



Operator Depot Lease Direct Agreement

The Director-General of the Ministry of Transport

[Name of Lessor]

[Name of Operator]

Explanatory Note

Under this Operator Depot Lease Direct Agreement, the Lessor grants the Director-General certain rights in the event of a default by the Operator of its obligations under a Depot Lease and recognises the Director-General's rights to have the Depot Lease novated to a Successor Operator on expiry of the MBSC (or any Second Contract).

In summary, this Operator Depot Lease Direct Agreement includes the following provisions:

- (i) an acknowledgment of the Director-General's security and step-in rights under the MBSC;
- (ii) an undertaking by the Lessor and the Operator not to amend or terminate a Depot Lease without the consent of the Director-General;
- (iii) cure rights in favour of the Director-General in the case of a default by the Operator of a Depot Lease;
- (iv) a right to have a Depot Lease novated to a Successor Operator (with the consent of the Lessor) on the termination or expiry of the MBSC (or any Second Contract);
- (v) provision for the Director-General to, following assignment of a Depot Lease, deposit an amount payable to the Successor Operator, which is referable to the Successor Operator's obligations under a Depot Lease, into a nominated bank account from which the Lessor can debit rental payments; and
- (vi) a right for an Interim Operator or Successor Operator to use a Depot in the provision of Bus Services prior to the Novation Completion Date.

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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 Operator] (Operator)

[insert name and address of Lessor] (Lessor)

Recitals

- A The Director-General and the Operator are parties to the MBSC under which the Operator has agreed to provide certain bus services to the Director-General and users of public bus services.
- B The Operator has entered into the Depot Lease with the Lessor under which the Lessor leases the Operator a Contract Region Depot used by the Operator to provide the bus services.
- C. The Operator has agreed, pursuant to the terms of the MBSC, to grant the Director-General certain step in rights in respect of its business and the right to novate the Depot Lease to an incoming operator on the expiry or termination of the MBSC.
- D. This Agreement sets out the parties' agreement as to how the Director-General may exercise its step in rights and rights of assignment of the Depot Lease, and other relevant matters between the parties.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context requires another meaning:

Bank means an authorised deposit taking institution authorised by the Australian Prudential Regulation Authority to carry on banking business under the *Banking Act 1959* (Cth).

Default means:

- (a) any breach by the Operator of any of its obligations under the Depot Lease or any event of default, termination event or similar event (whatever called) under the Depot Lease; or
- (b) any other event or circumstance which, alone or with the giving of notice or passage of time or both, would entitle the Lessor to avoid, terminate, discharge or rescind the Depot Lease or treat the Depot Lease as repudiated or suspend the Lessor’s performance of obligations under the Depot Lease.

Depot Lease means the leases listed in Schedule 1, together with any new or replacement leases agreed by the parties to be a Depot Lease for the purposes of this definition.

Enforcing Party means the Director-General or any receiver, receiver and manager, agent, attorney or nominee appointed or acting under the Operator Security or the MBSC.

Guarantee means a guarantee, indemnity, letter of credit, performance bond, letter of comfort or other assurance or assumption of responsibility, however 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.

New Depot means any Contract Region Depot approved by the Director-General under Clause 11.3 of the MBSC.

Novation Deed means an agreement in the form set out in Annexure 1.

Operator Security means any Security Interest granted by the Operator (whether before or after the date of this Agreement) in favour of the Director-General and includes any other Security Interest or assurance from the Operator in favour of an Enforcing Party.

Termination Date means:

- (a) in the case of the MBSC, the effective date of termination of the MBSC or the scheduled expiry date of the MBSC, which ever is applicable; or
- (b) if the Operator and the Director-General enter into a Second Contract for the provision of bus services in the Contract Region, the date of termination of the Second Contract or the scheduled expiry date of the Second Contract Term, whichever is applicable.

