

AGREEMENT FOR THE MELBOURNE CITY LINK¹

THE HONOURABLE WILLIAM R BAXTER,
MINISTER FOR ROADS AND PORTS
OF THE STATE OF VICTORIA FOR AND ON BEHALF OF THE
CROWN
IN RIGHT OF THE STATE OF VICTORIA
(the "State")

TRANSURBAN CITY LINK LIMITED
(the "Company")

PERPETUAL TRUSTEE COMPANY LIMITED
(the "Trustee")

CITY LINK MANAGEMENT LIMITED
(the "Manager")

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APPENDIX

THIS CONCESSION DEED made in Melbourne with effect as at and from the 20th day of October 1995

BETWEEN THE HONOURABLE WILLIAM R BAXTER, MINISTER FOR ROADS AND PORTS OF THE STATE OF VICTORIA FOR AND ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF VICTORIA (the "**State**")

AND TRANSURBAN CITY LINK LIMITED ACN 070 810 678 of Level 2, 437 St Kilda Road, Melbourne (the "**Company**")

AND PERPETUAL TRUSTEE COMPANY LIMITED ACN 000 001 007 as trustee of the TRANSURBAN CITY LINK UNIT TRUST of 39 Hunter Street, Sydney ("**Perpetual**")

AND CITY LINK MANAGEMENT LIMITED ACN 071 292 647 of Level 2, 437 St Kilda Road, Melbourne (the "**Manager**")

RECITALS

- A. In May 1992 VicRoads called for registrations of interest to build, own and operate the Melbourne City Link.
- B. In September 1992 two consortia were short-listed.
- C. In May 1994 following an extensive review, the State made a decision in principle to proceed with the Project.
- D. On 1 July 1994 it was announced that the Melbourne City Link would be constructed with scheduled completion dates for the year 2000.
- E. In September 1994 a project brief was issued to the two consortia requiring submissions to be lodged by 31 January 1995.
- F. On 23 December 1994 the Melbourne City Link Authority was established by the **Melbourne City Link Authority Act 1994** (Vic.).
- G. On 29 May 1995 following receipt of submissions, the State selected a preferred consortium.
- H. Acting, inter alia, under the powers conferred by the Melbourne City Link Authority Act, the State wishes to enter into this Deed with the Company, the Trustee and the Manager for the implementation of the Project.
- I. The Company and the Trustee have agreed to undertake the Project subject to and upon the terms of this Deed.
- J. The Manager is the manager of the Trust and has agreed to undertake certain obligations to the State subject to and upon the terms of this Deed.

WITNESSES:

1. DEFINITIONS, INTERPRETATION AND GENERAL PRINCIPLES

1.1 Definitions

In this Deed, unless the context otherwise requires:

"**Accident Towing Licence Event**" means where either:

- (a) the Minister fails to authorise sufficient licences under the Accident Towing Services Act 2007 (Vic) to enable the Link operator to perform its obligations, exercise its rights or carry out its functions under the Accident Towing Services Act 2007 (Vic), the Project Legislation, regulations made under those Acts, this Deed or the ESEP Deed (including the towing of vehicles and removal of debris arising out of or in connection with breakdowns and accidents to a Safe Location); or
- (b) VicRoads fails to issue a licence authorised by the Minister for the purposes described in paragraph (a) in circumstances where the proposed licensee has met all relevant requirements of the Accident Towing Services Act 2007 (Vic), the Road Management Act 2004 (Vic) and the regulations made under those Acts.

"**Act of Prevention**" is an act of prevention (which, if an omission, must be an omission in bad faith) of the State or a Victorian Government Agency which prevents, hinders or disrupts either the Company or the Trustee in the implementation of the Project (excluding the performance of the CTW Obligations) in accordance with the Project Documents, the M1 Corridor Redevelopment Deed, or the ability of the Company to satisfy its obligations under this Deed with respect to the levying of tolls, unless:

- (a) it would not have occurred but for:
 - (i) a breach of a **Project Document**, the **M1 Corridor Redevelopment Deed** or the **CTW Project Documents** by, or the negligence or recklessness of, the **Company**, the **Trustee** or any **Contractor**;
 - (ii) the occurrence of an event or the existence of a circumstance the risk of which has been accepted, or the occurrence of a matter or event, responsibility for which has been accepted, by the **Company** or the **Trustee** under the **Project Documents** or the **M1 Corridor Redevelopment Deed**;
 - (iii) the lack of legal capacity, or corporate or trustee powers of, or breach of duty by, the **Company** or the **Trustee**;
 - (iv) an act of the **State** or of a **Victorian Government Agency** in good faith and in the proper exercise of a right granted by a **Project Document**, the **M1 Corridor Redevelopment Deed** or the **CTW Project Documents**; or
 - (v) an act taken in good faith which the State or the Victorian Government Agency is empowered to take in performance of a duty imposed by **Law**, but even if taken in good faith this sub-paragraph (v) would not apply to an act if there was another act reasonably and practicably available (and not

materially more disadvantageous to the **State** or the **Victorian Government Agency**) to fulfil the duty which, if taken:

- (A) would not have constituted an **Act of Prevention**; or
- (B) would have had a materially less adverse effect on the **Company** or the **Trustee**; or
- (b) it is an event specified in clause 2.9(a);
- (c) items 7 or 11 of the **Appendix** applies to it;
- (d) the **State** bears the risk under sub-paragraph 12.8(b)(ii) in relation to it;
- (e) it is a change of the type described in paragraph 4(a), 4(b), 4(c) or 4(d) of the **Appendix** (without regard to any other paragraph);
- (f) paragraph 2.4(b) applies to it;
- (g) it constitutes the removal of a Non-Agreed Traffic Management Measure;
- (h) it is a failure to provide support required under sub-paragraph 2.4(a)(i) or would have been such a failure but for sub-paragraph 2.4(a)(i)(E), (F) and (G); or
- (i) it is any change in transport policy.

"**Additional Concession Period**" is, subject to Schedule 6, the period beginning at the end of the last day of the **Original Concession Period** and ending on the date which is 10 years after that date. However:

- (a) it may end earlier than this date, if the **Original Concession Period** is terminated under paragraph (a) of the definition of that term, in which case with effect from the date of such termination, the **Additional Concession Period** will be reduced such that it ends on the date on which:
 - (i) the present value as at **WGT Financial Close** of the projected net operating cashflow derived by the **Company** over the **Additional Concession Period** (commencing on the earlier date of termination of the Original Concession Period),
is equal to:
 - (ii) the present value as at **WGT Financial Close** of the projected net operating cashflow derived by the **Company** over the **Additional Concession Period** assuming the **Original Concession Period** had not been terminated under paragraph (a) of the definition of that term,

in each case determined using the **Reference Financial Model** and a discount rate equal to the **WGT Project IRR**, and subject to any necessary adjustments to reflect the change in maintenance expenditure as a result of the reduced **Concession Period**; and

- (b) it may end later than this date if a period is agreed or determined to be the **Concession Period** under clause 2.10 following the occurrence of an **Appendix Event** which has had, or will have, a **Material Adverse Effect**.

"**Additional Concession Period Securities**" means, at any time, the Units issued in accordance with the **WGT Equity Subscription Deed** which are attributable to the **WGT Extension**.

"**Addressee**" means the person named on a **Request For Payment or Further Request For Payment**.²

"**Adjusted Distributable Cashflow**" means, in relation to any period and in the context of **Concession Notes**, the amount calculated by reference to formula:

$$A = DC - CR$$

where:

A = the amount of **Adjusted Distributable Cashflow** for the relevant period.

DC = the amount of Distributable Cashflow for the relevant period or, insofar as the relevant period comprises a number of consecutive periods in relation to which Distributable Cashflow is separately determined, the aggregate of those Distributable Cashflows.

CR = the amount by which:

- (a) **Distributable Cashflow** forecast in the **Base Case Financial Model** as being derived in the relevant period or, insofar as the relevant period comprises a number of consecutive periods in relation to which **Distributable Cashflow** is separately determined, the aggregate of those **Distributable Cashflows**,

exceeds:

- (b) the amount of such **Distributable Cashflow** or aggregate **Distributable Cashflows** as would have been so forecast, had the **Base Case Financial Model** not been subject to the changes referred to or contemplated in **IFA**.³

"**Adjusted Equity Return**" means, in the context of a determination under a **Concession Note**, the expected real after tax internal rate of return as would constitute the **Equity Return** if the aggregate amount actually distributed in respect of the **Project Securities** in the period to the date of the relevant determination were equal to the amount calculated by reference to the formula:

$$x = ac - CR$$

where:

- x = the amount deemed to be the aggregate amount actually distributed in respect of **Project Securities** in the period to the date of the relevant determination.
- ac = the aggregate amount actually distributed in respect of **Project Securities** in the period to the date of the relevant determination less the aggregate of the **Forecast Enhancement Cashflow** in the **Financial Model** for that period (for the avoidance of doubt, if in any period, the **Forecast Enhancement Cashflow** is less than zero, the absolute amount will be added to the amounts actually distributed or forecast as being distributed).
- CR = has the meaning given it in the definition of **Adjusted Distributable Cashflow**.⁴

"**Adjustment Event**" means any of the following events:

- (a) the Date of Parliamentary Support (CityLink) occurring after 1 July 2019;
- (b) the Project Legislation (WGT) Commencement Date has occurred after the Date of Parliamentary Support (CityLink), but the Project Legislation (WGT) is different to the Project Bill (WGT); and
- (c) the CityLink O&M Documentation has not been entered into by the relevant parties to those documents by the WGT Date for West Gate Tunnel Completion.

"**Agent**" has the meaning given to it in the **Master Security Deed**.

"**Aggregate CLUT Works Amount**" has the meaning given to it in the **CLUT Works Loan Agreement**.

"**Agreed CityLink Financial Model**" has the meaning given to that term under the CityLink Option Deed.

"**Agreed Occupation**" has the meaning given in the relevant **Rail Projects Agreement**.

"**Agreed Sum Arrangement**" means, in relation to a proposal or change to which paragraph 2.4(f) applies, an arrangement reflected in clause 5 of the **Third Amending Deed** or a document:

- (a) made or coming into operation on or after the date being the Operative Date for the purposes of the Third Amending Deed;
- (b) signed by or on behalf of the Company with respect to **Company Land** or the Trustee with respect to **Trust Land**, as applicable;
- (c) signed by the Minister or by the person then holding the office of Chief Executive, VicRoads;⁵
- (d) which includes an express statement to the effect that the signatories intend that the document constitute an Agreed

- Sum Arrangement in respect of the relevant proposal or change for the purposes of the Concession Deed;
- (e) which includes an express statement as to the amount of the State's liability under paragraph 2.4(fa) in respect of the relevant proposal or change; and
 - (f) which includes an express statement as to:
 - (i) whether that amount of liability is to be satisfied by the State by a lump sum payment, by instalment payments or by some other means; and
 - (ii) whether there are any (and, if so, the nature of any) preconditions to the State making any payment or any particular payment, or taking any other step, in or towards satisfaction of that liability; and
 - (g) which may include an express statement as to a particular period for extension of the Sunset Date under the **M1 Corridor Redevelopment Deed** or the **Planned Date for CTW Practical Completion** or the **Planned Date for Ramp M Practical Completion** under the **CTC Redevelopment Deed** (as applicable).⁶

"**Agreed Timetable**" comprises the respective dates specified in the **Property Schedule** for making available for the **Project** the land identified in the **Property Schedule**.

"**Amended Project Scope and Technical Requirements**" is the design and requirements set out in **Exhibit I**, as further amended, including any amendments under clauses 7.16, 7A.16, 7.17, 7A.17 or pursuant to a **CTW Variation**.

"**Annual Compliance Report**" has the meaning given in the **Groundwater Management System Auditor Deed of Appointment**.

"**Annual Emergency Exercise**" is a substantial exercise which may (but is not required to) be physically conducted on the **Link** and which is designed to:

- (a) simulate an emergency on or around the **Link**;
- (b) simulate a response on the **Link** to that emergency; and
- (c) accurately and comprehensively test and validate the emergency, incident and response policies, plans, systems, manuals and procedures (including the **Operation and Maintenance Manuals, Operations Quality Plan, Emergency Management Plan** and **Incident Management Quality Plan**, and including those referred to or incorporated in the **Operation and Maintenance Manuals, Operations Quality Plan, Emergency Management Plan** and **Incident Management Quality Plan**) which the **Company** has in place.⁷

"**Anticipated Transition Services Period**" has the meaning given in clause 3.4AE(e)(iii).

"**Appendix**" is the appendix to this Deed.

"**Appendix Event**" is each of the events listed in column 1 of the Appendix.

"**Artefact**" includes any and all:

- (a) valuable minerals, fossils or coins;
- (b) articles or objects of value or antiquity; or
- (c) sites, places, objects or things of scientific, geological, Aboriginal cultural heritage, historic, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest.

"**Associate**" has the meaning given in the CTC Redevelopment Deed.

"**Authority**" is the Melbourne City Link Authority.

"**B2B Integration Systems**" means the systems in use by the Company at the relevant time that allow the secure transfer of transactions files between the Company and Foreign Toll Operators to allow interoperable tolling utilising the MOU file standards.

"**Back Office WLU ITS Activities**" means the back office works and activities to be undertaken by the **Company** and the **Trustee** in connection with the **ITS components of the CTW Works** in relation to the **Link**, including system configuration, systems security, system software upgrades, device integration, system support and management, service management and disaster recovery.

"**Bank**" means each of those banks:

- (a) so defined in Section 5(1) of the Banking Act 1959 (Cth); or
- (b) constituted under the **Law** of a **State** or Territory of Australia and authorised to carry on general banking business.

"**Barrel Drains**" means the twin 1050mm diameter drains east of Douglas St under the Westgate Freeway.

"**Base Case Equity Return**" is the expected real after tax internal rate of return which a **Notional Initial Equity Investor** is projected by the **Base Case Financial Model** to receive over the **Original Concession Period** on its investment in **Original Project Securities** which based on the **Original Concession Period** (assuming no early termination or extension) is as set out in the **Base Case Financial Model** as at 19 May 1995 or such other rate as calculated from any agreed changes in the **Base Case Financial Model**. In the period commencing on the date which is 33 years and 6 months after the **Link Expected Completion Date** and ending on the expiry of the **Original Concession Period**, the **Base Case Equity Return** is the same as on the day immediately preceding that year.

"Base Case Financial Model" is the financial model and the assumptions and information used by or incorporated in the model:

- (a) on the basis of which the **Company** and the **Trustee** enter into the **Project Documents**;
- (b) which include certain projections and calculations with respect to the repayment of **Project Debt** and the distribution to **Equity Investors** that results in achievement of the **Base Case Equity Return**; and
- (c) which was originally prepared on the basis of the **Base Case Traffic Model**,

as revised at WGT Financial Close in accordance with the then current clause 14.3(h) and referred to in the CityLink Option Deed.

"Base Case Traffic Model" is the traffic model and the assumptions and information used by or incorporated in the traffic model:

- (a) the results of operation of which are incorporated into the **Base Case Financial Model**; and
- (b) which is prepared on the assumption that the **Major Transport Network Changes** are implemented.

"Benchmark Swap Rate" has the meaning given in the **CTC Redevelopment Deed**.

"Benchmark Total Swap Margin" has the meaning given in the **CTC Redevelopment Deed**.

"Bill" has the meaning given to "Bill of Exchange" in the Bills of Exchange Act 1909 (Cth), but excluding cheques and payment orders.

"Break Costs" means, at any time, the lesser of:

- (a) the actual break costs payable by the **Company** or the **Trustee** at that time under:
 - (i) each interest rate management agreement that is a **Lending Document**; and
 - (ii) any fixed rate facility provided under a **Lending Document**; and
- (b) the theoretical break costs that would have been payable by the **Company** or the **Trustee** at that time had there then been termination of the transactions under the interest rate management agreements being the New Lending Documents (as defined in the **Fourth Amending Deed**) referred to in paragraph (xiii) of Schedule 1 to the Notice of Adoption given under clause 3.2(p) of the **Fourth Amending Deed** (and in respect of which a summary of the principal outstanding and quarterly swap rates under those transactions is set out at schedule 6 to IFA);

but in each case excluding any such costs (or theoretical costs) insofar as those costs (or theoretical costs) are (or would have been)

created or increased as a consequence of a breach of a **Project Document** or **ESEP Project Document** (other than by the State) or of a **Lending Document**.

In the event of a dispute between the Company and the Trustee on the one hand and the State on the other as to the calculation of the theoretical break costs referred to in paragraph (b), such dispute shall be referred for expert determination in accordance with Article 16 except that the reference in clause 16.3(a)(ii) to the "President of the Institute of Arbitrators" shall be taken to be a reference to the President of the Institute of Chartered Accountants.⁸

"Burnley Office Site Lease" is the lease by the State to the Company substantially in the form of Exhibit D.4 (annexed but as that form may be amended prior to execution of the lease by agreement between the State and the Company) in accordance with clause 4.7A.⁹

"Burnley site" means the land shown hatched on the plan numbered OP121635 and lodged in the Central Plan Office (within the meaning of the Project Legislation), being land which, for the purposes of clause 4.7(c), is necessary for the Company to have possession of in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the Leases.^{10 11}

"Burnley Tunnel" means that part of the Southern Link comprising generally of the eastbound tunnel between Sturt Street and Burnley Street (including entry and exit ramps and lanes and other parts of the Southern Link associated with that tunnel), as depicted on the plan which is Exhibit X.¹²

"Business Day" is a day on which banks are open for business generally in Melbourne, excluding any Saturday, Sunday or gazetted public holiday.

"CEPA" means the Concession Enhancement Payment Deed between the **Company**, **Cleppo** and **WGT Co** dated on or around the date of the WGT CityLink and ESEP Concession Amending Deeds.

"Centre to Centre Interface" means the interface between the Company's control room and VicRoads' traffic control and communications centre which allows for the co-ordination and monitoring of each party's lane use signals and other variable messaging signs.

"Certificate of Completion" is a certificate in the form of Exhibit C (Annexed).

"Certificate of CTW Section Final Completion" is a certificate substantially in the form of **Exhibit C (Annexed)**.

"Certificate of CTW Section Practical Completion" is a certificate substantially in the form of **Exhibit C (Annexed)**.

"Certificate of Ramp M Final Completion" is a certificate substantially in the form of **Exhibit C (Annexed)**.

"**Certificate of Ramp M Practical Completion**" is a certificate substantially in the form of **Exhibit C (Annexed)**.

"**Certificate of SLU Final Completion**" is a certificate substantially in the form of **Exhibit C (Annexed)**.

"**Certificate of SLU Section Practical Completion**" is a certificate substantially in the form of **Exhibit C (Annexed)**.

"**Change in CTW Codes and Standards**" means a change in CTW Codes and Standards which takes effect after the Relevant Date.

"**CityLink Access Deed**" has the meaning given in the **WGT Project Agreement**.

"**CityLink Funding Payment**" has the meaning given to it in the **CEPA**.

"**City Link Extension Project**" or "**CLEP**" means that part of the **Project** as comprises (or is to comprise) part of the **Southern Link** (or would, but for clause 7.2 of IFA, have comprised part of the Southern Link) and which involves, or is to involve, the expansion and changes to the **Southern Link** required to be made pursuant to the notice given on 30 June 1997 by the State to the Company and the Trustee under paragraph 2.4(d) and the amendments to the Project Scope and Technical Requirements specified in that notice.¹³

"**City Link Party**" has the meaning given to it in the **M1 Corridor Redevelopment Deed**.

"**CityLink Option Deed**" means the deed entitled "CityLink Option Deed" entered into between the State, the Company, the Trustee and Clepco on or about the date of WGT Financial Close.

"**CityLink Returned Works**" has the meaning given to it in the **WGT Project Agreement**.

"**CityLink Returned Works Date of Handback**" means the "Date of Handback" as defined under the **WGT Project Agreement** in respect of the CityLink Returned Works.

"**CityLink Returned Works Land**" means the land (including in stratum) outside the Project Land (as at the CityLink Returned Works Date of Handback) that is required to be made available by the State under the WGT Project Agreement for the construction of the CityLink Returned Works.

"**Clepco**" means City Link Extension Pty Ltd, ACN 082 058 615.¹⁴

"**Clause 2.4(d) Notice**" means the notice provided by the State to the Company, the Trustee and Clepco on or around WGT Financial Close.

"**Clawback Payment**" is a payment required to be made under clause 2.6(e) because of the operation of paragraph 2.6(a).

"**CLP WGT Project Documents**" means each of:

- (a) the CityLink Access Deed;

- (b) the WGT D&C Subcontract;
- (c) [Not Used];
- (d) the Operating Services Agreement (CityLink);
- (e) the WGT Deed of Surrender;
- (f) the FMS Operating Agreement;
- (g) the West Gate Tunnel – CityLink Umbrella Agreement;
- (h) the CEPA;
- (i) the document entitled “CityLink Operating Services Agreement Direct Deed” between the State, the Company, the Trustee and OpCo;
- (j) the Roaming Agreement;
- (k) the Networking Tolling Agreement; and
- (l) any other documents the parties agree is a CLP WGT Project Document.

"CLUT Works" has the meaning given to the term “Trustee Works” in the **WGT D&C Subcontract**.

"CLUT Works Loan" means any amount (if any) under and as defined in the **CLUT Works Loan Agreement**.

"CLUT Works Loan Agreement" means the document so entitled dated on or about the date of the WGT CityLink and ESEP Concession Amending Deeds between the **Trustee** and **WGT Co**.

"Commissioning" means:

- (a) the process of safety auditing, performance testing and checking against the technical requirements specified in the **Project Scope and Technical Requirements** of all road design and traffic engineering elements, operating, mechanical, electrical and electronic systems, computer software and hardware, plant and equipment which form part of the **Works** (including the **Tolling System**) utilising such tests and checks as are specified in the **Project Scope and Technical Requirements** in relation to the commissioning of those elements, systems or that software, hardware, plant or equipment; and
- (b) the achievement of results in relation to each such test and check as equals or exceeds minimum criteria specified in the **Project Scope and Technical Requirements** in relation to the commissioning of those elements, systems or that software, hardware, plant or equipment.

"Committed Extension Equity" has the meaning given to it in clause 1.31(b).

"Commonwealth" is the Commonwealth of Australia.

"Company Land" is at any time:

- (a) the land the subject of the **Company Leases**;

- (b) the SLU Company Land;
- (c) the WLU Company Land; and
- (d) the WGT Company Land.

"Company Lease" is:

- (a) a lease by the **State** to the **Company** substantially in the form of Exhibit D.1 (Annexed but as that form may be amended prior to execution of the lease by agreement between the State, the Company and the Trustee) in accordance with clause 4.7;
- (b) a **SLU Company Lease**;
- (c) a **WLU Company Lease**; and
- (d) a **WGT Company Lease**.

"Company Road" is the permanent works, being that part of the Link on the Company Land.

"Compensable Enhancement" has the meaning given to it in clause 2.6(g).

"Compensable Extension Event" has the meaning given to it in the CTC Redevelopment Deed.

"Compensation" means any redress, payment, compensation or debt owing under this Deed.

"Completion" of a Section is when:

- (a) the **Works** for that **Section** have been completed in accordance with the **Construction Documentation** except for minor omissions or minor defects which do not adversely affect the use of the **Section** by the public for the continuous passage of vehicles, the safety of that use or the ability of the **Company** or the **Trustee** to perform their respective obligations under the **Project Documents** (disregarding obligations required to be performed in relation to another **Section**);
- (b) **Commissioning** of that **Section** has taken place; and
- (c) the **Company** and the **Trustee** have performed all their respective obligations under this **Deed** (whether relating to the Works or not but excluding those addressed by paragraphs (a) and (b)), which are required to be performed before completion of the **Section** (disregarding obligations required to be performed in relation to another **Section**).

"Concession Notes" are securities issued by the Company which are in the form of, and which are issued on the terms set out in, Exhibit W.¹⁵

"Concession Period" is the period beginning on the first day of the Original Concession Period and ending on the last day of the Additional Concession Period.

"**Condition Review Date**" has the meaning given in clause 3.4AE(d).

"**Confidentiality and Disclaimer Deed**" is a deed in the form of Exhibit E (Annexed but as that form may be amended prior to execution of the deed by agreement between the Company, the Trustee and the State) executed by the Company and the Trustee.

"**Consolidated Handover**" means the occurrence of Handover and WGT Handover on or around the same date.

"**Construction Contractor**" is Obayashi Corporation ARBN 002 932 756 and Transfield Construction Pty Ltd ACN 000 854 688 and includes any other person who in addition or substitution is engaged by the Company and the Trustee (acting in compliance with the provisions of this Deed) to design and **construct the whole or part of the Link**.

"**Construction Documentation**" is:

- (a) the **Project Scope and Technical Requirements**; and
- (b) the **Design Documentation**.

"**Construction Milestone**" is a stage of the Works described in Schedule 1, as amended or adjusted in accordance with this Deed, noting that Completion of the last Section to be Completed is not such a stage.

"**Construction Permit**" means a construction permit under section 34 of the Project Legislation.

"**Construction Program**" for a Section is the construction program for that Section prepared by the Company and the Trustee pursuant to clause 8.1, as amended from time to time in accordance with this Deed.

"**Contamination**" is the presence in, on or under land or any other aspect of the environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the environment in the same locality; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.

"**Contractor**" is:

- (a) the **Construction Contractor**;
- (b) the **Operator**; and
- (c) any other person agreed in writing by the parties.

"Contractors' Deed of Novation" is a deed of novation between the **Company**, the **Trustee**, the **State**, the **Construction Contractor** and any other persons expressed to be parties to it in the form of Exhibit F (Annexed) (as that form may be amended prior to execution of the deed by agreement between the State, the Company and the Trustee).

"Control" has the meaning given in section 50AA of the Corporations Act. Without limitation, an Entity will be considered to be under the control of another Entity if, under accounting standards (within the meaning of the Corporations Act) dealing with the consolidation of financial statements, the Entity would be considered to be a subsidiary of the other Entity.¹⁶

"CPI" is:

- (a) the **All Groups Consumer Price Index Weighted Average of Eight Capital Cities** ("IECC") published quarterly by the Australian Bureau of Statistics, as long as there is no change in the coverage, periodicity or reference base from those applying at the date of this **Deed**;
- (b) if there is a change in the coverage of the IECC from that applying at the date of this **Deed** and the new IECC is linked to previous All Group Consumer Price Indexes, **CPI** is the new IECC;
- (c) if there is a change in the reference base of the IECC from that applying at the date of this **Deed** and the Australian Bureau of Statistics provides a conversion factor, that conversion factor shall be applied to calculate revised **CPI** figures for the purpose of this **Deed**, in terms of the new reference base;
- (d) if there is a change in the reference base of the IECC from that applying at the date of this **Deed** and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate revised **CPIs** for the purposes of this **Deed**, and that calculation is final and binds the parties;
- (e) if the IECC is published and:
 - (i) there is a change in its coverage and it is not linked to previous **All Groups Consumer Price Indexes**; or
 - (ii) there is a change in its periodicity,
the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine:
 - (iii) whether the new IECC is appropriate as a general indicator of the rate of price change for consumer goods and services; or
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of this **Deed**,

- and the President's determination is final and binds the parties;
- (f) if the IECC is not published and the Australian Bureau of Statistics publishes another index which is:
- (i) a replacement of the IECC; and
 - (ii) linked to the IECC,
- CPIs** must be re-calculated to the same reference base as the replacement index;
- (g) if the IECC is not published and the Australian Bureau of Statistics publishes another index which is not linked to the IECC, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate revised **CPIs** for the purposes of this **Deed**, and that calculation is final and binds the parties; or
- (h) if the IECC is not published and the Australian Bureau of Statistics does not publish another index in replacement of the IECC, the parties must request the President of the Institute of Actuaries (or the President nominee) to determine an appropriate index which is a general indicator of the rate of price change for consumer goods and services, and his determination is final and binds the parties.

“CTC Expiry Date” means the date which is 24 months after the Date of CTW and **Ramp M Final Completion**.

“CTC Redevelopment Deed” means the deed entitled "CityLink - Tullamarine Corridor Redevelopment Deed" dated 6 October 2014 between the State, the Company and the Trustee in the form set out in Exhibit OO as that deed may be amended from time to time.

“CTW” or **“CityLink-Tulla Widening”** is together each of the WLU and the State Returned Works Upgrade.

“CTW Agreed Timetable” comprises the respective dates notified by the Company and the Trustee in accordance with clause 4C.1(f) provided such dates are within the access period specified in the CTW Property Schedule for making available for the CTW the land identified in the CTW Property Schedule.

“CTW Access Schedule” means the access schedule attached to CTW Traffic Management Procedures.

“CTW Authority” means:

- (a) any governmental or semi-governmental or local government authority (including local municipal bodies), administrative or judicial body or tribunal, department, commission, public authority, agency, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under **Law** with respect to any part of the **CTW Works**; or

- (c) any other person having jurisdiction over, or ownership of, **CTW Utility Services** or the **CTW Utility Service Works**.

"CTW Break Costs or Gains" means at any time on and from the **CTC Expiry Date**, the aggregate of the theoretical break costs or gains that would have been payable or receivable by the **Company** and the **Trustee** at the date of termination of this Deed if there had been a termination of an AUD mid-market interest rate swap with semi-annual fixed rate payments adjusted to include the Benchmark Total Swap Margin for the remaining term to maturity with a principal outstanding under that swap of an amount equal to the relevant amount set out in column 4 of Schedule 5A to the IFA and the Benchmark Swap Rate expiring on February 2024, but excluding any such theoretical costs insofar as those theoretical costs are (or would have been) created or increased as a consequence of a breach of a Project Document, CTW Project Document or ESEP Project Document (other than by the State) or of a Lending Document.

In the event of a dispute between the Company and the Trustee on the one hand and the State on the other as to the calculation of the theoretical break costs referred to in this definition, such dispute shall be referred for expert determination in accordance with Article 16 except that the reference in clause 16.3(a)(ii) to the "President of the Institute of Arbitrators" shall be taken to be a reference to the President of the Institute of Chartered Accountants.

"CTW and Ramp M Final Completion" is when CTW Final Completion and Ramp M Final Completion have been achieved.

"CTW and Ramp M Practical Completion" is when CTW Practical Completion and Ramp M Practical Completion have been achieved.

"CTW Codes and Standards" means the codes, standards, specifications and guidelines referred to in the SWTC that are applicable to the CTW Works or the CTW Maintenance Activities.

"CTW Completion and Commissioning Report" means the completion and commissioning report to be provided to the State by the Company and the Trustee in accordance with section 14 of the SWTC.

"CTW Communications and Community Relations Plan" means the communications and community relations plan to be developed by the Company and the Trustee in accordance with clause 7D.39.

"CTW Communications Protocol" means the communication protocol set out in Attachment 5 to the CTW Traffic Management Procedures.

"CTW Construction Contractor" is any person or entity who is engaged by the Company and/or the Trustee to carry out any works forming part of the CTW Works or the CTW Maintenance Activities.

"CTW Construction Documentation" is:

- (a) the **SWTC**; and
- (b) the **CTW Design Documentation**.

"**CTW Construction Program**" is the construction program prepared by the Company and the Trustee pursuant to clause 8B.1, as amended from time to time in accordance with this Deed.

"**CTW Construction Site Safety Plan**" means a construction site safety plan that complies with the requirements of this Deed, the CTW Health and Safety Management Plan and all CTW Health and Safety Laws.

"**CTW D&C Contractor**" means Leighton Contractors Pty Ltd ABN 98 000 893 667.

"**CTW Defect**" means:

- (a) any defect, deficiency, fault, error or omission in the **CTW Works**; or
- (b) any:
 - (i) cracking, shrinkage, movement or subsidence in the **CTW Works**; or
 - (ii) other aspect of the **CTW Works**,

which is not in accordance with the requirements of this Deed, excluding, in respect of the State Returned Works, anything described in paragraph (a) or (b) of this definition to the extent that it was caused or contributed to by:

- (c) an act or omission of the State (or the relevant **CTW Authority**), not being an act or omission which:
 - (i) is in accordance with the **Handback Documents**; or
 - (ii) is consistent with the operation and maintenance activities and practices that would be carried out by a reasonable, experienced and prudent road operator;
- (d) fair wear and tear (except to the extent the **CTW Works** were required to have been designed and constructed to withstand the fair wear and tear); or
- (e) a CTW Force Majeure Event or damage caused by a third party other than an Associate of the Company or the Trustee (except to the extent the CTW Works were required to have been designed and constructed to withstand the CTW Force Majeure Event or damage),

after the Date of CTW Section Practical Completion of the CTW Section comprising the relevant State Returned Works.

"**CTW Defects Correction Period**" means a State Returned Works Defect Correction Period or a CTW Utility Services Works Defect Correction Period.

"CTW Design and Construct Contract" means the contract for the design and construction of the CTW Works (excluding the CTW ITS Activities) and certain CTW Maintenance Activities to be entered between the Company and the Trustee and the CTW D&C Contractor.

"CTW Design Consultant" is, at any time, the person then appointed as design consultant by or on behalf of the Company and the Trustee or the CTW D&C Contractor in accordance with the SWTC.

"CTW Design Documentation" means all design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models (including any building information model prepared in relation to the CTW), samples, prototypes, calculations, drawings, shop drawings, digital records and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, which are required for the performance of the CTW or which the Company or the Trustee or any other person creates in performing the CTW.

"CTW Design Program" means the program for the development of the CTW Design Documentation referred to in clause 7D.4.

"CTW Effective Date" means the date which is the operative date for the purposes of the Thirty-third Amending Deed.

"CTW Environmental Incident" is any incident that:

- (a) is required to be notified to a **CTW Authority** under any approval or **Law**; or
- (b) results or could potentially result in unplanned damage to the environment.

"CTW Environmental Management Plan" means the environmental management plan to be developed by the Company and the Trustee in accordance with clause 7D.39.

"CTW Extra Land" means any land or buildings in addition to the land in the **CTW Property Schedule** or other **Project Land** which is necessary or which the Company and the Trustee require for the execution of the **CTW Works** while the Company or the Trustee are in possession or control of that land.

"CTW Force Majeure Event" has the meaning given to the term 'Force Majeure Event' in the CTC Redevelopment Deed.

"CTW Final Completion" is when CTW Section Final Completion has been achieved in respect of CTW Sections A to C.

"CTW Health and Safety Alert" has the meaning given in section the CTW Health and Safety Management Plan.

"CTW Health and Safety Auditor" means an independent auditor appropriately experienced and qualified in health and safety matters in relation to projects similar to the CTW.

"CTW Health and Safety Compliance Audit" means an audit by a CTW Health and Safety Auditor of the Company and the

Trustee's compliance with CTW Health and Safety Laws, this Deed and the CTW Health and Safety Management Plan.

"**CTW Health and Safety Incident**" is any incident that:

- (a) is required to be notified to a **CTW Authority** under any **CTW Health and Safety Law**;
- (b) results or could potentially result in injury or disease requiring a person to miss more than one day of work (for the avoidance of doubt, this includes 'near misses'); or
- (c) results in an injury that requires treatment by a medical practitioner.

"**CTW Health and Safety Incident Report**" means a report detailing any CTW Health and Safety Incident, the cause of any CTW Health and Safety Incident and the measures to be taken by the Company and the Trustee to ensure there is no repeat of the CTW Health and Safety Incident, and which satisfies the requirements of this Deed, the CTW Health and Safety Laws and the CTW Health and Safety Management Plan.

"**CTW Health and Safety Laws**" means all workplace, health and safety, dangerous goods, electricity safety and rail safety related:

- (a) Laws;
- (b) guidance materials;
- (c) mandatory codes of practice;
- (d) other compliance codes;
- (e) directions on safety or notices issued by any relevant **CTW Authority** (which the **Company** and the **Trustee** are required by law to comply with); and
- (f) standards,

applicable to any part of the **CTW Works** or the **CTW Maintenance Activities** including, but not limited to, the *Occupational Health and Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2007* (Vic).

"**CTW Health and Safety Management Plan (HSMP)**" means the health and safety management plan to be developed by the Company and the Trustee in accordance with clause 7D.39.

"**CTW High Risk Construction Work**" means any CTW Works or the CTW Maintenance Activities within the meaning of "High Risk Construction Work" in regulation 5.1.3 of the *Occupational Health and Safety Regulations 2007* (Vic).

"**CTW HSMP Audit**" means an audit by a CTW Health and Safety Auditor that the CTW Health and Safety Management Plan complies with the requirements of this Deed and the CTW Health and Safety Laws.

"**CTW Information Documents**" has the meaning given in section 11 of the SWTC.

"**CTW Independent Reviewer**" is the person appointed as CTW Independent Reviewer in accordance with clause 6B or any person substituted under clause 6B.

"**CTW Independent Scheduler**" is the person appointed as CTW Independent Scheduler in accordance with clause 6C or any person substituted under clause 6C.

"**CTW Interface Works**" means works at the interface between:

- (a) the CTW Works and the CTW State Works; and
- (b) the CTW Works and the Webb Dock State Works.

"**CTW Insurance Policy**" means any policy of insurance to the extent required to be effected and maintained by the Company and the Trustee in accordance with clause 13.3A.

"**CTW ITS Activities**" means those CTW Works described in section 7 of the SWTC.

"**CTW Land**" means the State Returned Works Areas, and any part of the Project Land which is required for the CTW or the CTW Works (including the WLU Project Land).

"**CTW Local Areas**" means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which:

- (a) are adjacent to;
- (b) connect to;
- (c) intersect;
- (d) cross; or
- (e) are in any way affected by,

the CTW Works or the CTW Maintenance Activities, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

"**CTW Maintenance Activities**" means the maintenance works and activities the Company is required to carry out under Annexures O, Q and R of the SWTC.

"**CTW Major Incident or Issue**" means any major incident or issue arising from or affecting the CTW Works or the CTW Maintenance Activities, including the following:

- (a) life or health-threatening incidents or any workplace accident of a serious nature;
- (b) industrial action that threatens to cause or causes delays to the execution of the **CTW Works**;
- (c) damage to or loss of property, plant, equipment or impairment of the environment including any **CTW Environmental Incident**; and

- (d) any potential or 'near miss' major incident or issue or anything that might reasonably be expected to result in a major incident or issue.

"CTW Monthly Health and Safety Performance Report" means a monthly report detailing CTW related health and safety matters and the Company and the Trustee's compliance with this Deed in respect of CTW health and safety matters, and which meets the requirements of this Deed, all CTW Health and Safety Laws and the CTW Health and Safety Management Plan.

"CTW Obligations" means the obligations of the Company or the Trustee in relation to the CTW, the CTW Works or the CTW Maintenance Activities under the CTW Project Documents or the Project Documents (other than those obligations solely related to the operation and maintenance of the CTW after CTW Practical Completion and Ramp M Practical Completion (as applicable)) which, for the avoidance of doubt, include all payment obligations under the CTC Redevelopment Deed and all defect rectification obligations.

"CTW Practical Completion" is when CTW Section Practical Completion has been achieved in respect of CTW Sections A to C.

"CTW Prevented Obligation" has the meaning given in clause 1.3(h).

"CTW Project Debt":

- (a) at any time prior to the CTC Expiry Date, is the lower of:
- (i) the "CTW Project Debt" as defined in the **CTC Redevelopment Deed**; and
 - (ii) the amount set out in column 2 of Schedule 5A to the IFA for the CTC Expiry Date plus the Reserve Tranche (as defined in the CTC Redevelopment Deed) at that time; and
- (b) on or after the CTC Expiry Date is at any time the lesser of:
- (i) the aggregate of all moneys which the Company or the Trustee (whether alone or with another person) is at that time actually or contingently liable to pay to or for the account of any person under the Lending Documents in connection with CTW and the CTW Maintenance Activities (other than actual or contingent amounts created or increased as a consequence of a breach of a CTW Project Document (other than by the State) or of a Lending Document) and the CTW Break Costs or Gains applicable at that time; and
 - (ii) the aggregate of the amount set out in column 4 of Schedule 5A to IFA and CTW Break Costs or Gains applicable at that time. The Company and the Trustee shall be deemed to be no longer liable in respect of CTW Project Debt at any time if no

amount is set out in column 4 of Schedule 5A to IFA in respect of that time.

At any particular time, the ability to repay CTW Project Debt shall be assessed without regard to liabilities under Lending Documents to the extent that the amount of those liabilities then exceeds the amount of CTW Project Debt.

"CTW Project Documents" means each of:

- (a) this **Deed**;
- (b) the **CTC Redevelopment Deed**;
- (c) the **Thirty-third Amending Deed**;
- (d) the **Thirty-fifth Amending Deed**;
- (e) the **IFA Twenty-second Amending Deed**;
- (f) the **ESEP Fifteenth Amending Deed**;
- (g) each document amending the **CTC Redevelopment Deed**; and
- (h) each document which is agreed between the parties to this **Deed** to be a **CTW Project Document**.

"CTW Proof Engineer" means, at any time, the person then appointed as proof engineer by or on behalf of the Company and the Trustee or the CTW D&C Contractor in accordance with the SWTC.

"CTW Property Schedule" means Exhibit PP.

"CTW Proprietary Material" means the CTW Proprietary Material (Design), the CTW Proprietary Material (COTS Software) and CTW Proprietary Material (WLU Software), as each of this terms is defined in clause 7D.15.

"CTW PSA" comprises any amendment to an existing planning scheme affecting the CTW Land (and/or any identical or similar re-enactment of such amendment in or pursuant to the Victoria Planning Provisions) agreed by the Company or the Trustee in writing or for which either the Company, the Trustee or the Minister is the applicant or the proponent, made, approved or adopted by the Minister for Planning under the *Planning and Environment Act 1987* (Vic) or the *Road Legislation (Projects and Road Safety) Act 2006* (Vic), and including any maps, plans or tables referred to in such amendment.

"CTW Quality Management System" means a corporate system that details the organisational structure, policies, procedures, practices, resources and responsibilities of quality management.

"CTW Rail Interface Works" means any part of the CTW Works interfacing with or otherwise affecting any infrastructure or operations of the Rail Interface Parties.

"CTW Relevant Matters" means the following matters to the extent described:

- (a) noise walls to the extent that additional noise walls or modifications to existing noise walls are necessary to meet the requirements of the SWTC;
- (b) landscaping to the extent that additional landscaping works are required outside the Project Land;
- (c) pedestrian and bicycle paths to the extent that existing pedestrian and bicycle paths need to be modified;
- (d) allowing for the future design and construction of the Bulla Road interchange;
- (e) impacts on tram, train and other rail infrastructure;
- (f) impacts on drainage and water infrastructure.

"CTW Risk Assessment" means a thorough written risk assessment of all hazards and risks associated with the CTW Works and the CTW Maintenance Activities (whether risks to workers, other parties or members of the public) and their intended and actual controls.

"CTW Section" is, subject to clause 8B.20, each of:

- (a) CTW Section A;
- (b) CTW Section B;
- (c) CTW Section C; and
- (d) CTW Section D.

"CTW Section A" will comprise all CTW Works north of Flemington Road, as shown in Exhibit QQ.

"CTW Section B" will comprise all CTW Works between Flemington Road and the Westgate Freeway (excluding Ramp L and Ramp Z), as shown in Exhibit QQ.

"CTW Section C" will comprise the CTW Works on the West Gate Freeway (including Ramp L and Ramp Z), as shown in Exhibit QQ.

"CTW Section D" will comprise the CTW Works in respect of Ramp M as shown in Exhibit QQ .

"CTW Section Final Completion" of a CTW Section is, subject to clause 8B.4, when:

- (a) CTW Section Practical Completion has been achieved in respect of that CTW Section;
- (b) all CTW Defects in that CTW Section have been rectified, except any CTW Defect to the extent caused or contributed to by:
 - (i) fair wear and tear (except to the extent the **CTW Works** were required to have been designed and constructed to withstand the fair wear and tear);
 - (ii) a **CTW Force Majeure Event** or damage caused by a third party other than an **Associate** of the

Company or the **Trustee** (except to the extent the **CTW Works** were required to have been designed and constructed to withstand the **CTW Force Majeure Event** or damage); and

- (c) the **Company** and the **Trustee** have performed all their respective obligations under this Deed in respect of that **CTW Section** (excluding those addressed by paragraphs (a) and (b)), which are required to be performed before and for the purposes of **CTW Section Final Completion**.

"**CTW Section Practical Completion**" of a **CTW Section** is when, subject to clause 8B.4, all of the following have occurred:

- (a) the **CTW Works** for that **CTW Section** have been completed in accordance with the **CTW Construction Documentation** except for minor **CTW Defects**:
- (i) which do not prevent the **CTW Section** from being reasonably capable of being used for its intended purpose;
 - (ii) which the **Company** or the **Trustee** has reasonable grounds for not promptly rectifying; and
 - (iii) rectification of which will not prejudice the safe and convenient use of the **CTW Section**;
- (b) those tests which are required by the **SWTC** to be carried out and passed before that **CTW Section** reaches **CTW Section Practical Completion**, have been carried out and passed;
- (c) the **Company** and the **Trustee** have supplied to the **State** the following:
- (i) all shop drawings and as-built drawings in relation to the **CTW Works** as required by this **Deed**;
 - (ii) all original manufacturers' or suppliers' warranties in relation to the **CTW Works** required by this **Deed**; and
 - (iii) all certificates, notices, licences, consents, permits and approvals required to be obtained from relevant **CTW Authorities**;
- (d) all documents and other information required under this **Deed** which are reasonably required for the use, operation or maintenance of that **CTW Section**, have been supplied; and
- (e) the **Company** and the **Trustee** have performed all their respective obligations under this **Deed** in respect of that **CTW Section** (excluding those addressed by paragraphs (a) to (d)), which are required to be performed before and for the purposes of **CTW Section Practical Completion** of a **CTW Section** (disregarding obligations required to be performed in relation to another **CTW Section**), including:

- (i) providing the **CTW Security** and the **State Returned Works Security** (as applicable) which is required to be provided in respect of that **CTW Section** in accordance with clause 8B.18;
- (ii) providing the **Handback Documents** to the extent required under clause 8C;
- (iii) complying with clause 13.4B;
- (iv) providing the **CTW Completion and Commissioning Report**; and
- (v) in respect only of the last **CTW Section** to reach **CTW Section Practical Completion**, the **Company** and the **Trustee** have provided plans depicting **Western Link Section 1**, **Western Link Section 2** and the **Tullamarine Freeway Upgrade** (each as altered by the **CTW**).

"**CTW Security**" has the meaning given in clause 8B.18.

"**CTW Sixth Lane**" means an additional lane on Western Link outbound between Flemington Road and Ormond Road, as further described in section 6(e) of the **SWTC**.

"**CTW Specified Matters**" means:

- (a) in relation to the design of noise attenuation only, the traffic volume and traffic mix specified in the **SWTC**;
- (b) in relation to the design of the **CTW Works** generally:
 - (i) the number of lanes, minimum lane widths, lane configuration and minimum shoulder widths defined in Annexure A of the **SWTC**;
 - (ii) Design and Operating Speed defined in Annexure A of the **SWTC**;
 - (iii) the ramp metering locations, storage lengths and number of stand up lanes defined in Annexure A of the **SWTC**;
 - (iv) in respect of the ITS system design for the **Link**, the operating principles and protocols as referred to in Annexure H of the **SWTC**; and
 - (v) the following aspects of the ITS system for the **State Returned Works**:
 - (A) Streams System; and
 - (B) operating principles and protocols as referred to in Annexures M and P of the **SWTC**; and
- (c) in relation to the design of **Ramp M**:
 - (i) the requirement that **Ramp M** be ramp metered;

- (ii) the specified minimum storage requirements for **Ramp M** detailed in Table 3010.023 of Annexure A to the **SWTC**; and
- (iii) the specified minimum length of the existing auxiliary lane between the Cook Street entry and the exit to **Ramp M** of 412m (between the concrete ramp noses measured along the **West Gate Freeway** left hand lane edge line).

"CTW Stakeholder" means each of the entities described in paragraphs (d), (e) and (g) to (k) of the definition of **"Stakeholder"**.

"CTW State Works" has the meaning given in the CTC Redevelopment Deed.

"CTW Traffic Management Procedures" means the **"Traffic Management Procedures"** as that term is defined in the CTC Redevelopment Deed.

"CTW Utility Service" means any service, facility or item of infrastructure, including water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, railway, industrial waste disposal and electronic communications service.

"CTW Utility Service Works" means the construction, modification or relocation of CTW Utility Services all of which are to be designed and constructed by the Company and the Trustee or by the owner or manager of CTW Utility Service itself (or nominated contractor) and handed over to the State, a CTW Authority or any other person in accordance with this Deed including any such works specified in the SWTC (and including, to the extent relevant to such works, Variations directed in accordance with this Deed).

"CTW Utility Services Works Defects Correction Period" means a period referred to in clause 8B.11C.

"CTW Variation" has the meaning given in the CTC Redevelopment Deed.

"CTW Variation Order" has the meaning given in the CTC Redevelopment Deed.

"CTW Works" means the:

- (a) WLU Works; and
- (b) State Returned Works.

"Date of Completion" for a Section is the date so described in the Certificate of Completion for that Section or if a dispute or difference in relation to a Certificate of Completion is referred for determination under Article 16, the date determined under Article 16.

"Date of CTW and Ramp M Final Completion" is the later of the Date of CTW Final Completion and the Date of Ramp M Final Completion.

"Date of CTW and Ramp M Practical Completion" is the later of the Date of CTW Practical Completion and the Date of Ramp M Practical Completion.

"Date of CTW Final Completion" is the date described as the Date of CTW Section Final Completion in the Certificate of CTW Section Final Completion of the last of CTW Sections A to C to achieve CTW Section Final Completion.

"Date of CTW Practical Completion" is the date described as the Date of CTW Section Practical Completion in the Certificate of CTW Section Practical Completion of the last of CTW Sections A to C to achieve CTW Section Practical Completion.

"Date of CTW Section Final Completion" is the date so described in the Certificate of CTW Section Final Completion as the date CTW Section Final Completion of that CTW Section was achieved or if a dispute or difference in relation to a Certificate of CTW Section Final Completion is determined in accordance with the CTC Redevelopment Deed the date which is determined under the CTC Redevelopment Deed.

"Date of CTW Section Practical Completion" is the date so described in the Certificate of CTW Section Practical Completion as the date CTW Section Practical Completion of that CTW Section was achieved or if a dispute or difference in relation to a Certificate of CTW Section Practical Completion is determined in accordance with the CTC Redevelopment Deed, the date which is determined under the CTC Redevelopment Deed.

"Date of Parliamentary Support (CityLink)" means the date when all of the following events have occurred:

- (a) the WGT CityLink and ESEP Concession Amending Deeds have been signed and tabled in each House of Parliament;
- (b) the Revocation Period has ended without any revocation (whether in whole or in part) of the WGT CityLink and ESEP Concession Amending Deeds; and
- (c) all conditions precedent to the WGT CityLink and ESEP Concession Amending Deeds have been satisfied or waived.

"Date of Ramp M Final Completion" is the date described as the Date of CTW Section Final Completion in the Certificate of CTW Section Final Completion of CTW Section D.

"Date of Ramp M Practical Completion" is the date described as the Date of CTW Section Practical Completion in the Certificate of CTW Section Practical Completion of CTW Section D.

"Date of SLU Final Completion" is the date so described in the Certificate of SLU Final Completion or if a dispute or difference in relation to a Certificate of SLU Final Completion is referred for determination under Article 16, the date determined under Article 16.

"Date of SLU Section Practical Completion" is the date so described in the Certificate of SLU Section Practical Completion or if a dispute or difference in relation to a Certificate of SLU Section Practical Completion is referred for determination under Article 16, the date determined under Article 16.

"Date of West Gate Tunnel Completion" has the meaning in the WGT Project Agreement.

"Debt Recovery Cycle Requirement" means that if the Company or an authorised person of the Company provides notification to the Enforcement Agency within 180 days of the use of a vehicle in the toll zone which appears to be liable to pay the toll and fee, the Enforcement Agency must not refuse to:

- (a) serve an infringement notice under section 77(1)(b)(ii) of the Project Legislation; or
- (b) commence proceedings against a person in accordance with section 77(1)(b)(ii) of the Project Legislation,

solely on the basis of the timing of the notification by the Company.

"Deed" is this deed.

"Deed of Amendment to the Tulla-Calder Deed of Assignment" means the deed so entitled dated 25 July 2006 between the State, the Company and Transurban Infrastructure Management Limited as trustee of the Transurban Holding Trust in the form set out in Exhibit DD as that deed may be amended from time to time.

"Deed of Charge" is a deed in the form of Exhibit G (Annexed) (as that form may be amended prior to execution of the deed by agreement between the State, the Company and the Trustee) and any additional security taken by the State under clause 18.3 of the Master Security Deed.

"Deed of Guarantee and Indemnity" is a deed executed by Obayashi Corporation ARBN 002 937 756 and Transfield Holdings Pty Limited ACN 001 241 265 in favour of the State in the form of Exhibit H (Annexed).

"Default Rate" is, in relation to an amount owing but unpaid, the aggregate of 2% per annum and:

- (a) subject to paragraph (b), in relation to the period from and including the date on which the amount fell due for payment, the **Reference Rate** applicable on that date; and
- (b) (if interest on that amount capitalises under clause 11.7), in relation to each period from and including the date on which such interest capitalises to and excluding the earlier of the date on which interest on the amount ceases to accrue and the next date on which such interest capitalises, the **Reference Rate** applicable on the date of commencement of the relevant period.

"Defects Rectification Period" means the period of twelve months commencing at 4.00 pm on the date that Interchange Completion is achieved.

"**Design and Construct Contract**" has the meaning ascribed to that expression in the Contractors' Deed of Novation.

"**Design and Construction Verification Engineer**" is the person appointed as Design and Construction Verification Engineer in accordance with clause 6A or any person substituted under clause 6A.

"**Design and Construction Verification Engineer's Certificate**" is a certificate substantially in the form of Exhibit B (Annexed).

"**Design Consultant**" is at any time, the person then appointed as design consultant by or on behalf of the Company and the Trustee in accordance with the Project Scope and Technical Requirements.

"**Design Documentation**" is the plans, drawings and specifications and other design documentation prepared by the Company or the Trustee under clause 7.4, as amended (if at all) under clause 7.5 or by determination under Article 16.

"**Development Project**" means, each of:

- (a) SLU;
- (b) CTW; and
- (c) WGT Tolling Enhancements.

"**Development Project Base Case Equity Return**" is, in relation to a Development Project, the expected real after tax internal rate of return which a Notional Initial Equity Investor is projected by the **Reference Financial Model** to receive from the date of its investment in the relevant **Development Project** until the end of the **Original Concession Period** on its investment in the relevant **Development Project** which (assuming no early termination or further extension of the **Concession Period**) is as set out in the **Reference Financial Model** or such other rate as calculated from any agreed changes in the **Reference Financial Model**.

"**Dispute Resolution Schedule**" means a schedule identifying certain clauses of this Deed and allocating them, for the purposes of Article 16, into two parts, Part A and Part B as agreed by the parties under clause 2.7(d), as subsequently substituted by the document set out in Schedule 2 to the Fourth Amending Deed by the agreement acknowledged under clause 4.2 of the Fourth Amending Deed and as subsequently amended by the parties under clause 4.2 of the Twenty-second Amending Deed.¹⁷

"**Distributable Cashflow**" means, in relation to any period, the amount that would be calculated for that period were the same calculations made to arrive at the amount as were made in arriving at the calculation of surplus cash flow prior to payment of the additional concession fee under paragraph 3.1(d) or any variable lease rental under the Company Leases or the Trust Concurrent Leases in the Financial Model, but excluding the Forecast Enhancement Cashflows, and amounts or expenses insofar as:¹⁸

- (a) they relate to financial indebtedness or the provision of financial accommodation which does not comprise part of **Project Debt, CTW Project Debt** or **WGT Project Debt**;
- (b) liability for them was incurred in the context of a breach of an obligation owed to the **State** under the **Project Documents**; or
- (c) liability for them was incurred other than on arms' length terms (with expenses comprising payments made in accordance with a **Project Document** being deemed to have been incurred on arms' length terms),

provided however, that where this term is used in the context of:

- (d) **Adjusted Distributable Cashflow, Distributable Cashflow** for a period shall be the amount so calculated, but from which amount there shall then be deducted the amount of **Clawback Payments** (and payments required to be made under paragraph 2.6(e) because of the operation of paragraph 2.6(b)) required to be made in the period;^{19 20}
- (e) **Step-in Payments, Distributable Cashflow** for a period shall be calculated without regard to amounts or expenses paid or payable in respect of liabilities arising under the **Lending Documents**; and^{21 22}
- (f) **Concession Notes, Distributable Cashflow** for a period shall be Adjusted Distributable Cashflow for that period.²³

"Domain Tunnel" means that part of the Southern Link comprising generally of the westbound tunnel between Punt Road and Sturt Street (including entry and exit ramps and lanes and other parts of the Southern Link associated with that tunnel), as depicted on the plan which is Exhibit X.²⁴

"Early Termination Amount" means, at any time the aggregate of:

- (a) (in return for cancellation of the Company Leases) an amount equal to the Company's costs of constructing the Works, the SLU Works and Plant on the Company Land and all other aspects of the Link operating system, the **CityLink Returned Works on Company Land** and after the **CTC Expiry Date**, the **CTW Works** (and the cost of undertaking the **CTW Maintenance Activities**), including any reasonable loss, cost, charge, liability, damage or expense incurred or sustained (or to be incurred or sustained) by the Company under the SLU Construction Contract as a direct or indirect consequence of termination of the Concession Deed or because termination of the Concession Deed results (directly or indirectly) in repudiation of the SLU Construction Contract by the Company or the SLU Construction Contractor being entitled to rescind or otherwise terminate the SLU Construction Contract;

- (b) (in return for cancellation of the **Trust Leases**) an amount equal to the **Trustee's** costs of constructing the **Works**, the **SLU Works** and **Plant** on the **Trust Land**, the **CityLink Returned Works** on **Trust Land**, the **CLUT Works** and after the **CTC Expiry Date**, the **CTW Works** (and the cost of undertaking the **CTW Maintenance Activities**), including any reasonable loss, cost, charge, liability, damage or expense incurred or sustained (or to be incurred or sustained) by the **Trustee** under the **SLU Construction Contract** as a direct or indirect consequence of termination of the **Concession Deed** or because termination of the **Concession Deed** results (directly or indirectly) in repudiation of the **SLU Construction Contract** by the **Trustee** or the **SLU Construction Contractor** being entitled to rescind or otherwise terminate the **SLU Construction Contract**, or repudiation of the **WGT D&C Subcontract** by the **Trustee** or the **WGT D&C Subcontractor** being entitled to rescind or otherwise terminate or vary the scope of the **WGT D&C Subcontract** to remove or reduce the scope of the **CLUT Works**;
- (c) (in return for cancellation of the **Company's** rights under the **Concession Deed**) an amount equal to the sum of any costs of a capital nature incurred by the **Company** in relation to the **Project** (including after the **CTC Expiry Date**, the **State Returned Works**) and not otherwise provided for in paragraph (a), escalated by reference to **CPI** and any payments made by the **Company** under the **CEPA**;
- (d) (in return for cancellation of the **Trustee's** right under the **Concession Deed**) an amount equal to the sum of any costs of a capital nature incurred by the **Trustee** in relation to the **Project** (including after the **CTC Expiry Date**, the **State Returned Works**) and not otherwise provided for in paragraph (b), escalated by reference to **CPI**;
- (e) (in return for cancellation of the **Company's** rights under the **Concession Deed**) an amount equal to the sum of:
 - (i) any loss, cost, charge, liability, damage or expense incurred or sustained (or to be incurred or sustained) by the **Company** as a direct or indirect consequence of termination of the **Concession Deed** or because termination of the **Concession Deed** results (directly or indirectly) in the repudiation by the **Company** of any **Lending Documents, Project Document, Transaction Document, M1 Project Document**, any **WGT Project Document** to which the **Company** is a party or, after the **CTC Expiry Date**, any **CTW Project Document** or in any party to such a document (other than the **Company**) being entitled to rescind or otherwise terminate that document; and

- (ii) any amount necessary to be paid to the **Company** in order to enable the **Company** to satisfy its liabilities in respect of **Project Debt** and, on or after the **CTC Expiry Date**, **CTW Project Debt**, **WGT Project Debt** and any other liability the **Company** may have in relation to the **Project** (excluding prior to the **CTC Expiry Date**, the **CTW**),

except, however, insofar as any component of the amount to which this paragraph (e) applies is otherwise provided for in any of the preceding paragraphs;

- (f) (in return for cancellation of the Trustee's rights under the Concession Deed) an amount equal to the sum of:
 - (i) any loss, cost, charge, liability, damage or expense incurred or sustained (or to be incurred or sustained) by the **Trustee** as a direct or indirect consequence of termination of the **Concession Deed** or because termination of the **Concession Deed** results (directly or indirectly) in the repudiation by the **Trustee** of any **Lending Document**, **Project Document**, **Transaction Document**, **M1 Project Document**, any **WGT Project Document** to which the **Trustee** is a party or, after the **CTC Expiry Date**, any **CTW Project Document** or any party to such a document (other than a **Trustee**) becoming entitled to rescind or otherwise terminate that document (or in relation to the **WGT Project Documents** only, vary the scope of those documents to remove or reduce the scope of the **CLUT Works**); and
 - (ii) any amount necessary to be paid to the **Trustee** in order to enable the **Trustee** to satisfy its liabilities in respect of **Project Debt** and, on or after the **CTC Expiry Date**, the **CTW Project Debt**, **WGT Project Debt** and any other liability the **Trustee** may have in relation to the **Project** (excluding, prior to the **CTC Expiry Date**, the **CTW**),

except, however, insofar as any component of the amount to which this paragraph (f) applies is otherwise provided for in any of the preceding paragraphs; and

- (g) (in return for cancellation of the **Trustee's** capacity to derive income from the **Project** or for the **Company** and the **Trustee**, or both of them, having to seek cancellation of the rights of the holders of **Equity Infrastructure Bonds**) an amount equal to the amount, if any, by which the **Early Termination Limit** then exceeds the aggregate of the amounts provided for in the previous paragraphs,

provided, however, that at no time and in no circumstance may the **Early Termination Amount** exceed the **Early Termination Limit**. For the avoidance of doubt, losses, costs, charges, liabilities, damages or expenses will not be considered to be unreasonable solely by virtue of the fact that the SLU Construction Contract may be an alliance contract rather than a design and construction contract.

"**Early Termination Limit**" means, at any time:

- (a) subject to paragraph (c), in the context of a **State** election to acquire the **Project** under paragraph 12.8(e) because of crystallisation of a risk under sub-paragraph 12.8(b)(ii) relating to a **Law** of Victoria, the result of application of the formula $(A + B + B1 + C) - D + E$, where:
- A equals the aggregate of the **Project Debt**, **WGT Project Debt** and, on or after the **CTC Expiry Date** the **CTW Project Debt** at that time;
- B equals the aggregate of any reasonable costs and expenses incurred by the **Company** or the **Trustee** under the **Lending Documents** as a result of any **Lending Document** being terminated (consequent upon termination of this **Deed**), the premature satisfaction of the **Company's** or **Trustee's** liability under them utilising payments made by the **State** under clause 12.8 or 15.5 (as applicable) or the cancellation of the facilities utilised by **Lenders** in making funding available under them due to that termination or satisfaction but excluding such costs and expenses insofar as they are included in factor A or:
- (i) (other than in relation to the costs arising under a **Lending Document** that relates to **CTW Project Debt** and **WGT Project Debt**) insofar as the relevant costs and expenses exceed the costs and expenses (the "theoretical costs") which would have been incurred by the **Company** or the **Trustee** (as the case may be) had the Relevant Circumstances (as defined in the **IFA Ninth Amending Deed**) not occurred. Such theoretical costs shall be calculated using the **Lending Documents** in the form agreed by the **Company** and the **State** under clause 4.2(f) of the **IFA Ninth Amending Deed** and the **Project Documents** in the form of those documents immediately prior to the occurrence of the Relevant Circumstances (as defined in the **IFA Ninth Amending Deed**);²⁵

- (ii) (in relation to the costs arising under a **Lending Document** that relates to **CTW Project Debt**) insofar as the relevant costs and expenses exceed the costs and expenses which would have been incurred by the **Company** or the **Trustee** (as the case may be) had such costs been calculated using the **Lending Documents** in the form accepted by the **State** under clause 4.2(g) of the **IFA Twenty-second Amending Deed**; and
 - (iii) (in relation to the costs arising under a **Lending Document** that relates to **WGT Project Debt**) insofar as the relevant costs and expenses exceed the costs and expenses which would have been incurred by the **Company** or the **Trustee** (as the case may be) had such costs been calculated using the **Lending Documents** in the form accepted by the **State** as a condition precedent to the **IFA WGT Amending Deed**;
- B1 equals the aggregate of any reasonable costs and expenses incurred by the **Company** or the **Trustee** under a **Transaction Document, SLU Design and Construct Contract** or **WGT D&C Subcontract** as a result of the **Transaction Document, SLU Design and Construct Contract**, or **WGT D&C Subcontract** being terminated or the **WGT D&C Subcontractor** being entitled to vary the scope of the **WGT D&C Subcontract** to remove or reduce the scope of the **CLUT Works** (consequent upon termination of this **Deed**) including because the termination of this **Deed** results in the **Company** or the **Trustee** repudiating a **Transaction Document, SLU Design and Construct Contract** or **WGT D&C Subcontract**;²⁶
- C equals the highest of **ET Market Value, ET Base Case** and **ET Valuation**;
- D equals the aggregate of:
 - (i) the greater of the credit balance of the deposit account referred to in paragraph 14.4(a) at the relevant time and the amount assumed to be the balance of that account under that paragraph;
 - (ii) in relation to deposits and accounts required to be maintained under this **Deed**, the greater of the aggregate credit balance of those deposits and accounts and the amount that aggregate should have been

had the **Company** and the **Trustee** complied with their obligations under this **Deed** (calculated on a separate basis in relation to each such deposit or account);

- (iii) the aggregate credit balance of other accounts and deposits to which the **Company** or the **Trustee** is entitled,

excluding the balance of any Insurance Proceeds Account (which the parties agree will be available to the State on payment of the Early Termination Amount) or any balance in any other account which relates to the amounts payable to **WGT Co** under the **CEPA**;

E equals:

- (i) prior to the **CTC Expiry Date**, zero; and
- (ii) after the **CTC Expiry Date**, the Unrecovered CityLink State Contribution (as defined in the **CTC Redevelopment Deed**) as at the date of termination, to the extent not already included in factors A, B, B1 or C and to the extent that amount is greater than zero.

- (b) in the context of clause 15.5 and, subject to paragraph (c), in the context of a **State** election to acquire the **Project** under paragraph 12.8(e) because of crystallisation of a risk under sub-paragraph 12.8(b)(ii) relating to a **Law** (but not a **Law** of Victoria), the aggregate of:

- (i) the amount of the factor A referred to in paragraph (a);
- (ii) the amount of the factor B referred to in paragraph (a);
- (iii) **ET Market Value** at that time or (if that value is zero because of the operation of paragraph (a) of the definition of that term) **ET Valuation** at that time (but assessed without regard to the 100% change in control assumption outlined in paragraph (a)(ii) of the definition of that term);
- (iv) the amount of the factor E referred to in paragraph (a), excluding the words 'to the extent not already included in factors A, B, B1, or C', and to the extent not already included in paragraphs (b)(i), (b)(ii), or (b)(iii); and
- (v) any reasonable costs and expenses incurred by the **Company** or the **Trustee** under the **Operating Services Agreement (CityLink)** as a result of the **Operating Services Agreement (CityLink)** being terminated and to the extent not already included in paragraphs (b)(i), (b)(ii) or (b)(iii),

less the amount of the factor D referred to in paragraph (a);²⁷

- (c) in the context of a **State** election to acquire the **Project** under sub-paragraph 12.8(e)(iv), the greater of the amount of the factor A referred to in paragraph (a) and:
- (i) if the relevant time is after Completion of all Sections, the result of deducting X from the aggregate of Y, Z and Z1, where:
- Y** means the aggregate of Project Debt, the amount subscribed in respect of Original Project Securities (as projected in the Base Case Financial Model to apply at the time of Completion of all Sections), and **Extension Project Securities** (as projected in the **Reference Financial Model** to apply at that date), any cash applied or required to be applied or retained by the **Company** or the **Trustee** for the purposes of meeting the **CTW Obligations** or in, or in connection with risks under the **CTW Project Documents**, any amounts payable by the **Company** under the **CEPA** referable to the **WGT Tolling Enhancements** for the **Original Concession Period**, **WGT Project Debt** and, after the **CTC Expiry Date**, the **CTW Project Debt** and the **Equity Note**, together with the amount of the limit on the State's liability with respect to the State Works and the aggregate of costs and expenses the liability for which has been reasonably incurred by the Company, the Trustee or both of them in connection with, and for the purposes of, the SLU; and
- X** means the amount of the factor D referred to in paragraph (a), amounts payable on termination of this Deed under clause 15.6(a), reasonable costs incurred or payable by the State in connection with its acquisition of the Project and accrued amortisation of the Project (as if the value of the Project equalled the amount of factor Y and it amortised to zero over 45 years by equal daily instalments); and
- Z** means the amount of the factor E referred to in paragraph (a), excluding the words 'to the extent not already included in factors A, B, B1, or C', and to the extent not already included in factor Y; and
- Z1** means any reasonable costs and expenses incurred by the **Company** or the **Trustee**

- under the **Operating Services Agreement (CityLink)** as a result of the **Operating Services Agreement (CityLink)** being terminated and to the extent not already included in factor Y;
- (ii) if that time is before Completion of all Sections, an amount calculated in the manner outlined in sub-paragraph (i) but, as if:
- (A) the factor "Y" means the aggregate of costs and expenses the liability for which has been reasonably incurred by the **Company**, the **Trustee** or both of them in connection with and for the purposes of the **Project**; and
- (B) the factor "X" did not include accrued amortisation;
- (d) in the context of a **State** election to terminate this **Deed** under paragraph 14.7(b), where:
- (i) the **State** is not precluded from achieving **Completion** of all **Sections** at the time it elects to terminate, the aggregate of the amount of factors A and E referred to in paragraph (a) and **ET Market Value** at that time or (if that value is zero because of the operation of paragraph (a) of the definition of that term) ET Valuation at that time (but assessed without regard to the 100% change in control assumption outlined in paragraph (a)(ii) of the definition of that term); or^{28 29}
- (ii) the **State** is precluded from achieving **Completion** of all **Sections** at the time it elects to terminate, the greater of the amount of factor A referred to in paragraph (a) and the aggregate of:³⁰
- (A) costs and expenses the liability for which has been reasonably incurred by the **Company**, the **Trustee** or both of them in connection with and for the purposes of the **Project**;³¹ and
- (B) any amounts in respect of interest accrued on **Original Project Securities** in the period up to the relevant time and from the date most recently preceding that time on which interest fell due for payment,³²

in every case less the factor D referred to in paragraph (a).

"**Eighteenth Amending Deed**" means the deed so entitled made between the parties to this Deed pursuant to which amendments were effected to this Deed.³³

"**EIS**" is an Environment Impact Statement prepared by the Commonwealth pursuant to the *Environment (Impact of Proposals) Act 1974* (Cth).

"**Emergency Management Plan**" is the major emergency plan developed by the Company in conjunction with the Emergency Services and VicRoads in accordance with the Project Scope and Technical Requirements.³⁴

"**Emergency Response and Incident Management Plan**" means the emergency response and incident management plan developed in accordance with clause 7D.39.

"**Emergency Services**" means the following State services:

- (a) Victoria Police;
- (b) State Emergency Service ("SES");
- (c) Metropolitan Fire and Emergency Services Board ("MFESB");
- (d) Metropolitan Ambulance Service ("MAS");
- (e) State Traffic Co-Ordinator; and
- (f) any other State emergency service that may be required to respond to an emergency in relation to the **Link**.³⁵

"**Enforcement Agency**" has the meaning given to it under the Project Legislation.³⁶

"**Enterprise-wide Subcontract**" means a subcontract entered into between a member of the Transurban Group and a subcontractor who is not a member of the Transurban Group for both:

- (a) the performance of all or part of the operation, maintenance or repair of the Link that is the subject of a Service Agreement; and
- (b) the supply of goods or services, or granting of rights used to supply those goods or services for at least one other toll road operated by a member of the Transurban Group, such other toll road not being limited to WGT.

"**Entity**" has the meaning given in section 64A of the Corporations Act but is deemed to include a "joint venture" within the meaning of Australian Accounting Standard 19.³⁷

"**Environment Protection Act**" is the *Environment Protection Act 1970* (Vic).

"**Environment Protection Authority**" or "**EPA**" is the Environment Protection Authority established under the Environment Protection Act.

"**Equity Documents**" are:

- (a) the Equity Underwriting Agreement;
- (b) the Sponsors' Agreement;
- (c) the Deferred Equity Subscription Agreement; and

(d) each Up-Front Institutional Subscription Agreement.

"Equity Infrastructure Bonds" are debentures issued in parcels of 499 with one non-detachable Unit and one non-detachable share in the Company, the loans made pursuant to which are:

- (a) intended to qualify as infrastructure borrowings; and
- (b) repayable by applying the redemption proceeds to subscribe for **Stapled Securities**.³⁸

"Equity Investor" is, at any time, an Entity who holds Project Securities at that time.³⁹

"Equity Note" is the note issued by the Company to Transurban Holdings Limited pursuant to the Equity Note Deed Poll.

"Equity Note Deed Poll" is the deed poll entered into by the Company to issue the Equity Note on or around the CTW Effective Date.

"Equity Return" is, at any time, (as adjusted under clause 1.19A) the expected real after tax internal rate of return which a Notional Initial Equity Investor is projected to receive on its investment (and taking into account actual receipts) in Original Project Securities, which (subject to any provision of this Deed to the contrary) is to be made using the Financial Model, assessed over the entire Original Concession Period (assuming no early termination of the Original Concession Period) and assessed having regard to amounts actually distributed in respect of Project Securities, provided however, that where this term is used in the context of Concession Notes, "Equity Return" shall mean "Adjusted Equity Return".⁴⁰

"ESEP Deed" means the deed made by the State and Clepco on or about the date of the Fourth Amending Deed and providing for, amongst other things, the operation, maintenance, repair and tolling of the Exhibition Street Extension by Clepco.⁴¹

"ESEP Land" has the meaning given it in the ESEP Deed.⁴²

"ESEP Fifteenth Amending Deed" means the deed entitled "Exhibition Street Extension Fifteenth Amending Deed" between the parties to the ESEP Deed.

"ESEP Project" has the meaning given it in the ESEP Deed.⁴³

"ESEP Project Documents" has the meaning given it in the ESEP Deed.⁴⁴

"ET Base Case" means, in the context of a determination of the Early Termination Amount applicable at a time, the aggregate of:

- (a) the amount, if any, that would then need to be paid to the Company and the Trustee to enable:
 - (i) Original Equity Investors to achieve an Equity Return equal to the Base Case Equity Return (but with that return being calculated on the basis of the Concession Period ending at the relevant time and taking into account actual receipts during the

- Original Concession Period prior to that time and subject to clause 1.19A); and
- (ii) Extension Equity Investors to achieve an Extension Equity Return equal to the Extension Base Case Equity Return (but with that return being calculated on the basis of the Concession Period ending at the relevant time and taking into any account actual receipts during the Additional Concession Period prior to that time and subject to clause 1.19A);
- (b) the net present value of Forecast Enhancement Cashflows from the end of the Concession Period at the relevant time until the end of the Original Concession Period (assuming no early termination) using the appropriate Development Project Base Case Equity Return for the forecast cashflows relating to that Development Project.

"ET Market Value" means, in the context of a determination of the Early Termination Amount applicable at a time, the average market value of Project Securities in the period commencing 12 months before the event by reason of which the Early Termination Amount is being calculated and ending 6 months before that event. That market value is:

- (a) zero, unless throughout the majority of that period **Project Securities** were quoted on a stock market conducted by the Exchange or an Exchange subsidiary (with each of those terms having the meaning given to them in the Corporations Law); or
- (b) if paragraph (a) does not apply, the weighted average of the daily sale price of **Project Securities** (per security) determined over that period (in relation to transfers of **Project Securities** effected on such a stock market on each day in that period) multiplied by the number of relevant securities as comprise **Project Securities** on issue at the end of that period.

"ET Valuation" means, in the context of a determination of the Early Termination Amount applicable at a time:

- (a) unless paragraph (b) applies, the amount determined by the **ET Valuer** to be the value of the **Project Securities** and the **Equity Note** at the time assuming:
 - (i) the event by reason of which the **Early Termination Amount** is being calculated had not occurred;
 - (ii) the **Concession Period** has been extended by the **WGT CityLink and ESEP Concession Amending Deeds** and no (or no further) extension of the **Concession Period** (and assuming that if the **WGT Project Agreement** has not been terminated at the date of the

determination of the **Early Termination Amount** that the **WGT Project Agreement** is not terminated prior to the **WGT Date of Tolling Completion**); and

- (iii) a 100% change in Control of the **Trust** and the **Company**;
- (b) if the **State**, the **Company** or the **Trustee** indicate (by notice to the others of them given within 10 **Business Days** of receipt of details of the amount so determined by the **ET Valuer**) that it is not satisfied with that determination, the average of the amount so determined and the amount determined by **ET Valuer (2)** to be the value of the **Project Securities** and the **Equity Note** at that time, on the basis of the assumptions outlined in paragraph (a).

"**ET Valuer**" means, in the context of a determination of the Early Termination Amount, a person whom the State, the Company and the Trustee agree should determine the relevant ET Valuation. If they do not agree on the identity of that person within 20 Business Days of any of them requesting that they endeavour to do so, the parties shall procure that the President of the Institute of Arbitrators promptly appoints that person.

"**ET Valuer (2)**" means, in the context of a determination of the **Early Termination Amount**, a person who the **State**, the **Company** and the **Trustee** agree should determine the relevant **ET Valuation** should there be, or if there is, dissatisfaction with the determination of that value by the **ET Valuer**. If they do not agree on the identity of that person within 20 **Business Days** of any of them requesting that they endeavour to do so, the parties shall procure that the President of the Institute of Arbitrators promptly appoints that person.

"**Event of Default**" means, subject to clauses 12.15 and 15.9, a breach of obligation or warranty imposed on or given by the Company or the Trustee under a Project Document (other than a breach of any obligation provided for in paragraph 8.3(a), 8A.3(a)(i) or (ii), or Article 18), or a representation made by the Company or the Trustee in a Project Document being untrue when made or repeated:

- (a) the consequences of which are material;
- (b) in relation to which:
 - (i) damages adequate to compensate the **State** and users of the **Link** for those consequences or an order for specific performance cannot be obtained by the State for the breach or misrepresentation; or
 - (ii) if such adequate damages are awarded to the **State** consequent upon it suing the **Company** or the **Trustee** or an order for specific performance

is obtained by the **State** consequent upon it seeking such an order, either:

- (A) payment of the damages awarded is not made, otherwise than because of restrictions imposed by the **Master Security Deed**; or
 - (B) there is a failure to observe the terms of the order for specific performance;
- (c) a notice of which has been given by the **State** to the **Company** and the **Trustee**; and
- (d) in relation to which either of the following applies:
- (i) neither the **Company** nor the **Trustee** (as the case may be) has diligently pursued a remedy or the overcoming of the relevant consequences of the breach or misrepresentation since the expiration of 20 **Business Days** after receipt of that notice; or
 - (ii) if there has been such diligent pursuit, it ceased before the breach or misrepresentation was remedied or the consequences of it were overcome;

provided, however, that if (and for so long only as) any **Project Debt** or **CTW Project Debt** is outstanding:

- (e) the breach of the obligation or warranty, the representation being untrue or the failure (as applicable), must affect adversely users of the **Link** (or a material part of it); and
- (f) damages for the breach, the representation being untrue or the failure must not adequately compensate for that adverse effect.

"Exempt Vehicle" is:

- (a) a police vehicle;
- (b) an ambulance;
- (c) a fire service unit;
- (d) a State Emergency Service vehicle;
- (e) a vehicle of the Australian Defence Force, conveying any of its members or property while on march or duty; or
- (f) a vehicle being utilised in the performance of emergency services under authority of a statute or the **State**.

"Exhibition Street Extension" has the meaning given it in the ESEP Deed.⁴⁵

"Extension Base Case Equity Return" is the expected real after tax internal rate of return which an **Extension Notional Initial Equity Investor** is projected by the **Reference Financial Model** to receive from the date of its investment in the **Additional**

Concession Period Securities until the end of the **Concession Period**, on its investment in the **Additional Concession Period Securities** which (assuming no early termination or further extension of the **Concession Period**) is as set out in the **Reference Financial Model** or such other rate as calculated from any agreed changes in the **Reference Financial Model**.

"**Extension Equity Investor**" is, at any time, an **Entity** who holds Extension Project Securities at that time.

"**Extension Equity Return**" is, at any time, (as adjusted under clause 1.19A) the expected real after tax internal rate of return which an **Extension Notional Initial Equity Investor** is projected to receive on its investment (and taking into account actual receipts) in **Extension Project Securities**, which (subject to any provision of this **Deed** to the contrary) is to be made using the **Financial Model** and (if applicable), assessed over the entire **Concession Period** (assuming no early termination of the **Concession Period**) and assessed having regard to amounts actually distributed in respect of **Extension Project Securities**.

"**Extension Event**" is an event described in Schedule 2.

"**Extension Notional Initial Equity Investor**" is a notional corporate taxpayer who is deemed to have been issued with **Extension Project Securities** on the dates forecast in the **Reference Financial Model** and to hold those **Extension Project Securities** for the **Concession Period**.

"**Extension Project Securities**" means, at any time (subject to clause 1.27), the **Additional Concession Period Securities** and **WGT Enhancement Project Securities**.

"**Extension Relevant Period**" means a period which commences on the first day of the **Additional Concession Period** and ends on the last day of the financial year in which the first day of the **Additional Concession Period** occurs, and each subsequent 12 month period ending on the last day of the relevant financial year, except in relation to the last such period which commences on the first day of the financial year in which this **Deed** terminates or expires and ends on the date of such termination or expiry.

"**Failed Milestone**" is a Construction Milestone which has not been achieved by the Relevant Milestone Date.

"**Fifth Amending Deed**" means the deed so entitled made by the parties to this Deed pursuant to which, amongst other things, amendments were effected to this Deed.⁴⁶

"**Final Condition Report**" means a report in relation to the Specified Roads and Melbourne City Council Infrastructure in accordance with clause 7E.5(c) which includes a summary of the then-existing standard and condition of the Specified Roads and the Melbourne City Council Infrastructure including photographs and video.

"**Financial Closing**" is the latest of:

- (a) the date of satisfaction or waiver of the last of the conditions precedent to the initial provision of financial accommodation under the Syndicated Facilities Agreement to be satisfied or waived;
- (b) the date of satisfaction or waiver of the last of the conditions precedent to the obligations of subscribers or underwriters of the **Original Project Securities** under the **Equity Documents** to be satisfied or waived;
- (c) the date of satisfaction or waiver of the last of the conditions precedent under clause 2.7 of this Deed to be satisfied or waived; and
- (d) 31 January 1996 or such other date as the parties may agree.

"Finance System" means the system in use by the Company at the relevant time that supports the settlement process between the operators of toll road assets and retailers of toll account and pass products, together with the maintenance of general ledger accounts for asset and retail operations.

"Financial Model" is the Base Case Financial Model as changed with the approval of the State under paragraph 14.3(d) or as a result of incorporation of data or a revision under paragraph 14.3(e).

"FMS Operating Agreement" means the document entitled "West Gate Tunnel and CityLink FMS Operating Agreement" between the State, WGT Co, the Company and the Trustee dated on or around the date of the WGT Project Agreement.

"FMS Failure" means a failure by the State to deliver and maintain the level of functionality in its FMS and FMS Devices (each as defined in the FMS Operating Agreement) which is required by the FMS Operating Agreement, including the Interface Protocol and the Mutual Device Control Schedule (each as defined in the FMS Operating Agreement).

"FMS Reference Document" means:

- (a) the VicRoads Managed Motorways Framework; and
- (b) Technical References (as defined in the PSTR) to the extent that they relate to the operation of the FMS (as defined under the FMS Operating Agreement).

"Force Majeure Event" is any one or more of or a combination of:

- (a) any fire, flood, hurricane, explosion, earthquake, natural disaster, sabotage, act of a public enemy, war (declared or undeclared), revolution, radioactive contamination or toxic or dangerous chemical contamination, riot, civil commotion or blockade; or
- (b) any event which is beyond the reasonable control of the **Company** or the **Trustee**,

the risk of which is not reasonably capable of adequate insurance in the commercial insurance market on reasonable terms and (either separately or together) causes the **Company** or the **Trustee** to be unable to perform any one or more of their obligations to the **State** under the **Project Documents**, where that cause could not have been prevented, overcome or remedied by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligation without that prudent person having any expectation of relief from performing that obligation, including the expenditure of all reasonable sums of money;

but in respect of an event in paragraph (b) and without limiting paragraph (a) does not include:

- (c) any event, the risk of which is or the occurrence of a matter or event responsibility for which has been accepted by the **Company** or the **Trustee** under this **Deed**, including clause 12.3 of this **Deed**;
- (d) any **Extension Event**, other than item 4 in Schedule 2;
- (e) any event or combination of events referred to in column 1 of Items 1 to 7 of the **Appendix**;
- (f) lack of financial or technical resources;
- (g) mechanical, electrical or equipment breakdown;
- (h) any change in **Law**; or
- (i) any industrial action; and

in respect of paragraphs (a) and (b) does not include anything which would not have occurred had the **Works**, the **SLU Works** or the **CTW Works** been entirely designed and constructed to address floods of a level that might at the date of this **Deed** be expected to occur once in every 50 years.

"Forecast Enhancement Cashflows" means, in relation to any period the forecast cashflows for each of the Development Projects as set out in worksheet "Cdef" in the Reference Financial Model (as adjusted under Schedule 6) for that period.

"Foreign Toll Operator" means any entity (other than the Company) operating a toll road in Australia.

"Fourteenth Amending Deed" means the deed so entitled made between the parties to this Deed pursuant to which amendments were effected to this Deed.⁴⁷

"Fourth Amending Deed" means the deed so entitled made by the parties to this Deed pursuant to which, amongst other things, amendments were made to this Deed.⁴⁸

"Freeway Management System Coordination Agreement" means the agreement so entitled entered into by the State and the Company.

"Further Request For Payment" means a further Request for Payment sent to an Addressee following the sending of a Request For Payment to that Addressee in relation to any or all of the Trips

(in accordance with the meaning of Trip in the Toll Calculation Schedule as set out in Schedule 4 to the IFA) the subject of that Request For Payment.⁴⁹

"Further Request For Payment Cap" means, at any time, the sum of the Ongoing Costs Cap, the Project Development Costs Cap and the Further Request For Payment Costs Cap at that time.

"Further Request For Payment Costs Cap" means, subject to any review pursuant to clause 9.2B(d):

- (a) at any time up to and including 30 June 2008, \$9.50 (inclusive of GST);
- (b) at any time during each financial year after 30 June 2008, the amount (inclusive of GST) calculated in accordance with the following formula:

$\text{Further Request For Payment Costs Cap}_{t+1} = \text{Further Request For Payment Costs Cap}_t \times \text{Index}_t$

where:

Further Request For Payment Costs Cap_{t+1} is the Further Request For Payment Costs Cap per Request For Payment to apply in the relevant financial year

Further Request For Payment Costs Cap_t is the Further Request For Payment Costs Cap per Request For Payment which applies in the financial year preceding the relevant financial year

Index_t is the most recently available CPI for a quarter preceding commencement of the relevant financial year (CPI_{t-1}) divided by CPI for the corresponding quarter in the financial year preceding the relevant financial year (CPI_{t-2}).

The Further Request For Payment Costs Cap (as calculated above) reflects the estimated average cost of the Company per Further Request For Payment, properly incurred, of producing, sending, dealing with enquiries, complaints and disputes on, and processing payments for Further Requests For Payment and driver nominations (without double-counting any amounts already included in the Request For Payment Cap).

"Gateway" is the concept of an entry route into Melbourne by freeway or other major road, but does not include the Exhibition Street Extension.⁵⁰

"Good Practice Operator" means an operator of an undertaking similar to that of the Link, performing its obligations with a level of skill, diligence, prudence, foresight and experience which is within the top quartile of international operators of similar undertakings and, any reference to the standard of a Good Practice Operator is a reference to that level of skill, diligence, prudence, foresight and experience.⁵¹

"Government Agency" is any government or any governmental, semi-governmental or administrative entity, agency or authority and includes a Minister of the Crown (in any right), excluding a municipal governing body.

"Government Directed Benefit" means, in relation to an Appendix Event:

- (a) a change of the type described in paragraphs (a), (b) or (c) of item 4 of the **Appendix** or a change in management or operation of the (or any part of the) Melbourne transportation network (including the public transport network), the implementation of a policy that affects that (or any part of that) network or the exercise of any right or power to which paragraph 2.4(b) applies; or
- (b) the acceleration or early adoption or implementation of such a change or such a thing,

the adoption, implementation, exercise or acceleration of which:

- (c) is not required under paragraph 2.4(a);
- (d) is specifically for the purpose of redressing the adverse effect of an **Appendix Event** on the ability, level or timing referred to in the definition of **"Material Adverse Effect"**;
- (e) occurs after that **Appendix Event**; and
- (f) is notified by the **State** to the **Company** and the **Trustee**.

"Groundwater Land" means the land used for the maintenance and operation of the Groundwater Management System.

"Groundwater Land Direction" has the meaning given in clause 4.4A(g).

"Groundwater Land Order" has the meaning given in clause 4.4A(h).

"Groundwater Land Proposal" has the meaning given in clause 4.4A(b).

"Groundwater Management System" has the meaning given in the Project Scope and Technical Requirements.

"Groundwater Management System Auditor Indicative Scope" has the meaning given in the Project Scope and Technical Requirements.

"Groundwater Management System Auditor" is the person (or persons) appointed as Groundwater Management System Auditor in accordance with clause 6D or any person substituted under clause 6D.

"Groundwater Management System Auditor Deed of Appointment" means the document entitled "Groundwater Management System Auditor Deed of Appointment – CityLink" to be entered into between the State, the Company, the Trustee and the Groundwater Management System Auditor.

"GST" has the same meaning as it has in the GST Act.⁵²

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth.⁵³

"**GST law**" has the same meaning as it has in the GST Act.⁵⁴

"**GST rate**" means the percentage rate of goods and services tax payable under the GST Act as specified in any of the:

- (a) *A New Tax System (Goods and Services Tax Imposition - General) Act 1999*; or
- (b) *A New Tax System (Goods and Services Tax Imposition - Customs) Act 1999*; or
- (c) *A New Tax System (Goods and Services Tax Imposition - Excise) Act 1999*; or
- (d) any other Act that specifies the percentage rate of goods and services tax payable under the **GST Act**.⁵⁵

"**Handover**" means the stage when the Company and Trustee have done everything that this Deed requires to enable the Company and Trustee to handover the Link in the Handover Condition in accordance with clause 3.4AG.

"**Handover Bond**" has the meaning given in clause 3.4AE(i)(ii).

"**Handover Bond Reference Amount**" has the meaning given in clause 3.4AE(e)(iv).

"**Handover Condition**" has the meaning given in clause 3.4AG.

"**Handover Clauses**" means the clauses agreed in accordance with the CityLink Option Deed.

"**Handover Matters Agreement Notice**" has the meaning given in clause 3.4AF(d)(i).

"**Handover Matters Disagreement Notice**" has the meaning given in clause 3.4AF(d)(ii).

"**Handover Matters Notice**" has the meaning given in clause 3.4AD.

"**Handover Reviewer**" means a person with suitable expertise and experience appointed as the independent reviewer for Handover in accordance with clause 3.4AE(a).

"**Handover Services**" has the meaning given in clause 3.4AE(e)(i).

"**Handback Documents**" has the meaning given to that term in clause 8C.3(a).

"**Hazardous Substance**" means any substance which would or might reasonably be expected to cause damage or injury to human beings, any property or the environment.

"**House of Parliament**" means each of the Legislative Assembly and the Legislative Council of the Parliament of Victoria.

"**Hydrogeology Annual Operating Plan**" means the plan prepared in accordance with clause 9.1(ab), as updated in accordance with clause 9.1 or section 2.10.2(k) of the Project Scope and Technical Requirements.

"Hydrogeology Management Plan" means the plan prepared in accordance with clause 9.1(ab), as updated in accordance with clause 9.1 or section 2.10.2(k) of the Project Scope and Technical Requirements.

"IFA" means the Integration and Facilitation Agreement made on or about the date of the Fourth Amending Deed by the parties to this Deed and Clepco.⁵⁶

"IFA Eighteenth Amending Deed" means the deed entitled "City Link and Extension Projects Integration and Facilitation Agreement Eighteenth Amending Deed" dated on or about August 2008 between the parties to the IFA.

"IFA Ninth Amending Deed" means the deed entitled "City Link and Extension Projects Integration and Facilitation Agreement Ninth Amending Deed" dated on or about June 2002 between the parties to IFA.⁵⁷

"IFA Sixteenth Amending Deed" means the deed entitled "City Link and Extension Projects Integration and Facilitation Agreement Sixteenth Amending Deed" dated 30 June 2007 between the parties to IFA.

"IFA Thirteenth Amending Deed" means the deed entitled "City Link and Extension Projects Integration and Facilitation Agreement Thirteenth Amending Deed" to be entered into between the parties to IFA as contemplated by clause 4.2 of the Twenty-second Amending Deed.

"IFA Twentieth Amending Deed" means the deed entitled "City Link and Extension Projects Integration and Facilitation Agreement Twentieth Amending Deed" dated on or about the date of this Deed between the parties to the IFA.

"IFA Twenty-second Amending Deed" means the deed entitled "City Link and Extension Projects Integration and Facilitation Agreement Twenty-second Amending Deed" between the parties to the IFA.

"IFA WGT Amending Deed" means the deed referred to in paragraph (c) of the definition of WGT CityLink and ESEP Concession Amending Deed.

"Incident Management Quality Plan" means the quality management plan relating to the management of incidents as described in the Project Scope and Technical Requirements.⁵⁸

"Independent Reviewer" is the person appointed as Independent Reviewer, under the agreement referred to in paragraph (d) of the definition of "Project Document" or any substituted person appointed under Article 6.

"Independent Reviewer's Certificate" is a certificate in the form of Exhibit B (Annexed).

"Indirect or Consequential Loss" has the meaning given in the CTC Redevelopment Deed.

"Initial Condition Report" means a report in relation to the Specified Roads and Melbourne City Council Infrastructure in accordance with clause 7E.5(a) which includes a summary of the then-existing standard and condition of the Specified Roads and the Melbourne City Council Infrastructure including photographs and video.

"Insurance Proceeds Account" is the account referred to in clause 11.3.

"Integration Services" means the integration of the B2B Integration Systems and the Finance System with the Tolling System.

"Intellectual Property Right" is any present or future trade mark, trade name, copyright, patent, or other intellectual property right.

"Interchange Completion" is when either:

- (a) the following have occurred:
 - (i) the Interchange Works have been completed in accordance with the Interchange Design Documentation except for omissions and defects which do not adversely affect the use of the Interchange Works by the public for the continuous passage of vehicles or the safety of that use or the ability of the Company or the Trustee to access and perform their respective obligations under the Project Documents (to the extent applicable);
 - (ii) commissioning of the Interchange Works has taken place; and
 - (iii) the State has performed all its obligations under the M1 Corridor Redevelopment Deed (to the extent applicable to the Interchange Works); or
- (b) State Road Upgrade Completion has occurred in accordance with the M1 Corridor Redevelopment Deed.

"Interchange Design Documentation" means the plans, drawings, specifications and other design documentation prepared by the State in relation to the Interchange Works.

"Interchange Land" means the part of the Project Land as identified in plan numbers SP21339 and SP21330 as set out in Exhibit JJ and includes the first 500 metres of the Burnley Tunnel east of Sturt Street.

"Interchange Works" means the part of the State Road Works Scope to be carried out on the Interchange Land.

"John Holland" means John Holland Pty Ltd ABN 11 004 282 268.

"Joint Operational Interface Protocol" means the joint operational interface protocol between the State and the Company which will apply to the operation of lane use signs.

"Key People" means the person who fulfils the role of "Operations Manager" of the Link, as replaced (if at all) in accordance with clause 10.9(a).

"Key Subcontract" means the **Operating Services Agreement (CityLink)** as replaced in accordance with clause 10.9(a)(iii).

"Key Subcontractor" means the **Operator** as replaced in accordance with clause 10.9(a)(iii).

"Law" is:

- (a) those principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the **Commonwealth**, the State of Victoria or a **Government Agency**;
- (c) the Constitution of the **Commonwealth**;
- (d) binding requirements and mandatory approvals (including conditions) of the **Commonwealth**, the State of Victoria or a **Government Agency** which have the force of law; and
- (e) guidelines of the **Commonwealth**, the State of Victoria or a **Government Agency** which have the force of law.

"Lay Down Area" is, at any particular time, land identified in the Property Schedule as a lay down area in relation to which, at the relevant time, the Company, the Trustee or their nominee is entitled to powers of entry and occupation or rights of possession, under clause 4.2.

"Leases" are:

- (a) **the Company Leases**;
- (b) **the Trust Leases**; and
- (c) **the Trust Concurrent Leases**,

each of which is a **Lease**.

"Lender" has the meaning ascribed to that expression in the Master Security Deed.

"Lending Documents" are:

- (a) the Syndicated Facilities Agreement;
- (b) the CPI Bond Deed Poll;
- (c) the Terms of CPI Bonds;
- (d) the CPI Bond Underwriting/Subscription Agreement;
- (e) the Performance Undertaking;
- (f) the Western Link Sub-Contractor Undertaking;
- (g) the Operator Undertaking;
- (h) the Transroute Undertaking;
- (i) the Scetaroute Letter of Comfort;

- (j) each interest rate management agreement between the Company or the Trustee, on the one hand, and any Lender, on the other hand;
- (k) [intentionally deleted];⁵⁹
- (l) [intentionally deleted];
- (m) [intentionally deleted];
- (n) [intentionally deleted];
- (o) [intentionally deleted];
- (p) [intentionally deleted];
- (q) [intentionally deleted];
- (r) [intentionally deleted];⁶⁰
- (s) the Security Trust Deed;
- (t) the Company Charge;
- (u) the Trust Charge;
- (v) each Mortgage of Lease;
- (w) each Mortgage of sub-lease;
- (x) the Transponder Funding Facility Agreement;
- (y) the Transponder Subordination Deed;
- (z) any security permitted under clause 18.3(b) of the **Master Security Deed**;
- (aa) any other document which:
 - (i) is given to the **State** in or towards satisfaction of the conditions precedent in clause 2.7; and
 - (ii) the **Company** and the **Trustee** notify the **State** at that time is a **Lending Document**;^{61 62}
- (ab) each New Lending Document, within the meaning of the Fourth Amending Deed;^{63 64 65}
- (ac) each New Infrastructure Borrowing Document, within the meaning of the **Sixteenth Amending Deed**; and^{66 67}
- (ad) each other document under which the **Trustee**, the **Company** or **Clepeco** borrows or raises money, obtains financial accommodation, enters into interest rate risk hedging or derivative transactions or incurs financial liabilities in respect of any such borrowing or raising, financial accommodation or interest rate risk hedging or derivative transactions solely for the purposes of the **Project** and each document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any such document, solely for the purposes of the **Project**.⁶⁸

"Link" or **"Melbourne City Link"** is together each of the Southern Link and the Western Link, but does not include any State Returned Works (except where otherwise expressly provided).

"Link control rooms" means rooms forming part of the improvements located on the Link control site (within the meaning of the Project Legislation) and the Freeway Control Centre (as defined in the WGT PSR).⁶⁹

"Link Expected Completion Date" is 14 July 2000.

"Link Upgrade area" has the meaning given to it in the Project Legislation.

"Link Upgrade construction area" has the meaning given to it in the Project Legislation.

"Lorimer Street Site" means the land defined on the registered plan OP121866 as Crown Allotment 14^C section 103, Parish of Melbourne South, City of South Melbourne, being land which, for the purposes of clause 4.7(c), is necessary for the Company to have possession of in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the Leases.⁷⁰

"Lorimer Street Site Lease" is the lease by the State to the Company substantially in the form of Exhibit D.5 (annexed but as that form may be amended prior to execution of the lease by agreement between the State and the Company) in accordance with clause 4.7A.⁷¹

"M1 Corridor - Deed of Assignment" means the deed so entitled dated 25 July 2006 between the State, the Company and Transurban Infrastructure Management Limited as trustee of the Transurban Holding Trust in the form set out in Exhibit BB as that deed may be amended from time to time.

"M1 Corridor Deed of Guarantee and Indemnity" means the deed so entitled dated 25 July 2006 between the State and Transurban Holdings Limited in the form set out in Exhibit CC as that deed may be amended from time to time.

"M1 Corridor Redevelopment Deed" means the deed so entitled dated 25 July 2006 between the State, the Company and the Trustee in the form set out in Exhibit AA as that deed may be amended from time to time.

"M1 Project Documents" means each of:

- (a) the M1 Corridor Redevelopment Deed;
- (b) the Twenty-second Amending Deed;
- (c) the Twenty-fifth Amending Deed;
- (d) the Twenty-seventh Amending Deed;
- (e) the Twenty-eighth Amending Deed;
- (f) the Thirtieth Amending Deed;
- (g) the IFA Sixteenth Amending Deed;

- (h) the IFA Eighteenth Amending Deed;
- (i) the IFA Twentieth Amending Deed;
- (j) each document amending any of the above; and
- (k) each document which is agreed between the parties to this Deed to be an M1 Project Document.

"Maintenance Boundary" has the meaning given to it in the Maintenance Principles (State Network).

"Maintenance Principles (State Network)" means the principles described as such in SWTC.

"Major Transport Network Changes" are the changes specified in Exhibit J (Annexed).

"Manager" is, at any time the person then acting as Manager of the Trust and who is, at the date of this Deed, City Link Management Limited ACN 071 292 647.

"Master Security Deed" is a deed between the State, the Company, the Trustee, the Agent and the Security Trustee in the form of Exhibit K (Annexed), as that form may be amended prior to execution of the deed by agreement between the State, the Company and the Trustee.

"Material Adverse Effect" is a material adverse effect on:

- (a) the ability of the **Company** or the **Trustee** to repay the **Project Debt, CTW Project Debt and WGT Project Debt** in accordance with the amortisation schedules set out in schedules 5 and 5A and 5B to IFA respectively (without regard to any acceleration of the obligation to repay); or ⁷²
- (b) the level or timing of revenues (after excluding any GST paid or payable by the Company or the Trustee in respect of such revenues) or of outgoings incurred or paid in respect of the **Project**.⁷³

"Material Change" means a material change to the Interchange Works and:

- (a) includes any change to the Interchange Works which materially increases operation and maintenance costs of the Interchange Works compared to the costs that would have been likely to be incurred under the reference design of the relevant works attached as Annexure C of the M1 Corridor Redevelopment Deed; and
- (b) may include a Functional Change.

"Material Subcontract" means any subcontract (other than an Enterprise-wide Subcontract and a Service Agreement) for all or part of the operation, maintenance and repair of the Link:

- (a) the annual value of which exceeds \$5,000,000 (escalated by reference to CPI); or
- (b) which, when aggregated with the annual value of each other subcontract for the operation, maintenance and repair of the

Link which remains in effect and which was entered into by the same subcontractor in the preceding 12 month period (other than a subcontract referred to in paragraph (a)), will result in the total annual value of those contracts exceeding \$5,000,000 (escalated by reference to **CPI**).

"Melbourne City Council" means the municipal governing body for the Melbourne City Council.

"Melbourne City Council Infrastructure" means the pathways, drains, streetlights or other infrastructure within the Specified Roads, and any other infrastructure agreed between the parties in writing.

"Melbourne City Link Authority Act" is the Melbourne City Link Authority Act 1994 (Vic).

"Minister" means the Minister for Roads and Ports of the State of Victoria or such other Minister of the State authorised from time to time to exercise the Minister's powers under the Melbourne City Link Authority Act and includes any person to whom the rights of the Minister are assigned under section 25(4)(b) of that Act.

"Model Variation Event" means:

- (a) an Appendix Event which is agreed or determined has had or will have a Material Adverse Effect;
- (b) a Compensable Enhancement;
- (c) termination of the ESEP Project Documents;
- (d) termination of the WGT Project Agreement prior to the WGT Date of Tolling Completion; or
- (e) Variations implemented in accordance with clause 7.16,

which results in a permanent adjustment to the level or timing of revenues or of outgoings in respect of the Project, Equity Return, the Extension Equity Return, the Forecast Enhancement Cashflows, the Project Debt, the CTW Project Debt, the WGT Project Debt (which in the case of a Compensable Enhancement will take into account only the projected revenue to be retained by the Company or Trustee).

"Monash Freeway" is the section of freeway extending in a general south-easterly direction from Punt Road to the north-eastern limit of the elevated roadway west of Toorak Road a plan of which is Exhibit R.^{74 75 76}

"Net-Balance Level" means the volume of water described in section 2.10.2(c)(i) of Part E of the Project Scope and Technical Requirements.

"Network Tolling Agreement" means the agreement of that name between WGT Co, the Company and OpCo, dated on or around the date of the WGT Project Agreement.

"NEVDIS" means the National Exchange of Vehicle and Driver Information System used to facilitate the exchange of driver

licensing, vehicle registration and written off vehicle information between the Australian states and territories.⁷⁷

"**New CityLink Subcontract**" has the meaning given in clause 3.4AH(b)(ii)B or clause 3.5AH(c)(ii), as the context requires.

"**NewCo**" means West Gate Tunnel Leasehold Co. Pty Ltd ACN 622 944 709.

NewCo Facility Agreement means the document entitled "NewCo Loan Facility Agreement" between NewCo, WGT Co and Transurban Funding Pty Limited ACN 606 949 333 dated on or about WGT Financial Close.

NewCo FS2 Tranche means the FS2 Tranche as defined under the NewCo Facility Agreement.

NewCo FS3 Tranche means the FS3 Tranche as defined under the NewCo Facility Agreement.

"**NGER Legislation**" means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

"**Nineteenth Amending Deed**" means the deed entitled "Melbourne City Link Nineteenth Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.⁷⁸

"**Ninth Amending Deed**" means the deed so entitled made between the parties to this Deed pursuant to which amendments were effected to this Deed.⁷⁹

"**Non-Agreed Traffic Management Measures**" are at any time the measures described in Part B of Exhibit A (Annexed).

"**Notional Initial Equity Investor**" is a notional corporate taxpayer who is deemed to have been issued with Original Project Securities on Financial Closing and to hold those Original Project Securities for the Original Concession Period, in proportions comprising 50% shares in the Company and 50% Units (or such other proportions as may result from a State election as contemplated under the definition of Project Securities).⁸⁰

"**Occupation**" has the meaning given in the relevant Rail Projects Agreement.

"**Off-Site Area**" is each area of land identified in the Off-Site Areas Schedule on which part of the Works is, or is to be, performed but excluding land in respect of which the rights have expired under clause 4.2(e).

"**Off-Site Areas Schedule**" is Exhibit L (Annexed), as adjusted by agreement between the State, the Company and the Trustee.

"**Ongoing Costs Cap**" means, subject to any review pursuant to clause 9.2B(d):

- (a) at any time up to and including 30 June 2008, \$10 (inclusive of GST);

- (b) at any time during each financial year after 30 June 2008, the amount (inclusive of GST) calculated in accordance with the following formula:

$$\text{Ongoing Costs Cap}_{t+1} = \text{Ongoing Costs Cap}_t \times \text{Index}_t$$

where:

Ongoing Costs Cap_{t+1} is the Ongoing Costs Cap per Request For Payment to apply in the relevant financial year

Ongoing Costs Cap_t is the Ongoing Costs Cap per Request For Payment which applies in the financial year preceding the relevant financial year

Index_t is the most recently available CPI for a quarter preceding commencement of the relevant financial year (CPI_{t-1}) divided by CPI for the corresponding quarter in the financial year preceding the relevant financial year (CPI_{t-2}).

The Ongoing Costs Cap (as calculated above) reflects the estimated average cost of the Company per Request For Payment, properly incurred, of, identifying, producing, sending, dealing with enquiries, complaints and disputes on and processing payments for Requests For Payment and driver nominations as well as the direct cost, if any, incurred by the Company in obtaining information under section 90(1) of the Project Legislation or from NEVDIS identifying the owner of the Vehicle the subject of the Request For Payment.

"OpCo Effective Date" means the later of:

- (a) the date specified in the Operator OpCo Notice as being the date on which the identity of the Operator is to change, which date must be no earlier than the date of the Operator OpCo Notice and no later than the Date of West Gate Tunnel Completion; and
- (b) the date on which the OSA Direct Deed has been signed and all conditions to its coming into operation have been satisfied or waived.

"Operating and Maintenance Agreement" is the agreement between the Company and the Operator for among other things the operation and maintenance of the Link.⁸¹

"Operating Default" is a failure by the Company to perform any of its obligations under clause 9.1(a), clause 9.2(a), (d), (e), and (f), clause 9.4(a), (c), clause 9.5, clause 9.6(c) or clause 10.1 which:

- (a) materially adversely affects the maintenance or routine operation of the **Link** or any material part of it; or
- (b) increases the risk of imminent death or imminent injury to those using the **Link** or any part of it.

"Operating Services Agreement (CityLink)" means the agreement so entitled between the Company, Clepco and the Operator to carry out operation, maintenance and repair activities in respect of the Link.

"Operation and Maintenance Manuals" are:

- (a) the manuals prepared in accordance with clause 8.6(b) as updated in accordance with clause 8A.5(b) and 8B.6(a);
- (b) the **Hydrogeology Management Plan**; and
- (c) the **Hydrogeology Annual Operating Plan**.

"Operational Efficiency Audit" means an audit which complies with the Operational Efficiency Audit Guidelines for Managed Freeways published by Main Roads Western Australia, available at https://www.mainroads.wa.gov.au/Documents/OEAG%20report%20MRWA%20template_20130610_v6_Approved%20document.RC.N-D13%5E23304710.PDF.

"Operational Committee" means the committee established in accordance with clause 9.16, its members comprising senior representatives (which may change from time to time by written notice to the other parties) of:

- (a) the **Company**;
- (b) the **Operator**;
- (c) the **State**;
- (d) **Clecco**, and
- (e) **VicRoads**,

to be chaired on a rotational basis, alternating between a nominee of the Minister and of the Company every two (2) years.⁸²

"Operations Quality Plan" means the quality plan prepared by or on behalf of the Company which details all processes involved in the operation and maintenance of the Link and contains the incident management policy and procedures in accordance with the Project Scope and Technical Requirements.⁸³

"Operator" means:

- (a) prior to the OpCo Effective Date, Translink Operations Pty Ltd ACN 069 691 514; and
- (b) on and from the OpCo Effective Date, Transurban Vic Op Co Pty Limited ACN 621 893 945,

and as subsequently replaced in accordance with clause 10.9(a).

"Operator OpCo Notice" means the written notice from the Company to the State notifying the State that Transurban Vic Op Co Pty Limited ACN 621 893 945 will be the Operator, and the proposed date from which this will be effective.

"Original Concession Period" is the period beginning on the date of **Financial Closing** and ending on the date which is 34 years and 6 months after the **Link Expected Completion Date** (the **"Expiry Date"**). However:

- (a) it may end earlier than the **Expiry Date** on a date being 25 years and 6 months, 27 years, 29 years, 31 years or 33

years after the **Date of Completion** of the last **Section** to be **Completed** if:

- (i) on that date the **Equity Return** (assuming the **Original Concession Period** ends on the relevant date) is or exceeds 17.5% per annum;
 - (ii) all debt comprising part of the **Project Debt** at **Completion** of the last **Section** to be **Completed**, (and the **Project Debt** arising from a drawdown made by the **Trustee** under the **Syndicated Facilities Agreement** after **Completion** of that **Section** to meet liabilities incurred prior to **Completion** of that **Section**) has been repaid; and
 - (iii) all debt comprising part of the **CTW Project Debt** at the **Date of CTW and Ramp M Final Completion** (and the **CTW Project Debt** arising from a drawdown made by the **Trustee** under the **Lending Documents** after **CTW and Ramp M Final Completion** to meet liabilities incurred in relation to the **CTW Obligations** prior to the **Date of CTW and Ramp M Final Completion**) has been repaid; and
 - (iv) the **State** has given the **Company** and the **Trustee** not less than 2 months' notice of its desire that the **Original Concession Period** end on the relevant date and of its opinion (having regard to the **Financial Model**) that the conditions set out in sub-paragraphs (i) and (ii) would be satisfied on the relevant date; and
- (b) it may end later than the **Expiry Date** if a period is agreed or determined to be the **Original Concession Period** under clause 2.10 following the occurrence of an **Appendix Event** which has had, or will have, a **Material Adverse Effect**. In such a case it will end on the earlier of:
- (i) the date of expiry of that agreed or determined period (the "**Extended Date**"); and
 - (ii) a date being 1, 3, 5, 7 or 9 years earlier than the **Extended Date** if sub-paragraphs (a)(i), (a)(ii) and (a)(iii) are satisfied in relation to the date.

"Original Equity Investor" is, at any time, an Entity who holds **Original Project Securities** at that time.

"Original Project Securities" means, at any time, **Equity Infrastructure Bonds** and **Stapled Securities** which:

- (a) comprise part of the issue contemplated in the **Base Case Financial Model** or are issued pursuant to entitlements vested in the holders of such securities; and
- (b) are subject to terms consistent with those of which the **State** has been advised, and which have been agreed by the **State** prior to **Financial Closing**,

being at the date of WGT Financial Close, 510,000,001 Units and 510,000,000 shares in the Company.

"OSA Direct Deed" means the document entitled "Operating Services Agreement Direct Deed - CityLink" between the State, the Company, Clepco and the Operator.

"Outstanding Matters Report" has the meaning given to it in clause 3.4AE(d).

"Partial AP Termination Price" means, at any time, in relation to an AP Area (as defined in sub-paragraph 12.8(e)(iv)) an amount equal to a proportion of the Early Termination Amount that would apply at that time were the State to have elected to acquire the Project under that sub-paragraph.

That proportion equals the proportion which the parties agree or, absent agreement within 10 **Business Days** of the State's election which is determined under Article 16 to be the proportion which:

- (a) (subject to paragraph (b)), the cost of construction of the **AP Area** bears to the total cost of construction of the **Link**;⁸⁴ and
- (b) if the election is made prior to **SLU Practical Completion**, the aggregate of the cost of construction of the **AP Area** up to the time of the election and construction costs that would have been incurred in relation to the **AP Area** prior to **SLU Practical Completion** bears to the total cost of construction of the **Link** up to that date and construction costs that would have been incurred prior to **SLU Practical Completion**.

In determining the costs of construction of all or any part of the Link for the purposes of this definition, those costs shall be afforded a present value as at the date of the State's election calculated by escalating or discounting those costs from the dates on which they were incurred or were to be incurred by reference to an index to be agreed between the parties that reflects the principles used in calculating the Road and Bridge Index.

"Performance Bond" means a bank guarantee which:

- (a) is unconditional, irrevocable and payable on demand;
- (b) is issued by a financial institution that is the holder of a current licence issued by the Australian Prudential Regulation Authority and has the **Required Rating**; and
- (c) specifies a location within Melbourne where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day.

"Permitted Non-Road Revenue" is revenue derived or which may be derived from an activity or use for which the State's prior approval is required under clause 9.4(c).

"Planned Date for Completion" in respect of a Section is the Relevant Milestone Date specified in relation to the Section in

Schedule 1, as that date may be altered as a result of the updating of the Construction Program under clause 8.5.

"Planned Date for CTW Final Completion" is the date which is 12 months after the Date of CTW Practical Completion, as extended (if at all) in accordance with the CTC Redevelopment Deed.

"Planned Date for CTW Practical Completion" means 31 December 2017, as extended (if at all) in accordance with the CTC Redevelopment Deed.

"Planned Date for Ramp M Final Completion" is the date which is 12 months after the Date of Ramp M Practical Completion, as extended (if at all) in accordance with the CTC Redevelopment Deed.

"Planned Date for Ramp M Practical Completion" means 31 December 2017, as extended (if at all) in accordance with the CTC Redevelopment Deed.

"Planned Date for SLU Final Completion" is 12 months after the SLU Date of Practical Completion.

"Planned Date for SLU Practical Completion" is 31 December 2010.

"Plant" is all plant, machinery, equipment, fixtures, furniture, fittings and other improvements which the Company, the Trustee or both of them, any of their respective Contractors or any other person acting on their behalf installs, constructs or places on the Project Land and which is or becomes part of the Link (including the SLU and the WLU) or which is used for operating, tolling or maintaining the Link, but excluding all plant, machinery and equipment and other items used by the Company, the Trustee or their Contractors solely for the purpose of enabling or facilitating construction of the Link (including the construction of the SLU and the WLU) or the State Returned Works, which is not and will not become part of the Link (including the SLU and the WLU) or is not and will not be used for operating, tolling or maintaining the Link.

"Post Expiry Licensed Area" has the meaning given in clause 3.4AK(a).

"Principal Contractor" means the principal contractor as defined from time to time by applicable CTW Health and Safety Laws.

"Progressive State Contributions" has the meaning given to that term in schedule 38 of the WGT Project Agreement.

"Project" is:

- (a) the design, construction and **Commissioning** of the **Link**;
 - (b) the financing of the design and construction of the **Link**;
and
 - (c) the operation, maintenance and repair of the **Link**,
- in accordance with this **Deed**.

In the interpretation and application of this Deed, unless otherwise expressly provided, references to the **Project** will be deemed to include the **SLU** and the **CTW** (excluding, following **CTW Section Practical Completion** of a **CTW Section**, any **State Returned Works** within that **CTW Section** but including any defect correction work in respect of those **State Returned Works** during the **CTW Defects Correction Period**) and the **CityLink Returned Works** from the **CityLink Returned Works Date of Handback**.

"**Project Area**" has the meaning given it in the Project Legislation.

"**Project Bill (WGT)**" means the form of bill for WGT and the Project initialled for the purposes of identification as a condition precedent to the WGT Project Agreement.

"**Project Debt**" is, at any time the lesser of all moneys which the Company or the Trustee (whether alone or with another person) is at that time actually or contingently liable to pay to or for the account of any person under the Lending Documents (other than actual or contingent amounts created or increased as a consequence of a breach of a Project Document or an ESEP Project Document (other than by the State) or of a Lending Document) and the aggregate of the amount set out in column 4 of Schedule 5 to IFA and Break Costs applicable at that time. The Company and the Trustee shall be deemed to be no longer liable in respect of Project Debt at any time if no amount is set out in column 4 of Schedule 5 to IFA in respect of that time. At any particular time, the ability to repay Project Debt shall be assessed without regard to liabilities under Lending Documents to the extent that the amount of those liabilities then exceeds the amount of Project Debt.^{85 86 87 88}

"**Project Default**" means, subject to clauses 12.15 and 15.9, any of the following:

- (a) a breach of an obligation or warranty imposed on or given by the **Company** or the **Trustee** under a **Project Document** (other than a breach of any obligation provided for in paragraph 8.3(a), 8A.3(a), Article 18) or a representation made by the **Company** or the **Trustee** in a **Project Document** being untrue when made or repeated which (whether alone or together with other breaches) materially and adversely affects for a period of more than 30 days (or such other period as the **State**, the **Company** and the **Trustee** may from time to time agree):
 - (i) access to, or the condition or availability of, the **Link** (or a material part of it);
 - (ii) the level of service afforded to users of the **Link** (or to users of a material part of the **Link**), including:
 - (A) the price for the provision of that service; or
 - (B) the performance of the Tolling System,

- relative to the level of that service contemplated in the **Project Documents** and the **Base Case Traffic Model**; or
- (iii) the level of safety of users of, and those in the vicinity of, the Link (or of a material part of it);
- (b) a breach, the consequences of which are material, of an obligation:
- (i) in relation to insurance under Article 13 or clause 11.3;
 - (ii) under clause 14.5 (change in ownership);
 - (iii) in relation to the completion process, as outlined in clauses 7.8, 8.6 to 8.9 (inclusive), 9.2 and 9.3;
 - (iv) Handover Clauses (hand over on partial termination);
 - (v) clause 3.2 (**Tolling System**).

"Project Development Costs Cap" means:

- (a) at any time up to and including 30 June 2011, \$2 (inclusive of GST);
- (b) at any time after 30 June 2011, \$0.

"Project Documents" are:

- (a) this **Deed**;
- (b) the **Leases**, the Burnley Office Site Lease and the Lorimer Street Site Lease;⁸⁹
- (c) **Concession Notes**;
- (d) the agreement between the **State**, the **Company**, the **Trustee** and the **Independent Reviewer**;
- (e) the **Deed of Guarantee and Indemnity**;
- (f) the **Deed of Charge** (relating to both the **Company** and the **Trustee**);
- (g) the **Contractors' Deed of Novation**;
- (h) the **Master Security Deed**;
- (i) the **Confidentiality and Disclaimer Deed**;
- (j) **[not used]**;
- (k) any licence or construction permit issued under the **Project Legislation** of rights referred to in clause 4.2 or 4A.2 or any licence issued under clause 4C.2;
- (l) any licence of the **Tolling System** or **Proprietary Documentation, SLU Proprietary Documentation** or **CTW Proprietary Material** granted to the **State** under clause 3.2(b) or 7.15(b), 7A.15(b), 7D.15(a) or 7D.15(b);
- (m) the State Works Agreement;

- (n) the State Works Co-ordination Deed; and
- (o) all other material documents and agreements (other than **Lending Documents**) agreed by the **State**, the **Company** and the **Trustee** to be **Project Documents**.

"Project Land" is, at any time, the land then comprising the Company Land and the Trust Land.

"Project Legislation" is legislation for the Project passed by each House of the Parliament of the State of Victoria.

"Project Legislation (WGT)" is legislation for WGT and the Project passed by each House of the Parliament of the State of Victoria in relation to the matters contemplated in the Project Bill (WGT).

"Project Legislation (WGT) Commencement Date" means the date on which the Project Legislation (WGT) has come into operation in accordance with its terms.

"Project Plans" means any plan of the kind referred to in clause 7D.39.1(a), as that plan may be updated, amended and further developed under clause 7D.39.

"Project Scope and Technical Requirements" is the Amended Project Scope and Technical Requirements.^{90 91}

"Project Securities" means the Original Project Securities and, the Extension Project Securities, provided however, that Project Securities may include any other security or option (including shares in the Company or Units) issued by the Company, the Trustee or both of them which the State has elected to adopt as either an Original Project Security or an Extension Project Security.

"Proof Engineer" means, at any time, the person then appointed as proof engineer by or on behalf of the Company and the Trustee in accordance with the Project Scope and Technical Requirements.

"Property Schedule" means at any particular time:

- (a) prior to 30 June 1997, the map or maps and schedule agreed under sub-paragraph 2.7(d)(ix);
- (b) after the date referred to in paragraph (a) and up to 16 April 1999, the map or maps and schedule referred to in paragraph (a) as substituted and amended pursuant to clause 6.1 of the Third Amending Deed;
- (c) after 16 April 1999 and up to 16 November 1999, the map or maps and schedule referred to in paragraph (b) as further substituted and amended pursuant to clause 5.1 of the Fifth Amending Deed; and
- (d) after 16 November 1999 and up to 25 October 2002, the map or maps and schedule referred to in paragraph (c) as further substituted and amended pursuant to clause 2 of the Ninth Amending Deed.^{92 93 94 95}
- (e) as from 25 October 2002, the map or maps and schedule referred to in paragraph (d) as further substituted and

amended pursuant to clause 5 of the Eighteenth Amending Deed.⁹⁶

"Proprietary Documentation" is:

- (a) the Project Scope (within the meaning of the Project Scope and Technical Requirements);
- (b) the **Design Documentation**;
- (c) other documentation which the **Company** or the **Trustee** uses for the design, construction, maintenance or repair of the **Link** in which **Intellectual Property Rights** are capable of subsisting; and
- (d) other documentation which the **Company** uses for the operation of the **Link** in which **Intellectual Property Rights** are capable of subsisting.

"PSA" comprises:

- (a) clause 26 of the regional section of existing metropolitan planning schemes as initially appeared in the form of Exhibit O (and/or any identical or similar re-enactment of such clause in or pursuant to the Victoria Planning Provisions made pursuant to the Planning and Environment Act 1987 (Vic)) and including any maps, plans or table referred to in such clause; and
- (b) any amendment to an existing planning scheme affecting the City Link Project area (and/or any identical or similar re-enactment of such amendment in or pursuant to the Victoria Planning Provisions) agreed by the Company or the Trustee in writing or for which either the Company or the Trustee is the applicant or the proponent, made by a Minister of the Crown pursuant to powers vested in the Minister under the Planning and Environment Act 1987 (Vic) or the Project Legislation, and including any maps, plans or table referred to in such amendment.⁹⁷

"Quality Assurance Auditor" means at any time, the quality assurance audit team appointed by or on behalf of the Company and the Trustee in accordance with the Project Scope and Technical Requirements.

"Rail Interface Parties" means each of:

- (a) Victorian Rail Track ABN 55 047 316 805 established in accordance with section 116 of the *Transport Integration Act 2010* (Vic), in its capacity as the owner of rail land and infrastructure;
- (b) KDR Victoria Pty Ltd ABN 42 138 066 074, in its capacity as the franchise operator of Melbourne's tram network, Yarra Trams; and
- (c) Metro Trains Melbourne Pty Ltd ABN 43 136 429 948, in its capacity as the franchise operator of the suburban passenger railway network of Melbourne, Metro Trains Melbourne.

"Rail Projects Agreements" means:

- (a) the Project Agreement - Train entered into between Public Transport Victoria and Metro Trains Melbourne Pty Ltd dated 31 August 2009 as amended and restated; and
- (b) the Project Agreement - Tram entered into between Public Transport Victoria and KDR Victoria Pty Ltd dated 31 August 2009 as amended and restated,

and as publicly available on the ptv.vic.gov.au website as at the **CTW Effective Date** (unless a later version is agreed between the parties).

"Ramp M" means the West Gate Freeway eastbound to Bolte Bridge ramp.

"Ramp M Final Completion" means CTW Section Final Completion in relation to CTW Section D.

"Ramp M Practical Completion" means CTW Section Practical Completion in relation to CTW Section D.

"Reference Financial Model" has the meaning given in clause 1.30.

"Reference Rate" means:

- (a) subject to paragraphs (b) and (c), on a day the rate (expressed as a percentage per annum) which is the bid rate shown at approximately 10.15am on the "BBSY" reference rate page of the Reuters Monitor System in Melbourne on that day (or, if that day is not a **Business Day**, the **Business Day** immediately preceding that day) for **Bills** accepted by a bank having a tenor of 2 months;
- (b) if on the relevant day or, if the relevant day is not a Business Day, on the preceding **Business Day** in Melbourne the BBSY reference rate page or such a rate is not published in Melbourne by 10.30am and
 - (i) the Reuters Monitor System incorporates a page substantially similar to the BBSY reference rate page, the bid rate shown at approximately 10.30am on that page in Melbourne on that day or **Business Day**, as applicable, for such **Bills**, or
 - (ii) the Reuters Monitor System does not incorporate a page substantially similar to the BBSY reference rate page, the average buying rate shown at approximately 10.30am on either the BBSW reference rate page of the Reuters Monitor System in Melbourne on that day or **Business Day**, as applicable, for such **Bills** or if that page and such a rate is not published in Melbourne by 10.30am on that day or **Business Day**, as applicable, and the Reuters Monitor System incorporates a page substantially similar to the

BBSW reference rate page, in that similar page for such **Bills**; or

- (c) if neither paragraph (a) nor (b) applies, the average of the buying rate for such **Bills** quoted by no fewer than three Banks at approximately 10.30am on the relevant day (or the preceding **Business Day**, as applicable) assuming that each such **Bill** has a face value of \$500,000.

"Reinstatement Criteria" has the meaning given in Part C of Schedule 6.

"related body corporate", in relation to a body corporate or an Entity, means a body corporate or an Entity that is a related body corporate under the Corporations Act as if a reference to a body corporate includes an Entity and a reference to shares and to issued share capital includes a reference to interests (within the meaning of the Corporations Act);⁹⁸

"Relevant Changes made to the Toll Calculation Schedule" means changes made to the Toll Calculation Schedule pursuant to the WGT CityLink and ESEP Concession Amending Deeds to provide for a Fixed Escalation Period (as defined in the Toll Calculation Schedule) and the introduction of the High Productivity Freight Vehicles (as defined in the Toll Calculation Schedule) as a new class of vehicle for the purpose of the Toll Calculation Schedule.

"Relevant Circumstances" means the payment by the Company to the State of:

- (a) an amount under sections 1.1(a), 1.2(e), 2(b)(ii) and 3(b)(ii) of Part A of Schedule 6;
- (b) an amount under clause 2.6(e)(i) in respect of a Compensable Enhancement arising during the Additional Concession Period;
- (c) an amount under clause 7.16(b)(ii)(B) to the extent that it relates to additional revenue that the Company derives or is projected to derive as a result of the relevant Variation; or
- (d) any variable rent amount payable in aggregate under the Company Leases.

"Relevant Circumstances Amount" means any amounts payable by the Company to the State arising out of or in connection with the Relevant Circumstances.

"Relevant Circumstances Payment Date" means the date on which any Relevant Circumstance Amount is payable by the Company to the State.

"Relevant Circumstances Tax Liability" has the meaning given to it in clause 11.1(f).

"Relevant Date" means:

- (a) in respect of **CTW Sections A to C**, 6 August 2014; and

- (b) in respect of **CTW Section D**, 6 August 2014, except that in respect of the **CTW Codes and Standards** described in the notices from the **Company** and the **Trustee** to the **State** dated 26 August 2015, the Relevant Date is 26 June 2015.

"Relevant Matters" means the following matters to the extent described:

- (a) noise walls to the extent that additional noise walls or modifications to existing noise walls are necessary to meet the requirements of the Project Scope and Technical Requirements;
- (b) landscaping to the extent that additional landscaping works are required outside the Project Land;
- (c) pedestrian and bicycle paths to the extent that existing pedestrian and bicycle paths need to be modified; and
- (d) Yarra Bank (North) to the extent that there are modifications with a direct impact on the Yarra Bank (North).

"Relevant Milestone Date" is the date for achievement of a Construction Milestone described in Schedule 1 as that date may be altered as a result of the updating of the Construction Program under clause 8.5.

"Request For Payment" means a request for payment within the meaning of section 77(1)(a) or sections 77(1)(b) and 78(1) of the Project Legislation, as the case may be.⁹⁹

"Request For Payment Cap" means, at any time, the sum of the Ongoing Costs Cap and the Project Development Costs Cap at that time.

"Required Rating" means a credit rating of at least:

- (a) A- by Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc. or S&P Global Ratings Australia Pty Ltd; or
- (b) A3 by Moody's Investor Services, Inc. (including in Australia through Moody's Investors Service Pty Limited (ABN 61 003 399 657)) or any successor to its rating business.

"Reputable Insurer" means an insurance company having the Required Rating.

"Revocation Period" means the period that begins on the date the State exercises its option under the CityLink Option Deed and ends at the end of the last day in which WGT CityLink and ESEP Concession Amending Deeds may be, or have been, revoked (either wholly or in part) by a House of Parliament in accordance with the Project Legislation.

"Road and Bridge Index" means the Road and Bridge Construction (4121) Australia Index A2333664R subject to the

same qualifications as are set out in respect of CPI in the definition of CPI.

"Roaming Agreement" means the agreement of that name between WGT Co and the Company, dated on or around the date of the WGT Project Agreement.

"RRL Losses" has the meaning given to it in clause 13.2C(a).

"RRL Project Works" has the meaning given to it in clause 10.8(a).

"Safe Location" means a safe and convenient place near the Link or a place approved by VicRoads.

"Schedule of Specified Imperfections" is the schedule of structural defects and an approach to remediation for each such defect as contemplated by clause 4.2 of the Twenty-second Amending Deed.

"Schedule of Rail Interface Obligations" means Exhibit RR.

"Scope of Works and Technical Criteria" or **"SWTC"** means the scope of works and technical criteria for the CTW and the CTW Maintenance Activities, being Exhibit SS, including all schedules, annexures and attachments to that Exhibit.

"Section" is each of:

- (a) the Tullamarine Freeway Upgrade and Western Link Section 1 (together);
- (b) Western Link Section 2;
- (c) Southern Link Section 1;
- (d) Southern Link Section 2;
- (e) Southern Link Section 3;
- (f) Southern Link Section 4; and
- (g) Southern Link Section 5.¹⁰⁰

"Security of Payment Act" means the *Building and Construction Industry Security of Payment Act 2002* (Vic), as amended from time to time,

"Security Trust Deed" has the meaning given it in the Master Security Deed.

"Security Trustee" is, at any time, the person then acting as trustee of the trust established by the Security Trust Deed.

"Separated Systems" means:

- (a) the Tolling System (back office);
- (b) the Central Computer Control Systems (as defined in the Project Scope and Technical Requirements); and
- (c) the asset management system,

and such other systems contemplated to be subject to the Separation Plan Services in accordance with the Separation Plans.

"**Separation Fee**" means the fee payable by the State to the Company which is calculated in accordance with clause 3.4AQ.

"**Separation Notice**" has the meaning given in clause 3.4AB(a).

"**Separation Plans**" means the:

- (d) Separation Plan (ITS);
- (e) Separation Plan (TBO); and
- (f) Separation Plan (AMS),

approved (or deemed to be approved) in accordance with clause 3.4AA.

"**Separation Plan Services**" means the works or services to be performed by the Company to implement the Separation Plans.

"**Separation Principles**" means the principles agreed in accordance with the CityLink Option Deed.

"**Service**" is any service, including:

- (a) water, electricity, gas, telephone, drainage, sewerage and communications; and
- (b) connections for services of tramways, roads and railways and other land transport infrastructure on, over, under or adjoining the **Project Land, SLU Lay Down Areas, CTW Extra Land or State Returned Works Areas**.

"**Service Agreement**" means a subcontract entered into between:

- (a) the **Operator, Company or Trustee**; and
- (b) a member of the **Transurban Group** (other than the **Operator, Company or Trustee**),

for all or part of the operation, maintenance or repair of the **Link**.

"**Seventeenth Amending Deed**" means the deed entitled "Melbourne City Link Seventeenth Amending Deed" made by the parties to this Deed on or about June 2002 pursuant to which, amongst other things, amendments were made to this Deed.¹⁰¹

"**Shared Infrastructure**" has the meaning given in clause 3.4AL(a).

"**Single Asset Handover (CityLink)**" means the occurrence of Handover on a date that is prior to or after (but not around the same date as) the occurrence of WGT Handover.

"**Sign**" is a sign, advertisement or other form of visual display (not including a traffic or directional sign).

"**Site Access and Occupation Schedule**" has the meaning given in the Rail Projects Agreements.

"**Sixteenth Amending Deed**" means the deed entitled Melbourne City Link Sixteenth Amending Deed made by the parties to this Deed on or about May 2002 pursuant to which, amongst other things, amendments were made to this Deed.¹⁰²

"Sixth Amending Deed" means the deed so entitled made by the parties to this Deed pursuant to which, amongst other things, amendments were made to this Deed.¹⁰³

"SLU Agreed Timetable" comprises the respective dates specified in the SLU Property Schedule for making available for the SLU the land identified in the SLU Property Schedule.

"SLU Commissioning" means:

- (a) the process of safety auditing, performance testing and checking against the technical requirements specified in the **Project Scope and Technical Requirements** of all road design and traffic engineering elements, operating, mechanical, electrical and electronic systems, computer software and hardware, plant and equipment which form part of the **SLU Works** (excluding the **Tolling System**) utilising such tests and checks as are specified in the **Project Scope and Technical Requirements** in relation to the commissioning of those elements, systems or that software, hardware, plant or equipment; and
- (b) the achievement of results in relation to each such test and check as equals or exceeds minimum criteria specified in the **Project Scope and Technical Requirements** in relation to the commissioning of those elements, systems or that software, hardware, plant or equipment.

"SLU Company Land" is at any time:

- (a) before execution of any **SLU Company Lease**, the land identified as **SLU Company Land** in the **SLU Property Schedule**, but excluding **SLU Lay Down Areas** and land the rights in respect of which have expired under clause 4A.2(e);
- (b) before execution of all **SLU Company Leases**, the land the subject of all then executed **SLU Company Leases** and all land (not part of a **Section** in relation to which a **SLU Company Lease** has been executed) identified as **SLU Company Land** in the **SLU Property Schedule**, but excluding **SLU Lay Down Areas** and land the rights in respect of which have expired under clause 4A.2(e); and
- (c) after the execution of all **SLU Company Leases**, the land the subject of all the **SLU Company Leases**.

"SLU Company Lease" is a lease by the State to the Company substantially in the form of Exhibit D.1 (Annexed) but as that form may be amended prior to execution of the lease by agreement between the State, the Company and the Trustee in accordance with clause 4A.7.

"SLU Construction Contractor" is any person or entity who is engaged by, or forms an alliance with, the Company and/or the Trustee to design and construct the whole or any part of the SLU.

"SLU Construction Documentation" is:

- (a) the **Project Scope and Technical Requirements**; and
- (b) the **SLU Design Documentation**.

"**SLU Construction Program**" is the construction program prepared by the Company and the Trustee pursuant to clause 8A.1, as amended from time to time in accordance with this Deed.

"**SLU Date of Practical Completion**" or "**Southern Link Upgrade Date of Practical Completion**" is the date described as the "Date of SLU Section Practical Completion" in the "Certificate of SLU Section Practical Completion" of the last SLU Section to achieve SLU Section Practical Completion.

"**SLU Design and Construct Contract**" means each contract or alliance arrangement between the Company and/or the Trustee and a SLU Construction Contractor for the design and construction of all or any part of the SLU.

"**SLU Design Consultant**" is at any time, the person then appointed as design consultant by or on behalf of the Company and the Trustee in accordance with the Project Scope and Technical Requirements.

"**SLU Design Documentation**" is the plans, drawings and specifications and other design documentation prepared by the Company or the Trustee under clause 7A.4, as amended (if at all) under clause 7A.5 or by determination under clause 16.

"**SLU Design Program**" means the detailed design program referred to in clause 7A.4.

"**SLU Effective Date**" means the date which is the operative date for the purposes of the Twenty-second Amending Deed.

"**SLU Final Completion**" is when:

- (a) **SLU Practical Completion** has been achieved;
- (b) all defects and omissions have been rectified;
- (c) **the Company** and the **Trustee** have performed all their respective obligations under this **Deed** (whether relating to the **SLU Works** or not but excluding those addressed by paragraphs (a) and (b)), which are required to be performed before and for the purposes of **SLU Final Completion**.

"**SLU Lay Down Area**" is, at any particular time, land identified in the SLU Property Schedule as a lay down area in relation to which, at the relevant time, the Company, the Trustee or their nominee is entitled to powers of entry and **occupation or rights of possession, under clause 4A.2**.

"**SLU Leases**" are:

- (a) **the SLU Company Leases**; and
 - (b) **the SLU Trust Concurrent Leases**,
- each of which is a **SLU Lease**.

"**SLU Practical Completion**" is when SLU Section Practical Completion has been achieved in respect of all SLU Sections.

"**SLU Project Land**" is, at any time, the land then comprising the SLU Company Land.

"**SLU Proof Engineer**" means, at any time, the person then appointed as proof engineer by or on behalf of the Company and the Trustee in accordance with the Project Scope and Technical Requirements.

"**SLU Property Schedule**" means Exhibit FF.

"**SLU Proprietary Documentation**" is:

- (a) the Project Scope (within the meaning of the **Project Scope and Technical Requirements**);
- (b) the **SLU Design Documentation**;
- (c) other documentation which the **Company** or the **Trustee** uses for the design, construction, maintenance or repair of the **SLU** in which **Intellectual Property Rights** are capable of subsisting; and
- (d) other documentation which the **Company** uses for the operation of the **SLU** in which **Intellectual Property Rights** are capable of subsisting.

"**SLU PSA**" comprises any amendment to an existing planning scheme affecting the Link Upgrade area (and/or any identical or similar re-enactment of such amendment in or pursuant to the Victoria Planning Provisions) agreed by the Company or the Trustee in writing or for which either the Company or the Trustee is the applicant or the proponent, made by the Planning Minister pursuant to powers vested in the Minister under the Planning and Environment Act 1987 (Vic) or the Road Legislation (Projects and Road Safety) Act 2006 (Vic), and including any maps, plans or table referred to in such amendment.

"**SLU Section**" is, subject to clause 8A.20, each of:

- (a) SLU Section A;
- (b) SLU Section B;
- (c) SLU Section C;
- (d) SLU Section D;
- (e) SLU Section E; and
- (f) SLU Section F;

"**SLU Section A**" comprises the works required in the outbound (eastbound) direction as generally shown on plans J:/30024105/4301.dwg (Rev. D), J:/30024105/4302.dwg (Rev. E) and J:/30024105/4303.dwg (Rev. E). The works in this section finish at Toll Point 7 as shown on the plans.

"**SLU Section B**" comprises the works required in the outbound (eastbound) direction as generally shown on plans

J:/30024105/4303.dwg (Rev. E), J:/30024105/4304.dwg (Rev. E) and J:/30024105/4305.dwg (Rev. F). The works in this section commence at Toll Point 7 and finish at Toll Point 6A as shown on the plans.

"**SLU Section C**" comprises the works required in the outbound (eastbound) direction as generally shown on plans J:/30024105/4305.dwg (Rev. F) and J:/30024105/4306.dwg (Rev. F). The works in this section commence at Toll Point 6A and finish at the Monash Freeway as shown on the plans.

"**SLU Section D**" comprises the works required in the inbound (Westbound) direction as generally shown on plans J:/30024105/4305.dwg (Rev. F) and J:/30024105/4306.dwg (Rev. F). The works in this section commence at Monash Freeway and finish at Toll Point 6B as shown on the plans.

"**SLU Section E**" comprises the works required in the inbound (Westbound) direction as generally shown on plans J:/30024105/4303.dwg (Rev. E), J:/30024105/4304.dwg (Rev. E) and J:/30024105/4305.dwg (Rev. F). The works in this section commence at Toll Point 6B and finish at Toll Point 7 as shown on the plans.

"**SLU Section F**" comprises the works required in the inbound (Westbound) direction as generally shown on plans J:/30024105/4301.dwg (Rev. D), J:/30024105/4302.dwg (Rev. E) and J:/30024105/4303.dwg (Rev. E). The works in this section commence at Toll Point 7 as shown on the plans.

"**SLU Section Practical Completion**" of a SLU Section is when:

- (a) the **SLU Works** for that SLU Section have been completed in accordance with the **SLU Construction Documentation** except for minor omissions or minor defects which do not adversely affect the use of that **SLU Section** by the public for the continuous passage of vehicles, the safety of that use or the ability of the **Company** or the **Trustee** to perform their respective obligations under the **Project Documents**;
- (b) **SLU Commissioning** of that **SLU Section** has taken place; and
- (c) the **Company** and the **Trustee** have performed all their respective obligations under this **Deed** (whether relating to the **SLU Works** or not but excluding those addressed by paragraphs (a) and (b)), which are required to be performed before and for the purposes of **SLU Section Practical Completion** of a **SLU Section** (disregarding obligations required to be performed in relation to another **SLU Section**),

"**SLU Security**" means the security provided by the Company and the Trustee to the State in accordance with clause 8A.18.

"**SLU Trust Concurrent Lease**" is a concurrent lease by the State to the Trustee of part of the SLU Company Land substantially in the form of Exhibit D.3 (Annexed), as that form may be amended prior

to execution of the lease by agreement between the State, the Company and the Trustee.

"**SLU Works**" are the works which the Company, the Trustee or both of them are required to do under this Deed to:

- (a) design and construct the **SLU** and bring the **SLU** to **SLU Practical Completion** and **SLU Final Completion**;
- (b) effect any associated **Variation**; and
- (c) effect any connection or implement any associated change under paragraph 2.4(f),

and includes work which is partly completed.

"**Southbank Interchange Construction Area**" means that part of the Southern Link comprising of the roads, ramps, lanes and other works generally associated with the land shown diagonally hatched on the plan numbered LEGL./99-203 and lodged in the Central Plan Office (as defined in the Project Legislation).¹⁰⁴

"**Southern Link**" is Southern Link Section 1, Southern Link Section 2, Southern Link Section 3, Southern Link Section 4 and Southern Link Section 5, together comprising generally of a freeway-standard link of between 6 and 8 lanes connecting the West Gate Freeway to the Monash Freeway to the north-eastern limit of the elevated roadway west of Toorak Road, and which:

- (a) prior to the SLU Effective Date, is depicted in the plans attached as Exhibits R and S; and
- (b) from the SLU Effective Date until the SLU Date of Practical Completion, is the roadway contained within the aggregate of the Leases and land identified in the **SLU Property Schedule**; and
- (c) on and from the SLU Date of Practical Completion is depicted in the plans attached as Exhibit EE.

"**Southern Link Section 1**" means that part of the Southern Link comprising generally of:

- (a) that part of the Monash Freeway and roadway providing for the movement of traffic westbound commencing at the north-eastern limit of the elevated roadway west of Toorak Road and ending along Batman Avenue (between Punt Road and Swan Street) (including entry and exit ramps and lanes and other parts of the Southern Link associated with that Freeway and roadway and with the connection of that Freeway with Punt Road); and
- (b) (excluding Southern Link Section 3) the roads, ramps, lanes and other works generally associated with the connection of the Burnley Tunnel and the Domain Tunnel with the West Gate Freeway, Kings Way and Power Street (including roads, ramps, lanes and other works generally associated with Sturt Street and Power Street),

and which:

- (c) prior to the SLU Effective Date is depicted on the plan which is Exhibit X;
- (d) from the SLU Effective Date until the Date of SLU Section Practical Completion of the last of the SLU Sections relevant to Southern Link Section 1 to achieve SLU Section Practical Completion, is the roadway contained within the aggregate of Leases comprising Southern Link Section 1 and the land identified in the SLU Property Schedule; and
- (e) on and from the Date of SLU Section Practical Completion of the last of the SLU Sections relevant to Southern Link Section 1 to achieve SLU Section Practical Completion is depicted on the plan prepared and submitted by the Company and the Trustee in accordance with clause 8A.8(d).105 106

"Southern Link Section 1 Upgrade" means that part of the **Project** as comprises (or is to comprise) part of **Southern Link Section 1** and which involves, or is to involve, the design, construction, and **SLU Commissioning** of one additional lane and other associated works to **Southern Link Section 1** as more fully described in the **Project Scope and Technical Requirements**.

"Southern Link Section 2" is that part of the **Southern Link comprising of the Domain Tunnel**.¹⁰⁷

"Southern Link Section 3" is that part of the Southern Link comprising of the Southbank Interchange Construction Area.¹⁰⁸

"Southern Link Section 4" is that part of the Southern Link comprising of the Burnley Tunnel.¹⁰⁹

"Southern Link Section 5" is that part of the Southern Link comprising generally of that part of the roadway and Monash Freeway providing for the movement of traffic eastbound commencing along Batman Avenue (between Swan Street and Punt Road) and ending at the north-eastern limit of the elevated roadway west of Toorak Road (including entry and exit ramps and lanes and other parts of the Southern Link associated with that roadway and Freeway), and which:

- (a) prior to the SLU Effective Date, is depicted on the plan which is Exhibit X;
- (b) from the SLU Effective Date until the Date of SLU Section Practical Completion of the last of the SLU Sections relevant to Southern Link Section 5 to achieve SLU Section Practical Completion, is the roadway contained within the land identified in the aggregate of the Leases comprising Southern Link Section 5 and the **SLU Property Schedule**; and
- (c) on and from the Date of SLU Section Practical Completion of the last of the SLU Sections relevant to Southern Link Section 5 to achieve SLU Section Practical Completion, is depicted on the plan prepared and submitted by the

Company and the Trustee in accordance with clause 8A.8(d).^{110 111}

"Southern Link Section 5 Upgrade" means that part of the Project as comprises (or is to comprise) part of Southern Link Section 5 and which involves, or is to involve, the design, construction and SLU Commissioning of one additional lane and other associated works to Southern Link Section 5 as more fully described in the Project Scope and Technical Requirements.

"Southern Link Upgrade" or **"SLU"** is together each of Southern Link Section 1 Upgrade and Southern Link Section 5 Upgrade.

"Specified Imperfection" is any defect described in the schedule referred to in sub-paragraph 2.7(d)(xv) or the Schedule of Specified Imperfections.

"Specified Roads" has the meaning given in the SWTC.

"Spot Audit" means an audit of any part of:

- (a) the Project;
- (b) the operation, maintenance or repair of the **Link** or any activities related thereto; or
- (c) the operations of the **Company**, the **Trustee** or the **Operator**,

relating to road safety, traffic management, the role of emergency services, emergencies or any of them.¹¹²

"SRW Cap" means \$82 million.

"Stakeholder" means each of:

- (a) City of Boroondara;
- (b) City of Yarra;
- (c) City of Stonnington;
- (d) Bicycles Network Victoria;
- (e) Melbourne Water;
- (f) Parks Victoria;
- (g) Moonee Valley City Council;
- (h) Moreland City Council;
- (i) Melbourne City Council;
- (j) Essendon Airport Pty Ltd; and
- (k) VicTrack.

"Stapled Securities" are Units and shares in the Company, each of which is a "Stapled Security".¹¹³

"State" is the Crown in right of the State of Victoria.

"State Notice of Intention to Terminate" has the meaning given in clause 3.4AB(c).

"**State Project FMS**" has the meaning given to that term in the Freeway Management System Coordination Agreement.

"**State Returned Works**" are the works which the Company, the Trustee or both of them are required to do under this Deed to:

- (a) design and construct the **State Returned Works Upgrade** and bring the **State Returned Works Upgrade** to **CTW and Ramp M Practical Completion** and **CTW and Ramp M Final Completion**;
- (b) effect any associated **CTW Variation** (prior to **CTW Practical Completion** in respect of **CTW Sections A to C**, and prior to **Ramp M Practical Completion** in respect of **CTW Section D**) directed in accordance with the **CTC Redevelopment Deed**; and
- (c) effect any connection or implement any associated change under paragraph 2.4(f) (prior to **CTW Practical Completion** in respect of **CTW Sections A to C**, and prior to **Ramp M Practical Completion** in respect of **CTW Section D**),

and includes the **CTW Utility Services Works** and work which is partly completed.

"**State Returned Works Area**" is, at any particular time (other than prior to the relevant date on which the Company and the Trustee are entitled under this Deed to access such land) the land identified in the CTW Property Schedule upon which the State Returned Works are carried out, other than the Project Land;

"**State Returned Works Defects Correction Period**" means a period referred to in clause 8B.11B.

