

East West Link

**East West Link Project: Stage One
Linking Melbourne Authority**



INVITATION FOR EXPRESSIONS OF INTEREST

18 July 2013

Closing Date: 2:00pm on 29 August 2013

www.linkingmelbourne.vic.gov.au



MESSAGE FROM THE PREMIER, TREASURER AND MINISTER FOR ROADS

The Victorian Coalition Government is committed to delivering the East West Link, which will be the largest single transport infrastructure project ever delivered in Victoria.

Spanning 18 kilometres and crossing the city, the East West Link will transform Melbourne and consolidate Victoria's reputation as an outstanding place to invest and do business. In May 2013, the Victorian Coalition Government committed to building Stage One of the East West Link.

A nation-building project, the East West Link will bring extensive benefits at the local, state and national levels. It will provide significant travel time savings to road users and offer a much needed alternative to the busy M1 corridor (Monash and West Gate Freeways and West Gate Bridge). As CityLink did 20 years ago, it will improve freight movement and provide greater accessibility to important employment centres across the city, including the Port of Melbourne and Melbourne Airport. It will also remove traffic from local roads and deliver significant public transport improvements.

Stage One of the project will complete a "missing link" in the metropolitan freeway network by connecting the Tullamarine Freeway, CityLink and the Eastern Freeway. Importantly, it will deliver the first part of the East West Link.

Providing a northern CBD by-pass, Stage One will relieve pressure on the M1 corridor. It will also reduce congestion at the end of the Eastern Freeway and enhance growth across Melbourne.

We are delighted to provide this Invitation for Expressions of Interest, the next major milestone in delivering Stage One of East West Link.

The project is expected to create around 3,200 jobs during construction and lead to a substantial economic boost for Victoria.

The Coalition Government has a number of environmental and social objectives for this project and will be working with developers and the local community to achieve these goals for the benefit of the community and future generations.

This project will be delivered in partnership with the private sector under the *Partnerships Victoria* policy. We are seeking innovative proposals from the private sector which provide a world-class asset and drive value for money for the Victorian people including on design, construction, operations and maintenance and commercial solutions.

The Coalition Government welcomes your interest in working with us to develop and deliver the East West Link and we encourage you to participate in the delivery of Stage One of this landmark transport project.



The Hon. Dr Denis Napthine
Premier



The Hon. Michael O'Brien MP
Treasurer



The Hon. Terry Mulder MP
Minister for Roads

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IMPORTANT NOTICE

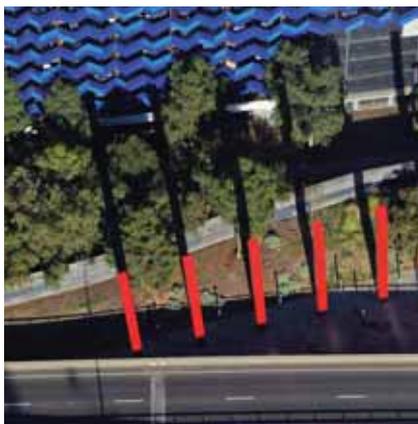
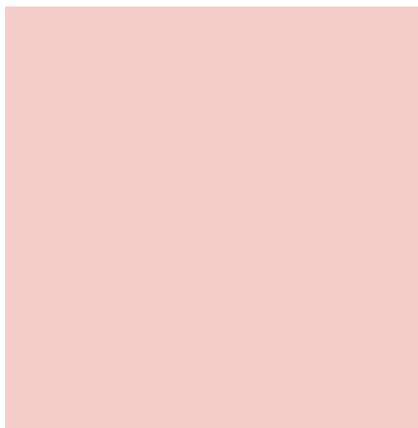
In reviewing this EOI Document, please also review the Terms and Conditions which apply to it (refer Annexure B).

By submitting an EOI and executing the EOI Form, a Respondent and each Respondent Member:

- agrees to comply with the Terms and Conditions; and
- must ensure compliance by its Associates with the Terms and Conditions.

Please also refer to section 7.4 for important information relating to the Victorian Code and Victorian Guidelines.

Capitalised terms are defined in the Glossary in Annexure A.



1. INTRODUCTION

1.1 The opportunity

The East West Link (EWL) is the Victorian Government's highest priority road project. It will be an 18 kilometre freeway-standard road link running between the western end of the Eastern Freeway and CityLink, then connecting to the Port of Melbourne precinct and to the Western Ring Road. The EWL will respond to the strong and increasing demand for travel across Melbourne.

The first package of works for the EWL to be delivered will provide for a 5.2 kilometre, freeway-standard road link to the north of the central city, running between the western end of the Eastern Freeway and CityLink (Stage One). Stage One will be procured as an availability PPP with the State separately tolling the road and retaining traffic volume and tolling revenue risk.

Stage One is intended to be implemented and operated in an integrated fashion with the broader road network, including existing privately operated toll roads (CityLink and EastLink). In conjunction with the delivery of Stage One, the State will separately procure complementary upgrades to relevant parts of the surrounding road network and public transport system.

Following procurement of Stage One, the State expects to procure a future stage or stages of the EWL which may include a separate direct independent connection from Stage One to the Port of Melbourne, as well as providing for the future link with the western end of the EWL. These future stage(s) of the EWL will be essential to maximising connectivity and traffic volumes across the entire network.

LMA has been appointed as the delivery agency for the State in relation to Stage One and now invites suitably qualified Respondents to submit Expressions of Interest for the delivery of Stage One.

1.2 The purpose

The purpose of this EOI Document is to:

- (a) provide information to potential Respondents about the EWL and Stage One;
- (b) outline the tender process and procurement timetable for Stage One;
- (c) invite potential Respondents to submit EOIs and inform them as to the information to be included in any EOIs;
- (d) set out the Evaluation Criteria against which the State will evaluate each EOI and select Short-Listed Respondents; and
- (e) elicit views / seek information from the market to assist the State's decision making on certain key issues for Stage One and the preparation of the RFP.

1.3 Stage One delivery process and timeline

The planning process for the delivery of Stage One, along with the connection to the Port of Melbourne, is currently underway (refer further details in section 3.1) and will be conducted in parallel with the Tender Process. The State will be responsible for obtaining the necessary planning approvals for the Reference Design as applicable to Stage One.

Stage One does not include the complementary upgrades of the surrounding road network and public transport system. These elements of the broader Stage One scheme will be separately procured by the State and subject to separate planning and approval processes.

The Tender Process is designed to encourage the private sector to develop innovative civil and urban design, engineering, commercial and operational solutions over the whole of the life of Stage One that will deliver value for money and high quality outcomes in accordance with the State's specified objectives for Stage One.

Section 7.2 outlines the Tender Process. Table 1 sets out the key dates relating to the EOI Phase and Table 2 sets out indicative dates for the Tender Process and Stage One milestones.

Table 1: Key EOI Phase dates

Milestone	Target Date / Period
Release of EOI Document	18 July 2013
Closing date to request a meeting with LMA (refer section 1.4)	5:00pm 24 July 2013
Potential meetings between Respondents and LMA	25 July - 5 August 2013
Closing date for clarification questions	5.00pm 22 August 2013
Closing time and date of EOIs	2:00pm 29 August 2013
EOI presentations from Respondents who comply with the requirements of section 8.2	Week commencing 2 September 2013

Table 2: Indicative Stage One timetable

Milestone	Target Date / Period
Release of RFP*	31 October 2013
Proposals due	April 2014
Successful Respondent selected	July / August 2014
Contract Close (with subsequent financial close)	September 2014
Project commencement	From October 2014
Anticipated completion	2019

* The State will endeavour to notify Short-Listed Respondents at the earliest opportunity in October 2013 prior to release of the RFP.

1.4 Industry engagement

The State conducted an industry briefing about EWL and Stage One on 6 June 2013. In addition, LMA may, upon written request from potential Respondents:

- (a) make available materials presented at the industry briefing; or
- (b) meet to discuss relevant elements of Stage One or this EOI Document.

If potential Respondents wish to meet with LMA as contemplated above, they should contact LMA via email at ewl@linkingmelbourne.vic.gov.au by 5:00pm, 24 July 2013. It is proposed that any such meetings will be held in the period from 25 July 2013 to 5 August 2013.

If LMA is of the view that any matter discussed during any such meeting requires the issue of a clarification to all potential Respondents, it may issue a clarification to prospective Respondents in accordance with section 9.4.

2. STAGE ONE

2.1 Objectives

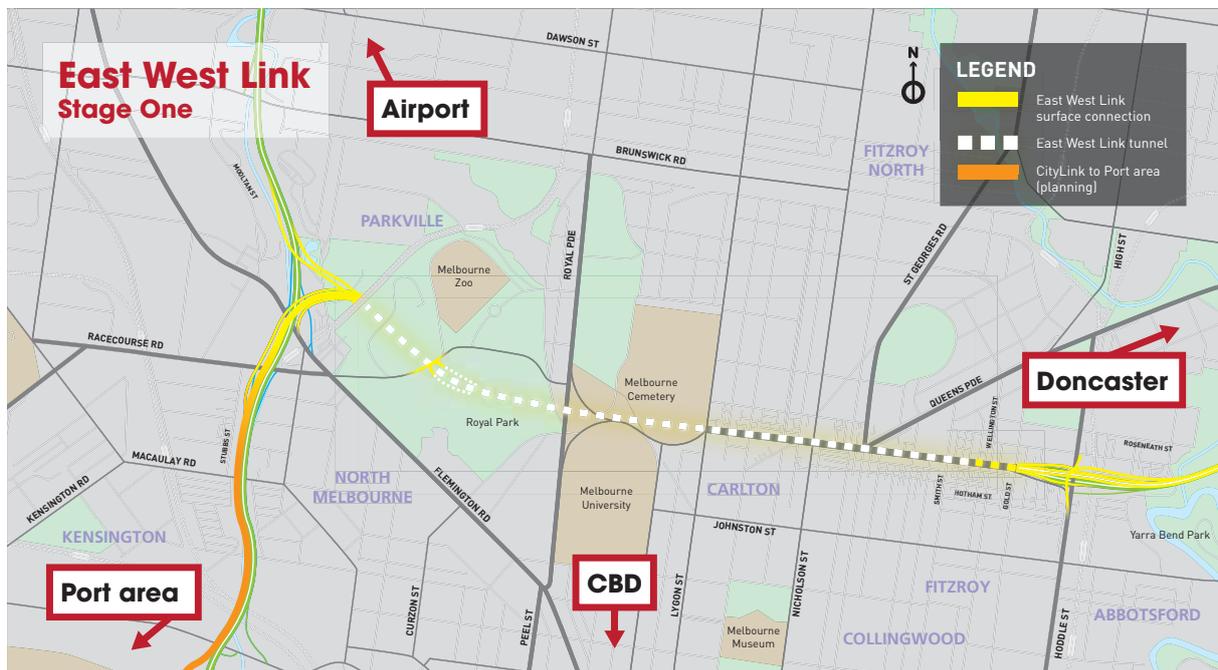
The EWL project objectives relevant to Stage One include to:

- (a) enhance the overall efficiency of the transport network, particularly Melbourne and Victoria's strategic freeway and toll road network;
- (b) improve the capacity and efficiency of Victoria's freight network;
- (c) facilitate public transport improvements in the EWL corridor;
- (d) leverage urban renewal opportunities and improved local amenity;
- (e) provide a freeway-standard connection to meet current and future demand for east-west movements across Melbourne;
- (f) help provide an alternative to the M1 corridor;
- (g) protect and, where possible, enhance natural and cultural resources, and the environment, during the development, delivery and operation of Stage One;
- (h) support sustainable communities and land use development during the planning, delivery and operation of Stage One;
- (i) achieve value for money outcomes for the State; and
- (j) secure timely delivery of Stage One.



2.2 Outline of Stage One

Figure 1: Stage One Map/Corridor



Refer to Annexure D for an A4 version of the Stage One Map / Corridor.

The State has determined that the alignment for Stage One, from the Eastern Freeway at Hoddle Street in Clifton Hill, will generally follow Alexandra Parade (delivered largely in tunnel) and connect to CityLink north of Flemington Road in Parkville.

The State has also adopted a Reference Design as being a suitable solution to form the basis of the statutory planning and environmental approval process that is now underway (refer section 3.1). Features of the Reference Design include:

- the length of Stage One between the Eastern Freeway and CityLink being approximately 5.2 kilometres, excluding associated widening of the Eastern Freeway and City Link respectively;
- connections to Hoddle Street, Elliot Avenue (east facing ramps) and CityLink (north and south facing ramps);
- connections into the median of the Eastern Freeway to Yarra Bend Road and connecting ramps to CityLink's north, extending the overall Stage One length to 9.3 kilometres;
- 3 traffic lanes in each direction;
- twin 3 lane tunnels extending for 4.4 kilometres between portals west of Hoddle Street and west of the Upfield railway line. The tunnels protect public facilities and urban amenity by passing under Alexandra Parade, Princes Street, the Melbourne General Cemetery, Princes Park and Royal Park; and
- provision for the future connection to the Port of Melbourne.

The Reference Design was released publicly on 16 July 2013 and is available at www.linkingmelbourne.vic.gov.au.

A more detailed description of the State's scope requirements for Stage One will be provided to Short-Listed Respondents during the RFP Phase.

3. LAND AND ENVIRONMENT

3.1 Planning and environment

Stage One (and the connection to the Port of Melbourne) has been declared a major transport project under the MTPFA with the Minister for Roads appointed as the responsible Project Minister and LMA as the project proponent.

In May 2013, the Minister for Planning determined that a CIS is required for Stage One and the connection to the Port of Melbourne.

LMA is currently in the process of preparing the CIS for Stage One and the connection to the Port of Melbourne.

The CIS process is being undertaken in conjunction with the procurement of Stage One and will assess the environmental and social impacts in order to obtain the applicable approvals under the MTPFA.

The CIS process will ultimately define the performance requirements for Stage One (as well as the connection to the Port of Melbourne) in relation to the environmental and social outcomes to be achieved during the design, construction and operation phases. To the extent applicable to Stage One, these performance requirements will be detailed during the RFP Phase.

The CIS process prescribed by the MTPFA includes:

- (a) community and stakeholder engagement;
- (b) detailed technical investigations and reports;
- (c) submission of the CIS to the Minister for Planning for approval;
- (d) the public exhibition of the CIS as approved by the Minister for Planning; and
- (e) the appointment of an assessment committee by the Minister for Planning to consider submissions and technical advice (including public hearings) in relation to the CIS.

The assessment committee will give its recommendations to the Minister for Planning. The Minister for Planning will determine the applicable approvals required for Stage One (and the connection to the Port of Melbourne) and any conditions to be attached to such approvals.

3.2 Indicative CIS timetable

The indicative timetable for the CIS process (to be run in conjunction with the Tender Process) is set out below:

Indicative CIS Timetable	Target Date / Period
Public exhibition period	November 2013
Formal public hearings	February / March 2014
Assessment Committee Recommendation Report	May 2014
Ministerial approval decision	June / July 2014

The CIS documentation is expected to be completed by the end of 2013, with the required approvals issued by the Minister for Planning by June / July 2014. Any refinement to the scope of Stage One arising from the CIS process and approvals will be detailed during the RFP Phase.

