
Operator Depot Lease Direct Deed (ODLDD)

Transport for NSW on behalf of the State of New South Wales (TfNSW)

[insert name] (Operator)

[insert name] (Lessor)

Explanatory Note

Under this Operator Depot Lease Direct Deed, the Lessor grants TfNSW certain rights in the event of a default by the Operator of its obligations under an Operator Depot Lease and recognises TfNSW's rights to have the Operator Depot Lease novated to a Successor Operator on expiry of the OMBSC.

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

- (i) an acknowledgment of TfNSW's security and step-in rights under the OMBSC;
- (ii) an undertaking by the Lessor and the Operator not to amend or terminate an Operator Depot Lease without the consent of TfNSW;
- (iii) cure rights in favour of TfNSW in the case of a default by the Operator under an Operator Depot Lease;
- (iv) a right to have an Operator Depot Lease novated to a Successor Operator (with the consent of the Lessor) on the termination or expiry of the OMBSC;
- (v) a right for TfNSW to, following assignment of an Operator Depot Lease, deposit an amount payable to the Successor Operator, which is referable to the Successor Operator's obligations under the relevant Operator 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 Effective Date

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Date:

Parties

- 1 **Transport for NSW** of a corporation constituted under the *Transport Administration Act 1988* on behalf of the State of New South Wales of 231 Elizabeth Street, Sydney, New South Wales (**TfNSW**)
 - 2 **[insert name]** (ABN 00 000 000 000) of **[insert address]** (**Operator**)
 - 3 **[insert name]** ACN 000 000 000] of **[insert address]** (**Lessor**)
-

Background

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

The parties agree

1 Defined terms and interpretation

1.1 Definitions

In this Deed, unless the context requires another meaning:

Bank means an Australian trading bank or other financial institution nominated by TfNSW.

Call Option Lease means the lease which arises on the exercise by TfNSW of the option granted to TfNSW by the Lessor under the Deed of Option to Lease.

Call Option Lease Commencement Date means the commencement date of the Call Option Lease.

Condition Reports means the condition reports referred to in clause 5.1.

Deed means this document.

Deed of Option to Lease means the document titled "First Deed of Option to Lease" between the Lessor and TfNSW.

Default means:

- (a) any breach by the Operator of any of its obligations under the Operator Depot Lease or any event of default, termination event or similar event under the Operator 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 Operator Depot Lease or treat the Operator Depot Lease as repudiated or suspend the Lessor's performance of obligations under the Operator Depot Lease.

Default Notice has the meaning given to it in clause 4.1(a)(i).

Depot means the premises and any associated plant and equipment (which may include the ZEB Depot Improvements) leased by the Operator from the Lessor under the Operator Depot Lease and listed in Schedule 1.

Electronic Signature means a visual representation of a person's handwritten signature which is placed on this Deed using an electronic signing platform.

Enforcing Party means TfNSW or any receiver, receiver and manager, agent, attorney or nominee appointed or acting under the Operator Security or the OMBSC.

Expiry Date means the scheduled expiry date of the OMBSC, being [insert date].

Force Majeure means the occurrence of any event which, despite a party having taken all reasonable steps to avoid the occurrence or the effects of such event:

- (a) is beyond the reasonable control of that party; and
- (b) delays or prevents that party from remedying a Default.

Governmental Agency means any government or governmental, semi-governmental, administrative, statutory, municipal, fiscal or judicial body, department, commission, authority, state-owned corporation, tribunal, person, agency or entity (wherever created or located).

Law means:

- (a) any statute, regulation, order, rule or subordinate legislation;
- (b) any other document or direction enforceable under any statute, regulation, order, rule or subordinate legislation; or
- (c) any rules, guidelines, policies, standards, procedures, directives, circulars, codes of practice or requirements relating to or affecting the Operator Depot Lease as may be published by the Commonwealth or New South Wales governments or local councils or Governmental Agencies, with which the Lessor is legally required to comply,

and includes the general and common law.

Lender means the lender/s which has provided financial accommodation which is secured under the Existing Security, or their appointed agent or security trustee on their behalf (as applicable).

