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Comparative analysis of key issues in Australian Transport Sector PPPs



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Events for which the project co/Operator is entitled to an extension of time

Toll road project A	Toll road project B	Toll road project C	Toll road project D	Light rail project
The Company and the Trustee will be entitled to an extension of the Expected Completion Date only to the extent that a delay in achieving Completion of all Sections is reasonably likely to result from progress of the works being actually delayed as a result of an Extension Event. The extent of any delay caused by or attributable to lack of financial or technical resources shall not be taken into account.	A Concessionaire will be granted an extension of time and the relevant completion date extended if the conditions precedent have been satisfied. The length of extension will be determined by an independent reviewer. The State may also, at any time, whether or not the Concessionaires have made a claim, extend the Completion date.	Not available.*	Project Co will be entitled to claim an extension of time if any Extension Event delays or is likely to delay the Project Co in achieving completion by the completion date and it is beyond the reasonable control of the Project Co.	If Operator Franchisee is, or is likely to be, delayed in achieving Completion by a Compensation Event or a Relief Event, Operator Franchisee may claim an extension of time.

	Toll Road Project A	Toll Road Project B	Toll Road Project C*	Toll Road Project D	Light Rail Project
State breach	Breach of any project document by the State.	A breach of any project document by the State. A breach of any other obligation owed by the State to the Concessionaire under law.	N/A	A breach by the State or Authority of any Project Document to which the State is a party.	A breach by the State of its obligations under a State Project Document which adversely affects the ability of Operator Franchisee to perform any of its obligations or exercise any of its rights under the State Project Documents.

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State act or omission	An Act of Prevention. An action or omission that hinders, disrupts or prevents the Company or Trustee in implementing the project.	An Act of Prevention if the State which prevents, hinders or disrupts the implementation of the project by the Concessionaries.	<i>N/A</i>	Any reckless, unlawful or malicious act or omission of the State or a State Associate in respect of the project.	Destruction, loss or damage to the Project Works, the Project Area or the System, to the extent such destruction, loss or damage is the direct result of a fraudulent, unlawful or negligent act or omission of the State or any of its Associates or caused or contributed to by an act or omission of the V8 Supercar Event Promoter or any of its Associates.
State directed modifications	Where the State requires a variation of the Concession Deed or where it gives a notice for change prior to completion.	A modification but only to the extent of the extension of time agreed upon.	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>
Step-in by state	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	The exercise of any Step-In Rights or the taking of any Required Action by the State which is taken other than as a result (directly or indirectly) of any negligence, Wilful Misconduct, breach or default of Operator Franchisee or its Associates.

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Native title claims and artefacts, heritage	<p>Claims by any Commonwealth or State Minister that the construction site is a sacred site, that there are Aboriginal relics or are places of significance or that native title exists.</p> <p>Any action taken under the Historic Buildings Act 1981 (Vic), which protects an existing building or structure.</p>	<p>Where a Concessionaire is prevented from performing its obligations under the Deed in respect of the Construction Activities as a result of a Native Title Application or Native Title being found to exist in respect of a Licensed Area.</p>	N/A	N/A	<p>A Native Title Claim resulting in Operator Franchisee or a Core Contractor being directed, ordered or required by the State, a court or tribunal to suspend or cease to perform any of the Project Activities (or to change the way it does so).</p> <p>The discovery of an Artefact on or under the surface of the Project Area resulting in Operator Franchisee or a Core Contractor being directed, ordered or required by the State, a court or tribunal or by Law to suspend or cease to perform any of the Project Activities (provided that, to the extent that the discovery of the Artefact occurs during the D&C Phase, Operator Franchisee or the Core Contractor must be required to suspend or cease to perform the Project Activities, with respect to the relevant part of the Construction Site on which the Artefact</p>

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					is discovered for a period of 30 days (in aggregate) or more).
Industry wide industrial action	<p>Industrial action directed at the ESEP Project where it can be reasonably demonstrated by or on behalf of Clepco that the industrial action:</p> <p>(a) results from an act or omission of the State or any Victorian Government Agency directly in relation to the ESEP Project; or</p> <p>(b) results from or is part of an organised campaign in opposition to the implementation of the ESEP Project or any part thereof or in opposition to the implementation of other State projects or State policies.</p>	<p>Industrial Action directed at the Project where it can be reasonably demonstrated by or on behalf of the Concessionaire that the Industrial Action results from an act or omission of the State or its Associates directly in relation to the Project.</p>	N/A	N/A	<p>Any Industrial Action within Australia which:</p> <ul style="list-style-type: none"> affects the construction or light rail operation or maintenance sectors or significant segments of those sectors; and does not affect only the Project Area, the Project Works or the System.
Project-specific industrial action	N/A	N/A	N/A	<p>Industrial action that directly affects the project.</p> <p>The Project Co must be able to demonstrate that the action results directly from an act or omission of the State.</p>	N/A

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				Excludes any industrial action caused or motivated by the deliverance of a project by way of PPP.	
Utilities	N/A	N/A	N/A	N/A	<p>During the Operations Phase, electricity required for the operation of the System not being available for use (either at all or in the necessary quantity) at the mains connection to the System Site for any reason other than because of:</p> <ul style="list-style-type: none"> • any act or omission or lack of diligence by Operator Franchisee or any of its Associates; or • a dispute under the electricity supply contract or any other arrangement between Operator Franchisee or its Associates and ENERGEX, regardless of how that dispute is initiated or by whom.

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Suspension by state/required by law	N/A	N/A	N/A	Suspension, cessation of any part of O&M activities (or a change in the way they are performed) because of a: <ul style="list-style-type: none"> • government direction • court or tribunal order • requirement of law 	During the Operations Phase, an by an Authority to suspend the Project Activities (or any part of them) which prevents Operator Franchisee from performing a material part of its obligations.
Contamination	Any radioactive contamination or toxic or dangerous chemical contamination (other than pollution contamination). The existence of any pollution or contamination on ESEP Land or any other land to which Clepco has access or in relation to which the State is required to provide an indemnity under clause.	Any unexpected pollution where the Concessionaire can demonstrate that all reasonable preventative measures have been taken by it to minimise the effects of such event and that the occurrence of such event did not result from the Concessionaire breaching the Project Documents	N/A	N/A	Ionising radiation, contamination by radioactivity, nuclear contamination, or sudden and accidental chemical or biological contamination. The remediation of Migrating Contamination within the Project Area by or on behalf of the State in accordance with clause 12.3(c)(iii)(C), to the extent such remediation delays or prevents the performance of the Project Activities. Contamination in, on, over or under the Project Area to the extent such Contamination is the direct result of an act or omission of the V8 Supercar Event Promoter or its Associates.

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Change in law	N/A	Any discriminatory change in law.	N/A	A project-specific change in law.	<p>A Qualifying Change in Law.</p> <p>Qualifying Change in Law means:</p> <ul style="list-style-type: none"> • a Project-Specific Change in Law occurring after the date of this deed and requiring Operator Franchisee to incur additional costs or loss of revenue; or • a General Change in Law occurring after the date of this deed and requiring Operator Franchisee to incur, during the Operations Phase and with respect to the O&M Activities (or, if the General Change in Law is a Change in Environmental Law, occurring after the date of this deed and requiring Operator Franchisee to incur, during the Term and with respect to the Project Activities): • additional Capital Expenditure; • additional operating costs which would not

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					<p>otherwise be incorporated into the Service Payment as a consequence of the indexation or benchmarking of Service Payments pursuant to this deed; or</p> <ul style="list-style-type: none"> loss of revenue.
Failure of governmental agency	N/A	N/A	N/A	N/A	Failure by any Authority to carry out works or provide services to the Project Area which it is obliged by Law to carry out or provide.
Access	N/A	N/A	N/A	N/A	A failure by the State to give to Operator Franchisee the right to access a part of the Construction Site on or before the Site Access Date for the relevant part of the Construction Site in accordance with the Site Access Schedule.
Fire, flood or explosion	Any fire, flood, hurricane, explosion or natural disaster.	Fire, flood, hurricane, explosion, earthquake, natural disaster, where the Concessionaire can demonstrate that all reasonable preventative measures have been taken by it to minimise	N/A	N/A	Flood, fire, explosion, lightning, cyclone, hurricane, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation.

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		the effects of such event and that the occurrence of such event did not result from the Concessionaire breaching the Project Documents.			
War or terrorist acts	Any sabotage, act of public enemy, war, revolution.	Sabotage, act of public enemy, war, revolution or act of terrorism where the Concessionaire can demonstrate that all reasonable preventative measures have been taken by it to minimise the effects of such event and that the occurrence of such event did not result from the Concessionaire breaching the Project Documents.	<i>N/A</i>	<i>N/A</i>	A "terrorist act" (as defined in section 5 of the Terrorism Insurance Act 2003 (Cth) as at the date of this deed). War (declared or undeclared), armed conflict, riot, civil commotion.
Loss or damage to the site	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	Any event or occurrence which causes loss or damage to the Project Works, the Project Area or the System.
Blockade or embargo	A riot, civil commotion or blockade.	Any riot, blockade or other civil commotion resulting from an Act by the State directly in relation to the project or forms part of an organised campaign in opposition to the implementation of the	<i>N/A</i>	<i>N/A</i>	Any blockade or embargo.

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		project where the Concessionaire can demonstrate that all reasonable preventative measures have been taken by it to minimise the effects of such event and that the occurrence of such event did not result from the Concessionaire breaching the Project Documents			
Failure to implement legislation	N/A	N/A	N/A	N/A	The Assumed Legislative Amendment with respect to schedule 4 of the Sustainable Planning Regulation 2009 (Qld) is not implemented by the Assumed Legislative Amendment Date.
Legal proceedings/rulings	Any court or tribunal decision which prevents or delays construction, except where the decision is caused by or results from the Company or Trustee acting in breach of the project documents.	Where a court makes a ruling relating solely to Laws which it is in the legislative power of the State to change which delays the Concessionaire from undertaking all, or substantially all, of the Project except where the decision is caused by or results from the Concessionaires acting in breach of the Project Documents or from an event or circumstance the	N/A	Legal action taken in respect of a key project approval procured by the State (eg Planning Scheme Amendment, Heritage Permit, Environmental Effects Assessment etc.).	A legal challenge in relation to a Key Approval or the modification, withdrawal, revocation, suspension, invalidation or replacement of a Key Approval, unless the legal challenge, modification, withdrawal, revocation, suspension, invalidation or replacement relates to or arises out of or in connection with: <ul style="list-style-type: none"> • legal action brought

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		occurrence or existence of which reflects the crystallisation of a risk accepted (or responsibility for which has been accepted) by the Concessionaire under the Project Documents.			<p>by or on behalf of Operator Franchisee or its Associates</p> <ul style="list-style-type: none"> any failure of the Project Works or the System to comply with all Approvals
Preliminary works	N/A	N/A	N/A	N/A	<p>Early and enabling works (EEW) have not achieved "practical completion" on a part of the Construction Site identified in the Site Access Plans as an "Area for Early and Enabling Works", on or before the relevant Site Access Date for that part of the Construction Site.</p> <p>Operator Franchisee acknowledges that "practical completion" may be achieved under the EEW Contracts notwithstanding the existence of minor defects in the EEW and that the presence of such defects will not constitute a Compensation Event.</p>

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Knock-on events	N/A	<p>Any delay in the performance by the State of either a proximate State work or a modification in respect of which the State has made an election, where:</p> <ol style="list-style-type: none"> 1 the delay in performance by the State has been as a result of an extension event 2 the extension event occurred after the extension of time agreed upon in respect of the proximate state work or modification 	N/A	N/A	N/A

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Interference by third-parties	N/A	<p>A delay to the Project (other than the DSB Aspects of the Project) due to a person exercising a right under the EPBC Act in respect of all or a substantial part of the Project in a manner that has a material impact on the Construction Activities.</p> <p>Except where it is due to the Concessionaire's non-compliance with their obligations under the deed or is in relation to any departure to the Day 1 design or subsequent departure from the Concept Design.</p>	N/A	N/A	<p>A breach by GCCC of its obligations under the Council Direct Deed or a breach by TTA of its obligations under the TTA Direct Deed, which adversely affects the ability of Operator Franchisee to perform any of its obligations or exercise any of its rights under the State Project Documents.</p> <p>Damage to the Project Works or the System or unreasonable interference with the Project Activities, directly caused by a third party Contractor engaged by or on behalf of the State, GCCC or TTA, in carrying out Proximate Works, implementation of a Future Stage or rectification of an EEW Defect, provided that Operator Franchisee has fully complied with all of its obligations under the deed in relation to the works which gave rise to such damage or unreasonable interference.</p>

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Excluded works	N/A	N/A	N/A	The carrying out of excluded works in respect of O&M Activities. Excluded works are where the state omits, deletes or removes work from the scope of the Project Activities and carry out that work itself (or engage another party to carry out that work).	N/A
Agency approval or minister's decision	Any compliance with the requirements resulting from and Environmental Impact Statement.	<p>EPBC Event</p> <p>Where the outcome of any referral of the DSB Aspects of the Project to the Minister for Environment and Heritage under the EPBC Act being unresolved 18 months from the date of referral as a result of the time taken to obtain the Minister's approval under the EPBC Act, including a person exercising a right under the EPBC Act in relation to the DSB Aspects of the Project.</p> <p>Except where it is due to the Concessionaire's non-compliance with their obligations under the deed or is in relation to any departure to the Day 1 design or subsequent</p>		<p>The approval of a Management Plan under the Environmental Protection and Biodiversity Conservation Approval not being obtained by a certain date.</p> <p>Additionally, where the relevant Minister has not made a decision under the <i>Environmental Protection and Biodiversity Conservation Act</i> by a certain date.</p>	<p>A delay by the Rail Safety Regulator in granting Accreditation required for Completion, provided that:</p> <ul style="list-style-type: none"> it is a pre-condition to relief (and compensation, if applicable) under this paragraph (m) that Operator Franchisee has fully complied with all of its obligations under the Rail Safety Accreditation Plan any delay by the Rail Safety Regulator in granting Accreditation as a result of the Rail Safety Regulator reasonably requiring additional information or

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		<p>departure from the Concept Design.</p> <p>EES Event</p> <p>A delay to the Project (other than the DSB Aspects of the Project) of more than 6 months due to the relevant Minister under the Environment Effects Act 1978 (Vic) requiring an environment effects statement to be prepared under the Act in respect of all or part of the Project.</p> <p>The relevant Minister under the Environment Effects Act 1978 (Vic) requiring an environment effects statement to be prepared for the DSB Aspects of the Project and such assessment being unresolved 18 months after the Commencement Date, except to the extent that:</p> <ul style="list-style-type: none"> • it is due to the Concessionaires' non-compliance with their obligations under this Deed • it is in relation to any departure from the Day 1 Design. 			<p>reasonably requiring additional testing to satisfy itself that the requirements for Accreditation have been met (provided that the Rail Safety Regulator has the statutory right to require that additional information or additional testing) will not be a Compensation Event (regardless of whether the additional information or additional testing was contemplated under the Rail Safety Accreditation Plan).</p>

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		<p>Tunnel Ventilation Delay</p> <p>A delay to the Project exceeding 18 months from application, in the Concessionaires obtaining a works approval under the Environment Protection Act 1978 (Vic) (including any review or appeal prior to the first grant of the approval) in respect of the tunnel ventilation system for the tunnels under the Mullum Mullum Creek, except to the extent that it is due to the Concessionaires' non-compliance with their obligations under this Deed.</p>			
Other	N/A	N/A	N/A	N/A	<p>A Station Defect, other than to the extent the State implements a Modification for Operator Franchisee to carry out the defect rectification.</p> <p>Station Defect means:</p> <ul style="list-style-type: none"> any aspect of the works constructed under the EEW Contract (Station Shell) which is not in

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					<p>accordance with the requirements of the EEW Contract (Station Shell)</p> <ul style="list-style-type: none"> any aspect of the works constructed under the EEW Contract (Station Hospital Canopy) which is not in accordance with the requirements of the EEW Contract (Station Hospital Canopy) <p>which has a significant detriment on the Project Activities or the D&C Program, provided that for the purposes of this definition, a defect (within the meaning set out in paragraph (a) or (b)) will be deemed to have a significant detriment on the Project Activities to the extent Operator Franchisee is abated under schedule 3 as a result of that defect.</p>

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Force majeure	N/A	N/A	N/A	Any <i>Force Majeure</i> event (see part 5 below for a list of these events).	N/A
Exercise of statutory power	N/A	N/A	N/A	N/A	<p>An exercise of a power or an instruction by the State or the V8 Supercar Event Promoter under or in connection with the Motor Racing Events Act 1990 (Old) occurring after the date of this deed or an act or omission of the V8 Supercar Event Promoter on the Project Area that:</p> <ul style="list-style-type: none"> materially differs from the V8 Supercar Event Requirements as at the date of this deed; and delays or disrupts Operator Franchisee or prevents Operator Franchisee from performing a material part of its obligations.

