



MINISTRY OF TRANSPORT

Associated Operator Deed of Charge

**The Director-General of the Ministry of
Transport**

[insert name of Associated Operator]

Explanatory Note

This Deed of Charge is required to cover all assets of the Associated Operator used for the purposes of delivering the services prescribed under the MBSC. This Deed of Charge is drafted on the basis that all property of the Associated Operator is used for this purpose and therefore will fall within its scope. Suitable amendments will be agreed where this is not the case.

Where the Associated Operator has granted security to a financier or any other third party, an Associated Operator General Financier Direct Agreement will also be required to govern the priority of rights of the Director-General and the other security holder in the event of insolvency or other enforcement (and to recognise any entitlements of the Director-General to the assets of the Associated Operator on termination of the MBSC).

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Date

Parties **Director-General of the Ministry of Transport** under the *Passenger Transport Act* (1990) (NSW) of Level 19, 227 Elizabeth Street, Sydney, New South Wales on behalf of The Crown in Right of the State of New South Wales
(Director-General)

[insert name and address of Associated Operator] (Associated Operator)

Operative Provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context requires another meaning:

Associated Operator Direct Agreement means the agreement of that name between the Director-General and the Associated Operator dated [x].

Authorised Officer means, for the Associated Operator, a director or a secretary of that Associated Operator or any employee of that Operator whose title includes the word "Manager", "President", "Director", and includes a person acting in any of those capacities or any other person nominated by that Associated Operator by notice to the other parties to be an Authorised Officer.

Charge means the charge over the Secured Property created by this Deed.

Controller has the meaning given to "controller" in section 9 of the *Corporations Act*.

Dollars and \$ means the lawful currency of Australia.

Guarantee means a guarantee, indemnity, letter of credit, performance bond, letter of comfort or other assurance or assumption of responsibility, however it is described, given for a debt or liability of another person or the solvency or financial condition of another person.

MBSC means the Metropolitan Bus System Contract dated [x] between the Operator and the Director-General.

Operator means [insert name of Operator].

Priority Amount means [insert priority amount].

Receiver means the person or persons appointed to be a receiver or receiver and manager under clause 9.1.

Secured Obligations means all obligations and liabilities of the Associated Operator (whether alone or with another person) arising for any reason whatsoever under or in connection with a Transaction Document including, without limitation:

- (a) obligations and liabilities which are presently owing or may become owing in the future; and

- (b) actual or contingent obligations and liabilities.

It includes, without limitation, all moneys that are or may in the future become due, owing or payable, whether actually, contingently or prospectively, by the Associated Operator to or for the account of the Director-General under or in relation to a Transaction Document including, without limitation, money by way of interest, fees, costs Guarantee, indemnity, charges, duties or expenses, or payment of liquidated or unliquidated damages under or in connection with a Transaction Document, or as a result of a breach of or default under or in connection with, a Transaction Document.

Secured Property means all of the property, rights and undertaking of the Associated Operator irrespective of:

- (a) whether it is present or future;
- (b) whether it is real or personal;
- (c) whether it is tangible or intangible; and
- (d) where it is located; and

including share capital that is uncalled or called but unpaid.

Security means this Deed and each other Guarantee, Security Interest or other document entered into by any person to secure or assume responsibility for the payment, repayment, performance or satisfaction of the Secured Obligations or any part of it.

Tax means a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty and GST) at any time:

- (a) imposed or levied by any Government Agency; or
- (b) required to be remitted to, or collected, withheld or assessed by, any Government Agency,

and any related interest, expense, fine, penalty or other charge on those amounts and includes any amount that a person is required to pay to another person on account of that other person's liability for Tax but does not include a tax imposed on the overall net income of the Director-General.

Transaction Document has the meaning given to that term in the MBSC.

1.2 Interpretation

- (a) A term defined in the MBSC, and not defined in this Deed, has the same meaning when used in this Deed.
- (b) Clauses 1.2 to 1.7 of the MBSC apply to this Deed as if set out in full in this Deed and all references to "this Agreement" were references to this Deed and all references to "Operator" were references to "Associated Operator".

2 Charge

2.1 Grant of Charge

The Associated Operator as beneficial owner charges the Secured Property to the Director-General as security for the due and punctual performance and satisfaction of the Secured Obligations.

2.2 Ranking

The Charge ranks ahead of all other Security Interests over the Secured Property, including any Permitted Security Interests, except:

- (a) any Permitted Security Interest which must be preferred by law; or
- (b) to the extent provided in any priority arrangement to which the Director-General agrees in writing in respect of any Permitted Security Interest.

2.3 Consideration

The Associated Operator enters into this Deed for valuable consideration from the Director-General and acknowledges receipt of that consideration.

2.4 Fixed charge

The Charge is a fixed charge on the Associated Operator's Existing Assets and New Assets.