"**State Returned Works Security**" has the meaning given in clause 8B.18(a).

"**State Returned Works Upgrade**" means the parts of the CTW comprising (or which are to comprise):

- (a) the design and construction of changes to the **West Gate Freeway** and other associated works on the **West Gate Freeway**;
- (b) the design and construction of changes to the **Tullamarine Freeway** and other associated works on the **Tullamarine Freeway** (excluding the Tullamarine Freeway Upgrade); and
- (c) works on the **State Road Network**,

as more fully described in the **SWTC**.

"**State Road Network**" means the roadways connecting to and surrounding CityLink that are (or, in relation CTW Section D, were during all or part of the period before Ramp M Practical Completion) operated or maintained by VicRoads, including the West Gate Freeway, the Tullamarine Freeway (excluding the Tullamarine Freeway Upgrade) and Cook St, Port Melbourne.

"**State Road Works**" has the meaning given to it in the M1 Corridor Redevelopment Deed.

"**State Road Works Certifying Engineer**" has the meaning given to it in the M1 Corridor Redevelopment Deed.

"**State Road Works Scope**" has the meaning given to it in the M1 Corridor Redevelopment Deed.

"**State's Representative**" has the meaning given in the CTC Redevelopment Deed.

"**State Works**" are the "**Works**" as defined in the State Works Agreement.

"**State Works Agreement**" means the design and construct agreement between the State and the Construction Contractor providing for the execution of certain works in relation to the Project.

"**State Works Co-ordination Deed**" is the deed between the parties to this Deed and the Construction Contractor to be entered into in relation to the State Works.

"**Step-in Payment**" is a payment which is required to be made under sub-paragraph 4.7(b)(vi) or paragraph 4.7(e) of the Master Security Deed.

"**Strengthening Notice**" means the notice dated 26 March 2010 given by the State to the Company and the Trustee under clause 2.4(d) of the Concession Deed.

"**Subcontract (O&M – CityLink/WGT)**" means a subcontract (other than a Service Agreement) under which the subcontractor provides operation, maintenance, repair and/or tolling goods or services (which may include the provision of licensed materials) in relation to the Project and the WGT.

"**Substantial Holder**" means a person who is:

- (a) entitled (within the meaning applicable to it under section 609 of the Corporations Law in its form as at 20 October, 1995, but as if that section also applied to units in a unit trust) to 20% or more of the voting shares in the **Company** or the **Units**; or¹¹⁴
- (b) would be so entitled if that person converted to voting shares in the **Company** or **Units** all securities (including without limitation, the **Equity Infrastructure Bonds** and options over unissued securities) which that person is entitled (whether conditionally, contingently or otherwise) to convert to such shares or **Units**.

"**Tax**" and "**Taxes**" are all income, stamp, indirect (including goods and services) and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholding (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other

amounts made on, or in respect thereof and "Taxation" shall be construed accordingly.

"tax invoice" has the same meaning as it has in the GST Act.¹¹⁵

"taxable supply" has the same meaning as it has in the GST Act.¹¹⁶

"Temporary Operational Completion" of a SLU Section or CTW Section is when the SLU Works or CTW Works in respect of that SLU Section or CTW Section (as applicable) are safe for use by the public for the passage of vehicles.

"Third Amending Deed" means the deed so entitled made by the parties to this Deed pursuant to which, amongst other things, amendments were effected to this Deed.¹¹⁷

"Thirtieth Amending Deed" means the deed entitled "Melbourne City Link Thirtieth Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.

"Thirty-fifth Amending Deed" means the deed entitled "Melbourne City Link Thirty-fifth Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.

"Thirty-third Amending Deed" means the deed entitled "Melbourne City Link Thirty-third Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.

"Tie In Works" has the meaning given to that term in clause 7E.1(a).

"Toll Administration Fee" means a toll administration fee within the meaning of section 71(1A) of the Project Legislation.¹¹⁸

"Toll Calculation Schedule" is, at any time, Schedule 3, as amended consequent upon any change agreed or determined under clauses 2.9 and 2.10.

"Toll Point" means, in respect of each of Southern Link Section 1 and Southern Link Section 5, each position at which a toll gantry is located.

"Toll Point 4D/9B" means the Toll Point identified as "Toll Point 4D/9B" in Exhibit LL.

"Toll Point 6A" means the Toll Point identified as "Toll Point 6A" on plan J:/30024105/4305.dwg.

"Toll Point 6B" means the Toll Point identified as "Toll Point 6B" on plan J:/30024105/4305.dwg.

"Toll Point 7" means the Toll Point identified as "Toll Point 7" on plan J:/30024105/4303.dwg.

"Toll Road" is a road the passage of vehicles on which, or the grant of (or agreement to grant) a right or authority to use which for the passage of vehicles, attracts a toll.¹¹⁹

"Tolling System" is, at any time, the system as proposed (if such time is before the first Section to be opened for public use is opened) or as used at that time (as the case may be), for imposing and collecting tolls in relation to the Project, as described in Part I of the Project Scope and Technical Requirements and as amended from time to time in accordance with the provisions of this Deed.

"Traffic Management Procedures" has the meaning given to it in the M1 Corridor Redevelopment Deed.

"Traffic Model" is the Base Case Traffic Model changed with the approval of the State under paragraph 14.3(d) or as a result of incorporation of data or a revision under paragraph 14.3(e).

"Transaction Documents" are:

- (a) the Design and Construct Contract;
- (b) prior to the OpCo Effective Date, the Operating and Maintenance Agreement;
- (c) on and from the OpCo Effective Date, the Operating Services Agreement (CityLink); and
- (d) the Trust Deed.

"Transfer of Land Act" is the Transfer of Land Act 1958 (Vic.).

"Transition Services" means the operation and maintenance activities, other than:

- (a) lifecycle maintenance;
- (b) any other activities carried out for the purpose of achieving a design life requirement; and
- (c) the Handover Services.

"Transition Services Fee" means the fee (if any) payable by the State to the Company in accordance with clause 3.4AQ for carrying out the Transition Services.

Transition Services Fee Entitlement Period has the meaning given in clause 3.4AQ(d).

"Transurban Entity" means each of:

- (a) Transurban Limited;
- (b) Transurban Holdings Limited;
- (c) Transurban Unit Trust;
- (d) a related body corporate of one of the Entities referred to in paragraphs (a), (b) or (c) (other than the Company, the Trustee or Clepco);¹²⁰

"Transurban Group" means the group of entities that comprises, from time to time:

- (a) Transurban International Limited (ACN 121 746 825), Transurban Holdings Limited and Transurban Holding Trust by its responsible entity Transurban Infrastructure Management Limited (ACN 098 147 678) but only while

the securities of those entities remain stapled securities (together the **Stapled Entities**);

- (b) each company in which the Stapled Entities, whether individually or collectively, own (directly or indirectly) more than 50% of the voting shares or securities; and/or
- (c) each company which is for the purposes of section 50AA of the Corporations Act under the "control" of the **Stapled Entities**, whether individually or collectively.

"Transurban Holdings Limited" means the company established to acquire shares in the Company and contemplated by the deed made by the State, the Company and the Trustee in or about October 2001 and entitled 'Melbourne City Link Fifteenth Amending Deed' and notified to the State by the Company;¹²¹

"Transurban Limited" means the company established to develop toll roads as contemplated by the deed made by the State, the Company and the Trustee in or about October 2001 and entitled 'Melbourne City Link Fifteenth Amending Deed' and notified to the State by the Company;¹²²

"Transurban Unit Trust" means the Trust established to acquire Units and contemplated by the deed made by the State, the Company and the Trustee in or about October 2001 and entitled 'Melbourne City Link Fifteenth Amending Deed' and notified to the State by the Company;¹²³

"Treasurer's Deed of Covenant" means an instrument proposed to be made between the Treasurer of the State of Victoria, the Company, the Trustee and the Project Banks (as this term will be therein defined).

"Triennial Emergency Exercise" means a substantial exercise which must be physically conducted on the Link and which is designed to:

- (a) simulate an emergency on or around the **Link**;
- (b) simulate a response on the **Link** to that emergency; and
- (c) accurately and comprehensively test and validate the emergency, incident and response policies, plans, systems, manuals and procedures (including the **Operation and Maintenance Manuals, Operations Quality Plan, Emergency Management Plan and Incident Management Quality Plan**, and including those referred to or incorporated in the **Operation and Maintenance Manuals, Operations Quality Plan, Emergency Management Plan and Incident Management Quality Plan**) which the **Company** has in place.¹²⁴

"Trust" is the Transurban City Link Unit Trust as established by the Trust Deed.

"Trust Concurrent Lease" is:

- (a) a concurrent lease by the **State** to the **Trustee** of part of the **Company Land** substantially in the form of Exhibit

D.3 (Annexed), as that form may be amended prior to execution of the lease by agreement between the State, the Company and the Trustee;

- (b) a **SLU Trust Concurrent Lease**; and
- (c) a **WLU Trust Concurrent Lease**; and
- (d) a **WGT Trust Concurrent Lease**.

"Trust Deed" is the deed of trust between the Trustee and the Manager constituting the Trust.

"Trustee" is at any time the person then acting as the trustee of the Trust, being, at the date of this Deed, Perpetual Trustee Company Limited.

"Trust Land" is at any time:

- (a) the land the subject of the **Trust Leases**; and
- (b) the WLU Trust Land.

"Trust Lease" is:

- (a) a lease by the **State** to the **Trustee** substantially in the form of Exhibit D.2 (Annexed), as that form may be amended prior to execution of the lease by agreement between the State, the Company and the Trustee; and
- (b) a **WLU Trust Lease**.

"Trust Road" is the permanent works being that part of the Link on the Trust Land.

"Tullamarine Freeway" is the freeway commencing at the Flemington Road Interchange and extending to Melbourne Airport.

"Tullamarine Freeway Upgrade" is the Tullamarine Freeway between Bulla Road and Flemington Road Interchange upgraded and widened, including an express lane in each direction reserved for buses and taxis in peak periods, which:

- (a) prior to the **CTW Effective Date**, is depicted on the plan which is Exhibit T;
- (b) from the **CTW Effective Date** until the **Date of CTW Section Practical Completion** of the last of the **CTW Sections** relevant to the **Tullamarine Freeway Upgrade**, is the roadway contained within the aggregate of **Leases** which comprised the **Tullamarine Freeway Upgrade** prior to the **CTW Effective Date**, and those parcels of **WLU Project Land** in the **CTW Property Schedule** which are between Bulla Road and Flemington Road Interchange; and
- (c) on and from the **Date of CTW Section Practical Completion** of the last of the **CTW Sections** relevant to **Tullamarine Freeway Upgrade**, is depicted on the plan prepared and submitted by the **Company** and the **Trustee** in accordance with paragraph (e)(v) of the definition of **CTW Section Practical Completion**.

"Twelfth Amending Deed" means the deed so entitled made between the parties to this Deed pursuant to which amendments were effected to this Deed.¹²⁵

"Twentieth Amending Deed" means the deed entitled "Melbourne City Link Twentieth Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.¹²⁶

"Twenty-eighth Amending Deed" means the deed entitled "Melbourne City Link Twenty-eighth Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.

"Twenty-fifth Amending Deed" means the deed entitled "Melbourne City Link Twenty-fifth Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.

"Twenty-second Amending Deed" means the deed entitled "Melbourne City Link Twenty-second Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.

"Twenty-seventh Amending Deed" means the deed entitled "Melbourne City Link Twenty-seventh Amending Deed" made between the parties to this Deed pursuant to which amendments were effected to this Deed.

"Unit" means any unit (however called) in the Trust which represents a beneficial interest in any of the income or assets of the Trust.

"Unplanned Occupation Impact" means, where the Company and the Trustee do not handback a rail occupation at the time required in accordance with a Rail Projects Agreement (including the Site Access and Occupation Schedule), the period of the rail occupation that exceeds the duration provided for in the relevant Rail Projects Agreement (including the Site Access and Occupation Schedule).

"Utility" is, at any time, a person or entity who, at that time, is involved in the provision of infrastructure to the public or sections of the public, including persons or entities who, at that time, supply, sell or distribute gas, water or electricity and is permitted by or under Law to do so.

"Utility Services Management Plan" means the utility services management plan to be developed by the Company and the Trustee in accordance with clause 7D.39.

"Variation" is any change:

- (a) to the structure of, materials used in, or improvements or equipment on, the **Link** (if implemented or proposed to be implemented after:
 - (i) **Completion** of the **Section** or **Sections**; and, if relevant

- (ii) **SLU Section Practical Completion** of the **SLU Section** or **SLU Sections**; and, if relevant
- (iii) **CTW Section Practical Completion** of the **CTW Section** or **CTW Sections**,

to which the change relates) or to the works set out in or necessary to give effect to or implement, the **Project Scope** and **Technical Requirements** (if otherwise); and

- (b) which does not and will not have a **Material Adverse Effect**;

"Variation Amending Deed" means amending deed to this Deed for the purpose of implementing a Variation Order.

"Variation Order" means a direction issued by the State under clause 7.16 which requires the Company or the Trustee to proceed with a Variation.

"Variation Principles" means the principles set out in Exhibit VV.

"Variation Proposal" has the meaning given in clause 7.16(l).

"Variation Quote" means the quote prepared by the Company or the Trustee in accordance with clause 7.16(f).

"Variation Reinstatement Criteria" means:

- (a) the Link and any surrounding roads which were physically affected by the Variation are safe for use and achieve at least the same functionality as existed prior to the commencement of the Variation;
- (b) any adverse effect upon the capacity or patronage of the Link is minimised; and
- (c) to the extent reasonably practicable having regard to the other matters referred to in paragraphs (a) and (b) and the requirements of this Deed, the flexibility to carry out all or part of the Variation in the future is preserved.

"Variation Revocation" has the meaning given in clause 7.16(d)(ii).

"VicRoads" is the Roads Corporation of Victoria established under the Transport Act 1983 (Vic) as amended.

"VicRoads Managed Motorways Framework" means the VicRoads published document "Managed Motorways Framework, Network Optimisation & Operations Rationale and Technical Requirements" as amended, supplemented, varied or replaced from time to time.

"Webb Dock State Works" means:

- (a) works carried out by or on behalf of the State to design and construct the widening of Cook Street from one to two lanes in the eastbound direction between Todd Road and the West Gate Freeway ramps terminal intersection; and
- (b) works to:

- (i) widen Cook Street between Todd Road and the Melbourne bound entry ramp to West Gate Freeway to provide a 3 or 4 lane arterial road connection to West Gate Freeway;
- (ii) widen the Melbourne bound exit ramp from West Gate Freeway to Cook Street to facilitate high productivity vehicles accessing the Webb Dock precinct;
- (iii) widen the entry ramp from Todd Road onto the West Gate Freeway to facilitate high productivity vehicles accessing the Webb Dock precinct; and
- (iv) remodel signalised intersections along Cook Street between Todd Road and the Melbourne bound entry ramp to West Gate Freeway.

"Webb Dock State Works Contractor" means any contractor engaged by the State or its Associates to carry out the Webb Dock State Works, and its subcontractors.

"Western Link Section 1" is a freeway-standard link between Tullamarine Freeway and the intersection of Footscray Road and includes the interchange of Tullamarine Freeway with Flemington Road and Mt Alexander Road, which:

- (a) prior to the **CTW Effective Date**, is depicted on the plan which is Exhibit U;
- (b) from the **CTW Effective Date** until the **Date of CTW Section Practical Completion** of the last of the **CTW Sections** relevant to **Western Link Section 1**, is the roadway contained within the aggregate of **Leases** which comprised **Western Link Section 1** prior to the **CTW Effective Date**, and those parcels of **WLU Project Land** in the **CTW Property Schedule** which are between **Tullamarine Freeway** and the intersection of Footscray Road and includes the interchange of **Tullamarine Freeway** with Flemington Road and Mt Alexander Road; and
- (c) on and from the **Date of CTW Section Practical Completion** of the last of the **CTW Sections** relevant to **Western Link Section 1**, is depicted on the plan prepared and submitted by the **Company** and the **Trustee** in accordance with paragraph (e)(v) of the definition of **CTW Section Practical Completion**.

"Western Link Section 2" is a continuation of the freeway-standard link from Footscray Road to the West Gate Freeway, which:

- (a) prior to **State Road Upgrade Completion** (as defined in the **M1 Corridor Redevelopment Deed**), is depicted on the plan which is Exhibit V;
- (b) from **State Road Upgrade Completion** (as defined in the **M1 Corridor Redevelopment Deed**) until the **CTW**

Effective Date, is depicted on the plan which is Exhibit GG;

- (c) from the **CTW Effective Date** until the **Date of CTW Section Practical Completion** of the last of the **CTW Sections** relevant to **Western Link Section 2**, is the roadway contained within the aggregate of **Leases** which comprised **Western Link Section 2** prior to the **CTW Effective Date**, and those parcels of **WLU Project Land** in the **CTW Property Schedule** which are between Footscray Road and the **West Gate Freeway**; and
- (d) on and from the **Date of CTW Section Practical Completion** of the last of the **CTW Sections** relevant to **Western Link Section 2**, is depicted on the plan prepared and submitted by the **Company** and the **Trustee** in accordance with paragraph (e)(v) of the definition of **CTW Section Practical Completion**.

"Western Link" is Western Link Section 1, Western Link Section 2 and Tullamarine Freeway Upgrade.

"Western Link Upgrade" or **"WLU"** means the parts of the Project comprising (or which are to comprise):

- (a) part of the **Tullamarine Freeway Upgrade** and which involves, or is to involve, the design, construction of changes made to the **Tullamarine Freeway Upgrade** and other associated works to the **Tullamarine Freeway Upgrade**;
- (b) part of **Western Link Section 1** and which involves, or is to involve, the design, construction of changes made to the **Western Link Section 1** and other associated works to **Western Link Section 1**; and
- (c) part of **Western Link Section 2** and which involves, or is to involve, the design, construction of the changes made to the **Western Link Section 2** and other associated works to **Western Link Section 2**,

as more fully described in the Project Scope and Technical Requirements and, until the Project Scope and Technical Requirements are amended in accordance with clause 3.1 of the CTC Redevelopment Deed, the SWTC.

"West Gate Freeway" is the freeway commencing at Sturt Street and extending to the Princes Freeway at Laverton.

"West Gate Tunnel – CityLink Umbrella Agreement" means the document entitled "West Gate Tunnel – CityLink Umbrella Agreement" as between the Company, the Trustee and WGT Co dated on or about WGT Financial Close.

"WGT" or "West Gate Tunnel" means the primary road connecting the **West Gate Freeway** with the Port of Melbourne, the **Link** and the central city, including the upgraded section of the **West Gate Freeway** between the M80 Interchange and

Williamstown Road as more fully described in the **WGT Project Agreement**.

"WGT Base Case Financial Model" has the meaning given to "Base Case Financial Model" in the WGT Project Agreement.

"WGT/CityLink Interface Letter" means the letter provided by the State to the Company, the Trustee and Clepco on or around WGT Financial Close.

"WGT CityLink and ESEP Concession Amending Deeds" means each of:

- (a) the amending deed to this Deed entered into between the State, the Company and the Trustee;
- (b) the amending deed to the IFA entered into between the State, the Company, the Trustee and Clepco; and
- (c) the amending deed to the ESEP Deed entered into between the State and Clepco,

each as agreed or amended in accordance with the CityLink Option Deed.

"WGT Co" means Transurban WGT Co Pty Limited ABN 56 617 420 023.

"WGT Company Land" is at any time:

- (a) before execution of any **WGT Company Leases**, the **CityLink Returned Works Land**;
- (b) before execution of all **WGT Company Leases**, the land the subject of all then executed **WGT Company Leases** and all **CityLink Returned Works Land** (not part of an executed **WGT Company Lease**); and
- (c) after the execution of all **WGT Company Leases**, the land the subject of all the **WGT Company Leases**,

but excluding land in respect of which **WGT Co's** rights of access have expired under clause the **WGT Project Agreement**.

"WGT Company Lease" is a lease by the **State** to the **Company** substantially in the form of Exhibit D.1 (Annexed) but as that form may be amended prior to execution of the lease by agreement between the **State**, the **Company** and the **Trustee**.

"WGT D&C Subcontract" means the deed entitled "West Gate Tunnel D&C Subcontract" as between **State**, **WGT Co**, **NewCo** and **WGT D&C Subcontractor** dated on or about the date of WGT Financial Close.

"WGT D&C Subcontractor" means CPB Contractors Pty Ltd ACN 000 893 667 and John Holland Pty Ltd ACN 004 282 268.

"WGT Date for West Gate Tunnel Completion" has the meaning given to "Date for West Gate Tunnel Completion" in the WGT Project Agreement.

"WGT Date of Tolling Completion" has the meaning given to "Date of Tolling Completion" in the WGT Project Agreement.

"WGT Deed of Surrender" means the deed of partial surrender of lease substantially in the form as set out in Exhibit WW.

"WGT Enhancement Project Debt" is, at any time, the lower of:

- (a) the aggregate of all moneys which the **Company** or the **Trustee** (whether alone or with another person) is at that time actually or contingently liable to pay to or for the account of any person under the **Lending Documents** in respect of the Tranche WGT - Enhancements as defined under the Syndicated Facility Agreement and the Tranche WGT – Reserve as defined under the Syndicated Facility Agreement (other than actual or contingent amounts created or increased as a consequence of a breach of a **WGT Project Document** to which the **Company** or the **Trustee** is a party (other than by the **State**) or of a **Lending Document**); and
- (b) the aggregate of the amount set out in column [4] of Part 1 and Part 2 of Schedule 5B to **IFA**. The **Company** and the **Trustee** shall be deemed to be no longer liable in respect of **WGT Enhancement Project Debt** at any time if no amount is set out in column [4] Part 1 and Part 2 of Schedule 5B to **IFA** in respect of that time.

At any particular time, the ability to repay **WGT Enhancement Project Debt** shall be assessed without regard to liabilities under **Lending Documents** to the extent that the amount of those liabilities then exceeds the amount of **WGT Enhancement Project Debt**.

"WGT Enhancement Project Securities" means, at any time, the **Units** issued in accordance with the **WGT Equity Subscription Deed** which are attributable to the **WGT Tolling Enhancements**.

"WGT Equity Subscription Deed" means the deed entitled "Equity Subscription Deed" between the State, Transurban Infrastructure Management Limited ACN 098 147 678 in its capacity as responsible entity of the Transurban Holding Trust, the **Trustee, Transurban Holdings Limited** and **WGT Co** dated on or around WGT Financial Close.

"WGT Expiry Date" has the meaning given to "Expiry Date" in the **WGT Project Agreement**.

"WGT Extension" means the extension by the **State** of the **Concession Period** to include the **Additional Concession Period** and the cashflows derived during the **Additional Concession Period**.

"WGT Extension Project Debt" is, at any time, the lower of:

- (a) the aggregate of all moneys which the **Company** or the **Trustee** (whether alone or with another person) is at that time actually or contingently liable to pay to or for the account of any person under the **Lending Documents** in

respect of the Tranche WGT - Extension as defined under the Syndicated Facility Agreement (other than actual or contingent amounts created or increased as a consequence of a breach of a **WGT Project Document** to which the **Company** or the **Trustee** is a party (other than by the **State**) or of a **Lending Document**); and

- (b) the aggregate of the amount set out in column [4] of Part 3 of Schedule 5B to **IFA**. The **Company** and the **Trustee** shall be deemed to be no longer liable in respect of **WGT Extension Project Debt** at any time if no amount is set out in column [4] Part 3 of Schedule 5B to **IFA** in respect of that time.

At any particular time, the ability to repay **WGT Extension Project Debt** shall be assessed without regard to liabilities under **Lending Documents** to the extent that the amount of those liabilities then exceeds the amount of **WGT Extension Project Debt**.

"**WGT Financial Close**" has the meaning given to the term "Financial Close" in the **WGT Project Agreement**.

"**WGT Handover**" means the discharge by WGT Co of its obligations under clause 28 of the **WGT Project Agreement**.

"**WGT Leases**" are the **WGT Company Leases** and the **WGT Trust Concurrent Leases**.

"**WGT Principles of Lease Surrender**" means the Lease Principles (as defined in the **WGT Project Agreement**), as they apply in relation to CityLink.

"**WGT Project**" has the meaning given to "Project" in the **WGT Project Agreement**.

"**WGT Project Agreement**" means the deed entitled "West Gate Tunnel Project Agreement" as between the **State** and **WGT Co** dated on or about 11 December 2017.

"**WGT Project Debt**" is, at any time, the aggregate of the **WGT Enhancement Project Debt** and **WGT Extension Project Debt** at that time.

"**WGT Project Document**" means each:

- (a) Project Document (as defined under the **WGT Project Agreement**);
- (b) each document amending a Project Document (as defined under the **WGT Project Agreement**); and
- (c) each document which is agreed between the parties to this **Deed** to be a **WGT Project Document**.

"**WGT PSR**" has the meaning given to "PSR" in the **WGT Project Agreement**.

"**WGT Reserve Tranche**" means the lesser of:

- (a) an amount equal to 50% of the total amounts paid by the Company under the **CEPA** attributable to the **WGT**

Tolling Enhancements during the Original Concession Period; and

- (b) the aggregate of the **WGT Reserve Tranche Contributions**.

"WGT Reserve Tranche Contribution" means, where at the time of payment of any amount by the **Company** under the **CEPA**, the amount of cash available to the **Company** or **Trustee** which is permitted to be used for the distribution or payment of cash pursuant to clause 14.7(e) of the **Security Trust Deed (Available Cashflow)** is insufficient to pay for 50% of such amount (the **Equity Portion**), an amount equal to the difference between the **Available Cashflow** and the **Equity Portion**.

"WGT State Security" has the meaning given to "State Security" in the **WGT Project Agreement**.

"WGT Surrender Date" means the Date of West Gate Tunnel Completion.

"WGT Surrendered Land" means those parts of the Project Land to be surrendered in accordance with clause 4E.1(a).

"WGT Termination for a Force Majeure Termination Event" has the meaning given to "Termination for a Force Majeure Event" in the **WGT Project Agreement**.

"WGT Tolling Enhancements" means the revenue derived from the Relevant Changes made to the **Toll Calculation Schedule** (over and above the revenue that would have been derived had no such amendment been made and assessed over the **Concession Period**).

"WGT Trust Concurrent Lease" is a lease by the **State** to the **Trustee** substantially in the form of Exhibit D.3 (Annexed) but as that form may be amended prior to execution of the lease by agreement between the **State**, the **Company** and the **Trustee**.

"WGT Works" has the meaning given to "Works" in the **WGT Project Agreement**.

"WLU Company Land" is at any time:

- (a) before execution of any **WLU Company Lease**, the land identified as **WLU Company Land** in the **CTW Property Schedule**, but excluding **CTW Extra Land** and land the rights in respect of which have expired under clause 4C.2(e);
- (b) before execution of all **WLU Company Leases**, the land the subject of all then executed **WLU Company Leases** and all land (not part of a **Section** in relation to which a **WLU Company Lease** has been executed) identified as **WLU Company Land** in the **CTW Property Schedule**, but excluding **CTW Extra Land** and land the rights in respect of which have expired under clause 4C.2(e); and
- (c) after the execution of all **WLU Company Leases**, the land the subject of all the **WLU Company Leases**.

"WLU Company Lease" is a lease by the State to the Company substantially in the form of Exhibit D.1 (Annexed) but as that form may be amended prior to execution of the lease by agreement between the State, the Company and the Trustee.

"WLU Leases" are:

- (a) the **WLU Company Leases**;
- (b) the **WLU Trust Leases**; and
- (c) the **WLU Trust Concurrent Leases**,

each of which is a **WLU Lease**.

"WLU Project Land" is, at any time, the land then comprising the WLU Company Land and the WLU Trust Land.

"WLU Trust Concurrent Lease" is a concurrent lease by the State to the Trustee of part of the WLU Company Land substantially in the form of Exhibit D.3 (Annexed), as that form may be amended prior to execution of the lease by agreement between the State, the Company and the Trustee.

"WLU Trust Land" is at any time:

- (a) before execution of any **WLU Trust Lease**, the land identified as **WLU Trust Land** in the **CTW Property Schedule**, but excluding **CTW Extra Land** and land the rights in respect of which have expired under clause 4C.2(e);
- (b) before execution of all **WLU Trust Leases**, the land the subject of all then executed **WLU Trust Leases** and all land (not part of a **Section** in relation to which a **WLU Trust Lease** has been executed) identified as **WLU Trust Land** in the **CTW Property Schedule**, but excluding **CTW Extra Land** and land the rights in respect of which have expired under clause 4C.2(e); and
- (c) after the execution of all **WLU Trust Leases**, the land the subject of all the **WLU Trust Leases**.

"WLU Trust Lease" is a lease by the State to the Trustee substantially in the form of Exhibit D.2 (Annexed), as that form may be amended prior to execution of the lease by agreement between the State, the Company and the Trustee.

"WLU Works" are the works which the Company, the Trustee or both of them are required to do under this Deed to:

- (a) design and construct the **WLU** and bring the **WLU** to **CTW and Ramp M Practical Completion** and **CTW and Ramp M Final Completion**;
- (b) effect any associated **CTW Variation** (prior to **CTW Practical Completion** in respect of **CTW Sections A to C** and prior to **Ramp M Practical Completion** in respect of **CTW Section D**) directed in accordance with the **CTC Redevelopment Deed**; and

- (c) effect any connection or implement any associated change under paragraph 2.4(f) (prior to **CTW Practical Completion** in respect of **CTW Sections A to C** and prior to **Ramp M Practical Completion** in respect of **CTW Section D**),

and includes work which is partly completed.

"**Works**" are the works which the Company, the Trustee or both of them are required to do under this Deed to:

- (a) design and construct the **Link** and bring each **Section to Completion**;
- (b) effect any **Variation**; and
- (c) effect any connection or implement any change under paragraph 2.4(f),

and includes work which is partly completed.

In the interpretation and application of this Deed, unless otherwise expressly provided, reference to the **Works** will be deemed not to include the **SLU Works** the **SLU**, the **CTW Works**, the **CTW Maintenance Activities** or the **CTW**.

1.2

Interpretation

In this Deed, and the Project Scope and Technical Requirements headings are for convenience only and do not affect its interpretation. Except to the extent that the context otherwise requires:

- (a) references to any statute, regulation, by-law or guideline or to any provision of any statute, regulation, by-law or guideline include any modification or re-enactment of, or any provision substituted for, and (in the case of a statute) all statutory and subordinate instruments issued under, such statute, regulation, by-law or guideline or such provision;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting individuals include corporations, partnerships, joint ventures, unincorporated organisations or Governmental Agencies and vice versa;
- (d) words denoting any gender include all genders;
- (e) references to appendices, Articles, clauses, sub-clauses, paragraphs, schedules or exhibits in this Deed are references to appendices, Articles, clauses, sub-clauses, paragraphs, schedules and exhibits of and to this Deed;
- (f) subject to paragraph (q), references to any document or agreement (including this Deed) include references to such document or agreement as amended, novated, replaced or supplemented from time to time;
- (g) references to any party or person include that party's or person's successors or permitted assigns;

- (h) "writing" and cognate expressions include all means of reproducing words in a tangible and permanently visible form;
- (i) where any word or phrase is defined in this Deed, any other part of speech or other grammatical form shall have a corresponding meaning;
- (j) (and to the extent used in this Deed) all accounting terms used in this Deed shall have the meaning given to those terms under, and all calculations and determinations as to financial matters shall be made in accordance with, accounting principles and practices generally accepted in Australia from time to time and consistently applied;
- (k) "financial year" means a period of 12 calendar months ending on 30 June;
- (l) "dollar" and "\$" mean the lawful currency of Australia;
- (m) "quarter" means a period of 3 calendar months ending on the last day of September, December, March or June;
- (n) the term "including" and "include" means "including or include (as applicable)" without limitation";
- (o) the term "operation" includes "tolling" and cognate expressions shall be similarly interpreted;
- (p) the term "land" includes interests in land;
- (q) References to the Equity Documents or any of them, are references to those documents or the relevant document in the form given to the State either before the execution of this Deed or in or toward satisfaction of conditions outlined in clause 2.7 but as amended by such changes or variations made by the parties to them (or any of them) which the State elects, in its discretion, to adopt;^{127 128 129}
- (qa) references to Lending Documents or any of them, are references to those documents or the relevant document:
 - (i) in the form given to the State either before execution of this Deed or in or towards satisfaction of conditions outlined in clause 2.7;
 - (ii) in the case of the New Lending Documents (as defined in the Fourth Amending Deed), in the form of the certified copies of them provided under the Fourth Amending Deed;
 - (iii) in the case of the New Infrastructure Borrowing Documents (as defined in the Sixteenth Amending Deed), in the form of the certified copies of them provided under the IFA Eighth Amending Deed (as defined in the Sixteenth Amending Deed);
 - (iv) in the case of the Refinancing Documents (as defined in the Seventeenth Amending Deed), in

the form of the certified copies of them provided under the IFA Ninth Amending Deed; and

- (v) in the case of each Lending Document referred to in paragraph (ad) of the definition of "Lending Document", in the form of the certified copies of them provided under clause 17.7(d),

but (except where expressly specified as being in a form as at a particular time) as amended by such changes or variations made by the parties to them (or any of them) as are made solely for the purposes of the Project and notified to the State under clauses 17.7(c) and (d);¹³⁰

- (r) references to the Project Securities, Stapled Securities, Equity Infrastructure Bonds, or any of them, are references to those Securities or Bonds (as applicable), as if they were subject to the terms and conditions notified to and agreed by the State prior to Financial Closing but as amended by such changes or variations made by the parties to them (or any of them) which the State elects, in its discretion, to adopt or which were, in or about the Operative Date (as defined in the deed made by the State, the Company and the Trustee in or about October 2001 and entitled 'Melbourne City Link Fifteenth Amending Deed'), reasonably necessary to make, to ensure that each Unit was no longer attached to one share in the Company, that the shares in the Company were acquired by Transurban Holdings Limited and that the Units were acquired by Transurban Unit Trust; and¹³¹
- (s) references to Commonwealth Law include a reference to the Constitution of the Commonwealth.

1.2A

Southern Link Section 4

- (a) The parties agree that in relation to (but only in relation to) the Section comprising Southern Link Section 4, clause 9.3(b) shall be read as if the words "minor omissions or minor defects" were replaced with the words "omissions or defects". Clause 9.3(b) shall be so read with effect from the Operative Date of the Fourteenth Amending Deed.
- (b) The parties agree that in relation to (but only in relation to) the Section comprising Southern Link Section 4:
 - (i) the definition "Completion" in clause 1.1 of the Concession Deed shall be read as if in paragraph (a) of that definition, the words "minor omissions or minor defects" were replaced with the words "omissions or defects";
 - (ii) clause 8.12 of the Concession Deed shall be read as if the words "(but in any event in accordance with any agreement in writing made between the State, the Company and the Trustee prior to Completion of the Section)" were inserted after

the words "as soon as practicable after Completion"; and

- (iii) Exhibit B shall be read as if the words "minor omissions" were replaced with the word "omissions".

Clauses 1.1 and 8.12 and Exhibit B of the Concession Deed shall be so read:

- (iv) if, and only if, a written agreement contemplated by paragraph (b)(ii) above (being a written agreement for the purposes of clause 8.12 of the Concession Deed) is made; and
- (v) if so made, with effect from the date (being a date on or after the Operative Date of the Fourteenth Amending Deed) when such written agreement is made.¹³²

1.3 Priority in Interpretation

- (a) Subject to paragraph (b), if there is any inconsistency between a provision of this Deed and a provision of another Project Document, this Deed shall prevail.
- (b) If there is any inconsistency between any provision of:
 - (i) any Project Document and the Master Security Deed, the provision of the Master Security Deed shall prevail; or
 - (ii) IFA and this Deed, the provision of IFA shall prevail.¹³³
- (c) The State acknowledges that it has reviewed the Project Scope and Technical Requirements, the **SWTC** and the **WGT PSR** and is satisfied with them for the purposes of this Deed (including in respect of the WGT PSR on and from WGT Financial Close), but such acknowledgment shall not limit or qualify the nature or extent of any obligation, warranty, risk or liability given, imposed upon or accepted by the Company or the Trustee under any Project Document, nor shall it adversely affect the nature or extent of any right, remedy or power of the State.
- (d) For the purposes of this Deed, to the extent of any inconsistency in the Construction Documentation, the SLU Construction Documentation or the Operation and Maintenance Manuals, the order of priority of interpretation shall be:
 - (i) the Project Scope and Technical Requirements;
 - (ii) the Design Documentation and the SLU Design Documentation; and
 - (iii) the Operation and Maintenance Manuals.
- (e) For the purposes of this Deed, to the extent there is any inconsistency, ambiguity or discrepancy between the CTW

Construction Documentation and the Operation and Maintenance Manuals, the order of priority of interpretation shall be:

- (i) in respect of the design and construction of the CTW Works:
 - (A) the SWTC; and
 - (B) the CTW Design Documentation; and
- (ii) in respect of the operation and maintenance of WLU:
 - (A) the Project Scope and Technical Requirements; and
 - (B) the Operation and Maintenance Manuals.
- (ea) On and from WGT Financial Close, for the purposes of this Deed, to the extent there is any inconsistency, ambiguity or discrepancy between the **Project Scope and Technical Requirements** and the **WGT PSR** in respect of the design and construction of the **CityLink Returned Works**, the provisions of the **WGT PSR** will prevail.
- (f) For the purposes of this Deed, to the extent there is any inconsistency, ambiguity or discrepancy between the clauses of this Deed and the SWTC, then the clauses of this Deed will prevail.
- (g) For the purposes of this Deed, to the extent there is any inconsistency, ambiguity or discrepancy between the CTC Redevelopment Deed and the SWTC, then the CTC Redevelopment Deed will prevail.
- (h) To the extent that carrying out the CTW Works or CTW Maintenance Activities in accordance with the requirements of the CTW Project Documents, or the carrying out by the State of the CTW State Works, prevents the Company and the Trustee from complying with an obligation under this Deed (other than a CTW Obligation) during the carrying out of the CTW Works (**CTW Prevented Obligation**), the State releases the Company and the Trustee from that obligation to the extent of such prevention, and for so long as the Company and the Trustee are so prevented from complying, unless the parties agree otherwise.
- (i) The Company and the Trustee must:
 - (i) notify the State as soon as practicable upon becoming aware of a CTW Prevented Obligation; and
 - (ii) submit a mitigation plan to the State within 10 Business Days of becoming aware of a CTW Prevented Obligation which details how the Company and Trustee will mitigate the effects of the CTW Prevented Obligation.

- (j) Any reference to:
- (i) the WLU and the State Returned Works (including the CTW Utility Service Works);
 - (ii) the Project Plans;
 - (iii) the SWTC;
 - (iv) the CTW Design Documentation; or
 - (v) any other document or thing in relation to the CTW,
- or any part of any of them:
- (vi) being fit for its purpose or for its intended purpose; or
 - (vii) as having an intended use,
- (or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to:
- (viii) the objectives for the CTW identified in this Deed; and
 - (ix) any purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:
 - (A) this Deed, including:
 - (i) the objectives referred to in the SWTC; and
 - (ii) the requirement that the WLU and State Returned Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the CTW Health and Safety Laws; or
 - (B) to the extent relevant for determining the purpose, intended purpose or intended use in connection with a CTW Variation, any document provided by the State to the Company or Trustee specifically in connection with the CTW Variation,
- and having regard to the CTW Specified Matters.
- (k) The parties agree that the obligation to perform the CTW Maintenance Activities is with the Company and not the Trustee, and accordingly any express or implied reference in this Deed to the Company and the Trustee being obliged to perform the CTW Maintenance Activities will be read as applying to the Company only.

- (l) The parties agree that, for the purposes of clauses 8B.6(a)(iv) and 8C.3(a)(ix), any issues relating to the matters referred to in paragraph (c)(ii) or (iii) of the definition of CTW Specified Matters have been appropriately addressed and closed out.

1.4 No Partnership or Joint Venture

Neither this Deed nor any other Project Document creates a partnership, joint venture or fiduciary relationship (except as may subsist under the Trust Deed between the Trustee and the Manager) among any of the parties.

1.5 Delegate

- (a) The State may appoint a person as a delegate to perform any of its functions, rights and powers under this Deed or in respect of Concession Notes. The State shall give the Company and the Trustee notice of any delegate so appointed, setting out the delegated functions, rights and powers and including a copy of the relevant instrument of appointment.
- (b) The State may revoke the appointment of a delegate and may appoint a substitute and shall give the Company and the Trustee notice of each appointment and revocation, including a copy of the relevant instrument of appointment or revocation.
- (c) The appointment of a delegate to perform some or all of the functions, rights and powers of the State under this Deed will not limit or affect the State's obligations or liability under this Deed.

1.6 Discontinuance of Bodies or Associations

- (a) If an authority, institute or association or other body referred to in this Deed is reconstituted, renamed or replaced or if its powers or functions are transferred to another entity, this Deed is deemed to refer to that new entity.
- (b) If an authority, institute or association or other body referred to in this Deed ceases to exist, this Deed is deemed to refer to that entity which serves substantially the same purpose or object as the former entity.

1.7 Waiver

Subject to the express provisions of this Deed, if a party or any other person fails or delays in exercising or enforcing any right or remedy under this Deed, it shall not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy or of any other right or remedy under this Deed or provided by Law.

1.8 Amendments

Any amendment to a Project Document shall only be made in writing.

1.9 Surviving Provisions

- (a) An indemnity given under this Deed survives the termination of this Deed.
- (b) Obligations of the parties under an agreement referred to in the definition of factor "D" in the definition of "Early Termination Limit" and under clauses 2.6(e), 3.2, Handover Clauses, 7.15, 7A.15, 7D.15, 9.6(b), 12.8(f)(iii), 14.7(d), 14.7(e), 15.5, 15.6, 17.1 and 19.3 shall survive the termination of this Deed.

1.10 Governing Law

This Deed shall be governed by and construed in accordance with the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

1.11 Contra Proferentem

In the interpretation of this Deed, no rule of construction applies to the disadvantage of one party on the basis that it put forward this Deed or any part of it.

1.12 Trustee Obligations and Change of Trustee

- (a) Subject to paragraph (d), the State and the Company acknowledge that:
 - (i) the Trustee is a party to this Deed only because it is the trustee of the Trust and the legal owner of the assets of the Trust pursuant to the Trust Deed;
 - (ii) the Trustee will perform or procure the performance of all of the obligations imposed on it under this Deed only because it is trustee of the Trust and legal owner of the assets of the Trust pursuant to the Trust Deed and, in all cases (but subject to the Trustee's duties under the Trust Deed and at general law), at the request, direction or instruction of the Manager (on which the Trustee will rely conclusively);
 - (iii) the Manager is responsible for all of the management and operations of the Trust and therefore will perform the Trustee's obligations under this Deed (and which, under the Trust Deed, would otherwise be the responsibility of the Trustee);
 - (iv) clause 1.13 applies to any action which the State or the Company may bring against the Trustee:
 - (A) if the Manager fails to satisfy that responsibility;
 - (B) if the Trustee fails to perform any of its obligations under this Deed as a result of the Manager failing to perform its obligations under this clause; or

- (C) for acting, or refraining to act, on the request, direction or instruction of the Manager,
- and which results in a breach by the Trustee of any obligations imposed on it under this Deed;
- (v) the Manager has requested and directed the Trustee to enter into this Deed.
- (b) The Trustee shall not voluntarily cease to be the trustee of the Trust until a replacement trustee approved by the State is appointed.
 - (c) If the Trustee involuntarily ceases to be the trustee of the Trust and the replacement trustee (the "**New Trustee**") was not approved by the State prior to its appointment, the New Trustee shall, within 20 Business Days of its appointment, seek the approval of the State to its continued appointment as such. The State shall not unreasonably withhold or delay such approval. If the State does not approve the appointment of the New Trustee, the New Trustee shall resign as trustee as soon as practicable after receipt of a notice from the State requiring it to do so.
 - (d) The parties acknowledge that the provisions of paragraph (a) are simply intended to set out the commercial context at the time at which the Project Documents were entered into. They are not intended to, and they do not:
 - (i) create or give rise to any obligations, rights, remedies or powers;
 - (ii) extinguish, limit or otherwise qualify or restrict, any right, remedy or power of the State or any obligation or liability of the Trustee or the Company; or
 - (iii) without limitation, put the State on enquiry as to whether any action or omission of the Trustee has been directed, authorised or otherwise consented to by the Manager.
 - (e) Each of the State, the Company and the Trustee hereby agrees and acknowledges that the appointment on 30 June 2003 of Transurban Infrastructure Management Limited ACN 098 147 678 ("**replacement trustee**") as Trustee and responsible entity of the Trust in place of Perpetual Trustee Company Limited ACN 000 001 007 ("**former trustee**"):
 - (i) has had the effect, in accordance with (and subject to) sections 601FS and 601FT of the Corporations Act that:
 - (A) the rights, obligations and liabilities of the former trustee (as trustee and responsible entity of the Trust) in relation to the Trust (including, without limitation, rights, obligations and

- liabilities under the Project Documents and Transaction Documents) have become the rights, obligations and liabilities of the replacement trustee as Trustee and responsible entity of the Trust; and
- (B) any document to which the former trustee (as Trustee and responsible entity of the Trust) was a party, in which a reference was made to it, or under which it had acquired or incurred a right, obligation or liability, or might have acquired or incurred a right, obligation or liability if it had remained the responsible entity and Trustee of the Trust, has effect, if the document is capable of having effect after the replacement, as if the replacement trustee (and not the former trustee) were a party to the document, were referred to in the document or had or might have acquired or incurred the right, obligation or liability under the document (in its capacity as Trustee and responsible entity of the Trust); and
- (ii) does not, in any way, other than as referred to in clause 1.12(e)(i) above, affect the operation of any of the Project Documents or Transaction Documents, nor the rights, obligations or liabilities arising under the Project Documents or Transaction Documents of any of the parties to them (including, without limitation, under the guarantees given under the Master Security Deed and the ESEP Deed of Guarantee and Indemnity (as defined in the ESEP Deed)), and such documents will (subject to clause 1.12(e)(i) above) continue in full force and effect in accordance with their terms.¹³⁴
- (f) Each of the State, the Company and the Trustee hereby agrees and acknowledges that any deregistration of the Trust (and the Trustee's consequent ceasing to be a responsible entity within the meaning of the Corporations Act), will not alter the operation or effect of the provisions referred to in clause 1.12(e)(i) above and:
- (i) without limiting any rights, obligations or liabilities under the Project Documents or Transaction Documents, the replacement trustee will continue, for so long as it is Trustee of the Trust, to have and be bound by the rights, obligations and liabilities of the Trustee arising under the Project Documents and Transaction Documents;

- (ii) notwithstanding clause 6.3 of the Deed for Managed Investments Act dated 21 March 2001 between the Company, the Trustee and the parties listed in Schedule 1 to that deed, each Project Document and Transaction Document will be interpreted as if any reference to the former trustee, City Link Management Limited (in its capacity as manager of the Trust) or Transurban Infrastructure Management Limited ACN 098 147 678 as responsible entity of the Trust, will be read as if it were a reference to the Trustee.¹³⁵

1.13

Trustee's Capacity

- (a) The Trustee enters into this Deed solely in its capacity as trustee of the Trust and in no other capacity. The State and the Company acknowledge that the Trustee's obligations under this Deed are incurred by the Trustee solely in its capacity as trustee of the Trust.
- (b) Subject to clause 1.14, the Trustee will not be liable to pay or satisfy any obligations under this Deed out of any assets out of which the Trustee is not entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (c) Subject to clause 1.14, the State and the Company may enforce their respective rights against the Trustee arising from non-performance of the Trustee's obligations under this Deed only to the extent of the Trustee's right of indemnity out of the assets of the Trust.
- (d) Subject to clause 1.14, if the State or the Company do not recover all money owing to it, them or either of them arising from non-performance of the Trustee's obligations under this Deed by enforcing the rights referred to in paragraph (c), neither of them may seek to recover the shortfall by:
 - (i) bringing proceedings against the Trustee in its personal capacity; or
 - (ii) applying to have the Trustee wound up or proving in the winding up of the Trustee unless another creditor has initiated proceedings to wind up the Trustee.
- (e) Subject to clause 1.14, the State and the Company each waives its rights, and releases the Trustee from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - (A) breach by the Trustee of its duties under this Deed; or
 - (B) non-performance by the Trustee of its obligations under the Project Documents; and

- (ii) which cannot be paid or satisfied out of the assets out of which the Trustee is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.

1.14 Qualifications to Trustee Provisions

- (a) The provisions of clause 1.13(b), (c), (d) and (e) shall not apply to any obligation or liability of the Trustee arising, and shall not apply insofar as there is a reduction in the extent of its entitlement to be indemnified out of property subject to the Trust, as a result of:
 - (i) the Trustee's fraud, negligence, breach of trust or breach of duty; or
 - (ii) a representation or warranty made under paragraph (b) being untrue, incorrect or misleading when made or deemed to have been repeated (notwithstanding that those representations and warranties are expressed to be given by the Trustee in its capacity as trustee of the Trust only).
- (b) The Trustee represents and warrants to the State that each representation and warranty made by it pursuant to subparagraph 14.2(c)(v), 14.2(c)(vi), 14.2(c)(viii) and 14.2(c)(x) is true and correct, when made.

1.15 Several Obligations

- (a) The obligations of the Company and the Trustee under the Project Documents are several.
- (b) Without limitation to their respective obligations or to the extent of their respective liability under this Deed, an obligation which is expressed to bind both the Company and the Trustee is deemed to be a several reference to:
 - (i) the Trustee in relation to the Trust Road, the Trust Land, the Trust Leases and the Trust Concurrent Leases or (insofar as the obligation does not relate to land) the specified obligation as it relates to the Trustee in each case (as the case may be); and
 - (ii) the Company in relation to the Company Road, the Company Land and each Company Lease or (insofar as the obligation does not relate to land) the specified obligation as it relates to the Company in each case (as the case may be) including the obligation to operate and maintain the whole of the Link and the obligation to operate the Tolling System in respect of the whole of the Link.

1.16 Manager

- (a) Performance by the Manager in whole or in part of obligations of the Trustee under this Deed will not limit or

affect the Trustee's obligations or liabilities under this Deed.

- (b) Unless otherwise expressly indicated in the Project Documents to which the State is a party, an agreement, consent, approval or waiver made or given by the Trustee shall be deemed also to have been made or given by the Manager.
- (c) The Manager shall not voluntarily cease to be the manager of the Trust until a replacement manager approved by the State is appointed.
- (d) If the Manager involuntarily ceases to be the manager of the Trust and the replacement manager (the "**New Manager**") was not approved by the State prior to its appointment, the New Manager shall, within 20 Business Days of its appointment, seek the approval of the State to its continued appointment as such. The State shall not unreasonably withhold or delay such approval. If the State does not approve the appointment of the New Manager, the New Manager shall resign as manager as soon as practicable after receipt of a notice from the State requiring it to do so.

1.17

Diligent Pursuit

Any assessment or determination as to:

- (a) whether a person has diligently pursued something or is diligently pursuing something;
- (b) whether something has been diligently pursued or is being diligently pursued; or
- (c) what could be achieved were something to be diligently pursued,

shall be made in the context of the actual circumstances prevailing at all relevant times but:

- (d) any lack of financial or technical resources shall be disregarded; and
- (e) the standard of pursuit shall be not less than what might reasonably be expected of the State, having regard to the resources (including technical resources) that the State might reasonably be expected to devote (or procure be devoted) were the State to have an obligation to achieve or implement that thing, promptly.

1.18

Amortisation Schedule and Payback Period

- (a) References to the amortisation schedule set out in schedule 5 to IFA are references to the schedule for repayment by the Company or the Trustee, as the case may be, of the principal amount of Project Debt as set out in schedule 5 to IFA without regard to any provision for voluntary prepayment or acceleration of any obligation to make repayments and without regard to the effect of any actual

- obligation to make payments or repayments under the Lending Documents.¹³⁶
- (b) The relevant "payback period" at any time, in respect of each of Project Debt, CTW Project Debt and WGT Project Debt, is the period commencing at that time and ending on the first date when the principal amount of the Project Debt, CTW Project Debt or WGT Project Debt (as applicable) is, according to the relevant amortisation schedule set out in schedules 5, 5A and 5B to IFA, zero.¹³⁷
 - (c) References to "principal" or "principal amount" in paragraphs (a) and (b) include, in relation to any:
 - (i) bill of exchange, the face amount of the bill;
 - (ii) letter of credit, guarantee or indemnity, the maximum limit of liability under the letter of credit, guarantee or indemnity;
 - (iii) CPI linked bonds, the full amount payable on redemption of the bond.
 - (d) References to "repayment" or "prepayment" in paragraphs (a) and (b) include, in relation to any:
 - (i) bill of exchange, the discharge of liability under the bill or the provision of cash cover for the face amount of the bill to any person indemnified by the Company or the Trustee in respect thereof under the Lending Documents;
 - (ii) letter of credit, guarantee or indemnity, the discharge of or the reduction, expiry or cancellation of liability under the letter of credit, guarantee or indemnity or the provision of cash cover for the maximum limit of liability to the person indemnified by the Company or the Trustee in respect thereof under the Lending Documents.
 - (e) References to the amortisation schedule set out in schedule 5A to IFA are references to the schedule for repayment by the Company or the Trustee, as the case may be, of the principal amount of CTW Project Debt as set out in schedule 5A to IFA without regard to any provision for voluntary prepayment or acceleration of any obligation to make repayments and without regard to the effect of any actual obligation to make payments or repayments under the Lending Documents.
 - (f) References to the amortisation schedules set out in schedule 5B to IFA are references to the schedule for repayment by the Company or the Trustee, as the case may be, of the principal amount of WGT Project Debt as set out in schedule 5B to IFA without regard to any provision for voluntary prepayment or acceleration of any obligation to make repayments and without regard to the effect of any

actual obligation to make payments or repayments under the Lending Documents.

1.19 Equity Return

In assessing at any particular time either the Equity Return, Extension Equity Return or the ability of Equity Investors to achieve an Equity Return or the ability of Extension Equity Investors to achieve the Extension Equity Return, the Equity Return, Extension Equity Return and such ability shall be determined on the basis that:

- (a) neither the Trust Deed nor any contract entered into by or on behalf of the Trustee restricts the ability of the Trustee to distribute net income of the Trust to the holders of the Units;¹³⁸
- (b) the Trustee and the Manager will exercise all their rights and powers to distribute net income of the Trust to holders of the Units;¹³⁹
- (c) for the purpose of projecting future distributions in calculating Equity Return and Extension Equity Return and not otherwise, neither the Trust Deed nor any contract entered into by or on behalf of the Trustee restricts the ability of the Trustee to distribute cash or other receipts to the holders of Units;^{140 141}
- (d) for the purpose of projecting future distributions in calculating Equity Return and Extension Equity Return and not otherwise, the Trustee will exercise all its rights and powers to distribute cash or other receipts to holders of the Units;^{142 143 144}
- (e) [not used]; and¹⁴⁵
- (f) any amounts distributed under, or in respect of, the Equity Note will be deemed to be distributions in respect of Original Project Securities, excluding any repayment of the issue price of that Equity Note.

Without limiting any other provision of this Deed, it is agreed by the parties that notwithstanding clauses 1.19 (a) to (d), for the purpose of assessing at any particular time either the Equity Return or an amount necessary to restore the ability of Original Equity Investors to achieve an Equity Return, any cash deemed or required to be applied by the Trustee in repayment of WGT Project Debt, will not be considered to be a distribution, even if that amount is actually distributed.

1.19A Development Projects and Extension Equity Return

- (a) For the purpose of calculating, at any particular time either the Equity Return, or return under clause 3.1(d) or an amount necessary to restore the ability of Original Equity Investors to achieve an Equity Return, the expected real after tax return which a Notional Initial Equity Investor is projected to receive on its investment (and taking into account actual receipts) in Original Project Securities will be determined on the basis that:

- (i) **(Deducting the Forecast Enhancement Cashflows):** Forecast Enhancement Cashflows in any period will be deducted from the amounts used to calculate the real after tax return. For the avoidance of doubt, if in any period, the Forecast Enhancement Cashflow is less than zero, the absolute amount will be added to the amounts used to calculate the real after tax return;
 - (ii) **(Deeming certain amounts to be “zero” during Original Concession Period):** during the Original Concession Period no distributions will be taken to be in respect of Extension Project Securities; and
 - (iii) **(Deeming certain amounts to be “zero” during Additional Concession Period):** during the Additional Concession Period no distributions will be taken to be in respect Original Project Securities.
- (b) For the purpose of calculating, at any particular time either the Extension Equity Return or an amount necessary to restore the ability of Extension Equity Investors to achieve an Extension Equity Return, the expected real after tax return which an Extension Notional Initial Equity Investor is projected to receive on its investment (and taking into account actual receipts) in Extension Project Securities will be determined on the basis of:
- (i) **(Deeming certain amounts to be “zero” during the Original Concession Period):** during the Original Concession Period, no distributions will be taken to be in respect of Extension Project Securities; and
 - (ii) **(Deeming certain amounts to be “zero” during the Additional Concession Period):** during the Additional Concession Period, no distributions will be taken to be in respect of Original Project Securities.

1.20 Cost of Performing Obligations

A party who has an obligation to do any thing under this Deed shall perform that obligation at its cost, unless a provision of this Deed expressly provides otherwise.

1.21 Early Termination

- (a) The costs of any ET Valuer shall be borne as to one half by the State and as to the other half by the Company and the Trustee. The costs of any ET Valuer (2) shall be borne by the party dissatisfied with the determination of the ET Valuer. If at the time of payment of the Early Termination Amount under this Deed a component of Project Debt, CTW Project Debt or WGT Project Debt is only contingently payable, the State must nevertheless make the

- payment but it shall be entitled to structure it in a manner which is reasonable to ensure that it is repaid the amount of that component should the contingency not occur.
- (b) Subject to paragraphs (c) and (d), if the Early Termination Amount becomes due for payment, payment of that amount by the State shall be made:
- (i) to the Security Trustee, insofar as it reflects amounts to which paragraphs (e)(ii) and (f)(ii) of the definition of the term "Early Termination Amount" apply;
 - (ii) to the Company, insofar as it reflects amounts to which paragraphs (a), (c) and (e)(i) of the definition of the term "Early Termination Amount" apply;
 - (iii) to the Trustee, insofar as it reflects amounts to which paragraph (b), (d) and (f)(i) of the definition of the term "Early Termination Amount" apply;
 - (iv) to the Trustee or, if (with the consent of the Security Trustee) the Trustee nominates a person as trustee for the holders of Equity Infrastructure Bonds and directs the State to pay the person, to that person, insofar as it reflects amounts to which paragraph (g) of the definition of the term "Early Termination Amount" applies.
- (c) The State shall be entitled to rely conclusively on any statements by the Company as to how much of an Early Termination Amount payable by the State is reflective of the separate paragraphs of the definition of the term "Early Termination Amount". Absent such a statement in relation to such a paragraph, the State shall be entitled to determine (at its discretion) how to divide an Early Termination Amount it is required to make amongst the persons referred to in paragraph (b).
- (d) Insofar as the aggregate of the amounts referred to in paragraph (a) to (f), inclusive, of the definition of the term "Early Termination Amount" exceeds, at any time, the Early Termination Limit applicable at that time, the State acknowledges that the Company shall, in preparing any statement under paragraph (c), apply the amount of the excess in reduction of amounts payable under the following paragraphs of the definition of "Early Termination Amount", in the following order:
- (i) first, amounts payable under paragraph (d) of that definition;
 - (ii) secondly, amounts payable under paragraph (c) of that definition;
 - (iii) thirdly, amounts payable under paragraph (a) of that definition;

- (iv) fourthly, amounts payable under paragraph (e)(i) of that definition;
- (v) fifthly, amounts payable under paragraph (b) of that definition; and
- (vi) lastly, amounts payable under paragraph (f)(i) of that definition,

or in such other order of priority as the Company, the Trustee and the State may agree.

1.22 Project Security and Elections

The elections to adopt referred to in paragraphs 1.2(q) and 1.2(r), and in the definition of "Project Securities", may be made by the State, in its discretion. The State must, however, make such an election:

- (a) if it is requested to do so by the Company or Trustee; and
- (b) the consequences, were the relevant matter or thing adopted, are not and would not be (whether upon the satisfaction of a condition, the occurrence of a contingency or otherwise) adverse to the nature or extent of any right or obligation (contingent or otherwise) of the State under the Project Documents.¹⁴⁶

1.23 Tolls

For the purposes of the Project Documents:

- (a) a toll is an amount levied for the use of something (or a part of that thing) or the grant of (or agreement to grant) a right or authority to use that thing (or a part of it), for a particular purpose; and
- (b) where the concept of "toll" is used with respect to or in relation to the Project or the Link, it means an amount levied for the use of the Link or a part of it, or for the grant of (or agreement to grant) a right or authority to use the Link or a part of it in a particular period, for the passage of vehicles.¹⁴⁷

1.24 Provisions for the benefit of the parties

- (a) The provisions contained in this Deed are for the benefit of the parties only and may not be relied on by any person in any prosecution for an offence contrary to section 73(1) of the Project Legislation.
- (b) Without limitation, any failure by the Company to send a Request For Payment or to request the Enforcement Agency to send a Request For Payment in accordance with clause 9.2A(c)(i) or (ii) does not invalidate or in any way affect the validity of any infringement notice served or proceeding commenced in accordance with section 77 of the Project Legislation.¹⁴⁸

1.25 Reference to invoice

Any reference to "invoice" that may exist in the Project Legislation is deemed to be a reference to "Request For Payment" or "Further Request For Payment" (as the case may be) for the purposes of this Deed.¹⁴⁹

1.26 Reference to Completion

Any reference to Completion or the Date of Completion of all or any Sections relates to "Sections" as that term was defined prior to the coming into effect of the Twenty-second Amending Deed.

1.27 WGT Funding

- (a) Subject to clause 1.27(c), prior to the WGT Date of Tolling Completion, any references in this Deed to the WGT Project Debt will not include amounts drawn down under the Lending Documents which exceed the aggregate of:
- (i) amounts paid (or deemed to have been paid) by the Company and Clepco under the CEPA; and
 - (ii) amounts paid to the State by the Company and the Trustee pursuant under Schedule 6,
- up to and including that date.
- (b) Subject to clause 1.27(c), prior to the WGT Date of Tolling Completion, Extension Project Securities will be limited to the Extension Project Securities the proceeds from the subscription of which have been:
- (i) used by the Company or Clepco (or deemed to have been used) to make payments to WGT Co under the CEPA;
 - (ii) used by the Trustee to pay the WGT D&C Subcontractor less the amount of the CLUT Works Loan; and
 - (iii) used by the Company or Trustee to pay the State under Schedule 6.
- (c) Subject to clause 1.27(d) and (e), in calculating at any time the WGT Project Debt, Equity Return, Extension Equity Return, the ability of the Original Equity Investor to achieve the Equity Return, the ability of the Extension Equity Investor to achieve the Extension Equity Return or return under clause 3.1(d), the parties agree that the aggregate of the amounts:
- (i) paid (or deemed to have been paid) by the Company and Clepco under the CEPA, at the relevant time; and
 - (ii) used by the Trustee to pay the WGT D&C Subcontractor less the amount of the CLUT Works Loan, at the relevant time; and

- (iii) used by the Company or Trustee to pay the State under Schedule 6,

will be deemed to be funded equally through the use of WGT Project Debt (excluding the WGT Reserve Tranche (if any)) (on the one hand) and in the aggregate the retained cash applied by the Company, the WGT Reserve Tranche (if any), and Extension Project Securities (on the other). To give effect to this intention, the parties agree that if this intention has not been met in the funding of the amounts, the parties must negotiate in good faith to ensure that the intention is deemed to be met by notionally reallocating the actual sources of funding so as to satisfy that intention. If the parties do not reach agreement on the appropriate notional reallocation within 20 Business Days of the time either party notifies the other of the need for a notional reallocation (or such extended time as may be agreed by the parties), any party may refer the matter to expert determination under Article 16 by notice to the other party.

- (d) At any relevant time prior to the WGT Date of Tolling Completion, to the extent that:
 - (i) there are payments by WGT Co to the WGT D&C Subcontractor as a result of a Construction Extension Event (as defined under the WGT D&C Subcontract) or a Modification (as defined under the D&C Subcontract) directed by WGT Co to the extent not arising as a result of a Modification (as defined under the WGT Project Agreement) directed under the WGT Project Agreement (**Overrun Event**); and
 - (ii) these amounts were financed by payments from the Company and Clepco under the CEPA and those payments were over and above the amounts that would otherwise have been required to be paid by the Company or Clepco under the CEPA (**Excess Payment**),

the parties agree that prior to the WGT Date of Tolling Completion:

- (iii) to the extent that Excess Payment was financed from drawdowns under the Lending Documents that would otherwise have been WGT Project Debt, notwithstanding all the other limitations inherent in that concept and the various bases and assumptions required to be adopted, that excess amount will be disregarded for the purposes of determining the amount of WGT Project Debt;
- (iv) to the extent that Excess Payment was financed from the proceeds of the issue of Units and those Units would otherwise have been Extension Project Securities, notwithstanding all the other

limitations inherent in that concept and the various bases and assumptions required to be adopted, the Units will be disregarded for the purposes of determining the Extension Project Securities; and

- (v) to the extent that Excess Payment was financed by cash retained by the Company, for the purposes of calculating at any time the Equity Return, the ability of the Original Equity Investors to achieve the Equity Return or return under clause 3.1(d), the Forecast Enhancement Cashflows will be adjusted to include the Excess Payment,

until such time as those amounts would have been payable under the CEPA as though the Overrun Event had not occurred.

- (e) At any relevant time prior to the WGT Date of Tolling Completion, to the extent that payments are made by the Company and Clepco under the CEPA which are used by WGT Co in respect of:
 - (i) project management costs and pre-operation and maintenance costs which are in the aggregate in excess of 120% of the amounts attributed to the project management costs and pre-operation and maintenance costs as set out in the Reference Financial Model to that time less any compensation received or payable from the State or WGT D&C Subcontractor in respect of those costs; or
 - (ii) D&C Activities (as defined in the WGT Project Agreement) undertaken by OpCo, excluding amounts included in clause 1.27(c)(i), which are in aggregate in excess of the amount attributed to those activities as set out in the Reference Financial Model less any compensation received or payable from the State in respect of those costs,

the parties agree that prior to the WGT Date of Tolling Completion:

- (iii) to the extent that excess amount was financed from drawdowns under the Lending Documents that would otherwise have been WGT Project Debt, notwithstanding all the other limitations inherent in that concept and the various bases and assumptions required to be adopted, that excess amount will be disregarded for the purposes of determining the amount of WGT Project Debt;
- (iv) to the extent that excess amount was financed from the proceeds of the issue of Units and those Units would otherwise have been Extension Project Securities, notwithstanding all the other limitations inherent in that concept and the various

- bases and assumptions required to be adopted, the Units will be disregarded for the purposes of determining the Extension Project Securities; and
- (v) to the extent that excess amount was financed by cash retained by the Company, for the purposes of calculating at any time the Equity Return, the ability of the Original Equity Investors to achieve the Equity Return or return under clause 3.1(d), the Forecast Enhancement Cashflows will be adjusted to take into account the excess amount (including the impact of lesser amounts being paid in respect of project management costs, pre-operation and maintenance costs and D&C Activities undertaken by OpCo in future periods).
 - (f) The parties agree that to the extent the WGT Reserve Tranche is used by the Company or Clepco to meet its obligation to pay the Concession Enhancement Purchase Amounts under the CEPA, any subsequent amounts of Distributable Cashflow will be deemed to be applied to repay the WGT Reserve Tranche (until that amount is repaid in full) and will be deemed not to be a distribution to Equity Investors.
 - (g) The parties agree that if the Company or Clepco make any Concession Enhancement Purchase Payment (as defined in the CEPA) or pay any Concession Enhancement Purchase Amount (as defined under the CEPA) to WGT Co with funds which are not received under or otherwise contributed under the IELA, such payments will be deemed to have been paid with or financed or funded by retained cash applied by the Company or Clepco.

1.28

Project Scope and Technical Requirements

- (a) The parties agree to negotiate in good faith to agree the necessary amendments to the Project Scope and Technical Requirements to incorporate the CityLink Returned Works (as constructed) and update the requirements for the “Tolling System” set out in the Project Scope and Technical Requirements to reflect requirements (other than requirements for retail components of a tolling system) which are equivalent to the requirements for the tolling system for WGT described in the WGT PSR, as soon as practicable, and in any event by no later than 6 months or such other time as agreed by the parties, after the Date of Parliamentary Support (CityLink).
- (b) In the event the parties are unable to agree the amendments described in clause 1.28(a) by the CityLink Returned Works Date of Handback, the parties agree that the term “Link” in this Deed will be deemed to include the CityLink Returned Works on and from the CityLink Returned Works Date of Handback, until such time as the parties agree the amendments described in clause 1.28(a).

- (c) In the event the parties are unable to agree the amendments described in paragraph 1.28(a) by the WGT Date of Tolling Completion, the parties agree that on and from WGT Date of Tolling Completion the definition of “Tolling System” will be deemed to be the system as used at that time for imposing and collecting tolls in relation to the Project, and the requirements for the Tolling System set out in the Project Scope and Technical Requirements will be taken to be those described in the WGT PSR (other than in respect of the retail components, including the treatment of customer data and customer accounts, which will remain the requirements as described in the Project Scope and Technical Requirements) as amended from time to time in accordance with the provisions of this Deed or the WGT Project Agreement.

1.29 Suspension of obligations due to FMS Failure

- (a) On and from WGT Financial Close, to the extent that a FMS Failure prevents or delays the Company and/or the Trustee from performing the operation, maintenance, tolling and repair obligations under this Deed or otherwise meeting their respective obligations in accordance with this Deed, then:
 - (i) the relevant obligations of the Company and/or the Trustee (as applicable) will be suspended, but only until the date the FMS Failure and the consequences of the FMS Failure cease to prevent or delay the Company and/or the Trustee (as applicable) from carrying out the relevant obligations; and
 - (ii) the failure to carry out such suspended obligations will not be a breach of this Deed by the Company or the Trustee, an Event of Default or a Project Default or an event or circumstance that would otherwise entitle the State to terminate, rescind or repudiate this Deed, and the State will not in such circumstances terminate, rescind or repudiate this Deed.
- (b) In the case of an FMS Failure, clause 1.29(a) will only suspend the Company’s obligation under clause 9.4(a) to keep the Link open to the extent that the occurrence of the FMS Failure prevents or delays the safe passage of vehicles.

1.29A Releases in relation to the FMS Agreement

- (a) Notwithstanding any other provision of this Deed, the State releases and agrees not to make any Claim against the Company or Trustee in relation to:
 - (i) the parties' operation of their respective FMS in accordance with the FMS Operating Agreement constituting a Compensable Enhancement; or

- (ii) loss or anticipated loss of use, profit, income, business interruption, loss of any contract or other business opportunity or other economic, special, indirect or consequential loss of the State arising out of, in relation to, or in connection with, the Company or Trustee operating its FMS in accordance with the FMS Operating Agreement,

provided that, for the avoidance of doubt, the State does not release and does not agree not to make any Claim against the Company or the Trustee in relation to disclosure by the Company or the Trustee of Data (as defined in the FMS Operating Agreement) of the State in breach of Part E of the FMS Agreement.

- (b) The parties acknowledge and agree that:
 - (i) without limiting clause 1.29(c)(ii), to the extent of any inconsistency ambiguity or discrepancy between the FMS Operating Agreement and the FMS Reference Documents, the FMS Operating Agreement will prevail over the FMS Reference Documents;
 - (ii) subject to clause 1.29(c)(iii), the State releases and agrees not to make any Claim against the Company and the Trustee in relation to a breach of any obligation under this Deed to comply with the FMS Reference Documents; and
 - (iii) nothing in this clause 1.29(c) limits or otherwise affects the Company's and the Trustee's obligations under the FMS Operating Agreement.
- (c) Notwithstanding any other provision of this Deed, the Company and Trustee release and agree not to make any Claim against the State in relation to:
 - (i) the level or timing of revenues, including tolling and fee revenue;
 - (ii) any impact on the net operating cashflows;
 - (iii) loss or anticipated loss of use, profit, income, business interruption, loss of any contract or other business opportunity or other economic, special, indirect or consequential loss of the Company or the Trustee whatsoever and howsoever arising;
 - (iv) the level or timing of costs or losses arising as a result of any increase or decrease in traffic on the Link; or
 - (v) the level or timing of operating expenditure or capital expenditure incurred by the Company or Trustee,

arising out of, in relation to, or in connection with, the State operating its FMS in accordance with the FMS

Operating Agreement, provided that, for the avoidance of doubt, the Company and Trustee do not release and do not agree not to make any Claim against the State in relation to disclosure by the State of Data (as defined in the FMS Operating Agreement) of a TU Entity (as defined in the FMS Operating Agreement) in breach of Part E of the FMS Agreement.

1.30 Reference Financial Model and Financial Model

Where the parties are required to use the Reference Financial Model, Financial Model or Forecast Enhancement Cashflows, that model or worksheet will be the Reference Financial Model, Financial Model or Forecast Enhancement Cashflows (as applicable) agreed or determined in accordance with the CityLink Option Deed as updated in accordance with clause 1.35 and to reflect each Model Variation Event that has occurred prior to the date that the parties are required to use the Reference Financial Model, Financial Model or Forecast Enhancement Cashflows (as applicable).

1.31 Force Majeure Events

- (a) For the purposes of determining the redress to be afforded under clause 2.10 in respect of an Appendix Event described in Item 8 or 9 of the Appendix that occurs prior to the WGT Date of Tolling Completion and which it is agreed or determined will have, or has had, a Material Adverse Effect, without limiting the rights or obligations of the parties in respect of any other Appendix Event or such an Appendix Event occurring at any other time, the State shall be required to restore the ability of the Extension Equity Investors to achieve an Extension Equity Return only on issued Extension Project Securities (as determined in accordance with clause 1.27(b)) as at the time of the Appendix Event.
- (b) Where clause 1.31(a) applies, the parties must negotiate in good faith to agree alternative sources of funding to be made available to the Company, Clepco and the Trustee so as to enable the Extension Equity Investors to achieve the Extension Equity Return on those amounts which are remaining to be paid by the Company, Clepco and the Trustee as referred to in clauses 1.27(b)(i) and (ii) as at the time of the Appendix Event (**Committed Extension Equity**).
- (c) If the parties are unable to agree alternative sources of funding under clause 1.31(b) within 20 Business Days of the agreement or determination that the Appendix Event has had or will have a Material Adverse Effect, the parties will negotiate in good faith to agree:
 - (i) reductions in the Committed Extension Equity so as to enable the Extension Equity Investors to achieve the Extension Equity Return on the Committed Extension Equity having regard to the

- impact of the Appendix Event on projected costs and revenue; and
- (ii) alternative funding sources and mechanisms that the State may be able to make available to fund construction of WGT in place of the amounts that will no longer be funded by Extension Equity Investors as a result of the application of clause 1.31(c)(i).
- (d) If the parties cannot agree on the reduced Committed Extension Equity or alternative funding sources and mechanisms under clause 1.31(c) within a further 20 Business Days of commencing negotiations, the parties acknowledge that WGT Co will be entitled to terminate the WGT Project Agreement by notice to the State in accordance with clause 42.2(e) of the WGT Project Agreement.
 - (e) For the avoidance of doubt, no party is required to agree any particular outcome under clause 1.31(b) or (c), and each party may elect not to agree any particular outcome at its discretion, subject only to the obligation to negotiate in good faith with the other parties.
 - (f) For the purposes of determining the redress to be afforded under clause 2.10 in respect of an Appendix Event (other than an Appendix Event described in Item 8 or 9 of the Appendix) that occurs prior to the WGT Date of Tolling Completion and which it is agreed or determined will have, or has had, a Material Adverse Effect, without limiting the rights or obligations of the parties in respect of any other Appendix Event or such an Appendix Event occurring at any other time, the State shall be required to restore the ability of the Extension Equity Investors to achieve an Extension Equity Return on the aggregate of:
 - (i) issued Extension Project Securities (as determined in accordance with clause 1.27(b)) as at the time of the Appendix Event; and
 - (ii) Committed Extension Equity.

1.32

Termination of the ESEP Deed

- (a) If the ESEP Deed is terminated during the period between WGT Financial Close and the WGT Date of Tolling Completion in accordance with clause 15.3 of the ESEP Deed or the State acquires the ESEP Project under clause 12.8(e)(iv) of the ESEP Deed, the parties must negotiate in good faith to agree alternative sources of funding to be made available to either:
 - (i) the Company and the Trustee; or
 - (ii) WGT Co,

to replace the payments under the CEPA which were to be made by Clepco after the termination of the ESEP Deed (including the reimbursement of any amounts advanced by the Company in anticipation of an agreement or determination under this clause 1.32) to the extent required, taking into account any "Early Termination Amount" (as defined in the ESEP Deed) made by the State to Clepco under the ESEP Deed, to restore:

- (iii) the ability of the Company and Trustee to repay the Project Debt in accordance with the amortisation schedule as set out in 5 to IFA to that which would have applied if the ESEP Deed had not been terminated;
 - (iv) the ability of the Company and Trustee to repay the WGT Project Debt in accordance with the amortisation schedule as set out in 5B to IFA to that which would have applied if the ESEP Deed had not been terminated;
 - (vi) the ability of the Original Equity Investors to achieve the Equity Return on Project Securities which would have applied but for the termination of the ESEP Deed; and
 - (v) the ability of the Extension Equity Investors to achieve an Extension Equity Return on Extension Project Securities which would have applied but for the termination of the ESEP Deed.
- (b) If the parties cannot agree on the alternative funding sources and mechanisms under clause 1.32(a) within 20 Business Days of commencing negotiations or such longer period as agreed by the parties, either party may refer the matter for expert determination in accordance with Article 16.
- (c) The parties agree, and any third person appointed under Article 16 shall be required to accept, that alternative funding sources and mechanisms under clause 1.32(a) may only include:
- (i) amending the Toll Calculation Schedule by varying the restrictions applicable to the Company's ability to charge tolls (and making consequential changes to the Project Documents);
 - (ii) varying the Concession Period and the term of the Leases;
 - (iii) altering the allocation of risk between the parties as established under the Project Documents (and making consequential changes to the Project Documents);
 - (iv) varying rights which the State has to receive payment of monies under the Project Documents

- (including amounts due for payment, accruing, payable or likely to become payable);
- (v) requesting the Lenders to restructure the Project financing arrangements;
 - (vi) the State making a financial contribution to the Project; or
 - (vii) adopting any other method of redress which the parties may agree, in their absolute discretion, in any particular context, to be appropriate.

1.33 Date of Parliamentary Support (CityLink)

- (a) The parties agree and acknowledge that prior to the Date of Parliamentary Support (CityLink), NewCo and WGT Co progressively drew down amounts under the NewCo Facility Agreement (**NewCo Facility Loans**).
- (b) For the purposes of this Deed (including for the purposes of calculating at any time the WGT Project Debt, Equity Return, Extension Equity Return, the ability of the Original Equity Investor to achieve the Equity Return, the ability of the Extension Equity Investor to achieve the Extension Equity Return or return under clause 3.1(d)):
 - (i) the WGT Reserve Tranche and WGT Enhancement Project Debt will be deemed to have been drawn down at the time and each at 50% of the amount that the NewCo FS2 Tranche was drawn down by NewCo or WGT Co prior to the Date of Parliamentary Support (CityLink);
 - (ii) the Extension Project Securities and the WGT Extension Project Debt will be deemed to have been issued or drawn down (as applicable) at the time and each at 50% of the amount that the NewCo FS3 Tranche was drawn down by NewCo or WGT Co prior to the Date of Parliamentary Support (CityLink); and
 - (iii) all amounts paid by the Company and Clepco under the CEPA on or around the Date of Parliamentary Support (CityLink) will be deemed to have been made at the time and in the amounts that the NewCo Facility Loans were drawn down by NewCo or WGT Co prior to the Date of Parliamentary Support (CityLink);
- (c) The parties shall each ensure that the Financial Model and Reference Financial Model are prepared and updated consistently with clause 1.33(b).

1.34

Appendix Event and ESEP Deed Termination prior to Date of Parliamentary Support (CityLink)

- (a) Any party may provide notice to the other parties if it considers that during the period between WGT Financial Close and the Date of Parliamentary Support (CityLink):
- (i) there has been an event, circumstance or Appendix Event which:
- (A) has, prior to the date of such notice, given rise to any Compensation by the State to the Company or the Trustee, or by the Company or the Trustee to the State; or
- (B) would have given rise to Compensation if the WGT CityLink and ESEP Concession Amending Deeds and amendments to the Financial Model as a result of WGT had taken effect on WGT Financial Close (including having regard to clause 1.33);
- (C) is, at the date of such notice, the subject of good faith negotiation between the parties or is the subject of expert determination under Article 16, which would give rise to an adjustment to the Compensation if the WGT CityLink and ESEP Concession Amending Deeds and amendments to the Financial Model as a result of WGT had taken effect on WGT Financial Close; or
- (ii) the ESEP Deed has terminated and any Compensation paid or payable under, or in connection with, the ESEP Deed in relation to that period (including in connection with the termination of the ESEP Deed) would have been different if the WGT CityLink and ESEP Concession Amending Deeds and amendments to the Financial Model as a result of WGT had taken effect on WGT Financial Close (including having regard to clause 1.33 of the ESEP Deed),
- (including any Compensation in relation to an Appendix Event which has or is likely to have a Material Adverse Effect or, in relation to the termination of the ESEP Deed, the payment of an Early Termination Amount (as defined in the ESEP Deed)).
- (b) On receipt of a notice under clause 1.34(a), the parties must negotiate in good faith to agree the Compensation that would have arisen if the WGT CityLink and ESEP Concession Amending Deeds (including the proposed amendments to the ESEP Project Documents) and amendments to the Financial Model as a result of WGT

had taken effect on WGT Financial Close (including having regard to clause 1.33), and in the case of clause 1.34(a)(i)(C) having regard to the fact that whether or not Compensation is payable remains the subject of negotiation or determination. The Compensation must have regard to any Compensation (or other compensation payable to WGT Co) that arose in relation to the relevant event or circumstance prior to the Date of Parliamentary Support (CityLink) so that there is no double recovery.

- (c) If the parties cannot agree on the Compensation under clause 1.34(b) within 20 Business Days of commencing negotiations or such longer period as agreed by the parties, either party may refer the matter for expert determination in accordance with Article 16.
- (d) The parties agree, and any third person appointed under Article 16 shall be required to accept, that the Compensation may only comprise forms of Compensation that are permitted under this Deed in relation to the relevant event or circumstance.
- (e) If the Compensation is agreed or determined, that Compensation must be paid and implemented (as applicable) in accordance with that agreement or determination.

1.35

Adjustment Events

- (a) Subject to clause 1.35(b), to the extent that there has been an Adjustment Event prior the Date of Parliamentary Support (CityLink) and the parties have not been able to reach agreement in relation to the revisions to the WGT CityLink and ESEP Concession Amending Deeds in accordance with clause 5.3 of the CityLink Option Deed, the parties agree that this Deed will be amended in accordance with Part A of Schedule 8.
- (b) To the extent that any of the following events have occurred between WGT Financial Close and the Date of Parliamentary Support (CityLink):
 - (i) CityLink Model Variation Events, including any redress or compensation received by any party in respect of such event(s);
 - (ii) Progressive State Contributions being made to WGT Co from 1 July 2019 and the Company not being entitled to WGT Tolling Enhancements prior to the Date of Parliamentary Support (CityLink);
 - (iii) distributions having been made by the Company to Original Equity Investors prior to the Date of Parliamentary Support (CityLink) which were projected to have been retained by the Company and paid to WGT Co under the CEPA if the Revocation Period had expired on or around WGT Financial Close;

- (iv) WGT Reserve Tranche being used to provide payments from CML and Clepco to WGT Co on or after the Date of Parliamentary Support (CityLink) which were otherwise projected to be have been funded by cash retained by the Company if the Revocation Period had expired on or around WGT Financial Close; or
- (v) any decrease to the total value of the CLUT Works as projected in the Agreed CityLink Financial Model as at WGT Financial Close;
- (vi) any changes to the Financial Model between WGT Financial Close and the Date of Parliamentary Support (CityLink),

and the parties are unable to agree updates to the Financial Model in accordance with clause 5.3 of the CityLink Option Deed (in respect of the Adjustment Events), the parties agree that the Reference Financial Model and Financial Model will be amended in accordance with Part B of Schedule 8.

2. THE PROJECT

2.1 Objectives

- (a) The State intends that:
 - (i) the Link shall be an integrated part of Melbourne's road system;
 - (ii) freeway-standard links be provided between the Monash Freeway, West Gate Freeway and Tullamarine Freeway and appropriate Gateways to Melbourne be developed;^{150 151}
 - (iii) road and infrastructure programs be implemented on a competitive basis;
 - (iv) the movement of traffic around and to the Central Activities District, rather than through it, be generally facilitated;¹⁵²
 - (v) access to the Central Activities District, to new State initiatives including Southbank, the Casino, the Exhibition Centre and the Docklands Area and to major sporting and entertainment venues including the Melbourne Cricket Ground, the Arts Centre, the Tennis Centre and Olympic Park, be improved;
 - (vi) aesthetically pleasing and architecturally significant structures and treatments which enhance the city of Melbourne be developed;
 - (vii) greater competitiveness in Victorian industry be promoted;

- (viii) economic benefits be optimised and financial costs be minimised;
 - (ix) access for freight movements for manufacturing industry and primary producers to the Port of Melbourne, rail facilities including the Melbourne Freight Terminal and the South Dynon Container Terminal, the wholesale markets and Melbourne Airport, be improved;
 - (x) the environment around the Yarra River, the Botanical Gardens, the Kings Domain and adjacent sporting and entertainment precincts be improved; and
 - (xi) adverse environmental and social impacts along the Link and its feeder roads be minimised.
- (b) The Company and the Trustee intend that:
- (i) Project Debt, CTW Project Debt, WGT Project Debt and other debt the liability for which was incurred solely for the purposes of the Project be repaid in accordance with the Lending Documents;¹⁵³
 - (ii) Equity Investors derive at least the Base Case Equity Return in relation to the Original Project Securities and a reasonable return on any investment in the SLU; and
 - (iii) Extension Equity Investors derive at least the Extension Base Case Equity Return in relation to the Extension Project Securities.

2.2

Intentions of the Parties

The parties' intentions are to implement the Project by entering into, and performing their respective obligations under, the Project Documents which have been prepared and negotiated on the premises that:

- (a) the Project is being undertaken by the private sector to deliver significant benefits to the community in terms of positive economic, social and environmental outcomes;
- (b) the Project (other than the SLU and CTW) is being implemented in accordance with the "Infrastructure Investment Policy for Victoria" (June 1994);
- (c) private finance is to be used for the Project; and
- (d) the Tolling System is to be available for use in other projects subject to clause 3.2.

2.3

Obligations of the Company and the Trustee

- (a) The Company shall:
 - (i) finance, design and construct the Company Road and Commission the Link;

- (ii) operate, maintain and repair the Link; and
- (iii) grant a licence to the State in respect of:
 - (A) the Proprietary Documentation, SLU Proprietary Documentation and CTW Proprietary Material; and
 - (B) the Tolling System,

in accordance with this Deed.

(b) The Trustee shall:

- (i) finance, design and construct the Trust Road; and
- (ii) grant a licence to the State in respect of the Proprietary Documentation, SLU Proprietary Documentation and CTW Proprietary Material (other than Proprietary Documentation, SLU Proprietary Documentation and CTW Proprietary Material licensed by the Company under clause 7.15, 7A.15 or 7D.15),

in accordance with this Deed.

2.4

Metropolitan Roads and Transport Policies

- (a)
 - (i) The State acknowledges that the Link is intended to be part of the freeway network for the movement of traffic around and to Melbourne and accordingly the State shall afford support to the Link equivalent to the support the State affords to other freeways by:
 - (A) managing the Freeways and Principal Traffic Routes reasonably required for access to or from the Link having regard to the status of the Link as a freeway and to a level comparable to that afforded to other freeways;
 - (B) diligently pursuing maintaining (including incident management and obstruction removal), restoring and repairing the Freeways and Principal Traffic Routes which are reasonably required for access to or from the Link, and if upgrading such a Freeway or Principal Traffic Route, diligently pursuing that upgrading, in a manner and to a level similar to that afforded to other freeways;
 - (C) procuring that there shall be no interference with the flow of traffic on Freeways and Principal Traffic Routes

reasonably required for access to or from the Link due to:

- (1) damage to, or a failure diligently to pursue the repair of damage to, such Freeways and Principal Traffic Routes caused by the State or a Victorian Government Agency (noting that relief may be available for "off project force majeure" under item 9(b) of the Appendix); or
 - (2) the failure of a Utility to diligently pursue its activities, and for the purposes of this provision "Utility" shall be limited to a Utility which was within the ownership and control of the State as at 1 January 1995;
- (D) bearing the risk of riots, blockades or other forms of civil commotion or unrest on the Link or on Freeways and Principal Traffic Routes reasonably required for access to or from the Link where it can be reasonably demonstrated by or on behalf of the Company or the Trustee that:
- (1) it results from an act by the State or a Victorian Government Agency (other than a municipal governing body) directly in relation to the Project; or
 - (2) it results from or forms part of an organised campaign in opposition to the implementation of the Project or a part of it or the implementation of other State projects or policies; or
- (DA) procuring that there shall be no removal of or closure of a lane on any Freeway or Principal Traffic Route reasonably required for access to or from the Link, other than where that removal or closure is temporarily required due to or part of:
- (1) any maintenance (including incident management and obstruction removal), repair or upgrading of the Freeway, a Principal Traffic Route; or

- (2) any other development, project or works procured by the State or any Government Agency,

but the State shall not be considered to have failed to provide the support required under this paragraph (a)(i):

- (E) because of a failure to undertake new road works, unless that failure either reflects a failure to observe the requirements of sub-paragraph (a)(i)(B) or would discriminate against the Link relative to other freeways;
 - (F) because of an act done in the course of day to day activities of the State or Victorian Government Agencies in the management of the transport network, being activities which are diligently pursued and consistently applied throughout equivalent aspects of the transport network (which, in respect of any removal or closure of a lane on a Freeway or Principal Traffic Route reasonably required for access to or from the Link must only be of a kind permitted under subparagraph (a)(i)(DA); or
 - (G) if the circumstances otherwise reflective of the failure are due to the Company, the Trustee or a Contractor acting in breach of the Project Documents.¹⁵⁴
- (ii) If the State fails to provide the support required of it under sub-paragraph (a)(i) (which should be deemed to be the case if a risk which it bears under that sub-paragraph crystallises) it shall have no liability for that failure and that failure shall not be considered to constitute a breach of this Deed but, notwithstanding the foregoing, the failure shall be treated as an event under item 3 of the Appendix.
- (iii) In this paragraph 2.4(a):
- (A) "Freeways" mean the Eastern freeway, the West Gate freeway, the Tullamarine freeway, the Monash Freeway and the Calder freeway and Western Ring Road, except insofar as they comprise part of the Link or such other freeways agreed by the parties from time to time;¹⁵⁵
 - (B) "Principal Traffic Routes" mean Bulla Road, Bell Street, Pascoe Vale Road, Moreland Road, Toorak Road,

Brunswick Road, Mt Alexander Road, Flemington Road, Racecourse Road, Dynon Road, Footscray Road, Kings Way, Power Street and Punt Road and the route comprising Barkly Street, Twickenham Crescent, Loyola Grove, MacRobertson Bridge, Grange Road and Madden Street or such other Principal Traffic Routes agreed by the parties from time to time.¹⁵⁶

- (iv) In this paragraph 2.4(a), on and from the WGT Expiry Date or during the period in which the State enforces its rights under the WGT State Security and assumes effective control of WGT Co, the West Gate Tunnel will be deemed to be a Freeway.
- (b) The Company and the Trustee acknowledge that this Deed shall not restrict any right or power of the State or any Victorian Government Agency to manage or change Melbourne's transport network (including road and public transport networks) other than the Link. Accordingly, for example, the State and each Victorian Government Agency will be entitled on its own account and to authorise others to exercise any right or power it would otherwise have had to:
 - (i) construct new Toll Roads, freeways and other roads;
 - (ii) connect new or existing Toll Roads, freeways and other roads to the Link;
 - (iii) extend or alter existing freeways and other roads;
 - (iv) extend, alter or upgrade existing public transport routes or services;
 - (v) construct new public transport routes or establish new transport services;
 - (vi) develop the transport network generally;
 - (vii) implement the following road policies of the State:
 - (A) Linking Melbourne (1994);
 - (B) Travel Demand Management Initiatives (1994); and
 - (C) Freight Initiatives (1994); and
 - (viii) from time to time vary or substitute other policies for the policies referred to in sub-paragraph (vii) and implement the policies as varied or the substituted policies.

- (c) As indicated in paragraph (b), the State's right and power to manage and change Melbourne's transport network does not include a right or power to manage or change the Link. It is acknowledged, however, that the exercise of this right and power of the State may make it necessary or desirable to make consequential changes to the Link or a part of the Link (or to the SLU Construction Documentation or CTW Construction Documentation, if it becomes necessary or desirable to make such a consequential change prior to SLU Practical Completion, CTW Practical Completion or Ramp M Practical Completion (as applicable)) in order to enable or facilitate the proper or efficient integration of the Link with Melbourne's transport network (including road and public transport network).
- (d) The State shall give the Company and the Trustee reasonable notice of any:
 - (i) proposal to connect a new Toll Road, freeway or other road directly to the Link; or
 - (ii) change to the Link, a part of the Link, the SLU Construction Documentation or the CTW Construction Documentation, which the State considers in good faith is a consequential change to which paragraph (c) applies.
- (da) In respect of the notice under paragraph (d) referred to in clause 4.2 of the Twenty-second Amending Deed, the State must not commence performing any of the physical works contemplated by that notice until such time as the parties have agreed the risk and liability terms on which those works are to be performed.
- (e) If the State gives a notice of a proposal or change under paragraph (d), other than a proposal or change to which paragraph (f) applies:
 - (i) the State shall co-operate with, ensure that relevant Victorian Government Agencies, and use best endeavours to ensure that relevant municipal governing bodies, co-operate with the Company and the Trustee to ensure that any consequent disruption of the ability of the Company or the Trustee to observe their construction, maintenance and operation obligations under this Deed is kept to a minimum, having regard to the circumstances; and
 - (ii) the Company and the Trustee shall co-operate with the State and relevant Government Agencies by giving reasonable access to the relevant Section or Sections to them and their nominees and otherwise permitting the connection or change (as applicable) to be made.
 - (iii) as between the Company, the Trustee and the State, the State shall bear the cost of the works

- necessary to effect the connection or implement the change, as applicable, whether on or adjoining the Project Land;
- (iv) the State shall indemnify the Company and the Trustees against:
- (A) losses in tolling revenue (after excluding any GST that would have been payable by the Company or the Trustee in respect of such revenue) incurred because the connection or change results in untolled use of the Link;¹⁵⁷
 - (B) reasonable expenditure incurred by the Company or the Trustee in order to reduce the level of actual or likely untolled use that has or would result from such connection or change; and
 - (C) (if neither the Company nor the Trustee undertakes the works necessary to effect the connection or implement the change) claims, demands and reasonable costs and expenses made against or incurred or payable by the Company or the Trustee as a result of those works causing structural failures in the Link.
- (f) If the State gives a notice (other than the notice given by the State as a condition precedent to the operation of the Twenty-second Amending Deed) of a proposal or change under paragraph (d) to be effected or implemented in respect of an SLU Section prior to SLU Section Practical Completion of the SLU Section or SLU Sections directly affected by the connection or to which the change relates, or in respect of a CTW Section prior to CTW Section Practical Completion of the CTW Section or CTW Sections, directly affected by the connection or to which the change relates (as applicable):
- (i) if the connection or change involves or will result in a change or changes to the SLU Construction Documentation or the CTW Construction Documentation, the notice shall include details of the changes to the Project Scope and Technical Requirements, if any, and (to the extent not addressed by those changes) the purposes and performance criteria (if any) to be met and satisfied by the connection or change, reasonably sufficient to enable the Company and the Trustee to either:
 - (A) if suggested changes to the SLU Design Documentation or the CTW Design Documentation accompany the State's

- notice, determine whether those changes are appropriate;
- (B) if suggested changes to the SLU Design Documentation or the CTW Design Documentation do not accompany that notice, prepare any necessary changes to that documentation;
- (ii) the Company shall (except in so far as the connection or change involves Trust Land, in which case the Trustee shall) carry out the works necessary to effect the connection (in so far as those works are required to be undertaken on the Project Land or the SLU Lay Down Areas) or implement the change, as applicable;
- (iii) subject to paragraph (fa), the State shall pay to the Company (or the Trustee, as applicable) the costs reasonably incurred by the Company (or Trustee) in reviewing or preparing changes to the SLU Design Documentation or the CTW Design Documentation and carrying out the relevant works, as and when those costs are incurred. Any claim for such costs by the Company (or the Trustee, as applicable) shall be accompanied by reasonable details of those costs. Any party may refer any dispute as to the State's liability for those costs for expert determination under Article 16; and¹⁵⁸
- (iv) any delay to the SLU Works or the CTW Works due to work undertaken to effect the connection or implement the change (including any consequent delay in achievement of SLU Practical Completion, CTW Practical Completion or Ramp M Practical Completion) will be a delay caused by the State for the purposes of clause 8.5 of the M1 Corridor Redevelopment Deed and will be deemed to be a Compensable Extension Event for the purposes of the CTC Redevelopment Deed (as applicable).¹⁵⁹
- (fa) If an Agreed Sum Arrangement exists in relation to a proposal or change to which paragraph (f) applies then in respect of the matters the subject of that Agreed Sum Arrangement (the "**Agreed Matters**"):
- (i) the State shall be liable for an amount equal to the total amount specified in or determined in accordance with the Agreed Sum Arrangement for the Agreed Matters;
- (ii) subject to any preconditions specified in the Agreed Sum Arrangement, the State shall satisfy that liability in the manner specified in the Agreed Sum Arrangement (which may include the State

assuming a liability in favour of a third party, in which case the Company and the Trustee will hold the benefit of that liability on behalf of that third party);

- (iii) sub-paragraphs (f)(iii) and (f)(iv) shall not apply to the Agreed Matters; and
- (iv) subject to sub-paragraphs (i) and (ii) and notwithstanding any other provision of this Deed or of the Appendix, the State shall have no liability or responsibility under any other provision of this Deed or of the Appendix, and it is agreed without limitation to this paragraph (iv) that:
 - (A) the Agreed Matters cannot be taken into account in determining whether a Material Adverse Effect has occurred or will occur, or the extent of redress to be provided in respect of any Appendix Event;
 - (B) the carrying out of the design and construction works the subject only of the Agreed Matters shall not constitute an Extension Event or be deemed to be a delay caused by the State for the purposes of clause 8.5 of the M1 Corridor Redevelopment Deed or an Extension Event for the purposes of the CTC Redevelopment Deed (except to the extent expressly agreed in the Agreed Sum Arrangement); and
 - (C) the Sunset Date under the M1 Corridor Redevelopment Deed, the Planned Date for CTW Practical Completion or the Planned Date for Ramp M Practical Completion under the CTC Redevelopment Deed, shall be extended by the period for its extension, if any, specified in the Agreed Sum Arrangement.¹⁶⁰
- (g) Deleted ¹⁶¹
- (h) It is agreed that the State will not impose or allow to be imposed any toll or levy for the use of (or for the grant of, or agreement to grant, a right or authority to use) the Westgate freeway link between Sturt Street and Graham Street for the passage of vehicles.¹⁶²
- (i) If the rail link referred to in paragraph 2 of Exhibit J is developed, then upon it commencing operations, the Company and the Trustee will cease to be bound under the Project Documents to maintain a lane in the Tullamarine

Freeway Upgrade dedicated for use only by buses and taxis.

- (j) The parties acknowledge and agree that:
- (i) the change the subject of the Strengthening Notice does not include the Yarra Boulevard entry and exit ramps, the Gibdon Street entry ramp, the Burnley exit ramps and Church Street exit ramp, the Punt Road entry and exit ramps, the Burnley tunnel (from the western portal at Sturt Street to the eastern portal at Burnley Street), the Domain tunnel (from the western portal at Sturt Street to the eastern portal at Toll Point 4D/9B) and any structures on Southern Link that are located west of Sturt Street;
 - (ii) the Strengthening Notice does not affect any obligation the Company or the Trustee had under the Concession Deed, prior to the Strengthening Notice, in relation to the design and construction of Southern Link;
 - (iii) any work carried out by the Company or the Trustee pursuant to the Strengthening Notice and any subsequent maintenance of that work will:
 - (A) not result in Southern Link structures that existed prior to 20 October 1995 constituting new components of the Link for the purposes of section 6.19 of Part K of the Project Scope and Technical Requirements; and
 - (B) be disregarded for the purposes of considering whether Southern Link structures that existed prior to 20 October 1995 constitute new components of the Link for the purposes of section 6.19 of Part K of the Project Scope and Technical Requirements; and
 - (iv) the purposes and performance criteria of the change the subject of the Strengthening Notice will be satisfied if the change complies with the Project Scope and Technical Requirements (as amended).
- (k) The parties acknowledge and agree that any work carried out by the Company or the Trustee at or on the wall shown as the 'Original Graham Street Crib Wall' on the plan contained in Exhibit UU as part of the CTW Works comprising CTW Section D and any subsequent maintenance of that work will:
- (i) not result in Western Link structures that existed prior to 20 October 1995 constituting new components of the Link for the purposes of

section 6.19 of Part K of the Project Scope and Technical Requirements; and

- (ii) be disregarded for the purposes of considering whether Western Link structures that existed prior to 20 October 1995 constitute new components of the Link for the purposes of section 6.19 of Part K of the Project Scope and Technical Requirements.

2.5

[Not used]

2.6

Non-Agreed Traffic Management Measures and Enhancements

- (a) The State shall be entitled at any time to implement any Non-Agreed Traffic Management Measure. If the State proposes to do so, the State and the Company shall consult in good faith in an endeavour to agree on the amount of the additional revenue (after excluding any GST that has been paid, or would have been payable, by the Company or the Trustee in respect of such additional revenue) (net of additional expenses likely to be incurred in deriving that additional revenue) likely to be derived by reason of the implementation, in the financial year of its implementation and each financial year thereafter during the Concession Period.¹⁶³
- (b) The State may notify the Company of a Compensable Enhancement provided that the notice is given within 12 months of the occurrence of the Compensable Enhancement. If it does, the State and the Company shall then consult in good faith in an endeavour to agree on the amount of the additional revenue (after excluding any GST that has been paid, or would have been payable, by the Company or the Trustee in respect of such additional revenue) (net of additional expenses likely to be incurred in deriving that additional revenue) derived and likely to be derived by reason of the Compensable Enhancement in the financial year in which the notice was given and each financial year thereafter during the Concession Period.¹⁶⁴
- (c) If no agreement is reached between the State and the Company as to an amount under paragraph (a) or (b) within 20 Business Days of the State requesting that the Company consult on the matter, any party may refer the matter for expert determination under Article 16.
- (d) Subject to paragraph (e), any amount so agreed or determined as to an amount under paragraph (a), and 50% of any amount so agreed or determined as to an amount under paragraph (b), shall be deemed to be an addition to the fees payable under clause 3.1.
- (e)
 - (i) Subject to paragraph (k), for each financial year, the amount so agreed or determined as to an amount under paragraph (a), and 50% of any amount so agreed or determined as to an amount

- under paragraph (b), shall be paid in cash by the Company to the State on the payment date relevant to that financial year. The obligation to make payments in respect of an amount under paragraph (a) and (b) is, however, subject to paragraphs (h) and (i), respectively.
- (ii) If this Deed terminates other than by reason of the effluxion of time, a proportion only of the amount applicable to the financial year in which this Deed terminates need be paid on the payment date relevant to that financial year, equivalent to the proportion of that financial year that has expired prior to termination.
- (iii) Subject to paragraph (f), the payment date relevant to a financial year is:
- (A) subject to sub-paragraph (B), the later of:
- (1) the date being the 20th Business Day after the end of the financial year; and
- (2) if on that date the Company was not in a position to make the required payment and satisfy all Project operating costs and expenses then due and payable by it, the first date thereafter on which the Company is able to satisfy all Project operating costs and expenses then due and payable by it; or
- (B) if the financial year concerned is the one in which this Deed terminates, the date being the 20th Business Day after the date of termination.
- (f) The State acknowledges that in determining the due date for payments to it, including the due date for payments under this clause, regard needs to be had to clause 1.9 of the Master Security Deed.
- (g) A "Compensable Enhancement" is a circumstance or event that occurs or takes place after the date of this Deed, which relates to the road transportation network and which is a consequence of the exercise by the State of any right or power of the type referred to in paragraph 2.4(b) (including connections to the Link to which sub-paragraph 2.4(d)(i) applies), but it does not include:
- (i) a circumstance or event constituted by the implementation of a Non-Agreed Traffic Management Measure;
- (ii) a Government Directed Benefit;

- (iii) a circumstance or event insofar as it reflects the State affording support to the Link under paragraph 2.4(a); or
- (iv) the design, construction, completion, commissioning or opening of the CTW Sixth Lane, or State giving its consent under clause 9.3B(e).

For the purpose of clarification, a Compensable Enhancement does not include:

- (v) the projects listed in Exhibit XX; or
 - (vi) actual or projected growth in road transportation network usage other than growth in traffic generated or attracted by the relevant circumstance or event.
- (h) The State shall be entitled at any time to remove any Non-Agreed Traffic Management Measure which it may have implemented under this clause 2.6. If it does so, paragraph (l) may apply, and the payments required to be made to the State under this clause 2.6 because of the particular implementation of the Non-Agreed Traffic Management Measure:
- (i) in respect of the financial year in which the Non-Agreed Traffic Management Measure is removed, shall be reduced to a proportion corresponding to the proportion of the financial year remaining after removal of the measure; and
 - (ii) subject to sub-paragraph (i), need no longer be made.
- (i) If a circumstance or event which constitutes a Compensable Enhancement ceases to subsist, paragraph (l) may apply, and payments required to be made to the State under this clause 2.6 because of the Compensable Enhancement:
- (i) in respect of the financial year in which that circumstance or those consequences cease to subsist, shall be reduced to a proportion corresponding to the proportion of the financial year remaining after that cessation; and
 - (ii) subject to sub-paragraph (i), need no longer be made.
- (j) A Non-Agreed Traffic Management Measure, may be implemented and subsequently removed, from time to time.
- (k) If a Non-Agreed Traffic Management Measure is implemented between the Execution Date and the Calculation Date (each as defined in the M1 Corridor Redevelopment Deed), any amount agreed or determined as to an amount under paragraph (a), which is to be paid by

the Company to the State in accordance with paragraph (e), must be reduced by 50%.

- (l) If:
- (i) a Compensable Enhancement occurs or takes place prior to the Calculation Date (as defined in the M1 Corridor Redevelopment Deed) and that Compensable Enhancement had not ceased to subsist by the date 12 months prior to the Calculation Date; or
 - (ii) a Non-Agreed Traffic Management Measure is implemented prior to the Calculation Date (as defined in the M1 Corridor Redevelopment Deed) and the Non-Agreed Traffic Management Measure had not been removed by the date 12 months prior to the Calculation Date; or
 - (iii) the State does something that constitutes the provision of support to the Link, as described in clause 2.4(a)(i), greater than that afforded to other freeways ("**additional support**"),

in the 12 months immediately preceding the Calculation Date (as defined in the M1 Corridor Redevelopment Deed), the Company may notify the State giving details of such Compensable Enhancement, Non-Agreed Traffic Management Measure or provision of additional support and:

- (iv) the State shall use its best endeavours not to remove that Compensable Enhancement, Non-Agreed Traffic Management Measure or additional support after the Calculation Date;
- (v) if the State removes that Compensable Enhancement, Non-Agreed Traffic Management Measure or additional support after the Calculation Date, the Company may notify the State that such removal has occurred;
- (vi) following receipt of such notice, the State and the Company shall consult in good faith in an endeavour to agree:
 - (A) whether a Compensable Enhancement had occurred or taken place, a Non-Agreed Traffic Management Measure had been implemented or additional support had been provided and been removed,
 - (B) the difference between the amount of the Net Present Value of the Uplift (as defined in Annexure A to the M1 Corridor Redevelopment Deed) and the amount the Net Present Value of the Uplift would have been (had it been

- calculated on the basis that the Compensable Enhancement, Non-Agreed Traffic Management Measure or additional support would be removed when it was so removed); and
- (C) whether the amount of such difference is material relative to the amount of the Net Present Value of the Uplift;
- (vii) if no agreement is reached between the State and the Company as to an amount under paragraph (vi) or as to whether an amount is material within 20 Business Days of the notice from the Company, any party may refer the matter for expert determination under Article 16; and
- (viii) if the amount of the difference referred to in paragraph (vi) is agreed or determined, and it is agreed or determined that such amount is material, the State shall pay to the Company an amount (in present value terms using a discount rate of 10.7% per annum) equal to such material amount within 20 Business Days of the date on which such material amount was agreed or determined.
- (m) If:
- (i) a Government Directed Benefit is implemented prior to the Calculation Date (as defined in the M1 Corridor Redevelopment Deed), then, as soon as practicable after the Calculation Date, the State and the Company shall consult in good faith in an endeavour to agree the amount of the State Revenue Share that was derived by reason of the Government Direct Benefit; or
- (ii) no agreement is reached between the State and the Company as to an amount under sub-paragraph (m)(i) within 20 Business Days of the parties commencing their consultation, any party may refer the matter for expert determination under Article 16;
- (iii) any amount so agreed or determined as to an amount under sub-paragraph (m)(i) must be discounted in present value terms using a discount rate of 10.7% per annum and paid by the State to the Company within 20 Business Days of such amount being agreed or determined.

2.7

Conditions Precedent

- (a) Each requirement in paragraphs (b) to (d) inclusive is a condition precedent to the coming into operation of this Deed, other than this clause, Article 1 and clauses 7.4(a), 7.5(a) (insofar as it relates to Design Documentation),

- 8.1(a), 14.6(b) (but not including sub-paragraph (i)), 14.6(c), 14.7(a), 14.8 and 19.3(b).
- (b) The execution on or before 30 October 1995 by all of the parties thereto of the following documents, each in form and substance satisfactory to the State:
 - (i) each Project Document (other than ones referred to in paragraph (b), (c), (k), (l) and (o) of the definition of that term or in paragraph (d) below); and
 - (ii) each Transaction Document.
 - (c) On or before 30 October 1995 the State receiving from the Company and the Trustee, and the Company and the Trustee receiving from the State, notice of satisfaction with the Project Bill.
 - (ca) On or before 15 November, 1995 the Treasurer's Deed of Covenant, the Interest Rate Risk Management Deed (referred to in that deed of covenant) and a deed of indemnity and acknowledgement given by the Treasurer of the State of Victoria in favour of the Company and the Trustee providing a form of indemnity in respect of certain transactions entered into pursuant to that Interest Rate Risk Management Deed, each having been executed and delivered.
 - (d) The satisfaction of each of the following:
 - (i) the State, the Company and the Trustee having agreed that component of the Project Debt which comprises infrastructure borrowings for the purposes of clause 14.4;
 - (ii) the Company and the Trustee having received (with a certified copy to the State of) satisfactory final and binding private income taxation rulings in respect of the Project and relating to section 51(1) (but only as it relates to the deductibility of interest incurred during the construction of the Link) and section 51AD and to Divisions 6B, 6C including sub-lease rent deductibility and 16D and Part IVA of the Income Tax Assessment Act 1936 and the State having received certified copies of requests for those rulings;
 - (iii) the Company and the Trustee having received (with a certified copy to the State of) certification by the Development Allowance Authority of all infrastructure borrowings made or to be made, and the indirect infrastructure borrowings proposed to be entered into between members of each of the Commonwealth Banking Group, Westpac Banking Corporation group and the Australia and New Zealand Banking Group Limited group, for the purposes of the Project, to qualify such

- infrastructure borrowings for concessional taxation treatment under the Income Tax Assessment Act 1936 and the State having received certified copies of requests for that certification;
- (iv) the State having received evidence reasonably satisfactory to it of the requirement set out in clause 14.6(a)(i) having been satisfied and, in particular, that obligations to subscribe for, underwrite or provide Project Securities or provide financial accommodation under the Lending Documents are not conditional upon or otherwise qualified by any matter relating to any proposed issue, sale or underwriting of Project Securities to which Part 7.12 of Chapter 7 of the Corporations Law applies;
 - (v) the Project Legislation having been proclaimed in the form of the Project Bill or as otherwise agreed by each of the parties;
 - (vi) the State being satisfied that the Articles of Association of the Company and the provisions of the Trust Deed are in a form enabling the Company or the Trustee to comply with the provisions of this Deed relating to acquisition by Substantial Holders in accordance with the Law and the Listing Rules of Australian Stock Exchange Limited of entitlements to, shares in the Company or Units subject to any approvals, waivers, modifications or exemptions referred to in sub-paragraph (d)(x);
 - (vii) the parties having agreed the Base Case Financial Model and the Base Case Traffic Model;
 - (viii) the State having received audit reports on each of the Base Case Financial Model and the Base Case Traffic Model, in form and substance satisfactory to the State;
 - (ix) the parties having agreed the Property Schedule (which is intended to comprise a map or maps and a schedule specifying the Project Land and Lay Down Areas to be made available within the Project Area and certain Lay Down Areas to be made available outside the Project Area) which identifies a date by which each parcel of land described in it is to be made available, distinguishes between Crown and other land (but not in respect of Lay Down Areas) distinguishes between Company Land and Trust Land (but not in respect of Lay Down Areas) and distinguishes between Project Land and Lay Down Areas;

- (x) satisfactory approvals, waivers, modifications and exemptions as are necessary to the ASX Listing Rules and the Corporations Law and Regulations having been obtained or included in the Project Legislation (as the case may be);
 - (xi) each of the State Works Agreement and the State Works Co-ordination Deed having been executed and delivered by the parties to it;
 - (xii) the parties having agreed on the mechanics of the provision of the benefit to be given pursuant to Exhibit N;
 - (xiii) the State having received a certified copy of each Lending Document and each Equity Document, each in form and substance satisfactory to it;
 - (xiv) the parties having agreed the Dispute Resolution Schedule;
 - (xv) the parties having agreed a schedule of structural defects and an approach to remediation for each such defect; and
 - (xvi) each of the State, the Company, the Trustee and the Independent Reviewer having executed and delivered the agreement referred to in paragraph (d) of the definition of "Project Document".
- (e) For the purposes of this clause 2.7, a copy is a certified copy if a director or secretary of the Company or the Manager certifies it to be a true and complete copy of the document or thing in relation to which it purports to be a copy.
- (f) The conditions in clauses 2.7(d)(iv) and (vi) are for the benefit of the State and may be waived by the State either wholly or in part. All other conditions are for the benefit of the Company, the Trustee and the State and may only be waived either wholly or in part by agreement between them.

2.8

Grant of Concession

- (a) Subject to clause 12.3, the State grants to the Company the right to:
- (i) design;
 - (ii) construct;
 - (iii) Commission;
 - (iv) operate;
 - (v) impose and collect a toll for the passage of Vehicles (within the meaning of the Toll Calculation Schedule) in relation to;
and^{165 166 167}

(vi) maintain and repair,

the Link (including the SLU and the WLU), and raise revenue in the manner approved by the State under clauses 9.4(c) and 9.4(d), until the end of the Concession Period, subject to and upon the terms of the Deed.¹⁶⁸

(b) Subject to clause 12.3 the State grants to the Trustee the right to design and construct the Trust Road subject to and upon the terms of this Deed, and acknowledges that the Trustee may grant a sub-lease of the Trust Land to the Company and allow the Company to do what is described in clause 2.8(a).

2.9

Material Adverse Effect

- (a) Each Appendix Event is capable of having a Material Adverse Effect. The parties acknowledge, however, that notwithstanding anything contained in the Appendix:
- (i) the implementation or non-implementation of any or all of the Major Transport Network Changes;
 - (ii) [Not used];
 - (iii) the removal of a Non-Agreed Traffic Management Measure in the circumstances referred to in clause 2.6(h);
 - (iv) subject to item 11 of the Appendix, an event or circumstance insofar as it affects the level of or right to Permitted Non-Road Revenue; and
 - (v) the removal of additional support in the circumstances referred to in clause 2.6(l), except to the extent that the removal of that additional support also constitutes or gives rise to an Appendix Event of the type described in item 3 of the Appendix,
- cannot constitute or give rise to a Material Adverse Effect or be taken into account in determining:
- (vi) whether a Material Adverse Effect has or will occur; or
 - (vii) the extent of redress to be provided in respect of an Appendix Event.
- (b) If the Company or the Trustee considers in good faith that an Appendix Event has occurred and that it has had or will have a Material Adverse Effect, it may give a notice to the other parties setting out full details of that effect or potential effect. Such a notice will only be valid if given within 12 months after the occurrence of the Appendix Event becoming known to the Company or the Trustee.
- (c)

- (i) It is agreed that any one of the Appendix Events in Items 1 to 9 (inclusive) and Item 11 of the Appendix which;
 - (A) when considered in isolation has had or will have an adverse effect on any of the matters referred to in paragraphs (a) and (b) of the definition of Material Adverse Effect,
 - (B) when considered in isolation has not had and will not have a Material Adverse Effect; and
 - (C) has been notified by the Company or the Trustee to the State within 12 months of its occurrence becoming known to the Company or the Trustee,

(herein referred to as a "Less than Material Item") may be further notified by the Company or the Trustee to the State in accordance with sub-paragraph (ii).
- (ii) If the Company or the Trustee considers in good faith that a Less than Material Item has occurred, it may give further notice to the other parties in accordance with clause 2.9(b) when:
 - (A) notice is given under clause 2.9(b) in respect of an Appendix Event in item 1 to 9 (inclusive) or item 11 of the Appendix; or
 - (B) a combination of Less than Material Items are considered in good faith to have together had or together will have a Material Adverse Effect.
- (iii) The combination of a Less than Material Item together with an Appendix Event which has had or will have a Material Adverse Effect, or a combination of Less than Material Items which together have had or will have a Material Adverse Effect, is deemed to be an Appendix Event under Item 10 of the Appendix.
- (d) When a valid notice is given under paragraph (b), the parties shall begin negotiations in good faith within 5 Business Days after the date the last of the parties receives the notice with the objective of agreeing within 20 Business Days whether or not an Appendix Event has occurred and, if so, whether it has had or will have a Material Adverse Effect. It is acknowledged that, subject to the express provisions of this Deed an event which is agreed or determined not to be a particular Appendix Event may nevertheless be agreed or determined to be another

Appendix Event but it is agreed that no event shall fall within the ambit of more than one Appendix Event.

- (e) If the parties do not reach agreement within the 20 Business Days period, any party may refer the matter for expert determination under Article 16.

2.10

Overcoming a Material Adverse Effect

- (a) Within 10 Business Days after it has been agreed or determined that an Appendix Event:
 - (i) has occurred; and
 - (ii) has had or will have a Material Adverse Effect,the parties shall in good faith begin and continue to negotiate in an endeavour to agree on an appropriate method of redress so as to achieve the outcome prescribed in column 4 of the Appendix in relation to the relevant Appendix Event.
- (b) If the parties do not reach agreement on the appropriate method of redress within 20 Business Days of the time for commencing negotiations (or such extended period as they may agree), any party may refer the matter for expert determination under Article 16 by notice given to the other parties.
- (c) Subject to paragraph (d) the parties agree, and any third person appointed under Article 16 shall be required to accept, that appropriate methods of redress in respect of an Appendix Event (other than an Appendix Event described in Items 5, 8 and 9 of the Appendix, even if that event falls within Item 10 of the Appendix) may only include:
 - (i) amending the Toll Calculation Schedule by varying the restrictions applicable to the Company's ability to charge tolls (and making consequential changes to the Project Documents);
 - (ii) varying the Concession Period and the term of the Leases;
 - (iii) altering the allocation of risk between the parties as established under the Project Documents (and making consequential changes to the Project Documents);
 - (iv) varying rights which the State has to receive payment of monies under the Project Documents (including amounts due for payment, accruing, payable or likely to become payable);
 - (v) requesting the Lenders to restructure the Project financing arrangements;
 - (vi) the State making a financial contribution to the Project; or

- (vii) adopting any other method of redress which the parties may agree, in their absolute discretion, in any particular context, to be appropriate.
- (d) Subject to the commentary in column 3, and to clause 12.10, in relation to Item 5 of the Appendix, the parties agree, and any third person appointed under Article 16 shall be required to accept, that appropriate methods of redress in respect of an Appendix Event described in Items 5, 8 and 9 of the Appendix (even if that event falls within Item 10 of the Appendix) may only include:
 - (i) amending the Toll Calculation Schedule by varying the restrictions applicable to the Company's ability to charge tolls (and making consequential changes to the Project Documents):
 - (ii) varying the Concession Period and the terms of Leases;
 - (iii) varying rights which the State has to receive payment of amounts under the Project Documents (including amounts due for payment, accruing payable, or likely to become payable); or
 - (iv) adopting any other method of redress which the parties may agree, in their absolute discretion, in any particular context, to be appropriate.
- (e) In the context of any particular Appendix Event, the availability of the methods of redress specified in paragraphs (c) and (d) and the extent to which any such method of redress is available, is constrained in the manner outlined in clauses 2.11 and 2.12 and in Column 3 of the Appendix.
- (f) The provisions of the Appendix must be read subject to the provisions of this Deed.
- (g) Each party shall ensure that each other party is, upon request, given a reasonable opportunity to consider information relevant to matters the subject of negotiation or determination pursuant to clause 2.9 or to this clause 2.10. This obligation does not, however, apply to information:
 - (i) of which those officers of the secondmentioned party charged with the conduct of negotiations under that or this clause were aware; or
 - (ii) of which it would have been reasonable to expect those officers were aware,when formulating the secondmentioned party's position in respect of the matters the subject of the negotiations or determination.

2.11

General Principles: Nature of Remedy

- (a) In no case can the Concession Period or term of the Leases be extended so as to result in the aggregate period

exceeding 54 years and 6 months from the Link Expected Completion Date except insofar as:

- (i) either the State agrees that such an extension is an appropriate method of redress so as to achieve the outcome prescribed in column 4 of the Appendix in relation to an Appendix Event or the extension is determined to be so appropriate in that context under Article 16; and
 - (ii) the relevant Appendix Event falls within any of items 5, 8 or 9 of the Appendix (even if that event falls within item 10 of the Appendix).
- (b) Notwithstanding paragraph (a), the State may elect to make available as a method of redress, in the context of any particular Appendix Event occurring after 44 years and 6 months from the Link Expected Completion Date, the ability to extend the Concession Period and the term of the Leases, but only insofar as the result of so doing (together with the result of any previous elections under this paragraph (b)) does not result in an aggregate extension of more than 10 years after 54 years and 6 months from the Link Expected Completion Date.
- (c) The parties agree, and shall ensure that any person appointed under Article 16 shall accept, that:
- (i) the method of redress involving the State making a financial contribution to the Project shall, in the context of those Appendix Events where that method is an available method of redress, be considered as a measure of last resort and shall apply only to the extent that the other methods of redress cannot reasonably be used so as to achieve the outcome prescribed in column 4 in relation to the particular Appendix Event; and
 - (ii) in all circumstances there can be no obligation on the Company or the Trustee to provide additional financial contribution to achieve an outcome prescribed in Column 4 in relation to the particular Appendix Event.
- (d) [Not used]
- (e) For the avoidance of doubt, in assessing any redress which includes any extension of the Original Concession Period, the term of that extension must not adversely impact on the ability of Extension Notional Initial Equity Investors to achieve the relevant outcome prescribed in column 4 of the Appendix in relation to the relevant Appendix Event.

2.12

General Principles: Assessment of Extent of Remedy

- (a) Under no circumstances shall any party be obliged to make available or be bound by a method of redress:

- (i) to the extent that it will achieve an outcome in excess of that which is necessary to provide the redress required in respect of the relevant Material Adverse Effect and which is acknowledged may in no circumstances exceed that which is necessary to address the extent of the relevant Material Adverse Effect; or
 - (ii) if the relevant Appendix Event is caused by a breach of a Project Document by the Company or the Trustee.
- (b) The level of redress to be provided by a method of redress agreed or determined to be appropriate (other than for an Appendix Event of the type specified in paragraph 3(a) of column 1 of the Appendix) and the issue of whether a particular Appendix Event has had or will have a Material Adverse Effect is to be determined net of:
 - (i) in the context of any determination as to the level of redress to be provided, the actual and projected effect on the ability to repay Project Debt, CTW Project Debt and WGT Project Debt and the ability of Original Equity Investors to achieve an Equity Return and the Extension Equity Investor to achieve an Extension Equity Return which has been agreed or determined in relation to any Government Directed Benefit relating to the Appendix Event and (in the context of an Appendix Event constituted by a change or connection implemented or effected pursuant to paragraph 2.4(e) or 2.4(f)), amounts paid or payable under sub-paragraph 2.4(e)(iv) or 2.4(f)(iv), or under an Agreed Sum Arrangement, (as applicable);
 - (ii) in the context of any determination as to whether a particular Appendix Event has had or will have a Material Adverse Effect, the actual and projected beneficial impact on the ability, level or timing referred to in the definition of "Material Adverse Effect" of any Government Directed Benefit relating to the Appendix Event and (in the context of an Appendix Event constituted by a change or connection implemented or effected pursuant to paragraph 2.4(e) or 2.4(f)), amounts paid or payable under sub-paragraph 2.4(e)(iv) or 2.4(f)(iv), or under an Agreed Sum Arrangement, (as applicable).¹⁶⁹; and
 - (iii) in the context of any determination as to the level of redress to be provided, the actual and projected effect on the ability to repay the Project Debt, CTW Project Debt and WGT Project Debt and the ability of Original Equity Investors to achieve an Equity Return of any compensation to which the

Company or Trustee is entitled to receive under the CTC Redevelopment Deed arising from the occurrence of the Appendix Event.

- (c) [Not used.]
- (d) Subject to clause 2.9(a), the parties agree, and any person appointed under Article 16 shall be required to accept, that the method of determining the effect of an Appendix Event is a function of the period during which that Appendix Event occurs. If it occurs in:
 - (i) the period between the date of this Deed and the second anniversary of the Date of Completion of the last Section to be completed or (if the Appendix Event relates to a particular part of the Link) the Date of Completion of the Section which relates to that part of the Link, then the effect of the Appendix Event is to be determined by comparing the projections derived using two computer models of the Project. Both models would be Base Case Financial Models, but one model would be amended so as to reflect the consequences of the Appendix Event, including the consequences of that event on the direct construction costs incurred by the Company or the Trustee; and
 - (ii) the period commencing on completion of the period referred to in sub-paragraph (i), then the effect of the Appendix Event is to be determined by comparing the projections derived using the Financial Model (in a form which does not take into account the effects of the Appendix Event) with the projections derived using that model (after its alteration to take into account those effects).
- (e)
 - (i) Insofar as the method of redress agreed or determined to be appropriate (other than for an Appendix Event of the type specified in paragraph 3(a) of column 1 of the Appendix) involves the making of a financial contribution by the State, the amount of that contribution is to be determined net of moneys due and payable to the State under the Project Documents.
 - (ii) Each party shall use reasonable endeavours (which would not involve substantial expenditure) to mitigate the adverse consequences of an Appendix Event and reasonable endeavours to ensure that redress afforded under clauses 2.9 and 2.10 is efficiently applied and structured (so as, for example, not to create or increase any liability for Taxes, the liability for which need not be

- incurred or need only be incurred to a limited extent) but the State has no right under this sub-paragraph to require the use of a particular structure; and
- (iii) Insofar as the Company or the Trustee reasonably incurs expenditure in undertaking such endeavours, and that expenditure would not have been incurred but for their respective obligations under sub-paragraph (ii), the State shall indemnify the Company or the Trustee (as applicable) for that expenditure provided that the State shall not be liable to indemnify the Company or the Trustee for any such expenditure to the extent that the amount of it exceeds the expenditure (the "theoretical expenditure") which would have been reasonably incurred by the Company or the Trustee (as the case may be) had the Relevant Circumstances (as defined in the IFA Ninth Amending Deed) not occurred. Such theoretical expenditure shall be calculated using (other than insofar as it relates to CTW Project Debt or WGT Project Debt) the Lending Documents in the form agreed by the Company and the State under clause 4.2(f) of the IFA Ninth Amending Deed and the Project Documents in the form of those documents immediately prior to the occurrence of the Relevant Circumstances (as defined in the IFA Ninth Amending Deed), (insofar as it relates to CTW Project Debt) the Lending Documents in the form accepted by the State under clause 4.2(g) of the IFA Twenty-second Amending Deed and (insofar as it relates to WGT Project Debt) the Lending Documents in the form accepted by the State as a condition precedent to the IFA WGT Amending Deed.¹⁷⁰
- (f) Subject to the other provisions of this Deed, any determination of the level of redress to be afforded to restore the ability of Original Equity Investors to achieve an Equity Return, Extension Equity Investors to achieve an Extension Equity Return or of the Company or the Trustee to repay the Project Debt, CTW Project Debt and WGT Project Debt is to take into account reasonable costs, losses and liabilities incurred by the Company or Trustee as a result of the relevant Appendix Event provided that no account shall be taken of any such cost, loss or liability to the extent that the amount of it exceeds that (the "theoretical amount") which would have been incurred by the Company or the Trustee (as the case may be) had the Relevant Circumstances (as defined in the IFA Ninth Amending Deed) not occurred. Such theoretical amount shall be calculated using (other than insofar as it relates to CTW Project Debt or WGT Project Debt) the Lending Documents in the form agreed by the Company and the

State under clause 4.2(f) of the IFA Ninth Amending Deed and the Project Documents in the form of those documents immediately prior to the occurrence of the Relevant Circumstances (as defined in the IFA Ninth Amending Deed), (insofar as it relates to CTW Project Debt) the Lending Documents in the form accepted by the State under clause 4.2(g) of the IFA Twenty-second Amending Deed and (insofar as it relates to WGT Project Debt) the Lending Documents in the form accepted by the State as a condition precedent to the IFA WGT Amending Deed.¹⁷¹

2.13 Construction Contractor

The parties shall permit the Construction Contractor to attend and participate in all negotiations conducted under clause 2.9 or clause 2.10 and proceedings leading up to determination arising under either of them which may affect its rights and obligations under the Design and Construct Contract.

2.14 Interrelationship

Unless otherwise expressly provided, nothing in clauses 2.9 to 2.13 inclusive derogates from either the nature or extent of any obligation owed to a party under this Deed or the rights and powers arising from the breach of any such obligation.

2.15 State Works

- (a) The Project Land to be subject to Leases in favour of the Company and the Trustee is to include certain improvements. Those improvements are to comprise the result of works, the design and construction of which is to be procured pursuant to the State Works Agreement.
- (b) As between the parties to this Deed, the Trustee and the Company accept the risk of any delay in executing the State Works, any delay to Completion of any Section caused by the State Works, any defect in the State Works and any claim made, or loss, expense or injury incurred or suffered, in relation to the State Works to the same extent as applies to, and as if the State Works comprised part of, the Works under this Deed.
- (c) The State Works are to be integrated with the Works and the Link and their design and execution is to be coordinated with that of the Works. The Company and the Trustee accept responsibility for that integration and coordination. The nature and extent of obligations and risks assumed by the Company, the Trustee or both of them under or in relation to the Project Documents are to be assessed as if the State had no obligation in relation to the State Works under paragraph (a) and as if the position in relation to the State Works were the same as the position in relation to any other component of the Works under this Deed.

2.16 Consultation

The Company and the Trustee shall consult in good faith with:

- (a) representatives of municipal governing bodies on local traffic management and other issues affecting any local communities (including noise, dust, hours of work) which may arise during construction of the Link (including the construction of the SLU and the WLU) and the State Returned Works Upgrade; and
- (b) representatives of relevant Government Agencies, municipal governing bodies, Utilities and community groups in an endeavour to seek their input on design, landscaping, the shared pedestrian bicycle pathway and noise attenuation issues.

2.17 State's Rights in Emergencies

Nothing in this Deed precludes, limits or otherwise qualifies the operation of Laws relating to matters relating to health, safety, law and order, emergency services, emergencies or any of them.

2.17A VicRoads' ability to close roads

- (a) Nothing in the Deed restricts the ability of VicRoads to exercise the power set out in clause 1 of Schedule 4 of the Transport Act 1983, to close the Link, any road or part thereof where it is necessary to do so by reason of a material risk to the health or safety of members of the public on or in close proximity to the Link.
- (b) The State must ensure that VicRoads consults with the Company (to the extent reasonable in the circumstances) before exercising the powers referred to in clause 2.17A(a).¹⁷²

2.18 Company and Trustee Legislative Authority

- (a) Insofar as it is able under the Project Legislation the State shall provide for the nominee from time to time of the Company and the Trustee to be given sufficient and exclusive legislative authority (consistent with the general laws of Victoria relating to the use, management and operation of roads) to discharge their obligations under the Concession Deed in respect of the construction, repair, maintenance and operation of the Link (including the SLU and the WLU and any off-Link lane management system contemplated by the M1 Corridor Redevelopment Deed), including traffic management. However, this will not include powers of a regulatory or enforcement nature, such as powers relating to safety or enforcement of rules made pursuant to such powers.
- (b) For the avoidance of doubt, nothing in clause 2.18(a) requires the State to enact any project-specific legislation in connection with CTW.

3. CONCESSION TERMS

3.1 Fees, Costs and Other Payments

- (a) Subject to clause 3.1(aa):

- (i) The Company shall (provided the Concession Period then continues), in consideration of the State granting the concession rights set out in clause 2.8, pay to the State in the period from the date of the commencement of the Concession Period until the end of the twenty-fifth year after the date which is 6 months earlier than the Link Expected Completion Date an annual concession fee of \$95,600,000, payable in equal instalments semi-annually in arrears, on the last Business Day of each June and December in that period and on the date of termination of this Deed (should termination occur in that period) with each such payment being adjusted on a pro rata basis for any period of less than 6 months.
 - (ii) The Company shall (provided the Concession Period then continues), in consideration of the State granting the concession rights set out in clause 2.8, pay to the State in the period from the date of the commencement of the twenty-sixth year after the date which is 6 months earlier than the Link Expected Completion Date until end of the thirty fourth year after that date an annual concession fee of \$45,200,000, payable in equal instalments semi-annually in arrears, on the last Business Day of each June and December in that period and on the date of termination of this Deed (should termination occur in that period) with each such payment being adjusted on a pro rata basis for any period of less than 6 months;
 - (iii) The Company shall (provided the Concession Period then continues), in consideration of the State granting the concession rights set out in clause 2.8 pay to the State in the period from the date of the commencement of the thirty fifth year after the date which is 6 months earlier than the Link Expected Completion Date until earlier of the last day of the Original Concession Period and the date of termination of this Deed, an annual concession fee of \$1,000,000 payable in equal instalments semi-annually in arrears on the last Business Day of each June and December in that period and on the date of termination of this Deed, with each such payment being adjusted on a pro rata basis for any period less than 6 months.
- (aa) No concession fee is payable by the Company under clause 3.1(a) in the period from the date of the commencement of the thirty fourth year after the date which is 6 months earlier than the Link Expected Completion Date until end of the Concession Period.
 - (b) Subject to clause 3.1A, the Company shall pay to the State rent under the Company Leases, Burnley Office Site Lease

- and Lorimer Street Site Lease and the Trustee shall pay to the State rent under the Trust Leases and the Trust Concurrent Leases, as provided for in those Leases.¹⁷³
- (c) The Company and the Trustee shall pay to the State on demand reasonable costs and expenses incurred or payable by the State:
- (i) in exercising powers under clause 9.11;
 - (ii) in it or any Victorian Government Agency taking reasonable measures outside the Project Land or to manage traffic outside the Project Land, to the extent required under arrangements approved under clause 7.13(a), 7A.13(a) or 7D.13(a) to be taken by it or a Victorian Government Agency under the Project Scope and Technical Requirements;
 - (iii) in it or any Victorian Government Agency taking measures to deal with the effects of any interference with the flow of traffic on roadways in the vicinity of the Project Land, the Lay Down Areas, the SLU Lay Down Areas, the CTW Extra Land, the State Returned Works Areas or the Off-Site Areas caused by the Works, the SLU Works or the CTW Works, or the operation or maintenance of the Link being measures reasonably taken if the State has been (or should have been), in accordance with this Deed, requested by the Company or the Trustee to deal with the interference;
 - (iv) in making a payment pursuant to the Contractors' Deed of Novation to remedy or overcome the consequences of a Construction Contract Default (as that expression is defined in the Contractors' Deed of Novation).
- (d) The Company shall pay to the State as an additional concession fee a proportion of the amount by which the aggregate revenue derived by the Company (or any of its subsidiaries), in any relevant period exceeds that projected in the Base Case Financial Model (which for the period commencing on the date which is 33 years and 6 months after the Link Expected Completion Date and ending on the expiry of the Original Concession Period will be the projected revenue set out in the "Cdef" worksheet of the Reference Financial Model in the row labelled "CTW Concession Extension Revenue"). Such a payment need only be made if the actual cumulative real after tax return which a Notional Initial Equity Investor would be considered to have derived on its investment in Original Project Securities up to the end of that period exceeds the cumulative real after tax return which a Notional Initial Equity Investor was projected by the Base Case Financial

Model to have received on its investment in Project Securities up to the end of that period.

The proportion of the amount of any such excess applicable to each relevant period is specified in Schedule 4. In this context:

- (i) the concept of "revenue" includes all tolls, charges, fees and returns imposed, or received in relation to the Link or in connection with the passage, or use or operation, of vehicles on the Link or mechanisms adopted for payment of those things, together with income derived in connection with any use of the Link or property permitted under paragraph 9.4(c), (d) or (e)¹⁷⁴, and those amounts agreed by the parties to be included under clause 2.7(b) of the CTC Redevelopment Deed. It excludes, however:
 - (A) revenue directly attributable to implementation of Non-Agreed Traffic Management Measures (which revenue includes revenue, if any, directly attributable to the Company's liability to pay GST on such revenue);¹⁷⁵
 - (B) revenue directly attributable to redress afforded under clauses 2.9 and 2.10 in respect of an Appendix Event which has had or will have a Material Adverse Effect (which revenue includes revenue, if any, directly attributable to the Company's liability to pay GST on such revenue);¹⁷⁶
 - (C) 50% of revenue directly attributable to a Compensable Enhancement (which revenue includes revenue, if any, directly attributable to the Company's liability to pay GST on such revenue);¹⁷⁷
 - (D) revenue directly attributable to GST, being an amount equal to the GST which the Company pays in respect of the revenue for the relevant period (but after excluding from such revenue the relevant amounts under clauses 3.1(d)(i)(A), (B) and (C));¹⁷⁸
 - (E) those amounts agreed by the parties to be excluded under clause 2.7(a)(ii)C of the CTC Redevelopment Deed;
 - (F) subject to any adjustments to the Financial Model in accordance with section 6 of Part A of Schedule 6, projected revenue from each Development Project and the relevant

- proportion of revenue from the Tulla Calder Interchange Project in each case as set out in worksheet "Cdef" in the Reference Financial Model;
- (G) revenue directly attributable to any amount which is paid or redress afforded to the State in accordance with section 6 of the Variation Principles (which includes revenue, if any, directly attributable to the Company's liability to pay GST on such revenue);
 - (H) any amounts which are received by the Company but which are paid or payable by the Company to the State in accordance with Schedule 6;
 - (I) compensation for the loss of any West Gate Tunnel revenue in accordance with the Variation Principles to the extent that it is remitted to WGT Co;
 - (J) revenue directly attributable to any amount paid to WGT Co in accordance with clause 8.19 of the Toll Calculation Schedule;
 - (K) to the extent they are considered revenue, any amounts received by the Company or the Trustee from WGT Co which are directly attributable to compensation to WGT Co by the State in accordance with the WGT Project Documents, other than compensation which relates to forgone revenue that would have been derived by the Company or the Trustee; and
 - (L) revenue to the extent that it is remitted to the operator of another toll road or tolling retailer in accordance with an interoperability agreement or the Network Tolling Agreement; and
- (ii) the "relevant periods" are successive periods each of which is a financial year, except in relation to:
- (A) the first such period which is a period from the Date of Completion of the first Section to be Completed to the following 30 June; and
 - (B) the last such period which commences on the 1 July date preceding the commencement of the Additional Concession Period and ends on the last day of the Original Concession Period.

For the avoidance of doubt, this clause does 3.1(d) does not apply during the Additional Concession Period.

- (e) Any payment to be made under paragraph (d) in relation to a relevant period shall be made within 20 Business Days of the expiry of that period, provided that payment for the last such period shall be made on the expiration of that period.
- (f) If the State is liable to pay, or has paid, GST in respect of all or part of any payment or transaction under, or pursuant to, clause 3.1(a) or (d), then the Company must, in addition to the Company's obligations under clauses 3.1(a) or (d) (as applicable), pay to the State an amount (the "**GST Amount**") equal to the GST payable or paid by the State.¹⁷⁹
- (g) The Company shall pay the GST Amount to the State on or before the 21st day of the month following the relevant payment or transaction under, or pursuant to, clauses 3.1(a) or (d) (as applicable) of the Concession Deed, provided the State has issued before such time a tax invoice in respect of the relevant payment or transaction. If the State has not issued before such time a tax invoice in respect of the relevant payment or transaction, then the GST Amount shall be paid to the State:
 - (i) if the State issues a tax invoice in respect of the relevant payment or transaction on or before the 21st day of a month, on or before the 21st day of that month; or
 - (ii) if the State issues a tax invoice in respect of the relevant payment or transaction after the 21st day of a month, on or before the 21st day of the next month.¹⁸⁰

3.1A

Variable Lease Rental

- (a) The variable rent amount payable in aggregate under the Company Leases in respect of an Extension Relevant Period will be equal to the proportion of the amount by which the aggregate consolidated revenue derived by the Company in the Extension Relevant Period exceeds that projected for the same Extension Relevant Period in the Agreed CityLink Financial Model as at WGT Financial Close as adjusted as a result of an Adjustment Event, if any.
- (b) For the purposes of clause 3.1A(a), the proportion of the amount of any such excess applicable to an Extension Relevant Period is specified in Schedule 7.
- (c) The variable rent amount payable by the Trustee in aggregate under the Trust Concurrent Leases in respect of an Extension Relevant Period will be equal to the amount which is payable by the Company under the Company Leases, as calculated in accordance with clause 3.1A(a), if any.

- (d) The parties acknowledge and agree that, in accordance with the terms of the Trust Concurrent Leases, the Trustee is entitled to the benefit of any rent payable by the Company under the Company Leases.
- (e) In this clause 3.1A, the concept of 'revenue':
 - (i) includes:
 - (A) all tolls, returns and other revenues; and
 - (B) the aggregate of all charges and fees, imposed or received by the Company in connection with the Link; and
 - (ii) excludes:
 - (A) revenue directly attributable to redress afforded under clauses 2.9 and 2.10 in respect of an Appendix Event which has had or will have a Material Adverse Effect;
 - (B) 50% of revenue which is agreed or determined to be directly attributable to a Compensable Enhancement;
 - (C) revenue directly attributable to any amount which is paid or redress afforded to the State in accordance with section 6 of the Variation Principles;
 - (D) compensation for the loss of any West Gate Tunnel revenue in accordance with the Variation Principles to the extent that it is remitted to WGT Co;
 - (E) revenue to the extent that it is remitted to the operator of another toll road or tolling retailer in accordance with an interoperability agreement or the Network Tolling Agreement;
 - (F) to the extent they are considered revenue, any amounts received by the Company or the Trustee from WGT Co which are directly attributable to compensation to WGT Co by the State in accordance with the WGT Project Documents, other than compensation which relates to forgone revenue that would have been derived by the Company or the Trustee;
 - (G) revenue directly attributable to any amount paid to WGT Co in accordance with clause 8.19 of the Toll Calculation Schedule;

- (H) revenue directly attributable to insurance receipts, except under business interruption or other insurance to the extent that such receipts represent payments for loss of past or anticipated revenue;
 - (I) any amounts which are received by the Company but which are paid or payable by the Company to the State in accordance with Schedule 6; and
 - (J) any other amounts agreed by the parties in writing.
- (f) The Company must:
- (i) within 30 Business Days after the expiry of an Extension Relevant Period, notify the State as to the amount of any variable rent as calculated in accordance with this clause 3.1A for that Extension Relevant Period; and
 - (ii) provide such details and evidence as the State reasonably requires as to the amount of the aggregate revenue received by the Company in the Extension Relevant Period (including the reasons why the Company claims that any amounts received by the Company in the Extension Relevant Period has or should be excluded from the concept of revenue).
- (g) Any reference in this clause 3.1A to revenue, price, value, sales or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.

3.2

Tolling System

- (a) The Company grants to the State an irrevocable non-exclusive licence to use, and sub-license others to use, the Tolling System as it sees fit for the purposes of operating, maintaining and repairing the Link (or a part of it):
- (i) during such period as the State is entitled to operate the Link (or a part of it) under the Project Documents; and
 - (ii) on and from the date on which the Concession Period ends.

For the purposes of this paragraph (a) a State Area within the meaning of clause 13.8(b), and an AP Area within the meaning of paragraph 12.8(e), shall be deemed a part of the Link.

- (b) Promptly after it is requested by the State to do so, the Company shall grant to the State or any nominee of the State specified in the request, an irrevocable non-exclusive

licence to use, and sub-license others to use, "tolling system B" as it sees fit for a specified use in Victoria (whether or not that use involves the State or any Victorian Government Agency). For this purpose, tolling system B means those elements of the tolling system as are described in clause 2.2 (Customer Vehicle Tag), 2.3 (Roadside Equipment), 2.4 (Beacons), 2.5 (Roadside Controller), 2.6 (Detection and Classification Sub-System) and 2.7 (Enforcement Sub-System) of Part I of the Project Scope and Technical Requirements, together with such other elements of the Tolling System as may be necessary to enable a user of tolling system B (assuming the user has a reasonable level of competence) to implement an effective tolling system (having regard to computer programs and computer equipment otherwise available to the user on reasonable, commercial, terms).

- (c) Any request under paragraph (b) may be made from time to time.
- (d) Any licence granted pursuant to a request under paragraph (b) must be:
 - (i) consistent with the provisions of this clause; and
 - (ii) on terms and conditions which are commercially reasonable (including as to costs) and which would be considered to be commercially reasonable, were there to be a number of non-collusive, competitive, suppliers of the tolling system B.
- (e) Any dispute which arises between the State and the Company in relation to the terms and conditions of a licence granted or to be granted in accordance with this clause may be referred for expert determination under Article 16.
- (f) The State shall use reasonable endeavours to assist in the development of Australian standards with which the Tolling System is compatible.

3.3

Approvals and Permits

- (a) The Company and the Trustee shall obtain and maintain all necessary approvals and permits from Government Agencies required to enable each of them to perform their respective obligations under the Project Documents and CTW Project Documents, other than any approvals or permits for which the State is responsible under this Deed or the CTC Redevelopment Deed.
- (b) The State shall use all reasonable and proper endeavours to assist the Company and the Trustee in obtaining and, to the extent required to carry out the SLU Works and implement the SLU, or to carry out the CTW Works or the CTW Maintenance Activities and implement the CTW, amending all necessary approvals and permits required to be obtained

and maintained by the Company or the Trustee under paragraph (a).

3.4 Not Used

3.4A NOT USED

3.4AA Updating the Separation Plans

- (a) **(Initial Submission):** The Company must no later than 120 days prior to the Date of West Gate Tunnel Completion (as defined in the WGT Project Agreement), submit to the State for its approval Separation Plans which are consistent with the Separation Principles and take into account (to the extent relevant to the matters contemplated by the Separation Principles) any changes to the Link or the operation and maintenance activities that have occurred since WGT Financial Close.
- (b) **(Further Submission):** The Company must within 60 Business Days after the end of each full financial year after the Date of West Gate Tunnel Completion (as defined in the WGT Project Agreement) until the expiry of the Concession Period,
- either:
- (i) submit to the State for its approval Separation Plans which are consistent with the Separation Principles and take into account (to the extent relevant to the matters contemplated by the Separation Plans) any changes to the Link or the operation and maintenance activities that have occurred since the previous submission under clause 3.4AA(a) or subsequent submission under this clause 3.4AA(b); or
- (ii) notify the State that no updates are required to the Separation Plans since the previous submission provided that the Separation Plans are consistent with the Separation Principles and take into account (as far as relevant to the matters contemplated by the Separation Plans) any changes to the Link or the operation and maintenance activities that have occurred since the previous submission under clause 3.4AA(a) or this clause 3.4AA(b) (or, in the case of the first submission, since the Date of West Gate Tunnel Completion (as defined in the WGT Project Agreement)).
- (c) **(Single Asset Handover (CityLink)):** Without limiting clause 3.4AA(a) or 3.4AA(b), where at the relevant time, it is anticipated that Single Asset Handover (CityLink) will occur, the Company must:

- (i) where this Deed is anticipated to end at the expiry of the Concession Period, at least 5 years and 6 months before the expiry of the Concession Period; or
- (ii) where this Deed is anticipated to end earlier than the expiry of the Concession Period, within such period before the expiry of the Concession Period as is reasonably practicable,

update each Separation Plan:

- (iii) to include details of the tests that are proposed to be conducted for the Handover Reviewer to verify that the Separated Systems meet the Handover Condition in respect of those systems; and
- (iv) for any matters usually the subject of its scheduled updates under clause 3.4AA(a),

and submit each updated Separation Plan to the State for approval, with a copy to the Handover Reviewer.

(d) **(State response):** Within:

- (i) 60 Business Days of receiving a Separation Plan in accordance with clause 3.4AA(a); or
- (ii) 30 Business Days after receiving an updated Separation Plan in accordance with clause 3.4AA(b) or clause 3.4AA(c) (as applicable),

the State must (acting reasonably and with regard to the opinion of the Handover Reviewer (if the Handover Reviewer is engaged at that time)) notify the Company that:

- (i) it approves the updated Separation Plan; or
- (ii) it does not approve the updated Separation Plan, including the reasons for its decision, in which case the Company must update the Separation Plan to address any reasonable concerns of the State and resubmit the updated Separation Plan to the State, and this clause 3.4AA(d) will continue to apply to any updated Separation Plan until it has been approved by the State.

(e) **(Deemed approval):** If in respect of a Separation Plan or an updated Separation Plan submitted by the Company under this clause 3.4AA, the State fails to give its approval (or otherwise) within the time period specified in clause 3.4AA(a) or clause 3.4AA(d) (as applicable), the State will be deemed to have given its approval to that updated Separation Plan.

(f) **(Handover Reviewer):** As part of the engagement of the Handover Reviewer as contemplated by clause 3.4AE, the parties must provide the Handover Reviewer with a copy of

the Separation Plans and must thereafter provide the Handover Reviewer with copies of all subsequently updated and approved Separation Plans.