* Extension of time provisions were incorporated in the EWAG Works Deed and the NB Works Deed and were unavailable.

Conditions precedent to a claim for EOT

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<p>N/A</p>	<p>It is a condition precedent to the Concessionaires' entitlement to an extension of time:</p> <ul style="list-style-type: none"> • that the Concessionaires have given the claim (notice) required • that the Concessionaires are, or will be: • (A) prevented from achieving Freeway Section Completion by the relevant Planned Date for Freeway Section Completion or the relevant Late Completion Date (as the case may be) • (B) after the relevant Planned Date for Freeway Section Completion or the relevant Late Completion Date (as the case may be), delayed in achieving Freeway Section Completion, by an Extension Event • that: • (A) the relevant delay is demonstrable on an assessment of the actual and then current critical path to achieving Freeway Section Completion of the Construction Activities in 	<p>N/A</p>	<p>The Project Co's entitlement to an extension of time is subject to the following condition's precedent:</p> <ul style="list-style-type: none"> • Project Co must submit a Change Notice • the cause of the delay must be beyond the reasonable control of Project Co and its Associates • The Project Co has actually been, or is likely to be, delayed by an Extension Event in a manner which will delay it from achieving Completion as agreed • Project Co must have submitted a D&C Program and must otherwise be fully complying with its obligations in respect of the D&C Program (at the time of submitting the Change Notice). 	<p>It is a condition precedent to Operator Franchisee's entitlement to an extension of time that:</p> <ul style="list-style-type: none"> • Operator Franchisee submits its Change Notice and any updated Change Notice in the manner required by clause 16.7(b)(i) • the cause of the delay was beyond the reasonable control of Operator Franchisee and its Associates (provided that the fact that a delay occurs after the Date for Completion will not, of Itself, disentitle Operator Franchisee from relief on the basis that the delay was within the reasonable control of Operator Franchisee) • Operator Franchisee has actually been, or is likely to be, delayed by a Compensation Event or a Relief Event in a manner which will delay it from achieving Completion in the relevant manner set out in clause 16.7(a) • subject to clause 16.7(e), Operator Franchisee has

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	<p>relation to the relevant Section by the relevant Planned Date for Freeway Section Completion or the relevant Late Completion Date</p> <ul style="list-style-type: none"> • (B) without limitation, the Concessionaires have complied with their obligations under clause 17.3 (Updating the Design and Construction Program) and clause 17.5(c) (Updated Design and Construction Program) as at the commencement and cessation of the Extension Event. <p>For the avoidance of doubt, the Concessionaires will not be entitled to an extension of the relevant Planned Date for Freeway Section Completion or the relevant Late Completion Date (as the case may be) under clause 20.4(g) (Assessment):</p> <ul style="list-style-type: none"> • except to the extent that the Concessionaires are or will be delayed by the Extension Event in achieving Freeway Section Completion of the Construction Activities in relation to that Section • if the Concessionaires can achieve Freeway Section 			<p>submitted a D&C Program in accordance with clause 16.3 and is otherwise (at the time it submits a claim under this clause 16.7) fully complying with its obligations in respect of the D&C Program under clause 16.3.</p>

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	<p>Completion of the Construction Activities in relation to that Section by the relevant Planned</p> <ul style="list-style-type: none"> • Date for Freeway Section Completion or the relevant Late Completion Date (as the case may be) without the extension of time • in respect of the Construction Activities in relation to a Section which are not affected by the Extension Event • to the extent that either Concessionaire has not complied with its obligations under clause 20.5(a) (Obligation to mitigate) • in respect of the relevant Late Completion Date, to the extent that the delay caused by the relevant Extension Event has otherwise been taken into account in the relevant Late Completion Program • except to the extent that the cause of the delay is not attributable to a breach of the Project Documents by the Concessionaires. 			

Delay liquidated damages

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
The State does not impose delay liquidated damages.	The State does not impose delay liquidated damages.	The State does not impose delay liquidated damages.	The State does not impose delay liquidated damages.	The State does not impose delay liquidated damages.

State-Proposed variations

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<p>The State may request information as to cost and other matters specified in the request in relation to a proposed variation of the project.</p> <p>The Company and Trustee must, as soon as possible, provide details of costs, impact on the completion date and impact on relevant traffic flows.</p> <p>The Company and Trustee shall not be required to begin work on the variation until all details have been agreed upon or have been determined by expert determination.</p> <p>Once an agreement or determination has been made, and the State has made a request, the Company and Trustee must carry out the variation.</p>	<p>The State may request information as to the revenue and cost impacts of a proposed modification of the project works. The Concessionaires must then give a notice to the State with all relevant information on cost, revenue, time, facilities, funding, implementation, etc. The Concessionaires are under a number of obligations in regards to this information, including the fact that the information must be prepared:</p> <ul style="list-style-type: none"> • in a way that minimises the need for third party consents • on an open book basis • in a way that minimises freeway disruptions <p>Where the State proposes to request a modification, it</p>	<p>The State may at any time issue a Modification Proposal to the PPP Cos.</p> <p>Within 20 business days, the PPP Cos must respond with a notice giving an estimate of costs, funding and implementation time etc.</p> <p>Following notice of the PPP Cos, the State either accept, reject or withdraw its Modification Proposal.</p> <p>If the State accepts, the PPP Cos must implement the modification as required.</p> <p>If the State rejects, there is a procedure for consultation and then, if needed, dispute resolution. Following the outcome of that process, the State can either require the PPP Cos to carry out the modification or withdraw its proposal.</p>	<p>The State may at any time issue a Modification Proposal setting out the details of a proposed Change which the State is considering.</p> <p>Within 20 business days, the project co must respond with a modification notice, that amongst other things, includes:</p> <ul style="list-style-type: none"> • an estimate of the compensation to which it considers itself entitled • the basis on which it would be prepared to fund the modification • the time in which the modification is to be implemented <p>The State must then either:</p> <ul style="list-style-type: none"> • advise Project Company that it requires further information or 	<p>The State may at any time issue to Operator Franchisee a notice titled "Modification Proposal" setting out the details of a proposed Modification which the State is considering, including the State's proposed requirements for the implementation and funding of the proposed Modification.</p> <p>If, in Operator Franchisee's opinion, any direction given by the State other than a direction given in a Notice to Proceed or Modification Order constitutes or involves a Modification, Operator Franchisee must provide notice to this effect to the State within 3 Business Days. Within 2 Business Days of receipt of such notice, the State will notify Operator Franchisee that it either agrees that the direction constitutes or involves a Modification (in which case the State will issue a Modification Proposal or Modification Order), or it disagrees that the direction constitutes or involves a Modification, and that it considers Operator Franchisee is required to comply with the direction in accordance with this deed or at Law. Alternatively, the State may withdraw the direction.</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>The State shall pay the variation costs.</p>	<p>will provide the Concessionaires with details and consult at least 30 business days prior to issuing a formal request.</p> <p>Within 60 business days of receiving the required information from the Concessionaires, the State must accept or reject the notice given. If the State accepts, the Concessionaires are then under an obligation to finalise funding and obtain any relevant third party consents.</p> <p>If the State rejects the notice given by the Concessionaires, it may then require that the two parties consult in good faith to achieve a mutually acceptable resolution and/or that the Concessionaires conduct a tender process.</p> <p>The State may refer the dispute for expert determination 60 business days after the commencement of consultation or 10 business days after the tender process is complete.</p>	<p>The State may require that the PPP Co conduct a tender for some or all of the works.</p> <p>Excluding works</p> <p>The State has the right, as part of a modification to omit, delete or remove work from the O&M activities, project works and project activities.</p> <p>Restriction</p> <p>The State cannot require a modification that would adversely affect the capacity, patronage or use of the Toll road (or the ability to levy tolls). Additionally, no modification can be required to the works or project activities after the last defects liability period date.</p>	<p>clarification or has reduced the scope of the Modification Proposal</p> <ul style="list-style-type: none"> • accept the Modification Notice and, if the Modification Notice contains any options, nominate which option the State accepts • reject the Modification Notice • withdraw the proposed State Initiated Modification. <p>The State also has the option (regardless of whether a Modification Proposal or Notice has been issued, there is a matter referred for dispute resolution or whether the parties have reached an agreement on a disputed matter in the Modification Notice) of instructing the Project Co to implement a modification and make interim determinations on compensation until the parties come to an agreement or it is settled through the agreed resolution procedure.</p> <p>The Project Co. must then implement the modification</p>	<p>If the parties fail to agree whether a modification is involved, the matter may be referred by either party for resolution in accordance with clause 57 (Dispute resolution).</p> <p>Within 20 Business Days of receipt of a Modification Proposal from the State, Operator Franchisee must prepare and submit a Modification Notice to the State. The State will not be obliged to proceed with any Modification proposed in a Modification Proposal or which is the subject of a Modification Notice.</p> <p>Without limiting the State's rights, however, the State may, at any time after issuing a Modification Proposal, issue a Notice to Proceed with the Modification together with a Modification Order.</p> <p>If the State issues a Notice to Proceed to Operator Franchisee:</p> <ul style="list-style-type: none"> • Operator Franchisee must proceed to implement the Modification in accordance with the directions of the State • Operator Franchisee will be relieved of its obligations under the State Project Documents to the extent specified in the Notice to Proceed • the parties will use their reasonable endeavours to agree to the Estimated Cost Effect of the Modification and any relief required by Operator Franchisee from its obligations under the State

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>Following any expert determination, the State can decide whether or not to proceed with the modification.</p> <p>For smaller modifications (less than \$20million), the time periods mentioned above shall be shortened as much as practicable and no tender process will be required.</p>		<p>(regardless of whether some matters remain in dispute). Whilst the Project Co cannot refuse to implement the modification, it may refer some matters (ie compensation) for dispute resolution.</p> <p>The State may also remove work from the stated project activities.</p>	<p>Project Documents (including extensions Date for Completion or Sunset Date) as is reasonable for the Modification</p> <ul style="list-style-type: none"> • if the parties cannot agree to the Estimated Cost Effect or the relief required by Operator Franchisee, the matter will be referred to dispute resolution by expert determination and will be reasonably determined by the State until the matter is resolved • any necessary adjustments to the Estimated Cost Effect and the relief granted will be made following the determination of the dispute (if applicable) <p>The State can then either accept or reject the modification notice. The State can also inform Operator Franchisee that it does not wish to proceed with the proposed Modification.</p> <p>If the State rejects the Notice, the parties must then consult in good faith. There is also a provision for dispute resolution if agreement cannot be reached. The State can issue a Notice to Proceed with the modification during dispute resolution. Following dispute resolution the State may either require that the modification be carried out or withdraw the modification.</p> <p>If the State requires that the modification be carried out (or accepts the Operator Franchisee’s Modification Notice), then the Operator Franchisee must carry out the modification in accordance with the Modification Order.</p>

Events which constitute Force Majeure

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>A Force Majeure is any one or more of:</p> <ul style="list-style-type: none"> • fire • flood • hurricane • explosion • earthquake • natural disaster • sabotage, act of a public enemy • war (declared or undeclared) • revolution • radioactive contamination or toxic or dangerous chemical contamination • riot • civil commotion or blockade <p>or any event which is beyond the reasonable control of the Company or Trustee.</p> <p>The risk must not be reasonably capable of adequate insurance in the commercial insurance market on reasonable terms and causes the Company or the Trustee to be unable to perform any one or more of their obligations to the State under the Project Documents, where that cause</p>	<p>A force majeure is an event that is beyond the reasonable control of the Concessionaires and their Contractors and one which causes them to be unable to perform an obligation under the project documents (where that has not resulted from a breach of the project documents by the Concessionaires). The event must also be one that could not have been prevented or remedied by the Concessionaires exercising a reasonable standard of care.</p> <p>A force majeure does not include any event the risk of which, or the occurrence of a matter or event responsibility for which, has been accepted by the Concessionaire. This does not, however, include:</p> <ul style="list-style-type: none"> • fire • flood • hurricane • explosion • earthquake • explosion • earthquake • natural disaster • unexpected pollution 	<p>A Force Majeure is any of the following events.</p> <p>Prior to the toll road opening:</p> <ul style="list-style-type: none"> • lightning, earthquake, cyclone, natural disaster, landslide and mudslide • explosion, malicious damage, sabotage, riots or a "terrorist act" (as defined in section 5 of the Terrorism Insurance Act 2003 (Cth) as at the date of this deed) • a flood which might at the date of this deed be expected to occur less frequently than once in every 50 years • war, invasion, act of a foreign enemy, hostilities between nations (whether war be declared or not), civil war, rebellion, revolution or military or usurped power, martial law or confiscation by order of any Authority • toxic chemical contamination • ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel 	<p>A Force Majeure includes:</p> <ul style="list-style-type: none"> • earthquake, cyclone, natural disaster, landslide, seismic activity and mudslide • explosion, malicious damage, sabotage, riots or a terrorist act • a flood which might, at the date of this deed, be expected to occur less frequently than once in every 100 years • war, invasion, act of a foreign enemy, hostilities between nations (whether war is declared or not), civil war, rebellion, revolution or military or usurped power, martial law or confiscation by order of any Authority • toxic, chemical or biological contamination • ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel <p>The event must also be beyond the reasonable control of the Project Co and must prevent or delay the Project Co from performing its obligations. The</p>	<p>A Force Majeure Event is the occurrence of a Relief Event which:</p> <ul style="list-style-type: none"> • exists or occurs or the effects of which exist or occur, or can reasonably be expected to exist or occur, for a continuous period exceeding 180 days • directly causes or the direct and immediate effects of which cause either party to be unable to comply with a material part of its obligations under the State Project Documents. <p>A relief event is:</p> <ul style="list-style-type: none"> • flood, fire, explosion, lightning, cyclone, hurricane, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation • a "terrorist act" (as defined in section 5 of the Terrorism Insurance Act 2003 (Cth) as at the date of this deed) • war (declared or undeclared), armed conflict, riot, civil commotion • ionising radiation, contamination by