3.3 Land

Construction of Stage One will require the acquisition of residential and commercial properties. Acquisition of properties will be undertaken in accordance with the provisions of the MTPFA and the *Land Acquisition and Compensation Act 1986 (Vic)*. The State will ensure that all affected parties are kept fully informed of the planning process, notified of relevant acquisition proposals and are given an opportunity to express their views.

Property acquisition and availability of land for Stage One will be in accordance with a land availability schedule, further details of which will be provided with the RFP.

3.4 Geotechnical investigations

LMA conducted preliminary geotechnical investigations between May and December 2012, to better understand ground and geological conditions along the Stage One corridor. These ground and geological conditions will inform the design and planning of Stage One and the development of the Reference Design. The investigations included borehole drilling at 43 locations along the proposed route alignment to gather background information about local soil profiles for tunnelling purposes, as well as soil and groundwater contamination testing and groundwater hydrogeological assessment.

An interim geotechnical report was released in December 2012 and is available at www.linkingmelbourne.vic.gov.au/pages/geotechnical-investigation-interim-report.asp. Core samples from the borehole drilling were made available to the construction industry in December 2012.

Further geotechnical investigations are underway with up to 50 additional borehole locations and information will be made available on the above website and otherwise as outlined in the RFP.



4. KEY STAGE ONE CONSIDERATIONS

4.1 Urbanised corridor

Stage One will be constructed through a densely urbanised corridor that includes established residential properties, retail and commercial centres, parks and reserves and community and recreational facilities. It will traverse several sensitive public facilities including Royal Park, the Melbourne General Cemetery, Melbourne Zoo, the State Hockey and Netball Centre and Debnays Park. It will also traverse Merri Creek and Moonee Ponds Creek.

The retrofitted nature of Stage One has the potential for significant social and environment impacts to be generated by its construction and operation. The civil and urban design, engineering, commercial and operational solutions for Stage One will need to minimise the impact on these important and sensitive areas, including ensuring no physical disturbance to the Melbourne General Cemetery, Fitzroy Swimming Pool or Royal Parade, while also minimising impacts on Royal Park and surrounding residential areas.

4.2 Community and stakeholder engagement

LMA adopts a proactive approach to managing projects which includes active stakeholder and community engagement. LMA aims to maintain open and productive relationships with stakeholders, such as local councils, environmental and other affected interest groups, the transport industry and government agencies. LMA's comprehensive engagement program will include formal consultation and submissions as part of the MTPFA statutory approvals process, as well as ongoing engagement to identify stakeholder and community concerns and develop effective responses to these issues across all phases of Stage One.

Project Co will be required to communicate effectively with affected and interested residents, motorists impacted by works, the wider community and businesses along the Stage One corridor and relevant government agencies. Project Co will also be required to implement protocols for media management, recognising that LMA approval may be required prior to the release of media materials in relation to Stage One.

Further details about the requirements for community and stakeholder engagement will be provided in the RFP.

4.3 Interaction with the broader transport network

Stage One will form a key part of Melbourne's urban freeway and toll road network. The design of Stage One will need to integrate (visually, technically and from an operational perspective) with the broader transport network including potential future stages of the EWL.

Further detail of the State's requirements in this regard will be set out in the RFP.

4.4 Interface with CityLink

The western end of Stage One will connect with the existing CityLink toll road.

The State expects to assume responsibility for facilitating the necessary access to CityLink to deliver Stage One. The commercial framework and technical requirements for undertaking these works will be set out in the RFP.

4.5 Interchange at Hoddle Street

The State is undertaking detailed design work and investigations relating to parts of the eastern interchange of Stage One at Hoddle Street. Further details in relation to these activities will be provided in the RFP.

4.6 Operation and maintenance activities

Project Co will be responsible for the efficient and safe operation and maintenance of Stage One within the broader freeway / toll road network in co-operation with VicRoads and responsible road authorities.

The operational and maintenance activities for which Project Co will be responsible include:

- (a) operating and maintaining Stage One for the safe, efficient and continuous passage of vehicles on a sustainable basis;
- (b) operating and maintaining the tunnels (including all environmental, safety and traffic monitoring and management systems);
- (c) providing incident response services;
- (d) providing real time traffic information services for road users (using some source data provided by VicRoads); and
- (e) providing real time traffic monitoring data for VicRoads.

Further details on how Project Co will need to work with VicRoads (as the operator of the broader road network) will be provided in the RFP.

4.7 Toll collection interface

The toll collection system, toll collection services and the associated customer service interface for Stage One will be procured separately by the State and will not form part of the scope of Stage One. Project Co will be required to cooperate with the tolling system contractor for the delivery and operation of the tolling system. The obligations of Project Co in relation to this interface will be set out in the RFP.

5. COMMERCIAL FRAMEWORK

5.1 Overview

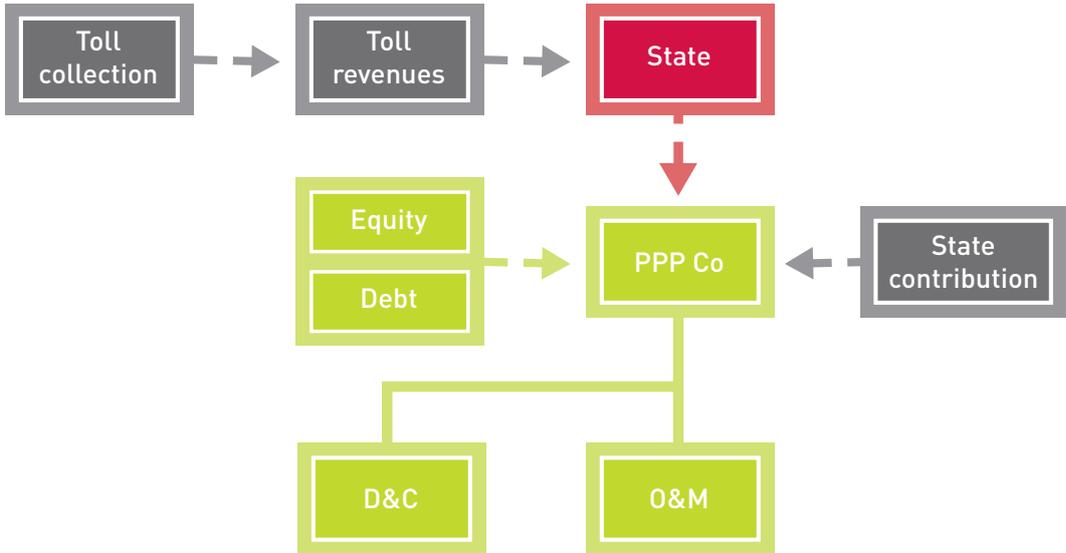
Stage One will be procured as an availability PPP with the State:

- (a) responsible for separately procuring and managing the toll collection system, toll collection services and the associated customer service interface; and
- (b) retaining the risk associated with traffic volumes and tolling revenue.

In addition to periodic Service Payments from the State, the State expects to make a significant contribution to Stage One’s financing requirements over the course of the design and construction phase.

Figure 2 sets out the proposed commercial structure for Stage One.

Figure 2: Project Commercial Structure



5.2 Commercial principles

The commercial principles to be adopted for Stage One will be consistent with the National PPP Guidelines and Partnerships Victoria Requirements, except to the extent necessary to reflect the State’s required risk allocation and project-specific issues.

5.3 Proposed contractual framework

The State is seeking to contract with a single entity to design, build, finance, operate and maintain Stage One. The State will be responsible for the tolling system, toll collection services and associated customer service interface and these will not form part of Project Co’s scope.

The contractual framework for Stage One will adopt a typical document structure as used for availability PPPs in Victoria. The State recognises that Respondents may propose contractual arrangements between Project Co and its contractors / service providers that differ from this. While the State is willing to consider alternative proposals in respect of the contractual structure and risk allocation for Stage One, it is the State's preference that Respondents accept the contractual structure and risk allocation as set out in this EOI Document. Any departures proposed by a Respondent will need to demonstrate value for money to the State, otherwise meet the State's requirements and further the achievement of the project objectives as set out in this EOI Document and the RFP.

5.4 State Project Documents

The State will be the principal in all contracts entered into with Project Co for the delivery of Stage One.

The State will release the draft State Project Documents to Short-Listed Respondents with the RFP. A broad overview of the proposed risk allocation to be further detailed in the RFP is set out in Annexure C. The State's positions on key project and financial considerations are also set out in sections 4 and 6.



6. KEY FINANCIAL CONSIDERATIONS

6.1 Payment mechanism

Project Co will be paid during the O&M Phase through Service Payments from the State. The Service Payments will be at risk of abatement for failure to achieve specified KPI benchmarks. The KPIs will include lane availability (including incident response requirements), traffic information management, road maintenance, graffiti management and environmental management. The payment mechanism may also include elements designed to ensure the efficient operation of Stage One as a part of the broader road network.

Project Co will be required to develop an appropriate KPI reporting and assessment system by which KPI reports will be submitted to the State to assist in the determination of the Service Payment. The payment mechanism, including the KPI regime, will be further articulated in the RFP, including specific Proposal variables.

The State seeks feedback on Respondents' views and preferences in relation to performance standards that might result in greater alignment between Project Co's and the State's interests in accordance with section 8.4 and Section C of the Respondent Information Schedule.

6.2 State contribution and certainty of private finance

In the context of the current financial market, the significant design and construction costs associated with Stage One and potential liquidity constraints in project finance debt markets, the State recognises the potential need to support efficient financing of the capital costs of Stage One.

The State intends that:

- (a) it will require fully financed Proposals during the RFP Phase, with finance to be from a combination of a State contribution and private sector finance. It is envisaged that the State contribution will be made available progressively during construction and on Completion. The State may also consider a further State contribution following Completion. Further details in relation to the State contribution, including the proposed amount (influenced by the State's assessment of the level of efficiently priced private finance available in the market) and timing, will be provided in the RFP;
- (b) Respondents' proposed financing structures should seek to optimise the level of efficiently priced private finance available (in the context of the proposed State contribution); and
- (c) any private sector finance (debt and equity) required for Proposals will need to be fully committed and unconditional upon submission of a Proposal.

The State also recognises that, depending on the number of the Short-Listed Respondents and the prevailing liquidity in project finance debt markets at the time Proposals are to be submitted, it may be required to provide further short term financing support (and / or flexibility in any committed State contribution) in order to facilitate its requirement for fully financed Proposals. Further information on any such support will be provided in the RFP.

Under the Terms and Conditions, the State does not require debt providers to be exclusive to only one Respondent during the EOI Phase. The State's requirements in this respect for the RFP Phase will be provided to the Short-Listed Respondents.

6.3 Project term

The State is still considering the optimal project term. It is expected this will be in the range of 15 to 30 years, and is likely to balance a number of factors, including:

- (a) lifecycle and major maintenance programs;
- (b) financing efficiency, and
- (c) alignment with other toll road concessions and / or delivery of any future stage or stages of the EWL.

The State seeks feedback on Respondents' views and preferences in relation to the optimal project term in accordance with section 8.4 and Section C of the Respondent Information Schedule.

6.4 Commercial revenue and development opportunities

It is possible that Respondents will identify:

- (a) commercial opportunities which could be incorporated into Stage One; and
- (b) opportunities to deliver further value to the State by maximising or unlocking development opportunities for the State.

Any such commercial opportunities should be identified by Respondents as early as possible as part of their response on innovation in their EOI or Proposal and will need to further the achievement of the project objectives set out in this EOI Document and the RFP.

7. PROCUREMENT APPROACH

7.1 National PPP Guidelines and Partnerships Victoria Requirements

The State will procure Stage One as an availability PPP under the Partnerships Victoria policy, subject to the Successful Respondent’s Proposal providing value for money and otherwise satisfying relevant criteria under the framework. This overarching framework requires compliance with both the:

- (a) National PPP Guidelines; and
- (b) Partnerships Victoria Requirements.

On 2 May 2013, new Partnerships Victoria Requirements were released outlining reforms designed to ensure that Victoria has the right model to deliver key infrastructure and better services in partnership with the private sector. A range of these reforms will apply to Stage One.

Table 3 highlights some key reforms and explains their application to Stage One.

Table 3: New Partnerships Victoria Requirements

Key reform	Application to the Project
Adopting modified financing structures	See comments in section 6.2.
Using an affordability benchmark	<p>The PSC will be developed in accordance with the National PPP Guidelines and will be a key element in determining whether the PPP procurement model achieves value for money for Stage One, alongside the qualitative aspects of the Proposals.</p> <p>For Stage One, the PSC will be used as an affordability benchmark rather than its previous ‘pass / fail’ function. There is no longer an assumption that the State will revert to traditional design and construct delivery if PSC cost expectations are not met.</p> <p>The State has developed, and will further refine, the PSC for the reference project based on the Reference Design relevant to Stage One. The State intends to make available to Short-Listed Respondents detailed costing reports and information used in formulating the PSC. The PSC itself will not be made available.</p>
Streamlining tender processes and trialling reimbursement of Proposal costs	<p>Stage One has been identified as a trial project for the reimbursement of Proposal costs. As such, the State will make a contribution to Proposal costs for the unsuccessful Short-Listed Respondent(s) equal to 50% of the Respondent’s verifiable external Proposal costs (subject to a maximum payment to any unsuccessful Short-Listed Respondent of \$12 million). Any payment will be subject to the unsuccessful Short-Listed Respondent(s) transferring the Intellectual Property Rights in its Proposal to the State and otherwise complying with the new Partnerships Victoria Requirements, the Terms and Conditions and any further requirements set out in the RFP.</p> <p>The State will also apply measures to streamline the Tender Process including minimising information requirements for Respondents, and avoiding the use of a ‘best and final offer’ process.</p>

Details of the National PPP Guidelines and Partnerships Victoria Requirements are available at www.infrastructureaustralia.gov.au and <http://www.dtf.vic.gov.au/Infrastructure-Delivery/Public-private-partnerships>, respectively.

7.2 Tender Process

The Tender Process for Stage One is expected to comprise the following key phases:

Phase 1: EOI Phase

The issue of this EOI Document represents the first stage of the Tender Process.

Respondents' EOIs will be assessed against the Evaluation Criteria for the purpose of shortlisting Respondents to participate in the RFP Phase. Following EOI evaluation, the State will notify the shortlisted Respondents selected to participate in the RFP Phase. The State anticipates it will shortlist two or three Respondents, based on the quality of the EOIs and the value to the State in maximising competition.

The State also seeks information from Respondents to assist the State in addressing certain key issues in the preparation of the RFP as set out in section 8.4 and Section C of the Respondent Information Schedule.

Phase 2: RFP Phase

The second stage of the Tender Process will involve the release of an RFP to the Short-Listed Respondents.

The RFP will require Short-Listed Respondents to submit a fully costed, binding Proposal based on the requirements outlined in the RFP.

To ensure that Short-Listed Respondents have the opportunity to clarify the requirements of the RFP, the RFP Phase will include Interactive Tender Workshops. Short-Listed Respondents will be encouraged to use these opportunities to meet the State to discuss the development of their proposed solutions and designs and to seek clarification and feedback to better understand the requirements of the RFP. These sessions will be coordinated in accordance with the National PPP Guidelines Volume 2: Practitioners' Guide.

Following detailed evaluation of submitted Proposals, the State may select a Preferred Respondent or Preferred Respondents with whom to enter into negotiations as a precursor to the execution of the Project Agreement and other relevant State Project Documents.

Phase 3: Negotiation and Completion Phase

Following the RFP Phase, the State will undertake an efficient negotiation phase and work towards timely execution of the Project Documents.

It is the State's preference to:

- (a) select only one Preferred Respondent for negotiations, provided that to do so would not compromise value for money or probity principles; and
- (b) where possible, not to employ a 'best and final offer' or other extended procurement process. However, whether the State is required to conduct such a process will be dependent on the quality of Proposals received from the Short-Listed Respondents.

The State may vary the above phases in accordance with the Terms and Conditions.

7.3 Victorian Industry Participation Policy

The Victorian Industry Participation Policy (VIPP) will apply to Stage One with respect to local content. The policy will require Short-listed Respondents to submit a VIPP Plan as part of their Proposal.

Short-listed Respondents must have their VIPP Plan certified by the Industry Capability Network (ICN). The VIPP Plan will be assessed as part of evaluation criteria of the Proposal.

Stage One is expected to be a 'Strategic Project' for the purpose of the VIPP. Where this is the case, minimum local content targets may be set and a Local Industry Development Plan (LIDP) would be required. A LIDP requires additional detail compared to a standard VIPP Plan and would be developed in consultation with ICN Victoria once Stage One has been registered on the VIPP Management Centre at www.icnvic.org.au/vipp.

7.4 Victorian Code and Victorian Guidelines

The Victorian Code and Victorian Guidelines, as amended from time to time, will apply to the building and construction work undertaken for the development of Stage One. The Victorian Code and Victorian Guidelines are available at www.dtf.vic.gov.au. The D&C Subcontractor must comply with the Victorian Code and Victorian Guidelines.

Further important details of the Respondent's and D&C Subcontractor's obligations in respect of the Victorian Code and Victorian Guidelines are set out in section 8 and the Terms and Conditions.

7.5 Commonwealth requirements

If Commonwealth Government funding is provided for Stage One, Respondents may be required to comply with any conditions associated with that funding, which may include:

- (a) complying with the National Code and National Guidelines. If applicable, LMA will issue a notification providing further details of, and the requirements to be met in relation to, the National Code and National Guidelines; and
- (b) ensuring that relevant Respondent Members obtain occupational health and safety accreditation in accordance with the *Fair Work (Building Industry) Act 2012* (Cth) and *Fair Work (Building Industry Accreditation Scheme) Regulations 2005* (Cth) (OHS Accreditation Scheme). Prospective Respondents should note the provisions of the OHS Accreditation Scheme in relation to foreign builders who are not 'accredited persons' and form part of a joint venture.



8. EVALUATION AND ASSESSMENT

8.1 Information required

Respondents are requested to ensure that their EOI reflects the structure set out in, and contains the information requested by, the Respondent Information Schedule.

Although page limits have not been specified, Respondents are requested to provide concise EOIs that clearly address the information requested. It is permissible to include appendices to the main body of the EOI, however there is a preference to limit the number of appendices. Respondents are requested not to include generic advertising or marketing material.

The State will:

- (a) evaluate each submitted EOI using the Evaluation Criteria to determine the Short-Listed Respondents; and
- (b) consider, but not evaluate, the input sought under section 8.4 and Section C of the Respondent Information Schedule to inform the State's decision in respect of particular aspects of Stage One for the purposes of the RFP.

8.2 Essential requirements – Victorian Code and Victorian Guidelines

Each of the following are essential requirements:

- (a) compliance by the D&C Subcontractor with the Victorian Code and Victorian Guidelines as referred to in clause 8(a) of the Terms and Conditions;
- (b) submission by the D&C Subcontractor of a completed Compliance Schedule in the form set out in Response Schedule 2 in accordance with clause 8(b) of the Terms and Conditions; and
- (c) submission of a Workplace Relations Management Plan acceptable to the CCCU or its nominated delegate. The Workplace Relations Management Plan must be prepared by the D&C Subcontractor for Stage One as part of the EOI in accordance with clauses 8(c) and 8(d) of the Terms and Conditions.

Failure to comply with any of these essential requirements will result in the relevant D&C Subcontractor being automatically excluded from the Tender Process. Additional rights of the State if the essential requirements are not complied with are set out in the Terms and Conditions.

8.3 Evaluation criteria

Evaluation Criterion 1: D&C capability and experience

Evidence of, or demonstrated ability to, successfully and safely deliver major road and/or tunnelling projects, which have:

- sought to deliver whole of life cost optimisation and maximise traffic throughput capacity;
- included significant, complex and sustainable tunnelling solutions;
- included significant road construction including associated ramps and bridge works;
- demonstrated excellence in architectural, landscape and urban design outcomes;
- involved development in a highly urbanised environment requiring complex traffic, access and environmental management; and
- required substantial interfaces with other integral parts of the road network (including private road operators).

Ability to apply the above experience to the delivery of Stage One.

Evaluation Criterion 2: Operation and maintenance capability and experience

Evidence of, or demonstrated ability to, successfully operate and maintain inner urban freeways / toll roads, including:

- the provision of operation and maintenance activities as generally described in section 4.6;
- delivering a whole of life cost optimisation and sustainable approach (in particular for large tunnel projects);
- ensuring an enduring high quality in architectural, landscape and urban design elements;
- working with other road management authorities to deliver integrated network management solutions;
- working with road management authorities and other toll road operators on the network to support efficient customer experiences across the tolled network; and
- working efficiently with third party toll collection services providers and / or owners of a toll revenue stream.

Ability to apply the above experience to the delivery of Stage One.

Evaluation Criterion 3: Stakeholder engagement

Evidence of, or demonstrated ability to, engage proactively and work effectively with a wide range of project stakeholders over the life of the asset.

Ability to apply the above experience to the delivery of Stage One.

Evaluation Criterion 4: Financing capacity and capability

Evidence of, or demonstrated ability to, manage the financing requirements of Stage One, including:

- capacity to effectively support the significant financing requirement for Stage One and maximise the available pool of efficiently priced private finance; and
- capability to drive cost efficiencies through the development of innovative financing solutions.

Evaluation Criterion 5: Commercial structure

Demonstrated understanding of the State's commercial requirements and commitment to the Tender Process, as evidenced by the:

- ability of the Respondent's proposed structure to deliver a project of similar scale in the State's timeframe and to achieve the State's requirements and preferred risk allocation;
- proposed role of equity in ensuring proactive management of the assets over the life of Stage One; and
- strength of commitment of all Respondent Members to Stage One.

Evaluation Criterion 6: Innovation

Evidence of, or demonstrated ability to, drive value for money through the development of high quality, innovative solutions for major infrastructure projects, including in relation to:

- project design, sustainability, environmental management, construction methodology and traffic management;
- whole of life cost optimisation and operation and maintenance solutions;
- integration into existing networks or with future stages of an overall scheme;
- working with other road and toll road operators; and
- efficient commercial structures and financing solutions.

Ability to apply the above experience to the delivery of Stage One.

8.4 Information sought from Respondents

Section C of the Respondent Information Schedule requests information from Respondents in relation to Stage One. Respondents are requested to complete the questions set out in Section C of the Respondent Information Schedule. Respondents are also encouraged to provide feedback or comments on any other issues relating to Stage One or future stages of the EWL in Section C of the Respondent Information Schedule.

The responses received and feedback provided by Respondents in Section C of the Respondent Information Schedule will not be considered in the evaluation of EOIs. However, they may be taken into account by the State for the purpose of developing the scope of Stage One and other elements of, or requirements for, Stage One to be set out in the RFP.

8.5 Evaluation process

The evaluation process may include:

- (a) structured and confidential interviews or meetings with Respondents; or
- (b) requests for clarification from LMA,

to discuss or clarify the information provided in a Respondent's EOI.

Respondents who comply with section 8.2 will have an opportunity to present their EOIs during the week commencing 2 September 2013.

In accordance with clause 6(a)(xviii) of the Terms and Conditions, the State may also have regard to information obtained through its own investigations. This may include conducting reference checks or other verification of Respondents' EOIs.

9. GENERAL

9.1 Terms and Conditions

The Terms and Conditions apply to the whole of the Tender Process. Respondents are bound by these Terms and Conditions by submitting an EOI.

This means that the State does not require Short-Listed Respondents to execute a separate probity and process deed prior to receiving the RFP, as these matters are now covered in the Terms and Conditions. This approach is in line with the State’s desire to simplify documentation and reduce Proposal costs.

The State reserves the right, however, to impose additional terms and conditions applicable to the RFP Phase on Short-Listed Respondents.

9.2 Project team and State Advisors

A dedicated project team has been established by LMA to manage the Tender Process and the design, construction and commissioning phases of Stage One. LMA has also appointed a number of advisors on an exclusive basis including the following:

Role	Advisor
Probity Advisor	Pitcher Partners
Commercial and Financial Advisor	PwC
Legal Advisor	Clayton Utz
Technical Advisor (including planning)	GHD
Urban Design	Shelley Penn Architects

Additionally, an inter-departmental steering committee has been established to report to the State on the procurement and delivery of Stage One, including representatives from the Department of Premier and Cabinet, Department of Treasury and Finance, Department of Transport, Planning and Local Infrastructure, LMA and VicRoads.



9.3 Probity Advisor

LMA has appointed Pitcher Partners as the Probity Advisor in respect of Stage One.

Prospective Respondents may contact the Probity Advisor by email at the address set out below in circumstances where they have concerns as to probity or the conduct of the Tender Process:

Richard Shrapnel
Pitcher Partners Consulting Pty Ltd
Level 19, 15 William Street, Melbourne VIC 3000
Telephone: (03) 8610 5507
Facsimile: (03) 8610 5819
Email: richard.shrapnel@pitcher.com.au

If a Respondent becomes aware of a probity issue, the Respondent should immediately contact the Probity Advisor and provide details of:

- (a) the proposed probity issue or concern;
- (b) how the probity issue or concern impacts on the Respondent's interest;
- (c) any relevant background information; and
- (d) the Respondent's proposals for the resolution of the probity issue or concern.

Any contact or communication with the Probity Advisor must be disclosed by the Probity Advisor to the State.

9.4 Communications and clarifications

In accordance with the Terms and Conditions, all communications by or on behalf of a Respondent or potential Respondent with the State in relation to Stage One should be provided by the Lead Respondent Member to LMA.

Clarification questions in relation to this EOI Document should be submitted in writing via email to LMA at ewl@linkingmelbourne.vic.gov.au by 2:00pm, Thursday 22 August 2013.

Potential Respondents should note that responses to clarification questions will be made available to all potential Respondents via the Victorian Government tenders website, subject to the paragraph below.

If a Respondent is of the view that a clarification question relates to proprietary aspects of a Respondent's EOI, the Respondent may identify that question as such. If LMA agrees that a question or issue relates to proprietary aspects of the Respondent's EOI, the response will not be made available to other potential Respondents. If, however, LMA is of the view that the question or issue is not proprietary, LMA will advise the relevant Respondent, who will then have the option to withdraw the question (if applicable). If the Respondent continues to request a response to a question, the question and the response will be made available to all potential Respondents.

LMA may issue clarifications with respect to this EOI Document, the RFP or the Tender Process to all potential Respondents via the Victorian Government tenders website.

9.5 Closing Time and Date

The Closing Time and Date for submission of EOIs is **2:00 pm, Thursday 29 August 2013.**

In accordance with the Terms and Conditions, the State reserves its right, in its absolute discretion, to accept or reject any EOI lodged after this time.

An EOI is deemed to have been lodged in the Tender Box at the time and date that is received and recorded by LMA staff.

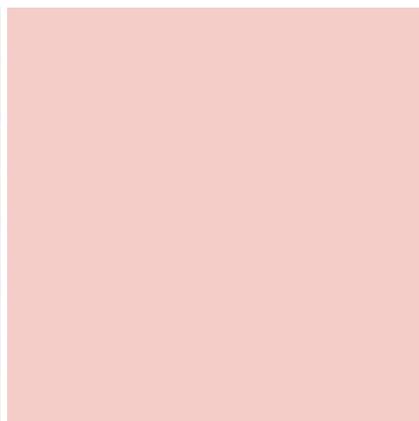
9.6 Lodgement requirements

The Respondent should lodge four bound copies, one unbound copy and one electronic copy (on a CD ROM formatted to Microsoft Windows Office 2010) of its EOI in sealed envelope(s) or package(s) marked:

Strictly Private and Confidential
East West Link - Stage One
Expression of Interest

in the Tender Box (located at the address below) by the Closing Time and Date.

Linking Melbourne Authority
Brandon Business Park
Building 1, Level 1, 540 Springvale Road
Glen Waverley VIC 3150



ANNEXURE A – GLOSSARY

In this EOI Document:

Addendum means modifications or clarifications to this EOI Document or the RFP issued by the State in accordance with the Terms and Conditions.

Associate means any officer, employee, agent, consultant, contractor, nominee, licensee, financier or advisor and:

- (a) in the case of a Respondent, does not include a Respondent Member, the State or its respective Associates; and
- (b) in the case of a Respondent Member, does not include the Respondent, the State or its respective Associates; and
- (c) in the case of the State:
 - (i) includes LMA and its respective Associates; and
 - (ii) excludes Respondents and Respondent Members.

Associate Obligations has the meaning given in clause 7.2 of the Terms and Conditions.

Board Sub-committee has the meaning given in clause 7.4(b) of the Terms and Conditions.

Business Day means a day in Melbourne that is not a Saturday, Sunday or a public holiday gazetted in the *Public Holidays Act 1994 (Vic)*.

Business Hours means between 9:00am and 5:00pm on a Business Day.

CCCU means the Construction Code Compliance Unit within the Department of Treasury and Finance.

CIS means the Comprehensive Impact Statement to be prepared by LMA (with assistance of various consultants) for Stage One and the connection to the Port of Melbourne under the MTPFA.

Claim means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made:

- (a) in connection with the Project Documents or Stage One;
- (b) at law or in equity; or
- (c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.

clause refers to a clause in the Terms and Conditions.

Closing Time and Date has the meaning given in clause 6(a)(xii) of the Terms and Conditions and in the case of any EOI, section 9.5 of the EOI Document.

Commonwealth or Commonwealth Government means the Commonwealth Government of Australia.

Competing Respondent means any person responding to this EOI Document, other than the Respondent.

Completion means the date on which the certificate of completion is issued under the Project Agreement.

Compliance Schedule means the compliance schedule set out in Response Schedule 2.

Consortium means a Respondent and advisors and technical consultants of that Respondent.

Contract Close means the date of execution of the Project Agreement by the State and Project Co.

D&C Subcontractor means any Respondent Member that is intended to undertake building or construction work in respect of Stage One.

Data Room means any data room operated by or on behalf of the State containing information relevant to Stage One and includes any online Data Room.

Disabling Code means any computer software known as a back door, time bomb, logic bomb, trojan horse, worm, drop dead device, virus, or any other computer software or configuration intended or designed to:

- (a) permit access to or use of the computer systems or associated data of a Respondent or Respondent Member other than as expressly authorised by the Respondent or Respondent Member (as the case may be); or
- (b) disable, damage, corrupt or erase, or disrupt or impair the normal operation of, computer systems or associated data of a Respondent or Respondent Member.

Disclosed Information means the following information (of whatever nature, including written, graphical, electronic, oral or in any other form) which is disclosed to, or otherwise obtained by or on behalf of, the Respondent, a Respondent Member or any of their respective Associates in connection with Stage One or the Tender Process:

- (a) this EOI Document and the RFP;
- (b) any oral or written advice, representations or information given by or on behalf of the State or any of its Associates during the Tender Process;
- (c) all material contained in any Data Room;
- (d) each EOI or Proposal to the extent that it contains or would reveal any of the information referred to in paragraphs (a) to (c); and
- (e) any other information which the Respondent, Respondent Member or any of their respective Associates knows or ought reasonably to know is confidential to the State or any of its Associates or should be treated as such.

EOI or Expression of Interest means an expression of interest for a Respondent to deliver Stage One.

EOI Document means this invitation for expressions of interest including all of its annexures and the Response Schedules.

EOI Form means the form to be submitted by a Respondent in the form of Response Schedule 1.

EOI Phase means the phase of the Tender Process which:

- (a) commences on the release of this EOI Document; and
- (b) ends on the selection of the Short-Listed Respondents invited to proceed to the RFP Phase.

Evaluation Criteria means the evaluation criteria set out in section 8.3.

EWL means the East West Link Project including Stage One and potential future stages.

Glossary means this Annexure A.

KPIs means the measures of Project Co's standard of performance during the O&M Phase to be set out in the Project Agreement.

Holding Company has the meaning given in clause 7.4(a) of the Terms and Conditions.

Intellectual Property Rights means all existing and future rights in the nature of intellectual property or industrial property (within the meaning of the term 'industrial property' in Article 1 of the Paris Convention for the Protection of Industrial Property) throughout the world, including:

- (a) copyright;
- (b) trade and service marks (whether registered or unregistered);
- (c) designs (whether registered or unregistered);
- (d) patents and inventions (whether or not patented or patentable);
- (e) internet domain names;
- (f) trade, business or company names; and
- (g) confidential information and trade secrets, whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in paragraphs (a) to (f).

Interactive Tender Workshops means the process of interaction between Short-Listed Respondents and key State stakeholders during the RFP Phase, to be carried out consistently with the National PPP Guidelines Volume 2: Practitioners' Guide.

Lead Respondent Member means the Respondent Member nominated by a Respondent in its EOI Form as its lead representative.

Liability means any loss, cost, liability or expense whether:

- (a) arising from or in connection with any proceeding or claim or not;
- (b) liquidated or not;
- (c) legal or equitable;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

LMA means the Linking Melbourne Authority as established by the *Transport Integration Act 2010* (Vic).

MTPFA means the *Major Transport Projects Facilitation Act 2009* (Vic).

National Code and National Guidelines means the *Code of Practice for the Construction Industry, and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry*.

National PPP Guidelines means the suite of guidance material published by Infrastructure Australia and available at www.infrastructureaustralia.gov.au under the “Public Partnerships” list.

Negotiation and Completion Phase means the phase of the Tender Process following selection of a Preferred Respondent which involves among other things:

- (a) negotiations with the Preferred Respondent; and
- (b) finalisation and completion of the State Project Documents.

Notice has the meaning given in clause 15.1 of the Terms and Conditions.

NSW Code and Guidelines means the *New South Wales Code of Practice for Procurement and the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction*.

O&M Phase means the period starting from Completion and ending at the expiry of the project term.

O&M Subcontractor means the Respondent Member that is intended to undertake the operation and maintenance of Stage One.

OHS Accreditation Scheme has the meaning given in section 7.5.

Online Data Room has the meaning given in clause 5.6(a) of the Terms and Conditions.

Partnerships Victoria Requirements means the State’s Partnerships Victoria policy. Further information can be obtained on the website <http://www.dtf.vic.gov.au/Infrastructure-Delivery/Public-private-partnerships>.

Permitted Purpose means to:

- (a) submit an EOI or Proposal (or consider and determine whether or not to submit an EOI or Proposal) in accordance with the Terms and Conditions; or
- (b) comply with an obligation under the EOI Document or the RFP.

PPP means public private partnership.

Preferred Respondent means one or more Respondents invited to proceed to the Negotiation and Completion Phase.

Probity Advisor means the probity advisor appointed by LMA in respect of Stage One.

Probity Checks has the meaning given in clause 17.5(a) of the Terms and Conditions.

Project Agreement means the document that will regulate the relationship between the State and Project Co in relation to the design, construction and operation of Stage One.

Project Co means the private party engaged by the State to design, construct, operate and maintain Stage One.

Project Documents means the documents to be entered into by the State, Project Co and others, depending on the contract structure determined by the State or proposed by the Successful Respondent and accepted by the State.

Proposal means a proposal submitted by a Short-Listed Respondent in response to the RFP, including any clarifications or further information submitted or given by a Short-Listed Respondent in respect of the Proposal, under the Terms and Conditions.

Proposal Form means the form to be submitted by each Short-Listed Respondent in accordance with the RFP.

Public Disclosure Obligation has the meaning given in clause 12.2(a) of the Terms and Conditions.

PSC means the hypothetical, risk-adjusted whole-of-life cost of a public sector project if delivered by Government.

Queensland Code and Guidelines means the *Queensland Code of Practice for Procurement and the Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry*.

Reference Design means the concept / reference design developed for Stage One and the connection to the Port of Melbourne by LMA, as part of the CIS process, and released on 16 July 2013.

Related Member means a Respondent Member who is a Related Party of a Respondent Member of any Competing Respondent.

Related Party has the meaning given to it by sections 9 and 50 of the *Corporations Act 2001* (Cth) and includes any Associate (as defined by sections 10 to 17 of the *Corporations Act 2001* (Cth)) of a person.

Respondent means any person (who alone) or persons (who together, each being a Respondent Member), submit an EOI.

Respondent Information Schedule means the respondent information schedule set out in Response Schedule 3.

Respondent Member means each of the following entities (forming the Respondent) in their individual capacity:

- (a) key equity provider(s);
- (b) D&C Subcontractor;
- (c) O&M Subcontractor;
- (d) financial advisor;
- (e) any special purpose vehicle that is intended to be the party that enters into the State Project Documents with the State (i.e. Project Co); and
- (f) any additional entity notified to the State in accordance with the Terms and Conditions.

RFP means the documentation issued to a Short-Listed Respondent in relation to which it may submit a Proposal for the delivery of Stage One.

RFP Phase means the phase of the Tender Process which:

- (a) commences on the selection of the Short-Listed Respondents; and
- (b) ends on the selection of the Preferred Respondent(s).

section refers to a section in this EOI Document (excluding the Terms and Conditions).

Service Payment means the service payments to be made by the State to Project Co during the O&M Phase, subject to the applicable KPIs and the requirements of the Project Agreement.

Short-Listed Respondent means any Respondent that is selected by the State to submit a Proposal in response to the RFP.

Stage One means Stage One of the EWL as described in section 2.2.

State means the Crown in the right of the State of Victoria.

State's Advisors means the State advisors listed in section 9.2.

State Project Documents means the Project Documents to be entered into between Project Co and the State.

Successful Respondent means the Short-Listed Respondent selected to enter into the State Project Documents with the State to deliver Stage One.

Team Member means an individual who is an employee, agent or advisor of a Respondent Member who is directly involved in the Tender Process for that Respondent Member.

Tender Box means the box at the location specified in section 9.6 into which EOIs must be submitted by the Closing Time and Date.

Terms and Conditions means the terms and conditions set out in Annexure B, and further terms and conditions to be set out in the RFP or otherwise imposed by the State in respect of the Tender Process.

Tender Process means the tender process for the delivery of Stage One, including each of the following phases:

- (a) EOI Phase;
- (b) RFP Phase; and
- (c) Negotiation and Completion Phase.

VicRoads means the Roads Corporation of Victoria established under the *Transport Integration Act 2010* (Vic).

Victorian Code means the *Victorian Code of Practice for the Building and Construction Industry*.

Victorian Guidelines means the *Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry*, as amended from time to time including any Practice Direction to those Guidelines.

VIPP has the meaning given in section 7.3.

VIPP Plan has the meaning given to it in the VIPP.

Workplace Relations Management Plan has the meaning given to it in the Victorian Guidelines.

ANNEXURE B - TERMS AND CONDITIONS

1. Application of Terms and Conditions

The Terms and Conditions apply generally to the whole of the Tender Process, the EOI Document and the RFP.

2. General

2.1 Definitions

Unless the context otherwise requires, words and phrases used in the Terms and Conditions have the meaning ascribed to them in Annexure A of the EOI Document.

2.2 Interpretation

- (a) No entity may participate in the Tender Process unless that entity is a Respondent, Respondent Member or any of their respective Associates.
- (b) Where the Respondent comprises more than one entity or is a Consortium, the obligations and liabilities of the Respondent under the Terms and Conditions apply to the Respondent and each Respondent Member jointly and severally.
- (c) No rule of interpretation applies to the disadvantage of the State on the basis that the State put forward the Terms and Conditions.
- (d) Unless the context indicates a contrary intention, in the Terms and Conditions:
 - (i) 'includes' in any form is not a word of limitation; and
 - (ii) the meaning of 'or' will be that of the inclusive 'or', meaning one, some or all of a number of possibilities.
- (e) If any of the Terms and Conditions purport to exclude liability for a particular matter, such exclusion only operates to the extent permitted by law.
- (f) Headings are for convenience only and do not affect interpretation.
- (g) The singular includes the plural and the plural includes the singular.

- (h) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (i) A reference to a person includes an individual, corporation, trust, partnership, unincorporated body or statutory body or other entity or any of them.
- (j) A reference to a time in the EOI Document or the RFP is to local time in Melbourne, Victoria, Australia.
- (k) A reference to a party in the Terms and Conditions or another agreement or document includes that party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal or personal representatives).
- (l) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and all legislation, regulations or statutory instruments issued under it.
- (m) Unless expressly provided to the contrary in the Terms and Conditions, the State may give, modify, withhold, withdraw, make or exercise any action, approval, consent, decision or discretion or other function under the Terms and Conditions at the State's absolute discretion, whether subject to terms and at any time.

3. Agreement to comply with Terms and Conditions

- (a) By submitting a completed EOI Form, the Respondent and each Respondent Member agrees to comply with the Terms and Conditions.
- (b) Without limiting clause 6, in consideration of the Respondent and Respondent Members agreeing to be bound by the Terms and Conditions, the State will receive and consider the Respondent's EOI.

4. Liability

- (a) Except as otherwise expressly provided in the Terms and Conditions, the Respondent and Respondent Members are not entitled to make any Claim against the State or any of its Associates for any Liability incurred by them arising out of, or in connection with, the Tender Process, the Disclosed Information or any inspections of any site related to Stage One.
- (b) The Respondent and Respondent Members must indemnify, and must keep indemnified on demand, the State and any of its Associates from and against any Claim or Liability suffered or incurred by the State or any of its Associates arising out of, or in connection with:
 - (i) any breach by the Respondent or a Respondent Member of the Terms and Conditions;
 - (ii) any action or Claim brought by the Respondent, a Respondent Member or any of their respective Associates against the State or any of its Associates with respect to any of the matters or events identified in clause 4(a);
 - (iii) any failure of an Associate to perform or otherwise comply with the Associate Obligations (as relevant); and
 - (iv) any site inspection to the extent caused by the act or omission, including any negligence of, the Respondent, a Respondent Member or any of their respective Associates.

5. Disclosed Information

5.1 Use and disclosure

- (a) Subject to clauses 5.1(b), 5.2 and 5.3, the Respondent and each Respondent Member must:
 - (i) not use the Disclosed Information for any purpose whatsoever except for the Permitted Purpose; and
 - (ii) keep confidential and not copy or duplicate (or allow the copying or duplication of) any Disclosed Information.
- (b) The Respondent and Respondent Members may disclose the Disclosed

Information to their respective Associates if the disclosure is required solely for the Permitted Purpose and is made in accordance with the Associate Obligations.

5.2 Approved disclosure

The provisions of clauses 5.1(a)(ii) and 5.3 do not apply to:

- (a) the disclosure of Disclosed Information for which the State has given its prior written consent;
- (b) Disclosed Information after (but only to the extent that) it becomes generally available to the public other than because of a breach of any provision of the Terms and Conditions; or
- (c) the disclosure of Disclosed Information to the extent necessary to comply with any applicable law or legally binding order of any governmental agency.

5.3 Unauthorised disclosure

The Respondent and each Respondent Member must:

- (a) notify the State immediately if it becomes aware of any unauthorised disclosure, copying or use of Disclosed Information (suspected or actual);
- (b) immediately take all reasonable steps to prevent or stop any such suspected or actual unauthorised disclosure, copying or use of Disclosed Information (including complying with directions of the State in this regard); and
- (c) take all reasonable steps to recover any Disclosed Information that has been disclosed, used or copied without the State's consent under the Terms and Conditions.

5.4 No liability for Disclosed Information

The Respondent and each Respondent Member acknowledges and agrees that:

- (a) the State and its Associates do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or accept any liability, with respect to the completeness, accuracy, adequacy or correctness of Disclosed Information;

- (b) the Disclosed Information, and all Intellectual Property Rights in the Disclosed Information, will remain the property of the State or its Associates (as the case may be);
- (c) the Respondent, Respondent Members and their respective Associates will not in any way rely upon:
 - (i) the Disclosed Information; or
 - (ii) a failure by the State or any of its Associates to provide any information; and
- (d) the Respondent, Respondent Members and their respective Associates must each carry out all relevant investigations, make its own review and evaluation, and examine and acquaint itself in respect of:
 - (i) all aspects of Stage One;
 - (ii) the contents, correctness, sufficiency and suitability of the Disclosed Information; and
 - (iii) all information which is relevant to the risks, contingencies and other circumstances related to Stage One which could affect the decision to lodge an EOI or Proposal,
 without reliance on the State or any of its Associates.

5.5 Return of Disclosed Information

If the State terminates the Tender Process in respect of a Respondent (or the Tender Process as a whole), the Respondent and Respondent Members must, at the State's election, destroy or return to the State all Disclosed Information.

5.6 Data Room

The Respondent and each Respondent Member acknowledges and agrees that:

- (a) any Data Room may (either wholly or in part) take the form of a web-based portal or other online facility for gaining access to information (**Online Data Room**);
- (b) it is responsible for ensuring that it has all computer hardware and computer software required to gain access to any Online Data Room, and that such computer hardware and computer software must comply with any requirements notified by the State in writing from time to time;
- (c) it will comply with all directions issued by the State in writing from time to time regarding access to or the use of any Online Data Room; and
- (d) the State and its Associates do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or accept any Liability, with respect to the functionality, performance or availability of any Online Data Room, or whether any Online Data Room will be free of Disabling Code or will cause any Disabling Code to be introduced into any computer systems of the Respondent or a Respondent Member, and the Respondent and Respondent Members are not entitled to make any Claim against the State for any Liability incurred by them arising out of or in connection with the use, functionality, performance or availability of any Online Data Room or the introduction of any Disabling Code into any computer systems of the Respondent or a Respondent Member.