3.4AB Separation Plan Services

- (a) **(Notification):** If at any time after the WGT Date of Tolling Completion, a party considers that Single Asset Handover (CityLink) will occur, that party may notify the other party, provided such notice must not be given any earlier than 12 months prior to the anticipated expiry of the Concession Period (**Separation Notice**).
- (b) **(Dispute):** If the party receiving a Separation Notice disagrees that Single Asset Handover (CityLink) will occur, it may refer the matter for resolution in accordance with Article 16.
- (c) **(State notice of intention to terminate):** Without limiting the State's rights under clause 3.4AB(a) or clause 15, the State may at any time give the Company and Trustee written notice that it intends to terminate this Deed prior to the expiry of the Concession Deed in accordance with clause 15.3 or clause 15.4 (**State Notice of Intention to Terminate**).
- (d) **(Separation Plan Services):** Upon agreement by the parties or determination that Single Asset Handover (CityLink) will occur or upon receipt of a State Notice of Intention to Terminate, the Company must carry out the Separation Plan Services in accordance with the requirements of the Separation Plans so that the Separation Plan Services are completed upon the expiry of the Concession Period or, where this Deed is terminated earlier than the expiry of the Concession Period, as soon as reasonably practicable following the expiry of the Concession Period.
- (e) **(Integration Services):** The Company must carry out the Integration Services so that the Integration Services are completed upon the expiry of the Concession Period or, where this Deed is terminated earlier than the expiry of the Concession Period, as soon as reasonably practicable following the expiry of the Concession Period.

3.4AC State obligations

Upon agreement by the parties or determination that Single Asset Handover (CityLink) will occur, or upon the issue of a State Notice of Intention to Terminate, the State must perform its obligations under the Separation Plans in accordance with the requirements of the Separation Plan.

3.4AD Meaning of Handover Condition

Handover Condition means:

- (b) if handover of all or any part of the Link is to occur on or after the WGT Date of Tolling Completion and before the

expiry of the Concession Period, the condition that the Link, Project Land (or the relevant parts of the Link and Project Land) would be in if the Company had complied with all of its obligations in connection with the Link and Project Land (or the relevant parts of them) in accordance with this Deed up to the time of termination having regard to the time and circumstances of the termination (except where the Deed is terminated in accordance with clause 15.5); or

- (c) if handover of all or any part of the Link is to occur on the expiry of the Concession Period, the condition that the Link and Project Land (or the relevant parts of the Link and Project Land) would be in as at that date if the Company had complied with all of its obligations in connection with the Link and Project Land (or the relevant parts of them) in accordance with this Deed,

which will have regard to any modifications or changes required to be made to the Separated Systems and the FCC (as defined in the WGT Project Agreement) by the Company in accordance with the requirements of the Separation Plans.

3.4AE

Obligations approaching end of O&M Phase

- (a) **(Handover Reviewer):** No later than 12 months before the inspections to be undertaken in accordance with clause 3.4AE(d)(i), or as soon as reasonably practicable before the inspections to be undertaken in accordance with clause 3.4AE(d)(ii):
 - (i) the parties must meet to determine the identity of a Handover Reviewer to be appointed jointly by the Company and the State to carry out the tasks identified in the Handover Clauses;
 - (ii) if the parties are unable to agree the identity of a Handover Reviewer in accordance with clause 3.4AE(a)(i) within 20 Business Days of meeting, the State will appoint a Handover Reviewer; and
 - (iii) the State and the Company must jointly engage the Handover Reviewer in accordance with the terms of this Deed,

provided that the Handover Reviewer to be engaged must:

- (iv) be independent of the Transurban Group and the State;
- (v) be reasonably acceptable to the State and the Company;
- (vi) have appropriate qualifications and experience; and

- (vii) have no interest or duty which conflicts or may conflict with its functions as a Handover Reviewer.
- (b) **(Costs):** The costs and expenses of the Handover Reviewer (including the Handover Reviewer's professional fees and any other costs incurred in accordance with the terms of its joint engagement) will be paid to the Handover Reviewer by the State.
- (c) **(Payment of costs):** The Company must pay to the State on demand, from time to time, 50% of the costs and expenses of the Handover Reviewer paid by the State under clause 3.4AE(b).
- (d) **(Joint inspection):** The Company, the State and the Handover Reviewer appointed under clause 3.4AE(a) must carry out joint inspections of the Link:
 - (i) where this Deed is to end on the expiry of the Concession Period, at least:
 - (A) 5 years before the expiry of the Concession Period; and
 - (B) every 6 months after that initial inspection until the end of the expiry of the Concession Period; or
 - (ii) where this Deed is to end following the WGT Date of Tolling Completion and earlier than the expiry of the Concession Period, within such shorter period before the date of termination as is required by the State,(each a **Condition Review Date**).
- (e) **(Program to achieve proper Handover):** Following each inspection undertaken in accordance with clause 3.4AE(d), the Handover Reviewer must give to the State and the Company a report (**Outstanding Matters Report**) specifying:
 - (i) the details of:
 - (A) the maintenance and repair work required to be carried out by the Company to meet the Handover Conditions and a program for undertaking such works, having regard to the time and circumstances of the inspection and ensuring that, where reasonably practicable, the program is consistent with any planned maintenance or repair work scheduled to be undertaken by the Company in accordance with the Operation and Maintenance Manuals;

- (B) where applicable in accordance with clause 3.4AB(d), the Separation Plan Services to be carried out by the Company in order to comply with its obligations under clause 3.4AB(d) and a program for undertaking such services, having regard to the time and circumstances of the inspection and ensuring that the program is consistent with the Company's obligations under the Separation Plans; and
- (C) all other obligations, services and activities to be carried out by the Company in order to for Handover to occur, including the Integration Services, collectively the **Handover Services**;
- (ii) the Handover Reviewer's opinion (together with its reasons for forming that opinion) of whether Handover will occur by the expiry of the Concession Period;
- (iii) if the Handover Reviewer forms the opinion that Handover will not occur by the expiry of the Concession Period, the Handover Reviewer's opinion (together with its reasons for forming that opinion) of the likely duration of the Company's obligation to perform Transition Services in accordance with clause 3.4AJ(a) (**Anticipated Transition Services Period**); and
- (iv) an estimate of the total costs of undertaking the Handover Services and where applicable, the Transition Services, for the Anticipated Transition Services Period (**Handover Bond Reference Amount**).
- (f) (**Dispute**): If either party does not agree with any of the matters determined by the Handover Reviewer in the Outstanding Matters Report, that party may refer the matter for resolution in accordance with Article 16 within 20 Business Days of the Outstanding Matters Report being received by it.
- (g) (**Condition Review Date**): Notwithstanding the terms of the Handover Clauses, the State may by notice to the Company:
 - (i) adjust the Condition Review Date to an alternative date which may not be earlier than 5 years before the expiry of the Concession Period;
 - (ii) elect to relieve the Company from any obligation to undertake any of the Handover Services; or

- (iii) acting reasonably, increase the number of times and frequency with which the Handover Reviewer, the State and the Company must inspect and assess the condition of the Link (or the relevant part of the Link), assess any Handover Services or prepare the Outstanding Matters Report, provided that the costs of undertaking such additional inspections will be borne by the State and will not be subject to recovery by the State under clause 3.4AE(c).
- (h) **(Review of Condition Review Date):** If the State exercises its rights in accordance with clause 3.4AE(g)(ii):
 - (i) the Project Scope and Technical Requirements and any other relevant parts of the Project Documents will be varied to the extent agreed by the parties or, where not agreed, as determined by the Handover Reviewer; and
 - (ii) the amount calculated in accordance with the Variation Principles will be a debt due and payable by the Company to the State and will also be subtracted from the Handover Bond Reference Amount.
- (i) **(Implement program):** Without limiting the Company's obligations in accordance with this Deed, the Company must:
 - (i) undertake the Handover Services and implement the program identified in the latest Outstanding Matters Report (or as otherwise determined under clause 3.4AE(f)), other than any Handover Services which the State has agreed to relieve the Company from under clause 3.4AE(g)(ii); and
 - (ii) within 20 Business Days after receiving an Outstanding Matters Report under clause 3.4AE(e), provide to the State a Performance Bond having a face value equal to 120% of the Handover Bond Reference Amount or such lower amount agreed by the State (**Handover Bond**), as security for the performance of the Company's obligations to perform the Handover Services and, where applicable, the Transition Services. Where the Handover Bond Reference Amount is disputed by a party and subsequently agreed between the parties or determined under clause 3.4AE(f), the Company must provide a replacement Handover Bond having a face value equal to 120% of the revised Handover Bond Reference Amount agreed or determined. Where the Company provides a replacement Handover Bond in these circumstances, or after the issue of a subsequent Outstanding Matters Report, the State must return the Handover Bond which is being replaced

within 10 Business Days upon receiving the replacement Handover Bond.

3.4AF Reaching Handover

- (a) **(Notice of expected Handover):** The Company must:
 - (i) at least 60 Business Days prior to the date upon which it reasonably expects Handover to occur, give the State (with a copy to the Handover Reviewer) a notice setting out that date on which it expects Handover to occur; and
 - (ii) if, after the Company gives the State and the Handover Reviewer a notice under clause 3.4AF(a)(i) the expected date upon which the Company reasonably expects Handover to occur changes, promptly give a notice the State (with a copy to the Handover Reviewer) revising that date.
- (b) **(Notice by the Company):** When the Company considers that Handover has occurred, the Company must:
 - (i) notify the State and the Handover Reviewer of its opinion; and
 - (ii) request the Handover Reviewer to issue a Handover Matters Notice.
- (c) **(Notice from Handover Reviewer to parties):** Within 45 Business Days after receiving a notice from the Company under clause 3.4AF(b), (or within 20 Business Days where the Company has previously given a notice under clause 3.4AF(b)) the Handover Reviewer must issue a notice to the parties:
 - (i) stating that in its reasonable opinion, Handover has occurred; or
 - (ii) which:
 - (A) states that in its reasonable opinion, Handover has not occurred;
 - (B) provides details of matters or things (if any) which it considers are required to be remedied or rectified by the State or its associates in order for the Link to meet the Handover Condition;
 - (C) specifies any Separation Plan Services or other Handover Services which it considers have not been completed by the Company in accordance with the requirements of the Handover Clauses; and
 - (D) specifies the amount which it reasonably considers is required to be spent by the

State or its associates to remedy or rectify the matters or things specified in clauses 3.4AF(c)(ii)B and 3.4AF(c)(ii)C,

(Handover Matters Notice).

- (d) **(Company response):** The Company must, within 20 Business Days after receiving the Handover Matters Notice, notify the State that it:
- (i) agrees with the matters set out in the Handover Matters Notice (**Handover Matters Agreement Notice**); or
 - (ii) disagrees with the matters set out in the Handover Matters Notice, together with details of why the Company disagrees (**Handover Matters Disagreement Notice**).
- (e) **(Handover Matters Agreement Notice):** If the Company gives the State a Handover Matters Agreement Notice or fails to give a Handover Matters Disagreement Notice in accordance with clause 3.4AF(d), then:
- (i) the amount (if any) set out in the Handover Matters Notice will be a debt due and payable by the Company to the State; and
 - (ii) the State may (at its absolute discretion):
 - (A) make a demand under the Handover Bond to recover the amount (if any) set out in the Handover Matters Notice; or
 - (B) direct the Company to carry out any Handover Services the subject of the Handover Matters Notice, in which case the Company will be entitled to provide a further notice to the Handover Reviewer under clause 3.4AF(b) when it considers that Handover has occurred.
- (f) **(Handover Matters Disagreement Notice):** If the Company gives the State a Handover Matters Disagreement Notice, the parties must consult in good faith and use their reasonable endeavours to agree on the details or the amount referred to in the Handover Matters Notice.
- (g) **(Consequences of consultation):** If the parties, following the consultation under clause 3.4AF(f):
- (i) reach agreement that an amount is payable in respect of a Handover Matters Notice, then:
 - (A) the agreed amount will be a debt due and payable by the Company to the State; and
 - (B) the State may (in its absolute discretion):

- 1) make a demand under the Handover Bond to recover the agreed amount; or
 - 2) direct the Company to carry out any Handover Services the subject of the Handover Matters Notice, in which case the Company will be entitled to provide a further notice to the Handover Reviewer under clause 3.4AF(b) when it considers that Handover has occurred;
- (ii) reach agreement that no amount is payable in respect of a Handover Matters Notice, then the State will return the Handover Bond to the Company within 5 Business Days of such agreement; or
- (iii) are unable to reach agreement as to whether an amount is payable in respect of a Handover Matters Notice and the amount of any payment within 10 Business Days after service of the Handover Matters Disagreement Notice, then:
- (i) the State may (in its absolute discretion):
 - (A) make a demand under the Handover Bond up to the amount set out in the Handover Matters Notice;
 - (B) direct the Company to carry out any Handover Services the subject of the Handover Matters Notice, in which case the Company will be entitled to provide a further notice to the Handover Reviewer under clause 3.4AF(b) when it considers that Handover has occurred; and
 - (ii) either party may refer the matter for resolution in accordance with Article 16.
- (h) **(State to reimburse the Company):** The State must pay the Company the difference between:
- (i) the amount drawn from the Handover Bond following a demand under clause 3.4AF(g)(iii)A.1 and
 - (ii) any lesser amount which is determined following the resolution of the dispute to be the amount referred to in the Handover Matters Notice,

within 5 Business Days of the resolution of the dispute.

- (i) **(No obligation in respect of monies):** The Company acknowledges and agrees that the State is under no obligation to apply any monies it receives under this clause 3.4AF towards the cost of satisfying the Handover Conditions or performing the Handover Services.
- (j) **(Acknowledgment):** The parties acknowledge and agree that:
 - (i) upon the State drawing down on the Handover Bond in accordance with clause 3.4AF(e)(ii)A, clause 3.4AF(g)(i)B.1, or clause 3.4AF(g)(ii)A.1 the Handover Services will be deemed to have been carried out by the Company; and
 - (ii) drawing down on the Handover Bond in accordance with clause 3.4AF(e)(ii)A, clause 3.4AF(g)(i)B.1 or clause 3.4AF(g)(iii)A.1 is the State's sole and exclusive remedy for a failure by the Company to carry out the Handover Services.
- (k) **(No limitation of rights):** Nothing in this clause 3.4AF will limit the State's rights against the Company, whether under this Deed or otherwise according to Law, in respect of any defect or other failure to comply with the Handover Clauses.
- (l) **(Return of Handover Bond):** The State must:
 - (i) return the Handover Bond within 10 Business Days of the Handover Reviewer giving notice under clause 3.4AF(c)(i); or
 - (ii) where the Handover Reviewer has given a notice under clause 3.4AF(c)(ii) return the balance of the undrawn value of the Handover Bond to the Company no later than 20 Business Days after:
 - (A) it has drawn on the Handover Bond; or
 - (B) the parties have agreed, or it has been determined, that no amount is payable in respect of a Handover Matters Notice.

3.4AG

Handover of the Link and Project Land

- (a) Without limiting clauses 3.4AH, 3.4AI and 3.4AK, upon the expiry of the Concession Period or, where this Deed is terminated earlier than the expiry of the Concession Period, as soon as reasonably practicable following the expiry of the Concession Period, the Company must:
 - (i) **(handover of the Link and Project Land):** handover the Link and Project Land (as applicable), other than the Tolling System back office or the asset management system (including (subject to clause [3.4AI]) all rights and interest in them, and with regard to the requirements of the

- relevant Separation Plan) to the State or its nominee free from any encumbrances and in the Handover Condition provided that in respect of the Tolling System back office and the asset management system, the Company's handover obligation will be satisfied where it provides a replica of the Tolling System back office and asset management system (as applicable);
- (ii) **(Traffic control rooms)** upgrade, reconfigure and handover traffic control rooms, as contemplated by the Separation Principles and in accordance with the requirements of the relevant Separation Plan;
- (b) **(transfer of rights)**: subject to any exceptions to the licences granted to the State or its nominee which have been agreed between the parties in or pursuant to [#] of this Deed, to the extent that it has not already been transferred, transfer to the State or its nominee all rights, title and interest in plant and equipment owned or held by the Company or the Operator which is required to allow the State or its nominee to operate, maintain and repair the Link to the standards required of the Company in accordance with this Deed free from any encumbrances;
 - (c) **(delivery of information)**: deliver to the State or its nominee all manuals, records, plans and other information under the control of the Company, including Project Material, which are relevant to the Project;
 - (d) **(payment of insurance proceeds)**: pay to the State or its nominee any insurance proceeds from any Insurances for the repair and rebuilding of the Link to the extent not already repaired or rebuilt, and assign to the State any rights available to the Company under the insurances set out in clause 13.4;
 - (e) **(transfer of approvals)**: do all acts and things necessary to enable the State or its nominee to have transferred to it all approvals necessary to deliver the Project or assist the State or its nominee to obtain such approvals; and
 - (f) **(delivery of project)**: do all other acts and things to enable the State or its nominee to be in a position to deliver the Project to the standards specified in accordance with this Deed, with minimum disruption.
 - (g) Nothing in this clause 3.4AG requires the Company to provide to the State:
 - (i) if the Concession Period ends before CTW and Ramp M Practical Completion, plant and equipment owned by a CTW Construction Contractor or any supplier to, or sub-contractor of, a CTW Construction Contractor); or

- (ii) if the Concession Period ends before the CityLink Returned Works Date of Handback, plant and equipment owned by the WGT D&C Subcontractor or any supplier to, or sub-contractor of, the WGT D&C Subcontractor.
- (h) The amendments to the Concession Deed effected by the WGT CityLink and ESEP Concession Amending Deeds do not change the rights of the parties under this Deed (if any) in relation to customers (including customer contracts and customer data). Each party agrees not to make any claim against the other parties inconsistent with this clause 3.4(f).

3.4AH Subcontracts and Roaming Agreement

Upon the expiry of the Concession Period or, where this Deed is terminated earlier than the expiry of the Concession Period, as soon as reasonably practicable following the expiry of the Concession Period (having regard to any subcontracts required to be retained by the Company for the period of time which the Company is required to perform any Transition Services under this Deed), the Company must:

- (a) **(novation of Subcontracts):** subject to clause 3.4AH(b) and clause 3.4AH(c), procure the novation or, if such novation cannot be procured, the assignment to the State or its nominee of:
 - (i) such subcontracts (excluding the Operating Services Agreement (CityLink) and the Service Agreement) as they relate to the Link as the State may nominate;
 - (ii) any leases, subleases and licences proposed to be novated or assigned by the Company and agreed to by the State; and
 - (iii) the Roaming Agreement;
- (b) **(novation of Subcontracts (O&M – CityLink / WGT)):**
 - (i) upon Consolidated Handover, procure the novation or, if such novation cannot be procured, the assignment to the State or its nominee of all Subcontracts (O&M – CityLink/WGT) (other than the Operating Services Agreement (CityLink)); or
 - (ii) upon Single Asset Handover (CityLink), either:
 - (A) procure the partial novation or, if such partial novation cannot be procured, the partial assignment to the State or its nominee of those aspects of the Subcontracts (O&M – CityLink/WGT) (other than the Operating Services Agreement (CityLink)) that relate to the Project; or

- (B) procure from each subcontractor who is a party to a subcontract (O&M – CityLink/WGT) (other than the Operating Services Agreement (CityLink)) a new subcontract (**New CityLink Subcontract**) which is to be entered into by that subcontractor with the State or its nominee which:
 - (1) relates only to the provision of operation, maintenance, repair and/or tolling goods or services (including, where applicable, the provision of licensed materials) in relation to the Project; and
 - (2) is on the same terms as the relevant Subcontract (O&M – CityLink/WGT), other than in relation to pricing; and
 - (iii) in relation to pricing under the New CityLink Subcontract, use reasonable endeavours to procure from the relevant subcontractor an agreement to provide the relevant goods or services (including, where applicable, the provision of licensed materials) to the State or its nominee for a price that is no less favourable than the price for which those goods or services were provided to the Project and the WGT Project under the relevant Subcontract (O&M – CityLink/WGT), having regard to the proposed level of consumption of the goods or services by the State or its nominee under the New CityLink Subcontract compared to the consumption of those goods or services by the Project and the WGT Project; and
- (c) **(Enterprise-wide Subcontracts):**
 - (i) provide the State with the following information in relation to each Enterprise-wide Subcontract:
 - (A) the identity of the counterparties to the Enterprise-wide Subcontract; and
 - (B) the nature of the goods or services provided or to be provided, or rights granted or to be granted, under the Enterprise-wide Subcontract; and
 - (ii) use reasonable endeavours to procure from each subcontractor who is a party to an Enterprise-wide Subcontract a new subcontract (**New CityLink Subcontract**) which is to be entered into by that subcontractor with the State or its nominee which:

- (A) relates only to the provision of operation, maintenance, repair and/or tolling goods or services (including, where applicable, the provision of licensed materials) in relation to the Project; and
- (B) is on the same terms as the relevant Enterprise-wide Subcontract, other than in relation to pricing; and
- (iii) in relation to pricing under the New CityLink Subcontract, use reasonable endeavours to procure from the relevant subcontractor an agreement to provide the relevant goods or services (including, where applicable, the provision of licensed materials) to the State or its nominee for a price that is no less favourable than the price for which those goods or services were provided to the Transurban Group under the relevant Enterprise-wide Subcontract, having regard to the proposed level of consumption of the goods or services by the State or its nominee under the New CityLink Subcontract compared to the consumption of those goods or services by the Transurban Group.

3.4AI Material for exercise of Intellectual Property Rights

Other than in respect of the D&C Subcontractor IPR (as defined in the WGT Project Agreement), upon the expiry of the Concession Period or, where this Deed is terminated earlier than the expiry of the Concession Period, as soon as reasonably practicable following the expiry of the Concession Period, the Company must, to the extent not already provided under this Deed (but without limiting the Separation Plans), provide to the State or its nominee all reasonable documentation, information, assistance and materials as the State may reasonably require for the State's:

- (a) use or enjoyment of the Link and the Project Material; or
- (b) use and enjoyment of the Project Intellectual Property Rights,

to the extent such use or enjoyment is consistent with a licence granted to the State or its nominee or agreed under this Deed in respect of the Project Material or Project Intellectual Property Rights (in the same manner to which the Company used or enjoyed or was required to use or enjoy that Project Material or those Project Intellectual Property Rights), including for all Project Material that consists of computer software:

- (c) a copy of that computer software (in object code and, subject to any exceptions to the licences granted to the State or its nominee which have been agreed between the parties in or pursuant to [#] of this Deed, source code format) and object code of computer software, together with all data (other than financial records stored within the Finance System) and, documentation forming part of the

Project Material that relates to that computer software, as installed on any computer hardware forming part of the Link or any traffic control room utilised in connection with the Link, provided that:

- (i) except as set out in clause 3.4AI(c)(ii), where that computer software is Third Party Software provided to the Company on an 'as-a-service' or similar basis, the Company's obligation to provide a copy of that computer software will be satisfied by procuring for the State or its nominee access to that computer software; and
 - (ii) where that computer software forms part of the Tolling System back office or asset management system, the Company's obligation to provide a copy of that computer software will be satisfied by providing a replica of the Tolling System back office or asset management system (as applicable) in accordance with the applicable Separation Plan and Handover Condition; and
- (d) all information and assistance necessary for the State or its nominee to use, operate and maintain (in the same manner to which the Company used, operated, and maintained or was required to use, operate or maintain) the computer software and Project Material for the purposes for which they are licensed under this Deed.

3.4AJ

Transition Services

- (a) **(Transition Services):** If Handover has not occurred by the expiry of the Concession Period, the Company must perform the Transition Services on and from the day after the expiry of the Concession Period until Handover has occurred.
- (b) **(Standard of Transition Services):** The Transition Services must be carried out to a standard that is the higher of:
 - (i) the standard of performance required by this Deed; and
 - (ii) the standard of performance achieved by the Company immediately prior to the expiry of the Concession Period,

in respect of the relevant operation and maintenance activities comprising the Transition Services, provided that the Company is relieved from complying with:

- (iii) clause 14.3(f);
- (iv) any requirements relating to design life;

- (v) a new standard or a material change in a standard introduced or made after the expiry of the Concession Period; and
 - (vi) the key performance indicator regime,
- and the parties agree that the Company will not be entitled to retain toll revenue collected while carrying out the Transition Services and will act as agent of the State in collecting any toll revenue.
- (c) **(Agreement of Commercial Terms):** As soon as reasonably practicable following the earlier of the:
 - (i) Separation Notice (where applicable);
 - (ii) State Notice of Intention to Terminate (where applicable); and
 - (iii) the date of the Handover Reviewer's first Outstanding Matters Report,the Company and the State must meet to agree:
 - (iv) the Transition Services Fee to be calculated (if any) in accordance with clause 3.4AQ; and
 - (v) the terms upon which the Transition Services will be performed consistent with the requirements of clause 3.4AJ(b) having regard to:
 - (A) the time and circumstances of the termination;
 - (B) the Anticipated Transition Services Period; and
 - (C) standard terms and conditions at the time of termination on which a competent and reasonable operator of a toll road carrying out services similar to the Transition Services would be engaged, including:
 - 1) applicable key performance indicators; and
 - 2) risk allocation.

3.4AK

Licence to perform Handover Services and Transition Services

- (a) **(Grant of access to Post Expiry Licensed Area):** The State must grant or procure the grant to the Company and its associates of a non-exclusive licence to those parts of the Project Land (or the areas which formed the Project Land on the expiry of the Concession Period) which are required by the Company to carry out:
 - (i) any Handover Services not completed by the expiry of the Concession Period; and

- (ii) to the extent the Company is required to carry out the Transition Services in accordance with clause 3.4AK(a), the Transition Services,

(the Post Expiry Licensed Area), with effect on and from the day after the expiry of the Concession Period until Handover occurs.

- (c) **(No interference)**: When accessing or utilising the Post Expiry Licensed Area, the State must not, and must ensure that its associates and any other person permitted by it to access or utilise the Post Expiry Licensed Area do not, unnecessarily interfere with the carrying out of the Company's obligations in relation to the Handover Services or the Transition Services (as applicable).

3.4AL

Deferral of Handover

- (a) **(Deferral of Shared Infrastructure)**: At any time after the parties have agreed or it is determined that Single Asset Handover (CityLink) will occur under clause 3.4AB(a) the State may notify the Company that it proposes that any part of the Link which is utilised for the operation and maintenance of WGT (the **Shared Infrastructure**) be removed from the requirements of the Handover Clauses and be handed over to the State by WGT Co at the expiry of the Term (as defined under the WGT Project Agreement).
- (b) **(Negotiate in good faith)**: Upon receipt of a notice under clause 3.4AL(a), the parties will negotiate in good faith to agree whether, and how such deferral of handover of the Shared Infrastructure, could be achieved, including the allocation of costs and savings incurred and any amendments to the State Project Documents (as defined in the WGT Project Agreement) and the Project Documents required to give effect to the arrangement.

3.4AM

Assistance in securing continuity

Without limiting the Company's other obligations in respect of Handover in accordance with the Handover Clauses, the Company must:

- (a) in the final 3 months before the expiry of the Concession Period (or such other period required by the State where the expiry of the Concession Period earlier than the expiry of the Concession Period), train suitably qualified personnel nominated by the State in respect of the operation, maintenance and repair of the Link to a level of competency to operate, maintain and repair the Link to the standards required of the Company in accordance with this Deed from the relevant expiry of the Concession Period; and
- (b) before the expiry of the Concession Period, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for delivering the Project

to the State or its nominee in accordance with the Handover Clauses, including:

- (i) **(meetings)**: meeting with the State and such other persons notified by the State to discuss the Project;
- (ii) **(access)**: providing access to its operations for managers and supervisors of the State or its nominee for the purpose of familiarisation; and
- (iii) **(information)**: providing sufficient information to the State or its nominee to determine the status and condition of the Project and any works program in place at the time.

3.4AN Power of attorney

The Company irrevocably:

- (a) **(attorney appointment)**: appoints the State, and the State's nominees from time to time, jointly and severally, as its attorney with full power and authority:
 - (i) with effect from the end of the Concession Period, to execute any agreement or novation contemplated by clause 3.4AN; and
 - (ii) to exercise the State's rights in accordance with clause 9.11; and
- (b) **(ratification)**: ratifies and confirms whatever action is taken by the attorney appointed by the Company under clause 3.4AN.

3.4AO No double up

The parties acknowledge that WGT Co may discharge the Company's obligations to:

- (a) transfer, deliver or provide any benefit; and
- (b) provide any services, access, information or training,

under the Handover Clauses, and the State agrees that discharge of such obligations by the WGT Co will constitute full and final discharge of those obligations by the Company and the State will have no Claim against the Company in relation to a failure by the Company to perform those obligations.

3.4AP Standard of performance

For the purposes of the Handover Clauses, in relation to the operation and maintenance activities, references to "the standards specified in accordance with this Deed" or "the standards required of the Company in accordance with this Deed" means the higher of:

- (a) the standards of performance required by this Deed; and
- (b) the standards of performance achieved by the Company immediately prior to the expiry of the Concession Period.

3.4AQ

Separation Fee and Transition Services Fee

- (a) **(Obligation to pay Separation Fee):** Subject to clause 3.4AQ:
- (i) in the case of Single Asset Handover (CityLink), the Company will be entitled to payment of the Separation Fee upon the occurrence of Handover; and
 - (ii) the Company will be entitled to payment of the Transition Services Fee (if any) monthly during the Transition Services Fee Entitlement Period.
- (b) **(Termination for default or natural expiry):** The parties acknowledge and agree that:
- (i) the Separation Fee and Transition Services Fee will not be payable by the State where this Deed has been terminated prior to the expiry of the Concession Period under clause 15.3 of this Deed;
 - (ii) the Transition Services Fee will not be payable by the State where this Deed expires on the expiry of the Concession Period; and
 - (iii) where this Deed:
 - (A) has been terminated prior to the expiry of the Concession Period under clause 15.3; or
 - (B) expires on the expiry of the Concession Period,
- the parties are not required to comply with clauses 3.4AQ(c) to 3.4AQ(j).
- (c) **(Calculation of Separation Fee):** The parties agree that the Separation Fee will comprise the following:
- (i) the actual internal and external costs reasonably and properly incurred by the Company in carrying out the Separation Plan Services; and
 - (ii) the actual net incremental internal and external costs reasonably and properly incurred by the Company in carrying out any part of the Handover Services which would not have been required to be carried out by it had a Consolidated Handover been performed.
- (d) **(Calculation of the Transition Services Fee):** The parties agree that:
- (i) the Transition Services Fee will comprise the following:
 - (A) the actual internal and external costs reasonably and properly incurred by the Company in carrying out the Transition

Services during the Transition Services Fee Entitlement Period, including the cost of effecting and maintaining insurances which a prudent service provider would maintain when providing services of a similar nature to the Transition Services; and

- (B) a margin of 10% applied to the amount described in clause 3.4AQ(d)(i);
- (ii) the Company will be entitled to payment of the Transition Services Fee for the period calculated using the following formula:

$$Y = X - Z$$

where:

- A. *Y is the period for which the Company is entitled to payment of the Transition Services Fee;*
- B. *X is 6 months; and*
- C. *Z is the period between the date of the State Notice of Intention to Terminate and the Expiry Date,*

- (iii) **(Transition Services Fee Entitlement Period);** and
- (iv) where the value of Y, as calculated in accordance with clause 3.4AQ(d)(ii), is zero or a negative number, the Transition Services Fee will not be payable by the State.
- (e) **(Applicable rates):** As soon as reasonably practicable following the earlier of the Separation Notice (where applicable), the State Notice of Intention to Terminate (where applicable) and the date of the Handover Reviewer's first Outstanding Matters Report:
 - (i) the Company and the State will meet to agree:
 - (A) the rates applicable to the calculation of the Separation Fee and, where applicable, the Transition Services, which must be reasonable having regard to (at the time of the calculation):
 - 1) in respect of internal costs of Separation Plan Services and Transition Services, the costs of a competent and reasonable

- operator of a toll road carrying out services similar to those Separation Plan Services and Transition Services (as applicable);
- 2) in respect of external costs of Separation Plan Services and Transition Services, the costs of a competent and reasonable third party provider of services similar to those Separation Plan Services or Transition Services (and who would be qualified to undertake those Separation Plan Services or Transition Services) engaged on arm's length terms, unless it is only feasible for the relevant Separation Plan Services or Transition Services to be undertaken by the Company's existing service provider, then at their existing rates; and
- (B) the internal and external costs to be incurred by the Company in carrying out any part of the Handover Services which would not have been required to be carried out by it had a Consolidated Handover been performed; and
- (ii) if the parties cannot agree on the applicable rates within 3 months of their first meeting under this clause 3.4AQ, either party may refer the matter for resolution in accordance with Article 16.
- (f) **(Update to applicable rates):** If, at any time following an agreement or determination under clause 3.4AQ(d), either party (acting reasonably) considers that:
- (i) the rates so agreed or determined are no longer reasonable; or
- (ii) subsequent to the initial agreement or determination the Handover Reviewer forms the opinion that Handover will not occur by the Expiry Date and therefore the Company will be required to provide Transition Services,
- it may give notice of this to the other party and the process in clause 3.4AQ(d) will reapply.
- (g) **(Payment claim (Separation Fee)):** If the Company wishes to be paid the Separation Fee, the Company must:
- (i) within 40 Business Days after the occurrence of Handover, provide to the State a notice setting out

- its calculation of the Separation Fee, together with a valid tax invoice from the Company in respect of such amount; and
- (ii) upon request by the State (acting reasonably), provide further information or documentation necessary to substantiate the Separation Fee, on an open book basis.
- (h) **(State payment (Separation Fee)):** Within 30 Business Days after receiving a notice from the Company under clause 3.4AQ(g), the State must:
- (i) pay to the Company the Separation Fee set out in the Company's notice under clause 3.4AQ(g) or
 - (ii) if it disagrees with the amount of the Separation Fee set out in the notice, pay the undisputed amount to the Company and either party may refer the matter for resolution in accordance with Article 16.
- (i) **(Payment claim (Transition Services Fee)):** If the Company wishes to be paid the Transition Services Fee, the Company must:
- (i) by the 20th day of a calendar month in which Transition Services are carried out, submit to the State:
 - (A) a breakdown of the Transition Services carried out since the previous claim submitted by the Company under this clause 3.4AQ(i)(i) (or in the case of the first claim, since the Expiry Date);
 - (B) the calculation of the Transition Services Fee payable in respect of such Transition Services; and
 - (C) a valid tax invoice from the Company in respect of such amount; and
 - (ii) upon request by the State (acting reasonably), any further information or documentation necessary to substantiate the Transition Services Fee, on an open book basis.
- (j) **(State payment (Transition Services Fee)):** Within 10 Business Days after receiving a notice from the Company under clause 3.4AQ(i)(i), the State must:
- (i) pay to the Company the Transition Services Fee set out in the Company's notice under clause 3.4AQ (i)(i); or
 - (ii) if it disagrees with the amount of the Transition Services Fee set out in the notice, pay the undisputed amount to the Company (and either

party may refer the matter for resolution in accordance with Article 16.)

- (k) **(No time bar):** The parties acknowledge and agree that a failure by the Company to submit the information (including the valid tax invoice) required by clause 3.4AJ(g) or clause 3.fAI(i) within the required time period will not:
 - (i) constitute a breach of this Deed by the Company; or
 - (ii) disentitle the Company to subsequently claim payment for the relevant amount, provided it submits the required information (including the valid tax invoice).

3.5 Assistance in securing continuity

Without limiting the Company and the Trustee's other obligations in respect of surrender and delivery as set out in clauses 3.4 and 3.4A, the Company and the Trustee must:

- (a) in the final 3 months before the expiry of the Concession Period, train suitably qualified personnel nominated by the State in respect of the operation, maintenance and repair of the Link to a level of competency to operate, maintain and repair the Link to the standards required of the Company and the Trustee under this Deed; and
- (b) before the expiry of the Concession Period, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for delivering the Project to the State or its nominee in accordance with clauses 3.4 and 3.4A, including:
 - (i) meeting with the State and such other persons notified by the State to discuss the Project;
 - (ii) providing access to its operations for managers and supervisors of the State or its nominee for the purpose of familiarisation; and
 - (iii) providing sufficient information to the State or its nominee to determine the status and condition of the Project and any works program in place at the time.

4. PROJECT LAND AND LEASES

4.1 Project Land, Lay Down Areas and Off-Site Areas

- (a) In order to co-ordinate and facilitate the land acquisition process for the Project, the State, the Company and the Trustee shall form a consultative committee (the "**Property Committee**") comprising such people and to conduct its proceedings in such manner as agreed between the parties.
- (b) The Property Committee shall not have any legal responsibility nor have any power to require any of the parties to act or refrain from acting in any way.

- (c) The State shall in accordance with clause 4.2(a), make available for the Project each parcel of land comprising the Project Land and Lay Down Areas by the date specified in the Agreed Timetable in relation to that parcel.
- (d) The State shall not be liable for any failure to comply with paragraph (c) or paragraph 4.2(a) insofar as the Company, the Trustee or any Contractor shall have prevented the State from so complying.
- (e) For the purposes of this Deed, the Company and the Trustee will be deemed to have taken possession of land or a parcel of land if they, either of them or any of their nominees have exercised rights or powers procured under paragraph 4.2(a) in relation to the land or the parcel.
- (f) The State shall ensure that the Authority marks off or causes to be marked off as a restricted access area (within the meaning of the Project Legislation) those areas being Project Land or Lay-Down Areas or a temporary construction site within the meaning of the Project Legislation as may reasonably be requested by the Company or Trustee (as applicable).
- (g) The State shall provide an authorisation certificate to enter and remain on any part of a restricted access area (as defined in the Project Legislation) to any person reasonably nominated by the Company or the Trustee.

4.2

Limited Right of Possession and Access

- (a) Subject to the following paragraphs, in relation to each parcel of land described in:
 - (i) the Property Schedule, by the date specified in the Agreed Timetable in relation to the parcel; or
 - (ii) the Off-Site Areas Schedule, by the date of which the Company or the Trustee gives the State reasonable notice (being a date no earlier than that which is reasonably necessary in order to enable the State, the Company and the Trustee to perform their obligations under this Deed),the State shall procure:
 - (iii) insofar as the parcel is within the Project Area, the grant of a licence under the Project Legislation in favour of the Company, the Trustee and their nominees (including the Construction Contractor) providing for a non-exclusive right of possession of that land;
 - (iv) insofar as the parcel is not within the Project Area, the grant of powers of entry and occupation under Part 9 of the Land Acquisition and Compensation Act 1986 (Vic) (subject to the Authority's constituent legislation and the Project Legislation)

in favour of the Company, the Trustee and their nominees (including the Construction Contractor),

sufficient to permit (and for use only to enable) the Company and the Trustee to perform their obligations under this Deed and on such additional terms and conditions as may be imposed under the Project Legislation, being terms and conditions agreed with the Company and the Trustee.

- (b) Subject to the Company's and the Trustee's right to do all things necessary to comply with this Deed, any licence or power granted under paragraph (a) shall be subject to the rights of the public in respect of any part of a parcel of land which is a public roadway.
- (c) The Property Schedule may be adjusted pursuant to paragraph (g).
- (d) Subject to the rights granted by the Project Legislation, before the Date of Completion of a Section, the Company and the Trustee will have no interest, right or title in the Project Land, Lay Down Areas or Off-Site Areas, comprising or relating to that Section, other than rights and powers conferred or procured under paragraph (a) and in clause 4.7.
- (e) The rights and powers granted under paragraph (a) with respect to a parcel of land which did not, has ceased to, or which will not (having regard to clause 4.7), form part of the Project Land, and the rights and powers granted under that paragraph with respect to an Off-Site Area shall expire on the earlier of:
 - (i) the date of Completion of the Section to which that parcel relates; and
 - (ii) the date when that parcel ceases to be required for the purposes of the Works or the Link as specified by notice given by the Company or the Trustee to the State not less than 10 Business Days or such other period as the State and the Company or the Trustee (as applicable) may agree prior to that date.¹⁸¹
- (f) If requested by the Company or the Trustee to do so, then to the extent permitted by the Melbourne City Link Authority Act or the Project Legislation, the State shall endeavour in good faith to make available or procure for the Company and the Trustee such rights of access over land (outside the Project Land and Lay Down Areas) specified in the request as may reasonably be required to enable the Company and the Trustee to perform the Works. In complying with any such request, the State shall not be required to incur expenditure.
- (g) Subject to paragraph (i), the Property Schedule may be adjusted from time to time by the inclusion or removal of

parcels of land specified by the Company or Trustee by notice to the State, that notice also specifying (where an inclusion) whether such a parcel is to be a Lay Down Area or part of Project Land and (if it is to be part of Project Land) whether it is to comprise part of Company Land or Trust Land. Such a parcel of land will only be included in the Property Schedule, however, if and when the State makes it available. Insofar as the parcel:¹⁸²

- (i) is in the Project Area and the State has powers under the Project Legislation enabling it to do so, the State shall exercise those powers to make the parcel available as soon as reasonably practicable;
 - (ii) is not in the Project Area, the relevant notice indicated that the parcel is to comprise part of Project Land, the State has powers under the Project Legislation enabling it to expand the Project Area so as to encompass that parcel, the State has powers under the Project Legislation to make the parcel available and it is reasonable for the State to exercise those powers, the State shall exercise those powers under the Project Legislation to expand the Project Area and make the parcel available as soon as reasonably practicable;
 - (iii) is not in the Project Area, the relevant notices indicated that the parcel is to be or comprise a Lay Down Area, the State has the statutory power enabling it to do so and it is reasonable for the State to exercise that power, the State shall exercise that power to make the parcel available as soon as reasonably practicable.
- (h) The Company and the Trustee accept the time and cost risks associated with parcels of land to which paragraph (g) applies. They, and the State, also accept that the risk of pollution on any such parcel of land is to be dealt with under clause 12.7 and Item 2 of the Appendix, but as if the references in paragraph 12.7(b) to 26 April 1995 and to 28 July 1995 were references to the date on which the notice relating to the relevant parcel of land was given by the Company or the Trustee under paragraph (g). Hence,
- (i) if the State is obliged under that paragraph to exercise powers to make a parcel of land available as soon as reasonably practicable, then (subject to it doing so) the risks of any delay in making the parcel available is borne by the Company and the Trustee;
 - (ii) costs and expenses incurred in the exercise of those powers and the making of parcels available shall be borne by the Company and the Trustee (and as a condition of exercise of any powers, the State may require that it be put in funds sufficient

- to meet costs it will incur as a result of that exercise);
- (iii) paragraph 12.7(b) is to be read subject to this paragraph.
- (i) The State need not exercise any powers in relation to, or otherwise make available, any parcel of land pursuant to paragraph (g) if the parcel relates to a Section which has been Completed or if it is not necessary for the parcel to be made available to enable the Company and Trustee to perform their obligations under this Deed. Any party may refer a dispute to whether a parcel of land is so necessary for expert determination under Article 16.
- (j) If pursuant to paragraph (g) a parcel of land is included in the Property Schedule:
- (i) the Agreed Timetable shall be deemed to specify a date in relation to the parcel consistent with the State's obligation to exercise powers or a power to make the parcel available as soon as reasonably practicable;
- (ii) the schedule shall be amended consistent with the relevant notice under paragraph (g).
- (k) The parties acknowledge that insofar as the Property Schedule consists of maps and a schedule, they intend that those maps and that schedule be examined together when ascertaining whether any particular land is described in the Property Schedule. Any party may refer for expert determination under Article 16 any dispute as to whether any particular land is so described.
- (l) Insofar as Works are to be carried out not on the surface of land but below the surface of land, any rights or powers in relation to that land procured or to be procured or made available by the State under the Project Documents shall be construed as rights and powers that affect areas below either 15.24 metres below the surface of the Land (in the case of freehold land) or 10 metres below the surface of the land (in the case of non-freehold land) or 5 metres below the land in the case of Barkly Gardens (located in South Richmond).

4.3

Obligation to Maintain Roadways

Without limiting the other provisions of this Deed, the Company and the Trustee shall maintain and repair any roadways forming part of a parcel of the Project Land, Lay Down Areas or of the Off-Site Areas in accordance with the Project Scope and Technical Requirements and any reasonable requirements of VicRoads in the period:

- (a) commencing on the date the Company or the Trustee takes possession of that parcel; and
- (b) ending on the earlier of:

- (i) the Date of Completion of the Section to which that parcel relates; and
- (ii) if the parcel did not, does not or will not (having regard to clause 4.7) form part of the Project Land, the date on which that parcel ceases to be required for the purposes of the Works, as specified by notice given by the Company or the Trustee to the State not less than 10 Business Days prior to that date.

4.4 Other Land

- (a) Subject to clause 4.2(c), (f) and (g), and clauses 4.4A, 4.7 and 4E, the State is not responsible for providing the Company or the Trustee with rights relating to any land other than the rights referred to in clause 4.2 in relation to the Project Land, the Lay Down Areas and the Off-Site Areas.
- (b) The Company and the Trustee shall bear all risks associated with obtaining all other such rights.

4.4A Additional Land for Groundwater Management

- (a) During the Concession Period, the Company must use reasonable endeavours to minimise the impact of the Groundwater Management System on Groundwater Land.
- (b) Subject to compliance with clause 4.4A(a), if the Company and the Trustee require access to additional land for ongoing maintenance of the Groundwater Management System in accordance with the Project Scope and Technical Requirements, the Hydrogeology Management Plan and the Hydrogeology Annual Operating Plan, it may submit a request to the State for access to additional land (**Groundwater Land Proposal**).
- (c) A Groundwater Land Proposal must:
 - (i) contain evidence of the Company's compliance with clause 4.4A(a);
 - (ii) include the reason(s) why access to additional land is required;
 - (iii) contain details of:
 - (1) proposed land that the Company has identified as suitable; and
 - (2) proposed alternative suitable land;
 - (iv) describe how locating a recharge bore within the proposed additional land will:
 - (1) enable the Company to continue to meet the requirements of the Project Scope and Technical Requirements, the Hydrogeology Management Plan and the

- Hydrogeology Annual Operating Plan;
and
- (2) recharge the same aquifer as the recharge bore that it is replacing;
- (v) contain any other information and supporting documentation the State reasonably requests.
- (d) The Company and the Trustee will not include land in a Groundwater Land Proposal that does not meet the requirements in paragraph (c)(4).
- (e) The State, in its sole discretion, may agree or disagree with the proposed location of additional land or propose alternative locations.
- (f) Within three months of receiving a Groundwater Land Proposal:
- (i) if the State disagrees with the location of the additional land identified in the Groundwater Land Proposal, the State may direct the Company and the Trustee to resubmit a Groundwater Land Proposal, to which paragraphs (c) to (f) will apply (**Groundwater Land Direction**); or
- (ii) if the State:
- (1) agrees with the location of the additional land identified in the Groundwater Land Proposal; or
- (2) disagrees with the location of the additional land identified in the Groundwater Land Proposal and wishes to procure access to alternative land that will enable the Company to continue to meet the requirements of the Project Scope and Technical Requirements, the Hydrogeology Management Plan and the Hydrogeology Annual Operating Plan to be used by the Company for ongoing maintenance of the Groundwater Management System,
- then the State may issue an order detailing the access to the additional land that the State will procure for the Company to use for the ongoing maintenance of the Groundwater Management System, including the approximate date the State will provide access to the additional land (**Groundwater Land Order**).
- (g) If the State considers (acting reasonably) that the Company has discharged its obligation under paragraph 4.4(a), the State shall use reasonable endeavours to make the additional land in the Groundwater Land Order available to the Company and the Trustee.

- (h) The Company must comply with a Groundwater Land Direction or Groundwater Land Order.
- (i) The Company and the Trustee accept the cost risks associated with the procurement of access to additional land to which this clause 4.4A applies.
- (j) The Company must pay to the State the reasonable costs properly incurred in procuring the additional land the subject of a Groundwater Land Order within 20 Business Days of the State providing evidence of those costs to the Company.
- (k) The State will use reasonable endeavours to provide access to the land the subject of a Groundwater Land Order within 36 months after the date of the Groundwater Land Order.
- (l) The State must use reasonable endeavours to assist the Company to obtain all necessary licences to conduct activities relating to the management of the Groundwater Management System (subject to the Company meeting the licensing requirements).
- (m) If there is a delay in obtaining additional land, the Company must still comply with its obligations in section 2.10.2 of Part E of the Project Scope and Technical Requirements through the use of the remaining available recharge wells in accordance with this Deed, Hydrogeology Management Plan and the Hydrogeology Annual Operating Plan.
- (n) If the Company or the Trustee (as the case may be) disputes all or any part of a Groundwater Land Order or the obligation to pay costs in accordance with paragraph (j), the Company or the Trustee may refer the matter for expert determination under Article 16.

4.5

Occupation and Restoration

Without limiting clauses 3.4 and 4.3 or any of their obligations at Law, each of the Company and the Trustee shall comply with the following obligations in relation to Project Land, Lay Down Areas, Off-Site Areas and land over which it has access under clause 4.2(f), which does not or will not (having regard to clauses 4.7 and 4.7A) form part of the land the subject of a Company Lease, Trust Lease, Burnley Office Site Lease or Lorimer Street Site Lease.¹⁸³

- (a) cause as little harm and inconvenience and do as little damage as possible to the land and anything on or growing on the land;
- (b) remain on the land only for such period as is reasonably necessary;
- (c) remove from the land on completion of occupation all plant, machinery, equipment, goods or buildings brought onto, or erected on, the land other than any of those things that the State, a relevant Victorian Government Agency or the owner or occupier agrees may be left on the land;

- (d) subject to the Works required to be performed on any part of the land, leave the land, as nearly as possible, in the condition in which it was immediately before the land was occupied;
- (e) use reasonable endeavours to co-operate with the State, the relevant Victorian Government Agency or other owner or occupier of the land; and
- (f) install and maintain reasonably appropriate systems of security in respect of the Works, the land and structures on the land.

4.6

Condition of Project Land, Off-Site Areas and Structures

- (a) Subject to paragraph (c), the State makes no representation and gives no warranty to the Company or the Trustee in respect of:
 - (i) subject to clause 12.7, the condition or state of repair of:
 - (A) the Project Land, Lay Down Areas or Off-Site Areas; or
 - (B) any structure on the Project Land, Lay Down Areas or on the Off-Site Areas;
 - (ii) the location or availability of Services in respect of the Project Land, Lay Down Areas or the Off-Site Areas;
 - (iii) any matter accepted in paragraph (b).
- (b) Subject to clauses 2.9 and 2.10 and to paragraphs (c) and (f), the Company and the Trustee accept the Project Land, Lay Down Areas and Off-Site Areas and structures on the Project Land, Lay Down Areas and the Off-Site Areas:
 - (i) in their condition and state of repair from time to time;
 - (ii) subject to all defects, including sub-surface soil conditions;
 - (iii) (except as provided in clause 12.7) subject to any pollution or contamination, whether or not known to the State, or a Government Agency;
 - (iv) subject to all easements and rights of way in favour of Victorian Government Agencies or Utilities; and
 - (v) subject to any third party claims or rights, in respect of historic sites or buildings or aboriginal sacred sites.
- (c) Subject to paragraph (e), the State shall bear the risk of Specified Imperfections and may at its option and cost, rectify them or arrange for them to be rectified in the manner indicated in the schedule referred to in sub-

paragraph 2.7(d)(xv) in relation to the relevant defect and to a standard consistent with the current code of practice which apply to rectification of defects in structures of that type.

- (d) If a Specified Imperfection is to be rectified by a person other than the Company, the Trustee or a Contractor:
- (i) the State shall give prior notice to the Company and the Trustee of its intention to rectify the Specified Imperfection;
 - (ii) the State shall use reasonable endeavours to ensure that any rectification work performed by it or on its behalf causes as little disturbance as practicable to the construction or operation of the Link;
 - (iii) the Company and the Trustee shall co-operate (and shall ensure that their respective Contractors co-operate) with the State in ensuring that the State and anyone acting on the State's behalf in rectifying a Specified Imperfection shall have such access to the Project Land, Lay Down Areas, the Off-Site Areas and to such Services as may be required properly to perform the work;
 - (iv) the State shall indemnify the Company and the Trustee against:
 - (A) reasonable costs and expenses incurred or payable because of the Works being delayed due to work undertaken to rectify the Specified Imperfection (including any consequent delay in achievement of Completion of all Sections);
 - (B) claims, demands, losses and reasonable costs and expenses made against or incurred or payable by the Company or the Trustee as a result of the Specified Imperfection not having been rectified:
 - (1) by a date specified by the Company or the Trustee to the State which is reasonable having regard to the Construction Program for the Section to which the Specified Imperfection relates, the time reasonably necessary to rectify it and the period of notice given to the State of that date;
 - (2) to the standard required under paragraph (c); or
 - (3) due to negligent workmanship or defective materials.

For the avoidance of doubt, the indemnity will not be affected if the Company or the Trustee cannot specify a date under paragraph (1) because the period between Financial Close and the date which is reasonable having regard to the Construction Program is not a reasonable period within which to remedy the Specified Imperfection.

- (e) If a Specified Imperfection is to be rectified by the Company, the Trustee or a Contractor:
 - (i) the State shall not bear the risk of the Specified Imperfection and if the person rectifying it is a Contractor, the State shall use reasonable endeavours to confer on the Company and the Trustee all the State's rights against the Contractor in relation to the rectification works and to ensure that those rights are capable of being so conferred;
 - (ii) the State shall indemnify the Company and the Trustee against reasonable costs and expenses incurred or payable because of the Works being delayed due to work undertaken to rectify the Specified Imperfection (including any consequent delay in achievement of Completion of all Sections).
- (f) If the State elects not to rectify a Specified Imperfection or arrange for it to be rectified, it shall indemnify the Company and the Trustee against claims, demands, losses and reasonable costs and expenses made against or incurred or payable by the Company or the Trustee as a result of the Specified Imperfection.
- (g) The Company and the Trustee shall each use reasonable endeavours to minimise costs and expenses to which subparagraph (d)(iv)(A), (d)(iv)(B) or (e)(ii) applies. The State shall indemnify the Company and the Trustee against reasonable costs and expenses incurred or payable as a result of those endeavours.
- (h) Where the Project Scope and Technical Requirements require the Company or the Trustee to use, incorporate or upgrade an existing structure on the Project Land, the Lay Down Areas or on the Off-Site Areas, the State shall procure that each relevant Victorian Government Agency shall use reasonable endeavours to confer on the Company and the Trustee, all its rights in relation to defects in that existing structure against other persons where liability in relation to those rights is not borne directly or indirectly by the State or any Victorian Government Agency.
- (i) Nothing in this clause 4.6 obliges the Company, the Trustee or a Contractor to agree to rectify a Specified Imperfection.

4.7

Section Leases¹⁸⁴

- (a) Subject to clause 4.8 and paragraph (c), from the Date of Completion of:
 - (i) each relevant Section that comprises or includes Company Land, the State shall grant; and
 - (A) the Company shall accept, the relevant Company Lease; and
 - (B) the Trustee shall accept, the relevant Trust Concurrent Lease; and
 - (ii) each relevant Section that comprises or includes Trust Land, the State shall grant and the Trustee shall accept, the relevant Trust Lease.
- (b) The Company and the Trustee shall ensure that the Company has such rights granted by the Trustee in relation to the Trust Land as may be necessary or desirable to enable the Company to perform its obligations to the State under the Project Documents.
- (c) Each Lease will provide for a lease of such of the land (or a lease of such interests in such of the land) identified in paragraph (a) of the definition of Company Land (in the case of a Company Lease or Trust Concurrent Lease), or paragraph (a) of the definition of Trust Land (in the case of a Trust Lease), as is necessary for the Company or the Trustee (as applicable) to have possession of, and (unless created or granted prior to the grant of the Lease) a grant of such easements over such of that land as is necessary for the Company or the Trustee to have, in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the Leases, (as identified in the plan of survey referred to in clause 4.8(a), and, hence:¹⁸⁵
 - (i) some parcels of land included in the Project Land prior to the grant of a Lease may not continue to form part of the Project Land; and
 - (ii) the Leases may, in part, be only of interests in land or of undivided strata of land.
- (ca) Prior to the grant of a Lease (being a Lease which provides for a lease of land benefited by such easements), the State will, pursuant to section 339B of the Land Act 1958 (Vic), create easements over such of the land identified under clause 4.7(c) as is necessary for the Company or the Trustee to have in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the Leases.¹⁸⁶
- (cb) If (but without any obligation to agree) the State and either the Company (in the case of a Company Lease) or the Trustee (in the case of a Trust Lease and Trust Concurrent Lease) so agree prior to the grant of the relevant Lease,

such Lease will (in addition to the lease of land and the lease of interests in land under clause 4.7(c)) provide for a lease of such land (or a lease of interests in such land) the subject of the agreement between the State and the Company or the Trustee (as the case may be).¹⁸⁷

- (cc) If the Company so requests and the State (without any obligation to agree) so agrees, the State will, prior to the grant of a Lease (being a Lease which provides for a lease of land benefited by such easements) and pursuant to section 339B of the Land Act 1958 (Vic), create easements over such land (not being land identified in clause 4.7(c)) and on such terms the subject of the agreement between the State and the Company.¹⁸⁸
- (d) The State, the Company and the Trustee shall consult, in good faith, before the State:
 - (i) creates easements under clause 4.7(ca); or
 - (ii) grants the Leases under clause 4.8,in an endeavour to agree on how the operation of clauses 4.7(c) and 4.7(ca) affect the land (and interests in land) to be the subject of the Leases.¹⁸⁹
- (e) If the parties do not reach agreement under paragraph (d) within 28 days of notice being given by a party that it requires the matter to be determined under Article 16, any party may refer the matter for expert determination under Article 16.

4.7A Burnley Office Site Lease and Lorimer Street Site Lease

Subject to clause 4.8, the State shall grant, and the Company shall accept:

- (a) in relation to the Burnley site, the Burnley Office Site Lease; and
- (b) in relation to the Lorimer Street Site, the Lorimer Street Site Lease.¹⁹⁰

4.8 Procedures

- (a) The State shall, as soon as practicable in all the circumstances:¹⁹¹
 - (i) procure the preparation of a plan of survey to enable each Lease, Burnley Office Site Lease and Lorimer Street Site Lease to be completed and executed and a folio of the Register (within the meaning of the Transfer of Land Act 1958) created for it; and¹⁹²
 - (ii) procure that the plan of survey (or relevant part of it) is annexed to each Lease, Burnley Office Site Lease and Lorimer Street Site Lease given by it to the Company or the Trustee under paragraph (d) and (if applicable) identifies each necessary

easement granted under clauses 4.7(c) and 4.7(ca).^{193 194}

- (b) The Company and the Trustee shall co-operate with the State (including giving details of final boundaries to, and strata of, the Burnley site, the Lorimer Street Site and the Project Land, and the location of the relevant Section within the Project Land) to enable the State to perform its obligations under paragraph (a) and the State on the one part and the Company and Trustee on the other, shall pay one half of the aggregate of the reasonable cost of preparing each plan of survey and reasonable costs incurred in providing that co-operation.¹⁹⁵
- (c) Each of the Company Leases, the Trust Leases, the Trust Concurrent Leases, the Burnley Office Site Lease and the Lorimer Street Site Lease will be completed by the State.¹⁹⁶
- (d) The State shall give each relevant Lease, and the Burnley Office Site Lease and the Lorimer Street Site Lease to the Company or the Trustee (as the case may be) as soon as practicable after the plan of survey for the relevant Section or site is available.¹⁹⁷
- (e) The Company and the Trustee shall execute each Company Lease, Trust Lease and Trust Concurrent Lease and the Burnley Office Site Lease and the Lorimer Street Site Lease (as the case may be), within 14 days after receiving it.¹⁹⁸
- (f) The State shall, as soon as reasonably practicable, produce to the Land Titles Office:
 - (i) such documents relating to the Section relevant to a Lease as it may be necessary to so produce in order to enable the creation of a folio of the Register (within the meaning of the Transfer of Land Act 1958) for the Lease; and
 - (ii) such instruments or documents as it may be necessary to so produce in order to enable an appropriate recording on any relevant folio of the Register (within the meaning of the Transfer of Land Act 1958) that any land in the folio is benefited by an easement created under section 339B of the Land Act 1958 (Vic) (being an easement created pursuant to clause 4.7(ca) or clause 4.7(cc) of this Deed).^{199 200}
- (fa) The State shall, as soon as reasonably practicable, produce to the Land Titles Office such documents relating to the site relevant to the Burnley Office Site Lease and the Lorimer Street Site Lease as it may be necessary to so produce in order to enable the creation of a folio of the Register (within the meaning of the Transfer of Land Act 1958) for the Burnley Office Site Lease and the Lorimer Street Site Lease.²⁰¹

- (g) Notwithstanding a Lease of land included in a Section has not yet been executed, the parties to the Lease will be bound as from the Date of Completion of the relevant Section as if it had been executed and as if it did not apply to land included in other Sections.
- (h) The Company and the Trustee shall each promptly stamp and take all steps to enable registration of each Lease, the Burnley Office Site Lease and the Lorimer Street Site Lease of which it is lessee.²⁰²
- (i) Subject to paragraph (j), the Company and the Trustee shall each promptly stamp (to the extent required by Law) and take all necessary steps to enable registration of each sublease of which it is a sublessor.²⁰³
- (j) Paragraph (i) does not require the registration of any sublease of the Trust Land granted by the Trustee to the Company.²⁰⁴

4.9

Land Tax

- (a) Land tax will not be assessed by or payable to the State on any part of the Project Land:
 - (i) that is utilised for the purpose of a roadway;
 - (ii) (in relation to a Section which has not been Completed) which is likely to be utilised for the purpose of a roadway after Completion;
 - (iii) on which ventilation stacks are constructed;
 - (iv) which is landscaped or comprises embankments (as long as the relevant part is not being used for commercial, including advertising, purposes);
 - (v) on which is located buildings used for the purpose of housing Link control rooms.
- (b) The State shall, however, indemnify the Company and the Trustee against any liability they, or either of them, may have for Land Tax in respect of Lay Down Areas or Off Site Areas.

4.10

Services to the Project

- (a) The Company and the Trustee shall comply with all provisions of the Project Documents and the Project Scope and Technical Requirements in relation to:
 - (i) installing;
 - (ii) relocating;
 - (iii) altering; or
 - (iv) maintaining,any Services.
- (b) As between the parties, the Company and the Trustee shall be responsible for the cost of all Services supplied to any of

the Company, the Trustee or any Contractor in respect of the Project.

4.11 Rights of the State

- (a) The Company and the Trustee acknowledge the right of the State, and of Government Agencies providing Services to enter upon the Project Land, SLU Lay Down Areas, CTW Extra Land and State Returned Works Areas to:

- (i) install;
- (ii) relocate;
- (iii) alter; or
- (iv) maintain,

Services subject to the Project Legislation, whether for the purposes of the Project or otherwise. The State shall use reasonable endeavours to ensure that reasonable notice of the exercise of this right is given to the Company or the Trustee (except in the case of emergencies) and that work done in relation to the Services is performed in an efficient and timely manner so as to minimise interference with the construction, operation or maintenance of any Section or any material part of the Link. Subject to the Project Legislation the Company and the Trustee also acknowledge that none of the Project Documents are intended to limit the rights of those providing Services (including Utilities) under Law.

- (b) The State shall be entitled to authorise a provider of Services not required for the purposes of the Project to enter upon the Project Land, SLU Lay Down Areas, CTW Extra Land and State Returned Works Areas to:

- (i) install;
- (ii) relocate;
- (iii) alter; or
- (iv) maintain,

Services subject to the Project Legislation, provided the work done in relation to the Services does not interfere (other than on a temporary basis) with the construction, operation or maintenance of the Link. The State shall use reasonable endeavours to ensure that reasonable notice of any grant of authority under this paragraph is given to the Company or the Trustee (except in the case of emergencies).

4.12 Cable Right of Way

The State shall provide or procure that there be provided such right of access as may reasonably be required by the Company or the Trustee to lay and maintain cables under the West Gate Freeway between Sturt Street and Graham Street and within the Monash Freeway reserve between the Southern Link and Toorak Road, at the

cost of the Company and the Trustee and only insofar as those cables are necessary for the purposes of the Project.

4.13

Termination of Licences and Declaration of Link Road

- (a) The State shall on Completion of a Section, or after receipt of a notice under clause 9.3(b) in respect of a Section, terminate the licences issued under section 56 of the Project Legislation insofar as they apply to land within that Section.²⁰⁵
- (b) If by no later than 15 Business Days prior to Completion of a Section, the Company has provided to the State all access and information reasonably necessary to enable the State to prepare the plans required, the State shall within 2 Business Days of Completion of that Section:
 - (i) procure that part of the land which is (or is to be) leased under clause 4.7 with respect to the Section is declared under section 61 of the Project Legislation to be a road; and
 - (ii) procure that any statement made in such a declaration as to whether the road so declared should be treated as a freeway or state highway is consistent with any agreement in relation to that treatment made by the State and the Company on or before the date of the declaration.

Each Business Day by which the Company misses the 15 Business Days deadline will commensurately increase the period in which the State must perform its obligations under this paragraph.

- (c) In clauses 4.13(a) and 4.13(b), "Section" means each of Southern Link Section 3 and Southern Link Section 4.²⁰⁶
- (d) The State shall, if requested in writing by the Company (the "**notice**") and the State so agrees:
 - (i) terminate all licences issued under section 56 of the Project Legislation and in existence as at 14 December 1999, all parties agreeing and acknowledging that, as a consequence, the temporary reservations in respect of all licensed land will be immediately revoked by operation of the Order in Council published in the Victoria Government Gazette (Special) No S 181 on 14 December 1999 (pages 1 to 20) and section 59(3) of the Project Legislation;
 - (ii) procure that:
 - (A) within 3 Business Days after the receipt of the notice, a licence (or licences) is (or are) issued under section 56 of the Project Legislation in respect of the land (being land within a Section or Sections)

identified in the notice as requiring a licence (or licences);

- (B) the land which is identified in the notice as requiring a road declaration, is declared under section 61 of the Project Legislation to be a road; and
- (C) any statement made in such a declaration as to whether the road so declared should be treated as a freeway or State highway is consistent with the notice,

provided that, in respect of any Section which includes land which is (or is to be) declared as a road pursuant to paragraph 4.13(d)(ii)(B), the Company and the Trustee agree and acknowledge that:

- (iii) the Section will not be opened for public use other than under clause 9.3(a) or clause 9.3(b); and
 - (iv) the Section will be opened for public use under clause 9.3(a) or clause 9.3(b) as soon as practicable after part of the land within the Section is declared to be a road.²⁰⁷
- (e) Notwithstanding paragraphs (a) to (d) of this clause 4.13, the State shall, if requested in writing by the Company (in this clause 4.13(e), the "**Notice**") and the State so agrees, terminate the licences identified in the Notice, being licences issued under section 56 of the Project Legislation, on the date specified in the Notice.²⁰⁸
- (f) If:
- (i) in a Notice under clause 4.13(e) or in any other notice in writing, the Company identifies land which is (or is to be) leased under clause 4.7 as requiring a road declaration on the date specified either in such Notice under clause 4.13(e) or in such other notice (as the case may be) (the "**requested declaration date**"), provided that, if the identified land is the subject of a licence, the requested declaration date must not be earlier than the date of termination of the licence as to such land; and
 - (ii) by no later than 15 Business Days prior to the requested declaration date, the Company has provided to the State all access and information reasonably necessary to prepare the plans required for the purposes of that road declaration,

the State shall:

- (iii) on the requested declaration date, procure that the land which is identified under sub-paragraph (i) as requiring a road declaration is declared under

section 61 of the Project Legislation to be a road;
and

- (iv) procure that any statement made in such a declaration as to whether the road so declared should be treated as a freeway or State highway is consistent with any agreement in relation to that treatment by the State and the Company on or before the date of the declaration.

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4.14 Application to the SLU and the CTW

For the purposes of clarification, clauses 4.1, 4.2, 4.3, 4.4., 4.5, 4.6, 4.7, 4.7A, 4.8 and 4.13 do not apply to the SLU or the CTW or the CTW Maintenance Activities.

4A. SLU PROJECT LAND AND SLU LEASES

4A.1 SLU Project Land and SLU Lay Down Areas

- (a) The State shall in accordance with clause 4A.2(a), make available for the SLU each parcel of land comprising the SLU Project Land and SLU Lay Down Areas by the date specified in the SLU Agreed Timetable in relation to that parcel.
- (b) The State shall not be liable for any failure to comply with paragraph (a) or paragraph 4A.2(a), but such failure may constitute a delay to achievement by the Company of SLU Practical Completion for the purposes of clause 8.5 of the M1 Corridor Redevelopment Deed. For the avoidance of doubt, the State will not be considered to have delayed the Company by reason of a failure to comply with paragraph (a) or paragraph 4A.2(a) insofar as the Company, the Trustee or any SLU Contractor shall have prevented the State from so complying.
- (c) For the purposes of this Deed, the Company and the Trustee will be deemed to have taken possession of land or a parcel of land if they, either of them or any of their nominees have exercised rights or powers procured under paragraph 4A.2(a) in relation to the land or the parcel.
- (d) The State shall cooperate with the Company and the Trustee to restrict unauthorised persons from entering on, or remaining on, any parcel of land comprising the SLU Project Land and SLU Lay Down Areas after the date on which the Company and Trustee take possession of that Land, except to the extent that land is part of Southern Link Section 1 or Southern Link Section 5.
- (e) The State must procure that prior to making any parcels of land available under clause 4A.2(a)(iii), those parcels of land must be temporarily reserved under the Crown Land (Reserves) Act 1978 for public purposes being in particular, the purposes of the Link Upgrade Project (as

defined in the Project Legislation). That temporary reservation must not be revoked other than in accordance with Clause 4A.7(aaa).

- (f) The Company must notify the State in writing at least 5 Business Days prior to the date that either the Company or Trustee intends to take possession of a parcel of land specifying the date it intends to take such possession.

4A.2

Limited Right of Possession and Access

- (a) Subject to the following paragraphs, in relation to each parcel of land described in:
 - (i) the SLU Property Schedule, by the date specified in the SLU Agreed Timetable in relation to the parcel;
 - (ii) [Not Used],the State shall procure:
 - (iii) insofar as the parcel is within the Link Upgrade area and the parcel is to become a part of the SLU Project Land, the grant of a licence under the Project Legislation in favour of the Company, the Trustee and their nominees (including the SLU Construction Contractor) providing for a non-exclusive right of possession of that land;
 - (iv) insofar as the parcel is not within the Link Upgrade area or the parcel is within the Link Upgrade area but the parcel is not to become a part of the SLU Project Land, the grant of powers of entry and occupation, whether under Part 9 of the Land Acquisition and Compensation Act 1986 (Vic) (subject to the Road Management Act 2004 and the Project Legislation) or otherwise, in favour of the Company, the Trustee and their nominees (including the SLU Construction Contractor),

sufficient for (and for use only to enable) the Company and the Trustee to have the access to the relevant parcel of land necessary for the Company and the Trustee to be able to perform their obligations under this Deed and on such additional terms and conditions as may be imposed under the Project Legislation, being terms and conditions agreed with the Company and the Trustee.

For the avoidance of doubt, where a parcel of land is identified in the SLU Property Schedule as a SLU Lay Down Area and the right of possession and access contemplated by paragraph (iv) is sufficient for the Company and the Trustee to be able to perform their obligations under this Deed, the State shall procure access under paragraph (iv) rather than paragraph (iii).

- (aa) At the same time that, in respect of a parcel of land:

- (i) a licence is granted under sub-paragraph (a)(iii) in respect of that parcel of land;
- (ii) powers of entry or occupation are granted under sub-paragraph (a)(iv) in respect of that parcel of land; or
- (iii) that parcel of land is made available to the Company or the Trustee under paragraphs (f) or (g),

the State must procure that VicRoads issues to the Company, the Trustee and their nominees (including any relevant SLU Construction Contractor) a construction permit under section 34 of the Project Legislation in respect of that parcel of land sufficient to permit the Company and the Trustee to perform their obligations under this Deed and on such other terms as may be imposed under the Project Legislation being terms and conditions agreed with the Company and the Trustee.

- (ab) If requested by the Company or the Trustee, the State must procure that VicRoads promptly issues to the Company, the Trustee and their nominees (including any relevant SLU Construction Contractor) a construction permit under Section 34 of the Project Legislation in respect of a parcel of land (other than a parcel of land referred to in paragraph (aa)) sufficient to permit the Company and the Trustee to perform their obligations under this Deed and on such other terms as may be imposed under the Project Legislation being terms and conditions agreed with the Company and the Trustee.
- (b) Subject to the Company's and the Trustee's right to do all things necessary to comply with this Deed, any licence or power granted under paragraph (a) shall be subject to the rights of the public in respect of any part of a parcel of land which is a public roadway.
- (c) The SLU Property Schedule may be adjusted pursuant to paragraph (g).
- (d) Subject to the rights granted by the Project Legislation, before the SLU Date of Practical Completion, the Company and the Trustee will have no interest, right or title in the SLU Project Land or SLU Lay Down Areas, other than rights and powers conferred or procured under paragraph (a), (aa) and (ab) and in clause 4A.7.
- (e) The rights and powers granted under paragraph (a) with respect to a parcel of land which did not, has ceased to, or which will not (having regard to clause 4A.7), form part of the SLU Project Land shall expire on the earlier of:
 - (i) the SLU Date of Practical Completion; and
 - (ii) the date when that parcel ceases to be required for the purposes of the SLU Works as specified by notice given by the Company or the Trustee to the

State not less than 10 Business Days or such other period as the State and the Company or the Trustee (as applicable) may agree prior to that date.

- (ea) The rights and powers granted under paragraphs (aa) and (ab) with respect to a parcel of land which did not, has ceased to, or which will not (having regard to clause 4A.7), form part of the SLU Project Land shall expire on the earlier of:
- (i) the Date of SLU Section Practical Completion in respect of the SLU Section in which that parcel of land is situated; and
 - (ii) the date when that parcel ceases to be required for the purposes of the SLU Works as specified by notice given by the Company or the Trustee to the State not less than 10 Business Days or such other period as the State and the Company or the Trustee (as applicable) may agree prior to that date.
- (eb) Where the SLU Agreed Timetable does not specify a date in respect of a parcel of land but rather provides that the parcel must be available to the Company or the Trustee (as the case may be) within a specified period from the date the Company or the Trustee (as the case may be) makes a request to the State that the parcel be made available, neither the Company nor the Trustee will be entitled to make such a request to the State after:
- (a) 31 December 2008 in respect of a parcel of land that is not Crown land or land that is owned by a public body ("**Private Land**"); and
 - (b) 28 February 2009 in respect of a parcel of land that is Crown land or land that is owned by a public body ("**Public Land**").

If the Company or Trustee does not make such a request to the State prior to or on 31 December 2008 in respect of a parcel of Private Land, or 28 February 2009 in respect of a parcel of Public Land, then subject to the right to make a subsequent request under clause 4A.2(g), neither the Company nor the Trustee will have any rights and powers in respect of the parcel of land and the SLU Property Schedule will be deemed to have been immediately adjusted to remove that parcel of land.

- (f) If requested by the Company or the Trustee to do so, then to the extent permitted by the Road Management Act 2004 (Vic), the Project Legislation or in respect of land to which Section 34 of the Project Legislation applies, the State shall endeavour in good faith to make available or procure for the Company and the Trustee such rights of access over land (outside the SLU Project Land and SLU Lay Down Areas) specified in the request and Construction Permits as

may reasonably be required to enable the Company and the Trustee to perform the SLU Works. In complying with any such request, the State shall not be required to incur expenditure.

- (fa) For the avoidance of doubt, insofar as the State is required to acquire any land which is not Crown land or land which is owned by a public body as at the SLU Effective Date for the purposes of making it available under clause 4A.2(a)(iv), and that land becomes part of the SLU Project Land that will form part of a SLU Lease as a result of a change to the SLU Property Schedule, the Company shall bear the costs and expenses incurred in acquiring that land.
- (g) Subject to paragraph (i), the SLU Property Schedule may be adjusted from time to time by the inclusion or removal of parcels of land specified by the Company or Trustee by notice to the State, that notice also specifying (where an inclusion) whether such a parcel is to be a SLU Lay Down Area or part of SLU Project Land. Such a parcel of land will only be included in the SLU Property Schedule, however, if and when the State makes it available. Insofar as the parcel:
 - (i) is in the Link Upgrade area and the State has powers under the Road Management Act 2004 (Vic) or Project Legislation enabling it to do so, the State shall exercise those powers to make the parcel available as soon as reasonably practicable and issue a Construction Permit in respect of that parcel;
 - (ii) is not in the Link Upgrade area, the relevant notice indicated that the parcel is to comprise part of SLU Project Land, the State has powers under the Road Management Act 2004 (Vic) or the Project Legislation enabling it to expand the Link Upgrade area so as to encompass that parcel, the State has powers under the Road Management Act 2004 (Vic) or the Project Legislation or in respect of land to which Section 34 of the Project Legislation applies to make the parcel available and it is reasonable for the State to exercise those powers, the State shall exercise those powers under the Road Management Act 2004 (Vic) or the Project Legislation or in respect of land to which Section 34 of the Project Legislation applies to expand the Link Upgrade area and make the parcel available as soon as reasonably practicable and issue a Construction Permit in respect of that parcel;
 - (iii) is not in the Link Upgrade area, the relevant notices indicated that the parcel is to be or comprise a SLU Lay Down Area, the State has the statutory power enabling it to do so and it is

reasonable for the State to exercise that power, the State shall exercise that power to make the parcel available as soon as reasonably practicable.

- (h) The Company and the Trustee accept the time and cost risks associated with parcels of land to which paragraph (g) applies. They, and the State, also accept that the risk of pollution on any such parcel of land is to be dealt with under clause 12.7A and Item 2 of the Appendix, but as if the references in paragraph 12.7A(b) to 25 July 2006 were references to the date on which the notice relating to the relevant parcel of land was given by the Company or the Trustee under paragraph (g). Hence,
 - (i) if the State is obliged under that paragraph to exercise powers to make a parcel of land available as soon as reasonably practicable, then (subject to it doing so) the risks of any delay in making the parcel available is borne by the Company and the Trustee;
 - (ii) costs and expenses incurred in the exercise of those powers and the making of parcels available shall be borne by the Company and the Trustee (and as a condition of exercise of any powers, the State may require that it be put in funds sufficient to meet costs it will incur as a result of that exercise);
 - (iii) paragraph 12.7A(b) is to be read subject to this paragraph.
- (i) The State need not exercise any powers in relation to, or otherwise make available, any parcel of land pursuant to paragraph (g) if the parcel relates to a SLU Section which has reached SLU Section Practical Completion or if it is not necessary for the parcel to be made available to enable the Company and Trustee to perform their obligations under this Deed. Any party may refer a dispute to whether a parcel of land is so necessary for expert determination under Article 16.
- (j) If pursuant to paragraph (g) a parcel of land is included in the SLU Property Schedule:
 - (i) the SLU Agreed Timetable shall be deemed to specify a date in relation to the parcel consistent with the State's obligation to exercise powers or a power to make the parcel available as soon as reasonably practicable;
 - (ii) the schedule shall be amended consistent with the relevant notice under paragraph (g).
- (k) The parties acknowledge that insofar as the SLU Property Schedule consists of maps and a schedule, they intend that those maps and that schedule be examined together when ascertaining whether any particular land is described in the

SLU Property Schedule. Any party may refer for expert determination under Article 16 any dispute as to whether any particular land is so described.

- (l) The State must procure that the Link Upgrade area is not decreased in a way which would have the effect of preventing the SLU Works.

4A.3 Obligation to Maintain Roadways

Without limiting the other provisions of this Deed, the Company and the Trustee shall maintain and repair any roadways forming part of a parcel of the SLU Project Land or of the SLU Lay Down Areas in accordance with the Project Scope and Technical Requirements and any reasonable requirements of VicRoads in the period:

- (a) commencing on the date the Company or the Trustee takes possession of that parcel; and
- (b) ending on the earlier of:
 - (i) the Date of SLU Final Completion; and
 - (ii) if the parcel did not, does not or will not (having regard to clause 4A.7) form part of the SLU Project Land, the date on which that parcel ceases to be required for the purposes of the SLU Works, as specified by notice given by the Company or the Trustee to the State not less than 10 Business Days prior to that date.

4A.4 Other Land

- (a) Subject to clause 4A.2(c), (f) and (g) and clause 4A.7, the State is not responsible for providing the Company or the Trustee with rights relating to any land in respect of the SLU Project other than the rights referred to in clause 4A.2 in relation to the SLU Project Land and the SLU Lay Down Areas.
- (b) The Company and the Trustee shall bear all risks associated with obtaining all other such rights.

4A.5 Occupation and Restoration

Without limiting clauses 3.4 and 4A.3 or any of their obligations at Law, each of the Company and the Trustee shall comply with the following obligations in relation to SLU Project Land, SLU Lay Down Areas and land over which it has access under clause 4A.2(f), which does not or will not (having regard to clauses 4A.7) form part of the land the subject of a SLU Company Lease:

- (a) cause as little harm and inconvenience and do as little damage as possible to the land and anything on or growing on the land;
- (b) remain on the land only for such period as is reasonably necessary;
- (c) remove from the land on completion of occupation all plant, machinery, equipment, goods or buildings brought

- onto, or erected on, the land other than any of those things that the State, a relevant Victorian Government Agency or the owner or occupier agrees may be left on the land;
- (d) subject to the SLU Works required to be performed on any part of the land, leave the land, as nearly as possible, in the condition in which it was immediately before the land was occupied;
 - (e) use reasonable endeavours to co-operate with the State, the relevant Victorian Government Agency or other owner or occupier of the land; and
 - (f) install and maintain reasonably appropriate systems of security in respect of the SLU Works, the land and structures on the land.

4A.6 Condition of SLU Project Land and Structures

- (a) Subject to paragraph (c), the State makes no representation and gives no warranty to the Company or the Trustee in respect of:
 - (i) subject to clause 12.7A, the condition or state of repair of:
 - (A) the Project Land which is required for the SLU Works, SLU Project Land or SLU Lay Down Areas; or
 - (B) any structure on the Project Land which is required for the SLU Works, SLU Project Land or SLU Lay Down Areas;
 - (ii) the location or availability of Services in respect of the Project Land which is required for the SLU Works, SLU Project Land or SLU Lay Down Areas;
 - (iii) any matter accepted in paragraph (b).
- (b) Subject to clauses 2.9 and 2.10 and to paragraphs (c) and (f), the Company and the Trustee accept the Project Land which is required for the SLU Works, SLU Project Land and SLU Lay Down Areas and structures on the Project Land which is required for the SLU Works, SLU Project Land and SLU Lay Down Areas:
 - (i) in their condition and state of repair from time to time;
 - (ii) subject to all defects, including sub-surface soil conditions;
 - (iii) (except as provided in clause 12.7A) subject to any pollution or contamination, whether or not known to the State, or a Government Agency;
 - (iv) subject to all easements and rights of way in favour of Victorian Government Agencies or Utilities; and

- (v) subject to any third party claims or rights, in respect of historic sites or buildings or aboriginal sacred sites.
- (c) Subject to paragraph (e), the State shall bear the risk of Specified Imperfections and may at its option and cost, rectify them or arrange for them to be rectified in the manner indicated in the Schedule of Specified Imperfections in relation to the relevant defect and to a standard consistent with the current code of practice which apply to rectification of defects in structures of that type.
- (d) If a Specified Imperfection is to be rectified by a person other than the Company, the Trustee or a Contractor:
 - (i) the State shall give prior notice to the Company and the Trustee of its intention to rectify the Specified Imperfection;
 - (ii) the State shall use reasonable endeavours to ensure that any rectification work performed by it or on its behalf causes as little disturbance as practicable to the construction of the SLU or operation of the Link;
 - (iii) the Company and the Trustee shall co-operate (and shall ensure that their respective contractors co-operate) with the State in ensuring that the State and anyone acting on the State's behalf in rectifying a Specified Imperfection shall have such access to the Project Land, SLU Project Land and SLU Lay Down Areas and to such Services as may be required properly to perform the work;
 - (iv) the State shall indemnify the Company and the Trustee against claims, demands, losses and reasonable costs and expenses made against or incurred or payable by the Company or the Trustee as a result of the Specified Imperfection not having been rectified:
 - (1) to the standard required under paragraph (c); or
 - (2) due to negligent workmanship or defective materials.
- (e) If a Specified Imperfection is to be rectified by the Company, the Trustee or a Contractor:
 - (i) the State shall not bear the risk of the Specified Imperfection and if the person rectifying it is a Contractor, the State shall use reasonable endeavours to confer on the Company and the Trustee all the State's rights against the Contractor in relation to the rectification works and to ensure that those rights are capable of being so conferred; and

- (ii) to the extent a closure of a lane on the Link is required due to those rectification works, then for the purposes of the M1 Corridor Redevelopment Deed, that lane closure will be deemed to have been a lane closure made by the Company at the request of the State.
- (f) If the State elects not to rectify a Specified Imperfection or arrange for it to be rectified, it shall, subject to clause 8.5(c) of the M1 Corridor Redevelopment Deed, indemnify the Company and the Trustee against claims, demands, losses and reasonable costs and expenses made against or incurred or payable by the Company or the Trustee as a result of the Specified Imperfection.
- (g) The Company and the Trustee shall each use reasonable endeavours to minimise costs and expenses to which subparagraph (d)(iv) applies. The State shall indemnify the Company and the Trustee against reasonable costs and expenses incurred or payable as a result of those endeavours.
- (h) Where the Project Scope and Technical Requirements require the Company or the Trustee to use, incorporate or upgrade an existing structure on the SLU Project Land or on the SLU Lay Down Areas, the State shall procure that each relevant Victorian Government Agency shall use reasonable endeavours to confer on the Company and the Trustee, all its rights in relation to defects in that existing structure against other persons where liability in relation to those rights is not borne directly or indirectly by the State or any Victorian Government Agency.
- (i) Nothing in this clause 4A.6 obliges the Company, the Trustee or a Contractor to agree to rectify a Specified Imperfection.

4A.7

Section Leases

- (aaa) Where, in respect of a parcel of land, the State has granted a licence and that licence is to expire or be surrendered or terminated, the State must procure that the temporary reservation of that parcel is revoked with effect from the expiry, surrender or termination of the licence (as applicable).
- (a) Subject to clause 4A.8 and paragraph (c), from the SLU Date of Practical Completion the State shall grant; and
 - (i) the Company shall accept, the relevant SLU Company Lease; and
 - (ii) the Trustee shall accept, the relevant SLU Trust Concurrent Lease.
- (aa) The parties acknowledge and agree that:
 - (i) as a result of the SLU, the boundaries of Southern Link Section 1 and Southern Link Section 5 may

- change, so that part of the roadway that formed part of Southern Link Section 1 prior to the commencement of the SLU Works may, upon SLU Practical Completion, form part of Southern Link Section 5 and vice versa;
- (ii) as a consequence of the matters referred to in subparagraph (aa)(i), land which forms part of the Leases for Southern Link Section 1 may, upon SLU Practical Completion, be located in Southern Link Section 5 and vice versa;
 - (iii) [Not used];
 - (iv) the parties may agree that rather than granting new SLU Leases, the parties may agree another mechanism for giving the same effect (including, for example, the consolidation of all of the Company Leases for a Section into a single Company Lease). Any such change will require the parties to agree on consequential changes to the definitions of this Deed.
- (b) Not Used
- (c) Each SLU Lease will provide for a lease of such of the land (or a lease of such interests in such of the land) identified in paragraph (a) of the definition of SLU Company Land (in the case of a SLU Company Lease or SLU Trust Concurrent Lease) as is necessary for the Company or the Trustee (as applicable) to have possession of, and (unless created or granted prior to the grant of the Lease) a grant of such easements over such of that land as is necessary for the Company or the Trustee to have, in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the SLU Leases, (as identified in the plan of survey referred to in clause 4A.8(a), and, hence:
- (i) some parcels of land included in the SLU Project Land prior to the grant of a SLU Lease may not continue to form part of the SLU Project Land; and
 - (ii) the SLU Leases may, in part, be only of interests in land or of undivided strata of land.
- (ca) Prior to the grant of a SLU Lease (being a SLU Lease which provides for a lease of land benefited by such easements), the State will, pursuant to section 339B of the Land Act 1958 (Vic), create easements over such of the land identified under clause 4A.7(c) as is necessary for the Company or the Trustee to have in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the SLU Leases.
- (cb) If (but without any obligation to agree) the State and either the Company (in the case of a SLU Company Lease) or the

Trustee (in the case of a SLU Trust Concurrent Lease) so agree prior to the grant of the relevant SLU Lease, such SLU Lease will (in addition to the lease of land and the lease of interests in land under clause 4A.7(c)) provide for a lease of such land (or a lease of interests in such land) the subject of the agreement between the State and the Company or the Trustee (as the case may be).

- (cc) If the Company so requests and the State (without any obligation to agree) so agrees, the State will, prior to the grant of a SLU Lease (being a SLU Lease which provides for a lease of land benefited by such easements) and pursuant to section 339B of the Land Act 1958 (Vic), create easements over such land (not being land identified in clause 4A.7(c)) and on such terms the subject of the agreement between the State and the Company.
- (d) The State, the Company and the Trustee shall consult, in good faith, before the State:
 - (i) creates easements under clause 4A.7(ca); or
 - (ii) grants the Leases under clause 4A.8,in an endeavour to agree on how the operation of clauses 4A.7(c) and 4A.7(ca) affect the land (and interests in land) to be the subject of the SLU Leases.
- (e) If the parties do not reach agreement under paragraph (d) within 28 days of notice being given by a party that it requires the matter to be determined under Article 16, any party may refer the matter for expert determination under Article 16.

4A.8

Procedures

- (a) The State shall, as soon as practicable in all the circumstances:
 - (i) procure the preparation of a plan of survey to enable each SLU Lease to be completed and executed and a folio of the Register (within the meaning of the Transfer of Land Act 1958) created for it; and
 - (ii) procure that the plan of survey (or relevant part of it) is annexed to each SLU Lease given by it to the Company or the Trustee under paragraph (d) and (if applicable) identifies each necessary easement granted under clauses 4A.7(c) and 4A.7(ca).
- (b) The Company and the Trustee shall co-operate with the State (including giving details of final boundaries to, and strata of the SLU Project Land and the location of the relevant Section within the Project Land) to enable the State to perform its obligations under paragraph (a) and the State on the one part and the Company and Trustee on the other, shall pay one half of the aggregate of the reasonable

- cost of preparing each plan of survey and reasonable costs incurred in providing that co-operation.
- (c) Each of the SLU Leases will be completed by the State.
 - (d) The State shall give each relevant SLU Lease to the Company or the Trustee (as the case may be) as soon as practicable after the plan of survey for the relevant site is available.
 - (e) The Company and the Trustee shall execute each SLU Company Lease and SLU Trust Concurrent Lease (as the case may be), within 14 days after receiving it.
 - (f) The State shall, as soon as reasonably practicable, produce to the Land Titles Office:
 - (i) such documents relating to the Section relevant to a SLU Lease as it may be necessary to so produce in order to enable the creation of a folio of the Register (within the meaning of the Transfer of Land Act 1958) for the Lease; and
 - (ii) such instruments or documents as it may be necessary to so produce in order to enable an appropriate recording on any relevant folio of the Register (within the meaning of the Transfer of Land Act 1958) that any land in the folio is benefited by an easement created under section 339B of the Land Act 1958 (Vic) (being an easement created pursuant to clause 4A.7(ca) or clause 4A.7(cc) of this Deed).
 - (g) Notwithstanding a SLU Lease of land included in a Section has not yet been executed, the parties to the SLU Lease will be bound as from the SLU Date of Practical Completion as if it had been executed.
 - (h) The Company and the Trustee shall each promptly stamp (to the extent required by Law) and take all steps to enable registration of each SLU Lease of which it is lessee.
 - (i) The Company and the Trustee shall each promptly stamp (to the extent required by Law) and take all necessary steps to enable registration of each sublease of which it is a sublessor.

4A.9

Land Tax

- (a) Land tax will not be assessed by or payable to the State on any part of the SLU Project Land:
 - (i) that is utilised for the purpose of a roadway;
 - (ii) (in relation to a SLU Section which has not achieved SLU Section Practical Completion) which is likely to be utilised for the purpose of a roadway after SLU Section Practical Completion;
 - (iii) on which ventilation stacks are constructed;

- (iv) which is landscaped or comprises embankments (as long as the relevant part is not being used for commercial, including advertising, purposes);
 - (v) on which is located buildings solely used for the purpose of housing Link control rooms.
- (b) The State shall, however, indemnify the Company and the Trustee against any liability they, or either of them, may have for Land Tax in respect of SLU Lay Down Areas or SLU Off Site Areas.

4A.10 [Not used]

4A.11 [Not used]

4A.12 [Not used]

4A.13 **Termination of Licences and Construction Permits and Declaration of Link Road**

- (a) If by no later than 15 Business Days prior to SLU Practical Completion, the Company has provided to the State all access and information reasonably necessary to enable the State to prepare the plans required, the State shall within 2 Business Days of SLU Practical Completion:
- (i) procure that part of the land which is (or is to be) leased under clause 4A.7 with respect to the Section is declared under section 61 of the Project Legislation to be a road; and
 - (ii) procure that any statement made in such a declaration that the road so declared should be treated as a freeway.

Each Business Day by which the Company misses the 15 Business Days deadline will commensurately increase the period in which the State must perform its obligations under this paragraph and paragraphs 4A.2(a) and 4A.2(e).

- (b) On the following Business Day after the date the declaration referred to in paragraph (a) has been made, the State shall terminate the licences issued under section 25 of the Project Legislation.
- (c) In clause 4A.13(a), "Section" means each of Southern Link Section 1 and Southern Link Section 5.
- (d) For the avoidance of doubt, the State must not terminate a licence issued under Section 25 of the Project Legislation or a construction permit issued under Section 34 of the Project Legislation other than:
- (i) in accordance with clause 4A.13;
 - (ii) on the termination of the M1 Corridor Redevelopment Deed; or
 - (iii) with the consent of the Company or the Trustee.

- (e) The State must not amend a term or condition of a construction permit issued under Section 34 of the Project Legislation without the consent of the Company and the Trustee.

4A.14 Utility Agreement

- (a) The State must procure that at the request of the Company, VicRoads will attend and participate in meetings with Utilities for the purposes of assisting the Company in its efforts to secure an agreement between the Company and the Utility to a Utility agreement that implements this Deed.
- (b) The parties agree that no party may claim that the position reached in this Deed in relation to the potential liability of the Company or the Trustee to Utilities under a Utility Agreement in relation to the SLU is to be used as a precedent in any future negotiations.
- (c) The State agrees that if a minister fails to give or delays in giving direction under Division 7 of Part 2B of the Project Legislation beyond a reasonable time after a matter is referred to, or a direction is applied for or from, the Minister, and that failure or delay causes a delay to the Company in achieving SLU Practical Completion by the Date for M1 Completion (as defined in the M1 Corridor Redevelopment Deed), that delay will be deemed to be a delay caused by the State for the purposes of clause 8.5(a) of the M1 Corridor Redevelopment Deed.
- (d) The State undertakes to the Company to ensure that as a consequence of interacting with Utilities for the purposes of the SLU Works, the Company is in no less favourable a position as a result of the Project Legislation (as amended in contemplation of the SLU) as compared to the Company's position under the Project Legislation (as it applied to the initial construction of the Link excluding the SLU).
- (e) For the purposes of this clause, Utility and Utility agreement have the same meaning as in the Project Legislation.

4.A.15 Extension to Sunset Date for native title and heritage

If, prior to 1 July 2007 a native title or heritage issue arises which delays the Company in carrying out the SLU then, in the absence of agreement between the parties as to an appropriate extension to the Sunset Date (as defined in the M1 Corridor Redevelopment Deed), the parties acknowledge that the Sunset Date under the M1 Corridor Redevelopment Deed will be extended by a period equivalent to the delay to the commencement of construction after 1 July 2007 caused to the Company as a result of the occurrence of the native title or heritage issue.

4A.16 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 4A does not apply to the CTW Works, the CTW Maintenance Activities or the CTW.

4B. INTERCHANGE LAND

4B.1 Grant of Access

- (a) The State must, in accordance with paragraph (b), notify the Company and the Trustee of the proposed date on which the State and its nominees reasonably require access to the Interchange Land for the purposes of enabling the State to execute the Interchange Works.
- (b) Any notice given under paragraph (a) must:
 - (i) be in writing;
 - (ii) be given at least 14 days before the State requires access;
 - (iii) specify the relevant parts of the Interchange Land to which the notice relates (including the duration and extent of access); and
 - (iv) contain any information reasonably required by the Company, including in order to comply with its obligations as Road Management Authority under the Road Management Act 2004 (Vic), to understand the scope, nature, impact and duration of the Interchange Works, including:
 - (A) traffic management plan;
 - (B) details of the proposed work to be carried out;
 - (C) details of the proposed program for such work; and
 - (D) risk assessment and risk mitigation plan.
- (c) The State agrees that it will use its best endeavours to consider and accommodate all reasonable comments of the Company or Trustee in relation to the access contemplated by the notice referred to in paragraph (a), as well as any reasonable comments of the Company or Trustee from time to time during performance of the Interchange Works, including development of joint risk mitigation plans where appropriate.
- (d) The Company or the Trustee (as applicable) must provide the State and its nominees with access to the Interchange Land as stated in the notice given under paragraph (a) sufficient to permit the State to execute the Interchange Works and to comply with its obligations under this Deed and the M1 Corridor Redevelopment Deed.
- (e) The access rights granted under this clause:

- (i) shall commence on the date specified in the notice given under paragraph (a) and continue until expiry of the period for which access is requested in accordance with clause 4B.1(b);
- (ii) provide the State and its nominee with access only to the relevant parts of the Interchange Land for the purposes of enabling the State to execute the Interchange Works and to comply with its other obligations under this Deed and the M1 Corridor Redevelopment Deed in respect of the Interchange Works;
- (iii) shall, subject to clause 4B.2 and the State's proper compliance with this Deed and the M1 Corridor Redevelopment Deed, be free from interruption from the Company and Trustee throughout the duration of the period specified in sub-paragraph (i) (recognising the limitations on any such freedom from interruption as a natural consequence of the Link's status as a major public toll road), except where access to the Interchange Land is prevented or altered:
 - (A) due to a traffic accident on, or in close proximity to, the Interchange Land;
 - (B) as a result of a proper exercise of the Company's powers under the Road Management Act 2004 (Vic);
 - (C) due to circumstances beyond the reasonable control of the Company or the Trustee;
 - (D) as a result of action taken by the Company or the Trustee to remedy or prevent non-compliance by the State or its contractors with the traffic management, risk assessment or risk mitigation plans or other information set out in the notice provided by the State pursuant to clause 4B.1(a) or agreed under clause 4B.1(c);
 - (E) for the purposes of conducting critical maintenance (providing that the Company will consult in good faith with the State to minimise to the extent possible any disruption to the Interchange Works);
 - (F) to the extent necessary to enable the Company and the Trustee to comply with its other obligations under the Deed and the M1 Corridor Redevelopment Deed;

- (G) as a result of the Company or the Trustee undertaking rectification works under clause 4B.4(c); and
 - (iv) do not include a right of exclusive access to the Interchange Land.
- (f) If, at any time prior to the grant of the access rights under paragraph 4B.1(d), the State requires access to the Interchange Land to carry out preliminary activities and investigations including land surveys and geotechnical investigations, the Company and the Trustee will provide the State and its nominees with access to those parts of the Interchange Land as reasonably required by the State subject to such conditions as reasonably required by the Company.
- (g) The State will keep the Company and the Trustee informed of the progress of the Interchange Works, and any changes to the terms of access notified under paragraph 4B.1(b):
 - (i) on a regular basis; and
 - (ii) in any event at least quarterly on the last day of the month of the Calendar quarter,

detailing the nature and extent of the work to be undertaken in the next quarter by the State or its nominees. The State must give the Company reasonable advance notice of any proposed material change to the terms of access notified to the Company and the Trustee under clause 4B.1(a).
- (h) If the Company or the Trustee (as applicable) fails to provide the State or its nominees with access in accordance with paragraphs (d) and (e), that failure will be deemed to be a delay caused by a City Link Party for the purposes of clause 8.5 of the M1 Corridor Redevelopment Deed except to the extent that failure was caused or contributed to by:
 - (i) the State failing to comply with its obligations under clause 4B.2; or
 - (ii) one of the circumstances listed in clause 4B.1(e)(iii).

4B.2 State obligations in relation to access

The State must in exercising the rights of access granted under clause 4B.1 and 7C.5:

- (a) comply with all laws in respect of occupational health and safety and the environment;
- (b) comply with the traffic management, risk assessment and risk mitigation plans or other plans set out in the notice provided by the State pursuant to clause 4B.1(a) or any plans or conditions agreed under clause 4B.1(c);
- (c) comply with any measures and conditions agreed to with the Company or the Trustee;

- (d) remain on the Interchange Land only for such period as is reasonably necessary to perform the Interchange Works and comply with its obligations under this Deed and the M1 Corridor Redevelopment Deed;
- (e) comply with any reasonable directions given by the Company or the Trustee in relation to:
 - (i) occupational health and safety;
 - (ii) the environment; and
 - (iii) the performance by the Company of critical maintenance on the Link;
- (f) minimise, as far as is reasonably practicable, disruption to users of the Link including comply with clause 8.6 of the M1 Corridor Redevelopment Deed;
- (g) co-operate with the Company and the Trustee or any contractor engaged by the Company or the Trustee to carry out work on, or in the vicinity of, the Interchange Land and co-ordinate the Interchange Works with such work;
- (h) install and maintain, as reasonably appropriate, systems of security and safety in respect of the Interchange Works and the Interchange Land; and
- (i) subject to the Interchange Works required to be performed on any part of the Interchange Land, leave the Interchange Land following Interchange Completion, as nearly as possible, in the condition in which it was immediately before the State commenced the Interchange Works or as otherwise agreed in writing by the parties. The parties will conduct a joint inspection to ascertain and record the current condition of the Interchange Land prior to commencement of the Interchange Works.

4B.3

Access for State Road Works Certifying Engineer

The Company and the Trustee must provide the State Road Works Certifying Engineer with sufficient access to the Interchange Land to enable the State Road Works Certifying Engineer to perform its functions under clause 7C.4 and the M1 Corridor Redevelopment Deed, subject to the State Road Works Certifying Engineer:

- (a) complying with all laws in respect of occupational health and safety and the environment;
- (b) complying with any reasonable directions given by the Company or the Trustee in relation to:
 - (i) occupational health and safety; and
 - (ii) the environment;
- (c) minimising, as far as is reasonably practicable, disruption to users of the Link; and

- (d) co-operating with the Company and the Trustee or any contractor engaged by the Company or the Trustee to carry out work on, or in the vicinity of, the Interchange Land.

4B.4 Services

- (a) The Company and the Trustee must within 14 days of receiving a written request from the State provide the State with drawings (in hard copy and electronic format) which identify the location and dimensions of all Services and all tolling infrastructure and assets (together the "**Interchange Services**") within the Interchange Land.
- (b) Not more than 15 Business Days after receipt of the drawings referred to in paragraph (a), the parties will conduct a joint survey of the Interchange Land to confirm that the drawings reflect the correct location of the Interchange Services. These drawings, as amended (where necessary) as a result of the joint survey, will then be used and relied upon by the State and its nominees in conducting the Interchange Works.
- (c) The Company and the Trustee acknowledge and agree that, in respect of Interchange Services owned or installed by the Company or the Trustee (or their contractors, nominees or agents):
 - (i) the State and its contractors will rely on the drawings provided to the State under paragraph (a) and agreed (with amendments where necessary) under paragraph (b) in carrying out the Interchange Works;
 - (ii) the State and its contractors will be responsible for rectifying or repairing any damage to or the destruction of any Interchange Services (but will not be responsible for any consequential loss or loss of revenue suffered by the Company or the Trustee which arises out of or is connected with the damage to or the destruction of an Interchange Service) arising from the performance of the Interchange Works;
 - (iii) if the State fails to rectify or repair, within a reasonable period of time (as determined by the Company having regard to the impact of the damage or destruction), any damage caused to, or destruction of, an Interchange Service arising from performance of the Interchange Works, the Company or the Trustee may itself, or appoint others to, undertake such rectification or remedial works and the State must reimburse to the Company or the Trustee (as the case may be) the reasonable costs of doing so within 30 days of a demand from the Company; and
 - (iv) the indemnities given by the State under clause 13.1 remain unaffected irrespective of any error,

omission or inadequacy in the information depicted in the drawings provided to the State under paragraph (a) and agreed (with amendments as necessary) pursuant to paragraph (b).

- (b) The State acknowledges and agrees that, notwithstanding the provision of drawings pursuant to paragraph (a) and the carrying out of the joint survey pursuant to paragraph (b), in respect of the Interchange Services owned or installed by persons other than the City Link Parties (or their contractors, nominees or agents) ("Third Parties"):
- (i) the Company and the Trustee make no representation and give no warranty to the State in relation to the location, dimensions or availability of the Interchange Services within the Interchange Land;
 - (ii) the State and its contractors will be responsible for any damage to or the destruction of any Interchange Services (including any claims against a City Link Party in respect of consequential loss suffered by a Third Party which arises out of or is connected with the damage to or the destruction of an Interchange Service); and
 - (iii) the indemnities given by the State under clause 13.1 remain unaffected irrespective of any error, omission or inadequacy in the information depicted in the drawings provided to the State under paragraph (a) and agreed (with amendments as necessary) pursuant to paragraph (b).

4B.5 No representation

The State acknowledges that in performing the Interchange Works, it has not relied on any representations or warranties by the Company or the Trustee in respect of:

- (a) the Interchange Land; or
- (b) the Link.

4B.6 Grant of consent for placement of spoil

- (a) The Company and the Trustee:
 - (i) acknowledge that:
 - (A) the State, in procuring the State Road Works pursuant to the M1 Corridor Redevelopment Deed, has, with the consent of the Company and the Trustee, placed spoil on the Project Land including on the area depicted as "SITE 6" on the plan attached as Exhibit MM (the State Road Works Spoil); and

- (B) the State Road Works Spoil contains polluted and/or contaminated material; and
 - (ii) irrevocably consent to the retention of the State Road Works Spoil on the Project Land for the duration of the Concession Period.
- (b) The State indemnifies each of the Company and the Trustee:
 - (i) for the reasonable costs of complying with a clean-up notice issued by the EPA under section 62A(1)(a) of the Environment Protection Act or any similar notice (including cleaning up pollution or contamination in accordance with such notice) in respect of the State Road Works Spoil except to the extent that the clean-up notice has been issued as a result of an act or omission of the Company, Trustee or a third party (other than the consent or retention referred to in clause 4B.6(a)(ii));
 - (ii) against any claim, demand, damage, expense, loss, cost or liability brought against or suffered, incurred or payable by either of the Company or the Trustee in respect of injury to, or disease or death of, persons as a result of or in connection with the polluted or contaminated nature of the State Road Works Spoil, except to the extent that such injury, disease or death is caused by the management of the State Road Works Spoil by either of the Company or the Trustee; and
 - (iii) against any claim, demand, damage, expense, loss, cost, or liability brought against or suffered, incurred or payable by either of the Company or the Trustee in respect of harm, damage or injury to property or the Environment as a result of or in connection with the polluted or contaminated nature of the State Road Works Spoil, except to the extent that such harm, damage or injury is caused by the management of the State Road Works Spoil by either the Company or the Trustee.

4B.7 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 4B does not apply to the CTW Works, the CTW Maintenance Activities or the CTW.

4C CTW LAND AND LEASES

4C.1 WLU Project Land, CTW Extra Land and State Returned Works Areas

- (a) The State shall in accordance with clause 4C.2(a), make available for the CTW each parcel of land comprising the WLU Project Land and State Returned Works Areas by the

- date specified in the CTW Agreed Timetable in relation to that parcel.
- (b) The Company and the Trustee acknowledge and agree that their sole and exclusive contractual remedy for a breach by the State of clause 4C.1(a) is as set out in the CTC Redevelopment Deed.
 - (c) For the purposes of this Deed, the Company and the Trustee will be deemed to have taken possession of land or a parcel of land from the earlier of:
 - (i) the date on which they, either of them or any of their nominees have exercised rights or powers procured under clause 4C.2(a) or clause 4C.2(aa) in relation to the land or the parcel; and
 - (ii) the commencement date of any licence granted to the Company or the Trustee in accordance with clause 4C.2(a) or clause 4C.2(aa) in respect of a parcel of land.
 - (d) The State shall cooperate with the Company and the Trustee to restrict unauthorised persons from entering on, or remaining on, any parcel of CTW Land after the date on which the Company and Trustee take possession of that land, except to the extent that land is part of the Western Link.
 - (e) [not used];
 - (f) The Company must notify the State in writing at least 30 Business Days prior to the date that either the Company or Trustee intends to take possession of a parcel of CTW Land specifying the date it intends to take such possession and the likely duration that it requires possession of that parcel of land.

4C.2 Limited Right of Possession and Access

- (a) Subject to the following paragraphs, in relation to each parcel of land described in:
 - (i) the CTW Property Schedule, by the date specified in the CTW Agreed Timetable in relation to the parcel; and
 - (ii) [Not used],the State shall procure the grant of:
 - (iii) a licence in favour of the Company, the Trustee and their nominees (including any CTW Construction Contractor); or
 - (iv) powers of entry and occupation, whether under Part 9 of the *Land Acquisition and Compensation Act 1986* (Vic) (subject to the *Road Management Act 2004* (Vic)) or otherwise, in favour of the

Company, the Trustee and their nominees
(including any CTW Construction Contractor),

on terms reasonably required by the State and agreed to by
the Company and the Trustee, which grant shall:

- (v) commence on the date notified to the State by the Company and the Trustee, provided that such date is within the access period specified in the CTW Property Schedule in relation to that parcel;
- (vi) be for a period not greater than the maximum duration specified in the CTW Property Schedule; and
- (vii) be subject to the conditions and restrictions contained in the CTW Property Schedule in relation to the parcel;

sufficient for (and for use only to enable) the Company and the Trustee to have access to the relevant parcel of land necessary for the Company and the Trustee to be able to perform their obligations under this Deed and the CTC Redevelopment Deed.

- (aa) Without limiting the Company and the Trustee's rights under paragraph (ac) or clause 4C.2A, if the Company or the Trustee requires access to any land referred to in paragraph 4C.2(a)(i) for a period:
 - (i) before or after the access period specified in the CTW Property Schedule in relation to that parcel; or
 - (ii) greater than the maximum duration specified in the CTW Property Schedule;

subject to paragraph 4C.2(ea), the State shall procure the grant of:

- (i) a licence in favour of the Company, the Trustee and their nominees (including the CTW D&C Contractor); or
- (ii) powers of entry and occupation, whether under Part 9 of the *Land Acquisition and Compensation Act 1986* (Vic) (subject to the *Road Management Act 2004* (Vic)) or otherwise, in favour of the Company, the Trustee and their nominees (including the CTW D&C Contractor),

on terms reasonably required by the State and agreed to by the Company and Trustee sufficient for (and for use only to enable) the Company and the Trustee to have the access to the relevant parcel of land necessary for the Company and the Trustee to be able to perform their obligations under this Deed and the CTC Redevelopment Deed during such period provided the Company must notify the State in writing at least 30 Business Days prior to the date that it

requires such access specifying the date it intends to take such possession and the likely duration that it requires possession of that parcel of land, and the CTW Property Schedule will be deemed to be amended in accordance with the licence granted.

- (ab) [not used].
- (ac) Subject to paragraph (ad), the Company or the Trustee may, in relation to a parcel of land:
 - (i) defer (without changing the duration of) any access period specified in the CTW Property Schedule for that parcel of land, by providing notice to the State in writing at least 45 Business Days prior to the date on which the State would otherwise have been required to procure access in accordance with clause 4C.2(a), and the CTW Property Schedule will be deemed to be amended in accordance with that notice; or
 - (ii) issue a request to the State to bring forward (without changing the duration of) any access period specified in the CTW Property Schedule for that parcel of land, by providing a written request to the State at least 45 Business Days prior to the commencement date of the revised access period set out in the Company and the Trustee's written request. The State will use reasonable endeavours to procure access to the relevant parcel of land in accordance with the Company and the Trustee's request, however the State will have no liability under the CTW Project Documents or otherwise for a failure to procure access in accordance with the request.
- (ad) Paragraph (ac) does not apply in respect of any parcel of land identified in the plans titled "West Gate Freeway Temporary Occupation Plan Sheet 1 CTW-SKT-AGJ-CRG-S00-CON-0013 rev B" dated 30/03/2015 and "West Gate Freeway Temporary Occupation Plan Sheet 2 CTW-SKT-AGJ-CRG-S00-CON-0014 rev B" dated 30/03/2015.
- (b) Subject to the Company's and the Trustee's right to do all things necessary to comply with this Deed, any licence granted under paragraph (a) or (aa) shall be subject to the rights of the public in respect of any part of a parcel of land which is a public roadway.
- (c) Without limiting paragraphs (aa) or (ac), the CTW Property Schedule may be adjusted pursuant to paragraph (g).
- (d) The Company and the Trustee will have no interest, right or title in:
 - (i) before the Date of CTW Practical Completion, the WLU Project Land forming part of any of CTW Sections A to C;

- (ii) before the Date of Ramp M Practical Completion, the WLU Project Land forming part of CTW Section D;
- (iii) the State Returned Works Areas,
other than rights and powers conferred or procured under paragraph (a), (aa), (ac) or in clause 4C.7, or any rights granted by the Project Legislation.
- (e) The rights granted under paragraph (a) or (aa) with respect to:
 - (i) a parcel of land which did not, has ceased to, or which will not (having regard to clauses 4C.7 and 4C.8), form part of the WLU Project Land; and
 - (ii) State Returned Works Areas,
shall expire on the earlier of:
 - (iii) the Date of CTW Practical Completion, in relation to a parcel of land forming part of any of CTW Sections A to C;
 - (iv) the Date of Ramp M Practical Completion in relation to a parcel of land forming part of CTW Section D;
 - (v) the date when that parcel ceases to be required for the purposes of the CTW Works as specified by notice given by the Company or the Trustee to the State not less than 10 Business Days or such other period as the State and the Company or the Trustee (as applicable) may agree prior to that date; and
 - (vi) in relation to a licence granted under:
 - (A) paragraph (a), the expiry of the access period, date or maximum access duration, if any, specified in the CTW Property Schedule in relation to that parcel of land; and
 - (B) paragraph (aa), the expiry of the access period, date or maximum duration requested by the Company in accordance with paragraph (aa).
- (ea) Subject to the CTC Redevelopment Deed and clause 4C.2A, the Company and the Trustee:
 - (i) accept the time and cost risks associated with requesting, and the State procuring, access to land in accordance with paragraph (aa), other than where such access is required to carry out CTW Maintenance Activities; and

- (ii) subject to paragraph (eb), indemnify the State for and against any and all costs, expenses and liabilities suffered or incurred by the State:
 - (A) in the State procuring access to land in accordance with paragraph (aa), other than where such access is required to carry out CTW Maintenance Activities; and
 - (B) in relation to or as a consequence of any failure by the Company or the Trustee or their nominees (including any CTW Construction Contractor) to comply with the conditions and restrictions contained in the CTW Property Schedule in relation to a parcel or parcels of land,

provided that the State has used reasonable endeavours to mitigate any such cost, expense or liability.

(eb) The indemnity under:

- (i) paragraph (ea)(ii)(A) does not apply to the extent that:
 - (A) an Extension Event delays the carrying out of the CTW Works for a period of time, and there is no other concurrent delay to those CTW Works resulting from a cause that is not an Extension Event during that period of time (Access Delay Period);
 - (B) as a result of the Access Delay Period, CTW Works could not be performed during the period provided for in the CTW Property Schedule (prior to the deemed amendment described in paragraph (aa) taking effect) in respect of the land required for the performance of those CTW Works (**Access Delay CTW Works**); and
 - (C) the access to land procured by the State under paragraph (aa) was required to carry out the Access Delay CTW Works (and no other CTW Works),

provided that the Company and the Trustee must provide the State with:

- (D) a notice detailing the relevant Extension Event and the estimated delay to the CTW Works caused by the Extension Event within 15 Business Days after the date the Company and the Trustee

- become aware of the Extension Event;
and
- (E) a notice advising the State that the delay caused by the Extension Event has ceased, and the Company and the Trustee's opinion of the Access Delay Period and the Access Delay CTW Works, within 15 Business Days after cessation of the delay caused by the Extension Event; and
- (ii) paragraph (ea)(ii)(B) does not apply to the extent that the failure to comply was caused by the Extension Event.

For the avoidance of doubt, the content of the notices under subparagraphs (i)(D) and (i)(E) do not limit the Company and the Trustee's entitlements under subparagraph (i).

- (f) [Not used]
- (fa) [Not used]
- (g) The CTW Property Schedule may be amended from time to time by the inclusion or removal of parcels of Public Land specified by the Company or Trustee by notice to the State, that notice also specifying (where an inclusion) whether such a parcel is to be part of WLU Company Land, part of WLU Trust Land, or part of the State Returned Works Area. Such a parcel of Public Land will only be included in the CTW Property Schedule if it is Public Land and if the State agrees to make it available. The CTW Property Schedule will be taken to be amended from the date on which the State notifies the Company and the Trustee that it agrees to make the Public Land available.
- (h) The Company and the Trustee accept the time and cost risks associated with parcels of land to which paragraph (g) applies. They, and the State, also accept that the risk of pollution on any such parcel of land is to be dealt with under the CTC Redevelopment Deed and clauses 4C.6, 12.7B and Item 2 of the Appendix, but as if the references in paragraph 12.7B(b) to the CTW Effective Date were references to the date on which the notice relating to the relevant parcel of land was given by the Company or the Trustee under paragraph (g). Hence:
 - (i) if the State agrees to make a parcel of land available, then the risks of any delay in making the parcel available is borne by the Company and the Trustee;
 - (ii) costs and expenses incurred in making such parcels of land available shall be borne by the Company and the Trustee (and as a condition of exercise of any powers, the State may require that the Company and the Trustee provide funds

sufficient to meet costs it will incur as a result of that exercise); and

- (iii) paragraph 12.7B(b) is to be read subject to this paragraph.
- (i) [Not used]
- (j) [Not used]
- (k) The parties acknowledge that insofar as the CTW Property Schedule consists of maps and a schedule, they intend that those maps and that schedule be examined together when ascertaining whether any particular land is described in the CTW Property Schedule. Any party may refer for expert determination under the CTC Redevelopment Deed any dispute as to whether any particular land is so described.
- (l) [Not used]
- (m) The Company and the Trustee agree that when accessing the Western Link or the State Road Network for the purpose of carrying out the CTW Works, they must:
 - (i) to the extent reasonably practicable, minimise disruption to the entry and exit points to the Melbourne Exhibition and Convention Centre during events at the Melbourne Convention Centre (including pre and post event facilitation periods), based on entry and exit arrangements as at the date of the Thirty-third Amending Deed;
 - (ii) to the extent reasonably practicable, maintain appropriate and reasonable access for users of all car parks adjacent to the areas on which the CTW Works are being carried out;
 - (iii) to the extent reasonably practicable, minimise disruption to the entry and exit points to the McDonalds located on Clarendon St/City Rd (based on entry and exit arrangements as at the date of the Thirty-third Amending Deed), including by maintaining access to the 24 hour drive through;
 - (iv) do all things necessary to minimise the disturbance, nuisance or inconvenience to the occupants of land adjoining the areas on which the CTW Works are being carried out, including utilities and residents on the residential side of the noise walls;
 - (v) to the extent reasonably possible in performing the CTW Works, not interfere with the free movement of traffic into and out of, adjacent to, around, on or about the areas on which the CTW Works are being carried out, or block or impair access to any premises, carparks, roadways, pedestrian ways,

- public spaces, parks, bicycle paths or facilities associated with Utility services; and
- (vi) to the extent reasonably possible program and coordinate the CTW Works so as to minimise the effect of the CTW Works on occupants of land adjoining the areas on which the CTW Works are being carried out.
- (n) Where the Company or the Trustee's access to the State Road Network is interrupted by the State exercising its rights under clause 7G.3, the State must:
- (i) take all reasonable steps to minimise the extent of the interruption to that access; and
- (ii) facilitate the granting of access to the Company and the Trustee in accordance with this Deed as soon as reasonably practicable after the interruption to the Company and the Trustee's access has ceased.
- (o) Without limiting this clause 4C, the State must and must ensure that its Associates co-operate with the Company and the Trustee in relation to the granting of access in accordance with this Deed to the State Road Network in respect of the CTW Works.
- (p) To the extent the Company and the Trustee are required to obtain any approval, authorisation or consent from the State or a State Associate (in its capacity as an Authority) in relation to the CTW Works, the State must (and must procure that its Associates) not unreasonably withhold such approval, authorisation or consent.
- (q) For the avoidance of doubt, nothing in clause 4C.2(p) will:
- (i) require the State or State Associate to act in a manner that is inconsistent with their statutory obligations as an Authority; or
- (ii) in any way lessen or otherwise affect any rights of the State under the CTW Project Documents to review or comment on an access proposal.
- (r) Without limiting the State's obligations under this clause 4C.2, the State must use its best endeavours to diligently pursue the granting of access to those parts of the land within the CTW Property Schedule reasonably requested by the CityLink Parties for the purpose of the CityLink Parties (or their agent or contractor) carrying out preliminary activities and investigations, including land surveys and geotechnical investigation, for the purposes of the CTW Works.
- (s) The only way the CTW Property Schedule can be amended is in accordance with this clause 4C.2.

- (t) The parties acknowledge and agree that the CTW Works do not, as at the date of the Thirty-third Amending Deed, include works to construct alternative means of access to properties used for car parking operations under the West Gate Freeway included in the CTW Property Schedule, however the State may issue a CTW Variation Proposal or CTW Variation Order in respect of such works. Nothing in this clause 4C.2(t) implies that any construction work is required in order to access other land included in the CTW Property Schedule, other than where such work is required by the SWTC.
- (u) For the avoidance of doubt, if the State fails to procure the grant of a licence in accordance with clauses 4C.2(a) or (aa), this will be a State Act of Prevention for the purposes of the CTC Redevelopment Deed.

4C.2A

Access for CTW Maintenance Activities

- (a) The State must give the Company sufficient access for the Company to carry out the CTW Maintenance Activities, provided that:
 - (i) the State will not be obliged to provide access under this clause 4C.2A(a) to the extent that the Company has access to the relevant land in accordance with a licence granted to the Company or the Trustee under clause 4C.2(a), or clause 4C.2(aa); and
 - (ii) other than where immediate access to land is required in an emergency situation:
 - (A) in respect of access to the State Road Network, the Company and the Trustee have complied with the CTW Traffic Management Procedures;
 - (B) in respect of access to the Melbourne Convention Centre, the Company and the Trustee have given the State no less than 12 days' prior written notice;
 - (C) in respect of any other land, the Company and the Trustee have given the State no less than 24 hours' prior written notice.
- (b) Where immediate access to land is required in an emergency situation, the Company and the Trustee will provide written notice to the State of that access as soon as possible and, in any event, no later than 24 hours after access commenced.
- (c) Any notice provided under this clause must contain the following information:
 - (i) the date of commencement of access;

- (ii) the duration of the access;
 - (iii) the nature of activities to be performed during the access; and
 - (iv) such other details as are required by the SWTC.
- (d) Should the State fail to comply with its obligation under clause 4C.2A(a), the Company and the Trustee will be relieved of their obligations to carry out the CTW Maintenance Activities (which relate to such access) to the extent and for such period as the relevant CTW Maintenance Activities are unable to be carried out as a result of the State's failure.

4C.3 Obligation to Maintain Roadways

Without limiting the other provisions of this Deed, the Company and the Trustee shall maintain and repair any roadways forming part of a parcel of the CTW Land in accordance with the SWTC:

- (a) commencing in accordance with clause 4C.1(c); and
- (b) ending on the earlier of:
 - (i) CTW Section Practical Completion of the CTW Section to which the relevant parcel of the CTW Land relates: and
 - (ii) if the parcel did not, does not or will not (having regard to clause 4C.7) form part of the WLU Project Land, the date on which that parcel ceases to be required for the purposes of the CTW Works, as specified by notice given by the Company or the Trustee to the State not less than 10 Business Days prior to that date.

4C.4 Other Land

- (a) The State is not responsible for providing the Company or the Trustee with rights relating to any land in respect of the CTW other than the rights referred to in clause 4C.2, 4C.2A, 4C.7 and 8B.11A.
- (b) The Company and the Trustee shall bear all risks associated with obtaining all other such rights.

4C.5 Occupation and Restoration

Without limiting clauses 3.4 and 4C.3 or any of the Company's or the Trustee's obligations at Law, each of the Company and the Trustee shall comply with the following obligations in relation to the CTW Land, the CTW Extra Land which does not or will not (having regard to clause 4C.7) form part of the land the subject of a WLU Lease:

- (a) cause as little harm and inconvenience and do as little damage as possible to the land and anything on or growing on the land;

- (b) remain on the land only for such period as is reasonably necessary;
- (c) remove from the land on completion of occupation all plant, machinery, equipment, goods or buildings brought onto, or erected on, the land other than any of those things that the State, a relevant Victorian Government Agency or the owner or occupier agrees may be left on the land;
- (d) subject to the CTW Works required to be performed on any part of the land, leave the land, as nearly as possible, in the condition in which it was immediately before the land was occupied;
- (e) use reasonable endeavours to co-operate with the State, the relevant Victorian Government Agency or other owner or occupier of the land; and
- (f) install and maintain reasonably appropriate systems of security in respect of the CTW Works, the land and structures on the land.

4C.6

Condition of CTW Land and Structures

- (a) Subject to the CTC Redevelopment Deed and paragraph (c), the State makes no representation and gives no warranty to the Company or the Trustee in respect of:
 - (i) subject to clause 12.7B, the condition or state of repair of:
 - (A) the CTW Land and the CTW Extra Land; or
 - (B) any structure on the CTW Land or the CTW Extra Land;
 - (ii) the location or availability of Services in respect of the CTW Land or CTW Extra Land; or
 - (iii) any matter accepted in paragraph (b).
- (b) Subject to the CTC Redevelopment Deed, Annexures O, Q and R of the SWTC and clauses 2.9 and 2.10, the Company and the Trustee accept the CTW Land and the CTW Extra Land, and structures on the CTW Land and the CTW Extra Land:
 - (i) in their condition and state of repair from time to time;
 - (ii) subject to all defects, including sub-surface soil conditions;
 - (iii) (except as provided in clause 12.7B) subject to any pollution or contamination, whether or not known to the State, or a Government Agency;
 - (iv) subject to all easements and rights of way in favour of Victorian Government Agencies or Utilities or any third party; and

(v) subject to any third party claims or rights, in respect of historic sites or buildings or aboriginal sacred sites.

(c) [Not used]

(d) [Not used]

(e) [Not used]

(f) [Not used]

(g) [Not used]

(h) [Not used]

(i) [Not used]

4C.7

Section Leases

(aaa) [Not used]

(a) Subject to clause 4C.8 and paragraph (c), from the Date of CTW Practical Completion, in relation to parcels of land forming part of CTW Sections A to C, and the Date of Ramp M Practical Completion, in relation to parcels of land forming part of CTW Section D, the State shall grant, and:

(i) the Company shall accept, the relevant WLU Company Lease; and

(ii) the Trustee shall accept:

(A) the relevant WLU Trust Lease; and

(B) the relevant WLU Trust Concurrent Lease.

(aa) The parties acknowledge and agree that:

(i) as a result of the CTW, the boundaries of Western Link Section 1, Western Link Section 2 and the Tullamarine Freeway Upgrade may change, so that part of the roadway that formed part of Western Link Section 1, Western Link Section 2 or the Tullamarine Freeway Upgrade prior to the commencement of the CTW Works may, upon CTW Practical Completion or Ramp M Practical Completion, form part of any of Western Link Section 1, Western Link Section 2 or the Tullamarine Freeway Upgrade;

(ii) as a consequence of the matters referred to in subparagraph (aa)(i), land which forms part of the Leases for Western Link Section 1, Western Link Section 2 or the Tullamarine Freeway Upgrade may, upon CTW Practical Completion or Ramp M Practical Completion, be located in any of Western Link Section 1, Western Link Section 2 or the Tullamarine Freeway Upgrade;

- (iii) [Not used]; and
 - (iv) the parties may agree that rather than granting new WLU Leases, the parties may agree another mechanism for giving the same effect (including, for example, the consolidation of all of the Company Leases for a Section into a single Company Lease). Any such change will require the parties to agree on consequential changes to the definitions of this Deed.
- (b) The Company and the Trustee shall ensure that the Company has such right granted by the Trustee in relation to the WLU Trust Land as may be necessary or desirable to enable the Company to perform its obligations to the State under the Project Documents and the CTW Project Documents.
- (c) Each WLU Lease will provide for a lease of such of the land (or a lease of such interests in such of the land) identified in paragraph (a) of the definition of WLU Company Land (in the case of a WLU Company Lease or WLU Trust Concurrent Lease) or paragraph (a) of the definition of WLU Trust Land (in the case of a WLU Trust Lease) as is necessary for the Company or the Trustee (as applicable) to have possession of, and (unless created or granted prior to the grant of the Lease) a grant of such easements over such of that land as is necessary for the Company or the Trustee to have, in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the WLU Leases, (as identified in the plan of survey referred to in clause 4C.8(a), and, hence:
 - (i) some parcels of land included in the WLU Project Land prior to the grant of a WLU Lease may not continue to form part of the WLU Project Land; and
 - (ii) the WLU Leases may, in part, be only of interests in land or of undivided strata of land.
- (ca) Prior to the grant of a WLU Lease (being a WLU Lease which provides for a lease of land benefited by such easements), the State will, pursuant to section 339B of the *Land Act 1958* (Vic), create easements over such of the land identified under clause 4C.7(c) as is necessary for the Company or the Trustee to have in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the WLU Leases.
- (cb) If (but without any obligation to agree) the State and either the Company (in the case of a WLU Company Lease) or the Trustee (in the case of a WLU Trust Lease or WLU Trust Concurrent Lease) so agree prior to the grant of the relevant WLU Lease, such WLU Lease will (in addition to the lease of land and the lease of interests in land under

clause 4C.7(c)) provide for a lease of such land (or a lease of interests in such land) the subject of the agreement between the State and the Company or the Trustee (as the case may be).

- (cc) If the Company so requests and the State (without any obligation to agree) so agrees, the State will, prior to the grant of a WLU Lease (being a WLU Lease which provides for a lease of land benefited by such easements) and pursuant to section 339B of the *Land Act 1958* (Vic), create easements over such land (not being land identified in clause 4C.7(c)) and on such terms the subject of the agreement between the State and the Company.
- (d) The State, the Company and the Trustee shall consult, in good faith, before the State:
 - (i) creates easements under clause 4C.7(ca); or
 - (ii) grants the Leases under clause 4E.3,in an endeavour to agree on how the operation of clauses 4C.7(c) and 4C.7(ca) affect the land (and interests in land) to be the subject of the WLU Leases.
- (e) If the parties do not reach agreement under paragraph (d) within 28 days of notice being given by a party that it requires the matter to be determined under the CTC Redevelopment Deed, any party may refer the matter for expert determination under the CTC Redevelopment Deed.

4C.8

Procedures

- (a) The State shall, as soon as practicable in all the circumstances:
 - (i) procure the preparation of a plan of survey to enable each WLU Lease to be completed and executed and a folio of the Register (within the meaning of the *Transfer of Land Act 1958* (Vic)) created for it; and
 - (ii) procure that the plan of survey (or relevant part of it) is annexed to each WLU Lease given by it to the Company or the Trustee under paragraph (d) and (if applicable) identifies each necessary easement granted under clause 4C.7(c) and 4C.7(ca).
- (b) The Company and the Trustee shall co-operate with the State (including giving details of final boundaries to, and strata of the WLU Project Land and the location of the relevant CTW Section within the WLU Project Land) to enable the State to perform its obligations under paragraph (a).
- (c) Each of the WLU Leases will be completed by the State.
- (d) The State shall give each relevant WLU Lease to the Company or the Trustee (as the case may be) as soon as

- practicable after the plan of survey for the relevant site is available.
- (e) The Company and the Trustee shall execute each WLU Company Lease, WLU Trust Lease and WLU Trust Concurrent Lease (as the case may be), within 14 days after receiving it.
 - (f) The State shall, as soon as reasonably practicable, produce to the Land Titles Office:
 - (i) such documents relating to the Section relevant to a WLU Lease as it may be necessary to so produce in order to enable the creation of a folio of the Register (within the meaning of the *Transfer of Land Act 1958* (Vic)) for the Lease; and
 - (ii) such instruments or documents as it may be necessary to so produce in order to enable an appropriate recording on any relevant folio of the Register (within the meaning of the *Transfer of Land Act 1958* (Vic)) that any land in the folio is benefited by an easement created under section 339B of the *Land Act 1958* (Vic) (being an easement created pursuant to clause 4C.7(ca) or clause 4C.7(cc) of this Deed).
 - (g) Notwithstanding a WLU Lease of land included in a CTW Section has not yet been executed, the parties to the WLU Lease will be bound as from:
 - (i) the Date of CTW Practical Completion in relation to a parcel of land forming part of any CTW Sections A to C; and
 - (ii) the Date of Ramp M Practical Completion in relation to a parcel of land forming part of CTW Section D,as if it had been executed.
 - (h) The Company and the Trustee shall each promptly stamp (to the extent required by Law) and take all steps to enable registration of each WLU Lease of which it is lessee.
 - (i) The Company and the Trustee shall each promptly stamp (to the extent required by Law) and take all necessary steps to enable registration of each sublease of which it is a sublessor.

4C.9

Land Tax

- (a) Land tax will not be assessed by or payable to the State on any part of the Project Land:
 - (i) that is utilised for the purpose of a roadway;
 - (ii) (in relation to a CTW Section which has not achieved CTW Section Practical Completion)

which is likely to be utilised for the purpose of a roadway after CTW Section Practical Completion; or

- (iii) which is landscaped or comprises embankments (as long as the relevant part is not being used for commercial, including advertising, purposes).

- (b) The State shall, however, indemnify the Company and the Trustee against any liability they, or either of them, may have for Land Tax in respect of State Returned Works Areas or land for which access is provided under clause 4C.2A.

4C.10 [Not used]

4C.11 [Not used]

4C.12 [Not used]

4C.13 **Declaration of Road**

Provided that by no later than 20 Business Days prior to the Date of CTW Section Practical Completion, the Company has provided to the State all access and information reasonably necessary to enable the State to prepare the plans required in respect of that CTW Section, the State shall within 2 Business Days of the Date of CTW Section Practical Completion:

- (a) procure that that part of the WLU Project Land which is leased pursuant to section 60 of the Project Legislation under clause 4C.7 with respect to the CTW Section is declared under section 61 of the Project Legislation to be a road; and
- (b) procure that any statement made in such a declaration that the road so declared should be treated as a freeway.

Each Business Day by which the Company misses the 20 Business Days deadline will commensurately increase the period in which the State must perform its obligations under this paragraph (a).

4C.14 [Not used]

4C.15 [Not used]

4C.16 [Not used]

4C.17 **Security of CTW Land**

- (a) The Company and the Trustee will be responsible for, and must rectify any damage to the CTW Works from vandalism or from unauthorised persons driving vehicles or equipment on the CTW Land.
- (b) The Company and the Trustee must take all necessary measures to provide security and protection of the CTW Works and to prevent members of the public from gaining unauthorised access to any sections of the CTW Land closed to the public.

- (c) The Company and the Trustee must, as a minimum, supply, erect, maintain and later remove security fencing and gates at the following locations in order to prevent unauthorised public or livestock access to closed sections of the CTW Land:
 - (i) site compounds;
 - (ii) areas designated by the Company and the Trustee for the wearing of safety helmets;
 - (iii) hazardous areas of the CTW Land (including significant excavations, steep batters, partly completed structures and plant and machinery);
 - (iv) access points to the work areas; and
 - (v) other areas deemed necessary by the Company, the Trustee or the State.
- (d) All CTW Land security fencing must be installed prior to commencement of the CTW Works.
- (e) Any existing CTW Land perimeter or boundary fencing or fencing erected under this Deed, must remain intact unless otherwise agreed to by the State. Any damage to fencing must be repaired promptly by the Company and the Trustee.

4D. ACCESS TO PROJECT LAND FOR CTW STATE WORKS

4D.1 Grant of Access

- (a) The State must, in accordance with paragraph (b), notify the Company and the Trustee of the proposed date on which the State and its nominees reasonably require access to the Project Land for the purposes of enabling the State and its nominees to carry out traffic management to the extent reasonably required to execute the CTW State Works at the interface between the Western Link and the Tullamarine Freeways.
- (b) Any notice given under paragraph (a) must:
 - (i) be in writing;
 - (ii) be given at least 14 days before the State requires access;
 - (iii) specify the relevant parts of the Project Land to which the notice relates (including the duration and extent of access); and
 - (iv) contain any information reasonably required by the Company, including in order to comply with its obligations under the Road Management Act 2004 (Vic), to understand the scope, nature, impact and duration of the CTW State Works, including:
 - (A) traffic management plan;

- (B) details of the proposed work to be carried out;
 - (C) details of the proposed program for such work; and
 - (D) risk assessment and risk mitigation plan.
- (c) The State agrees that
 - (i) any right of access under this clause 4D is subject to access arrangements already in place under clause 7E, and to clause 13.3 of the CTC Redevelopment Deed; and
 - (ii) it will use its best endeavours to consider and accommodate all reasonable comments of the Company or Trustee in relation to the access contemplated by the notice referred to in paragraph (a), as well as any reasonable comments of the Company or Trustee from time to time during the carrying out of relevant traffic management reasonably required to execute the CTW State Works, including development of joint risk mitigation plans where appropriate.
- (d) Subject to access arrangements already in place under clause 7E, and to clause 13.3 of the CTC Redevelopment Deed, the Company or the Trustee (as applicable) must provide the State and its nominees with access to the Project Land as stated in the notice given under paragraph (a) sufficient to permit the State to carry out traffic management to the extent reasonably required to execute the CTW State Works and to comply with its obligations under this Deed and the CTC Redevelopment Deed.
- (e) Subject to access arrangements already in place under clause 7E, and to clause 13.3 of the CTC Redevelopment Deed, the access rights granted under this clause:
 - (i) shall commence on the date specified in the notice given under paragraph (a) and continue until expiry of the period for which access is requested in accordance with paragraph (b);
 - (ii) provide the State and its nominees with access only to the relevant parts of the Project Land sufficient for (and for the use only to enable) the State to carry out traffic management to the extent reasonably required to execute the CTW State Works;
 - (iii) shall, subject to clause 4D.2 and the State's proper compliance with this Deed and the CTC Redevelopment Deed, be free from interruption from the Company and Trustee throughout the duration of the period specified in sub-paragraph (i) (recognising the limitations on any such freedom from interruption as a natural

consequence of the Link's status as a major public toll road), except where access to the Project Land is prevented or altered:

- (A) due to a traffic accident on, or in close proximity to, the Project Land;
 - (B) as a result of a proper exercise of the Company's powers under the *Road Management Act 2004* (Vic);
 - (C) due to circumstances beyond the reasonable control of the Company or the Trustee;
 - (D) as a result of action taken by the Company or the Trustee to remedy or prevent non-compliance by the State or its contractors with the traffic management, risk assessment or risk mitigation plans or other information set out in the notice provided by the State pursuant to clause 4D.1(a) or agreed under clause 4D.1(c);
 - (E) for the purposes of conducting critical maintenance (providing that the Company will consult in good faith with the State to minimise to the extent possible any disruption to the CTW State Works); and
 - (F) to the extent necessary to enable the Company and the Trustee to comply with its other obligations under this Deed and the CTC Redevelopment Deed; and
- (iv) do not include a right of exclusive access to the Project Land.
- (f) The State will keep the Company and the Trustee informed of the progress of the CTW State Works, and any changes to the terms of access notified under paragraph 4D.1(b), on:
- (i) a regular basis; and
 - (ii) in any event, at least quarterly on the last day of the month of the calendar quarter,
- detailing the nature and extent of the work to be undertaken in the next quarter by the State or its nominees, and any notice of change in access must comply with the notice requirements stated in clause 4D.1(b) (as if it were a notice under clause 4D.1(a)) and the State must comply with clause 4D.1(c) in respect of that notice.

4D.2 State obligations in relation to access

The State must in exercising the rights of access granted under clause 4D.1:

- (a) comply with all Laws in respect of occupational health and safety and the environment;
- (b) comply with the traffic management, risk assessment and risk mitigation plans or other plans set out in the notice provided by the State pursuant to clause 4D.1(a) or any plans or conditions agreed under clause 4D.1(c);
- (c) comply with any measures and conditions agreed to with the Company or the Trustee;
- (d) remain on the Project Land only for such period as is reasonably necessary to perform the traffic management for the purposes of the CTW State Works and comply with its obligations under this Deed and the CTC Redevelopment Deed;
- (e) comply with any reasonable directions given by the Company or the Trustee in relation to:
 - (i) occupational health and safety;
 - (ii) the environment; and
 - (iii) the performance by the Company of critical maintenance on the Link;
- (f) minimise, as far as is reasonably practicable, having regard to the nature and extent of the CTW State Works, disruption to users of the Link;
- (g) co-operate with the Company and the Trustee or any contractor engaged by the Company or the Trustee to carry out work on, or in the vicinity of, the Project Land and co-ordinate the CTW State Works with such work;
- (h) install and maintain, as reasonably appropriate, systems of security and safety in respect of the CTW State Works and the affected Project Land;
- (i) cause as little harm and inconvenience and do as little damage as possible to the land and anything on or growing on the Project Land;
- (j) remove from the Project Land on completion of occupation all plant, machinery, equipment or goods brought onto the Project Land, other than those things which the Company or the Trustee agree may be left on the Project Land; and
- (j) leave the Project Land, as nearly as practicable, in the condition in which it was immediately before the State accessed the land or as otherwise agreed in writing by the parties.

4E

WGT LEASE ARRANGEMENTS

4E.1

Transfer of Land to WGT Co

- (a) The Company and the Trustee agree to surrender, in accordance with the WGT Deed of Surrender and the WGT Principles of Lease Surrender, those parts of the Project

Land (including in stratum) on which permanent infrastructure comprising the Freeway (as defined in the WGT Project Agreement but excluding the CityLink Returned Works) constructed in accordance with the WGT Project Agreement will remain.

- (b) In relation to the WGT Surrendered Land, the State agrees to release the Company and the Trustee from their obligations under this Deed in relation to the WGT Surrendered Land with effect from and including the CityLink Returned Works Date of Handback, provided that nothing in this clause 4E.1(b) is a waiver of any breach of this Deed by the Company or the Trustee, of any obligation on the Company and the Trustee required to be performed, on or before the CityLink Returned Works Date of Handback (even if the State does not discover the breach or make a claim in connection with the breach until after the CityLink Returned Works Date of Handback) or of any obligation of the Company or the Trustee under the Leases.
- (c) If the WGT Project Agreement is terminated for any reason after the WGT Surrender Date, the State will procure for the Company and the Trustee, if requested by the Company and the Trustee, access to the WGT Surrendered Land to the extent required to enable the Company and the Trustee to comply with their obligations under this Deed.
- (d) Without limiting clauses 12.15(a) to (f), the parties agree that, on and from WGT Financial Close, to the extent the State has a right under the WGT Project Documents against WGT Co and an equivalent right (however expressed) against the Company or the Trustee under the Leases in relation to the WGT Surrendered Land, the State must exercise its rights under the WGT Project Document and not under the Leases.

4E.2

WGT Leases

- (a) Subject to clause 4E.3, from the CityLink Returned Works Date of Handback, in relation to the land described in paragraph (b), the State shall grant, and:
 - (i) the Company shall accept, the relevant WGT Company Lease; and
 - (ii) the Trustee shall accept, the relevant WGT Trust Concurrent Lease.
- (b) Each WGT Lease will provide for a lease, in accordance with the WGT Principles of Lease Surrender, of such of the CityLink Returned Works Land (or a lease of such interests in such of the CityLink Returned Works Land) as is necessary for the Company or the Trustee (as applicable) to have possession of, and (unless created or granted prior to the grant of the WGT Lease) a grant of such easements over such of that land as is necessary for the Company or the Trustee to have, in order for the Company and the Trustee to perform their obligations and exercise their

- rights under this Deed and the WGT Leases (as identified in the plan of survey referred to in clause 4E.3(a)).
- (c) Prior to the grant of a WGT Lease (being a WGT Lease which provides for a lease of land benefited by such easements), the State will, pursuant to section 339B of the Land Act 1958 (Vic), create easements over such of the land identified under clause 4E.2(b) as is necessary for the Company or the Trustee to have in order for the Company and the Trustee to perform their obligations and exercise their rights under this Deed and the WGT Leases.
 - (d) If (but without any obligation to agree) the State and either the Company (in the case of a WGT Company Lease) or the Trustee (in the case of a WGT Trust Concurrent Lease) so agree prior to the grant of the relevant WGT Lease, such WGT Lease will (in addition to the lease of land and the lease of interests in land under clause 4E.2(b)) provide for a lease of such land (or a lease of interests in such land) the subject of the agreement between the State and the Company or the Trustee (as the case may be).
 - (e) If the Company so requests and the State (without any obligation to agree) so agrees, the State will, prior to the grant of a WGT Lease (being a WGT Lease which provides for a lease of land benefited by such easements) and pursuant to section 339B of the Land Act 1958 (Vic), create easements over such land (not being land identified in clause 4E.2(b)) and on such terms the subject of the agreement between the State and the Company.
 - (f) The State, the Company and the Trustee shall consult, in good faith, before the State:
 - (i) creates easements under clause 4E.2(c); or
 - (ii) grants the Leases under clause 4C.8,
in an endeavour to agree on how the operation of clauses 4E.2(c) and 4E.2(e) affect the land (and interests in land) to be the subject of the WGT Leases.
 - (g) If the parties do not reach agreement under paragraph (f) within 28 days of notice being given by a party that it requires the matter to be determined under Article 16, any party may refer the matter for expert determination under Article 16.

4E.3

Procedures

- (a) The State shall, as soon as practicable in all the circumstances:
 - (i) procure the preparation of a plan of survey to enable each WGT Lease to be completed and executed and a folio of the Register (within the meaning of the Transfer of Land Act 1958 (Vic)) created for it; and

- (ii) procure that the plan of survey (or relevant part of it) is annexed to each WGT Lease given by it to the Company or the Trustee under paragraph (d) and (if applicable) identifies each necessary easement granted under clause 4E.2(b) and 4E.2(c).
- (b) The Company and the Trustee shall co-operate with the State (including giving details of final boundaries to, and strata of the relevant CityLink Returned Works Land) to enable the State to perform its obligations under paragraph (a).
- (c) Each of the WGT Leases will be completed by the State.
- (d) The State shall give each relevant WGT Lease to the Company or the Trustee (as the case may be) as soon as practicable after the plan of survey for the relevant site is available.
- (e) The Company and the Trustee shall execute each WGT Company Lease and WGT Trust Concurrent Lease (as the case may be), within 14 days after receiving it.
- (f) The State shall, as soon as reasonably practicable, produce to the Land Titles Office:
 - (i) such documents relating as it may be necessary to so produce in order to enable the creation of a folio of the Register (within the meaning of the Transfer of Land Act 1958 (Vic)) for the WGT Leases; and
 - (ii) such instruments or documents as it may be necessary to so produce in order to enable an appropriate recording on any relevant folio of the Register (within the meaning of the Transfer of Land Act 1958 (Vic)) that any land in the folio is benefited by an easement created under section 339B of the Land Act 1958 (Vic) (being an easement created pursuant to clause 4E.2(c) or clause 4E.2(e) of this Deed).
- (g) Notwithstanding a WGT Lease has not yet been executed, the parties to the WGT Lease will be bound as from the Date of Handback as if it had been executed.
- (h) The Company and the Trustee shall each promptly stamp (to the extent required by Law) and take all steps to enable registration of each WGT Lease of which it is lessee.
- (i) The Company and the Trustee shall each promptly stamp (to the extent required by Law) and take all necessary steps to enable registration of each sublease of which it is a sublessor.

4E.4 Land Tax

On and from WGT Financial Close, land tax will not be assessed by or payable to the State on any part of the Project Land:

- (a) that is utilised for the purpose of a roadway or the Project;
- (b) (in relation to CityLink Returned Works Land if the CityLink Returned Works has not achieved CityLink Returned Works Date of Handback) which is likely to be utilised for the purpose of a roadway after CityLink Returned Works Date of Handback; or
- (c) which is landscaped or comprises embankments (as long as the relevant part is not being used for commercial purposes).

4E.5 Declaration of Road

- (a) Provided that by no later than 40 Business Days prior to the CityLink Returned Works Date of Handback, the Company has provided to the State all access and information reasonably necessary to enable the State to prepare the plans required in respect of that CityLink Returned Works Land, the State shall within 2 Business Days of the CityLink Returned Works Date of Handback:
 - (i) procure that that part of the CityLink Returned Works Land which is (or is to be) leased pursuant to section 60 of the Project Legislation under clause 4E.2 is declared under section 61 of the Project Legislation to be a road; and
 - (ii) procure that any statement made in such a declaration that the road so declared should be treated as a freeway.
- (b) Each Business Day by which the Company misses the 40 Business Days deadline will commensurately increase the period in which the State must perform its obligations under paragraph (a).

4E.6 Condition of CityLink Returned Works Land

- (a) Without limitation on the rights of WGT Co under the WGT Project Agreement, the State makes no representation and gives no warranty to the Company or the Trustee in respect of:
 - (i) subject to clause 12.7C, the condition or state of repair of:
 - (A) the CityLink Returned Works Land; or
 - (B) any structure on the CityLink Returned Works Land;
 - (ii) the location or availability of Services in respect of the CityLink Returned Works Land; or
 - (iii) any matter accepted in paragraph (b).

- (b) Subject to clauses 2.9 and 2.10 and without limiting the rights of WGT Co under the WGT Project Agreement, the Company and the Trustee accept the CityLink Returned Works Land, and structures on the CityLink Returned Works Land:
 - (i) in their condition and state of repair from time to time;
 - (ii) subject to all defects, including sub-surface soil conditions;
 - (iii) (except as provided in clause 12.7C) subject to any pollution or contamination, whether or not known to the State, or a Government Agency;
 - (iv) subject to all easements and rights of way in favour of Victorian Government Agencies or Utilities or any third party; and
 - (v) subject to any third party claims or rights, in respect of historic sites or buildings or aboriginal sacred sites.