Comparative analysis of key issues in Australian Transport Sector PPPs

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>could not have been prevented, overcome or remedied by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligation without that prudent person having any expectation of relief from performing that obligation, including the expenditure of all reasonable sums of money.</p> <p>A <i>Force Majeure</i> does not include:</p> <ul style="list-style-type: none"> • any event, the risk of which is or the occurrence of a matter or event • responsibility for which has been accepted by the Company or the Trustee • any Extension Event • any event or combination of events referred to in column 1 of Items 1 to 7 of the Appendix (claims of Aboriginal sites, native title, heritage protection, acts of prevention, industrial action) • lack of financial or technical resources • mechanical, electrical or equipment breakdown • any change in Law 	<ul style="list-style-type: none"> • sabotage, act of a public enemy • war (declared or undeclared) • terrorism • revolution • riot, civil commotion or blockade (resulting from a State act or in direct opposition to the project) <p>A <i>force majeure</i> does not include:</p> <ul style="list-style-type: none"> • change in law • lack of financial or technical resources • mechanical, electrical or equipment breakdown which is not extraordinary and highly unlikely • an act of prevention • failure by the State to provide support • industrial action • proximate State work • the State or any of its Associates exercising a right or power with respect to Melbourne's transport network 	<ul style="list-style-type: none"> • After to the toll road opening • any event specified above • any other material event the risk of which is not otherwise specifically allocated in the State Project Documents and is beyond the reasonable control of the PPP Cos. The event must also prevent the PPP Cos from carrying out an obligation under the project documents and must not have been prevented, remedied or overcome by PPP Cos taking prudent and reasonable measures. 	<p>event or consequence must not have been caused by the Project Co and cannot have been prevented, overcome or remedied by the Project Co by taking reasonable and prudent steps.</p>	<p>radioactivity, nuclear contamination, or sudden and accidental chemical or biological contamination</p> <ul style="list-style-type: none"> • failure by any Authority to carry out works or provide services to the Project Area which it is obliged by Law to carry out or provide • any event or occurrence which causes loss or damage to the Project Works, the Project Area or the System • any blockade or embargo • any Industrial Action within Australia which • affects the construction or light rail operation or maintenance sectors or significant segments of those sectors • does not affect only the Project Area, the Project Works or the System.

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<ul style="list-style-type: none"> any industrial action <p>it also does not include anything that would not have occurred had the Works been entirely designed and constructed to address floods of a level that might at the date of the Deed be expected to occur once in every 50 years.</p>				

Relief for Force Majeure

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>If the Company or the Trustee is unable to perform an obligation to the State under the Project Documents because of a relevant event (which includes a <i>Force Majeure</i>), then those obligations shall be suspended for the relevant period.</p> <p>The State will also be unable to exercise its right of termination because of a failure to diligently pursue repair and reinstatement if the damage or destruction was caused by a <i>Force Majeure</i>.</p>	<p>To the extent that the Concessionaire is prevented or delayed by a <i>Force Majeure</i> Event, a Concessionaire's performance of its non-financial obligations under the Deed will be suspended to that extent from the date the Concessionaires give a Suspension Notice in respect of that <i>Force Majeure</i> Event until the relevant Concessionaire ceases to be so prevented or delayed.</p> <p>The Concessionaires will not be entitled to an extension of time to the Planned Date for Freeway Section Completion as a result of any delay caused by a <i>Force Majeure</i> Event, except where expressly entitled.</p>	<p>The Project Co's obligations are suspended to the extent affected by the FM. No default notice may be issued by the State in respect of any breach of an obligation that has been suspended.</p> <p>Upon the PPP Cos, the State Works Contractor or the NB Works Contractor (as applicable) becoming able to recommence performing the obligations which were suspended, the PPP Cos must recommence (and ensure that the State Works Contractor and the NB Works Contractor recommence, as applicable) the performance of those obligations.</p> <p>The State will not be obliged to</p>	<p>The Project Co's obligations are suspended to the extent affected by the FM.</p> <p>Quarterly Services Payment will be abated in accordance with the Abatement regime, but any application of this regime will be ignored for the purpose of assessing an Event of Default so long as the Project Co complies with its obligations regarding actions to be taken in an FM event.</p> <p>If any abatement results in the Project Co not being able to make repayments of project debt and the FM event is not one that is uninsurable, should have been insured or was required to have been insured, then they Project Co will be</p>	

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	The obligation to keep all traffic lanes of the Freeway open for public use is not affected or suspended by a <i>Force Majeure</i> if safe passage of vehicles can be allowed.	provide any financial relief to PPP Cos during suspension. The PPP Cos will not be liable to compensate the State for any costs or losses which the State incurs during the period of suspension.	entitled to an amount of money necessary to make it's scheduled repayments (less the abated quarterly service payment and any amount that the Project Co is able to recover under insurance).	

Termination for prolonged Force Majeure

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
N/A	<p>There is no general right of termination but where notice is given to the State of an uninsurable <i>force majeure</i> event and the cost of the project (after relevant repairs/remedies) increases such that the equity return would be lower than the lower of (immediately prior to the relevant damage):</p> <ul style="list-style-type: none"> the applicable Base Case Equity Returns the applicable Equity Returns <p>then the State may, upon giving 15 days' notice, terminate the rights and obligations under the deed.</p>	<p>At any time after the occurrence of an Uninsurable <i>Force Majeure</i> Event, the State may in its absolute discretion terminate this deed by giving a notice to that effect to each PPP Co after which this deed will be terminated.</p>	<p>A <i>Force Majeure</i> Termination Event is where a <i>Force Majeure</i> prevents the Project Co from undertaking all or substantially all of its Project Activities for a continuous period of more than six months.</p> <p>Where a <i>Force Majeure</i> Termination Event occurs, either party can terminate the deed by giving notice.</p> <p>The Project Co cannot, however, terminate the deed:</p> <ul style="list-style-type: none"> prior to completion unless any advanced consequential insurance has expired if during the O&M term the O&M Contractor or the Project Co is entitled to recover insurance referable to the FM suspension period or would have been 	<p>If:</p> <ul style="list-style-type: none"> the parties are unable to agree on appropriate terms to mitigate the effects of the <i>Force Majeure</i> Event and facilitate the continued performance of the State Project Documents on or before the date falling 20 Business Days after the date of the commencement of the relevant <i>Force Majeure</i> Event (or the date on which the relevant Relief Event became a <i>Force Majeure</i> Event) the <i>Force Majeure</i> Event is continuing or its consequence remain such that the affected party has been or is unable to comply with a material part of its obligations under the State Project Documents during

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
			<p>able to recover had it complied with its obligations.</p>	<p>that 20 Business Day period,</p> <p>then either party may terminate the deed by giving 20 Business Days' notice to the other party.</p> <p>Restrictions on Termination</p> <p>The Operator Franchisee, however, may only terminate the deed if:</p> <ul style="list-style-type: none"> • the <i>Force Majeure</i> Event occurred during the D&C Phase • if Operator Franchisee is entitled to recover under the advance business interruption insurance policy, the maximum indemnity period stated in the advance business interruption insurance policy has been exceeded • if Operator Franchisee is not entitled to recover under the advance business interruption insurance policy (other than because Operator Franchisee has not complied with its obligations under clause 43 or made a proper claim), at the end of the 20 Business Day period • the <i>Force Majeure</i> Event

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
				<p>occurred during the Operations Phase</p> <ul style="list-style-type: none"> • if Operator Franchisee is entitled to recover under any business interruption insurance policies, the maximum indemnity period stated in the business interruption insurance policies has been exceeded • Operator Franchisee is not entitled to recover under any business interruption insurance policies (other than because Operator Franchisee has not complied with its obligations under clause 43 or made a proper claim), at the end of the 20 Business Day period. <p>Suspension of Operator Franchisee's right to terminate</p> <p>Subject to some requirements, the State also has the power to suspend the Operator Franchisee's right to terminate. Instead of being treated as a <i>Force Majeure</i> event, the event will be treated as a Relief Event (for the purpose of the period of suspension). The period of suspension cannot be greater than six months.</p>

Events which constitute a general change in law

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Change in law is not defined.</p>	<p>Definition</p> <ul style="list-style-type: none"> • a change in Law existing as at the Commitment Date • the enactment of a new Law after the Commitment Date • a change in the judicial interpretation of an existing Law, after the Commitment Date, <p>but does not include:</p> <ul style="list-style-type: none"> • a change in Tax other than a Change in Relevant Tax • a change in relation to Part IVAA of the Wrongs Act 1958 (Vic) or its application which: <ul style="list-style-type: none"> – limits or eliminates the impact of that Part on the legal risk allocation under the Transaction Documents as between all of the parties to the Transaction Documents (as at the date of this Deed) in so far as that legal risk allocation, in each case, relates to the Project (whether or not it has a wider application to other persons or risks) – is not expressed to apply differently to the different parties to the 	<p>Change in law is not defined.</p>	<p>Definition</p> <p>A general change in law means:</p> <ul style="list-style-type: none"> • a change in, or repeal of, an existing Law • the enactment of a new Law • a change in the way a Law is applied or interpreted as a result of a binding decision of a court of competent jurisdiction which reverses, overrules or refuses to follow an earlier binding decision of a court of competent jurisdiction where that earlier decision existed at the date of this deed <p>but does not include:</p> <ul style="list-style-type: none"> • a modification • a change in the way a Law is applied or is interpreted as a result of a court decision (other than as stated above or a decision which is the first decision on the relevant issue) • a change in the way a Law is applied or is interpreted as a result of the failure of Project Company to comply with a Law or a requirement of any Approval, or in 	<p>Definitions</p> <p>Qualifying Change in Law means:</p> <ul style="list-style-type: none"> • a Project-Specific Change in Law occurring after the date of this deed and requiring Operator Franchisee to incur additional costs or loss of revenue • a General Change in Law occurring after the date of this deed and requiring Operator Franchisee to incur, during the Operations Phase and with respect to the O&M Activities (or, if the General Change in Law is a Change in Environmental Law, occurring after the date of this deed and requiring Operator Franchisee to incur, during the Term and with respect to the Project Activities) <ul style="list-style-type: none"> – additional Capital Expenditure; – additional operating costs which would not otherwise be incorporated into the Service Payment as a consequence of the

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>Transaction Documents, provided that any such change to the extent that it expressly seeks to change the risk allocation as between users of the Freeway and any parties to a Transaction Document and does not take effect more broadly than the Victorian toll road sector will not be taken to be excluded from the definition of Change in Law by virtue of this paragraph (e);</p> <ul style="list-style-type: none"> • a change in relation to Division 2 or 3 of Part 6 of the Road Management Act in so far as that change permits in whole or part: • a Claim of the State or its Associates • a Liability of the Concessionaire or its Associates to the State or its Associates, in connection with the Project which would have been permitted had those Divisions as at the Commitment Date not existed • any amendment to the Project Legislation to: <ul style="list-style-type: none"> – make clear that the DSB 		<p>response to an illegal act or omission of Project Company (including any breach of the deed by Project Company)</p> <ul style="list-style-type: none"> • any change in an Approval resulting from any direct or indirect action of Project Company including any Modification requested by Project Company • a change in any Law relating to Taxes including the Income Tax Assessment Act 1936 (Cth), the GST Act and the Income Tax Assessment Act 1997 (Cth) and the GST Law • a change in Law which was not in force at the date of this deed but which had been published in the Government Gazette (by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of the deed), is contained or referred to in any Project Document, or a party experienced and competent in the performance of activities similar to the Project Activities would have reasonably foreseen or anticipated prior to the date 	<p>indexation or benchmarking of Service Payments pursuant to this deed; or</p> <ul style="list-style-type: none"> – loss of revenue. <p>A General Change in Law means a Change in Law that is not a Project Specific Change in Law.</p> <p>Change in Law means:</p> <ul style="list-style-type: none"> • the amendment, repeal or change after the date of this deed of any Law existing at the date of this deed • the enactment of any new Law after the date of this deed • a change in the way a Law is applied as a result of a binding decision of a court or tribunal of competent jurisdiction which reverses, overrides or refuses to follow an earlier binding decision of a court or tribunal of competent jurisdiction where that earlier decision existed on the date of this deed • a Change in Codes and Standards, to the extent Operator Franchisee is required to comply with that change under clause 26.4,

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>Aspects of the Project are included in the Project</p> <ul style="list-style-type: none"> – give effect to the enforceability of the KPI Regime • a change in relation to Divisions 2 and 3 of Part 9 of the Project Legislation which provides for a Two-Stage Demand Process in place of the single demand contemplated by Division 2 of Part 9 of the Project Legislation: <ul style="list-style-type: none"> – attaching to each demand such terms, conditions, processes and procedures (including nomination rights and time periods) as considered reasonably necessary by the State to implement a Two-Stage Demand Process so long as, with respect to each demand, those terms, conditions, processes and procedures (including nomination rights and time periods) are not inconsistent with those applying to a demand under section 200 of the Project Legislation as at the date 		<p>of the deed</p> <ul style="list-style-type: none"> • a change in law relating to Part IVAA (Proportionate Liability) of the Wrongs Act 1958 (Vic) or its application which limits or eliminates the impact of that Part or any legal risk allocation, whether or not it has any application. 	<p>but excluding:</p> <ul style="list-style-type: none"> • any amendment, repeal, change or enactment of any Legislation, or any Code or Standard, contemplated by and in substantially the same form as the Assumed Legislative Amendments; • any amendment, repeal or change of the Income Tax Assessment Act 1936 (Cth), the GST Law or the Income Tax Assessment Act 1997 (Cth) • any amendment, repeal, change or enactment of any Law, or any Code or Standard, which, as at the date of this deed: <ul style="list-style-type: none"> – was published or of which public notice had been given (even as a possible amendment, repeal, change or enactment) – a party experienced and competent in the delivery of works and services similar to the Project Works or the Project Activities (as applicable) would have reasonably foreseen or anticipated, in substantially the same

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>of this Deed</p> <ul style="list-style-type: none"> – such that the Owner of the vehicle driven, or a person who drives a vehicle on the Freeway is not guilty of an offence unless the relevant tolls and administration fees are not paid before the end of the process (including the nomination process) applicable to the later demand • unless the parties otherwise agree, a change in so far as that change permits the State in whole or part to: <ul style="list-style-type: none"> – effect, or require the granting of, any licences in the Tolling System as are required – effect, or require the provision or making available of, any materials, information, assistance, rights, access or personnel as are necessary, by any person who has any Intellectual Property Rights in the Tolling System so as to enable either: <ul style="list-style-type: none"> – the Concessionaires to fully and properly grant the licences granted 			<p>form as the amendment, repeal, change or enactment eventuating after the date of this deed, other than</p> <ul style="list-style-type: none"> – a Change in Law by reason of the introduction of an Emissions Trading Scheme or any associated amendment, repeal, change or enactment of a Carbon Emissions Law – an increase to the minimum Employer superannuation contributions required under the Superannuation Guarantee Charge Act 1992 (Cth) or the Superannuation Guarantee (Administration) Act 1992 (Cth) and its regulations, to the extent applicable to the O&M Contractor's employees working on the Project • any amendment, repeal, change or enactment of any Law, or any Code or Standard, effected in response to an illegal act or omission by Operator

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>under, and perform all the Concessionaries' obligations required to be performed under, the IP Licence Deed and the Escrow Agreement</p> <ul style="list-style-type: none"> - the provision of equivalent rights (subject to any equivalent obligations and restrictions), as referred to in paragraph (iii) directly to the State or its nominee. 			<p>Franchisee (not including an act or omission which became illegal as the result of the amendment, repeal, change or enactment).</p>

Relief for a general change in law

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Not available.</p>	<p>Not available.</p>	<p>A change in law is a Possible MAE Event. Possible (but not guaranteed redress includes):</p> <ul style="list-style-type: none"> • a change to the project documents • variation of the concession period and term of the lease • restructuring of financing arrangements • variation of toll calculation schedule • any other agreed action <p>and, as a last resort, financial contribution from the State.</p>	<p>A general change in law is a type of Compensable Relief Event.</p> <p>If a general change in law occurs, the State will pay an amount equal to the net incremental costs less any savings, insurance proceeds, damages or compensation.</p>	<p>Where a General Change in Law meets the requirements of paragraph (b) of a Qualifying Change in Law, the Operator Franchisee will be entitled to compensation.</p>

Events which constitute a Project-Specific change in law

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
There are no defined project-specific changes in law.	There are no defined project-specific changes in law.	There are no defined project-specific changes in law.	<p>A project-specific change in law is a general change in law in relation to a State Law which:</p> <ul style="list-style-type: none"> • specifically and only affects the Project or only affects companies undertaking similar road projects procured under public private partnership arrangements • does not include a change in State Law solely on the basis that it has a greater effect on Project Company than other companies <p>A project-specific change in law also includes the introduction of a Carbon Pollution Reduction Scheme.</p>	<p>Project-Specific Change in Law means:</p> <ul style="list-style-type: none"> • a Change in Law, the terms of which apply to • the Project or the System, and not to other light rail projects in Australia • Operator Franchisee, and not to other persons • the Project Area, and not to any other • similarly situated land or facilities • land or facilities where similar activities to the Project Activities are undertaken • projects procured or established under the National Public Private Partnership Guidelines or other policies of the Commonwealth or the State in respect of privately financed projects, and not to other projects • a Change in Railway Law.

