

Schedule 10 - Deed of Accession

CLAYTON UTZ

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Execution Version

Deed of Accession

Stage One - East West Link

Linking Melbourne Authority

LMA

East West Connect Partnership

Project Co

[]

Utility

Deed of Accession made on

Parties Linking Melbourne Authority ABN 54 293 070 013 of Level 20, 180 Lonsdale Street, Melbourne 3000, a body corporate established under section 134 of the Transport Integration Act 2010 (Vic) (**LMA**)
East West Connect Partnership(**Project Co**)
[] (**Utility**)

Background

- A. LMA has entered into the Utility Agreement with the Utility.
- B. Under the Project Agreement, Project Co has agreed to, upon request, execute this Deed and implement the Utility Works in accordance with its obligations under the Project Agreement and the Utility Agreement.

Operative provisions

1. Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

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

Effective Date means the date of this Deed.

Party means any of LMA, Project Co or the Utility and **Parties** means each of them.

Project Agreement means the document entitled "Project Agreement Stage One - East West Link" between the State and Project Co dated [*#insert date*].

Utility Agreement means [*#insert details of Utility Agreement*].

Utility Works has the meaning given to it in the Utility 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) (**Deed and Schedule references**): a reference to:

- (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
- (ii) a section is a reference to a section of a Schedule;
- (d) **(Deed as amended)**: 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, duty, obligation, Liability, interest, entitlement, title, 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) **(construction)**: where there is a reference to an Authority, 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;

- (q) **(remedy)**: the use of the words "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; and
- (r) **(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.

2. Precedence of Project Agreement

Each of the Parties acknowledges and agrees that to the extent of any inconsistency, ambiguity or discrepancy between its obligations under this Deed, and the Project Agreement, the terms of the Project Agreement will prevail.

3. Covenant

3.1 Project Co covenants

- (a) **(covenants)**: Project Co:
 - (i) confirms that it has been supplied with a copy of the Utility Agreement; and
 - (ii) with effect from the Effective Date, agrees to be bound by the Utility Agreement and to perform all of the obligations required to be performed by LMA under the Utility Agreement:
 - A. as if Project Co was named in the Utility Agreement as a "Party"; and
 - B. in accordance with clause 5(c) of the Utility Agreement.
- (b) **(utility covenant)**: The Utility covenants with Project Co, with effect from the Effective Date, to comply with the provisions of, and to perform all its obligations under the Utility Agreement so far as they may remain to be observed and performed.

4. Miscellaneous

4.1 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 15 to 16 of the Utility Agreement, 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.

4.2 Entire Agreement

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

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

4.3 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.

4.4 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, power or remedy 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.

4.5 Consents, approvals and directions

- (a) (**State**): 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.
- (b) (**Project Co**): A consent or approval required in accordance with this Deed from Project Co may not be unreasonably withheld or delayed, unless otherwise expressly provided in this Deed.

4.6 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.

4.7 Expenses

Except as otherwise expressly provided in this Deed or (as between the State and Project Co) the Project Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

4.8 Severance

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

4.9 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.

4.10 Moratorium legislation

Without limiting clause 5.3 of the Project Agreement, 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 LMA any obligation under this Deed, or prejudicially affect the exercise by LMA of any right, power or remedy under this Deed or otherwise, are expressly waived.

4.11 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 4.11(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.

Executed as a deed

Signed sealed and delivered for and on behalf of **Linking Melbourne Authority** by its delegate in the presence of:

Signature of Witness

Signature of Delegate

Name of Witness in full

Name of Delegate

[State Note: Execution blocks for EWC Partnership to be inserted prior to execution.]