

Operating Services Agreement Direct Deed

CityLink and Exhibition Street Extension

Hon Melissa Horne MP, Minister for Roads and Road Safety for and on
behalf of the Crown in right of the State of Victoria

State

CityLink Melbourne Limited

Company

Transurban Vic Op Co Pty Limited

OpCo

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CityLink Operating Services Agreement Direct Deed dated 16 December 2024

Parties

Hon Melissa Horne MP, Minister for Roads and Road Safety for and on behalf of the Crown in right of the State of Victoria (**State**)

CityLink Melbourne Limited (ACN 070 810 678) of Tower Five, Collins Square, Level 31, 727 Collins St, Docklands VIC 3008 (**Company**)

Transurban Vic Op Co Pty Limited ACN 621 893 945 of Tower Five, Collins Square, Level 31, 727 Collins St, Docklands VIC 3008 (**OpCo**)

Background

- A. The background to the CityLink Project is set out in the Concession Deed.
- B. The background to the ESEP Project is set out in the ESEP Deed.
- C. The Company and OpCo are or will become parties to the Operating Services Agreement.
- D. OpCo has agreed to grant to the State certain rights in relation to the Operating Services Agreement.

Operative provisions

1. Defined terms and interpretation

1.1 Concession Deed and ESEP Deed definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Concession Deed and the ESEP Deed (as applicable).

1.2 Definitions

In this Deed, unless the context otherwise requires:

Additional Obligor means a company or other entity which is wholly owned by the State.

Additional Obligor Step-In Notice has the meaning given in clause 6.1(a)(iv).

Additional Obligor Step-Out Date has the meaning given in clause 6.3(d).

Adjusted Transurban Support Services Cost Profile has the meaning given in clause 10(a)(iv).

Agreed Amount has the meaning given in clause 17(a).

Associates, in respect of OpCo and the Company, has the meaning given in the Operating Services Agreement.

Assumption Date has the meaning given in clause 6.3(a).

Audit Year means each financial year during the term of the Operating Services Agreement.

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

Change in Law has the meaning given in the Operating Services Agreement.

Charge Allocation Audit Notice has the meaning given in clause 10(b).

Charge Allocation Auditor means the auditor appointed in accordance with clause 10(c).

Charge Allocation Audit Report has the meaning given in clause 10(c)(iv).

CityLink Project has the meaning given to 'Project' in the Concession Deed.

CityLink Trust has the meaning given to "Trust" in the Concession Deed.

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

- (a) in connection with the O&M Project Documents, the Concession Deed, the ESEP Deed or the Project; or
- (b) at Law or for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.

Company's Rights has the meaning given in clause 6.3(b)(i)A.

Concession Deed means the deed entitled "Agreement for the Melbourne City Link" made with effect as at and from 20 October 1995 between the State, the Company and the Trustee (and all exhibits to that deed).

Corporations Act means the Corporations Act 2001 (Cth).

Cost has the meaning given in clause 17(e).

Cost Allocation Audit Notice has the meaning given in clause 11(b).

Cost Allocation Auditor means the auditor appointed in accordance with clause 11(c).

Cost Allocation Data has the meaning given in clause 11(a).

Cost Allocation Non-Conformance has the meaning given in clause 11(b).

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Default Event means:

- (a) any breach by the Company of any of its obligations under the Operating Services Agreement; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle OpCo to terminate, rescind, accept the repudiation of, or suspend any or all of its obligations under, the Operating Services Agreement.

Disputing Parties has the meaning given in clause 13.1(a).

Distributable Cash Letter means the letter from the Company, the Trustee and Clepco to the State regarding 'Distributable Cash' dated 15 February 2019.

Expert Determination Agreement has the meaning given in the Operating Services Agreement.

GST Law has the meaning given in the GST Act.

IFA means the agreement entitled 'City Link and Extension Projects Integration and Facilitation Deed' between the State, the Company, the Trustee and Clepco.

Incident Response Services Agreement means the agreement so entitled between the Roads Corporation, established under the *Transport Act 1983* (Vic), and continued under the *Transport Integration Act 2010* (Vic) (trading as "VicRoads") and OpCo dated 1 November 2018.

Insolvency Event has the meaning given in the Operating Services Agreement.

Lease means:

- (a) each deed entitled "Deed of Lease" between the State and the Company or the Trustee (as applicable) in respect of the Project Land; and
- (b) the deed entitled "ESEP Deed of Lease" between the State and Clepco in respect of the ESEP Land.

Liability means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether under this Deed, any other O&M Project Document, the Concession Deed, the ESEP Deed or arising at Law.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each of the Company, Clepco or OpCo to perform and observe their respective obligations under the Operating Services Agreement, the Concession Deed, the ESEP Deed and any other O&M Project Document to which it is a party (as applicable); or
- (b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

OHS Legislation has the meaning given in the Operating Services Agreement.

OHS Regulations has the meaning given in the Operating Services Agreement.

O&M Activities has the meaning given in the Operating Services Agreement.

O&M Project Documents has the meaning given in the Operating Services Agreement.

OpCo Activities has the meaning given in the Operating Services Agreement.

OpCo Costs means costs incurred by OpCo in connection with the provision of goods or services under the Operating Services Agreement and the WGT Operating Services Agreement.

OpCo Direct Costs means costs incurred by OpCo in connection with the provision of goods or services under the Operating Services Agreement that are directly contracted by OpCo to third party suppliers or contractors in respect of the Project or OpCo, excluding costs charged by Transurban under the Service Agreement as the TU Direct Services Charge.

OpCo Statement has the meaning given in clause 5.4.

Operating Services Agreement means the deed entitled "Operating Services Agreement - CityLink and Exhibition Street Extension" between the Company and OpCo dated on or about the date of this Deed.

Operator OpCo Notice means the written notice from the Company to the State notifying the State that OpCo will be the Operator, and the proposed date from which this will be effective.

Principal Contractor has the meaning given in the Operating Services Agreement.

Project means:

- (a) the CityLink Project; or
- (b) the ESEP Project,

or both as the context requires.

Project Documents means the "Project Documents" (as defined in the Concession Deed) and the ESEP Project Documents.

Proposed Scope Change has the meaning given in clause 9(a).

Receiver means a receiver or receiver and manager appointed by the State under the Deed of Charge or ESEP Deed of Charge (as applicable).

Recipient has the meaning given in clause 17(b)(i).

Representatives has the meaning given in clause 13.2(a).

Responsible Entity has the meaning given in the Corporations Act.

Revenue has the meaning given in clause 17(d).

Service Agreement means the agreement entitled "Service Agreement (Victorian Assets)" entered into between OpCo and Transurban dated on or around the date of this Deed.

State Cure Notice has the meaning given in clause 5.2(a).

State Project Document means those Project Documents to which the State is a party.

Statement Beneficiary means the State, an Additional Obligor appointed under clause 6 or a Receiver.

Step-In Period has the meaning given in clause 6.1(b).

Step-In Right has the meaning given in clause 6.1(a)

Supplier has the meaning given in clause 17(b).

Transurban means Transurban Limited (ABN 96 098 143 410).

Transurban Support Services has the meaning given in the Service Agreement.

Transurban Support Services Cost Profile has the meaning given in the Service Agreement.

Trustee means Transurban Infrastructure Management Limited (ABN 27 098 147 678) in its capacity as trustee of the CityLink Trust.

TU Direct Services Charge has the meaning given in the Service Agreement.

TU Support Services Charge has the meaning given in the Service Agreement.

Victorian Government Agency means any government or any governmental, semi-governmental or administrative entity, agency or authority of the State of Victoria and includes a Minister of the Crown in right of the State of Victoria acting in connection with the Project, excluding a municipal governing body.

WGT O&M Project Document means:

- (a) the WGT Operating Services Agreement;
- (b) the WGT OSA Direct Deed; and
- (c) any other document WGT Co and OpCo agree is a WGT O&M Project Document.

WGT Operating Services Agreement has the meaning given in the Operating Services Agreement.

WGT OSA Direct Deed has the meaning given in the Operating Services Agreement.

WGT Project has the meaning given to 'Project' in the WGT Project Agreement.

WGT Project Agreement has the meaning given in the Operating Services Agreement.

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(agreement and schedule references)**: a reference to:
 - (i) a party, clause or Schedule is a reference to a party, clause or Schedule of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(agreement as amended)**: except to the extent this Deed provides otherwise, a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to a Victorian Government Agency, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy or cure)**: the use of the word "remedy" or "cure" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome;
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision;
- (t) **(application of IFA)**: where the terms in this Deed are defined by reference to the Concession Deed or ESEP Deed, those provisions will be interpreted in accordance with and subject to the provisions of the IFA; and
- (u) **(Exhibition Street Extension)**: to the extent the rights and obligations of the Company under this Deed are rights and obligations in respect of the Exhibition Street Extension, the Company is only required to exercise those rights and perform

those obligations to the extent of Clepco's rights and obligations under the ESEP Deed.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and the Operating Services Agreement, this Deed prevails.

1.5 State Project Documents

OpCo acknowledges that it has received a copy of the Concession Deed, the ESEP Deed, the Deed of Charge and the ESEP Deed of Charge.

1.6 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:

- (a) **(no additional relationship)**: create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: impose any duty of good faith on the State.

1.7 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands must be given in writing.

1.8 State's rights and obligations

- (a) **(No Claim)**: Subject to clause 1.8(b), the Company and OpCo will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (b) **(Liability for breach)**: Clause 1.8(a) does not limit any Liability which the State would have had to the Company or OpCo under any State Project Document as a result of a breach by the State of a term of any State Project Document but for clause 1.8(a).

1.9 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (i) exercise an executive or statutory right or duty of any Victorian Government Agency, or to influence, over-ride, interfere with or direct any other Victorian Government Agency in the proper exercise and performance of its executive or statutory rights and duties;
 - (ii) exercise a power or discretion in a manner that the State regards as not in the public interest;

- (iii) develop or implement new policy;
- (iv) procure legislation; or
- (v) act in any way that the State regards as not in the public interest.

1.10 Agency

- (a) The State and OpCo acknowledge that the Company enters into and will exercise its rights and perform its obligations under this Deed:
 - (i) in its own right; and
 - (ii) in relation to the Exhibition Street Extension, as the disclosed agent of Clepco.
- (b) The Company irrevocably waives any defence against Liability under this Deed on the basis that it performs its obligations as the agent of Clepco.

1.11 Clepco and the Trustee

The Company must procure that the Trustee and Clepco do not make any Claim against:

- (a) OpCo in excess of OpCo's Liability to the State and the Company under this Deed; or
- (b) the State and OpCo to the extent that the Company has released the State or OpCo (as applicable) from such Claim under this Deed.

2. Acknowledgments

2.1 By OpCo concerning the Deed of Charge and ESEP Deed of Charge

OpCo acknowledges and agrees:

- (a) **(grant of security):** that:
 - (i) the Company may give a security interest in the form of the Deed of Charge, in favour of the State over all assets and undertakings of the Company including the Company's right, title and interest under the Operating Services Agreement or assign the Company's right, title and interest under the Operating Services Agreement to the State by way of security, and OpCo consents to the Deed of Charge and any such assignment; and
 - (ii) Clepco may give a security interest in the form of the ESEP Deed of Charge, in favour of the State over all assets and undertakings of Clepco including Clepco's right, title and interest under the Operating Services Agreement or assign Clepco's right, title and interest under the Operating Services Agreement to the State by way of security, and OpCo consents to the ESEP Deed of Charge and any such assignment;
- (b) **(exercise of rights):** to the State's rights under the Deed of Charge and the ESEP Deed of Charge including the appointment by the Company and Clepco (as applicable) of the State as attorney of the Company and Clepco (as applicable) to do, perform and exercise all things, acts and rights under the Operating Services Agreement on behalf of and for the account of the Company, subject to the terms of the Deed of Charge and the ESEP Deed of Charge (as applicable);

- (c) **(no Default Event)**: that the grant of, or exercise by the State of its rights under, the Deed of Charge and the ESEP Deed of Charge will not itself contravene, or constitute a Default Event under, the Operating Services Agreement or entitle OpCo to exercise any right (including termination) under it;
- (d) **(Liabilities and obligations)**: that nothing in the Deed of Charge and the ESEP Deed of Charge will cause the State or any Victorian Government Agencies to assume any Liabilities or obligations under the Operating Services Agreement except as may result from its own acts or omissions in exercising rights or in performing or failing to perform obligations under the Operating Services Agreement as envisaged by this Deed, the Deed of Charge and the ESEP Deed of Charge (as applicable);
- (e) **(notice of any other assignment)**: that, with the exception of any security interests under the Lending Documents, it has not received notice of any other assignment or charge by the Company of any right, title, interest in or benefit of the Company under the Operating Services Agreement; and
- (f) **(set off)**: that as of the date of this Deed, it has no knowledge of any right of set off or counterclaim which it may have against the Company so as to diminish any money payable by it to the Company under the Operating Services Agreement, except only where the right of set off or counterclaim is contained within the Operating Services Agreement.

2.2 By OpCo concerning the State's rights

- (a) **(State's rights)**: OpCo acknowledges the State's rights under clauses 2.4(e), 3.4AA to 3.4AQ, 4.11, 9.11, 9.12, 9.13, 9.13A, 10.9, 10.10 10.11, 13.4, 13.5, 13.6, 14.2C, 15 and 19.3 of the Concession Deed and clauses 2.4(e), 3.3AA to 3.3AQ, 4.10, 9.11, 9.12, 9.13, 9.13A, 10.6, 10.7, 10.8, 13.3, 13.4, 13.5, 14.2A, 15 and 19.3 of the ESEP Deed.
- (b) **(Continued performance)**: During the period in which the State is exercising a right referred to in clause 2.2(a), the State may, to the extent permitted by and, in accordance with the Concession Deed and the Operating Services Agreement, require the suspension or the continuation of performance by OpCo of its obligations under the Operating Services Agreement to the extent such obligations are impacted by the exercise of the State's right, and if it does so, OpCo will comply with this requirement and with all reasonable directions of the State in relation to the performance of the relevant obligations under the Operating Services Agreement by OpCo during such period.
- (c) **(State not liable)**: The requirement of the State that OpCo suspend or continue to perform its obligations under the Operating Services Agreement and the giving of any direction under clause 2.2(b) by the State will not be construed as an assumption by the State of any obligations of OpCo under the Operating Services Agreement.
- (d) **(Facilitation of rights)**: OpCo must exercise its rights under the Operating Services Agreement in a way that facilitates the effective exercise by the State of the rights referred to in clause 2.2(a) and will on reasonable notice permit the State or a Victorian Government Agency to have access to, and take copies of, the records, reports, documents and other papers prepared or kept by OpCo to which the State is entitled to have access in accordance with the State's rights referred to in clause 2.2(a).
- (e) **(Subcontracting)**: Other than in accordance with this Deed, OpCo will not enter into a Material Subcontract or a Service Agreement without the prior consent of the State (such consent not to be unreasonably withheld or delayed), where such

consent is required in accordance with clause 10.11 of the Concession Deed or clause 10.8 of the ESEP Deed (as applicable).

