
Bus Lease Agreement

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

(**Lessee**)

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Date:

Parties

- 1 **Transport for NSW**, a corporation constituted under the *Transport Administration Act 1988* (NSW) on behalf of the State of New South Wales of 231 Elizabeth Street, Sydney, NSW (**Lessor**)
- 2 **[X]** (**Lessee**)

Background

- A The Lessee has or will enter into the Services Contract with the Lessor to operate the Services.
- B The Lessor owns the Contract Buses and is entitled to lease the Contract Buses to the Lessee.
- C The Lessee wishes to lease the Contract Buses for the purpose of carrying out its obligations under the Services Contract.
- D The Lessor has agreed to lease the Contract Buses to the Lessee and the Lessee has agreed to accept the lease of the Contract Buses on the terms and conditions in this agreement.

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

In this document:

Bus Lease Payment means the lease payment in respect of a Contract Bus as set out in clause 5.

Bus Risks means all risks in connection with the Contract Buses, including risks relating in any way to:

- (a) the condition of the Contract Buses, including on the first day of the Term for a Contract Bus;
- (b) the fitness for purpose of the Contract Buses, including to discharge the Lessee's obligations under the Services Contract;
- (c) defects in, or damage to, the Contract Buses; and
- (d) the Use of the Contract Buses.

Bus Warranties means that the Lessee:

- (a) enters into this agreement based entirely and exclusively on its own investigations and decisions and has not relied at all on any act or omission of the Lessor;
- (b) has the skill and resources to comply with its obligations under this agreement; and
- (c) ensures that the Contract Bus complies with the standards in Schedule 6 (Assets) at all times during the Term.

Casualty Event means, in respect of a Contract Bus, when the Contract Bus is irretrievably lost or stolen or is damaged beyond economic repair.

Contract Bus means each bus identified in Schedule 1 and any bus added under clause 3.2(a) but does not include any bus removed from this agreement under clause 3.2(b), (c) or (d) or which ceases to be subject to this agreement under clause 3.2(e).

Permitted Location means:

- (a) Sydney, New South Wales; and
- (b) any other location permitted by the Lessor.

Services Contract means the agreement between the Lessor and the Lessee titled 'Outer Metropolitan Bus Services Contract' dated on or about **[Date of Services Contract to be inserted]** under which the Lessee agrees to provide the Services in Sydney, New South Wales.

Term means, for a Contract Bus, the period:

- (a) commencing on the Service Commencement Date, unless the Contract Bus was added to this agreement under clause 3.2 in which case it is the date specified in the written instrument under clause 3.2; and
- (b) ending on the earlier of:
 - (i) if a Contract Bus has been added to the agreement under clause 3.2, the date (if any) specified in the written instrument executed under clause 3.2 as the date on which the lease will end for that Contract Bus;
 - (ii) if a Contract Bus is removed from this agreement under clause 3.2(b), 3.2(c) or 3.2(e), the date determined under the applicable clause in respect of that Contract Bus;
 - (iii) if a Casualty Event has occurred, the date upon which that Casualty Event is adjudged to have occurred; and
 - (iv) the expiry or termination of the Services Contract.

Use includes possession, leasing, use, operation, maintenance, repair, alteration, refurbishment, storage and transportation.

1.2 Services Contract defined terms

Unless the context requires otherwise or the relevant term is defined in this agreement, definitions in Clause 1.1 (Definitions) of the Services Contract apply to this agreement and shall be read with the amendments set out in clause 9.4.

1.3 Services Contract interpretation clauses

Unless the context requires otherwise, Clauses 1.2 (Interpretation) to 1.7 (Effect of certificates issued by TfNSW) of the Services Contract apply to this agreement and shall be read with the amendments set out in clause 9.4.

1.4 TfNSW Representative

TfNSW has appointed the TfNSW Representative to exercise any power, right or remedy of TfNSW under this agreement.

2 Commencement

This agreement will commence on the Service Commencement Date, except this clause 2 and clauses 1, 7, 9.3(m), **Error! Reference source not found.**, 9.3(n), 9.3(q), 9.3(s), 9.3(t), 9.4 and 10 which commence operation on execution of this agreement.

3 Lease

3.1 Grant of lease

- (a) The Lessor leases to the Lessee, and the Lessee agrees to accept and takes from the Lessor, each Contract Bus for its Term subject to the terms and conditions of the Services Contract and this agreement.
- (b) On commencement of the Term for a Contract Bus:
 - (i) the Lessor will be taken to have delivered that Contract Bus to the Lessee for the purposes of this agreement without the need for any further act by the Lessor; and
 - (ii) the Lessee will be taken to have irrevocably and unconditionally accepted that Contract Bus and taken delivery of that Contract Bus for all purposes of this agreement.

3.2 Addition and removal of a Contract Bus

- (a) The Lessee and the Lessor may at any time agree to add a Contract Bus to this agreement by written instrument executed by the Lessee and the Lessor.
- (b) The Lessor may remove a Contract Bus from this agreement effective from the date specified by the Lessor, with the consent of the Lessee (not to be unreasonably withheld).
- (c) The Lessee may remove a Contract Bus from this agreement if the Lessee has obtained the prior written approval of the Lessor.
- (d) The Lessor will not unreasonably withhold consent to the removal of a Contract Bus under clause 3.2(c) if the Lessee has demonstrated to the Lessor's satisfaction that:
 - (i) the removal of the Contract Bus is in accordance with the Fleet Replacement Schedule;

- (ii) the Operator has complied with Clause 22 (Acquisition of New Assets) of the Services Contract,

in which case, that Contract Bus will be removed from this agreement from the date notified by the Lessor.

- (e) If a Contract Bus is or becomes irretrievably lost or stolen or is damaged beyond economic repair it will automatically cease to be subject to this agreement from the date of that event.
- (f) The Lessor is under no obligation whatsoever to lease or supply a Contract Bus in replacement of, or in addition to, a Contract Bus that is or was subject to this agreement (whether that Contract Bus is of the same class or different).

3.3 Delivery on last day of Term

- (a) On the last day of the Term for a Contract Bus, the Lessee must deliver possession of that Contract Bus, and all documents of title, books of account, accounts, records, data and all other documents relating to that Contract Bus, to the Lessor at a time and location nominated by the Lessor.
- (b) The Lessee must comply with Clause 50.3(c) (Handback obligations) of the Services Contract as if that clause applied to the last day of the Term for each Contract Bus.

4 Provision relating to the Contract Buses

4.1 Bus Risks

The Lessee accepts the Bus Risks.

4.2 Bus Warranties

- (a) The Lessee gives the Bus Warranties, each of which is given and repeated at all times during the term of this agreement.
- (b) The Lessee must immediately notify the Lessor upon becoming aware that a representation or warranty it has given under this clause has become untrue or misleading at any time during the Term.
- (c) The Lessee acknowledges that the Lessor has entered, or will enter, into this agreement in reliance on the Bus Warranties.
- (d) To the maximum extent permitted by law, all warranties and conditions imposed on the Lessor implied by law in respect of the Contract Buses are excluded.

4.3 Lessor's title to the Contract Buses

- (a) The Lessee acknowledges that each Contract Bus is and remains at all times the property of the Lessor and the Lessor retains full title to each Contract Bus notwithstanding that that Contract Bus may be leased to, and in the possession of, the Lessee.

- (b) The rights of the Lessee under this agreement in respect of each Contract Bus are as Lessee only. Nothing in this agreement entitles the Lessee to any ownership or inconsistent proprietary right in or to any Contract Bus at any time.

4.4 Protection of title to the Contract Buses

The Lessee must:

- (a) do everything reasonably necessary to safeguard and protect the property, title and rights of the Lessor in and to each Contract Bus including making clear to others, where ownership of a Contract Bus is relevant, that the Lessor owns that Contract Bus;
- (b) subject to Clause 24 (Dealing with Assets) of the Services Contract, not do or permit to be done any act, omission or thing which might jeopardise the property, title and rights of the Lessor in and to each Contract Bus;
- (c) not remove or permit the removal of any Contract Bus from a Permitted Location;
- (d) protect the title to, interest in and possession of, each Contract Bus against, and not do anything or permit anything to be done that will or may result in it becoming subject to, confiscation, forfeiture, condemnation, distress, execution, seizure or other similar legal process; and
- (e) not place or allow to be placed on any Contract Bus any plates or marks which are inconsistent with the rights of the Lessor.

4.5 Equipment not to be fixtures

- (a) The Lessee must not cause or permit any Contract Bus to be affixed to any land or building.
- (b) If any Contract Bus is affixed to any land or building:
 - (i) it will not become a fixture but will remain the property of the Lessor;
 - (ii) it will be removable by the Lessor; and
 - (iii) the Lessee will be responsible for any damage caused to the land or building by the affixing or removal of that Contract Bus.

4.6 Notification on arrest of Contract Buses

If any person arrests, seizes or attempts to seize or interfere with any Contract Bus the Lessee must promptly upon becoming aware:

- (a) notify that person of the Lessor's title to and rights in relation to that Contract Bus; and
- (b) inform the Lessor by notice of that seizure, attempted seizure or interference.

4.7 Release from arrest

If a Contract Bus:

- (a) has a writ or libel filed against it; or
- (b) is arrested, detained, attached or levied upon or under any legal or purported legal process; or
- (c) is detained in exercise or purported exercise of any lien or claim,

then the Lessee must, at its expense, immediately upon becoming aware procure the release of the Contract Bus or the discharge of the writ or libel, by providing bail or providing security or taking such other action as the circumstances may require (at its expense). The Lessee must discharge each and every liability in connection with any such process, lien, claim or other action.

4.8 Parts and works

- (a) The Lessee acknowledges that any item that is removed or detached from a Contract Bus remains the property of the Lessor until that item is replaced with a part, accessory, component or similar thing:
 - (i) title to which has vested in the Lessor or will, upon installation or incorporation into that Contract Bus, vest in the Lessor;
 - (ii) that is free and clear of all Security Interests and rights of others; and
 - (iii) that has a utility and quality at least equal to the item removed or detached.

At that time title to the item removed or detached vests in the Lessee.

- (b) The Lessee acknowledges that any item that is installed in or attached to a Contract Bus becomes the property of the Lessor upon its installation or attachment and must be free and clear of all Security Interests and rights of others.
- (c) The Lessee acknowledges that upon completion of any works undertaken with respect to a Contract Bus by or on behalf of the Lessee under the Services Contract (or, if the works are not completed by the expiry or termination of this agreement, on that expiry or termination) property in the works will vest in and remain with the Lessor at no cost to the Lessor and the works will form part of that Contract Bus.

4.9 Inspection regime

- (a) In addition to its obligations under Clause 31 (Contract management) of the Services Contract, the Lessee must and must procure that any of its subcontractors:
 - (i) make each Contract Bus available for inspection by the Lessor at the location or locations and at the times nominated by the Lessor;
 - (ii) give the Lessor access to the premises where any of the Contract Buses are located;
 - (iii) allow the Lessor to examine, make copies of and take extracts from, the physical and electronic records of the Lessee and any of its subcontractors relevant to the performance of the obligations of the Lessee under this

agreement and give the Lessor access to the premises and systems in or at which those records are kept; and

- (iv) permit the Lessor to carry out tests of any Contract Bus and any maintenance works undertaken in respect of them under the Maintenance Works Program.
- (b) The Lessor must ensure that the exercise of the rights under this clause 4.9 does not restrict unnecessarily the conduct of maintenance works by the Lessee or any of its subcontractors under the Maintenance Works Program or unreasonably interfere with the conduct of the Services.

4.10 Permitted Use

Subject to Clause 19.4 (Bus Charter) of the Services Contract, the Lessee must not use the Contract Buses for any purpose other than providing the Services.

4.11 Notices

- (a) A party which receives a notice, order or direction from a Governmental Agency which affects or relates to the Contract Buses or their use must promptly give a copy of that notice, order or direction to the other party.
- (b) If a Casualty Event occurs in relation to a Contract Bus, the Lessee must immediately notify the Lessor.

5 Bus Lease Payment

5.1 Amount and method

- (a) The Lessee must pay the Lessor (or the Lessor's nominee) the Bus Lease Payment on a monthly basis during the Term. The Bus Lease Payment is the amount set out in paragraph 3(c) of Schedule 3 (Payment).
- (b) Time will be of the essence in relation to the payment of the Bus Lease Payment.

5.2 Taxes

Where Taxes are assessed in respect of any Contract Bus, the Lessee must pay the relevant Governmental Agency, or reimburse to the Lessor on demand if paid by the Lessor, all such Taxes.

5.3 Payment by the Lessor

If the Lessee defaults in the payment of any Taxes under clause 5.2 the Lessor may (without limiting any other rights and remedies of the Lessor) pay the Taxes and the Lessee must on demand reimburse the Lessor the amount so paid with interest in accordance with clause 5.5.

5.4 Unconditional payment obligation

The Lessee acknowledges and confirms that its obligation to pay the Bus Lease Payment and all other money payable under this agreement and the Lessor's right to receive such amounts is absolute and unconditional irrespective of any contingency, and is not subject

to any abatement, reduction, set-off, defence, counterclaim or recoupment of any kind. The Lessee may not for any reason place any Contract Bus off-hire or withhold a payment in respect of the Bus Lease Payment or other money payable under this agreement, including because:

- (a) the Lessee claims to have a right of set-off, counter claim, defence or other right against the Lessor or any other person; or
- (b) a Contract Bus is damaged, unavailable, does not operate or is not in the Lessee's possession; or
- (c) there is any defect in the title, condition, design, operation, quality or fitness for use of a Contract Bus; or
- (d) there is a prohibition, Force Majeure, arrest or other restriction on the Lessee's Use of the Contract Bus; or
- (e) of any other event or circumstance whatsoever,

except where and to the extent that the Lessor is not entitled to the benefit of any limit, waiver or release of its personal liability under this agreement.

5.5 Interest on overdue amounts

- (a) The Lessee must pay to the Lessor interest on any moneys due and payable but unpaid under this agreement (**Financial Default**).
- (b) Interest will accrue at the Default Rate on the amount which is the subject of the Financial Default on a daily basis from (and including) the date on which the amount became due and payable to the date the amount is paid in full both before and after judgment (as a separate and independent obligation).
- (c) The Lessee must pay interest accrued under this clause on demand by the Lessor and on the last Business Day of each month.
- (d) The right to require payment of interest under this clause is without prejudice to any other rights and remedies of the Lessor in respect of the Financial Default.

6 Quiet enjoyment

If the Lessee duly and punctually observes and performs this agreement, the Lessee will and may peaceably possess and enjoy each Contract Bus for its Term without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by, from or under the Lessor except where an interruption or disturbance results from the exercise by the Lessor of any right of the Lessor in this agreement or another Transaction Document, expressly or impliedly conferred.

7 Termination

7.1 Termination of this agreement

Notwithstanding any rule of law or equity to the contrary, this agreement may not be terminated except as provided in this clause 7.

7.2 Termination of Services Contract

This agreement will automatically terminate in respect of all Contract Buses upon the Termination Date (as that date is defined under the Services Contract).

7.3 Termination by agreement or notice

Subject to clause 7.2, this agreement may be terminated:

- (a) by written agreement between the Lessor and the Lessee; or
- (b) by the Lessor issuing a notice of termination to give effect to an asset restructure as contemplated by Clause 25 (Asset restructure by TfNSW) of the Services Contract.

7.4 Termination by Lessee

The Lessee may not terminate this agreement, except with the Lessor's agreement under clause 7.3.

7.5 Consequences of Termination

- (a) Subject to clause 7.5(b), upon the expiry or termination of this agreement (whether through default or expiry or otherwise) the rights and obligations of the parties will cease except for:
 - (i) any obligations arising or rights accrued as a result of an existing breach of this agreement by the Lessee;
 - (ii) any outstanding obligations existing as at termination (including any obligation to pay money);
 - (iii) any obligations that are expressed to continue in accordance with the terms of this agreement;
 - (iv) any indemnity given by the Lessee under this agreement and the Services Contract; and
 - (v) any obligation of confidence under this agreement.
- (b) The following clauses survive the expiration or termination of this agreement and the expiry of the Term for a Contract Bus: clauses 1 and 3.3, this clause 7 and clauses 8, 9.2, 9.3(g) 9.3(m)9.3(l), 9.3(l), 9.3(o), 9.3(n), 9.3(p) **Error! Reference source not found.**, 9.3(n) 9.3(q) 9.3(r) 9.3(s) 9.3(t), 9.4 and 10.

7.6 Waiver

If this agreement is lawfully terminated, the Lessee waives any rights it might otherwise have to pursue a claim of restitution of any kind (including a claim of unjust enrichment) against the Lessor.

8 GST

8.1 Interpretation

Words or expressions used in this clause 8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

8.2 Consideration is GST exclusive

Any consideration to be paid or provided to the Lessor for a supply made by the Lessor under or in connection with this agreement, unless specifically described in this agreement as 'GST inclusive', does not include an amount on account of GST.

8.3 Gross up of consideration

Despite any other provision in this agreement, if the Lessor makes a supply under or in connection with this agreement on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this agreement but for the application of this clause ('**GST exclusive consideration**') is increased by, and the Lessee must also pay to the Lessor, an amount equal to the GST payable by the Lessor or the representative member of a GST group of which the Lessor is a member on the supply ('**GST Amount**'); and
- (b) the GST Amount must be paid to the Lessor by the Lessee without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

8.4 Reimbursements (net down)

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group of which that party is a member, is entitled for that loss, cost or expense.

8.5 Tax invoices

The Lessor will issue a tax invoice for any taxable supply that it makes to the Lessee under this agreement.

9 Application of Services Contract clauses

9.1 Step-in Powers

The Lessee acknowledges the rights and powers of a Step in Party under Clause 45 of the Services Contract which extend and apply to this agreement.

9.2 Indemnity and Limitation of Liability

Clause 41 (Indemnity and Limitation of Liability) of the Services Contract applies to this agreement with the amendments set out in clause 9.4.

9.3 Clauses incorporated

The following Clauses of the Services Contract form part of this agreement as if they were set out in full in this agreement except for the general amendments set out in clause 9.4 and those specified below:

- (a) Clause 14 (Customer Interaction);
- (b) Clause 16 (TfNSW Systems and Equipment);
- (c) Clause 19 (Contract Buses);
- (d) Clause 22 (Acquisition of New Assets);
- (e) Clause 23 (Asset Management);
- (f) Clause 24 (Dealing with Assets);
- (g) Part H (Confidentiality and Privacy);
- (h) Clause 31 (Contract management);
- (i) Clause 32 (Accreditation and compliance);
- (j) Clause 33 (Reporting);
- (k) Clause 34.1 (All Staff);
- (l) Clause 40 (Insurance);
- (m) Clause 42 (Reinstatement of loss or damage);
- (n) Clause 43 (Dispute resolution);
- (o) Clause 49.7 (Access);
- (p) Clause 50 (End of Service Term Asset Condition and Handover Requirements);
- (q) Clause 53 (Relationship between Operator and TfNSW);
- (r) Clause 54 (Personal Property Securities Act);
- (s) Clause 56 (Proportionate Liability); and
- (t) Clause 61 (Notices);
- (u) Clause 70 (Claims).

9.4 General amendments

The Clauses of the Services Contract incorporated under clauses 1.2, 1.3, 9.2 and 9.3 (and the meaning of the defined terms used in those Clauses) shall be read with the following amendments unless specified otherwise in those clauses:

- (a) each reference to the following defined terms is replaced as follows:

- (i) 'this Contract' and 'the State Bus Lease' with 'this agreement';
 - (ii) 'Operator' with 'Lessee';
 - (iii) 'TfNSW' with Lessor;
 - (iv) 'Term' with 'the period commencing on the Service Commencement Date and ending on the date this agreement expires or is terminated in accordance with this agreement'.
- (b) references to 'Clauses' and 'Schedules' are references to the Clauses and Schedules of the Services Contract unless the reference is to a Clause that has been incorporated into this agreement in which case, it refers to that Clause as it reads under this agreement.

10 General

10.1 Entire agreement

This agreement and the Transaction Documents contain the entire agreement between the parties with respect to their subject matter and supersede all prior agreements and understandings between the parties in connection with the subject matter.

10.2 Amendment

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

10.3 Assignment

- (a) The Lessee may not assign, transfer, encumber or otherwise deal with its interest under this agreement without the consent in writing of the Lessor.
- (b) The Lessor may assign or transfer its rights or obligations under this agreement without the consent of the Lessee.
- (c) The Lessee must, at the request of the Lessor, consent to and do all things necessary (including executing documents) to novate this agreement to:
 - (i) any person nominated by the Lessor to give effect to Clause 1.6 (Transfer of Functions) or Clause 25 (Asset restructure by TfNSW) of the Services Contract; or
 - (ii) any person nominated by the Lessor who has the financial and operational capacity to perform the Lessor's obligations and satisfy the Lessor's liabilities under this agreement.

10.4 No waiver

No failure to exercise nor any delay in exercising any Power by a party operates as a waiver. A single or partial exercise of any Power does not preclude any other or further exercise of that or any other Power. A waiver is not valid or binding on the party granting that waiver unless made in writing.

10.5 Further assurances

Each party must execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this agreement.

10.6 Costs and stamp duty

- (a) Each party must pay its own costs of negotiation, preparation and execution of this agreement.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this agreement and any instrument executed under this agreement must be borne by the Lessee. The Lessee must indemnify the Lessor on demand against liability for that stamp duty.

10.7 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.

10.8 Counterparts

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

10.9 Rights Cumulative

Subject to any express provision in this agreement to the contrary, the rights, powers and remedies of a party under this agreement are cumulative and are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

10.10 No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by a Transaction Document. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

10.11 Severability

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.

Schedule 1 Contract Buses

To be Inserted

Execution page

Executed as an agreement.

Signed, sealed and delivered for and on behalf of the **Lessor** by its authorised delegate:

Signature of authorised delegate

Signature of witness

Name of authorised delegate (print)

Name of witness (print)

Signed, sealed and delivered by the **Lessee** 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)