1.2 Interpretation

- (a) A term defined in the MBSC, and not defined in this Agreement, has the same meaning when used in this Agreement.
- (b) Clauses 1.2 to 1.8 of the MBSC apply to this Agreement as if set out in full and all references to "this Agreement" were references to this Agreement.

1.3 Determination, Statement and Certificate conclusive

Except where otherwise provided in this Agreement any determination, statement or certificate by the Director-General or an authorised officer of the Director-General provided for in this Agreement is conclusive and binds the parties in the absence of manifest error.

2 Consent, acknowledgements and agreements

The Lessor consents to the creation of the Operator Security and acknowledges and agrees that:

- (a) **no Default:** neither the creation of the Operator Security nor the exercise of any of the Director-General's Powers under the Operator Security or the MBSC will of itself contravene or constitute a Default under the Depot Lease or entitle the Lessor to exercise any Power (including termination) under the Depot Lease;
- (b) **enforcement:** any Enforcing Party may, at any time after the Director-General has given notice to the Lessor stating that:
 - (i) the Operator Security has become enforceable; or
 - (ii) a Step-in Party is entitled to exercise the Step-in Rights under the MBSC,

exercise all or any of the Powers, and perform all or any of the obligations, of the Operator under or in relation to the Depot Lease as if it were the Operator to the exclusion of the Operator;

- (c) **not liable:** without limiting the liability of the Operator (who continues to be responsible for the performance of its obligations under the Depot Lease), no Enforcing Party will be liable, or taken to have assumed liability, for any obligation of the Operator under the Depot Lease by reason only of:
 - (i) the creation of the Operator Security;
 - (ii) the exercise of any of the Director-General's Powers under the Operator Security; or
 - (iii) the exercise of any of the Director-General's Powers, or the performance of any of its obligations, under the MBSC; and
- (d) **no adoption:** without limiting paragraph (c), nothing in this Agreement requires an Enforcing Party to adopt or accept the obligations of the Operator, in whole or in part, under the Depot Leases.

3 General undertakings

3.1 Undertakings of the Lessor

Unless the Director-General otherwise agrees in writing, the Lessor must:

- (a) **Amendments:** not materially amend or supplement, or consent to any material amendment or supplement of, the Depot Lease;
- (b) **Termination, release, etc:** not, except as permitted by Clause 4:
 - (i) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of; or
 - (ii) suspend the performance of any of its obligations under,
the Depot Lease;
- (c) **Assignment:** not:
 - (i) create or allow to exist any Security Interest over; or
 - (ii) in any other way assign, dispose of, part with possession of, create or allow any interest in, or otherwise deal with,

its rights under or interest in the Depot Lease in favour of any person, other than in favour of the Director-General or as contemplated by this Agreement or to a counterparty which enters into an agreement in favour of the Director-General on terms substantially the same as this Agreement;

- (d) **Notices:** must notify the Director-General of any Default as soon as it becomes aware of it; and
- (e) **Copy:** promptly provide a copy to the Director-General of any notice given or received by it terminating, or suspending the performance of any obligations under, the Depot Lease.

3.2 Undertakings of the Director-General

Unless the Lessor otherwise agrees in writing, the Director-General must:

- (a) **Extension:** give the Lessor a copy of any notice given to the Operator extending the term of the MBSC, promptly after that notice is given to the Operator; and
 - (b) **Early termination:** give the Lessor a copy of any notice given to the Operator terminating the MBSC, promptly after that notice is given to the Operator.
-