- (f) **(Other dealing)**: Other than in accordance with this Deed, OpCo must not amend, terminate, rescind, novate or assign any Material Subcontract or the Service Agreement without the State's prior consent (such consent not to be unreasonably withheld or delayed).
- (g) **(State consent)**: The State will not withhold its consent to any matter contemplated by clause 2.2(e) or clause 2.2(f) to which it has consented in accordance with the Concession Deed or the ESEP Deed (as applicable).

2.3 By the Company

The Company is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only OpCo and the State and does not in any way affect any obligation of the Company under the Operating Services Agreement or under any Project Document except as expressly set out herein.

2.4 Information

The Company and OpCo each acknowledge and agree that:

- (a) **(information purpose)**: any information, data and documents provided by the State:
 - (i) are provided for information purposes only and all of the State and any Victorian Government Agencies' Intellectual Property Rights therein remain the property of the State or a Victorian Government Agency (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or any Victorian Government Agency; and
- (b) **(no Liability)**: to the extent permitted by Law, neither the State nor any Victorian Government Agency will have any Liability to OpCo or any OpCo Associate, nor will OpCo or any OpCo Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any Victorian Government Agency arising in connection with:
 - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 2.4(a) by OpCo, or any other person to whom such information is disclosed by OpCo, OpCo Associates or any person on OpCo or any OpCo Associate's behalf;
 - (ii) any reference to the State in the Operating Services Agreement; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Operating Services Agreement by the State.

2.5 Subcontract not to affect State rights

- (a) The Company and OpCo each acknowledge and agree that:
 - (i) **(rights not affected)**: where OpCo is expressed in the Operating Services Agreement to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the

Concession Deed or the ESEP Deed or an equivalent or similar right of the Company or Clepco (as applicable):

- A. this does not of itself expand the Company's Rights under the Operating Services Agreement, or the State's Liability under the Concession Deed and the ESEP Deed (as applicable) to include the compensation or relief to which OpCo is or may become entitled under the Operating Services Agreement; and
 - B. the Company's Rights, and the State's Liability under the Concession Deed and the ESEP Deed (as applicable), will be determined solely in accordance with the terms of the Operating Services Agreement, the Concession Deed and the ESEP Deed (as applicable);
- (ii) **(risk of discrepancy):** as between the State (on the one hand) and the Company, Clepco and OpCo (on the other hand), the Company, Clepco and OpCo accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Operating Services Agreement, the Concession Deed and the ESEP Deed; and
- (iii) **(dealing directly with State):** notwithstanding anything to the contrary in the Operating Services Agreement, OpCo has no right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
- A. expressly provided to the contrary in the Concession Deed, the ESEP Deed or this Deed; or
 - B. the State consents.
- (b) **(No novation of Service Agreement):** The State acknowledges and agrees that, notwithstanding anything to the contrary in the Concession Deed or the ESEP Deed, the Company is not required, at any time, to novate the Service Agreement to the State.

3. Representations and warranties by OpCo

OpCo represents and warrants for the benefit of the State that:

- (a) **(power to execute):** it has the power to execute, deliver and carry out its obligations under this Deed, the Operating Services Agreement and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality):** the execution, delivery and performance of this Deed, the Operating Services Agreement and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity):** this Deed, the Operating Services Agreement and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration):** it is duly registered, properly constituted and remains in existence;

- (e) **(no trust relationship):** except as stated in this Deed, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) **(information true and correct):** as at the date of this Deed, all information provided by it to the State is true and correct and OpCo is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the Operating Services Agreement;
- (g) **(litigation):** as at the date of this Deed, no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the Operating Services Agreement or any other Project Document to which it is a party;
- (h) **(Insolvency Event):** as at the date of this Deed, no Insolvency Event has occurred in respect of it;
- (i) **(accounts):**
 - (i) its most recent consolidated audited (if the requirement for auditing is applicable) accounts as at the date of this Deed, give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (ii) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (iii) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia which are consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (j) **(no default):** as at the date of this Deed:
 - (i) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (ii) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement,and which would have a Material Adverse Effect;
- (k) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution; and
- (l) **(own investigations):** in entering into this Deed, the Operating Services Agreement and any other Project Document to which it is a party, it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, the Company or any other person unless in respect of the Company or any other person, other than the State or any Victorian Government Agency, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

4. Undertakings of OpCo

4.1 Undertakings

OpCo undertakes to the State as follows:

- (a) **(notification of Default Event):** it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with clause 28.5(b) (*Suspension and termination by OpCo*) of the Operating Services Agreement;
- (b) **(documents in relation to Default Event):** it will promptly give the State a copy of all documents issued by OpCo to the Company in relation to a Default Event;
- (c) **(no amendment without consent):** other than in accordance with this Deed, it will not, without first obtaining the consent of the State:
 - (i) amend or allow any amendment to;
 - (ii) subject to clause 5.2, terminate or rescind or allow the termination or rescission of; or
 - (iii) novate or assign or allow the novation or assignment of,

the Operating Services Agreement, provided that the State will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Concession Deed or the ESEP Deed (as applicable);
- (d) **(deed of accession):** it will not novate, assign or substitute any of its rights, obligations or interest in the Operating Services Agreement without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were OpCo;
- (e) **(attend meetings and inspections):** it will (when reasonably requested by the State):
 - (i) attend, where reasonable and appropriate, meetings with the State or any Victorian Government Agency;
 - (ii) provide the State, any Victorian Government Agency and authorised personnel with:
 - A. full access to the Project Land to the extent provided in the Concession Deed and the ESEP Deed (as applicable), in each case to the extent that OpCo is granted access under the Operating Services Agreement; and
 - B. any other information, records or documents that the State or any Victorian Government Agency (acting reasonably) requires in relation to the carrying out of the OpCo Activities or compliance with the Operating Services Agreement or any information required by the State to comply with requests from the Victorian Auditor-General, to the extent the State is entitled to receive such information, records or documents under the Concession Deed and the ESEP Deed (as applicable); and

- (iii) to the extent provided in the Concession Deed and the ESEP Deed (as applicable), permit the State or any Victorian Government Agency to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Operating Services Agreement; and
- (f) **(access to records):** at the request of the State, OpCo will:
 - (i) permit the State or any Victorian Government Agency to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by OpCo in relation to the OpCo Activities and the Project, to the extent the State is entitled to inspect such records, reports, plans, programs, specifications and design documents under the Concession Deed and the ESEP Deed (as applicable); and
 - (ii) supply the State or any Victorian Government Agency with a copy of any such report or document which they may require from time to time, to the extent the State is entitled to receive a copy of such report or document under the Concession Deed and the ESEP Deed (as applicable).