2.5 Floating charge

- (a) The Charge is a floating charge on all the Secured Property that is not subject to a fixed charge under clause 2.4.
- (b) The Associated Operator may deal with any Secured Property while it is subject to a floating charge only in the ordinary course of the Associated Operator's business.

2.6 Crystallisation

The floating charge created under clause 2.1 and clause 2.5 automatically becomes a fixed charge:

- (a) on all Secured Property not already subject to a fixed charge if:
 - (i) an Insolvency Event occurs in respect of the Associated Operator;
 - (ii) an investigation of the affairs of the Associated Operator is commenced under any law relating to companies;
 - (iii) distress, attachment, execution or other court process is levied on or against any assets, revenues or the business of the Associated Operator;
 - (iv) the Associated Operator reduces or takes steps to reduce its capital or limits or restricts calls on its issued but uncalled capital including by passing a resolution under section 254N of the *Corporations Act*;
 - (v) the Director-General makes a demand that the Associated Operator pay the Secured Obligations under clause 6.1(a) or the Charge is enforced in any other way;
 - (vi) a Termination Event has occurred and the Director-General gives a notice in writing to the Associated Operator to that effect in relation to all of the Secured Property not already subject to a fixed charge; or
 - (vii) the Commissioner of Taxation issues a notice under section 260-5 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) or section 255 of the *Income Tax Assessment Act 1936* (Cth) relating to the Associated Operator; and
- (b) on any particular asset forming part of the Secured Property and not already subject to a fixed charge if:

- (i) the Associated Operator deals, or attempts, purports or proposes to deal, with that asset in breach of a Transaction Document;
- (ii) a person proposes to take action or action is taken to obtain a writ, order, notice or other thing relating to distress, attachment or other execution over that asset;
- (iii) a Security Interest (other than this Charge) over that asset becomes capable of being enforced or a person enforces or attempts, purports or proposes to enforce, a Security Interest over that asset; or
- (iv) a Termination Event has occurred and the Director-General gives a notice in writing to the Associated Operator to that effect in relation to that asset.

Nothing in any paragraph of clause 2.6 prevents the floating charge from becoming fixed as to any asset under another provision of the Charge (including another paragraph of clause 2.6), or by operation of law.

2.7 Decrystallisation

- (a) If the floating charge over an asset becomes fixed under clause 2.6, the Director-General may release that asset from the fixed charge at any time by notice to the Associated Operator.
- (b) If the Director-General gives a notice under clause 2.7(a), the asset specified in the notice will, with effect from the date specified in the notice, be subject to a floating charge under clause 2.1 and clause 2.5 and subject to the further operation of clause 2.6.

2.8 Priority Amount

For the purpose only of determining priorities between the Charge and any other Security Interest under Part 2K.3 of the *Corporations Act*:

- (a) the Charge secures:
 - (i) all Secured Obligations that are a present liability at the priority time in relation to the Charge; and
 - (ii) all Secured Obligations that are a prospective liability at the priority time in relation to the Charge, whether that Secured Obligation becomes a present liability before or after the registration of the Charge, up to a maximum amount equal to the Priority Amount; and
- (b) the prospective liability secured by the Charge is all money, obligations and liabilities of any kind that are or may in the future become due, owing or payable, whether actually, contingently or prospectively by the Associated Operator to or for the account of the Director-General under or in relation to a Transaction Document including, without limitation, money by way of interest, fees, costs Guarantee, indemnity, charges, duties or expenses, or payment of liquidated or unliquidated damages under or in connection with a Transaction Document, or as a result of a breach of or default under or in connection with, a Transaction Document;

and any priority accorded by Part 2K.3 of the *Corporations Act* to the Charge over any other Security Interest extends to the prospective liability secured by the Charge only to the extent of the Priority Amount.

In this clause 2.8 "present liability", "priority time" and "prospective liability" have the meaning given to those expressions in section 261 and section 278 of the *Corporations Act*.

3 Release of Charge

3.1 Release of Charge

If the Director-General is satisfied that:

- (a) all of the Secured Obligations are discharged, performed in full or paid;
- (b) no money, obligation or liability is likely to become a Secured Obligation within a reasonable time; and
- (c) there is no reasonable possibility that:
 - (i) any money received or recovered by the Director-General and applied in payment of the Secured Obligations; or
 - (ii) any settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Secured Obligations;

must be repaid or may be avoided under any law, including a law relating to preferences, bankruptcy, insolvency, administration or the winding-up of companies;

the Director-General will discharge the Charge, at the request and cost of the Associated Operator.

3.2 Partial release of Charge

- (a) The Director-General may release any part of the Secured Property from the Charge at any time.
- (b) A release of part of the Secured Property from the Charge does not adversely affect the Charge over any other Secured Property, or any Transaction Document.

