

Transport for New South Wales
Rural and Regional Bus System Contract
Standard Terms and Conditions
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Transport for New South Wales
Rural and Regional Bus Service Contract
Standard Terms and Conditions

THIS DOCUMENT CONTAINS TERMS AND CONDITIONS THAT ARE INCORPORATED INTO ALL CONTRACTS FOR THE PROVISION OF REGULAR BUS SERVICES IN RURAL AND REGIONAL NEW SOUTH WALES BETWEEN THE DIRECTOR GENERAL OF THE TRANSPORT FOR NEW SOUTH WALES AND ANY OPERATOR PROVIDING SUCH REGULAR BUS SERVICES.

All capitalised terms used in these terms and conditions are defined in the section headed "Dictionary" and contained in the Schedule at the end of this document.

These terms and conditions and the Contract to which they apply are to be interpreted in accordance with the rules set out in the section headed "Interpretation" and contained in the Schedule at the end of this document.

1 Term

1.1 Term of Contract

The term of the Contract is 7 years from the Service Commencement Date set out in Schedule 1 to the Contract (the **Term**), unless it is terminated or extended in accordance with the Contract.

1.2 Extension of Term

Prior to the end of the Term, the Director General may, on not less than 3 months written notice to the Operator, extend the Term for a further period and upon expiry of that further period may continue to extend the term for further periods (provided that the further periods extending the Term total in aggregate no more than 12 months from the date of scheduled expiry of the initial 7 year term).

2 Accreditation

2.1 Authorisations

At all times, the Operator must:

- (a) be an accredited service operator in accordance with the Act;
- (b) comply with its accreditation under the Act; and
- (c) hold, and comply with, all other Authorisations required to operate the Services in accordance with the Contract.

2.2 Designated manager

If the Operator is a corporation, there must, at all times, be a designated manager or director of the Operator in accordance with Section 7 of the Act.

3 Provision of Bus Services

3.1 Contract Services

- (a) The Operator must provide the Regular Bus Services (including School Services) described in Schedule 5 to the Contract.

- (b) The Contract does not give the Operator the right to provide any Regular Bus Services other than as expressly permitted under the terms of the Contract.

3.2 Provision of the Services

The Operator must, at all times, provide the Services:

- (a) in accordance with the Contract;
- (b) with the degree of skill, diligence, prudence and practice that would be exercised by a skilled and experienced bus service operator providing Regular Bus Services comparable to the Services;
- (c) in a competent, courteous, safe and reliable manner having primary regard to the needs and interests of passengers; and
- (d) so as substantially to comply with the Key Performance Indicators.

3.3 Compliance with laws

The Operator must, at all times, comply with:

- (a) the Act;
- (b) all other Laws applicable to the Services; and
- (c) the safety management system required under its accreditation as varied and adopted from time to time.

3.4 Compliance with Fleet Procurement Guidelines

The Operator must at all times comply with the Fleet Procurement Guidelines as varied and adopted from time to time.

3.5 Compliance with the Service Planning Guidelines

- (a) The Operator must at all times comply, and provide the Services in accordance, with the Service Planning Guidelines.
- (b) The Operator must obtain the prior written consent of the Director General to any proposal to provide the Services otherwise than in accordance with the Service Planning Guidelines.
- (c) In the event that the Operator proposes to provide the Services otherwise than in accordance with the Service Planning Guidelines, the Operator must give notice to the Director General specifying the reasons for the proposal (including any relevant local community requirements).
- (d) Within 28 days of receipt of a notice under clause 3.5(c), the Director General, acting reasonably, will notify the Operator of whether or not he approves the proposal notified under clause 3.5(c).

4 Fares and concessions

4.1 Fare paying passengers

To the extent the Operator is providing Services which involve carrying fare paying passengers, the Operator must offer and honour the products and fares listed in Schedule 3 to the Contract to:

- (a) passengers, at no more than the maximum full fares specified in Schedule 3 to the Contract; and
- (b) any fare paying passengers entitled to concession travel, at the concession fares to which they are entitled.

