AUSTRALIAN TRANSPORT SAFETY BUREAU (CTH) &
OFFICE OF TRANSPORT SAFETY INVESTIGATIONS (NSW) &
OFFICE OF THE CHIEF INVESTIGATOR, TRANSPORT SAFETY (VIC)

COLLABORATION AGREEMENT FOR:
RAIL SAFETY INVESTIGATIONS AND OTHER MATTERS
1. Parties


   Address: Level 2, 62 Northbourne Avenue, CANBERRA ACT 2601


   Address: Level 17, 201 Elizabeth Street, SYDNEY NSW 2000

1.3. The Chief Investigator, Transport Safety, established under the *Transport Integration Act 2010* (VIC), on behalf of the Crown in Right of *the State of Victoria*.

   Address: Level 6, 121 Exhibition Street, MELBOURNE VIC 3000.

2. Interpretation & Definitions

2.1. Refer to Schedule 1 for the Interpretation clauses and definitions for terms used in this Collaboration Agreement.

3. Purpose

3.1. The Agreement is intended to enhance the contribution all parties make to the national rail safety system without seeking to require an allocation of resources beyond what is available to each of the parties at the time of entering into this agreement.

3.2. The Agreement provides for a collaborative approach to conducting independent transport safety investigations and associated activities.

3.3. The Agreement fulfils commitments under the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform (the IGA) signed on 19 August 2011 by the Council of Australian Governments (COAG).

   3.3.1. Clause 22(a) of the IGA states that the parties agree to extend the role of the ATSB to operate as the enhanced national rail safety investigator.

   3.3.2. Clause 22(b) of the IGA states that the ATSB may use States’ existing investigation resources by agreement.

3.4. This document constitutes an agreement for the purposes of clause 22(b) of the IGA. The parties enter into the agreement in accordance with the objective set out in clause B2 of the IGA in order that the arrangements will be cooperative
and that transport safety investigations will be conducted in accordance with the *Transport Safety Investigation Act 2003* (CTH).

3.5. While it is intended that the parties will seek to fulfil their rail safety functions in New South Wales and Victoria in accordance with the terms of this Agreement, nothing prevents any party from electing to fulfil a function under its own governing legislation separately to the arrangements in this Agreement.

4. **Agreement**

**Construction**

4.1. The Agreement includes:

(a) this document and its schedules;
(b) Annexure A – Business Plan
(c) Annexure B – Risk Register
(d) Annexure C – Work Level Standards
(e) Annexure D – SIIMS Licence Agreement
(f) Annexure E – Property Register

If there is any ambiguity or inconsistency concerning the documents comprising the Agreement, the document appearing higher on the list will have precedence to the extent of any ambiguity or inconsistency.

**Enforceability**

4.2. The parties agree that the following clauses and annexures to this agreement will be legally enforceable:

(a) Clauses 8.19 to 8.25 (*Use of property*)
(b) Clause 11 (*intellectual property*);
(c) Annexure D (*SIIMS Licence Agreement*).

4.3. Clauses and annexures that are not referenced in clause 4.2 are not intended by the parties to be legally enforceable. However, this does not lessen the parties’ commitment to adhering to their terms.

**Relationship to the Transport Safety Investigation Act 2003**

4.4. This Agreement establishes an arrangement for the purposes of subsection 16A(2) of the *Transport Safety Investigation Act 2003*.

**Execution**

4.5. This Agreement may be executed in counterparts. All executed counterparts constitute one document.
5. Term

Commencement and Initial Term

5.1. The parties entered into this Agreement on January 2013. The agreement will commence on 20 January 2013.

5.2. The Agreement will remain in force for three years from the date of commencement in clause 5.1.

Review of Agreement

5.3. The parties agree to conduct a review of this Agreement at least six months prior to the expiry of the initial term.

5.4. As part of the review process, parties will:

   (a) evaluate the effectiveness of the Agreement and measure the performance of the parties in the delivery of the Collaboration Activities;
   
   (b) consider whether any changes are required to the Agreement.

Variation and Withdrawal from the Agreement

5.5. The Agreement may be varied by the written consent of the parties.

5.6. A party may withdraw from the Agreement after giving notice of intent in writing at least four weeks in advance to the other parties. Withdrawal may only occur after the dispute resolution clauses at clause 14 in this agreement have been invoked.

5.7. A party who withdraws from the Agreement remains responsible for fulfilling responsibilities with respect to the completion of Collaboration Activities commenced prior to their withdrawal.

6. Collaboration Activities

Activities

6.1. The parties agree to collaborate to carry out the following activities:

   (a) the investigation of rail transport safety matters under the Transport Safety Investigation Act 2003;
   
   (b) in connection with the performance of functions under the Transport Safety Investigation Act 2003, providing safety information and education to the rail industry and the public;
   
   (c) matters incidental to the activities outlined in paragraphs (a) and (b) above; and
   
   (d) any other matter which may be agreed in writing between the parties and is then Annexured to this Agreement.
Objective of the Collaboration Activities

6.2. The objectives of undertaking the Collaboration Activities are to:

(a) improve safety and public confidence in the rail mode of transport;
(b) fulfil the commitments of the Commonwealth, New South Wales and Victorian governments under the IGA;
(c) give regard to the strategic direction provided in accordance with section 12AE of the *Transport Safety Investigation Act 2003*.

Oversight

6.3. The parties agree that the designation of responsibility for making decisions with respect to carrying out Collaboration Activities under this agreement will be contained in the ATSB’s policies, procedures and guidelines. The parties agree that such designations will take into account the ATSB’s responsibilities for the administration and implementation of the TSI Act.

*Note:* Clauses 9.3 – 9.5 requires the ATSB to consult with the State Investigation Authorities on the ATSB’s policies, procedures and guidelines applicable to carrying out the Collaboration Activities under this Agreement.

6.4. The parties agree to commit to regular meetings, and discussions, between personnel at appropriate levels from the respective parties, to determine priorities and other matters in relation to the Collaboration Activities, including:

(a) developing Business Plans;
(b) reviewing investigations;
(c) briefing Ministers;
(d) disseminating information to the industry and the public;
(e) reviewing and changing policies, procedures and guidelines;
(f) managing human, financial and other resources.

Business Plan for Carrying out Collaboration Activities

6.5. Prior to the beginning of each financial year, during the term of this Agreement, the ATSB will develop a Business Plan in consultation with the State Investigation Authorities which will outline the proposed Collaboration Activities in each Authority’s jurisdiction for the relevant financial year.

6.6. The expectations in the Business Plan must be reasonable having regard to the commitment of resources identified in clause 6.9 – 6.11 and the Financial Responsibilities of the parties outlined in Part 6 of the IGA.

6.7. The parties will have regard to the Business Plan when undertaking or proposing to undertake Collaboration Activities under this Agreement.

6.8. The Business Plan for each financial year will form an Annexure to this Agreement.
Resources for Carrying out Collaboration Activities

6.9. For the purpose of carrying out Collaboration Activities, each party agrees to maintain, as a minimum, a proportional commitment of human and financial resources, and other assets, that are reasonably commensurate with the party’s allocation of resources and assets towards its rail safety functions in New South Wales and Victoria prior to entering into this Agreement.

6.10. While retaining control over its own resources and assets, the parties agree that these resources and assets will be made available in accordance with all reasonable requests of another party for the purpose of achieving the objectives of the Collaboration Activities.

6.11. Requests made by one party for another party’s resources to be made available for the purpose of carrying out Collaboration Activities under this Agreement will be reasonable having regard to:
(a) each party’s commitment of resources in clause 6.9;
(b) each party’s financial responsibilities in Part 6 of the IGA;
(c) clause 22 of the IGA;
(d) schedule B to the IGA;
(e) the objectives of this Agreement;
(f) the applicable Business Plan;
(g) the competing priorities of each party.