4.2 Appointment of Principal Contractor

- (a) **(Appointment of OpCo):** Subject to clause 4.2(b), on and from the Date of West Gate Tunnel Completion:
 - (i) the State appoints OpCo to perform or ensure the performance of the role of Principal Contractor in respect of any "construction project" which meets the applicable threshold under the OHS Regulations undertaken in connection with the O&M Activities; and
 - (ii) the State authorises OpCo to manage and control the worksites on which the O&M Activities will be performed (and for which the State is the owner for the purposes of the OHS Regulations) to the extent necessary to discharge the duties of a Principal Contractor under OHS Legislation; and
 - (iii) OpCo accepts the appointment as, and agrees to comply with the obligations of, a Principal Contractor under the OHS Legislation in respect of any "construction project" which meets the applicable threshold under the OHS Regulations undertaken in connection with the O&M Activities.
- (b) **(Appointment of alternative Principal Contractor):**
 - (i) If another person has the capability and resources to comply with the duties of Principal Contractor under OHS Legislation in respect of any "construction project" referred to in clause 4.2(a), OpCo may:
 - A. nominate that person to be appointed as Principal Contractor in respect of that "construction project" and notify that person of their appointment by operation of this Deed; and
 - B. authorise that person to manage or control the worksites on which the O&M Activities will be performed (and for which the State is the owner for the purposes of the OHS Regulations), or part thereof, to the extent necessary to discharge the duties of a Principal Contractor under OHS Legislation in respect of that "construction project".

- (ii) In respect of any Principal Contractor appointment under clause 4.2(b)(i)A, OpCo must ensure that the person nominated:
 - A. accepts the appointment as, and complies with the obligations of, a person appointed as Principal Contractor under the OHS Legislation;
 - B. accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Law which occurs after the date of this Deed; and
 - C. is able to discharge the obligations required of a Principal Contractor.
- (iii) In respect of any Principal Contractor appointment under clause 4.2(b)(i)A, if, for any reason, the entity identified as appointed as Principal Contractor is determined at Law to not be validly appointed within the meaning of and for the purposes of the OHS Legislation, on and from the Date of West Gate Tunnel Completion, OpCo is hereby taken to have been appointed as Principal Contractor in accordance with clause 4.2(a), in respect of the "construction project", from its commencement, and OpCo accepts that appointment.

5. Right to cure before termination of Operating Services Agreement

5.1 State's cure rights

- (a) **(Provide State with notices):** OpCo must give State Cure Notices to the State as required by clause 5.2.
- (b) **(State Cure Notice):** On receiving a State Cure Notice, the State may (but is not obliged to) take steps to:
 - (i) remedy, or procure the remedy of, that Default Event; or
 - (ii) if the Default Event is not capable of remedy, commence and continue to perform the obligations of the Company under the Operating Services Agreement, provided that if the State Cure Notice contains a Claim for reasonable compensation for the Default Event and the Company or the State (or another person on behalf of either of them) pays or otherwise provides that compensation (or any other compensation determined pursuant to an expert determination under clause 13.3) to OpCo the State must promptly cease to perform the obligations of the Company under the Operating Services Agreement.

5.2 Termination or suspension with cause

OpCo may only exercise a right to terminate, rescind, accept the repudiation of, or (subject to clause 5.3) suspend the performance of any or all of its obligations under the Operating Services Agreement if:

- (a) **(prior notice):** OpCo has given to the State prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 5.4 **(State Cure Notice)**; and
- (b) **(Default Event remedy):** where:

- (i) the Default Event is capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice, the Default Event has not been remedied within that 20 Business Day period;
- (ii) the Default Event is not capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice but is nevertheless capable of remedy, the State (or an Additional Obligor appointed under clause 6 or Receiver) has not commenced remedying the Default Event within that 20 Business Day period and has not continued to diligently pursue that remedy;
- (iii) the Default Event is not capable of remedy and the State Cure Notice contains a Claim for reasonable compensation (or a method for determining reasonable compensation) for the Default Event, the Company or the State (or another person on behalf of either of them) has not paid or otherwise provided that compensation to OpCo:
 - A. to the extent that the relevant amount of compensation or the method for determining the compensation has been referred to expert determination under clause 13.3, within 20 Business Days after that dispute is resolved; or
 - B. otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
- (iv) the Default Event is not capable of remedy and the State Cure Notice does not contain a Claim for reasonable compensation (or a method for determining reasonable compensation) for the Default Event, the State (or an Additional Obligor appointed under clause 6 or Receiver) does not commence and continue to perform the Company's obligations under the Operating Services Agreement within 20 Business Days after the date on which the State received the State Cure Notice; or
- (v) the State notifies OpCo, within 20 Business Days after the date on which the State receives the State Cure Notice, that it elects not to remedy, or procure the remedy of, the Default Event.

5.3 Early suspension of OpCo's obligations

If:

- (a) **(right to suspend):** OpCo, but for the operation of clause 5.2, would have a right to suspend the performance of its obligations under the Operating Services Agreement;
- (b) **(State Cure Notice):** OpCo has issued a State Cure Notice to the State with respect to that Default Event;
- (c) **(dispute, non-payment or expired period):** either:
 - (i) the State has not undertaken to pay to OpCo the amounts payable under the Operating Services Agreement within 20 Business Days from the date of receipt of the State Cure Notice or, if the State refers the amounts in the State Cure Notice to dispute, within 20 Business Days of the dispute being determined; or
 - (ii) the State has undertaken to pay OpCo such amounts for a stated period and that period has expired without being extended by the State (acting reasonably); and

- (d) **(not remedied)**: the Default Event has not otherwise been remedied, then OpCo may suspend performance of its obligations under the Operating Services Agreement.

5.4 OpCo Statements

As part of any State Cure Notice, OpCo must include a statement of:

- (a) **(amounts due and payable)**: all amounts due and payable to OpCo under the Operating Services Agreement on or before the date of the State Cure Notice but remaining unpaid at such date;
- (b) **(monetary claim)**: the nature and, to the best of OpCo's knowledge and belief, the amount of any monetary Claim asserted by OpCo arising in connection with the Operating Services Agreement against the Company; and
- (c) **(intention to terminate)**: where OpCo intends to terminate the Operating Services Agreement due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:
- (i) the provisions of the Operating Services Agreement alleged to have been breached or not fulfilled;
 - (ii) sufficient information to enable the State to identify the material facts;
 - (iii) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
 - (iv) the time within which the specified steps can reasonably be expected to be taken;
 - (v) if applicable, the amount of damages claimed and the manner in which they have been calculated; and
 - (vi) if applicable, the other relief to be sought,

(being the **OpCo Statement**).

5.5 Warranty of accuracy and waiver

OpCo:

- (a) **(warranty)**: warrants to the State that each OpCo Statement will, subject to unintended error which OpCo agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which OpCo considers itself entitled; and
- (b) **(waiver)**: waives and abandons all Claims then known or which ought reasonably to have been known to OpCo arising in connection with the Operating Services Agreement prior to the date of the State Cure Notice other than the Claims disclosed in the OpCo Statement.

5.6 Verification of OpCo Statements

The State may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of the Company) an OpCo Statement, and OpCo must, subject to such persons executing an appropriate confidentiality agreement as OpCo may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not subject

to legal (including solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such OpCo Statement.