4 Termination or Suspension of Depot Lease

4.1 Termination or suspension for default

- (a) Subject to paragraph (b), the Lessor may only terminate, or suspend the performance of its obligations under, the Depot Lease as a result of a Default in accordance with the terms of the Depot Lease and if:
 - (i) the Lessor has given notice (a **Default Notice**) to the Director-General and the Operator setting out the Default; and
 - (ii) either:
 - (A) if the Default is capable of remedy, the Default has not been remedied within 30 days of the date on which the Default Notice is given to the Director-General and the Operator or such longer period as is allowed for remedy of the Default under the Depot Lease; or
 - (B) if the Default is not capable of remedy, all of the obligations of the Operator under the Depot Lease do not commence and continue to be performed within 30 days of the date on which the Default Notice is given to the Director-General and the Operator or such longer period as is allowed under the Depot Lease. For the avoidance of doubt "all of the obligations of the Operator" excludes any existing Defaults and accrued obligations.
- (b) The Lessor must not terminate, or suspend the performance of its obligations under, a Depot Lease as a result of a Default if:
 - (i) the Director-General has notified the Lessor that he or she is entitled to exercise his or her Step-in Rights or the Operator Security has become enforceable; and
 - (ii) an Enforcing Party is performing all of the obligations of the Operator under the Depot Lease. For the avoidance of doubt "all of the obligations of the Operator" excludes any existing Defaults and accrued obligations.
- (c) Paragraphs (a) and (b) do not prejudice the Lessor's rights against the Operator in respect of remedies other than termination of the Depot Lease or suspension of the performance by the Lessor of its obligations under the Depot Lease.

4.2 Cure rights

- (a) On becoming aware of any Default, an Enforcing Party may take steps to:
 - (i) remedy, or procure the remedy of, the Default; or
 - (ii) if the Default is not capable of remedy, commence and continue to perform the obligations of the Operator under the Depot Lease.

- (b) To the extent reasonably requested by an Enforcing Party for the purpose of exercising its Powers under this Agreement, the Lessor must promptly provide the Enforcing Party with any information in its possession (including details of any steps which the Lessor considers appropriate to be taken to, remedy a Default or, if a Default is not capable of remedy, to commence and continue to perform all of the obligations of the Operator under the Depot Lease).

4.3 Application of Clauses

Clause 4.1 applies despite anything in the Depot Lease or any other document and whether or not the Director-General has exercised any Power under the Operator Security or the MBSC.

5 Novation

5.1 Novation under the MBSC

If the MBSC requires the Operator to novate a Depot Lease to a Successor Operator, the Operator may novate the Depot Lease to the Successor Operator with the prior consent of the Lessor, which consent must not, subject to Clause 5.4, be withheld.

5.2 Notice

The Director-General must give the Lessor on or before the Novation Completion Date a written notice (**Novation Notice**) which:

- (a) specifies the Novation Completion Date;
- (b) identifies the Successor Operator; and
- (c) is accompanied by the latest audited financial statements of the Successor Operator.

5.3 Consent

The Lessor must provide the Director-General with a notice within 5 Business Days of receiving a Novation Notice:

- (a) where the Lessor consents to the assignment of the Depot Lease to the Successor Operator, confirming that consent; or
- (b) where the Lessor withholds its consent to the assignment of the Depot Lease to the Successor Operator, a notice:
 - (i) advising that consent has been withheld; and
 - (ii) specifying the grounds referred to in Clause 5.4 on which the Lessor has relied in order to withhold its consent.

5.4 Withholding consent

- (a) The Lessor may refuse to grant its consent to a assignment of a Depot Lease to a Successor Operator if and only if the assignment would cause the Lessor to:
 - (i) contravene any applicable laws or the requirements of any relevant regulatory agency; or
 - (ii) breach any risk exposure limits to a particular Successor Operator previously notified to the Director-General.

- (b) If the Lessor fails or refuses to provide the Director-General with the notice contemplated in Clause 5.3(a) within the period prescribed in Clause 5.3(a), the Lessor will be deemed to have irrevocably consented to the assignment of the Depot Lease from the Operator to the Successor Operator.

5.5 Novation Completion Date

- (a) Subject to this Clause 5, the Lessor, the Operator and the Successor Operator must (and the Director-General must procure the Successor Operator to) enter into a Novation Deed.
- (b) For the avoidance of doubt, nothing in this Clause 5 releases or affects the Operator's obligations under the Depot Lease, and the Operator must continue to perform those obligations, unless and until those obligations are novated to the Successor Operator to the exclusion of the Operator in accordance with this Clause 5.

5.6 Costs and expenses

The Director-General must procure the Successor Operator pays to the Lessor on demand the Lessor's reasonable costs and expenses (including legal costs and expenses) of the preparation, negotiation and execution of the Novation Deed contemplated by this Clause 5.

5.7 Bank Account and Release of Surety

- (a) Where a Guarantee has been provided in support of a Depot Lease, the Lessor will release the guarantor from its obligations under the Guarantee effective as and from the Novation Completion Date and will not require any replacement or new Guarantee to be provided by any person in connection with the Depot Lease.
- (b) To better secure performance by the Successor Operator of its obligations under the Depot Lease from Novation Completion Date, the Director-General may, at the request of the Lessor, open and maintain an account with a Bank into which the Director-General will deposit payments due by the Director-General to that Successor Operator under that Successor Operator's metropolitan passenger bus system contract which the Director-General considers are referable to the Depot Lease. The Director-General will ensure that the Successor Operator authorises the Lessor to debit from the account the amounts owing by that Successor Operator to the Lessor under the Depot Lease. Nothing in this Clause will be construed as a guarantee by the Director-General of the performance by that Successor Operator of its obligations under the Depot Lease.

6 Use Prior to Novation Completion Date

- (a) If the Novation Completion Date will be a date after the Termination Date, the Lessor consents to a Successor Operator and any Interim Operator using any Novation Depot for the provision of Bus Services from the Termination Date until the relevant Novation Completion Date.
- (b) During the period referred to in Clause 6(a), the Director-General must procure that the Successor Operator and any Interim Operator agree to:
 - (i) maintain each Novation Depot in accordance with the degree of skill, diligence, prudence and practice that would ordinarily be exercised by a skilled and experienced bus operator operating bus services comparable to the size, scope and complexity of the Bus Services and in accordance with all applicable laws, including section 7 of the Act;

- (ii) if required by the terms of a Depot Lease, insure the relevant Novation Depot with insurers, and on terms, approved by the Lessor;
- (iii) comply with the terms of the Depot Lease; and
- (iv) indemnify the Lessor in respect of any Losses that may be incurred or sustained by the Lessor in respect of or arising from the operation of the Novation Depot during that period.

7 Equitable Relief

- (a) Each party to this Agreement acknowledges that damages may not be an adequate remedy for any breach of, or failure by it to comply with, this Agreement.
- (b) Each party to this Agreement agrees that, without limiting any other right, remedy or action it has in connection with any actual or threatened breach of, or failure to comply with, this Agreement by the other party, it is entitled to seek equitable relief (including specific performance or injunctive or declaratory relief) to restrain any actual or threatened breach of, or failure to comply with, this Agreement by the other party and the other party must not oppose the granting of such relief on the basis that the party seeking such relief has not or will not sustain any actual loss or damage.

8 GST

- (a) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This Clause 8 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.
- (b) Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.
- (c) Any reference in this Agreement to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.
- (d) Any reference in this Agreement (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.
- (e) No payment of any amount pursuant to Clause 8(a), and no payment of the GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

9 Assignment by Director-General

The Director-General may assign or transfer all or any of its rights or obligations under this Agreement to another Government Agency.

10 Notices

Any notice, demand, consent or other communication (the **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
 - (i) to the Director-General:
Ministry of Transport
[GPO Box 1620
Sydney NSW 2001]
Attention: [Director, Contracts and Compliance]
Fax No: [(02) 9891 8950]
 - (ii) to the Lessor:
[#]
Attention: [#]
Fax No: [#];
 - (iii) to the Operator:
[#]
Attention: [#]
Fax No: [#]; and
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two business days after the date of posting (if posted to an address in the same country) or seven business days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

11 Entire Agreement

This Agreement contains the entire agreement between the Lessor, the Operator and the Director-General with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

12 No waiver

No failure to exercise or any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

13 Amendment

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by all parties.

