



Registration of a Charge

Company Name: **TOWER TRANSIT OPERATIONS LTD**

Company Number: **08314506**



XC50VY96

Received for filing in Electronic Format on the: **05/06/2023**

Details of Charge

Date of creation: **23/05/2023**

Charge code: **0831 4506 0006**

Persons entitled: **WESTPAC ADMINISTRATION PTY LIMITED AS SECURITY TRUSTEE**

Brief description:

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ASHURST LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8314506

Charge code: 0831 4506 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd May 2023 and created by TOWER TRANSIT OPERATIONS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th June 2023 .

Given at Companies House, Cardiff on 9th June 2023

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**



Execution version

Supplemental Debenture

The companies listed in schedule 1
as Chargors

and

Westpac Administration Pty Limited
as Security Trustee

23 May 2023

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THIS DEED is made on 23 May 2023

BETWEEN:

- (1) **THE COMPANIES** listed in schedule 1 (Chargors) as chargors (the "**Chargors**"); and
- (2) **WESTPAC ADMINISTRATION PTY LIMITED**, ABN 67 008 617 203 as security trustee for itself and the other Secured Parties (the "**Security Trustee**", which expression shall include any person from time to time appointed as a successor, replacement or additional trustee in relation to the interests created by this deed).

RECITALS:

- (A) Pursuant to:

- (i) a facility agreement dated 6 January 2020 and made between, among others, Kelsian Group Limited (ACN 109 078 257) (previously known as SeaLink Travel Group Limited) (the "**Company**") and DBS Bank Ltd., Australia Branch as lender ("**DBS**");
- (ii) a facility agreement dated 6 January 2020 and made between, among others, the Company and Bank of China Limited (Sydney Branch) as lender ("**BOC**");
- (iii) a facility agreement dated 6 January 2020 and made between, among others, the Company and The Hongkong and Shanghai Banking Corporation Limited, Sydney Branch as lender ("**HSBC**"); and
- (iv) a facility agreement dated 6 January 2020 and made between, among others, the Company and Westpac Banking Corporation as lender ("**Westpac**", and together with DBS, BOC and HSBC, the "**Lenders**" and each a "**Lender**"),

(each as supplemented, amended and/or restated from time to time before the date of this deed, an "**Original Facility Agreement**" and together, the "**Original Facility Agreements**") the Lenders made available to the borrowers described therein certain facilities on the terms and conditions set out therein.

- (B) In connection with the Original Facility Agreements, there was also entered into, among other things:

- (i) a security trust deed dated 6 January 2020 and made between the Company, the entities listed in part 1 of schedule 1 thereto as original borrowers, the entities listed in part II of schedule 1 thereto as original guarantors and the Security Trustee (as supplemented, amended and/or restated from time to time before the date of this, the "**Security Trust Deed**");
- (ii) a common terms deed poll dated 6 January 2020 and made between the Company, the entities listed in schedule 1 thereto as original borrowers and the entities listed in schedule 1 thereto as original guarantors, in favour of each finance party named therein from time to time (as supplemented, amended and/or restated from time to time before the date of this, the "**Common Terms Deed Poll**"); and
- (iii) a debenture dated 19 February 2020 (the "**Original Debenture**") between the Chargors as chargors and the Security Trustee as security agent and trustee, by which it created Security over the Charged Property (as defined therein).

- (C) Each Lender (other than BOC) and the Company (as Obligors' agent pursuant to clause 1.4 (Obligors' agent) of the Common Terms Deed Poll) have entered or have agreed to enter into an amendment deed dated on or about the date of this deed in relation to the Original Facility Agreement to which that Lender is a party (each such amendment deed,

an **"Amendment Deed (Facility)"** in order to increase the amount of facilities provided under each such Original Facility Agreement (the **"Increase"**).

- (D) In addition to the Original Facility Agreements, a secured multicurrency term and revolving facility agreement (the **"ANZ Facility Agreement"**) is entered into or will be entered into on or about the date of this deed between (1) the Company as company, (2) the entities listed in schedule 1 thereto as original borrowers and/or original guarantors and (3) Australia and New Zealand Banking Group Limited acting through its Australia branch as original Lender (**"ANZ"**).
- (E) As a condition to the Increase and the amendment of the terms of the relevant Original Facility Agreements in accordance with the terms of the relevant Amendment Deeds (Facility), and in connection with the ANZ Facility Agreement, the Chargors and the Security Trustee have agreed to enter into this deed to further supplement the terms of the Original Debenture (as supplemented by the Supplemental Debenture) in the manner set out in this deed.
- (F) The Chargors and the Security Trustee consider that the security interests in the Original Debenture secure the Secured Obligations (as defined in the Original Debenture), which includes the Increase, but enter into this deed in case they do not.
- (G) The Security Trustee acts under and holds the benefit of the rights conferred upon it in this deed on trust for the Secured Parties.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless defined in this deed or the context otherwise requires, words and expressions defined in the Original Debenture or the Common Terms Deed Poll (as the context requires) has the same meaning in this deed or any notice given under or in connection with this deed. In addition, in this deed:

"ANZ Facility Agreement Date" means the date of the ANZ Facility Agreement;

"Insurances" means the benefits arising from all policies of insurance (including all rights of recovery and all proceeds of them) either now or in the future held by, or written in favour of, a Chargor or in which it is otherwise interested, including those policies (if any) listed in schedule 2 (Insurance Policies) but excluding any third party liability or public liability insurance and any directors' and officers' insurance;

"Original Facility Agreements Amendment Date" means each date on which an Original Facility Agreement is amended in accordance with the terms of an Amendment Deed (Facility); and

"Supplemental Debenture" means the supplemental debenture dated 21 June 2022 between the Chargors and the Security Trustee supplementing the Original Debenture.

1.2 Construction

- (a) Unless a contrary intention appears, the principles of construction contained in clause 1.2 (Construction) of the Common Terms Deed Poll and clause 1.2 (Construction) of the Original Debenture (as the context requires) apply equally to the construction of this deed, except that references to the Common Terms Deed Poll or the Original Debenture will be construed as references to this deed.

- (b) The parties intend that this document shall take effect as a deed, notwithstanding the fact that a party may only execute it under hand.

1.3 Security Trustee's limitation of liability

The Security Trustee enters into and delivers this deed as trustee of the Security Trust and subject to the limitations of liability and indemnities contained in the Security Trust Deed, including clause 3.13 (Limitations of liability of Security Trustee) and clause 3.15 (Security Trustee's indemnity out of the Security Trust assets) of the Security Trust Deed.

1.4 Designation

This deed is a "Finance Document" for the purposes of the Common Terms Deed Poll and a "Secured Document" for the purposes of the Security Trust Deed.

1.5 Third Party Rights

- (a) Any Receiver or Delegate will have the right to enforce the provisions of this deed which are given in its favour however the consent of a Receiver or Delegate is not required for the rescission or variation of this deed.
- (b) Subject to paragraph (a), a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this deed.

2. COVENANT TO PAY

Each Chargor as primary obligor covenants with the Security Trustee (for the benefit of itself and the other Secured Parties) that it will on demand pay the Secured Obligations when they fall due for payment.

3. CHARGING CLAUSE

3.1 Fixed Charges

Each Chargor, as security for the payment and discharge of the Secured Obligations, charges in favour of the Security Trustee with full title guarantee all of its right, title and interest in the following assets, both present and future, from time to time owned by it or in which it has an interest and, in each case, all Related Rights, by way of first fixed charge:

- (a) all Subsidiary Shares;
- (b) all Investments (other than Subsidiary Shares);
- (c) all Material Equipment;
- (d) all Intellectual Property;
- (e) its goodwill and uncalled capital; and
- (f) to the extent not effectively assigned by clause 3.2 (Security Assignment):
 - (i) the Assigned Agreements; and
 - (ii) the Insurances.

3.2 Security Assignment

As further security for the payment and discharge of the Secured Obligations, each Chargor assigns absolutely with full title guarantee in favour of the Security Trustee all its right, title and interest in the following assets, both present and future, and, in each case, all Related Rights:

- (a) the Assigned Agreements; and
- (b) the Insurances,

provided that on payment or discharge in full of the Secured Obligations the Security Trustee will at the request and cost of the relevant Chargor re-assign the relevant rights, title and interest in the assigned assets to that Chargor (or as it shall direct).

3.3 Fixed Security

Clause 3.1 (Fixed Charges) and clause 3.2 (Security Assignment) shall be construed as creating a separate and distinct mortgage, fixed charge or security assignment over each relevant asset within any particular class of assets specified in this deed. Any failure to create effective fixed security (for whatever reason) over an asset shall not affect the fixed nature of the security on any other asset, whether within the same class of assets or not.

3.4 Floating Charge

As further security for the payment and discharge of the Secured Obligations, each Chargor charges with full title guarantee in favour of the Security Trustee by way of first floating charge:

- (a) all its Floating Charge Assets;
- (b) all its Property; and
- (c) all its present and future assets not effectively charged by way of fixed charge under clause 3.1 (Fixed Charges) or assigned under clause 3.2 (Security Assignment).

3.5 Conversion of Floating Charge

- (a) Subject to paragraph (b) below, if:
 - (i) an Event of Default has occurred and is continuing; or
 - (ii) the Security Trustee is (acting reasonably) of the view that any legal process or execution is being enforced against any Floating Charge Asset or that any Floating Charge Asset is in danger of being seized or otherwise in jeopardy; or
 - (iii) the Security Trustee considers that it is necessary to protect the priority of the security,

the Security Trustee may, by notice to any Chargor, convert the floating charge created under this deed into a fixed charge as regards those assets which it specifies in the notice.

- (b) The floating charge created under this deed may not be converted into a fixed charge solely by reason of the obtaining of a moratorium under Part A1 of the

Insolvency Act 1986 in relation to a Chargor, or anything done with a view to obtaining such a moratorium.

- (c) Paragraph (b) above does not apply if the floating charge created under this deed is a floating charge referred to in section A52(4) of Part A1 of the Insolvency Act 1986.

3.6 Automatic Conversion of Floating Charge

If:

- (a) any Chargor creates (or purports to create) any Security in breach of clause 6.2 (Negative Pledge) of the Original Debenture over any Floating Charge Asset; or
- (b) any person levies or attempts to levy any distress, attachment, execution or other legal process against any Floating Charge Asset,

the floating charge created under this deed over the relevant Floating Charge Asset will automatically and immediately be converted into a fixed charge.

3.7 Excluded Property and counterparty consent

- (a) Each relevant Chargor is required to use all reasonable endeavours for a period of no more 180 days after the date of this deed (or, if later, by the date not exceeding 180 days following its entry into or acquisition of such Excluded Property) to obtain consents from the relevant counterparty to grant Security over any Excluded Property.
- (b) The relevant Chargor is deemed to have satisfied the obligation under paragraph (a) above if, after having requested the consent, the counterparty has refused to provide the consent or, if in that Chargor's reasonable opinion, there is no reasonable prospect that the counterparty will give such consent or that any further attempt to comply would be to its material commercial detriment.
- (c) The Security under clauses 3.1 (Fixed charge), 3.2 (Security Assignment) and 3.4 (Floating Charge) will take effect over any property that is Excluded Property upon the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager, judicial manager or other similar officer in respect of the relevant Chargor or any of its assets.

3.8 Details of Charged Property

The fact that no details of any Charged Property are included in any relevant schedule to the Original Debenture does not affect the validity or enforceability of any Security created by or pursuant to this deed.

3.9 Ranking

Where this deed purports to create first ranking Security, that Security will be subject to the equivalent Security created by the Original Debenture and/or the Supplemental Debenture until such time as the relevant Security created by the Original Debenture and/or the Supplemental Debenture ceases to have effect.

4. INCORPORATION OF TERMS

- (a) Subject to paragraph (b) below, the provisions of clauses 4 (Further assurance) to 24 (Miscellaneous) (inclusive) of the Original Debenture shall be deemed to be incorporated in this deed with all necessary modifications as if they were set out in full in this deed.

(b) Any reference to:

- (i) "clauses 5.3 (Property)" in clause 5.2 (Matters Represented) of the Original Debenture as incorporated in this deed shall be construed as a reference to clause 5.3 (Scheduled Assets) of the Original Debenture;
- (ii) "Schedule 3 (Subsidiary Shares)" in clause 5.3(a) (Scheduled assets) of the Original Debenture as incorporated in this deed shall be construed as a reference to Schedule 2 (Subsidiary Shares) of the Original Debenture;
- (iii) "the date of this deed" in clause 5.3(a) (Scheduled assets) of the Original Debenture as incorporated in this deed shall be construed as a reference to the date of the Original Debenture;
- (iv) "schedule 6 (Insurance Policies)" in clause 5.3(b) (Scheduled assets) of the Original Debenture as incorporated in this deed shall be construed as a reference to schedule 2 (Insurance Policies) of this deed;
- (v) "schedule 6 (Forms of notice to counterparties)" in clause 11.2(a) (Perfection of Agreements Security) of the Original Debenture as incorporated in this deed shall be construed as a reference to schedule 7 (Forms of notice to counterparties) of the Original Debenture;
- (vi) "schedule 6 (Forms of notice to counterparties)" in clause 12.2(a) (Perfection of Insurances Security) of the Original Debenture as incorporated in this deed shall be construed as a reference to schedule 7 (Forms of notice to counterparties) of the Original Debenture;
- (vii) "section 1A of the Insolvency Act 1986" in clause 14.2(e) (Appointment of Receiver or Administrator) of the Original Debenture as incorporated in this deed shall be construed as a reference to Part A1 of the Insolvency Act 1986;
- (viii) "clause 26.4 (Covenant to Release)" in clause 20.1 (Continuing Security) of the Original Debenture as incorporated in this deed shall be construed as a reference to clause 24.4 (Covenant to Release) of the Original Debenture;
- (ix) "clause 22.7 (Non-competition)" in clause 20.7 (Non-competition) of the Original Debenture as incorporated in this deed shall be construed as a reference to clause 20.7 (Non-competition) of the Original Debenture; and
- (x) "clause 21 (Application of Enforcement Proceeds)" in clause 20.7 (Non-competition) of the Original Debenture as incorporated in this deed shall be construed as a reference to clause 19 (Application of Enforcement Proceeds) of the Original Debenture.

5. **CONFIRMATION**

- (a) Each of the Original Debenture and the Supplemental Debenture will remain in full force and effect and is not and will not be affected, discharged, impaired, diminished or varied by:
- (i) the execution of the Amendment Deeds (Facility) or the ANZ Facility Agreement; or
 - (ii) the amendment of the relevant Original Facility Agreements in accordance with the terms of the relevant Amendment Deeds (Facility),

save that:

- (A) with effect from each relevant Original Facility Agreements Amendment Date, references to an Original Facility Agreement in the Original Debenture and/or the Supplemental Debenture shall be deemed to be references to that Original Facility Agreement as amended by the relevant Amendment Deed (Facility); and
 - (B) with effect from the ANZ Facility Agreement Date, references to the Facility Agreements in the Original Debenture and/or the Supplemental Debenture shall be deemed to include the ANZ Facility Agreement.
- (b) Each Chargor further confirms that its obligations under and the Security created by the Original Debenture and the Supplemental Debenture will, with effect from:
 - (i) each relevant Original Facility Agreements Amendment Date, extend to the Secured Obligations under the relevant Original Facility Agreement as amended by the relevant Amendment Deed (Facility); and
 - (ii) the ANZ Facility Agreement Date, extend to the Secured Obligations under the ANZ Facility Agreement.

6. **GOVERNING LAW AND JURISDICTION**

- (a) This deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed or any non-contractual obligation arising out of or in connection with this deed) (a "**Dispute**").
- (c) The parties to this deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

IN WITNESS whereof this deed has been duly executed and delivered on the above date first above written.

**SCHEDULE 1
CHARGORS**

Name	Registered Number
Kelsian UK Limited (previously known as Tower Transit Group Limited)	08451873
Tower Transit Limited	04335658
Tower Transit Operations Limited	08314506
Tower Transit Property Holdings Limited	10199751
Tower Transit Asset Holdings Limited	10738299

SCHEDULE 2
INSURANCE POLICIES

Policy	Policy No.	Insurer	Insured	Period of Cover
Property and Business Interruption	Y090776QBE0123A	QBE UK Limited	Kelsian UK Limited (previously known as Tower Transit Group Limited) and subsidiary companies	31 March 2023 to 30 March 2024
Motor Fleet	50404604	Equity Red Star	Kelsian UK Limited (previously known as Tower Transit Group Limited) and subsidiary companies	31 March 2023 to 30 March 2024
Liability	YS CMB 7079007	AXA Insurance	Kelsian UK Limited (previously known as Tower Transit Group Limited) and subsidiary companies	31 March 2023 to 30 March 2024
Excess Public & Products Liability	Y106067QBE0123A	QBE UK Limited	Kelsian UK Limited (previously known as Tower Transit Group Limited) and subsidiary companies	31 March 2023 to 30 March 2024
Business Travel	0010811287	American International Group UK Limited	Kelsian UK Limited (previously known as Tower Transit Group Limited) and subsidiary companies	26 April 2023 to 31 March 2024
Directors and Officers Liability	UKDRND01730	Chubb Insurance	Kelsian UK Limited (previously known as Tower Transit Group Limited) and subsidiary companies	8 January 2020 to 7 January 2026

EXECUTION

Chargors

EXECUTED as a **DEED**
for and on behalf of
KELSIAN UK LIMITED
by:

Director

)
)
)
)


Name: **ANDREW DAVID MUIR**

Director/Secretary


Name: **JOANNE HELEN MCDONALD**

Date: 23 May 2023

EXECUTED as a **DEED**
for and on behalf of
TOWER TRANSIT LIMITED
by:

)
)
)
)

Director

[Redacted Signature]

Name: **ANDREW DAVID MUIR**

Director/Secretary

[Redacted Signature]

Name: **JOANNE HELEN MCDONALD**

Date: 23 May 2023

EXECUTED as a **DEED**)
for and on behalf of)
TOWER TRANSIT OPERATIONS)
LIMITED)
by:

Director

Name: **ANDREW DAVID MUIR**

Director/Secretary

Name: **JOANNE HELEN MCDONALD**

Date: 23 May 2023

EXECUTED as a **DEED**
for and on behalf of
TOWER TRANSIT
HOLDINGS LIMITED
by:

PROPERTY

Director

Name:

ANDREW DAVID MUIR

Director/Secretary

Name:

JOANNE HELEN MCDONALD

Date: 23 May 2023

EXECUTED as a **DEED**)
for and on behalf of)
TOWER TRANSIT ASSET HOLDINGS)
LIMITED)
by:

Director

Name: **ANDREW DAVID MUIR**

Director/Secretary

Name: **JOANNE HELEN MCDONALD**

Date: 23 May 2023

Security Trustee

EXECUTED as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SIGNED, SEALED and **DELIVERED** for
WESTPAC ADMINISTRATION PTY LIMITED
under power of attorney in the presence of

Signature of witness

Name of witness (print)

Signature of attorney

Name of attorney (print)

Date of power of attorney