



**Deane's  
Transit Group**

## **Deane's Transit Group Bus Advertising Agreement**

Capital Region

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## 1. Interpretation

1.1 Words used in this Agreement have the meanings set out below.

**"Advertising"** means the advertising space provided by Deane's Buslines to the Company pursuant to this Agreement and as specified in Schedule Item 2;

**"Advertisement"** means the material provided by the Company for the Advertising and includes the Content;

**"Commencement Date"** means the date of this Agreement;

**"Content"** means all forms of material including, without limitation, text, pictures, animation, data, logos, designs and graphics separately or combined and may include software;

**"Fee"** means the fee payable by the Company for the Advertising in accordance with clause 4;

**"Intellectual Property Rights"** means copyright, trademark, design or patent, rights relevant to, among other things, the textual, graphical, and other Content displayed in the Advertisement;

**"Initial Term"** means the period from and including the Commencement Date to the date which is twelve months from the Commencement Date;

**"Party"** means either Deane's Buslines or the Company as the context dictates; and

**"Term"** means the term specified in Schedule Item 1.

## 2. Commencement Date and Term

2.1 This Agreement shall commence on the Commencement Date and shall terminate on completion of the Term.

## 3. Advertising Services

3.1 During the Term, Deane's Buslines shall provide the Advertising in return for the Fee.

3.2 Deane's Buslines will not be liable in the event that any bus used for the Advertising is unavailable for any reason including mechanical breakdown and for any period of time.

## 4. Fee

4.1 The Company shall pay Deane's Buslines the Fee in monthly installments by cheque or direct debit and within 7 days of receipt of an invoice from Deane's Buslines.

4.2 The Fee payable by the Company for the Initial Term is the Fee set out in Schedule Item 3.

4.3 The Fee payable by the Company following the expiry of the Initial Term shall be the Fee determined by Deane's Buslines and notified to the Company in writing.

4.4 Deane's Buslines reserves the right to review the Fee following the Initial Term in its absolute discretion and the Company shall have no claim with respect to the same.

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## **5. Company's Obligations**

- 5.1 The Company is responsible for the design, production and placement of the Advertisement. All costs associated with the design and production of the Advertisement and the placement of the Advertisement on any bus provided by Deane's Buslines for the Advertising are the Company's responsibility
- 5.2 The Company must obtain approval from Deane's Buslines for the design, size and placement of the Advertisement prior to the commencement of the Term. That consent may be withheld at Deane's Buslines absolute discretion.
- 5.3 The Company shall submit to Deane's Buslines all advertising material for approval no later than thirty (30) days prior to the commencement of the Term and shall comply with all directions given by Deane's Buslines regarding the design, size and placement of the Advertisement.
- 5.4 All costs incurred by Deane's Buslines in reviewing and approving the Advertisement are the Company's responsibility.
- 5.5 The Company must replace the Advertisement if directed by Deane's Buslines:
- (a) every three years; and
  - (b) where necessary as a result of changes to relevant advertising laws.

## **6. Warranties and Covenants**

- 6.1 The Company warrants that the Advertisement:
- (a) will not infringe the Intellectual Property Rights of any third person or entity;
  - (b) is not and will not, in Deane's Buslines reasonable opinion, be or be likely to be, obscene, offensive, illegal or defamatory;
  - (c) does not breach any codes, standards or requirements of any relevant authority or body, including any relevant industry codes of practice; and
  - (d) does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.
- 6.2 The Company warrants that it has not relied on any representation by Deane's Buslines which is not expressly contained in this Agreement and that the Company has had adequate opportunity to independently verify the accuracy of any such representation.
- 6.3 Each Party represents and warrants to the other that:
- (a) it has the full power to enter into this Agreement and perform its obligations under this Agreement;

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- (b) the execution of this Agreement, and the performance of its obligations under this Agreement, does not and will not contravene any contractual restriction or any existing applicable law or regulation binding on it; and
  - (c) no action, suit, proceeding or arbitration is pending or threatened against it before any court, board of arbitration or administrative agency which could or might result in any material adverse change in its business assets or condition (financial or otherwise).

## **7. Indemnity**

7.1 The Company must continually indemnify Deane's Buslines from and against all or any losses, damages, claims, actions, suits, proceedings, demand, costs and expenses incurred by Deane's Buslines whether direct or indirect arising out of a claim by a third party in relation to the Advertisement and against any loss (including reasonable legal costs and expenses) caused by:

- (a) a breach by the Company of its obligations under this Agreement; or
- (b) any willful, unlawful or negligent act or omission by the Company.

## **8. Deane's Buslines Obligations and Liability**

8.1 Deane's Buslines shall:

- (a) maintain the Advertisement, fair wear and tear excepted, for the Term OR for a period of three (3) years;
- (b) provide feedback on each Advertisement submitted by the Company for approval within fourteen (14) days of receipt of the same; and
- (c) allow the printing company engaged by the Company to produce the Advertisement access to the bus or bus's provided by Deane's Buslines for the Advertising for the purpose of measuring and installing the Advertisement.

8.2 Despite any other term in this Agreement and except as obligated by law, Deane's Buslines will not be liable to the Company or any third party for any loss (including consequential loss) arising from any breach of its obligations, duties of care, statutory duties or implied warranties in connection with the Advertising provided by Deane's Buslines to the Company and to the extent any law implies any duties or warranties that may not be excluded Deane's Buslines liability will be limited, at its option, to either supplying the Advertising services again or refunding the Fee.

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## **9. Terminating this Agreement**

- 9.1 Deane's Buslines may terminate this Agreement immediately by notice in writing if:
- (a) the Company commits a breach of this Agreement which is not rectifiable;
  - (b) the Company fails to rectify a breach of this Agreement which is rectifiable for seven (7) days after receiving a written notice from Deane's Buslines specifying the breach and requiring the Company to rectify it;
  - (c) the Company becomes or Deane's Buslines considers the Company may be insolvent or subject to any form of bankruptcy or external administration.
- 9.2 The termination or natural ending of this Agreement does not affect accrued rights. Moreover, the following clauses continue to apply despite the termination or ending of this Agreement:
- (a) Clause 7 (Indemnity); and
  - (b) Clause 4 (Fee).

## **10. General**

- 10.1 This Agreement constitutes the sole and entire agreement between the parties with regard to its subject matter and any warranty, representation, guarantee or other term or condition of any nature not expressly contained or recorded in this Agreement is of no force or effect.
- 10.2 Any provision, or the application of any provision herein, which is void, illegal, prohibited or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 10.3 This Agreement is governed by the Law of the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of State of New South Wales and any court hearing appeals from those courts.
- 10.4 No failure or delay by Deane's Buslines to exercise a right pursuant to this Agreement or to insist on strict compliance with this Agreement constitutes a waiver of Deane's Buslines rights under this Agreement. A waiver by Deane's Buslines is only effective if it is in writing.
- 10.5 A written waiver by Deane's Buslines is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or of a subsequent breach.
- 10.6 Each Party must pay its own costs and disbursements (including legal costs on a solicitor-client basis) in relation to preparing, negotiating and executing this Agreement and any document related to the transaction it contemplates.

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10.7 The Company may not assign, transfer or subcontract any of its rights under this document, without the prior written consent of Deane's Buslines. That consent may be withheld at Deane's Buslines absolute discretion.

## **11. Notice**

### 11.1 Notice to Parties

Any notice, demand, consent, approval, advice or other communication (a "notice") from a Party to another Party will be deemed duly served if:

- (a) left for the Party at the address provided in Schedule Item 4 or the registered address of the Party; or
- (b) mailed by prepaid letter addressed to the Party at the address provided in Schedule Item 4 or the registered address of the Party; or
- (c) sent by facsimile machine to the Party's facsimile machine at the number provided in Schedule Item 4; or
- (d) sent by electronic mail to the Party's email address provided in Schedule Item 4.

### 11.2 Notices only by authorised signatories

Any notice given by one Party to the other may be signed on behalf of the party giving it by an authorised signatory. A person is an authorised signatory if he or she is a director, manager, secretary or acting secretary of the relevant party, or if he or she is authorised in writing by that party.

### 11.3 Timing of Notice

- (a) Any notice left at the relevant address will be deemed to be duly served when it is left at that address.
- (b) Any notice mailed will be deemed to be duly served at the expiration of forty eight (48) hours after the time of mailing.
- (c) Any notice served by facsimile machine will be deemed to be served on the next business day after it was sent unless the sender is aware that the transmission is impaired or not completed.
- (d) Any notice served by electronic mail will be deemed to be duly served following the receipt of an electronic delivery receipt by the party serving the notice.

### 11.4 Notice in writing

A notice to be given or made under this Agreement must be in writing.

### 11.5 Change of address

If a Party gives another Party three (3) business days written notice of a change of address, email address or facsimile machine number, a notice, demand, consent, approval, advice or other communication is only deemed duly served if it is left at, posted to, faxed to or emailed to the latest address or number.

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## **12. Dispute Resolution**

- 12.1 If any dispute arises in relation to this Agreement the Parties agree to endeavour to settle the dispute between themselves. If the dispute is not resolved within 14 days after written notice of the dispute has been given by one Party to the other, the Parties agree to refer the dispute to a mediator appointed jointly by the Parties.
- 12.2 If the parties do not agree on a mediator within 21 days after such written notice, the mediator is to be appointed by the Institute of Arbitrators and Mediators Australia.
- 12.3 The mediation is to be conducted in accordance with the Institute's Rules for the Mediation of Commercial Disputes. Each of the parties must fully cooperate with the mediator and the mediator's costs will be shared equally by the Parties.
- 12.4 Mediation must be attempted before having recourse to arbitration or litigation.
- 12.5 If the parties have not settled a dispute referred to mediation under this Clause within 28 days of the appointment of the mediator, then the parties must immediately submit the dispute to arbitration administered by Institute of Arbitrators and Mediators Australia.
- 12.6 The arbitration must be conducted in accordance with the *Rules for the Conduct of Commercial Arbitration* published by IAMA. Each of the parties must fully cooperate with the arbitrator and the arbitrator's costs will be shared equally by the Parties.

## **13. GST**

- 13.1 The Parties mutually agree that if GST applies to any supply made under or in connection with this Agreement by Deane's Buslines
- (a) the amount stated in this Agreement to be payable in respect of the supply shall in the absence of express indication to the contrary be deemed to be exclusive of GST;
  - (b) Deane's Buslines may in addition to any amount or consideration expressed as payable in respect of the supply, recover from the Company an additional amount on account of GST; and
  - (c) any additional amount is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates.