

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

- 1.1. *The Commonwealth Government of Australia* as represented by the Australian Transport Safety Bureau (ATSB).

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

- 1.2. *The State Government of New South Wales* as represented by the Chief Investigator of the Office of Transport Safety Investigations (OTSI).

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 5, 1 Spring 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.

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).

- 3.4. 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 – Investigation work flow: responding to incidents, reviewing reports, publishing reports and other matters.
- (e) Annexure D – SIIMS Licence Agreement
- (f) Annexure E – Property Register

Other Annexures the parties agree in writing will form part of this Agreement.

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 8.16 to 8.28 (**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 the date the last person signed. The agreement is taken to have commenced on 14 November 2019.
- 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 consistent with the functions clause in section 12AA of the TSI Act:
- (a) the independent investigation of rail transport safety matters (including data analysis and research) under the TSI Act;
 - (b) identifying factors that:

- i. contribute, or have contributed, to transport safety matters; or
 - ii. affect, or might affect transport safety;
 - (c) communicating contributing and other safety factors to the transport industry and the public
 - (d) reporting publicly on those investigations
 - (e) conducting public educational programs about matters relating to transport safety;
 - (f) matters incidental to the activities outlined in paragraphs (a) and (e) above; and
 - (g) any other matter which may be agreed in writing between the parties and is then Annexured to this Agreement.
- 6.2. The parties will have regard to the available resourcing of each of the respective parties when discussing commitments to the Collaboration Activities.

Objective of the Collaboration Activities

- 6.3. 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

- 6.4. 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.

- 6.5. 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

- 6.6. 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.
- 6.7. The expectations in the Business Plan must be reasonable having regard to the commitment of resources identified in clause 6.11 – 6.13 and the Financial Responsibilities of the parties outlined in Part 6 of the IGA.
- 6.8. The parties will have regard to the Business Plan when undertaking or proposing to undertake Collaboration Activities under this Agreement.
- 6.9. The Business Plan for each financial year will form an Annexure to this Agreement.

Evaluation of Performance against Collaboration Activities

- 6.10. The parties will conduct an annual performance review against actions arising from the Collaboration Activities and other activities under the Business.

Resources for Carrying out Collaboration Activities

- 6.11. 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.
- 6.12. 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.
- 6.13. 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 6.11;
 - (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

- 6.14. 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.
- 6.15. 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

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

Risk Management of Collaboration Activities

- 6.17. In carrying out the Collaboration Activities, each party agrees to apply and comply with AS/NZ ISO 31000:2018, Risk Management – Principles and guidelines or any successor standard.
- 6.18. 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.
- 6.19. 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;

- (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.

Representation

- 8.4. The parties 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 one of the other parties.
- 8.5. 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

- 8.6. 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

- 8.7. 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

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.

- 8.8. 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

- 8.9. 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.
- 8.10. 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.

- 8.11. 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.
- 8.12. 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

8.13. 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.

8.14. 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 8.13. This includes appearing as a witness where required in the relevant court or tribunal proceedings.

Privacy

8.15. 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

8.16. Provision of Commonwealth premises, facilities and property to the State Investigation Authorities for use in carrying out Collaboration Activities is at the discretion of the Commonwealth. Commonwealth premises, facilities and property remain the Commonwealth's.

8.17. 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.

8.18. 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.

8.19. 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*.

- 8.20. 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.
- 8.21. 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.
- 8.22. 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.

State Investigation Authority Premises, Facilities and Property

- 8.23. Provision of State Investigation Authority premises, facilities and property to the Commonwealth (ATSB) for use in carrying out Collaboration Activities is at the discretion of the State Investigation Authority. State Investigation Authority premises, facilities and property remain the State Investigation Authority's.
- 8.24. When accessing any State Investigation Authority premises, facility or property, the Commonwealth agrees to comply with any security and safety requirements notified by the State Investigation Authority or of which the Commonwealth is, or should reasonably be, aware. The Commonwealth 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.
- 8.25. The Commonwealth must, when using State Investigation Authority provided premises, facilities or property comply with all reasonable directions of the State Investigation Authority, and act consistently with behaviours set out in section 13 of the *Public Service Act 1999* (CTH). The Commonwealth must use all reasonable means to ensure its 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*.
- 8.26. The Commonwealth must ensure that any premises, facilities or property (including security-related devices and clearances) provided by the State Investigation Authority 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 State Investigation Authority.