5.7 OpCo Statements to be conclusive evidence

- (a) **(Reliance)**: Each Statement Beneficiary is entitled to rely on an OpCo Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a Statement Beneficiary.
- (b) **(Conclusive evidence)**: An OpCo Statement will be conclusive evidence in favour of any Statement Beneficiary that OpCo has waived and abandoned all Claims then known or which ought reasonably to have been known to OpCo arising in connection with the Operating Services Agreement prior to the date of the State Cure Notice other than the Claims disclosed in the OpCo Statement.
- (c) **(Claims against the Company)**: Clauses 5.7(a) and 5.7(b) are without prejudice to the rights of OpCo to pursue any Claims against the Company following the end of the Step-In Period or termination of the Operating Services Agreement.
- (d) **(Disputes)**: For the avoidance of doubt, an OpCo Statement will not prevent any Statement Beneficiary from disputing the amount of any Claim or other relief sought by OpCo or the existence of any default by the Company under the Operating Services Agreement. In the case of any such dispute:
 - (i) the relevant Statement Beneficiary must pay the amount or perform the obligations (if any) not in dispute in accordance with this Deed and the Operating Services Agreement;
 - (ii) the dispute must be referred to dispute resolution under clauses 13 and 14; and
 - (iii) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the O&M Project Documents and Project Documents to which they are a party.

6. Step-In by the State

6.1 Step-In Right

- (a) **(Exercise)**: Following receipt of a State Cure Notice the State may:
 - (i) if permitted under the Master Security Deed and Deed of Charge and ESEP Deed of Charge (as applicable), appoint a Receiver over the Company or Clepco or any or all of their respective assets (including the Operating Services Agreement) (as applicable);
 - (ii) itself enter into possession of any or all of the assets of the Company or Clepco (as applicable);
 - (iii) take such other action as it is permitted to take under the terms of the Deed, the ESEP Deed and the Operating Services Agreement; or
 - (iv) by notice to OpCo **(Additional Obligor Step-In Notice)**, procure that an Additional Obligor assumes jointly and severally with the Company all of the Company's Rights and obligations under the Operating Services Agreement,

(each a **Step-In Right**).

- (b) **(Step-In Period):** The period from the earlier of the date on which OpCo receives notice of the exercise of any Step-In Right and the date on which the State first exercises any Step-In Right to the earliest of:
- (i) the Additional Obligor Step-Out Date;
 - (ii) the date on which OpCo terminates the Operating Services Agreement;
 - (iii) the date which the State has notified OpCo that the State will cease to exercise its Step-In Rights; and
 - (iv) any other date on which the State ceases to continue to exercise its Step-In Rights,
- is the **Step-In Period**.
- (c) **(Acknowledgment):** OpCo acknowledges that the exercise by the State of a Step-In Right will not of itself contravene the Operating Services Agreement, or constitute a Default Event under the Operating Services Agreement or entitle OpCo to exercise any right (including termination) under the Operating Services Agreement.

6.2 Step-In by the State

- (a) **(Rights):** The State may at any time after it has become entitled to exercise a Step-In Right, exercise all or any of its rights and carry out all or any of the obligations of the Company in connection with the Operating Services Agreement, as if it were the Company to the exclusion of the Company.
- (b) **(No Liability):** The Company and OpCo each agree that, subject to clause 6.3(b) of this Deed, neither the State nor any Victorian Government Agency will have any Liability, and none of the Company and OpCo will be entitled to make, continue or enforce any Claim against the State or any Victorian Government Agency arising in connection with the Operating Services Agreement or this Deed by reason only of the State or any Victorian Government Agency exercising any of the Company's Rights, or performing any of the Company's obligations under the Operating Services Agreement other than, and then only to the extent of, Liability for reckless, unlawful or malicious acts or omissions of the State or any Victorian Government Agency.

6.3 Step-In using Additional Obligor

- (a) **(Assumption Date):** The Additional Obligor will become a party to the Operating Services Agreement on the date on which the Additional Obligor Step-In Notice is given to OpCo or such later date as OpCo and the State may agree (**Assumption Date**).
- (b) **(Rights and obligations of Additional Obligor):** During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 6.1(a)(iv):
- (i) subject to clause 6.3(b)(ii), the Additional Obligor will be jointly and severally:
 - A. entitled with the Company to exercise the rights of the Company under the Operating Services Agreement (excluding any accrued rights of the Company in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**the Company's Rights**); and

- B. liable with the Company for the performance or non-performance of all the Company's obligations under the Operating Services Agreement arising on or after the Assumption Date except as released in accordance with clause 6.3(e);
- (ii) as between the Company, OpCo and the Additional Obligor, only the Additional Obligor is authorised to deal with OpCo and to exercise the Company's Rights;
- (iii) the Company acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with OpCo and in exercising the Company's Rights;
- (iv) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
- (v) clause 18 will apply to OpCo and the Additional Obligor as if the address and email address of the Additional Obligor were set out in addition to those of the Company; and
- (vi) OpCo will owe its obligations under the Operating Services Agreement to the Company and the Additional Obligor jointly but the performance by OpCo in favour of either the Company or the Additional Obligor will be a good discharge of the relevant obligations under the Operating Services Agreement.
- (c) **(No Liability):** Without prejudice to OpCo's rights under clauses 5.2 and 5.3, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of the Company under the Operating Services Agreement arising prior to the Assumption Date.
- (d) **(Additional Obligor Step-Out Date):** The Additional Obligor may at any time give OpCo not less than 30 days' notice terminating the Additional Obligor's rights or obligations under the Operating Services Agreement (without affecting the continuation of the Company's obligations or liabilities towards OpCo under the Operating Services Agreement). Such notice must specify the date on which it takes effect, which must be at least 30 days after the date of the notice (**Additional Obligor Step-Out Date**).
- (e) **(Release):** On and from the Additional Obligor Step-Out Date, between OpCo and the Additional Obligor, OpCo and the Additional Obligor will be released from all obligations under the Operating Services Agreement (except for those obligations which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed.

6.4 Indemnity

The Company must indemnify the State, Victorian Government Agencies and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any Victorian Government Agency or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 6.2 or clause 6.3, except to the extent that such Claim or Liability is caused or contributed to by:

- (a) a negligent, wilful, unlawful, malicious or reckless act or omission of the State, its nominees or contractors, a Victorian Government Agency or any Additional Obligor;

- (b) any breach by the State, its nominees or contractors, a Victorian Government Agency or any Additional Obligor of any State Project Document;
- (c) an Appendix Event, but only to the extent that the Company, the Trustee or Clepco (as applicable) is entitled to relief in connection with the relevant event in accordance with the Concession Deed or the ESEP Deed (as applicable);
- (d) the Company, the Trustee or Clepco complying strictly with a direction from the State (except to the extent that the direction is a direction to comply with a Project Document, is permitted in accordance with a Project Document or was given as a result of a breach of a Project Document by the Company, the Trustee or Clepco (as applicable) provided that prior to complying with the direction:
 - (i) the Company notified the State that, in its opinion, compliance with the direction may directly result in a Claim or Liability that would otherwise be the subject of an indemnity by the Company to the State; and
 - (ii) notwithstanding having received the notification referred to in clause 6.4(d)(i), the State confirms that the Company, the Trustee or Clepco (as applicable) should comply with the direction; or
- (e) a failure by the State to use all reasonable endeavours to mitigate the extent or consequences of the Claim or Liability.