Relief for Project-Specific change in law

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
There are no defined project-specific changes in law.	There are no defined project-specific changes in law.	There are no defined project-specific changes in law.	Where the project-specific change in law occurs prior to completion and the Project Co is granted an extension of time (or is not entitled to an extension of time but the change of law has had an effect on D&C activities) then the Project Co may submit a Change Notice. The State will then pay Project Co an amount equal to the net incremental cost less any savings, insurance proceeds, damages or compensation.	A project-specific change in law is a Qualifying Change in Law for which the Operating Franchisee is entitled to compensation.

Step change in technology

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
During the Concession Period the Company shall maintain such a level of technology in its systems of operation (including the Tolling System), maintenance and repairs of the Link as would be maintained by a prudent Operator of the Link consistently with current good practices and standards.	<p>General undertaking</p> <p>During the Concession Period, the Road Operator must maintain such a level of technology in its systems for the operation (including Tolling), maintenance and repair of the Freeway as would be maintained by a prudent Operator of the Freeway, consistently with Operation and Maintenance Best Practices and to ensure that the Interoperability of the Freeway is maintained.</p> <p>Tolling technology</p> <p>Consistent with Operation</p>	<p>The Project Co has an obligation to comply with O&M Best Practices throughout the O&M term.</p> <p>O&M best practices include the requirement that advancements in technology which the Project Co must implement are responded to and incorporated into the O&M Activities no later than the time when the relevant component of the Toll road and the Maintained Non-Toll road Works is due to be replaced.</p>	<p>The Project Co has an obligation to comply with O&M Best Practices throughout the O&M term.</p> <p>O&M best practices include the requirement that advancements in technology which the Project Co must implement are responded to and incorporated into the O&M Activities no later than the time when the relevant infrastructure component is due to be replaced.</p>	<p>An obligation of the Operator Franchisee is to adhere to O&M Best Practices.</p> <p>Amongst other things, O&M Best Practices include everything reasonably necessary to ensure that advancements in technology which Operator Franchisee must implement to enable it to meet its obligations under the State Project Documents are promptly responded to and incorporated into the O&M Activities no later than the time when the relevant component of the System is</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>and Maintenance Best Practices and Customer Service Practices Requirements, the Road Operator must develop and improve the Tolling System, having regard to:</p> <ul style="list-style-type: none"> • advancements in technology • the most appropriate and efficient means of Tolling, from the perspective of Customers and users of the Freeway • the means of Tolling offered by other Toll Road Service Providers. 			<p>due to be replaced.</p> <p>In addition, throughout the Term, Operator Franchisee must review and, if necessary, update, Operator Franchisee's Privacy Plan to take account of any evolution in technology upon request of the State.</p>

Definitions of loss, Liability and consequential loss

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Loss is not defined</p>	<p>Loss includes any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, ascertained or unascertained, actual, prospective or contingent, or any fine or penalty.</p>	<p>Loss means:</p> <ul style="list-style-type: none"> • any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent • only to the extent not prohibited by Law, any fine or penalty. 	<p>Loss is</p> <ul style="list-style-type: none"> • any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent • only to the extent not prohibited by Law, any fine or penalty. 	<p>Loss means:</p> <ul style="list-style-type: none"> • any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent • only to the extent not prohibited by law, any fine or penalty.

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Liability is not defined</p>	<p>Liability means any debt, obligation, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable, and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at law or in equity.</p>	<p>Liability is not defined</p>	<p>Liability is not defined</p>	<p>Liability is not defined</p>
<p>Indirect and Consequential Loss is not defined.</p>	<p>Indirect or Consequential Loss is not defined.</p>	<p>Indirect or Consequential Loss is included in the definition of 'loss'.</p>	<p>Indirect or Consequential Loss means any:</p> <ul style="list-style-type: none"> • loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings • any penalties payable under agreements other than the deed. <p>Consequential Loss means:</p> <ul style="list-style-type: none"> • pure economic loss • loss of profit • loss of revenue • loss of opportunity • anticipated savings • change to goodwill or reputation 	<p>Indirect or Consequential Loss means:</p> <ul style="list-style-type: none"> • loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, or any failure to achieve anticipated savings • any penalties under agreements other than the State Project Documents.

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
			<p>and excludes loss arising from:</p> <ul style="list-style-type: none"> • personal injury, nervous shock or death • property damage • third party liability claims in respect of property damage, personal injury, nervous shock or death • criminal acts or fraud <p>and excludes all costs of the type described in sections 233(8) and 234(7) of the <i>Major Transport Projects Facilitation Act</i> incurred by SEITA or Project Company as a result of a delay in carrying out the Utility Works.</p>	

Exclusion of indirect or consequential loss

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Liability is not excluded for indirect or consequential loss.</p>	<p>There are about over 75 listed events which, to the extent permitted by Law, neither the State, its Associates nor (if applicable) any Protected Contractor will have any Liability, nor will either Concessionaire or its Associates be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to Liability from, the State, any of its Associates.</p>	<p>Liability is not excluded for indirect or consequential loss.</p>	<p>No party will be liable to the other for any consequential loss.</p>	<p>Neither the State nor any Associate of the State has any liability to Operator Franchisee, nor will Operator Franchisee be entitled to make any Claim, in respect of any Indirect or Consequential Loss incurred or sustained by Operator Franchisee as a result of any act or omission of the State or any Associate of the State (whether negligent or otherwise) or as a result of a breach of the State Project</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>These events include:</p> <ul style="list-style-type: none"> • the existence or submission of or any errors or omissions in the Models • any act or omission of the Independent Reviewer • a Concessionaire being required by the State to remove any personnel • a Concessionaire being obliged to adopt the Project Scope and Project Requirements • a Concessionaire being obliged to correct any Defect <p>The State is also not liable for any loss (including indirect or consequential) resulting from an estimation of compensation or an extension of time in relation to a proximate State work.</p>			<p>Documents by the State, except to the extent that such Indirect or Consequential Loss is in respect of:</p> <ul style="list-style-type: none"> • an amount for which the State is liable under clause 38 (Payment Provisions), schedule 3, clause 40 (Benchmarking) or schedule 6; • an amount for which the State is liable under clause 45 (Termination) or schedule 7 • an Uninsurable risk for which the State is liable to indemnify or otherwise pay Operator Franchisee under clause 43.2 (Insurability). <p>The Operator Franchisee also excludes liability except in respect of:</p> <ul style="list-style-type: none"> • Wilful Misconduct, Gross Negligence, a criminal act or fraud of Operator Franchisee or an Associate of Operator Franchisee • a liability that cannot be limited or excluded at Law; • a reduction to the Service Payment • economic loss which is insured or required to be covered in an insurance

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
				<p>policy held by Operator Franchisee or a sub contractor in compliance with this deed</p> <ul style="list-style-type: none"> any injury to, or death or disease of persons any third party suit, claim, action, demand, proceeding, penalty, cost, charge or expense arising out of or in relation to a breach of the State Project Documents by Operator Franchisee or its Associates.

Scope of indemnities given by project Co/Operator

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>General Indemnity</p> <p>The Company and the Trustee each severally release the State from and indemnifies it against any claim, demand, damage, expense, loss or liability brought against or suffered, incurred or payable by the State in respect of:</p> <ul style="list-style-type: none"> loss, destruction or damage to real or personal property injury to, or disease or death of, persons <p>arising out of the Project or (other than in the case of the indemnity provided by the</p>	<p>Indemnity for Concessionaires breach</p> <p>The Concessionaires must indemnify the State and its Associates on demand against any Claim, Liability or Loss (including any Claim made by, or Liability to, a third party) the State or any of its Associates suffers or incurs arising out of or in respect of or in connection with, a Concessionaire breaching any provision (including any obligation, representation or warranty) of the Deed or any other Project Document except</p>	<p>General Indemnity</p> <p>Each PPP Co must indemnify the State against any Loss or Claim brought against, incurred or suffered by the State or its Associates in respect of:</p> <ul style="list-style-type: none"> non-compliance with Work Health and Safety legislation damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property (including property belonging to the 	<p>General Indemnity</p> <p>Project Company must indemnify the State against any Claim or Loss arising out of or in connection with:</p> <ul style="list-style-type: none"> damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property (including property belonging to the State) and the Returned Works after Handback to the State or the applicable Facility Owner any injury to, disease or 	<p>Indemnity from Operator Franchisee</p> <p>Subject to some exceptions, Operator Franchisee must release and indemnify the State from and against:</p> <ul style="list-style-type: none"> any Claim or Loss brought against, suffered or incurred by the State or its Associates in respect of: <ul style="list-style-type: none"> damage to, loss or destruction of, or loss of use (whether total or partial) of, any real or personal property (including properly

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Trustee) the operation, maintenance or repair of the Link or any activities related thereto, except to the extent that such loss, destruction, damage, injury, disease or death is a consequence of a negligent wilful or reckless act or omission of the State, of any of its nominees or Contractors.</p> <p>Exclusions to indemnity</p> <p>This exception shall not, however, apply insofar as its application would be inconsistent with the acceptance of risk provided for under, or any representation, warranty, undertaking, waiver or acknowledgment provided for.</p>	<p>to the extent that breach is due to a Wilful Default by the State or its Associates.</p> <p>Other indemnities</p> <p>The Concessionaires also give the State a number of other indemnities including:</p> <ul style="list-style-type: none"> physical damage to any infrastructure, property or assets caused by the connection of the Works, the Temporary Works or the Freeway (other than the Freeway Plant and Equipment, in the case of the Trustee) to such infrastructure, property or assets loss, destruction or damage to real or personal property, injury to, disease or death of, persons or economic loss suffered by third parties, arising out of or in respect of or in connection with the Project, the design and construction of any of the Facilities or the performance of the Construction Activities, the operation, maintenance or repair of the Freeway and the maintenance or repair of the Maintained Off-Freeway Facilities or any 	<p>State) and the Busway, EWAG and Returned Works after handover to the State or the applicable Facility Owner</p> <ul style="list-style-type: none"> any injury to, disease or death of, persons pure economic loss suffered by third parties, caused by, arising out of, or in any way in connection with: <ul style="list-style-type: none"> the Projects or the Project Activities the State's ownership of the Licensed Construction Areas, the Leased Area and the Licensed Maintenance Areas the use or occupation of the Licensed Construction Areas, the Leased Area and the Licensed Maintenance Areas by a PPP Co or its Associates. <p>Exclusions to indemnity</p> <p>A PPP Co's obligation to indemnify the State will be reduced to the extent that any wrongful act or omission by the State contributed to the Loss or Claim.</p> <p>The general indemnity does not apply in respect of any third party claim for pure</p>	<p>death of, persons</p> <ul style="list-style-type: none"> pure economic loss suffered by third parties arising out of, or in connection with: <ul style="list-style-type: none"> the Project or the Project Activities the use or occupation of the Relevant Land by Project Company or its Associates <p>Exclusions to Indemnity</p> <p>The general indemnity does not apply in respect of any third party claim for pure economic loss to the</p> <ul style="list-style-type: none"> extent the claim arises solely as a result of: the decision by the State to proceed with the Project; or the existence or location of PLP <p>Contamination Indemnity</p> <p>The Project Company must indemnify the State against any third party claim arising out of or in connection with any Contamination existing on, in, over, under or emanating from the Project Area which:</p> <ul style="list-style-type: none"> was caused or contributed to by an act or omission of Project Company or its Associates 	<p>belonging to the State or its Associates)</p> <ul style="list-style-type: none"> any injury to, or death or disease of persons any third party suits, claims, actions, demands, proceedings, penalty, costs, charges or expenses not otherwise covered by clause 42.1 (a)(i) or 42.1(a)(ii), to the extent caused or contributed to by or arising out of: <ul style="list-style-type: none"> the condition of the Project Area or the use or occupation of the Project Area by Operator Franchisee or its Associates any act or omission of Operator Franchisee or its Associates in relation to, or in consequence of, the Project or the Project Activities (including the performance or non-performance by Operator Franchisee of its obligations under the State Project Documents) any Claim or Loss suffered by or incurred by the State or its Associates to the extent caused or

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>activities related to the Project</p> <ul style="list-style-type: none"> the provision of, or the purported reliance upon, or use of, the Disclosed Information, any other information or data referred to in clause 53 (Concessionaires' acknowledgment) or the Concessionaire Intellectual Property, by an Obligor, a Contractor, their sub contractors or any other person to whom the Disclosed Information is disclosed by an Obligor, a Contractor, their sub contractors or any person on an Obligor's or a Contractor's behalf the Disclosed Information or any other information or data referred to in clause 53 (Concessionaires' acknowledgment) being relied upon or otherwise used by an Obligor, a Contractor, their sub contractors or any other person to whom the Disclosed Information is disclosed by an Obligor, a Contractor, their sub contractors or any person on an Obligor's or a 	<p>economic loss to the extent the claim arises as a result of:</p> <ul style="list-style-type: none"> the decision by the State or the Council to proceed with the Projects the existence or location of the Toll road, EWAG or the Busway. 	<ul style="list-style-type: none"> was not caused or contributed to by an act or omission of Project Company or its Associates but was disturbed or interfered with by Project Company or its Associates; or would have been prevented or minimised by a prudent, experienced and competent Contractor in the circumstances. <p>Approval Indemnity</p> <p>The Project Co must indemnify the State against any claim or loss arising out of or in connection with a failure of the Project Co to comply with its obligations with respect to complying with approvals and assessments.</p> <p>OHS Indemnity</p> <p>The Project Co must indemnify the State against any Claim or Loss arising out of or in connection with any breach by Project Company or any of its Associates of the OHS Legislation.</p> <p>Other Specific Indemnities</p> <p>The Project Co must also indemnify the State against claims or loss arising out of: A failure to cooperate with</p>	<p>contributed to by or arising out of:</p> <ul style="list-style-type: none"> breach or failure to comply with the terms of any State Project Document by Operator Franchisee or its Associates negligent or unlawful acts or omissions or Wilful Misconduct by Operator Franchisee or its Associates. <p>Exclusions to Indemnity</p> <ol style="list-style-type: none"> The Operator Franchisee liability will be reduced to the extent that a claim or loss arises from: a fraudulent, negligent, unlawful or wrongful act or omission or Wilful Misconduct of the State or its Associates a fraudulent, unlawful or negligent act or omission of the VB Supercar Event Promoter or Its Associates a breach by the State or its Associates of their respective express obligations under a State Project Document Operator Franchisee following an express

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>Contractor's behalf in the preparation of any information or document, including, to the extent permitted by Law, any Disclosed Information which is 'misleading or deceptive' or 'false and misleading' (within the meaning of those terms in sections 52 and 53 (respectively) of the Trade Practices Act 1974 (Cth) or any equivalent provision of State or Territory legislation)</p> <ul style="list-style-type: none"> • any Defect which may arise (whether directly or indirectly) as a result of or in connection with any of the matters, information, data or material referred to in clause 53 (Concessionaires' acknowledgment); the rights of a third party which have not been adequately or accurately described by a Concessionaire under the provisions of clause 56.9(c)(ii) (Licence for specified use) • any acts or omissions by the entities referred to in clause 59.3(f) (Liability for acts of Contractors) 		<p>third-party Contractors in relation to interfaces with other roads</p> <p>A failure to comply with modification obligations</p> <p>Any taxes incurred as a result of the project</p> <p>Any act done by the Project Co that contravenes Information Privacy Principles and any Privacy Code.</p>	<p>direction of the State with respect to its obligations under the State Project Documents if such directions are given in accordance with this deed, provided that this does not reduce Operator Franchisee's liability under clause 42.1 to the extent the State direction arises out of, or is given in relation to a circumstance which is caused by, a breach of the State Project Documents by Operator Franchisee or its Associates</p> <p>f a third party suit, claim, action, demand, proceeding, penalty, cost, charge or expense for pure economic loss arising solely as a result of:</p> <ul style="list-style-type: none"> i the decision by the State to proceed with the Project ii the decision by the State to proceed with the System iii the existence of the System or location of the System Site Corridor

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<ul style="list-style-type: none"> • the termination of this Deed (other than under clauses 37.11 (State options) or 67 (Termination by Concessionaire)), including all reasonable out-of-pocket expenses (including legal fees (on an indemnity basis), enforcement costs and Taxes) incurred by the State or any of its Associates arising out of or in respect of or in connection with, the enforcement and protection of their rights under this Deed or any other Project Document, including but not limited to, the costs of collection; and • the exercise of any Step-In Rights in accordance with clause 70 (Step-In) (except to the extent that the State acts in a reckless or grossly negligent manner or in bad faith in the exercise of those rights). • other risks 			<p>any of:</p> <ul style="list-style-type: none"> iv a Compensation Event, Relief Event or <i>Force Majeure</i> Event, to the extent Operator Franchisee is entitled to relief in respect of that event under clause 16, 26, 27 or 28 (as applicable) v provided that Operator Franchisee has complied with all of its obligations under this deed in respect of the Migrating Contamination (including the conditions of any Approvals), the effects of Migrating Contamination vi the effects of Contamination caused or contributed to by the State or its Associates during the Term, to the extent the State retains the risk of such Contamination under clause 12.3 vii an Uninsurable risk to the extent the State

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
				<p>has agreed to indemnify Operator Franchisee for that risk under clause 43.2</p> <p>viii destruction, loss or damage, to the extent such destruction, loss or damage is the direct result of the circumstances in clause 41.2(b), other than to the extent that Operator Franchisee Is entitled to recover (or would have been entitled to recover if Operator Franchisee had fully complied with clause 43 and made a proper claim) under any insurance policy.</p>

Types and requirements of security provided

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
Not available	<p>The Trustee must provide a Construction Bond for the value of \$87,570,000 (in a maximum of two bonds).</p> <p>the Road Operator must procure an Operation Phase Bond for \$5,000,000</p> <p>The Concessionaires may</p>	<p>(D&C Bond) The BC Trustee must provide the State with a bond for \$10 million or bonds that aggregate \$10million.</p> <p>(NB Bonds) The PPP Cos must provide the State with bonds for \$20 million comprising of two bonds to the</p>	<p>Project Co must provide a Condition Precedent Bond (CPB). The Project Co may also provide the State with a Handover Bond, so as to fulfil its handover obligations.</p> <p>Requirements</p> <p>Each Bond must be:</p>	<p>Operator Franchisee must provide the State with each Handback Bond required under clause 46.3(a) (Handback Bond or Retention Fund – Relevant Amount) or 46.8(a) (Handback Bond or Retention Fund – Handback Security).</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>procure that a bond is issued to the State so as to fulfil their respective handover obligations.</p> <p>Requirements</p> <p>Each Bond must:</p> <ul style="list-style-type: none"> • be in the form of Exhibit A (Pro forma Bond) (or in such form and substance as the State may otherwise approve);= • be issued by an Issuer with the Required Rating • expire no earlier than the relevant date specified in clause 5.4 (Expiry Date) • be payable at an office of the Issuer in Melbourne or Sydney (or such other place as the State may otherwise approve). <p>Expiry Date</p> <p>Each Bond must not expire earlier than the following times:</p> <ul style="list-style-type: none"> • for the Construction Bond, 24 months • for the Operation Phase Bond, 12 months • for the Handover Bond, 12 months, after the date it is issued to the State. 	<p>value of \$10 million each.</p> <p>(EWAG Bonds) The PPP Cos must provide the State with bonds for \$13.5 million comprising of two bonds for \$6.75million each.</p> <p>(O&M Bond) Where there had been a failure to comply with O&M obligations, BC Operations must provide the State with one or more bonds as required by the State up to \$20million.</p> <p>(Handover Bond) Each PPP Co may provide the State with a Handover Bond to fulfil its handover obligations.</p>	<ul style="list-style-type: none"> • in the prescribed form or such other form as the State may approve • in favour of the State • a continuing liability without an expiry date • at all times provided by a bank acceptable to the State that maintains the Required Rating • payable at an office of the issuer in Melbourne (or such other place as the State may approve) • where required, duly stamped. 	<p>Requirements</p> <p>Each Bond must be:</p> <ul style="list-style-type: none"> • in the form of schedule 2 or such other form as the State may approve • in favour of the State • at all times provided by a bank or insurance company acceptable to the State that maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority • payable at an office of the issuer in Brisbane (or such other place as the State may approve).

State's right to make a demand under a bond

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Not available</p>	<p>The State may make a demand under the Construction Bond or the Operation Phase Bond in respect of any amount which the State considers is, or at any time may become, due or payable by either Concessionaire to the State or SEITA under a Project Document, or which the State or SEITA has incurred, or the State considers it or SEITA may incur, arising out of or in respect of or in connection with any default, wrongful act or omission or breach of, or a failure to comply with, an obligation or Liability.</p> <p>The State may also make a demand under any Handover Bond.</p> <p>Where any demand is made, the State must, as soon as practicable after it has made a demand and received payment under a Bond, give a notice to the Concessionaires specifying the amount of the demand and the State's reason for making the demand.</p> <p>The State may make a demand under a Bond irrespective of whether or not the amount demanded and the</p>	<p>The State may make a demand under a Bond at any time. Each PPP Co must not (and must ensure that the NB Works Contractor does not) take any steps to injunct or otherwise restrain:</p> <ul style="list-style-type: none"> the issuer of a Bond from paying the State pursuant to the Bond the State from making a demand or receiving payment under a Bond the State using the proceeds of a Bond. <p>The State may use the proceeds of any Bond to reimburse it for any Loss, and in payment of any other moneys owing by a PPP Co or the NB Works Contractor (including monies owing under any indemnity).</p> <p>Any proceeds remaining will be repaid to a PPP Co in return for a replacement bond.</p>	<p>The State may make a demand under a Bond at any time, subject to the following conditions:</p> <p>Condition Precedent Bond</p> <p>The State may make a demand under the Condition Precedent Bond to reimburse it for any Loss, and in payment of any other moneys owing by Project Company (including moneys owing under any indemnity), if the State considers that:</p> <ul style="list-style-type: none"> Project Company is in breach of any Day 1 Clause Project Company is seeking to introduce, either formally or informally, whether in writing or otherwise, any variations or additions to the Project Documents which were not, by the date of this deed, specifically identified in writing and agreed by the State Project Company has failed to satisfy a Condition Precedent for the benefit of the State (or the State and Project Company) by the relevant Condition Precedent Deadline Date. 	<p>Failure to replace bond</p> <p>If Operator Franchisee fails to replace any Bond when required, the State may make a demand on the Bond which is to expire.</p> <p>Inspection at end of Term</p> <p>At the end of the Term, the State must give notice specifying:</p> <ul style="list-style-type: none"> details of what needs to be rectified or remedied and the amount of money required the extent (if any) to which the State considers the actual Residual Design Life is less than the Required Residual Design Life <p>If the Operator Franchisee agrees with the State or fails to give notice that it disagrees, one of the options available to the State is to make a demand under the Handback Bond to recover the relevant amount.</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>circumstances relating to the amount:</p> <ul style="list-style-type: none"> • are in dispute • have been referred for determination in accordance with Part L (Dispute Resolution) or similar determination in any other Project Document • are the subject of a claim under any of the insurances provided • are subject to any Proceeding 		<p>Handover Bond</p> <p>If Project Company gives the State a Handover Agreement Notice, or fails to give a Handover Disagreement Notice, then:</p> <ul style="list-style-type: none"> • the amount set out in the Handover Notice will be a debt due and payable by Project Company to the State • without prejudice to any other rights the State may have, the State may draw on the Handover Escrow Account or make a demand under the Handover Bond to recover the amount set out in the Handover Notice. <p>No injunction</p> <p>Project Company must not take any steps to injunct or otherwise restrain:</p> <ul style="list-style-type: none"> • the issuer of a Bond from paying the State pursuant to the Bond • the State from making a demand or receiving payment under a Bond • the State using the proceeds of a Bond. 	

Assignment/Transfer by the project co

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Neither the Company nor the Trustee may assign, novate, mortgage or charge or otherwise deal with its interest in, or obligations under, any of the Project Documents or Transaction Documents (and shall not permit or suffer any such assignment, novation, mortgage, charge or dealing) without the prior approval of the State save that the Trustee shall be entitled to grant a sub-lease of the Trust Land to the Company to enable the Company to comply with its obligations under this Deed.</p> <p>This does not, however, restrict:</p> <ul style="list-style-type: none"> the listing of Project Securities with Australian Stock Exchange Limited the issue or transfer of Project Securities in the Company anything permitted under this Deed, the Deed of Charge or the Contractors' Deed of Novation. 	<p>Each Concessionaire must not assign, novate, mortgage, charge or declare any trust over or otherwise deal with its interest in, or obligations under, any of the Transaction Documents (and will not permit or suffer any such assignment, novation, mortgage, charge or dealing) without the prior consent of the State.</p>	<p>Except as expressly permitted by the deed, the Debt Finance Side Deed or the State Deed of Charge, each PPP Co must not assign, novate, transfer, mortgage, charge or otherwise deal with its interest in, or obligations under, any of the Project Documents, without the State's prior approval (which must not be unreasonably withheld).</p>	<p>Project Company must not assign, novate, transfer, mortgage, charge or otherwise deal with its interest in, or obligations under, any of the Project Documents, without the State's prior approval.</p> <p>Project Company must not:</p> <ul style="list-style-type: none"> create or allow to exist any security interest over lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with, the whole or any part of the Relevant Land or PLP, except as expressly permitted under this deed, the Debt Finance Side Deed or the Debt Financing Documents or as otherwise approved by the State. 	<p>Except as expressly permitted by the deed, the Debt Finance Side Deed or the State Deed of Charge, Operator Franchisee must not assign, novate, transfer, mortgage or charge its interest in, or obligations under, any of the Project Documents, without the State's prior approval (such approval not to be unreasonably withheld or delayed in respect of the Equity Documents).</p>

Assignment/Transfer by the state

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>The State will not assign, novate, mortgage, charge or otherwise deal with its interest in, or obligations under, any of the Project</p>	<p>The State will not assign, novate, mortgage, charge or otherwise deal with its interest in, or obligations under, any of the Project Documents</p>	<p>The State may not sell, transfer or assign or otherwise dispose of its interest in the Project Documents without the prior</p>	<p>The State may not sell, transfer or assign or otherwise dispose of its interest in the Project Documents without the prior written consent of Project</p>	<p>No assignment without consent</p> <p>The State may not sell, transfer or assign or otherwise dispose of its</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Documents without the prior approval of the Company and the Trustee. The State may, however:</p> <ul style="list-style-type: none"> assign any of its rights under any of the Project Documents to receive revenue, provided that the assignment does not directly or indirectly impose any additional obligations on or reduce any rights of the Company or the Trustee or have a Material Adverse Effect dispose of Concession Notes, but only if it is a term of such disposal that demand for payment of the notes may be made only by the State or any delegate of the State 	<p>without the prior consent of each Concessionaire. However, the State may assign any of its rights under any of the Project Documents to receive revenue.</p>	<p>written consent of the PPP Cos. The State may, however, assign any of its rights under the Project Documents to receive revenue. A PPP Co must give its consent if:</p> <ul style="list-style-type: none"> it has been provided with written details of the proposed transferee and the terms and conditions of the proposed transfer the proposed transferee is an Authority and has the requisite power and financial capability to comply with the State's obligations under the relevant Project Documents the proposed transferee has agreed to be bound by the relevant Project Documents. 	<p>Company. Project Company must give its consent if:</p> <ul style="list-style-type: none"> it has been provided with written details of the proposed transferee and the terms and conditions of the proposed transfer the proposed transferee is an Authority (including any Minister) which is an agent of, or the obligations of which are supported by, the Crown in the right of the State of Victoria the proposed transferee has agreed to be bound by the relevant Project Documents. 	<p>interest in the State Project Documents without Operator Franchisee's consent (subject to the exception for revenue rights, below).</p> <p>Assignment of revenue rights</p> <p>The State may assign any of its rights under the State Project Documents to receive revenue.</p> <p>Consent to be given</p> <p>Operator Franchisee must give its consent if:</p> <ul style="list-style-type: none"> it has been provided with details of the proposed transferee and the terms and conditions of the proposed transfer; the proposed transferee is an Authority of the type referred to in paragraph (a) of the definition of Authority and has the requisite power and financial capability to comply with the State's obligations under the relevant State Project Documents the proposed transferee has agreed to be bound by the relevant State Project Documents.

Change in control

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>The Company and Trustee represents and warrants that the Operator is controlled by Transfield Holdings and Transrout International.</p> <p>The Company and Trustee must obtain approval of the State (which shall not be unreasonably withheld or delayed) for material changes in:</p> <ul style="list-style-type: none"> the acquisition or control of the Construction Contractor the acquisition or control of the Operator. 	<p>Each Concessionaire must not, without the prior consent of the State:</p> <ul style="list-style-type: none"> permit a Change in Control of the relevant Concessionaire or FinCo amend, or permit to be amended, it's or FinCo's constitution or other constituent documents. <p>Concessionaire Change in Control</p> <p>Each Concessionaire must give the State reasonable prior notice of a proposed Change in Control for which the consent of the State is sought. That notice must include full details of the proposed Change in Control including the acquisition of voting power, the change in control or any other event which will constitute the Change in Control.</p> <p>Controlling entity Change in Control</p> <p>If shares or other equity interests in an entity with ultimate control of a Concessionaire or FinCo (as applicable) are quoted</p>	<p>Each PPP Co undertakes not to (without the consent of the State) permit or suffer any change to (or transfer of the share capital or units in) the ultimate holding company (as defined in the Corporations Act) of, or the ultimate holding trust of, or the ultimate holder of the entire limited partners' interest in an Equity Investor which results in a change in Control of the PPP Cos.</p>	<p>The State may only withhold its consent to a proposed Share Capital Dealing if the State is of the reasonable opinion that:</p> <ul style="list-style-type: none"> a new Equity Investor or Equity Investors (or any direct or indirect Holding Entity of a new Equity Investor or Equity Investors): is or are not solvent and reputable has or have an interest or duty which conflicts or may conflict in a material way with the interests of the State the proposed Share Capital Dealing: <ul style="list-style-type: none"> is against the public interest would adversely affect the ability or capability of Project Company to perform its obligations under any Project Document would have a material adverse effect on the Project would increase the liability of, or risks accepted by, the State under the State Project Documents or in any other way in respect of the Project would negatively impact upon the State's commercial position under the State Project Documents or in any other way in respect of the Project. 	<p>Operator Franchisee must give the State at least 15 Business Days prior notice of any Permitted Change in Control.</p> <p>Permitted Change in Control means:</p> <ul style="list-style-type: none"> in the case of a Designated Investor, any Change in Control following which the relevant Designated Investor Holding Company Controls the Designated Investor; in the case of an Equity Investor, any Change in Control following which the relevant Equity Investor Holding Company Controls the Equity Investor in the case of a Core Contractor, any Change in Control following which the relevant Core Contractor Holding Company Controls the Core Contractor.

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>on a prescribed financial market and a Change in Control occurs due to the transfer of such shares or interests on that market, promptly after a Concessionaire becomes aware of the Change in Control, the Concessionaires must notify the State, providing full details of the Change in Control including the acquisition of voting power, the change in control or any other event which has constituted the Change in Control.</p>		<p>The State's consent to a Share Capital Dealing, other than a Share Capital Dealing:</p> <ul style="list-style-type: none"> • in relation to units or share capital issued in or by a Holding Entity which are publicly listed on a stock exchange • that is not a transfer of units or share capital in a Holding Entity by a Designated Investor • may be given or withheld, or may be given subject to any conditions, as the State thinks fit if the Share Capital Dealing will occur during the period commencing on the date of this deed and ending on the date that is 2 years after the Date of Completion. 	

Refinancing

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p><i>No provisions with respect to refinancing in the Deed.</i></p>	<p>The Concessionaires may not and must procure that FinCo does not refinance all or any part of the Actual Debt otherwise than with the prior consent of the State.</p> <p>If a Concessionaire or FinCo intends to undertake any refinancing, the Concessionaires must submit a notice to the State seeking its consent at least 30 Business Days prior to the refinancing (that notice must give a range of information on the proposal).</p> <p>The State must advise the Concessionaires within 20 Business Days of receiving the Concessionaires' notice that:</p> <ul style="list-style-type: none"> • it consents to the proposed refinancing • the proposed refinancing is unacceptable to it and the reasons why this is the case • (it requires further information from the Concessionaires regarding the proposed refinancing. If so, the Concessionaires must provide the additional information reasonably sought by the State within a further period of 5 Business Days, after which the State must respond in again within 5 Business Days. <p>The State has an obligation not to refuse its consent (subject to a number of conditions being satisfied).</p>	<p>Each PPP Co must not, and must ensure that FinCo does not, Refinance all or any part of the Actual Debt otherwise than with the prior consent of the State. The State must not unreasonably withhold or delay its consent to a proposed Refinancing.</p> <p>The State and the PPP Cos will use their respective reasonable endeavours to agree the Refinancing Gain and the manner and timing of paying of the State's share of the Refinancing Gain to the State. For these purposes, the PPP Cos must provide the State with all information concerning the Refinancing, the Distributions and the AL Project that the State may require to calculate the Refinancing Gain.</p> <p>If the parties fail to agree the Refinancing Gain or the manner or timing of payment of the State's share of the Refinancing Gain to the State, either party may require that the matter be determined in accordance with clause dispute resolution procedures.</p> <p>For these purposes the parties must require any expert or arbitrator to make his or her determination on the basis that the State is to receive</p>	<p>Project Company must not enter into or implement any refinancing without the prior written consent of the State, which will:</p> <ul style="list-style-type: none"> • not be unreasonably withheld or delayed • be given or withheld within 20 Business Days of receipt of the information provided by Project Company <p>The State and the Project Co will share in any gains from refinancing (the proportional split between the two parties has been redacted).</p> <p>Situations in which it will be reasonable for the State to withhold consent include where:</p> <ul style="list-style-type: none"> • refinancing would be an increase or adverse change in the risks and liabilities of the State under the 1project • the terms and conditions of the refinancing are not on arm's length commercial terms or not in accordance with market practice • the refinancing terms and conditions are less favourable than the terms under the debt financing documents and the State believes that the refinancing will adversely affect Project Co's ability to perform 	<p>Operator Franchisee must not enter into any Refinancing except if:</p> <ul style="list-style-type: none"> • the State has given its prior consent to the Refinancing • the Refinancing is an Assumed Refinancing, the amount and manner and timing of payment of any Refinancing Gain has been agreed or otherwise determined • the incoming Financiers and Operator Franchisee have executed a deed substantially in the form of the Debt Finance Side Deed and otherwise on terms reasonably acceptable to the State. <p>The Operator Franchisee must give full details by notice to the State. The State cannot unreasonably withhold consent. It must not withhold consent at all to an Assumed Refinancing. The Operator Franchisee must pay the</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>Refinancing Gain</p> <p>The State is to receive 50% of any refinancing gain.</p>	<p>50% of any Refinancing Gain and that the State is to be paid its share of the Refinancing Gain no later than any Equity Investor receives its share of the Refinancing Gain.</p>	<p>its obligations</p> <ul style="list-style-type: none"> the financial indebtedness assumed under the Refinancing will not be used solely for the Project matters in regard to the sharing of gains have not been agreed upon 	<p>State's costs in reviewing the proposed refinancing.</p> <p>The State is entitled to 50% of any gains from refinancing.</p>

Project co events of default

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
General breach of obligations	Breach by Project Co of its obligations under the project agreement, the consequences of which are material	A Concessionaire defaults in a material respect in the due observance and performance of any of its other obligations under this Deed or any other Project Document.	PPP Co, the State Works Contractor or the NB Works Contractor defaults in a material respect in the due observance and performance of any of its other obligations under this deed, the EWAG Works Deed, the NB Works Deed or any other Project Document.	A material default by the Project Co	Any other breach of an obligation under any State Project Document by Operator Franchisee (other than a breach as a result of which the Service Payment has been or will be subject to a reduction in the Service Payment).
Abandonment	N/A	A Concessionaire displays an intention to permanently abandon or permanently abandons the Project.	PPP Co or the NB Works Contractor displays an intention to permanently abandon, or permanently abandons one or more of the Projects.	N/A	N/A
Assignment/change in control	Company or Trustee breach an obligation to seek approval of State before novation, assignment, mortgage	There is a failure to comply with the relevant change of control clause.	N/A	Project Company breaches an obligation in relation to assignments, transfers or	Operator Franchisee breaches its obligations with respect to change in control (eg seeking consent).

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	or charge.			disposals of any of its obligations under the Project Documents or Share Capital Dealings without the State's prior Consent.	
Insurance obligations	Failure to maintain and effect required insurances during the project.	N/A	N/A	BC Operations fails in a material respect to operate, maintain, repair or insure the Toll road or maintain and repair the Maintained Non-Toll road Works in accordance with its obligations.	N/A
Project Co Insolvency	N/A	An Insolvency Event occurs in relation to a Concessionaire, whether or not a Concessionaire is then in breach of this Deed.	An Event of Insolvency occurs in relation to a PPP Co, the State Works Contractor or the NB Works Contractor, whether or not that PPP Co, the State Works Contractor or the NB Works Contractor has been in breach of a State Project Document.	N/A	N/A
Insolvency of entity other than Project Co	N/A	An Insolvency Event occurs in relation to a Contractor or a Guarantor whether or not a Concessionaire is then in breach of this Deed and that insolvent party is not replaced	An Event of Insolvency occurs in relation to the D&C Contractor, the D&C Guarantor, the O&M Contractor or the O&M Guarantor, whether or not a PPP Co is then in breach of a	An insolvency event occurs in relation to the D&C Contractor, the D&C Guarantor, the O&M Contractor or the O&M Guarantor, whether or	N/A

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
		within 40 business days.	State Project Document, and that D&C Contractor, D&C Guarantor, O&M Contractor or O&M Guarantor is not replaced within 60 days.	not Project Company is then in breach of a State Project Document.	
Failure to achieve milestones	Neither the Company nor the Trustee shall be in breach of the Deed or liable in damages to the State solely as a result of either a Construction Milestone not being achieved by the Relevant Milestone Date.	Concessionaire fails to commence, or to expeditiously and diligently progress, the Construction Activities as required.	PPP Co fails to commence (or ensure that the State Works Contractor and the NB Works Contractor commence), or to expeditiously and diligently progress (or ensure that the State Works Contractor and the NB Works Contractor expeditiously and diligently progress) in accordance with the D&C Activities.	Project Company fails to achieve Completion by the Sunset Date.	N/A
Fraud, deceptive conduct and untrue warranties	A representation made by the Company or Trustee being untrue when made or repeated.	N/A	N/A	Project Co engages in fraud, collusion, misleading or deceptive conduct in performing their obligations under the Project Documents including the Project Activities.	Where there is any fraud or any collusive or misleading or deceptive conduct on the part of Operator Franchisee or its Associates in the performance of any of the Project Activities (including any fraud or intentionally false, misleading or deceptive reporting discovered during any audit.
Ceasing the services/lane	The Company and Trustee are under an	After Freeway Section Completion of the	After the Toll road Opening Date, BC	Project Co closes or permits the closure of	N/A

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
closures	obligation to operate and maintain the Link. An event of default will be a failure to meet this obligation where the consequences are material and notice has been given.	Construction Activities in relation to a Section, the Road Operator closes or permits the closure of one or more traffic lanes (in whole or in part) of that Freeway Section, other than for an agreed reason.	Operations closes or permits the closure of one or more traffic lanes, in whole or in part, of the Toll road other than for reasons permitted.	one or more freeway lanes for reasons other than permitted.	
Failure to progress	The Company and Trustee are under an obligation to design and construct the Link. An event of default will be a failure to meet this obligation where the consequences are material and notice has been given.	N/A	N/A	Project Co fails to commence D&C activities which is likely to have a material adverse effect on its ability to achieve completion by the date for completion.	N/A
Failure to consult	N/A	N/A	PPP Co defaults in a material respect in the due observance and performance of its obligations under this deed with respect to its environmental and community consultation obligations.	N/A	N/A
Representation and warranty	A breach of warranty or the making of an untrue representation.	A representation or warranty given by a Concessionaire under this Deed is found to be materially incorrect or misleading	A representation or warranty given by a PPP Co, the State Works Contractor or the NB Works Contractor under a State Project Document	A representation or warranty given by Project Company under a State Project Document is found to be materially	A representation or warranty made or given by Operator Franchisee in any State Project Document proves to be untrue.

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
			is found to be materially incorrect or misleading.	incorrect or misleading.	
Services failures (abatement)	N/A	N/A	N/A	Project Co has been abated more than a certain proportion of its quarterly service payments.	If during the operations phase, the total abatement arising from the Performance Abatement and calculation of the Availability Entitlement under schedule 3 is greater than [unspecified]% of the Base Service Payment.
Persistent/wilful default	N/A	A Concessionaire commits a Wilful Default.	N/A	Project Co defaults in a persistent or repeated fashion in the performance of obligations under the project deed or debt financing documents.	N/A
Defaults under other agreements	N/A	N/A	N/A	Where the obligation of a Debt Financier to provide funding under the Debt Financing Documents is cancelled.	N/A
Failure to maintain required authorisations	N/A	A Concessionaire fails to comply with or obtain relevant approvals.	N/A	N/A	N/A
Failure of other obligations	An event of default will be any breach of any obligation or representation made by the Company or Trustee where the consequences are	A Concessionaire fails to provide the updated model information to the State in accordance with the times agreed.	N/A	Project Company breaches an obligation in relation to sub contractors in whether or not due to an act or omission by	Operator Franchisee breaches its obligations in relation to subcontracting.

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	material.			Project Company.	
Failure to provide and maintain security	N/A	IF the Road Operator fails to procure the provision to the State of either the Operation Phase Bond or a replacement bond.	N/A	N/A	Operator Franchisee fails to provide the State with a Bond required under this deed within the time period required under this deed.
Failure to repair or rebuild	N/A	A Concessionaire fails in a material respect to operate, maintain, repair or insure the Facilities in accordance with this Deed.	N/A	N/A	N/A
Failure to pay	N/A	A Concessionaire fails to pay any amount that is due and payable by it under the Deed when it is due and that failure is not remedied within 10 Business Days.	N/A	N/A	Operator Franchisee fails to pay an amount that is due under any State Project Document when it is due and the failure is not remedied with 20 Business Days of a demand from the State.
Probity Events	N/A	N/A	N/A	Project Company fails to remedy a Probity Event in accordance with agreed terms.	N/A
Funding	N/A	Cancellation of funding or credit change.	The obligation of a Debt Financier to provide funding under the Debt Financing Documents is cancelled.	N/A	The obligation of a Debt Financier or an Equity Investor to provide funding under the Debt Financing Documents or the Equity Documents, respectively, is cancelled due to a breach, an event of default or review event (in each case, however described) under a

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
					Debt Financing Document or an Equity Document (as applicable), or a Debt Financier or Equity Investor fails (in whole or in part) to provide funding under the Debt Financing Documents or the Subscription Agreement or the Deferred Equity Commitment Deeds for the amounts set out in the Base Case Financial Model;
Cross default	N/A	It will be an Event of Default in relation to the Road Operator if an Event of Default (any described above) occurs in respect of the Trustee, or if the Road Operator does or omits to do anything which, if it were done or omitted to be done by the Trustee, would be an Event of Default on the part of the Trustee. The same cross default rules apply for the Trustee.	N/A	N/A	N/A
Failure to report	N/A	N/A	N/A	N/A	Operator Franchisee fails to comply with its reporting obligations under this deed or a report from Operator Franchisee contains a material inaccuracy.

