
Attachment C Deed of Guarantee and Indemnity

Deed of Guarantee and Indemnity

Outer Metropolitan Bus Services Contract

(Guarantor)

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

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Date:

Parties

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

Background

- A TfNSW has entered into an agreement with the Operator for the supply of bus services in the Sydney area (**Services Contract**).
- B Under the 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.

The parties agree

1 Defined terms and 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 Services Contract.

1.2 New defined terms

In this deed:

Dollars means Australian dollars.

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 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 **[insert]**.

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

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

1.3 Interpretation

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

1.4 TfNSW's power and discretions

- (a) The provisions of clauses 1.4 (Delegation) to 1.7 (Effect of certificates issued by TfNSW) of the 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 or a subcontractor of the Operator (if any) 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 the 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 or a subcontractor of the Operator (if any) 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 the payment obligation being unenforceable, invalid or illegal, 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 due and payable. 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 paragraphs above limits the generality of any other.

2.6 Principal and independent obligation

This deed 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, or to which TfNSW is party, 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 distributions, dividends or other payments 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 distribution or 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 4.4), 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 or in respect of 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 M (Default, Termination and End of Service Term) of the 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 5.1 (Performance Bonds) of the 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 5.1 (Performance Bonds) of the Services Contract; or
 - (ii) pay to TfNSW an amount equal to the General Performance Bond Amount or the Estimated Amount (as defined in clause 5.1(b) (Performance Bonds) of the Services Contract) as the case may be.

- (c) TfNSW may use the amounts paid under clause 8(b)(ii) subject to the same conditions applicable to it making demand under a General Performance Bond or Handback Security Bond under the Services Contract and the unused balance of any such amounts 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 5.1 (Performance Bonds) of the Services Contract.

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, transfer or novate 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 1.6 (Transfer of functions) or 25 (Asset restructure by TfNSW) of the 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 or electronically 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; or
 - (iii) sent by email to the following email addresses:
 - [TfNSW email address]
 - [Guarantor email address]
- (b) If a Notice is sent by email:
 - (i) the email must be sent to an email address of an appropriate authorised officer of the Guarantor (if being sent by TfNSW); and
 - (ii) the recipient's email system must be capable of generating a receipt of acknowledgement.
- (c) The Guarantor must promptly notify TfNSW of any change of email address for Notices.
- (d) 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;
 - (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); and
 - (iii) if sent by email, upon receipt by the sender a receipt of acknowledgement,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 acknowledges 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.

Execution page

Executed as a deed.

Signed, sealed and delivered for and on behalf
of **Transport for NSW ABN 18 804 239 602** by
its authorised delegate:

Signature of authorised delegate

Signature of witness

Name of authorised delegate (print)

Name of witness (print)

Executed by **ABN** in accordance with
section 127 of the *Corporations Act 2001* (Cth)
by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)