14 Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.

15 Costs

Subject to any express provision in this Agreement to the contrary, each party must bear its own costs and expenses relating directly or indirectly to the negotiation, preparation, execution of and performance of its obligations under this Agreement.

16 Severability of provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

17 Governing law and jurisdiction

This Agreement is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

18 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Executed as an agreement in Sydney.

Execution

The Director-General

Signed sealed and delivered

by the Director-General for the time being of
the **New South Wales Ministry of
Transport** for and on behalf of the **State
Government of New South Wales**
in the presence of:

Signature of witness

Signature of the Director-General of the New
South Wales Ministry of Transport

Name of witness (please print)

[Operator execution clause]

[Lessor execution clause]

Schedule 1 – Depot Leases

Annexure 1

Novation Deed

[Clause 5.5]

Novation Deed

This Deed is made on [*insert date*]

Between

[**Lessor**] of [**address**] (the **Lessor**)

[**Operator**] of [**address**] (the **Operator**)

[**Successor Operator**] of [**address**] (the **Successor Operator**)

Recitals

- A. The Lessor is the owner of the Contract Region Depot and is the registered proprietor of the Premises.
- B. The Lessor has granted the Depot Lease to the Operator.
- C. The Operator, the Successor Operator and the Lessor enter into this Deed pursuant to clause 5.5 of the Operator Depot Lease Direct Agreement.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

Act means the *Passenger Transport Act 1990* (NSW) as amended, including by operation of *Passenger Transport Amendment (Bus Reform) Act 2004* (NSW).

Depot means the premises and any associated plant and equipment leased by the Operator from the Lessor under the Depot Lease as described in **Item 8** of the Schedule.

Depot Lease means the Depot Lease described in **Item 5** of the Schedule.

Director-General means the Director-General of the Ministry of Transport.

Effective Date means the date set out in **Item 4** of the Schedule.

Lessor means the Lessor described in **Item 1** of the Schedule.

Licence Agreement means the licence agreement described in **Item 7** of the Schedule.

Operator means the lessee under the Depot Lease described in **Item 2** of the Schedule.

Operator Depot Lease Direct Agreement means the Operator Depot Lease Direct Agreement dated on or about [x] between the Director-General, the Lessor and the Operator.

Outgoings means the [outgoings/operating expenses] referred to under the Depot Lease.

Power means any power, right, authority, discretion or remedy, whether express or implied.

Premises means the premises constituting part of the Depot described in **Item 6** of the Schedule.

Rent means the rent payable under the Depot Lease as at the date of this Deed.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, Item, Schedule or Annexure is a reference to a clause of, item in the Schedule, or a schedule or annexure to, this Deed.
- (f) A reference to an agreement or document (including, without limitation, a reference to this Deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail.
- (h) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset.

- (m) A reference to any governmental department or professional body includes the successors of that body.
- (n) A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- (o) A reference to a month or to a year is to a calendar month or a calendar year.
- (p) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (q) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (r) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it.
- (s) Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the *reference date*) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month.
- (t) If any provision of this Deed is found by a Court to be illegal, invalid or unenforceable, that provision is to be read down to the extent necessary and reasonable in all the circumstances to give it a valid operation of partial character. If any provision of this Deed cannot be so read down, that provision will be void and severable and the remaining provisions of this Deed will not in any way be affected or impaired.
- (u) This Deed may not be construed adversely to a party only because that party was responsible for preparing it.
- (v) This Deed may be signed in counterparts and all counterparts taken together constitute one document.

1.3 Consents or approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of the Director-General or is within the discretion of the Director-General, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Director-General in his absolute discretion unless express provision to the contrary has been made.

1.4 Director-General's Capacity

The Director-General enters into this Deed on behalf of the Crown in right of the State pursuant to the Act and an obligation or Power of the Director-General under this Deed is an obligation or Power of the Director-General in that capacity.