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
Refinancing	N/A	N/A	N/A	N/A	Operator Franchisee breaches its obligations with respect to refinancing.
Illegality Event	N/A	N/A	N/A	N/A	An Illegality Event occurs.

Remedy of an operator event of default

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>After an event of default or a project default, the State may give notice to the Company and Trustee of an intention to terminate.</p> <p>Within 15 business days, the Company and Trustee must give notice of the anticipated date by which the breach will be remedied and the program that will be adopted in order to overcome the breach.</p> <p>If a remedy program is not given by the Company and Trustee, the State may prepare its own program. If no agreement can be reached, the matter can be referred to expert determination.</p> <p>The Company and Trustee are then under an obligation to remedy the breach and to diligently pursue all steps agreed upon in accordance with the agreed program.</p>	<p>The Concessionaires have an obligation to notify the State of any Event of Default and to immediately commence diligent action to remedy the default.</p> <p>After a default, the State may then give a Notice to Remedy Default. The State must give the Concessionaires a reasonable amount of time to remedy the default.</p> <p>The Concessionaires must then comply with the Notice and provide a program for remedy. Following agreement of that program with the State, the Concessionaires must implement that program.</p> <p>The Concessionaires must be entitled to an extension of time to remedy the default if they have been reasonably pursuing the remedy and have kept the</p>	<p>Where an event of default occurs the State may give notice to the PPP Cos requiring a remedy for the default and setting out a timeline.</p> <p>The PPP Cos have an option to request more time from the State, however the maximum remedy period is six months.</p> <p>If the event of default is not remedied, within the specified time or a remedy has not been diligently pursued, then the State may give notice to terminate.</p>	<p>There is a regime for Project Co to provide a remedy program and comply with that remedy program for defaults capable of being remedied.</p> <p>If the State gives a notice of default, the Project Company must give the State a program to remedy the default (or overcome its effects) in accordance with the terms of the State's notice which will specify steps to address the underlying causes of abatement and to avoid similar abatements occurring in the future.</p> <p>The parties must consult in good faith to develop and settle the remedy program; and, following agreement or determination of the remedy program, Project Company must implement and comply with the remedy program.</p> <p>Extensions of time for remedy</p>	<p>Where an event of default occurs, the State may notify the Operator Franchisee of the nature of the default and a reasonable period in which to remedy the default.</p> <p>Whether or not a notice has been issued, the Operator Franchisee must immediately commence and diligently pursue action required to remedy the default. If a default notice has not been issued, the State must be notified of the default.</p> <p>There is provision for consultation between the parties as to the applicable time needed to cure a default.</p> <p>Where an event of default occurs, the Operator Franchisee must also prepare a prevention plan which details the actions to be taken to prevent the event of default</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
Variations to this program can be made by agreement of both parties. If the Company and Trustee fail to satisfy these obligations, then the State may give notice to terminate with 25 business days' notice.	freeway lanes open (to the extent that it is safe to do so).		may be given by the State.	from reoccurring.

State right to terminate for project co default

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
As mentioned in 13.2, if a remedy for an event of default is not diligently pursued (as agreed) or the breach not remedied by the agreed date, the State may terminate the agreement with 25 days' notice.	<p>The State may give 20 business days of notice to terminate the deed where:</p> <ul style="list-style-type: none"> the Concessionaire fails to remedy an event of default within the specified time if, at any time, the Concessionaire is not diligently pursuing or has not diligently pursued the remedy of an event of default all traffic lanes of any Freeway Section which has achieved Freeway Section Completion are not open to the general public to the extent that it is safe to do so. <p>If, after the 20 day notice period has expired and the event of default has not been remedied, the Concessionaire</p>	<p>If an event of default is not remedied, within the specified time or a remedy has not been diligently pursued, then the State may give notice to terminate. The State may also give notice to terminate if after the Toll road Opening Date, all traffic lanes of the Toll road are not open to the general public to the extent that it is safe to do so.</p> <p>The State may give the PPP Cos 20 Business Days' notice of its intention to terminate this deed. During this 20 Business Day period the PPP Cos will have the right to remedy the Event of Default.</p> <p>If at the end of the 20 Business Day period the default has not been remedied or the lanes not reopened the State may</p>	<p>On the occurrence of a Default Termination Event, the State may terminate the deed immediately and without granting Project Company any cure period by notice in writing if:</p> <ul style="list-style-type: none"> Project Company displays an intention to wholly or substantially abandon or does permanently abandon the Project an Insolvency Event occurs in relation to Project Company, whether or not Project Company is then in breach of a State Project Document. <p>The State may also terminate for project default. The State must give 20 business days' notice of intention to terminate</p>	<p>If an Operator Franchisee Termination Event occurs and is subsisting, the State may terminate this deed by not less than 10 Business Days' notice to Operator Franchisee, which states the Operator Franchisee Termination Event in respect of which the notice is given, with effect from the date stated in the notice, without any cure period being given to Operator Franchisee.</p> <p>Without limiting the State's other rights and remedies under the State Project Documents, if an Operator Franchisee Termination Event has occurred and is subsisting, the State may take any action it considers appropriate or necessary to overcome the effects of Operator Franchisee</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>has not recommended diligently pursuing the remedy or freeway lanes have not been reopened, then the State may terminate the deed.</p> <p>The State may also terminate the deed for a failure by the Concessionaires to achieve freeway section completion (or for a failure to diligently pursue) in accordance with their obligations.</p>	<p>terminate the deed by giving notice to the PPP Cos.</p>	<p>the deed if the Project Co fails to comply with any of its obligations or fails to remedy any defaults. If the company does not remedy the default within 20 business days, the State may terminate the deed.</p>	<p>Termination Event or preserve the Project, which may include the State (or its nominees) entering and remaining on or in the Project Area or the System and the amount of any costs or expenses incurred in taking such action will be payable on demand by Operator Franchisee to the State.</p>

Project co termination events

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Failure to cure a curable default event</p>	<p>Where an Event of Default or Project Default occurs, the State may give notice of an intention to terminate the deed if:</p> <ul style="list-style-type: none"> a remedy to the of the breach the overcoming of the consequences of the breach <p>is not diligently pursued.</p> <p>If the Company and Trustee subsequently fail to:</p> <ul style="list-style-type: none"> remedy the relevant 	N/A	N/A	N/A	<p>A failure by Operator Franchisee to Remedy an Event of Default which is capable of being Remedied within the Applicable Cure Period.</p>

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>breach or overcome its consequences by the date specified in the agreed or determined Proposed Remedy Program</p> <ul style="list-style-type: none"> diligently pursue all steps and actions described in the agreed or determined Proposed Completion Program or the agreed or determined State Remedy Program <p>then the State is entitled to terminate the agreement.</p>				
Failure to source finance	<p>If the Company and Trustee fail to ensure that:</p> <ul style="list-style-type: none"> on Financial Closing, unconditional commitments by persons notified to the State on or before 30 October 1995 subsist to subscribe for, or procure the subscription of, 	<i>N/A</i>	<i>N/A</i>		<i>N/A</i>

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	Project Securities in an amount of not less than \$455 million then the State may terminate the agreement.				
Insolvency	N/A	N/A	N/A	An Insolvency Event occurs in relation to the Project Co	<p>An Event of Insolvency occurs in relation to Operator Franchisee, whether or not Operator Franchisee has been in breach of this deed.</p> <p>An Event of Insolvency occurs in relation to a Core Contractor or a Core Guarantor whether or not Operator Franchisee is then in breach of this deed, and either:</p> <ul style="list-style-type: none"> • that Core Contractor or Core Guarantor is not replaced within 120 Business Days (or, at any time during that period, Operator Franchisee is not diligently pursuing the replacement of that Core Contractor or Core Guarantor (as applicable)), by a person that: • satisfies the requirements of clause 56; or • is otherwise acceptable to

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project the State (acting reasonably)
Prevention by law	Where the Company or Trustee is prevented (absolutely) from carrying out works intended to be constructed. If this occurs, the State may acquire the project for the Early Termination Amount.	N/A	N/A	N/A	N/A
Assignment by Project Co/share capital restrictions	N/A	N/A	N/A	N/A	Operator Franchisee breaches its obligations with respect to assignment. Operator Franchisee breaches its obligations with respect to the deed's restrictions on dealing with share capital.
Abandonment	The State may terminate if the Company or Trustee fails to take efforts to achieve completion for either: <ul style="list-style-type: none"> a period of three consecutive months an aggregate period of six months in any 12 month period. 	N/A	N/A	Project Co at any time wholly or substantially abandons the works or displays an intention to do so.	Operator Franchisee wholly or substantially abandons the Project or displays an intention to do so.

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
Persistent/repeated breach	N/A	N/A	N/A	N/A	<p>The State has issued a Final Persistent Breach Notice and the relevant breach has continued beyond 30 Business Days (or such longer period determined by the State under clause 44.1 (d)(iv)) or recurred three or more times within the six month period after the date of service of the Final Persistent Breach Notice.</p> <p>The State has issued a Final Frequent Breaches Notices and Frequent Breaches continue to occur at any time in the six month period after the date of service of the Final Frequent Breaches Notice.</p>
Unacceptable quality	N/A	N/A	N/A	N/A	Operator Franchisee accumulates more than <i>[figure withheld]</i> per Payment Month in any 4 out of 6 consecutive Payment Months.
Failure to proclaim legislation	If Project Legislation is not proclaimed in the form of the Project Bill or as otherwise agreed by each of the parties by 31 March 1996, either the Company or the Trustee may, by notice to the State given within 10 Business Days of that date, terminate this Deed.	N/A	N/A	N/A	N/A

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
Failure to satisfy conditions precedent	If any of the conditions precedent contained in paragraph 2.7(b) or (c) are not satisfied or waived within 75 Business Days from the proclamation of Project Legislation, any party entitled to the benefit of the conditions may terminate this Deed by notice to the other parties.	N/A	N/A	N/A	N/A
Completion not achieved by in time	<p>If Completion of all the Sections of the Link is not achieved by the Link Expected Completion Date and the Company and Trustee subsequently fail to:</p> <ul style="list-style-type: none"> achieve Completion of all Sections by the date specified in the agreed or determined Proposed Completion Program, or the agreed or determined State Program (as the case may be), diligently pursue all 	N/A	N/A	N/A	Completion has not occurred by the Date for Completion and the Independent Verifier reasonably forms the view (including having regard to any applicable Cure Plan or Prevention Plan which Operator Franchisee is diligently implementing) that Operator Franchisee will not achieve Completion by the Sunset Date; or Completion has not occurred by the Sunset Date.

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>steps and actions described in the agreed or determined Proposed Completion Program or the agreed or determined State Program (as applicable)</p> <p>then the State will be entitled to terminate (notice periods apply).</p>				
Failure to commence	N/A	N/A	N/A	N/A	Following Financial Close, Operator Franchisee fails to commence within 60 Business Days the performance of the Project Activities.
Requirement for approvals	<p>If, before Financial Closing, the Company, the Trustee or the State becomes aware that an Environmental Impact Statement is, or will be, required in relation to the Project, it shall be entitled to terminate this Deed by giving, prior to Financial Closing, notice of termination to the other parties.</p> <p>If, after Financial Closing, the Company</p>	N/A	N/A	N/A	N/A

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>or the Trustee becomes aware that an EIS is, or will be, required in relation to the Project, it shall promptly notify the State of it. If, after Financial Closing, the State becomes aware that an EIS is or will be required in relation to the Project and:</p> <ul style="list-style-type: none"> • Completion of all Sections has not occurred, it may terminate this Deed by notice to the Company and the Trustee given within 20 Business Days after it becomes aware of the EIS requirement or provide the limited indemnity described in paragraph (c). If the State does not give such a notice, it will be deemed to have elected to provide that indemnity • Completion of all Sections has occurred, it must 				

Comparative analysis of key issues in Australian Transport Sector PPPs

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	provide the limited indemnity described in paragraph (c).				
Failure to effect and maintain insurance	N/A	N/A	N/A	N/A	Operator Franchisee fails to effect and maintain (or cause to be effected and maintained) the Insurances it is required to effect and maintain pursuant to this deed.
Default under other Agreements	The State may terminate the Deed by notice to the Company and the Trustee if the Company, the Trustee or a Hedging Project Bank (within the meaning of the Treasurer's Deed of Covenant) exercises its right under paragraph 2.1(a) of that Deed (note: a copy of the Treasurer's Deed of Covenant is not available).	N/A	N/A	N/A	N/A
Unacceptable availability	N/A	N/A	N/A	N/A	The Availability Entitlement is less than [withheld amount] in any 3 out of 6 consecutive Payment Months.
Failure to prevent	N/A	N/A	N/A	N/A	A failure by Operator Franchisee to prevent the recurrence of an Event of

	Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
					<p>Default which is the subject of a Prevention Plan.</p> <p>A failure by Operator Franchisee to submit a draft Cure Plan or a draft Prevention Plan or to consult in good faith with the State to agree to a Cure Plan or a Prevention Plan, if such failure is not remedied within 6 Business Days of notice from the State regarding that failure.</p>

State's other termination rights

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>The State may also terminate the Deed by notice to the Company and the Trustee if:</p> <ul style="list-style-type: none"> at a particular time, the State was unable to exercise a right of termination in relation to a <i>Force Majeure</i> event (due to s 13.8) and no liability of the Trustee and Company subsists in relation to the project debt; the Trustee or a Hedging Project Bank exercises its right under cl 2.1(a) of the Treasurer's Deed of Covenant; or subject to exceptions, if an Appendix Event (eg an act of prevention, change in law, industrial action etc.) results in an event which gives the State the right to terminate under cl 15.2 or 15.3 and that 	<p>State may terminate the deed if the Concessionaire notifies it that it is unable or unwilling to carry out a modification requested by the State. If the State terminates, it must may the Concessionaires an Early Termination Amount.</p> <p>The State may also terminate, with 15 days' notice, if an</p>	<p>At any time after the occurrence of an Uninsurable <i>Force Majeure</i> Event, the State may in its absolute discretion terminate this deed by giving a notice to that effect to each PPP Co after which this deed will be terminated.</p>	<p>State may terminate for convenience and prolonged <i>Force Majeure</i> event that affects activities for a period of greater than six continuous months.</p>	<p>Either party may terminate for occurrence of a <i>Force Majeure</i> with 20 business days' notice. Some restrictions do apply to the Operator Franchisee's ability to terminate and, in some instances, the State may suspend the right of the Operator Franchisee to terminate.</p>

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
event had a material adverse effect.	uninsurable <i>Force Majeure</i> Event occurs.			

