

A.2 RFP Terms and Conditions

1 Invitation to submit a Proposal

1.1 Invitation

- (a) VicTrack invites each Respondent to submit a Conforming Proposal for the delivery of the Project.
- (b) Any documents provided by, or on behalf of, VicTrack as part of the RFP Process do not represent an offer by VicTrack to any Respondent.
- (c) Each Respondent acknowledges that the issuing of this RFP by VicTrack or the lodgement of a Proposal or other action pursuant to this RFP does not impose any legal obligations on VicTrack or create any process contract that imposes any obligations on VicTrack. Subject to these Terms and Conditions, the Respondent in submitting its Proposal, acknowledges and accepts that no legal or other obligation in respect of the undertaking of services or otherwise in relation to the Project or the RFP Process will arise between the Respondent and VicTrack.

1.2 No response to RFP

If a Respondent does not intend to submit a Proposal, it must within 14 days of receiving the RFP, notify the Transaction Advisor accordingly and, if required by the Transaction Advisor or VicTrack, the Respondent must return or destroy all Background Information in accordance with Clause 2.6.

2 RFP Documents

2.1 Overview of RFP Documents

The RFP Documents comprise the following:

- (a) Part A – RFP Process overview, including:
 - (i) Part A.1 – Overview;
 - (ii) Part A.2 – RFP Terms and Conditions;
 - (iii) Annexure A – Key Details;
 - (iv) Annexure B – Evaluation Criteria;
 - (v) Annexure C – Project Development Agreement;
- (b) Part B – Project Brief;
 - (i) Annexure D – Background Information register; and
- (c) Part C – Returnable Schedules.

2.2 Ownership

The contents of this RFP including all text, graphics, logos and images are the property of VicTrack and protected by relevant copyright legislation. Other than with the written permission of VicTrack, the RFP, or any part of it, may not be reproduced, stored in a retrieval system or transmitted in any form, by any method (including electronic), for any purpose, except as expressly permitted under relevant copyright legislation.

2.3 Confidentiality, Use and Disclosure by Respondents

- (a) Subject to Clause 2.3(b) and 2.3(c) of these Terms and Conditions, the Respondent must:
 - (i) comply with the terms of the confidentiality deed executed by it prior to receiving the RFP and Background Information;
 - (ii) keep confidential any Background Information;
 - (iii) establish and maintain effective security measures to safeguard Background Information from unauthorised access or use;
 - (iv) not use the Background Information for any purpose whatsoever except for the Permitted Purpose; and
 - (v) not copy or duplicate (or allow the copying or duplication of) any documents containing Background Information unless it is for the Permitted Purpose.
- (b) The Respondent may disclose the Background Information to its Associates if the disclosure is required solely for the Permitted Purpose and the Respondent obtains a binding confidentiality undertaking from each such Associate in the same terms as this Clause 2.3.
- (c) The provisions of Clauses 2.3(a)(ii) and 2.3(d) do not apply to:
 - (i) the disclosure of Background Information for which VicTrack has given its prior written consent;
 - (ii) any Background 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 these Terms and Conditions; or
 - (iii) the disclosure of any Background Information to the extent necessary to comply with any applicable Law or legally binding order of any Governmental Agency.
- (d) The Respondent must:
 - (i) notify VicTrack immediately if it becomes aware of any unauthorised disclosure, copying or use of any Background Information (suspected or actual);
 - (ii) immediately take all reasonable steps to prevent or stop any such suspected or actual unauthorised disclosure, copying or use of any Background Information (including complying with directions of VicTrack in this regard); and
 - (iii) take all reasonable steps to recover any Background Information that has been disclosed, used or copied without VicTrack's consent under these Terms and Conditions.

2.4 Confidentiality Obligations and Disclosure by VicTrack

- (a) Subject to Clauses 2.4(b) to 2.4(d) of these Terms and Conditions and the Project Development Agreement, the Transaction Advisor and VicTrack will hold the contents of each Proposal in confidence.
- (b) The Respondent acknowledges and agrees that VicTrack or any of its Associates may publish or disclose (on the internet or otherwise), and the Respondent consents to such publication or disclosure, details of:
 - (i) the Respondents (including any of their Associates);
 - (ii) the identity of any Preferred Respondent or Preferred Developer (including any of their Associates);

- (iii) the status of the RFP Process at any time; and
 - (iv) the value of the Project Development Agreement.
- (c) The Respondent consents to VicTrack publishing or otherwise making available information in relation to the Respondent or some or all of the contents of a Proposal:
- (i) in order to keep the Department of Transport and Planning, or relevant Minister informed;
 - (ii) so that the relevant Minister may answer questions raised in Parliament;
 - (iii) in order keep Parliament informed or otherwise discharge the Minister's duties and obligation to Parliament;
 - (iv) in order to advise the Governor, Parliament and the Government;
 - (v) where required to under the *Freedom of Information Act 1982* (Vic) or any other Laws; or
 - (vi) to the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and any other organisation that may, from time to time, perform the functions of the commission.
- (d) The Victorian Government's policy of openness requires that details of the resulting contract be published, except for those details which would ordinarily be exempt under the *Freedom of Information Act 1982* (Vic). By lodging a Proposal, the Respondent consents to the publishing (on the internet or otherwise) of the name of the Respondent and the details in the Project Development Agreement generally.