6. Discretion of the State

- (a) The Respondent and each Respondent Member acknowledges and agrees to the State's right, at the State's absolute discretion, to:
 - (i) reject or refuse to consider, or to accept any EOI or Proposal that does not comply with the requirements of the EOI Document, the RFP or the Terms and Conditions (as the case may be) or which is otherwise incomplete;
 - (ii) vary, modify, suspend or terminate the Tender Process;
 - (iii) require the Respondent and each Respondent Member at any time (including as a condition precedent to being appointed a Short-Listed Respondent) to provide security for its involvement or continued involvement in the Tender Process;
 - (iv) reject or accept any EOI or Proposal notwithstanding whether such Proposal is the lowest priced, the best EOI or Proposal or otherwise;

- (v) award Stage One to any Respondent, including a Respondent which did not have the highest ranked Proposal as against the Evaluation Criteria;
- (vi) accept or reject the whole or part of any Proposal to the extent, in the case of part-acceptance, that part of the Proposal is capable of such partial acceptance;
- (vii) suspend or terminate the Respondent's participation in the Tender Process if the State forms the view that the Respondent, a Respondent Member or any of their respective Associates has breached the Terms and Conditions;
- (viii) require, request, receive or accept additional information, material, clarification or explanation from any Respondent or any Competing Respondent relating to an EOI or Proposal at any time and the State may, at its sole discretion, take such information, material, clarification or explanation into consideration in its evaluation of an EOI or Proposal (as the case may be);
- (ix) consider and accept an EOI or Proposal regardless of whether:
 - A. any Respondent, Respondent Member or any of their respective Associates has breached the Terms and Conditions; or
 - B. any member of a Competing Respondent has breached the Terms and Conditions;
- (x) vary or supplement any of the Terms and Conditions or other aspects of the EOI Document or the RFP;
- (xi) change the timing, order or application of any phase or process in the Tender Process or supplement, remove, add to or vary any part of the Tender Process;
- (xii) accept or reject an EOI or Proposal at any time after the closing time and date for the EOI or Proposal, as set out in the EOI Document or the RFP (as the case may be) (**Closing Time and Date**) or which is lodged otherwise than in accordance with the EOI Document or the RFP (as the case may be);
- (xiii) accept or reject any clarification question or request for a meeting which is lodged by a Respondent after the time and date specified, or otherwise in the manner specified, in the EOI Document or the RFP (as the case may be) as the closing time and date for such questions or requests;
- (xiv) extend any time or date specified in the EOI Document or the RFP (as the case may be);
- (xv) negotiate with any Respondent or Competing Respondent on any matter the State may determine;
- (xvi) enter into the State Project Documents with a Competing Respondent without prior notice to the Respondent;
- (xvii) allow any Respondent to clarify, alter, amend, add to or change its EOI, Proposal, Respondent Members or Associates after the Closing Time and Date without notifying or offering the same opportunity to others;
- (xviii) in evaluating any EOI or Proposal or short-listing a Respondent or selecting a Preferred Respondent, to have regard to:
 - A. the State's and its Associates' knowledge and previous experience and dealings with any Respondent, Respondent Member or any of their respective Associates; or
 - B. information concerning a Respondent, Respondent Member or any of their respective Associates which is in the public domain or which is obtained by the State or its Associates through its or their own investigations;
- (xix) appoint or decline to appoint any number of Short-listed Respondents or Preferred Respondents or change Short-listed Respondents or Preferred Respondents at any time;
- (xx) require one or more of the Respondents and Competing Respondents to make a 'best and final offer';
- (xxi) withdraw, cancel or modify (substantially or otherwise) Stage One or any part of Stage One;

- (xxii) change the procurement method of Stage One (including public sector delivery) or any part of Stage One in any way it sees fit;
 - (xxiii) without limiting clause 6(a)(v), short-list or select the highest ranked Respondent who does not have a Related Member ahead of a higher ranked Respondent that does have a Related Member;
 - (xxiv) not attribute any reasons for any actions or decisions taken, including in respect of the exercise of any or all of the above mentioned rights; and
 - (xxv) otherwise take any such other action as it considers appropriate in relation to the Tender Process.
- (b) The State is not obliged to disclose to any Respondent, Respondent Member or any of their respective Associates, any negotiations the State has had with any Competing Respondent or any amendments, additions or other changes the State has allowed a Competing Respondent to make to its EOI or Proposal, and is not obliged to enter into similar negotiations with the Respondent or allow or require amendments, additions or changes to be made to its EOI or Proposal.

7. Conflicts and Competing Respondents

7.1 Conflicts and Competing Respondents

Subject to clauses 7.8 and 7.9, the Respondent and each Respondent Member:

- (a) acknowledges and agrees that except as expressly provided in the Terms and Conditions or as otherwise consented to by the State in writing (and at the State's sole and absolute discretion), it is not and will not become:
 - (i) a member of, or otherwise be involved with a Competing Respondent in respect of Stage One; or
 - (ii) an advisor to or in respect of the State or otherwise involved with the State or any of its Associates in respect of Stage One; and

- (b) warrants that no conflict of interest has arisen or will arise in respect of the performance by a person within the Respondent or relevant Respondent Member in respect of Stage One.

7.2 Associates

The Respondent and each Respondent Member must ensure that each of their respective Associates complies with the requirements of clauses 4, 5, 7.1, 7.7, 7.8, 7.11, 11.1, 11.5, 11.6, 12, 13, 14, 16 and 17 (as though it was a Respondent Member) (**Associate Obligations**).

7.3 Related Members

The Respondent acknowledges and agrees:

- (a) to identify in its EOI any Related Members;
- (b) that the State has a preference for no more than one Related Member in any Consortium. If the State agrees to allow more than one Related Member in a Consortium, the State reserves the right to impose additional conditions upon those identified in clause 7.4 in accordance with clause 7.11;
- (c) that no confidential information about the EOI Document or RFP is to be disclosed to any person other than a Team Member or member of the relevant Holding Company Board Sub-committee, where the State is satisfied such persons have complied with the Terms and Conditions;
- (d) that each Related Member is required to have all necessary measures in place to prevent access to confidential information by the other relevant Related Member and any person who is not a Team Member or member of the relevant Holding Company Board Sub-committee;
- (e) that the State may appoint an independent probity auditor for each Related Member. The Respondent must pay the State for the costs of the probity auditor; and
- (f) that the State has the right to exclude the Respondent from the process for breach of this clause 7.3. No reimbursement of Proposal costs will be payable by the State in these circumstances.

7.4 Holding company of Related Members

- (a) The Respondents must identify in their EOI whether a Related Member's group policy requires approval of the EOI or Proposal at a holding company (or higher) board level, as the case may be (**Holding Company**).
- (b) The Holding Company must establish a board sub-committee for each Respondent, with authority to make final decisions (**Board Sub-committee**).
- (c) No person can be a member of more than one Board Sub-committee.
- (d) Where a Board Sub-committee is required to be established, only the Board Sub-committee (and not the full board) can be shown any information about any EOI or Proposal.
- (e) The Holding Company, all board members (whether members of a Board Sub-committee or not) and executive managers:
 - (i) may be required to sign confidentiality and process agreements on terms satisfactory to the State as a condition precedent to participating in the RFP Phase to ensure compliance with the Terms and Conditions; and
 - (ii) as a condition precedent to contract execution, must sign statutory declarations confirming compliance with obligations under any relevant process and confidentiality agreement.
- (f) The Holding Company is required to have all necessary measures in place to prevent access to confidential information relating to an EOI or Proposal by any person who is not a Team Member or a member of the Board Sub-committee for the relevant Respondent.
- (g) The State may appoint an independent probity auditor for the Holding Company. The probity auditor costs will be paid by the Holding Company.
- (h) The State has the right to disqualify a Respondent for breach of this clause 7.4 by the Holding Company which may result in the calling in of some or all of any Proposal bond (or other security). No reimbursement of Proposal costs will be payable by the State in these circumstances.

7.5 Team Members

- (a) All Team Members of each Respondent Member are to be identified in the EOI.
- (b) No individual person can be a Team Member of more than one Respondent.
- (c) All Team Members, executive managers and board members of the Related Member:
 - (i) may be required to sign confidentiality and process agreements on terms satisfactory to the State as a condition precedent to participating in the RFP Phase to ensure compliance with the Terms and Conditions; and
 - (ii) as a condition precedent to contract execution, must sign statutory declarations confirming they have complied with their obligations under any confidentiality and process agreement.

7.6 Independent reviewer

The Respondent and each Respondent Member acknowledges and agrees that a Respondent Member who is a part of the Successful Respondent is not eligible for the role of the independent reviewer under the State Project Documents.

7.7 Further Conflicts

- (a) Subject to clauses 7.9 and 7.11, the Respondent and each Respondent Member:
 - (i) must immediately notify the State of any Associate of the Respondent or a Respondent Member who is (or subsequently becomes) involved with, a Competing Respondent or the State in respect of Stage One; and
 - (ii) subject to clause 7.7(b), unless otherwise agreed to by the State:
 - A. must ensure that any such Associate the subject of a notification under clause 7.7(a) (i), immediately ceases its involvement with the Competing Respondent; or
 - B. must otherwise take such action as is necessary to ensure that any such Associate the subject of a notification under clause 7.7(a) (i), is no longer an Associate of more than one Respondent or relevant Respondent Member.

- (b) For the purpose of clause 7.7(a)(ii), during the EOI Phase, the definition of 'Associate' excludes debt providers.

7.8 Respondent issues

Subject to clauses 7.9 and 7.11, the Respondent and each Respondent Member must ensure that:

- (a) no Respondent Member may be a financier or an equity provider to, or in respect of, the Respondent or a Respondent Member and a Competing Respondent;
- (b) no advisor to, or in respect of:
 - (i) the Respondent or a Respondent Member may be an advisor to a Competing Respondent in relation to Stage One; or
 - (ii) the State or its Associates in relation to Stage One may be an advisor to or in respect of the Respondent or a Respondent Member in relation to Stage One,

unless the State is advised accordingly by the Respondent and the State agrees to the arrangement.

7.9 State Advisors

In its EOI, the Respondent must provide details of any Respondent or Respondent Member or any Associate of a Respondent or a Respondent Member that has an existing relationship with any of the State's Advisors for other business activities.

7.10 Release of debt and equity providers and advisors

- (a) If the State has selected a Competing Respondent as the Preferred Respondent, has terminated or suspended the participation of the Respondent in the Tender Process or the Respondent has otherwise withdrawn from the Tender Process, the Respondent and each Respondent Member agrees, if requested in writing by the State, to release:
 - (i) its financiers and equity providers (as the case may be) from their respective commitments to the Respondent and Respondent Members to permit them, subject to written approval of the State, to participate in providing funding or other financial accommodation for a Competing Respondent; and

- (ii) any of its advisors to permit them, subject to the written approval of the State, to be involved in Stage One with a Competing Respondent, the State or any of its Associates.

- (b) The release of a financier, equity provider or advisor under clause 7.10(a), may be subject to the maintenance of confidentiality of information relating to the Respondent and Respondent Members by the relevant financier, equity provider or advisor, on terms agreed with the State, which agreement will not be unreasonably withheld.

7.11 State right to impose additional obligations or arrangements

- (a) Without limiting clause 6, the Respondent and each Respondent Member acknowledges and agrees that the State may impose additional obligations or arrangements with the State on:
 - (i) the Respondent and any relevant Respondent Member if:
 - A. the State reasonably determines that the relationship of the Respondent or a Respondent Member to any person involved in a Competing Respondent renders these additional obligations necessary or desirable to ensure confidentiality, competitiveness or probity with respect to the Tender Process;
 - B. a Respondent identifies an existing relationship with any of the State's Advisors in accordance with clause 7.9; or
 - C. as a result of submitting an EOI or Proposal, the State identifies a potential breach by the Respondent or any Respondent Member of clause 7.8(b)(ii); and
 - (ii) any Related Member as a condition to the Respondent and relevant Respondent Members continuing in the Tender Process.
- (b) Upon receipt of any additional obligations or arrangements under clause 7.11(a), the Respondent, each Respondent Member and any Related Member (as the case may be) must comply with the additional obligations or implement arrangements to the satisfaction of the State:

- (i) prior to the RFP being issued to the Short-Listed Respondent (in the case of identification as part of submission of an EOI); or
 - (ii) otherwise promptly as required by the State.
- (c) Without limiting clause 6, the State may terminate or suspend the participation of a Short-Listed Respondent or any Respondent Member from the Tender Process if the Respondent or any Respondent Member fails to comply with the additional obligations or arrangements proposed under clause 7.11(a) and, in the case of termination from the RFP Phase, no reimbursement of Proposal costs will be payable by the State to the Respondent in these circumstances.

8. Compliance with Victorian Code and Victorian Guidelines

- (a) Compliance by the D&C Subcontractor with the Victorian Code and Victorian Guidelines is an essential requirement. A Respondent and its Respondent Members will not be short-listed for the RFP Phase if:
- (i) any of them, or their related entities are subject to a sanction or other circumstance pursuant to the Victorian Code, Victorian Guidelines or a relevant federal scheme (such as the National Code or National Guidelines) that would preclude them from tendering for, or being awarded, Stage One; or
 - (ii) their D&C Subcontractor is not able to demonstrate compliance with the Victorian Code and Victorian Guidelines.
- (b) An EOI must include a completed Compliance Schedule. If an EOI does not include a completed Compliance Schedule, the D&C Subcontractor for the relevant Respondent will be excluded from the Tender Process.
- (c) An EOI must include a Workplace Relations Management Plan prepared by the D&C Subcontractor for Stage One. If the EOI submitted by the Respondent does not include a Workplace Relations Management Plan, the D&C Subcontractor for the Respondent will be excluded from the Tender Process. Prior to any short-listing for the RFP Phase, the Workplace Relations Management Plan must be acceptable to the CCCU or its nominated delegate.
- (d) After receipt of the Workplace Relations Management Plan, LMA will advise the D&C Subcontractor of any amendments that the CCCU requires the D&C Subcontractor to make to the Workplace Relations Management Plan to comply with the Victorian Code and Victorian Guidelines. The D&C Subcontractor must make the amendments necessary to ensure compliance with the Victorian Code and Victorian Guidelines prior to any short-listing for the RFP Phase and will be excluded from the Tender Process if it fails to do so.
- (e) The Respondent and each Respondent Member acknowledges that it has read and understands the essential requirements set out in clauses 8(a) to 8(b) and understands and agrees to the consequences if the D&C Subcontractor does not comply with those essential requirements.
- (f) The Respondent and each Respondent Member (other than the D&C Subcontractor) acknowledges that it is a related entity of the D&C Subcontractor and will procure compliance by the D&C Subcontractor with its obligations as set out in the Compliance Schedule and the Victorian Code and Victorian Guidelines. The Respondent and each Respondent Member will provide the State with all reasonable assistance required by the State to implement the Victorian Code and Victorian Guidelines in circumstances of any non-compliance by the D&C Subcontractor.
- (g) By submitting an EOI, the Respondent and each Respondent Member (other than the D&C Subcontractor) acknowledges and agrees that it:
- (i) is aware that the Victorian Code and Victorian Guidelines apply to the construction aspects of Stage One, where relevant, and has advised its D&C Subcontractor as such;
 - (ii) has read and understands the Victorian Code and Victorian Guidelines and the obligations they impose, and will ensure that the D&C Subcontractor does the same;

- (iii) will agree and ensure that the D&C Subcontractor agrees, to contractual terms, if the Respondent is the Successful Respondent to give effect to the Victorian Code and Victorian Guidelines and mechanisms to ensure their compliance and enforcement; and
 - (iv) will require that the D&C Subcontractor complies with, and all of the D&C Subcontractor's related entities will comply with, the Victorian Code and Victorian Guidelines in respect of any of their building and construction work (including any subsequent privately funded work), on and from the date of submitting their EOI to which the Victorian Code and Victorian Guidelines apply.
- (h) The Respondent and each Respondent Member (other than the D&C Subcontractor) authorises personnel of the CCCU investigating claims and assertions made by the Respondent or any Respondent Member in respect of their compliance with, or ability to comply with, the Victorian Code and Victorian Guidelines and accordingly agrees to allow the CCCU to:
- (i) access premises and sites controlled by the Respondent, Respondent Members, the D&C Subcontractor or its respective related entities;
 - (ii) monitor and investigate compliance with the Victorian Code and Victorian Guidelines, including inspecting and copying relevant records and documents;
 - (iii) inspect any work, material, machinery, appliance article or facility; and
 - (iv) interview any person, as is necessary to investigate the D&C Subcontractor's or its related entities' current compliance with the Victorian Code and Victorian Guidelines, or where relevant, to investigate past conduct that may be inconsistent with the Victorian Code and Victorian Guidelines (as amended from time to time).
- (i) Notwithstanding any other provision of the EOI Document or the RFP, the Respondent and each Respondent Member (including the D&C Subcontractor) agrees and consents to, the disclosure of information concerning the D&C Subcontractor's, and the D&C Subcontractor's related entities', compliance with the Victorian Code and Victorian Guidelines, including the disclosure of details of past and present conduct relating to Victorian Code and Victorian Guidelines and the relevant federal or State scheme (such as the National Code and National Guidelines or the NSW Code and Guidelines or Queensland Code and Guidelines), including whether or not sanctions have been imposed on the D&C Subcontractor or any of its related entities by the Commonwealth or any State or any government agency.
- (j) Where the D&C Subcontractor proposes to subcontract a part of the building and construction work and it is authorised to do so, the Respondent and each Respondent Member (including the D&C Subcontractor) will ensure, through contract, that each subcontractor or consultant complies with the Victorian Code and Victorian Guidelines and each proposed subcontractor will authorise personnel of the CCCU to investigate the subcontractors' compliance with the Victorian Code and Victorian Guidelines, in accordance with clause 8(h) (in respect of the proposed subcontractor).
- (k) Terms used in this clause 8 have the meaning given in the Victorian Code and Victorian Guidelines including all Practice Directions to those guidelines.

9. Proposal binding

The Respondent agrees that the Proposal:

- (a) will constitute an offer to the State for the period specified in the RFP or otherwise agreed with the State; and
- (b) shall remain open for this period notwithstanding that a Short-Listed Respondent is not appointed as the Preferred Respondent.

10. Preferred Respondent

The selection of a Preferred Respondent does not constitute an acceptance of the Proposal submitted by the Preferred Respondent and is without prejudice to the State's right to decline to enter into the Project Agreement or State Project Documents, or to enter into the State Project Documents with a Competing Respondent.

11. Process matters

11.1 Contact with the State, LMA, State stakeholders and Probity Advisor

- (a) The Respondent and each Respondent Member acknowledges and agrees that it will not, and it will ensure that its respective Associates do not, make contact with:
 - (i) any governmental agency or officer;
 - (ii) the State or any of its Associates;
 - (iii) members of Parliament or their staff, to discuss any aspect of Stage One, the EOI Document, any EOI, the RFP or any Proposal except as provided for in the Terms and Conditions.
- (b) The Respondent and each Respondent Member acknowledges and agrees that it will not offer any inducement, fee or reward to the State or any of its Associates.
- (c) Any notification to be provided by the State under the Terms and Conditions will not have been given or deemed to have been given unless such notice has been given by LMA in writing.
- (d) Unless otherwise directed or agreed by the State, all communications by, or on behalf of, the Respondent or any Respondent Member with the State, including any notices required to be provided by the Respondent under the Terms and Conditions, must be provided by the Lead Respondent Member to LMA for the State.
- (e) The Probity Advisor has been appointed by LMA to advise on and monitor the procedural integrity of the Tender Process. The Respondent and each Respondent Member must immediately advise the Probity Advisor of any issues

or concerns it has with the probity or integrity of the Tender Process, including the EOI Phase, so that the matter may be considered and remedied where appropriate. When raising an issue or concern, the Respondent or relevant Respondent Member must provide the information referred to in section 9.3 of the EOI Document. Any contact or communication with the Probity Advisor must be disclosed to the State.

11.2 Material changes

- (a) The Respondent must notify the State promptly in writing of any:
 - (i) material change to any:
 - A. information contained in its EOI or Proposal;
 - B. additional information submitted to the State pursuant to the EOI Document or the RFP; or
 - C. information submitted to the State in any interview, meeting or workshop conducted pursuant to the EOI Document or the RFP;
 - (ii) event which may affect or have an impact on the financial position or capacity of the Respondent or any Respondent Member or ability of the Respondent or Respondent Member to continue to participate in the Tender Process or comply with the Terms and Conditions; or
 - (iii) circumstances which may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, the EOI or Proposal.
- (b) Upon receipt of any written notification under clause 11.2(a), the State reserves the right to:
 - (i) assess the change and terminate the Respondent's or any Respondent Member's further participation in the Tender Process; or
 - (ii) invite the Respondent to amend its EOI or Proposal accordingly.

11.3 Changes to Respondent Members

- (a) If, after lodgement of its EOI or Proposal:
- (i) there is a change in the structure of a Respondent Member or there is otherwise a change in control (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of a Respondent Member; or
 - (ii) the Respondent replaces, adds or removes a Respondent Member, from those entities identified as Respondent Members in the Respondent's EOI,
- the Respondent must:
- (iii) promptly notify the State;
 - (iv) provide the State with sufficient details of the change; and
 - (v) provide evidence to the State that the new Respondent Member has agreed to be bound by the Terms and Conditions.
- (b) Upon receipt of a notification under clause 11.3(a) and without limiting clause 7.11, the State will assess any change and reserves the right to accept the change or terminate the Respondent's further participation in the Tender Process.
- (c) If the change the subject of the notification under clause 11.3(a) involves a change to the parties which constitute the Respondent Member and that change is approved by the State, the Respondent must submit to the State an updated completed EOI Form or Proposal Form (as the case may be) which reflects such change.
- (d) If the proposed counterparty to the State Project Documents is a special purpose vehicle and that special purpose vehicle is not incorporated as at the date of the completion of the EOI Form or Proposal Form (as the case may be), the Respondent must submit to the State an updated completed EOI Form or Proposal Form (as the case may be) which is executed by the special purpose vehicle within 5 Business Days after such incorporation.

11.4 Addenda

The Respondent and each Respondent Member agrees that:

- (a) at any time during the Tender Process the State may, for any reason (but without being obliged to do so), amend:
 - (i) the EOI Document (including the Terms and Conditions); or
 - (ii) the RFP,by issuing an Addendum;
- (b) none of the State or any of its Associates will have any liability to the Respondent or any Respondent Member as a consequence of any such Addendum; and
- (c) the Respondent must prepare its EOI or Proposal (as the case may be) to take into account and reflect the content of any such Addendum.

11.5 Site inspections

- (a) The State may grant the Respondent or any Respondent Member permission to undertake inspections of any site related to Stage One.
- (b) The Respondent and each Respondent Member must comply with any protocols, procedures or requirements notified by the State prior to any such inspection referred to in clause 11.5(a).

11.6 Interactive Tender Workshops and meetings

The Respondent and each Respondent Member:

- (a) acknowledges that the State:
 - (i) intends to hold a series of Interactive Tender Workshops during the Tender Process; and
 - (ii) may hold other meetings during the Tender Process,with the Respondent, Respondent Members and their respective Associates; and
- (b) agrees to participate in the Interactive Tender Workshops and attend any meeting held during the Tender Process advised by the State on the basis of any protocols specified by the State in respect of that process.

11.7 No amendment

The Respondent may not amend its EOI or Proposal (unless invited or requested to do so by the State or as otherwise required by the Terms and Conditions) after it has been submitted.

11.8 No requirements to return

The Respondent agrees that the State will not be required to return the EOI, Proposal or any documents, materials, articles and information lodged by the Respondent as part of, or in support of, its EOI or Proposal.

12. Disclosure by the State

12.1 Disclosure by the State

The Respondent and each Respondent Member acknowledges and agrees that the State or any of its Associates may publish or disclose (on the internet or otherwise) details of:

- (a) the Respondent(s) short-listed after the EOI Phase to continue to participate in the Tender Process;
- (b) the identity of the Preferred Respondent(s); and
- (c) the status of the Tender Process at any time.

12.2 Public disclosure and freedom of information

- (a) The Respondent and each Respondent Member acknowledges and agrees that disclosure by either of the State or any of its Associates of any information provided by the Respondent, a Respondent Member or any of their respective Associates may be required:
 - (i) under any current legislation including:
 - A. the *Freedom of Information Act 1982* (Vic);
 - B. the *Ombudsman Act 1973* (Vic); and
 - C. the *Audit Act 1994* (Vic);
 - (ii) under any future legislation;
 - (iii) in the course of the official duties of a relevant Minister or Department or the State;

- (iv) to satisfy requirements of parliamentary accountability;
 - (v) in annual reports of the State;
 - (vi) pursuant to policies of the Victorian government; or
 - (vii) to satisfy any other recognised public requirement,
- (each a **Public Disclosure Obligation**).

- (b) The Respondent and each Respondent Member must use all reasonable endeavours to assist the State and its Associates in meeting their Public Disclosure Obligations.

12.3 Proprietary information

- (a) Subject to the terms of the RFP, including the conditions applicable to any reimbursement of Proposal costs, the Respondent and each Respondent Member grants, and will procure that each of its respective Associates with a relevant interest grants, to the State and its Associates an irrevocable, perpetual, non-exclusive, free of charge licence to use, reproduce and modify or sub-licence the whole or any part of any EOI or Proposal for the purposes of the Tender Process provided that, subject to the Terms and Conditions and the State Project Documents, the State may not (other than pursuant to this clause 12.3(a)) provide the whole or any part of any EOI or Proposal to a Competing Respondent.
- (b) Without limiting the application of clause 12.3(a), if the Respondent has been nominated as the Preferred Respondent, the Respondent and each Respondent Member also licenses the State and its Associates to make publicly available:
 - (i) the broad concept plan, design documents and any other sketches or drawings of any element of Stage One;
 - (ii) the key functional and operational characteristics;
 - (iii) the aggregate capital and / or operating cost;
 - (iv) the proposed risk allocation; and
 - (v) other high level commercial or technical information,in relation to the Respondent's EOI or Proposal.

13. No legal relationship in respect of delivery of Stage One

The Respondent and each Respondent Member acknowledges and agrees that:

- (a) neither the EOI Document nor the RFP constitutes an offer to enter into State Project Documents;
- (b) other than the process contract that is formed between the State and the Respondent by the operation of clause 3:
 - (i) no contract exists or will arise between the State, the Respondent and the Respondent Members in respect of Stage One unless and until Contract Close is achieved; and
 - (ii) none of the State, LMA the Respondent or the Respondent Members intends to create a legal relationship; and
- (c) the Terms and Conditions set out the entire agreement between the State, LMA, the Respondent and the Respondent Members in respect of the Tender Process.

14. Publicity

Except to the extent it is not possible to comply with this clause 14 while complying with the law or the binding requirement of a recognised stock exchange, the Respondent and each Respondent Member must not make, and must procure that none of its respective Associates make, a media release or other public announcement or statement in relation to Stage One without the prior written consent of the State.

15. Notices

15.1 General

Subject to clause 15.2, all communications (including notices, demands, consents, approvals or requests) under or in connection with the Terms and Conditions (**Notice**):

- (a) must be, in writing, signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, and on behalf of, that party; and

- (b) must be:
 - (i) delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, specified in the EOI Document or the RFP (in the case of the State or LMA), and the EOI or Proposal (in the case of the Lead Respondent Members); or
 - (ii) sent by email to the email address specified in the EOI Document or the RFP (in the case of the State or LMA), and the EOI or Proposal (in the case of the Lead Respondent Members), or to the address, fax number or email address (as the case may be) last notified by the intended recipient to the sender.

15.2 Time of receipt

A Notice given in accordance with this clause 15 is treated as having been given and received by the addressee:

- (a) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
- (b) in the case of fax, at the local time (in the place of receipt of that fax) which then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety, unless that local time is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
- (c) in the case of delivery by hand, on delivery at the address of the addressee as provided in the EOI Document or the RFP (in the case of the State or LMA), and the EOI or the Proposal (in the case of the Lead Respondent Members), or to such other address last notified by the intended recipient to the sender, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (d) in the case of delivery by email, the first to occur of:
- (i) receipt by the sender of any email acknowledgement from the intended recipient's information system showing that the Notice has been delivered to the email address of that recipient;
 - (ii) the time that the Notice enters an information system which is under the control of the intended recipient; and
 - (iii) the time that the Notice is first opened or read by an employee or officer of the intended recipient,
- but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or after Business Hours, the Notice will be taken to have been duly given or made at the start of business on the next Business Day.

16. Survival of obligations

The Respondent's and each Respondent Member's obligations pursuant to the Terms and Conditions shall exist prior to, and shall survive the termination or completion of, Stage One.

17. General Terms and Conditions

17.1 Requirements of fairness

The Respondent and each Respondent Member acknowledges and agrees that:

- (a) it must not attempt to obtain any advantage for itself by seeking information other than through the means set out in the EOI Document or the RFP or by attempting to influence the State or any of its Associates in relation to Stage One through any means apart from communications and the presentation of information in accordance with the Terms and Conditions, the EOI Document or the RFP; and
- (b) it will not, and will procure that its respective Associates do not, engage in collusive tendering, anti-competitive conduct or any similar conduct with a Competing Representative or any other person in relation to Stage One.