4.2 IPART

If IPART makes a determination under section 28J of the Act, in respect of the maximum full fares and concession fares, Schedule 3 will be varied to reflect the new maximum full fares and concession fares determined by IPART.

4.3 Other ticket products and fares

Schedule 3 to the Contract lists each of the ticket products provided by the Operator as at the Service Commencement Date. In the event the Operator offers any ticket product not listed in Schedule 3, the Operator must:

- (a) notify the Director General in writing of any such ticket product prior to, or within a reasonable time following, its offer; and
- (b) not offer such ticket product at fares greater than those listed in Schedule 3 to the Contract, without obtaining the prior written approval of the Director General.

4.4 Free travel

The Operator must ensure free travel is provided to the eligible categories of passenger defined in Schedule 3 to the Contract.

4.5 School travel

The Operator must carry schoolchildren in accordance with the SSTS Bus Operators Manual and the Guidelines for Managing School Student Behaviour on Buses.

5 Changes to Services – initiated by the Director General

5.1 Changes initiated by the Director General

The Director General may, at any time, by giving reasonable notice in writing to the Operator (giving particulars of the change and confirming the date from which it will take effect), require a change to the:

- (a) Services;
- (b) ticket products and fares set out in Schedule 3 to the Contract; or
- (c) concessions set out in Schedule 3 to the Contract.

5.2 Operator to comply with changes initiated by the Director General

- (a) The Operator must agree to the change notified under clause 5.1 and will make any necessary amendments to its operations and to the Contract so that it complies with the change.
- (b) Any change to the payments made to the Operator which result from a change notified under clause 5.1 shall be calculated in accordance with the provisions of Schedule 4 of the Contract.

6 Change events

6.1 Change events

- (a) Subject to clause 6.1(b), the following are Change Events:
 - (i) a Change in Law;
 - (ii) a Change in Industry Standard;
 - (iii) the implementation of, or any subsequent amendment to, the Fuel Tax Credits System under the *Fuel Tax Act 2006* (Cth);
 - (iv) an amendment to the SSTS Bus Operators Manual by the Director General;
 - (v) an amendment to the Service Planning Guidelines by the Director General;
 - (vi) the implementation of a new, or a subsequent amendment to an existing, Australian Design Rule administered under the *TfNSW or Vehicle Standards Act 1989* (Cth);
 - (vii) an amendment to the list of approved beneficiaries in Schedule 3; and
 - (viii) the imposition of, or amendment to, any other Law (whether State or Commonwealth) (other than a Change in Tax) or industry standard or guideline which has a material adverse financial impact on the ability of operators of Regular Bus Services in Rural and Regional New South Wales generally to perform their obligations to provide those Regular Bus Services and which is agreed in writing by the Director General (acting in good faith) and the BCA to be a Change Event for the purposes of this clause 6.1(a).
- (b) The matters listed in clause 6.1(a) are only Change Events if they occur after the date of the Contract, affect the Operator's obligations under the Contract or the Services and are not contract variations under clause 5 of these Standard Terms and Conditions or clause 4 of the Contract.
- (c) If the Operator reasonably considers a Change Event has occurred and would result in the Operator incurring additional expenditure (or receiving reduced income) than it otherwise would in order to comply with the Contract, it may so notify the Director General.
- (d) A notice provided under clause 6.1(c) must include reasonable details of the Change Event and its effect and any steps the Operator is able to implement to mitigate such effects.
- (e) If, in the reasonable opinion of the Director General, the Operator has proved the occurrence of a Change Event which would result in the Operator incurring additional expenditure (or receiving reduced income) than it otherwise would in order to comply with the Contract, the Operator shall be entitled to compensation in accordance with Schedule 4 to the Contract.
- (f) If the Director General reasonably considers that:
 - (i) a Change Event has occurred and would result in the Operator incurring less expenditure under the Contract; and
 - (ii) payments made to the Operator under the Contract are not reduced as a result of that Change Event,

the Director General shall be entitled to reduce payments under the Contract in accordance with Schedule 4 to the Contract.

6.2 Change in Industry Standard

Before implementing a Change in Industry Standard, the Director General must consult with the BCA in relation to that Change in Industry Standard.

7 Bus and driver standards

7.1 Buses - compliance with standards

At all times the Operator must comply with the following requirements in providing the Services:

- (a) where it is reasonable for the Director General to require it, having regard to the Operator's circumstances, each vehicle used in the Services must be painted in a standard livery of the Operator, except in emergencies and except for "all over advertising" vehicles. Such "all over advertising" vehicles shall clearly display the trading name of the Operator on the front of the vehicle;
- (b) each vehicle used in the Services must be registered under and comply with Road Transport Legislation and other applicable Laws;
- (c) vehicles used in the Services must comply with any maximum and average age requirements set out in Schedule 12 to the Contract; and
- (d) all Services (other than Dedicated School Services) must satisfy the compliance requirements of the Disability Discrimination Act 1992 (Cth), its Disability Standards for Accessible Public Transport 2002, and any standards relating to disability aids determined from time to time by the Director General.

7.2 Staff – compliance with standards

During the Term the Operator must ensure that all persons (whether officers, employees, agents or contractors of the Operator) engaged in connection with the provision of the Services:

- (a) are properly authorised, accredited and trained; and
- (b) have such experience as would be reasonably expected of persons employed or engaged in their particular positions.

7.3 Drivers – compliance with standards

At all times the Operator must ensure that all drivers providing the Services:

- (a) hold all appropriate authorities issued under Division 2 of Part 2 of the Act and an appropriate driver's licence under the *Road Transport (Driver Licensing) Act 1998* (NSW) and comply with all such authorities and licences;
- (b) comply with the obligations of a driver under the *Passenger Transport Regulation 2007* (NSW); and
- (c) have detailed knowledge of the fares, route and timetable for the Services.

8 Reporting requirements

8.1 Maintenance of records

The Operator must maintain the financial and operational records that would ordinarily be maintained by a skilled and experienced operator of buses and bus services comparable to the size, scope and complexity of the Services and must comply with the reporting and record keeping requirements in the Contract, the *Passenger Transport Regulation 2007* (NSW) and the Road Transport Legislation as amended from time to time.

8.2 Reporting

- (a) The Operator must provide to the Director General performance reports relating to the matters specified, and in the format set out, in Schedule 7 to the Contract. The Director General may, from time to time, change the format in which these reports must be provided.
- (b) In addition to the reporting requirements in clause 8.2(a), the Operator must deliver to the Director General, any other information, records or documents, and respond to any questions, relating to, or connected with the Services and the Contract as reasonably requested by, and within the period reasonably specified by, the Director General.
- (c) All financial information provided to the Director General by the Operator to be used for the purposes of calculating or auditing any payments made pursuant to Schedule 4 must be prepared by the Operator using financial information consistent with the accounting standards applicable to the Operator under the Corporations Act or, in the absence of any standards applying to the Operator, with the financial information contained in the Operator's tax returns provided to the Australian Taxation Office for the equivalent period.

8.3 Warranty

The Operator warrants that all reports, data, information, records and documents provided under clauses 8.2(a) and (b) shall be true, accurate and not misleading.

8.4 Electronic lodgement of reports

- (a) Except as provided for in clause 8.4(c), the Operator must provide any reports, information, records and documents to be provided under the Contract in an electronic form which is compatible with the electronic data and records systems notified by the Director General to the Operator from time to time.
- (b) If the Director General requires the Operator to provide any reports or information in electronic format pursuant to clause 8.4(a), the Director General shall in good faith agree on costs that the Director General will pay to the Operator as compensation for complying with this requirement (such costs to be all reasonable costs of complying with that requirement but only to the extent such costs exceed the costs that the Operator would have been reasonably expected to have incurred by reason of its usual practice or requirements in respect of replacement of hardware and office equipment)
- (c) The Operator may seek approval from the Director General to lodge any reports, information, records and documents to be provided under the Contract in a form other than electronic form, for a period no longer than three years from the Service Commencement Date as set out in the Contract.

8.5 Right of audit and inspection

The Operator must permit, and assist, the Director General and the Director General's Associates to conduct surveys of passengers or to inspect at any reasonable time the books, records and other

material kept by or on behalf of the Operator and the Operator's buses, depots and premises, in order to:

- (a) check or audit any information supplied to the Director General under the Contract; and
- (b) monitor the performance of the Operator or compliance by the Operator with its obligations under the Contract.

8.6 False reporting

- (a) In the event the Operator provides information under the Contract which is false or misleading in any respect:
 - (i) the payments made to the Operator under the Contract will be reduced in accordance with paragraph 1.7 of Schedule 4; and
 - (ii) interest will be payable by the Operator to the Director General in accordance with paragraph 1.7 of Schedule 4.
- (b) It will be a breach of the Contract if the Operator deliberately provides information under the Contract which is false or misleading in any respect.

9 Financial Review

9.1 Financial review

Where the Director General reasonably suspects that the Operator may in the future cease to be financially capable of performing its obligations under the Contract, he may implement a viability review in relation to the financial position of the Operator (**Financial Review**).

9.2 Process for a financial review

- (a) A Financial Review may be specifically initiated by the Director General or may be carried out as part of the Director General's review of any reports provided by the Operator under the Contract or any survey carried out by or on behalf of the Director General in relation to the Services.
- (b) The Operator must co-operate with and assist the Director General or his representatives in conducting the Financial Review, including by providing as soon as practicable after being notified of the Financial Review, any information reasonably requested by the Director General and relevant to the Financial Review.
- (c) If the Director General reasonably forms the opinion, following a Financial Review, that the Operator is likely to incur financial losses on a continuing basis in the performance of the Services, with the potential to prejudice the Operator's ability to perform its obligations under the Contract, the Director General may issue a notice to the Operator (**Viability Notice**) to that effect.
- (d) The Viability Notice must set out requirements on the Operator to develop and submit to the Director General, strategies that may mitigate the matters set out in the Viability Notice.
- (e) The Operator must either:

- (i) provide evidence to the reasonable satisfaction of the Director General that the matters set out in the Viability Notice do not prejudice the Operator's ability to perform its obligations under the Contract; or
 - (ii) comply with the requirements set out in the Viability Notice and take any other action the Director General reasonably considers as likely to mitigate the matters set out in the Viability Notice.
- (f) In the event that, following a period of no less than 6 months from the issue of the Viability Notice, the Director General reasonably forms the opinion that the matters set out in the Viability Notice continue to apply, the Director General may issue a notice terminating the Contract with immediate effect.

10 Cure and Termination

10.1 Immediate termination

The Director General may terminate the Contract immediately by written notice to the Operator (without any obligation on the Director General to pay compensation or make payment in lieu of notice to the Operator) if:

- (a) the Operator ceases to be an accredited service operator in accordance with the Act; or
- (b) the Operator materially fails to comply with its accreditation under the Act; or
- (c) an order is made or a resolution is passed for the winding up of the Operator or the Operator goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or is unable to pay its debts within the meaning of the Corporations Act or execution is levied against the Operator and not discharged within thirty (30) days, or if the Operator (being an individual) becomes bankrupt or commits an act of bankruptcy or brings his estate within the operation of any Law relating to bankrupts.

10.2 Termination following failure to cure a breach

Subject to clause 10.3, the Director General may terminate the Contract by written notice to the Operator if any of the following events occur (**Events of Default**):

- (a) the Operator has been in persistent breach, or has committed a material breach, of the Contract or the Act;
- (b) there has been, in the Director General's reasonable opinion, an instance of such magnitude or blatant disregard of the Contract or the Act that the public interest requires such action; or
- (c) the Operator seeks to assign its rights under the Contract without the Director General's consent in breach of the Contract.

10.3 Cure period

- (a) If an Event of Default listed in clause 10.2 occurs, before becoming entitled to terminate the Contract, the Director General must serve notice on the Operator specifying details of that Event of Default and requiring the Operator to implement one or more of the matters set out in clause 10.3(b).
- (b) A notice served under clause 10.3(a) may require one or more of:

- (i) a remedy to be implemented by the Operator within a reasonable period stated by the Director General;
 - (ii) a cure plan to be submitted by the Operator within 5 business days for approval by the Director General and setting out the detailed measures the Operator proposes to take to remedy the Event of Default (**Cure Plan**); and/or
 - (iii) the immediate implementation of temporary measures by the Operator to alleviate the impact or effect of the Event of Default.
- (c) The Director General must, within 5 business days of receipt of a Cure Plan approve the Cure Plan or, acting reasonably, require amendments to the Cure Plan (in either case, the **Final Cure Plan**).
 - (d) The Operator must diligently pursue and implement the Final Cure Plan and any other remedies or temporary measures required under clause 10.3(b).
 - (e) In the event that the Operator fails to rectify the Event of Default to the reasonable satisfaction of the Director General within the time period set out in the Final Cure Plan or in a notice served under clause 10.3(a), the Director General may terminate the Contract immediately by written notice to the Operator (without any obligation on the Director General to pay compensation or make payment in lieu of notice to the Operator).

10.4 Termination by Operator on notice

The Operator may terminate the Contract provided that 90 days written notice (or less if the Director General agrees) is given to the Director General.

10.5 Effect of termination

Termination of the Contract under any relevant provision shall be without prejudice to the rights of the parties in relation to breaches of the Contract prior to termination.

11 Contract Management Plan

11.1 Draft Contract Management Plan

The Operator must, within 6 months of the Service Commencement Date as set out in the Contract, in accordance with Schedule 9 to the Contract, submit to the Director General a draft Contract Management Plan which includes details of the matters listed in Schedule 9 to the Contract.

11.2 Finalisation of Contract Management Plan

- (a) Within 6 weeks of submission of a draft Contract Management Plan under clause 11.1, the Director General must provide comments on the draft Contract Management Plan, suggesting areas for consideration or amendment.
- (b) The Operator must review and update the draft Contract Management Plan to address any comments raised by the Director General and re-submit it to the Director General for final approval.

11.3 Compliance with the Contract Management Plan

In providing the Services, the Operator must comply in all material respects with the provisions of the Contract Management Plan.

12 Emergencies

12.1 Emergencies

If any of the following matters occur or, in the reasonable opinion of the Director General having regard to the urgency of the circumstances, are likely to occur (including in circumstances where that matter may also be a Force Majeure Event):

- (a) the operation of the Services being materially disrupted, restricted or prevented or the Operator otherwise being unable to provide the Services for a period in excess of 24 hours;
- (b) the risk of imminent death or injury to passengers, the Operator's staff or members of the public; or
- (c) any other matter where the Director General, acting reasonably (and after receiving the approval of the Minister for Transport), believes it would be in the public interest for the provisions of this clause 12 to apply (together, an **Emergency**),

the Director General may provide oral or written notice to the Operator that he has appointed a nominee (the **Nominee**) to attempt to remedy or mitigate the consequences of the Emergency.

12.2 Contract Management Plan

In exercising his rights under clause 12.1, the Director General shall have regard to any provisions in the Contract Management Plan relating to the Operator's procedures for incident management and will consider whether, in the circumstances, those procedures would enable the Operator to deal with the Emergency to the Director General's reasonable satisfaction.

12.3 Nominee's powers

The Nominee may take any actions the Director General reasonably considers appropriate to remedy or mitigate the Emergency for such period as the Director General reasonably considers the Emergency will continue, including:

- (a) enter into, remain in possession of and operate all or any of the assets used by the Operator in providing the Services; and
- (b) exercise any of the powers and perform any of the obligations of the Operator in connection with the Services.

12.4 Cooperation by Operator

- (a) The Operator must take all steps to cooperate with the Nominee in the exercise of the powers under clause 12.3.
- (b) The Operator acknowledges that the Nominee will not be liable to the Operator in respect of any conduct, delay, negligence or breach of duty in the exercise or non-exercise of powers under this clause 12 or any loss that results, except where it arises from fraud, wilful default or gross negligence on the part of the Nominee.
- (c) The Operator is not liable for any breach of the provisions of the Contract directly caused by the Nominee.

12.5 Cessation of Emergency

- (a) The Nominee must cease to exercise its powers under clause 12.3 as soon as is reasonably practicable and, in any event, as soon as, in the reasonable opinion of the Director General, the Emergency no longer exists or is no longer likely to occur.
- (b) The Director General and the Operator must consult with each other with the intention of ensuring that the transition from the Nominee ceasing to exercise its powers under clause 12.3 to the Operator resuming the performance of the Services is effected without interruption to the Services.
- (c) Upon the Nominee ceasing to exercise its powers under clause 12.3, the Operator must resume the performance of the Services in accordance with the Contract.

12.6 Without prejudice to other rights

The rights under this clause 12 do not affect or prejudice the Director General's other rights in relation to any breach of the Contract.

13 Force majeure

13.1 Force Majeure Events

It shall be a force majeure event if any event listed in this clause 13.1 occurs and as a result a party is prevented in whole or in part from carrying out its obligations under the Contract (each a **Force Majeure Event**):

- (a) act of God, lightning, storm, explosion, flood, landslide, bush fire or earthquake;
- (b) strikes or other industrial action (other than industrial action primarily involving some or all of the Operator's staff or primarily involving the bus industry);
- (c) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil comTfNSWion, epidemic;
- (d) embargo, power shortage or water shortage; and
- (e) fuel shortages that apply generally to the bus industry,

the consequence of which is beyond the control of the party seeking relief as a result of the event 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).

13.2 Consequences of a Force Majeure Event

- (a) If a party is prevented in whole or in part from carrying out its obligations under the Contract as a result of a Force Majeure Event, it must as soon as practicable notify the other party accordingly and provide reasonable details of the Force Majeure Event, its effect on that party's ability to carry out its obligations and the measures it proposes to adopt to minimise the effects of the Force Majeure Event.
- (b) Following a notice under clause 13.2(a) and while the Force Majeure Event continues, the obligations which cannot be performed are suspended.
- (c) The party that is prevented from carrying out its obligations under the Contract because of the Force Majeure Event, must take all steps reasonably practicable to remedy or minimise the effects of the Force Majeure Event and to mitigate any loss suffered by the other party or any passengers.

- (d) Payments due to the Operator for the period during which a Force Majeure Event continues shall be reduced in accordance with Schedule 4.

14 Indemnity

The Operator indemnifies the Director General from and against all actions, claims, demands, losses, damages, costs and expenses for which the Director General may become liable whether during or after the term of the Contract in respect to or arising from the negligent or wilful act or omission of the Operator or the failure or default of the Operator to observe or perform any of the terms, covenants and conditions expressed in or implied in the Contract.

15 Insurance

At all times during the Term, the Operator must maintain the following insurances with reputable insurers on terms to be approved by the Director General (acting reasonably):

- (a) public liability insurance covering claims for damage to any real or personal property and injury to or death of any person in the performance of the Services and the use and operation of any vehicles in the Services for at least \$10 million per incident; and
- (b) any other insurances which the Director General reasonably requires and which are commonly effected by the operators of buses and Regular Bus Services comparable to the size, scope and complexity of the Services provided those insurances can be obtained on payment of a reasonable premium.

16 Payments

16.1 Payments

The Director General and the Operator agree to make the payments calculated and payable under Schedule 4 to the Contract.

16.2 GST

- (a) If GST is payable on a Taxable Supply made under, by reference to or in connection with the Contract, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.
- (b) In the calculation of a cost, expense or other liability incurred by a party, the amount of any Input Tax Credit entitlement in relation to the relevant cost, expense or other liability must be excluded. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.
- (c) Subject to clause 16.2(d), the GST Amount, or an appropriate component of it, is payable on the earlier of:
 - (i) the first date on which all or any part of the Consideration for the Taxable Supply, or a component of it that is treated as a separate supply, is provided; and
 - (ii) the date 5 business days after the date on which an Invoice is issued in relation to the Taxable Supply, or a component of it that is treated as a separate supply.

- (d) Despite clause 16.2(c), the GST Amount will only become payable if the supplier has issued a Tax Invoice that complies with the requirements of the GST Act.
- (e) Any reference in the Contract to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to the amount obtained by subtracting from that Revenue any GST.

17 Confidentiality

17.1 Obligation of confidentiality

Subject to clauses 17.2 and 17.3 below, unless required or permitted by the Contract, no party may, without the prior written consent of the other party, disclose:

- (a) the terms, effect or implementation of the Contract;
- (b) any communication to or from a party in accordance with the Contract;
- (c) any decision by the Director General pursuant to the Contract; or
- (d) any documents which are, or information which is, confidential under the Contract.

17.2 Exceptions – general

Despite clause 17.1, a party may make disclosures:

- (a) to the extent previously agreed by the other party in writing;
- (b) if required by Law or under a binding order of a government agency but only after the disclosure has been notified to the other party and the other party has had a reasonable opportunity to comment on the form and terms of the disclosure;
- (c) in enforcing the Contract or in a proceeding arising out of or in connection with the Contract or under a procedure for discovery in any proceedings;
- (d) to a party's legal advisers and consultants on a strictly confidential basis;
- (e) as required or permitted by the NSW Government policy on the disclosure of information in relation to government contracts with the private sector (Premier's Memorandum No. 2007-1) as amended from time to time, or any policy issued in substitution for or addition to such document;
- (f) to the extent necessary for a party to perform its obligations under the Contract;
- (g) in the case of the Operator, to the extent necessary or commercially desirable, to an existing or bona fide proposed or prospective financier or finance lessor, provided such financier or finance lessor executes a confidentiality deed in favour of the parties prior to any such disclosure;
- (h) in the case of the Operator, to a bona fide prospective purchaser of all of the shares in, or assets and business of, the Operator, provided such purchaser executes a confidentiality deed in favour of the parties prior to any such disclosure;
- (i) to the extent the information disclosed is already in the public domain, other than as a result of a breach of the Contract or any other obligation of confidentiality between the parties.

17.3 Exceptions – Director General

Despite clause 17.1, the Director General may make disclosures:

- (a) to any of a Nominee appointed under clause 12, the Director General's Associates, any Minister of the Crown in right of the State or any of its agencies or instrumentalities;
- (b) (where he reasonably considers it necessary in order to secure continuity of the performance and operation of the Services) to a proposed or prospective performer of the Services (or any part of those functions) either following the expiry or termination of the Contract or in contemplation of such expiry or termination;
- (c) of any information relating to the Operator or the Contract (including financial information) if he has previously notified the Operator and the Operator does not demonstrate to the reasonable satisfaction of the Director General within 14 days of that notification that the information is commercially sensitive and disclosure of it would be materially detrimental to the Operator's business. If the Operator objects but fails to demonstrate that the information is commercially sensitive and publication of it would be materially detrimental to the Operator's business, the Director General must allow seven more days before disclosing the information.

18 Neighbouring services

18.1 Neighbouring services

The Operator acknowledges that operators under other Rural and Regional Bus Service Contracts may provide Regular Bus Services in or near the area in which the Operator provides the Services (**Neighbouring Service Providers**).