- 8.27. The Commonwealth will notify the State Investigation Authority in writing as soon as practicable after becoming aware that any State Investigation Authority premises, facilities or property is lost, destroyed, damaged, defective or deficient.
- 8.28. The Commonwealth will be liable for loss or destruction of, or damage to, State Investigation Authority premises, facilities or property being occupied or used by the Commonwealth. Liability does not extend to loss, destruction or damage caused by any negligent act or omission of the State Investigation Authority, State Investigation Authority representative or officers, employees or agents of the State Investigation Authority.

Audit

- 8.29. 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 9.8 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 8.22.

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

- 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. Conflict of Interest

- 15.1. The parties agree to provide for transparency in identifying and managing conflicts of interest, both real and perceived. The parties will meet standards consistent with those in the Commonwealth *Public Governance Performance and Accountability Act 2013* and *Public Service Act 1999* for identifying and managing material personal interests and conflicts of interest.
- 15.2. The parties will agree and document the means by which those standards are met.

16. Other Matters

- 16.1. 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 sent via email or left at or sent by prepaid post to the postal address.
- 16.2. 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


- 16.3. 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.
- 16.4. The parties agree that where a matter arises in relation to carrying out a Collaboration Activity that requires the use of legal services (in-house or externally) 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 6.17 to 6.19, the party to whom the responsibility is allocated;
 - (b) For an investigation in a state's territory, the relevant State Investigation Authority; or
 - (c) In any other case, the party who is best placed to manage the risks associated with the matter that has arisen.
- 16.5. 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

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

Executed as an Agreement

Signed for the Commonwealth of Australia
represented by the Australian Transport
Safety Bureau by an authorised officer in the
presence of




Signature of Witness

Patrick Hornby

Name of Witness (Print)

Manager Legal & Governance

Office Held (Print)

 21/2/2020

Signature of Officer


GREG HOOD

Name of Officer (Print)

CHIEF COMMISSIONER

Office Held (Print)

Signed for the State of New South Wales
represented by the Office of Transport Safety
Investigations by the authorised officer in the
presence of




Signature of Witness

Terence Zachary

Name of Witness (Print)

MANAGER BUSINESS SERVICES

Office Held (Print)

 23.1.2020

Signature of Officer

MICK QUINN

Name of Officer (Print)

CHIEF INVESTIGATOR OTSI

Office Held (Print)

Signed for the State of Victoria represented
by the Chief Investigator Transport Safety by
the authorised officer in the presence of




Signature of Witness

MS LEE CHONG

Name of Witness (Print)

OFFICE MANAGER

Office Held (Print)



Signature of Officer

Christopher McKeown

Name of Officer (Print)

Chief Investigator Transport

Office Held (Print) Safety

INTERPRETATION

In this Collaboration Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to this Collaboration Agreement, and a reference to this Collaboration Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to time is to the time in the place where the obligation is to be performed;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (i) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day; and
- (j) headings are for ease of reference only and do not affect interpretation.
- (k) Notes are for guidance purposes only and do not form part of the Agreement

DEFINITIONS

ATSB's policies, procedures and guidelines means the Policies, Procedures and Guidelines comprising the Quality System stored on the ATSB's intranet.

Australian Transport Safety Bureau (ATSB) means the ATSB established in accordance with section 12 of the TSI Act.

Business Plan means a Business Plan developed or being developed to be inserted into Annexure A to this Agreement in accordance with clauses 6.6 to 6.9.

Chief Investigator of the Office of Transport Safety Investigations (OTSI) is the Chief Investigator appointed under section 45 of the *Transport Administration Act 1988* (NSW).

Chief Investigator, Transport Safety (CITS) is the office established in accordance with section 179 of the *Transport Integration Act 2010* (VIC).

Collaboration Activities refers to the activities detailed at clause 6 which are the subject of this Agreement.

Foreign jurisdiction means:

- (a) in relation to OTSI a jurisdiction within or outside Australia that is geographically outside New South Wales' State borders;
- (b) In relation to CITS a jurisdiction within or outside Australia that is geographically outside Victoria's State borders.

IGA means the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform, signed by the Council of Australian Governments (COAG) at its meeting on 19 August 2011.

Intellectual Property means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

Risk Register means a Risk Register developed or being developed to be inserted into Annexure B to this Agreement in accordance with clauses 6.17 to 6.19.

SIIMS Licence Agreement means the licence agreement at Annexure D.

State Investigation Authority is a reference to either OTSI or CITS.

State Investigation Authorities is a reference to OTSI and CITS jointly.

the parties is a reference to the ATSB, OTSI and CITS jointly.

Property Register means the register of property provided by the ATSB to State Authorities at Annexure D.

PERSONS FOR RECEIVING NOTICES

Australian Transport Safety Bureau	<p>Nat Nagy Executive Director Transport Safety</p> <p>Email: Nat.Nagy@atsb.gov.au</p> <p>Postal: PO Box 967 Civic Square ACT 2608</p>
Office of Transport Safety Investigations	<p>Michael Quinn Chief Investigator</p> <p>Email: mick.quinn@otsi.nsw.gov.au</p> <p>Postal: PO Box A2616 Sydney South NSW 1235</p>
Office of the Chief Investigator Transport Safety	<p>Chris McKeown Chief Investigator Transport Safety</p> <p>Email: christopher.mckeown@chiefinvestigator.vic.gov.au</p> <p>Postal: PO Box 2797 Melbourne VIC 3001</p>

SIIMS Licence Agreement

Parties to this Licence Agreement

This Licence Agreement is made on the same day the covering Collaboration Agreement between the ATSB, OTSI and CITS commences. The Licence Agreement is between:

- (a) **Commonwealth of Australia** represented in this Licence Agreement through its Australian Transport Safety Bureau (ATSB) having its principal office at 62 Northbourne Avenue, Canberra 2601 in the Australian Capital Territory ABN 65 061 156 887 (the ATSB),

And:

- (b) **The State Government of New South Wales** as represented by the Chief Investigator of the Office of Transport Safety Investigations (OTSI) having its principal office at Level 17, 201 Elizabeth Street, SYDNEY NSW 2000
- (c) The Chief Investigator, Transport Safety, established under the *Transport Integration Act 2010* (VIC), on behalf of the Crown in the Right of the **State of Victoria** having its principal offices at Level 6, 121 Exhibition Street, MELBOURNE VIC 3000.

Purposes of this Licence Agreement

- A. The State Investigation Authorities requires the use of an intranet enabled data submission and retrieval system for the purpose of managing information it obtains and generates in the course of performing Collaboration Activities under the Collaboration Agreement between the Parties.
- B. The ATSB owns the Intellectual Property in an intranet enabled data submission and retrieval system called Safety Investigation Information Management System (SIIMS).
- C. The ATSB agrees to provide the State Investigation Authorities with a Licence to use SIIMS as an information management system for performing Collaboration Activities.

1. Definitions

- 1.1 In this Licence Agreement, unless the contrary intention appears:

Collaboration Agreement means the Collaboration Agreement between the ATSB, OTSI and CITS to which this Licence Agreement forms Annexure D

Commencement Date means the date of commencement of the covering Collaboration Agreement;

Exploit means to manufacture, sell, hire, distribute, give away, or otherwise commercialise the Derivative Product or to provide a service, incorporating the Derivative Product.

Intellectual Property includes all copyright, and all rights in relation to registered and unregistered trademarks (including service marks), registered designs and confidential

information (including trade secrets and know-how), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and

Licenced Material means the Intellectual Property in the Software comprising the SIIMS as well as any Updates. However, the Licenced Material does not include any product licenced by the ATSB by a third party that was used to create SIIMS, including:

- (a) products comprising any versions of the Microsoft .Net framework;
- (b) products comprising any versions of Microsoft Office Sharepoint Server;
- (c) products comprising any versions of Microsoft SQL Server; or
- (d) products comprising any versions of the ComponentArt UI Framework for .NET.

The Software comprising SIIMS and any updates means the computer program (including the source code) and related user and technical documentation.

Personnel means in relation to either the ATSB or the State Investigation Authorities, their respective officers employees, agents or contractors.

