



**Transport
for NSW**

Operator Bus Lease Direct Agreement

**Transport for NSW on behalf of the State of
New South Wales**

[Pro forma version dated May 2012]

Contents

Clause Number	Heading	Page
1	Definitions and interpretation	4
2	Consent, acknowledgements and agreements	7
3	General Undertakings	7
4	Termination or Suspension of Bus Leases	9
5	Novation	10
6	Use Prior to Novation Completion Date	12
7	Locked Box Arrangements	12
8	Equitable Relief	13
9	GST	13
10	Assignment by TfNSW	13
11	Notices	14
12	Entire Agreement	15
13	No waiver	15
14	Amendment	15
15	Further assurances	15
16	Costs	15
17	Severability of provisions	15
18	Governing law and jurisdiction	15
19	Counterparts	16
	Schedule 1	18
	Bus Leases	18
	Schedule 2	
	Panel of Potential Successor Operators	19
		19
	Annexure 1	20
	Novation Deed	20
		20
1	Definitions	20
2	Novation and release	21
3	Amendments to Bus Leases	21

4	Indemnities	21
5	Representations and warranties	22
6	Costs, expenses and duties	22
7	Notices	23
8	General provisions	23
9	Governing law and jurisdiction	24

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).

Bus Lease means a bus lease set out in Schedule 1 (as amended from time to time), each being an Operating Lease or Finance Lease under which a Novation Bus is leased by the Operator from the Lessor and including any chattel mortgage by which the Operator assigns legal title in a Novation Bus to the Lessor subject to an equity of redemption.

Default means:

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

Early Termination Amount means any amount payable by the Operator to the Lessor as a result of the termination of a Bus Lease, as calculated under the terms of the relevant Bus Lease, but specifically excluding (notwithstanding anything contained in that Bus Lease to the contrary) any:

- (a) penalty;
- (b) discount to the rate of interest provided for in the Bus Lease and used to calculate the net present value of any unpaid rent instalments;
- (c) additional amount arising or payable due to money being paid earlier than originally agreed in the relevant Bus Lease, other than the Lessor's reasonable costs and expenses of repossessing, storing, valuing and insuring the relevant Bus, repairing and restoring the Bus to any minimum standard required by the Bus Lease and selling (or attempting to sell) the relevant Bus (if relevant); and
- (d) Acquisition Value (if relevant).

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

Locked Box Arrangement means, in respect of any Bus Lease, an arrangement whereby the TfNSW pays amounts owing to the Operator under the O/MBSC (or a Successor Operator or Interim Operator under any replacement metropolitan bus services contract or other similar arrangement with the TfNSW) and which TfNSW considers are referable to that Bus Lease, into an account with a Bank nominated by, and directly accessible to, the Lessor for the purposes of satisfying some or all of the Operator's (or Successor Operator's) obligations under the relevant Bus Lease. For the avoidance of any doubt, TfNSW shall not be obliged to pay any amounts into the relevant account in excess of the amounts owing in respect of the Operator's (or Successor Operator's) obligations under the relevant Bus Lease.

New Bus means any Contract Bus approved by TfNSW under Clause 11.1 of the O/MBSC.

Novation Bus means:

- (a) a Bus subject to a Bus Lease;

- (b) a New Bus subject to a Bus Lease;
- (c) a Bus subject to a Replacement Bus Lease; and
- (d) any other Contract Bus TfNSW, the Lessor and the Operator agree to be a Novation Bus for the purposes of this Agreement,

together with any associated Spares, but does not include any Replaced Bus.

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

O/MBSC means the Outer/Metropolitan Bus System Contract dated _____ between the Operator and TfNSW.

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

Panel means the potential Successor Operators specified in Schedule 2 and any other potential Successor Operators notified by TfNSW to the Lessor from time to time.

Potential Default means any event or circumstance that, in the reasonable opinion of the relevant party, indicates a material risk of Default.

Replaced Bus means any Novation Bus that:

- (a) is irretrievably lost, stolen, destroyed or damaged beyond economic repair during the term of the O/MBSC; or
- (b) TfNSW agrees in writing shall cease to be a Novation Bus.