3.3 Reinstatement of Charge

- (a) If:
 - (i) any payment, settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Secured Obligations is void or voidable under any law; or
 - (ii) any claim is made that any payment, settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Secured Obligations is void or voidable under any law and the claim is upheld, conceded or compromised;

the Director-General is immediately entitled to the same rights, powers and remedies against the Associated Operator and the Secured Property as it would have had if the relevant payment, settlement, conveyance, transfer or transaction had never been made or taken place. If required by the Director-General, the Associated Operator must, at its own expense, sign all documents and do all acts necessary to restore to the Director-General the Charge and any other Security to which the Associated Operator was a party and held by the Director-General immediately before the payment, settlement, conveyance, transfer or transaction.

- (b) This clause 3.3 survives the discharge of the Charge.

3.4 Continuing security

This Deed is a continuing security and remains in full force and effect, despite any settlement of account or any other matter or thing, until a final discharge is given to the Associated Operator.

4 Representations and warranties

4.1 Representations and warranties

The Associated Operator makes the same representations and warranties to and for the benefit of the Director-General as made by the Operator and set out in Schedule 6 of the MBSC as if set out in this section 4.1 in full and further represents and warrants to and for the benefit of the Director-General that:

- (a) **registration:** other than registration of this Deed under the *Corporations Act* it is not necessary that a Transaction Document or any other document be filed or registered with any Government Agency to ensure:
 - (i) the validity, enforceability or admissibility in evidence of the Transaction Documents in any relevant jurisdiction; or
 - (ii) that each Transaction Document which is a Security Interest has the priority it is intended to have;
- (b) **other default:** no Termination Event has occurred which has not been remedied or waived in writing;
- (c) **no Security Interests:** no Security Interest exists over the Secured Property except Permitted Security Interests;
- (d) **ownership:** the Associated Operator is the legal and beneficial owner of the Secured Property;
- (e) **no immunity:** neither it or any of its assets, revenues or business has any immunity from jurisdiction or execution;
- (f) **financial benefit to a related party:** the execution of the Transaction Documents to which it is a party and the performance by it of its obligations or the exercise of its rights under them does not constitute a contravention of section 208 or section 209 of the *Corporations Act* by any person, without relying on any approval of the members of a public company obtained in the way set out in Part 2E.1 Division 3 of the *Corporations Act* or any of the exceptions set out in Part 2E.1 Division 2 of the *Corporations Act*;
- (g) **certifications:** each document, matter or thing certified by an Authorised Officer of the Associated Operator is true, complete and up to date;
- (h) **benefit:** it benefits by entering into, exercising its rights and performing its obligations under the Transaction Documents;
- (i) **priority:** the Charge is a [x] ranking charge over the Secured Property and the obligations of the Associated Operator under this Deed rank ahead of all its other obligations (other than those which on its winding-up, liquidation, dissolution or similar process must be preferred by operation of law) except to the extent provided in this Deed or any priority arrangement to which the Director-General agrees in writing in respect of any Permitted Security Interest; and

- (j) ***no resumption:*** the Associated Operator has no notice of any proposal by any Government Agency to expropriate, seize, confiscate, requisition, resume or compulsorily acquire any Secured Property;

4.2 Continuing representations and warranties

The representations and warranties in this Deed, including those in clause 4.1, survive the execution of each Transaction Document and are repeated on the last day of each calendar quarter while any of the Secured Obligations remain outstanding.

4.3 Acknowledgment of reliance

The Associated Operator acknowledges that the Director-General has entered into each Transaction Document in reliance on the representations and warranties in this Deed.

4.4 Additional representations and warranties

The representations and warranties in this Deed are in addition to any other representations and warranties in any other Transaction Document.

5 Undertaking

5.1 Payment and performance of Secured Obligations

- (a) The Associated Operator must perform its obligations under the Transaction Documents in full and on time.
- (b) Without limiting clause 5.1(a), where the Secured Obligations comprise the payment of money, the Associated Operator must pay that money to the Director-General:
- (i) in accordance with the Transaction Documents; or
 - (ii) on demand, if payment of that money is not expressly provided for in a Transaction Document.

5.2 Consent of Director-General

If any consent or approval of the Director-General is given, or compliance by the Associated Operator with any undertaking is waived, subject to compliance by the Associated Operator with any condition at or before a particular time, the Associated Operator must comply with that condition.

5.3 Director-General may act

The Director-General may do or cause to be done all things, including the payment of any money, which must be done by the Associated Operator under this Deed but which the Associated Operator fails to do in accordance with this Deed or which the Associated Operator fails to do to the satisfaction of the Director-General. Any money paid by the Director-General for this purpose forms part of the Secured Obligations.