2.5 No Liability for Background Information documents

Each Respondent acknowledges that:

- (a) the Background Information has been provided to a Respondent by VicTrack for the information only of the Respondent;
- (b) Background Information may be incorrect;
- (c) VicTrack requires each Respondent to make its own enquiries to determine the accuracy and adequacy of any Background Information;
- (d) if VicTrack has not prepared and is not the author of any Background Information, VicTrack does not adopt the Background Information and merely passes the Background Information on to a Respondent;
- (e) none of VicTrack, the Transaction Advisor nor any of their respective Associates makes any representation that all information in VicTrack's or the Transaction Advisor's control or possession in relation to the Project has been provided to each Respondent; and
- (f) none of VicTrack, the Transaction Advisor nor any of their respective Associates, warrants, guarantees or makes any representation, or assumes any duty of care, or (to the extent permitted by law) accepts any Liability, with respect to the completeness, accuracy, adequacy or correctness of any Background Information.

2.6 Return of Background Information

Each Respondent must, if required by VicTrack and at VicTrack's election, destroy or return to VicTrack all Background Information other than Background Information which:

- (a) is required to be retained to in accordance with Law or a binding requirement of a recognised stock exchange;

- (b) forms part of the minutes of, or papers to, a board of the Respondent; and
- (c) is retained as part of automatic information technology archiving or back-up procedures,

provided that, in each case, the Background Information is kept confidential and otherwise in accordance with the Terms and Conditions.

2.7 Data Room

The Respondent 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;
- (b) the Respondent will adhere to all directions issued by VicTrack in writing from time to time regarding access to or the use of any Data Room;
- (c) the Respondent is responsible for ensuring that it has all computer hardware and computer software required to gain access to any Data Room; and
- (d) VicTrack 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 Data Room, or whether any Data Room will be free of Disabling Code or will cause any Disabling Code to be introduced into any computer systems of the Respondent, a Member or any of their respective Associates, and the Respondent and Members are not entitled to make any Claim against VicTrack for any Liability incurred by any of them and indemnifies VicTrack and its Associates in respect of any Claim brought by any of the Respondent's or a Member's Associates for Liability incurred by them arising out of or in connection with the use, functionality, performance or availability of any Data Room or the introduction of any Disabling Code into any computer systems of the Respondent, a Member or any of their respective Associates.

2.8 Privacy

- (a) The Respondent agrees in respect of Personal Information held in connection with this RFP that it will be bound by the Information Privacy Principles, and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Respondent for the purposes of lodging a Proposal, in the same way and to the same extent as the Privacy Obligations would have applied to VicTrack in respect of that act or practice had it been directly done or engaged in by VicTrack.
- (b) Without limiting Clause 2.8(a), in relation to any Personal Information obtained by the Respondent in connection with the Proposal, the Respondent must:
 - (i) not collect, use, disclose, store, transfer or handle the information except in accordance with the Privacy Obligations;
 - (ii) not, without the prior consent of VicTrack, disclose the information to a person who is outside Victoria;
 - (iii) take all reasonable steps to ensure that the information is protected from misuse, interference or loss, and from unauthorised access, modification or disclosure;
 - (iv) take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of submitting the Proposal;

- (v) co-operate with any reasonable request or direction VicTrack makes which relates to the protection of the information or the exercise of the functions of any of the Commissioners appointed under the PDP Act;
 - (vi) ensure that access to the information is limited to those of its personnel who are required to access that information for the purposes of the Proposal; and
 - (vii) comply with any reasonable direction of VicTrack in relation to a complaint concerning privacy received by either party.
- (c) The Respondent agrees to immediately notify VicTrack where it becomes aware of a breach of this Clause 2.8 by it or any of its or its Member's Associates.

2.9 Data protection

- (a) The Respondent acknowledges that VicTrack is bound by the Protective Data Security Standards.
- (b) The Respondent must not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to contravention of a Protective Data Security Standard by VicTrack in respect of any data collected, held, used, managed, disclosed or transferred by the Respondent.

2.10 Publicity

Except if required by Law or by the rules of a stock exchange on which the Respondent is listed, all promotion, press releases, advertising, public relations, public statements and media activities associated with the preparation of Proposals, status of a Respondent's participation in the RFP Process, any decisions of VicTrack, communications between VicTrack, and Respondents or the RFP Process must receive prior written approval of VicTrack. In particular:

- (a) Respondents wishing to advertise for expressions of interest for proposed purchasers, tenants or licensees must obtain the prior written approval of VicTrack;
- (b) all advertisements must be prepared in consultation with VicTrack;
- (c) all advertising must cease no later than two (2) weeks prior to the announcement of Preferred Respondent(s). It is inappropriate for competing Respondents to deliberately promote their Proposals in the period up to final selection of Preferred Respondents. Respondents cannot speak to the media or otherwise issue public statements relating to the content of their Proposal or the RFP Process except in limited circumstances with the prior written approval of VicTrack;
- (d) consistent with VicTrack's best practice in probity, VicTrack will take into account the protection of confidential information and equality of opportunity for all competing Respondents before granting any approvals; and
- (e) all requests for approvals must be in writing at least four (4) Business Days prior to the planned commencement of the public communications activity. All requests must be submitted directly to the Transaction Advisor by the Respondent

3 Respondent to fully inform itself

3.1 Respondent to do

Without in any way limiting what a Respondent does, a Respondent must do all of the following prior to submitting its Proposal:

- (a) inform itself completely as to:
 - (i) conditions at the Site;

