
On Demand Transport Agreement

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

and

[Insert]

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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 [Insert] (**Operator**).

Background

- A The Parties are currently party to an existing pilot services agreement titled [Insert] dated [Insert] under which the Operator provides on demand services to the public (**Existing Contract**).
- B The Operator will continue to provide the services under the Existing Contract until the Service Commencement Date, upon which the Existing Contract 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 authorised and 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.

Accreditation means accreditation or certification of competency required by any Law (including the PT Act 1990 and the P2P Act) to operate a passenger service.

Approved Subcontractor means a subcontractor which has been consented to by TfNSW in accordance with clause 30.1(a).

Assets means any asset used by the Operator to conduct the Services, including any systems and equipment (including the Booking System), Existing Vehicles, New Vehicles, existing Depots, any new Depots leased by the Operator or Subcontractors, but excluding:

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

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

Asset Register means the list of Assets in Schedule 6 (Asset Register).

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.

Booking Services means the booking services (as defined in the P2P Act) to be provided by the Operator in connection with the On Demand Services, as specified in Schedule 1.

Booking System means the customer facing system used by the Operator for the provision of the Booking Services.

Booking System Data means all Data recorded in, generated and stored by the Booking System, including Personal Information.

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

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 25.

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

Certificate of Service Commencement means the certificate issued by TfNSW in accordance with clause 4.4.

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).

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

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 (excluding Booking System Data) is Confidential Information of TfNSW, and not of the Operator.

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..

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

Contract Material means Existing Contract Material and New Contract Material.

Contract Objectives has the meaning given in clause 3.

Contract Vehicle means:

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

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 2022, the Contract Year 1 is 3 September 2022 to 31 August 2023, and the Contract Year 2 is 1 September 2023 to 31 August 2024.

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

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

Cure Notice has the meaning given in clause 40.

Cure Plan has the meaning given in clause 40.

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

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 Services or the performance of the Services, including data, information, documents or records provided or required to be provided by the Operator or otherwise relating to the maintenance or operation of any Contract Vehicles, the operation or utilisation of any 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 22.4;
- (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 Services, including coding and performance data;
- (g) Booking System Data; and
- (h) all any transformations, modifications, derivations or insights created or generation from any other 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).

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.

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 document related to the Contract;
- (b) any other information disclosed to the Operator or any person acting on behalf of or associated with the Operator by or on behalf of TfNSW, the State, any Governmental Agency or TfNSW's Associates, or which is otherwise acquired by, or comes to the knowledge of, the Operator or any person acting on behalf of, or associated with, the Operator directly or indirectly from any of them, in connection with the contracting of the Services, whether the information is in oral, visual or written form or is recorded in any other medium.

Emergency Replacement Vehicle has the meaning given in clause 14.3.

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 41.7),

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 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.

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

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 Vehicle means each Vehicle listed Schedule 6 (Schedule 6 Asset Register).

Expiry Date means:

- (a) the date that is five years after the Planned Service Commencement Date; or
- (b) if this Contract is terminated under clause 4.1, either:
 - (i) the date that is 3 years after the Planned Service Commencement Date; or
 - (ii) the date that is 4 years after the Planned Service Commencement Date.

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

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.

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.

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

GST has the meaning given by the GST Act.

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

GST Group has the meaning given by the GST Act.

Handover Information has the meaning given in clause 42.2.

Heavy Vehicle National Law means:

- (a) the Heavy Vehicle National Law set out in the Schedule to the Heavy Vehicle National Law Act 2012 (Qld) and as it applies through being adopted in other States and Territories, including through, inter alia, the Heavy Vehicle National Law (NSW) within the meaning of that term under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW), as amended, reproduced or updated from time to time; and
- (b) regulations in force under the Schedule to the Heavy Vehicle National Law Act 2012 (Qld) and as they apply through being adopted in other States or Territories, including through, inter alia, Heavy Vehicle National Law (NSW), as amended, reproduced or updated from time to time.

Incident means any unplanned event which impacts on a Service and causes, or may cause, an interruption to a Service

Indemnified Person has the meaning given in clause 35.1(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.

Insolvency Event means when the Operator:

- (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.

KPI Default means the failure to achieve a KPI Target specified in Schedule 4 (Key Performance Indicators).

KPI Negative Trend means a trend in the measured results of a KPI, or an associated lead indicator, which demonstrates a reduction in the performance with respect to that KPI resulting in, or likely to result in, a KPI Default.

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

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.

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.

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).

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.

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 and all Data, but does not include the Booking System or Booking System Data.

New Vehicle means any Vehicle that is leased or acquired by the Operator, with the approval of TfNSW, in accordance with clause 17.2, during the Service Term.

On Demand Services means the services specified in Schedule 1 as either Flexible Pre Booked, Fixed Stop Pre Booked, or Dynamic Pre Booked (as defined in paragraph 2(d) of Schedule 1), or as otherwise described in Schedule 1.

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 Services which are Fixed Stop Pre Booked, Flexible Pre Booked, Dynamic Pre Booked and Booking Services.

Operator has the meaning given in the Parties section.

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 Contract;
- (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) any Related Body Corporate or Related Entity of the Operator; and
- (d) any director, officer, employee or agent of the Operator or any of the persons referred to in paragraphs (a) to (d) above.

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

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

Passenger Service has the meaning given to the term 'passenger service' in section 5 of the PT Act 2014.

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

Performance Improvement Initiative means all actions planned and undertaken by the Operator to:

- (a) reverse a KPI Negative Trend; and
- (b) remediate the cause of any KPI Default.

Personal Information has the meaning given in the Privacy Laws.

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

Pollution means water, air, noise or land pollution.

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.

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

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 of NSW.

P2P Act means the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW).

P2P Regulation means the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (NSW).

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

Related Body Corporate has the same meaning as in section 50 of the Corporations Act.

Related Entity has the meaning given in the Corporations Act.

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

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

Route means a route or route variant specified or described in paragraph 3 Schedule 1 and any revisions to that route, approved by TfNSW.

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 Depot or on any Contract Vehicle;
- (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 means the Services described in clause 7.

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

Service Desk means a telephone service which provides a Booking Service and responds to, or coordinates a response to, any customer complaints and Incidents.

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

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.

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.

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; 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 Event has the meaning given in clause 39(a).

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

Step in Powers has the meaning given in clause 39(a).

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

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).

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 41.1.

Termination Notice has the meaning given under clause 41.1.

TfNSW Brand means all Marks, livery, colours or other get up or brand used on or in relation to the Contract Vehicles 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'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.

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 Policies means all TfNSW policies and standards:

- (a) referenced in this Contract (including in Attachment A);
- (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 "<http://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 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 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 Ticketing Equipment.

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 any equipment used to issue Tickets and record and validate Tickets, including any related or supporting equipment.

Ticketing System Income means amounts in respect of the Fares for each Ticket for Services collected by the Operator.

Transition Activities means the transition activities as specified in the Transition In Plan (if applicable).

Transition Completion has the meaning given in clause 5.1(d).

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.

Transit Stops means all stops passengers are picked up or set down.

Transport Laws has the meaning given in clause 27.1(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.

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 means any motorised vehicle which travels on land and is used to provide the Services, including a Bus.

Vehicle Lease means a lease or other arrangement under which a Contract Vehicle is leased to the Operator by any party other than TfNSW or a TfNSW nominee and the expression 'lease of a Vehicle' has a consistent meaning.

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 month or to a year is to a calendar month or a calendar year.
- (p) 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.
- (q) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (r) 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.
- (s) 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.

- (t) A reference to the words “include”, “includes” and “including” or “such as” means “including, without limitation”.
- (u) 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.
- (v) A reference to ‘any other document related to the Contract’ includes any transaction document entered in to for the purpose of delivering the Services and includes any pre-condition, collateral agreement, and Vehicle Lease.

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, TfNSW will determine how 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 Contract to any person to whom TfNSW may delegate Powers, functions or responsibilities.

1.5 No fetter on TfNSW’s powers

- (a) No part of the Contract 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 Contract 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 the Contract as a result of a breach by TfNSW of a term of the Contract 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;
 - (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.