Step-in events

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>The State may step-in where there is a material risk resulting from the operating default to:</p> <ul style="list-style-type: none"> the health and safety of users of a section of the link material damage to a section of the link 	<p>If a Concessionaire breaches an obligation under a project document and the State:</p> <ul style="list-style-type: none"> reasonably forms the opinion that unless it exercises some or all of its step-in rights, there is likely to be a material risk to either the environment, health or safety of facility users, general public, or a risk of material damage to the freeway works has given the Concessionaires a notice to remedy a breach and that breach has not been remedied 	<p>If a PPP Co breaches an obligation under any State Project Document, the State may give the PPP Cos notice requiring the relevant PPP Co to remedy the breach.</p> <p>If a PPP Co:</p> <ul style="list-style-type: none"> has not, within a reasonable time after receipt of the State's notice under clause 42.1 taken steps to remedy the breach having taken such steps, fails to remedy the breach within a reasonable time, <p>then the State may take such action as</p>	<p>A State may step-in when:</p> <ul style="list-style-type: none"> an incident is subsisting the State is required by Law to act to discharge a statutory power or duty an event of default occurs a default termination event occurs any Project Activities are suspended following the occurrence of a <i>Force Majeure</i> Event 	<p>A Step-In Event is an Operator Franchisee Termination Event, or an event or circumstance which:</p> <ul style="list-style-type: none"> arises out of or in connection with the Project and poses a serious threat to, or causes or will cause material damage or material disruption to: <ul style="list-style-type: none"> the health or safety of persons the Environment any property the safe and secure performance of the Project Activities or the operation of the System requires the State to exercise any of its responsibilities or functions at law.

Comparative analysis of key issues in Australian Transport Sector PPPs

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>within the reasonable time allowed</p> <p>then the State may exercise its step-in rights.</p> <p>The State may also exercise its step –in rights where a cure notice has been issued by the Construction Contractor or Operator in accordance with the Construction Tripartite Agreement or the Operating Tripartite Agreement (as applicable) or a notice has been issued by any Customer Service Contractor or Relevant Entity (including any Customer Service Contractor) (as the case may be) under any Relevant Tripartite Agreement advising that the Customer Service Contractor or Relevant Entity is</p>	<p>may be necessary to remedy the breach (including requiring the Toll road or part of it to be closed).</p> <p>If the State elects to exercise its step-in the PPP Cos must assist the State wherever and however possible to ensure that the State is able to exercise its step-in right effectively and expeditiously, including giving the State or its nominees access to the Project Areas and any other land upon which the Project Activities are being carried out.</p> <p>Each PPP Co acknowledges and agrees that the State is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in respect of which the State exercises its step-in rights.</p>		

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
	<p>entitled, in accordance with the terms of the relevant Material Contract to which the Relevant Tripartite Agreement relates, to terminate the Material Contract due to a failure by a Concessionaire to comply with its obligations under that Material Contract.</p>			

Step-in rights

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>State or its nominee may operate, repair or maintain (as the case may be) the relevant part of that Section or of the Link in an endeavour in good faith to address the risk or mitigate its consequences.</p> <p>When assuming control of the Link, the State has no entitlement to tolls levied during any period during which the State is exercising its rights.</p> <p>The Company shall co-operate with the State,</p>	<p>Where a step-in event occurs, the State may:</p> <ul style="list-style-type: none"> • temporarily take or assume total or partial management and control of the Construction Activities or possession, management and control of the Facilities • take such other steps or action that, in the reasonable opinion of the State, are necessary or desirable to: <ul style="list-style-type: none"> – progress or complete the Construction 	<p>The State may take such action as may be necessary to remedy the breach (including requiring the Toll road or part of it to be closed).</p>	<p>The State may step in and temporarily assume total or partial management of the project activities, access the relevant land and take such other steps as necessary.</p> <p>The Project Co's obligations will be suspended for the period of step-in.</p> <p>Any loss suffered by the State must be compensated by the Project Co.</p>	<p>If a Step-In Event occurs, the State may instruct Operator Franchisee to do any one or more of the following:</p> <ul style="list-style-type: none"> • immediately suspend performance of all or any part of the Project Activities • provide additional or alternative services or other Project Activities • take, or procure that its Associates take, such other steps as the State determines are necessary or desirable in order to:

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Government Agencies, Utilities and other persons in ensuring that they are given reasonable access to the Project Land and Lay Down Areas to enable them to carry out repair and maintenance work to roadways and structures situated on, below, above or adjacent to the Link.</p> <p>If the State or its nominee exercises the right vested in the State to step in, consequent upon the occurrence of an Operating Default, neither the Company nor the Trustee shall be liable in damages to the State for the particular failure to perform an obligation which comprised part of that Operating Default. The exercise of that right shall not, however, otherwise extinguish, qualify or limit any other right, remedy or power of the State.</p>	<p>Activities</p> <ul style="list-style-type: none"> – operate, maintain or repair the Freeway or maintain or repair the Maintained Off-Freeway Facilities; – levy, charge or collect tolls or User Charges <ul style="list-style-type: none"> • minimise the risk: <ul style="list-style-type: none"> – to the Environment, to users of the Freeway or the Maintained Off – Freeway Facilities, or to other members of the general public – of material damage to the Freeway or the Maintained Off-Freeway Facilities, or to the routine operation or maintenance of the Facilities • remedy the failure by the Concessionaire or the Concessionaires (as applicable) • do anything which a Concessionaire is entitled to do under a Transaction Document or with respect to the Project 			<ul style="list-style-type: none"> • continue the performance of the Project Activities; or • minimise the risk to: <ul style="list-style-type: none"> – the health or safety of persons – the Environment – any property – the safe and secure performance of the Project Activities or the operation of the System, in each case to ensure that the Step-In Event is dealt with and normal performance of the Project Activities resumes as soon as is reasonably practicable <p>Required Action</p> <p>The State or its nominees may take such action as notified and any consequential additional action as the State believes is necessary to exercise those rights (together, the Required Action) and Operator Franchisee must (and must procure that its Associates) give all assistance to the State and its nominees while it is taking the Required Action including by:</p> <ul style="list-style-type: none"> • giving the State or its nominees access to the System, including the Project Area and any other land upon which the Project Activities are

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
				<p>being carried out</p> <ul style="list-style-type: none">• making available to the State all relevant staff of Operator Franchisee and its Associates and authorising the State to give lawful directions to all such staff• making available to the State all parts of the System, including all spare parts, consumables and repairable items held by Operator Franchisee or its Associates in relation to the Project (wherever located)• making available to the State all documentation relating to the Project, including the documents referred to in clause 47.9• enabling the State to step in to any relevant Core Contract or Significant Contract.

Termination payments for project co/operator default

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>If the Deed is terminated by the State, the Company and the Trustee shall pay to the State an amount equal to the aggregate of:</p> <p>(i) if it is terminated prior to Completion of all Sections, amounts due and payable by them or either of them to the State in respect of:</p> <ul style="list-style-type: none"> • indemnities • sub-paragraph 3.1(c)(ii) or 3.1(c)(iii) <p>(ii) if it is terminated after Completion of all Sections, amounts due and payable by them or either of them to the State in respect of:</p> <ul style="list-style-type: none"> • indemnities • sub-paragraph 3.1(c)(ii) or 3.1(c)(iii) • sub-paragraph 3.1(c)(i) or Step – In Payments • paragraphs 2.6(e) and (f) • paragraph 3.1(a) • rental under a Lease • paragraph 3.1(d) • Concession Notes. 	<p>State's right to damages</p> <p>Any termination of the Deed by the State (Termination by State) will entitle the State to recover all Loss from the Concessionaires that the State may suffer or incur arising out of or in respect of or in connection with, the termination of the Deed.</p>	<p>State's right to damages</p> <p>Any termination of this deed by the State will entitle the State to recover from the PPP Cos any Loss that the State may suffer or incur arising out of or in any way in connection with the termination of the deed.</p>	<p>Following termination, if the State elects to conduct a tender, the State must pay the highest complaint tender price and any amounts owing by the State to Project Co less:</p> <ul style="list-style-type: none"> • the tender costs • any amounts owing by Project Co to the State • any additional costs reasonably incurred by the State as a result of the default termination event • value of all post termination service amounts • any net gains that have accrued to Project Co as a result of termination • insurance proceeds. <p>If the State does not elect to conduct a Tender, the State must pay Project Co:</p> <ul style="list-style-type: none"> • the estimated fair value of the project • any amounts owing by the State to Project Co <p>less:</p> <ul style="list-style-type: none"> • costs incurred in engaging an independent expert and determining the value of the project • any amounts owing by Project Co to the State • any additional costs reasonably incurred by the State that result from the termination event • value of all post termination service amounts • any net gains that have accrued to Project Co as a result of termination • insurance proceeds 	<p>Where the deed is terminated:</p> <ul style="list-style-type: none"> • For an Operator Franchisee Termination Event • Voluntarily by the State • Due to a <i>Force Majeure</i> Termination Event <p>the State must pay to the Operator Franchisee (except in the case of Operator Franchisee abandonment), an amount determined by the relevant formula (as set in in one of the schedules).</p>

Termination payments for state default

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>If the Deed is terminated by the Company and the Trustee, there shall be deducted from the Early Termination Amount payable under that clause:</p> <ul style="list-style-type: none"> any amount to which the State would be entitled under that clause were the termination made by the State at that time any amount due but unpaid to the State under the Project Documents. 	<p>Early Termination Amount</p> <p>If the Deed is terminated under clauses 37.12(b) (Additional State remedies) or 67 (Termination by Concessionaires), the State must, within 30 Business Days of the Termination Date, pay to the Concessionaires the Early Termination Amount. Other than the Early Termination Amount, the State will not be liable to pay any compensation or other amounts to a Concessionaire in any way arising out of or in respect of or in connection with such termination.</p>	<p>The State must, within 30 Business Days of termination, pay to the PPP Cos the Early Termination Amount and pay, if applicable, to the NB Works Contractor the NB Termination Amount and the EWAG Termination Amount.</p> <p>Payment of the Early Termination Amount, the NB Termination Amount and the EWAG Termination Amount will be full and final settlement of the PPP Cos' and the NB Works Contractor's rights against the State.</p> <p>Early termination payment</p> <p>The total of:</p> <ul style="list-style-type: none"> the project debt on the date of termination an amount sufficient to give each PPP Co the ability to give the Equity Investors (treated as if those Equity Investors were all Notional Initial Equity Investors) a nominal after tax internal rate of return to that date equal to the Equity Return on amounts invested by Notional Initial Equity Investors. <p>It does not include:</p> <ul style="list-style-type: none"> any interest on the Project Debt to the extent that it is calculated at a rate which would constitute a penalty any amount included in the calculation of the NB Termination Amount or the EWAG Termination Amount. 	<p>Project Co does not have the right to terminate for State default and, accordingly, there is no termination payment for such an event.</p>	<p>N/A</p>

Termination payments for termination for convenience

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>There is no termination for convenience clause in the Concession Deed.</p>	<p>There is no termination for convenience clause in the Concession Deed.</p>	<p>There is no termination for convenience clause in the Project Deed.</p>	<p>If the State elects to terminate for convenience, it must pay:</p> <ul style="list-style-type: none"> • the outstanding project debt with interest at the termination date • an amount which gives an equity return for the period between the termination date the original term expiry • redundancy payments for Project Co employees • amounts reasonably incurred by the Project Co due to the termination of agreements with D&C Contractors and O&M Contractors • any costs incurred by the Project Co as a result of terminating the debt financing documents • amounts owing by the State to the Project Co (incl. quarterly service payments) <p>less:</p> <ul style="list-style-type: none"> • any gains realised by 	<p>Where the deed is terminated voluntarily by the State, the Termination Payment is equal to:</p> <ul style="list-style-type: none"> • an amount equal to the Termination Senior Debt; • an amount which gives an internal rate of return on Equity equal to the Base Case Equity Return • an amount equal to the Sub contractor Breakage Costs • any amounts due and payable by the State to Operator Franchisee in accordance with the terms of the State Project Documents as at the Termination Date; • the total of all redundancy

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
			<p>the Project Co as a result of terminating the debt financing documents</p> <ul style="list-style-type: none"> • any amounts owing by the Project Co to the State • any credit balances held by or for the benefit of the Project Co and any insurance proceeds owing to the Project Co • all sums due and payable to the Project Co from any prepayment of debt • any insurance proceeds • the securitisation refund payment 	<p>payments for employees of Operator Franchisee</p> <p>less:</p> <ul style="list-style-type: none"> • any amounts owing by Operator Franchisee to the State, under the State Project Documents as at the Termination Date • any gains which have or will accrue to Operator Franchisee as a result of the termination of this deed and any other Project Documents, not included in the definition of Termination Senior Debt • the net amount (which, for the avoidance of doubt, will be net of any amount deductible under the relevant insurance policy)

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
				<p>Operator Franchisee is entitled to retain, or would be entitled to retain had Operator Franchisee complied with the requirements of clause 43 and the relevant insurance policy, under any insurance policy</p> <ul style="list-style-type: none">• the total of all amounts standing to the credit of the Insurance Proceeds Account or Asset Management Retention Account as at the Termination Date• the Securitisation Refund Payment

Termination payments for prolonged force majeure/uninsurable force majeure events

Toll Road Project A	Toll Road Project B	Toll Road Project C	Toll Road Project D	Light Rail Project
<p>Whilst there is no right of termination for a <i>force majeure</i> event, obligations under the Deed may be suspended and the Company and Trustee relieved of their liability.</p> <p>If the Company or the Trustee is unable to perform an obligation to the State under the Project Documents because of a relevant event (eg <i>Force Majeure</i>), then the obligation shall be suspended (and the Company or the Trustee (as the case may be) shall be relieved from liability arising by reason of that inability)</p> <p>for the duration of the relevant period.</p>	<p>Termination of rights and obligations by the State for an uninsurable <i>Force Majeure</i> does not constitute a breach of a project document by the State.</p>	<p>Where the project is terminated for an uninsurable <i>Force Majeure</i> event, an Early Termination Payment will be payable by the State.</p> <p>Early termination payment</p> <p>The total of:</p> <ul style="list-style-type: none"> the project debt on the date of termination an amount sufficient to give each PPP Co the ability to give the Equity Investors (treated as if those Equity Investors were all Notional Initial Equity Investors) a nominal after tax internal rate of return to that date equal to the Equity Return on amounts invested by Notional Initial Equity Investors. <p>It does not include:</p> <ul style="list-style-type: none"> any interest on the Project Debt to the extent that it is calculated at a rate which would constitute a penalty any amount included in the calculation of the NB Termination Amount or the EWAG Termination Amount. 	<p>If the State or Project Co terminates due to a <i>Force Majeure</i> Event, the Termination Payment is the greater of a Default Termination Payment was due (as calculated above where the state elects not to re-tender) and the following calculation:</p> <ul style="list-style-type: none"> Project debt amounts owing by the State to Project Co amount of any costs incurred from terminating or reversing derivative position under finance documents <p>less:</p> <ul style="list-style-type: none"> gains realised from terminating or reversing derivative position under finance documents any amounts owing by Project Co to the State insurance proceeds all sums due to Project Co from the Financiers any accrued, deferred or rolled up interest from outstanding amounts of the project debt that are intended to be refinanced credit balances held for the benefit of Project Co securitisation refund payment 	<p>If:</p> <ul style="list-style-type: none"> the parties are unable to agree on appropriate terms to mitigate the effects of the <i>Force Majeure</i> Event and facilitate the continued performance of the State Project Documents on or before the date falling 20 Business Days after the date of the commencement of the relevant <i>Force Majeure</i> Event (or the date on which the relevant Relief Event became a <i>Force Majeure</i> Event) the <i>Force Majeure</i> Event is continuing or its consequence remain such that the affected party has been or is unable to comply with a material part of its obligations under the State Project Documents during that 20 Business Day period, <p>then either party may terminate this deed by giving 20 Business Days' notice to the other party.</p> <p>Restrictions</p> <p>The State can suspend the Operator Franchisee's right to terminate provided that any suspension does not last longer than six months.</p>

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