Replacement Bus Lease means a Bus Lease entered into by the Operator pursuant to Clause 16.3(b) of the O/MBSC on the expiry or termination of a Bus Lease.

Spares means parts and components of Novation Buses that are required for the purpose of carrying out maintenance services on those Buses.

Termination Date means:

- (a) in the case of the O/MBSC, the effective date of termination of the O/MBSC or the scheduled expiry date of the O/MBSC, which ever is applicable; or
- (b) if the Operator and TfNSW 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 O/MBSC, and not defined in this Agreement, has the same meaning when used in this Agreement.
- (b) Clause 1.2 to 1.8 of the O/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 TfNSW or an authorised officer of TfNSW 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 TfNSW's Powers under the Operator Security or the O/MBSC will of itself contravene or constitute a Default under the Bus Leases or entitle the Lessor to exercise any Power (including termination) under the Bus Leases and to the extent that any Bus Lease provides to the contrary, any such Default is hereby waived;
- (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 O/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 Bus Leases 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 Bus Leases), no Enforcing Party will be liable, or taken to have assumed liability, for any obligation of the Operator under the Bus Leases 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 O/MBSC; and
- (d) **no adoption:** without limiting Clause 2(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 Bus 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 Bus Leases;
- (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 Bus Leases;

- (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 Bus Leases in favour of any person, other than in favour of TfNSW or as contemplated by this Agreement or to a counterparty which enters into an agreement in favour of TfNSW on terms substantially the same as this Agreement;
- (d) **Default:** notify TfNSW of any Default where the default remains unremedied by the Operator for more than 30 days (or any lesser period afforded the Operator to remedy such Default under the relevant Bus Lease). Nothing in this Clause 3.1(d) prevents the Lessor from notifying TfNSW of any Default at an earlier time;
- (e) **Potential Default:** use its reasonable endeavours to notify TfNSW of a Potential Default within a reasonable period after becoming aware of that Potential Default;
- (f) **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 Bus Leases; and
- (g) **New Bus Leases:** promptly provide TfNSW with details of any:
- (i) New Bus subject to a Bus Lease entered into after the date of this Agreement;
 - (ii) Bus subject to a Replacement Bus Lease entered into after the date of this Agreement; or
 - (iii) other Contract Bus TfNSW, the Lessor and the Operator agree to be a Novation Bus for the purposes of this Agreement,

3.2 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 O/MBSC, promptly after that notice is given to the Operator;
- (b) **Early Termination:** give the Lessor a copy of any notice given to the Operator terminating the O/MBSC, promptly after that notice is given to the Operator; and
- (c) **Potential Default:** use its reasonable endeavours to notify the Lessor of a Potential Default within a reasonable period after becoming aware of that Potential Default.

3.3 Potential Default

- (a) Within 10 Business Days following receipt of a notice of Potential Default under Clause 3.1(e) or Clause 3.2(c), the Lessor and TfNSW must meet to discuss the Potential Default and any steps that either of them may consider reasonably necessary in the circumstances. Neither TfNSW nor the Lessor shall be obligated to take any action or agree to any arrangement as a consequence of a Potential Default.
- (b) The parties acknowledge that they shall have no rights against any party for failing to provide a notice required under Clause 3.1(e) or Clause 3.2(c).

4 Termination or Suspension of Bus Leases

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, a Bus Lease as a result of a Default in accordance with the terms of the relevant Bus Lease and if:
- (i) the Lessor has given notice (a **Default Notice**) to TfNSW 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 TfNSW and the Operator or such longer period as is allowed for remedy of the Default under the relevant Bus Lease; or
 - (B) if the Default is not capable of remedy, all of the obligations of the Operator under the Bus Lease, other than Defaults existing and obligations incurred by the Operator as at the date of the Default Notice, do not commence and continue to be performed within 30 days of the date on which the Default Notice is given to TfNSW and the Operator or such longer period as is allowed under the Bus Lease.
- (b) The Lessor must not terminate, or suspend the performance of its obligations under, a Bus 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 Security has become enforceable; and
 - (ii) an Enforcing Party is performing all of the obligations of the Operator under the relevant Bus Lease. For the avoidance of doubt "*all of the obligations of the Operator*" excludes any Defaults existing and obligations accrued as at the date of a Default Notice issued by the Lessor under Clause 4.1(a).
- (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 a Bus Lease or suspension of the performance by the Lessor of its obligations under a Bus Lease.
- (d) Clauses 4.1(a) and (b) do not prejudice the rights of the Lessor on expiry of the scheduled term of any Bus 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 relevant Bus 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 a Bus Lease),

