

Confidentiality and Disclaimer Deed

Date:

MADE BY

**TRANSURBAN CITY LINK LIMITED
(the "Company")**

and

**PERPETUAL TRUSTEE COMPANY LIMITED
AS TRUSTEE OF THE TRANSURBAN CITY LINK UNIT TRUST
(the "Trustee")**

in favour of

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

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CONFIDENTIALITY AND DISCLAIMER DEED

THIS DEED made the _____ day of _____ 199

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

AND PERPETUAL TRUSTEE COMPANY LIMITED ACN 000 001 007 of Level 7, 39 Hunter Street, Sydney as trustee of the **TRANSURBAN CITY LINK UNIT TRUST** (the "**Trustee**")

(each a "**Recipient**" and together the "**Recipients**")

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

WHEREAS

- A. In connection with the Project, the Recipient will receive Disclosed Information.
- B. The terms and conditions upon which the Recipient receives and may use and disclose Disclosed Information and Notices are set out in this Deed.

WITNESSES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Any word, expression, reference or term in this Deed (or in any clause of the Concession Deed incorporated in this Deed) which is defined in the Concession Deed but not specifically defined below shall, unless the context otherwise requires, have in this Deed (including in any clause of the Concession Deed incorporated into this Deed) the same meaning as in the Concession Deed.

In this Deed unless the context otherwise requires:

"Confidential Information" means:

- (a) all Information submitted or disclosed to the State at any time in connection with the Project (including during negotiations, discussions and meetings);
and

- (b) all Information disclosed by the State to the Recipient at any time;
and includes without limitation:
- (c) Information which at the time of disclosure by the State is identified as being confidential;
- (d) Information which, of implied necessity, is confidential;
- (e) the Project Documents and any decisions or determinations made by the State in respect of the Project Documents;
- (f) any amendments or supplements to, or variations or novations of the Project Documents;
- (g) Information which the Recipient knows or ought reasonably be expected to know, is confidential;
- (h) Information disclosed by the State during the course of or which is related to the application and selection process, including that contained in correspondence, negotiations, discussions and meetings with the State; and
- (i) any agreement, arrangement or understanding relating to the Project, but does not include Non-Confidential Information.

"Concession Deed" means the deed dated [] entitled "Concession Deed" made between the State, the Company, the Trustee and the Manager.

"Disclosed Information" means Confidential Information and Non-Confidential Information.

"Information" includes information, inventions and ideas, which may be:

- (a) oral, written, recorded or stored by electronic, magnetic, electromagnetic, or in other form, process, media or otherwise in a machine readable form; or
- (b) translated from the original form, re-compiled, made into a compilation, partially copied, modified, updated or otherwise altered.

"Non-Confidential Information" means Information which:

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- (a) at the time of disclosure by or to the State or at any time thereafter is identified in writing by the State as such;
- (b) at the time of disclosure by or to the State is in the public domain otherwise than as a result of a breach of the terms of this Deed, or any other obligations of confidentiality owed by the Recipient or the State as the case may be;
- (c) prior to disclosure by the State was lawfully known to the Recipient and in respect of which the Recipient is not bound by any other obligations of confidentiality; or
- (d) is found by final and binding Court judgment to either not constitute Confidential Information or not otherwise be subject to any confidentiality obligations under this Deed.

"Notes" means any notes, abstracts, reports, assessments, evaluations, summaries and other material made by or on behalf of the Recipient or any of its Representatives in whatever form and on whatever media which are derived from, refer to, incorporate, contain any reproductions, adaptations or copies of or were created on the basis of:

- (a) for the purposes of clauses 8, 9 and 10, any Disclosed Information; and
- (b) for all other purposes of this Deed, any Confidential Information.

"Purposes" means the actions, activities and work performed or undertaken by the Company and the Trustee in order to fulfil their obligations under the Project Documents, Lending Documents and Transaction Documents.

"Permitted Person" means a Representative of the Recipient to whom the Recipient would be entitled, under clause 2(a), to disclose Confidential Information or Notes.

"Related Bodies Corporate" has the meaning ascribed to that term in section 50 of the Corporations Law.

"Representatives" includes in respect of a party any officer, director, partner, employee, agent, representative, delegate, consultant, adviser, financial adviser, contractor, Related Body Corporate, relative or close associate of or to that party.

"State" means the Crown in right of the State of Victoria and Government Agencies and its and their employees, agents and consultants.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) words importing the singular shall include the plural and vice versa;
- (b) words importing any gender include every gender;
- (c) the expression "**person**" includes an individual, body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated) and any other entity recognised by law;
- (d) references to any legislation or to any section or provision of any legislation shall include any statutory modification or re-enactment of that legislation or any statutory provision substituted for, and all ordinances, by-laws, regulations and other statutory instruments issued under such legislation or provision;
- (e) any reference to this Deed or any other agreement, deed, document, or instrument in part or in whole shall be construed as references to this Deed or that other agreement, deed or instrument or provision as amended, varied, modified, extended, renewed, supplemented, novated or substituted from time to time;
- (f) the headings are included in this Deed for convenience only and shall not be deemed to affect the interpretation of this Deed;
- (g) a reference to a clause is a reference to a clause of this Deed; and
- (h) a reference to disclosure (and variations of that phrase) in respect of Information or Notes shall also include permitting or allowing someone to have access to or possession of that Information or Notes (as the case may be) and in relation to disclosure by the State or the Recipient includes disclosure by their respective Representatives.

1.3 **Trustee Provisions**

The provisions of clauses 1.12, 1.13 and 1.14 of the Concession Deed shall apply as if set out in full in this Deed on the basis that references to the words "this Deed" are deemed to be references to this Deed.

2. **NON-DISCLOSURE**

Subject to clause 6, in consideration of the State from time to time at the State's discretion disclosing certain Confidential Information to the Recipient or the Permitted Persons, the Recipient covenants that:

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- (a) it shall not directly or indirectly disclose any of the Confidential Information or Notes to any person (including any of its Representatives) other than to either such persons who have a need-to-know to assist the Company and the Trustee (in the capacity and as required by the Company and the Trustee) in pursuing the Purposes or legal advisors, accountants or auditors to the Company or Trustee (acting in their capacity as such);
- (b) it shall use reasonable endeavours to ensure that any person to whom the Confidential Information or Notes are disclosed, does not disclose that Confidential Information or Notes at any time (either during their respective terms of employment, engagement, association or thereafter) to any person other than a Permitted Person;
- (c) it shall not, and shall use reasonable endeavours to ensure that each person to whom the Confidential Information or Notes are disclosed does not, appropriate for use on its or that person's own behalf or on the behalf of others, any of the Confidential Information or Notes other than strictly for the Purposes;
- (d) it shall maintain an up to date register of the names and addresses of each person to whom the Recipient discloses, or permits, the disclosure of, any of the Confidential Information or Notes;
- (e) it shall provide to the State, upon request from the State from time to time, a copy of the register maintained under paragraph (d) of this clause;
- (f) it shall not, and shall use reasonable endeavours to ensure that any person to whom the Confidential Information or Notes are disclosed does not, make Notes other than as strictly necessary for the Purposes;
- (g) it shall not, and shall use reasonable endeavours to ensure that any person to whom the Confidential Information or Notes are disclosed does not, reverse engineer, reverse compile or reverse analyse any Confidential Information or Notes;
- (h) it shall not, and shall use reasonable endeavours to ensure that any person to whom the Confidential Information or Notes are disclosed does not, disclose to any person other than a Permitted Person the purpose or fact that the Confidential Information or Notes have been made available to the Recipient or that person or that the Recipient or that person has inspected any portion of the Confidential Information and Notes; and

- (i) it shall not, and shall use reasonable endeavours to ensure that any person to whom the Confidential Information or Notes are disclosed does not, make, encourage or participate in any public comment or discussion in any forum on or in relation to any Confidential Information or Notes.

3. PARTIES

The Recipient (on its own behalf and on behalf of the Permitted Persons) agrees and acknowledges that though this Deed is not executed by the State's Representatives they are expressed to be and are parties to it, and, in accordance with its terms are entitled:

- (a) to the benefit of it; and
- (b) to enforce it as against the other parties to it.

4. PUBLIC DOMAIN

For the purposes of this Deed, Confidential Information shall not be deemed to be in the public domain merely because it relates to other Information which may be in the public domain.

5. SEARCH OF PUBLICATIONS

In addition and without limitation to the Recipient's other obligations under this Deed, the Recipient will not be released from its obligations under this Deed by using, and shall not use or permit any other person to whom it has disclosed the Confidential Information to use, any Confidential Information or Notes to guide a search of publications and other publicly available Information selecting a series of items of knowledge from unconnected sources and fitting them together.

6. EXCEPTIONS

6.1 Project Documents and Other Documents

Nothing in this Deed shall prevent the Recipient using or permitting another to use any Confidential Information or Notes (or require the Recipient to observe any obligation under this Deed relating to disclosure by it or another) to the extent that such use or disclosure is necessary for the purpose of fulfilling any obligation or performing any function under a Project Document, a Lending Document or an Equity Document.

6.2 Compulsory Disclosure

Subject to the Recipient first complying with clause 6.3, the covenants of the Recipient contained in clause 2 shall not apply in respect of Confidential Information or Notes that are required to be disclosed by law or Court order or by the Listing Rules of Australian Stock Exchange Limited, but only to the extent of such requirement.

6.3 Procedure Requirements

In the event that the Recipient or any person to whom any Confidential Information or Notes is disclosed:

- (a) is required by law or Court order to disclose all or any part of the Confidential Information or Notes; or
 - (b) anticipates or has cause to anticipate that it may be so required,
- the Recipient shall, and shall ensure such person shall as soon as possible:
- (c) notify the State of such actual or anticipated requirements;
 - (d) take all lawful measures available to oppose or restrict such disclosure, or to make disclosure on terms which shall preserve as far as possible the confidentiality of the Confidential Information or Notes; and
 - (e) take such steps as will permit the State to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means.

7. ACKNOWLEDGMENT

The Recipient acknowledges that it obtained its own legal advice in relation to, and prior to, executing this Deed.

8. INDEMNITY FOR BREACH

The Recipient hereby indemnifies and shall keep indemnified the State from and against any and all (including consequential and special) damages, loss, cost, expense or liability incurred or suffered by the State at any time as a direct or indirect result of any breach by the Recipient of any covenant, undertaking or warranty by the Recipient under this Deed.

9. NO RELIANCE ON MATERIAL

9.1 No Reliance on Material

Except as may be otherwise agreed in writing between the State and the Recipient and subject to clause 7.2 of the Concession Deed, the Recipient agrees and acknowledges that:

- (a) the State and its representatives and advisers do not make or give any representation, guarantee or warranty, express or implied, that the Disclosed Information is or will be complete or accurate or that it has been or will be audited or independently verified, or that reasonable care has been or will be taken by the State or any other person in the compilation, preparation or furnishing of the Disclosed Information; and
- (b) while the Disclosed Information may be used by the Recipient and its Representatives for the Purposes, it may not be relied upon in any way by the Recipient or its Representatives in assuming any contractual, statutory or other obligation or liability whatsoever, whether in relation to the Project, its interest or involvement in the Project, or otherwise.

9.2 Purpose of Disclosure and Use of Information

Subject to clause 7.2 of the Concession Deed, the Recipient covenants and agrees that:

- (a) the Disclosed Information is provided to the Recipient for the Purposes only;
- (b) the Recipient and its Representatives have and will rely entirely upon their own assessment and advice in relation to the Project and their interest or involvement therein in assuming all contractual statutory or other obligations in relation to the Project and all other obligations and liabilities of whatsoever nature; and
- (c) any reliance placed by the Recipient or its Representatives on the Disclosed Information or Notes is wholly at the risk of the Recipient or its Representatives.

10. RELEASE AND INDEMNITY

Subject to the specific provisions of this Deed, the Recipient covenants and agrees that:

- (a) to the extent permitted by statute, no liability (whether in negligence or other tort, by contract or under statute) is accepted by the State by reason of or in connection with the provision of the Disclosed Information or Notes or by the purported reliance on them by the Recipient or any person to whom any Disclosed Information or Notes are disclosed by the Recipient or its Representatives;

- (b) the Recipient irrevocably releases and hereby indemnifies the State and any person to whom any Disclosed Information or Notes are disclosed by the Recipient or its Representatives from and against all claims, actions, damages, judgments, losses, remedies or matters whether in negligence or other tort, contract or under statute or otherwise, (but not including liability in fraud or for dishonesty) arising from or which hereafter may arise from or in connection with:
 - (i) the provision of, or any purported reliance on, the Disclosed Information or Notes; or
 - (ii) any breach by the Recipient of this Deed,and covenants that no claim or allegation shall be made by the Recipient against the State in relation thereto; and
- (c) the Recipient expressly waives any right which it may otherwise have against the State to rely upon the Disclosed Information or Notes and warrants and covenants that neither it nor its Representatives will sue or seek to hold the State liable in any respect by reason of the provision of the Disclosed information or Notes or anything done or omitted to be done in reliance on them.

11 THIRD PARTY RIGHTS

Subject to the express provisions of the Concession Deed, the Recipient warrants that the use, disclosure or copying by the State of all or any part of the Information referred to in sub-paragraph (a) of the definition of "Confidential Information" in clause 1.1, including any additional information or documents provided to the State by the Recipient, or any person in connection with the Project, will not infringe any Intellectual Property Rights of any third party.