5. PLANNING SCHEME REQUIREMENTS AND REMEDIATION

5.1 PSA

- (a) The Company and the Trustee shall comply with:
 - (i) the requirements of the PSAs in all respects; and
 - (ii) all requirements, recommendations or decisions made by a responsible Minister of the State in accordance with the PSAs and, in the case of buildings housing Link control rooms, with the Planning Scheme for the area adjacent to the Project Area.
- (b) The State shall bring into effect the PSA (as defined prior to the date of the Fourth Amending Deed) by no later than the first date by which the State is required to make the first parcel of land available but no earlier than 5 Business Days after Financial Closing.²¹¹

5.2 Liability for Remediation

- (a) Subject to clauses 4B.6 and 12.7, each of the Company and the Trustee shall comply (and shall ensure that each of their Contractors complies) with any clean-up notice issued to it under section 62(A)(1) of the Environment Protection Act or any similar notice in relation to any of the Project Land.
- (b) The following will satisfy the obligations of the Company and the Trustee under paragraph (a), either:
 - (i) the issue of a certificate of environmental audit under the Environment Protection Act stating that

the condition of the segment of the environment constituted by the area of Project Land to which the certificate relates is not or is not potentially detrimental to any beneficial use of that segment of the environment; or

- (ii) the issue of a statement of environmental audit under the Environment Protection Act stating that the condition of the segment of the environment constituted by the area of Project Land to which the statement relates is not or is not potentially detrimental to a particular beneficial use of that segment which is consistent with the proposed use of the Project Land by the Company and the Trustee.

- (c) The Company and the Trustee acknowledge their obligations at Law are not limited by the provisions of this clause, clause 4B.6 or clause 12.7.

5.3 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 5 does not apply to the CTW Works, the CTW Maintenance Activities or the CTW.

5A. PLANNING SCHEME REQUIREMENTS AND REMEDIATION - SLU

5A.1 SLU PSA

- (a) The Company and the Trustee shall comply with:
 - (i) the requirements of the SLU PSA in all respects; and
 - (ii) all requirements, recommendations or decisions made by a responsible Minister of the State in accordance with the SLU PSA.
- (b) The State shall bring into effect the SLU PSA by no later than the first date by which the State is required to make the first parcel of land available but no earlier than the later of:
 - (i) 31 December 2006; and
 - (ii) the date that the Twenty-second Amending Deed becomes operative.

5A.2 Liability for Remediation

- (a) Subject to clauses 12.7 and 12.7A, each of the Company and the Trustee shall comply (and shall ensure that each of their contractors complies) with any clean-up notice issued to it under section 62A(1) of the Environment Protection Act or any similar notice in relation to any of the SLU Project Land.
- (b) The following will satisfy the obligations of the Company and the Trustee under paragraph (a), either:

- (i) the issue of a certificate of environmental audit under the Environment Protection Act stating that the condition of the segment of the environment constituted by the area of Project Land to which the certificate relates is not or is not potentially detrimental to any beneficial use of that segment of the environment; or
 - (ii) the issue of a statement of environmental audit under the Environment Protection Act stating that the condition of the segment of the environment constituted by the area of Project Land to which the statement relates is not or is not potentially detrimental to a particular beneficial use of that segment which is consistent with the proposed use of the Project Land by the Company and the Trustee.
- (c) The Company and the Trustee acknowledge their obligations at Law are not limited by the provisions of this clause, clause 12.7 or clause 12.7A.

5A.3 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 5A does not apply to the CTW Works, the CTW Maintenance Activities or the CTW.

5B. PLANNING SCHEME REQUIREMENTS AND REMEDIATION - CTW

5B.1 CTW PSA

Subject to the CTC Redevelopment Deed the Company and the Trustee shall comply with:

- (a) the requirements of the CTW PSA in all respects; and
- (b) all requirements, recommendations or decisions made by a responsible Minister of the State in accordance with the CTW PSA.

5B.2 Liability for Remediation

- (a) Subject to clauses 12.7 and 12.7B, each of the Company and the Trustee shall comply (and shall ensure that each of their contractors complies) with any clean-up notice issued to it under section 62A(1) of the Environment Protection Act or any similar notice in relation to any of the CTW Land or CTW Extra Land.
- (b) The following will satisfy the obligations of the Company and the Trustee under paragraph (a), either:
 - (i) the issue of a certificate of environmental audit under the Environment Protection Act stating that the condition of the segment of the environment constituted by the area of CTW Land or CTW Extra Land to which the certificate relates is not or

- is not potentially detrimental to any beneficial use of that segment of the environment; or
- (ii) the issue of a statement of environmental audit under the Environment Protection Act stating that the condition of the segment of the environment constituted by the area of CTW Land or CTW Extra Land to which the statement relates is not or is not potentially detrimental to a particular beneficial use of that segment which is consistent with the proposed use of the CTW Land or CTW Extra Land by the Company and the Trustee.
- (c) The Company and the Trustee acknowledge their obligations at Law are not limited by the provisions of this clause, clause 12.7 or clause 12.7B.

5B.3

Contamination

- (a) If the Company or the Trustee discovers any Contamination in, on or under the CTW Land or the CTW Extra Land prior to:
 - (i) in respect of land forming part of CTW Sections A to C, the Date of CTW Practical Completion; or
 - (ii) in respect of land forming part of CTW Section D, the Date of Ramp M Practical Completion,it must:
 - (iii) immediately notify the State; and
 - (iv) give any notice required by Law relating to the environment.
- (b) The parties agree that failure to provide any notice in accordance with clause 5B.3(a) will not preclude the Company or the Trustee from any entitlement or claim those parties may have under the CTC Redevelopment Deed.
- (c) The Company and the Trustee must:
 - (i) dispose of, or otherwise deal with, Contamination on, in, under, over or that emanated or is emanating from the CTW Land or the CTW Extra Land:
 - (A) to the extent:
 - (1) caused or contributed to by the Company or the Trustee or the CTW Works;
 - (2) required by Law;
 - (3) necessary in order to prevent such Contamination from migrating from the CTW Land or the CTW Extra Land;

- (4) such Contamination is inconsistent with the use of the CTW Land and the CTW Extra Land for its intended purpose; or
 - (5) such Contamination is required to be disposed of or otherwise dealt with under this Deed (either immediately or with the passage of time); or
 - (B) where paragraph (A) does not apply, to the extent necessary in order to allow the Company and the Trustee to undertake the CTW Works,
 - in accordance with Law and the CTW Environmental Management Plan; and
 - (ii) remediate, to the standard required by Law and the CTW Environmental Management Plan, the CTW Land and the CTW Extra Land to the extent the CTW Land or the CTW Extra Land is in any way degraded by any Contamination which the Company or the Trustee is required to dispose of or otherwise deal with under paragraph (i).
- (d) This clause 5B.3 will cease to apply to a CTW Section on and from the Date of CTW Section Practical Completion of that CTW Section.

6. INDEPENDENT REVIEWER

6.1 Engagement of Independent Reviewer

The State, the Company and the Trustee have engaged the Independent Reviewer to act as an independent expert experienced in road, bridge and tunnel design and construction to exercise the functions conferred on the Independent Reviewer under this Deed.

6.2 Role of Independent Reviewer

- (a) The State, the Company and the Trustee shall permit the Independent Reviewer to exercise its functions under this Deed and shall provide such information to the Independent Reviewer and give such access to the Project Land, Lay Down Areas and the Off-Site Areas to the Independent Reviewer (and any person authorised by the Independent Reviewer) as may reasonably be requested by the Independent Reviewer for that purpose.
- (b) The Independent Reviewer will:
 - (i) advise the State and the Company and the Trustee following general overview and reasonable checking whether in its opinion:

- (A) the Company and the Trustee perform their obligations under this Deed in executing the Works;
 - (B) the Design Documentation is in accordance with the Project Scope and Technical Requirements;
 - (C) the Works have been and are being executed in accordance with the Construction Documentation; and
 - (D) the Company and the Trustee are complying with the Construction Program;
- (ii) perform the function of issuing a "stop work" order under clause 7.9 where the construction of the Works is or will be unsafe to people;
 - (iii) perform the function of issuing an Independent Reviewer's Certificate in relation to each Section;
 - (iv) determine extensions of time under clause 8.3;
 - (v) without limiting the generality of sub-paragraph (b)(i):
 - (A) review the quality assurance systems under clause 7.14;
 - (B) advise following general overview and reasonable checking whether the Design Consultant has designed the Link on behalf of the Company and Trustee in accordance with the requirements of the Construction Documentation;
 - (C) advise following general overview and reasonable checking whether the Proof Engineer properly performs its obligations in relation to the design prepared by the Design Consultant in accordance with the Construction Documentation;
 - (D) advise following general overview and reasonable checking that the Quality Assurance Auditor properly performs its responsibilities in relation to the execution of the Works in accordance with the Project Scope and Technical Requirements;
 - (vi) advise following general overview and reasonable checking that the Operation and Maintenance Manuals are in accordance with the Project Scope and Technical Requirements.

6.3 Conduct of the Independent Reviewer

On no account will the State be liable to the Company or the Trustee for any act or omission by the Independent Reviewer.

6.4 Company and Trustee not Relieved

Neither the Company nor the Trustee will be relieved of any responsibility or liability under this Deed as a result of anything which the Independent Reviewer may do or fail to do, including any orders which it may give the Company or the Trustee under clause 7.9(c).

6.5 Replacement of the Independent Reviewer

- (a) If:
- (i) the Independent Reviewer refuses or is unable to perform the functions designated to it under this Deed; or
 - (ii) the Company, the Trustee or the State can establish a material breach by the Independent Reviewer of any of the required terms of the Independent Reviewer's engagement, then the Independent Reviewer's engagement may be terminated by the State.

The State, the Company and the Trustee shall (on terms and conditions proposed by the State and discussed with the Company and the Trustee, as long as they are substantially similar to those which apply to the Independent Reviewer's engagement) engage another consultant proposed by the State (and against whom the Company and the Trustee make no reasonable objection) with similar professional experience and expertise as the Independent Reviewer, to fulfil the functions of the Independent Reviewer under this Deed.

- (b) Thereafter all references in this Deed to the Independent Reviewer shall be read and construed as a reference to the replacement consultant so engaged.

6.6 Non-application to SLU, SLU Works, CTW or CTW Works

For the avoidance of doubt, this clause 6 does not apply to the SLU Works, the SLU, the CTW Works, the CTW Maintenance Activities or the CTW.

6A DESIGN AND CONSTRUCTION VERIFICATION ENGINEER - SLU

6A.1 Engagement of Design and Construction Verification Engineer

- (a) The State, the Company and the Trustee will, in relation to the SLU Works, jointly select and engage the Design and Construction Verification Engineer to act as an independent expert to exercise the functions conferred on the Design and Construction Verification Engineer under this Deed.

- (b) If the parties are unable to agree on the identity of the Design and Construction Verification Engineer within one month of commencing the selection process, either party may refer the matter to the President, The Institution of Engineers, Australia, who will appoint the Design and Construction Verification Engineer in accordance with clause 6A.1(c).
- (c) Selection of the Design and Construction Verification Engineer will be based on:
 - (i) information as to the candidate's ability to perform the functions conferred on the Design and Construction Verification Engineer under this Deed;
 - (ii) the candidate's proposed methodology for the performance of those functions;
 - (iii) an outline of the candidate's relevant expertise and experience in projects of a similar type and nature. In particular, the parties require that the candidate must be experienced in road and bridge design and construction, traffic engineering and freeway management systems; and
 - (iv) pre-qualification in relation to VicRoads requirements for road and bridge design and construction, and traffic engineering (where applicable) existing at the time of engagement of the Design and Construction Verification Engineer.

6A.2

Role of Design and Construction Verification Engineer

- (a) The State, the Company and the Trustee shall permit the Design and Construction Verification Engineer to exercise its functions under this Deed and shall provide such information to the Design and Construction Verification Engineer and give such access to the SLU Project Land and SLU Lay Down Areas to the Design and Construction Verification Engineer (and any person authorised by the Design and Construction Verification Engineer) as may reasonably be requested by the Design and Construction Verification Engineer for that purpose.
- (b) The Design and Construction Verification Engineer will:
 - (i) advise the State and the Company and the Trustee following general overview and reasonable checking but without unnecessary duplication of the role of the SLU Design Consultant and the SLU Proof Engineer whether in its opinion:
 - (A) the Company and the Trustee perform their obligations under this Deed in executing the SLU Works;

- (B) the SLU Design Documentation (both at the preliminary and detailed design stage) is in accordance with the Project Scope and Technical Requirements;
 - (C) the SLU Works have been and are being executed in accordance with the SLU Construction Documentation; and
 - (D) the Company and the Trustee are complying with the SLU Construction Program;
- (ii) perform the function of issuing a Design and Construction Verification Engineer's Certificate in relation to each SLU Section;
 - (iii) without limiting the generality of sub-paragraph (b)(i), advise following general overview and reasonable checking but without unnecessary duplication of the role of the SLU Design Consultant and the SLU Proof Engineer whether the SLU Proof Engineer properly performs its obligations in relation to the design prepared by the SLU Design Consultant in accordance with the SLU Construction Documentation.

6A.3 Conduct of the Design and Construction Verification Engineer

On no account will the State be liable to the Company or the Trustee for any act or omission by the Design and Construction Verification Engineer.

6A.4 Company and Trustee not Relieved

Neither the Company nor the Trustee will be relieved of any responsibility or liability under this Deed as a result of anything which the Design and Construction Verification Engineer may do or fail to do.

6A.5 Replacement of the Design and Construction Verification Engineer

- (a) If:
 - (i) the Design and Construction Verification Engineer refuses or is unable to perform the functions designated to it under this Deed; or
 - (ii) the Company, the Trustee or the State can establish a material breach by the Design and Construction Verification Engineer of any of the required terms of the Design and Construction Verification Engineer's engagement,

then the Design and Construction Verification Engineer's engagement may be terminated by the agreement of the State and the Company and the Trustee.

The State, the Company and the Trustee shall (on terms and conditions proposed by the State and agreed by the Company and the Trustee), engage another consultant with similar professional experience and expertise as the Design and Construction Verification Engineer, to fulfil the functions of the Design and Construction Verification Engineer under this Deed.

If the parties are unable to agree on the identity of the replacement of the Design and Construction Verification Engineer within one month of commencing discussions, either party may refer the matter to the President, The Institution of Engineers, Australia, who will appoint the Design and Construction Verification Engineer in accordance with clause 6A.1(c).

- (b) Thereafter all references in this Deed to the Design and Construction Verification Engineer shall be read and construed as a reference to the replacement consultant so engaged.
- (c) The costs of the Design and Construction Verification Engineer will be borne by the parties as follows:
 - (i) in respect of the functions performed by the Design and Construction Verification Engineer in accordance with the express terms of this Deed, and unless otherwise expressly stated, the costs will be shared equally between the State, the Company and the Trustee; and
 - (ii) in respect of other requests of the Design and Construction Verification Engineer made by a party, that party will bear 100% of the costs.

6A.6 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 6A does not apply to the CTW Works, the CTW Maintenance Activities or the CTW.

6B. INDEPENDENT REVIEWER - CTW

6B.1 Engagement of CTW Independent Reviewer

- (a) The State, the Company and the Trustee will jointly select and engage the CTW Independent Reviewer to act as an independent expert to exercise the functions conferred on the CTW Independent Reviewer under the CTW Project Documents.
- (b) If by 31 May 2015, or such later date as may be agreed by the parties, the State, the Company and the Trustee have not appointed the CTW Independent Reviewer, either party may refer the matter to the President, The Institution of Engineers, Australia, who will appoint the CTW Independent Reviewer in accordance with clause 6B.1(c).
- (c) Selection of the CTW Independent Reviewer will be based on:

- (i) information as to the candidate's ability to perform the functions conferred on the CTW Independent Reviewer under the CTW Project Documents;
- (ii) the candidate's proposed methodology for the performance of those functions;
- (iii) an outline of the candidate's relevant expertise and experience in projects of a similar type and nature. In particular, the parties require that the candidate must be experienced in road and bridge design and construction, program, timing, traffic engineering and freeway management systems; and
- (iv) pre-qualification in relation to VicRoads requirements for road and bridge design and construction, and traffic engineering (where applicable) existing at the time of engagement of the CTW Independent Reviewer.

6B.2 Role of CTW Independent Reviewer

- (a) The State, the Company and the Trustee shall permit the CTW Independent Reviewer to exercise its functions under the CTW Project Documents and shall provide such information to the CTW Independent Reviewer and give such access to the Project Land, CTW Land and CTW Extra Land to the CTW Independent Reviewer (and any person authorised by the CTW Independent Reviewer) as may reasonably be requested by the CTW Independent Reviewer for that purpose.
- (b) The CTW Independent Reviewer will exercise the functions conferred on the CTW Independent Reviewer under the CTW Project Documents.

6B.3 Conduct of the CTW Independent Reviewer

- (a) On no account will the State be liable to the Company or the Trustee for any act or omission by the CTW Independent Reviewer.
- (b) On no account will the Company or the Trustee be liable to the State for any act or omission by the CTW Independent Reviewer.

6B.4 No Relief

- (a) Neither the Company nor the Trustee will be relieved of any responsibility or liability under this Deed as a result of anything which the CTW Independent Reviewer may do or fail to do.
- (b) The State will not be relieved of any responsibility or liability under this Deed as a result of anything which the CTW Independent Reviewer may do or fail to do.

6B.5 Determinations of CTW Independent Reviewer

- (a) Determinations of the CTW Independent Reviewer under clauses 8B.6(e), 8B.11C(a)(i), 8B.13(e) and 8B.19(d) will be final and binding on the State and the Company and the Trustee except in the case of manifest error on the face of the CTW Independent Reviewer's determination.
- (b) The following determinations of the CTW Independent Reviewer:
 - (i) a determination under clause 8B.11(e);
 - (ii) a determination under clause 9.1(d) of the CTC Redevelopment Deed (other than where the State has directed a variation);
 - (iii) a determination under section 1.3(a) of Schedule 6 of the CTC Redevelopment Deed; and
 - (iv) a determination under clause 11.5(c) or 11.5(d) of the CTC Redevelopment Deed,will be final and binding on the State and the Company and the Trustee except:
 - (v) in the case of manifest error on the face of the CTW Independent Reviewer's determination; or
 - (vi) if the potential financial impact of the CTW Independent Reviewer's determination is more than \$2,500,000.

6B.6 Replacement of the CTW Independent Reviewer

- (a) If:
 - (i) the CTW Independent Reviewer refuses or is unable to perform the functions designated to it under the CTW Project Documents; or
 - (ii) the Company, the Trustee or the State can establish a material breach by the CTW Independent Reviewer of any of the required terms of the CTW Independent Reviewer's engagement,

then the State, the Company and the Trustee shall (on terms and conditions proposed by the State and discussed with the Company and the Trustee, as long as they are substantially similar to those which apply to the CTW Independent Reviewer's engagement) engage another consultant proposed by the State (and against whom the Company and the Trustee make no reasonable objection) with similar professional experience and expertise as the CTW Independent Reviewer, to fulfil the functions of the CTW Independent Reviewer under this Deed.

If the parties are unable to agree on the identity of the replacement of the CTW Independent Reviewer within one

month of commencing discussions, either party may refer the matter to the President, The Institution of Engineers Australia, who will appoint the CTW Independent Reviewer in accordance with clause 6B.1(c).

- (b) Thereafter all references in this Deed to the CTW Independent Reviewer shall be read and construed as a reference to the replacement consultant so engaged.
- (c) The costs of the CTW Independent Reviewer will be borne by the parties as follows:
 - (i) in respect of the functions, activities or services performed by the CTW Independent Reviewer in accordance with the express terms of the CTW Project Documents, and unless otherwise expressly stated, the costs will be shared equally between the State, the Company and the Trustee;
 - (ii) in respect of the functions, activities or services performed by the CTW Independent Reviewer in accordance with the express terms of the CTW Design and Construct Contract, the costs will be borne by the Company and the Trustee, except to the extent the functions, activities or services under the CTW Design and Construct would in any event need to be performed under the CTW Project Documents, in which case the costs will be shared equally between the State, the Company and the Trustee; and
 - (iii) in respect of other requests of the CTW Independent Reviewer made by a party, that party will bear 100% of the costs.
- (d) The parties will negotiate in good faith to agree payment arrangements to give effect to the cost allocation principle described in paragraph (c).

6C INDEPENDENT SCHEDULER - CTW

6C.1 Engagement of CTW Independent Scheduler

- (a) The State, the Company and the Trustee will jointly select and engage the CTW Independent Scheduler to act as an independent expert to exercise the functions conferred on the CTW Independent Scheduler under the CTW Project Documents.
- (b) If by 31 May 2015, or such later date as may be agreed by the parties, the Company and the Trustee have not appointed the CTW Independent Scheduler, either party may refer the matter to the President, The Institution of Engineers, Australia, who will appoint the CTW Independent Scheduler in accordance with clause 6C.1(c).
- (c) Selection of the CTW Independent Scheduler will be based on:

- (i) information as to the candidate's ability to perform the functions conferred on the CTW Independent Scheduler under the CTW Project Documents;
- (ii) the candidate's proposed methodology for the performance of those functions;
- (iii) an outline of the candidate's relevant expertise and experience in projects of a similar type and nature. In particular, the parties require that the candidate must be experienced in road and bridge design and construction, traffic engineering, program, timing and freeway management systems; and
- (iv) pre-qualification in relation to VicRoads requirements for road and bridge design and construction, and traffic engineering (where applicable) existing at the time of engagement of the CTW Independent Scheduler.

6C.2 Role of CTW Independent Scheduler

- (a) The State, the Company and the Trustee shall permit the CTW Independent Scheduler to exercise its functions under the CTW Project Documents and shall provide such information to the CTW Independent Scheduler and give such access to the Project Land, CTW Land and CTW Extra Land to the CTW Independent Scheduler (and any person authorised by the CTW Independent Scheduler) as may reasonably be requested by the CTW Independent Scheduler for that purpose.
- (b) The CTW Independent Scheduler will exercise the functions conferred on the CTW Independent Scheduler under the CTW Project Documents.

6C.3 Conduct of the CTW Independent Scheduler

- (a) On no account will the State be liable to the Company or the Trustee for any act or omission by the CTW Independent Scheduler.
- (b) On no account will the Company or the Trustee be liable to the State for any act or omission by the CTW Independent Scheduler.

6C.4 No Relief

- (a) Neither the Company nor the Trustee will be relieved of any responsibility or liability under this Deed as a result of anything which the CTW Independent Scheduler may do or fail to do.
- (b) The State will not be relieved of any responsibility or liability under this Deed as a result of anything which the CTW Independent Scheduler may do or fail to do.

6C.5 Determinations of CTW Independent Scheduler

Determinations of the CTW Independent Scheduler under the CTW Project Documents will be final and binding on the State and the Company and the Trustee except:

- (a) in the case of manifest error on the face of the CTW Independent Scheduler's determination; or
- (b) if the potential financial impact of the CTW Independent Scheduler's determination is more than \$2,500,000.

6C.6 Replacement of the CTW Independent Scheduler

- (a) If:
 - (i) the CTW Independent Scheduler refuses or is unable to perform the functions designated to it under the CTW Project Documents; or
 - (ii) the Company, the Trustee or the State can establish a material breach by the CTW Independent Scheduler of any of the required terms of the CTW Independent Scheduler's engagement,

then the State, the Company and the Trustee shall (on terms and conditions proposed by the State and discussed with the Company and the Trustee, as long as they are substantially similar to those which apply to the CTW Independent Scheduler's engagement) engage another consultant proposed by the State (and against whom the Company and the Trustee make no reasonable objection) with similar professional experience and expertise as the CTW Independent Scheduler, to fulfil the functions of the CTW Independent Scheduler under this Deed.

If the parties are unable to agree on the identity of the replacement of the CTW Independent Scheduler within one month of commencing discussions, either party may refer the matter to the President, The Institution of Engineers Australia, who will appoint the CTW Independent Scheduler in accordance with clause 6C.1(c).

- (b) Thereafter all references in this Deed to the CTW Independent Scheduler shall be read and construed as a reference to the replacement consultant so engaged.
- (c) The costs of the CTW Independent Scheduler will be borne by the parties as follows:
 - (i) in respect of the functions activities or services performed by the CTW Independent Scheduler in accordance with the express terms of the CTW Project Documents, and unless otherwise expressly stated, the costs will be shared equally between the State, the Company and the Trustee; and

- (ii) in respect of other requests of the CTW Independent Scheduler made by a party, that party will bear 100% of the costs.

6D Groundwater Management System Auditor

6D.1 Engagement of Groundwater Management System Auditor

- (a) The State and the Company must jointly select and engage a hydro geologist to act as Groundwater Management System Auditor to perform the services as outlined in section 2.10.2(k) of the Project Scope and Technical Requirements.
- (b) If by 3 months prior to the date of the first review of the Groundwater Management System in accordance with the Groundwater Management System Auditor Deed of Appointment, or such later date as may be agreed by the parties, the State and the Company have not appointed the Groundwater Management System Auditor, either party may refer the matter to the a member of the Committee of the International Association of Hydrogeologists (Victoria), or his or her representative, who will appoint the Groundwater Management System Auditor in accordance with clause 6D.1(c).
- (c) Selection of the Groundwater Management System Auditor will be based on:
 - (i) information as to the candidate's ability to perform the functions conferred on the Groundwater Management System Auditor under the Groundwater Management System Auditor Deed of Appointment;
 - (ii) the candidate's proposed methodology for the performance of those functions; and
 - (iii) an outline of the candidate's relevant expertise and experience in hydrogeology and operating and maintaining groundwater management systems.

6D.2 Role of Groundwater Management System Auditor

- (a) The State and the Company shall permit the Groundwater Management System Auditor to exercise its functions under the Groundwater Management System Auditor Deed of Appointment and shall provide such information to the Groundwater Management System Auditor and give such access to the Project Land, Lay Down Areas, Off-Site Areas and Groundwater Land to the Groundwater Management System Auditor (and any person authorised by the Groundwater Management System Auditor) as may reasonably be requested by the Groundwater Management System Auditor for that purpose.
- (b) The Groundwater Management System Auditor will exercise the functions conferred on the Groundwater

Management System Auditor under the Groundwater Management System Auditor Deed of Appointment.

6D.3 Conduct of the Groundwater Management System Auditor

- (a) On no account will the State be liable to the Company or the Trustee for any act or omission by the Groundwater Management System Auditor.
- (b) On no account will the Company or the Trustee be liable to the State for any act or omission by the Groundwater Management System Auditor.

6D.4 No Relief

- (a) The Company will not be relieved of any responsibility or liability under this Deed as a result of anything which the Groundwater Management System Auditor may do or fail to do.
- (b) The State will not be relieved of any responsibility or liability under this Deed as a result of anything which the Groundwater Management System Auditor may do or fail to do.

6D.5 Replacement of the Groundwater Management System Auditor

- (a) If:
 - (i) the Groundwater Management System Auditor Deed of Appointment is terminated in accordance with its terms; or
 - (ii) the Groundwater Management System Auditor ceases to act as the Groundwater Management System Auditor for the purposes of the Deed,
the State and the Company must jointly engage another person to act as the Groundwater Management System Auditor on substantially the same terms as the Groundwater Management System Auditor Deed of Appointment, provided that the Groundwater Management System Auditor to be engaged must:
 - (iii) be reasonably acceptable to the State and the Company;
 - (iv) have appropriate qualifications and experience; and
 - (v) have no interest or duty which conflicts or may conflict with its functions as a Groundwater Management System Auditor.
- (b) If the parties are unable to agree on the identity of the replacement of the Groundwater Management System Auditor within one month of commencing discussions, either party may refer the matter to a member of the Committee of the International Association of

Hydrogeologists (Victoria), or his or her representative, who will appoint the Groundwater Management System Auditor in accordance with clause 6D.1(c).

- (c) Thereafter all references in this Deed to the Groundwater Management System Auditor shall be read and construed as a reference to the replacement consultant so engaged.

6D.6 Costs and expenses of the Groundwater Management System Auditor

- (a) The costs of the Groundwater Management System Auditor (including the cost of engaging the Groundwater Management System Auditor, the Groundwater Management System Auditor 's professional fees and any costs incurred in exercising or purporting to perform its obligations under Groundwater Management System Auditor Deed of Appointment) will, unless otherwise expressly stated, be paid in equal shares between the State and the Company to the Groundwater Management System Auditor.
- (b) The Company and the Trustee will reimburse the State for all costs associated with selecting and engaging the Groundwater Management System Auditor including those costs payable by the State under clause 6D.6(a).
- (c) The parties will negotiate in good faith to agree payment arrangements to give effect to the cost allocation principle described in paragraph (a).

7. DESIGN AND CONSTRUCTION

7.1 Design

Each of the Company and the Trustee represents and warrants that:

- (a) it has checked and carefully considered the Project Scope and Technical Requirements and that they are proper, adequate and suitable for their purpose as specified in the Project Scope and Technical Requirements;
- (b) the design of the Link will be fit for its purpose as specified in the Project Scope and Technical Requirements and completed in accordance with the requirements of this Deed;
- (c) subject to clause 7.2, no representation or warranty has been given or is given by or on behalf of the State, any Government Agency or Utility or anyone for whom it or a Government Agency or Utility is responsible (other than pursuant to clause 14.1(d)) as to:
 - (i) the suitability, completeness or efficacy of any information or data supplied or made available by any of them, on or before the date of this Deed including information or data forming part of the Project Scope and Technical Requirements; or

- (ii) any other drawings, plans, design specifications, reports or other information or data which relate directly or indirectly to the Works or the Link; and
- (d) subject to clause 7.2, it has made its own review and evaluation of the suitability and accuracy of the information or data referred to in this clause without reliance on the State, any Government Agency or Utility (other than pursuant to clause 14.1(d)).

7.1A Further Design

Each of the Company and the Trustee represents and warrants as at the date being the operative date for the purposes of the Fourth Amending Deed that:

- (a) it has checked and carefully considered the amendments to the Project Scope and Technical Requirements contemplated in the notice issued under paragraph 2.4(d) on 30 June 1997 and they are proper, adequate and suitable for their purpose as specified in the Project Scope and Technical Requirements;
- (b) the design of CLEP will be fit for its purpose as specified in the Project Scope and Technical Requirements and completed in accordance with the requirements of this Deed;
- (c) subject to clause 7.2, no representation or warranty has been given or is given by or on behalf of the State, any Government Agency or Utility or anyone for whom it or a Government Agency or Utility is responsible as to:
 - (i) the suitability, completeness or efficacy of any information or data supplied or made available by any of them with respect to CLEP on or before the date being the operative date for the purposes of the Fourth Amending Deed; or
 - (ii) any other drawings, plans, design specifications, reports or other information or data which relate directly or indirectly to the Works relating to CLEP or to CLEP;
- (d) subject to clause 7.2, it has made its own review and evaluation of the suitability and accuracy of the information or data referred to in this clause without reliance on the State, any Government Agency or Utility.²¹²

7.2 Services and Roadway Information

It is acknowledged by the State that the Company, the Trustee and/or their nominee (including the Construction Contractor) may have sought and relied on information from (and in so doing, may have rights at Law against) third parties (including Government Agencies and Utilities but excluding the Authority and VicRoads) in relation to the location of existing Services and roadways. The Company and the Trustee acknowledge, however, that, as between the parties they bear the risk of any such reliance.

7.3

Prior Design Work

- (a) Each of the Company and the Trustee acknowledges it is aware that:
- (i) substantial work previously performed by others upon the design of the Link (including the proposed Tullamarine Freeway Upgrade) has been incorporated in the Project Scope and Technical Requirements;
 - (ii) geotechnical tests have been conducted and information prepared as a result of those tests; and
 - (iii) traffic investigations have been conducted.
- (b) Notwithstanding the matters referred to in paragraph (a), the Company and the Trustee shall comply with their obligations under this Deed.
- (c) As between the parties, the Company and the Trustee shall bear absolutely all risks howsoever they may arise (whether directly or indirectly and whether as a result of negligence or otherwise) as a result of the use for the purposes of the Project of:
- (i) any design work which is incorporated in the Project Scope and Technical Requirements used by the Company, the Trustee or any Contractor;
 - (ii) any geotechnical information used by the Company, the Trustee or any Contractor; or
 - (iii) any traffic investigations used by the Company the Trustee or any Contractor,
- undertaken by others prior to the date of this Deed or, insofar as that work or information or those investigations relates to CLEP, prior to the date being the operative date for the purposes of the Fourth Amending Deed; and²¹³
- subject to clause 7.2, any other information obtained from or provided by the State, any Government Agency or Utility prior to the date of this Deed or, insofar as the information obtained or provided relates to CLEP, prior to the date being the operative date for the purposes of the Fourth Amending Deed.²¹⁴
- (d) Each of the Company and the Trustee acknowledges that none of the matters referred to in paragraph (c):
- (i) affect its obligations to execute the Works or the obligations of the Company to operate, maintain and repair the Link in accordance with this Deed; or
 - (ii) subject to clause 7.2, entitle it to receive from the State, a Government Agency or Utility any moneys by way of damages, compensation or

other payment, whether arising under a Project Document or in any other manner.

7.4

Design Program

- (a) By the later of the date of satisfaction of the last of the conditions precedent required to be satisfied under clause 2.7 and 31 January 1996, the Company and the Trustee shall submit a detailed design program to the State and the Independent Reviewer.
- (ai) The Company and the Trustee shall submit to the State and the Independent Reviewer a detailed amendment to the design program submitted under paragraph (a):
 - (i) so as to take into account changes consequent upon CLEP;
 - (ii) so as nevertheless to comply with paragraph (c);
 - (iii) by the 10th Business Day after the date being the operative date for the purposes of the Fourth Amending Deed.²¹⁵
- (b) The design program shall be in the form of a critical path network set out to a time scale of calendar weeks.
- (c) The design program shall:
 - (i) identify each discrete complete component for which proposed Design Documentation is required under clause 7.5(e);
 - (ii) provide for the Company and the Trustee to give monthly reports to the State and the Independent Reviewer setting out details of the Company's and the Trustee's progress in developing the design of the Link;
 - (iii) set out the sequence in which and times by which the Design Documentation is to be completed having regard to, amongst other things, the requirements of paragraph 7.5(c);
 - (iv) make due allowance for the Independent Reviewer to conduct a general overview and reasonable checking of the Design Documentation and for any amendments and resubmission of the Design Documentation which may be undertaken by the Company and Trustee;
 - (v) require the Design Documentation to be given to the Independent Reviewer within the time required by, and at a rate consistent with, the maintenance of progress of the Works in accordance with the Construction Program; and
 - (vi) require the Design Documentation to be given to the Independent Reviewer in a manner and at a rate which will enable the Independent Reviewer

to examine the Design Documentation within the time required by this Deed.

7.5

Design Documentation

- (a) The Company shall complete the design of the Link (other than the Trust Road) in accordance with the Project Scope and Technical Requirements by preparing proposed Design Documentation provided, however, that the Company shall provide to the State by the date of Financial Closing sufficient information to enable the precise identification of land for the purposes of the preparation of the Property Schedule.²¹⁶
- (b) The Trustee shall complete the design of the Trust Road in accordance with the Project Scope and Technical Requirements by preparing proposed Design Documentation.
- (bi) Insofar as proposed Design Documentation:
 - (i) has been prepared, submitted, or given effect to on or before the date being the operative date for the purposes of the Fourth Amending Deed; and
 - (ii) relates to the design of the Works affected by CLEP,

the Company shall (or, if the Design Documentation was prepared by the Trustee under paragraph (b), the Trustee shall) promptly prepare such changes to that Design Documentation as may be necessary or desirable to ensure that design of the Link or of the Trust Road (as applicable) remains in accordance with the Project Scope and Technical Requirements.²¹⁷

- (c) In relation to the preparation and submission of any Design Documentation which impacts on any of the matters set out in Schedule 5 (a "**Schedule 5 matter**"):
 - (i) the Company and the Trustee shall each ensure that each municipality affected by a Schedule 5 matter shall receive full details of that part of the proposed Design Documentation relevant to that matter;
 - (ii) the Company and the Trustee shall each ensure that each community group whose interests are (to the knowledge of the Company, the Trustee or the Construction Contractor) affected by a Schedule 5 matter shall receive notification as to where the proposed Design Documentation may be inspected;
 - (iii) the Company and the Trustee shall each ensure that each such municipality and community group shall be notified of the period (being not less than 20 Business Days) during which it may make written submissions to the Authority (with a copy

- to the Company and the Trustee) on the proposed Design Documentation insofar as it impacts on any Schedule 5 matter;
- (iv) if, within a period of 30 Business Days after the last date for making written submissions under sub-paragraph (c)(iii), the State reasonably considers and so advises the Company and the Trustee that changes are required to the proposed Design Documentation in relation to any Schedule 5 matter, the Company and the Trustee shall effect such changes, provided that no changes need be effected pursuant to this sub-paragraph if the cost of doing so (together with the cost of giving effect to other such changes, but less costs saved as a result of such changes) results or would result in the aggregate direct construction cost under the Design and Construct Contract exceeding the contract price under the Design and Construct Contract;
 - (v) if the Company and the Trustee are reasonably of the view that a change need not be effected because of the proviso to sub-paragraph (iv), they shall give to the State details of the cost of the change and the Company and the Trustee shall endeavour in good faith to agree with the State on a modified change to which the proviso does not apply; and
 - (vi) if there is a dispute or difference about the cost of effecting a change or if no agreement is reached within 20 Business Days, any party may refer the matter for expert determination under Article 16.
- (ci) Insofar as proposed Design Documentation:
- (i) either:
 - (A) comprises or is affected by changes to which paragraph 7.5(bi) applies; or
 - (B) relates to the design of a part of the Works that comprises part of CLEP; and
 - (ii) relates to works which are described in the Project Scope and Technical Requirements as being subject to the approval of or for the consideration by the State or are described in the drawings numbered SE1-CI-2703 Revision C, SC3-ST-2504 Revision B1, SC3-ST-2508 Revision B1, SPR-ST-2301 Revision A, SPR-ST-2311 Revision A, SPR-ST-2312 Revision A, SPR-ST-2313 Revision A, SPR-CI-2301 Revision B and SPR-CI-2302 Revision B and either:

- (A) would reasonably be considered to relate to urban design issues which arise from, landscaping contemplated in, or architecture of structures to be constructed as a result of, the changes to the Construction Documentation notice of which was given by the State to the Company and Trustee under paragraph 2.4(d) and 30 June 1997; or
- (B) relates to either the Morshead Overpass or any of the portals comprised within or affected by CLEP,

then, without limiting any of their other obligations under this clause 7.5, the Company and the Trustee shall, before commencing construction of the Works to which the relevant Design Documentation relates;

- (iii) submit that Design Documentation to the State; and
- (iv) make such changes to that Design Documentation of which the State may have given notice to the Company and Trustee within 30 Business Days of its receipt of that documentation, provided that no such change need be effected pursuant to this sub-paragraph if the cost of doing so (together with the cost of giving effect to other such changes, but less costs saved as a result of such changes) results or would result in the aggregate direct construction cost under the Design and Construct Contract exceeding the contract price under the Design and Construct Contract.

If the Company and the Trustee are reasonably of the view that a change need not be effected because of the proviso to sub-paragraph (iv), they shall give to the State details of the cost of the change and the Company and the Trustee shall endeavour in good faith to agree with the State on a modified change to which the proviso does not apply. If there is a dispute or difference about the cost of effecting a change or if no agreement is reached within 20 Business Days, any party may refer the matter for expert determination under Article 16.²¹⁸

- (d) Before commencing construction of any part of the Section to which proposed Design Documentation relates:
 - (i) the Company and the Trustee shall submit the proposed Design Documentation to the Independent Reviewer and to the **State**; and
 - (ii) 7 Business Days must have elapsed since the Company or the Trustee provided the Independent Reviewer with the proposed Design Documentation.

- (e) The proposed Design Documentation submitted by the Company and the Trustee shall be all the documentation properly required for each discrete complete component referred to in the design program submitted under clause 7.4(a), as amended under clause 7.4(ai), together with further proposed Design Documentation which demonstrates the relationship of that component to adjoining and related components of the Project Scope and Technical Requirements.²¹⁹
- (f) The parties may, from time to time and at any time after 20 February 1996, in the sole and absolute discretion of each party, agree other arrangements to those set out in paragraph (a) to enable the precise identification of land for the purposes of the preparation of the Property Schedule and to the extent agreed between them the arrangements shall operate in satisfaction of the requirements of paragraph (a).²²⁰

7.6

Review of Design Documentation

- (a) It is acknowledged by the State, the Company and the Trustee that the Independent Reviewer, the Company and the Trustee may consult and confer with each other as to the proposed Design Documentation prior to the formal submission of the Design Documentation by the Company and the Trustee to the Independent Reviewer under clause 7.5.
- (b) The Independent Reviewer shall review the proposed Design Documentation (by general overview and reasonable checking) within:
 - (i) 5 Business Days of receipt of the initial proposed Design Documentation; and
 - (ii) 5 Business Days of receipt of other proposed Design Documentation, or a proposed change under clause 2.4(d) and (e),to form an opinion as to whether it complies with the Project Scope and Technical Requirements.
- (c) Within 2 Business Days after the end of the relevant period specified under paragraph (b), the Independent Reviewer may give notice to the Company and the Trustee and the State of the Independent Reviewer's opinion as to whether the proposed Design Documentation or proposed change complies with the Project Scope and Technical Requirements for reasons which the Independent Reviewer specifies.
- (d) If the Independent Reviewer forms the opinion that implementation of the proposed Design Documentation or the proposed change will be unsafe to members of the public or to workers involved in carrying out the Works, the Independent Reviewer shall specify those matters in a

notice given under paragraph (c), together with the reasons for that opinion.

- (e) If the Company or the Trustee disagree with any opinion of the Independent Reviewer under paragraph (c) they may at their own risk proceed with construction in accordance with the design to which the opinion relates. Alternatively, if the Company and Trustee prepare further proposed Design Documentation, they shall resubmit it under clause 7.5(d).

7.7 Warranties Unaffected

- (a) The Company and the Trustee shall not be relieved of any liability in respect of the warranties in clause 7.1 or 7.1A because they or either of them have been obliged to adopt the Project Scope and Technical Requirements.²²¹
- (b) The liability and responsibility of the Company and the Trustee under this Deed for the design and construction of the Link will not be affected by the Independent Reviewer making or giving or failing to make or give any:
 - (i) opinion;
 - (ii) comment or specification; or
 - (iii) notice,in relation to any Design Documentation.

7.8 Construction

- (a) The Company shall construct that part of the Link other than the Trust Road:
 - (i) with good workmanship and materials;
 - (ii) in accordance with the Construction Documentation; and
 - (iii) so that it is fit for its intended purpose as specified in the Project Scope and Technical Requirements.
- (b) The Trustee shall construct the Trust Road:
 - (i) with good workmanship and materials;
 - (ii) in accordance with the Construction Documentation; and
 - (iii) so that it is fit for its intended purpose as specified in the Project Scope and Technical Requirements.

7.9 Review of Construction

- (a) The Independent Reviewer shall review (by general overview and reasonable checking) the Construction Program and the construction of the Link so that it may form an opinion as to whether the obligations of the Company and the Trustee relating to construction of the Link are being complied with and in particular whether the

- Link is being constructed in accordance with clauses 7.8 and 8.3.
- (b) The Independent Reviewer may give notice to the Company or the Trustee and the State that, in its opinion, the obligations of the Company or the Trustee relating to construction of the Link are not being complied with for reasons which the Independent Reviewer specifies.
 - (c) Under the Project Legislation:
 - (i) the State delegates to the Independent Reviewer its power to issue orders under section 102 of the Building Act; and
 - (ii) as a result of the delegation referred to in subparagraph (i), the Independent Reviewer may make an emergency order if the Independent Reviewer is of the opinion that the order is necessary because of a danger to life or property arising out of the carrying out of the Works for the Project on the Project Land.
 - (d) Subject to paragraph (f), the Company and the Trustee may develop a plan and program for remediation ("**Plan for Remediation**") to remedy the matters the subject of a notice under either paragraph (b) or paragraph (e), which they may submit to the Independent Reviewer within 10 Business Days after receipt of the Independent Reviewer's notice under paragraph (b) or paragraph (e), as the case may be.
 - (e) Within 10 Business Days of receipt of the Plan for Remediation the Independent Reviewer may give notice to the Company or the Trustee and the State of its opinion as to whether the Plan for Remediation satisfactorily addresses the concerns of the Independent Reviewer, for reasons which the Independent Reviewer specifies.
 - (f) If the Company or the Trustee disagree with any determination of the Independent Reviewer under paragraphs (b), or (e) they may at their own risk proceed with construction notwithstanding the Independent Reviewer's opinion.
 - (g) The Company and the Trustee shall cease construction of any part of the Works the subject of an order under paragraph (c) and shall prepare to overcome the fact, matter or thing which gave rise to the necessity for the Independent Reviewer to issue the order. The Plan for Remediation shall be submitted to the Independent Reviewer who shall either:
 - (i) agree with the Plan of Remediation - in which case the Company and the Trustee will carry out such plan;
 - (ii) disagree with the Plan of Remediation - in which case the Company and Trustee shall resubmit the

plan. Any resubmitted plan pursuant to this subparagraph shall be subject to the provisions of this paragraph as if it were the first such plan submitted in accordance with this paragraph.

7.10 Construction Contractor

The engagement of the Construction Contractor to perform some or all of the obligations of the Company or the Trustee under this Deed will not limit or affect the obligations or liability of the Company or the Trustee under this Deed.

7.11 Safety

The Company and the Trustee shall:

- (a) carry out the Works in a safe manner and so as to minimise the risk of damage being caused to any person or property;
- (b) identify any land or improvements which may be affected while carrying out such Works; and
- (c) give to the State and the Independent Reviewer detailed proposals for minimising the risk of injury or damage to any person or property when carrying out the Works.

7.12 State's Right to Enter and Inspect

Upon giving reasonable notice to the Company and the Trustee the State and any person authorised by it may enter and inspect the Project Land, the Lay Down Areas and the Off-Site Areas at any reasonable time, conditional however, upon:

- (a) the State observing (and ensuring that any such authorised person observes) rules or requirements of the Company or the Trustee as to safety or security on the Project Land, the Lay Down Areas or the Off-Site Areas which are applied generally by the Company and the Trustee;
- (b) the State not delaying (and ensuring that any authorised person does not delay) the carrying out of the Works; and
- (c) the State not damaging (and ensuring that any authorised person does not damage) the Works,

in connection with the exercise or purported exercise of rights under this clause.

7.13 Interference

- (a) The Company and the Trustee shall ensure that each of them and their Contractors shall not interfere with the flow of traffic on roadways in the vicinity of the Project Land, the Lay Down Areas or the Off-Site Areas unless it is reasonably necessary to do so for the purposes of the Project and:
 - (i) the Company or the Trustee has notified the State, VicRoads and any relevant municipal governing body of the:

- (A) nature and approximate duration of any proposed interference;
 - (B) arrangements proposed for traffic movements (including minimising interference); and
 - (C) proposed arrangements for notifying the public; and
- (ii) the State has approved those arrangements, which approval:
 - (A) may be subject to reasonable conditions;
 - (B) shall not be unreasonably withheld or delayed; and
 - (C) shall be deemed to have been given insofar as the relevant interference is contemplated in, and the arrangements to deal with that interference are provided for in, the Project Scope and Technical Requirements.
- (b) After approval is given:
 - (i) subject to sub-paragraph (ii), the Company and the Trustee shall carry out the arrangements in accordance with the approval;
 - (ii) the State may carry out or procure the carrying out of the approved arrangements to the extent that the approved arrangements require management of traffic or taking of other measures outside the Project Land and the Lay Down Areas.
- (c) Without limitation to clause 3.1(c), the Company and the Trustee shall be responsible for the cost of carrying out approved traffic arrangements under paragraph (b)(i).
- (d) Without prejudice to their other obligations under this Deed, the Company and the Trustee shall each ensure that the effect of execution of the Works on:
 - (i) transportation Services and facilities (whether public or otherwise); and
 - (ii) Services and facilities used or provided by Utilities,is minimised.

7.14

Quality Assurance

- (a) The Company and the Trustee shall develop and implement a quality assurance system for the Works in accordance with the Project Scope and Technical Requirements.
- (b) Neither the Company nor the Trustee shall be relieved of any liability under this Deed (other than under paragraph (a)) as a result of:

- (i) compliance with the quality assurance requirements under this Deed; or
- (ii) anything which the Independent Reviewer does or does not do with respect to the quality assurance requirements under this Deed, including the expression of any opinion about the Company's or the Trustee's compliance with those requirements.

7.15 Proprietary Documentation

- (a) The Company and the Trustee grant to the State an irrevocable non-exclusive licence to use, and sub-licence others to use, the Proprietary Documentation as it sees fit:
 - (i) for the purposes of executing the Works, achieving Completion of any Section, and operating, maintaining and repairing the Link (or a part of it);
 - (ii) during such period as the State is entitled to construct, operate, repair or maintain the Link (or a part of it) or execute the Works (or a part of them), under the Project Documents; and on and from the date on which the Concession Period ends.

For the purpose of this paragraph (a):

- (iii) a State Area within the meaning of clause 13.8(b), and an AP Area within the meaning of clause 12.8(e), shall be deemed part of the Link and works undertaken or proposed to reinstate or repair any damage to or destruction of such an area shall be deemed part of the Works; and
 - (iv) in considering what constitutes Proprietary Documentation, the definition of Intellectual Property Rights shall be deemed to include an express reference to "design and know how".
- (b) Promptly after it is requested by the State to do so but subject to the rights of, and obligations owed to, third parties (including licensors) or owners of Intellectual Property Rights and to the extent permitted by such third parties or owners and subject to paragraph (c), the Company and the Trustee shall grant, or procure the grant, to the State or any nominee of the State specified in the request, an irrevocable non-exclusive licence to use, and sub-licence others to use, the Proprietary Documentation as it sees fit for a specified use in Victoria (whether or not that use involves the State or any Victorian Government Agency).
 - (c) The non-exclusive licence granted under paragraph (b) does not include a licence of Intellectual Property Rights listed in Exhibit Q.

- (d) Any request under paragraph (b) may be made from time to time.
- (e) Any licence granted pursuant to a request under paragraph (b) must be;
 - (i) consistent with the provisions of this clause; and
 - (ii) on terms and conditions which are commercially reasonable and which would be considered to be commercially reasonable, were there to be a number of non-collusive competitive, suppliers of the Proprietary Documentation.
- (f) Any dispute which arises between the State, the Company or the Trustee in relation to the terms and conditions of a licence granted or to be granted in accordance with this clause may be referred for expert determination under Article 16.
- (g) This clause 7.15 does not apply to the Tolling System.

7.16

Variations

- (a) At any time during the Concession Period, the State may direct the Company or the Trustee (as the case may be) to undertake a Variation by issuing a Variation Order in respect of the Trust Road or the Company Road. The direction must include the terms on which the Variation is required to be undertaken and completed including:
 - (i) the amount payable to or by the Company or the Trustee (as the case may be) for the Variation, calculated in accordance with the Variation Principles;
 - (ii) the time for completion of the Variation; and
 - (iii) any amendments to the Link, the Project Documents or any variations to any existing approval or permit or any new approval or permit to take into account the Variation,which will be determined having regard to the procedures in this clause 7.16 or otherwise by the State acting reasonably.
- (b) If the State issues a Variation Order then:
 - (i) subject to clause 7.16(d), the Company or the Trustee (as the case may be) must undertake the Variation on the terms set out in the Variation Order;
 - (ii) subject to clause 7.16(d), where the amount under clause 7.16(a)(i), is payable:
 - (A) by the State to the Company or the Trustee (as the case may be), the Company or the Trustee will be entitled to payment of the amount for undertaking

- the Variation set out in the Variation Order; and
- (B) by the Company or the Trustee (as the case may be) to the State, the State will be entitled to payment of the amount for undertaking the Variation set out in the Variation Order;
- (iii) the Project Documents will be deemed to be amended in accordance with the relevant amendments set out in the Variation Order; and
- (iv) the Company or the Trustee (as the case may be) must carry out its obligations under the Project Documents as amended in accordance with clause 7.16(b)(iii),
- unless and until determined otherwise as a result of the Company or the Trustee (as the case may be) exercising its rights under clause 7.16(c).
- (c) Subject to clause 7.16(d), if the Company or the Trustee (as the case may be) disputes all or any part of the Variation Order, the Company or the Trustee must continue to undertake the Variation described in the Variation Order (including the works or activities the subject matter of any dispute) but may refer the matter for expert determination under Article 16.
- (d) If:
- (i) the State has issued a Variation Order; and
- (ii) the effect of the Variation Order is subsequently revoked wholly or in part in accordance with section 15(3) of the Project Legislation (**Variation Revocation**),
- then:
- (iii) on and from the date of Variation Revocation, the Company and the Trustee are not obliged to continue to undertake the Variation described in the Variation Order to the extent of the Variation Revocation; and
- (iv) the State must reimburse the Company and the Trustee for:
- (A) their actual costs properly and reasonably incurred prior to the date of the Variation Revocation;
- (B) any amounts reasonably and properly incurred by the Company or the Trustee as a direct result of the Variation Revocation to the extent the Company and the Trustee had used their best

- endeavours to minimise such costs (including any redundancy payments);
 - (C) the effect on the actual revenue of the Company and WGT Co of implementing the Variation and any subsequent reinstatement; and
 - (D) their actual costs properly and reasonably incurred in reinstating the Link in accordance with the Variation Reinstatement Criteria to the state and condition that it was in immediately prior to the commencement of the works to undertake the relevant Variation (if any).
 - (e) The Company and the Trustee must not begin any work or incur any cost, and will not have any entitlement to make any claim in respect of a Variation unless a Variation Order has been issued by the State in accordance with this clause 7.16.
 - (f) The State may at any time request the Company or the Trustee (as the case may be) to submit a Variation Quote for a proposed Variation which includes details of:
 - (i) the proposed Variation;
 - (ii) the State's preferred financing for the proposed Variation in accordance with the Variation Principles (where the Variation will result in an increase in cost to the Company or the Trustee (as the case may be));
 - (iii) the State's preferred approach to how any savings (calculated in accordance with the Variation Principles) are to be passed on to the State; and
 - (iv) any specific information that the State requires the Company or the Trustee (as the case may be) to include or that may be relevant to the preparation of the Variation Quote,
- (Variation Request).**
- (g) If the Company or the Trustee is required to submit a Variation Quote and, prior to preparing a Variation Quote, the Company or the Trustee:
 - (i) notifies the State that it needs to engage a third party other than a member of the Transurban Group (other than a member of the Transurban Group engaged on an arm's length basis and on commercial terms) to provide design, engineering or quantity surveying or other services reasonably required to be outsourced to assist in the preparation of a Variation Quote; and

- (ii) provides details of the third party costs that will be incurred in preparing the Variation Quote calculated in accordance with the Variation Principles,
- the State will either:
- (iii) agree to pay the Company or the Trustee (as applicable) the cost to prepare the Variation Quote calculated in accordance with the Variation Principles, in which case the Company or the Trustee must proceed to prepare the Variation Quote; or
 - (iv) withdraw the Variation Request.
- (h) If the State issues a Variation Request, the Company and the Trustee must within 20 Business Days of the State agreeing to pay the costs referred to in clause 7.16(g)(iii) or at such later time as agreed by the State (acting reasonably, taking into account the size and complexity of the proposed Variation and the information included in the Variation Quote), provide the State with a Variation Quote prepared in accordance with the Variation Principles containing reasonably detailed particulars of:
- (i) their estimate of the amount that is payable by the Company or the Trustee for undertaking the Variation, calculated in accordance with the Variation Principles;
 - (ii) the time for completion of the Variation;
 - (iii) the effect (if any) of the proposed Variation upon traffic flow on the Link during the Concession Period;
 - (iv) the basis (if applicable) on which the Company or the Trustee would be prepared to fund or to procure the funding of the whole or part of the Variation, and the cost difference if the Company or the Trustee, rather than the State, were to fund the Variation (with such basis to be consistent with the Variation Principles);
 - (v) any amendments to the Link, the Project Documents, the Proprietary Documentation, SLU Proprietary Documentation or the CTW Proprietary Material, any variations to any existing approval or permit or any new approval or permit required for the Variation;
 - (vi) any amendments to any relevant warranty given by the Company or the Trustee under this Deed; and
 - (vii) other relevant information related to carrying out the proposed Variation.

The State must provide the Company and the Trustee with further details reasonably requested to assist them in preparing their Variation Quote.

- (i) Once the Company and the Trustee have provided the State with the Variation Quote:
 - (i) the State may, at any time, request that the Company or Trustee carry out a tender process in respect of a Variation in accordance with the Variation Principles; and
 - (ii) the Company or the Trustee (as the case may be) must:
 - (A) provide the State with any additional information the State notifies that it reasonably requires to assess the Variation;
 - (B) make any changes to the Variation which the State requests and with which it agrees; and
 - (C) upon receipt of a request under paragraph (i)(i), carry out a tender process in accordance with section 9 of the Variation Principles.
- (j) The Company or Trustee (as the case may be) must, within 10 Business Days of the outcome of the tender process undertaken in accordance with section 9 of the Variation Principles, amend its Variation Quote to take into account of the outcome of the tender process and submit it to the State.
- (jj) Once the Company or Trustee (as the case may be) has provided the State with the Variation Quote, the Company and Trustee must:
 - (i) provide the State with any additional information the State notifies that it reasonably requires to assess the Variation Quote; and
 - (ii) make any changes to the Variation Quote which the State requests and with which it agrees.
- (k) Within 20 Business Days after receiving a Variation Quote or such longer period as the State reasonably requires given:
 - (i) the size and complexity of the proposed Variation; and
 - (ii) the need for any additional information not included in the Variation Quote and the time when it is subsequently provided,the State must:

- (iii) issue a Variation Order, in accordance with clause 7.16(b), to the Company or Trustee directing the Company or Trustee to carry out the Variation on the terms set out in the Variation Quote or as reasonably determined by the State, and the Company or the Trustee must implement the Variation in accordance with the Variation Order and clause 7.16(b) will apply;
 - (iv) notify the Company or Trustee that it does not agree with the Variation Quote, including supporting documentation and reasons; or
 - (v) notify the Company or Trustee that it does not wish to proceed with the proposed Variation.
- (kk) If the State issues a notice in accordance with clauses 7.16(jj) or 7.16(k)(iv), the Company or the Trustee must provide the State with an updated Variation Quote, addressing the issues raised by the State, within 10 Business Days of the receipt of the State's notice and clauses 7.16(jj) to 7.16(k) will apply again to that Variation Quote.
- (l) The Company or the Trustee may, for its own convenience, request the State to direct a Variation by submitting a notice to the State which must:
- (i) set out:
 - (A) the time for completion of the Variation;
 - (B) any amendments to the Link, the Project Documents or any variations to any existing approval or permit or any new approval or permit to take into account the Variation; and
 - (C) the effect (if any) of the proposed Variation upon traffic flow on the Link during the Concession Period;
 - (ii) include the reason(s) for the proposed Variation;
 - (iii) contain a statement confirming the extent (if any) to which the proposed Variation will affect:
 - (A) any third parties; and
 - (B) the standards, warranties and other obligations with which the Company and the Trustee are required to comply under this Deed; and
 - (iv) contain any other information and supporting documentation the State requests,
- (Variation Proposal).**
- (m) Upon receipt of a Variation Proposal, the State may elect to proceed or not proceed with the proposed Variation at its

discretion and will be under no obligation to issue a Variation Order for the convenience of, or to assist, the Company or the Trustee.

- (n) If the State issues a Variation Order as a result of a Variation Proposal, the Company or the Trustee (as the case may be) must undertake the Variation on the basis of the Variation Order and clause 7.16(b) will apply.
- (o) The State acknowledges and agrees that, at any time prior to the WGT Date of Tolling Completion, to the extent the State issues a Variation Order which requires a Modification (as defined in the WGT Project Agreement) under the WGT Project Agreement, the State must issue a Modification Order (as defined under the WGT Project Agreement) in respect of such Modification.
- (p) The Company and Trustee hold on trust for WGT Co the benefit of all losses of, and compensation for, WGT Co payable by the State pursuant to this clause 7.16 and the Variation Principles (**WGT Losses**).
- (q) The State acknowledges the existence of such trusts and consents to:
 - (i) the Company and Trustee exercising rights in relation to, or otherwise enforcing such rights in relation to the WGT Losses on behalf of WGT Co; and
 - (ii) WGT Co exercising rights in relation to, or otherwise enforcing the rights in relation to the WGT Losses as if they were a party to this Deed.

7.17 Changes by the Company or the Trustee

- (a) The Company and the Trustee shall keep the State and the Independent Reviewer fully informed of any proposed changes to the Design Documentation and the Independent Reviewer shall review (by general overview and reasonable checking) any such changes in accordance with clause 7.6.
- (b) The State in its sole and unfettered discretion (and, if it so elects, after receiving a report from the Independent Reviewer):
 - (i) may consider a request from the Company or the Trustee for a change in the Project Scope and Technical Requirements; and
 - (ii) must promptly accept or reject any such change, and if accepted, on terms acceptable to the State.

7.18 Deleted²²²

7.19 Non-compliance

If any design or construction does not comply with the requirements of this Deed and rectification of that non-compliance has not been achieved and is not being diligently pursued by the Company or the

Trustee then, notwithstanding any opinion to the contrary expressed by the Independent Reviewer, the State may:

- (a) if the non-compliance is in the Company Road either:
 - (i) require the Company to rectify the Company Road, in which case the Company shall rectify the non-compliance, failing which the State may apply for, and the court may grant, an order for specific performance of the State's requirement; or
 - (ii) at the State's absolute discretion the State may accept such non-compliance, but the Company shall pay or allow the State the amount certified by the Independent Reviewer as being the direct costs which would have been incurred by the Company had such rectification been effected (such costs being linked to the direct cost of such rectification); and
- (b) if the non-compliance is in the Trust Road either:
 - (i) require the Trustee to rectify the Trust Road, in which case the Trustee shall rectify the non-compliance, failing which the State may apply for, and the court may grant, an order for specific performance of the State's requirement; or
 - (ii) at the State's absolute discretion the State may accept such non-compliance but the Trust shall pay or allow the State the amount certified by the Independent Reviewer as being the direct costs which would have been incurred by the Trust had rectification been effected (such costs being linked to the direct cost of such rectification).

7.20 Non-application to SLU, SLU Works, CTW or CTW Works

For the avoidance of doubt, this clause 7 does not apply to the SLU Works, the SLU, the CTW Works, the CTW Maintenance Activities or the CTW.

7A DESIGN AND CONSTRUCTION OF SLU

7A.1 Design

Each of the Company and the Trustee represents and warrants that:

- (a) it has checked and carefully considered the Project Scope and Technical Requirements and that they are proper, adequate and suitable for their purpose as specified in the Project Scope and Technical Requirements;
- (b) the design of the SLU will be such that the Link will continue to be fit for its purpose as specified in the Project Scope and Technical Requirements and completed in accordance with the requirements of this Deed;
- (c) subject to clause 7A.2, no representation or warranty has been given or is given by or on behalf of the State, any

Government Agency or Utility or anyone for whom it or a Government Agency or Utility is responsible (other than pursuant to clause 14.1B to the extent that it applies to clause 14.1(d)) as to:

- (i) the suitability, completeness or efficacy of any information or data supplied or made available by any of them in relation to the SLU, on or before the date of the Twenty-second Amending Deed including information or data forming part of the Project Scope and Technical Requirements; or
 - (ii) any other drawings, plans, design specifications, reports or other information or data which relate directly or indirectly to the SLU Works or the SLU; and
- (d) subject to clause 7A.2, it has made its own review and evaluation of the suitability and accuracy of the information or data referred to in this clause without reliance on the State, any Government Agency or Utility (other than pursuant to clause 14.1B to the extent that it applies to clause 14.1(d)).

7A.2 Services and Roadway Information

It is acknowledged by the State that the Company, the Trustee and/or their nominee (including any SLU Construction Contractor) may have sought and relied on information from (and in so doing, may have rights at Law against) third parties (including Government Agencies and Utilities but excluding VicRoads) in relation to the location of existing Services and roadways. The Company and the Trustee acknowledge, however, that, as between the parties they bear the risk of any such reliance.

7A.3 Prior Design Work

- (a) As between the parties, the Company and the Trustee shall bear absolutely all risks howsoever they may arise (whether directly or indirectly and whether as a result of negligence or otherwise) as a result of the use for the purposes of the SLU of:
- (i)
 - (A) any design work which is incorporated in the Project Scope and Technical Requirements used by the Company, the Trustee or any SLU Construction Contractor;
 - (B) any geotechnical information used by the Company, the Trustee or any SLU Construction Contractor; or
 - (C) any traffic investigations used by the Company, the Trustee or any SLU Construction Contractor, undertaken by

- others prior to the date of the Twenty-second Amending Deed; and
- (ii) subject to clause 7A.2, any other information obtained from or provided by the State, any Government Agency or Utility prior to the date of the Twenty-second Amending Deed.
- (b) Each of the Company and the Trustee acknowledges that none of the matters referred to in paragraph (a):
- (i) affect its obligations to execute the SLU Works or the obligations of the Company to operate, maintain and repair the Link in accordance with this Deed; or
 - (ii) subject to clause 7A.2, entitle it to receive from the State, a Government Agency or Utility any moneys by way of damages, compensation or other payment, whether arising under a Project Document or in any other manner.

7A.4

SLU Design Program

- (a) Within 60 days after the SLU Effective Date, or such later date as is agreed by the parties, the Company and the Trustee shall submit the SLU Design Program to the State and the Design and Construction Verification Engineer.
- (b) The SLU Design Program shall be in the form of a critical path network set out to a time scale of calendar weeks.
- (c) The SLU Design Program shall:
 - (i) in relation to the SLU Design Documentation, identify each discrete complete component which is proposed to be submitted;
 - (ii) provide for the Company and the Trustee to give monthly reports to the State and the Design and Construction Verification Engineer setting out details of the Company's and the Trustee's progress in developing the design of the SLU;
 - (iii) set out the sequence in which and times by which the SLU Design Documentation is to be completed having regard to, amongst other things, the requirements of paragraph 7A.5(c);
 - (iv) make due allowance for the Design and Construction Verification Engineer to conduct a general overview and reasonable checking but without unnecessary duplication of the role of the SLU Design Consultant and the SLU Proof Engineer of the SLU Design Documentation and for any amendments and resubmission of the SLU Design Documentation which may be undertaken by the Company and Trustee;

- (v) require the SLU Design Documentation to be given to the Design and Construction Verification Engineer within the time required by, and at a rate consistent with, the maintenance of progress of the SLU Works in accordance with the SLU Construction Program; and
- (vi) require the SLU Design Documentation to be given to the Design and Construction Verification Engineer in a manner and at a rate which will enable the Design and Construction Verification Engineer to examine the SLU Design Documentation within the time required by this Deed.

7A.5 SLU Design Documentation

- (a) The Company shall complete the design of the SLU (other than the Trust Road) in accordance with the Project Scope and Technical Requirements by preparing proposed SLU Design Documentation.
- (b) The Trustee shall complete the design of the Trust Road that forms part of the SLU in accordance with the Project Scope and Technical Requirements by preparing proposed SLU Design Documentation.
- (c) In relation to the preparation and submission of any SLU Design Documentation which impacts on a Relevant Matter:
 - (i) the Company and the Trustee shall each ensure that each Stakeholder directly affected by a Relevant Matter shall receive information that is relevant to that Stakeholder in relation to the SLU;
 - (ii) the Company and the Trustee shall each ensure that each Stakeholder shall be notified of the period (being not less than 20 Business Days) during which it may make written submissions to VicRoads (with a copy to the Company and the Trustee) in relation to the information provided under sub-paragraph (i);
 - (iii) if, within a period of 30 Business Days after the last date for making written submissions under sub-paragraph (c)(ii), the State reasonably considers and so advises the Company and the Trustee that changes are required to the proposed SLU Design Documentation as a direct result of a Stakeholder's submission in relation to any Relevant Matter, the Company and the Trustee shall effect such changes, provided that no changes need be effected pursuant to this sub-paragraph if the cost of doing so (together with the cost of giving effect to other such changes, but less costs saved as a result of such changes)

- results or would result in an increase in the aggregate direct construction cost of the SLU;
- (iv) if the Company and the Trustee are reasonably of the view that a change need not be effected because of the proviso to sub-paragraph (iii), they shall give to the State details of the estimated cost of the change and the Company and the Trustee shall endeavour in good faith to agree with the State on a modified change to which the proviso does not apply; and
 - (v) if there is a dispute or difference about the cost of effecting a change or if no agreement is reached within 20 Business Days, any party may refer the matter for expert determination under Article 16.
- (d) Before commencing construction of any part of the SLU to which proposed SLU Design Documentation relates:
- (i) the Company and the Trustee shall submit the proposed SLU Design Documentation to the Design and Construction Verification Engineer and to the State; and
 - (ii) 7 Business Days must have elapsed since the Company or the Trustee provided the Design and Construction Verification Engineer with the proposed SLU Design Documentation.
- (e) The proposed SLU Design Documentation submitted by the Company and the Trustee shall be all the documentation properly required for each discrete complete component referred to in the SLU Design Program submitted under clause 7A.4(a), together with further proposed SLU Design Documentation which demonstrates the relationship of that component to adjoining and related components of the Project Scope and Technical Requirements.

7A.6

Review of SLU Design Documentation

- (a) It is acknowledged by the State, the Company and the Trustee that the Design and Construction Verification Engineer, the Company and the Trustee may consult and confer with each other as to the proposed SLU Design Documentation prior to the formal submission of the SLU Design Documentation by the Company and the Trustee to the Design and Construction Verification Engineer under clause 7A.5.
- (b) The Design and Construction Verification Engineer shall review the proposed SLU Design Documentation (by general overview and reasonable checking but without unnecessary duplication of the role of the SLU Design Consultant and the SLU Proof Engineer) within:
 - (i) 5 Business Days of receipt of the initial proposed SLU Design Documentation; and

- (ii) 5 Business Days of receipt of other proposed SLU Design Documentation, or a proposed change under clause 2.4(d) and (e),
to form an opinion as to whether it complies with the Project Scope and Technical Requirements.
- (c) Within 2 Business Days after the end of the relevant period specified under paragraph (b), the Design and Construction Verification Engineer may give notice to the Company and the Trustee and the State of the Design and Construction Verification Engineer's opinion as to whether the proposed SLU Design Documentation or proposed change complies with the Project Scope and Technical Requirements for reasons which the Design and Construction Verification Engineer specifies.
- (d) If the Design and Construction Verification Engineer forms the opinion that implementation of the proposed SLU Design Documentation or the proposed change will be unsafe to members of the public or to workers involved in carrying out the SLU Works, the Design and Construction Verification Engineer shall specify those matters in a notice given under paragraph (c), together with the reasons for that opinion.
- (e) If the Company or the Trustee disagree with any opinion of the Design and Construction Verification Engineer under paragraph (c) they may at their own risk proceed with construction in accordance with the design to which the opinion relates. Alternatively, if the Company and Trustee prepare further proposed SLU Design Documentation, they shall resubmit it under clause 7A.5(d).

7A.7

Warranties Unaffected

- (a) The Company and the Trustee shall not be relieved of any liability in respect of the warranties in clause 7A.1 because they or either of them have been obliged to adopt the Project Scope and Technical Requirements.
- (b) The liability and responsibility of the Company and the Trustee under this Deed for the design and construction of the SLU will not be affected by the Design and Construction Verification Engineer making or giving or failing to make or give any:
 - (i) opinion;
 - (ii) comment or specification; or
 - (iii) notice,in relation to any SLU Design Documentation.

7A.8

Construction

- (a) The Company shall construct that part of the SLU other than the Trust Road:

- (i) with good workmanship and materials;
 - (ii) in accordance with the SLU Construction Documentation; and
 - (iii) so that it is fit for its intended purpose as specified in the Project Scope and Technical Requirements.
- (b) The Trustee shall construct the part of the Trust Road that forms part of the SLU:
- (i) with good workmanship and materials;
 - (ii) in accordance with the SLU Construction Documentation; and
 - (iii) so that it is fit for its intended purpose as specified in the Project Scope and Technical Requirements.

7A.9

Review of Construction

- (a) The Design and Construction Verification Engineer shall review (by general overview and reasonable checking but without unnecessary duplication of the role of the SLU Design Consultant and the SLU Proof Engineer) the construction of the SLU (as described in Part L2 of the Project Scope and Technical Requirements) so that it may form an opinion as to whether the obligations of the Company and the Trustee relating to construction of the SLU are being complied with and in particular whether the SLU is being constructed in accordance with clauses 7A.8 and 8A.3.
- (b) The Design and Construction Verification Engineer may give notice to the Company or the Trustee and the State that, in its opinion, the obligations of the Company or the Trustee relating to construction of the SLU are not being complied with, for reasons which the Design and Construction Verification Engineer specifies.
- (c) The Company and the Trustee acknowledge that, under the Project Legislation, VicRoads is empowered to make an emergency order if VicRoads is of the opinion that the order is necessary because of a danger to life or property arising out of the carrying out of the SLU Works on the Link Upgrade construction area.
- (d) Subject to paragraph (f), the Company and the Trustee may develop a plan and program for remediation ("**Plan for Remediation**") to remedy the matters the subject of a notice under either paragraph (b) or paragraph (e), which they may submit to the Design and Construction Verification Engineer within 10 Business Days after receipt of the Design and Construction Verification Engineer's notice under paragraph (b) or paragraph (e), as the case may be.
- (e) Within 10 Business Days of receipt of the Plan for Remediation the Design and Construction Verification

Engineer may give notice to the Company or the Trustee and the State of its opinion as to whether the Plan for Remediation satisfactorily addresses the concerns of the Design and Construction Verification Engineer, for reasons which the Design and Construction Verification Engineer specifies.

- (f) If the Company or the Trustee disagree with any determination of the Design and Construction Verification Engineer under paragraphs (b), or (e) they may at their own risk proceed with construction notwithstanding the Design and Construction Verification Engineer's opinion.
- (g) The Company and the Trustee shall cease construction of any part of the SLU Works the subject of an order under paragraph (c) and shall prepare to overcome the fact, matter or thing which gave rise to the necessity for VicRoads to issue the order. The Plan for Remediation shall be submitted to the Design and Construction Verification Engineer (with a copy submitted to VicRoads) who shall either:
 - (i) agree with the Plan of Remediation - in which case the Company and the Trustee will carry out such plan;
 - (ii) disagree with the Plan of Remediation - in which case the Company and Trustee shall resubmit the plan. Any resubmitted plan pursuant to this subparagraph shall be subject to the provisions of this paragraph as if it were the first such plan submitted in accordance with this paragraph.

7A.10 SLU Construction Contractor

The engagement of a SLU Construction Contractor to perform some or all of the obligations of the Company or the Trustee under this Deed will not limit or affect the obligations or liability of the Company or the Trustee under this Deed.

7A.11 Safety

The Company and the Trustee shall:

- (a) carry out the SLU Works in a safe manner and so as to minimise the risk of damage being caused to any person or property;
- (b) identify any land or improvements which may be affected while carrying out such SLU Works; and
- (c) give to the State detailed proposals for minimising the risk of injury or damage to any person or property when carrying out the SLU Works.

7A.12 State's Right to Enter and Inspect

Upon giving reasonable notice to the Company and the Trustee the State and any person authorised by it may enter and inspect the SLU

Project Land and the SLU Lay Down Areas at any reasonable time, conditional however, upon:

- (a) the State observing (and ensuring that any such authorised person observes) rules or requirements of the Company or the Trustee as to safety or security on the SLU Project Land and the SLU Lay Down Areas which are applied generally by the Company and the Trustee;
- (b) the State not delaying (and ensuring that any authorised person does not delay) the carrying out of the SLU Works; and
- (c) the State not damaging (and ensuring that any authorised person does not damage) the SLU Works,

in connection with the exercise or purported exercise of rights under this clause.

7A.13

Interference

- (a) The Company and the Trustee shall ensure that each of them, and their SLU Construction Contractors shall not interfere with the flow of traffic on roadways in the vicinity of the SLU Project Land or the SLU Lay Down Areas, unless it is reasonably necessary to do so for the purposes of the SLU and:
 - (i) the Company or the Trustee has notified the State, VicRoads and any relevant municipal governing body of the:
 - (A) nature and approximate duration of any proposed interference;
 - (B) arrangements proposed for traffic movements (including minimising interference); and
 - (C) proposed arrangements for notifying the public; and
 - (ii) the State has approved those arrangements, which approval:
 - (A) may be subject to reasonable conditions;
 - (B) shall not be unreasonably withheld or delayed; and
 - (C) shall be deemed to have been given insofar as the relevant interference is contemplated in, and the arrangements to deal with that interference are provided for in, the Project Scope and Technical Requirements.
- (b) After approval is given:

- (i) subject to sub-paragraph (ii), the Company and the Trustee shall carry out the arrangements in accordance with the approval;
 - (ii) the State may carry out or procure the carrying out of the approved arrangements to the extent that the approved arrangements require management of traffic or taking of other measures outside the Project Land and the SLU Lay Down Areas.
- (c) Without limitation to clause 3.1(c), the Company and the Trustee shall be responsible for the cost of carrying out approved traffic arrangements under paragraph (b)(i).
- (d) Without prejudice to their other obligations under this Deed, the Company and the Trustee shall each ensure that the effect of execution of the SLU Works on:
 - (i) transportation Services and facilities (whether public or otherwise); and
 - (ii) Services and facilities used or provided by Utilities,is minimised.
- (e) Clauses 7A.13(a) and (b) do not apply to closures of the Link, or to closures of the Link that have the consequence of interfering with the flow of traffic on roadways in the vicinity of the SLU Project Land and the SLU Lay Down Areas provided that such closures are in accordance with the M1 Corridor Redevelopment Deed.

7A.14

Quality Assurance

- (a) The Company and the Trustee shall ensure that each SLU Construction Contractor develops and implements a quality assurance system for the SLU Works.
- (b) The Company and the Trustee shall regularly monitor each SLU Construction Contractor's compliance with the quality assurance system referred to in sub-paragraph (a).
- (c) Neither the Company nor the Trustee shall be relieved of any liability under this Deed (other than under paragraph (a) or (b)) as a result of:
 - (i) compliance with sub-paragraph (a) or (b);
 - (ii) a SLU Construction Contractor's compliance with the quality assurance system referred to in sub-paragraph (a); or
 - (iii) anything which the Design and Construction Verification Engineer does or does not do with respect to the quality assurance requirements under this Deed, including the expression of any opinion about the Company's, the Trustee's or any SLU Construction Contractor's compliance with those requirements.

7A.15 SLU Proprietary Documentation

- (a) The Company and the Trustee grant to the State an irrevocable non-exclusive licence to use, and sub-licence others to use, the SLU Proprietary Documentation as it sees fit:
 - (i) for the purposes of executing the SLU Works, achieving SLU Final Completion or SLU Section Practical Completion of any SLU Section, and operating, maintaining and repairing the SLU (or a part of it);
 - (ii) during such period as the State is entitled to construct, operate, repair or maintain the SLU (or a part of it) or execute the SLU Works (or a part of them), under the Project Documents; and on and from the date on which the Concession Period ends.
- For the purpose of this paragraph (a):
- (iii) a State Area within the meaning of clause 13.8(b), and an AP Area within the meaning of clause 12.8(e) that is within the SLU Project Land, shall be deemed part of the SLU and works undertaken or proposed to reinstate or repair any damage to or destruction of such an area shall be deemed part of the SLU Works; and
 - (iv) in considering what constitutes SLU Proprietary Documentation, the definition of Intellectual Property Rights shall be deemed to include an express reference to "design and know how".
- (b) Promptly after it is requested by the State to do so but subject to the rights of, and obligations owed to, third parties (including licensors) or owners of Intellectual Property Rights and to the extent permitted by such third parties or owners and subject to paragraph (c), the Company and the Trustee shall grant, or procure the grant, to the State or any nominee of the State specified in the request, an irrevocable non-exclusive licence to use, and sub-licence others to use, the SLU Proprietary Documentation as it sees fit for a specified use in Victoria (whether or not that use involves the State or any Victorian Government Agency).
 - (c) The non-exclusive licence granted under paragraph (b) does not include a licence of Intellectual Property Rights listed in Exhibit Q.
 - (d) Any request under paragraph (b) may be made from time to time.
 - (e) Any licence granted pursuant to a request under paragraph (b) must be:
 - (i) consistent with the provisions of this clause; and

- (ii) on terms and conditions which are commercially reasonable and which would be considered to be commercially reasonable, were there to be a number of non-collusive competitive, suppliers of the SLU Proprietary Documentation.
- (f) Any dispute which arises between the State, the Company or the Trustee in relation to the terms and conditions of a licence granted or to be granted in accordance with this clause may be referred for expert determination under Article 16.
- (g) This clause 7A.15 does not apply to the Tolling System.

7A.16

Variations

- (a) The State may request from the Company or the Trustee (as the case may be) information as to costs and other matters specified in the request in relation to a proposed Variation in respect of the SLU prior to the SLU Date of Practical Completion.
 - (b) As soon as practicable after receipt of a request from the State under paragraph (a), the Company and the Trustee shall (so far as it is reasonably practicable to do so) provide the State with reasonably detailed particulars of:
 - (i) their estimate of the costs of carrying out the proposed Variation, including:
 - (A) all direct construction costs; and
 - (B) all indirect or consequential construction or operating costs including revenue reductions, losses or deferrals and delay costs, finance costs and costs of amortisation of Project Debt, which have not been or will not be the subject of any payment, set-off or other form of compensation under another provision of this Deed, the M1 Corridor Redevelopment Deed or otherwise; and
 - (C) the amount of Taxes payable by the Company or the Trustee (assuming the Trustee were a corporate taxpayer) as a direct result of costs incurred by the Company or the Trustee in effecting the proposed Variation not being an allowable deduction under the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 (noting that such party shall use best endeavours to reduce any such amount as far as practicable, which may, for example, entail adopting an alternative structure for having the Variation implemented),
- together "Variation Costs";

- (ii) [Not Used];
 - (iii) the effect of the proposed Variation on the achievement of the Planned Date for SLU Practical Completion and Planned Date for SLU Final Completion;
 - (iv) the effect (if any) of the proposed Variation upon traffic flow on the Link during the Concession Period; and
 - (v) other relevant information related to carrying out the proposed Variation.
- (c) The State may, at its own cost, obtain from the Design and Construction Verification Engineer:
- (i) a report as to the Variation; and
 - (ii) other information it may require on any of the matters specified in sub-paragraphs (b)(i), (b)(iii), (b)(iv) (excluding costs of the relevant effects) and (b)(v).
- (d) The Company and the Trustee shall not be required to, and shall not, begin work in respect of a Variation until such time as all relevant details of the Variation (including the Variation Costs and preconditions to and mechanisms for their payment and any relevant amendments to the M1 Corridor Redevelopment Deed) have been agreed between the Company or the Trustee (as the case may be) and the State or have been determined in accordance with paragraph (e).
- (e) If the State wishes to dispute any of the particulars provided by the Company or the Trustee relating to the proposed Variation (including the accuracy or reasonableness of their estimate of the Variation Costs and preconditions to and mechanisms for their payment) it may refer the dispute for expert determination under Article 16.
- (f) Following agreement between the parties or a determination in accordance with paragraph (e), the State may request the Company or the Trustee (as the case may be) to, and the Company or the Trustee (as the case may be) shall, carry out the Variation in respect of the Company Road or the Trust Road.
- (g) The State shall pay to the Company or the Trustee (as the case may be) the Variation Costs of the Variation as agreed or determined under paragraph (d) or paragraph (e) in accordance with the mechanisms for, but subject to any preconditions to, payment agreed or determined in accordance with paragraph (d) or paragraph (e) (as the case may be).

7A.17 Changes by the Company or the Trustee

- (a) The Company and the Trustee shall keep the State and the Design and Construction Verification Engineer fully informed of any proposed changes to the SLU Design Documentation and the Design and Construction Verification Engineer shall review (by general overview and reasonable checking but without unnecessary duplication of the role of the SLU Design Consultant and the SLU Proof Engineer) any such changes in accordance with clause 7A.6.
- (b) The State in its sole and unfettered discretion:
 - (i) may consider a request from the Company or the Trustee for a change in the Project Scope and Technical Requirements; and
 - (ii) must promptly accept or reject any such change, and if accepted, on terms acceptable to the State.

7A.18 Deleted

7A.19 Non-compliance

If any design or construction of the SLU Works does not comply with the requirements of this Deed and rectification of that non-compliance has not been achieved and is not being diligently pursued by the Company or the Trustee then, notwithstanding any opinion to the contrary expressed by the Design and Construction Verification Engineer, the State may either:

- (a) if the non-compliance is in the Company Road either:
 - (i) require the Company to rectify the Company Road, in which case the Company shall rectify the non-compliance, failing which the State may apply for, and the court may grant, an order for specific performance of the State's requirement; or
 - (ii) at the State's absolute discretion the State may accept such non-compliance, but the Company shall pay or allow the State the reasonable and direct costs which would have been incurred by the Company had such rectification been effected; and
- (b) if the non-compliance is in the Trust Road either:
 - (i) require the Trustee to rectify the Trust Road, in which case the Trustee shall rectify the non-compliance, failing which the State may apply for, and the court may grant, an order for specific performance of the State's requirement; or
 - (ii) at the State's absolute discretion the State may accept such non-compliance but the Trust shall pay or allow the State the reasonable and direct costs which would have been incurred by the Trust had rectification been effected.

7A.20 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 7A does not apply to the CTW Works, the CTW Maintenance Activities or the CTW.

7B DESIGN AND CONSTRUCTION OF STATE ROAD UPGRADE

7B.1 State Road Upgrade

The parties acknowledge that the State will be performing the State Road Upgrade under and as defined in the M1 Corridor Redevelopment Deed.

7B.2 Interference

The State shall pay to the Company on demand reasonable costs and expenses incurred by the Company in it or its nominee managing traffic or taking other measures on the Link to the extent required as a result of the State's performance of the State Road Works (as defined in the M1 Corridor Redevelopment Deed) interfering with the flow of traffic on the Link.

7B.3 Design of State Road Upgrade

The Company and the Trustee agree that if:

- (a) the State Road Works achieve State Road Upgrade Completion in accordance with the State Road Works Scope (each as defined in the M1 Corridor Redevelopment Deed) as at immediately after the Operative Date under and as defined in the Thirtieth Amending Deed and as amended under clause 7C.3(e); and
- (b) have been built to the standard required under clause 4(b)(ii) of the M1 Corridor Redevelopment Deed,

such completion will not preclude, limit or otherwise qualify the ability of the Company or the Trustee to perform its obligations or exercise its rights under the Project Documents or the nature, extent or value of its rights or entitlements under the Project Documents and the State will have no further liability in this respect, except where, in respect of the Interchange Works, any loss, damage or defect to the Interchange Works is a consequence of breach by the State of its obligations under clause 7C.1(b) or which:

- (c) was subsisting at Interchange Completion; and
- (d) if identified at or prior to Interchange Completion, would have entitle the Company and the Trustee to refuse to certify that Interchange Completion had occurred.

7B.4 Interchange Works maintenance standard

Without limiting any rights of the Company and Trustee, the parties agree that, if at Interchange Completion, the Interchange Works do not comply with the Project Scope and Technical Requirements, the Company will only be obliged to operate, maintain, repair, make good, reinstate or surrender the Interchange Works to the standard or scope of the Interchange Works as at Interchange Completion and

any representations of the Company in relation to the Interchange Works will be similarly limited to the standard or scope of the Interchange Works as at Interchange Completion.

7B.5 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 7B does not apply to the CTW Works, the CTW Maintenance Activities or the CTW.

7C INTERCHANGE WORKS DESIGN AND CONSTRUCTION

7C.1 Relevant Standard

The State must:

- (a) procure the design and construction of the Interchange Works in accordance with clause 4(b)(ii) of the M1 Corridor Redevelopment Deed;
- (b) procure that the Interchange Works are executed:
 - (i) with due skill, care and diligence,
 - (ii) using the materials and standards of workmanship required by the Interchange Design Documentation or, in the absence of any requirement to the contrary, suitable new materials and proper and tradesman like workmanship;
 - (iii) in accordance with the Interchange Design Documentation; and
 - (iv) so as not to adversely affect the representations and warranties that the Company and the Trustee have each given to the State in respect of the Link; and
- (c) ensure that any equipment and/or systems of a type described in Exhibit II that will be installed as part of the Interchange Works will be compatible with existing equipment and systems (of that type) on the Link.

7C.2 Southbank Interchange Design Documentation

- (a) Before commencing the construction of any part of the Interchange Works, the State must submit the Interchange Design Documentation to the Company and the Trustee.
- (b) Within 10 Business Days of receipt of the Interchange Design Documentation, the Company or the Trustee may, by written notice, provide the State with its comments on the Interchange Design Documentation.
- (c) The State must amend the Interchange Design Documentation to incorporate the Company's or the Trustee's comments provided in accordance with paragraph (b) if the amendment is necessary to ensure that the State complies with its obligations under clause 7C.1.

- (d) The State is not obliged to amend the Interchange Design Documentation under paragraph (c) if the Company's or the Trustee's comments are not provided within the period specified in paragraph (b).
- (e) Subject to paragraph 7C.3(e), the Company or the Trustee's receipt of, review of, comment on, acceptance of or approval of, any Interchange Design Documentation or any other documentation provided by or on behalf of the State, will not:
 - (i) relieve the State of any of its responsibilities to the Company or the Trustee under this Deed or the M1 Corridor Redevelopment Deed;
 - (ii) constitute acceptance by the Company or the Trustee of the performance of the State's obligations under this Deed or the M1 Corridor Redevelopment Deed; or
 - (iii) be considered as an acknowledgement by the Company or the Trustee that the relevant documentation comply with this Deed or the M1 Corridor Redevelopment Deed.
- (f) The State grants to the Company, the Trustee and its nominee an irrevocable non-exclusive licence to use (including the right to sub-licence) the Interchange Design Documentation and any documentation provided in accordance with clause 7C.4(d) for the purposes of operating, maintaining and repairing the Link.
- (g) The State must provide assistance to the Company and the Trustee by using its reasonable endeavours to promptly answer any questions the Company or the Trustee has and, if required by the Company or the Trustee, provide training in respect of the use of the documents specified in paragraph (f).

7C.3

Material Change to Interchange Works

- (a) If the State proposes to make a Material Change to the Interchange Works, it must, prior to effecting the Material Change, give written notice to the Company and the Trustee setting out details of the Material Change and the effect (if any) the Material Change could reasonably have on the operation, maintenance and tolling of the Link or the Interchange Works.
- (b) Within 21 Business Days of receipt of a notice given in accordance with paragraph (a), the Company and the Trustee must, by written notice, advise whether the Company and the Trustee consent to the Material Change.
- (c) Subject to paragraphs (a) and (d), the Company and the Trustee may not withhold their consent:
 - (i) unreasonably (including having regard to clause 7B.3); or

- (ii) if the Material Change would not cause detriment to the users of the Link.
- (d) The Company and the Trustee may withhold their consent if the proposed Material Change will increase the cost to, or the risk of, the Company or the Trustee of operating, maintaining and tolling the Link or the Interchange Works (as constructed).
- (e) If the Company and the Trustee consent to a Material Change the State Road Works Scope for the purposes of the M1 Corridor Redevelopment Deed and clause 7B.3 of this Deed will be deemed to be amended to incorporate the Material Change.
- (f) If a Material Change is made to the Interchange Works after the Interchange Design Documentation has been submitted by the State in accordance with clause 7C.2, the State must amend the Interchange Design Documentation to incorporate the Material Change and resubmit the Interchange Design Documentation to the Company and the Trustee and the amendment procedure under clause 7C.2 will apply in respect of the resubmitted Interchange Design Documentation and the State must grant the licences contemplated by clause 7C.2 in respect of the amended Interchange Design Documentation.

7C.4

Southbank Interchange Completion

- (a) This clause 7C.4 only applies if the Interchange Works will be completed prior to the balance of the State Road Works.
- (b) At least 10 Business Days prior to the date the State reasonably expects that Interchange Completion will be achieved, the State must notify the Company and the Trustee.
- (c) The State must notify the Company and the Trustee when it considers that Interchange Completion has been achieved.
- (d) The State must provide the Company and the Trustee, at the same time as the notice under paragraph (c) is provided, with the documentation specified in clause 8.2(b)(ii) of the M1 Corridor Redevelopment Deed (including the documentation pursuant to clause 7C.3(f)) in respect of the Interchange Works.
- (e) If within 5 Business Days of receiving a notice under paragraph (c) neither the Company nor the Trustee advise the State in writing that they agree Interchange Completion has been achieved, the State may then request the State Road Works Certifying Engineer to determine whether Interchange Completion has been achieved.
- (f) The State Road Works Certifying Engineer will review the Interchange Works and notify the State, the Company and the Trustee within 5 Business Days of receipt of the request under paragraph (e) whether Interchange Completion has

been achieved or, if not, what further work is required to achieve Interchange Completion.

- (g) The determination of the State Road Works Certifying Engineer under paragraph (f) will be final and binding on the parties and not subject to objection or reference to expert determination or arbitration, including under Article 16 of this Deed.
- (h) For the avoidance of doubt, the parties agree that the State may not exercise its right under clause 8.3(k) of the M1 Corridor Redevelopment Deed in respect of the Interchange Works.

7C.5 Defects or Omissions

- (a) If Interchange Completion has occurred, the State must rectify as soon as practicable after Interchange Completion and, in any case, no later than the expiry of the Defects Rectification Period any omissions or defects which:
 - (i) had been notified to the State by the Company prior to Interchange Completion; and
 - (ii) did not prevent the Interchange Works from being considered to have achieved Interchange Completion.
- (b) For the avoidance of doubt, nothing in this clause 7C.5 shall require the State to carry out any maintenance work during the Defects Rectification Period.
- (c) The Company and the Trustee must provide the State and its nominees with sufficient access to the Interchange Land to enable the State to comply with its obligations under this clause 7C.5.

7C.6 Traffic Management Procedures

- (a) The State, the Company and the Trustee must comply with the Traffic Management Procedures.
- (b) The State must ensure that lane closures (including closures of any ramps connected to the Link) required as a result of executing the Interchange Works are carried out in accordance with the Traffic Management Procedures and clause 8.6 of the M1 Corridor Redevelopment Deed.

7C.7 State Road Upgrade Completion prior to Interchange Works Completion

Where clause 7C.4 does not apply, a reference in this Deed to whether the Company or Trustee would have been entitled to refuse to certify that Interchange Completion has occurred shall be interpreted as if the Company and Trustee had a right to disagree that the requirements of paragraph (a) of the definition of Interchange Completion have been satisfied.

7C.8 Non-compliant Interchange Works

Notwithstanding any other clause of this Deed or the M1 Corridor Redevelopment Deed, the parties acknowledge and agree that, if after Interchange Completion, either party reasonably considers that either:

- (a) the Interchange Works do not comply with the Project Scope and Technical Requirements; or
- (b) there are differences between the Interchange Works and the State Road Works Scope (as defined in the M1 Corridor Redevelopment Deed) as at the date of the Thirtieth Amending Deed that require amendment to the Project Scope and Technical Requirements,

the parties shall, within 20 Business Days of a notice under this clause 7C.8 being given (which may only be given within 90 days of Interchange Completion), meet and negotiate in good faith in an endeavour to agree on appropriate amendments to the Project Scope and Technical Requirements consistent with the agreed principle that the Company is not required to operate, maintain, repair, make good or reinstate the Interchange Works to a scope or standard above that of the Interchange Works as at Interchange Completion.

7C.9 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 7C does not apply to the CTW Works, the CTW Maintenance Activities or the CTW.

7D DESIGN AND CONSTRUCTION OF CTW

7D.1 Design

Each of the Company and the Trustee represents and warrants that:

- (a) it has checked and carefully considered the SWTC and that it is proper, adequate and suitable for the purpose as specified in the SWTC;
- (b) the design of the CTW will be such that:
 - (i) the Western Link will continue to be fit for its purpose as specified in the SWTC and the Project Scope and Technical Requirements (as applicable); and
 - (ii) the State Returned Works Upgrade forming part of:
 - (A) CTW Sections A to C will, upon CTW Practical Completion; and
 - (B) CTW Section D will, upon Ramp M Practical Completion,be fit for its intended purposes as specified in the SWTC; and
 - (C) thereafter, provided the State (or the relevant CTW Authority) operates and

maintains the State Returned Works Upgrade in accordance with the Handback Documents, remain at all relevant times fit for its intended purposes as specified in the SWTC,

and will be completed in accordance with the requirements of this Deed;

- (c) subject to clause 7D.2, no representation or warranty has been given or is given by or on behalf of the State, any Government Agency or Utility or anyone for whom it or a Government Agency or Utility is responsible (other than pursuant to clause 14.1C to the extent that it applies to clause 14.1(d)) as to:
- (i) the suitability, completeness or efficacy of any information or data supplied or made available by any of them in relation to the CTW or the CTW Maintenance Activities, on or before the date of the Thirty-third Amending Deed (in respect of CTW Sections A to C) or the date of the Thirty-fifth Amending Deed (in respect of CTW Section D) including information or data forming part of the Project Scope and Technical Requirements, the SWTC or the CTW Information Documents; or
 - (ii) any other drawings, plans, design specifications, reports or other information or data which relate directly or indirectly to the CTW Works, the CTW Maintenance Activities or the CTW; and
- (d) subject to clause 7D.2, it has made its own review and evaluation of the suitability and accuracy of the information or data referred to in this clause without reliance on the State, any Government Agency or Utility (other than pursuant to clause 14.1C to the extent that it applies to clause 14.1(d)).

7D.2 Services and Roadway Information

It is acknowledged by the State that the Company, the Trustee and/or their nominee (including any CTW Construction Contractor) may have sought and relied on information from (and in so doing, may have rights at Law against) third parties (including Government Agencies and Utilities but excluding VicRoads) in relation to the location of existing Services and roadways. Subject to the CTC Redevelopment Deed and other than in respect of any information provided by such third parties in respect of the CTW Works relating to the VicRoads 96 and 48 core cables the Company and the Trustee acknowledge, however, that, as between the parties they bear the risk of any such reliance.

7D.3 Prior Design Work

- (a) Subject to clause 1.3(1) and clause 13.8 of the CTC Redevelopment Deed, as between the parties, the Company

and the Trustee shall bear absolutely all risks howsoever they may arise (whether directly or indirectly and whether as a result of negligence or otherwise) as a result of the use for the purposes of the CTW of:

- (i) each of the following:
 - (A) any design work which is incorporated in the SWTC used by the Company, the Trustee or any CTW Construction Contractor;
 - (B) any geotechnical information used by the Company, the Trustee or any CTW Construction Contractor; or
 - (C) any traffic investigations used by the Company, the Trustee or any CTW Construction Contractor, undertaken by others prior to the date of the Thirty-third Amending Deed (in respect of CTW Sections A to C) or the date of the Thirty-fifth Amending Deed (in respect of CTW Section D); and
 - (ii) subject to clause 7D.2, any other information obtained from or provided by the State, any Government Agency or Utility prior to the date of the Thirty-third Amending Deed (in respect of CTW Sections A to C) or the date of the Thirty-fifth Amending Deed (in respect of CTW Section D).
- (b) Subject to clause 13.8 of the CTC Redevelopment Deed, each of the Company and the Trustee acknowledges that none of the matters referred to in paragraph (a):
- (i) affect its obligations to execute the CTW Works or the obligations of the Company to operate, maintain and repair the Link in accordance with this Deed; or
 - (ii) subject to clause 7D.2, entitle it to receive from the State, a Government Agency or Utility any moneys by way of damages, compensation or other payment, whether arising under a Project Document, a CTW Project Document or in any other manner.

7D.4

CTW Design Program

- (a) The CTW Design Program shall:
 - (i) be in the form of a critical path network set out to a time scale of calendar weeks;
 - (ii) be prepared using critical path project planning methods and must be computer based using Microsoft Project or an alternative computer

- program approved by the CTW Independent Reviewer (in which case the Company and the Trustee must provide the State and the CTW Independent Reviewer with a licensed copy of the relevant program);
- (iii) be in a linked bar chart format; and
 - (iv) be a subsidiary program to the CTW Construction Program.
- (b) The CTW Design Program shall:
- (i) in relation to the CTW Design Documentation, identify each discrete complete component which is proposed to be submitted;
 - (ii) provide for the Company and the Trustee to give monthly reports to the State and the CTW Independent Reviewer setting out details of the Company's and the Trustee's progress in developing the design of the CTW;
 - (iii) set out the sequence in which and times by which the CTW Design Documentation is to be completed having regard to, amongst other things, the requirements of paragraph 7D.5(c) and the SWTC;
 - (iv) make due allowance for:
 - (A) [Not used]; and
 - (B) any amendments to and submission of the CTW Design Documentation which may be undertaken by the Company and the Trustee in the manner contemplated by this Deed;
 - (v) require the CTW Design Documentation to be given to the CTW Independent Reviewer and the State within the time required by, and at a rate consistent with, the maintenance of progress of the CTW Works in accordance with the CTW Construction Program; and
 - (vi) require the CTW Design Documentation to be given to the CTW Independent Reviewer and the State in a manner and at a rate which will enable the CTW Independent Reviewer and the State to review and provide comments on the CTW Design Documentation within the times required by this Deed.
- (ba) The submission of the Company and the Trustee's CTW Design Program must be accompanied with the electronic program files. The hardcopy submission must be in colour.
- (c) Within 60 days after the CTW Effective Date, or such later date as is agreed by the parties, the Company and the

Trustee shall submit the initial CTW Design Program to the State and the CTW Independent Reviewer.

- (d) The Company and the Trustee shall:
 - (i) review regularly the CTW Design Program, and update it monthly, to ensure the CTW Design Program accurately reflects:
 - (A) the actual progress of the design activities;
 - (B) the effect of all delays on the design activities;
 - (C) the then actual and current critical path to achieving CTW Practical Completion by the Planned Date for CTW Practical Completion; and
 - (D) the then actual and current critical path to achieving Ramp M Practical Completion by the Planned Date for Ramp M Practical Completion; and
 - (ii) provide a copy of the updated CTW Design Program to the State and the CTW Independent Reviewer within 3 Business Days after the commencement of each month during which design activities are undertaken.
- (e) The State may, and the CTW Independent Reviewer must, review and comment on any CTW Design Program.
- (f) If the State or the CTW Independent Reviewer believes that a CTW Design Program is not in accordance with this Deed, the State may and the CTW Independent Reviewer must notify the Company and the Trustee of that opinion and the reasons for that opinion.
- (g) On receipt of a notice from the State or the CTW Independent Reviewer under paragraph (f), the Company and the Trustee must, as soon as practicable:
 - (i) review the CTW Design Program in light of the State or the CTW Independent Reviewer's concerns;
 - (ii) revise the CTW Design Program to the extent necessary to ensure it complies with the requirements of this Deed; and
 - (iii) resubmit the CTW Design Program to the State and the CTW Independent Reviewer in accordance with paragraph (d).
- (h) Any review of or comments upon a CTW Design Program by the State or the CTW Independent Reviewer will not:

- (i) relieve the Company or the Trustee from or alter its liabilities or obligations under the CTW Project Documents;
 - (ii) evidence or constitute an extension of time or a direction by the State to accelerate, disrupt, prolong or vary any, or all, of the CTW Works; or
 - (iii) affect the time for performance of the State's obligations under the CTW Project Documents, including obliging the State to do anything earlier than is necessary to enable the Company and the Trustee to achieve:
 - (A) CTW Practical Completion by the Planned Date for CTW Practical Completion;
 - (B) CTW Final Completion by the Planned Date for CTW Final Completion;
 - (C) Ramp M Practical Completion by the Planned Date for Ramp M Practical Completion; or
 - (D) Ramp M Final Completion by the Planned Date for Ramp M Final Completion.
- (i) The Company and the Trustee must give written notice to the State and the CTW Independent Reviewer:
- (i) immediately upon becoming aware of any proposed or likely departure from the CTW Design Program and in any event before departing from the CTW Design Program; and
 - (ii) the Company and Trustee must provide written reasons why it is necessary to do so to comply with this Deed within 7 Business Days of becoming aware of the proposed or likely departure.
- (j) A notice under paragraph (i)(ii) must include an updated CTW Design Program incorporating all or any changes in activities, methods, times or sequence of activities and the Company and the Trustee's planned progress towards the Planned Date for CTW Practical Completion and the Planned Date for Ramp M Practical Completion.
- (k) The Company and the Trustee may submit two separate CTW Design Programs, one in respect of the CTW ITS Activities and the other in respect of the balance of the CTW Works.
- (l) The CTW Design Documentation must be submitted at the following stages of the design (which must be reflected in the CTW Design Program):
- (a) preliminary design;

- (b) detailed design; and
- (c) issued for construction.

7D.5

CTW Design Documentation – CTW Relevant Matters and consultation

- (a) [Not used]
- (b) [Not used]
- (c) In relation to the preparation and submission of any CTW Design Documentation which impacts on a CTW Relevant Matter:
 - (i) the Company and the Trustee shall each ensure that each CTW Stakeholder directly affected by a CTW Relevant Matter shall receive information that is relevant to that CTW Stakeholder in relation to the CTW;
 - (ii) the Company and the Trustee shall each ensure that each CTW Stakeholder shall be notified of the period (being not less than 20 Business Days) during which it may make written submissions to VicRoads (with a copy to the Company and the Trustee) in relation to the information provided under sub-paragraph (i);
 - (iii) if, within a period of 30 Business Days after the last date for making written submissions under sub-paragraph (c)(ii), the State reasonably considers and so advises the Company and the Trustee that changes are required to the proposed CTW Design Documentation as a direct result of a CTW Stakeholder's submission in relation to any CTW Relevant Matter, the Company and the Trustee shall effect such changes, provided that no changes need be effected pursuant to this sub-paragraph if the cost of doing so (together with the cost of giving effect to other such changes, but less costs saved as a result of such changes) results or would result in an increase in the aggregate direct construction cost of the CTW;
 - (iv) if the Company and the Trustee are reasonably of the view that a change need not be effected because of the proviso to sub-paragraph (iii), they shall give to the State details of the estimated cost of the change and the Company and the Trustee shall endeavour in good faith to agree with the State on a modified change to which the proviso does not apply; and
 - (v) if there is a dispute or difference about the cost of effecting a change or if no agreement is reached within 20 Business Days, any party may refer the matter for expert determination under the CTC Redevelopment Deed.

7D.6

Review of CTW Design Documentation

- (aa) The Company shall complete the design of the CTW (other than the Trust Road) by preparing proposed CTW Design Documentation in accordance with the SWTC and submitting that CTW Design Documentation in accordance with the CTW Design Program.
- (ab) The Trustee shall complete the design of the Trust Road that forms part of the CTW by preparing proposed CTW Design Documentation in accordance with the SWTC and submitting that CTW Design Documentation in accordance with the CTW Design Program.
- (ac) It is acknowledged by the State, the Company and the Trustee that the CTW Independent Reviewer, the Company and the Trustee may consult and confer with each other as to the proposed CTW Design Documentation prior to the formal submission of the CTW Design Documentation by the Company and the Trustee to the CTW Independent Reviewer and the State under this clause 7D.6.
- (ad) Before commencing construction of any part of the CTW to which proposed CTW Design Documentation relates the Company and the Trustee shall submit to the CTW Independent Reviewer and to the State (and, in respect of the CTW Works forming part of CTW Section D, to Melbourne City Council) the proposed CTW Design Documentation.
- (ae) The proposed CTW Design Documentation submitted by the Company and the Trustee shall:
 - (i) include a certificate from the Company and the Trustee and the CTW Design Consultant, confirming that the CTW Design Documentation is appropriate for construction and complies with the CTW Project Documents, and a certificate from the CTW Proof Engineer as described in section 17(e) of the SWTC; and
 - (ii) be all the documentation properly required for each discrete complete component referred to in the CTW Design Program submitted under clause 7D.4, together with further proposed CTW Design Documentation which demonstrates the relationship of that component to adjoining and related components of the CTW.
- (af) The State may review the proposed CTW Design Documentation and may provide comments on the proposed CTW Design Documentation to the CTW Independent Reviewer, the Company and the Trustee within 7 Business Days of receipt of the CTW Design Documentation submitted by the Company or the Trustee under clauses 7D.6(aa) or 7D.6(ab) (as applicable). The CTW Independent Reviewer must consider any comments received by the State as part of the CTW Independent

Reviewer's review of the proposed CTW Design Documentation under clause 7D.6(b).

- (b) The CTW Independent Reviewer shall review the proposed CTW Design Documentation within 7 Business Days of receipt of the CTW Design Documentation submitted by the Company or the Trustee under clauses 7D.6(aa) or 7D.6(ab) (as applicable) to verify whether it:
 - (i) is appropriate for construction; and
 - (ii) complies with the CTW Project Documents, including the SWTC.
- (c) Within 3 Business Days after the end of the 7 Business Day period specified under paragraph (b), the CTW Independent Reviewer must give notice to the Company and the Trustee and the State of the CTW Independent Reviewer's verification as to whether the proposed CTW Design Documentation:
 - (i) is appropriate for construction; and
 - (ii) complies with the CTW Project Documents, including the SWTC,for reasons which the CTW Independent Reviewer specifies.
- (d) If the CTW Independent Reviewer forms the opinion that implementation of the proposed CTW Design Documentation will be unsafe to members of the public or to workers involved in carrying out the CTW Works, the CTW Independent Reviewer shall specify those matters in a notice given under paragraph (c), together with the reasons for that opinion. Without limiting their other obligations under this Deed, the Company and Trustee must address such matters, to the satisfaction of the CTW Independent Reviewer, before commencing construction of any part of the CTW to which the proposed CTW Design Documentation relates.
- (e) If the CTW Independent Reviewer's notice under paragraph (c) specifies that the proposed CTW Design Documentation either:
 - (i) is not appropriate for construction; or
 - (ii) does not comply with the CTW Project Documents,the Company or the Trustee must either:
 - (iii) amend the CTW Design Documentation to address the issues raised in the CTW Independent Reviewer's notice and re-submit the amended CTW Design Documentation to the State and the CTW Independent Reviewer under paragraph (ad), in which case paragraphs (af), (b), (c), (d) and this paragraph (e) will re-apply; or

- (iv) other than in respect of matters specified in accordance with paragraph (d), provide the State and the CTW Independent Reviewer with a notice detailing any matters in respect of which the Company and the Trustee disagree with the CTW Independent Reviewer's notice under paragraph (c), including the Company and the Trustee's reasons (Design Explanation).
- (f) If the Company and the Trustee provide a Design Explanation in accordance with paragraph (e)(iv), the CTW Independent Reviewer must give notice to the State and the Company and the Trustee, within 5 Business Days of receipt of any Design Explanation, of its opinion as to whether or not the Design Explanation satisfactorily addresses the CTW Independent Reviewer's concerns together with its reasons for forming that opinion.
- (g) Despite any opinion of the CTW Independent Reviewer that:
 - (i) the proposed CTW Design Documentation is not appropriate for construction or does not comply with the CTW Project Documents; or
 - (ii) the Design Explanation does not satisfactorily address the CTW Independent Reviewer's concerns,and subject to the State's rights under clause 7D.11E and clause 7G.3 , the Company and the Trustee may commence construction on the basis of the submitted CTW Design Documentation, subject to providing the State and the CTW Independent Reviewer with 2 Business Days' notice of the Company and the Trustee's intention to proceed with construction at its own risk, including the risk that a Certificate of CTW Section Practical Completion may not be issued (Notice of Intention to Proceed).
- (h) A Notice of Intention to Proceed must include details of the reasons why the Company and the Trustee intend to proceed with construction despite the opinion of the CTW Independent Reviewer.
- (i) The provision by the Company and the Trustee or receipt by the State of the Notice of Intention to Proceed does not in any way limit or otherwise affect:
 - (a) the obligations of the Company and the Trustee under the CTW Project Documents; or
 - (b) the State's rights under the CTW Project Documents.
- (j) The Company and the Trustee must not commence construction of any part of the CTW Works unless either:

- (i) the CTW Independent Reviewer has provided a notice under paragraph (c) that the relevant CTW Design Documentation is appropriate for construction and complies with the CTW Project Documents, including the SWTC; or
 - (ii) the Company and the Trustee have issued a Notice of Intention to Proceed in respect of the relevant CTW Design.
- (k) The parties acknowledge that:
- (i) the SWTC sets out, for specific aspects of the CTW Works, a design review process which differs from the process set out above, including in respect of timeframes for review, and approval requirements; and
 - (ii) those different design review processes set out in the SWTC apply in place of the above process in respect of those specific aspects of the CTW Works.

7D.7

Warranties Unaffected

- (a) The liability and responsibility of the Company and the Trustee under this Deed for the design and construction of the CTW will not be affected by the State or the CTW Independent Reviewer making or giving or failing to make or give any:
 - (i) opinion;
 - (ii) comment or specification;
 - (iii) notice; or
 - (iv) verification or approval,in relation to any CTW Design Documentation.

7D.8

Construction

- (a) The Company shall construct that part of the CTW other than the Trust Road and the State Returned Works:
 - (i) using good workmanship and materials;
 - (ii) in accordance with the CTW Construction Documentation; and
 - (iii) so that it is fit for its intended purpose as specified in the SWTC.
- (b) The Trustee shall construct the part of the Trust Road that forms part of the CTW:
 - (i) using good workmanship and materials;
 - (ii) in accordance with the CTW Construction Documentation; and

- (iii) so that it is fit for its intended purpose as specified in the SWTC.
- (c) The Company shall construct the State Returned Works:
 - (i) using good workmanship and materials;
 - (ii) in accordance with the CTW Construction Documentation; and
 - (iii) so that the State Returned Works forming part of:
 - (A) CTW Sections A to C will upon CTW Practical Completion; and
 - (B) CTW Section D will upon Ramp M Practical Completion,be fit for their intended purposes (as specified in the SWTC); and
 - (C) thereafter, provided the State (or the relevant CTW Authority) operates and maintains the State Returned Works in accordance with the Handback Documents, they will remain at all relevant times fit for their intended purposes (as specified in the SWTC).

7D.9

Review of Construction

- (a) The Company and the Trustee must ensure that at all times the State, the CTW Independent Reviewer and, in respect of the CTW Works forming part of CTW Section D, Melbourne City Council:
 - (i) subject to normal safety and security constraints, have safe and convenient access during business hours or on reasonable notice (except in the case of an emergency, when the right of access will be immediate) to:
 - (A) the CTW Land and the CTW Extra Land;
 - (B) the CTW Works; and
 - (C) the CTW Design Documentation and any other documentation created for the purposes of the CTW Works; and
 - (ii) be entitled to exercise this right of access for the purposes of:
 - (A) observing progress in and inspecting the CTW Works; and
 - (B) seeking comments from others in respect of the CTW Works.
- (b) The Company and the Trustee must provide the State, the CTW Independent Reviewer and, in respect of the CTW Works forming part of CTW Section D, Melbourne City

- Council, with every reasonable facility necessary for the inspection of the CTW Works.
- (c) If the CTW Independent Reviewer believes that the CTW Works are not being constructed in accordance with the requirements of this Deed, the CTW Independent Reviewer must give notice to the State, the Company and the Trustee specifying the non-conformance or the CTW Defect.
 - (d) The State may at any time provide comments to the CTW Independent Reviewer in relation to whether the CTW Works are being constructed in accordance with the requirements of this Deed, and the CTW Independent Reviewer must consider these comments when determining whether to give a notice under clause 7D.9(c).
 - (e) If the CTW Independent Reviewer provides a notice under paragraph (c), the Company and the Trustee must either:
 - (i) develop a plan and program for remediation (**Plan for Remediation**) to remedy the matters the subject of a notice under either paragraph (c) or paragraph (f), which they must submit to the CTW Independent Reviewer within 15 Business Days after receipt of the CTW Independent Reviewer's notice under paragraph (c) or paragraph (f), as the case may be; or
 - (ii) provide the State and the CTW Independent Reviewer with a Notice of Intention to Proceed, including details of the reasons why the Company and the Trustee intend to proceed with construction despite the opinion of the CTW Independent Reviewer.
 - (f) Within 15 Business Days of receipt of a Plan for Remediation, the CTW Independent Reviewer must give notice to the State, the Company and the Trustee of its opinion as to whether the Plan for Remediation satisfactorily addresses the concerns of the CTW Independent Reviewer, for reasons which the CTW Independent Reviewer specifies.
 - (g) None of the State, the CTW Independent Reviewer or, in respect of the CTW Works forming part of CTW Section D, Melbourne City Council owes any duty to the Company or the Trustee to:
 - (i) inspect the CTW Works; or
 - (ii) review any construction, maintenance or repair for errors, omissions or compliance with the requirements of this Deed if it does so inspect.
 - (h) No inspection or review of, or comments in relation to, the CTW Works or any construction, maintenance or repair, or the receipt or review of any Plan for Remediation or Notice of Intention to Proceed, by the State or the CTW

Independent Reviewer will in any way lessen or otherwise affect:

- (i) the Company or the Trustee's obligations or warranties under this Deed or otherwise according to Law; or
- (ii) the State's rights against the Company or the Trustee whether under this Deed or otherwise according to Law.

7D.10 CTW Construction Contractor

The engagement of a CTW Construction Contractor to perform some or all of the obligations of the Company or the Trustee under this Deed will not limit or affect the obligations or liability of the Company or the Trustee under this Deed.

7D.11 Health and safety

- (a) The Company and the Trustee shall carry out the CTW Works and the CTW Maintenance Activities in a safe manner and so as to minimise the risk of damage being caused to any person or property.
- (aa) The Company and Trustee must ensure the following safety documentation is prepared, submitted and resubmitted to the State until CTW and Ramp M Practical Completion in accordance with this Deed:
 - (i) a CTW Health and Safety Management Plan (including a CTW Risk Assessment);
 - (ii) Safe Work Method Statements (as required by Law); and
 - (iii) an Emergency Response and Incident Management Plan.
- (ab) The Company and the Trustee must put in place arrangements for ensuring that:
 - (i) appropriate Safe Work Method Statements are prepared prior to the commencement of CTW High Risk Construction Work that forms part of the CTW Works or the CTW Maintenance Activities;
 - (ii) Safe Work Method Statements prepared are reviewed as necessary in accordance with the requirements of CTW Health and Safety Laws; and
 - (iii) CTW High Risk Construction Work is carried out in accordance with the Safe Work Method Statements.
- (ac) The Company and the Trustee must maintain records of all Safe Work Method Statements relating to the CTW Works or the CTW Maintenance Activities and the Company and the Trustee acknowledge that the State may, in accordance

with clause 7D.11C(h), inspect and audit any of the Company and the Trustee's records to confirm compliance with these obligations.

- (b) The Company and the Trustee warrant that:
- (i) they are familiar with and have the capability and resources to comply with the CTW Health and Safety Laws; and
 - (ii) they will only appoint a contractor for the CTW Works or the CTW Maintenance Activities if that contractor:
 - (A) is qualified and competent to comply with the Company and the Trustee's obligations under this clause 7D.11; and
 - (B) has the necessary expertise to carry out its obligations in a manner that is without risk to the health and safety of any person.
- (c) The Company and the Trustee acknowledge that they are responsible for and have control over all aspects of health and safety for, or in connection with, the CTW Works (except in relation to the obligations of any Principal Contractor appointed in accordance with clause 7D.11A) and the CTW Maintenance Activities including, but not limited to the following:
- (i) controlling and managing the performance of the CTW Works and the CTW Maintenance Activities to ensure they are performed safely and without risks to the health and safety of any person;
 - (ii) managing all safety hazards and risks, including undertaking a complete review and assessment of any hazards and risks associated with the CTW Works and the CTW Maintenance Activities and identifying and implementing appropriate measures to control all such hazards and risks;
 - (iii) monitoring and auditing the performance of the CTW Works and the CTW Maintenance Activities to ensure that they are performed safely and without risks to the health and safety of any person;
 - (iv) managing and controlling access to, use and possession of the CTW Land and the CTW Extra Land throughout the life of the CTW Works;
 - (v) providing and maintaining a healthy and safe work environment;
 - (vi) providing and maintaining safe systems of work in connection with the performance of the CTW Works and the CTW Maintenance Activities;

- (vii) ensuring the safe use, handling, storage and transport of materials throughout the life of the CTW Works and the CTW Maintenance Activities;
 - (viii) providing adequate facilities for the welfare at work of workers;
 - (ix) providing all necessary information to protect persons who may be affected by the CTW Works and the CTW Maintenance Activities from risks to their health and safety;
 - (x) providing all necessary training, instruction and supervision to persons performing work in connection with the CTW Works or the CTW Maintenance Activities;
 - (xi) ensuring that at all times the CTW Land and the CTW Extra Land is safe and without risks to health;
 - (xii) ensuring that at all times the CTW Land and the CTW Extra Land is secure and that access and egress to the CTW Land and the CTW Extra Land is controlled, including during non-work times and does not pose a risk to the health and safety of any person;
 - (xiii) ensuring any materials used during the performance of the CTW Works and the CTW Maintenance Activities are safe and without risks to health; and
 - (xiv) ensuring the materials are installed, erected, constructed or commissioned in such a way that does not make the materials unsafe or a risk to health when used for the stated purpose.
- (d) The Company and the Trustee must, in carrying out the CTW Works and the CTW Maintenance Activities:
- (i) comply with and ensure that any CTW Construction Contractor or other persons engaged in the CTW Works or the CTW Maintenance Activities comply with all CTW Health and Safety Laws and upon request, provide the State with evidence of such compliance;
 - (ii) comply with and ensure that any CTW Construction Contractor or other persons engaged in the CTW Works or the CTW Maintenance Activities comply with the CTW Health and Safety Management Plan and upon request, provide the State with evidence of such compliance;
 - (iii) not used;

- (iv) ensure a CTW Construction Site Safety Plan is prepared and implemented for each discrete workplace within the CTW Land and the CTW Extra Land in accordance with the requirements of the SWTC;
- (v) prepare and submit to the State a Weekly CTW Health and Safety Incident Report in accordance with the requirements of the SWTC;
- (vi) prepare and submit to the State a CTW Monthly Health and Safety Performance Report in accordance with the requirements of the SWTC;
- (vii) promptly advise the State in writing of any act, fact or circumstance associated with the activities of the Company and the Trustee or any other person relevant to the ability of the Company and the Trustee to perform the CTW Works and the CTW Maintenance Activities in a manner that is safe and without risks to health;
- (viii) discharge the State's obligations under any CTW Health and Safety Laws with respect to the CTW and the CTW Maintenance Activities, unless the State directs otherwise; and
- (ix) cooperate with and do all things necessary to assist, and refrain from doing anything that may impede, the State or its officers, employees, agents and contractors in discharging their obligations under CTW Health and Safety Laws.

7D.11A

Principal Contractor

- (a) The State will:
 - (i) appoint the CTW D&C Contractor as Principal Contractor in connection with any CTW Works or, to the extent an appointment is required, any CTW Maintenance Activities in respect of which the State is the "owner" for the purposes of the *Occupational Health and Safety Regulations 2007* (Vic); and
 - (ii) authorise the CTW Construction Contractor nominated by the Company and the Trustee to manage or control the State Returned Works Areas and any other relevant CTW Land to the extent necessary to discharge the duties of a Principal Contractor under the CTW Health and Safety Laws.
- (b) The Company and the Trustee will:
 - (i) appoint the CTW D&C Contractor as Principal Contractor in connection with construction work forming part of the CTW Works or CTW Maintenance Activities in respect of which the

Company or the Trustee is the "owner" for the purposes of the *Occupational Health and Safety Regulations 2007* (Vic); and

- (ii) authorise the CTW D&C Contractor to manage or control the WLU Project Land and the CTW Extra Land to the extent necessary to discharge the duties of a Principal Contractor under the CTW Health and Safety Laws as described in paragraph (b)(i).
- (c) The Company and the Trustee must ensure that the CTW D&C Contractor:
 - (i) accepts the appointments described above as, and complies with the obligations imposed on, a Principal Contractor under the CTW Health and Safety Laws; and
 - (ii) is able to discharge the obligations required of a Principal Contractor.

7D.11B

CTW Health and safety incident management

- (a) The Company and the Trustee must, upon the occurrence or threatened occurrence of a CTW Health and Safety Incident in respect of the CTW Works or the CTW Maintenance Activities:
 - (i) comply with its obligations under clause 7D.11D as if the CTW Health and Safety Incident was a CTW Major Incident or Issue;
 - (ii) comply with any requirements under CTW Health and Safety Laws to notify any relevant CTW Authority of the CTW Health and Safety Incident;
 - (iii) provide the State with all information necessary for the State to manage its health and safety obligations, legal and reputational interests and public interest obligations in relation to the CTW Health and Safety Incident;
 - (iv) not used;
 - (v) as soon as practicable after the CTW Health and Safety Incident has occurred:
 - (A) investigate the CTW Health and Safety Incident; and
 - (B) provide the State with such evidence as the State requires that the hazards or risks giving rise to the CTW Health and Safety Incident have been appropriately identified and controlled to prevent the recurrence of the same or similar CTW Health and Safety Incident; and
 - (vi) by no later than:

- (A) 24 hours after the CTW Health and Safety Incident has occurred, provide the State with evidence that the Company and the Trustee have complied with their obligation to notify any relevant CTW Authority in relation to the CTW Health and Safety Incident; and
- (B) 48 hours after the CTW Health and Safety Incident has occurred, provide the State with the following documentation in relation to the CTW Health and Safety Incident:
 - (1) a CTW Health and Safety Incident Report;
 - (2) if requested by the State, a CTW Health and Safety Alert; and
 - (3) if requested by the State, a detailed health and safety briefing in relation to the CTW Health and Safety Incident.
- (b) The Company and the Trustee must immediately notify, and copy to, the State any entry reports and notices received from a CTW Authority or any other person acting pursuant to CTW Health and Safety Laws, which arise out of or in connection with the CTW Works or the CTW Maintenance Activities.

7D.11C

Monitoring and Auditing

The Company and the Trustee, in carrying out the CTW Works and the CTW Maintenance Activities:

- (a) must, throughout the life of the CTW Works and the CTW Maintenance Activities, undertake such monitoring and auditing of the CTW Works and the CTW Maintenance Activities as is necessary to ensure that at all times the CTW Works and the CTW Maintenance Activities are being performed in compliance with all CTW Health and Safety Laws, the requirements of this Deed and the CTW Health and Safety Management Plan;
- (b) must undertake an Operational Efficiency Audit and comply with the recommendations of the Operational Efficiency Audit;
- (c) must ensure that a CTW HSMP Audit is performed prior to the CTW Health and Safety Management Plan being submitted to the State;
- (d) must ensure a CTW Health and Safety Compliance Audit is performed by a CTW Health and Safety Auditor once within the first 3 months following commencement of the CTW Works and at least every 6 months thereafter;

- (e) must ensure the State is given at least 3 Business Days' notice of any upcoming CTW Health and Safety Compliance Audit or other health and safety related audit of the CTW Works, and must allow a representative of the State to attend those audits if the State so requests;
- (f) must within 8 Business Days of a CTW Health and Safety Compliance Audit or as soon as practicable after any other health and safety audit, provide the State with a copy of the audit report (whether draft or final) together with proposed and/or implemented actions for addressing any non-conformances identified in the report;
- (g) must promptly rectify any non-conformances identified in an audit report provided under clause 7D.11C(f), and provide the State with evidence of such rectification, within the timeframes specified in the audit report;
- (h) acknowledges and agrees that the State or its representatives, other contractors or agents can at any reasonable time review, inspect, monitor, audit or otherwise observe the Company and the Trustee's health and safety systems, work practices and procedures related to the CTW Works and the CTW Maintenance Activities and the Company and the Trustee must provide such access and assistance as is necessary to allow such monitoring or auditing to occur; and
- (i) must rectify any non-conformances identified during monitoring or auditing under clause 7D.11C(h), and provide the State with evidence of such rectification, within the timeframes specified by the person performing the monitoring or auditing.

7D.11D

Reporting of CTW Major Incident or Issue

- (a) The Company and the Trustee must, on the occurrence or threatened occurrence of a CTW Major Incident or Issue:
 - (i) immediately notify the State of the CTW Major Incident or Issue and provide the State with the following information:
 - (A) the details of the potential or actual incident or issue;
 - (B) the actions taken and proposed in response;
 - (C) the key personnel involved in taking those actions and their contact details; and
 - (D) the proposed media response and approach to managing and dealing with the media;
 - (ii) if the CTW Major Incident or Issue relates to or affects the State Returned Works, the CTW

Maintenance Activities or the State Returned Works Areas, promptly comply with any direction given by the State in accordance with clause 7D.11E; and

- (iii) ensure that the State is kept informed of any material developments.
- (b) The Company and the Trustee must:
 - (i) where possible:
 - (A) take photographs of the CTW Major Incident or Issue; and
 - (B) prepare diagrams to assist in the explanation of the CTW Major Incident or Issue,
 - to supply to the State in addition to the requirements set out in clause 7D.11D(a)(i);
 - (ii) not disturb or interfere with any physical evidence of the CTW Major Incident or Issue unless directed by a relevant CTW Authority, the State, or police, fire, ambulance or other emergency services; and
 - (iii) comply with the CTW Communications Protocol.

7D.11E

State directions in relation to CTW Major Incident or Issue

- (a) Notwithstanding any other provision of this Deed, upon the occurrence or threatened occurrence of a CTW Major Incident or Issue prior to:
 - (i) in relation to CTW Sections A to C, the Date of CTW Practical Completion; and
 - (ii) in respect of CTW Section D, the Date of Ramp M Practical Completion,
- and without limiting any other provision of this Deed, the State may:
- (iii) direct the Company and the Trustee to suspend the CTW Works or the CTW Maintenance Activities;
 - (iv) direct the Company and the Trustee to carry out or use the materials on the CTW Land to carry out any works reasonably required to overcome the effects of the CTW Major Incident or Issue; or
 - (v) direct the Company and the Trustee to take any other reasonable action necessary to promptly resolve or overcome the effects of the CTW Major Incident or Issue.
- (b) The Company and the Trustee must immediately comply with all directions issued by the State under this clause 7D.11E.

- (c) The State must not issue a direction under this clause 7D.11E unless there is an occurrence or threatened occurrence of a CTW Major Incident or Issue prior to:
 - (i) in relation to CTW Sections A to C, the Date of CTW Practical Completion; and
 - (ii) in respect of CTW Section D, the Date of Ramp M Practical Completion.
- (d) Nothing in this clause 7D.11E limits the rights of the Company or the Trustee in relation to a State Caused Suspension under the CTC Redevelopment Deed or as otherwise expressly provided in this Deed (including clause 2.4).

7D.12

Not used

7D.13

Interference

- (a) The Company and the Trustee shall ensure that each of them, and their CTW Construction Contractors, shall not interfere with the flow of traffic on roadways in the vicinity of the CTW Land and the CTW Extra Land, unless it is reasonably necessary to do so for the purposes of the CTW and:
 - (i) the Company or the Trustee has notified the State, VicRoads and any relevant municipal governing body of the:
 - (A) nature and approximate duration of any proposed interference;
 - (B) arrangements proposed for traffic movements (including minimising interference); and
 - (C) proposed arrangements for notifying the public; and
 - (ii) the State, VicRoads or any relevant municipal governing body has approved those arrangements, which approval in the case of the State or VicRoads:
 - (A) may be subject to reasonable conditions;
 - (B) shall not be unreasonably withheld or delayed; and
 - (C) shall be deemed to be given insofar as the relevant interference is provided for in, and the arrangements to deal with that interference are provided for in, the CTW Project Documents.
- (b) After approval is given:

- (i) subject to sub-paragraph (ii), the Company and the Trustee shall carry out the arrangements in accordance with the approval; and
 - (ii) the State may carry out or procure the carrying out of the approved arrangements to the extent that the approved arrangements require management of traffic or taking of other measures outside the Project Land and the CTW Land.
- (c) Without limitation to clause 3.1(c), the Company and the Trustee shall be responsible for the cost of carrying out approved traffic arrangements under paragraph (b)(i).
- (d) Without prejudice to their other obligations under this Deed, the Company and the Trustee shall each ensure that the effect of execution of the CTW Works and the CTW Maintenance Activities on:
 - (i) transportation Services and facilities (whether public or otherwise); and
 - (ii) Services and facilities used or provided by Utilities,is minimised.
- (e) Clauses 7D.13(a) and (b) do not apply to closures that have the consequence of interfering with the flow of traffic on roadways in the vicinity of the CTW Land or CTW Extra Land provided that such closures are in accordance with the CTW Project Documents.

7D.14

Quality Assurance

- (a) The Company and the Trustee shall ensure that each CTW Construction Contractor develops and implements a CTW Quality Management System for the management of all aspects of the CTW Construction Contractor's obligations in respect of the CTW Works and the CTW Maintenance Activities in accordance with the applicable requirements of the SWTC.
- (b) The Company and the Trustee shall regularly monitor each CTW Construction Contractor's compliance with the quality assurance system referred to in paragraph (a).
- (c) Neither the Company nor the Trustee shall be relieved of any liability under this Deed (other than under paragraph (a) or (b)) as a result of:
 - (i) compliance with paragraph (a) or (b);
 - (ii) a CTW Construction Contractor's compliance with the quality assurance system referred to in paragraph (a); or
 - (iii) anything which the CTW Independent Reviewer does or does not do with respect to the quality assurance requirements under this Deed, including

the expression of any opinion about the Company's, the Trustee's or any CTW Construction Contractor's compliance with those requirements.

7D.15 CTW Proprietary Material

(aa) In this clause 7D.15:

(i) "**CTW Proprietary Material (Design)**" means:

- (A) the SWTC;
- (B) the CTW Design Documentation;
- (C) other documentation which the Company or the Trustee uses for the design, construction, maintenance or repair of the CTW in which Intellectual Property Rights subsist or are capable of subsisting;
- (D) other documentation which the Company uses for the operation of the CTW or supplies as part of the CTW in which Intellectual Property Rights subsist or are capable of subsisting;
- (E) computer software (including both source code and object code versions) where that computer software has been specifically created for the purposes of the undertaking or as a part of the WLU Works (excluding the ITS component of the WLU Works) or the ITS component of the State Returned Works; and
- (F) modifications or enhancements to computer software (including both source code and object code versions of those modifications or enhancements, but excluding, for the avoidance of doubt, the unmodified or unenhanced computer software) which have been specifically created for the purposes of the undertaking or as a part of the WLU Works (excluding the ITS component of the WLU Works) or the ITS component of the State Returned Works,

other than the CTW Proprietary Materials (COTS Software) or CTW Proprietary Material (WLU Software).

(ii) "**CTW Proprietary Material (COTS Software)**" means commercially available off the shelf computer software (being software which is generally and readily made available on a

commercial basis, on arms' length terms, to any person who wishes to acquire a licence to use the product) relevant to the CTW Works, in which Intellectual Property Rights subsist or are capable of subsisting, excluding:

- (A) any modification or enhancement to such computer software specifically created for the purposes of or as a part of the undertaking the WLU Works (excluding the ITS component of the WLU Works) or the ITS component of the State Returned Works; and
 - (B) the CTW Proprietary Material (WLU Software); and
- (iii) **"CTW Proprietary Material (WLU Software)"** is the computer software which are part of the ITS component of the WLU Works, or which is required to operate the WLU Works, in which Intellectual Property Rights subsist or are capable of subsisting.
- (a) The Company and the Trustee grant to the State an irrevocable non-exclusive licence to use, and sub-licence others to use, all Intellectual Property Rights in or relating to the CTW Proprietary Material as it sees fit:
- (i) for the purposes of executing the CTW Works, achieving CTW Final Completion, Ramp M Final Completion or CTW Section Practical Completion of any CTW Section, and operating, maintaining and repairing the CTW (or part of it) (which includes, without limiting the generality of those or any other words in this Deed, extending, maintaining or upgrading or altering the whole or any part of the CTW); and
 - (ii) to the extent that the CTW Proprietary Material relates to the WLU:
 - (A) during such period as the State is entitled to construct, operate, repair or maintain the CTW (or a part of it) or execute the CTW Works (or a part of them), under the Project Documents or CTW Project Documents; and
 - (B) on and from the date on which the Concession Period ends, and
 - (iii) to the extent that the CTW Proprietary Material relates to the State Returned Works, on and from the CTW Effective Date,

provided that:

- (iv) the Company and the Trustee's obligation to provide a licence under clause 7D.15(a)(i) to (iii) in respect of any Intellectual Property Rights in that material in any CTW Proprietary Material (COTS Software) will only apply to the extent that the Company and the Trustee is legally able to do so, and on the terms of the licence granted to the Company and the Trustee by the third party licensor; and
- (v) in relation to the Intellectual Property Rights in the CTW Proprietary Material (WLU Software):
 - (A) the Company and Trustee must:
 - (1) use reasonable endeavours (having regard to all relevant factors, including the cost of procuring such licence, the purposes for which the State requires such a licence, and reasonable industry practices in relation to conducting tender and negotiation processes) to procure the licence as required by clause 7D.15(a)(i) to (iii);
 - (2) without limiting sub-paragraph (v)(A)(1) above, include in any requests for proposals, requests for tenders or other formal communications in which the Company or the Trustee requests proposals or offers for the supply of any CTW Proprietary Material (WLU Software) a requirement that the applicable CTW Proprietary Material (WLU Software) must be licensed on the licence terms required by clause 7D.15(a)(i) to (iii) (as applicable);
 - (3) provide to the State (within 5 Business Days after being provided to the potential licensors), a copy of the documentation referred to in paragraph (v)(A)(2) above, together with the timetable for the conduct of the procurement as communicated to potential licensors, and any variations to that timetable made by the Company or the Trustee from time to time and which are communicated to potential licensors;

- (4) without limiting sub-paragraph (v)(A)(1) above, provide to the State (within 5 Business Days after they are received or made by the Company or the Trustee), the terms of any departures from the requirements communicated under sub-paragraph (v)(A)(2) above, which are proposed by such a licensor in any formal responses to such requirements (including copies of any alternate licensing terms proposed);
- (5) if requested by the State in writing, without limiting sub-paragraphs (v)(A)(1), (v)(A)(2), (v)(A)(3) or (v)(A)(4) above, request any potential licensor to provide it with information to show clearly the difference between the cost of granting a licence on the terms necessary for the Company or the Trustee to confer upon the State the licence as required by clause 7D.15(a)(i) to (iii), and the cost of any other form of licence proposed to be granted to the Company or the Trustee, and provide that information to the State within 5 Business Days after it is received by the Company or the Trustee;
- (6) if requested by the State in writing, without limiting sub-paragraph (v)(A)(2) above, provide to the State (within 5 Business Days after they are received or made by the Company or the Trustee) relevant communications between the Company or the Trustee (or any person acting on their behalf) and such a licensor concerning the terms of the licence, which are materially related to the Company or Trustee's procurement of the required licence; and
- (7) without limiting sub-paragraph (v)(A)(4) above, consult with the State upon the State's request and consider the State's reasonable requirements in relation to the matters set out in sub-paragraph (v)(A)(4) above;

- (B) for the purposes of sub-paragraphs (v)(A)(3) to (v)(A)(7) above, the State must nominate a State representative (for the purposes of this clause 7D.15 only), who:
- (1) will be the State's single point of contact in relation to, and responsible for, the communication to the Company and the Trustee of the State's requests pursuant to sub-paragraphs (v)(A)(3) and (v)(A)(5) to (v)(A)(7) above and requirements pursuant to sub-paragraph (v)(A)(7) above;
 - (2) will receive such notices and information that the Company and the Trustee must provide pursuant to sub-paragraphs (v)(A)(3) to (v)(A)(6) above, via email, whereby the notice or information (or both) will be deemed to have been received at the time shown on the delivery receipt stating that the email was received by the recipient; and
 - (3) may be replaced by the State from time to time upon written notice to the Company and Trustee;
- (C) if the Company and the Trustee are unable to obtain the Intellectual Property Rights licence in accordance with sub-paragraph (v)(A) above, having complied with that sub-paragraph:
- (1) the Company and the Trustee will be deemed to be not in breach of its obligation to provide a licence under clause 7D.15(a)(i) to (iii) in respect of the Intellectual Property Rights in the CTW Proprietary Material (WLU Software);
 - (2) the Company and the Trustee must promptly, as soon as the Company and the Trustee reasonably assess that they are unable (despite having complied with sub-paragraph (v)(A) above) to obtain the licence rights required by sub-paragraph (v)(A) above, notify the State of the measures they have taken to procure from the relevant third party licensor (or potential

- third party licensors) the right to grant a licence to the State in relation to the relevant CTW Proprietary Material (WLU Software), and the alternative terms on which they will be able to grant such a licence to the State (regardless of whether such information has been provided previously under sub-paragraphs (v)(A)(2) or (v)(A)(4) or not); and
- (3) not incorporate the relevant CTW Proprietary Material (WLU Software) into the WLU Works until the parties have followed the process set out in sub-paragraph (vi) below; and
- (vi) following the notification by the Company and Trustee pursuant to sub-paragraph (v)(C)(2) above:
- (A) the State may notify the Company and Trustee whether:
- (1) it accepts the alternative licence terms (including the detail of which licence terms from which third party licensor it accepts if there are multiple alternatives), in which case the Company and Trustee will grant a licence to the Intellectual Property Rights in the relevant CTW Proprietary Material (WLU Software) on those accepted alternative licence terms; or
- (2) it does not accept the alternative licence terms, in which case the State will notify the Company and the Trustee of the approach it wishes to adopt and at the same time the State must issue a CTW Variation Order giving effect to that notification, as if that CTW Variation Order had been given by the State in accordance with clause 7.9 of the CTC Redevelopment Deed; and
- (B) where the Company and the Trustee have complied with sub-paragraphs (v)(A)(2), (v)(A)(3), (v)(A)(4) and (v)(A)(5) above, if the State does not notify the Company and the Trustee under sub-paragraph (vi)(A) above within 30 days following

notification by the Company and Trustee pursuant to sub-paragraph (v)(C)(2) above (Determination Period), then a Compensable Extension Event will be deemed to have occurred on and from the expiration of the Determination Period until the date that the State provides notice under paragraph (vi)(A)(2); or

- (C) where the Company and the Trustee have not complied with sub-paragraphs (v)(A)(2), (v)(A)(3), (v)(A)(4) and (v)(A)(5) above, then the Determination Period will be automatically extended by a period equal to the length of the non-compliance (Extended Determination Period), and if the State does not notify the Company and the Trustee under sub-paragraph (vi)(A) above within the Extended Determination Period, then a Compensable Extension Event will be deemed to have occurred on and from the expiration of the Extended Determination Period until the date that the State provides notice under paragraph (vi)(A)(2).

For the purpose of:

- (vii) this clause 7D.15(a), a State Area within the meaning of clause 13.8(b), and an AP Area within the meaning of clause 12.8(e) that is within the WLU Project Land, shall be deemed part of the CTW and works undertaken or proposed to reinstate or repair any damage to or destruction of such an area shall be deemed part of the CTW Works; and
- (viii) this clause 7D.15, "Intellectual Property Right" means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, registered and registrable designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, technical data and know-how, trademarks and any other right in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.
- (b) Promptly after it is requested by the State to do so but subject to the rights of, and obligations owed to, third parties (including licensors) or owners of Intellectual Property Rights and to the extent permitted by such third parties or owners and subject to paragraph (c), the Company and the Trustee shall grant, or procure the grant,

to the State or any nominee of the State specified in the request, an irrevocable non-exclusive licence to use, and sub-licence others to use, the CTW Proprietary Material as it sees fit for a specified use in Victoria (whether or not that use involves the State or any Victorian Government Agency).

- (c) The non-exclusive licence granted under paragraph (b) does not include a licence of Intellectual Property Rights listed in Exhibit Q.
- (d) Any request under paragraph (b) may be made from time to time.
- (e) Any licence granted pursuant to a request under paragraph (b) must be:
 - (i) consistent with the provisions of this clause; and
 - (ii) on terms and conditions which are commercially reasonable and which would be considered to be commercially reasonable, were there to be a number of non-collusive competitive, suppliers of the CTW Proprietary Material.
- (f) Any dispute which arises between the State, the Company or the Trustee in relation to the terms and conditions of a licence granted or to be granted in accordance with this clause may be referred for expert determination under Article 16.
- (g) This clause 7D.15 only applies in respect of the CTW Proprietary Material which is used for the purposes of undertaking or operating the WLU or which forms part of the WLU.

7D.16 [Not used]

7D.17 [Not used]

7D.18 [Not used]

7D.19 [Not used]

7D.20 [Not used]

7D.21 **CTW Utility Services**

- (a) The Company and the Trustee must, in carrying out the CTW Works:
 - (i) obtain and pay for any CTW Utility Services and all connections for all CTW Utility Services the Company and the Trustee need to perform their obligations under the CTW Project Documents;
 - (ii) investigate, protect, relocate, remove, modify, support, reinstate and provide for CTW Utility Services necessary for the Company and the Trustee to comply with their obligations under this Deed;

- (iii) ensure there are no unplanned disruptions to the CTW Utility Services in carrying out the CTW Works and that planned disruptions to the CTW Utility Services are minimised and that otherwise no CTW Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the CTW Works; and
 - (iv) comply with the Utility Services Management Plan.
- (b) The Company and the Trustee are responsible for, and assume the risk of, all additional work, increased costs and any other loss, delay or disruption it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all CTW Utility Services required for the execution of the CTW Works.

7D.22

Control of traffic

In respect of the CTW Works and the CTW Maintenance Activities only, and subject to the CTC Redevelopment Deed and the requirements of the CTW Traffic Management Procedures, the Company and the Trustee:

- (a) are responsible for the control, direction and protection of all road, cyclist and pedestrian traffic in any way affected by the carrying out of the CTW Works or the CTW Maintenance Activities (except to the extent a traffic management plan approved under the Traffic Management Procedures provides for traffic management to be undertaken by the State or its Associates);
- (b) must manage all such traffic (except to the extent a traffic management plan approved under the Traffic Management Procedures provides for traffic management to be undertaken by the State or its Associates) to ensure:
 - (i) its continuous, safe and efficient movement;
 - (ii) any reduction to the traffic carrying capacity of CTW Local Areas is minimised; and
 - (iii) that any delays and disruptions to such traffic and the movement of such traffic are kept to an absolute minimum;
- (c) must coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or the operations of CTW Authorities;
- (d) must at all times comply with the requirements of the CTW Traffic Management Procedures, the CTW Access Schedule and SWTC in respect of road traffic management and safety; and

- (e) must comply with the directions of the State and any relevant CTW Authority with respect to road traffic management and safety of any roads other than the Link and the State Returned Works Areas.

7D.23 Environment

7D.23.1 Environmental Requirements

- (a) In carrying out the CTW Works and the CTW Maintenance Activities, the Company and the Trustee must not use the CTW Land, CTW Extra Land, or land within the Maintenance Boundary (to the extent that the Company has been given access to such land under clause 4C.2A), or allow any CTW Construction Contractor to use the CTW Land, CTW Extra Land or land within the Maintenance Boundary (to the extent that the Company has been given access to such land under clause 4C.2A), so that:
 - (i) any Hazardous Substance is abandoned or dumped on the CTW Land, CTW Extra Land or land within the Maintenance Boundary (to the extent that the Company has been given access to such land under clause 4C.2A);
 - (ii) any Hazardous Substance is handled in a manner which is likely to cause a state of danger to human beings or the environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or
 - (iii) any other substance is released from, deposited to, or emanates from, the CTW Land or CTW Extra Land such that a state of Contamination occurs.
- (b) The Company and the Trustee must at all times carry out the CTW Works and the CTW Maintenance Activities in an environmentally responsible manner, in accordance with good industry practice, and so as to protect the environment.
- (c) Without limiting any other provision of this Deed, the Company and the Trustee must, in carrying out the CTW Works and the CTW Maintenance Activities:
 - (i) comply with:
 - (A) all Laws relating to the environment; and
 - (B) the Project Plans, including the CTW Environmental Management Plan; and
 - (ii) obtain and comply with all requirements of any approvals required in order to release or emit anything from the CTW Land, CTW Extra Land or the land within the Maintenance Boundary (to the extent that the Company has been given access

to such land under clause 4C.2A), into the air or water or onto the ground or otherwise into the environment, including to emit any substantial noise or vibrations.

- (d) Without limiting the Company and the Trustee's other obligations under this Deed, and insofar as they apply to the CTW Works and the CTW Maintenance Activities, the Company and the Trustee must comply with, carry out and fulfil the conditions and requirements of the CTW Environmental Management Plan.
- (e) The Company and the Trustee must immediately notify the State in writing as soon as the Company and the Trustee, in carrying out the CTW Works or the CTW Maintenance Activities:
 - (i) become aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law, approval or the Environmental Management Plan regarding the environment in the performance of the CTW Works or the CTW Maintenance Activities;
 - (ii) become aware of any information, fact or circumstance where, if the State were to be aware of such information, fact or circumstance, the State would be required to notify any CTW Authority of that information, fact or circumstance pursuant to any Law relating to the environment (without limiting any other obligation of the Company and the Trustee in relation to the information, fact or circumstance); or
 - (iii) notifies any CTW Authority of any matter pursuant to any Law relating to the environment, in which case the Company and the Trustee must provide to the State a copy of such notification and of any subsequent correspondence with the CTW Authority in relation to the subject of the notification.

7D.23.2

Waste disposal

- (a) The Company and the Trustee must, in carrying out the CTW Works:
 - (i) remove from the CTW Land and the CTW Extra Land; and
 - (ii) dispose of,

any Contamination or other waste pursuant to its obligations under this Deed to a licensed waste facility in accordance with all relevant Laws and approvals.
- (b) The Company and the Trustee must:

- (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the CTW Land and the CTW Extra Land holds all relevant approvals that are necessary or desirable; and
- (ii) procure and provide evidence of such approvals to the State upon request.
- (c) The Company and the Trustee must ensure that, in carrying out the CTW Works, its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any contaminated waste or other waste and that they comply with all applicable Laws.

7D.23.3 Indemnity

The Company and the Trustee must indemnify the State from and against any claim, demand, damage, expense, loss, cost or liability brought against or suffered or incurred by the State arising out of or in any way in connection with any failure by the Company and the Trustee to comply with any obligation under this clause 7D.23 or clause 5B.3, provided that the Company and the Trustee's liability to indemnify the State will be reduced proportionally to the extent that an act or omission of the State contributed to the claim, demand, damage, expense, loss, cost or liability.

7D.24 Community relations

7D.24.1 General

The Company and the Trustee:

- (a) acknowledge that the areas where the CTW Works are being carried out are of great importance to many people, including local residents and businesses; and
- (b) must, in carrying out the CTW Works, comply with the CTW Communications and Community Relations Plan.

7D.24.2 Management of customers, stakeholders and other affected parties

- (a) The Company and the Trustee must, in dealing with third parties affected by the CTW Works, including residents on the residential side of any noise walls:
 - (i) ensure that a representative of the Company and the Trustee, or the CTW D&C Contractor, can be contacted during normal business hours and that the Company and the Trustee's, or the CTW D&C Contractor's, contact details are publicly available, including on the Company and the Trustee's website;
 - (ii) give reasonable consideration to all feedback received; and
 - (iii) actively manage any issues raised.

- (b) The Company and the Trustee must notify the State as soon as possible (and in any event within 24 hours) by telephone and then via email if any:
- (i) proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,
- by anyone (including any CTW Authority or any landowner, resident, lessee or licensee on or near the CTW Land, CTW Extra Land or land within the Maintenance Boundary) against the Company and the Trustee or any CTW Construction Contractor in respect of any aspect of the carrying out of the CTW Works or the CTW Maintenance Activities, including:
- (iv) Contamination, noise or vibration arising out of, or in any way in connection with, the CTW Works or the CTW Maintenance Activities;
 - (v) the Company and the Trustee's non-compliance with any Project Plan or any Law regarding the environment;
 - (vi) the Company and the Trustee's use or occupation of the CTW Land, the CTW Extra Land or the land within the Maintenance Boundary; or
 - (vii) loss or damage in respect of the CTW Works or the CTW Maintenance Activities.
- (c) Without limiting the Company and the Trustee's obligations under the SWTC, the Company and the Trustee must:
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in paragraphs (a) and (b);
 - (ii) take all reasonable measures to resolve those matters as soon as possible (including defending any proceedings); and
 - (iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in paragraph (b) which:
 - (A) contains full details of:
 - (1) each complaint, proceedings, letter of demand, order and direction; and
 - (2) the action taken by the Company and the Trustee with respect to each complaint, proceedings, letter of demand, order and direction;

- (B) is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
- (C) may be inspected by the State whenever the State reasonably requires.

7D.25 Site meeting

- (a) The Company and the Trustee must conduct a site meeting with the State and relevant CTW Construction Contractors at least once every calendar month during the carrying out of the CTW Works. The Company and the Trustee must provide the State with a copy of the meeting minutes within 15 Business Days after any such site meeting.
- (b) The Company and the Trustee acknowledge and agree that a representative of the State may attend any CTW site meeting which relates to technical matters.

7D.26 Change in Codes and Standards

- (a) Where there is a Change in CTW Codes and Standards:
 - (i) the Company and the Trustee must give a written notice to the State within 20 Business Days after the Change in CTW Codes and Standards containing details of the Change in CTW Codes and Standards; and
 - (ii) if a notice is given by the Company and the Trustee which complies with paragraph (i), then within 14 Business Days after the notice having been given, the State will either:
 - (A) direct the Company and the Trustee to disregard the Change in CTW Codes and Standards; or
 - (B) issue a CTW Variation Order in respect of the Change in CTW Codes and Standards under the CTC Redevelopment Deed.
- (b) If the State gives a notice under paragraph (a)(ii)(A), the Company and the Trustee will not be regarded as being in breach of this Deed to the extent that they disregarded the relevant Change in CTW Codes and Standards.
- (c) If the State gives a notice under paragraph (a)(ii)(B), the Company and the Trustee will not have any claim for CTW Variation Costs (as defined in the CTC Redevelopment Deed) against the State:
 - (i) except to the extent that the relevant CTW Design Documentation, before the issue of a notice under paragraph (a)(ii)(B) complied, or would have complied, with the requirements of this Deed; or

- (ii) to the extent that, notwithstanding the Change in CTW Codes and Standards, the Company and the Trustee would have had to make a change to the CTW Works or a change to the methods of construction used in carrying out the CTW Works, in order that the CTW Works be fit for their intended purposes (or any similar reference), in respect of the CTW Works, at CTW Practical Completion or Ramp M Practical Completion (as applicable).

7D.27 Performance of CTW Works

In addition to other requirements of this Deed, the following restrictions will apply to the construction of the CTW Works:

- (a) the Company and the Trustee must use only declared main roads, highways and freeways for cartage of materials or plant to or from the CTW Land and the CTW Extra Land. The Company and the Trustee may only deviate from this restriction with the prior written permission of the relevant road authority. Evidence of such permission must be provided to the State prior to commencement of cartage;
- (b) materials must not be carted over any unprotected bridge expansion joint;
- (c) access to adjacent businesses and private property must be provided at all times; and
- (d) noise walls are to be constructed prior to adjacent construction or cartage wherever possible.

7D.28 Cleaning up

In carrying out the CTW Works and the CTW Maintenance Activities, the Company and the Trustee must keep the CTW Land, the CTW Extra Land, the land within the Maintenance Boundary (to the extent that the Company has been given access to such land under clause 4C.2A) and the CTW Works clean and tidy and regularly remove from the CTW Land, the CTW Extra Land, the land within the Maintenance Boundary (to the extent that the Company has been given access to such land under clause 4C.2A) and CTW Works any waste or surplus material arising from carrying out the CTW Works or the CTW Maintenance Activities.

7D.29 Signage

- (a) Subject to paragraph (b) and without limiting the other provisions of this Deed, the Company and the Trustee must not erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the State Returned Works (or permit any third party to do so), without the State's prior approval.
- (b) The Company and the Trustee may only erect the following signage on or near any part of the State Returned Works:

- (i) temporary directional signage to assist businesses in the vicinity of the relevant CTW Land and the CTW Extra Land, access to which has been, or is likely to be, adversely affected by the State Returned Works;
 - (i) signage required by Law or reasonably required for the environment, safety and security of the State Returned Works;
 - (iii) project identification signage approved by the State;
 - (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the State Returned Works; and
 - (v) directional and other signage necessary to inform, and direct the movement of, motorists, pedal cyclists and pedestrians in the vicinity of the relevant CTW Land and the CTW Extra Land,
- in accordance with the requirements set out in the SWTC.
- (c) In performing the CTW Works, the Company and the Trustee must:
 - (i) consider the impact of any works or activities on existing advertising signage (including in the development of the CTW Design Documentation);
 - (ii) notify the State where any existing advertising signage on State Returned Works Areas or on Project Land (where that signage is managed by the State or a Victorian Government Agency) is likely to be affected by the CTW Works at least 100 days prior to the advertising signage being affected; and
 - (iii) not disturb, obscure or obstruct existing advertising signage on State Returned Works Areas or on Project Land (where that signage is managed by the State or a Victorian Government Agency), without notifying the State in accordance with paragraph (c)(ii) and obtaining the State's prior written consent, which consent may be subject to reasonable conditions.
 - (d) The Company and the Trustee indemnify the State in respect of any claim, demand, damage, expense, loss or liability brought against or suffered, incurred or payable by the State arising out of any disturbance, obscuring or obstruction of any advertising signs on State Returned Works Areas or on Project Land (where that signage is managed by the State or a Victorian Government Agency) caused or contributed to by the carrying out of the CTW Works, provided that the State has used reasonable endeavours to mitigate any claim, demand, damage,

expense, loss or liability brought against or suffered, incurred or payable by the State so arising.

7D.30 CTW Works documentation

- (a) Without limiting any other obligation of the Company and Trustee under this Deed, the Company and the Trustee must provide the State with any documentation required to be provided to the State under this Deed, including the SWTC, as soon as reasonably practicable after a written request from the State.
- (b) All documentation referred to in paragraph (a) must be maintained for 6 years after the expiry of the last CTW Defects Correction Period, and must be made available to the State at no cost upon request.

7D.31 [Not used]

7D.32 [Not used]

7D.33 Notice of CTW Force Majeure

- (a) The Company or the Trustee must give the State prompt written notice of any claimed CTW Force Majeure Event once it becomes aware of the same and the obligations affected together with full particulars of all relevant matters including:
 - (i) details of the claimed CTW Force Majeure Event;
 - (ii) details of the obligations affected;
 - (iii) details of the action that the Company or Trustee has taken and/or proposes to take to remedy the situation;
 - (iv) an estimate of the time during which the Company or the Trustee will be unable to carry out its obligations due to the CTW Force Majeure;
 - (v) an estimate of the costs that the Company or the Trustee will incur to remedy the situation; and
 - (vi) details of all insurance moneys upon which the Company or Trustee will be able to rely in making good damage caused by claimed the CTW Force Majeure Event.
- (b) After giving notice under clause 7D.33(a) the Company and the Trustee must continue to provide to the State with all relevant information pertaining to the claimed CTW Force Majeure Event.

7D.34 Suspension of obligations on CTW Force Majeure Event

- (a) If a CTW Force Majeure Event occurs, the CTW Obligations (other than under clauses 7D.33 and 7D.34) which are affected by the CTW Force Majeure Event will be suspended but only to the extent and for so long as such obligations are affected by the CTW Force Majeure Event.

- (b) If a CTW Force Majeure Event occurs, no party will be in default of the CTW Obligations (or in the case of the State its obligations in respect of the CTW or the CTW Works) in so far as the failure or delay in the observance or performance of those obligations by that party is caused by the CTW Force Majeure Event.
- (c) During the period of suspension, the State may make alternative arrangements for the performance of any suspended obligations (without incurring any liability to the Company or the Trustee).
- (d) The Company or the Trustee must notify the State immediately after it ceases to be prevented or delayed from performing its obligations as a result of a CTW Force Majeure Event.
- (e) The State will not be obliged to provide any financial relief to the Company or the Trustee during the period of suspension.
- (f) Upon the Company or the Trustee becoming able to recommence performing its obligations which were suspended under clause 7D.34(a), the Company or the Trustee must recommence the performance of those obligations.

7D.35 [Not used]

7D.36 [Not used]

7D.37 **CTW Practical Completion**

Clauses 7D.11B, 7D.11C, 7D.11D, 7D.11E, 7D.21, 7D.22, 7D.23, 7D.24 and 7E.3 cease to apply in relation to:

- (a) the carrying out of the WLU Works within a CTW Section once that CTW Section has achieved CTW Section Final Completion; and
- (b) the carrying out of the State Returned Works within a CTW Section upon the expiry of the relevant CTW Defects Correction Period.

7D.38 **CTW ITS Activities**

Clause 7D.27 does not apply to the carrying out or completion of the CTW ITS Activities.

7D.39 **Project Plans**

7D.39.1 **General**

- (a) The Company and the Trustee must prepare and develop the Project Plans specified in Attachment 3 of the SWTC in accordance with clauses 7D.39.2 to 7D.39.6.
- (b) Neither the attachment of the initial Project Plans to the SWTC nor any review of, comments upon or notice in respect of any Project Plan, or any other act or omission of

the State (including a direction under clause 7D.39.6) about any Project Plan will:

- (i) lessen or otherwise affect the Company's or the Trustees liabilities or responsibilities under this Deed or otherwise according to Law;
 - (ii) lessen or otherwise affect the State's rights against the Company or the Trustee, whether under this Deed or otherwise according to Law; or
 - (iii) constitute acceptance by the State that the Project Plan complies with the requirements of this Deed.
- (c) The Company and the Trustee:
- (i) must comply with each Project Plan which has been submitted to the State and the CTW Independent Reviewer under this clause 7D.39 and in respect of which the State or the CTW Independent Reviewer has not given a notice under clause 7D.39.3(a)(ii); and
 - (ii) agree that compliance with any Project Plan will not in any way lessen or affect:
 - (A) the liabilities or responsibilities of the Company or the Trustee under this Deed or otherwise according to Law; or
 - (B) the State's rights against the Company or the Trustee, whether under this Deed or otherwise according to Law.
- (d) To the extent they are relevant to operation, maintenance, repair and reinstatement of the CTW Works, all Project Plans must be incorporated into the Operation and Maintenance Manuals or Handback Documents.

7D.39.2 Project Plan Requirements

- (a) Each Project Plan must:
- (i) where an initial plan exists for the relevant Project Plan and is contained in Attachment 3 of the SWTC, be based upon that initial plan;
 - (ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this clause 7D.39 and Attachment 3 of the SWTC; and
 - (iii) contain any relevant contents required under this Deed, including as specified in Attachment 3 of the SWTC.
- (b) Each Project Plan must be initially submitted to the State and the CTW Independent Reviewer within any relevant time period specified in this Deed (including as specified in Attachment 3 of the SWTC).

7D.39.3 Review of Project Plans

- (a) The State may, and the CTW Independent Reviewer must:
 - (i) review any Project Plan submitted under this this clause 7D.39 and all Project Plans attached to the SWTC; and
 - (ii) if the Project Plan does not comply with this Deed, notify the Company and the Trustee of that within 20 Business Days of the initial submission of the Project Plan or, in the case of an initial Project Plan attached to the SWTC, within 20 Business Days of the date that the CTW Independent Reviewer is appointed under clause 6B.1.
- (b) If the Company or the Trustee receives a notice under clause 7D.39.3(a)(ii), the Company and the Trustee must promptly submit an amended Project Plan, or relevant part or component of it, to the State and the CTW Independent Reviewer, in which case paragraph (a) will apply again.
- (c) The State owes no duty to the Company or the Trustee to review any Project Plan submitted by the Company or the Trustee, or attached to the SWTC, for errors, omissions or compliance with this Deed.
- (d) The parties acknowledge that:
 - (i) the SWTC sets out, for specific plans, a plan review process which differs from the process set out above, including in respect of timeframes for review, and approval requirements; and
 - (ii) those different plan review processes set out in the SWTC apply in place of the above process in respect of those specific plans.

7D.39.4 Purpose of Project Plans

The Company and the Trustee acknowledge and agree that:

- (a) an intended purpose of each Project Plan is for the Company and the Trustee to provide a detailed description of how the Company and the Trustee intend to carry out the CTW Works in accordance with the requirements of this Deed with respect to the subject matter of each Project Plan; and
- (b) the Project Plans will require ongoing development, amendment and updating throughout the duration of the CTW Works to take into account:
 - (i) CTW Variations;
 - (ii) changes in Law;
 - (iii) the commencement of new phases or stages of design and construction as shown in the CTW

Design Program and CTW Construction Program
(as applicable);

- (iv) those events or circumstances expressly identified for each Project Plan including as specified in Attachment 3 of the SWTC; and
- (v) any other events or circumstances which occur or come into existence and which have, or may reasonably be expected to have, a material effect on the manner in which the Company and the Trustee carry out the CTW Works.

7D.39.5 Warranties and undertakings

The Company and the Trustee:

- (a) warrant that each Project Plan will be fit for its intended purpose and that compliance by the Company and the Trustee with the Project Plans will enable the Company and the Trustee to carry out and complete the CTW Works in accordance with this Deed;
- (b) must not decrease or otherwise reduce the scope of any Project Plan, or the scope of work or level of effort or expertise required by a Project Plan, or the number of personnel or extent of surveillance required, including any initial Project Plan and any revision of a Project Plan, without the prior written approval of the State (which must not be unreasonably withheld); and
- (c) must continue to develop and promptly amend or update the Project Plans:
 - (i) to take into account:
 - (A) the circumstances and events referred to in clause 7D.39.4(b) as those circumstances and events occur or come into existence; and
 - (B) any breach or potential breach of the warranties referred to in clause 7D.39.5(a); and
 - (ii) as otherwise specified in the SWTC, including Attachment 3 of the SWTC,

and promptly submit each further Project Plan to the State as it is further developed, amended or updated.

7D.39.6 The State's direction

If the State believes that:

- (a) any Project Plan does not comply with the requirements of this Deed; or
- (b) the Company and the Trustee have not further developed, updated or amended any Project Plan in accordance with the requirements of clause 7D.39.4(b),

the State may by written notice direct the Company and the Trustee to further develop, update or amend the Project Plan so that the Project Plan will comply with the requirements of this Deed, specifying:

- (c) the reasons why such development, updating or amending is required; and
- (d) the time within which such development, updating or amending must occur,

and the Company and the Trustee must:

- (e) further develop, update or amend the Project Plan as directed by the State and so that it complies with the requirements of this Deed; and
- (f) submit the further developed, updated or amended Project Plan to the State within the time specified in clause 7D.39.6(d).

7D.40 CTW Variations

The parties agree that to the extent the State accepts a “CTW Variation Notice” or issues a “CTW Variation Order” under the CTC Redevelopment Deed, the Company and the Trustee’s obligations under the CTW Project Documents will be varied to the extent provided for in the CTC Redevelopment Deed.

7E. CTW INTERFACES

7E.1 Tie In Works

- (a) If necessary for:
 - (i) the State to achieve completion of the CTW State Works; or
 - (ii) the Company and the Trustee to achieve CTW Section Practical Completion of a CTW Section,

to enter onto land controlled by another party specified above, in carrying out such works (**Tie In Works**), that party will comply with this clause 7E.1.

- (b) The parties agree that:
 - (i) Tie In Works are limited to the works which are necessary to integrate a party’s works with the other party’s works, solely as a result of one party completing its works at the interface between the CTW Works and the CTW State Works prior to the other party completing its works; and
 - (ii) prior to commencing any Tie In Works, the party carrying out such works (**Requesting Party**) will provide to the party to whose land it requires access (**Responding Party**) a notice of its intention to do so.
- (c) Any notice given under paragraph (b)(ii) must:

- (i) be in writing;
- (ii) be given at least 20 Business Days before the Requesting Party requires access;
- (iii) specify the relevant parts of the Responding Party's land to which the notice relates (including the duration and extent of access); and
- (iv) contain any information reasonably required by the Responding Party to understand the scope, nature, impact and duration of the Tie In Works, including:
 - (A) a traffic management plan;
 - (B) details of the proposed work to be carried out;
 - (C) details of the proposed program for such work; and
 - (D) risk assessment and risk mitigation plan.
- (d) The Requesting Party agrees that it will use its best endeavours to consider and accommodate all reasonable comments of the Responding Party in relation to the access contemplated by the notice referred to in paragraph (b)(ii), as well as any reasonable comments of the Responding Party from time to time during performance of the Tie In Works, including development of joint risk mitigation plans where appropriate.
- (e) The Responding Party must provide the Requesting Party and its nominees with access to the Responding Party's land as stated in the notice given under paragraph (b)(ii), in a manner sufficient to permit the Requesting Party to execute the Tie In Works.
- (f) Subject to clause 7E.1(d) and clause 13.3 of the CTC Redevelopment Deed, the access rights granted under this clause:
 - (i) shall commence on the date specified in the notice given under paragraph (b)(ii) and continue until expiry of the period for which access is requested in accordance with this clause;
 - (ii) shall provide the Requesting Party and its nominee with access only to the relevant parts of the Responding Party's land for the purposes of enabling the Requesting Party to execute the Tie In Works;
 - (iii) shall, subject to clause 7E.2, be free from interruption from the Responding Party throughout the duration of the period specified in paragraph (f)(i); and

- (iv) do not include a right of exclusive access to that land.
- (g) If, at any time prior to the grant of the access rights under paragraph 7E.1.(e), the Requesting Party requires access to the Responding Party's land to carry out preliminary activities relating to the Tie In Works, the Responding Party will provide the Requesting Party and its nominees with access to those parts of the Responding Party's land and as reasonably required by the Requesting Party subject to such conditions as reasonably required by the Responding Party.
- (h) The Requesting Party will keep the Responding Party informed of the progress and conduct of the Tie In Works.

7E.2

Requesting Party's obligations in relation to access

The Requesting Party must in exercising the rights of access granted under clause 7E.1:

- (a) comply with all laws in respect of occupational health and safety and the environment;
- (b) comply with the traffic management, risk assessment and risk mitigation plans or other plans which are notified to the Requesting Party by the Responding Party (acting reasonably);
- (c) comply with any measures and conditions agreed to with the Responding Party;
- (d) remain on the Responding Party's land only for such period as is reasonably necessary to perform the Tie In Works;
- (e) comply with any reasonable directions given by the Responding Party in relation to:
 - (i) occupational health and safety; and
 - (ii) the environment;
- (f) minimise, as far as is reasonably practicable, disruption to users of the road forming part of the Responding Party's land; and
- (g) leave the Responding Party's land, as nearly as possible, in the condition in which it was immediately before the Requesting Party commenced the Tie In Works (or as otherwise agreed in writing by the parties). The parties will conduct a joint inspection to ascertain and record the current condition of the relevant land prior to commencement of the Tie In Works.

7E.3

Interface with Rail

- (a) The Company and the Trustee must:
 - (i) comply with those obligations of the State or Public Transport Victoria under the Rail Projects Agreements as set out in the Schedule of Rail

- Interface Obligations to the extent required for the CTW Works;
- (ii) if required by the State or a Rail Interface Party, participate in any working group, committee or similar forum relating to the CTW Rail Interface Works, whether as a member or observer;
 - (iii) do all things necessary to comply with, or procure compliance with, the obligations of the 'Contractor' as set out in the Rail Projects Agreements in relation to the CTW Rail Interface Works, including in relation to the design, standards, construction and handover of the CTW Rail Interface Works;
 - (iv) ensure that they do not, in connection with the CTW Rail Interface Works, cause the State or Public Transport Victoria to be in breach of any of their obligations under or related to the Rail Projects Agreements; or
 - (v) upon request by the State, provide any information or supporting documentation, including in such form and by such time, as the State reasonably requires in relation to the CTW Rail Interface Works; and
 - (vi) in connection with the CTW Rail Interface Works:
 - (A) comply with any relevant Site Access and Occupation Schedule;
 - (B) ensure that there are no Unplanned Occupation Impacts; and
 - (C) ensure that there are no Occupations which are not:
 - (1) Agreed Occupations; or
 - (2) Occupations otherwise agreed to by the Rail Interface Parties in accordance with the Rail Projects Agreements.
- (b) For the avoidance of doubt, clause 7E.3(a) does not limit the State's or Public Transport Victoria's rights under the Rail Projects Agreements.
- (c) The Company and the Trustee must indemnify the State against any claim or liability to the Rail Interface Parties arising in connection with:
- (i) any breach by the Company and the Trustee of their obligations under clause 7E.3(a);
 - (ii) any access or disruption relating to the impact of the CTW Rail Interface Works in breach of this clause 7E.3; and

- (iii) any damage caused by the Company and the Trustee to the property of the Rail Interface Parties,

arising out of undertaking the CTW Works.
- (d) If there is or is likely to be an Unplanned Occupation Impact, the Company and the Trustee must:
 - (i) immediately notify the State, Public Transport Victoria and the relevant Rail Interface Parties of the occurrence or likely occurrence of the Unplanned Occupation Impact and the expected duration of the Unplanned Occupation Impact;
 - (ii) take all necessary steps to bring any Unplanned Occupation Impact to an end as soon as possible; and
 - (iii) submit to the State and the relevant Rail Interface Party, within 2 Business Days of the occurrence of an Unplanned Occupation Impact, a cure plan which:
 - (A) identifies the reasons why the Unplanned Occupation Impact occurred; and
 - (B) describes the steps to be taken by the Company and the Trustee (including any changes to operating procedures, policies or practices of the Company and the Trustee) to ensure that Unplanned Occupation Impacts do not recur.
- (e) The State must, within 5 Business Days of receiving from the Company and the Trustee a cure plan under clause 7E.3(d)(iii) or an amended cure plan under clause 7E.3(f) (as the case may be), consider the cure plan and provide the Company and the Trustee with a notice either:
 - (i) stating that the State is satisfied (acting reasonably) with the cure plan; or
 - (ii) specifying the reasons why the State is not satisfied (acting reasonably) with the cure plan.
- (f) The Company and the Trustee must, within 3 Business Days of a notice received from the State in accordance with clause 7E.3(e)(ii), submit an amended cure plan which addresses the reasons the State is not satisfied as identified by the State in the notice, in which case clause 7E.3(e) will re-apply.
- (g) The Company and the Trustee must comply with any cure plan in relation to which the State provided a notice under clause 7E.3(e)(i).
- (h) Where the number of Unplanned Occupation Impacts exceeds three, the State, Public Transport Victoria and the

relevant Rail Interface Party will be entitled to suspend the Company's and the Trustee's access to the relevant area for the purpose of undertaking the CTW Rail Interface Works (Rail Interface Area) until such time as the State is satisfied (acting reasonably) with the cure plan submitted by the Company and the Trustee under clause 7E.3(d)(iii) or clause 7E.3(f) (as the case may be).

- (i) Where the State, Public Transport Victoria or the relevant Rail Interface Party exercise their rights under clause 7E.3(h), the Company and the Trustee must vacate the Rail Interface Area in a safe operational condition.
- (j) The State must:
 - (i) without limiting clause 3.3, ensure that the CTW is nominated as a "State Project" under the Rail Projects Agreements;
 - (ii) procure that the Rail Interface Parties provide the Company and the Trustee with access in accordance with the relevant Site Access and Occupation Schedule and the Rail Projects Agreements; and
 - (iii) procure that the Rail Interface Parties mitigate any losses, damages, costs and expenses as a result of the undertaking of the CTW Rail Interface Works.

7E.4 No claims

Except to the extent the parties are expressly entitled to relief in accordance with the CTC Redevelopment Deed or this Deed, a party will not be entitled to any claim, extension of time or other form of relief for any delay incurred with respect to the CTW Works or the CTW State Works (as applicable) as a result of performing its obligations under clause 7E.

7E.5 Melbourne City Council Interface

- (a) Prior to the commencement of the CTW Works forming part of CTW Section D which affect the Specified Roads:
 - (i) the State, the Company, the Trustee, the CTW D&C Contractor and Melbourne City Council will undertake a joint inspection, including a CCTV drainage pipe condition survey in respect of the Barrel Drains, to assess the then-existing standard and condition of the Specified Roads and Melbourne City Council Infrastructure;
 - (ii) the Company and the Trustee must prepare an Initial Condition Report for the Specified Roads and Melbourne City Council Infrastructure; and
 - (iii) the Company and the Trustee must provide the Initial Condition Report to the State and Melbourne City Council.

- (b) From the commencement of the CTW Works forming part of CTW Section D until Ramp M Practical Completion, the Company and the Trustee must maintain the condition of the Specified Roads (other than the Barrel Drains) to a satisfactory standard such that they are trafficable by road users, and adjacent property access is not inhibited due to the condition of the Specified Roads.
- (c) As a condition precedent to CTW Section Practical Completion of CTW Section D:
 - (i) the State, the Company, the Trustee and Melbourne City Council will undertake a joint inspection, including a CCTV drainage pipe condition survey of the Barrel Drains, to assess the then-existing standard and condition of the Specified Roads and Melbourne City Council Infrastructure;
 - (ii) the Company and the Trustee must prepare a Final Condition Report for the Specified Roads and Melbourne City Council Infrastructure;
 - (iii) the Company and the Trustee must provide the Final Condition Report to the State and Melbourne City Council; and
 - (iv) the Company and the Trustee must ensure that the Specified Roads and Melbourne City Council Infrastructure (to the extent the Company and the Trustee are required by the SWTC to maintain that infrastructure) are in the standard and condition described in the Initial Condition Report, excluding fair wear and tear of the Specified Roads and Melbourne City Council Infrastructure (except to the extent that fair wear and tear should have been repaired in accordance with the Company and Trustee's obligations under clause 7E.5(b) or the SWTC).
- (d) The Company and the Trustee must provide to Melbourne City Council all, or relevant parts of all, documentation that is relevant to the CTW Works forming part of CTW Section D carried out on Specified Roads or affecting Melbourne City Council Infrastructure or residential properties, to the extent the Company and the Trustee would otherwise be required to provide such documentation to the State in performing the CTW Obligations in accordance with the CTW Project Documents.

7F

CTW LEGISLATION PROVISIONS

7F.1

Liability under the NGER Legislation

- (a) Without limiting any other clause in this Deed, the Company and the Trustee acknowledge and agree that, if the CTW Works constitute a "facility" within the meaning

of the NGER Legislation, then for the purposes of the NGER Legislation, the Company and the Trustee have, or will procure that a CTW Construction Contractor has, operational control of that facility or facilities and will comply with any obligations arising in respect of the CTW Works under the NGER Legislation.

- (b) If, despite the operation of paragraph (a), the State incurs, or but for this clause 7F.1 would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with the design and construction of the CTW Works (but not the operation of the CTW Works), and the NGER Legislation provides that such liability can be transferred by the State to the Company and the Trustee or a CTW Construction Contractor, the Company and the Trustee must, upon the written request of the State, do all things reasonably necessary to transfer the liability to the Company and the Trustee or a CTW Construction Contractor.

7F.2 [Not used]

7F.3 [Not used]

7F.4 **Victorian Industry Participation Policy**

7F.4.1 **Definitions:**

For the purposes of this clause 7F.4, only:

- (a) "**Contestable Items**" means goods or services the subject of this Deed for which there are competitive international suppliers and Australia and New Zealand suppliers. The Contestable Items are set out in the VIPP Plan;
- (b) "**ICN**" means Industry Capability Network (ICN) Victoria of Level 11, 10 Queens Road, Melbourne, Victoria (ABN 20 007 058 120);
- (c) "**Responsible Minister**" means the Minister with responsibility for administering the Victorian Industry Participation Policy Act 2003 (Vic);
- (d) "**VIPP**" means the Victorian Industry Participation Policy made pursuant to section 4 of the Victorian Industry Participation Policy Act 2003 (Vic);
- (e) "**VIPP Monitoring Table**" means the table set out in Exhibit TT (Part A); and
- (f) "**VIPP Plan**" means the plan set out in Exhibit TT (Part B).

7F.4.2 **VIPP Plan**

- (a) The Company and the Trustee must, in performing their obligations under this Deed in respect of the CTW Works, comply with the VIPP Plan.
- (b) The Company and the Trustee acknowledge and agree that their obligations as set out in the VIPP Plan apply until all

of their reporting obligations as set out in clause 7F.4.4 are fulfilled.

- (c) The Company and Trustee acknowledge and agree that:
 - (i) the VIPP Plan does not include the CTW ITS Activities;
 - (ii) within 20 Business Days after ICN has completed its contestability assessment, they will prepare, and obtain certification from ICN of, an updated VIPP Plan to include the CTW ITS Activities; and
 - (iii) once the updated VIPP Plan is certified by ICN, the updated VIPP Plan replaces the VIPP Plan in Exhibit TT (Part B).

7F.4.3 Revised VIPP Plan

- (a) If at any time during the design and construction of the CTW Works, a CTW Variation is proposed which involves or effects a change in the nature of any Contestable Items, the Company and the Trustee must prepare a revised VIPP Plan which must be certified by ICN (Revised VIPP Plan).
- (b) When requested by the State, the Company and the Trustee must provide the Revised VIPP Plan within the time stated in the State's request.
- (c) Once the Revised VIPP Plan is certified by ICN, the Revised VIPP Plan replaces the VIPP Plan in Exhibit TT (Part B) and forms part of this Deed.

7F.4.4 Reporting

- (a) The Company and the Trustee must, in carrying out the CTW Works, prepare and maintain records in the form of the VIPP Monitoring Table demonstrating their compliance with the VIPP Plan.
- (b) Upon CTW and Ramp M Practical Completion, the Company and the Trustee must provide to the State:
 - (i) the VIPP Monitoring Table detailing the Company and the Trustee's aggregate compliance with the VIPP Plan. The VIPP Monitoring Table must identify and explain any departures from the VIPP Plan and the aggregated outcomes as reported in the VIPP Monitoring Table; and
 - (ii) a statutory declaration from the CTW D&C Contractor in the form set out in Exhibit TT (Part C) to confirm that the information contained in the VIPP Monitoring Table is true and accurate. The statutory declaration must be made by a director of the CTW D&C Contractor or the CTW D&C Contractor's chief executive officer or chief financial officer.

- (c) At the request of the State, the Company and the Trustee must provide further information or explanation of any departures from the VIPP Plan as reported in the VIPP Monitoring Table.
- (d) The reporting obligations are in addition to and do not derogate from any other reporting obligations as set out in this Deed.

7F.4.5 Verification of Company and Trustee's compliance with VIPP Plan

- (a) The Company and the Trustee must, in relation to the CTW Works:
 - (i) permit the State and any authorised representative of the State or ICN, from time to time during ordinary business hours and upon written notice, to inspect, verify and make copies of all records maintained by the Company and the Trustee for the purposes of the CTW;
 - (ii) permit the State and any authorised representative of the State or ICN to undertake a review of the Company and the Trustee's performance in accordance with the VIPP Plan; and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to the State and any authorised representative of the State or ICN to undertake such audit or inspection.
- (b) The Company and the Trustee acknowledge and agree that the State, any authorised representative of the State and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Company and the Trustee's compliance with the VIPP Plan in carrying out the CTW Works.
- (c) The obligations set out in this clause 7F.4.5 are in addition to and do not derogate from any other obligation under this Deed.

7F.4.6 Use of VIPP information

The Company and the Trustee acknowledge and agree that:

- (a) ICN will assess the Company and the Trustee's performance against the Company and the Trustee's VIPP Plan;
- (b) the statistical information contained in the Company and the Trustee's VIPP Plan and the measures of the Company and the Trustee's compliance with the VIPP Plan as reported in the VIPP Monitoring Table will be:
 - (i) included in the relevant State department's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the department's compliance with the VIPP in the

financial year to which the report of operations relates; and

- (ii) provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the VIPP during that year; and
- (iii) may be disclosed as required by Law.

7F.5 [Not used]

7F.6 [Not used]

7F.7 **Security of Payment**

- (a) The Company and the Trustee must ensure that all subcontractors engaged in the performance of the CTW Works or the CTW Maintenance Activities are paid in accordance with the terms of their subcontracts.
- (b) The Company and the Trustee must ensure that, within:
 - (i) two Business Days after any notice under the Security of Payment Act (excluding any "payment claim" or "payment schedule" as those terms are defined under the Security of Payment Act) is given to, or received by, the Company and the Trustee from any subcontractor engaged in the performance of the CTW Works or the CTW Maintenance Activities; or
 - (ii) one Business Day after notice of a subcontractor's intention to suspend work under a subcontract in accordance with the Security of Payment Act is given to, or received by, the Company and the Trustee from any subcontractor engaged in the performance of the CTW Works or the CTW Maintenance Activities,

a copy of that notice is given to the State.
- (c) If a subcontractor engaged in the performance of the CTW Works or the CTW Maintenance Activities has become entitled to suspend work (which forms part of the CTW Works or the CTW Maintenance Activities) under a subcontract in accordance with the Security of Payment Act because of a failure by the Company and the Trustee to pay moneys due and payable to the subcontractor, the State may pay to the subcontractor the amount owing to the subcontractor in connection with that work forming part of the CTW Works or the CTW Maintenance Activities (as applicable), and any amount paid by the State will be a debt due and payable by the Company and the Trustee to the State.
- (d) The State must notify and consult with the Company and the Trustee prior to making any payment under paragraph (c).

- (e) Notwithstanding paragraph (c), if any amount is:
 - (i) certified as payable; or
 - (ii) otherwise due and payable,

to a subcontractor engaged in the performance of the CTW Works or the CTW Maintenance Activities under a subcontract, and the Company and the Trustee do not pay such amount to that subcontractor in accordance with that subcontract, then, the State may pay such amount to that subcontractor provided it has given the Company and the Trustee 5 Business Days' notice of its intention to do so, and any amount paid by the State will be a debt due and payable by the Company and the Trustee to the State.

7G. STATE RETURNED WORKS PROVISIONS

7G.1 Access to State Returned Works Areas

- (a) Subject to clause 7G.3, and without limiting the State's obligations under clause 4C.1, 4C.2 or 4C.2A, the State must provide the Company and the Trustee with access to those parts of the State Road Network within the CTW Property Schedule in accordance with the CTW Access Schedule and the CTW Traffic Management Procedures.
- (b) Subject to clause 7G.3 and any access arrangements already in place under clause 4C.1, 4C.2, 4C.2A, clause 7E and clause 13.3 of the CTC Redevelopment Deed, the State must provide access to those parts of the State Road Network which are outside of the areas specified in the CTW Property Schedule, sufficient for the Company and the Trustee to carry out traffic management to the extent reasonably required to execute the CTW Works and to comply with its obligations under this Deed and the CTC Redevelopment Deed, provided that:
 - (i) such access must be in accordance with a traffic management plan which has been approved in accordance with the CTW Traffic Management Procedures;
 - (ii) the Company and the Trustee have complied with their obligations under clause 13.7 of the CTC Redevelopment Deed in respect of that traffic management plan; and
 - (iii) such access is in accordance with CTW Traffic Management Procedures and CTW Access Schedule.

7G.2 [Not used]

7G.3 Suspension of access

- (a) The Company and the Trustee acknowledge and agree that, given the status of the roadways forming part of the State Road Network as operating roads, the Company and the

Trustee's access to the State Returned Works Areas (or any other areas of the State Road Network which the Company and the Trustee access in accordance with clause 7G.1(a) or (b)) remains at all times subject to the State's right to take action that is necessary:

- (i) to respond to a risk to the health and safety of users of the State Road Network, the employees, agents, consultants and contractors of the State or the general public;
- (ii) to respond to any incident or abnormal event which:
 - (A) is likely to prevent any part of the State Road Network from being open to the public for the safe and continuous passage of vehicles; or
 - (B) otherwise requires an urgent response to provide access to emergency services or traffic control;
- (iii) to prevent or minimise loss or damage to any property which would have an immediate impact, or is already having an impact, on the operation of the State Road Network or electronic systems (other than loss or damage that is an unavoidable consequence of the proper performance of the State Returned Works or the CTW Maintenance Activities);
- (iv) as a result of the proper exercise by the State or VicRoads of its statutory obligations, including under the *Road Management Act 2004* (Vic);
- (v) to enable the State to perform unplanned critical maintenance; or
- (vi) to enable the State to comply with any Law,

and the State may deny any request for access and may vary, suspend or cancel any access granted to the Company and the Trustee to the extent required to enable the State to carry out such action.

- (b) Subject to the CTC Redevelopment Deed, the Company and the Trustee acknowledge that they have made allowance for all delays and costs in relation to the performance of the CTW Works and the CTW Maintenance Activities which they may suffer or incur in respect of the State taking action in accordance with this clause 7G.3 and the Company and the Trustee will not be entitled to any claim, extension of time or other form of relief for any delay or costs suffered or incurred solely by virtue of the State taking action in accordance with this clause 7G.3.

- (c) The Company and the Trustee acknowledge and agree that the State's right to take action under this clause 7G.3 is a discretionary right of the State which may be exercised by the State for the sole benefit of the State and does not:
 - (i) impose any obligations on the State;
 - (ii) require the State to exercise its discretion for the benefit of the Company and the Trustee; or
 - (iii) to the maximum extent permitted by Law, give rise to any duty to act in good faith.
- (d) Nothing in this clause 7G limits the rights of the Company or the Trustee in relation to a State Caused Suspension under the CTC Redevelopment Deed or as otherwise expressly provided in this Deed (including clause 2.4).
- (e) This clause 7G.3 will cease to apply after CTW Final Completion, in respect of CTW Sections A to C, and Ramp M Final Completion, in respect of CTW Section D.

7G.4 Not used

7G.5 Artefacts

As between the State (on the one hand) and the Company and the Trustee (on the other), any Artefacts found on or under the surface of the State Returned Works Areas or land within the Maintenance Boundary are the property of the State.

The Company and the Trustee must upon the discovery of any Artefact on or under the surface of the State Returned Works Areas in carrying out the CTW Works or CTW Maintenance Activities (as applicable):

- (a) immediately notify the State that an Artefact has been found;
- (b) ensure that the Artefact is protected and not disturbed any further;
- (c) comply with all requirements of CTW Authorities and directions of the State in relation to the Artefact;
- (d) continue to perform the State Returned Works except to the extent otherwise:
 - (i) directed by the State or the Commonwealth;
 - (ii) ordered by a court or tribunal of competent jurisdiction; or
 - (iii) required by Law; and
- (e) provide all reasonable assistance to the State in connection with dealing with the Artefact discovery.

Nothing in this clause 7G.5 is intended to limit any claim or entitlement of the Company or the Trustee under any other provision of the CTC Redevelopment Deed.

7G.6 Use of partly completed State Returned Works

Use and occupation of the State Returned Works by the State or the relevant CTW Authority prior to or following CTW Section Practical Completion of the relevant CTW Section will not constitute CTW Section Practical Completion, or a deemed 'taking over', of the State Returned Works or the relevant CTW Section and will not relieve the Company or the Trustee from:

- (a) any obligation to complete or make good any CTW Defect notified by the State to the Company and the Trustee during any State Returned Works Defects Correction Period; or
- (b) full responsibility and liability for the performance and completion of each CTW Section and the CTW Works, and all other CTW Obligations.

7H CTW STATE WORKS AND DESIGN OF CTW STATE WORKS AND CTW WORKS

7H.1 Not used

7H.2 [Not used]

7H.3 Design of CTW State Works and CTW Works

The Company and the Trustee agree that the carrying out of the CTW State Works, in accordance with the CTC Redevelopment Deed, the Webb Dock State Works (subject to the CTC Redevelopment Deed) and the CTW Works will not preclude, limit or otherwise qualify the ability of the Company or the Trustee to perform its obligations or exercise its rights under the Project Documents or the nature, extent or value of its rights or entitlements under the Project Documents and the State will have no liability in this respect.

7I CONSTRUCTION OF THE WEST GATE TUNNEL

7I.1 Construction of the West Gate Tunnel

On and from WGT Financial Close, the State:

- (a) consents to and otherwise approves:
 - (i) the Company and the Trustee entering into the CLP WGT Project Documents;
 - (ii) the undertaking of the CityLink Returned Works;
 - (iii) changes to the Plant and Link Control Room;
 - (iv) WGT Co and its Associates (as defined in the WGT Project Agreement) undertaking the WGT Works;
 - (v) the granting of access to the Company Land and Trust Land to WGT Co and its Associates (as defined in the WGT Project Agreement); and

- (vi) the Company and the Trustee assuming and performing their other rights and obligations, in each case in accordance with and as permitted by the CLP WGT Project Documents or the Project Documents (as defined under the WGT Project Agreement);
- (b) agrees that the undertaking of the CityLink Returned Works as permitted by the WGT Project Documents will not of itself put the Company or the Trustee in breach of any Project Document;
- (c) releases and waives any rights, and agrees not to bring any claim, action or other proceeding under the Project Documents in relation to:
 - (i) the performance of the WGT Works by WGT Co and its Associates (as defined in the WGT Project Agreement); and
 - (ii) the matters referred to in clause 7I.1(a);
- (d) agrees that:
 - (i) the Company and Trustee are not required to operate, maintain or repair the CityLink Returned Works to a standard higher than that required by this Deed; and
 - (ii) to the extent the documentation, policies, plans, systems, manuals and procedures in relation to CityLink Returned Works are created, updated, reviewed and maintained in accordance with the WGT Project Agreement they will be deemed to comply with this Deed;
- (e) releases and waives any rights to bring any claim, action or other proceeding in respect of the CityLink Returned Works under the Project Scope and Technical Requirements to the extent the CityLink Returned Works are designed and constructed in accordance with the WGT PSR;
- (f) agrees that the CityLink Returned Works (and the performance of any other obligations under the WGT Project Documents and the CLP WGT Project Documents) if undertaken in accordance with the WGT Project Documents (of itself) do not constitute and will not constitute:
 - (i) loss, damage, defect or disrepair of or to the Link, under clauses 10, 12 or 13 of this Deed, or otherwise;
 - (ii) a failure to operate, maintain or repair the Link in accordance with this Deed; or
 - (iii) a failure to comply with the Project Scope and Technical Requirements;

- (g) agrees that clauses 5, 5A, 5B, 6, 6A, 6B, 6C, 7, 7A, 7B, 7C, 7D, 7E, 7F, 7G, 7H, 8, 8A, 8B and 8C do not apply to the CityLink Returned Works or the WGT Works; and
- (h) agrees that, to the extent that the State recovers any losses from WGT Co in relation to the CityLink Returned Works, the State will not be entitled to make a claim against the Company and the Trustee in relation to the same loss.

Except to the extent that the State has enforced the WGT State Security and assumed effective control of WGT Co, the Company and the Trustee release and agree not to bring any claim against the State arising out of or in connection with the CityLink Returned Works to the extent performed by WGT Co (other than in relation to Appendix Event 3(g), any rights the Company and Trustee have to be indemnified by the State in accordance with clause 12.7C and any rights to recover losses of the Company and the Trustee that WGT Co has under the WGT Project Agreement).

7I.2 Clause 2.4(d) Notice and WGT/CityLink Interface Letter

On and from WGT Financial Close, the State consents to and otherwise approves the Company and the Trustee acting in accordance with the Clause 2.4(d) Notice and the WGT/CityLink Interface Letter.

8. TIMING OF THE WORKS

8.1 Construction Program

- (a) By the later of the date of satisfaction or waiver of the last of the conditions precedent required to be satisfied or waived under clause 2.7 and the date which is 60 Business Days after the date of this Deed, the Company and the Trustee shall submit to the State and the Independent Reviewer a detailed Construction Program for each Section which:
 - (i) provides for commencement of construction; and
 - (ii) is consistent with completion of that Section by its Planned Date for Completion.
- (ai) By the 10th Business Day after the date being the operative date for the purposes of the Fourth Amending Deed, the Company and the Trustee shall submit to the State and the Independent Reviewer a detailed Construction Program for the each Section the construction of which is affected by the Works necessary to give effect to CLEP.²²³
- (b) The Construction Program for each Section shall show or attach:
 - (i) all major activities (whether for design or construction) which are required to complete that Section;
 - (ii) the estimated duration of each such activity and the key relationships between such activities;

- (iii) sequences of working intended by the Company or the Trustee for various activities for that Section;
- (iv) the dates by which all time-critical approvals and permits are required from Government Agencies;
- (v) a Relevant Milestone Date for each Construction Milestone;
- (vi) the form of the critical path or paths for each Construction Milestone to be achieved by the Relevant Milestone Date, set out to a time scale of calendar weeks;
- (vii) an analysis of the impact of the proposed construction on the surrounding environment and community including local traffic implications and an outline of the proposals to deal with those implications; and
- (viii) a program for consultation with municipal governing bodies to take place prior to commencement of construction activities affecting the relevant municipalities.

8.2

Amendment to Construction Program

- (a) Each of the Company and the Trustee shall give to the State and the Independent Reviewer notice in a timely manner of any proposed or likely material departure from the Construction Program for a Section.
- (b) A notice under paragraph (a) shall include an updated Construction Program for the relevant Section incorporating all or any changes in activities, methods, times or sequence of activities and the Company's or the Trustee's planned progress towards the Planned Date for Completion of that Section with the same level of detail as for the original Construction Program for that Section.
- (c) No program notified under this clause 8.2 affects the obligations imposed under paragraph 8.3(a).

8.3

Progress and Completion

- (a) (i) The Company shall, unless it relates to the Trust Road, in which case the Trustee shall, diligently pursue each part of the Works for each Section so that Completion can take place by the Planned Date for Completion of the Section, provided that the Company and the Trustee shall not be in breach of this Deed or be liable in damages to the State due to a failure to observe the requirements of this sub-paragraph (i); and
- (ii) The Company and the Trustee shall ensure that Completion of all Sections takes place by the Link Expected Completion Date.

- (b) If the progress of the Works is or is likely to be delayed by an Extension Event and, as a result, the Company or the Trustee reasonably expects a delay in any Section reaching Completion, it shall give notice to the Independent Reviewer and the State and each other stating with as much detail as possible the cause of the delay and the time by which the Link Expected Completion Date should be extended.
- (c) The Company and the Trustee shall be entitled to an extension of the Link Expected Completion Date only to the extent that a delay in achieving Completion of all Sections is reasonably likely to result from progress of the Works being actually delayed as a result of an Extension Event. The extent of any delay caused by or attributable to lack of financial or technical resources shall not be taken into account.
- (d) Within 5 Business Days after the receipt of a notice given in accordance with paragraph (b), the Independent Reviewer shall determine whether the Company's or the Trustee's entitlement under paragraph (c) affects the Link Expected Completion Date and, if it does, shall determine the new date to constitute that date to reflect the extent of delay in achieving Completion of all Sections reasonably likely to result from progress of the Works being actually delayed as a result of an Extension Event and notify the Company and the Trustee of the determination.
- (e) The State, the Company or the Trustee may refer any dispute or difference as to a determination of the Independent Reviewer under paragraph (d) for expert determination under Article 16.
- (f) If Completion of all Sections does not take place by the Link Expected Completion Date, then the Company and the Trustee shall each continue to diligently pursue Completion of all Sections.
- (g) Neither the Company nor the Trustee will be liable in damages to the State for any breach of the obligations provided for in sub-paragraph (a)(ii) or paragraph (f). The Company and the Trustee shall, however, pay to the State (on demand by the State) any amount or amounts payable by the State to the Independent Reviewer, insofar as the amount or amounts would not have been payable if the relevant obligation had been observed.

8.4

Company and the Trustee to Consult with State regarding Delays

- (a) If progress of the Works is delayed then:
 - (i) in addition to the Company's and the Trustee's obligations under clauses 8.2 and 8.3, the Company and the Trustee shall consult with the State and notify the State of their plans and programs for overcoming such delay; and

- (ii) if the State requests them to do so, the Company and the Trustee shall meet with the State and provide such reports to the State as may reasonably be required as to the cause of delay and available options for overcoming that delay.
- (b) The obligations of the Company and the Trustee under this clause 8.4 are in addition to their obligations under clause 7.18 and their obligation to meet under clause 8.5.

8.5

Construction Milestones

- (a) The Company and the Trustee shall diligently progress the Works to enable each Construction Milestone to be achieved by the Relevant Milestone Date.
- (b) The Company, in respect of the Company Road, and the Trustee, in respect of the Trust Road, shall advise the State and the Independent Reviewer at each Relevant Milestone Date whether or not the Construction Milestone has been achieved.
- (c) If a Construction Milestone has not been achieved by the Relevant Milestone Date, the Company, the Trustee and the State shall within 5 Business Days of the passing of that Relevant Milestone Date enter into discussions and consultation to achieve the purposes set out in paragraph (d).
- (d) The purpose of any discussions or consultation entered into by the parties under paragraph (c) is to:
 - (i) obtain a detailed explanation from the Company and the Trustee of why a Construction Milestone has not been achieved by the Relevant Milestone Date (**Failed Milestone**);
 - (ii) identify the action which will be undertaken by the Company and the Trustee and a revised Construction Program which will enable the Failed Milestone to be achieved as soon as practicable (having regard to the prime objective of achieving Completion of all Sections by the Link Expected Completion Date) or extend the Relevant Milestone Date if progress was delayed due to an Extension Event;
 - (iii) extend the Relevant Milestone Date relating to the Failed Milestone in accordance with any revised Construction Program identified under subparagraph (ii);
 - (iv) agree upon any reporting by the Company and Trustee of progress of the Works; and
 - (v) agree upon any consequential changes to any other Construction Milestones or Relevant Milestone Dates.

- (e) Neither the Company nor the Trustee shall be in breach of this Deed or liable in damages to the State solely as a result of either a Construction Milestone not being achieved by the Relevant Milestone Date or a failure to observe paragraph (a).

8.6 Requirements for Completion of a Section

- (a) Before Completion of a Section, the Company and Trustee will undertake the requirements for Commissioning and Completion detailed in the Project Scope and Technical Requirements.
- (b) Before Completion of a Section, the Company and the Trustee shall give to each of the State and the Independent Reviewer a copy of operation and maintenance manuals prepared for that Section in accordance with the Project Scope and Technical Requirements and in a form approved in writing by the State, such approval not to be unreasonably withheld.
- (c) As soon as practicable after the Date of Completion of a Section and in any event, within 60 days after that date, the Company and the Trustee (respectively) shall give to each of the State and the Independent Reviewer a complete set of "as constructed" drawings for that Section.

8.7 Completion Process for a Section

- (a) The Company and the Trustee shall ensure that the Independent Reviewer and the State are given at least 20 Business Days' notice (or such lesser notice period as may be agreed between the State and the Company) before the date upon which either the Company or the Trustee expects Completion of a Section to take place.²²⁴
- (b) Upon receipt of a notice under paragraph (a), without delay and at the latest within 5 Business Days, the Independent Reviewer shall:
 - (i) inspect the relevant Works with the Company and the Trustee; and
 - (ii) form an opinion as to what (if any) work remains to be performed before:
 - (A) the Works with respect to the Section would be considered to be in a condition consistent with satisfaction of the requirement outlined in paragraph (a) and (insofar as it applies to the Works) paragraph (c) of the definition of Completion; and
 - (B) Commissioning could be considered to have occurred in relation to the Section.
- (c) As soon as possible after inspecting the Works, and at the latest within 5 Business Days after either doing so or the

expiration of the time required for doing so under paragraph (b), the Independent Reviewer shall give notice to the Company, the Trustee and the State of its opinion under paragraph (b), including a detailed list of the work (if any) remaining to be performed.

- (d) Upon receipt of a notice given under paragraph (c), the Company shall (unless the work relates to the Trust Road, in which case the Trustee shall) either:
 - (i) perform the work specified in that notice as soon as practicable; or
 - (ii) refer the subject matter of the notice for expert determination under Article 16.
- (e) The Company and the Trustee shall ensure that notice is given to the Independent Reviewer and the State on completion of the detailed list of work in the Independent Reviewer's notice or, if the subject matter of the Independent Reviewer's notice is referred for expert determination under Article 16, on completion of the work (if any) determined under Article 16 as remaining to be performed to achieve Completion of the relevant Section.
- (f) Paragraphs (b), (c) and (d) will apply in respect of the notice under paragraph (e) in the same way as if it were the original notice under paragraph (a).

8.8 Independent Reviewer's Certificate

If the effect of a notice given under paragraph 8.7(c) is that no work remains to be performed to achieve Completion, the Independent Reviewer shall promptly issue to the State and to the Company and the Trustee a certificate certifying that the requirements of paragraphs (a), (b) and (insofar as it applies to the Works) (c) of the definition of "Completion" have been satisfied in relation to the relevant Section. A notice to that effect shall be deemed to have been issued in relation to a Section if the Independent Reviewer fails to give notice under paragraph 8.7(c) within the 5 Business Day period specified in that paragraph.

8.9 Certificate of Completion

If the State has received an Independent Reviewer's Certificate in relation to a Section or, under clause 8.8, a notice is deemed to have been issued in relation to the Section, the State shall issue to the Company and the Trustee a Certificate of Completion certifying Completion of the Section has taken place and the Date of Completion within 5 Business Days after:

- (a) the State's receipt of that certificate or the deemed issue of that notice, unless the State then has reasonable grounds to believe that the requirement outlined in paragraph (c) of the definition of "Completion" (to the extent not covered in the Independent Reviewer's Certificate) has, in relation to the Section, not been satisfied and advises the Company and the Trustee of those grounds; or

- (b) it having been determined under Article 16 that such requirement has, in relation to the Section, been satisfied.

8.10 Effect of Certificates

Upon the issue of a Certificate of Completion in relation to a Section that Section shall irrevocably be considered to have achieved Completion. However neither the Independent Reviewer's Certificate nor a Certificate of Completion in relation to a Section constitutes an approval by the Independent Reviewer or the State of the Company's or the Trustee's performance of the Works in relation to that Section or evidence that all or any other obligations under this Deed have been satisfied.

8.11 Dispute in relation to Completion

The Company, the Trustee or the State may refer any dispute or difference in relation to the issue or non-issue of an Independent Reviewer's Certificate or a Certificate of Completion for expert determination under Article 16.

8.12 Defects or Omissions

If Completion of a Section has occurred, the Company or the Trustee shall rectify as soon as practicable after Completion, any omissions or defects which did not prevent the Section from being considered to have achieved Completion.

8.13 Non-application to SLU, SLU Works, CTW or CTW Works

For the avoidance of doubt, this clause 8 does not apply to the SLU Works, SLU, CTW Works or CTW.

8A. TIMING OF THE SLU WORKS

8A.1 SLU Construction Program

- (a) Within 90 Business Days after the SLU Effective Date, the Company and the Trustee shall submit to the State and the Design and Construction Verification Engineer a detailed SLU Construction Program which:
 - (i) provides for commencement of construction; and
 - (ii) is consistent with SLU Practical Completion of the SLU Works by the Planned Date for SLU Practical Completion and SLU Final Completion of the SLU Works by the Planned Date for SLU Final Completion.
- (b) The SLU Construction Program shall show or attach:
 - (i) all major activities (whether for design or construction) which are required to complete the SLU Works;
 - (ii) the estimated duration of each such activity and the key relationships between such activities;

- (iii) sequences of working intended by the Company or the Trustee for various activities of the SLU Works;
 - (iv) the dates by which all time-critical approvals and permits are required from Government Agencies; and
 - (v) the form of the critical path or paths for SLU Practical Completion to be achieved by the Planned Date for SLU Practical Completion set out to a time scale of calendar weeks.
- (c) Prior to the commencement of the relevant construction activities, the Company and the Trustee shall submit to the State:
- (i) an analysis of the impact of the proposed construction on the surrounding environment and community including local traffic implications and an outline of the proposals to deal with those implications; and
 - (ii) a program for consultation with municipal governing bodies and directly affected adjoining landowners to take place prior to commencement of construction activities affecting the relevant municipalities and the directly affected adjoining landowners.

8A.2

Amendment to SLU Construction Program

- (a) Each of the Company and the Trustee shall give to the State notice in a timely manner of any proposed or likely material departure from the SLU Construction Program.
- (b) A notice under paragraph (a) shall include an updated SLU Construction Program incorporating all or any changes in activities, methods, times or sequence of activities and the Company's or the Trustee's planned progress towards the Planned Date for SLU Practical Completion and the Planned Date for SLU Final Completion with the same level of detail as for the original SLU Construction Program.
- (c) No program notified under this clause 8A.2 affects the obligations imposed under paragraph 8A.3(a).

8A.3

Progress, SLU Practical Completion and SLU Final Completion

- (a) (i) The Company shall, unless it relates to the Trust Road, in which case the Trustee shall, diligently pursue the SLU Works so that SLU Practical Completion takes place by the Planned Date for SLU Practical Completion, provided that the Company and the Trustee shall not be in breach of this Deed or, subject to clause 8.5 of the M1 Corridor Redevelopment Deed, be liable in

- damages to the State due to a failure to observe the requirements of this sub-paragraph (i); and
- (ii) the Company and the Trustee shall ensure that SLU Final Completion of the SLU Works takes place by the Planned Date for SLU Final Completion provided that neither the Company nor the Trustee shall be in breach of this Deed or, subject to clause 8A.12, liable in damages to the State due to a failure to observe the requirements of this sub-paragraph (ii).
- (b) If the progress of the SLU Works is or is likely to be delayed and, as a result, the Company or the Trustee reasonably expects a delay in reaching SLU Practical Completion by the Planned Date for SLU Practical Completion and/or SLU Final Completion by the Planned Date for SLU Final Completion, it shall give notice to the State stating with as much detail as possible the cause of the delay and the effect on the Planned Date for SLU Practical Completion and/or Planned Date for SLU Final Completion.
- (c) The parties agree and acknowledge that:
- (i) the consequences of the Company and/or the Trustee being delayed by the State (including a delay in relation to which the State has assumed the risk of) in achieving SLU Practical Completion are set out in the M1 Corridor Redevelopment Deed and not this Deed and the M1 Corridor Redevelopment Deed contains the sole and exclusive remedies for any such delays;
 - (ii) as a result of clause 8A.3(c)(i) if the Company or the Trustee is delayed in achieving SLU Practical Completion by the State or by any other cause, the Company and the Trustee shall not be entitled to an extension of time under this Deed or to any adjustment to the Planned Date for SLU Practical Completion; and
 - (iii) clause 8A.3(c)(ii) does not affect the Company's and the Trustee's obligations, liabilities and warranties under this Deed or the M1 Corridor Redevelopment Deed, in particular clause 8.5 of the M1 Corridor Redevelopment Deed.
- (d) The Company and the Trustee shall be entitled to an extension of the Planned Date for SLU Final Completion only to the extent that a delay in achieving SLU Final Completion has been caused by an act, omission, default or breach of this Deed by the State. Any delay up to the SLU Date of Practical Completion or the extent of any delay caused by or attributable to lack of financial or technical resources shall not be taken into account.

- (e) Within 5 Business Days after the receipt of a notice given in accordance with paragraph (b), the State shall determine whether the Company's or the Trustee's entitlement under paragraph (d) affects the Planned Date for SLU Final Completion and, if it does, shall determine the new date to constitute that date to reflect the extent of delay in achieving SLU Final Completion reasonably likely to result from SLU Final Completion being actually delayed as a result of the act, omission, default or breach of this Deed by the State and notify the Company and the Trustee of the determination.
- (f) The Company or the Trustee may refer any dispute or difference as to a determination of the State under paragraph (e) for expert determination under Article 16.
- (g) If SLU Practical Completion does not take place by the Planned Date for SLU Practical Completion, then the Company and the Trustee shall each continue to diligently pursue SLU Practical Completion of the SLU Works.
- (h) Subject to clause 8A.12, neither the Company nor the Trustee will be liable in damages to the State for any breach of the obligations provided for in sub-paragraph (a)(i) and (ii) or paragraph (g).

8A.4 Not used

8A.5 Requirements for SLU Section Practical Completion

- (a) Before SLU Section Practical Completion of a SLU Section, the Company and Trustee will undertake the requirements for SLU Commissioning and SLU Section Practical Completion detailed in the Project Scope and Technical Requirements.
- (b) Before SLU Section Practical Completion of a SLU Section, the Company and the Trustee shall give to the State a draft copy of updated Operation and Maintenance Manuals which cover that SLU Section (or the Section of which the SLU Section forms part), with such updates to be in accordance with the Project Scope and Technical Requirements.
- (c) As soon as practicable after the Date of SLU Section Practical Completion of a SLU Section and in any event, within 60 Business Days after that date, the Company and the Trustee (respectively) shall give to the State a complete set of "as constructed" drawings for that SLU Section.

8A.6 SLU Section Practical Completion Process

- (a) The Company and the Trustee shall ensure that the State is given at least 10 Business Days' notice (or such lesser notice period as may be agreed between the State and the Company) before the date upon which either the Company or the Trustee expects SLU Section Practical Completion

of a SLU Section to take place, such notice must include (as relevant to the SLU Section):

- (i) a statement by the Company, supported where applicable by the SLU Design Consultant's and the Design and Construction Verification Engineer's certification, that the functional requirements have been satisfied;
 - (ii) a copy of the document required under clause 8A.5(b);
 - (iii) a schedule of the documents anticipated to be provided under clause 8A.5(c);
 - (iv) copies of road safety audits and Company responses demonstrating that all road safety issues identified in the audits have been appropriately addressed; and
 - (v) a schedule of minor omissions and minor defects to be completed to achieve SLU Final Completion.
- (b) The Company and the Trustee shall notify the State in writing when either the Company or the Trustee considers that SLU Section Practical Completion of a SLU Section has been achieved.
- (c) Upon receipt of a notice under paragraph (b), without delay and at the latest within 5 Business Days, the State shall:
- (i) inspect the relevant SLU Works with the Company and the Trustee; and
 - (ii) form an opinion as to what (if any) work remains to be performed before:
 - (A) the SLU Works with respect to the SLU Section would be considered to be in a condition consistent with satisfaction of the requirement outlined in paragraph (a) and paragraph (c) of the definition of SLU Section Practical Completion; and
 - (B) SLU Commissioning could be considered to have occurred in relation to the SLU Section.
- (d) As soon as possible after inspecting the SLU Works, and at the latest within 5 Business Days after either doing so or the expiration of the time required for doing so under paragraph (c), the State shall:
- (i) give notice to the Company and the Trustee of its opinion under paragraph (c), the reasons for its opinion, including a detailed list of the work (if any) remaining to be performed; or

- (ii) if in the opinion of the State there is no work remaining to be performed and all the requirements of SLU Section Practical Completion have been satisfied in respect of the SLU Section, subject to clause 8A.8, issue to the Company and Trustee a Certificate of SLU Section Practical Completion in respect of the SLU Section.
- (e) If the State fails to give notice under subparagraph (d)(i) or issue a certificate under sub-paragraph (d)(ii) within the 5 Business Day period specified in this clause 8A.6(d) or forms an opinion that all of the requirements of SLU Section Practical Completion have not been satisfied, the Company and the Trustee may request the Design and Construction Verification Engineer to determine whether SLU Section Practical Completion has been achieved in respect of the SLU Section.
- (f) Upon receipt of a notice under paragraph (e), without delay and at the latest within 5 Business Days, the Design and Construction Verification Engineer shall:
 - (i) inspect the relevant SLU Works with the Company and the Trustee; and
 - (ii) form an opinion as to what (if any) work remains to be performed before:
 - (A) the SLU Works with respect to the SLU Section would be considered to be in a condition consistent with satisfaction of the requirement outlined in paragraph (a) and paragraph (c) of the definition of SLU Section Practical Completion; and
 - (B) SLU Commissioning could be considered to have occurred in relation to the SLU Section.
- (g) As soon as possible after inspecting the SLU Works, and at the latest within 5 Business Days after either doing so or the expiration of the time required for doing so under paragraph (f), the Design and Construction Verification Engineer shall give notice to the Company, the Trustee and the State of its opinion under paragraph (f), including a detailed list of the work (if any) remaining to be performed.
- (h) Upon receipt of a notice given under paragraph (g), the Company shall (unless the work relates to the Trust Road, in which case the Trustee shall) either:
 - (i) perform the work specified in that notice as soon as practicable; or
 - (ii) refer the subject matter of the notice for expert determination under Article 16.

- (i) The Company and the Trustee shall ensure that notice is given to the Design and Construction Verification Engineer and the State on completion of the detailed list of work in the Design and Construction Verification Engineer's notice or, if the subject matter of the Design and Construction Verification Engineer's notice is referred for expert determination under Article 16, on completion of the work (if any) determined under Article 16 as remaining to be performed to achieve SLU Section Practical Completion of the relevant SLU Section.
- (j) Paragraphs (c), (d), (e), (f), (g) and (h) will apply in respect of the notice under paragraph (i) in the same way as if it were the original notice under paragraph (b).

8A.7 Design and Construction Verification Engineer's Certificate

If the effect of a notice given under paragraph 8A.6(g) is that no work remains to be performed to achieve SLU Section Practical Completion, the Design and Construction Verification Engineer shall promptly issue to the State and to the Company and the Trustee a certificate certifying that the requirements of paragraphs (a), (b) and (c) of the definition of "SLU Section Practical Completion" have been satisfied in relation to the relevant SLU Section. A notice to that effect and a Design and Construction Verification Engineer's Certificate shall be deemed to have been issued in relation to a SLU Section if the Design and Construction Verification Engineer fails to give notice under paragraph 8A.6(g) within the 5 Business Day period specified in that paragraph.

8A.8 Certificate of SLU Section Practical Completion

If the State has received a Design and Construction Verification Engineer's Certificate in relation to a SLU Section or, under clause 8A.7, a notice or Design and Construction Verification Engineer's Certificate is deemed to have issued in relation to the SLU Section, the State shall issue to the Company and the Trustee a Certificate of SLU Section Practical Completion certifying SLU Section Practical Completion of the SLU Section has taken place and the Date of SLU Section Practical Completion within 5 Business Days after:

- (a) the State's receipt of that certificate or the deemed issue of that notice, unless the State then has reasonable grounds to believe that the SLU Section is not safe for use by the public for the continuous passage of vehicles and advises the Company and the Trustee of those grounds; or
- (b) it having been determined under Article 16 that such SLU Section is safe for use by the public for the continuous passage of vehicles.

Despite any other provision of this Deed, the State shall not be obliged to issue a Certificate of SLU Section Practical Completion in respect of the last SLU Section to achieve SLU Section Practical Completion until the Company and the Trustee have:

- (c) provided the SLU Security in accordance with clause 8A.18; and

- (d) provided plans depicting Southern Link Section 1 and Southern Link Section 5.

8A.9 Effect of Certificates

Upon the issue of a Certificate of SLU Section Practical Completion in relation to a SLU Section that SLU Section shall irrevocably be considered to have achieved SLU Section Practical Completion. However neither the Design and Construction Verification Engineer's Certificate nor a Certificate of SLU Section Practical Completion in relation to a SLU Section constitutes an approval by the Design and Construction Verification Engineer or the State of the Company's or the Trustee's performance of the SLU Works in relation to that SLU Section or evidence that all or any other obligations under this Deed have been satisfied.

8A.10 Dispute in relation to SLU Section Practical Completion

- (a) The Company, the Trustee or the State may refer any dispute or difference in relation to the issue or non-issue of a Design and Construction Verification Engineer's Certificate or a Certificate of SLU Section Practical Completion for expert determination under Article 16.
- (b) Notwithstanding sub-paragraph (a), the issue of a Design and Construction Verification Engineer's Certificate or a Certificate of SLU Section Practical Completion in respect of the last SLU Section to be certified as complete by either the Design and Construction Verification Engineer or the State will be deemed to be the Southern Link Upgrade Date of Practical Completion under the M1 Corridor Redevelopment Deed.

8A.11 Defects or Omissions

If SLU Section Practical Completion of a SLU Section has occurred, the Company or the Trustee shall rectify as soon as practicable after SLU Section Practical Completion and, in any case, no later than the Planned Date for SLU Final Completion, any omissions or defects which did not prevent the SLU Section from being considered to have achieved SLU Section Practical Completion.

8A.12 Failure to rectify Defects or Omissions

If the Company and the Trustee fail to achieve SLU Final Completion by the Planned Date for SLU Final Completion, the State may, after the Planned Date for SLU Final Completion, call upon the SLU Security up to an amount representing the reasonable cost of rectifying all defects or omissions not rectified at the Planned Date for SLU Final Completion. The parties acknowledge and agree that:

- (a) upon the State drawing down on the SLU Security in accordance with this clause 8A.12, SLU Final Completion will be deemed to be achieved; and
- (b) drawing down upon the SLU Security in accordance with this clause 8A.12 is the State's sole and exclusive remedy for a failure by the Company and the Trustee to achieve

SLU Final Completion by the Planned Date for SLU Final Completion.

If at any time after the SLU Date of Final Completion, the estimated reasonable cost of rectifying any outstanding defects or omissions is less than the amount of the proceeds of the SLU Security, the parties must negotiate in good faith to agree the amount to be reimbursed to the Company and Trustee, having regard to the estimated reasonable cost of rectifying the defects or omissions outstanding at the time.

8A.13

SLU Final Completion Process

- (a) The Company and the Trustee shall ensure that the State is given at least 10 Business Days' notice (or such lesser notice period as may be agreed between the State and the Company) before the date upon which either the Company or the Trustee expects SLU Final Completion to take place.
- (b) The Company and the Trustee shall notify the State in writing when either the Company or the Trustee considers that SLU Final Completion has been achieved.
- (c) Upon receipt of a notice under paragraph (b), without delay and at the latest within 5 Business Days, the State shall:
 - (i) inspect the SLU Works with the Company and the Trustee; and
 - (ii) form an opinion as to what (if any) defects and omissions remain to be rectified before the SLU Works would be considered to have reached SLU Final Completion.
- (d) As soon as possible after inspecting the SLU Works, and at the latest within 5 Business Days after either doing so or the expiration of the time required for doing so under paragraph (c), the State shall:
 - (i) give notice to the Company and the Trustee of its opinion under paragraph (c), and the reasons for its opinion, including a detailed list of the defects and omissions (if any) remaining to be rectified; or
 - (ii) if in the opinion of the State there are no defects or omissions remaining to be rectified and all the requirements of SLU Final Completion have been satisfied, issue to the Company and Trustee a Certificate of SLU Final Completion.
- (e) If the State fails to give notice under sub-paragraph (d)(i) or issue a certificate under sub-paragraph (d)(ii) within the 5 Business Day period specified in clause 8A.13(d), or forms an opinion that all requirements of SLU Final Completion have not been satisfied, the Company and the Trustee may request the Design and Construction Verification Engineer to determine whether SLU Final Completion has been achieved. The Company and the Trustee shall provide to the State a copy of any such

- request at the same time it is provided to the Design and Construction Verification Engineer.
- (f) Upon receipt of a notice under paragraph (e), without delay and at the latest within 5 Business Days, the Design and Construction Verification Engineer shall:
 - (i) inspect the SLU Works with the Company and the Trustee; and
 - (ii) form an opinion as to what (if any) defects or omissions remain to be rectified before the SLU Works would be considered to have reached SLU Final Completion.
 - (g) As soon as possible after inspecting the SLU Works, and at the latest within 5 Business Days after either doing so or the expiration of the time required for doing so under paragraph (f), the Design and Construction Verification Engineer shall give notice to the Company, the Trustee and the State of its opinion under paragraph (f), including a detailed list of the defects and omissions (if any) remaining to be rectified.
 - (h) Upon receipt of a notice given under paragraph (g), the Company shall (unless the work relates to the Trust Road, in which case the Trustee shall) either:
 - (i) perform the work specified in that notice as soon as practicable; or
 - (ii) refer the subject matter of the notice for expert determination under Article 16.
 - (i) The Company and the Trustee shall ensure that notice is given to the Design and Construction Verification Engineer and the State on rectification of the detailed list of defects and omissions in the Design and Construction Verification Engineer's notice or, if the subject matter of the Design and Construction Verification Engineer's notice is referred for expert determination under Article 16, on completion of the work (if any) determined under Article 16 as remaining to be performed to achieve SLU Final Completion.
 - (j) Paragraphs (c) (d), (e), (f), (g) and (h) will apply in respect of the notice under paragraph (i) in the same way as if it were the original notice under paragraph (b).

8A.14

Design and Construction Verification Engineer's Certificate

If the effect of a notice given under paragraph 8A.13(g) is that no work remains to be performed to achieve SLU Final Completion, the Design and Construction Verification Engineer shall promptly issue to the State and to the Company and the Trustee a certificate certifying that the requirements of paragraph (b) of the definition of "SLU Final Completion" have been satisfied. A notice to that effect or a Design and Construction Verification Engineer's Certificate shall be deemed to have been issued if the Design and Construction Verification Engineer fails to give notice or a certificate under

paragraph 8A.13(g) within the 5 Business Day period specified in that paragraph.

8A.15 Certificate of SLU Final Completion

If the State has received a Design and Construction Verification Engineer's Certificate or, under clause 8A.14, a notice or Design and Construction Verification Engineer's Certificate is deemed to have been issued, the State shall issue to the Company and the Trustee a Certificate of SLU Final Completion certifying SLU Final Completion has taken place and the Date of SLU Final Completion within 5 Business Days after:

- (a) the State's receipt of that certificate or the deemed issue of that notice, unless the State then has reasonable grounds to believe that the requirements outlined in paragraphs (b) and (c) of the definition of "SLU Final Completion" have not been satisfied and advises the Company and the Trustee of those grounds; or
- (b) it having been determined under Article 16 that those requirements have been satisfied.

8A.16 Effect of Certificates

Upon the issue or deemed issue of a Certificate of SLU Final Completion the SLU Works shall irrevocably be considered to have achieved SLU Final Completion. However neither the Design and Construction Verification Engineer's Certificate nor a Certificate of SLU Final Completion constitutes an approval by the Design and Construction Verification Engineer or the State of the Company's or the Trustee's performance of the SLU Works or evidence that all or any other obligations under this Deed have been satisfied.

8A.17 Dispute in relation to SLU Final Completion

The Company, the Trustee or the State may refer any dispute or difference in relation to the issue or non-issue of an Design and Construction Verification Engineer's Certificate or a Certificate of SLU Final Completion for expert determination under Article 16.

8A.18 SLU Security

- (a) Prior to SLU Practical Completion, the Company and the Trustee must provide the State with an unconditional and irrevocable bank undertaking for the due performance of the Company's and the Trustee's obligations in respect of those aspects of the SLU Works that are required to be performed to achieve SLU Final Completion in the amount of \$2,500,000.00 in a form reasonably acceptable to the State from a bank registered under the Banking Act 1958 (Cth).
- (b) Within 10 Business Days after the issue of a Certificate of SLU Final Completion, the State must return the SLU Security to the Company and the Trustee unless the State has called upon the SLU Security, in which case the State shall return the amount (if any) not exhausted.

- (c) The Company and the Trustee agree and acknowledge that the State:
 - (i) is not obliged to pay the Company or the Trustee interest on:
 - (A) the SLU Security; or
 - (B) subject to clause 8A.18(e), the proceeds of the SLU Security if it is converted into cash; and
 - (ii) does not hold the proceeds or money referred to in subparagraph (i) on trust for the Company or the Trustee.
- (d) If at any time after the SLU Date of Practical Completion, the estimated reasonable cost of rectifying any outstanding defects or omissions is less than the amount of the SLU Security, the parties must negotiate in good faith to agree the amount by which , the SLU Security will be reduced having regard to the estimated reasonable cost of rectifying the defects or omissions outstanding at the time.
- (e) If the State has drawn on the SLU Security:
 - (i) for an amount in respect of defects and omissions which neither the Company nor the Trustee was required to rectify to achieve SLU Final Completion; or
 - (ii) for an amount in excess of the cost of the defects and omissions which the Company and the Trustee are required to rectify but have not been rectified to achieve Final Completion,then the State must:
 - (iii) in the case of a drawing referred to in clause 8A.18(e)(i), refund the amount drawn to the Company and the Trustee plus accrued interest at the Default Rate; or
 - (iv) in the case of a drawing referred to in clause 8A.18(e)(ii), refund the difference between the amount that was drawn and the cost of the defects and omissions that the Company and the Trustee are required to rectify but have not been rectified, plus accrued interest at the Default Rate.

8A.19 Temporary Operational Completion

- (a) The Company and the Trustee shall ensure that the State is given at least 10 Business Days' notice (or such lesser notice period as may be agreed between the State and the Company) before the date upon which either the Company or the Trustee expects Temporary Operational Completion of a SLU Section to take place.

- (b) The Company and the Trustee shall notify the State in writing when either the Company or the Trustee considers that Temporary Operational Completion has been achieved in respect of a SLU Section.
- (c) If within 5 Business Days of receiving a notice under clause 8A.19(b), the State advises in writing that it does not agree that Temporary Operational Completion has been achieved in respect of the SLU Section (such advice to include the reasons for the State's opinion), the Company and the Trustee may then request, by written notice, the Design and Construction Verification Engineer to determine whether Temporary Operational Completion has been achieved in respect of the SLU Section. The Company and the Trustee shall provide to the State a copy of any such request at the same time it is provided to the Design and Construction Verification Engineer.
- (d) Upon receipt of a notice under clause 8A.19(c) and at the latest within 5 Business Days, the Design and Construction Verification Engineer shall review the SLU Works in respect of the SLU Section and notify in writing the State, the Company and the Trustee whether Temporary Operational Completion has been achieved in respect of the SLU Section, or, if not, what further work is required to achieve Temporary Operational Completion in respect of the SLU Section.
- (e) Upon receipt of a notice from the Design and Construction Verification Engineer stating that further work is required to achieve Temporary Operational Completion in respect of the SLU Section, the Company shall (unless the work relates to the Trust Road, in which case the Trustee shall) perform that further work and give written notice to the State and the Design and Construction Verification Engineer on completion of that further work.
- (f) Paragraphs (c), (d) and (e) will apply in respect of the notice under paragraph (e), in the same way as if it were the original notice under paragraph (b).
- (g) If the:
 - (i) State advises the Company and the Trustee in writing that it agrees; or
 - (ii) Design and Construction Verification Engineer provides notification in accordance with clause 8A.19(d),

that Temporary Operational Completion has been achieved in respect of a SLU Section then, subject to clause 8A.19(h), the Company and the Trustee may open the SLU Section on a temporary basis and allow the completed SLU Works within that SLU Section to be used by the public for the passage of vehicles.

- (h) The parties agree and acknowledge that:

- (i) Temporary Operational Completion being achieved in respect of a SLU Section does not constitute an acknowledgement by the State or the Design and Construction Verification Engineer that the SLU Works within that SLU Section comply with this Deed; and
- (ii) the Company may not, prior to the Date of SLU Section Practical Completion, have open for use by the public more than 3 lanes in each SLU Section at any one time.

8A.20 Division or Consolidation of SLU Sections

- (a) If the Company or the Trustee wish to divide a SLU Section into further sections or consolidate two or more SLU Sections into one section (the "**Proposed Change**"), the Company and Trustee may give written notice to the State setting out details of the Proposed Change.
- (b) Upon receipt of such a notice, the State shall within 10 Business Days, advise the Company and the Trustee by written notice whether the State agrees to the Proposed Change.
- (c) If the State agrees to the Proposed Change:
 - (i) the SLU Section(s) the subject of the Proposed Change will be divided into further sections or consolidated into one section (as the case may be) as set out in the notice issued to the State in accordance with clause 8A.20(a); and
 - (ii) the new sections or the consolidated section(s) (as the case may be) will be deemed to be a SLU Section for the purposes of this Deed.

8A.21 Non-application to CTW or CTW Works

For the avoidance of doubt, this clause 8A does not apply to the CTW Works or the CTW.

8B. TIMING OF THE CTW WORKS

8B.1 CTW Construction Program

- (a) The CTW Construction Program shall:
 - (i) provide for commencement of construction;
 - (ii) be consistent with:
 - (A) CTW Practical Completion being achieved by the Planned Date for CTW Practical Completion;
 - (B) CTW Final Completion being achieved by the Planned Date for CTW Final Completion;

- (C) Ramp M Practical Completion being achieved by the Planned Date for Ramp M Practical Completion; and
 - (D) Ramp M Final Completion being achieved by the Planned Date for Ramp M Final Completion;
 - (iii) be prepared using critical path project planning methods and must be computer based using Microsoft Project or an alternative computer program approved by the CTW Independent Reviewer (in which case the Company and the Trustee must provide the State and the CTW Independent Reviewer with a licensed copy of the relevant program); and
 - (iv) be in a linked bar chart format.
 - (b) The CTW Construction Program shall show or attach:
 - (i) all major activities (whether for design or construction) which are required to complete the CTW Works;
 - (ii) the estimated duration of each such activity and the key relationships between such activities;
 - (iii) sequences of working intended by the Company or the Trustee for various activities of the CTW Works;
 - (iv) the dates by which all time-critical approvals and permits are required from Government Agencies; and
 - (v) the form of the critical path or paths for:
 - (A) CTW Practical Completion to be achieved by the Planned Date for CTW Practical Completion; and
 - (B) Ramp M Practical Completion to be achieved by the Planned Date for Ramp M Practical Completion,
- set out to a time scale of calendar weeks.
- (c) The submission of the Company and the Trustee's CTW Construction Program must be accompanied with the electronic program files. The hardcopy submission must be in colour.
 - (d) Within 90 Business Days after the CTW Effective Date, the Company and the Trustee shall submit to the State and the CTW Independent Reviewer an initial CTW Construction Program.
 - (e) The Company and the Trustee shall:

- (i) review regularly the CTW Construction Program, and update it monthly, to ensure the CTW Construction Program accurately reflects:
 - (A) the actual progress of the construction activities;
 - (B) the effect of all delays on the construction activities; and
 - (C) the then actual and current critical path to achieving CTW Practical Completion by the Planned Date for CTW Practical Completion; and
 - (D) the then actual and current critical path to achieving Ramp M Practical Completion by the Planned Date for Ramp M Practical Completion.
- (ii) provide a copy of the updated CTW Construction Program to the State and the CTW Independent Reviewer within 3 Business Days after the commencement of each month during which construction activities are undertaken.
- (f) The State may, and the CTW Independent Reviewer must, review and comment on any CTW Construction Program.
- (g) If the State or the CTW Independent Reviewer believes that a CTW Construction Program is not in accordance with this Deed, the State may and the CTW Independent Reviewer must notify the Company and the Trustee of that opinion and the reasons for that opinion.
- (h) On receipt of a notice from the State or the CTW Independent Reviewer under paragraph (g), the Company and the Trustee must, as soon as practicable:
 - (i) review the CTW Construction Program in light of the State or the CTW Independent Reviewer's concerns;
 - (ii) revise the CTW Construction Program to the extent necessary to ensure it complies with the requirements of this Deed; and
 - (iii) resubmit the CTW Construction Program to the State and the CTW Independent Reviewer in accordance with paragraph (e).
- (i) Any review of or comments upon a CTW Construction Program by the State or the CTW Independent Reviewer will not:
 - (i) relieve the Company or the Trustee from or alter its liabilities or obligations under the CTW Project Documents;

- (ii) evidence or constitute an extension of time or a direction by the State to accelerate, disrupt, prolong or vary any, or all, of the CTW Works; or
- (iii) affect the time for performance of the State's obligations under the CTW Project Documents, including obliging the State to do anything earlier than is necessary to enable the Company and the Trustee to achieve:
 - (A) CTW Practical Completion by the Planned Date for CTW Practical Completion;
 - (B) CTW Final Completion by the Planned Date for CTW Final Completion;
 - (C) Ramp M Practical Completion by the Planned Date for Ramp M Practical Completion; or
 - (D) Ramp M Final Completion by the Planned Date for Ramp M Final Completion.
- (j) The Company and the Trustee may submit two separate CTW Construction Programs, one in respect of the Back Office WLU ITS Works and the other in respect of the balance of the CTW Works.

8B.2 Notice of program departures

Without limiting clause 8B.1(e), the Company and the Trustee must provide the State notice in a timely manner of any proposed or likely material departure from the CTW Construction Program. Any notice under this clause 8B.2 must include an updated CTW Construction Program incorporating all or any changes in activities, methods, times or sequence of activities and the Company and the Trustee's planned progress towards the Planned Date for CTW Practical Completion and the Planned Date for Ramp M Practical Completion.

8B.3 Progress, CTW Practical Completion and CTW Final Completion

- (a) The:
 - (i) Company shall, unless it relates to the Trust Road, in which case the Trustee shall, diligently pursue the CTW Works so that CTW Practical Completion takes place by the Planned Date for CTW Practical Completion and Ramp M Practical Completion takes place by the Planned Date for Ramp M Practical Completion, provided that the Company and the Trustee shall not be in breach of this Deed or, subject to clause 13.9 of the CTC Redevelopment Deed, be liable in damages to the State due to a failure to observe the requirements of this sub-paragraph (i); and

- (ii) Company and the Trustee shall ensure that CTW Final Completion of the CTW Works takes place by the Planned Date for CTW Final Completion and Ramp M Final Completion takes place by the Planned Date for Ramp M Final Completion, provided that neither the Company nor the Trustee shall be in breach of this Deed or, subject to clause 8B.12, liable in damages to the State due to a failure to observe the requirements of this sub-paragraph (ii).
- (b) [Not used]
- (c) The parties agree and acknowledge that:
 - (i) the Planned Date for CTW Practical Completion, the Planned Date for CTW Final Completion, the Planned Date for Ramp M Practical Completion and the Planned Date for Ramp M Final Completion are extended in accordance with the CTC Redevelopment Deed; and
 - (i) the risk and consequences of the Company and/or the Trustee being delayed by the State (including a delay in relation to which the State has assumed the risk of) in achieving CTW Practical Completion or Ramp M Practical Completion are set out in the CTC Redevelopment Deed and not this Deed and the CTC Redevelopment Deed contains the sole and exclusive remedies for any such delays.
- (d) [Not used.]
- (e) [Not used.]
- (f) [Not used.]
- (g) If CTW Practical Completion does not take place by the Planned Date for CTW Practical Completion, or Ramp M Practical Completion does not take place by the Planned Date for Ramp M Practical Completion, then the Company and the Trustee shall each continue to diligently pursue CTW Practical Completion or Ramp M Practical Completion (as applicable).
- (h) Subject to clause 8B.12, neither the Company nor the Trustee will be liable in damages to the State for any breach of the obligations provided for in sub-paragraph (a)(i) and (ii) or paragraph (g).

8B.4

Core Cabling

The parties agree that notwithstanding any other provision of this Deed or the SWTC, the CTW Works relating to the VicRoads 96 core cables are not required to be completed prior to CTW Section Practical Completion or CTW Section Final Completion of a CTW Section and that failure by the Company and the Trustee to complete those works (or the existence of any CTW Defects in those works) will in no way preclude or delay:

- (a) the Company and the Trustee achieving either CTW Section Practical Completion or CTW Section Final Completion of a CTW Section; or
- (b) the CTW Independent Reviewer issuing a certificate under clause 8B.6(e) or clause 8B.13(e).

8B.5

Not used

8B.6

CTW Section Practical Completion Process

- (a) The Company and the Trustee shall ensure that the State and the CTW Independent Reviewer are given at least 10 Business Days' notice (or such lesser notice period as may be agreed between the State and the Company) before the date upon which either the Company or the Trustee expects CTW Section Practical Completion of a CTW Section to take place, and such notice must include (as relevant to the CTW Section):
 - (i) a statement by the Company, supported where applicable by the CTW Design Consultant's certification, that the functional requirements have been satisfied;
 - (ii) a copy of the updated Operation and Maintenance Manuals in accordance with the SWTC;
 - (iii) a schedule of the 'as-built' documents for that CTW Section;
 - (iv) copies of road safety audits and Company responses demonstrating that all road safety issues identified in the audits have been appropriately addressed; and
 - (v) a schedule of minor omissions and minor defects to be completed to achieve CTW Section Final Completion.

To the extent a document listed in subparagraphs (i) to (v) has already been submitted to the State and the CTW Independent Reviewer in final form as part of the Handback Documents or the CTW Completion and Commissioning Report, the Company and the Trustee are not required to re-submit that document as part of the notice required by this clause 8B.6, provided that the notice under this clause 8B.6 cross refers to the section of the Handback Documents or the CTW Completion and Commissioning Report where such document was provided.

- (b) The Company and the Trustee shall notify the State, and the CTW Independent Reviewer when either the Company or the Trustee considers that CTW Section Practical Completion of a CTW Section has been achieved.
- (c) Upon receipt of a notice under paragraph (b), without delay and at the latest within 5 Business Days, the State and, in

respect of CTW Section D, Melbourne City Council, may, and the CTW Independent Reviewer shall:

- (i) inspect the relevant CTW Works with the Company and the Trustee; and
 - (ii) form an opinion as to what (if any) work remains to be performed before the CTW Works with respect to the CTW Section would be considered to be in a condition consistent with satisfaction of the requirements outlined in the definition of CTW Section Practical Completion.
- (d) The State may provide comments to the CTW Independent Reviewer in relation to the matters described in paragraph (c)(ii) within 2 Business Days of the joint inspection. The CTW Independent Reviewer must consider the State's comments when responding in accordance with paragraph (e).
- (e) As soon as possible after inspecting the CTW Works, and at the latest within 5 Business Days after doing so, the CTW Independent Reviewer shall:
- (i) if the CTW Independent Reviewer forms an opinion that no work remains to be performed to achieve CTW Section Practical Completion of the CTW Section, promptly issue to the State, the Company and the Trustee a Certificate of CTW Section Practical Completion certifying CTW Section Practical Completion of the CTW Section has taken place and the Date of CTW Section Practical Completion; or
 - (ii) if the CTW Independent Reviewer forms an opinion that CTW Section Practical Completion of the CTW Section has not been achieved, give notice to the Company, the Trustee and the State of its opinion under paragraph (c), stating:
 - (A) the items which remain to be completed before CTW Section Practical Completion of the CTW Section is achieved; or
 - (B) that CTW Section Practical Completion of the CTW Section is so far from being achieved that it is not practicable to notify the State, the Company and the Trustee of the items which remain to be completed as contemplated by clause 8B.6(e)(ii)(A).
- (f) Upon receipt of a notice given under paragraph (e)(ii), the Company shall (unless the work relates to the Trust Road, in which case the Trustee shall) perform the work specified in that notice as soon as practicable or continue to

diligently pursue CTW Section Practical Completion (as applicable).

- (g) The Company and the Trustee shall ensure that notice is given to the CTW Independent Reviewer and the State on completion of the items in the CTW Independent Reviewer's notice under paragraph (e)(ii).
- (h) Paragraphs (b) to (g) will apply in respect of the notice under paragraph (g) in the same way as if it were the original notice under paragraph (a).

8B.7 Not Used

8B.8 Not used

8B.9 Effect of Certificates

Notwithstanding clause 6B.5(a), upon the issue of a Certificate of CTW Section Practical Completion by the CTW Independent Reviewer in relation to a CTW Section, that CTW Section shall irrevocably be considered to have achieved CTW Section Practical Completion. However, a Certificate of CTW Section Practical Completion in relation to a CTW Section will not constitute an approval by the CTW Independent Reviewer or the State of the Company's or the Trustee's performance of the CTW Works in relation to that CTW Section or evidence that all or any other obligations under this Deed have been satisfied.

8B.10 [Not used]

8B.11 CTW Defects

- (a) If CTW Section Practical Completion of a CTW Section has occurred, the Company or the Trustee shall rectify any minor CTW Defects which did not prevent the CTW Section from being considered to have achieved CTW Section Practical Completion, as soon as practicable after CTW Section Practical Completion and, in any case, no later than:
 - (i) in relation to CTW Sections A to C, the Planned Date for CTW Final Completion; and
 - (i) in relation to CTW Section D, the Planned Date for Ramp M Final Completion.
- (b) The Company and the Trustee must correct all CTW Defects in the State Returned Works that arise during the relevant CTW Defects Correction Period.
- (c) Without limiting clause 8B.11(b), if during a CTW Defects Correction Period, the State discovers or believes there is a CTW Defect in the State Returned Works, the State may, without prejudice to any other rights which the State may have under this Deed or otherwise at law, give the Company or the Trustee a direction specifying the CTW Defect and requiring the Company or the Trustee to correct the CTW Defect (or a part of it) and specifying a reasonable time within which this must occur.

- (d) If the Company or the Trustee disagrees with any direction given by the State under clause 8B.11(c), it must within 5 Business Days after receipt of such a notice give notice of its disagreement to the State.
- (e) If the Company or the Trustee gives the State a notice under clause 8B.11(d), the State and the Company or the Trustee must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 10 Business Days after the date of the Company's or the Trustee's notice, either the State or the Company and the Trustee may, by notice to the other and the CTW Independent Reviewer, refer the matter for determination by the CTW Independent Reviewer, who must within 10 Business Days after receipt of the referral make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination.
- (f) If the State directs the Company or the Trustee to correct a CTW Defect under clause 8B.11(c) prior to the expiration of the relevant CTW Defects Correction Period and the Company or the Trustee does not give a written notice under clause 8B.11(d) or, if it does, the parties agree or the CTW Independent Reviewer determines that a CTW Defect exists, the Company or the Trustee must correct the CTW Defect (or the part of it):
 - (i) within the time specified in the State's direction;
 - (ii) at times agreed with the State and in accordance with the requirements of any other relevant CTW Authority;
 - (iii) so as to minimise the impact on the use of the relevant part of the CTW Works; and
 - (iv) so as to minimise the inconvenience to possible users of the Freeway, any CTW Local Area, the CTW Works or any access and the adjacent community.
- (g) The Company or the Trustee must give notice to the State and the CTW Independent Reviewer that a CTW Defect has been corrected promptly after the correction of the CTW Defect.

8B.11A

Access for CTW Defects correction

- (a) If, in order to rectify any CTW Defect in the State Returned Works comprising that CTW Section in accordance with clause 8B.11, the Company and the Trustee require access to:
 - (i) the State Road Network, the State must give the Company and the Trustee (and their Associates) such access to the State Road Network as is necessary for the Company and the Trustee to comply with their obligations under clause 8B.11,

provided that the State will not be obliged to provide such access unless the Company and the Trustee:

- (A) have provided reasonable notice to the State that such access is required; and
 - (B) comply with any conditions of access reasonably required by the State and (to the extent applicable) the Traffic Management Procedures; or
- (ii) a parcel of land in the CTW Property Schedule, clause 4C.2(aa) will apply, however;
- (A) clause 4C.2(e)(iii) will not apply; and
 - (B) where the Company and the Trustee have not used the full extent of the access provided for in the CTW Property Schedule, the indemnity under clause 4C.2(ea)(ii)(A) will be limited to the State's incremental costs, expenses and liabilities suffered or incurred in procuring the access (over and above the costs, expenses and liabilities that would have been incurred if the Company and the Trustee had used the full extent of that access prior to CTW Section Practical Completion of the relevant CTW Section).
- (b) Failure by the State to comply with clause 8B.11A in relation to State Road Network forming part of:
- (i) CTW Sections A to C, will be a deemed Extension Event in respect of the Planned Date for CTW Final Completion; and
 - (i) CTW Section D, will be a deemed Extension Event in respect of the Planned Date for Ramp M Final Completion,

for the purposes of the CTC Redevelopment Deed.

8B.11B

Defects Correction Period – State Returned Works

The State Returned Works (other than the CTW Utility Services Works) will have:

- (a) a State Returned Works Defects Correction Period which begins on the relevant Date of CTW Section Practical Completion and ends on the second anniversary of the Date of CTW Section Practical Completion (of the CTW Section which included the relevant State Returned Works); and
- (b) a further CTW Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 8B.11(c) (relating to the discrete part of the State Returned

Works) during the CTW Defects Correction Period, which begins on the date of the correction of the CTW Defect (or the part of it).

8B.11C Defects Correction Period – CTW Utility Service Works

Each discrete part of the CTW Utility Service Works has:

- (a) a CTW Utility Services Works Defects Correction Period which begins when:
 - (i) the relevant CTW Authority which has jurisdiction in respect of the CTW Utility Service gives written notice to the Company and the Trustee that the work is complete (or if the Company and the Trustee cannot obtain such notice despite using their best endeavours, the CTW Independent Reviewer determines that the work is complete); and
 - (ii) the State, the Company, the Trustee, and the CTW Independent Reviewer have been provided with a copy of this notice,and which expires 12 months after:
 - (iii) where the CTW Utility Services Works occur in respect of CTW Section A to C, the Date of CTW Practical Completion; and
 - (iv) where the CTW Utility Services Works occur in respect of CTW Section D, the Date of Ramp M Practical Completion; and
- (b) a further CTW Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 8B.11(c) (relating to the discrete part of the CTW Utility Service Works) during the CTW Defects Correction Period, which begins on the date of correction of the CTW Defect (or the part of it).

8B.12 Failure to achieve CTW Final Completion by the Planned Date for CTW Final Completion or Ramp M Final Completion by the Planned Date for Ramp M Final Completion

If the Company and the Trustee fail to achieve CTW Final Completion by the Planned Date for CTW Final Completion or Ramp M Final Completion by the Planned Date for Ramp M Final Completion, the State may, after the Planned Date for CTW Final Completion or Planned Date for Ramp M Final Completion (as applicable), call upon the CTW Security up to an amount representing the reasonable cost of rectifying all CTW Defects not rectified or carried out at the Planned Date for CTW Final Completion or Planned Date for Ramp M Final Completion (as applicable). The parties acknowledge and agree that:

- (a) upon the State drawing down on the CTW Security in accordance with this clause 8B.12, CTW Final Completion

or Ramp M Final Completion (as applicable) will be deemed to be achieved; and

- (b) drawing down upon the CTW Security in accordance with this clause 8B.12 is the State's sole and exclusive remedy for a failure by the Company and the Trustee to achieve CTW Final Completion by the Planned Date for CTW Final Completion or Ramp M Final Completion by the Planned Date for Ramp M Final Completion (as applicable).

If at any time after the Date of CTW Practical Completion or Date of Ramp M Practical Completion (as applicable), the estimated reasonable cost of rectifying any outstanding CTW Defects is less than the amount of the proceeds of the CTW Security, the parties must negotiate in good faith to agree the amount to be reimbursed to the Company and Trustee, having regard to the estimated reasonable cost of rectifying the CTW Defect outstanding at the time.

8B.12A

Failure to rectify CTW Defect in the State Returned Works or the CTW Utility Service Works

If following the Planned Date for CTW Final Completion or the Planned Date for Ramp M Final Completion (as applicable), the Company or the Trustee fails to comply with a direction or determination under clause 8B.11(e) or 8B.11(f), the State may (without limiting any other rights it may have):

- (a) apply for a court order for specific performance; or
- (b) correct the CTW Defect itself or procure the rectification of the CTW Defect by others and any reasonable amount paid or cost or expense incurred by the State in relation to such correction or rectification will be a debt due and payable by the Company and the Trustee to the State,

except to the extent the Company or the Trustee have been prevented from complying with the direction or determination because the State has failed to provide access in accordance with clause 8B.11A.

8B.13

CTW Section Final Completion Process

- (a) The Company and the Trustee shall ensure that the State and the CTW Independent Reviewer are given at least 10 Business Days' notice (or such lesser notice period as may be agreed between the State and the Company) before the date upon which either the Company or the Trustee expects CTW Section Final Completion of a CTW Section to take place.
- (b) The Company and the Trustee shall notify the State and the CTW Independent Reviewer in writing when either the Company or the Trustee considers that CTW Section Final Completion of a CTW Section has been achieved.
- (c) Upon receipt of a notice under paragraph (a), without delay and at the latest within 5 Business Days, the State and, in

respect of CTW Section D, Melbourne City Council, may, and the CTW Independent Reviewer shall:

- (i) inspect the CTW Works with the Company and the Trustee; and
 - (ii) form an opinion as to what (if any) work remains to be performed before the CTW Works with respect to the CTW Section would be considered to have reached CTW Section Final Completion.
- (d) The State, may provide comments to the CTW Independent Reviewer in relation to the matters described in paragraph (c)(ii) within 2 Business Days of the joint inspection. The CTW Independent Reviewer must consider the State's comments when responding in accordance with paragraph (e).
- (e) As soon as possible after inspecting the CTW Works, and at the latest within 5 Business Days after doing so, the CTW Independent Reviewer shall:
- (i) if the CTW Independent Reviewer forms an opinion that no work remains to be performed to achieve CTW Section Final Completion of the CTW Section, promptly issue to the State, the Company and the Trustee a Certificate of CTW Section Final Completion certifying CTW Section Final Completion has taken place and the Date of CTW Section Final Completion; or
 - (ii) if the CTW Independent Reviewer forms an opinion that CTW Section Final Completion of the CTW Section has not been achieved, give notice to the Company, the Trustee and the State of its opinion:
 - (A) the items which remain to be completed before CTW Section Final Completion of the CTW Section is achieved; or
 - (B) that CTW Section Final Completion of the CTW Section is so far from being achieved that it is not practicable to notify the State, the Company and the Trustee of the items which remain to be completed as contemplated by clause 8B.13(e)(ii)(A).
- (f) Upon receipt of a notice given under paragraph (e)(ii), the Company shall (unless the work relates to the Trust Road, in which case the Trustee shall) perform the work specified in that notice as soon as practicable.
- (g) The Company and the Trustee shall ensure that notice is given to the CTW Independent Reviewer and the State on completion of the items in the CTW Independent Reviewer's notice under paragraph (e)(ii).

- (h) Paragraphs (b) to (g) will apply in respect of the notice under paragraph (g) in the same way as if it were the original notice under paragraph (a).
- (i) The achievement of CTW Section Final Completion does not limit the obligations of the Company and the Trustee during any CTW Defects Correction Period.

8B.14 **Not Used**

8B.15 **Not Used**

8B.16 **Effect of Certificates**

Notwithstanding clause 6B.5(a), upon the issue of a Certificate of CTW Section Final Completion the CTW Works shall irrevocably be considered to have achieved CTW Section Final Completion. However a Certificate of CTW Section Final Completion will not constitute an approval by the CTW Independent Reviewer or the State of the Company's or the Trustee's performance of the CTW Works or evidence that all or any other obligations under this Deed have been satisfied.

8B.17 **[Not used]**

8B.18 **CTW Security and State Returned Works Security**

- (a) The Company and the Trustee must provide the State with:
 - (i) prior to CTW Section Practical Completion of CTW Section A, an unconditional and irrevocable bank undertaking for the due performance of the Company's and the Trustee's obligations in respect of those aspects of the CTW Works that are required to be performed to achieve CTW Section Final Completion of CTW Section A, in the amount of \$8,702,245;
 - (ii) prior to CTW Section Practical Completion of CTW Section B, an unconditional and irrevocable bank undertaking for the due performance of the Company's and the Trustee's obligations in respect of those aspects of the CTW Works that are required to be performed to achieve CTW Section Final Completion of CTW Section B, in the amount of \$2,204,745; and
 - (iii) prior to CTW Section Practical Completion of CTW Section D, an unconditional and irrevocable bank undertaking for the due performance of the Company's and the Trustee's obligations in respect of those aspects of the CTW Works that are required to be performed to achieve Ramp M Final Completion, in the amount of \$2,226,212,

being the **CTW Security**; and
 - (iv) prior to CTW Section Practical Completion of CTW Section A, an unconditional and irrevocable

bank undertaking for the due performance of the Company's and the Trustee's obligations during the CTW Defects Correction Periods relevant to CTW Section A, in the amount of \$1,692,500;

- (v) prior to CTW Section Practical Completion of CTW Section C, an unconditional and irrevocable bank undertaking for the due performance of the Company's and the Trustee's obligations during the CTW Defects Correction Periods relevant to CTW Section C, in the amount of \$3,217,500; and
- (vi) prior to CTW Section Practical Completion of CTW Section D, an unconditional and irrevocable bank undertaking for the due performance of the Company's and the Trustee's obligations during the CTW Defects Correction Periods relevant to CTW Section C, in the amount of \$858,038,

being the **State Returned Works Security**,

in a form reasonably acceptable to the State from a bank licensed under the *Banking Act 1959* (Cth) and having a minimum required rating of either A- (in respect of Standard & Poor's Australia) or A3 (in respect of Moody's Investors Service).

- (ab) The State may have recourse to the CTW Security or the State Returned Works Security where:
 - (i) in respect of the CTW Security, the State has become entitled to exercise a right to call on that security in accordance with clause 8B.12; or
 - (ii) in respect of the State Returned Works Security, there is a debt due and payable by the Company or the Trustee to the State in accordance with clause 8B.12A.
- (b) Within 10 Business Days after the issue of a Certificate of CTW Section Final Completion in respect of a CTW Section, the State must return the CTW Security relevant to that CTW Section to the Company and the Trustee unless the State has called upon that CTW Security, in which case the State shall return the amount (if any) not exhausted.
- (ba) Within 10 Business Days after the later of the expiry of:
 - (i) the State Returned Works Defects Correction Period in respect of a CTW Section; and
 - (ii) all CTW Utility Services Works Defects Correction Periods in respect of a CTW Section,

the State must return the relevant State Returned Works Security to the Company and the Trustee unless the State has called upon the State Returned Works Security, in

which case the State shall return the amount (if any) not exhausted.

- (c) The Company and the Trustee agree and acknowledge that the State:
 - (i) is not obliged to pay the Company or the Trustee interest on:
 - (A) the CTW Security or the State Returned Works Security; or
 - (B) subject to clause 8B.18(e), the proceeds of the CTW Security or State Returned Works Security if it is converted into cash; and
 - (ii) does not hold the proceeds or money referred to in subparagraph (i)(B) on trust for the Company or the Trustee.
- (d) If at any time after the Date of CTW Practical Completion or Date of Ramp M Practical Completion (as applicable), the estimated reasonable cost of rectifying any outstanding CTW Defects is less than the amount of the CTW Security and State Returned Works Security, the parties must negotiate in good faith to agree the amount by which the CTW Security and State Returned Works Security will be reduced having regard to the estimated reasonable cost of rectifying the CTW Defects outstanding at the time.
- (e) If the State has drawn on either the CTW Security or State Returned Works Security:
 - (i) for an amount in respect of defects and omissions which neither the Company nor the Trustee was required to rectify to achieve CTW Final Completion or Ramp M Final Completion (as applicable);
 - (ii) for an amount in excess of the cost of the defects and omissions which the Company and the Trustee are required to rectify but have not been rectified to achieve CTW Final Completion or Ramp M Final Completion (as applicable); or
 - (iii) for an amount for which it is subsequently found that the Company and the Trustee were not liable,then the State must:
 - (iii) in the case of a drawing referred to in clauses 8B.18(e)(i) or 8B.18(e)(iii), refund the amount drawn to the Company and the Trustee plus accrued interest at the Default Rate; or
 - (iv) in the case of a drawing referred to in clause 8B.18(e)(ii), refund the difference between the amount that was drawn and the cost of the defects

and omissions that the Company and the Trustee are required to rectify but have not been rectified, plus accrued interest at the Default Rate.

8B.19 Temporary Operational Completion

- (a) The Company and the Trustee shall ensure that the State is given at least 10 Business Days' notice (or such lesser notice period as may be agreed between the State and the Company) before the date upon which either the Company or the Trustee expects Temporary Operational Completion of a CTW Section to take place.
- (b) The Company and the Trustee shall notify the State in writing when either the Company or the Trustee considers that Temporary Operational Completion has been achieved in respect of a CTW Section.
- (c) If within 5 Business Days of receiving a notice under clause 8B.19(b), the State advises in writing that it does not agree that Temporary Operational Completion has been achieved in respect of the CTW Section (such advice to include the reasons for the State's opinion), the Company and the Trustee may then request, by written notice, the CTW Independent Reviewer to determine whether Temporary Operational Completion has been achieved in respect of the CTW Section. The Company and the Trustee shall provide to the State a copy of any such request at the same time it is provided to the CTW Independent Reviewer.
- (d) Upon receipt of a notice under clause 8B.19(c) and at the latest within 5 Business Days, the CTW Independent Reviewer shall review the CTW Works in respect of the CTW Section and notify in writing the State, the Company and the Trustee whether Temporary Operational Completion has been achieved in respect of the CTW Section, or, if not, what further work is required to achieve Temporary Operational Completion in respect of the CTW Section.
- (e) Upon receipt of a notice from the CTW Independent Reviewer stating that further work is required to achieve Temporary Operational Completion in respect of the CTW Section, the Company shall (unless the work relates to the Trust Road, in which case the Trustee shall) perform that further work and give written notice to the State and the CTW Independent Reviewer on completion of that further work.
- (f) Paragraphs (c), (d) and (e) will apply in respect of the notice under paragraph (e), in the same way as if it were the original notice under paragraph (b).
- (g) If the:
 - (i) State advises the Company and the Trustee in writing that it agrees; or

- (ii) CTW Independent Reviewer provides notification in accordance with clause 8B.19(d),

that Temporary Operational Completion has been achieved in respect of a CTW Section then, subject to clause 8B.19(h), the Company and the Trustee may open the CTW Section on a temporary basis and allow the completed CTW Works within that CTW Section to be used by the public for the passage of vehicles.

- (h) The parties agree and acknowledge that:
 - (i) Temporary Operational Completion being achieved in respect of a CTW Section does not constitute an acknowledgement by the State or the CTW Independent Reviewer that the CTW Works within that CTW Section comply with this Deed; and
 - (ii) unless the State otherwise agrees, the Company may not, prior to the Date of CTW Section Practical Completion, have open for use by the public more lanes than were open to use by the public as running lanes in that CTW Section as at the CTW Effective Date.

8B.20

Division or Consolidation of CTW Sections

- (a) If the Company or the Trustee wish to divide a CTW Section into further sections or consolidate two or more CTW Sections into one section (**Proposed Change**), the Company and Trustee may give written notice to the State setting out details of the Proposed Change.
- (b) Upon receipt of such a notice the State shall, within 10 Business Days, advise the Company and the Trustee and the CTW Independent Reviewer by written notice whether the State agrees to the Proposed Change.
- (c) If the State agrees to the Proposed Change:
 - (i) the CTW Section(s) the subject of the Proposed Change will be divided into further sections or consolidated into one section (as the case may be) as set out in the notice issued by the Company and Trustee in accordance with clause 8B.20(a); and
 - (ii) the new sections or the consolidated section(s) (as the case may be) will be deemed to be a CTW Section for the purposes of this Deed.

8C.

HANDBACK OF STATE RETURNED WORKS

8C.1

Handback

- (a) The parties acknowledge and agree that:
 - (i) the State Returned Works do not, and will not, form part of the Link; and

- (ii) upon CTW Section Practical Completion of a CTW Section, any State Returned Works within that CTW Section will be handed back to VicRoads (or the relevant CTW Authority) to operate and maintain (**Handback**).
- (b) The Company and the Trustee must provide the State, VicRoads and any relevant CTW Authority with all such assistance as may be reasonably required in relation to the Handback of the State Returned Works.

8C.2

Handback Plan

- (a) The Company and the Trustee must provide to the State, at least 80 Business Days prior to the date upon which the Company and the Trustee reasonably expect to achieve CTW Section Practical Completion of each CTW Section, a draft plan which sets out the processes and procedures, leading up to and including the Date of CTW Section Practical Completion, for Handback of the State Returned Works within that CTW Section so as to ensure that control of those State Returned Works is transferred to the State, VicRoads or the relevant CTW Authority in a safe and efficient manner (**Handback Plan**).
- (b) Each Handback Plan must contain, in relation to the State Returned Works within the relevant CTW Section:
 - (i) relevant transition stages for the opening of that CTW Section;
 - (ii) defined processes, including frequency and personnel responsible for:
 - (A) reviewing and updating the Handback Plan;
 - (B) capturing "as constructed" drawings and required warranties;
 - (C) ensuring all documentation relevant to CTW Section Practical Completion of that CTW Section is provided to the State and the CTW Independent Reviewer;
 - (D) recording all documentation referred to in sub-paragraph (C) into an electronic storage system approved by the State; and
 - (E) monitoring progress toward CTW Section Practical Completion of that CTW Section; and
 - (iii) the process by which the State Returned Works will be handed over to the State, VicRoads or the relevant CTW Authority by the Company and the Trustee.

- (c) Within 20 Business Days after receipt of the draft Handback Plan from the Company and the Trustee under paragraph (a), the State may provide the Company and the Trustee with comments on the Handback Plan.
- (d) The Company and the Trustee must incorporate any reasonable comments of the State provided in accordance with paragraph (c), and re-submit the Handback Plan to the State, by no later than 40 Business Days prior to the relevant anticipated Date of CTW Section Practical Completion.

8C.3 Handback Documents

- (a) Subject to paragraph (d), the Company and the Trustee must, at least 40 Business Days prior to the date upon which the Company and the Trustee reasonably expect to achieve CTW Section Practical Completion of each CTW Section, submit to the State and the CTW Independent Reviewer in hard-copy form as a single volume, indexed, ring bound document, together with an electronic copy of all documents, the following documents and information in relation to the State Returned Works within that CTW Section:
 - (i) as-constructed documents (which meet the requirements as to the form and content of such documents set out in the SWTC);
 - (ii) all verifications given by the CTW Independent Reviewer in accordance with clause 7D.6;
 - (iii) all certificates issued by the CTW Proof Engineer;
 - (iv) all warranties relating to design;
 - (v) relevant warranties for materials and products used;
 - (vi) details of all intelligent transport systems and electrical installations including:
 - (A) details of cabins and cabinets including functional layouts and diagrams, internal electrical wiring details, communication details, and a list of assets/IP addresses connected;
 - (B) certificates of electrical safety; and
 - (C) all other documents in accordance with VicRoads Standard Specification Section 3160 (as set out in the SWTC);
 - (vii) quality records, including details of the close out of non-conformances and corrective actions;
 - (viii) complete details of all road safety audits, including details of the close out of issues identified;

- (ix) a register of all audits and details of the issues identified which have not been closed out, including:
 - (A) OH&S audits; and
 - (B) environmental audits;
 - (x) a register detailing memorandums of authorisation for permanent major traffic control items;
 - (xi) all manuals and other documentation required to be prepared by the Company and the Trustee in accordance with this Deed prior to CTW Section Practical Completion;
 - (xii) in respect of each discrete part of the CTW Utility Services Works, a copy of the written notice from the relevant CTW Authority, or determination of the CTW Independent Reviewer, referred to in clause 8B.11C;
 - (xiii) technical data sheets of all materials and products used, including details of the relevant manufacturer;
 - (xiv) a register containing, for each asset forming part of the State Returned Works, details regarding ownership and maintenance responsibilities; and
 - (xv) a register containing, for each asset component forming part of the State Returned Works, inspection, maintenance and cleaning frequency, maintenance and cleaning instructions and any particular requirements for that asset component,
- (together, **Handback Documents**).
- (b) Within 20 Business Days after receipt of the Handback Documents from the Company and the Trustee under paragraph (a), each of the State and the CTW Independent Reviewer may provide the Company and the Trustee with comments on the Handback Documents.
 - (c) Between 20 and 5 Business Days prior to Handback of each CTW Section, the Company and the Trustee must re-submit to the State and the CTW Independent Reviewer in hard-copy form as a single volume, indexed, ring bound document, together with an electronic copy of all documents, the Handback Documents in final form:
 - (i) amended to incorporate and address any reasonable comments of the State and the CTW Independent Reviewer provided in accordance with paragraph (b); and
 - (ii) including any documentation and information which has become available or been created after the Handback Documents were submitted to the

State and the CTW Independent Reviewer under paragraph (a).

- (d) Where the SWTC provides for any Handback Documents to be provided within a timeframe that differs from the timeframes set out in paragraph (a) (including after CTW Section Practical Completion), the timeframe required by the SWTC prevails.

9. OPERATION

9.1 Compliance

- (a) During the Concession Period, the Company shall operate each Section of the Link which has reached Completion and which has commenced operation (which must commence as soon as practicable after Completion) in accordance with the Project Scope and Technical Requirements and the Operation and Maintenance Manuals. The Company shall also do this whilst it permits public use of a Section under clause 9.3(b), in relation to any Works which are required to be completed prior to permitting public use of that Section under that clause.²²⁵

- (aa) The Company shall, in addition to its obligations under paragraph (a):
 - (i) operate each SLU Section, and the WLU Works within a CTW Section, which has reached Temporary Operational Completion in accordance with clause 9.3A(b) or 9.3B(b) (as applicable); and
 - (ii) operate each SLU Section, and the WLU Works within a CTW Section, which has reached SLU Section Practical Completion or CTW Section Practical Completion (as applicable) and commenced operation,

in accordance with the Project Scope and Technical Requirements and the Operation and Maintenance Manuals.

- (ab) Within 20 Business Days of the date of the WGT CityLink and ESEP Concession Amending Deeds, the Company must submit a Hydrogeology Management Plan, the Hydrogeology Annual Operating Plan and an updated version of the Operations and Maintenance Manuals relevant to the Burnley and Domain Tunnels in a form satisfactory to the State (acting reasonably).
- (b) The Company shall ensure that:
 - (i) the Operation and Maintenance Manuals, Emergency Management Plan, Operations Quality Plan and Incident Management Quality Plan; and

- (ii) all policies, plans, systems, manuals and procedures referred to or incorporated in any of the documents referred to in subparagraph (i),

are subject to:

- (iii) a program of ongoing review and amendment during the Concession Period, in accordance with the Project Scope and Technical Requirements and in a manner consistent with the conduct of a Good Practice Operator; and
 - (iv) in relation to the manuals and plans referred to in subparagraph (i), a complete review, to the standard consistent with a Good Practice Operator, no less than once every two years from the Operative Date (as defined in the Nineteenth Amending Deed) of the Nineteenth Amending Deed.²²⁶
- (ba) Subject to subparagraph (bb) and during the Concession Period, the Company shall ensure that the State is promptly provided with a written copy of, and any amendments to the Operation and Maintenance Agreement, Operation and Maintenance Manuals, Emergency Management Plan, Operations Quality Plan and Incident Management Quality Plan.²²⁷
 - (bb) During the Concession Period, the Company must:
 - (i) promptly notify the State of any change it proposes to make to the Hydrogeology Management Plan and the Hydrogeology Annual Operating Plan; and
 - (ii) within five Business Days of a notification pursuant to subparagraph (i), provide to the State a written copy of, and any amendments to the Hydrogeology Management Plan and the Hydrogeology Annual Operating Plan.
 - (bc) As part of its obligations in subparagraph (b), the Company shall incorporate State proposed amendments to the Hydrogeology Management Plan and the Hydrogeology Annual Operating Plan to the extent that such amendments are consistent with the conduct of a Good Practice Operator.
 - (c) For the avoidance of doubt, "road operation and management powers" (within the meaning of section 62 of the Project Legislation) which under this Deed are to be conferred on or given to the Company after Completion, are also powers which are to be conferred on or given to the Company in relation to land leased under section 60 (as applied by section 60A or section 33).²²⁸

9.2

Tolling System

- (a) The Company shall ensure that the Tolling System:
 - (i) does not impede the flow of traffic on the Link;
 - (ii) operates so that vehicles can travel at speeds and in the manner as set out in the Project Scope and Technical Requirements, when entering, travelling along and leaving the Link without being required to slow down or stop; and
 - (iii) operates in a manner which conforms with the standards and requirements either:
 - (A) as outlined in the Project Scope and Technical Requirements; or
 - (B) applied by Law from time to time.

Insofar as a standard or requirement under sub-paragraph (A) differs from one under sub-paragraph (B), the more onerous standard or requirement shall prevail.

- (b) Before Completion of the first Section to be Completed, the Company shall submit details of the Tolling System to the State for approval and obtain the State's approval before Completion of that Section. If those details reasonably establish that by the use of reasonable endeavours, the Company would be able to comply with its obligations under paragraph (a) were all Sections then to have achieved Completion, the State shall not withhold its approval.
- (c) The State shall make a decision within 5 Business Days after the later of receipt of:
 - (i) a request for approval; or
 - (ii) any further particulars which the State may, within 5 Business Days of submission by the Company of the details referred to in paragraph (b), reasonably request of the Company following submission of the details required under paragraph (b).
- (d) The Company shall levy tolls in accordance with the Toll Calculation Schedule and the Company and the Trustee acknowledge that they intend (and the State acknowledges) that such tolls and any other revenue from activities approved under clauses 9.4(c), (d) and (e) shall constitute the source of revenue for the Project.
- (e) Subject to clauses 9.2(ea), 9.2(eb), 9.2(ef), 9.2(i), 9.2(l), 9.2(la), 9.2A and 9.2B, the Company shall ensure that no fee or charge is levied or imposed, in addition to tolls in relation to the Link levied in accordance with the Toll Calculation Schedule, in connection with any agreement or arrangement providing for the levying, payment or recording of tolls unless:^{229 230 231}

- (i) the Company makes available to each person who wishes to use the Link for personal or domestic purposes an arrangement providing for certain services (including registration under Division 2 of Part 4 of the Project Legislation), incurring no fee or charge (other than under clauses 9.2(ea), 9.2(eb), 9.2(i), 9.2(l), and 9.2(la)) as proposed from time to time by the Company and which services have been approved by the State (such approval not to be unreasonably withheld or delayed);²³²
- (ii) the fee or charge is imposed in relation to a particular mechanism or arrangement for the levying, payment or recording of tolls or in relation to enforcing such a mechanism or arrangement;
- (iii) the Company offers a reasonable range of toll payment and recording mechanisms or arrangements (including for this purpose the arrangement referred to in paragraph (e)(i)); and
- (iv) the relevant fee or charge is reasonable having regard to costs properly incurred by each of the Company and WGT Co (but excluding profits of the Company and WGT Co) in offering the particular mechanism or arrangement or in seeking to enforce such mechanism or arrangement, or is otherwise approved by the State.²³³

Notwithstanding anything in this clause 9.2(e) or any approval provided by the State under subparagraph (i) prior to 1 May 2002, the Company must not levy or impose any fee or charge in respect of any of the circumstances set out in clause 9.2(ea)(iii) and (iv) or the costs (or any part of the costs) incurred by the Company of the type referred to in subparagraph (iv) arising out of or in connection with those circumstances other than the fee (if any) levied and imposed in accordance with clause 9.2(ea), unless clause 9.2(ec) applies.²³⁴

- (ea) Where the Company satisfies clauses 9.2(e)(i) and 9.2(e)(iii), then the Company may, in connection with an agreement providing for the levying, payment or recording of tolls, levy or impose a fee per Trip (in accordance with the meaning of Trip in the Toll Calculation Schedule as set out in Schedule 4 to the IFA) during:
 - (i) the period from 1 May 2002 to 30 June 2007 (inclusive) – of not more than \$1.20;
 - (ii) the period from 1 July 2007 to 30 June 2008 (inclusive) – of not more than \$0.90 (subject to review pursuant to clause 9.2(eb));

- (iii) the period from 1 July 2008 – of not more than \$0.75 (subject to review pursuant to clause 9.2(eb)),

if a Vehicle is driven on the Link:

- (iv) without a tag; or
- (v) with a tag that is of a classification different from the Vehicle,

where that Vehicle is registered under section 73B of the Project Legislation, is subject to that agreement and a tag is issued in respect of that Vehicle.

- (eb) The Company may initiate a review of the quantum of the fee per Trip (in accordance with the meaning of Trip in the Toll Calculation Schedule as set out in Schedule 4 to the IFA) it may charge under clauses 9.2(ea) or 9.2(eb)(v), in order to agree with the State to set a different amount for the fee, in the following circumstances:
 - (i) in the period between 1 April 2008 and 30 June 2008 (that is, the quarter immediately preceding the reduction in the fee from \$0.90 to \$0.75 per Trip on 1 July 2008), if Company believes that the reduction should not occur because it would lead to an unsustainable increase in Trips to which the fee would apply; or
 - (ii) at any time after 1 July 2007, if the total number of Trips to which the fee applied during the two consecutive quarters immediately preceding the relevant review exceeds 12% of the total number of Trips during those two quarters; or
 - (iii) at any time after 1 July 2008, if:
 - (A) the fee has reduced to \$0.75 per Trip on 1 July 2008;
 - (B) subsequent to this reduction, there is a significant increase in the number of Trips to which the fee applies;
 - (C) the Company and the State have agreed to increase the fee under this paragraph (eb) to greater than \$0.75 per Trip; and
 - (D) the total number of Trips (in aggregate) to which the fees under clauses 9.2(ea) and 9.2(eb)(v) applied during the two consecutive quarters immediately preceding the relevant review increased at a rate more than 50% greater than the rate of increase in the total number of Trips during those two quarters.

The State agrees to negotiate in good faith with the Company to agree a revised fee, having regard to the assumptions and estimates underlying the calculation of the fees compared with data relating to the total number of Trips to which the fee applied, for the two consecutive quarters immediately preceding the relevant review. If the State and the Company fail to agree a revised fee in the circumstances contemplated by clauses 9.2(eb)(i) or 9.2(eb)(ii) by 30 June 2008, the fee that the Company may charge under clauses 9.2(ea) and 9.2(ef)(v) as at 1 July 2008 will be \$0.75 per Trip.

- (ec) [Intentionally deleted]
- (ed) [Intentionally deleted]
- (ee) For the purposes of paragraph (ea) and (ef) "Vehicle" has the meaning given to it in the Toll Calculation Schedule.²³⁵
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(ef) Where:

- (i) the Company satisfies clauses 9.2(e)(i) and 9.2(e)(iii);
- (ii) an applicant enters an agreement with the Company in respect of one or more Vehicles providing for the payment of tolls without a tag; and
- (iii) the Company has, before the applicant enters into the agreement referred to in subparagraph (ii), made available to potential applicants information in relation to the arrangements and services made available and the applicable fees or charges under clause 9.2(e)(i) to enable the applicant to make an informed decision as to the type of arrangement and services the applicant wishes to use,

then the Company may, in connection with the agreement referred to in subparagraph (ii), levy or impose:

- (iv) a one-off start-up fee of not more than \$5.50 where the agreement allows the applicant to link at least four Vehicles to that agreement; and
- (v) a Vehicle matching fee of:
 - (A) for the period until 30 June 2007, not more than \$1.20;
 - (B) for the period from 1 July 2007 until 30 June 2008 (inclusive), not more than \$0.90 (subject to review pursuant to clause 9.2(eb)); and
 - (C) for the period from 1 July 2008, not more than \$0.75 (subject to review pursuant to clause 9.2(eb)),

per Trip (in accordance with the meaning of Trip in the Toll Calculation Schedule as set out in Schedule 4 to the IFA) if a Vehicle in respect of which the agreement is entered into is driven on the Link without a tag where:

- (E) that Vehicle is registered under section 73B of the Project Legislation;
- (F) that Vehicle is not also registered under section 73C of the Project Legislation; and
- (G) that Vehicle is subject to that agreement.

(f) The Company shall obtain the prior approval of the State to any material change in the Tolling System. The State may only withhold its approval to a material change if the material change would or would be reasonably like to result in any of the following:

- (i) a non-compliance with any requirements under this Deed which is not immaterial;
- (ii) a breach of any Laws;
- (iii) a material adverse change to the ability of the Company to operate the Tolling System to the higher of the performance standard set out in the this Deed and the performance standard to which the Company was operating the Tolling System immediately prior to the implementation of the change;
- (iv) a material adverse impact on users of the Link including their ability to access or manage their accounts; and
- (v) a material adverse change to the net operating cashflow of the State or an incoming operator on the basis that the State or the incoming operator is operating the road as a tollroad in the same or a substantially similar manner as it was operated by the Company immediately prior to handover.

Approval under this paragraph (f) does not limit any obligation of the Company or the Trustee under any other provision of this Deed.

(fa) The parties agree that:

- (i) the State will not unreasonably withhold or delay its approval under clause 9.2(f) having regard to the bureau nature of the Tolling System; and
- (ii) either party may refer a matter arising under clause 9.2(f) and this clause 9.2(fa) for resolution in accordance with Article 16.

- (g) A variation in a toll may only be made in accordance with the provisions of the Toll Calculation Schedule or as otherwise agreed or determined in accordance with clauses 2.9 to 2.12.
- (h) The Company shall use tags as the primary method of enabling it, through the medium of the Tolling System:²³⁷
 - (i) to levy tolls in relation to the Link;²³⁸
 - (ii) to determine whether arrangements for the payment of the appropriate toll subsist,²³⁹

when the Link is used for the passage of a vehicle.

The Company acknowledges and agrees that neither the nature nor extent of its obligation under this clause 9.2(h) is limited or qualified by the fact that tolls may be levied under the Toll Calculation Schedule other than on the basis of use of the Link (or a part of it).²⁴⁰

- (i) Subject to clauses 9.2(1) and 9.2(1a), the Company (with the assistance of the State under paragraph (m)) shall ensure that:^{241 242}
 - (i) prior to the date of Completion of the first Section to be Completed, there is a distribution of tags to such categories of prospective users of the Link as is consistent with the efficient use of the Link;
 - (ii) after the date of Completion of the first Section to be Completed, tags are made available to existing and proposed users of the Link at no cost;²⁴³
 - (iii) equivalent replacement tags are promptly made available at no cost except:²⁴⁴
 - (A) in respect of tags lost, destroyed or damaged, or which become faulty, as a result of wilful, reckless or negligent acts or omissions of persons entitled to possession of them or their agents; or²⁴⁵
 - (B) where the tag to be replaced (or, if the tag to be replaced was itself a replacement tag, where the tag which was replaced by the tag to be replaced) was last issued more than 12 months before the request for its replacement, tolls in relation to the Link levied with respect to that tag (including tolls with respect to any tag replaced by that tag) fell short of either:
 - (1) \$25.00 in the 12 months preceding that request, being a request made before 1 July 2001; or

- (2) \$27.50 in the 12 months preceding that request, being a request made on or after 1 July 2001.^{246 247}
- (j) The Company shall ensure that there is no restriction or qualification imposed on the persons to whom tags are distributed in connection with the Project on the use of those tags in connection with other uses for which the Tolling System has been licensed under this Deed. The Company will not, however, be in breach of its obligations under this paragraph to the extent that a restriction or qualification on the use of tags is imposed by the State or any Government Agency or any other person to whom the Tolling System has been licensed under this Deed.
- (k) The Company acknowledges that no toll (or fee or charge referred to in paragraphs (e), (ea), (eb) or (ef)) may be levied in relation to the Link where the Vehicles concerned are Exempt Vehicles or in respect of any use of the Link by Exempt Vehicles.^{248 249 250}
- (l) As a condition of issue of any tag (but not for use of the Link or for the grant of, or agreement to grant, a right or authority to use the Link), the Company may require that the relevant applicant pay (for each tag applied for) at the end of (or promptly after) each Relevant Tag Year an amount not in excess of the amount, if any, by which either:
- (i) \$25.00 exceeds the aggregate amount of tolls in relation to the Link levied in the Relevant Tag Year with respect to the tag, being a Relevant Tag Year ending before 1 July 2001; or
- (ii) \$27.50 exceeds the aggregate amount of tolls in relation to the Link levied in the Relevant Tag Year with respect to the tag, being a Relevant Tag Year ending on or after 1 July 2001.²⁵¹

In this regard:

- (iii) an amount so paid shall constitute tolls levied by the Company in the Relevant Tag Year;
- (iv) Relevant Tag Year in relation to a particular tag means a Tag Year with respect to the tag which is one of the first three Tag Years in relation to the tag; and
- (v) where a replacement tag is issued, Tag Years will still be assessed by reference to the original tag for the purposes of this clause. For clarity, the issue of a replacement tag as part of a general release of "new generation" tags (that is, the general issue of technologically improved tags) does not constitute the issue of a replacement tag unless the tag being replaced is of the same "new generation".²⁵²

- (la) If:
- (i) an agreement providing for the payment of tolls entered (or to be entered into) by an applicant for a tag (not being a replacement tag) allows for the payment of tolls in arrears;
 - (ii) an applicant for a tag (not being a replacement tag) requires anonymity;
 - (iii) an applicant for a tag (not being a replacement tag) is unable to satisfy the Company as to his, her or its capacity to meet toll payments or as to his, her or its identity (and, in this regard, the Company shall act reasonably in relation to the evidence it requires to be satisfied of these matters); or
 - (iv) an equivalent replacement tag is provided in circumstances outlined in sub-paragraph 9.2(i)(iii)(A) or 9.2(i)(iii)(B),

then the Company may (as a condition of issue of the tag but not for use of the Link or for the grant of, or agreement to grant, a right or authority to use the Link) require that the applicant for the tag pay (for each tag so applied for) a deposit of an amount not exceeding:

- (v) in the case of paragraph (i), \$20.00 (as escalated);
- (vi) in the case of paragraph (ii), \$100.00 (as escalated);
- (vii) in the case of paragraph (iii), \$50.00 (as escalated);
- (viii) in the case of paragraph (iv), the value of the tag.

The Company may apply amounts so deposited in or towards satisfaction of moneys due and owing to the Company by the person who applied for the tag. Subject to this right, the Company shall ensure that the amount of any such deposit is:

- (ix) other than for a deposit under paragraph (i), promptly after return of the tag or receipt of notice of loss or destruction of the tag (without any request for a replacement tag), refunded to the person who applied for the tag; and
- (x) in the case of a deposit paid under paragraph (i):
 - (A) within the first 12 months after the relevant Start Date, promptly after return of the tag or receipt of notice of loss or destruction of the tag (without any request for a replacement tag), refunded to the person who applied for the tag; or

- (B) otherwise applied in or towards satisfaction of any liability for tolls in relation to the Link incurred by the person who applied for the tag after the first anniversary of the relevant Start Date.²⁵³
- (m) The State shall procure that VicRoads assists in an initial dispatch of marketing material by the Company with motor vehicle registration renewal forms on terms and conditions to be agreed between the Company and VicRoads. The terms and conditions of such agreement shall be on commercial terms agreed between the Company and the State on behalf of VicRoads. Any dispute in relation to agreeing those terms and conditions shall be determined in accordance with Article 16. In addition, if requested by the Company to do so, the State shall endeavour in good faith to agree on methods by which the State might assist in the implementation of the Tolling System and the distribution of tags.
- (n) In this clause, references to:
 - (i) "tags" are references to transponders which are placed in or on vehicles, which enable the Tolling System to detect electronically the passage of those vehicles on the Link and which have the capacity to transmit and receive information electronically;^{254 255}
 - (ii) (as escalated) is a reference to the product of the dollar amount preceding the reference and a fraction:²⁵⁶
 - (A) the denominator of which is the CPI for the quarter ended 30 June 1999; and²⁵⁷
 - (B) the numerator of which is the CPI most recently published prior to making the relevant calculation, unless the calculation relates to a particular 12 month period, in which case the numerator is the CPI most recently published prior to the commencement of that period;²⁵⁸
 - (iii) "**Start Date**" are, in relation to any particular tag issued in relation to a particular vehicle (or particular vehicles) or in relation to some other identifiable characteristic, references to the date as determined in accordance with the principles agreed in writing between the State and the Company from time to time;^{259 260}
 - (iv) "**Tag Year**" are, in relation to a tag, references to a period of twelve months commencing on either the relevant Start Date or on an anniversary of the

relevant Start Date, provided that the final Tag Year in relation to a particular tag shall:

- (A) end on the earlier of the date on which the Company was notified of the loss or destruction of the tag and the date on which the tag was returned and in either case was not replaced; and
 - (B) commence on the later of the relevant Start Date and the last anniversary of the relevant Start Date to occur prior to the date of that notification or return.²⁶¹
- (o) The State shall:²⁶²
- (i) cause to be prescribed by regulation under section 118 of the Project Legislation each process, each device and each manner of use of devices, as:
 - (A) constitutes (in the case of a process or device) an aspect of the Tolling System or (in the case of a manner of use) the manner of use of either a device prescribed under section 118 of the Project Legislation or a device which the State must, under this paragraph (o), cause to be prescribed; and
 - (B) the State and the Company may have agreed prior to the relevant date should be so prescribed:
 - (1) so as to attract the operation of section 74 of the Project Legislation (in the case of a device); or
 - (2) so that evidence of a vehicle being driven in a toll zone (within the meaning of the Project Legislation), as indicated or determined by an image or message produced by the relevant process, by the relevant device (if used in a particular manner) or by a particular device (if used in the relevant manner), may under section 88 of the Project Legislation be admissible in evidence under that section and (absent evidence to the contrary) constitute proof of the vehicle being so driven.

In this paragraph (o), the date which is the operative date for the purposes of the deed entitled "Fifth Amending Deed" made by the parties on or

- around 30 April 1999 shall constitute the relevant date;
- (ii) cause to be prescribed by regulation under section 118 of the Project Legislation each process, each device and each manner of use of devices, as:
 - (A) constitutes (in the case of a process or device) an aspect of the Tolling System or (or in the case of a manner of use) the manner of use of either a device prescribed under section 118 of the Prescribed Legislation or a device which the State must, under this paragraph (o), cause to be prescribed;
 - (B) the Company requests (by notice to the State) be prescribed by regulation under section 118 of the Project Legislation (being a request which specifically identifies the relevant process, device or manner of use in detail reasonably sufficient to facilitate its being so prescribed);
 - (C) is capable of being prescribed by regulation under section 118 of the Project Legislation; and
 - (D) is reasonably necessary to be prescribed by regulation under section 118 of the Project Legislation:
 - (1) so as to attract the operation of section 74 of the Project Legislation (in the case of a device); or
 - (2) so that evidence of a vehicle being driven on a toll zone (within the meaning of the Project Legislation), as indicated or determined by an image or message produced by the relevant process, by the relevant device (if used in a particular manner) or by a particular device (if used in the relevant manner), may under section 88 of the Project Legislation be admissible in evidence under that section and (absent evidence to the contrary) constitute proof of the vehicle being so driven;
 - (iii) cause to be conferred by regulation under section 118 of the Project Legislation power on the Company to exempt from the requirement to be

- registered under Part 4 of the Project Legislation, a particular vehicle or vehicles or a particular category or categories of vehicle, whether permanently or for particular times or particular periods, whether conditionally or unconditionally and whether in whole or in part; and
- (iv) cause to be prescribed by regulation under section 118 of the Project Legislation the matters that must or may be contained in a certificate in order for that certificate to constitute the prescribed form of certificate for the purposes of section 89(4) of the Project Legislation.²⁶³
- (p) For the purposes of section 76(1) of the Project Legislation, the State shall cause an amount of administrative costs to be prescribed by regulation, being an amount determined by the State:
- (i) in accordance with the methodology generally applied from time to time in arriving at assessments of costs of proposed statutory rules for the purpose of inclusion within regulatory impact statements under the Subordinate Legislation Act 1994; and
- (ii) with the objective of measuring administrative costs likely to be incurred by the Company as a result of the commission of an offence under section 73 of the Project Legislation and the undertaking of those steps which need to be undertaken in order to have any charge in respect of such an offence proved.

The appropriateness of any amount so prescribed:

- (iii) shall be reconsidered by the State at intervals of no greater than 3 years since the later of 30 June 1999 and the last reconsideration of them under this paragraph (iii) with each party bearing costs incurred or payable by it in connection with such a reconsideration;
- (iv) shall be reconsidered by the State within a reasonable time of being requested by the Company to do so, provided that costs incurred or payable by the State in connection with such a reconsideration are paid by the Company promptly after demand for them; and
- (v) may be reconsidered from time to time by the State, at the cost of the State, provided that costs incurred or payable by the Company in connection with such a reconsideration are paid by the State promptly after demand for them.

In any reconsideration of the appropriateness of any amount so prescribed, the State shall re-determine that amount in accordance with the methodology outlined in paragraph (i), with the objective outlined in paragraph (ii).

The Company shall provide such information to the State as may be reasonably necessary in order to enable or facilitate such a reconsideration, promptly after being requested to do so.²⁶⁴

- (q) The first time a particular person requests the Company to make available an arrangement which provides for the payment of tolls in relation to the Link, the Company shall promptly do so on the applicable terms and conditions for that particular person. Subject to that person entering into an agreement on those terms and conditions and complying with them, the Company shall (without limitation to its obligations under the Project Legislation) promptly ensure that (subject to those terms and conditions) each vehicle to which the agreement applies is either registered under Division 2 of Part 4 of the Project Legislation or exempted from the requirement to be registered under that Part in accordance with regulations made under the Project Legislation. This provision shall be construed so as not to derogate from the other rights and obligations of the Company, in respect of any subsequent registration or exemption.²⁶⁵
- (r) If, under the Project Legislation, an infringement notice is caused to be served but further proceedings are not taken in respect of the relevant offence (or alleged offence) under section 73 of the Project Legislation as a result of the payment of an amount sufficient to expiate the notice, the State shall pay to the Company (for itself and as agent of Clepco) the TU Amount, within 20 Business Days of that payment. The Company shall, however, refund any amount so paid to it within 5 Business Days of its being requested by the State to do so if the relevant infringement notice is withdrawn by the enforcement officer under the Project Legislation. For the purpose of this paragraph (r), the TU Amount is the sum of:
- (i) if the payment is made:
- (A) in the quarter ending 30 June 1999, \$2.52; or
- (B) in a quarter subsequent to the quarter ending 30 June 1999 (" Q_t "), the product (rounded to the nearest cent) of the amount applicable under this paragraph (i) in the quarter preceding Q_t (" Q_{t-1} ") and a fraction, the numerator of which is the Maximum Charge Toll set for Q_t under the Toll Calculation Schedule with respect to cars and the

- denominator of which is the Maximum Charge Toll set for Q_{t-1} under the Toll Calculation Schedule with respect to cars. (Each of the Company and the State shall reconsider, in good faith, the appropriateness of the amount applicable under this paragraph (i) if and when the other of them requests that it do so.); and
- (ii) if the payment is made in a quarter not affected by a determination or redetermination of the amount to which this paragraph (ii) applies, \$8.86.

The State:

- (iii) shall make any determination or redetermination of the amount to which paragraph (ii) applies:
- (A) in accordance with the methodology generally applied from time to time in arriving at assessments of costs of proposed statutory rules for the purpose of inclusion within regulatory impact statements under the Subordinate Legislation Act 1994; and
- (B) with the objective of measuring administrative costs likely to be incurred by the Company in connection with:
- (1) any request by it under Part 4 of the Project Legislation that an infringement notice be served; and
- (2) the undertaking of those steps leading to the making of such a request as, under Part 4 of the Project Legislation, may be undertaken by the Company as a result of a vehicle which is not registered under that Part being driven on a part of the Link in contravention of that Part;
- (iv) shall redetermine the amount to which paragraph (ii) applies on or around expiry of the third month after Completion of the Southern Link and also when the appropriateness of any amount which the State has caused to be prescribed by regulation for the purposes of section 76(1) of the Project Legislation is being reconsidered under paragraph 9.2(p)(iii), with each party bearing costs incurred or payable by it in connection with such a redetermination;
- (v) shall redetermine the amount to which paragraph (ii) applies within a reasonable time of being requested by the Company to do so, provided that

costs incurred or payable by the State in connection with such a redetermination are paid by the Company promptly after demand for them; and

- (vi) may redetermine the amount to which paragraph (ii) applies from time to time, at the cost of the State, provided that costs incurred or payable by the Company in connection with such a redetermination are paid by the State promptly after demand for them.

Any determination or redetermination of the amount to which paragraph (ii) applies shall first take effect in the quarter which first commences after the determination or redetermination is made.

The Company shall provide such information to the State as the State may reasonably consider to be necessary or desirable in order to enable or facilitate any determination or redetermination of the amount to which paragraph (ii) applies, promptly after being requested to do so.²⁶⁶

- (ra)²⁶⁷ (i) If the Company is liable to pay GST in respect of any supplies for which the TU Amount payable under clause 9.2(r) is consideration, then the State must pay the Company an additional amount (“**the GST Amount**”) equal to the GST payable by the Company in respect of that TU Amount.
- (ii) The Company must issue a Tax Invoice to the State in respect of a supply referred to in clause 9.2(ra)(i) where the State has not agreed to issue a Recipient Created Tax Invoice in respect of the supply.²⁶⁸
- (iii) The Company agrees that it will not issue a Tax Invoice in respect of the supplies referred to in clause 9.2(ra)(i) in respect of which the State has agreed to issue a Recipient Created Tax Invoice under this clause.²⁶⁹
- (iv) Where the State has agreed to issue a Recipient Created Tax Invoice for a supply referred to in clause 9.2(ra)(i), the State must pay the GST Amount at the same time and in the same manner as all other amounts in relation to the supply are required to be paid under the Deed or, if that time has already occurred, within 7 days of a request from the Company for payment of the GST Amount.²⁷⁰
- (v) Where the Company must issue a Tax Invoice for a supply referred to in clause 9.2(ra)(i), the requirement for the State to pay the GST Amount on the supply is subject to the Company issuing that Tax Invoice to the State. Where a valid tax

invoice is not received by the State at the same time the TU Amount is paid or payable, the GST Amount shall be payable within 7 days of receipt of a valid tax invoice.²⁷¹

- (vi) If for any reason the amount of GST payable on a supply referred to in clause 9.2(ra)(i) is different from the amount in respect of GST previously payable by the State under clause 9.2(ra)(i), or if there is an adjustment event in respect of the supply referred to in clause 9.2(ra)(i), as appropriate:
 - (A) the Company may recover from the State the amount by which the amount of GST on the supply exceeds the amount already payable under clause 9.2(ra)(i); or
 - (B) the Company must refund to the State the amount by which the amount already paid under clause 9.2(ra)(i) exceeds the amount of GST now payable on the supply; and
 - (C) the Company must issue an Adjustment Note in relation to the supply within 28 days of the adjustment event where the State has not agreed to issue a Recipient Created Adjustment Note; and
 - (D) the State must issue a Recipient Created Adjustment Note in relation to the supply within 28 days of the adjustment event where the State has agreed to issue an Adjustment Note in relation to the supply.
- (vii) Terms defined in the GST Act have the same meaning in this clause 9.2(ra) unless provided otherwise.²⁷²
- (s) Under the Project Legislation, the Company or the person for the time being that is the "relevant corporation" within the meaning of the Project Legislation, may specify toll zones and may fix tolls which are payable in respect of the use of vehicles on toll zones.

Without limiting the manner in which the Company or the person for the time being that is the "relevant corporation" within the meaning of the Project Legislation may otherwise specify toll zones that comply with the requirements of, and are in accordance with, this Deed and the Exhibits to this Deed, the parties agree and acknowledge that any notice published by the Company or the person for the time being that is the "relevant corporation" within the meaning of the Project Legislation under section 71(1)(a) of the Project Legislation shall

comply with the requirements of, and is in accordance with this Deed and the Exhibits to this Deed if that notice either:

- (i) both:
 - (A) specifies one or more toll zones which relate to one or more Tollable Sections (to the extent that the Tollable Section has or those Tollable Sections have been declared as part of the Link road under section 61 of the Project Legislation) forming part of the Southern Link; and
 - (B) is in the form of, or is substantially in the form of, Exhibit Y; or
- (ii) both:
 - (A) specifies one or more toll zones which relate to one or more Tollable Sections (to the extent that the Tollable Section has or those Tollable Sections have been declared as part of the Link road under section 61 of the Project Legislation) forming part of the Western Link; and
 - (B) is in the form of, or is substantially in the form of, Exhibit Z.

For the avoidance of doubt, the parties agree and acknowledge that a notice is not to be regarded as not being in the form of, or not being substantially in the form of:

- (iii) Exhibit Y by reason only that the notice specifies one or more but not all toll zones referred to in Exhibit Y; or
- (iv) Exhibit Z by reason only that the notice specifies one or more but not all toll zones referred to in Exhibit Z.

It is further agreed and acknowledged, for the avoidance of doubt, that any notice published by the Company or the person for the time being that is the "relevant corporation" within the meaning of the Project Legislation under section 71(1)(a) of the Project Legislation will not be:

- (v) not in accordance with this Deed; and/or
- (vi) not in accordance with the Exhibits to this Deed,

merely because one or more of the toll zones specified in that notice only contains so much of the Tollable Section or the Tollable Sections relating to that toll zone or those toll zones as has or have been declared as part of the Link road under section 61 of the Project Legislation.^{273 274}

9.2A

Request for Payment

- (a) The parties acknowledge that the Company may, under section 77(1) of the Project Legislation, in respect of the use of a Vehicle in a toll zone (within the meaning of the Project Legislation), send or request the Enforcement Agency to send, a Request For Payment to the Addressee, in the circumstances described in section 77(1) of the Project Legislation.
- (b) The Company will not in respect of a particular Vehicle:
 - (i) send a Request For Payment to the relevant Addressee under section 77(1)(a) of the Project Legislation; or
 - (ii) request the Enforcement Agency to send a Request For Payment to the relevant Addressee under section 77(1)(b)(i) of the Project Legislation,where:
 - (iii) at the time of the relevant use the Vehicle is, or ought reasonably to have been, registered by the Company on the register maintained under section 73A of the Project Legislation (including by way of registration subsequent to the use in accordance with section 73C of the Project Legislation);
 - (iv) the Vehicle is covered by a tollway billing arrangement (within the meaning of the Project Legislation);
 - (v) the Vehicle is exempt from the requirement to be registered under section 73A of the Project Legislation, in accordance with the power conferred on the Company under clause 9.2(o)(iii); or
 - (vi) the Vehicle is an Exempt Vehicle.
- (c) Where the Company (or a person authorised by the Company) has the belief described in section 77(1) of the Project Legislation in respect of a Vehicle, the Company agrees, that it will not, and will procure that any such authorised person will not, request the Enforcement Agency to serve an infringement notice under section 77(1)(b)(ii) of the Project Legislation or commence proceedings against a person in accordance with section 77(1)(b)(iii) of the Project Legislation in respect of the use of the Vehicle in a toll zone (within the meaning of the Project Legislation) unless the Company (or a person authorised by the Company) has either sent a Request For Payment to that person or requested the Enforcement Agency to send a Request For Payment in accordance with section 77(1)(b)(i) of the Project Legislation, and that Request For Payment has been sent to the Addressee,

and either:

- (i) that Request For Payment has not been paid in full for four days from the due date for payment as shown on that Request For Payment in the case where the Addressee:
 - (A) has previously sought registration of a Vehicle under section 73A of the Project Legislation;
 - (B) has previously been issued with a Request For Payment;
 - (C) has previously been served with an infringement notice under section 77(1)(b)(ii); or
 - (D) has previously had proceedings commenced against them under section 77(1)(b)(iii); or
- (ii) in any other case:
 - (A) a Further Request For Payment has been sent to that Addressee subsequent to the expiry of the due date for payment for that Request For Payment; and
 - (B) that Further Request For Payment has not been paid in full for four days from the due date as shown on that Further Request For Payment.
- (d) A Request For Payment sent by the Company (or a person authorised by the Company) to an Addressee must:
 - (i) be in writing and must separately identify each use for which a toll is payable and separately identify the Toll Administration Fee payable;
 - (ii) be in a form approved by the State, such approval not to be unreasonably withheld or delayed;
 - (iii) be sent promptly, having regard to the systems of operation referred to in clause 14.3(f), after the expiry of the 3 day period commencing on the day of the last use of the Link to which that Request for Payment relates, but not before the expiry of that period;²⁷⁵
 - (iv) relate to relevant uses of the Vehicle for which a Request For Payment may be sent in accordance with clause 9.2A(c) within three consecutive days from the commencement of the day of the earliest use identified on the Request For Payment;
 - (v) without limiting the Company's undertakings set out in clause 14.3(f), be sent no later than:

- (A) from 1 July 2005 until 30 September 2005, 40 days;
 - (B) from 1 October until 31 December 2005, 35 days;
 - (C) from 1 January 2006 until 30 June 2006, 30 days, if agreed by the parties, or if no such agreement is reached, 35 days; and
 - (D) from 1 July 2006, the number of days determined in accordance with clause 9.2A(g),

after the date of the earliest use identified on that Request For Payment; and
- (vi) not state a due date for payment of less than 16 days from the date of the Request For Payment.
- (e) A Further Request For Payment sent by the Company (or a person authorised by the Company) to an Addressee must:
- (i) specify the applicable Request For Payment, and may include the applicable Toll Administration Fee;
 - (ii) be in a form approved by the State, such approval not to be unreasonably withheld or delayed;
 - (iii) without limiting the Company's undertakings set out in clause 14.3(f), be sent not later than:
 - (A) from 1 July 2005 until 30 September 2005, 60 days;
 - (B) from 1 October until 31 December 2005, 55 days;
 - (C) from 1 January 2006 until 30 June 2007, 50 days, if agreed by the parties, or if no such agreement is reached, 55 days; and
 - (D) from 1 July 2007 until 30 June 2008, 71 days;
 - (E) from 1 July 2008, the number of days determined in accordance with clause 9.2A(g),

after the date of the earliest use identified on the applicable Request For Payment;
 - (iv) not state a due date for payment of less than 16 days from the date of the Further Request For Payment.
- (f) Where a Request For Payment or a Further Request For Payment is paid in full by the due date for payment as specified in the Request For Payment or Further Request

For Payment as applicable, then the Company will not request that the Enforcement Agency:

- (i) serve an infringement notice under section 77(1)(b)(ii) of the Project Legislation; or
- (ii) commence proceedings against a person in accordance with section 77(1)(b)(iii) of the Project Legislation,

in respect of the use of a Vehicle the subject of the Request for Payment or the Further Request for Payment as applicable.

- (g)
 - (i) The parties agree that, 90 days prior to a Review Date, the parties will commence negotiations, in good faith, to reduce the time periods referred to in clauses 9.2A(d)(v) and 9.2A(e)(iii) from that Review Date, having regard to the Company's undertakings set out in clause 14.3(f).
 - (ii) If, 30 days prior to that Review Date, the parties cannot reach agreement in relation to the reduction referred to in (i) above, then the time periods referred to in clauses 9.2A(d)(v) and 9.2A(e)(iii) existing at that date will remain until the following Review Date.
 - (iii) For the purposes of this clause 9.2A(g) "Review Date" means 1 July 2006, and the anniversary of that date each year thereafter.
- (h) Any Request For Payment or Further Request For Payment sent in accordance with clause 9.2A(c) that is the final request for payment to be sent to that Addressee must clearly state on its face that it is the final request for payment that will be sent.
- (i) Where a Request For Payment or Further Request For Payment is sent to an Addressee and that Addressee supplies a sworn statement in accordance with section 72(3) of the Project Legislation in relation to all of the uses of the Vehicle the subject of the Request For Payment or Further Request for Payment or some of those uses, then:
 - (i) where the sworn statement is in relation to all of the uses of the Vehicle the subject of the Request For Payment or Further Request for Payment, the Company will cause the Request For Payment or Further Request For Payment, as applicable, to be cancelled, and cancel any Toll Administration Fees levied or imposed by reason of the issue of that Request For Payment or Further Request For Payment; or
 - (ii) otherwise, the Company agrees, that it will not, and will procure that any such authorised person will not, request the Enforcement Agency to serve

an infringement notice under section 77(1)(b)(ii) of the Project Legislation or commence proceedings against a person in accordance with section 77(1)(b)(iii) of the Project Legislation in respect of the use of the Vehicle that was not the subject of the sworn statement, unless it cancels the Request For Payment or Further Request For Payment, and any Toll Administration Fees levied or imposed by reason of the issue of that Request For Payment or Further Request For Payment, and issues a new Request For Payment (in respect of which a Toll Administration Fee may be levied or imposed) under this clause 9.2A to the Addressee in respect of that use, and any other such use, that was not the subject of the sworn statement.²⁷⁶

- (j) The Company may, at any time, cause a Request For Payment or Further Request For Payment, as applicable, to be cancelled, and where it does so it must also cancel any Toll Administration Fees levied or imposed by reason of the issue of that Request For Payment or Further Request For Payment.
- (k) (i) If, while the Company is complying with its undertaking set out in clause 14.3(f):
 - (A) matters beyond the Company's reasonable control prevent the Company from complying with time frames in either clause 9.2A(d)(v), 9.2A(e)(iii) or 9.2A(1)(i), where those matters or their consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the Company's obligations; or
 - (B) a complaint or enquiry by a member of the public that results in an investigation by the Company in connection with use of a Vehicle for which a Request For Payment or Further Request For Payment may be sent, prevents the Company from complying with time frames in either clause 9.2A(d)(v) or 9.2A(e)(iii), where that complaint or enquiry or its consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the Company's obligations,

then provided that the Company takes all reasonable steps to minimise any delays caused by such matters for investigations, the time periods set out in those clauses will be extended, but only

- to the extent that the Company is so prevented from complying.
- (ii) For the purposes of clause 9.2A(k)(i)(A), all acts and omissions of the Company's contractors, agents or employees (and their respective contractors, agents or employees) are deemed to be matters within the Company's control.
 - (iii) If, at the request of a member of the public, the Company and the member of the public enter into an arrangement in relation to an extension of the due date for payment for the amount payable under a Request For Payment then the time periods set out in clause 9.2A(e)(iii) will be extended by an amount of time equivalent to the extension the subject of that arrangement.²⁷⁷
- (l) Where the Company requests disclosure of registration or ownership information in relation to a Vehicle under section 90(1A) or 90(1B) of the Project Legislation or from NEVDIS:
- (i) such request must be made not more than 24 days after the Trip (in accordance with the meaning of Trip in the Toll Calculation Schedule in Schedule 4 to the IFA) to which that request relates; and
 - (ii) the Company may only make one such request in relation to a Vehicle in any one day.
- (m) (i) The parties agree that, 90 days prior to a Review Date, the parties will commence negotiations, in good faith, to reduce the time period referred to in clause 9.2A(l)(i) from that Review Date, having regard to the Company's undertakings set out in clause 14.3(f).
- (ii) If, 30 days prior to that Review Date, the parties cannot reach agreement in relation to the reduction referred to in (i) above, then the time period referred to in clauses 9.2A(l)(i) existing at the date will remain until the following Review Date.
- (iii) For the purposes of this clause 9.2A(m), "Review Date" means 1 January 2006, and the anniversary of that date each year thereafter.
- (n) If, as a result of a change in State policy, the Roads Corporation or a relevant person within the meaning of section 92(2) of the **Road Safety Act 1986**:
- (i) ceases disclosure to the Company of registration or ownership information under section 90(1) of the Project Legislation or from NEVDIS; or
 - (ii) discloses to the Company registration or ownership information under section 90(1) of the

Project Legislation or from NEVDIS in a manner or to an extent materially different to the manner or extent of disclosure provided to enforcement agencies responsible for enforcement of offences based on traffic surveillance devices, and that difference adversely affects the Company's ability to issue Requests for Payment,

then clause 9.2A(c) will not apply to the Company for so long and to the extent that the circumstances in clauses 9.2A(n)(i) or (ii) (as applicable) apply.²⁷⁸

- (o) The State must procure that the Enforcement Agency meets the Debt Recovery Cycle Requirement.
- (p) The Company will provide a notice to the State if it considers that the Enforcement Agency is failing to meet the Debt Recovery Cycle Requirements.
- (q) On receipt of a notice under clause 9.2A(p) the State must procure that the Enforcement Agency meets the Debt Recovery Cycle Requirement.

9.2B

Toll Administration Fees

- (a) In accordance with section 71(1A) of the Project Legislation, the Company may levy or impose a Toll Administration Fee no more than once per Request For Payment or Further Request For Payment. For the avoidance of doubt, the Company has no entitlement to a Toll Administration Fee on a per Trip (in accordance with the meaning of Trip in the Toll Calculation Schedule as set out in Schedule 4 to the IFA) basis.
- (b) A Toll Administration Fee:
 - (i) in the case of a Request For Payment must not at any time exceed the Request For Payment Cap applicable at that time; and
 - (ii) in the case of a Further Request For Payment must not at any time exceed the Further Request For Payment Cap applicable at that time.
- (c) For the avoidance of doubt, the parties agree that during the period from 1 July 2007 to 30 June 2008 (inclusive):
 - (i) the Request For Payment Cap is \$12.00 (inclusive of GST); and
 - (ii) the Further Request For Payment Cap is \$21.50 (inclusive of GST).
- (d) (i) At any time after 30 June 2009, the State or the Company may initiate a review of the quantum of the Toll Administration Fees, the Ongoing Costs Cap, the Request For Payment Cap or the Further Request For Payment Cap calculated in

accordance with this clause 9.2B, having regard to:

- (A) the assumptions and estimates underlying the calculation of those fees as contemplated in the definitions of “Further Request For Payment Costs Cap” and “Ongoing Costs Cap” compared with the data relating to actual costs for the year immediately preceding that review, which:
 - (1) in relation to the Ongoing Costs Cap, are the actual costs of the Company per Request For Payment, properly incurred, of the matters listed in the last paragraph of the definition of “Ongoing Costs Cap”; and
 - (2) in relation to the Further Request for Payment Costs Cap, are the actual costs to the Company per Further Request For Payment, properly incurred, of the matters listed in the last paragraph of the definition of “Further Request for Payment Costs Cap”; and
 - (B) the extent to which the Company has already recovered its project development costs.
- (ii) If the parties are unable to reach agreement within 120 days of the commencement of a review referred to in clause 9.2B(d)(i) above, the matter may be referred by either party for expert determination in accordance with clause 16.
- (e) The Company has no entitlement to any other fee or charge, other than the Toll Administration Fee, in relation to providing Requests For Payment or Further Requests for Payment.

9.2C

Roaming Agreement and Network Tolling Agreement

- (a) For the purposes of this clause 9.2C, the terms ‘Fee Review’, ‘Discount Amount’, ‘Image Processing Fee’, ‘IPF Retention Amount’, ‘Net Incremental Costs’, ‘Price Review’, ‘Roaming Services’, ‘TAF Retention Amount’, ‘Toll’ and ‘Toll Administration Fee’ have the meanings given in the Roaming Agreement.
- (b) The Company must:
 - (i) following a Price Review in accordance with clause 10.7 of the Roaming Agreement:

- (A) notify the State of any adjustment to the Discount Amount agreed between WGT Co and the Company pursuant to the Price Review; and
 - (B) provide to the State such information as is reasonably required by the State to demonstrate that the adjusted Discount Amount does not exceed the Net Incremental Cost to the Company of recovering Tolls on behalf of the WGT Co as part of the Roaming Services; and
- (ii) following a Fee Review in accordance with clause 10.9 of the Roaming Agreement:
 - (A) notify the State of any adjustment to the IPF Retention Amount and the TAF Retention Amount agreed between WGT Co and the Company pursuant to the Fee Review; and
 - (B) provide to the State such information as is reasonably required by the State to demonstrate that the adjusted IPF Retention Amount and the adjusted TAF Retention Amount (as applicable) does not exceed the Net Incremental Cost to the Company of recovering an Image Processing Fee or a Toll Administration Fee respectively, on behalf of WGT Co.
- (c) If the State reasonably considers that:
 - (i) the Discount Amount (as adjusted through a Price Review) exceeds the Net Incremental Cost to the Company of recovering Tolls on behalf of WGT Co as part of the Roaming Services;
 - (ii) the IPF Retention Amount (as adjusted through a Fee Review) exceeds the Net Incremental Cost to the Company of recovering an Image Processing Fee as part of the Roaming Services; or
 - (iii) the TAF Retention Amount (as adjusted through a Fee Review) exceeds the Net Incremental Cost to the Company of recovering a Toll Administration Fee as part of the Roaming Services,

the State may issue a notice to the Company which identifies:

 - (iv) the amount by which the Discount Amount, IPF Retention Amount and TAF Retention Amount (as applicable) exceeds the relevant Net Incremental Cost; and

- (v) the reasonable period of time within which the Company must (and must ensure that WGT Co does) agree to a variation to the Discount Amount, IPF Retention Amount and TAF Retention Amount (as applicable) to reduce it to the relevant Net Incremental Cost.
- (d) If the Company disagrees with any notice given by the State under clause 9.2C(c), then:
 - (i) it must, within 5 Business Days of receipt of the notice given under clause 9.2C(c), give notice of its disagreement to the State including such supporting documentation to the reasonable satisfaction of the State;
 - (ii) the State and the Company must use reasonable endeavours to resolve the matter the subject of the disagreement; and
 - (iii) if the matter is not resolved within 10 Business Days after the date of the notice given under clause 9.2C(d)(i), either party may, by notice to the other party, refer the matter for determination under clause 16.
- (e) Upon receipt of a notice from the State under clause 9.2C(c), the Company must (and must ensure that WGT Co does):
 - (i) except where the State's notice under clause 9.2C(c) does not refer to the Discount Amount, or the State's notice is disputed in accordance with 9.2C(d), vary the Roaming Agreement so as to reduce the Discount Amount to an amount no more than the Net Incremental Cost to the Company of recovering Tolls on behalf of WGT Co as part of the Roaming Services;
 - (ii) except where the State's notice under clause 9.2C(c) does not refer to the IPF Retention Amount, or the State's notice is disputed in accordance with 9.2C(d), vary the Roaming Agreement so as to reduce the IPF Retention Amount to an amount no more than the Net Incremental Cost to the Company of recovering an Image Processing Fee;
 - (iii) except where the State's notice under clause 9.2C(c) does not refer to the TAF Retention Amount, or the State's notice is disputed in accordance with clause 9.2C(d), vary the Roaming Agreement so as to reduce the TAF Retention Amount to an amount no more than the Net Incremental Cost to the Company of recovering a Toll Administration Fee,

in accordance with the State's notice under clause 9.2C(c) with effect from the date specified in the State's notice under clause 9.2C(c), or where the State's notice is disputed in accordance with clause 9.2C(d) as determined in accordance with clause 9.2C(d).

- (f) The Company must not:
- (i) [not used]; and
 - (ii) give notice to the other parties to the Network Tolling Agreement of its intention to terminate the Network Tolling Agreement in accordance with clause 9.2(a)(2) of the Network Tolling Agreement without the State's prior consent, such consent not to be unreasonably withheld or delayed,

provided that nothing in this clause 9.2C(f) is intended to limit any other right of the Company under the Roaming Agreement or the Network Tolling Agreement to terminate those agreements.

- (g) The Company must not:
- (i) assign or novate the Roaming Agreement or the Network Tolling Agreement; and
 - (ii) amend the Roaming Agreement or the Network Tolling Agreement,

without the State's prior consent, such consent not to be unreasonably withheld or delayed.

- (h) The parties agree that this clause 9.2C will cease to have effect in relation to each of the Roaming Agreement and the Network Tolling Agreement on and from the earlier of:
- (i) the termination or expiry of this Deed; and
 - (ii) the termination or expiry of the WGT Project Agreement.
- (i) For the avoidance of doubt, the Network Tolling Agreement is not a "West Gate Tunnel roaming agreement" for the purposes of the Project Legislation.

9.2D

Civil Debt Recovery

The Company must ensure that its civil debt recovery arrangements in respect of tolls and fees imposed in connection with the Link comply with the minimum requirements for civil debt recovery published in the Government Gazette for the purpose of section [72C(1)] of the Project Legislation from time to time.

9.3

Opening of a Section

- (a) Subject to paragraph (b), a Section may not be opened for public use prior to its Completion. However, as soon as practicable after Completion of a Section, the Company

shall open it for public use and may then operate the Tolling System and levy tolls in relation to that part of the Link as consists of a Tollable Section (within the meaning of the Toll Calculation Schedule) comprised within that Section, for the passage of Vehicles (within the meaning of that Schedule).²⁷⁹

The Company shall:

- (i) give notice to the State and VicRoads of its intention to open a Section for public use at least 1 month (or such lesser period as may be agreed between the State and the Company) prior to the Section being so opened;²⁸⁰
 - (ii) effect all insurances required in relation to that Section under Article 13 prior to opening the Section for public use; and
 - (iii) if the Section is the first to be opened for public use, do those things required to be done under clauses 11.1, 11.2 and 11.3 prior to opening the Section for public use.
- (b) Notwithstanding paragraph (a), if the Works for a Section (other than the Tolling System)²⁸¹ have been completed in accordance with the Construction Documentation, except for minor omissions or minor defects which do not adversely affect use of the Section by the public for the continuous passage of vehicles or the safety of that use, the Company may permit the public use of the Section if:
- (i) the Company gives 15 Business Days' notice (or such lesser period as may be agreed) in respect of each of Southern Link Section 1, Southern Link Section 2, Southern Link Section 3, Southern Link Section 4 and Southern Link Section 5, and otherwise notice of its intention to do so to the State and VicRoads;^{282 283}
 - (ii) all insurances required in relation to that Section under clause 13.4 have been effected; and
 - (iii) the Company establishes to the reasonable satisfaction of the State that it is necessary:
 - (A) for the purpose of testing the Tolling System;
 - (B) to facilitate proper traffic management; or
 - (C) for another purpose acceptable to the State,

but the Company may not impose or collect tolls for any use of that Section (or any part of it).

9.3A Opening of a SLU Section

- (a) Subject to paragraph (b), a SLU Section may not be opened for public use prior to SLU Section Practical Completion being achieved in respect of that SLU Section. However, as soon as practicable after SLU Section Practical Completion of a SLU Section, the Company shall open it for public use and may then operate the Tolling System and levy tolls in relation to all lanes in that part of the Link as consists of a Tollable Section (within the meaning of the Toll Calculation Schedule) comprised within the Section of which the SLU Section forms a part, for the passage of Vehicles (within the meaning of that Schedule).
- (b) Notwithstanding paragraph (a), if Temporary Operational Completion has been achieved in respect of a SLU Section, the Company may permit the public use of the SLU Works completed within the SLU Section in accordance with clause 8A.19 if all insurances required under clause 13.4 in relation to that SLU Section, and the Section of which the SLU Section forms a part, have been effected.
- (c) Notwithstanding paragraph (a), in relation to Southern Link Section 1 and Southern Link Section 5, the Company may elect not to open for public use, or to close to public use, a lane that relates to a Toll Point in a SLU Section until the later of:
 - (i) the achievement of SLU Section Practical Completion of the SLU Section to which the Toll Point relates; and
 - (ii) specification of toll zones to reflect the upgrade of that SLU Section.

9.3B Opening of a CTW Section

- (a) Subject to paragraph (b), the WLU Works within a CTW Section may not be opened for public use prior to CTW Section Practical Completion being achieved in respect of that CTW Section. However, subject to paragraph (d), as soon as practicable after CTW Section Practical Completion of a CTW Section, the Company shall open the WLU Works within that CTW Section for public use and may then operate the Tolling System and levy tolls in relation to that part of the WLU as consists of a Tollable Section (within the meaning of the Toll Calculation Schedule) comprised within the Section or Sections of which the CTW Section forms a part, for the passage of Vehicles (within the meaning of that Schedule).
- (b) Notwithstanding paragraph (a), if Temporary Operational Completion has been achieved in respect of a CTW Section, the Company may permit the public use of the WLU Works within that CTW Section in accordance with clause 8B.19 if all insurances required under clause 13.4 in relation to that CTW Section, and the Section or Sections

- of which the CTW Section forms a part, have been effected.
- (c) Notwithstanding paragraph (a), the Company may elect not to open for public use, or to close to public use, a lane that relates to a Toll Point in a CTW Section until the later of:
 - (i) the achievement of CTW Section Practical Completion of the CTW Section to which the Toll Point relates;
 - (ii) any necessary specification of toll zones to reflect the upgrade of that CTW Section;
 - (iii) in respect of the northbound lanes within CTW Section B, the achievement of CTW Section Practical Completion in respect of CTW Section A; and
 - (iv) in respect of the southbound lanes within CTW Section A, the achievement of CTW Section Practical Completion in respect of CTW Section B.
 - (d) Notwithstanding paragraph (a) but subject to clause 8B.19, the Company will not open the new southbound lanes within CTW Section B until CTW Section Practical Completion has been achieved in respect of CTW Section C.
 - (e) The parties acknowledge and agree that:
 - (i) the Company and Trustee shall undertake works in respect of the CTW Sixth Lane as part of the CTW Works;
 - (ii) the Company and the Trustee must not open the CTW Sixth Lane as a permanent trafficable lane without the State's prior written consent, which consent may be subject to conditions determined by the State in its absolute discretion (subject to clause 2.6(g)(iv)).

9.4

Public Use

- (a) After Completion of a Section and subject to clause 9.3(a) and paragraph (b) and, subject to clauses 9.3A(c) and 9.3B(c) after the Company has opened that Section for public use, the Company shall keep that Section open for continuous public use during the Concession Period.
- (b) The Company may close the Link or any Section if:
 - (i) compliance with this Deed (including performance of the SLU Works or the CTW Works or CTW Maintenance Activities (as applicable)), the Project Scope and Technical Requirements or Operation and Maintenance Manuals or, on and from WGT Financial Close, WGT Co's performance of its obligations under

- the WGT Project Agreement (in accordance with the WGT Project Agreement) or the WGT PSR, requires it to do so, but so that the effect on traffic flow is as little as practicable; or
- (ii) it is necessary to do so by reason of:
 - (A) the requirements of VicRoads or any other relevant Government Agency;
 - (B) a material risk to the health or safety of members of the public; or
 - (C) for any other reason which the State agrees in writing.
- (c) Unless the State gives prior approval, the Company shall not use or permit the use of:
- (i) the Link or any part of it for any purpose other than public roads; or
 - (ii) subject to clauses 3.2, 7.15, 7A.15, 7D.15, 9.2(j), 9.4(d) and 9.4(e), any of its or the Trustee's property used to facilitate or enable the operation, maintenance or repair of the Link, or any part of it (including the Tolling System) to be used for any other purpose,
- other than on and from WGT Financial Close, for a purpose in connection with the WGT in accordance with the WGT Project Agreement or the CLP WGT Project Documents.
- (d) For the purposes of paragraph (c) only, but subject to clause 9.6(f), during the Concession Period the State approves the use of the areas of land defined in the maps attached to the PSA for the display of outdoor advertising signs insofar as (and for so long as) that display is expressly allowed under the PSA or any Ministerial approval issued under it and the display accords with the requirements (locational or otherwise) of the PSA.²⁸⁴
 - (e) While the approval of the State under sub-paragraph (c)(i) may generally be withheld at its absolute discretion (except in relation to paragraph (d)), it cannot unreasonably withhold that approval where the relevant use is restricted to the grant of rights to lay and maintain telecommunications and electricity cables and the like in or on such parts of the Link as consist of tunnels or the bridge over the Yarra River.

9.5

Public Safety and Interference

- (a) The Company shall take reasonable measures to prevent or restrict access by members of the public to the Project Land, SLU Lay Down Areas, CTW Extra Land or State Returned Works Areas (for such time as the Company and the Trustee are in possession and control of the State

Returned Works Areas), if the Company is aware or ought reasonably to have been aware that there is a material risk to their health or safety.

- (b) The Company is expressly authorised by the State to erect entry barriers preventing vehicles with heights in excess of heights specified in the Project Scope and Technical Requirements from entering those parts of the Link in respect of which those heights are specified, but such barriers shall not affect the use by other vehicles of the Link.
- (c) Insofar as the operation or maintenance of the Link is likely to interfere with the flow of traffic in the vicinity of the Project Land, SLU Lay Down Areas or CTW Extra Land, then the Company shall, by reasonable notice to the State:
 - (i) request the State to deal with the interference; and
 - (ii) specify the likely level, location and duration of such interference.

9.6

Advertising Signs and Road Signs

- (a) Subject to paragraph (c) and to clauses 9.4(c) and (d), the Company may only erect or display Signs on the Project Land with the prior approval of the State.
- (b) At the end of the Concession Period, the Company shall comply with all directions of the State to remove Signs erected pursuant to paragraph (a) (other than advertising signs the subject of paragraph (f)(i)) from the Project Land and make good any damage caused by their placement or removal.
- (c) The Company shall erect or display and shall maintain and repair:
 - (i) traffic or directional signs on the Project Land in accordance with the Project Scope and Technical Requirements or any reasonable requirement of the State, VicRoads or any other relevant Government Agency; and
 - (ii) Signs on the Project Land (other than, during the Additional Concession Period, any advertising signs) in accordance with the Project Scope and Technical Requirements or any reasonable requirement of the State, VicRoads or of any other relevant Government Agency.
- (d) The Company is expressly authorised by the State to operate traffic or directional signs on the Project Land at its discretion to facilitate the efficient operation of the Link or the Exhibition Street Extension, but so that the adverse effect on traffic flow is as little as possible.²⁸⁵

- (e) The State shall erect, and maintain and repair, directional signs relating to the Link outside the Project Land as and when, and to an extent and of a nature, consistent with that which the State does from time to time in relation to other freeways, but as varied having regard to the fact that tolls are charged in relation to the Link (so that, for example, the State might provide potential users of the Link with an adequate notice of the imposition of tolls and advice as to alternative routes).²⁸⁶
- (f) The parties:
 - (i) agree that any reference to the "Concession Period" as the expiry date for advertising signs on the plan referenced in clause 45.07-2 of the City Link Project Overlay in the Victoria Planning Provisions will be read as "Original Concession Period";
 - (ii) acknowledge that the State will use reasonable endeavours to procure an amendment to applicable planning controls, incorporated documents or other ancillary documents or materials, to the extent reasonably required to give effect to paragraph (f)(i); and
 - (iii) agree that the Company and the Trustee will transfer any residual property interest in the advertising signs the subject of paragraph (f)(i) to the State with effect on and from the expiry of the Original Concession Period.

9.7 Application of Law

The Company and the Trustee acknowledge that:

- (a) the Link will be a "highway" for the purposes of the Transport Act 1983 (Vic) and the Road Safety Act 1986 (Vic) open to the public for passage with vehicles, even though constructed and operated by the private sector; and
- (b) accordingly, the provisions of Law relating to traffic and motor vehicles on, and the exercise of Victorian state emergency service, health and police powers in relation to such highways apply with respect to the Link.

9.8 Speed Limits

The Company acknowledge that lawful speed limits on main carriageways and ramps of the Link will be those established from time to time under the Road Safety Act 1986 (Vic) or otherwise by Law.

9.9 Notification of Unlawful Acts

The Company shall promptly notify all relevant Government Agencies if, in the normal course of operating a Section or the Link, it becomes aware of:

- (a) any unlawful act of a serious nature being committed; or

- (b) any other conduct which the Company is notified by the State it is reasonably required to report to specified Government Agencies,

on the Project Land.

9.10 Engagement of Operator

Subject to clause 14.3(d), the Company may subcontract the performance of some or all of its obligations under Article 9 to the Operator. This will not limit or affect the Company's obligations or liability under this Deed.

9.11 State's Rights in Risk Situations

Without limiting clause 2.17, if an Operating Default occurs and the State considers in good faith there is or is likely to be a material risk resulting from the Operating Default:

- (a) to the health or safety of users of a Section or the Link or other members of the public; or
- (b) of material damage to a Section or the Link,

then, subject to clause 9.12, the State or its nominee may operate, repair or maintain (as the case may be) the relevant part of that Section or of the Link in an endeavour in good faith to address the risk or mitigate its consequences.

The State acknowledges that it has no entitlement to tolls levied during any period during which the State is exercising its rights under this clause.

9.12 Procedure

- (a) The State shall exercise its rights under clause 9.11 in accordance with the provisions of this clause.
- (b) If the State considers in good faith that it must exercise its rights under clause 9.11 as a matter of urgency it may only do so if:
 - (i) it has given prior notice of exercise to the Company, which notice:
 - (A) may be given verbally;
 - (B) shall include a brief description of:
 - (1) the relevant Operating Default;
 - (2) the nature of the material risk;
 - (3) what the State initially considers it requires to facilitate the State's exercise of its rights under clause 9.11; and
 - (4) what the State considers in good faith to be the course of action to overcome or mitigate the risk; and

- (C) requires the Company to address the risk or mitigate its consequences within a reasonable time (which may be by a date or time specified in the notice which shall take into account and make due allowance for all relevant facts and contingencies reasonably known to the State); and
 - (ii) after expiry of the time allowed under sub-paragraph (b)(i)(C) the Company has not taken all steps reasonably necessary to address the risk and mitigate the consequences should the risk be (or have been) realised.
- (c) In any circumstances other than those to which paragraph (b) applies:
 - (i) the State shall give notice to the Company:
 - (A) setting out the nature of the Operating Default and the material risk;
 - (B) describing what the State reasonably considers should be the course of action to address the risk or mitigate its consequences;
 - (C) estimating in good faith the anticipated costs of the State in exercising its rights under clause 9.11; and
 - (D) requiring the Company to overcome or mitigate that risk within a reasonable time (which may be by a date specified in the notice) which shall take into account and make due allowance for all relevant facts and contingencies reasonably known to the State;
 - (ii) if after notice from the State under sub-paragraph (c)(i) and the expiry of the time allowed under sub-paragraph (c)(i)(D), the Company has not taken all steps reasonably necessary to address the risk and mitigate the consequences should the risk be (or have been) realised, the State may exercise its rights under clause 9.11.
- (d) If the circumstances giving rise to the exercise by the State under paragraph (b) of its rights under clause 9.11 are likely to continue for more than 1 day, the State shall give a further notice to the Company setting out the matters in sub-paragraph (c)(i)(A), (B) and (C).
- (e) If at any time the State reasonably considers that:
 - (i) it is necessary or desirable to undertake a different course of action from that described in a notice given under any of paragraphs (b), (c) or (d); or

- (ii) the costs estimated in a notice given under paragraph (c) or paragraph (d) will be significantly exceeded,

the State shall give to the Company a further notice setting out details of such different course of action or increased costs (as the case may be).

- (f) Except insofar as a condition of exercise of a right by the State, or an obligation of the State, is expressed in terms of a good faith requirement the State shall, and shall ensure that its nominee shall, at all times act reasonably in exercise of its rights under clause 9.11 and shall endeavour to keep costs incurred to a minimum.
- (g) The State (or its nominee) shall cease to operate, repair or maintain (as the case may be) the relevant part of a Section or of the Link as soon as reasonably practicable and, in any event, upon the earlier of the relevant risk or consequence having been addressed or mitigated (as the case may be) and the State ceasing to endeavour in good faith to address the risk or mitigate its consequences (as the case may be). Upon the State so ceasing to operate, repair or maintain (as the case may be) the Company shall recommence to operate, repair or maintain (as the case may be) the relevant part of the Section or of the Link in accordance with this Deed.
- (h) The State shall give notice to the Company of the date when it (or its nominee) proposes to, or is required under paragraph (g) to, cease to operate, repair or maintain (as the case may be) the relevant part or Section of the Link and the State and the Company shall consult with each other with the intention of ensuring that the process of the State (or its nominee) ceasing to act and the Company recommencing to perform the relevant activities is effected as smoothly as possible.
- (i) The Company and the Trustee acknowledge that the State, its nominee and its contractors:
 - (i) may enter and remain on the Project Land, SLU Lay Down Areas and the CTW Extra Land for the purposes only of the State exercising its rights under clause 9.11 and this clause;
 - (ii) are subject to paragraph (f), not under any obligation to remedy the relevant Operating Default or to overcome or mitigate any risk or consequences in respect of which the State exercises its rights under clause 9.11 or this clause; and
 - (iii) notwithstanding paragraph (g), may give a notice under paragraph (h) at any time after it has commenced to exercise its rights under clause 9.11.

- (j) Any dispute or difference as to whether an Operating Default has occurred or as to the measures required to remedy that default may be referred for expert determination under Article 16, but any such reference shall not operate to delay the exercise of rights under clause 9.11 pursuant to paragraph (b) of this clause.

9.12A

Spot Audits by the State

- (a) Subject to its compliance with this clause 9.12A, the State may, at its absolute discretion, conduct a Spot Audit:
 - (i) from time to time during the Concession Period;
 - (ii) whether itself or through an agent (whether a Government Agency (including VicRoads) or otherwise).
- (b) The State must give the Company and the Trustee reasonable written notice (“**Spot Audit Notice**”) of its intention to conduct a Spot Audit. That notice must detail:
 - (i) the persons who will be conducting the Spot Audit;
 - (ii) the scope of the Spot Audit; and
 - (iii) the equipment, information and systems that the persons conducting the Spot Audit will require access to.
- (c) The State may only conduct a Spot Audit if its Spot Audit Notice is accompanied by the Minister's written authorisation of the notice and the matters in it.
- (d) The State may revise (whether by way of addition, omission or other change) the matters in the Spot Audit Notice, either before, during or after the conduct of the Spot Audit, if the revisions are in accordance with this clause, the Minister authorises the revisions and the State gives the Company and the Trustee reasonable notice of the revisions.
- (e) The State must ensure that the Spot Audit is conducted in accordance with the Spot Audit Notice (including any revisions under clause 9.12A(d)).
- (f) The State must reasonably consult with the Company and the Trustee during the conduct of the Spot Audit, by:
 - (i) allowing the Company and the Trustee to make submissions to the State and its agent in relation to the Spot Audit and to respond to the Spot Audit's draft findings, reports and recommendations; and
 - (ii) providing the Company and the Trustee with a copy of the Spot Audit's final findings, reports and recommendations.
- (g) The Company and the Trustee must:

- (i) co-operate with the State or its agent and facilitate the conduct of the Spot Audit; and
 - (ii) ensure that the Operator co-operates with the State or its agent and facilitates the conduct of the Spot Audit.
- (h) The State must ensure that, in conducting a Spot Audit:
- (i) there is no disruption to the SLU Works or CTW Works, CTW Maintenance Activities or WGT Works undertaken on Project Land unless otherwise agreed by the parties;
 - (ii) any disruption to the operation, maintenance or repair of the Link is, as far as is reasonably possible given the scope of the Spot Audit, minimised; and
 - (iii) the State and its agent comply with the Company's and the Operator's reasonable (having regard to the scope of the Spot Audit) directions in relation to health, safety and access to the Link, including by obtaining any work permits that the Company or the Operator would ordinarily require from a third party, on reasonable terms, for the conduct of work similar to the Spot Audit.
- (i) The State must bear all its costs of conducting a Spot Audit and reimburse the Company and the Trustee, within 30 days of a written request, for all:
- (i) extra costs actually and reasonably incurred to an external third party;
 - (ii) material internal overheads in respect of internal personnel and resources which are required due to the unreasonably frequent nature of Spot Audits; and
 - (iii) lost tolling revenue actually and reasonably incurred,

by either of them as a result of the Spot Audit, subject to the Company and the Trustee providing the State with all such information and documents as may be reasonably necessary to demonstrate that those costs, overheads and lost tolling revenue have been incurred.

For the avoidance of doubt, the Company and the Trustee will have no entitlement under this clause 9.12A to any costs:

- (iv) incurred in remedying any breach identified by the Spot Audit;
- (v) arising as a result of the Company or the Trustee implementing recommendations made by the Spot Audit (unless agreed by the parties); or

- (vi) incurred by the Company or the Trustee prior to the commencement of the Spot Audit.
- (j) The State does not assume or owe any duty of care to the Company or the Trustee:
 - (i) to conduct a Spot Audit; or
 - (ii) in conducting a Spot Audit to identify:
 - (A) any failure by the Company, the Trustee, the Project or the Link to comply with the requirements of this Deed, the Project Scope and Technical Requirements, the Operation and Maintenance Manuals, the Emergency Management Plan, the Operations Quality Plan, the Incident Management Quality Plan or any other Law, regulation or requirement; or
 - (B) any other damage to or defect in the Link.
- (k) No Spot Audit conducted, no act or omission by or on behalf of the State arising out of or in connection with a Spot Audit, and no failure to conduct a Spot Audit will:
 - (i) relieve the Company or Trustee from, or alter or affect, the Company's or the Trustee's liabilities or responsibilities whether under this Deed or otherwise according to law; or
 - (ii) prejudice the State's rights against the Company and the Trustee whether under this Deed or otherwise according to law.
- (l) Any dispute or difference under or in relation to this clause 9.12A or clause 9.13A may be referred for expert determination under Article 16.²⁸⁷

9.13 Access

Subject to clauses 4.10 and 4.11, the Company shall co-operate with the State, Government Agencies, Utilities and other persons in ensuring that they are given reasonable access to the Project Land, SLU Lay Down Areas and CTW Extra Land to enable them to carry out repair and maintenance work to roadways and structures situated on, below, above or adjacent to the Link.

9.13A Access and provision of information

Without limiting the State's rights under clauses 4.10 and 4.11, the Company shall:

- (a) provide the State or its agent (whether a Government Agency (including VicRoads) or otherwise) access to such:
 - (i) equipment, information and systems of the Company and the Trustee; and
 - (ii) parts of the Link,

as have been identified in the State's Spot Audit Notice (including any revisions under clause 9.12A(d)) and that the State or its agent may reasonably require when conducting a Spot Audit under clause 9.12A; and

- (b) procure access to such equipment, information and systems of the Operator as have been identified in the State's Spot Audit Notice (including any revisions under clause 9.12A(d)) and that the State or its agent may reasonably require when conducting a Spot Audit under clause 9.12A.²⁸⁸

9.14 Damages and Step-In

If the State or its nominee exercises the right vested in the State under clause 9.11 consequent upon the occurrence of an Operating Default, neither the Company nor the Trustee shall be liable in damages to the State for the particular failure to perform an obligation which comprised part of that Operating Default. The exercise of that right shall not, however, otherwise extinguish, qualify or limit any other right, remedy or power of the State.

9.15 Emergency Exercises

- (a) During the Concession Period, the Company will conduct:
 - (i) an Annual Emergency Exercise at least once a year, other than in a year where a Triennial Emergency Exercise is conducted; and
 - (ii) a Triennial Emergency Exercise at least once every three years,

from the Operative Date (as defined in the Nineteenth Amending Deed) of the Nineteenth Amending Deed in conjunction with the Emergency Services and other relevant organisations.

- (b) The Company, together with the Operational Committee, must review in light of, and to address issues arising out of, Annual Emergency Exercises and Triennial Emergency Exercises, the Operation and Maintenance Manuals, Operations Quality Plan, Emergency Management Plan and Incident Management Quality Plan at least once every twelve months from the Operative Date (as defined in the Nineteenth Amending Deed) of the Nineteenth Amending Deed during the Concession Period.²⁸⁹

9.16 Operational Committee

- (a) The parties shall establish and maintain, during the Concession Period, the Operational Committee.
- (b) The Operational Committee shall have no legal responsibility to any of the parties and shall not have any power to require any of the parties to act or refrain from acting in any way, with the exception that the State shall outline to the Operational Committee any proposals of the type to which paragraph 2.4(d) applies.

- (c) The Operational Committee:
 - (i) will act as a liaison between the Company, the Operator, Clepco, VicRoads, the State and its agencies; and
 - (ii) may discuss, on an informal basis, and may deal with matters relating to the Link, the Project, the Project Documents, the Exhibition Street Extension, ESEP Project, ESEP Project Documents, the SLU or the CTW including:
 - (A) traffic integration;
 - (B) public safety;
 - (C) changing standards;
 - (D) incidents;
 - (E) co-ordination and consistency with the Victorian road network including the treatment of the Link in the context of Victoria's transport infrastructure and, in particular, issues arising in relation to the treatment of the road connecting the Southern Link to the Western Link;
 - (F) the Works;
 - (G) the SLU Works;
 - (H) the CTW Works; and
 - (I) the CTW Maintenance Activities.
- (d) The Operational Committee shall:
 - (i) meet no less frequently than quarterly, and more frequently if so agreed by its members; and
 - (ii) conduct its meetings in such manner as its members may from time to time agree.
- (e) Each meeting of the Operational Committee shall be attended by such members of the Operational Committee as are required by reference to the matters to be discussed at that meeting.²⁹⁰

9.17

Joint Operational Interface Protocol

- (a) The State and the Company must negotiate in good faith prior to completion of the State Project FMS (and to the extent not agreed by that date, as soon as practicable thereafter) to develop and agree the Joint Operational Interface Protocol.
- (b) If the Joint Operational Interface Protocol is agreed, each party agrees to actively and, where appropriate, co-operatively, implement the Joint Operational Interface Protocol and must consider in good faith any proposal by

the other party to amend the Joint Operational Interface Protocol (but is not obliged to accept it).

- (c) The Company and the State shall negotiate in good faith to seek to establish (and, if established, maintain) a Centre to Centre Interface to facilitate the safe and efficient passage of vehicles through the Monash Freeway, Southern Link, the West Gate Freeway and Western Link (between Toorak Road and Bolte Bridge).

9.18 Groundwater Recharge Direction

- (a) Notwithstanding any other provision of this Deed, the State may at its discretion and by written direction:
 - (i) direct the Company to reinject less water into aquifers than is required to achieve Net-Balance Level; or
 - (ii) direct the Company to reinject more water (including potable water) into aquifers than is required to achieve Net-Balance Level,

within a reasonable minimum notice period having regard to the nature of the direction.

- (b) A direction under this clause 9.18 will detail the:
 - (i) date the direction is to commence;
 - (ii) duration of the direction;
 - (iii) recharge well(s) the direction applies to; and
 - (iv) source of the water to be used.
- (c) The Company must comply with all directions issued by the State under this clause 9.18 to the extent permitted by Law and its licensing requirements.
- (d) If the Company receive a direction under clause 9.18(a)(i), the Company may:
 - (i) safely dispose of the excess water;
 - (ii) provide the excess water to other potential users; or
 - (iii) otherwise use the water,

in accordance with all Laws.

- (e) Within three months of the Company providing evidence of reasonable costs properly incurred to comply with a direction under clause 9.18(a)(ii), the State must reimburse the Company for all reasonable costs properly incurred.
- (f) For the avoidance of doubt, if the Company's inability to achieve Net-Balance Level is caused or contributed to by the Company, any water purchased or used by the Company and the Trustee to achieve Net-Balance Level will be at the cost of the Company and the Trustee.

- (g) If the Company disputes all or any part of costs payable under this clause 9.18:
 - (i) the Company must continue to undertake the direction;
 - (ii) the State must pay the undisputed amounts payable pursuant to clause 9.18(e); and
 - (iii) either party may refer the matter for expert determination under Article 16.

9.19 Towing of vehicles and debris

The Company and the Trustee will be relieved of their incident clearance obligations under this Deed to the extent they are prevented from complying due to an Accident Towing Licence Event.

10. MAINTENANCE AND REPAIR

10.1 Maintenance and Repairs

- (a) Subject to clauses 4.6, 10.1(cb) and 13.7, during the Concession Period the Company shall maintain, and shall promptly repair and make good any damage to or defect in, the Link to maintain the standards of finish, quality and condition set out or referred to in the Project Scope and Technical Requirements and to the extent that the Project Scope and Technical Requirements have not been updated in accordance with clause 3.1 of the CTC Redevelopment Deed, the SWTC (in relation to the WLU only and other than in respect of noise attenuation), the Design Documentation, the SLU Design Documentation, the CTW Design Documentation (to the extent relevant to Western Link) and the Operation and Maintenance Manuals.
- (b) The Company shall perform its obligations under paragraph (a) in the manner (if any) set out or referred to in the Project Scope and Technical Requirements and the Operation and Maintenance Manuals and as if the performance of those obligations comprised, where relevant:
 - (i) "Works" as referred to in clause 7.11(a);
 - (ii) "SLU Works" as referred to in clause 7A.11(a); or
 - (iii) "CTW Works" as referred to in clause 7D.11(a).
- (c) Paragraph (a) does not apply to the extent that any damage to or defect in the Link is a consequence of any negligent, wilful or reckless act of the State, of any of its nominees or contractors engaged in the context of an exercise by the State of its rights under clause 9.11 (or under clause 4.7 of the Master Security Deed) or any Victorian Government Agency and the State hereby indemnifies the Company and the Trustee with respect to any loss, cost, expense or

damage suffered as a result of such damage or defect. This paragraph (c), however, does not apply insofar as its application would be inconsistent with the acceptance of risk provided for under, or any representation, warranty, undertaking, waiver or acknowledgment provided for in, any of paragraphs 4.6(b) to 4.6(f), inclusive, or any of clauses 5.2, 7.1, 7A.1, 7D.1, 7.1A, 7.2, 7A.2, 7D.2, 7.3, 7A.3, 7D.3, 12.2 or 12.7.²⁹¹

(ca) In respect of the Interchange Works, the obligation of the Company under paragraph (a) does not apply to the extent that any damage to or defect in the Interchange Works is a consequence of breach by the State of its obligations under clause 7C.1(b) or is one which:

- (i) was subsisting at Interchange Completion; and
- (ii) if identified at or prior to Interchange Completion, would have entitled the Company and the Trustee to refuse to certify that Interchange Completion had occurred,

and the State hereby indemnifies the Company and the Trustee with respect to any loss, cost, expense or damage suffered as a result of such damage or defect.

(cb) Subject to paragraph (cc), the State acknowledges and agrees that the Company and the Trustee will only be obliged to operate, maintain, repair, make good or reinstate any CTW Interface Works which are carried out on the Project Land by the State or its Associates to the standard or scope of those CTW Interface Works as at completion of those works and any representations of the Company and the Trustee under this Deed in relation to those CTW Interface Works are similarly limited to the standard or scope of the CTW Interface Works as at that date.

(cc) The parties agree that to the extent that the Company and Trustee subsequently replace or refit the CTW Interface Works described in paragraph (cb), then clause (cb) will not apply to those CTW Interface Works.

(d) For the purposes of this clause the expression "the Link" includes the improvements and equipment on those Sections which have reached Completion and the improvements and equipment on those SLU Sections which have reached SLU Section Practical Completion and the improvements and equipment on those CTW Sections which have reached CTW Section Practical Completion (to the extent within the WLU Project Land) and the CityLink Returned Works from and including the CityLink Returned Works Date of Handback. Whilst the Company permits public use of a:

(i) Section under clause 9.3(b), the expression also includes any Works which are required to be completed prior to permitting public use of that Section under that clause;²⁹²

- (ii) SLU Section under clause 9.3A(b), the expression also includes any SLU Works which are required to be completed prior to permitting public use of that SLU Section under that clause; or
 - (iii) CTW Section under clause 9.3B(b), the expression also includes any CTW Works which are required to be completed prior to permitting public use of that CTW Section under that clause.
- (e) For the purposes of this clause the expression "the Link" includes:²⁹³
- (i) the pedestrian structure across Mt Alexander Road adjacent to the Upfield Rail line including:
 - (A) the structure over the Mt Alexander City Link exit ramp;
 - (B) the off ground approaches (including footings) to the structure; and
 - (C) all attachments to the structure (for example, gateway panels); and
 - (ii) the shared pathway generally located on the eastern side of the Moonee Ponds Creek between Footscray Road and Arden Street including:
 - (A) the main pathway generally running north south between Footscray Road and Arden Street and 0.5 metres on either side of that path ("**main path**");
 - (B) the connecting paths between the main path and cross roads;
 - (C) all underpasses and associated drainage and pumping infrastructure; and
 - (D) associated items such as signage, drink fountains, bollards and head impact protectors.

10.2 Reports

- (a) Every 6 months during the Concession Period, the Company shall give the State and VicRoads a written report of all maintenance and repairs carried out on the Link during the previous 6 month period, with details of the procedures and materials used.
- (b) The report referred to in paragraph (a) shall be in a form reasonably acceptable to the State.

10.3 Inspection

The Company shall inspect each Section at least once a month to determine its state of repair.

10.4 Notifications

During the Concession Period, the Company shall promptly give the State a detailed written report of:

- (a) any material damage to, or defect or disrepair in a Section of which it is aware;
- (b) the action the Company proposes to take to remedy that material damage, defect or disrepair and the estimated time the proposed remediation will require; and
- (c) any serious accidents involving injury or damage of which it is aware which occur on a Section.

10.5 Engagement of Contractor

- (a) Subject to clause 10.10, the Company may sub-contract the performance of some or all of its obligations under Article 10 and shall give the State prior notice including reasonable details of the relevant Contractor.
- (b) The engagement of a Contractor under paragraph (a) will not limit or affect the Company's obligations or liability under this Deed.

10.6 Operation, Maintenance and Repair during Construction

The parties agree and acknowledge that during the construction of the Interchange Works or the performance of any CTW Interface Works the Company will:

- (a) subject to clause 13, remain responsible for the operation, maintenance and repair of; and
- (b) continue to perform the functions and exercise the powers conferred on the Company under the Road Management Act 2004 (Vic) in respect of,

the Link (including, in respect of the Interchange Works, the part of the Link that consists of the Interchange Land).

10.7 Legislative Requirements

- (a) The State acknowledges and agrees that the Company is required to comply with various legislative requirements in operating, maintaining and repairing the Link including those relating to occupational health and safety, the environment, road safety and anti-terrorism.
- (b) The State must:
 - (i) to the extent applicable, comply with those requirements in executing the Interchange Works;
 - (ii) not, by any act or omission, cause the Company to be in breach of those requirements; and
 - (iii) indemnify the Company against any claim, demand, damage, expense, loss or liability brought against or suffered, or incurred or payable by the Company arising from the State failing to

comply with sub-paragraphs (i) or (ii) but only to the extent that the claim, demand, damage, expense, loss or liability resulted from or was caused or contributed to by the act or omission of the State.

10.8 Regional Rail Link Project

The parties acknowledge and agree that:

- (a) works will be undertaken by John Holland on behalf of the State as part of the Regional Rail Link Project in the area adjacent to the Dynon Road exit ramp as described in Exhibit NN ("**RRL Project Works**");
- (b) to the extent that:
 - (i) John Holland has access to the area adjacent to the Dynon Road exit ramp for the purposes of carrying out the RRL Project Works (including demobilisation on completion of the works); or
 - (ii) the RRL Project Works remain on the Link following the completion of those works and have not been constructed in accordance with the standards required by the Project Scope and Technical Requirements,

the Company and the Trustee will:

- (iii) not be in breach of any of its obligations under this Deed (including the Company's obligations with respect to the Project Scope and Technical Requirements or handover) to the extent that:
 - (A) the Company is prevented from complying with its obligations by John Holland carrying out the RRL Project Works; or
 - (B) the RRL Project Works are not being constructed in accordance with the standards required by the Project Scope and Technical Requirements;
- (c) the Company will only be obliged to operate, maintain, repair, make good, reinstate or surrender the RRL Project Works to the standard they were constructed;
- (d) to the extent RRL Project Works remain on the Link and the State requires access to the RRL Project Works, the State shall obtain any work permits that the Company or the Operator would ordinarily require from a third party, on reasonable terms, for the conduct of that type of work; and
- (e) to the extent that any RRL Project Works are constructed on any part of the Project Land and the Company and/or the Trustee agrees to surrender that part of the Project Land, the State shall prepare all relevant documents

associated with the surrender and shall bear the reasonable costs and expenses (including legal costs and expenses) incurred by the Company and the Trustee in relation to the preparation, negotiation and execution of any documentation required to give effect to such transaction or arrangement, and cost, impost or charge in relation to such documentation.

10.9 Key People and Key Subcontractors

- (a) The Company must:
 - (i) ensure that the Key People and Key Subcontractors are employed or engaged in the roles specified in the definition of Key People and Key Subcontractor (as applicable);
 - (ii) procure from the Operator (if the Operator is Transurban Vic Op Co Pty Limited ACN 621 893 945) an executed direct deed in the form of the OSA Direct Deed;
 - (iii) subject to:
 - (A) clause 10.9(a)(iv); and
 - (B) clause 10.9(c) in the case of the Operator,not replace the Key Subcontractors and ensure that the Key People are not replaced without the State's prior consent (which will not be unreasonably withheld or delayed); and
 - (iv) if any of the Key People die, become seriously ill or resign from the employment of the Operator or receive a promotion, procure the replacement of the relevant Key People with persons approved by the State (not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise.
- (b) The Company must not replace the Operator without the State's prior written consent (which will not be unreasonably withheld or delayed).
- (c) If the Company requests the State's consent to replace the Operator in accordance with paragraph 10.9(b), the State must not withhold such consent where:
 - (i) the State has been provided with:
 - (A) details of the proposed replacement subcontractor; and
 - (B) the terms and conditions on which the proposed replacement subcontractor is to be engaged;

- (ii) in the State's reasonable opinion, the proposed replacement subcontractor is a reputable corporation;
- (iii) in the State's reasonable opinion, the proposed replacement subcontractor (whether by itself or by way of support from its shareholders in a form acceptable to the State acting reasonably):
 - (A) has sufficient expertise and ability; and
 - (B) is of sufficiently high financial and commercial standing,

to properly carry out the obligations which were carried out by the Operator under the relevant Project Documents;

- (iv) the terms and conditions on which the proposed replacement subcontractor is to be engaged are reasonably acceptable to the State;
 - (v) the proposed replacement subcontractor has agreed to be bound by the terms of the relevant Project Documents; and
 - (vi) a person other than the State bears all reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - (A) any enquiries which the State may make for the purposes of determining whether to consent to the replacement of the Operator;
 - (B) the procurement of a replacement subcontractor; and
 - (C) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.
- (d) If the Company provides the Operator OpCo Notice or replaces the Operator in accordance with clause 10.9(a), the State must procure that the Governor in Council, by Order published in the Victorian Government Gazette declares the replacement Operator to be the 'Link operator' for the purposes of the Project Legislation.

10.10

Subcontracting

- (a) The Company must not, and must procure that the Operator does not, engage any subcontractor in relation to the Project, unless the proposed subcontractor has the financial capacity, experience and capability to perform the obligations of the Company to be subcontracted to at least the standards required under this Deed including the Project Scope and Technical Requirements.

- (b) The Company must ensure that all persons employed or engaged on the Project hold appropriate qualifications and have received appropriate training for their intended duties, and provide evidence of such qualifications and training to the State as reasonably requested.
- (c) If the State notifies the Company of any person employed or engaged in relation to the Project who, in the State's reasonable opinion, is incompetent, does not meet the standard required by clause 10.10(b), or is negligent, dishonest, guilty of misconduct or fraudulent, then the Company must promptly:
 - (i) remove the person or ensure that such person is promptly removed from working on the Project;
 - (ii) replace the person or ensure that such person is promptly replaced; and
 - (iii) ensure that the person is not again employed or engaged on the Project.
- (d) The Company and Trustee must if the State requires, give the State access to (or copies of, upon request) any proposed or executed subcontract (other than Enterprise-wide Subcontracts) (regardless of whether the Company or the Trustee is a party to that contract) relating to the operation, maintenance and repair of the Link and all plans, specifications and drawings relating to that subcontract.
- (e) The Company and Trustee must not, and must procure that the Operator and its related bodies corporate do not, enter into Enterprise-wide Subcontracts or Service Agreements which contain exclusivity obligations which would restrict the ability of the State or its nominee to utilise the products, services or rights that are provided under the relevant subcontract for the purposes of the Project.

10.11

Key Subcontracts and Material Subcontracts

- (a) The Company and the Trustee must not themselves amend, terminate, rescind, novate or assign or allow at any time amendment to, or termination, rescission, novation or assignment of a Key Subcontract, Material Subcontract or Service Agreement without the State's prior consent (which will not be unreasonably withheld or delayed) other than in accordance with the OSA Direct Deed.
- (b) The Company and the Trustee must not, and must procure that the Operator does not, at any time:
 - (i) enter into a Material Subcontract; or
 - (ii) enter into a Service Agreement,without the State's prior consent, which consent must not be unreasonably withheld or delayed.

- (c) If either the Company or the Trustee requests the State's consent in accordance with clause 10.11(a) or (b), the State must not withhold such consent where:
- (i) the Material Subcontract or Service Agreement, or amendment to the Key Subcontract, Material Subcontract or Service Agreement (as applicable) is on commercial terms which have been negotiated on an arm's length basis; and
 - (ii) a copy of the Material Subcontract or Service Agreement, or amendment to the Key Subcontract, Material Subcontract or Service Agreement (as applicable) has been given to the State.
- (d) The Company must ensure that each Key Subcontract and Material Subcontract includes a clause which provides that, if this Deed is terminated in accordance with clause 15 of this Deed:
- (i) subject to the terms of OSA Direct Deed, the Company, the Trustee, the Operator or other relevant party may terminate the relevant subcontract; and
 - (ii) the Company, the Trustee, the Operator or other relevant party (in the case of the Company and the Trustee, excluding the Operator and, in the case of the Operator, excluding any subcontractor that has entered into a Service Agreement) will pay to the relevant subcontractor an early termination amount which is no greater than the aggregate of:
 - (A) the contract value of the work or services properly executed in accordance with the subcontract up to the date of termination;
 - (B) reasonable costs and expenses properly incurred up to the date of termination in expectation of completing the work or services under the subcontract;
 - (C) liabilities to third parties (excluding any related body corporate, other than to the extent the related body corporate is engaged on an arm's length basis and on commercial terms) for termination; and
 - (D) 10% of the unpaid balance of the contract sum on account of early termination that would have been payable to the relevant subcontractor in accordance with the subcontract (after deducting the amounts payable in accordance with clauses 10.11(d)(ii)A to (d)(ii)C) but for the termination, for the 12 month period from the date of the termination,

less the total amounts already paid on account of the contract sum.

- (e) The Company must not engage a subcontractor in respect of a Key Subcontract or a Material Subcontract, unless the Key Subcontract or Material Subcontract (as applicable) contains further provisions expressly recognising and permitting the exercise by the State of its rights under, and contains all relevant provisions prescribed by, (if applicable) clauses 2.4(b), Handover Clauses, 9.11, 10.9, 10.11, 13.4, 13.5, 13.6, 14, 15 and 19.3.

10.12 Grandfathering

Until the earlier of:

- (a) the date on which:
 - (i) the terms of a Material Subcontract is renegotiated by the parties to it;
 - (ii) a Material Subcontract is terminated and replaced with a new Material Subcontract for the provision of the same type of goods or services; or
 - (iii) the term of a Material Subcontract is extended other than in accordance with an existing option to extend; and
- (b) the Date of West Gate Tunnel Completion,

the State agrees that the Company will be relieved of its obligations under:

- (c) clause 10.11(e) in respect of that Material Subcontract; and
- (d) clause 10.10(c) to the extent that terms of that Material Subcontract do not give the Company the right to require the removal, replacement or restriction on further employment or engagement referred to in that clause.

10.13 Enterprise-wide Subcontracts

The Company must within 30 Business Days following:

- (a) the WGT Date of Tolling Completion; and
- (b) thereafter, each anniversary of the date of WGT Financial Close,

provide the State with the following information in relation to each Enterprise-wide Subcontract:

- (c) the identity of the counterparties to the Enterprise-wide Subcontract; and
- (d) the nature of the goods or services provided or to be provided, or rights granted or to be granted, under the Enterprise-wide Subcontract.

11. FINANCE

11.1 Approach to Relevant Circumstances

- (a) If a Relevant Circumstance arises:
- (i) the parties must promptly meet to discuss the manner in which a payment made by the Company will or is likely to be treated for income tax purposes from the perspective of the relevant taxpayer. For the avoidance of doubt, if the Company is a subsidiary member of a tax consolidated group, the relevant taxpayer will be the head company of that tax consolidated group;
 - (ii) the Company must notify the State if it considers that there is a material risk of the amounts not being deductible, including having regard to previous private rulings from the Commissioner of Taxation in relation to similar circumstances, issues or questions of law;
 - (iii) the State may notify the Company no later than 20 Business Days prior to the first Relevant Circumstances Payment Date in respect of that Relevant Circumstance whether it requires a private ruling to be sought from the Commissioner of Taxation to confirm whether the Relevant Circumstances Amount is deductible for income tax purposes and if the State fails to notify the Company by that date, the State will be deemed to have notified the Company that a private ruling is to be sought from the Commissioner of Taxation to confirm whether the Relevant Circumstances Amount is deductible for income tax purposes;
 - (iv) the Company must comply with a notice from the State under clause 11.1(a)(iii); and
 - (v) the State will provide reasonable assistance to the Company to enable a private ruling to be sought from the Commissioner of Taxation to confirm whether the Relevant Circumstances Amount is deductible for income tax purposes, and the Company will have regard to any reasonable comments or requests of the State in relation to the form or content of the private ruling request.
- (b) If, on a Relevant Circumstances Payment Date:
- (i) the State notifies or is deemed to have notified the Company under clause 11.1(a)(iii) that it requires a private ruling to be sought from the Commissioner of Taxation to confirm whether the Relevant Circumstances Amount is deductible for income tax purposes but the Commissioner of Taxation has not ruled on the application;

- (ii) the State has not required a private ruling to be sought in relation to the Relevant Circumstances Amount and the Company considers that there is a material risk of the amounts not being deductible, including having regard to previous private rulings from the Commissioner of Taxation in relation to similar circumstances, issues or questions of law, then:
 - (iii) the Company must pay the portion of the Relevant Circumstances Amount equal to a factor of one minus the then current applicable tax rate on the Relevant Circumstances Payment Date;
 - (iv) where clause 11.1(b)(i) applies, the Company's obligation to pay the remainder of the Relevant Circumstances Amount on the Relevant Circumstances Payment Date will be deferred until the later of the date that is 20 Business Days after the earlier of the date on which the Commissioner of Taxation:
 - (A) issues a private ruling confirming that the Relevant Circumstances Amount is deductible for income tax purposes; or
 - (B) notifies the applicant of the private ruling that the Commissioner of Taxation declines to hear or rule on the application for the private ruling; and
 - (v) where clause 11.1(b)(ii) applies, the Company will not be required to pay the remainder of the Relevant Circumstances Amount unless the Company, or the head company of the tax consolidated group of which the Company is a subsidiary member, lodges a tax return with the Australian Taxation Office that claims an amount of the Relevant Circumstances Amount as deductible for income tax purposes in which case the Company must pay the remainder of the Relevant Circumstances Amount within 20 Business Days of the date that the relevant tax return is lodged with the Australian Taxation Office.
- (c) The Company must pay to the State interest on the remainder of any Relevant Circumstances Amount that is payable in accordance with clause 11.1(b)(iv) or clause 11.1(b)(v) (as applicable):
 - (i) from the date on which the portion of the Relevant Circumstances Amount was paid under clause 11.1(b)(iii) until the date on which the remainder of the Relevant Circumstances Amount is paid in accordance with clause 11.1(b)(iv) or clause 11.1(b)(v) (as applicable); and

- (ii) calculated on daily balances at the Reference Rate.
- (d) The State acknowledges and agrees that payments deferred pursuant to clause 11.1(b)(iv) may not be set-off against any amounts payable by the State and will not be payable on termination of this Deed other than to the extent such amounts have become payable in accordance with clause 11.1(b)(iv).
- (e) If the State notifies or is deemed to have notified the Company that a private ruling from the Commissioner of Taxation is required in accordance with clause 11.1(a)(iii), and following the application for a private ruling, the Commissioner of Taxation:
 - (i) rules that the Relevant Circumstances Amount is not deductible for income tax purposes, then the Relevant Circumstances Amount payable to the State will be adjusted by a factor of one minus the then current applicable tax rate;
 - (ii) rules that the Relevant Circumstances Amount is deductible for income tax purposes, then the Relevant Circumstances Amount payable to the State will not be adjusted and clause 11.1(b)(iv) will apply; or
 - (iii) declines to hear or rule on the application for the private ruling, then the Relevant Circumstances Amount will not be adjusted and clause 11.1(f)(ii) will apply.
- (f) If:
 - (i) the State notifies the Company that no private ruling from the Commissioner of Taxation is required in accordance with clause 11.1(a)(iii); or
 - (ii) the Commissioner of Taxation declines to hear or rule on the application for private ruling as contemplated by clause 11.1(e)(iii),

and the Company, or the head company of the tax consolidated group of which the Company is a subsidiary member, subsequently incurs a tax liability as a result of:

- (iii) lodging a tax return with the Australian Taxation Office that claimed an amount of the Relevant Circumstances Amount as deductible for income tax purposes; and
- (iv) the Commissioner of Taxation determining that an amount of the Relevant Circumstances Amount claimed as a deduction is not tax deductible for income tax purposes in that period,

the State must (to the extent that it has received the Relevant Circumstances Amount in full from the

Company) pay to the Company an amount equal to the net amount, including taxes, fines, penalties and/or interest, payable to the Commissioner of Taxation by the Company (or the head company of the tax consolidated group of which the Company is a subsidiary member) as a consequence of the Relevant Circumstances Amount not being deductible for income tax purposes (**Relevant Circumstances Tax Liability**) within 20 Business Days of receiving a notice under clause 11.1(g).

- (g) The Company must notify the State as soon as reasonably practicable:
 - (i) that it, or the head company of which it is a subsidiary member, has incurred a tax liability as contemplated by clause 11.1(f);
 - (ii) the breakdown of the calculations to determine the Relevant Circumstances Tax Liability; and
 - (iii) any other information reasonably requested by the State to allow it to verify the Relevant Circumstances Tax Liability.

11.2 Not Used

11.3 Insurance Proceeds Accounts

- (a) Not later than the date of WGT Financial Close, the Company and the Trustee shall jointly establish an account to be known as the Insurance Proceeds Account and thereafter maintain such account in the name of the Company and the Trustee, and whilst the Project Debt, CTW Project Debt or WGT Project Debt is outstanding, the Security Trustee with a financial institution nominated by the Company and approved by the State (such approval not to be unreasonably withheld) or with a financial institution which is a party to the Master Security Deed.
- (b) Each of the Company, the Trustee and the State shall deposit any amount it receives under any insurance policy taken out in compliance with clauses 13.3(a)(i), 13.3A(a)(i) and 13.4(a)(i) of this Deed (other than insofar as any such amount comprises compensation for loss of revenue) into the Insurance Proceeds Account.
- (c) If insurance proceeds of policies taken out in compliance with clauses 13.3(a)(i), 13.3A(a)(i) and 13.4(a)(i) of this Deed are paid, those proceeds are to be applied for the repair and reinstatement of the Link or relevant part thereof in accordance with this Deed, subject however to the provisions of the Master Security Deed.
- (d) The non-application of insurance proceeds of the type to which paragraph (c) applies in the manner described in that paragraph as a result of the operation of clause 7.2 of the Master Security Deed is deemed to give rise to a Material Adverse Effect.

11.4 Taxes

Subject to clauses 4.9 and 12.6, each of the Company and the Trustee shall pay all Taxes levied on it and all Taxes properly charged to it by reference to the ownership or occupation of the Project Land and the Lay Down Areas or the operation of the Link.

11.5 Stamp Duty

As between the State and the Company and the Trustee, the Company and the Trustee will pay or procure the payment of all stamp duties and other Taxes and fees levied or payable in respect of the Project Documents or any transaction or instrument contemplated in any of them.

11.6 Certificate

A statement given by a party certifying an amount payable by another party under this Deed or another Project Document shall be prima facie evidence of the amount that is due and owing by that other party.

11.7 Interest

If the Company, the Trustee or the State does not pay any amount owing under a Project Document to another party to that document by the due date, it shall pay to that person on demand interest on that amount at the Default Rate from the due date for payment until payment is made in full before and (as a separate and independent obligation) after judgment or award. Interest so payable shall be calculated with daily rests and capitalising periodically, with the period being selected by the person to whom the interest is payable, but not being more frequent than monthly. A capitalised amount shall be due for payment on the date it is capitalised and shall bear interest under this clause until paid in full.

11.8 Letter of Credit Support

- (a) The Company and the Trustee must provide to the State before Completion of the last Section to be Completed, a letter of credit which satisfies the requirements of this clause.²⁹⁴
- (b) In order for a letter of credit to satisfy the requirements of this clause, it must be an irrevocable stand-by letter of credit in form and substance satisfactory to the State which, without limitation:
 - (i) specifies the State as sole beneficiary;
 - (ii) specifies the Company and the Trustee as the sole account parties;
 - (iii) does not expire, or provide for reduction of the issuer's liability at any time, before the earliest of:
 - (A) 4 December 2012;
 - (B) the date of issue of a replacement letter of credit which in all respects complies with paragraph (e); and

- (C) the date being 5 Business Days after the termination of this Deed;^{295 296}
 - (iv) vests in the beneficiary a right to require payment of an amount (not exceeding the then applicable maximum liability of the issuer under it) at any time prior to its expiry upon, and subject only to, presentation to the issuer of a draft drawn on the issuer payable to the beneficiary at an office of the issuer in Melbourne on any Business Day;
 - (v) is issued by an issuer approved of by the State (that approval not to be unreasonably withheld);
 - (vi) entitles the beneficiary to make multiple claims under it;
 - (vii) provides for a maximum liability of the issuer at any time equal to the result of deducting from \$20 million the aggregate of any amounts paid to the State prior to that time under the letter of credit.
- (c) The State must not require the issuer of the letter of credit to make any payment under it unless, subject to clause 11.8(f):
- (i) the State reasonably considers that an amount is due and payable to it under (or by reason of a breach of) the Project Documents (or would be so due and payable but for clause 1.9 of the Master Security Deed);
 - (ii) it has given the Company, the Trustee and (while Project Debt, CTW Project Debt or WGT Project Debt is outstanding) the Agent, two Business Days' notice of its intention to make the claim.
- (d) If, in respect of the letter of credit referred to in paragraph (a), the date 4 December 2012 is an earlier date than the date which is the 5th Business Day after the 13th Anniversary of the Date of Completion of the last Section to be completed and if by the date which is 5 days before 4 December 2012 the Company and the Trustee have not procured the issue of a replacement letter of credit pursuant to paragraph (e), then the State will be entitled to make a claim on the issuer of that letter of credit for the full amount remaining to be drawn on the letter of credit and the following provisions will apply:²⁹⁷
- (i) the State will hold that amount in trust account in the joint names of the State, the Company and the Trustee;
 - (ii) the State will be entitled to withdraw from that trust account amounts for its own account if:
 - (A) the State reasonably considers that an amount is due and payable to it in accordance with paragraph (c)(i); and

- (B) the State has given the Company, the Trustee and (while Project Debt, CTW Project Debt or WGT Project Debt is outstanding) the Agent, two Business Days' notice of intention to make the claim; and
 - (iii) the State will refund to the Company and the Trustee the balance (if any) of moneys in that trust account on the earlier of 5 Business Days after termination of this Deed and the date of issue of a letter of credit which complies in all respects with paragraph (e), save that it is issued after the expiry of the letter of credit referred to in paragraph (a).²⁹⁸
- (e) The Company and the Trustee must procure (or ensure that a Transurban Entity procures) the issue in favour of the State of successive letters of credit, each in form and substance satisfactory to the State:
 - (i) the first of which is issued no earlier than 18 months or such earlier date as the State may from time to time agree and no later than 5 Business Days prior to 4 December 2012;^{299 300 301}
 - (ii) the last of which expires 5 Business Days after termination of this Deed;
 - (iii) each of which does not expire, or provide for reduction of the issuer's liability, at any time prior to the later of 3 years from the date of issue and the issue of the next such letter of credit;
 - (iv) subject to sub-paragraph (iii) each of which satisfies the conditions outlined in paragraph (b) but as if:
 - (A) the reference in sub-paragraph (b)(ii) to "the Company and the Trustee" was a reference to "the Company, the Trustee, a Transurban Entity or such other person or persons as the State may from time to time agree"; and
 - (B) the reference in sub subparagraph (b)(vii) to the letter of credit were a reference to the relevant letter of credit and preceding letters of credit.³⁰²
- (f) The State must not require the issuer of the letter of credit to make any payment under it in respect of any breach of this Deed that relates solely to the SLU, the SLU Works, the CTW, CTW Works or the CTW Maintenance Activities.

12. LIABILITY AND RISKS

12.1 Traffic Usage

Neither the State nor any Victorian Government Agency makes on or before the date of this Deed any representation or gives any warranty in respect of traffic usage of the Link or any matter that does or might affect traffic usage, or makes on or before the date being the operative date for the purposes of the Fourth Amending Deed any representation or gives any warranty in respect of traffic usage on the Exhibition Street Extension or CLEP or the effect of the Exhibition Street Extension or CLEP on traffic usage on the Link, or any matter that does or might affect traffic usage with respect to the Exhibition Street Extension or CLEP, or makes on or before the SLU Effective Date any representation or gives any warranty in respect of traffic usage on the SLU or the effect of the SLU on traffic usage on the Link, or makes on or before the CTW Effective Date any representation or gives any warranty in respect of traffic usage on the CTW or the effect of the CTW on traffic usage on the Link.³⁰³

12.1A Acknowledgement of the State - SLU

Neither the Company nor the Trustee makes on or before the SLU Effective Date any representation or gives any warranty in respect of traffic usage of the Link or any matter that does or might affect traffic usage, or makes on or before the SLU Effective Date any representation or gives any warranty in respect of traffic usage on the SLU or the effect of the SLU on traffic usage on the Link.

12.1B Acknowledgement of the State - CTW

Neither the Company nor the Trustee makes on or before the CTW Effective Date any representation or gives any warranty in respect of traffic usage of the Link, the State Road Network or any matter that does or might affect traffic usage, or makes on or before the CTW Effective Date any representation or gives any warranty in respect of traffic usage on the CTW or the effect of the CTW on traffic usage on the Link or the State Road Network.

12.2 Disclaimer

(a) Subject to clauses 7.2 and 14.1, the Company and the Trustee each acknowledge that neither the State nor any Victorian Government Agency or Utility has:

- (i) made any representation;
- (ii) given any advice; or
- (iii) given any warranty,

of any kind in respect of a matter relevant to the Company's or the Trustee's assessment or undertaking of the Project or the Company's or Trustee's decision to enter into any of the Project Documents or Transaction Documents or in respect of any information or data supplied or made available by the State, or any Victorian Government Agency or Utility (including any Design Documentation, any environment

- effects statement prepared under the Environment Effects Act 1978 (Vic), reports or any other information or data) in respect of the Project.
- (b) The Company and the Trustee each warrant that, subject to clauses 7.2 and 14.1 it:
- (i) has not relied on any information, data or other material referred to in paragraph (a) and without limitation has not relied on any such information, data or material in assessing or undertaking the Project or in entering into any of the Project Documents or Transaction Documents;
 - (ii) has relied on its own investigations and enquiries in relation to the accuracy, suitability and completeness of that information or material; and
 - (iii) is aware that the State relied on this warranty in entering this Deed.
- (c) Subject to clause 7.2, each of the Company and the Trustee waives any right which it has at the date of this Deed or may have at any later time to bring any action or make any claim against the State or a Victorian Government Agency or Utility arising (directly or indirectly) out of any alleged negligent act or omission on the part of the State or such Government Agency or Utility in connection with any matter referred to in paragraph (a).
- (ci) The Company and Trustee each repeat the acknowledgement made by them under paragraph (a) as at the date being the operative date for the purposes of the Fourth Amending Deed but as if the references in paragraph (a) to:
- (i) the Project were references to CLEP and the establishment and capitalisation of Clepco;
 - (ii) the Project Documents or Transaction Documents were references to the Fourth Amending Deed and to each instrument or document providing for an amendment to a Project Document, Transaction Document, a certified copy of which was provided under that deed.³⁰⁴
- (cii) Each of the Company and the Trustee warrants that, subject to clauses 7.2 and 14.1A, it:
- (i) has not relied on any information, data or other material relevant to its assessment or undertaking of CLEP, the decision to establish and capitalise Clepco, its decision to enter into the Fourth Amending Deed or its decision to amend the Project Documents and Transaction Documents in the way provided for in the instruments and documents certified copies of which were provided under that deed, or otherwise supplied or made available by the State, any Victorian

- Government Agency or any Utility in respect of CLEP or the Exhibition Street Extension;
- (ii) has relied on its own investigations and inquiries in relation to the accuracy, suitability and completeness of that information, data or material; and
 - (iii) is aware that the State relied on this warranty in entering into the Fourth Amending Deed.³⁰⁵
- (ciii) Subject to clause 7.2, each of the Company and the Trustee waives any right which it has at the date of the Fourth Amending Deed or may have at any later time to bring any action or make any claim against the State or a Victorian Government Agency or Utility arising (directly or indirectly) out of any alleged negligent act or omission on the part of the State or such Government Agency or Utility in connection with any matter relevant to the assessment, undertaking or decision referred to in sub-paragraph (cii)(i).³⁰⁶
- (civ) The Company and the Trustee each repeat the acknowledgement made by them under paragraph (a):
- (i) as at the SLU Effective Date but as if the references in paragraph (a) to:
 - (A) the Project were references to the SLU; and
 - (B) the Project Documents or Transaction Documents were references to the M1 Project Documents,and as if the acknowledgement were made subject to the M1 Corridor Redevelopment Deed; and
 - (ii) as at the CTW Effective Date but as if the references in paragraph (a) to:
 - (A) the Project were references to the CTW; and
 - (B) the Project Documents or Transaction Documents were references to the CTW Project Documents,and as if the acknowledgement were made subject to the CTC Redevelopment Deed.
- (cv) Each of the Company and the Trustee warrants that:
- (i) subject to clauses 7A.2 and 14.1B and the M1 Corridor Redevelopment Deed, it:
 - (A) has not relied on any information, data or other material relevant to its assessment or undertaking of the SLU or its decision to enter into the M1 Project Documents,

- or otherwise supplied or made available by the State, any Victorian Government Agency or any Utility in respect of the SLU;
 - (B) has relied on its own investigations and inquiries in relation to the accuracy, suitability and completeness of that information, data or material; and
 - (C) is aware that the State relied on this warranty in entering into the Twenty-second Amending Deed and giving effect to the M1 Project Documents; and
- (ii) subject to clauses 7D.2 and 14.1C and the CTC Redevelopment Deed, it:
 - (A) has not relied on any information, data or other material relevant to its assessment or undertaking of the CTW or its decision to enter into the CTW Project Documents, or otherwise supplied or made available by the State, any Victorian Government Agency or any Utility in respect of the CTW;
 - (B) has relied on its own investigations and inquiries in relation to the accuracy, suitability and completeness of that information, data or material; and
 - (C) is aware that the State relied on this warranty in entering into the Thirty-third Amending Deed and Thirty-fifth Amending Deed and giving effect to the CTW Project Documents.
- (cvi) Subject to:
 - (i) clause 7A.2, each of the Company and the Trustee waives any right which it has at the SLU Effective Date or may have at any later time to bring any action or make any claim against the State or a Victorian Government Agency or Utility arising (directly or indirectly) out of any alleged negligent act or omission on the part of the State or such Government Agency or Utility in connection with any matter relevant to the assessment, undertaking or decision referred to in sub-paragraph (cv)(i)(A); and
 - (ii) clause 7D.2 and the CTC Redevelopment Deed, each of the Company and the Trustee waives any right which it has at the CTW Effective Date or may have at any later time to bring any action or make any claim against the State or a Victorian Government Agency or Utility arising (directly or

indirectly) out of any alleged negligent act or omission on the part of the State or such Government Agency or Utility in connection with any matter relevant to the assessment, undertaking or decision referred to in sub-paragraph (cv)(ii)(A).

(cvii) Subject to:

(i) clauses 7A.2 and 14.1B and any representations and warranties expressly given under this Deed or any M1 Project Document with respect to the SLU, the State acknowledges as at the SLU Effective Date that neither the Company nor the Trustee has:

(A) made any representation;

(B) given any advice; or

(C) given any warranty,

of any kind in respect of a matter relevant to the State's assessment or undertaking of the M1 Project or the State's decision to enter into any of the M1 Project Documents or in respect of any information or data supplied or made available by or on behalf of the Company or the Trustee, in respect of the M1 Project; and

(ii) clauses 7D.2 and 14.1C and any representations and warranties expressly given under this Deed or any CTW Project Document with respect to the CTW, the State acknowledges as at the CTW Effective Date that neither the Company nor the Trustee has:

(A) made any representation;

(B) given any advice; or

(C) given any warranty,

of any kind in respect of a matter relevant to the State's assessment or undertaking of the CTW or the State's decision to enter into any of the CTW Project Documents or in respect of any information or data supplied or made available by or on behalf of the Company or the Trustee, in respect of the CTW.

(cviii) The State warrants that it:

(i) has not relied on any information, data or other material referred to in paragraph (cvii) and without limitation has not relied on any such information, data or material in assessing or undertaking the:

- (A) M1 Project or its decision to enter into the M1 Project Documents, or otherwise supplied or made available by the Company or the Trustee in respect of the SLU; and
- (B) CTW or its decision to enter into the CTW Project Documents, or otherwise supplied or made available by the Company or the Trustee in respect of the CTW;
- (ii) has relied on its own investigations and enquiries in relation to the accuracy, suitability and completeness of that information or material; and
- (iii) is aware that the Company relied on this warranty in entering into the Twenty-second Amending Deed, the Thirty-third Amending Deed and the Thirty-fifth Amending Deed, and giving effect to the M1 Project Documents and the CTW Project Documents.
- (cix) The State waives any right which it has at the SLU Effective Date or the CTW Effective Date (as applicable) or may have at any later time to bring any action or make any claim against the Company or the Trustee arising (directly or indirectly) out of any alleged negligent act or omission on the part of the Company or the Trustee in connection with any matter relevant to the assessment, undertaking or decision referred to in sub-paragraph (cviii)(i).
- (d) The provisions of clauses 7.1, 7A.1, 7D.1, 7.1A, 7.3, 7A.3, 7D.3, 12.1 and this clause prevail over any inconsistent Victorian Law, and to the extent of any inconsistency, that Law is modified accordingly. This paragraph (d) does not apply to matters occurring (including warranties made or information provided) after the date of this Deed unless those matters relate to:
 - (i) CLEP or Clepco or the Exhibition Street Extension, in which case this paragraph (d) only ceases to apply to such matters after the date being the operative date for the purposes of the Fourth Amending Deed;^{307 308}
 - (ii) the SLU, in which case this paragraph (d) only ceases to apply to such matters after the SLU Effective Date; or
 - (iii) the CTW, in which case this paragraph (d) only ceases to apply to such matters after the CTW Effective Date.

12.3

Risks

Except in relation to obligations or responsibilities expressly undertaken by the State, or the occurrence of events or the existence of circumstances reflecting the crystallisation of risks accepted, or

the occurrence of matters or events responsibility for which has been accepted by the State under the Project Documents, the M1 Corridor Redevelopment Deed and the CTC Redevelopment Deed, the Company and the Trustee each accept all risks relating to the Project, including (and subject to) the following:

- (a) subject to clauses 2.9 and 2.10, the actual cost of the Project (including inflation, cost increases and rates of interest) being greater than the cost estimated;
- (b) subject to clauses 2.9 and 2.10, the traffic flow on the Link being less than estimated or not being economically viable;
- (c) subject to clauses 2.9 and 2.10, the revenue generated from the Link being less than estimated;
- (d) land or interests in land additional to the Project Land, Lay Down Areas, the Off-Site Areas, the SLU Lay Down Areas or the State Returned Works Areas being necessary to enable compliance with the provisions of this Deed relating to the construction and execution of the Works, the SLU Works or the CTW Works or the operation or maintenance of the Link;
- (e) subject to the FMS Operating Agreement, technical obsolescence occurring in relation to the Plant, the Tolling System or otherwise in relation to equipment or systems used in the operation, maintenance or repair of the Link;
- (f) the Tolling System not operating effectively in accordance with its intended purpose as specified in this Deed and the Project Scope and Technical Requirements;
- (g) subject to clauses 2.9 and 2.10 (in relation to items 4 and 5 of the Appendix) and to clauses 12.8 and 14.1, any Law (now or in the future) affecting the nature or extent of its rights or obligations under the Project Documents or Transaction Documents or its ability to exercise those rights or perform those obligations;
- (h) subject to clauses 2.9 and 2.10 and to clauses 8.3 and 15.8 the risk of industrial action;
- (i) inclement weather causing the incurring of delay, increased cost or decreased revenue;
- (j) changes to the SLU Works or CTW Works causing the incurring of delay, increased cost or decreased revenue;
- (k) subject to clauses 2.9 and 2.10 (in relation to item 1 of the Appendix) and to clause 3.3(b), delay in Government Agencies granting usual building permits and construction approvals for construction causing the incurring of delay, increased cost or decreased revenue; and
- (l) subject to clause 13.5, the ability to obtain and maintain insurances in accordance with Article 13,

and neither the Company nor the Trustee shall make any claim for damage loss, expense or seek to be indemnified for any liability from the State arising from any such risk having eventuated.

12.4

Indemnities

- (a) To the maximum extent permitted by Law, the Company and the Trustee each indemnify the State and each Victorian Government Agency against any claim, demand, damage, expense, loss or liability brought against or suffered, incurred or payable by either of the State or any Victorian Government Agency arising out of or in connection with:
 - (i) any defect in the Link which may arise (whether directly or indirectly) as a result of any of the matters, information, data or material referred to in clauses 7.3(a), 7A.3(a), 7D.3(a) and 12.2(a) or to which clause 12.2(c) or 12.2(d) applies; and
 - (ii) use of or reliance upon any of the following by the Company or the Trustee or any of their Contractors, a SLU Construction Contractor or a CTW Construction Contractor:
 - (A) any of the matters, information, data or material referred to in clauses 7.3(a), 7A.3(a), 7D.3(a) and 12.2(a) or to which clause 12.2(c) or 12.2(d) applies; or
 - (B) the Proprietary Documentation, SLU Proprietary Documentation or CTW Proprietary Material.³⁰⁹
- (b) To the maximum extent permitted by Law, the State indemnifies the Company and the Trustee against any claim, demand, damage, expense, loss or liability brought against or suffered, incurred or payable by either of the Company or the Trustee arising out of or in connection with use of or reliance upon any of the following by the State and each Victorian Government Agency or any of their contractors:
 - (i) any of the matters, information, data or material referred to in clause 7A.3(a), 7D.3(a) or to which clause 12.2(e) applies;
 - (ii) the SLU Proprietary Documentation; or
 - (iii) the CTW Proprietary Material.

12.5

Indemnity held on Trust

The State, the Company and the Trustee each declares and acknowledges that:

- (a) each indemnity referred to in clause 12.4 in favour of Victorian Government Agencies is held on trust by the State for the benefit of Victorian Government Agencies from the date of this Deed;

- (b) the consent of a Victorian Government Agency referred to in paragraph (a) shall not be required for any amendment to, or waiver of rights under, a Project Document.

12.6

Rates

The State indemnifies each of the Company and the Trustee in respect of any liability to pay:

- (a) local government rates imposed on it with reference to the Project Land, SLU Lay Down Areas or State Returned Works Areas (except insofar as those rates are imposed on or in relation to the Link control site (within the meaning of the Project Legislation), the Lorimer Street site (within the meaning of the Project Legislation) or the Burnley site);
or³¹⁰
- (b) water and sewerage rates, but only to the extent of any land component of such rates (and excluding such rates insofar as they are imposed on or in relation to the Lorimer Street site or the Burnley site).^{311 312}

12.7

Clean-up Notices

- (a) Subject to paragraphs (b) and (c) and to paragraph 4.2(h), the State indemnifies each of the Company and the Trustee for the reasonable costs of complying with a clean-up notice issued by the EPA under section 62A(1)(a) of the Environment Protection Act (including cleaning up pollution in accordance with such notice) or of cleaning up pollution the continued existence of which is likely to result in the issue of such a notice, in respect of pollution on any part of the Project Land specified as Crown Land in the Property Schedule, or any part of the Lay Down Areas or Off-Site Areas, ("**the Polluted Land**") where the State, a Victorian Government Agency or an occupier of the Polluted Land (while in occupation) caused or permitted the pollution to occur before the earlier of:
 - (i) the later of the date specified in the Agreed Timetable in relation to the parcel of land that included that Polluted Land (which, in the case of an Off-Site Area is deemed to be the date referred to in sub-paragraph 4.2(a)(ii) in relation to that area) and the date the State procures the grant of the licence or powers (as applicable) in relation to that parcel in accordance with paragraph 4.2(a); and
 - (ii) the date on which the Company or the Trustee takes possession of that land.
- (b) The indemnity conferred under paragraph (a) shall not apply in relation to particular pollution if:
 - (i) the existence of such pollution could have been discovered by making a search of publicly available EPA records or registers on 26 April 1995; or

- ii) the existence of such pollution was known to the Construction Contractor before 28 July 1995 or was outlined in letter of 28 July 1995 from Axis Environmental Consultants Pty. Ltd. to, amongst others, the Authority.
- (c) For the purpose of this clause 12.7, paragraph 3(b) of Schedule 2 and Item 2 of column 1 of the Appendix:
 - (i) pollution includes contamination;
 - (ii) the Company and the Trustee shall have the onus of proving in each instance that any particular pollution of land referred to in paragraph (a) existed on that land before the earlier of:
 - (A) the later of the date specified in the Agreed Timetable in relation to the parcel of land that includes the relevant land (which in the case of an Off-Site Area, is deemed to be the date referred to in sub-paragraph 4.2(a)(ii) in relation to that area) and the date the State procures the grant of the licence or power, (as applicable) in relation to that parcel in accordance with paragraph 4.2(a); and
 - (B) the date on which the Company or the Trustee takes possession of that land; and
 - (iii) subject to compliance with sub-paragraph (ii), the State shall have the onus of proving that the pollution was not caused or permitted by the State, a Victorian Government Agency or an occupier of that land (while in occupation).
- (d) It is agreed that any amounts paid or payable by the State under this clause cannot be claimed by the Company or the Trustee when seeking any redress pursuant to clauses 2.9 and 2.10.
- (e) Insofar as the Polluted Land comprises an ESEP Affected Site (within the meaning of the Third Amending Deed), any liability of the State for certain costs under the indemnity conferred by paragraph (a) shall be limited to a proportion of those costs. That proportion equals the result of deducting from 100% the ESEP Proportion (within the meaning of the Third Amending Deed) relevant to the ESEP Affected Site.³¹³

12.7A

Clean-up Notices in respect of SLU

- (a) Subject to paragraphs (b) and (c) and to paragraph 4A.2(h), the State indemnifies each of the Company and the Trustee for the reasonable costs of complying with a clean-up notice issued by the EPA under section 62A(1)(a) of the Environment Protection Act (including cleaning up pollution in accordance with such notice) or of cleaning up pollution the continued existence of which is likely to

result in the issue of such a notice, in respect of pollution on any part of the Project Land specified as Crown Land in the SLU Property Schedule, or any part of the SLU Lay Down Areas, ("**the SLU Polluted Land**") where the State, a Victorian Government Agency or an occupier of the SLU Polluted Land (while in occupation) (other than the Company or the Trustee) caused or permitted the pollution to occur before the earlier of:

- (i) the date specified in the notice from the Company or the Trustee under clause 4A,1 in relation to the parcel of land that included that SLU Polluted Land; and
 - (ii) the date on which the Company or the Trustee takes possession of that land.
- (b) The indemnity conferred under paragraph (a) shall not apply in relation to particular pollution if:
- (i) the existence of such pollution could have been discovered by making a search of publicly available EPA records or registers on 25 July 2006; or
 - (ii) the existence of such pollution was known to the Company or the Trustee before 25 July 2006.
- (c) For the purpose of this clause 12.7A, paragraph 3(b) of Schedule 2 and Item 2 of column 1 of the Appendix:
- (i) pollution includes contamination;
 - (ii) the Company and the Trustee shall have the onus of proving in each instance that any particular pollution of land referred to in paragraph (a) existed on that land before the earlier of:
 - (A) the date specified in the notice from the Company or Trustee in relation to the parcel of land that includes the relevant land; and
 - (B) the date on which the Company or the Trustee takes possession of that land; and
 - (iii) subject to compliance with sub-paragraph (ii), the State shall have the onus of proving that the pollution was not caused or permitted by the State, a Victorian Government Agency or an occupier of that land (while in occupation) (other than the Company or the Trustee).
- (d) It is agreed that any amounts paid or payable by the State under this clause cannot be claimed by the Company or the Trustee when seeking any redress pursuant to clauses 2.9 and 2.10.

12.7B Clean-up Notices in respect of CTW

- (a) Subject to paragraphs (b) and (c) and to paragraph 4C.2(h), and without limiting the CTC Redevelopment Deed, the State indemnifies each of the Company and the Trustee for the reasonable costs of complying with a clean-up notice issued by the EPA under section 62A(1)(a) of the Environment Protection Act (including cleaning up pollution in accordance with such notice) or of cleaning up pollution the continued existence of which is likely to result in the issue of such a notice, in respect of pollution on any part of the Project Land specified as Crown Land in the CTW Property Schedule, or any part of the State Returned Works Areas, (**CTW Polluted Land**) where the State, a Victorian Government Agency or an occupier of the CTW Polluted Land (while in occupation) (other than the Company or the Trustee) caused or permitted the pollution to occur before the earlier of:
 - (i) the date specified in the notice from the Company or the Trustee under clause 4C.1 in relation to the parcel of land that included that CTW Polluted Land; and
 - (ii) the date on which the Company or the Trustee takes possession of that land.
- (b) The indemnity conferred under paragraph (a) shall not apply in relation to particular pollution if:
 - (i) the existence of such pollution could have been discovered by making a search of publicly available EPA records or registers on the date of the CTC Redevelopment Deed or, in respect of CTW Section D, the date of the Thirty-fifth Amending Deed; or
 - (ii) the existence of such pollution was known to the Company or the Trustee before the date of the CTC Redevelopment Deed or, in respect of CTW Section D, the date of the Thirty-fifth Amending Deed.
- (c) For the purpose of this clause 12.7B, paragraph 3(b) of Schedule 2 and Item 2 of column 1 of the Appendix:
 - (i) pollution includes Contamination;
 - (ii) the Company and the Trustee shall have the onus of proving in each instance that any particular pollution of land referred to in paragraph (a) existed on that land before the earlier of:
 - (A) the date specified in the notice from the Company or Trustee in relation to the parcel of land that includes the relevant land; and

- (B) the date on which the Company or the Trustee takes possession of that land; and
- (iii) subject to compliance with sub-paragraph (ii), the State shall have the onus of proving that the pollution was not caused or permitted by the State, a Victorian Government Agency or an occupier of that land (while in occupation) (other than the Company or the Trustee).
- (d) It is agreed that any amounts paid or payable by the State under this clause cannot be claimed by the Company or the Trustee when seeking any redress pursuant to clauses 2.9 and 2.10.
- (e) The parties agree that the operation of this clause 12.7B is not intended to limit the Company or Trustee's rights or entitlements under the CTC Redevelopment Deed, provided that the Company and the Trustee will not be entitled to recover the same loss under both this clause 12.7B and any provision of the CTC Redevelopment Deed.

12.7C

Clean-up Notices in respect of CityLink Returned Works Land

- (a) Subject to paragraphs 12.7C(b) and (c), the State indemnifies each of the Company and the Trustee for the reasonable costs of complying with a clean-up notice issued by the EPA under section 62A(1)(a) of the Environment Protection Act (including cleaning up pollution in accordance with such notice) or of cleaning up pollution the continued existence of which is likely to result in the issue of such a notice, in respect of pollution on any part of the CityLink Returned Works Land that is Crown Land, (**CRW Polluted Land**) where the State, a Victorian Government Agency or an occupier of the CRW Polluted Land (while in occupation) (other than the Company or the Trustee) caused or permitted the pollution to occur before the earlier of:
 - (i) the date the land was made available to WGT Co in accordance with the WGT Project Agreement; and
 - (ii) the date on which the Company or the Trustee takes possession of that land in connection with the CityLink Returned Works.
- (b) The indemnity conferred under paragraph 12.7C(a) shall not apply in relation to particular pollution if:
 - (i) the existence of such pollution could have been discovered by making a search of publicly available EPA records or registers on the date of WGT Financial Close; or
 - (ii) the existence of such pollution was known to the Company or the Trustee before the date of WGT Financial Close.

- (c) For the purpose of this clause 12.7C, paragraph 3(b) of Schedule 2 and Item 2 of column 1 of the Appendix:
 - (i) pollution includes Contamination;
 - (ii) the Company and the Trustee shall have the onus of proving in each instance that any particular pollution of land referred to in paragraph 12.7C(a) existed on that land before the earlier of:
 - (A) the date specified in the notice from the Company or Trustee in relation to the parcel of land that includes the relevant land; and
 - (B) the date on which the Company or the Trustee takes possession of that land; and
 - (iii) subject to compliance with sub-paragraph (ii), the State shall have the onus of proving that the pollution was not caused or permitted by the State, a Victorian Government Agency or an occupier of that land (while in occupation) (other than the Company or the Trustee).
- (d) It is agreed that any amounts paid or payable by the State under this clause cannot be claimed by the Company or the Trustee when seeking any redress pursuant to clauses 2.9 and 2.10.

12.8

Prevention by Law

- (a) In this clause:
 - (i) "Current Victorian Law" means a Law of the State of Victoria in force as at the date of this Deed;
 - (ii) "Current Commonwealth Law" means a Law of the Commonwealth in force at the date of this Deed; and
 - (iii) "Current Law" means Current Victorian Law and Current Commonwealth Law.
- (b) Subject to paragraphs (c) and (d), the State accepts the risk of:
 - (i) Current Law, insofar as it is relevant to the State's power to execute, deliver and perform the Project Documents (other than the performance of the State's obligations in respect of the CTW) (but it does not accept this risk insofar as it relates to clause 2.8 other than to the extent provided under paragraph (b)(ii)); and
 - (ii) Law to the extent that it prevents absolutely (regardless of the application of financial or technical resources):
 - (A) the Company from constructing one or more elements of works described in

- paragraph 1 of Exhibit P as it is intended that the Company construct;
 - (B) the Trustee from constructing one or more elements of Works described in paragraph 1 of Exhibit P as it is intended that the Trustee construct; or
 - (C) the Company from doing that which is described in paragraphs 2, 3 or 4 of Exhibit P.
- (c) The State's acceptance of the risk outlined in sub-paragraph (b)(ii):
 - (i) only applies in the context of the State's obligation under paragraph (e) below; and
 - (ii) is inapplicable where the Company or the Trustee (as applicable) is absolutely prevented from doing the relevant thing by Law as a result of:
 - (A) a breach of a Project Document by the Company or the Trustee; or
 - (B) the lack of legal capacity or corporate or trustee powers of, or breach of duty by, the Company or the Trustee.
- (d) If either the Company or the Trustee claims that a risk borne by the State under sub-paragraph (b)(ii) has crystallised, it shall notify the State of that claim. The parties shall endeavour, in good faith, to agree whether the claim is valid. If agreement as to this matter is not reached within 20 Business Days of the State's receipt of the relevant notice, any party may refer the matter for expert determination under Article 16.
- (e) If it is agreed or determined that such a risk has crystallised, the State shall as soon as practicable (having regard to the measure selected) do at least one of the following (to be considered by the State, the Company and the Trustee in the following order but with the selection of any particular measure at the State's discretion exercised in good faith having regard to matters it considers relevant, including the likely taxation and other consequences for the Company and Trustee):
 - (i) pass or procure the passage of legislation which results in the thing absolutely prevented ceasing to be absolutely prevented;
 - (ii) if the State and its agents can do the thing which the Company or the Trustee is absolutely prevented from doing, acquire such rights and interests in the Project as may be necessary or desirable to enable or facilitate it or its agents to do that thing and appoint the Company, the Trustee, or both of them, the agent of the State

- (and so through it or them the State does that which the Company and the Trustee are otherwise prevented from doing) (but the State agrees that this measure may only be selected if the economic value to the Lenders, the Security Trustee and the Agent of the charges and mortgages that will be available to secure Project Debt, CTW Project Debt and WGT Project Debt after adoption of the measure is substantially the same as the economic value they derived from the Securities (within the meaning of the Master Security Deed) prior to crystallisation of the relevant risk);
- (iii) if the thing absolutely prevented relates to tolling, levy tolls in relation to the Link by, amongst other things, electronically identifying those vehicles the passage of which attracts tolls or allocate to the Project the proceeds of a new Tax or an existing (or component of an existing) Tax;^{314 315}
 - (iv) if the relevant risk relates to a Law which is not a Law of Victoria, the result of crystallisation of the risk is not to prevent absolutely the Company from doing that which is described in paragraph 2 of Exhibit P and the State is also absolutely prevented from doing the thing which the Company or the Trustee (as applicable) is absolutely prevented from doing, acquire:
 - (A) if the thing which the Company or the Trustee (as applicable) and the State is absolutely prevented from doing relates to a part only of the Link (the "affected part"), acquire that part of the Link comprising the area between two interchanges (whether adjoining or not) between which is the affected part (the area being the "AP Area") for the Partial AP Termination Price applicable at the time of the election; or
 - (B) if sub-paragraph (A) does not apply, acquire the Project for the Early Termination Amount applicable at the time of the election; or
 - (v) acquire the Project for the Early Termination Amount applicable at the time of the election; or
 - (vi) implement any other remedy agreed by the parties (in their absolute discretion).
- (f) If under paragraph (e) the State elects to:
- (i) appoint the Company, the Trustee or both of them, agent of the State to operate and maintain the Project or levy tolls, the appointee shall accept appointment as the State's agent, with the

- provisions of the agency agreement reflecting (to the greatest extent possible) the provisions of the Project Documents to which the State is party. In return for acting as agent, the appointee will receive fees equal to the tolling revenue in respect of the Link actually received by the State (less costs and expenses incurred or payable by the State which would not have been incurred or payable by the State had the arrangements reflected in the Project Documents to which the State is party continued to apply and the risk referred to in sub-paragraph (b)(ii) not crystallised);
- (ii) appoint the Company, the Trustee or both of them, an agent of the State to complete construction of the SLU Works, the appointee shall accept appointment as the State's agent, with the provisions of the agency agreement reflecting (to the greatest extent possible), the provisions of the Project Documents to which the State is party. In return for acting as agent, the appointee will become entitled to rights corresponding to those vested in the Company and the Trustee under this Deed, subject to it assuming (and providing security for the satisfaction of) obligations and risks corresponding to those borne (and to security provided) by the Company and the Trustee under the Project Documents to which the State is a party;
 - (iii) acquire the AP Area for the Partial AP Termination Price applicable at the time of the election;
 - (A) the State shall pay to the Company and the Trustee an aggregate amount equal to that Partial AP Termination Price within 60 Business Days of the State having elected to acquire the AP Area;
 - (B) paragraphs 13.8(c), (d) and (e) shall apply as if the AP Area were a State Area and as if the reference to repair and reinstatement in paragraph 13.8(c) were a reference to completion of that part of the Works as relates to the area; and
 - (C) (upon payment pursuant to sub-paragraph (A)), the rights granted to the Company and the Trustee under clause 2.8 (and any other rights and, with the exception of those that arise out of sub-paragraph (B), obligations of the Company and the Trustee under the Project Documents) shall terminate

- insofar as they apply to or affect the AP Area;
- (iv) acquire the Project for the Early Termination Amount applicable at the time of the election, the Concession Deed shall terminate (and hence, the Handover Clauses shall apply) and the State shall pay the Early Termination Amount in accordance with clause 1.21 within 60 Business Days after the State having elected to acquire the Project; or
 - (v) levy tolls or allocate a Tax (or component of a Tax) to the Project, the Company or the Trustee shall provide the State or its nominee with such access rights in relation to the Project Land and the Tolling System as it may be necessary or desirable for the State or its nominee to have in order to enable or facilitate the levying or imposition of tolls. The State shall endeavour in good faith to collect tolls or derive revenue from the relevant Tax (or the relevant component of it) sufficient to restore the ability of Original Equity Investors to achieve the Equity Return and the Extension Equity Investors to achieve the Extension Equity Return they would have achieved but for the crystallisation of the risk referred to in sub-paragraph (b)(ii). The State shall pay to the Company or the Trustee the tolling revenue or an amount equal to the proceeds of the relevant Tax (or component) actually received by the State, less costs and expenses referred to in sub-paragraph (f)(i).
- (g) Each party shall endeavour in good faith to:
- (i) agree with the other parties on changes to the Project Documents; and
 - (ii) agree and then give effect to such steps and actions to be undertaken by the party,
- which are either necessary or desirable to enable or facilitate the State to do the thing it has elected to do or which are a necessary consequence of the State doing it, without the Trustee or the Company being obliged to bear or assume any obligation or risk additional to that which would have been incurred and assumed had the risk referred to in sub-paragraph (b)(ii) not crystallised or (should the State elect to acquire the Project) necessary to give effect to the State's acquisition of the Project.
- (h) If:
- (i) consequent upon crystallisation of a risk borne by the State under sub-paragraph (b)(ii) in relation to a Law of Victoria, a measure under paragraph (e) is selected by the State; and

- (ii) as a result of selection of that measure the proportion which the aggregate of Tax payable by the Company and net income of the Trust (within the meaning of Section 95 of the Income Tax Assessment Act 1936) bears to the aggregate of amounts received by the Company and the Trustee in respect of the Project increases relative to what the proportion would have been if the measure had not been selected (for example, because of the imposition of Tax on any infrastructure certificate cancellation amount under section 159GZZZZH of that Act),

then the State will pay to the Company such amount as is necessary to restore the ability of Original Equity Investors to achieve the Equity Return and the Extension Equity Investor to achieve the Extension Equity Return they would have achieved but for the increase.

12.8A

Prevention of SLU

- (a) Subject to paragraphs (b) and (c), the State accepts the risk of Law to the extent that it prevents absolutely (regardless of the application of financial or technical resources):
 - (i) the Company from constructing one or more material elements of the SLU Works as it is intended that the Company construct; or
 - (ii) the Trustee from constructing one or more material elements of the SLU Works as it is intended that the Trustee construct.
- (b) The State's acceptance of the risk outlined in paragraph (a) is inapplicable where the Company or the Trustee (as applicable) is absolutely prevented from doing the relevant thing by Law as a result of:
 - (i) a breach of this Deed or an M1 Project Document by the Company or the Trustee; or
 - (ii) the lack of legal capacity or corporate or trustee powers of, or breach of duty by, the Company or the Trustee.
- (c) If either the Company or the Trustee claims that a risk borne by the State under paragraph (a) has crystallised, it shall notify the State of that claim and the parties shall endeavour, in good faith, to agree whether the claim is valid. If agreement as to this matter is not reached within 20 Business Days of the State's receipt of the relevant notice, any party may refer the matter for expert determination under Article 16.
- (d) If it is agreed or determined that such a risk has crystallised:

- (i) the Company and the Trustee shall be relieved of all of their obligations with respect to the SLU, including the obligation to carry out the SLU Works and all of the Company's and the Trustee's licences and construction permits in relation to the Project Land and SLU Lay Down Areas shall automatically terminate;
- (ii) the parties will, notwithstanding the terms of the M1 Corridor Redevelopment Deed, calculate the State Revenue Share as follows:
 - (A) [not used];
 - (B) the Company's Total Investment Costs for the purposes of clause 3.2 of Annexure A of the M1 Corridor Redevelopment Deed will be an amount equal to the aggregate of the actual construction costs incurred by the Company and the Trustee up to the date of crystallisation of the risk and any other unavoidable construction costs that the Company and the Trustee are committed to pay in relation to the SLU Works, which must be no more than \$155.3 million;
 - (C) the Other Annual Costs for the purposes of clause 3.2 of Annexure A of the M1 Corridor Redevelopment Deed will be an amount agreed by the parties which must be no more than \$38.9 million; and
 - (D) the State Revenue Share can be a negative number, provided that the absolute value of that number cannot exceed the present value of the aggregate of the actual construction costs incurred by the Company and the Trustee up to the date of crystallisation of the risk and any costs of returning the Link to the condition required under this Deed; and
- (iii) for the purposes of clause 8.5(a) of the M1 Corridor Redevelopment Deed, Southern Link Upgrade Practical Completion will be deemed to have occurred by the Sunset Date.

12.9 Change in Commonwealth Law

Without prejudice to the rights of the Company or the Trustee under clauses 2.9 and 2.10, if an event described in Item 5 of column 1 of the Appendix occurs which has had or will have a Material Adverse Effect then, if requested by the Company or the Trustee to do so, the State shall make representations to the Commonwealth which are appropriate and made with a view to overcoming the Material Adverse Effect.

12.10 Prevention Claim

Without affecting, or delaying the performance of, the obligations of the State under clause 12.8(d), if a claim is made by a person which, if successful, would result in crystallisation of a risk accepted by the State under clause 12.8(b)(ii) and 12.8A(a) the Company, the Trustee and the State shall endeavour, in good faith, to agree on steps which might be taken by the Company, the Trustee and the State to defeat or assist in challenging the claim.

12.11 Non-Exercise of Rights

The State is not required to take any action under clauses 7.12, 7A.12, 9.11, 14.6 or Article 15 and any failure to do so shall not affect the obligations required to be performed by the Company or the Trustee under this Deed.

12.12 No Risk to State

Without limiting clause 2.9(a), the implementation of, or a failure to implement or a delay in implementing, any of the Major Transport Network Changes or the loss, reduction or termination of, any prohibition with respect to, or any increase in costs of, deriving Permitted Non-Road Revenue for any reason whatsoever (including existing, or change in, Law) does not:

- (a) render the State liable; or
- (b) change or increase the extent of any State liability,

under the Project Documents except to the extent expressly provided in item 11 of the Appendix.

12.13 Interest Rate Risk and Benefit and Financial Enhancements

- (a) The State shall bear the risk and be entitled to the benefit of the difference in the interest rates determined on Financial Closing from the rates reflected in a letter from the consortium referred to in Recital G to the Authority dated 27 June 1995.
- (b) It is intended that the extent of this risk and benefit be calculated in accordance with Exhibit N and be provided as agreed by the parties, as indicated in clause 2.7(d).
- (c) Each party shall observe the obligations imposed on it under Exhibit N.

12.14 West Gate Tunnel Release

The parties agree that, on and from WGT Financial Close:

- (a) the State releases and agrees not to bring any claim against the Company and the Trustee that all or part of the WGT or the carrying out of the WGT Works constitutes a Compensable Enhancement;
- (b) the Company and the Trustee release and agree not to bring any claim against the State that all or part of the WGT or the carrying out of the WGT Works in accordance with the WGT Project Agreement constitutes an Appendix Event

(other than Appendix Event 3(g) or where the West Gate Tunnel is deemed to be a Freeway in accordance with clause 2.4(a)(iv)), until such time that the WGT Project Agreement is terminated, provided that the releases given under this clause 12.14(b) will continue to be effective to the extent that the WGT has been or continues to be carried out substantially in accordance with the terms of the WGT Project Documents as at the date of termination; and

- (c) without limiting any rights under the WGT Project Agreement, the Company and the Trustee release and agree not to make a claim against the State in relation to any amount that WGT Co is entitled to claim under sections 3.9 and 3.10 of Part A of the Change Compensation Principles (as that term is defined under the WGT Project Agreement).

12.15

No cross default for West Gate Tunnel

- (a) On and from WGT Financial Close, subject to clause 12.15(c):
- (i) the parties agree that a breach by WGT Co of a WGT Project Document (including any failure by WGT Co to design or construct the CityLink Returned Works in accordance with the WGT Project Agreement) will not of itself constitute a breach of this Deed; and
 - (ii) the State will not have any Claim against the Company or the Trustee under this Deed in relation to or arising from such breach.
- (b) On and from WGT Financial Close, subject to clause 12.15(c), the parties agree that the consequences of:
- (i) WGT Co breaching a WGT Project Document;
 - (ii) the Company or the Trustee breaching an obligation or a warranty in a Project Document to the extent caused by a breach by WGT Co or its Associates (as defined in the WGT Project Agreement) of a WGT Project Document;
 - (iii) the Company or the Trustee breaching an obligation or warranty in a Project Document to the extent caused by an act or omission of WGT Co or its Associates (as defined in the WGT Project Agreement) in accordance with the WGT Project Documents (including the performance of the CityLink Returned Works or WGT Works);
 - (iv) a representation or warranty in respect of the CityLink Returned Works being untrue, incorrect or misleading as at the CityLink Returned Works Date of Handback (whether identified before or after the CityLink Returned Works Date of Handback);

- (v) the CityLink Returned Works not complying with the WGT Project Documents as at the CityLink Returned Works Date of Handback (whether identified before or after the CityLink Returned Works Date of Handback); or
- (vi) any third party liability or property damage in connection with the performance of the CityLink Returned Works or WGT Works,

are set out in the WGT Project Documents and not this Deed, and the WGT Project Documents set out the sole and exclusive contractual remedy for any such breach, untrue, incorrect or misleading representation or warranty, non-compliance or liability and neither the State, Company nor the Trustee will have any liability for that breach, untrue, incorrect or misleading representation, warranty, non-compliance liability and such a breach, untrue, incorrect or misleading representation or warranty, non-compliance or liability will not be considered to be a breach of this Deed, an Event of Default or a Project Default or an event or circumstance that would otherwise entitle the State to terminate, rescind or repudiate this Deed, and the State will not in such circumstances terminate, rescind or repudiate this Deed.

- (c) The parties acknowledge and agree that clauses 12.15(a)(ii) and 12.15(b) do not apply in respect of any breach of this Deed, untrue, incorrect or misleading representation or warranty, non-compliance or liability to the extent that the breach, untrue, incorrect or misleading representation or warranty or non-compliance relates to the CityLink Returned Works occurring after the CityLink Returned Works Date of Handback except to the extent that the breach, untrue, incorrect or misleading representation or warranty or non-compliance occurred or existed on or before the CityLink Returned Works Date of Handback (whether identified at that time or not).
- (d) The Company and the Trustee agree that they will have no claim against the State under this Deed arising as a result of an act or omission of WGT Co on and from WGT Financial Close, other than to the extent the act or omission occurs after the WGT Project Agreement has been terminated or the act or omission was caused by a breach of the State or its Associates (as defined in the WGT Project Agreement) of the WGT Project Documents or a direction by the State or its Associates (as defined in the WGT Project Agreement) under the WGT Project Documents.
- (e) On and from WGT Financial Close, the parties agree that the consequences of:
 - (i) the Company or Clepco breaching the CEPA or otherwise failing to make a CityLink Funding Payment; or

- (ii) the Trustee breaching the WGT D&C Subcontract or otherwise failing to make payments in relation to the CLUT Works in accordance with the WGT D&C Subcontract,

are set out in the WGT Project Agreement and the WGT Equity Subscription Deed and not this Deed, and the WGT Project Agreement and the WGT Equity Subscription Deed set out the sole and exclusive contractual remedy for any such breach or failure and that neither the Company nor the Trustee will have any liability for that breach or failure under this Deed and that such a breach or failure will not be considered to be a breach of this Deed, an Event of Default or Project Default or an event or circumstance that would otherwise entitle the State to terminate, rescind or repudiate this Deed, and the State will not in such circumstances terminate, rescind or repudiate this Deed.

- (f) On and from WGT Financial Close, the parties agree that the consequences of the Company or Trustee breaching the CityLink Access Deed or otherwise failing to provide access to the WGT D&C Subcontractor to the Link are set out in the CityLink Access Deed and the WGT D&C Subcontract and not this Deed, and the CityLink Access Deed and the WGT D&C Subcontract set out the sole and exclusive contractual remedy for any such breach or failure and that neither the Company nor the Trustee will have any liability for that breach or failure under this Deed and that such a breach or failure will not be considered to be a breach of this Deed, an Event of Default or Project Default or an event or circumstance that would otherwise entitle the State to terminate, rescind or repudiate this Deed, and the State will not in such circumstances terminate, rescind or repudiate this Deed.

13. LOSS OR DAMAGE AND INSURANCE

13.1 Risk

- (a) Subject to clauses 2.9, 2.10 and 4.6, from the earlier of:
 - (i) the date specified in the notice given by the Company or the Trustee under clause 4A.1 or 4C.1 in relation to a parcel of land that includes a part of the Link; and
 - (ii) the date on which the Company or the Trustee takes possession of that land,

the Company, or (if the relevant land is or comprises part of Trust Land) the Trustee, shall bear the risk of loss or damage to that part of the Link, but in respect of any loss or damage to or in relation to Trust Land occurring after Completion of the Section of which that land forms part, the Company shall bear such risk. The risk referred to in this clause 13.1(a) in relation to a part of the Link shall

cease to be borne by the Company or the Trustee (as the case may be) from the date the rights expire in relation to that part of the Link, as referred to in clause 4.2(e), clause 4A.2(e) or 4C.2(e).

- (b) Paragraph (a) does not apply to the extent that any loss, damage or defect to the Link is a consequence of any negligent, wilful or reckless act or omission of the State, of any of its nominees or contractors engaged in the context of an exercise by the State of its rights under clause 9.11 (or under clause 4.7 of the Master Security Deed) or any Victorian Government Agency and the State hereby indemnifies the Company and the Trustee with respect to any loss, cost, expense or damage suffered as a result of such loss, damage or defect provided that the State shall not be liable for any such loss, cost, expense or damage to the extent that it exceeds the loss, cost, expense or damage (the "theoretical loss") which would have been suffered by the Company or the Trustee (as the case may be) had the Relevant Circumstances (as defined in the IFA Ninth Amending Deed) not occurred. Such theoretical loss shall be calculated using (other than insofar as it relates to CTW Project Debt or WGT Project Debt) the Lending Documents in the form agreed by the Company and the State under clause 4.2(f) of the IFA Ninth Amending Deed and the Project Documents in the form of those documents immediately prior to the occurrence of the Relevant Circumstances (as defined in the IFA Ninth Amending Deed), (insofar as it relates to CTW Project Debt) the Lending Documents in the form accepted by the State under clause 4.2(g) of the IFA Twenty-second Amending Deed. and (insofar as it relates to WGT Project Debt) the Lending Documents in the form accepted by the State as a condition precedent to the IFA WGT Amending Deed. This paragraph (b), however, does not apply insofar as its application would be inconsistent with the acceptance of risk provided for under, or any representation, warranty, undertaking, waiver or acknowledgment provided for in, any of paragraphs 4.6(b) to 4.6(f), inclusive, paragraphs 4A.6(b) to 4A.6(f), inclusive, clause 4C.6(b), or any of clauses 5.2, 7.1, 7A.1, 7.1A, 7D.1, 7.2, 7A.2, 7D.2, 7.3, 7A.3, 7D.3, 12.2 or 12.7.^{316 317}
- (ba) In respect of the Interchange Works, paragraph (a) does not apply to the extent that any loss, damage or defect to the Interchange Works is a consequence of breach by the State of its obligations under clause 7C.1(b) or is one which:
- (i) was subsisting at Interchange Completion; and
 - (ii) if identified at or prior to Interchange Completion, would have entitled the Company and the Trustee to refuse to certify that Interchange Completion had occurred,

and the State hereby indemnifies the Company and the Trustee with respect to any loss, cost, expense or damage suffered as a result of such damage or defect, provided that the State shall not be liable for any such loss, cost, expense or damage to the extent that it exceeds the loss, cost, expense or damage (the "theoretical loss") which would have been suffered by the Company or the Trustee (as the case may be) had the Relevant Circumstances (as defined in the IFA Ninth Amending Deed) not occurred. Such theoretical loss shall be calculated using the Lending Documents in the form agreed by the Company and the State under clause 4.2(f) of the IFA Ninth Amending Deed and the Project Documents in the form of those documents immediately prior to the occurrence of the Relevant Circumstances (as defined in the IFA Ninth Amending Deed).

- (bb) Paragraph (a) does not apply to the extent that any loss, damage to or defect in the Link is a consequence of:
 - (i) loss, destruction or damage to real or personal property; or
 - (ii) pollution or contamination,

caused or contributed to by the State or its Associates in the performance by the State or its Associates of the CTW Interface Works.

- (bc) Subject to clauses 9.9(c)(iii) and 14.9 of the CTC Redevelopment Deed, the State hereby indemnifies the Company and the Trustee with respect to any loss, cost, expense or damage suffered or incurred as a result of:
 - (i) loss, destruction or damage to real or personal property;
 - (ii) injury to, disease or death of persons; or
 - (iii) pollution or contamination,

arising out of the performance of the CTW State Works or the Webb Dock State Works at the interface with the CTW Works or the CTW Maintenance Activities (except to the extent caused or contributed to by an act or omission of the Company or the Trustee or any of their Associates).

- (c) For the purposes of this clause, the Link includes the SLU Works, the CTW Works (excluding, after CTW Section Practical Completion of a CTW Section has been achieved, any State Returned Works forming part of that CTW Section), the Project Land, the SLU Lay Down Areas, the CTW Extra Land and the CTW Land (excluding, after the date the rights of the Company and the Trustee to access any part of the State Returned Works Areas expire under clause 4C.2(e), such parts of the State Returned Works Areas (as applicable)) and property on the Project Land,

SLU Lay Down Areas, the CTW Extra Land and CTW Land.

13.2 Liability and Indemnity

(a) Subject to clauses 4.6, 4A.6, 4C.6 and 13.2(d), the M1 Corridor Redevelopment Deed and the CTC Redevelopment Deed, the Company and the Trustee each severally releases the State from and indemnifies it against any claim, demand, damage, expense, loss or liability brought against or suffered, incurred or payable by the State in respect of:

- (i) loss, destruction or damage to real or personal property; or
- (ii) injury to, or disease or death of, persons,

arising out of the Project, the CTW Maintenance Activities or (other than in the case of the indemnity provided by the Trustee) the operation, maintenance or repair of the Link or any activities related thereto, except to the extent that such loss, destruction, damage, injury, disease or death is a consequence of a negligent, wilful or reckless act or omission of the State, of any of its nominees or contractors engaged in the context of an exercise by the State of its rights under clause 9.11 (or under clause 4.7 of the Master Security Deed) or a Victorian Government Agency. This exception shall not, however, apply insofar as its application would be inconsistent with the acceptance of risk provided for under, or any representation, warranty, undertaking, waiver or acknowledgment provided for in, any of paragraphs 4.6(b) to 4.6(f), inclusive, paragraphs 4A.6(b) to 4A.6(f), inclusive, paragraphs 4C.6(b) or any of clauses 5.2, 7.1, 7A.1, 7D.1, 7.1A, 7A.2, 7D.2, 7.2, 7.3, 7A.3, 7D.3, 12.2 or 12.7.³¹⁸

(aa) Subject to clause 13.2A, the Company and the Trustee acknowledge and agree that the release and indemnity given by the Company and the Trustee under paragraph (a) of this Deed will continue to apply during the execution of the Interchange Works. However the obligations of the Company and the Trustee to release and indemnify the State under paragraph (a) does not apply to the extent that such loss, destruction or damage to real or personal property, injury to or disease or death of persons is a consequence of breach by the State of its obligations under clause 7C.1(b) or is one which:

- (i) was subsisting at Interchange Completion; and
- (ii) if identified at or prior to Interchange Completion, would have entitled the Company and the Trustee to refuse to certify that Interchange Completion had occurred.

(b) Subject to the Deed and the Project Legislation, from the earlier of:

- (i) the date specified in the notice from the Company or the Trustee under clause 4A.1 or 4C.1 in relation to a parcel of land (other than land within the State Returned Works Areas or the Maintenance Boundary); and
- (ii) the date on which the Company or the Trustee takes possession of that land,

the Company or the Trustee has the same responsibilities in respect of persons, property and all other aspects of the Project which it would have if it held that parcel of land as freehold in possession and as occupier.

(bb) Paragraph (a) does not apply to the extent that the:

- (i) loss, destruction or damage to real or personal property: or
- (ii) injury to, or disease or death of persons,

is caused or contributed to by the State or its Associates in the performance by the State of the CTW Interface Works or CTW State Works or Webb Dock State Works at the interface with the CTW Maintenance Activities.

(c) For the purposes of paragraph (a), the expression the "Link" has the same meaning as in clause 13.1.

(d) Subject to the CTC Redevelopment Deed, the parties agree that:

- (i) the State will have no liability to the Company and the Trustee; and
- (ii) the Company and the Trustee will have no liability to the State,

in respect of any act or omission of that party or their Associates relating to the CTW Interface Works (or any works or activities at the interface of the CTW State Works or the Webb Dock State Works and the CTW Maintenance Activities), other than liability arising as a consequence of:

- (iii) loss, destruction or damage to real or personal property,
- (iv) injury to, disease or death of persons; or
- (v) pollution or contamination.

13.2A

Indemnity by the State in respect of Interchange Works

The State shall indemnify the Company and the Trustee against:

- (a) losses in tolling revenue (after excluding any GST that would have been payable by the Company or the Trustee in respect of such revenue) incurred because the Interchange Works result in untolled use of the Link.

- (b) reasonable expenditure incurred by the Company or the Trustee in order to reduce the level of actual or likely untolled use that has or would result from the Interchange Works;
- (c) claims, demands and reasonable costs and expenses made against or incurred or payable by the Company or the Trustee as a result of the Interchange Works causing structural failures in the Link;
- (d) loss of or damage to property of the Company or the Trustee located on or within the Interchange Land caused by the State in the carrying out of the Interchange Works;
- (e) any damage, expense, loss or liability brought against or suffered by the Company or the Trustee in respect of claims by any person against the Company or the Trustee in respect of personal injury, death or loss of or damage to any property located on or within Interchange Land caused by the State in the carrying out of the Interchange Works; and
- (f) any damage, expense, loss or liability brought against or suffered by the Company or the Trustee in respect of a claim referred to in clause 4B.4(d)(ii).

The State's liability to indemnify the Company and the Trustee under this clause shall be reduced proportionally to the extent that a negligent, wilful or reckless act or omission of the Company, the Trustee, or their employees, agents or contractors contributed to the loss, damage, death or injury.

13.2AA

Liability in respect of Tie In Works

- (a) The parties agree that for the purposes of this Deed and the avoidance of doubt, Tie In Works are treated as CTW Interface Works.
- (b) The State will indemnify the Company and the Trustee against any damage, expense, loss or liability brought against or suffered by the Company and the Trustee in respect of claims by any person against the Company or the Trustee, in respect of personal injury, disease, death or loss, destruction or damage to any real or personal property or contamination or pollution caused by or on behalf of the State in carrying out any CTW Interface Works.

13.2B

MacRobertson Bridge and SLU Works

- (a) The Company and the Trustee will not be liable for any damage, expense, loss or liability brought against or suffered by the State in respect of personal injury, death or loss of or damage to any property or any claims by any person against the State in respect of personal injury, death or loss of or damage to any property resulting from any damage to or defect in MacRobertson Bridge resulting from the performance by the Company of the SLU Works to the extent that such damage or defect is the result of any

- defect in MacRobertson Bridge that existed prior to the date on which the SLU Works commenced.
- (b) The parties will conduct a joint inspection to ascertain and record the current condition of any defects in MacRobertson Bridge prior to commencement of the SLU Works.
 - (c) To the extent that the Company or the Trustee is prevented or delayed in performing the SLU Works as a result of any damage to or defect in MacRobertson Bridge that existed prior to the date on which the SLU Works commenced, then without limiting the provisions of the M1 Corridor Redevelopment Deed, this shall constitute an event beyond the reasonable control of the Company or the Trustee (as applicable) under clause 10(a)(ii)(B) of the M1 Corridor Redevelopment Deed for the sole purpose of enabling that party to seek an extension of the Sunset Date under clause 11.1(e) of the Redevelopment Deed.

13.2C

Indemnity by the State in respect of RRL Project Works

- (a) If the Company or the Trustee suffers or incurs any loss, cost, expense or damage arising out of or in connection with any damage to, or defect in, the Link caused by the RRL Project Works, subject to paragraph (b), the State shall indemnify the Company and the Trustee against any such loss, cost, expense or damage suffered or incurred by the Company or the Trustee ("**RRL Losses**") to the extent that the Company or the Trustee has not recovered the RRL Losses from John Holland.
- (b) The indemnity in paragraph (a) only applies to the extent that:
 - (i) the Company and the Trustee have used their best endeavours to recover the RRL Losses from John Holland; and
 - (ii) the Company or the Trustee has not been able to recover the RRL Losses from John Holland within 3 months from the date the Company and the Trustee demand payment of the RRL Losses from John Holland.
- (c) The State shall indemnify the Company and the Trustee against reasonable external costs incurred by the Company and the Trustee in using their best endeavours to recover the RRL Losses from John Holland during the period referred to in paragraph (b)(ii).
- (d) Paragraphs (b) and (c) only apply to the extent that the Company and/or the Trustee have a right to be indemnified by John Holland in respect of the RRL Losses.
- (e) If, following recovery by the Company or the Trustee of the RRL Losses from the State pursuant to the indemnity in paragraph (a), the Company or the Trustee recovers any RRL Losses from John Holland, the Company or the

Trustee (as applicable) shall pay the amount recovered from John Holland (less the reasonable external costs incurred by the Company and the Trustee in recovering that amount to the extent that those costs have not already been recovered from the State) to the State within 14 days of receiving the amount from John Holland.

- (f) For the purpose of this clause, the Link includes:
- (i) the Project Land and property on the Project Land; and
 - (ii) the shared pathway generally located on the eastern side of the Moonee Ponds Creek between Footscray Road and Arden Street, including:
 - (A) the main pathway generally running north south between Footscray Road and Arden Street and 0.5 meters on either side of that path (“**main path**”);
 - (B) the connecting paths between the main path and cross roads;
 - (C) all underpasses and associated drainage and pumping infrastructure; and
 - (D) associated items such as signage, drink fountains, bollards and head impact protectors.

13.2D

CTW liability

- (a) Notwithstanding any other provision of this Deed, but subject to paragraph (b), the State has no liability to the Company or the Trustee, and neither the Company nor the Trustee are entitled to make any claim, for any Indirect or Consequential Loss incurred or sustained by the Company or the Trustee or any of their Associates in connection with the CTW Works, the CTW Maintenance Activities, the CTW State Works, the Webb Dock State Works or the performance of the CTW Obligations or the CTW Project Documents (solely to the extent they relate to CTW).
- (b) The exclusion of liability of the State under paragraph (a) does not apply to:
 - (i) any liability of the State to the Company and the Trustee in respect of the operation and maintenance or tolling of the WLU after the Date of CTW Section Practical Completion (of that part of the WLU);
 - (ii) any liability arising in connection with an Appendix Event or Early Termination Amount (including a Partial AP Termination Price) or any notice under clause 2.4(d) in connection with CTW;

- (iii) liability in respect of loss of or damage to property, injury to, disease or death of a person, or pollution or contamination caused or contributed by the State or any of its Associates;
 - (iv) liability which:
 - (A) cannot be limited at Law;
 - (B) arises in connection with the State's fraudulent or criminal conduct; or
 - (C) arises in connection with any wilful breach of the CTW Project Documents or wilful misconduct by the State;
 - (v) any amounts due and payable to the Company and the Trustee by the State in accordance with clauses 9, 10, 14 or 19 of the CTC Redevelopment Deed; or
 - (vi) the extent the State actually recovers any amounts from a third party.
- (c) Notwithstanding any other provision of this Deed, but subject to paragraph (cc) and (d), neither the Company nor the Trustee has any liability to the State, and the State is not entitled to make any claim, for any Indirect or Consequential Loss incurred or sustained by the State or any of its Associates in connection with the CTW Works, the CTW Maintenance Activities, the CTW State Works, the Webb Dock State Works or the performance of the CTW Obligations or the CTW Project Documents (solely to the extent they relate to CTW).
- (cc) For the purposes of clause 13.2D(c), State Associate will be deemed to include Melbourne City Council in respect of any loss which arises in connection with the CTW Works comprising CTW Section D.
- (d) Subject to clause 13.2D(e), the exclusion of liability of the Company and the Trustee under paragraph (c) does not apply to:
- (i) liability in respect of loss of or damage to property, injury to, disease or death of a person, or pollution or contamination caused or contributed by the Company or the Trustee or any of their Associates;
 - (ii) liability which:
 - (A) cannot be limited at Law;
 - (B) arises in connection with the Company and the Trustee's fraudulent or criminal conduct; or
 - (C) arises in connection with any wilful breach of the CTW Project Documents or

- wilful misconduct by the Company and the Trustee;
- (iii) the extent the Company or the Trustee recover any amounts under a CTW Insurance Policy that responds to that liability, or would have recovered amounts under a CTW Insurance Policy that responds to that liability but for any act or omission of the Company or the Trustee (including any failure to maintain any CTW Insurance Policy or failure to make a claim on the relevant CTW Insurance Policy);
 - (iv) the extent the Company or the Trustee actually recover any amounts from a third party other than a Transurban Entity;
 - (v) liability of the Company and the Trustee under clause 7D.29(d); or
 - (vi) any amounts due and payable to the State by the Company and the Trustee under section 3150.02(b) of Annexure O of the SWTC.
- (e) The Company and the Trustee's maximum aggregate liability to the State and any State Associate in respect of the State Returned Works and the CTW Maintenance Activities under the CTW Project Documents or whether in tort (including negligence or otherwise), under any statute or otherwise at Law or in equity, is the SRW Cap, subject to the exclusions listed below:
- (i) loss resulting from loss of or damage to property, or injury to, disease or death of a person;
 - (ii) loss arising from any criminal acts, fraud or wilful default or wilful misconduct on the part of the Company or the Trustee;
 - (iii) loss which cannot be limited at Law;
 - (iv) loss to the extent that the Company or the Trustee recover any amounts under a CTW Insurance Policy that responds to that liability, or would have recovered amounts under a CTW Insurance Policy that responds to that liability but for any act or omission of Company or the Trustee (including any failure to maintain any CTW Insurance Policy or failure to make a claim on the relevant CTW Insurance Policy);
 - (v) loss to the extent that the Company or the Trustee have recovered that loss from a party other than a Transurban Entity or the CTW D&C Contractor. The exclusion in this clause 13.2D(e)(v) does not apply to the extent the Company or the Trustee's recourse against the third party is limited under contract by a liability cap;

- (vi) liability arising under clause 7E.3(c); or
- (vii) any liability of the State to a third party (other than a State Associate):
 - (A) in respect of which the Company and the Trustee are required to indemnify the State under clause 4C.2(ea); and
 - (B) arising out of or in connection with a breach by the Company or the Trustee of clause 14.2B(a).
- (f) Subject to paragraph (fa), the Company and the Trustee's maximum aggregate liability to the State and any State Associate arising under clause 7E.3 will in no event exceed \$60 million.
- (fa) Clause 13.2D(f) does not limit the liability of the Company and Trustee in respect of:
 - (i) loss of or damage to property, or injury to, disease or death of a person;
 - (ii) loss arising from any criminal acts, fraud or wilful default on the part of the Company or the Trustee;
 - (iii) loss which cannot be limited at Law;
 - (iv) loss to the extent that the Company or the Trustee recover any amounts under a CTW Insurance Policy that responds to that liability, or would have recovered amounts under a CTW Insurance Policy that responds to that liability but for any act or omission of Company or the Trustee (including any failure to maintain any CTW Insurance Policy or failure to make a claim on the relevant CTW Insurance Policy); or
 - (v) loss to the extent that the Company or the Trustee have recovered that loss from a party other than a Transurban Entity or the CTW D&C Contractor. The exclusion in this clause 13.2D(fa)(v) does not apply to the extent the Company or the Trustee's recourse against the third party is limited under contract by a liability cap.

13.3

Insurances During Construction of the SLU Works³¹⁹

- (a) Subject to the provisions of clause 13.5, prior to the commencement of the SLU Works the Company and the Trustee shall effect and maintain the following insurances:
 - (i) a policy of construction risks insurance in respect of the SLU Works (including completed SLU Works and transits which remain part of the SLU Works) for a value equal to the maximum foreseeable loss (including provision for 20% escalation) on the basis of the anticipated cost of reinstatement as at the time of reinstatement;

- (ii) [Not Used];
 - (iii) public and products liability insurance covering all third party claims arising from any one occurrence in respect of:
 - (A) loss, destruction or damage to real or personal property; and
 - (B) injury to, or disease or death of, persons,

arising out of or in connection with the SLU Works for a minimum of \$150 million for any one occurrence and in the aggregate in respect of products liability insurance;
 - (iv) professional indemnity insurance for any breach of a duty owed in a professional capacity by a contractor or professional consultant engaged by the Company or the Trustee in relation to the SLU Works for a minimum of \$10 million on all claims arising from any one occurrence with an aggregate limit of \$10 million for all claims made during the period of insurance;
 - (v) employer's liability and workers' compensation insurance as required by law and shall ensure that each of its contractors and consultants shall effect and maintain such insurance in respect of any period during which they provide services in relation to the SLU Works;
 - (vi) motor vehicle registration and motor vehicle insurance covering third party property damage for all vehicles used in respect of the SLU Works for a minimum of \$20 million for any one occurrence;
 - (vii) for the period up to the SLU Date of Practical Completion, combined advance and operational consequential loss (business interruption) insurance in respect of loss of anticipated revenue and additional expense arising out of the risks of loss or damage to the property insured under subparagraph (a)(i) for an indemnity period of not less than 24 months, subject to the sum insured representing not less than \$36 million anticipated revenue; and
 - (viii) [Not Used].
- (b) The Company and the Trustee shall maintain the insurances referred to in paragraph (a) until:
- (i) in the case of the professional indemnity insurance, 10 years after the SLU Date of Practical Completion; and

- (ii) in respect of sub-paragraphs (a)(i), (iii), (v), (vi), and (vii), the SLU Date of Practical Completion, but so that claims may be made under such policies for a period of 6 years after that time.
- (iii) [Not Used].

13.3A

Insurances During Construction of the CTW Works

- (a) Subject to the provisions of clause 13.5, prior to the commencement of the CTW Works the Company and the Trustee shall effect and maintain (or cause to be effected and maintained) the following insurances:
 - (i) a policy of construction risks insurance in respect of the CTW Works (including completed CTW Works) for, as a minimum, the reinstatement costs of the works under this Deed plus escalation of 20% plus an additional amount to cover the cost of demolition and removal of debris and fees for relevant project managers and other consultants, and an amount to cover additional costs and expenses to expedite the commencement or completion or repair of the CTW Works;
 - (ii) inland transit and/or overseas transit insurance for a minimum of \$50 million in respect of relevant items intended to be employed about or used in the CTW Works;
 - (iii) public and products liability insurance, naming the State as an insured, covering all third party claims arising from any one occurrence in respect of:
 - (A) loss, destruction or damage to real or personal property; and
 - (B) injury to, or disease or death of, persons,arising out of or in connection with the CTW Works or the CTW Maintenance Activities for a minimum of \$250 million for any one occurrence and in the aggregate in respect of products liability insurance;
 - (iv) professional indemnity insurance for any breach of a duty owed in a professional capacity by a contractor or professional consultant engaged by the Company or the Trustee in relation to the CTW Works for a minimum of \$30 million on all claims arising from any one occurrence with an aggregate limit of \$30 million for all claims made during the period of insurance;
 - (v) employer's liability and workers' compensation insurance as required by law and shall ensure that each of its contractors and consultants shall effect and maintain such insurance in respect of any

- period during which they provide services in relation to the CTW Works or CTW Maintenance Activities;
- (vi) motor vehicle registration and motor vehicle insurance covering third party property damage for all road registered plant, equipment and motor vehicles used in respect of the CTW Works or CTW Maintenance Activities for a minimum of \$30 million for any one occurrence;
 - (vii) for the period up to the Date of CTW and Ramp M Practical Completion, delay in start-up (advance business interruption) insurance in respect of losses covered by the construction risks policy described under sub-paragraph (a)(i) for a 24 month indemnity period and losses covered by the overseas transit policy described under sub-paragraph (a)(ii) for a 12 month indemnity period covering all standing charges and loss of anticipated net revenue;
- (b) The Company and the Trustee shall maintain the insurances referred to in paragraph (a) until:
- (i) in the case of the professional indemnity insurance, 6 years after the Date of CTW and Ramp M Practical Completion or 10 years after the CTW Effective Date, whichever is later;
 - (ii) in respect of sub-paragraphs (a)(ii), (v), (vi) and (vii), the Date of CTW and Ramp M Practical Completion; and
 - (iii) in respect of sub-paragraphs (a)(i) and (iii), the expiry of the last CTW Defects Correction Period, provided that the Company and the Trustee's obligation to maintain such insurances will reduce from the Date of CTW Final Completion or the Date of Ramp M Final Completion (as applicable) as follows:
 - (A) in respect of the insurance described in sub-paragraph (a)(i), the amount required to be insured will be for an amount equal to the reinstatement costs of the State Returned Works at the Date of CTW Practical Completion or the Date of Ramp M Final Completion (as applicable), plus an additional amount to cover the cost of demolition and removal of debris and fees for relevant project managers and other consultants, and an amount to cover additional costs and expenses to expedite the commencement or completion or repair of the State Returned Works; and

- (B) in respect of the insurance described in sub-paragraph (a)(iii), the insurance will cover relevant third party claims only insofar as those claims arise out of or in connection with the State Returned Works.

13.4 Policies after Completion

Subject to clause 13.5, before the Completion of all Sections, the Company and the Trustee shall effect and thereafter maintain the following insurances:

- (a) an industrial special risk insurance policy in respect of the Link (including Plant, Tolling System and all other items comprising the Link, such as computer and other systems), with cover no less extensive than found in Industrial Special Risks Industry Advisory Wording Mark IV or Mark V (or other equivalent industry standard in force from time to time) and provided that the minimum level of such coverage will be based on a maximum foreseeable loss analysis determined by an independent third party appointed by the Company who is approved by the State (such approval not to be unreasonably withheld) and providing cover for:
 - (i) physical loss of or damage to the items referred to above on the basis of reinstatement at the time of reinstatement; and
 - (ii) consequential loss (business interruption) insurance for an indemnity period of not less than 24 months in respect of loss of anticipated revenue and additional expense arising out of:
 - (A) physical loss of or damage to the Link covered under clause 13.4(a)(i); and
 - (B) prevention of access or egress arising out of loss or damage to freeways and major roads leading to or from the Link but only to the extent such risk of loss or damage is a risk covered under the industrial special risk policy required under clause 13.4(a);
- (b) public liability insurance covering all third party claims arising from one occurrence in respect of:
 - (i) loss, destruction or damage to real or personal property; and
 - (ii) death, injury to, or disease of, persons,arising out of or in connection with the operation, repair or maintenance of the Link or any activities related thereto for at least \$150 million for any one occurrence;

- (c) employer's liability and workers' compensation insurance and shall ensure that each of its contractors and consultants effects and maintains such insurance in respect of any period during which they provide services in relation to the Link;
- (d) motor vehicle insurance covering third party property damage for all vehicles used in the operation, repair or maintenance of the Link for at least \$5 million for any one occurrence; and
- (e) directors and officers liability insurance for an amount of not less than \$50 million for any one claim and, in the aggregate, not less than \$50 million in any one year of insurance.

13.4A Policies after SLU Practical Completion

Subject to clause 13.5, prior to the SLU Date of Practical Completion, the Company and the Trustee must ensure that the insurances to be effected and maintained under clause 13.4 apply to the SLU.

13.4B Policies after CTW Section Practical Completion

Subject to clause 13.5, prior to the Date of CTW Section Practical Completion of a CTW Section, the Company and the Trustee must ensure that the insurances to be effected and maintained under clause 13.4 apply to the WLU which forms part of that CTW Section.

13.4C Material Subcontract Insurance

- (a) Without limiting clause 13.4C(b), the Company and the Trustee must ensure that each subcontractor which undertakes any part of the operation, maintenance and repair of the Link effects and maintains insurances which a prudent service provider would maintain when providing services of a similar nature to the operation, maintenance and repair of the Link undertaken by them.
- (b) The Company and the Trustee must:
 - (i) ensure that each subcontractor who enters into a Material Subcontract effects and maintains:
 - (A) public and products liability insurance in respect of third party bodily injury, any property damage with a limit of not less than \$10 million (escalated by reference to CPI) any one claim but in the aggregate with respect to products liability;
 - (B) workers' compensation insurance in respect of its liability for injury to its employees as required by Law; and
 - (C) motor vehicle third party property damage insurance with a limit of not less than

\$20,000,000 (escalated by reference to CPI),

(Material Subcontract Insurances);

- (ii) use its reasonable endeavours to procure that each Material Subcontract Insurance:
 - (A) includes the Company, the Trustee and the State as an insured for their respective rights, interests and liabilities, except in the case of workers' compensation insurance referred to in clause 13.4C(b)(i)(B);
 - (B) where the policy includes more than one party as an insured, includes cross liability and waiver of subrogation clauses; and
 - (C) is effected and maintained on terms consistent with the obligations contained in clause 13.6; and
- (iii) ensure that each Material Subcontract Insurance:
 - (A) is effected with a Reputable Insurer; and
 - (B) is maintained for the period during which the subcontractor is undertaking the operation, maintenance and repair of the Link.
- (c) The Company and the Trustee must:
 - (i) other than in respect of workers' compensation insurance referred to in clause 13.4C(b)(i)(B), notify the State of any claim under any of the Material Subcontract Insurances, where such claim in any way relates to or arises from the operation, maintenance and repair of the Link; and
 - (ii) notify the State if it becomes aware of any circumstance relating to or arising from the performance of the operation, maintenance and repair of the Link which could give rise to an insurer of a Material Subcontract Insurance cancelling or materially changing the Material Subcontract Insurance.
- (e) The Company and the Trustee acknowledge and agrees that the procurement and maintenance of the Material Subcontract Insurances in accordance with clause 13.4C(b) does not reduce or otherwise limit the Company and the Trustee's other obligations under this clause 13.4.

13.4D State may effect Insurances

- (a) The State may procure or effect and maintain the relevant insurances required by clause 13.4 and clause 13.4C

(Insurances) and pay the relevant premiums in connection with such Insurances:

- (i) if the Company and the Trustee fail to provide evidence satisfactory to the State that the Company or the Material Subcontractor (as applicable) is complying with clause 13.4 or 13.4C within 10 Business Days of a request; or
 - (ii) in the event of any default by the Company and the Trustee or their subcontractors in obtaining or maintaining such Insurances, in accordance with clause 13.4 or clause 13.4C or if any Insurance for which the Company and the Trustee are responsible to effect and maintain in accordance with this Deed is terminated.
- (b) The costs reasonably incurred by the State in connection with taking such action will be a debt due and payable by the Company and the Trustee to the State.

13.4E Insurance review

- (a) Either the State or the Company and Trustee may, within 20 Business Days prior to 6 months prior to every 5th anniversary of the date of the Date of Parliamentary Support (CityLink), request that the parties meet to review the minimum limits of liability, sub-limits of liability and deductibles for the Insurances, including consideration of the appropriateness of the limits, sub-limits and deductibles which will apply during that ensuing 5 year period and which will comprise the minimum requirements for the Insurances during the ensuing 5 year period.
- (b) Without limiting the State's rights under clause 7.16, the Company or Trustee may propose a Variation Proposal in accordance with clause 7.16(l) requesting a change to the minimum limits of liability, sub-limits of liability and deductibles for the Insurances.
- (c) Subject to clause 13.4E(d), clause 7.16(m) will apply to the Variation Proposal submitted by the Company or the Trustee under clause 13.4E(b).
- (d) In considering the Variation Proposal submitted by the Company and Trustee under this clause 13.4E, the State must have regard to:
 - (i) the nature of the Project;
 - (ii) the insurances which the Company and Trustee has effected, or caused to be effected, at that time and the risks covered under those insurances;
 - (iii) the risks required to be insured by clause 13;
 - (iv) the risks which a prudent insured in the position of the Company and Trustee would seek to insure in accordance with best industry practices; and

- (v) the terms on which insurance is available and the reasonableness of those terms, having regard to the terms generally available in the insurance market at that time.

13.5

Extent of Cover

- (a) The Company and the Trustee shall ensure that the insurances required to be effected under clauses 13.3(a)(i) and (iii), 13.3A(a)(i) and (iii) and 13.4(a) and (b) extend so as to provide for loss, destruction, damage, injury, disease or death which results from or is attributable to the construction of the Link (including the SLU and the CTW).
- (b) The nature and extent of the insurances in relation to the Project shall at all times be such as the State reasonably requires. If the State at any time reasonably requires the Company or the Trustee to:
 - (i) insure against a risk not specifically provided for or contemplated under clause 13.3, clause 13.3A or clause 13.4; or
 - (ii) increase the extent of or change the terms of the cover in relation to a risk,

it may notify the Company or the Trustee requesting either of them to give effect to its requirements as set out in the notice, provided that in relation to the Insurance Policies the State must pay to the Company and Trustee the reasonable incremental cost of any additional insurances or cover required by the State.

- (c) The Company and the Trustee need not effect or maintain any particular insurance required to be effected and maintained under clause 13.3, clause 13.3A, clause 13.4 or 13.5(b) insofar as, and only for so long as, it becomes (after the date of this Deed, or in the case of insurances under clause 13.3, after the date of the Twenty-second Amending Deed, or, in the case of insurance under clause 13.3A, after the date of the Thirty-third Amending Deed) unavailable (or not available on commercially reasonable terms). The Company and the Trustee must give the State reasonable notice should they, or either of them, propose not to obtain insurance in reliance on their rights under this paragraph (c). Within a reasonable time after receipt of that notice, the State may request the Company and the Trustee to effect and maintain substitute insurance if the State reasonably considers that the substitute insurance is available on commercially reasonable terms and applies to risks substantially similar to those that would have been addressed by the insurance not effected or maintained. Subject to paragraphs (d) and (e) the Company and the Trustee must give effect to such a request promptly.³²⁰
- (d) The Company or the Trustee shall promptly carry out each request made by the State in accordance with the terms of

the notice, unless it disputes the reasonableness of the State's request, in which case it may refer the dispute for expert determination under Article 16.

- (e) The State, in making a request under this clause and the expert, in making a determination under Article 16, shall in the case of paragraphs (b) and (c) take into account whether the insurance so requested is available in the commercial insurance market on commercially reasonable terms and in the case of paragraph (c) applies to risks substantially similar to those addressed by the insurance not effected or maintained under paragraph (c).
- (f) Not Used.³²¹
- (g) The parties may, from time to time and at any time after 20 February 1996, in the sole and absolute discretion of each party, agree other insurance arrangements to those set out in clauses 13.3, 13.3A, 13.4, 13.5 (excluding this paragraph 13.5(g)) and 13.6, and to the extent agreed between them the arrangements shall operate in satisfaction for those provisions.³²²

13.6

General Requirements

- (a) All insurances which the Company and the Trustee are required to effect under this Deed:
 - (i) shall be effected with insurers approved by the State (such approval not to be unreasonably withheld);
 - (ii) shall be on terms approved by the State (such approval not to be unreasonably withheld);
 - (iii) shall not contain any exclusion, endorsement or alteration, unless it is first approved by the State (such approval not to be unreasonably withheld);
 - (iv) in the case of the insurances specified in clauses 13.3(a)(i), (iii) and (vii), 13.4(a) and 13.4(b) shall be in the joint names of the Security Trustee (while any Project Debt, CTW Project Debt or WGT Project Debt remains outstanding), the Company, the Trustee, the State and Victorian Government Agencies and identify their respective rights and interests;
 - (v) in the case of the insurances specified in clauses 13.3A(a)(i), (ii), (iii) and (vi) shall be in the joint names of the Company, the Trustee, subcontractors carrying out CTW Works or CTW Maintenance Activities of every tier and the State (including the Roads Corporation) and identify their respective rights and interests;

- (vi) other than in respect of the insurance specified in clause 13.3 (a) (v) , 13.3A(a)(v), and 13.4(c) shall contain a term which requires the insurer to give not less than 90 days prior notice to the State and the Security Trustee in writing (at the address for notices to the State under clause 19.1) whenever the insurer gives the Company or the Trustee a notice of cancellation or any other notice in respect of the policy;
- (vii) shall specify the Security Trustee and the State as joint loss payees in respect of policies referred to in sub-paragraph 13.3(a)(i) and 13.4(a), so long as any Project Debt, CTW Project Debt or WGT Project Debt is outstanding and thereafter the Company, the Trustee and the State as joint loss payees. The State must not be identified as a loss payee in circumstances where there is a declared terrorist event pursuant to the *Terrorism Insurance Act 2003* (Cth);
- (viii) where the insurances are in joint names, shall contain a cross liability clause:
 - (A) in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - (B) for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
- (ix) other than in respect of the insurances specified in clause 13.3(a)(v), 13.3A and 13.4(c), shall contain a "no cancellation" clause:
 - (A) in respect of the policies described in clause 13.3(a)(i), (iii) and (iv) (except to the extent agreed), 13.3(a)(vii) and clause 13.4(a) and (b); and
 - (B) in respect of all other policies to the extent that such a clause can be obtained by the use of best endeavours;
- (x) where the insurances are in joint names, shall contain a provision under which the insurer agrees that the failure of one insured to observe and fulfil the terms of the policy will not prejudice the policy with respect to the interests of the other insureds; and

- (xi) where the insurances are in joint names, have each policy endorsed to the effect that the State and the other insureds shall not be prejudiced by an unintended and/or inadvertent error, omission or misdescription of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement; and
- (xii) in the case of the insurances specified in clauses 13.3A(a)(i) and 13.3A(a)(iii), shall contain provisions to the effect that:
 - (A) where the insured as described and noted in the policy schedule consists of more than one person or organisation, the cover shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured, provided that the total liability of all insurers to all the insured collectively shall not exceed the sums insured and limits of indemnity or any applicable sub-limits;
 - (B) the insurers will not impute to any insured any knowledge or intention or state of mind possessed or allegedly possessed by any other insured;
 - (C) any breach of condition or warranty, breach of duty of disclosure, misrepresentation, other act or omission, whether fraudulent or otherwise, committed by an insured shall not prejudice the right to indemnity or the ability to claim under the policy of any other insured; and
 - (D) the insurers waive all rights of subrogation which they might have or acquire against any person or organisation described and noted in the policy schedule as insured.
- (b) The Company and the Trustee shall:
 - (i) give the State proof satisfactory to the State of currency and coverage of insurances referred to in:
 - (A) clause 13.3, prior to commencement of the SLU Works;
 - (AA) clause 13.3A, prior to the commencement of the CTW Works forming part of CTW Sections A to C

- and prior to commencing the CTW Works forming part of CTW Section D;
- (B) clause 13.4, before Completion of all Sections; and also whenever reasonably requested by the State;
- (C) clause 13.4A, before the SLU Date of Practical Completion; and
- (D) clause 13.4B, before the Date of CTW Practical Completion and Ramp M Practical Completion (as applicable);
- (E) clause 13.4C, before the Date of West Gate Tunnel Completion; and
- (ii) give the State certified copies of all:
 - (A) policies;
 - (B) renewal certificates; and
 - (C) endorsement slips.
- (c) Each of the Company and the Trustee shall punctually pay or procure payment of all premiums in respect of all insurance policies referred to in this clause 13 and give the State copies of receipts for payment of premiums if, and when requested by the State.

13.7

Reinstatement

- (a) If any part of the Link is damaged or destroyed, while the Company or the Trustee bears risk in relation to that part under paragraph 13.1(a), then if that part relates to a Section, SLU Section or CTW Section which:
 - (i) has not reached Completion, SLU Section Practical Completion or CTW Section Practical Completion (as applicable), then the Company (in the case of the Company Land or the Lay Down Areas) or the Trustee (in the case of the Trust Land) shall; or
 - (ii) has reached Completion, SLU Section Practical Completion or CTW Section Practical Completion (as applicable), then the Company shall,

(without limiting the obligations of the Company or the Trustee under this Article or Article 10) diligently pursue its repair and reinstatement. In particular it shall:

 - (iii) take immediate steps to clear any debris and begin initial repair work;
 - (iv) diligently pursue the repair and reinstatement of the relevant part of the Link so that the Link complies with the Project Scope and Technical Requirements and in respect of CTW, prior to CTW Section Practical Completion (of that part of

- CTW), the SWTC, and in respect of the CityLink Returned Works prior to the CityLink Returned Works Date of Handback, the WGT PSR, and there is as little as practicable disruption to the Link;
- (v) endeavour, to the greatest extent reasonably possible (and ensure that the Company or Trustee, as applicable, endeavours to the greatest extent reasonably possible) to continue to comply with their other obligations under the Project Documents and the CTW Project Documents;
 - (vi) keep the State fully informed of progress of the repair and reinstatement;
 - (vii) manage all repair and replacement activities so that the impact on the free flow of traffic over the Link is as little as practicable; and
 - (viii) subject to clause 7.2 of the Master Security Deed, apply (and the Trustee or the Company, as applicable, shall also apply) all proceeds of insurance taken out in compliance with clauses 13.3(a)(i), 13.3A(a)(i) or 13.4(a)(i) and paid as a result of the damage or destruction in or towards satisfaction of the costs of the repair and reinstatement.
- (b) For the purposes of paragraph (a), the expression the "Link" has the same meaning as in clause 13.1.
- (c) Prior to:
- (i) in relation to State Returned Works forming part of CTW Sections A to C, the Date of CTW Practical Completion; or
 - (ii) in relation to State Returned Works forming part of CTW Section D, the Date of Ramp M Practical Completion,
- in circumstances where:
- (iii) an event which is not caused or contributed to by an act or omission of the Company or the Trustee gives rise to any part of the State Returned Works being damaged or destroyed;
 - (iv) that event also causes damage or destruction to a part of the Westgate Freeway or Tullamarine Freeway; and
 - (v) as a result of that damage or destruction to the Westgate Freeway or the Tullamarine Freeway, the Company and the Trustee are unable to diligently commence and pursue reinstatement of the State Returned Works within a reasonable time, having regard to the damage also caused to

the balance of the Westgate Freeway or
Tullamarine Freeway,

the State must (unless otherwise agreed by the parties) direct the Company and the Trustee not to carry out its obligations under clause 13.7(a) in respect of the affected part of the State Returned Works.

- (d) If the State issues a direction under clause 13.7(c):
 - (i) the State must concurrently with that direction issue a CTW Variation to remove the relevant affected part of the State Returned Works from the CTW Works; and
 - (ii) the Company and the Trustee agree to pay to the State the proceeds under any CTW Insurance Policy they would have applied to rectification of the relevant part of the State Returned Works under clause 13.7(a)(viii), had the State not issued its direction under clause 13.7(c).

13.8

Termination for Failure to Reinstate

- (a) The State shall not be entitled to exercise its right of termination under clause 15.3 because of a failure diligently to pursue repair and reinstatement under clause 13.7:
 - (i) if the relevant damage or destruction was caused by a Force Majeure Event and either
 - (A) were the Company or the Trustee to repair and reinstate the damaged or destroyed part of the Link, the cost to it (net of any insurance proceeds paid in respect of the relevant damage or event of destruction) would be likely to result in:
 - (1) the Equity Return assessed only from the date of damage or destruction over the remainder of the Original Concession Period (as it may have been extended under clauses 2.9 and 2.10 and having regard to any redress afforded or likely to be afforded under clauses 2.9 and 2.10 in connection with the damage or destruction, but for the avoidance of doubt excluding the Additional Concession Period) being less than the lower of the Base Case Equity Return and the Equity Return prior to the damage or destruction; or

- (2) the Extension Equity Return assessed, subject to clause 1.19A, only from the date of damage or destruction over the remainder of the Concession Period (as it may have been extended under clauses 2.9 and 2.10 and having regard to any redress afforded or likely to be afforded under clauses 2.9 and 2.10 in connection with the damage or destruction) being less than the lower of the Extension Base Case Equity Return and the Extension Equity Return prior to the damage or destruction; or
- (B) each of the following conditions is satisfied:
 - (1) pursuant to the Securities, a Controller (within the meaning of the Master Security Deed) is, at the time of the failure, in possession of all of the Company's and the Trustee's property, rights and interest in the Project or the Security Trustee is then entitled to appoint such a Controller;
 - (2) the cost of repair and reinstatement under clause 13.7 would exceed the aggregate of insurance proceeds received or receivable in respect of the damage or destruction by more than \$50 million (escalated);
 - (3) the aggregate of Project Debt, CTW Project Debt and WGT Project Debt subsisting at the time exceeds the aggregate of those insurance proceeds, funds then available to either the Company or the Trustee (other than funds provided by the Lenders) and the net present value of revenue (after excluding any GST payable in respect of such revenue) from the Project (but excluding revenue from the Development Projects) then projected using the Financial Model and a discount rate equal to the average weighted cost of Project Debt (as, at any particular time, set out in column 5 of Schedule 5 to IFA with respect to

that time), and in so far as it relates to CTW Project Debt, as set out in the Lending Documents in the form accepted by the State under clause 4.2(g) of the IFA Twenty-second Amending Deed, and as it relates to WGT Project Debt, as set out in the Lending Documents in the form accepted by the State as a condition precedent to the IFA WGT Amending Deed and the Equity Return and the Extension Equity Return; and^{323 324}

- (4) the Agent has undertaken to the State to apply all insurance proceeds received or receivable in respect of the relevant damage or destruction in the execution of the SLU Works or WLU Works or, the operation, maintenance or repair of the Link or in satisfying liabilities of the Company, the Trustee or both of them to pay or repay Project Debt, CTW Project Debt and WGT Project Debt in accordance with the amortisation schedule set out in Schedule 5, Schedule 5A and Schedule 5B to IFA (as applicable);³²⁵ or
 - (ii) if:
 - (A) the relevant damage or destruction was caused by an event, adequate insurance against the risk of which was commercially available;
 - (B) pursuant to the Securities, a Controller (within the meaning of the Master Security Deed) is, at the time of the failure, in possession of all of the Company's and the Trustee's property, rights and interest in the Project or the Security Trustee is then entitled to appoint such a Controller;
 - (C) the aggregate of insurance proceeds received or receivable in respect of the damage or destruction then exceeds \$100 million (escalated); and
 - (D) sub-paragraphs (i)(B)(3) and (i)(B)(4) above are satisfied.

In this paragraph (a), references to a dollar amount (escalated) at any particular time are references to the

- product of that amount and a fraction, the denominator of which is CPI for the quarter ended 31 December 1995 and the numerator of which is the CPI most recently published prior to that time.
- (b) If the State is unable to exercise its right of termination under clause 15.3, because of paragraph (a), the State may, subject to clause 15.9, upon giving 15 Business Days' notice to the Company and the Trustee, terminate the rights granted to them under clause 2.8 (and any other rights and with the exception of those imposed by this clause 13.8, obligations of the Company and the Trustee under the Project Documents) insofar as they apply to or affect the part of the Link comprising the area between two interchanges (whether adjoining or not) between which are the part or parts damaged or destroyed (the "**State Area**").
- (c) The Company and the Trustee shall give to the State and its servants or agents such access to the Project Land, SLU Lay Down Areas and, to the extent the Company and the Trustee have such rights, CTW Extra Land as the State or its servants or agents may reasonably require to repair the damage to or reinstate the State Area and to operate, maintain and impose tolls in relation to that part of the Link as comprises the State Area. If the State does terminate rights under clause 2.8 in relation to the State Area, no redress under clauses 2.9 and 2.10 need be afforded in respect of or in connection with the relevant damage or destruction.³²⁶
- (d) The Company and the Trustee shall ensure that users of the State Area will be entitled to unfettered use (in common with the users of the Link in accordance with this Deed but free of tolls charged by the Company or in connection with the Link) of the interchanges which define the State Area.
- (e) If the State wishes to impose tolls in relation to that part of the Link as comprises the State Area, it and the Company shall consult from time to time in an endeavour, in good faith, to agree on matters of mutual concern to them as operators of connecting toll roads.³²⁷
- (f) If the State is prevented from exercising its right of termination under clause 15.3 because of the application of sub-paragraph 13.8(a)(i)(A) then the Company and the Trustee shall make such payments to the State as and when it is necessary to make those payments in order to ensure that the Equity Return (assessed only from the date of the relevant damage or destruction over the remainder of the Original Concession Period, as it may have been extended under clauses 2.9 and 2.10) never exceeds the Base Case Equity Return and the Extension Equity Return (assessed, subject to clause 1.19A, only from the date of the relevant damage or destruction over the remainder of the Concession Period, as it may have been extended under clauses 2.9 and 2.10) never exceeds the Extension Base

Case Equity Return. The Company and the Trustee shall, however, cease to be liable to make these payments to the State once the State has been reimbursed by way of those payments for any costs reasonably incurred by it, in reinstating and repairing the relevant State Area.

- (g) Nothing done by the State under this clause shall constitute an Appendix Event.

14. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

14.1 State Representations and Warranties

The State represents and warrants that:

- (a) it has the power to execute and deliver and perform its obligations under the Project Documents and all necessary action has been taken to authorise their execution and delivery and performance save that, insofar as this warranty applies in relation to an obligation to grant a right under clause 2.8, if the Company or the Trustee is prevented by Law from exercising such a right then, in such circumstances, the State warrants that it has the power to perform its obligations under clauses 2.9 and 2.10 (in relation to items 4 and 5 of the Appendix) and clause 12.8, rather than power to perform its obligations under clause 2.8;
- (b) it enters into the Project Documents to which it is a party as a commercial rather than a public or governmental act; and
- (c) it is not entitled to claim immunity from legal proceedings for itself on the grounds of sovereignty or otherwise under a law or in a jurisdiction where an action may be brought for the enforcement of any of the obligations under this Deed;
- (d) the supply of information, material or data supplied by the State or a Victorian Government Agency to the Company or the Trustee did not infringe the Intellectual Property Rights of a person (other than a party to this Deed or a Contractor), noting however, that this representation and warranty only applies to the supply of information, material and data, not (for example) its use, accuracy or validity;
- (e) the Project Documents accurately set out the requirements of the State for the Project.

The State irrevocably waives to the fullest extent permitted by the law of any jurisdiction any right to immunity from set-off, legal proceedings, attachment prior to judgment or other attachment or execution of judgement on the grounds of sovereignty or on grounds otherwise afforded to the State because it is the Crown in right of the State of Victoria, for itself and its property and assets in respect of its obligations under the Project Documents to which it is a party.

The State shall indemnify the Company and the Trustee against any claim made against, or damage suffered by, them or either of them because the use (for the purposes of the Project) of information, data or material supplied by State or a Victorian Government Agency infringes the Intellectual Property Rights of a person (other than a party to this Deed or a Contractor). The State's liability under this indemnity, however, cannot exceed \$500,000 in aggregate for all claims under this clause. Notwithstanding this indemnity, both the Company and the Trustee accept the risk of such an infringement.

14.1A Repetition of State Representations and Warranties

The State repeats the representations and warranties made by it under clause 14.1 as at the date being the operative date for the purposes of the Fourth Amending Deed but as if references in clause 14.1 to:

- (a) the Project were references to CLEP; and
- (b) the Project Documents were references to the Third Amending Deed, the Fourth Amending Deed and each instrument or document providing for an amendment to a Project Document as contemplated in clause 3.2(k) of the Fourth Amending Deed.³²⁸

14.1B Repetition of State Representations and Warranties with respect to SLU

The State repeats the representations and warranties made by it under clause 14.1 as at the SLU Effective Date but as if references in clause 14.1 to:

- (a) the Project were references to the M1 Project; and
- (b) the Project Documents were references to, in the case of paragraphs 14.1(a) to (d) inclusive, the M1 Project Documents, and in the case of paragraph 14.1(e), the M1 Project Documents and the Project Documents.

14.1C Repetition of State Representations and Warranties with respect to CTW

The State repeats the representations and warranties made by it under clause 14.1 as at the CTW Effective Date but as if references in clause 14.1 to:

- (a) the Project were references to the CTW and the CTW Maintenance Activities; and
- (b) the Project Documents were references to, in the case of paragraphs 14.1(a) to (d) inclusive, the CTW Project Documents, and in the case of paragraph 14.1(e), the CTW Project Documents and the Project Documents.

14.2 Company and Trustee Representations and Warranties

- (a) Each of the Company and the Trustee (in its capacity as trustee of the Trust) represents and warrants for itself that:
 - (i) it has the power to execute and deliver and perform its obligations under the Project

- Documents and Transaction Documents and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (ii) it is entitled to grant the irrevocable non-exclusive licences granted (in the case of the Company) under clauses 3.2 and 7.15 or (in the case of the Trustee) under clause 7.15;
 - (iii) the use and licences for use of the Tolling System and the Proprietary Documentation by the State or any other person to whom a licence or rights are granted directly or indirectly by the Company under clause 3.2 or by the Company and the Trustee under clause 7.15 will not infringe any Intellectual Property Rights of any third person or result in the State or other person to whom a licence or rights are granted being liable to a third person (except pursuant to an agreement made in accordance with clause 3.2(b) or 7.15(b)) for royalties or compensation;
 - (iv) the Construction Contractor is a joint venture between Obayashi Corporation ARBN 002 932 736 and Transfield Construction Pty Ltd ACN 000 854 688 and no other person, and is Controlled by those parties (as agreed between them) and Transfield Constructions Pty Ltd is a wholly owned subsidiary of Transfield Holdings Pty Ltd ACN 001 241 265;
 - (v) Not Used;
 - (vi) the only persons from whom the Company, the Trustee or the Construction Contractor has sought or obtained or sought and obtained advice in relation to the existence of any pollution or contamination on the Project Land (other than land which is required for the purposes of the SLU or the CTW) are Axis Environmental Consultants Pty. Ltd., Golders Associates Pty. Ltd. and Knight Frank Hooker (Vic.) Pty. Ltd. which are reasonably considered by the Company and the Trustee as the only persons retained as consultants or agents of the Consortium referred to in Recital G to this Deed or the Construction Contractor who could reasonably be expected to have become aware of such pollution or contamination in the context of their retainer as such consultants or agents.
- (b) The representations and warranties made under sub-paragraphs (a)(ii) and (iii) are deemed to be repeated by reference to the circumstances then subsisting at the date any licence or rights are granted under clause 3.2 or clause 7.15 and, in relation to sub-paragraph (a)(iii), on any date

on which the State grants any licence or sub-licence which it is empowered to grant under either of those clauses (providing that the State has given 5 Business Days' notice of that date to the Company and the Trustee).

- (c) The Trustee represents and warrants (in its capacity as trustee of the Trust only) that:
- (i) the Trust subsists and is properly constituted;
 - (ii) it is the sole trustee of the Trust and no action has been taken or threatened to remove or replace it as trustee of the Trust or to appoint an additional trustee of the Trust;
 - (iii) the copy of the Trust Deed provided to the State prior to the date of this Deed is a true and complete copy of the instrument of which it purports to be a copy and contains full particulars of the terms of the Trust and of the rights and entitlements of the holders of Units;
 - (iv) (subject to paragraph (d)), each Project Document, Transaction Document, Lending Document and Equity Document and insurance policy to which it is (or to which it is intended to be) a party is (or is capable of being), entered into by it as trustee of the Trust in the due and proper administration of the Trust;
 - (v) (subject to paragraph (d)), it has, as trustee of the Trust, full power and authority to enter into and perform its obligations under each such document and each policy in respect of insurances required to be obtained or maintained pursuant to this Deed;
 - (vi) it has an unconditional right to be indemnified in full out of the assets held by it as trustee of the Trust in respect of obligations incurred by it as trustee of the Trust and no action has been taken to limit or restrict that right;
 - (vii) it is not in default of its obligations as trustee of the Trust;
 - (viii) it is not, as trustee of the Trust, involved in, and does not conduct, any business other than the business related to the Project;
 - (ix) the rights of the State under the Project Documents have priority over the rights of any holder of Units;
 - (x) no assets held by or on its behalf as trustee of the Trust have been resettled or distributed or otherwise disposed of (except insofar as the distribution or disposition is permitted under the

- Trust Deed and does not result in a contravention of the Project Documents); and
- (xi) the property charged by the Trustee pursuant to the Deed of Charge and the Trustee's rights and interest in the Project Documents comprise all the property the subject of the Trust and do not include or affect property not the subject of the Trust.
- (d) The representations and warranties given in sub-paragraphs 14.2(c)(iv) and 14.2(c)(v) are made on the date of Financial Closing, rather than the date of this Deed. In addition, those representations and warranties and the other representations and warranties given under paragraph (c) are repeated on the first Business Day of each quarter commencing after the date of this Deed (by reference to the circumstances then subsisting) but, in the case of the representation and warranty made in:
- (i) sub-paragraph (c)(ii), subject to changes of the Trustee made otherwise than in breach of clauses 1.12(b) and (c);
 - (ii) sub-paragraph (c)(iii), subject to changes to the Trust Deed made otherwise than in breach of sub-paragraph 14.3(b)(iv).

14.2A

Company and Trustee SLU Representations and Warranties

- (a) Each of the Company and the Trustee (in its capacity as trustee of the Trust) represents and warrants for itself that as at the SLU Effective Date:
 - (i) it is entitled to grant the irrevocable non-exclusive licences granted under clause 7A.15; and
 - (ii) the use and licences for use of the SLU Proprietary Documentation by the State or any other person to whom a licence or rights are granted directly or indirectly by the Company and the Trustee under clause 7A.15 will not infringe any Intellectual Property Rights of any third person or result in the State or other person to whom a licence or rights are granted being liable to a third person (except pursuant to an agreement made in accordance with clause 7A.15(b)) for royalties or compensation.
- (b) The representations and warranties made under subparagraphs (a)(i) and (ii) are deemed to be repeated by reference to the circumstances then subsisting at the date any licence or rights are granted under clause 7A.15, and in relation to subparagraph (a)(ii), on any date on which the State grants any licence or sub-licence which it is empowered to grant under that clause (providing that the State has given 5 Business Days' notice of that date to the Company and the Trustee.)

14.2B Company and Trustee CTW Representations and Warranties

- (a) Each of the Company and the Trustee (in its capacity as trustee of the Trust) represents and warrants for itself that as at the CTW Effective Date:
 - (i) it is entitled to grant the irrevocable non-exclusive licences granted under clause 7D.15; and
 - (ii) the use and licences for use of the CTW Proprietary Material by the State or any other person to whom a licence or rights are granted directly or indirectly by the Company and the Trustee under clause 7D.15 will not infringe any Intellectual Property Rights of any third person or result in the State or other person to whom a licence or rights are granted being liable to a third person (except pursuant to an agreement made in accordance with clause 7D.15(b)) for royalties or compensation.
- (b) The representations and warranties made under subparagraphs (a)(i) and (ii) are deemed to be repeated by reference to the circumstances then subsisting at the date any licence or rights are granted under clause 7D.15, and in relation to subparagraph (a)(ii), on any date on which the State grants any licence or sub-licence which it is empowered to grant under that clause (providing that the State has given 5 Business Days' notice of that date to the Company and the Trustee.)

14.2C Company and Trustee subcontractor representations and warranties

- (a) The Company represents and warrants for itself that:
 - (i) each Subcontractor engaged under an Enterprise-wide Subcontract has sufficient financial capacity, experience and capability to provide the goods or perform the services that it provides or performs under the Enterprise-wide Subcontract, to at least the standards required under this Deed; and
 - (ii) there has been no material change in the financial condition of the Key Subcontractors (since the date of their last audited accounts) which would prejudice the ability of the Company to perform its obligations under the Project Documents.
- (b) Each representation and warranty given by the Company in accordance with clause 14.2C(a):
 - (i) is made on the date of WGT Financial Close; and
 - (ii) will be deemed to be repeated each day during the period from the WGT Financial Close to the Expiry Date,

with reference to the facts and circumstances then subsisting.

14.3 Company and Trustee Undertakings³²⁹

- (a) The Company shall not:
- (i) carry on any business other than the Project, the carrying out on behalf of Clepco of the obligations and the exercise of the rights of Clepco under the ESEP Project Documents or as permitted by clause 9.4;³³⁰
 - (ii) acquire or hold any property or incur any liabilities other than for the purposes of the Project its acquisition and holding of ordinary shares in Clepco, as permitted by clause 9.4, or in respect of loans to or from the Trustee;^{331 332}
 - (iii) incorporate or acquire any subsidiary (other than Clepco) except for the purpose of carrying out the State Works as party to the State Works Agreement; or³³³
 - (iv) materially amend, materially vary or terminate, any Project Document or Transaction Document,

without the State's prior approval which, in relation to subparagraph (iv) (insofar as it applies to Transaction Documents), shall not be unreasonably withheld or delayed.

- (b) The Trustee (in its capacity as trustee of the Trust) shall not:
- (i) carry on any business other than design, construction and financing of the Trust Road and leasing the Trust Land to the Company;
 - (ii) acquire or hold any property or incur any liabilities (other than for the purposes of its business or the Project or in the administration of the Trust or the making of loans to or from the Company);³³⁴
 - (iii) incorporate or acquire any subsidiary;
 - (iv) materially amend, materially vary or terminate, any Project Document or Transaction Document,

without the State's prior approval which, in relation to subparagraph (iv) (insofar as it applies to Transaction Documents), shall not be unreasonably withheld or delayed.

- (c) The Trustee shall:
- (i) notify the State immediately if the Trust is determined or for any other reason ceases to exist or if it is proposed that at any meeting of holders

- of Units there be considered a resolution providing for, or the effect of passing which would be, termination of the Trust; and
- (ii) notify the State if the Trustee ceases to be entitled to be fully indemnified out of property held subject to the Trust in respect of all liabilities (present and future, actual and contingent) incurred by or imposed on the Trustee under the Project Documents or Transaction Documents.
- (d) The Company and the Trustee shall obtain or procure the prior approval of the State (which shall not be unreasonably withheld or delayed) to:
- (i) material changes in the identity or terms of engagement of the Construction Contractor or to the acquisition of Control of the Construction Contractor by an Entity (other than an Entity consisting of a corporation referred to in sub-paragraph 14.2(a)(iv)), it being acknowledged by the State that:
 - (A) the appointment of an SLU Construction Contractor for the purposes of performing the SLU Works does not constitute such a change; and
 - (B) that the appointment of a CTW Construction Contractor for the purposes of performing the CTW Works does not constitute such a change;
 - (ii) material changes in the identity or terms of engagement of the Operator or to the acquisition of Control of the Operator by an Entity (other than an Entity consisting of a corporation referred to in sub-paragraph 14.2(a)(v)); and
 - (iii) any change in the Financial Model or the Traffic Model (other than in relation to data incorporated pursuant to paragraph (e)).
- (e) Without limitation to the Company's and the Trustee's obligations under the Project Documents, it is agreed that:
- (i) the Company and the Trustee shall each ensure that:
 - (A) the SLU Design Consultant, the SLU Proof Engineer, and the Quality Assurance Auditor perform the functions required of them under the Project Scope and Technical Requirements; and
 - (B) the CTW Design Consultant, the CTW Proof Engineer, and the Quality Assurance Auditor perform the functions required of them under the SWTC;

- (ii) not used
- (iii) the Company and the Trustee shall each comply with the Victorian Government Code of Practice for the Building and Construction Industry in relation to the Project;
- (iv) the Company and the Manager shall each give notice to the State of the names of its proposed directors or proposed directors of any Equity Investor before, or contemporaneously with, their appointment;³³⁵
- (v) each of the Company and the Trustee shall promptly provide to the State a copy of any notice given to Australian Stock Exchange Limited in relation to any issue by it of capital market instruments (including long term bonds or infrastructure bonds);
- (vi) the Company and the Trustee shall each comply with all relevant Laws applicable in relation to the Project;
- (vii) the Company and the Trustee shall each ensure that the Financial Model and Traffic Model incorporate relevant and accurate data (subject to clause 1.19 and 1.19A) when operated, from time to time for the purposes of this Deed, provided however, that:
 - (A) data so incorporated relating to Project Debt, CTW Project Debt, WGT Project Debt, Equity Return or Extension Equity Return must be consistent with the nature of, and limitations inherent in, those concepts, and the various bases and assumptions required under this Deed to be adopted in relation to them as outlined in particular, in the definitions of those concepts, in the definition of "Project Securities", "Original Project Securities", "Extension Project Securities" and in clauses 1.19, 1.19A and 14.4;³³⁶ and
 - (B) the Forecast Enhancement Cashflows are not to be updated to reflect actual cashflows;
- (viii) the Company and the Trustee shall each ensure that:
 - (A) such person as may from time to time be nominated by the State is given such access to the Traffic Model and the Financial Model as that person considers necessary in order to enable the person to check whether the obligations concerning

those models under this Deed have been observed (provided, however that the State shall only nominate such a person if it reasonably considers the person to be skilled in the operation or audit (or operation and audit) of computer models and has informed the person of the confidentiality of the contents of the models); and

- (B) revisions to the Traffic Model and the Financial Model specified by such a person by notice to the Company are promptly effected unless the Company by notice to the State promptly disputes the reasonableness, accuracy or relevance of any such revision. In that event, the State may promptly refer the dispute for expert determination under Article 16);
- (ix) the Company and the Trustee shall be able to satisfy their obligations under the Handover Clauses on any date during the Concession Period, as if the Concession Period terminated or the obligations under clause the Handover Clauses were required to be fulfilled, on that date.
- (f) Subject to paragraph (g), during the Concession Period the Company shall maintain such a level of technology in its systems of operation (including the Tolling System), maintenance and repairs of the Link as would be maintained by a prudent operator of the Link consistently with current good practices and standards.
- (g) Paragraph (f) does not apply to the Company's FMS (as defined under the FMS Operating Agreement) to the extent that VicRoads (or any other operator of the State's FMS (as defined under the FMS Operating Agreement) has not maintained that level of technology.
- (h) [Not used]
- (i) [Not used]

14.4 Infrastructure Borrowings

In assessing or determining at any particular time whether the State has a particular liability under the Project Documents or the nature or extent of any such liability, or in assessing or determining matters relating to Project Debt (including the ability of the Company or the Trustee or both of them to repay Project Debt in the context of clauses 2.9 and 2.10) it shall be assumed that:

- (a) the aggregate amount of the deposits which secure (whether by way of set-off, combination of accounts or otherwise) that component of the Project Debt as is attributable to infrastructure borrowings is and remains an amount equal to the amount of that component;

- (b) the net cost of that component of the Project Debt (such as interest costs and fees) never exceeds net (after Taxes) revenue from those deposits; and
- (c) those deposits are and remain legally and beneficially held by the Company.

This assumption does not apply in determining the priorities under clause 3.1, or in the context of clause 7.2, of the Master Security Deed and does not affect clause 1.9 of the Master Security Deed.

14.5

Change in Ownership

- (a) If a person (the "**Applicant**"), or the Company on behalf of the Applicant, requests the prior written consent of the State to become a Substantial Holder, the State shall not unreasonably withhold or delay its consent to the Applicant becoming a Substantial Holder.
- (b) The State may withhold its consent where it is reasonably satisfied that:
 - (i) while Project Securities are not quoted on a stock market conducted by the Exchange or an Exchange subsidiary (with each of those terms having the meaning given to them in the Corporations Law) and shares or interests (within the meaning of the Corporations Act) issued by an Equity Investor are also not so quoted:³³⁷
 - (A) the Applicant or any of its directors or any person considered by the State to have a substantial legal or economic interest, whether direct or indirect, in the Applicant:
 - (1) has been responsible for policies in another entity which have been detrimental to the entity or have evidenced a lack of either sensitivity to or a willingness to address legitimate community expectations; or
 - (2) has been convicted of an offence involving fraud or committed an act of insolvency or been declared by any Government Agency unfit to be a company director; or
 - (B) there is an appreciable risk that the Applicant or any of its directors or any person considered by the State to have a substantial legal or economic interest, whether direct or indirect, in the Applicant might seek the adoption of policies by the Company or the Trustee which could be detrimental to any of them or their ability or willingness to

- observe their respective obligations to the State; or
- (ii) if and when sub-paragraph (i) does not apply:
 - (A) the Applicant:
 - (1) has acquired substantial interests in other corporations in the past and instituted policies which have been detrimental to the corporation or its operations; or
 - (2) has been convicted of an offence involving fraud or committed an act of insolvency or been declared by the Australian Securities Commission unfit to be a company director; and
 - (B) there is an appreciable risk that the person might seek the adoption of policies by the Company or the Trustee which could be detrimental to their performance or operations.
 - (c) Any request for consent of the State shall be in writing and set out particulars of the Applicant's current holding of shares or interests (within the meaning of the Corporations Act) issued by an Equity Investor, shares in the Company, of Units and holding of Equity Infrastructure Bonds and particulars of the proposed holding of Project Securities, and entitlement (within the meaning applicable to it under section 609 of the Corporations Law in its form as at 20 October, 1995, but as if that section also applied to units in a unit trust) to such shares, interests, Units and Equity Infrastructure Bonds, if that person becomes a Substantial Holder.³³⁸
 - (d) The State may request further information in writing from the Applicant at any time after the request is made under paragraph (a) requiring that such information be provided within 7 days of the State's request.
 - (e) The Company and the Trustee shall not knowingly suffer or permit any person to become or remain a Substantial Holder without the State's prior written consent.
 - (f) The Company and the Trustee shall ensure that the constitution (within the meaning of the Corporations Act) of the Company and of any Equity Investor, and the Trust Deed, respectively contain provisions to give effect to this clause 14.5.³³⁹
 - (g) The State has consented to Transurban Holdings Limited and the Transurban Unit Trust being and remaining a Substantial Holder. The Company and the Trustee shall, however, ensure that (except with the prior consent of the State) no other Entity:

- (i) is or becomes an Equity Investor or a holder of shares in the Company or Units;
- (ii) has or acquires a beneficial interest in Project Securities, shares in the Company or Units (other than as a result of holding a legal or beneficial interest in an interest (within the meaning of the Corporations Act) in the Transurban Unit Trust);
- (iii) has or acquires a relevant interest (within the meaning of section 608 of the Corporations Act) in Project Securities, shares in the Company or Units other than as a result of having a relevant interest in shares issued by Transurban Holdings Limited or a relevant interest in an interest (within the meaning of the Corporations Act) in the Transurban Unit Trust; or
- (iv) has or acquires a right (actual or contingent) the exercise of which would result in a situation to which any of the preceding provisions of this paragraph (g) applies.³⁴⁰

14.6

Equity Commitment

- (a) The Company and the Trustee shall each ensure that:
 - (i) on Financial Closing, unconditional commitments by persons notified to the State on or before 30 October 1995 subsist to subscribe for, or procure the subscription of, Original Project Securities in an amount of not less than \$455 million (less any amounts received in cash by the Company or the Trustee by way of subscription for Original Project Securities prior to Financial Closing); and
 - (ii) Original Project Securities the issue of which is referred to in the Equity Documents but which, on Financial Closing, remain to be subscribed are subscribed and paid for on the specified date for subscription notified to the State on or before the earlier of the date of Financial Closing and 31 December 1995.
- (b) If:
 - (i) there is a failure to comply with paragraph (a); or
 - (ii) Financial Closing does not take place within the relevant period after proclamation of the Project Legislation,

the State shall be entitled to terminate this Deed by giving notice to the Company and the Trustee and in exercising that right the State shall not be required to comply with the provisions of clause 15.3 provided however, that this right to terminate because of a failure to comply with the obligation outlined in sub-paragraph (a)(ii) is subject to the

failure not having been remedied within 30 Business Days after notice of it has been given by the State to the Company and the Trustee.

- (c) For the purposes of this clause, the "relevant period" is 30 Business Days unless:
 - (i) the Australian Taxation Office or the Development Allowance Authority has (in response to a submission made by or on behalf of the Company or the Trustee prior to the expiration of 5 Business Days after the date of the second reading of the Project Bill, in a form agreed with the Authority, such agreement not to be unreasonably withheld or delayed) indicated it would be unable to finalise requested rulings and approvals of the type contemplated in subparagraph 2.7(d)(ii) (but excluding the issue relating to deductibility of sub-lease rentals) until passage of the Project Bill; and
 - (ii) the form of application for such a ruling or approval is to be agreed with the Authority and is based on the financial structure set out in the submission to the Authority of the consortium referred to in Recital G, as amended prior to 28 July, 1995,

in which case it is the longer of 30 Business Days and such period as is reasonably necessary to enable the Australian Taxation Office and the Development Allowance Authority to complete their review of the Project Legislation and provide those final rulings and approvals.

14.7

EIS

- (a) If, before Financial Closing, the Company, the Trustee or the State becomes aware that an EIS is, or will be, required in relation to the Project, it shall be entitled to terminate this Deed by giving, prior to Financial Closing, notice of termination to the other parties.
- (b) If, after Financial Closing, the Company or the Trustee becomes aware that an EIS is, or will be, required in relation to the Project, it shall promptly notify the State of it. If, after Financial Closing, the State becomes aware that an EIS is or will be required in relation to the Project and:
 - (i) Completion of all Sections has not occurred, it may terminate this Deed by notice to the Company and the Trustee given within 20 Business Days after it becomes aware of the EIS requirement or provide the limited indemnity described in paragraph (c). If the State does not give such a notice, it will be deemed to have elected to provide that indemnity; or

- (ii) Completion of all Sections has occurred, it must provide the limited indemnity described in paragraph (c).
- (c) Subject to paragraph (f), if the State is deemed to have elected to provide the limited indemnity described in this paragraph, or must provide that indemnity, it shall indemnify each of the Company and the Trustee against costs, charges, expenses, liabilities and losses reasonably incurred by the Company or the Trustee (as applicable) as a consequence of the EIS or in complying with requirements resulting from the EIS.
- (d) If the State terminates this Deed under paragraph (b), it shall pay to the Company and the Trustee an amount, in aggregate, equal to the Early Termination Amount applicable at the time of the election under paragraph (b) in accordance with clause 1.21. That amount shall be paid within 60 Business Days of the relevant election.
- (e) If:
 - (i) the State terminates this Deed under paragraph (b);
 - (ii) the Early Termination Amount paid by it was calculated on the basis that the State was precluded from achieving Completion of all Sections; and
 - (iii) after conclusion of the relevant EIS the State ceases to be precluded from achieving Completion of all Sections,then within a reasonable time of these conditions being satisfied the State shall pay to the Company and the Trustee an amount, in aggregate, equal to the sum of:
 - (iv) the amount by which the Early Termination Amount paid by the State fell short of the amount it would have been required to pay had it not been precluded from achieving Completion of all Sections; and
 - (v) interest on the amount of that shortfall calculated at a rate equal to the discount rate referred to in paragraph 2.5(b) and accruing over the period since payment of the Early Termination Amount.
- (f) The State will not be liable to provide an indemnity under paragraph (c) insofar as:
 - (i) the Company or the Trustee is in breach, or had committed a breach, of a Project Document; and
 - (ii) that breach is the subject of, or is included within the scope of, the relevant EIS.

- (g) The State acknowledges, independently of clause 12.2, that the processes referred to in Section 30(2) of the Melbourne City Link Authority Act 1994 have been completed.
- (h) For the avoidance of doubt, this clause 14.7 (other than paragraph (g)) will not apply in respect of the circumstances referred to in clauses 11.1 of the M1 Corridor Redevelopment Deed or in relation to the circumstances described in clause 19.2(a)(i)(D) of the CTC Redevelopment Deed.

14.8 Certain Conditions Precedent

- (a) If any of the conditions contained in paragraph 2.7(b) or (c) are not satisfied or waived within 75 Business Days from the proclamation of Project Legislation, any party entitled to the benefit of the conditions may terminate this Deed by notice to the other parties;
- (b) If Project Legislation is not proclaimed in the form of the Project Bill or as otherwise agreed by each of the parties by 31 March 1996, either the Company or the Trustee may, by notice to the State given within 10 Business Days of that date, terminate this Deed.

14.9 Manager's Undertakings

The Manager shall give such directions, approvals and instructions and make such requests, as and when desirable in order to facilitate the due and punctual performance by the Trustee of its obligations under the Project Documents and fully and properly do all acts, matters and things which, under or pursuant to the Trust Deed:

- (a) it is obliged to do;
- (b) are delegated to it; or
- (c) it elects to do on behalf of the Trustee.

14.10 Ring Fencing

- (a) Each of the Company and Trustee must not make, or permit to subsist, a contract with any Transurban Entity other than a contract:
 - (i) which is not more onerous in a material respect (assessed having regard to all relevant circumstances, including the nature of the relevant contract) on the Company or Trustee (as applicable) than would be the case were the contract to have been made on an arm's length basis; and
 - (ii) which a reasonable person in the position of the Company or the Trustee (as applicable) would enter into (if acting solely in the interest of one or more of the Company, the Trust (but without regard to the interests of any Entity which are separate to its interest as a holder of an interest in Units) and Clepco).

- (b) Each of the Company and the Trustee must not:
- (i) acquire any assets from a Transurban Entity; or
 - (ii) assume or permit to subsist any liability in favour of a Transurban Entity (or in favour of any third party at the request of or for the benefit of a Transurban Entity),

other than an asset acquired, or a liability assumed under a contract -

 - (iii) which is not more onerous in a material respect (assessed having regard to all relevant circumstances, including the nature of the relevant contract) on the Company or Trustee (as applicable) than would be the case were the contract to have been made on an arm's length basis; and
 - (iv) which a reasonable person in the position of the Company or the Trustee (as applicable) would enter into (if acting solely in the interest of one or more of the Company, the Trust (but without regard to the interests of any Entity which are separate to its interest as a holder of an interest in Units) and Clepco).
- (c) Not Used
- (d) The Company must provide to the State:
- (i) Not Used;
 - (ii) reasonable details of any contract with a Transurban Entity, promptly after the contract is made (but only if it would be reasonable to regard the contract as of itself material, or as part of a number of related contracts or arrangements which together are material, from the perspective of the Company, the Trustee or the State); and
 - (iii) reasonable details of any change to any contract notified under the preceding paragraph, promptly after it is made (but only if it would be reasonable to regard the relevant change as material from the perspective of the Company, the Trustee or the State).
- (e) For the purposes of clause 14.10(d), in determining whether a contract or arrangement is material from the perspective of the State, regard must only be had to the State in its capacity as a party to the Project Documents.³⁴¹
- (f) This clause 14.10 does not apply to the CLP WGT Project Documents entered into as at Date of Parliamentary Support (CityLink) or as subsequently amended with the approval of the State. To the extent the CLP WGT Project Documents are subsequently amended without the need to

obtain State consent, clause 14.10 will only apply in relation to those amendments.

15. TERMINATION

15.1 Abandonment

If, for a period in excess of a relevant period, efforts (which could reasonably be characterised as efforts in good faith) are not taken to achieve Completion of all Sections then the State may by giving 10 Business Days' notice to the Company and the Trustee terminate this Deed. For the purposes of this clause, a period is a "relevant period" if either:

- (a) it is a period of 3 consecutive months commencing on the date on which the State gives notice to the Company or the Trustee of its opinion that relevant efforts are not being taken in good faith; or
- (b) it is an aggregate period in excess of 6 months in any 12 month period, being a 12 month period commencing on the date on which the State gives notice to the Company or the Trustee of its opinion that relevant efforts are not being taken in good faith.

Any party may refer the issue of whether relevant efforts were taken in a relevant period for expert determination under Article 16. If a party were to do this, the State would not be entitled to give notice of termination of this Deed under this clause 15.1 until a determination is made under that Article consistent with it being entitled to do so.

15.2 Termination during Construction

- (a) If Completion of all the Sections of the Link is not achieved by the Link Expected Completion Date then if the Company Road is not Complete, the Company shall, and if the Trust Road is not complete, the Trustee shall, give to the State within 15 Business Days of the passing of the Link Expected Completion Date a notice (the "**Proposed Completion Program**") setting out the reasons for the delay and a written program describing:
 - (i) the state of the Works in respect of those Sections which have not been Completed;
 - (ii) the date by which it is anticipated that Completion of all Sections will be achieved;
 - (iii) the program which should be adopted in order to achieve Completion of all Sections by that date; and
 - (iv) the information (including construction programs and progress reports) and the level of consultation proposed to keep the State regularly informed of progress of the proposed action to Complete all Sections of the Link.

- (b) Promptly after receipt of a Proposed Completion Program given in accordance with paragraph (a), the State shall endeavour to agree with the Company or the Trustee (as applicable) the matters required to be described in that program. If any of those matters are not agreed within 20 Business Days of the State's receipt of the Proposed Completion Program, any party may refer the matter for expert determination under Article 16.
- (c) If, however, a Proposed Completion Program is not given in accordance with paragraph (a), the State may prepare its own program which must contain the same details as required under clause 15.2(a) (the "**State Program**") and give the State Program to the Company or the Trustee (as applicable). Promptly after receipt of a State Program given in accordance with this paragraph (c), the Company or the Trustee (as applicable) shall endeavour to agree with the State the matters described in that program. If any of those matters are not agreed within 20 Business Days of the Company's or the Trustee's receipt of the State's Program, any party may refer the matter for expert determination under Article 16.
- (d) The parties agree that in agreeing or determining under paragraph (b) or (c) a Proposed Completion Program or State Program (as the case may be):
 - (i) the State, the Company and the Trustee shall each be entitled to require that the relevant program reflect Completion of all Sections being diligently pursued by the Company and the Trustee;
 - (ii) the State shall be entitled to require that the relevant program reflect no allowance for the time to complete components of the Works which should have been completed had each of the Company and the Trustee diligently pursued Completion of all Sections prior to the Link Expected Completion Date.
- (e) For the purposes of this clause 15.2, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure diligently to pursue something, regard is required to be had to time necessary to enforce the Design and Construct Contract, or to engage a substitute Construction Contractor, if to do so would be consistent with the required steps and actions being diligently pursued, recognising that neither the Trustee nor the Company are construction contractors.
- (f) The Company and the Trustee shall:
 - (i) achieve Completion of all Sections by the date specified in the agreed or determined Proposed Completion Program, or the agreed or determined State Program (as the case may be), but as that date may have been varied as a result of:

- (A) agreement between the parties; or
 - (B) the operation of paragraph (g); and
- (ii) diligently pursue all steps and actions described in the agreed or determined Proposed Completion Program or the agreed or determined State Program (as applicable), but as these steps may have been varied as a result of:
 - (A) agreement between the parties; or
 - (B) operation of paragraph (g).
- (g) The Company and the Trustee may seek a change to the date by which they must achieve Completion of all Sections, or any steps or actions described in the proposed Completion Program or the State Program, and a consequent change in the relevant program to so achieve Completion. They may only do this, however, by notice to the State:
 - (i) specifying the change sought (and the consequent changes to the relevant program); and
 - (ii) which is received by the State prior to the date by which the Company and the Trustee are, at the time of giving the notice, obliged to achieve Completion of all Sections.
- (h) If the Company and the Trustee have diligently pursued Completion of all Sections since the 15th Business Day after the Link Expected Completion Date and they seek a change in accordance with paragraph (g), they shall be entitled to such change insofar as it is consistent with them continuing diligently to pursue Completion of all Sections. Neither the Company nor the Trustee shall, however, be entitled to any change which, if incorporated in the Proposed Completion Program or State Program (as applicable) would be inconsistent with the State's entitlement under sub-paragraph (d)(ii). If there is no agreement as to any change so sought within 10 Business Days of the State's receipt of a notice under paragraph (g), any party may refer the matter for expert determination under Article 16.
- (i) The State shall be entitled to terminate this Deed at any time after either the Company or the Trustee fails to observe an obligation imposed on it under sub-paragraph (f)(i). Termination shall be effected by the State giving not less than 25 Business Days' notice to the Company and the Trustee. Subject to the Master Security Deed, such a notice takes effect upon the expiration of that 25 Business Day period. It is agreed that the State shall have no other claim or remedy against the Company or the Trustee and the Company and the Trustee are not liable in damages or otherwise for failure to observe an obligation imposed on either of them under sub-paragraph (f)(i).

- (j) If the Company or the Trustee fail to observe their obligations under sub-paragraph (f)(ii), the State may give notice in writing requiring the Company or the Trustee (as applicable) to remedy that failure within 20 Business Days of that notice (by observing those obligations). If the Company or the Trustee do not remedy that failure within that 20 Business Day period or subsequently fail to observe their obligations under sub-paragraph (f)(ii), the State shall be entitled to terminate this Deed at any time by giving not less than 25 Business Days' notice to the Company and the Trustee. Subject to the Master Security Deed, such a notice takes effect upon expiry of that 25 Business Day period. It is agreed that the State shall have no other claim or remedy against the Company or the Trustee and the Company or the Trustee are not liable in damages or otherwise for failure to observe an obligation imposed on either of them under sub-paragraph (f)(ii).

15.2A CTW acknowledgement

The parties acknowledge and agree that each of clauses 15.1 and 15.2 will not apply in respect of the CTW or CTW Obligations, and the State will have no claim or entitlement under those clauses in respect of the CTW or the CTW Obligations.

15.3 Material Default

- (a) At any time after the occurrence of an Event of Default or a Project Default the State may give notice to the Company and the Trustee of the State's intention to terminate this Deed under this clause if either:

- (i) a remedy of the breach to which the Event of Default or Project Default relates; or
- (ii) the overcoming of the consequences of that breach,

is not thereafter diligently pursued.

- (b) Within 15 Business Days of the State giving a notice under paragraph (a), the Company and the Trustee shall give to the State a notice ("**Proposed Remedy Program**") setting out a written program describing:
 - (i) the date by which it is anticipated that the relevant breach will be remedied or its consequences overcome; and
 - (ii) the program which should be adopted in order to remedy the relevant breach or overcome its consequences by that date.
- (c) Promptly after receipt of the Proposed Remedy Program given in accordance with paragraph (b), the State shall endeavour to agree with the Company and the Trustee the matters required to be described in that program. If any of those matters are not agreed within 20 Business Days of

- the State's receipt of the Proposed Remedy Program, any party may refer the matter for expert determination under Article 16.
- (d) If, however, a Proposed Remedy Program is not given in accordance with paragraph (b), the State may prepare its own program (the "**State Remedy Program**") and give the State Remedy Program to the Company and the Trustee. Promptly after receipt of a State Remedy Program given in accordance with paragraph (c), the Company and the Trustee shall endeavour to agree with the State the matters described in that program. If any of those matters are not agreed within 20 Business Days of the Company's and the Trustee's receipt of the State Remedy Program, any party may refer the matter for expert determination under Article 16.
 - (e) The parties agree that in agreeing or determining under paragraph (c) or (d) a Proposed Remedy Program or State Remedy Program (as the case may be) the State, the Company and the Trustee shall each be entitled to require that the relevant program reflect the remedy of the relevant breach or the overcoming of the consequences of the relevant breach being diligently pursued by the Company and the Trustee.
 - (f) The Company and the Trustee shall:
 - (i) remedy the relevant breach or overcome its consequences by the date specified in the agreed or determined Proposed Remedy Program or the agreed or determined State Remedy Program (as applicable), but as that date may have been varied as a result of:
 - (A) agreement between the parties; or
 - (B) the operation of paragraph (g); and
 - (ii) diligently pursue all steps and actions described in the agreed or determined Proposed Completion Program or the agreed or determined State Remedy Program (as applicable), but as those steps may have been varied as a result of:
 - (A) agreement between the parties; or
 - (B) the operation of paragraph (g).
 - (g) The Company and the Trustee may seek a change to the date by which they must achieve a remedy of the relevant default or the overcoming of its consequences, or any steps or actions described in the Proposed Remedy Program or in the State Remedy Program, and a consequent change in the relevant program to achieve that remedy or the overcoming of those consequences. They may only do this, however, by notice to the State:

- (i) specifying the change sought (and the consequent changes to the relevant program); and
 - (ii) which is received by the State prior to the date by which the Company and the Trustee are, at the time of giving the notice, obliged to have remedied the relevant breach or overcome its consequences.
- (h) If the Company and the Trustee have diligently pursued a remedy of the relevant breach or the overcoming of its consequences since the 15th Business Day after the date of the notice given by the State under paragraph (a) and they seek a change in accordance with paragraph (g), they shall be entitled to such change insofar as it is consistent with them continuing diligently to pursue a remedy of the relevant breach or the overcoming of its consequences. If there is no agreement as to any change so sought within 10 Business Days of the State's receipt of a notice under paragraph (g), any party may refer the matter for expert determination under Article 16.
- (i) The State shall be entitled to terminate this Deed at any time after either the Company or the Trustee fails to observe an obligation imposed on it under sub-paragraph (f)(i). Termination shall be effected by the State giving not less than 25 Business Days' notice to the Company and the Trustee. Subject to the Master Security Deed, such a notice takes effect upon expiry of that 25 Business Day period. It is agreed that the State shall have no other claim or remedy against the Company or the Trustee and the Company or the Trustee are not liable in damages or otherwise for failure to observe an obligation imposed on either of them under sub-paragraph (f)(i).
- (j) If the Company or the Trustee fail to observe their obligations under sub-paragraph (f)(ii), the State may give notice in writing requiring the Company or the Trustee (as applicable) to remedy that failure within 20 Business Days of that notice (by observing those obligations). If the Company or the Trustee do not remedy that failure within that 20 Business Day period or subsequently fail to observe their obligations under sub-paragraph (f)(ii), the State shall be entitled to terminate this Deed at any time by giving not less than 25 Business Days' notice to the Company and the Trustee. Subject to the Master Security Deed, such a notice takes effect upon expiry of that 25 Business Day period. It is agreed that the State shall have no other claim or remedy against the Company or the Trustee and the Company or the Trustee are not liable in damages or otherwise for failure to observe an obligation imposed on either of them under sub-paragraph (f)(ii).

15.4

Other Termination Events and Termination Restrictions

- (a) The State may terminate this Deed by notice to the Company and the Trustee if:

- (i) at a particular time, the State was unable to exercise a right of termination under clause 15.3 because of clause 13.8(a) (other than due to the application of clause 13.8(a)(i)(A));
 - (ii) the rights and interests of the Company and the Trustee in the Project have not subsequently been sold, assigned or disposed of; and
 - (iii) no liability of the Company or the Trustee subsists in relation to Project Debt, CTW Project Debt and WGT Project Debt.
- (b) The State may terminate this Deed by notice to the Company and the Trustee if the Company, the Trustee or a Hedging Project Bank (within the meaning of the Treasurer's Deed of Covenant) exercises its right under paragraph 2.1(a) of that Deed.
- (c) If:
- (i) an Appendix Event constitutes, or results in, a circumstance or event which entitles the State to terminate this Deed under clause 15.2 or 15.3;
 - (ii) that Appendix Event has had or will have a Material Adverse Effect; and
 - (iii) the Company or the Trustee has given notice of the Appendix Event in accordance with clause 2.9,
- then, notwithstanding clauses 15.2 and 15.3,
- (iv) if the redress afforded under clauses 2.9 and 2.10 in respect of the relevant Appendix Event has remedied or overcome the consequences of the relevant circumstance or event, the State may not exercise the entitlement referred to in sub-paragraph (i) because of the circumstance or event; or
 - (v) while:
 - (A) the redress afforded under clauses 2.9 and 2.10 remains unagreed and not determined,
 - (B) the redress likely to be agreed or determined is likely to promptly remedy or overcome the consequences of the relevant circumstance or event, and
 - (C) the Company or the Trustee (as applicable) is diligently pursuing finalisation of an agreement or determination as to that redress,

the State may not exercise the entitlement referred to in sub-paragraph (i) because of the circumstance or event.

- (d) If:
 - (i) the State would, but for this paragraph, be entitled to terminate this Deed because of an Event of Default or Project Default; and
 - (ii) the Event of Default or Project Default arose as a direct and sole result of a breach by the State of a Project Document,

then, in the context of the relevant Event of Default or Project Default, the State shall not be entitled to exercise that entitlement.

15.5

Termination by the Company and the Trustee

- (a) The Company and the Trustee may terminate this Deed by notice to the State given at a time when, and within a reasonable time after, all of the following conditions are satisfied:
 - (i) an event occurs to which item 1 or item 4 of the Appendix applies, which does or will have a Material Adverse Effect or the State breaches a Project Document;
 - (ii) the value of the effect of the event (in terms of loss of revenue or increase in outgoings), or the level of damages flowing from the breach (as applicable), exceeds 20% of the present value of future Project revenue (using projections derived from operation of the Financial Model and a discount rate of 12.85% per annum and excluding revenue from the Development Projects);
 - (iii) the redress for the event is agreed or determined to be implemented over a period in excess of 2 years or the damages are not paid promptly after any award of them (the right of appeal against which has expired);
 - (iv) no part of that redress or award of damages has been accepted; and
 - (v) no Event of Default or Project Default subsists.
- (b) If the Company and the Trustee terminate this Deed under paragraph (a), the State must pay in accordance with clause 1.21 an amount equal to the Early Termination Amount applicable at the date of the State's receipt of notice under paragraph (a). That payment must be made within 60 Business Days of the date of that notice.
- (c) If the Company and the Trustee exercise their right to terminate this Deed under this clause 15.5 in relation to an event to which item 1 or item 4 of the Appendix applies, no redress under clauses 2.9 and 2.10 need be provided in relation to that event, even if it has been agreed or determined that such redress should be provided.

15.6 Payments on Termination

- (a) If this Deed is terminated by the State, the Company and the Trustee shall pay to the State an amount equal to the aggregate of:
 - (i) if it is terminated prior to Completion of all Sections, amounts due and payable by them or either of them to the State in respect of:
 - (A) indemnities; or
 - (B) sub-paragraph 3.1(c)(ii) or 3.1(c)(iii); or
 - (ii) if it is terminated after Completion of all Sections, amounts due and payable by them or either of them to the State in respect of:
 - (A) indemnities;
 - (B) sub-paragraph 3.1(c)(ii) or 3.1(c)(iii);
 - (C) sub-paragraph 3.1(c)(i) or Step-In Payments;
 - (D) paragraphs 2.6(e) and (f);
 - (E) paragraph 3.1(a);
 - (F) rental under a Lease;
 - (G) paragraph 3.1(d); or
 - (H) Concession Notes.
- (b) If this Deed is terminated by the Company and the Trustee under clause 15.5, there shall be deducted from the Early Termination Amount payable under that clause:
 - (i) any amount to which the State would be entitled under paragraph (a), were the termination made by the State at that time; and
 - (ii) any amount due but unpaid to the State under the Project Documents.

15.7 Exclusive Termination

None of the Company, the Trustee and the State may terminate this Deed or any rights under this Deed otherwise than in accordance with clauses 12.8, 13.8(b), 14.6(b), 14.7(a), 14.7(b), 14.8 and this Article 15 or in accordance with the Master Security Deed. It is acknowledged by the parties that the doctrine of frustration is not intended to apply to this Deed.

15.8 Suspension

- (a) Subject to paragraph (b), if the Company or the Trustee is unable to perform an obligation to the State under the Project Documents because of a relevant event, then the obligation shall be suspended (and the Company or the Trustee (as the case may be) shall be relieved from liability

arising by reason of that inability) for the duration of the relevant period. In this context:

- (i) "relevant event" means any event or circumstance occurring on the Westgate Freeway Link between Sturt Street and Graham Street, the performance by the Company or the Trustee of the SLU Works in accordance with this Deed or the performance by the State of the State Road Works under and as defined in the M1 Corridor Redevelopment Deed (an "**M1 Project Event**"), on and from WGT Financial Close, the performance of CityLink Returned Works or WGT Co's obligations under the WGT Project Agreement in accordance with the WGT Project Agreement, a Force Majeure Event (which manifests itself after the date of this Deed) or an event or circumstance (which manifests itself after the date of this Deed) which would have constituted a Force Majeure Event but for:
 - (A) the fact that the risk of the event or circumstance was reasonably capable of adequate insurance in the commercial insurance market on reasonable terms; or
 - (B) the application of the exceptions in the definition of "Force Majeure Event" which relate to, first, Items 1 to 7 of column 1 of the Appendix (see paragraph (e) of that definition), secondly, certain Extension Events (see paragraph (d) of that definition but as if that paragraph also excluded item 3 of Schedule 2, in addition to item 4 of that Schedule) or, thirdly, industrial action (see paragraph (i) of that definition but as if that paragraph only excluded industrial action of the type specified in item 6 of the Appendix); and
 - (ii) the "relevant period" is the shorter of the period that the Company or the Trustee (as the case may be) remains unable to perform the relevant obligation because of the relevant event and the period during which it would have been unable to so perform that obligation had both the Company and the Trustee used reasonable endeavours to mitigate or overcome the consequences of the relevant event.
- (b) Paragraph (a) does not suspend:
- (i) any obligation expressed in terms of a requirement diligently to pursue something (noting that in assessing or determining what is required in terms

of an obligations diligently to pursue, regard should be had to clause 1.17);

- (ii) any obligation to pay money or indemnify;
- (iii) any obligation which arises under clause 8.3(a)(ii); or
- (iv) in respect of an M1 Project Event only, any obligation which arises under clause 7A.8, 7A.11, 9.5(a) or 9.13 (in the case of clause 9.13 on the basis that any delay in the performance of the SLU Works resulting from the exercise by the State of its rights under that clause will constitute a delay by the State for the purposes of clause 8.5 of the M1 Corridor Redevelopment Deed).

15.9

CTW Obligations

- (a) Without limiting clause 15.7, the State, the Company and the Trustee each acknowledges and agrees that the terms of this Deed (including without limitation each of clauses 15.3 to 15.8) is subject to the operation of this clause 15.9.
- (b) The State, the Company and the Trustee each acknowledges and agrees that:
 - (i) subject to clause 15.9(b)(ii) and (iii), the consequences of the Company or the Trustee breaching the CTW Obligations or the CTC Redevelopment Deed, or a representation or warranty in respect of the CTW or the CTW Maintenance Activities being incorrect, are set out in the CTC Redevelopment Deed and not this Deed, and the CTC Redevelopment Deed contains the sole and exclusive contractual remedy for any such breach or incorrect representation or warranty;
 - (ii) subject to clause 15.9(b)(iii), if the Company or the Trustee breach the CTW Obligations or the CTC Redevelopment Deed, or a representation or warranty made by the Company or the Trustee in respect of the CTW or the CTW Maintenance Activities is incorrect, neither the Company nor the Trustee will have any liability for that failure under this Deed and that breach or incorrect representation or warranty shall not be considered to constitute a breach of this Deed, an Event of Default or a Project Default, or an event or circumstance that would otherwise entitle the State to terminate, rescind, or repudiate this Deed, and the State will not in such circumstances terminate, rescind or repudiate this Deed; and
 - (iii) clauses 15.9(b)(i) and (ii) do not apply in respect of any breach of this Deed or incorrect representation or warranty to the extent that

breach or incorrect representation or warranty relates to the WLU occurring after the CTC Expiry Date except to the extent that the breach or incorrect representation or warranty occurred or subsisted on or before the CTC Expiry Date.

- (c) The parties acknowledge the effect of clauses 19.2(b) and 19.2(c) of the CTC Redevelopment Deed and will enter into any documents reasonably necessary to comply with clause 19.9 of the CTC Redevelopment Deed.
- (d) To the extent that any part of the WLU Works are incorporated into the Link as part of the carrying out of a Reinstatement Plan in accordance with clause 19.3 of the CTC Redevelopment Deed, the parties agree:
 - (i) the relevant part of the WLU Works will be deemed to be part of the Link; and
 - (ii) to negotiate in good faith to agree amendments to the Project Scope and Technical Requirements to reflect the incorporation of the WLU Works into the Link in accordance with the Reinstatement Plan.

16. DISPUTE RESOLUTION

16.1 Disputes

- (a) Subject to paragraph (c), any dispute or difference arising between the parties under any of the clauses of this Deed listed in Part A of the Dispute Resolution Schedule or under any other clause in which it is expressly provided that a dispute or difference may be referred for expert determination under this Article 16, shall be resolved in the first instance in accordance with the provisions of clauses 16.2 (as applicable), and 16.3 to 16.7 inclusive and, subject to the provisions of clause 16.5 in relation to giving timely notice, a party may appeal against the determination of the expert, in which case the provisions of clauses 16.13 to 16.16 inclusive shall apply.
- (b) Any dispute or difference arising under any of the clauses listed in Part B of the Dispute Resolution Schedule or under any other clause in which it is stated that a dispute or difference may be referred for resolution under Article 16 (not being a dispute or difference required to be referred for expert determination) shall be resolved in accordance with clauses 16.2 (as applicable) and clauses 16.8 to 16.16 inclusive.
- (c) It is acknowledged and agreed that this Article 16 does not apply to any dispute or difference arising between the parties:
 - (i) which is not referred to in paragraph (a) or paragraph (b); or

- (ii) in connection with the CTC Redevelopment Deed or the CTW Obligations (including questions concerning the existence, meaning or validity of the CTC Redevelopment Deed).
- (d) The parties agree that for the purposes of the resolution of any dispute or difference relating to any matter arising under clauses 2.9 or 2.10, the dispute or difference shall be decided or determined in accordance with considerations of general justice and fairness and the provisions of section 22(1) of the Commercial Arbitration Act 1984 (Vic) are excluded.

16.2 Procedures

- (a) A dispute or difference in relation to a decision or determination of the Independent Reviewer which is binding on the parties (namely, other than an expression of opinion or advice under clause 7.6(c), 7.6(d), 7.9(b) or 7.9(e)) or of the Design and Construction Verification Engineer which is binding on the parties (namely, other than an expression of opinion or advice under 7A.6(c), 7A.6(d), 7A.9(b), 7A.9(e)) shall be referred for expert determination upon a party giving a notice to the other parties and the Independent Reviewer or the Design and Construction Verification Engineer (as applicable) within 14 days after the date of the decision or determination the subject of the dispute or difference.
- (b) Where a provision of this Deed authorises a party to refer a dispute or difference for expert determination or other resolution under this Article 16 after the parties have failed to agree on a matter, the dispute or difference shall be referred for resolution under this Article 16 by one party giving notice to the other parties with 14 days after:
 - (i) the expiry of any period specified for reaching agreement; or
 - (ii) (if no such period is specified), the expiry of 20 Business Days after any party gives notice to the other parties that the matter must be agreed.
- (c) Any dispute or difference, other than one referred to in paragraphs (a) or (b), shall be referred for resolution under this Article 16 if any party gives a notice to the other parties within 14 days after the dispute or difference arises.
- (d) If no notice is given within the time prescribed under this clause for giving a notice of referral for resolution of any dispute or difference under this Article 16 (as the case may be):
 - (i) all parties to the dispute or difference will be barred from giving such a notice in the future in relation to the relevant decision, determination or matter;

- (ii) all parties to the dispute or difference waive the right to object to the decision, determination or matter the subject of the dispute or difference; and
- (iii) the relevant decision, determination or matter will be final and binding.

16.3 Selection of Expert

- (a) A dispute or difference required to be referred to or resolved by expert determination shall be determined by an independent expert:
 - (i) agreed between and appointed by the parties; or
 - (ii) in the absence of agreement, within 7 days after the date of the notice under clause 16.2(a) or (b), as applicable, appointed by the President of the Institute of Arbitrators
- and administered in accordance with clause 16.4.
- (b) It is the intention of the parties that:
 - (i) the expert appointed to determine a dispute or difference arising in relation to the design, construction or operation of the Link must have a technical understanding of the issues in contest; and
 - (ii) the expert appointed to determine a dispute or difference arising under Article 2 must have a general understanding of the industry area or other private sector infrastructure projects.

16.4 Rules of Expert Determination

- (a) The expert shall:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) take into consideration all documents, information and other material which the parties give the expert and which the expert in his or her absolute discretion, considers relevant to the determination of the dispute or difference;
 - (iv) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she so wishes; and
 - (v) make his or her decision within 14 days from the acceptance by the expert of the appointment, or such extended period as the parties shall agree.
- (b) The expert may commission his or her own advisers or consultants, including lawyers, accountants, bankers,

engineers, surveyors, traffic consultants or other technical consultants, to provide information to assist the expert in his or her decision.

- (c) The parties shall indemnify the expert for the reasonable cost of retaining those advisers or consultants.
- (d) In reaching a determination in respect of a dispute or difference referred to in clause 16.1(d), the expert must give effect to the intent of the parties entering into the Project Documents as set out in Article 2 by employing the options referred to in clauses 2.9 and 2.10. The expert shall not have regard to the matters set out in clause 2.1 or clause 2.2.

16.5 Expert's Finding

The determination of the expert shall be in writing and will be final and binding on each party unless a party gives notice of appeal to the other parties within 14 days after the determination. The parties are to give effect to the determination of the expert unless and until it is reversed, overturned or otherwise changed by arbitration under clause 16.13.

16.6 Release

The expert will not be liable in respect of the expert determination, except in the case of fraud on the part of the expert. The parties agree to release and indemnify the expert from and against all claims, except in the case of fraud, on the part of the expert, which may be made against him or her by any person in respect of the expert's appointment to determine the dispute or difference.

16.7 Costs

Failing any agreement to the contrary between the parties, the expert shall have the power to award costs against all or any of the State, the Company, the Trustee and against the Construction Contractor, the Agent and the Security Trustee (if they or any of them participate in the process) in such proportions as the expert shall determine. For the purposes of this clause, costs shall not be limited to legal costs (on a solicitor/own client basis) but will extend to all costs incurred by the parties, (including fixed overhead costs), directly related to the referral to, and conduct by the parties of, the expert determination.

In the absence of an agreement or a determination to the contrary, the State will pay one half and the Company and the Trustee will pay one half of the cost of the expert.

16.8 Reference of Disputes

- (a) At the expiration of 10 days from the date of the notice under clause 16.2 in respect of a dispute or difference (other than one to which paragraph 16.1(a) applies), the party which gave the notice shall (unless the dispute is meanwhile resolved) give to the other parties notice (the "**Conciliation Notice**") by hand or by certified mail stating that the dispute or difference will within 7 days

from the date of receipt of the Conciliation Notice (unless the dispute or difference is meanwhile resolved) be referred for conciliation to the Institute of Arbitration Australia ("IAA").

- (b) The giving of a Conciliation Notice shall be a condition precedent to the commencement by any party of the conciliation process with regard to the matters the subject of that dispute or difference as identified in the Conciliation Notice.

16.9 Conciliation

If after the expiration of 7 days from the receipt of a Conciliation Notice the dispute or difference has not been resolved then the party giving the Conciliation Notice must refer the dispute or difference to the IAA for resolution in accordance with IAA Rules for the conduct of Commercial Conciliation.

16.10 Place of Conciliation

The place of a conciliation shall be Melbourne.

16.11 Evidence Not Admissible

Evidence of anything said, documents presented to, admissions made or matters raised in the course of any conciliation under this Article will be confidential to the parties and the conciliator and will not be admissible at any subsequent arbitration proceedings.

16.12 Costs

Failing any agreement to the contrary between the parties, the conciliator shall have the power to award costs (including any fees charged by the IAA) against all or any of the State, the Company, the Trustee and also against the Construction Contractor, the Agent and the Security Trustee (if they or any of them participate in the process) in such proportions as the conciliator shall determine. For the purposes of this clause, costs shall not be limited to legal costs (on a solicitor/own client basis), but shall extend to all costs incurred (including fixed overhead costs) in the course of referring the matter for conciliation or conducting the conciliation.

In the absence of an agreement or a determination to the contrary, the State will pay one half and the Company and the Trustee will pay one half of the costs of the conciliation.

16.13 Arbitration

- (a) If:
- (i) a notice of appeal is given under clause 16.5; or
 - (ii) a dispute or difference identified in a Conciliation Notice is not resolved within 28 days after the reference to the IAA,

a party to the dispute or difference may notify the other parties (the "**Arbitration Notice**") that it requires the dispute or difference to be referred to arbitration.

- (b) Upon receipt by the other party of the Arbitration Notice such dispute or difference will then be and is hereby referred to arbitration.

16.14 Identity of Arbitrator

Any arbitration under clause 16.13 must be conducted by 3 arbitrators (or such lesser number as agreed by the parties) chosen as follows:

- (a) one arbitrator to be nominated by each of the State and the Company; and
- (b) the third arbitrator to be agreed between the parties or, failing such agreement, within 10 Business Days after receipt by the other parties of the Arbitration Notice, then by an arbitrator to be selected by the President for the time being of the IAA.

16.15 Rules for Conduct of Arbitration

Subject to paragraph (b), an arbitration under this Article will be conducted in accordance with the following rules:

- (a) if the arbitration is in respect of an appeal against an expert's determination under clause 16.5 relating to an Independent Reviewer's decision or determination, or a Design and Construction Verification Engineer's decision or determination, the Expedited Commercial Arbitration Rules of the IAA will apply; or
- (b) in all other cases the Rules for the Conduct of Commercial Arbitration of the IAA will apply.

16.16 Place of Arbitration

The place of any arbitration shall be Melbourne.

16.17 Role of Construction Contractor

- (a) The parties acknowledge the interests and concerns of the Construction Contractor in the outcome of any disputes or differences in relation to decisions and determinations of the Independent Reviewer referred to in clause 16.2(a).
- (b) The State acknowledges that the Construction Contractor:
 - (i) will be given copies of all documents, information and other material given to the expert under clause 16.5, to the IAA for the purposes of conciliation of the dispute or difference under this Article 16 or to the arbitrators appointed under clause 16.15 for the purposes of arbitration of the dispute or difference under this Article 16; and
 - (ii) may attend and participate at any hearing held by the expert or other meeting between any party and the expert in relation to the dispute or difference, at any conciliation of the dispute or difference under this Article 16 and at any arbitration of the

dispute or difference under this Article 16, in respect of any such dispute.

- (c) The Construction Contractor may make submissions to the expert and may give to the expert documents, information and other material for consideration by the expert under clause 16.4(a)(iii).
- (d) The Construction Contractor may make submissions and provide documents, information and other material to the IAA in relation to the consideration of any such dispute or difference under this Article 16 or to the arbitrators appointed under clause 16.15 in relation to the arbitration of a dispute or difference under this Article 16.
- (e) Any determination of a dispute or difference under this Article 16 in relation to a decision or determination of the Independent Reviewer referred to in clause 16.2(a) will be binding on the parties to this Deed and the Design and Construct Contract.
- (f) Any determination of a dispute or difference under this Article 16 in relation to a decision or determination of the Design and Construction Verification Engineer referred to in clause 16.2(a) will be binding on the parties to this Deed.

17.

ACCOUNTING AND REPORTING OBLIGATIONS

17.1

Accounting Records

- (a) The Company and the Trustee shall keep proper books of account and all other records they have relating to the Project at their respective offices in Melbourne.
- (b) The Company shall have its accounts, and the Trustee shall procure that the Trust's accounts are, audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that the Company or Trust is part of a consolidated entity, within the meaning of the Corporations Act).³⁴²
- (c) The Company and the Trustee shall ensure that their respective books of account and records referred to in paragraph (a) are available to the State at all reasonable times for examination, audit, inspection, transcription and copying.
- (d) Without limiting their obligations under the Handover Clauses, if this Deed is terminated the Company and the Trustee shall give to the State access to all of their respective books of account and records referred to in paragraph (a) which are necessary for the continued operation, repair and maintenance of the Link.
- (e) The State shall give the Company and the Trustee access to any books of account or records given to it by the Company and the Trustee (as the case may be) for a period of 7 years after the date they are given.

17.2 Construction Period

Until Completion of all Sections the Company and the Trustee shall give to the State the same information required to be given to any of the Lenders (under the Lending Documents) in relation to the costs to complete construction of the Works or the Project, at such times as are required under the Lending Documents.

17.3 Financial Statements

Not later than 30 September in each year, the Company and the Trustee shall each give to the State its or (in the case of the Trustee) the Trust's unconsolidated audited financial statements for the previous financial year and the audited financial statements for the previous financial year of any consolidated entity (within the meaning of the Corporations Act) of which the Company or the Trust (as applicable) forms part.³⁴³

17.4 Models

- (a) Not later than 30 September in each year, the Company and the Trustee shall give to the State:
 - (i) a printout of the Financial Model and of the Traffic Model (or a disk on which those models are encoded) certified by a director of the Company on the basis of the actual performance of the Company and the Trustee in the previous financial year and cumulatively since Financial Closing and, showing the then current performance projections for the remaining years of the Concession Period, assuming no (or no further) extension; and
 - (ii) a statement reconciling the information in the printout relating to the Financial Model (or the disk) referred to in paragraph (a) with the audited financial statements of the Company and the Trust for the same period.
- (b) Without limiting paragraph (a), the Company shall ensure that the State is provided with such results from the operation of the Financial Model and the Traffic Model and in a form reasonably satisfactory to the State as and when reasonably requested by the State, as soon as practicable after any such request.

17.5 Traffic Figures

- (a) The Company shall give the State such information relating to traffic figures as the State reasonably requires.
- (b) Information required under paragraph (a) shall be given to the State at quarterly intervals and at such other times as the State reasonably requires.

17.6 Other Information

- (a) The Company shall, and the Trustee (in relation to the Trust) shall, give to the State:

- (i) copies of all documents or information given to or received by it or an Equity Investor from the Australian Securities Commission or Australian Stock Exchange Limited promptly after the information is first given or received;³⁴⁴
 - (ii) copies of all notices to Equity Investors and of all notices from an Equity Investor to the holder of any securities issued by the Equity Investor, and shall ensure that the State is permitted to attend all general meetings of each Equity Investor and of the holders of any such securities;³⁴⁵
 - (iii) records of expenditure from each Insurance Proceeds Account within 45 days of such expenditure; and
 - (iv) such other information relating to the Project as the State may reasonably require from time to time provided that the State indemnifies the Company and the Trustee against costs and expenses (including internal overheads) reasonably incurred in compliance with such a requirement (other than immaterial costs and expenses).
- (c) If the State is, or is likely to become, liable to pay the Early Termination Amount, the Company and the Trustee shall, promptly after being requested to do so by the State, give the State reasonable details of each component of that amount and the way the component was calculated.

17.7

Lending Documents

In respect of:

- (a) each document of the type referred to in paragraph (ad) of the definition of "Lending Document"; and
- (b) each amendment or variation to a Lending Document, proposed to be entered into by the Trustee, the Company or Clepco, the Company shall provide to the State:
- (c) notice of the general nature and purpose of the document, amendment or variation (or, where the document, amendment or variation is part of a suite of documents, amendments or variations, the overall nature and purpose of such documents, amendments or variations as a whole) at least 10 Business Days prior to execution of the document or instrument of amendment or variation, together with copies of draft documentation (which, if not available at the time of giving notice, shall be provided to the State as soon as they become available); and
- (d) certified copies of each such document or instrument of amendment or variation promptly following execution of such.³⁴⁶

18. ASSIGNMENT AND MORTGAGE

18.1 Assignment

- (a) Subject to clause 18.2 and to paragraph (b), neither the Company nor the Trustee may assign, novate, mortgage or charge or otherwise deal with its interest in, or obligations under, any of the Project Documents, the CTW Project Documents, the Transaction Documents or the CTW Design and Construct Contract (and shall not permit or suffer any such assignment, novation, mortgage, charge or dealing) without the prior approval of the State save that the Trustee shall be entitled to grant a sub-lease of the Trust Land to the Company to enable the Company to comply with its obligations under this Deed.
- (b) Paragraph (a) does not restrict:
 - * * * * *
 - (ii) the issue of Project Securities in the Company;
or³⁴⁸
 - (iii) anything permitted under this Deed, the Deed of Charge or the Contractors' Deed of Novation.
- (c) The Company and the Trustee shall give the State a certified copy of any agreement under which either of them assigns, novates, mortgages, charges or deals with its interests in, or obligations under, a Project Document or Transaction Document.
- (d) Subject to paragraph (e), the State will not assign, novate, mortgage, charge or otherwise deal with its interest in, or obligations under, any of the Project Documents without the prior approval of the Company and the Trustee.
- (e) The State may:
 - (i) assign any of its rights under any of the Project Documents to receive revenue, provided that the assignment does not directly or indirectly impose any additional obligations on or reduce any rights of the Company or the Trustee or have a Material Adverse Effect; and
 - (ii) dispose of Concession Notes.

18.2 Mortgage

The Company and the Trustee may, after execution of the Master Security Deed, mortgage or charge their interest under the Project Documents and Transaction Documents to secure their obligations to any Lender (or trustee or agent for any Lender) under the Lending Documents, if, and for so long only as, the Lender (or trustee or agent for the Lender) is party to the Master Security Deed.

19. GENERAL

19.1 Notices and Approvals

- (a) Except as otherwise provided in this Deed, a notice, request, approval consent or certificate given under this Deed (a "**communication**") shall be in writing and is deemed to be duly given to a party if it is:
- (i) left at the party's address;
 - (ii) sent by prepaid post to the party's address with a request for confirmation of receipt to be provided by post; or
 - (iii) (other than a communication under Article 15), transmitted by facsimile using the party's facsimile number, but only if the sender receives an "error free" transmission report for the correct facsimile number; and,

in the case of a notice given to the Company marked: "URGENT FOR THE IMMEDIATE ATTENTION OF CHIEF EXECUTIVE OFFICER—MELBOURNE CITYLINK PROJECT".

- (b) A communication given to a party is deemed to have been received by the party:
- (i) if left at the party's address, when delivered;
 - (ii) if sent by prepaid post to the party's address with a request for confirmation of receipt to be provided by post, on the day evidenced by the receipt given by the postal service; and
 - (iii) (other than a communication under Article 15) if transmitted by facsimile using the party's facsimile number, on the day of transmission but only if the sender receives an "error free" transmission report for the correct facsimile number,

provided however, that:

- (iv) if a party would, but for this provision, be deemed to have received a communication after 4:00pm on a Business Day or on a day not being a Business Day, the party shall be deemed to have received the communication on the next Business Day; and
- (v) in determining whether a requirement that there be a period of Business Days' notice in relation to a communication has been satisfied, the relevant number of Business Days shall be calculated from, but excluding, the Business Day of deemed receipt.

- (c) The address and facsimile number of each party is that set out below or such other address or facsimile number which that party from time to time gives notice of to each other party:

STATE: Address – care of the Chief Executive,
Roads Corporation, 60 Denmark Street,
Kew.^{349 350}
Facsimile number - 9655 6670

COMPANY: Address:
Level 23, 727 Collins Street, Docklands
3008
Fax:(03) 9649 7380

TRUSTEE: Address:
Level 23, 727 Collins Street, Docklands
3008
Fax:(03) 9649 7380

19.2 Entire Deed

- (a) Subject to paragraphs (b) and (c), the Project Documents and the Treasurer's Deed of Covenant contain the entire agreement of the parties with respect to the transactions contemplated by them. There are no understandings, agreements, warranties or representations, express or implied, with respect to the transactions contemplated by the Project Documents except for those referred to in them.
- (b) This Deed, the M1 Project Documents and the Freeway Management System Coordination Agreement contain the entire agreement of the parties with respect to the M1 Project, including the SLU. There are no understandings, agreements, warranties or representations, express or implied, with respect to the M1 Project or the SLU, except for those referred to in this Deed, the Freeway Management System Coordination Agreement and the M1 Project Documents.
- (c) The CTW Project Documents and the FMS Operating Agreement contain the entire agreement of the parties with respect to the CTW and the CTW Maintenance Activities. There are no understandings, agreements, warranties or representations, express or implied, with respect to the CTW or the CTW Maintenance Activities, except for those referred to in the FMS Agreement and the CTW Project Documents.

19.3 Confidentiality

- (a) The Company and the Trustee shall execute and procure that each "Permitted Person" (as that expression is defined in Exhibit E) engaged by them will promptly execute a Confidentiality and Disclaimer Deed.
- (b) The State shall not disclose any confidential or unpublished information or documents supplied by the Company or the Trustee in connection with the Project Documents and the

M1 Project Documents which are specifically identified by the Company or the Trustee, as applicable, to be confidential or which are supplied in circumstances clearly indicative of their confidential nature. However, this obligation of non-disclosure does not apply to disclosure:

- (i) in any proceedings arising out of or in connection with any Project Document or M1 Project Document to the extent that such disclosure is deemed by the State to be necessary to protect its interest;
 - (ii) if required to do so under a binding order or any procedure for discovery in any proceedings;
 - (iii) if required to do so under any Law or any directive, request or policy (which, if not having the force of Law, the observance of which is in accordance with the practice of responsible corporate citizens);
 - (iv) as required or permitted under any Project Documents or M1 Project Documents;
 - (v) to legal advisors and consultants, as long as the person disclosing it advised them of the confidential nature of the information or documents or that nature is clear from the circumstances of the disclosure;
 - (vi) made with the prior written consent of the Company or the Trustee, as applicable, which consent may not be unreasonably withheld or delayed; or
 - (vii) of information or a document already publicly available or in the public domain.
- (c) The parties acknowledge that clause 28 and Schedule 5 of the CTC Redevelopment Deed set out obligations on the parties in relation to maintaining the confidentiality of CTW Project Documents and any other information produced or otherwise arising out of or in connection with the CTW Obligations.

19.4

Further Assurance

- (a) Each party shall sign, execute, deliver and do all such acts and things as may reasonably be required of it to carry out and give full effect to this Deed and the rights and obligations of the parties to it.
- (b) The parties acknowledge that accelerated negotiations leading up to the execution of this Deed and the Twenty-second Amending Deed may have resulted in this Deed containing errors. If any such errors are discovered, the parties will discuss in good faith (but without obligation) means to address them.

19.5

Counterparts

This Deed may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

SCHEDULE 1 ^{351 352}

CONSTRUCTION MILESTONES

CLAUSE 8.5

Construction Milestone	Relevant Milestone Date (End of Specified Month)
<p>Tullamarine Freeway</p> <p>Commence Tullamarine Freeway works</p> <p>Diversion of traffic onto new northbound ramps at the Flemington Road Interchange to enable construction of the section of Western Link over Mount Alexander Road</p> <p>Completion of widening of Tullamarine Freeway bridges over the railway line and Moonee Ponds Creek at the Bell Street Interchange</p> <p>Completion of the widening of the Pascoe Vale Road Overpass</p> <p>Completion of widening of the Tullamarine Freeway carriageways from Pascoe Vale Road to Bulla Road</p> <p>Tullamarine Freeway complete and available to take traffic for opening of Western Link</p>	<p>September 1996</p> <p>February 1998</p> <p>December 1998</p> <p>November 1998</p> <p>December 1998</p> <p>April 1999</p>
<p>Western Link Section 1</p> <p>Commence superstructure works</p> <p>Commencement of piling operations for the elevated viaduct construction.</p> <p>Commencement of construction of the International Gateway architectural features</p> <p>Western Link Section 1 complete and available to take traffic for opening of Western Link</p>	<p>September 1997</p> <p>January 1997</p> <p>August 1998</p> <p>April 1999</p>

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Construction Milestone	Relevant Milestone Date (End of Specified Month)
<p>Western Link Section 2</p> <p>Commencement of Yarra River Bridge piling operations (including bridge transition piers)</p> <p>Completion of Yarra River Bridge piling operations (including bridge transitions piers).</p> <p>Completion of Yarra River Bridge Piers, including bridge transition piers</p> <p>Completion of Yarra River Bridge superstructure, excluding deck finishings and above road level works</p> <p>Western Link Section 2 complete and available to take traffic for opening of Western Link</p>	<p>January 1997</p> <p>September 1997</p> <p>March 1998</p> <p>February 1999</p> <p>April 1999</p>
<p>Southbank Interchange</p> <p>Commence Interchange works</p> <p>Completion of construction of Power Street overpass</p> <p>Completion of construction of Sturt Street overpass</p>	<p>November 1996</p> <p>March 1999</p> <p>December 1999</p>
<p>Domain Tunnel</p> <p>Completion of cover to Grant Street (between St Kilda Road and Wells Street)</p> <p>Commence construction operations for St Kilda Road tunnels</p> <p>Breakthrough of driven Domain tunnel into chamber on southern bank of Yarra River</p> <p>Completion of Domain tunnel and available to take traffic for opening of Southern Link</p>	<p>April 1997</p> <p>April 1996</p> <p>February 1999</p> <p>December 1999</p>
<p>Burnley Tunnel</p> <p>Commencement of shaft excavation at Swan Street</p> <p>Completion of excavation of shaft to tunnel level in Army land at Swan Street</p> <p>Commencement of access adit excavation at Burnley</p> <p>Completion of Burnley tunnel excavation works</p> <p>Completion of Burnley tunnel available to take traffic for Southern Link opening</p>	<p>April 1996</p> <p>June 1997</p> <p>August 1996</p> <p>January 1999</p> <p>December 1999</p>

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Construction Milestone	Relevant Milestone Date (End of Specified Month)
Southern Eastern Arterial (SEA) - Punt Road to Burnley	
Commence main carriageway	August 1997
Commence either road lowering works beneath or raising of Cremorne Railway overpass	Either November 1998 or January 1999
Complete either road lowering works beneath or raising of Cremorne Railway overpass	Either August 1999 or December 1999
Commence either road lowering works beneath or raising of Church Street overpass	Either November 1998 or January 1999
Complete either road lowering works beneath or raising of Church Street overpass	Either August 1999 or December 1999
Completion of Punt Road to Burnley section and conversion of SEA to 5 lane operation, available for traffic for Southern Link opening	December 1999

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Act No. 107/1995

Construction Milestone	Relevant Milestone Date (End of Specified Month)
<p>South Eastern Arterial (SEA) - Burnley to West of Toorak Road</p> <p>Commencement date for each of:</p> <ul style="list-style-type: none"> • Modification of MacRobertson Bridge • Reconstruction/Modification of Gibdon Street overpass • Reconstruction/Modification of Yarra Boulevard bridge overpass <p>Completion date for each of:</p> <ul style="list-style-type: none"> • Modification of MacRobertson Bridge • Reconstruction/Modification of Gibdon Street overpass • Reconstruction/Modification of Yarra Boulevard bridge overpass <p>Commencement date for the section CH 16100-17300</p> <p>Commencement date for the section CH 14400-16100</p> <p>Completion date for the section CH 16100-17300</p> <p>Completion date for the section CH 14400-16100</p> <p>Completion of Burnley to West of Toorak Road section SEA, available for traffic for Southern Link opening</p>	<p>December 1997</p> <p>December 1997</p> <p>December 1997</p> <p>December 1999</p> <p>December 1999</p> <p>December 1999</p> <p>August 1997</p> <p>January 1998</p> <p>December 1999</p> <p>December 1999</p> <p>December 1999</p>

SCHEDULE 2

EXTENSION EVENTS

1. Breach of any Project Document by the State.
2. The State requiring a Variation under clause 7.16 of the Concession Deed or any proposal or change referred to in paragraph 2.4(f) of the Concession Deed.
3. An event described in:
 - (a) Item 1 (Acts of Prevention);
 - (b) Item 2 (pollution for which the State is responsible);
 - (c) Item 6 (certain industrial action); or
 - (d) Item 7 (heritage and other events),of column 1 of the Appendix occurs, (but as if an event described in Item 6 extended also to include strikes which are either nation-wide or Victoria-wide, whether or not directed at the Project).
4. Any fire, flood (not including a flood which would not have occurred had the Works been entirely designed and constructed to address floods of a level that might at the date of this Deed be expected to occur once in every 50 years), hurricane, explosion, earthquake, natural disasters, sabotage, act of public enemy, war (declared or undeclared), revolution, radioactive contamination or toxic or dangerous chemical contamination (other than pollution or contamination for which the State is not under this Deed, responsible) and any riot, civil commotion or blockade which falls within sub-paragraph 2.4(a)(i)(D), where the Company and Trustee can demonstrate all reasonable preventative measures have been taken by them to minimise the effect of such event.
5. A court or tribunal making or issuing a decision which prevents or delays the Company or the Trustee from constructing the Link except where the decision is caused by or results from the Company or the Trustee acting in breach of the Project Documents or from an event or circumstance the occurrence or existence of which reflects the crystallisation of a risk accepted (or responsibility for which has been accepted) by the Company or the Trustee under the Project Documents.
6. Work undertaken to rectify a Specified Imperfection or effect a connection or change under paragraph 2.4(f).
7. Compliance with the requirements resulting from an EIS.

SCHEDULE 3 353 354 355 356 357 358 359 360361

TOLL CALCULATION SCHEDULE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Bus is a Motor Vehicle having more than 12 seating positions (including that of the driver).

Car is a Motor Vehicle, other than a Motor Cycle, a Light Commercial Vehicle, a Heavy Commercial Vehicle or a High Productivity Freight Vehicle, even if such a Motor Vehicle is towing a trailer or caravan.

Charge Toll for a Tollable Section, a quarter and a category of Vehicle is the amount set as such in relation to that Tollable Section, that quarter and that category of Vehicle under Section 3 of this Schedule.

Commercial Vehicles are Light Commercial Vehicles and Heavy Commercial Vehicles.

Date of West Gate Tunnel Tolling Completion has the meaning given to "Date of Tolling Completion" in the WGT Project Agreement.

Fixed Escalation Period means, subject to Schedule 6, the period commencing on and including 1 April 2019 and ending on and including 31 March 2029.

FY16/17 Taxi Pricing Model means the Excel workbook with the file name "20150520 - CML Taxi Pricing Model FY16_FY17 0% Div Dec 16 CPI.xlsx" as sent by the Company to the State on 20 May 2015.

FY18/19 Taxi Pricing Model means the Excel workbook with the file name "CML Taxi Pricing Model FY18_FY19 (VicRoads) (002).xlsx" as sent by the Company to the State on 10 May 2017.

Heavy Commercial Vehicle is:

- (a) a rigid Truck with three or more axles;
- (b) an articulated Truck;
- (c) a Bus; or
- (d) a two axle rigid Truck having a gross vehicle mass which exceeds 4.5 tonnes,

but does not include a High Productivity Freight Vehicle during the HPFV Tolling Period.

High Productivity Freight Vehicle is:

- (a) a rigid Truck with three or more axles;
- (b) an articulated Truck;

- (c) a Bus; or
- (d) a two axle rigid Truck having a gross vehicle mass which exceeds 4.5 tonnes,

which has a total length equal to or greater than 26 metres.

HPFV Tolling Period means, subject to Schedule 6, the period commencing on the Date of West Gate Tunnel Tolling Completion and ending on the last day of the Concession Period.

Light Commercial Vehicle is a two axle rigid Truck having a gross vehicle mass which exceeds 1.5 tonnes, but does not exceed 4.5 tonnes.

Maximum Charge Toll for a Trip, a quarter and a category of Vehicle is the amount set as such in relation to that quarter and that category of Vehicle under Section 3 of this Schedule.

Maximum Theoretical Toll for a Trip, a category of Vehicle and a particular quarter is the amount calculated in relation to that category and that quarter under clauses 2.1(b), 2.5, 2.6. and 2.7.

Motor Cycle is a two wheeled Motor Vehicle (and includes such a Motor Vehicle even if it has a trailer, fore car or side car attached).

Motor Vehicle is a vehicle which is used or intended to be used on a highway or in a public place and which has its own motive power (other than human or animal power) but does not include:

- (a) a vehicle intended to be used on a railway or tramway; or
- (b) a motorised wheel chair capable of a speed of not more than 10 kilometres per hour which is used solely for the conveyance of an injured or disabled person.

Revised FY16/17 Taxi Pricing Model has the meaning given in clause 6.2A.

Revised FY18/19 Taxi Pricing Model has the meaning given in clause 6.2C.

Revised Taxi Pricing Model means each of the Revised FY16/17 Taxi Pricing Model and the Revised FY18/19 Taxi Pricing Model.

Theoretical Toll for a Tollable Section, a category of Vehicle and a particular quarter is the amount calculated in relation to that Tollable Section, that category of Vehicle and that quarter in accordance with clauses 2.1(a), 2.2, 2.3, 2.4 and 2.7.

Tollable Section is a part of the Link described in the table set out in paragraph 2.1(a) of this Schedule.

Trip is the passage of a Vehicle on one or more Tollable Sections:

- (a) uninterrupted by exit and subsequent re-entry; or
- (b) if so interrupted, the interruption consists only of travel directly between the Southern Link and the Western Link.

Truck is a Motor Vehicle other than a Bus which has a cab-chassis construction and a gross vehicle mass which exceeds 1.5 tonnes.

Vehicle is a Motor Vehicle constituted by a Motor Cycle, Car, Light Commercial Vehicle, Heavy Commercial Vehicle or High Productivity Freight Vehicle.

Weekend is the period of time commencing at 12.00pm (Melbourne local time) on a Friday and ending at midnight on the Sunday immediately following that Friday.³⁶²

West Gate Tunnel has the meaning given to "Freeway" in the WGT Project Agreement.

WGT Day Pass has the meaning given to that term in the WGT Project Agreement.

1.2 Interpretation

In:

- (a) calculating a Theoretical Toll under clauses 2.2 and 2.3 and a Maximum Theoretical Toll under clause 2.5; and
- (b) setting a Day Toll under clause 5.2(b), a Taxi Toll under clause 6.2 and a Taxi Day Toll under clause 6.3,

for the quarter commencing on 1 July 2000 and for each subsequent quarter, the Theoretical Toll, Maximum Theoretical Toll, Day Toll, Taxi Toll and Taxi Day Toll shall be calculated or set (as applicable):

- (c) as if each respective:
 - (i) Theoretical Toll specified in clause 2.1(a);
 - (ii) Maximum Theoretical Toll specified in clause 2.1(b);
 - (iii) Day Toll specified in clause 5.2(a);
 - (iv) Taxi Toll specified in clause 6.2; and
 - (v) Taxi Day Toll specified in clause 6.3,

was equal to an amount derived by multiplying the respective Toll so specified in such clause by a factor of one plus the "applicable GST rate", where the "applicable GST rate" is the GST rate (expressed as a decimal number (for example, 10% is 0.1)) which applies or is imposed by the GST law on taxable supplies made by the Company in the quarter for which the Theoretical Toll, Maximum Theoretical Toll, Day Toll, Taxi Toll and Taxi Day Toll is being calculated or set (as applicable); and

- (d) as if each respective:
 - (i) Theoretical Toll and Maximum Theoretical Toll for each quarter (except the quarter ending 31 March 1995) ending prior to the quarter for which the Theoretical Toll and Maximum Theoretical Toll is being calculated; and
 - (ii) Day Toll for each quarter (except the quarter ending 30 June 1999) ending prior to the quarter for which the Day Toll is being set,

was calculated or set (as applicable) in accordance with this Schedule, but as if each respective:

- (iii) Theoretical Toll specified in clause 2.1(a), was replaced by the amount derived under paragraph (c) of this clause 1.2 in respect of such Theoretical Toll;
- (iv) Maximum Theoretical Toll specified in clause 2.1(b), was replaced by the amount derived under paragraph (c) of this clause 1.2 in respect of such Maximum Theoretical Toll; and
- (v) Day Toll specified in clause 5.2(a), was replaced by the amount derived under paragraph (c) of this clause 1.2 in respect of such Day Toll.

2. THEORETICAL TOLLS

- 2.1 (a) The Theoretical Toll for Cars for a Tollable Section for the quarter ending 31 March, 1995 is the amount specified below in relation to the Tollable Section.

Tollable Section	(\$/car)
Tullamarine Freeway Upgrade, between Moreland Road and Brunswick Road	0.80
Western Link Section 1, between Racecourse Road and Dynon Road	0.80
Western Link Section 2, between Footscray Road and West Gate Freeway	1.00
Domain Tunnel and that part of the Southern Link leading into that Tunnel between the eastern portal of that Tunnel and Punt Road, other than that part of Southern Link Section 1: (a) between Punt Road and the exit to Boulton Parade; and (b) comprising Boulton Parade	1.00
Burnley Tunnel and that part of the Southern Link leading out of that Tunnel between the eastern portal of that Tunnel and Burnley Street	1.80
Southern Link Section 1, between Burnley Street and Punt Road and including that part of Southern Link Section 1: (a) between Punt Road and the exit to Boulton Parade; and (b) comprising Boulton Parade	0.80

Tollable Section	(\$/car)
Southern Link Section 5, between Punt Road and Burnley Street other than that part of the Southern Link leading out of the Burnley Tunnel between the eastern portal of that Tunnel and Burnley Street	0.80
Southern Link Section 1, between Glenferrie Road and Burnley Street	0.80
Southern Link Section 5, between Burnley Street and Glenferrie Road	0.80
Southern Link Section 1, between Punt Road and Swan Street Intersection, other than: (a) that part of Southern Link Section 1: between Punt Road and the exit to Boulton Parade; and (ii) comprising Boulton Parade; and (b) that part of the Southern Link leading into the Domain Tunnel between the eastern portal of that Tunnel and Punt Road	0.50
Southern Link Section 5, between Swan Street Intersection and Punt Road	0.50

Notes:

1. *When travelling on Southern Link Section 1 between Burnley Street and Punt Road and then onto Batman Avenue, the Tollable Sections may be combined for the purposes of levying Tolls.*
2. *When travelling on Southern Link Section 1 and into the Domain Tunnel, the Tollable Sections may be combined for the purposes of levying Tolls.*
3. *A reference in the description of a Tollable Section to a part of the Southern Link between a particular street or road and Burnley Street, includes that part of the Southern Link between that particular street or road and where Burnley Street would cross the Southern Link if Burnley Street continued in a straight southerly direction from its southernmost extremity.*
4. *In this table:
"Boulton Parade" includes the off-ramp connecting the rest of the Southern Link to Boulton Parade;*

"Burnley Tunnel" means the eastbound tunnel between Sturt Street and Burnley Street;

"Domain Tunnel" means the westbound tunnel between Punt Road and Sturt Street; and

"Swan Street Intersection" means the intersection between Swan Street and Batman Avenue.

5. The Maximum Theoretical Toll for a Trip for the quarter ending 31 March, 1995 is, in relation to:
- (i) Cars, \$3.00;
 - (ii) Motor Cycles, \$1.50;
 - (iii) Commercial Vehicles the passage of which on the last Tollable Section comprising the Trip before exiting the Link occurs between 6.00 am and 8.00 pm, \$4.00; and
 - (iv) Commercial Vehicles the passage of which on the last Tollable Section comprising the Trip before exiting the Link occurs between 8.00 pm and 6.00 am, \$3.00.

- 2.2 Subject to clause 2.4, the Theoretical Toll for Cars for a Tollable Section for a quarter subsequent to the quarter ending 31 March, 1995 is calculated in accordance with the following formula:

$$\text{Theoretical Toll}_{t+1} = \text{Theoretical Toll}_t \times \text{Index}_t$$

where:

Theoretical Toll_{t+1} is the Theoretical Toll for the Tollable Section to apply to Cars in the relevant quarter

Theoretical Toll_t is the Theoretical Toll for the Tollable Section which applies to Cars in the quarter preceding the relevant quarter

Index_t is:

- (a) subject to paragraph (c), for a quarter ending before the 16th anniversary of Completion of the last Section to be Completed, the greater of:
 - (i) the most recently available CPI during the quarter preceding commencement of the relevant quarter (CPI_{t-1}) divided by CPI for the quarter preceding the quarter for which the most recently available CPI applies (CPI_{t-2}); or
 - (ii) 1.0110650 (that is, 4.5% per annum converted to a quarterly compound rate plus one);
- (b) for a quarter to which paragraphs (a), (c) or (d) do not apply, the greater of one and the amount derived under subparagraph (a)(i);
- (c) for the quarter ending 31 March 2001, 1.015595 (or such other amount as the State and the Company may agree in writing in the event that the difference between the CPI for

the quarter ending 30 September 2000 and the CPI for the quarter ending 30 June 2000 is materially different to 3.89%); and

- (d) if:
 - (i) the Date of Parliamentary Support (CityLink) occurs prior to 1 July 2019, for a quarter ending during the Fixed Escalation Period, 1.0104597 (that is, 4.25% per annum converted to a quarterly compound rate plus one); and
 - (ii) if the Date of Parliamentary Support (CityLink) occurs after 1 July 2019,
 - (A) for the first a quarter ending during the Fixed Escalation Period such escalation as is required to enable the Company to set a Charge Toll which would be the same as if the Date of Parliamentary Support (CityLink) had occurred prior to 1 June 2019; and
 - (B) for each subsequent quarter ending during the Fixed Escalation Period, 1.0104597 (that is, 4.25% per annum converted to a quarterly compound rate plus one).
- 2.3
- (a) Subject to clause 2.4, the Theoretical Toll for Motor Cycles for a quarter and a Tollable Section is 0.5 times the Theoretical Toll for Cars for that quarter and Tollable Section.
 - (b) Subject to clause 2.4, the Theoretical Toll for Light Commercial Vehicles for a quarter and a Tollable Section is 1.6 times the Theoretical Toll for Cars for that quarter and Tollable Section.
 - (c) Subject to clause 2.4, the Theoretical Toll for Heavy Commercial Vehicles for a quarter and a Tollable Section is:
 - (i) for any quarter commencing prior to 31 March 2017, 1.9 times the Theoretical Toll for Cars for that quarter and Tollable Section; and
 - (ii) for any quarter commencing on or after 1 April 2017:
 - (A) where the passage of the Heavy Commercial Vehicle on the Tollable Section occurs between 6.00 am and 8.00 pm, 3.0 times the Theoretical Toll for Cars for that quarter and Tollable Section; and
 - (B) where the passage of the Heavy Commercial Vehicle on the Tollable Section occurs between 8.00 pm and 6.00 am, 2.0 times the Theoretical Toll for Cars for that quarter and Tollable Section.

- (d) Subject to clause 2.4, the Theoretical Toll for High Productivity Freight Vehicles for a quarter ending during the HPFV Tolling Period and a Tollable Section is:
 - (i) where the passage of the High Productivity Freight Vehicle on the Tollable Section occurs between 6.00 am and 8.00 pm, 4.5 times the Theoretical Toll for Cars for that quarter and Tollable Section; and
 - (ii) where the passage of the High Productivity Freight Vehicle on the Tollable Section occurs between 8.00 pm and 6.00 am, 3.0 times the Theoretical Toll for Cars for that quarter and Tollable Section.

- 2.4 The Theoretical Toll so determined for a quarter, a Tollable Section and a category of Vehicle is reduced to the extent necessary to ensure that it does not exceed 1.21 times the applicable Charge Toll in the preceding quarter for that category of Vehicle, and that Tollable Section. This reduction does not apply:
- (a) where the category of Vehicle is a Motor Cycle and in the quarter preceding the relevant quarter no toll was levied in relation to the use of any part of the Link for the passage of Motor Cycles;
 - (b) for the quarter beginning on 1 April 2017, where the category of Vehicle is a Heavy Commercial Vehicle;
 - (c) for the first quarter of the HPFV Tolling Period, where the category of Vehicle is a Heavy Productivity Freight Vehicle; or
 - (d) if the Date of Parliamentary Support (CityLink) occurs after 1 July 2019, for the first quarter ending after the Date of Parliamentary Support (CityLink).

If, however, the GST rate (in this clause, the "**new GST rate**") which applies or is imposed by the GST law on taxable supplies made by the Company in the quarter in respect of which the Theoretical Toll is being calculated under clauses 2.2 and 2.3 (in this clause, the "**relevant quarter**") differs from the GST rate (in this clause, the "**old GST rate**") which applied or was imposed by the GST law on taxable supplies made by the Company in the quarter immediately preceding the relevant quarter (in this clause, the "**previous quarter**"), then the reference to "Charge Toll" in this clause 2.4 shall mean "notional Charge Toll", where "notional Charge Toll" means the amount derived by multiplying the Charge Toll set for the previous quarter by a fraction comprising of the numerator equal to the sum of the new GST rate (expressed as a decimal number) and one and the denominator equal to the sum of the old GST rate (expressed as a decimal number) and one.

- 2.5 Subject to clause 2.6, the Maximum Theoretical Toll for a Trip and a category of Vehicle for a particular quarter subsequent to the quarter ending 31 March, 1995 is:
- (a) except if paragraph (b), (c) or (d) of this clause 2.5 applies, the product of:

- (i) the Index, (as defined in clause 2.2); and
- (ii) the Maximum Theoretical Toll for a Trip for Vehicles of the relevant category in relation to the quarter preceding the relevant quarter;
- (b) for any quarter beginning on or after 1 April 2017, if the category of Vehicle is a Light Commercial Vehicle, 1.6 times the Maximum Theoretical Toll for Cars for that quarter;
- (c) for any quarter beginning on or after 1 April 2017, if the category of Vehicle is a Heavy Commercial Vehicle:
 - (i) where the passage of the Heavy Commercial Vehicle on the last Tollable Section comprising the Trip before exiting the Link occurs between 6.00 am and 8.00 pm, 3.0 times the Maximum Theoretical Toll for Cars for that quarter; and
 - (ii) where the passage of the Heavy Commercial Vehicle on the last Tollable Section comprising the Trip before exiting the Link occurs between 8.00 pm and 6.00 am, 2.0 times the Maximum Theoretical Toll for Cars for that quarter; and
- (d) for any quarter ending during the HPFV Tolling Period, if the category of Vehicle is a High Productivity Freight Vehicle:
 - (i) where the passage of the High Productivity Freight Vehicle on the last Tollable Section comprising the Trip before exiting the Link occurs between 6.00 am and 8.00 pm, 4.5 times the Maximum Theoretical Toll for Cars for that quarter; and
 - (ii) where the passage of the High Productivity Freight Vehicle on the last Tollable Section comprising the Trip before exiting the Link occurs between 8.00 pm and 6.00 am, 3.0 times the Maximum Theoretical Toll for Cars for that quarter.

2.6 The Maximum Theoretical Toll for a quarter for a category of Vehicle is reduced to the extent necessary to ensure that it does not exceed 1.21 times the applicable Maximum Charge Toll in the preceding quarter for that category of Vehicle. This reduction does not apply:

- (a) where the category of Vehicle is a Motor Cycle and in the quarter preceding the relevant quarter no toll was levied in relation to the use of any part of the Link for the passage of Motor Cycles;
- (b) for the quarter beginning on 1 April 2017, where the category of Vehicle is a Light Commercial Vehicle or Heavy Commercial Vehicle;
- (c) for the first quarter of the HPFV Tolling Period, where the category of Vehicle is a Heavy Productivity Freight Vehicle; or

- (d) if the Date of Parliamentary Support (CityLink) occurs after 1 July 2019, for the first quarter ending after the Date of Parliamentary Support (CityLink).

If, however, the GST rate (in this clause, the "**new GST rate**") which applies or is imposed by the GST law on taxable supplies made by the Company in the quarter in respect of which the Maximum Theoretical Toll is being determined under clause 2.5 (in this clause, the "**relevant quarter**") differs from the GST rate (in this clause, the "**old GST rate**") which applied or was imposed by the GST law on taxable supplies made by the Company in the quarter immediately preceding the relevant quarter (in this clause, the "**previous quarter**"), then the reference to "Maximum Charge Toll" in this clause 2.6 shall mean "notional Maximum Charge Toll", where "notional Maximum Charge Toll" means the amount derived by multiplying the Maximum Charge Toll set for the previous quarter by a fraction comprising of the numerator equal to the sum of the new GST rate (expressed as a decimal number) and one and the denominator equal to the sum of the old GST rate (expressed as a decimal number) and one.

- 2.7 The Theoretical Toll for each Tollable Section and for each category of Vehicle, and the Maximum Theoretical Toll for each category of Vehicle, must be expressed in terms of \$ per Vehicle and be calculated rounded to four decimal places. Any publication of these figures can be expressed rounded to two decimal places (that is, expressed rounded to the nearest cent). For the avoidance of doubt, any rounding of a number ending in a 5 will be rounded up.

3. TOLL SETTING

- 3.1 The Company shall set a Charge Toll in relation to each category of Vehicle, each Tollable Section and each quarter from and including the quarter in which the Company first becomes entitled to levy tolls under paragraph 9.3(a) of this Deed. Subject to clause 8.6, only one Charge Toll may be set in relation to a category of Vehicle, a Tollable Section and a quarter. A Charge Toll so set, however, cannot exceed either:

- (a) the Theoretical Toll for that Tollable Section with respect to that quarter and that category of Vehicle; or
- (b) if four quarters have commenced since Completion of the Section (or Completion of all Sections) which relate to the Tollable Section, the product of:
- (i) the Charge Toll for that Tollable Section with respect to that category of Vehicle in the quarter commencing 12 months prior to commencement of the relevant quarter; and
- (ii) the result of the formula:

$$(CPI_{t-2} \div CPI_{t-6}) + 0.025 \text{ where:}$$

CPI_{t-2} = the most recently available CPI during the quarter preceding commencement of the relevant quarter; and

CPI_{t-6} = CPI for the quarter which commences 12 months prior to commencement of the quarter to which CPI_{t-2} applies.

This clause 3.1(b) does not apply:

- (iii) where the category of Vehicle is a Motor Cycle and in the quarter preceding the relevant quarter no toll was levied in relation to the use of any part of the Link for the passage of Motor Cycles pursuant to a tolling strategy approved under clause 4;
- (iv) for any quarter beginning on or after 1 April 2017 and before 31 March 2018, if the category of Vehicle is a Heavy Commercial Vehicle; and
- (iv) for any quarter ending after the commencement of the Fixed Escalation Period.

If, however, the GST rate (in this clause, the "**new GST rate**") which applies or is imposed by the GST law on taxable supplies made by the Company in the quarter in respect of which a Charge Toll is being set under this clause 3.1 (in this clause, the "**relevant quarter**") differs from the GST rate (in this clause, the "**old GST rate**") which applied or was imposed by the GST law on taxable supplies made by the Company in the quarter commencing 12 months prior to commencement of the relevant quarter (in this clause, the "**previous year's quarter**"), then the reference to "Charge Toll" in paragraph (b)(i) of this clause 3.1 shall mean "notional Charge Toll", where "notional Charge Toll" means the amount derived by multiplying the Charge Toll set for the previous year's quarter by a fraction comprising of the numerator equal to the sum of the new GST rate (expressed as a decimal number) and one and the denominator equal to the sum of the old GST rate (expressed as a decimal number) and one. However, in setting a Charge Toll for the quarter ending 31 March 2001 or 30 June 2001, the reference to "Charge Toll" in paragraph (b)(i) of this clause 3.1 shall mean "notional Charge Toll", where "notional Charge Toll" means an amount derived by multiplying the relevant Charge Toll set for the quarter ending 31 March 2000 or 30 June 2000 (as the case may be) by a factor of 1.1.

- 3.2 The Company shall set a Maximum Charge Toll for a Trip for each category of Vehicle and each quarter from and including the quarter in which the Company first becomes entitled to levy tolls under paragraph 9.3(a) of this Deed. A Maximum Charge Toll so set, however, cannot exceed either:
- (a) the Maximum Theoretical Toll with respect to that quarter and that category of Vehicle; or
 - (b) if four quarters have commenced since Completion of the Section as a result of Completion of which the Company became entitled to, or might then, under paragraph 9.3(a) of this Deed, levy tolls for the passage of a Vehicle on more than one Tollable Section (including any Tollable Section

comprised within any other Completed Section or Sections), the product of:

- (i) the Maximum Charge Toll with respect to that category of Vehicle applicable in the quarter commencing 12 months prior to commencement of the relevant quarter; and
- (ii) the result of application of the formula:

$$(CPI_{t-2} \div CPI_{t-6}) + 0.025$$

where CPI_{t-2} and CPI_{t-6} have the meanings ascribed to them in clause 3.1.

This clause 3.2(b) does not apply:

- (iii) for any quarter beginning on or after 1 April 2017 and before 31 March 2018, if the category of Vehicle is a Light Commercial Vehicle or Heavy Commercial Vehicle; and
- (iv) for any quarter ending after the commencement of the Fixed Escalation Period.

If, however, the GST rate (in this clause, the "**new GST rate**") which applies or is imposed by the GST law on taxable supplies made by the Company in the quarter in respect of which a Maximum Charge Toll is being set under this clause 3.2 (in this clause, the "**relevant quarter**") differs from the GST rate (in this clause, the "**old GST rate**") which applied or was imposed by the GST law on taxable supplies made by the Company in the quarter commencing 12 months prior to commencement of the relevant quarter (in this clause, the "**previous year's quarter**"), then the reference to "Maximum Charge Toll" in paragraph (b) of this clause 3.2 shall mean "notional Maximum Charge Toll", where "notional Maximum Charge Toll" means the amount derived by multiplying the Maximum Charge Toll set for the previous year's quarter by a fraction comprising of the numerator equal to the sum of the new GST rate (expressed as a decimal number) and one and the denominator equal to the sum of the old GST rate (expressed as a decimal number) and one. However, in setting a Maximum Charge Toll for the quarter ending 31 March 2001 or 30 June 2001, the reference to "Maximum Charge Toll" in paragraph (b) of this clause 3.2 shall mean "notional Maximum Charge Toll", where "notional Maximum Charge Toll" means an amount derived by multiplying the relevant Maximum Charge Toll set for the quarter ending 31 March 2000 or 30 June 2000 (as the case may be) by a factor of 1.1.

4. LEVYING STANDARD TOLLS

Subject to paragraph 9.2(k) and clause 9.3 of this Deed and clauses 6.4, 7 and 8 below, the Company may exercise its rights under this Deed to levy a toll for the use of the Link (or a part of it) for the passage of a Vehicle if:

- (a) the toll so levied equals:

- (i) (if the Trip constituted by that use relates to only one Tollable Section) the Charge Toll set in accordance with this Schedule in relation to that Tollable Section, with respect to the quarter during which the Trip occurs and the category of Vehicle which applies to the relevant Vehicle; or
 - (ii) (if the Trip constituted by that use relates to more than one Tollable Section) the lesser of:
 - (A) the aggregate of the Charge Tolls set in accordance with this Schedule in relation to those Tollable Sections, with respect to the quarter during which the Trip occurs and the category of Vehicle which applies to the relevant Vehicle; and
 - (B) the Maximum Charge Toll set in accordance with this Schedule with respect to the quarter during which the Trip occurs and the category of Vehicle which applies to the relevant Vehicle; or
- (b) the toll so levied is consistent with a detailed tolling strategy the subject of a then current approval of the State (which approval may be conditional and limited), being a strategy which:
- (i) entails levying tolls at levels different from that otherwise permitted under this clause 4 but which in no event exceed:
 - (A) in relation to a Vehicle of a particular category, a quarter and a particular Tollable Section, the applicable Theoretical Toll; or
 - (B) in relation to a Vehicle of a particular category, a quarter and a Trip, the applicable Maximum Theoretical Toll;
- and
- (ii) is (if appropriate) designed to ensure that the average weighted toll levied for Vehicles of each particular category passing either on the Link or (if the strategy relates to a particular Tollable Section or Tollable Sections only) on the relevant Tollable Section or Tollable Sections, during each week of operation of the strategy does not exceed that which would be levied were the strategy not to apply and tolls were levied under paragraph (a). In calculating that average weighted toll, the weight to be used shall be relevant traffic volumes, as agreed between the Company and the State. The Company acknowledges that (without limiting the State's right to refuse or withhold its approval to any proposed strategy) agreement as to relevant traffic volumes during the period that it is proposed that a strategy apply will be a pre-condition to any approval of the strategy by the State.

5. DAY TOLLS

5.1 In this clause 5 and clauses 7 and 8:

(a) **Day Pass** is:

- (i) the grant of a right or authority to use any or all Tollable Sections comprising the Link:
 - A. where subsubparagraph B does not apply, for the passage of a particular Vehicle at any time within a period of 24 consecutive hours (but no other period) commencing at the time of commencement of the first use; or
 - B. where a customer advises that the time of first use of a particular Vehicle (not being a Heavy Commercial Vehicle, a High Productivity Freight Vehicle or a Vehicle to which clause 6 applies) will be during the period of time commencing on 12.00pm (Melbourne local time) on a Friday and ending at midnight on the Saturday immediately following that Friday - for the passage of that particular Vehicle at any time within a Weekend which includes the time of first use as advised by the customer (but no other period).

For the purposes of this clause 5, references to "where a customer advises" and its cognate expressions will mean where a customer advises (or has done everything reasonably required to be done by the customer to advise) the Company or any person acting on behalf of the Company through any means made available to customers for this purpose; or

- (ii) (where consistent with a detailed tolling strategy under clause 5.3(b)(ii) (being a detailed tolling strategy that refers to this clause 5.1(a)(ii))) the grant of a right or authority to use one or more Tollable Sections (as specified in such detailed tolling strategy) comprising the Link for the passage of a particular Vehicle at any time within a period of 24 consecutive hours (but no other period) commencing at the time of commencement of the first use.³⁶³

(b) **Day Toll** is the maximum toll for a Day Pass which, for a quarter and a category of Vehicle, is the amount set as such in relation to that quarter and that category of Vehicle under Clause 5.2.

5.2 The Company shall set a Day Toll for each category of Vehicle for each quarter from and including the quarter in which the Company first becomes entitled to levy tolls under paragraph 9.3(a) of this Deed. A Day Toll so set, however, cannot exceed:

- (a) in relation to the first quarter in which the Company must so set a Day Toll and every quarter (if any) thereafter which commences prior to 30 June, 1999, where the category of Vehicle is:

- (i) Cars, \$7.00;
 - (ii) Motor Cycles, \$3.50;
 - (iii) Light Commercial Vehicles, \$11.20; or
 - (iv) Heavy Commercial Vehicles, \$13.30; or
- (b) in relation to a quarter to which paragraph (a) does not apply and a particular category of Vehicle:
- (i) unless paragraph (ii) or (iii) of this clause 5.2(b) applies, the product of the Index_t (as defined in clause 2.2) and the maximum Day Toll which the Company could have set under this clause 5.2 in relation to the preceding quarter and the relevant category of Vehicle (with that maximum Day Toll to be determined on the assumption that the Day Toll set in each preceding quarter was the maximum that could have been set under this clause 5.2);
 - (ii) if the category of Vehicle is a Light Commercial Vehicle, for each quarter beginning on or after 1 April 2017, 2.6 times the Maximum Theoretical Toll for a Light Commercial Vehicle for that quarter;
 - (iii) if the category of Vehicle is a Heavy Commercial Vehicle, for each quarter beginning on or after 1 April 2017, 3.1 times the average of:
 - (A) the Maximum Theoretical Toll for the period between 6:00am and 8:00pm; and
 - (B) the Maximum Theoretical Toll for the period between 8:00pm and 6:00am,for a Heavy Commercial Vehicle for that quarter; and
 - (iv) if the category of Vehicle is a High Productivity Freight Vehicle, for each quarter during the HPFV Tolling Period, 3.1 times the average of:
 - (A) the Maximum Theoretical Toll for the period between 6:00am and 8:00pm; and
 - (B) the Maximum Theoretical Toll for the period between 8:00pm and 6:00am,for a High Productivity Freight Vehicle for that quarter.
- 5.3 Subject to paragraph 9.2(k) and clause 9.3 of this Deed and clauses 6.4, 7 and 8 below, the Company may exercise its rights under this Deed to levy a toll for the grant of (or agreement to grant) a right or authority to use the Link (or a part of it) for the passage of a Vehicle if:
- (a) the grant is of a Day Pass in relation to the relevant Vehicle;
 - (b) it ensures that:

- (i) the amount of the toll does not exceed the Day Toll set in accordance with this Schedule with respect to the quarter in which the day or the time of first use as advised by the customer (as applicable) to which the Day Pass relates occurs and the category of Vehicle which applies to the relevant Vehicle; or³⁶⁴
- (ii) the toll so levied is consistent with a detailed tolling strategy the subject of a then current approval of the State (which approval may be conditional and limited), being a strategy which:
 - (A) entails levying tolls at levels different from that otherwise permitted under this clause 5.3 but which in no event exceed, in relation to a Vehicle of a particular category and a quarter, the maximum Day Toll which the Company could have set under clause 5.2 in relation to that quarter and that category of Vehicle; and
 - (B) is (if appropriate) designed to ensure that the average Day Toll for Vehicles of each particular category during each week of operation of the strategy does not exceed that which would be levied were the strategy not to apply and Day Tolls were levied under paragraph (b)(i). The Company acknowledges that (without limiting the State's right to refuse or withhold its approval to any proposed strategy) agreement as to the relevant volumes of Day Passes during the period that it is proposed that the strategy apply will be a pre-condition to any approval of the strategy by the State.

6. TAXIS

6.1 In this clause 6 and clauses 7 and 8:

- (a) **Initial Period for Taxis** is the period commencing on the date on which the Company first becomes entitled to levy tolls under paragraph 9.3(a) of this Deed and ending on the earlier of:
 - (i) midnight on 30 June 2019; and^{365 366 367}
 - (ii) subject to clause 6.6, where the State has received notice from the Company no later than one month (or such other period as agreed by the Company and the State) prior to the end of a quarter advising the State of the successful implementation of the Automated Taxi Tolling System for use in Taxis, the end of the quarter during which the Company provided such notice to the State; and
 - (iii) provided the Automated Taxi Tolling System is ready to be implemented for use in Taxis by 1 July 2018, where the Company receives a notice from the State no later than 40 Business Days prior to 1 July 2018

advising that the Initial Period for Taxis will end on 30 June 2018, midnight on 30 June 2018;

- (b) **Metropolitan Taxi** is, at any particular time, a Taxi the licence plate number (within the meaning of the Project Legislation) of which commences with the letter "M" or ends with the letters "PS";
- (c) **Taxi** is, at any particular time, a Vehicle in relation to which a commercial passenger vehicle licence (issued under the Transport Act 1983) then subsists, being a licence allowing for operation of the Vehicle as a Taxi-Cab (within the meaning of the Transport Act 1983);
- (d) **Taxi Day Pass** is the grant of a right or authority to use any or all Tollable Sections comprising the Link for the passage of a Taxi at any time within a particular day (but no other day) and within the three hour period commencing on expiry of the particular day;
- (e) **Taxi Day Toll** is the toll for a Taxi Day Pass in relation to a Taxi, and which, for a quarter, is the amount set as such in relation to that quarter under clause 6.3 in relation to Metropolitan Taxis (where the Taxi concerned is a Metropolitan Taxi) or in relation to taxis which are not Metropolitan Taxis (where the Taxi concerned is not a Metropolitan Taxi);
- (f) **Taxi Toll** is the toll for a Trip where the Vehicle concerned is a Taxi at the time of the Trip and which, for a quarter, is the amount set as such in relation to the quarter under clause 6.2;
- (g) **Automated Taxi Tolling System** is a system that enables the displaying of tolls incurred by a Taxi during a Trip on the fare meter of that Taxi.

6.2 The Company shall set a Taxi Toll for each quarter from and including the quarter in which the Company first becomes entitled to levy tolls under paragraph 9.3(a) of this Deed to and including the last quarter that commences in the Initial Period for Taxis. A toll so set, however, cannot exceed:

- (a) for a quarter commencing prior to 31 December 2006:
 - (i) subject to subparagraph (ii), \$3.00 (inclusive of GST) insofar as the relevant Trip involves:³⁶⁸
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$5.00 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;³⁶⁹
- (b) for any quarter commencing on or after 1 January 2007 and ending on or before 31 December 2007:

- (i) subject to subparagraph (ii), \$3.50 (inclusive of GST) insofar as the relevant Trip involves:³⁷⁰
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
- (ii) \$5.60 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (c) for any quarter commencing on or after 1 January 2008 and ending on or before 30 June 2008:
 - (i) subject to subparagraph (ii), \$3.70 (inclusive of GST) insofar as the relevant Trip involves:³⁷¹
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$5.70 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (d) for the quarter commencing on 1 July 2008 and ending on 30 September 2008:
 - (i) from the commencement of the quarter until 26 July 2008:
 - (A) subject to sub-subparagraph (B), \$3.70 (inclusive of GST) insofar as the relevant Trip involves:
 - (1) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (2) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (B) \$5.70 (inclusive of GST), insofar as the relevant Trip is not one to which sub-subparagraph (A) applies; and
 - (ii) from 27 July 2008 until the end of the quarter:
 - (A) subject to sub-subparagraph (B), \$3.80 (inclusive of GST) insofar as the relevant Trip involves:
 - (1) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or

- (2) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (B) \$5.80 (inclusive of GST), insofar as the relevant Trip is not one to which sub-subparagraph (A) applies;
- (e) for any quarter commencing on or after 1 October 2008 and ending on or before 30 June 2009:
 - (i) subject to subparagraph (ii), \$3.80 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$5.80 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (f) for any quarter commencing on or after 1 July 2009 and ending on or before 30 June 2010:
 - (i) subject to subparagraph (ii), \$4.00 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$6.10 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (g) for any quarter commencing on or after 1 July 2010 and ending on or before 30 June 2011:
 - (i) subject to subparagraph (ii), \$4.10 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$6.40 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (h) for any quarter commencing on or after 1 July 2011 and ending on or before 30 June 2012:

- (i) subject to subparagraph (ii), \$4.60 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
- (ii) \$6.50 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (i) for any quarter commencing on or after 1 July 2012 and ending on or before 30 June 2013:
 - (i) subject to subparagraph (ii), \$4.80 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$6.60 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (j) for any quarter commencing on or after 1 July 2013 and ending on or before 30 June 2014:
 - (i) subject to subparagraph (ii), \$5.10 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$7.30 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (k) for any quarter commencing on or after 1 July 2014 and ending on or before 30 June 2015:
 - (i) subject to subparagraph (ii), \$5.30 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or

- (ii) \$7.80 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (l) for any quarter commencing on or after 1 July 2015 and ending on or before 30 June 2016:
 - (i) subject to subparagraph (ii), \$5.70 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$7.90 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (m) for any quarter commencing on or after 1 July 2016 and ending on or before 30 June 2017:
 - (i) subject to subparagraph (ii), \$6.00 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (ii) \$7.90 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies;
- (n) for any quarter commencing on or after 1 July 2017 and ending on or before 30 June 2018:
 - (i) subject to subparagraph (ii), \$6.10 (inclusive of GST) insofar as the relevant Trip involves:
 - (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
 - (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
 - (i) \$8.00 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies; and
- (o) for any quarter commencing on or after 1 July 2018 and ending on or before 30 June 2019:
 - (i) subject to subparagraph (ii), \$6.30 (inclusive of GST) insofar as the relevant Trip involves:

- (A) use of only any or all of the first three Tollable Sections outlined in the table in paragraph 2.1(a) and no other Tollable Sections; or
- (B) use of only any or all of the last eight of the Tollable Sections outlined in that table and no other Tollable Sections; or
- (ii) \$8.10 (inclusive of GST), insofar as the relevant Trip is not one to which subparagraph (i) applies.

6.2A The Company must:

- (a) except where paragraph (b) applies, within 20 Business Days after the end of the quarter ending on 30 June 2017; or
- (b) if the Initial Period for Taxis ends earlier than 30 June 2017, within 20 Business Days after the end of the Initial Period for Taxis,

provide the State with a revised FY16/17 Taxi Pricing Model which includes:

- (c) in the tab entitled "All Taxi data Quarterly", actual traffic data (replacing the forecasted traffic data) in each of the relevant columns BB to BK which relates to a quarter ending prior to the date by which the Company is required to submit a revised Taxi Pricing Model under this clause 6.2A (and only those columns); and
- (d) in the tab entitled "STD Cars Pricing", actual toll prices (replacing forecasted toll prices) in each of the relevant columns BC to BJ which relates to a quarter ending prior to the date by which the Company is required to submit a revised Taxi Pricing Model under this clause 6.2A (and only those columns);

(Revised FY16/17 Taxi Pricing Model).

6.2B The Company must, where amount X is a positive number, pay to the State amount X calculated in accordance with the following formula:

$$X = -1 \times (-\$366,878 - Z)$$

where Z is the sum of the amounts specified in cells H30 and H31 of the tab entitled "Parity Calculation" in the Revised FY16/17 Taxi Pricing Model.

Where the Company fails to provide the Revised FY16/17 Taxi Pricing Model within the period required by clause 6.2A, interest will accrue in respect of any amount X payable by the Company to the State under this clause 6.2B in accordance with clause 11.7 of this Deed, from the date on which the Revised FY16/17 Taxi Pricing Model was required to be provided under clause 6.2A until the date the Company provides the Revised FY16/17 Taxi Pricing Model to the State.

6.2C The Company must:

- (a) except where paragraph (b) applies, within 20 Business Days after the end of the quarter ending on 30 June 2019; or
- (b) if the Initial Period for Taxis ends earlier than 30 June 2019, within 20 Business Days after the end of the Initial Period for Taxis,

provide the State with a revised FY18/19 Taxi Pricing Model which includes:

- (c) in the tab entitled "All Taxi data Quarterly", actual traffic data (replacing the forecasted traffic data) in each of the relevant columns BK to BT (inclusive) which relates to a quarter ending prior to the date by which the Company is required to submit a revised Taxi Pricing Model under this clause 6.2C (and only those columns); and
- (d) in the tab entitled "STD Cars Pricing", actual toll prices (replacing forecasted toll prices) in each of the relevant columns BM to BT (inclusive) which relates to a quarter ending prior to the date by which the Company is required to submit a revised Taxi Pricing Model under this clause 6.2C (and only those columns),

(Revised FY18/19 Taxi Pricing Model).

- 6.2D The Company must, where amount X is a positive number, pay to the State amount X calculated in accordance with the following formula:

$$X = -1 \times (-\$374,685 - Z)$$

where Z is the sum of the amounts specified in cells H36 and H37 of the tab entitled "Parity Calculation" in the Revised FY18/19 Taxi Pricing Model.

Where the Company fails to provide the Revised FY18/19 Taxi Pricing Model within the period required by clause 6.2C, interest will accrue in respect of any amount X payable by the Company to the State under this clause 6.2D in accordance with clause 11.7 of this Deed, from the date on which the Revised FY18/19 Taxi Pricing Model was required to be provided under clause 6.2C until the date the Company provides the Revised FY18/19 Taxi Pricing Model to the State.

- 6.2E Within 20 Business Days of receiving a Revised Taxi Pricing Model, the State must either:
- (a) notify the Company that the State agrees with the Revised Taxi Pricing Model, in which case the relevant amount X will be due and payable by the Company to the State within 20 Business Days of receiving a tax invoice from the State for that amount; or
 - (b) notify the Company that the State will conduct an audit of the Revised Taxi Pricing Model whether itself or through an agent, in which case the Company must reasonably co-operate with the State or its agent and facilitate the conduct of the audit, including by providing any information and access

to the Company's systems reasonably required by the State or its agent for the purposes of conducting the audit. The audit will be at the State's cost unless the audit shows that the Revised Taxi Pricing Model submitted by the Company under clause 6.2A or 6.2C, as applicable, was incorrect or incomplete (other than in an immaterial manner), in which case the audit will be at the Company's cost, which cost will be due and payable by the Company to the State within 20 Business Days of receiving a tax invoice from the State for the cost of the audit. Within 20 Business Days of the completion of the audit, the State must issue a notice to the Company under either clause 6.2E(a) or (c); or

- (c) whether or not the State has conducted an audit under clause 6.2E(b), notify the Company that the State does not agree with any aspect of the Revised Taxi Pricing Model, including the reasons why the State has formed that view, in which case the Company must, within 10 Business Days of receiving such notice from the State, review the State's notice and either:
- (i) amend the Revised Taxi Pricing Model to address the State's notice and re-submit the amended Revised Taxi Pricing Model to the State, in which case clauses 6.2B and 6.2E or clauses 6.2D and 6.2E, as applicable, will re-apply; or
 - (ii) notify the State that the Company does not agree with the State's notice and that it considers that the Revised Taxi Pricing Model already submitted to the State is accurate, which notice must include all necessary supporting reasoning and documentation.

Where the Company fails to respond within the period required by clause 6.2E(c), interest will accrue in respect of any amount X payable by the Company to the State under clause 6.2B or 6.2D (as applicable) in accordance with clause 11.7 of this Deed, from the date on which the Company was required to respond under clause 6.2E(c) until the date that the Company does respond under clause 6.2E(c).

- 6.2F Where the Company issues a notice to the State under clause 6.2E(c)(ii), the relevant amount X (as calculated in accordance with the Revised Taxi Pricing Model most recently submitted by the Company) will be due and payable by the Company to the State within 20 Business Days of receiving a tax invoice from the State for that amount and the State may refer any dispute or difference under or in relation to clauses 6.2A to 6.2F for expert determination under Article 16 of this Deed.
- 6.3 The Company shall set a Taxi Day Toll for Metropolitan Taxis and a Taxi Day Toll for Taxis which are not Metropolitan Taxis, for each quarter from and including the quarter in which the Company first becomes entitled to levy tolls under paragraph 9.3(a) of this Deed to and including the last quarter that commences in the Initial Period for Taxis. A toll so set, however, cannot exceed:

- (a) for a quarter commencing prior to 31 December 2006:
 - (i) \$10.00 (inclusive of GST), in the case of a Metropolitan Taxi; or³⁷²
 - (ii) \$7.00 (inclusive of GST), in the case of a Taxi not being a Metropolitan Taxi;³⁷³ and
 - (b) for any quarter commencing on or after 1 January 2007 and ending on or before 30 June 2019:
 - (i) in the case of a Metropolitan Taxi, the Day Toll applicable to Cars at the time; or
 - (ii) in the case of a Taxi not being a Metropolitan Taxi, \$7.00 (inclusive of GST).
- 6.4 Subject to paragraph 9.2(k) and clause 9.3 of this Deed and clauses 7 and 8 below, the Company may exercise its rights under this Deed to levy a toll for the use of (or the grant of, or agreement to grant, a right or authority to use) the Link (or a part of it) for the passage of a Vehicle at a time when the Vehicle concerned is a Taxi if:
- (a) (where levied for the use of the Link, or a part of it, in a quarter in respect of which the Company must set a Taxi Toll under clause 6.2) it ensures that:
 - (i) the amount of the toll equals the Taxi Toll set in accordance with this Schedule with respect to:
 - (A) the quarter during which the Trip constituted by that use occurs; and
 - (B) Trips involving those Tollable Sections used in relation to the relevant Trip; or
 - (ii) the toll so levied is consistent with a detailed tolling strategy the subject of a then current approval of the State (which approval may be conditional and limited), being a strategy which:
 - (A) entails levying tolls at levels different from that otherwise permitted under this paragraph 6.4(a), but which in no event exceed, in relation to any particular Trip, the maximum amount that might have been set under clause 6.2 in relation to Trips of that nature;
 - (B) is (if appropriate) designed to ensure that the average weighted toll levied for Taxis passing either on the Link or (if the strategy relates to a particular Tollable Section or Tollable Sections only) on the relevant Tollable Section or Tollable Sections during each week of operation of the strategy does not exceed that which would have been levied were the strategy not to apply and tolls were levied under paragraph (a)(i). In calculating that average weighted toll, the weight to be used shall be Taxi traffic volumes for the Link or the relevant Tollable Section or Tollable

Sections, as applicable, and as agreed between the Company and the State. The Company acknowledges that (without limiting the State's right to refuse or withhold its approval to any proposed strategy) agreement as to relevant traffic volumes during the period that it is proposed that a strategy apply will be a pre-condition to any approval of the strategy by the State; or

- (b) (where levied for the grant of, or agreement to grant, a right or authority to use the Link, or a part of it, in a quarter in respect of which the Company must set a Taxi Day Toll under clause 6.3):
 - (i) the grant is of a Taxi Day Pass in relation to the relevant Taxi; and
 - (ii) it ensures that the amount of the toll:
 - (A) equals the Taxi Day Toll set in accordance with this Schedule with respect to the quarter during which the relevant Trip occurs and the type of Taxi concerned (that is, whether or not it is a Metropolitan Taxi); or
 - (B) is consistent with a detailed tolling strategy the subject of a then current approval of the State (which approval may be conditional and limited), being a strategy which:
 - (1) entails levying tolls at levels different from that otherwise permitted under this paragraph 6.4(b) but which in no event exceed in relation to a Taxi of a particular type and a quarter, the maximum Taxi Day Toll that could have been set under paragraph 6.3 in relation to that quarter and Taxis of that type; and
 - (2) is (if appropriate) designed to ensure that Taxi Day Tolls levied for Taxis of each particular type during each week of operation of the strategy do not exceed that which would be levied were the strategy not to apply and Taxi Day Tolls were levied under paragraph (b)(ii)A. The Company acknowledges that (without limiting the State's right to refuse or withhold its approval to any proposed strategy) agreement as to Taxi traffic volumes during the period that it is proposed that a strategy apply will be a precondition of any approval of the strategy by the State.

6.5 Taxis shall for the purposes of this Schedule be treated as Cars on and from expiry of the Initial Period for Taxis.

6.6 The Company acknowledges and agrees that:

- (a) the Company will during the Initial Period for Taxis continue to develop the Automated Taxi Tolling System with the objective of implementing the Automated Taxi Tolling System for use in Taxis prior to the expiry of the Initial Period for Taxis;
- (b) the Company must obtain the State's written approval prior to the implementation of the Automated Taxi Tolling System for use in Taxis with such approval not to be unreasonably withheld or withheld contrary to clause 9.2(f) of this Deed;
- (c) in obtaining the State's approval under paragraph (b), the Company must provide the State with any information or details reasonably requested by the State including results of testing carried out by the Company that establishes that the Automated Taxi Tolling System accurately records on a fare meter tolls incurred by a Taxi;
- (d) if the Company has obtained the State's approval under paragraph (b), and the Company is satisfied that the Automated Taxi Tolling System has been successfully implemented, then it may provide the State with a notice for the purpose of clause 6.1(a)(ii);
- (e) notwithstanding any approval given by the State under paragraph (b), the State does not make any representation, give any advice or any warranty of any kind in relation to the operation, use or accuracy of the Automated Taxi Tolling System; and
- (f) for the avoidance of doubt, during the Initial Period for Taxis, Taxis will not be treated as Cars for the purposes of this Schedule.

7. INACCURATE TOLLING

- (a) The Company shall ensure that a toll is not levied both for the use of the Link (or a part of it) for the passage of a particular Vehicle and for the grant of, or agreement to grant, a right or authority which applies to that use.
- (b) Notwithstanding the obligation set out in paragraph 7(a), if:
 - (i) any of the following situations arise:
 - (A) a toll is levied under clause 4, 5.3 or 6.4 of this Schedule and the amount of the toll so levied is consistent with the amount which the Company is then entitled to levy under that clause but the toll should have been levied under another such clause; or
 - (B) more than one toll is levied with respect to the same use, grant or agreement; or
 - (C) a toll is levied in circumstances which contravene paragraph 7(a); and
 - (ii) the situation outlined in paragraph 7(b)(i) arose as a result of an event or circumstance the occurrence or subsistence of which:

- (A) was outside the reasonable control of the Company (so as to include, for example, a circumstance where a toll under clause 4 of this Schedule was levied as a result of a tag being in a Vehicle on a day or at a time (as applicable) when a Day Pass applied to the Vehicle but so as not to include, for example, a circumstance where a toll under clause 4 of this Schedule was levied as a result of a Vehicle passing on the Link at a time when a Day Pass applies, if there was no tag in the Vehicle); and³⁷⁴
- (B) did not constitute or reflect a breach or contravention by the Company of any law or of any Project Document (other than a breach that might have arisen but for the operation of this clause 7),

then the occurrence of the relevant situation shall not of itself be considered to constitute a failure to have levied a toll in accordance with this Schedule or a breach of the obligations imposed by clauses 4, 5.3 or 6.4 of this Schedule, or this clause 7.

8. GENERAL

8.1 In order to set a Charge Toll, Maximum Charge Toll, a Day Toll, a Taxi Toll, a Taxi Day Toll, and Toll Administration Fee, the Company must:³⁷⁵

- (a) give the State notice of the relevant toll and relevant Toll Administration Fee and the quarter in which the Company intends that it first apply;³⁷⁶
- (b) place a notice outlining the relevant toll and relevant Toll Administration Fee and the quarter in which the Company intends that it first apply, in both the Victoria Government Gazette,³⁷⁷ and
- (ba) place a notice that outlines, in plain language:
 - (i) tolls and the applicable Toll Administration Fee for Cars (with the exception of Taxis) in a prominent part of a newspaper circulating throughout Victoria; and
 - (ii) tolls and the applicable Toll Administration Fee for all other classes of Vehicles in the notice section of a newspaper circulating throughout Victoria,

and outlines the quarter in which the Company intends that those tolls and Toll Administration Fees first apply, and provide a means by which the public may view these changes.³⁷⁸

Notice so required to be:

- (c) placed in the Victoria Government Gazette and a newspaper, must be so placed at least five Business Days prior to commencement of the relevant quarter, if it reflects an increase in the relevant toll or relevant Toll Administration Fee, or, if it does not reflect such an increase, prior to commencement of the relevant quarter; and³⁷⁹

- (d) given to the State, must be so given at least one month prior to commencement of the relevant quarter, if it reflects an increase in the relevant toll or relevant Toll Administration Fee, or, if it does not reflect such an increase, prior to commencement of the relevant quarter.³⁸⁰

Notwithstanding paragraphs (c) and (d), however, each Charge Toll, each Maximum Charge Toll, each Day Toll, each Taxi Toll and each Taxi Day Toll specified in the notices relating to this Deed published by the Company on 10 June 1999 in the Victoria Government Gazette No. G23 (the "Notices"):

- (e) shall be deemed to have been validly set in accordance with this Schedule; and
- (f) without limitation to paragraph (e), shall be deemed to have been validly set in accordance with this Schedule as if any of those tolls specified in the Notices:
- (i) in relation to the tollable section described as "Burnley Tunnel (being that part of the Southern Link consisting of the eastbound tunnel between Sturt Street and Burnley Street)", whether described on its own or as one of the tollable sections comprising the Southern Link, was specified in relation to the Tollable Section described as "Burnley Tunnel (being that part of the Southern Link consisting of the eastbound tunnel between Sturt Street and Burnley Street) and that part of the Southern Link between the eastern portal of that tunnel and Burnley Street", whether described on its own or as one of the tollable sections comprising the Southern Link;
 - (ii) in relation to the tollable section described as "Domain Tunnel (being that part of the Southern Link consisting of the westbound tunnel between Punt Road and Sturt Street)", whether described on its own or as one of the tollable sections comprising the Southern Link, was specified in relation to the Tollable Section described as "Domain Tunnel (being that part of the Southern Link consisting of the westbound tunnel between Punt Road and Sturt Street) and that part of the Southern Link between the eastern portal of that tunnel and Punt Road", whether described on its own or as one of the tollable sections comprising the Southern Link; and
 - (iii) in relation to the tollable section described as "Western Link Section 2, between Footscray Road and West Gate Freeway", whether described on its own or as one of the tollable sections comprising the Western Link, was specified in relation to the Tollable Section described as "Western Link Section 2, between Footscray Road and West Gate Freeway", whether described on its own or as one of the tollable sections comprising the Western Link,

but only in respect of the quarters commencing 1 April 1999 and 1 July 1999.

