
[First/Second] Deed of Option to Lease

Greater Sydney Bus Depot
Region **[insert region]**

[insert address]

[insert name of landowner]

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

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Date:

Parties

- 1 **[insert]** of **[insert address]** (**Landowner**)
- 2 **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 2000 (**Grantee**)

Background

- A The Landowner [is/will become] the registered proprietor of the Property.
- B The Landowner has agreed, subject to the terms and conditions set out in this Deed, to grant the Grantee an option to lease the Property.

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears.

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

Authorised Officer means:

- (a) in the case of the Landowner, either the Landowner personally, or if the Landowner is a corporation or other entity, a director, secretary or an officer whose title contains the word manager or a person performing the functions of any of them; and
- (b) in the case of the Grantee, a delegate, director or secretary or any other person appointed by the Grantee to act as an Authorised Officer for the purpose of this Deed.

Business Day means a day on which banks are open for general banking business in Sydney, Australia (not being a Saturday, Sunday or public holiday in that city).

Call Option means the option granted under clause 3.

Call Option Expiry Date means:

- (a) the date that is 3 months before the expiry date of the [Initial/Second] Lease;
- (b) where the [Initial/Second] Lease is terminated earlier, the date that is 2 months after the date on which the Grantee is notified by the Landowner of the termination of the [Initial/Second] Lease;
- (c) where the [Initial/Second] Lease is surrendered, the date of the surrender of the [Initial/Second] Lease; or

(d) the date this Deed is terminated,

whichever occurs first.

Call Option Fee means \$1 (plus GST).

Call Option Period means the period from the date of this Deed until the Call Option Expiry Date.

Control means a company or entity controls a company or entity if the company or entity directly, or indirectly through one or more interposed persons holds more than 50% of the shares in the entity and has control of day to day management of the entity.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

CPI means the Consumer Price Index (All Groups) for Sydney published by the Australian Bureau of Statistics or the Commonwealth of Australia or if that Index ceases to be published then the index which is substituted for it by the Australian Bureau of Statistics or the Commonwealth of Australia.

CPI Review Date means each anniversary of the Rent Determination Date that occurs before the Service Commencement Date.

Deed means this deed and includes the Attachments attached.

[First Deed means the first deed of option to lease between the Landowner and the Grantee dated on or about the same date as this Deed, pursuant to which the Landowner grants an option for the Grantee to lease the Property.] **[Drafting note: This is only relevant for the second deed of option to lease.]**

Governing Law means the law in force in New South Wales.

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).

Grantee's Solicitor means Simon Burns, Gilbert + Tobin, Level 35, Tower 2, International Towers Sydney, Barangaroo NSW 2000, sburns@gtlaw.com.au, or another solicitor notified by the Grantee from time to time.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST exclusive market value has the meaning it has in the GST Act.

GST has the meaning it has in the GST Act.

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, excluding any personal guarantees.

Initial Lease means the lease entered into between the Landowner and [insert] dated [insert] in respect of the Property commencing on [insert] and expiring on [insert].

Initial Tenant means the tenant under the Initial Lease (and any predecessor of the tenant).

Input Tax Credit has the meaning it has in the GST Act.

Institute means the NSW Division of the Australian Property Institute.

Land means the land located at [insert] and contained in Certificate of Title [insert].

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 this Deed as may be published by the Commonwealth or New South Wales governments or local councils or Governmental Agencies, with which the Landowner is legally required to comply,

and includes the general and common law.

Landowner's Property means anything on the Land (which may include the ZEB Depot Improvements) that is not the Tenant's Property.

Landowner's Solicitor means [insert Landowner's solicitor's details], or another solicitor notified by the Landowner from time to time.

Lease means a document in the form of Attachment C completed pursuant to clause 5.

Market Rent means the annual rent that could reasonably be obtained for the Property in the open market by a willing but not anxious landlord negotiating with a willing but not anxious tenant on the following conditions:

- (a) taking into account the terms of the Lease;
- (b) on the basis that the Property is unoccupied;
- (c) not taking into account any breach of the [Initial/Second] Lease by the [Initial/Second] Tenant (but without prejudice to any right or remedy for any such breach);
- (d) taking into account any payment, allowance, rent free period or rent reduction or abatement or other incentive or assistance in respect of comparable premises to induce tenants to take a lease of or remain in such comparable premises;
- (e) not taking into account any goodwill attaching to the [Initial/Second] Tenant's business conducted at the Property;
- (f) not taking into account any ZEB Infrastructure;
- (g) taking into account that the use of the Property is a bus depot;

- (h) not taking into account any decrease in value of the Property caused or contributed to by work carried out by or on behalf of the [Initial/Second] Tenant; and
- (i) not taking into account any value attaching to any fixtures, fittings or improvements erected or installed by or on behalf of the [Initial/Second] Tenant.

Nomination Date has the meaning it has in clause 4.5.

Nomination Notice has the meaning it has in clause 4.2(b).

Nominee means the person nominated by the Grantee under clause 4.2.

ODLDD means a deed on substantially the same terms as the document titled "Operator Depot Lease Direct Deed" between the Landowner, the Grantee and the Initial Tenant dated [insert].

Property means the Land and the Landowner's Property.

Rent Determination Date means the date that is:

- (a) the 6th anniversary of the [Initial/Second] Lease; or
- (b) where the [Initial/Second] Lease is terminated before the 6th anniversary of the [Initial/Second] Lease, the day immediately following the date of termination.

[Second Lease means the lease which arises on the exercise of the option granted by the Landowner to the Grantee under the First Deed.] **[Drafting note: This is only relevant for the second deed of option to lease.]**

[Second Tenant means the tenant under the Second Lease (and any predecessor of the tenant).] **[Drafting note: This is only relevant for the second deed of option to lease.]**

Service Commencement Date has the meaning it has in the Subsequent Bus Services Contract, as notified by the Grantee to the Landowner.

[Service Expiry Date means the fixed date specified in the definition of "Expiry Date" in the Subsequent Bus Services Contract.]

Subsequent Bus Services Contract means the Greater Sydney Bus Service Contract between the Grantee and the Nominee.

Tax Invoice has the meaning it has in the GST Act.

Tenant's Property means all property, stock, fitout, fittings, fixtures, goods, equipment, signage which the Grantee, [Initial/Second] Tenant or its sub-tenants, licensees, officers, employees, contractors, subcontractors, agents, customers, invitees and visitors have (at any time) installed in, brought to, or keeps in or at, the Land.

Valuer means a person who:

- (a) is at least an associate member of the Institute and has been for the last 5 years;
- (b) is active in the relevant market at the time of their appointment; and
- (c) has at least 5 years' experience in valuing premises like the Property.

ZEB Depot Improvements means upgrades to the underground cabling and associated trenching to support the ZEB Infrastructure on the Land that are not removable from the Land, but do not include chargers, solar panels, batteries, main switchboards and distribution switchboards.

ZEB Infrastructure means any infrastructure or works, including cabling, supply of high voltage electricity and any charging equipment, supporting or enabling the use or charging of zero emission or battery electric buses on the Land, whether installed by or on behalf of the Landowner, the [Initial/Second] Tenant or any other person. ZEB Infrastructure includes the ZEB Depot Improvements.

1.2 References to certain general terms

Unless the contrary intention appears, in this Deed:

- (a) a reference to a document (including this Deed) includes any variation or replacement of it;
- (b) a reference to a clause, attachment, annexure or schedule is a reference to a clause in or attachment or annexure or schedule to this Deed;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) the singular includes the plural and vice versa;
- (f) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (g) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (h) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) 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;
- (l) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;

- (m) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (p) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (q) if an act under this Deed to be done by a party on or by a given day is done after 5.00 pm on that day, it is taken to be done on the next day;
- (r) a reference to time is a reference to the time in the State or Territory in which the Property is situated; and
- (s) a reference to any thing (including any amount) is a reference to the whole and each part of it.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

2 Landowner’s obligations

2.1 Consents

Before the date of this Deed, the Landowner must obtain all consents required to enter into this Deed and to enable the grant and registration of the Lease including:

- (a) consent from any mortgagee;
- (b) consent from any caveator noted on the title to the Property; and
- (c) any other consent required from a Governmental Agency.

2.2 Third Party Rights

The Landowner must not grant rights (including any mortgage in relation to the Property) in relation to the Property to any third party except where such rights are granted in accordance with this Deed or where the Grantee has provided its prior written consent to the grant of such rights (consent not to be unreasonably withheld or delayed).

