

# Master Security Deed

**Date:**

**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")**

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

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

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
(the "Agent")**

**ANZ CAPEL COURT LIMITED  
(the "Security Trustee")**

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DEED made at \_\_\_\_\_ on \_\_\_\_\_

**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 AS TRUSTEE OF THE TRANSURBAN CITY LINK UNIT TRUST of Level 7, 39 Hunter Street, Sydney (the "Trustee")**

**AND AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ACN 005 357 522 of Level 2, 100 Queen Street, Melbourne (the "Agent")**

**AND ANZ CAPEL COURT LIMITED ACN 004 768 807 of Level 2, 100 Queen Street, Melbourne (the "Security Trustee")**

## RECITALS

- A. The State, Company and the Trustee have agreed that the
- (a) planning, design and construction of: and
  - (b) ownership, operation and maintenance of,
- the Link will be in accordance with the terms and conditions of the Concession Deed.
- B. Company and the Trustee will execute the Deed of Charge to secure their obligations under or by reason of the Project Documents to the State.
- C. The State will consent to the Securities and the Security Trustee and the Agent will consent to the Deed of Charge in accordance with this Deed.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Concession Deed

- (a) Unless the context otherwise requires any word, expression, reference or term used in this Deed which is defined in the Concession Deed and is not specifically defined in clause 1.2 shall have the same meaning in this Deed as in the Concession Deed.

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- (b) Clause 14.4 of the Concession Deed shall be incorporated in this Deed as if set out in this Deed.

## 1.2 **Definitions**

In this Deed, unless the context otherwise requires:

**"Accession Deed"** means a deed substantially in the form of the Second Schedule.

**"Bank Model"** is the financial model, and the assumptions and information used by or incorporated in the model:

- (a) which includes certain projections and calculations with respect to repayment of Project Debt;
- (b) on the basis of which the Lenders entered into the Lending Documents;
- (c) a copy of which has been approved by the State prior to Financial Closing;
- (d) as, at a time after Financial Closing, changed only as a result of incorporation of data or as a result of revisions made under paragraph 7.2(e) or which would have been made by the Company and the Trustee under clause 14.3(e) of the Concession Deed were the model the Financial Model.

**"Concession Deed"** is the deed made with effect from 20 October 1995 entitled "Concession Deed" made between the State the Company, the Trustee and the Manager.

**"Controller"** has the meaning given it in the Corporations Law but as if the Trust were a corporation and as if the concept of "charge" included any Security Interest.

**"Core Property"** means all property, interests, rights and Plant to which sub-paragraph 6.3(a)(ii) applies.

**"Delegate"** is a delegate appointed by the State under clause 1.5.

**"Finance Default"** is an event described as an "Event of Default" in the Security Trust Deed.

**"Lender"** means, at any time, a person who provides or may provide financial accommodation to the Company or the Trustee under a Lending Document, or any other person on whose behalf the Agent acts as agent under the Lending Documents.

**"Lenders' Cure Period"** is the period during which the Concession Deed does not terminate because of the operation of paragraph 4.3(a). Such a period commences on the giving of the relevant notice of termination of the Concession Deed under clause 15.2 or

15.3 of that deed and ends on the earliest of:

- (a) termination of that deed pursuant to paragraph 4.3(b) or 4.3(c);
- (b) disposition of all the property and rights of the Company and the Trustee in relation to the Project under the Securities;
- (c) the relevant PV Default being remedied or its consequences overcome in the manner outlined in paragraph 4.3(g)(ii) and (iii).

**"Lenders Cure Program"** is, at any time, the steps and actions that together comprise a program, and the date or dates then specified in the program, as outlined in paragraph 4.3(d) and as changed pursuant to paragraphs 4.3(e) and 4.3(f).

**"Loan Life Cover Ratio"** is, at any time, the ratio then determined using the Bank Model on the basis of the calculation outlined in the definition of that ratio in the Security Trust Deed.

**"Operating Step-In"** means the exercise by the State of its right of step-in under subparagraph 4.7(a)(ii).

**"PV Default"** is an event or circumstance which under the Concession Deed does, or with the giving of notice or lapse of time would, entitle the State to terminate the Concession Deed.

**"Remedial Step-In"** means the exercise by the State of its right of step-in under subparagraph 4.7(a)(i).

**"Securities"** are the securities listed in the First Schedule and any additional Security Interest taken by the Security Trustee under clause 18.3 .

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

**"Security Trust"** means the trust to be established by the Security Trust Deed.

**"Security Trust Deed"** means the deed contemplated to be made on or before Financial Closing between the Company, the Trustee, the Manager, certain of the Lenders, the Agent and the Security Trustee, in connection with the provision of financial accommodation for the design and construction of the Link.

**"State's Priority Obligations"** means obligations owed to the State:

- (a) under clause 3.1(c) of the Concession Deed;

- (b) under clause 11.7 of the Concession Deed (insofar as it requires the payment of interest on moneys falling within the State's Priority Amount); and
- (c) under sub-paragraph 4.7(b)(vi) (step in costs),

but excluding obligations owed to the State to pay interest on, or overhead or indirect expenses comprising part of, amounts payable in relation to Remedial Step-In.

**"State's Priority Amount"** is, at any time, the aggregate amount then due for payment to the State at that time in respect of the State's Priority Obligations.

**"Syndicated Facilities Agreement"** is the agreement contemplated to be made on or before Financial Closing between the Company, the Trustee, the Manager, certain of the Lenders and the Agent for the provision of financial accommodation for the design and construction of the Link.

### 1.3 **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 party includes that party'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 entity, deemed to be a reference to the new entity; and
  - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the entity which serves substantially the same purposes or object as that former entity;
- (d) a reference to any document or agreement (including this Deed) includes a reference to such document or agreement as amended, novated, replaced or supplemented from time to time;
- (e) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of, or any legislative provision substituted for and all ordinances, by-laws, regulations and other statutory instruments issued under, such legislation or such provision;



- (f) words denoting the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (g) headings are for convenience only and shall not affect the interpretation of this Deed;
- (h) a reference to a clause or Schedule is a reference to a clause of or Schedule of this Deed; and
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form has a corresponding meaning.

#### 1.4 **Inconsistencies**

If there is an inconsistency between the provisions of this Deed and the Project Documents or between the provisions of the Deed and the Lending Documents, the provisions of this Deed will prevail to the extent of the inconsistency.

#### 1.5 **Delegate**

- (a) The State:
  - (i) may appoint a delegate to perform any functions or exercise any rights or powers of the State under this Deed;
  - (ii) shall specify the delegated functions, or rights or powers in a notice of appointment;
  - (iii) may revoke the appointment of the Delegate and substitute another person; and
  - (iv) shall give the Security Trustee, the Agent, the Company and the Trustee notice of each appointment (including details of its scope) and revocation.
- (b) 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 or expand the State's rights under this Deed.

## 1.6 **Role of Agent**

- (a) The Agent enters into this Deed (and executes Accession Deeds) in its capacity as agent of the Lenders from time to time. The rights and obligations of the Agent under this Deed at any time are the rights and obligations of the Lenders at that time. Each Lender has (subject to the terms of the Lending Documents) a several entitlement to each such right, and a several liability in respect of each such obligation, in the proportions applicable at that time under clause 4.4 of the Security Trust Deed. The rights, remedies and discretions of the Lenders, or any of them, under this Deed and under Accession Deeds may be exercised by the Agent. No party to this Deed shall be obliged to enquire whether an exercise by the Agent of any such right, remedy or discretion is within the Agent's authority as agent of the Lenders.
- (b) Each party to this Deed acknowledges that any change (in accordance with the provisions of the Lending Documents) in the identity of the persons from time to time comprising the Lenders shall give rise to a novation of this Deed, without any further act. Upon such a novation, the persons then comprising the Lenders shall be vested with the rights, remedies and discretions, and assume the obligations, of the Lenders under this Deed (as described in paragraph (a)). Each party to this Deed irrevocably authorises the Agent to consent to each novation contemplated in this paragraph (b). That consent will be deemed to have been given when the Agent countersigns an accession certificate delivered to it under clause 1.11 of the Security Trust Deed.

## 1.7 **Role of Security Trustee**

The parties acknowledge that the Security Trustee enters into and delivers this Deed, holds the benefit of this Deed and of the Securities and incurs its obligations under this Deed, as trustee of the Security Trust. Except in the case of fraud or wilful misconduct on the part of the Security Trustee, any liability incurred by the Security Trustee pursuant to this Deed shall be limited, and the Security Trustee will not be obliged to satisfy it except, to the extent to which it is entitled to be indemnified out of assets of the Security Trust.

## 1.8 **Role of Trustee**

The provisions of clauses 1.12, 1.13 and 1.14, inclusive, of the Concession Deed shall be incorporated into this Deed as if set out in this Deed.

## 1.9 **Payments by the Company or Trustee**

For so long as any Project Debt is owing and notwithstanding the express terms of any Project Document to the contrary, payments to be made by the Company or the Trustee to the State under, or for breach of, any Project Document (other than a payment of the State's Priority Amount) shall not become due or due and payable until sufficient money is available

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for withdrawal from the Distributions Account (as defined in the Security Trust Deed) to meet that payment in full.

**1.10 Conditions Precedent**

The satisfaction or waiver in accordance with clause 2.7 of the Concession Deed of the conditions contained in that clause is a condition precedent to the coming into operation of this Deed (other than this Clause). Neither the Company nor the Trustee will waive any such condition without the consent of the Agent.

**2. CONSENT TO SECURITIES**

- (a) The State consents to the Securities.
- (b) The Security Trustee and the Agent consent to the Deed of Charge.