12 RETURN OF CONFIDENTIAL INFORMATION AND NOTES

The Recipient undertakes that it shall, and shall use reasonable endeavours to ensure that each person to whom the Confidential Information or Notes are disclosed shall, as soon as practical but in any event within 3 days of a request from the State:

- (a) return to the State, all documents, materials and other material which contain or refer to any of the Confidential Information and which is (or is legally capable of being) in its custody, possession or control;

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- (b) return to the State any copies or other replications of any such documents, materials or media which are (or are legally capable of being) in the State's custody, possession or control;
- (c) provide to the State all Notes and all copies thereof which are (or are legally capable of being) in the State's custody, possession or control;
- (d) remove from electronic storage all Confidential Information, including such information combined with any other information; and
- (e) execute and provide to the State a statutory declaration stating that the Recipient has discharged their obligations under this clause.

13 TERM

The terms and conditions of this Deed will survive indefinitely despite compliance with a request or deemed request under clause 12.

14 ACKNOWLEDGMENT

The Recipient acknowledges that a breach or threatened breach by it in regard to any provision of this Deed is likely to cause irreparable harm to the State, that the State's remedies at law may be inadequate, and that the State shall have the right to seek and obtain injunctive relief (including interlocutory, provisional, preliminary, temporary or permanent injunctions or restraining orders) against any such breach or threatened breach in addition to any other remedies to which the State may be entitled at law or in equity.

15 GENERAL

15.1 Non-Waiver

A failure to exercise or enforce, or a delay in exercising or enforcing, or a partial exercise or enforcement of any right, remedy, power or privilege under this Deed by the State shall not in any way preclude or operate as a waiver of any further exercise or enforcement of it, or the exercise or enforcement of any other right, remedy, power or privilege under this Deed or provided by law.

15.2 Severability

This Deed shall be interpreted, construed and applied so as to provide the maximum possible lawful protection to the State. If any provision of this Deed, or the application of any provision to any person or any circumstance, shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Deed, or the application of its provisions, to any

other person or circumstance, all of which other provisions shall remain in full force and effect, and it is the intention of the parties that if any provision of this Deed is susceptible of two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, then the provision shall have the meaning which renders it enforceable.

15.3 **Stamp Duty**

The Recipient shall pay all stamp duty and other fees (including fines and penalties) levied or payable in respect of this Deed or any transaction or instrument contemplated in this Deed.

15.4 **Governing Law**

This Deed shall be governed, by and construed in accordance with the laws in force in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

15.5 **Notices**

- (a) A notice, request, approval, consent or certificate given under this Deed (a "communication") shall be in writing and is deemed to be duly given to a party if it is:
 - (i) left at the party's address;
 - (ii) sent by prepaid post to the party's address with a request for confirmation of receipt to be provided by post; or
 - (iii) transmitted by facsimile to the party using the party's facsimile number, but only if the sender receives an "error free" transmission report for the correct facsimile number; and
 - (iv) in the case of a notice given to the Company marked "URGENT FOR THE IMMEDIATE ATTENTION OF THE CHIEF EXECUTIVE OFFICER - MELBOURNE CITY LINK PROJECT".
- (b) A communication given to a party is deemed to have been received by the party:
 - (i) if left at the party's address, when delivered;

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- (ii) if sent by prepaid post to that address with a request for confirmation of receipt to be provided by post, on the day evidenced by the receipt given by the postal service; and
- (iii) if transmitted by facsimile using the facsimile number of the party, on the day of transmission, but only if the sender receives an "error free" transmission report for the correct facsimile number,

provided however that:

- (iv) if a party would, but for this provision, be deemed to have received a communication after 4.00pm on a Business Day or on a day not being a Business Day, the party shall be deemed to have received the communication on the next Business Day; and
 - (v) in determining whether a requirement that there be a period of Business Days' notice in relation to a communication has been satisfied, the relevant number of Business Days shall be calculated from, but excluding, the Business Day of deemed receipt.
- (c) The address and facsimile number of each party is that set out below or such other address or facsimile number which that party from time to time gives notice of to each other party:

COMPANY: []

TRUSTEE: []

STATE: []

15.6 Variation

Any variation to this Deed shall only be made in writing and executed by each party.

Executed as a deed.

THE COMMON SEAL of)
TRANSURBAN CITY LINK PTY)
LIMITED was affixed by the authority of)
the Board of Directors in the presence of:)

16.

.....
(Signature of Secretary/Director)

.....
(Signature of Director)

.....
(Name of Secretary/Director in Full)

.....
(Name of Director in Full)

SIGNED, SEALED and DELIVERED for)
PERPETUAL TRUSTEE COMPANY)
LIMITED by its Attorney in the presence)
of:)

.....
Witness

.....
Name

.....**SIGI**)
ED, SEALED and DELIVERED by **THE**)
HONOURABLE WILLIAM R BAXTER)
MP, Minister for Roads and Ports of the)
State of Victoria for an on behalf of the)
Crown in Right of the State of Victoria in)
the presence of:)

.....
Witness

.....

.....
Name