3 Payments and grant of Call Option

In consideration of the payment by the Grantee to the Landowner of the Call Option Fee (receipt of which is acknowledged by the Landowner), the Landowner grants to the Grantee an

irrevocable and exclusive option for the Grantee or the Nominee to lease the Property on the terms set out in the Lease (**Call Option**).

4 Exercise of Call Option

4.1 Exercise of Call Option by Grantee

If the Grantee wants to exercise the Call Option, then the Grantee must deliver to the Landowner's Solicitor on or before the Call Option Expiry Date a notice of exercise of Call Option substantially in the form of Attachment A signed by the Grantee.

4.2 Nomination

- (a) At the same time as, or within 40 Business Days after, the exercise of the Call Option by the Grantee under clause 4.1, the Grantee may nominate another person as being entitled to become the tenant under the Lease by giving the Landowner a notice substantially in the form of Attachment B.
- (b) The Grantee must, at least 10 Business Days prior to the effective nomination of another person as being entitled to become the tenant under the Lease, give the Landowner a written notice (**Nomination Notice**) which
 - (i) specifies the proposed Service Commencement Date (**Nomination Date**); and
 - (ii) identifies the Nominee.

4.3 Effective Nomination

- (a) The Nominee will become the tenant under the Lease on the Service Commencement Date.
- (b) The Grantee must notify the Landowner of the Service Commencement Date promptly after it has been determined under the Subsequent Bus Services Contract.

4.4 Release of Grantee

The Grantee will be released from its obligations under this Deed and the Lease on the later of:

- (a) the Service Commencement Date; and
- (b) the date on which the Nominee provides a Guarantee satisfactory to the Landowner (acting reasonably) in connection with the Lease.

4.5 ODLDD

- (a) If the Grantee nominates a Nominee under clause 4.2:
 - (i) subject to clause 4.5(a)(ii), the Landowner and the Grantee must enter into the ODLDD on or about the Service Commencement Date; and

- (ii) the Grantee must use reasonable endeavours to procure the Nominee to enter into the ODLDD on or about the Service Commencement Date.
- (b) If the Grantee does not nominate a Nominee but subsequently assigns or novates the Lease to a bus operator:
 - (i) subject to clause 4.5(b)(ii), the Landowner and the Grantee must enter into the ODLDD promptly after the date of the assignment or novation; and
 - (ii) the Grantee must use reasonable endeavours to procure the bus operator to enter into the ODLDD promptly after the date of the assignment or novation.

5 Determination of commencing rent under the Lease

5.1 Grantee's assessment

- (a) No earlier than 6 months before and no later than 3 months after the Rent Determination Date, the Grantee must notify the Landowner of the Grantee's assessment of the Market Rent as at the Rent Determination Date (**Grantee's Market Rent Notice**).
- (b) The Landowner may, within 30 days of receiving the Grantee's Market Rent Notice, notify the Grantee that it disputes the Grantee's assessment and requires the Market Rent to be determined by a Valuer in accordance with clause 5.2.
- (c) If the Landowner fails to give a notice of dispute within the time required by clause 5.1(b), then the Market Rent as at the Rent Determination Date will be the amount set out in the Grantee's Market Rent Notice.

5.2 Determination by Valuer

- (a) If the Landowner gives a notice of dispute under clause 5.1(b) on time, the parties must:
 - (i) within 15 Business Days of the Landowner's notice of dispute, attempt to agree in writing on a Valuer to determine the Market Rent as at the Rent Determination Date; and
 - (ii) appoint that Valuer jointly within 10 Business Days after agreeing who that Valuer is to be.
- (b) If the parties cannot agree on a Valuer within the period referred to in clause 5.2(a):
 - (i) either party may ask the chief executive officer of the Institute to nominate a Valuer; and
 - (ii) the parties must appoint that Valuer jointly within 10 Business Days after the nomination is made.
- (c) If either party does not join with the other to appoint a Valuer within 10 Business Days after the parties agree in writing who the Valuer is to be or the Valuer is nominated under clause 5.2(b), the other party may appoint the Valuer agreed on or nominated.
- (d) The Valuer will be instructed to undertake the determination of the Market Rent as at the Rent Determination Date on the following basis:

- (i) promptly on appointment the Valuer must:
 - (A) notify the Landowner and the Grantee of the Valuer's acceptance of the appointment; and
 - (B) seek written submissions from or on behalf of the Landowner and the Grantee as to the matters which the Valuer ought to consider in making the determination;
- (ii) the Valuer will act as an expert and not an arbitrator;
- (iii) the Valuer must ensure it uses the Institute methodology in determining the Market Rent;
- (iv) the Valuer must give consideration to the submissions made by the Landowner and the Grantee before making the determination, provided that the submissions are made within the time required by the Valuer; and
- (v) the determination must be made within 30 days following the Valuer's acceptance of the appointment and the Valuer must send a copy of the determination and reasons for its determination to each of the Landowner and the Grantee promptly on its making.
- (e) If the Valuer fails to make the determination within 30 days after accepting the appointment or becomes incapacitated or dies or resigns from the appointment, then another Valuer may be appointed to act in accordance with this clause.
- (f) The Valuer's determination will be final and binding on the parties (in the absence of manifest error).
- (g) The Costs incurred in the determination of the Market Rent under this clause 5.2 will be equally borne by the Landowner and Grantee.
- (h) Despite the valuation provisions of this clause 5.2, the Landowner and the Grantee may at any time agree in writing as to the Market Rent as at the Rent Determination Date.

5.3 Subsequent CPI reviews

The Market Rent agreed or determined under clause 5.1 or 5.2 will be reviewed on and from each CPI Review Date to an amount equal to 'A' calculated in accordance with the following formula:

$$A = B \times C \div D$$

where:

'B' is:

- (a) where the CPI Review Date is the date that is one year after the Rent Determination Date, the Market Rent agreed or determined under clause 5.1 or 5.2; or
- (b) where the CPI Review Date is the date that is 2 years after the Rent Determination Date, the amount as already reviewed under this clause;

'C' is the CPI for the quarter ending before the relevant CPI Review Date; and

'D' is the CPI for the corresponding quarter ending 12 months before the relevant CPI Review Date.

5.4 Commencing rent under the Lease

The Market Rent agreed or determined under clause 5.1 or 5.2, as reviewed under clause 5.3, will be the commencing rent under the Lease.

6 Completion of Lease

- (a) Within 90 Business Days following the latest of the exercise of the Call Option under clause 4.1, the date on which the commencing rent is calculated under clause 5.4 and the Service Commencement Date is determined under the Subsequent Bus Services Contract, the Grantee or Nominee must deliver to the Landowner's Solicitor the Lease signed by the Grantee or its Nominee, which must be in substantially the same form as Attachment C, subject to clause 6(b).
- (b) The Landowner authorises and directs the Grantee, Nominee or the Grantee's Solicitor to complete the Lease (where required) by:
 - (i) insertion of updated Form 07L prescribed by NSW Land Registry Services, or such other cover page required for leases prescribed by NSW Land Registry Services from time to time;
 - (ii) [insertion of the term, being 2 years/ the term of the Subsequent Bus Services Contract];
 - (iii) insertion of the commencing date, being the Service Commencement Date;
 - (iv) insertion of the terminating date, being a date that is [2 years after the Service Commencement Date/ the Service Expiry Date];
 - (v) insertion of the commencing rent in accordance with clause 5.4;
 - (vi) amending the Lease to ensure that the Lease is in registrable form; and
 - (vii) insertion of any other relevant details to complete the Lease.

7 Binding agreement

If the Grantee exercises the Call Option in accordance with clause 4.1, then:

- (a) the Lease binds the Landowner and the Grantee (or Nominee, if the Grantee subsequently nominates a Nominee under clause 4.2) from the time that the notice in clause 4.1 or 4.2 (as applicable) is delivered to the Landowner's Solicitor;
- (b) the Landowner must date the Lease with the date on which the signed Lease is delivered to the Landowner's Solicitor;
- (c) within 10 Business Days after the signed Lease is delivered to the Landowner's Solicitor, the Landowner must deliver to the Grantee or Nominee (as applicable) one copy of the

Lease completed with particulars of the Grantee or Nominee (as applicable), executed by the Landowner; and

- (d) the Lease binds the Landowner and the Grantee or Nominee (as applicable) even though the Landowner does not comply with clause 7(b) or 7(c).

8 Caveat

8.1 If the Grantee lodges a caveat

- (a) The Grantee or Nominee (as applicable) may lodge a caveat against the title to the Property to protect its interests under this Deed and/or the Lease.
- (b) If the Grantee or Nominee (as applicable) lodges a caveat under clause 8.1(a), it agrees promptly to consent to the registration of any dealing lodged by or with the consent of the Landowner when the Landowner requests it to do so if:
- (i) that dealing does not prejudice the Grantee's interest as grantee under this Deed or, if the Call Option has been exercised, the interest of the Grantee or Nominee (as applicable) under the Lease; or
 - (ii) the person acquiring the interest in the Property under that dealing enters into a deed in favour of the Grantee acknowledging the Grantee's interest as Grantee under this Deed or, if the Call Option has been exercised, the interest of the Grantee or Nominee (as applicable) under the Lease.

8.2 Withdrawal of caveat

The Grantee or Nominee must withdraw any caveat it has lodged against the title to the Property:

- (a) within 20 Business Days after this Deed is terminated;
- (b) if this Deed is not terminated and the Grantee has not exercised the Call Option, then within 20 Business Days after the Call Option Expiry Date; or
- (c) if the caveat remains on title after registration of the Lease, within 20 Business Days after the registration of the Lease.

9 Termination of Deed

9.1 Call Option not exercised

This Deed terminates on the Call Option Expiry Date if the Call Option is not properly exercised under clause 4.1 during the Call Option Period.

9.2 [Termination if First Deed is terminated

If the First Deed is terminated, then this Deed is automatically terminated on the date of termination of the First Deed.]

[Drafting note: This is only relevant for the second deeds of option to lease.]

10 Dealings with the Property

10.1 Assignment by Grantee

- (a) Subject to clause 10.1(b), the Grantee must not assign this Deed without the consent of the Landowner, such consent not to be unreasonably withheld or delayed.
- (b) The Grantee may assign or transfer its rights or obligations under this Deed to another Governmental Agency, without the consent of the Landowner. The Landowner must promptly do all things and deliver all documents reasonably requested by the Grantee to give effect to an assignment or transfer.

10.2 Sale or transfer of rights or interests in the Property

- (a) The Landowner must not sell, transfer or otherwise grant any third party any right, title or interest in relation to the Property or any part of the Property, unless prior to completion of the sale, transfer or grant of right, title or interest or change in Control, the proposed purchaser, transferee or grantee of the Property enters into a Deed of Assignment and Novation in the form of Attachment D (or such other form as may be agreed between the parties, acting reasonably) under which the proposed purchaser, transferee or grantee (as the case may be) assumes all of the Landowner's obligations under this Deed and agrees to observe and perform all such obligations as if they were named as the Landowner in this Deed.
- (b) The provisions of this clause 10.2 must be included in any such further contract, transfer or grant of right, title or interest or other document effecting the sale, transfer, or grant of right, title or interest of the Property.

10.3 Change in Control of the Landowner

If the Landowner is a company which is not listed on a stock exchange, and there is a proposed change in Control of the Landowner, then the Landowner must give the Grantee 10 Business Days' prior written notice of the change in Control.

11 Goods and services tax

11.1 Consideration does not include GST

The consideration specified in this Deed does not include any amount for GST.

11.2 Recovery of GST

If a supply under this Deed is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

11.3 Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

11.4 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier:

- (a) a corresponding adjustment of GST payable under this Deed must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable; and
- (b) the supplier, if obligated to do so under the GST Act, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable.

11.5 Reimbursement

If a party may be reimbursed or indemnified under this Deed, the amount to be reimbursed or indemnified does not include any amount for GST for which the party (or the representative member of a GST group of which the party is a member) is entitled to an Input Tax Credit.

12 Confidentiality

12.1 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 party.

12.2 Exceptions

- (a) Clause 12.1 does not apply to:
 - (i) any disclosure required by Law, a court or a Governmental Agency;
 - (ii) disclosures to employees, contractors or professional advisers and related entities under a 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 Property under a duty of confidentiality.
- (b) Clause 12.1 does not apply to the Grantee:
 - (i) (or the bus operator, if required by the Grantee to publish such information) if it publishes any information the Grantee has obtained from the bus operator or the Landowner or otherwise through the performance of this Deed or a related bus services contract (and any ancillary documents);

- (ii) if it publishes any information associated with this Deed or the Property any other information reasonably required in connection with re-tendering or contracting of the services which are the subject of a bus services contract, 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 managing and operating 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 Property including this Deed and any information and documents associated with it.

