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**BETWEEN 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 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 (the "**Trustee**")

**AND TRANSFIELD CONSTRUCTION PTY LTD ACN 000 854 688** of 12th Floor, 100 Arthur Street, North Sydney, New South Wales, ("**Transfield Construction**") and

**OBAYASHI CORPORATION ARBN 002 932 756** of [Level 16, State Bank Centre, Martin Place, Sydney, New South Wales] ("**Obayashi**")

(each a "Construction Contractor" and together the "**Construction Contractor**")

**AND** [ ] of [ ]  
[ ] of [ ] (each a "Contractor" and collectively with the Construction Contractor, the "**Contractors**")

**AND [ETTM JOINT VENTURERS,** that is those responsible for the Tolling System]

## RECITALS

- A. Under the Concession Deed the State, the Company and the Trustee have agreed that the Company and the Trustee will plan, design, construct and own the Link and the Company will operate and maintain the Link in accordance with the terms and conditions of the Concession Deed.
- B. The Construction Contractor, the Company and the Trustee have entered into the Design and Construct Contract, and the Construction Contractor has entered into the Construction Contracts in relation to designing and constructing Sections of the Link.

- C. The State has agreed to procure certain rights in favour of the Company and the Trustee in relation to the Project Land and has taken security over amongst other things, the interests of the Company and the Trustee in the Design and Construct Contract.

**THIS DEED WITNESSES**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Any word, expression, reference or term used in this Deed (or in any clause of the Concession Deed incorporated in this Deed) which is defined in the Concession Deed and is 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:

**"Concession Deed"** is the deed dated [ ] entitled "Concession Deed" made between the State, the Company, the Trustee [and the Manager];

**"Construction Contract Default"** is, at any time, a default or event, however described, on the part of or relating to:

- (a) the Company or the Trustee under any Contract; or
- (b) in relation to a Contract between a Construction Contractor and a Contractor, the Construction Contractor,

which subsists at the relevant time and which entitles another party to the Contract to terminate the Contract;

**"Construction Contracts"** is each contract between a Construction Contractor and a Contractor, particulars of which are set out in the Schedule;

**"Construction Joint Venture"** means the unincorporated joint venture between Obayashi and Transfield Construction;

**"Contract"** is any or all of the Design and Construct Contract and the Construction Contracts;

**Defects Correction Period**" has the meaning given it in the Design and Construct Contract;

**"Design and Construct Contract"** is the agreement dated [ ] between the Company, the Trustee, the Manager and the Construction Contractor relating to the design and construction of the Link;

**"Receiver"** is a receiver or receiver and manager appointed by the State under the Deed of Charge and, if more than one, then each of them; and

**"Security"** has the meaning given it in the Master Security Deed.

**"Security Interest"** is a mortgage, charge, lien, pledge, lien, encumbrance, trust arrangement or other security agreement or security arrangement.

## 1.2 Interpretation

In this Deed unless the context indicates a contrary intention:

- (a) the expression "person" includes an individual, body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- (b) a reference to any person includes that person's executors, administrators, successors, permitted substitutes and assigns, including any person taking by way of novation;
- (c) a reference to any authority, institute, association or body is:
  - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another body, deemed to refer to that body; and
  - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the body as serves substantially the same purposes or object of that authority, institute, association or body;
- (d) a reference to this Deed or to any other deed, agreement, document or instrument includes, respectively, this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

- (e) a reference to any legislation or to any section or provision thereof includes any statutory modification or re-enactment or any statutory provision substituted therefor and all ordinances, by-laws, regulations and other statutory instruments issued thereunder;
- (f) words importing the singular shall include the plural (and vice versa) and words denoting a given gender shall include all other genders;
- (g) headings are for convenience only and shall not affect the interpretation hereof;
- (h) a reference to a clause or Schedule is a reference to a clause of or Schedule to this Deed;
- (i) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning; and
- (j) a reference to the "Construction Contractor" means a reference to Transfield Construction and Obayashi and each of them separately.

### **1.3 Inconsistencies**

In the event of any inconsistency between the provisions of this Deed and any Contract the provisions of this Deed will prevail to the extent of the inconsistency.

### **1.4 Delegate**

- (a) The State may appoint a person as a delegate to perform any of its functions under this Deed. The State shall give the Contractors notice of any delegate so appointed, setting out the delegated functions.
- (b) The State may revoke the appointment of a delegate and may appoint a substitute and shall give the Contractors notice of each appointment and revocation.
- (c) The appointment of a delegate to perform some or all of the functions of the State under this Deed will not limit or affect the State's obligations or liability under this Deed.

### **1.5 Trustee Provisions**

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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 .

## **2. CONSTRUCTION CONTRACT DEFAULT**

### **2.1 Notification of Construction Contract Default**

- (a) Upon becoming aware of a Construction Contract Default relating to a Contract, each Construction Contractor and each Contractor party to it shall promptly notify the State in writing of the occurrence of that default.
- (b) Where a Contractor or Construction Contractor is required under a Contract to give a notice of default to the Company, the Trustee or a Construction Contractor, as the case may be, upon the occurrence of a Construction Contract Default, it shall give the State a copy of that notice of default at the same time it gives that notice to the Company, the Trustee or a Construction Contractor.

### **2.2 Opportunity to the State to Rectify**

If a Construction Contract Default may be remedied by the payment of money or if the payment of money may prevent the exercise of any entitlement to terminate a Contract because of a Construction Contract Default the State will, in conjunction with and in addition to any right of the Company, the Trustee or the Construction Contractor to remedy or procure the remedy of the Construction Contract Default, have the right to remedy or procure the remedy of the Construction Contract Default (or prevent termination of the relevant Contract) by the payment of money in accordance with clause 2.3(b) (but without prejudice to any other rights of the State under the Project Documents).

### **2.3 Remedial Action by the State**

- (a) If a Construction Contract Default occurs, the State has the right to remedy it or procure its remedy (or prevent termination of the relevant Contract) and it is not remedied by or on behalf of the Company, the Trustee or the Construction Contractor (as the case may be) within the time given under the relevant Contract (if any), the Contractor or the Construction Contractor which is the other party to that Contract shall give notice to the State specifying the relevant Construction Contract Default and the view of the person giving the notice of the amount of money required to be paid to remedy it or procure its remedy (and, if

different, the amount of money required to be paid to prevent termination of the relevant Contract).

- (b) The State shall be at liberty to remedy or procure the remedy of a Construction Contract Default, and to prevent termination of the relevant Contract by reason of a Construction Contract Default, of which it is entitled to receive notice under paragraph (a). It may do this by making or procuring payment of money within 15 Business Days of the date of the notice given under paragraph (a) sufficient to either remedy the relevant Construction Contract Default or to prevent termination of the relevant Contract by reason of that default.

#### 2.4 **No Termination of a Construction Contract**

Each Contractor and Construction Contractor agrees with the State that it will only be entitled to terminate a Contract under which a Construction Contract Default has occurred if:

- (a) it has given to the State the notice referred to in clauses 2.1;
- (b) (in the context of a Construction Contract Default to which clause 2.2 applies) a period of 15 Business Days has elapsed after its having given the State notice under paragraphs 2.3(a) and in that period the State did not exercise its rights under paragraph 2.3(b);
- (c) it has given the Lenders the notices required to be given by it under the Lending Documents and a period of 15 Business Days has elapsed from the giving of such notice; and
- (d) the Construction Contract Default has not been remedied.

### 3. **NOVATION TO STATE ON TERMINATION**

#### 3.1 **Novation**

If Completion of all Sections has not occurred and the State gives notice of its intention to exercise its rights under paragraph 3.4(b)(i)(A) of the Concession Deed to a Construction Contractor or Contractor in relation to a particular Contract or Contracts to which the Construction Contractor or Contractor is party, then as from the date specified in the notice or (absent specification of a date) the date of the notice:



- (a) the Construction Contractor or Contractor, as applicable, shall perform for, and owe to, the State all its obligations under the particularised Contract or Contracts;
- (b) the State shall be entitled to exercise all of the rights and, subject to clause 3.2, shall assume all of the obligations, of the Company and the Trustee under the particularised Contracts (insofar as the particularised Contract is the Design and Construct Contract) or of the Construction Contractor (insofar as the particularised Contracts are not the Design and Construct Contract);
- (c) subject to clause 3.2, the Construction Contractor or Contractor (as applicable) shall have the same rights against the State as it had against the Company, the Trustee or the Construction Contractor in respect of obligations so assumed; and
- (d) any party to this Deed requested by the State to do so will enter into a deed, in terms reasonably required by the State, reflecting the novation of the relevant Contract from the Company, the Trustee or the Construction Contractor, as the case may be, to the State.

### **3.2 Obligations prior to Novation**

- (a) Clause 3.1 will not operate to:
  - (i) require the State to assume any obligations under any Contract which relate to the period prior to the date specified in, or the date of, the State's notice under clause 3.1 (as applicable) or to any breach or failure to perform in that period; or
  - (ii) vest in any person any rights against the State in respect of obligations which the State is not required to assume; and
- (b) The State shall not, in relation to any Contract, be subject to any set-off or counterclaim which arises out of circumstances which relate to, or to any breach or failure in, the period prior to the date specified in, or the date of, a notice given under clause 3.1 (as applicable).

### **3.3 Appointment of a Receiver**

- (a) Each Contractor and the Construction Contractor each agrees with the State that if the State appoints a Receiver under or in accordance with

the Deed of Charge the appointment of the Receiver will not become or be capable of becoming a Construction Contract Default.

- (b) The Construction Contractor agrees with the State that, if the State appoints a Receiver under or in accordance with the Deed of Charge, the Construction Contractor will perform for the Receiver all of the obligations of the Construction Contractor to the Company and the Trustee under the Design and Construct Contract, but subject to clause 2.4 and paragraph (a), without prejudice to any of its rights of termination under that Contract.

### **3.4 Sub-Contractors and Suppliers**

The Construction Contractor and each Contractor shall each ensure that all sub-contracts and supply agreements to which it is a party and which are entered into pursuant to a Contract contain provisions, in a form approved by the State (such approval not to be unreasonably withheld), so that each sub-contract or supply agreement remains capable of performance for the benefit of the State or a Receiver, should the State exercise its rights under clause 3.1 or the provisions of clause 3.3 apply.

## **4. AMENDMENTS TO CONSTRUCTION CONTRACTS**

The Construction Contractor and each Contractor each agree with the State that it will not make any material modification, variation or amendment to the terms of any Contract to which it is a party without the prior consent of the State. That consent shall not be unreasonably withheld or delayed.

## **5. RESTRICTION ON DEALINGS**

- (a) Nothing in this Deed prevents:
  - (i) some or all of the parties to this Deed (other than the State) entering into an agreement for, or deed of, novation of a Contract to the Security Trustee, in a form acceptable to the State, provided that the agreement or deed (and any dealing effected by it) only applies for a period which expires no later than the date of termination of the Concession Deed;
  - (ii) the grant of a Security Interest affecting a Contract, or the exercise of any right, remedy or power arising because of the Security Interest; or

- (iii) the Company or the Trustee from terminating the Design and Construct Contract or the Construction Contractor terminating a Contract with a Contractor, either pursuant to the terms of that Contract or at general law.
- (b) Subject to paragraph (a), each Contractor and the Construction Contractor each agrees with the State that it will not transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in any Contract without the prior consent of the State (such consent not to be unreasonably withheld) and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrancee enters into a deed in which it agrees to be bound by the terms of this Deed.
- (c) Each of Obayashi and Transfield Construction agrees with the State that it will not transfer or otherwise deal with its participation interest or share in the Construction Joint Venture or permit any person to become a participant in, or to take a participation interest or share in, the Construction Joint Venture at any time prior to the expiry of one year after Completion of all Sections without the prior written consent of the State which consent shall not be unreasonably withheld or delayed.
- (d) Transfield Construction represents to the State that it enters into the Construction Joint Venture in its own right, not as a trustee or fiduciary. It agrees with the State that it will not permit any person to become entitled (within the meaning of section 609 of the Corporations Law) to:
  - (i) 50% or more of the issued ordinary shares and other voting shares in Transfield Construction; or
  - (ii) issued ordinary and other voting shares in Transfield Construction which when added to the number of ordinary and other voting shares in Transfield Construction to which that person would be so entitled if that person converted to ordinary shares or other voting shares in Transfield Construction all securities which that person is entitled to convert, equals or exceeds 50% of the issued ordinary shares and other voting shares in Transfield Construction (assuming such conversion).

## 6. ACKNOWLEDGMENT BY THE COMPANY AND THE TRUSTEE

Each of the Company and the Trustee consents to the terms of this Deed and will co-operate in the implementation of this Deed.

## **7. EXPENSES AND STAMP DUTIES**

### **7.1 Expenses**

Each party will bear its own costs, including professional costs and disbursements, associated with the preparation and execution of this Deed and any subsequent consent, agreement, approval or waiver hereunder or amendment thereto.

### **7.2 Stamp Duty**

The Company and the Trustee shall each pay all stamp, registration and similar taxes (including fines and penalties not imposed or levied because of any negligent delay by the State effecting a payment utilising funds provided to the State by the Company or the Trustee for the purpose of effecting they payment) payable to or required to be paid by any appropriate authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by it.

## **8. MISCELLANEOUS**

### **8.1 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.
  
- (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;
- (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:

STATE: [ ]

COMPANY: [ ]

TRUSTEE: [ ]

[CONSTRUCTION CONTRACTOR]: [ ]

[CONTRACTOR]: [ ]

**8.2 Variation**

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

**8.3 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.

**8.4 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 hereunder by a party shall not in any way preclude or operate as a waiver of any further exercise or enforcement thereof for the exercise or enforcement of any other right, remedy, power or privilege hereunder or provided by law.

**8.5 Severability of Provisions**

Any provision of this Deed which is illegal, void or unenforceable shall be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions of this Deed.

**8.6 Counterparts**

This Deed may be executed in a number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same deed.

**8.7 Further Assurance**

Each Contractor and the Construction Contractor each shall promptly after being requested to do so by the State perform all things and execute all agreements, assurances and other documents as the State reasonably requires, to perfect or give effect to the rights and powers of the State created, or intended to be created, by this Deed.

**THE SCHEDULE**

**CONSTRUCTION CONTRACTS**

| NAME OF CONTRACTOR | DATE OF CONTRACT | WORK TO BE PERFORMED UNDER CONTRACT |
|--------------------|------------------|-------------------------------------|
|--------------------|------------------|-------------------------------------|

EXECUTED as a deed.

SIGNED, 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

SIGNED, SEALED and DELIVERED for )  
and on behalf of TRANSURBAN CITY )  
LINK LIMITED ACN 070 810 678 by )  
its Attorney in the presence of: )

.....  
Witness

.....  
Name

SIGNED, SEALED and DELIVERED for )  
and on behalf of PERPETUAL )  
TRUSTEE COMPANY LIMITED ACN )  
000 001 007 by its Attorney in the )  
presence of: )

.....



.....  
Witness

.....  
Name

**SIGNED, SEALED and DELIVERED** for )  
and on behalf of **TRANSFIELD** )  
**CONSTRUCTION PTY LTD ACN 000** )  
**854 688** by its Attorney in the presence )  
of: )

.....

.....  
Witness

.....  
Name

**SIGNED, SEALED and DELIVERED** for )  
and on behalf of **OBAYASHI** )  
**CORPORATION ARBN 002 932 756** )  
by its Attorney in the presence of: )

.....  
Witness

.....  
Name

.....

**SIGNED, SEALED** and **DELIVERED** for )  
and on behalf of **[ETTM JOINT** )  
**VENTURERS]** by its Attorney in the )  
presence of: )

.....

.....  
Witness

.....  
Name