- (ii) the risks, contingencies and other circumstances which might have an effect on the Project or the cost of completing the Project;
 - (iii) the Project and the nature of the work and of the plant, equipment, materials and other items necessary for completion of the Project, the means of access to and facilities and services at the Site and the means of transport, transport routes and facilities for making deliveries to and from the Site;
 - (iv) the availability and cost of labour, plant, equipment, materials and other items required (including all relevant industrial conditions) for the Project;
 - (v) all applicable Laws, taxes, duties, levies, charges, fees and insurance premiums (including compulsory insurance premiums);
 - (vi) all authority and approvals requirements relating to the Project Development Agreement or the Project; and
 - (vii) all measures necessary to protect the environment from any adverse effect or damage arising from completion of the Project;
- (b) prepare its Proposal based on its own investigations, interpretations, deductions, information and determinations;
 - (c) make its own enquiries to determine the adequacy, accuracy, suitability and completeness of any Background Information;
 - (d) satisfy itself as to the correctness and sufficiency of its Proposal and that the price offered in its Proposal covers the cost of complying with all of its obligations under the Project Development Agreement and of all matters and inputs necessary for the due and proper performance and completion of its obligations under the Project Development Agreement; and
 - (e) obtain all appropriate professional, commercial and technical advice with respect to the matters referred to in Clauses 3.1(a) to 3.1(d),

and any failure by a Respondent to do any of those things will not relieve the Respondent of its obligation to perform and deliver the Project in accordance with the Project Development Agreement should the Project Development Agreement be awarded to it.

3.2 Site visit

A Site visit will not be conducted as the subject is a publicly accessible area at present.

3.3 Briefing Sessions

- (a) Briefing Sessions will be carried out at the location and time and on the date stated in Item 7 of the Key Details;
- (b) the Respondent must comply with any protocols, procedures or requirements notified by VicTrack prior to any such RFP Respondents Briefing Session.
- (c) Respondents are required to provide the names and contact details of its representatives that will attend the RFP Respondents Briefing Session, at least 24 hours prior to the time and date of the RFP Respondents Briefing Session by contacting the Transaction Advisor.
- (d) Respondents will only be permitted to have the maximum number of representatives set out in Item 7 of the Key Details attend any RFP Respondents Briefing Session.

4 Lodgement of Proposal

4.1 Requirement to lodge

The complete Proposal must be lodged at the Place for Lodgement by no later than the Closing Time.

4.2 Method of Proposal submission

Proposals must be lodged using the method indicated in Item 3 of the Key Details.

4.3 Respondent not present at opening

Respondents will not be present at the opening of Proposals.

4.4 Acknowledgement of receipt of Proposal

An acknowledgement by or on behalf of VicTrack or the Transaction Advisor of receipt of a Proposal does not mean or imply that the Proposal is a Conforming Proposal.

4.5 Acceptance of Terms and Conditions

- (a) By submitting a Proposal, the Respondent and each Member confirms that it is bound by these Terms and Conditions, that it has complied with the Terms and Conditions prior to the submission of the Proposal and that it agrees to continue to comply with the Terms and Conditions.
- (b) Without limiting Clause 10, in consideration of the Respondent and its Members agreeing to be bound by the Terms and Conditions, VicTrack will receive and consider the Respondent's Proposal.
- (c) Nothing in these Terms and Conditions limits or otherwise derogates from any additional obligations on any Respondent, Member or any of their respective Associates under any deed or other arrangement with the VicTrack relating to collusion, the management of conflicts, information barriers or confidentiality entered into prior to, on or after, the date of release of this RFP.

5 Proposal validity period

- (a) By submitting a Proposal, a Respondent agrees (without in any way limiting the operation of Clause 9):
 - (i) that its Proposal (including any Associated Proposals), will remain valid and irrevocable until the date the Respondent gives written notice that the Proposal has been withdrawn;
 - (ii) that it will not give a notice withdrawing its Proposal (including any Associated Proposals) any earlier than the period of time set out in Item 4 of the Key Details after the Closing Time; and
 - (iii) that any notice withdrawing or purporting to withdraw its Proposal (including any Associated Proposals) that is given prior to the expiry of the period of time mentioned in Clause 5(a)(ii) will be ineffective.
- (b) Nothing in Clause 5(a) limits the operation of Clause 10.4 in any way.

6 Variations, late, non-conforming and alternative Proposals

6.1 Variations to Proposals

A Respondent may replace, amend or supplement its Proposal only if invited to do so by VicTrack. VicTrack reserves the right to ask for replacement, amended or supplemental Proposals from one or more Respondents but is under no obligation to do so. VicTrack is entitled, in its absolute discretion, to consider and accept a replacement, amended or supplemental Proposal from any Respondent (whether requested by VicTrack or not) and without reference to any other Respondents.

6.2 Rejection of late and non-conforming Proposals

(a) A Proposal:

- (i) that is not received at the Place for Lodgement by the Closing Time as required by Clause 4.1;
- (ii) that does not comply in every respect with the requirements of the RFP Documents (including these Terms and Conditions); or
- (iii) that seeks to include a Respondent's own terms and conditions or conditions of contract

may be treated as not being a Conforming Proposal (**Non-Conforming Proposal**) and rejected or not considered, regardless of the reason for the late lodgement or the non-conformance.

(b) Notwithstanding Clause 6.2(a), VicTrack may consider and accept any Proposal (even one that is lodged late or one that might, pursuant to that clause, be liable to be treated as not being a Conforming Proposal and rejected and/or not considered).

