



The Treasurer of Victoria

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STAGE ONE – EAST WEST LINK

I refer to the “Project Agreement Stage One – East West Link” (**Project Agreement**) signed today by the State and the East West Connect Partnership (**EWC**).

On the basis of legal advice, the State’s executive government has the power to enter into the Project Agreement.

I understand that:

- (a) EWC has devoted considerable resources in bringing its bid to the point where it is capable of acceptance by the State;
- (b) the resources devoted to this bid have meant that not only have the global consortium members expended considerable time and money in their respective endeavours, but that there is also a significant opportunity cost to each of them given the many infrastructure related opportunities around the world;
- (c) Victoria's leading reputation as a safe and reliable place to do business, and more specifically as a leading exponent of the public private partnership model for the delivery of major public infrastructure and the benefits this brings in terms of attracting world class bidding teams for our tenders for infrastructure, will be compromised if the Project Agreement is challenged;
- (d) this impact will be magnified given the participation of a wide range of significant international and local equity and debt providers contributing to the private sector funding of Stage One of the East West Link;
- (e) Victoria has a significant pipeline of privatisations. major infrastructure projects and infrastructure refinancings which will require substantial private sector participation, hence maintaining private sector and investor confidence and interest in investing in Victoria is critical to the State; and

- (f) more generally confidence in the Victorian Government's reputation as a reliable counterparty and its current excellent ability to access international capital and inward investment may be unnecessarily dented.

EWC has advised me that it will be unable to sign the Project Agreement and achieve Financial Close in circumstances where the ability of the State to sign the Project Agreement has been questioned by others, and in the event that the Project Agreement is declared or decided to be void, EWC will be exposed to significant pecuniary loss and damage.

Because of these concerns I confirm that it is the intention of the State, under this letter, that EWC be given the same rights to which it might have been entitled under the Project Agreement to receive a Termination Payment calculated in accordance with the Termination Payments Schedule or under clause 58 of the Project Agreement (as applicable), should the Project Agreement be declared or decided to be void. I have been advised that the structure of the Project Agreement, including the Termination Payment, is appropriate and consistent with the National Public Private Partnership Policy and Guidelines, the Partnerships Victoria Framework and Victorian PPP precedent.

Accordingly I declare on behalf of the State if the Supreme Court of Victoria or other court of competent jurisdiction (**Court**) makes a declaration or decision within the period commencing from Financial Close (or purported Financial Close) and expiring 3 years later, that the State did not have the requisite executive power to execute the Project Agreement such that the Project Agreement is void or otherwise unenforceable, then the State will pay to EWC one or more amounts by way of compensation calculated in accordance with, and at the time or times payable in accordance with, the Project Agreement as if the Project Agreement had been terminated by the State in accordance with the terms of the Project Agreement on the date that is 3 months after the date on which the Project Agreement was declared or decided to be void or otherwise unenforceable.

This obligation is subject to the following conditions precedent, namely that:

- (i) Financial Close as defined in the Project Agreement (or purported Financial Close) has occurred;
- (ii) the State is entitled to a period of 3 months from the date of the Court's declaration or decision to otherwise remedy the fact of the Project Agreement being declared or decided to be void or otherwise unenforceable; and
- (iii) EWC or any Associate (as defined in the Project Agreement) has not brought about the relevant Court's declaration or determination.

Unless otherwise defined in this Deed Poll, all capitalised words have the meaning given to them in the Project Agreement as if that document had been a valid, and otherwise enforceable agreement and as if the Project Documents referred to in the Project Agreement were also valid and otherwise enforceable.

If, at any time, a provision of this Deed Poll 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 Poll; or
- (b) that provision under the Law of any other jurisdiction.

If any element (or sub-element) of the relevant formula used for calculating the Termination Payment is found to be illegal, invalid or otherwise unenforceable, the relevant element (or sub-element) will not affect or impair the legality, validity or enforceability of the relevant formula and the calculation of the Termination Payment will be given effect to by reference to the remaining elements (and sub-elements) and the purpose and intention of the element (or sub element) found to be illegal, invalid or otherwise unenforceable.

Executed as a Deed Poll in favour of the East West Connect Partnership and delivered on 29 September 2014

SIGNED SEALED & DELIVERED on the above date by the Honourable **Michael O'Brien MP** in his capacity as **Treasurer of the State of Victoria** on behalf of the Crown in right of the State of Victoria in the presence of:

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Treasurer of Victoria

[not disclosed - names and addresses]