17.2 Waiver

- (a) Subject to the express provisions of the Terms and Conditions, if the State or any of its Associates fails or delays in exercising or enforcing any right or remedy under the Terms and Conditions, the EOI Document or the RFP, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy or of any other right or remedy under the Terms and Conditions or provided by law.
- (b) If the State or any of its Associates fails or delays in exercising or enforcing any right or remedy under a similar deed to the Terms and Conditions, the EOI Document or the RFP against any Competing Respondent, none of the Respondent, Respondent Members or of their respective Associates will have or make any Claim against the State or LMA in respect of such failure or delay.

17.3 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by the Terms and Conditions. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

17.4 Entire agreement and inconsistency

- (a) The terms and conditions for the Tender Process are contained entirely in the EOI Document and the RFP. There are no undertakings, agreements, warranties or representations (express or implied), with respect to the matters contemplated by the Terms and Conditions except for those referred to in them.
- (b) The Respondent must notify the State in writing if the Respondent or a Respondent Member is of the opinion that there is any error or discrepancy in the EOI Document or the RFP, as soon as reasonably practicable after discovering it.
- (c) Following receipt of a written notice under clause 17.4(b), or if the State otherwise discovers an ambiguity, discrepancy or inconsistency, the State in its sole and absolute discretion, will direct the Respondent in writing as to how to resolve the ambiguity, discrepancy or inconsistency.

17.5 Probity Checks

- (a) The State may conduct checks in relation to the Respondent, each Respondent Member and any of their respective Associates during the Tender Process in relation to probity matters (**Probity Checks**).
- (b) The Respondent and each Respondent Member consents to such Probity Checks, agrees to procure the consents of its directors and to procure the consents of such employees or respective Associates as are requested by the State, and as are required by law to be obtained in connection with such Probity Checks.
- (c) The Respondent and each Respondent Member acknowledges and agrees that the State:
 - (i) is not under any obligation to provide to the Respondent or any Respondent Member the results of any Probity Checks;
 - (ii) may take into account any matters revealed by any Probity Checks in evaluating any EOI or Proposal; and
 - (iii) may reject any EOI or Proposal or take such other action as it considers appropriate, in its absolute discretion, in light of matters revealed by any Probity Checks.

17.6 The State entitlement to adopt a proposed or draft document

If the State has exercised its right to terminate the Tender Process with respect to the Respondent and all Competing Respondents, without the award of Stage One to any of them, then the Respondent and each Respondent Member acknowledges that the State is at liberty to negotiate with any party to a proposed or draft document submitted as part of an EOI or Proposal, with a view to entering into a contract with that party on substantially the same terms as the proposed or draft document.

17.7 Severability of provisions

If any provision of the Terms and Conditions is held to be invalid, unenforceable or illegal for any reason, the Terms and Conditions shall remain otherwise in full force and effect apart from such provision which shall be deemed deleted.

17.8 Indemnity, rights held on trust and no fettering

The Respondent and each Respondent Member declares and acknowledges that:

- (a) each indemnity and right referred to in the Terms and Conditions in favour of any of the State's Associates is held on trust by the State for the benefit of any of its Associates from the date of the EOI Form;
- (b) the consent of the Associates of the State will not be required for any amendment to, or waiver of rights under, the Terms and Conditions by the State; and
- (c) nothing contained or implied in the Terms and Conditions or any State Project Documents will be construed or interpreted as unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the State to exercise any of its executive or statutory powers or functions under any law.

17.9 Governing law and jurisdiction

The Terms and Conditions are governed by, and are to be construed in accordance with, the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

17.10 Process agents

Each Respondent Member that does not have its registered office in Australia irrevocably:

- (a) nominates the Respondent as its agent to receive service of process or other documents in any action in connection with Stage One; and
- (b) agrees that service on that agent will be sufficient service on it.

17.11 Additional obligations unaffected

The obligations set out in the Terms and Conditions are in addition (and without prejudice) to any other obligations of confidence or with respect to probity which the Respondent or Respondent Members may have, whether at law, in equity, by statute or otherwise.

ANNEXURE C - RISK ALLOCATION

Risk Allocation

The table below sets out Stage One risks that the State is proposing to accept or share with Project Co. Please note that all other risks are proposed to be borne by Project Co.

Risks to be accepted by the State or shared between the State and Project Co

	Type of Risk	Description	State	Shared
Site Risks				
1.	Land acquisition – for land agreed at Contract Close	Risk of cost and delay associated with acquiring land identified at Contract Close as required for Project Co's design accepted by the State.	✓	
2.	Land acquisition – land required as a result of subsequent State requested design changes	Risk of cost and delay associated with acquiring land as a result of design changes requested by the State after Contract Close.	✓	
3.	Appropriate planning reservations of the land required for Stage One based on the design agreed at Contract Close	Risk of cost and delay if State approvals are not obtained or if the required planning reservations of the land required for Stage One based on the design agreed at Contract Close cannot be obtained or are delayed.	✓	
4.	Native title claims	Risk of cost and delay if native title claims are made in respect of Stage One.	✓	
5.	Discovery of items of aboriginal heritage and artefacts at the site	Risk of cost and delay resulting from discovery of items of aboriginal heritage and artefacts at the site.		✓
Design and Construction Risks				
6.	Construction delays caused by force majeure	Risk of delay caused by force majeure events which prevent construction milestones being met.		✓
7.	Construction costs and delays caused by defined compensable extension events	Risk of cost and delay if caused by defined compensable extension events that prevent construction milestones being met and the total cost associated with Stage One being different from anticipated.	✓	
8.	Access for interface works	Risk of procuring the necessary access to CityLink to deliver Stage One.		✓
9.	State initiated variations to performance specifications	Risk of cost and delay where the State requests alterations to the performance specifications.	✓	

	Type of Risk	Description	State	Shared
Operating Risks				
10.	Toll revenue risk	Risk of traffic volumes and associated toll revenues.	✓	
11.	Force majeure	Risk that force majeure events affect the operation or availability of Stage One.		✓
12.	Operational interfaces	Management of operational interfaces with road management authorities and toll collection service provider.		✓
Industrial Relations				
13.	Industrial action targeted directly against Stage One which results from certain acts of the State	Risks of industrial action in respect of Stage One which directly affects Project Co and which directly results from an act or omission of the State.	✓	
Other				
14.	Changes in State policy or law which directly affect Stage One	Risk of additional cost or delay resulting from changes in State policy or law which directly affect Stage One.	✓	
General				
15.	Interest risk	Base interest rate risk prior to Financial Close	✓	

ANNEXURE D – STAGE ONE MAP / CORRIDOR



RESPONSE SCHEDULE 1 – EOI FORM

Response Instruction: The Respondent is to complete this form in this format and submit it as part of the EOI. This EOI Form is to be signed by the Respondent and each Respondent Member.

1. Respondent and Respondent Members

Response Instruction: Provide the following details in relation to the Respondent and each Respondent Member (if applicable). Respondent Members will be dependent on the proposed contractual structure, but must include the key equity provider(s), D&C Subcontractor, O&M Subcontractor, financial advisor and Project Co, including any special purpose vehicle that is incorporated for the purposes of carrying out Stage One (if applicable). A Lead Respondent Member must also be identified.

The Respondent and Respondent Members are as follows:

Respondent and Respondent Member corporate information

Full name:

Role: e.g. O&M Subcontractor, D&C Subcontractor etc:

Place and date of incorporation:

Company number:

Address of registered office:

Address for notices:**

Email address for notices:

Telephone number:

Name and position of the individual nominated as Respondent's contact:

** Please duplicate this table for each Respondent and Respondent Member (identifying specifically the Lead Respondent Member).*

*** Address for notices should be in Australia. Where the Respondent has an international address for notices, the Respondent should nominate an alternative Australian address for notices.*

2. Respondent's Associates (including Team Members)

Response Instruction: Provide a list of the Respondent's Associates (including Team Members), including any officers, employees, agents, consultants, nominees, licensees, financiers or advisers, that have been engaged by the Respondent or a Respondent Member to assist, or be directly involved with the Respondent, in the preparation of this EOI and/or in relation to the Tender Process if shortlisted.

The Respondent's Associates are as follows:

Organisation	Role
--------------	------

Response Instruction: Provide details of any Respondent Member or Respondent Associates that has an existing relationship with any of the State's Advisors for other business activities.

3. Related Party Participants

Response Instruction: Disclose all Related Party participants of the Respondent and each Respondent Member that may also be a member of a Competing Respondents.

4. Potential additional Respondent Members

Response Instruction: Provide details of any areas in which the Respondent is currently incomplete and the proposed approach and timing of obtaining the relevant expertise (including the identity of any additional Respondent Members).

5. Holding Company of Related Members

Response Instruction: Provide details of any Related Member’s group policy which requires approval of the EOI at a holding company or higher board level, as the case may be.

6. Respondent Confirmation

The Respondent confirms:

- (a) the information set out in the EOI is accurate;
- (b) the EOI consists of:
 - (i) this completed and signed EOI Form;
 - (ii) a completed Compliance Schedule and a Workplace Relations Management Plan;
 - (iii) a completed Respondent Information Schedule; and
 - (iv) the following documents:

[Respondent to insert if required]; and

7. Terms and Conditions

By submitting its EOI, the Respondent and each Respondent Member confirms and agrees that it is bound by the Terms and Conditions set out in Annexure B of the EOI Document.

8. Execution

This EOI is dated the _____ day of _____ 2013.

Response Instruction: To be signed by duly authorised officers for the Respondent and each Respondent Member using one of the execution blocks below. Where signing under power of attorney, please provide a certified copy of the relevant power(s) of attorney and evidence of the attorney's authority. The State reserves the right to ensure the Respondent and each Respondent Member has duly executed the EOI Form before further considering the EOI.

Signed for and on behalf of _____ (ABN _____) by its attorney under power of attorney dated _____, in the presence of:

Signature of witness

Signature of attorney

Name of witness in full

Name of attorney in full

or:

Executed by [*# insert Company name*]
in accordance with Section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

RESPONSE SCHEDULE 2 – COMPLIANCE SCHEDULE VICTORIAN CODE AND VICTORIAN GUIDELINES

Response Instruction: Please provide a Workplace Relations Management Plan (WRMP) and Compliance Schedule in the form set out below for Stage One prepared by your nominated D&C Subcontractor in accordance with the Victorian Code and Victorian Guidelines and as required by clause 8 of the Terms and Conditions.

EWL

Respondent:

[insert full legal name, including Australian Business Number (ABN) and, where applicable, Australian Company Number (ACN) of the Respondent associated with the D&C Subcontractor]

D&C Subcontractor:

[insert full legal name, including Australian Business Number (ABN) and, where applicable, Australian Company Number (ACN) of Respondent's nominated D&C Subcontractor]

D&C Subcontractor's authorised representative:

[insert full name and title of the natural person completing this Compliance Schedule on behalf of the D&C Subcontractor]

Definitions

1. Terms used in this Compliance Schedule have the meaning given to them in the Victorian Government's Code of Practice for the Building and Construction Industry (**Victorian Code**) and the Victorian Government's Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry, as amended from time to time (**Victorian Guidelines**), including all Practice Directions to those Guidelines.

Primary acknowledgments and undertakings

2. By completing this Compliance Schedule and submitting it with, or in advance of, the Respondent's EOI, the D&C Subcontractor:

- (a) expresses an interest in becoming the D&C Subcontractor in relation to Stage One;
- (b) acknowledges that the Victorian Code and Victorian Guidelines apply to Stage One;

- (c) undertakes that it, and its related entities, will comply with the Victorian Code and Victorian Guidelines on:
 - (i) Stage One;
 - (ii) any privately and publicly funded building and construction work to which the Victorian Guidelines apply, on and from the date this Compliance Schedule is submitted (if not already required to comply on such privately and publicly funded projects);
- (d) confirms that it and its related entities have complied with:
 - (i) the Victorian Code and Victorian Guidelines on all its other projects to which the Victorian Guidelines apply or have applied; and
 - (ii) all applicable legislation, court and tribunal orders, directions and decisions, and industrial instruments;
- (e) confirms that, where it and its related entities are, or have been, required to comply with any relevant federal or State scheme (such as the National Code and National Guidelines or the NSW Code and Guidelines or the Queensland Code and Guidelines), they have done so; and
- (f) confirms that neither it, nor any of its related entities, are subject to a sanction or other circumstance that would preclude the Respondent from submitting an EOI or a Proposal, or, if successful, being awarded Stage One.

Sanctions for non-compliance

3. The Department of Treasury and Finance, through the Construction Code Compliance Unit (**CCCU**), has responsibility for enforcing, and ensuring compliance with, the Victorian Code and Victorian Guidelines.

4. The D&C Subcontractor acknowledges that where it, or a related entity, fails to comply with the Victorian Code or Victorian Guidelines, a sanction may be imposed on the D&C Subcontractor or any related entity of the D&C Subcontractor. The sanctions that can be imposed include, but are not limited to, one or more of the following:

- (a) a formal warning that a further breach will lead to severe sanctions;
- (b) referral of a complaint to the relevant industry organisation for assessment against its own professional code of conduct and appropriate action;
- (c) reduction in tendering opportunities at either agency or government-wide level, for example, by exclusion of the breaching party from tendering for government work above a certain value, or for a specified period;
- (d) reporting the breach to an appropriate statutory body; and
- (e) publicising the breach and identity of the party.

Disclosure of information

5. The D&C Subcontractor agrees and gives its consent (or reaffirms its consent), and confirms that its related entities agree and give their consent (or reaffirm their consent), to the disclosure of information concerning the D&C Subcontractor's, and the D&C Subcontractor's related entities', compliance with the Victorian Code, Victorian Guidelines and any relevant federal or State scheme (such as the National Code and National Guidelines, the NSW Code and Guidelines or the Queensland Code and Guidelines), including disclosure of details of past conduct relating to the Victorian Code and Victorian Guidelines and whether or not sanctions have been imposed on a D&C Subcontractor or its related entities.

6. The D&C Subcontractor confirms that it has obtained, or will obtain, the consent of each subcontractor or consultant it proposes to use on Stage One, or that it will use if successful in the tender, to the disclosure of information concerning the subcontractor's and consultant's compliance with the Victorian Code, Victorian Guidelines and any relevant federal or State scheme (such as the

National Code and National Guidelines, the NSW Code and Guidelines or the Queensland Code and Guidelines) including disclosure of details of past conduct relating to the Victorian Code and Victorian Guidelines and whether or not sanctions have been imposed on the subcontractor or consultant or its related entities.

7. The consent (or reaffirmation of consent) by the D&C Subcontractor, its related entities and any proposed or subsequent subcontractors, is given to the State of Victoria, its agencies, Ministers and the CCCU (and its authorised personnel) for purposes including:

- (a) the exercise of their statutory or portfolio responsibilities;
- (b) investigating and checking claims and assertions made by the D&C Subcontractor in any documents provided as part of the Respondent's EOI or Proposal (including, but not limited to, any Workplace Relations Management Plans or Health and Safety Management Plans);
- (c) monitoring, investigating and enforcing the Victorian Code and Victorian Guidelines; and
- (d) ensuring, facilitating and promoting compliance with the Victorian Code and Victorian Guidelines.

8. The D&C Subcontractor acknowledges that this consent is not limited to Stage One, as parties are expected to comply with the Victorian Code and Victorian Guidelines on future projects to which they apply.

Positive obligations

9. Without limiting the obligations and requirements in the Victorian Guidelines, the D&C Subcontractor acknowledges and undertakes to comply with its positive obligations under the Victorian Code and Victorian Guidelines, including to:

- (a) prepare and submit a Workplace Relations Management Plan as part of the EOI and a Health and Safety Management Plan as part of the Proposal;
- (b) comply with any Workplace Relations Management Plan and Health and Safety Management Plan that is approved by the State;
- (c) allow Victorian Government authorised personnel to:
 - (i) access the Site and other premises;
 - (ii) monitor and investigate compliance with the Victorian Code and Victorian Guidelines;
 - (iii) inspect any work, material, machinery, appliance, article, or facility;
 - (iv) inspect and copy any record relevant to Stage One; and
 - (v) interview any person,as is necessary to demonstrate compliance with the Victorian Code and Victorian Guidelines;
- (d) notify the CCCU (or nominee) and the State of any alleged breaches of the Victorian Code and Victorian Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach;
- (e) report any grievance or dispute relating to workplace relations or occupational health, safety and rehabilitation (**OHS&R**) matters that may impact on Stage One costs, related contracts or timelines to the CCCU (or nominee) and the State within 24 hours of becoming aware of the grievance or dispute, and to provide regular updates on the grievance or dispute;
- (f) report any threatened or actual industrial action that may impact Stage One, Stage One costs, related contracts or timelines to the CCCU (or nominee) and the State within 24 hours, and provide regular updates about the steps being taken to resolve the threatened or actual industrial action;
- (g) take all steps reasonably available to prevent, or resolve, industrial action which adversely affects, or has the potential to adversely affect, the delivery of Stage One or other related contracts on time and within budget; and

(h) take all reasonably available steps to prevent, or bring to an end, unprotected industrial action occurring on, or affecting, Stage One, including by pursuing legal action where possible. Any such legal action must be conducted (and where appropriate, concluded) in a manner consistent with the guiding principles and objectives of the Victorian Guidelines, namely supporting outcomes of compliance with the law, productivity in delivering Stage One on time and within budget, maintaining a high standard of safety and protecting freedom of association.

10. Without limiting the obligations and requirements of the Victorian Code and Victorian Guidelines, the D&C Subcontractor acknowledges its obligation to ensure, through contract, that subcontractors and consultants similarly do, or allow for, each of these applicable positive obligations.

Privately funded work

11. The D&C Subcontractor acknowledges and agrees that in respect of its privately funded building and construction work (to which the Victorian Guidelines apply) it, and its related entities, will:

- (a) comply with the Victorian Code and Victorian Guidelines;
- (b) maintain adequate records of compliance with the Victorian Code and Victorian Guidelines (including by contractors);
- (c) allow Victorian Government authorised personnel to:
 - (i) access the sites and premises;
 - (ii) monitor and investigate compliance with the Victorian Code and Victorian Guidelines;
 - (iii) inspect any work, material, machinery, appliance, article, or facility;
 - (iv) inspect and copy any record relevant to Stage One; and
 - (v) interview any person,as is necessary to demonstrate compliance with the Victorian Code and Victorian Guidelines; and
- (d) ensure contractors and consultants similarly do, or allow, for each of these obligations.

Declaration by D&C Subcontractor and authorised representative

12. By signing this declaration on behalf of the D&C Subcontractor, the D&C Subcontractor's authorised representative declares that they have full authority to execute it and have obtained any necessary consents and approvals to do so.

Signature of authorised representative:

Name of authorised representative:

[Print full name of authorised representative]

Date: / /20

RESPONSE SCHEDULE 3 - RESPONDENT INFORMATION SCHEDULE

EOIs are expected to contain the information required by this EOI Document reflecting the structure set out below.

Section A: Executive Summary

This section should, at a minimum, identify each of the Respondent Members. Respondents may otherwise summarise key highlights of their EOI responses in this section.

Section B: Responses to Evaluation Criteria

Evaluation Criterion 1: D&C capability and experience

Evidence of, or demonstrated ability to, successfully and safely deliver major road and / or tunnelling projects, which have:

- sought to deliver whole of life cost optimisation and maximise traffic throughput capacity;
- included significant, complex and sustainable tunnelling solutions;
- included significant road construction including associated ramps and bridge works;
- demonstrated excellence in architectural, landscape and urban design outcomes;
- involved development in a highly urbanised environment requiring complex traffic, access and environmental management; and
- required substantial interfaces with other integral parts of the road network (including private road operators).

Ability to apply the above experience to the delivery of Stage One.

Requested information in response to Evaluation Criterion 1

- 1.1 Respondents should describe the local and international major road and / or tunnelling projects its Respondent Members have delivered.

The examples provided should focus on projects of a similar scale, scope and value to that contemplated for Stage One and, wherever possible, demonstrate the experiences of Respondent Members working together in a similar capacity to that proposed for Stage One.

Respondents should, as a minimum, include the following information in relation to each project example:

- a description of the project (including aspects of particular relevance to Stage One);
- details of the project's procurement model and contracting arrangements (design and construct, PPP, etc.);
- details of design and construction quality assurance arrangements and performance;
- the name and roles of Respondent Members involved, including commercial position within the delivery structure (e.g. head contractor, subcontractor, details of joint venture arrangement (if relevant) etc.);
- the commencement date and duration of contract;
- the value of design and construction component;
- the key project risks and factors critical to success;
- the key project outcomes (e.g. delivery against program and budget, high quality design such as evidenced through peer awards or recognition in relevant publications and team capabilities etc.);

- the key lessons learned and how these might be applied to Stage One; and
- referee details (one per project).

Respondents should seek to identify at least one project which did not proceed to plan, including details of how any delivery challenges were ultimately resolved.

1.2 Respondents should also set out their proposed strategy for delivering Stage One, in particular highlighting their approach to ensuring the effective transfer of the knowledge and experience outlined above to Stage One. This should include:

- identification of key design and construction risks for Stage One and strategies to manage them; and
- details of the particular benefits which will be brought to construction of Stage One by the individual Respondent Members and under the proposed Respondent working arrangements.

Evaluation Criterion 2: Operation and maintenance capability and experience

Evidence of, or demonstrated ability to, successfully operate and maintain inner urban freeways / toll roads, including:

- the provision of operation and maintenance activities as generally described in section 4.6;
- delivering a whole of life cost optimisation and sustainable approach (in particular for large tunnel projects);
- ensuring an enduring high quality in architectural, landscape and urban design elements;
- working with other road management authorities to deliver integrated network management solutions;
- working with road management authorities and other toll road operators on the network to support efficient customer experiences across the tolled network; and
- working efficiently with third party toll collection services providers and / or owners of a toll revenue stream.

Ability to apply the above experience to the delivery of Stage One.

Requested information in response to Evaluation Criterion 2

2.1 Respondents should describe the local and international road projects its Respondent Members have operated and / or maintained or continue to operate and maintain. The examples provided should focus on projects of a similar scale and scope to that contemplated for Stage One and, wherever possible, demonstrate the experiences of Respondent Members working together in a similar capacity to that proposed for Stage One.

Respondents should, as a minimum, include the following information in relation to each project example:

- description of the project, including aspects of particular relevance to Stage One and reference to the prevailing performance management regime;
- details of the project's procurement model and contracting arrangements (operations and maintenance, PPP etc.), including relationships to the original construction contractor;
- whether, and by whom, the road is tolled (together with details of any role in / or the interfaces with the associated toll collection function);
- the name and roles of Respondent Members involved including commercial position within the operating structure;
- the commencement date and duration of contract;
- any operational, management or maintenance issues that have arisen and how these issues have been influenced and managed through a whole of life approach to project delivery, including successful approaches to the delivery of enduring and maintainable urban design outcomes;

- the key risks and factors critical to successful operation and maintenance especially in the context of maintaining a road to help maximise toll revenue and any need to manage impacts from or on the broader road network;
 - the key lessons learned and how these might be applied to Stage One; and
 - referee details (one per project).
- 2.2 Respondents should also set out their proposed strategy for delivering the operation and maintenance of Stage One, in particular highlighting their approach to ensuring the effective transfer of the knowledge and experience outlined above to Stage One. This should include:
- the identification of key operation and maintenance risks for Stage One and strategies to manage them; and
 - details of the particular benefits which will be brought to operation and / or maintenance of Stage One by both the individual Respondent Members and under the proposed Respondent working arrangements.

Evaluation Criterion 3: Stakeholder engagement

Evidence of, or demonstrated ability to, engage proactively and work effectively with a wide range of project stakeholders over the life of the asset.

Ability to apply the above experience to the delivery of Stage One.

Requested information in response to Evaluation Criterion 3

- 3.1 Respondents should provide examples of where its Respondent Members have been required to engage, and have undertaken successful engagement with, stakeholder groups across the project lifecycle (including as asset owner and / or key contractor), including utilities companies, government agencies (particularly traffic management authorities), toll road operators / concessionaires (government or private), other road operators / concessionaires on the network, financiers, landowners and sophisticated local interest groups in an urbanised environment.

Respondents should, as a minimum, include the following information in relation to each example:

- description of the project (including aspects of particular relevance to Stage One);
 - the name and roles of Respondent Members involved;
 - details of the nature of engagement;
 - the relevance to Stage One and the key lessons learned;
 - referee details (one per project); and
 - proposed approach to ensuring effective transfer of relevant skills and experience to the delivery of Stage One.
- 3.2 Respondents should also provide an overview of their assessment of the stakeholder engagement issues which will be most critical for Stage One and their proposals for ongoing stakeholder engagement and management over the course of Stage One including allocation of responsibilities.

Evaluation Criterion 4: Financing capacity and capability

Evidence of, or demonstrated ability to, manage the financing requirements of Stage One, including:

- capacity to effectively support the significant financing requirement for Stage One and maximise the available pool of efficiently priced private finance; and
- capability to drive cost efficiencies through the development of innovative financing solutions.

Requested information in response to Evaluation Criterion 4

4.1 Respondents should provide (as a minimum):

- examples of where Respondent Members have successfully raised private finance for an infrastructure project of equivalent scale to Stage One. Examples should include:
- a description of the project (including aspects of particular relevance to Stage One);
- the name and roles of Respondent Members involved;
- details of the finance raised (nature, amount, etc.); and
- relevance to Stage One and the key lessons learned;
- an outline of their proposed strategy and staging for raising private finance, including expected financing sources and how that strategy has been developed and progressed to optimise the amount and cost of private finance available;
- details of the allocation of key capital raising responsibilities and how the proposed commercial structure for Stage One will support capital raising activities;
- evidence of the financial strength of the Respondent, including audited financial statements covering results for the last 3 years for all Respondent Members; and
- details of any material post-balance date events relevant to an assessment of financial strength and which are not addressed in the audited financial statements provided above.

Evaluation Criterion 5: Commercial structure

Demonstrated understanding of the State's commercial requirements and commitment to the Tender Process, as evidenced by the:

- ability of the Respondent's proposed structure to deliver a project of similar scale in the State's timeframe and to achieve the State's requirements and preferred risk allocation;
- proposed role of equity in ensuring proactive management of the assets over the life of Stage One; and
- strength of commitment of all Respondent Members to Stage One.

Required information in response to Evaluation Criterion 5

5.1 Respondents should provide an outline of the proposed Respondent structure and details of the roles and responsibilities of each Respondent Member (both during the Tender Process and Project delivery phases). This should include:

- the proposed Respondent contractual arrangements;
- the allocation of Proposal management responsibilities;
- plans to facilitate efficient mobilisation (if successful);
- the nature and allocation of key contracting responsibilities;
- the long term proposals for ownership and management of the assets;
- details of the nature and likelihood of strategies to achieve any regulatory, investment and taxation approvals necessary for the Respondent's or any Respondent Member's involvement in Stage One;

- details of the ability of relevant Respondent Members to meet any conditions associated with receiving federal funding. This may include, demonstrating an ability to achieve accreditation under the OHS Accreditation Scheme in the event Stage One receives Commonwealth funding; and
 - examples of where similar Respondent / commercial approaches have been successfully implemented elsewhere.
- 5.2 Details of the proposed allocation of key Stage One risks, including (as a minimum):
- the nature of security packages (including Parent Company support) proposed;
 - the extent (or otherwise) of acceptance of the risk allocation generally described in the EOI Document; and
 - details of other key risk mitigation strategies.
- 5.3 Evidence (e.g. board minutes or similar) that each of the Respondent Members has accepted the proposed Respondent contractual arrangements including the allocation of Proposal management responsibilities and sharing of Proposal costs.
- 5.4 Experience of participating in competitive tender processes for projects of a similar scale and in similar timeframes to those outlined for Stage One.

Evaluation Criterion 6: Innovation

Evidence of, or demonstrated ability to, drive value for money through the development of high quality, innovative solutions for major infrastructure projects, including in relation to:

- project design, sustainability, environmental management, construction methodology and traffic management;
- whole of life cost optimisation and operation and maintenance solutions;
- integration into existing networks or with future stages of an overall scheme;
- working with other road and toll road operators; and
- efficient commercial structures and financing solutions.

Ability to apply the above experience to the delivery of Stage One.

Required information in response to Evaluation Criterion 6

Respondents should identify local and international examples where they have previously implemented innovative solutions for civil and urban design, engineering, commercial and operations (focusing on projects similar in nature, scale and scope to Stage One) and also outline any innovative ideas specifically relevant to Stage One. Examples identified should include a description of the manner in which the innovation drove value for money outcomes on a risk adjusted basis.

Respondents should, as a minimum, include the following information in relation to each example:

- nature of the underlying project issue / requirement;
- name and roles of Respondent Members involved;
- solution proposed and / or implemented, including high quality, innovative and cost effective civil and urban design, engineering, commercial and operations outcomes;
- relevance to Stage One, how similar solutions might be implemented and the potential value for the State; and
- referee details (one per project).

Section C: Other Information

While not part of the evaluation as set out section 8.4, Respondents are asked to comment on and provide feedback on the below matters:

1. **Risk allocation.** How alternative approaches to risk allocation (to that outlined in the EOI Document) might deliver greater value for money to the State.
2. **Project term.** How different length project terms (in the range of 15 -30 years or longer) might impact the value for money realized by the State, bearing in mind the considerations set out in section 6.3.
3. **State contribution.** The size and structure of any State contributions made to Stage One, including with specific reference to the:
 - (a) preferred format, timing and basis of the State contribution;
 - (b) potential impacts on the overall financing and tax structures and strategies to mitigate them; and
 - (c) options for assisting the State to manage any increased exposure to construction risk resulting from the introduction of State contributions prior to completion.
4. **Market financing capacity.** The amount of efficiently priced private finance (debt and equity) currently available for a project of this type in Australia. Ideas on efficient processes for securing fully financed Proposals in this context.
5. **Payment mechanism.** Performance standards that might result in greater alignment of interests between Project Co and the State in its role as network operator and as recipient of toll revenues for the road (capable of being financed on a value for money basis).
6. **Other areas of innovation.** Other potential areas of delivery innovation (including potential further stages of EWL) that might result in greater value for money to the State.