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 Contract 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 Contract, or any replacement agreement or agreements for the Contract 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 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 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 provide an innovative on demand service which meets the needs of the [insert] community, including to:
- (i) deliver transport journeys and related customer services that are safe for customers, staff and the community and suitable for infants, children and people with a disability;
 - (ii) deliver a service which is efficient, convenient and timely;
 - (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 Contract 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 clause 4.1(c) or 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 4.1.3, TfNSW may terminate this Contract (without cost or liability) at its absolute discretion:
- (A) by giving notice at least six months prior to the third anniversary of the Planned Service Commencement Date, with such termination to take effect from the date that is the third anniversary of the Planned Service Commencement Date, without limiting the End of Contract Period; or
 - (B) by giving notice at least six months prior to the fourth anniversary of the Planned Service Commencement Date, with such termination to take effect from the date that is the fourth 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 Clause 4.1(c).

- (e) Nothing in clause 4.1(c) in any way limits TfNSW's rights in respect of any breach by the Operator or the Operator's Associates of this Contract 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 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 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 the Operator holds the necessary Accreditation to conduct the Services;
- (b) achievement of Transition Completion in accordance with the Transition In Plan and clause 5.1;
- (c) delivery to TfNSW of evidence satisfactory to it that the Operator has obtained the insurances required by clause 34(a); and
- (d) anything else TfNSW may reasonably request.

4.4 Certificate of Service Commencement

- (a) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions in clause 4.3 has been 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 4.5 does not amount to a waiver of any conditions under clause 4.3.
- (b) The Service Commencement Date will be a date on or after the Planned Service Commencement Date (unless the Parties agree otherwise).

4.5 Consequences of non-fulfilment of conditions precedent

If any of the conditions precedent contemplated by clause 4.3 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 4.5 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 B – Transition

5 Transition

5.1 Transition

- (a) This Contract commences on the date on which this Contract is executed by both parties and, if a Transition In Plan is required by TfNSW, will be in the Transition Period until the Service Commencement Date.
- (b) The parties agree that, in accordance with the Transition Plan (if applicable):
 - (i) the Operator will continue providing services under the Existing Contract up until the Service Commencement Date; and
 - (ii) on the Service Commencement Date, the Existing Contract 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 (if applicable).
- (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 (if applicable) and satisfaction of all criteria or requirements for the performance or completion of Transition Activities as are specified in the Transition In Plan (if applicable).
- (e) Without limiting paragraph (b), the Operator must perform all Transition Activities in a way that causes no disruption to the existing services under the Existing Contract.

5.2 Failure to comply with Transition In Plan

If the Operator fails to comply with the Transition In Plan (if applicable) in accordance with clause 5.1 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 5.2 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

6 Performance of Services

6.1 Services

Without limiting clause 5, the Operator must perform the Services:

- (a) in accordance with the terms of this Contract, including in accordance with the performance standards and requirements in 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 clause 3 and anywhere else in where objectives are specified in the Contract.

6.2 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 Services along or near the Routes specified in this Contract.
- (c) Nothing in, or contemplated by, the Contract 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 Passenger Service or other transport service other than the Services (**Other Services**); or
 - (iii) any right to provide or be paid for Other Services.
- (d) The Operator has no Claim against TfNSW in relation to the award, provision, operation or amendment of Other Services or the establishment, award, provision or operation of any new Passenger Services by TfNSW.
- (e) Nothing in this clause 6.2 or the Contract gives the Operator a right to provide or be paid for Passenger Services other than the Services.

7 Services

The Operator must provide each of the:

- (a) On Demand Services, and
- (b) Booking Services,

(being the **Services**) as described in Schedule 1, on and from the Service Commencement Date for the duration of the Service Term in accordance with the terms of this Contract.

Part D – Planning and service changes

8 Continuous Improvement, Innovation and Directions

8.1 Continuous Improvement and Innovation

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

- (b) The Operator must report any suggested improvements or strategies that arise under clause 8.1(a) as an innovation proposal at contract governance meetings with the TfNSW Representative.

8.2 Directions by TfNSW

- (a) The Operator must comply with all decisions, demands, determinations, directions, instructions, orders, rejections, requirements or notices in writing by a person authorised by TfNSW to do so (**Direction**) 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 8.2.

Part E – Service requirements

9 Customer Interaction

9.1 General

- (a) The Operator must prioritise the safety of the Customer at all times.
- (b) 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.

9.2 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) 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 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.
- (c) The Operator must at TfNSW's request, immediately amend or withdraw any document, Material or thing bearing the TfNSW Brand.

9.3 Livery

The Operator must comply with all livery requirements which are otherwise notified by TfNSW from time to time.

9.4 Advertising

- (a) Any advertising displayed or made by the Operator in connection with the Service must:
 - (i) comply with any directions and policies issued by TfNSW, including where advertising may be placed on a Contract Vehicle;
 - (ii) comply with Laws, codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by a Governmental Agency;
 - (iii) not depict political, religious or other similar subject matter;
 - (iv) not cause, or have the potential to cause, any damage or harm to TfNSW's reputation; and
 - (v) not be offensive.
- (b) The Operator must comply with TfNSW's directions to remove advertising which TfNSW's believes does not comply with this clause. It must do this within 1 Business Day of receipt of the direction.

10 Fares, Ticketing and Cooperation

10.1 General

The Operator must comply with all Fare, Ticketing and other requirements as set out in Schedule 1.

10.2 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 Vehicles, to carry out their statutory duties and functions.

11 Systems and Equipment For Bookings, Storing Data and Ticketing

- (a) The Operator must ensure that TfNSW Systems and Equipment are operational at all times during the Service Term.
- (b) 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 Vehicle as requested to test or inspect any TfNSW Systems and Equipment; and

- (iii) liaising with TfNSW and TfNSW's Associates as required in relation to the installation, testing and ongoing maintenance of TfNSW Systems and Equipment.
- (c) The Operator must comply with any reasonable operational procedures, guidelines, directions and training requirements for TfNSW Systems and Equipment issued by TfNSW from time to time.
- (d) 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.
- (e) 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 Services arising out of or in connection with any failure of any TfNSW Systems and Equipment.
- (f) 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.
- (g) 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 11 to the extent of any inconsistency, unless otherwise agreed.
- (h) 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.
- (i) 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.

Part F – Performance Management

12 Key Performance Indicators

- (a) The Operator must 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).

13 Notifiable Incidents

13.1 Notifications Matters

The following are **Notification Matters**, which the Operator must notify TfNSW of:

- (a) any Incident (*defined below*) arising from the Service as soon as reasonably possible, and in any event, within 1 day of the Incident;
- (b) any actual or proposed Investigation or Prosecution (*defined below*); and
- (c) any Claim or dispute which may materially affect or relates to the Service.

13.2 Plan to deal with matter

If a Notification Matter occurs then the Operator, at the request of TfNSW, must prepare and implement a plan/strategy to deal with it. The Operator will amend the plan/strategy to take account of any TfNSW's reasonably requested changes.

13.3 Definitions

- (a) For the purposes of this clause 13, **Incident** means:
 - (i) any accident or incident required to be reported to a regulator under the PT Act 1990, PT Act 2014, P2P Act, P2P Regulation, PT Regulation (General) 2017 (**PT Law**), WHS Law or to the police;
 - (ii) any actual or alleged fraud of the Operator or its Staff;
 - (iii) conduct that has or could have caused, or is likely to cause, death or personal injury or a breach of the PT Law; or
 - (iv) any other matter which might negatively affect the reputation or image of TfNSW or TfNSW's Associates or 'On Demand Transport'.
- (b) **Investigation or Prosecution** means:
 - (i) any investigation in connection with a safety matter, an Incident or by any Governmental Agency for any other matter; and
 - (ii) any prosecution of a breach of the PT Law and/or WHS Law.

Part G – Assets and Infrastructure

14 Contract Vehicles

14.1 Performance of the Services using Contract Vehicles

- (a) Except as otherwise provided in 14.3, the Operator must perform the Services using Contract Vehicles.
- (b) The Operator must have available to it enough Contract Vehicles to meet its obligations under this Contract.
- (c) The Operator must monitor and manage the security and safety of the Staff and passengers on the Contract Vehicles.
- (d) If there is any failure or malfunction of any duress alarm on a Contract Vehicle while the Contract Vehicle is performing a Service, the Operator must ensure that the Contract Vehicle is taken out of service within a reasonable timeframe and until the faulty system or equipment is repaired or replaced.

14.2 Contract Vehicle standard

- (a) The Operator must ensure that each Contract Vehicle is maintained and kept in clean, safe and working order.
- (b) The Operator must:
 - (i) comply with its obligations under any Vehicle Lease or any replacement of that lease; and
 - (ii) only use the best available Contract Vehicles to provide the Services having regard to reasonable operational requirements and the condition, cleanliness, features and age of all Contract Vehicles.