Use of Resources in a Foreign Jurisdiction

6.12. The State Investigation Authorities acknowledge that there may be occasions under this Agreement where there is a requirement for it to commit resources and assets to be used in a foreign jurisdiction. A State Investigation Authority will not unreasonably withhold permission for their resources and assets to be used in a foreign jurisdiction in the interests of fulfilling the objectives of the Collaboration Activities.

6.13. When considering whether it is reasonable to withhold permission for its resources to be used in a foreign jurisdiction, a State Investigation Authority may take into account whether the necessary travel and accommodation costs associated with its involvement will be recompensed as well as any other competing priorities.

Transparency and Keeping of Accounts

6.14. The parties agree to provide transparency with respect to available resourcing and costs of contribution to the Collaboration Activities.

Risk Management of Collaboration Activities

6.15. In carrying out the Collaboration Activities, each party agrees to apply and comply with AS/NZ ISO 31000:2009, Risk Management – Principles and guidelines or any successor standard.
6.16. The parties agree to develop a Risk Register to address the types of Collaboration Activities proposed to be undertaken in accordance with this Agreement. The parties agree to update the Risk Register as required throughout the term of this Agreement.

6.17. Risk Management issues specific to the Collaboration Activities will be managed in accordance with the Risk Register.

7. Joint Promises

7.1. Each party will:
   (a) diligently conduct its part of the Collaboration Activities and observe and perform its respective obligations and commitments set out in this Agreement;
   (b) not unreasonably create any delay in the performance of Collaboration Activities;
   (c) act reasonably and in good faith in performing its obligations under this Agreement;
   (d) ensure its officers, employees, agents and subcontractors have the training and skills to effectively contribute to relevant Collaboration Activities and, where relevant to their duties, meet the requirements of the Work Level Standards at Annexure C to this Agreement;
   (e) ensure that non investigation staff involved in carrying out Collaboration Activities meet the performance standards expected of a person usually occupying the position;
   (f) use reasonable efforts to ensure that its officers, employees, agents, subcontractors, and other representatives, involved in any way with the Collaboration Activities, give full force and effect to the provisions of this Agreement.
   (g) ensure that each of them, its officers, employees, agents and subcontractors comply with all relevant laws in connection with this Agreement.

8. Commitments of the State Investigation Authorities

Status of officers, employees, agents and subcontractors

8.1. The State Investigation Authorities agree, where the ATSB requests one of them to do so, to have their respective officers, employees, agents and subcontractors delegated powers and functions under the Transport Safety Investigation Act 2003 for the purpose of carrying out Collaboration Activities under this Agreement.
8.2. To avoid doubt, arrangements under this Agreement do not create a relationship of employment between the ATSB and a State Investigation Authority’s officers, employees, agents and subcontractors.

8.3. The State Investigation Authorities will remain responsible to their respective officers, employees, agents and subcontractors with respect to any rights or obligations arising out of the engagement of those persons.

Work Level Standards
8.4. In order to fulfil its promise under clause 7.1(d) each State Investigation Authority will notify the ATSB of the equivalent level of each of its investigator qualified officers, employees, agents or subcontractors under the Work Level Standards in Annexure C (to the extent applicable).

8.5. Notice should be provided to the ATSB’s representative in Schedule 2.

Representation
8.6. The State Investigation Authorities must use all reasonable means to ensure their respective officers, employees, agents or subcontractors do not represent themselves as being an officer or employee of the Commonwealth.

8.7. While undertaking activities in accordance with this Agreement, the State Investigation Authorities, and their respective officers, employees, agents and subcontractors, will retain their own identity. However, where the Policies and Procedures provide for it, officers, employees, agents and subcontractors of the State Investigation Authorities may represent themselves as authorised to carry out the activities on behalf of the ATSB.

Executing Instruments
8.8. The State Investigation Authorities agree to use all reasonable means to have their respective officers, employees, agents and subcontractors sign, execute, or otherwise deal, with any instrument under the TSI Act the ATSB requests to give effect to the carrying out of Collaboration Activities under this Agreement.

Policies, Procedures and Guidelines
8.9. The State Investigation Authorities will act in accordance with policies, procedures and guidelines of the ATSB applying to the Collaboration Activities. The State Investigation Authorities must use all reasonable means to ensure their respective officers, employees, agents and subcontractors act in accordance with the applicable policies, procedures and guidelines.

Management of Records
8.10. The State Investigation Authorities agree to comply with the Commonwealth Archives Act 1983 with respect to the creation, storage and disposal of records created or obtained in the course of carrying out Collaboration Activities. The
State Investigation Authorities will use all reasonable means to ensure their respective officers, employees, agents and subcontractors comply with the requirements of the Act, and do anything required to ensure the Commonwealth is able to comply with its obligations.

8.11. The State Investigation Authorities agrees to use the ATSB’s Safety Investigation Information Management System for the storage of records as outlined in manuals authorised by the ATSB.

External Requests for Documents or Other Material related to Collaboration Activities

8.12. Where the Commonwealth receives a request from a person (other than from one of the parties to this agreement) for a document or other material obtained or generated as a result of engaging in Collaboration Activities, and a State Investigation Authority has possession of the document or material object, the State Investigation Authority agrees to promptly provide the document or other material object to the Commonwealth.

8.13. Where a State Investigation Authority receives a request for a document or other material obtained or generated as a result of engaging in Collaboration Activities under this Agreement, the State Investigation Authority agrees to do everything it reasonably can to have the request dealt with by the Commonwealth under applicable Commonwealth laws.

Note: for the purposes of clauses 8.12 and 13 a request for a document or material object includes a request made in accordance with applicable freedom of information laws, a demand under legislation, a court order or subpoena.

8.14. Where a request for a document or other material is transferred to the Commonwealth, the State Investigation Authority who transferred the request agrees to provide all reasonable cooperation and support to respond to the Commonwealth to assist with responding to the request.

8.15. The State Investigation Authority agrees to use all reasonable means to ensure its officers, employees, agents and subcontractors provide cooperation and support in accordance with clause 8.14.

Assistance with Court and Tribunal Proceedings

8.16. Where persons other than the parties to this agreement initiate proceedings in a court or tribunal that affect, or are affected by, the carrying out of Collaboration Activities, a State Investigation Authority who is, or has been, involved in the Collaboration Activity agrees to provide all reasonable cooperation or support to the Commonwealth where there is a need to engage with those proceedings.

8.17. The State Investigation Authority agrees to use all reasonable means to ensure its officers, employees, agents and subcontractors provide cooperation and
support in accordance with clause 8.15. This includes appearing as a witness where required in the relevant court or tribunal proceedings.

**Privacy**

8.18. While carrying out Collaboration Activities, the State Investigation Authorities agree to comply with, and use all reasonable means to ensure their respective officers, employees, agents and subcontractors comply with, the Commonwealth *Privacy Act 1988* and do (or refrain from doing) anything required to ensure that the Commonwealth is able to comply with its obligations under the Act.

**Commonwealth provided Premises, Facilities and Property**


8.20. Annexure E is a register of all premises, facilities and property provided by the Commonwealth to each of the State Investigation Authorities. The register may be updated at any time by the Commonwealth. The Commonwealth must notify the State Investigation Authority when an update is made.

8.21. When accessing any Commonwealth premises, facility or property, the State Investigation Authorities agree to comply with any security and safety requirements notified by the Commonwealth or of which a State Investigation Authority is, or should reasonably be, aware. The State Investigation Authorities must use all reasonable means to ensure that their respective officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

8.22. The State Investigation Authorities must, when using Commonwealth provided premises, facilities or property comply with all reasonable directions of the Commonwealth, and act consistently with behaviours set out in section 13 of the *Public Service Act 1999* (CTH). The State Investigation Authorities must use all reasonable means to ensure that their respective officers, employees, agents and subcontractors are aware of, and comply with, such directions and act consistently with the behaviours set out in section 13 of the *Public Service Act 1999*.

