

Annexure 9 – State Bus Depot Lease

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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, New South Wales (**Lessor**)
 - 2 **[insert]** of **[insert]** (**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 Premises and is entitled to lease the Premises to the Lessee.
- C The Lessee wishes to lease the Premises for the purpose of carrying out its obligations under the Services Contract.
- D The Lessor has agreed to lease the Premises to the Lessee and the Lessee has agreed to accept the lease of the Premises on the terms and conditions in this lease.

The parties agree

1 Defined terms & interpretation

1.1 Defined terms

In this lease:

Commencement Date means **[insert]**.

Employees has the meaning of "Operator's Associates" as that term is defined under the Services Contract.

Expiry Date means **[insert]**.

Improvements means all fixtures, including buildings and other improvements of whatever nature, items or equipment affixed to the Premises (irrespective of the degree of affixation) and whether by the Lessor or the Lessee.

Permitted Use means the operation of a bus depot in connection with the performance of the Operator Activities including the ability to use the Premises as commercial offices associated with a bus depot and to clean, service, refuel and maintain buses and other modes of transport and any other lawful use..

PPS Act means the *Personal Property Securities Act 2009 (Cth)*.

PPS Security Interest means a security interest as defined in the PPS Act.

Premises means [Note: Description of premises to be inserted] and includes the Improvements.

Premises Risks means all risks in connection with the Premises, including risks relating in any way to:

- (a) the condition of the Premises;
- (b) the fitness for purpose of the Premises, including to discharge the Lessee's obligations under the Services Contract;
- (c) defects in, or damage to, the Premises; and
- (d) the use of the Premises or that the Premises can be put to.

Premises Warranties means that the Lessee:

- (a) enters into this lease 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 lease; and
- (c) ensures that the Premises comply with the standards in the Asset Schedule at all times during the Term.

Rent means the rent payable in respect of the Premises as set out in clause 10.

Security Interest means:

- (a) any third party rights or interests including a mortgage, bill of sale, charge, lien, pledge, trust, encumbrance, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangement or any arrangement having a similar effect; and
- (b) a PPS Security Interest.

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

Term means 8 years commencing on the Commencement Date and terminating on the Expiry Date.

Utility Services means all services or systems of any nature provided to, or service the Premises including the provision of any electronic medium, energy source, internet, telephone, water, sewerage, drainage, fire services, sprinkler system or devices, lighting (including emergency lighting), lifts or escalators, heating and air conditioning and the fittings, fixtures, appliances, plant and equipment utilised for providing or using any Utility Services and includes any services or systems utilised for access to the Premises.

1.2 Services Contract defined terms

Unless the context requires otherwise or the relevant term is defined in this lease, definitions in clause 1.1 of the Services Contract apply to this lease and shall be read with the amendments set out in clause 14.4.

1.3 Services Contract interpretation clauses

Unless the context requires otherwise, clauses 1.2 to 1.7 of the Services Contract apply to this lease and shall be read with the amendments set out in clause 14.4.

2 Lease

2.1 Lease of Premises for lease Term

The Lessor leases the Premises to the Lessee for the Term subject to the terms and conditions of the Services Contract and this lease.

2.2 Lessor reservations

Subject to the terms of the Services Contract, the Lessor reserves to itself and the Lessor's Associates the right to:

- (a) create any registered or unregistered easement or other right through or around the Premises; and
- (b) access the Premises and undertake any works of a capital and/or structural nature.

2.3 Lessor's access rights

- (a) The Lessor and the Lessee acknowledge and agree to give the rights of access to the Premises which the Lessor reserves to itself under the Services Contract.
- (b) The Lessee acknowledges and agrees that the exercise by the Lessor of the rights of access to the Premises under the Services Contract:
 - (i) will not give rise to any right to the Lessee to terminate this lease or make any Claim against the Lessor; and
 - (ii) will not release the Lessee from its obligations pursuant to this lease.

3 Provision relating to the Premises

3.1 Premises Risks

The Lessee accepts the Premises Risks.

3.2 Premises Warranties

- (a) The Lessee gives the Premises Warranties.
- (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 lease in reliance on the Premises Warranties.
- (d) To the maximum extent permitted by law, all warranties and conditions imposed on the Lessor implied by law in respect of the Premises are excluded.

3.3 Notices

A party which receives a notice, order or direction from a Governmental Agency which affects or relates to the Premises or their use must promptly give a copy of that notice, order or direction to the other party.

3.4 Utility Services

The Lessee must:

- (a) pay on time for all Utility Services in relation to the Premises; and
- (b) pay the amount under paragraph (a) directly to the Utility Services provider on time or, at the Lessor's request, to the Lessor in time for the Lessor to make the payment to the Utility Services provider on time.

4 Use of Premises

- (a) The Lessee must not use the Premises for any purpose other than the Permitted Use.
- (b) The Lessee must:
 - (i) not do anything on the Premises which is noxious or illegal; and
 - (ii) not do or omit to do anything regarding the Premises which does or may annoy, damage, offend or create a nuisance to an occupier, guest or owner of the Premises or adjacent premises and must ensure that no one else does any of those things.
- (c) The Lessee must comply with all applicable Laws, policies and codes about:
 - (i) the Premises or the way the Premises may be used;
 - (ii) the employees of the business carried out on the Premises;
 - (iii) additions or improvements to the Premises; and
 - (iv) anything affixed to the Premises or used for the Permitted Use.
- (d) The Lessee must carry out work or make any arrangements regarding the Premises or additions or improvements to the Premises which is required by Law or directed by a relevant Governmental Agency.

5 Sublease and other dealings

The Lessor and the Lessee agree that:

- (a) the Lessee has no right to deal with all or any part of its interest in this lease or the Premises (including by way of assignment, sub-lease, licence, trust or the grant of any Security Interest) except to the extent allowed under the Services Contract; and
- (b) the Lessor may assign or transfer its rights or obligations under this lease to another Governmental Agency or as otherwise provided for under the Services Contract. The Lessee must execute all documents and do all things required by the Lessor (acting reasonably) to give effect to such assignment or transfer.

- (c) notwithstanding the obligations under (a) and (b) above, should the Lessee seek to enter into a sub-lease or licence of a part of the premises contained within the envelope of the existing buildings upon the Premises, for the purposes of providing canteen or dining facilities for Staff, the Lessee is not required to seek consent for this activity from the Lessor. However, the Lessee must ensure that the proposed use and the built environment established for such use, meets all applicable local, state and federal Laws, policies and codes.

6 Lessor's covenant

If the Lessee pays the Rent and observes and performs its obligations in the time and manner required under this lease and the Services Contract, then the Lessee may occupy and enjoy the Premises during the lease Term without any interruption by the Lessor or by any person claiming through the Lessor except as provided in the Transaction Documents.

7 Maintenance and repair of Premises

- (a) The Lessee must during the Term, maintain the Premises in accordance with its obligations under the Services Contract. In addition, the Lessee must, at its cost during the Term, maintain, repair and keep the Premises in good and substantial repair, working order and condition, and this obligation applies to (without limitation) all plate glass, machinery, plant, equipment and fixtures contained in or forming part of the Premises, except for reasonable wear and tear.
- (b) The Lessee must, if required by the Lessor, undertake works of a capital and/or structural nature in order to maintain or repair the Premises. Such works will be at the Lessor's cost, except where such maintenance or repair is required to be performed by the Lessee under the Services Contract or required due to deliberate, negligent or reckless act or default of the Lessee or its Employees, in which case the works will be at the cost of the Lessee.
- (c) The Lessee must not undertake and works of a capital and/or structural nature without prior written approval of the Lessor.
- (d) The Lessor must comply with all obligations to repair and maintain the Premises specified in the Services Contract, and the Lessee acknowledges and agrees that it is not entitled to request the Lessor to carry out any maintenance or repair works.
- (e) The Lessee must ensure that any work on the Premises or additions or improvements to the Premises are carried out in a proper and workmanlike manner and in accordance with all applicable Laws, policies and codes.

8 Lessor owns all Improvements

- (a) The Lessee acknowledges and agrees that the title and rights to the Improvements vests in the Lessor, free and clear of any Security Interest, on the date on which the Improvement is affixed to the Premises whether before or after the Commencement Date.
- (b) Unless otherwise requested by the Lessor, the Lessee must not remove, demolish or alter any Improvement or any part of an Improvement without the Lessor's prior written consent during the Term.

9 Services Contract

The Lessee must, at all times during the Term, comply with its obligations and liabilities under the Services Contract.

10 Rent

10.1 Amount and method

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

10.2 Taxes

Clause 57 (Taxes) of the Services Contract applies in relation to Rates and Taxes under this document as if set out in full in this document.

10.3 Unconditional payment obligation

The Lessee acknowledges and confirms that its obligation to pay the Rent and all other money payable under this lease 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 withhold a payment in respect of the Rent or other money payable under this lease, 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) the Premises are damaged, unavailable or inaccessible; or
- (c) there is any defect in the title, condition, design, operation, quality or fitness for use of the Premises; or
- (d) there is a prohibition, Force Majeure, arrest or other restriction on the Lessee's use of the Premises; 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 lease.

10.4 Interest on overdue amounts

- (a) The Lessee must pay to the Lessor interest on any moneys due and payable but unpaid under this lease (**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.

11 Early surrender

Despite any provision in this lease to the contrary, the parties acknowledge and agree that this lease may be surrendered under clause 25 (Asset restructure by TfNSW) of the Services Contract by TfNSW giving written notice.

12 Termination

12.1 Termination of this lease

Notwithstanding any rule of law or equity to the contrary, this lease may not be terminated except as provided in this clause 12.

12.2 Termination of Services Contract

This lease will automatically terminate on the Termination Date (as that date is defined under the Services Contract).

12.3 Termination by agreement

Subject to clause 12.2, this lease may be terminated by written agreement between the Lessor and the Lessee.

12.4 Termination by Lessee

The Lessee may not terminate this lease, except with the Lessor's agreement under clause 12.3 or as contemplated by clause 11.

12.5 Consequences of termination

- (a) Subject to clause 12.5(b), upon the expiry or termination of this lease (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 lease 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 lease;
 - (iv) any indemnity given by the Lessee under this lease and the Services Contract; and
 - (v) any obligation of confidence under this lease.

- (b) The following clauses survive the expiration or termination of this lease and the expiry of the Term: clause 1, this clause 12 and clauses 13, 14.2, 14.3(j), 14.3(l), 14.3(m), 14.3(n), 14.3(o), 14.3(p), 14.3(r), 14.3(s), 14.3(t), 14.3(u), 14.3(v), 14.4 and 15.

12.6 Waiver

If this lease 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.

13 GST

13.1 Interpretation

Words or expressions used in this clause 13 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

13.2 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 lease, unless specifically described in this lease as 'GST inclusive', does not include an amount on account of GST.

13.3 Gross up of consideration

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

- (a) the consideration payable or to be provided for that supply under this lease 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.

13.4 Reimbursements (net down)

If a payment to a party under this lease 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.

13.5 Tax invoices

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

14 Application of Services Contract Clauses

14.1 Step-in Powers

The Lessee acknowledges the rights and powers of a Step in Party under clause 45 (Step-in) of the Services Contract.

14.2 Indemnity and Limitation of Liability

Clause 41 (Indemnity and Limitation of Liability) of the Services Contract applies to this lease with the amendments set out in clause 14.4.

14.3 Clauses incorporated

The following Clauses of the Services Contract form part of this lease as if they were set out in full in this lease except for the general amendments set out in clause 14.4 and those specified below:

- (a) Clause 14 (Customer Interaction);
- (b) Clause 16 (TfNSW Systems and Equipment);
- (c) Clause 20 (Infrastructure);
- (d) Clause 23 (Asset Management);
- (e) Clause 24 (Dealing with Assets);
- (f) Part H (Confidentiality and Privacy);
- (g) Clause 31 (Contract management);
- (h) Clause 32 (Accreditation and compliance);
- (i) Clause 33 (Reporting);
- (j) Clause 34 (Staffing);
- (k) Clause 40 (Insurance);
- (l) Clause 42 (Reinstatement of loss or damage);
- (m) Clause 43 (Dispute resolution);
- (n) Clause 50 (End of Service Term Asset Condition and Handover Requirements);
- (o) Clause 53 (Relationship between Operator and TfNSW);
- (p) Clause 54 (Personal Property Securities Act);
- (q) Clause 56 (Proportionate Liability);
- (r) Clause 61 (Notices); and
- (s) Clause 70 (Claims).

14.4 General amendments

The Clauses of the Services Contract incorporated under clauses 1.2, 1.3, 14.2 and 14.3 (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 Depot Lease' with 'this lease';
 - (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 lease expires or is terminated in accordance with this lease'.
- (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 lease in which case, it refers to that Clause as it reads under this lease.

15 General

15.1 Entire agreement

This lease 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.

15.2 Amendment

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

15.3 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.

15.4 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 lease.

15.5 Costs

Each party must pay its own costs of negotiation, preparation and execution of this lease.

15.6 Governing law and jurisdiction

This lease 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 lease.

15.7 Rights Cumulative

Subject to any express provision in this lease to the contrary, the rights, powers and remedies of a party under this lease 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.

15.8 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.

15.9 Severability

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