Lessor's Improvements means any improvements at the Depot which are owned by the Lessor.

Novatee means a Successor Operator, Interim Operator, or Enforcing Party as notified by TfNSW to the Lessor under clause 6.2.

Novation Deed means a deed substantially in the form set out in Attachment A.

Novation Effective Date means the date the novation of the Operator Depot Lease takes effect.

OMBSC means the agreement between the Operator and TfNSW titled "Outer Metropolitan Bus Services Contract 6/7" dated on or about [insert].

Operator's Property means the property in the Depot owned or leased by the Operator.

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

Operator Security means any Security Interest granted by the Operator (whether before or after the date of this Deed) in favour of TfNSW in respect of the Operator Depot Lease or any of the State Assets, and includes any other Security Interest or assurance from the Operator in favour of an Enforcing Party.

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

PT Act means the *Passenger Transport Act 1990* (as amended, including by operation of *Passenger Transport Amendment (Bus Reform) Act 2004*, the *Passenger Transport Act 2014*) and regulations under the *Passenger Transport Regulation 2017*.

Termination Date means in the event of early termination of the OMBSC, the effective date of termination of the OMBSC.

ZEB Infrastructure means any infrastructure and assets, including in relation to electricity or hydrogen manufacture, generation or supply, chargers, any stationary batteries and any other infrastructure upgrades for use of ZEB Buses (including those using battery electric and/or hydrogen) at the Depots.

1.2 Interpretation

- (a) A term defined in the OMBSC, and not defined in this Deed, has the same meaning when used in this Deed.
- (b) Clauses 1.2 to 1.6 of the OMBSC apply to this Deed as if set out in full and all references to this "Contract" were references to this Deed.
- (c) In the event of an inconsistency, ambiguity or discrepancy between this Deed and the Operator Depot Lease, this Deed prevails.

1.3 Determination, Statement and Certificate conclusive

Except where otherwise provided in this Deed, any determination, statement or certificate by TfNSW or an authorised officer of TfNSW provided for in this Deed 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 TfNSW's Powers under the Operator Security or the OMBSC will of itself contravene or constitute a Default under the Operator Depot Lease or entitle the Lessor to exercise any Power (including termination) under the Operator Depot Lease;
- (b) *Enforcement* - any Enforcing Party may, at any time after TfNSW 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 OMBSC,do any of the following:
 - (iii) in respect of:
 - (A) Operator Security that is in respect of an Operator Depot Lease; and/or
 - (B) the exercise of Step in Rights under the OMBSC,exercise all or any of the Powers, and perform all or any of the obligations, of the Operator under or in relation to the Operator Depot Lease as if it were the Operator and to the exclusion of the Operator; and/or
 - (iv) in respect of Operator Security that is other than in respect of an Operator Depot Lease, exercise all or any of the Powers of the Enforcing Party under the relevant Operator Security, and the Lessor agrees that it will not impede the Enforcing Party in the exercise of such Powers at the Depot;
- (c) *Not liable* - without limiting the liability of the Operator (who continues to be responsible for the performance of its obligations under the Operator Depot Lease), no Enforcing Party will be liable, or taken to have assumed liability, for any obligation of the Operator under the Operator Depot Lease by reason only of:
 - (i) the creation of the Operator Security;
 - (ii) the exercise of any of TfNSW's Powers under the Operator Security; or
 - (iii) the exercise of any of TfNSW's Powers, or the performance of any of its obligations, under the OMBSC; and
- (d) *No adoption* - without limiting clause 2(c), nothing in this Deed requires an Enforcing Party to adopt or accept the obligations of the Operator, in whole or in part, under the Operator Depot Leases.