8.23. The State Investigation Authorities must ensure that any premises, facilities or property (including security-related devices and clearances) provided by the Commonwealth for the purpose of this Agreement are protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and returned as directed by the Commonwealth.
8.24. The State Investigation Authorities will notify the ATSB in writing as soon as practicable after becoming aware that any Commonwealth premises, facilities or property is lost, destroyed, damaged, defective or deficient.

8.25. Each State Investigation Authority will be separately liable for loss or destruction of, or damage to, Commonwealth premises, facilities or property being occupied or used by the State Investigation Authority. Liability does not extend to loss, destruction or damage caused by any negligent act or omission of the Commonwealth, Commonwealth representative or officers, employees or agents of the Commonwealth.

Audit

8.26. The parties agree to provide each other with assistance with respect to any reasonable request associated with carrying out Collaboration Activities to participate in:
(a) an internal audit program of a party;
(b) an audit conducted by a Commonwealth or State Government body with statutory authority to conduct the audit.

9. Commitments of the Australian Transport Safety Bureau

Acknowledgement of State Investigation Authority Work

9.1. The ATSB will acknowledge the work of the State Investigation Authorities in carrying out activities under this Agreement where that work will result in an official publication.

Safety Investigation Information Management System

9.2. The ATSB will provide the State Investigation Authorities with access to and use of the ATSB’s Safety Investigation Information Management System in accordance with the Licence Agreement at Annexure D.

Policies, Procedures and Guidelines

9.3. The ATSB will develop and maintain the policies, procedures and guidelines applicable to carrying out the Collaboration Activities under this Agreement.

9.4. The ATSB will consult the State Investigation Authority on the ATSB’s policies, procedures and guidelines applicable to carrying out the Collaboration Activities under this Agreement.

9.5. The ATSB will make copies of the policies, procedures and guidelines available to officers, employees and subcontractors of State Investigation Authorities engaged in carrying out Collaboration Activities.

Access to Commonwealth legislation and guidance material

9.6. The ATSB will make available other Commonwealth legislation and guidance material to officers, employees, agents and subcontractors of the State
Investigation Authorities identified as applying to the carrying out of Collaboration Activities.

**Provision of Commonwealth Property and Services**

9.7. The ATSB will provide the State Investigation Authorities the use of the Commonwealth premises, facilities and property contained in Appendix E.

9.8. The ATSB will provide the State Investigation Authorities access to support services indicated as available in Appendix E for maintaining the premises, facilities and property provided by the ATSB in good and serviceable mechanical repair, working order and condition.

9.9. The cost of providing the support services in clause 9.7 will be borne by the ATSB unless the services are required in response to a matter for which the State Investigation Authority is liable under clause 8.25.

**Training**

9.10. Where the ATSB is providing training courses to its officers or employees, relevant to carrying out Collaboration Activities under this Agreement, using its own personnel and facilities, the ATSB will make these training courses available to State Investigation Authority officials, employees, agents and subcontractors without charge.

9.11. Where the ATSB is providing training courses to its officers or employees relevant to carrying out activities under this Agreement, using outsourced personnel and/or facilities, it will advise the State Investigation Authority and seek to make places available for State Investigation Authority officials and employees. The State Investigation Authority may elect to have its officials or employees fill the positions at its own cost.

**10. Procurement**

**Notices**

10.1. Commonwealth Government Agencies are subject to a number of specific requirements, which support internal and external scrutiny of its tendering and contracting processes. These include:

(a) the requirement to publish details of its agreements, Australian Government contracts and standing offers with an estimated liability of $10,000 or more on AusTender; and

(b) the requirement to report a list of contracts valued at $100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts.

10.2. Parties also note that the Commonwealth Parliament and its committees have the power to require the disclosure of Commonwealth Government contracts and contract information to enable them to carry out their functions.
10.3. The parties agree to comply with any applicable State, Territory or Commonwealth government arrangements or processes in relation to the disclosure of contracts and contract information.

10.4. Each of the parties agrees not to commit another party to an obligation in relation to the procurement of goods or services without that party’s permission.

**Application of Commonwealth Procurement Guidelines**

10.5. This Agreement is an agreement to collaborate only, and as such the mandatory procurement procedures set out in the Commonwealth Procurement Guidelines do not apply.

10.6. Each party will comply with the legislation and procurement policies and guidelines relevant to their respective jurisdiction for the procurement of goods or services that may need to be acquired for a Collaboration Activity.

**11. Intellectual Property**

11.1. Nothing in this Agreement affects the ownership of Intellectual Property prior to the commencement date of this Agreement.

11.2. Subject to clause 11.1 ownership of intellectual property created or acquired by either party in the performance of the Collaboration Activities vests in the Commonwealth.

11.3. The Commonwealth may grant a licence to the other parties on the following terms with respect to the Intellectual Property in any materials referred to in clause 11.2:

   a perpetual, royalty-free, non-exclusive, worldwide licence to use the Intellectual Property and all material in which the Intellectual Property subsists for the purpose of achieving objectives related to this Agreement.

11.4. The Commonwealth will not unreasonably refuse to grant a licence in accordance with clause 11.3.

11.5. The parties may agree terms for the licence other than those in clause 11.3.

11.6. The parties agree not to commercially exploit Intellectual Property the subject of clause 11.3 without the prior written consent of the party in whom the intellectual property rights are vested.

**12. Insurance**

12.1. The parties will each obtain and maintain such insurances, and on such terms and conditions, as a Commonwealth or State Government agency would
normally have when carrying out the types of activities contemplated by this Agreement.

13. Third Party Liability

13.1. The parties agree that any liability owed to a third party that arises as a consequence of this Agreement will be governed by the arrangements for managing liability as specified in the Risk Register, guided by the general principle that the party which is in the best position to manage the risk of liability arising should bear primary responsibility for such liability.

14. Dispute Resolution

Objective

14.1. The parties agree to use reasonable efforts to resolve, by negotiation, any problem that arises among them (Dispute). A party will not withdraw from this Agreement or a Collaboration Activity until the following process has been exhausted and, in the case of a Dispute in respect of a Collaboration Activity, until any process in the Collaboration Agreement has been followed.

Notification

14.2. If a dispute arises under this Agreement, or in undertaking a Collaboration Activity, which cannot be resolved at an operational level, a party concerned about the dispute may notify the other relevant party or parties as applicable.

Resolution by Management Representative

14.3. Management representatives of each of the dispute parties will endeavour in good faith to agree upon a resolution.

Continued Performance

14.4. To the extent possible, the parties agree to continue to perform their respective obligations under this Agreement or a Collaboration Activity pending the resolution of a dispute.

15. Other Matters

Notice

15.1. A party notifying or giving notice under this Collaboration Agreement will give notice in writing, addressed to the person designated in Schedule 2 for receiving notices, and left at or sent by prepaid post to that address.

15.2. A notice given in accordance with clause 15.1 is received if left at the recipient’s address, on the date of delivery, and if sent by prepaid post, 7 days after the date of posting.
Legal Representation and Legal costs

15.3. Subject to clause 15.4, the parties agree to bear their own legal and other costs and expenses of, and incidental to, the preparation, execution and completion of this Agreement.

15.4. The parties agree that where a matter arises in relation to carrying out a Collaboration Activity that requires the contracting of legal services for advice and/or representation in order to resolve the matter, the costs will be borne:

(a) Where responsibility for the matter has been allocated to a party in a risk assessment prepared in accordance with clauses 6.16 to 6.18, the party to whom the responsibility is allocated; or

(b) In any other case, the party who is best placed to manage the risks associated with the matter that has arisen.

15.5. Matters requiring legal advice and/or representation will be handled in a manner that adheres to the requirements of the Legal Services Directions 2005 (CTH).

Governing law

15.6. The laws of the Australian Capital Territory apply to this Agreement.