Notwithstanding paragraphs (c) and (d), however:

- (g) each Charge Toll, each Maximum Charge Toll, each Day Toll, each Taxi Toll and each Taxi Day Toll specified in the notices relating to this Deed published by the Company on 16 December 1999 in the Victoria Government Gazette No. G50 and on 16 March 2000 in the Victoria Government Gazette No. G11 (the "**Notices**"):
 - (i) shall be deemed to have been validly set in accordance with this Schedule; and
 - (ii) without limitation to paragraph (i), shall be deemed to have been validly set in accordance with this Schedule as if any of those tolls specified in the Notices:
- (A) in relation to the tollable section described as "Southern Link, between Punt Road and Burnley Street", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to each of the following Tollable Sections:
- (1) "Southern Link Section 1, between Burnley Street and Punt Road and including that part of Southern Link Section 1:
 - (a) between Punt Road and the exit to Boulton Parade; and
 - (b) comprising Boulton Parade",
where "Boulton Parade" includes the off-ramp connecting the rest of the Southern Link to Boulton Parade, whether described on its own or as one of the tollable sections comprising the Southern Link; and
 - (2) "Southern Link Section 5, between Punt Road and Burnley Street other than that part of the Southern Link leading out of the Burnley Tunnel between the eastern portal of that Tunnel and Burnley Street", where "Burnley Tunnel" means the eastbound tunnel between Sturt Street and Burnley Street, whether described on its own or as one of the tollable sections comprising the Southern Link;
- (B) in relation to the tollable section described as "Southern Link, between Burnley Street and Glenferrie Road", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to each of the following Tollable Sections:

- (1) "Southern Link Section 1, between Glenferrie Road and Burnley Street" whether described on its own or as one of the tollable sections comprising the Southern Link; and
 - (2) "Southern Link Section 5, between Burnley Street and Glenferrie Road" whether described on its own or as one of the tollable sections comprising the Southern Link;
- (C) in relation to the tollable section described as "Southern Link, between Punt Road and Swan Street Intersection", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to each of the following Tollable Sections:
- (1) "Southern Link Section 1, between Punt Road and Swan Street Intersection, other than:
 - (a) that part of Southern Link Section 1:
 - (i) between Punt Road and the exit to Boulton Parade; and
 - (ii) comprising Boulton Parade; and
 - (b) that part of the Southern Link leading into the Domain Tunnel between the eastern portal of that Tunnel and Punt Road",
- where:
- "Boulton Parade" includes the off-ramp connecting the rest of the Southern Link to Boulton Parade;
- "Domain Tunnel" means the westbound tunnel between Punt Road and Sturt Street; and
- "Swan Street Intersection" means the intersection between Swan Street and Batman Avenue,
- whether described on its own or as one of the tollable sections comprising the Southern Link; and
- (2) "Southern Link Section 5, between Swan Street Intersection and Punt Road", where "Swan Street Intersection" means the intersection between Swan Street and Batman Avenue, whether described on its

own or as one of the tollable sections comprising the Southern Link;

(D) in relation to the tollable section described as "Burnley Tunnel (being that part of the Southern Link consisting of the eastbound tunnel between Sturt Street and Burnley Street) and that part of the Southern Link between the eastern portal of that tunnel and Burnley Street", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to the Tollable Section described as "Burnley Tunnel and that part of the Southern Link leading out of that Tunnel between the eastern portal of that Tunnel and Burnley Street", where "Burnley Tunnel" means the eastbound tunnel between Sturt Street and Burnley Street, whether described on its own or as one of the tollable sections comprising the Southern Link; and

(E) in relation to the tollable section described as "Domain Tunnel (being that part of the Southern Link consisting of the westbound tunnel between Punt Road and Sturt Street) and that part of the Southern Link between the eastern portal of that tunnel and Punt Road", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to the Tollable Section described as:

"Domain Tunnel and that part of the Southern Link leading into that Tunnel between the eastern portal of that Tunnel and Punt Road, other than that part of Southern Link Section 1:

- (1) between Punt Road and the exit to Boulton Parade; and
- (2) comprising Boulton Parade",

where:

"Boulton Parade" includes the off-ramp connecting the rest of the Southern Link to Boulton Parade; and

"Domain Tunnel" means the westbound tunnel between Punt Road and Sturt Street,

whether described on its own or as one of the tollable sections comprising the Southern Link; and

(h) each Charge Toll, each Maximum Charge Toll, each Day Toll, each Taxi Toll and each Taxi Day Toll specified in the notice relating to this Deed published by the Company on 18 April 2000 in the Victoria Government Gazette No. S48 and

on 19 June 2000 in the Victoria Government Gazette No. S85 (the "Notices"):

- (i) shall (subject to clause 8.5) be deemed to have been validly set in accordance with this Schedule; and
- (ii) without limitation to paragraph (i), shall (subject to clause 8.5) be deemed to have been validly set in accordance with this Schedule as if any of those tolls specified in the Notices:

(A) in relation to the tollable section described as "Domain Tunnel (being that part of the Southern Link consisting of the westbound tunnel between Punt Road and Sturt Street) and that part of the Southern Link between the eastern portal of that tunnel and Punt Road", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to the Tollable Section described as:

"Domain Tunnel and that part of the Southern Link leading into that Tunnel between the eastern portal of that Tunnel and Punt Road, other than that part of Southern Link Section 1:

- (1) between Punt Road and the exit to Boulton Parade; and
- (2) comprising Boulton Parade",

where:

"Boulton Parade" includes the off-ramp connecting the rest of the Southern Link to Boulton Parade; and

"Domain Tunnel" means the westbound tunnel between Punt Road and Sturt Street,

whether described on its own or as one of the tollable sections comprising the Southern Link;

(B) in relation to the tollable section described as "Burnley Tunnel (being that part of the Southern Link consisting of the eastbound tunnel between Sturt Street and Burnley Street) and that part of the Southern Link between the eastern portal of that tunnel and Burnley Street", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to the Tollable Section described as "Burnley Tunnel and that part of the Southern Link leading out of that Tunnel between the eastern portal of that Tunnel and Burnley Street", where "Burnley Tunnel" means the eastbound tunnel between Sturt Street and Burnley Street, whether described on its own or as one of the tollable sections comprising the Southern Link;

- (C) in relation to the tollable section described as "Southern Link Section 1, between Burnley Street and Punt Road", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to the Tollable Section described as:

"Southern Link Section 1, between Burnley Street and Punt Road and including that part of Southern Link Section 1:

- (1) between Punt Road and the exit to Boulton Parade; and
- (2) comprising Boulton Parade",

where "Boulton Parade" includes the off-ramp connecting the rest of the Southern Link to Boulton Parade, whether described on its own or as one of the tollable sections comprising the Southern Link;

- (D) in relation to the tollable section described as "Southern Link Section 5, between Punt Road and Burnley Street", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to the Tollable Section described as "Southern Link Section 5, between Punt Road and Burnley Street other than that part of the Southern Link leading out of the Burnley Tunnel between the eastern portal of that Tunnel and Burnley Street", where "Burnley Tunnel" means the eastbound tunnel between Sturt Street and Burnley Street, whether described on its own or as one of the tollable sections comprising the Southern Link;

- (E) in relation to the tollable section described as "Southern Link Section 1, between Punt Road and Swan Street Intersection", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to the Tollable Section described as:

- (1) "Southern Link Section 1, between Punt Road and Swan Street Intersection, other than:

- (a) that part of Southern Link Section 1:

- between Punt Road and the exit to Boulton Parade; and
- comprising Boulton Parade; and

- (b) that part of the Southern Link leading into Domain Tunnel between the

eastern portal of that Tunnel and Punt Road",

where:

"Boulton Parade" includes the off-ramp connecting the rest of the Southern Link to Boulton Parade;

"Domain Tunnel" means the westbound tunnel between Punt Road and Sturt Street; and

"Swan Street Intersection" means the intersection between Swan Street and Batman Avenue,

whether described on its own or as one of the tollable sections comprising the Southern Link; and

- (F) in relation to the tollable section described as "Southern Link Section 5, between Swan Street Intersection and Punt Road", whether described on its own or as one of the tollable sections comprising the Southern Link, were specified in relation to the Tollable Section described as "Southern Link Section 5, between Swan Street Intersection and Punt Road", where "Swan Street Intersection" means the intersection between Swan Street and Batman Avenue, whether described on its own or as one of the tollable sections comprising the Southern Link.

The requirements of paragraphs (c) and (d) of this clause 8.1 do not apply to any notices which the Company places in the Victoria Government Gazette and a newspaper in respect of, and only in respect of, the quarter commencing 1 July 2000 or part thereof, being notices so placed within 10 Business Day after the Operative Date (as defined in the Twelfth Amending Deed) of the Twelfth Amending Deed.

For the avoidance of doubt, the requirements of paragraphs (a) and (b) of this clause 8.1 shall be deemed to have been met in respect of the notice relating to this Deed published by the Company on 18 April 2000 in the Victoria Government Gazette No. S48.

For the avoidance of doubt, this clause 8.1 does not oblige the Company to publish a notice under Section 71 of the Project Legislation by the dates described in paragraph 8.1(c).

- 8.2 A Charge Toll set in accordance with this Schedule in relation to a category of Vehicle, a Tollable Section and a particular quarter, (and a Maximum Charge Toll, Day Toll, Taxi Toll and Taxi Day Toll in relation to a quarter and, if applicable, a category of Vehicle) shall be deemed to have been so set in relation to all succeeding quarters occurring prior to a quarter in respect of which notice is given and placed in accordance with clause 8.1 indicating a change to the relevant Toll.

- 8.3 A toll may not be levied under clause 4 and a Taxi Toll may not be levied under clause 6 in relation to any Trip constituted only by:
- (a) the passage of a Vehicle on that part of the Link:
 - (i) comprising the Tullamarine Freeway (including that freeway as altered by the Works) between Bell Street and Bulla Road; or
 - (ii) comprising the West Gate Freeway (including that freeway as altered by the Works); or
 - (b) the passage of a Vehicle carrying a placard load (within the meaning of the *Dangerous Goods (Transport By Road Or Rail) Regulations 2008* (Vic)) on that part of the Link comprising Western Link Section 2, between Footscray Road and West Gate Freeway, provided that the Vehicle does not travel on any other Tollable Section as part of the same Trip.
- 8.4 Subject to clauses 4, 5, 6 and 8, the Company shall not, and shall not permit or suffer, a toll to be levied in relation to the Link (or any part of it) or for or in connection with the use of anything on the Link (or any part of it).
- 8.5 Each Charge Toll, each Maximum Charge Toll, each Day Toll, each Taxi Toll and each Taxi Day Toll specified in the notice relating to this Deed published by the Company on 19 June 2000 in the Victoria Government Gazette No. S85 in respect of the quarter commencing 1 July 2000, shall be deemed to have been validly set in accordance with this Schedule, but only in respect of the period commencing on 1 July 2000 and ending two Business Days after the date of publication of the notice placed by the Company in the Victoria Government Gazette under clause 8.6.
- 8.6 If, within 10 Business Day after the Operative Date (as defined in the Twelfth Amending Deed) of the Twelfth Amending Deed, the Company places notices relating to this Deed in the Victoria Government Gazette (and a newspaper) in respect of, and only in respect of, the quarter commencing 1 July 2000 or part thereof, then each Charge Toll, each Maximum Charge Toll, each Day Toll, each Taxi Toll and each Taxi Day Toll specified in the notice so placed in the Victoria Government Gazette shall be deemed to be validly set in accordance with this Schedule in respect of the period commencing three Business Days after the date of publication of such notice placed in the Victoria Government Gazette and ending on 30 September 2000. This clause applies notwithstanding any prohibition (whether express or implied) in this Schedule (whether in clauses 3.1, 3.2, 5.2, 6.2 or 6.3 or otherwise) to set only one Charge Toll, one Maximum Charge Toll, one Day Toll, one Taxi Toll and one Taxi Day Toll in respect of a quarter.
- 8.7 For the purposes of calculating a Theoretical Toll and a Maximum Theoretical Toll and setting a Charge Toll, a Maximum Charge Toll and a Day Toll in respect of any quarter commencing on or after 1 October 2000, each Charge Toll, each Maximum Charge Toll and each Day Toll specified in the notice placed by the Company in the Victoria Government Gazette under clause 8.6 shall be deemed to be

- validly set in accordance with this Schedule in respect of the quarter commencing 1 July 2000.
- 8.8 For the purposes of clause 8.2 of this Schedule, each Charge Toll, each Maximum Charge Toll, each Day Toll, each Taxi Toll and each Taxi Day Toll specified in the notice placed by the Company in the Victoria Government Gazette under clause 8.6 shall be deemed to be validly set in accordance with this Schedule in respect of the quarter commencing 1 July 2000.
- 8.9 Each Charge Toll, each Maximum Charge Toll, each Day Toll, each Taxi Toll and each Taxi Day Toll specified in the notice relating to this Deed published by the Company on 22 September 2000 in the Victoria Government Gazette No. S134 in respect of the quarter commencing 1 October 2000, shall be deemed to have been validly set in accordance with this Schedule.
- 8.10 The Toll Administration Fee specified in the notices relating to this Deed published by the Company on 9 August 2005 in the Victoria Government Gazette No. S146, 22 September 2005 in the Victoria Government Gazette No. G38 and The Age Newspaper dated 15 September 2005 shall be deemed to have been validly set in accordance with this Schedule from 1 July 2005.³⁸¹
- 8.11 For the purposes of clause 8.1(d) of this Schedule, if a notice required by clause 8.1(a) of this Schedule is given to the State at least 5 Business Days prior to the commencement of the quarter commencing 1 January 2006, then each Charge Toll, each Maximum Charge Toll, each Day Toll, each Taxi Toll and each Taxi Day Toll specified in that notice shall be deemed to be validly set in accordance with this Schedule.³⁸²
- 8.12 For the avoidance of doubt, if a Tollable Section changes as a result of the SLU Works or the WLU Works:
- (a) the Company is not required to:
 - (i) re-set any Charge Tolls; or
 - (ii) re-fix any tolls which are payable in respect of the use of vehicles on the toll zone that relates to that Tollable Section,solely as a result of that change;
 - (b) each Charge Toll that applies in relation to each category of Vehicle for that Tollable Section for the quarter in which the change occurred will continue to apply to that Tollable Section;
 - (c) each Charge Toll that applies in relation to each category of Vehicle for that Tollable Section for each quarter preceding the quarter in which the change occurred will be deemed to have been validly set in accordance with this Schedule; and
 - (d) if notwithstanding paragraph (a) the Company elects to re-fix the tolls which are payable in respect of the use of Vehicles on the toll zone that relates to that Tollable Section, clauses

- 8.1(a), (b), (ba), (c) and (d) of this Schedule will not apply to the re-fixing of that toll.
- 8.13 For the purposes of clause 8.1(d) of this Schedule, each Taxi Toll and each Taxi Day Toll for the quarter commencing 1 January 2007 shall be deemed to be validly set in accordance with this Schedule at the maximum applicable level permitted by paragraph 6 of this Schedule for that quarter.
- 8.14 Notwithstanding clauses 8.1(c) and 8.1(d) of this Schedule, each Toll Administration Fee for the quarter commencing 1 July 2007 shall be deemed to be validly set in accordance with this Schedule at the maximum applicable level permitted by clause 9.2(B) of this Deed for that quarter.
- 8.15 For the quarter commencing on 1 July 2008 and ending on 30 September 2008:
- (a) for the purposes of clause 6.2, a Taxi Toll may be set by the Company for each of the following periods:
 - (i) for the period commencing on 1 July 2008 and ending on 26 July 2008; and
 - (ii) for the period commencing on 27 July 2008 and ending on 30 September 2008;
 - (b) if the Company sets a Taxi Toll that only applies to the period referred to in paragraph (a)(ii), any notices required under clauses 8.1(a), 8.1(b) and 8.1(ba) in relation to that toll must specify that the toll shall only apply to that period; and
 - (c) for the purposes of clauses 8.1(c) and 8.1(d), if the notices required by clauses 8.1(a), 8.1(b) and 8.1(ba) (as qualified by this clause 8.15) are given or placed (as the case may be) prior to 27 July 2008, then each Taxi Toll and each Taxi Day Toll specified in those notices shall be deemed to be validly set in accordance with this Schedule.
- 8.16 For the quarter commencing on 1 July 2011 and ending on 30 September 2011, for the purposes of clause 8.1(d) only and without limiting any other requirement of this Schedule, if the notice required by clause 8.1(a) is given prior to 23 June 2011, then each Taxi Toll and each Taxi Day Toll specified in that notice shall be deemed to be validly set in accordance with this Schedule.
- 8.17 In respect of the setting of Taxi Tolls and Taxi Day Tolls for the quarter commencing on 1 July 2015, for the purposes of clause 8.1(c) only and without limiting any other requirement of this Schedule, if the notices required by clauses 8.1(b), 8.1(ba) and 8.1(c) are placed prior to 31 July 2015, then the requirements of clause 8.1(c) will be deemed to be satisfied.
- 8.18 In respect of the setting of Taxi Tolls and Taxi Day Tolls for the quarter commencing on 1 July 2017, for the purposes of clause 8.1(c) only and without limiting any other requirement of this Schedule, if the notices required by clauses 8.1(b), 8.1(ba) and 8.1(c) are placed prior to 31 July 2017, then the requirements of clause 8.1(c) will be deemed to be satisfied.

- 8.19 For the period commencing on the Date of West Gate Tunnel Tolling Completion and ending on the WGT Expiry Date, the Company may:
- (a) grant (or agree to grant) a right or authority to use:
 - (i) the West Gate Tunnel; or
 - (ii) the West Gate Tunnel and the Link,

(or a part of either tollroad) for the passage of a Vehicle for a period of 24 hours if the total amount charged in relation to that right or authority is in accordance with the requirements of the WGT Project Agreement; and
 - (b) pay to WGT Co the amount payable by the Company to WGT Co in relation to that right or authority in accordance with any agreement between them, and retain the amount charged in relation to the right or authority referred to in clause 8.19(a),
- provided that WGT Co has not levied a toll for the grant (or agreement to grant) of that right or authority under clause 5 of the Toll Calculation Schedule under and as defined in the WGT Project Agreement in respect of that Vehicle.
- 8.20 If the WGT Project Agreement expires or terminates prior to the expiry or termination of this Deed, the Company must continue to:
- (a) offer the WGT Day Pass in respect of the West Gate Tunnel; and
 - (b) provide services to users of the West Gate Tunnel who hold a WGT Day Pass,
- (WGT Retail Services)** until the earlier of the date:
- (c) on which the Tolling System is handed over to the State in accordance with clause the Handover Clauses; and
 - (d) that is 3 years after the Expiry Date (as defined in the WGT Project Agreement).
- 8.21 Where clause 8.20 applies, the Company must perform the WGT Retail Services to the higher of:
- (a) the standard to which the WGT Retail Services were performed by the Company; and
 - (b) the standard to which the WGT Retail Services were required to be performed by the Company under this Deed,
- during the 6 month period prior to the Expiry Date (as defined in the WGT Project Agreement).

SCHEDULE 4

ADDITIONAL CONCESSION FEE PAYMENTS

ATTACHMENT	PROPORTION OF EXCESS REVENUE PAYABLE TO THE STATE: %			
	Relevant Period Nos 1 to 5	Relevant Period Nos 6 to 10	Relevant Period Nos 11 to 17	Relevant Period 18 and Later Relevant Period (ending on the last day of the Original Concession Period)
0-5	0	5	10	20
5.01-10	10	10	15	25
10.01-15	15	10	20	30
15.01-20	15	10	20	30
20.01-30	20	20	25	35
30.01-40	25	25	30	40
40.01-50	30	30	35	45
50.01-75	40	40	45	50
75.01-100	50	50	55	60
100.01+	70	70	70	70

SCHEDULE 5

STATE DESIGN CONSIDERATIONS

Noise Walls

Portals

Gateways

Landscaping

Pedestrian and Bike Paths

Moonee Ponds Creek

Yarra Bank (North)

Grant Street

Olympic Park reinstatement

Vent Stacks

Public furniture

SCHEDULE 6

TERMINATION OF WGT PROJECT AGREEMENT

PART A - CONCESSION ENHANCEMENTS

1. TERMINATION OF WGT PROJECT AGREEMENT FOR DEFAULT TERMINATION EVENT

1.1 State election

If the WGT Project Agreement is terminated by the State pursuant to a WGT Termination for a Default Termination Event before the WGT Date of Tolling Completion, the State may within 10 Business Days of the WGT Expiry Date, notify the Company that either:

- (a) with effect from the date notified by the State (not being any earlier than 20 Business Days after the date of receipt by the Company of the notice from the State), the Toll Calculation Schedule will be amended as set out in section 5.1 of Part A of this Schedule 6, in which case the Company must pay to the State within 10 Business Days of the date notified an amount equal to the tolling revenue derived by the Company following the WGT Expiry Date that would not have been so derived had section 5.1 of Part A of this Schedule 6 applied with effect from the WGT Expiry Date; or
- (b) with effect from the WGT Expiry Date, the State will be entitled to retain a portion of the tolling revenue derived by the Company as set out in section 1.2 of Part A of this Schedule 6.

1.2 State entitlement to tolling revenue

If the State gives a notice under section 1.1(b) of Part A of this Schedule 6, then:

- (a) the State will be entitled to an amount equal to that portion of the tolling revenue derived by the Company following the WGT Expiry Date which exceeds the tolling revenue that would have been derived by the Company had section 5.1 of Part A of this Schedule 6 applied with effect from the WGT Expiry Date (**State Revenue Entitlement**);
- (b) within 10 Business Days of the end of each quarter following the WGT Expiry Date the Company will provide to the State:
 - (i) details of the tolling revenue derived by the Company during that quarter;
 - (ii) a calculation of the tolling revenue that would have been derived by the Company during that quarter had section 5.1 of Part A of this Schedule 6 applied with effect from the WGT Expiry Date, including sufficient details for the State to verify such calculation; and
 - (iii) the amount of the proposed State Revenue Entitlement;

- (c) within 20 Business Days of receiving the information referred to in section 1.2(b) of Part A of this Schedule 6, the State must notify the Company whether it agrees with or wishes to dispute all or any part of such matters;
- (d) if the State disputes all or any part of any of the matters referred to in section 1.2(b) of Part A of this Schedule 6, it may refer such dispute for resolution in accordance with Article 16;
- (e) if:
 - (i) the State agrees with the matters referred to in section 1.2(b) of Part A of this Schedule 6;
 - (ii) the State does not respond within the period required by section 1.2(c) of Part A of this Schedule 6; or
 - (iii) it is determined that an amount is payable following reference of a matter to dispute resolution under section 1.2(d) of Part A of this Schedule 6,then the amount so agreed, notified or determined will be payable by the Company to the State within 10 Business Days of such agreement, notification or determination.

2. TERMINATION OF WGT PROJECT AGREEMENT FOR FORCE MAJEURE TERMINATION EVENT

If the State or WGT Co terminates the WGT Project Agreement pursuant to a WGT Termination for a Force Majeure Termination Event before the WGT Date of Tolling Completion, then subject to section 4.2 of Part A of this Schedule 6, the State must by notice to the Company within 20 Business Days of the WGT Expiry Date elect that either:

- (a) with effect from the date notified by the State (not being any earlier than 20 Business Days after the date of receipt by the Company of the notice from the State), the Toll Calculation Schedule will be amended as set out in section 5.2 of Part A of this Schedule 6; or
- (b) the State will pay to the Company the FM Termination Concession Enhancement Compensation Amount, in which case:
 - (i) the State must pay the FM Termination Concession Enhancement Compensation Amount to the Company at the same time as it pays the WGT Termination Payment to WGT Co in accordance with the WGT Project Agreement which will be applied in accordance with section 7 of Part A of this Schedule 6; and
 - (ii) with effect from date notified by the State in its election (not being any earlier than 20 Business Days after the date of receipt by the Company of the notice from the State) the Toll Calculation Schedule will be amended as set out in section 5.1 of Part A of this

Schedule 6, in which case the Company must pay to the State within 10 Business Days of the date notified an amount equal to the tolling revenue derived by the Company following the WGT Expiry Date that would not have been so derived had section 5.1 of Part A of this Schedule 6 applied with effect from the WGT Expiry Date.

If the State does not make an election within the time required under this section 2 of Part A of this Schedule 6, the State will be taken to have made the election in section 2(a) of Part A of this Schedule 6.

3. TERMINATION OF WGT PROJECT AGREEMENT FOR EARLY TERMINATION EVENT

If the State or WGT Co terminates the WGT Project Agreement pursuant to a WGT Termination for an Early Termination Event before the WGT Date of Tolling Completion, then subject to section 4.1 of Part A of this Schedule 6, the State must by notice to the Company within 20 Business Days of the WGT Expiry Date elect that either:

- (a) with effect from the date notified by the State (not being any earlier than 20 Business Days after the date of receipt by the Company of the notice from the State), the Toll Calculation Schedule will be amended as set out in section 5.2 of Part A of this Schedule 6; or
- (b) the State will pay to the Company the ETE Termination Concession Enhancement Compensation Amount, in which case:
 - (i) the State must pay the ETE Termination Concession Enhancement Compensation Amount to the Company at the same time as it pays the WGT Termination Payment to WGT Co in accordance with the WGT Project Agreement; and
 - (ii) with effect from date notified by the State in its election (not being any earlier than 20 Business Days after the date of receipt by the Company of the notice from the State) the Toll Calculation Schedule will be amended as set out in section 5.1 of Part A of this Schedule 6, in which case the Company must pay to the State within 10 Business Days of the date notified an amount equal to the tolling revenue derived by the Company following the WGT Expiry Date that would not have been so derived had section 5.1 of Part A of this Schedule 6 applied with effect from the WGT Expiry Date.

If the State does not make an election within the time required under this section 3 of Part A of this Schedule 6, the State will be taken to have made the election in section 3(a) of Part A of this Schedule 6.

4. COMPANY PURCHASE OF CONCESSION ENHANCEMENTS

4.1 Early Termination Event

- (a) If the State or WGT Co terminates the WGT Project Agreement pursuant to a WGT Termination for an Early Termination Event before the WGT Date of Tolling Completion, the Company may by notice to the State within 10 Business Days of WGT Expiry Date, elect to pay to the State a Relevant Concession Enhancement Portion, in which case the Toll Calculation Schedule will be amended as set out in section 5.3 of Part A of this Schedule 6 and the Company will pay such amounts in accordance with section 4.3 of Part A of this Schedule 6.
- (b) If the Company gives a notice under section 4.1(a) of Part A of this Schedule 6 and a notice under clause section 2(b) of Part B of this Schedule 6:
 - (i) the Company must also pay to the State the Relevant Concession Extension Tolling Enhancement Portion; and
 - (ii) the Trustee must also pay to the State the Relevant Lease Extension Tolling Enhancement Portion,

equal to the present value of tolling revenue derived during the Additional Concession Period from Relevant Changes to the Toll Calculation Schedule as adjusted in accordance with section 5.3 of Part A of this Schedule 6 (over and above the tolling revenue that would have been derived had no such amendments been made and assessed over the Additional Concession Period) determined using the Reference Financial Model less the Concession Extension Tolling Enhancement Purchase Payments and the Company and Trustee will pay such amounts in accordance with section 4.3 of Part A of this Schedule 6.

4.2 Force Majeure Termination Event

- (a) If the State or WGT Co terminates the WGT Project Agreement pursuant to a WGT Termination for a Force Majeure Termination Event before the WGT Date of Tolling Completion the Company may by notice to the State within 10 Business Days of the WGT Expiry Date, request that it be allowed to pay to the State a Relevant Concession Enhancement Portion.
- (b) If the Company gives a notice under section 4.2(a) of Part A of this Schedule 6 and a notice under section 2(b) of Part B of this Schedule 6 and the State gives notice under section 4.2(c) of Part A of this Schedule 6:
 - (i) the Company must also pay to the State the Relevant Concession Extension Tolling Enhancement Portion; and
 - (ii) the Trustee must also pay to the State the Relevant Lease Extension Tolling Enhancement Portion,

equal to the present value of tolling revenue projected to be derived during the Additional Concession Period from Relevant Changes to the Toll Calculation Schedule as adjusted in accordance with section 5.3 of Part A of this Schedule 6 (over and above the tolling revenue that would have been derived projected to be had no such amendments been made and assessed over the Additional Concession Period) determined using the Reference Financial Model less the Concession Extension Tolling Enhancement Purchase Payments and the Company and Trustee will pay such amounts in accordance with section 4.3 of Part A of this Schedule 6.

- (c) If the State, in its absolute discretion, consents to the Company's request under section 4.2(a) of Part A of this Schedule 6, it will notify the Company accordingly within 10 Business Days of receiving the notice from the Company under section 4.2(a) of Part A of this Schedule 6 in which case the amendments to the Toll Calculation Schedule contemplated in section 2 of Part A of this Schedule 6 will not take effect and the Toll Calculation Schedule will be amended as set out in section 5.3 of Part A of this Schedule 6 and the Company and Trustee will pay the requested Relevant Concession Enhancement Portion in accordance with section 4.3 of Part A of this Schedule 6.

4.3 Payment for unpaid WGT Tolling Enhancements

If:

- (a) the Company gives notice to the State under section 4.1 of Part A of this Schedule 6; or
- (b) the State gives notice to the Company under section 4.2(c) of Part A of this Schedule 6,

the Company must pay to the State the Relevant Concession Enhancement Portion and the Relevant Concession Extension Tolling Enhancement Portion and the Trustee must pay to the State the Relevant Lease Extension Tolling Enhancement Portion at the times for payment of the corresponding amounts under the Reference Financial Model (and if an amount has not previously been paid at the time contemplated in the Reference Financial Model, at the time for payment of the next amount payable as contemplated by the Reference Financial Model), and in this regard where section 4.3(b) of Part A of this Schedule 6 applies, amounts referred to in paragraph (b) of the definition of Concession Enhancement Purchase Consideration will be payable at the Company's election as either:

- (c) a lump sum payment within 20 Business Days of the State giving the Company the notice under section 4.2(c) of Part A of this Schedule 6; or
- (d) pro rata with the payment of the Relevant Concession Enhancement Portion and escalated to the relevant date of payment using the WGT Project IRR.

5. AMENDMENTS TO TOLL CALCULATION SCHEDULE AND RELEVANT DATE

5.1 Amendments to Toll Calculation Schedule - full windback

If the State gives a notice under section 1.1(a), 2(b) or 3(b) of Part A of this Schedule 6, then with effect from the date specified in the notice the Toll Calculation Schedule will be amended so that:

- (a) the Relevant Changes to the Toll Calculation Schedule will be reversed and the Toll Calculation Schedule will read from that date onwards as if those amendments had not been made;
- (b) the applicable Theoretical Tolls and Maximum Theoretical Tolls will be those that would have applied had the amendments effected by the WGT CityLink and ESEP Concession Amending Deeds never been made;
- (c) a Charge Toll and Maximum Charge Toll applying from that date will be deemed to have been validly set in accordance with clause 8.1 of the Toll Calculation Schedule if no later than 10 Business Days prior to such date the Company:
 - (i) gives the State notice of the relevant toll and the date from which it will apply;
 - (ii) places a notice outlining the relevant toll and the date from which it will apply in the Victorian Government Gazette; and
 - (iii) places a notice that outlines, in plain language:
 - A. the tolls for Cars in a prominent part of a newspaper circulating throughout Victoria; and
 - B. the tolls for all other classes of Vehicles in the notice section of a newspaper circulating throughout Victoria,

and outlines the date from which they will apply, and provide a means by which the public may view the changes.

5.2 Amendments to Toll Calculation Schedule - FM and Early Termination (no purchase of WGT Tolling Enhancements)

- (a) If the State gives a notice under section 2(a) or 3(a) of Part A of this Schedule 6, then the Toll Calculation Schedule will be amended such that:
 - (i) (if required to achieve the outcome in sections 5.2(a)(ii)(A) and (B) of Part A of this Schedule 6) the HPFV Tolling Period will commence on the WGT Date for Tolling Completion as at the WGT Expiry Date; and
 - (ii) the Fixed Escalation Period and, (if required to achieve the outcome in sections 5.2(a)(ii)(A) and (B) of Part A of this Schedule 6) the HPFV Tolling Period, will be reduced to end on the dates at which:

- (A) the present value of tolling revenue derived from the Relevant Changes to the Toll Calculation Schedule (over and above the tolling revenue that would have been derived had no such amendments been made and assessed over the Concession Period) determined using the Reference Financial Model and the present value of any Progressive State Contributions under and as defined in Schedule 38 of the WGT Project Agreement that have been paid to WGT Co;

equals:

- (B) an amount equal to:
- (1) in the case of a notice given under section 2(a) of Part A of this Schedule 6, 75%; and
 - (2) in the case of a notice given under section 3(a) of Part A of this Schedule 6, 100%,
- of the present value of the Concession Enhancement Purchase Payments and Concession Extension Tolling Enhancement Purchase Payments as at the WGT Expiry Date.

To the extent that the absolute value of the amount in section 5.2(a)(ii)(B) of Part A of this Schedule 6 is greater than the absolute value of the present value of tolling revenue derived from the Relevant Changes made to the Toll Calculation Schedule (over and above the tolling revenue that would have been derived had no such amendments been made and assessed over the Concession Period) determined using the Reference Financial Model until the termination of the Concession Period, the State will pay to WGT Co this difference within 20 Business Days after the WGT Expiry Date.

- (b) The parties acknowledge that, as an alternative to adjusting the Fixed Escalation Period and the State making the payment as contemplated in section 5.2(a) of Part A of this Schedule 6, the parties may agree instead to adjust tolls under the Toll Calculation Schedule or any other arrangement such that the Fixed Escalation Period remains the same but the equivalent economic outcome is achieved. Neither party is obliged to agree any such adjustments to the Toll Calculation Schedule, and in the absence of any agreement section 5.2(a) of Part A of this Schedule 6 will apply.

5.3 Amendments to Toll Calculation Schedule - FM and Early Termination (purchase of a portion of WGT Tolling Enhancements)

- (a) If:

- (i) the Company gives notice to the State under section 4.1 of Part A of this Schedule 6; or
- (ii) the State gives notice to the Company under section 4.2(c) of Part A of this Schedule 6,

then the Toll Calculation Schedule will be amended such that:

- (iii) the HPFV Tolling Period will commence on the WGT Date for Tolling Completion as at the WGT Expiry Date; and
- (iv) the Fixed Escalation Period and, (if required to achieve the outcome in sections 5.3(a)(iv)(A) and (B) of Part A of this Schedule 6) the HPFV Tolling Period, will be reduced to end on the dates at which:
 - A. the present value of tolling revenue derived from the Relevant Changes made to the Toll Calculation Schedule (over and above the tolling revenue that would have been derived had no such amendments been made and assessed over the Original Concession Period) determined using the Reference Financial Model and the present value of any Progressive State Contributions under and as defined in Schedule 38 of the WGT Project Agreement that have been paid to WGT Co;

equals

- B. an amount equal to the present value of the Concession Enhancement Purchase Payment and the Relevant Concession Enhancement Portion less the amounts referred to in paragraph (b) of the definition of Concession Enhancement Purchase Consideration.
- (b) The parties acknowledge that, as an alternative to adjusting the Fixed Escalation Period as contemplated in section 5.3(a) of Part A of this Schedule 6, the parties may agree instead to adjust tolls under the Toll Calculation Schedule or any other arrangement such that the Fixed Escalation Period remains the same but the equivalent economic outcome is achieved. Neither party is obliged to agree any such adjustments to the Toll Calculation Schedule and in the absence of any agreement section 5.3(a) of Part A of this Schedule 6 will apply.

6. ADJUSTMENTS ON TERMINATION

6.1 Termination of WGT Project Agreement for Default Termination Event

If the WGT Project Agreement is terminated by the State pursuant to a WGT Termination for a Default Termination Event before the WGT Date of Tolling Completion:

- (a) the Reference Financial Model, the Financial Model and the Forecast Enhancement Cashflows will be adjusted to exclude the future cashflows attributable to the WGT Tolling Enhancements on and from the WGT Expiry Date;
- (b) to the extent the State is entitled to tolling revenue collected by the Company in accordance with section 1.1 and 1.2 of Part A of this Schedule 6, the Reference Financial Model and the Financial Model will not include forecasts of that revenue and when operated from time to time in accordance with this Deed must exclude the actual tolling revenue derived by the Company and paid to the State in accordance with section 1.1 and 1.2 of Part A of this Schedule 6;
- (c) any WGT Enhancement Project Debt will be deemed to be zero on and from the WGT Expiry Date; and
- (d) there will be deemed to be no WGT Enhancement Project Securities on and from the WGT Expiry Date.

6.2 Termination of WGT Project Agreement for a Force Majeure Termination Event

If the State or WGT Co terminates the WGT Project Agreement pursuant to a WGT Termination for a Force Majeure Termination Event before the WGT Date of Tolling Completion and:

- (a) the State gives notice to the Company under section 4.2(c) of Part A of this Schedule 6:
 - (i) any securities issued by the Company or the Trust and any amounts borrowed under the Lending Documents to fund any amounts paid by the Company to the State pursuant to paragraph (b) of the definition of the Concession Enhancement Purchase Consideration will not be deemed to be WGT Project Debt or Extension Project Securities; and
 - (ii) the Reference Financial Model and Financial Model and the Forecast Enhancement Cashflows will be adjusted to reflect that:
 - (A) the Toll Calculation Schedule will be amended as set out in section 5.3 of Part A of this Schedule 6;
 - (B) the Company will only pay the Relevant Concession Enhancement Portion, Relevant Concession Extension Tolling Enhancement Portion and the Trustee will only pay the Relevant Lease Extension Tolling Enhancement Portion; and
 - (C) any amounts paid by the Company to the State pursuant to paragraph (b) of the definition of the Concession Enhancement Purchase Consideration will be included in the Forecast Enhancement Cashflows; and

- (iii) the Trustee will not be required to make payments to the WGT D&C Subcontractor pursuant to the WGT D&C Subcontract in respect of any Lease Extension Tolling Enhancement Purchase Consideration which is in excess of the Relevant Lease Extension Tolling Enhancement Portion;
- (b) the State gives notice to the Company under section 2(a) of Part A of this Schedule 6:
 - (i) the Reference Financial Model and Financial Model and the Forecast Enhancement Cashflows will be adjusted to reflect that:
 - (A) the Toll Calculation Schedule will be amended as set out in section 5.2 of Part A of this Schedule 6; and
 - (B) the Company will not make any further payments in respect of the Concession Enhancement Purchase Consideration or the Concession Extension Tolling Enhancement Purchase Consideration and the Trustee will not pay the Lease Extension Tolling Enhancement Purchase Consideration; and
 - (ii) the Trustee will not be required to make payments to the WGT D&C Subcontractor pursuant to the WGT D&C Subcontract in respect of the Lease Extension Tolling Enhancement Purchase Consideration; and
- (c) the State gives notice to the Company under section 2(b) of Part A of this Schedule 6:
 - (i) the Reference Financial Model and Financial Model and the Forecast Enhancement Cashflows will be adjusted to reflect that:
 - (A) the Toll Calculation Schedule will be amended as set out in section 5.1 of Part A of this Schedule 6 and the Company will pay to the State an amount equal to the tolling revenue derived by the Company following the WGT Expiry Date that would not have been so derived had section 5.1 of Part A of this Schedule 6 applied with effect from the WGT Expiry Date;
 - (B) the State will pay to the Company the FM Termination Concession Enhancement Compensation Amount; and
 - (C) the Company will not make any further payments in respect of the Concession Enhancement Purchase Consideration or the Concession Extension Tolling Enhancement Purchase Consideration and the Trustee will not pay the Lease Extension Tolling Enhancement Purchase Consideration;

- (ii) the Trustee will not be required to make payments to the WGT D&C Subcontractor pursuant to the WGT D&C Subcontract in respect of the Lease Extension Tolling Enhancement Purchase Consideration; and
- (iii) to the extent the State is entitled to tolling revenue collected by the Company in accordance with section 2(b) of Part A of this Schedule 6, the Reference Financial Model and Financial Model will not include forecasts of that revenue and when operated from time to time in accordance with this Deed and must exclude the actual tolling revenue derived by the Company and paid to the State in accordance with section 2(b) of Part A of this Schedule 6.

6.3 Termination of WGT Project Agreement for an Early Termination Event

If the State or WGT Co terminates the WGT Project Agreement pursuant to a WGT Termination for an Early Termination Event before the WGT Date of Tolling Completion and:

- (a) the Company gives notice to the State under section 4.1 of Part A of this Schedule 6:
 - (i) the Reference Financial Model and Financial Model and the Forecast Enhancement Cashflows will be adjusted to reflect that:
 - (A) the Toll Calculation Schedule will be amended as set out in section 5.3 of Part A of this Schedule 6; and
 - (B) the Company will only pay the Relevant Concession Enhancement Portion, Relevant Concession Extension Tolling Enhancement Portion and the Trustee will only pay the Relevant Lease Extension Tolling Enhancement Portion; and
 - (ii) the Trustee will not be required to make payments to the WGT D&C Subcontractor pursuant to the WGT D&C Subcontract in respect of any Lease Extension Tolling Enhancement Purchase Consideration which is in excess of the Relevant Lease Extension Tolling Enhancement Portion;
- (b) the State gives notice to the Company under section 3(a) of Part A of this Schedule 6:
 - (i) the Reference Financial Model and Financial Model and the Forecast Enhancement Cashflows will be adjusted to reflect that:
 - (A) the Toll Calculation Schedule will be amended as set out in section 5.2 of Part A of this Schedule 6; and

- (B) the Company will not make any further payments in respect of the Concession Enhancement Purchase Consideration or the Concession Extension Tolling Enhancement Purchase Consideration and the Trustee will not pay the Lease Extension Tolling Enhancement Purchase Consideration; and
- (ii) the Trustee will not be required to make payments to the WGT D&C Subcontractor pursuant to the WGT D&C Subcontract in respect of the Lease Extension Tolling Enhancement Purchase Consideration; and
- (c) the State gives notice to the Company under section 3(b) of Part A of this Schedule 6:
 - (i) the Reference Financial Model and Financial Model and the Forecast Enhancement Cashflows will be adjusted to reflect that:
 - (A) the Toll Calculation Schedule will be amended as set out in section 5.1 of Part A of this Schedule 6;
 - (B) the State will pay to the Company the ETE Termination Concession Enhancement Compensation Amount; and
 - (C) the Company will not make any further payments in respect of the Concession Enhancement Purchase Consideration or the Concession Extension Tolling Enhancement Purchase Consideration and the Trustee will not pay the Lease Extension Tolling Enhancement Purchase Consideration;
 - (ii) the Trustee will not be required to make payments to the WGT D&C Subcontractor pursuant to the WGT D&C Subcontract in respect of the Lease Extension Tolling Enhancement Purchase Consideration; and
 - (iii) to the extent the State is entitled to tolling revenue collected by the Company in accordance with section 3(b) of Part A of this Schedule 6, the Reference Financial Model and Financial Model will not include forecasts of that revenue and when operated from time to time in accordance with this Deed must exclude the actual tolling revenue derived by the Company and paid to the State in accordance with section 3(b) of Part A of this Schedule 6.

7. APPLICATION OF COMPENSATION

Where the State has paid to the Company the FM Termination Concession Enhancement Compensation Amount, such amounts will be deemed to be applied:

- (a) first towards the repayment of WGT Enhancement Project Debt to the Lenders in accordance with the Finance Documents; and

(b) secondly, as distributions to the Equity Investors.

8. WGT TERMINATION AFTER WGT DATE OF TOLLING COMPLETION

If the WGT Expiry Date occurs after the WGT Date of Tolling Completion, this Part A of Schedule 6 does not apply.

PART B - CONCESSION EXTENSION

1. TERMINATION OF WGT PROJECT AGREEMENT FOR DEFAULT TERMINATION EVENT

If the WGT Project Agreement is terminated by the State pursuant to a WGT Termination for a Default Termination Event before the WGT Date of Tolling Completion, the State must by notice to the Company within 10 Business Days of the WGT Expiry Date elect that either:

- (a) the Additional Concession Period will be amended as set out in section 3 of Part B of this Schedule 6; or
- (b) the State will require the Company to pay the Relevant Concession Extension Portion and the Trustee to pay the Relevant Lease Extension Portion as set out in section 4 of Part B of this Schedule 6.

2. TERMINATION OF WGT PROJECT AGREEMENT FOR FORCE MAJEURE TERMINATION EVENT OR EARLY TERMINATION EVENT

If the State or WGT Co terminates the WGT Project Agreement pursuant to a WGT Termination for a Force Majeure Termination Event or a WGT Termination for an Early Termination Event before the WGT Date of Tolling Completion, the Company must by notice to the State within 10 Business Days of the WGT Expiry Date elect that either:

- (a) the Additional Concession Period will be amended as set out in section 3 of Part B of this Schedule 6; or
- (b) it will pay the Relevant Concession Extension Portion and the Trustee will pay the Relevant Lease Extension Portion as set out in section 4 of Part B of this Schedule 6.

3. AMENDMENT TO CONCESSION PERIOD (NO FURTHER PURCHASE OF WGT EXTENSIONS)

If:

- (a) the State gives a notice under section 1(a) of Part B of this Schedule 6 or does not give any notice within the time required under section 1 of Part B of this Schedule 6; or
- (b) the Company gives a notice under section 2(a) of Part B of this Schedule 6 or does not give any notice within the time required under section 2 of Part B of this Schedule 6,

then, the Additional Concession Period will be reduced such that it ends on the date on which, subject to clause 1.27(d):

- (c) the present value of projected net operating cashflow projected to be derived from the Project during the Additional Concession Period less the net operating cashflows derived from the WGT Tolling Enhancements during the Additional Concession Period determined using the Reference Financial Model, and (where section 3(b) of Part B of this Schedule 6 applies) subject to any necessary adjustments to reflect the

change in maintenance expenditure as a result of the reduced Concession Period;

is equal to:

- (d) an amount equal to the aggregate of the:
 - (i) present value of the amounts paid by the Company and Clepco under the CEPA as at the WGT Expiry Date; and
 - (ii) present value of amounts used by the Trustee to pay the WGT D&C Subcontractor less the amount of the CLUT Works Loan as at the WGT Expiry Date,less the Concession Enhancement Purchase Payments and the Concession Extension Tolling Enhancement Purchase Payments as at the WGT Expiry Date.

4. FURTHER COMPANY PURCHASE OF WGT EXTENSIONS

If:

- (a) the State gives a notice under section 1(b) of Part B of this Schedule 6; or
- (b) the Company gives a notice under section 2(b) of Part B of this Schedule 6,

the Company or the Trustee (as applicable) must pay to the State the Relevant Concession Extension Portion and the Relevant Lease Extension Portion (as applicable) at the times for payment of the corresponding amounts under the Reference Financial Model and in this regard the Relevant Concession Extension Portion will be payable pro rata with the Relevant Lease Extension Portion.

5. AMENDMENT TO CONCESSION PERIOD (FURTHER PURCHASE OF WGT EXTENSIONS)

If:

- (a) the State gives a notice under section 1(b) of Part B of this Schedule 6; or
- (b) the Company gives a notice under section 2(b) of Part B of this Schedule 6,

whereby the State requires under section 1(b) of Part B of this Schedule 6 or the Company or Trustee elects under section 2(b) of Part B of this Schedule 6 to purchase a Relevant Concession Extension Portion which is less than the total Concession Extension Purchase Consideration as at WGT Expiry or a Relevant Lease Extension Portion which is less than the total Lease Extension Purchase Consideration as at WGT Expiry then, the Additional Concession Period will be reduced such that it ends on the date on which, subject to clause 1.27(d):

- (c) the present value of projected net operating cashflow projected to be derived from the Project during the Additional Concession Period less the net operating cashflows derived from the WGT Tolling Enhancements during the Additional

Concession Period determined using the Reference Financial Model, and (where section 3(b) of Part B of this Schedule 6 applies) subject to any necessary adjustments to reflect the change in maintenance expenditure as a result of the reduced Concession Period;

is equal to:

- (d) an amount equal to the aggregate of the:
 - (i) present value of the amounts paid by the Company and Clepco under the CEPA as at the WGT Expiry Date;
 - (ii) present value of amounts used by the Trustee to pay the WGT D&C Subcontractor less the amount of the CLUT Works Loan as at the WGT Expiry Date; and
 - (iii) amounts payable by the Company pursuant to section 4 of Part B of this Schedule 6 (including, where section 5(a) of Part B of this Schedule 6 applies, as may be funded by amounts drawn under clause 7.1 of the WGT Equity Subscription Deed),

less the Concession Enhancement Purchase Payments, the Concession Extension Tolling Enhancement Purchase Payments, Relevant Concession Enhancement Portion, Relevant Concession Extension Tolling Enhancement Portion and Relevant Lease Extension Tolling Enhancement Portion, as at the WGT Expiry Date.

6. ADJUSTMENTS ON TERMINATION

6.1 No further purchase of WGT Extensions

If:

- (a) the State gives a notice under section 1(a) of Part B of this Schedule 6 or does not give any notice within the time required under section 1 of Part B of this Schedule 6; or
- (b) the Company gives a notice under section 2(a) of Part B of this Schedule 6 or does not give any notice within the time required under section 2 of Part B of this Schedule 6,

the Financial Model and the Forecast Enhancement Cashflows will be adjusted to reflect that:

- (c) the Company will not make any further payments in respect of the Concession Extension Purchase Consideration and the Trustee will not make any further payments in respect of the Lease Extension Purchase Consideration; and
- (d) the Additional Concession Period will be reduced in accordance with section 3 of Part B of this Schedule 6.

6.2 Further purchase of WGT Extensions

If:

- (a) the State gives a notice under section 1(b) of Part B of this Schedule 6; or
- (b) the Company gives a notice under section 2(b) of Part B of this Schedule 6,

whereby the State requires under section 1(b) of Part B of this Schedule 6 or the Company or Trustee (as applicable) elects under section 2(b) of Part B of this Schedule 6 to purchase a Relevant Concession Extension Portion which is less than the total Concession Extension Purchase Consideration as at WGT Expiry or a Relevant Lease Extension Portion which is less than the total Lease Extension Purchase Consideration as at WGT Expiry then, the Reference Financial Model and Financial Model and the Forecast Enhancement Cashflows will be adjusted to reflect that:

- (c) the Company will only pay the Relevant Concession Extension Portion and the Trustee will only pay the Relevant Lease Extension Portion; and
- (d) the Additional Concession Period will be reduced in accordance with section 5 of Part B of this Schedule 6.

7. WGT TERMINATION AFTER WGT DATE OF TOLLING COMPLETION

If the WGT Expiry Date occurs after the WGT Date of Tolling Completion, this Part B of Schedule 6 does not apply.

PART C - REINSTATEMENT OR HANDBACK OF CITYLINK RETURNED WORKS

- (a) If the WGT Project Agreement is terminated by the State pursuant to a WGT Termination for a Default Termination Event before the WGT Date of Tolling Completion, the State must within 20 Business Days of the WGT Expiry Date notify the Company whether:
 - (i) the State proposes to complete the CityLink Returned Works;
 - (ii) the State proposes to reinstate those parts of the Link that have been affected by the WGT Works (the **Affected Areas**); or
 - (iii) the State requires the Company to reinstate the Affected Areas.
- (b) If the State gives a notice under paragraph (a)(i) of Part C of this Schedule 6 and WGT Co pays the State the WGT Default Termination Payment under the WGT Project Agreement or the State claims such amounts under the WGT Equity Subscription Deed, the State will procure that WGT Handback of the CityLink Returned Works is achieved and that any adverse effect on the patronage of the Link is minimised.

- (c) If the State gives a notice under paragraph (a)(ii) of Part C of this Schedule 6 and WGT Co pays the State the WGT Default Termination Payment under the WGT Project Agreement or the State claims such amounts under the WGT Equity Subscription Deed, the State will procure that the Affected Areas are reinstated so that the Company and the Trustee are able to comply with their obligations under this Deed and:
- (i) the Affected Areas are safe for their intended use and do not negatively affect the functionality that existed prior to the commencement of the CityLink Returned Works;
 - (ii) any adverse effect upon the capacity or patronage of the Link and the Affected Areas is minimised; and
 - (iii) to the extent reasonably practicable having regard to the other matters referred to in paragraphs (c)(i) and (ii) of Part C of this Schedule 6 and the requirements of the Concession Deed, it preserves the flexibility of the parties to carry out all or part of the CityLink Returned Works in the future (having regard to the nature of the relevant events leading to termination),
- (Reinstatement Criteria).**
- (d) If the State gives a notice under paragraph (a)(iii) of Part C of this Schedule 6:
- (i) the Company will procure that the Affected Areas are reinstated in accordance with the Reinstatement Criteria and to ensure that the Company and Trustee are able to comply with their obligations under this Deed; and
 - (ii) the State will pay to the Company the reasonable costs of such reinstatement as determined by the independent expert appointed under schedule 5 (Termination Payments Schedule) of the WGT Project Agreement.

PART D - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Schedule 6:

Affected Areas has the meaning given to it in Part C of this Schedule 6.

Concession Enhancement Purchase Amount has the meaning given to it in the CEPA.

Concession Enhancement Purchase Consideration means:

- (a) the unpaid Concession Enhancement Purchase Amounts under the CEPA for the Original Concession Period that would have been payable after the WGT Expiry Date had the WGT Project Agreement not been terminated; plus
- (b) in the case of a notice under section 4.3(c) of Part A of this Schedule 6, an amount equal to 25% of all Concession Enhancement Purchase Amounts that have been paid under the CEPA prior to the WGT Expiry Date.

Concession Enhancement Purchase Payments means, as at the WGT Expiry Date, the aggregate of the Concession Enhancement Purchase Amounts paid by the Company and Clepco under the CEPA up to and including that date.

Concession Extension Purchase Amount has the meaning given to it in the CEPA.

Concession Extension Purchase Consideration means the unpaid Concession Extension Purchase Amounts under the CEPA that would have been payable after the WGT Expiry Date had the WGT Project Agreement not been terminated attributable to the Additional Concession Period (other than the value of any WGT Toll Enhancements during that same period).

Concession Extension Purchase Payments means, as at the WGT Expiry Date, the aggregate of:

- (a) the Concession Extension Purchase Amounts attributable to the Additional Concession Period (other than the value of any WGT Toll Enhancements during that same period) paid by the Company and Clepco under the CEPA up to and including that date; and
- (b) the Aggregate CLUT Works Amount up to and including that date less the amount of the CLUT Works Loan (to the extent there is a loan from WGT Co) attributable to the Additional Concession Period (other than the value of any WGT Toll Enhancements during that same period).

Concession Extension Tolling Enhancement Purchase Consideration means the unpaid Concession Extension Purchase Amounts under the CEPA that would have been payable after the WGT Expiry Date had the WGT Project Agreement not been terminated attributable to the WGT Toll Enhancement during the Additional Concession Period.

Concession Extension Tolling Enhancement Purchase Payments

means, as at the WGT Expiry Date, the aggregate of:

- (a) the Concession Extension Purchase Amounts attributable to the value of any WGT Toll Enhancements during the Additional Concession Period paid by the Company and Clepco under the CEPA up to and including that date; and
- (b) the Aggregate CLUT Works Amount up to and including at that date less the amount of the CLUT Works Loan attributable to the value of any WGT Toll Enhancements during the Additional Concession Period.

ETE Termination Concession Enhancement Compensation Amount means an amount equal to:

- (a) the aggregate of the present value of Concession Enhancement Purchase Payments and Concession Extension Tolling Enhancement Purchase Payments; less
- (b) the aggregate of the present value of tolling revenue derived from the Relevant Changes made to the Toll Calculation Schedule (over and above the tolling revenue that would have been derived had no such amendments been made) prior to the WGT Expiry Date and the present value of any Progressive State Contributions under and as defined in Schedule 38 of the WGT Project Agreement that have been paid to WGT Co.

The ETE Termination Concession Enhancement Compensation Amount will be escalated to the date of payment using the WGT Project IRR. If the ETE Termination Concession Enhancement Compensation Amount is less than zero, the ETE Termination Concession Enhancement Compensation Amount will be deemed to be zero.

FM Termination Concession Enhancement Compensation Amount means an amount equal to:

- (a) 75% of the aggregate of the present value of Concession Enhancement Purchase Payments and Concession Extension Tolling Enhancement Purchase Payments; less
- (b) the aggregate of the present value of tolling revenue derived from the Relevant Changes made to the Toll Calculation Schedule (over and above the tolling revenue that would have been derived had no such amendments been made) prior to the WGT Expiry Date and the present value of any Progressive State Contributions under and as defined in Schedule 38 of the WGT Project Agreement that have been paid to WGT Co.

The FM Termination Concession Enhancement Compensation Amount will be escalated to the date of payment using the WGT Project IRR. If the FM Termination Concession Enhancement Compensation Amount is less than zero, the FM Termination Concession Enhancement Compensation Amount will be deemed to be zero.

Lease Extension Purchase Consideration means:

- (a) the unpaid portion of the Trustee Works Price (as defined in the D&C Subcontract) that would have been payable after the WGT Expiry Date had the WGT Project Agreement not been terminated; and
- (b) any amounts outstanding under the CLUT Works Loan that would have been payable after the WGT Expiry Date had the CLUT Works Loan Agreement not been terminated,

attributable to the Additional Concession Period (other than the value of any WGT Toll Enhancements during that same period).

Lease Extension Tolling Enhancement Purchase Consideration means:

- (a) the unpaid portion of the Trustee Works Price (as defined in the D&C Subcontract) that would have been payable after the WGT Expiry Date had the WGT Project Agreement not been terminated; and
- (b) any amounts outstanding under the CLUT Works Loan that would have been payable after the WGT Expiry Date had the CLUT Works Loan Agreement not been terminated,

attributable to the WGT Toll Enhancement during the Additional Concession Period.

Relevant Concession Enhancement Portion means the portion of the Concession Enhancement Purchase Consideration the Company elects to pay pursuant to section 4.1 of Part A of this Schedule 6 or nominates to pay pursuant to section 4.2 of Part A of this Schedule 6 (as applicable).

Relevant Concession Extension Portion means the portion of the Concession Extension Purchase Consideration the State requires the Company to pay under section 1(b) of Part B of this Schedule 6 or the Company notifies the State it elects to pay under section 2(b) of Part B of this Schedule 6 (as applicable).

Relevant Concession Extension Tolling Enhancement Portion means the portion of the Concession Extension Tolling Enhancement Purchase Consideration that the Company elects to pay pursuant to section 4.1 of Part A of this Schedule 6 or nominates to pay pursuant to section 4.2 of Part A of this Schedule 6 (as applicable), which must be the same proportion as the Relevant Lease Extension Tolling Enhancement Portion.

Relevant Lease Extension Portion means the portion of the Lease Extension Purchase Consideration the State requires the Trustee to pay under section 1(b) of Part B of this Schedule 6 or the Company notifies the State it elects for the Trustee to pay under section 2(b) of Part B of this Schedule 6 (as applicable).

Relevant Lease Extension Tolling Enhancement Portion means the portion of the Lease Extension Tolling Enhancement Purchase Consideration that the Company elects to pay pursuant to section 4.1 of Part A of this Schedule 6 or nominates to pay pursuant to section

4.2 of Part A of this Schedule 6 (as applicable), which must be the same proportion as the Relevant Concession Extension Tolling Enhancement Portion.

WGT Date for Tolling Completion has the meaning given to "Date for Tolling Completion" in the WGT Project Agreement.

WGT Default Termination Payment has the meaning given to "Default Termination Payment" in the WGT Project Agreement.

WGT Financial Close has the meaning given to "Financial Close" in the WGT Project Agreement.

WGT Handback has the meaning given to "Handback" in the WGT Project Agreement.

WGT Project IRR means the internal rate of return for the WGT Tolling Enhancement and WGT Extension as set out in worksheet "Wdef" in the WGT Base Case Financial Model.

WGT Termination for a Default Termination Event has the meaning given to "Termination for a Default Termination Event" in the **WGT Project Agreement**.

WGT Termination for an Early Termination Event has the meaning given to "Termination for an Early Termination Event" in the WGT Project Agreement.

WGT Termination Payment has the meaning given to "Termination Payment" in the WGT Project Agreement.

2. INTERPRETATION

For the purposes of Parts A, B, C and D of this Schedule 6:

- (a) present values will be calculated as at WGT Financial Close using a discount rate equal to WGT Project IRR; and
- (b) the concept of 'tolling revenue' includes all toll revenue imposed and collected in relation to the Link, but it excludes those matters referred to in clause 3.1(d)(i)(A) to (E) of this Deed and any charges or fees imposed and collected by the Company.

SCHEDULE 7

ADDITIONAL VARIABLE LEASE RENTAL PAYMENTS

	PROPORTION OF EXCESS REVENUE PAYABLE: %
Increase in revenue over Reference Financial Model (%)	Extension Relevant Period
0 – 5	0
5.01 – 10	0
10.01 - 15	0
15.01 – 20	30
20.01 – 30	35
30.01 – 40	40
40.01 – 50	45
50.01 – 75	50
75.01 – 100	60
100.01 +	70

SCHEDULE 8

AMENDMENTS TO THE CITYLINK AND ESEP CONCESSION DEEDS

PART A – AGREED PRINCIPLES AND GOOD FAITH NEGOTIATIONS

1. AGREED PRINCIPLES

The parties acknowledge and agree that to the extent agreement has not been reached in relation to an Adjustment Event:

- (a) the WGT CityLink and ESEP Concession Amending Deeds and the Project Financial Model have been agreed between the State and the CityLink Parties on the assumption that:
 - (i) by the Date of West Gate Tunnel Completion the WGT Project Legislation has come into operation in the form of the Project Bill; and
 - (ii) the Date of Parliamentary Support (CityLink) has occurred by 30 May 2019;
- (b) the WGT Base Case Financial Model represents those elements of the Project Financial Model which relate to the WGT Project, and the Reference Financial Model represents those elements of the Project Financial Model which relate to the Project;
- (c) an Adjustment Event may, without limitation, impact (whether positively or negatively) on one or more of:
 - (i) the ability of the CityLink Parties, Clepco or their Associates' (as defined under the WGT Project Agreement) to perform their obligations under the Project Documents or ESEP Project Documents; and
 - (ii) the:
 - A. revenues from the WGT Project;
 - B. WGT Co's liabilities in connection with the WGT Project;
 - C. revenues from the Project; and
 - D. CityLink Parties' liabilities in connection with the Project or the WGT Project,which were forecast in the Project Financial Model (and therefore impact on the WGT Base Case Financial Model and the Agreed CityLink Financial Model (as applicable));
- (d) the impacts of an Adjustment Event to be addressed by this Schedule are only the incremental impacts of the Adjustment Event (**Relevant Impacts**);
- (d) the objective of this section (1) of Part A of this Schedule 8 is to ensure that if an Adjustment Event has occurred, the

parties negotiate in good faith to agree the net present value as at the date of the occurrence of the Adjustment Event of the Relevant Impacts when compared to what was forecast in the Reference Financial Model immediately prior to the occurrence of the Adjustment Event, any amendments to terms of the this Deed and the ESEP Deed (including the Financial Model), and other forms of redress, with the objective that the CityLink Parties should not be better or worse off as a result of the Relevant Impacts arising from the Adjustment Event or Adjustment Events (as applicable);

- (e) other than in relation to the Relevant Impacts of an Adjustment Event, the purpose of this Schedule 8 is not to address the consequences of other events or circumstances that may have impacted on the matters referred to in section 1(c) of Part A of this Schedule 8;
- (f) [not used]; and
- (g) the purpose of this Schedule 8 is not to provide any redress for toll revenue foregone by the CityLink Parties as a result of the disruption arising from the D&C Activities (as defined under the WGT Project Agreement) prior to the Date of West Gate Tunnel Completion (as defined under the WGT Project Agreement). This does not limit the CityLink Parties' rights to recover loss of toll revenue under the WGT/CityLink Project Documents.

2. Occurrence of an Adjustment Event and good faith negotiations

- (a) **(Provision of information):** Within 60 Business Days after the occurrence of an Adjustment Event or Adjustment Events, each party must provide the other with all information it considers relevant to the Adjustment Event or Adjustment Events (as applicable). Each party may continue to provide the other with updated information over the course of the process described in this Schedule 8.
- (b) **(Obligation to negotiate):** As soon as practicable, but no later than 80 Business Days after the occurrence of an Adjustment Event or Adjustment Events (as applicable), the parties must meet and negotiate in good faith to determine, having regard to paragraph 2(e) of Part A of this Schedule 8 and paragraph 2(f) of Part A of this Schedule 8, the net present value as at the date of the occurrence of the Adjustment Event of the Relevant Impacts when compared to what was forecast in the Reference Financial Model immediately prior to the occurrence of the Adjustment Event, any amendments to terms of the this Deed and the ESEP Deed (including the Financial Model), and the form of any redress with the objective that the CityLink Parties should not be better or worse off as a result of the Relevant Impacts arising from the Adjustment Event or Adjustment Events (as applicable).
- (c) **(Determination of matter):** If the parties do not reach agreement within 60 Business Days after commencing the

negotiations contemplated by paragraph 2(b) of Part A of this Schedule 8, then either the State or the Company and Trustee may refer the matter for resolution in accordance with clauses Article 16.

- (d) **(Limitation on form of disputed redress):** In making the determination in relation to a dispute that has been referred to dispute resolution in accordance with paragraph 2(c) of Part A of this Schedule 8, the expert or the arbitrator (as applicable) must ensure, and the parties must require, that his or her determination as to any redress does not involve a method of redress other than those identified in clause paragraph 2(f) of Part A of this Schedule 8.
- (e) **(Process to be followed):** In agreeing or determining the redress, regard must be had to:
- (i) identification of the Relevant Impacts of the Adjustment Event, including the extent to which the assumptions relating to the Reference Financial Model (including, those assumptions to the Project Financial Model which relate to the Project) need to be updated to reflect the occurrence of the Adjustment Event, and calculating the net present value as at the date of the occurrence of the Adjustment Event of the Relevant Impacts;
 - (ii) updating the Reference Financial Model to incorporate the impact of the Adjustment Event;
 - (iii) using the forms of redress described in paragraph 2(f) of Part A of this Schedule 8, ensuring that the CityLink Parties are no better or worse of as a result of the Relevant Impacts arising from the Adjustment Event or Events (as applicable);
 - (iv) making any amendments necessary to the Project Documents, ESEP Project Documents and the Financial Model to reflect the changes to the Reference Financial Model and the redress adopted (taking into account the process for amending the Project Documents and ESEP Project Documents as set out in the Project Legislation);
 - (v) the time value of money and the timing of cashflows (including that the redress must have regard to the timing of that redress); and
 - (vi) efficient application and structuring of the redress (so as, for example, not to create or increase any liability for taxes, the liability for which need not be incurred or need only be incurred to a limited extent, or not to adversely impact the timing of any projected distributions from the CityLink Parties and WGT Co).
- (f) **(Form and timing of redress):** The form of redress that may be agreed or determined under this Schedule 8 may include:

- (i) varying the Project Documents or ESEP Project Documents (only with the agreement of the parties, other than to ensure that the CityLink Parties will not be in breach of a Project Document or ESEP Project Document as a result of an Adjustment Event);
 - (ii) varying the Concession Period (only with the agreement of the parties);
 - (iii) varying the allocation of risk between the parties (only with the agreement of the parties);
 - (iv) varying the Toll Calculation Schedule (only with the agreement of the parties);
 - (v) varying the rights of any parties to the payment of money under the Project Documents or ESEP Project Documents;
 - (vi) varying the Financial Model;
 - (vii) the State making a financial contribution to the CityLink Parties;
 - (viii) the CityLink Parties making a financial contribution to the State; or
 - (ix) such other action as the parties may agree.
- (g) **(Entitlement to redress)**: If the amount of redress in respect of an Adjustment Event:
- (i) is agreed in accordance with clause paragraph 2(b) of Part A of this Schedule 8; or
 - (ii) is determined in accordance with clause paragraph 2(c) of Part A of this Schedule 8,
- then the relevant party will be entitled to such redress.
- (h) **(No double counting or compensation)**: In calculating or determining any compensation or redress in respect of an Adjustment Event or Adjustment Events (as applicable), whether under this Schedule, or the Project Documents, no amounts will be double counted and there will be no entitlement to redress, payment or compensation for a cost, loss or liability to the extent that same cost, loss or liability has already been redressed, paid or compensated for elsewhere in the Project Documents, ESEP Project Documents or WGT Project Documents.
- (i) **(Discount rates)**: The net present value of all pre-financing, pre-tax project nominal cash flows referred to in this Schedule 8 will be calculated using the CityLink Project Return.
- (j) **(Costs)**: The State will bear the reasonable costs of the Company and the Trustee (and its Associates (as defined under the WGT Project Agreement)) arising out of the administration and implementation of the procedures and processes contemplated in this Schedule 8 (including

identifying, assessing and quantifying the impacts of an Adjustment Event. For the avoidance of doubt this does not include any costs of the CityLink Parties or their Associates arising out of any matter referred for resolution in accordance with clause 16 of this Deed from the time such matter is referred for resolution.

- (k) **(Revocation):** If any agreement or determination in accordance with this Schedule 8 is subsequently revoked in accordance with the Project Legislation, the process in this clause paragraph 2 of Part A of this Schedule 8 will apply again in relation to the relevant Adjustment Event or Adjustment Events (as applicable) except that, other than to the extent agreed by the Company and the Trustee, the only available form of redress will be the State making a financial contribution to the Company and the Trustee. For the avoidance of doubt this clause 2(j) of Part A of this Schedule 8 only applies to the extent any agreement or determination is required to be tabled in each House of Parliament and is not an acknowledgement that tabling will be required for each agreement or determination.

PART B – UPDATES TO THE REFERENCE FINANCIAL MODEL AND FINANCIAL MODEL

1. Updates to the Reference Financial Model

- (a) The parties must update the Financial Model as at WGT Financial Close within 60 Business Days of:
 - (i) the Date of Parliamentary Support (CityLink);
 - (ii) the end of any year in which there is money owing under the WGT Reserve Tranche;
 - (iii) or such other time agreed by the parties,to take into account the impacts (whether positive or negative) of:
 - (iv) the occurrence of any CityLink Model Variation Events or WGT Model Variation Events, including any redress or compensation received by any party in respect of such event(s);
 - (v) distributions having been made by the Company to Original Equity Investors prior to the Date of Parliamentary Support (CityLink) which were projected to have been retained by the Company and paid to WGT Co under the CEPA if the Revocation Period had expired on or around WGT Financial Close;
 - (vi) the WGT Reserve Tranche being used to provide payments from CML and Clepco to WGT Co on or after the Date of Parliamentary Support (CityLink) which were otherwise projected to have been funded by cash retained by the Company if the Revocation Period had expired on or around WGT Financial Close; and
 - (v) any decrease to the total value of the CLUT Works as projected in the Agreed CityLink Financial Model as at WGT Financial.
- b) If the parties cannot agree on the impact of the occurrence of any of the matters referred to in paragraph 1(a) of Part B of this Schedule 8 within 60 Business Days of the relevant date referred to in paragraph (a) of Part B of this Schedule 8, or such other time agreed by the parties, any party may refer the matter for dispute resolution in accordance with Article 16.
- (c) Any update to the Financial Model as at WGT Financial Close agreed or determined pursuant to paragraph 1(a) or 1(b) respectively of Part B of this Schedule 8 must be initialled by the parties.
- (d) The parties agree that the Financial Model (as updated or determined pursuant to paragraph 1(a) or 1(b) respectively of Part B of this Schedule 8) is the “Reference Financial Model” for the purposes of this Deed.

2. Updates to the Financial Model

- (a) The parties must update the Financial Model determined pursuant to paragraph 1(a) or 1(b) respectively of Part B of this Schedule 8 with any changes to the Financial Model between the WGT Financial Close and the Date of Parliamentary Support (CityLink).
- (b) If the parties cannot agree on the impact of the occurrence of the matters referred to in paragraph 2(a) of Part B of this Schedule 8 within 60 Business Days of the occurrence of the same or such other time agreed by the parties, any party may refer the matter for dispute resolution in accordance with Article 16.
- (c) Any update to the Financial Model determined pursuant to paragraph 2(a) or 2(b) respectively of Part B of this Schedule 8 must be included on an USB stick initialled by the parties.
- (d) The parties agree that the Financial Model as updated or determined pursuant to paragraphs 2(a) and 2(b) of Part B of this Schedule 8 will be the new “Financial Model” for the purposes of this Deed.

PART D - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Schedule 8:

CityLink Project Return means the forecast pre-financing, pre-tax project nominal internal rate of return for the WGT Tolling Enhancement and WGT Extension as set out in the worksheet entitled "Cdef" in the Reference Financial Model.

WGT/CityLink Project Documents means each of:

- (a) WGT Project Agreement;
- (b) D&C Subcontract (as defined under the WGT Project Agreement);
- (c) CityLink Access Deed as between the CityLink Parties and the D&C Subcontractor (as defined under the WGT Project Agreement) dated on or about December 2017; and
- (d) West Gate Tunnel – CityLink Umbrella Agreement.

WGT Base Case Financial Model has the meaning given to “Base Case Financial Model” in the WGT Project Agreement.

WGT Model Variation Events has the meaning given to “Model Variation Event” under the WGT Project Agreement.

WGT Project Legislation means legislation for the Project (as defined in the WGT Project Agreement) passed by each House of Parliament.

APPENDIX

CLAUSE 2.9

Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
1. An Act of Prevention	It must be agreed or determined under clause 2.9 that the event has had or will have a Material Adverse Effect	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in Column 4, having regard to all the "remedial tools" in clause 2.10(c)</p> <p>SAVE THAT</p> <p>Any requirement on the State to provide financial contribution shall be considered as a measure of last resort and apply only to the extent the other methods of redress cannot reasonably be used so as to achieve the outcome prescribed in column 4</p>	<p>Restore the ability of the Company and the Trustee to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA to that which would have applied but for the relevant event,³⁸³</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay WGT Project Debt in accordance with the amortisation schedules set out in Schedule 5B to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Original Equity Investors to achieve the Equity Return which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Extension Equity Investors to achieve the Extension Equity Return which would have applied but for the relevant event</p>
2. The existence of any pollution or contamination on Project Land or SLU Lay Down Areas in relation to which the State is required to provide an indemnity under clause 12.7 or	It must be agreed or determined under clause 2.9 that the event has had or will have a Material Adverse Effect	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in column 4, having regard to all the "remedial tools" in clause 2.10(c)</p>	<p>Restore the ability of the Company and the Trustee to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA to that which would have applied but for the relevant</p>

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<p>12.7A or on Project Land in relation to which the State is required to provide an indemnity under clause 4B.6(b)</p>		<p>SAVE THAT Any requirement on the State to provide financial contribution shall be considered as a measure of last resort and apply only to the extent the other methods of redress cannot reasonably be used so as to achieve the outcome prescribed in column 4</p>	<p>event³⁸⁴ AND Restore the ability of the Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event AND Restore the ability of the Company and the Trustee to repay WGT Project Debt in accordance with the amortisation schedules set out in Schedule 5B to IFA to that which would have applied but for the relevant event AND Restore the ability of Original Equity Investors to achieve the Equity Return which would have applied but for the relevant event AND Restore the ability of Extension Equity Investors to achieve the Extension Equity Return which would have applied but for the relevant event</p>
<p>3. (a) [Not used]; (b) A failure to provide support required under sub-paragraph 2.4(a)(i) which is treated as an event under item 3 of the Appendix; (c) The doing of any of the acts or things to which clause 2.4(b) applies, which: (i) evidences a failure by the State to accord to the Link its status as part of the freeway network for the movement of traffic around Melbourne and the State; (ii) [Not used];</p>	<p>It must be agreed or determined under clause 2.9 that the event has had or will have a Material Adverse Effect. Subject, however in relation to the event described in item 3(e) only of the Appendix, to the proviso that the assessment of whether there has been or will be a Material Adverse Effect will not consider revenue loss other than revenue loss: (a) resulting from the impacts of traffic disruption</p>	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in Column 4, having regard to all the "remedial tools" in clause 2.10(c) SAVE THAT Any requirement on the State to provide additional financial contribution shall be considered as a measure of last resort and apply only to the extent the other methods of redress cannot reasonably be used so as to achieve the outcome prescribed in column 4 SUBJECT HOWEVER in relation to the event</p>	<p>Restore the ability of the Company and the Trustee to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA to that which would have applied but for the relevant event³⁸⁵ AND Restore the ability of the Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event AND Restore the ability of the Company and the Trustee to repay WGT Project Debt</p>

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<p>(iii) [Not used]; or (iv) [Not used]; (d) Changes in transport policy which: (i) specifically discriminates against tollways (including the implementation of free or near-free public transport across the metropolitan public transport system, but excluding all concessional travel) but not including policies arising from competitive</p>	<p>caused by the construction of the relevant connection or change; or (b) attributable to a connection or change to the Link that results in a long term: (i) physical change to the Link; (ii) impact on the ability of the Company or the Trustee to keep the Link open for the safe, efficient and continuous passage of vehicles; or (iii) impact on the maximum posted speed applicable in steady state operation for the Link.</p>	<p>described in item 3(a) of this Appendix, to clause 2.11(d) of this Deed</p>	<p>in accordance with the amortisation schedules set out in Schedule 5B to IFA to that which would have applied but for the relevant event AND Restore the ability of Original Equity Investors to achieve the Equity Return which would have applied but for the relevant event AND Restore the ability of Extension Equity Investors to achieve the Extension Equity Return which would have applied but for the relevant event</p>

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<p>practices initiated by public transport management); or</p> <p>(ii) are inconsistent with overall objectives or intentions of the parties as described in clause 2.1, taken as a whole, provided however that this is not to be taken as an assurance that the Company and the Trustee will achieve their intentions referred to in clause 2.1(b). By way of example, a restriction on parking directed to limiting access in the Central Activities District (especially if the restriction only leads to a decrease in traffic growth) would not usually be inconsistent with the overall objectives of clause 2.1 but the imposition of parking restrictions calculated substantially to reduce the free access of traffic to key points around the Central Activities District would usually be inconsistent with those objectives;</p> <p>(e) A change or connection being effected or implemented under paragraph 2.4(e) or 2.4(f);</p> <p>(f) [Not used];</p> <p>(g) Any of:</p> <p>(i) a breach by the State of a WGT Project Document;</p> <p>(ii) a Project Specific Change in Mandatory Requirement (as defined in the WGT</p>			

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<p>Project Agreement); or</p> <p>(iii) the State directs a Modification (as that term is defined in the WGT Project Agreement) under the WGT Project Agreement</p> <p>(each a WGT Event), which results in the level of support afforded to the Link being less than the lower of:</p> <p>(iv) the level of support afforded to the Link prior to the relevant WGT Event; and</p> <p>(v) the level of support to the Link that the State would have been required to afford to the Link if the West Gate Tunnel was a Freeway for the purposes of clause 2.4(a).</p>			
<p>4.</p> <p>(a) Change in or new State Law;</p> <p>(b) change in, or new, State Government authority requirement;</p> <p>(c) change in application or interpretation of existing State Laws;</p> <p>(d) changes in, or matters relating to, State policy or discretion, and certain other matters, as specified below, which:</p> <p>(i) in the context of paragraphs (a), (b) and (c) has a specific and demonstrable effect on the Project (whether or not it relates specifically to, or is directed at, the Project) including road Taxes, transport Taxes, carbon Taxes, fuel Taxes, environmental Taxes or new Taxes which directly affect the Project</p>	<p>It must be agreed or determined under clause 2.9 that the event has had or will have a Material Adverse Effect</p>	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in column 4, having regard to all the "remedial tools" in clause 2.10(c)</p> <p>Any requirement on the State to provide additional financial contribution shall be considered as a measure of last resort and apply only to the extent the other methods of redress cannot reasonably be used so as to achieve the outcome prescribed in column 4</p>	<p>Restore the ability of the Company and the Trustee to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA to that which would have applied but for the relevant event³⁸⁶</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay WGT Project Debt in accordance with the amortisation schedules set out in Schedule 5B to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the</p>

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<p>but not including a change relating to Taxes (such as income, payroll and sales tax) which affects business generally and which would have affected the Company, the Trustee or Equity Investors (as applicable) irrespective of the single purpose nature of the Project (a reference to tax includes imposts, duties, excise or other form of State collected revenue); or</p>			<p>Original Equity Investors to achieve the Equity Return which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the Extension Equity Investors to achieve the Extension Equity Return which would have applied but for the relevant event</p>
<p>(ii) in the context of paragraphs (a), (b), (c) and (d) do not include</p> <p>(A) an act to which items 7 or 11 of the Appendix applies;</p> <p>(B) anything in relation to which the State bears the risk under sub-paragraph 12.8(b)(ii);</p> <p>(C) anything to which paragraph 2.4(b) applies;</p>			
<p>(D) the removal of a Non-Agreed Traffic Management Measure;</p> <p>(E) a failure to provide support required under sub-paragraph 2.4(a)(i) or anything which would have been such a failure but for sub-paragraphs 2.4(a)(i)(E), (F) and (G); or</p> <p>(F) any change in transport policy.</p>			

Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<p>Changes and matters to which paragraph (d) applies are:</p> <p>(1) changes in policy of the State concerning enforcement of Victorian Law in force at the date of this Deed relating to the display of vehicle licence plates;</p> <p>(2) State policy concerning enforcement of, or prosecutorial discretion applicable to, offences under provisions enacted consequent upon the Project Legislation and which relate to evasion of toll payments, being</p> <p style="padding-left: 40px;">different (in nature or extent) from that concerning or applicable to offences based on traffic surveillance devices,</p> <p>(In this context, the State excludes any Governmental Agency vested with discretion to enforce, or powers to issue, guidelines as to the exercise of prosecutorial discretion insofar as the exercise of those discretions and powers are substantially free from interference from the Government of the day),</p> <p>(3) The number of offences to which paragraph (2) applies affecting State policy or the discretion referred to in that paragraph,</p> <p>(4) State policy concerning the resourcing of the Victorian Government Agency responsible for the enforcement of penalties imposed in connection with the failure to pay tolls on the Link resulting in that Agency being less able to fulfil that responsibility relative</p>			

Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<p>to the ability it would have had were the resources made available to it by the State equivalent to those made available by the State to corresponding Agencies</p>			
<p>5. (a) Change in, or new, Commonwealth Law; (b) change in, or new Commonwealth Government authority requirement; or (c) change in application or interpretation of existing Commonwealth Laws, which has a specific and demonstrable effect on the Project (whether or not it relates specifically to, or is directed at, the Project) including road Taxes, transport Taxes, carbon Taxes, fuel Taxes, environmental Taxes or new Taxes which directly affect the Project but not including: (i) a change relating to Taxes (such as income, payroll and sales tax) which affects business generally and which would have affected the Company, the Trustee or Equity Investors (as applicable) (irrespective of the single purpose nature of the Project); (ii) anything in relation to which the State bears the risk under sub-paragraph 12.8(b)(ii) (A reference to tax includes imposts, duties, excise or other form of Commonwealth collected revenue)</p>	<p>It must be agreed or determined under clause 2.9 that the event has had or will have a Material Adverse Effect</p>	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in column 4, having regard to all the "remedial tools" in clause 2.10(d) SAVE THAT for the purpose only of achieving the outcomes described in column 4 in relation to Project Debt and CTW Project Debt the State shall negotiate in good faith in an endeavour to agree whether there are methods of redress available to the State which it would be appropriate to add to the "remedial tools" in clause 2.10(d). (It is acknowledged that it would not be appropriate to add methods of redress involving any State financial contribution or the enactment of or change to Victorian Law). The State shall only be obliged to so negotiate, however, if: (a) in the context of a particular event described in column 1; (b) the Agent requests that it do so in the context of that event; (c) the aggregate of the Project Debt and CTW Project Debt at the relevant time exceeds the net present value of all revenue receivable in relation to the Project over the</p>	<p>The Company and the Trustee are to have an ability to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA substantially similar to that which would have applied but for the relevant event³⁸⁷ AND Restore the ability of the Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event AND Restore the ability of the Company and the Trustee to repay WGT Project Debt in accordance with the amortisation schedules set out in Schedule 5B to IFA to that which would have applied but for the relevant event AND restore the ability of Original Equity Investors to achieve an Equity Return being the lower of: (a) the Equity Return which would have applied but for the relevant event; and (b) Base Case Equity Return AND restore the ability of Extension Equity Investors to achieve an Extension Equity Return being the lower of: (a) the Extension Equity Return which would have applied but for</p>

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
		<p>balance of the Original Concession Period,</p> <p>net of expenses payable in that period in respect of operation, maintenance and repair of the Link. In this context, such revenue includes non-operating revenue (such as interest or fees derived on any deposit or term accounts) and such expenses exclude ones the liability for which was incurred either in breach of an obligation owed to the State under the Project Documents or other than on arms' length terms.</p> <p>Revenue receivable and expenses payable shall be assessed by reference to the position as changed (or as capable of being changed) by adoption of the methods of redress outlined in clause 2.10(d). The discount rate used shall be the weighted average cost of Project Debt (as, at any particular time, set out in column 5 of schedule 5 to IFA with respect to that time) and the weighted average cost of CTW Project Debt (as, at any particular time, determined in accordance with the Lending Documents in the form accepted by the State under clause 4.2(g) of the IFA Twenty-second</p>	<p>the relevant event; and</p> <p>(b) Extension Base Case Equity Return.</p>

Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
		<p>Amending Deed); and³⁸⁸</p> <p>(d) the event described in column 1 is constituted by a changed, or a new Law or requirement:</p> <p>(i) which effectively discriminates (including by way of taxation) against the construction or operation of Toll Roads or motor vehicle use; or</p> <p>(ii) which relates to Taxes on Toll Road use or carbon taxes or levies or environmental requirements in relation to motor vehicle use, roads, Toll Roads or the construction or operation of Toll Roads</p>	
<p>6. Industrial action directed at the Project or the M1 Project where it can be reasonably demonstrated by or on behalf of the Company or the Trustee that the industrial action:</p> <p>(a) results from an act or omission of the State or any Victorian Government Agency directly in relation to the Project or the M1 Project; or</p> <p>(b) results from or is part of an organised campaign in opposition to the implementation of the Project or the M1 Project or any part of either project or in opposition to the implementation of other State projects or State policies</p>	<p>It must be agreed or determined under clause 2.9 that the event has had or will have a Material Adverse Effect</p>	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in column 4, having regard to all the "remedial tools" in clause 2.10(c)</p> <p>SAVE THAT</p> <p>Any requirement on the State to provide additional financial contribution shall be considered as a measure of last resort and apply only to the extent the other methods of redress cannot reasonably be used so as to achieve the outcome prescribed in column 4</p>	<p>Restore the ability of the Company and the Trustee to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA to that which would have applied but for the relevant event³⁸⁹</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay WGT Project Debt in accordance with the amortisation schedules set out in Schedule 5B to IFA</p>

Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
			<p>to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Original Equity Investors to achieve the Equity Return which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Extension Equity Investors to achieve the Extension Equity Return which would have applied but for the relevant event</p>
<p>7.</p> <p>(a) Any claim or application being made or any action being taken by any Commonwealth or State Minister or Government Agency on the basis that, or a court or tribunal deciding that:</p> <ul style="list-style-type: none"> • any or all of the Project Land or SLU Lay Down Areas constitutes a sacred site or that there is a sacred site on the Project Land • there are "relics" within the meaning of the Archaeological and Aboriginal Relics Preservation Act 1972 (Vic) on the Project Land or SLU Lay Down Areas • there are "aboriginal places", "significant Aboriginal areas" or "aboriginal objects" within the meaning of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) on the Project Land or SLU Lay Down Areas 	<p>It must be agreed or determined under clause 2.9 that the event has had or will have a Material Adverse Effect</p>	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in column 4, having regard to all the "remedial tools" in clause 2.10(c)</p> <p>SAVE THAT</p> <p>Any requirement on the State to provide a financial contribution shall be considered as a measure of last resort and apply only to the extent the other methods of redress cannot reasonably be used so as to achieve the outcome prescribed in column 4</p>	<p>Restore the ability of the Company and the Trustee to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA to that which would have applied but for the relevant event³⁹⁰</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay WGT Project Debt in accordance with the amortisation schedules set out in Schedule 5B to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Original Equity Investors to achieve an Equity Return being the lower of:</p> <ul style="list-style-type: none"> (a) the Equity Return which would have applied but for the relevant event; and (b) the Base Case Equity Return

Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<ul style="list-style-type: none"> • any form of native title subsists or previously subsisted in the Project Land or SLU Lay Down Areas or that any act in relation to the Project Land or • SLU Lay Down Areas should or should not be permitted or should be permitted only on certain conditions <p>(b) Any action being taken (or not taken) by any Federal Government Minister or Government Agency pursuant to sections 30(1) or 30(2) of the Australian Heritage Commission Act 1975 (Cth) to protect a site on the Register of the National Estate, which is located on the Project Land or SLU Lay Down Areas</p> <p>(c) Any action being taken under the Historic Buildings Act 1981 (Vic) which prevents, restricts or delays the Company or the Trustee from performing its duties under the Concession Deed or which protects any building structure or site which is located on the Project Land or SLU Lay Down Areas</p>			<p>AND</p> <p>Restore the ability of Extension Equity Investors to achieve an Extension Equity Return being the lower of:</p> <p>(a) the Extension Equity Return which would have applied but for the relevant event; and</p> <p>(b) the Extension Base Case Equity Return.</p>
<p>8. An event which manifests itself after the date of this Deed which would have been a Force Majeure</p>	<p>The event is deemed under clause 11.3(d) to have had a Material Adverse</p>	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to</p>	<p>Restore the ability of the Company and the Trustee to repay Project Debt, CTW Project Debt and</p>

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<p>Event but for the fact that the risk of it was reasonably capable of adequate insurance in the commercial insurance market on reasonable terms but insurance proceeds have been applied by the Lenders in accordance with the Master Security Deed to reduce debt and are not available under clause 11 to repair/reinstate the Link</p>	<p>Effect and the parties agree to negotiate in good faith</p>	<p>achieve the outcome in column 4, having regard to all the "remedial tools" in clause 2.10(d)</p>	<p>WGT Project Debt within the relevant Payback Period to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the Original Equity Investors to achieve an Equity Return being the lower of:</p> <p>(a) the Equity Return which would have applied but for the relevant event; and</p> <p>(b) Base Case Equity Return</p> <p>AND</p> <p>Restore the ability of the Extension Equity Investors to achieve an Extension Equity Return being the lower of:</p> <p>(a) the Extension Equity Return which would have applied but for the relevant event; and</p> <p>(b) Extension Base Case Equity Return.</p>
<p>9.</p> <p>(a) Force Majeure Event which manifests itself after the date of this Deed</p> <p>(b) an event which causes damage to a Freeway or Principal Traffic Route as described in subparagraph 2.4(a)(iii)(B), which is reasonably required for access to or from the Link and which, if it had damaged the Link, would have caused the Company or the Trustee to be unable to perform any of their obligations to the State under the Project Documents and would have been categorised as a Force Majeure Event</p>	<p>It must be agreed or determined under clause 2.9 that the event has had or will have a Material Adverse Effect</p>	<p>If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in column 4 having regard to all the "remedial tools" in clause 2.10(d)</p>	<p>Restore the ability of the Company and the Trustee to repay Project Debt, CTW Project Debt and WGT Project Debt within the relevant Payback Period to that which would have applied but for relevant event</p> <p>AND</p> <p>Restore the ability of the Original Equity Investors to achieve an Equity Return being the lower of:</p> <p>(a) the Equity Return which would have applied but for the relevant event; and</p> <p>(b) Base Case Equity Return</p> <p>AND</p> <p>Restore the ability of the Extension Equity Investors to achieve an Extension Equity Return being the lower of:</p> <p>(a) the Extension Equity</p>

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
			Return which would have applied but for the relevant event; and (b) Extension Base Case Equity Return.
10. A combination of 2 or more events deemed under sub-paragraph 2.9(c)(iii) to be an Appendix Event		In relation to each Less than Material Item and each Appendix Event forming part of the relevant combination, the parties must negotiate to achieve the outcome specified in Column 4 having regard to all the remedial tools applicable to the category of Appendix Event which applies to the particular item or event, considered as if that item or event was the only one under consideration	In relation to each Less than Material Item and each Appendix Event forming part of the relevant combination, the outcome is the one applicable to the category of Appendix Event which applies to the particular item or event, considered as if that item or event was the only one under consideration
In considering each item, the redress for each item shall be considered in the following order: Item 5 events (if any) will be considered before other events (if any); Item 8 and 9 events, (if any) are to be considered next and before the following events (if any); Item 7 events, (if any) are to be considered next and before the following events (if any); and Items 1, 2, 3, 4 and 6 events (if any) are to be considered last.			
11. The removal (in whole or in part) of advertising rights granted by the PSA, being a removal effected prior to 31 December 2013. ³⁹¹	It must be agreed or determined that the removal has had or will have a Material Adverse Effect.	If the event has had or will have a Material Adverse Effect the parties must negotiate to achieve the outcome in column 4 having regard to all the "remedial tools" in clause 2.10(c).	Restore the ability of Original Equity Investors to achieve the Equity Return being the lower of: (a) the Equity Return which would have applied but for removal of the relevant rights; and (b) the Equity Return which would have applied were the Company to derive from those rights an amount of \$5,000,000 per annum (escalated

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
			at the rate of inflation assumed in the Base Case Financial Model).
<p>12. The use of the Link by autonomous vehicles (including vehicles without drivers) is permitted but the Law is not amended to enable the Company to levy and collect tolls and charges in respect of such use (including the ability of the Company to request, and expect, service of an infringement notice in relation to the evasion of tolls and the enforcement of the offence the subject of that infringement notice), in the same manner as prior to use of the Link by autonomous vehicles.</p>	<p>During the Original Concession Period, it must be agreed or determined that the event has had or will have a Material Adverse Effect on the projected net operating cashflows in connection with the Link from the date of the occurrence of the event until the expiry of the Concession Period.</p> <p>During the Additional Concession Period, it must be agreed or determined that the event has had or will have an effect on the projected net operating cashflows in connection with the Link, from the date of the occurrence of the event until the expiry of the Concession Period, the net present value of which exceeds \$10 million (escalated by reference to CPI).</p>		<p>The Company and the Trustee are to have an ability to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA substantially similar to that which would have applied but for the relevant event³⁹²</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay WGT Project Debt in accordance with the amortisation schedules set out in Schedule 5B to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Original Equity Investors to achieve the Equity Return which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Extension Equity Investors to achieve the Extension Equity Return which would have applied but for the relevant event.</p>
<p>13. (a) The first set of minimum requirements for civil debt recovery arrangements approved by the Minister and published in the Government Gazette for the purpose of section [72C(1)] of the Project Legislation, is</p>	<p>In respect of Appendix Event 13(a), it must be agreed or determined that the event has had or will have an effect on the projected net operating cashflows in connection with the Link, from the</p>		<p>The Company and the Trustee are to have an ability to repay Project Debt in accordance with the amortisation schedule set out in schedule 5 to IFA substantially similar to that which would have applied but for the relevant event³⁹³</p> <p>AND</p> <p>Restore the ability of the</p>

Agreement for the Melbourne City Link

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Column 1 Event	Column 2 Material Adverse Effect	Column 3 Negotiations	Column 4 Outcome
<p>substantially different to the minimum requirements for civil debt recovery arrangements as set out in Exhibit YY.</p> <p>(b) Any subsequent minimum requirements for civil debt recovery arrangements approved by the Minister and published in the Government Gazette after the first such publication for the purpose of section [72C(1)] of the Project Legislation, is substantially different to the minimum requirements for civil debt recovery arrangements in place immediately prior to the publication of the revised requirements.</p>	<p>date of the occurrence of the event until the expiry of the Concession Period, which exceeds \$0.</p> <p>In respect of Appendix Event 13(b), it must be agreed or determined that the event has had or will have an effect on the projected net operating cashflows in connection with the Link, from the date of the occurrence of the event until the expiry of the Concession Period, the net present value of which exceeds \$10 million (escalated by reference to CPI).</p>		<p>Company and the Trustee to repay CTW Project Debt in accordance with the amortisation schedule set out in Schedule 5A to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of the Company and the Trustee to repay WGT Project Debt in accordance with the amortisation schedules set out in Schedule 5B to IFA to that which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Original Equity Investors to achieve the Equity Return which would have applied but for the relevant event</p> <p>AND</p> <p>Restore the ability of Extension Equity Investors to achieve the Extension Equity Return which would have applied but for the relevant event.</p>
<p>14. An Accident Towing Licence Event occurs during the Additional Concession Period.</p>	<p>It must be agreed or determined that the event has had or will have an effect on the projected net operating cashflows in connection with the Link, from the date of the occurrence of the event until the expiry of the Concession Period, which exceeds \$0.</p>		

EXECUTED as a deed.

SIGNED, SEALED and DELIVERED by **THE HONOURABLE WILLIAM R BAXTER MP**, Minister for Roads and Ports of the State of Victoria for and on behalf of the Crown in Right of the State of Victoria in the presence of:

WILLIAM R BAXTER

JOHN BUXTON LAURIE
Witness

THE COMMON SEAL of TRANSURBAN CITY LINK LIMITED was affixed by the authority of the Board of Directors in the presence of:

LS

GUIDO BELGIORNO-NETTIS
Director

ANTHONY FRANCIS SHEPHERD
Director

SIGNED, SEALED and DELIVERED for and on behalf of **PERPETUAL TRUSTEE COMPANY LIMITED** by its Attorney in the presence of:

RAYMOND JOHN KELLERMAN

SHIGETAKA SANO
Witness

SIGNED, SEALED and DELIVERED for and on behalf of **CITY LINK MANAGEMENT LIMITED** by its Attorney in the presence of:

JAMES I WILTON

RICHARD J LOVERIDGE
Witness

ENDNOTES

1. General Information

This Agreement has been reprinted in accordance with section 18A of the **Melbourne City Link Act 1995**.

S. 3 def. of "the Agreement": The following Exhibits form part of the Agreement for the Melbourne City Link Project:

- Exhibit A: Traffic Management Measures
- Exhibit B: Independent Reviewer's Certificate
- Exhibit C: Certificate of Completion
- Exhibit D.1: Company Lease
- Exhibit D.2: Trust Lease
- Exhibit D.3: Trust Concurrent Lease
- Exhibit D.4: Burnley Office Site Lease (inserted by Amending Deed dated 23 October 2002)
- Exhibit D.5: Lorimer Street Site Lease (inserted by Amending Deed dated 23 October 2002)
- Exhibit E: Confidentiality and Disclaimer Deed
- Exhibit F: Contractor's Deed of Novation
- Exhibit G: Deed of Charge
- Exhibit H: Deed of Guarantee and Indemnity
- Exhibit I: Project Scope and Technical Requirements
- Exhibit J: Major Transport Network Changes
- Exhibit K: Master Security Deed
- Exhibit L: Off-Site Areas Schedule
- Exhibit M: Not Used
- Exhibit N: Financial Enhancements and Hedging
- Exhibit O: Planning Scheme Amendments
- Exhibit P: Absolute Prevention
- Exhibit Q: Exclusive Intellectual Property Rights
- Exhibit R: Plan of the South Eastern Arterial
- Exhibit S: Plan of the Southern Link
- Exhibit T: Tullamarine Freeway Upgrade
- Exhibit U: Western Link Section 1
- Exhibit V: Western Link Section 2
- Exhibit W: Concession Note (inserted by Amending Deed dated 20 February 1996)

The Exhibits are available for public inspection at the State Library of Victoria, 328 Swanston Street, Melbourne. The Exhibits are held in the Library's closed stacks and can be accessed by quoting call number SEF 388.13099451 M48ME at the Information Desk. The Exhibits may also be inspected, by prior arrangement, at the Office of the Director, Melbourne City Link, Level 13, Nauru House, 80 Collins Street, Melbourne.

The majority of the Exhibits are also available on the Internet site of the Melbourne City Link Authority: <http://www.citylink.vic.gov.au/pages/lib1.html>

2. Table of Amendments

S. 15: The Agreement for the Melbourne City Link Project has been varied by further agreements between the parties in accordance with section 15(1) of the Act.

Amending Agreement	Gazette Reference	Date of Making	Date of Operation⁺
Deed Amending the Concession Deed	-	20 February 1996	19 June 1996*
Deed Amending the Master Security Deed [@]	-	20 February 1996	19 June 1996*
Second Deed Amending the Concession Deed	-	28 May 1996	26 June 1996*
Melbourne City Link Third Amending Deed	Special Gazette (No.34), 23 April 1998, page 1	22 April 1998	23 April 1998 [#]
Melbourne City Link Fourth Amending Deed	Special Gazette (No.34), 23 April 1998, page 1	22 April 1998	23 April 1998 [#]
Melbourne City Link Second Deed Amending Master Security Deed [@]	Special Gazette (No.45), 29 March 1999, page 1	22 March 1999	29 March 1999 [#]
Melbourne City Link Fifth Amending Deed	Special Gazette (No.67), 12 May 1999, page 1	12 May 1999	12 May 1999 [#]
Melbourne City Link Sixth Amending Deed	Special Gazette (No.109), 20 July 1999, page 1	20 July 1999	20 July 1999 [#]
Melbourne City Link Seventh Amending Deed	Special Gazette (No.115), 5 August 1999, page 1	4 August 1999	5 August 1999 [#]
Melbourne City Link Eighth Amending Deed	Special Gazette (No.118), 12 August 1999, page 1	12 August 1999	12 August 1999 [#]
Melbourne City Link Ninth Amending Deed	Special Gazette (No.185), 17 December 1999, page 2, 3	17 December 1999	17 December 1999 [#]
Melbourne City Link Tenth Amending Deed	Special Gazette (No.3), 18 January 2000, page 1	11 January 2000	18 January 2000 [#]
Melbourne City Link Eleventh Amending Deed	Special Gazette (No.43), 11 April 2000, page 1	10 April 2000	11 April 2000 [#]
Melbourne City Link Twelfth Amending Deed	Special Gazette (No.127), 11 September 2000, page 1	11 September 2000	11 September 2000 [#]

Agreement for the Melbourne City Link

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Amending Agreement	Gazette Reference	Date of Making	Date of Operation⁺
Melbourne City Link Thirteenth Amending Deed	Special Gazette (No.180), 1 December 2000, page 1	1 December 2000	1 December 2000 [#]
Melbourne City Link Fourteenth Amending Deed	Special Gazette (No.199), 20 December 2000, page 6	20 December 2000	20 December 2000 [#]
Deed for Managed Investments	Special Gazette (No.30), 21 March 2001, page 1	21 March 2001	21 March 2001 [#]
Melbourne City Link Fifteenth Amending Deed	Special Gazette (No.202), 15 November 2001, page 1	15 November 2001	15 November 2001 [#]
Melbourne City Link Sixteenth Amending Deed	Special Gazette (No.87), 24 May 2002, page 1	24 May 2002	24 May 2002 [#]
Melbourne City Link Seventeenth Amending Deed	Special Gazette (No.118), 28 June 2002, page 1	28 June 2002	28 June 2002 [#]
Melbourne City Link Third Deed Amending Master Security Deed [@]	Special Gazette (No.118), 28 June 2002, page 1	28 June 2002	28 June 2002 [#]
Melbourne City Link Eighteenth Amending Deed	Special Gazette (No.191), 28 October 2002, page 1	23 October 2002	28 October 2002 [#]

⁺ The Date of Operation is the date the particular amending agreement became operative pursuant to section 15(1C) of the Act. To determine the date that the amendments to the Agreement for the Melbourne City Link Project prescribed by that particular amending agreement became operative, reference should be made to the terms of that amending agreement.

[@] The Master Security Deed is Exhibit K to the Concession Deed.

^{*} Date of Operation was determined by the expiry of the parliamentary revocation period pursuant to section 15(3) and 15(4) (as in force prior to the amendment of section 15(3) and 15(4) by the **Melbourne City Link (Amendment) Act 1996**).

[#] Date of Operation was determined by the date of Gazette notice pursuant to section 15(1C)(a).

The amending agreements can be inspected during office hours at the Department of Infrastructure, Level 3 Plaza, Nauru House, 80 Collins Street, Melbourne and at the Office of the Director, Melbourne City Link, Level 13, Nauru House, 80 Collins Street, Melbourne. Copies of the amending agreements are also available for public inspection at the State Library (call number above).

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S. 15: The Agreement for the Melbourne City Link Project has been varied in accordance with the terms of the Agreement and section 15(1A) of the Act.

Statement of Variation	Gazette Reference	Date of Making	Date of Operation
Statement of Variation No.1/1997: Changes to the Project Scope and Technical Requirements, Request for Change No.1	Government Gazette, 23 January 1997, pages 163, 164	21 January 1997	23 January 1997*
Statement of Variation No.2/1997: Changes to the Project Scope and Technical Requirements, Request for Change No.2	Government Gazette, 23 January 1997, page 163	21 January 1997	23 January 1997*
Statement of Variation No.3/1997: Changes to the Project Scope and Technical Requirements, Request for Change No.3	Special Gazette (No.47), 1 May 1997, page 1	30 April 1997	1 May 1997*
Statement of Variation No.4/1997: Integration of the Exhibition Street Extension Project with the Melbourne City Link Project	Government Gazette, 10 July 1997, pages 1705, 1706	8 July 1997	10 July 1997*
Statement of Variation No.4/1999: Changes to the Project Scope and Technical Requirements, Request for Change No.4 (Rev A)	Special Gazette (No.115), 5 August 1999, page 1	5 August 1999	5 August 1999*

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Statement of Variation	Gazette Reference	Date of Making	Date of Operation
Statement of Variation No.5/1999: Changes to the Project Scope and Technical Requirements, Request for Change No.7 (Rev A)	Special Gazette (No.115), 5 August 1999, page 2	5 August 1999	5 August 1999*
Statement of Variation No.6/1999: Changes to the Project Scope and Technical Requirements, Request for Change No.8	Special Gazette (No.115), 5 August 1999, page 3	5 August 1999	5 August 1999*
Statement of Variation No.7/1999: Changes to the Project Scope and Technical Requirements, Request for Change No.9	Special Gazette (No.115), 5 August 1999, page 3, 4	5 August 1999	5 August 1999*
Statement of Variation No.8/1999: Changes to the Project Scope and Technical Requirements, Request for Change No.10	Special Gazette (No.115), 5 August 1999, page 4, 5	5 August 1999	5 August 1999*
Statement of Variation No.9/1999: Changes to the Project Scope and Technical Requirements, Request for Change No.6	Special Gazette (No.189), 21 December 1999, page 3, 4	21 December 1999	21 December 1999*

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Statement of Variation	Gazette Reference	Date of Making	Date of Operation
Statement of Variation No.10/1999: Changes to the Project Scope and Technical Requirements, Request for Change No.11	Special Gazette (No.189), 21 December 1999, page 2, 3	21 December 1999	21 December 1999*
Statement of Variation No.11/1999: Changes to the Project Scope and Technical Requirements, Request for Change No.13	Special Gazette (No.189), 21 December 1999, page 3	21 December 1999	21 December 1999*
Statement of Variation No.1/2000: Changes to the Project Scope and Technical Requirements, Request for Change No.5	Special Gazette (No.39), 30 March 2000, page 1, 2	29 March 2000	30 March 2000*
Statement of Variation No.2/2000: Changes to the Project Scope and Technical Requirements, Request for Change No.12	Special Gazette (No.39), 30 March 2000, page 2	29 March 2000	30 March 2000*
Statement of Variation No.3/2000: Changes to the Project Scope and Technical Requirements, Request for Change No.14	Special Gazette (No.39), 30 March 2000, page 2, 3	29 March 2000	30 March 2000*

Statement of Variation	Gazette Reference	Date of Making	Date of Operation
Statement of Variation No.4/2000: Changes to the Project Scope and Technical Requirements, Request for Change No.15	Special Gazette (No.39), 30 March 2000, page 3	29 March 2000	30 March 2000*
Statement of Variation No.8/2000: Agreement under clause 8.12 of the Concession Deed	Special Gazette (No.203), 21 December 2000, page 3, 4	20 December 2000	21 December 2000*
Statement of Variation No.3/2001: Release from Single Purpose	Special Gazette (No.152), 20 September 2001, page 1	20 September 2001	20 September 2001*

* Date of Operation was determined by the date of Gazette notice pursuant to section 15(1C)(a).

The Statements of Variation can be inspected during office hours at the Department of Infrastructure, Level 3 Plaza, Nauru House, 80 Collins Street, Melbourne and at the Office of the Director, Melbourne City Link, Level 13, Nauru House, 80 Collins Street, Melbourne. Copies of the Statements of Variation are also available for public inspection at the State Library (call number given above).

S. 15: Section 4(4) of the **Melbourne City Link (Amendment) Act 1996**, No. 21/1996 reads as follows:

4. Variation of the Agreement

(4)An agreement in writing purporting to be an agreement referred to in section 15 of the **Melbourne City Link Act 1995** that is laid before each House of the Parliament before 1 June 1996 is deemed to be an agreement in writing between the parties to the Agreement within the meaning of that Act as in force before that date, whether or not all those parties are parties to the agreement in writing.

The provisions of an amending agreement or statement of variation may be relevant to the interpretation and operation of provisions of this consolidated reprint. Therefore, when seeking to interpret provisions of this consolidated reprint reference should always be made to the terms of the relevant amending agreement or statement of variation. Failure to do so may prevent a correct or complete interpretation of the relevant provision.

3. Explanatory Details

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- ¹ This version incorporates all amendments to the Concession Deed up to and including the Twenty-first Amending Deed.
 - ² Clause 1.1 def. of "Addressee" inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.1.
 - ³ Clause 1.1 def. of "Adjusted Distributable Cashflow" inserted by Fourth Amending Deed Sch. 1 cl. 11.
 - ⁴ Clause 1.1 def. of "Adjusted Equity Return" inserted by Fourth Amending Deed Sch. 1 cl. 11.
 - ⁵ Clause 1.1 def. of "Agreed Sum Arrangement" para. (c) substituted by Eighteenth Amending Deed Sch. Pt 3 cl. 3.1.
 - ⁶ Clause 1.1 def. of "Agreed Sum Arrangement" inserted by Third Amending Deed Sch. Pt 2 cl. 2.1.
 - ⁷ Clause 1.1 def. of "Annual Emergency Exercise" inserted by Nineteenth Amending Deed Sch. cl. 2.1.
 - ⁸ Clause 1.1 def. of "Break Costs" inserted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(a).
 - ⁹ Clause 1.1 def. of "Burnley Office Site Lease" inserted by Eighteenth Amending Deed Sch. Pt 2 cl. 2.1.
 - ¹⁰ Clause 1.1 def. of "Burnley site" inserted by Eleventh Amending Deed Sch. Pt 2 cl. 1.
 - ¹¹ Clause 1.1 def. of "Burnley site" amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.2.
 - ¹² Clause 1.1 def. of "Burnley Tunnel" inserted by Ninth Amending Deed Annexure Pt 1 cl. 2.
 - ¹³ Clause 1.1 def. of "City Link Extension Project" inserted by Fourth Amending Deed Sch. 1 cl. 11.
 - ¹⁴ Clause 1.1 def. of "Cleppo" inserted by Fourth Amending Deed Sch. 1 cl. 11.
 - ¹⁵ Clause 1.1 def. of "Concession Notes" substituted by First Amending Deed cl. 3.1(a).
 - ¹⁶ Clause 1.1 def. of "Control" relocated by Twenty-first Amending Deed Sch. Pt 5 cl. 5.1(b).
 - ¹⁷ Clause 1.1 def. of "Dispute Resolution Schedule" amended by Fourth Amending Deed Sch. 1 cl. 1.
 - ¹⁸ Clause 1.1 def. of "Distributable Cashflow" amended by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(b)(i).
 - ¹⁹ Clause 1.1 def. of "Distributable Cashflow" para. (d) amended by Fourth Amending Deed Sch. 1 cl. 2(a).
 - ²⁰ Clause 1.1 def. of "Distributable Cashflow" para. (d) amended by Fourth Amending Deed Sch. 1 cl. 2(b).
 - ²¹ Clause 1.1 def. of "Distributable Cashflow" para. (e) amended by Fourth Amending Deed Sch. 1 cl. 2(c).
 - ²² Clause 1.1 def. of "Distributable Cashflow" para. (e) amended by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(b)(ii).
 - ²³ Clause 1.1 def. of "Distributable Cashflow" para. (f) inserted by Fourth Amending Deed Sch. 1 cl. 2(d).
 - ²⁴ Clause 1.1 def. of "Domain Tunnel" inserted by Ninth Amending Deed Annexure Pt 1 cl. 2.
 - ²⁵ Clause 1.1 def. of "Early Termination Limit" para. (a) amended by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(c).
 - ²⁶ Clause 1.1 def. of "Early Termination Limit" amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.1(a)(i).
 - ²⁷ Clause 1.1 def. of "Early Termination Limit" para. (b)(iii) amended by Fifteenth Amending Deed Sch. Pt 2(a).
 - ²⁸ Clause 1.1 def. of "Early Termination Limit" para. (d)(A) amended by Fifteenth Amending Deed Sch. Pt 2(b).
 - ²⁹ Clause 1.1 def. of "Early Termination Limit" amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.1(a)(ii)(A).
 - ³⁰ Clause 1.1 def. of "Early Termination Limit" amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.1(a)(ii)(A).
 - ³¹ Clause 1.1 def. of "Early Termination Limit" amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.1(a)(ii)(B).
 - ³² Clause 1.1 def. of "Early Termination Limit" amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.1(a)(ii)(B).
 - ³³ Clause 1.1 def. of "Eighteenth Amending Deed" inserted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.1.
 - ³⁴ Clause 1.1 def. of "Emergency Management Plan" inserted by Nineteenth Amending Deed Sch. cl. 2.1.

- 35 Clause 1.1 def. of "Emergency Services" inserted by Nineteenth Amending Deed Sch. cl. 2.1.
- 36 Clause 1.1 def. of "Enforcement Agency" inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.1.
- 37 Clause 1.1 def. of "Entity" substituted by Fifteenth Amending Deed Sch. Pt 3 cl. 3.2.
- 38 Clause 1.1 def. of "Equity Infrastructure Bonds" amended by Fifteenth Amending Deed Sch. Pt 1 cl. 1.2.
- 39 Clause 1.1 def. of "Equity Investor" amended by Fifteenth Amending Deed Sch. Pt 3 cl. 3.3.
- 40 Clause 1.1 def. of "Equity Return" amended by Fourth Amending Deed Sch. 1 cl. 3.
- 41 Clause 1.1 def. of "ESEP Deed" inserted by Fourth Amending Deed Sch. 1 cl. 11.
- 42 Clause 1.1 def. of "ESEP Land" inserted by Fourth Amending Deed Sch. 1 cl. 11.
- 43 Clause 1.1 def. of "ESEP Project" inserted by Fourth Amending Deed Sch. 1 cl. 11.
- 44 Clause 1.1 def. of "ESEP Project Documents" inserted by Fourth Amending Deed Sch. 1 cl. 11.
- 45 Clause 1.1 def. of "Exhibition Street Extension" inserted by Fourth Amending Deed Sch. 1 cl. 11.
- 46 Clause 1.1 def. of "Fifth Amending Deed" inserted by Fifth Amending Deed Sch. cl. 2.
- 47 Clause 1.1 def. of "Fourteenth Amending Deed" inserted by Fourteenth Amending Deed cl. 1.
- 48 Clause 1.1 def. of "Fourth Amending Deed" inserted by Fourth Amending Deed Sch. 1 cl. 11.
- 49 Clause 1.1 def. of "Further Request For Payment" inserted by Twentieth Amending Deed Sch. pt 1 cl. 1.1.
- 50 Clause 1.1 def. of "Gateway" amended by Fourth Amending Deed Sch. 1 cl. 4.
- 51 Clause 1.1 def. of "Good Practice Operator" inserted by Nineteenth Amending Deed Sch. cl. 1.1.
- 52 Clause 1.1 def. of "GST" inserted by Twelfth Amending Deed Sch. Pt 3 cl. 1(a).
- 53 Clause 1.1 def. of "GST Act" inserted by Twelfth Amending Deed Sch. Pt 3 cl. 1(a).
- 54 Clause 1.1 def. of "GST law" inserted by Twelfth Amending Deed Sch. Pt 3 cl. 1(a).
- 55 Clause 1.1 def. of "GST rate" inserted by Twelfth Amending Deed Sch. Pt 3 cl. 1(a).
- 56 Clause 1.1 def. of "IFA" inserted by Fourth Amending Deed Sch. 1 cl. 11.
- 57 Clause 1.1 def. of "IFA Ninth Amending Deed" inserted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(d).
- 58 Clause 1.1 def. of "Incident Management Quality Plan" inserted by Nineteenth Amending Deed Sch. cl. 1.1.
- 59 Clause 1.1 def. of "Lending Documents" para. (k) repealed by Nineteenth Amending Deed Sch. cl. 8.
- 60 Clause 1.1 def. of "Lending Documents" para. (r) repealed by Nineteenth Amending Deed Sch. cl. 8.
- 61 Clause 1.1 def. of "Lending Documents" para. (aa) amended by Fourth Amending Deed Sch. 1 cl. 5(a).
- 62 Clause 1.1 def. of "Lending Documents" para. (aa) amended by Sixteenth Amending Deed Sch. 1 Pt 1 (a)(i).
- 63 Clause 1.1 def. of "Lending Documents" para. (ab) inserted by Fourth Amending Deed Sch. 1 cl. 5(b).
- 64 Clause 1.1 def. of "Lending Documents" para. (ab) amended by Sixteenth Amending Deed Sch. 1 Pt 1 (a)(ii).
- 65 Clause 1.1 def. of "Lending Documents" para. (ab) amended by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(e)(i).
- 66 Clause 1.1 def. of "Lending Documents" para. (ac) inserted by Sixteenth Amending Deed Sch. 1 Pt 1 (a)(iii).
- 67 Clause 1.1 def. of "Lending Documents" para. (ac) amended by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(e)(ii).
- 68 Clause 1.1 def. of "Lending Documents" para. (ad) inserted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(e)(iii).
- 69 Clause 1.1 def. of "Link control rooms" inserted by Sixth Amending Deed Sch. Pt 5 cl. 6.1.
- 70 Clause 1.1 def. of "Customer Service Site" inserted by Eighteenth Amending Deed Sch. Pt 2 cl. 2.1.
- 71 Clause 1.1 def. of "Customer Service Site Lease" inserted by Eighteenth Amending Deed Sch. Pt 2 cl. 2.1.

- ⁷² Clause 1.1 def. of "Material Adverse Effect" amended by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(f).
- ⁷³ Clause 1.1 def. of "Material Adverse Effect" amended by Twelfth Amending Deed Sch. Pt 3 cl. 1(b).
- ⁷⁴ Clause 1.1 def. of "South Eastern Arterial" amended by Fourth Amending Deed Sch. 1 cl. 9(a). (Definition of "South Eastern Arterial" amended by definition of "South Eastern Freeway").
- ⁷⁵ Clause 1.1 def. of "South Eastern Arterial" amended by Fourth Amending Deed Sch. 1 cl. 9(b).
- ⁷⁶ Clause 1.1 def. of "South Eastern Freeway" substituted by Eleventh Amending Deed Sch. Pt 3 cl. 1(a). (Definition of "South Eastern Freeway" substituted by definition of "Monash Freeway").
- ⁷⁷ Clause 1.1 def. of "NEVDIS" inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.1.
- ⁷⁸ Clause 1.1 def. of "Nineteenth Amending Deed" inserted by Nineteenth Amending Deed Sch. cl. 1.1.
- ⁷⁹ Clause 1.1 def. of "Ninth Amending Deed" inserted by Ninth Amending Deed Annexure Pt 5.
- ⁸⁰ Clause 1.1 def. of "Notional Initial Equity Investor" amended by Fifteenth Amending Deed Sch. Pt 3 cl. 3.4.
- ⁸¹ Clause 1.1 def. of "Operating and Maintenance Agreement" amended by Fourth Amending Deed Sch. 1 cl. 6.
- ⁸² Clause 1.1 def. of "Operational Committee" inserted by Nineteenth Amending Deed Sch. cl. 3.1.
- ⁸³ Clause 1.1 def. of "Operations Quality Plan" inserted by Nineteenth Amending Deed Sch. cl. 1.1.
- ⁸⁴ Clause 1.1 def. of "Partial AP Termination Price" para. (a) amended by Fourth Amending Deed Sch. 1 cl. 7.
- ⁸⁵ Clause 1.1 def. of "Project Debt" amended by First Amending Deed cl. 3.7.
- ⁸⁶ Clause 1.1 def. of "Project Debt" amended by Sixteenth Amending Deed Sch. 1 Pt 2.
- ⁸⁷ Clause 1.1 def. of "Project Debt" substituted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(g).
- ⁸⁸ Clause 1.1 def. of "Project Debt" amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.1(c).
- ⁸⁹ Clause 1.1 def. of "Project Documents" para. (b) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.3.
- ⁹⁰ Clause 1.1 def. of "Project Scope and Technical Requirements" amended by Eleventh Amending Deed Sch. Pt 4.
- ⁹¹ Clause 1.1 def. of "Project Scope and Technical Requirements" relocated by Twenty-first Amending Deed Sch. Pt 5 cl. 5.1(d).
- ⁹² Clause 1.1 def. of "Property Schedule" substituted by Third Amending Deed Sch. Pt 1 cl. 1.1.
- ⁹³ Clause 1.1 def. of "Property Schedule" substituted by Fifth Amending Deed Sch. cl. 1.
- ⁹⁴ Clause 1.1 def. of "Property Schedule" substituted by Ninth Amending Deed Annexure Pt 2 cl. 1.
- ⁹⁵ Clause 1.1 def. of "Property Schedule" para. (d) amended by Eighteenth Amending Deed Sch. Pt 1 cl. 1.2.
- ⁹⁶ Clause 1.1 def. of "Property Schedule" para. (e) inserted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.3
- ⁹⁷ Clause 1.1 def. of "PSA" substituted by Fourth Amending Deed Sch. 1 cl. 8.
- ⁹⁸ Clause 1.1 def. of "related body corporate" inserted by Fifteenth Amending Deed Sch. Pt 1 cl. 1.3.
- ⁹⁹ Clause 1.1 def. of "Request For Payment" inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.1.
- ¹⁰⁰ Clause 1.1 def. of "Section" substituted by Ninth Amending Deed Annexure Pt 1 cl. 1.
- ¹⁰¹ Clause 1.1 def. of "Seventeenth Amending Deed" inserted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.1(h).
- ¹⁰² Clause 1.1 def. of "Sixteenth Amending Deed" inserted by Sixteenth Amending Deed Sch. 1 Pt 1 (b).
- ¹⁰³ Clause 1.1 def. of "Sixth Amending Deed" inserted by Sixth Amending Deed Sch. Pt 5 cl. 6.2.
- ¹⁰⁴ Clause 1.1 def. of "Southbank Interchange Construction Area" inserted by Ninth Amending Deed Annexure Pt 1 cl. 2.
- ¹⁰⁵ Clause 1.1 def. of "Southern Link Section 1" inserted by Ninth Amending Deed Annexure Pt 1 cl. 2.
- ¹⁰⁶ Clause 1.1 def. of "Southern Link Section 1" amended by Eleventh Amending Deed Sch. Pt 3 cl. 1(b).
- ¹⁰⁷ Clause 1.1 def. of "Southern Link Section 2" inserted by Ninth Amending Deed Annexure Pt 1 cl. 2.

- ¹⁰⁸ Clause 1.1 def. of "Southern Link Section 3" inserted by Ninth Amending Deed Annexure Pt 1 cl. 2.
- ¹⁰⁹ Clause 1.1 def. of "Southern Link Section 4" inserted by Ninth Amending Deed Annexure Pt 1 cl. 2.
- ¹¹⁰ Clause 1.1 def. of "Southern Link Section 5" inserted by Ninth Amending Deed Annexure Pt 1 cl. 2.
- ¹¹¹ Clause 1.1 def. of "Southern Link Section 5" amended by Eleventh Amending Deed Sch. Pt 3 cl. 1(b).
- ¹¹² Clause 1.1 def. of "Spot Audit" inserted by Nineteenth Amending Deed Sch. cl. 4.1.
- ¹¹³ Clause 1.1 def. of "Stapled Security" substituted by Fifteenth Amending Deed Sch. Pt 1 cl. 1.1. (Definition of "Stapled Security" substituted by definition of "Stapled Securities").
- ¹¹⁴ Clause 1.1 def. of "Substantial Holder" amended by Fifteenth Amending Deed Sch. Pt 3 cl. 3.5.
- ¹¹⁵ Clause 1.1 def. of "tax invoice" inserted by Twelfth Amending Deed Sch. Pt 3 cl. 1(a).
- ¹¹⁶ Clause 1.1 def. of "taxable supply" inserted by Twelfth Amending Deed Sch. Pt 3 cl. 1(a).
- ¹¹⁷ Clause 1.1 def. of "Third Amending Deed" inserted by Third Amending Deed Sch. Pt 1 cl. 1.2.
- ¹¹⁸ Clause 1.1 def. of "Toll Administration Fee" inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.1.
- ¹¹⁹ Clause 1.1 def. of "Toll Road" substituted by Sixth Amending Deed Sch. Pt 1 cl. 1.1.
- ¹²⁰ Clause 1.1 def. of "Transurban Entity" inserted by Fifteenth Amending Deed Sch. Pt 1 cl. 1.3.
- ¹²¹ Clause 1.1 def. of "Transurban Limited" inserted by Fifteenth Amending Deed Sch. Pt 1 cl. 1.3.
- ¹²² Clause 1.1 def. of "Transurban Developments" inserted by Fifteenth Amending Deed Sch. Pt 1 cl. 1.3.
- ¹²³ Clause 1.1 def. of "Transurban Unit Trust" inserted by Fifteenth Amending Deed Sch. Pt 1 cl. 1.3.
- ¹²⁴ Clause 1.1 def. of "Triennial Emergency Exercise" inserted by Nineteenth Amending Deed Sch. cl. 2.1.
- ¹²⁵ Clause 1.1 def. of "Twelfth Amending Deed" inserted by Twelfth Amending Deed Sch. Pt 3 cl. 1(a).
- ¹²⁶ Clause 1.1 def. of "Twentieth Amending Deed" inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.1.
- ¹²⁷ Clause 1.2(q) amended by Fourth Amending Deed Sch. 1 cl. 12.
- ¹²⁸ Clause 1.2(q) substituted by Sixteenth Amending Deed Sch. 1 Pt 1 (c).
- ¹²⁹ Clause 1.2(q) substituted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.2(a).
- ¹³⁰ Clause 1.2(qa) inserted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.2(b).
- ¹³¹ Clause 1.2(r) amended by Fifteenth Amending Deed Sch. Pt 1 cl. 1.4.
- ¹³² Clause 1.2A inserted by Fourteenth Amending Deed cl. 2.
- ¹³³ Clause 1.3(b) substituted by Fourth Amending Deed Sch. 1 cl. 13.
- ¹³⁴ Clause 1.12(e) inserted by Nineteenth Amending Deed Sch. cl. 7.1.
- ¹³⁵ Clause 1.12(f) inserted by Nineteenth Amending Deed Sch. cl. 7.1.
- ¹³⁶ Clause 1.18(a) substituted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.2(c).
- ¹³⁷ Clause 1.18(b) substituted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.2(d).
- ¹³⁸ Clause 1.19(a) amended by First Amending Deed cl. 3.2(a).
- ¹³⁹ Clause 1.19(b) amended by First Amending Deed cl. 3.2(a).
- ¹⁴⁰ Clause 1.19(c) inserted by First Amending Deed cl. 3.2(a).
- ¹⁴¹ Clause 1.19(c) substituted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.2(e).
- ¹⁴² Clause 1.19(d) inserted by First Amending Deed cl. 3.2(a).
- ¹⁴³ Clause 1.19(d) amended by Fifteenth Amending Deed Sch. Pt 3 cl. 3.6.
- ¹⁴⁴ Clause 1.19(d) substituted by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.2(f).
- ¹⁴⁶ Clause 1.22 amended by Seventeenth Amending Deed Sch. 1 Pt 1 cl. 1.2(h).

- ¹⁴⁷ Clause 1.23 inserted by Sixth Amending Deed Sch. Pt 1 cl. 1.2.
- ¹⁴⁸ Clause 1.24 inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.2.
- ¹⁴⁹ Clause 1.25 inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.2.
- ¹⁵⁰ Clause 2.1(a)(ii) amended by Fourth Amending Deed Sch. 1 cl. 14.
- ¹⁵¹ Clause 2.1(a)(ii) amended by Eleventh Amending Deed Sch. Pt 3 cl. 2.
- ¹⁵² Clause 2.1(a)(iv) amended by Fourth Amending Deed Sch. 1 cl. 15.
- ¹⁵³ Clause 2.1(b) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.1(a).
- ¹⁵⁴ Clause 2.4(a)(i) amended by Fourth Amending Deed Sch. 1 cl. 16.
- ¹⁵⁵ Clause 2.4(a)(iii) amended by Eleventh Amending Deed Sch. Pt 3 cl. 3.
- ¹⁵⁶ Clause 2.4(a)(iii) amended by Fourth Amending Deed Sch. 1 cl. 17.
- ¹⁵⁷ Clause 2.4(e)(iv)(A) amended by Twelfth Amending Deed Sch. Pt 3 cl. 2.
- ¹⁵⁸ Clause 2.4(f)(iii) amended by Third Amending Deed Sch. Pt 2 cl. 2.2(a).
- ¹⁵⁹ Clause 2.4(f)(iv) amended by Third Amending Deed Sch. Pt 2 cl. 2.2(b).
- ¹⁶⁰ Clause 2.4(fa) inserted by Third Amending Deed Sch. Pt 2 cl. 2.2(c).
- ¹⁶¹ Clause 2.4(g) repealed by Nineteenth Amending Deed Sch. cl. 3.2.
- ¹⁶² Clause 2.4(h) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.3.
- ¹⁶³ Clause 2.6(a) amended by Twelfth Amending Deed Sch. Pt 3 cl. 4.
- ¹⁶⁴ Clause 2.6(b) amended by Twelfth Amending Deed Sch. Pt 3 cl. 5.
- ¹⁶⁵ Clause 2.8(a)(v) amended by Fourth Amending Deed Sch. 1 cl. 19(a).
- ¹⁶⁶ Clause 2.8(a)(v) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.4(a).
- ¹⁶⁷ Clause 2.8(a)(v) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.4(b).
- ¹⁶⁸ Clause 2.8(a)(vi) substituted by Fourth Amending Deed Sch. 1 cl. 19(b).
- ¹⁶⁹ Clause 2.12(b) amended by Fourth Amending Deed Sch. 1 cl. 20.
- ¹⁷⁰ Clause 2.12(e)(iii) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.1(b).
- ¹⁷¹ Clause 2.12(f) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.1(c).
- ¹⁷² Clause 2.17A inserted by Nineteenth Amending Deed Sch. cl. 5.
- ¹⁷³ Clause 3.1(b) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.4.
- ¹⁷⁴ Clause 3.1(d)(i) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.5.
- ¹⁷⁵ Clause 3.1(d)(i)(A) amended by Twelfth Amending Deed Sch. Pt 2 cl. 1(a).
- ¹⁷⁶ Clause 3.1(d)(i)(B) amended by Twelfth Amending Deed Sch. Pt 2 cl. 1(b).
- ¹⁷⁷ Clause 3.1(d)(i)(C) amended by Twelfth Amending Deed Sch. Pt 2 cl. 1(c)(i).
- ¹⁷⁸ Clause 3.1(d)(i)(D) inserted by Twelfth Amending Deed Sch. Pt 2 cl. 1(c)(ii).
- ¹⁷⁹ Clause 3.1(f) inserted by Twelfth Amending Deed Sch. Pt 2 cl. 2.
- ¹⁸⁰ Clause 3.1(g) inserted by Twelfth Amending Deed Sch. Pt 2 cl. 2.
- ¹⁸¹ Clause 4.2(e)(ii) amended by Sixth Amending Deed Sch. Pt 5 cl. 6.3.
- ¹⁸² Clause 4.2(g) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.5.
- ¹⁸³ Clause 4.5 amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.6. (The amendment is included in this consolidation despite the expression 'the land' appearing as 'land' in the clause.)
- ¹⁸⁴ Clause 4.7 (Heading) substituted by Eighteenth Amending Deed Sch. Pt 2 cl. 2.7.

- ¹⁸⁵ Clause 4.7(c) amended by Eighteenth Amending Deed Sch. Pt 1 cl. 1.4(a).
¹⁸⁶ Clause 4.7(ca) inserted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.4(b).
¹⁸⁷ Clause 4.7(cb) inserted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.4(b).
¹⁸⁸ Clause 4.7(cc) inserted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.4(b).
¹⁸⁹ Clause 4.7(d) substituted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.5.
¹⁹⁰ Clause 4.7A inserted by Eighteenth Amending Deed Sch. Pt 2 cl. 2.8.
¹⁹¹ Clause 4.8(a) substituted by Sixth Amending Deed Sch. Pt 5 cl. 6.4.
¹⁹² Clause 4.8(a)(i) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.9.
¹⁹³ Clause 4.8(a)(ii) substituted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.6.
¹⁹⁴ Clause 4.8(a)(ii) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.9.
¹⁹⁵ Clause 4.8(b) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.10.
¹⁹⁶ Clause 4.8(c) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.11.
¹⁹⁷ Clause 4.8(d) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.12.
¹⁹⁸ Clause 4.8(e) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.13.
¹⁹⁹ Clause 4.8(f) substituted by Sixth Amending Deed Sch. Pt 5 cl. 6.5.
²⁰⁰ Clause 4.8(f) substituted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.7.
²⁰¹ Clause 4.8(fa) inserted by Eighteenth Amending Deed Sch. Pt 2 cl. 2.14.
²⁰² Clause 4.8(h) amended by Eighteenth Amending Deed Sch. Pt 2 cl. 2.15.
²⁰³ Clause 4.8(i) inserted by Eighteenth Amending Deed Sch. Pt 2 cl. 2.16.
²⁰⁴ Clause 4.8(j) inserted by Eighteenth Amending Deed Sch. Pt 2 cl. 2.16.
²⁰⁵ Clause 4.13(a) amended by Eighth Amending Deed.
²⁰⁶ Clause 4.13(c) inserted by Ninth Amending Deed Annexure Pt 2 cl. 2.
²⁰⁷ Clause 4.13(d) inserted by Ninth Amending Deed Annexure Pt 2 cl. 2.
²⁰⁸ Clause 4.13(e) inserted by Thirteenth Amending Deed Sch. Pt 1 cl. 1.
²⁰⁹ Clause 4.13 inserted by Sixth Amending Deed Sch. Pt 5 cl. 6.6.
²¹⁰ Clause 4.13(f) inserted by Thirteenth Amending Deed Sch. Pt 1 cl. 1.
²¹¹ Clause 5.1(b) amended by Fourth Amending Deed Sch. 1 cl. 22.
²¹² Clause 7.1A inserted by Fourth Amending Deed Sch. 1 cl. 23.
²¹³ Clause 7.3(c)(i) amended by Fourth Amending Deed Sch. 1 cl. 24(a).
²¹⁴ Clause 7.3(c)(ii) amended by Fourth Amending Deed Sch. 1 cl. 24(b).
²¹⁵ Clause 7.4(ai) inserted by Fourth Amending Deed Sch. 1 cl. 25.
²¹⁶ Clause 7.5(a) substituted by First Amending Deed cl. 3.6(a).
²¹⁷ Clause 7.5(bi) inserted by Fourth Amending Deed Sch. 1 cl. 26.
²¹⁸ Clause 7.5(ci) inserted by Fourth Amending Deed Sch. 1 cl. 27.
²¹⁹ Clause 7.5(e) amended by Fourth Amending Deed Sch. 1 cl. 28.
²²⁰ Clause 7.5(f) inserted by First Amending Deed cl. 3.6(b).
²²¹ Clause 7.7(a) amended by Fourth Amending Deed Sch. 1 cl. 29.
²²² Clause 7.18 repealed by Nineteenth Amending Deed Sch. cl. 3.3.
²²³ Clause 8.1(ai) inserted by Fourth Amending Deed Sch. 1 cl. 31.

- 224 Clause 8.7(a) amended by Ninth Amending Deed Annexure Pt 3 cl. 1.
- 225 Clause 9.1(a) amended by Seventh Amending Deed.
- 226 Clause 9.1(b) substituted by Nineteenth Amending Deed Sch. cl. 1.2.
- 227 Clause 9.1(ba) inserted by Nineteenth Amending Deed Sch. cl. 1.3.
- 228 Clause 9.1(c) inserted by Seventh Amending Deed.
- 229 Clause 9.2(e) amended by Eighteenth Amending Deed Sch. Pt 4 cl. 4.1.
- 230 Clause 9.2(e) amended by Nineteenth Amending Deed Sch. cl. 6.1.
- 231 Clause 9.2(e) amended by Twentieth Amending Deed Sch. Pt 2 cl. 2.2.
- 232 Clause 9.2(e)(i) amended by Eighteenth Amending Deed Sch. Pt 4 cl. 4.2.
- 233 Clause 9.2(e) substituted by Sixth Amending Deed Sch. Pt 3 cl. 3.1.
- 234 Clause 9.2(e) amended by Eighteenth Amending Deed Sch. Pt 4 cl. 4.4.
- 235 Clause 9.2(ee) inserted by Eighteenth Amending Deed Sch. Pt 4 cl. 4.5.
- 236 Clause 9.2(ee) amended by Nineteenth Amending Deed Sch. cl. 6.6.
- 237 Clause 9.2(h) amended by Sixth Amending Deed Sch. Pt 2 cl. 2.1(a).
- 238 Clause 9.2(h)(i) substituted by Sixth Amending Deed Sch. Pt 2 cl. 2.1(b).
- 239 Clause 9.2(h)(ii) amended by Sixth Amending Deed Sch. Pt 2 cl. 2.1(c).
- 240 Clause 9.2(h) amended by Sixth Amending Deed Sch. Pt 2 cl. 2.1(d).
- 241 Clause 9.2(i) amended by Sixth Amending Deed Sch. Pt 3 cl. 3.2(a).
- 242 Clause 9.2(i) amended by Twelfth Amending Deed Sch. Pt 3 cl. 6(a).
- 243 Clause 9.2(i)(ii) amended by Sixth Amending Deed Sch. Pt 3 cl. 3.2(b).
- 244 Clause 9.2(i)(iii) amended by Sixth Amending Deed Sch. Pt 3 cl. 3.2(c).
- 245 Clause 9.2(i)(iii)(A) amended by Sixth Amending Deed Sch. Pt 3 cl. 3.2(d).
- 246 Clause 9.2(i)(iii)(B) substituted by Sixth Amending Deed Sch. Pt 3 cl. 3.2(e).
- 247 Clause 9.2(i)(iii)(B) amended by Twelfth Amending Deed Sch. Pt 3 cl. 6(b).
- 248 Clause 9.2(k) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.6.
- 249 Clause 9.2(k) amended by Eighteenth Amending Deed Sch. Pt 4 cl. 4.3.
- 250 Clause 9.2(k) amended by Nineteenth Amending Deed Sch. cl. 6.5.
- 251 Clause 9.2(l) amended by Twelfth Amending Deed Sch. Pt 3 cl. 7.
- 252 Clause 9.2(l) substituted by Sixth Amending Deed Sch. Pt 3 cl. 3.3.
- 253 Clause 9.2(la) inserted by Sixth Amending Deed Sch. Pt 3 cl. 3.3.
- 254 Clause 9.2(n)(i) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.7.
- 255 Clause 9.2(n)(i) amended by Sixth Amending Deed Sch. Pt 3 cl. 3.4(a).
- 256 Clause 9.2(n)(ii) amended by Sixth Amending Deed Sch. Pt 3 cl. 3.4(b)(i).
- 257 Clause 9.2(n)(ii)(A) amended by Sixth Amending Deed Sch. Pt 3 cl. 3.4(b)(ii).
- 258 Clause 9.2(n)(ii) amended by Sixth Amending Deed Sch. Pt 3 cl. 3.4(b)(iii).
- 259 Clause 9.2(n)(iii) inserted by Sixth Amending Deed Sch. Pt 3 cl. 3.4(c).
- 260 Clause 9.2(n)(iii) substituted by Tenth Amending Deed.
- 261 Clause 9.2(n)(iv) inserted by Sixth Amending Deed Sch. Pt 3 cl. 3.4(c).
- 262 Clause 9.2(o) amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.2.

- ²⁶³ Clause 9.2(o) substituted by Fifth Amending Deed Sch. cl. 3.
- ²⁶⁴ Clause 9.2(p) inserted by Sixth Amending Deed Sch. Pt 3 cl. 3.5.
- ²⁶⁵ Clause 9.2(q) inserted by Sixth Amending Deed Sch. Pt 3 cl. 3.5.
- ²⁶⁶ Clause 9.2(r) inserted by Sixth Amending Deed Sch. Pt 3 cl. 3.5.
- ²⁶⁷ Clause 9.2(ra) amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.3.
- ²⁶⁸ Clause 9.2(ra)(ii) amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.4(a).
- ²⁶⁹ Clause 9.2(ra)(iii) amended by Twenty-first Amending Deed Sch., Pt 5 cl. 5.4(b).
- ²⁷⁰ Clause 9.2(ra)(iv) amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.4(c).
- ²⁷¹ Clause 9.2(ra)(iv) amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.4(d).
- ²⁷² Clause 9.2(ra) inserted by Twentieth Amending Deed Sch. Pt 5 cl. 5.1.
- ²⁷³ Clause 9.2(s) inserted by Sixth Amending Deed Sch. Pt 1 cl. 1.8.
- ²⁷⁴ Clause 9.2(s) substituted by Twelfth Amending Deed Sch. Pt 4 cl. 1.
- ²⁷⁵ Clause 9.2A(d)(iii) amended by Twenty-first Amending Deed Sch. Pt 1 cl. 1.1.
- ²⁷⁶ Clause 9.2A(i) amended by Twenty-first Amending Deed Sch. Pt 2.
- ²⁷⁷ Clause 9.2A inserted by Twentieth Amending Deed Sch. Pt 1 cl. 1.3.
- ²⁷⁸ Clause 9.2A(l), 9.2A(m) and 9.2A(n) inserted by Twentieth Amending Deed Sch. Pt 3 cl. 3.1.
- ²⁷⁹ Clause 9.3(a) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.9.
- ²⁸⁰ Clause 9.3(a)(i) amended by Ninth Amending Deed Annexure Pt 3 cl. 2.
- ²⁸¹ Clause 9.3(b) amended by Seventh Amending Deed.
- ²⁸² Clause 9.3(b)(i) amended by Seventh Amending Deed.
- ²⁸³ Clause 9.3(b)(i) amended by Ninth Amending Deed Annexure Pt 3 cl. 3.
- ²⁸⁴ Clause 9.4(d) substituted by Fourth Amending Deed Sch. 1 cl. 32.
- ²⁸⁵ Clause 9.6(d) amended by Fourth Amending Deed Sch. 1 cl. 33.
- ²⁸⁶ Clause 9.6(e) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.10.
- ²⁸⁷ Clause 9.12A inserted by Nineteenth Amending Deed Sch. cl. 4.2.
- ²⁸⁸ Clause 9.13A inserted by Nineteenth Amending Deed Sch. cl. 4.3.
- ²⁸⁹ Clause 9.15 inserted by Nineteenth Amending Deed Sch. cl. 2.2.
- ²⁹⁰ Clause 9.16 inserted by Nineteenth Amending Deed Sch. cl. 3.4.
- ²⁹¹ Clause 10.1(c) amended by Fourth Amending Deed Sch. 1 cl. 34.
- ²⁹² Clause 10.1(d) amended by Seventh Amending Deed.
- ²⁹³ Clause 10.1(e) inserted by Eighteenth Amending Deed Sch. Pt 1 cl. 1.8.
- ²⁹⁴ Clause 11.8(a) amended by Thirteenth Amending Deed Sch. Pt 2(a).
- ²⁹⁵ Clause 11.8(b)(iii) substituted by First Amending Deed cl. 3.3(a).
- ²⁹⁶ Clause 11.8(b)(iii) substituted by Thirteenth Amending Deed Sch. Pt 2(b).
- ²⁹⁷ Clause 11.8(d) amended by Thirteenth Amending Deed Sch. Pt 2(c).
- ²⁹⁸ Clause 11.8(d) substituted by First Amending Deed cl. 3.3(b).
- ²⁹⁹ Clause 11.8(e)(i) substituted by First Amending Deed cl. 3.3(c).
- ³⁰⁰ Clause 11.8(e)(i) amended by Thirteenth Amending Deed Sch. Pt 2(d).
- ³⁰¹ Clause 11.8(e)(i) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.2(c)(i).

- ³⁰² Clause 11.8(e)(iv) substituted by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.2(c)(ii).
- ³⁰³ Clause 12.1 amended by Fourth Amending Deed Sch. 1 cl. 35.
- ³⁰⁴ Clause 12.2(ci) inserted by Fourth Amending Deed Sch. 1 cl. 36.
- ³⁰⁵ Clause 12.2(cii) inserted by Fourth Amending Deed Sch. 1 cl. 36.
- ³⁰⁶ Clause 12.2(ciii) inserted by Fourth Amending Deed Sch. 1 cl. 36.
- ³⁰⁷ Clause 12.2(d) amended by Fourth Amending Deed Sch. 1 cl. 37(a).
- ³⁰⁸ Clause 12.2(d) amended by Fourth Amending Deed Sch. 1 cl. 37(b).
- ³⁰⁹ Clause 12.4 amended by Fourth Amending Deed Sch. 1 cl. 38.
- ³¹⁰ Clause 12.6(a) amended by Sixth Amending Deed Sch. Pt 5 cl. 6.7.
- ³¹¹ Clause 12.6(b) amended by Sixth Amending Deed Sch. Pt 5 cl. 6.8.
- ³¹² Clause 12.6 substituted by Eleventh Amending Deed Sch. Pt 2 cl. 2.
- ³¹³ Clause 12.7(e) inserted by Third Amending Deed Sch. Pt 1 cl. 1.3.
- ³¹⁴ Clause 12.8(e)(iii) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.11(a).
- ³¹⁵ Clause 12.8(e)(iii) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.11(b).
- ³¹⁶ Clause 13.1(b) amended by Fourth Amending Deed Sch. 1 cl. 39.
- ³¹⁷ Clause 13.1(b) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.3(a).
- ³¹⁸ Clause 13.2(a) amended by Fourth Amending Deed Sch. 1 cl. 40.
- ³¹⁹ Clause 13.3 is amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.5.
- ³²⁰ Clause 13.5(c) amended by First Amending Deed cl. 3.4(a).
- ³²¹ Clause 13.5(f) amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.6.
- ³²² Clause 13.5(g) inserted by First Amending Deed cl. 3.4(b).
- ³²³ Clause 13.8(a)(i)(B)(3) amended by Twelfth Amending Deed Sch. Pt 3 cl. 8.
- ³²⁴ Clause 13.8(a)(i)(B)(3) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.3(b).
- ³²⁵ Clause 13.8(a)(i)(B)(4) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.3(c).
- ³²⁶ Clause 13.8(c) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.12.
- ³²⁷ Clause 13.8(e) amended by Sixth Amending Deed Sch. Pt 1 cl. 1.13.
- ³²⁸ Clause 14.1A inserted by Fourth Amending Deed Sch. 1 cl. 42.
- ³²⁹ Refer to Table of Amendments for Table of Statements of Variation which sets out variations made under this clause.
- ³³⁰ Clause 14.3(a)(i) amended by Fourth Amending Deed Sch. 1 cl. 43(a).
- ³³¹ Clause 14.3(a)(ii) amended by Fourth Amending Deed Sch. 1 cl. 43(b).
- ³³² Clause 14.3(a)(ii) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.4(a).
- ³³³ Clause 14.3(a)(iii) amended by Fourth Amending Deed Sch. 1 cl. 43(c).
- ³³⁴ Clause 14.3(b)(ii) amended by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.4(b).
- ³³⁵ Clause 14.3(e)(iv) amended by Fifteenth Amending Deed Sch. Pt 5 cl. 5.1.
- ³³⁶ Clause 14.3(e)(vii) amended by First Amending Deed cl. 3.2(b).
- ³³⁷ Clause 14.5(b)(i) amended by Fifteenth Amending Deed Sch. Pt 3 cl. 3.7.
- ³³⁸ Clause 14.5(c) amended by Fifteenth Amending Deed Sch. Pt 3 cl. 3.8(a) and (b).
- ³³⁹ Clause 14.5(f) substituted by Fifteenth Amending Deed Sch. Pt 3 cl. 3.9.

- 340 Clause 14.5(g) inserted by Fifteenth Amending Deed Sch. Pt 3 cl. 3.9.
- 341 Clause 14.10 inserted by Fifteenth Amending Deed Sch. Pt 4.
- 342 Clause 17.1(b) amended by Fifteenth Amending Deed Sch. Pt 5 cl. 5.2.
- 343 Clause 17.3 amended by Fifteenth Amending Deed Sch. Pt 5 cl. 5.3(a) and (b).
- 344 Clause 17.6(a)(i) amended by Fifteenth Amending Deed Sch. Pt 5 cl. 5.4(a).
- 345 Clause 17.6(a)(ii) substituted by Fifteenth Amending Deed Sch. Pt 5 cl. 5.4(b).
- 346 Clause 17.7 inserted by Seventeenth Amending Deed Sch. 1 Pt 2 cl. 2.5.
- 347 Clause 18.1(b)(i) repealed by Fifteenth Amending Deed Sch. Pt 5 cl. 5.5(a).
- 348 Clause 18.1(b)(ii) amended by Fifteenth Amending Deed Sch. Pt 5 cl. 5.5(b).
- 349 Clause 19.1(c) amended by Nineteenth Amending Deed Sch. cl. 11.
- 350 Clause 19.1(c) amended by Twenty-first Amending Deed Sch. Pt 5 cl. 5.7.
- 351 Schedule 1 substituted by Second Amending Deed cl. 3.2.
- 352 Schedule 1 substituted by Third Amending Deed Sch. Pt 3 cl. 3.1.
- 353 Schedule 3 amended by Fourth Amending Deed Sch. 1 cl. 44(a).
- 354 Schedule 3 amended by Fourth Amending Deed Sch. 1 cl. 44(b).
- 355 Schedule 3 amended by Fifth Amending Deed Sch. cl. 4.
- 356 Schedule 3 substituted by Sixth Amending Deed Sch. Pt 4.
- 357 Schedule 3 amended by Ninth Amending Deed Annexure Pt 4.
- 358 Schedule 3 amended by Eleventh Amending Deed Sch. Pt 1.
- 359 Schedule 3 substituted by Twelfth Amending Deed Sch. Pt 1.
- 360 Schedule 3 amended by Thirteenth Amending Deed Sch. Pt 3.
- 361 Schedule 3 amended by Twentieth Amending Deed Sch. Pt 4 cl. 4.1.
- 362 Schedule 3 def. of "Weekend" substituted by Eighteenth Amending Deed Sch. Pt 5 cl. 5.1.
- 363 Schedule 3 cl. 5.1(a) substituted by Eighteenth Amending Deed Sch. Pt 5 cl. 5.2.
- 364 Schedule 3 cl. 5.3(b)(i) amended by Eighteenth Amending Deed Sch. Pt 5 cl. 5.3.
- 365 Schedule 3 cl. 6.1 def. of "Initial Period for Taxis" sub-para. (a)(i) amended by Eighteenth Amending Deed Sch. Pt 6 cl. 6.1.
- 366 Schedule 3 cl. 6.1 def. of "Initial Period for Taxis" amended by Nineteenth Amending Deed Sch. cl. 9.
- 367 Schedule 3 cl. 6.1 def. of "Initial Period for Taxis" amended by Thirty-first Amending Deed Annexure A
- 368 Schedule 3 cl 6.2(a) amended by Twenty-first Amending Deed Sch. Pt 3 cl. 3.1(a).
- 369 Schedule 3 cl 6.2(b) amended by Twenty-first Amending Deed Sch. Pt 3 cl. 3.1(b).
- 370 Schedule 3 cl 6.2(a) amended by Twenty-first Amending Deed Sch. Pt 3 cl. 3.1(a).
- 371 Schedule 3 cl 6.2(a) amended by Twenty-first Amending Deed Sch. Pt 3 cl. 3.1(a).
- 372 Schedule 3 cl 6.3(a) amended by Twenty-first Amending Deed Sch. Pt 3 cl. 3.1(c).
- 373 Schedule 3 cl 6.3(b) amended by Twenty-first Amending Deed Sch. Pt 3 cl. 3.1(d).
- 374 Schedule 3 cl. 7(b)(ii)(A) amended by Eighteenth Amending Deed Sch. Pt 5 cl. 5.4.
- 375 Schedule 3 cl 8.1 amended by Twentieth Amending Deed Sch. Pt 4 cl. 4.2(a).
- 376 Schedule 3 cl 8.1(a) amended by Twentieth Amending Deed Sch. Pt 4 cl. 4.2(b) and (c).
- 377 Schedule 3 cl 8.1(b) amended by Twentieth Amending Deed Sch. Pt 4 cl. 4.2(d).

- ³⁷⁸ Schedule 3 cl 8.1(ba) inserted by Twentieth Amending Deed Sch. Pt 4 cl. 4.2(e).
- ³⁷⁹ Schedule 3 cl 8.1(c) amended by Twentieth Amending Deed Sch. Pt 4 cl. 4.2(f).
- ³⁸⁰ Schedule 3 cl 8.1(d) amended by Twentieth Amending Deed Sch. Pt 4 cl. 4.2(g).
- ³⁸¹ Schedule 3 cl 8.10 inserted by Twenty-first Amending Deed Sch. Pt 1 cl. 1.2.
- ³⁸² Schedule 3 cl 8.11 inserted by Twenty-first Amending Deed Sch. Pt 3 cl. 3.2.
- ³⁸³ Appendix item 1 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).
- ³⁸⁴ Appendix item 2 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).
- ³⁸⁵ Appendix item 3 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).
- ³⁸⁶ Appendix item 4 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).
- ³⁸⁷ Appendix item 5 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).
- ³⁸⁸ Appendix item 5 column 3 amended by Seventeenth Amending Deed Sch. 1 Pt 3(b).
- ³⁸⁹ Appendix item 6 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).
- ³⁹⁰ Appendix item 7 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).
- ³⁹¹ Appendix item 11 amended by Fourth Amending Deed Sch. 1 cl. 45(c).

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- ³⁹² Appendix item 5 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).
- ³⁹³ Appendix item 5 column 4 amended by Seventeenth Amending Deed Sch. 1 Pt 3(a).