7. Restrictions on OpCo

- (a) **(Restrictions):** OpCo must not:
 - (i) conduct any business other than:
 - A. the Project and the carrying out of its obligations and the exercise of its rights under the O&M Project Documents; and
 - B. the WGT Project and the carrying out of its obligations and the exercise of its rights under the WGT O&M Project Documents;
 - (ii) acquire or hold any property or incur any Liability other than for the purposes of the WGT Project or the Project;
 - (iii) enter into contracts with the Company, the Trustee or Clepco (other than Project Documents or O&M Project Documents), or with another member of the Transurban Group (other than the Service Agreement) insofar as it relates to the provision of goods or services the costs of which will be allocated to the Company;
 - (iv) assume or permit to subsist any Liability in favour of the Company, the Trustee or Clepco (other than pursuant to a Project Document or an O&M Project Document) or with another member of the Transurban Group (other than pursuant to the Service Agreement) insofar as it relates to the provision of goods or services the costs of which will be allocated to the Company;
 - (v) undertake any OpCo Activities that are equivalent to the Transurban Support Services, or direct or allow Transurban to undertake any Transurban Support Services in respect of the Project, prior to the Date of West Gate Tunnel Completion; or

- (vi) issue a proposal to Transurban or direct Transurban to decrease, omit, delete or remove work or services from the scope of the Transurban Support Services in accordance with clause 6.2 of the Service Agreement,
- without the State's prior written consent.
- (b) **(Consent):** The State must not:
 - (i) unreasonably withhold its consent under clause 7(a)(iii) or clause 7(a)(iv) if the relevant transaction is on arm's length commercial terms;
 - (ii) unreasonably withhold or delay its consent under clause 7(a)(v);
 - (iii) withhold its consent under clause 7(a)(vi) where, at the time the request for the State's consent is made by OpCo, the TU Support Services Charge is less than or equal to the Transurban Support Services Cost Profile at that time; or
 - (iv) where clause 7(b)(iii) does not apply, unreasonably withhold or delay its consent under clause 7(a)(vi).
- (c) **(Deemed consent):** The parties acknowledge and agree that by entering into this Deed, the State is deemed to have consented to the following agreements and the transactions contemplated by them as at the date of this Deed, to the extent such agreements or the transactions contemplated by them require the State's consent under this Deed:
 - (i) the Network Tolling Agreement;
 - (ii) the Incident Response Services Agreement; and
 - (iii) the Service Agreement.

7A Loss of Synergies

The parties acknowledge and agree to clause 9.2 of the WGT OSA Direct Deed.

8. Adjustment to cost profile for cost increases

- (a) **(State consent):** Unless otherwise expressly provided in this Deed, OpCo must not amend, change or vary the Transurban Support Services Cost Profile.
- (b) **(OpCo request):** OpCo may, at any time, request State consent (which will not be unreasonably withheld or delayed) to change the Transurban Support Services Cost Profile where OpCo reasonably believes that:
 - (i) the cost incurred by Transurban in the provision of the Transurban Support Services under the Service Agreement has, at that time, exceeded the Transurban Support Services Cost Profile (to that same point in time) by greater than 10% in aggregate; or
 - (ii) the cost to be incurred by Transurban in the provision of the Transurban Support Services under the Service Agreement is likely, at a future point in time, to exceed the Transurban Support Services Cost Profile (to that same point in time) by greater than 10% in aggregate.
- (c) **(Information provided by OpCo):** Where OpCo requests the State's consent under clause 8(b), OpCo must provide reasonably detailed information to

demonstrate to the State's satisfaction (acting reasonably) that the cost incurred or to be incurred by Transurban in the provision of the Transurban Support Services under the Service Agreement exceeds or is likely to exceed the Transurban Support Services Cost Profile by greater than 10% in aggregate.

- (d) **(Request for further information):** The State may request, and OpCo must provide, any further information reasonably required by the State in relation to a request made by OpCo under clause 8(b).
- (e) **(Current Transurban Support Services Cost Profile):** Where the State does not consent to the proposed change to the Transurban Support Services Cost Profile in a response to a request under clause 8(b), the current Transurban Support Services Cost Profile will continue to apply.

9. Adjustment to cost for profile for scope changes

- (a) **(Proposed Change to Transurban Support Services):** OpCo may, in its absolute discretion at any time, request State consent (not to be unreasonably withheld or delayed) to change the Transurban Support Services Cost Profile as a result of a change to the scope of the Transurban Support Services (if any) **(Proposed Scope Change)**.
- (b) **(Notice requirements):** Where OpCo requests the State's consent under clause 9(a), OpCo must provide details of:
 - (i) the Proposed Scope Change; and
 - (ii) the proposed change to the Transurban Support Services Cost Profile as a result of the Proposed Scope Change.
- (c) **(Request for further information):** The State may request, and OpCo must provide, any further information reasonably required by the State in relation to a request made by OpCo under clause 9(a).
- (d) **(Current Transurban Support Services Cost Profile):** Where the State does not consent to the proposed change to the Transurban Support Services Cost Profile in a response to a request under clause 9(a), the current Transurban Support Services Cost Profile will continue to apply.

10. Adjustment to cost profile for partial termination

- (a) **(Notification to State):** If there is a partial termination of the Service Agreement:
 - (i) with respect to the WGT Project under clause 27(a) of the Service Agreement; or
 - (ii) with respect to the Project under clause 27(b) of the Service Agreement,then, in each case, OpCo must:
 - (iii) determine the amount by which the Transurban Support Services Cost Profile is to be reduced, which amount:
 - A. must reflect, at that time, the fixed cost profile of the Transurban Support Services that are no longer required to be provided by Transurban under the Service Agreement; and
 - B. may have regard to any loss of synergies arising from the partial termination of the Service Agreement, to the extent

such losses have not been compensated by OpCo pursuant to clause 30.1 or clause 30.2 of the Service Agreement (as applicable); and

- (iv) promptly notify the State of both the partial termination of the Service Agreement and the adjusted Transurban Support Services Cost Profile (**Adjusted Transurban Support Services Cost Profile**).
- (b) **(State may audit):** The State may, within 20 Business Days of receipt of the Adjusted Transurban Support Services Cost Profile, notify OpCo that it requires an audit of the allocation of the TU Support Services Charge between the WGT Project and the Project for the immediately preceding 12 month period (**Charge Allocation Audit Notice**).
- (c) **(Charge Allocation Auditor):** If the State gives a Charge Allocation Audit Notice in accordance with clause 10(b):
 - (i) the State will appoint, and notify OpCo of, the Charge Allocation Auditor, at the State's cost and on terms and conditions of appointment determined by the State;
 - (ii) OpCo must, within a reasonable period, make the allocation of the TU Support Services Charge between the WGT Project and the Project for the immediately preceding 12 month period (including information supporting the basis for that allocation) available for audit by the Charge Allocation Auditor and provide all reasonable assistance to the Charge Allocation Auditor;
 - (iii) OpCo must provide such access to its senior management as the Charge Allocation Auditor may reasonably require for the purpose of conducting its functions;
 - (iv) the Charge Allocation Auditor must complete the audit and its report (**Charge Allocation Audit Report**) within 30 Business Days of receiving all relevant information from OpCo; and
 - (v) the State must provide to OpCo a copy of the Charge Allocation Audit Report within 5 Business Days of the State's receipt of the report.
- (d) **(Good faith negotiations):** If, within 20 Business Days after the later of:
 - (i) receipt by the State of the Adjusted Transurban Support Services Cost Profile; or
 - (ii) receipt by the State of the Charge Allocation Audit Report,the State notifies OpCo that it rejects the Adjusted Transurban Support Services Cost Profile, then OpCo and the State must negotiate in good faith to agree the adjustments to the Transurban Support Services Cost Profile by applying the principles outlined in clause 10(a)(iii) and OpCo and the State may, where a Charge Allocation Audit Report has been prepared, have regard to that report.
- (e) **(Dispute resolution):** If the parties are unable to agree the adjustments to the Transurban Support Services Cost Profile within 20 Business Days of commencing the good faith negotiations referred to in clause 10(d)10(c), then OpCo or the State may refer the matter to dispute resolution under clauses 13 and 14.
- (f) **(Outcomes):** If:

- (i) the State does not issue a notice to OpCo in accordance with clause 10(d), then the Adjusted Transurban Support Services Cost Profile notified to the State by OpCo in accordance with clause 10(a) will be taken to be the Transurban Support Services Cost Profile under the Service Agreement with effect from the date of OpCo's notice; or
- (ii) the State does issue a notice to OpCo in accordance with clause 10(d) and the parties agree the adjustments to the Transurban Support Services Cost Profile in accordance with clause 10(d), then the adjusted Transurban Support Services Cost Profile agreed by the State and OpCo will be taken to be the Transurban Support Services Cost Profile under the Service Agreement with effect from the date of that agreement; or
- (iii) neither the State nor OpCo refers the matter to dispute resolution in accordance with clause 10(e), then the Adjusted Transurban Support Services Cost Profile notified to the State by OpCo in accordance with clause 10(a) will be taken to be the Transurban Support Services Cost Profile under the Service Agreement with effect from the date of OpCo's notice; or
- (iv) the matter is referred to dispute resolution in accordance with clause 10(e), then the Transurban Support Services Cost Profile determined by the dispute resolution process will be taken to be the Transurban Support Services Cost Profile under the Service Agreement with effect from the date of the determination.

11. OpCo Cost Audit

- (a) **(Cost Allocation Data):** Within 30 Business Days after the conclusion of each Audit Year, OpCo must provide to the State such information as is reasonably required to demonstrate how OpCo Costs in that Audit Year have been allocated between the WGT Project and the Project (**Cost Allocation Data**).
- (b) **(Cost Allocation Non-Conformance):** Subject to clause 11(e), if, based on the Cost Allocation Data, the State believes that:
 - (i) the costs charged by OpCo to the Company under the Operating Services Agreement in respect of:
 - A. the TU Direct Services Charge; and
 - B. OpCo Direct Costs,do not relate solely to the operations of the Project or OpCo;
 - (ii) the OpCo Direct Costs and / or the TU Direct Services Charge include items which have been included in the scope of Transurban Support Services and included in the Transurban Support Services Cost Profile; or
 - (iii) the cost allocation from OpCo to the Company is more onerous (in a material respect) than would have been the case under an arm's length arrangement,

(Cost Allocation Non-Conformance), the State may give notice to OpCo requiring an audit of the allocation of the OpCo Costs (**Cost Allocation Audit Notice**).
- (c) **(Cost Allocation Auditor):** If the State gives a Cost Allocation Audit Notice:

- (i) subject to clause 11(d)(iii), the State will appoint, and notify OpCo of, the Cost Allocation Auditor, at the State's cost and on terms and conditions of appointment determined by the State;
 - (ii) OpCo must, within a reasonable period, make the OpCo Costs and the Cost Allocation Data available for audit by the Cost Allocation Auditor and provide all reasonable assistance to the Cost Allocation Auditor; and
 - (iii) OpCo must provide such access to its senior management as the Cost Allocation Auditor may reasonably require for the purpose of conducting its functions.
- (d) **(Good faith negotiations):** If the report of the Cost Allocation Auditor determines, with relevant supporting evidence, that there is a Cost Allocation Non-Conformance and neither the State nor OpCo initiates a dispute in relation to the report in accordance with clause 13, then:
 - (i) as soon as practicable, but no later than 20 Business Days after the report of the Cost Allocation Auditor is received by OpCo and the State, OpCo and the State must negotiate in good faith to agree the notional reallocation of the OpCo Costs between the WGT Project and the Project, having regard to the report of the Cost Allocation Auditor;
 - (ii) the notional reallocation of the OpCo Costs for the relevant Audit Year as agreed between the parties in accordance with clause 11(d)(i) or as determined by the independent expert in accordance with clause 13 will apply for the purposes of paragraph 4(i) of the Distributable Cash Letter; and
 - (iii) where the auditor determines that there has been a Cost Allocation Non-Conformance which is not immaterial, OpCo must pay the State the costs reasonably and properly incurred by the State in undertaking the audit on or before the date which is 10 Business Days after the State and OpCo reach an agreement in accordance with clause 11(d)(i) or the dispute is determined in accordance with clause 13 (as applicable).
- (e) **(Restriction on audit):** The State:
 - (i) may only give OpCo a Cost Allocation Audit Notice within 12 months after the date on which OpCo provides the Cost Allocation Data to the State; and
 - (ii) must complete an audit in accordance with this clause 10 within 24 months after the date on which OpCo provides the Cost Allocation Data to the State.
- (f) **(Deemed acceptance):** If the State fails to comply with clause 11(e) in respect of an Audit Year, the State will be deemed to have accepted the OpCo Costs and Cost Allocation Data for the Audit Year.

12. Operator OpCo Notice

If the Company provides the Operator OpCo Notice, 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.

13. Dispute Resolution

13.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 13.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:
 - (i) firstly, the dispute must be the subject of negotiation as required by clause 13.2;
 - (ii) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.2(c)(i), the Disputing Parties may agree that the dispute be referred to an expert for determination in accordance with clauses 13.4 to 13.8 or to arbitration under clause 14; and
 - (iii) thirdly, if:
 - A. the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.2(c)(i) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties failed to agree whether the dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 13.2(c)(i);
 - B. the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment or such later date as agreed between the Disputing Parties; or
 - C. the dispute is referred to expert determination and a notice of dissatisfaction is given under clause 13.6(a),then the dispute must be referred to arbitration under clause 14.

13.2 Negotiation

- (a) **(Notification):** If a dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of notice):** A notice under clause 13.2(a) must:
 - (i) state that it is a notice under this clause 13; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve dispute):** If a dispute is referred for resolution by negotiation under clause 13.2(a), then:
 - (i) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on

which the notice under clause 13.2(a) is received (or such later date as the Disputing Parties may agree); and

- (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

13.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives):** a dispute which has been referred to the Representatives for negotiation in accordance with clause 13.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.2(c)(i); and
- (b) **(referral to expert):** the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 13.2(c)(i), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 13.4 to 13.8. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

13.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 13.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 13.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person who appears on the list of all of the Disputing Parties exchanged under clause 13.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 13.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 13.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 13.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 13.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.

- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 13.4 on the basis that the expert does not satisfy the requirements of clause 13.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

13.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

13.6 Expert finding

- (a) **(Notification):** Subject to clause 13.6(b), the determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 14.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

13.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate tax invoice equal to its share of the costs of the expert.

13.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and

- (b) pay an equal portion of the costs of the expert.

14. Arbitration

14.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (i) a dispute:
 - A. which has been referred to the Representatives for negotiation in accordance with clause 13.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.2(c)(i); and
 - B. the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (ii) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 13.3:
 - A. a determination is not made within 30 days of the expert's acceptance of the appointment or such later date as agreed between the Disputing Parties; or
 - B. a notice of dissatisfaction is given in accordance with clause 13.6,
- then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 14.1(a), the dispute will be referred to arbitration.

14.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 14 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 14.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

14.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 14.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

14.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;

- (ii) any arbitration conducted in accordance with this clause 14 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 14.4(a)(i) and 14.4(a)(iii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 14.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 14.4(d)(ii);
 - (vii) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

14.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 14.5, have applied to any dispute referred to arbitration in accordance with this clause 14.

14.6 Extension of ambit of arbitration proceedings

(a) **(Extending disputes):** Where:

- (i) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 14; and
- (ii) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.