3 General undertakings

3.1 Undertakings of the Lessor

Unless TfNSW otherwise agrees in writing, the Lessor must:

- (a) *Amendments* - not materially amend or supplement, or consent to any material amendment or supplement of, the Operator 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 Operator Depot Lease;
- (c) *Assignment or sale* – 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 or Operator Depot Lease in favour of any person, other than in favour of TfNSW or as contemplated by this Deed or to a counterparty which enters into an agreement in favour of TfNSW on terms substantially the same as this Deed;
- (d) *Notices* - must notify TfNSW of any Default as soon as it becomes aware of it;
- (e) *Copy* - promptly provide a copy to TfNSW of any notice given or received by it terminating, or suspending the performance of any obligations under, the Operator Depot Lease;
- (f) *Information* - promptly provide to TfNSW any other information reasonably requested by TfNSW in relation to the Operator Depot Lease;
- (g) *ZEB Infrastructure* - not alter or remove from the Depot the ZEB Infrastructure;
- (h) *Lessor's Improvements* - not materially alter or remove, or require the Operator to materially alter or remove, from the Premises the Lessor's Improvements; and
- (i) *Operator's Property* - not require the Operator to remove from the Premises any Operator's Property which a new tenant has agreed to acquire from the Operator or continue to lease from the relevant owner.

3.2 Undertaking of Operator

Unless TfNSW otherwise agrees in writing, the Operator must not alter or remove from the Depot the ZEB Infrastructure.

3.3 Undertakings of TfNSW

Unless the Lessor otherwise agrees in writing, TfNSW must:

- (a) *Extension* - give the Lessor a copy of any notice given to the Operator extending the term of the OMBSC, 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 OMBSC, promptly after that notice is given to the Operator.

3.4 Operator's continued occupation

Each of the Lessor and Operator acknowledges and agrees that, despite the provisions of the Operator Depot Lease and any other agreements between the Lessor and Operator:

- (a) the Operator may not exercise any option to renew or otherwise continue to occupy the Depot after the expiry date of the Operator Depot Lease, without TfNSW's prior written consent (such consent not to be unreasonably withheld or delayed); and
- (b) if the Operator purports to exercise an option to renew or otherwise continues to occupy the Depot after the expiry date of the Operator Depot Lease without TfNSW's prior written consent, the purported exercise of the option to renew or continued occupation of the Depot is invalid.

4 Termination or Suspension of Operator Depot Lease

4.1 Termination or suspension for default

- (a) Subject to clause 4.1(b), the Lessor may only terminate, or suspend the performance of its obligations under, an Operator Depot Lease as a result of a Default in accordance with the terms of the Operator Depot Lease and if:
 - (i) the Lessor has given notice to TfNSW and the Operator setting out the Default including the nature of the Default, any action which it considers appropriate to remedy the Default or the amount necessary to compensate it for the Default, and any other information which TfNSW and the Operator reasonably require in relation to the Default (**Default Notice**); and
 - (ii) either:
 - (A) if the Default is capable of remedy, the Default has not been remedied within 60 days after the date on which the Default Notice is given to TfNSW and the Operator or such longer period as is allowed for remedy of the Default under the Operator Depot Lease or any period in which TfNSW or the Operator is delayed or prevented from remedying the Default as a result of Force Majeure; or
 - (B) if the Default is not capable of remedy, all of the obligations of the Operator under the Operator Depot Lease do not commence and continue to be performed by an Enforcing Party within 60 days after the date on which the Default Notice is given to TfNSW and the Operator or such longer period as is allowed under the Operator Depot Lease or any period in which TfNSW or the Operator is delayed or prevented from remedying the Default as a result of Force Majeure.

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, an Operator Depot Lease as a result of a Default if:
 - (i) TfNSW has notified the Lessor that it is entitled to exercise its 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 Operator Depot Lease. For the avoidance of doubt, "all of the obligations of the Operator" excludes any existing Defaults and accrued obligations.
- (c) Clauses 4.1(a) and (b) do not prejudice the Lessor's rights against the Operator in respect of remedies other than termination of the Operator Depot Lease or suspension of the performance by the Lessor of its obligations under the Operator 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 Operator Depot Lease.
- (b) The Lessor agrees that any remedy of a Default effected by, or on behalf of, an Enforcing Party will be effective as a remedy of the relevant Default by the Operator.
- (c) To the extent reasonably requested by an Enforcing Party for the purpose of exercising its Powers under this Deed, 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 Operator Depot Lease. For the avoidance of doubt, "all of the obligations of the Operator" excludes any existing Defaults and accrued obligations).

4.3 Application of Clauses

Clause 4.1 applies despite anything in the Operator Depot Lease or any other document and whether or not TfNSW has exercised any Power under the Operator Security or the OMBSC.

5 Access to Depot by TfNSW and others

5.1 Condition Reports

- (a) TfNSW and its consultants may, on or before the date that is 2 years before the Expiry Date, access the Depot to obtain reports:
 - (i) regarding the existing condition of the Depot; and
 - (ii) regarding any Contamination at the Depot.

- (b) The Operator must provide TfNSW and its consultants promptly on request with access to the Depot and any other assistance as they may reasonably require in order to prepare the Condition Reports.

5.2 Inspections

The Lessor acknowledges that the Operator is required under the OMBSC to provide TfNSW, any prospective Successor Operator, Successor Operator, Interim Operator and nominee of TfNSW with access to the Depot to inspect the Depot.

5.3 General access in exercise of TfNSW's rights under the OMBSC

In addition, the Lessor and Operator acknowledge that TfNSW has various rights under the OMBSC that may require or permit TfNSW or its nominees to access the Depot from time to time, including in relation to advertising and access or inspection of any State Assets that may be located on the Depot.

5.4 Terms of access

TfNSW and the other persons referred to in clause 5.1, 5.2 or 5.3 access the Depot on the following terms:

- (a) they may only access the Depot accompanied by the Operator or the Operator's nominated representative, if one is made available;
- (b) they must not cause any damage while at the Depot and if they do, TfNSW must procure the repair of the damage; and
- (c) they must comply with the reasonable directions and requirements of the Operator.

5.5 Acknowledgement by Lessor

The Lessor acknowledges and agrees to the rights described in this clause 5 and may not:

- (a) object to the exercise of the rights; or
- (b) assert that the Operator is in breach of the Operator Depot Lease as a result of the exercise of the rights.

6 Novation

6.1 Novation of Operator Depot Lease

If prior to the Expiry Date, the OMBSC is terminated and TfNSW requires the Operator to novate an Operator Depot Lease to a Successor Operator, Interim Operator or Enforcing Party, then the Operator may novate the Operator Depot Lease to that person.

6.2 Notice

TfNSW must give the Lessor at least 15 Business Days before the Novation Effective Date a written notice (**Novation Notice**) which:

- (a) specifies the Novation Effective Date; and
- (b) identifies the Successor Operator, Interim Operator or Enforcing Party (**Novatee**).

6.3 Novation Deed

- (a) Subject to this clause 6, the Lessor, the Operator and the Novatee must (and TfNSW must procure the Novatee to) enter into a Novation Deed.
- (b) For the avoidance of doubt, nothing in this clause 6 releases or affects the Operator's obligations under the Operator Depot Lease and the Operator must continue to perform those obligations, unless and until those obligations are novated to the Novatee in accordance with this clause 6.

6.4 Costs and expenses

TfNSW must procure the Novatee to pay to the Lessor 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 6.

6.5 Bank account

- (a) To better secure performance by the Novatee of its obligations under the Operator Depot Lease from the Novation Effective Date, TfNSW may, at the request of the Lessor, open and maintain an account with a Bank into which TfNSW will deposit payments due from TfNSW to that Novatee under that Novatee's passenger bus system services contract which TfNSW considers is referable to the Operator Depot Lease.
- (b) If TfNSW exercises its rights under clause 6.5(a), TfNSW will ensure that the Novatee authorises the Lessor to debit from the account the amounts owing by that Novatee to the Lessor under the Operator Depot Lease.
- (c) Nothing in this clause 6.5 will be construed as a guarantee by TfNSW of the performance by that Novatee of its obligations under the Operator Depot Lease.

6.6 New ODLDD with Novatee

- (a) Subject to clause 6.6(b), the Lessor and TfNSW must enter into a deed with the Novatee on substantially the same terms as this Deed on or about the Novation Effective Date.
- (b) TfNSW must use reasonable endeavours to procure the Novatee to enter into such a deed on or about the Novation Effective Date.
- (c) This clause survives termination of this Deed.

7 Surrender

7.1 Surrender under the OMBSC

If prior to the Expiry Date, the OMBSC is terminated and TfNSW requires the Operator to surrender an Operator Depot Lease, then the Lessor and the Operator must:

- (a) surrender the Operator Depot Lease with effect on and from a date agreed by TfNSW; and
- (b) do all things reasonably necessary to effect the surrender, including, where the Operator Depot Lease is registered on title, procuring the removal of the Operator Depot Lease from title.

7.2 Deed of surrender

- (a) Subject to this clause 7, the Lessor and the Operator must enter into a deed of surrender on terms acceptable to the parties (acting reasonably).
- (b) The Lessor agrees that the Operator will not be required to pay to the Lessor any consideration for the surrender of the Operator Depot Lease, other than the costs and expenses referred to in clause 7.3.
- (c) For the avoidance of doubt, nothing in this clause 7 releases or affects the Operator's obligations under the Operator Depot Lease and the Operator must continue to perform those obligations, unless and until the Operator Depot Lease is surrendered in accordance with this clause 7.

7.3 Costs and expenses

The Operator must pay to the Lessor the Lessor's reasonable costs and expenses (including legal costs and expenses) of the preparation, negotiation and execution of the deed of surrender and any ancillary documents contemplated by this clause 7.

8 Use Prior to Novation Effective Date or Call Option Lease Commencement Date

- (a) If the Novation Effective Date or Call Option Lease Commencement Date will occur after the Termination Date, the Lessor consents to the Novatee and any Interim Operator using any Depot for the provision of Bus Services from the Termination Date until the relevant Novation Effective Date or Call Option Lease Commencement Date as the case may be.
- (b) During the period referred to in clause 8(a), TfNSW must procure that the Novatee and any Interim Operator agree to:
 - (i) maintain each 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 PT Act;
 - (ii) if required by the terms of an Operator Depot Lease, insure the relevant Depot with insurers, and on terms, as required under the Operator Depot Lease;
 - (iii) comply with the terms of the Operator Depot Lease (if the Operator Depot Lease has been surrendered, as though it was still in effect until the Call Option Lease Commencement Date); 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 Depot during that period.

9 Termination of Deed

9.1 Novation of Operator Depot Lease

If the Operator Depot Lease is novated to a Novatee in accordance with this Deed, this Deed terminates on the Novation Effective Date.

9.2 Surrender of Operator Depot Lease

If the Operator Direct Lease is surrendered in accordance with this Deed, this Deed terminates on the date the Operator Direct Lease is surrendered.

9.3 Termination if no longer a Depot

If a Depot is at any time not a "Contract Depot" for the purposes of the OMBSC, then this Deed is automatically terminated insofar as it relates to the Depot with effect from the Depot ceasing to be a "Contract Depot".

10 Equitable Relief

- (a) Each party to this Deed acknowledges that damages may not be an adequate remedy for any breach of, or failure by it to comply with, this Deed.
- (b) Each party to this Deed 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 Deed 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 Deed 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.

11 GST

- (a) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause 11 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 Deed to price, value, sales, revenue or a similar amount (Revenue), is a reference to that Revenue exclusive of GST.
- (d) Any reference in this Deed (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 11(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.
- (f) A term defined in the GST Act, and not defined in this clause has the same meaning when used in this clause.

12 Assignment by TfNSW

TfNSW may assign or transfer all or any of its rights or obligations under this Deed to another Governmental Agency.

13 Notices

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

- (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 email to the address or email address below or the address or email address last notified by the intended recipient to the sender:
 - (i) to TfNSW:

Attention: Director, Outer Metropolitan & Community Transport
Transport for NSW
231 Elizabeth Street
SYDNEY NSW 2000
GPO Box K659, Haymarket 1240
Email: outer.metro@transport.nsw.gov.au
 - (ii) to the Lessor:

Attention: [Insert]
[address]
Email: [Insert]
 - (iii) to the Operator:

Attention: [Insert]
[address]
Email: [Insert]
- (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 email, to the email address identified in this clause 13, or the email address last notified by the intended recipient to the sender, on receipt by the sender of a receipt of transmission; and

- (iii) 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),

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 5.00pm (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.

14 Confidentiality

14.1 Keep confidential

Each party must keep the contents of this Deed (and all documents, and information made available to that party for the purpose of entering into this Deed or in the course of performance of this Deed) confidential and must not disclose to any other person without the written consent of the other parties.

14.2 Exceptions

- (a) Clause 14.1 does not apply to:
 - (i) any disclosure required by Law, the rules of any stock exchange, a court or a Governmental Agency;
 - (ii) disclosures to employees, contractors or professional advisers, related entities or financiers who are under a relevant duty of confidentiality;
 - (iii) disclosure to auditors, experts, mediators, or arbitrators under or in connection with this Deed;
 - (iv) information that it is shown to be in the public domain through no fault of that party;
 - (v) information that was lawfully in that party's possession prior to the execution of this Deed; and
 - (vi) disclosure to prospective tenants or a bona fide purchaser of the Depot under a duty of confidentiality.
- (b) Clause 14.1 does not apply to TfNSW:
 - (i) (or the Operator, if required by TfNSW to publish such information) if it publishes any information TfNSW has obtained from the Operator or the Lessor or otherwise through the performance of this Deed or the OMBSC (and any ancillary documents);
 - (ii) if it publishes any information associated with this Deed or the Depot any other information reasonably required in connection with re-tendering or contracting of the services which are the subject of the OMBSC, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting;
 - (iii) when disclosing to other transport operators for the purposes of operating and managing a safe, consistent and integrated transport service;

- (iv) providing information to any Minister of the Crown in the right of the State or any of its agencies, instrumentalities or Governmental Agencies; and
 - (v) storing any or all of the information associated with the Depot including this Deed and any information and documents associated with it.
- (c) This clause 14 survives termination of this Deed.
-

15 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.

16 Amendment

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

17 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 Deed.

18 Costs

Subject to any express provision in this Deed 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 Deed.

19 Severability of provisions

Any provision of this Deed 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 Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

20 Governing law and jurisdiction

This Deed 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 Deed.

21 Counterparts

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

22 Electronic execution

- (a) This Deed may be signed by or on behalf of a party using an Electronic Signature.
- (b) Where an Electronic Signature has been used by a party to sign this Deed, that party warrants that their Electronic Signature was used to:
 - (i) identify and authenticate the person signing;
 - (ii) where the party is an individual, indicate that the person, intended to be bound by the terms of this Deed; and
 - (iii) where the party is a company, indicate that the person or persons intended to bind the company to the terms of this Deed.
- (c) Each party warrants that the placing of their Electronic Signature in accordance with this Deed constitutes delivery of this Deed by the individual or the company (as the case may be).

23 TfNSW as a party

23.1 Consents or approvals

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

23.2 TfNSW's capacity

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

23.3 No fetter on TfNSW's powers

- (a) Subject to clause 23.3(b), nothing in this Deed unlawfully restricts or otherwise affects TfNSW's unfettered discretion to use its statutory powers.
- (b) TfNSW acknowledges and agrees that clause 23.3(a) does not limit TfNSW's obligations under this Deed.

23.4 Transfer of functions

- (a) The parties acknowledge that TfNSW may be reconstituted, renamed or replaced and that some or all of the Powers of TfNSW may be transferred to or vested in another Governmental Agency.
- (b) If TfNSW is reconstituted, renamed or replaced or if some or all of TfNSW's Powers are transferred to or vested in another Governmental Agency, references in this Deed to TfNSW 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.

Schedule 1

Operator Depot Lease

| Operator Depot Lease | Depot |
|---|----------|
| Lease between the Lessor and the Operator of the Depot commencing on or about [insert] and expiring on [insert] | [insert] |

Execution page

Executed as a deed.

TfNSW

Signed, sealed and delivered for and on behalf of
Transport for NSW (ABN 18 804 239 602) by its
authorised delegate in the presence of:

| | |
|-------------------------------|---|
| <hr/> Signature of witness | <hr/> Signature of authorised delegate |
| <hr/> Name of witness (print) | <hr/> Name of authorised delegate (print) |

DATE:

- ☐ If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000, and the witness affixed their electronic signature to a counterpart of this document.
- ☐ If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

Executed as a deed.

Operator

Signed, sealed and delivered by [insert] Pty Ltd
in accordance with section 127 of the
Corporations Act 2001 (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Executed as a deed.

Lessor

Signed, sealed and delivered [insert] Pty Ltd in
accordance with section 127 of the *Corporations
Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Attachment A Novation Deed [Clause 6.3]

Date:

Parties

- 1 [Lessor] of [address] (Lessor)
- 2 [Operator] of [address] (Operator)
- 3 [Novatee] of [address] (Successor Operator) *[Drafting Note: If the novatee is not the "Successor Operator", replace the term throughout with "Novatee" or another appropriate term.]*

Background

- A The Lessor is the owner of the Depot and is the registered proprietor of the Premises.
- B The Lessor has granted the Operator Depot Lease to the Operator.
- C The Operator, the Successor Operator and the Lessor enter into this Deed pursuant to clause 6.3 of the Operator Depot Lease Direct Deed.

The parties agree

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

Depot means the Premises and any associated plant and equipment leased by the Operator from the Lessor under the Operator Depot Lease.

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 Operator Depot Lease described in Item 2 of the Schedule.

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

Operator Depot Lease Direct Deed means the Operator Depot Lease Direct Deed dated on or about *[insert]* between TfNSW, the Lessor and the Operator.

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

Premises means the premises described in Item 5 of the Schedule.

Rent means the rent payable under the Operator 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 a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- (m) A reference to a month or to a year is to a calendar month or a calendar year.
- (n) 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.

- (c) An agreement, undertaking, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually.
 - (d) An agreement, undertaking, representation or warranty by two or more persons binds them jointly and each of them individually.
 - (e) A reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
 - (o) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
 - (p) 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.
 - (q) 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.
 - (r) 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.
 - (s) This Deed may be signed in counterparts and all counterparts taken together constitute one document.
-

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 (receipt of which is acknowledged by the Successor Operator), the Operator novates to the Successor Operator:

- (a) all its right, title and interest under the Operator Depot Lease (together with the benefits and burdens of the covenants under the Operator 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 Operator 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 Operator 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 Operator Depot Lease to the Successor Operator as contemplated in this Deed.

2.3 Successor Operator Agreements

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

2.4 Operator Agreements

- (a) The Operator warrants to the Successor Operator that:
 - (i) the Operator Depot Lease is valid and subsisting and the Operator is not in default under the Operator Depot Lease;
 - (ii) there is no event or circumstance which entitles the Lessor to terminate the Operator 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 Operator 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 Operator Depot Lease.

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) On and from the Effective Date, the Operator releases the Lessor from all claims, actions, demands, proceedings, obligations and liabilities incurred in connection with, the Operator Depot Lease or the Operator's use of the Depot or occupation of the Premises.
- (b) On and from the Effective Date, the Lessor releases the Operator from all its obligations and liabilities under the Operator Depot Lease.

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 Operator 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 Operator 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 represents and warrants 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).

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

8 Miscellaneous

8.1 Costs

- (a) Subject to clauses 8.1(b) and 8.2, the parties must bear their own costs and expenses of the preparation, negotiation and execution of this Deed.
- (b) The Successor Operator must reimburse the Lessor for the Lessor's reasonable costs and expenses (including legal costs and expenses) of the preparation, negotiation and execution of 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 Operator 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; and
- (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 – to be the date on which services under the Successor Operator's service contract will commence] |
| Item 5 | Premises | [specify Premises] |
| Item 6 | Operator Depot Lease | Lease [specify registration number of lease] between the Lessor and [the Operator /specify other, e.g. name of original Lessee where applicable] in respect of the Premises, terminating on [specify lease expiry date] |
| Item 7 | Licence Agreement | [specify Licence Agreement e.g. 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]] |