**3. PRIORITY**

**3.1 Priority**

Notwithstanding:

- (a) anything contained in the Securities or the Deed of Charge;
- (b) the respective dates or the order of execution or registration of the Securities and the Deed of Charge;
- (c) the order in which any moneys secured by the Securities or the Deed of Charge are:
  - (i) advanced;
  - (ii) deemed to have been advanced; or
  - (iii) become payable or secured under the Securities or the Deed of Charge;
- (d) the repayment in whole or part from time to time of moneys secured by the Deed of Charge;
- (e) any fluctuation in the amount secured by the Securities or the Deed of Charge;
- (f) that moneys secured by the Securities or the Deed of Charge are contingently payable or not due for payment;

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- (g) the respective dates on which anything is done or omitted to be done under or in relation to either the Securities or the Deed of Charge; or
- (h) any rule of law or equity to the contrary,

the parties agree that the order or priority between the Deed of Charge and the Securities is, at any particular time:

- (i) first, the Deed of Charge for the State's Priority Amount at that time;
- (j) secondly, the Securities for the aggregate of:
  - (i) Project Debt;
  - (ii) amounts due from the Company or the Trustee because of their breach of a Lending Document; and
  - (iii) to the extent not falling within the preceding sub-paragraphs, amounts due from the Company and the Trustee in respect of financial accommodation made available by the Lenders in addition to that contemplated in the Base Case Financial Model, insofar as it is reasonably necessary for the Trustee and the Company to incur liability in respect of that financial accommodation because of an event outside the reasonable control of the Company, the Trustee and all Contractors and insofar as the risk of that event was not fully insured (notwithstanding observance by the Company and the Trustee of their respective obligations under Article 13 of the Concession Deed),

at that time;

- (k) thirdly, the Deed of Charge for any amount secured by it at that time, other than the State's Priority Amount at that time; and
- (l) fourthly, the Securities insofar as they secure at that time amounts other than those to which paragraph (j) applies.

Accordingly, the parties agree that any moneys received by the Security Trustee or the State or any Controller appointed under a Security or the Deed of Charge on enforcement of the Security or the Deed of Charge, as the case may be, shall (subject to any prior claim at law) be applied in the following order of priority:

- (m) first, towards the reasonable costs, charges and expenses of the State, the Security Trustee or any Controller appointed under the Deed of Charge or a Security incurred in the enforcement of the Deed of Charge or the Security;

- (n) secondly, towards the remuneration of any such Controller;
- (o) thirdly, to the State and the Security Trustee in accordance with the priorities set out above;
- (p) fourthly, any surplus amount to be paid to an account in the name of the Trustee (to be apportioned by the Trustee for its benefit and the benefit of the Company) with any Bank. That surplus will not carry interest.

### 3.2 **Continuance of Rights**

- (a) This Deed does not affect the obligations, rights, powers or remedies of a party under a Project Document or Lending Document, except to the extent expressly provided in this Deed.
- (b) The failure by a party (other than the Company or the Trustee) to comply with the provisions of this Deed does not affect the liability of either the Company or of the Trustee under any Project Document or Lending Document.

### 3.3 **Payments by the State**

The Trustee shall specify by notice to the State given on or about the date of the Security Trust Deed an account (the "designated account"). The Trustee and the Agent may from time to time change that account by notice given by both of them to the State. Such a notice will take effect upon the expiration of 5 Business Days after it is received by the State. While any Project Debt remains secured by the Securities, all payments by the State to the Company or to the Trustee (or to the Security Trustee under clause 1.21 of the Concession Deed) shall be paid without set-off or counterclaim into the then applicable designated account.

### 3.4 **Appointment of Controller**

If a Controller is appointed in relation to any property under any of the Securities, the Controller may (if it notifies the State of its desire to do so) assume possession and control of that property from any Controller in possession and control of that property under the Deed of Charge, and the Deed of Charge does not preclude the free dealing with the property by such a Controller, notwithstanding the security created by or any provision of the Deed of Charge to the contrary.

### 3.5 **Enforcement by the State**

For so long as there is Project Debt secured by the Securities then, unless:

- (a) the Security Trustee has previously consented in writing;

- (b) a PV Default has not been remedied and its consequences not overcome and the State is not precluded by this Deed from exercising its right to terminate the Concession Deed; or
- (c) the State has terminated the Concession Deed otherwise than in breach of this Deed,

the State will not:

- (d) accelerate any amount owing by Company or the Trustee to the State or otherwise declare any such amount prematurely payable on a PV Default or otherwise unless Project Debt has become prematurely due and payable pursuant to the Security Trust Deed;
- (e) enforce, by execution, the payment of any amount owing by Company or the Trustee to the State under or by reason of the breach of the Project Documents except to the extent that such amount is included in the State's Priority Amount;
- (f) enforce any Security Interest arising under or by virtue of the Deed of Charge; or
- (g) petition for (or vote in favour of any resolution for) or initiate or support or take any step with a view to, any insolvency, liquidation, reorganisation, administration or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving the Company or the Trustee,

provided, however that nothing in this clause 3.5 prevents the floating charge in the Deed of Charge crystallising over an asset in accordance with the terms of the Deed of Charge upon or at any time after enforcement of any Security Interest in respect of that asset arising under a Security.

### **3.6 Registration and Notice**

The State and the Security Trustee shall co-operate with a view to reflecting the priorities set out in this Deed in any register with any filing or registration authority and in giving notice to insurers and debtors liable for obligations covered by a Security and the Deed of Charge.

### **3.7 Payment of Priority Amounts**

If, at any particular time:

- (a) the Agent or the Security Trustee (or a Controller appointed under a Security) has control over an amount of money (or an account into which an amount of money was deposited) derived from payment of tolls in connection with the

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Project;

- (b) at that time moneys were due and payable to the State which comprise (in whole or in part) the then applicable State Priority Amount; and
- (c) the State demonstrates to the reasonable satisfaction of the Agent that such moneys are so due and payable,

then the Agent or the Security Trustee (as the case requires) shall pay to the State the lesser of the amount referred to in paragraph (a) and that part of the State Priority Amount as is then due for payment.

#### **4. PV DEFAULT**

##### **4.1 Notice of PV Default**

The State shall give to the Security Trustee and the Agent a copy of any notice given to the Company or the Trustee under any of the clauses 15.1 to 15.4 of the Concession Deed at the same time it gives that notice to the Company or the Trustee.

##### **4.2 Information to the Lenders**

After the State has given the Company or the Trustee a notice to which clause 4.1 applies:

- (a) each of the Company and the Trustee shall keep the Agent informed of all measures taken or intended to be taken by it to remedy or overcome the consequences of the PV Default to which the notice relates; and
- (b) if the Agent requests that it do so, the State shall give to the Agent (promptly after the request was made) copies of all correspondence and documents reasonably required by the Agent and issued by the State to the Company or the Trustee relating to that PV Default (other than correspondence or documents the provision of copies of which to the Agent would result in breach of an obligation of confidence owed by the State).

##### **4.3 Lenders' Right to Remedy**

- (a) If at the time notice of termination of the Concession Deed is given by the State under clause 15.2 or 15.3 of that deed, any Project Debt is outstanding;

then the Concession Deed will not terminate by reason of the State having given that notice unless:

- (i) (if within 3 months after having given the Security Trustee a copy of the relevant notice of termination the State receives notice from the

Security Trustee of the intention of the Security Trustee diligently to pursue disposal of all the Company's and Trustee's property and rights in relation to the Project (or at least all Core Property)), the Concession Deed terminates under paragraph (b); or

(ii) (if sub-paragraph (i) does not apply), the Concession Deed terminates under paragraph (c).

(b) The Concession Deed may terminate under this paragraph by notice given by the State to the Security Trustee, the Company and the Trustee at any time after a failure by the Security Trustee or a Controller appointed under a Security to either:

(i) dispose of all the property and rights of the Company and the Trustee in relation to the Project (or at least all Core Property) under the Securities in accordance with this Deed within 2 years after the date of the notice under sub-paragraph (a)(i); or

(ii) diligently pursue such a disposition provided, however, that no notice of termination in respect of a failure to which this sub-paragraph (ii) applies may be given unless either:

A. the State has given the Security Trustee notice of the failure and the Security Trustee or the Controller fails to recommence diligent pursuit of the disposition within 20 Business Days of the giving of that notice; or

B. if the State has given such a notice to the Security Trustee, the Security Trustee or the Controller recommenced diligent pursuit of the disposition within that 20 Business Day period but the Security Trustee or the Controller subsequently again fails to diligently pursue the disposition.

(c) The Concession Deed may terminate under this paragraph by notice given by the State to the Security Trustee, the Company and the Trustee:

(i) if by the date 3 months after the State gives the Security Trustee and the Agent a copy of a notice of termination referred to in paragraph (a) a Controller appointed under the Securities is not in possession of all the Company's and the Trustee's property and rights in relation to the Project (or at least in possession of all Core Property); or

(ii) at any time after a failure by a Controller (or successor Controller) appointed under the Securities to either:



- (A) remedy the relevant PV Default or overcome its consequences by the date specified in the Lenders Cure Program, but as that date may have been varied as a result of:
  - (1) agreement between the Security Trustee and the State; or
  - (2) the operation of paragraph (e); or
- (B) diligently pursue all steps and actions described in the Lenders Cure Program, but as those steps and actions may have been varied as a result of:
  - (1) agreement between the Security Trustee and the State; or
  - (2) the operation of paragraph (e),

provided, however, that no notice of termination:

- (iii) under sub-paragraph (c)(ii) may be given prior to the date referred to in sub-paragraph (i);
- (iv) under this paragraph (c) may be given, at a time when the relevant PV Default has been remedied or its consequences overcome; or
- (v) in respect of a failure of the type described in sub-paragraph (ii)(B) may be given unless either:
  - (A) the State has given the Security Trustee notice of the failure and the Controller fails to recommence diligent pursuit of all the relevant steps and actions within 20 Business Days of the giving of that notice, or
  - (B) if the State has given such a notice to the Security Trustee, the Controller recommenced diligent pursuit of all relevant steps and actions within that 20 Business Day period but the Controller subsequently again fails to diligently pursue all relevant steps and actions.