6 Termination Events

6.1 Consequences of Events of Default

- (a) If a Termination Event occurs, the Associated Operator must immediately pay any money comprising the Secured Obligation in full to the Director-General on demand by the Director-General and in the manner notified by the Director-General.
- (b) The Director-General may do or cause to be done all things, including the payment of any money, necessary to remedy any Termination Event but is under no obligation to do so. Any money paid by the Director-General for that purpose forms part of the Secured Obligations.
- (c) The Director-General may enforce this Deed even if the Director-General accepts payment of any money comprising part of the Secured Obligations after a Termination Event has occurred.

7 Interest on overdue amounts

7.1 Default interest

- (a) Subject to clause 7.1(c), the Associated Operator must pay interest to the Director-General on demand on any amount due and payable by the Associated Operator under a Transaction Document but unpaid (including interest payable under this clause 7.1).
- (b) Interest under clause 7.1(a):
 - (i) accrues on each unpaid amount from and including the due date for payment to the date of actual payment at the rate determined by the Director-General to be the sum of 2% per annum and the higher of:
 - (A) the cost to the Director-General of funding the unpaid amount; and
 - (B) the rate, if any, applicable to the unpaid amount immediately before the due date;calculated with reference to successive periods of a length selected by the Director-General or, if no selection is made, of 1 month, starting on the due date for payment;
 - (ii) accrues from day to day;
 - (iii) is calculated on the basis of the actual number of days elapsed (including the first day but excluding the last) and a 365 day year; and
 - (iv) may be compounded by the Director-General at intervals selected by the Director-General or, if no selection is made, at 1 month intervals.
- (c) The Associated Operator has no obligation to pay interest under clause 7.1(a) on any unpaid amount if the Associated Operator has another obligation to pay default interest on the same unpaid amount under another Transaction Document and the Associated Operator satisfies that other obligation.

7.2 Additional interest

If a liability under a Transaction Document becomes merged in a judgment, the Associated Operator must, as an independent obligation, pay interest on the amount of that liability to the Director-General.

Interest on the amount of that liability will accrue from the date the amount becomes due until the date the amount is paid, both before and after judgment, at the rate that is the higher of:

- (a) the rate payable under the judgment; and
- (b) the rate referred to in clause 7.1(b).

8 Powers of Director-General on default

8.1 Powers of Director-General

If a Termination Event occurs, the Director-General has the power to do all acts and things and exercise all rights, powers and remedies that the Associated Operator could do or exercise in relation to the Secured Property, including the power to:

- (a) **take possession:** enter, take possession and assume control of the Secured Property and collect and get in and give receipts for the Secured Property;
- (b) **receive rents:** receive rents and profits of the Secured Property;
- (c) **manage:** manage the Secured Property;
- (d) **carry on business:** carry on any business of the Associated Operator forming part of the Secured Property, or relating to it;
- (e) **maintain or improve:** do anything to maintain, protect or improve the Secured Property;
- (f) **make calls:** make calls on capital and premiums of the Associated Operator and enforce payment of calls;
- (g) **sell:** sell or agree to sell the Secured Property on terms that the Director-General thinks fit and:
 - (i) whether or not the Director-General has taken possession;
 - (ii) by public auction, private treaty or by tender;
 - (iii) for cash or on deferred purchase terms or a combination of those and whether or not deferred purchase terms provide for the charging of interest or the giving of security;
 - (iv) in one lot or in parcels;
 - (v) whether or not other property is sold by the Director-General or another person; and
 - (vi) whether with or without special provisions including provisions relating to title and payment of the purchase money;
- (h) **lease:** lease or license any part of the Secured Property, and renew, terminate, surrender or accept the surrender of leases or licences, on terms that the Director-General thinks fit;
- (i) **grant options:** grant to any person an option to purchase, lease or licence any Secured Property on terms that the Director-General thinks fit;
- (j) **fixtures:** add or sever fixtures and sell or agree to sell fixtures separately from any real property;

- (k) ***make agreements or compromises:*** make any agreement or compromise which the Director-General thinks fit;
- (l) ***transfer property:*** surrender or transfer the Secured Property to any Government Agency (whether or not for compensation);
- (m) ***exchange property:*** exchange any part of the Secured Property for any other property, whether or not of equal value;
- (n) ***employ:*** employ or engage any person on terms that the Director-General thinks fit for the purpose of exercising any of the Director-General's rights, powers or remedies under this Deed;
- (o) ***delegate:*** delegate to any person for any time as the Director-General approves any or all of the powers of the Director-General on terms that the Director-General thinks fit;
- (p) ***give receipts:*** give effective receipts for all money and other assets that come into the hands of the Director-General;
- (q) ***perform and enforce:*** carry out and enforce, or refrain from carrying out or enforcing, agreements entered into or held by the Associated Operator in relation to the Secured Property or entered into in exercise of the rights, powers or remedies of the Director-General under this Deed;
- (r) ***insure:*** insure the Secured Property;
- (s) ***proceedings:*** institute, conduct, defend, discontinue, settle, arrange or compromise any proceedings, including proceedings relating to insurance of the Secured Property;
- (t) ***borrow:***
 - (i) advance money for the account of the Associated Operator; or
 - (ii) raise or borrow any money in its name or in the name of or on behalf of the Associated Operator, from any person approved by the Director-General; and
 - (iii) secure money advanced under clause 8.1(t)(i) or raised or borrowed under clause 8.1(t)(ii) by a Security Interest over any part of the Secured Property whether ranking in priority to, equally with or after the Charge or any other Security;
- (u) ***execute documents:*** execute and deliver documents on behalf of the Associated Operator under seal or under hand;
- (v) ***operate bank accounts:*** operate any bank account forming part of the Secured Property, including the Proceeds Account; and
- (w) ***other acts:*** do or cause to be done any other act or thing that the Director-General considers necessary or incidental to the exercise of any right, power or remedy of the Director-General.

The powers of the Director-General under this clause 8.1 are in addition to any rights, powers or remedies conferred on the Director-General by law.

8.2 Exclusion of notice

- (a) The Director-General and any Controller appointed by the Director-General may, to the extent that an applicable law permits, exercise a right, power or remedy under a Transaction Document without first giving any notice, or allowing the lapse of any period of time or fulfilling any other condition precedent.

- (b) If an applicable law provides that a right, power or remedy under a Transaction Document may only be exercised after a period of notice is given or a lapse of time occurs:
- (i) if a period of notice or of time is fixed by that law, that period of notice must be given or lapse of that time must occur before exercise of that right, power or remedy; or
 - (ii) if a period of notice or of time may be fixed by this Deed, one Business Day is fixed as the period during which:
 - (A) default must continue before a notice is given demanding performance, satisfaction or repayment of the Secured Obligations; or
 - (B) a notice requiring performance, satisfaction or payment of the Secured Obligations must remain unsatisfied;
- before exercise of that right, power or remedy.

8.3 Not mortgagee in possession

If the Director-General, or a Controller appointed by the Director-General, takes possession of any Secured Property neither the Director-General nor the Controller is liable as a mortgagee in possession.

8.4 Give up possession

The Director-General may give up possession of the Secured Property or any part of it at any time and may discontinue a receivership.

8.5 Exclusion of liability

The Director-General is not liable for losses of any kind that occur as a result of the exercise, or attempted or purported exercise or non-exercise of a right, power or remedy of the Director-General or a Controller appointed by the Director-General, including as a result of the negligence or default of any person.

8.6 Protection of third parties

- (a) A person dealing with the Director-General or a Controller appointed by the Director-General in connection with the exercise of any of the Director-General's or the Controller's rights, powers or remedies is not bound to enquire into any matter in connection with the exercise of those rights, powers or remedies, including:
- (i) whether a Termination Event has occurred;
 - (ii) whether the Secured Obligation is due and payable;
 - (iii) whether the right, power or remedy has been properly exercised;
 - (iv) whether the appointment of a Controller has been duly made; or
 - (v) as to the propriety or regularity of any dealing.
- (b) A dealing referred to in clause 8.6(a):
- (i) is valid and effective despite any irregularity or impropriety referred to in clause 8.6(a); and

- (ii) is not affected by express or constructive notice on the part of any person dealing with the Director-General or a Controller appointed by the Director-General of any matter referred to in clause 8.6(a).

9 Appointment of Receiver

9.1 Appointment

If a Termination Event occurs the Director-General may:

- (a) appoint in writing:
 - (i) any one or more persons to be a receiver or receiver and manager of the Secured Property or part of it; or
 - (ii) different receivers or receivers and managers for different parts of the Secured Property,
on terms that the Director-General thinks fit and whether or not:
 - (iii) the Director-General has taken possession of the Secured Property; or
 - (iv) an order has been made or a resolution passed to wind-up the Associated Operator;
- (b) remove a Receiver and, if a Receiver is removed, retires or dies, appoint a replacement;
- (c) fix the remuneration of the Receiver at an amount or rate of commission agreed between the Director-General and the Receiver or, if no amount or rate is agreed, the amount or rate determined by the Director-General; and
- (d) if two or more persons are appointed as a Receiver, appoint them jointly or severally or jointly and severally.

9.2 Agent of Associated Operator

- (a) A Receiver is the agent of the Associated Operator unless and until:
 - (i) the Director-General, by notice in writing to the Associated Operator and the Receiver, requires that the Receiver act as agent of the Director-General: or
 - (ii) an order is made or a resolution is passed for the winding-up of the Associated Operator, except to the extent that approval is given under section 420C(1) of the *Corporations Act*.
- (b) If for any reason a Receiver ceases to be the agent of the Associated Operator, the Receiver immediately becomes the agent of the Director-General.
- (c) While the Receiver is the agent of the Associated Operator:
 - (i) the Associated Operator alone is responsible for the acts and defaults of the Receiver; and
 - (ii) in exercising a right, remedy or power of the Director-General, the Receiver has the authority of both the Associated Operator and the Director-General.

9.3 Powers of Receiver

- (a) A Receiver may do any act, matter or thing and exercise any right, power or remedy that may be done or exercised by the Director-General in relation to the Secured Property.
 - (b) The power conferred on a Receiver under clause 9.3(a) is:
 - (i) in addition to any right, power or remedy conferred on the Receiver by law; and
 - (ii) subject to any specific limitations placed on a Receiver by the terms of the appointment of that Receiver.
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10 Receipt and application of money

10.1 Order of application

- (a) The Director-General or a Controller appointed by the Director-General may appropriate and apply money which it receives or recovers under the Charge toward any part of the Secured Obligations and in any order it determines in its absolute discretion.
- (b) If no determination is made under clause 10.1(a), any money received or recovered under the Charge must, subject to clause 10.3 and to the extent permitted by law, be applied in the following order:
 - (i) first, in payment of all amounts which, to the extent required by law, have priority over the payments specified in the remaining paragraphs of this clause;
 - (ii) secondly, in payment of all costs, charges, expenses or other money incurred or payable by the Director-General, or a Controller appointed by the Director-General, in or in connection with the exercise or attempted or purported exercise of a right, power or remedy under a Transaction Document or the enforcement of the Charge;
 - (iii) thirdly, in payment of the Controller's remuneration;
 - (iv) fourthly, in payment or satisfaction of any Security Interest of which the Director-General has notice having priority over the Charge, in order of, and to the extent of, its priority;
 - (v) fifthly, in payment of the Secured Obligations and applied against interest or any other amount the Director-General or Controller thinks fit;
 - (vi) sixthly, to the extent required by law, in payment of other Security Interests in respect of the Secured Property of which the Director-General or Controller has notice and which are due and payable in accordance with their terms, in the order of their priority; and
 - (vii) seventhly, in payment of any surplus to the Associated Operator in accordance with clause 10.5.

10.2 Credit actual receipts

In applying any money toward satisfaction of the Secured Obligations, the Director-General will credit the Associated Operator only with that money actually received by the Director-General in Cleared Funds, and that credit will date from the time of actual receipt.

10.3 Amounts contingently due

If money available for distribution to the Director-General relates to a part of the Secured Obligations which is contingently due to the Director-General:

- (a) that money may be placed in a short-term interest bearing deposit account with any person selected by the Director-General on terms determined by the Director-General until that part of the Secured Obligations becomes actually due and payable or otherwise ceases to be contingently due; and
- (b) at that time the amount actually owing may be paid to the Director-General and the balance distributed in accordance with clause 10.5.

10.4 Suspense account

- (a) The Director-General may retain and credit to a suspense account:
 - (i) any money paid by the Associated Operator under this Deed;
 - (ii) any distribution, dividend or payment received in respect of the Secured Obligations after an Insolvency Event occurs in respect of any person; and
 - (iii) any money paid by any other person in respect of the Secured Obligations.
- (b) The amounts credited to the suspense account referred to in clause 10.4(a) may be retained by the Director-General in that account for as long as the Director-General determines is appropriate. The Director-General may apply those amounts in or towards satisfaction of the Secured Obligations at any time, but is not under any obligation to do so.

10.5 Surplus money

- (a) If at any time after satisfaction of the Secured Obligations the Director-General holds surplus money payable to the Associated Operator, that money:
 - (i) does not carry interest; and
 - (ii) may be placed to the credit of an account in the name of the Associated Operator with a Bank.
- (b) The Director-General has no further liability in respect of money dealt with in accordance with clause 10.5(a).

10.6 Receipts of the Director-General

The receipt of an Authorised Officer of the Director-General or a Controller appointed by the Director-General for money payable to the Director-General or another asset received by or for the account of the Director-General under a Transaction Document relieves the person making the payment or delivery from all liability to enquire as to:

- (a) the application of that money or other asset;
- (b) whether the Secured Obligations are due or payable; or
- (c) the propriety or regularity of the appointment of a Controller appointed by the Director-General.

11 Payments

11.1 Payments by the Associated Operator

All payments by the Associated Operator to the Director-General under this Deed must be made:

- (a) not later than 11:00 am on the due date for payment;
- (b) in Cleared Funds in Dollars; and
- (c) to the account specified by the Director-General;

or in any other manner that the Director-General notifies to the Associated Operator.

11.2 Business Days

If an amount would otherwise be due for payment on a day that is not a Business Day, that amount is due on the next Business Day or, if that Business Day is in another calendar month, on the preceding Business Day.

11.3 Payable on demand

An amount payable under this Deed that is not payable on a specified date is payable on demand by the Director-General.

11.4 Payments in gross

Subject to clause 11.5, all money payable by the Associated Operator under this Deed must be paid unconditionally and in full without:

- (a) set-off or counterclaim of any kind; or
- (b) deduction or withholding for Tax or any other reason, unless the deduction or withholding is required by applicable law.

11.5 Deductions and withholdings

- (a) If the Associated Operator or any other person is required by law to make a deduction or withholding for Tax from a payment under this Deed or the Director-General is required to make a payment for Tax on any payment received or receivable by it under this Deed, the Associated Operator:
 - (i) indemnifies the Director-General against any Claim in respect of the Tax; and
 - (ii) must immediately pay an additional amount to the Director-General so that, after all applicable deductions, withholdings or payments for Tax, the Director-General actually receives for its own benefit a net amount equal to the amount that it would have received if no deductions, withholdings or payments had been required.
- (b) If the Associated Operator is required by law to make a deduction or withholding for Tax from a payment to the Director-General under this Deed, the Associated Operator must pay the full amount of the deduction or withholding to the appropriate Government Agency in accordance with applicable law and deliver the original receipts to the Director-General.

12 Assignment

12.1 Assignment

A Party may only assign or otherwise transfer, create any charge, trust or other interest in or otherwise deal with a Transaction Document or a right, remedy, power, duty or obligation under a Transaction Document in accordance with the MBSC.

12.2 Disclosure

The Director-General may disclose to a potential assignee, transferee, participant or sub-participant or any other person who is considering entering into contractual relations with it in connection with or in relation to a Transaction Document any information about the Associated Operator and the Transaction Documents as the Director-General considers appropriate.

13 Preservation of rights

13.1 No merger

- (a) No Transaction Document merges, discharges, postpones or adversely affects in any other way the rights, remedies or powers of the Director-General under any other Transaction Document.
- (b) Nothing in any Transaction Document merges, discharges, postpones or adversely affects in any other way a Security or any of the rights, remedies or powers of the Director-General against any person.
- (c) If a judgment is made in favour of the Director-General against the Associated Operator in respect of the Secured Obligations or any part of it, the Director-General holds the judgment collaterally with the Transaction Documents as security for performance, satisfaction or payment of the Secured Obligations and no Transaction Document merges in the judgment.

13.2 Moratorium legislation

To the extent permitted by law, a provision of a law is excluded if it does or may, directly or indirectly:

- (a) lessen or vary in any other way the Associated Operator's obligations under a Transaction Document; or
- (b) delay, curtail or prevent or adversely affect in any other way the exercise by the Director-General or a Controller appointed by the Director-General of any of its rights, remedies or powers under a Transaction Document.

13.3 Waiver and exercise of rights

- (a) A waiver by the Director-General of a provision of or of a right under a Transaction Document is binding on the Director-General only if it is given in writing and is signed by the Director-General or an Authorised Officer of the Director-General.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by the Director-General does not prevent another exercise or attempted exercise of that right or the exercise of another right.

- (d) Failure by the Director-General to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- (e) The Director-General is not liable for any loss, cost or expense of the Associated Operator caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

13.4 Rights cumulative

The rights, remedies and powers under the Transaction Documents of the Director-General, or a Controller appointed by the Director-General, are cumulative and do not exclude any other rights, remedies or powers.

13.5 Further assurances

The Associated Operator must, at its own expense, whenever requested by the Director-General, promptly do or cause to be done anything that the Director-General considers necessary or desirable to:

- (a) give full effect to a Transaction Document; or
- (b) more fully secure the rights, remedies and powers of the Director-General under a Transaction Document or to enable the Director-General to exercise those rights, remedies and powers; or
- (c) perfect or complete any transfer or assignment referred to in clause 12 and the benefit of any Security in relation to any transfer or assignment;

including signing and delivering documents.

13.6 Attorney

- (a) The Associated Operator irrevocably appoints the Director-General, a Controller appointed by the Director-General, and each of their respective Authorised Officers, severally as its attorney to do any of the following:
 - (i) perform the obligations of the Associated Operator under the Transaction Documents;
 - (ii) in the name of the Associated Operator or the attorney, do everything the attorney considers necessary or desirable to give full effect to a right, remedy or power of the Director-General or the Controller under a Transaction Document (including signing and lodging proofs of debt and similar claims in legal proceedings);
 - (iii) appoint substitutes or delegate its powers (including this power of delegation) to any person for any period and revoke any substitution or delegation; and
 - (iv) after a Termination Event has occurred, do everything that the Associated Operator may lawfully authorise an attorney to do in respect of the Secured Property.
- (b) An attorney of the Associated Operator may exercise its powers even if the exercise of the power constitutes a conflict of interest or duty.
- (c) If required by the Director-General, the Associated Operator must ratify anything an attorney or its substitute or delegate does in exercising its powers under clause 13.6(a).

13.7 Completion of blanks

The Director-General and each Authorised Officer of the Director-General is authorised to fill in any blanks and otherwise complete this Deed and any other documents executed by the Associated Operator and deposited with the Director-General in connection with this Deed.

13.8 Rights regarding prior Security Interests

The Director-General may pay or discharge any money, obligation or liability secured by a Security Interest having priority over this Deed and take a transfer of that Security Interest for the benefit of the Director-General and:

- (a) the Associated Operator authorises, directs and consents to a person having the benefit of the prior Security Interest providing the Director-General with all information it requires in relation to the prior Security Interest, including as to amounts secured by the prior Security Interest, despite any term to the contrary effect in that prior Security Interest; and
- (b) any money paid by the Associated Operator to the Director-General after the date of transfer is available to be applied by the Director-General in its absolute discretion to either that part of the Secured Obligations comprising the money secured by the prior Security Interest or to any other Secured Obligations.

13.9 No marshalling

The Director-General is not required before it enforces the Charge or any other Security to:

- (a) give notice of this Deed to any person;
- (b) enforce payment of or appropriate any Secured Obligations or other money or assets which it at any time holds or is entitled to receive;
- (c) marshal, enforce, realise or otherwise resort to any other Security; or
- (d) commence proceedings or enforce any right against the Associated Operator or any other person;

unless the Director-General thinks fit.

13.10 Time of the essence

Time is of the essence of the performance of each of the Associated Operator's obligations under this Deed.

14 Notices

14.1 Requirements

All notices must be:

- (a) in legible writing and in English;
- (b) addressed to the recipient at the address or facsimile number set out below or to any other address or facsimile number that a party may notify to the others:

to the Director-General:

Address: [GPO Box 1620
Sydney NSW 2001]

Attention: [Director, Contracts and Compliance]

Facsimile no: [(02) 9891 8950]

to the Associated Operator:

Address: *[insert Associated Operator's address for notices]*

Attention: *[insert officer to receive notices for Associated Operator]*

Facsimile no: *[insert Associated Operator's fax number]*

- (c) signed by the party, or where the sender is a company, by an Authorised Officer or under the common seal of the sender; and
- (d) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or facsimile.

14.2 Receipt

Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be considered to have been received:

- (a) if sent by hand, when left at the address of the recipient;
- (b) if sent by prepaid post, 3 days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or
- (c) if sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole facsimile was sent to the recipient's facsimile number;

but if a notice is served by hand, or is received by the recipient's facsimile, on a day that is not a Business Day, or after 5:00 pm (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9:00 am (recipient's local time) on the next Business Day.

15 General provisions

15.1 Invalid or unenforceable provisions

- (a) If a provision of this Deed is invalid or unenforceable in a jurisdiction:
 - (i) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
 - (ii) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.
- (b) Without limiting clause 15.1(a), if an Authorisation is required under any law before the creation of Security Interest over an item of the Secured Property and the absence of the

Authorisation does or might render this Deed invalid or unenforceable in whole or in part unless and until the Authorisation is obtained:

- (i) the Secured Property is considered not to include that item unless and until the Authorisation is obtained; and
- (ii) immediately on the Authorisation being obtained, the Secured Property includes that item and, if permitted by the relevant law, is deemed to have included that item from the date of this Deed.

15.2 Director-General's certificate

A certificate signed by an Authorised Officer of the Director-General stating an amount due, owing or payable or a rate or any other matter for the purpose of a Transaction Document is, in the absence of manifest error, conclusive and binding on the Associated Operator.

15.3 Certifications

Any document or thing required to be certified by the Associated Operator must be certified by an Authorised Officer of the Associated Operator or in any other manner that the Director-General approves.

15.4 Amendment

This Deed may be amended only by a document signed by all parties.

15.5 Counterparts

This Deed may be signed in counterparts and all counterparts taken together constitute one document.

15.6 Successors and assigns

This Deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

16 Governing law and jurisdiction

16.1 Governing law

This Deed is governed by the laws of New South Wales.

16.2 Jurisdiction

The Associated Operator irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Each attorney executing this Deed states that the attorney has no notice of revocation or suspension of the power of attorney under which the attorney executes this Deed.

Executed as a deed.

Execution

Signed sealed and delivered
by **New South Wales Ministry of**
Transport for and on behalf of the **State**
Government of New South Wales
by a director and secretary/director:

Signature of secretary/director

Signature of director

Name of secretary/director (please print)

Name of director (please print)

[Execution clause for Associated Operator]