provided that this Clause will not require the Lessor to breach any duty of confidence or privacy imposed by law or any agreement or to breach the provisions of any statute, including statutes with respect to privacy.

4.3 Application of Clauses

Clause 4.1 applies despite anything in the Bus Leases or any other document and whether or not TfNSW has exercised any Power under the Security or the O/MBSC.

5 Novation

5.1 Novation under the O/MBSC

If the O/MBSC requires the Operator to novate a Bus Lease to a Successor Operator, the Operator may novate the Bus 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

TfNSW 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 TfNSW with a notice within 10 Business Days of receiving a Novation Notice:

- (a) where the Lessor consents to the novation of the Bus Lease to the Successor Operator, confirming that consent; or
- (b) where the Lessor withholds its consent to the novation of the Bus 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 novation of a Bus Lease to a Successor Operator if and only if:
 - (i) the novation would cause the Lessor to contravene any applicable laws or the requirements of any relevant regulatory agency;
 - (ii) the novation would cause the Lessor to breach any risk exposure limits to a particular Successor Operator previously notified to TfNSW;
 - (iii) the Successor Operator is not a member of the Panel; or

- (iv) the Lessor has not had a reasonable opportunity to formulate and notify any risk exposure limits for the Successor Operator to TfNSW since being given notice that that Successor Operator was a member of the Panel.
- (b) If the Lessor fails or refuses to provide TfNSW with the notice contemplated in Clause 5.3 within the period prescribed in Clause 5.3, the Lessor will be deemed to have irrevocably consented to the novation of the Bus 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 TfNSW 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 Bus 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

TfNSW 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 Early termination

- (a) If the Lessor withholds its consent to the novation of a Bus Lease on the grounds set out in Clause 5.4(a), and the relevant Bus Lease is a Finance Lease, TfNSW may, by notice to the Operator and Lessor, require that:
 - (i) the Operator and the Lessor terminate the Bus Lease;
 - (ii) the Operator pay to the Lessor the Early Termination Amount in full satisfaction of its obligations under the Bus Lease;
 - (iii) where paragraph (a) of the definition of "*Acquisition Value*" applies, the Operator pay to the Lessor the Acquisition Value in return for the transfer of the relevant Bus to the Successor Operator, free of any Security Interest, in its then present state and condition and without any representation or warranty by the Lessor as to its title, fitness for purpose or otherwise; and
 - (iv) where paragraph (b) of the definition of "*Acquisition Value*" applies, the Successor Operator pay to the Lessor the Acquisition Value in return for the transfer of the relevant Bus to the Successor Operator, free of any Security Interest, in its then present state and condition and without any representation or warranty by the Lessor as to its title, fitness for purpose or otherwise.
- (b) If TfNSW issues a notice under clause 5.7(a), and Clause 5.7(a)(iii) applies, it must procure that the Successor Operator pays to the Operator the Acquisition Value for such Bus (or, at the direction of the Operator, pays the Acquisition Value direct to the Lessor in satisfaction of the Operator's obligations under Clause 5.7(a)(iii)).
- (c) Where a Bus Lease terminated under Clause 5.7(a)(i) does not grant the Operator an entitlement to acquire the relevant Bus on termination of the Bus Lease, TfNSW and the Lessor must negotiate an amount for the acquisition of the relevant Bus by the Successor Operator for the purposes of paragraph (b) of the definition of "*Acquisition Value*". TfNSW

shall not be obliged to agree any value exceeding the residual value of the relevant Bus and if no agreement is reached, Clause 5.7(a)(iv) shall not apply to such Bus and Bus Lease.