(b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 14.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

14.7 Award final and binding

(a) **(Final and binding):** Subject to clause 14.7(b), any award will be final and binding on the Disputing Parties.

(b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 14.

14.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

14.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

14.10 Interlocutory relief

This clause 14 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

14.11 Consolidation

The parties agree that section 27C of the *Commercial Arbitration Act 2011* (Vic) will apply.

15. Termination of this Deed

- (a) **(Satisfaction of obligations under Operating Services Agreement):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Operating Services Agreement.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

16. Insurances

- (a) **(Insurances):** Notwithstanding anything else, OpCo will:
 - (i) effect and maintain (or cause to be effected and maintained) all insurances as are required to be effected and maintained under the Operating Services Agreement; and
 - (ii) otherwise comply with all of its obligations in relation to insurance in the Operating Services Agreement.
- (b) **(Not to prejudice):** The Company and OpCo must not do or permit, or omit to do, anything which prejudices any Insurance policy required under the Operating Services Agreement.
- (c) **(Void or voidable):** If any default is made by OpCo in effecting or maintaining such Insurance policy or if any such Insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that Insurance policy at the cost of OpCo or, failing it, the Company.
- (d) **(State to be covered):** If required by the Concession Deed and the ESEP Deed (as applicable), on any insurance contract entered into by OpCo in accordance with clause 16(a) OpCo must ensure that the State and the Victorian Government Agencies are specified as a person to whom the insurance cover provided by that contract extends.
- (e) **(All documents, evidence and information):** The Company and OpCo must do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due to the State in respect of any Insurance policy required under the Operating Services Agreement at the cost of OpCo or, failing it, the Company.
- (f) **(Cancellation, lapse or material change):** Without prejudice to the above requirements, neither the Company nor OpCo will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescission of any such Insurance policy unless it has first obtained the consent of the State.
- (g) **(Notify the State):** The Company and OpCo will immediately notify the State of any cancellation, lapse, material change, reduction, or any rescission of any such Insurance policy, and of the occurrence of any event giving rise to any Claim under any such Insurance policy in respect of the O&M Activities.
- (h) **(Several obligations):** Notwithstanding clause 1.3(o), but subject to the obligations of the Company and Clepco under the terms of the Concession Deed and the ESEP Deed (as applicable), the obligations of the Company and OpCo in this clause 16 are several.

17. Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Deed are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier):** If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 17(a) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 17(a) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the adjustment note:
 - (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (e) **(Cost net of GST):** Any reference in this Deed to cost, expense, Liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (f) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.

- (g) **(Definitions):** In this clause 17 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Deed exchange non-monetary consideration:
 - (i) notwithstanding clause 17(b)(i), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and
 - (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

18. Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: Leigh Bracken, Director, Commercial Contracts, Department
of Transport and Planning
Address: 1 Spring Street, Melbourne VIC 3000
Email: leigh.bracken@roads.vic.gov.au

Company:

Attention: Company Secretary
Address: Tower Five, Collins Square, Level 31, 727 Collins Street,
Docklands VIC 3008
Email: companysecretary@transurban.com

OpCo:

Attention: Catherine Hopper, General Manager, Commercial, ROAD
Address: Tower Five, Collins Square, Level 31, 727 Collins Street,
Docklands VIC 3008
Email: CHopper@transurban.com

- (c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery):** must be delivered by hand or posted by prepaid express post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 18(b); and
- (e) **(taken to be received):** are taken to be received by the addressee at the address set out in clause 18(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case

that communication is taken to be received at 9.00 am on the next Business Day;

- (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
- (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

19. Confidential information and disclosure

The State may disclose any information in connection with the Project (including any confidential or unpublished information) in accordance with its rights under clause 19.3 of the Concession Deed and clause 19.3 of the ESEP Deed and OpCo must use all reasonable endeavours to assist the State in the exercise of its rights under clause 19.3 of the Concession Deed and clause 19.3 of the ESEP Deed (as applicable).

20. Return of documents

To the extent not already returned by the Company or Clepco under the Concession Deed or the ESEP Deed, OpCo must return to the State a copy of all plans, drawings, specifications and other documents provided by the State which come into its possession for the purpose of the Operating Services Agreement or this Deed at the expiration of the Operating Services Agreement.

21. Miscellaneous

21.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 13 and 14, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

21.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

21.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

21.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) a party's right to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given in accordance with this Deed; or
 - (vi) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation)**: No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

21.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

21.6 Consents, approvals and directions

A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.

21.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

21.8 Expenses

Except as otherwise expressly provided in this Deed or (as between the State and the Company and Clepco) the Concession Deed or the ESEP Deed (as applicable), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

21.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

21.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

21.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

21.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 21.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

21.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** The State holds on trust for the Victorian Government Agencies the benefit of:

- (i) each indemnity, promise and release given by the Company or OpCo under this Deed in favour of the Victorian Government Agencies; and
 - (ii) each right in this Deed to the extent that such right is expressly stated to be for the benefit of the Victorian Government Agencies.
- (b) **(Company and OpCo acknowledgement):** The Company and OpCo acknowledge the existence of such trusts and consents to:
 - (i) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of a Victorian Government Agency; and
 - (ii) Victorian Government Agencies exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that the State does not require the consent of the Victorian Government Agencies to amend or waive any provision of any State Project Document.

21.14 Assignment

Except as expressly contemplated by this Deed, none of the Company or OpCo may assign or transfer any of its rights or obligations under this Deed.

21.15 Set off

Without limiting the State's rights under the Concession Deed and the ESEP Deed, all moneys which the State may pay or incur and for which the Company or Clepco is liable under the terms of the Concession Deed or the ESEP Deed (as applicable) or in respect of which the Company is under this Deed liable to make reimbursement to or indemnify the State, may be deducted by the State from all moneys due, becoming due or to become due from it to the Company under the Concession Deed or Clepco under the ESEP Deed or may be recovered from the Company by action at Law or otherwise.

22. Limitation of Liability

Despite any other provision of the Operating Services Agreement or this Deed:

- (a) OpCo's aggregate Liability to the State and the Company whether in contract (including under an indemnity), tort (including negligence) or equity, under statute or otherwise, arising out or in connection with the subject matter of the Operating Services Agreement or this Deed and irrespective of how it arises will be no greater than OpCo's aggregate Liability to the Company and the State under the Operating Services Agreement; and
- (b) if there is a breach of the Operating Services Agreement by OpCo, payment by it to the Company or the State (as the case may be) of an amount in respect of its Liability for that breach will also satisfy any Claim by the State or the Company (as the case may be) against OpCo in respect of the same breach.

Executed as a deed.

Signed, sealed and delivered by Hon Melissa
Horne MP, Minister for Roads and Road
Safety for and on behalf of the Crown in right
of the State of Victoria in the presence of:



Signature of witness

LILY RAMAGE

Full name of witness



Signature of Minister

Executed by Citylink Melbourne Limited ACN
070 810 678 in accordance with section 127 of the
Corporations Act 2001 (Cth):



Signature of director

THOMAS MCKAY

Full name of director



Signature of company secretary/~~director~~

NATALIE MCKAIG

Full name of company secretary/~~director~~

Executed by Transurban Vic Op Co Pty Limited
ACN 621 893 945 in accordance with section 127
of the Corporations Act 2001 (Cth):



Signature of director

THOMAS MCKAY

Full name of director



Signature of company secretary/~~director~~

NATALIE MCKAIG

Full name of company secretary/~~director~~