1.5 Delegation

- (a) The Director-General may delegate any Power, function or responsibility that the Director-General has under this Deed.
- (b) Any such delegation may be:
 - (i) revoked, changed or delegated;

- (ii) limited or may be subject to such conditions as the Director-General determines from time to time; and
 - (iii) in favour of a nominated person or in favour of the holder of a nominated office or position from time to time.
- (c) The Lessor is entitled to request details of the delegation of any Power, function or responsibility by the Director-General under this Deed where a person purports to be acting under such a delegation. Once the Lessor obtains such details, it is entitled to rely on them unless and until given notice of revocation of that delegation.
- (d) If the Director-General delegates any Power, function or responsibility under this Deed, the Director-General must give notice of such delegation to the Lessor (including the address of any person, or the description of the office or position, to whom such Power, function or responsibility is delegated). Where the Director-General has given such notice, the Lessor is entitled to rely upon such notice unless and until given notice of revocation of that delegation.
- (e) Any person, or the holder of any office or position, to whom a Power, function or responsibility is delegated by the Director-General has, to the extent of that delegation and subject to compliance with the terms and conditions of that delegation, full power and authority to act for and on behalf of and to bind the Director-General under this Deed.

1.6 No fetter on Director-General's powers

- (a) Subject to paragraph (b), nothing in this Deed unlawfully restricts or otherwise affects the Director-General's unfettered discretion to use his or her statutory powers.
- (b) The Director-General acknowledges and agrees that paragraph (a) does not limit the Director-General's obligations under this Deed.

1.7 Transfer of Functions

- (a) The parties acknowledge that the Director-General may be reconstituted, renamed or replaced and that some or all of the Powers of the Director-General may be transferred to or vested in another entity.
- (b) If the Director-General is reconstituted, renamed or replaced or if some or all of the Director-General's Powers are transferred to or vested in another entity, references in this Deed to the Director-General must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those Powers.
- (c) For the purposes of this clause 1.6, another entity means a Governmental Agency.

2 Novation

2.1 Operator novates

Subject to the terms of this Deed, on and from the Effective Date and in consideration of the sum of \$10.00 (whose receipt is acknowledged), the Operator novates to the Successor Operator:

- (a) all its right, title and interest under the Depot Lease and in the Depot (together with the benefits and burdens of the covenants under the Depot Lease whether or not such covenants touch and concern the Premises); and

- (b) the right (so far as may be necessary) to demand performance or to sue for and enforce the terms and conditions of the Depot Lease in accordance with this Deed.

2.2 Consent/Acknowledgment and agreements of Lessor

- (a) Without prejudice to the Lessor's rights, powers and remedies under the Depot Lease, the Lessor acknowledges and consents to the novation referred to in clause 2.1.
- (b) The Lessor must do all things reasonably necessary and obtain all consents, execute all documents and produce any title documents as may be required or appropriate to perfect the novation of the Depot Lease to the Successor Operator as contemplated in this Deed.

2.3 Successor Operator Agreements

The Successor Operator accepts the novation of the Depot Lease and agrees that it will, on and from the Effective Date:

- (a) pay to the Lessor the Rent, Outgoings and all other amounts payable by the Operator under the Depot Lease at the times and in the manner provided by the Depot Lease; and
- (b) observe and perform all other Operator 's obligations, conditions, restrictions and agreements under the Depot Lease whether or not such obligations touch and concern the Premises (including without limit any extensions or renewals of the Depot Lease), as if the Successor Operator had been named as lessee in the Depot Lease.

2.4 Operator Agreements

- (a) The Operator warrants to the Successor Operator that:
 - (i) the Depot Lease is valid and subsisting and the Operator is not in default under the Depot Lease;
 - (ii) there is no event or circumstance which entitles the Lessor to terminate the Depot Lease; and
 - (iii) it is not a party to any agreement with the Lessor in respect of the Depot that has not been either recorded in the Depot Lease or disclosed to the Successor Operator.
- (b) The Operator agrees with the Successor Operator and the Lessor that the Operator will, for the period before the Effective Date, perform and observe all of the obligations of the Operator under the Depot Lease.
- (c) On or before the date of this Deed, the Operator will deliver a separate transfer of lease in relation to the Premises to the Lessor, together with a cheque for registration fees. The transfer of lease must be signed by both the Operator and the Successor Operator and stamped and otherwise in registrable form.

3 Goods and Services Tax

- (a) For the avoidance of doubt, the parties agree that any sum payable or amount to be used in the calculation of a sum payable has been determined without regard to and does not include an amount on account of any goods and services tax, value added tax or like tax (**GST**).
- (b) If any GST is payable on any taxable supply made under this Deed to the recipient (**Recipient**) by the supplier (**Supplier**), the Recipient must pay to the Supplier, at the same time and in the same manner as making payment of any monetary consideration on which the GST is

calculated, the amount of the GST (**GST Amount**), subject to receipt of a valid tax invoice. If the GST Amount is not calculated on any monetary consideration, the recipient must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Supplier.

- (c) The amount recoverable on account of GST under this clause by the Supplier will include any fines, penalties, interest and other charges incurred as a consequence of late payment or other default by the Recipient under this Deed.
- (d) If either party is required to pay or reimburse to the other or indemnify the other for any cost, expense or other amount that the other party has incurred or will incur in connection with this Deed, the amount must be reduced by any part of that amount for which the other party (or representative member if this is not the other party) can claim an input tax credit, partial input tax credit or other like offset.

4 Releases

- (a) The Operator releases the Lessor from all claims, actions, demands, proceedings, obligations and liabilities incurred in connection with, the Depot Lease or the Operator 's use of the Depot or occupation of the Premises and which are arising on or after the Effective Date. For the avoidance of doubt, performance by the Lessor under the Depot Lease in favour of the Successor Operator will satisfy any same obligation owed to the Operator.
- (b) With effect from the Effective Date, the Lessor releases the Operator from all its obligations and liabilities under the Depot Lease and which are arising on or after the Effective Date. For the avoidance of doubt, the Successor Operator may satisfy any obligations or liabilities of the Operator under the Depot Lease arising before the Effective Date.

5 Indemnities

5.1 Operator indemnity

The Operator unconditionally and irrevocably indemnifies the Successor Operator against any liability, cost, damages, debt, expense, tax or loss incurred or payable by the Successor Operator as a result of any suit, action, demand, cause of action or proceeding against the Successor Operator under or in respect the Depot Lease which relates to any act or omission of the Operator at any time before the Effective Date.

5.2 Successor Operator indemnity

The Successor Operator unconditionally and irrevocably indemnifies the Operator against any liability, cost, damages, debt, expense, tax or loss incurred or payable by the Operator as a result of any suit, action, demand, cause of action or proceeding against the Operator under or in respect the Depot Lease which relates to any act or omission of the Successor Operator at any time on or after the Effective Date.

6 Representations and warranties

6.1 Representations and warranties

Each of the parties represent and warrant to the other parties that:

- (a) it is properly incorporated under the laws of the place of its incorporation;

- (b) it has full power and authority to enter into and perform its obligations under this Deed and it has taken all corporate and other action necessary to authorise the execution, delivery and performance of this Deed;
- (c) it benefits by entering into this Deed;
- (d) this Deed has created valid and binding obligations enforceable against it in accordance with its terms;
- (e) the execution of this Deed and the performance by it of its obligations or the exercise of its rights under this Deed does not and will not:
 - (i) contravene its constitution;
 - (ii) contravene a law or Authorisation or require that any Authorisation be obtained;
 - (iii) contravene any agreement or obligation binding on it or applicable to its assets, revenues or business;
 - (iv) exceed any limits on its powers or the powers of its directors;
- (f) in entering this Deed, it is not acting as a trustee of any trust; and
- (g) no application or order has been made for winding-up or liquidation of it, no action has been taken to seize or take possession of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as they fall due.

6.2 Repetition

The representations and warranties in this Deed are made on the date of this Deed and are repeated on the Effective Date.

6.3 Reliance

Each party acknowledges that the other parties have entered into this Deed in reliance on the representations and warranties in clause 6.1.

7 Novation of Licence Agreement

- (a) With effect on and from Effective Date
 - (i) the Successor Operator will be substituted as licensee under the Licence Agreement as if the Successor Operator had been named as licensee in the Licence Agreement and all the references in the Licence Agreement to the licensee will be read and construed as if they were references to the Successor Operator; and
 - (ii) the Successor Operator will be bound by and comply with the provisions of the Licence Agreement which are or were binding on the Lessee (as licensee) and will enjoy all the rights of the Lessee (as licensee) under the Licence Agreement.
- (b) The Lessor in its capacity as licensor under the Licence Agreement consents to the novation of the Licence Agreement to the Successor Operator in clause 7(a).

[Clause 7 may be necessary if there are associated licence agreements, such as car park or signage or storage licence agreements associated with the Depot Lease.]

8 Miscellaneous

8.1 Costs

Subject to clause 8.2, the parties shall bear their own expenses of agreeing and executing this Deed.

8.2 Stamp Duty

The Successor Operator will be responsible for the payment of any stamp duty (including penalties and fines) payable in respect of this Deed.

8.3 Notices

All notices made or issued under this Deed must be made or issued in accordance with the terms of the Depot Lease.

8.4 Further assurances

Each party must, at its own expense, whenever reasonably requested by another party, promptly do or arrange for others to do everything reasonably necessary or desirable to give full effect to this Deed and the transactions contemplated by this Deed.

8.5 Amendments

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

8.6 Non-merger

The warranties, representations and promises by the parties in this Deed are continuing and will not merge or be extinguished on the Effective Date.

8.7 No disadvantage

Each representation, covenant and obligation in this Deed will continue in full force and effect until it is satisfied or completed.

8.8 Waiver/remedies cumulative

- (a) No failure to exercise and no delay in exercising any power, right, authority, discretion or remedy given to any party by this Deed or by any law in relation to this Deed operates as a waiver, nor does any single or partial exercise of them preclude any other or further exercise of them or any of them.
- (b) The powers, rights, authorities, discretions or remedies (if any) given to any party by this Deed are additional to, and do not exclude or limit, any right, power or remedy provided by law.

8.9 Indemnities

The indemnities in this deed are continuing obligations, independent from the other obligations of the parties under this deed and continue after this Deed ends. It is not necessary for a party to incur an expense or make payment before enforcing a right of indemnity under this Deed.

8.10 Governing law

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

8.11 Jurisdiction

The parties irrevocably and unconditionally:

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

Executed as a deed.

[Execution clauses as required]

Schedule

Item 1 Lessor's details

Name: [specify Lessor]
ACN: [specify Lessor's ACN]
Address: [specify Lessor's address]

Item 2 Operator's details

Name: [specify Operator 's name]
ACN: [specify Operator 's ACN]
Address: [specify Operator 's address]

Item 3 Successor Operator's details

Name: [specify Successor Operator's name]
ACN: [specify Successor Operator's ACN]
Address: [specify Successor Operator's address]

Item 4 Effective Date

[specify Effective Date]

Item 5 Depot Lease

Depot Lease consists of:

1. [Description of Depot Lease]; and
2. Lease [specify registration number of lease] between the Lessor and [the Operator /specify other, eg, name of original Lessee where applicable] in respect of the Premises, terminating on [specify lease expiry date]

Item 6 Premises

[specify Premises]

Item 7 Licence Agreement

[specify Licence Agreement eg the [car parking/signage/specify other agreement] Agreement dated [specify date] between the Lessor (as licensor) and the Operator (as licensee) in relation to [car parking/signage/specify other] at [specify relevant address]

Item 8 Depot

The Premises [and [specify Depot]]