14.3 Use of non-compliant Vehicles

- (a) The Operator may use a replacement vehicle which is not a Contract Vehicle (**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:
 - (iii) 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;
 - (iv) the Operator must ensure that the Emergency Replacement Vehicle is the best available vehicle and at a minimum complies with the terms of this Contract;
 - (v) the insurances required under clause 34 must be effective in relation to the Emergency Replacement Vehicle and the use of the Emergency Replacement Vehicle;
 - (vi) the Operator must ensure that the use of the Emergency Replacement Vehicle will not materially adversely affect the provision of the Services; and
 - (vii) the Payments will not be adjusted.

15 Infrastructure and Environment

15.1 Infrastructure standards

The Operator must use and maintain the Depots used for the Contract Vehicles in a clean, safe and working order and in accordance with Good Industry Practice.

15.2 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, including the provision of equivalent access, will be borne by the Operator.

15.3 Environment and Contamination

The Operator must at all times during the Service Term ensure that in carrying out the Services:

- (a) Contaminants are not discharged unlawfully;
- (b) a condition of pollution does not arise and is not likely to arise;
- (c) no breach of any Environmental Law occurs;
- (d) no industrial waste or potentially hazardous substance is abandoned or dumped at the Depots, or other areas used in the delivery of Services; or
- (e) no industrial waste or potentially hazardous substance is handled in a manner which causes or is likely to cause an environment hazard.

16 Utility Services

Utility Services

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

17 Acquisition and Leasing of Vehicles Systems and Equipment

17.1 General

- (a) Where the Operator has a lease for a Contract Vehicle, the Operator enters into such lease at the Operator's sole risk and liability.
- (b) TfNSW shall not be responsible for the payment of any fees or costs in relation to any any Contract Vehicle, including Vehicle Lease or any termination of that Vehicle Lease for any reason, other than as agreed and in accordance with Schedule 3 (Payments). For the avoidance of doubt, TfNSW is under no obligation to purchase a Contract Vehicle from the Operator or accept a novation or assignment of a Vehicle Lease during the Service Term or following expiry of the Service Term.

17.2 New Vehicles

- (a) The Operator must not lease or acquire a New Vehicle without the prior approval of TfNSW.
- (b) If the Operator wishes to lease or acquire New Vehicles as a result of any changes to the Services during the Service Term, the Operator must submit a business case in a form satisfactory to TfNSW (**Business Case**) which must:
 - (i) clearly identify that the Operator requires the New Vehicles; and
 - (ii) state the number and type of New Vehicles required and any details in relation to the proposed New Vehicles 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) If TfNSW does not respond to the Operator, TfNSW will not be deemed to have accepted the proposal.

17.3 Acquisition and Adjustments

- (a) On leasing or acquiring a New Vehicle or Lease or acquisition of a new Depot:
 - (i) the Operator must update the Asset Register to include the relevant New Vehicle or Depot; and
 - (ii) the Operator must update the Asset Register required as part of the Handover Information to include the New Vehicle or Depot; and
- (b) Subject to the provisions of Schedule 3 (Payments) in respect of New Vehicles, there will be no adjustment to the Payment in relation to New Vehicle or Depots.

18 Asset Management

- (a) The Operator must ensure that:
 - (i) all Assets are operated and maintained in accordance with Good Industry Practice and so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract;
 - (ii) each Contract Vehicle is registered and licensed in accordance with all Laws and complies with all Authorisations;
 - (iii) the Assets are in a safe operating condition at all times and are maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations;
 - (iv) ensure the performance of the Assets enables the Operator to satisfy all requirements of this Contract;

19 Dealing with Assets

19.1 Security, assignment and possession of Assets

The Operator must not (directly or indirectly) without TfNSW's prior consent, create or allow to exist any Security Interest over any of its assets used in the delivery of this Contract.

19.2 Consequences of dealings with Assets

Any breach by the Operator of this clause 19 is deemed to be a Termination Event.

20 Assignment or Restructure by TfNSW

20.1 Assignment or Novation

- (a) Without limiting any clause in this Contract or any facilitative legislation, TfNSW may assign or novate this Contract, its interest in the subject matter of this Contract or any right under this Contract to any person.
- (b) The Operator agrees to such assignment or novation such that no further consent is required.
- (c) 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.

20.2 Attorney

The Operator, for valuable consideration, to secure the performance of its obligations under this clause 20, 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 20 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

21 Confidentiality

21.1 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 21.2; 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.

21.2 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 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 21.1; 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.

21.3 Publication of certain information by TfNSW

- (a) 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) (subject to clause 21.3(e)) or information collected from the TfNSW Systems and Equipment.

- (b) Subject to clause 21.3(e), 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) 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 21.1, TfNSW may disclose Confidential Information of the Operator to TfNSW's Associates.
- (d) For the avoidance of any doubt, and without limiting clause 21.3(a) to 21.3(c), TfNSW may publish:
 - (i) all Data;
 - (ii) performance information;
 - (iii) ticketing information; and
 - (iv) information regarding Payments made under this Contract.
- (e) TfNSW must not publish the following information:
 - (i) Personal Information of the Operator or its Associates; and
 - (ii) Information that TfNSW considers is commercial-in confidence information.
- (f) For the purposes of clause 21.3(e) "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 23.3); 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 Vehicle or passenger safety.

21.4 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.

21.5 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.

21.6 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.

21.7 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 21.7(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 21.7(a) at the Operator's own expense.

21.8 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 consider 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 21.8(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 21.8(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.

21.9 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 21.9.

22 Privacy

22.1 Privacy compliance

The Operator must comply with:

- (a) Privacy Laws and any guidelines issued by the Federal or NSW Privacy Commissioner. This means even if the Operator is not legally required to comply with the Privacy Laws, then, for the purposes of this Contract, it must do so;
- (b) any privacy policy or approved privacy code which has been adopted by TfNSW; and
- (c) any reasonable direction of TfNSW regarding how to comply with any such legislation, privacy policy or code, in respect of any Personal Information which the Operator receives or has access to under this Contract and the performance of the Service.

22.2 Resolving complaints

The Operator must co-operate with TfNSW in the resolution of any alleged breach of the Privacy Laws, a privacy policy or an approved privacy code, arising out of or in connection with this Contract.

22.3 Monitoring by TfNSW

In order for TfNSW to monitor the Service and the Operator's performance, the Operator is required to report various information and data to TfNSW which may include Personal Information about passengers of the Service.

22.4 Consents

- (a) In relation to any Personal Information collected by Operator or its Associates in connection with the Services, including in connection with the Booking System Data, 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 11(d).
- (b) Without limiting the Operator's obligations under paragraph (a), in obtaining such consents and making such disclosures in connection with the Services and Booking System, the Operator must include in its privacy policy a statement which covers the requirements of paragraph (a), including a statement which substantially covers the following:

*Personal information (information or an opinion), collected from passengers, such as name, date of birth, contact details, or sensitive personal information (including information about mobility/accessibility requirements) (together **Personal Information**) collected by [insert Operator name] may be disclosed to Transport for New South Wales (**TfNSW**).*

TfNSW may disclose such Personal Information to other Australian government agencies. These government agencies may use Personal Information for any purpose relating to the exercise of their government functions. Such Personal Information may also be disclosed to other third parties if required by law.

TfNSW will be evaluating the delivery and use of this service. TfNSW may disclose Personal Information to third parties assisting with evaluation and survey purposes. This includes using contact details of passengers to conduct surveys relating to the service provided by [insert Operator name].

The Operator or TfNSW may also disclose Personal Information to a third party that is taking over the delivery of this transport service from the Operator.

By using these services provided by [insert Operator name], passengers consent to the collection, use and disclosure of their Personal Information in the manner outlined above.

Part I – Intellectual Property and Data

23 Intellectual Property Rights

23.1 Existing Contract Material

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

23.2 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).

23.3 Licence to Operator Material

- (a) 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 TfNSW to exercise its rights under this Contract, including ownership rights, in connection with the New Contract Material.
- (b) Subject to paragraph (d), without limiting clause 23.2 or 23.3(a), where any of the Intellectual Property used by the Operator (including Existing Contract Material and Intellectual Property in the Booking System and Booking System Data) 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).

23.4 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.

23.5 Provision of Material

The Operator must provide TfNSW, on request, with copies of any Material within its possession or control which 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.

24 Data

24.1 General

- (a) The Data (excluding the Booking System 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, the Booking System). The Operator shall not obtain any right, title or interest to the Data save as set out in clause 23.3(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.

24.2 Security and confidentiality of the Data

- (a) 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).

24.3 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.

24.4 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.

25 Business Continuity and Disaster Recovery

25.1 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 maintain continuity of the services, or if continuity is interrupted then 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 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
- (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;
- (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 Contract, or is implemented and the applicable Disaster continues to materially prevent, hinder or delay performance of the Services for more than 14 Business Days; and

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

25.2 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 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.
- (c) 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

26 Contract management

26.1 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.

26.2 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 26.2.
- (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 Vehicles and at 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) 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 26.2;
 - (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 26.2; and
 - (iii) comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits.
- (f) 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 26.2.

26.3 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.

26.4 TfNSW's right of entry

- (a) TfNSW (and any person authorised by TfNSW) may, at any time, enter the Depots, access Contract Vehicles 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 the Contract or any Law, including in respect of the conduct of advertising activities contemplated by clause 9.4; or
 - (iv) for any other purpose.
- (b) The Operator must use reasonable endeavours to:
 - (i) coordinate the 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 26.4(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 Contract, 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 26.4(a), TfNSW (or any person authorised by TfNSW) enters the 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 26.4(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.

26.5 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 26.5(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 26.5(b)(i);
 - (iii) if and as requested, provide to TfNSW written evidence (including copies of any contractual rights referred to in clause 26.5(b)(ii)) showing compliance by the Operator of its obligations under 26.5(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 26.4 and this clause 26.5.

27 Accreditation, Authorisation, and Compliance

27.1 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 P2P Act;
 - (D) the *Road Transport Act 2013* (NSW);
 - (E) the TAA;
 - (F) the DDA Legislation;
 - (G) the *Fair Work Act 2009* (Cth);
 - (H) 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
 - (I) *Independent Commission Against Corruption Act 1988 No 35* (NSW);
 - (J) any regulations made under any of the Laws referred to in this clause 27.1(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 27.1(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 27:
 - (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.

27.2 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 27.2(a) may include policies relating to health, safety or security.

27.3 Authorisations

- (a) Prior to the commencement of any work arising under or in connection with the Services for which any Authorisation 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 and P2P Act.
- (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 and section 30(3) of the P2P Act (as applicable).

27.4 Suspension for safety reasons

- (a) For the protection or safety of any person or property TfNSW may by notice to the Operator immediately suspend any of the Operator's rights under this Contract.
- (b) The Operator must use its best endeavours to mitigate and/or remedy the effects of a suspension.
- (c) TfNSW must, within a reasonable period of time, stop the suspension if the reasons for the suspension have ceased.
- (d) This clause is without prejudice to TfNSW's rights elsewhere under this Contract or at Law.

27.5 Safety Management System

- (a) The Operator must have a Safety Management System in place and report any Safety Incidents to TfNSW within the earliest reasonable timeframe.
- (b) The Operator must perform the services in a proper, competent, courteous, safe, reliable and timely manner.
- (c) The Operator acknowledges that the safety and wellbeing of all persons, including the Operator's Staff, passengers and the general public, is of paramount importance (**Safety Objective**). The Operator must ensure that it communicates this Safety Objective to its Staff and satisfies it at all times in the performance of the Service.

27.6 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.
- (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) in performing the Services, the Operator must ensure that:
 - (A) it manages or controls the Workplace;
 - (B) it establishes and maintains safe work practices;
 - (C) it provides appropriate training and supervision for all persons employed or engaged by it at the Workplace;
 - (D) it controls or directs the performance of work associated with the Services;
 - (E) it otherwise complies with all WHS Law;
- (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) If the Operator breaches its obligations under this clause 27.6, the breach will be a Termination Event for the purposes of clause 41. 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 27.6.
- (e) In this clause 27.6 the term "workplace" has the same meaning given to that term in the WHS Law.

28 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).

29 Staffing

29.1 All Staff

- (a) The Operator warrants that all Staff hold all necessary Authorisations and are properly Authorised, 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.
- (c) Without limiting clause 29.1(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.

29.2 Damage or Harm to TfNSW's Reputation by Staff

- (a) If TfNSW reasonably believes that a member of Staff may cause, or has caused, damage or harm to TfNSW's reputation:
 - (i) TfNSW may advise the Operator of its belief (providing adequate reasons for such belief); and
 - (ii) the Operator must take such disciplinary action as is warranted in the circumstances (including termination of employment).
- (b) 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.

30 Subcontracting

30.1 Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under this Contract (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.
- (b) 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 this Contract;
 - (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 this Contract 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 this Contract.
- (c) If required to do so by TfNSW, the Operator must complete a Subcontractor's Statement in relation to any subcontractor approved by TfNSW under this clause 30.

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

Part K – Payment

31 Payment

31.1 Payments

- (a) 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 31.2.
- (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 the Contract.

31.2 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 31.2(a).
- (c) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.

31.3 Set-off

- (a) TfNSW will be entitled to set off or deduct from any amount due from TfNSW to the Operator under the Contract:
 - (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 the Contract and whether or not the amount is disputed.
- (b) The Operator must make all payments due to TfNSW under the Contract without set off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) Nothing in this clause 31.3 affects TfNSW's right to recover from the Operator the whole of the debt or any balance that remains owing after any set off.

31.4 Goods and Services Tax (GST exclusive prices)

- (a) A reference in this clause 31.4 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) 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.

31.5 Internal Control Framework and Records

- (a) The Operator must implement and maintain an effective internal control framework over:
 - (i) processing of Ticketing System Income collected and management of such Ticketing System Income to ensure that Ticketing System Income is completely and accurately identified, collected, recorded and reported; and
 - (ii) money handling and banking procedures to ensure that Ticketing System Income collected from all sources is completely and accurately identified, collected, banked and recorded.
- (b) The Operator must maintain and provide to TfNSW accurate records that verify Ticket System Income derived from the sale of Fares.

31.6 Civil Penalties

Clause 31.3 of this Contract is a civil penalty provision for the purposes of section 38 of the PT Act 2014.

Part L – Risk Allocation

32 Representations and warranties

32.1 General representations and warranties

The Operator represents and warrants to TfNSW and Indemnified Persons 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 Contract;

- (c) the execution and performance by it of the Contract 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;
- (d) 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;
- (e) there are no facts, matters or circumstances that would give rise to an Insolvency Event occurring;
- (f) each Authorisation that is required in relation to its business as now conducted or contemplated and that is material (including, under the PT Act 1990 and the P2P Act), 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;
- (g) 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;
- (h) there are no notices of any Reporting Body outstanding against it;
- (i) 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;
- (j) 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;
- (k) none of its Assets are subject to any Security Interest;
- (l) it does not hold any assets as the trustee of any trust;
- (m) it complies with the Privacy Laws, and any guidelines issued by the Privacy Commissioner under the relevant Privacy Law;
- (n) 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;
- (o) 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);

- (p) 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 passenger transport services and passenger transport services comparable to the size, scope and complexity of the Services and to TfNSW's reasonable satisfaction;
- (q) 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;
- (r) 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);
- (s) 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 relating to the subject matter of the Disclosed Information;
 - (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 as well as the risks, contingencies and other circumstances having an effect on its performance of its obligations and liabilities under this Contract;
 - (iv) has had sufficient access to the Disclosed Information 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.

32.2 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 32 has become untrue or misleading at any time during the term of this Contract.

32.3 Reliance on Representations and Warranties

- (a) The Operator acknowledges that TfNSW has entered into, or will enter into, the Contract in reliance on the representations and warranties made by the Operator in this clause 32.

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

33 Operator acknowledgments

33.1 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.
- (b) Without limiting the generality of clause 33.1, 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) 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;
 - (iv) assessment, investigation and appraisal in deciding to submit an offer and to enter into this Contract;
 - (v) 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
 - (C) all amounts payable between the parties to this Contract;
 - (vi) 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; and
 - (vii) 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 the Operator is aware that TfNSW has relied on the acknowledgments contained in this clause 33 in entering into this Contract.
- (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.
- (e) The Operator indemnifies TfNSW and Indemnified Persons and will hold TfNSW and Indemnified Persons 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 33 by the Operator including, any breach of a warranty given by the Operator under this clause 33; or
 - (ii) any Claim or Loss associated with any action or claim referred to in paragraph (d).
- (f) The Operator acknowledges that this clause 33 is intended to benefit and is to be interpreted as benefiting Indemnified Persons to the extent that this clause 33 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 33 on trust for the Indemnified Persons.

33.2 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.

34 Insurance

- (a) For the Term, the Operator must (at the Operator's cost) have and maintain the insurances as required under Law and in Attachment A.
- (b) The Insurance Policies must be with reputable insurers reasonably acceptable to TfNSW.
- (c) The Operator must:

- (i) give TfNSW acceptable proof of currency and coverage of the Insurance Policies at any time reasonably requested by TfNSW. This includes giving to TfNSW copies of all policies and policy schedules, renewal certificates and endorsement slips; and
 - (ii) use reasonable endeavours to have each policy endorsed, or a term in the policy, to the effect that the insurer waives its right to avoid the policy or any liability under it by reason of non-disclosure or inaccurate disclosure relating to that policy by the named insureds other than the named insureds responsible for the non-disclosure or inaccurate disclosure.
- (d) The Operator must use reasonable endeavours to ensure that all Insurance Policies require the insurer to notify TfNSW in writing whenever the insurer gives the Operator any other notice in respect of the policy including a notice of cancellation. In any case, the Operator must immediately notify TfNSW if the insurer gives the Operator any notice in respect of the policy. The Operator must provide TfNSW full details of that notice.
- (e) The Operator must immediately notify TfNSW of any occurrence in connection with this Contract that may give rise to a Claim, and must keep TfNSW fully informed of all decisions relating to the Claim.
- (f) The requirements of this clause 34 do not affect the Operator's liabilities in connection with this Contract.

35 Indemnity and Limitation of Liability

35.1 Indemnity

- (a) The Operator indemnifies and must keep indemnified TfNSW, TfNSW's Associates 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 21, 22 and 24;
 - (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 Contract 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) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or its Associates or Staff;
 - (x) the occupation or use of the Contract Vehicles, Transit Stops, or Depots by the Operator or the Operator's Associates;
 - (xi) except to the extent prohibited by Law, Contamination in, on or under (or emanated or emanating from) any Depot;
 - (xii) any breach by the Operator (or an Approved Subcontractor (if any)) of the terms of a Key Subcontract;
 - (xiii) 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
 - (xiv) any claim by a third party arising from any of the events described in clauses 35.1(a)(i) to 35.1(a)(xiii).
- (b) The Operator's indemnity in clause 35.1(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 35.1(a) include any Losses arising as a result of a Service Default or Termination Event and any Step in Costs.

35.2 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.

35.3 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 Contract.

35.4 Exclusion for Consequential and Indirect Loss

- (a) Subject to clause 35.4(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 35.4(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:
 - 1. diligently pursued a claim under that policy of insurance;
 - 2. complied with the terms and conditions of that policy or insurance; and
 - 3. 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, including under clause 35.1(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.

35.5 State exclusion

Despite any other provision of this Contract but subject to clauses 35.6 and 35.7, 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).

35.6 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 Contract

35.7 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 the Contract in favour of the Indemnified Persons (including as contemplated by clause 61);
 - (ii) each right to the extent that such right is expressly stated to be for the benefit of 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 the Contract.
- (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 35.7, 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.

36 Reinstatement of loss of damage

36.1 Reinstatement

Without limiting clause 35.1, if any part of a Contract Vehicle is lost, significantly damaged or destroyed, the Operator must promptly provide the TfNSW Representative with notice of any such loss, damage or destruction and any required reinstatement or repair, and an associated remediation Plan.

36.2 Damage to third party property

- (a) Without limiting clause 35, 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.

37 Dispute Resolution

37.1 Dispute Resolution

If a dispute arises between the Operator and TfNSW, both parties agree to address the dispute in the following way:

- (a) the party who claims that a dispute exists will give the other party a written notice setting out reasonable particulars of the matter in dispute;
- (b) the parties will then try to resolve the dispute by negotiation, within 20 Business Days from when the notice is given, and for that purpose may authorise persons to act for them;
- (c) if the dispute is not resolved within 20 Business Days from when the notice is given, a party may submit the dispute to a form of alternative dispute resolution (including mediation).

37.2 Restriction on commencing legal proceedings

A party must not start legal proceedings in relation to the dispute unless:

- (a) the negotiations fail to resolve the dispute within 20 Business Days of when notice pursuant to clause 37.1(a) is given; or
- (b) where a party submits the dispute to alternative dispute resolution under clause 37.137.1(c), the dispute is not resolved within 20 Business Days of that submission (or any extended time the parties have agreed to in writing before the expiry of the 20 Business Days).

37.3 Exception to restriction on commencing legal proceedings

A party does not need to follow the dispute resolution procedures set out in clause 37.1 and 37.2 if they are seeking urgent interlocutory or interim relief from a court.

37.4 General

- (a) This clause 37 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, PT Act 2014, P2P Act, or otherwise by Law.

- (b) The Parties will continue performing their respective obligations under the Contract 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.

37.5 Section 65 of the PT Act 1990

The Operator acknowledges that any dispute resolution procedure brought under this clause 37 or otherwise is subject to section 65 of the PT Act 1990.

38 Relief

38.1 Notification

If a Force Majeure Event occurs or prevents, or will prevent, the ability of the Operator or TfNSW to comply with its obligations under this Contract (including meeting any KPI), then that party's obligations which cannot be performed because of the Force Majeure Event will be suspended for the period of time they are affected, provided the Party affected:

- (a) notifies the other promptly of the event, but not later than 48 hours of it occurring,
- (b) with reasonable details including:
 - (i) the impact on its obligations;
 - (ii) estimated time the event will continue; and
 - (iii) proposed actions to remedy or minimise the effects of the event, and
 - (iv) if required by TfNSW, the Operator must submit to TfNSW a Cure Plan within 10 days of the event occurring.

38.2 Term and Payment

- (a) The Service Term will not be extended by the period of a Force Majeure Event.
- (b) 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.

38.3 Termination for extended Force Majeure Event

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 38.1, TfNSW may terminate this Contract by giving a notice to the Operator.

Part M – Default, Termination and End of Service Term

39 Step-in

- (a) Without prejudice to any other rights or remedies that TfNSW may have, if the Operator threatens to, is likely to, or fails to deliver the Services in accordance with any requirement under this Contract, for any reason, including a Force Majeure Event (**Step In Event**), then TfNSW (in its sole discretion) may notify the Operator that either TfNSW or a Step In Party will carry out the Services from the date specified in the notice (**Step In Powers**), and in which case, the Operator will be liable for all Step In Costs. TfNSW (including through a Step In Party) may continue to carry out the Services for the period reasonably determined by TfNSW.
- (b) The Operator must 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.
- (c) If requested by TfNSW, the Operator must provide such assistance as is reasonably requested by TfNSW in connection with the Step In Event. Such assistance may include:
 - (i) cooperating with the Step In Party nominated by TfNSW; and
 - (ii) providing such records, Data, information and materials (including electronic copies and backups) or access to Staff as is reasonably necessary to enable performance of the Services by TfNSW or the Step In Party.
- (d) The Operator must pay to TfNSW on demand all reasonable Step In Costs and all Losses incurred by TfNSW or a Step in Party in exercising the Step in Powers. TfNSW may deduct from any Payments due to the Operator, any debts due in accordance with clause 31.3 (Set-off).

40 Cure Notice and Cure Plans and Performance Improvement Initiatives

Without limiting any other rights TfNSW may have under this Contract:

- (a) if a Service Default occurs or where this Contract otherwise permits TfNSW to require a cure plan, then TfNSW may notify the Operator that it requires the Operator to develop a cure plan (a **Cure Notice**) setting out all measures the Operator proposes to take to cure the Service Default (or other event requiring a cure plan) or the events or circumstances giving rise to the Service Default (or other event requiring a cure plan) (**Cure Plan**), by a date specified by TfNSW, which is satisfactory to TfNSW in accordance with this clause; and
- (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) If the Service Default is a KPI Default, the Operator must submit the following information as part of the Operator's Cure Plan for such KPI Default:
- (i) a report and analysis on the cause of the KPI Default and KPI Negative Trend (if applicable);
 - (ii) outlining all Performance Improvement Initiatives to be undertaken to rectify the performance and otherwise reverse the KPI Negative Trend (if applicable); and
 - (iii) may require the Operator to attend additional meetings to discuss the Performance Improvement Initiative and implementation process.
- (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) 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.
- (f) The Operator will not be relieved of any liability or responsibility under this Contract or otherwise at Law arising out of or in connection with the implementation of a Cure Plan.

41 Termination

41.1 Termination Events

TfNSW may (in its absolute discretion) 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 40, including any:
 - (i) failure to submit a Cure Plan in accordance with (or within the time period required by) clause 40; 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 27.4;
- (e) (**Unlawful**) it becomes or is likely to become unlawful for the Operator to perform all or any of the Services;
- (f) (**Dealing with Assets**) the Operator breaches clause 19;
- (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 this Contract or any of its rights or obligations under the Contract occurs without the prior consent of TfNSW;
- (j) (**Misrepresentation**): a material representation, warranty or statement by or on behalf of the Operator in under or in connection with the Contract, 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 the Services;
- (m) (**Lack or breach of Accreditation**) The Operator:
 - (i) undertakes any of the 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 the Contract, or to the validity and enforceability of the Contract or for the performance of the 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 Contract;

- (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) (**Force Majeure Event**) TfNSW has a termination right under clause 38.3;
- (u) (**Other**) any other right of TfNSW to terminate this Contract arises under the terms of this Contract; or
- (v) (**Material non-performance of Key Performance Indicators**) the Operator fails to achieve a KPI Target on four occasions within a six month period, and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a Cure Plan provided in accordance with clause 40; and

this termination right is without prejudice to TfNSW's rights under clause 39 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).

41.2 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.

41.3 Termination by TfNSW for convenience

- (a) TfNSW may (without cost or liability, subject to clause 41.3(b)) at any time at its absolute discretion and for convenience, by a minimum of 14 days' notice to the Operator, terminate this Contract (in whole or in part).
- (b) If TfNSW terminates this Contract under clause 41.3(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 41.3(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 41.3(b)(ii)(A) and TfNSW is only liable to pay such costs to the extent the Operator has complied with this paragraph.
- (d) The Operator has no other claim against TfNSW in relation to the termination of this Contract under this clause 41.3.
- (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 this Contract or otherwise at Law.
- (f) TfNSW may itself, or through a third party, carry out the Services after termination under this clause 41.3.

41.4 Waiver on termination

- (a) If TfNSW terminates this Contract under clause 41.1 the Operator's sole right and remedy will be to require TfNSW (subject to clause 31.3) 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 38.3, the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with clause 38.3; or
 - (ii) clause 41.3(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with clause 41.3(b).

41.5 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 41.3), the Operator is liable for and must indemnify TfNSW against any loss suffered by TfNSW as a result of the termination.

41.6 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 41.3 as if TfNSW had terminated the whole or that part of this Contract for convenience under clause 41.3.

41.7 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 any variations to this Contract to effect the partial termination; and
 - (iii) TfNSW may determine and direct how the rights and obligations in clause 42 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.

41.8 Operator

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

42 End of Contract Transfer Provisions

42.1 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.

42.2 Access to Information

- (a) TfNSW may at any time notify the Operator that it requires access to information on the following (held by the Operator or the Operator's Associates):
- (i) all premises from which the Services are carried out, including the Depots and other offices;
 - (ii) material contracts relating to the Services;
 - (iii) computer and other information systems (including the Booking System and Booking System Data);
 - (iv) an asset register for Assets used in relation to the Services; and
 - (v) 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) Upon receipt of a notice under clause 42.2(a), the Operator must immediately provide TfNSW (and any person authorised by TfNSW) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege and TfNSW (and any person authorised by TfNSW) may review, copy, retain or otherwise deal with such information.

- (c) 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 Handover Information on reasonable notice from TfNSW.
- (d) The Operator must cooperate, and must ensure that the Operator's Associates cooperate, with TfNSW and any persons authorised by TfNSW in the exercise of TfNSW's rights under this clause 42.2.
- (e) The Operator warrants to TfNSW that to the best of its belief, all information provided under clause 42.2 will be, at the time it is provided, true and correct in all material respects and will not be misleading by omission or otherwise.
- (f) Despite any other provisions of this Contract, TfNSW may disclose the Handover Information, all material that TfNSW may licence to Successor Operator or which TfNSW otherwise owns the Intellectual Property and any other information reasonably required by TfNSW in connection with the re-tendering or contracting of all or any part of the Services.

42.3 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).

Part N - General

43 Restriction on Activities

43.1 Assignment

- (a) Except where this Contract expressly provides otherwise, the Operator may not assign, transfer, encumber or otherwise deal with its interest under the Contract 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 Contract 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.

44 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.

45 Personal Property Securities Act

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:

- (a) to perfect and/or protect any Security Interest created by or in connection with the Contract, including registration on the Personal Property Securities Register established under section 147 of the PPS Law;
- (b) to facilitate the realisation or enforcement of such Security Interest; and
- (c) to facilitate the exercise of any of the Relevant Party's rights, powers or discretions under the Contract.

46 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.

47 Proportionate Liability

47.1 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 47.1, 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.

47.2 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).

48 Taxes

Subject to clause 31.4, the Operator must indemnify TfNSW against, and must pay TfNSW when requested, 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 Depots and any other facilities used in the provision of the Services) incurred in connection with:

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

49 International obligations

49.1 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.

49.2 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 do not engage in) 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.

50 Transport planning

- (a) The Operator acknowledges that TfNSW or any Governmental Agency 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 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.

51 Industrial and community relations

51.1 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.

51.2 Community relations

The Operator:

- (a) acknowledges that the areas where the Services are being carried out are of great importance to many people and include businesses and health care providers; and
- (b) must participate in all community relations and involvement programs and activities as reasonably required by TfNSW from time to time.

52 Notices

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:
 - (A) to TfNSW:

[Insert]
 - (B) 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.

53 Entire agreement

Without limiting clause 33.1(b), this Contract and the Contract 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.

54 Amendment

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

55 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.

56 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.

57 Costs and stamp duty

- (a) Each party will pay its own costs of negotiation, preparation and execution of this Contract and any other documents related to the Contract.
- (b) TfNSW may require the Operator to pay the reasonable costs of any variations to this Contract or any of the other documents related to the Contract 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 or any other document related to the Contract and any instrument executed under this Contract and any document related to the Contract must be borne by the Operator. The Operator must indemnify TfNSW on demand against any liability for those costs and that stamp duty.

58 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.

59 Counterparts

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

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

60 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 Contract 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 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;
 - (D) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Contract; or
 - (E) act in any other way that TfNSW regards as not in the public interest.

61 Claims

Where this Contract 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 Persons 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 Persons 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 Persons.

62 Survival

Clauses 1.1 (Definitions), 4 (Service Term), 6.2 (Non exclusivity), 11 (Systems and Equipment), 15.3 (Environment and Contamination), Part H (Confidentiality and Privacy), Part I (Intellectual Property and Data), 26 (Contract management), 28 (Reporting), 30.2 (Successor Operator), 31.3 (Set-off), 31.6 (Civil Penalties), 32 (Representation and warranties), 33 (Operator acknowledgments), 34 (Insurance), 35 (Indemnity and Limitation of Liability), 36 (Reinstatement of loss of damage), 37 (Dispute Resolution), Part M (Default, Termination and End of Service Term), 43 (Restriction on Activities), 44 (Relationship between Operator and TfNSW), 45 (Personal Property Securities Act), 47 (Proportionate Liability), 48 (Taxes), 52 (Notices), 55 (No waiver), 56 (Further Assurances), 58 (Governing law and jurisdiction), 60 (TfNSW actions), 61 (Claims) and this clause 62 (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)

Date of signature:

Date of signature:

- If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000, and the witness affixed their electronic signature to a counterpart of this document.
- If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

Signed by [Insert] 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)

Date of signature:

Date of signature:

Attachment A Contract details

Description	Details
Operator details	[Insert]
Planned Service Commencement Date	[Insert]
Operator Representative	[Insert]
TfNSW Representative	[Insert]
Transition In Plan	[Insert]
Transition End Date	[Insert]
Insurance requirements	[Insert]

Schedule 1 Services

The Operator must deliver the Services as specified in this Schedule.

1. Service Area

[Insert]

2. Delivery of On Demand Transport Services

[Insert]

3. Route, Hours of Operation and Timetable

[Insert]

4. Accessibility by the public

The Operator must have, follow, and keep up to date, a plan for DDA Compliance, including compliance with the Disability Standards for Accessible Public Transport (Cth) 2022.

5. Booking and riding the service

[Insert]

6. Service Desk

[Insert]

7. Customer Booking

[Insert]

8. Vehicle Tracking and Cancellation by Customer

[Insert]

9. Customer Feedback

The Operator is to ensure that Customers have the ability to provide feedback on the Service through the Operator's App, other Booking System or any other reasonable means.

10. Fares

TfNSW will from time to time determine the Fares and any booking fee charged to Customers of the Service.

11. Free Travel

For Customers entitled to free travel, the Operator will ensure that those Customers are given free travel when using the Service. Successful Customer trips for Customers using these entitlements will be reported by the Operator in its monthly report.

Eligibility details for these arrangements will be notified by TfNSW from time to time, current eligibility details are below:

Vision Impaired Person's Travel Pass

Severely vision impaired or blind customers who hold a Vision Impaired Person's (VIP) Travel Pass are entitled to free travel; and may also include attendant travel.



**NSW Blinded Soldier Pass
WW1 Veteran's Widows Pass**

The free travel Opal card is also available for the following eligible ex-members of the Defence Forces: NSW Blinded Soldiers, widows/widowers of the WWI Veterans, Victoria Cross and George Cross recipients and their widows/widowers.



Ex-Defence

For this customer segment, the TCEC acts as a free travel pass. Customers can also opt in for an Opal card (optional) for independent gate access. It is available for eligible ex-members of the Defence Forces and may also include attendant.



Reverse view of TCEC card for Ex-Defence (ED)

Schedule 2 Transition Activities

Transition Activities

The Operator must achieve these milestones (**Transition Milestones**) during the Transition Period.

Table 1

Transition Milestones	Completion Date (weeks from the Contract execution)
Transition Plan approved by TfNSW	
The last day for completion of all Transition Milestones (Transition Completion)	

Schedule 3 Payments

1. Definitions and Interpretation

- (a) In this Schedule:
- (i) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
 - (ii) a reference to a Clause is a reference to a Clause in the Contract; and
 - (iii) a reference to a paragraph is a reference to a paragraph in this Schedule.
- (b) In this Schedule, the following words have the following meanings:
- (i) **Annual Contract Price** means the amounts itemised in paragraph 3(b) to this Schedule as adjusted in accordance with this Schedule;
 - (ii) **Fare Revenue** are the Fares required to be collected by the Operator during a month;
 - (iii) **Monthly Contract Price** means the amounts which is equal to the Annual Contract Price divided by 12 as adjusted in accordance with this Schedule. If the Service Commencement Date or the Termination Date occurs on a day other than the first of the month, the Monthly Contract Price will be adjusted on a pro rata basis accordingly.

2. General Requirements

- (a) In accordance with Clauses 31.2 (Invoices and time for payment) and 31.3 (Set-off) of the Contract, the Operator must, within five Business Days after the end of each calendar month, and for the duration of the Service Term, provide a valid Tax Invoice to TfNSW, in a form approved by TfNSW from time to time, which identifies:
- (i) the amount of the Monthly Contract Price for the previous month;
 - (ii) any Fare Revenue remitted to the Operator in previous months,
- and the net Payment payable by TfNSW to the Operator, having regard to paragraphs (i) to (ii) above.
- (b) For the avoidance of doubt, the amounts referred to in paragraph (a)(ii), will be set off and reduced from the amounts otherwise payable to the Operator. If the Fare Revenue in any month exceeds the amount otherwise payable by TfNSW to the Operator under paragraph (a) for that month, the Operator must pay to TfNSW the amount of that excess within 20 Business Days after the end of that month.
- (c) The Operator must provide TfNSW with supporting evidence showing that the amounts identified in paragraph 2(a) are correctly calculated in accordance with the Contract and this Schedule and details identifying and clarifying changes from the prior month's invoice line item charges.
- (d) The Tax Invoice must be addressed to the TfNSW officer nominated by TfNSW in writing from time to time.
- (e) The Tax Invoice must be paid by TfNSW within 10 Business Days of receipt of the valid Tax Invoice required under paragraph 2(a).
- (f) The Operator acknowledges that other than as expressly set out in this Schedule 3, no other fees, expenses or charges are payable to the Operator in connection with the Services.

3. Calculation of Monthly Payment

(a) [Insert]

(b) The Annual Contract Price is set out below (excluding GST):

[Insert]

(c) The total potential cost for the Service for the Service Term is: [insert] (excluding GST) *(subject to adjustments under this Contract from time to time e.g. an annual adjustment to the Annual Contract Price for index changes)*.

(d) Where the Operator does not perform the Service during a month, then the Monthly Contract Price may be pro-rata adjusted to reflect the period of the month the Operator performed the Service. TfNSW will enter into good faith discussions with the Operator to determine a fair adjustment to the Monthly Contract Price.

(e) Unless otherwise specified, the Annual Contract Price is fixed, even if the actual effort (e.g. drivers' wages, running costs (e.g. fuel), capital expenses, dispatch costs, hours, KM) and/or Operator's costs is more or less than what was anticipated or planned, subject to agreed service variations.

4. Price Adjustment for Inflation and Fuel Taxes and Credits

(a) The Monthly Contract Price will be adjusted to take into account inflation.

(b) At the periods as specified in the table below, TfNSW must apply the inflation index and multiplier specified in the table to the relevant items specified in the table and notify the Operator in writing of the adjusted Monthly Contract Price.

(c) For the purposes of this paragraph, the following inflation indices will be adopted and applied to the prices shown in Schedule 3, paragraph 3 above.

[Insert]

(d) If there are changes to the manner in which the applicable index number is determined or reported which materially affect the calculations in this clause, TfNSW will, in good faith, determine a new basis for the calculation of the adjustment.

5. Service variations

Any service variations must be agreed in writing and signed by TfNSW's authorised delegate before they are effective.

Payment for additional hours or Contract Vehicles required as a result of an agreed variation to the Service, will be calculated at the rates agreed by the parties for the variation.

6. Commercial risk for the Operator

For the avoidance of doubt, the Operator will not be entitled to any additional funding or payments for any upfront capital, mobilisation or other costs if the Contract is terminated early pursuant to clause 4.1(c) of the Contract.

Schedule 4 Key Performance Indicators

KPI	Booking Acceptance Rate
Description	This KPI aims to ensure that all booking requests for On Demand Services made by customers are accepted
Hours measured	All hours of operation
KPI Calculation	100 x (number of bookings accepted / total number of booking requests) Note: if a customer cancels a booking, it is not considered a booking for the purpose of this KPI
KPI Target	95% of all booking requests made by Customers are accepted by the Operator
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
KPI Reporting Period	Monthly
Measurement unit	Percentage rounded to two decimal places
Data source	Operator data
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Operator Booking Cancellation Rate
Description	This KPI aims to ensure that all On Demand Service bookings are delivered
Hours measured	All hours of operation
KPI Calculation	$100 \times (\text{number of bookings cancelled by the operator} / \text{total number of accepted bookings})$
KPI Target	2% or less of all on demand service bookings are cancelled by the Operator
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
KPI Reporting Period	Monthly
Measurement unit	Percentage rounded to two decimal places
Data source	Operator data
Measurement responsibility	Operator with selected audit by TfNSW
Monthly	Monthly

KPI	Successful Trips
Description	This KPI aims to ensure the utilisation of the On-Demand service is optimised in the local community
Hours measured	All hours of operation
KPI Calculation	Total number of successful trips delivered in the KPI calculation Period
KPI Target	Increase in the no. of successful trips in each consecutive period
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
KPI Reporting Period	Monthly
Measurement unit	Whole number
Data source	Operator data
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Customer Satisfaction
Description	Customer Satisfaction means the level of satisfaction with the Operator's performance as expressed by a representative sample of the Customers (TfNSW to approve) as measured on either App or Survey
Hours measured	All hours of operation
KPI Calculation	On the basis of a survey (the structure and content to be defined by TfNSW) on a Likert Scale (The number of the ratings above the mid-point) / (the total number of rating) x 100.
KPI Target	85% of all ratings above the mid-point of the Likert Scale
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
KPI Reporting Period	Monthly
Measurement unit	Percentage
Data source	Operator data
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI		Customer Complaint Resolution	
Description	Customer Complaint Resolution means the satisfactory closure of customer complaints within agreed timeframes. It is measured from the time of receipt of the complaint by the Operator to the resolution and closure of the complaint		
Hours measured	All hours of operation		
KPI Calculation	$100 \times (\text{Complaints resolved within 2 Business Days during the KPI Reporting Period}) / \text{Total complaints received for the KPI Reporting Period})\%$ $100 \times (\text{Complaints resolved within 15 Business Days during the KPI Reporting Period}) / \text{Total complaints received for the KPI Reporting Period})\%$		
KPI Target	a) 80% of all complaints are resolved within 2 Business Days b) 100% of all complaints are resolved within 15 Business Days		
Measurement methodology			
Measurement starting point	First day of each KPI Reporting Period		
KPI Reporting Period	Monthly		
Measurement unit	Percentage rounded to two decimal places		
Data source	Operator data		
Measurement responsibility	Operator with selected audit by TfNSW		
Reporting frequency	Monthly		

KPI	Preventable Accidents
Description	<p>This KPI aims to ensure that all Contract Vehicles are properly maintained and operated.</p> <p>In this KPI:</p> <p>Preventable Accident is defined as an accident that is caused by:</p> <ul style="list-style-type: none"> • poor maintenance (such as wheels falling off, fire, fluid leaks); • driver failure to follow proper procedures (such as failure to engage the hand brake or resulting in a runaway Contract Bus); • failure to perform adequate maintenance; or • poor driving
Hours measured	All hours of operation
KPI Calculation	Number of Preventable Accidents during the KPI Reporting Period
KPI Target	0 Accident
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
KPI Reporting Period	Monthly
Measurement unit	Whole number
Data source	Operator data
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Reporting
Description	<p>This KPI aims to ensure all agreed reports are available to TfNSW within the agreed timeframe. This Reporting KPI measures the time taken to deliver reports starting from the end of the reporting period until the time that the reports are available for TfNSW. The scope is for all reports as set out in the Reporting Schedule.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	All hours of operation
KPI Calculation	$100 \times (\text{Total number of reports presented within the required timeframe during the KPI Reporting Period} / \text{total number of reports due to be presented during the KPI Reporting Period})$
KPI Target	100% within KPI Reporting Requirements
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
KPI Reporting Period	Monthly
Measurement unit	Percentage rounded to two decimal places
Data source	Operator data
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

Schedule 5 Governance and Reporting

1. Governance

- (a) The Operator must attend and participate in governance meetings with TfNSW to discuss the delivery of Services and/or the achievement or failure to achieve the KPI Targets.
- (b) TfNSW will determine the frequency of governance meetings, and notify the Operator of the requirement to attend a meeting within a reasonable time frame, in writing.
- (c) The Operator may request TfNSW to attend a governance meeting within a reasonable time frame, by notice in writing.

2. Service Review Meetings

The Operator and TfNSW will conduct Service review meetings at a minimum frequency of 1 per quarter or as directed by TfNSW.

3. Reporting Requirements

- (a) The Operator must prepare and submit to TfNSW all service data extracts and reports (as set out in paragraphs 4 - 8 (inclusive)) in a format prescribed by TfNSW on a monthly basis or as directed by TfNSW by notice in writing.
- (b) TfNSW will not be liable for any additional costs associated with reporting changes.
- (c) Unless otherwise notified in writing by TfNSW, the Operator must submit to TfNSW reports about the Data as described below on the specified date.
- (d) TfNSW may reasonably request additional reporting data from time to time, at no additional cost to TfNSW.

4. Service Data (SD) – to be provided monthly (on 5th Business Day)

- (a) The following information (**SD**) will be collated by the Operator and submitted to TfNSW in accordance with the monthly reporting requirements:
 - (i) Total Customer bookings;
 - (ii) Proportion accepted vs. rejected;
 - (iii) Total Customer cancellations and no shows;
 - (iv) Total Customer trips delivered;
 - (v) Total vehicle kilometres travelled;
 - (vi) Total vehicle service hours (in and out of service);
 - (vii) Value of ticket sales by payment method (cash, credit card, other);
 - (viii) Number of tickets purchased by payment method (cash, credit card, other);
 - (ix) Details of fare types (e.g. standard, concession);
 - (x) Details of booking type (application, phone call); and
 - (xi) Details of payment types (in-application, phone call).
- (b) The SD will be provided to TfNSW by 4:00pm on the 5th Business Day of each calendar month for the reporting period of the previous calendar month. TfNSW will provide a reporting template and required file format prior to the Service Commencement Date.

5. SD 1.1

The requirements for SD 1.1 are as follows:

- (a) SD 1.1 contains one record (row) for each booking, whether accepted or rejected, or successfully delivered or not. Each booking contains one or more Customers. Multiple Customers on the same booking are contained in the same record.

- (b) The required fields in the SD 1.1 dataset are as follows, for each booking:
- (i) Whether the booking was accepted;
 - (ii) The date and time that the booking was confirmed;
 - (iii) The Contract Vehicle registration number;
 - (iv) A unique Customer ID (e.g. the phone number) of the person making the booking;
 - (v) The number of standard and concession fares;
 - (vi) How the booking was made (e.g. phone, mobile app, website, other);
 - (vii) The date and time when the booking was made;
 - (viii) The payment method (e.g. cash, credit card);
 - (ix) Whether the customer had any wheelchair accessibility requirements;
 - (x) Whether the pickup was successful;
 - (xi) If the pickup was not successful, why not? (Customer no-show, customer cancel, operator failure, other);
 - (xii) The scheduled pickup and drop-off date and times of the booking;
 - (xiii) The actual pickup and drop-off date and times of the booking;
 - (xiv) The pickup and drop-off addresses (both full addresses as well as latitude and longitude co-ordinates are required);
 - (xv) Service zone that the Contract Vehicle operates within;
 - (xvi) Trip rating for individual trips;
 - (xvii) Walking distance from Customers request location to pick up location;
 - (xviii) Whether the booking is On Demand or a walk on Customer;
 - (xix) How long the Customer waits from the request time to pick up time (for On Demand bookings).

6. SD 1.2

- (a) SD 1.2 contains one record Contract Vehicle per day type, with the following fields:
- (i) The day type (working weekday, Saturday, Sunday /Public Holiday);
 - (ii) The Contract Vehicle registration number;
 - (iii) The total number of kilometres travelled by that Contract Vehicle that month, including positioning kilometres;
 - (iv) The total number of kilometres travelled by that Contract Vehicle that month whilst in revenue service (carrying at least one Customer);
 - (v) The total number of hours travelled by that Contract Vehicle that month, including positioning time;
 - (vi) The total number of hours travelled by that Contract Vehicle that month whilst in revenue service (carrying at least one Customer).

Monthly Performance Report

- (a) The Operator will provide the 'Monthly Performance Report' (**MPR**) to TfNSW by 4:00pm on the 9th Business Day of each calendar month.
- (b) The MPR will as a minimum cover the following areas:
- (i) Analysis and commentary on the current month trend analysis;
 - (ii) Key outcomes achieved during the month;
 - (iii) Major marketing activities conducted in current month;
 - (iv) Details of any media publications that covered the Services;
 - (v) A report of any major Incident that occurred during the current month;
 - (vi) Major Incidents including impacts, learnings and mitigation actions;
 - (vii) Financial Analysis including:
 - A. Current month and cumulative profit and loss information for the service based on Operators actual financial results;
 - B. Relevant commentary on any material financial impacts;
 - (viii) Customer feedback analysis including:
 - A. Number of feedback responses including their source;
 - B. Number of feedback responses by rating;

- C. Average driver rating;
 - D. Customer behaviour insights;
 - E. Verbatim feedback comments;
- (ix) KPI Report based on the KPI's contained in Schedule 4.

The MPR will be used as the basis for the discussion of the Services performance at the service review meeting.

TfNSW may provide the Operator with an MPR template.

7. Customer Complaints

The Operator must

- (a) respond to Customer complaints in a professional manner,
- (b) have a 'Complaints Management' procedure in place,
- (c) provide adequate training to staff to ensure a consistent approach and application of the 'Complaints Management' procedure,
- (d) record all customer complaints with a reasonable level of detail, and
- (e) clearly display instructions for Customers about providing feedback inside the Contract Vehicles.

Schedule 6 Assets Register

1. Contract Vehicles

The details of the Contract Vehicles are as specified in the table below:

Model	Rego	VIN	Number of Seats

2. Vehicle storage and Depots

The Contract vehicles will be stored at:

[Insert]

3. Information required

The Operator must provide, upon request by TfNSW, all Contract Vehicle and depot details reasonably required and in a format nominated by TfNSW.