

Execution Version

R6BSP Services Contract

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

Transit Systems West Pty Ltd (**Operator**)

R6BSP Services Contract

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Details

Date 12 February 2018

Parties

Name **Transport for NSW, a corporation constituted under the *Transport Administration Act 1988 (NSW)* on behalf of the State of New South Wales**
Short form name **TfNSW**
Notice details 18 Lee Street, Sydney, New South Wales

Name **Transit Systems West Pty Ltd ABN 76 161 755 988**
Short form name **Operator**
Notice details 49 Percival Road, Smithfield, New South Wales

Background

- A The *Passenger Transport Act 2014 (NSW)* (**PT Act 2014**) provides that TfNSW may enter into a passenger service contract on behalf of the State for the provision of a Public Passenger Service with an accredited operator of a Public Passenger Service or the operator of a Public Passenger Service who is not required to be accredited under the PT Act 2014.
- B This Contract is a passenger service contract within the meaning, and for the purposes, of section 39 of the PT Act 2014.
- C The Government of New South Wales is the employer of the Transition In Employees on or before the date of this Contract under section 68B of the TA Act.
- D The Operator has agreed to carry out the Operator Activities on the terms set out in this Contract.
- E TfNSW is the recipient of the benefit of the conduct of the Operator Activities by the Operator.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Contract:

Accessible Transport Action Plan means a plan which addresses the requirements referred to in Clause 30.1.

Accounting Standards means:

- (a) accounting standards approved under the Corporations Act and its requirements about the preparation and contents of accounts; and
- (b) generally accepted accounting principles, policies, practices and procedures in Australia.

Accreditation means accreditation for a Bus service obtained in accordance with the requirements of the PT Act 1990 including any guideline, regulation or ordinance made under the PT Act 1990.

AEO or Authorised Engineering Organisation means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status by TfNSW.

Approved Beneficiaries means the beneficiaries listed in the Fares and Ticketing Schedule as amended from time to time.

Asset Information System means the system for the storage, processing, transmission and management of asset information as described in paragraph 5 of the Asset Schedule.

Asset Maintenance Standards means the standards adopted by the Operator in accordance with paragraph 2 of the Asset Schedule.

Asset Management Activities means the activities that the Operator is required to perform under Clause 25 and the Asset Schedule, including:

- (a) maintaining and repairing the Assets; and
- (b) the replacement and refurbishment of the Assets.

Asset Management Failure has the meaning given in Clause 25.7(b).

Asset Management Framework means the asset management arrangements described in paragraph 1.2 the Asset Schedule within which the Asset Management Activities are undertaken.

Asset Management Plan means the plan set out in Annexure 7 of the Asset Schedule.

Asset Schedule means Schedule 8 to this Contract.

Assets means:

- (a) the State Assets; and
- (b) the Operator Assets.

Authorisation includes any Accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with a Reporting Body (including RMS).

Authorised Insurer means a corporation authorised under the *Insurance Act 1973* (Cth) to carry on an insurance business and which has the Required Rating.

Authorised Officer has the meaning given in the PT Act 1990 and the PT Regulation 2007.

Boardings has the meaning given in the KPI Schedule.

BSAR system means the Bus Service Alteration Request System, available at <https://appln.transport.nsw.gov.au/portal/login>.

Bus has the meaning given in section 4 of the PT Act 2014.

Bus Driver Authority means any requirements with respect to Drivers of Buses under the PT Act 1990 or PT Regulation 2007, in particular Parts 3 and 4 of the PT Regulation 2007.

Bus Procurement Panel means TfNSW's panel for the manufacture and supply of Buses (as notified to the Operator or published by TfNSW from time to time).

Bus Services means the routine Bus services, excluding the Dedicated School Services, described in the Service Level Schedule as amended from time to time in accordance with this Contract.

Bus Timetable means the timetable for the operation of the Bus Services as set out in the Service Level Schedule as amended from time to time in accordance with this Contract.

Business Day means any day other than a Saturday, Sunday or a Public Holiday.

Calendar Month has the meaning given in the KPI Schedule.

Cancelled Trip has the meaning given in the KPI Schedule.

Certificate of Service Commencement means the certificate issued by TfNSW in accordance with Clause 5.3(a).

Chain of Responsibility Provisions means any section of the Heavy Vehicle National Law under which the Operator or its Associates are "a party in the chain of responsibility" (within the meaning given to that term in the Heavy Vehicle National Law).

Change in Law means any one or more of the following that occurs after the date of this Contract:

- (a) a change in, or repeal of, an existing Law; or
- (b) the enactment or making of a new Law,

but does not include:

- (c) any change in workers compensation premiums;
- (d) the introduction of any emissions tax or Law or emissions trading scheme;
- (e) the introduction of or variation to, or change in application or interpretation of, any industrial instrument to which the Operator or any Staff is or will be bound or subject to;
- (f) any change in application or interpretation of a Law (including a Law of a New South Wales Governmental Agency);
- (g) a change in or enactment or making of a new Law relating to Taxes, including the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) and any GST Law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth));
- (h) any change in or enactment or making of a new Law:
 - (i) enacted or made (but not yet commenced or effective) as at the date of this Contract;
 - (ii) which was not enacted or made as at the date of this Contract but which had been made public by way of bill, draft bill or draft statutory instrument prior to the date of this Contract and which is subsequently enacted or made in substantially the same form in which it had been made public; or
 - (iii) that a party experienced and competent in the operation of a business similar to the Operator's business would have reasonably foreseen or anticipated prior to the date of this Contract;
- (i) a change in Law relating to Part 4 of the *Civil Liability Act 2002* (NSW) or its application which limits or eliminates the impact of that part on any legal risk allocation under this Contract;
- (j) the making, amendment or repeal of any order made under the TA Act, the PT Act 1990 or the PT Act 2014;
- (k) any change to the TA Act, the PT Act 1990 or the PT Act 2014 made for the purposes of giving effect to this Contract; or

(l) an amendment, change, modification or variation to any Authorisation.

Claim means any claim, demand, proceedings, dispute or complaint of any nature or kind.

Class 1 Key Performance Indicator has the meaning given in the KPI Schedule.

Class 4 Key Performance Indicator has the meaning given in the KPI Schedule.

Clean Up Notice means any direction, order, demand or other requirement from a Governmental Agency to take any action, including any investigation of any Contamination or Pollution, or refrain from taking any action in respect of any Contamination or Pollution.

CNG Supply Arrangement has the meaning given in Clause 21.3(c).

Commissioner means either the Federal or New South Wales Privacy Commissioner as the context requires.

Concession Fare means the Fare that can be charged to an Approved Beneficiary for a Ticket, set out in the Fares and Ticketing Schedule, as amended from time to time.

Confidential Information means, in relation to a Party, information that:

- (a) is by its nature confidential;
- (b) is designated by TfNSW as confidential; or
- (c) the other Party knows or ought to know is confidential.

Connecting Passenger Operators means any passenger transport operator whose services connect with the Services.

Consequential or Indirect Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract (other than the loss of this Contract), loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

Contamination means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica,

and the word 'Contaminant' has a corresponding meaning.

Continuity of the Services means:

- (a) the continued provision of the Services during the Term in accordance with this Contract;
- (b) the continued performance of the Operator's obligations under the Transaction Documents; and
- (c) the orderly handover of the Operator Activities and the transfer of assets by the Operator to a Step in Party or Successor Operator as contemplated by this Contract.

Contract means this R6BSP Services Contract.

Contract Area means that part of Sydney set out in the diagram set out in Schedule 15.

Contract Bus means:

- (a) an Existing Bus; or
- (b) a New Bus.

Contract Depot means a depot used or to be used in the performance of any of the Services with the approval of TfNSW, including the Existing Depots and any New Depots and the land, buildings and other improvements comprising the depot.

Contract Employees means employees employed by the Operator to carry out the Operator Activities during the Term, and includes Dedicated Staff.

Contract Material means Existing Contract Material, New Contract Material and Third Party Contract Material.

Contract Objectives has the meaning given in Clause 3(a).

Contract Service Levels means the level of services to be operated for Services, including:

- (a) the periods of time during which Services are to be operated; and
- (b) the frequency and extent of operation of Services during any specified period of time.

Contract Year means each 12 months ending 30 June during the Term, provided that:

- (a) the first Contract Year will commence on the Service Commencement Date and end on the following 30 June; and
- (b) the last Contract Year will commence on 1 July and end on the Termination Date.

Control has the meaning given in section 50AA of the Corporations Act.

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

CPI means the "ABS Consumer Price Index (CPI), - quarter, Index Numbers; All groups CPI; Sydney; Series ID: A2325806K" as maintained and published Quarterly by the Australian Bureau of Statistics (ABS) (**Index**). If the Index ceases to be published Quarterly or its method of calculation substantially alters, then the Index is to be replaced by the nearest equivalent index as selected by the TfNSW Representative and any necessary consequential amendments are to be made.

CPI Indexed has the meaning given in Clause 71.

Cure Period has the meaning given in Clause 43.3(b)(iv).

Cure Plan Date has the meaning given in Clause 43.2(c)(ii).

Customer Service Plan means a plan which addresses the requirements referred to in Clause 30.3(b).

DCIS means the centralised integrated transport information service that communicates and receives data and information in relation to public transport services, through Transport Infoline.

DDA Legislation means:

- (a) the *Disability Discrimination Act 1992* (Cth); and
- (b) the *Disability Standards for Accessible Public Transport 2002* (Cth) and accompanying guidelines under the *Disability Discrimination Act 1992* (Cth).

Dedicated School Services means Bus services carried out primarily to cater for transport of primary or secondary school students from the schools referred to in the Service Level Schedule and that carry few, if any, fare paying passengers who are not school students, as described in the Service Level Schedule as amended from time to time in accordance with this Contract.

Dedicated School Services Timetable means each and every timetable for Dedicated School Services contained in the Service Level Schedule as amended from time to time in accordance with this Contract.

Dedicated Staff means:

- (a) Drivers;
- (b) the Operator's Authorised Officers;
- (c) members of Staff who are engaged predominantly to carry out regular maintenance in accordance with this Contract; and
- (d) members of Staff who are predominantly engaged as operations supervisors, on-road supervisors, customer service representatives and refuellers.

Deed of Guarantee and Indemnity means a deed in favour of TfNSW in the form set out in Attachment C.

Default Rate means an interest rate that is three percentage points above the 90 day bill rate as published each Business Day in the Australian Financial Review.

Depot Headlease means the lease in the form contained in Annexure 8 of the Asset Schedule.

Design Life means in respect of a State Asset or any Operator New Bus that falls within an asset category referred to in paragraph 6 of the Asset Schedule, the period specified for that asset category in paragraph 6 of the Asset Schedule.

Disclosed Information means all information of whatever nature that is obtained by or on behalf of the Operator from TfNSW, the State, any Governmental Agency or any of TfNSW's Associates including:

- (a) all information provided in briefings to, correspondence or discussions with and negotiations between TfNSW and TfNSW's Associates on the one hand, and the Operator and the Operator's Associates on the other hand, relating directly or indirectly to this Contract or any other Transaction Document; and
- (b) any other information disclosed to the Operator or any person acting on behalf of or associated with the Operator by or on behalf of TfNSW, the State, any Governmental Agency or TfNSW's Associates, or which is otherwise acquired by, or comes to the knowledge of, the Operator or any person acting on behalf of, or associated with, the Operator directly or indirectly from any of them, in connection with the contracting of the Services, whether the information is in oral, visual or written form or is recorded in any other medium.

Dispose means to transfer, assign, sell, grant an exclusive or irrevocable licence over, declare a trust over or otherwise part with possession of something.

Dispute Notice has the meaning given in Clause 55.1.

Driver means a person who, in the provision of the Services, drives any Contract Bus.

End of Contract Period means the period commencing on the earlier of the following dates:

- (a) the date which is twelve months prior to the Expiry Date;
- (b) the date on which TfNSW notifies the Operator of a Termination Event; or
- (c) the date on which TfNSW issues a Termination Notice,

and ending on the Termination Date.

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

Environmental Auditor means a person who is entitled to be accredited as a site auditor under Part 4 of the *Contaminated Land Management Act 1997* (NSW).

Environmental Law means any Law relating to the Environment including any Law relating to the protection or preservation of the Environment, flora and fauna, land use, planning, Contamination or pollution of air, water, soil or groundwater, chemicals, industrial waste, the use and transport, storage and handling of dangerous goods and hazardous substances or the health or safety of any person.

Environmental Plan means a plan which addresses the requirements referred to in Clause 30.2(b).

Excused Performance Incident has the meaning given in the KPI Schedule.

Existing Bus means each Bus listed in Annexure 1 of the Asset Schedule.

Existing Contract Material means any Material that is brought into existence other than for the purposes of this Contract.

Existing Depot means each depot listed in Annexure 2 of the Asset Schedule.

Existing Facility means each facility listed in Annexure 2 of the Asset Schedule that is not an Existing Depot.

Expert means an independent expert appointed in accordance with Clause 55.2.

Expiry Date means:

- (a) the date that is eight years after the Planned Service Commencement Date; or
- (b) if this Contract is terminated under Clause 6.2, the later of:
 - (i) the date that is five years after the Planned Service Commencement Date; and
 - (ii) the date referred to in Clause 6.2(b)(ii).

Fare means the price payable for a Ticket.

Fares and Ticketing Schedule means Schedule 7 to this Contract.

FATA has the meaning given in Clause 5.2(h).

Final Inspection Auditor has the meaning given in Clause 48.4(a).

Financial Indebtedness means indebtedness (whether actual or contingent) in respect of financial accommodation. It includes indebtedness under or in respect of:

- (a) a guarantee of financial indebtedness or a guarantee given to a financier;
- (b) a finance lease;
- (c) a derivative transaction;
- (d) an acceptance, endorsement or discounting arrangement;
- (e) a redeemable share or redeemable stock;
- (f) a factoring or securitisation of receivables or other assets;
- (g) the deferred purchase price (for more than 90 days) of an asset or service; or
- (h) an obligation to deliver assets or services paid for in advance by a financier or otherwise relating to a financing transaction.

Financial Year means a period that commences on 1 July and ends on the next 30 June.

Financier Direct Agreement means a direct agreement entered into between TfNSW, the Operator and a proposed financier under this Contract in a form approved by TfNSW.

Fleet Replacement Schedule means the fleet replacement schedule set out in Annexure 4 of the Asset Schedule.

Force Majeure Event means:

- (a) act of God, lightning, storm, explosion, flood, landslide, bush fire, tsunami or earthquake;
- (b) act of public enemy, war (declared or undeclared), terrorism, sabotage, revolution, riot, insurrection, civil commotion or epidemic;
- (c) blockade or embargo within Australia, other than a blockade or embargo which only affects the Operator or the Operator's Associates or which is caused by industrial action;
- (d) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (e) any exceptional event which TfNSW determines renders it impossible or economically non-viable for the Operator to continue to perform the Operator Activities,

the consequence of which is beyond the control of the affected Party and could not have been prevented, overcome or remedied by that Party exercising a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such prudent and competent person).

Full Fare means the Fare that can be charged to passengers who are not Approved Beneficiaries for a Ticket, set out in the Fares and Ticketing Schedule, as amended by TfNSW from time to time.

General Performance Bond mean the performance bond(s) to be provided to TfNSW under Clause 7.1(a) and any performance bond(s) replacing them.

General Performance Bond Amount means on any day, the amount which is equal to:

- (a) the amount specified in Item 7 of Attachment A CPI Indexed at the commencement of each Contract Year;
- (b) less the aggregate amount of any payments received by TfNSW under the General Performance Bonds up to and including that date;
- (c) plus the aggregate amount of any payments made by TfNSW to the Operator under Clause 7.5(d) or Clause 7.5(f)(iii) up to and including that date.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person, engaged in the provision of one or more activities the same or similar to the Operator Activities under the same or similar circumstances for those activities.

Governance Schedule means Schedule 6 to this Contract.

Government Subsidised Travel Schemes means a scheme for subsidised travel on passenger services, approved by the Minister for Transport, in accordance with section 8 of schedule 1 of the TA Act.

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

GST has the meaning given by the GST Act.

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

GST Group has the meaning given by the GST Act.

Handback Audit has the meaning given in Clause 48.1(a).

Handback Audit Assets has the meaning given in Clause 48.1(b).

Handback Auditor has the meaning given in Clause 48.1(a).

Handback Condition means the required condition of the State Assets and Operator New Buses as at the Termination Date as set out in paragraph 4 of the Asset Schedule.

Handback Security Bond means the performance bond to be provided to TfNSW under Clause 7.1(b) and any performance bond replacing it.

Handover Information has the meaning given in Clause 47.3.

Headway means the elapsed time that separates two adjacent vehicles travelling the same Route or group of Routes.

Headway Management Solution means the systems and equipment, resources and personnel solution developed to manage Headway Trips, including system engineering and transition management, upfront mobilisation and training on the technological solution, in-Bus and operations control centre hardware, software licencing and software maintenance.

Headway Management Solution Technical Specification means the specification titled *LIO AVLC Headway Management Proposal* as set out in Schedule 17.

Headway Services has the meaning given in the KPI Schedule.

Headway Trips means Trips that are not scheduled to a public timetable.

Heavy Vehicle National Law means:

- (a) the Heavy Vehicle National Law set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as it applies through being adopted in other States and Territories, including through, inter alia, the *Heavy Vehicle National Law* (NSW) within the

meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW), as amended, reproduced or updated from time to time; and

- (b) regulations in force under the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as they apply through being adopted in other States or Territories, including through, inter alia, *Heavy Vehicle National Law* (NSW), as amended, reproduced or updated from time to time.

Incident means any unplanned event which impacts on a Service and causes, or may cause, an interruption to a Service operating in accordance with the Timetable or the Dedicated School Services Timetable.

Incomplete Trip has the meaning given in the KPI Schedule.

Indemnified Person has the meaning given in Clause 39.1(a).

Input Tax Credit has the meaning given by the GST Act and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but which another member of the same GST Group is entitled to under the GST Act.

In-Service Hours has the meaning given in the KPI Schedule.

Insolvency Event means when the Operator or the Parent Company:

- (a) stops or suspends payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Act;
- (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertakings;
- (g) has an application or order made or a resolution passed for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them;
- (h) has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings and that enforcement, distress, execution or similar process is not set aside within five Business Days; or
- (i) any event occurs which, under the Laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Intellectual Property means all industrial and intellectual property rights whether created before or after the date of this Contract, whether recognised in Australia or overseas, whether or not they are registered or capable of being registered and includes copyright, patents, trade marks, design, semi-conductor or circuit layout rights, plant breeder's rights, trade secrets, know how, trade, business or company names, or other proprietary rights, or any rights to registration of such rights.

Interim Operator means any party appointed by TfNSW to perform the Operator Activities on a temporary or interim basis after the Termination Date.

Issuer means:

- (a) an authorised deposit-taking institution, as defined in section 5(1) of the *Banking Act 1959* (Cth); or
- (b) any other person whose usual business includes the issue of performance bonds or insurance bonds (as the case may be) and who is approved by TfNSW.

Key Contract means an agreement or arrangement (whether legally enforceable or not) in respect of:

- (a) maintenance or refurbishment of any State Asset;
- (b) contracts for any work to be undertaken by the Operator at a Contract Depot;
- (c) labour hire for Drivers; or
- (d) labour hire contracts for any maintenance staff,

or that is otherwise designated as a Key Contract under Clause 33.2(b).

Key Contract Security Document means:

- (a) any document that TfNSW requires (in its absolute discretion) to be provided or entered into by any Key Contractor and any other parties in connection with a Key Contract; and
 - (b) any ancillary document required by the terms of a document referred to in paragraph (a),
- in each case in a form and substance satisfactory to TfNSW and executed by the Key Contractor and all relevant counterparties.

Key Contractor means any party to a Key Contract that is not TfNSW or the Operator.

Key Performance Indicators means the indicators specified in the KPI Schedule, as amended from time to time.

Key Personnel has the meaning given in Clause 31.2(a).

KPI Credit has the meaning given in the KPI Schedule.

KPI Debit has the meaning given in the KPI Schedule.

KPI Default has the meaning given in the KPI Schedule.

KPI Event has the meaning given in Clause 44.1(a)(ii).

KPI Relief has the meaning given in the KPI Schedule.

KPI Schedule means Schedule 4 to this Contract.

Land Tax means land tax payable in accordance with the provisions of the Land Tax Legislation.

Land Tax Legislation means each of the *Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW).

Late has the meaning given in the KPI Schedule.

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

and includes the general law.

Leichardt Depot means the Contract Depot identified as the Leichardt Depot in Annexure 2 to the Asset Schedule.

Licensed Area has the meaning given in Clause 21.1(a) and includes the Licensed Infrastructure located on the relevant Licensed Area.

Licensed Infrastructure means the infrastructure affixed to the Licensed Area.

Licensed Area Handover Date means 1 July 2018.

Loss means any loss, damage, liability, action, suit, Claim, demand, charge, cost or expense of any kind (including reasonable legal costs and expenses on a full indemnity basis), including Consequential or Indirect Loss.

Maintenance Works Program means the works program required under the paragraph 3 of the Asset Schedule defining the Asset Management Activities required in the following two years.

Market Process Information means the information described in the Market Process Schedule.

Market Process Schedule means Schedule 10 to this Contract.

Material includes documents, equipment, designs, templates, computer programs, software and applications, information and data created or stored by any means.

Modification means any change to the requirements of this Contract for:

- (a) the Assets; or
- (b) the Operator Activities (or the sequencing or timing of them),
including any addition, extension, reduction, increase, decrease or omission to or from them and includes:
- (c) a Modification that requires the Operator to operate and or maintain additional bus depots;
- (d) a Modification that TfNSW is permitted to direct in accordance with the terms of this Contract,

but does not include a Service Variation.

Modification Approval means a notice titled 'Modification Approval' issued by TfNSW under Clause 42.3(b)(ii)(A).

Modification Impact Proposal means a proposal prepared by the Operator in respect of a Modification which must set out detailed particulars of the Operator's view on:

- (a) the Net Financial Impact of the proposed Modification;
- (b) the time within which the proposed Modification will be implemented;
- (c) any Authorisations required to implement the proposed Modification and the effect of the proposed Modification on any existing Authorisations;
- (d) the effect which the proposed Modification will have on the Operator's ability to satisfy its obligations under this Contract;
- (e) any relief which is required from the Operator's obligation under this Contact to ensure that it is left in a no better or no worse position than it would be in if the Modification were not implemented; and
- (f) any other information required by TfNSW in a Modification Request.

Modification Order means a notice titled 'Modification Order' issued by TfNSW under Clause 42.2 or Clause 42.3 for a Modification.

Modification Request means a notice titled 'Modification Request' issued by TfNSW under Clause 42.1(a).

Monthly Contract Price has the meaning given in the Payment Schedule.

Monthly Commercial Forum has the meaning given in the Governance Schedule.

Monthly Service Delivery Forum has the meaning given in the Governance Schedule.

Moral Rights means those rights recognised as belonging to the author or creator of Intellectual Property and includes those rights recognised under Part IX of the *Copyright Act 1968* (Cth), including the right of attribution, the right against false attribution and the right of integrity of creatorship.

NCE Cure Plan has the meaning given in Clause 43.2(c)(ii).

Net Financial Impact means the net financial impact of a NFI Event calculated in accordance with Schedule 12.

New Bus means:

- (a) any Operator New Bus; and

- (b) any Bus which is acquired by TfNSW or its nominee and which is leased to the Operator under the State Bus Lease or otherwise during the Term.

New Contract Material means any Material brought into existence as part of, or for the purposes of, performing this Contract and includes the Disclosed Information and the Timetables and Dedicated Bus Services Timetables (whether prepared before or after the commencement of this Contract) and all data provided by the Operator via the OSD or DCIS.

New Depot means a depot or other bus parking or stabling facility that is purchased, leased or licensed or otherwise accessed or used by the Operator with the approval of TfNSW in accordance with Clause 23.6.

NFI Event has the meaning given in Schedule 12.

Nominated Assets has the meaning given in Clause 49.2(a).

Non-Compliance Event means an event identified as such in Clause 43.1.

Non-Compliance Notice has the meaning given in Clause 43.2.

On Demand Service Options means the options for On Demand Services set out in Part 6 of the Service Level Schedule.

On Demand Service Option Commencement Date has the meaning given in Clause 16.3(a).

On Demand Service Option Notice has the meaning given in Clause 16.3(a).

On Demand Services means the non routine Bus services described in the Service Level Schedule as amended from time to time in accordance with this Contract.

On Time has the meaning given in the KPI Schedule.

Opal Card means a Smartcard for travel within NSW that has been or may be issued by TfNSW for the Opal Ticketing System.

OpalPay means the system comprising the Opal Ticketing System, the OpalPay API, the POS Device App and the POS Device.

OpalPay API means the OpalPay application programming interface (API) developed by TfNSW to permit the POS Devices to connect to the Opal Card system.

Opal Ticketing System means the electronic ticketing system for the Greater Sydney Region, known as Opal.

Operator Activities means all things and tasks which the Operator is, or may be, required to carry out or do to comply with its obligations under the Transaction Documents, including the Services.

Operator Asset means any asset used by the Operator to conduct the Operator Activities including any systems and equipment used by the Operator to provide the Headway Management Solution, Operator New Buses and Key Contracts but excluding:

- (a) the State Assets;
- (b) any sum placed on deposit with a bank or other financial institution by the Operator; and
- (c) an asset which TfNSW notifies the Operator is not to be an Operator Asset for the purposes of this Contract.

For the avoidance of doubt, assets includes rights under leases, licences and other contracts.

Operator Bus Lease means a lease or other arrangement under which an Operator New Bus is leased to the Operator by any party other than TfNSW or a TfNSW nominee (and which would be classified as a 'finance lease' in accordance with the Accounting Standards).

Operator Bus Lease Direct Agreement has the meaning given in Clause 26.3(a).

Operator Communications and Marketing Plan means the marketing plan prepared by the Operator in accordance with Clause 11.3.

Operator Financial Arrangement means any financing arrangement for the purchase of an Operator Asset including a finance lease, hire purchase or chattel mortgage by the Operator from

a financier for use in the provision of the Operator Activities but excluding any arrangement that is in the nature of an operating lease, as determined under the Accounting Standards.

Operator New Bus means a Bus that is purchased, leased, licensed or otherwise accessed or used by the Operator, with the approval of TfNSW, in accordance with Clause 23 during the Term (but does not include a Bus that is leased to the Operator by TfNSW or any nominee of TfNSW under the State Bus Lease or otherwise).

Operator Novation Bus means an Operator New Bus that is subject to an Operator Bus Lease.

Operator Representative has the meaning given in Clause 2(b).

Operator Sale Bus means an Operator New Bus that is owned by the Operator.

Operator Schedules means the Trip linking or Driver instructions put in place by the Operator for the efficient and effective performance of the Services.

Operator Stakeholder Engagement Plan means the stakeholder engagement plan prepared by the Operator in accordance with Clause 11.10 (and which in the first Contract Year is the plan set out in Schedule 14).

Operator's Authorised Officers a member of the Staff appointed as an Authorised Officer.

Operator's Associates means:

- (a) any contractor, consultant or adviser of or to the Operator including any person engaged by the Operator for the purpose of enabling the Operator to comply with its obligations under the Transaction Documents;
- (b) the Parent Company;
- (c) any Related Body Corporate of the Operator; and
- (d) any director, officer, employee or agent of the Operator or any of the persons referred to in paragraphs (a) to (c) above.

OSD means the operational and spatial database established by TfNSW as the centralised repository of public transport services data provided by operators, or any successor system.

Party means TfNSW or the Operator, as the context requires.

Parent Company means Transit Systems Pty Ltd ABN 34 135 200 609.

Payment Schedule means Schedule 3 to this Contract.

Payments means those payments set out in the Payment Schedule.

Performance Benchmarks has the meaning given in Clause 6.3.

Performance Bond means:

- (a) a General Performance Bond; or
- (b) the Handback Security Bond.

Permitted Security Interest means a lien or charge:

- (a) which arises by operation of Law in the ordinary course of day-to-day trading;
- (b) which does not secure Financial Indebtedness;
- (c) under which the indebtedness secured by it is paid when due or is being contested in good faith;
- (d) a Security Interest created or outstanding in respect of an Operator New Bus with the prior written consent of TfNSW, which consent will not be unreasonably withheld where the holder of that Security Interest enters into a Financer Direct Deed if required by TfNSW.

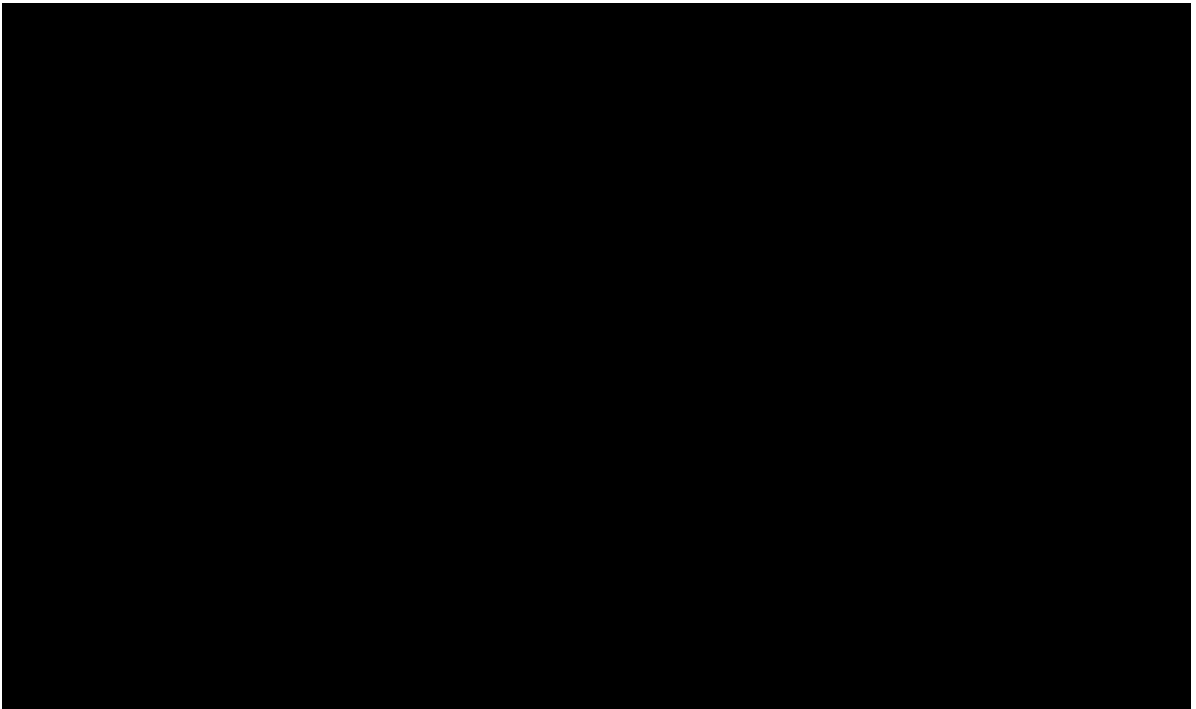
Personal Information has the meaning given in the Privacy Laws.

Pilot Assets has the meaning given in Clause 24.1(a)(i)(B)

Pilot Project means the pilot project for the trial of electric Buses the requirements for which are set out in Schedule 13.

Pilot Project Data has the meaning given in Clause 24.2(a)(i).

Planned Service Commencement Date means 1 July 2018.



Pollution means water, air, noise or land pollution.

POS Device means the hardware on which the POS Device App can be installed.

POS Device App means the application and associated network infrastructure developed or utilised by the Operator to connect with the OpalPay API.

Power means any power (including to make a determination), right, authority, discretion or remedy, whether express or implied.

PPS Law means the *Personal Property Securities Act 2009* (Cth), the regulations made under that Act and any amendment made at any time to any other Laws as a consequence of that Act.

Pre-existing Contamination means:

- (a) any Contamination existing in, on or under or emanated or emanating from the Existing Depots or Existing Facilities (or the land adjoining the Existing Depots or Existing Facilities) at the Service Commencement Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the Service Commencement Date; and
- (b) any Contamination existing in, on or under or emanated or emanating from the Licensed Areas (or the land adjoining the Licensed Areas) at the applicable Licensed Area Handover Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the applicable Licensed Area Handover Date,

except to the extent the release, leaching or deterioration arises by reason of the act or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the Existing Depots, Existing Facilities or Licensed Areas (**State Property**) from the Operator or enjoying the use or occupation of the State Property with the consent of the Operator.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth).

Project Specific Change in Law means a Change in Law:

- (a) the terms of which apply directly and exclusively to the Operator, and not to any other person;
- (b) relating specifically to bus safety.

Proposal means the proposal submitted by the Operator to TfNSW in response to the Request For Tender for Region 6 Bus Services issued by TfNSW on 18 July 2017 (RFT Reference Number ISD-17-6551).

PT Act 1990 means the *Passenger Transport Act 1990* (NSW).

PT Act 2014 means the *Passenger Transport Act 2014* (NSW).

PT Regulation 2007 means the *Passenger Transport Regulation 2007* (NSW).

Public Holiday means a day that is appointed as a public holiday in the State.

Public Passenger Service has the meaning given to the term 'public passenger service' in section 5 of the PT Act 2014 (which, for the avoidance of doubt, includes Dedicated School Services).

Published Timetabled Trips has the meaning given in the KPI Schedule.

Quarter means any calendar quarter (or part of a calendar quarter) commencing on 1 January, 1 April, 1 July or 1 October in any year.

Quarterly Executive Forum has the meaning given in the Governance Schedule.

Rates means all rates, taxes or charges or other amounts which any Governmental Agency levies by reference to the Contract Depots, but excluding any Land Tax.

Related Body Corporate has the same meaning as in section 50 of the Corporations Act and in relation to the Operator includes the Parent Company..

Related Entity has the meaning given in the Corporations Act.

Related Party Arrangement has the meaning set out in Clause 56.2(a).

Relevant Amount has the meaning set out in Clause 7.5(f)(iii).

Relief Event means, in respect of the Operator:

- (a) TfNSW fails to give the Operator access to any State Asset under a State Asset Access Agreement;
 - (b) a Project Specific Change in Law; or
- except to the extent that the event (or its effects):
- (c) occurs or arises as a direct or indirect result of any act or omission of the Operator or the Operator's Associates;
 - (d) occurs or arises as a direct or indirect result of a failure by the Operator to comply with its obligations under the Transaction Documents;
 - (e) occurs or arises as a direct or indirect result of any breach of the Transaction Documents by the Operator; or
 - (f) is, or ought reasonably to have been, within the control of the Operator or the Operator's Associates,

and additionally includes, in respect of each of TfNSW and the Operator, a Force Majeure Event.

Reporting Body means a Governmental Agency, including a self regulatory organisation established under statute or a stock exchange.

Reporting Schedule means Schedule 5 to this Contract.

Required Rating means a credit rating of at least A (Standard & Poor's) or A2 (Moody's).

Road has the meaning given to that term in the *Roads Act 1993* (NSW).

Roads and Maritime Services or **RMS** means Roads and Maritime Services being a corporation constituted under section 46 of the TA Act.

Roads Authority has the meaning given to that term in the *Roads Act 1993* (NSW).

Road-Related Areas has the same meaning given to that term in the *Roads Act 1993* (NSW).

Route means a bus route specified or described in the Service Level Schedule and any revisions to that route, approved by TfNSW in accordance with Clause 18.

Route Control Strategy has the meaning given in the Item 3.18 of the Services Schedule.

Safety Management System means a 'safety management system' as required by section 9D of the PT Act 1990.

Security Interest means:

- (a) an interest which provides security for, or protects against default by, a person for the payment or satisfaction of a debt, obligation or liability including a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance or hypothecation (including a retention of title other than in the ordinary course of day to day trading and a deposit of money by way of security);
- (b) a security interest under the PPS Law; and
- (c) an agreement to create or give any arrangement referred to in paragraphs (a) or (b) of this definition.

Service Commencement Date means 12.01 am on the date set out in the Certificate of Service Commencement.

Service Desk means a telephone service to respond to, or coordinate a response to, any customer complaints and Incidents.

Service Level Schedule means Schedule 2 to this Contract, as amended by TfNSW from time to time.

Service Variation means a variation to the Contract Service Levels, Timetables or Dedicated School Services Timetables in each case that requires:

- (a) a temporary or continuing change in the nature, scope or level of the Services (including the removal of a Trip);
- (b) a temporary or continuing variation to a Route (including the creation of a new Bus Route or the removal of an existing Route); or
- (c) a temporary or continuing variation to the Operator Schedules.

Service Variation Notice means a notice issued in accordance with Clause 18(a).

Services means the Bus Services, the Dedicated School Services and the On Demand Services (as applicable).

Services Schedule means Schedule 1 to this Contract.

Smartcard has the meaning given in the PT Act 1990.

Special Event Services means services provided in response to a temporary Service Variation requested by TfNSW to transport customers to an event, such as an event of a sporting, cultural or community nature.

SSTS means the School Student Transport Scheme, being a scheme administered by TfNSW providing for free travel for school students.

STA Residual Furniture and Tools means all items of furniture, equipment, tools and consumables left by STA at the Existing Depots or Existing Facilities at the Service Commencement Date.

Staff means all persons whether officers, employees, agents or contractors of the Operator or the Operator's Associates engaged in or in connection with the provision of Operator Activities.

State means the State of New South Wales.

State Asset Access Agreements means:

- (a) the State Bus Lease;
- (b) the State Bus Depot Leases;
- (c) the State Existing Facility Leases; and
- (d) any other agreement or document entered into between TfNSW (or TfNSW's nominees) and the Operator in relation to access to and use of assets required to perform the Operator Activities.

State Assets means:

- (a) the Existing Buses;
- (b) any Bus which is acquired by TfNSW or its nominee and which is leased to the Operator under the State Bus Lease or otherwise during the Term;
- (c) the Existing Depots;
- (d) the Existing Facilities;
- (e) the Licensed Areas; and
- (f) the Transit Stops.

State Bus Depot Leases means each lease for the parts of the Existing Depots set out in Annexure 2 of the Asset Schedule in substantially the form set out in Annexure 10 of the Asset Schedule.

State Bus Lease means a lease in respect of the Contract Buses in substantially the form set out in Annexure 9 of the Asset Schedule.

State Existing Facility Lease means each lease for the Existing Facilities set out in Annexure 2 of the Asset Schedule in substantially the form set out in Annexure 10 of the Asset Schedule with such amendments as are necessary to reflect that the premises the subject of the lease are an Existing Facility and not an Existing Depot.

State Transit Authority or **STA** has the meaning given in section 3 of the TA Act.

Step in Costs means the following costs, charges and expenses:

- (a) the costs, charges and expenses of any Step in Party appointed by TfNSW to carry out any or all of the Operator Activities under this Contract or any other Transaction Document; and
- (b) TfNSW's costs, charges and expenses incurred in engaging a Step in Party including any transaction costs and the costs of any consultants and advisers engaged in connection with the appointment of the Step in Party.

Step in Event has the meaning given in Clause 44.1(a).

Step in Party means an agent, attorney or nominee of TfNSW, and may be more than one person appointed to act jointly.

Step in Powers has the meaning given in Clause 44.2.

Step in Right has the meaning given in Clause 44.1(b).

Subcontractor's Statement means a form prepared for the purposes of section 175B of the *Workers Compensation Act 1987* (NSW), Part 5 of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW).

Subsequent Contamination means:

- (a) any Contamination existing in, on, under or emanated or emanating from an Existing Depot or Existing Facility (or the land adjoining an Existing Depot or Existing Facility), that was not in existence at the Service Commencement Date;
- (b) any Contamination existing in, on, under or emanated or emanating from the Licensed Areas (or the land adjoining the Licensed Areas) that was not in existence at the applicable Licensed Area Handover Date to the extent caused or contributed to by an act or omission of the Operator or the Operator's Associates;
- (c) any Contamination existing in, on or under or emanated or emanating from a Transit Stop to the extent caused or contributed to by an act or omission of the Operator or the Operator's Associates;
- (d) any release, leaching or deterioration of any Pre-existing Contamination which arises by reason of the acts or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the Existing Depots, Existing Facilities or Licensed Areas (**State Property**) from the Operator or enjoying the use or occupation of the State Property with the consent of the Operator;

- (e) any Contamination which migrates:
 - (i) to the State Property or the land adjoining any State Property as a result of an act or omission of the Operator provided that the Operator was aware, or ought reasonably to have been aware, of such Contamination; or
 - (ii) from the State Property or the land adjoining any State Property as a result of an act or omission of the Operator; or
- (f) any Contamination which otherwise arises out of or in connection with the Operator Activities.

Subsidiary has the meaning given in the Corporations Act.

Successor Operator means an operator succeeding the Operator in the operation of all or part of the Operator Activities after the Termination Date (but does not include an Interim Operator).

TA Act means the *Transport Administration Act 1988* (NSW).

Tax means any present or future tax, levy, impost, duty, deduction, fee, charge, compulsory loan or withholding plus any interest, penalty, charge, fees or other amounts payable in respect thereof.

Tax Invoice has the meaning given by the GST Act.

Temporary Measures means temporary measures taken to alleviate the impact or effect of a Non-Compliance Event pending a permanent cure being achieved.

Term means the period determined under Clause 6.

Termination Date means:

- (a) the effective date of termination of this Contract (including where applicable the date set out in a Termination Notice); or
- (b) the Expiry Date,

whichever is applicable.

Termination Event means any of the events listed in Clause 45.1.

Termination Notice means a notice issued by TfNSW terminating this Contract including a notice issued in accordance with:

- (a) Clause 40.5(a);
- (b) Clause 45.2(a); or
- (c) Clause 45.3(a).

TfNSW Advertising Assets has the meaning given in Clause 52.2.

TfNSW Authorised Officer means a member of TfNSW staff appointed as an Authorised Officer.

TfNSW Transport Service Provider Asset Management Plan Standard means TfNSW's information and analysis requirements for service provider asset management plans as issued and amended by TfNSW from time to time, which as the date of this Contract is the document titled *Transport Service Provider Asset Management Plan Standard* dated 1 December 2016.

TfNSW Brand has the meaning given in Clause 51.4(l)(ii).

TfNSW Brand Style Guide means a rule book that specifies the requirements for the manner in which all brand devices, logos, strap-lines, positioning statements and other elements of visual representation of all relevant brands will be applied to livery, equipment, uniforms and printed, electronic, video and other visual media, covering all brands including the TfNSW Brands and the Operator's brand, which as the date of this Contract is the document titled *TfNSW Brand Style Guide* dated 29 June 2017 as developed, amended and updated in accordance with Clause 52.1(a).

TfNSW Bus Advertising Guidelines means the guidelines for advertising on Contract Buses as issued and amended by TfNSW from time to time, which as the date of this Contract are set out in the document titled *Bus – Advertising Guidelines* dated April 2017.

TfNSW Customer Complaints Policy means the policy standard and guidelines for the management of customer complaints and feedback as issued and as amended by TfNSW from time to time, which as the date of this Contract are set out in the document titled *Customer Complaints and Feedback Policy* dated 30 March 2015 and the document titled *Customer Complaints and Feedback Management Standard* dated 30 March 2015.

TfNSW Customer Feedback System means the cloud based customer complaint and feedback case management system operated by TfNSW using the desktop solution licensed by TfNSW from salesforce.com, inc. that has been configured to meet TfNSW requirements or such other system as is used by TfNSW from time to time.

TfNSW Headway Systems and Equipment has the meaning given in Clause 17.4(c).

TfNSW Marks has the meaning given in Clause 51.4(l)(iii).

TfNSW Representative has the meaning given in Clause 2(a).

TfNSW Systems and Equipment means systems and equipment installed for or on behalf of TfNSW on any Asset at any time before or during the Term including TfNSW Headway Systems and Equipment and Ticketing Equipment.

TfNSW's Associates means any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of TfNSW but does not include the Operator or the Operator's Associates.

Third Party Contract Material means any Material created by or owned by a third party which is or becomes incorporated in the Existing Contract Material or New Contract Material or is otherwise necessary or required for the purposes of performing this Contract or accessing or using the Existing Contract Material or New Contract Material.

Ticket means any entitlement to travel on one or more Services, as evidenced by a paper, electronic or magnetic ticket (including a Smartcard), coupon, card or other instrument.

Ticketing Equipment means equipment used to issue Tickets and record and validate Tickets, including any related or supporting equipment and which includes the Opal Ticketing System.

Timetables means each and every timetable for the Services contained in the Service Level Schedule as amended from time to time in accordance with this Contract and includes the Bus Timetable but does not include the Dedicated School Services Timetable.

Transaction Document means:

- (a) this Contract;
- (b) the State Asset Access Agreements;
- (c) any Key Contract Security Documents, Operator Bus Lease Direct Agreements or Financier Direct Agreements to which the Operator is a party;
- (d) the Performance Bonds;
- (e) the Deed of Guarantee and Indemnity;
- (f) the Transitional Agreement;
- (g) any Transfer Agreement; and
- (h) any other document or agreement that TfNSW and the Operator agree is to be a Transaction Document for the purpose of this Contract.

Transfer means where a fare-paying passenger on a Trip provided by the Operator under this Contract, as part of a continuous journey, alights from a public transport vehicle and boards another connecting public transport vehicle within the timetabled Headway of the connecting Trip, allowing for any reasonable service delay.

Transfer Agreement has the meaning given in Clause 49.2(b).

Transfer Agreement Date means:

- (a) if this Contract terminates by expiry, the date falling 30 Business Days prior to the Expiry Date or such later date as TfNSW and the Operator may agree; or
- (b) if this Contract terminates other than by expiry, the date notified by TfNSW to the Operator being no later than the date falling 25 Business Days after the date of termination.

Transfer Date means:

- (a) if this Contract terminates by expiry, the Expiry Date, or
- (b) if this Contract terminates other than by expiry, the date nominated in writing by TfNSW falling no later than 45 Business Days after the date of termination.

Transfer Notice has the meaning given in Clause 49.2(a).

Transfer Time means 12.01 am on the Transfer Date.

Transferee has the meaning given in Clause 49.2(a).

Transit Stop Signage means all Route, Timetable (and Dedicated School Services Timetable) and related signage at a Transit Stop, including the pole to which the signage is affixed and plinths which are installed as directed by TfNSW.

Transit Stops means all designated stops or stations along a Bus Route for Buses to set down or pick up passengers.

Transitional Agreement means the document titled *Transitional Agreement – R6BSP Services* between the Transport Secretary and the Operator dated on or about the date of this Contract.

Transition In Employees means the 'Transferring Employees' as defined in the Transitional Agreement.

Transition In Plan means the Operator's transition in plan containing (as a minimum) the matters required by Schedule 9 (and any other matters reasonably required by TfNSW).

Transition Milestone means each milestone identified in the Transition Schedule.

Transition Milestone Date means the date for completion of a Transition Milestone as identified in the Transition Schedule.

Transition Period means the period commencing on the date of this Contract and ending on the Service Commencement Date.

Transition Schedule means Schedule 9 to this Contract.

Transport Infoline means the centralised New South Wales transport information service that communicates and receives data and information in relation to public transport services through the 131500 transport infoline (or any replacement service that serves a similar function), call centre, website, apps and other channels provided by TfNSW to customers for such purposes including transportnsw.info and the Feedback2Go app).

Transport Laws has the meaning given in Clause 35.1.

Transport Secretary means the Secretary of the Department of Transport who, pursuant to section 68C of the TA Act, exercises, on behalf of the Government of New South Wales, the employer functions of the Government in relation to the staff employed in the Transport Service.

Transport Service means the Transport Service of New South Wales as defined by section 68B of the TA Act.

Trigger Date means, in relation to a Performance Bond procured under Clause 7, the date falling six months prior to the expiry date of that Performance Bond.

Trip means any single, one direction service which forms part of the Services.

TSE Rotable Asset means a removable component or inventory item forming part of the TfNSW Systems and Equipment that can be repeatedly and economically restored to a fully serviceable condition.

Utility Service means any service and includes any utility, facility or item of infrastructure for the provision of water, electricity, gas, telephone, drainage (including piped, open or subsoil drains), sewerage, industrial waste disposal, lighting, closed circuit television and electronic communications services.

Vehicle Termination Payment means the amount payable for any Operator New Bus or Operator Bus Lease in respect of an Operator New Bus as calculated under paragraph 4.7 of the Payment Schedule.

Voting Power has the meaning given in section 610 of the Corporations Act.

Wayfinding Guidance Documents means TfNSW's specifications for new wayfinding signage including the design and installation standards for new signage, the naming and numbering conventions for stops and other locations and documentation and other related requirements as set out in the Wayfinding Strategy and Kit of Parts as issued and amended by TfNSW from time to time.

Wayfinding Signage Upgrade has the meaning given in Clause 11.6.

Wayfinding Signage Upgrade Program means the program developed by the Operator in accordance with Clause 11.7 for the removal of existing signage and installation of wayfinding signage upgrades to all Transit Stops in the Contract Area in accordance with the Wayfinding Guidance Documents.

Wayfinding Strategy and Kit of Parts means the planning guide and kit of parts developed by TfNSW from time to time regarding the correct use and placement of wayfinding signage across the New South Wales transport network.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Law means:

- (a) those Acts, regulations, by-laws, orders, awards, proclamations, standards and codes relating to work health and safety (including the WHS Act and WHS Regulation) with respect to the Operator Activities;
- (b) the requirements of any Governmental Agency relating to work health and safety with respect to the Operator Activities; and
- (c) any directions or notices relating to work health and safety issued by any relevant Governmental Agency or any code of practice or compliance code appropriate or relevant to the Operator Activities.

WHS Regulation means the *Work Health and Safety Regulation 2011* (NSW).

Worker has the meaning given to that term in section 7 of the WHS Act.

Workplace has the meaning given to that term in section 8 of the WHS Act.

WSUP Works has the meaning given in Clause 11.8.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) Where TfNSW has a Power, or where the term 'may' is used in the context of a Power exercisable by TfNSW:
 - (i) TfNSW can exercise that Power in its absolute and unfettered discretion;
 - (ii) TfNSW has no obligation to the Operator or any other party to exercise that Power, or to consider whether to exercise that Power; and
 - (iii) no right, interest or expectation of any kind is created in the Operator or any other person in respect of that Power or its exercise or otherwise.
- (b) An acknowledgement by the Operator under any Transaction Document does not of itself create legal rights or obligations on the part of TfNSW.
- (c) The singular includes the plural and conversely.
- (d) A gender includes all genders.
- (e) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (f) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (g) A reference to a Clause, Part, Schedule, Attachment or Annexure is a reference to a clause of, part of, or a schedule, attachment or annexure to, this Contract.

- (h) A reference to an agreement or document (including a reference to this Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other agreement or document.
- (i) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form.
- (j) A reference to a party to this Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (k) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (l) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (m) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (n) A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from, the property or asset.
- (o) A reference to any Governmental Agency or professional body includes the successors of that Governmental Agency or professional body.
- (p) A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- (q) A reference to a month or to a year is to a calendar month or a calendar year.
- (r) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (s) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions. A reference to the words 'include', 'includes' and 'including' means 'including without limitation'.
- (t) Nothing in this Contract is to be interpreted against a Party solely on the ground that the Party put forward this Contract or any part of it.
- (u) Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the reference date) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month.
- (v) The meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities.
- (w) Where this Contract provides that the Operator is not entitled to make any Claim against TfNSW, or the Operator releases TfNSW from any Claim, or the Operator has no Claim against TfNSW or similar words are used, the Operator is deemed to have released and forever discharged TfNSW, TfNSW's Associates, STA, RMS, any Roads Authority, the Minister for Transport and the State (**Released Parties**) from all Claims which the Operator has or at any time might have or, but for the release, might have had in connection with the relevant subject matter and the Released Parties have no liability to the Operator whatsoever in connection with the relevant subject matter. TfNSW holds the benefit of this release on trust for each of the Released Parties.
- (x) Where a Power is conferred on TfNSW under any Transaction Document, that Power is in addition to, and not in substitution of, any other Power conferred on TfNSW at Law or under another Transaction Document.

- (y) TfNSW may rely on any waiver by the Operator of any Powers, including statutory Powers.
- (z) Any act or omission by or on behalf of the Operator's Associates or the Staff in relation to the Transaction Documents is deemed to be an act or omission by the Operator.
- (aa) Where:
 - (i) an obligation has been imposed on an Operator's Associate under a Transaction Document;
 - (ii) an obligation has been imposed on the Operator to procure or ensure that an Operator's Associate complies with the requirements of a Transaction Document; or
 - (iii) in order to discharge its obligations under a Transaction Document the Operator is required to, or would need to, ensure or procure that an Operator's Associate complies with that obligation,the Operator must ensure or procure that the Operator's Associate complies with that obligation.

1.3 Precedence of documents

- (a) If the Operator identifies an inconsistency, ambiguity or discrepancy within this Contract, then the Operator must notify TfNSW of the inconsistency, ambiguity or discrepancy as soon as practicable and, in any case not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (b) Within 5 Business Days of receipt of a notice issued under Clause 1.3(a), TfNSW will direct the Operator as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice given under Clause 1.3(a) which direction may require the Operator to comply with the greater, more onerous to the Operator or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by TfNSW.

1.4 Consents or approvals

Unless expressly provided otherwise, if the doing of any act, matter or thing under this Contract is dependent on the consent or approval of TfNSW or is within the discretion of TfNSW, including where it is expressed that TfNSW may do something or omit to do something, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by TfNSW as the case may be in its absolute discretion. Any consent or approval by TfNSW does not relieve the Operator from its obligations under this Contract nor constitute evidence that the act, matter or thing has been completed in accordance with this Contract.

1.5 TfNSW's capacity

TfNSW enters into this Contract on behalf of the State pursuant to the PT Act 2014 and an obligation or Power of TfNSW under this Contract is an obligation or Power of TfNSW in that capacity.

1.6 No implied duty of good faith

Nothing in, or contemplated by, this Contract will be construed or interpreted as imposing any general duty of good faith on TfNSW, other than the obligations (if any) expressly stated to be assumed by TfNSW under this Contract on a good faith basis.

1.7 Reasonable endeavours

Without limiting Clause 1.9, if TfNSW is required under the terms of this Contract to exercise best or reasonable endeavours or good faith, the Operator acknowledges that:

- (a) TfNSW will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities; and
- (b) TfNSW cannot guarantee the relevant outcome.

1.8 Delegation

TfNSW may at any time delegate, or enter into any subcontractor or agency agreements in relation to, any of TfNSW's Powers, functions or responsibilities.

1.9 No fetter on TfNSW's powers

- (a) The Transaction Documents will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its statutory functions or Powers pursuant to any Law.
- (b) The Operator acknowledges that, without limiting Clause 1.9(a):
 - (i) anything TfNSW does, fails to do, or purports to do, pursuant to its functions and powers under any Law will be deemed not to be an act or omission by TfNSW (including a breach of contract) under or in connection with the Transaction Documents and will not entitle the Operator to make any Claim against TfNSW; and
 - (ii) nothing in a Transaction Document will in any way:
 - (A) interfere with or influence the exercise by any person of a statutory Power;
 - (B) require TfNSW to exercise a Power or otherwise act in a manner that promotes the objectives and expected outcomes of the Transaction Documents if TfNSW regards that exercise as not in the public interest;
 - (C) require TfNSW to develop policy or legislate by reference only or predominantly to the interests of the Transaction Documents;
 - (D) require TfNSW to procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Transaction Documents; or
 - (E) act in any other way that TfNSW regards as not in the public interest.
- (c) Clauses 1.9(a) and 1.9(b) do not limit any liability which TfNSW would have had to the Operator under any Transaction Document as a result of a breach by TfNSW of a term of any Transaction Document but for Clauses 1.9(a) and 1.9(b).
- (d) The Operator acknowledges that:
 - (i) there are many Governmental Agencies (other than TfNSW) with jurisdiction over aspects of the Operator Activities, parts of the State Assets and other areas affected by the Operator Activities;
 - (ii) such Governmental Agencies may from time to time exercise their statutory functions and Powers in such a way as to disrupt, interfere with or otherwise affect the Operator Activities; and
 - (iii) except to the extent expressly stated otherwise in this Contract, the Operator bears the risk of all occurrences of the kind referred to in Clause 1.9(d)(ii) and will not be entitled to make any Claim against TfNSW arising out of or in any way in connection with such occurrences.

1.10 Transfer of functions

- (a) The Operator acknowledges that:
 - (i) TfNSW may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the Powers, functions, assets, liabilities or responsibilities of TfNSW may be transferred to or vested in another entity;
 - (ii) if TfNSW is reconstituted, renamed, dissolved, replaced or restructured or if some or all of TfNSW's Powers, functions, assets, liabilities or responsibilities are transferred to or vested in another entity, references in the Transaction Documents to TfNSW must, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those Powers, functions, assets, liabilities or responsibilities; and

- (iii) TfNSW may, or may be required to (including as a result of changes to New South Wales Government policy or directions) acquire or dispose of, any property or assets forming part of TfNSW's assets at its absolute discretion.
- (b) The Operator acknowledges and agrees that it must, to the extent required by TfNSW and without limiting any facilitative legislation, negotiate in good faith any variations required to the Transaction Documents, or any replacement agreement or agreements for the Transaction Documents to give effect to TfNSW being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Operator shall be taken for all purposes to have consented to, and the Operator will have no Claim against TfNSW as a result of, any action, matter or circumstance referred to in, or contemplated by this Clause.
- (d) For the purposes of this Clause 1.10, 'another entity' means a Governmental Agency and may include a privately owned entity to whom Powers, functions, assets, liabilities or responsibilities are transferred pursuant to any Law.

1.11 Effect of certificates issued by TfNSW

The Operator acknowledges and agrees that the issue by TfNSW of a Certificate of Service Commencement is final and binding but does not constitute conclusive evidence that the Operator has performed its obligations in accordance with this Contract.

2. Parties' Representatives

- (a) TfNSW appoints as its representative the person named in Item 1 in Attachment A of the Contract, or such other person as TfNSW may nominate and notify to the Operator in writing from time to time (**TfNSW Representative**).
- (b) The Operator appoints as its representative the person named in Item 2 in Attachment A of the Contract, or such other person as the Operator may nominate and notify to TfNSW in writing from time to time (**Operator Representative**).
- (c) The TfNSW Representative and the Operator Representative will serve as the principal interface between the Parties with respect to all issues arising under the Transaction Documents.

3. Contract Objectives

- (a) The Operator acknowledges that:
 - (i) the primary purpose of this Contract is to ensure that the Services are run by an efficient and experienced public transport operator, which is able to deliver improvements in service delivery and value for money and assist TfNSW in developing longer term service plans; and
 - (ii) TfNSW's principal objectives (**Contract Objectives**) in entering into this Contract are to:
 - (A) provide transport journeys and related customer services that are safe for passengers, Staff and the public;
 - (B) deliver best in class transport services with an experienced, capable and innovative operator that meets contractual targets and enhances the mobility of Sydney's citizens;
 - (C) deliver improvements in customer experience, service delivery and integration of public transport services in Sydney;
 - (D) deliver the New South Wales Government's plans for Sydney's bus and boarder transport services (including on demand services);
 - (E) enhance value for money for TfNSW, including by improving the efficiency of fleet and depot assets;

- (F) maintain and operate contract assets on a whole of life basis using robust and evidence based asset management practices;
 - (G) maintain reliable, timely and transparent reporting and data management in respect of transport services; and
 - (H) employ prudent business management practices to balance financial, environmental and social sustainability outcomes.
- (b) The Operator must perform its obligations under the Transaction Documents having regard to the Contract Objectives.

4. Contract risks

Except to the extent that this Contract expressly provides otherwise, as between TfNSW and the Operator, the Operator must bear all risks and costs, and has no Claim against TfNSW arising out of or in connection with carrying out the Operator Activities or otherwise complying with its obligations under the Transaction Documents.

Part A – Service Commencement and Term

5. Conditions Precedent for commencement of Contract

5.1 Commencement

This Contract (other than Clauses 1, 2, 5, 7, 8, 9, 11.3, 35, 38, 39, 45.5, 50, 51, 53, 54, 55, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69 and 70) does not commence until the conditions precedent set out in Clause 5.2 have been satisfied in accordance with this Clause 5.

5.2 Conditions precedent

The Operator must ensure that the following conditions precedent are fulfilled to TfNSW's satisfaction prior to the Planned Service Commencement Date:

- (a) delivery to TfNSW of the General Performance Bond(s), in accordance with Clause 7.1;
- (b) delivery to TfNSW of the executed Deed of Guarantee and Indemnity in accordance with Clause 8;
- (c) delivery to TfNSW of evidence satisfactory to TfNSW of the due execution of the Deed of Guarantee and Indemnity by each party to it (other than TfNSW) including, if any party is not an Australian entity, a legal opinion in form and substance, and issued by a law firm, acceptable to TfNSW;
- (d) the Operator has obtained approval of the first Operator Communications and Marketing Plan by TfNSW in accordance with Clause 11.3(d);
- (e) delivery to TfNSW of evidence satisfactory to it that the Operator has obtained the insurances required by Clause 38.1;
- (f) deliver to TfNSW of evidence satisfactory to TfNSW that the Operator and the Staff hold the necessary Authorisations to conduct the Service and other related Operator Activities;
- (g) delivery to TfNSW of counterparts of:
 - (i) the State Bus Lease;
 - (ii) the State Bus Depot Leases; and
 - (iii) the State Existing Facility Leases,
 executed by the Operator;
- (h) delivery to TfNSW, if necessary, of evidence of notification under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) from the Australian Treasurer that there is 'no

objection' under the FATA (either unconditionally or on conditions acceptable to TfNSW and the Operator) to all of the 'notifiable actions' and 'significant actions' (as those terms are defined in the FATA) contemplated by or otherwise related to this Contract;

- (i) delivery to TfNSW of evidence satisfactory to TfNSW that the Operator has entered into a CNG Supply Arrangement in accordance with Clause 21.3(c); and
- (j) delivery to TfNSW of the Transitional Agreement executed by the Operator.

5.3 Certificate of Service Commencement

- (a) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions in Clause 5.2 has been satisfied (or waived by TfNSW), TfNSW will issue to the Operator a Certificate of Service Commencement specifying the Service Commencement Date.
- (b) The Service Commencement Date will be a date on or after the Planned Service Commencement Date (unless the Parties agree otherwise).

5.4 Consequences of non-fulfilment of conditions precedent

If the Operator fails to comply with Clause 5.2, TfNSW may terminate this Contract by issuing a notice to the Operator with immediate effect and, subject to Clauses 45.5 and 70, this Contract will be of no further effect and the Operator has no Claim against TfNSW or any of TfNSW's Associates in respect of such termination.

6. Term

6.1 Term

- (a) The Term commences on the Service Commencement Date and continues until the Expiry Date, unless earlier terminated in accordance with this Contract.
- (b) For the avoidance of doubt, the Term is not extended if the Services are not commenced (regardless of the reason) by the Planned Service Commencement Date.

6.2 Performance review

- (a) Not later than the date that is nine months prior to the fifth anniversary of the Planned Service Commencement Date, TfNSW must determine whether the Operator has met the Performance Benchmarks as at the end of the fourth Contract Year and notify the Operator accordingly.
- (b) If TfNSW notifies the Operator under Clause 6.2(a) that the Operator has not met the Performance Benchmarks, TfNSW may, by giving notice to the Operator, terminate this Contract with effect from the later of:
 - (i) the date that is the fifth anniversary of the Planned Service Commencement Date; or
 - (ii) another date nominated by TfNSW in the notice of termination issued under this Clause 6.2(b) which must be no earlier than the date that is the fifth anniversary of the Planned Service Commencement Date and no later than the date that is the sixth anniversary of the Planned Service Commencement Date.
- (c) The Operator has no Claim against TfNSW in relation to the termination of this Contract under Clause 6.2(b).
- (d) Nothing in this Clause in any way limits TfNSW's rights in respect of any breach by the Operator or the Operator's Associates of any Transaction Document including under Clauses 43, 44 and 45 or otherwise at Law.

6.3 Performance Benchmarks

- (a) For the purposes of Clause 6.2, the Operator must achieve the following performance benchmarks at the end of the fourth Contract Year (**Performance Benchmarks**):
 - (i) during the second, third and fourth Contract Years the Operator has not:
 - (A) breached two or more Class 1 Key Performance Indicators, or a Class 1 Key Performance Indicator on more than one occasion during any six month period; or
 - (B) breached three or more Class 1 Key Performance Indicators, or a Class 1 Key Performance Indicator on more than three occasions during any 12 month period;
 - (ii) there is no Non-Compliance Event under this Contract that has not been remedied or waived, or in respect of which the Operator is not diligently pursuing a cure, in accordance with the requirements of this Contract to the satisfaction of TfNSW; and
 - (iii) TfNSW has received written advice from RMS that, in the opinion of RMS there have been no material concerns regarding the Operator's safety record during the first four Contract Years.
- (b) TfNSW may waive any of the Performance Benchmarks or any non compliance with them.

6.4 No entitlement to new contract or extension of contract

- (a) Nothing in this Contract shall be construed as affording the Operator a right or expectation of any renewal or extension of this Contract or to provide, or be invited to provide the Operator Activities after the Term or any new Public Passenger Service during the Term.
- (b) A reference in this Contract to TfNSW's rights to conduct a procurement process for the performance of the Operator Activities on termination or expiry of this Contract includes the right to conduct a limited or open tender, engage in bilateral negotiation or award a service contract on any other basis and conditions whatsoever.

7. Performance Bonds

7.1 Performance Bonds

- (a) The Operator must, prior to the Planned Service Commencement Date, procure the issue to TfNSW of one or more performance bonds each of which:
 - (i) is in the form of Attachment B;
 - (ii) is issued by an Issuer with the Required Rating and approved by TfNSW (which approval must not be unreasonably withheld);
 - (iii) has a face amount which, when aggregated with the face amount of any other performance bond provided under this Clause 7.1(a) (or any replacement provided under Clauses 7.2, 7.3 or 7.4), is no less than the General Performance Bond Amount;
 - (iv) is unconditional and irrevocable;
 - (v) expires no earlier than:
 - (A) 12 months after the end of the Term; or
 - (B) two years after the date it is issued to TfNSW; and
 - (vi) is issued, and available to be drawn at, an office of the Issuer in Sydney.
- (b) The Operator must, at least six months prior to the Expiry Date provide to TfNSW a performance bond for the amount referred to in Clause 48.1(c)(iv) (**Estimated Amount**) that complies with the requirements of Clauses 7.1(a)(i), (ii), (iv), (v) and (vi) (**Handback Security Bond**).

- (c) If the Operator fails to provide a Handback Security Bond in accordance with Clause 7.1(b), then TfNSW may withhold the Estimated Amount from the Payments (provided that TfNSW will not withhold more than [REDACTED] of the Estimated Amount from payments due in any one month). TfNSW may use the amounts so withheld on the same conditions as it may use the Handback Security Bond under this Contract and the unused part of any amounts so withheld will be paid to the Operator on the earlier of:
- (i) the time that the Handback Security Bond would have been returned had it been provided; and
 - (ii) the time that the Operator provides the Handback Security Bond in accordance with its obligations under this Clause 7.1.

7.2 Available amount

If, at any time prior to the date that is 12 months after the end of the Term, the amount available to be drawn under the General Performance Bonds is less than the General Performance Bond Amount as at that time, the Operator must, within 10 Business Days of that time procure the issue to TfNSW of one or more supplementary performance bonds in accordance with the requirements of Clause 7.1(a), so that the aggregate of the amount of all General Performance Bonds is equal to the General Performance Bond Amount as at that time.

7.3 Trigger Date

If the Trigger Date of a Performance Bond occurs at any time prior to the date that is 12 months after the end of the Term the Operator must procure the issue to TfNSW of a replacement performance bond which complies with the requirements of Clause 7.1 prior to the occurrence of the Trigger Date for the Performance Bond.

7.4 Required Rating

If, at any time prior to the date that is 12 months after the end of the Term, the Issuer of a Performance Bond ceases to have the Required Rating, the Operator must procure the issue to TfNSW of a replacement performance bond which complies with the requirements of Clause 7.1 within 20 Business Days of the Issuer ceasing to have the Required Rating.

7.5 Demands under bonds

- (a) TfNSW may only make a demand under the Performance Bonds in accordance with this Clause 7.5.
- (b) TfNSW may have recourse to more than one of the Deed of Guarantee and Indemnity and the Performance Bonds.
- (c) TfNSW may make a demand under the Performance Bonds where:
 - (i) any amount has become due and payable (and has not been paid) by the Operator or the Operator's Associates to TfNSW under or in connection with a Transaction Document;
 - (ii) TfNSW has a good faith Claim to any amount whether for damages (including liquidated damages) or under an indemnity or otherwise relating to the Operator Activities or any Transaction Document; or
 - (iii) the Operator or the Operator's Associates may or will become liable to pay any amount to TfNSW or a Successor Operator in respect of their obligations under a Transaction Document following the Termination Date.
- (d) If the Operator does not comply with Clause 7.2, 7.3 or 7.4, TfNSW may demand the full General Performance Bond Amount as at the relevant time, provided that:
 - (i) the amount paid to TfNSW as a result of the demand must be paid to the Operator as soon as practicable after a replacement General Performance Bond is provided to TfNSW in accordance with Clause 7.2, 7.3 or 7.4 (whichever is applicable) (but for this purpose the amount received by TfNSW under this paragraph is to be disregarded in determining the General Performance Bond Amount which the replacement General Performance Bond must satisfy); or

- (ii) if a replacement General Performance Bond has not been provided to TfNSW by the date falling 12 months after the end of the Term, TfNSW must pay the Operator the amount, if any, paid to TfNSW as a result of the demand under this Clause 7.5(d) less any amount in respect of which TfNSW was or would have been entitled to make a demand in accordance with Clause 7.5(c) at any time on or before that date,

without any interest being owed in respect of such amount.

- (e) TfNSW may make a demand irrespective of whether or not the amount is, or the circumstances relating to the amount are:
 - (i) in dispute between the Parties; or
 - (ii) subject to any Court or other proceedings.
- (f) If:
 - (i) the Issuer of a Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 7.5(c)(i) and all or part of the amount in respect of which demand was made was not actually payable by the Operator or the Operator's Associates to TfNSW or a Successor Operator; or
 - (ii) the Issuer of a Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 7.5(c)(ii) or 7.5(c)(iii) and the Operator or the Operator's Associates do not in fact become liable to pay to TfNSW or a Successor Operator all or part of the amount in respect of which demand was made,then TfNSW must pay to the Operator (as the Operator's sole remedy):
 - (iii) the amount which was not actually due and payable by the Operator or the Operator's Associates to TfNSW or a Successor Operator or for which the Operator or the Operator's Associates did not in fact become liable to pay to TfNSW or a Successor Operator (**Relevant Amount**); and
 - (iv) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Performance Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Operator. Such interest must be paid on the date the Relevant Amount is paid to the Operator.
- (g) TfNSW must, as soon as practicable after TfNSW has made a demand under a Performance Bond, give a notice to the Operator specifying TfNSW's reasons for making the demand.
- (h) The aggregate amount of demands that TfNSW may make under all of the General Performance Bonds may not exceed the General Performance Bond Amount as at the relevant time.
- (i) The Operator must not take any steps to restrain or injunct TfNSW from making a demand under a Performance Bond or the Issuer paying, or TfNSW using, any amounts under a Performance Bond.

7.6 Return of Performance Bonds

- (a) TfNSW must return to the Operator an existing Performance Bond once TfNSW has received a replacement Performance Bond under Clause 7.2, 7.3 or 7.4.
- (b) TfNSW must, subject to any rights TfNSW may have in relation to the Performance Bond, return the Performance Bonds (less any amounts drawn under Clause 7.5) to the Operator within 12 months after the end of the Term.

8. Deed of Guarantee and Indemnity

Prior to the Planned Service Commencement Date, the Operator must provide TfNSW with a Deed of Guarantee and Indemnity duly executed by the Parent Company and stamped (if required by Law).

Part B – Day One Operator Activities

9. Day One Operator Activities

On and from the date of this Contract the Operator must:

- (a) comply with the Transition Schedule (including by preparing and complying with the Transition In Plan);
- (b) achieve the Transition Milestones by the Transition Milestone Dates; and
- (c) do all other things reasonably necessary,

so as to ensure that the Services are able to be commenced by the Planned Service Commencement Date.

Part C– Service Delivery

10. Performance of Services

10.1 Commencement of Services

- (a) The Operator must provide the Services on and from the Service Commencement Date for the duration of the Term.
- (b) In performing the Services, the Operator must comply with the requirements of the Services Schedule.

10.2 General Service obligations

The Operator must at all times during the Term:

- (a) perform its obligations under this Contract:
 - (i) in accordance with the Services Schedule and the Service Level Schedule;
 - (ii) in accordance with Good Industry Practice;
 - (iii) so as to meet or exceed the Key Performance Indicators;
 - (iv) so as to minimise disruption to the Services and to mitigate any unavoidable disruption to the fullest extent possible;
 - (v) so as to prevent injury to or death of persons and damage to property; and
 - (vi) in a proper, competent, courteous, safe and reliable manner;
- (b) be of good character and fit to conduct and manage the Operator Activities;
- (c) provide the Services (other than the Dedicated School Services and On Demand Services):
 - (i) on the relevant Routes;
 - (ii) in accordance with the relevant Timetables and the relevant provisions of the Services Schedule; and
 - (iii) in a manner that effectively and efficiently carries out the Contract Service Levels set out in the Service Level Schedule;
- (d) provide the Dedicated School Services:
 - (i) to the schools set out in the Dedicated School Services Timetable;
 - (ii) in accordance with the Dedicated School Services Timetable and the relevant provisions of the Services Schedule; and

- (iii) in a manner that effectively and efficiently carries out the Contract Service Levels set out in the Service Level Schedule;
- (e) provide the On Demand Services;
 - (i) in accordance with the provisions of the Services Schedule; and
 - (ii) in a manner that effectively and efficiently carries out the Contract Service Levels set out in the Service Level Schedule; and
- (f) maintain, repair, replace and refurbish the Assets in accordance with the Asset Schedule.

10.3 Non exclusivity

- (a) The right to provide the Services under this Contract is non-exclusive.
- (b) The Operator acknowledges that TfNSW may contract with one or more service provider(s) to provide Public Passenger Services along or near the Routes specified in this Contract.
- (c) Nothing in, or contemplated by, the Transaction Documents or elsewhere confers on the Operator:
 - (i) any ownership of, or property or proprietary right in or over, the Routes;
 - (ii) any other right or interest to operate any Public Passenger Service or other transport service other than the Services (**Other Services**); or
 - (iii) any right to provide or be paid for Other Services.
- (d) The Operator has no Claim against TfNSW in relation to the award, provision, operation or amendment of Other Services or the establishment, award, provision or operation of any new Public Passenger Services by TfNSW.
- (e) If a Service Variation decreases, omits, deletes or removes any part of the Routes or Services, TfNSW may thereafter carry out the omitted routes or services itself or by engaging another person to provide the routes or services.

Part D – Service requirements

11. Publication and display of public transport information and marketing

11.1 General requirements

- (a) The Operator must display and provide the public transport information, referred to in Item 4 of the Services Schedule, to the public, for the duration of the Term, in accordance with the requirements of Item 4 of the Services Schedule.
- (b) The Operator must submit the public transport information, referred to in Item 4 of the Services Schedule, to TfNSW for approval, in accordance with the requirements of Item 4 of the Services Schedule.
- (c) The Operator must provide information about the Services, in accordance with Item 5 of the Services Schedule.

11.2 Transport information

- (a) The Operator must provide real time information to TfNSW and customers in accordance with the Services Schedule.
- (b) The Operator must:
 - (i) actively participate in the governance processes for Transport Infoline as reasonably required by TfNSW;
 - (ii) promote Transport Infoline as the primary customer interface for information regarding the Services, trip planning and customer feedback, particularly on

published information such as websites, promotional material and other literature at Transit Stops and within Contract Buses in a format reasonably required by TfNSW; and

- (iii) not compete with or duplicate Transport Infoline.

11.3 Operator Communications and Marketing Plan

- (a) No later than:

- (i) 20 Business Days prior to the Planned Service Commencement Date; and
- (ii) subsequently, 40 Business Days prior to the commencement of each Contract Year (excluding the first Contract Year),

the Operator must prepare and submit to TfNSW a draft of the Operator Communications and Marketing Plan covering the relevant forthcoming Contract Year which must:

- (iii) identify the marketing context for the plan and identified marketing opportunities for the Contract Year;
 - (iv) state the marketing objectives for the Contract Year (for example, patronage growth, safe use of public transport or operational communication);
 - (v) identify audience profile and insights including the Operator's approach to market segmentation and target audiences;
 - (vi) set out a planned calendar of marketing, promotional, public relations and other engagement activities, providing an overview of each activity, implementation timing and budget;
 - (vii) detail the Operator's approach to creative content and the channels or resources to be used;
 - (viii) provide for the inclusion in marketing materials (where relevant) of information and references to TfNSW customer channels including the transportnsw.info website and apps and relevant services and products including the Ticketing Equipment; and
 - (ix) be consistent with TfNSW policies, guidelines and programs advised to the Operator prior to the submission date.
- (b) Within 10 Business Days after submission of a draft Operator Communications and Marketing Plan under Clause 11.3(a), TfNSW may provide comments on the draft Operator Communications and Marketing Plan.
 - (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under Clause 11.3(b), the Operator must provide to TfNSW for its approval a revised version of the Operator Communications and Marketing Plan amended to incorporate any comments provided by TfNSW under Clause 11.3(b).
 - (d) TfNSW will approve the Operator Communications and Marketing Plan if it is consistent with TfNSW policies, guidelines and programs advised to the Operator prior to the submission date and adequately incorporates any comments required by TfNSW under Clause 11.3(b).
 - (e) The Operator must only undertake marketing in accordance with the final Operator Communications and Marketing Plan approved by TfNSW under this Clause 11.3.
 - (f) The parties acknowledge and agree that the Operator Communications and Marketing Plan may be updated by the Operator during the Contract Year. The Operator must notify TfNSW of any updates and follow the process set out in this Clause 11.3.
 - (g) The Operator must notify TfNSW, and obtain TfNSW's approval (which approval may not be unreasonably withheld), prior to the Operator undertaking any additional marketing which is not included in the Operator Communications and Marketing Plan approved by TfNSW under this Clause 11.3.

11.4 Social media

The Operator must not establish or operate during the Term, its own social media channels for the Services unless approved by TfNSW.

11.5 Other requirements

The Operator must:

- (a) unless otherwise agreed by TfNSW, ensure that all marketing materials are provided to TfNSW for approval prior to publication;
- (b) unless otherwise agreed by TfNSW, not publish or make publicly available any marketing materials which have not been approved by TfNSW;
- (c) at the Operator's cost, produce the Operator's marketing materials in accordance with the Operator Communications and Marketing Plan;
- (d) where requested to do so by TfNSW, make advertising space available on Contract Buses in accordance with Clause 52.3(e) and do all things reasonably required by TfNSW to install TfNSW marketing campaign materials on the Contract Buses; and
- (e) maintain any TfNSW marketing campaign materials in good condition, replacing them where necessary with replacement materials provided by TfNSW and removing them when required by TfNSW.

11.6 Wayfinding Signage Upgrade

- (a) The Operator acknowledges that TfNSW is undertaking a system wide upgrade of all wayfinding signage across the New South Wales public transport network covering all modes and locations (**Wayfinding Signage Upgrade**).
- (b) TfNSW will provide to the Operator free of charge all new signage (being bus pole flags, finials and timetable cases) and wayfinding materials required to be installed at Transit Stops in the Contract Area as part of the Wayfinding Signage Upgrade.
- (c) The Operator will be responsible for the supply of standard galvanised poles and engineered footings and the assembly and installation of new signage and wayfinding materials at Transit Stops in the Contract Area as part of the Wayfinding Signage Upgrade in accordance with this Clause 11.6 and Clause 11.8.

11.7 Wayfinding Signage Upgrade Program

- (a) No later than 10 Business Days after the Service Commencement Date, the Operator must meet with the customer service division of TfNSW for a briefing on the Wayfinding Signage Upgrade.
- (b) No later than 60 Business Days after the Service Commencement Date, the Operator must prepare and submit to TfNSW a draft of the Wayfinding Signage Upgrade Program for approval by TfNSW.
- (c) Within 10 Business Days after submission of a draft Wayfinding Signage Upgrade Program under Clause 11.7(b), TfNSW may provide comments on the draft Wayfinding Signage Upgrade Program.
- (d) Within 10 Business Days after receipt of TfNSW's comments (if any) under Clause 11.7(c), the Operator must provide to TfNSW for its approval a revised version of the Wayfinding Signage Upgrade Program amended to incorporate any comments provided by TfNSW under Clause 11.7(c).
- (e) The Operator must not amend or deviate from the Wayfinding Signage Upgrade Program without TfNSW's consent.

11.8 Delivery of Wayfinding Signage Upgrade Program

The Operator must, at its own cost and expense:

- (a) diligently commence and proceed to execute the work under the Wayfinding Signage Upgrade Program (**WSUP Works**) and complete the WSUP Works as soon as reasonably

practicable but not later than the date that is 18 months after the Service Commencement Date;

- (b) conduct all design, engineering, certification and assurance processes in respect of the new signage (including signage poles and footings) and provide TfNSW with complete and accurate as built drawings;
- (c) obtain all Authorisations required in relation to the WSUP Works;
- (d) obtain any other third party approvals or licences required in relation to the WSUP Works (including rights to carry out work on any land that does not belong to TfNSW) and comply with the requirements of those approvals or licences;
- (e) ensure that the WSUP Works comply with the Wayfinding Guidance Documents and all Laws and Authorisations;
- (f) carry out the WSUP Works:
 - (i) in a sound and workmanlike manner;
 - (ii) with due care and skill in applying accepted engineering, construction and maintenance procedures;
 - (iii) with due expedition and without unnecessary or unreasonable delays; and
 - (iv) in accordance with the Wayfinding Guidance Documents and all Laws and Authorisations; and
- (g) comply with any direction from TfNSW to rectify or remove and replace any WSUP Work that does not comply with the Wayfinding Guidance Documents or the requirements of this Clause 11.8.

11.9 Maintenance of WSUP Works

The Operator must maintain the WSUP Works as part of the Asset Management Activities as if the WSUP Works were Assets. For the avoidance of doubt, TfNSW will supply replacement bus pole flags, finials and timetable cases at the Operator's cost.

11.10 Operator Stakeholder Engagement Plan

- (a) No later than 40 Business Days prior to the commencement of each Contract Year (excluding the first Contract Year), the Operator must prepare and submit to TfNSW a draft of the Operator Stakeholder Engagement Plan covering the relevant forthcoming Contract Year which must:
 - (i) identify the stakeholder engagement activities to be undertaken by the Operator including providing details of:
 - (A) relevant stakeholders to be engaged with during the Contract Year;
 - (B) focus areas for engagement;
 - (C) information to be provided to stakeholders;
 - (D) the proposed format of reporting on stakeholder responses and feedback to TfNSW; and
 - (E) how the proposed engagement is aligned with TfNSW stakeholder engagement plans for the relevant Contract Year and any other TfNSW stakeholder engagement policies or direction issued in respect of the relevant Contract Year;
 - (ii) be in a form that is no less detailed than the initial Operator Stakeholder Engagement Plan set out in Schedule 14; and
 - (iii) be consistent with TfNSW policies, guidelines and programs advised to the Operator prior to the submission date and updated from time to time.
- (b) Within 10 Business Days after submission of a draft Operator Stakeholder Engagement Plan under Clause 11.10(a), TfNSW may provide comments on the draft Operator Stakeholder Engagement Plan.

- (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under Clause 11.10(b), the Operator must provide to TfNSW for its approval a revised version of the Operator Stakeholder Engagement Plan amended to incorporate any comments provided by TfNSW under Clause 11.10(b).
- (d) The Operator must only undertake stakeholder engagement and community consultation in accordance with the final Operator Stakeholder Engagement Plan approved by TfNSW under this Clause 11.10 (or in the first Contract Year, in accordance with the initial Operator Stakeholder Engagement Plan set out in Schedule 14).
- (e) The parties acknowledge and agree that the Operator Communications and Marketing Plan may be updated by the Operator during the Contract Year. The Operator must notify TfNSW of any updates and follow the process set out in this Clause 11.10.

12. Service Desk

- (a) The Operator must provide and operate a Service Desk, in accordance with the requirements set out in Item 7 of the Services Schedule, from the Service Commencement Date and for the duration of the Term.
- (b) Without limiting the requirements of this Clause 12 and the Services Schedule:
 - (i) the Operator must manage and resolve all customer complaints in accordance with the TfNSW Customer Complaints Policy including by promptly dealing with and responding to all complaints and feedback referred from the TfNSW Customer Feedback System and Transport Infoline;
 - (ii) while ever TfNSW is operating the Transport Infoline services, the Operator must use the Transport Infoline services for the provision of the Service Desk services under this Contract;
 - (iii) the Operator must record all complaints or feedback received by the Operator's Service Desk in the TfNSW Customer Feedback System and complete the entry of all relevant data in relation to the management of complaints in respect of the Services in accordance with the TfNSW Customer Complaints Policy;
 - (iv) the Operator must, at its own cost, obtain and maintain sufficient software licences in respect of the TfNSW Customer Feedback System, and ensure that sufficient Staff are trained to use that system, to enable the Operator to perform its obligations under this Clause 12(b);
 - (v) the Operator must comply with TfNSW's directions in relation to a standardised approach to the complaints handling software used as part of the TfNSW Customer Complaints Policy (including by ensuring that any other complaints management software used by the Operator is compatible and integrated with the software used by TfNSW).
- (c) Nothing in Clause 12(b):
 - (i) limits the Operator's responsibility for resolving calls or complaints received through the Operator's Service Desk, the TfNSW Customer Feedback System or the Transport Infoline services; or
 - (ii) makes TfNSW responsible for resolving calls or complaints received through the Operator's Service Desk, the TfNSW Customer Feedback System or the Transport Infoline services.
- (d) If and when TfNSW chooses to discontinue the Transport Infoline services, the Operator must cease using those services but must otherwise continue to provide the Service Desk in accordance with this Contract. The Parties acknowledge and agree that the discontinuation of the Transport Infoline services is not a Modification.

13. Key Performance Indicators

- (a) Unless expressly provided for in the KPI Schedule, the Operator must meet or exceed the Key Performance Indicators from the Service Commencement Date.

- (b) TfNSW will measure the Operator's performance against the Key Performance Indicators.
- (c) The Operator must comply with its obligations relating to the measurement and reporting of Key Performance Indicators and the remedy of any breaches of the Key Performance Indicators as set out in the KPI Schedule.

14. Fares and Ticketing

14.1 Fares

- (a) The Operator must offer Fares for Tickets to travel on Services in accordance with the categories and prices outlined in the Fares and Ticketing Schedule and as amended by TfNSW and notified to the Operator in writing from time to time. The Operator must comply with all directions issued by TfNSW regarding Fares for Special Event Services.
- (b) The Operator must not offer or charge any other fare for Tickets to travel on Services without prior written approval from TfNSW of the other fare proposed, such approval being given at TfNSW's absolute discretion.
- (c) The Operator must deal with all revenue from the sale of Tickets in accordance with Item 10 of the Services Schedule and account for all revenue from the sale of Tickets in accordance with the Payment Schedule.

14.2 Ticketing and revenue protection

- (a) The Operator must take reasonable steps to ensure all passengers travelling on a Service have a valid Ticket, including that the Ticket is valid for the journey being taken by the passenger.
- (b) The Operator authorises TfNSW, and persons for and on behalf of TfNSW, to enter and remain on any Contract Bus providing Services or any Transit Stop, for the purpose of carrying out Ticket inspection and revenue protection activities.
- (c) The Operator must ensure that its Staff comply with any reasonable direction given to them by TfNSW, or a person for and on behalf of TfNSW, carrying out the activities referred to in Clause 14.2(b).
- (d) Subject to the terms of this Contract:
 - (i) TfNSW will be responsible for the collection of fare revenue in relation to the Ticketing Equipment including OpalPay;
 - (ii) the Operator will be responsible for the collection of any other fare revenue on the Services (including, for the avoidance of doubt, on any On Demand Services which is not connected to the Opal Ticketing System);
 - (iii) the Operator will be responsible for protection of fare revenue to the extent specified in the Services Schedule;
 - (iv) the Operator is not entitled to any fine revenue received by the Operator; and
 - (v) the Operator must remit to TfNSW all fine revenue received by the Operator.
- (e) The Operator must minimise fare evasion on the Services including by:
 - (i) operating in accordance with all relevant TfNSW policies as notified by TfNSW to the Operator from time to time;
 - (ii) providing TfNSW with assurance (to the satisfaction of TfNSW) that the Operator's Authorised Officers (to the extent that the Operator chooses to engage Operator's Authorised Officers) are competent and trained to be appointed as and undertake the duties of Authorised Officers;
 - (iii) producing a monthly fare evasion report as specified by TfNSW;
 - (iv) co-operating with TfNSW in implementing fare evasion strategies as required by TfNSW, including twice yearly fare evasion surveys; and

- (v) co-operating with and providing access to TfNSW, TfNSW Authorised Officers and the NSW Police to enable them to undertake revenue protection and crime prevention activities.

14.3 Prohibition on disincentives, penalties and discounts

The Operator must not impose any charges, fees, penalties, restrictions or other Fare adjustments in connection with any of the Services that have the purpose or likely effect of:

- (a) increasing the total cost to passengers choosing to travel on a Service above the Full Fares;
- (b) increasing the total cost to Approved Beneficiaries choosing to travel on a Service above the Concession Fares;
- (c) deterring passengers from purchasing Tickets at the Fares;
- (d) reducing the availability of Tickets to passengers wishing to travel on the Services; or
- (e) reducing the revenue from Tickets.

14.4 Travel free of charge

The Operator must ensure that travel, free of any direct or indirect charge by the Operator, is provided to persons:

- (a) listed in Part 3 of the Fares and Ticketing Schedule, as amended by TfNSW and notified to the Operator from time to time; or
- (b) notified by TfNSW, from time to time.

The requirements of this Clause do not apply in relation to On Demand Services.

14.5 Government Subsidised Travel Schemes

The Operator must participate in Government Subsidised Travel Schemes, as outlined in Item 13 of the Services Schedule.

14.6 Recognition of Transfers

- (a) The Operator must recognise the Transfer rights of any passenger carrying a Ticket entitling Transfer (**Transfer Rights**). This obligation does not apply in relation to On Demand Services unless TfNSW issues a notice under Clause 14.6(b).
- (b) TfNSW may issue a notice to the Operator directing the Operator to recognise the Transfer Rights on On Demand Services and the time that such recognition must commence. For the avoidance of doubt, if the Operator is required to undertake software development to provide a new feature or to provide reasonable information, data or application programming interfaces under this Clause 14.6(b) that is not already available or in a form required by TfNSW in the 'Bridj' system, TfNSW will direct a Modification under Clause 42.

14.7 Compliance by agents

The Operator must ensure that each of its agents selling or offering to sell Tickets on the Operator's behalf complies with this Clause 14.

14.8 Operator to cooperate with TfNSW Authorised Officers, NSW Police and other emergency services

The Operator must at all times cooperate with and otherwise allow TfNSW Authorised Officers, NSW Police and other emergency services personnel to have full access to the Contract Buses, Transit Stops and Licensed Area to carry out their statutory duties and functions.

14.9 Implementation of Opal Ticketing System and OpalPay on On Demand Services

- (a) The Operator must work collaboratively with TfNSW and integrate its systems with TfNSW Systems and Equipment (or the systems and equipment of TfNSW's authorised providers) to implement OpalPay for On Demand Services. For the avoidance of doubt, if the Operator is required to undertake software development to provide a new feature or

provide reasonable information or data under this Clause 14.9(a) that is not already available in the 'Bridj' application, TfNSW will direct a Modification under Clause 42.

- (b) The Operator may notify TfNSW that it intends to procure, install, operate and maintain the Opal Ticketing System for On Demand Services. If the Operator provides a notice to TfNSW under this Clause 14.9(b), the Operator must work collaboratively with TfNSW to implement the Opal Ticketing System, including by (at the Operator's own cost):
 - (i) procuring, installing, operating and maintaining equipment used to issue Tickets and record and validate Tickets, including any related or supporting systems, equipment or software rights; and
 - (ii) providing all necessary information and undertaking all necessary activities to interface the equipment in Clause 14.9(b)(i) with the Opal Ticketing System.
- (c) The Operator is responsible for maintaining any ticketing equipment supplied by it under this Clause 14.9 for On Demand Services, and Clauses 15.1(c) and 15.1(k) do not apply to that equipment. For the avoidance of doubt, ticketing equipment installed on Contract Buses used exclusively to operate On Demand Services does not transfer under Clause 49.

15. TfNSW Systems and Equipment

15.1 TfNSW Systems and Equipment

- (a) The Operator must ensure that TfNSW Systems and Equipment are operational at all times during the Term.
- (b) The Operator must cooperate with TfNSW in facilitating the installation, testing and ongoing maintenance of TfNSW Systems and Equipment including by:
 - (i) making each Asset, the Operator's premises and any required equipment available to TfNSW or TfNSW's Associates, on reasonable notice from TfNSW (being not more than 10 Business Days' notice), for installation, testing and maintenance of TfNSW Systems and Equipment by or on behalf of TfNSW;
 - (ii) allowing TfNSW and TfNSW's Associates to travel, free of any direct or indirect charge by the Operator to TfNSW, on each Contract Bus as requested to test or inspect any TfNSW Systems and Equipment; and
 - (iii) liaising with TfNSW and TfNSW's Associates as required in relation to the installation, testing and ongoing maintenance of TfNSW Systems and Equipment.
- (c) The Operator must maintain TfNSW Systems and Equipment in accordance with Item 9 of the Services Schedule.
- (d) The Operator must comply with any reasonable operational procedures, guidelines, directions and training requirements for TfNSW Systems and Equipment issued by TfNSW from time to time.
- (e) The Operator acknowledges that TfNSW:
 - (i) owns any TfNSW Systems and Equipment installed before and during the Term, including any Intellectual Property in the TfNSW Systems and Equipment, unless TfNSW agrees otherwise in writing;
 - (ii) may use any data collected by TfNSW Systems and Equipment as the property of the State and the Operator must not modify any such data; and
 - (iii) reserves the right for the State to use the data as it sees fit, including providing other authorised service providers with access to data relating to their services.
- (f) The Operator acknowledges and agrees that it has no Claim against TfNSW in respect of any delays or interruptions in the Services arising out of or in connection with any failure of any TfNSW Systems and Equipment.
- (g) If any TfNSW Systems and Equipment on a Contract Bus fails to operate while the Contract Bus is performing a Service, the Operator must ensure that the Contract Bus is

taken out of service until the faulty system or equipment is repaired or replaced, in accordance with the following timeframes:

- (i) immediately if a safety issue arises;
 - (ii) when the Contract Bus returns to the Contract Depot, if the failure occurs to a TSE Rotable Asset; or
 - (iii) at the end of the day for any other failures.
- (h) The Operator must not:
- (i) use the TfNSW Systems and Equipment (or any Intellectual Property in the TfNSW Systems and Equipment) for any purpose other than the performance of its obligations under this Contract; or
 - (ii) use any TfNSW Systems and Equipment on vehicles that are not Contract Buses, without the prior written approval of TfNSW.
- (i) The Operator agrees to enter into any agreement with TfNSW, on reasonable commercial terms considered necessary by TfNSW, in relation to any TfNSW Systems and Equipment, when requested by TfNSW to do so. Such agreement will prevail over this Clause 15.1 to the extent of any inconsistency, unless otherwise agreed.
- (j) The Operator must allow TfNSW or TfNSW's Associates to remove TfNSW Systems and Equipment from each Asset, including by making such Asset or other Operator premises available on reasonable notice from TfNSW.
- (k) If the Operator repairs any damage caused to any Asset by TfNSW when installing, testing, maintaining or removing TfNSW Systems and Equipment, TfNSW will reimburse the Operator the reasonable direct costs of repairing such damage.

15.2 Participation in the DCIS

- (a) The Operator must participate in the DCIS (or any successor or additional service developed by TfNSW or any of TfNSW's Associates for use by TfNSW).
- (b) The Operator must advertise the DCIS (or any successor service) phone number and internet address on its published Timetables and Dedicated School Services Timetables, website, promotional material and other literature at Transit Stops and within Contract Buses in a format reasonably required by TfNSW.
- (c) TfNSW will pay the centralised costs in respect of Transport Infoline (including software licensing fees).
- (d) TfNSW may give the Operator access to data collected by DCIS as required for the purpose of managing its business and for planning and marketing purposes, subject to reasonable conditions, qualifications or restrictions as TfNSW may impose.
- (e) The Operator acknowledges that all data collected by DCIS will constitute New Contract Material and the title and property to Intellectual Property in or in relation to all data collected by DCIS will vest in TfNSW, in accordance with Clause 51.1.

15.3 OSD

- (a) The Operator must submit data to the OSD, as required by the Reporting Schedule.
- (b) The Operator acknowledges that all data submitted to the OSD will constitute New Contract Material and the title and property to Intellectual Property in or in relation to all data submitted to the OSD will vest in TfNSW, in accordance with Clause 51.1.

15.4 Compatibility of information systems

- (a) Any financial, operational or other information, data or records required to be provided to TfNSW by the Operator must be provided in a form which is compatible with the electronic data and records systems notified by TfNSW to the Operator from time to time.
- (b) The Operator must assist TfNSW to comply with the *NSW Government Open Data Policy 2016* including by ensuring that data supplied to TfNSW by the Operator under this Contract complies with the requirements of that policy.

15.5 Development of customer facing information systems

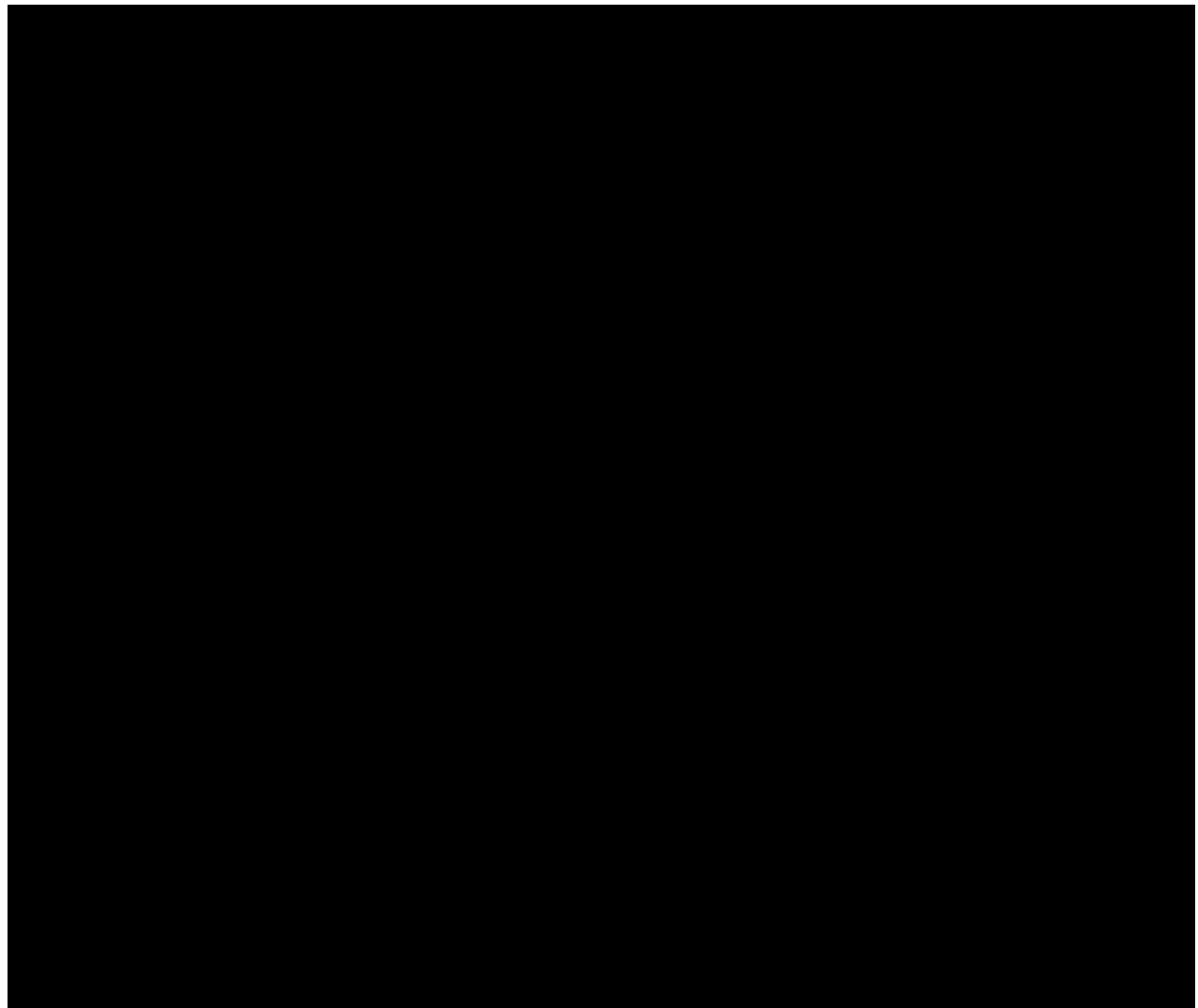
Without limiting Clause 15.4, during the Term the Operator must (at its own cost):

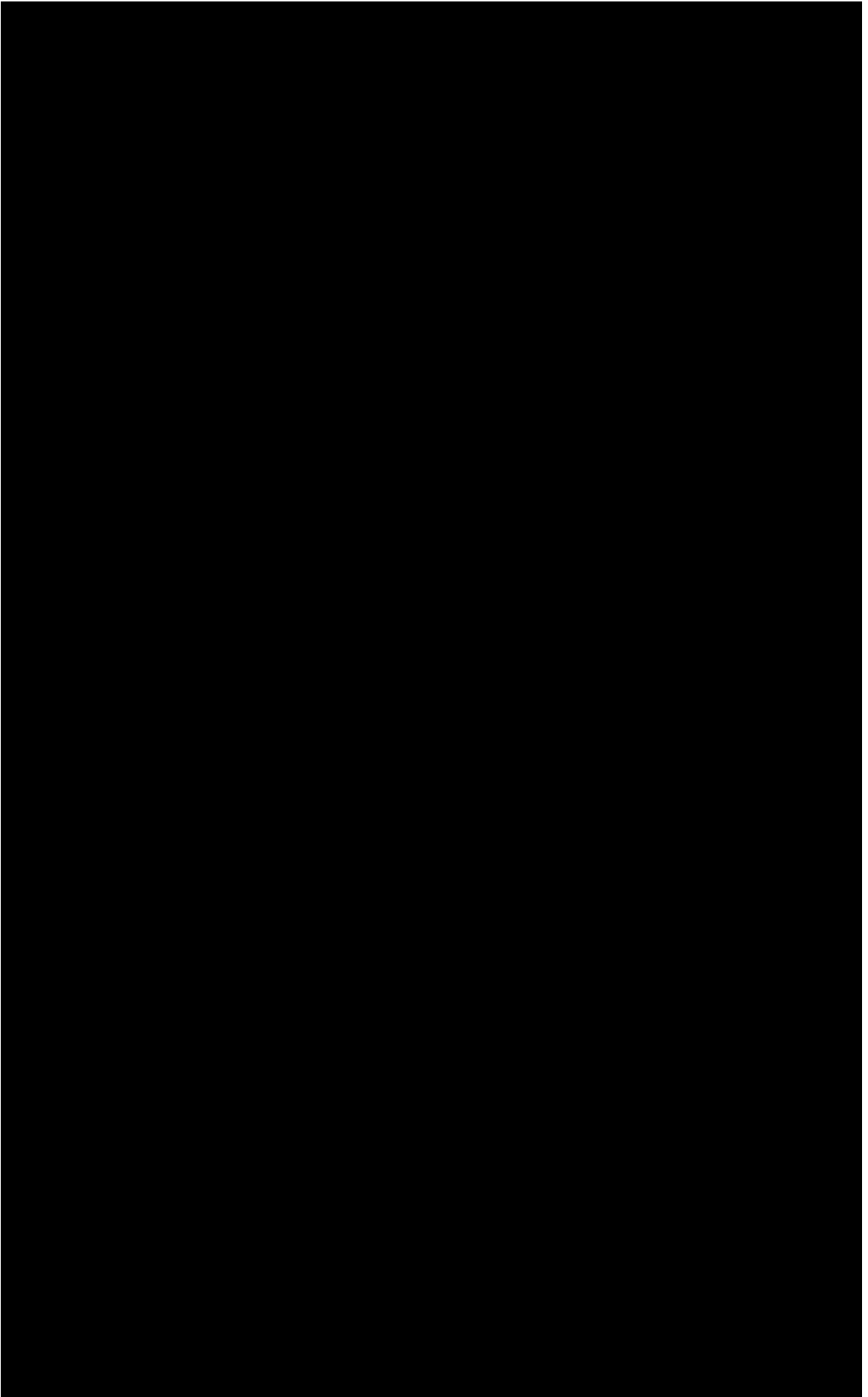
- (a) collaborate with TfNSW (including by attending meetings and forums requested by TfNSW);
- (b) provide all reasonable resources; and
- (c) provide all reasonable data, application programming interfaces and information,

in a timely manner and without delay, to ensure that the Operator's customer facing systems are co-ordinated, compatible, interoperable and integrated with TfNSW's customer facing systems in a way that enables customers to plan, book, pay and provide feedback for an end-to-end journey using the channel (including phone, single applications, intelligent personal assistant and website) of their choice. For the avoidance of doubt, if the Operator is required to undertake software development to provide a new feature or provide information, application programming interfaces or data under this Clause 15.5 that is not already available or in a form required by TfNSW in the Operator's existing customer facing information systems, TfNSW will direct a Modification under Clause 42.

Part E – Planning and service changes

16. Operator role in planning







16.2 Review of Contract Services Levels and Timetables

- (a) The Operator must:
 - (i) undertake regular reviews of the Contract Service Levels, Timetables and the Dedicated School Services Timetables;
 - (ii) work collaboratively with TfNSW to:
 - (A) develop the Services having regard to the Contract Objectives and the requirements of this Contract; and
 - (B) consider and develop innovative strategies to:
 - (I) utilise capacity;
 - (II) optimally manage dead running;
 - (III) improve the safety of the Services; and
 - (IV) improve the security of the Operator's transport network; and
 - (iii) proactively engage and collaborate with key stakeholders in accordance with the Operator Stakeholder Engagement Plan.
- (b) Within 40 Business Days after the end of each Contract Year the Operator must submit to TfNSW a report recommending any changes to the Contract Service Levels, Timetables and Dedicated School Services Timetables to facilitate the outcomes referred to in Clause 16.1(a).
- (c) In developing the report required under Clause 16.2(b) and in submitting any other proposals to TfNSW in respect of proposed changes to the Contract Service Levels and Timetables, the Operator should have regard to:
 - (i) current patronage and likely future patronage changes;
 - (ii) the needs of passengers and key stakeholders;
 - (iii) TfNSW service level guidelines and polices;
 - (iv) efficient management of capacity and dead running;
 - (v) interconnectivity of the Services with other transport services (other than the Services) available in Sydney (including rail, Metro and coach services);
 - (vi) innovation, including the introduction of on demand services;
 - (vii) the funding envelope and timing of funding available for public transport in Sydney; and
 - (viii) any new or amended Contract Service Levels requested by TfNSW and the effect of those Contract Service Levels on Contract Depot capacity.
- (d) TfNSW is not obliged to in any way adopt the recommendations provided in the Operator's report submitted in accordance with Clause 16.2(b) and the Operator must not make any changes to the Contract Service Levels, Timetables and Dedicated School Services Timetables described in the report unless and until TfNSW issues a notice for a change to Contract Service Levels under Clause 17.1(b).



17. Contract Service Levels and Timetables

17.1 Contract Service Levels

- (a) TfNSW may, but is not obliged to, accept a proposal by the Operator for a change to Contract Service Levels by issuing a notice under Clause 17.1(b).
- (b) TfNSW may introduce new or amended Contract Service Levels, whether or not proposed by the Operator, by notice to the Operator.
- (c) If TfNSW provides notice of new or amended Contract Service Levels, the Operator must:
 - (i) develop a new timetable to efficiently and effectively carry out the requirements of the new or amended Contract Service Levels; and
 - (ii) submit the new timetable to TfNSW for approval, in accordance with Clauses 17.2 or 17.3,within the timeframe specified by TfNSW.
- (d) If TfNSW has not specified any Contract Service Levels, the Operator must deliver the Services in a manner that efficiently and effectively carries out the base level of services required by the Timetables and the Dedicated School Services Timetable.

17.2 Timetables

- (a) If, at any time during the Term, the Operator believes it can deliver the Services (other than the Dedicated School Services) more efficiently and effectively, or is required to submit a revised timetable under Clause 17.1, the Operator must immediately submit a revised timetable for approval by TfNSW, by notice to TfNSW via the BSAR system.
- (b) If, at any time during the Term, the Operator wishes to vary the Timetable, the Operator may submit a revised timetable for approval by TfNSW, by notice to TfNSW via the BSAR system.
- (c) TfNSW may approve or reject a timetable submitted for approval by an Operator, by notice to the Operator.
- (d) If TfNSW approves a revised Timetable, the Operator must operate the Services in accordance with the approved Timetable, within the period specified by TfNSW.
- (e) If TfNSW rejects a revised timetable (or does not respond to the Operator's request for approval), the revised timetable will be of no effect and the Operator must continue to provide the Services in accordance with the approved Timetable.
- (f) The Operator acknowledges that TfNSW may introduce a template for the preparation of timetables, by notice in writing to the Operator. The Operator must use the template when preparing any timetables, after receiving notice from TfNSW that a template has been introduced.

17.3 Dedicated School Services Timetable

- (a) The Operator must liaise with the schools set out in the Service Level Schedule, by no later than 30 October of each calendar year for the duration of the Term, to ascertain the start and finish dates of the school year and the daily bell start and finish times.

- (b) The Operator must provide TfNSW with a preliminary timetable for the Dedicated School Services by no later than 1 January each calendar year for the duration of the Term, via the BSAR system.
- (c) The Operator must:
 - (i) submit a revised timetable under Clause 17.1 immediately after request by TfNSW; or
 - (ii) submit any revisions to the timetable for the Dedicated School Services, no later than 4 weeks after the start of the school year, via the BSAR system.
- (d) TfNSW may approve or reject a timetable for the Dedicated School Services submitted by the Operator within 10 Business Days of receipt, by notice to the Operator.
- (e) If TfNSW approves a timetable for the Dedicated School Services, the Operator must operate the Dedicated School Services in accordance with the approved Dedicated School Services Timetable, within the period specified by TfNSW.
- (f) If TfNSW rejects a timetable for the Dedicated School Services (or does not respond to the Operator's request for approval), the proposed timetable will be of no effect and the Operator must continue to provide the Dedicated School Services in accordance with the approved Dedicated School Services Timetable.

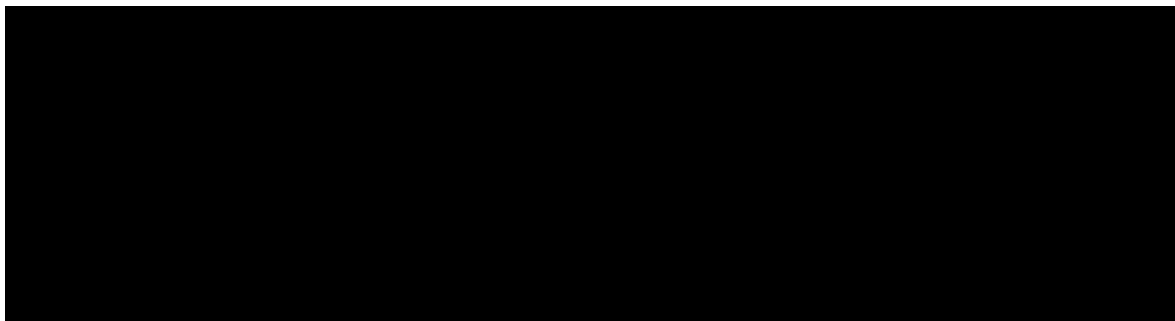
17.4 Headway management

- (a) The Operator acknowledges and agrees that:
 - (i) as at 1 January 2019; and
 - (ii) on and from each Planned Service Phase,
 any Service that predominantly operates with a Headway of less than 15 minutes must be provided as a Headway Service (unless TfNSW directs otherwise).
- (b) The Operator must develop and provide a Headway Management Solution in accordance with Item 3.17 of the Services Schedule.
- (c) At any time before 1 June 2020, TfNSW may notify the Operator that TfNSW intends to install and operate systems and equipment on the Assets to manage or monitor Headway for the remainder of the Term (**TfNSW Headway Systems and Equipment**).
- (d) If TfNSW issues a notice under Clause 17.4(c):
 - (i) the Operator's obligations under Clause 17.4(b) and Item 3.17 of the Services Schedule will be extinguished; and
 - (ii) the Operator must collaborate with TfNSW in a timely manner to ensure that the Operator's systems and equipment are co-ordinated, compatible, interoperable and integrated with any TfNSW Headway Systems and Equipment.
- (e) Without limiting TfNSW's rights under Clause 17.4(c), before the Operator proposes to incur any material costs or enter into any arrangement with third parties in relation to the Headway Management Solution, the Operator must consult with TfNSW in relation to TfNSW's then current intention with respect to implementing TfNSW's own systems and equipment on the Assets to manage or monitor Headway. Where the Operator has signed a contract with a third party for a Headway Management System after agreeing with TfNSW that they should proceed with the procurement of the Headway Management Solution, TfNSW shall pay any reasonable costs payable by the Operator or for which the Operator is or becomes liable resulting from TfNSW installing and operating systems and equipment on the Assets to manage or monitor Headway for the remainder of the Contract (provided the Operator has taken all reasonable steps to mitigate its costs).

18. Service Variations

- (a) TfNSW may at any time during the Term, require a Service Variation by way of written notice to the Operator (**Service Variation Notice**).

- (b) The Service Variation Notice must state:
 - (i) the particulars of the Service Variation; and
 - (ii) the date on which the Service Variation will take effect, which:
 - (A) other than in the event of an emergency (as determined by TfNSW), must be after a reasonable period of time to enable the Operator to comply with the Service Variation Notice; and
 - (B) in the event of an emergency (as determined by TfNSW), will be immediately.
- (c) The Operator must comply with the Service Variation Notice and make any necessary amendments to its operations so that it complies with the Service Variation Notice.
- (d) The Operator is entitled to Payment for a Service Variation required by TfNSW in accordance with the Payment Schedule.
- (e) The Operator may request a Service Variation, by way of notice to TfNSW via the BSAR system. Any request for a Service Variation from the Operator is subject to TfNSW's approval (which may be withheld at TfNSW's absolute discretion). The Operator must have consulted with TfNSW in accordance with Clause 16.2 prior to submitting a Service Variation request that comprises any change to the Contract Service Levels, Timetables or the Dedicated School Services Timetables.
- (f) For the avoidance of doubt, nothing in this Clause 18 gives rise to an obligation on TfNSW to approve a request for a Service Variation from the Operator.
- (g) Any request for a Service Variation from the Operator must set out:
 - (i) a description of the proposed Service Variation, including any impact on the Routes, Headway, Timetables or Dedicated School Services Timetables;
 - (ii) the impact of the proposed Service Variation on the Operator's ability to meet the Key Performance Indicators;
 - (iii) any updates to the Route Control Strategy;
 - (iv) the proposed price adjustment, based on paragraph 4.1 of the Payment Schedule (including any pricing adjustments required to be provided under Clause 16.1(g)); and
 - (v) in respect of the Services, if the proposed Service Variation is based on road congestion, the request must also set out:
 - (A) the Routes which are said to be affected by road congestion;
 - (B) Driver and vehicle shift information for the proposed Service Variation;
 - (C) the nature of the road congestion and the means adopted by the Operator to isolate the effect of the road congestion on the relevant Services from other factors affecting the relevant Services;
 - (D) traffic flow data to verify a change in road congestion conditions along the affected Routes; and
 - (E) the impact the Operator considers the road congestion to have had on the relevant Services.

- 
- (j) Unless and until TfNSW approves any request from the Operator for a Service Variation:
 - (i) the request for a Service Variation will be of no effect;
 - (ii) the Operator must not act upon the request for a Service Variation; and
 - (iii) the Operator will not be entitled to any payments in connection with its request for a Service Variation.

Part F – Assets

19. Contract Buses

19.1 Performance of the Services using Contract Buses

- (a) Subject to Clause 19.4, the Operator must perform the Services using the Contract Buses.
- (b) Subject to Clause 19.2, the Operator must not use Contract Buses for any purpose other than the purpose of providing the Services.

19.2 Bus Charter

- (a) The Operator may only use a Contract Bus for the purpose of providing charter services:
 - (i) when the Contract Bus is not required for the performance of the Services; and
 - (ii) provided that such use:
 - (A) does not adversely affect the ability of the Operator to provide the Services;
 - (B) does not adversely affect the ability of the Operator to comply with Clause 48;
 - (C) does not breach the State Bus Lease or any replacement of that lease; and
 - (D) does not adversely affect TfNSW's rights under a Transaction Document.
- (b) Without limiting Clause 19.2(a), the Operator:
 - (i) must ensure that the use of Contract Buses for the purposes of providing charter services does not affect the ability of the Operator to comply with Clause 19.3(b)(ii); and
 - (ii) must not enter into any agreement or agreements with a third party which have the effect of making Contract Buses available to be used for charter services during the period between 6.00am and 9.00am and the period between 3.00pm and 6.00pm on Business Days for a period of more than two months.

19.3 Contract Bus standard

- (a) The Operator must ensure that:
 - (i) each Contract Bus is registered and licensed in accordance with all Laws and complies with all Authorisations;
 - (ii) each Contract Bus:
 - (A) complies with the Asset Schedule and all Laws;
 - (B) is operated and maintained:
 - (I) in accordance with Part G;
 - (II) in accordance with Good Industry Practice and so as to ensure that it is always in a condition which enables the Operator to comply with its obligations under this Contract;
 - (C) is clean and tidy and meets the standards required under Annexure 6 of the Asset Schedule when providing the Services;
 - (D) is in a safe operating condition at all times and is maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations, including the DDA Legislation; and
 - (E) displays illuminated destination signs (if available) stating the destination and or the Route.
- (b) The Operator must:
 - (i) have available to it enough Contract Buses to meet its obligations under this Contract;
 - (ii) only use the best available Contract Buses to provide the Services having regard to reasonable operational requirements and the condition, cleanliness, features and age of all Contract Buses;
 - (iii) comply with its obligations under the State Bus Lease or any replacement of that lease; and
 - (iv) monitor and manage the security and safety of the Staff and passengers on the Contract Buses.
- (c) To the extent that it is lawfully able to do so, TfNSW will use reasonable endeavours to assign, or procure that STA assigns, to the Operator the benefit of any manufacturer's warranties in relation to the Existing Buses procured under the Bus Procurement Panel for the Term.
- (d) To the extent that it is lawfully able to do so, TfNSW will use reasonable endeavours to procure that the Operator receives the benefit of any manufacturer's warranty provided in relation to any New Bus procured under the Bus Procurement Panel during the Term.
- (e) Any warranty provided to the Operator under Clause 19.3(c) or (d) that is assigned to the Operator, must, if assigned for a period longer than the Term, be assigned by the Operator back to TfNSW or its nominee by the Termination Date.

19.4 Use of non-compliant Contract Buses

- (a) The Operator may use a replacement Bus which is not a Contract Bus (**Emergency Replacement Vehicle**) only in an emergency and only for the minimum period necessary to overcome the emergency and in any event, for no longer than 48 hours (unless otherwise approved by TfNSW prior to the expiry of the 48 hour period).
- (b) If an Emergency Replacement Vehicle is to be used in an emergency:
 - (i) the Operator must notify TfNSW as soon as practicable (and in any event, not later than 24 hours after it is first used) explaining the particulars of the emergency and details of the Emergency Replacement Vehicle used;
 - (ii) the Operator must ensure that the Emergency Replacement Vehicle is the best available Bus and at a minimum complies with Clause 19.3(a);

- (iii) the insurances required under Clause 38 must be effective in relation to the Emergency Replacement Vehicle and the use of the Emergency Replacement Vehicle;
- (iv) the Operator must ensure that the use of the Emergency Replacement Vehicle will not materially adversely affect the provision of the Services; and
- (v) the Payments will not be adjusted.

20. Infrastructure

20.1 Infrastructure standards

The Operator must:

- (a) have access to enough suitably located Contract Depots to meet its obligations under this Contract;
- (b) comply with the State Bus Depot Leases, the State Existing Facility Leases and any conditions identified in Annexure 2 of the Asset Schedule;
- (c) ensure that the Contract Depots:
 - (i) are and remain at all times fit for the purposes of enabling the Operator to perform its obligations under the Transaction Documents;
 - (ii) comply with the Asset Schedule and all Laws, in addition to any other requirements imposed in any other Transaction Documents;
 - (iii) are operated and maintained:
 - (A) in accordance with Part G;
 - (B) in accordance with Good Industry Practice and so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract;
 - (iv) are clean and tidy and meet the standards required under Annexure 6 of the Asset Schedule;
 - (v) are in a safe operating condition at all times and are maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations, including the DDA Legislation; and
- (d) ensure that the Existing Facilities and Licensed Areas:
 - (i) are operated in accordance with all Laws and any other requirements imposed in any other Transaction Documents;
 - (ii) are operated in accordance with Good Industry Practice and so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract;
 - (iii) are clean and tidy and meet the standards required under Annexure 6 of the Asset Schedule and the Services Schedule;
- (e) except to the extent necessary for the purposes of complying with this Contract, not:
 - (i) alter or modify the State Assets; and
 - (ii) carry out, procure or allow the carrying out of, any works or services on the State Assets,

without the prior written consent of TfNSW and the applicable owner of the property.

20.2 State Bus Depot Leases and State Existing Facility Leases

- (a) The Operator must, prior to the Planned Service Commencement Date, execute two copies of each State Bus Depot Lease and State Existing Facility Lease and provide them to TfNSW.

- (b) To the extent that it is not possible to do so prior to execution of the State Bus Depot Leases and the State Existing Facility Leases by the Operator, the Operator authorises TfNSW to:
 - (i) insert the Torrens title details, 'Term', 'Commencing Date' and 'Terminating Date' on the cover page of the State Bus Depot Leases and the State Existing Facility Leases;
 - (ii) insert the 'Commencement Date', 'Expiry Date', 'Premises' and 'Term' in clause 1.1 of Annexure A of the State Bus Depot Leases and the State Existing Facility Leases; and
 - (iii) arrange for registration of the State Bus Depot Leases and the State Existing Facility Leases under the *Real Property Act 1990* (NSW).

20.3 DDA compliance

Without in any way limiting the application of the other provisions of this Contract, the Parties acknowledge and agree that all costs of complying with the DDA Legislation will be borne by the Operator.

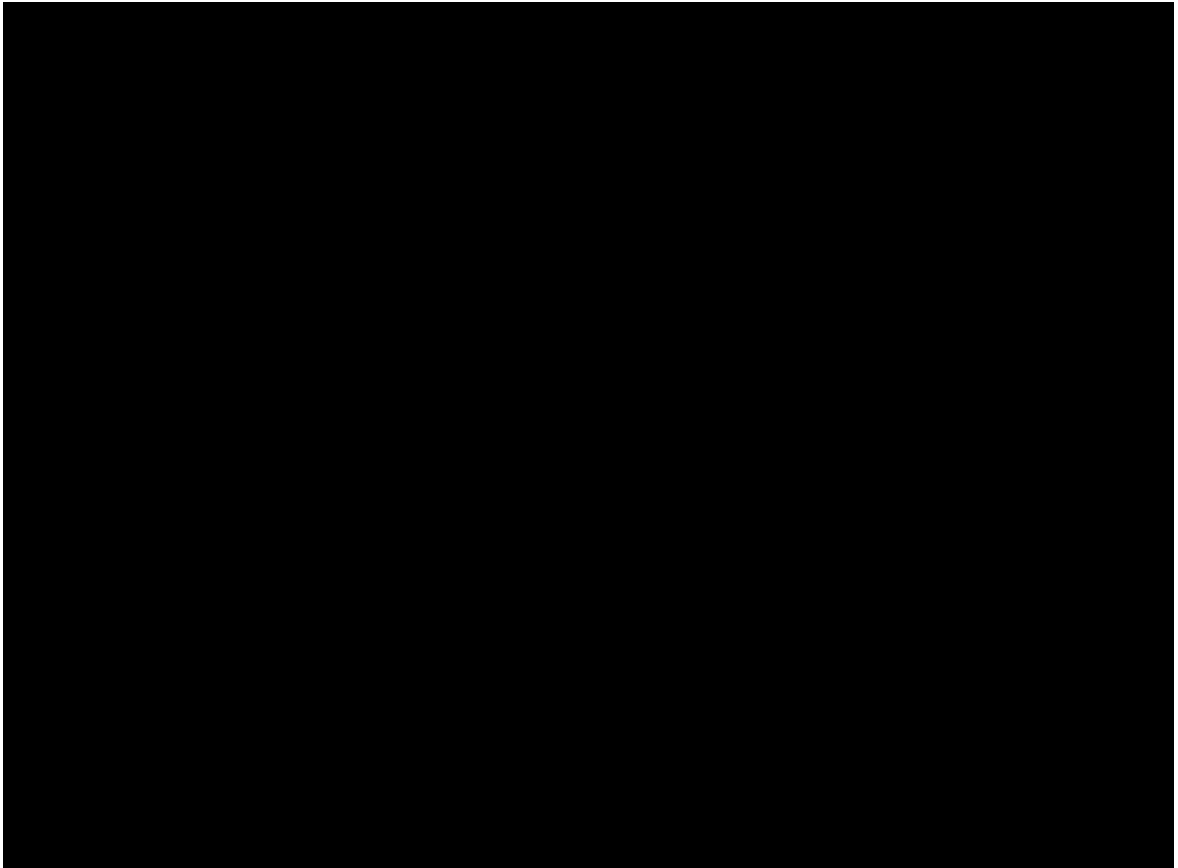
21. Operating Licence

21.1 Licensed Area

- (a) Subject to the terms of this Contract, TfNSW grants to the Operator a non-exclusive licence to use and occupy, and to permit the Operator's Associates to use and occupy the areas identified in Annexure 5 of the Asset Schedule as 'Licensed Areas' (**Licensed Area**) for the purpose of performing the Operator Activities.
- (b) The licences granted under this Clause 21.1 commence on the applicable Licensed Area Handover Date (**Licence Commencement Date**) and terminate on the Termination Date.
- (c) The rights conferred by this Clause 21.1 are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Area.
- (d) The Operator must comply with any easements, restrictions on use, covenants, agreements or other similar arrangements burdening or benefiting the land contained in the Licensed Area as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW) as at the relevant Licence Commencement Date.
- (e) The Operator must not use the Licensed Area for any purpose other than the Operator Activities.

21.2 STA Residual Furniture and Tools

- (a) Within 30 Business Days after the Service Commencement Date the Operator must provide TfNSW with a register of all STA Residual Furniture and Tools.
- (b) The Operator may deal with STA Residual Furniture and Tools on the same basis as if the STA Residual Furniture and Tools were Operator Assets.
- (c) If at the end of the Term, TfNSW nominates that any STA Residual Furniture and Tools not dealt with in accordance with Clause 21.2(b) are to be transferred to TfNSW or its nominee, the Operator must transfer those assets to TfNSW or its nominee, unencumbered and for consideration of [REDACTED]



22. Environment and Contamination

22.1 Condition of Infrastructure

- (a) The Operator must at all times during the Term ensure that in carrying out the Operator Activities:
 - (i) Contaminants are not discharged unlawfully;
 - (ii) a condition of pollution does not arise and is not likely to arise;
 - (iii) no breach of any Environmental Law occurs;
 - (iv) no industrial waste or potentially hazardous substance is abandoned or dumped at the Contract Depots, Transit Stops or the Licensed Area; or
 - (v) no industrial waste or potentially hazardous substance is handled in a manner which causes or is likely to cause an environment hazard.
- (b) The Operator must:
 - (i) obtain and maintain in full force and effect and comply with the terms of all Authorisations required in order to release or emit anything from the Contract Depots, Transit Stops or Licensed Areas into the air or water or on to the ground or into the Environment;
 - (ii) permit TfNSW to enter the Contract Depots, Transit Stops and Licensed Areas on reasonable notice to enable TfNSW to satisfy itself that the Contract Depots, Transit Stops and Licensed Areas have not been Contaminated and that no breach of an Environmental Law has occurred;
 - (iii) advise TfNSW of the existence of any Contamination of, or emanation from, the Contract Depots, Transit Stops or Licensed Areas contrary to any Environmental Law as soon as the Operator becomes aware of the matter; and
 - (iv) as soon as reasonably practicable, and in any event within two Business Days, after receipt of any penalty notice or direction or other notice or complaint issued under any Environmental Law in relation to the Contract Depots, Transit Stops or

Licensed Areas give full details of it and copies of any notices, directions, or other instruments to TfNSW.

- (c) Not later than:
- (i) in respect of the Existing Depots and Existing Facilities, two months after the Service Commencement Date; and
 - (ii) in respect of any New Depots, two months after the Operator commences carrying out Operator Activities from the New Depot,
- the Operator must:
- (iii) obtain, at its own cost, a report prepared by an independent and suitably qualified third party approved by TfNSW regarding the existing condition of the relevant Contract Depot including the existence of any Contamination at the Contract Depot in a form that is satisfactory to TfNSW acting reasonably (**Baseline Condition Report**); and
 - (iv) provide TfNSW with a copy of the Baseline Condition Report.

22.2 Subsequent Contamination

The Operator is responsible for all Subsequent Contamination and must:

- (a) dispose of, or otherwise deal with, Subsequent Contamination in accordance with Law; and
- (b) remediate to the standard required by Law, the Existing Depots, Existing Facilities, Transit Stops and the Licensed Areas (**State Property**) or the land or seabed adjoining any State Property (and any other land to which any Subsequent Contamination has migrated) to the extent to which:
 - (i) it is in any way degraded by Subsequent Contamination; and
 - (ii) the Subsequent Contamination is of such a nature that an Environmental Auditor or other relevant Governmental Agency could issue a statutory notice requiring it to be remediated or it is otherwise necessary at Law for it to be remediated. In this Clause the term 'remediate' includes to remove, disperse, abate, destroy, dispose of, treat, cap, contain, evacuate or manage and any associated testing, monitoring and assessment.

22.3 Contamination at New Depots

The Operator is solely responsible for any Contamination in, on or under any New Depot.

22.4 Clean Up Notices

- (a) If a Clean Up Notice is served on TfNSW, RMS, STA or the Operator relating to Contamination in, on or under (or which has emanated from or is emanating from) the Existing Depots, Existing Facilities or Licensed Areas, then:
 - (i) if the Operator receives the Clean Up Notice the Operator must promptly provide TfNSW with a copy of the Clean Up Notice;
 - (ii) if TfNSW, RMS or STA receives the Clean Up Notice TfNSW must promptly provide the Operator with a copy of the Clean Up Notice;
 - (iii) the Parties must meet as soon as practicable after service of the Clean Up Notice to determine, to the extent possible, whether and to what extent the Clean Up Notice relates to Pre-existing Contamination or Subsequent Contamination;
 - (iv) to the extent that the Clean Up Notice relates solely to Subsequent Contamination, the Operator will at its sole cost and expense be responsible for complying with the Clean Up Notice;
 - (v) to the extent that the Clean Up Notice relates to both Pre-existing Contamination and Subsequent Contamination, the Operator will be responsible for complying with the Clean Up Notice to the extent that it relates to Subsequent Contamination;

- (vi) to the extent that the Clean Up Notice relates to Pre-existing Contamination, TfNSW will at its sole cost and expense be responsible for complying with the Clean Up Notice; and
 - (vii) the Operator must provide TfNSW, RMS or STA with such access to the Existing Depots, Existing Facilities or Licensed Areas and other assistance as TfNSW, RMS or STA may reasonably require in order to investigate, assess or manage the risk created by the existence or suspected existence of any Pre-existing Contamination.
- (b) If the Parties cannot agree within a reasonable period to what extent the Clean Up Notice relates to Pre-existing Contamination or to Subsequent Contamination:
- (i) the Parties will:
 - (A) refer the matters in dispute to be determined by an Environmental Auditor to be approved by the Parties (such approval not to be unreasonably withheld or delayed). If the Parties cannot agree on the appointment of an Environmental Auditor within a reasonable period, TfNSW may determine who will be appointed as the Environmental Auditor;
 - (B) arrange for the Environmental Auditor to investigate the Existing Depots or Existing Facilities the subject of the Clean Up Notice and prepare and provide to the Parties a report in accordance with all applicable Environmental Laws and relevant Governmental Agency guidelines and generally in accordance with Good Industry Practice (**Contamination Report**), which:
 - (I) describes the nature and extent of any Contamination which is the subject of that Clean Up Notice (**Notified Contamination**);
 - (II) describes the investigation undertaken to identify the nature and extent of the Notified Contamination;
 - (III) identifies, in the opinion of the Environmental Auditor, the extent to which the Notified Contamination:
 - (1) is Pre-existing Contamination; or
 - (2) is Subsequent Contamination; and
 - (IV) based on the conclusions in Clause 22.4(b)(i)(B)(III), allocates liability for the Environmental Auditor's fees between TfNSW and the Operator in the same proportion as that Party's responsibility for the Contamination; and
 - (C) ensure that prior to finalising the Contamination Report, the Environmental Auditor provides a draft of the Contamination Report to both Parties, and allows both Parties a reasonable period in which to provide the Environmental Auditor with comments regarding that draft Contamination Report. Those comments must also be provided by each Party to the other Party; and
 - (ii) the findings of the Environmental Auditor contained in the final Contamination Report will be final and binding on the Parties (including regarding liability for the Environmental Auditor's fees) in the absence of manifest error.

23. Acquisition of new assets

23.1 New Assets

- (a) The Operator must use only the State Assets and Operator New Buses for the provision of the Services, unless expressly provided for in this Contract or otherwise with prior approval in writing by TfNSW.

- (b) Subject to Clause 19.4, the Operator:
 - (i) must not use vehicles, depots, facilities or premises that are not State Assets or Operator New Buses to perform the Operator Activities;
 - (ii) must only use or acquire new buses or bus depots for the provision of the Services in accordance with this Clause 23; and
 - (iii) must otherwise only use or acquire assets, vehicles, vessels or premises to perform the Operator Activities with the prior consent of TfNSW.
- (c) The Operator acknowledges that TfNSW may, in its sole discretion, determine that any New Bus will be purchased by TfNSW (or its nominee) and leased to the Operator.
- (d) The Operator must provide TfNSW with any information requested by TfNSW in relation to each New Bus.
- (e) If a Contract Bus is scheduled to be retired under the Fleet Replacement Schedule, the Operator must:
 - (i) agree to the removal of the Contract Bus from the State Bus Lease (if applicable); and
 - (ii) if requested by TfNSW manage the disposal of that Contract Bus in accordance with TfNSW's reasonable directions. The Operator must pay to TfNSW all proceeds received by the Operator in connection with the disposal of the retired Contract Bus (**Sale Proceeds**). In consideration for providing management services under this Clause 23.1(e), TfNSW will pay to the Operator [REDACTED] of the Sale Proceeds.
- (f) The Operator must give TfNSW at least two months' prior notice before commencing the procurement of a New Bus under this Clause 23. If directed to do so by TfNSW, the Operator must temporarily defer the procurement of the New Bus for a reasonable period as determined by TfNSW. The Operator has no Claim against TfNSW in relation to the temporary deferral of any procurement under this Clause. To the extent that a direction by TfNSW to defer the acquisition of a New Bus results in the deferral of the retirement of a Contract Bus that does not comply with Clause 23.2(b) (**Aged Bus**), TfNSW will waive the requirement to comply with Clause 23.2(b) in respect of that Aged Bus for the duration of the period of deferral.

23.2 Acquisition of New Buses

- (a) The Operator must comply with the Fleet Replacement Schedule, and must arrange for the acquisition and disposal of Contract Buses in accordance with Clause 23.4 or Clause 23.5 (as determined by TfNSW under Clause 23.1(c)).
- (b) Without limiting Clauses 23.2(a) and 23.2(d), but subject to Clause 19.4, the Operator must ensure that at all times during the Term:
 - (i) the average age of the Contract Buses does not exceed 12 years; and
 - (ii) the maximum age of each Contract Bus does not exceed 25.99 years or such other maximum age (not being less than 25.99 years) as TfNSW may determine from time to time.
- (c) For the purpose of Clauses 23.2(b), the age of a Contract Bus will be taken to run from:
 - (i) where the Bus has not been previously used, the date of its first registration in New South Wales;
 - (ii) where the Bus has been previously used, the date of its first registration in New South Wales or any other jurisdiction; or
 - (iii) where the date of first registration cannot be confirmed, the date of manufacture on its compliance plate (noting that, for older buses with separate chassis compliance plates and body compliance plates, the date of manufacture is that which appears on the chassis compliance plate).
- (d) The Operator must not depart from the Fleet Replacement Schedule without the prior consent of TfNSW.

23.3 New Buses acquired as a result of a Service Variation

- (a) The Operator must not acquire any New Bus as a result of a Service Variation without the prior approval of TfNSW.
- (b) If the Operator wishes to acquire new Buses as a result of a Service Variation, the Operator must submit a business case in a form satisfactory to TfNSW (**Business Case**) which must:
 - (i) clearly identify that the Operator requires the Buses as a result of the Service Variation; and
 - (ii) state the number of Buses required and any details in relation to the proposed Buses as are available at the time.
- (c) TfNSW may liaise with the Operator in relation to any Business Case and may require the Operator to resubmit the Business Case with suggested amendments.
- (d) TfNSW must notify the Operator within 20 Business Days after receiving the original or resubmitted Business Case from the Operator under Clause 23.3(b) or (c) whether:
 - (i) the Operator's proposal to acquire the new Buses is approved (and any conditions attached to that approval);
 - (ii) the Operator's proposal to acquire the new Buses is rejected (including reasons for the rejection); or
 - (iii) TfNSW requires further time or information to consider the Business Case and the reasonable time by which the Operator must provide the information and within which TfNSW will have made its decision.
- (e) If TfNSW does not respond to the Operator in accordance with Clause 23.3(d), TfNSW will be deemed to have rejected the proposal.
- (f) If TfNSW approves the Operator's proposal to acquire, or procure the acquisition of, Buses by the Operator under Clause 23.3(d)(i) then the Operator must manage the acquisition of the Bus in accordance with Clause 23.4 or Clause 23.5 (as determined by TfNSW under Clause 23.1(c)).

23.4 Procurement of New Buses by Operator

- (a) This Clause applies in relation to New Buses that are to be acquired by the Operator.
- (b) The Operator must do the following in relation to any New Buses approved by TfNSW:
 - (i) comply with any conditions notified to it by TfNSW; and
 - (ii) if the New Bus is to be leased to the Operator by any party other than TfNSW (or a nominee of TfNSW), execute:
 - (A) an Operator Bus Lease in respect of the New Bus, which must:
 - (I) contain terms that grant the Operator an entitlement to acquire the New Bus at the end of the Operator Bus Lease; and
 - (II) otherwise be on terms approved by TfNSW; and
 - (B) if required by TfNSW:
 - (I) an Operator Bus Lease Direct Agreement, with the relevant lessor and TfNSW on terms that are acceptable to TfNSW in accordance with Clause 26.3; and
 - (II) a Financier Direct Agreement, with the secured financiers in respect of the New Bus; or
 - (iii) if the New Bus is to be purchased by the Operator, execute:
 - (A) a purchase agreement on terms approved by TfNSW; and
 - (B) a Financier Direct Agreement, with the secured financiers of the Operator and TfNSW.

- (c) The Operator acknowledges that all New Buses must be supplied, manufactured or purchased by or from the Bus Procurement Panel, unless TfNSW otherwise notifies the Operator in writing.

23.5 Procurement of New Buses by TfNSW

- (a) This Clause applies if TfNSW has determined that any New Bus (**TfNSW Nominated New Bus**) will be purchased by TfNSW or its nominee and leased to the Operator.
 - (b) The Operator is responsible for procuring all TfNSW Nominated New Buses approved under this Clause 23 through the Bus Procurement Panel including by:
 - (i) preparing all documentation required in order to procure a TfNSW Nominated New Bus under the Bus Procurement Panel (including so that Clause 23.5(d) is satisfied); and
 - (ii) undertaking all other activities and obligations required to be undertaken in order to facilitate the delivery of a TfNSW Nominated New Bus under the Bus Procurement Panel.
 - (c) The Operator has no Claim against TfNSW in relation to the late delivery of any TfNSW Nominated New Bus under the Bus Procurement Panel except to the extent such late delivery is due to non-payment by TfNSW of amounts owing under the Bus Procurement Panel.
 - (d) Legal title in any TfNSW Nominated New Bus procured under this Contract vests in TfNSW or its nominee.
 - (e) All TfNSW Nominated New Buses procured under this Clause are Contract Buses and must, unless otherwise directed by TfNSW, become subject to the State Bus Lease (and the Operator agrees to the addition of such Buses to the State Bus Lease). Where TfNSW directs that a TfNSW Nominated New Bus will become subject to a lease other than the State Bus Lease (**Alternative Bus Lease**):
 - (i) the Operator must enter into the Alternative Bus Lease as directed by TfNSW; and
 - (ii) TfNSW will:
 - (A) use reasonable endeavours to ensure that the terms of the Alternative Bus Lease are no more onerous than the State Bus Lease; or
 - (B) if:
 - (I) the amount of the lease payments required to be made by the Operator under the Alternative Bus Lease are greater than the equivalent payments required to be made by the Operator under the State Bus Lease; or
 - (II) the Operator demonstrates to TfNSW's reasonable satisfaction that the terms of the Alternative Bus Lease are more onerous than the State Bus Lease in a material way,
- direct a Modification to the extent necessary to provide that the Operator is in no worse a position than it was under the State Bus Lease.

23.6 Acquisition of New Depot

- (a) If the Operator considers that it is necessary to acquire or use a new bus depot or other parking or storage facility for the purposes of complying with its obligations under this Contract the Operator must submit a detailed business case in a form satisfactory to TfNSW setting out details of:
 - (i) the bus depot or other parking or storage facility proposed to be acquired or used;
 - (ii) the reasons for the acquisition or use;
 - (iii) the method of acquisition or access (including leasing or purchase);
 - (iv) any financial arrangements associated with a proposed acquisition;

- (v) any financial impacts associated with the use or acquisition of the depot or facility (including a proposal in relation to the Net Financial Impact of the acquisition or access); and
- (vi) any other information requested by TfNSW,

(New Depot Application).

- (b) The Operator covenants that the acquisition of a New Depot by TfNSW in accordance with this Clause 23.6 will not adversely affect:
 - (i) the Continuity of the Services;
 - (ii) TfNSW's rights under any Transaction Document; or
 - (iii) the operating efficiency of the Operator Activities in a material way.
- (c) In respect of a New Depot Application, TfNSW may:
 - (i) approve the New Depot Application without conditions;
 - (ii) approve the New Depot Application with conditions including:
 - (A) that the New Depot will be acquired by TfNSW (or its nominee) and leased to the Operator on substantially the same terms as the State Bus Depot Leases;
 - (B) where the New Depot is or will be owned by a third party (including an Operator's Associate) (**Lessor**) and leased or licensed to the Operator:
 - (I) a requirement that the terms of any lease or licence in respect of the New Depot allow for the New Depot to be subleased or sublicensed to TfNSW or a nominee of TfNSW;
 - (II) a requirement for the Lessor to enter into a Key Contract Security Document with TfNSW (in a form satisfactory to TfNSW) that permits TfNSW to assign or novate the relevant lease or licence to TfNSW or a nominee of TfNSW; or
 - (III) a requirement that the Lessor will on notice from TfNSW surrender the New Depot lease and enter into a Depot Headlease with TfNSW (as tenant), for a term required by TfNSW (not exceeding 2 years);
 - (C) where the New Depot is owned by the Operator or an Operator's Associate, a requirement that:
 - (I) the Operator or the Operator's Associate transfer the New Depot to TfNSW or a nominee of TfNSW by the Transfer Date on terms agreed by the Parties at the time of approval of the acquisition of the New Depot including the price payable (or method of calculation of the price payable) in respect of the New Depot and any other terms and conditions applicable to the transfer;
 - (II) the Operator or the Operator's Associate grant a mortgage in respect of the New Depot in favour of TfNSW (in a form satisfactory to TfNSW); and
 - (III) a requirement that the Operator or the Operator's Associate procure the execution of a Financier Direct Agreement with any financier of the New Depot (both in a form satisfactory to TfNSW);
 - (D) that the Operator be required to obtain the consent of any mortgagee of the New Depot to the implementation of any of the conditions referred to in Clauses 23.6(c)(ii)(A) to (C); or
 - (E) any adjustments to the Payments agreed by TfNSW which may include an adjustment to reflect the Net Financial Impact of the proposal calculated in accordance with Schedule 12; or
 - (iii) reject the New Depot Application,

and must advise the Operator of its decision with reasons within 30 Business Days of receiving the New Depot Application. If TfNSW does not approve or reject the New Depot Application within 30 Business Days it will be deemed to have rejected the New Depot Application.

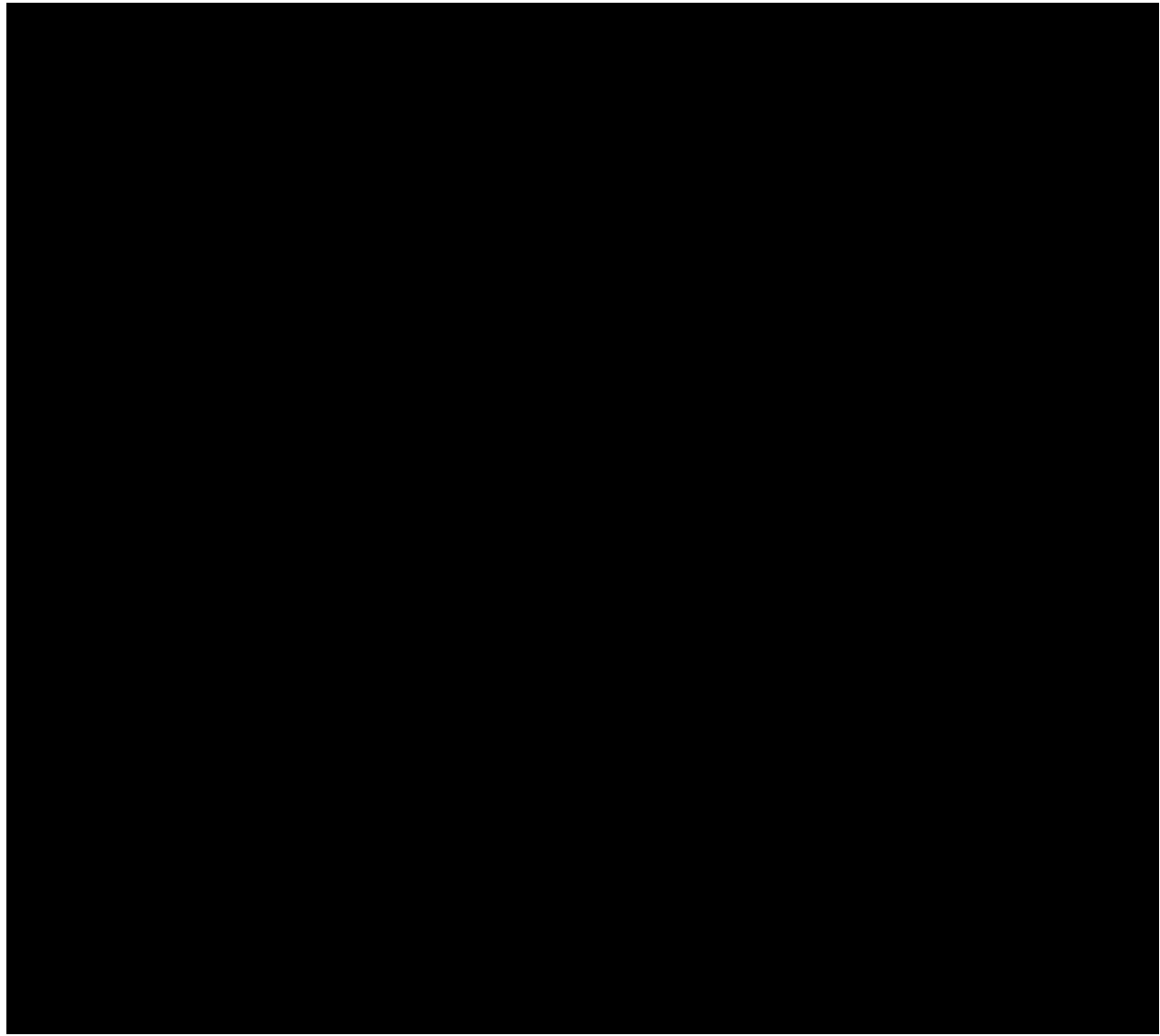
- (d) The Operator has no Claim against TfNSW arising out of or in connection with a rejection by TfNSW of a New Depot Application under Clause 23.6(c)(iii).

23.7 Acquisition and adjustments

On acquisition of each New Bus or New Depot:

- (a) the Operator must update the Asset Management Plan and Asset Management Framework to include the relevant New Bus or New Depot;
- (b) the Operator must update the asset register required as part of the Handover Information to include the New Bus or New Depot; and
- (c) subject to Clause 23.5(e), adjustments to the Payments will be made:
 - (i) in relation to New Buses, in accordance with Schedule 3; and
 - (ii) in relation to New Depots, in accordance with any conditions attached to TfNSW's approval issued under Clause 23.6(c)(ii)(E).

24. Pilot Project



Part G – Asset Management

25. Asset Management

25.1 Asset management obligations

The Operator must perform the Asset Management Activities in accordance with:

- (a) the Asset Management Framework;
- (b) the Asset Management Plan;
- (c) the Asset Schedule; and
- (d) the other requirements of this Contract,

so that:

- (e) the Assets comply with the requirements of the Transaction Documents;
- (f) the Assets are and remain fit for purpose during the Term;
- (g) the Assets are in a condition to permit the Services to be provided in accordance with this Contract;
- (h) the Assets comply with the Handback Condition at the end of the Term; and

- (i) provided each State Asset and Operator New Bus is operated and maintained after the end of the Term in accordance with the Asset Management Framework, each State Asset and Operator New Bus is capable of remaining fit for its intended purpose throughout the Design Life of that State Asset and Operator New Bus.

25.2 Asset Management Framework

The Operator must:

- (a) prior to the Planned Service Commencement Date develop, implement and update the Asset Management Framework;
- (b) otherwise develop and update the Asset Management Framework in accordance with the requirements of the Asset Schedule.

25.3 Asset Management Plan

The Operator must:

- (a) update the Asset Management Plan in accordance with the Asset Schedule;
- (b) not update the Asset Management Plan in a manner which makes TfNSW's obligations under this Contract more onerous or increases any Loss or potential Loss of TfNSW or TfNSW's Associates in connection with the condition or maintenance of State Assets or Operator New Buses; and
- (c) ensure that any updated Asset Management Plan:
 - (i) imposes standards, levels and frequencies of service, scope and requirements that are equal to or greater than or higher than those imposed by this Contract; and
 - (ii) provides an equal or greater level of detail than the most recent applicable Asset Management Plan.

25.4 Review of Asset Management Plan

- (a) The TfNSW Representative may:
 - (i) review any Asset Management Plan submitted under paragraph 3 of the Asset Schedule; and
 - (ii) notify the Operator if, in the opinion of the TfNSW Representative, the Asset Management Plan does not comply with the requirements of this Contract (with detailed reasons) within 20 Business Days following submission of the Asset Management Plan to the TfNSW Representative.
- (b) If the Operator receives a notice in accordance with Clause 25.4(a)(ii) the Operator must, within 20 Business Days, submit a revised Asset Management Plan to the TfNSW Representative whereupon the provisions of this Clause 25.4 will reapply to the revised Asset Management Plan.

25.5 TfNSW may request updates of the Asset Management Plan

If, at any time during the Term:

- (a) any Asset Management Plan does not comply with the requirements of this Contract; or
- (b) the Operator has not updated any Asset Management Plan in accordance with the requirements of the Asset Schedule,

the TfNSW Representative may, by written notice, request that the Operator amend or update the Asset Management Plan specifying:

- (c) the reasons why such updating is required (or why the Asset Management Plan does not comply with this Contract); and
- (d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and the Operator must:

- (e) amend or update the Asset Management Plan as requested by TfNSW to comply with the requirements of this Contract; and
- (f) submit the amended or updated Asset Management Plan to TfNSW within the time specified under Clause 25.5(d) for review under Clause 25.4.

25.6 Compliance with Asset Management Plan

The Operator:

- (a) is only permitted to use; and
- (b) must implement and comply with,

each Asset Management Plan which has been submitted to the TfNSW Representative and in respect of which the TfNSW Representative has not issued a notice under Clause 25.4(a)(ii) within 20 Business Days following submission of the Asset Management Plan.

25.7 Asset Management Failures

- (a) The Parties will meet annually within 3 months of the end of each Contract Year to review the Operator's compliance with the Maintenance Works Program during the previous Contract Year (as applicable).
- (b) An Asset Management Failure will occur if:
 - (i) the Operator fails to comply with the Maintenance Works Program and in TfNSW's opinion (acting reasonably), the Operator's failure to comply with the Maintenance Works Program constitutes a material non-compliance with the Asset Management Plan or will, or is likely to, result in breach of Clauses 25.1(a) to (i); or
 - (ii) the Operator fails in any material respect to comply with any of its maintenance obligations under this Contract.
- (c) If an Asset Management Failure occurs TfNSW may give the Operator a notice stating the nature of the Asset Management Failure.
- (d) The Operator must remedy the Asset Management Failure within:
 - (i) 3 months of the date on which the notice referred to in Clause 25.7(c) is issued; or
 - (ii) such other period agreed between the Parties (acting reasonably),
(Remediation Period).

26. Dealing with Assets

26.1 Security, assignment and possession of State Assets

The Operator must not, except with the consent of TfNSW:

- (a) Dispose of any State Asset, State Asset Access Agreement or Operator Sale Bus;
- (b) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any State Asset, State Asset Access Agreement or Operator Sale Bus; or
- (c) otherwise deal with or part with possession of any State Asset, State Asset Access Agreement or Operator Sale Bus,

except as authorised by the Transaction Documents.

26.2 Security, assignment and possession of Operator Assets

- (a) All assets (other than State Assets) required by the Operator to perform its obligations under the Transaction Documents must, subject to this Clause, be owned by the Operator.

- (b) Subject to Clauses 26.1 and 26.3, the Operator must not (directly or indirectly) without TfNSW's prior consent:
 - (i) create or allow to exist any Security Interest (other than a Permitted Security Interest) over any Operator Asset; or
 - (ii) Dispose of any Operator Asset (unless it is being replaced by an Operator Asset having a substantially similar or better functionality or condition),
where the effect of that action would (in TfNSW's opinion) materially and adversely affect:
 - (iii) the Operator's ability to provide the Services;
 - (iv) the Continuity of the Services; or
 - (v) TfNSW's rights or obligations under a Transaction Document.
- (c) The Operator must not enter into any arrangement in respect of any Operator Asset that is in the nature of an operating lease (as determined under the Account Standards) other than with the prior written consent of TfNSW (which may be subject to conditions).
- (d) Prior to executing any Operator Financial Arrangement in respect of an Operator Asset, the Operator must provide TfNSW with:
 - (i) details of the purchase terms, including the acquisition cost of the relevant Asset;
 - (ii) the terms of the financing with the proposed financier; and
 - (iii) if requested by TfNSW, a Financier Direct Agreement executed by the Operator and the proposed financier.

26.3 Operator Bus Lease Direct Agreement

- (a) In addition to its rights under Clause 26.2 to require a Financier Direct Agreement, TfNSW may, at any time during the Term, require that an agreement is entered into with the owner or lessor of any Operator New Bus which:
 - (i) recognises TfNSW's rights under this Contract in respect of the Operator New Bus; and
 - (ii) is on such terms as are customarily used by TfNSW for an agreement of such nature (including such terms as are necessary to give effect to TfNSW's Powers under the Transaction Documents including with respect to step in and novation),
(each such agreement an **Operator Bus Lease Direct Agreement**).
- (b) If TfNSW notifies the Operator that it requires an Operator Bus Lease Direct Agreement to be entered in accordance with Clause 26.3(a) (such notification to identify the relevant Operator New Bus or Operator New Buses), the Operator must use all reasonable endeavours to procure that the relevant owner or lessor promptly enters into an Operator Bus Lease Direct Agreement with TfNSW.
- (c) The Operator must not, except with the consent of TfNSW (such consent not to be unreasonably withheld or delayed):
 - (i) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any Operator Bus Lease;
 - (ii) in any other way:
 - (A) assign, transfer or otherwise dispose of;
 - (B) create or allow any interest in; or
 - (C) part with possession of,
its rights under, or interest in, an Operator Bus Lease, or:
 - (D) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
 - (E) suspend the performance of any of its obligations under; or

- (F) do or permit anything that would enable or give grounds to another party to do anything referred to in Clauses 26.3(c)(ii)(D) or (E) in relation to,
 - an Operator Bus Lease, other than by way of a Permitted Security Interest; or
- (iii) materially amend or supplement, or consent to any material amendment or supplement of an Operator Bus Lease or expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under an Operator Bus Lease if and to the extent that such amendment, supplement, waiver, extension or grant takes effect in, or relates to the exercise of any power or the performance of any obligation under the Operator Bus Lease during the End of Contract Period or after the Termination Date.

26.4 Management of Operator Bus Leases

In respect of an Operator New Bus that is the subject of an Operator Bus Lease, the Operator must at the end of the term of the Operator Bus Lease, as directed by TfNSW and at the Operator's cost:

- (a) where the Operator Bus Lease gives an entitlement to acquire the Operator New Bus, acquire the Operator New Bus free of any Security Interest; or
- (b) where the Operator Bus Lease does not give an entitlement to acquire the Operator New Bus:
 - (i) negotiate the acquisition of the Operator New Bus free of any Security Interest for not more than its replacement value; or
 - (ii) enter into a replacement Operator Bus Lease.

26.5 Consequences of dealings with Assets

Any breach by the Operator of this Clause 26 is deemed to be a Termination Event.

27. Asset restructure by TfNSW

27.1 Assignment or Novation

- (a) Without limiting Clause 1.10 or any facilitative legislation, TfNSW may assign or novate this Contract or any State Asset Access Agreement, its interest in the subject matter of this Contract or any State Asset Access Agreement or any right under this Contract or any State Asset Access Agreement.
- (b) The Operator agrees to such assignment or novation such that no further consent is required.
- (c) In the case of a novation by TfNSW under this Clause 27.1:
 - (i) TfNSW will be released from its obligations under this Contract or any relevant State Asset Access Agreement and the respective rights of TfNSW and the Operator against one another under this Contract or any relevant State Asset Access Agreement will cease; and
 - (ii) the novated Contract or State Asset Access Agreement will be on substantially the same terms and conditions as this Contract or the relevant State Asset Access Agreement, such that the incoming party and the Operator will assume substantially the same obligations to one another and acquire substantially the same rights against one another as the rights and obligations discharged under Clause 27.1(c)(i), except that the incoming party replaces TfNSW for all purposes under this Contract or the relevant State Asset Access Agreement.
- (d) The Operator consents to the disclosure by or on behalf of TfNSW to the incoming party of the Operator's Confidential Information for the purposes of the assignment or novation.

27.2 Transfer of State Assets by other Governmental Agencies

- (a) The Operator acknowledges and agrees that TfNSW, STA, RMS or any other head lessor under any State Asset Access Agreement entered into during the Term may transfer the

ownership of State Assets to another Governmental Agency or a private entity (**Asset Holding Entity**) during the Term.

- (b) Without limiting Clause 1.10 or any facilitative legislation, the Operator:
- (i) consents to, and must procure that the Operator's Associates and financiers consent to any such transfer of State Assets to an Asset Holding Entity;
 - (ii) agrees to the assignment or novation of any State Asset Access Agreement by TfNSW to an Asset Holding Entity in accordance with Clause 27.1; and
 - (iii) agrees to:
 - (A) the termination of any State Asset Access Agreement by TfNSW;
 - (B) the release of TfNSW from its obligations under the relevant State Asset Access Agreement and the respective rights of TfNSW and the Operator against one another under the relevant State Asset Access Agreement ceasing from the date of termination under Clause 27.2(b)(iii)(A); and
 - (C) in relation to the relevant State Asset the subject of that State Asset Access Agreement, enter into a replacement lease, licence or arrangement with the Asset Holding Entity (**Asset Holding Entity Lease**). TfNSW will use reasonable endeavours to procure that the Asset Holding Entity Lease provides that the Asset Holding Entity and the Operator will assume substantially the same obligations to one another and acquire substantially the same rights against one another as the rights and obligations discharged under Clause 27.2(b)(iii)(B), except that the incoming party replaces TfNSW for all purposes under the relevant State Asset Access Agreement.
- (c) If:
- (i) the amount of the lease payments required to be made by the Operator under the Asset Holding Entity Lease is greater than the equivalent payments required to be made by the Operator under the relevant State Asset Access Agreement; or
 - (ii) the Operator demonstrates to TfNSW's reasonable satisfaction that the terms of the Asset Holding Entity Lease are more onerous than the relevant State Asset Access Agreements that they replace in a material way,
- TfNSW will direct a Modification to the extent necessary to provide that the Operator is no worse off under the Asset Holding Entity Lease than it would have been under the State Asset Access Agreement.
- (d) The Operator consents to the disclosure by or on behalf of TfNSW to the incoming party of the Operator's Confidential Information for the purposes of the transfer of State Assets to any Asset Holding Entity.

27.3 Attorney

The Operator, for valuable consideration, to secure the performance of its obligations under this Clause 27, irrevocably appoints TfNSW as its attorney to:

- (a) do all other things (and execute all other documents) necessary to complete the transactions contemplated by this Clause 27 if the Operator has not done so in sufficient time to give effect to those transactions, and
- (b) the Operator must ratify anything done by TfNSW acting under this power of attorney.

Part H – Contract Administration

28. Access and inspections

28.1 TfNSW's right of entry

- (a) TfNSW (and any person authorised by TfNSW) may, at any time, enter the Contract Depots and any other premises where the Operator Activities are being carried out for the purpose of:
 - (i) observing or inspecting the Operator Activities;
 - (ii) monitoring compliance by the Operator with its obligations under this Contract or any Laws; or
 - (iii) exercising any right or performing any obligation which TfNSW has under any Transaction Document.
- (b) The Operator must use reasonable endeavours to:
 - (i) coordinate the Operator Activities so they do not interfere with the exercise by TfNSW of its right of entry; and
 - (ii) provide TfNSW with every reasonable facility and other assistance necessary for any inspection by TfNSW, including providing access to any Assets, relevant systems, registers, manuals, records (including financial records), plans and programs.
- (c) If an inspection shows that the Operator has not complied or is not complying with its obligations under the Transaction Documents, TfNSW:
 - (i) may notify the Operator of the details of the non-compliance;
 - (ii) will specify a reasonable period within which the Operator must carry out appropriate rectification or remedy activities; and
 - (iii) will be entitled to be reimbursed by the Operator for the reasonable costs of the inspection including any reasonable administrative costs incurred by TfNSW in relation to the inspection.
- (d) Where, in accordance with Clause 28.1(a), TfNSW (or any person authorised by TfNSW) enters the Contract Depots or any other premises where the Operator Activities are being carried out, TfNSW must comply (or must procure that any person authorised by TfNSW complies) with reasonable site safety and security requirements as advised by the Operator.
- (e) Without limiting Clause 28.1(a), the Operator must, if requested to do so by TfNSW, participate in audits conducted by or for the New South Wales Government with respect to fire safety.

28.2 Access to information

- (a) Without limiting any other provision of this Contract:
 - (i) TfNSW may at any time notify the Operator that it requires access to any information held by the Operator or the Operator's Associates which relates to the Operator Activities;
 - (ii) upon receipt of a notice under Clause 28.2(a), the Operator must immediately provide TfNSW (and any person authorised by TfNSW) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and

- (iii) TfNSW (and any person authorised by TfNSW) may review, copy, retain or otherwise deal with such information.
- (b) The Operator must:
 - (i) ensure that TfNSW (and any person authorised by TfNSW) has direct access to any information, documents or material that:
 - (A) is maintained by a third party (including the Operator's Associates); and
 - (B) TfNSW is entitled to have access to, or have copies of, from the Operator under this Contract;
 - (ii) ensure that any contractual arrangements between the Operator or the Operator's Associates and any third parties acknowledge TfNSW's right of access under Clause 28.2(b)(i); and
 - (iii) on demand, provide to TfNSW written evidence (including copies of any contractual arrangements referred to in Clause 28.2(b)(ii)) showing compliance by the Operator with its obligations under Clause 28.2(b)(ii).
- (c) The Operator must cooperate, and must ensure that the Operator's Associates cooperate, with TfNSW and any persons authorised by TfNSW in the exercise of TfNSW's rights under this Clause 28.

29. Reporting

- (a) The Operator must report to TfNSW during the Term, in accordance with the Reporting Schedule.
- (b) If requested by TfNSW, the Operator must provide Driver and Contract Bus shift information to TfNSW, on reasonable notice.

30. Operating Plans

30.1 Accessible Transport Action Plan

- (a) The Operator must develop, implement, maintain and comply with its Accessible Transport Action Plan from the Planned Service Commencement Date and for the duration of the Term.
- (b) The Operator's Accessible Transport Action Plan must specify the steps the Operator will take to comply with:
 - (i) the DDA Legislation;
 - (ii) the *Anti-Discrimination Act 1977* (NSW);
 - (iii) the *Disability Inclusion Act 2014* (NSW); and
 - (iv) any 'Guidelines for Disability Action Planning', or similar guidelines, issued by NSW Governmental Agencies.
- (c) The Operator must publish its Accessible Transport Action Plan on its website and make it available to passengers, upon request, free of charge.
- (d) The Operator must annually review the Accessible Transport Action Plan to ensure it complies with this Clause 30.1 and meets the needs of passengers and the requirements of Law and this Contract. Each update of the Accessible Transport Action Plan must be provided to TfNSW 20 Business Days prior to the planned date of publication.

- (e) The Operator must consult and liaise with RMS, the Roads Authority, local government authorities or any other Governmental Agency with responsibilities relevant to the Transit Stops and the Licensed Areas (**Relevant Authority**) and Connecting Passenger Operators to:
 - (i) carry out the Operator's obligations relating to Transit Stops and Transit Stop Signage and Service related signage at Licensed Areas, referred to in Item 6 of the Services Schedule;
 - (ii) facilitate and enable compliance by the Relevant Authority with accessibility requirements at Transit Stops and Licensed Areas; and
 - (iii) coordinate the Operator's accessible transport services with the accessible services and infrastructure of Connecting Passenger Operators.

30.2 Environmental Plan

- (a) The Operator must develop, implement, maintain and comply with its Environmental Plan from the Planned Service Commencement Date and for the duration of the Term.
- (b) The Operator's Environmental Plan must:
 - (i) be generally consistent with or address the environmental system requirements set out in ISO 14001 'Environmental Management System – Specification with guidance for use'; and
 - (ii) have regard to the need to preserve the Environment and the need to mitigate any adverse effects on the Environment and must ensure all material and consumables used in the performance of the Services are environmentally friendly and kept and disposed of in an environmentally safe and lawful manner.
- (c) The Operator must publish its Environmental Plan on its website and make it available to passengers, upon request, free of charge.
- (d) The Operator must annually review the Environmental Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Environmental Plan must be provided to TfNSW 20 Business Days prior to the planned date of publication.
- (e) If requested by TfNSW, the Operator must demonstrate that it has appropriate environmental management systems in place.

30.3 Customer Service Plan

- (a) The Operator must develop, implement, maintain and comply with its Customer Service Plan from the Planned Service Commencement Date.
- (b) The Operator's Customer Service Plan must identify how the Operator will comply with customer service requirements and must:
 - (i) as a minimum, address and detail:
 - (A) the Operator's customer service model including Staff competencies, roles, deployment and responsibilities;
 - (B) customer communication and other interfaces throughout the journey during normal, degraded and planned service disruption operations;
 - (C) customer and Staff safety and security;
 - (D) Special Event Services support;
 - (E) ticketing, revenue protection and mitigation of fare evasion;
 - (F) operational integration with other public transport services;
 - (G) customer feedback and lost property management;
 - (H) customer service training and development of Staff; and
 - (I) measures and strategies to ensure customer engagement in maintaining high standards and the continuous improvement of service delivery; and

- (ii) ensure equitable access for all customers.
- (c) The Operator must review and report annually to TfNSW to provide TfNSW with information about how all the complaints of which the Operator is aware were resolved or why complaints were not resolved, in accordance with the KPI Schedule.
- (d) The Operator must publish its Customer Service Plan on its website and make it available to passengers, upon request, free of charge.
- (e) The Operator must annually review the Customer Service Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Customer Service Plan must be provided to TfNSW 20 Business Days prior to the planned date of publication.

31. Staffing

31.1 All Staff

- (a) The Operator warrants that all Staff hold all necessary Authorisations and are properly Authorised, Accredited, trained and experienced to perform the Services for the duration of the Term.
- (b) The Operator must provide training to its Staff and develop, document and maintain training materials in accordance with Item 8 of the Services Schedule.
- (c) Without limiting Clause 31.1(a) and (b), the Operator must ensure that all Staff who are engaged in, or in connection with, the Operator Activities are properly trained and experienced to a level that would ordinarily be expected of an experienced, efficient and competent operator of passenger transport in relation to the provision of services and the conduct of a passenger transport service comparable to the size, scope and complexity of the Services and the Operator Activities.
- (d) The Operator must ensure that all customer facing Staff are:
 - (i) clean and tidy; and
 - (ii) attired in a clean, well maintained and appropriate uniform that complies with WHS Laws.

31.2 Key Personnel

- (a) The Operator must ensure that all Staff that are identified as key management personnel of the Operator in Item 3 of Attachment A (**Key Personnel**) are members of Staff on or before the time specified in Item 3 of Attachment A.
- (b) The Operator must:
 - (i) ensure that each person who is one of the Key Personnel remains dedicated to the carrying out of the performance of the Operator Activities and the Operator's obligations under this Contract in the positions and for the periods specified in Item 3 and Item 4 of Attachment A; and
 - (ii) not remove Key Personnel from their positions and identified duties during the Term (or other period specified in Item 4 of Attachment A) without the prior approval of TfNSW unless the employment of the Key Personnel is terminated.
- (c) If any of the Key Personnel do not remain dedicated to the performance of the Operator Activities and the Operator's obligations under this Contract in the position and for the periods specified in Item 3 and Item 4 of Attachment A, the Operator must propose a replacement who is of at least equivalent skill and experience as soon as practicable for TfNSW's approval. The Operator must only appoint proposed replacements approved by TfNSW (acting reasonably). If the proposed replacements are not approved, the Operator must propose further replacements until TfNSW's approval is obtained. Any replacement personnel approved by TfNSW will be Key Personnel for the purposes of this Clause 31.2.

32. Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under a Transaction Document without the consent of TfNSW (such consent not to be unreasonably withheld or delayed). TfNSW may consent to the terms of a specific subcontract or delegation or to a class or type of subcontracts or delegations.
- (b) Without limiting Clause 32(a), a subcontract or delegation entered into by the Operator must not be for a period that exceeds the seventh anniversary of the Planned Service Commencement Date without the consent of TfNSW.
- (c) The Operator must ensure that any subcontractor engaged to provide any of the Operator Activities holds all appropriate Authorisations required in relation to the activities for which it has been engaged.
- (d) The Operator:
 - (i) is not, by reason of having engaged a subcontractor, relieved of any of its liabilities or obligations under the Transaction Documents;
 - (ii) is responsible for each subcontractor engaged by it as if all the acts and omissions of the subcontractor were its own acts and omissions; and
 - (iii) agrees, that where there is a reference in a Transaction Document to the Operator and a subcontractor is performing the obligations of the Operator, the Operator must procure that each subcontractor it appoints engages in, or refrains from engaging in, conduct of the kind required or prohibited by this Contract and otherwise complies with all obligations of the Operator under the Transaction Document.
- (e) The Operator must complete a Subcontractor's Statement in relation to any subcontractor approved by TfNSW under this Clause 32. TfNSW will provide the Subcontractor's Statement to the Operator for completion.

33. Key Contracts

33.1 Interpretation

In this Clause 33:

- (a) a reference to an agreement includes an arrangement (whether legally enforceable or not); and
- (b) a reference to the Operator entering into an agreement includes the Operator being a party to, or having the benefit of, an agreement.

33.2 Key Contract Security Documents

- (a) Subject to Clause 33.2(g), the Operator must not enter into a Key Contract unless TfNSW has previously entered into a Key Contract Security Document in respect of that Key Contract on terms acceptable to TfNSW. The Operator will not be required to comply with this Clause 33.2(a) if it notifies TfNSW prior to entering into a Key Contract and TfNSW notifies the Operator that a Key Contract Security Document is not required in respect of that Key Contract. TfNSW must act reasonably in determining whether or not a Key Contract Security Document will be required.
- (b) TfNSW may, by notice to the Operator, designate any agreement as a Key Contract if TfNSW considers that the receipt by the Operator of the goods or services which are or will be the subject matter of the agreement is reasonably necessary for the conduct of all or any part of the Operator Activities.
- (c) The designation takes effect from the date that notice is given to the Operator under Clause 33.2(b) and may be made in respect of a particular agreement or a category of agreements.

- (d) The Operator must notify TfNSW of any agreement it proposes to enter into which it believes (acting reasonably) TfNSW may wish to designate under Clause 33.2(b), prior to entering into that agreement.
- (e) TfNSW may, by notice to the Operator, declare that a Key Contract is no longer a Key Contract for the purposes of this Contract if TfNSW considers that the receipt by the Operator of the goods or services that are the subject matter of the agreement is no longer reasonably necessary for the conduct of all or any part of the Operator Activities.
- (f) A designation or declaration takes effect from the date that notice is given to the Operator under Clause 33.2(e) and may be made in respect of a particular agreement or a category of agreements.
- (g) The Operator will not be required to comply with this Clause 33.2 in respect of any agreement with a term (including all options) of three months or less that is necessary to deal with any emergency in connection with all or any part of the Operator Activities.
- (h) The Operator acknowledges the existence of the Key Contract Security Documents and agrees to cooperate in the implementation of those Key Contract Security Documents.

33.3 Amendment of Key Contracts

The Operator must not, except with the consent of TfNSW:

- (a) materially amend or supplement, or consent to any material amendment or supplement of; or
- (b) expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under a Key Contract, if and to the extent that anything referred to in Clauses 33.3(a) or (b) takes effect in, or relates to the exercise of any power or the performance of any obligation under the Key Contract during the End of Contract Period or after this Contract is due to expire.

33.4 Assignment of Key Contracts

The Operator must not, except with the consent of TfNSW:

- (a) create or allow to exist any Security Interest over; or
- (b) in any other way Dispose of, part with possession of, create or allow any interest in, or otherwise deal with,

its rights under, or interest in, a Key Contract.

33.5 Termination of Key Contracts

- (a) The Operator must not, except as permitted by Clause 33.5(b):
 - (i) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
 - (ii) suspend the performance of any of its obligations under; or
 - (iii) do or permit anything that would enable or give grounds to another party to do anything referred to in Clause 33.5(a)(i) or (ii) in relation to, a Key Contract.
- (b) The Operator may terminate a Key Contract if TfNSW is reasonably satisfied that:
 - (i) it is no longer necessary for the Operator to have the benefit of the Key Contract; or
 - (ii) the Operator has made adequate alternative arrangements for the continued conduct of the Operator Activities.
- (c) If the Operator terminates a Key Contract in breach of this Contract, the Operator must at the request of TfNSW, enter into an agreement immediately following that request with each counterparty to the Key Contract on the terms set out in the relevant Key Contract Security Document.

33.6 Notices in respect of Key Contracts

The Operator must in respect of any Key Contract, as soon as practicable:

- (a) notify TfNSW if it receives any notice of any assignment, transfer, Security Interest, execution or other dealing in relation to the Key Contract;
- (b) provide a copy to TfNSW of any notice given or received by it terminating, or suspending any services under, the Key Contract; and
- (c) notify TfNSW (to the extent that it is aware) of:
 - (i) any breach by any party to the Key Contract of any of its material obligations under the Key Contract;
 - (ii) the occurrence of any event of default, termination event or similar event (whatever called) under the Key Contract; and
 - (iii) any other event or circumstance which, alone or with the giving of notice or passage of time or both, would entitle a party to the Key Contract to terminate or rescind it or treat it as repudiated or suspend a party's performance of obligations under it.

33.7 Successor Operator

The Operator must at the request of TfNSW, provide reasonable assistance to the Successor Operator and Interim Operator in securing the supply to the Successor Operator or Interim Operator (as applicable) of the goods or services which are the subject matter of a Key Contract, to the extent that the supply is necessary for the conduct of all or any part of the Operator Activities.

34. Contract management

34.1 Governance

- (a) The Operator and TfNSW must participate in the governance of this Contract, as described in the Governance Schedule.
- (b) The Operator warrants that it will manage the Contract in accordance with the obligations set out in Item 12 of the Services Schedule.

34.2 Audit

- (a) TfNSW (and any person authorised by TfNSW) may investigate any matter in connection with this Contract, including costs and pricing matters, and may at any time during the Term and for six months after the Termination Date, audit all files, records and invoices of the Operator pertaining to the provision of the Operator Activities and related expenditures.
- (b) TfNSW may appoint an auditor for the purposes of this Clause 34.2.
- (c) TfNSW may, or may appoint persons to, carry out mystery shopper surveys, or collect customer satisfaction data, from passengers on Contract Buses and at Transit Stops.
- (d) TfNSW (and any person authorised by TfNSW) may conduct audits of the contents of reports and data provided by the Operator to TfNSW in accordance with the Reporting Schedule.
- (e) Without limiting Clause 34.2(d), from the Service Commencement Date and for the duration of the Term, the Operator must collect the data specified in paragraph 12(a) of the Reporting Schedule.
- (f) The Operator must:
 - (i) provide all reasonable assistance to TfNSW (and any person authorised by TfNSW) in the conduct of an audit under Clause 34.2(d);

- (ii) make available to TfNSW (and any person authorised by TfNSW) all reports and underlying data requested by TfNSW in the conduct of an audit under Clause 34.2(d); and
 - (iii) comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits.
- (g) The Operator must provide all reasonable access and assistance required in connection with this Clause 34.2.

34.3 Inquiries

- (a) The Operator must, within the timeframe required by TfNSW, provide all assistance reasonably requested by TfNSW in respect of any inquiry into or concerning the Operator Activities or this Contract. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to TfNSW) or any request for information from the NSW Auditor-General or the Independent Pricing and Regulatory Tribunal directed to TfNSW or the Minister for Transport.
- (b) Without limiting Clause 34.3(a), the assistance to be provided by the Operator includes:
 - (i) the provision of requested documents or information relevant to the Operator Activities; and
 - (ii) answering questions relevant to the Operator Activities.

35. Accreditation and compliance

35.1 Compliance with Laws

- (a) The Operator must:
 - (i) in performing the Operator Activities, comply with all applicable Laws including:
 - (A) the PT Act 1990;
 - (B) the PT Act 2014;
 - (C) the *Road Transport Act 2013* (NSW);
 - (D) the TA Act;
 - (E) the Heavy Vehicle National Law (including requirements relating to vehicle standards, mass, dimension and loading requirements, driver fatigue management, speed management, maintenance management and the Chain of Responsibility Provisions); and
 - (F) any regulations made under any of the Laws referred to in Clauses 35.1(a)(i)(A) to (D),
(Transport Laws);
 - (ii) ensure the Operator's Associates engaged in, or in connection with, the Operator Activities, comply with all applicable Laws including Transport Laws;
 - (iii) ensure that the Assets are operated and maintained so as to comply with all applicable Laws including Transport Laws;
 - (iv) give the TfNSW Representative copies of:
 - (A) all material documents given by the Operator or any of the Operator's Associates to a Governmental Agency; and
 - (B) details of any other material communications between the Operator or any of the Operator's Associates and any Governmental Agency,

- in connection with the Operator Activities;
- (v) without limiting Clause 35.1(a)(iv), give the TfNSW Representative copies of any notice, report or other correspondence given or received by:
- (A) the Operator or the Operator's Associates under or in connection with:
- (I) any applicable Law including any Transport Law under which any Authorisation required to carry out the Operator Activities is granted; or
- (II) any Authorisation held by the Operator or the Operator's Associates,
- in connection with the Operator Activities; or
- (B) the Operator or the Operator's Associates which may adversely affect the ability of the Operator or the Operator's Associates to carry out the Operator Activities,
- as soon as practicable, but in any event no later than five Business Days after such notice, report or other correspondence is given or received by the Operator or the Operator's Associates.
- (b) The Operator must provide TfNSW, RMS and STA with such assistance as may be required by TfNSW, RMS and STA (acting reasonably) to enable them to comply with all applicable Laws including Transport Laws.
- (c) During the first month after the Service Commencement Date and every 12 months thereafter, the Operator must certify in writing to TfNSW that the Operator has complied with the following legislative and regulatory requirements:
- (i) *Disability Discrimination Act 1992* (Cth);
- (ii) *Anti-Discrimination Act 1977* (NSW);
- (iii) Environmental Law, including but not limited to the *Protection of the Environment Operations Act 1997* (NSW);
- (iv) *Industrial Relations Act 1996* (NSW); and
- (v) *Child Protection (Working with Children) Act 2012* (NSW).
- (d) The Operator must, and must ensure that the Operator's Associates:
- (i) promptly give any Governmental Agency such access to assets, premises and information as that Governmental Agency requests, within the time requested;
- (ii) cooperate with and respond to any lawful requests made by any Governmental Agency, within the time requested; and
- (iii) do not hinder or delay any Governmental Agency in carrying out its duties.
- (e) Compliance by the Operator with its obligations under this Clause 35:
- (i) does not discharge or excuse the Operator from complying with its other obligations under the Contract; and
- (ii) is not evidence of compliance by the Operator with its other obligations under the Contract.

35.2 Authorisations and Accreditation

- (a) Prior to the commencement of any work arising under or in connection with the Operator Activities for which any Authorisation or Accreditation is required by Law, and at all times

while carrying out such Operator Activities, the Operator must, and must ensure that the Operator's Associates:

- (i) hold all Authorisations required to carry out those Operator Activities including Accreditation; and
 - (ii) comply with all conditions of such Authorisations and all obligations of accredited persons under the applicable Laws including the PT Act 1990.
- (b) If the Operator is a corporation, there must be at all times a designated manager or director of the Operator in accordance with section 7 of the PT Act 1990.

35.3 Safety Management System

- (a) Without limiting Clauses 35.1 and 35.2, the Operator must, and must ensure that the Operator's Associates do, to the extent required by applicable Law including Transport Laws develop, implement and maintain a Safety Management System:
- (i) in a timely manner; and
 - (ii) in accordance with this Contract and the applicable Law including Transport Laws.
- (b) The Operator must:
- (i) ensure that its or the Operator's Associates' Safety Management Systems contemplate and provide for the continuation of the Operator Activities following the exercise by TfNSW of its Step in Rights; and
 - (ii) provide TfNSW with:
 - (A) the then current version of its or the Operator's Associates' Safety Management System for the Operator Activities promptly upon request by TfNSW; and
 - (B) an updated version of such Safety Management System within five Business Days of any update.

35.4 Staff

- (a) Without limiting Clauses 35.1 to 35.3, the Operator must ensure that all Staff:
- (i) are competent to carry out the work for which they are engaged for the purposes of all applicable Laws including Transport Laws; and
 - (ii) comply with their obligations under all applicable Laws including Transport Laws.
- (b) Without limiting Clause 35.4(a), the Operator must ensure that with respect to Bus Driver Authorities required to be held by Drivers under the PT Act 1990, all Drivers of Buses hold such Bus Driver Authorities and will comply at all times with such Bus Driver Authorities.

35.5 Specific Bus safety requirements

Without limiting any other Authorisations required for the carrying out of the Operator Activities, the Operator must operate the Services only upon:

- (a) Roads and Road-Related Areas that have been approved by the appropriate Roads Authority for use by Bus traffic; or
- (b) if the Services are to be provided on private property, with the permission of the owner of the private property.

35.6 AEO

- (a) The Operator must, or must procure that the Operator's Associates, obtain and maintain during the Term, AEO status in relation to the Operator Activities in accordance with the requirements set out from time to time at <http://www.asa.transport.nsw.gov.au/ts/asa-standards>.
- (b) For clarification, a change in the requirements referred to in Clause 35.6(a) is not a Project Specific Change in Law.

35.7 WHS

- (a) In performing the Operator Activities, the Operator must ensure, so far as is reasonably practicable, the health and safety of its Workers and any persons at the Workplace (in the area under the Operator's control), including any persons performing work at the Workplace, whether or not engaged by the Operator.
- (b) The Operator acknowledges that, in performing the Operator Activities:
 - (i) for the purposes of the WHS Law, it has management and control of the Workplace and as such must ensure compliance with its obligations under WHS Law in this regard;
 - (ii) it will ensure, so far as is reasonably practicable, the health safety of any persons at the Workplace, including any persons performing work at the Workplace, whether or not engaged by the Operator;
 - (iii) in performing the Operator Activities, the Operator must ensure that (subject to Clause 35.7(e)):
 - (A) it manages or controls the Workplace;
 - (B) it provides appropriate training and supervision for all persons employed or engaged by it at the Workplace;
 - (C) it controls or directs the performance of work associated with the Operator Activities;
 - (D) it establishes and maintains safe work practices;
 - (E) it engages competent persons to carry out risk audits at its Workplace every two years. Such audits must be undertaken in compliance with good risk management principles and must identify, assess and control any work health and safety risks present at the Workplace;
 - (F) all Staff performing the Operator Activities are trained in work health and safety, in particular in relation to the risks associated with performing the Operator Activities;
 - (G) it otherwise complies with all WHS Law;
 - (H) it will inform TfNSW of any changes of any Staff, corporate structure, management structure or supervisors that may affect the safety of its Staff or workers in performing the Operator Activities; and
 - (I) it otherwise complies with all statutory requirements for work health, safety and rehabilitation management.
- (c) TfNSW and the Operator acknowledge and agree that the Operator has control of:
 - (i) the manner in which the Operator Activities are performed; and
 - (ii) all matters arising out of or as a consequence of the performing of or failure to perform the Operator Activities that give rise or may give rise to risks to health or safety.
- (d) The Operator must, prior to the performance of any part of the Operator Activities:
 - (i) undertake an assessment of the work, health and safety risks associated with the performance of the Operator Activities and identify and take all reasonably practicable steps to implement appropriate work, health and safety risk control measures to eliminate and minimise all such work, health and safety risks; and
 - (ii) as required by TfNSW, provide TfNSW with details of the work, health and safety risk assessment undertaken and evidence of implementation of appropriate work, health and safety risk control measures required under this Clause 35.7.
- (e) If the Operator engages a contractor, or otherwise relinquishes to, or shares with, any person:
 - (i) the management or control of the Workplace; or

- (ii) control over the performance of work associated with the Operator Activities, it will ensure that person complies with the obligations referred to in this Clause 35.7.
- (f) In order to meet its obligations under this Clause 35.7, the Operator must adopt a work health, safety and rehabilitation management system that supports a systematic approach to managing risks to health and safety posed by the Workplace or the Operator Activities, including:
 - (i) a process to identify safety hazards, assess the risks posed by such hazards and eliminate or control the risks; and
 - (ii) mechanisms to monitor the performance of the system and adapt and improve it as necessary.
- (g) The Operator will provide to TfNSW such information about the operation and maintenance of the system referred to in Clause 35.7(f) as TfNSW requests. Any review of the operation or maintenance of the system by TfNSW under this Clause 35.7(g) does not constitute a verification or acceptance by TfNSW of the adequacy of the system.
- (h) The Operator must so far as is reasonably practicable consult, cooperate and coordinate the Operator Activities with any other person involved in performing work at the Workplace to achieve effective coordination of those activities to ensure optimal health and safety risk management and enable TfNSW and the Operator and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.
- (i) Without limiting the Operator's obligations under any other provision of this Contract, to the extent that the Operator Activities include construction work at a Contract Depot or Licensed Area that is owned by TfNSW (TfNSW Site):
 - (i) TfNSW engages the Operator as the principal contractor in respect of that TfNSW Site and authorises the Operator to have management and control of each workplace at which such Operator Activity is to be carried out and to discharge the duties of a principal contractor under the WHS Law;
 - (ii) the Operator accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Law and perform all such other activities as are necessary to ensure the TfNSW does not breach its obligations under the WHS Law; and
 - (iii) the Operator's engagement and authorisation as a principal contractor will continue until the point in time when the relevant Operator Activity is completed.
- (j) If the Operator breaches its obligations under this Clause 35.7, the breach will be a Termination Event for the purposes of Clause 45.1. In addition, the Operator has no Claim against TfNSW as a result of or in any way connected with a breach of its obligations under this Clause 35.7.
- (k) In this 35.7 the terms "principal contractor", "workplace" and "construction work" have the same meanings given to those terms in the WHS Law.

Part I – Payment

36. Payment

36.1 Payments

- (a) In exchange for the Operator performing the Operator Activities in accordance with this Contract, TfNSW must pay the Operator the Payments, after receipt of a valid Tax Invoice from the Operator in accordance with Clause 36.2.
- (b) The Payment amounts specified in the Payment Schedule will be fixed for the Term, unless varied in accordance with the Payment Schedule or this Contract.

- (c) Unless expressly stated in this Contract or the Schedules, the Operator must bear the cost of any steps, actions, obligations or activities required of the Operator arising from or in connection with this Contract and is not entitled to any reimbursement of expenses, payment or compensation for any such steps, actions, obligations or activities.

36.2 Invoices and time for payment

- (a) On a monthly basis in accordance with paragraph 2(a) of the Payment Schedule for the duration of the Term, the Operator must submit to TfNSW a valid Tax Invoice for the performance of the Operator Activities in accordance with the terms of this Contract. The Tax Invoice must specify:
 - (i) the amount of the Payments in respect of the Services for the month in arrears;
 - (ii) the amount of GST payable in respect of the provision of the Services; and
 - (iii) such other details specified in the Payment Schedule.
- (b) TfNSW must make Payments within 14 days after receipt of a Tax Invoice where:
 - (i) the amount claimed in the Tax Invoice is due for payment and correctly calculated in Australian dollars; and
 - (ii) the invoice is set out as an itemised account in accordance with the requirements of Clause 36.2(a).
- (c) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.

36.3 Set off

- (a) TfNSW will be entitled to set off or deduct from any amount due from TfNSW to the Operator under a Transaction Document:
 - (i) any debt or other monies due from the Operator to TfNSW; and
 - (ii) any Claim to money which TfNSW may make in good faith against the Operator whether for damages or otherwise (including under any indemnity in a Transaction Document) and whether or not the amount is disputed,whether under a Transaction Document or otherwise at Law relating to the Operator Activities.
- (b) The Operator must make all payments due to TfNSW under any Transaction Document without set off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) Nothing in this Clause 36.3 affects TfNSW's right to recover from the Operator the whole of the debt or any balance that remains owing after any set off.

36.4 Goods and Services Tax (GST exclusive prices)

- (a) A reference in this Clause 36.4 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this Contract which is relevant in determining a payment to be made by one of the Parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this Contract, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- (d) If one of the Parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Contract, the amount of the reimbursement will be net of any Input Tax Credit which may be claimed by the Party being reimbursed in relation to that expense or outgoing.

36.5 Civil Penalties

Paragraph 5 of the KPI Schedule and paragraphs 2(a)(iii) and 4 of the Payment Schedule are civil penalty provisions for the purposes of section 38 of the PT Act 2014.

Part J – Insurance and indemnity

37. Reinstatement of loss of damage

37.1 Reinstatement

- (a) If any part of the State Assets or an Operator New Bus is lost, damaged or destroyed, the Operator must:
 - (i) promptly provide the TfNSW Representative with notice of any such loss, damage or destruction and any required reinstatement or repair;
 - (ii) consult with the TfNSW Representative as to the programming of the works needed to effect the relevant reinstatement or repair;
 - (iii) except in the case of any Licensed Area or Transit Stop (other than Transit Stop Signage and WSUP Works) promptly reinstate or otherwise make good the loss, or repair the damage, so that the Operator continues to comply with its obligations under the Transaction Documents to the greatest extent possible; and
 - (iv) keep the TfNSW Representative fully informed of the progress of the reinstatement and repair activities.
- (b) Contract Buses that are reinstated or repaired under this Clause 37.1 must comply with the uniform livery requirements set out in the TfNSW Brand Style Guide .

37.2 Damage to third party property

- (a) Without limiting Clause 39, but subject to Clause 38.2, where any damage to or loss or destruction of real or personal property of a third party occurs which arises out of a breach by the Operator of this Contract or an act or omission of the Operator, the Operator must do one of the following (where it has a legal liability to do so):
 - (i) promptly repair, replace or reinstate the damage, loss or destruction; or
 - (ii) reasonably compensate the third party.
- (b) If the Operator fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, TfNSW may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by TfNSW will be a debt due and payable from the Operator to TfNSW.

38. Insurance

38.1 Insurance policies

- (a) On or before the Planned Service Commencement Date, the Operator must effect and maintain for the Term:
 - (i) public liability insurance:
 - (A) covering claims in respect of:
 - (I) damage to any real or personal property; and
 - (II) injury to, or death of, any person,

arising out of or in connection with the performance of the Operator Activities and use and operation of the Assets;

- (B) in which TfNSW and RMS are also a named insured in the policy; and
 - (C) for at least the amount specified in Item 5 of Attachment A;
 - (ii) workers' compensation insurance against any common law or statutory liability;
 - (iii) industrial special risks insurance:
 - (A) covering the Contract Depots and other assets, infrastructure or equipment provided to, used or accessed by the Operator under the State Bus Depot Leases and State Existing Facility Leases against physical loss, destruction or damage for an amount not less than the market value (plus allowances for claim contingencies including removal of debris, demolition costs, professional fees and expediting expenses); and
 - (B) to be effected in the joint names of TfNSW, STA and the Operator for their respective rights and interests;
 - (iv) insurance covering the Contract Buses:
 - (A) against physical loss, destruction or damage for an amount not less than the market value; and
 - (B) to be effected in the joint names of TfNSW, STA and the Operator for their respective rights and interests;
 - (v) insurance coverage against third party property damage for all Contract Buses and any other motor vehicles used to carry out the Operator Activities for at least the amount specified in Item 6 of Attachment A;
 - (vi) a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles which are used in connection with the Operator Activities (other than motor vehicles that are required to be insured under Clause 38.1(a)(iv));
 - (vii) compulsory third party motor vehicle insurance in respect of all registrable motor vehicles which are used in connection with the Operator Activities;
 - (viii) a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned or leased by the Operator or the Operator's Associates) which is used in connection with the carrying out of the Operator Activities relating to the Services;
 - (ix) terrorism insurance which covers physical loss or damage to the Contract Buses caused by a 'Terrorist Act' (as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this Contract) and including cover for business interruption arising from such loss or damage; and
 - (x) any other insurances which TfNSW reasonably requires in which it is also a named insured or which are commonly effected by the operators of public transport services comparable to the size, scope and complexity of the Operator Activities provided those insurances can be obtained on payment of a reasonable premium.
- (b) All policies of insurance required under this Clause must be effected and maintained with an Authorised Insurer that has been approved by TfNSW.

38.2 Insurance generally

- (a) The Operator represents and warrants to TfNSW that on the date of this Contract and for the duration of the Transition Period and the Term that it has effected insurances as are required by, and in accordance with, Clause 38.1.
- (b) The Operator must use reasonable endeavours to ensure that all contracts for insurance the Operator effects in compliance with this Contract contain a term that requires the insurer to notify TfNSW in writing whenever the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy.

- (c) If the Operator has used reasonable endeavours as required by Clause 38.2(b) but, despite this, the contracts for insurance effected in compliance with this Contract do not contain the term referred to in Clause 38.2(b), the Operator must immediately notify TfNSW in writing if the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy, including particulars of that notice from the insurer.
- (d) The Operator must provide notice to TfNSW of any intended cancellation of insurances effected in compliance with this Contract by the Operator and when any insurances are to expire.
- (e) The Operator must:
 - (i) give TfNSW proof of currency and coverage of the insurances referred to in Clause 38.1 that is acceptable to TfNSW before the Planned Service Commencement Date;
 - (ii) give TfNSW certified copies of all:
 - (A) policies;
 - (B) policy schedules;
 - (C) renewal certificates; and
 - (D) endorsement slips,
 as soon as it receives them;
 - (iii) give TfNSW a certificate of currency in a form satisfactory to TfNSW (acting reasonably) to confirm that the insurances which the Operator must effect and maintain under this Clause 38 have been effected and maintained in accordance with the requirements of this Clause 38, whenever requested by TfNSW; and
 - (iv) in respect of any policy which names more than one insured, have each policy endorsed or a term in the policy to the effect that:
 - (A) the insurer waives its right to avoid the policy or any liability under the policy by reason of non-disclosure or inaccurate disclosure in the proposal relating to that policy by the named insureds other than the named insureds responsible for the non-disclosure or inaccurate disclosure;
 - (B) the insurer agrees to waive all rights of subrogation or action that it may have or acquire against the 'insured' parties;
 - (C) the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
 - (D) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.
- (f) The Operator must:
 - (i) not knowingly do or permit, or omit to do, anything which prejudices any insurance required to be effected and maintained under this Clause 38 (**Required Insurance**);
 - (ii) rectify anything which might prejudice any Required Insurance;
 - (iii) reinstate any Required Insurance if it lapses;
 - (iv) immediately notify TfNSW of any fact or circumstance or change in circumstances which may prejudice any Required Insurance;
 - (v) without limiting Clause 38.2(f)(iv), immediately notify TfNSW if it receives any claim or notice in connection with a Required Insurance;
 - (vi) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Required Insurance; and

- (vii) comply at all times with the terms of each Required Insurance.
- (g) The effecting of insurances does not limit the liabilities or obligations of the Operator under this Contract. The Operator bears the risk of the Required Insurances being inadequate to enable the Operator to fulfil its obligations under this Contract.

38.3 Premiums

The Operator must punctually pay all premiums in respect of all insurance policies referred to in this Clause 38.

38.4 Claims and proceeds

- (a) If the Operator becomes entitled to claim under any insurance policy as the result of the loss of, or any damage to, any State Asset or Operator New Bus, the Operator must diligently pursue such claim and keep TfNSW notified of its progress in pursuing that claim.
- (b) The Operator must, as directed by TfNSW, apply the proceeds of any claim referred to in Clause 38.4(a):
 - (i) to the repair of any damage to the relevant State Asset or Operator New Bus, where such repair is economic; or
 - (ii) to TfNSW, together with any deductible loss and proceeds realised by the Operator on the disposal of or scrapping of such State Assets.
- (c) If Clause 38.4(b)(i) applies and if required by TfNSW, the Operator must provide evidence to TfNSW's satisfaction (acting reasonably) that repair of any damage to a State Asset or Operator New Bus is economic.
- (d) If TfNSW is not reasonably satisfied by the evidence provided by the Operator under Clause 38.4(c), TfNSW may (acting reasonably) direct the Operator to apply the insurance proceedings in another manner.
- (e) Any replacement for a State Asset procured under this Clause 38.4 will be deemed to be a State Asset and, unless TfNSW directs that an alternative lease will apply, will become subject to the same State Asset Access Agreement that the original State Asset was subject to.

39. Indemnity and Limitation of Liability

39.1 Indemnity

- (a) The Operator must indemnify TfNSW, RMS, STA, any Roads Authority, the Minister for Transport, the State and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of, or to, any of them (**Indemnified Persons**), from and against:
 - (i) any Loss incurred by an Indemnified Person in respect of:
 - (A) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to an Indemnified Person;
 - (B) damage to, loss or destruction of, or loss of use of (whether total or partial), any State Asset; and
 - (C) any claim against an Indemnified Person (including by another Indemnified Person) in respect of:
 - (I) any illness, personal injury to, or death of, any person; or
 - (II) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property,caused by, arising out of, or as a consequence of any act or omission of the Operator;

- (ii) any Loss incurred by an Indemnified Person arising out of or any way in connection with:
 - (A) any breach of, or failure to comply with, a Transaction Document by the Operator including:
 - (I) any Non-Compliance Event; or
 - (II) any Termination Event;
 - (B) termination of this Contract under Clause 45.2; or
 - (C) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or any of its Staff;
- (iii) any Loss incurred by an Indemnified Person in respect of any claim by a third party against an Indemnified Person or any liability of an Indemnified Person to a third party arising out of, or in any way in connection with:
 - (A) any breach of, or failure to comply with, a Transaction Document by the Operator including:
 - (I) any Non-Compliance Event; or
 - (II) any Termination Event;
 - (B) termination of this Contract under Clause 45.2; or
 - (C) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or any of its Staff;
- (iv) without limiting Clauses 39.1(a)(i), (ii) or (iii), any Loss incurred by an Indemnified Person including in respect of any Claim by a third party against an Indemnified Person or any liability of an Indemnified Person to a third party arising out of or in any way in connection with:
 - (A) the occupation or use of the Contract Buses, Transit Stops, Licensed Areas or Contract Depots by the Operator or the Operator's Associates;
 - (B) any Subsequent Contamination including:
 - (I) except to the extent prohibited by Law, where arising out of or in any way in connection with any failure by the Operator to comply with any obligation under this Contract in connection with Subsequent Contamination; or
 - (II) where incurred by TfNSW, RMS or STA in complying with, or in connection with, a Clean Up Notice to the extent that the relevant the Contamination the subject of the Clean Up Notice is Subsequent Contamination;
 - (C) except to the extent prohibited by Law, Contamination in, on or under (or emanated or emanating from) any New Depot;
 - (D) any breach by the Operator of the terms of a Key Contract;
 - (E) TfNSW:
 - (I) remedying or procuring the remedy of any default of the Operator under a Key Contract; or
 - (II) performing the obligations of the Operator under a Key Contract;
 - (F) a breach by the Operator of Clause 35.7;
 - (G) any infringement of any Intellectual Property rights by any of the Operator or any of the Operator's Associates;
 - (H) TfNSW's or its sublicensee's use of the Contract Material produced by or on behalf of the Operator infringing a third party's Intellectual Property rights; or

- (l) (whether directly or indirectly) any breach of Clause 53 or 54 by the Operator including any breach of a warranty given by the Operator under Clause 53 or 54.
- (b) The Operator's indemnity in Clause 39.1(a) will be reduced proportionally to the extent that the Loss is caused by or arises out of, or in any way in connection with:
 - (i) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Indemnified Person claiming under the indemnity;
 - (ii) a breach by TfNSW of its obligations under the Transaction Documents;
 - (iii) a Force Majeure Event which is uninsurable only if and to the extent that the Operator has been granted relief under Clause 40.
- (c) This indemnity will not exclude any other right of TfNSW to be indemnified by the Operator.
- (d) For the purposes of this Clause 39.1, 'infringement' includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 100 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth) constitute an infringement.
- (e) TfNSW may recover a payment under an indemnity in this Contract before the Indemnified Person for that indemnity makes the payment in respect of which the indemnity is given.

39.2 Liability and responsibility

The Operator acknowledges and agrees that:

- (a) the Indemnified Persons are not responsible for and have no obligations in connection with the actions or omissions of the Operator or any of the Operator's Associates;
- (b) the Indemnified Persons are not liable for any Loss caused or incurred by the Operator or any of the Operator's Associates; and
- (c) the Operator will provide and perform the Operator Activities at its own cost and risk, without recourse to TfNSW or government funds or guarantees,

except as expressly provided otherwise in this Contract.

39.3 Release

- (a) The Operator releases, and must procure that the Operator's Associates release the Indemnified Persons to the full extent permitted by Law, from all Claims for any Losses suffered or incurred by the Operator or the Operator's Associates to the extent caused or contributed to by any of the Operator Activities or any act or omission of the Operator or the Operator's Associates in connection with the Transaction Documents.
- (b) The release in Clause 39.3(a) will be reduced proportionally to the extent that the relevant Loss is caused by or arises out of, or in any way in connection with:
 - (i) any fraudulent, negligent, or other wrongful act or omission of the Indemnified Person seeking to rely on the release;
 - (ii) a breach by TfNSW of its obligations under the Transaction Documents;
 - (iii) a Force Majeure Event which is uninsurable only if and to the extent that the Operator has been granted relief under Clause 40.

39.4 Exclusion of Consequential or Indirect Loss

- (a) Subject to Clause 39.4(b), but otherwise despite any other provision of this Contract, the Operator has no liability to any Indemnified Person (whether in contract, tort, negligence, under an indemnity or otherwise), nor will any Indemnified Person be entitled to make any Claim against the Operator, in respect of Consequential or Indirect Loss incurred or sustained by the Indemnified Person as a result of any act or omission of the Operator (whether negligent or otherwise).

- (b) Clause 39.4(a) does not operate to limit or restrict the Operator's liability to an Indemnified Person in respect of Consequential or Indirect Loss:
 - (i) to the extent that the Operator has:
 - (A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that the Operator is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Operator,

an amount in respect of that liability; and
 - (ii) to the extent that the Operator:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this Contract; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract if the Operator had:
 - (I) diligently pursued a claim under that policy of insurance;
 - (II) complied with the terms and conditions of that policy or insurance; or
 - (III) complied with its insurance obligations under this Contract;
 - (iii) in respect of any liability of an Indemnified Person to a third party (including to another Indemnified Party);
 - (iv) in respect of any liability which is the subject of the indemnity given under Clause 39.1(a)(i);
 - (v) arising from any criminal acts or fraud on the part of the Operator or an Operator's Associate;
 - (vi) arising from wilful misconduct on the part of the Operator or an Operator's Associate; or
 - (vii) to the extent to which, by Law, the Parties cannot limit or contract out of such liability.

39.5 State exclusion

- (a) Despite any other provision of this Contract but subject to Clauses 4 and 39.5(b), none of the Indemnified Persons has any liability to the Operator (whether in contract, tort or otherwise), nor will the Operator be entitled to make any Claim against the Indemnified Persons, in respect of Consequential or Indirect Loss incurred or sustained by the Operator as a result of any act or omission of the Indemnified Persons (whether negligent or otherwise).
- (b) Clause 39.5(a) does not operate to limit or restrict the State or TfNSW's liability in respect of Consequential or Indirect Loss:
 - (i) to the extent payable pursuant to Schedule 12;
 - (ii) to the extent payable as part of any termination payment referred to in Clause 45.4;
 - (iii) to the extent that an Indemnified Person:
 - (A) has recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that none of the Indemnified Persons are required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Indemnified Person,

- an amount in respect of that liability;
- (iv) to the extent that the an Indemnified Person:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this Contract; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract if TfNSW had:
 - (I) complied with the terms and conditions of that policy of insurance; or
 - (II) complied with its insurance obligations under this Contract;
- (v) arising from any criminal acts or fraud on the part of the Indemnified Persons;
- (vi) arising from wilful misconduct on the part of the Indemnified Persons; or
- (vii) to the extent to which, by Law, the Parties cannot limit or contract out of such liability.

39.6 Liability for events triggering KPI Credits

- (a) Subject to Clauses 39.6(b) and (c), reduction of the Payments by the application of KPI Credits will be the only monetary compensation payable by the Operator to TfNSW for any failure by the Operator to meet the Key Performance Indicators.
- (b) Clause 39.6(a) does not limit or exclude:
 - (i) the Operator's liability for any KPI Credit;
 - (ii) the Operator's liability under any indemnity contained in this Contract including the indemnity in Clause 39.1;
 - (iii) the Operator's obligations and liabilities under Clauses 43 to 45;
 - (iv) the Operator's obligations and liabilities under Clauses 46 to 49;
 - (v) any Indemnified Person's entitlement to a Claim under this Contract or at Law in respect of:
 - (A) any third party property damage; or
 - (B) any personal injury or death,
 for which the Operator or any Operator's Associate is liable;
 - (vi) TfNSW's rights under this Contract or any other Transaction Document in respect of the event that caused or contributed to the KPI Default (as opposed to the KPI Default itself); or
 - (vii) any other right under this Contract or at Law in relation to any non-monetary compensation.
- (c) If any KPI Credit is held to be void, invalid, unenforceable or otherwise inoperative so as to disentitle TfNSW from adjusting the Payments in accordance with the KPI Schedule, TfNSW will be entitled to recover common law damages for the failure to meet the Key Performance Indicators, but the Operator's liability for such damages will not be any greater than the liability which it would have had if the KPI Credit had not been void, invalid, unenforceable or otherwise inoperative.

39.7 Indemnified Persons

- (a) To the extent that an indemnity in this Contract is for Indemnified Persons other than TfNSW, TfNSW has sought and obtained that indemnity as agent on behalf of each Indemnified Person (other than TfNSW) and TfNSW confirms that it has the authority to act as agent on behalf of each Indemnified Person (other than TfNSW). TfNSW may also enforce that indemnity as agent on behalf of each Indemnified Person (other than TfNSW).
- (b) If TfNSW does not have authority to act as agent on behalf of an Indemnified Person (other than TfNSW), then TfNSW will be deemed to have sought and obtained that

indemnity as trustee for that Indemnified Person and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit of that Indemnified Person.

- (c) If the indemnity in Clause 39.1 is unenforceable to the extent that it is expressed to be given in favour of an Indemnified Person other than TfNSW, all references in this Clause 39 to the Indemnified Person will be read as a reference to TfNSW only.

Part K – Management of change

40. Relief Events

40.1 General obligations in respect of Relief Events

- (a) If either of the Parties (**Affected Party**) is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Relief Event, it must, as soon as practicable notify the other Party accordingly.
- (b) A notice under Clause 40.1(a) must:
 - (i) specify the obligations and the extent to which the Affected Party cannot perform its obligations;
 - (ii) fully describe and provide documentary evidence of the Relief Event;
 - (iii) estimate the period during which the Relief Event will continue;
 - (iv) specify the measures proposed to be adopted to remedy, minimise or mitigate the effects of the Relief Event; and
 - (v) indicate whether the duration of the Relief Event may result in the Contract being terminated under Clause 40.5.
- (c) If a Relief Event (or its effects) continues for such a period or in such a manner that Clause 40.5 may apply, and the Affected Party has not given notice under Clause 40.1(b)(v), the Affected Party must, as soon as it forms the view that Clause 40.5 may apply, notify the other Party that it considers that Clause 40.5 may apply.

40.2 Notification

Without limitation to Clause 40.1, if a Relief Event occurs and prevents, or will prevent, the ability of the Operator to comply with its obligations under this Contract, the Operator must:

- (a) within 10 Business Days after it becomes aware, or ought reasonably to have become aware, that a Relief Event is likely to affect the ability of the Operator to comply with its obligations under this Contract, give to the TfNSW Representative a notice:
 - (i) stating that a Relief Event has occurred;
 - (ii) stating whether the Operator proposes to seek relief from performance of its obligations arising directly out of that Relief Event; and
 - (iii) if the Relief Event is also a Project Specific Change in Law, stating whether the Operator proposes to make a Claim in respect of Losses arising directly out of that Project Specific Change in Law;
- (b) within 10 Business Days of giving the notice under Clause 40.2(a), give the TfNSW Representative full particulars of the Relief Event including (to the extent practicable):
 - (i) detailed particulars concerning the Relief Event upon which the Claim is based;
 - (ii) details of the obligations which have been prevented by the Relief Event; and
 - (iii) details of the steps which the Operator has taken to mitigate the effects of the relevant Relief Event; and

- (c) if the Relief Event (or its effects) is continuing:
 - (i) continue to give the information required by Clause 40.2(b) every 40 Business Days after the notice under Clause 40.2(b) was provided to the TfNSW Representative until after the Relief Event (or its effects) has ceased; and
 - (ii) if the Operator has notified TfNSW that it proposes to seek relief or make a Claim in relation to the Relief Event under 40.2(a)(ii), provide a final written Claim within 5 Business Days after the Relief Event (or its effects) have ceased.

40.3 Condition precedent to relief

- (a) It is a condition precedent to the Operator's entitlement to relief from its obligations under Clause 40.4 that:
 - (i) the Operator has complied with the requirements of Clause 40.2; and
 - (ii) the Operator has used all reasonable and practicable methods for mitigating the impacts of the Relief Event.
- (b) If the Operator fails to comply with the requirements of this Clause 40:
 - (i) TfNSW will not be liable upon any Claim by the Operator; and
 - (ii) the Operator will be absolutely barred from making any Claim against TfNSW, arising out of or in connection with the relevant Relief Event.

40.4 Relief

- (a) For the duration of a Force Majeure Event, the obligations of TfNSW which cannot be performed because of the Force Majeure Event will be suspended.
- (b) If a Relief Event occurs that prevents the Operator from carrying on its obligations under this Contract and the Operator has complied with the requirements in Clause 40.1, Clause 40.2 and Clause 40.4(c), TfNSW will, taking into account the notices given by the Operator under Clause 40.1:
 - (i) grant the Operator such relief from its non-financial obligations under this Contract which are prevented by the Relief Event, but only to the extent and for so long on the Relief Event prevents the Operator from performing those obligations; and
 - (ii) subject to paragraph 5.6 of the KPI Schedule, grant the Operator relief from its obligation to pay any KPI Credit which has arisen due to the Relief Event preventing the Operator from performing its obligations under this Contract, for the avoidance of doubt, on the basis that the relevant obligations prevented by the Relief Event subsisted during the period in which the Relief Event is subsisting.
- (c) The Party that is prevented from carrying on its obligation under this Contract because of the impact of a Relief Event, must:
 - (i) remedy or minimise the effects of the Relief Event to the extent reasonably practicable; and
 - (ii) take all action reasonably practicable to mitigate any loss suffered by the other Party or any passengers as a result of the Party's failure to carry out its obligations under this Contract. The Party is not required to test the validity or refrain from testing the validity of any Law.
- (d) The Parties acknowledge and agree that any relief granted by TfNSW under this Clause 40.4 will not apply to extend the Planned Service Commencement Date.
- (e) The Term will not be extended by the period of a Relief Event.

40.5 Termination for extended Force Majeure Event

- (a) If a Force Majeure Event is continuing or its consequences remain such that the affected Party has been or is unable to comply with a material part of its obligations under this

Contract for a continuous period of 180 days after the date on which notice is issued under Clause 40.1(a), TfNSW may terminate this Contract by giving a notice to the Operator.

- (b) If this Contract is terminated by TfNSW under Clause 40.5(a), TfNSW shall pay a termination payment to the Operator calculated as the aggregate of:
- (i) any amounts due and payable by TfNSW to the Operator in accordance with this Contract as at the Termination Date,
- less:
- (ii) any amounts owing by the Operator to TfNSW under this Contract as at the Termination Date; and
 - (iii) the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) the Operator is entitled to retain, or would be entitled to retain had the Operator complied with the requirements of Clause 38 and the relevant insurance policy, under any insurance policy.

41. Compensation in respect of a Project Specific Change in Law

41.1 Notification

If a Project Specific Change in Law occurs and the Operator wishes to claim compensation under Clause 41.3, the Operator must:

- (a) comply with the requirements of Clause 41.2; and
- (b) in its notice given under Clause 40.2(b), give the TfNSW Representative full particulars of any Net Financial Impact of the Project Specific Change in Law and how it has been calculated.

41.2 Condition precedent to compensation

- (a) It is a condition precedent to the Operator's entitlement to compensation under Clause 41.3 that:
 - (i) the Operator has complied with the requirements of Clause 40;
 - (ii) the Project Specific Change in Law (or its effects):
 - (A) does not occur or arise as a direct or indirect result of any act or omission of the Operator or the Operator's Associates;
 - (B) does not occur or arise as a direct or indirect result of a failure by the Operator to comply with its obligations under the Transaction Documents;
 - (C) does not occur or arise as a direct or indirect result of any breach of the Transaction Documents by the Operator; or
 - (D) is not, or ought not reasonably to have been, within the control of the Operator or the Operator's Associates;
 - (iii) the Operator has used all reasonable and practicable methods for mitigating the impacts of the Project Specific Change in Law; and
 - (iv) in the case of a Claim for Loss, the Project Specific Change in Law has occurred and has caused the Operator to incur a Loss.
- (b) If the Operator fails to comply with the requirements of Clauses 41.1 and 41.2(a):
 - (i) TfNSW will not be liable upon any Claim by the Operator; and
 - (ii) the Operator will be absolutely barred from making any Claim against TfNSW, arising out of or in connection with the relevant Project Specific Change in Law.

41.3 Compensation for Net Financial Impact

- (a) If the conditions precedent in Clause 41.2(a) have been satisfied:
 - (i) to the extent that the Project Specific Change in Law results in a Service Variation, the Operator will only be entitled to compensation calculated in accordance with Clause 18(d); or
 - (ii) only to the extent that the Project Specific Change in Law does not result in a Service Variation, the Operator will be entitled to be compensated for the Net Financial Impact of the Project Specific Change in Law in accordance with this Clause 41.3 and Schedule 12.
- (b) The Net Financial Impact of a Project Specific Change in Law will be calculated and paid in accordance with Schedule 12.
- (c) Except as provided for in Clause 40 and in this Clause 41.3, the Operator has no Claim against TfNSW arising out of or in connection with a Project Specific Change in Law, including in respect of any breach of this Contract by TfNSW.
- (d) The Parties agree that the Operator's entitlements under this Clause 41 are a limitation on TfNSW's liability to the Operator for any breach of this Contract by TfNSW and that the Operator will not be entitled to make any Claim in these circumstances other than in respect of the matters for which TfNSW may be liable under this Clause 41.
- (e) The Operator must use all reasonable endeavours to mitigate the effects of any Project Specific Change in Law (including by putting in place temporary measures reasonably acceptable to TfNSW).
- (f) Without limiting Clause 41.3(e), the Operator must use all reasonable endeavours to:
 - (i) avoid or minimise the duration and consequences of any delay caused by a Project Specific Change in Law;
 - (ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of a Project Specific Change in Law; and
 - (iii) maximise any cost savings or additional revenue derived as a result of a Project Specific Change In Law.

42. Modifications

42.1 TfNSW Modification Request

- (a) The TfNSW Representative may at any time issue to the Operator a Modification Request setting out the details of a proposed Modification which TfNSW is considering.
- (b) If the Modification Request requests that the Operator provide TfNSW with a Modification Impact Proposal, then the Operator must provide TfNSW with a Modification Impact Proposal as soon as practicable (but no later than 10 Business Days) after receipt of a Modification Request.
- (c) TfNSW will not be obliged to proceed with any Modification proposed in a Modification Request.

42.2 Modification Order

- (a) Within 30 Business Days after receiving a Modification Impact Proposal, the TfNSW Representative may:
 - (i) accept the Modification Impact Proposal by issuing a Modification Order on the basis set out in the Modification Impact Proposal;
 - (ii) reject the Modification Impact Proposal;

- (iii) inform the Operator that it does not wish to proceed with the proposed Modification; or
 - (iv) inform the Operator that it requires further time or information to assess the Modification Impact Proposal in which case TfNSW must advise the Operator of the further information required and the reasonable time within which such information must be provided and within which a determination will be made, by notice to the Operator. The Operator must comply with any request to provide further information issued by TfNSW under this Clause in accordance with the timeframe advised by TfNSW under this Clause.
- (b) If TfNSW accepts the Modification Impact Proposal in accordance with Clause 42.1(b):
- (i) the Operator must implement the Modification on the basis of the Modification Impact Proposal (as accepted by TfNSW); and
 - (ii) the Operator's obligations under this Contract will be modified to the extent specified in the Modification Impact Proposal (as accepted by TfNSW).
- (c) Whether or not TfNSW has issued a Modification Request under Clause 42.1, the TfNSW Representative may at any time instruct the Operator to implement a Modification by issuing a Modification Order. In these circumstances TfNSW will determine all matters required to enable the Modification to be implemented.
- (d) If the Operator disagrees with a matter determined by TfNSW:
- (i) the Operator may refer the matter to an Expert for determination in accordance with Clause 55.2;
 - (ii) the Operator must proceed to implement the Modification on the basis determined by TfNSW notwithstanding that the matters in dispute have not been agreed or determined in accordance with Clause 55.2; and
 - (iii) any necessary adjustments will be made following any agreement or determination under Clause 55.2.

42.3 Operator initiated Modifications

- (a) The Operator may propose a Modification by giving to TfNSW a notice with details of:
- (i) the proposed Modification;
 - (ii) the reason for the proposed Modification;
 - (iii) the time within, and the manner in, which the Operator proposes to implement the proposed Modification;
 - (iv) any Authorisations required to implement the proposed Modification and the effect of the proposed Modification on any existing Authorisations;
 - (v) the effects which the proposed Modification will have on the Operator's ability to satisfy its obligations under this Contract; and
 - (vi) the value for money for TfNSW arising from the Modification, including the proposed cost savings to be paid to TfNSW.
- (b) If the Operator gives a notice under Clause 42.3(a), TfNSW:
- (i) will consider the Operator's proposed Modification; and
 - (ii) may:
 - (A) approve (with or without conditions) the proposed Modification by issuing a Modification Order on the basis set out in the Operator's notice under Clause 42.3(a) to the Operator; or
 - (B) reject the proposed Modification in its absolute discretion; and

- (iii) will be under no obligation to approve the proposed Modification for the convenience of or to assist the Operator.
- (c) The Operator will:
 - (i) bear all risks and costs associated with a Modification proposed by the Operator; and
 - (ii) have no Claim against TfNSW arising out of, or in any way in connection with, a Modification proposed by the Operator.
- (d) If a decision, demand, determination, direction, instruction, order, rejection, requirement or notice given to it in writing by a person authorised by TfNSW to do so (**Direction**), other than a Modification Order, in the Operator's opinion constitutes a Modification, the Operator must, if it wishes to make a Claim against TfNSW arising out of or in any way in connection with the Direction, issue a notice under Clause 42.3(a) in respect of the Direction within 10 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction.
- (e) TfNSW will have no liability in respect of any Claim by the Operator arising out of or in connection with a Direction if the Operator fails to comply with the requirements of Clause 42.3(d).

42.4 Operator to implement Modification

If TfNSW gives a Modification Order:

- (a) the Operator must carry out the Modification in accordance with the Modification Order; and
- (b) the Operator's obligations under the Contract will be modified to the extent specified in the Modification Order.

42.5 Omissions

If a Modification omits any part of the Operator Activities, TfNSW may carry out those omitted Operator Activities itself or by engaging another contractor.

42.6 Calculation and payment of Net Financial Impact

- (a) The Net Financial Impact of a Modification directed by TfNSW under Clauses 42.1 to 42.5 will be calculated and paid in accordance with Schedule 12.
- (b) The Operator will have no Claim against TfNSW arising out of, or in any way in connection with, any Modification, except where the Operator is directed to implement a Modification pursuant to a Modification Order issued by TfNSW under Clauses 42.1 to 42.5.

Part L– Termination and End of Term

43. Default and cure regime

43.1 Non-Compliance Events

- (a) The following are Non-Compliance Events:
 - (i) **(Non-performance of Key Performance Indicators)** the Operator:
 - (A) breaches an individual Class 1 Key Performance Indicator on two occasions within a six month period;
 - (B) breaches an individual Class 1 Key Performance Indicator on three occasions within a 12 month period; or

- (C) breaches an individual Class 4 Key Performance Indicator in two consecutive Quarters,

and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a cure plan provided in accordance with the KPI Schedule, to justify waiving the breaches of the relevant Key Performance Indicators for the purposes of this Clause;

- (ii) **(lack or breach of Authorisation)** the Operator or any Operator's Associate:
 - (A) undertakes any of the Operator Activities which require an Authorisation without obtaining the Authorisation or being Authorised to do so; or
 - (B) breaches the terms of any Authorisation;
 - (iii) **(threatened suspension or revocation of Authorisation)** RMS notifies the Operator that:
 - (A) the Operator or an Operator's Associate must improve a part of the Operator Activities to which an Authorisation relates and failure to do so within the time specified by RMS may result in RMS suspending or revoking the Authorisation;
 - (B) RMS proposes to suspend or revoke an Authorisation held by the Operator or an Operator's Associate that is required to permit the Operator to carry out the Operator Activities; or
 - (C) a failure to take action specified by RMS within a time period specified by RMS may result in RMS suspending or revoking an Authorisation held by the Operator or an Operator's Associate that is required to permit the Operator to carry out the Operator Activities;
 - (iv) **(Operator Breach)** any Operator breach of a Transaction Document other than one that is a Termination Event; or
 - (v) **(Misrepresentation)** a material representation, warranty or statement by or on behalf of the Operator in a Transaction Document, or in a document provided under or in connection with a Transaction Document, is not true in a material respect or is misleading when made or repeated.
- (b) As soon as practicable following the Operator becoming aware of a Non-Compliance Event the Operator must give notice to TfNSW setting out in reasonable detail the relevant event and surrounding circumstances.

43.2 Issue of Non-Compliance Notice

On the occurrence of a Non-Compliance Event, TfNSW may give the Operator written notice (**Non-Compliance Notice**):

- (a) stating that a Non-Compliance Event has occurred;
- (b) setting out reasonable details of the event or circumstance constituting the Non-Compliance Event; and
- (c) stating whether TfNSW requires either one or more of:
 - (i) an immediate remedy to be implemented by the Operator (specifying a reasonable period for the Operator to effect a remedy for that event or the circumstances that gave rise to the event);
 - (ii) a plan (**NCE Cure Plan**) to be submitted by the Operator setting out all measures the Operator proposes to take to cure the Non-Compliance Event or the events or circumstances giving rise to the Non-Compliance Event by a date specified by TfNSW (**Cure Plan Date**); and
 - (iii) implementation of Temporary Measures (specifying a reasonable period for the Operator to do so having regard to the Non-Compliance Event or the circumstances that gave rise to the Non-Compliance Event) to alleviate the impact or effect of the Non-Compliance Event (or the events or circumstances that gave

rise to the Non-Compliance Event) pending a permanent cure being achieved following an immediate remedy or in accordance with a NCE Cure Plan.

43.3 Dealing with Non-Compliance Notices

- (a) If TfNSW requires the Operator to immediately remedy the Non-Compliance Event under Clause 43.2(c)(i), the Operator must remedy the Non-Compliance Event within the period stipulated by TfNSW in the Non-Compliance Notice.
- (b) If TfNSW requires the Operator to submit a NCE Cure Plan under Clause 43.2(c)(ii), the Operator must within five Business Days of receipt of the Non-Compliance Notice submit to TfNSW a NCE Cure Plan which must, in order to be a compliant NCE Cure Plan, include:
 - (i) the requirements of any cure plan previously provided by the Operator in accordance with the KPI Schedule;
 - (ii) the measures that the Operator considers necessary and proposes to take to cure the Non-Compliance Event (or the events or the circumstances giving rise to the Non-Compliance Event), including any measures over and above those provided for in any cure plan previously provided by the Operator in accordance with the KPI Schedule;
 - (iii) the Temporary Measures to be taken to alleviate the impact or effect of the Non-Compliance Event (or the events or circumstances giving rise to the Non-Compliance Event) pending implementation of the NCE Cure Plan;
 - (iv) the period within which the Operator will cure the Non-Compliance Event (or the events or the circumstances that gave rise to the Non-Compliance Event), which period must end before the Cure Plan Date (**Cure Period**);
 - (v) a work plan setting out each task to be undertaken and the time for each task to be completed;
 - (vi) the form and timing of reports to be provided by the Operator as to the status of any NCE Cure Plan together with evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan; and
 - (vii) the operational arrangements for integrating the cure with the continuing performance of Operator Activities.
- (c) If TfNSW requires the Operator to implement a Temporary Measure with respect to the Non-Compliance Event under Clause 43.2(c)(iii), the Operator must undertake that Temporary Measure within the time stipulated by TfNSW in the Non-Compliance Notice.

43.4 Implementation of NCE Cure Plan

- (a) TfNSW may, by notice to the Operator within five Business Days of submission by the Operator of a NCE Cure Plan required under Clause 43.2(c)(ii), require the Operator to amend the NCE Cure Plan if TfNSW considers, acting reasonably, that the NCE Cure Plan:
 - (i) is not likely to cure the relevant Non-Compliance Event (or the events or circumstances that gave rise to the Non-Compliance Event) within the period required in the Non-Compliance Notice; or
 - (ii) does not comply with all applicable provisions of this Contract.

A notice under this Clause 43.4(a) may include details of any amendments (generally or specifically) to the NCE Cure Plan required by TfNSW.

- (b) If TfNSW requires an amendment to the NCE Cure Plan under Clause 43.4(a), the Operator must amend its NCE Cure Plan in accordance with the requirements of TfNSW and resubmit a revised NCE Cure Plan to TfNSW and the provisions of this Clause 43.4 will re-apply.

- (c) The Operator must implement and diligently pursue any NCE Cure Plan (or, where a revised NCE Cure Plan is requested by TfNSW, any revised NCE Cure Plan) provided under this Clause 43.
- (d) The Operator must provide reports as to the status of any NCE Cure Plan and evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan. These reports and evidence must be provided by the Operator to TfNSW:
 - (i) in accordance with the reporting requirements set out in the NCE Cure Plan; and
 - (ii) within five Business Days of TfNSW's request.

43.5 Extension to Cure Period

- (a) Subject to Clause 43.5(b), if the Operator reasonably requires an extension of the existing Cure Period the Operator must, as soon as possible but not later than the expiration of the existing Cure Period, submit to TfNSW a request that the NCE Cure Plan be revised and provide:
 - (i) reports as to the status of the NCE Cure Plan;
 - (ii) the proposed amendment to the Cure Period (provided that the proposed amendment must not result in the total Cure Period exceeding six months);
 - (iii) evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan but that the Non-Compliance Event cannot, with reasonable diligence, be cured within the existing Cure Period;
 - (iv) any other consequential amendments to the NCE Cure Plan; and
 - (v) any other information requested by TfNSW and relevant to the NCE Cure Plan or curing the Non-Compliance Event.
- (b) TfNSW must not unreasonably refuse to grant an extension of the Cure Period if the Operator has complied with Clause 43.5(a).
- (c) The Operator may only apply once under Clause 43.5(a) for an extension of the Cure Period in respect of any Non-Compliance Event (unless otherwise approved by TfNSW).
- (d) If TfNSW approves the requested extension or part of the requested extension under Clause 43.5(a), the Operator must submit a revised NCE Cure Plan and the provisions of Clause 43.4 will apply.

44. Step in

44.1 Step in Rights

- (a) Each of the following is a Step in Event:
 - (i) a Termination Event occurs;
 - (ii) a material KPI Default in respect of a Class 1 Key Performance Indicator (**KPI Event**) occurs and TfNSW considers that the Operator is failing to address the causes of the KPI Event or has not developed a cure plan which TfNSW considers will address the KPI Event in accordance with the requirements of the KPI Schedule;
 - (iii) an event or circumstance which arises out of or in connection with the Operator Activities poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (A) the health or safety of persons;
 - (B) the Environment;
 - (C) any property; or
 - (D) the safe and secure performance of the Operator Activities; or

- (iv) TfNSW forms the opinion that a breach of a Transaction Document by the Operator or any Operator's Associate:
 - (A) materially adversely affects the operation of all or any of the Services;
 - (B) materially disrupts, restricts or prevents the operation of all or any of the Services for more than 24 hours;
 - (C) materially disrupts, restricts or prevents the operation of all or any of the Public Passenger Services of any other operator for more than 24 hours;
 - (D) increases the risk of imminent death or imminent injury to any person;
 - (E) directly or indirectly avoids or materially prejudices or frustrates the transfer of the Operator Activities as a going concern at the expiry or termination of this Contract to a Successor Operator; or
 - (F) is likely to give rise to any of the above.
- (b) If a Step in Event occurs and TfNSW has given a notice to the Operator advising the Operator that a Step in Party will be appointed then a Step in Party may exercise all or any of the Step in Powers (**Step in Right**).
- (c) The notice referred to in Clause 44.1(b):
 - (i) must specify:
 - (A) the Step in Event which has triggered the Step in Right;
 - (B) the Operator Activities which TfNSW proposes the Step in Party will perform;
 - (C) the date on which the relevant Step in Party proposes to commence exercising the Step in Powers; and
 - (D) the date on which, if any, the relevant Step in Party proposes to cease performing the relevant Operator Activities; and
 - (ii) may be given orally if TfNSW considers that the Step in Event requires urgent remedy and there is insufficient time to serve a written notice. Any oral notice given under this Clause 44.1(c)(ii) must be followed within 24 hours by a written notice to the same effect.
- (d) The Step in Right is without prejudice to TfNSW's other Powers in respect of a Step in Event, and the rights set out in Clause 43 and Clause 45.

44.2 Step in Powers

A Step in Party may, in performing the Operator Activities referred to in the notice issued under Clause 44.1(b), do anything in respect of those Operator Activities that the Operator could do including:

- (a) enter into and remain in possession of all or any of the Assets used in the performance of the Operator Activities;
- (b) operate and manage all or any of the Assets used in the performance of the Operator Activities;
- (c) enter into and remain in or on any part of the Contract Depots, the Licensed Areas, the Transit Stops or any other premises on which Operator Activities are conducted;
- (d) exercise all or any of the Powers, and perform all or any of the obligations, of the Operator:
 - (i) in connection with the Operator Activities;
 - (ii) under or in relation to a Transaction Document or any other document to which the Operator is a party; or
 - (iii) under or in relation to any Authorisation held by the Operator, as if it were the Operator to the exclusion of the Operator;

- (e) do anything TfNSW considers necessary to remedy the relevant Step in Event or to overcome any risk or mitigate any consequences resulting from the Step in Event; and
 - (f) do anything incidental to the matters listed in Clauses 44.2(a) to 44.2(e),
- (Step in Powers).**

44.3 Acknowledgment and obligations of the Operator

- (a) The Operator must (and must procure that the Operator's Associates):
 - (i) cooperate with the Step in Party in the exercise of the Step in Powers;
 - (ii) assist the Step in Party to enable the Step in Party to perform all or any of the Operator's obligations under or in relation to any Authorisation held by the Operator or the Operator's Associates; and
 - (iii) take any step which the Step in Party considers necessary or desirable to remedy the Step in Event or overcome the risk or mitigate any consequences resulting from the Step in Event.
- (b) Without limiting Clause 44.3(a), the Operator must (and must procure that the Operator's Associates):
 - (i) give access to a Step in Party to:
 - (A) all or any of the Assets used in the Operator Activities;
 - (B) its Staff; and
 - (C) any information the Step in Party reasonably requires;
 - (ii) to the extent necessary, procure any consents to disclose Personal Information to the Step in Party;
 - (iii) assist the Step in Party in dealing with RMS in relation to any Authorisations; and
 - (iv) comply with all reasonable directions given by the Step in Party, to enable the Step in Party to exercise the Step in Powers.
- (c) The Operator irrevocably appoints TfNSW as its attorney with full power to exercise the Step in Powers (or to delegate the exercise of the Step in Powers to another Step in Party).
- (d) The Operator's obligations under this Contract will be suspended to the extent and for such period as is necessary to permit TfNSW to exercise its Step in Rights.
- (e) The Operator acknowledges that a Step in Party is not under any obligation to remedy a Step in Event, nor to overcome any risk or mitigate any consequences resulting from a Step in Event.

44.4 Payments during step in

- (a) During the period when TfNSW is exercising its Step in Rights, if the Operator's performance of its obligations under this Contract which affect the calculation of the Payment:
 - (i) is continuing, then those parts of the Payment affected by the Operator's performance will continue to be calculated in accordance with the Payment Schedule based on the actual performance of those obligations by the Operator during the period when TfNSW is exercising its Step in Rights; or
 - (ii) is suspended, then those parts of the Payment which would have been affected but for the Operator's suspension will continue to be calculated in accordance with the Payment Schedule based on the average performance of those suspended obligations by the Operator for the six months immediately prior to TfNSW exercising the Step in Right (provided that KPI Credits and KPI Debits calculated under the KPI Schedule will continue to be calculated based on actual performance by the Operator).

- (b) TfNSW will be entitled to deduct the following amount, without double counting, from any Payment payable in respect of a period when TfNSW is exercising its Step in Right:
 - (i) where the Step in Event was an event identified in Clauses 44.1(a)(i), (ii) or (iv) or where the Step in Event was an event identified in Clause 44.1(a)(iii) and was caused or contributed to by the Operator or the Operator's Associates:
 - (A) the costs avoided by the Operator as a result of the exercise of the Step in Right;
 - (B) the Step in Costs incurred by TfNSW in exercising the Step in Rights; and
 - (ii) where the Step in Event was an event identified in Clause 44.1(a)(iii) and was not caused or contributed to by the Operator or the Operator's Associates the costs avoided by the Operator as a result of the Step in Right.
- (c) If the aggregate amount to be deducted under Clause 44.4(b) is greater than the Payments payable in respect of the relevant period, the difference will be a debt due and payable from the Operator to TfNSW.

44.5 Protection of a Step in Party

The Operator acknowledges and agrees that the Operator has no Claim against TfNSW arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non exercise of a Step in Power; or
- (b) any Loss which results,

except where it arises from fraud, wilful default or gross negligence on the part of the Step in Party.

44.6 Protection of third parties

- (a) A party to any Dealing (as defined in Clause 44.6(c)):
 - (i) need not enquire:
 - (A) as to whether the Step in Right has become exercisable;
 - (B) as to whether a person who is, or purports or is purported to be, the Step in Party is duly appointed;
 - (C) in any other way as to the propriety or regularity of the Dealing; and
 - (ii) is not affected by express notice that the Dealing is unnecessary or improper.
- (b) For the protection of any party to a Dealing, the Dealing will be taken to be authorised by this Contract and accordingly will be valid, even if there is any irregularity or impropriety in the Dealing.
- (c) In this Clause 44.6, a **Dealing** is:
 - (i) any payment, or any delivery or handing over of an asset, to; or
 - (ii) any acquisition, incurring of Financial Indebtedness, receipt, sale, lease, disposal or other dealing, by,

any Step in Party or any person who purports, or is purported, to be a Step in Party.
- (d) The receipt by TfNSW or any Step in Party (or person who purports, or is purported, to be a Step in Party) of any money or assets payable to or receivable or received by it exonerates the person paying that money or handing over that asset from being concerned as to their application or from being liable or accountable for their loss or misapplication.

44.7 Step out

- (a) A Step in Party must cease to exercise the Step in Powers as soon as reasonably practicable and, in any event, upon the earlier of:
 - (i) the relevant Step in Event being remedied (or the risk or consequences resulting from the Step in Event being overcome) to the satisfaction of TfNSW; and
 - (ii) the TfNSW Representative notifying the Operator that the Step in Party will no longer exercise the Step in Powers.
- (b) TfNSW will give notice to the Operator of the date on which the Step in Party will cease to exercise the Step in Powers (which notice must be given by TfNSW to the Operator within a reasonable time prior to the date the Step in Party proposes to cease to exercise the Step in Powers).
- (c) TfNSW and the Operator must consult with each other with the intention of ensuring that the transition from the Step in Party ceasing to exercise the Step in Powers to the Operator resuming the performance of the Operator Activities is effected without interruption to the Operator Activities.
- (d) Upon the Step in Party ceasing to exercise the Step in Powers, the Operator must resume the performance of the Operator Activities in accordance with this Contract (unless this Contract has been terminated).

45. Termination

45.1 Termination Events

The following are Termination Events:

- (a) (**Immediate action**) the Operator fails to remedy a Non-Compliance Event when required to do so under (or within the time period required by) Clause 43.3(a);
- (b) (**Temporary Measure**) the Operator fails to take a Temporary Measure when required to do so under (or within the time period required by) Clause 43.3(c);
- (c) (**NCE Cure Plan**) the Operator fails to submit a NCE Cure Plan in accordance with (or within the time period required by) Clause 43.3(b) or a revised NCE Cure Plan in accordance with Clause 43.4(b);
- (d) (**Failure to pursue NCE Cure Plan**) TfNSW forms the opinion, acting reasonably, that the Operator has not diligently pursued or is not continuing to diligently pursue a cure in accordance with a NCE Cure Plan, or the Operator fails to provide the evidence required (or within the time period required) by Clause 43.4(d);
- (e) (**Failure to cure**) the Operator took action required under Clause 43.3(a) or Clause 43.3(c) or pursued a cure in accordance with Clause 43.4(c) but, in the opinion of TfNSW has failed to cure the Non-Compliance Event or the circumstances giving rise to the Non-Compliance Event in the period prescribed under Clause 43;
- (f) (**Persistent breaches**) a persistent failure by the Operator to perform, or comply to a material extent with, any one or more of its obligations under this Contract or the Transaction Documents in circumstances where TfNSW has previously notified the Operator of the failures or non-compliances and has put the Operator on notice that continued failure or non-compliance would constitute a persistent failure or non-compliance for the purposes of this Clause 45.1;
- (g) (**Material non-performance of Key Performance Indicators**) the Operator:
 - (i) breaches an individual Class 1 Key Performance Indicator on three occasions within a six month period;
 - (ii) breaches an individual Class 1 Key Performance Indicator on four occasions within a 12 month period; or
 - (iii) breaches an individual Class 4 Key Performance Indicator in three consecutive Quarters,

and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a cure plan provided in accordance with the KPI Schedule, to justify waiving the breaches of the Key Performance Indicators for the purposes of this Clause;

- (h) (**Safety**) the circumstances described in Clause 35.7(i) occur;
- (i) (**Unlawful**) it becomes unlawful for the Operator to perform all or a material part or number of Operator Activities;
- (j) (**Dealing with Assets**) the Operator breaches Clause 26;
- (k) (**Abandonment**) the Operator abandons, ceases or suspends the conduct of all or a substantial part of the Operator Activities or it threatens or expresses an intention to do so;
- (l) (**Failure to insure**) the Operator does not effect and maintain (or cause to be effected or maintained) any insurance as required by this Contract, and fails to do so within 10 Business Days after receipt of a notice from TfNSW directing it to do so;
- (m) (**Assignment**) a purported assignment by the Operator of a Transaction Document or any of its obligations under any Transaction Document occurs without the prior consent of TfNSW;
- (n) (**Change of Control**) without the prior written consent of TfNSW:
 - (i) the Operator becomes a Subsidiary of a person (of which it was not a Subsidiary on the commencement of this Contract);
 - (ii) a person's Voting Power in the Operator increases from below 50% to 50% or more after the commencement of this Contract; or
 - (iii) a person is able to Control the Operator where that person was not able to Control the Operator on the commencement of this Contract;
- (o) (**Revocation of Accreditation or Authorisation**)
 - (i) the Operator's Accreditation; or
 - (ii) any other Authorisation that is material to the performance by the Operator of a Transaction Document, or to the validity and enforceability of a Transaction Document, or for the performance of the Operator Activities,
is cancelled, suspended, repealed, revoked, terminated, expires or is varied, modified or amended, or conditions are attached to it in a manner unacceptable to TfNSW, and is not replaced by another Authorisation acceptable to TfNSW;
- (p) (**Repudiation**) the Operator repudiates this Contract;
- (q) (**Fraud**) the Operator has acted fraudulently or dishonestly in relation to the Operator Activities, the provision of the Operator Activities or the performance of any of its obligations under the Transaction Documents;
- (r) (**ICAC**) the Independent Commission Against Corruption or similar Governmental Agency determines that the Operator has engaged in corrupt conduct, collusive pricing or other similar activity;
- (s) (**Conflict of Interest**) in TfNSW's view, a conflict of interest exists for the Operator which prevents the proper performance of this Contract;
- (t) (**Harm to TfNSW reputation**) in TfNSW's reasonable opinion, the Operator has caused damage or harm to TfNSW's or the State's reputation;
- (u) (**Insolvency Event**) an Insolvency Event occurs;
- (v) (**Deed of Guarantee and Indemnity**) the Deed of Guarantee and Indemnity is validly terminated or is or becomes void, illegal, invalid or unenforceable (or a party becomes entitled to terminate, rescind or avoid the Deed of Guarantee and Indemnity) for any reason and such situation is not remedied within 5 Business Days after it first arises; or
- (w) (**Termination of Transaction Document**) a Transaction Document (other than this Contract) is terminated as a result of an act or omission of the Operator or any of the Operator's Associates.

45.2 Termination by TfNSW

- (a) TfNSW may terminate the whole or any part of this Contract with effect immediately, or on a date determined by TfNSW, by giving notice to the Operator if a Termination Event occurs.
- (b) This Contract will terminate on the date specified in the Termination Notice.
- (c) The termination right under Clause 45.2(a) is without prejudice to TfNSW's rights under Clause 44 and TfNSW's right to exercise all legal and equitable rights and remedies available to TfNSW in respect of the relevant Termination Event (whether under this Contract or not).

45.3 Termination by TfNSW for convenience

- (a) TfNSW may at any time at its absolute discretion by giving notice to the Operator, terminate this Contract, whether or not the Operator is in default.
- (b) If TfNSW terminates this Contract in accordance with Clause 45.3(a), TfNSW will reimburse the Operator its unavoidable costs directly incurred as a result of the termination, as follows:
 - (i) any outstanding Payments owed to the Operator, calculated in accordance with the Payment Schedule; and
 - (ii) any reasonable and mitigated costs incurred by the Operator in winding down or providing disengagement assistance.
- (c) TfNSW may itself, or through a third party, carry out the Operator Activities after termination under this Clause 45.3.

45.4 Waiver on termination

- (a) If TfNSW terminates this Contract under Clause 45.2(a) the Operator's sole right and remedy will be to require TfNSW (subject to Clause 36.3) to pay a proper valuation under this Contract of all amounts due and not previously paid to the Operator for performance of the Services completed in accordance with this Contract before the Termination Date.
- (b) If TfNSW terminates this Contract under:
 - (i) Clause 40.5(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with Clause 40.5(b);
 - (ii) Clause 45.3(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with Clause 45.3(b).

45.5 Consequences of termination generally

- (a) Upon expiry or termination of this Contract, the rights and obligations of the Parties under this Contract will cease except for:
 - (i) any accrued rights and obligations under this Contract, including those arising out of the expiry or termination of this Contract; and
 - (ii) any rights and obligations which expressly or impliedly continue after expiry or termination of this Contract (including those referred to in Clause 70).
- (b) The expiry or termination of the Operator's engagement under this Contract does not affect any of TfNSW's other rights or remedies.

46. End of Term Restrictions

The Operator must not, without the prior written consent of TfNSW (which may not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Contract Employee where:

- (a) the variation takes effect in the End of Contract Period unless:
 - (i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase

in the remuneration of the Contract Employee of no more than the percentage increase in the wage price indices referred to in the first, second and third lines in the table set out in paragraph 4.5(c) of the Payment Schedule over the twelve month period ending on the month for which that index was last published; or

- (ii) is a variation imposed by a determination of Fair Work Australia, the New South Wales Industrial Relations Commission or Law;
- (b) all or part of the variation first takes effect after the Termination Date;
- (c) the variation results in the employment being for a fixed term, the expiry of which is more than six months after the Termination Date;
- (d) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at Law);
- (e) the variation relates to the provision of a benefit (but excluding base salary and the Contract Employee's legal entitlements) which the Contract Employee will or may have a contractual right to receive after the Termination Date; or
- (f) the variation prevents, restricts or hinders the Contract Employee from working for a Successor Operator or Interim Operator, or from performing the duties the Contract Employee performed in the Operator Activities.

47. End of Contract Transfer Provisions

47.1 Right to appoint Successor Operator and Interim Operator

- (a) The Operator acknowledges and agrees that TfNSW may, on or before the Termination Date, invite any person (including the Operator) to perform all or any part of the Operator Activities for the period commencing after the Termination Date.
- (b) The following Clauses will not apply if the Operator is the Successor Operator:
 - (i) Clause 47.7; and
 - (ii) Clause 49.

47.2 Maintenance as going concern

The Operator must maintain and manage the Operator Activities in a way that a Step in Party, Successor Operator (or nominee of TfNSW) or Interim Operator is able at any time to immediately take over the Operator Activities as a going concern.

47.3 Handover Information and Market Process Information

- (a) The Operator must, as soon as practicable and in any event no later than six months after the Service Commencement Date, prepare and maintain information on:
 - (i) all premises from which the Operator Activities are carried out, including the Contract Depots and other offices;
 - (ii) material contracts relating to the Services (including Key Contracts);
 - (iii) computer and other information systems;
 - (iv) an asset register for Assets used in relation to the Operator Activities (including an inventory of spares and special tools and equipment);
 - (v) Contract Employee details (including a list of names, terms and conditions of employment, rosters and all information required to be provided under Clause 47.3(e));
 - (vi) its organisational structure;
 - (vii) an up to date and complete copy of the Asset Information System; and

- (viii) such other information as is reasonably requested by TfNSW to facilitate smooth handover of the Operator Activities to a Step in Party, Successor Operator (or nominee of TfNSW) or Interim Operator,

(Handover Information).

- (b) The Operator must, as soon as practicable and in any event no later than six months after the Service Commencement Date, prepare and maintain the Market Process Information.
- (c) The Operator must keep the information referred to in Clauses 47.3(a) and 47.3(b) up to date and provide copies to TfNSW on reasonable notice, and in any case on the earlier of:
 - (i) TfNSW issuing a Termination Notice;
 - (ii) the date that is six months prior to the Expiry Date; and
 - (iii) one week after the commencement of the End of Contract Period.
- (d) The Operator must ensure that a Step in Party, prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW has, to the extent permitted by Law, immediate access to the information referred to in Clauses 47.3(a) and 47.3(b) on reasonable notice from TfNSW, and in any case on the earlier of:
 - (i) the exercise of the Step in Rights;
 - (ii) TfNSW issuing a Termination Notice;
 - (iii) the date that is six months prior to the Expiry Date; and
 - (iv) one week after the commencement of the End of Contract Period.
- (e) No later than 30 Business Days prior to the Expiry Date or, in the event that TfNSW gives a Termination Notice, within seven Business Days of the Termination Notice, the Operator must provide to each Contract Employee a statement setting out that Contract Employee's:
 - (i) grade/classification;
 - (ii) rate of pay;
 - (iii) date of commencement of employment; and
 - (iv) estimated accrued entitlements (including annual leave, long-service leave, sick/personal/carers leave and rostered days off) as at the Termination Date.
- (f) In the event that a Contract Employee notifies the Operator that he or she disputes any of the information contained in the statement provided to that Contract Employee pursuant to Clause 47.3(e), the Operator must notify TfNSW of such dispute and TfNSW shall refer the disputed issue to an actuary.

47.4 Preparation for contracting at End of Term

- (a) The Operator must, to the extent permitted by Law, provide TfNSW with reasonable access to the Staff and the information, books and records kept by or on behalf of the Operator in connection with the Operator Activities for the purpose of TfNSW preparing reports and documents in connection with any procurement process for the operation of all or part of the Operator Activities or any other associated services.
- (b) The Operator must use reasonable endeavours to assist TfNSW in the preparation for, and the conduct of the procurement process including, where required by TfNSW, a fair and competitive expression of interest or tendering process.
- (c) Without limiting Clause 47.4(b), the Operator must, to the extent permitted by Law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as TfNSW reasonably requires in connection with the procurement process for the Operator Activities or any other associated services.
- (d) The Operator warrants to TfNSW that to the best of its belief, all information provided under Clauses 47.3(a), 47.3(b) and 47.4(c) will be, at the time it is provided, true and correct in all material respects and will not be misleading by omission or otherwise.

- (e) The Operator must warrant to a Successor Operator that to the best of its belief, any other information made available to the Successor Operator by the Operator or the Operator's Associates is true and correct.

47.5 Non frustration of Transfer

The Operator must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer as a going concern of the Operator Activities at the Termination Date to a Successor Operator (or nominee of TfNSW) or Interim Operator and any procurement process in connection with such transfer.

47.6 Assistance in securing continuity

The Operator must do everything, both before and after the Termination Date, as TfNSW may reasonably require to assist and advise any Step in Party, prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW in performing the Operator Activities, including the provision of information and records related to the operation of the Operator Activities (excluding confidential financial information but including all records relating to the Staff).

47.7 Access

The Operator must ensure that a prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW has access to the Staff and Assets for the purpose of:

- (a) the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW receiving information in respect of the Operator Activities; and
- (b) preparations by the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW to take over the Operator Activities on the Termination Date,

but only to the extent that any of the above does not unduly interfere with the performance of the Operator Activities.

48. End of Term Asset Condition and Handover Requirements

48.1 Handback Audit

- (a) Without limiting Clause 28:
 - (i) no earlier than 18 months; and
 - (ii) no later than eight months,prior to the Expiry Date, the TfNSW Representative may procure the carrying out of an audit of the State Assets and Operator New Buses (**Handback Audit**) by an independent expert (**Handback Auditor**):
 - (iii) appointed by agreement between the Parties; or
 - (iv) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia.
- (b) The TfNSW Representative must:
 - (i) notify the Operator at least 10 Business Days in advance of the date it wishes to procure the carrying out of a Handback Audit and specify the State Assets and Operator New Buses that will be the subject of the Handback Audit (**Handback Audit Assets**); and
 - (ii) consider in good faith any reasonable request by the Operator for the Handback Audit to be carried out on a different date.
- (c) The Handback Auditor will inspect and assess the Handback Audit Assets and notify TfNSW and the Operator in writing of:
 - (i) whether the Handback Audit Assets have been and are being maintained by the Operator in accordance with this Contract;

- (ii) any rectification, maintenance or remediation works required to be carried out by the Operator to bring the condition of the Handback Audit Assets to the condition they would have been in had the Operator complied with its obligations under this Contract;
 - (iii) any rectification, maintenance or remediation works required to be carried out by the Operator to bring the condition of the Handback Audit Assets to the Handback Condition at the Expiry Date; and
 - (iv) the Handback Auditor's estimate of the value of the rectification, maintenance and remediation works referred to in Clauses 48.1(c)(ii) and (iii).
- (d) The Operator must, at its cost, cooperate with the Handback Auditor and provide the Handback Auditor with any reasonable assistance required by the Handback Auditor.
 - (e) The TfNSW Representative must use its reasonable endeavours to procure that the Handback Auditor minimises any disruption caused to the Operator Activities by the Handback Audit.
 - (f) The cost of the Handback Audit will be borne by TfNSW, except where the results of the Handback Audit show that the Operator has not complied with its obligations under this Contract in relation to the maintenance of the Handback Audit Assets, in which case the cost of the Handback Audit will be a debt due and payable by the Operator to TfNSW.

48.2 Rectification work

The Operator must carry out any required rectification, maintenance or remediation work notified pursuant to Clauses 48.1(c)(ii) and (iii):

- (a) to the satisfaction of the Handback Auditor; and
- (b) so as to satisfy the standards and other requirements applicable to the State Assets and Operator New Buses under this Contract,

prior to the Expiry Date and any costs it incurs in carrying out such rectification, maintenance or remediation work will be at the Operator's own expense.

48.3 Handback obligations

At the Termination Date, the Operator must:

- (a) surrender and return to TfNSW or TfNSW's nominee the State Assets and the TfNSW Systems and Equipment;
- (b) transfer all of the Operator's rights, title and interest (if any) in the State Assets to TfNSW or TfNSW's nominee free from any Security Interests;
- (c) ensure that the State Assets and Operator New Buses are in a state and condition which complies with the requirements of this Contract, including the Handback Condition;
- (d) have completed all works scheduled to be carried out under the current Maintenance Works Program;
- (e) have completed the transfer of the Asset Information System database to TfNSW or TfNSW's nominee such that:
 - (i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
 - (ii) the Asset Information System database remains fully functional and retains interface capabilities;
 - (iii) all data entry is fully up to date;
 - (iv) all data archives are included; and
 - (v) all supporting documentation is included.

48.4 Final inspection

- (a) As soon as practicable following the Termination Date, an independent expert (**Final Inspection Auditor**):
- (i) appointed by agreement between the Parties; or
 - (ii) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia,
- will inspect and assess the State Assets and Operator New Buses and notify TfNSW and the Operator in writing of the estimated cost (without double counting) of making good or rectifying any failure by the Operator to carry out:
- (iii) where the end of the Term is the Expiry Date, the work (if any) required under Clauses 48.1(c)(ii) and 48.1(c)(iii); and
 - (iv) the Operator's obligations under Clause 48.3.
- (b) The amount notified by the Final Inspection Auditor under Clause 48.4(a) will be a debt due and payable from the Operator to TfNSW.
- (c) TfNSW may deduct or set off any amount payable by the Operator under Clause 48.4(b) against any amount otherwise payable by TfNSW to the Operator, or may take other enforcement action available to it including under the Handback Security Bond or any other security provided under Clause 7.

49. Transfer of Operator Assets

49.1 Transfer of Operator New Buses

- (a) Subject to Clause 49.1(d), on or within the period of 30 days immediately preceding the Termination Date:
- (i) the Operator must ensure that all Operator Sale Buses are sold to TfNSW or its nominee (**Purchaser**); and
 - (ii) TfNSW shall procure that the Purchaser purchases all Operator Sale Buses, as required by TfNSW, including in accordance with the terms of this Contract and any other Transaction Document.
- (b) Subject to Clause 49.1(d), on or within the period of 30 days immediately preceding the Termination Date:
- (i) the Operator must ensure that all Operator Bus Leases in respect of Novation Buses are novated to TfNSW or its nominee (**Novatee**); and
 - (ii) TfNSW shall procure that the Novatee executes documentation to ensure the novation of Operator Bus Leases as contemplated under this Clause, as required by TfNSW, including in accordance with the terms of this Contract and any other Transaction Document.
- (c) The transfer of the Operator New Buses under Clauses 49.1(a) and (b) shall be on the following terms and conditions:
- (i) in respect of any Operator New Bus that is an Operator Sale Bus the Operator must:
 - (A) sell;
 - (B) transfer full legal and beneficial title to; and
 - (C) deliver possession of,such Operator New Bus to the Purchaser free from all Security Interests as required by TfNSW and on terms otherwise acceptable to TfNSW;
 - (ii) in respect of any Operator New Bus that is an Operator Novation Bus:
 - (A) novate the Operator Bus Lease in respect of; and

- (B) deliver possession of,
 - such Operator New Bus to the Novatee as required by TfNSW and on terms otherwise acceptable to TfNSW;
- (iii) if an Operator New Bus is subject to an Operator Bus Lease, and the Operator is unable to procure the novation of the Operator Bus Lease, the Operator must exercise its rights under the Operator Bus Lease to acquire the Operator New Bus and sell the Operator New Bus to the Purchaser under this Clause as if it were an Operator Sale Bus;
- (iv) the Purchaser and Novatee may conduct due diligence on the Operator New Buses;
- (v) the Operator must assign any warranties held by it in respect of the Operator New Buses to the Purchaser or Novatee (as the case may be); and
- (vi) the Operator agrees that the amount payable by the Purchaser and the Novatee to the Operator in respect of the:
 - (A) sale of an Operator New Bus that is an Operator Sale Bus will be the Vehicle Termination Payment as determined by TfNSW in accordance with paragraph 4.7(a) of the Payment Schedule; and
 - (B) novation of an Operator Bus Lease in respect of an Operator New Bus that is an Operator Novation Bus will be the Vehicle Termination Payment as determined by TfNSW in accordance with paragraph 4.7(b) of the Payment Schedule; and
- (vii) the Operator shall have no Claim against TfNSW in respect of the termination of any Operator Bus Lease (including payment of any costs under that arrangement).
- (d) This Clause does not apply in relation to Operator New Buses that are used exclusively to provide On Demand Services or to Operator New Buses that are Pilot Assets as defined in Clause 24.

49.2 Transfer of Operator Assets

- (a) Not later than 60 Business Days prior to the Expiry Date, or if this Contract is terminated earlier than that date, not later than 20 Business Days after the date of termination, TfNSW must provide written notice (**Transfer Notice**) to the Operator identifying any Operator Assets (other than systems and equipment used to provide the Headway Management Solution and Operator New Buses) that TfNSW wishes to transfer from the Operator to TfNSW or a nominee of TfNSW (**Transferee**) (**Nominated Assets**).
- (b) The Operator must negotiate in good faith with the Transferee to agree and execute an agreement (**Transfer Agreement**) setting out the terms and conditions (including the price) on which the Nominated Assets will be transferred to the Transferee which terms must include that the Nominated Asset will be transferred with effect from the Transfer Time free of any Security Interest.
- (c) If the Parties are unable to agree the terms of the Transfer Agreement by the Transfer Agreement Date, then good faith negotiations will cease and the Operator shall have no Claim against TfNSW in respect of the transfer of the Nominated Assets.
- (d) At the Termination Date, the Operator must (at nil cost):
 - (i) provide to TfNSW or TfNSW's nominee the systems and equipment used to provide the Headway Management Solution;
 - (ii) transfer all of the Operator's rights, title and interest (if any) in the systems and equipment used to provide the Headway Management Solution to TfNSW or TfNSW's nominee free from any Security Interests; and
 - (iii) ensure that the systems and equipment used to provide the Headway Management Solution are in a state and condition which complies with the requirements of this Contract.

- (e) If the Operator cannot transfer its rights, title and interest (if any) in the systems and equipment used to provide the Headway Management Solution to TfNSW, the Operator must:
 - (i) notify TfNSW that the Operator cannot transfer its rights, title and interest in that system or equipment; and
 - (ii) do everything necessary for TfNSW to otherwise obtain the benefit of that system or equipment (at no cost to TfNSW).

49.3 Successor Operator to make offers

- (a) The Operator must ensure that at the Termination Date all Dedicated Staff are employed by the Operator and it must use reasonable endeavours to facilitate offers of employment to be made to Dedicated Staff by any Successor Operator.
- (b) TfNSW must procure that any Successor Operator makes offers of employment on equivalent terms and conditions (including all accrued entitlements) to Contract Employees (other than the persons named in Schedule 11). Offers made by a Successor Operator must take effect from the Termination Date.
- (c) If a Contract Employee accepts an offer of employment from the Successor Operator made in accordance with this Clause 49.3:
 - (i) on termination or expiry of the Contract, the Operator must pay to TfNSW or the Successor Operator (as directed by TfNSW) a sum determined in accordance with the following formula:

$$P = (1 - t) \times L$$

where:

P is the amount to be paid by the Operator to TfNSW or the Successor Operator;

t is the corporate tax rate which applies on the Termination Date expressed as a decimal figure; and

L is the amount applicable in respect of the value of annual leave and long service leave and applicable loadings thereon as governed by the relevant industrial instrument of all Contract Employees who accept offers made under Clause 49.3(b) (**Acquired Employee**) which accrued for service to the Termination Date with the Operator or with any prior employer and transferred to the Successor Operator or to TfNSW as the case may be.

The value of leave entitlements will be determined by an actuary in accordance with the methodology set out in Australian Accounting Standards Board Standard AASB 119: Employee Benefits, or any successor standard issued by the Australian Accounting Standards Board. The actuary will be appointed by agreement between the Operator, Successor Operator and TfNSW or, in the absence of such agreement, by the President of the Council of the Institute of Actuaries of Australia; and

- (ii) on termination or expiry of the Contract the Operator must deliver to TfNSW or a Successor Operator a schedule setting out against each Acquired Employee the respective amounts for accrued annual leave and long service leave and applicable loadings.

Part M – Miscellaneous

50. Confidentiality, Privacy and Information Access

50.1 Confidentiality

Subject to Clauses 50.3, 50.4 and 50.6, a Party must not disclose to a third party without the prior written consent of the other Party, any Confidential Information which is:

- (a) supplied or made available by a Party to the other Party in relation to the performance of the Operator Activities; or
- (b) brought into existence by the Operator in performing the Operator Activities.

50.2 Maintaining confidentiality

The Parties must take or cause to be taken all precautions necessary to maintain confidentiality and prevent disclosure of Confidential Information.

50.3 Permitted disclosure

Clauses 50.1 and 50.2 do not apply to disclosures to the extent the disclosure is:

- (a) with the prior written consent of the Party whose Confidential Information is proposed to be disclosed;
- (b) required or permitted by this Contract or by Law;
- (c) in enforcing this Contract or in proceedings arising out of or in connection with this Contract;
- (d) to the Operator's Associates, provided the Operator's Associates are under a similar obligation of confidentiality with respect to the information as the Operator is bound to under Clause 50.1; or
- (e) to a Party's legal advisers or its consultants.

50.4 Publication of certain information by TfNSW

- (a) Subject to Clause 50.4(e), despite any other provisions of this Contract, TfNSW may publish or require the Operator to publish in any form and at times TfNSW considers appropriate, any information obtained by TfNSW from the Operator in accordance with the KPI Schedule, the Reporting Schedule, Schedule 13 or information collected from the TfNSW Systems and Equipment.
- (b) Subject to Clause 50.4(e), despite any other provisions of this Contract, TfNSW may publish the Handover Information, the Market Process Information and any other information reasonably required in connection with the re-tendering or contracting of all or any part of the Operator Activities, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting.
- (c) Nothing in this Contract restricts TfNSW's provision of information to any Minister of the Crown in right of the State or any of its agencies, instrumentalities or Governmental Agencies.
- (d) For the avoidance of any doubt, and without limiting Clause 50.4(a), TfNSW may publish:
 - (i) information collected via DCIS and the OSD;
 - (ii) performance information;
 - (iii) ticketing information; and
 - (iv) information regarding Payments made under this Contract.
- (e) TfNSW must not publish the following information:
 - (i) Personal Information; and

- (ii) subject to Clause 50.3, information that TfNSW considers is commercial-in-confidence information.
- (f) For the purposes of Clause 50.4(e)(ii) 'commercial-in-confidence' information means information which TfNSW considers to show:
 - (i) the Operator's financing arrangements;
 - (ii) the Operator's cost structure or profit margins;
 - (iii) any Intellectual Property in which the Operator has an interest (other than Intellectual Property in the Contract Material or Intellectual Property which is licenced to TfNSW under Clause 51.2); or
 - (iv) any other matter the disclosure of which TfNSW reasonably considers could place the Operator at a substantial commercial disadvantage in relation to other operators or potential operators, whether at the time of the proposed disclosure or in the future.

50.5 Privacy compliance

- (a) TfNSW and the Operator must comply with:
 - (i) the Privacy Laws and any guidelines issued by the Commissioner;
 - (ii) any privacy policy or approved privacy code which has been adopted by TfNSW and that is reasonable having regard to the requirements of Law; and
 - (iii) any reasonable direction of TfNSW regarding how to comply with any such Privacy Laws, privacy policy or code,

in respect of any Personal Information which TfNSW or the Operator receives or has access to under this Contract or any Transaction Document.
- (b) The Operator must cooperate with TfNSW in the resolution of any complaint alleging a breach of the Privacy Laws, a privacy policy or an approved privacy code.

50.6 Disclosure log (GIPA Act section 25)

The Operator acknowledges and agrees that TfNSW may disclose certain information about this Contract in accordance with TfNSW's obligations under the GIPA Act, including making certain information about this Contract (and a copy of the Contract) publicly available in any disclosure log of contracts TfNSW is required to maintain.

50.7 Access to information (GIPA Act section 121)

- (a) The Operator must, within five Business Days of receiving a written request by TfNSW, provide TfNSW with immediate access to the following information contained in records held by or under the control of the Operator or the Operator's Associates:
 - (i) information that relates directly to the performance of the Operator Activities provided to the Operator by TfNSW pursuant to this Contract;
 - (ii) information collected by the Operator from members of the public to whom it provides, or offers to provide, the Services pursuant to this Contract; and
 - (iii) information received by the Operator from TfNSW to enable it to perform the Operator Activities pursuant to this Contract.
- (b) For the purposes of Clause 50.7, such information does not include:
 - (i) information that discloses or would tend to disclose the Operator's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Operator is prohibited from disclosing to TfNSW by provision made by or under any Act, whether of any Australian state or territory, or of the Commonwealth; or
 - (iii) information that, if disclosed to TfNSW, could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to TfNSW, whether at present or in the future.

- (c) The Operator must provide copies of any of the information requested by TfNSW in accordance with Clause 50.7(a) at the Operator's own expense.

50.8 Consultation (GIPA Act section 54)

- (a) TfNSW will take reasonably practicable steps to consult with the Operator before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, if it appears that:
 - (i) the information:
 - (A) includes Personal Information about the Operator or its employees;
 - (B) concerns the Operator's business, commercial, professional or financial interests;
 - (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Operator; or
 - (D) concerns the affairs of a government of the Commonwealth or another Australian state or territory;
 - (ii) the Operator may reasonably be expected to have concerns about the disclosure of the information; and
 - (iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (b) If, following consultation between TfNSW and the Operator, the Operator objects to disclosure of some or all of the information, the Operator must provide details of any such objection (including the information objected to and the reasons for any such objection) to TfNSW within five Business Days of the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of the information, TfNSW will take into account any objection received from the Operator.
- (d) If the Operator objects to the disclosure of some or all of the information but TfNSW nonetheless decides to release the information, TfNSW must not provide access to that information until it has given the Operator notice of TfNSW's decision and notice of the Operator's right to have that decision reviewed.
- (e) Where TfNSW has given notice to the Operator in accordance with Clause 50.8(d), TfNSW must not provide access to the information:
 - (i) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - (ii) where any review of the decision duly applied for is pending.
- (f) The reference in Clause 50.8(e)(i) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

50.9 Publicity

Except for notices which the Operator is required to disclose to any recognised stock exchange, the Operator must:

- (a) not make any public announcements or statements in relation to the Operator Activities (including by posting any information related to the Operator Activities on any website) without TfNSW's prior consent;
- (b) give TfNSW a draft of any proposed media release relating to the Operator Activities and obtain TfNSW's approval of the media release before distributing it;
- (c) prior to release, revise the wording and timing of all media releases, public announcements and statements by the Operator or the Operator's Associates relating to the Services as requested by TfNSW; and

- (d) ensure that the Operator's Associates comply with the requirements referred to in this Clause 50.9.

51. Intellectual Property and Marks

51.1 General principle

- (a) The Operator acknowledges and agrees that TfNSW endorses open government principles and that any and all New Contract Material may be shared by TfNSW with other persons or made publicly available (including online) and that TfNSW may grant such other persons or members of the public broad licences to use and sub-licence the New Contract Material either on a fee or free fee basis. The Operator acknowledges and agrees that the New Contract Material may be branded by TfNSW or a sub-licensee of TfNSW with TfNSW's or the licensee's branding with no acknowledgement of the Operator's input, Intellectual Property or Moral Rights.
- (b) The Parties agree that ownership of Intellectual Property in or in relation to all New Contract Material vests upon its creation in the Crown in right of the State of New South Wales acting through TfNSW without the need for further assurance.
- (c) With respect to any New Contract Material, irrespective of where it is created, if requested by TfNSW, the Operator must:
 - (i) sign, execute or otherwise deal with; and
 - (ii) ensure that any third party that creates any New Contract Material signs, executes or otherwise deals with,

any document which may be necessary to vest all rights in and title to the Intellectual Property in the New Contract Material to TfNSW.

51.2 Intellectual Property licence

- (a) Subject to Clause 51.4, the Operator grants to TfNSW an irrevocable, royalty-free licence to use all Existing Contract Material for the purposes of providing public transport in New South Wales which licence will be for the duration of the Intellectual Property in that material and will include a right to sublicense.
- (b) The licence granted under Clause 51.2(a) only applies in respect of the Operator's registered business name, company name, trademark or logo (**Operator Identification**) for such period that any Operator Identification remains affixed to any Asset used or acquired by the Successor Operator or Interim Operator.
- (c) The Operator agrees to obtain, at its own cost, irrevocable, royalty free licences in favour of TfNSW to use all Third Party Contract Material for the purposes of providing public transport in New South Wales which licences will be for the duration of the Intellectual Property in that material and will include a right to sub-licence.
- (d) TfNSW grants the Operator a non-exclusive, non-assignable, royalty-free licence to use the Intellectual Property in the New Contract Material and TfNSW's Existing Contract Material for the purpose of performing the Operator's obligations under this Contract. The licence granted by this Clause 51.2(d) does not, however, extend to a licence to use TfNSW's trade marks, logos or branding so as to represent or give the impression that the Operator represents TfNSW. Express written permission is required for such use.
- (e) The Operator warrants that it holds all necessary rights and has obtained all necessary approvals, consents and licences to grant the assignments and licences referred to in this Clause 51.2 and that TfNSW will not, by using, publishing or licensing the Contract Material or the Intellectual Property in the Contract Material, infringe any Intellectual Property in the Contract Material.
- (f) The Operator agrees that it will create and execute any documents necessary to give effect to the terms and intention of this Clause 51.2 so as to ensure that TfNSW is unimpeded in its power to use, publish and licence the Contract Material and any Intellectual Property in the Contract Material.

- (g) The Operator agrees that it will obtain signed waivers from each person who has, or comes to have, Moral Rights in the Contract Material or Intellectual Property in the Contract Material irrevocably:
 - (i) waiving that person's Moral Rights in the Contract Material or Intellectual Property in the Contract Material; and
 - (ii) authorising TfNSW to do acts with the Contract Material or Intellectual Property in the Contract Material that would, but for the waiver, breach that person's Moral Rights.

51.3 Third party rights

Where the use by TfNSW or its sub-licencees of any Contract Material supplied by the Operator does, or is likely to, infringe the rights of any third party's Intellectual Property which does, or may, prevent TfNSW or its sub-licencees from using that Contract Material, the Operator must, where requested by TfNSW and to TfNSW's reasonable satisfaction obtain such consents from the relevant third party that will allow TfNSW or its sub-licencees to use that Contract Material without infringing that third party's Intellectual Property.

51.4 Use of TfNSW Brand

- (a) The Operator must only use the TfNSW Brand in material if TfNSW has given that material to the Operator or if the Operator has submitted representative material including the TfNSW Brand to TfNSW and TfNSW has approved their use in writing.
- (b) The Operator acknowledges and agrees that:
 - (i) the TfNSW Brand is extremely important and valuable to TfNSW;
 - (ii) TfNSW owns all right, title and interest in the TfNSW Brand and the Operator has no right, title or interest in the TfNSW Brand and, in particular, in respect of the TfNSW Marks the powers conferred on authorised users by section 25 of the *Trade Marks Act 1995* (Cth) are expressly excluded;
 - (iii) any goodwill and any other right, title or interest from the Operator's use of the TfNSW Brand accrues solely for TfNSW's benefit;
 - (iv) the Operator will, at TfNSW's request, immediately amend or withdraw any document or thing bearing the TfNSW Brand;
 - (v) the Operator must only use the TfNSW Brand in a manner which strictly accords with the terms of this Contract and any directions or guidelines which TfNSW provides to the Operator from time to time; and
 - (vi) TfNSW may request access to any material bearing the TfNSW Brand to ensure compliance with this Contract and any directions or guidelines for use of the TfNSW Brand and upon receipt of such a request, the Operator will provide TfNSW with access to the relevant material within five Business Days.
- (c) The Operator must do all things necessary (including executing documents) and provide TfNSW with all such assistance as is reasonably required by TfNSW to register any part of the TfNSW Brand in the name of TfNSW and to maintain that registration throughout the Term.
- (d) The Operator must ensure that where the TfNSW Marks appear in any written material (including any electronic material) published by or on behalf of the Operator, unless otherwise authorised by TfNSW in writing:
 - (i) the ® symbol must appear next to TfNSW Marks which are registered and the "TM" symbol must appear next to TfNSW Marks which are not registered; and
 - (ii) the TfNSW Marks must be accompanied by the following footnote:
"The [to be inserted] trade mark is used by [insert Operator name] under licence from TfNSW."
- (e) The Operator must not use the TfNSW Brand in a manner which is prejudicial to TfNSW or likely to prejudice the distinctiveness of the TfNSW Brand or the validity of any registration for any of the TfNSW Marks.

- (f) The Operator must comply with any standards, directions and specifications notified in writing by TfNSW from time to time during the Term as to the appearance, colour, size and positioning of the TfNSW Marks and the footnote referred to in Clause 51.4(d)(ii).
- (g) The Operator must not at any time during the Term use the TfNSW Marks in juxtaposition to any other trade mark, embellishment or device without the prior written consent of TfNSW.
- (h) The Operator will:
 - (i) if requested by TfNSW, take all necessary action and execute and deliver to TfNSW all necessary documents and instruments to record the Operator as a registered user of the TfNSW Marks;
 - (ii) if requested by TfNSW, submit to TfNSW samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the TfNSW Brand for TfNSW's prior written approval;
 - (iii) except to the extent expressly permitted by this Contract, not use or apply to register any TfNSW Marks as part of its corporate, business, trading or domain name;
 - (iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose TfNSW's ownership of the TfNSW Brand;
 - (v) not register or use any trade mark, trade name, company name or domain name which includes any part of the TfNSW Brand or which is substantially identical or deceptively similar to any part of the TfNSW Brand; and
 - (vi) not challenge the TfNSW Brand or TfNSW's ownership of the TfNSW Brand or assist a third party to do these things.
- (i) If, during the Term, the Operator becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the TfNSW Marks, the Operator must promptly notify TfNSW.
- (j) TfNSW will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the TfNSW Marks and will in its sole discretion decide what action if any to take in respect of that matter. The Operator must, at TfNSW's reasonable cost, take any action which TfNSW reasonably requests to bring the matter to an end.
- (k) The Operator shall, upon termination or expiry of this Contract, procure that any part of the TfNSW Brand which is listed or registered in the name of the Operator, or any person acting on its behalf, is transferred to TfNSW and procure that all telephone numbers, email addresses and all other electronic addresses which are designated by the Operator for use by the general public to make contact with the Operator in relation to the Operator Activities using a telecommunication network be transferred to TfNSW.
- (l) In this Clause:
 - (i) 'Marks' means any mark, trade mark, logo, indicia or image;
 - (ii) 'TfNSW Brand' means all Marks, livery, colours or other get up or brand used on or in relation to the State Assets and Operator New Buses or any part of them including:
 - (A) the TfNSW Marks;
 - (B) all names including business names, domain names and company names registered or used in relation to the Operator Activities (other than those business names, domain names and company names of the Operator or Operator's Associates which are used in their business generally); and
 - (C) all telephone numbers, email addresses, websites, social media accounts and all other addresses or means of communication in any medium, whether in existence at the date of this Contract or not, registered or used in relation to the Operator Activities (other than those of the Operator or Operator's Associates which are used in their business generally); and

- (iii) 'TfNSW Marks' means the Marks notified by TfNSW to the Operator from time to time and any other Marks used by or on behalf of the Operator in relation to the Operator Activities (other than those Marks of the Operator's Associates which are used in their business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any Marks which are created or developed in connection with, the Operator Activities or any part of the Operator Activities).

52. Livery and advertising

52.1 Livery and Operator's Marks

- (a) TfNSW will, in consultation with the Operator, develop, amend and periodically update the TfNSW Brand Style Guide to provide specifically for use of TfNSW Brands in relation to the Services.
- (b) The Operator must:
 - (i) ensure that the State Assets and Operator New Buses incorporate the TfNSW Brand;
 - (ii) incorporate the TfNSW Brand in a manner that enables the State Assets and Operator New Buses to be identified as part of an integrated transport network;
 - (iii) comply with the TfNSW Brand Style Guide including by ensuring that:
 - (A) the TfNSW Brand is applied in accordance with the TfNSW Brand Style Guide;
 - (B) any Operator brand placement is co-branded with the relevant TfNSW Brand and in a format and relative scale in accordance with the TfNSW Brand Style Guide;
 - (C) all customer facing surfaces on vehicles, equipment, electronic displays, printed, promotional or other branded materials display the TfNSW Brand and the Operator brand in a manner that complies with the TfNSW Brand Style Guide; and
 - (D) the Operator does not use primary colours or other distinctive colour schemes unless it can be demonstrated to TfNSW's satisfaction that it is complementary to and or consistent with the TfNSW Brand Style Guide;
 - (iv) comply with a visual language as determined by TfNSW; and
 - (v) ensure that the New Buses conform to uniform livery requirements, set out in the TfNSW Brand Style Guide, or as otherwise prescribed by TfNSW from time to time.
- (c) If TfNSW prescribes or varies any existing uniform livery requirements in respect of all New Buses or requires that the livery of Existing Buses be updated to conform with uniform livery requirements:
 - (i) the Operator must comply with that new or varied uniform livery requirement; and
 - (ii) TfNSW must compensate the Operator for all reasonable incremental direct costs of complying with that new or varied uniform livery requirement but only to the extent that such costs exceed the costs that the Operator would have incurred had TfNSW not required the new or varied uniform livery requirements.
- (d) Before the Planned Service Commencement Date TfNSW will update the TfNSW Brand Style Guide to include a place for the Operator brand and the 'Bridj' brand on On Demand Buses.

52.2 Advertising and commercial opportunities

- (a) The Parties acknowledge and agree that:
- (i) the Operator has the exclusive right under this Contract to advertise, and grant rights to third parties to advertise:
 - (A) on the interior of the Contract Buses; and
 - (B) on the exterior of Contract Buses,subject always to the requirements set out in Clause 52.1;
 - (ii) subject to Clause 52.2(b), the Operator must not advertise on the Transit Stops and the Licensed Areas; and
 - (iii) TfNSW has the right under this Contract to advertise, and grant rights to third parties to advertise, on the Transit Stops and the Licensed Areas (**TfNSW Advertising Assets**).
- (b) The Parties acknowledge and agree that the Operator may pursue other commercial opportunities in relation to the Services (including advertising, or granting rights to third parties to advertise, on TfNSW Advertising Assets) provided it first obtains the consent of TfNSW and complies with any conditions that may be imposed by TfNSW in respect of such opportunities.

52.3 Advertising by Operator

- (a) Any advertising placed by the Operator on a State Asset or Operator New Bus must:
- (i) comply with all applicable Laws;
 - (ii) comply with:
 - (A) the TfNSW Bus Advertising Guidelines; and
 - (B) any other guidelines, standards or directions issued by TfNSW from time to time;
 - (iii) comply with the requirements of Clause 52.1;
 - (iv) comply with codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by a Governmental Agency, the Advertising Standards Bureau of Australia, Office of Film and Literature Classification, Australian Association of National Advertising, Outdoor Advertising Association of Australia, Australian Advertising Standards Board and the TfNSW Centre for Road Safety;
 - (v) not depict political, religious or other similar subject matter;
 - (vi) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour;
 - (vii) not cause, or have the potential to cause, any damage or harm to TfNSW's reputation;
 - (viii) not be offensive;
 - (ix) not obscure the route number and destination details on the Contract Bus;
 - (x) not obscure any transport information or wayfinding information; and
 - (xi) not obscure or distract from any safety information or signage.
- (b) Where, in TfNSW's reasonable opinion, advertising on a Contract Bus does not comply with Clause 52.3(a), TfNSW may require the Operator to remove an advertising item from that Contract Bus.
- (c) The Operator must comply with a direction of TfNSW made pursuant to Clause 52.3(b) within one Business Day of receipt of the direction.

- (d) The Operator must not install any digital advertising equipment on Contract Buses without the prior consent of TfNSW which consent may be subject to conditions, including conditions protecting TfNSW's rights in relation to the Contract Buses.
- (e) The Operator must, when requested to do so by TfNSW, allow TfNSW to utilise such advertising panels and spaces on Contract Buses (including any digital media) for such reasonable periods as are required by TfNSW, at no cost to TfNSW, to enable TfNSW to promote transport and safety initiatives.

53. Warranties

53.1 Special purpose vehicle warranties

In addition to the warranties in Clauses 53.2 and 53.3, the Operator represents and warrants that:

- (a) as at the date of this Contract and on the Service Commencement Date:
 - (i) it is a proprietary company incorporated under the Corporations Act solely for the purposes of performing the Operator Activities or other activities permitted under this Contract;
 - (ii) it has not traded or engaged in any form of business activities prior to the date of this Contract; and
 - (iii) it is a wholly owned subsidiary of the Parent Company; and
- (b) as at the Service Commencement Date and throughout the Term:
 - (i) its only assets will be the Assets acquired by it in accordance with this Contract;
 - (ii) its only liabilities will be liabilities which are related to the Assets and the Staff or as otherwise contemplated by the Transaction Documents; and
 - (iii) it will be the employer for all of the Dedicated Staff.

53.2 Special purpose vehicle undertakings

The Operator must not during the Term, without the prior consent of TfNSW:

- (a) engage in any business activity other than:
 - (i) performing the Operator Activities;
 - (ii) providing advertising on Contract Buses in a manner consistent with Clauses 52.2 and 52.3; and
 - (iii) providing charter Bus services in accordance with this Contract;
- (b) permit or engage any Dedicated Staff to perform duties or activities not associated with the Operator Activities;
- (c) acquire or use any assets for purposes other than the performance of its obligations under the Transaction Documents to which it is a party;
- (d) acquire or use any premises, facilities or bus, for the purposes of the Operator Activities and then only on the terms set out in the Transaction Documents; or
- (e) enter into any subcontracts or Related Party Arrangements in respect of matters which are not for the purposes of the performance of its obligations under this Contract.

53.3 Warranties correct

The Operator represents and warrants to TfNSW that the following warranties are true and correct and not misleading on the date of this Contract, the Service Commencement Date and for the duration of the Transition Period and the Term:

- (a) it is a corporation duly incorporated and validly existing under the Laws of New South Wales;
- (b) it has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- (c) it has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents;
- (d) each Transaction Document to which it is expressed to be a party creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (e) the execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
 - (i) a Law or treaty or a judgment, ruling, order or decree of a Reporting Body binding on it; or
 - (ii) its constitution or other constituent documents;
- (f) no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it that may have an adverse effect on the performance of this Contract;
- (g) no resolution has been passed for its winding up;
- (h) no resolution has been passed for the appointment of an administrator to it;
- (i) there is no unsatisfied judgment against it;
- (j) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its undertakings or assets or income;
- (k) each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents; and
 - (ii) its business as now conducted or contemplated and that is material (including, under the PT Act 1990),

has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Service Commencement Date, it is only given as at and from the Service Commencement Date;
- (l) all returns, notices and other documents required to be lodged or given by it under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (m) there are no notices of any Reporting Body outstanding against it;
- (n) all Authorisations necessary for the conduct of its business are validly subsisting and are held by it;
- (o) it has duly observed and complied in all respects with the provisions of all Laws and regulations and all orders, notices, awards and determinations made by any statutory or

other competent authority in any way relating to or binding on it or any property owned or occupied by it;

- (p) all copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to TfNSW are true and complete copies. Where applicable, those documents are in full force and effect;
- (q) none of its property is subject to any Security Interest (other than a Permitted Security Interest);
- (r) it does not hold any assets as the trustee of any trust;
- (s) it complies with the Privacy Laws, and any guidelines issued by the Commissioner under the relevant Privacy Law;
- (t) it can commence the Services on and from the Service Commencement Date;
- (u) it is and will be able to comply with the Services Schedule, the Service Level Schedule, the Key Performance Indicators and any outcomes or indicators agreed in this Contract;
- (v) its performance of this Contract will not infringe the Intellectual Property rights of any third person;
- (w) its Accessible Transport Action Plan, Environmental Plan and Customer Service Plan are updated annually;
- (x) it will perform the Services in accordance with the degree of skill, diligence, prudence and practice that would be exercised by a skilled and experienced operator of public transport services and public transport services comparable to the size, scope and complexity of the Services and to TfNSW's reasonable satisfaction;
- (y) it will perform the Services:
 - (i) in a competent, courteous, safe and reliable manner;
 - (ii) having primary regard to the needs and interests of passengers; and
 - (iii) in accordance with the requirements of this Contract; and
- (z) it:
 - (i) has examined this Contract and the Disclosed Information and any other information that was made available in writing by TfNSW or any other person on TfNSW's behalf;
 - (ii) has been given the opportunity prior to submitting its Proposal to itself undertake tests, enquiries and investigations:
 - (A) relating to the subject matter of the Disclosed Information; and
 - (B) relating to the State Assets;
 - (iii) has had a sufficient opportunity to obtain and obtained all necessary legal and other technical advice in relation to this Contract, the Disclosed Information and the State Assets as well as the risks, contingencies and other circumstances having an effect on its Proposal and the performance of its obligations and liabilities under this Contract;
 - (iv) has had sufficient access to the Disclosed Information and the State Assets and undertaken sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and potential risks and liabilities which it imposes on the Operator; and
 - (v) has satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the Operator Activities.

53.4 Notification of change

The Operator must immediately notify the TfNSW Representative in writing upon becoming aware that a representation or warranty it has given under this Clause 53 has become untrue or misleading at any time during the Term.

53.5 Reliance on representations and warranties

- (a) The Operator acknowledges that TfNSW has entered into, or will enter into, the Transaction Documents in reliance on the representations and warranties made by the Operator in this Clause 53.
- (b) Each warranty and representation is separate and independent from the other and not limited by reference to another warranty or representation.

54. Operator acknowledgments

54.1 Acknowledgements

- (a) The Operator acknowledges and agrees that it has made its own enquiries and has not relied on any representations made by TfNSW or the State, nor any other person acting on behalf of TfNSW or the State, in respect of this Contract and each other Transaction Document.
- (b) Without limiting the generality of Clause 54.1(a), the Operator acknowledges and agrees the following:
 - (i) neither TfNSW, the State nor any other person acting on behalf of TfNSW or the State has verified the accuracy, reliability or completeness of the Disclosed Information;
 - (ii) neither TfNSW, the State nor any other person acting on behalf of TfNSW or the State has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
 - (iii) the Operator has not relied in any way on the skill or judgment of TfNSW, the State or any person acting on behalf of or associated with TfNSW or the State and has relied absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to tender a proposal and to enter into this Contract and each other Transaction Document;
 - (iv) the Operator has carried out all relevant investigations and has examined and acquainted itself concerning:
 - (A) the contents, correctness and sufficiency of the Disclosed Information;
 - (B) all information which is relevant to the risks, contingencies and other circumstances which could affect its decision to enter into this Contract and each other Transaction Document; and
 - (C) all amounts payable between the Parties to this Contract and the other Transaction Documents;
 - (v) the Disclosed Information has been provided by TfNSW or the State in good faith and that:
 - (A) neither TfNSW nor the State has no knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither TfNSW, the State nor any person acting on behalf of or associated with TfNSW or the State is under an obligation to make, and that none of them has made, enquiries to verify that state of knowledge); and
 - (B) any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by TfNSW, the State or any person acting on behalf of or associated with TfNSW or the State, in any prior negotiation, arrangement, understanding or agreement has no effect

except to the extent expressly set out or incorporated in this Contract or the other Transaction Documents;

- (vi) for the avoidance of doubt:
 - (A) neither TfNSW, the State nor any person acting on behalf of TfNSW or the State has made or makes any representation or warranty either express or implied as to the condition of the State Assets or the STA Residual Furniture and Tools; and
 - (B) the Operator accepts the State Assets and the STA Residual Furniture and Tools in their condition at the date they are first licensed or leased to the Operator subject to all defects and agrees that it is responsible for, and assumes the risk of:
 - (i) all Loss, delay or disruption it suffers or incurs; and
 - (ii) any adverse effect on the Operator Activities,arising out of or in any way in connection with the State Assets or the STA Residual Furniture and Tools; and
- (vii) the acknowledgments under this Clause 54.1(b) are in addition to and do not limit the terms and conditions already agreed to or accepted by the Operator when receiving the Disclosed Information.
- (c) The Operator warrants to TfNSW that the Operator is aware that TfNSW has relied on the acknowledgments contained in this Clause 54 in entering into this Contract and each of the other Transaction Documents.
- (d) To the extent permitted by Law, the Operator expressly waives any right which it has (whether at the commencement of this Contract or otherwise) to bring any action or make any Claim against TfNSW, the State or any person acting on behalf of or associated with any of TfNSW or the State, arising (directly or indirectly) out of any alleged misrepresentation or misleading or deceptive conduct on the part of TfNSW or the State, or any person acting on behalf of or associated with TfNSW or the State, in providing the Disclosed Information or in connection with this Contract or any other Transaction Document (except for any misrepresentation or misleading or deceptive conduct of TfNSW or the State that is deliberate or negligent).
- (e) The Operator acknowledges that this Clause 54 is intended to benefit and is to be interpreted as benefiting TfNSW and the State and is to be enforceable by TfNSW and the State against the Operator. TfNSW holds the benefit of the Operator's representations, warranties, acknowledgments and agreements under this Clause 54 on trust for TfNSW's Associates, STA, RMS, any Roads Authority, the Minister for Transport and the State.

54.2 No TfNSW responsibility for review of documents

- (a) The Operator:
 - (i) must develop, amend or update (and resubmit to TfNSW) any documents required to be submitted to TfNSW under this Contract (**Operator Documents**) in accordance with the requirements of this Contract or, where no requirement is specified, from time to time as and when either the Operator or TfNSW reasonably consider it is necessary to do so to comply with this Contract; and
 - (ii) warrants that the Operator Documents will be fit for their intended purposes and will otherwise comply with the requirements of this Contract.
- (b) TfNSW does not assume or owe any duty of care to the Operator to review, or when reviewing, to assess any Operator Document for errors, omissions or compliance with this Contract.
- (c) The Operator agrees that:
 - (i) review of, comments upon, or failure to comment upon, or rejection of (including the reasons for rejection) or failure to reject, an Operator Document or any other direction by TfNSW about such document; and

- (ii) the Operator's compliance with any Operator Document,
will not:
 - (iii) relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise according to Law;
 - (iv) prejudice TfNSW's rights against the Operator whether under this Contract or otherwise according to Law; or
 - (v) entitle the Operator to make any Claim against TfNSW in connection with such review, comments, or failure to comment, or rejection or failure to reject, or other direction by TfNSW.
- (d) Without limiting Clauses 54.2(a) and 54.2(c), TfNSW is not assuming any management or control of the Operator Activities or the Services.

55. Dispute resolution

55.1 Dispute resolution

- (a) This Clause 55 applies to any dispute which arises between the Parties in connection with this Contract, except disputes relating to the construction of this Contract including this Clause 55 (**Dispute**).
- (b) Subject to Clause 55.1(c), a Party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first complying with the provisions of this Clause 55.
- (c) This Clause does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensable in damages.
- (d) If a Party considers that a Dispute has arisen, it may issue a written notice to the other Party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (e) Subject to Clause 55.2, the Parties must promptly (and in any event within 10 Business Days after the date of the Dispute Notice):
 - (i) subject to legal professional privilege, furnish to the other Party all information with respect to the Dispute which is appropriate in connection with its resolution; and
 - (ii) hold good faith discussions between the Operator Representative and the TfNSW Representative to attempt to resolve the Dispute.
- (f) If the Dispute has not been resolved within 10 Business Days after the date of the Dispute Notice, the Parties must attempt to resolve the Dispute by holding good faith discussions between the Operator's Chief Executive Officer (or equivalent) and the Executive General Manager, Service Delivery and Performance, TfNSW (or such other position notified to the Operator by TfNSW from time to time).
- (g) If the Dispute has not been resolved within 25 Business Days after the date of the Dispute Notice, either Party may pursue its rights and remedies under this Contract as it sees fit.

55.2 Referral to expert

- (a) If this Contract requires that a Dispute be resolved by an independent expert, or if the Parties agree that a Dispute will be referred to an independent expert, the Parties must refer that Dispute for resolution under this Clause 55.2 to a person who is an independent expert in its subject matter appointed by agreement between the Parties (**Expert**).
- (b) If the parties are unable to agree on whom to appoint as an Expert within 20 Business Days after the date of the Dispute Notice, the Expert will be appointed on the application of any Party by (unless otherwise agreed) the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Institute of Arbitrators and Mediators Australia.

- (c) The Expert appointed under Clause 55.2(a) or (b) acts as an expert and not as an arbitrator.
- (d) Each Party to a Dispute which is referred to the Expert for determination must have a reasonable opportunity to make submissions to the Expert.
- (e) Unless otherwise stated in this Contract, the costs of the Expert must be borne in equal shares by the Parties.
- (f) The Expert's decision is final and binding on the Parties to the Dispute, except to the extent of fraud, gross negligence or a manifest error.
- (g) The provisions of the *Commercial Arbitration Act 2010* (NSW) will not apply to the dispute resolution proceedings under this Clause 55.2.

55.3 General

- (a) This Clause does not apply to any Dispute relating to or arising out of the exercise or non exercise by TfNSW of any Power conferred on TfNSW by the TA Act, PT Act 1990, PT Act 2014 or otherwise by Law.
- (b) The Parties will continue performing their respective obligations under the Transaction Documents while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Contract.

55.4 Section 65 of the PT Act 1990

The Operator acknowledges that any dispute resolution procedure brought under this Clause 55 or otherwise is subject to section 65 of the PT Act 1990.

56. Restriction on activities

56.1 Assignment

- (a) Except where this Contract expressly provides otherwise, the Operator may not assign, transfer, encumber or otherwise deal with its interest under the Transaction Documents without the consent in writing of TfNSW which may be granted or refused at TfNSW's discretion and on such conditions as TfNSW may impose.
- (b) Without limiting Clauses 1.10 and 27, TfNSW may assign or transfer its rights or obligations under the Transaction Documents to another Governmental Agency.

56.2 Arrangements with Related Entities

- (a) The Operator must not enter into any agreement or arrangement (whether legally enforceable or not) between it and a Related Entity (a **Related Party Arrangement**) unless the Related Party Arrangement is on arm's length commercial terms for:
 - (i) the provision of services or goods by the Related Entity to the Operator;
 - (ii) the transfer, secondment or sharing of any employee to or with the Related Entity; or
 - (iii) the lease, licence or sharing of any assets or facilities of the Related Entity by the Operator,
 and the following requirements have also been satisfied:
 - (iv) TfNSW and the Related Entity have entered into an agreement on terms acceptable to TfNSW in respect of the Related Party Arrangement;
 - (v) if required by TfNSW acting reasonably, the Related Entity has provided a Security Interest in favour of TfNSW in a form satisfactory to TfNSW; and
 - (vi) if required by TfNSW acting reasonably, TfNSW has obtained a parent company guarantee in respect of the obligations of the Related Entity under the agreement referred to in Clause 56.2(a)(iv).

- (b) In acting reasonably under Clause 56.2(a)(v) and 56.2(a)(vi), TfNSW must have regard to the need to ensure the Continuity of the Services on expiry or termination of this Contract or if a Termination Event or Non-Compliance Event occurs.
- (c) If the Operator enters into a Related Party Arrangement in breach of Clause 56.2(a), then TfNSW may request the Operator to terminate the Related Party Arrangement and the Operator must, as soon as practicable, comply with that request.
- (d) No later than three months prior to the end of each Financial Year the Operator must provide to TfNSW a summary list of all Related Party Arrangements to which it is a party. TfNSW may seek further information about any Related Party Arrangement (including copies of any contracts) identified on the list and the Operator must provide that information within one month of TfNSW's request. If, on the basis of the information provided under this Clause 56.2(d) or otherwise available to TfNSW, TfNSW reasonably considers that any Related Party Arrangements are not on arm's length commercial terms TfNSW may provide a notice to the Operator specifying conditions to which any future Related Party Arrangements may be subject. The conditions so specified may include a condition prohibiting the Operator from entering into Related Party Arrangements without the approval of TfNSW. The Operator must comply with any conditions specified by TfNSW under this Clause 56.2(d).

57. Relationship between Operator and TfNSW

- (a) The Operator acknowledges that neither the Operator, nor any person employed or engaged by the Operator for the purpose of carrying out its obligations under this Contract or any other Transaction Document shall be deemed to be an employee, partner or agent of TfNSW or the State, by reason only of execution of, or performance of, this Contract or any other Transaction Document.
- (b) The Operator must not, and must procure that none of its Staff represent themselves as being the employees, partners or agents of TfNSW or the State.

58. Personal Property Securities Act

58.1 Incorporation of PPS Law terms

In this Clause 58 the following words and expressions have the same meanings given to them in the PPS Law:

- (a) registration;
- (b) secured party;
- (c) verification statement;
- (d) financing statement;
- (e) personal property; and
- (f) financing change statement.

58.2 General

The Operator acknowledges and agrees that:

- (a) if and to the extent that TfNSW at any time forms a belief on reasonable grounds that TfNSW is, or will become, a secured party in respect of a Security Interest arising out of or in connection with this Contract or any other Transaction Document, TfNSW or its agents, attorneys or nominees (**Relevant Party**), may at the Operator's expense take all steps that the Relevant Party considers advisable to:
 - (i) perfect, protect, record, register, amend or remove the registration of TfNSW's Security Interest in any personal property that is the subject of the Security Interest (**Relevant Personal Property**); and

- (ii) better secure TfNSW's position in respect of the Relevant Personal Property under the PPS Law;
- (b) it will execute such other documents, deeds and other agreements including the execution of additional Security Interests, and otherwise take whatever action that the Relevant Party may reasonably require, including the giving of all notices, orders, instructions and directions whatsoever, to:
 - (i) do anything referred to in Clause 58.2(a)(i) or (ii);
 - (ii) facilitate the realisation or enforcement of such Security Interest;
 - (iii) facilitate the exercise of any of the Relevant Party's rights, powers or discretions under the Transaction Documents;
 - (iv) ensure that any Transaction Document is stamped for the proper amount in each state and territory of Australia in which the Transaction Document is required to be stamped; and
 - (v) confer on the Relevant Party security over the secured property (in whatever jurisdiction situated) equivalent or similar to the security intended to be conferred by any Transaction Document;
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Relevant Party in the Relevant Personal Property;
- (d) if TfNSW becomes a secured party in relation to the Relevant Personal Property, and to the extent that Chapter 4 of the PPS Law would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, the Operator and TfNSW agree that pursuant to section 115 of the PPS Law, sections 117, 118, 120, 121(4), 125, 129, 130, 132(3)(d), 132(4), 142 and 143 of the PPS Law do not apply in relation to those Security Interests;
- (e) other than in relation to Security Interests arising in the ordinary course of the Operator Activities and Security Interests described in section 12(3) of the PPS Law of which the Operator is the grantor (but only where the interest does not secure payment or performance of an obligation), it must immediately notify TfNSW if the Operator becomes aware of any person other than the Operator taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and
- (f) other than in relation to Security Interests arising in the ordinary course of the Operator Activities and Security Interests described in section 12(3) of the PPS Law of which the Operator is the grantor (but only where the interest does not secure payment or performance of an obligation), it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of TfNSW's interest in Relevant Personal Property.

58.3 Corresponding provisions

Any document required to be executed by the Operator under Clause 58.2 will be in a form and substance satisfactory to the Relevant Party.

59. Proportionate Liability

59.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of the Parties under this Contract whether those rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting Clause 59.1, the rights, obligations and liabilities of TfNSW and the Operator under this Contract with respect to proportionate liability are as specified in this Contract and not otherwise, whether those rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

59.2 Operator not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the Operator must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by TfNSW against the Operator (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by TfNSW against the Operator (whether in contract, tort or otherwise), the Operator will indemnify TfNSW against any loss, damage, cost or expense that forms part of a claim by TfNSW against the Operator which TfNSW cannot recover from the Operator because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

59.3 Subcontracts

The Operator must:

- (a) in each subcontract into which it enters for the performance of the Operator Activities, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each subcontractor to include, in any further contract that it enters into with a third party for the performance of the Operator Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

60. Taxes

Subject to Clause 36.4, the Operator must indemnify TfNSW against, and must pay TfNSW on demand the amount of, all Taxes (excluding Rates, Land Tax and any stamp or like duty (**Duty**), and any penalty, fine, charge or interest in respect of any Rates, Land Tax or Duty, in each case relating to the Existing Depots and Existing Facilities) incurred in connection with:

- (a) the negotiation, preparation, execution and registration of this Contract or any Transaction Document;
- (b) the transactions that this Contract or any Transaction Document contemplates; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Contract or any Transaction Document.

61. Conflict of Interest

- (a) The Operator promises that, to the best of its knowledge, no conflict of interest of the Operator, its employees, agents or subcontractors exists or is likely to arise in the performance of its obligations under this Contract.
- (b) The Operator must:
 - (i) notify in writing, and consult with, TfNSW immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
 - (ii) comply with any direction given by TfNSW in relation to those circumstances designed to manage that conflict of interest.
- (c) For the purposes of this Clause, a 'conflict of interest' includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Operator of, or to restrict the Operator in performing, its obligations under this Contract.

62. Notices

Subject to the notices referred to in Clauses 17.2(a), 17.2(b) and 18(e), and the information referred to in Clauses 17.3(b) and 17.3(c) which are to be submitted via the BSAR system, any notice, demand, consent or other communication (**Notice**) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (or, if posted to an address in another country, by registered airmail) or by hand to the address below or the address last notified by the intended recipient to the sender:
 - (i) to TfNSW:
Barry O'Neill
Associate Director Bus Contracts
18 Lee Street
SYDNEY NSW 2000
 - (ii) to the Operator:
[REDACTED]
General Manager
Transit Systems West Pty Ltd
49 Percival Road
SMITHFIELD NSW 2164,

or by email (in accordance with an email authorisation procedure agreed between the Parties);

- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of delivery by email, on the earlier to occur of:
 - (A) receipt by the sender of any email acknowledgement from the intended recipient's information system showing that the Notice has been delivered to the email address of the recipient;
 - (B) the time that the Notice enters an information system which is under the control of the intended recipient; or
 - (C) the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

63. Entire agreement

This Contract 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 that subject matter.

64. Amendment

No amendment or variation of this Contract is valid or binding on a Party unless made in writing executed by all Parties.

65. No waiver

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

66. Further assurances

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

67. Costs

- (a) Each Party will pay its own costs of negotiation, preparation, execution and (subject to express terms of this Contract and the Transaction Documents) performance of this Contract and the other Transaction Documents.
- (b) TfNSW may require the Operator to pay the reasonable costs of any variations to this Contract or any of the Transaction Documents sought by the Operator, at TfNSW's absolute discretion.

68. Governing Law and jurisdiction

This Contract 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 Contract.

69. Counterparts

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

70. Survival

Clauses 1, 4, 6.4, 7, 10.3, 15.1(j), 15.1(k), 22, 28.2, 29, 33.7, 34, 36.3, 36.5, 37, 38, 39, 40.5, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 62, 66, 68 and this Clause 70 continue to apply after the expiration or termination of this Contract.

71. Indexation

Unless otherwise expressly provided in this Contract, a reference to "CPI Indexed" means that the relevant amount will be indexed for movements in CPI in accordance with the following formula:

$$A \text{ (CPI Indexed)} = A \times (\text{CPI}_{Q-1} / \text{CPI}_{\text{Base}})$$

Where:

A is the monetary amount originally specified;

CPI_{Q-1} is the CPI for the Quarter End following the date that occurs six months before the relevant calculation date;

CPI_{Base} is the CPI for the Quarter End ending 30 June 2017;

Quarter End means the last day of each Quarter.

Signing page

EXECUTED as a deed.

**Executed for and on behalf of Transport for NSW
(ABN 18 804 239 602) by its authorised delegate:**

[Redacted signature area]

Signature of authorised delegate 12/2/18

ROOD ANDREW STAPLES

Name of authorised delegate (block letters)

[Redacted signature area]

Signature of witness

JOHN KARABOULIS

Name of witness (block letters)

**Executed by Transit Systems West Pty Ltd
ABN 76 161 755 988 in accordance with Section
127 of the Corporations Act 2001**

[Redacted signature area]

Signature of director

NEIL ESPRIT SMITH

Name of director (print)

[Redacted signature area]

Signature of director/~~company secretary~~
(Please delete as applicable)

[Redacted signature area]

Name of director/company secretary (print)

Attachment A – Contract details

Item	Clause	Term	Details		
Item 1	2(a)	TfNSW Representative	Associate Director Bus Contracts		
Item 2	2(b)	Operator Representative	General Manager being at the date of this Contract [REDACTED]		
Item 3	31.2(b)	Key Personnel Details and Roles	Role	Name	Time for Commencement
			General Manager	[REDACTED]	Date of this Contract
			Head of Operations	[REDACTED]	Date of this Contract
			Head of Assets	[REDACTED]	Date of this Contract
			Safety/Security Manager	[REDACTED]	Date of this Contract
			Customer Service / Experience Manager	[REDACTED]	Date of this Contract
			Head of HR/IR	[REDACTED]	Date of this Contract
Item 4	31.2(b)	Key Personnel – Duration of Appointment	Three years from Time for Commencement specified in Item 3		
Item 5	38.1(a)(i)(C)	Public liability insurance	[REDACTED]		
Item 6	38.1(a)(v)	Third party property damage insurance	[REDACTED]		
Item 7	7.1	General Performance Bond Amount	[REDACTED]		

Attachment B – Performance Bond

[insert date]

TO: Transport for NSW on behalf of the State of New South Wales (**Beneficiary**)
Address: [insert]
Attention: [insert]

Transit Systems West Pty Ltd ABN 76 161 755 988 (**Operator**) has entered into a document with the Beneficiary under which the Operator has agreed to, among other things, provide bus services in Sydney, New South Wales in accordance with the terms of that document (**Document**).

At the request of the Operator, and in consideration of the Beneficiary agreeing to accept the form of this bond (**Bond**):

[insert] (**Issuer**),

unconditionally and irrevocably covenants to pay to the Beneficiary on first demand by the Beneficiary any sum or sums which may be demanded by the Beneficiary up to an aggregate maximum of:

A\$[insert].

Payment or payments under this Bond will be made by the Issuer to the Beneficiary:

1. without reference to the Operator or any agreement between the Beneficiary and the Operator;
2. despite any notice by the Operator or any other person (aside from the Beneficiary) to the Issuer not to pay the whole or any part of the sum; and
3. despite anything which but for this provision might operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
 - (a) any variation or alteration to any contract between the Beneficiary and the Operator; or
 - (b) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person.

This Bond expires on [insert] (**Expiry Date**).

The Issuer will have no liability in respect of any claim under this Bond after the Expiry Date.

The Beneficiary may assign its rights under this Bond to any person to whom it has assigned some or all of its rights under the Document provided that the relevant Beneficiary has notified the Issuer of that assignment.

Other than as set out above, the Beneficiary cannot assign or transfer its rights under this Bond without the prior consent of the Issuer, not to be unreasonably withheld.

Despite anything else in this bond, the Issuer may terminate it at any time by payment to the Beneficiary of the guaranteed amount at that time or any lesser amount that the Beneficiary may agree.

This Bond is governed by the laws of the State of New South Wales.

EXECUTED as a deed.

If this Bond is being executed under power of attorney, the attorney executing this Bond states that he or she has no notice of revocation or suspension of his or her power of attorney.

[insert execution block of Issuer]

Attachment C – Deed of Guarantee and Indemnity



Execution Version

Deed of Guarantee and Indemnity

R6BSP Services Contract

Transit Systems Pty Ltd (**Guarantor**)

Transport for NSW, a corporation constituted under
the *Transport Administration Act 1988* (NSW) on
behalf of the State of New South Wales (**TfNSW**)

Deed of Guarantee and Indemnity

R6BSP Services Contract

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Details

Date

Parties

Name	Transit Systems Pty Ltd
ABN	ABN 34 135 200 609
Short form name	Guarantor
Notice details	PO Box 7070 East Brisbane, Queensland Attention: [REDACTED]

Name	Transport for NSW , a corporation constituted under the Transport Administration Act 1988 (NSW) on behalf of the State of New South Wales
Short form name	TfNSW
Notice details	18 Lee Street, Sydney, New South Wales Attention: Associate Director Bus Contracts

Background

- A TfNSW has entered into an agreement with the Operator for the supply of bus services in the Newcastle area (**R6BSP Services Contract**).
- B Under the R6BSP Services Contract, the Operator is required to provide TfNSW with a parent company guarantee in the form of this deed.
- C The Guarantor understands and is aware of the obligations and liabilities of the Operator under the Transaction Documents and is prepared to give and execute the parent company guarantee in this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Existing defined terms

Unless the context requires otherwise and other than as defined below, all terms in capitals in this deed have the definition given to them in the R6BSP Services Contract.

1.1 New defined terms

In this deed:

Excluded Tax means a Tax imposed by a jurisdiction on, or calculated by reference to, the net income of TfNSW in a jurisdiction because TfNSW has a connection with that jurisdiction, other than a Tax:

- (a) calculated by reference to the gross amount of a payment (without allowing for any deduction) derived by TfNSW under a Transaction Document or any other document referred to in a Transaction Document; or
- (b) imposed because TfNSW is taken to be connected with that jurisdiction solely by being a party to a Transaction Document or a transaction contemplated by a Transaction Document.

External Administrator means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Guarantee means an obligation or offer to provide funds (including by subscription or purchase) or otherwise be responsible in respect of an obligation or indebtedness, or the financial condition or insolvency, of another person. It includes a guarantee, indemnity, letter of credit or legally binding letter of comfort, or an obligation or offer to purchase an obligation or indebtedness of another person.

Indemnified Person means any Indemnified Person (as defined in the R6BSP Service Contract), Interim Operator, Successor Operator or Step in Party, or each of them as the case requires.

Liquidation means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

Obligations means all obligations of the Operator (whether present, prospective or contingent and whether owed alone or not and in any capacity) to TfNSW (whether alone or not and in any capacity) under or in connection with a Transaction Document. It includes obligations:

- (a) whether arising or contemplated before or after the date of this deed or as a result of the assignment (with or without the Operator's consent) of any debt, liability or Transaction Document;
- (b) in the nature of interest, fees, costs, charges, expenses, duties, indemnities, Guarantee obligations or damages;
- (c) whether liquidated or sounding in damages only;
- (d) whether relating to the payment of money or the performance or omission of any act;
- (e) whether accruing as a result of a default or breach of any Transaction Document including a Non-Compliance Event or Termination Event; or
- (f) which a person would be liable for but for an Insolvency Event in respect of that person.

It includes, without limitation, all money and amounts (in any currency) which the Operator is or may become liable at any time (presently, prospectively or contingently, whether alone or not in any capacity), to pay to or for the account of TfNSW (whether alone or not and in any capacity).

Operator means Transit Systems West Pty Ltd ABN 76 161 755 988.

Power means a power, right, authority, discretion or remedy that is conferred on TfNSW:

- (a) by this deed; or
- (b) by law in relation to this deed.

1.2 Interpretation

The provisions of clauses 1.2 and 1.3 of the R6BSP Services Contract are incorporated in, and apply to, this deed as if set out in full with any necessary amendments.

1.3 TfNSW's power and discretions

- (a) The provisions of clauses 1.5, 1.6, 1.7, 1.8, 1.9, 1.10 and 1.11 of the R6BSP Services Contract are incorporated in, and apply to, this deed as if set out in full with any necessary amendments.
- (b) TfNSW has appointed the TfNSW Representative to exercise any power, right or remedy of TfNSW under this deed.

2. Guarantee

2.1 Consideration

The Guarantor enters into this deed for valuable consideration which includes TfNSW entering into the Transaction Documents at its request. Its obligations are unconditional and irrevocable.

2.2 Guarantee

- (a) The Guarantor guarantees to TfNSW the due and punctual payment and performance of the Obligations.
- (b) If the Operator does not perform any of the Obligations, the Guarantor must perform, or procure the performance of, those Obligations (without the need for demand by TfNSW) in accordance with the Transaction Documents.

2.3 Indemnities

- (a) The Guarantor indemnifies TfNSW against, and must pay TfNSW on demand amounts equal to, any Loss of TfNSW as a result of or in connection with:
 - (i) any obligation or liability of, or obligation or liability guaranteed by, the Guarantor under this clause 2 (or which would be such an obligation or liability if enforceable, valid and not illegal) being or becoming unenforceable, invalid or illegal;
 - (ii) the Operator failing, or being unable, to perform any of the Obligations in accordance with the Transaction Documents;
 - (iii) any monetary obligation or liability which would be an Obligation if it were recoverable, not being recoverable from the Operator; or
 - (iv) an Insolvency Event in respect of any Operator (but only to the extent that Loss relates to an Obligation),in each case, for any reason and whether or not TfNSW knew or ought to have known anything about those matters.
- (b) Without limiting the foregoing, the Guarantor indemnifies TfNSW in respect of all Loss which may be incurred by, brought, made or recovered against, TfNSW consequent on or arising directly or indirectly out of any default or delay by the Operator in performing, observing or fulfilling the Obligations.

2.4 Payment obligation

If any of the Obligations comprise an amount due and payable, or an amount that would be due and payable but for some reason, the Guarantor must pay an amount equal to that amount to TfNSW on demand. If TfNSW is entitled to make a claim against the Guarantor under clause 2.3, the Guarantor must pay the amount claimed by TfNSW on demand. In each case, the Guarantor must pay that amount in the same manner and currency which the Operator is, or would have been, required to pay. A demand need only specify the amount owing. It need not specify the basis of calculation of that amount.

2.5 Unconditional nature of obligation

Neither this deed nor the obligations of the Guarantor under it will be affected by anything which but for this provision might operate to release, prejudicially affect or discharge them or in any way relieve the Guarantor from any obligation. This includes:

- (a) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person;
- (b) any transaction or arrangement that may take place between TfNSW and or any person;
- (c) the Liquidation of any person;
- (d) TfNSW becoming a party to or bound by any compromise, moratorium, assignment of property, scheme of arrangement, deed of company arrangement, composition of debts or scheme of reconstruction by or relating to any person;
- (e) TfNSW exercising or delaying or refraining from exercising or enforcing any document or agreement or any right, power or remedy conferred on it by law or by any Transaction Document or by any document or agreement with any person;
- (f) the amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, termination, loss, release, discharge, abandonment, assignment or transfer, in whole or in part and with or without consideration, of any Transaction Document, or of any other document or agreement held by TfNSW at any time or of any right, obligation, Power or remedy;
- (g) the taking or perfection or failure to take or perfect any document or agreement;
- (h) the failure by any person or TfNSW to notify the Guarantor of any default by any person under any Transaction Document or any other document or agreement or other circumstance;
- (i) TfNSW obtaining a judgment against any person for the payment or performance of any Obligation;
- (j) any legal limitation, disability, incapacity or other circumstance relating to any person;
- (k) any change in any circumstance (including in the members or constitution of any person);
- (l) this deed, any Transaction Document or any other document or agreement not being valid or executed by, or binding on, any person; or
- (m) any increase in the Obligations for any reason (including as a result of anything referred to above),

whether with or without the consent or knowledge of the Guarantor. None of the clauses above limits the generality of any other.

2.6 Principal and independent obligation

This clause is a principal and independent obligation. Except for stamp duty purposes, it is not ancillary or collateral to another document, agreement, right, obligation, Security Interest or Guarantee.

2.7 No marshalling

TfNSW is not obliged to perfect or to marshal or appropriate in favour of the Guarantor or to exercise, apply or recover:

- (a) any Security Interest, Guarantee, document or agreement (including, without limitation, any Transaction Document) held by TfNSW at any time; or
- (b) any of the funds or assets that TfNSW may be entitled to receive or have a claim on.

2.8 No competition

- (a) Until the Obligations and any money secured or guaranteed by any Security Interest or Guarantee referred to below has been irrevocably paid and discharged in full the Guarantor is not entitled to and must not, except as directed by TfNSW:
 - (i) be subrogated to TfNSW or claim the benefit of any Security Interest or Guarantee held by TfNSW at any time;
 - (ii) either directly or indirectly prove in, claim or receive the benefit of, any distribution, dividend or payment arising out of or relating to the Liquidation of the Operator or any other person who gives a Guarantee or Security Interest in respect of any Obligations; or
 - (iii) have or claim any right of contribution or indemnity from the Operator or any other person who gives a Guarantee or Security Interest in respect of any Obligation.
- (b) The receipt of any distribution, dividend or other payment by TfNSW out of or relating to any Liquidation will not prejudice the right of TfNSW to recover the Obligations by enforcement of this deed.
- (c) The Guarantor must comply with any direction under this clause. That direction may require that any proceeds be held on trust for, and promptly paid to, TfNSW.

2.9 Prove in Liquidation

The Guarantor irrevocably authorises TfNSW to prove in the Liquidation of the Operator for all money that the Guarantor can claim against the Operator on any account. TfNSW need only account to the Guarantor for dividends it receives in excess of the Obligations, without interest.

2.10 Suspense account

In the event of the Liquidation of the Operator or any other person, the Guarantor authorises TfNSW to prove in the Liquidation of the Operator for all money that the Guarantor can claim against the Operator on any account and:

- (a) to retain and carry to a suspense account (without applying it); and
- (b) to appropriate at the discretion of TfNSW,

any dividend received in the Liquidation of the Operator or any other person and any other money received in respect of the Obligations, until the Obligations have been performed and satisfied in full.

2.11 Rescission of payment

If, for any reason (including, without limitation, under any law relating to Liquidation, fiduciary obligations or the protection of creditors):

- (a) all or part of any transaction of any nature (including, without limitation, any payment or transfer) that affects or relates in any way to the Obligations is void, set aside or voidable;
- (b) any claim that anything contemplated by this clause 2.11 is so is upheld, conceded or compromised; or
- (c) TfNSW is required to return or repay any money or asset received by it under any transaction or the equivalent in value of that money or asset,

TfNSW will immediately become entitled against the Guarantor to all rights in respect of the Obligations that TfNSW would have had if all or the relevant part of the transaction or receipt had not taken place. The Guarantor indemnifies TfNSW against any resulting Loss that may be

incurred or sustained by TfNSW. Unless TfNSW expressly agrees otherwise in writing, this clause 2.11 continues after the discharge of this deed.

2.12 Continuing guarantee and indemnity

This deed:

- (a) is a continuing guarantee and indemnity;
- (b) will not be taken to be wholly or partially discharged by the payment or performance at any time of any Obligations or by any settlement of account or other matter or thing; and
- (c) remains in full force until all Obligations have been satisfied and there are no liabilities or obligations which will subsequently fall within the description of the Obligations.

2.13 Variations

Without limiting any other provision, this deed covers the Obligations as varied including, without limitation, as a result of any amendment to any Transaction Document and whether or not with the consent of or notice to the Guarantor.

2.14 Judgment

A judgment obtained against the Operator will be conclusive against the Guarantor.

3. Representations and warranties

3.1 Representations and warranties

The Guarantor makes the following representations and warranties:

- (a) **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- (b) **(Power)** It has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- (d) **(Documents binding)** Each Transaction Document to which it is expressed to be a party is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration, laws generally affecting creditors' rights and general principles of equity.
- (e) **(Transactions permitted)** The execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement that is binding on it,and, except as provided by the Transaction Documents, did not and will not create or impose a Security Interest on any of its assets.
- (f) **(Authorisations)** Each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents; and

- (ii) the validity and enforceability of those documents and the effectiveness or priority of this deed,

has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them.

- (g) **(No misrepresentation)** All information provided by it to TfNSW is true in all material respects at the date of this deed or, if later, when provided. Neither that information nor its conduct in relation to the transactions contemplated by the Transaction Documents to which it is a party, was or is misleading, by omission or otherwise.
- (h) **(Law)** It has complied with all laws binding on it where breach may have a material adverse effect on the ability of the Guarantor to perform its obligations under a Transaction Document.
- (i) **(Corporate tree)** It is the direct or indirect owner of all shares in the Operator.

3.2 Repetition

The Guarantor repeats each representation and warranty in this clause 3 with reference to the facts and circumstances then subsisting on the first day of each calendar month.

3.3 Reliance on representations and warranties

The Guarantor acknowledges that TfNSW has entered the Transaction Documents in reliance on the representations and warranties in this clause.

4. Payment and release

4.1 Payment requirements

All payments by the Guarantor under this deed must be made:

- (a) by 12.00 noon on the due date (or, if not a Business Day, on the next Business Day in the same calendar month or, if none, the preceding Business Day);
- (b) to TfNSW by payment to an account nominated by TfNSW or as TfNSW otherwise directs;
- (c) in Dollars, in immediately available funds, and in full without set-off, counterclaim or, subject to clause 4.3, deduction or withholding; and
- (d) if no date for payment is specified in this deed, on demand by TfNSW.

4.2 Amounts payable on demand

Any amount which is not expressed by a Transaction Document to be payable on a specified date is payable immediately on demand.

4.3 Deduction or withholding

If the Guarantor is required by Law to deduct or withhold Taxes from a payment to TfNSW in connection with this deed, it must:

- (a) make that deduction or withholding (and any further deductions or withholdings contemplated by clause 4.3(b)), pay to the appropriate Governmental Agency an amount equal to the full amount deducted and/or withheld as required by law and give TfNSW the original receipt for the payment; and
- (b) unless the Tax is an Excluded Tax, pay additional amounts to TfNSW which will result in TfNSW receiving at the time the payment is due (after deduction or withholding of any Taxes in respect of any additional amount) the full amount which TfNSW would have received if no deduction or withholding had been required.

4.4 Release

TfNSW must release the Guarantor from its obligations under this deed once TfNSW is satisfied, in its sole discretion, that the Obligations have been fully and finally repaid and performed and

there are no liabilities or obligations which will subsequently fall within the description of the Obligations.

5. Interest on overdue amounts

5.1 Accrual

Interest accrues on each unpaid amount that is due and payable by the Guarantor under or in respect of any Transaction Document (including interest payable under this clause):

- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the Default Rate,

provided that no default interest will accrue under this clause on any unpaid amount for any period to the extent that default interest is accruing on that amount for that period, and is payable, under any other Transaction Document.

5.2 Payment

The Guarantor must pay interest accrued under this clause on demand and on the last Business Day of each month.

6. Expenses and indemnity

6.1 Expenses

On demand the Guarantor must pay or reimburse TfNSW for its costs and expenses in relation to any enforcement of this deed or the exercise, enforcement or protection of any Power under this deed including legal costs and expenses (including in house lawyers charged at their usual rates) on a full indemnity basis. The Guarantor waives in favour of TfNSW and its solicitors, counsel and in house lawyers its rights (if any) to require any legal costs and expenses to be taxed.

6.2 Taxes, fees and charges

The Guarantor must pay, or reimburse TfNSW on demand for, all:

- (a) Taxes (other than an Excluded Tax), fees and charges in connection with any Transaction Document or any payment, receipt, supply or other transaction carried out pursuant to, or contemplated by, any Transaction Document, including Taxes passed onto TfNSW by a financial institution or supplier of goods and services; and
- (b) fines and penalties for late payment or non-payment of those amounts, except where the Guarantor places TfNSW in cleared funds to make the payment not less than five Business Days before the due date and TfNSW fails to make the payment.

The Guarantor must pay or reimburse TfNSW on demand for all such amounts which are payable or which TfNSW determines in good faith to be payable.

6.3 Indemnity

The Guarantor indemnifies TfNSW and each Indemnified Person (and their respective officers, employees and agents) against any Loss that may be incurred or sustained by TfNSW, each Indemnified Person (or any of its officers or employees) as a direct or indirect result or in connection with:

- (a) a Default (as defined in any Transaction Document);
- (b) any enforcement of this deed;
- (c) any exercise or attempted exercise of any Power or the failure to exercise any Power;

- (d) any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Guarantor or with respect to the transactions contemplated under any Transaction Document; and
- (e) TfNSW acting or relying in good faith on any notice or other communication from, or genuinely believed to be from, the Guarantor,

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in house legal counsel in connection with the above.

6.4 Amounts in foreign currency

Where an amount to be reimbursed or indemnified against is denominated in another currency, if the person to be indemnified so requests, the Guarantor must reimburse or indemnify it against the amount of dollars that the person certifies that it used to buy the relevant amount of the other currency in accordance with its normal procedures. If the person does not so request, the Guarantor must reimburse or indemnify it in the relevant currency.

7. End of Contract Transfer

The Guarantor undertakes to TfNSW the due and proper performance and observance by the Operator of its obligations under Part L of the R6BSP Services Contract.

8. Undertakings

- (a) The Guarantor must ensure that TfNSW is notified, with reasonable details, on becoming aware of any matter which could potentially give rise to an Insolvency Event with regards to the Operator or the Guarantor.
- (b) Without limiting the Guarantor's obligations under this deed, if the Operator does not comply with its obligations under clause 7.1 of the R6BSP Services Contract within the time required under that clause, the Guarantor must immediately (on demand by TfNSW) either:
 - (i) procure the issue to TfNSW of a performance bond(s) that satisfies the requirements of clause 7.1 of the R6BSP Services Contract; or
 - (ii) pay to TfNSW an amount equal to the General Performance Bond Amount or the Estimated Amount (as defined in clause 7.1(b) of the R6BSP Services Contract) as the case may be.
- (c) TfNSW may use the amounts paid under clause 8(b) on the same conditions as it may use the General Performance Bond or Handback Security Bond under the R6BSP Services Contract and the unused part of any amounts so paid will be returned to the Guarantor on the earlier of:
 - (i) the time that the General Performance Bond or Handback Security Bond would have been returned to the Operator had it been provided; and
 - (ii) the time that the Operator provides the missing performance bond in accordance with its obligations under clause 7.1.

9. Cost and stamp duty

- (a) 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 and performance of its obligations under this deed.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this deed and any instrument executed under this deed must be borne by the Guarantor.

10. GST

10.1 Recovery of GST

If GST is payable on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply (**GST Amount**). The GST Amount is not payable until the supplier gives the recipient a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive.

10.2 Liability net of GST

Where any payment under this deed is based on or calculated by reference to any cost, expense or other liability, it must be reduced by any input tax credit entitlement in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the payment must be made.

10.3 Definitions

- (a) Words used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**)) will have the same meaning in this clause.
- (b) GST includes an amount an entity is notionally liable to pay as GST or an amount which is treated as GST under the GST Act.
- (c) Input tax credit includes any notional input tax credit under the GST Act.

10.4 Survival

This clause will continue to apply after expiration or termination of this deed.

11. Set off

TfNSW may, without any demand or notice, set off and apply indebtedness it owes to the Guarantor (whatever the currency) against any money owing to it by the Guarantor under any Transaction Document, whether or not the amount owed by TfNSW or the Guarantor is immediately payable or is owed alone or with any other person. The Guarantor irrevocably authorises TfNSW to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

12. Severability of provisions

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

13. Waivers, remedies cumulative

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not

preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made under writing.

- (b) The rights, powers and remedies of a party under this deed 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.

14. Survival of representations and indemnities

- (a) All representations and warranties in this deed survive the execution and delivery of this deed and the Transaction Documents.
- (b) Each indemnity in this deed:
 - (i) is a continuing obligation;
 - (ii) is a separate and independent obligation; and
 - (iii) survives the termination or discharge of this deed and any other Transaction Document and the satisfaction of the Obligations.

15. Assignments

15.1 Assignment by Guarantor

The Guarantor may not assign or transfer any of its rights or obligations under this deed without the prior consent of TfNSW.

15.2 Assignment by TfNSW

TfNSW may assign or transfer any of its rights or obligations under this deed at any time to a Governmental Agency or to otherwise facilitate a transfer or restructure contemplated by clause 1.10 or 27 of the R6BSP Services Contract. If TfNSW 's rights under this deed are assigned, the Obligations will include all actual and contingent liability of the Operator to the assignee, whether or not it was incurred before the assignment or in contemplation of it.

15.3 Assistance

The Guarantor agrees to do or execute anything reasonably requested by TfNSW to effect an assignment, transfer, novation or other dealing under this clause 15.

16. Nominated officers

- (a) The Guarantor irrevocably authorises TfNSW to rely on a certificate signed by two persons purporting to be its directors or its director and secretary as to the identity and signatures of its nominated officers. The Guarantor warrants that those persons have been authorised to give notices and communications under or in connection with this deed.
- (b) A certificate signed by the TfNSW Representative is sufficient evidence against the Guarantor unless proven wrong:
 - (i) as to the amount or the nature of any Obligation; and
 - (ii) that TfNSW is of the opinion stated in the certificate.

17. Governing Law and jurisdiction

This deed is governed by the laws of the State of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this deed.

18. Notices and other communications

- (a) A notice, demand, consent, approval or communication given under this deed (**Notice**) must be:
- (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this deed); and
 - (ii) hand delivered or sent by prepaid post to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 18(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery; and
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia),
- but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

19. Counterparts

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

20. Acknowledgement by Guarantor

The Guarantor confirms that:

- (a) it has not entered into any Transaction Document in reliance on, or as a result of, any conduct of any kind of or on behalf of TfNSW (including any advice, warranty, representation or undertaking); and
- (b) TfNSW is not obliged to do anything (including disclose anything or give advice), except as expressly set out in the Transaction Documents.

21. General provisions

21.1 Term of obligations

The Guarantor agrees that its obligations in the Transactions Documents continue from the date of the relevant document until the Obligations are fully and finally paid and performed in full.

21.2 Prompt performance

If a time is not specified for the performance by the Guarantor of an obligation under this deed, it must be performed promptly.

21.3 Performance of Guarantor's obligations by TfNSW

TfNSW may do anything which the Guarantor fails to do as required by, or in accordance with, this deed. This does not limit or exclude TfNSW's Powers in any way.

21.4 Powers

Powers under the Transaction Documents are cumulative and do not limit or exclude Powers under law. Full or partial exercise of a Power does not prevent a further exercise of that or any other Power. No failure or delay in exercising a Power operates as a waiver or representation. Unless expressly provided in a Transaction Document, no Power or Transaction Document

merges in, limits or excludes any other Power, Transaction Document or judgment which TfNSW may have or obtain.

21.5 Rights held on trust

The Guarantor acknowledges and agrees that:

- (a) a waiver, release, acknowledgement or indemnity in favour of an Indemnified Person is held on trust by TfNSW for the benefit of any of that Indemnified Person; and
- (b) the consent of an Indemnified Person referred to in clause 21.5(a) is not required for any alterations to this deed.

21.6 TfNSW's compliance

TfNSW is not obliged to do anything prescribed or contemplated for it (or the State) in any document referred to in a Transaction Document (other than another Transaction Document) or that relates to the provision of regular passenger services unless either TfNSW:

- (a) is expressly required to do the same thing by another provision of a Transaction Document; or
- (b) agrees in writing to do so.

21.7 Independent

- (a) Despite anything to the contrary in this deed, nothing constitutes the parties as partners of each other, nor as parties to a joint venture. Except as is expressly provided in this deed, neither party is the agent of the other nor has the power to bind the other.
- (b) The Guarantor must not hold itself out as the agent of TfNSW unless this deed otherwise authorises it to do so.

21.8 Variation

A variation of this deed must be in writing and signed by or on behalf of each party to it.


21.9 Service of process

- (a) Without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of notices under this deed.
- (b) The Guarantor authorises the Operator to receive notices under this deed on its behalf, and must procure that the Operator consents to receive notices on the Guarantor's behalf.

Signing page

EXECUTED as a deed.

Executed for and on behalf of **Transport for NSW**
ABN 18 804 239 602 by its authorised delegate:

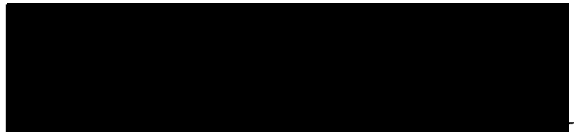


Signature of authorised delegate


ROD ANDREW STAPLES

Name of authorised delegate (block letters)

12/2/2018



Signature of witness



Name of witness (block letters)

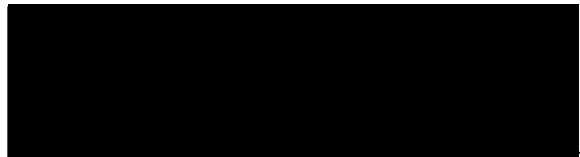
Executed by **Transit Systems Pty Ltd** ABN 34
135 200 609 in accordance with Section 127 of the
Corporations Act 2001



Signature of director

NEIL ESPIE SMITH

Name of director (print)



Signature of director/~~company secretary~~
(Please delete as applicable)



Name of director/company secretary (print)

Schedule 1 - Services

1. Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to an item is a reference to an item in this Schedule.

In this Schedule, the following words have the following meanings:

Declared School Year means, in relation to each school set out in the Service Level Schedule, the period between the school's first term start date and the school's final term finish date in each calendar year during the Term.

KPI Management means the activities associated with monitoring and reporting on the Key Performance Indicators and information required to be reported to TfNSW.

National Terrorism Threat Advisory System means the scale of five levels published by the Australian Government on the likelihood of an act of terrorism occurring in Australia.

NSW Transit Stop Numbering and Naming Standard means the standard developed by TfNSW for numbering and naming transit stops and other locations where passengers access public transport, included in Annexure 1 to this Schedule and as amended by TfNSW from time to time.

Service Planning Guidelines means the service planning guidelines prepared by TfNSW to develop transport service plans in outer metropolitan areas (as amended from time to time) being at the date of this Contract the document titled *Integrated Service Planning Guidelines – Sydney Metropolitan Area – Final* dated December 2013.

Standard Working Timetable (SWTT) means the base scheduled timetable approved by TfNSW of route timetable, stopping patterns, days of operation, route path and accessibility.

The following table sets out the meaning of the column headings in the roles and responsibilities tables set out in this Schedule. 'T' in any of the columns means that TfNSW is the relevant Party. 'O' in any of the columns means that the Operator is the relevant Party.

Term	Description
Responsible	The Party that has to do the activity.
Accountable	The Party ultimately answerable for the correct and full completion of the activity. There must be only one Party accountable for each activity.
Support	The Party that is to provide support to assist in completing the activity.
Consulted	The Party that is consulted by the responsible Party as part of the process of carrying out the activity.
Informed	The Party that has to be kept up-to-date, by the responsible Party.
When	When the activity must be performed.
Contract clause	The clause in the Contract that the activity must be performed in accordance with.

2. Services Overview

The following are the key objectives for the provision of the Services under the Contract by the Operator:

- (a) provide reliable, safe and clean Services to customers;

- (b) develop Services to efficiently meet the Contract Objectives and the requirements of Clause 16;
- (c) operate the Services to the approved Timetables or Headway;
- (d) operate the On Demand Services in accordance with the Service Level Schedule and the Planned Service Phases;
- (e) ensure customers are provided with accurate Timetable information and kept informed of Service changes and Incidents;
- (f) provide passenger information to deliver a seamless passenger service;
- (g) ensure Staff receive appropriate training and are competent and capable of providing excellent Services;
- (h) recommend Service improvements annually;
- (i) improve the provision of Services to customers; and
- (j) provide support for TfNSW Systems and Equipment required to improve and upgrade the Services.

3. Contract Service Levels, Timetables and Dedicated School Service Timetables

The following table identifies the general roles and responsibilities associated with Contract Service Levels, Timetables and Dedicated School Service Timetables

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.1	Update Service Planning Guidelines.	T	T	O		O	As required throughout the Term
3.2	Develop Contract Service Levels.	T	T	O		O	As required throughout the Term
3.3	Develop Timetables to efficiently and effectively meet the requirements of the Contract Service Levels.	O	O	T	T	T	As required throughout the Term
3.4	Ensure that timetabling provides passengers with effective connectivity so as to deliver seamless Services.	O	O	T	T	T	Continuing throughout the Term
3.5	Consult with passengers, the broader community, relevant local councils, RMS, local business groups, education and health providers, relevant tourism bodies and other key stakeholders in relation to planned service changes, special events service satisfaction levels, service initiatives and improvement opportunities.	O	O	T	T	T	As required throughout the Term and at least twice each Contract Year
3.6	Carry out Service reviews annually to develop Service improvement plans and submit any recommended variations to TfNSW for consideration.	O	O	T	T	T	Annually
3.7	Provide evidence through cost benefit analysis in support of changes in Contract Service Levels or Timetables, including the impact of changes in improving the customer experience. The analysis requires provision of the detail and outcome of the consultation process to demonstrate community support for the changes.	O	O		T	T	For each Timetable change throughout the Term
3.8	Maintain a prioritised list of Contract Service Level or Timetable changes that are considered worthwhile	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	implementing and which are compliant with the Service Planning Guidelines and the requirements of the Contract.						
3.9	For each change in Contract Service Levels or Timetables, provide confirmation of compliance with the Service Planning Guidelines. Any change that is not compliant with the Service Planning Guidelines must be expressly advised detailing how the non-compliance will provide an improved customer experience / service outcome.	O	O		T	T	For each Timetable change throughout the Term
3.10	Approve Contract Service Level, Timetables and Dedicated School Service Timetables.	T	T	O	O	O	As required throughout the Term
3.11	Contact each school set out in the Service Level Schedule to ascertain the Declared School Year and the daily start and finish times, for the following school year.	O	O		T	T	By 30 October each year
3.12	Prepare a provisional timetable for the Dedicated School Services for the Declared School Year, based on the start and finish dates and times ascertained in accordance with item 3.11 above.	O	O	T	T	T	By 1 January each year
3.13	Prepare a final timetable for the Dedicated School Services for the year, based on the start and finish dates and times ascertained in accordance with item 3.11 above.	O	O	T	T	T	Within 4 weeks of the start of each Declared School Year
3.14	Operate the Services (other than On Demand Services) in accordance with the approved Contract Service Levels and approved Timetables and Dedicated School Services Timetables.	O	O		T	T	Continuing throughout the Term
3.15	Maintain high levels of passenger and Staff security on the Services and monitor and manage passenger and Staff safety, including responding to the activation of duress alarms in accordance with response time standards in the KPI Schedule.	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.16	Deploy customer service personnel across the network to provide a regular presence for customer engagement and receipt of feedback, support Special Events and mitigate the customer impact of network disruption.	O	O		T	T	Continuing throughout the Term
3.17	Provide a Headway Management Solution: <ul style="list-style-type: none"> for all Headway Trips; in accordance with the Headway Management Solution Technical Specification; and which meets the requirements of Item 4 of this Schedule, including all supporting equipment and software.	O	O	T	T	T	On and from 1 December 2020
3.18	Provide TfNSW with a route control strategy for each Route that will be delivered as a Headway Service (which must include a summary of route performance data, operating dynamics, excess wait time (EWT) targets, excess wait time (EWT) measuring points, dead runs, congestion "hot spots", strategies to manage congestion and detailed communication instructions) (Route Control Strategy).	O	O	T	T	T	At least one month prior to the commencement of the Route operating as a Headway Service
3.19	Provide services for school children using On Demand Contract Buses if Bus Services are removed and replaced by an On Demand Service Option (and no alternative Bus Service is available). If this requirement results in the need for additional services above those provided in paragraph 6.3 of Schedule 2, then a Service Variation will be required under Clause 18 of the Contract	O	O	T	T	T	Continuing throughout the Term as required

4. Publication and Display of Public Transport Information

Publication and display of public transport information includes the activities required to ensure that passengers are provided with adequate, reliable information regarding the Services.

A reference in the table below to the Services excludes a reference to the On Demand Services (except in relation to item 4.7, 4.18, 4.22, 4.23, 4.24, 4.25 and 4.26).

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
4.1	<p>a) Publish accurate Timetables for the Services, including Dedicated School Services Timetables, with route maps on the Operator website. This includes updating Dedicated School Service Timetables daily at the commencement of each school year, if changes are made to the Dedicated School Services.</p> <p>b) Ensure accurate Timetables for the Services including Dedicated School Services Timetables are provided to transportnsw.info and Transport Infoline.</p> <p>c) Ensure accurate data including approved short term changes, amendments to Timetables and Dedicated School Services Timetables are provided to transportnsw.info and Transport Infoline.</p>	O	O			T	<p>Continuing throughout the Term.</p> <p>Ensure PDF timetables are provided at least 14 days prior to introduction of a Service change, unless otherwise approved by TfNSW</p> <p>Ensure data is provided at least 21 days prior to the introduction of a Service change, unless otherwise approved by TfNSW</p>
4.2	Provide Timetables for the Services, including Dedicated School Services Timetables, to TfNSW for approval.	O	O		T	T	Prior to the introduction of a new or revised Timetable or Dedicated School Services Timetables
4.3	Approve all Timetables for the Services, including Dedicated School Services Timetables, prior to publication.	T	T	O	O	O	Continuing throughout the Term
4.4	<p>If a Timetable or Dedicated School Services Timetable is approved by TfNSW, provide:</p> <p>a) TfNSW with the updated Timetable or Dedicated School Services Timetable in electronic format (as reasonably required by the TfNSW) suitable for website display;</p>	O	O			T	Ensure Timetables are provided to TfNSW at least 21 days, and on display to customers from 14 days (or as otherwise

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	and b) the public with the updated printed Timetable or Dedicated School Services Timetable.						agreed with TfNSW), prior to the implementation of the new Timetable or Dedicated School Services Timetable
4.5	If a Timetable is approved, provide Standard Working Timetable (SWTT) data to TfNSW on approved timetables to support TfNSW data quality assurance and data change management.	O	O			T	Ensure data is provided at least 14 days prior to the implementation date each time a change has been made to the underlying Standard Working Timetable (SWTT).
4.6	If TfNSW approves an amendment to a Timetable or Dedicated School Services Timetable, provide notice to the public of any material amendments to the Timetable by: a) notifying TfNSW of relevant details; b) displaying signs prominently; c) updating the Operator's website; d) displaying advertisements in the local newspapers covering the affected Route; e) displaying signs at Transit Stops; f) making announcements on local radio; and g) other appropriate means.	O	O			T	Ensure details are provided at least 21 days out to TfNSW and on display to customers from 14 days (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable or Dedicated School Services Timetable
4.7	If requested by a member of the public, provide complete and up-to-date information about the accessibility of the Services.	O	O			T	Within a reasonable timeframe
4.8	Ensure accurate Timetables and Dedicated School Services Timetables are displayed at all locations on or near the Routes where timetables are on	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	display.						
4.9	Ensure that Timetables and Dedicated School Services Timetables are in the format specified by TfNSW.	O	O			T	Continuing throughout the Term
4.10	Ensure Timetables and Dedicated School Services Timetables indicate all Services which are accessible.	O	O			T	Continuing throughout the Term
4.11	Ensure Timetables and Dedicated School Services Timetables comply with TfNSW requirements.	O	O			T	Continuing throughout the Term
4.12	Provide the destination information, to be displayed on all Services, in data submitted to TfNSW in Timetables, on the Operator website and in any other relevant location, to TfNSW for approval.	O	O		T	T	Prior to publication of the destination information
4.13	Approve destination information for all Services, to ensure it complies with current TfNSW standards or guidelines.	T	T	O	O	O	Continuing throughout the Term
4.14	Display the destination clearly on the front and side of all Contract Buses in service, excluding any Contract Buses without side destination signage.	O	O		T	T	Continuing throughout the Term
4.15	Display the route number clearly on the front, side and rear of all Contract Buses in service, excluding Contract Buses without side and rear route number signage.	O	O			T	Continuing throughout the Term
4.16	Ensure all Timetables for the Services and Dedicated School Services Timetables provide times at Transit Stops and do not reflect operational timing points that are not Transit Stops.	O	O		T	T	Continuing throughout the Term
4.17	Use timetable template(s) which may be changed by TfNSW from time to time.	O	O		T	T	Continuing throughout the Term (if notice is given by TfNSW under Clause 17.2(f) of the

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
							Contract)
4.18	Provide a real-time data feed to TfNSW in 'SIRI' format that includes: a) Contract Bus locations; b) predicted arrival times at all subsequent Transit Stops on the Trip; c) information on Services and status of Services and Transit Stops; and d) real-time running status information.	O	O		T	T	At a 15 second interval frequency
4.19	Provide a static timetable data feed to TfNSW in 'Transmodel' format (TransNet) that provides upcoming Timetable and Dedicated School Service Timetable changes due to a TfNSW approved change, holidays, Special Event Services and maintenance works.	O	O		T	T	Ensure a static timetable data feed is provided at least 21 days prior to Timetable change (or as otherwise agreed with TfNSW) prior to the implementation of the new or revised Timetable
4.20	Provide an electronic feed of information in a format acceptable to TfNSW (including GTFS, GTFS-R and TransXchange as appropriate) to integrate into the TfNSW journey planner and feeds to other third parties to integrate into relevant systems.	O	O		T	T	Continuing throughout the Term
4.21	For Special Event Services, ensure accurate data is provided to TfNSW in TfNSW's required format.	O	O		T	T	Ensure data is provided at least 21 days prior to the relevant event (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable
4.22	When notified by TfNSW, fix any errors in the	O	O		T	T	Within 24 hours of the

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	information provided on the Operator website or OSD.						notification from TfNSW
4.23	<p>For On Demand Services provide:</p> <p>a) those Services using the 'Bridj' technology platform;</p> <p>b) information to all prospective customers on the hours of operation and how to book and use the On Demand Services;</p> <p>c) access to an easy to use On Demand booking application, available on any smartphone, that:</p> <ul style="list-style-type: none"> • shows the Fares for the On Demand Services, • accepts credit/debit card payment for On Demand Services; • sends a booking confirmation (including details of the pick-up stop, drop-off stop, time for pick-up and drop-off, walking directions to pick-up stop (if applicable), booking information to present to the Driver, details of the vehicle providing the service and estimated journey time) to the customer within five minutes of completing the booking; • allows customers to book On Demand Services; • enables the customer to track their booked vehicle in real time; • provides customers with feedback options including a 5-star rating system against nominated criteria and a detailed feedback form; and • advises customers of service pick-up 	O	O		T	T	From the commencement of the relevant On Demand Service Option

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	and drop-off times, pick-up locations and drop-off destination; and d) access (including a phone booking service) for prospective customers who do not have access to smartphone applications.						
4.24	Accept bookings for On Demand Services before the start of the Trip.	O	O		T	T	From the commencement of the relevant On Demand Service Option
4.25	Provide no less than the number of vehicles indicated in Part 6 of the Service Level Schedule for each On Demand Service Option.	O	O		T	T	From the commencement of the relevant On Demand Service Option
4.26	Allocated customers a pick-up stop and drop-off stop based on the parameters below: a) pick-up stop: 90% of passengers within the Catchment Zones for each On Demand Service Option are required to walk less than 400m from their point of origin (as nominated in their booking) to reach their pick-up stop; b) drop-off stop: 90% of passengers within the Catchment Zones for each On Demand Service Option are required to walk less than 400m walking from their drop-off stop to reach their point of destination (as nominated in their booking).	O	O		T	T	From the commencement of the relevant On Demand Service Option
4.27	Provide free Wi-Fi to passengers on all New Buses.	O	O	T	T	T	Continuing throughout the Term.
4.28	At no additional cost to the Operator, provide TfNSW with direct access to live data and	O	O	T	T	T	From the time that the Operator's Headway

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	information from the Operator's Headway Management Solution.						Management Solution commences.

5. Services Information

The following table identifies the general roles and responsibilities associated with providing information about the Services:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.1	Inform passengers on a Service of any relevant Service delays.	O	O			T	Continuing throughout the Term.
5.2	When an Incident occurs, categorise the Incident using the Incident Classification and Management Table in Attachment 1 of the KPI Schedule.	O	O	T	T	T	Continuing throughout the Term
5.3	When an Incident occurs, inform TfNSW of delays to any Service and work with TfNSW as required from time to time to minimise the impact of delays on customers.	O	O	T	T	T	Continuing throughout the Term.
5.4	Provide interim status updates to TfNSW as required in Attachment 1 of KPI Schedule (Incident Classification and Management).	O	O	T	T	T	Continuing throughout the Term
5.5	Provide digital passenger information screens (PIDS) on all New Buses, including supporting equipment or systems for the operation of the PIDS. The PIDS must supply live destination information, safety and customer service announcements, audio recordings and next stop information on selected routes as agreed with TfNSW and service disruptions.	O	O	T	T	T	Continuing throughout the Term

6. Signage

The following table identifies the general roles and responsibilities associated with Transit Stop Signage. This section does not limit the Wayfinding Signage Upgrade Program requirements set out in Clauses 11.6 to 11.9:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.1	Maintain Transit Stop Signage, including but not limited to: <ul style="list-style-type: none"> • repair; • replacement; • cleaning; and • graffiti removal. 	O	O	T	T	T	Continuing throughout the Term.
6.2	For all plinths associated with Transit Stop Signage, carry out: <ul style="list-style-type: none"> • minor repairs (parts to be provided by TfNSW); • cleaning; and • graffiti removal. 	O	O			T	Within 7 days after the Operator becomes aware of the damage
6.3	Ensure Transit Stop Signage for all locations serviced by any Service, which includes Timetable or Dedicated School Services Timetable information, contains up to date timetable information and complies with any standards or guidelines issued by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the Term
6.4	Ensure Transit Stop identification numbers and names comply with the NSW Transit Stop Numbering and Naming Standard and are registered with TfNSW.	O	O			T	Continuing throughout the Term
6.5	If there is a change to a Route, or a new Route is introduced, ensure that all new Transit Stop Signage meets TfNSW standards and is updated in the TfNSW 'Transit Stop Management System' operated by TfNSW or any replacement of that system.	O	O			T	Before commencement of the new or changed Route
6.6	If there is a change to a Route, or a new Route is introduced provide the 'X/Y' coordinates of the new stop to TfNSW.	O	O			T	21 Days before commencement of the new or changed Route

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.7	Liaise with the Roads Authority, RMS, local government authority or any other Governmental Agency with responsibilities relevant to Transit Stops and local residents, as appropriate, about the installation of Transit Stop Signage	O	O			T	Before installing Transit Stop Signage
6.8	Notify the relevant authority if any infrastructure at a Transit Stop is damaged or in need of maintenance or repair.	T	T			O	Within 24 hours of the Operator becoming aware of the damage
6.9	Document and maintain a proper record of all communications relating to Transit Stops and Transit Stop Signage.	O	O			T	Continuing throughout the Term
6.10	If a new Bus Transit Stop is approved by TfNSW as part of a Services Variation requested by the Operator or the Operator requires a new Transit Stop as part of a Planned Service Phase, supply and install Transit Stop Signage in line with TfNSW standards.	O	O			T	Before the Service Variation commences

7. Service Desk

The following table identifies the Service Desk roles and responsibilities:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.1	Use the call centre provided as part of Transport Infoline or another call centre as nominated by TfNSW from time to time for the provision of call centre information services.	O	O			T	Continuing throughout the Term.
7.2	Manage all complaints and feedback recorded in the TfNSW Customer Feedback System in relation to the Operator Activities from receipt to closure.	O	O			T	Continuing throughout the Term.
7.3	Log, classify and assign a reference number to all complaints and feedback in accordance with the	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	TfNSW Customer Complaints Policy.						
7.4	Assign a priority to all complaints and feedback received by the Service Desk to reflect the severity of the issue in accordance with the TfNSW Customer Complaints Policy or as otherwise directed by TfNSW.	O	O			T	Continuing throughout the Term
7.5	Collaborate and cooperate with the Transport Infoline and the TfNSW Customer Feedback System, as required, to manage complaints and feedback received by the Service Desk and resolve Incidents.	O	O			T	Continuing throughout the Term
7.6	Refer any calls received by the Service Desk which do not relate to the Services to the TfNSW Customer Feedback System.	O	O			T	Within 2 hours of receipt of call
7.7	Immediately notify TfNSW of Incidents and any other unplanned maintenance issues.	O	O			T	Immediately after the Incident or unplanned maintenance issue
7.8	Report all Service Desk calls received that remain unresolved for more than 30 Business Days, at the end of each month to TfNSW.	O	O			T	Monthly throughout the Term
7.9	Maintain appropriate documentation of all complaints and feedback in relation to the Services recorded on the TfNSW Customer Feedback System, including details of the closure of all calls.	O	O			T	Continuing throughout the Term
7.10	Perform trend analysis on complaints and feedback in relation to the Services recorded on the TfNSW Customer Feedback System.	O	O			T	Monthly throughout the Term
7.11	Identify any problems of a systemic nature revealed by the trend analysis and when identified, inform TfNSW and implement processes to improve performance.	O	O			T	As soon as practicable
7.12	Ensure the Service Desk is staffed with personnel	O	O			T	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	who are suitably skilled and trained to deliver support services and to interface with the TfNSW Customer Feedback System.						throughout the Term
7.13	Ensure the Service Desk can deliver On Demand Service support including accepting telephone bookings for On Demand Services, resolution of billing issues, general technical support on the On Demand Services application and answer all operational inquiries.	O	O		T	T	Continuing throughout the Term

8. Staff training and knowledge transfer

The following table identifies training and knowledge transfer roles and responsibilities.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.1	Provide all customer facing Staff with passenger service training, in particular: <ul style="list-style-type: none"> a) training with regard to requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds; and b) training with regard to the management of confrontation, difficult passengers and personal safety. 	O	O			T	Before the individual commences providing Service
8.2	Provide training to all relevant Staff regarding the following, as applicable to the Services for which the relevant Staff are engaged to work: <ul style="list-style-type: none"> a) the Tickets, Full Fares, Concession Fares and SSTS; b) the Routes and the Contract Depots and Transit Stops; and c) the Timetables. 	O	O			T	Before the individual commences working on the relevant Services
8.3	Provide training to all Staff regarding compliance	O	O			T	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	with: a) Environmental Law; b) work health and safety and WHS Law; and c) emergency and incident management and response procedures and protocols, including protocols for passenger emergency evacuation and operation of fire safety equipment.						throughout the Term
8.4	Provide additional training to Staff to meet the requirements of items 8.1, 8.2 and 8.3 above, if required when a change in the Services is implemented.	O	O			T	Before the implementation of the change in the Services
8.5	Develop, document and maintain training materials to provide to Staff to support the training referred to at items 8.1, 8.2 and 8.3 above.	O	O			T	As required throughout the Term
8.6	Provide all staff with customer service training in the three months after the Service Commencement Date, and on an annual basis.	O	O			T	Within three months after the Service Commencement and Continuing throughout the Term
8.7	Install a vehicle telematics system on all Contract Buses that provides real time feedback on fleet and driver performance.	O	O			T	To be progressively implemented from Service Commencement Date and implemented on all Services from 1 July 2019

9. TfNSW Systems and Equipment

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
9.1	Develop operational procedures, guidelines and	T	T		O		As required by

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	training requirements for TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations, as required.						TfNSW throughout the Term
9.2	Comply with any reasonable operational procedures, guidelines and training requirements for TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations issued by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the Term.
9.3	Ensure TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations are in operational condition.	O	O	T	T	T	Continuing throughout the Term
9.4	Protect TfNSW Systems and Equipment associated with the provision of the Services and related contractual obligations and use reasonable endeavours to ensure TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations are not mishandled or mistreated.	O	O	T	T	T	Continuing throughout the Term
9.5	Check TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations for faults, malfunctions security breaches or viruses regularly.	O	O	T	T	T	Continuing throughout the Term
9.6	Report any fault, malfunction, security breach or virus in TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations to TfNSW promptly.	O	O	T	T	T	Within 24 hours of the fault, malfunction, security breach or virus being identified
9.7	Replace TSE Rotable Assets associated with TfNSW Systems and Equipment as required.	O	O	T	T	T	Continuing throughout the Term
9.8	Ensure all spare TSE Rotable Assets associated with TfNSW Systems and Equipment are kept in a secure location.	O	O	T	T	T	Continuing throughout the Term
9.9	Maintain a record of all TfNSW Systems and Equipment associated with the provision of Services	O	O	T	T	T	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	and related contractual obligations, which includes information regarding the location and movement of all TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations (including TSE Rotable Assets).						throughout the Term

10. Collection Services

(a) Cash Collection

The Operator must take the following steps to securely collect and store cash received for Fares and to remit all revenue from cash, credit card and other Ticket sales (including Ticket sales in respect of On Demand Services) to TfNSW:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.1	Sell and accurately record all Service cash Ticket sales.	O	O			T	Continuing throughout the Term.
10.2	Ensure amounts reported to TfNSW equal actual cash Ticket sales.	O	O			T	Continuing throughout the Term.
10.3	Ensure bank deposits equal actual receipts.	O	O			T	Continuing throughout the Term.
10.4	Securely manage all cash at all times.	O	O			T	Continuing throughout the Term.
10.5	Offset the amount of all cash, credit card and other Ticket sales received by the Operator against the charges in the Tax Invoice each month.	O	O			T	Monthly throughout the Term

(b) Not used

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.6	Not used						

(c) Revenue Collection

The Operator is empowered and incentivized to maximise the number of fare paying passengers and minimise Fare loss:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.7	Deploy Operator's Authorised Officers to minimise revenue loss.	O	O	T	T	T	At the Operator's discretion.
10.8	Issue penalty notices.	O	O	T	T	T	Continuing throughout the Term if Operator's Authorised Officers are engaged.
10.9	Issue fines and commence proceedings to collect unpaid fines.	T	T	O			Continuing throughout the Term.
10.10	Attend court hearings as a witness in relation to proceedings concerning unpaid fines.	O	O	T	T	T	Continuing throughout the Term.
10.11	Develop and implement Authorised Officer training programs which are consistent with Law and with similar programs for the training of Authorised Officers in other parts of New South Wales and which address revenue protection issues as notified by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the term if Operator's Authorised Officers are engaged.
10.12	Use reasonable endeavours to ensure that sufficiently trained personnel who are submitted to be authorised as an Authorised Officer are granted such authorisation.	T	T	O	O	O	Continuing throughout the term if the Operator submits sufficiently trained personnel to be authorised as an Authorised Officer

11. KPI Management

The following table identifies KPI Management roles and responsibilities.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
11.1	Define and document KPI and reporting requirements.	T	T	T	O	O	Before the Commencement Date and as amended from time to time in accordance with the KPI Schedule
11.2	Coordinate KPI monitoring and reporting with TfNSW and third-party providers as required.	O	O		T	T	Continuing throughout the Term.
11.3	Measure, analyse, and provide reports on performance against KPIs and other information as requested.	O	O			T	As stated in the KPI Schedule and the Reporting Schedule
11.4	Track KPI performance for individual Incidents and escalating KPI Default.	O	O			T	As stated in the KPI Schedule
11.5	Develop and document KPI cure plans where required under the KPI Schedule.	O	O	T	T	T	As required throughout the Term
11.6	Implement and diligently pursue cure plans developed under the KPI Schedule.	O	O	T	T	T	As required throughout the Term
11.7	Report to TfNSW on KPI cure plan results.	O	O	T	T	T	As required throughout the Term
11.8	Collaborate with TfNSW Authorised Officers.	O	O	T	T	T	As required throughout the Term
11.9	Implement a mystery traveller program. The	O	O		T	T	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	mystery traveller will roam the network on a random day each week, recording service performance and areas for improvement under customer service and cleanliness. The results of the mystery traveller program will be provided to TfNSW under the Reporting Schedule.						throughout the Term.

12. Account Management

The Operator must possess contemporary account management, service and reporting capabilities including, but not limited to, the roles and responsibilities detailed in the following table:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
12.1	Continuously monitor trends in all Services through independent research.	O	O			T	Continuing throughout the Term
12.2	Document and report to TfNSW on products and services to improve Services and customer outcomes.	O	O			T	Continuing throughout the Term
12.3	Act in accordance with and support the governance process, as set out in the Governance Schedule.	O	O			T	Continuing throughout the Term
12.4	Provide accurate, robust and proven billing systems and methodology.	O	O			T	Continuing throughout the Term
12.5	Engage and maintain a qualified and experienced account management team.	O	O			T	Continuing throughout the Term

13. Government Subsidised Travel Schemes, including SSTS

The Operator must provide the necessary systems and process to ensure all students have appropriate bus passes under SSTS and persons eligible for other Government Subsidised Travel Schemes have access to concessional and free transport, as required by TfNSW, and outlined below:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
13.1	<p>Provide administration of any Government Subsidised Travel Schemes approved by the Minister for Transport in accordance with clause 8 of Schedule 1 of the TA Act and notified to the Operator by TfNSW from time to time (including SSTS).</p> <p>Administration activities may include:</p> <ul style="list-style-type: none"> a) receiving and retaining applications; b) assessing the eligibility of applicants; and c) maintaining administration records. 	T	T	O	O	O	Continuing throughout the Term
13.2A	Manage travel entitlements conferred by Government Subsidised Travel Schemes.	T	T	O	O	O	Continuing throughout the Term
13.2B	Planning and determining the most cost effective route of travel on the Routes.	O	O		T	T	Continuing throughout the Term
13.3	Issue new and replacement instruments evidencing proof of entitlement under a Government Subsidised Travel Scheme, whether purchased or not e.g. travel passes, term passes, concession cards.	O	O		T	T	Continuing throughout the Term
13.4	Liaise with schools, TAFE colleges and other relevant organisations where school students or concessional customers are serviced by the Routes, to ensure the Services are meeting the requirements of those persons.	O	O		T	T	On a regular basis, continuing throughout the Term
13.5	Attend schools, TAFE colleges and other relevant organisations for meetings with relevant persons to communicate transport arrangements and work through and resolve service issues.	O	O		T	T	As required throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
13.6	Ensure all schools and TAFE colleges serviced by the Routes have access to specific timetable information regarding the individual school or TAFE college and the information is available on the Operator's website.	O	O		T	T	Continuing throughout the Term
13.7	Comply with the requirements of any guidelines regarding carrying school children issued by TfNSW from time to time.	O	O		T	T	Continuing throughout the Term
13.8	In addition to validation of the instruments referred to in item 13.3 above, ensure that Tickets issued to instrument holders are also validated.	O	O		T	T	Continuing throughout the Term

14. Licensed Area Management

The obligations set out in this table do not limit the obligations of the Operator under Annexure 6 of Schedule 8.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
14.1	Perform day to day maintenance of the Licensed Areas.	O	O			T	Continuing throughout the Term
14.2	Inspect, weed, trim, mow, water, dewater, fertilise, repair, replace, plant all landscaped areas of the Licensed Areas.	O	O			T	Continuing throughout the Term
14.3	Clean third party infrastructure such as TfNSW Systems and Equipment in the Licensed Areas.	O	O			T	Continuing throughout the Term
14.4	Report major maintenance issues at the Licensed Areas to TfNSW or as otherwise required by the Contract.	O	O		T	T	Continuing throughout the Term
14.5	If facilities for Staff are provided as part of the Licensed Areas, clean the facilities.	O	O		T	T	Continuing throughout the

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	Allow access to other bus operators as requested by TfNSW to staff facilities.						Term

15. Security Management

The Operator must ensure that security risk management requirements in relation to the delivery of transport services, arising from the National Terrorism Threat Advisory System and general security arrangements, are implemented and participate with TfNSW on ensuring that potential security threats are identified and managed appropriately:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
15.1	Carry out regular risk assessments of terrorism related threats to the Operator Activities.						
15.2	Implement security measures as identified in the Operator's risk assessment.	O	O	T	T	T	Continuing throughout the Term
15.3	Develop and implement security measures that align to the Operator's risk assessment and the relevant level identified under the National Terrorism Advisory System.	O	O	T	T	T	Continuing throughout the Term
15.4	Implement procedures to notify NSW Police and TfNSW of the following incidents: a) assault; b) sexual offences; c) robbery; d) harassment, threatening behaviour and private nuisance; e) other offences against the person; f) theft; g) arson; h) malicious damage to property; i) drug offences; j) prohibited and regulated weapons	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<p>offences;</p> <p>k) disorderly conduct, each as defined in the 'definitions and explanations' section of the NSW Bureau of Crime Statistics and Research website, and:</p> <p>l) offences against transport services;</p> <p>m) other street offences;</p> <p>n) terrorism offences;</p> <p>o) offences under Part 5 Divisions 2 and 3 and Part 6 (as it relates to ticketing offences) of the PT Regulation.</p>						

16. Emergency Bus Services

In the event that TfNSW requires Contract Buses to be deployed for an emergency (**Emergency Buses**), the Operator will deliver the agreed number of Emergency Buses in accordance with the following requirements:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When												
16.1	<p>Provide the minimum number (or the number of buses requested by TfNSW if that number is less than the minimum number) of Contract Buses on request by TfNSW in accordance with the following table:</p> <table border="1"> <thead> <tr> <th>Time from notice of emergency</th> <th>Time of day</th> <th>Minimum number of buses</th> </tr> </thead> <tbody> <tr> <td rowspan="4">Within 30 minutes</td> <td>Peak</td> <td style="background-color: black;"></td> </tr> <tr> <td>Shoulder Peak</td> <td style="background-color: yellow;"></td> </tr> <tr> <td>Day</td> <td style="background-color: yellow;"></td> </tr> <tr> <td>Evening</td> <td style="background-color: yellow;"></td> </tr> </tbody> </table>	Time from notice of emergency	Time of day	Minimum number of buses	Within 30 minutes	Peak		Shoulder Peak		Day		Evening		O	O	T	T	T	Continuing throughout the Term
Time from notice of emergency	Time of day	Minimum number of buses																	
Within 30 minutes	Peak																		
	Shoulder Peak																		
	Day																		
	Evening																		

	Functional Description				Responsibility	Accountable	Support	Consulted	Informed	When								
		Night																
	Within one hour	Peak																
		Shoulder Peak																
		Day																
		Evening																
		Night																
	Within two hours	Peak																
		Shoulder Peak																
		Day																
		Evening																
		Night																
16.2	Provide a contract telephone number for TfNSW to request Emergency Buses.				O	O			T	Continuing throughout the Term								
16.3	Unless otherwise directed by TfNSW, provide the number of supervisors in accordance with the following table: <table border="1" data-bbox="257 1077 667 1340"> <thead> <tr> <th>Number of Emergency Buses</th> <th>No Supervisors</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>				Number of Emergency Buses	No Supervisors							O	O	T	T	T	Continuing throughout the Term
Number of Emergency Buses	No Supervisors																	
16.4	Distribute maps / directions to drivers and keep drivers aware of route changes.				O	O	T	T	T	Continuing throughout the								

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When																	
							Term																	
16.5	Advise the representative notified by TfNSW from time to time as TfNSW's 'Emergency Representative' of any service changes or issues within 30 minutes.	O	O		T	T	Continuing throughout the Term																	
16.6	Provide Emergency Buses from the following sources:	O	O		T	T	Continuing throughout the Term																	
	<table border="1"> <thead> <tr> <th>Time of Day</th> <th>Number of Spare Buses</th> <th>Number of reassigned Contract Buses by Route</th> </tr> </thead> <tbody> <tr> <td>Peak</td> <td></td> <td></td> </tr> <tr> <td>Shoulder Peak</td> <td></td> <td></td> </tr> <tr> <td>Day</td> <td></td> <td></td> </tr> <tr> <td>Evening</td> <td></td> <td></td> </tr> <tr> <td>Night</td> <td></td> <td></td> </tr> </tbody> </table>	Time of Day	Number of Spare Buses	Number of reassigned Contract Buses by Route	Peak			Shoulder Peak			Day			Evening			Night							
Time of Day	Number of Spare Buses	Number of reassigned Contract Buses by Route																						
Peak																								
Shoulder Peak																								
Day																								
Evening																								
Night																								

Annexure 1 – NSW Transit Stop Numbering and Naming Standard

See attached.

NSW Transit Stop Naming and Numbering Standard

Purpose

Transit stops and routes are the basic skeleton of public transport. Transit stops are the public access points to public transport and enable the public to change between routes and modes of transport. Transit stops are essential to customers to plan and to describe a public transport journey. Transit stops are frequently serviced by different operators and/or different modes of transport making it critical to apply a standard approach to describe a transit stop.

This transit stop naming and numbering standard provides a consistent and systematic way to identify individual transit stops.

Within NSW all transit stops are held and maintained within the Transit Stop Management (TSM) application managed by TfNSW. The Transit Stop Management application is the single source of information on the location, numbering, accessibility, naming and other transit stop attributes of public transport access point.

Transit Stop Naming Standard

A transit stop name should be simple, structured and provide a clear unique description to public transport customers and service providers.

Each transit stop belongs to a suburb which is maintained as a stop attribute in the Transit Stop Management (TSM) application and can be applied to the transit stop name if required. Therefore, the suburb that the transit stop is located in must not be included in the stop name unless it is related to a Landmark or a transport interchange.

1. Transit stop near a Train Station, Interchange, Major Bus Interchange or Ferry Wharf

The standard for naming transit a single stop (without a stand designation) at a Station, Interchange or Wharf should be as follows:

a. Name of Station/Interchange/Wharf, Street Name

For example:

Petersham Station, Trafalgar St

Greenwich Point Wharf, Mitchell St

Lilyfield Light Rail, Catherine St

If there is a single stop (without a stand designation) opposite a station, the name standard should be as follows:

b. Street Name opp Station Name

For example:

The Esplanade opp Thornleigh Station

Alexandra Av opp Westmead Station



If the Station, Interchange or Wharf has a series of transit stops or stands, the naming standard should be as follows:

c. Name of Station/Interchange/Wharf, Street Name - Stand# (Letter)(Number)

For example:

Wynyard Station, York St - Stand N

Wynyard Station, Carrington St - Stand C

Campbelltown Station - Stand A

Note: Street names should start with a capital (title case) – Alexandra Av.

2. Transit stop near a landmark or point of interest

The Standard for naming a transit stop near a landmark or point of interest should be as follows:

a. Landmark Description, Street Name

For example:

Casula Mall, Ingham Dr

Wetherill Park TAFE, Victoria St

Glenwood Public School, Belmont Rd



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If the landmark or point of interest is large and there are many transit stops with stand designations the name should be as follows:

b. Landmark Description, Street Name – Stand Letter

For example:

Queen Victoria Building, York St – Stand B

Macquarie Centre - Stand D

Note: Street names should start with a capital (title case) – Belmont Rd.

4. Transit stop at the Intersection of two roads (with the stop less than 30 metres from the intersection)

a. Street Name at Nearest Street (on the left)

For example:

Market St at Pitt St

Windsor Rd at Coronation Rd

Smith St at Rose St



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Note: The crossing street lies on the left of direction of travel. Street names should start with a capital (title case) – Smith St at Rose St.

5. Transit stop near the Intersection of two roads (with the stop greater than 30 metres but less than 200 metres from the intersection)

a. Street Name *before* or *after* nearest Street on the left

For example:

Jasper Rd after Vanessa Av

Parramatta Rd before Johnston St

Parramatta Rd after Northumberland Av



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Note: The crossing street lies on the left of direction of travel. Street names should start with a capital (title case) – Parramatta Rd *before* Johnston St.

6. Transit stop along a road with no intersecting road within 200 metres

a. "Street Number" Street Name

For example:

293 Merrylands Rd

62 Main Rd

If there is no street number on the left side of the road in the direction of travel but there is on the opposite side, then the name should be as follows:

b. Street Name opp "Street Number"

For example:

Merrylands Rd opp 293

Main Rd opp 64



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Note: Street names should start with a capital (title case) – Main Rd.

Transit Stop Numbering Standard

A unique number is assigned to each transit stop, called the Transit Stop Number (TSN). The TSN is automatically allocated by the Transit Stop Management (TSM) application when it is created in TSM. The TSN is made up of the post code of the suburb where the transit stop is located and the next available sequential number within that suburb eg. 2011341, 2011342. Transit stop numbers do not change even if there is a change in the relevant postcode.

Abbreviations that should be used:

opposite = opp (always use for transit stop name and On-board PIDs alias)

opposite = op (always use in ETS and PTIPS alias abbreviations)

after = af (always use in ETS and PTIPS alias abbreviations)

before = bf (always use in ETS and PTIPS alias abbreviations)

, = use of comma as a separator

Avenue = Av

Boulevard/e = Bvd

Chase = Ch

Circuit = Cct

Circle = Cir

Close = Cl

Corner = Cnr

Court = Ct

Crescent = Cr

Drive = Dr

Driveway = Drwy

Esplanade = Esp

Freeway = Fwy

Garden = Gdn

Highway = Hwy

Junction = Jct

Lane = La

Motorway = Mwy

Parade = Pde

Parkway = Pkwy

Place = Pl

Rise = Rise

Road = Rd

Street = St

Terrace = Tce

Tunnel = Tun

Way = Way

Punctuation that should not be used (inappropriate):

. Full stops should not be used in names

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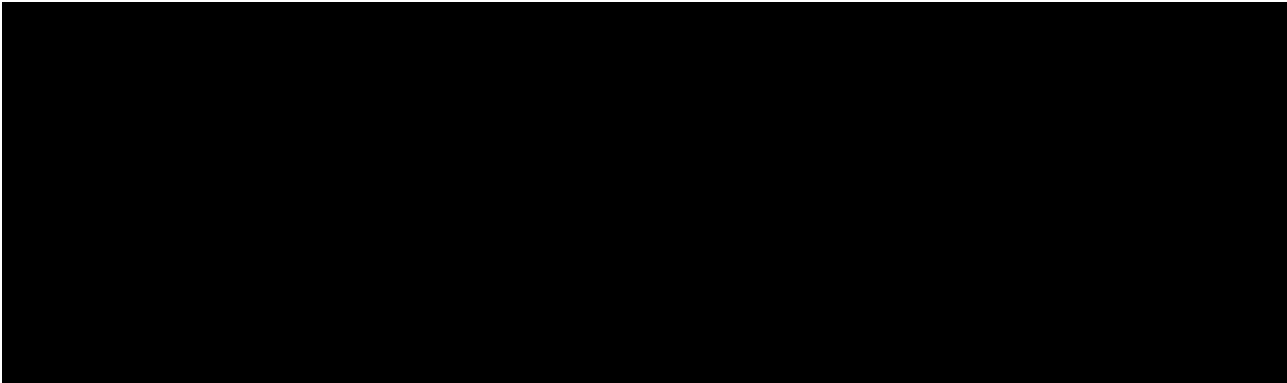
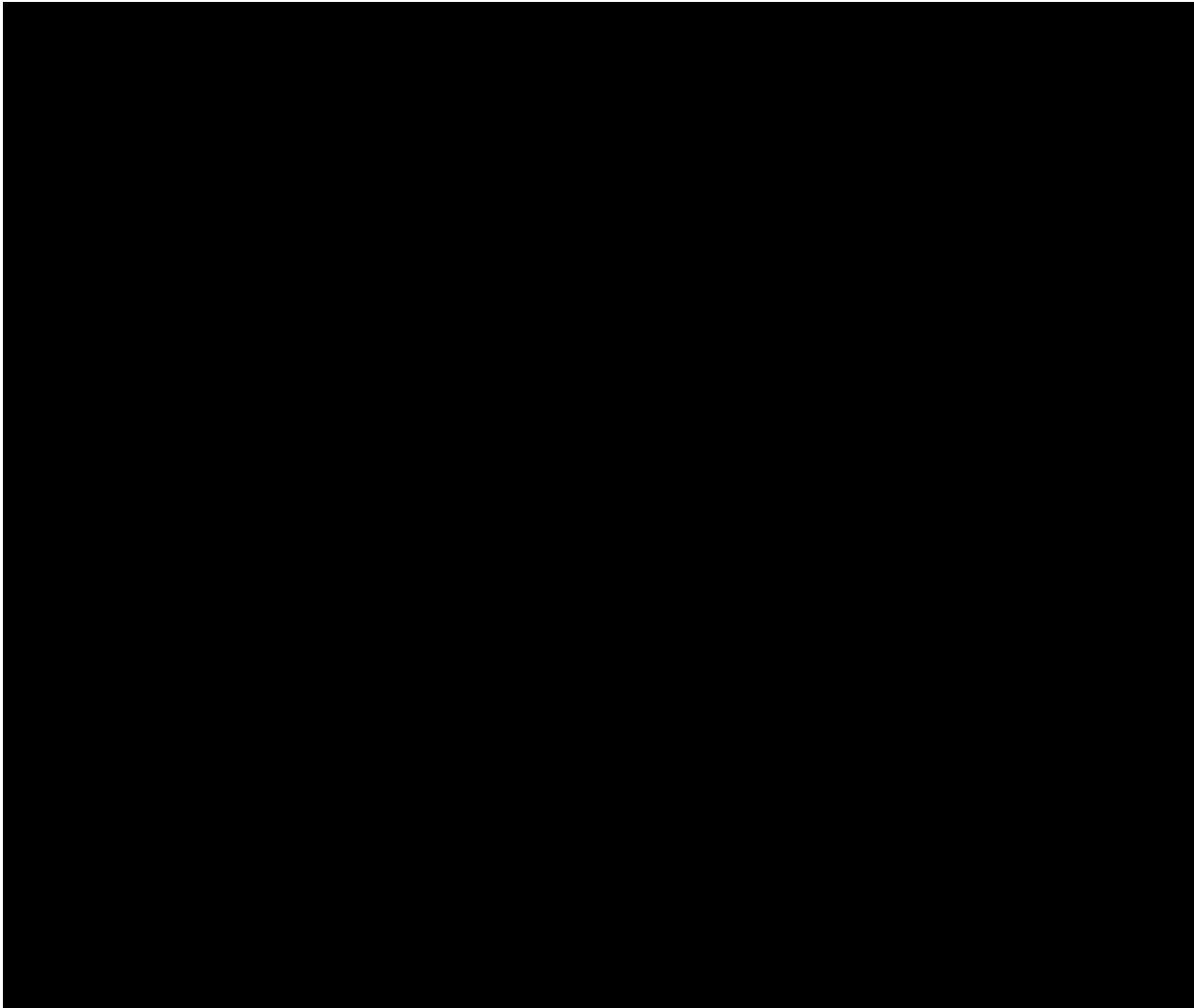
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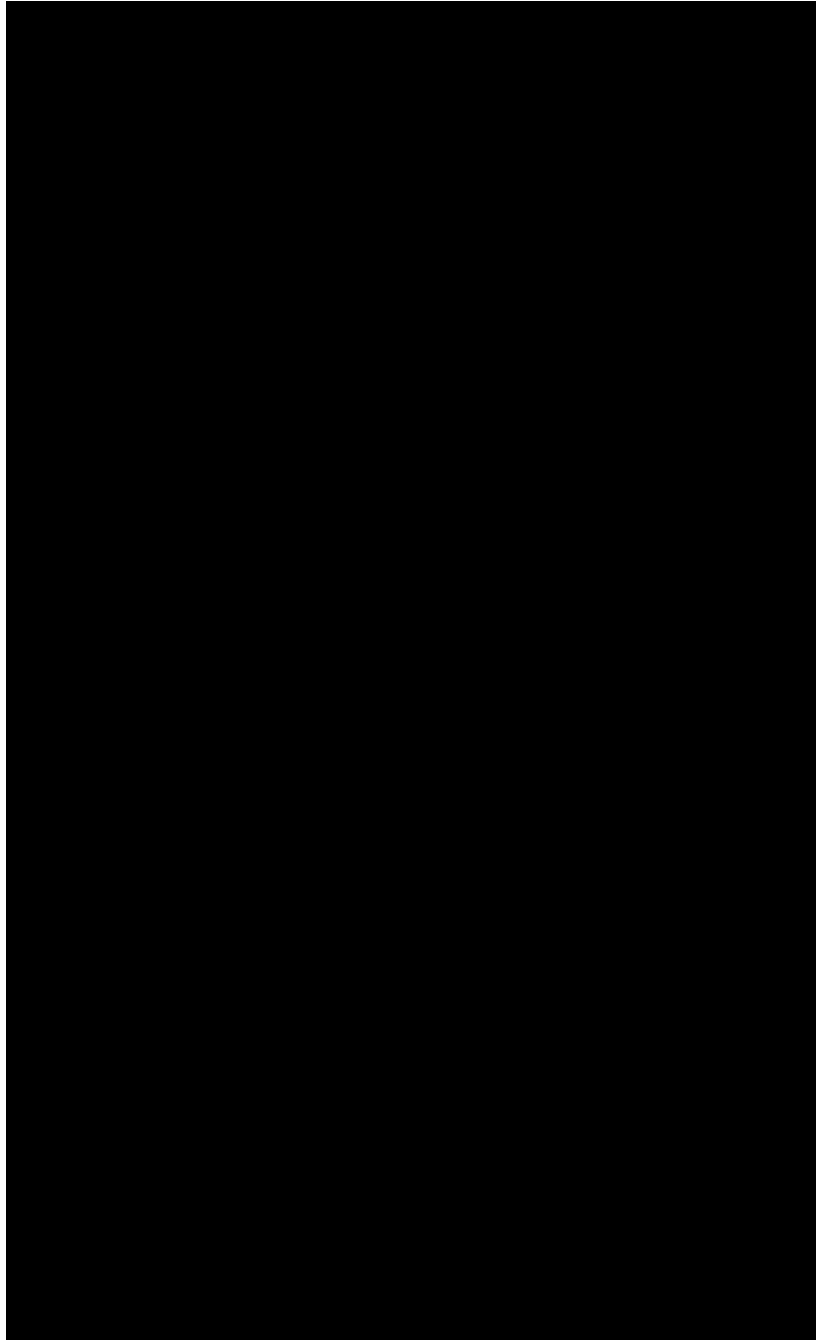
"QUEEN" - Capitalisation of words should not be used

Schedule 2 - Service Levels (including Timetable) and Planned Service Phases

1. Commencement Date

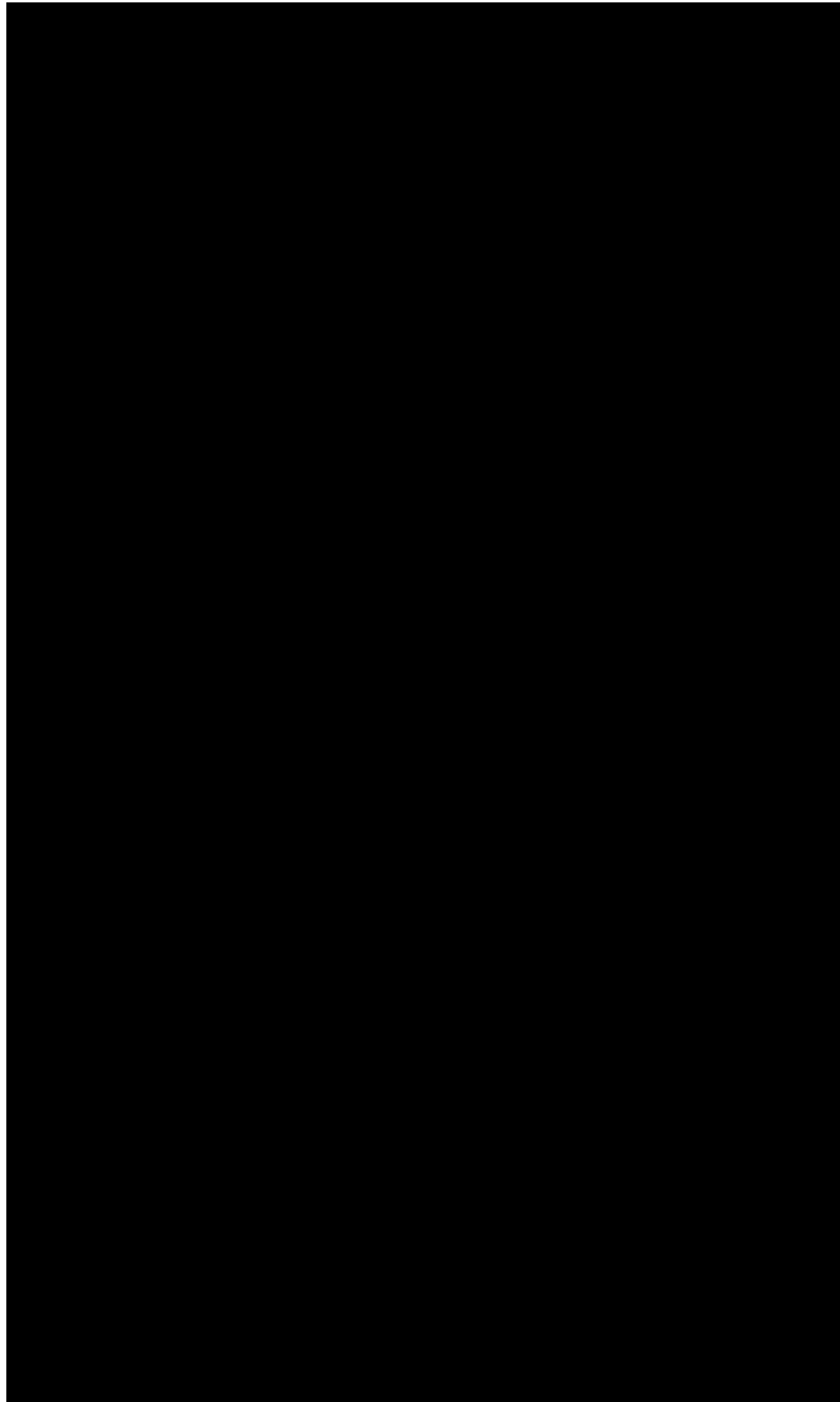
Contract Service Levels, Timetables, Dedicated School Timetables, Headway Services and On Demand Services from the Commencement Date to be provided separately to this document on a compact disc initialled and exchanged between the parties and dated with the date of this Contract and labelled as '*Schedules CD*', in the documents titled '*Stage 1 TT Weekday*', '*Stage 1 TT Saturday*' and '*Stage 1 TT Sunday*'.

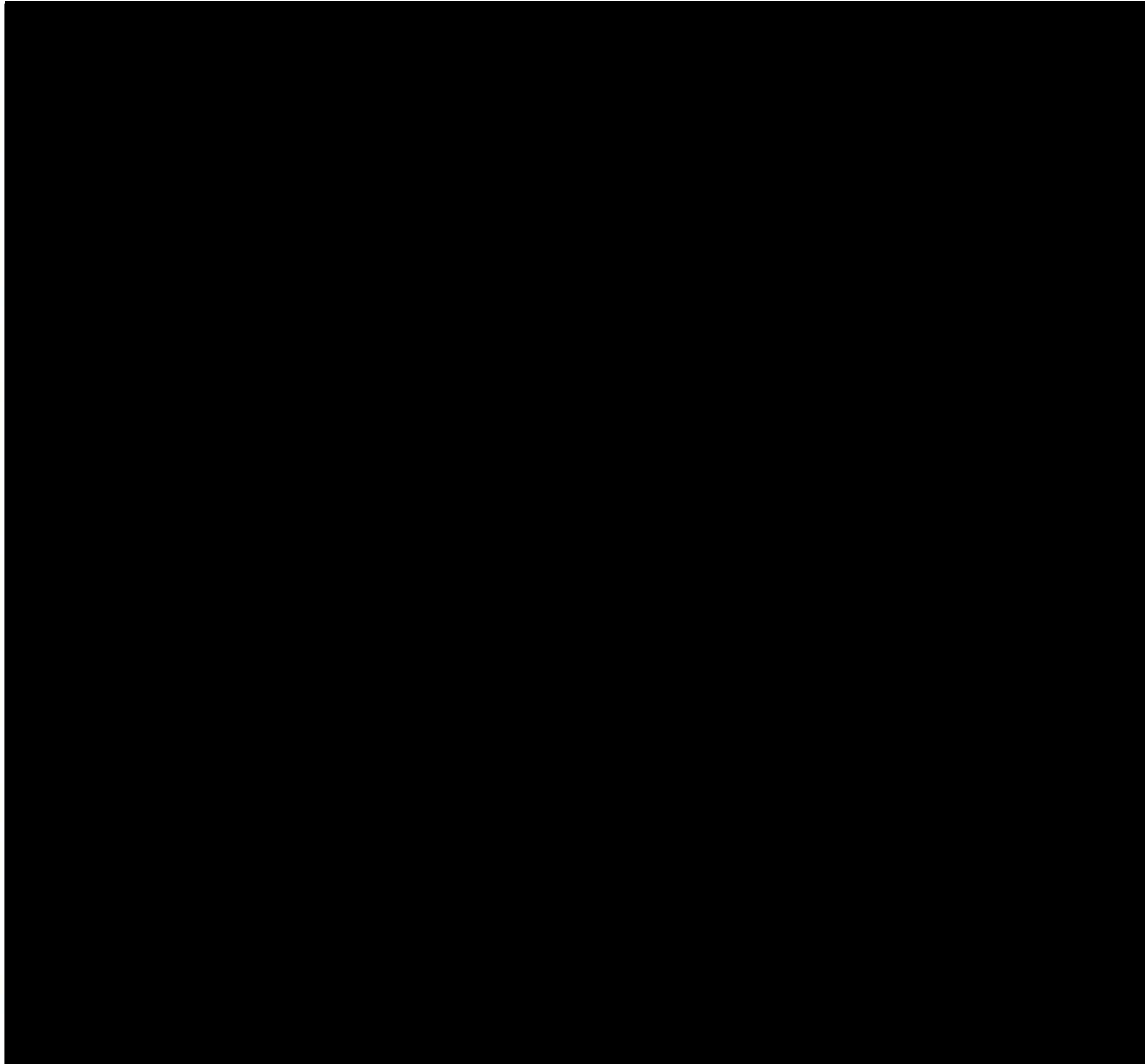


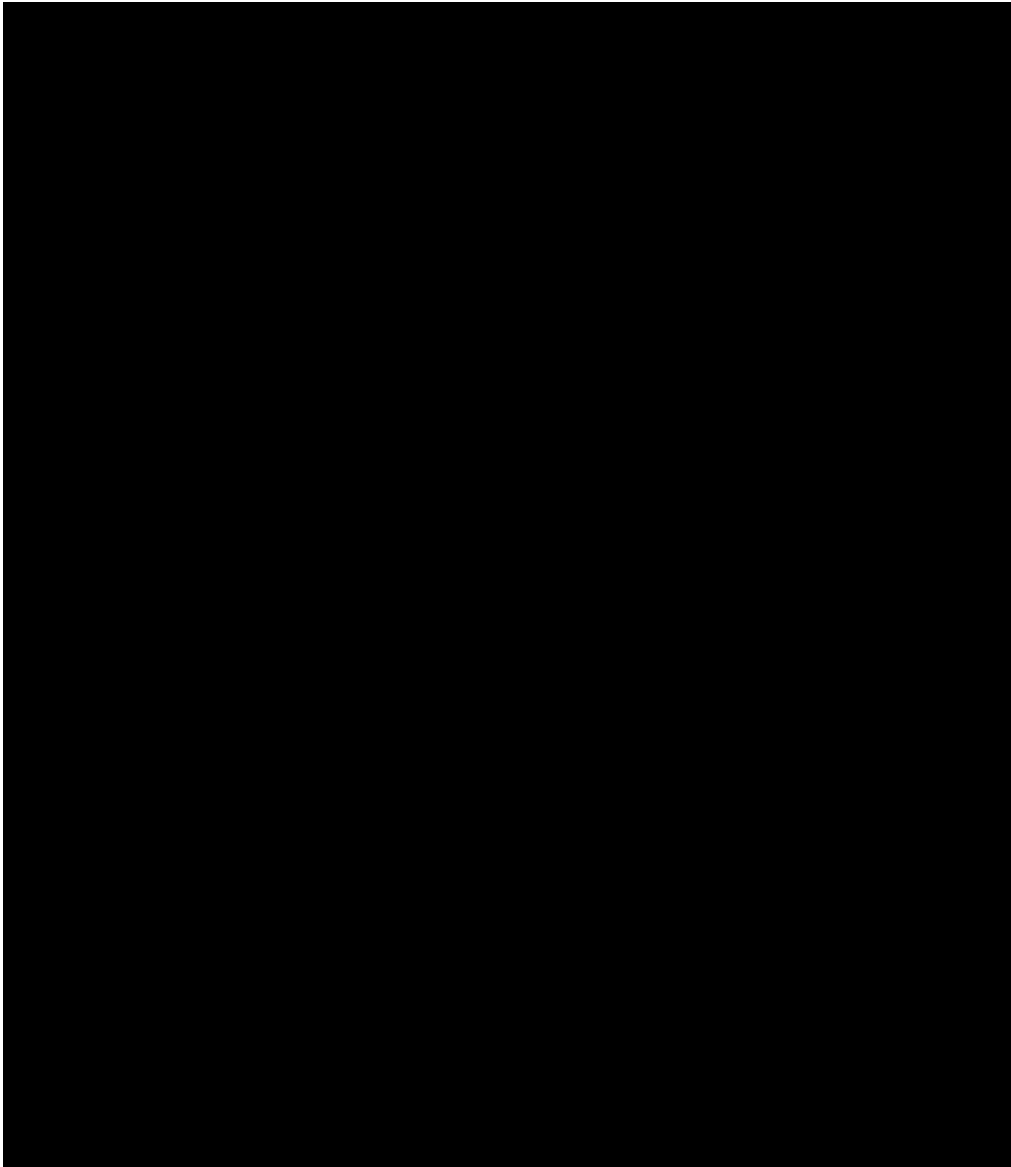


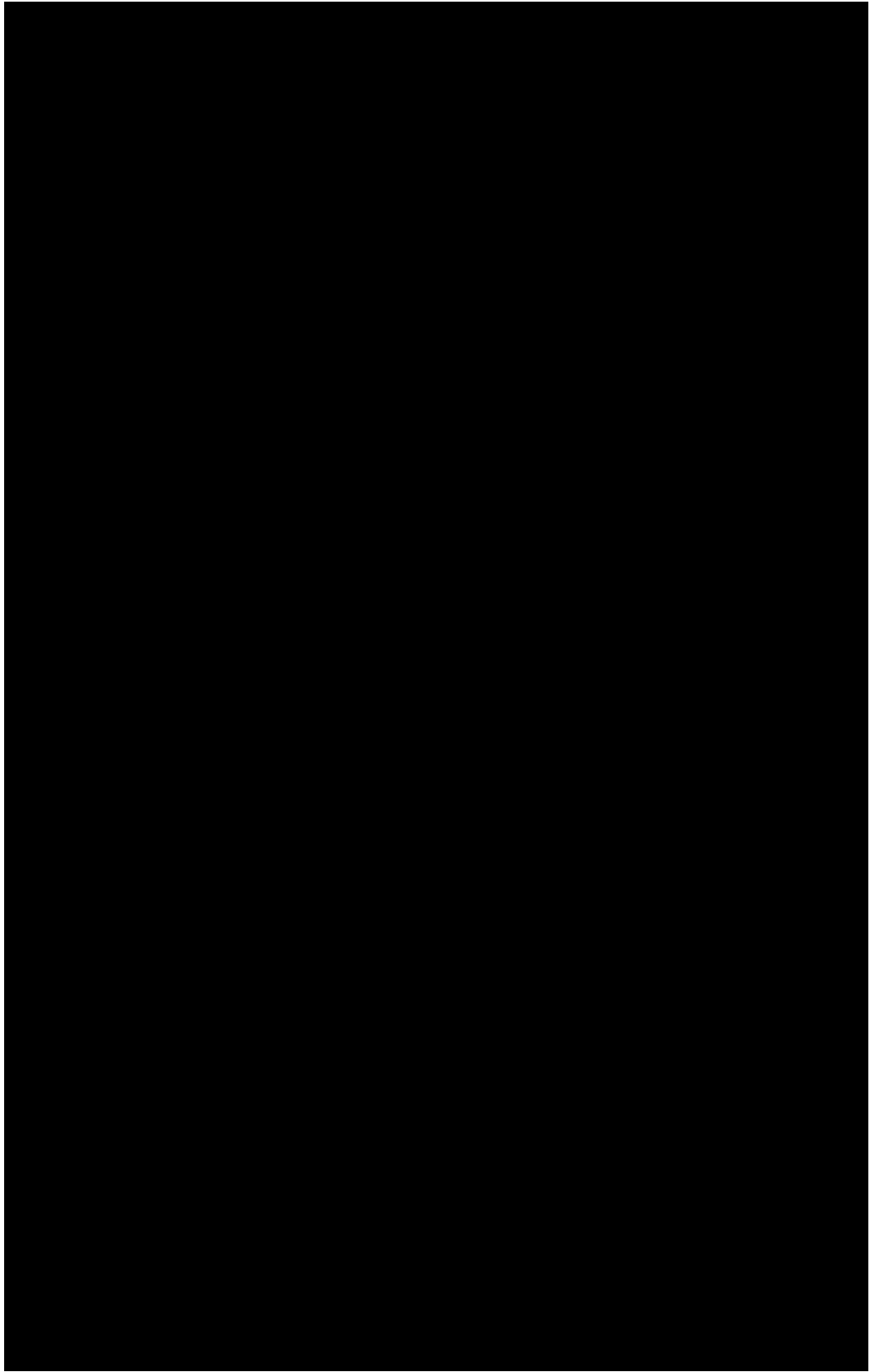


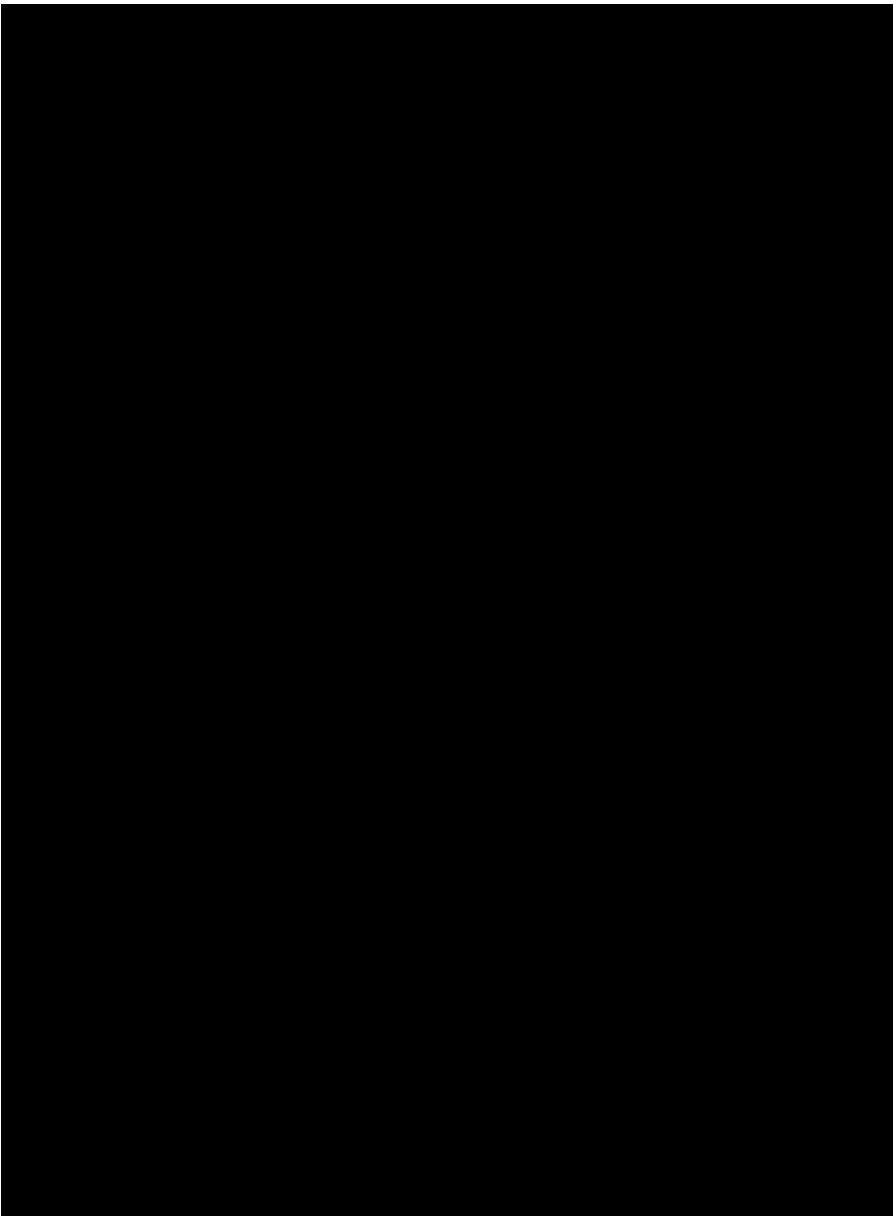


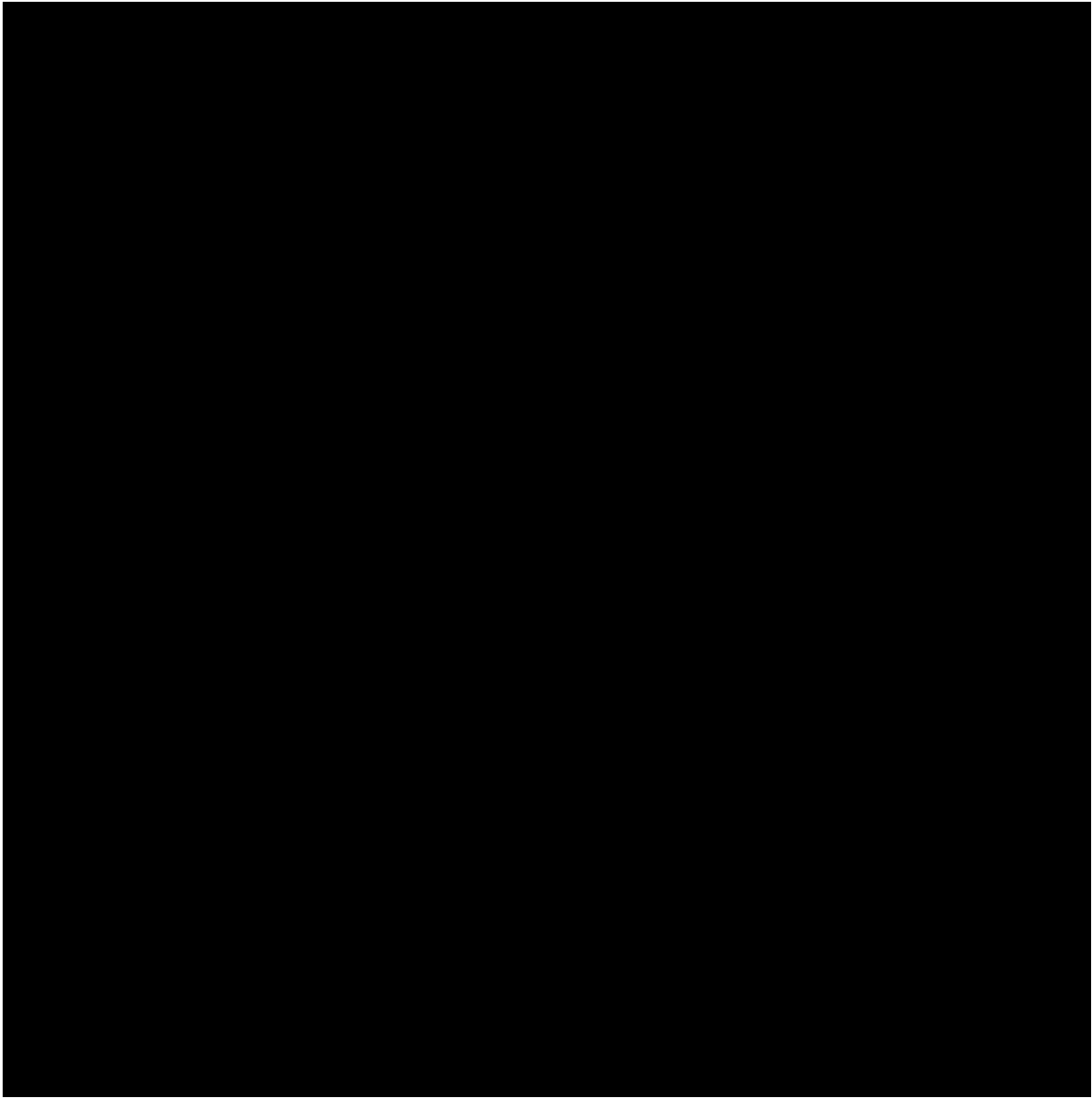


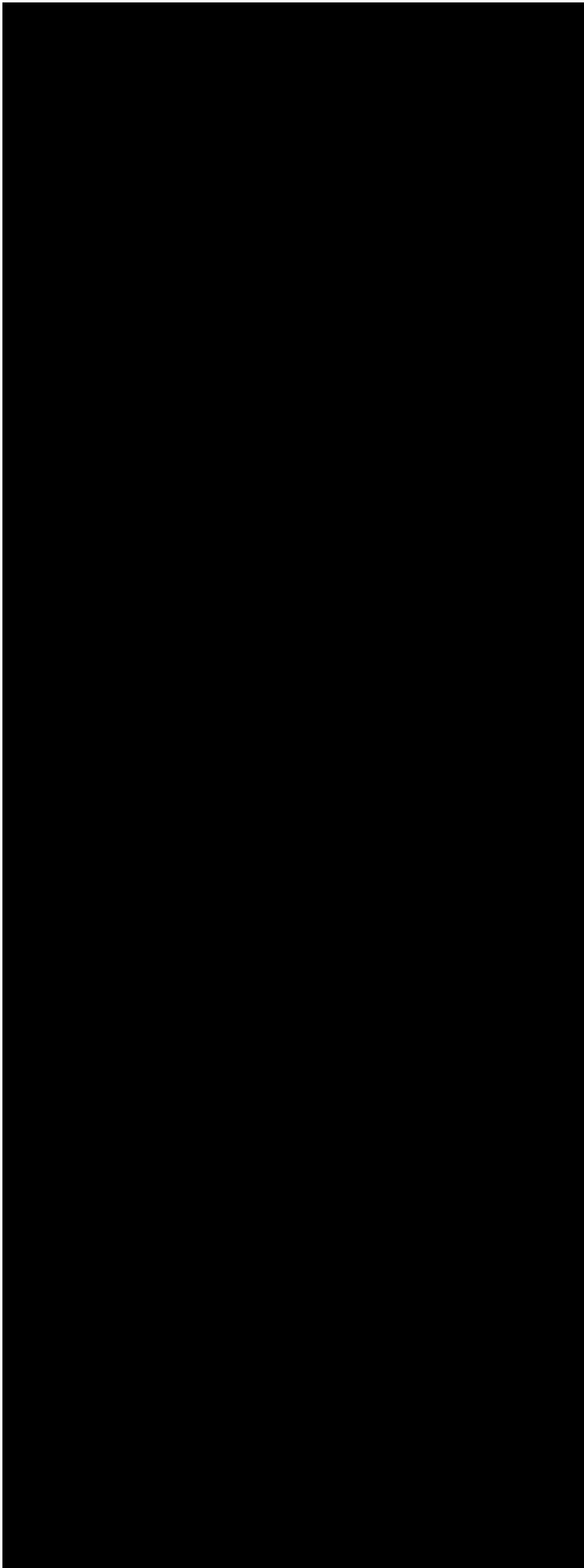








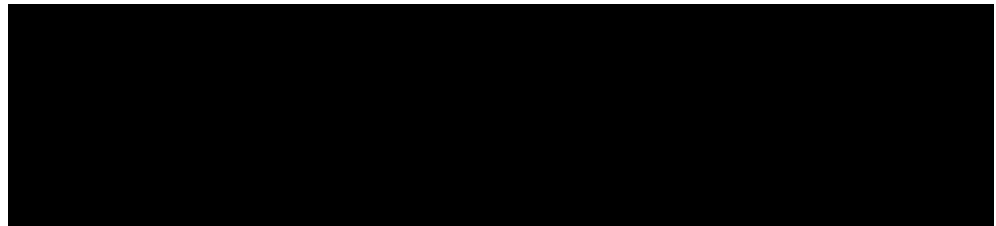




Schedule 3 - Payment

1. Definitions and Interpretation

- (a) In this Schedule:
- (i) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
 - (ii) a reference to a Clause is a reference to a Clause in the Contract; and
 - (iii) a reference to a paragraph is a reference to a paragraph in this Schedule.
- (b) In this Schedule, the following words have the following meanings:



Annual Contract Price means:

- (A) from the Commencement Date, the amounts itemised in Annexure A to this Schedule; or
- (B) from each Planned Service Phase Commencement Date, the amounts itemised in Parts 1 to 4 of Annexure B of this Schedule as applicable in relation to the relevant Planned Service Phase,

as adjusted in accordance with this Schedule.



On Demand Service Hrs means any hour that a Contract Bus of a particular Bus type used to provide On Demand Services is absent from the Contract Depots in order to efficiently provide an On Demand Service including time for that Contract Bus to travel the most direct practicable route between the finishing point of that service and the starting point of the next service or between a Contract Depot and a starting or finishing point of that service, excluding time allowed for unpaid meal breaks or non driving idle time.

Monthly Contract Price means the sum to be paid by TfNSW to the Operator for the Services provided in any month, which is equal to the Annual Contract Price, divided by 12 and adjusted on a pro rata basis if a Planned Service Phase Commencement Date occurs during a month (other than on the first day of the month).

Patronage Incentive Payment means a payment by TfNSW to the Operator in accordance with paragraph 4.6 of this Schedule.

Peak Bus means a Contract Bus of a particular Bus type that must be absent from the Contract Depots at the same time that the maximum number of Contract Buses of that Bus type must be absent from the Contract Depots in order to efficiently provide the Contract Bus Services and Dedicated School Services.

Service Bus Hrs means any hour that a Contract Bus of a particular Bus type must be absent from the Contract Depots in order to efficiently provide the Contract Bus Services and Dedicated School Services including time for that Contract Bus to travel the most direct practicable route between the finishing point of that Service and the starting point of the next Service or between a Contract Depot and a starting or finishing point of that Service, excluding time allowed for unpaid meal breaks or non driving idle time.

Service Bus Kms means any kilometre that a Contract Bus of a particular Bus type must travel outside of the Contract Depots in order to efficiently provide the Contract Bus Services and Dedicated School Services including distance for that Contract Bus to travel the most direct practicable route between the finishing point of that Service and the starting point of the next Service or between a Contract Depot and a starting or finishing point of that Service.

Unit Rate means the rates contained in Annexure C to this Schedule.

Written Off Bus means a Contract Bus which is irretrievably lost, stolen, destroyed or damaged beyond economic repair during the Term.

2. General Requirements

- (a) In accordance with Clauses 36.2 and 36.3 of the Contract, the Operator must, within five Business Days after the last day of each month during the Term, provide a Tax Invoice to TfNSW, in a form approved by TfNSW from time to time, which identifies:
- (i) the amount of the Monthly Contract Price for the previous month;
 - (ii) any price adjustments applicable to the previous month, calculated in accordance with paragraph 4;
 - (iii) the amount to be set-off from the aggregate of the amounts referred to in paragraphs 2(a)(i) and 2(a)(ii) for:
 - (A) [REDACTED] of the actual gross revenue derived from all advertising activities conducted by or on behalf of the Operator in accordance with Clause 52.2 that has become due and payable in that month (excluding charter and other commercial revenue);
 - (B) the amount to be deducted (if abatements are greater than bonuses) or added (if bonuses are greater than abatements) for all KPI Credits and KPI Debits calculated in that month in accordance with Schedule 4;
 - (C) the Sale Proceeds (as defined in Clause 23.1 of the Contract), from the disposal of any Contract Bus retired from service in accordance with Clause 23.1 of the Contract and sold in that month, less [REDACTED] to be retained by the Operator;
 - (D) retention of Pilot Project milestone payments as specified in Annexure D where Pilot Project milestones as set out in Schedule 13 are not achieved by the specified dates. Pilot Project milestone payments will be retained by TfNSW until the milestones set out in Annexure D are achieved;
 - (E) the amount received (if any) by the Operator from cash, credit card and other Ticket sales in the previous month (or that has been received in earlier months but not yet set-off under this paragraph 2(a)(iii)) in accordance with Items 10.1 to 10.5 of the Services Schedule;
 - (iv) the net Payment owed by TfNSW to the Operator, having regard to paragraphs 2(a)(i) to 2(a)(iii) above; and
 - (v) the amount of GST chargeable on the amount referred to in paragraph 2(a)(iv).
- (b) The Operator must provide TfNSW with supporting evidence showing that the amounts identified in paragraph 2(a) are correctly calculated in accordance with the Contract and this Schedule and details identifying and clarifying changes from the prior month's invoice line item charges.
- (c) The Tax Invoice must be addressed to the TfNSW officer nominated by TfNSW in writing from time to time.

3. Annual Contract Price

- (a) The Annual Contract Price is fixed for the Term, unless varied in accordance with this Schedule.

- (b) The parties acknowledge there will be no negotiation of the Annual Contract Price, other than variations in accordance with this Schedule.
- (c) The amount to be paid to the Operator in respect of each of the State Asset Access Agreements in Annexure A and B to this Schedule shall be determined by TfNSW and be consistent with the amounts to be paid by the Operator under the respective State Asset Access Arrangements. From the Contract Commencement Date the amount to be paid will be [REDACTED] per item per month which will be fixed over the Contract Term (on fleet basis and not for individual vehicles). If TfNSW restructures the arrangements for State Asset ownership as contemplated by Clauses 1.10 and 27, TfNSW may alter the amount in Annexure A and B to this Schedule (including by moving from a fleet based payment to a per asset based payment) and amend paragraph 4.3 and paragraph 4.4 (to provide for payment adjustment in respect of Written Off Buses) subject to the requirements of Clause 27. The Operator will not be paid a margin on any additional rental amount payable in respect of State Assets under any restructured arrangements.

4. Price adjustments

The parties acknowledge and agree that the Annual Contract Price payable by TfNSW to the Operator may vary due to price adjustments, calculated in accordance with this paragraph 4.

4.1 Price Adjustments for Service Variations to Contract Bus Services and Dedicated School Services

- (a) The price adjustment for a Service Variation for Contract Bus Services and Dedicated School Services approved by TfNSW will be calculated by applying the following calculation(s):
 - (i) the change in daily Service Bus Kms as a result of the Service Variation, multiplied by the Unit Rate per Service Bus Km (for the applicable Bus type and day type), multiplied by the number of days in the year for which the Service Variation will operate;
 - (ii) the change in daily Service Bus Hrs as a result of the Service Variation, multiplied by the Unit Rate per Service Bus Hr (for the applicable Bus type and day type), multiplied by the number of days in the year for which the Service Variation will operate;
 - (iii) for any Service Variation requiring an increase in the number of Peak Buses, the price for the agreed required number of Operator New Buses as a result of the Service Variation will be calculated in accordance with paragraph 4.3 of this Schedule.

In determining the required number of Operator New Buses, an allowance will be incorporated for additional spare Buses. This allowance will be applied on the basis of one additional spare Bus of the same Bus type being required for each ten extra Peak Buses required in the fleet; and

- (iv) for any Service Variation allowing a decrease in the number of Peak Buses, the corresponding number of Contract Buses will be removed from the fleet in descending age order.

In determining the number of Contract Buses no longer required, an allowance will be incorporated for a reduction in the number of spare Contract Buses required, unless the service change is associated with the introduction of an On Demand Service Option. This allowance will be applied on the basis of one less spare Contract Bus of the same Bus type being required for each ten less Peak Buses required in the fleet.

- (b) For the avoidance of doubt, where under Clause 16.1(g) a Service Variation for Contract Bus Services or Dedicated School Services also requires a change or adjustment to the pricing for a Planned Service Phase or On Demand Service Option, that change or adjustment must be calculated in accordance with this paragraph.

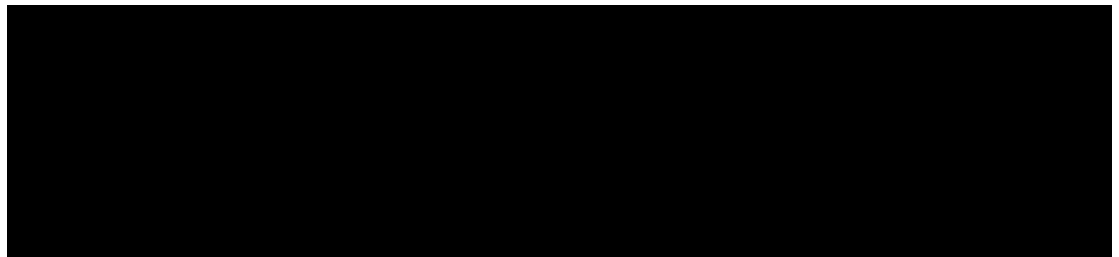
- (c) Unit Rates will be inflation adjusted by application of the inflation indices in paragraph 4.5(c), applied in the following manner:

Unit Rate	Inflation Indices to be Applied
Per Bus Km	
Per Bus Hr	

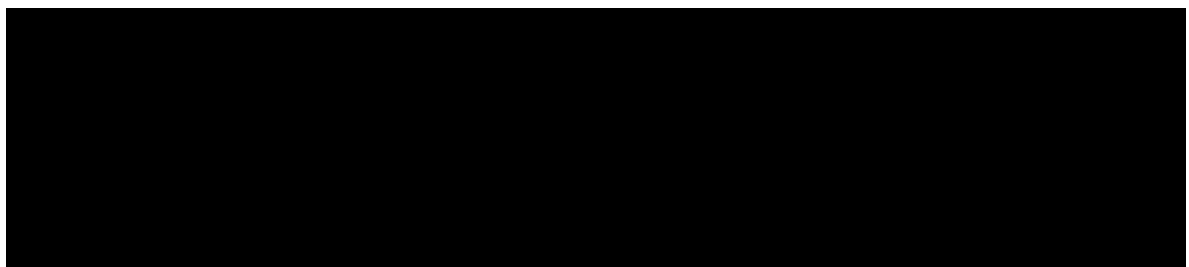
- (d) If the Annual Contract Price has been varied due to a Service Variation, any future inflation adjustment for the varied Annual Contract Price will be treated in accordance with paragraph 4.5 of this Schedule.
- (e) At any given time, TfNSW shall record the inflation adjusted value of the Annual Contract Price, as at the Services Commencement Date, separately from the inflation adjusted total value of all Service Variations.
- (f) TfNSW must notify the Operator of the variation to the Annual Contract Price by notice in writing and adjust the Monthly Contract Price accordingly for payment purposes.

4.2 Price Adjustment for Service Variations to On Demand Services

- (a) The price adjustment for a Service Variation On Demand Services approved by TfNSW will be calculated by applying the following calculation(s):



- (ii) for any Service Variation requiring an increase in the number of On Demand Peak Buses, the price for the agreed required number of Operator New Buses for On Demand Services as a result of the Service Variation will be calculated in accordance with paragraph 4.3 of this Schedule. In determining the required number of Operator New Buses for On Demand Services, an allowance will be incorporated for additional spare Buses. This allowance will be applied on the basis of one additional spare Bus of the same Bus type being required for each ten extra Peak Buses required in the fleet. For the avoidance of doubt, this does not apply to the introduction of an On Demand Service Option;
- (iii) for any Service Variation allowing a decrease in the number of On Demand Peak Buses, the corresponding number of Contract Buses will be removed from the fleet in descending age order. In determining the number of On Demand Buses no longer required, an allowance will be incorporated for a reduction in the number of spare Buses required. This allowance will be applied on the basis of one less spare Bus of the same Bus type being required for each ten less Peak Buses required in the fleet. For the avoidance of doubt, this does not apply to the removal of an On Demand Service Option.






4.4 Price Adjustment for Written Off Bus

- (a) There is no adjustment to the Monthly Price in the event of an Existing Bus becoming a Written Off Bus or where the Written Off Bus was a New Bus that TfNSW has elected to procure and lease or licence to the Operator in accordance with Clause 23.5 of the Contract.
- (b) In accordance with Clause 38.4(b) of the Contract, the Operator must remit to TfNSW the insurance proceeds received and deductible loss incurred for a Written Off Bus that was either an Existing Bus or New Bus that TfNSW has elected to procure in accordance with Clause 23.5 of the Contract.
- (c) The Price Adjustment for an Operator New Bus calculated in accordance with paragraph 4.3 that subsequently becomes a Written Off Bus will cease from the first day of the month in which the Operator New Bus becomes a Written Off Bus.
- (d) The Operator must replace any Written Off Bus that was an Operator New Bus in accordance with Clause 37.1 of the Contract and will receive a Price Adjustment in accordance with paragraph 4.3 for the replacement Operator New Bus.

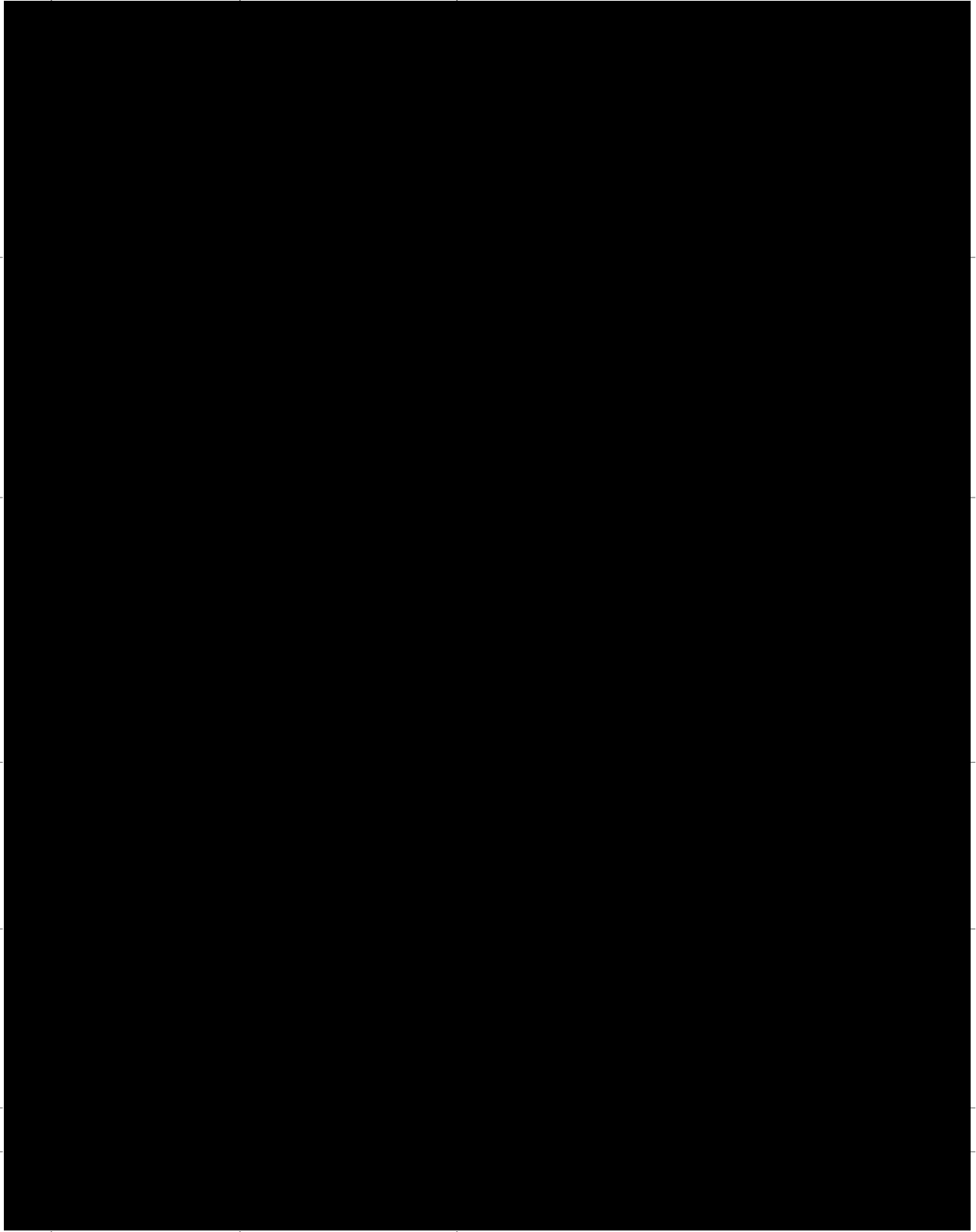
4.5 Price Adjustments for Inflation and Fuel Taxes and Credits

- (a) The Monthly Contract Price must be adjusted to take into account inflation.
- (b) At the periods as specified in the table in paragraph 4.5(c), TfNSW must apply the inflation index and multiplier specified in the table in paragraph 4.5(c) to the relevant items

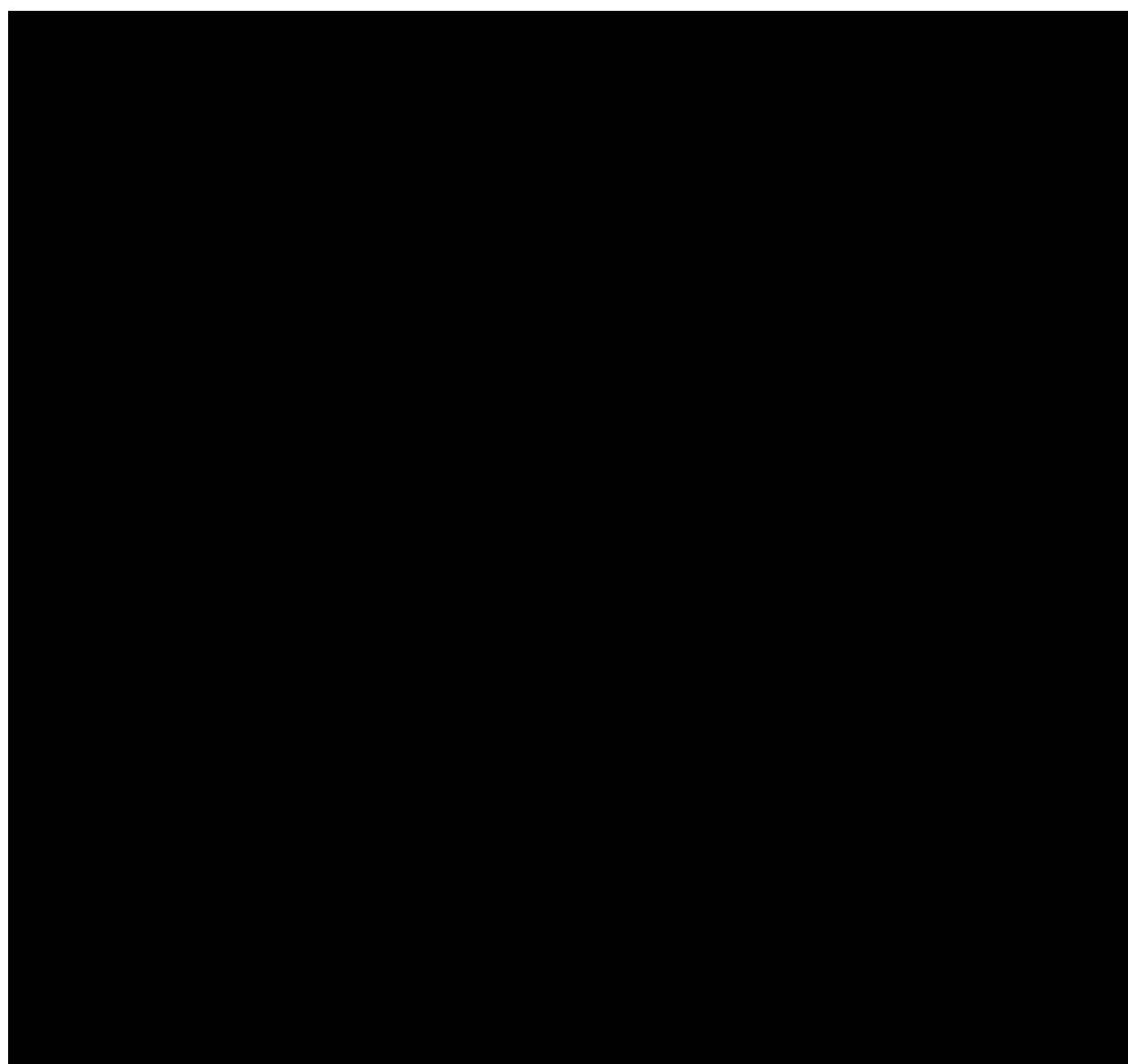
specified in the table in paragraph 4.5(c) and notify the Operator in writing of the adjusted Monthly Contract Price.

- (c) For the purposes of this paragraph 4.5, the following inflation indices will be adopted and applied to the prices shown in Annexure A and B (other than the prices in relation to the State Bus Leases, State Existing Facility Leases and State Bus Depot Leases).

Ref	Item (from table in Annexure A and B)	Inflation Adjustment Mechanism	Inflation Timing, Base and Multiplier
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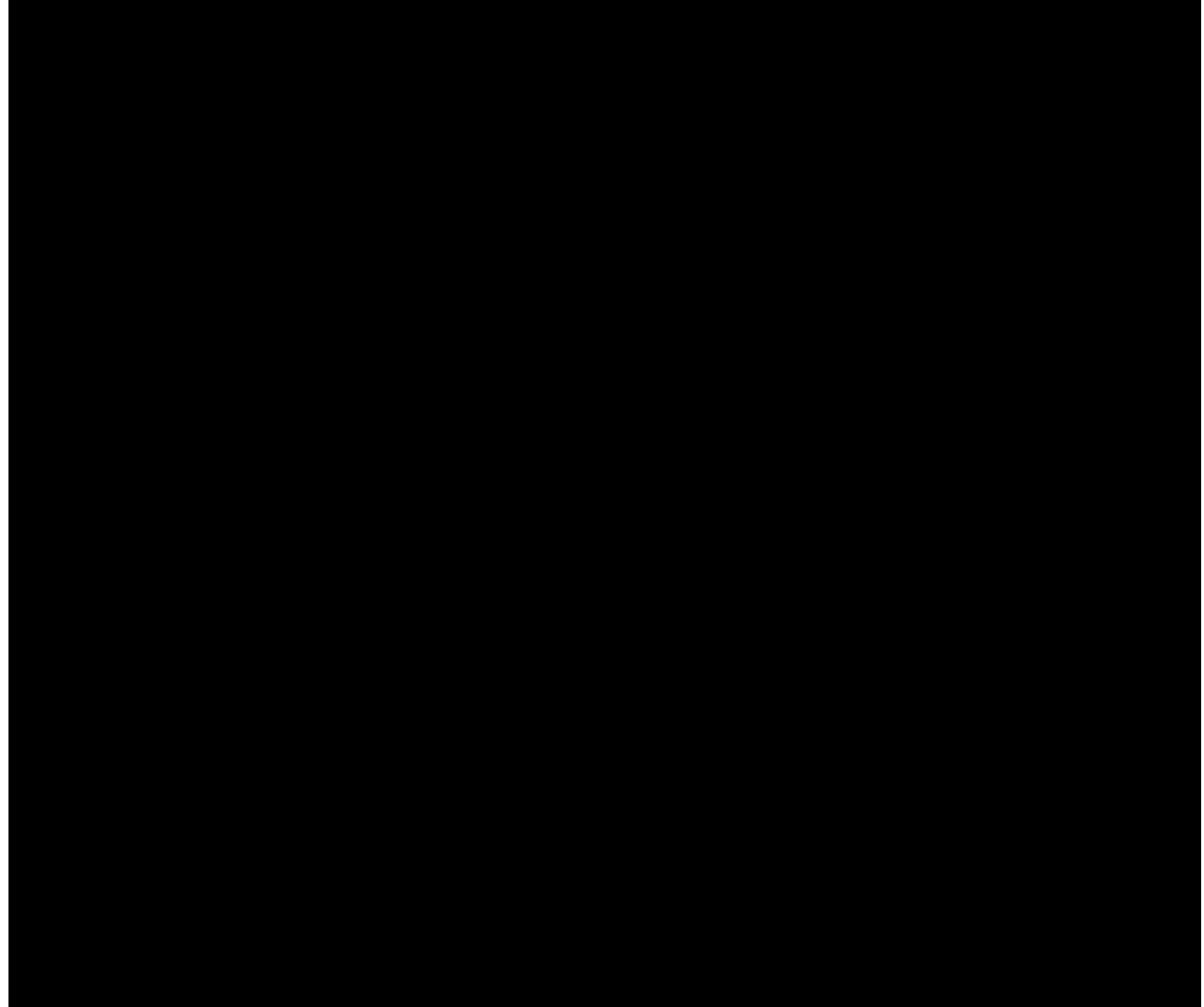
Ref	Item (from table in Annexure A and B)	Inflation Adjustment Mechanism	Inflation Timing, Base and Multiplier



4.7 Patronage Incentive

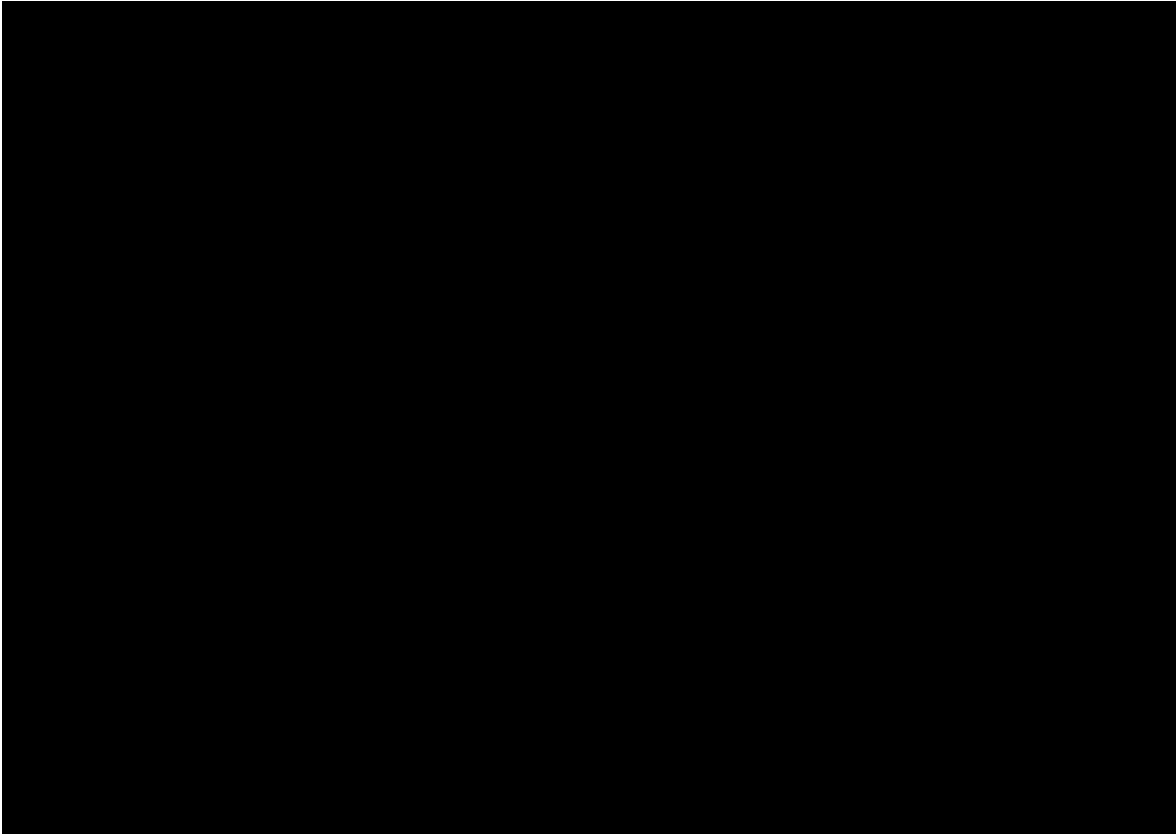
- (a) In addition to any other payments made by TfNSW to the Operator under this Schedule, the Operator will also receive a payment sum for each Fare paying passenger travelling on the Services.

- (b) The Patronage Incentive Payment will be at the rate of [REDACTED] per Fare paying passenger.
- (c) The Operator must accurately record the total number of Fare paying passengers travelling on the Services each month and submit those total numbers to TfNSW in its monthly Tax Invoice to TfNSW.
- (d) The parties acknowledge the Patronage Incentive Payment will not be adjusted for inflation.



4.9 Price Adjustments for On Demand Services

- (a) With effect from the On Demand Service Option Commencement Date for each On Demand Service Option the Annual Contract Price will be adjusted by adding the amounts included under Ref 1 to 7 in Annexure E for the On Demand Service Option to the Annual Contract Price. The adjustment amounts will be indexed in accordance with paragraph 4.5.
- (b) With effect from the On Demand Service Option Commencement Date for each On Demand Service Option the Payments will be adjusted by adding the amounts included under Ref 8 in Annexure E (**Vehicle capital and finance costs**) for the On Demand Service Option to the Annual Contract Price. Subject to paragraph 4.9(c), the adjustment amounts for Vehicle capital and finance costs will not be adjusted for indexation at any point in time.

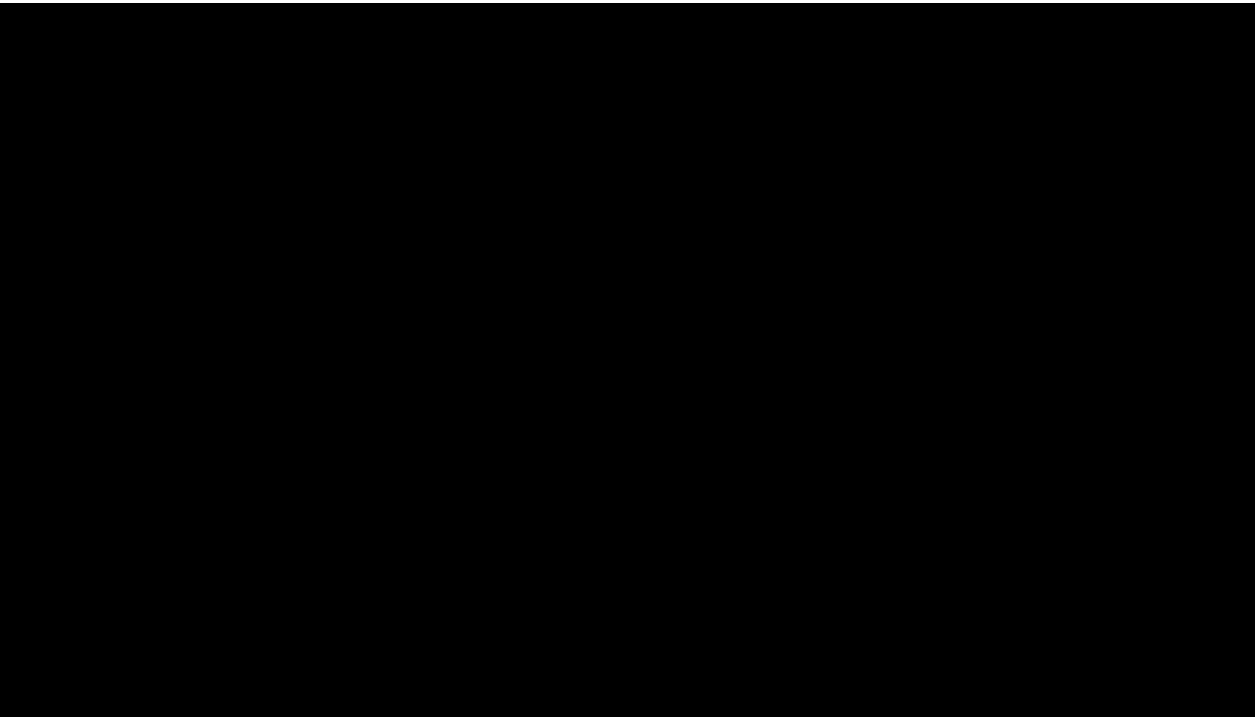


4.10 Price Adjustments for Wayfinding Signage Upgrade Program

The price adjustment paid to the Operator for executing the WSUP Works is set out in Annexure F.

4.11 Price Adjustments for Headway Management Solution

- (a) The price adjustment paid to the Operator for developing and providing a Headway Management Solution in accordance with Item 3.17 of the Services Schedule is set out in Annexure F.
- (b) The price will not be adjusted by the amounts included in Annexure F if TfNSW issues a notice to the Operator under Clause 17.4(c).



Schedule 4 - Key Performance Indicators

1. Definitions and Interpretation

(a) In this Schedule:

- (i) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (ii) a reference to a Clause is a reference to a Clause in the Contract; and
- (iii) a reference to a paragraph is a reference to a paragraph in this Schedule.

(b) In this Schedule, the following words have the following meanings:

Boardings means the number of Trips taken by all passengers.

Booked On Demand Services means an On Demand Service that has been booked by a passenger and a booking confirmation has been provided to the passenger by or on behalf of the Operator.

Calendar Month means the period that commences on the first day of the month and ends on the last day of the month.

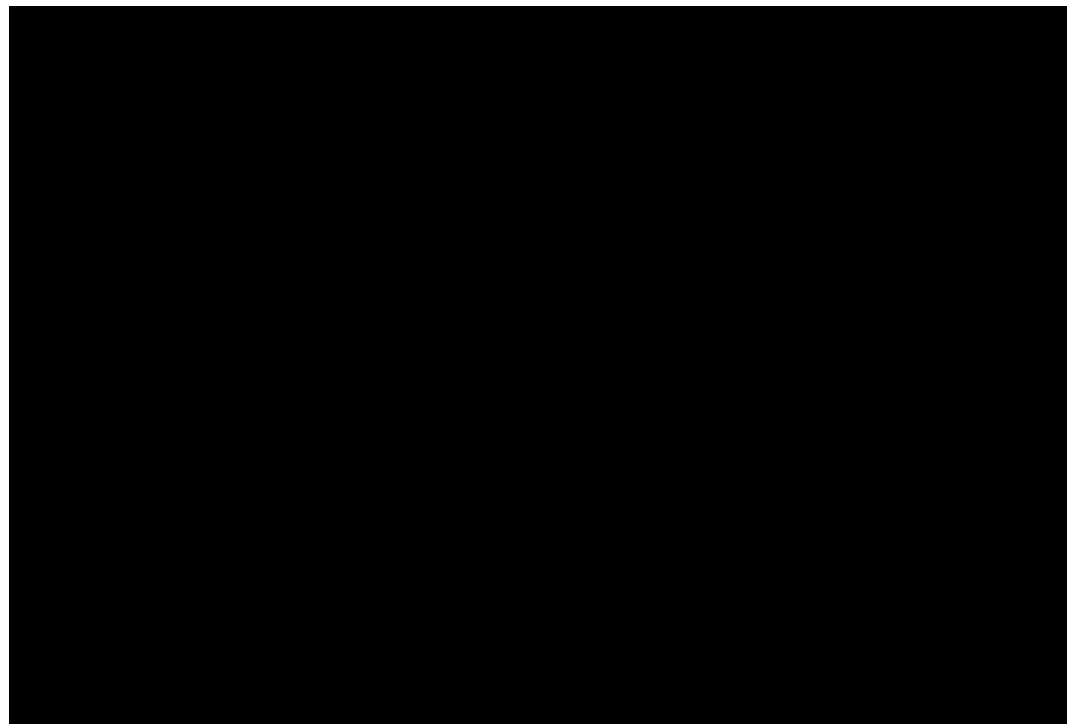
Cancelled Trip means the whole of the advertised Timetable, Headway, or Dedicated School Services Timetable Trip was cancelled or did not operate.

Class 1 Key Performance Indicator means a KPI identified as such in this Schedule.

Class 2 Key Performance Indicator means a KPI identified as such in this Schedule.

Class 4 Key Performance Indicator means a KPI identified as such in this Schedule.

Crowded means Contract Bus full on Route which leaves customers behind.



Headway Services means the Bus services which are Headway Trips.

Headway Trips means Trips that are not scheduled to a public timetable.

In-Service Hour means time in hours travelled in performing the Services, in which passengers are able to board the Contract Bus (for the avoidance of doubt this excludes the time for that Contract Bus to travel the most direct practicable route between the finishing point of that Service and the starting point of the next Service or between a Contract Depot and a starting or finishing point of that Service).

Incomplete Trip means only a part of the advertised Service operated. This means the Trip was shortened to start or end at a point/s between the advertised start and finish, and/or intermediate Transit Stops are missed.

KPI means a Key Performance Indicator.

KPI Class means the classification of the KPI as a Class 1, Class 2, Class 4 KPI.

KPI Credit Allocation Percentage means the percentage defined in the table set out in paragraph 6 of this Schedule.

KPI Credit means the amount payable by the Operator to TfNSW for non-performance of KPIs, being a civil penalty provision for the purposes of section 38 of the PT Act 2014 and a genuine pre-estimate, agreed by the parties, to off-set part of TfNSW's direct or indirect costs arising from the Operator's non-performance.

KPI Debit means the amount payable by TfNSW to the Operator for a KPI Satisfaction.

KPI Debit Allocation Percentage means the percentage defined in the table set out in paragraph 6 of this Schedule.

KPI Default means failure to comply with a KPI.

KPI Negative Trend means a trend in the measured results of a KPI which demonstrate a reduction in the achievement of that KPI resulting in, or likely to result in, a KPI Default.

KPI Relief means an Operator is excused from non-performance of a KPI as a result of an Excused Performance Incident in accordance with paragraph 5.6 of this Schedule.

KPI Reporting Period means the frequency with which the period of time in which the Operator's performance of the KPI will be measured as determined in accordance with the relevant KPI Table.

KPI Satisfaction means that the Operator has meet or exceeded a Class 1 Key Performance Indicator or Class 4 Key performance Indicator.

KPI Table means the KPI tables set out in paragraph 9 of this Schedule.

Late means a Contract Bus departing a Transit Stop more than 5 minutes 59 seconds later than timetabled.

On Time means:

- (i) for Published Timetable Trips, a Contract Bus departing a Transit Stop no earlier than the timetabled departure time and no more than 5 minutes 59 seconds late compared to Timetable. Where Contract Buses link with train services in the Timetable, time is measured from when passengers arrive at the Transit Stop; and
- (ii) for Trips that are On Demand Services:
 - (A) in respect of the arrival of the Trip at its pick up location, a Contract Bus arriving the correct pick up location within 5 minutes and 59 seconds after the end of the booked time window provided at time of booking; and
 - (B) in respect of the arrival of the Trip at its destination, a Contract Bus arriving the nominated destination within 5 minutes and 59 seconds after the end of the scheduled arrival window provided at time of booking.

Published Timetable Trips means trips on Routes that are scheduled by public timetable rather than Headway.

- (c) The following table sets out how the KPI Tables included in this Schedule 4 are to be interpreted:

Name	The name of the KPI
Description	A description of what the KPI does and, at a high level, how it is measured and calculated
Hours measured	The hours during which the KPI calculation is applied

Name	The name of the KPI
KPI	The level which the delivery performance of the Operator (calculation) must equal or exceed. If multiple levels are specified each level can cause a KPI Defaults and multiple KPI Defaults can result from the KPI.
KPI Credit Thresholds	The thresholds that determine which KPI Credit Allocation Percentages are applied.
KPI Debit Thresholds	The thresholds that determine which KPI Debit Allocation Percentages are applied.
Class	Either Class 1, Class 2 or Class 4
Measurement methodology	
Measurement starting point	The point in time at which the Operator must commence measurement for any KPI Reporting Period
Calculation	The algorithm for calculation of the level of performance of the KPI for the KPI Reporting Period
Period of calculation	The period over which the performance of the KPI must be calculated in each report
Measurement unit	The granularity with which the KPI performance must be measured and reported against
Data source	The data sources TfNSW will consider in order to provide an accurate measurement
Measurement responsibility	Whether it is the responsibility of the Operator, TfNSW or a third party to measure (or collect the measurement of) and then calculate the KPI
Reporting frequency	How frequently performance against this KPI should be reported (typically this is each Calendar Month unless specified otherwise in this Schedule 4 (KPI Reporting Period))

2. KPI Principles

- (a) In accordance with Clauses 10 and 13 of the Contract, the Operator must perform the Services described in the Services Schedule and the Service Levels Schedule of the Contract measured against the KPIs set out in this Schedule 4.
- (b) The Operator acknowledges:
 - (i) the emphasis of the KPI regime is on delivery of the Services to meet TfNSW's business requirements and on performance improvement where the Services fail to meet the requirements;
 - (ii) unless otherwise specified in this Schedule 4 or directed by TfNSW, KPIs apply from the Service Commencement Date and data must be sourced from available sources if automation of data collection is not available;
 - (iii) TfNSW requires flexibility to modify KPIs and the management regime in order to keep pace with the changing business environment; and
 - (iv) TfNSW may classify KPIs to guide the Operator as to which KPIs are the most important, but TfNSW may change this classification at TfNSW's absolute discretion as the business environment or the performance of the Operator changes.

3. KPI Reporting

- (a) In accordance with the reporting frequency specified for every KPI in the relevant KPI Table, the Operator must provide a written report to TfNSW containing, at a minimum, the following information:
 - (i) numerical data setting out the KPI performance achieved during the KPI Reporting Period against, where applicable, the data for the preceding Quarter, 6 Calendar Months and 12 Calendar Months;
 - (ii) a graphical representation of that data highlighting the KPI, the actual performance during the KPI Reporting Period and the performance for the previous Quarter, 6 Calendar Months or 12 Calendar Months (as applicable);
 - (iii) a summary table demonstrating performance for each KPI;
 - (iv) details of any KPI Credits and KPI Debits incurred during the KPI Reporting Period;
 - (v) commentary explaining any performance variations and performance trends;
 - (vi) where, for the KPI Reporting Period, there is a KPI Default, or there is an indication of a KPI Negative Trend, an explanation of the causes of the KPI Default or KPI Negative Trend;
 - (vii) a proposed cure plan, developed by the Operator to address the causes of any KPI Default or KPI Negative Trend, including proposed actions for the Operator;
 - (viii) where there has been a previous cure plan for the KPI, the status of the actions and an explanation of any relationship between the cure plans and current performance;
 - (ix) the total amount of KPI Credits imposed for KPI Defaults in the preceding 12 Calendar Months; and
 - (x) any other information required by the Reporting Schedule.
- (b) The Operator must include such other information in its reports to TfNSW as is specified in this Schedule 4 or as otherwise required by TfNSW from time to time.
- (c) The Operator must use the format for KPI reporting specified in paragraph 2 of the Reporting Schedule.
- (d) Where the Operator develops a cure plan under paragraph 3(a)(vii) of this Schedule 4 to address the causes of any KPI Default or a KPI Negative Trend in a KPI performance and proposes actions to be performed by TfNSW, the Operator acknowledges that:
 - (i) TfNSW may accept those proposed actions at its absolute discretion; and
 - (ii) nothing in the proposed cure plan derogates from the Operator's responsibility to perform the Services.
- (e) The Operator must implement and diligently pursue any cure plan required to be provided under paragraph 3(a)(vii) of this Schedule 4 to address the causes of any KPI Default or a KPI Negative Trend in a KPI performance.
- (f) TfNSW may, from time to time, redefine its requirements for KPI reporting or request additional material to be provided by the Operator for any KPI which the Operator must provide.
- (g) The Operator may propose additional or alternative data sources that would, in the reasonable opinion of the Operator, improve the quality of measurement and reporting against the KPI. TfNSW may consider any additional or alternative data sources proposed at its absolute discretion.

- (h) In addition to reporting in the KPI Reporting Period specified for each KPI, within 15 days of each KPI Reporting Period, the Operator must provide a report to TfNSW that includes, with respect to each KPI for which there was a KPI Default during the preceding 12 months, the following:
- (i) statistics on the Operator's monthly performance against each of the KPIs included in the report during the preceding year;
 - (ii) the yearly Performance Average for the KPIs included in the report;
 - (iii) the total amount of KPI Credits imposed for KPI Defaults;
 - (iv) the total amount of KPI Debits.

4. KPI Classes

The parties acknowledge and agree that KPIs are classified into KPI Classes as defined in the table below:

KPI Class	Description	Management
Class 1	The measurement, management, reporting and achievement of the KPI must be met by the Operator.	Actively monitored and managed by the Operator; breaches within any KPI Reporting Period require the Operator to develop an incident report in accordance with paragraph 3(a) of this Schedule 4 with an explanation and remedial action proposed to ensure the KPI is met. The Operator's performance against the KPI must be reported, presented and reviewed at the regular monthly meeting.
Class 2	The KPI information is to be measured, captured and reported on a regular basis.	Performance is monitored and reported on a monthly basis by the Operator (unless otherwise stated in the KPI description). Where the KPI is not met, the Operator must take remedial action where it is necessary to continue to meet the KPI.
Class 3	Not Used	Not used
Class 4	Applies to Customer Satisfaction and Passenger Information only	Actively monitored and managed by the Operator; breaches within any reporting period require an incident report with explanation and remedial action if required. Will be reported, presented and reviewed at the regular monthly meeting.

5. Calculation of KPI Credits and KPI Debits

5.1 Applicability

- (a) The Operator must pay KPI Credits to TfNSW for a KPI Default of a KPI as specified in the KPI Tables, other than where non-compliance with a KPI is as a result of an Excused Performance Incident for which the Operator has been granted KPI Relief, in accordance with the Contract.
- (b) TfNSW must pay KPI Debits to the Operator for a KPI Satisfaction of a KPI as specified in the KPI Tables.

5.2 Calculation of KPI Credits and KPI Debits

- (a) KPI Credits and KPI Debits are calculated in the Contract Month following the KPI Reporting Period for each KPI as specified in the KPI Tables.
- (b) Subject to paragraph 5.1 of this Schedule 4, in the event of a KPI Default of a KPI as specified in the KPI Tables, the Operator must pay to TfNSW a KPI Credit as calculated below.

- (c) The Operator must pay to TfNSW a KPI Credit for a KPI Default computed in accordance with the following formulae:
- (i) in the event of a KPI Default (in respect of a Class 1 Key Performance Indicator or a Class 2 Key Performance Indicator that is nominated under the table in paragraph 6(a)):
- $$KPI\ Credit = A \times B \times C$$
- where:
- $A =$ subject to paragraph 6(c), the KPI Credit Allocation Percentage for the KPI Default as shown in the KPI Credit table in paragraph 6 of this Schedule 4;
- $B =$ the At Risk Amount – [REDACTED] and
- $C =$ the aggregate of the Monthly Contact Price for each month in the KPI Reporting Period; and
- (ii) in the event of a KPI Default in respect of a Class 4 Key Performance Indicator:
- $$KPI\ Credit = A \times B$$
- where:
- $A =$ the KPI Credit Allocation Percentage for the KPI Default as shown in the KPI Credit tables in paragraph 6 of this Schedule 4; and
- $B =$ the aggregate of the Monthly Contact Price for each month in the KPI Reporting Period.
- (d) In the event of a KPI Satisfaction of a KPI as specified in the KPI Tables, TfNSW must pay to the Operator a KPI Debit as calculated below.
- (e) TfNSW must pay to the Operator a KPI Debit for a KPI Satisfaction computed in accordance with the following formulae:
- (i) in the event of a KPI Satisfaction in respect of a Class 1 Key Performance Indicator:
- $$KPI\ Debit = A \times B \times C$$
- where:
- $A =$ subject to paragraph 6(h), the KPI Debit Allocation Percentage for which the KPI Satisfaction occurred as shown in the KPI Debit tables in paragraph 6 of this Schedule 4;
- $B =$ [REDACTED] and
- $C =$ the aggregate of the Monthly Contact Price for each month in the KPI Reporting Period; and
- (ii) in the event of a KPI Satisfaction in respect of a Class 4 Key Performance Indicator:
- $$KPI\ Debit = A \times B$$
- where:
- $A =$ the KPI Debit Allocation Percentage for the KPI Satisfaction as shown in the KPI Debit tables in paragraph 6 of this Schedule 4; and
- $B =$ the aggregate of the Monthly Contact Price for each month in the KPI Reporting Period.

5.3 KPI Credit and Debit Caps

- (a) The parties acknowledge that the aggregate amount of Class 1 and Class 2 KPI Credits payable by the Operator to TfNSW with respect to all Class 1 and Class 2 KPI Defaults calculated in a Contract Month must not exceed the At Risk Amount for KPI Credits set

out in paragraph 5.2 multiplied by the Monthly Contract Price. For the avoidance of doubt the Monthly Class 1 KPI Credit Cap does not apply to Class 4 KPI Credits.

- (b) The parties acknowledge that the aggregate amount of KPI Debits payable by TfNSW to the Operator with respect to all KPI Satisfactions calculated in a Contract year must not exceed the sum of [REDACTED] multiplied by the aggregate of the Monthly Contract Price for each month in the Contract Year.

5.4 Multiple KPI Defaults

- (a) For each KPI, if more than one KPI Default has occurred in a single Calendar Month, the Operator must credit the sum of the corresponding KPI Credits to TfNSW in accordance with Schedule 3 (Payment Schedule).
- (b) For the avoidance of doubt, a single incident may give rise to multiple KPI Defaults in respect of a single KPI or in respect of different KPIs including where a KPI Table includes multiple KPIs.

5.5 KPI Credit Reporting

The Operator must immediately notify TfNSW in writing if TfNSW becomes entitled to a KPI Credit or if the Operator becomes entitled to a KPI Debit, and must include any such notification in its reporting for each KPI in accordance with the reporting frequency specified for the KPI.

5.6 Excused Performance Incident

- (a) In the event of an Excused Performance Incident, the Operator must:
 - (i) if the Excused Performance Incident relates to a Relief Event, apply for relief in accordance with Clause 40; and
 - (ii) in any other case, apply for relief as if the Excused Performance Incident were a Relief Event in accordance with Clauses 40.2 and 40.3.
- (b) The Operator acknowledges if TfNSW does not receive written notification in accordance with Clause 40, the Incident will not be an Excused Performance Incident for the purposes of this Schedule 4.
- (c) In support of an application for KPI Relief, the Operator must provide TfNSW supporting documentation detailing the circumstances of the Excused Performance Incident and the effect of the Excused Performance Incident on one or more of the KPIs.
- (d) The Operator acknowledges that, in the event of a KPI Default which is caused by an Excused Performance Incident and for which KPI Relief is granted, the Operator's obligations in relation to the performance of the Services and compliance with the KPIs which are not affected by the Excused Performance Incident continue and include, but are not limited to:
 - (i) an obligation to use commercially reasonable efforts to reinstate the Services affected by the Excused Performance Incident and meet the KPIs affected by the Excused Performance Incident as soon as possible in the circumstances;
 - (ii) track and monitor the performance against the KPIs affected by the Excused Performance Incident; and
 - (iii) continue to report Excused Performance Incidents as if they were any other Incidents for the purposes of analysis and corrective action.

6. KPI Credits and KPI Debit weighting


- (a) Subject to paragraph 6(b) below, the KPI Credit Allocation Percentages for each KPI as at the Service Commencement Date are set out in the following table:

Table No	KPI	KPI Credit Allocation Percentage
1A	Service Reliability – Punctuality Rate – On Time Running (OTR)	[REDACTED]

Table No	KPI	KPI Credit Allocation Percentage
1B	Service Reliability – Punctuality Rate – Excess Wait Time (EWT)	
3A	Incomplete Trips	
3B	Cancelled Trips	
3C	Cancelled and Incomplete Trips	
5	Customer Complaint per Boarding	
8	Customer Satisfaction (Class 4)	
9	Passenger Information (Class 4)	
10	Asset Presentation	
11	Asset Condition	
12	Contract Bus Maintenance Major Defects	
13	Contract Bus Maintenance Minor Defects	
15	Revenue Collection Rate	
18	Data Maintenance	
20	Class 2 KPI (1), which as at the date of this Contract is KPI Table 16 (Reporting)	
21	Class 2 KPI (2), which as at the date of this Contract is KPI Table 14 (CCTV and Duress Alarm Reliability)	

- (b) Subject to paragraph 6(c) below, if a KPI Table contains KPI Credit Bands, the relevant KPI Credit Allocation Percentage for that KPI will be the relevant KPI Credit Band percentage corresponding to the extent of the KPI Default.
- (c) In respect of the Punctuality Rate KPI 1 (1A and 1B), a single KPI Credit Allocation Percentage will be calculated which will be the weighted average of the KPI Credit Allocation Percentages specified under paragraph 6(a) above. The weighting will be determined based on the In-Service Hours provided in the KPI Reporting Period for each of the Contract Bus Services and Dedicated School Services (OTR) and Headway Services (EWT). If the KPI in Table 1C is nominated as item 20 or 21 under paragraph 6(e) of this Schedule 4, that KPI will be included in the single KPI Credit Allocation Percentage under, and on the same basis as set out in, this paragraph.
- (d) The parties acknowledge that the KPI Credit Table contains KPIs the performance of which have a significant business impact to TfNSW.
- (e) TfNSW may substitute the Class 2 KPIs included in items 20 and 21 in the KPI Credit Table with any other Class 2 KPI by no less than 30 days written notice to the Operator.
- (f) Subject to paragraph 6(g) below, the KPI Debit Allocation Percentages for each KPI as at the Service Commencement Date are set out in the following KPI Debit Table:

No	KPI	KPI Debit Allocation Percentage
1A	Service Reliability – Punctuality Rate – On Time Running (OTR)	










1B	Service Reliability – Punctuality Rate – Excess Wait Time (EWT)	
8	Customer Satisfaction (Class 4)	
9	Passenger Information (Class 4)	

- (g) Subject to paragraph 6(h), if a KPI Table contains KPI Debit Bands, the relevant KPI Debit Allocation Percentage for that KPI will be the relevant KPI Debit Band Allocation Percentage corresponding to the extent of the Operator's relevant performance.
- (h) In respect of KPI 1 (1A and 1B), a single KPI Debit Allocation Percentage will be calculated which will be the weighted average of the KPI Debit Allocation Percentages specified under paragraph 6(f) above. The weighting will be determined based on the In-Service Hours provided in the KPI Reporting Period for each of the Contract Bus Services and Dedicated School Services (OTR) and Headway Services (EWT).

7. Not used

8. Not used

9. KPIs

KPI	Table 1A (Punctuality Rate – On Time Running (OTR))
Description	This KPI aims to ensure that Contract Bus Services and Dedicated School Services run to Timetable or Dedicated School Services Timetable (as relevant). It will measure the variation from Timetable or Dedicated School Services Timetable for all Trips each month, measured at the start, mid and end point of each Trip. This KPI does not apply to Headway Services.
Hours measured	All hours of operation
KPI	<p>The minimum weighted On Time performance is expected to be :</p> <ul style="list-style-type: none"> at least  of Trips that are Published Timetable Trips leave the first Transit Stop of each Trip On Time. Where the Dedicated School Service is directed by a school employee or bus marshal to leave early, the Dedicated School Service will be deemed to be On Time ( weighting) at least  of Trips that are Published Timetable Trips leave the TfNSW nominated mid-point Transit Stop On Time ( weighting) at least  of Trips that are Published Timetable Trips arrive at the TfNSW nominated Transit Stop close to the end of each Trip On Time ( weighting) <p>In the first 6 KPI Reporting Periods from the Service Commencement Date the minimum weighted On-Time Performance will be:</p> <p>KPI Reporting Period 1: </p> <p>KPI Reporting Period 2: </p>

KPI	Table 1A (Punctuality Rate – On Time Running (OTR))
	KPI Reporting Period 3: [REDACTED] KPI Reporting Period 4: [REDACTED] KPI Reporting Period 5: [REDACTED] KPI Reporting Period 6: [REDACTED]
KPI Credit Thresholds	First KPI Credit Band: [REDACTED] Second KPI Credit Band: [REDACTED] Third KPI Credit Band: [REDACTED]
KPI Debit Thresholds	First KPI Debit Band: [REDACTED] Second KPI Debit Band: [REDACTED] Third KPI Debit Band: [REDACTED] If the First KPI Debit Band threshold has been not been met or exceeded in the two KPI Reporting Periods prior to the KPI Reporting Period for which the KPI is measured, the KPI Debit Allocation Percentage for the KPI Reporting Period will be deemed to be 0% for the purpose of the KPI Debit calculation.
Class	Class 1
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	A. (Number of Trips that are Published Timetable Trips that leave the first Transit Stop On Time / Total number of Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100% B. (Number of mid-point Transit Stops departed On Time for Trips that are Published Timetable Trips / Total number of mid-point Transit Stops for Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100% C. (Number of Trips that are Published Timetable Trips arrived the nominated Transit Stop close to the end of the Trip On Time/ Total number of the nominated Transit Stops for Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100% KPI result = [REDACTED]
KPI Reporting Period	Monthly
Measurement unit	% of Transit Stops for which a Trip is not On Time
Data source	Relevant system such as PTIPS, analysed to provide performance information. KPI will be based on TfNSW nominated Transit Stops for all Routes for which automated data is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 1B (Punctuality Rate – Excess Wait Time (EWT))
Description	This KPI aims to ensure that Headway Services run at the required frequency and applies to all Headway Trips.
Hours measured	All hours of operation or other time periods as nominated by TfNSW

KPI	Table 1B (Punctuality Rate – Excess Wait Time (EWT))
KPI	<p>Excess Wait Time does not exceed [REDACTED] minutes.</p> <p>In the first 6 KPI Reporting Periods from the commencement of a Headway Service the EWT target will be:</p> <p>KPI Reporting Period 1 and 2: EWT does not exceed [REDACTED] minutes</p> <p>KPI Reporting Period 3 and 4: EWT does not exceed [REDACTED] minutes</p> <p>KPI Reporting Period 5 and 6: EWT does not exceed [REDACTED] minutes</p> <p>The KPI Credit and Debit Thresholds in these Reporting Periods will be adjusted accordingly based on these targets such that:</p> <div data-bbox="564 645 1473 913" style="background-color: black; width: 100%; height: 100%;"></div> <p>For example, in KPI Reporting Period 1, the First KPI Credit Band will be between [REDACTED] minutes and [REDACTED] minutes and the First KPI Debit Band will be between [REDACTED] minutes and [REDACTED] minutes.</p>
KPI Credit Thresholds	<p>Subject to the adjustments described in the row above for the first 6 KPI Reporting Periods:</p> <div data-bbox="564 1133 1182 1211" style="background-color: black; width: 100%; height: 100%;"></div>
KPI Debit Thresholds	<p>Subject to the adjustments described in the row above for the first 6 KPI Reporting Periods:</p> <div data-bbox="564 1323 1171 1402" style="background-color: black; width: 100%; height: 100%;"></div> <p>If the First KPI Debit Band threshold has been not been met or exceeded in the two KPI Reporting Periods prior to the KPI Reporting Period for which the KPI is measured, the KPI Debit Allocation Percentage for the Reporting Period will be deemed to be 0% for the purpose of the KPI Debit calculation.</p>
Class	Class 1
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	<p>The EWT is calculated for all Headway Services based on measurements at selected times and Transit Stops along the Route as nominated by TfNSW from time to time. Calculation of EWT may be weighted by time of day and day per week based on weightings nominated by TfNSW. Such weightings will not change the amount at risk for this KPI.</p> <p>Excess Wait Time = Actual Wait Time (AWT) – Scheduled Wait Time (SWT) where:</p>

KPI	Table 1B (Punctuality Rate – Excess Wait Time (EWT))
	$AWT = \frac{\sum_1^n Aheadway^2}{2 \times \sum_1^n Aheadway}$ $SWT = \frac{\sum_1^n Sheadway^2}{2 \times \sum_1^n Sheadway}$ <p>where:</p> <p><i>Aheadway</i> = the actual Headway in minutes</p> <p><i>Sheadway</i> = the Scheduled Headway in minutes</p>
KPI Reporting Period	Monthly
Measurement unit	Excess Wait Time (EWT): the average time passengers wait over and above what would have been expected if the service was running exactly as scheduled in minutes expressed in decimals.
Data source	Relevant system such as PTIPS, analysed to provide performance information. KPI will be based on TfNSW nominated Transit Stops for all Routes for which automated data is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 1C (Punctuality Rate – On Time Pick-Up (OTP))
Description	This KPI aims to ensure that On Demand Services arrive at the correct pick up time
Hours measured	All hours of operation
KPI	At least 95% of On Demand Services arrive On Time
Class	Class 2
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	100 x (Number of Booked On Demand Services that arrive On Time / Total number of Booked On Demand Services measured in the KPI Reporting Period)%
KPI Reporting Period	Monthly
Measurement unit	Pick ups for which an On Demand Service is not On Time
Data source	Relevant system such as PTIPS or On Demand Service systems, analysed to provide performance information, Operator systems and or apps.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 2 (Reliability of On Demand Services)
Description	This KPI aims to ensure that On Demand Services arrive at the nominated destination at the time provided by the Operator in a booking confirmation.
Hours measured	All hours of operation

KPI	Table 2 (Reliability of On Demand Services)
KPI	At least 95% of On Demand Services arrive at the nominated destination On Time
Class	Class 2
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	$100 \times (\text{Number of Booked On Demand Services that are On Time Destination Service} / \text{Total number of Booked On Demand Services measured in the KPI Reporting Period})\%$
KPI Reporting Period	Monthly
Measurement unit	On-Demand Service which do not arrive On Time
Data source	Relevant system such as PTIPS or On-Demand systems, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 3A (Incomplete Trips)
Description	This KPI aims to ensure that Contract Bus Services and Dedicated Bus Services are delivered in full, and Transit Stops are not missed to correct timetable or frequency issues. All Incomplete Trips must be reported against the total Trips for the period. This KPI does not apply to Headway Services or On Demand Services.
Hours measured	All hours of operation
KPI	<0.5% Incomplete Trips
KPI Credit Threshold	KPI Credit Band: More than 0.5%
Class	Class 1
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	$(\text{Incomplete Trips}) / \text{Total Trips} \times 100\%$
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Relevant system such as PTIPS, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 3B (Cancelled Trips)
Description	This KPI aims to ensure that Contract Bus Services and Dedicated School Services are delivered. All Cancelled Trips must be reported against the total

KPI	Table 3B (Cancelled Trips)
	Trips for the period. This KPI does not apply to Headway Services or On Demand Services.
Hours measured	All hours of operation
KPI	<0.5% Cancelled Trips
KPI Credit Band	KPI Credit Band: More than 0.5%
Class	Class 1
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	(Cancelled Trips)/Total Trips x 100%
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Relevant system such as PTIPS, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 3C (Cancelled and Incomplete Trips)
Description	This KPI aims to ensure that Contract Bus Services and Dedicated School Services are delivered. All Cancelled Trips and Incomplete Trips must be reported against the total Trips for the period. This KPI does not apply to Headway Services or On Demand Services.
Hours measured	All hours of operation
KPI	<0.75% Incomplete Trips and Cancelled Trips
KPI Credit Band	KPI Credit Band: More than 0.75%
Class	Class 1
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	Sum of Incomplete Trips and Cancelled Trips as calculated in Table 3A and 3B.
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Relevant system such as PTIPS, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

If a KPI Default occurs on KPI 3C (Cancelled and Incomplete Trips), the KPI Credit Allocation Percentages for KPI 3A or 3B will not be applied.

KPI	Table 4 (Accessible Bus Services)
Description	<p>This KPI aims to ensure that Timetabled Accessible Services are available as advertised. All Accessible Services Not Operated must be reported against the total Trips for the period.</p> <p>In this KPI 4:</p> <p>Timetabled Accessible Services is defined as the number of Wheelchair Accessible timetabled Trips during the KPI Reporting Period.</p> <p>Wheelchair Accessible is defined as a Bus which has wheelchair access such as a ramp.</p> <p>Accessible Services Not Operated is defined as the total wheelchair accessible Bus Trips not operated in full or in part during the KPI Reporting Period or are not operated using a Bus which is Wheelchair Accessible.</p>
Hours measured	All hours of operation
KPI	100% of Timetabled Accessible Services operate
Class	Class 2
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	$100 \times (\text{Accessible Services Not Operated} / \text{Timetabled Accessible Services})\%$
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	<p>Relevant Systems such as PTIPS</p> <p>Driver, customer complaints, mystery shopper.</p> <p>Contract Bus designation to include information on accessibility.</p>
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 5 (Customer Complaint per Boardings)
Description	<p>Measures the level of customer complaints per 100,000 Boardings to ensure that the level of complaints is effectively managed and improvements are implemented to enhance customer satisfaction.</p> <p>In this KPI 5:</p> <p>Complaint means each report of a negative experience in relation to the Services</p>
Hours measured	All hours of operation
KPI	<22 complaints per 100,000 Boardings
KPI Credit Threshold	KPI Credit Band: More than 22 Complaints per 100,000 Boardings

KPI	Table 5 (Customer Complaint per Boardings)
Class	Class 1
Measurement methodology	
Measurement starting point	Beginning of each Contract Year
Calculation	Complaints received during the previous Contract Year per 100,000 Boardings for the previous Contract Year
KPI Reporting Period	Contract Year
Measurement unit	Complaints
Data source	Operator and TfNSW Customer Feedback System, Transport Infoline, Boardings (from Opal system)
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 6 (Customer Complaint Resolution)
Description	Customer Complaint Resolution means the satisfactory closure of customer complaints within agreed timeframes. It is measured from the time of receipt of the complaint by the Operator to the resolution and closure of the complaint in accordance with the Customer Service Plan
Hours measured	24/7
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> • KPI 6(i): 70% of all complaints and feedback (when the customer has requested a response) are resolved within 2 Business Days after the complaint is received by the Operator • KPI 6(ii): 100% of customers with an unresolved complained are contacted by the Operator within 20 Business Days after the complaint is received by the Operator • KPI 6(iii): 95% of all complaints received up until five Business Days before the end of the KPI Reporting Period are resolved within the KPI Reporting Period • KPI 6(iv): 100% of calls received in KPI Reporting Period are included in the TfNSW Customer Feedback System. <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
Class	Class 2
Measurement methodology	
Measurement starting point	First Business Day of each KPI Reporting Period
Calculation	<ul style="list-style-type: none"> • KPI 6(i): $100 \times (\text{Complaints resolved within 2 Business Days during the KPI Reporting Period} / \text{Total complaints received for the KPI Reporting Period})\%$ • KPI 6 (ii): $100 \times (\text{Complaints resolved within 20 Business Days during the KPI Reporting Period} / \text{Total complaints received for the KPI Reporting Period})\%$ • KPI 6(iii): $100 \times (\text{Complaints resolved within the KPI Reporting Period} / \text{Total$

KPI	Table 6 (Customer Complaint Resolution)
	<p>complaints received for the KPI Reporting Period)%</p> <ul style="list-style-type: none"> KPI 6(iv): $100 \times (\text{Calls included in the TfNSW Customer Feedback System within the KPI Reporting Period} / \text{Total calls received for the KPI Reporting Period})\%$
KPI Reporting Period	Monthly
Measurement unit	Complaints
Data source	TfNSW Customer Feedback System and other customer complaints registers as advised by TfNSW from time to time
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 7 (Customer response times for On Demand Services)
Description	<p>Measures the Operator's response times in answering booking requests for On Demand Services.</p> <p>Customers should receive a response to their booking request (via telephone or app) for an On Demand Service within 1 minute</p>
Hours measured	All hours of operation
KPI	95% of calls received in KPI Reporting Period are responded to within 1 minute
Class	Class 2
Measurement methodology	
Measurement starting point	First Business Day of each KPI Reporting Period
Calculation	$100 \times (\text{Total booking requests received during the KPI Reporting Period responded to within 1 minute} / \text{Total booking requests received during the KPI Reporting Period}) \%$
KPI Reporting Period	Monthly
Measurement unit	Booking requests
Data source	TfNSW Customer Feedback System, Operator systems, apps
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 8 (Customer Satisfaction)
Description	<p>Customer Satisfaction means the level of satisfaction with the Operator's performance as expressed by a representative sample of the passengers (TfNSW to approve) as measured on a Likert Scale. The survey questions used in the calculation of this KPI will relate to services largely under the control of the Operator.</p>
Hours measured	N/A – by survey

KPI	Table 8 (Customer Satisfaction)
KPI	█ of all ratings above the mid-point of the Likert Scale, based on historical performance on services largely under the control of the Operator
KPI Credit Threshold	KPI Credit Band: Less than █
KPI Debit Threshold	First KPI Debit Band: Between █ Second KPI Debit Band: █
Class	Class 4
Measurement methodology	
Measurement starting point	First Business Day of the KPI Reporting Period
Calculation	On the basis of a survey (the structure and content to be defined by TfNSW) on a Likert Scale, the number of the ratings above the mid-point divided by the total number of ratings times 100.
KPI Reporting Period	Semi-annual or other periods as advised by TfNSW.
Measurement unit	Rating
Data source	Surveys of customer satisfaction
Measurement responsibility	TfNSW
Reporting frequency	Semi- annual

KPI	Table 9 (Passenger Information)
Description	This measures how well-informed passengers are in regards to the Services.
Hours measured	24x7
KPI	> 75% of passengers on Contract Buses are satisfied with information (based on a non-weighted average across the 4 customer satisfaction survey measures: availability of information for this bus, availability of next stop information for this bus, availability of information about service delays and ease of finding into (routes, stops, timetables)
KPI Credit Threshold	KPI Credit Band: Less than 75%
KPI Debit Threshold	First KPI Debit Band: Between 78% and 82% Second KPI Debit Band: More than 82%
Class	Class 4
Measurement methodology	
Measurement starting point	First day of Quarter
Calculation	100 x (The number of surveyed passengers satisfied with passenger information / the number of passengers surveyed)%
KPI Reporting Period	Semi-annual or other periods as advised by TfNSW.
Measurement unit	Passengers
Data source	Customer satisfaction surveys, mystery shopper

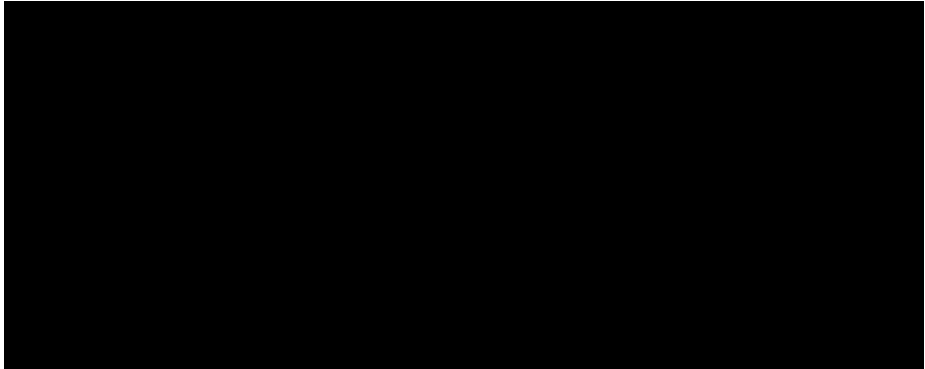



KPI	Table 9 (Passenger Information)
Measurement responsibility	TfNSW
Reporting frequency	Semi-annual

KPI	Table 10 (Asset Presentation)
Description	This KPI aims to ensure that all Contract Buses and Contract Depots are clean and tidy. Clean and tidy (includes general presentation including, clean at the beginning of each Trip, free of graffiti, good external presentation and paintwork, minimal window etching etc) in accordance with the Asset Presentation Schedule set out in Annexure 6 of Schedule 8.
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> • KPI 10(i): > 95% of passengers surveyed are satisfied with Contract Bus presentation • KPI 10(ii): 100% of Contract Buses and Contract Depots inspected in the KPI Reporting Period meet or exceed presentation standard 3 (Moderately Dirty) in accordance with the table in paragraph 1.3 of Annexure 6 to Schedule 8; or • KPI 10(iii): > 90% of Contract Buses and Contract Depots inspected in the KPI Reporting Period meet or exceed presentation standard 4 (Moderately Clean) in accordance with the table in paragraph 1.3 of Annexure 6 to Schedule 8. <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	KPI Credit Band: Failure of any one of the requirements set out under KPI.
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Contract Year
Calculation	<ul style="list-style-type: none"> • KPI 10(i): $100 \times (\text{The number of passengers surveyed in the KPI Reporting Period satisfied with Contract Bus presentation} / \text{the number of passengers surveyed in the KPI Reporting Period})\%$; or • KPI 10(ii): $100 \times (\text{The number of Contract Buses and Contract Depots inspected in the KPI Reporting Period which meet or exceed presentation standard 3 (Moderately Dirty)} / \text{The number of Contract Buses and Contract Depots inspected in the KPI Reporting Period})\%$; or • KPI 10(iii): $100 \times (\text{The number of Contract Buses and Contract Depots inspected in the KPI Reporting Period which meet or exceed presentation standard 4 (Moderately Clean)} / \text{The number of Contract Buses and Contract Depot inspected in the KPI Reporting Period})\%$
KPI Reporting Period	Contract Year
Measurement unit	Passengers and inspections
Data source	Customer complaints, customer satisfaction survey, random survey of presentation, mystery shopper and inspections
Measurement responsibility	TfNSW via customer surveys and audits

KPI	Table 10 (Asset Presentation)
Reporting frequency	Annually

KPI	Table 11 (Asset Condition)
Description	This KPI aims to ensure that all Contract Buses and Contract Depots are properly maintained.
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> KPI 11(i): 100% of Contract Buses and Contract Depots inspected in the KPI Reporting Period meet or exceed presentation standard 4 (Moderate wear and tear) in accordance with the table in paragraph 2.3 of Annexure 6 to Schedule 8; or KPI 11(ii): > 90% of Contract Buses and Contract Depots inspected in the KPI Reporting Period meet or exceed condition standard 5 (Minor wear and tear) in accordance with the table in paragraph 2.3 of Annexure 6 to Schedule 8. <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	KPI Credit Band: Failure of any one of the requirements set out under KPI.
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Contract Year
Calculation	<ul style="list-style-type: none"> KPI 11(i): $100 \times (\text{The number of Contract Buses and Contract Depots inspected in the KPI Reporting Period which meet or exceed condition standard 4 (Moderate wear and tear) / The number of Contract Buses and Contract Depots inspected in the KPI Reporting Period})\%$; or KPI 11(ii): $100 \times (\text{The number of Contract Buses and Contract Depots inspected in the KPI Reporting Period which meet or exceed condition standard 5 (Minor wear and tear) / The number of Contract Buses and Contract Depots inspected in the KPI Reporting Period})\%$
KPI Reporting Period	Contract Year
Measurement unit	Inspections
Data source	Inspections
Measurement responsibility	TfNSW via inspections
Reporting frequency	Annually

KPI	Table 12 (Contract Bus Maintenance – Major Defects or Incidents)
Description	<p>This KPI aims to ensure that all Contract Buses are properly maintained and do not have major defects or Major Preventable Incidents which potentially impact reliability and safety.</p> <p>In this KPI:</p>

KPI	Table 12 (Contract Bus Maintenance – Major Defects or Incidents)
	<p>Major Defect Notice means a notification issued by RMS or any other Governmental Agency in relation to a major defect identified in a Contract Bus during regular and random inspections by RMS or another Governmental Agency.</p> 
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> • KPI 12(i): Nil Major Defect Notices issued in respect of Contract Buses. • KPI 12(ii):  <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	<p>KPI Credit Band:</p> <ul style="list-style-type: none"> • For KPI 12(i): One or more Major Defect Notices issued in KPI Reporting Period • For KPI 12(ii): 
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	<p>For KPI 12(i): Number of Contract Buses in respect of which a Major Defect Notice is issued.</p> <p>For KPI 12(ii): </p>
KPI Reporting Period	Monthly
Measurement unit	<p>Contract Buses</p> <p>Incidents</p> <p>Accidents</p>
Data source	Contract Bus maintenance records, RMS, notices issued by Governmental Agencies, TfNSW data sources
Measurement responsibility	Operator, with selected audit by TfNSW.

KPI	Table 12 (Contract Bus Maintenance – Major Defects or Incidents)
Reporting frequency	Monthly

KPI	Table 13 (Contract Bus Maintenance – Minor Defects)
Description	<p>This KPI aims to ensure that all Contract Buses are properly maintained and do not have minor defects which potentially impact reliability and safety.</p> <p>In this KPI:</p> <p><8% of Contract Buses subject to minor defect notice issued by RMS or other Governmental Agencies</p>
Hours measured	All hours of operation
KPI	<p><8% of Contract Buses subject to minor defect notice issued by RMS or other Governmental Agencies</p> <p>In the first 6 KPI Reporting Periods from the Service Commencement Date the target will be:</p> <p>KPI Reporting Period 1: [REDACTED]</p> <p>KPI Reporting Period 2: [REDACTED]</p> <p>KPI Reporting Period 3: [REDACTED]</p> <p>KPI Reporting Period 4: [REDACTED]</p> <p>KPI Reporting Period 5: [REDACTED]</p> <p>KPI Reporting Period 6: [REDACTED]</p>
KPI Credit Threshold	KPI Credit Band: More than 8% of Contract Buses subject to minor defect notice issued by RMS or other Governmental Agencies.
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	Number of Contract Buses subject to minor defects notice
KPI Reporting Period	Monthly
Measurement unit	Contract Buses subject to minor defects notice issued by the RMS or other Governmental Agencies
Data source	Contract Bus maintenance records, RMS, notices issued by Governmental Agencies
Measurement responsibility	Operator, with selected audit by TfNSW.
Reporting frequency	Monthly

KPI	Table 14 (CCTV and Duress Alarm Reliability)
Description	<p>Measures the reliability of the Closed Circuit Television (CCTV) and duress alarm system. For avoidance of doubt:</p> <ul style="list-style-type: none"> CCTV data reliability measures the retrieval of quality images from

KPI	Table 14 (CCTV and Duress Alarm Reliability)
	<p>designated coverage areas</p> <ul style="list-style-type: none"> Failure to identify people in CCTV images due to improper maintenance, including cleaning, is deemed to be a failure to retrieve images Measures the reliability of the duress alarm system. For the avoidance of doubt, duress alarm reliability does not include known communication black spots <p>Vehicles that did not contain operable CCTV systems or duress alarms at the Service Commencement Date will be excluded from this requirement.</p>
Hours measured	N/A
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> KPI 14(i): 100% of CCTV images successfully retrieved KPI 14(ii): 100% of duress alarms responded to within 30 seconds <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each Calendar Month
Calculation	<p>For KPI 14(i): $100 \times (\text{Number of incidents for which CCTV images were successfully retrieved}) / (\text{Total number of incidents requiring retrieval of CCTV images})$</p> <p>For KPI 14(ii): $100 \times (\text{Number of duress alarms responded to within 30 seconds}) / (\text{Total number of incidents for which the duress alarm was activated})$</p>
KPI Reporting Period	Monthly
Measurement unit	Percentage of CCTV images successfully retrieved and duress alarms responded to within 30 seconds (as relevant to each KPI)
Data source	Requests for images / Records of duress alarm calls
Measurement responsibility	Operator
Reporting frequency	Monthly

KPI	Table 15 (Contract Bus Revenue Collection Rate)
Description	<p>This KPI aims to ensure that a suitable level of revenue protection is carried out as passengers enter a Contract Bus. The percentage of passengers travelling without paying should be within acceptable limits and reducing as revenue management strategies improve compliance.</p> <p>The percentage of paying passengers will be determined from the results of revenue inspections organised by TfNSW.</p>
Hours measured	All hours of operation
KPI	At least 99% of passengers inspected are travelling with a valid Ticket including SSTS

KPI	Table 15 (Contract Bus Revenue Collection Rate)
KPI Credit Threshold	KPI Credit Band: Less than 99%
Class	Class 1
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	100 X (passengers inspected who have correctly touched on for their Trip / passengers inspected)%
KPI Reporting Period	Quarterly
Measurement unit	Passengers who have travelled with a valid Ticket on the Contract Bus. For avoidance of doubt, this measure does not include passengers who have paid the wrong Fare.
Data source	Ticket inspectors. Following automation, report must be generated from data available from automated systems.
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Quarterly

KPI	Table 16 (Reporting)
Description	<p>This KPI aims to ensure all agreed reports are available to TfNSW within the agreed timeframe. This Reporting KPI measures the time taken to deliver reports starting from the end of the reporting period until the time that the reports are available for TfNSW. The scope is for all reports as set out in the Reporting Schedule and for avoidance of doubt, includes the reporting requirements outlined in this Schedule 4 and the Governance Schedule. Reports are to be available in an agreed repository or otherwise provided to TfNSW (eg, provision to TfNSW of on-line access) within the timeframes nominated in the Reporting Schedule.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% of reports required under this Schedule 4, the Reporting Schedule and the Governance Schedule are delivered to TfNSW within the timeframe nominated in those Schedules.
Class	Class 2
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of reports presented within the required timeframe during the KPI Reporting Period / total number of reports due to be presented during the KPI Reporting Period)
KPI Reporting Period	Monthly
Measurement unit	Report

KPI	Table 16 (Reporting)
Data source	Where possible, report to be generated directly from installed automated systems such as ticketing, traffic priority etc
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 17 (Provision of Information)
Description	<p>This KPI aims to ensure that responses to request for information about Services are provided in a reasonable timeframe as determined by TfNSW. Such requests for information could arise from varying sourcing, but would include information required to provide Ministerial responses, answering customer enquiries, providing information required by legislation, providing information to support transport planning etc.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% within the timeframe specified in the relevant request for information (provided that such timeframe must be reasonable in the circumstances))
Class	Class 2
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of information requests responded to within the required timeframe during the KPI Reporting Period / total number of information requests during the KPI Reporting Period)
KPI Reporting Period	Monthly
Measurement unit	Requests for information
Data source	Record of requests
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 18 (Data Maintenance)
Description	<p>This KPI aims to ensure critical information is accurate and available to customers and TfNSW within the timeframe determined by TfNSW. The Data Maintenance KPI measures the currency and accuracy of information relating to timetables, routes, mapping, bus stops, schedules, etc. Information must be accurate and current.</p> <p>In this KPI :</p> <p>Data Error means any error, due to error or omission on the part of the Operator, in published timetables or Operator scheduling data uploads to TfNSW (TODIS or</p>

KPI	Table 18 (Data Maintenance)
	<p>equivalent) for the Services, including a route mapping, bus stop, schedule, timetable or similar error, which affects one trip or multiple trips (where it is a common error).</p> <p>Missing Data Incident means a failure by the Operator to provide published timetables or operator scheduling data uploads to TfNSW (TODIS or equivalent) for the Services for one or more routes for a given day, due to error or omission on the part of the Operator, which impacts information being made available to customers or ticketing equipment for the affected route(s).</p> <p>For the avoidance of doubt, where an Operator engages a third party to prepare or provide any of the abovementioned data for the Services on its behalf, then an error or omission by that third party will be deemed to be an error or omission on the part of the Operator.</p>
Hours measured	24 x 7
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> • KPI 18(i): Zero (0) Missing Data Incidents for the Services; and • KPI 18(ii): No more than two (2) Data Errors for the Services, provided that all such Data Errors are rectified no later than 2 Business Days after the date of identification. <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	<p>For KPI 18(i) Missing Data Incident:</p> <p>KPI Credit Band: One Missing Data Incident or more in the KPI Reporting Period</p> <p>For KPI 18(ii) Data Errors:</p> <p>KPI Credit Band: More than two Data Errors that are not rectified within 2 Business Days after date of identification in the KPI Reporting Period</p>
Class	Class 1
Measurement methodology	
Measurement starting point	Number of Missing Data Incidents or Data Errors identified during the month for the KPI Reporting Period
Calculation	<p>Number of Missing Data Incidents</p> <p>Number of Data Errors</p> <p>Number of Data Errors not rectified within 2 Business Days after the date of identification</p>
KPI Reporting Period	Monthly
Measurement unit	Services
Data source	Website, OSD, TSM, change.id
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 19 (Project On Time Delivery)
Description	<p>Measures the % of Projects that are delivered On Time. Of particular interest to TfNSW is the implementation of Government initiatives.</p> <p>In this KPI :</p> <p>On Time means a Project is delivered to within 5% of the original agreed schedule as varied by any approved change requests.</p> <p>Project means any project nominated by TfNSW.</p>
Hours measured	N/A
KPI	100% of Projects are delivered On Time
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each Calendar Month
Calculation	$100 \times \text{Number of Projects delivered On Time} / \text{Total number of projects required to be delivered}$
KPI Reporting Period	Calendar Month
Measurement unit	Percentage
Data source	Project reports, plans and records
Measurement responsibility	Operator
Reporting frequency	Monthly

Annexure 1 – Incident classification and management

DEFINITION	MAJOR INCIDENT	SIGNIFICANT INCIDENT	MINOR INCIDENT
Impact on Service Performance	Service unavailable or seriously delayed for affected customers	Service seriously delayed for affected customers. A recurring Minor Incident	Service is delayed causing minor disruption or inconvenience for affected users
Extent of Impact	Potentially impacts ■■■ or more customers of the Operator. Any serious injury	Potentially impacts more than ■■■ but less than ■■■ customers of the Operator	Impacts less than ■■■ customers of the Operator
Impact on productivity and reputation	Potential for adverse impact on TfNSW and Operator's reputation through negative press coverage and many unsatisfied customers.	May result in customer inconvenience and increase in unsatisfied customers. Likely to raise serious public concern.	May result in some customer inconvenience and unsatisfied customers
The Operator must work to resolve the Incident	Continuously	Continuously until the Incident is resolved	Within Business Hours until the Incident is resolved
Examples			
Interim Status Update Timeframe	Every 15 minutes	15 mins then every 30 minutes	On request
If Incident is not resolved within the required timeframe	Escalate according to agreed processes	Escalate according to agreed processes	Escalate according to agreed processes
If Incident is not resolved within two times the required timeframe	Escalate according to agreed processes	Reclassify Incident as Major Incident	Escalate according to agreed processes

Schedule 5 - Reporting

1. Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to a paragraph is a reference to a paragraph in this Schedule.

In this Schedule, the following words have the following meanings:

Ad Hoc Reports or **AHR** has the meaning given in paragraphs 3 and 10 of this Schedule.

Annual Financial Report or **AFR** has the meaning given in paragraphs 3 and 8(b) of this Schedule.

Half Yearly Financial Report or **HFR** has the meaning given in paragraphs 3 and 8(a) of this Schedule.

KPI Report means the reporting required to be provided under paragraph 3 of Schedule 4 of the Contract.

Monthly Commercial Report or **MCR** has the meaning given in paragraph 3 and 6 of this Schedule.

Monthly On Demand Service Report or **MODSR** has the meaning given in paragraph 3 and 11 of this Schedule.

Monthly Operational Report or **MOR** has the meaning given in paragraph 3 and 4 of this Schedule.

Monthly Performance Report or **MPR** has the meaning given in paragraph 3 and 5 of this Schedule.

Pilot Project Report has the meaning given in Schedule 13 of the Contract.

PTIPS means the service tracking and priority equipment installed on Contract Buses, which for the avoidance of doubt forms part of the TfNSW Systems and Equipment.

Quarterly Executive Report or **QER** has the meaning given in paragraph 3 and 7 of this Schedule.

TODIS means the Transport Operational Data Interface Specification as advised by TfNSW from time to time.

2. Reporting Principles

- (a) In accordance with Clause 29, the Operator must provide all reports and data to TfNSW (or any person authorised by TfNSW):
 - (i) in accordance with the timeframes specified in this Schedule 5 (or other times as may be required by TfNSW from time to time); and
 - (ii) in any one or more of the following formats (or any other format set out in this Schedule 5 or requested by TfNSW from time to time):
 - (A) hard copy (printed) report, printed in colour where applicable;
 - (B) electronic copy report; or
 - (C) electronic transfer in a format reasonably required by TfNSW, including:
 - (I) TODIS for OSD; and

- (II) reports submitted electronically via a reporting interface and/or web-portal.
- (b) In accordance with Clause 34.2, the Operator acknowledges and agrees that TfNSW, or a person authorised by TfNSW, may conduct audits on the contents of reports and data provided by the Operator and the Operator must comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits. Such audit reports will be considered in the relevant governance forums as set out in Schedule 6 of the Contract. The Operator must make available to TfNSW on request all reports and underlying data in the format as required by TfNSW.

3. Overview of Reporting Requirements

The Operator must provide the following reports and data to TfNSW (or any person authorised by TfNSW) in accordance with this Schedule 5 (and any Annexures to this Schedule 5) at the following times:

- (a) Monthly Operational Report: Within 10 Business Days after the start of each Calendar Month of the Term.
- (b) Monthly Performance Report: Within 10 Business Days after the start of each Calendar Month of the Term.
- (c) Monthly Commercial Report: Within 10 Business Days after the start of each Calendar Month of the Term.
- (d) Quarterly Executive Report: No later than 10 Business Days prior to the date of the Quarterly Executive Forum meeting referred to in paragraph 2.1(c) of the Governance Schedule.
- (e) Half Yearly Financial Report: No later than 15 January of any Contract Year during the Term.
- (f) Annual Financial Report: No later than two months after the end of each Financial Year during the Term.
- (g) Maintenance Works Programme Report: Within 20 Business Days after each anniversary of the Service Commencement Date.
- (h) Pilot Project Report: As required under Schedule 13 of the Contract and as set out in this Schedule.
- (i) Ad-Hoc Reports: At such times as requested by TfNSW from time to time during the Term.
- (j) Data: The Operator must provide TfNSW with access to all ticketing, OSD, PTIPS and SSTS data held by the Operator at such times as requested by TfNSW in accordance with Clause 15.
- (k) KPIs: The Operator must provide reporting in relation to KPIs as required under Schedule 4.
- (l) Tax Invoice Reporting: The Operator must provide reporting in relation to Tax Invoices as required under Schedule 3.
- (m) Monthly On Demand Service Report: Within 10 Business Days of after the start of each Calendar Month of the Term.

4. Reporting requirement - Monthly Operational Reporting

The Operator acknowledges and agrees that the Monthly Operational Report must satisfy the following requirements:

Monthly Operational Report	Description
<p>MOR 1: Ticket sales and cash</p>	<p>MOR 1 reflects the value of ticket sales and the actual cash received by the Operator from Ticket sales for the Calendar Month by Ticket type. The Operator must accurately report in the MOR all cash or other payment received for the sale of every approved Ticket type.</p>
<p>MOR 2: Service kilometres travelled</p>	<p>MOR 2 reflects the actual Service kilometres travelled by Contract Vehicles in the performance of the Services for the Calendar Month including:</p> <ul style="list-style-type: none"> ▪ total Services; ▪ minus Cancelled Trips and Incomplete Trip kilometres; ▪ total operated In-Service Hours and in service kilometres; ▪ total Dedicated School Service In-Service Hours and in service kilometres; ▪ minus Cancelled Trip and Incomplete Trip kilometres for the Dedicated School Service; ▪ total In-Service Hours and in service kilometres; ▪ total other kilometres; and ▪ total dead running kilometres.
<p>MOR 3: Operational performance data</p>	<p>MOR 3 reflects a number of key operational performance results for each Calendar Month:</p> <ul style="list-style-type: none"> ▪ Service by Route; ▪ Route description; ▪ Published Timetabled Trips; ▪ number of Incomplete Trips; ▪ number of Cancelled Trips; ▪ Trips that are Late; ▪ Trips that are Late as a result of late train arrival at station; ▪ Contract Bus crowded on Route;

Monthly Operational Report	Description
	<ul style="list-style-type: none"> ▪ Timetabled accessible Trips; and ▪ accessible Trips that are Incomplete Trips or Cancelled Trips. For the avoidance of doubt this means accessible Services not operating to accessible timetabled Trip/s.
<p>MOR 4: Incomplete or Cancelled Trips</p>	<p>MOR 4 reflects the actual kilometres travelled for the Calendar Month:</p> <ul style="list-style-type: none"> ▪ Service by Route and direction; ▪ identification (registration number or equivalent); ▪ scheduled time; ▪ scheduled date; ▪ Incomplete Trip or Cancelled Trip; ▪ kilometres run as positioning or other incidental movements of Contract Buses; ▪ details of reason for Incomplete Trip or Cancelled Trip.
<p>MOR 5: Customer feedback</p>	<p>MOR 5 records the total number of different types of customer feedback received by the Operator or on the Operator's behalf.</p> <p>MOR 5 must include details of customer feedback received from the following sources:</p> <ul style="list-style-type: none"> ▪ mail; ▪ telephone; ▪ email; ▪ DCIS (Transport Infoline); ▪ the Operator's website; ▪ the Operator's mystery traveller program; ▪ matters referred to the Operator by TfNSW; and ▪ any new TfNSW Systems and Equipment that may be introduced in accordance with Clause 15.
<p>MOR 6: Contract Bus movements</p>	<p>MOR 6 reflects Contract Bus movements that occurred in the preceding Calendar Month.</p>

Monthly Operational Report	Description
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SUMMARY SHEET		
MONTHLY REPORT		
CHANGES TO CONTRACTED BUS FLEET		
	PERIOD COVERED	Jan-13
	REGION	
	OPERATORS NAME	
	REPORT SUBMITTED BY:	
FORM NO	BUS FLEET CHANGE EVENT	TOTAL CHANGES IN THIS PERIOD
NB1	NEW REPLACEMENT BUS and RETIRED BUS	
NB2	NEW GROWTH BUS	
NB3	REGISTRATION CHANGE	
NB4	CHANGE OF BUS LOCATION	
NB5	BUS RETIRED FROM SERVICE (NOT REPLACED)	
NB 1 TO NB5	COMBINED TOTAL	0

Where there have been no changes to any of the above reports in the preceding Calendar Month the Operator must submit MOR 8 with a “nil” record.

MOR 7:
Safety performance indicators

MOR 7 provides a set of safety related performance indicators.

The safety performance section of the Monthly Operations Report must include as a minimum:

- proactive management, including:
 - A. percentage of planned leadership visits completed (the total number of planned visits completed as compared to the total number planned for the month);
 - B. percentage of planned safety actions closed out (within timeframe);
 - C. percentage of planned safety audits completed; and
 - D. safety audits, including the type, outcomes and non-conformances, status (raised/closed) of issues, preventative actions.
- operations and staff, including:

	<p>A. lost time injury frequency rate (injury and illness) based on the following formula:</p> <p style="padding-left: 40px;">Lost time injury frequency rate = Number of lost time injuries/illnesses in the month/(Total hours worked in the month) x 1,000,000;</p> <p>A lost time injury is as defined in the Australian Standard: Workplace Injury and Disease Recording Standard (Australian Standard 1885.1 - 1990);</p> <p style="padding-left: 40px;">Work related (compensable) injuries and illnesses are to be included;</p> <p>B. notifiable incidents (safety and environmental) with a description;</p> <p>C. driver human error incidents per vehicle operating kilometre; and</p> <p>D. the number of drug and alcohol tests undertaken and the total number of negative and positive results.</p> <ul style="list-style-type: none"> ▪ customer impact, including: <ul style="list-style-type: none"> A. number of customer injuries that are serious enough to require transportation to hospital or result in a fatality, per 100,000 customer Boardings (directly attributable to the Operator Activities); B. number of customer injuries from slips, trips and falls per 100,000 customer journeys (subset of above); and C. fatalities (on and off board) (all fatalities with a subset of those related to self-harm); ▪ the disruption to Services arising from any accident; and ▪ any Incident and accident investigation, including the lessons learnt, recommendations made, actions taken and any changes to procedures, working practices and/or the Safety Management System. <p>Accreditation and Accreditation</p> <p>The Accreditation and Authorisation section of the Monthly Operations Report must include as a minimum:</p> <ul style="list-style-type: none"> ▪ record of engagements with Safework NSW and RMS; and ▪ ongoing actions for maintaining Accreditation and similar Authorisations relevant to conducting the Services.
<p>MOR 8</p>	<p>MOR 8 provides reports on critical asset management performance of the Assets</p> <p>This report should identify any Asset Management Activities scheduled as part of the Asset Management Plan or Maintenance Works Program for the relevant month which have not been undertaken during the month and any non-scheduled Asset Management Activities undertaken during the month. It should also identify any changes to the Asset Maintenance Standards made during the month.</p>

5. Reporting Requirement - Monthly Performance Report

The Operator acknowledges and agrees the Monthly Performance Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
Monthly Service Delivery Forum	<p>KPI Report, including trend analysis</p> <p>The following to be provided by exception as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> ▪ new and outstanding root cause analyses identifying appropriate preventative action; ▪ post Incident review reports; ▪ new and existing escalations and plans to resolve; ▪ recommended improvements to operational processes; ▪ progress against improvement plans; ▪ customer feedback report, including results of the Operator's mystery traveller program; ▪ Incomplete Trips or Cancelled Trips report; ▪ total number of Fare paying passengers travelling on the Services; ▪ actual patronage Boarding by Route and Ticket type; ▪ patronage and type of patronage per Route (cash/pre-paid/adult/concession/SSTS /Pensioner Excursion Travel/travel free of charge etc.); ▪ a Pilot Project Report; and ▪ status of actions to improve interactions with any and all third party operators. 	Within 10 Business Days after the start of the Calendar Month	Electronic Copy

6. Reporting Requirement - Monthly Commercial Report

The Operator acknowledges and agrees the Monthly Commercial Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
Monthly Commercial Forum	<p>The following to be provided as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> ▪ Operator organisational changes, including requests for changes to Key Personnel; 	Within 10 Business Days from the start of the Calendar Month	Electronic Copy

<ul style="list-style-type: none"> ▪ any commercial changes to the Services environment; ▪ any Service Variations; ▪ KPI Report; ▪ financial summary (monthly and year to date and trend analysis); ▪ status of invoicing, payment issues, rate validation issues and billing disputes outstanding; ▪ inventory report including Contract Bus movements and Contract Bus movement reports; ▪ any allegations of fraud and corrupt conduct; ▪ Pilot Project Report; and ▪ any Incidents which may generate public and/or media interest in the Operator. 		
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7. Reporting requirement - Quarterly Executive Report

The Operator acknowledges and agrees the Quarterly Executive Report must satisfy the following requirements:

Forum	Report Description	Frequency	Format
Quarterly Executive Forum	<p>Quarterly summary of KPI Report</p> <p>The following to be provided as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> ▪ achievements, completed activities and projects; ▪ overall performance against the results of customer satisfaction surveys in accordance with Schedule 6, the Operator's mystery traveller program and trend analysis; ▪ improvement opportunities; ▪ list of upcoming activities and projects; ▪ relationship effectiveness issues between the Operator and TfNSW; ▪ engagement processes issues; ▪ Operator organisational changes; ▪ Operator strategic changes; ▪ Service trends, including capacity report on the Service, covering peaks and floors, trends, 	No later than 10 Business Days prior to the Quarterly Executive Forum	Electronic Copy

Forum	Report Description	Frequency	Format
	utilisation and planning to assess the Sydney public transport network and its utilisation; <ul style="list-style-type: none"> ▪ Contract Bus and or Contract Depot replacement plans (detailing the forecast for the following two 12 month Financial Year periods); ▪ refresh plans for assets nearing end of useful life; ▪ any exceptions to the Maintenance Works Program that are impacting the Services; ▪ Quarterly financial report (balance sheet, cashflow and profit and loss statement) and trend analysis; ▪ Pilot Project Report; ▪ any allegations of fraud and corrupt conduct; and ▪ any Incidents which may generate public and/or media interest in the Operator. 		

8. Reporting requirement – Half Yearly Financial Report and Annual Financial Report

- (a) Half Yearly Financial Report - The Operator must provide to TfNSW within 10 Business Days after completion, and by no later than 15 January in each Contract Year of the Term:
- (i) a half yearly Financial Report; and
 - (ii) a detailed line item report in the format specified in Annexure 1 to this Schedule 5 for the preceding six month period.
- (b) Annual Financial Report - The Operator must provide to TfNSW within 2 months of the end of each Financial Year of the Term:
- (i) an annual Financial Report which is independently audited; and
 - (ii) a detailed line item report in the format specified in Annexure 1 to this Schedule 5 for the preceding Financial Year.
- (c) Audited Financial Statements - The Operator must also provide certified copies of its audited annual financial statements for each Financial Year together with all related directors' and auditor's reports to TfNSW as soon as is practicable, and by no later than 31 October each Contract Year of the Term.
- (d) Each of the documents specified in paragraphs 8(a) to 8(c) above must be submitted to TfNSW in electronic format.
- (e) For the purposes of this paragraph 8, each 'Financial Report' a detailed report and analysis of the Operator's financial performance which must include the following information:
- (i) balance sheets;

- (ii) cash flow reports;
- (iii) profit and loss statements; and
- (iv) any other financial analysis required by TfNSW.

9. Reporting Requirement – Maintenance Works Program Report

- (a) The Operator must provide a report on its compliance with the then current Maintenance Works Program within 20 Business Days after each anniversary of the Service Commencement Date.
- (b) The Operator must provide an updated copy of the Operator plans in accordance with Clause 30 and the Asset Management Plan in accordance with Clause 25.3.

10. Reporting requirement - Ad-Hoc Reports

The Operator acknowledges and agrees that TfNSW may require the Operator to submit Ad-Hoc Reports to TfNSW from time to time in the format required by TfNSW.

11. Reporting Requirement – Monthly On Demand Service Report

The Operator acknowledges and agrees the Monthly On Demand Service Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
Monthly Service Delivery Forum	The following to be provided as required and agreed for each meeting agenda (with additional commentary as required):	Within 10 Business Days after the start of the Calendar Month	Electronic Copy
Quarterly Executive Forum	Capacity Summarised view of vehicle occupancy according to time of day and day of the week - Weekday, Saturday and Sunday Periods		
Quarterly Executive Forum	Operations <ul style="list-style-type: none"> • Total passenger bookings, including proportion of booking accepted vs. rejected • Total customer cancellations and no shows • Total passenger trips delivered • Total vehicle kilometres travelled • Total vehicle service hours (in and out of service) 		

Forum	Report Items	Frequency	Format
	<ul style="list-style-type: none"> • Most popular service stops 		
Efficiency	<ul style="list-style-type: none"> • Average cost per passenger served • Average cost per service hour • Average cost per service kilometre 		
Ticketing	<ul style="list-style-type: none"> • Value of Ticket sales by payment method (cash, credit card, other) • Number of Tickets purchased by payment method (cash, credit card, other) • Distribution of fare types (standard, concession) • Distribution of booking type (application, phone call) • Distribution of payment types (in-application, phone call) 		
Technology	<ul style="list-style-type: none"> • Software development milestones reached / goals • Number of application downloads • Summary of technology feedback • Ratings • Positive / negative comments (relating to the app) 		
Customer Satisfaction	<ul style="list-style-type: none"> • Number of feedback responses • Number of feedback responses by rating (i.e pilots which offer a 5 star feedback rating to provide number of responses for each level of rating) • Average Driver rating • Summary of service feedback • Customer behaviour insights • Verbatim feedback comments 		
Milestones and Performance	<ul style="list-style-type: none"> • Key achievements and completed activities • Goals / upcoming milestones 		

Forum	Report Items	Frequency	Format
	<ul style="list-style-type: none"> • Service delivery benefits, concerns, obstacles or challenges • Public and/or media interest • Recommended or potential improvements to operational processes 		

As part of the On Demand Service Report, the Operator must also provide a data extract of the On Demand Services for the previous month.

TfNSW will provide a reporting template and required file format prior to the commencement of Services.

The database of service activities should be readily interpreted in a format similar to that described below.

Field	Description	Variants (if applicable)
Trip ID	A unique identifier for each trip conducted (if a loop service or equivalent, otherwise N/A)	-
Vehicle ID	A unique identifier for each vehicle	-
Passenger ID	A unique identifier for each passenger	-
Passenger fare type	The type of fare charged for a passenger	Standard Concession
Booking type	The method by which a passenger booked the service	Application Web Phone
Booking time	The time at which a passenger places a booking for a service	-
Payment type	The payment method used by a passenger	Credit card (application) Credit card (phone call) Cash
Successful pickup	Whether or not a potential passenger got on board or not	Yes No
Pickup failure reason	The reason for an unsuccessful pickup	Customer cancellation Operator failure Other

Field	Description	Variants (if applicable)
Pickup date/time - scheduled	The time and date at which the service is scheduled to arrive at a passenger's pickup location	-
Pickup date/time - actual*	The time and date at which the service arrives at a passenger's pickup location	-
Pickup information	Unique identifier / latitude and longitude for each drop-off stop	-
Pickup location	Latitude and longitude of pickup location	-
Drop-off date/time - scheduled	The time and date at which the service is scheduled to arrive at a passenger's drop-off location	-
Drop-off date/time - actual*	The time and date at which the service arrives at a passenger's drop-off location	-
Drop-off information	Unique identifier / latitude and longitude for each pickup stop	-
Distance travelled (km)	The distance travelled between origin and destination	-
Accessibility requirements	Whether or not the customer had additional accessibility requirements	Yes / No
Positioning KMs	Kilometres travelled without any passengers during Service availability	-
Positioning Hours	Hours the vehicle did not carry any passengers during Service availability	-

12. Data Requirements

- (a) The Operator acknowledges and agrees that TfNSW may require access to data collected by the Operator from time to time in accordance with Clauses 28 and 34.2 of the Contract. The following table outlines specific data requirements the Operator must collect commencing from the Service Commencement Date and for the duration of the Term.

(b) The Operator acknowledges and agrees that TfNSW may request additional data for Projects (as defined in Table 23 of the KPI Schedule) from time to time during the Term:

Service	Report	Frequency	Format
OSD data transfer	<ul style="list-style-type: none"> • Data required of the type and in the format specified in TODIS or any replacement system, as modified from time to time by TfNSW, including: <ul style="list-style-type: none"> ○ Timetable, Route and Transit Stop data; and ○ shift data, including Driver shifts. • Data required from automated and electronic ticketing systems 	<p>As specified in the TODIS</p> <p>3 weeks in advance of any change</p>	Data transfer as specified by TODIS
Bus Incident Management Database	Operators are required to notify TfNSW of incidents and accidents	In accordance with PT Regulation 2007	Submission of an incident report to the BIMS system
PTIPS	Provide continued access to all PTIPS data	Daily	As specified by TfNSW's PTIPS requirements as set out in Part 4 of Schedule 1
Ticketing data	Provide continued access to all Ticketing data	Daily	As specified by TfNSW's electronic ticketing system requirements as set out in Part 4 of Schedule 1

Annexure 1 Line Item Report

As set out in paragraph 8(a) and 8(b) the Operator is to provide detailed revenues and costs per line item in accordance with the category list as set out below:

Bus			
		Reporting period ending DD MM YY	Previous reporting period ending DD MM YY
Commercial revenue line items (2015-16)			
Revenues from advertising	\$'000	0	0
Revenues from charter services	\$'000	0	0
Total Commercial Revenue	\$'000	0	0
Cost line items (2015-16)			
Drivers - Salary, wages, overtime and oncosts	\$'000	0	0
Workshop Staff - Salary, wages, overtime and oncosts	\$'000	0	0
Cleaners - salary, wages, overtime and oncosts	\$'000	0	0
Fuel - Diesel	\$'000	0	0
Fuel - LPG	\$'000	0	0
Fuel - CNG	\$'000	0	0
Contract Bus other parts and consumables	\$'000	0	0
Contract Bus maintenance and repairs	\$'000	0	0
Contract cleaning	\$'000	0	0
Depot related cleaning, maintenance and repairs	\$'000	0	0
Contract Bus operating costs - Transit Stop signage	\$'000	0	0
Contract Bus operating costs - Timetables	\$'000	0	0
Contract Bus operating costs - Livery	\$'000	0	0
Contract Bus operating costs - Uniforms	\$'000	0	0
Contract Bus registration costs	\$'000	0	0
Contract Bus refurbishments	\$'000	0	0
Insurance - Bus specific	\$'000	0	0
Ticketing costs	\$'000	0	0
Security	\$'000	0	0
Cash collection	\$'000	0	0
Operating lease expenses	\$'000	0	0
Other Contract Bus specific overhead costs	\$'000	0	0
Other costs	\$'000	0	0
Total Operating Costs	\$'000	0	0
Net Operating Costs (Cost – Commercial Revenue)	\$'000	0	0
Statement of FTEs			
Drivers	FTEs	0	0
Workshop	FTEs	0	0
Cleaners	FTEs	0	0
Other	FTEs	0	0
Total	FTEs	0	0
Operational parameters - Services			
Number of Contract Buses	number	0	0
Contract Bus kilometres per year - in service	km	0	0

Contract Bus kilometres per year - dead running	km	0	0
Total Contract Bus Kilometres		0	0
Passenger journeys	'000	0	0
Net Operating Cost per total bus kilometres	\$	0	0
Net Operating Cost per passenger journey	\$	0	0
Fuel Consumed - Diesel	Litres	0	0
Fuel Consumed - LPG	Litres	0	0
Fuel Consumed - CNG	Litres	0	0

Corporate and Commercial

Operational parameters – Charter Services

Contract Bus Charter kilometres per year - in service and dead running

		Year ending	
		30 June	30 June
km		0	0

Corporate Costs

Corporate Staff - Salaries, wages, overtime and oncosts

Other corporate expenses

Total

\$'000	0	0
\$'000	0	0
\$'000	0	0

Statement of FTEs

Corporate Staff

FTEs	0	0
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Schedule 6 - Governance

1. Introduction

1.1 Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to a paragraph is a reference to a paragraph in this Schedule.

In this Schedule, the following words have the following meanings:

Monthly Commercial Forum means the monthly forum which will focus on commercial matters, described in paragraph 2.1(b).

Monthly Service Delivery Forum means the monthly forum which will focus on the delivery of the services, described in paragraph 2.1(a).

Quarterly Executive Forum means the quarterly forum which will focus on the ongoing relationship between TfNSW and the Operator, described in paragraph 2.1(c).

1.2 General Requirements

The Operator must:

- (a) provide effective governance for its own team to ensure the Services are delivered in accordance with the Contract;
- (b) ensure that the governance model used is aligned with and, where appropriate, integrated with the TfNSW business model;
- (c) take sole responsibility and accountability for the performance of its own subcontractors. Such subcontractors are not required to attend the TfNSW governance forums described in this Schedule; and
- (d) raise issues relating to the delivery of the Services at the Monthly Service Delivery Forums.

2. Governance Regime

2.1 Operational Forums and Reviews

There are a number of forums and reviews the Parties will utilise to manage the relationship and measure the Operator's compliance with the Contract (including its objectives). In addition to these forums and reviews, the Operator must attend ad-hoc meetings with TfNSW as required, such as specific root cause analysis reviews, Project (as defined in Table 19 of the KPI Schedule) status meetings, operational meetings and informal discussions.

The Operator must also meet in a multi operator forum, should TfNSW require.

- (a) Monthly Service Delivery Forum

The Monthly Services Delivery Forums will focus on the ongoing delivery of the services required under the Contract, including service management activities, KPI performance and reporting and customer satisfaction assessments.

The Monthly Services Delivery Forum will take place by the end of the third week of each month and be attended by:

TfNSW Attendees	Operator Attendees
Principal Manager (as required)	Chief Executive Officer / General Manager (as required)
Manager Contracts (Chairperson)	Senior Manager
Senior Contracts Officer	Contract Manager or equivalent
	Operations Manager

The attendees at the Monthly Services Delivery Forum will address the following, as required:

- (i) Operator's performance in the delivery of the Services and Operator Activities;
- (ii) Service improvement opportunities and service change plans being considered;
- (iii) feedback from community and stakeholder groups on whether the Services are meeting expectations;
- (iv) patronage trends and plans to increase patronage;
- (v) Operator's performance against the Key Performance Indicators, in particular:
 - (A) monthly reporting, including emerging trends;
 - (B) new and outstanding root cause analyses and appropriate preventative action;
 - (C) management of any Incidents; and
 - (D) post Incident reports and cure plans as required under the KPI Schedule or otherwise;
- (vi) customer satisfaction surveys;
- (vii) Operator's handling and management of any customer complaints;
- (viii) any workforce/industrial relations issues affecting current/recent performance/service delivery;
- (ix) any emerging significant industrial relations issues with the potential/capacity to effect the overall performance of the Contract;
- (x) identify and approve any improvements to operational processes;
- (xi) any breaches by the Operator, corrective actions to resolve such breaches and progress of corrective actions;
- (xii) interactions between the Operator and other operators (if appropriate) and ways to improve those interactions;
- (xiii) disputes between the Operator and another operator that cannot be resolved by the Operator;
- (xiv) Service Variations or other changes to Services;
- (xv) lifecycle management of assets by the Operator, and tracking against the Maintenance Works Program;
- (xvi) implementation and management of new spares, special tools and equipment by TfNSW and the Operator;
- (xvii) implementation of the Planned Service Phases; and
- (xviii) any other issues relating to the performance of the Services or the Operator Activities.

Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Monthly Service Delivery Forum.

(b) Monthly Commercial Forum

The Monthly Commercial Forums will focus on all commercial matters under the Contract. This includes Payments, KPI Credits and KPI Debits, set offs, deductions, disputes, contract negotiations, Service Variations and Modifications.

The Monthly Commercial Forum will take place by the end of the third week of each month and be attended by:

TfNSW Attendees	Operator Attendees
Principal Manager (as required)	Senior Manager
Manager Contracts (Chairperson)	Contract Manager or equivalent
Senior Contracts Officer	Chief Financial Officer
Finance Manager (as required)	

The attendees at the Monthly Commercial Forum will address the following, as required:

- (i) Staff issues, including changes to any of the Operator's key personnel;
- (ii) organisational changes;
- (iii) raise and attempt to resolve any contractual disputes, prior to issuing a Dispute Notice under the Contract. This includes:
 - (A) review of any Service delivery issues and its significance for TfNSW;
 - (B) review of any Contract issues raised by TfNSW; and
 - (C) tabling KPI Defaults and associated KPI Credits;
- (iv) raise and attempt to resolve disputes between the Operator and another operator that cannot be resolved between the Operator and the other operator or through the Monthly Service Delivery Forum;
- (v) table and discuss proposed Service changes and other proposed amendments to the Contract;
- (vi) assist with budget planning activities;
- (vii) review financial summary and trending;
- (viii) address any Payment issues, including invoicing, rate validation and billing disputes, and results of benchmarking;
- (ix) review and manage audit activities and outcomes;
- (x) implementation of the Planned Service Phases.

Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Monthly Commercial Forum.

(c) Quarterly Executive Forum

The Quarterly Executive Forum will focus on the ongoing relationship between TfNSW and the Operator, the alignment of the Operator and the Contract to TfNSW's business strategies and objectives, performance management, the management of escalated issues and continuing alignment to the governance requirements.

The Quarterly Executive Forum will be held within a month of the end of the relevant Quarter and the attendees will be:

TfNSW Attendees	Operator Attendees
Executive Management (as required)	Chief Executive Officer or General Manager
Principal Manager (Chairperson)	Senior Manager or equivalent
Manager Bus Contracts	

The attendees at the Quarterly Executive Forum will address the following:

- (i) share achievements, completed activities and projects;
- (ii) identify opportunities for improvement;
- (iii) discuss any improvement initiatives identified by the Operator;
- (iv) Service improvement opportunities and service change plans being considered;
- (v) feedback from community and stakeholder groups on whether the Services are meeting expectations;
- (vi) feedback on the state of working relationships with key stakeholders,
- (vii) patronage trends and plans to increase patronage;
- (viii) analysis of capacity utilisation by Route, including identification of Routes which are overcrowded and Routes which have excess capacity;
- (ix) review of Excused Performance Incidents and cure plans;
- (x) any emerging significant industrial relations issues with the potential/capacity to effect the overall performance of the Contract;
- (xi) any exceptions to the Maintenance Works Program that are impacting Services or any Asset Management Failures;
- (xii) communicate TfNSW's strategic direction where appropriate;
- (xiii) review the effectiveness of the relationship between the Operator and TfNSW and related concerns and issues;
- (xiv) communicate organisational changes;
- (xv) enable the Operator to communicate new technologies and service offerings;
- (xvi) review the development of customer facing information and the effectiveness of the interface of Operator systems and information with TfNSW application programming interfaces and systems;
- (xvii) develop objectives for the following Quarter;
- (xviii) report on performance against the Security Plan (as defined in Part 15 of Schedule 1); and
- (xix) implementation of the Planned Service Phases.

Reports addressing the above items must be delivered by the Operator to TfNSW at least two days prior to each Quarterly Executive Forum.

The Operator represents that its senior executives are committed to making the relationship with TfNSW a success.

(d) Conduct of meetings

All meetings must be conducted in accordance with the following:

- (i) TfNSW will be responsible for publishing the agenda and scheduling the meeting;
- (ii) TfNSW will record the minutes and action items from each meeting and distribute with the agenda for the next meeting;
- (iii) action items not resolved within the agreed timeframe will be escalated as follows:
 - (A) from the Monthly Service Delivery Forum to the Monthly Commercial Forum, or straight to the Quarterly Executive Forum if considered necessary by TfNSW; and
 - (B) from the Monthly Commercial Forum to the Quarterly Executive Forum; and
- (iv) each Party will bear its own costs for attending meetings.

Schedule 7 - Fares and Ticketing

1. Full Fares and Concession Fares applicable on Services (other than On Demand Services)

Current Opal Fare Prices as at 3 July 2017.

Distance	Adult fare	Adult single bus ticket	Gold Senior/Pensioner Fare	Concession Fare	Child/Youth Fare	Child/youth single bus ticket
0-3km	\$2.15	\$2.60	\$1.07	\$1.07	\$1.07	\$1.30
3-8km	\$3.58	\$4.30	\$1.79	\$1.79	\$1.79	\$2.10
8+km	\$4.61	\$5.60	\$2.30	\$2.30	\$2.30	\$2.80

2. Full Fares and Concessions Fares applicable on Services (other than On Demand Services)

The persons identified in the following are Approved Beneficiaries eligible for concession fares prices.

Customer Group	Concession card/s (a sample of which is set out in Part 4 of this Schedule)	Concession fares
Aged 4-15 (inclusive)	No card (Proof of Age Card available to verify holder is under 16)	Child fare
Aged 16 and over	NSW Senior Secondary Card	Half fare
	NSW Tertiary Student Concession Card	
	NSW Tertiary Student Identification Card	
	NSW Half Fare Entitlement Card for Jobseekers	
	Apprentice and Trainee Card	
Pensioners (all ages), seniors, asylum seekers and carers	Pensioner Concession Card Seniors Card – NSW and interstate Concession Entitlement Card (asylum seekers)	Pensioner fares (Pensioner excursion (PET) fare or half fare)

3. Approved Beneficiaries of travel free of charge on Services

The persons identified in the following table will be eligible for free travel

Customer Group	Concession Card/s (a sample of which is set out in Part 4 of this Schedule)	Concession fares
Aged 0-3 (inclusive)	No card	Free Travel
School students eligible for free travel	SSTS card	Free Travel (To/from school/college)
People with disabilities	Ex-member of Defence Forces Pass	Free Travel
	Ex-member of Defence Forces Pass – Blinded Soldier	
	Vision Impaired Persons Pass – NSW and interstate	

Customer Group	Concession Card/s (a sample of which is set out in Part 4 of this Schedule)	Concession fares
Attendant	Transport concession cards marked ' Plus Attendant'	Free travel for Attendant when accompanying card holder
	Companion Card	
Recognised for service	NSW Travelcard	Free Travel
	World War 1 Veteran/Widow	
Employee	Employee Passes issued by TfNSW	Free Travel

4. Sample of concession cards as advised by TfNSW from time to time



Free travel		
Vision Impaired Person (NSW and Interstate)* 	Ex-member of Defence Forces* 	Blinded Soldier's Pass 
WW1 Veteran's Pass 	Operator Issued SSTS Travel Pass 	NSW Travelcard 
Attendant (NSW and interstate) 	Assistance Animal Permit 	Operator Issued Employee Pass 

5. On Demand Services

Opal ticketing will be made available for On Demand Services in accordance with Clause 14.9.

Fares applicable on On Demand Services to be notified by TfNSW to the Operator prior to the Planned Service Commencement Date.

Schedule 8 - Asset Schedule

1. Asset Management Obligations

1.1 Application of Schedule

In this Schedule, unless the context requires otherwise, references to Assets exclude the Licensed Areas and Transit Stops (other than Transit Stop Signage and WSUP Works).

1.2 Asset Management Framework requirement

The Operator must develop and implement an Asset Management Framework that aligns with ISO 55000, ISO55001 and ISO55002 to maintain the Assets. The Asset Management Framework must be aligned with and, where appropriate, adopt the asset management policies and strategies described in the TfNSW publication titled 'Asset Management Framework Overview' and satisfy all of the requirement set out in this Schedule.

From 1 February 2020, the asset management systems will be certified to the AS/NZS ISO 55001:2014 Asset Management Standard.

1.3 General obligations

The Operator must:

- (a) carry out the Asset Management Activities to ensure the performance of the Assets enables the Operator to satisfy all requirements of the Contract;
- (b) ensure that only suitably trained and competent personnel are engaged in respect of the Asset Management Activities;
- (c) keep the Assets in a clean and tidy condition and remove all waste, spillage, graffiti, litter and debris, including incident debris, and repair all damage;
- (d) maintain records of all Asset Management Activities carried out in the Asset Information System within 24 hours of the activity occurring;
- (e) conduct Asset Management Activities in accordance with the Asset Management Plan;
- (f) inspect, weed, trim, mow, water, dewater, fertilise, repair, replace, plant all landscaped areas and non-structure areas of the Assets;
- (g) retain appropriate levels of spares (including any rotatable spares); and
- (h) procure, maintain and update an Asset Information System.

1.4 Asset inspection and routine preventative maintenance

- (a) Inspections and routine maintenance of the Assets must be conducted in accordance with the Asset Maintenance Standards.
- (b) Inspections must identify non-compliances and potential non-compliances in the performance of the Operator Activities, defects in and the condition of the Assets.
- (c) The outcomes of inspections must be recorded in the Asset Information System together with the Operator's action plan to rectify any non-compliance.

1.5 Asset replacement and refurbishment

- (a) Replacement and refurbishment of an Asset must be undertaken by the Operator where replacement or restoration of an Asset or components of an Asset is necessary for the Operator to meet the requirements of the Contract and for the Asset to achieve its Design Life.
- (b) Replacement or refurbishment of an Asset must meet the following requirements:
 - (i) where refurbishment of an Asset is undertaken, the functionality and performance of the refurbished Asset must be equivalent to the functionality and performance of the Asset when new; and

- (ii) where replacement is undertaken with a new Asset, the functionality, performance and Design Life of the new Asset must be equivalent to or exceed the functionality, performance and Design Life of the replaced Asset when it was new.

1.6 Maintenance equipment

The Operator must procure any tools and equipment not comprising the State Assets and the TfNSW Systems and Equipment that are required to enable the Operator to comply with the requirements of the Contract including maintaining the Assets in accordance with this Schedule.

1.7 Inventory and inventory control

The Operator must maintain a spares inventory at levels that permit the timely maintenance of the Assets through the Term and at the end of the Term, on the basis of continued operation as a going concern.

1.8 Condition monitoring

- (a) The Asset Management Framework must include a description of how condition monitoring will be used to assess the condition of Assets and how it will be used to inform changes to the Asset Management Plan. The Operator must undertake condition monitoring in order to:
 - (i) identify and prevent as far as practicable, future Asset failures;
 - (ii) identify Assets that require maintenance, replacement or refurbishment;
 - (iii) provide objective analysis of the condition of the Asset which can be used to determine remaining serviceable life; and
 - (iv) enable analysis of trends in performance and reliability of Assets referable to location and system.
- (b) The method and frequency of condition monitoring and the minimum performance at which intervention is required must be:
 - (i) as defined in the Asset Maintenance Standards for that Asset;
 - (ii) as nominated by the manufacturer; and
 - (iii) otherwise sufficient to ensure the Operator's compliance with the requirements of the Contract.
- (c) The Operator must undertake an Asset condition assessment of the State Assets within 6 months of commencement of the relevant State Asset Access Agreement for each State Asset.

2. Asset Maintenance Standards

- (a) The Operator must document and adopt Asset Maintenance Standards that include manufacturer's requirements in technical specifications and performance standards or such higher standards as may be required to meet the obligations of the Contract.
- (b) Where there are no manufacturer's technical maintenance standards for an item of infrastructure the Operator must develop standards in accordance with the following TfNSW documents:
 - (i) T MU AM 01002 MA Maintenance Requirements Analysis Manual;
 - (ii) T MU AM 01003 Development of Technical Maintenance Plans;
- (c) The Asset Maintenance Standards must cover each Asset and include:
 - (i) the specific performance characteristics which must be maintained;
 - (ii) potential faults or hazards which could affect each performance characteristic;
 - (iii) clearly defined severity ratings for each potential fault or hazard;

- (iv) the severity ratings at which the fault must be rectified or the hazard removed (intervention level);
 - (v) the time period / response time within which any faults must be rectified or hazard removed; and
 - (vi) condition indicators and condition ratings for each specific performance characteristic that will be used to record an objective assessment of the condition of the Asset and Asset type.
- (d) The Operator must review and improve the Asset Maintenance Standards on an ongoing basis throughout the Term to ensure that the Asset Maintenance Standards enable the Operator to comply with its obligations under the Contract.
 - (e) Configuration management must be conducted in accordance with the TfNSW Asset Standards Authority requirements set out at <http://www.asa.transport.nsw.gov.au/sites/default/files/asa/asa-standards/t-mu-am-04001-pl.pdf> as updated from time to time (**TfNSW Configuration Management Plan**).
 - (f) The Operator will establish a 'Configuration Change Board' in accordance with the TfNSW Configuration Management Plan.
 - (g) The Operator must consult with the TfNSW Asset Standard Authority in relation to any change in Asset Maintenance Standards.

3. Asset Management Plan

- (a) The Operator must develop, update and maintain the Asset Management Plan in accordance with the TfNSW Transport Service Provider Asset Management Plan Standard and in accordance with the Asset Management ISO 55000 suite of Standards. The plan is to consider the Design Life of the Assets (not the length of the Contract). The Asset Management Plan must:
 - (i) include an Asset management policy;
 - (ii) include a risk management policy;
 - (iii) describe the risk management process;
 - (iv) include an assurance and audit program; and
 - (v) include a management plan for subcontracted maintenance.
- (b) The Asset Management Plan must also contain a 30 year (rolling) forecast works program for the maintenance, refurbishment and/or replacement of Assets.
- (c) The program should include the following:
 - (i) Assets to be renewed with supporting justification;
 - (ii) timing of works;
 - (iii) location and scope of works; and
 - (iv) the Fleet Replacement Schedule plus the projected fleet replacement beyond the Term to meet TfNSW's fleet age requirements.
- (d) As part of the Asset Management Plan, the Operator must develop, implement and maintain a Maintenance Works Program which;
 - (i) describes the Asset Management Activities to be undertaken to meet the requirements of the Contract; and
 - (ii) describes the Asset interventions to be carried out during the following 24 months in sufficient detail to facilitate effective monitoring of all Asset Management Activities.
- (e) The Asset Management Plan must incorporate the requirements of appropriate Asset Maintenance Standards as amended to meet the requirements of the Contract.

- (f) The Asset Management Plan must incorporate an obsolescence management plan that describes how Assets can meet their Design Life.
- (g) The Operator must submit the updated Asset Management Plan to TfNSW:
 - (i) as part of the development of the Asset Management Framework in accordance with Clause 25.2 including three months prior to the Planned Service Commencement Date;
 - (ii) thereafter, at yearly intervals by no later than 1 July in each Contract Year and if the Operator materially amends the Asset Management Plan including the technical maintenance plans.

4. Handback Condition

At the Termination Date, the Operator must ensure that:

- (a) the Assets are in such condition to ensure a safe and reliable operation of the Services and comply with the requirements of the Contract;
- (b) all Asset Management Activities required under the Asset Management Plan are complete;
- (c) any deficiencies in any State Asset or Operator New Bus that mean the Design Life, or the residual life, of the State Asset or Operator New Bus will not be achieved are rectified (unless such deficiencies were forecast with the approval of TfNSW to be rectified after expiry of the Term in the course of Asset Management Activities undertaken in accordance with the Asset Management Plan);
- (d) any rotatable spares are in as new condition or refurbished in accordance with the Asset Management Plan;
- (e) all special tools and equipment are maintained and fit for purpose and are suitable to maintain the State Assets and Operator New Buses as a going concern;
- (f) the Contract Depots are in no worse a condition than identified in the Baseline Condition Report under Clause 22.1;
- (g) all Assets are performing to their intended function and are fault free; and
- (h) Assets are clean and free from graffiti and defects (subject to fair wear and tear).

5. Asset Information System

5.1 General requirements of the Asset Information System

- (a) The Operator must provide, maintain, keep up to date and support an Asset Information System covering all Assets.
- (b) The Operator must:
 - (i) as far as practicable adopt processes and naming conventions consistent with the following documents:
 - (A) T MU AM 02001ST Asset Information Management; and
 - (B) T MU AM 01006ST Asset Reference Codes;
 - (ii) record all Asset information in the Asset Information System and keep such information up-to-date and accurate throughout the Term, including changes arising from:
 - (I) configuration changes to the Assets;
 - (II) like-for-like exchange of components;
 - (III) Asset faults reported and corrective actions taken; and
 - (IV) Asset Management Activities undertaken;

- (iii) record the procurement, acquisition, maintenance and disposal of all Assets;
 - (iv) use the Asset Information System to generate reports on:
 - (A) the achieved performance and condition of the Assets; and
 - (B) Asset use;
 - (v) use the Asset Information System to support Asset performance analysis;
 - (vi) record the spares and consumables inventory data within the Asset Information System;
 - (vii) provide the necessary database tools, manuals, documentation and training required to enable the maintenance and exporting of Asset Information System data to be performed;
 - (viii) provide on-going training on the Asset Information System for TfNSW's staff; and
 - (ix) allow TfNSW to audit the validity, accuracy and currency of all data held within the Asset Information System at any time.
- (c) The data within the Asset Information System will be the property of TfNSW.
 - (d) The Operator must make available to TfNSW all data and reports held in the Asset Information System in password-protected real-time format which incorporates full monitoring, review, searching and custom report generation facilities.
 - (e) The Operator must participate with TfNSW to develop of Asset data rules (**Asset Data Rules**). The Operator will then work in accordance with the Asset Data Rules prescribed by TfNSW.

5.2 Information requirements of the Asset Information System

- (a) Assets must be labelled at an appropriate level of disaggregation to allow asset management and reporting in accordance with the Contract and the Assets Standards Authority naming convention including but not limited to buses, maintenance equipment, buildings, stops and systems.
- (b) The Asset Information System must include for all Assets unless otherwise agreed with TfNSW:
 - (i) a complete Asset register;
 - (ii) design information (i.e. design documentation, calculations, drawings etc.);
 - (iii) as built information;
 - (iv) supplier/vendor information;
 - (v) Asset type, function and output association;
 - (vi) Asset identifier including serial number;
 - (vii) age of Asset;
 - (viii) location of Assets;
 - (ix) current operational status;
 - (x) failure profile including operational impact assessment and failure history;
 - (xi) reliability analysis aligned with FMECA (Failure Mode, Effects, and Criticality Analysis);
 - (xii) maintenance history, including pre-approval activities and warranty history;
 - (xiii) forward Asset maintenance and replacement and refurbishment plans;
 - (xiv) manufacturer's maintenance requirements;
 - (xv) Asset Design Life and remaining life;
 - (xvi) Asset dependency conditions;

- (xvii) planned, actual, and projected financial cost;
 - (xviii) Asset condition data and models;
 - (xix) testing and commissioning records;
 - (xx) inventory of spares and consumables;
 - (xxi) minimum levels for re-ordering;
 - (xxii) Asset criticality;
 - (xxiii) special conditions (i.e. environmental, heritage, confined space, dangerous materials etc.); and
 - (xxiv) capital acquisition cost, depreciation and residual value.
- (c) The Asset Information System must hold supporting information including:
- (i) operations and maintenance manuals;
 - (ii) original equipment manufacturer manuals;
 - (iii) Asset Maintenance Standards including technical maintenance plans and manuals;
 - (iv) training materials, and
 - (v) drawings.
- (d) Asset records must be structured to reflect the requirements of the Asset Management Plan including, but not limited to, supporting effective monitoring of scheduling of maintenance activities and defect rectification.
- (e) The Asset Information System must be developed no later than three months before the Operator takes possession of the State Assets and data must be entered into the Asset Information System in accordance with this schedule from that time.

5.3 Asset Information System design requirements

The Asset Information System must:

- (a) be able to export data in standard industry format (including Excel) retaining all Asset details and hierarchies;
- (b) have the capability of integrating Asset data into a common user format;
- (c) be capable of providing integrated Asset information (including Asset performance) within a "dashboard" format to TfNSW and all approved stakeholders covering the data required under paragraph 5.2 of this Schedule;
- (d) have the capability for scheduling, prioritising and altering Asset Management Activities;
- (e) provide records in respect of inventory management, generation of work orders, bills of materials, tracking of costs and Asset warranty data;
- (f) apply version control to all maintenance procedures which is capable of identifying what version of a maintenance procedure was applied to an Asset at any given point in time;
- (g) be capable of recording all asset management activities; and
- (h) record and report on asset failure system responses.

6. Design Life

Number	Asset	Design Life from entry into service

Number	Asset	Design Life from entry into service
		

Annexure 3 – Not used

Annexure 5 – Licensed Areas

Nil.

Annexure 6 - Asset Presentation Schedule

1. Cleanliness

1.1 Customer outcome

(a) Contract Buses

Customers shall be provided with Contract Buses that are clean and free from the effects of dirt and grime. This includes:

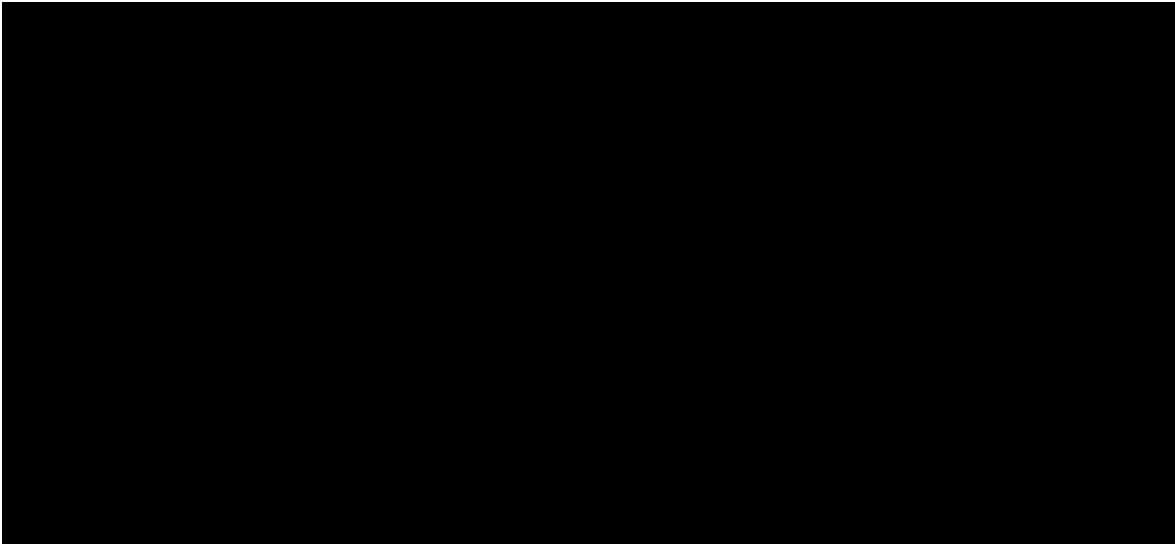
- (i) seats and armrests;
- (ii) entry and exit area and luggage storage;
- (iii) all surfaces inside and outside the Contract Buses (including the floor, ceilings, walls, doors, decals, handrails, draught screens and grab-handles); and
- (iv) windows and frames.

(b) Contract Depots and Licensed Areas

Contract Depots and Licensed Areas shall be clean and free from the effects of dirt and grime. This includes:

- (i) seats;
- (ii) canopies;
- (iii) floors and walls;
- (iv) stairs and ramp;
- (v) lifts;
- (vi) platforms;
- (vii) ticketing, public transport and local area information and wayfinding signage; and
- (viii) Ticketing Equipment.

1.2 Standard – Performance



1.3 Standard – Remediation

When an area of a Contract Bus, Contract Depots or Licensed Area outlined above has been observed by a member of Staff, or reported by a customer, to be in a condition such that it may soil clothing or property, the relevant area shall be cleaned at the earliest opportunity. Contract Buses which are at level 1 for cleanliness (as defined in the table below) shall be remediated or removed from service immediately.

Once a major instance of graffiti has been observed by a Staff member, or reported by a customer, it shall be removed at the earliest opportunity.

(a) Definition: Cleanliness (includes all areas outlined in 'Cleanliness - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard
[Redacted content]		

Level	Label	Standard

2. Condition

2.1 Customer outcome

(a) Contract Buses

Customers shall be provided with Contract Buses that are in good condition and free from damage (including graffiti and vandalism). This includes:

- (i) seats & armrests;
- (ii) entry and exit area and luggage storage;
- (iii) all interior and exterior surfaces of Contract Buses (including the floor, ceilings, walls, doors, decals, handrails, draught screens and grab-handles); and
- (iv) windows and frames (including window etching).

(b) Garden Areas

Garden areas located with the Contract Depots and Licensed Areas (**Garden Areas**) must be maintained in good condition including watering, mowing, weeding and pruning.

2.2 Standard – Performance

Contract Buses, Contract Depots and Licensed Areas shall be maintained to ensure that at all times Contract Buses, Contract Depots, Licensed Areas and Garden Areas meet or exceed level 4 for condition (as defined in the table below).

2.3 Standard – Remediation

When a part of a Contract Bus or an area of a Contract Depots or Licensed Area has been observed by a Staff member, or reported by a customer, as broken or missing it shall be repaired or replaced at the earliest opportunity.

Once a major maintenance or safety issue has been observed by a Staff member, or reported by a customer, it shall be made safe and rectified at the earliest opportunity.

(a) Definition: Condition (includes all areas outlined in 'Condition - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard

Level	Label	Standard
[Redacted Content]		

Schedule 10 - Market Process

In accordance with Clause 48.3 of the Contract, the Operator must prepare, maintain and keep up to date the following information to be used and published in any market process, being any process in connection with the re-tendering or contracting of all or any part of the Services by TfNSW:

- (a) employee information at an aggregate and at an individual level, including date of joining, contract / award terms, grade, accrued entitlements and training record, set out in the following manner.

Aggregate employee information – Number of Staff by Staff category (full time equivalents)

Category	Two Years Ago	Last Year	Current Year to Date
Management			
Clerical			
Drivers			
Mechanics			
Body Shop			
Cleaners			
Operations			
Other			
Total			

Individual employee information – Accrued entitlements owing

Category	Start date	Service (years and months)	Long service leave (days/hrs)	Annual leave (days/hrs)	Other accrued entitlements	Training records
Number of months						
Management						
Person 1						
Person 2						
Person etc						
Sub total						
Clerical						
Person 3						
Person 4						
Person etc						
Sub total						
Drivers						
Person 5						
Person 6						

Category	Start date	Service (years and months)	Long service leave (days/hrs)	Annual leave (days/hrs)	Other accrued entitlements	Training records
Person etc						
Sub Total						
Mechanics						
Person 7						
Person 8						
Person etc						

- (b) payroll details at an aggregate and at an individual level, including wages and salaries, allowances and awards, overtime and penalties, set out in the following manner;
- (c) general information on overtime, absenteeism, sick leave and industrial relations issues.

Aggregate payroll details: Annual wage / salary payments (incl. overtime payment)

Category	Two years ago	Last Year	Current year to date
Number of months	12	12	
Management			
Clerical			
Drivers			
Mechanics			
Body Shop			
Cleaners			
Operations			
Other			
Total			

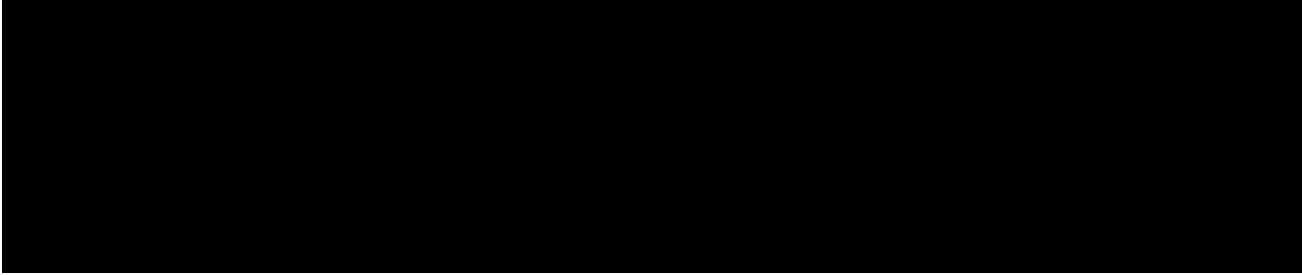
Individual payroll details: Current year to date (\$)

Category	Award	Grade	Ordinary time hour rate	Ordinary time payments	Overtime payments	Allowance payments	Total payments
Number of months							
Management							
Person 1							
Person 2							
Person etc							
Sub total							
Clerical							
Person 3							
Person 4							

Category	Award	Grade	Ordinary time hour rate	Ordinary time payments	Overtime payments	Allowance payments	Total payments
Person etc							
Sub total							
Drivers							
Person 5							
Person 6							
Person etc							
Sub Total							
Mechanics							
Person 7							
Person 8							
Person etc							
Body Shop							
Person 9							
Person 10							
Person etc							
Sub Total							
Cleaners							
Person 13							
Person 14							
Person etc							
Sub Total							
Other							
Person 15							
Person 16							
Sub Total							
Total							

Schedule 11 – Excluded Contract Employees

For the purposes of Clause 49.3, TfNSW is not required to procure that any Successor Operator make offers of employment to the following Contract Employees:



Schedule 12 – Net Financial Impact

1. Application

- (a) Subject to the Contract, the Operator is entitled to be compensated for the negative Net Financial Impact of the following events (**NFI Events**):
 - (i) if agreed to by TfNSW, acquisition of a New Depot;
 - (ii) Project Specific Changes in Law; and
 - (iii) Modifications directed by TfNSW under Clause 42.
- (b) Subject to the Contract, TfNSW is entitled to be paid an amount calculated by reference to the positive Net Financial Impact of the NFI Events referred to in paragraph 1(a)(iii).

2. Calculation of Net Financial Impact

- (a) The Net Financial Impact of an NFI Event will be calculated having regard to:
 - (i) the incremental costs which the Operator incurs or will incur as a result of the NFI Event, including:
 - (A) design and construction costs which are the actual incremental direct costs of plant, labour, materials and subcontractors directly engaged in construction required in relation to the NFI Event;
 - (B) manufacturing costs;
 - (C) financing costs;
 - (D) external third party advisory costs;
 - (E) subcontractor overhead and margin costs;
 - (F) the Operator's overhead and margin costs;
 - (ii) any cost savings which accrue or will accrue to the Operator as a result of the NFI Event;
 - (iii) any insurance proceeds, damages, compensation or other revenue which the Operator receives or is entitled to receive as a result of the NFI Event; and
 - (iv) any liability to third parties (including subcontractors) incurred by the Operator as a result of the NFI Event.
- (b) If in any month the incremental costs and loss incurred or suffered by the Operator as a result of a NFI Event exceeds the cost savings derived by the Operator as a result of the NFI Event, the Net Financial Impact for that month will be a negative amount.
- (c) If in any month the cost savings derived by the Operator as a result of a NFI Event exceeds the incremental cost and loss incurred or suffered by the Operator as a result of the NFI Event, the Net Financial Impact for that month will be a positive amount.

3. Principles for calculating Net Financial Impact

3.1 Overriding considerations

The overriding considerations for calculating Net Financial Impact will be that:

- (a) TfNSW is receiving value for money;
- (b) the compensation amount is fair and reasonable and is calculated in a manner that is transparent.

3.2 Open book basis

The Operator must and must procure that the Operator's Associates:

- (a) provide all information in relation to the Operator's calculations on an open book basis;
- (b) if required by TfNSW, make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
- (c) allow TfNSW to review and undertake audits to enable it to verify compliance with paragraph 3.2(b),

in order to enable TfNSW to make an accurate assessment of the actual costs and savings. "Open book basis" will include the Operator providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs and margins of the Operator and the Operator's Associates in a clear and transparent manner and other information reasonably required by TfNSW including reasonable available source documents required to verify such calculation.

3.3 No double counting or double compensation

- (a) No amounts will be double counted and no costs will be payable more than once, whether as part of the Net Financial Impact or otherwise under this Contract.
- (b) Without limitation to paragraph 3.3(a), no amount will be included in the Net Financial Impact to the extent that the Operator is otherwise compensated for that amount under this Contract, including in any indexation.

3.4 Incremental costs only

Changes in costs are to be determined on an incremental basis where:

- (a) in the case of an increase in costs, only costs that would not be incurred but for the NFI Event are taken into account; and
- (b) in the case of a reduction in costs, only savings that would not have accrued but for the NFI Event are taken into account.

3.5 Fair and reasonable, arm's length arrangements

All increases or decreases in costs included in the calculation must:

- (a) be fair and reasonable; and
- (b) reflect commercial arm's length arrangements.

3.6 Non-compliance with other obligations

The Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not be been incurred or suffered; and
- (b) include any cost savings which would have been derived,

had the Operator complied with its obligations under this Contract, other than to the extent the Parties agree that an obligation is adversely affected by the relevant NFI Event.

3.7 Mitigation

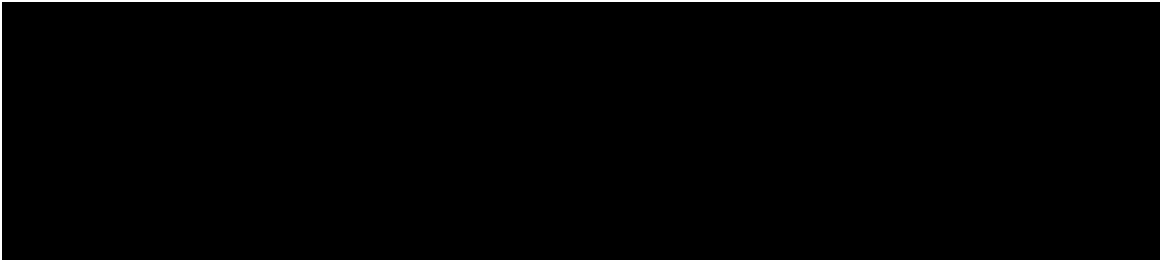
Without limiting paragraph 3.6, the Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not have been incurred or suffered; and
- (b) include any costs savings which would have been derived,

had the Operator complied with Clause 41.3(e).

3.8 Overheads and margin





3.9 Redundancy

Any redundancy payments which are necessary as a result of a NFI Event (but excluding annual leave, rostered days off and long service leave entitlements) will be included provided the Operator has used reasonable endeavours to avoid or minimise those redundancies.

3.10 Insurance costs

All insurance cost impacts must be included in the calculations.

4. Compensation Arrangements

4.1 If agreed

- (a) Subject to paragraph 4.2, the Parties can agree that the Operator will be compensated or TfNSW will be paid for the Net Financial Impact of a NFI Event by:
 - (i) single lump sum payment, or a series of lump sum payments;
 - (ii) milestone payments; or
 - (iii) any other means which the Parties may agree.
- (b) if the Parties agree the arrangements by which the Operator will be compensated or TfNSW will be paid, then TfNSW must provide the agreed compensation, or the Operator must make the agreed payment, in accordance with the agreed arrangements.

4.2 If not agreed

If the Parties do not agree upon an arrangement for the payment of compensation under paragraph 4.1 of this Schedule, then:

- (a) if the actual Net Financial Impact of a NFI Event in any month is a negative amount, that amount will become payable by TfNSW to the Operator after the end of the relevant month; and
- (b) if the actual Net Financial Impact of a NFI Event in any month is a positive amount, that amount will become payable by the Operator to TfNSW after the end of the relevant month.

4.3 Claims for payment

The Operator may submit claims for payment due under this paragraph 4 in accordance with Clause 36.