SIIMS means the "Safety Investigation Information Management System" which is the intranet enabled data submission and retrieval system designed to capture information about safety related occurrences for aviation, marine and rail which features:

- (a) data entry and data models;
- (b) analysis of transport safety trends;
- (c) support to manage investigations as projects;
- (d) support for case managing investigation documents and evidence;
- (e) improved access to information for internal audiences.

State Investigation Authorities means OTSI and CITS

Third Party means a person other than:

- (a) the ATSB and its Personnel; or
- (b) the Authority and its Personnel.

Updates means any revised version of SIIMS which is made available by the ATSB to the State Investigation Authorities.

2. Provision of Licenced Material

- 2.1 The ATSB will provide the State Investigation Authorities with one copy of the Licenced Material, in a reproducible format, following the commencement date.

3. Grant of licence

The ATSB grants to the State Investigation Authorities (without cost) from the commencement date an irrevocable, royalty-free, non exclusive, non-transferable licence to use the Licenced Material.

4. Restrictions on use

The State Investigation Authorities agree, except to the extent permitted by this Licence Agreement or applicable Law:

- (a) not to sell, rent, lease, licence, sublicense, display, time share or otherwise transfer the Licenced Material to, or permit the use of the Licenced Material by, any Third Party;
- (b) not to remove, obscure or interfere with any copyright statement, acknowledgment, attribution, trade mark, warning or disclaimer statement affixed to, incorporated in or otherwise applied in connection with the Licenced Material;
- (c) to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Licenced Material; and
- (d) to require any State Investigation Authority Personnel to whom the Licenced Material is made available to also comply with the requirements of this clause.

5. Use by the Authority's contractors

The State Investigation Authorities may permit its contractors to use the Licenced Material but only if:

- (a) the Authorities have appropriate arrangements in place with their contractors to require their compliance with the terms of this Licence Agreement;
- (b) the Authorities retain responsibility for the use of the Licenced Material in accordance with the terms of this Licence Agreement.

6. Intellectual Property rights in the Licenced Material

- 6.1 The State Investigation Authorities acknowledge that all Intellectual Property rights in the Licenced Material remains vested in the ATSB, and that all rights not expressly granted to the Authorities under this Licence Agreement are reserved.

7. Intellectual Property warranty of Third Parties

- 7.1 The ATSB will use its reasonable endeavours to ensure that the rights granted under this Licence for the Licenced Material do not infringe the Intellectual Property rights of any person. If the Intellectual Property rights of a person are so infringed, the ATSB may modify or adapt the Licenced Material so that the infringement ends.
- 7.2 If the State Investigation Authorities become aware of any potential or actual infringement of Third Party Intellectual Property rights in relation to either the Licenced Material, the Authorities must immediately notify the ATSB.

8. Product warranty and Precautions

- 8.1 No warranties, express or implied, are given or offered for the Licenced Material except as provided in this clause 8. Where any statute implies into the Licence Agreement any condition or warranty, and that statute prohibits provisions excluding or modifying the application or exercise of, or liability under, such condition or warranty, such condition or warranty will be deemed to be included in the Licence Agreement. However, the ATSB's liability for any breach of such statutory condition or warranty will be limited, at its option, to replacement of the Licenced Material.
- 8.2 The State Investigation Authorities acknowledge that it has not relied on any representation made by the ATSB that has not been expressly stated in this Licence Agreement
- 8.3 The ATSB does not warrant the accuracy, completeness, currency or suitability of the Licenced Material for any purpose.
- 8.4 The State Investigation Authorities assume responsibility for selection of the Licenced Material to achieve any intended results, and for its installation and use.

9. Liability

- 9.1 The parties agree that issues pertaining to liability will be addressed in accordance with clause 13 of the covering Collaboration Agreement.

10. Ceasing to need the Licenced Material

If the State Investigation Authorities no longer requires the Licenced Material then they will return the Licenced Material to the ATSB or destroy the Licence Material and inform the ATSB accordingly.

11. Entire agreement / amendments

This Licence Agreement constitutes the entire agreement between the parties for the licensing of the Licenced Material, and supersedes all prior written and oral proposals, agreements and communications between the parties. No variation or amendment to this Licence Agreement will be effective unless it is in writing and signed by both parties.

12. No waiver

A waiver by either party of any rights arising from a breach of this Licence Agreement will not be a continuing waiver of any other rights arising from any other breach of this Licence Agreement. A failure or delay by either party to exercise its rights under this Licence Agreement will not operate as a waiver of that party's rights and will not prevent that party from subsequently enforcing such rights or treating any breach by the other party as a repudiation of this Licence Agreement.

14. Severability

If any provision of this Licence Agreement is illegal, invalid or unenforceable, this will not affect the remaining provisions of this Licence Agreement, which will continue in full force and, if possible, the illegal, invalid or unenforceable part will be read with such modifications as are necessary to render it legal, valid and enforceable.

15. Transfer and assignment

Neither party may transfer, assign or subcontract their rights or obligations under this Licence Agreement without the written consent of the other (such consent not to be unreasonably withheld or delayed).

16. Dispute Resolution

If any dispute arises between the parties out of the interpretation, application or implementation of the provisions of this Agreement, the parties shall seek to settle the dispute amicably through consultation or negotiations between the parties.

17 Duration and Termination

17.1 This Agreement shall enter into force on the Commencement Date and shall remain in force until terminated in accordance with sub-clause 17.2.

17.2 This Agreement will be terminated if the Authority no longer requires the Licenced Material.

18. Governing law

This Licence Agreement is governed by the laws of Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Issue of Information and Communication Technology (ICT) Equipment

Officer Name:

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Agency:

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Location:

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Information Technology Equipment

Item	Make	Model	Serial No.	PAI
Monitor				
Laptop with software as installed and updated from time to time				
Docking Station				
Power Pack				
Carry Bag				
Wireless Mouse				
Wireless Keyboard				
Secure Thumb Drive				
Server Rack				
HP Server				
Cisco Router				
Cisco Switch				
OPTUS NTU (Modem)				
Fibre optic media converter				
MFD Printer				

Security Equipment

Item	Make	Model	Serial No.	PAI
Keysafe				
4 Draw B Class Cabinet				

Condition of Issue

The use of IT equipment increases the risk of exposure of sensitive information. Approval for the issue of equipment is therefore subject to the end user agreeing to adhere to the relevant ATSB IT Policies, which are accessible on ATSB's intranet website (The Hub).

- ATSB ICT Conditions of Use – Policy, Plans and Procedures Version 1.0 – Release Date: January 2013
- ATSB Secure ICT Policy – Version 2.1 Release Date: June 2013

All services are managed in accordance with the Commonwealth Protective Security Policy Framework (PSPF), and the Information Security Manual (ISM).

Unacceptable Use of IT Equipment

The use of ATSB issued IT equipment for illegal, inappropriate, unethical or unacceptable purposes is prohibited and may be cause for disciplinary action, including removal of access, dismissal or prosecution.

The ATSB characterises as illegal any activity that is in violation of State, Territory or Commonwealth laws.

IT Support Services

ATSB's IT service Desk operates from 7.30am to 5.30pm and provides a single point of contact for all End Users for all questions, problems and requests related to IT services (hardware and software). This includes password management, screen and network session locking issues.

All software issued on ATSB computers will be patched and updated as required by the IT Service Desk to ensure the continued reliability and security of the ATSB's network.

The IT Service Desk can be contacted by:

- Email: IT.ServiceDesk@atsb.gov.au
- Phone: 02 6274 6772

Acceptance by the End User

I confirm that I have read and understood the relevant ATSB IT Policies, which can be accessed on the ATSB intranet (The Hub).'

I accept full responsibility for ensuring that the equipment issued to me is used in a manner that is consistent with ATSB's IT Policies. Any loss, damage, relocation or other material change in circumstance will be notified to the IT Help Desk (IT.ServiceDesk@atsb.gov.au) within 24 hours and an ATSB incident report is to be completed if requested.

Upon request, all issued IT equipment must be displayed or made available for asset stocktake/audit when required.

Prior to cessation of duties, all issued IT equipment must be returned to the ATSB.

Signed:

Date: / /

Approval for the issue of IT Equipment

Approved by: Chris Fitzpatrick

Position: Chief Information Officer (CIO)

Signed:

Date: / /