12.3 Survival

This clause 12 survives termination of this Deed.

13 Notices and other communications

13.1 Form

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in this Deed or, if the recipient has notified otherwise, then marked for attention in the way last notified.

13.2 Delivery

Communications must be:

- (a) left at the address set out or referred to in this Deed;
- (b) sent by prepaid ordinary post to the address set out or referred to in this Deed;
- (c) sent by email to the address or email address below or the address or email address last notified by the intended recipient to the sender:

to the Landowner:

Attention: [Insert]
[address]
Email: [Insert]

to the Grantee:

Attention: Director, Service Delivery
Transport for New South Wales
231 Elizabeth Street
SYDNEY NSW 2000
Email: BusFerryContractsSydney@transport.nsw.gov.au

- (d) given in any other way permitted by Law.

However, if the intended recipient has notified a changed address, then communications must be to that address.

13.3 When effective

Communications take effect from the time they are received or taken to be received under clause 13.4 (whichever happens first) unless a later time is specified.

13.4 When taken to be received

Communications are taken to be received:

- (a) in the case of delivery in person, when delivered;
- (b) 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
- (c) 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 Costs

14.1 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.

14.2 Stamp duty and registration fees

The Grantee agrees to:

- (a) pay or reimburse the Landowner for all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this Deed, any new lease granted under this Deed or any other transaction contemplated by this Deed (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) pay amounts due to the Landowner under this clause within 10 Business Days of demand from the Landowner.

15 General

15.1 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the approval or consent.

15.2 Variation and waiver

A provision of this Deed, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

15.3 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 expense or make payment before enforcing a right of indemnity under this Deed.

15.4 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this Deed or any part of it.

15.5 Governing law

This Deed is governed by the Governing Law and the parties submit to the non-exclusive jurisdiction of the courts of that place.

15.6 Serving documents

Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 13.

15.7 Counterparts and electronic execution

- (a) The parties acknowledge and agree that:
- (i) a party may sign this Deed electronically and bind itself to this Deed by executing in that manner;
 - (ii) a party's signature (whether affixed electronically or in handwriting) may be witnessed remotely in accordance with applicable laws; and
 - (iii) a party's signature appearing in this Deed (whether affixed electronically or in handwriting) is their personal signature which has been duly authenticated.
- (b) This Deed may be executed in any number of counterparts, each of which:
- (i) may be executed electronically or in handwriting; and
 - (ii) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.

- (c) Without limiting clause 15.7(b), if the signatures on behalf of one party are on more than one copy of this, this shall be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this Deed.

Execution page

Executed as a deed.

Landowner

Signed, sealed and delivered by **[insert Landowner]** in accordance with s.127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Grantee

Signed for and on behalf of **Transport for NSW on behalf of the State of New South Wales** by its authorised delegate in the presence of:

Signature of witness

Signature of delegate

Name of witness (print)

Name of delegate (print)

Address of witness (print)

Title of delegate (print)

- 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.

Attachment A Notice of Exercise of Call Option

TO: [insert Landowner] (Landowner)

[insert Grantee] exercises the call option granted in the deed of option to lease between the Landowner and Transport for NSW dated [insert date of Deed] to lease the property being [insert description of Property].

Dated:

[insert appropriate execution clause for Grantee]

Attachment B Nomination Notice

TO: [insert Landowner] (Landowner)

Transport for NSW (**Grantee**) nominates [insert full name and address of Nominee] (**Nominee**) to be its nominee to be the tenant under the lease the subject of the deed of option to lease between the Landowner and the Grantee dated [insert date of Deed] to lease the property being [insert description of Property].

The Nominee's address for service is: [insert address for service of Nominee].

Dated:

[Insert appropriate execution clause for Grantee]

Attachment C Lease

[insert form of lease]

Attachment D Deed of Assignment and Novation

Date:

Parties

- 1 [Insert] ACN [Insert] of [Insert] (**Outgoing Landowner**)
 - 2 [Insert] ACN [Insert] of [Insert] (**Incoming Landowner**)
 - 3 [Insert] ACN [Insert] of [Insert] (**Grantee**)
-

Background

- A The Outgoing Landowner and the Grantee are parties to the Option Deed.
- B The parties to this Deed agree to assign the Outgoing Landowner's rights and novate the Outgoing Landowner's obligations under the Option Deed to the Incoming Landowner on and from the Commencement Date in accordance with the terms of this Deed.

The parties agree

1 Definitions and Interpretation

1.1 Definitions

- (a) Capitalised terms used in this Deed that are not defined in this clause have the meaning given to them in the Option Deed.
- (b) The meaning of the terms used in this Deed are set out below:
 - (i) **Commencement Date** means the date of this Deed.
 - (ii) **Option Deed** means the deed of option to lease between the Outgoing Landowner and the Grantee dated [insert].

1.2 Interpretation

In this Deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this Deed.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning.
- (d) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any authority as well as an individual.

- (e) A reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(e) implies that performance of part of an obligation constitutes performance of the obligation.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Deed.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A reference to a deed other than this Deed includes a deed and any legally enforceable undertaking, deed, arrangement or understanding, whether or not in writing.
- (k) A reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind.
- (l) No provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision.
- (m) Where this Deed confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.

1.3 Interpretation of inclusive expressions

Specifying anything in this Deed after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

2 Assignment and Novation

- (a) With effect on and from the Commencement Date:
 - (i) the Incoming Landowner is substituted for the Outgoing Landowner as a party to the Option Deed;
 - (ii) all the rights and obligations of the Outgoing Landowner under the Option Deed arising on or after the Commencement Date are assigned and novated to the Incoming Landowner;
 - (iii) the Incoming Landowner assumes responsibility for, and agrees to pay, satisfy, discharge and perform, all of the obligations and liabilities of the Outgoing Landowner arising in connection with the Option Deed as if the Incoming Landowner was listed as the Landowner in the Option Deed; and
 - (iv) each reference in the Option Deed to the Outgoing Landowner is to be read as if it were a reference to the Incoming Landowner.

-
- (b) The Grantee acknowledges that on and from the Commencement Date, the Incoming Landowner has replaced the Outgoing Landowner under the Option Deed in accordance with this Deed and must comply with the Option Deed in favour of the Incoming Landowner on that basis.
-

3 Releases

- (a) The Grantee releases and discharges the Outgoing Landowner from all obligations under or in connection with the Option Deed, due for performance on or after the Commencement Date and not performed as at the date of this Deed.
- (b) The Outgoing Landowner releases and discharges the Grantee from all obligations under or in connection with the Option Deed, due for performance on or after the Commencement Date and not performed as at the date of this Deed.
-

4 General

4.1 Remaining provisions unaffected

Except as specifically stated in this Deed, all terms of the Option Deed remain in full force and effect.

4.2 Governing law and jurisdiction

- (a) This Deed is governed by the laws of New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts that may hear appeals from these courts regarding any proceedings under or in connection with this Deed.

4.3 Variation

A variation of any term of this Deed must be in writing and signed by the parties.

4.4 Counterparts

- (a) The parties acknowledge and agree that:
- (i) a party may sign this Deed electronically and bind itself to this Deed by executing in that manner;
 - (ii) a party's signature (whether affixed electronically or in handwriting) may be witnessed remotely in accordance with applicable laws; and
 - (iii) a party's signature appearing in this deed (whether affixed electronically or in handwriting) is their personal signature which has been duly authenticated.
- (b) This Deed may be executed in any number of counterparts, each of which:
- (i) may be executed electronically or in handwriting; and
 - (ii) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.

- (c) Without limiting the foregoing, if the signatures on behalf of one party are on more than one copy of this, this shall be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this Deed.
- (d) If this Deed is signed electronically, the parties' intention is to print this Deed out after all parties that are signing electronically have done so, so that where a party prints it out, the first print-out by that party after all signatories who are signing electronically have done so will also be an executed original counterpart of this Deed.

Execution page**Executed** as a deed.

Signed, sealed and delivered by [Incoming Landowner] in accordance with s.127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed, sealed and delivered by [Outgoing Landowner] in accordance with s.127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed for and on behalf of **Transport for NSW on behalf of the State of New South Wales** by its authorised delegate in the presence of:

Signature of witness

Signature of delegate

Name of witness (print)

Name of delegate (print)

Address of witness (print)

Title of delegate (print)

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.