6.3 Alternative Proposals

- (a) A Respondent may submit one alternative Proposal, provided it has also submitted a Conforming Proposal.
- (b) Notwithstanding Clause 6.3(a), VicTrack may consider and accept an alternative Proposal even if the Proposal that it accompanies as per Clause 6.3(a) is not a Conforming Proposal.
- (c) The alternative Proposal (if any) must be marked as such (e.g. "Alternative Proposal") and must be submitted as a separate Proposal and with separate completed Returnable Schedules. All departures from the RFP Documents and any claimed benefits to VicTrack, must be clearly identified.

7 Proposal evaluation

7.1 Information requests

- (a) After a Proposal has been lodged, the Evaluation Panel may require a Respondent to submit further information. Respondents must respond promptly to all such requests. All responses must be sent to the Transaction Advisor in the manner stated in Clause 8.1.
- (b) When assessing Proposals, the Evaluation Panel may utilise information and advice provided by any support advisors to VicTrack, who may also review (whole or parts thereof) the Proposal.

7.2 Interview and meetings

- (a) VicTrack may, in its discretion, interview or meet with any one or more of the Respondents.
- (b) If a Respondent is called to such an interview or meeting:
 - (i) the Respondent must be represented at the interview by an authorised person (or persons) who is conversant with all technical, financial and contractual details of the Proposal;
 - (ii) the Respondent must not provide additional material beyond their original Proposal; and
 - (iii) the Probity Advisor will be present at any interview or meeting to ensure a transparent and equitable process.

7.3 Evaluation criteria

- (a) Without in any way limiting the operation of Clause 10 or 11(f)(ii), VicTrack will evaluate Proposals by taking into account the Evaluation Criteria (not necessarily in order of priority or weighting) and other considerations.
- (b) Respondents may wish to provide further information in support of their Proposal; however, further information must be clearly relevant to the Evaluation Criteria. Detailed submissions beyond what is required by the Evaluation Criteria are not sought by VicTrack for this RFP Process.

8 Process matters

8.1 Questions and requests for clarification

- (a) If the Respondent has a question or request for clarification (**Enquiry**), the Enquiry must be directed to the Transaction Advisor by email at the address set out in Item 5 of the Key Details.
- (b) Where an Enquiry has been made by the Respondent under Clause 8.1(a):
 - (i) the Respondent must ensure that each Enquiry is marked either 'Confidential' (if the Respondent is of the view that the Enquiry relates to proprietary aspects of the Proposal or is commercial-in-confidence) or 'Non-confidential';
 - (ii) Enquiries and VicTrack's responses will be provided to all Respondents except where:
 - (A) the Enquiry relates to proprietary information relevant to the Proposal of the Respondent making the Enquiry, or is commercial-in-confidence, and the Respondent has also identified its Enquiry as such in accordance with Clause 8.1(b)(i); or
 - (B) VicTrack, in its absolute discretion, is of the opinion that the Enquiry and VicTrack's response will materially impact the integrity or the competitiveness of the RFP Process;
 - (iii) if VicTrack, in its absolute discretion, is of the opinion that the Enquiry is not proprietary in nature or commercial-in-confidence, VicTrack will advise the Respondent that the Enquiry and VicTrack's response will be provided to all Respondents and that the Respondent has the opportunity to withdraw the Enquiry. If the Respondent then reaffirms its request for a response to the Enquiry, the Enquiry and VicTrack's response may be provided to all Respondents; and

- (iv) the Respondent must ensure that Enquiries are submitted within the enquiry period set out in Item 6 of the Key Details.

8.2 Addenda

- (a) At any time prior to execution of the Project Development Agreement, VicTrack or the Transaction Advisor may (but without being obliged to do so), for any reason, clarify, add to, modify or otherwise amend an RFP Document by issuing an Addendum.
- (b) Each Addendum will be issued to all Respondents, save that:
 - (i) where, after the Closing Time, some but not all Respondents are short listed as Preferred Respondents, further Addenda might only be sent to the Preferred Respondents; and
 - (ii) where, after the Closing Time, a Preferred Developer is identified, further Addenda might only be sent to the Preferred Developer.
- (c) If applicable, an Addendum may include the text of the request for clarification or other question or matter which led to the Addendum being issued, but will not identify the Respondent who sought the clarification or raised the question.

8.3 Contact with VicTrack

- (a) The Respondent acknowledges and agrees that it will not, and it will ensure that its Associates and Members (and their Associates) do not, make contact with:
 - (i) any Governmental Agency or officer;
 - (ii) VicTrack or any of its Associates;
 - (iii) members of Parliament or their staff; or
 - (iv) the Transaction Advisor (other than pursuant to the process in Clause 8.1),to discuss any aspect of the Project or any matter relating to or arising out of its Proposal, except as provided for in these Terms and Conditions.
- (b) The Respondent acknowledges and agrees that it will not offer any inducement, fee or reward to VicTrack or any of its Associates.

8.4 Material Changes

- (a) The Respondent must notify VicTrack promptly in writing of any:
 - (i) material change to any:
 - (A) information contained in its Proposal;
 - (B) additional information submitted to VicTrack pursuant to this RFP; or
 - (C) information submitted to VicTrack in any interview, meeting or workshop conducted pursuant to the RFP;
 - (ii) event which may affect or have an impact on the financial position or capacity of the Respondent or the ability of the Respondent to continue to participate in the RFP Process or comply with these 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 Proposal.
- (b) Upon receipt of any written notification pursuant to Clause 8.4(a), VicTrack reserves the right to:

- (i) assess the change and terminate the Respondent's further participation in the RFP Process; or
- (ii) invite the Respondent to amend its Proposal accordingly.

8.5 Complaints

- (a) If any Respondent considers that the RFP Process conducted by VicTrack has breached any probity principles or a Respondent has any other complaint with the RFP Process, the Respondent must provide immediate notice of the alleged failure or breach in writing to VicTrack's General Counsel at generalcounsel@victrack.com.au. Notification under this Clause 8.5(a) must set out the failures or breaches and how they impact upon the Respondent's interests, any relevant background information and the outcome desired by the Respondent.
- (b) Delay of more than five (5) Business Days in notification of a probity issue or a complaint (after the Respondent first becomes aware of the issue or circumstances giving rise to the complaint) precludes a Respondent from relying upon or taking action based on the alleged failure or breach.

8.6 Negotiation of Project Development Agreement with the Preferred Respondent(s)

- (a) VicTrack may negotiate with one or more Preferred Respondents. A Preferred Respondent must negotiate in good faith and must not withdraw from negotiations without delivering written notice of its intention to withdraw to VicTrack.
- (b) Each Preferred Respondent must use its best endeavours to agree the terms of the Project Development Agreement and will not seek to negotiate terms of the Project Development Agreement which are inconsistent with its Proposal so as to be, in VicTrack's opinion, less favourable to VicTrack.
- (c) The selection of a Respondent as a Preferred Respondent does not constitute an acceptance of the Proposal submitted by the Preferred Respondent and is without prejudice to VicTrack's right to decline to enter into the Project Development Agreement, or to enter into the Project Development Agreement with a competing Respondent.

8.7 No requirements on VicTrack to return Proposals

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

8.8 Debrief

VicTrack will offer unsuccessful Respondents the opportunity to participate in a debrief session following the conclusion of the RFP Process. These sessions will take place no later than two months after the conclusion of the RFP Process. Respondents wishing to participate in a debrief session must submit a request in writing to the Transaction Advisor.

9 Respondent's warranty and acknowledgement

9.1 Respondent's warranty

By submitting a Proposal:

- (a) a Respondent will be taken to represent and warrant that:
 - (i) it has done all of the things mentioned in Clause 3.1;

- (ii) it prepared its Proposal based on its own investigations, interpretations, deductions, information and determinations;
 - (iii) it did not place any reliance upon the completeness, accuracy, adequacy or correctness of any of the documents, information or other things mentioned in Clause 2.5; and
 - (iv) its Proposal is accurate and complies in all respects with the RFP Documents (other than to the extent required for any alternative Proposal submitted in accordance with Clause 6.3) and the requirements of all applicable Laws;
- (b) a Respondent will be taken to have acknowledged and agreed (to the extent permitted by law) that neither VicTrack nor the Transaction Advisor, nor any of their respective Associates, has any Liability to the Respondent (whether in contract, in tort, under statute (to the extent permitted by law) or on any other basis) with respect to or as a result of or arising from:
- (i) any incompleteness or inadequacy of, or any inaccuracy or error in, or omission from; or
 - (ii) any use of or reliance by the Respondent upon,
any of the RFP Documents, any Background Information, written information or any oral information provided; and
- (c) a Respondent:
- (i) acknowledges and warrants to VicTrack and the Victorian Government, its employees and consultants that it has carried out all relevant investigations and has examined and acquainted itself with, and satisfied itself concerning the contents of this RFP and all information relevant to the risks, contingencies and other circumstances that could affect the Project;
 - (ii) acknowledges and warrants to VicTrack and the Victorian Government, its employees and consultants that all information provided by or on behalf of the Respondent in its Proposal is complete and accurate and that the Respondent has all the necessary experience, skills and resources to perform and carry out its obligations in accordance with this RFP, the Proposal and the Project;
 - (iii) warrants, in the event that it is submitting a Proposal as part of a consortium, that the lead Member is authorised to negotiate and act for it, and has authority to bind it and all other Members and confirms that it will advise VicTrack promptly in writing of any change to the composition of the consortium or the authority of the lead Member;
 - (iv) indemnifies VicTrack and the Victorian Government, its Associates, employees and consultants for any Liability which may be incurred or suffered by VicTrack and the Victorian Government, its Associates, employees or consultants as a consequence of the Respondent's failure to comply with the terms of this RFP or as a consequence of any error or omission in information contained in its Proposal or arising as a consequence of a breach of the warranties contained in this RFP;
 - (v) acknowledges that all descriptions, references to conditions, statements, estimates and projections contained in this RFP or in any document provided by VicTrack in relation to this RFP are given in good faith but may or may not be accurate;
 - (vi) acknowledges that this RFP may not contain all the information each Respondent may require in considering its Proposal;

- (vii) acknowledges that it must conduct its own independent analysis and investigation and rely solely on its own enquiries and inspections as to the significance, adequacy, currency, reliability and completeness of this RFP or any other information provided to it;
- (viii) acknowledges that VicTrack and its employees and consultants make no representation or warranty as to the significance, adequacy, accuracy, currency, reliability or completeness of this RFP or any other documents provided to a Respondent, and that this RFP does not purport to contain all information that an interested Respondent would desire, or require, to assess the opportunity to submit its Proposal;
- (ix) acknowledges that it will disclose in its Proposal (and be under a continuing obligation to disclose) any:
 - (A) litigation (threatened or actual) by or against any Governmental Agency or authority involving the Respondent or a Member of the Respondent; and
 - (B) legal convictions against the Respondent, related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) or any of their shareholders or directors;
- (x) apart from any existing conflict of interest advised in the Respondent's EOI response, no conflict of interest, including any perceived conflict of interest, exists concerning the Respondent or a related entity of the Respondent affecting the delivery of the Project should the Respondent be successful with its Proposal in response to this RFP;
- (xi) if, before finalisation of the RFP process a conflict of interest, including any perceived conflict of interest, arises concerning itself or a related entity, the Respondent will notify VicTrack immediately in writing of that conflict or risk of conflict;
- (xii) acknowledges that it will provide upon request, written agreement to probity investigations of any company or directors by the Victoria Police, the Australian Federal Police or the Australian Securities and Investments Commission;
- (xiii) acknowledges and warrants to VicTrack and the Victorian Government, their Associates, employees and consultants that it will not rely on any representation, document, arrangement or other conduct as adding to or amending the RFP except as provided expressly in this RFP and that, in the event of the Respondent being selected as the Preferred Developer, the relationship between VicTrack and the Preferred Developer will be solely governed by the RFP and any contractual documents entered into;
- (xiv) acknowledges and warrants to VicTrack and the Victorian Government, their Associates, employees and consultants that in submitting its Proposal, it will not rely upon any representation made by or on behalf of VicTrack, its Associates, employees or consultants but will rely entirely on its own enquiries and inspections; and
- (xv) warrants to VicTrack and the Victorian Government, their Associates, employees and consultants that it will make no Claim against VicTrack or the Victorian Government, their Associates, employees or consultants or any person involved in the RFP Process in relation to the selection of the Preferred Developer or any other matter in connection with the RFP or the selection process contemplated by the RFP.

9.2 Respondent's acknowledgement

By submitting a Proposal, a Respondent will also be taken to have acknowledged and agreed that in considering its Proposal and in entering into the Project Development Agreement with the Respondent (should that happen), VicTrack will be relying upon the representations and warranties given by the Respondent in these Terms and Conditions.

9.3 Proprietary Information

- (a) The Respondent warrants that it has the authority to grant the rights granted to VicTrack under Clause 9.3(c) and that exercise of those rights by VicTrack or any person authorised by VicTrack in accordance with, or as contemplated by, these Terms and Conditions will not infringe the intellectual property rights or other rights of any person.
- (b) The Respondent must indemnify VicTrack against any Liability or Claim arising from any breach of the warranties set out in Clause 9.3(a).
- (c) The Respondent grants, and will procure that each of its Members and its and their Associates with a relevant interest grants, to VicTrack and its Associates an irrevocable, perpetual, non-exclusive, transferable, free of charge licence to use, reproduce, develop, communicate or modify or sub-licence the whole or any part of any Proposal for the purposes of the RFP Process provided that, subject to these Terms and Conditions and the RFP Documents, VicTrack may not provide the whole or any part of any Proposal to a competing Respondent.
- (d) Without limiting the application of Clause 9.3(c), if the Respondent has been nominated as the Preferred Respondent, the Respondent also licenses VicTrack and its Associates to make publicly available:
 - (i) the broad concept plan, design documents and any other fly through sketches or drawings of any element of the Project;
 - (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 that Respondent's Proposal.

10 No contract and no obligation to consider or accept any Proposal

10.1 No Contract

By submitting a Proposal, a Respondent acknowledges that:

- (a) no contract exists or will arise between VicTrack and a Respondent in respect of the Project or any part thereof or the RFP Process unless and until VicTrack and the Preferred Developer enter into the Project Development Agreement;
- (b) the rights, powers and discretions given to VicTrack and the Transaction Advisor in these Terms and Conditions are not pursuant to any contract between VicTrack or the Transaction Advisor and the Respondent but rather are rights, powers and discretions that VicTrack and the Transaction Advisor have as part of the RFP Process;
- (c) before the Project Development Agreement is entered into, VicTrack may require that a conformed contract document be prepared that takes into account any changes to the RFP Documents and the outcomes of any negotiations during the RFP Process; and

- (d) no other document issued and no other representation made or conduct engaged in, by or on behalf of VicTrack (other than as set out in Clause 10.1(a)) will be deemed to be acceptance of a Respondent's Proposal or to create any contractual or other legal relationship between VicTrack and a Respondent or otherwise oblige VicTrack to enter into the Project Development Agreement with the Respondent.

10.2 No obligation

- (a) Without limiting a Respondent's obligations under Clauses 5 and 7, VicTrack and the Transaction Advisor have no contractual or other legal obligation to a Respondent arising out of this RFP Process with respect to:
 - (i) the consideration, evaluation, acceptance or rejection of any Proposal; or
 - (ii) the failure to consider, evaluate or accept any Proposal.
- (b) In particular, VicTrack and the Transaction Advisor are under no obligation to:
 - (i) receive, consider or evaluate any Proposal;
 - (ii) receive, consider or evaluate any Proposal in any particular way or within any particular time;
 - (iii) accept the lowest cost Proposal or any Proposal; or
 - (iv) give any reasons for any decision they make in respect of the RFP Process.

10.3 VicTrack not liable

- (a) Without limiting Clauses 10.2 or 12.1, in no circumstances will VicTrack or the Transaction Advisor or any of their respective Associates be liable to a Respondent or Member (whether a Respondent is successful or unsuccessful) whether in contract, tort (including negligence or misrepresentation), under statute (to the extent permitted by law) or otherwise, for any Liability incurred or suffered by any Respondent or Member:
 - (i) in responding to the RFP, and in submitting any Proposal or in otherwise acting in reliance upon these Terms and Conditions;
 - (ii) arising out of or in connection with:
 - (A) any Respondent's participation in or response to any discussions, negotiations, interviews, enquiries or requests for details or information whether before or after the Closing Time; or
 - (B) any Respondent's participation in the RFP Process generally; or
 - (iii) arising out of or in connection with the exercise, or failure to exercise, by VicTrack or the Transaction Advisor of any of their rights, powers and discretions under these Terms and Conditions, including rights under Clause 10.4.
- (b) Without limiting Clause 10.3(a), any Respondent that is not selected as the Preferred Developer will have no recourse against VicTrack or the Transaction Advisor or their respective Associates, in relation to any decisions of VicTrack or the Transaction Advisor:
 - (i) to select another Respondent as the Preferred Developer;
 - (ii) to not select any of the Respondents as the Preferred Developer; or
 - (iii) to not proceed with the Project.

10.4 Discretion of VicTrack

- (a) VicTrack (either itself or through the Transaction Advisor) reserves the right in its absolute discretion, and without limiting any other rights which VicTrack may have whether under these Terms and Conditions or otherwise, to do any one or more of the following without giving reasons:
- (i) withdraw any RFP;
 - (ii) amend these Terms and Conditions, any other RFP Documents, or the scope of work under the Project Development Agreement;
 - (iii) vary, suspend or terminate the RFP Process;
 - (iv) extend the Closing Time;
 - (v) change the Place for Lodgement;
 - (vi) reject or refuse to consider or evaluate any Proposal or all Proposals;
 - (vii) seek clarifications on any Proposal;
 - (viii) terminate at any time the further participation in the RFP Process by any Respondent;
 - (ix) reject or accept any Proposal notwithstanding whether such Proposal is the lower priced, higher ranked, or otherwise;
 - (x) award the Project to any Respondent, including a Respondent which did not have the highest ranked Proposal as against the Evaluation Criteria;
 - (xi) accept or reject the whole or any part of any Proposal to the extent, in the case of part-acceptance, that part of the Proposal is capable of such partial acceptance (whether a Conforming Proposal or an Associated Proposal);
 - (xii) consider and accept a Proposal regardless of whether:
 - (A) any Respondent or any of its Associates has breached these Terms and Conditions; or
 - (B) any Member of a competing Respondent has breached these Terms and Conditions;
 - (xiii) at any time, vary or alter any process or procedure regarding the consideration or the evaluation of any Proposal or Proposals (including the evaluation criteria);
 - (xiv) adopt different approaches with different Respondents;
 - (xv) require additional information or further offers from any one or more Respondent(s);
 - (xvi) negotiate on any aspect of a Proposal before accepting or rejecting any Proposal;
 - (xvii) invite best and final offers from any one or more Respondents;
 - (xviii) invite further or other persons to tender for the performance of the Project;
 - (xix) select a Respondent as a Preferred Respondent or Preferred Developer, or elect not to select any Respondent as a Preferred Respondent or Preferred Developer, or having selected a Respondent as a Preferred Respondent or Preferred Developer, terminate that selection and select one or more other Respondents as Preferred Respondent or Preferred Developer;

- (xx) negotiate with one or more Respondents and enter into the Project Development Agreement without prior notice to any other Respondent;
 - (xxi) not proceed with the Project;
 - (xxii) proceed with the Project on the basis of a different scope of work or on terms different from those stated in the RFP Documents or Project Development Agreement or change the procurement method of the Project (including public sector delivery) or any part of the Project in any way it sees fit;
 - (xxiii) negotiate with and enter into a contract with any person (including someone other than a Respondent) for the performance of work under the Project Development Agreement or any other work without prior notice to the Respondent;
 - (xxiv) allow any Respondent to clarify, alter, amend, add to or change its Proposal or Associates after the Closing Time, without notifying or offering the same opportunity to others;
 - (xxv) in evaluating any Proposal or selecting a Preferred Respondent or Preferred Developer, have regard to:
 - (A) VicTrack's and its Associates' knowledge and previous experience and dealings with any Respondent, Member or any of their respective Associates; or
 - (B) information concerning a Respondent, Member or any of their respective Associates which is in the public domain or which is obtained by VicTrack or its Associates through its or their own investigations;
 - (xxvi) hold discussions, interviews, meetings or workshops with any one or more Respondents at any time during the RFP Process;
 - (xxvii) issue Addenda or further Background Information;
 - (xxviii) suspend or terminate the Respondent's participation in the RFP Process if VicTrack forms the view that the Respondent or any of their Members or their respective Associates has breached these Terms and Conditions;
 - (xxix) waive any requirement or obligation under these Terms and Conditions; and
 - (xxx) take such other action as it considers, in its absolute discretion, appropriate in relation to the RFP Process.
- (b) No Respondent is entitled to enquire into the basis of VicTrack's decisions under Clause 10.4(a).
 - (c) To the extent permitted by law, Respondents will have no Claim against VicTrack or the Transaction Advisor arising out of VicTrack's or the Transaction Advisor's exercise, or failure to exercise, any rights or discretions under these Terms and Conditions.

11 Probity and competitiveness

- (a) By submitting a Proposal, the Respondent warrants that:
 - (i) the Respondent and each of its Members and each of their respective Associates are not a member of, or otherwise involved with, a competing Respondent in respect of the Project;
 - (ii) as at the Closing Time, no actual, potential or perceived probity issues (including any actual, potential or perceived conflicts of interest) exist or are likely to arise in respect of the Respondent or each of its Associates or its involvement in the

Project, including any relationships between the Respondent and a competing Respondent (including the existence of related parties, common directors, advisers or employees), other than those probity issues disclosed and described in its Proposal; and

- (iii) it will not place itself, and will procure that its Members and its and their Associates do not place themselves, in a position that may or does give rise to an actual, potential or perceived probity issue at any time during the RFP Process.
- (b) If any actual, potential or perceived probity issue arises, or appears likely to arise, including after lodgement of its Proposal, the Respondent must:
- (i) immediately notify VicTrack in writing as soon as such actual, potential or perceived probity issue becomes apparent to the Respondent and provide details of such probity issue; and
 - (ii) if the actual, potential or perceived probity issue arises prior to the lodgement of its Proposal, fully disclose and describe such probity issue in its Proposal.
- (c) If a notice is given under Clause 11(b)(i), VicTrack will, in its absolute discretion, decide on the appropriate course of action. The Respondent must take all steps required by VicTrack to prevent, end, avoid, mitigate, resolve or otherwise manage the actual, potential or perceived probity issue.
- (d) VicTrack may conduct checks and investigations to satisfy itself that there are no actual, potential or perceived probity issues which may preclude a person from becoming a Respondent or a Preferred Respondent (**Probity Check**).
- (e) The Respondent consents to such Probity Checks and investigations, agrees to procure the consents of its and its Members' directors and to procure the consents of such Associates as are requested by VicTrack, and as are required by Law to be obtained in connection with such Probity Checks and investigations. Such Probity Checks and investigations may include:
- (i) investigations into commercial structure, business and credit history;
 - (ii) prior contract compliance and performance;
 - (iii) any criminal records or pending charges;
 - (iv) interviews with any referees nominated; and
 - (v) research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation.
- (f) The Respondent acknowledges and agrees that VicTrack:
- (i) is not under any obligation to provide to the Respondent the results of any Probity Checks or investigations;
 - (ii) may take into account any matters revealed by any Probity Checks and investigations in evaluating any Proposal; and
 - (iii) may reject any Proposal, suspend or terminate the Respondent's participation in the RFP Process or take such other action as it considers appropriate, in its absolute discretion, in light of matters revealed by any Probity Checks and investigations.
- (g) Nothing in this Clause 11 detracts from or limits the Respondent's obligations or responsibilities for complying with all probity requirements which relate to the RFP Process.

- (h) The Respondent must ensure that each of its Associates complies with the requirements of this Clause 11 as though it were a Respondent.

12 Miscellaneous

12.1 Respondent bears costs

- (a) The Respondent bears entirely and exclusively all costs and expenses incurred in any way associated with developing, preparing and submitting its Proposal, including costs associated with the Respondent seeking clarification.
- (b) The Respondent acknowledges and agrees that under no circumstances will VicTrack reimburse any charges, costs, expenses or fees that may be incurred by a Respondent in submitting a Proposal.
- (c) Indemnity, rights held on trust and no fettering

12.2 Entire terms and conditions and Inconsistency

- (a) The terms and conditions governing this RFP Process are contained entirely in this RFP and the 'Confidentiality, Probity and Collusive Tendering Deed Poll' signed by the Respondent.
- (b) A Respondent must notify VicTrack in writing if the Respondent or a Member of the Respondent considers that there is any error or discrepancy in the 'Confidentiality, Probity and Collusive Tendering Deed Poll' or this RFP, as soon as reasonably practicable after discovering such error or discrepancy.
- (c) Following receipt of a notice pursuant to Clause 12.3(b), or if VicTrack otherwise discovers an ambiguity, discrepancy or inconsistency, VicTrack will direct the Respondent in writing as to how to resolve the ambiguity, discrepancy or inconsistency.

12.3 Goods and services tax

A Respondent must quote all prices exclusive of GST as well as providing a breakdown of the prices and rates to show the GST applicable to all prices and rates.

12.4 Governing law and jurisdiction

- (a) These Terms and Conditions and a Respondent's agreement to be bound by them, are governed by and are to be construed according to the laws of Victoria.
- (b) Each Respondent irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of Victoria (and the courts to which appeals from those courts may be made) and waives any right to object to any proceedings being brought in those courts.

12.5 Continuing obligations

The obligations of the Respondent under this RFP survive the termination, completion or expiry of the RFP Process.

13 Interpretation

In this RFP, including these Terms and Conditions:

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (b) where the Respondent comprises more than one person or is a consortium, the obligations and liabilities of the Respondent under the Terms and Conditions apply to the Respondent and each Member jointly and severally;
- (c) no rule of interpretation applies to the disadvantage of VicTrack on the basis that VicTrack put forward the Terms and Conditions;
- (d) 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.
- (e) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) "person" includes an individual, the estate of an individual, a corporation, a Government, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (h) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and in the case of a trustee, includes a substituted or an additional trustee;
- (i) a reference to a document (including the RFP Documents or any one of them) is to that document as varied, novated, ratified or replaced from time to time;
- (j) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (k) "includes" in any form is not a word of limitation;
- (l) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (m) a reference to a time is to the time in Melbourne, Victoria;
- (n) a reference to "\$" or "dollar" is to Australian currency; and
- (o) VicTrack may give, modify, withhold, withdraw, make, take or exercise any right, action, approval, consent, decision or discretion or do any other thing under the Terms and Conditions at VicTrack's sole and absolute discretion, and at any time.