5.8 Release of Surety

Where a Guarantee has been provided in support of a Bus Lease, the Lessor will release the guarantor from its obligations under the Guarantee, but only with respect to obligations incurred under the Bus Lease after the Novation Completion Date.

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 Bus 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), TfNSW must procure that the Successor Operator and any Interim Operator agree to:
 - (i) maintain each Novation Bus 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 Bus Lease, insure the relevant Novation Bus with insurers, and on terms, approved by the Lessor;
 - (iii) comply with the terms of the Bus 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 Bus during that period.

7 Locked Box Arrangements

- (a) TfNSW will, if requested by the Lessor, implement and maintain a Locked Box Arrangement in respect of a Bus Lease where:
 - (i) the Lessor has provided TfNSW with a Default Notice under Clause 4.1(a)(i) in respect of that Bus Lease;
 - (ii) the relevant Bus Lease has been novated to a Successor Operator under Clause 5 as a result of the early termination of the O/MBSC by TfNSW; or
 - (iii) the Operator has provided its written consent to that arrangement.
- (b) A Locked Box Arrangement under Clause 7(a)(i) shall endure only for so long as the relevant Default is in existence and remains unremedied.
- (c) The Operator hereby consents to the implementation and maintenance of any Locked Box Arrangement under Clause 7(a)(i).
- (d) TfNSW will ensure that any Successor Operator consents to the implementation and maintenance of any Locked Box Arrangement under Clause 7(a)(ii).

- (e) Nothing in this Clause will be construed as a guarantee by TfNSW of the performance by an Operator or Successor Operator of its obligations under a Bus Lease.
- (f) The Lessor agrees to meet TfNSW's reasonable costs of implementing and maintaining any Locked Box Arrangement under this Clause 7.
- (g) The Lessor acknowledges that any proceeds it draws from a Locked Box Arrangement shall, to the extent of such drawing, be applied in reduction of the obligations of the Operator under the relevant Bus Lease.

8 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.

9 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 9 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 9(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.

10 Assignment by TfNSW

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

11 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) Transport for NSW:

PO Box K659

HAYMARKET NSW

Attention: Principal Manger, Bus and Ferry Services Contracts

Fax No: (02) 8202 2739

- (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.

12 Entire Agreement

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

13 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.

14 Amendment

- (a) Subject to clause 14(b), no amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by all parties.
 - (b) TfNSW must amend Schedule 1 to include details of any new Bus Lease notified under clause 3.1(g) and provide a revised Schedule 1 to the Operator and the Lessor. Any amendment to Schedule 1 pursuant to this clause shall be valid and binding on all parties.
-

15 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.

16 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.

17 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.

18 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.

19 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

Transport for NSW

Signed sealed and delivered
by the authorised representative of Transport
for NSW for and on behalf of the **State**
Government of New South Wales
in the presence of:

Signature of witness

Signature of the authorised representative

Name of witness (please print)

Schedule 2

Panel of Potential Successor Operators

Annexure 1

Novation Deed

[Clause 5.5(a)]

Novation Deed

This Deed is made on

Between

of (the *Lessor*)

of (the *Operator*)

of (the *Successor Operator*)

Recitals

A The Operator has entered into the Bus Leases with the Lessor

B The Operator, the Lessor and the Successor Operator wish to novate the Bus Leases.

Operative provisions:

1 Definitions

1.1 Definitions

In this Novation Deed:

Authorisation means:

- (a) any authorisation, approval, license, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them; and
- (b) for anything which a Government Agency may prohibit or restrict within a specified period, the expiry of that period without intervention or other action by that Government Agency.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Effective Date means the date specified as such in the Schedule to this Novation Deed.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (wherever created or located).

Bus Leases means the bus leases listed in the Schedule to this Novation Deed.

2 Novation and release

2.1 Novation from Effective Date

By way of novation and with effect from the Effective Date:

- (a) the Successor Operator is substituted for the Operator under the Bus Leases as if named as an original party to the Bus Leases in place of the Operator;
- (b) the Successor Operator assumes all of the obligations of the Operator under the Bus Leases arising on or after the Effective Date;
- (c) all of the rights and benefits of the Operator under the Bus Leases are conferred on the Successor Operator; and
- (d) every reference in the Bus Leases to "*the Lessee*" is to be read as if it were a reference to the Successor Operator.

2.2 Release by the Lessor

With effect from the Effective Date, the Lessor releases the Operator from all its obligations and liabilities under the Bus Leases arising on or after the Effective Date.

3 Amendments to Bus Leases

3.1 Amendments to Bus Leases

The Bus Leases are amended with effect from the Effective Date as set out in the Schedule to this Novation Deed.

3.2 Construction of Bus Leases

Subject to the provisions of this Novation Deed, this Novation Deed and the Bus Leases will be read and construed as one document.

4 Indemnities

4.1 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 Bus Leases which relates to any act or omission of the Operator at any time before the Effective Date.

4.2 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 Bus Leases which relates to any act or omission of the Successor Operator at any time on or after the Effective Date.

5 Representations and warranties

5.1 Representations and warranties

Each of the parties represents 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 Novation Deed and it has taken all corporate and other action necessary to authorise the execution, delivery and performance of this Novation Deed;
- (c) it benefits by entering into this Novation Deed;
- (d) this Novation Deed has created valid and binding obligations enforceable against it in accordance with its terms;
- (e) the execution of this Novation Deed and the performance by it of its obligations or the exercise of its rights under this Novation 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 Novation 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.

5.2 Repetition

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

5.3 Reliance

Each party acknowledges that the other parties have entered into this Novation Deed in reliance on the representations and warranties in Clause 5.1.

6 Costs, expenses and duties

6.1 Costs and expenses

Subject to Clause 6.2, the parties shall bear their own expenses of agreeing and executing this Deed.

6.2 Other duties

The Successor Operator must pay all registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, registration, performance, enforcement or attempted performance or otherwise in respect of this Novation Deed or any payment or receipt or other transaction contemplated by this Novation Deed.

7 Notices

- (a) All notices and other communications made, permitted or required to be given under this Novation Deed will be deemed given on receipt when sent by post, by personal delivery or by facsimile:
 - (i) in the case of the Lessor or the Operator, to the respective addresses for those parties which are (or which but for the amendment in Clause 7(b) would be) set out in the Bus Leases; and
 - (ii) in the case of the Successor Operator, to the address set out in paragraph 2(c) of the Schedule to this Novation Deed.
 - (b) The Bus Leases shall be deemed amended by deleting the Operator's billing address set out in the Bus Leases and inserting in its place the address set out in paragraph 2(c) of the Schedule to this Novation Deed.
-

8 General provisions

8.1 Invalid or unenforceable provisions

If a provision of this Novation Deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.

8.2 Counterparts

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

8.3 Further assurances

Each party to this Novation Deed must, at its own expense, whenever requested by another party, promptly do or cause to be done anything that that other party considers necessary or desirable to:

- (a) give full effect to this Novation Deed; or
- (b) more fully secure the rights, remedies and powers of that other party under this Novation Deed or to enable that other party to exercise those rights, remedies and powers;

including signing and delivering documents.

8.4 Moratorium legislation

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

- (a) lessen or vary in any other way the obligations of any party under this Novation Deed; or
 - (b) delay, curtail or prevent or adversely affect in any other way the exercise by a party of any of its rights, remedies or powers under this Novation Deed.
-

9 Governing law and jurisdiction

9.1 Governing law

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

9.2 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; and
- (c) agree that a document required to be served in proceedings about this Novation Deed may be served by being delivered to or left at its address for service of notices under Clause 7 or in any other way permitted by law.

Executed as a deed in Sydney.

Execution

Schedule

- 1. Terms and expressions defined in the Novation Deed have the same meaning when used in this Schedule.
- 2. For the purpose of the Novation Deed:
 - (a) the Bus Lease(s) are:

(b) the Effective Date is ; and

(c) the address, attention details and facsimile number for notices to the Successor Operator are:

Address:

Attention:

Facsimile no: