
Outer Metropolitan Bus Services Contract

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

[Operator]
ACN

[insert] 2021

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Date:

Parties

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

Background

- A The parties currently are party to an existing agreement entitled “Outer Sydney Metropolitan Bus Service Contract” dated [insert] under which the Operator provides bus services to TfNSW (**Existing Agreement**).
- B The Operator will continue to provide the services under the Existing Agreement until the Service Commencement Date, upon which the Existing Agreement will automatically terminate and be replaced by this contract.
- C TfNSW is entering into this contract on behalf of the State under the *Transport Administration Act 1988* (NSW) (**TAA**) and the *Passenger Transport Act 2014* (NSW) (**PTA**).
- D This Contract is a passenger service contract within the meaning, and for the purposes of, Part 3 Division 1 of the PTA.
- E The Operator is an accredited service operator ready and able to provide the Services specified in this Contract.
- F The Operator has agreed to carry out the Services on the terms set out in this Contract.

The parties agree

1 Defined terms and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Abatement has the meaning given in Schedule 4 (Key Performance Indicators).

Accessible Transport Action Plan means a plan which addresses the requirements referred to in Schedule 5 (Governance and Reporting).

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.

Approved Beneficiaries means the beneficiaries listed in Schedule 1C (Services - Ticketing and Revenue Protection) as amended from time to time.

Approved Subcontractor means a subcontractor which has been consented to by TfNSW in accordance with clause 35(a).

Asset Information System means the system for the storage, processing, transmission and management of asset information as described in paragraph 8 of Schedule 6 (Assets).

Asset Maintenance Standards means the standards adopted or required to be adopted by the Operator in accordance with paragraph 3 of Schedule 6 (Assets).

Asset Management Activities means the activities that the Operator is required to perform under clause 23 and Schedule 6 (Assets), including:

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

Asset Management Failure has the meaning given in clause 23.7 and also includes any other circumstance described as such in Schedule 6 (Assets).

Asset Management Framework means the asset management arrangements described in paragraph 2.2 of Schedule 6 (Assets) within which the Asset Management Activities are undertaken.

Asset Management Plan means the plan set out in Annexure 4 of Schedule 6 (Assets).

Assets means:

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

Associate means TfNSW's Associates or Operator's Associates, as applicable.

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.

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 2017.

Boardings has the meaning given in Schedule 4 (Key Performance Indicators).

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 2017, in particular Parts 3 and 4 of the PT Regulation 2017.

Bus Fleet means the aggregate of all Contract Buses at any time during the Service Term.

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 has the meaning given to it in clause 9.1.

Business Continuity Plan means the business continuity plan that the Operator has prepared and is required to maintain and comply with in accordance with clause 30.

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

Business Day (In Hours) means, in respect of a point in time, that same time on the following Business Day or within the following number of Business Days (as applicable). For example, 2pm on Tuesday to 2pm on Wednesday would be 1 Business Day (In Hours), and 4pm on Thursday to 4pm on Monday would be 2 Business Days (In Hours).

Calendar Month has the meaning given in Schedule 4 (Key Performance Indicators).

Cancelled Trip has the meaning given in Schedule 4 (Key Performance Indicators).

Cardholder Data means details of any credit, debit or other payment card, including the account number, cardholder name, service code, expiry date, magnetic stripe data, card verification number and any other information regulated or governed by PCI DSS.

Certificate of Service Commencement means the certificate issued by TfNSW in accordance with clause 4.5.

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 TAA, the PT Act 1990 or the PTA;
- (k) any change to the TAA, the PT Act 1990 or the PTA 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.

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.

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

Concession Fare means the fare that can be charged for a ticket intended to provide free travel, or travel at a reduced fare, on a public passenger vehicle, set out in Schedule 1C (Services – Ticketing and Revenue Protection), 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.

All Data is Confidential Information of TfNSW, and not of the Operator.

Connecting Passenger Operators means any passenger transport operator whose services connect with the Bus 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 goodwill or failure to realise anticipated savings (whether the loss is direct or indirect), but excluding any

loss or damage which may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from a breach or other act or omission giving rise to the relevant liability.

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, and includes both Pre-existing Contamination and Subsequent Contamination.

Continuity of the Services means:

- (a) the continued provision of the Services during the Service 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 Services and the transfer of Assets by the Operator to a Step in Party or Successor Operator as contemplated by this Contract.

Contract means this Services Contract, including all attachments and schedules and all documents attached or annexed to each schedule.

Contract Bus means:

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

and includes any On Demand Vehicles.

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 Material means Existing Contract Material and New Contract Material.

Contract Objectives has the meaning given in clause 3.

Contract Variation means any change to the requirements of this Contract that does not constitute a Service Variation, and includes any:

- (a) addition, extension, reduction, increase, decrease or omission to or from the Assets or the Services (or the sequencing or timing of them); and
- (b) change that requires the Operator operate or maintain additional bus depots.

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

- (a) the Net Financial Impact of the proposed Contract Variation;
- (b) the time within which the proposed Contract Variation will be implemented;
- (c) any Authorisations required to implement the proposed Contract Variation and the effect of the proposed Contract Variation on any existing Authorisations;
- (d) the effect which the proposed Contract Variation will have on the Operator's ability to satisfy its obligations under this Contract;
- (e) the details of any specific amendments to this Contract; and
- (f) any other information required by TfNSW in a Contract Variation Request.

Contract Variation Order means a notice identified as a 'Contract Variation Order' issued to the Operator by TfNSW under clause 13.2(a) or 13.2(c), requiring a Contract Variation.

Contract Variation Request has the meaning given to in clause 13.1.

Contract Year means each 12 month period from Service Commencement Date, provided that:

- (a) Contract Year 1 commences on the Service Commencement Date and ends on the last day of the 12th calendar month from that date;
- (b) each subsequent Contract Year commences on the first day of the month following the end of the previous Contract Year, for a subsequent 12 month period; and
- (c) the last Contract Year during the Service Term commences on the first day of the month following the end of the previous Contract Year and ends on the Termination Date.

By way of example, if the Service Commencement Date is 3 September 2021, the Contract Year 1 is 3 September 2021 to 31 August 2022, and the Contract Year 2 is 1 September 2022 to 31 August 2023.

Contracted Timetabled Trips has the meaning given in Schedule 4 (Key Performance Indicators).

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.

Cure Plan has the meaning given in clause 46.1.

Cure Notice has the meaning given in clause 46.1.

Customer means any user, passenger or customer in respect of the Bus Services.

Customer Experience Plan means a plan which addresses the requirements referred to in Schedule 5 (Governance and Reporting).

Data means all data, information, documents or records of whatever nature and in whatever form:

- (a) relating to the business, networks and operations of TfNSW or its Associates, including data, information, documents or records in relation to the customers, employees or suppliers of TfNSW; or
- (b) relating to the Bus Services or the performance of the Services, including data, information, documents or records provided or required to be provided by the Operator via the OSD or DCIS or otherwise relating to the maintenance or operation of any Contract Buses or other Assets, the operation or utilisation of any Bus Services or any passengers (including complaints) or patronage or lost property,

whether subsisting before, during or after the execution of this Contract and all data, information, documents or records created, generated or processed by the Operator as part of, or in connection with, the Services or its other obligations under this Contract, and includes:

- (c) data that is Personal Information, including any Personal Information referred to in clause 27.3;
- (d) data that is corporate, proprietary or financial information;
- (e) diagrammatic or schematic data, including data representing networks, maps or technology;
- (f) all data (including metadata) processed, communicated or generated in performance of the Bus Services, including coding and performance data; and
- (g) all any transformations, modifications, derivations or insights created or generation from any other Data.

Data Breach means any:

- (a) unauthorised access to, or unauthorised disclosure of, or breach of security relating to any Personal Information or Data; or
- (b) loss, corruption or damage of any Personal Information or Data.

DDA Legislation means:

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

and accompanying regulations and guidelines, including those issued under the *Disability Discrimination Act 1992* (Cth).

De-Identified or **De-Identify** has the same meaning as in the *Privacy Act 1988* (Cth).

Dedicated School Services means Trips on Routes that are primarily to cater for transport of primary or secondary school students from the schools and that carry few, if any, fare paying passengers who are not school students, including as further described in Schedule 2A (Service Levels) 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 Schedule 2A (Service Levels) as amended from time to time in accordance with this Contract.

Dedicated Staff means any Staff who are:

- (a) predominantly engaged to carry out the functions or roles listed in Attachment E, notwithstanding that the role names and descriptions may be different to those in Attachment E, but excluding any Staff who are solely engaged with respect to On Demand Services; and
- (b) any Staff who are otherwise identified in Attachment E as “Dedicated Staff” (or the replacement of those Staff).

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 Schedule 6 (Assets).

Design Life means in respect of a State Asset or any Operator New Bus that falls within an asset category referred to in paragraph 9 of Schedule 6 (Assets), the period specified for that asset category in paragraph 9 of Schedule 6 (Assets).

Digital Customer Information Systems (DCIS) means the centralised integrated transport information service that communicates and receives data and information in relation to public transport services, through Transportnsw.info Website.

Disabling Code means any computer virus or other code which is intended to or would have the effect of intercepting, accessing, copying, disrupting, impairing, denying or otherwise adversely affecting security, performance, integrity, reliability, access to or use of any information technology, data, equipment, network, including worms, spyware, adware, key loggers, trojans and any new types of programmed threats that may be classified.

Disaster means an event (which may include a Force Majeure Event) that has, or is likely to have, a material adverse effect on the provision of the Services by or the business operations of Operator or its Associates, which cannot be managed within the context of normal operating procedures

Disaster Recovery Plan means a plan to recover from and ensure continued operations in the event of a Disaster.

Disclosed Information means all information of whatever nature that is obtained by or on behalf of the Operator or its Associates 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;

- (b) all "ITN Documents" (as that term is defined in the Invitation to Negotiate); and
- (c) 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 43.1(d).

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

Emergency Replacement Vehicle has the meaning given in clause 19.3.

Employees means employees employed by the Operator to carry out the Services during the Service Term.

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; and
- (b) the date on which TfNSW issues a Termination Notice or this Contract is otherwise purported to be terminated (excluding partial termination under clause 47.7),

and ending on a date nominated by TfNSW, which date must be no more than 18 months following date determined under paragraph (a) or (b) above.

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 (d).

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 Schedule 5 (Governance and Reporting).

Excused Performance Incident has the meaning given in the Schedule 4 (Key Performance Indicators).

Existing Agreement has the meaning given to it in the Background.

Existing Bus means each Bus listed in Annexure D of Schedule 3 (Pricing), including each Legacy Bus.

Existing Contract Material means any Material that is not brought into existence as part of, or for the purposes of, performing this Contract or preparing the Offer.

Existing Depot means each depot listed in Annexure 6 of Schedule 6 (Assets), including each Legacy Depot.

Expert means an independent expert appointed in accordance with clause 43.2(a).

Expiry Date means:

- (a) the date that is seven years after the Planned Service Commencement Date; or
- (b) if this Contract is terminated under clause 4.1, either:
 - (i) the date that is five years after the Planned Service Commencement Date; or
 - (ii) the date that is six years after the Planned Service Commencement Date.

Fare has the meaning given in clause 4 of the PT Act 2014.

Final Inspection Auditor has the meaning given in clause 50.4.

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 each 12 month period ending on 30 June during the Service Term, provided that:

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

Financier Direct Deed means a direct deed 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 2 of Schedule 6 (Assets).

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 Services,

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). However, a Force Majeure Event does not include any event that was in effect or could have reasonably been foreseen as at the effective date of this Contract.

General Performance Bond mean the performance bond(s) to be provided to TfNSW under clause 5.1(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 9 of Attachment A CPI Indexed at the commencement of each Financial 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 5.5(d) or clause 5.5(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 Services under the same or similar circumstances for those activities.

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

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).

Outer Metropolitan Region means the total region covered from time to time by TfNSW's:

- (a) "Outer Metropolitan Region Bus Services Contracts" or "Outer Sydney Metropolitan Region Bus Services Contracts"
- (b) "Newcastle Integrated Services Contract"; or
- (c) or any successor frameworks for such Bus services contracts.

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 Assets means the:

- (a) State Assets; and
- (b) Contract Buses and Contract Depots in respect of which TfNSW or the Successor has a right to procure or require a novation or transfer in connection with under this Contract or any Transaction Document on termination of this Contract.

Handback Audit has the meaning given in clause 50.1.

Handback Audit Assets has the meaning given in clause 50.1(b).

Handback Auditor has the meaning given in clause 50.1.

Handback Condition means the required condition of the Handback Assets as at the Termination Date as set out in Schedule 6 (Assets) or otherwise under a relevant Transaction Document.

Handback Security Bond means the performance bond to be provided to TfNSW under clause 5.1(b) and any performance bond replacing it.

Handover Information has the meaning given in clause 49.3.

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 Services means the Bus Services which are Headway Trips.

Headway Trips means Trips on Routes that are scheduled to a Headway as described in Schedule 2A (Service Levels) as amended from time to time in accordance with this Contract.

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 Bus Service operating in accordance with the Schedule 1A (Bus Services and Management), Schedule 1D (Special Services and Operating Activities) or Schedule 2A (Service Levels).

Incomplete Trip has the meaning given in Schedule 4 (Key Performance Indicators).

Indemnified Person has the meaning given in clause 41.1(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 Kms has the meaning given in Schedule 4 (Key Performance Indicators).

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 Services on a temporary or interim basis after the Termination Date.

Invitation to Negotiate means the invitation to negotiate for the Outer Metropolitan Bus Services Contract issued by TfNSW on or about 30 October 2020.

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 Performance Indicators (or KPI) means the indicators specified in Schedule 4 (Key Performance Indicators), as amended from time to time.

Key Personnel has the meaning given in clause 34.3(a).

Key Subcontract 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 or provision of Drivers; or
- (d) the provision of On Demand Services (or part of them),

or that is otherwise designated as a Key Subcontract under clause 36.2(b).

Key Subcontract Security Document means:

- (a) any document that TfNSW requires (in its absolute discretion) to be provided or entered into by any Key Subcontractor and any other parties in connection with a Key Subcontract; 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 Subcontractor and all relevant counterparties.

Key Subcontractor means any party to a Key Subcontract that is not TfNSW or the Operator.

KPI Default has the meaning given in Schedule 4 (Key Performance Indicators).

KPI Event has the meaning given in Schedule 4 (Key Performance Indicators).

KPI Relief has the meaning given in Schedule 4 (Key Performance Indicators).

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).

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

and includes the general and common law.

Legacy Bus means each Bus owned or leased by Operator and listed in Annexure D of Schedule 3 (Pricing) that was not subject to the NFPP payment under any prior contract with TfNSW or is otherwise identified as a "Legacy Bus" in that Annexure.

Legacy Depot means each Depot owned or leased by the Operator and listed in Annexure 6 of Schedule 6 (Assets) and identified as a "Legacy Depot".

Licensed Area has the meaning given in clause 21.1 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 the date identified as such in Annexure 7 of Schedule 6 (Assets) in respect of the relevant Licensed Area.

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 Schedule 6 (Assets) defining the Asset Management Activities required under the Contract.

Market Process Information means the information described in the Schedule 5 (Governance and Reporting).

Marks means any mark, trade mark, logo, indicia or image, whether or not they are registered or capable of being registered.

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

Material Breach means:

- (a) the Operator commits a material breach (being any breach that is not trivial or inconsequential) of this Contract; or
- (b) the Operator regularly or frequently breaches this Contract or commits a number of breaches which collectively constitute a material breach of this Contract.

Modern Slavery Laws means any anti-slavery and human trafficking Laws (in any relevant jurisdiction), including:

- (a) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
- (b) sections 80D, 80E, 91G(1)-(3), 91H, 91HAA and 93AA-93AC of the *Crimes Act 1900* (NSW); and
- (c) Laws equivalent to any of the Laws referred to in paragraphs (a) and (b) in the relevant jurisdictions.

Monthly Contract Price has the meaning given in Schedule 3 (Payment).

Monthly Commercial Forum has the meaning given in Schedule 5 (Governance and Reporting).

Monthly Service Delivery Forum has the meaning given in Schedule 5 (Governance and Reporting).

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.

Net Financial Impact means the net financial impact of a NFI Event calculated in accordance with Schedule 7 (Net Financial Impact).

New Bus means:

- (a) any Operator New Bus; and
- (b) any TfNSW New Bus.

New Contract Material means any Material brought into existence as part of, or for the purposes of, performing this Contract (whether prepared before or after the commencement of

this Contract) and includes the Disclosed Information, Service Plan 2 and the Timetables and all Data, including 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 22.6.

NFI Event has the meaning given in Schedule 7 (Net Financial Impact).

NFPP has the meaning given in Schedule 3 (Payment).

Nominated Assets has the meaning given in clause 51.2.

Offer means the proposal submitted by the Operator (or its Associates) to TfNSW in response to the Invitation to Negotiate.

On Demand Services means on demand services specified in Schedule 1A (Bus Services and Management).

On Demand System means the Operator's customer facing systems for On Demand Services.

On Demand Vehicle means any vehicle used by the Operator or its Associates to provide On Demand Services.

On Time has the meaning given in the Schedule 4 (Key Performance Indicators)

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

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

Opal Ticketing System means the electronic ticketing system operated by TfNSW known as Opal.

Operating Activities means all services, activities and things which the Operator is required or may be required, to do to comply with its obligations under this Contract, including management and maintenance of the Assets in accordance with this Contract, and anything customarily performed in connection with the performance of, or incidental or ancillary to, any of the foregoing, but excluding the Bus Services.

Operator has the meaning given in the Parties section.

Operator Asset means any asset used by the Operator to conduct the Services, including any systems and equipment used by the Operator to provide the Headway Management Solution or On Demand Services (including the On Demand System), Existing Buses, Existing Depots, Operator New Buses, any New Depots owned or leased by the Operator and Key Subcontracts, 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 a Contract 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 24.3.

Operator Communications and Marketing Plan means the marketing plan prepared by the Operator in accordance with Schedule 5 (Governance and Reporting).

Operator Depot Lease means any lease under which a Contract Depot is leased to the Operator, other than a Depot Headlease.

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 Services 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 or On Demand Vehicle that is purchased, leased, licensed or otherwise accessed or used by the Operator, with the approval of TfNSW, in accordance with clause 22 (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 or an Existing Bus (other than a Legacy Bus) that is subject to an Operator Bus Lease.

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

Operator Owned Bus means an Operator New Bus or an Existing Bus (other than a Legacy Bus) that is owned by the Operator.

Operator Owned Existing Depot means an Existing Depot 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 Schedule 5 (Governance and Reporting).

Operator's Authorised Officers means 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) if the Operator is, or is part of a joint venture, for the purposes of delivering the Services under this Contract, any entity or organisation in that joint venture;
- (c) the Parent Company;
- (d) any Related Body Corporate or Related Entity of the Operator; and

- (e) any director, officer, employee or agent of the Operator or any of the persons referred to in paragraphs (a) to (d) 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 [insert].

Payments means those payments set out in Schedule 3 (Payment).

PCI DSS means the latest version of “Payment Card Industry’s Data Security Standard”, as updated from time to time.

Performance Bond means:

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

Performance Payment has the meaning given in Schedule 4 (Key Performance Indicators).

Permitted Security Interest means:

- (a) a lien or charge:
 - (i) which arises by operation of Law in the ordinary course of day-to-day trading;
 - (ii) which does not secure Financial Indebtedness; and
 - (iii) under which the indebtedness secured by it is paid when due or is being contested in good faith; and
- (b) 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.

Planned Service Commencement Date has the meaning given in Item 5 of Attachment A.

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 OpalConnect 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 any Contamination existing in, on or under or emanated or emanating from the Licensed Areas (or the land adjoining the Licensed Areas other than land that is Contract Depots) 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 Licensed Areas from the Operator or enjoying the use or occupation of the State Property with the consent of the Operator.

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; and
- (b) relating specifically to operating buses safely.

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).

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

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

PT Regulation (General) 2017 means the *Passenger Transport Regulation 2017* (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).

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 Schedule 5 (Governance and Reporting).

Rail Replacement Services has the meaning given in Schedule 1D (Special Services and Operating Activities).

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 Entity Owned Existing Depot means an Existing Depot owned by Related Entity of the Operator.

Related Party Arrangement has the meaning set out in clause 52.2.

Relief Event means, in respect of the Operator:

- (a) TfNSW fails to give the Operator access to any State Asset as required by a State Asset Access Agreement; or
- (b) a Project Specific Change in Law,
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.

Relevant Amount has the meaning set out in clause 5.5(f).

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

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 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 or route variant specified or described in Schedule 2A (Service Levels) and any revisions to that route, approved by TfNSW in accordance with clause 12.

Route Control Strategy has the meaning given in Schedule 1A (Bus Services and Management).

Route Services means timetabled Bus Services, excluding the:

- (a) Dedicated School Services;
- (b) On Demand Services;
- (c) Special Services; and
- (d) Headway Services,

as described in Schedules 1A (Bus Services and Management), 1B (Services – Customer Interaction) and 1C (Services – Ticketing and Revenue Protection) as amended from time to time in accordance with this Contract.

Route Services Timetable means the timetable for the operation of the Route Services as set out in Schedule 2A (Service Levels) as amended from time to time in accordance with this Contract.

Safety Incident means, in connection with the performance of the Services:

- (a) any safety incident impacting members of the public, any work health and safety incident, and any environmental incident;
- (b) any fire or dangerous event at any Contract Depot or on any Contract Bus;
- (c) any fatality or injury to any person, including any incident which must be reported to New South Wales WorkCover Authority;
- (d) any unplanned or undesired event which results or creates a material risk in resulting in injury, ill health or death of any person, including any near miss; and
- (e) any 'occurrences' or 'notifiable occurrences' under the WHS Law.

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 Default means:

- (a) any Operator breach of a Transaction Document (including any breach of warranty) other than one that is a Termination Event;
- (b) performance with respect to any KPI is at or below the Cure Plan Threshold; or
- (c) any other circumstance identified as a "Service Default" in any Transaction Document or where TfNSW can require the Operator to develop a Cure Plan; or
- (d) any Termination Event.

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

Service Levels means the service requirements for each Bus Service, including:

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

including as described in Schedule 2A (Service Levels).

Service Plan means the service plan attached in Schedule 2A (Service Levels) that is identified as 'Service Plan' and specifies the service requirements to be operated from the Service Commencement Date.

Service Term means the period determined under clause 4.1, and also includes any End of Contract Period.

Service Variation means a variation to the Bus Services that requires:

- (a) a temporary or continuing change in the nature, scope, requirements or level of the Bus Services (including the removal of a Trip);
- (b) a temporary or continuing variation to a Route (including the creation of a new 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 12.1.

Services means the Bus Services and the Operating Activities.

Smartcard has the meaning given in the PT Act 1990.

Software is any computer program or programming (including source code and object code) and includes modifications, any Software, tools or object libraries embedded in that Software and all Contract Materials relating to that Software and/or its design, development, modification, operation, support or maintenance.

Special Services has the meaning given in Schedule 1D (Special Services and Operating Activities).

Special Service Order has the meaning given in clause 9.5(b).

Special Services Order Form means a form substantially in the form set out in Attachment D to this Contract.

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

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 Services, including the Operating Activities.

State means the State of New South Wales.

State Asset Access Agreements means:

- (a) the State Bus Lease (if required for any TfNSW New Buses);

- (b) the State Bus Depot Leases (if required for any New Depots owned or leased by TfNSW); and
- (c) 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 Services.

State Assets means:

- (a) the TfNSW New Buses;
- (b) the New Depots owned or leased by TfNSW; and
- (c) the Licensed Areas; and
- (d) the Transit Stops.

State Bus Depot Leases means each lease for the Contract Depots owned or leased by TfNSW in substantially the form set out in Annexure 9 of Schedule 6 (Assets).

State Bus Lease means a lease in respect of the Contract Buses owned or leased by TfNSW insubstantially the form set out in Annexure 5 of Schedule 6 (Assets).

State Property means the Contract Depots owned or leased by TfNSW, Licensed Areas and Transit Stops.

State Record has the meaning given in section 3 of the *State Records Act 1988* (NSW).

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 Services under this Contract or any other Transaction Document; and
- (b) TfNSW's costs, charges and expenses incurred in engaging or managing a Step in Party or exercising any Step in Rights, including any transaction costs and the costs of any consultants and advisers engaged in connection with the appointment or management of the Step in Party or otherwise associated with the conduct of the Step in Rights.

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 45.2.

Step in Right has the meaning given in clause 45.1(a).

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 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;

- (b) 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;
- (c) 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 State Property from the Operator or enjoying the use or occupation of the State Property with the consent of the Operator;
- (d) 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
- (e) any Contamination which otherwise arises out of or in connection with the Services.

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 Services after the Termination Date (but does not include an Interim Operator).

TAA 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.

Termination Date means the date on which the End of Contract Period ends (as nominated by TfNSW).

Termination Event means any of the events listed in clause 47.1.

Termination Notice has the meaning given under clause 47.1.

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

TfNSW Brand means all Marks, livery, colours or other get up or brand used on or in relation to the State Assets and Contract 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 Services (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 Services (other than those of the Operator or Operator's Associates which are used in their business generally).

TfNSW Public Transport Brand Style Guide means the TfNSW policy that specifies how the TfNSW Brand may be used and TfNSW's marketing requirements, as updated by TfNSW from time to time.

TfNSW Customer Complaints Policy means the policy standard and guidelines for the management of customer complaints and feedback, as updated by TfNSW from time to time.

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 9.4.

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 Services (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 Services or any part of the Services).

TfNSW New Bus means 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 Service Term.

TfNSW Policies means all TfNSW policies and standards:

- (a) referenced in this Contract or the Transaction Documents;
- (b) TfNSW's Statement of Business Ethics (which includes a requirement to comply with the *Transport Code of Conduct* and the *NSW Government Procurement Policy Framework* in relation to conduct by suppliers);
- (c) published on TfNSW's website (being www.transport.nsw.gov.au or its successor) from time to time, that are generally applicable or otherwise relevant to any part of the Services or the performance of this Contract, including all policies and standards regarding security, data and privacy; or
- (d) otherwise notified by TfNSW to Operator from time to time.

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 Service Term, including TfNSW Headway Systems and Equipment and Ticketing Equipment.

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.

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

Third Party Owner means an owner of a Third Party Owned Existing Depot or the owner of a New Depot that is not the Operator, a Related Entity of the Operator, or TfNSW.

Third Party Owned Existing Depot means an Existing Depot not owned by TfNSW, the Operator nor by a Related Entity of the Operator.

Ticket means an authority to travel on one or more Services, as evidenced by a printed ticket, a Smartcard or any other thing issued by or on behalf of the Operator or TfNSW in accordance with clause 69 of the PT Regulation 2017.

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.

Ticketing System Income means amounts in respect of the Fares for each Ticket for Bus Services collected using TfNSW Systems and Equipment and OpalConnect.

Timetables means each and every timetable for the Bus Services, including each of those contained in Schedule 2A (Service Levels) as amended from time to time in accordance with this Contract and includes the Route Services Timetables and Dedicated School Services Timetables.

Transaction Document means:

- (a) this Contract, including any of the documents contained in the schedules or annexures to this Contract;
- (b) each Special Services Order;
- (c) each of the State Asset Access Agreements;
- (d) any Key Subcontract Security Documents, Operator Bus Lease Direct Agreements or Financier Direct Deeds to which the Operator is a party;
- (e) the Performance Bonds;
- (f) the Deed of Guarantee and Indemnity;
- (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 51.2.

Transfer Agreement Date means the date that is 30 Business Days prior to end of the End of Contract Period or such other date as TfNSW and the Operator may agree.

Transfer Date means the Termination Date or such other date as agreed in writing by the Parties.

Transfer Notice has the meaning given in clause 51.2.

Transfer Time means 12.01 am on the Transfer Date.

Transferee has the meaning given in clause 51.2.

Transit Stop Signage means all Route, Timetables 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 Route for Contract Buses to set down or pick up passengers.

Transition Completion has the meaning given in clause 7.1(d).

Transition Activities means the transition activities as specified in the Transition In Plan.

Transition In Plan means the Operator's transition in plan attached to Schedule 8 (Transition).

Transition Period means the period commencing on the date on which this Contract is executed by both parties and ending on the Service Commencement Date.

Transportnsw.info Website means the centralised New South Wales transport information service that communicates and receives data and information in relation to public transport services through the transportnsw.info website (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 the Feedback2Go app.

Transport Laws has the meaning given in clause 32.1(a).

Transport Operators means any Governmental Agency or other operator (including private operator) of public transport services for the Government of New South Wales, including Sydney Trains.

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

Trigger Date means, in relation to a Performance Bond procured under clause 5, 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 Bus 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 services 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 (but excluding On Demand Vehicles) as calculated under paragraph 4.7 of Schedule 3 (Payment).

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, each as issued and amended by TfNSW from time to time.

Wayfinding Strategy and Kit of Parts means the planning guide and kit of parts issued 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 Services;
- (b) the requirements of any Governmental Agency relating to work health and safety with respect to the Services; 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 Services.

WHS Regulation means the *Work Health and Safety Regulation 2017* (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.

1.2 Interpretation

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

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, Schedule, Attachment or Annexure is a reference to a clause of, or a schedule, attachment or annexure to, this Contract.
- (f) A reference to an agreement or document (including, without limitation, 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.

- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail.
- (h) 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).
- (i) 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.
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) 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.
- (l) 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.
- (m) A reference to any Governmental Agency or professional body includes the successors of that Governmental Agency or professional body.
- (n) A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- (o) A reference to a "bus" is a bus within the meaning given in section 4 of the PT Act 2014.
- (p) A reference to a month or to a year is to a calendar month or a calendar year.
- (q) 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.
- (r) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (s) 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.
- (t) 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.
- (u) A reference to the words "include", "includes" and "including" or "such as" means "including, without limitation".
- (v) A requirement to perform an act on a Business Day means a requirement to perform that act by the close of business (5pm, Sydney time) on the required Business Day, and a

requirement to perform an act in one Business Day is interpreted as a requirement to perform that act by the same time as the requirement was communicated on the next Business Day.

1.3 Precedence of documents

- (a) In the event of an inconsistency, ambiguity or discrepancy between or within this Contract, any of the documents contained in the schedules or annexures to this Contract and the Transaction Documents (excluding this Contract), TfNSW will determine how to that inconsistency, ambiguity or discrepancy will be resolved, which determination 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.
- (b) If the Operator identifies any such inconsistency, ambiguity or discrepancy, 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.

1.4 Delegation

TfNSW may delegate any Power, function or responsibility that TfNSW has under the Transaction Documents to any person to whom TfNSW may delegate Powers, functions or responsibilities.

1.5 No fetter on TfNSW's powers

- (a) No Transaction Document unlawfully restricts or otherwise affects TfNSW's unfettered discretion to exercise its statutory Powers.
- (b) The Operator acknowledges that, without limiting clause 1.5(a) 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.
- (c) Clauses 1.5(a) and 1.5(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 1.5(a) and 1.5(b).
- (d) The Operator acknowledges that:
 - (i) there are many Governmental Agencies (other than TfNSW) with jurisdiction over aspects of the Services, parts of the State Assets and other areas affected by the Services;
 - (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 Services; 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 1.5(d)(i) and will not be entitled to make any Claim against TfNSW, any TfNSW's Associates or other Governmental Agencies arising out of or in any way in connection with such occurrences.

- (e) The Operator acknowledges that 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 State Assets at its absolute discretion.

1.6 Transfer of Functions

- (a) The Operator acknowledges that TfNSW may be reconstituted, renamed or replaced and that some or all of the Powers of TfNSW may be transferred to or vested in another Governmental Agency;
- (b) If TfNSW is reconstituted, renamed or replaced or if some or all of TfNSW's Powers are transferred to or vested in another Governmental Agency, references in the Transaction Documents to TfNSW must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those Powers.
- (c) 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.
- (d) 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.
- (e) For the purposes of this clause 1.6, '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.

1.7 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 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 Operator Representative will serve as principal interfaces between the Parties with respect to all issues arising under this Contract.

3 Contract Objectives

- (a) The Operator acknowledges that TfNSW's principal objectives in entering into this Contract are to:

- (i) deliver transport journeys and related customer services that are safe for customers, staff and the community;
 - (ii) promote a partnership to plan and deliver integrated end-to-end journeys that are efficient, more reliable and improve access to jobs, education, services and recreation;
 - (iii) deliver value for money and a commercially sustainable outcome while increasing customer satisfaction; and
 - (iv) maintain flexibility in the contract arrangements to address future growth and changes,
- (together, the **Contract Objectives**).
- (b) The Operator must perform its obligations under the Transaction Documents having regard to the Contract Objectives.

Part A - Service Commencement and Service Term

4 Service Term

4.1 Service Term

- (a) The Service Term commences on the Planned Service Commencement Date and continues until the Expiry Date, unless earlier terminated in accordance with this Contract.
- (b) For the avoidance of doubt, the Service Term is not extended if the Services are not commenced (regardless of the reason) by the Planned Service Commencement Date.
- (c) Without limiting clause 47.3, TfNSW may terminate this Contract (without cost or liability) at its absolute discretion:
 - (i) by giving notice at least nine months prior to the fifth anniversary of the Planned Service Commencement Date, with such termination to take effect from the date that is the fifth anniversary of the Planned Service Commencement Date, without limiting the End of Contract Period, or
 - (ii) by giving notice at least nine months prior to the sixth anniversary of the Planned Service Commencement Date, with such termination to take effect from the date that is the sixth anniversary of the Planned Service Commencement Date, without limiting the End of Contract Period.
- (d) The Operator has no claim against TfNSW in relation to the termination of this Contract under this clause 4.1.
- (e) 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 or otherwise at Law.

4.2 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 after the Expiry Date (or that

TfNSW will not exercise its rights under clause 4.1) or to provide, or be invited to provide the Services after the Service Term or any new Public Passenger Service during the Service Term.

- (b) A reference in this Contract to TfNSW's rights to conduct a procurement process for the performance of the Services after or prior to 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.

4.3 Conditions generally

- (a) Without limiting the operation of clause 4.4 to 4.6 the parties acknowledge and agree that it is a requirement that the Operator delivers to TfNSW at the same time as it delivers to TfNSW a counterpart of this Contract executed by the Operator:
 - (i) a Deed of Guarantee and Indemnity that has been executed by all parties in accordance with clause 6; and
 - (ii) if any party of the Deed of Guarantee and Indemnity is not an Australian entity, a legal opinion in the form and substance, and issued by a law firm, acceptable to TfNSW.
- (b) If any of the conditions contemplated by clause 4.3(a) are not fulfilled to TfNSW's satisfaction as at the date of execution of this Contract by the Operator, TfNSW may terminate this Contract by notice in writing to the Operator with immediate effect and this Contract will be of no further effect. For the avoidance of doubt, if TfNSW terminates the Contract in accordance with this clause 4.3(b) TfNSW has no liability to the Operator and the Operator will not be entitled to claim any amount, including for set-up costs or any other costs incurred during or before the Transition Period.

4.4 Conditions precedent to Service Commencement Date

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 evidence satisfactory to it that either the Operator holds the necessary Accreditation to conduct the Services;
- (b) delivery to TfNSW of the Performance Bond, in accordance with clause 5.1;
- (c) delivery to TfNSW of a Deed of Guarantee and Indemnity that has been executed by all parties in accordance with clause 6;
- (d) if any party of the Deed of Guarantee and Indemnity is not an Australian entity, delivery of a legal opinion in the form and substance, and issued by a law firm, acceptable to TfNSW;
- (e) achievement of Transition Completion in accordance with the Transition In Plan and clause 7.1;
- (f) delivery to TfNSW of evidence satisfactory to it that the Operator has obtained the insurances required by clause 40.1;
- (g) delivery to TfNSW, if necessary or requested by TfNSW, 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; and

- (h) delivery to TfNSW of any Key Subcontract Security Documents required under clause 36 executed by all relevant parties.

4.5 Certificate of Service Commencement

- (a) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions in clause 4.4 has been satisfied, satisfied subject to any conditions nominated by TfNSW or waived by TfNSW (which waiver may be in whole or part), TfNSW will issue to the Operator a Certificate of Service Commencement specifying the Service Commencement Date. For clarity, any election by TfNSW to not exercise its termination rights under clause 4.3 does not amount to a waiver of any conditions under clause 4.4.
- (b) The Service Commencement Date will be a date on or after the Planned Service Commencement Date (unless the Parties agree otherwise).

4.6 Consequences of non-fulfilment of conditions precedent

If any of the conditions precedent contemplated by clause 4.4 are not fulfilled to TfNSW's satisfaction prior to the Planned Service Commencement Date, TfNSW may terminate this Contract by notice in writing to the Operator with immediate effect and this Contract will be of no further effect. For the avoidance of doubt, if TfNSW terminates the Contract in accordance with this clause 4.6 TfNSW has no liability to the Operator and the Operator will not be entitled to claim any amount, including for set-up costs or any other costs incurred during or before the Transition Period.

5 Performance Bonds

5.1 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 5.1(a) (or any replacement provided under clauses 5.2, 5.3 or 5.4), 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 Service 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 5.1(c)(iv) (**Estimated Amount**) that complies with the requirements of clauses 5.1(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 5.1(b), then TfNSW may withhold the Estimated Amount from the Payments (provided that TfNSW will not withhold more than 20% 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 5.1.

5.2 Available amount

If, at any time prior to the date that is 12 months after the end of the Service 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 5.1(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.

5.3 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 Service Term, the Operator must procure the issue to TfNSW of a replacement performance bond which complies with the requirements of clause 5.1 prior to the occurrence of the Trigger Date for the Performance Bond.

5.4 Required Rating

If, at any time prior to the date that is 12 months after the end of the Service 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 5.1 within 20 Business Days of the Issuer ceasing to have the Required Rating.

5.5 Demands under bonds

- (a) TfNSW may only make a demand under the Performance Bonds in accordance with this clause 5.5.
- (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 (if applicable)) or under an indemnity or otherwise relating to the Services 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 5.2, 5.3 or 5.4, 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 5.2, 5.3 or 5.4 (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 Service Term, TfNSW must pay the Operator the amount, if any, paid to TfNSW as a result of the demand under this clause 5.5(d) less any amount in respect of which TfNSW was or would have been entitled to make a demand in accordance with clause 5.5(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 5.5(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 5.5(c)(ii) or 5.5(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.

5.6 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 5.2, 5.3 or 5.4.
- (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 5.5) to the Operator within 12 months after the end of the Service Term.

6 Deed of Guarantee and Indemnity

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 – Transition

7 Transition

7.1 Transition

- (a) This Contract commences on the date on which this Contract is executed by both parties and will be in the Transition Period until the Service Commencement Date.
- (b) The parties agree that:
 - (i) the Operator will continue providing bus services under the Existing Agreement up until the Service Commencement Date; and
 - (ii) on the Service Commencement Date, the Existing Agreement will automatically terminate without any cost or liability to TfNSW and will be replaced by this Contract.

- (c) During the Transition Period, the Operator must comply with the Transition In Plan and complete all items and activities contemplated by the Transition In Plan in accordance with the specified requirements and timelines, including the completion of all milestones by the relevant milestone date. Without limiting the foregoing, the Operator must achieve Transition Completion by the Planned Service Commencement Date.
- (d) The parties acknowledge and agree that **Transition Completion** will occur on successful completion of all Transition Activities (and associated milestones) in accordance with the Transition In Plan and satisfaction of all criteria or requirements for the performance or completion of Transition Activities as are specified in the Transition In Plan.
- (e) Without limiting paragraph (b), the Operator must perform all Transition Activities in a way that causes no disruption to the existing services.
- (f) The Operator must provide TfNSW with weekly progress reports (or as otherwise required by the Transition In Plan) that describe in reasonable detail the current status of the Transition Activities, identify any actual or potential issues, delays and anticipated risks and propose solutions for them and work with TfNSW to come to an agreed solution that enables Transition Completion to be achieved by the Planned Service Commencement Date.
- (g) The Operator must implement all agreed solutions referred to in clause 7.1(f) and promptly take all reasonable actions necessary to resolve actual issues with transition and any delays.

7.2 Failure to comply with Transition In Plan

If the Operator fails to comply with the Transition In Plan in accordance with clause 7.1 or otherwise fails to achieve Transition Completion by the Planned Service Commencement Date, TfNSW may terminate this Contract by notice in writing to the Operator with immediate effect and this Contract will be of no further effect. For the avoidance of doubt, if TfNSW terminates the Contract during the Transition Period in accordance with this clause 7.2 TfNSW has no liability to the Operator and the Operator will not be entitled to claim any amount, including for set-up costs or any other costs incurred during or before the Transition Period.

Part C – Services

8 Performance of Services

8.1 Services

Without limiting clause 7, the Operator must perform the Bus Services and Operating Activities (together, the **Services**):

- (a) in accordance with the terms of this Contract, including in accordance with the performance standards and requirements in Schedule 2A (Service Levels) and Schedule 4 (Key Performance Indicators);
- (b) in accordance with Good Industry Practice and in a proper, efficient, effective, competent, courteous, safe and reliable manner;
- (c) so as to prevent injury to or death of persons and damage to property; and

- (d) so as to meet any key objectives for the Services as described in the Schedules 1A (Bus Services and Management), 1B (Services – Customer Interaction), 1C (Services – Ticketing and Revenue Protection) or 1D (Special Services and Operating Activities).

8.2 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; or
 - (ii) any other right or interest to operate any Public Passenger Service or other transport service other than the Bus 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 or Contract 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 and the Operator has no Claim against TfNSW arising out of or in connection with the same.
- (f) Nothing in this clause 8.2 or the Contract gives the Operator a right to provide or be paid for Public Passenger Services other than the Bus Services.

9 Bus Services

9.1 Bus Services

The Operator must provide each of the:

- (a) Route Services;
- (b) Dedicated School Services;
- (c) On Demand Services;
- (d) Headway Services; and
- (e) Special Services,

(together, the **Contract Bus Services**) on and from the Service Commencement Date for the duration of the Service Term in accordance with the terms of this Contract.

9.2 Dedicated School Services

- (a) The Operator must operate the Dedicated School Services specified in Schedule 2A (Service Levels).
- (b) The Operator must liaise with the schools served by the Dedicated School Services, Route Services and Headway Services by no later than 31 October of each calendar year for the duration of the Service Term, to ascertain the start and finish dates of the school year and the daily bell start and finish times.
- (c) The Operator must prepare and submit proposed timetables for each Dedicated School Service in accordance with Schedule 1A (Services - Bus Services and Management).
- (d) The Operator must operate the Dedicated School Services in accordance with approved Dedicated School Services Timetables.

9.3 On Demand Services

The Operator must operate the On Demand Services specified in Schedule 2A (Service Levels).

9.4 Headway Services

- (a) The Operator must operate the Headway Services (if any) specified in Schedule 2A (Service Levels).
- (b) The Operator must develop and provide a Headway Management Solution in accordance with this Contract, including Schedule 1A (Services (Bus Services and Management)).
- (c) At any time before [insert date], 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 Service Term (**TfNSW Headway Systems and Equipment**).
- (d) If TfNSW issues a notice under clause 9.4(c):
 - (i) subject the implementation, integration and operation of the TfNSW Headway Systems and Equipment, the Operator's obligations under clause 9.4(b) and Item 3.24 of Schedule 1A (Services - Bus Services and Management) will no longer apply on and from the date nominated by TfNSW; and
 - (ii) the Operator must collaborate and co-operate with TfNSW (including by providing such assistance as required by TfNSW) in a timely manner to ensure that the TfNSW Headway Systems and Equipment are implemented and integrated with the Assets and that the Operator's systems and equipment are co-ordinated, compatible, interoperable and integrated with any TfNSW Headway Systems and Equipment; and
 - (iii) without limiting this clause 9.4, TfNSW's notice under clause 9.4(c) will operate as a Contract Variation and the parties will comply with clause 13.
- (e) Without limiting TfNSW's rights under clause 9.4(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.

9.5 Special Services

- (a) The Operator must plan, coordinate, respond to requests for, and operate the Special Services in accordance with Schedule 1D (Special Services and Operating Activities).
- (b) From time to time TfNSW or, in respect of Rail Replacement Services, Transport Operators, may require certain Special Services by submitting to the Operator a completed Special Services Order Form via email or as otherwise agreed between the parties, including as contemplated by Schedule 1D (Special Services and Operating Activities), (a **Special Services Order**).
- (c) Where TfNSW or Transport Operator requires Special Services under paragraph (b), the Operator must provide such Special Services in accordance with the Transaction Documents and the terms of the Special Services Order. For clarity, the provision of such Special Services and each Special Services Order forms part of this Contract and will be governed by the terms of this Contract.
- (d) Operator must comply with the process contemplated by Schedule 1D (Special Services and Operating Activities) in relation to the ordering of Special Services and acknowledges TfNSW's and Transport Operator's rights under that Schedule 1D (Special Services and Operating Activities). Without limiting the foregoing:
 - (i) Where a Transport Operator requires Rail Replacement Services under paragraph (b), the Operator must liaise directly with the Transport Operator representative specified in Item 1 of the Special Services Order Form used to request the Rail Replacement Services for all matters relating to the request and delivery of Rail Replacement Services and comply with their reasonable directions.
 - (ii) TfNSW and a Transport Operator may vary or cancel a Special Services Order for Event Services or Rail Replacement Services made under this clause 9.5 with immediate effect at any time up to 24 hours prior to the requested Special Services by directing the Operator with respect to such variation or cancellation (via email, SMS or online), and including as directed to the Operator's representative as outlined in Item 1 of the Special Services Order. TfNSW and a Transport Operator will not be liable to pay any fees or costs for any cancelled Special Services (whether cancelled in whole or in part).
 - (iii) Where Event Services or Rail Replacement Services are required urgently, TfNSW or Transport Operators may specify that such request is urgent in Item 2 of the Special Services Order Form submitted via email or as otherwise agreed between the parties to the Operator, in which case the Operator must respond to the request within 1 hour and use its best endeavours to fulfil the requested Services within the requested time period in accordance with Schedule 1D (Special Services and Operating Activities).
- (e) Subject to clause 9.5(f), within 30 days of the completion of Special Services, the Operator must submit an invoice to TfNSW that complies with paragraph 5 of Schedule 3 (Payment), based on the Unit Rates for Special Services in Schedule 3 (Annexure C).
- (f) Where Rail Replacement Services are ordered by a Transport Operator, the Operator must within 30 days of the completion of Rail Replacement Services, submit an invoice to the Transport Operator representative specified in Item 1 of the Special Services Order

Form used to request the Rail Replacement Services. The invoice must comply with paragraph 5 of Schedule 3 (Payment) and be based on the Unit Rates for Special Services in Schedule 3 (Annexure C).

- (g) TfNSW can (but is not obliged to) direct the Operator to use Buses other than Contract Buses for the delivery of any Special Services required under this clause 9.5.
- (h) The Operator acknowledges and agrees that:
 - (i) any Losses suffered by any Transport Operator in connection with performance or failure to perform any Special Services in accordance with a Special Services Order and the terms of any Transaction Document are deemed to be Losses of TfNSW and are recoverable by TfNSW as if TfNSW had suffered such Losses itself; and
 - (ii) the Operator must comply with the invoicing requirements set out in Schedule 3 (Payment) in respect of invoicing the relevant Transport Operator or other party ordering the Special Services under the Special Services Order (the **Ordering Party**) in relation to all Payments for any such Special Services and it has no Claim against TfNSW (without limiting Claims against the applicable Ordering Party) in respect of any amounts or payments in respect of such Special Services, including any delay or failure by such Ordering Party to pay such amounts.

Part D – Planning and service changes

10 Network Planning

- (a) The Operator must deliver the Bus Services in accordance with the Service Plan and Timetables on and from the Service Commencement Date.
- (b) Throughout the term of this Contract, the Operator must work collaboratively with TfNSW to implement revisions to the Bus Services which deliver improved passenger outcomes in accordance with this Contract and the TfNSW Service Planning Guidelines as updated from time to time by TfNSW.
- (c) The Operator must deliver highly integrated Bus Services, including integration with other bus service operators and other transport modes as appropriate and so as to enable passengers to easily and efficiently transfer to and from other transport modes.
- (d) The Operator must, subject to TfNSW policy, governance and guidance, actively promote and develop the Bus Services, drawing on analysis of the Service Levels and following stakeholder engagement.

11 Continuous Improvement and Innovation

11.1 Continuous Improvement and Innovation

- (a) The Operator must continuously review its performance, the Service Levels and Timetables to:
 - (i) improve and develop the Bus Services having regard to the Contract Objectives and the requirements of this Contract; and

- (ii) consider and develop innovative strategies to:
 - (A) improve the efficiency and effectiveness of the Services (including cost savings to TfNSW);
 - (B) improve processes and procedures for achieving Contract Objectives;
 - (C) utilise capacity;
 - (D) optimally manage dead running;
 - (E) improve the safety of the Bus Services;
 - (F) improve the security of the Operator's transport network; and
 - (G) uplift customer satisfaction,

adopting a 'best for passenger' and 'best for TfNSW' approach, regardless of possible to negative impacts on Payments for the Operator.

- (b) In recognition of the commercial disadvantage that this approach may cause to the Operator, TfNSW may elect (at its sole discretion) to apportion to the Operator a 25 per cent share of TfNSW's determination (in its sole discretion) of certain financial savings realised by TfNSW that are directly attributable to the implementation by the Operator of any suggested improvement to the Bus Services or innovation strategy under paragraph (ii) (an **Innovation Proposal**) that:
 - (i) has been independently developed by the Operator; and
 - (ii) is not also in development or has not also been developed by TfNSW; and
 - (iii) is agreed by TfNSW under a Service Variation under clause 12.2.
- (c) TfNSW may determine (in its sole discretion) all elements of any calculations and methodology used in connection with its determination of the apportionable financial savings (including any parameters, such as timeframes) under clause 11.1(b) and to what extent such financial savings are directly attributable to the Operator's implementation of the Innovation Proposal under a Service Variation.
- (d) The Operator will have no Claim against TfNSW in connection with any of TfNSW's elections, determinations or exercise of discretion under clause 11.1(b) or 11.1(c).
- (e) The Operator must proactively engage and collaborate with key stakeholders in accordance with the Operator Stakeholder Engagement Plan when developing improvements and strategies under clause 11.1(a).
- (f) The Operator must report any suggested improvements or strategies that arise under clause 11.1(a) as an Innovation Proposal at every second Quarterly Executive Forum in accordance with Schedule 5 (Governance and Reporting) and as otherwise agreed between the Parties.
- (g) TfNSW is not obliged to in any way adopt the recommendations provided in the Operator's report submitted in accordance with 11.1(f) and the Operator must not make any changes to the Service described in the report except pursuant to clause 12.

- (h) Without limiting clause 11.1(g), if TfNSW considers that it may progress with any suggested improvements or strategies presented as an Innovation Proposal in accordance with clause 11.1(f), it may request that the Operator provide it with a written proposal setting out an overview of the suggested improvement or strategy, together with the associated potential commercial and technical benefits, including the Operator's view of any financial savings to TfNSW arising from the Innovation Proposal, and any other particulars required for a Service Variation Notice, within 10 days of TfNSW's request.
- (i) Following receipt of that proposal, TfNSW may elect to submit a Service Variation Notice in relation to the same.

11.2 Improvements to Service Levels and Timetables

- (a) The Operator must submit to TfNSW a report recommending any changes to the Service Levels and Timetables to facilitate the outcomes referred to in clause 11.1(a) as an Innovation Proposal at every second Quarterly Executive Forum in accordance with Schedule 5 (Governance and Reporting), including in relation to Dedicated School Services.
- (b) In developing the report required under clause 11.2(a), 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 policies;
 - (iv) efficient management of capacity and dead running;
 - (v) utilising regular Route Services or Headway Services instead of Dedicated School Services;
 - (vi) interconnectivity of the Services with other transport services (other than the Services) available in outer metropolitan areas (including rail) and coach services;
 - (vii) innovation, including the introduction of on demand services;
 - (viii) the funding envelope and timing of funding available for public transport in Outer Metropolitan Region; and
 - (ix) any new or amended Service Levels requested by TfNSW and the effect of those Service Levels on Contract Depot capacity.
- (c) TfNSW is not obliged to in any way adopt the recommendations provided in the Operator's report submitted in accordance with clause 11.2(a) and the Operator must not make any changes to the Service Levels described in the report except pursuant to clause 12.

12 Service Variations

12.1 TfNSW initiated Service Variation

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

- (b) The Service Variation Notice must set out:
 - (i) the particulars of the Service Variation; and
 - (ii) the date on which the Service Variation will take effect (with TfNSW having due regard to the period of time required to enable the Operator to comply with the Service Variation Notice).
- (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) Any adjustment to the Payments as a result of the Service Variation will be determined and implemented in accordance with paragraph 4 of the Schedule 3 (Payment).

12.2 Operator initiated Service Variation

- (a) The Operator Representative may request a Service Variation, by way of notice to TfNSW's Representative, if it believes that Service Variation will improve the Services or create efficiencies and benefits for TfNSW, however, the Operator must consult with TfNSW under clause 11 prior to the Operator Representative submitting any request for a Service Variation under this paragraph.
- (b) For the avoidance of doubt, a request for a Service Variation may only be submitted by the Operator Representative.
- (c) Any request for a Service Variation from the Operator Representative is subject to TfNSW's approval (which may be withheld at TfNSW's absolute discretion). For the avoidance of doubt, nothing in this clause 12.2 creates an obligation on TfNSW to consider or approve a Service Variation requested by the Operator.
- (d) Any request for a Service Variation from the Operator Representative must set out:
 - (i) a description of the proposed Service Variation, including any impact on the Routes, Headway or Timetables;
 - (ii) the impact of the proposed Service Variation on the Operator's ability to meet the Key Performance Indicators;
 - (iii) a reasonably detailed assessment on any impact on passengers;
 - (iv) any updates to the Route Control Strategy;
 - (v) the proposed adjustment to the Payments; and
 - (vi) 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.
- (e) The Operator Representative must submit any requests for Service Variation that have been approved by TfNSW via the BSAR system.
- (f) Without limiting clause 12.2(c), the Operator Representative may only request a Service Variation to correct the punctuality rate of the Services based on road congestion if:
 - (i) the request for the Service Variation is a stand-alone request that is not bundled with other Service Variation requests;
 - (ii) the Operator demonstrates to the reasonable satisfaction of TfNSW that the congestion:
 - (A) has impacted on Services for a continuous period of at least 3 months;
 - (B) affects more than one Route; and
 - (C) has resulted in actual trip time exceeding Trips that are On Time by at least 10%; and
 - (iii) this request is supported by sufficient detailed evidence of the matters set out in clause 12.2(f)(ii).
- (g) Without limiting clause 12.2(c), TfNSW will generally not approve any adjustment to the Payments as a result of a Service Variation required to correct the punctuality rate of the Services, within 2 years from the Service Commencement Date, if the Operator has failed to commence at least 95% of Contracted Timetabled Trips and Headway Trips as On Time.
- (h) Unless and until TfNSW approves any request from the Operator Representative for a Service Variation and the Operator Representative has submitted the approved Service Variation in the BSAR system:
 - (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.

12.3 Service Levels

- (a) Where a Service Variation introduces new or amended Service Levels or otherwise requires an update to any Timetable, the Operator must:
 - (i) develop a new timetable to efficiently and effectively carry out the requirements of the new or amended Service Levels; and
 - (ii) submit the new timetable to TfNSW for approval, by notice to TfNSW via the BSAR system,

within the timeframe specified by TfNSW.

- (b) TfNSW may approve, reject or require amendments to a timetable submitted for approval by an Operator, by notice to the Operator.
- (c) If TfNSW requires amendments, then the Operator must amend its timetable accordingly and resubmit them within 20 Business Days of being notified that TfNSW requires amendments.
- (d) If TfNSW approves of the timetable submitted under clause 12.3(b), the Operator must operate the applicable Bus Services in accordance with the approved Timetable.
- (e) If TfNSW rejects the proposed timetable submitted under clause 12.3(b) (or does not respond to the request), the proposed timetable will be of no effect and the Operator must continue to provide the applicable Bus Services in accordance with the existing Timetables.

13 Contract Variations

13.1 TfNSW Contract Variation Request

- (a) If TfNSW wishes to make any change to the requirements of this Contract (other a Service Variation), TfNSW may at any time issue to the Operator a contract variation request setting out the details of the proposed Contract Variation which TfNSW is considering (**Contract Variation Request**).
- (b) If the Contract Variation Request requests that the Operator provide TfNSW with a Contract Variation Proposal, then the Operator must provide TfNSW with a Contract Variation Proposal as soon as practicable (but no later than 10 Business Days) after receipt of a Contract Variation Request.
- (c) The Operator Representative may recommend to TfNSW a Contract Variation from time to time by setting out the reasons for the Contract Variation, and if it does so:
 - (i) the Operator must provide all information requested by TfNSW regarding the same; and
 - (ii) TfNSW may elect to issue a Contract Variation Request or Contract Variation Order or not pursue any associated Contract Variation.
- (d) TfNSW will not be obliged to proceed with any Contract Variation proposed in a Contract Variation Request or that is recommended by the Operator. For clarity, the Operator will have no Claim against TfNSW arising out of, or in any way in connection with, a Contract Variation recommended by the Operator.

13.2 Contract Variation Order

- (a) Within 30 Business Days after receiving a Contract Variation Proposal, TfNSW may, by notice to the Operator:
 - (i) accept the Contract Variation Proposal by issuing a Contract Variation Order on the basis set out in the Contract Variation Proposal;
 - (ii) reject the Contract Variation Proposal;

- (iii) inform the Operator that it does not wish to proceed with the proposed Contract Variation; or
 - (iv) inform the Operator that it requires further time or information to assess the Contract Variation 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.
- (b) The Operator must comply with any request to provide further information issued by TfNSW under clause 13.2(a)(iv) in accordance with the timeframe specified by TfNSW.
- (c) TfNSW may also issue a Contract Variation Order at any time without first issuing a Contract Variation Request or agreeing the terms of the Contract Variation with the Operator. In these circumstances TfNSW will determine all matters required to enable the Contract Variation to be implemented and any modifications to this Contract.
- (d) If TfNSW issues a Contract Variation Order in accordance with clause 13.2(a) or clause 13.2(c):
 - (i) the Operator must implement and comply with the Contract Variation in accordance with the Contract Variation Order; and
 - (ii) this Contract, including the Operator's obligations under this Contract, will be modified to the extent specified in the Contract Variation Order.
- (e) Without limiting clause 13.1(c), if the Operator disagrees with a matter determined by TfNSW under clause 13.2(c):
 - (i) the Operator may refer the matter to an Expert for determination in accordance with clause 43.2;
 - (ii) the Contract Variation takes effect and Operator must continue to implement the Contract Variation and comply with the Contract Variation on the basis determined by TfNSW notwithstanding that there are matters in dispute or matters that have not been determined in accordance with clause 43.2; and
 - (iii) any necessary further adjustments will be made following any agreement or determination under clause 43.2.

13.3 Directions by TfNSW

- (a) If the Operator is given a decision, demand, determination, direction, instruction, order, rejection, requirement or notice in writing by a person authorised by TfNSW to do so (**Direction**) that is not a Contract Variation Order, but in the Operator's opinion constitutes a Contract Variation, the Operator must notify TfNSW that it considers compliance with such Direction constitutes a Contract Variation, 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.
- (b) The Operator must comply with all Directions. 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 13.3.

13.4 Calculation and payment of Net Financial Impact

- (a) The Net Financial Impact of a Contract Variation Order directed by TfNSW under clauses 13.1 to 13.3 will be calculated and paid in accordance with Schedule 7 (Net Financial Impact).
- (b) The Operator will have no Claim against TfNSW arising out of, or in any way in connection with, any Contract Variation, except for the payment of the Net Financial Impact under paragraph (a) where the Operator is directed to implement a Contract Variation pursuant to a Contract Variation Order issued by TfNSW under clauses 13.1 to 13.2.

Part E – Service requirements

14 Customer Interaction

14.1 General

- (a) The Operator must comply with all requirements as set out in Schedule 1B (Services-Customer Interaction).
- (b) TfNSW may request access to all Data and any other material prepared, produced or published under Schedule 1B (Services - Customer Interaction) to verify compliance with this Contract, the TfNSW Public Transport Brand Style Guide and with any standards, directions or guidelines provided by TfNSW to the Operator. The Operator must provide TfNSW with access to the relevant Data and material within 5 Business Days of such request.
- (c) TfNSW must notify the Operator of any changes to the TfNSW Public Transport Brand Style Guide and the Operator must comply with the notified changes immediately.
- (d) Unless otherwise approved in writing by TfNSW, all Operator communications in relation to the Services must incorporate the TfNSW Brand.

14.2 Marketing

- (a) The Operator must prepare and submit to TfNSW an Operator Communications and Marketing Plan in accordance with Schedule 5 (Reporting and Governance).
- (b) The Operator must prepare, produce, publish and maintain marketing material for the purposes of this Contract in accordance with:
 - (i) Schedule 1B (Services - Customer Interaction);
 - (ii) the final Operator Communications and Marketing Plan approved by TfNSW in accordance with Schedule 5 (Reporting and Governance); and
 - (iii) the TfNSW Public Transport Brand Style Guide.
- (c) The Operator must not establish or operate during the Service Term, its own social media channels for the Services unless approved by TfNSW in writing.
- (d) All marketing material and associated Intellectual Property that is created during, or for the purposes of, any marketing forums required by Schedule 5 (Reporting and

Governance) is New Contract Material owned by TfNSW and TfNSW has the right to distribute it to other operators for their use.

14.3 Use of TfNSW Brand

- (a) The Operator may only use the TfNSW Brand in Material if:
 - (i) TfNSW has given that Material to the Operator; or
 - (ii) the Operator has submitted to TfNSW samples of proposed Materials (including, all advertisements, promotions and other marketing Material) which incorporate the TfNSW Brand and TfNSW has approved its use in writing.
- (b) When using the TfNSW Brand, the Operator must comply with:
 - (i) the requirements set out in this clause 14.3;
 - (ii) Schedule 1B (Services - Customer Interaction);
 - (iii) the TfNSW Public Transport Brand Style Guide; and
 - (iv) all other TfNSW standards, guidance, directions and specifications relating to the TfNSW Brand as notified in writing to the Operator from time to time.
- (c) 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; and
 - (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.
- (d) The Operator must:
 - (i) at TfNSW's request, immediately amend or withdraw any document, Material or thing bearing the TfNSW Brand;
 - (ii) 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 Service Term;
 - (iii) promptly notify TfNSW if, during the Service 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;
 - (iv) 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;

- (v) 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;
 - (vi) not directly or indirectly contest, challenge or oppose or assist any other party to contest, challenge or oppose TfNSW's ownership of the TfNSW Brand; and
 - (vii) 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.
- (e) 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.
- (f) 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 on its behalf, is transferred to TfNSW and procure that all telephone numbers, email addresses, social media accounts and all other electronic addresses and domain names which are designated by the Operator for use by the general public to make contact with the Operator in relation to the Services (other than those telephone numbers, email addresses, social media accounts or domain names of the Operator or Operator's Associates which are used in their business generally) be transferred to TfNSW.

14.4 Livery and Operator's marks

- (a) The Operator must comply with all livery requirements under Schedule 1B (Services - Customer Interaction).
- (b) If TfNSW prescribes or varies any existing livery requirements in respect of New Buses or requires that the livery of Existing Buses be updated to confirm with livery requirements:
 - (i) the Operator must comply with that new or varied livery requirements; and
 - (ii) TfNSW must compensate the Operator for all reasonable incremental and 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.

14.5 Advertising

- (a) Subject to clause 14.5(b), the Parties acknowledge and agree that TfNSW has the exclusive right under this Contract to advertise, and grant rights to third parties to advertise, on:
 - (i) the interior and exterior of the Contract Buses;
 - (ii) Transit Stops;
 - (iii) Licensed Areas (when applicable); and
 - (iv) Contract Depots,

including any digital screens or PIDs.

- (b) Where, as at the date of execution of this Contract, the Operator has an existing advertising contract in connection with the Existing Agreement:
 - (i) the Operator must not extend that contract; and
 - (ii) the exclusive right under clause 14.5(a) applies upon the earlier of:
 - (A) the expiry of such existing advertising contract; and
 - (B) the due date of expiry of the Existing Agreement (but excluding any extension made under the variation to the Existing Agreement as agreed to under the participation deed between the parties dated [insert], unless agreed to by TfNSW),

but only to the extent that it applies over the items in paragraphs (a)(i) to (iv) above. For the avoidance of doubt, if any of the items in paragraphs (a)(i) to (iv) above are not subject to the existing advertising contract, then the exclusive right under clause 14.5(a) applies to those items from the date of execution of this Contract.

- (c) Provided that the Operator complies with all requirements specified in clause 14.5(g) to TfNSW's satisfaction, TfNSW will pay to the Operator an amount determined by TfNSW to be 5% of the gross revenue directly derived by TfNSW from sale of advertising space to third parties on Contract Buses (but excluding advertising on digital screens and PIDS) (together, **Commercial Activity**) in accordance with clause 14.5(a). The parties acknowledge and agree that the purpose of this payment is to compensate the Operator, in part, for the costs and activities associated with meeting TfNSW's advertising requirements, including the Operator's obligations under this clause 14.5.
- (d) TfNSW will determine the amount under paragraph (c) (the **Advertising Commission**) based on an allocation to the Operator of eligible gross revenue received from TfNSW from Commercial Activity across all Bus services contracts, which allocation is calculated at TfNSW's sole discretion.
- (e) The Advertising Commission will be calculated by TfNSW annually at the end of each Financial Year and will be paid by TfNSW to the Operator within two months of the end of the Financial Year.
- (f) For clarity, Commercial Activity does not include advertising on websites, applications, depots, Transit Stops, Licensed Areas, digital screens, PIDS, social media or any other advertising assets.
- (g) The Operator must, in connection with the installation, removal, refresh and maintenance of advertising material and otherwise conducting activities in connection with advertising under this clause 14.5 (together, the **Advertising Activities**):
 - (i) provide to TfNSW and its advertising contractors any access to the Contract Buses, Transit Stops, Licensed Areas and Contract Depots that is required by TfNSW;
 - (ii) liaise and co-operate with TfNSW and its advertising contractors in a timely manner in relation to Advertising Activities and all operational issues or concerns;

- (iii) release Contract Buses to TfNSW and its advertising contractors as reasonably required by TfNSW or its advertising contractors for the installation of larger format advertising, provided that where the Operator considers that this may negatively impact its ability to provide the Contract Bus Services it must promptly notify TfNSW of such concerns and comply with TfNSW's Directions;
- (iv) ensure no Contract Bus leaves Contract Depots with any damage or issues which will or is likely to impact its road worthiness, safety or suitability as a public passenger vehicle in connection with any Advertising Activities;
- (v) promptly report to TfNSW any incidence of a Contract Bus being defective, or any other damage to or issues relating to the Contract Buses, due to any Advertising Activities, and comply with TfNSW's Directions as to how rectification is to be addressed;
- (vi) provide to TfNSW a declaration of the total number of kilometres Contract Buses have accumulated while performing Services under this Contract for each Contract Depot each Financial Year within 10 Business Days from the last day of the Financial Year;
- (vii) not damage any work performed by TfNSW or its advertising contractors, or any of its plant and equipment used during or in connection with any Advertising Activities;
- (viii) fully co-operate with TfNSW and its advertising contractors, and do everything reasonably necessary to:
 - (A) assist with and facilitate all Advertising Activities, including providing such assistance and information as may be directed by TfNSW's Representative; and
 - (B) ensure the effective coordination of the Services in relation to the Advertising Activities;
- (ix) minimise any interference with or disruption or delay to any Advertising Activities;
- (x) attend all meetings where reasonably required by TfNSW; and
- (xi) immediately advise TfNSW if the Operator becomes aware of any matter arising out of the Advertising Activities that may have an adverse effect upon the Services or the safety of Customers or any other persons.

14.6 Wayfinding

The Operator must perform all wayfinding obligations specified in paragraph 5 of Schedule 1B (Services – Customer Interaction).

14.7 Publication and display of public transport information

- (a) The Operator must provide public transport information to TfNSW and customers in accordance with this Contract and paragraph 6 of Schedule 1B (Services – Customer Interaction).
- (b) The Operator must:

- (i) actively participate in the governance processes for Transportnsw.info Website as reasonably required by TfNSW;
- (ii) promote TfNSW customer information products and social media channels 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 Transportnsw.info Website.

14.8 Operator Stakeholder Engagement Plan

The Operator must prepare, submit to TfNSW and comply with an Operator Stakeholder Engagement Plan in accordance with Schedule 5 (Reporting and Governance).

15 Fares and Ticketing

15.1 General

The Operator must comply with all Fare, Ticketing and other requirements as set out in Schedule 1C (Services - Ticketing and Revenue Protection)

15.2 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 Areas to carry out their statutory duties and functions.

16 Systems and Equipment

16.1 TfNSW Systems and Equipment

- (a) The Operator must ensure that TfNSW Systems and Equipment are operational at all times during the Service Term.
- (b) The Operator must comply with all obligations as set out in Schedule 1C (Services - Ticketing and Revenue Protection) and Schedule 6 (Assets).
- (c) The Operator must cooperate with TfNSW in facilitating the installation, testing, ongoing maintenance and removal 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, maintenance and removal 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.

- (d) The Operator must maintain TfNSW Systems and Equipment in accordance with Schedule 1B (Services – Customer Interaction) and Schedule 6 (Assets).
- (e) 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.
- (f) The Operator acknowledges and agrees that TfNSW:
 - (i) owns all TfNSW Systems and Equipment installed before and during the Service Term, including all Intellectual Property in the TfNSW Systems and Equipment, unless TfNSW agrees otherwise in writing;
 - (ii) owns all Data processed, generated or 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 such Data in any way, and for any purpose, as it sees fit, including providing other operators and service providers with access to Data relating to their services.
- (g) The Operator acknowledges and agrees that it has no Claim against TfNSW or any TfNSW Associates in respect of any delays or interruptions in the Bus Services arising out of or in connection with any failure of any TfNSW Systems and Equipment.
- (h) If any TfNSW Systems and Equipment on a Contract Bus fails to operate while the Contract Bus is performing a Bus 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 or risk arises (including where there is any failure or malfunction of any CCTV system or duress alarm as contemplated by clause 19.1(f));
 - (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.
- (i) The Operator must not:
 - (i) use the TfNSW Systems and Equipment (or any Intellectual Property in the TfNSW Systems and Equipment) or any Data referred to in paragraph (e) 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.
- (j) 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 16 to the extent of any inconsistency, unless otherwise agreed.
- (k) The Operator must ensure, without exception, that when a Contract Bus is removed from service due to retirement, write-off, disposal or surplus to needs, that a notification of

works order made to Cubic Service Desk (etservice@cubic.com) requesting the decommissioning of Opal-related equipment and incident number is received. No Opal-related equipment is to be removed by the Operator.

- (l) 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.
- (m) Without limiting any other rights or remedies of TfNSW, if an Operator or its Associates damages or loses any TfNSW Systems and Equipment, the Operator must pay to TfNSW on demand, all costs associated with either the repair or replacement of the damaged or lost equipment. TfNSW shall determine whether a repair or replacement is required at its discretion.

16.2 Development of customer facing information systems

Without limiting its obligations under Schedule 1B (Services - Customer Interaction), 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 (including the On Demand System) are co-ordinated, compatible, interoperable and integrated with TfNSW's customer facing systems (including OpalConnect) 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 or integration to provide a new feature or provide information, application programming interfaces or data under this clause 16.2 that is not already available or in a form required by TfNSW in the Operator's existing customer facing information systems, TfNSW may direct a Contract Variation under clause 12.3(e).

17 Service Desk

The Operator must perform all Service Desk related obligations and responsibilities as contemplated by paragraph 4 of Schedule 1B (Services – Customer Interaction).

Part F – Performance Management

18 Key Performance Indicators

- (a) The Operator must, and ensure that the Services, meet or exceed the Key Performance Indicators from the Service Commencement Date.
- (b) The Operator must comply with its obligations relating to Key Performance Indicators as set out in Schedule 4 (Key Performance Indicators).

Part G – Assets and Infrastructure

19 Contract Buses

19.1 Performance of the Services using Contract Buses

- (a) The Operator must comply with its obligations as set out in Schedule 6 (Assets) in connection with the Bus Services.
- (b) Except as otherwise provided in 19.3, the Operator must perform the Bus Services using Contract Buses.
- (c) The Operator must have available to it enough Contract Buses to meet its obligations under this Contract.
- (d) Except as otherwise provided in 19.4, the Operator must not use the Contract Buses for any purpose other than the purpose of providing the Bus Services.
- (e) The Operator must monitor and manage the security and safety of the Staff and passengers on the Contract Buses.
- (f) If there is any failure or malfunction of any CCTV system or duress alarm on a Contract Bus while the Contract Bus is performing a Bus Service, the Operator must ensure that the Contract Bus is immediately taken out of service until the faulty system or equipment is repaired or replaced.

19.2 Contract Bus standard

- (a) The Operator must ensure that each Contract Bus complies with Schedule 6 (Assets) and all Laws.
- (b) The Operator must:
 - (i) comply with its obligations under the State Bus Lease or any replacement of that lease; and
 - (ii) only use the best available Contract Buses to provide the Bus Services having regard to reasonable operational requirements and the condition, cleanliness, features and age of all Contract Buses.
- (c) 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 Service Term.
- (d) Any warranty provided to the Operator under clause 19.2(d) that is assigned to the Operator, must, if assigned for a period longer than the Service Term, be assigned by the Operator back to TfNSW or its nominee by the Termination Date.

19.3 Use of non-compliant Buses

- (a) The Operator may use a replacement vehicle 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 vehicle and at a minimum complies with the Bus standards specified in Schedule 6 (Assets);
 - (iii) the insurances required under clause 40 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.

19.4 Bus Charter

- (a) The Operator may use a Contract Bus for the purpose of providing charter services, subject to the following conditions:
 - (i) the Contract Bus is not required for the performance of the Services;
 - (ii) such use of the Contract Bus:
 - (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 50;
 - (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 19.4(a), the Operator must:
 - (i) ensure that the use of Contract Buses for the purposes of providing charter services does not:
 - (A) affect the ability of the Operator to comply with clause 19.2(b)(ii) (and for the purposes of that clause all Contract Buses scheduled for use on charter services are considered to be "available"); or
 - (B) affect the ability of the Operator to provide Special Services on and as requested by TfNSW and Transport Operators, and the Operator acknowledges that charter services may require cancellation to accommodate Special Services; and

- (ii) 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 weeks.
- (c) TfNSW may, at any time during the Contract, review the Operator's use of the Contract Buses for charter services, including having regard to any impact or risk that any charter services may have on the Operator's performance under this Contract or ability to provide Special Services on and as required by TfNSW and Transport Operators. The Operator must co-operate with such review, including by providing details of all routine and proposed charter services.
- (d) Further, where TfNSW considers that any charter services may negatively impact on the Operator's performance under this Contract or otherwise on TfNSW or any Contract Objectives, including as a result of risk associated with availability of Contract Buses for Special Services, then TfNSW will consult with the Operator and, following such consultation, may require the Operator to cease or adapt its charter operations using Contract Buses or pay a fee (as determined by TfNSW) for use of such Contract Buses. The Operator must comply with any such requirement of TfNSW.

20 Infrastructure

20.1 Infrastructure standards

The Operator must:

- (a) comply with its obligations as set out in Schedule 6 (Assets) in connection with the Bus Services;
- (b) ensure it has access to enough suitably located Contract Depots to meet its obligations under this Contract;
- (c) comply with each State Asset Access Agreement and all requirements and conditions specified in Schedule 6 (Assets);
- (d) except to the extent necessary for the purposes of complying with this Contract, and at all times subject to the terms of the Transaction Documents, 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 Contract Depot capacity

- (a) The Operator must be able to provide the Contract Depot capacity referred to in paragraph (b) on the Services Commencement Date and throughout the Service Term.
- (b) The Operator must be able to provide Contract Depots sufficient to:
 - (i) accommodate the following:

- (A) the number and type of Buses required for the proper and efficient operation of the Bus Services as at the Services Commencement Date;
 - (B) additional Buses to allow for an increase of up to 5% of the total seating capacity of the Buses referred to in paragraph (A) above;
 - (C) the number of spare Buses required for the proper and efficient operation of Bus Services as at the Services Commencement Date, plus any additional spare Buses required for the potential increase referred to in paragraph (B) above.
- (c) The Operator may achieve the Contract Depot capacity referred to in paragraph (b) through the use of Existing Depots or New Depots.

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.

20.4 Environment and Contamination

The Operator must comply with all obligations and requirements relating to Environment and Contamination as specified in paragraph 11 of Schedule 6 (Assets).

21 Licensed Areas and Utility Services

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 (if any) identified in Annexure 7 of Schedule 6 (Assets) as 'Licensed Areas' (**Licensed Area**) for the purpose of performing the Services.
- (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).
- (e) The Operator must not use the Licensed Area for any purpose other than the Services.

21.2 Utility Services

The Operator is responsible for all costs associated with Utility Services required to perform the Services (including in respect of Contract Depots).

22 Acquisition of New Assets

22.1 General

- (a) The Operator must comply with its obligations as set out in Schedule 6 (Assets), including the Fleet Replacement Schedule, when acquiring or dealing with Assets.
- (b) Unless otherwise permitted in Schedule 6 (Assets) and clause 19.4, the Operator:
 - (i) must only use the State Assets and Contract Buses to perform the Services;
 - (ii) must only use or acquire new buses, vehicles or bus depots for the provision of the Services in accordance with this clause 22; and
 - (iii) must otherwise only use or acquire buses, vehicles or depots to perform the Services with the prior written approval of TfNSW.

22.2 Acquisition of New Buses

- (a) The Operator acknowledges that, TfNSW may, in its sole discretion, determine that any New Bus will be purchased by:
 - (i) TfNSW (or its nominee) and leased to the Operator in accordance with clause 22.4 (**TfNSW New Bus**); or
 - (ii) the Operator in accordance with clause 22.5 (**Operator New Bus**).
- (b) The Operator must provide TfNSW with any information requested by TfNSW in relation to each New Bus.
- (c) If a Contract Bus is scheduled to be retired under the Fleet Replacement Schedule, the Operator must arrange for the title of such Contract Bus to be transferred to the Operator (if title does not already sit with the Operator), and TfNSW has no obligations associated with the Contract Bus to be deregistered and then manage the disposal of that Contract Bus, which is all the responsibility of the Operator. The Operator may keep all proceeds received in connection with the disposal of the retired Contract Bus.

22.3 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 or Contract Variation without the prior approval of TfNSW.
- (b) If the Operator wishes to acquire New Buses as a result of a Service Variation or Contract Variation, the Operator must, within 20 Business Days (or other period as requested by TfNSW) of any Service Variation Notice or Contract Variation Request or, in respect of an Operator-initiated Service Variation, at the same time as it requests a Service Variation under clause 12.2, submit a business case in a form satisfactory to TfNSW (**Business Case**) which must:
 - (i) clearly identify that the Operator requires the New Buses as a result of the Service Variation or Contract Variation; and
 - (ii) state the number and type of New Buses required and any details in relation to the proposed New 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 required amendments.
- (d) TfNSW may notify the Operator after receiving the original or resubmitted Business Case from the Operator under clause 22.3(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, TfNSW will not be deemed to have accepted the proposal.
- (f) If TfNSW approves the Operator's proposal to acquire, or procure the acquisition of, New Buses by the Operator under clause 22.3(d)(i) then the Operator must manage the acquisition of the New Bus in accordance with clause 22.4 or clause 22.5 (as determined by TfNSW under clause 22.2(a)).
- (g) If the Operator does not comply with paragraph (b) in respect of a particular Service Variation or Contract Variation, the Operator acknowledges and agrees that it has no Claim against TfNSW in relation to any requirement for New Buses in connection with the relevant Service Variation or Contract Variation.

22.4 TfNSW New Buses

- (a) This clause applies if TfNSW has determined that any New Bus (other than an On Demand Vehicle) will be purchased by TfNSW or its nominee and leased to the Operator.
- (b) The Operator is responsible for procuring all TfNSW New Buses approved under this clause 22.4 through the Bus Procurement Panel including by and, on behalf of TfNSW:
 - (i) preparing all documentation required in order to procure a TfNSW New Bus under the Bus Procurement Panel (including so that clause 22.4(d) is satisfied); and
 - (ii) undertaking all other activities and obligations required to be undertaken in order to facilitate the delivery of a TfNSW New Bus under the Bus Procurement Panel.
- (c) The Operator has no Claim against TfNSW in relation to the late delivery of any TfNSW New Bus 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 New Bus procured under this Contract vests in TfNSW or its nominee.
- (e) All TfNSW 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 Contract Buses to the State Bus Lease through a lease variation).

22.5 Operator New Buses

- (a) This clause applies if a New Bus will be purchased by the Operator and also in respect of any On Demand Vehicles that are Operator New Buses.
- (b) The Operator must do the following in relation to any Operator New Buses approved by TfNSW:
 - (i) comply with any conditions notified to it by TfNSW; and
 - (ii) if the Operator 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 Operator New Bus, which must:
 - (I) contain terms that grant the Operator an entitlement to acquire the Operator 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:
 - (III) an Operator Bus Lease Direct Agreement, with the relevant lessor and TfNSW on terms that are acceptable to TfNSW in accordance with clause 24.3; and
 - (IV) a Financier Direct Deed, with the secured financiers in respect of the New Bus; or
 - (iii) if the Operator New Bus is to be purchased by the Operator, execute:
 - (A) a purchase agreement on terms approved by TfNSW; and
 - (B) a Financier Direct Deed, with the secured financiers of the Operator and TfNSW.
- (c) The Operator acknowledges that all Operator New Buses (excluding On Demand Vehicles) must be supplied, manufactured or purchased by or from the Bus Procurement Panel, unless TfNSW otherwise notifies the Operator in writing.

22.6 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,
- (a **New Depot Application**).
- (b) The Operator must ensure that the acquisition of a New Depot in accordance with this clause 22.6 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 Services 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 on terms acceptable to TfNSW;
 - (II) a requirement for the Lessor to enter into a Key Subcontract 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 Deed 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 22.6(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 7; 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 22.6(c)(iii).

22.7 Acquisition and adjustments

- (a) On acquisition of each New Bus or New Depot:
 - (i) the Operator must update the Asset Management Plan and Asset Management Framework to include the relevant New Bus or New Depot;
 - (ii) the Operator must update the asset register required as part of the Handover Information to include the New Bus or New Depot; and
 - (iii) subject to clause 22.4(e), adjustments to the Payments will be made in relation to New Depots, in accordance with any conditions attached to TfNSW's approval issued under clause 22.6(c)(ii).
- (b) Subject to clause 4.5 of Schedule 3 in respect of Operator New Buses (other than On Demand Vehicles), there will be no adjustment to the Payment in relation to New Buses..

23 Asset Management

23.1 General

- (a) The Operator must perform the Asset Management Activities and otherwise maintain each Asset in accordance with:
 - (i) the Asset Management Framework;
 - (ii) the Asset Management Plan;
 - (iii) Maintenance Works Program and Schedule 6 (Assets); and
 - (iv) the other requirements of the Transaction Documents.

- (b) Without limiting paragraph (a), the Operator must ensure each of the Assets:
 - (i) comply with the requirements of the Transaction Documents;
 - (ii) is and remains fit for its intended purpose during the Service Term and throughout its Design Life;
 - (iii) are in a condition to permit the Services to be provided in accordance with this Contract; and
 - (iv) comply with the Handback Condition at the end of the Service Term; and

23.2 Asset Management Framework

The Operator must:

- (a) prior to the Planned Service Commencement Date develop, implement and update the Asset Management Framework; and
- (b) otherwise develop and update the Asset Management Framework in accordance with the requirements of Schedule 6 (Assets).

23.3 Asset Management Plan

The Operator must:

- (a) submit the Asset Management Plan to TfNSW prior to the Planned Service Commencement Date;
- (b) update the Asset Management Plan in accordance with Schedule 6 (Assets) and submit updated Asset Management Plans to TfNSW at yearly intervals by no later than 1 July in each Contract Year and in each instance the Operator materially amends the Asset Management Plan including the technical maintenance plans;
- (c) not update the Asset Management Plan in a manner which makes TfNSW or its Associate's obligations or responsibilities under this Contract or any Transaction Document 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
- (d) 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 the Transaction Documents; and
 - (ii) provides an equal or greater level of detail than the most recent applicable Asset Management Plan.

23.4 Review of Asset Management Plan

- (a) The TfNSW Representative may:
 - (i) review any Asset Management Plan submitted under clause 23.3; 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 23.4(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 23.4 will reapply to the revised Asset Management Plan.

23.5 TfNSW may request updates of the Asset Management Plan

If, at any time during the Service 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 Schedule 6 (Assets),

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 23.5(d) for review under clause 23.4.

23.6 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 23.4(a)(ii) within 20 Business Days following submission of the Asset Management Plan.

23.7 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 23.1(a)(i) to 23.1(a)(iv); 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 23.7(c) is issued; or
 - (ii) such other period agreed between the Parties (acting reasonably).

24 Dealing with Assets

24.1 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 Owned 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 Owned Bus; or
- (c) otherwise deal with or part with possession of any State Asset, State Asset Access Agreement or Operator Owned Bus,

except as authorised by the Transaction Documents.

24.2 Security, assignment and possession of Operator Assets

- (a) Subject to clauses 24.1 and 24.3, 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.
- (b) 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 Accounting Standards) other than with the prior written consent of TfNSW (which may be subject to conditions).

- (c) 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 Deed executed by the Operator and the proposed financier.

24.3 Security, assignment and possession of Operator Bus Leases and Operator Depot Leases

- (a) In addition to its rights under clause to require a Financier Direct Deed, TfNSW may, at any time during the Service Term, require that an agreement with TfNSW is entered into by the owner or lessor of any Contract Bus (other than Legacy Buses) which:
 - (i) recognises TfNSW's rights under this Contract in respect of the Contract 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 (such notification to identify the relevant Contract 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 or Operator Depot 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 Operator Depot 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 24.3(c)(ii)(D) or (E) in relation to,

an Operator Bus Lease or Operator Depot 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 Operator Depot 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 or Operator Depot 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 or Operator Depot Lease during the End of Contract Period or after the Termination Date.

24.4 Management of Operator Bus Leases

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

in each case on terms approved by TfNSW.

24.5 Management of Operator Depot Leases

- (a) Where the term of an Operator Depot Lease expires during the Service Term the Operator must:
 - (i) notify TfNSW before the date of expiry (or termination) in the Operator Depot Lease no later than the earlier of:
 - (A) 18 months before the date of expiry (or termination); and
 - (B) 18 months before the last date the Operator is permitted to exercise an option to renew in that Operator Depot Lease;
 - (ii) notify TfNSW of the Operator's intentions whether or not to renew the Operator Depot Lease at the date of expiry (or termination) or to purchase the Existing Depot including details of the terms of the new lease (if they have been negotiated with the owner of the Existing Depot);
 - (iii) liaise with TfNSW in good faith to determine whether:
 - (A) the Operator Depot Lease should be renewed or extended;
 - (B) the Existing Depot should be purchased by the Operator or TfNSW and on what terms; or

- (C) the Operator should cease to use that Existing Depot.
- (b) Where an Operator Depot Lease over a Contract Depot grants the Operator an option or other right to purchase the relevant Contract Depot, the Operator must ensure that if it does not acquire the Contract Depot, it provides TfNSW or TfNSW 's nominee with the opportunity to acquire the Contract Depot, to the extent such opportunity arises under the relevant Operator Depot Lease (whether as the nominee of the Operator or otherwise).

24.6 Consequences of dealings with Assets

Any breach by the Operator of this clause 24 is deemed to be a Termination Event.

25 Asset restructure by TfNSW

25.1 Assignment or Novation

- (a) Without limiting any clause in this Contract 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 to any person.
- (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 25.1:
 - (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 25.1(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 or any proposed such assignment or novation.

25.2 Transfer of State Assets by other Governmental Agencies

- (a) The Operator acknowledges and agrees that TfNSW or any other head lessor under any State Asset Access Agreement entered into during the term of this Contract may transfer the ownership of State Assets to another Governmental Agency or a private entity (**Asset Holding Entity**).
- (b) Without limiting any clause in this Contract 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 25.1; 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 25.2(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 25.2(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.

25.3 Attorney

The Operator, for valuable consideration, to secure the performance of its obligations under this clause 25, 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 25 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 – Confidentiality and Privacy

26 Confidentiality

26.1 Obligations of confidence

- (a) Each party must:
 - (i) use the other party's Confidential Information solely for the purposes of exercising rights or performing obligations under this Contract;
 - (ii) notify the other party of any potential, suspected or actual unauthorised access, reproduction or use of the other party's Confidential Information which comes to its attention; and
 - (iii) keep the other party's Confidential Information confidential and not disclose it to any third party except as:
 - (A) provided for in clause 26.2; and
 - (B) otherwise permitted under this Contract.
- (b) These obligations of confidence extend to any Confidential Information related to any rights or obligations under this Contract, provided to or obtained by a party prior to entry into this Contract.

26.2 Permitted use and disclosures

Each party may disclose Confidential Information of the other party:

- (a) to its officers, agents, employees, contractors, sub-contractors (in the case of the Operator, limited to its TfNSW approved subcontractors) and insurers, each on a "need-to-know" basis and provided that, in the case of the Operator's subcontractors:
 - (i) the recipient is under a similar obligation of confidentiality with respect to the information as the parties are bound to under clause 26.1; and
 - (ii) the disclosure is in order for the Operator to exercise rights or perform obligations under this Contract;
- (b) to any auditor, expert, mediator or arbitrator appointed under or in connection with this Contract;
- (c) to a parties legal advisors or consultants;
- (d) with the prior consent of that other party;
- (e) where the disclosure is required by or permitted by this Contract; and
- (f) notwithstanding anything to the contrary in this Contract, where such Confidential Information:
 - (i) is required to be disclosed by applicable Law, by a court or Government Authority, provided that, prior to disclosing any such Confidential Information, the party

making the disclosure has promptly notified the other party to allow that party to take all reasonable steps to maintain such Confidential Information in confidence;
or

- (ii) is required to enforce this Contract or for proceedings arising out of or in connection with this Contract.

26.3 Publication of certain information by TfNSW

- (a) Subject to clause 26.3(f), 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, all Data, any information obtained by TfNSW from the Operator in accordance with Schedule 4 (Key Performance Indicators), Schedule 5 (Governance and Reporting) or information collected from the TfNSW Systems and Equipment.
- (b) Subject to clause 26.3(f), despite any other provisions of this Contract, TfNSW may disclose the Operator's Confidential Information to other transport operators for the purposes of managing and operating a safe, consistent and integrated transport service.
- (c) Subject to clause 26.3(f), 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 Services, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting.
- (d) 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. Further, without limiting TfNSW's rights under clause 26.1, TfNSW may disclose Confidential Information of the Operator to TfNSW's Associates.
- (e) For the avoidance of any doubt, and without limiting clause 26.3(a) to 26.3(c), TfNSW may publish:
 - (i) all Data, including information collected via DCIS and the OSD;
 - (ii) performance information;
 - (iii) ticketing information; and
 - (iv) information regarding Payments made under this Contract.
- (f) TfNSW must not publish the following information:
 - (i) Personal Information; and
 - (ii) subject to clause 26.2, information that TfNSW considers is commercial-in confidence information.
- (g) For the purposes of clause 26.3(f) "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 ownership right (other than Intellectual Property in the Contract Material or Intellectual Property which is licenced to TfNSW under clause 28.3); and
- (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,

but does not include any information that is relevant to or relates to bus or passenger safety.

26.4 Security

Each party must take reasonable steps to protect the Confidential Information of the other party from unauthorised use or disclosure, and in any event take steps no less protective than those taken to protect that party's own Confidential Information.

26.5 Records and retention of TfNSW Confidential Information

On the date any TfNSW Confidential Information is no longer needed for the purposes of the Operator performing the Services, the Operator must within 14 Business Days after such date, at its cost:

- (a) cease using the relevant TfNSW Confidential Information; and
- (b) subject to any legal requirement in relation to the retention of records, deliver to TfNSW, or, at TfNSW's option, destroy (in accordance with approved destruction methods) or De-Identify all tangible records of TfNSW Confidential Information in the power, possession or control of the Operator or any person to whom it has given access to these records.

26.6 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.

26.7 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 Services 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 Services pursuant to this Contract.
- (b) For the purposes of clause 26.7(a), 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 26.7(a) at the Operator's own expense.

26.8 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 26.8(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 26.8(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.

26.9 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 Services (including by posting any information related to the Services on any website) without TfNSW's prior consent;
- (b) give TfNSW a draft of any proposed media release relating to the Services 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 26.9.

27 Privacy

27.1 Privacy compliance

If the Operator collects, uses, discloses, transfers or otherwise handles any Personal Information in connection with this Contract or the Services, it must:

- (a) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (b) comply with any of TfNSW Policies related to privacy; and
- (c) not do anything or engage in any practice which if done or engaged in by TfNSW, would be a breach of any Privacy Laws.

27.2 General privacy obligations

Without limiting clause 27.1, the Operator must:

- (a) (and must ensure its Staff) collect, use, disclose, transfer or handle any Personal Information only to the extent necessary to perform its obligations in accordance with this Contract;
- (b) not disclose any Personal Information to any other person (including to an Approved Subcontractor) without the prior consent of TfNSW or, subject to paragraph (e), as required by Law;

- (c) ensure that its Staff with access to any Personal Information:
 - (i) are made aware of the obligations in this clause 27; and
 - (ii) if requested by TfNSW, ensure that such Staff sign written undertakings (in a form acceptable to TfNSW) to comply with the obligations in this clause 27;
- (d) without limiting any of the Operator's other obligations under this Contract, take all technical, organisational and other security measures as are reasonably within the Operator's power to protect any Personal Information from:
 - (i) misuse, interference and loss; and
 - (ii) unauthorised access, modification or disclosure;
- (e) notify TfNSW:
 - (i) as soon as reasonably practicable after the Operator receives any request or complaint concerning any Personal Information;
 - (ii) immediately after the Operator becomes aware that a disclosure of any Personal Information may be required by Law; and
 - (iii) immediately if the Operator becomes aware of any breach of this clause 27, or of any Data Breach which has occurred or which the Operator has reasonable grounds to suspect may have occurred;
- (f) promptly comply with any requests and/or directions from TfNSW from time to time:
 - (i) concerning the collection, use, disclosure, transfer, handling, access or correction of any Personal Information; and
 - (ii) for information, assistance and co-operation to allow TfNSW to investigate breaches of this clause 27, or a Data Breach and to comply with its obligations under the Privacy Laws; and
- (g) without limiting the above, in relation to the Data Breach, if the Operator forms the view that it is or may be required to notify affected individuals of a Data Breach under the Privacy Laws, ensure that:
 - (i) before making any such notification it promptly discusses such matter with TfNSW in good faith and complies with any reasonable directions issued by TfNSW in relation to such notification, including as to whether the Operator or TfNSW will be the person responsible for fulfilling the relevant notification requirements; and
 - (ii) where TfNSW determines that the Operator will be the party responsible for fulfilling the relevant notification requirements, comply with all such notification requirements in accordance with the Privacy Laws.

27.3 Consents

- (a) In relation to any Personal Information collected by Operator or its Associates in connection with the Services, including in connection with the On Demand System, the Operator must ensure that it obtains all consents and makes all disclosures required under Privacy Law for the collection, use and disclosure of that Personal Information to and by TfNSW and TfNSW Associates, including as contemplated by clause 16.1(f).

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- (b) Without limiting the Operator's obligations under paragraph (a):
 - (i) in obtaining such consents and making such disclosures in connection with the On Demand System, the Operator must include in its privacy policy a statement which covers the requirements of paragraph (a); and
 - (ii) the Operator must provide a copy of its privacy policy and associated collection statements to TfNSW for its review and approval prior to the Service Commencement Date.
-

Part I – Intellectual Property and Data

28 Intellectual Property Rights

28.1 Existing Contract Material

Each party retains title to and Intellectual Property in or in relation to their respective Existing Contract Material.

28.2 New Contract Material

- (a) The title to and Intellectual Property in or in relation to all New Contract Material is owned by TfNSW.
- (b) The Operator:
 - (i) absolutely and unconditionally assigns to TfNSW all right, title and interest (including all Intellectual Property) in New Contract Materials without the need for further assurance, including as an assignment of future property under section 197 of the *Copyright Act 1968* (Cth) and in equity; and
 - (ii) must promptly do all things and deliver all further documents required by Law, or reasonably requested by TfNSW, to give effect to an assignment under paragraph (i).

28.3 Licence to Operator Material

- (a) Subject to paragraph (e), to the extent that any Existing Contract Material of the Operator or any third party:
 - (i) is incorporated into;
 - (ii) forms part of; or
 - (iii) is required in order to enable TfNSW to utilise or otherwise obtain the full benefit from,

any New Contract Material, the Operator grants (and must procure that any relevant third party grants), to TfNSW an irrevocable, perpetual, transferable, world-wide, non-exclusive, royalty-free licence to do the following things in respect of such Existing Contract Material:

- (iv) use and develop and sublicense the use and development of such Existing Contract Material (and all associated Intellectual Property) in connection with the use or development of the New Contract Material; and

- (v) all such other things as contemplated or required by the TfNSW to exercise its rights under this Contract, including ownership rights, in connection with the New Contract Material.
- (b) Subject to paragraph (e), without limiting clause 28.2 or 28.3(a), where any of the Intellectual Property used by the Operator (including Existing Contract Material) in connection with the performance of the Services is owned by the Operator or any third party (**Operator Material**), the Operator grants to TfNSW an irrevocable, world-wide, perpetual, non-exclusive, royalty-free, transferable licence (with the right to sublicense) to use, distribute and develop all of the Operator Material (and all associated Intellectual Property) for purposes:
 - (i) in connection with this Contract;
 - (ii) in connection with other transport services with other operators (including each Transport Operator); or
 - (iii) for the purpose of permitting any Successor Operator (or nominee of TfNSW) or Interim Operator to provide all or any part of the Services after the termination or expiry of the Service Term.
- (c) TfNSW grants the Operator a revocable, world-wide and royalty-free licence during the term of this Contract to use, reproduce and adapt the New Contract Materials solely for purpose of the performance of this Contract.
- (d) Without limiting paragraphs (a) or (b), in respect of Operator Material owned by a Third Party, the Operator must use all reasonable efforts to obtain the licence rights and consents required to grant the rights under paragraphs (a) and (b).
- (e) However, provided that the Operator has complied with its obligations in paragraph (d), TfNSW's licence rights to Identified Third Party Material are those set out in Attachment F in respect of such Identified Third Party Material.
- (f) **Identified Third Party Material** means any Operator Material which satisfies all of the following conditions:
 - (i) the Intellectual Property Rights in such Operator Material are owned by a third party (other than a Related Body Corporate or Related Entity of the Operator);
 - (ii) the Operator has complied with its obligations in clause 28.3(d), but despite such compliance has been unable to procure the rights and consents required to satisfy clause 28.3(a) and (b) in respect of such Operator Material due to a genuine refusal of the relevant third party;
 - (iii) the Operator Material is listed under in Attachment F where it is separately itemised and expressly identified as a "Identified Third Party Material"; and
 - (iv) Attachment F sets out the specific licence terms and use rights for TfNSW that apply to such Operator Material.

28.4 Moral Rights

To the maximum extent permitted by Law:

- (a) the Operator consents to, and must procure that each relevant author(s) consents to:

- (i) any use of any New Contract Material or Operator Material in accordance with this Contract without the need to make any identification of the Operator or the author; and
 - (ii) doing anything in relation to a Contract Material or Operator Material that (but for the consents provided in this Contract) would otherwise infringe any moral rights or similar non-assignable, personal rights that the Operator or relevant author might otherwise have.
- (b) The Operator must obtain all necessary waivers or consents from the authors of any moral rights which may subsist in any New Contract Material and Operator Material to permit TfNSW to exercise its full rights of use and quiet enjoyment of that New Contract Material or Operator Material.

28.5 Provision of Material

The Operator must provide TfNSW, on request, with copies of any Material within its possession or control which a TfNSW owns or is licensed to use under this Contract. The Operator must do so promptly, and for:

- (a) Material already in existence within 2 Business Days; and
- (b) Material that needs to be compiled from information already in existence, within 5 Business Days.

29 Data

29.1 General

- (a) The Data is and remains the property and Confidential Information of TfNSW and all rights, title and interests, including Intellectual Property, in the Data will remain with or vest in TfNSW.
- (b) To the extent necessary to give effect to this clause, the Operator hereby assigns to TfNSW all rights, title and interest, including Intellectual Property, in the Data (including any Data associated with, collected or processed by, any On Demand System). The Operator shall not obtain any right, title or interest to the Data save as set out in clause 28.3(c).
- (c) The Operator must ensure TfNSW has access at all times (and without condition or additional charge) to the Data (in an industry standard format) whilst in the possession or under the control of the Operator or any of its Associates.

29.2 Security and confidentiality of the Data

- (a) The Operator acknowledges that Data is Confidential Information of TfNSW (and not of the Operator) and is subject to the confidentiality obligations in clause 26.
- (b) The Operator must maintain, enforce and continuously improve a security environment and safety and security procedures and safeguards (including procedures and safeguards against the destruction, loss, disclosure, alteration or unauthorised access or use of Data) that are:
 - (i) in accordance with Good Industry Practice and any policies, procedures or standards as may be advised by TfNSW from time to time;

- (ii) consistent with the following International Standards for Information Security (available from the Australian Standards website, www.standards.org.au):
 - (A) AS/NZS ISO/IEC 27001:2015 Information Security Management Systems - Requirements;
 - (B) AS/NZS ISO/IEC 27002:2013 Code of Practice for Information Security Management; and
 - (C) ISO/IEC 27005:2018 Information Security Risk Management;
- (iii) comply with all Laws applicable to the Operator's use and custody of the Data; and
- (iv) to the extent Operator or its Associates (or any of their systems) process, transmit or store Cardholder Data, the Operator:
 - (A) must implement and maintain PCI DSS compliance and certification; and
 - (B) as requested by TfNSW, evidence of its compliance and certification with PCI DSS.
- (c) Without limiting clauses 29.2(b) and 29.3, the Operator must:
 - (i) at all times use the most appropriate, sophisticated and up-to-date pro-active security prevention software, including virus detection systems and intrusion detection systems for preventing and detecting Disabling Code;
 - (ii) ensure that all systems are constantly updated throughout the term of this Contract to address security vulnerabilities and changes in the threat environment;
 - (iii) not remove or transfer Data to any non-TfNSW premises or from TfNSW Systems and Equipment without obtaining the prior approval of TfNSW or as expressly authorised by and in accordance with this Contract;
 - (iv) provide TfNSW with security-relevant information including security intelligence, near-miss incidents or relevant updates to the Operator's data security policies which may impact the security of Data and systems; and
 - (v) promptly inform TfNSW of any security threats or Disabling Code and the steps necessary to avoid their introduction.
- (d) If the Operator becomes aware of a breach or potential breach of security, the Operator must immediately notify TfNSW and identify the cause of such breach or potential breach, and do all within its power to remedy any breach and prevent any recurrence of such breach.
- (e) In the event of any conflict between any data or security requirements, the most stringent or higher level of security standard will apply.

29.3 Disabling Code

- (a) The Operator must not, and must ensure its Staff does not:
 - (i) supply or connect to the TfNSW Environment any product containing a Disabling Code; or

- (ii) insert or activate any Disabling Code into the TfNSW Environment or Bus Services at any time.
- (b) If the Operator becomes aware that any Disabling Code is found to have been installed, released or otherwise introduced into any part of the TfNSW Environment or Contract Bus Services by the Operator or its Staff:
 - (i) the Operator must promptly provide all information reasonably requested by TfNSW in relation to the Disabling Code, its manner of introduction and the effect the Disabling Code has had or is likely to have;
 - (ii) if the Disabling Code causes a loss of operational efficiency or loss of data, assist TfNSW to mitigate the effect of the Disabling Code and to assist TfNSW to recover the efficiency and/or data;
 - (iii) in addition to any other rights that TfNSW has, must pay the Losses incurred by TfNSW relating to:
 - (A) identifying and removing the Disabling Code; and
 - (B) restoring any data lost, damaged or corrupted as a result of the Disabling Code to the last backed-up version of that data and otherwise remedying the impact of the Disabling Code.

29.4 No transfer of Data outside of NSW

The Operator must not, without TfNSW's prior approval:

- (a) transfer, or permit the transfer, outside of NSW any Data which is a State Record or Personal Information held in connection with this Contract; or
- (b) allow or permit access to such Data by any person who is outside of NSW at the time of such access.

29.5 Data recovery and back-up

Without limiting any other terms of this Contract, the Operator must:

- (a) to the extent the Data is within the Operator's control, maintain back-ups in accordance with Good Industry Practice and as required by this Contract; and
- (b) if there is a loss of, or damage to, Data, reload the relevant data saved during the last back-up.

30 Business Continuity and Disaster Recovery

30.1 Business Continuity Plan

The Operator:

- (a) must have, maintain and comply with a Business Continuity Plan which sets out the disaster recovery and business continuity processes to be implemented by the Operator in the event of a Disaster, including:

- (i) the processes the Operator will implement to protect the Assets and any part of the Data within its control; and
- (ii) the steps that the Operator will take to recommence provision of the Services;
- (b) must ensure that the Business Continuity Plan covers potential impacts on its Staff and is sufficient to encompass all Bus Services and any site or location from which the Operator or its Associates operates, or other site or location from which any of the Services are or will be performed (or tasks and activities relevant to the Services undertaken);
- (c) where requested by TfNSW, test or modify the Business Continuity Plan to:
 - (i) ensure it is effective in managing risks relevant to service continuity and in responding to relevant events;
 - (ii) demonstrate to TfNSW that the Operator has the ability to recover from a Disaster and to recommence provision of the Services in accordance with the Operator's obligations under this Contract; and
 - (iii) ensure it is properly integrated with TfNSW's (and, where relevant and available, other transport operator's) own business continuity and disaster recovery processes, provided that any such requested testing or modifications do not place a significant burden on the Operator;
- (d) provide TfNSW with a copy of the Business Continuity Plan (including any updates) upon request;
- (e) without limiting paragraph (a), if a Disaster occurs, must implement the relevant recovery, back-up and response activities set out in the Business Continuity Plan at the times and in accordance with the corresponding procedures set out in the Business Continuity Plan;
- (f) acknowledges and agrees that TfNSW will not be required to pay any fees or other amounts for any Services that are not provided as a result of a Disaster;
- (g) acknowledges and agrees that TfNSW may immediately terminate this Contract where the Business Continuity and Disaster Recovery Plan is either not implemented as required under this Agreement, or is implemented and the applicable Disaster continues to materially prevent, hinder or delay performance of the Services for more than 14 Business Days;
- (h) if requested by TfNSW (in its sole discretion), must allow TfNSW's observation and assessment of the testing of the Business Continuity and Disaster Recovery Plan or provide TfNSW with an independent assessment and assurance in writing that the Operator has successfully tested the Business Continuity and Disaster Recovery Plan; and
- (i) must:
 - (i) provide to TfNSW the Operator's criteria and procedures for declaring: (i) a threat to the Operator's ability to provide the Services uninterrupted to TfNSW; and (ii) an actual disruption to the Operator's continuous provision of the Services, to the extent that such criteria and procedures are not specified within the Business Continuity and Disaster Recovery Plan in a level of detail which TfNSW considers, acting reasonably, to be necessary, and provided that nothing in the foregoing limits TfNSW's ability to declare a Disaster;

- (ii) immediately notify TfNSW of any threat or any disruption to Operator's ability to provide the Services; and
- (iii) for the duration of any disruption to the Services, provide to TfNSW a formal status report each day until the Services are restored.

30.2 Business Continuity Plan updates

- (a) The Operator must keep the Business Continuity and Disaster Recovery Plan and associated plans and processes up to date so that they remain consistent with the then current Services and provide for any changes in the provision of the Services or the facilities supporting the provision of the Services.
- (b) The Operator must conduct an operational test of the Business Continuity and Disaster Recovery Plan at least once every 12 months and must provide TfNSW with the result of that testing.
- (c) The Operator must make any reasonable changes to the Business Continuity and Disaster Recovery Plan requested by TfNSW from time to time, where those changes relate to the provision of the Services.
- (d) The Operator must consult with TfNSW on the updating of its plans and processes to amend the Business Continuity and Disaster Recovery Plan in order to address any major service, audit or security requirements of TfNSW or any Governmental Authority.

Part J – Contract Administration

31 Contract management

31.1 Governance

- (a) The Operator and TfNSW must participate in the governance of this Contract, as described in Schedule 5 (Governance and Reporting).
- (b) The Operator warrants that it will manage the Contract in accordance with the obligations set out in this Contract and the Schedules.

31.2 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 of this Contract and for six months after the Termination Date, audit all files, records and invoices of the Operator pertaining to the provision of the Services and related expenditures.
- (b) TfNSW may appoint an auditor for the purposes of this clause 31.2.
- (c) At any time, 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 Schedule 5 (Governance and Reporting).

- (e) Without limiting clause 31.2(d), from the Service Commencement Date and for the duration of the Service Term, the Operator must collect, and provide to TfNSW on request, the data specified in Schedule 5 (Governance and Reporting).
- (f) The Operator must:
 - (i) provide all reasonable assistance to TfNSW (and any person authorised by TfNSW) in the conduct of an audit or investigation under this clause 31.2;
 - (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 or investigation under this clause 31.2; 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 access and assistance reasonably required by TfNSW (and any person authorised by TfNSW to conduct an audit or investigation) in connection with this clause 31.2.

31.3 Inquiries

The Operator must, within the timeframe required by TfNSW, provide all assistance reasonably requested by TfNSW in respect of any complaint, investigation, action or inquiry into or in connection with the Services or this Contract (including in relation to customer complaints). 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.

31.4 TfNSW's right of entry

- (a) TfNSW (and any person authorised by TfNSW) may, at any time, enter the Contract Depots, access Contract Buses and any other premises where the Services are being carried out for:
 - (i) observing or inspecting any activity or matter in connection with this Contract;
 - (ii) monitoring compliance by the Operator with its obligations under this Contract or any Laws;
 - (iii) exercising any right or performing any obligation which TfNSW has under any Transaction Document, including in respect of the conduct of advertising activities contemplated by clause 14.5; or
 - (iv) for any other purpose.
- (b) The Operator must use reasonable endeavours to:
 - (i) coordinate the Bus Services 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 or the exercise of any right or performance of any obligation under clause 31.4(a)(iii), 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 31.4(a), TfNSW (or any person authorised by TfNSW) enters the Contract Depots or any other premises where the Services 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 31.4(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.

31.5 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 or Data held or controlled by the Operator or the Operator's Associates which relates to the Services;
 - (ii) upon receipt of a notice under clause 31.5(a)(i), 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 31.5(b)(i);

- (iii) on demand, provide to TfNSW written evidence (including copies of any contractual referred to in clause 31.5(b)(ii)) showing compliance by the Operator of its obligations under 31.5(b)(i); and
 - (iv) notify TfNSW of all demands, claims or proceedings by or on behalf of any Employee relating to their employment with the Operator or the termination of their employment including without limitation any claims under the Fair Work Act 2009 and any industrial disputes.
- (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 clause 31.4 and this clause 31.5.

32 Accreditation and compliance

32.1 Compliance with Laws

- (a) The Operator must:
- (i) in performing the Services, 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 TAA;
 - (E) the DDA Legislation;
 - (F) the *Fair Work Act 2009* (Cth);
 - (G) 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
 - (H) *Independent Commission Against Corruption Act 1988 No 35* (NSW);
 - (I) any regulations made under any of the Laws referred to in this clause 32.1(a),

(Transport Laws);
 - (ii) ensure the Operator's Associates engaged in, or in connection with, the Services, comply with all applicable Laws, including Transport Laws;
 - (iii) ensure that the Assets are operated and maintained in accordance with Good Industry Practice and 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 Services;
- (v) without limiting clause 32.1(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 Services is granted; or
 - (II) any Authorisation held by the Operator or the Operator's Associates,
in connection with the Services; 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 Services,
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 with such assistance as may be required by TfNSW (acting reasonably) to enable it 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) *Work Health and Safety Act 2011* (Cth);
 - (ii) DDA Legislation;
 - (iii) *Anti-Discrimination Act 1977* (NSW);
 - (iv) Environmental Law, including but not limited to the *Protection of the Environment Operations Act 1997* (NSW);
 - (v) *Industrial Relations Act 1996* (NSW);
 - (vi) *The Fair Work Act 2009* (Cth); and
 - (vii) *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 32:
 - (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.

32.2 Compliance with TfNSW Policies

- (a) In connection with the performance of the Services, the Operator must comply with, and ensure all Operator Associates comply with :
 - (i) any TfNSW Policies that have been provided to the Operator prior to the execution of this Contract; and
 - (ii) any changed or additional TfNSW Policies of which TfNSW notifies the Operator of from time to time after the Service Commencement Date.
- (b) Without limitation, the TfNSW Policies referred to in clause 32.2(a)(ii) may include policies relating to health, safety or security.

32.3 Authorisations and Accreditation

- (a) Prior to the commencement of any work arising under or in connection with the Services for which any Authorisation or Accreditation is required by Law, and at all times while carrying out such Services, the Operator must, and must ensure that the Operator's Associates:
 - (i) hold all Authorisations required to carry out those Services 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.

32.4 Safety Management System

- (a) Without limiting clauses 32.1 and 32.2, 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) that aligns and complies with the principles of ISO 45001:2018 Occupational Health and Safety Management Systems; and

- (iii) is 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 Services 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 Services promptly upon request by TfNSW; and
 - (B) an updated version of such Safety Management System within five Business Days of any update.
- (c) Without limiting any requirements under Laws or under the Operator's Safety Management System, the Operator must immediately report to TfNSW any Safety Incident and comply with all other notification, reporting and safety management requirements under the Schedules.

32.5 Staff

- (a) Without limiting clauses 32.1 to 32.4, 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 32.5(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 Contract Buses hold such Bus Driver Authorities and will comply at all times with such Bus Driver Authorities.

32.6 Specific Contract Bus safety requirements

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

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

32.7 WHS

- (a) In performing the Services, 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.

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- (b) The Operator acknowledges that, in performing the Services:
- (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 Services, the Operator must ensure that (subject to clause 32.7(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 Services;
 - (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 Services are trained in work health and safety, in particular in relation to the risks associated with performing the Services;
 - (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 Services; 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 Services are performed; and
 - (ii) all matters arising out of or as a consequence of the performing of or failure to perform the Services 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 Services:
- (i) undertake an assessment of the work, health and safety risks associated with the performance of the Services 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 32.7.
- (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 Services, it will ensure that person complies with the obligations referred to in this clause 32.7.
- (f) In order to meet its obligations under this clause 32.7, 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 Services, 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 32.7(f) as TfNSW requests. Any review of the operation or maintenance of the system by TfNSW under this clause 32.7(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 Services 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 Services 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 Services are 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 Service is completed.
- (j) If the Operator breaches its obligations under this clause 32.7, the breach will be a Termination Event for the purposes of clause 47. 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 32.7.

- (k) In this 32.7 the terms "principal contractor", "workplace" and "construction work" have the same meanings given to those terms in the WHS Law.

33 Reporting

- (a) The Operator must report to TfNSW during the Service Term, in accordance with Schedule 5 (Reporting and Governance).
- (b) The Operator must develop, implement, maintain and comply with the plans specified in Schedule 5 (Reporting and Governance).
- (c) If requested by TfNSW, the Operator must provide Driver and Contract Bus shift information to TfNSW, on reasonable notice.

34 Staffing

34.1 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 Service Term.
- (b) The Operator must provide training to its Staff and develop, document and maintain training materials in accordance with paragraph 5 of Schedule 1A (Services – Bus Services and Management).
- (c) Without limiting clause 34.1(a) and (b), the Operator must ensure that all Staff who are engaged in, or in connection with, the Services 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.
- (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.

34.2 Damage or Harm to TfNSW's Reputation by Staff

If TfNSW reasonably believes that a member of Staff may cause, or has caused, damage or harm to TfNSW's reputation:

- (a) TfNSW may advise the Operator of its belief (providing adequate reasons for such belief); and
- (b) the Operator must take such disciplinary action as is warranted in the circumstances (including termination of employment).

The Operator will not be relieved of any of its liabilities or obligations under this Contract and the Operator will be liable to TfNSW for the acts and omissions of its Staff as if they were the acts or omissions of the Operator.

34.3 Key Personnel

- (a) The Operator must ensure that all Staff that are identified as key 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 Services 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 of this Contract (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 Services 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 34.3.

35 Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under a Transaction Document (whether to one or more subcontractors) without the consent of TfNSW in respect of each such subcontractor, which may be given with or without conditions as may be determined by TfNSW in its sole discretion. TfNSW may consent to the terms of a specific subcontract or delegation or to a class or type of subcontracts or delegations. Each subcontractor consented to by TfNSW being an **Approved Subcontractor**.
- (b) The parties further acknowledge and agree that any Key Subcontract is deemed to be a subcontract arrangement and is subject to the terms of this clause 35, including such that the each Key Subcontractor is deemed to be a subcontractor and requires approval of TfNSW.
- (c) Without limiting clause 35(a), any subcontract or delegation, including any Key Subcontract, entered into by the Operator must not be for a period that exceeds the seventh anniversary of the Planned Service Commencement Date without the express consent of TfNSW in respect of that excess duration.
- (d) The Operator must ensure that any subcontractor engaged to provide any of the Services holds all appropriate Authorisations required in relation to the activities for which it has been engaged.

- (e) The Operator:
 - (i) is not, by reason of having engaged a subcontractor, nor any approval or consent granted by TfNSW in relation to a subcontractor, relieved of any of its liabilities or obligations under the Transaction Documents;
 - (ii) is responsible for each subcontractor (and their Staff) as if all the acts and omissions of the subcontractor and its Staff 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.
- (f) The Operator must complete a Subcontractor's Statement in relation to any subcontractor approved by TfNSW under this clause 35. TfNSW will provide the Subcontractor's Statement to the Operator for completion.

36 Key Subcontracts

36.1 Interpretation

In this clause 36:

- (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.

36.2 Key Subcontract Security Documents

- (a) Without limiting TfNSW's rights or Operator's obligations under clause 35, subject to clause 36.2(g), the Operator must not enter into a Key Subcontract unless TfNSW has previously entered into a Key Subcontract Security Document in respect of that Key Subcontract on terms acceptable to TfNSW. The Operator will not be required to comply with this clause 36.2(a) if it notifies TfNSW prior to entering into a Key Subcontract and TfNSW notifies the Operator that a Key Subcontract Security Document is not required in respect of that Key Subcontract. TfNSW must act reasonably in determining whether or not a Key Subcontract Security Document will be required.
- (b) The parties agree that TfNSW may, by notice to the Operator, designate any agreement as a Key Subcontract 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 Services;
- (c) The designation under clause 36.2(b)(i) takes effect from the date that notice is given to the Operator under clause 36.2(b)(i) 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 36.2(b)(i), prior to entering into that agreement.

- (e) TfNSW may, by notice to the Operator, declare that a Key Subcontract is no longer a Key Subcontract 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 Services.
- (f) A designation or declaration takes effect from the date that notice is given to the Operator under clause 36.2(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 36.2 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 Services.
- (h) The Operator acknowledges the existence of the Key Subcontract Security Documents and agrees to cooperate in the implementation of those Key Subcontract Security Documents.

36.3 Amendment of Key Subcontracts

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 Subcontract, if and to the extent that anything referred to in clauses 36.3(a) or (b) takes effect in, or relates to the exercise of any power or the performance of any obligation under the Key Subcontract during the End of Contract Period or after this Contract is due to expire.

36.4 Assignment of Key Subcontracts

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 Subcontract.

36.5 Termination of Key Subcontracts

- (a) The Operator must not, except as permitted by clause 36.5(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 36.5(a)(i) or (ii) in relation to,
- a Key Subcontract.

- (b) The Operator may terminate a Key Subcontract if TfNSW is reasonably satisfied that:
 - (i) it is no longer necessary for the Operator to have the benefit of the Key Subcontract; or
 - (ii) the Operator has made adequate alternative arrangements for the continued conduct of the Services.
- (c) If the Operator terminates a Key Subcontract 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 Subcontract on the terms set out in the relevant Key Subcontract Security Document.

36.6 Notices in respect of Key Subcontracts

The Operator must in respect of any Key Subcontract, 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 Subcontract;
- (b) provide a copy to TfNSW of any notice given or received by it terminating, or suspending any services under, the Key Subcontract; and
- (c) notify TfNSW (to the extent that it is aware) of:
 - (i) any breach by any party to the Key Subcontract of any of its material obligations under the Key Subcontract;
 - (ii) the occurrence of any event of default, termination event or similar event (whatever called) under the Key Subcontract; 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 Subcontract to terminate or rescind it or treat it as repudiated or suspend a party's performance of obligations under it.

36.7 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 Subcontract, to the extent that the supply is necessary for the conduct of all or any part of the Services.

Part K – Payment

37 Payment

37.1 Payments

- (a) Without limiting clause 9.5(h), in exchange for the Operator performing the Services 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 37.2.

- (b) For the avoidance of doubt, the Operator acknowledges that the Operator will not be entitled to any Payments until after the Service Commencement Date.
- (c) The Payment amounts specified in Schedule 3 (Payment) will be fixed for the Service Term, unless varied in accordance with Schedule 3 (Payment).

37.2 Invoices and time for payment

- (a) On a monthly basis from the Service Commencement Date, within 5 Business Days after the end of each calendar month, and for the duration of the Service Term, the Operator must submit to TfNSW a valid Tax Invoice for the performance of the Services in accordance with the terms of this Contract as specified in Schedule 3 (Payment). 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 Payment for the provision of the Services;
 - (iii) such other details specified in the Schedule 3 (Payment).
- (b) TfNSW must make Payments within 10 Business Days after receipt of a valid 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 37.2(a).
- (c) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.

37.3 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.
- (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 37.3 affects TfNSW's right to recover from the Operator the whole of the debt or any balance that remains owing after any set off.

37.4 Goods and Services Tax (GST exclusive prices)

- (a) A reference in this clause 37.4 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 person 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.
- (e) Subject to clauses 37.4(f) and 37.4(g), the Operator acknowledges that:
 - (i) the Ticketing System Income is collected for and paid to the Operator on the Operator's own account; and
 - (ii) the Ticketing System Income is consideration for a supply made by the Operator to passengers and the Operator will remit the GST on that Ticketing System Income.
- (f) The Operator must, if requested by TfNSW in writing, enter into a Sub-division 153-B agreement in relation to the supplies for which the Ticketing System Income are consideration.
- (g) If TfNSW directs the Operator in accordance with paragraph 6.6(d)(i)(B) of Schedule 1C (Services – Ticketing and Revenue Protection), then from the date of that direction, the parties agree and acknowledge that for GST purposes:
 - (i) the Ticketing System Income will be collected and retained by TfNSW for its own account; and
 - (ii) the Ticketing System Income will be consideration for a supply made by TfNSW to passengers and TfNSW will remit the GST on that Ticketing System Income.

37.5 Civil Penalties

Paragraph 7 of Schedule 4 (Key Performance Indicators) and clause 47.2 of this Contract are civil penalty provisions for the purposes of section 38 of the PT Act.

Part L – Risk Allocation

38 Representations and warranties

38.1 General representations and warranties

The Operator represents and warrants to TfNSW and Indemnified Parties on a continuing basis:

- (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) there are no facts, matters or circumstances that would give rise to an Insolvency Event occurring;
- (h) 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;

- (i) 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;
- (j) there are no notices of any Reporting Body outstanding against it;
- (k) 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;

- (l) 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;
- (m) none of its property is subject to any Security Interest (other than a Permitted Security Interest);
- (n) it does not hold any assets as the trustee of any trust;
- (o) it complies with the Privacy Laws, and any guidelines issued by the Commissioner under the relevant Privacy Law;
- (p) it can commence the Services on and from the Planned Service Commencement Date;
- (q) it is and will be able to comply with Schedule 1 (Services), Schedule 2A (Service Levels), the Key Performance Indicators and any outcomes or indicators agreed in this Contract;
- (r) its performance of this Contract, any New Contract Material, Existing Contract Material and Operator Contract Material will not infringe the Intellectual Property rights of any third person;
- (s) all plans that are required to be prepared and maintained under this Contract are, and will be, updated annually and will be fit for purpose (including having due regard to the Contract Objectives);
- (t) it will perform the Services and care for and maintain all Assets 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;
- (u) 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
- (v) all Materials provided or made available as part of the Services, including all New Contract Material, will comply with the requirements of this Contract and otherwise be fit for their intended purpose (including having due regard to the Contract Objectives).
- (w) 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 Offer and executing this Contract 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 Tender 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;
- (v) has satisfied itself as to the correctness and sufficiency of its Offer 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 Services.

38.2 Notification of Change

The Operator must immediately notify TfNSW's Representative in writing upon becoming aware that a representation or warranty it has given under this clause 38 has become untrue or misleading at any time during the term of this Contract.

38.3 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 38.3.
- (b) Each warranty and representation is separate and independent from the other and not limited by reference to another warranty or representation.

39 Operator acknowledgments

- (a) The Operator acknowledges that it has made its own enquiries and has not relied on any representations made by TfNSW, nor any other person acting on behalf of or associated with TfNSW, in respect of this Contract and the Transaction Documents.
- (b) Without limiting the generality of clause 39(a), the Operator acknowledges the following:
 - (i) TfNSW, or any other person acting on behalf of TfNSW, has not verified the accuracy, reliability or completeness of the Disclosed Information;
 - (ii) TfNSW, or any other person acting on behalf of TfNSW, has not made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
 - (iii) that any Disclosed Information relating to past performance of bus services or congestion may not be an indicator of future performance or future congestion;
 - (iv) the Operator has not relied in any way on the skill or judgment of TfNSW or any person acting on behalf of or associated with TfNSW and has relied absolutely on its own opinion and professional advice based upon its own independent analysis;

- (v) assessment, investigation and appraisal in deciding to submit an Offer and to enter into this Contract and each other Transaction Document;
- (vi) 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;
- (vii) the Disclosed Information has been provided by TfNSW in good faith and that TfNSW has no knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither TfNSW, or any person acting on behalf of or associated with TfNSW, is under no obligation to make, and that none of them has made, enquiries to verify that state of knowledge), any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by TfNSW, or any person acting on behalf of or associated with TfNSW, 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; and
- (viii) the acknowledgments under this clause are in addition to and do not replace the terms and conditions already agreed to or accepted by the Operator when receiving the Disclosed Information.
- (c) The Operator warrants to TfNSW that in entering into this Contract and each other Transaction Document, the Operator is aware that TfNSW has relied on the acknowledgments contained in this clause 39 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, or any person acting on behalf of or associated with any of TfNSW, arising (directly or indirectly) out of or in connection with:
 - (i) the Disclosed Information, including any reliance on any of the Disclosed Information by the Operator or any other person; or
 - (ii) any alleged or actual misrepresentation or misleading or deceptive conduct or false or misleading statements the part of TfNSW, or any person acting on behalf of or associated with TfNSW, in connection with the Disclosed Information or in connection with this Contract or any other Transaction Document.
- (e) The Operator indemnifies TfNSW and Indemnified Parties on demand and will hold TfNSW and Indemnified Parties harmless against all claims, proceedings, costs, expenses, loss, liability or damage that TfNSW may sustain or incur as a result of or in connection with (whether directly or indirectly):
 - (i) any breach of this clause 39 by the Operator including, any breach of a warranty given by the Operator under this clause 39; or

- (ii) any Claim or Loss associated with any action or claim referred to in paragraph (d).
- (f) The Operator acknowledges that this clause 39 is intended to benefit and is to be interpreted as benefiting Indemnified Parties to the extent that this clause 39 applies to them and is to be enforceable by TfNSW against the Operator. TfNSW holds the benefit of the Operator's representations, warranties, waivers, acknowledgments and agreements under this clause 39 on trust for the Indemnified Parties.

39.2 TfNSW's review

No inspection, audit, agreement, approval, acceptance, review, attendance, payment of any payment claim, permission or comment by TfNSW (or failure to do the same):

- (a) constitutes a waiver of any default, admission of liability or acceptance of any act or omission of the Operator or that a Service or any Material has been properly provided; or
- (b) otherwise prejudices TfNSW or any of TfNSW's Associate's rights against the Operator or any of the Operator's Associates whether under this Contract or Law; or
- (c) affects the Operator's obligation to perform this Contract in accordance with its terms.

40 Insurance

40.1 Insurance policies

- (a) The Operator must effect and maintain the following insurances for the period contemplated by clause 40.2(a) in relation to the relevant insurance:
 - (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 Services and use and operation of the Assets;
 - (B) in which TfNSW are also a named insured in the policy; and
 - (C) for at least the amount specified in Item 6 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 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 and the Operator for their respective rights and interests;
 - (iv) comprehensive 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 and the Operator for their respective rights and interests;
 - (v) insurance coverage for third party property damage arising from use of all Contract Buses and any other motor vehicles used to carry out the Services for at least the amount specified in Item 7 of Attachment A;
 - (vi) comprehensive motor vehicle insurance which covers all physical loss or damage to motor vehicles and all damage arising from motor vehicles which are used in connection with the Services (other than motor vehicles that are required to be insured under clause 40.1(a)(iv));
 - (vii) compulsory third party motor vehicle insurance in respect of all registrable motor vehicles including the Contract Buses which are used in connection with the Services for injury or death arising from use of such motor vehicles;
 - (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 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;
 - (x) environmental impairment liability (EIL) insurance which covers liabilities arising from pollutants or Contaminants;
 - (xi) Property in Care, Custody and Control (PCCC) insurance for at least the amount specified in Item 8 of Attachment A; and
 - (xii) 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 Services 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.

40.2 Insurance generally

- (a) The Operator undertakes, represents and warrants to TfNSW that:
 - (i) prior to the Planned Services Commencement Date and for the duration of the Service Term that it will have effected and maintained all insurances as are required by, and in accordance with, clause 40.1; and

- (ii) without limiting paragraph (i), on the date of this Contract and for the duration of the Transition Period and the Service Term that it has effected and maintained the following insurances as required by, and in accordance with, clause 40.1(a):
 - (A) public liability insurance;
 - (B) workers' compensation insurance;
 - (C) insurance coverage for third party property damage
 - (D) compulsory third party motor vehicle insurance (excluding Contract Buses)
 - (E) plant and equipment insurance; and
 - (F) any other insurances referred to in clause 40.1(a) which TfNSW reasonably requires the Operator to effect during the Transition Period.
- (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 40.2(b) but, despite this, the contracts for insurance effected in compliance with this Contract do not contain the term referred to in clause 40.2(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 40.1 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,within a reasonable time of receipt by the Operator;
 - (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 40 have been effected and maintained in accordance with the requirements of this clause 40, 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 40 (**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 40.2(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.

40.3 Premiums

The Operator must punctually pay all premiums in respect of all insurance policies referred to in this clause 40.

40.4 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 40.4(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 40.4(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 40.4(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 40.4 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.

41 Indemnity and Limitation of Liability

41.1 Indemnity

- (a) The Operator indemnifies on demand and must keep indemnified on demand TfNSW, TfNSW's Associates, STA, each Transport Operator, any Roads Authority, the Minister for Transport and Roads, the State and any officer, employee, agent, contractor, consultant, nominee, licensor, licensee or adviser of, or to, any of them (**Indemnified Persons**), from and against any Loss in connection with or arising from:
 - (i) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Operator or any of its Staff;
 - (ii) any breach of confidentiality, privacy, data or security obligations under this Contract, and including any breach of clauses 26, 27 and 29;
 - (iii) any Service Default;
 - (iv) any Termination Event or any termination of this Contract based on the occurrence of a Termination Event;
 - (v) any breach of a Transaction Document by the Operator (or an Approved Subcontractor (if any));
 - (vi) any infringement of any Intellectual Property rights by any of the Operator or any of its Associates or Staff;
 - (vii) any New Contract Material or Operator Material or the Services (or in each case any part of them) or any of their use infringing the rights, including Intellectual Property of any person;

- (viii) the illness, personal injury or death to any person or damage to, or loss or destruction of, or loss of use of (whether total or partial) any real or personal property caused or contributed to by the Operator, any Operator's Associates or Staff;
 - (ix) damage to, loss or destruction of, or loss of use of (whether total or partial), any State Asset;
 - (x) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or its Associates or Staff;
 - (xi) the occupation or use of the Contract Buses, Transit Stops, Licensed Areas, or Contract Depots by the Operator or the Operator's Associates;
 - (xii) any Subsequent Contamination including:
 - (A) 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 Contamination; or
 - (B) where incurred by TfNSW or any of its Associates 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;
 - (xiii) except to the extent prohibited by Law, Contamination in, on or under (or emanated or emanating from) any Contract Depot;
 - (xiv) any breach by the Operator (or an Approved Subcontractor (if any)) of the terms of a Key Subcontract;
 - (xv) TfNSW:
 - (A) remedying or procuring the remedy of any default of the Operator under a Key Subcontract; or
 - (B) performing the obligations of the Operator under a Key Subcontract;
 - (xvi) any loss or damage suffered by any passengers or by any third party enjoying or affected by the performance of the Services caused or contributed to by the Operator or its Associates or Staff; or
 - (xvii) any claim by a third party arising from any of the events described in clauses 41.1(a)(i) to 41.1(a)(xvi).
- (b) The Operator's indemnity in clause 41.1(a) will be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Indemnified Persons caused or contributed to the Loss.
 - (c) This indemnity will not exclude any other right of TfNSW to be indemnified by the Operator.
 - (d) For the avoidance of doubt the Losses that must be indemnified under clause 41.1(a) include any Losses arising as a result of a Service Default or Termination Event and any Step-in Costs.

41.2 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 services required under this Contract at its own cost and risk, without recourse to TfNSW or government funds or guarantees,

except as expressly provided otherwise in this Contract.

41.3 Release

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 Services or any act or omission of the Operator or the Operator's Associates in connection with the Transaction Documents.

41.4 Exclusion for Consequential and Indirect Loss

- (a) Subject to clause 41.4(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 41.4(a) does not operate to exclude, 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 likely 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 or covered in respect of that liability by a policy of insurance required under this Contract; or
 - (B) would have been indemnified or covered 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;
and
- (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 Person);
- (iv) in respect of any liability which is the subject of an indemnity given under this Contract or any Transaction Document, including under clause 41.1(a);
- (v) arising from any criminal acts or fraud on the part of the Operator, an Operator's Associate or any Staff;
- (vi) arising from wilful misconduct on the part of the Operator, an Operator's Associate or any Staff; or
- (vii) to the extent to which, by Law, the Parties cannot exclude, limit or contract out of such liability.

41.5 State exclusion

Despite any other provision of this Contract but subject to clauses 41.6 and 41.7, 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).

41.6 Contract risk

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 Services or otherwise complying with its obligations under the Transaction Documents.

41.7 Benefits held on trust

- (a) TfNSW holds as trustee for the Indemnified Persons the benefit of:
 - (i) each indemnity, waiver and release given by the Operator under any Transaction Document in favour of the Indemnified Persons (including as contemplated by clause 70);
 - (ii) each right to the extent that such right is expressly stated to be for the benefit of a Indemnified Persons.
- (b) The Operator acknowledges the existence of such trusts and consents to:
 - (i) TfNSW exercising rights in relation to, or otherwise enforcing such indemnities, waiver, releases and their rights on behalf of, the Indemnified Persons;

- (ii) each Indemnified Person exercising rights in relation to, or otherwise enforcing the indemnities, waivers, releases and other rights as if they were a party to the relevant Transaction Document.
- (c) To the extent that TfNSW does not have actual authority from an Indemnified Person to act as trustee on behalf of the Indemnified Person as contemplated in this clause 41.7, then as between TfNSW and the Operator, TfNSW will be deemed to have sought and obtained that authority to act as trustee for that Indemnified Person.

42 Reinstatement of loss of damage

42.1 Reinstatement

- (a) Without limiting clause 41.1, if any part of the State Assets or an Operator New Bus is lost, significantly 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 Transit Stop (other than Transit Stop Signage and wayfinding activities specified in paragraph 5 of Schedule 1B (Services – Customer Interaction)) 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 42.1 must comply with the uniform livery requirements set out in the TfNSW Public Transport Brand Style Guide.

42.2 Damage to third party property

- (a) Without limiting clause 41, where any damage to or loss or destruction of real or personal property of a third party occurs which arises as a result of an act or omission of the Operator or its Associates, the Operator must do one of the following (as requested by TfNSW):
 - (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.

43 Dispute Resolution

43.1 Dispute Resolution

- (a) This clause 43 applies to any dispute which arises between the Parties in connection with this Contract (including any dispute arising in connection with Special Services that involves a Transport Operator), except disputes relating to the construction of this Contract including this clause 43 (**Dispute**).
- (b) Subject to clause 43.1(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 43.
- (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 43.2, 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.

43.2 Referral to expert

- (a) If this Contract requires that a Dispute be resolved by an independent expert, or if the Parties agree, with reference to this clause, that a Dispute will be referred to an independent expert, the Parties must refer that Dispute for resolution under this clause 43.2 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 43.2(a) or 43.2(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 43.2.

43.3 General

- (a) This clause 43 does not apply to any Dispute relating to or arising out of the exercise or non exercise by TfNSW or a Transport Operator of any Power conferred on TfNSW or a Transport Operator by the TAA, PT Act 1990, PTA 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.

43.4 Section 65 of the PT Act 1990

The Operator acknowledges that any dispute resolution procedure brought under this clause 43 or otherwise is subject to section 65 of the PT Act 1990.

44 Relief

44.1 Notification

If a Relief Event occurs or prevents, or will prevent, the ability of the Operator to comply with its obligations under this Contract (including meeting any KPI), the Operator must:

- (a) immediately 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 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 44.1(a), give the TfNSW Representative full particulars of the Relief Event including (to the extent practicable):
 - (i) detailed particulars concerning the Relief Event;
 - (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
 - (iv) if the Relief Event is a Project Specific Change in Law, stating the full particulars of any Net Financial Impact of the Project Specific Change in Law and how it has been calculated; and
- (c) if the Relief Event (or its effects) is continuing:
- (i) continue to give the information required by clause 44.1(b) every 10 Business Days after the notice under clause 44.1(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 44.1(a)(iii), provide a final written Claim within 5 Business Days after the Relief Event (or its effects) have ceased.

44.2 Condition precedent to relief or compensation

- (a) If a Relief Event occurs the Operator must:
- (i) comply with the requirements of this Contract in connection with the Relief Event, including this clause 44;
 - (ii) remedy or minimise the effects and duration of the Relief Event to the extent reasonably practicable and as soon as possible; and
 - (iii) take all action reasonably practicable to mitigate any loss suffered by the other party or passengers in relation to the Relief Event or any failure by the Operator to perform its obligations in accordance with this Contract and the Transaction Documents.
- (b) If the Operator fails to comply with the requirements of this clause 44:
- (i) TfNSW will not be liable upon any Claim by the Operator;
 - (ii) the Operator will not be entitled to any relief from any KPIs under Schedule 4; and
 - (iii) the Operator will be absolutely barred from making any Claim against TfNSW, arising out of or in connection with the relevant Relief Event.

44.3 Relief

- (a) If the Relief Event is a Force Majeure Event, then, subject to clause 44.1, 44.2 and 44.3(g), the impacted party is relieved from liability for any failure to perform its obligations which cannot be performed because of the Force Majeure Event to the extent the impacts of the Force Majeure Event are not mitigated or avoided by implementing Business Continuity Plans and otherwise complying with clause 44.2, but only to the extent and for so long on the Force Majeure Event prevents the party from performing those obligations.
- (b) If the Relief Event is a Project Specific Change in Law and has directly caused the Operator to incur a Loss, the Operator may seek compensation in accordance with clause 44.4 in addition to relief under this clause 44.3.

- (c) Subject to clause 44.1 and 44.2 and 44.3(g), if a Relief Event (other than a Force Majeure Event) occurs and prevents the Operator from carrying on its obligations under this Contract to the extent the impacts of the Relief Event are not mitigated or avoided by implementing Business Continuity Plans and otherwise complying with clause 44.2, TfNSW will, taking into account the notices given by the Operator under clause 44.1:
 - (i) grant the Operator such relief from liability for failure to perform 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) grant the Operator relief from its obligation to pay any Abatement which has arisen due to the Relief Event preventing the Operator from performing its obligations under this Contract.
- (d) Any relief granted under this clause 44.3 will not apply to extend the Planned Service Commencement Date.
- (e) The Service Term will not be extended by the period of a Relief Event.
- (f) TfNSW is not required to pay the Payments under this Contract to the extent the Operator is unable to or does not perform the Services in accordance with the Contract due to the occurrence of a Force Majeure Event.
- (g) Where the Operator is entitled to relief under clause 44.3(a) and (c):
 - (i) the Operator will not be relieved from its obligations to meet any KPI or any associated liability; and
 - (ii) the Operator will not be relieved from any Abatements,except to the extent expressly stated in Schedule 4 (Key Performance Indicators), which, for clarity, applies additional thresholds and conditions to the grant of relief.

44.4 Compensation for Project Specific Change in Law

- (a) If a Relief Event is a Project Specific Change in Law, and to the extent that the Project Specific Change in Law does not result in a Service Variation or Contract 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 44 and Schedule 7 (Net Financial Impact).
- (b) Except as provided for in this clause 44, 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.

44.5 Termination for extended Force Majeure Event

- (a) If a Force Majeure Event is continuing or its consequences remain such that the Operator has been or is unable to comply with a material part of its obligations under this Contract for a continuous period of 90 days after the date on which notice is issued under clause 44.1, TfNSW may terminate this Contract by giving a notice to the Operator.
- (b) If this Contract is terminated under paragraph (a), TfNSW shall pay (as the Operator's sole remedy) 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 the 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 40 and the relevant insurance policy under any insurance policy.

Part M – Default, Termination and End of Service Term

45 Step-in

45.1 Step-in Right

- (a) If TfNSW reasonably considers that:

- (i) a Termination Event has occurred; or
- (ii) Service Default (other than a Termination Event) which is likely to have a material adverse impact on TfNSW or its Associates (or any of their reputations) or on the operation of Services, has occurred or TfNSW reasonably considers it likely to occur;
- (iii) a Force Majeure Event has occurred which prevents or delays the Operator from performing any material obligation under a Transaction Document; ;
- (iv) a Cure Plan has not substantially cured or is not likely to substantially cure, the matters for which it was designed by the Required Cure Date,

each a (**Step-in Event**) then:

- (v) TfNSW may give notice to the Operator in accordance with clause 45.1(b); and
- (vi) following such notice, a Step-in Party may exercise all or any of the Powers set out in clause 45.2 (in this clause 45.1, the **Step-in Powers**) in an endeavour to remedy the Termination Event or the Service Default or to overcome any risk or mitigate the consequences resulting from the Termination Event or the Service Default (the **Step-in Right**).

- (b) The notice referred to in clause 45.1(a)(iv):

- (i) must specify:
 - (A) the event or circumstance which has triggered the Step-in Right under paragraph (a); and
 - (B) the date on which the relevant Step-in Party proposes to commence exercising the Step-in Powers; and

- (ii) may be given orally if TfNSW considers that the Termination Event or Non-Compliance Event requires urgent remedy and there is insufficient time to serve a written notice. Any oral notice must be followed within 24 hours by a written notice.
- (c) The Step-in Right is without prejudice to TfNSW's other Powers in respect of a Step-in Event, and the right to terminate in the circumstances set out in clause 47.
- (d) TfNSW may:
 - (i) deduct from an amount payable to the Operator under clause 37 or under any other clause of this Contract, the amount of any costs and expenses it reasonably considers will be incurred by a Step-in Party in exercising the Step-in Powers; and
 - (ii) apply the amount deducted to meet such costs and expenses.

45.2 Step-in Powers

A Step-in Party may do anything in respect of the Services and any document to which the Operator is a party, that the Operator could do including:

- (a) enter into and remain in possession of all or any of the Assets used in the operation of the Bus Services;
- (b) operate and manage all or any Assets used in the operation of the Services;
- (c) exercise all or any of the Powers, and perform all or any of the obligations, of the Operator:
 - (i) in connection with the Services; or
 - (ii) under or in relation to a Transaction Document or any other document to which any of the Operator is a party,as if it were the Operator to the exclusion of the Operator;
- (d) 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
- (e) do anything incidental to the matters listed in clauses 45.2(a) to 45.2(d),

(Step-in Powers).

45.3 Acknowledgment and Obligations of the Operator

- (a) The Operator must immediately take such steps as are necessary to remedy the Step-In Event to TfNSW's satisfaction.
- (b) 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.
- (c) The Operator must cooperate, and ensure all relevant third parties, including Key Subcontractors and Related Entities, cooperate with the Step-in Party in the exercise of the Step-in Powers.

- (d) Without limiting clause 45.3(c):
- (i) the Operator must give access to and control of, and ensure any relevant third parties give access to and control of, a Step-in Party to:
 - (A) all or any of the assets used in the operation of the Services;
 - (B) all Staff, including Dedicated Staff; and
 - (C) any information the Step-in Party reasonably requires; and
 - (ii) to the extent necessary, the Operator must procure any consents to disclose Personal Information to the Step-in-Party,
- to enable the Step-in Party to exercise the Step-in Powers.
- (e) Further, the Operator must ensure that all Dedicated Staff (including those employed by a third party) are available to the Step In Party and the performance of the Operator Activities in connection with any Step In Event.
- (f) The Operator must pay to TfNSW on demand all reasonable Step-In Costs and all Losses incurred by a Step-in Party in exercising the Step-in Powers (less any amount applied to meet those costs and expenses pursuant to clause 45.1(d)).
- (g) Any Step-in Party acts as agent of the Operator at all times during which it is exercising the Step-in Powers and subject to clause 45.3(h), the Operator indemnifies the Step-in Party and TfNSW from and against all reasonable Step-in Costs and all Losses in respect of or arising from the exercise of the Step-in Powers by the Step-in Party or arising in connection with the Step-In Event which has triggered the Step-in Right, except to the extent it arises from the fraud, wilful default, or gross negligence on the part of the Step-in Party.
- (h) Without limiting the Operator's liability for the Step-In Event and its ongoing impacts, the Operator is not liable for the acts or omissions of the Step-In Party.

45.4 Protection of a Step-in Party

Subject to any Law which applies despite any written agreement to the contrary, the Operator acknowledges that a Step-in Party will not be liable to the Operator in respect of:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non- exercise of a Power; nor
- (b) for any loss (including Consequential Loss) which results,

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

45.5 Protection of third parties

- (a) A party to any Dealing (as defined in clause 45.5(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; or
- (C) in any other way as to the propriety or regularity of the Dealing; or
- (ii) is 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 will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.
- (c) In this clause 45.5, 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 of TfNSW or any Step-in Party (or person who purports, or is purported, to be a Step-in Party) for 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.

45.6 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 to occur of:
 - (i) the relevant Step-in Event being remedied by the Operator to the satisfaction of TfNSW; and
 - (ii) TfNSW notifying the Operator in writing that the Step-in Party will no longer exercise the Step-in Powers.
- (b) TfNSW must give written 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 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 Services and the operation of the Services is effected without interruption to the Services.
- (d) Upon the Step-in Party ceasing to exercise the Step-in Powers, the Operator must resume the operation of the Services in accordance with this Contract (unless this Contract has been terminated).

46 Cure regime

46.1 Issue of a Cure Notice

- (a) Without limiting any other rights TfNSW may have under this Agreement, if a Service Default occurs or where this Agreement otherwise permits TfNSW to require a Cure Plan, then TfNSW may notify the Operator that it requires the Operator to develop a Cure Plan in accordance with this clause and the procedure below (a **Cure Notice**).
- (b) The Cure Notice may specify:
 - (i) that an immediate remedy or temporary measures (identified by TfNSW or to be proposed by the Operator for TfNSW's approval) (**Immediate and Temporary Measure**) are to be implemented by the Operator (with TfNSW specifying a reasonable period for the Operator to effect that remedy and temporary measures) to alleviate the impact of, and temporarily resolve, the Service Default or the events or circumstances that gave rise to the Service Default);
 - (ii) the date by which a permanent resolution or remediation is to be effected to cure the Service Default and the events or circumstances giving rise to the Service Default (the **Required Cure Date**); and/or
 - (iii) any other terms or measures proposed by TfNSW in relation to the Service Default.
- (c) Unless TfNSW notifies the Operator that a Cure Plan is not required, the following terms apply if a Service Default occurs (regardless if TfNSW issues a Cure Notice):
 - (i) the Operator must implement Immediate and Temporary Measures to alleviate the impact of, and temporarily resolve, the Service Default or the events or circumstances that gave rise to the Service Default, including as, and within any time period, stipulated by TfNSW;
 - (ii) the Operator must deploy such additional Resources and take such remedial action as is reasonable to cure the relevant Service Default and the events or circumstances that gave rise to the Service Default as soon as possible, and at least by the Required Cure Date;
 - (iii) the Operator must within five Business Days of the occurrence of the Service Default submit to TfNSW a Cure Plan for TfNSW's approval which must:
 - (A) identify the root cause of the Service Default and the anticipated impact of the relevant Service Default (to the extent known by the Operator at that time). Where root cause analysis is not available at the time of proposing the Cure Plan, the Operator must identify within the Cure Plan the timeline for completing the root cause analysis and providing it to TfNSW;
 - (B) identify the Immediate and Temporary Measures to be taken pending implementation a permanent resolution and remediation, which must, at a minimum, include any such Immediate and Temporary Measures required by TfNSW to be undertaken by the Operator;
 - (C) identify the permanent resolution and remediation measures to be taken to cure the Service Default and the events or circumstances giving rise to the Service Default (the **Permanent Measures**);

- (D) include a work plan setting out each task to be undertaken and the time for each task to be completed;
 - (E) include the form and timing of reports to be provided by the Operator as to the status of any Cure Plan together with evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the Cure Plan; and
 - (F) include the operational arrangements for integrating the Immediate and Temporary Measures and the Permanent Measures with the continuing performance of Bus Services.
- (d) The Operator must amend any proposed Cure Plan to reflect TfNSW's comments and to include any additional steps or timing requirements that TfNSW may require, and then resubmit the Cure Plan for TfNSW's approval. This procedure will then re-apply.
 - (e) If the parties have not agreed the Cure Plan within 15 Business Days (or such alternative period as agreed) of its delivery to TfNSW or if the Operator fails to provide the first draft within 5 Business Days of any Cure Notice, TfNSW may either refer the matter to dispute resolution in accordance with clause 43 or, acting reasonably in the circumstances, establish a Cure Plan itself.
 - (f) Once agreed or otherwise established by TfNSW in accordance with this clause, the Operator must implement and comply with the Cure Plan and otherwise promptly and diligently remediate any Service Default and the events or circumstances leading to a Service Default.
 - (g) The Operator must provide reports as to the status of any Cure Plan and any Immediate and Temporary Measures and Permanent Measures, and evidence that the Operator has complied with and has diligently and promptly pursued and is continuing to diligently and promptly pursue a cure in accordance with this clause and the 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 Cure Plan; and
 - (ii) otherwise within five Business Days of TfNSW's request.
 - (h) Unless otherwise agreed, the costs incurred under this clause and otherwise in developing and implementing a Cure Plan will be borne by the Operator.
 - (i) The Operator will not be relieved of any liability or responsibility under this Agreement or otherwise at law arising out of or in connection with the implementation of a Cure Plan.
 - (j) Either TfNSW or Operator may propose updates to the Cure Plan to reflect changed circumstances, provided that any updates must be approved by TfNSW and no update or change to the Cure Plan will vary the Required Cure Date unless such change to the Required Cure Date is expressly approved by the TfNSW Representative with reference to this clause 46.1(j).

46.2 Enhanced Cooperation Right

If any Service Default or Termination Event occurs or TfNSW reasonably considers that a Cure Plan either is not appropriate on its own or has not resolved or is not likely to resolve the relevant issue, then TfNSW may require the Operator to:

- (a) enable TfNSW or its nominated personnel to work alongside and supervise the Operator and its Staff to understand and collaborate on how to resolve the relevant circumstances, problem, risk or issue;
- (b) promptly provide TfNSW or its nominated personnel with such information (in addition to any information required to be provided under the other provisions of this Contract), and access to the Contract Depots and other Assets used in the provision of the Services as TfNSW may reasonably request to enable it fully to understand the nature and causes of the circumstances, problem, risk or issue, other information relevant to the Services, and the steps (if any) being taken or considered by the Operator to remedy such circumstances, problem, risk or issue; and
- (c) procure that such members of the Operator's senior management engaged or familiar with the delivery of the Services:
 - (i) attend in person, at TfNSW's chosen location, meetings with representatives of TfNSW as soon as reasonably practicable and on no more than 2 Business Days notice; and
 - (ii) are directly responsible for management and oversight of resolution of the relevant circumstances, problem, risk or issue, remotely providing comprehensive daily updates (or updates at such other frequency as TfNSW may require) on such resolution to TfNSW.
- (d) Without limiting any other term of this Contract, where TfNSW provides any assistance, materials or resources to support or help the Operator in performance of any Services or the conduct of any remediation activities, the provision of such assistance, materials or resources in no way limits the Operator's obligations or warranties under this Contract or reduces the Operator's liability under this Contract. This paragraph applies regardless of whether such assistance, materials or resources are provided under or in accordance with clause 46.2 or otherwise.

47 Termination

47.1 Termination Events

TfNSW may terminate the whole or any part of this Contract immediately (or on such later date specified in the Termination Notice) by giving notice (a **Termination Notice**) to the Operator, if any of the following **Termination Events** occur:

- (a) (**Material breach**) a Material Breach occurs;
- (b) (**Cure Plan**) the Operator breaches any term of clause 46, including any:
 - (i) failure to submit a Cure Plan in accordance with (or within the time period required by) clause 46.1; or
 - (ii) without limiting paragraph (a), any failure to cure the Service Default or the circumstances giving rise to the Service Default by the Required Cure Date;
- (c) (**Cure Plan deficiencies**) TfNSW reasonably considers that:
 - (i) a Cure Plan submitted by the Operator does not address or will not resolve the Service Default by the Required Cure Date; or

- (ii) the Operator is not diligently and promptly pursuing remediation of a Service Default or the Operator will not otherwise remediate such Service Default by the Required Cure Date;
- (d) (**Safety**) any material (as determined by TfNSW) Safety Incident occurs in circumstances where the Operator or any Operator's Associates are in breach of this Contract or any Law, including Transport Law or the Operator otherwise breaches clause 32.4;;
- (e) (**Unlawful**) it becomes or is likely to become unlawful for the Operator to perform all or any of the Bus Services.
- (f) (**Dealing with Assets**) the Operator breaches clause 24;
- (g) (**Abandonment**) the Operator abandons, ceases or suspends the conduct of all or a substantial part of the Services or it threatens or expresses an intention to do so;
- (h) (**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;
- (i) (**Assignment**) a purported assignment or novation by the Operator of a Transaction Document or any of its rights or obligations under any Transaction Document occurs without the prior consent of TfNSW;
- (j) (**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;
- (k) (**Change of Control**) Without the prior written consent of TfNSW, a person is able to Control the Operator or its Associates where that person was not able to Control the Operator or its Associates on the commencement of this Contract.
- (l) (**Cross ownership**) Without the prior written approval of TfNSW, the Operator and its Associates (taken together) operate Route Services, Headway Services, On Demand Services and Dedicated School Services utilising more than 40% of the total number of buses providing timetabled, school, on demand or Headway bus services in the Outer Metropolitan Region except where this is the consequence of:
 - (i) one or more events the occurrence of which TfNSW determines is beyond the control of the Operator or its Associates including:
 - (A) changes to the business, networks and operations of TfNSW;
 - (B) a reduction in the total number of buses providing timetabled bus services in the Outer Metropolitan Region as a result of a decrease in service demand for buses in other operator contract areas (for example, in response to new modes or increased mode capacity); or
 - (C) an increase in the total numbers of buses providing timetabled bus services in the Outer Metropolitan Region as a result of increased service demand; or
 - (ii) the award of an additional services contract directly to the Operator's Associates to operate bus services in the Outer Metropolitan Region following their participation in a competitive tender process after the date of this Contract;

- (m) **(Lack or breach of Accreditation)** The Operator:
 - (i) undertakes any of the Bus Services which require an Accreditation without obtaining the Accreditation or being authorised to do so; or
 - (ii) breaches the terms of any Accreditation;
- (n) **(Revocation of Accreditation)** The Operator's Accreditation, or 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 Bus Services, is repealed, revoked or terminated or expires, or is 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;
- (o) **(Fraud)** the Operator or its Associates have acted fraudulently or dishonestly in relation to the Services, the provision of the Services or the performance of any of its obligations under any of the Transaction Documents;
- (p) **(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;
- (q) **(Conflict of Interest)** in TfNSW's view, a conflict of interest exists for the Operator or any of its Associates;
- (r) **(Harm to TfNSW reputation)** in TfNSW's reasonable opinion, the Operator, or TfNSW's relationship with the Operator, has caused damage or harm to TfNSW's or Indemnified Person's reputation or brand;
- (s) **(Insolvency Event)** an Insolvency Event occurs;
- (t) **(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;
- (u) **(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;
- (v) **(Force Majeure Event)** TfNSW has a termination right under clause 44.5; or
- (w) **(Other)** any other right of TfNSW to terminate this Contract arises under the terms of this Contract, and

this termination right is without prejudice to TfNSW's rights under clause 45 in relation to Step-in Parties and TfNSW's right to exercise all legal and equitable rights and remedies available to TfNSW in respect of the Termination Event (whether under this Contract or not).

47.2 Suspension of payments

Without limiting TfNSW's rights or remedies, if a Termination Event occurs TfNSW may suspend payments to the Operator until the date upon which the Operator remedies the Termination Event or makes other arrangements satisfactory to TfNSW.

47.3 Termination by TfNSW for convenience

- (a) TfNSW may (without cost or liability, subject to paragraph (b)) at any time at its absolute discretion and for convenience by 6 months notice to the Operator terminate this Contract (in whole or in part).
- (b) If TfNSW terminates this Contract under clause 47.3(a), TfNSW will (as its sole liability) reimburse the Operator for:
 - (i) any outstanding Payments owed to the Operator, calculated in accordance with Schedule 3 (Payment); and
 - (ii) the lesser of:
 - (A) the demonstrable and reasonable costs actually incurred by the Operator directly as a result of the early termination under clause 47.3(a) and that otherwise would not have been incurred had this Contract (or, in the case of partial termination, the applicable portion of the Contract) continued until the Expiry Date; and
 - (B) an amount equal to 3 times the Monthly Contract Price.
- (c) The Operator must take all reasonable measures to mitigate and minimise the costs in clause 47.3(b)(ii)(A) and TfNSW is only liable to pay such costs to the extent the Operator has complied with this paragraph.
- (d) TfNSW may itself, or through a third party, carry out the Services after termination under this clause 47.3.

47.4 Waiver on termination

- (a) If TfNSW terminates this Contract under clause 47.1 the Operator's sole right and remedy will be to require TfNSW (subject to clause 37.3) 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 44.5, the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with clause 44.5; or
 - (ii) clause 47.3(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with clause 47.3(b).

47.5 Consequences of termination generally

- (a) The termination of the Operator's engagement under this Contract does not affect any of TfNSW's other rights or remedies.
- (b) If the Operator's engagement under this Contract is terminated (but excluding any termination under clause 47.3), the Operator is liable for and indemnifies TfNSW on demand against any loss suffered by TfNSW as a result of the termination.

47.6 Wrongful termination

If:

- (a) TfNSW purports to terminate the whole or any part of this Contract; and
- (b) a court determines that such purported termination was wrongful,

the liability of TfNSW is limited to the payment of the amounts contemplated by clause 47.3 as if TfNSW had terminated the whole or that part of this Contract for convenience under clause 47.3.

47.7 Partial termination

- (a) If TfNSW exercises a right to terminate this Contract in part:
 - (i) TfNSW has the sole discretion as to which part or parts of this Contract are to be terminated;
 - (ii) the parties will agree (or TfNSW may direct in accordance with clause 12 or 13) any appropriate Service Variations or Contract Variations to this Contract to effect the partial termination; and
 - (iii) TfNSW may determine and direct how the rights and obligations in clauses 48 to 51 apply and must be implemented by the Operator in respect of the terminated parts (including as if such clauses apply only in respect of the terminated part with such changes as TfNSW deems necessary so that those clauses operate with respect to the terminated part). The Operator must comply with such directions at no cost to TfNSW.
- (b) If at any time TfNSW considers that any aspect of the partial termination is not proceeding to its satisfaction, TfNSW may by notice convert the partial termination into a full termination.

47.8 Operator

The Operator waives any right it may have to terminate this Contract at law or otherwise.

48 End of Service Term Restrictions

48.1 Variation of Terms and Conditions of Employment

- (a) 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 Employee where:
 - (i) the variation takes effect in the End of Contract Period unless:
 - (A) 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 Employee of no more than the percentage increase in the index referred to in paragraph 4.4 of Schedule 3 (Payment) over the twelve month period ending on the month for which that index was last published; or

- (B) is a variation imposed by a determination of the Fair Work Commission or the New South Wales Industrial Relations Commission;
 - (ii) all or part of the variation first takes effect after the expiry or termination of the Service Term;
 - (iii) the variation results in the employment being for a fixed term, the expiry of which is more than six months after the expiry or termination of the Service Term;
 - (iv) 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);
 - (v) the variation relates to the provision of a benefit (but excluding base salary and the Employee's legal entitlements) which the Staff will or may have a contractual right to receive after the expiry or termination of the Service Term; or
 - (vi) the variation prevents, restricts or hinders the Employee from working for a Successor Operator or from performing the duties the Employee performed in the Services.
- (b) If any Dedicated Staff are employed by another entity that is not the Operator, the Operator warrants and must ensure that such entity complies with clause 48 as if the references to "Operator" in this clause are a reference to that entity.

49 End of Contract Transfer Provisions

49.1 Right to appoint Successor Operator and Interim Operator

- (a) The Operator acknowledges that TfNSW may, on or before the expiry or termination of the Service Term, invite any person (including the Operator and/or any third party) to perform all or any part of the Services for the period commencing after expiry or termination of the Service Term.
- (b) The following clauses will not apply if the Operator is the Successor Operator:
 - (i) clause 49.7; and
 - (ii) clause 51.

49.2 Maintenance as Going Concern

The Operator must maintain and manage the Services, including the Bus Services, 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 Dedicated Staff and the Services as a going concern.

49.3 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 Services are carried out, including the Contract Depots and other offices;
 - (ii) material contracts relating to the Services (including Key Subcontracts);

- (iii) computer and other information systems;
- (iv) an asset register for Assets used in relation to the Services (including an inventory of spares and special tools and equipment);
- (v) Employee and Dedicated Staff details (including a list of names, terms and conditions of employment, rosters and all information required to be provided under clause 49.3(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 Services 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 49.3(a) and 49.3(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 49.3(a) and 49.3(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 date on which the End of Contract Period ends, and otherwise on requested by TfNSW during the End of Contract Period, the Operator must provide to each Employee, and where any Dedicated Staff are not Employees, ensure that the relevant employer provides to each of their Dedicated Staff, a statement setting out that 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 an Employee or Dedicated Staff notifies the Operator or their relevant employer that he or she disputes any of the information contained in the statement provided to that employee pursuant to clause 49.3(e), the Operator must notify TfNSW of such dispute and TfNSW shall refer the disputed issue to an actuary.

49.4 Preparation for contracting at End of Service Term

- (a) The Operator must, to the extent permitted by Law, provide TfNSW with reasonable access to the Staff (including Dedicated Staff) and the information, books and records kept by or on behalf of the Operator or the relevant employer of Dedicated Staff in connection with the Services for the purpose of TfNSW preparing reports and documents in connection with any procurement process for the operation of all or part of the Services (which may be disclosed to potential successor service providers). The Operator must procure the consent of any relevant Staff and Dedicated Staff for the purposes of such use and disclosures.
- (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 49.4(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 Services.
- (d) The Operator warrants to TfNSW that to the best of its belief, all information provided under clauses 49.3(a), 49.3(b) and 49.3(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.

49.5 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 Services at the Termination Date to a Successor Operator (or nominee of TfNSW) or Interim Operator and any procurement process in connection with such transfer.

49.6 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 Services, including the provision of information and records related to the operation of the Services (excluding confidential financial information but including all records relating to the Staff).

49.7 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 Services; and
- (b) preparations by the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW to take over the Services on the Termination Date,

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

50 End of Service Term Asset Condition and Handover Requirements

50.1 Handback Audit

- (a) Without limiting clause 31:
 - (i) no earlier than 18 months; and
 - (ii) no later than eight months,

prior to the date on which the End of Contract Period ends, the TfNSW Representative may procure the carrying out of an audit of the Handback Assets (**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 Handback Assets 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 50.1(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 Services 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.

50.2 Rectification work

The Operator must carry out any required rectification, maintenance or remediation work notified pursuant to clauses 50.1(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 Handback Assets 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.

50.3 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 Handback Audit Assets 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.

50.4 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 Handback Audit Assets 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) the work (if any) required under clauses 50.1(c)(ii) and 50.1(c)(iii); and
 - (iv) the Operator's obligations under clause 50.3.
- (b) The amount notified by the Final Inspection Auditor under clause 50.4(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 50.4(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 5.

51 Transfer of Operator Assets

51.1 Treatment of Operator New Buses

- (a) Subject to clause 51.1(d), on or within the period of 30 days immediately preceding the Termination Date:
 - (i) the Operator must ensure that all Operator Owned Buses are sold to TfNSW or its nominee (**Purchaser**); and
 - (ii) TfNSW shall procure that the Purchaser purchases all Operator Owned Buses, as required by TfNSW, including in accordance with the terms of this Contract and any other Transaction Document.
- (b) Subject to clause 51.1(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 Operator 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 relevant Contract Buses under clauses 51.1(a) and (b) shall be on the following terms and conditions:
 - (i) in respect of any Contract Bus that is an Operator Owned Bus the Operator must:
 - (A) sell;
 - (B) transfer full legal and beneficial title to; and
 - (C) deliver possession of,

such Contract 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 Contract Bus that is an Operator Novation Bus:
 - (A) novate the Operator Bus Lease in respect of; and
 - (B) deliver possession of,

such Contract Bus to the Novatee as required by TfNSW and on terms otherwise acceptable to TfNSW;
 - (iii) if a Contract 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 Contract Bus and sell the Contract Bus to the Purchaser under this clause as if it were an Operator Owned Bus;
 - (iv) the Purchaser and Novatee may conduct due diligence on the Contract Buses (other than Legacy Buses);
 - (v) the Operator must assign any warranties held by it in respect of the Contract Buses (other than Legacy 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 a Contract Bus that is an Operator Owned Bus will be the Vehicle Termination Payment as determined by TfNSW in accordance with paragraph 4.7 of Schedule 3 (Payment); and
 - (B) novation of an Operator Bus Lease in respect of a Contract Bus that is an Operator Novation Bus will be the Vehicle Termination Payment as determined by TfNSW in accordance with paragraph 4.7 of Schedule 3 (Payment); 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 51.1 does not apply in relation to On Demand Vehicles that are used exclusively to provide On Demand Services or any Legacy Buses.

51.2 Treatment of Depots

- (a) On or within the period of 30 days immediately preceding the expiry of the End of Contract Period:
 - (i) where there is an Operator Owned Existing Depot or a New Depot owned by the Operator, the Operator (as landlord) must enter into a Depot Headlease with TfNSW (as tenant), for a term required by TfNSW in its absolute discretion, but not exceeding 2 years from the date advised by TfNSW by notice to the Operator;
 - (ii) where there is an Related Entity Owned Existing Depot or a New Depot owned by a Related Entity of the Operator, that:
 - (A) the Operator must procure the Related Entity (as landlord) enter into a Depot Headlease with TfNSW (as tenant), for a term required by TfNSW in its absolute discretion, but not exceeding 2 years from the date advised by TfNSW by notice to the Operator; and
 - (B) the Operator must procure the Operator Depot Lease for that Related Entity Owned Existing Depot or New Depot (as the case may be) is surrendered on the date advised by TfNSW by notice to the Operator
 - (iii) where there is a Third Party Owned Existing Depot or a New Depot owned by a Third Party Owner, the Operator must use its best endeavours to either:
 - (A) seek to procure a surrender of the Operator Depot Lease for that Third Party Owned Existing Depot or New Depot (as the case may be) by no later than the day notified by TfNSW and have the Third Party Owner (as landlord) enter into the Depot Headlease with TfNSW (as tenant) for a term required by TfNSW in its absolute discretion, but not exceeding 2 years from the date advised by TfNSW by notice to the Operator; or
 - (B) if the Operator is unable to achieve the matters in paragraph (A) above, then the Operator must procure the assignment of that Operator Depot Lease to TfNSW (as assignee) from the date advised by TfNSW by notice to the Operator.

51.3 Not used

51.4 Successor Operator to make offers

- (a) The Operator must use reasonable endeavours, and ensure that any third party employer of Dedicated Staff uses reasonable endeavours, to facilitate offers of employment to be made to all Employees and 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 Dedicated Staff (other than the persons named in clause 51.4(f)). Offers made by a Successor Operator must take effect from the Termination Date.

- (c) If an Employee or Dedicated Staff accepts an offer of employment from the Successor Operator made in accordance with this clause 51.4, on termination or expiry of the Contract, the Operator must pay or, in the case of Dedicated Staff not employed by the Operator, ensure the relevant employer pays, to TfNSW or the Successor Operator (as directed by TfNSW) 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 Employees or Dedicated Staff who accept offers made under clause 51.4(b) (**Acquired Employee**) which accrued for service to the Termination Date with the Operator or with any current or prior employer and transferred to the Successor Operator or to TfNSW as the case may be.
- (d) The value of leave entitlements will be determined by an actuary (engaged at the Operator's cost) 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.
- (e) 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.
- (f) For the purposes of clause 51.4(b), TfNSW is not required to procure that any Successor Operator make offers of employment to the following Dedicated Staff:
 - (i) any person employed in the position of General Manager of the Operator or a shareholder of the Operator or carrying out a similar function or job description;
 - (ii) any person appointed to the Board of Directors of the Operator or a shareholder of the Operator or carrying out a similar function or job description;
 - (iii) any person employed in a management position in the 'Head Office' functions of the Operator;
 - (iv) any person employed in a support staff role in the 'Head Office' functions of the Operator; and
 - (v) any person employed in specific non-operational shared service roles approved by TfNSW.
- (g) Where the employer of any Acquired Employee is not the Operator and that employer does not promptly pay to TfNSW or the Successor Operator (as directed by TfNSW) any amount to be paid under clause 49.3(c), the Operator must promptly pay such amount to TfNSW on demand as if it were the principle obligor.

51.5 Transition-out Services

- (a) Without limiting the Operator's obligations under clauses 50 and 51, the Operator must during the End of Contract Period:
 - (i) continue performance of the Services in accordance with this Contract and the Transaction Documents to the extent required by TfNSW; and
 - (ii) provide such assistance as reasonably required by TfNSW in relation to the orderly handback of Assets and transition of the Services to a Successor Operator or

TfNSW's nominee and otherwise to minimise the disruption to the operation of bus services and to the operation of TfNSW.

- (b) To the extent that the Operator continues to perform the Services after this Contract has terminated, TfNSW will continue to pay the Operator in accordance with Schedule 3 (Payment).

Part N - General

52 Restriction on Activities

52.1 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) TfNSW may assign or transfer its rights or obligations under the Transaction Documents to another Governmental Agency, without the need for consent of the Operator. The Operator must promptly do all things and deliver all further documents reasonably requested by TfNSW to give effect to an assignment or transfer.

52.2 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**) for:
 - (i) the provision of services or goods by the Related Entity to the Operator; or
 - (ii) the transfer, secondment or sharing of any employee to or with a Related Entity of the Operator; or
 - (iii) the lease, licence or sharing of any assets or facilities of the Related Entity by the Operator,

unless the Related Party Arrangement is on arm's length commercial terms and the following requirements are also 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 52.2(a)(iv).

In acting reasonably under clause 52.2(a)(v) and 52.2(a)(vi), TfNSW must have regard to the need to ensure continuity of performance of the Bus Services on expiry or termination of this Contract or if a Termination Event occurs.

- (b) If the Operator enters into a Related Party Arrangement in breach of clause 52.2(a), then TfNSW may request the Operator to terminate the Related Party Arrangement at their cost and the Operator must, as soon as practicable, comply with that request.
- (c) No later than 3 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 1 month of TfNSW's request. If TfNSW reasonably considers that any Related Party Arrangements are not on arms length terms or do not comply with this clause, 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 or from entering into Related Party Arrangements without the approval of TfNSW. The Operator must comply with any conditions specified by TfNSW under this clause 52.2(c) .

53 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 shall be deemed to be an employee, partner or agent of TfNSW or of the State, by reason only of execution of, or performance of, this Contract.
- (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.

54 Personal Property Securities Act

54.1 General

- (a) The Operator must, at its own expense and cost, promptly following request by TfNSW or its agents, attorneys or nominees (**Relevant Party**), execute such documents, deeds and other agreements and otherwise take whatever action that Relevant Party may reasonably require:
 - (i) to perfect and/or protect any Security Interest created by or in connection with the Transaction Documents, including registration on the Personal Property Securities Register established under section 147 of the PPS Law;
 - (ii) to facilitate the realisation or enforcement of such Security Interest;
 - (iii) to facilitate the exercise of any of the Relevant Party's rights, powers or discretions under the Transaction Documents;
 - (iv) to register, record or file any Transaction Document in such places as the Relevant Party may at any time consider necessary or desirable to perfect the Transaction Document, to ensure its enforceability, validity and priority against any other person or to protect the rights of the Relevant Party under or in connection with the Transaction Document;
 - (v) to 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;

- (vi) to 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; and
- (vii) to enable the Relevant Party to better exercise its rights over the relevant secured property,

including, without limitation, the execution of additional Security Interests and other documents and the giving of all notices, orders, instructions and directions whatsoever.

54.2 Corresponding provisions

Any document required to be executed by the Operator under clause 54.1 will be in form and substance satisfactory to the Relevant Party.

55 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 sub-contractors 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;
 - (ii) promptly notify TfNSW in writing of any gifts or benefits (other than the Payments) offered or received by the Operator or its Associates in relation to the performance of the Services or its obligations under this Contract; and
 - (iii) 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.

56 Proportionate Liability

56.1 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 56.1, 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.

56.2 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).

56.3 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.

57 Taxes

Subject to clause 37.4, 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.

58 International obligations

58.1 Anti-bribery and anti-corruption

Without limiting any other provision of this Contract, the Operator must:

- (a) comply with all applicable anti-bribery and anti-corruption legislation, including the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) and similar Laws of other countries that are applicable;

- (b) comply with TfNSW's Statement of Business Ethics (which includes a requirement to comply with the *Transport Code of Conduct* and the *NSW Government Procurement Policy Framework* in relation to conduct by suppliers);
- (c) maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
- (d) ensure that Operator's Associates and Staff comply with this clause.

58.2 Anti-slavery and human trafficking

Without limiting any other provision of this Contract, the Operator must:

- (a) not engage in (and take reasonable steps to ensure that in the Operator's operations and supply chains there are not) activities, practices or conduct:
 - (i) that would constitute an offence under Modern Slavery Laws; or
 - (ii) which occurs outside of an Australian jurisdiction which would constitute an offence under Modern Slavery Laws if it had taken place within the relevant Australian jurisdiction;
- (b) notify TfNSW as soon as reasonably practicable after it becomes aware of any actual or suspected activity, practice or conduct of the kind described in paragraph (a);
- (c) provide TfNSW with all information and records reasonably requested by TfNSW, in order for TfNSW to comply with its reporting obligations under the *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2018* (NSW) and equivalent legislation in the other Australian states and territories, within thirty (30) days of TfNSW's request; and
- (d) warrant that it will comply with the mandatory reporting requirements under the *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2018* (NSW) and equivalent legislation in the other states and territories, to the extent applicable, and provide a copy of its modern slavery statement produced in accordance with such legislation to TfNSW within thirty (30) days of being required to produce such statement under the relevant legislation.

59 Transport planning

- (a) The Operator acknowledges that TfNSW or any Government Authority may make policy decisions in relation to the development and implementation of transport planning in the State as it sees fit. Nothing in this Contract restricts this.
- (b) The Operator must participate as reasonably required by any TfNSW in the development and implementation of transport planning. This participation may involve:
 - (i) attending meetings, consultation forums and other similar events;
 - (ii) reviewing and contributing to the development of proposals and strategies put forward by the TfNSW or other transport operators and stakeholders;
 - (iii) providing comments on the impact of proposals and strategies on the Services; and
 - (iv) cooperating in good faith in the implementation of TfNSW's public transport policy objectives, as notified to the Operator.

- (c) The Operator will have no Claim against TfNSW with respect to any consequence of such person exercising, or not exercising, any right or power in relation to the development and implementation of transport planning in the State, except as expressly provided in this Contract.

60 Industrial and community relations

60.1 Industrial relations

- (a) The Operator must perform its obligations under this Contract so as to minimise industrial relations disputes and ensure that a good industrial climate is maintained.
- (b) Without limiting any obligation of the Operator, the Operator must ensure that at all times any and all employment and industrial relations obligations to the Staff are complied with, including ensuring that:
 - (i) all relevant awards and formal industrial agreements are adhered to;
 - (ii) good safety practices in accordance with relevant legislation, awards and procedures contained in the relevant industry agreements are maintained; and
 - (iii) industrial relations are professionally managed.
- (c) Without prejudice to the generality of the foregoing provisions of this clause, the Operator must, in carrying out the Services:
 - (i) assume sole responsibility for and manage all aspects of industrial relations of the Staff;
 - (ii) ensure each subcontractor manages all aspects of the industrial relations with their employees appropriately;
 - (iii) keep TfNSW fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Services;
- (d) The industrial relations requirements contained in this Contract and any TfNSW Policies:
 - (i) are in addition to, but are not in substitution for, any requirements of Law; and
 - (ii) do not limit the powers of TfNSW or the liabilities and responsibilities of the Operator.
- (e) The Operator indemnifies and must keep indemnified the TfNSW and each of the Indemnified Parties against any Loss or Claim suffered or incurred as a result of or in connection with any industrial relations dispute or industrial action which arises as a result of an act or omission of the Operator or any of its Associates.

60.2 Community relations

The Operator:

- (a) acknowledges that the areas where the Services are being carried out are of great importance to many people, including local residents, schools and businesses; and

-
- (b) must participate in all community relations and involvement programs and activities as reasonably required by TfNSW from time to time.
-

61 Notices

Unless a notice is required under the Contract to be submitted via the BSAR system, any notice, demand, consent or other communication (the Notice) given or made under this Contract:

- (a) must be in writing and signed by hand or electronically by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by:
- (i) prepaid post (if posted to an address in another country, by registered airmail);
 - (ii) hand to the address below or the address last notified by the intended recipient to the sender; or
 - (iii) email to the email address below or the email address last notified by the intended recipient to the sender:
 - (iv) to TfNSW:

Associate Director, Bus Contracts
Email: outer.metro@transport.nsw.gov.au
GPO Box K659, Haymarket 1240
 - (v) to the Operator:

[insert]
- (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 email, on receipt by the sender of a receipt of transmission,

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.

62 Entire agreement

Without limiting clause 39(b), 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 it.

63 Amendment

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

64 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.

65 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.

66 Costs and stamp duty

- (a) Each party will pay its own costs of negotiation, preparation and execution 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 other Transaction Documents sought by the Operator, at TfNSW's absolute discretion.
- (c) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Contract any Transaction Document and any instrument executed under this Contract or any Transaction Document must be borne by the Operator. The Operator must indemnify TfNSW on demand against any liability for those costs and that stamp duty.

67 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.

68 Counterparts

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

69 TfNSW actions

- (a) Unless this Contract expressly provides otherwise, all approvals, consents, decisions, waivers or exercises of discretion required (whether expressly or impliedly) or able to be given or made by TfNSW may be given, not given, made, not made, exercised, not exercised, withheld or conditioned by TfNSW in its absolute discretion and the Operator

acknowledges that TfNSW and the TfNSW Representative, in granting any approval, consent or waiver, or making any decisions or exercising any discretion under or in connection with this Agreement in relation to such matters, will not assume any duty of care, responsibility or liability to the Operator or any other person .

- (b) If TfNSW is required under the terms of any Transaction Document to exercise best or reasonable endeavours, the Operator acknowledges that TfNSW:
- (i) 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;
 - (ii) cannot guarantee the relevant outcome; and
 - (iii) by undertaking to exercise best or reasonable endeavours, does not agree to:
 - (A) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (B) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Contract if TfNSW regards that exercise as not in the public interest;
 - (C) develop policy or legislate by reference only or predominantly to the interests of the Contract or Transaction Document;
 - (D) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Agreement; or
 - (E) act in any other way that TfNSW regards as not in the public interest.

70 Claims

Where this Contract or any Transaction Document provides that the Operator is not entitled to make any Claim against TfNSW, has no Claim against TfNSW, waives any Claim, releases TfNSW from any Claim or any similar words are used, then the Operator and each of Operator's Associates is deemed to have released and forever discharged TfNSW and each of the Indemnified Parties from all Claims which the Operator or any of the Operator's Associates has or at any time might have, or but for the release, might have had, in connection with the relevant subject matter and TfNSW and each of the Indemnified Parties have no liability to the Operator or any of the Operator's Associates whatsoever in connection with the relevant subject matter. TfNSW holds the benefit of this release on trust for each of the Indemnified Parties.

71 Survival

Clauses 1.1 (Definitions), 4 (Service Term), 5 (Performance Bonds), 8.2 (Non exclusivity), 16 (Systems and Equipment), 20.4 (Environment and Contamination), Part H (Confidentiality and Privacy), Part I (Intellectual Property and Data), 31 (Contract management), 33 (Reporting), 36.7 (Successor Operator), 37.3 (Set-off), 37.5 (Civil Penalties), 38 (Representation and warranties), 39 (Operator acknowledgments), 40 (Insurance), 41 (Indemnity and Limitation of Liability), 42 (Reinstatement of loss of damage), 43 (Dispute Resolution), Part M (Default, Termination and End of Service Term), 52 (Restriction on Activities), 53 (Relationship between Operator and TfNSW), 54 (Personal Property Securities Act), 56 (Proportionate Liability), 57 (Taxes), 61 (Notices), 64 (No waiver), 65 (Further Assurances), 67 (Governing law and

jurisdiction), 69 (TfNSW actions), 70 (Claims) and this clause 71 (Survival), together with any other provisions which are expressed to survive or by their nature impose continuing obligations or rights for the relevant parties, separate and independent from the other obligations or rights of the parties, continue to apply after the expiration or termination of this Contract.

Execution page

Executed as a Contract.

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

Signature of witness

Signature of authorised delegate

Name of witness (print)

Name of authorised delegate (print)

Signed by ACN 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)

Attachment A Contract details

Item	Clause reference	Term	Details
Item 1	2	TfNSW Representative	Associate Director, Bus Contracts (or such other position notified to the Operator by TfNSW from time to time)
Item 2	2	Operator's Representative	
Item 3	34.3	Key Personnel Details and Roles	
Item 4	34.3	Key Personnel – duration of appointment	
Item 5	4	Planned Service Commencement Date	
Item 6	40.1(a)(i)(C)	Public liability insurance	
Item 7	40.1(a)(v)	Third party property insurance	
Item 8	40.1(a)(xi)	Property in Care, Custody and Control insurance	
Item 9	1.1	General Performance Bond Amount	

Attachment B Performance Bond

Attachment C Deed of Guarantee and Indemnity

Attachment D Special Services Order Form

Item 1 (Party details)	Party ordering Special Services	[Insert either TfNSW or Transport Operator]
	Ordering party representative	Name: Position: Email: Phone: [Insert representative details who is authorised to order Special Services and liaise with Operator during delivery of Special Services]
	Operator	[Insert name of Operator]
	Operator representative	Name: Position: Email: Phone: [Insert representative details who will liaise with the ordering party representative during delivery of Special Services]
Item 2 (Request type)	<input type="checkbox"/> Standard request for Special Services under clause 9.5 (Special Services) <input type="checkbox"/> Urgent request for Event Services or Rail Replacement Services under clause 9.5(d)(iii) (Special Services) [Indicate whether this request is urgent and made under clause 9.5(d)(iii) (Special Services)]	
Item 3 (Special Services)	<input type="checkbox"/> Event Services <input type="checkbox"/> Rail Replacement Services	
Item 4 (Details of Special Services)	[Insert all details that are required for a request of the applicable type of Special Services as set out in Schedule 1D (Special Services and Operating Activities).]	

Attachment E Dedicated Staff

List of Dedicated Staff to be further discussed and agreed by the Parties prior to the Service Commencement Date

[insert]

*This does not include Staff engaged through a sub-contract to deliver bus cleaning services or general facilities cleaning services.