- (d) If the notice given by the State under paragraph (a) relates to clause 15.2 of the Concession Deed, the Lenders Cure Program shall comprise those of the steps and actions described in the program applicable under that clause of the

Concession Deed as remain incomplete at the later of the time of the appointment of Controller referred to in paragraph (c) and the time at which that notice was given. Similarly, if notice given by the State under paragraph (a) relates to clause 15.3 of the Concession Deed, the Lenders Cure Program shall comprise those of the steps and actions described in the program applicable under that clause of the Concession Deed as remain incomplete at the later of the time of the appointment of Controller referred to in paragraph (c) and the time at which that notice was given. The Security Trustee and the State shall meet within three months after the date of that notice in an endeavour, in good faith, to agree the date (for inclusion in the Lenders Cure Program) by which the relevant PV Default should be remedied or its consequences overcome. If that date is not agreed by the State and the Security Trustee before expiration of that three month period, either of them may refer the matter for expert determination under clause 4.6.

- (e) The Security Trustee may seek a change to the Lenders Cure Program (including a change to the date by which the relevant PV Default should be remedied or its consequences overcome). It may only do this, however, by notice to the State:
  - (i) specifying each change sought;
  - (ii) received by the State prior to the date specified in the then current Lenders Cure Program as the date by which the relevant PV Default should have been remedied or its consequences overcome.
- (f) If a remedy of the relevant PV Default or the overcoming of its consequences has been diligently pursued since the later of the time of appointment of the Controller referred to in paragraph (c) and the time at which the relevant notice under clause 15.2 or 15.3 of the Concession Deed (as applicable) was given and the Security Trustee seeks a change in accordance with paragraph (e), it shall be entitled to such change if (but only to the extent that) it is consistent with a Controller appointed under the Securities continuing diligently to pursue a remedy of the relevant PV Default or the overcoming of its consequences . Absent agreement between the State and the Security Trustee as to any change so sought within 10 Business Days of the giving of a notice under paragraph (e), the State or the Security Trustee may refer the matter for expert determination under clause 4.6.

- (g) The parties agree that:
- (i) subject to sub-paragraph (v), any assessment or determination as to what can be achieved were something to be diligently pursued or as to whether there has been a failure diligently to pursue something shall be made in the context of the actual circumstances prevailing at all relevant times but:
    - (A) any lack of financial or technical resources shall be disregarded; and
    - (B) the standard of pursuit shall be not less than what might reasonably be expected of the State, having regard to the resources (including technical resources) that the State might reasonably be expected to devote (or procure be devoted) were the State to have or have had (as applicable) an obligation to achieve or implement that thing, promptly;
  - (ii) insofar as the notice to which paragraph (a) relates is one given under clause 15.2 of the Concession Deed, Completion of all Sections is the only means of both remedying the relevant PV Default and overcoming its consequences;
  - (iii) insofar as the notice to which paragraph (a) relates is one given under clause 15.3 of the Concession Deed, in order for the relevant PV Default to have been remedied or its consequences overcome, the breach to which that notice relates must have been remedied or its consequences overcome;
  - (iv) any action or step which would constitute a breach of this Deed or which, if taken by the Company or the Trustee, would constitute a breach of an obligation owed to the State under another Project Document, must not form part of any Lenders Cure Program;
  - (v) in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure diligently to pursue something, for the purpose of this clause 4.3, regard is required to be had to time necessary to enable advice to be taken in relation to the relevant PV Default and the steps and actions required to be taken in order to remedy it or overcome its consequences (including advice that might need to be taken at or around the time of appointment of any Controller), recognising that neither the Security Trustee nor any Controller appointed under the Securities will be either a toll road constructor or operator; and
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(vi) in agreeing or determining the date (for inclusion in the Lenders Cure Program) by which a PV Default should be remedied or its consequences overcome by a Controller, the State and the Security Trustee shall each be entitled to require the adoption of a date which reflects that remedy or the overcoming of those consequences being diligently pursued by the Controller.

(h) During any Lenders Cure Period:

(i) the State shall promptly provide the Security Trustee with such information as the Security Trustee may reasonably request that the State provide to it, including information relevant to the decision by the Security Trustee whether to give a notice under clause 4.3(a)(i), any disposal of the kind mentioned in that clause, the remedying of the relevant PV Default or the overcoming of its consequences or the achievement and implementation of the things provided for in a Lenders Cure Program, in each case as may be reasonably requested by the Security Trustee;

(ii) the Agent shall promptly provide to the State such information as the State may reasonably request that the Agent provide to it, including information in relation to the actions and steps taken or proposed with respect to:

(A) the disposition of the Company's and Trustee's property and rights in relation to the Project (or all the Core Property, as applicable);

(B) the remedy of any PV Default or the overcoming of its consequences,

including information reasonably requested concerning timing estimates in relation to those actions and steps, progress made in the implementation of those actions and steps, changes to actions and steps previously proposed and any alternative actions or steps being considered;

(iii) the State and the Security Trustee shall hold discussions in good faith as and when reasonably requested by either of them, concerning matters referred to in this clause 4.3 which either of them reasonably requests be the subject of such discussions; and

(iv) if so requested by the Security Trustee, the State shall confer with the Security Trustee for the purpose of assisting the Security Trustee in

identifying any persons who may be appropriate to acquire the property and rights of the Company and the Trustee in relation to the Project.

#### 4.4 **Payments by the State**

For the avoidance of doubt, but without limiting or affecting the State's obligations under the Project Documents, the parties acknowledge that the State shall not be liable for any costs incurred by a party to this Deed in attempting to remedy or overcome the consequences of a PV Default or in exercising rights under the Lending Documents.

#### 4.5 **Acknowledgment**

The Security Trustee and the Agent acknowledge that the concurrence of a Finance Default and a PV Default will not affect or suspend the rights and obligations of the parties under this clause 4.

#### 4.6 **Disputes**

If pursuant to clause 4.3 or 7.2(e) a matter may be referred for expert determination under this clause 4.6, any dispute or difference arising between the State and the Security Trustee or Agent (as applicable) in relation to that matter shall be resolved in the same manner as disputes or differences referred for expert determination under Article 16 of the Concession Deed are resolved. Accordingly, the provisions of clauses 16.3 to 16.16 of the Concession Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Concession Deed, and the only persons party to the relevant dispute of difference, are the Security Trustee or Agent (as applicable) and the State;
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this clause 4.6 pursuant to clause 4.3 or 7.2(e);

- (c) clauses 4.3 and 7.2(e) were listed in Part A of the Dispute Resolution Schedule to the Concession Deed; and
- (d) the relevant dispute or difference was one to which paragraph 16.2(b) of the Concession Deed applies.

#### 4.7 **Step In**

- (a) Without limitation to its rights under the Concession Deed (and in particular clause 9.11 of that deed) the State may at any time after its receipt of a notice under sub-paragraph 4.3(a)(i), step in to the Project for the purpose of endeavouring in good faith:
  - (i) to remedy or overcome the consequences of (within the meaning of sub-paragraphs 4.3(g)(ii) and (iii)) the PV Default in connection with which the relevant notice of termination under the Concession Deed was issued;
  - (ii) to achieve Completion of all Sections (insofar as this has not been achieved at the relevant time) and to operate, maintain and repair the Link, but only insofar as:
    - (A) prior to the relevant time, the Security Trustee has notified the State that the Lenders do not wish to do these things in accordance with the Project Documents; or
    - (B) a Controller appointed under the Securities is not diligently pursuing either Completion of all Sections (insofar as this has not been achieved prior to the relevant time), or the operation, maintenance and repair of the Link, in accordance with the Project Documents.
- (b) If the State elects to exercise its power of step-in under paragraph (a):
  - (i) it must notify the Security Trustee, the Company and the Trustee of that election;
  - (ii) each party to this Deed shall give to the State or its nominee (and each of the Agent and the Security Trustee shall do such acts as are within its power to ensure that any Controller appointed under any Security gives to the State or its nominee) such of its rights in relation to the property and rights of the Company and Trustee, or either of them, as and when the State in good faith determines (by notice to the Agent) to be necessary or desirable for it (or its nominee) to have in order to enable or facilitate the endeavours which it must, in good faith, make under paragraph (a);
  - (iii) the State (or its nominee) may exercise the rights required to be given it under sub-paragraph (ii) to the exclusion of all others and in such manner as the State determines in good faith may be necessary or desirable in order to enable or facilitate those endeavours;
  - (iv) each party to this Deed shall cooperate (and each of the Agent and

the Security Trustee shall ensure that any Controller appointed under any Security cooperates) with the State (or its nominee) to the extent reasonably necessary to allow the proper exercise by the State (or its nominee) of those rights, without material interference or restriction;

- (v) (without prejudice to its rights under this clause to step-in again or under clause 9.11 of the Concession Deed) the State must relinquish (or procure that any nominee under this clause relinquishes) rights given under sub-paragraph (ii):
  - (A) in the context of remedial step-in, if it determines not to pursue the remedy of the relevant PV Default or the overcoming of its consequences, or if the purpose of the State having exercised its step-in right, as outlined in sub-paragraph (a)(i), is achieved; or
  - (B) in the context of operating step-in, if either it determines that it no longer wishes to exercise those rights or 20 Business Days has expired after the Agent has notified the State that a Controller, acting under a Security, wishes diligently to pursue Completion of all Sections (insofar as this has not been achieved) and the operation, maintenance and repair of the Link, in accordance with the Project Documents;
- (vi) each of the Company and the Trustee shall indemnify the State for any cost, loss, claim or expense suffered, incurred or payable by, or made against, the State as a result of or in connection with the exercise of its rights under this clause, including:
  - (A) the exercise of any right given under sub-paragraph (ii);
  - (B) in the context of remedial step-in, its endeavours (or those of its nominee) to remedy the relevant PV Default or overcome its consequences;
  - (C) in the context of operating step-in, its endeavours (or those of its nominee) to achieve Completion of all Sections and operate, maintain and repair the Link;
- (vii) the State shall endeavour in good faith to ensure that costs and expenses to which the preceding sub-paragraph applies do not exceed those that would have been incurred or payable by the Company and the Trustee, or either of them, had each of them been complying with their respective obligations to the State under the Project Documents and, in particular (but without limitation), had they:
  - (A) in the context of remedial step-in, been diligently pursuing a remedy for the relevant PV Default or the overcoming of its consequences; and
  - (B) in the context of operating step-in, been diligently pursuing Completion of all Sections (insofar as this has

not been achieved prior to the relevant time) or the operation, maintenance and repair of the Link, in accordance with the Project Documents.

- (c) Each party acknowledges and agrees that the exercise by the State of any of its rights of step-in under this clause shall not extinguish or limit any obligation owed or risk assumed or accepted by a party in favour of the State under a Project Document. This does not, however, apply insofar as and for so long as the result of the giving of rights under sub-paragraph (b)(ii) is to preclude the performance by the party of the obligation or its ability to assume or accept that risk.
- (d) If the State elects to exercise its right of step-in under paragraph (a), it shall provide regular (not less than monthly) reports to the Agent (with copies to the Company and the Trustee) outlining its good faith estimate of:
  - (i) the aggregate amount for which the Company and the Trustee became liable under the indemnity provided for in paragraph (b)(vi) since the later of its last report under this clause and the date on which it exercised its right of step-in;
  - (ii) the amount received by the State and applied by it in or toward satisfaction of that indemnity liability; and
  - (iii) the amount which the State anticipates will become the subject of that indemnity in the period up to the next such report.
- (e) If an amount is paid by the State and the State is entitled to be indemnified against that payment under sub-paragraph (b)(vi), each of the Company and the Trustee shall pay interest on that amount from the date of payment. Such interest shall accrue, be calculated and be capitalised in the manner outlined in clause 11.7 of the Concession Deed as if that amount fell due for payment to the State on the date the payment was made by the State.
- (f) Amounts and interest payable to the State under the indemnity referred to in sub-paragraph (b)(vi) and under paragraph (e) shall become due for payment:
  - (i) in whole, on termination of the Concession Deed;
  - (ii) to the extent of any sales proceeds upon a sale, assignment or disposition of Plant, property, rights or interest (being a sale, assignment or disposal in relation to which the State's consent must be obtained under clause 6.3) on the date of receipt; and
  - (iii) (insofar as the relevant amounts relate to [or the interest relates to amounts which relate to] operation and maintenance in the context of Operating Step-In) in part, on the 5th Business Day of each month following that in which the amount or interest became payable or the interest began to accrue, with the amount of that part being equal to the Distributable Cashflow for the preceding month (less so much of that Distributable Cash Flow as has already been received by the State in or towards payment of amounts or interest payable to it under that indemnity or under that paragraph).



- (g) Notwithstanding anything in this clause, it is acknowledged that the Security Trustee may permit a Controller appointed under a Security to endeavour in good faith to rectify or overcome the consequences of a PV Default at any time when the State is not exercising its rights under paragraph (a)(i) but such Controller will not act contrary to the rights of the State under this clause and will acknowledge those rights.
- (h) The State may only appoint a nominee in relation to the exercise of its right of step-in under this clause 4.7 if the nominee has been approved by the Security Trustee. The Security Trustee will not unreasonably withhold or delay approval and will be deemed to have given it if the Security Trustee does not reject a request for approval within 5 Business Days of the request being made.

## **5. FINANCE DEFAULT**

### **5.1 Notice of Finance Default and Enforcement**

- (a) The Security Trustee shall notify the State of a Finance Default promptly after the Security Trustee receives written notice that a Finance Default has occurred from the Agent, the Company or the Trustee.
- (b) The Security Trustee and the Agent must each ensure that no action is taken to enforce any Security or to recover under any Security any money secured by it, unless the Security Trustee first gives the State not less than 10 Business Days prior notice of intention to take the action or make the declaration. The obligation to provide this notice does not, however, apply if:
  - (i) the Agent considers in good faith that it would be prejudicial to the interests of the Lenders to give that prior notice; and
  - (ii) the State is given notice of the relevant declaration or action promptly after it is made or taken.

### **5.2 Information to the State**

Upon the occurrence of a Finance Default:

- (a) when the Finance Default is capable of remedy, each of the Company and the Trustee shall keep the State informed of all measures taken or intended to be taken to remedy the Finance Default; and
- (b) if the State requests that it do so, the Agent shall give to the State (promptly after the request was made) copies of all correspondence and documents reasonably required by the State issued to the Company or the Trustee under a Lending Document in relation to or in connection with the Finance Default, other than correspondence or documents the provision of copies of which to the State would result in the breach of an obligation of confidence owed by the Agent or the Lenders.

## **6. ENFORCEMENT OF RIGHTS FOLLOWING A FINANCE DEFAULT**

### **6.1 Rights in Respect of Project Documents**

- (a) The State acknowledges that any Controller appointed under the Securities in respect of all (or substantially all) the property and rights of the Company and of the Trustee subject to the Securities in relation to the Project (including all of their respective property and rights in the Project Documents and Transaction Documents) is entitled to (and may) exercise the rights of the Company and of the Trustee under the Project Documents, subject to the terms of those documents, this Deed and to the rights and duties of the Controller or of the Security Trustee at law or under any of the Securities.
- (b) The State acknowledges that none of the Security Trustee, the Agent, the Lenders and any Controller appointed under any of the Securities is, or becomes (on exercise or enforcement of any of their rights, powers or remedies under the Securities), liable to perform any obligation owed to the State by the Company or the Trustee under the Project Documents.

### **6.2 Enforcement Action**

- (a) Without limitation to the actions which the Security Trustee and the Lenders may choose to take following the occurrence of a Finance Default (including during a Lenders' Cure Period), but subject to this Deed and the Lending Documents, the Security Trustee may:
  - (i) appoint a Controller to perform some or all of the obligations, and exercise some or all of the rights, of the Company and Trustee under the Project Documents;
  - (ii) engage (or permit a Controller appointed by it to engage) one or more other persons reasonably acceptable to the State to perform some or all of those obligations; and
  - (iii) exercise a power of sale whether or not a notice has been given under sub-paragraph 4.3(a)(i).
- (b) Subject to paragraph (e), the Agent agrees on its own behalf and on behalf of the Lenders that it and none of them shall exercise:
  - (i) any right of set off or combination of accounts in relation to either of the Insurance Proceeds Accounts or the Maintenance and Repairs Account; or
  - (ii) any other right whatsoever in relation to any of those accounts the effect of exercise of which would be to apply money standing to the credit of the account in a way inconsistent with:
    - (A) in the context of the Maintenance and Repairs Account, clause 11.2 of the Concession Deed;
    - (B) in the context of an Insurance Proceeds Account, clause 13.7 of the Concession Deed, but as modified by clause

7.2 of this Deed.

- (c) The parties acknowledge the provisions of paragraph 11.2(d) of the Concession Deed and agree that for the purposes of this Deed (as well as for the other Project Documents) references to the Maintenance and Repairs Account shall, in certain circumstances in accordance with that paragraph, be deemed to be references to the Maintenance Reserve Account (within the meaning of the Security Trust Deed).
- (d) The Agent shall notify the State of any non-compliance by the Company with an obligation under a Lending Document with respect to the Maintenance Reserve Account (within the meaning of the Security Trust Deed), promptly after the Agent becomes aware of it.
- (e) Nothing in paragraph (b) shall prevent moneys in the Maintenance and Repairs Account and Maintenance Reserve Account from being applied to meet Company or Trustee liabilities in respect of Project Debt due and payable.

### 6.3 **Disposal of Rights under Project Documents**

- (a) Each of the Agent and the Security Trustee will do all in its respective power to ensure that:
  - (i) no person is engaged as a replacement Contractor;
  - (ii) no Plant, no property or interest in property which would need to be provided to the State under clause 3.4 of the Concession Deed (were that Deed to terminate) and no right or interest of the Company or the Trustee in the Tolling System, the Proprietary Documentation or, in the Project Documents or Transaction Documents or in the Project Land or Lay Down Areas, is sold, assigned or otherwise disposed of, by it, a Lender, the Security Trustee or a Controller appointed under a Security without first having:
    - (iii) obtained the prior written consent of the State; and
    - (iv) given to the State such written details of the relevant person and of the proposed terms and conditions of that person's engagement as replacement Contractor or of the proposed sale, assignment or disposal (as applicable), as may be reasonably necessary in order to enable the State to determine whether it must consent under paragraph (b).
- (b) If the State's consent under paragraph (a) is sought, it shall not withhold or unreasonably delay the giving of that consent if:
  - (i) any Project Debt is outstanding;
  - (ii) it has received all the details referred to in sub-paragraph (a)(iv);
  - (iii) the person who it is proposed be the replacement Contractor or who it is proposed be the purchaser, assignee or donee is solvent, is either a reputable corporation or a corporation which has not

previously traded and is a corporation in relation which each person in Control is a reputable and solvent person;

- (iv) in the case of a proposed purchaser, assignee or disponent:
  - (A) the relevant person has itself or has by way of support provided by others in form and substance reasonably satisfactory to the State, financial and technical resources, and a level of expertise, necessary to enable the person to perform those of the obligations of each of the Company and of the Trustee to the State under the Project Documents which remain unsatisfied or which will be, or may be, required to be performed under the Project Documents;
  - (B) the relevant person is to acquire simultaneously all Core Property;
  - (C) the relevant person enters into such written instruments in form and substance satisfactory to the State as the State reasonably considers necessary for that person to enter into in order for that person to assume in favour of the State all obligations (including obligations which remain unsatisfied and contingent obligations) owed to the State by the Company, the Trustee or both of them, under the Project Documents;
  - (D) there has been executed in favour of the State a fixed and floating charge over all the relevant person's present and future property, rights and interests (including those referred to in sub-paragraph B) substantially in the form of the Deed of Charge, being a charge the priority of which is not less than the priority enjoyed by the State in respect of the Deed of Charge;
  - (E) the State has received a draft of each document which it is proposed be executed under clause 6.4;
  - (F) The State determines in relation to all such documents (which determination shall not be unreasonably withheld or delayed) that they would not adversely affect the nature or extent of any of its rights, remedies, powers, obligations or liabilities under the Project Document, were they to bind the parties to them;
- (v) in the case of a proposed replacement Contractor, the relevant person:
  - (A) has itself or by way of support provided by others in form and substance reasonably satisfactory to the State, financial and technical resources, and a level of expertise, necessary to enable the person to perform its obligations under the proposed terms and conditions of its engagement; and

- (B) the proposed terms and conditions of that person's engagement are not materially less onerous than those which apply to the current Contractor and include a requirement to perform such of the obligations of the current Contractor under the relevant Transaction Document which remain unsatisfied or which would or may have been required to be satisfied and there has been executed in favour of the State an instrument in form and substance not materially different from the Contractors' Deed of Novation (in the case of a replacement Construction Contractor) or Operator Support Instrument (in the case of a replacement Operator).
- (c) The State agrees that the Security Trustee is entitled to nominate the replacement Operator approved by the State under paragraph (a) or the purchaser, assignee or donee approved by the State under paragraph (a), and that it will procure any such person to be declared, as a "Link operator" or a "Link Corporation" respectively under the Project Legislation.

#### 6.4 **Facilitation of Disposal**

If it is proposed that property subject to a Security be sold, assigned or otherwise disposed of under a Security and the State has consented to that sale, assignment or disposal under clause 6.3, each party to this Deed must execute such documents as it is reasonably requested to execute by another party to this Deed to enable the relevant property to vest in the purchaser, assignee or donee and, if that property comprises all Core Property to:

- (a) novate the Project Documents (other than this Deed) so that the purchaser, assignee or donee becomes a party to those documents;
- (b) amend the concepts of "Project Debt" and "Lending Documents" to the extent (if any) necessary to reflect the nature and extent of the indebtedness incurred or assumed by the purchaser, assignee or donee in acquiring the relevant property and the documents under which that indebtedness was incurred;
- (c) either terminate this Deed or, if a person other than the State is to hold a Security Interest over the relevant property, novate this Deed so that:
  - (i) instruments under which the purchaser, assignee or donee grants such Security Interests become the "Securities";
  - (ii) the holder or holders of such Security Interests become party to the novated deed and assume the position of the Security Trustee, the Agent and the Lenders; and
  - (iii) the instrument of fixed and floating charge referred to in clause 6.3 becomes the Deed of Charge.

#### 6.5 **Sale Proceeds**

The Security Trustee and the Agent shall each ensure that any proceeds of a sale, assignment or disposal in relation to which the State's consent must be obtained under

clause 6.3 are first applied (and are promptly applied) in satisfaction of the State's Priority Amount. Insofar as those proceeds:

- (a) are (at the time the sale, assignment or disposal becomes effective) insufficient to do this the State will nevertheless be obliged to perform its obligations under clause 6.3;
- (b) exceed the aggregate of the amount secured by the Deed of Charge and the Securities at the time of the sale, assignment or disposal and the State was, prior to that time, prevented from exercising a right of termination under clause 15.3 of the Concession Deed because of sub-paragraph 13.8(a) of that deed (other than due to the application of sub-paragraph 13.8(a)(i)(A) of that deed) then the Security Trustee and the Agent shall each ensure that the State is promptly paid a proportion of the amount of that excess, being the proportion which costs reasonably incurred by the State in reinstating and repairing the relevant State Area (within the meaning of clause 13.8 of the Concession Deed) bears to ET Market Value at the time of the relevant damage or destruction or (if that value is zero because of the operation of paragraph (a) of the definition of that term) ET Base Case at that time. The Security Trustee may hold the amount of the excess pending the State, the Company and the Trustee agreeing that proportion or that proportion otherwise being determined. In this regard, the State, the Company and the Trustee agree to adopt the provisions of Article 16 of the Concession Deed in relation to any dispute concerning that proportion as if:
  - (i) the only matter for expert determination under those provisions was the issue as to the determination of the appropriate proportion;
  - (ii) the only persons party to the Concession Deed, and the only persons party to the relevant dispute or difference, were the Company, the Trustee and the State;
  - (iii) this paragraph (b) were listed in Part A of the Dispute Resolution Schedule to the Concession Deed; and
  - (iv) the dispute was one to which paragraph 16.2(b) of the Concession Deed applies.

## 6.6 Disposals on Arms Length Terms

Whilst any Project Debt remains outstanding, each of the Security Trustee and the State shall, in exercising any power of sale, assignment or disposal under or by virtue of the Securities or the Deed of Charge, to the extent to which it is required to do so as part of its duties as a mortgagee or chargee at law and to no greater extent, endeavour in good faith to ensure that any resulting sale, assignment or disposal is on commercial arms length terms.

## **7. INSURANCE PROCEEDS**

### **7.1 Deposit Insurance Proceeds**

Subject to clause 7.2, each party shall deposit into the Company's Insurance Proceeds Account all insurance proceeds received by the party which (were they to have been received by the Company) would have been required to have been deposited into that account under paragraph 11.3(b) of the Concession Deed. Similarly, each party shall deposit into the Trustee's Insurance Proceeds Account all insurance proceeds received by the party which (were they to have been received by the Trustee) would have been required to have been deposited into that account under that paragraph.

### **7.2 Application of Insurance Proceeds**

- (a) The Security Trustee and the Agent acknowledge that, subject to this clause 7.2, all insurance proceeds referred to in clause 13.7 of the Concession Deed must be applied towards reinstatement and repair of any damage or destruction, in accordance with that clause, and that the Company and the Trustee shall each be entitled (even if a Finance Default has occurred or a Controller under a Security has been appointed) to effect withdrawals from their respective Insurance Proceeds Accounts in order to facilitate that application.
- (b) If:
  - (i) proceeds are received in respect of insurance of the type to which sub-paragraph 13.3(a)(i) or 13.4(a)(i) of the Concession Deed applies as a result of any particular damage to, or an event of destruction of, the Link (or a part of the Link);
  - (ii) the aggregate amount so received as a result of the particular damage or event exceeds, at the time of receipt, the product of \$100,000,000 and the greater of one and a fraction:
    - (A) the numerator of which is the quarterly CPI most recently published prior to receipt of the proceeds;
    - (B) the denominator of which is the CPI for the quarter ending 31 December 1995; and
  - (iii) either:
    - (A) the Company and the Trustee do not have access to financial resources sufficient to enable them to fund the works necessary to satisfy their respective repair and reinstatement obligations under clause 13.7 of the Concession Deed in respect of the particular damage or event of destruction as a result of which the relevant proceeds of insurance were paid and including, for these purposes, as financial resources to which the Company has access:
      - (1) all insurance proceeds paid as a result of the particular damage or event of destruction;

- (2) all moneys either then standing to the credit of the Maintenance and Repairs Account or (while a reference to the Maintenance and Repairs Account is deemed to be a reference to another account pursuant to paragraph 11.2(d) of the Concession Deed) that should then have been standing to the credit of the Maintenance and Repairs Account under paragraph 11.2(b) of the Concession Deed and in respect of which there is no reasonable expectation of failure to receive those moneys (assuming there were no paragraph 11.2(d) of the Concession Deed); and
  - (3) (if the Agent considers in good faith that the event of destruction or damage constitutes, gives rise to or reflects an Appendix Event which has had or will have a Material Adverse Effect) the money and additional resources which the Agent considers in good faith will be available to the Company and the Trustee as a consequence of the redress afforded in relation to that Appendix Event;
- (B) if the particular damage or destruction caused by the relevant event were to be repaired or reinstated under clause 13.7 of the Concession Deed, the Loan Life Cover Ratio would fall below 1.20 (determined by the Agent using the Bank Model after, however, that model has been revised so as to incorporate what the Agent considers in good faith to be the effect of any methods of redress adopted or likely to be adopted, should the relevant event of destruction or particular damage constitute, give rise to or reflect an Appendix Event which has had or will have a Material Adverse Effect),

then those proceeds shall, if the Security Trustee so requires, be paid to the Security Trustee, instead of being applied under clause 13.7 of the Concession Deed. If the Security Trustee receives such proceeds or such a payment, it may apportion them or it in satisfaction of both the Company's and Trustee's liabilities (actual and contingent, present and prospective) to all the Lenders, the Agent and the Security Trustee. If, pursuant to this paragraph (b), insurance proceeds are paid to the Security Trustee, the Agent and the Security Trustee must each:

- (iv) release or procure a release of each of the Company and Trustee from all liabilities (actual and contingent, present and prospective) owed by them, or either of them, to the Agent, the Security Trustee or any Lender under any Lending Document or in respect of Project Debt other than such of those liabilities as are owed to persons whose recourse (should any of those liabilities not be satisfied) is or then becomes limited to only the benefit of deposit accounts maintained by



the Company, the Trustee or both of them pursuant to the Lending Documents (but provided that recourse does not extend to either Insurance Proceeds Account except insofar as such an account includes the relevant proceeds to be paid to the Security Trustee under paragraph 7.2(b)); and

(v) discharge or procure a discharge of all the Securities held by any of them or which directly or indirectly secure obligations in respect of Project Debt and which relate to property or rights of the Company or the Trustee which relate to the Project, such as Core Property provided however, that this sub-paragraph does not require that a discharge of a Security be effected or procured insofar as, and to the extent only that, the Security applies to a deposit account or deposit accounts in relation to which recourse for certain liabilities may be limited, as referred to in sub-paragraph (iv).

(c) If liabilities are required to be released under sub-paragraph (b)(iv), then:

(i) for the purposes of the Project Documents (including for the purpose of determining any liability of the State under the Project Documents) there shall thereafter be deemed to be no Project Debt outstanding and no liabilities in respect of Project Debt, or secured by any Security, owing or subsisting;

(ii) any requirement to deposit moneys into an account or accounts under the Security Trust Deed shall be deemed to have terminated.

(d) If:

(i) proceeds are received in respect of insurance of the type to which sub-paragraph 13.3(a)(i) or 13.4(a)(i) of the Concession Deed applies as a result of any particular damage to, or an event of destruction of, the Link (or a part of the Link);

(ii) there is a failure diligently to pursue repair and reinstatement of that damage or destruction under clause 13.7 of the Concession Deed; and

(iii) the State is not entitled to exercise its right of termination under clause 15.3 of the Concession Deed because either sub-paragraph 13.8(a)(i)(B) or 13.8(a)(ii) of the Concession Deed applies,

then in lieu of depositing those proceeds into the applicable Insurance Proceeds Account they may be paid to, and applied by, the Agent in accordance with the undertaking given by it to the State under the relevant sub-paragraph of the Concession Deed.

(e) (i) The Agent shall ensure that such person as may from time to time be nominated by the State is given such access to the computer model which the Agent considers to be the Bank Model as that person reasonably considers necessary to check whether the requirements of the definition of "Bank Model" are then satisfied in relation to that computer model.

- (ii) The Agent shall ensure that revisions to that model specified by that person by notice to the Agent are promptly effected unless the Agent by notice to the State promptly disputes the accuracy, reasonableness or relevance of the revision. In that event the State may promptly refer the dispute for expert determination under clause 4.6.
- (iii) The State may only nominate a person under this clause 7.2(e) if the State reasonably considers the person to be skilled in the operation or audit (or operation and audit) of computer models and has informed the person of the confidentiality of the model.

### 7.3 **Other Insurances**

- (a) Each of the parties hereto agree that:
  - (i) all proceeds of the insurances referred to in paragraphs 13.3(a)(iii), (v) and (vi) and 13.4(b), (c) and (d) of the Concession Deed will be applied for the respective purposes for which they are received and pending such application will be paid into a designated account; and
  - (ii) subject to clause 7.2, all proceeds of other insurances maintained as required by clause 13 of the Concession Deed will be paid into a designated account.
- (b) In this clause "designated account" means, so long as there is an amount secured by the Securities, an account specified for the relevant purpose by the Security Trustee by notice to the other parties hereto given on or about the date of the Security Trust Deed and otherwise, an account so specified for the relevant purpose by the Company or the Trustee, being an account comprising part of the property encumbered by the Deed of Charge. So long as there is an amount secured by the Securities, the Security Trustee and otherwise, the Company or the Trustee, may from time to time change that account by notice given to the other parties hereto. Such a notice will take effect upon the expiration of 5 Business Days after it is received by the State.

## **8. STATE'S RIGHTS**

### **8.1 Recognition of Rights under Concession Deed**

The Security Trustee and the Agent recognise and acknowledge the rights available to the State under clauses 9.11 and 9.12 of the Concession Deed. Without limitation, each of the Agent and the Security Trustee agree that the rights vested in the State and its nominees under those clauses may be exercised even if a Controller has been appointed under a Security. Each of them will do everything within its respective power to ensure that such Controller does such things as the State may reasonably require in order to enable or facilitate the effective exercise of those rights.

### **8.2 Act in Accordance with Concession Deed**

The State agrees in favour of the Security Trustee and the Agent that to the extent it chooses to exercise its rights under clauses 9.11 and 9.12 of the Concession Deed it shall do so in accordance with those clauses.

### **8.3 Recognition of Rights under Contractors' Deed of Novation**

The Security Trustee and the Agent recognise and acknowledge the rights available to the State under the Contractors' Deed of Novation and the exercise of those rights shall not in any way be affected or restricted by the provisions of this Deed. Without limitation, each of the Agent and the Security Trustee agree that the rights so available to the State may be exercised even if a Controller has been appointed under a Security. Each of them will do everything in its respective power to ensure that any such Controller does such things as the State may reasonably require in order to enable or facilitate the effective exercise of those rights.

### **8.4 Act in Accordance with Contractors' Deed of Novation**

The State agrees in favour of the Security Trustee and the Agent that to the extent it chooses to exercise its rights under the Contractors' Deed of Novation it shall do so in accordance with the provisions of the Contractors' Deed of Novation.

### **8.5 Security Trustee and Lenders not to exercise Rights**

The Security Trustee and the Agent agree with the State that they will not exercise any rights (whether arising under or by virtue of a Lending Document) in any manner which interferes with or restricts in any way the exercise by the State of its rights under:

- (a) clauses 9.11 and 9.12 of the Concession Deed or 4.7 of this Deed; and
- (b) the Contractors' Deed of Novation.

### **8.6 Restriction on Enforcement**

Notwithstanding anything in the Concession Deed, a breach of an obligation or warranty imposed on or given by the Company or the Trustee under clause 1.12, 1.16, 14.2(d) or 14.5 of the Concession Deed will not constitute an Event of Default, and the State may not terminate the Concession Deed by reason of such breach:

- (a) if a Controller under the Lending Documents is in possession of Core Property at the time the breach occurs; or
- (b) if a Controller takes possession of Core Property under the Lending Documents within 60 days after the Agent becomes aware of the breach,

at any time while any such Controller (or a successor Controller) remains in possession.

## **9. DISPUTE RESOLUTION**

### **9.1 Negotiations and Disputes**

Each of the State, the Company and the Trustee shall notify the Security Trustee if it intends to either institute negotiations under clause 2.9 or paragraph 12.8(g) of the Concession Deed or refer a dispute to expert determination or resolution under clause 16.1 of the Concession Deed.

## 9.2 **Right to Participate**

The State, the Company and the Trustee each acknowledge that the Lenders have interests and concerns in the outcome of any dispute under the Project Documents. Prior to the commencement of negotiations in relation to a matter under clause 2.9 or 2.10 or paragraph 12.8(g), of the Concession Deed, each of them shall give the Agent notice of the commencement of negotiations and a reasonable opportunity for the Agent (or its nominee) to attend those negotiations. The State, the Company and the Trustee each agree that they will not reach an agreement in relation to those issues the subject of the negotiations, insofar as they entail questions of:

- (a) whether or not an Appendix Event has occurred;
- (b) if an Appendix Event has occurred, whether it has had or will have a Material Adverse Effect;
- (c) if an appendix Event has occurred and it has had or will have a Material Adverse Effect, the appropriate method of redress to be adopted;
- (d) in the case of negotiations in relation to a matter under paragraph 12.8(g) of the Concession Deed, changes to the Project Documents and steps and actions to be undertaken by the parties to the Concession Deed,

unless they have given prior written notice to the Agent of their intention to do so, specifying in reasonable detail the particulars of their agreement. Any such agreement not complying with this clause 9.2 will be of no effect.

Any written communications forming part of any negotiations will be copied by the State, the Company or the Trustee (as applicable) to the Agent.

The State, the Company, the Trustee or the Agent may within 5 Business Days of receipt of the notice referred to above, require any of the questions referred to in paragraphs (a), (b), (c) and (d) to be determined pursuant to Article 16 of the Concession Deed, in which case the Agent shall be taken to be bound by, and have the benefit of, Article 16 as if it were a party to the Concession Deed and to have consented to the outcome which is reached by determination under Article 16.

## 9.3 **Participation in Article 16 Procedures.**

- (a) The State shall give to the Agent a copy of all documents, information and other material which it gives the Company or the Trustee for the purposes of any expert determination, conciliation or arbitration under Article 16 of the Concession Deed.
- (b) The State, the Company and the Trustee agree that the Agent shall be given reasonable notice of, and an opportunity for it (or its nominee) to attend, (and participate in), any hearing convened or meeting attended by an expert, conciliator or arbitrator appointed under Article 16 of the Concession Deed.
- (c) If:

- (i) a determination made under or pursuant to Article 16 is final and binding on the State, the Company and the Trustee;
- (ii) provisions of this clause have been observed in relation to any meetings and hearings that may have taken place under Article 16 in relation to the matter or matters the subject of the determination,

then the determination shall also be final and binding on the Agent, the Security Trustee and the Lenders.

## **10. AMENDMENT TO DOCUMENTS**

- (a) While any Project Debt is outstanding, the State undertakes for the benefit of the Security Trustee and of the Agent that it will not make any modification, variation or amendment to the terms of any Project Document without the prior written consent of the Agent, which consent shall not be unreasonably withheld or delayed. That consent need not be obtained, however, in relation to any modification, variation or amendment agreed or determined under clause 2.9 or 2.10, paragraph 12.8(g), or Article 16 of the Concession Deed, if clauses 9.2 and 9.3, as applicable, of this Deed have been observed in relation to any negotiations, hearings and meetings leading up to the relevant agreement or determination.
- (b) None of the Lenders, the Security Trustee or the Agent shall be obliged by any provision of the Project Documents to agree any modification, variation or amendment to a Lending Document.

## **11. RESTRICTION ON DEALING**

- (a) Subject to paragraphs (b) and (c), the State on the one hand and the Security Trustee and the Agent on the other hand agree for the benefit of each other that none of them shall sell, transfer, assign, mortgage, charge, encumber or otherwise deal with all or any part of its interest in this Deed or any of the Project Documents or Lending Documents to which it is a party.
- (b) Paragraph (a) does not apply in relation to:
  - (i) any assignment by the State of rights to receive revenue, or to any disposal by the State of any Concession Notes, permitted under paragraph 18.1(e) of the Concession Deed;
  - (ii) any release of the Deed of Charge; or
  - (iii) anything done after the Company and the Trustee cease to be liable in respect of Project Debt.
- (c) Paragraph (a) does not apply in relation to any release of a Security or to any assignment or transfer by the Security Trustee or the Agent which:
  - (i) relates to all its right, title and interest in this Deed and in the Lending Documents (in its capacity as Security Trustee or Agent);

- (ii) which occurs consequent upon the implementation of provisions in a Lending Document providing for the replacement of the Security Trustee or Agent (as applicable); and
  - (iii) in relation to which the assignee or transferee has executed an Accession Deed in which it agrees to be bound by the provisions of this Deed.
- (d) The Lenders agree that the Security Trustee may execute an Accession Deed on behalf of each of them in the context of a transfer or assignment by the Agent to which paragraph (c) applies.
- (e) Nothing in this clause 11 prevents the State, the Security Trustee or the Agent agreeing to amendments of or waiving rights under the Project Documents or Lending Documents.

## **12. DISCHARGE OF SECURITIES**

The Agent (to the extent within its power) and the Security Trustee each undertake for the benefit of the State that it will promptly:

- (a) discharge the Securities to the extent necessary (if at all) to:
  - (i) enable the Company and the Trustee to perform their respective obligations under clause 3.4 of the Concession Deed and, without limitation, to transfer and assign title in the Plant and other assets to the State, and to participate in the transactions contemplated by the Contractors' Deed of Novation, in accordance with clause 3.4 of the Concession Deed; and
  - (ii) give effect to any modification, variation or amendment to the terms of any Project Document either consented to by the Agent or in relation to which that consent need not have been obtained under paragraph 10(a);
- (b) deliver the original discharges referred to in paragraph (a) to the Company or the Trustee (as applicable); and
- (c) deliver a copy of the discharges referred to in paragraph (a) to the State.

Insofar as such a discharge is capable of registration with a Governmental Agency, the Company or the Trustee, as applicable, must promptly register it.

## **13. PROJECT LAND**

The State agrees in favour of the Agent to perform its obligations under clause 4.8 of the Concession Deed. The State acknowledges the importance to the Lenders of the Leases to which it is party being granted and registered and, accordingly, agrees that, if it fails to perform its obligations under that clause, the Agent shall be entitled to apply for an order for specific performance of the State's obligation under this clause 13. The State acknowledges that any holder of a mortgage permitted under clause 18.2 of the Concession Deed may enter a caveat protecting its interest as mortgagee on title to any of the Project Land to which the mortgage applies.

## **14. GUARANTEE AND INDEMNITY**

### **14.1 Purpose**

The purpose of this clause is for the Company to provide a guarantee and indemnity in favour of the State in respect of obligations owed by the Trustee to the State under the Project Documents and for the Trustee to provide a guarantee and indemnity in favour of the State in respect of obligations owed to the State by the Company under the Project Documents. Accordingly:

- (a) references in this clause 14 to "Guarantor" are to be construed as a separate reference to each of the Company and the Trustee;
- (b) insofar as:
  - (i) such a reference is a reference to the Company, references to "obligation" and "obligor" are references to an obligation (actual or contingent, present or future) of the Trustee to the State under a Project Document and to the Trustee, respectively;
  - (ii) such a reference is a reference to the Trustee, references to "obligation" and "obligor" are references to an obligation of the Company to the State under a Project Document and to the Company, respectively.

### **14.2 Guarantee**

The Guarantor irrevocably and unconditionally guarantees to the State the due and punctual performance of each obligation.

### **14.3 Indemnity**

- (a) As a separate, additional and primary liability, the Guarantor irrevocably and unconditionally indemnifies the State against any loss, liability, claim or damage incurred or payable by, or made against, the State as a result of or in connection with:
  - (i) a failure to duly and punctually perform any obligation;
  - (ii) an obligation or a provision of a Project Document imposing or purportedly imposing an obligation, being void, voidable or unenforceable for any reason whatsoever, including by reason of:
    - (A) an event described in clause 14.7;
    - (B) any transaction relating to the obligation or provision being void or illegal; or
    - (C) any legal limitation, liability or incapacity.
- (b) Paragraph (a) applies irrespective of whether or not the State knew, or ought to have known, of the circumstance or event which caused an obligation or a provision of a Project Document to be void, voidable or unenforceable.

- (c) The Guarantor undertakes, as principal debtor, to pay the State on demand an amount equal to the amount of any loss, liability, claim or damage to which paragraph (a) applies. Such a demand may be made at any time and from time to time.
- (d) The Guarantor acknowledges and agrees that its liability under paragraph (a) is that of a principal debtor and a primary one. It waives any right it may have of first requiring the State to proceed against the obligor or any other person or to enforce and right, remedy, power or Security Interest that it may have in relation to the obligation.

#### 14.4 **No Marshalling**

The State is not required to marshal, enforce, apply, appropriate, recover, transfer or exercise in favour of a Guarantor:

- (a) any Security Interest or other right, remedy or power it may have;
- (b) any money or asset which it holds at any time or is entitled to receive or have a claim upon.

#### 14.5 **Nature of Security**

The Guarantor acknowledges and agrees that its liability under this clause 14 represents a continuing security to the State and is not extinguished, limited or otherwise affected:

- (a) because any other person intended to be a surety for the obligations or any of them has not become such a surety; or
- (b) because of the discharge or release of, or amendment of the terms applicable to, the liability of a person who is a surety for the obligations or any of them,

and remains in full force and effect until:

- (c) all obligations have been satisfied in full;
- (d) it has been fully discharged from its liability under this clause 14 by the State.

#### 14.6 **No Preconditions to Enforcement**

The liabilities of the Guarantor under this clause 14 are enforceable against it:

- (a) without first having recourse to any Security Interest;
- (b) whether or not the State has:
  - (i) made demand upon the obligor or any other person;
  - (ii) given notice to the obligor or any other person;
  - (iii) taken any other steps against the obligor or any other person; and



- (c) despite the occurrence of any event described in clause 14.7.

#### 14.7 **Unconditional Nature of Liabilities**

The liabilities of the Guarantor under this clause 14 are not released or discharged or otherwise affected by anything which, but for this provision, might have that effect including:

- (a) the grant to the obligor or any other person of any time, waiver, covenant not to sue or other indulgence;
- (b) the release (including a release as part of a novation) or discharge of the obligor or any other person or of any property subject to a Security Interest or the substitution of any such property by other property;
- (c) the release, extinguishment, waiver of rights or disclaimer in relation to any of the obligations (in whole or part) or of any other obligations of the obligor or any other person;
- (d) the liquidation of the obligor or any other person;
- (e) any arrangement, composition, or compromise having been entered into by the State, the obligor or any other person;
- (f) a Project Document or other document or agreement or obligation arising under any such document or agreement (or any payment made under such a document, agreement or obligation to the State or a Controller) being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (g) the extinguishment, failure, loss, release, discharge, abandonment, impairment, compound, composition or compromise, termination or acceptance of repudiation, in whole or in part, of or in relation to any Project Document or other document or agreement;
- (h) a Security Interest being given to, or released by, the State;
- (i) any alteration, amendment, variation, supplement, novation, assignment, renewal or replacement of, or any dealing with, any Project Document, or other document or agreement or any right or interest in such a document or agreement, whether or not the effect of any of the foregoing is material or substantial or materially increases the extent of, or materially changes the nature of, any obligation;
- (j) any moratorium or other suspension of any power or liability to perform an obligation, including any obligation;
- (k) the State exercising or enforcing, neglecting to exercise or enforce, delaying or refraining from exercising or enforcing, making any mistake or omitting anything in connection with the exercise or enforcement of, or not being entitled or unable to exercise or enforce, any of its rights under any Security Interest or in respect of any obligation;
- (l) the State obtaining any judgment against the obligor or any other person;

- (m) any legal limitation, disability or incapacity of the obligor or any other person;
- (n) any prejudice (including material prejudice) to any person as a result of:
  - (i) property being disposed of the subject of a Security Interest; or
  - (ii) any failure or neglect by the State or any other person to recover moneys owed in respect of an obligation from the obligor or any other person or by the realisation or disposition of any property the subject of a Security Interest;
- (o) anything done or not done in relation to property the subject of a Security Interest (even if it results in waste of or damage to such property) not perfecting, maintaining, preserving or enforcing or releasing any Security Interest or exercising any right or power or negligently enforcing or realising any Security Interest;
- (p) any failure to disclose to the Guarantor or any other person any material or unusual fact, circumstance or event or thing whatsoever known to, or which ought to have been known to the State (irrespective of whether there was a duty to disclose such fact, circumstance, event or thing);
- (q) any rule of law or equity to the contrary; or
- (r) the consent or knowledge or lack of consent or knowledge of the State in relation to any event or circumstance described in any preceding paragraph.

#### 14.8 **No Competition**

Until each obligation has been satisfied in full, the Guarantor must not:

- (a) seek to be, or permit itself to be, subrogated to the position of the State;
- (b) claim or receive the benefit of:
  - (i) any Security Interest or document or agreement of which the State has the benefit;
  - (ii) any right, power or remedy of the State;
- (c) subject to clause 14.9, either directly or indirectly prove in, claim or receive the benefit of any distribution, dividend or payment arising out of or relating to the liquidation of the obligor or termination of the Trust;
- (d) accept, procure the grant of or allow to exist any Security Interest in its favour from the obligor;
- (e) realise any Security Interest taken from the obligor; or
- (f) raise any defence or counterclaim in reduction or discharge of its obligations under this clause 14.

#### **14.9 Prove if Requested**

If the Guarantor has a right of proof consequent upon the liquidation or winding up of the obligor (or has an equivalent right on termination of the Trust), the State is irrevocably appointed the attorney of the Guarantor to exercise that right and to receive any dividend arising out of that right. The Guarantor may not exercise that right independently of such an attorney. Any dividend received by such an attorney arising out of that right need not be accounted for to the Guarantor until all obligations have been satisfied in full.

#### **14.10 Judgment Conclusive**

Any judgment obtained against the Obligor shall, subject to the Guarantor's right of appeal, be conclusive as against the Guarantor.

### **15. CONFIDENTIALITY**

The Agent and the Security Trustee each covenant with the State that:

- (a) they will comply with clause 32.1 of the Security Trust Deed; and
- (b) that confidentiality undertaking will also apply in respect of the terms of the Concession Deed and all other Project Documents.

### **16. ACKNOWLEDGMENT BY COMPANY AND TRUSTEE**

Each of the Company and the Trustee consents to the terms of this Deed and shall cooperate in its implementation. Each of them also:

- (a) releases the State, the Agent and the Security Trustee from any obligation of confidentiality that might otherwise be breached were information which is required to be provided to or by the State under this Deed provided;
- (b) agrees that obligations of the State under this Deed are not owed to them or either of them, except to the extent otherwise expressly provided in this Deed;
- (c) direct the Security Trustee and the Agent to make any payment required under paragraph 6.5(b); and
- (d) authorises the State, the Security Trustee and the Agent to take any action required to be taken or permitted to be taken under this Deed.

### **17. EXPENSES AND STAMP DUTIES**

#### **17.1 Expenses**

Without affecting the obligations of the Company and the Trustee under the Lending Documents, each party shall 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 under or amendment to this Deed.

## 17.2 Stamp Duty

The Company shall pay all stamp, registration and similar taxes (including fines and penalties) 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.

## 18. MISCELLANEOUS

### 18.1 Notices

(a) A notice, request, approval, consent or certificate given under this Deed (a "communication") must 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 using the party's facsimile number, but only if the sender receives an "error free" transmission report for the correct facsimile number; and,

in the case of a notice given to the Company marked: "URGENT FOR THE IMMEDIATE ATTENTION OF 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;
- (ii) if sent by prepaid post to the party's 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 party's facsimile number, 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 are as set out below or such other address or facsimile number of which that party from time to time gives notice of to each other party:

### **Company**

Address: Level 2, 437 St Kilda Road, Melbourne

Facsimile: 9287 5850

### **Trustee**

Address: Level 7, 1 Castlereagh Street, Sydney

Facsimile: (02) 221 7870

### **Agent**

Address: Level 16, 530 Collins Street, Melbourne

Facsimile: 9273 1544

### **Security Trustee**

Address: Level 16, 530 Collins Street, Melbourne

Facsimile: 9273 1544

### **State**

Address: care of Melbourne City Link Authority, Level 1, 150  
Jolimont Road, East Melbourne

Facsimile: 9650 7410

## **18.2 Consents, Approvals and Appointments**

Any consent, approval or appointment given or made under this Deed must be in writing.

## **18.3 Further Securities**

- (a) Subject to paragraph (b), the Agent and the State agree for the benefit of each other that the provisions of this Deed shall apply to each additional or other security which the Security Trustee or the State may take from the Company or the Trustee after the date of this Deed.
- (b) Such additional or other Security Interest given in favour of
  - (i) the Security Trustee shall secure only any or all moneys secured by the Securities;
  - (ii) the State shall secure only the performance of obligations owed to it under the Project Documents.

#### 18.4 **Variation**

No modification, variation or amendment of this Deed shall be of any force unless it is in writing and executed by each party.

#### 18.5 **Concession Notes**

- (a) The obligation of the Company to pay an amount payable by it under paragraph 3.1(a) of the Concession Deed may (at the election of the Company) be satisfied by the Company issuing to the State (on or before the due date for payment of the amount) Concession Notes:
- (i) the aggregate face value of which equals the relevant amount;
  - (ii) (if more than one Concession Note is issued in respect of an amount so payable) the face value of each of which is an integral multiple of \$100,000; and
  - (iii) subject to sub-paragraphs (i) and (ii), each of which has such a face value or face values as the State specifies.
- (b) The State shall not (and shall procure that none of its delegates appointed under the Concession Deed shall) present for payment any Concession Note unless it is entitled to do so in accordance with the terms of the Concession Note.

#### 18.6 **Governing Law**

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

#### 18.7 **Waiver**

If a party or any other person fails or delays in exercising or enforcing any right or remedy under this Deed, it shall not preclude or amount to a waiver of, any further exercise or enforcement of that right or remedy or of any other right or remedy under this Deed.

#### 18.8 **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.

#### 18.9 **Counterparts**

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

#### 18.10 **State Works Agreement**

The State agrees to accept performance by a Controller appointed under the Securities, or by a nominee of the Agent, of obligations owed to the State under the State Works Agreement by the entity or entities obliged under that agreement to execute certain works.

#### 18.11 **State Satisfaction with Lending Documents**

The parties to this Deed acknowledge and agree that, upon and after the State expresses its satisfaction with each Lending Document as contemplated by clause 2.7(d)(xii) of the

Concession Deed, paragraph (c) of the definition of "Project Debt" will be satisfied with respect to all moneys which the Company or the Trustee (whether alone or with another person) is at the relevant time actually or contingently liable to pay to or for the account of any person under any of the Lending Documents (in their form as provided to the State prior to that expression of satisfaction).

#### 18.12 **Lending Documents**

The parties to this Deed agree that if financial accommodation is made available as provided in the penultimate sentence of the definition of "Project Debt" in clause 1.1 of the Concession Deed, references to the Lending Documents will, to the extent necessary having regard to paragraphs (d), (e), (f) or (g) of that definition, include references to the documents evidencing the arrangements made by the Company and the Trustee in respect of that financial accommodation.

## **FIRST SCHEDULE**

The Company Charge to be entered into between the Company and the Security Trustee. The Trust Charge to be entered into between the Trustee and the Security Trustee. Any mortgage or charge executed by the Company or the Trustee in favour of the Security Trustee over its interest in a Lease or in a sub-lease contemplated by clause 18.1(a) of the Concession Deed.



## SECOND SCHEDULE

THIS ACCESSION DEED is made the            day of

19

**BETWEEN**

**THE CROWN IN RIGHT OF THE STATE OF VICTORIA**

[COMPANY]  
("Company")

[TRUSTEE]  
("Trustee")

[NEW ENTITY]  
("Assignee")

[ASSIGNING ENTITY]  
("Assignor")

[SECURITY TRUSTEE]  
("Security Trustee")

[AGENT]  
("Agent")

**WHEREAS**

- A. The parties to this Deed, other than the Assignee, are parties to the Master Security Deed dated            1995 (the "Security Deed").
- B. Subject to clause 11 of the Security Deed, the State, the Security Trustee or the Agent is permitted to assign its rights under the Project Documents or the Lending Documents as the case may be.
- C. The Assignor proposes to transfer or assign its interest as [Security Trustee/Agent] in the [Lending Documents and Project Documents] to the Assignee.
- D. [The Security Trustee is authorised by clause 11 of the Security Deed to execute this Deed on behalf of all Lenders].

**WITNESSES:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

Any term used in this Deed the definition of which is contained in or incorporated into the Security Deed and which is not specifically defined in this Deed shall, unless the context otherwise requires, have in this Deed that defined meaning. In addition, in this Deed the term "Accession Date" means the date of this Deed.

#### **1.2 Interpretation**

Clause 1.2 of the Security Deed shall apply as if set out in full in this Deed.

**2. ASSUMPTION BY ASSIGNEE**

With effect from and including the Accession Date, the Assignee is deemed to be a party to the Security Deed and shall be entitled to and bound by, the rights and obligations of the Assignor under the Security Deed as if it had been named as an original party to the Security Deed in lieu of the Assignor.

**3. RELEASE OF ASSIGNOR**

The Assignor shall cease to be entitled to its rights and cease to be bound by its obligations under the Security Deed, with effect from the Accession Date, but shall remain entitled to such rights and bound by such obligations which accrue up to the Accession Date.

**4. GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the laws of the State of Victoria.

**IN WITNESS WHEREOF** this Deed has been executed on the date first specified above.

**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: )

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.....  
Witness

.....  
Name

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

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Witness

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Name

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

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Witness

.....  
Name

**SIGNED, SEALED and DELIVERED** for )  
and on behalf of **AUSTRALIA AND NEW** )  
**ZEALAND BANKING GROUP** )  
**LIMITED** by its Attorney in the presence of: )

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Witness

.....  
Name

**SIGNED, SEALED and DELIVERED** for )  
and on behalf of **ANZ CAPEL COURT** )  
**LIMITED** by its Attorney in the presence of: )  
)

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Witness

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Name