

North East Link Tolling Agreement

The Minister for Transport Infrastructure for and on behalf of the Crown in
right of the State of Victoria

State

North East Link State Tolling Corporation

State Toll Co

Clayton Utz
Level 18 333 Collins Street
Melbourne VIC 3000
GPO Box 9806
Melbourne VIC 3001
DX 38451 333 Collins VIC
Tel +61 3 9286 6000
Fax +61 3 9629 8488
www.claytonutz.com

Our reference 904/18561/80184879

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North East Link Tolling Agreement

Date 27 October 2021

Parties

The Minister for Transport Infrastructure for and on behalf of the Crown in right of the State of Victoria (State)

North East Link State Tolling Corporation (ABN 86 585 150 837) established under section 8(1) of the Project Legislation (**State Toll Co**)

Background

- A. This Deed sets out the terms on which the State Toll Co may fix and collect tolls and fees for use of the Tollway (or part of it) for the passage of vehicles.
- B. This Deed is the North East Link tolling agreement for the purposes of the Project Legislation.

Operative provisions

1. Defined terms and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

Base Flag Fall means the amount specified in section 2.2 of the Toll Calculation Schedule.

Base Toll Rate means the rate specified in section 2.1 of the Toll Calculation Schedule.

Business Day means a day in Melbourne that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday for Melbourne pursuant to the *Public Holidays Act 1993 (Vic)*.

Commencement Date means the date specified in the CP Satisfaction Notice as the date on which the last condition precedent was satisfied.

Completion Review Date means the date that is 6 months before the expected Date of Tolling Commencement.

CP Satisfaction Notice means the notice issued by the State to State Toll Co in accordance with clause 2.2.

Customer means any person who is currently registered with or is a party to a current arrangement with a Toll Road Service Provider (including State Toll Co) governing the arrangements for the use of, or the entitlement to use the relevant Toll Road by one or more vehicles in accordance with the terms of that arrangement.

Date of NEL Opening has the meaning given in the Project Deed.

Date of Tolling Commencement means the date fixed by State Toll Co under section 60(1) of Project Legislation for the commencement of tolling on the Tollway, which cannot be earlier than the date on which both of the following have occurred:

- (a) the Date of Commercial Acceptance has occurred under and as defined in the Project Deed; and
- (b) the Toll Collection Capability has passed all necessary commissioning and acceptance tests under the Toll Collection Capability Contract.

Enforcement Allowance Amount means the amount determined or redetermined by the State from time to time under clause 4.8.

Expiry Date has the meaning given to it in clause 3.2.

Final Expiry Date means the date which is 50 years from the Date of Tolling Commencement.

Financial Year means each period commencing 1 July and ending 30 June.

GST has the meaning given in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

GST Law has the meaning giving in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Infringement Notice means an infringement notice issued by an enforcement officer pursuant to section 83 of the Project Legislation.

Interoperable or Interoperability means a system or method of operation which:

- (a) records a journey undertaken and tolls and User Charges incurred by a user of the Tollway who is entitled to use another Toll Road pursuant to an arrangement between another Toll Road Service Provider and a Customer of that other Toll Road Service Provider;
- (b) enables that Customer to be billed for that journey by that other Toll Road Service Provider; and
- (c) provides for the payment for that journey to be remitted to State Toll Co from that other Toll Road Service Provider (whether directly or through an agreed payments clearing mechanism),

and (to the extent that State Toll Co has Customers) enables State Toll Co to provide a reciprocal billing capability to that other Toll Road Service Provider in respect of use of that other Toll Road by State Toll Co's Customers, all without prior arrangement between either:

- (d) the Customer of the other Toll Road Service Provider and State Toll Co; or
- (e) a Customer of State Toll Co and the other Toll Road Service Provider.

Interoperable Agreement has the meaning given to it in clause 4.3(a).

Interoperable User means any person who uses the Tollway pursuant to an arrangement between another Toll Road Service Provider and a Customer of that other Toll Road Service Provider where that Toll Road Service Provider has an Interoperable Agreement with State Toll Co.

Interstate Look Up Fee means the fee paid by State Toll Co to any person duly authorised by any Australian State or Territory to provide information enabling the identification of the operator of a vehicle registered in that State or Territory for the purposes of issuing a request for payment pursuant to the Project Legislation in respect of a Trip or Trips by that vehicle.

Law means:

- (a) those principles of common law and equity established by decisions of courts;
- (b) all legislation of the Commonwealth, the State or an authority; and
- (c) approvals and any other licence, permit, authorisation, consent, assessment, determination, certificate, accreditation, registration, clearance, permission or the like which must be obtained or satisfied (as the case may be) in connection with the North East Link project (including any conditions of requirements under them).

NEL Corridor means the freeway connecting the Metropolitan Ring Road and the Eastern Freeway, including:

- (a) the interchanges at the Metropolitan Ring Road, Grimshaw Street, Yallambie Road, Greensborough Road, Manningham Road and the Eastern Freeway;
- (b) the arterial roads in the vicinity of the interchanges, including Greensborough Bypass / Road, Grimshaw Street, Watsonia Road, Yallambie Road, Lower Plenty Road, Rosanna Road, Banksia Street, Manningham Road, Bulleen Road, Templestowe Road and Thompsons Road; and
- (c) the freeways in the vicinity of the interchanges, including the Metropolitan Ring Road and Eastern Freeway.

Prescribed Period has the meaning given to that term under section 70 of the Project Legislation.

Project Co means Spark North East Link Pty Limited (ACN 633 649 439) as trustee of the Spark North East Link Trust.

Project Deed means the document entitled "North East Link Project - Primary Package - Project Deed" entered into or to be entered into between the State, State Toll Co and Project Co.

Project Legislation means the *North East Link Act 2020 (Vic)*.

Quarter means each 3 month period commencing on a Quarterly Date.

Quarterly Date means every 1 January, 1 April, 1 July and 1 October.

STC Lease means the lease granted or to be granted by the State to State Toll Co in respect of the North East Link road for a period ending 99 years after the date of Financial Close under and as defined in the Project Deed.

Toll Amount has the meaning given in clause 4.8(d).

Toll Amount Fixing Notice has the meaning given in section 2(a) of Schedule 3.

Toll Calculation Principles means the principles set out in section 1 of Schedule 3.

Toll Calculation Schedule means Schedule 1.

Toll Collection Capability means the electronic toll collection system used (or designed to be used) from time to time for the calculation and collection of tolls and User Charges in relation to the passage of vehicles on the Tollway.

Toll Collection Capability Contract means each agreement in force between State Toll Co and a Toll Collection Capability Contractor under which that Toll Collection Capability Contractor has agreed to design, implement, test, commission, operate or maintain all or part

of the Toll Collection Capability (or to do any of those things in relation to all or part of the Toll Collection Capability).

Toll Collection Capability Contractor means each entity appointed by State Toll Co from time to time to design, implement, test, commission, operate and maintain all or any part of the Toll Collection Capability (or to do any of those things in relation to all or part of the Toll Collection Capability).

Toll Infringement Payment means the amount determined in accordance with clause 4.8(c).

Toll Road means an Australian road on which a toll is levied for the passage of vehicles.

Toll Road Service Provider means State Toll Co and any other person who is a "tollway operator" under and as defined in the Project Legislation.

Tollway means the North East Link tollway as defined in the Project Legislation.

Toll Zone means a part of the Tollway described in section 2.3(a) of the Toll Calculation Schedule.

Trip has the meaning given to "trip" in the Project Legislation.

User Charge means any charge, fee, deposit, pre-payment, required account balance, impost or other amount imposed or required in connection with:

- (a) the use of, or the entitlement to use, the Tollway, any part of the Tollway or any other Toll Road; or
- (b) the provision of services in connection with the use of or the entitlement to use the Tollway or any part of the Tollway or any other Toll Road.

Victorian Look Up Fee means the fee paid by State Toll Co to the Secretary of the Department of Transport pursuant to any agreement between State Toll Co and the Secretary of the Department of Transport for identification of the operator of a vehicle for the purposes of issuing a request for payment pursuant to the Project Legislation in respect of a relevant Trip or Trips by that vehicle.

1.2 Interpretation

In this Deed:

- (a) **(headings)**: headings and subheadings (including those of the type in this paragraph) are for convenience only and do not affect interpretation;
- (b) **(number and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Annexure or Attachment is a reference to a party, clause, Schedule, Annexure or Attachment of or to this Deed; and
 - (ii) a section, part, item or table is a reference to a section, part, item or table of the Schedule in which they are located,
 unless expressly provided otherwise;
- (d) **(document as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument means 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 and, in the case of a trustee, includes a substituted or additional trustee;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, an entity and a trust (including a trustee);
- (g) **(replacement person)**: a reference to a person appointed under this Deed includes that person's replacement or delegate appointed in accordance with this Deed;
- (h) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and
 - (ii) consolidations, amendments, re-enactments and replacements;
- (i) **(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;
- (j) **("includes")**: "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";
- (k) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(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;
- (m) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(time)**: a reference to time is a reference to time in Melbourne, Victoria, Australia;
- (p) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (q) **(replacement authorities)**: where there is a reference to an authority, institute, 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 the new entity (if any) which serves substantially the same purpose or object as the former entity; and

- (r) **(no bias against drafter)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision.

2. Conditions Precedent

2.1 Commencement of obligations

It is a condition precedent to the coming into operation of clauses 3 and 4 of this Deed that:

- (a) **(Government Gazette)**: State Toll Co causes, in accordance with section 50(1) of the Project Legislation, to be published in the Victorian Government Gazette a notice that the agreement constituted by this Deed has been made, and specifying the address of an internet site at which this Deed is published;
- (b) **(Revocation period)**: the Minister (for the purposes of the Project Legislation) causes, in accordance with section 51(1) of the Project Legislation, a copy of this Deed to be laid before each House of Parliament and the period during which this Deed may be revoked by each House of Parliament under section 52(1) of the Project Legislation has passed without this Deed having been revoked;
- (c) **(Designation)**: the Minister (for the purposes of the Project Legislation) designates the North East Link road under section 5(1) of the Project Legislation; and
- (d) **(Project Deed)**: each condition precedent under clause 3 (*Conditions Precedent*) of the Project Deed is satisfied or waived.

2.2 Satisfaction of Conditions Precedent

(Notice of Satisfaction): When the last condition precedent to be satisfied in accordance with clause 2.1 has been satisfied, the State must confirm that all conditions precedent have been satisfied and that date on which the last condition precedent was satisfied.

3. Term

3.1 Commencement date

Subject to clause 2.1 this Deed commences on the Commencement Date.

3.2 Expiry Date

This Deed will expire on the Final Expiry Date unless the STC Lease is terminated earlier, in which case this Deed will expire on the date of such earlier termination (in each case, the **Expiry Date**).

4. Tolling and fees

4.1 Tolls and toll administration fees

- (a) **(Tolls and toll administration fees)**: On and from the Date of Tolling Commencement until the Expiry Date, State Toll Co may from time to time:
 - (i) specify as toll zones under section 59(1)(a) of the Project Legislation the toll zones set out in the Toll Calculation Schedule at that time;
 - (ii) fix tolls that are payable for the use of vehicles in toll zones under sections 58 and 59(1)(b) of the Project Legislation which are no greater than the tolls for the toll zones set out in the Toll Calculation Schedule at that time; and

- (iii) fix toll administrative fees and specify the circumstances in which such fees are payable under sections 58 and 59(1)(c) of the Project Legislation which are no greater than the toll administrative fees, and consistent with the circumstances, set out in the Toll Calculation Schedule at that time.
- (b) **(Toll Calculation Schedule):** State Toll Co must not (and must ensure that any party with whom it contracts, does not) fix, levy, collect or impose any toll or toll administration fee for or in connection with the use of the Tollway other than in accordance with this Deed and the Project Legislation.

4.2 Entitlement to revenue

As between the State and State Toll Co, State Toll Co will be entitled to all tolls and toll administrative fees levied, collected or imposed in accordance with clause 4.1(a).

4.3 Interoperability

- (a) From the Commencement Date, State Toll Co must use its reasonable endeavours to ensure that the Tollway operates on an Interoperable basis with each other Toll Road, including, to the extent applicable, by entering into (to the extent that such agreements have not been entered into before the Commencement Date) and maintaining an agreement (**Interoperable Agreement**) with the Toll Road Service Provider for such Toll Road from time to time to facilitate the Tollway operating on an Interoperable basis with that other Toll Road.
- (b) State Toll Co must provide the State with a copy of each Interoperable Agreement concerning the Tollway as soon as practicable after it is made or varied.
- (c) State Toll Co must:
 - (i) not recover under an Interoperable Agreement a toll or User Charge for use of the Tollway (or part of the Tollway) by an Interoperable User which is greater than the toll and, if applicable, any other fee which State Toll Co would be entitled to charge on account of the relevant Trip under the Toll Calculation Schedule had the Interoperable User been a Customer of State Toll Co; and
 - (ii) use its best endeavours to procure that each other Toll Road Service Provider does not, in respect of the use of a Toll Road (other than the Tollway) by one of State Toll Co's Customers, recover from State Toll Co under an Interoperable Agreement an amount which exceeds the tolls or User Charges that that Toll Road Service Provider is entitled to levy, charge or impose on its own Customers (and, for the avoidance of doubt, not the amount it is entitled to charge unregistered or uncontracted casual users of that other Toll Road) in respect only of that trip on the Toll Road.

4.4 Toll Collection Capability

At all times from the Date of Tolling Commencement, State Toll Co must ensure that the Toll Collection Capability:

- (a) does not impede the flow of traffic on the Tollway; and
- (b) operates on a multi-lane free flow basis.

4.5 Civil debt recovery

State Toll Co must ensure that its civil debt recovery arrangements in respect of tolls and fees imposed in connection with the Tollway comply with the minimum requirements for civil debt recovery as specified by the Minister and published in the Victorian Government Gazette for the purpose of the Project Legislation from time to time.

4.6 Prescribed administrative amount

- (a) The State shall use reasonable endeavours to cause to be prescribed by regulation under section 113 of the Project Legislation:
- (i) the prescribed administrative amount of administrative costs for the purpose of section 78(1) of the Project Legislation; and
 - (ii) with the agreement of State Toll Co, criteria for determining acute financial hardship and special circumstances for the purposes of section 78(2) of the Project Legislation.
- (b) For the purposes of clause 4.6(a), the prescribed administrative amount:
- (i) shall be determined from time to time by the State in accordance with the methodology used generally in determining fees and charges for the purposes of regulatory impact statements under the *Subordinate Legislation Act 1994 (Vic)*;
 - (ii) shall fairly reflect the administrative costs likely to be incurred by State Toll Co in undertaking the steps which need to be undertaken to produce evidence to a court of the commission of an offence under section 69 of the Project Legislation, and for that purpose may specify two amounts, being:
 - A. an amount payable with respect to one offence found proven at a hearing; and
 - B. a lower amount payable with respect to any other offence found proven at the same hearing;
 - (iii) shall be reconsidered by the State at intervals of no greater than 3 years since the later of the Date of Tolling Commencement and the last reconsideration of them under this clause 4.6(b)(iii) with each party bearing costs incurred or payable by it in connection with such a reconsideration;
 - (iv) shall be reconsidered by the State within a reasonable time of being requested by State Toll Co to do so, provided that costs incurred or payable by the State in connection with such a reconsideration are paid by State Toll Co promptly after demand for them; and
 - (v) may be reconsidered from time to time by the State, at the cost of the State, provided that costs incurred or payable by State Toll Co in connection with such a reconsideration are paid by the State promptly after demand for them.
- (c) In any reconsideration of the appropriateness of any amount so prescribed, the State shall re-determine that amount in accordance with the methodology outlined in clause 4.6(b)(i), with the objective outlined in clause 4.6(b)(ii).

- (d) State Toll Co shall provide such information to the State as may be reasonably necessary in order to enable or facilitate such a reconsideration, promptly after being requested to do so.

4.7 Process for requesting payment

The parties acknowledge that State Toll Co may only send a request for payment of a toll or fee amount in accordance with the Project Legislation.

4.8 Infringements

- (a) If under the Project Legislation an Infringement Notice is caused to be served but further proceedings are not taken in respect of the relevant offence (or alleged offence under the Project Legislation), as a result of the payment of an amount sufficient to expiate the notice, the State shall pay to State Toll Co an amount equal to the Toll Infringement Payment within 20 Business Days of receipt of that payment.
- (b) State Toll Co must refund any amount paid to it in accordance with clause 4.8(a) within 20 Business Days of its being requested by the State to do so if the relevant Infringement Notice is withdrawn by the enforcement officer under the Project Legislation.
- (c) The Toll Infringement Payment in respect of an Infringement Notice is the sum of:
 - (i) the Toll Amount;
 - (ii) the Enforcement Allowance Amount; and
 - (iii) the Victorian Look Up Fee (in respect of vehicles registered in the State of Victoria) or the Interstate Look Up Fee (in respect of vehicles registered in any State or Territory, other than Victoria) (whichever is applicable).
- (d) The Toll Amount is, in relation to an Infringement Notice, the toll payable in accordance with the Toll Calculation Schedule in respect of the single Trip which is the subject of the Infringement Notice.
- (e) The Enforcement Allowance Amount is, in relation to an Infringement Notice, the amount determined by the State prior to the Date of Tolling Commencement under clause 4.8(g) as may be redetermined under clauses 4.8(f) and 4.8(g).
- (f) The State will redetermine the Enforcement Allowance Amount:
 - (i) on or around the expiry of the twelfth month after the date on which tolling commences on the Tollway;
 - (ii) at such times as the State may elect, such election not to occur within 3 years of any previous redetermination; and
 - (iii) upon request of State Toll Co, such request not to occur within 3 years of any previous redetermination.
- (g) Any determination or redetermination of the Enforcement Allowance Amount must be made:
 - (i) in accordance with the methodology generally applied from time to time in arriving at assessments of costs or proposed statutory rules for the purpose of inclusion within regulatory impact statements under the *Subordinate Legislation Act 1994* (Vic); and

- (ii) with the objective of measuring the reasonable administrative costs likely to be incurred by State Toll Co in connection with:
 - A. any request by it under section 79 of the Project Legislation; and
 - B. the undertaking of the steps leading to the making of a request (under section 79 of the Project Legislation) as may be undertaken by State Toll Co as a result of a vehicle being driven on the Tollway in contravention of Part 4 of the Project Legislation,

with respect to the single Trip that is the subject of the Infringement Notice; and
- (iii) recognising that the Enforcement Allowance Amount is not intended to:
 - A. include any amount in respect of tolls; or
 - B. fully compensate State Toll Co for costs and expenses incurred in respect of all Trips undertaken during the Prescribed Period to which the Infringement Notice relates.
- (h) State Toll Co must provide such information to the State as the State may reasonably consider to be necessary or desirable in order to enable or facilitate any determination or redetermination of the Enforcement Allowance Amount.
- (i) Any redetermination of the Enforcement Allowance Amount will take effect in the Quarter which first commences after the redetermination is made.

4.9 Completion Review

- (a) By no later than the Completion Review Date, the State and State Toll Co will, in accordance with this clause 4.9, review any tolls (including multipliers), fees and charges that have previously been determined in accordance with the Toll Calculation Schedule.
- (b) State Toll Co may submit to the State for the purposes of the review under this clause 4.9:
 - (i) any request or proposal for changes to the tolls, fees and charges set out in the Toll Calculation Schedule;
 - (ii) any evidence supporting the request or proposal for change under clause 4.9(b)(i); and
 - (iii) any further particulars which the State may reasonably request of State Toll Co.
- (c) The State and State Toll Co will negotiate in good faith to agree any revisions to the tolls, fees and charges that have previously been determined in accordance with the Toll Calculation Schedule by no later than the Completion Review Date and determine any changes that they agree are appropriate, including having regard to:
 - (i) any submission from State Toll Co under clause 4.9(b);
 - (ii) the capital structure of State Toll Co and its continuing status as an entity that is classified by the Australian Bureau of Statistics as a public non-financial corporation; and

- (iii) the nature and manner of operation of the Toll Collection Capability.

If the State and State Toll Co are unable to agree to any changes that either of them requires to be made to the tolls, fees or charges by the Completion Review Date, the changes will be referred to the Minister (for the purposes of the Project Legislation) and the Treasurer for final determination.

- (d) The changes to the Toll Calculation Schedule determined under clause 4.9(c) will be binding on State Toll Co and reflected in an amended Toll Calculation Schedule to be substituted for the then current Toll Calculation Schedule by way of an amendment to this Deed. The parties acknowledge that any changes to the Toll Calculation Schedule will be subject to sections 53, 54 and 55 of the Project Legislation. The parties will use all reasonable endeavours to procure that such changes to the Toll Calculation Schedule come into effect by the Date of Tolling Commencement.
- (e) The parties must do all things (including signing any document or taking any other action) reasonably required to give effect to clause 4.9(d).

4.10 Subcontracting

State Toll Co may engage subcontractors in the collection of tolls and fees under this Deed but:

- (a) is not relieved from any or all of its obligations under this Deed as a result of any such subcontracting; and
- (b) will be responsible for the acts and omissions of each subcontractor in the carrying out of such activities as if such acts or omissions were the acts or omissions of State Toll Co.

5. Miscellaneous

5.1 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):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought in connection with this Deed.

5.2 Entire agreement

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

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

5.3 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 all parties) required by Law or reasonably requested by another party to give effect to this Deed.

5.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

5.5 Waiver

- (a) **(Writing):** Other than where the waiver is already given expressly in the terms of this Deed, a waiver that may be given by a party under 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 exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by Law or under 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 under 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.

5.6 Amendments

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

5.7 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) **(provisions):** any other provision of this Deed; or
- (b) **(other jurisdictions):** that provision under the Law of any other jurisdiction.

5.8 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 deed.

5.9 Assignment

Neither the State nor State Toll Co may assign or transfer any of its rights or obligations under this Deed without the consent of the other party.

5.10 GST

- (a) **(Interpretation):** In this clause, a word or expression defined in the GST Act has the same meaning as in that Act. For the purposes of this clause 5.10, references to GST payable and input tax credit entitlements of any entity include:
- (i) any notional GST payable and notional input tax credit entitlements; and
 - (ii) GST payable by, and input tax credit entitlements of, the representative member of the GST group of which the entity is a member.
- (b) **(GST exclusive consideration):** Unless stated to the contrary, and otherwise as provided in this clause, any consideration payable under this Deed shall be exclusive of GST.
- (c) **(GST gross up):** If a party makes a supply pursuant to this Deed, to the extent, if any, the consideration provided for that supply is expressed as an amount of money, the consideration for the supply (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made (**additional GST amount**), except where the recipient of the supply is liable under the GST Law to pay the GST on that supply. The additional GST amount must be paid at the same time and in the same manner as the GST exclusive consideration.
- (d) **(Tax invoice):** To the extent the consideration for a supply under this Deed is expressed as an amount of money, a party need not make a payment for a taxable supply made pursuant to this Deed until it receives a tax invoice for the supply to which the payment relates.
- (e) **(Barter Supply):** The parties acknowledge and agree that for GST purposes:
- (i) the State is making a taxable supply to State Toll Co of the right to toll under this Deed, in return for State Toll Co entering into the obligation to pay to develop the Tollway on the State's land and returning possession of the land and fixed Tollway assets to the State at the expiry of the STC Lease;
 - (ii) State Toll Co is making a taxable supply to the State by entering into an obligation to pay to develop the Tollway on the State's land, in return for the State granting to State Toll Co the right to toll under this Deed;
 - (iii) in respect of taxable supplies identified in this clause 5.10(e), the parties agree that:
 - A. the GST inclusive market value of the State's supply of the right to toll under this Deed is equal to the GST inclusive market value of State Toll Co's supply of entering into the obligation to pay to develop the Tollway on the State's land, the amount of which shall be agreed by the parties;
 - B. the GST inclusive market value of State Toll Co's supply of entering into the obligation to pay to develop the Tollway on the State's land is equal to the GST inclusive market value of the State's supply of granting to State Toll Co the right to toll under this Deed, the amount of which shall be agreed by those parties;
 - C. the value of the non-monetary consideration to be agreed by the parties is not a valuation supported by a qualified professional valuer and is not conclusive evidence of the

GST-inclusive market value of the non-monetary consideration; and

- D. notwithstanding any other clause in this Deed, the State and State Toll Co agree to exchange tax invoices for their respective supplies made under this clause 5.10(e) on Financial Close under and as defined in the Project Deed.
- (iv) if the Commissioner of Taxation makes inquiries, in any form, of the State or State Toll Co with respect to the valuation of non-monetary consideration shown on the tax invoices issued pursuant to this clause 5.10(e), the parties acknowledge and agree that:
- A. each party must provide all reasonable co-operation and assistance reasonably requested by the other party to respond to any such queries;
- B. the parties must promptly keep each other fully informed in relation to those inquiries and provide copies of any correspondence or other documents sent to or received from the Commissioner of Taxation in relation to the matter;
- C. if either party is notified that the Commissioner of Taxation has determined the value of non-monetary consideration to be different to that shown on the tax invoices, it must notify the other party of that determination and the value determined; and
- D. as soon as practicable after giving or receiving a notice in accordance with clause 5.10(e)(iv)C, each party must issue an amended tax invoice to the other party reflecting the valuation of non-monetary consideration as determined by the Commissioner of Taxation.
- (f) **(Adjustments):** If an adjustment of GST is required as a result of an adjustment event in respect of a supply made pursuant to this Deed, then:
- (i) a corresponding adjustment of GST payable under this Deed must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable; and
- (ii) the supplier, if obligated to do so under the GST Law, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable.
- (g) **(Reimbursements)** If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by an amount equal to any input tax credit the other party is entitled to in respect of the loss, cost or expense, and then increased in accordance with clause 5.10(c) where applicable.
- (h) **(Calculating the consideration for a supply):** If the consideration for a supply under this Deed is calculated by reference to the consideration for other supplies, in making that calculation, the consideration for those other supplies excludes any amount in respect of GST payable on those supplies.

5.11 Electronic execution

A party may sign this Deed electronically, and bind itself accordingly. In addition, the intention is to print it out after all parties that are signing electronically have done so, so that any such

print-out will also be an executed original counterpart of this Deed. Each signatory confirms that their signature appearing in this Deed, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

Schedule 1 - Toll Calculation Schedule

1. Definitions and Interpretation

1.1 Definitions

The following words and phrases, where they appear in this Schedule 1, have the following meaning unless the context requires otherwise:

Base Tolling Product Fee means each User Charge specified in 4.2.

Bus means a Motor Vehicle having more than 12 seating positions (including that of the driver).

Car means a Motor Vehicle, other than a Motor Cycle or a Commercial Vehicle (even if such a Motor Vehicle is towing a trailer or caravan).

Commercial Vehicle means a Motor Vehicle that is either a Light Commercial Vehicle, a Heavy Commercial Vehicle or a High Productivity Freight Vehicle.

CPI has the meaning given in Schedule 2.

Discount Period means any period during which State Toll Co offers to levy discounted Trip Charges under section 5.3(c)(ii) as notified under section 5.3(c)(iii).

Escalation Rate has the meaning given in Schedule 2.

First Invoice Fee has the meaning given in section 4.4(a)(i).

Flag Fall means, for a Quarter, the amount fixed as such under section 5.2.

Heavy Commercial Vehicle (HCV) means a Motor Vehicle that is:

- (a) a rigid Truck with three or more axles;
- (b) an articulated Truck;
- (c) a Bus; or
- (d) a two axle rigid Truck having a gross vehicle mass greater than 4.5 tonnes,

but does not include a High Productivity Freight Vehicle.

High Productivity Freight Vehicle (HPFV) means a Motor Vehicle that is:

- (a) a rigid Truck with more than three axles;
- (b) an articulated Truck;
- (c) a Bus; or
- (d) a two axle rigid Truck having a gross vehicle mass which exceeds 4.5 tonnes,

which has a total length equal to or greater than 26 metres.

Indexed User Charge means a User Charge which is identified as such in accordance with section 4.2.

Light Commercial Vehicle (LCV) means a Motor Vehicle that is a two axle rigid Truck, having a gross vehicle mass that does not exceed 4.5 tonnes.

Motor Cycle means a two-wheeled Motor Vehicle (and includes such a Motor Vehicle even if it has a trailer, fore car or side car attached).

Motor Vehicle has the meaning given to it in the *Road Safety Act 1986* (Vic).

NEL Opening has the meaning given to it in the Project Deed.

Quarterly Indexation Factor has the meaning given in Schedule 2.

Second Invoice Fee has the meaning given in section 4.4(a)(ii).

Theoretical Flag Fall means, for a Quarter, the amount calculated in relation to that Quarter in accordance with section 3.3.

Theoretical Tolling Product Fee means, for a Tolling Product and a Financial Year, the amount calculated in accordance with section 4.3.

Theoretical Toll Rate means, for a category of Vehicle, a Toll Zone, and a Quarter, the amount calculated in relation to that category of Vehicle, that Toll Zone and that Quarter in accordance with section 3.1 or 3.2.

Toll Charge means, for a category of Vehicle, a Toll Zone and a Quarter, the amount fixed as such in relation to that category of Vehicle, that Toll Zone and that Quarter under section 5.1.

Tolling Product means each tolling product proposed by State Toll Co and agreed by the State under section 4.1.

Tolling Product Fee means, for a Tolling Product and a Financial Year, the amount fixed as such in relation to that Tolling Product and Financial Year under section 5.4.

Trip Charge means, for a category of Vehicle, a Trip and a Quarter, the amount calculated in relation to that category of Vehicle, that Trip and that Quarter under section 5.3.

Truck means a Motor Vehicle other than a Bus which has a cab-chassis construction and a gross vehicle mass greater than 1.5 tonnes.

Vehicle means a Motor Vehicle constituted by a Motor Cycle, Car or Commercial Vehicle.

Yearly Indexation Factor has the meaning given in Schedule 2.

1.2 Rounding

The:

- (a) Theoretical Toll Rate for each category of Vehicle for a Toll Zone for a Quarter;
- (b) Theoretical Flag Fall for each Quarter; and
- (c) Theoretical Tolling Product Fee for each Tolling Product for a Financial Year,

will be rounded to the nearest whole cent (with .5 and above rounding up and below .5 rounding down).

1.3 GST

- (a) All amounts referred to in this Schedule are inclusive of GST.

- (b) If the GST rate (in this clause, the "new GST rate") which applies or is imposed by the GST law on taxable supplies made by State Toll Co in the Quarter in respect of which an amount is calculated under this Schedule (in this clause, the "relevant Quarter") differs from the GST rate (in this clause, the "old GST rate") which applied or was imposed by the GST law on taxable supplies made by State Toll Co in the Quarter preceding the commencement of the relevant Quarter (in this clause, the "previous Quarter"), then such amount for the relevant Quarter will be adjusted by a fraction comprising of the numerator equal to the sum of the new GST rate (expressed as a decimal number) and one and the denominator equal to the sum of the old GST rate (expressed as a decimal number) and one.

2. Base Toll Rate, Base Flag Fall

2.1 Base Toll Rate for Cars

The Base Toll Rate for Cars for a Toll Zone will be determined in accordance with the Toll Calculation Principles.

2.2 Base Flag Fall

The Base Flag Fall will be determined in accordance with the Toll Calculation Principles.

2.3 Toll Zones

- (a) For the purposes of section 59(1)(a) of the Project Legislation, State Toll Co may only specify as toll zones the following Toll Zones:
- (i) Grimshaw Street to Lower Plenty Road;
 - (ii) Lower Plenty Road to Manningham Road; and
 - (iii) Manningham Road to Eastern Freeway.
- (b) Tolls will not apply for travel along any part of the Eastern Freeway that does not form part of the Tollway.

3. Theoretical Toll Rate, Theoretical Flag Fall

3.1 Theoretical Toll Rate for Cars

The Theoretical Toll Rate for Cars for a Toll Zone for a Quarter is:

- (a) for each Quarter until (and including) the Quarter in which NEL Opening occurs, calculated in accordance with the following formula:

Theoretical Toll Rate for Cars = Base Toll Rate for Cars x Quarterly Indexation Factor for that Quarter; and

- (b) for each subsequent Quarter, is calculated in accordance with the following formula:

Theoretical Toll Rate for Cars = Theoretical Toll Rate for Cars for the Quarter preceding the relevant Quarter x Escalation Rate for that Quarter.

3.2 Theoretical Toll Rate for other Vehicles

- (a) Motor Cycles

The Theoretical Toll Rate for Motor Cycles for a Toll Zone for a Quarter is 0.50 times the Theoretical Toll Rate for Cars for that Toll Zone and that Quarter, as determined in accordance with section 3.1.

(b) Light Commercial Vehicles

The Theoretical Toll Rate for Light Commercial Vehicles for a Toll Zone for a Quarter is 1.60 times the Theoretical Toll Rate for Cars for that Toll Zone and that Quarter, as determined in accordance with section 3.1.

(c) Heavy Commercial Vehicles

The Theoretical Toll Rate for Heavy Commercial Vehicles for a Toll Zone for a Quarter is 3.0 times the Theoretical Toll Rate for Cars for that Toll Zone and that Quarter, as determined in accordance with section 3.1.

(d) High Productivity Freight Vehicles

The Theoretical Toll Rate for High Productivity Freight Vehicles for a Toll Zone for a Quarter is 4.50 times the Theoretical Toll Rate for Cars for that Toll Zone and that Quarter, as determined in accordance with section 3.1.

3.3 Theoretical Flag Fall

The Theoretical Flag Fall for each Quarter is:

- (a) for each Quarter until (and including) the Quarter in which NEL Opening occurs, calculated in accordance with the following formula:

Theoretical Flag Fall = Base Flag Fall x Quarterly Indexation Factor for that Quarter; and

- (b) for each subsequent Quarter, is calculated in accordance with the following formula:

Theoretical Flag Fall = Theoretical Flag Fall for the Quarter preceding the relevant Quarter x Escalation Rate for that Quarter.

4. Tolling Products, Tolling Product Fees and other User Charges

4.1 Review of Tolling Products, Tolling Product Fee and other User Charges

- (a) State Toll Co may:
- (i) for the purposes of the review conducted by the State and State Toll Co under clause 4.9 of this Deed; and
 - (ii) from time to time, propose to the State:
 - (iii) retail tolling products and associated Tolling Product Fees;
 - (iv) changes to the tolling strategy; and
 - (v) other User Charges associated with usage of the Tollway.
- (b) Retail tolling products, Tolling Product Fees and other User Charges proposed by State Toll Co are to:

- (i) be based on consumer needs including for Customers and Interoperable Users;
 - (ii) reflect developments in technology and the nature and manner of operation of the Toll Collection Capability; and/or
 - (iii) be designed to be similar in nature to those offered by other Toll Road Service Providers at the time.
- (c) The State and State Toll Co will negotiate in good faith to agree the nature and terms of any retail tolling products, Tolling Product Fees and other User Charges or change in tolling strategy proposed by State Toll Co, and consequential changes to this Deed.
- (d) Tolling Product Fees and other User Charges proposed by State Toll Co:
- (i) are to be calculated on the basis of cost recovery having regard to the actual costs to State Toll Co (in the case of Tolling Product Fees associated with providing the relevant retail tolling product); and
 - (ii) may be indexed annually by reference to CPI.

4.2 Base Tolling Product Fee

The Base Tolling Product Fee for each Tolling Product:

- (a) will be determined in accordance with section 4.1;
- (b) once determined, will be set out in this section 4; and
- (c) if it is to be indexed, must be identified as an Indexed User Charge.

4.3 Theoretical Tolling Product Fee

The Theoretical Tolling Product Fee for a Tolling Product and a Financial Year:

- (a) in respect of all Tolling Product Fees other than those that are Indexed User Charges, is the Base Tolling Product Fee for that Tolling Product and that Financial Year; and
- (b) in respect of Tolling Product Fees that are Indexed User Charges, is the greater of the Theoretical Tolling Product Fee for that Tolling Product for the previous Financial Year, and the amount calculated in accordance with the following formula:

$$\text{Theoretical Tolling Product Fee} = \text{Base Tolling Product Fee for that Tolling Product and that Financial Year} \times \text{Yearly Indexation Factor}$$

4.4 Invoice and Look-Up User Charges

- (a) For the purposes of section 59(1)(c) of the Project Legislation, the following User Charges may be fixed as toll administration fees:
 - (i) invoice fee payable in respect of the first Invoice issued pursuant to section 66 of the Project Legislation (**First Invoice Fee**);
 - (ii) invoice fee payable in respect of the second Invoice issued pursuant to section 66 of the Project Legislation which has been the subject of a first Invoice (**Second Invoice Fee**);

- (iii) Victorian Look Up Fee in respect of one Trip on each day the subject of the relevant Invoice; and
 - (iv) Interstate Look Up Fee in respect of one Trip on each day the subject of the relevant Invoice.
- (b) Each of the First Invoice Fee and Second Invoice Fee:
- (i) will be determined in accordance with section 4.1;
 - (ii) once determined, will be set out in this section 4.4; and
 - (iii) is an Indexed User Charge.

5. Toll and Fee setting

5.1 Toll Charge

- (a) State Toll Co will fix as a toll under section 59(1)(b) of the Project Legislation a Toll Charge in relation to each category of Vehicle, each Toll Zone and each Quarter from and including the Quarter in which the Date of Tolling Commencement occurs.
- (b) A Toll Charge cannot exceed the Theoretical Toll Rate for that category of Vehicle, that Toll Zone and that Quarter.

5.2 Flag Fall

- (a) State Toll Co will fix:
 - (i) as a toll under section 59(1)(b) of the Project Legislation; and
 - (ii) for use of a Vehicle in the first Toll Zone entered by that Vehicle as part of a Trip,

a Flag Fall in relation to each Quarter from and including the Quarter in which the Date of Tolling Commencement occurs.
- (b) A Flag Fall cannot exceed the Theoretical Flag Fall for that Quarter.

5.3 Trip Charge

- (a) State Toll Co may levy a Trip Charge in relation to each Trip, each category of Vehicle and each Quarter from and including the Quarter in which the Date of Tolling Commencement occurs, calculated in accordance with section 5.3(b).
- (b) A Trip Charge for a Trip, a category of Vehicle and a Quarter is calculated as follows:

$$\text{Trip Charge}_q = \text{Flag Fall}_q + \text{Toll Charges}_q$$

where:

Flag Fall_q = the Flag Fall for the Quarter; and

Toll Charges_q = the sum of the Toll Charges for the category of Vehicle, the Quarter and each Toll Zone forming part of the Trip.

- (c) State Toll Co may levy a Trip Charge for use of a Vehicle in a Toll Zone which is less than the Trip Charge able to be levied under section 5.3(a) (whether by way of

one or more discounted Toll Charges, a discounted Flag Fall, or both) provided that such discount:

- (i) is offered to all Vehicles in the same category as that Vehicle;
- (ii) is offered in relation to travel at a particular time (for example over weekends, public holidays or off-peak times); and
- (iii) has been notified by State Toll Co at the same time and in the same manner as notification of the then applicable Toll Charges and Flag Fall under section 5.5(a).

5.4 Tolling Product Fee

- (a) State Toll Co may fix a Tolling Product Fee in relation to each Tolling Product and each Financial Year from and including the Financial Year in which the Date of Tolling Commencement occurs.
- (b) A Tolling Product Fee fixed for a Tolling Product and a Financial Year cannot exceed the Theoretical Tolling Product Fee for that Tolling Product and that Financial Year.

5.5 Notification

- (a) Subject to section 5.5(c), in order to fix a Toll Charge, Flag Fall, Tolling Product Fee or other User Charge permitted to be fixed under this Schedule, State Toll Co must, prior to the Quarter or Financial Year in which it is to apply, publish a notice outlining the relevant Toll Charge, Flag Fall, Tolling Product Fee or other User Charge:
 - (i) in the Victorian Government Gazette as required under the Project Legislation; and
 - (ii) on a website maintained by State Toll Co.
- (b) A Toll Charge, Flag Fall, Tolling Product Fee or other User Charge fixed in accordance with this Schedule in relation to a category of Vehicle, a Toll Zone, a Quarter and/or a Financial Year (as applicable) shall be deemed to have been so set in relation to each succeeding Quarter or Financial Year (as applicable) unless and until a further notice is published in accordance with section 5.5(a) indicating a change to the relevant Toll Charge, Flag Fall, Tolling Product Fee or other User Charge.
- (c) In respect of the Quarter and Financial Year in which the Date of Tolling Commencement occurs, notice required to be published under section 5.5(a) is required to be published prior to the Date of Tolling Commencement.

5.6 Determination of when a Trip occurs

For the purposes of determining whether a Vehicle travels within:

- (a) a Discount Period, a Trip is within a Discount Period if the Vehicle's first detected vehicle passage for that Trip occurs during a Discount Period;
- (b) a Quarter, a Trip is within a Quarter if the Vehicle's first detected Vehicle passage by for that Trip occurs during that Quarter; or
- (c) a Financial Year, a Trip is within a Financial Year if the Vehicle's first detected Vehicle passage by for that Trip occurs during that Financial Year.

Schedule 2 - Indexes Schedule

1. CPI

Consumer Price Index and **CPI** mean the ABS Cat No. 6401.0 Series ID A2325846C / All Groups Consumer Price Index Weighted Average of Eight Capital Cities published quarterly by the Australian Bureau of Statistics or, if section 3 applies, the index determined in accordance with section 3.

2. Indexation Factors and Escalation Rate

(a) The Quarterly Indexation Factor for each Quarter (**QIF_q**) is calculated as follows:

$$\text{QIF}_q = \left(\frac{\text{CPI}_{(q-1)}}{\text{CPI}_{\text{Base}}} \right)$$

where:

CPI_(q-1) = CPI for the Quarter immediately preceding the relevant Quarter; and

CPI_{Base} = CPI for the Quarter ending 31 December 2026, or such other CPI as may be determined under clause 4.9 of this Deed.

(b) The Escalation Rate for each Quarter is:

(i) for a Quarter ending before the 10th anniversary of the Date of NEL Opening, the greater of:

- A. the most recently available CPI (**CPI_{q-1}**) during the Quarter preceding commencement of the relevant Quarter divided by CPI (**CPI_{q-2}**) for the Quarter preceding that Quarter for which the most recently available CPI applies; and
- B. 1.008638 (that is, 3.5% per annum converted to a quarterly compound rate plus one); and

(ii) for each subsequent Quarter, the greater of 1 and the amount derived under section 2(b)(i)A.

(c) The Yearly Indexation Factor for each Financial Year (**YIF_y**) is calculated as follows:

$$\text{YIF}_y = \left(\frac{\text{CPI}_{(y-1)}}{\text{CPI}_{\text{Base}}} \right)$$

where:

CPI_(y-1) = at any date in that Financial Year, CPI for the Quarter ending 31 March in the Financial Year immediately preceding that Financial Year; and

CPI_{Base} = CPI for the Quarter ending 31 December 2026, or such other CPI as may be determined under clause 4.9 of this Deed.

3. Changes to Indexes

- (a) If there is a change in the coverage of CPI from that applying at the date of this Deed and the new index is linked to another index, CPI is to be referable to the new Index.
- (b) If CPI is published and there is a change in its:
- (i) coverage and it is not linked to another index; or
 - (ii) periodicity,
- the State must, within 20 Business Days of becoming aware of the change or being notified by State Toll Co, reasonably determine:
- (iii) whether CPI remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of CPI's use in this Deed,
- and seek State Toll Co's agreement as to such index.
- (c) If there is a change in the reference base of CPI from that applying at the date of this Deed and the Australian Bureau of Statistics:
- (i) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of CPI's use in this Deed, in terms of the new reference base; or
 - (ii) does not provide a conversion factor, the State must, within 20 Business Days of becoming aware of the change or being notified by State Toll Co, reasonably calculate a revised index for the purposes of the defined term's use in this Deed, and seek State Toll Co's agreement as to such revised index.
- (d) If CPI ceases to be published and the Australian Bureau of Statistics:
- (i) publishes another index which is:
 - A. a replacement of CPI; and
 - B. linked to CPI,

CPI must be re-calculated to the same reference base as the replacement index; or
 - (ii) does not publish another index which is linked to or replaces CPI, the State must, within 20 Business Days of becoming aware of the change or being notified by State Toll Co, calculate or determine a revised index and seek State Toll Co's agreement as to such revised index.
- (e) If a change in law causes a material aberration in CPI, CPI must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the State and State Toll Co.

Schedule 3 - Toll Calculation Principles

Prior to the Completion Review Date, the State and State Toll Co will determine the Base Toll Rate and the Base Flag Fall in accordance with the principles in this Schedule 3.

1. Base Toll Rate and Base Flag Fall

The Base Toll Rate for each Toll Zone and the Base Flag Fall shall be determined with a view to optimising the balance between the following principles (**Toll Calculation Principles**):

- (a) toll levels reflect the benefit obtained by the user and the costs they impose on the network;
- (b) transport outcomes are considered by optimising asset utilisation and managing traffic flows across the transport network to avoid distortionary network impacts;
- (c) tolls are not set at a level which would have the potential to materially compromise:
 - (i) the efficiency and performance of the NEL Corridor at any times of the day; or
 - (ii) the general alignment with the range of traffic volumes published in the EES (having regard to any changes to those traffic volumes as may be attributable to contemporary demographic and/or economic assumptions that may change over time); and
- (d) economically significant toll levels are set that allow State Toll Co to meet its financial obligations and generate a commercial return.

2. Determination of amounts

- (a) At any time prior to the Completion Review Date, State Toll Co may give the State a notice (a **Toll Amount Fixing Notice**) stating that it requires the fixing of the Base Toll Rate and the Base Flag Fall in accordance with the Toll Calculation Principles, and setting out its proposal for the Base Toll Rate and Base Flag Fall including reasonable detail of the basis for such amounts.
- (b) Upon receiving a Toll Amount Fixing Notice, the State will negotiate in good faith with State Toll Co to agree the Base Toll Rate and the Base Flag Fall in accordance with section 1 of this Schedule 3.
- (c) If the State and State Toll Co are unable to agree the Base Toll Rate and Base Flag Fall under section 1 within 30 days of the Toll Amount Fixing Notice, the decision to determine any of those amounts which are not agreed by the State and State Toll Co will be referred to the Minister (for the purposes of the Project Legislation) and the Treasurer for final determination in accordance with the Toll Calculation Principles.
- (d) The Base Toll Rate for each Toll Zone and the Base Flag Fall determined under this section 2 will be binding on State Toll Co and reflected in an amended Toll Calculation Schedule to be substituted for the then current Toll Calculation Schedule by way of an amendment to this Deed. The parties acknowledge that any changes to the Toll Calculation Schedule will be subject to sections 53, 54 and 55 of the Project Legislation.

Executed as a deed.

Each signatory confirms that the page they sign is in a full copy of the document.

State Toll Co

The OFFICIAL SEAL of the NORTH EAST LINK STATE TOLLING CORPORATION was affixed in accordance with section 11(1)(b) of the North East Link Act 2020 (Vic) in the presence of:



Name: Jason Loos

Title: Director

Name: An Nguyen

Title: Acting Managing Director

State

Signed, sealed and delivered as a deed in the State of Victoria by Jacinta Allan MP, in her capacity as the Minister for Transport Infrastructure for and on behalf of the Crown in the right of the State of Victoria:

Jacinta Allan

Jacinta Allan (Oct 27, 2021 18:34 GMT+11)

Signature