18.2 Coordination of services

The Operator must:

- (a) cooperate with those Neighbouring Service Providers listed in Schedule 11 to the Contract to ensure that the Regular Bus Services under their respective Rural and Regional Bus Service Contracts are provided in an efficient coordinated manner; and
- (b) otherwise comply with the provisions set out in Schedule 11 to the Contract.

19 Passenger Relations

19.1 Community consultation

The Operator must consult with the community (including all key stakeholders such as local schools, community groups, local council and other affected transport service providers) when undertaking any Service Review.

19.2 Passenger information

The Operator must:

- (a) ensure that there are available at all times for distribution to the public a timetable leaflet for each route (or group of routes) in a format which clearly identifies times at each terminus for each journey, intermediate journey times at major points, a route map outlining all streets traversed (for urban areas), a phone number for lost property and complaints and any other relevant information. Such timetable leaflets are to be available from the driver or from a reasonable number of convenient outlets along the route(s). The timetable leaflet is to be available free of charge or at a small nominal charge;

- (b) display a timetable in appropriate display cases at major bus stops or interchanges;
- (c) give adequate notice to the public and publicity for any material timetable variations for the Services; and
- (d) maintain a telephone service between at least the hours of 8:00am and 5:00pm weekdays for the purpose of receiving customer complaints, answering timetable and lost property enquiries.

20 Notices

- 20.1 Subject to clause 12.1, every notice, request, demand, consent, authorisation, approval or other communication under the Contract (a "**Notice**") shall be in writing and either delivered personally or sent by prepaid letter or facsimile and shall be deemed to have been received:
- (a) in the case of a letter, when delivered personally or three days after it has been put in the post; and
 - (b) in the case of a facsimile, at the time the machine at which the facsimile is transmitted displays or records confirmation that transmission has been completed.
- 20.2 A Notice received on a day other than a business day or after 5.00pm on a business day shall be deemed to have been received on the next following business day.
- 20.3 Notices shall be addressed to the Director General at the address or facsimile number set out in Schedule 1 to the Contract,
- or to such other address or facsimile number as the Director General may from time to time notify the Operator.
- 20.4 Notices shall be addressed to the Operator at the address or facsimile number set out in Schedule 1 to the Contract or to such other address or facsimile number as the Operator may from time to time notify the Director General.

21 Delegation

- 21.1 The Director General may delegate any power, function or responsibility that the Director General has under the Contract to any person to whom the Director General may delegate powers, functions or responsibilities under the *Transport Administration Act 1988* (NSW).
- 21.2 Any such delegation may be revoked, changed or delegated, limited or may be subject to such conditions as the Director General determines from time to time and may be made in favour of a nominated person or in favour of the holder of a nominated office or position from time to time.
- 21.3 Any person, or the holder of any office or position, to whom a power, function or responsibility is delegated by the Director General has, to the extent of that delegation and subject to compliance with the terms and conditions of that delegation, full power and authority to act for and on behalf of and to bind the Director General under the Contract.

22 Variation

- 22.1 Except as otherwise set out in the Contract, the Contract may only be varied in writing by a document signed by or on behalf of each party.

23 Dispute Resolution

23.1 Disputes

Unless the parties agree otherwise, a dispute between the parties in connection with the Contract must be dealt with in accordance with this clause 23.

23.2 Negotiation

If there is a dispute between the parties in connection with the Contract, then within 10 business days of a party notifying the other party of a dispute, a senior representative of appropriate seniority and responsibility from each party must meet and use all reasonable endeavours acting in good faith to resolve the dispute within 10 business days of meeting.

23.3 Court proceedings and other relief

- (a) A party may not start court proceedings in relation to a dispute, until it has complied with the obligation to negotiate under clause 23.2.
- (b) Clause 23.3(a) does not prevent either party from applying to a court at any stage for injunctive or other urgent relief.

23.4 Independent expert

If either party notifies the other of a dispute under the Contract which the parties agree is best resolved by an independent expert, the parties will submit to the following procedure prior to any other course of action being taken to resolve the dispute:

- (a) the Director General will nominate an expert from the current panel of at least 4 independent experts that have been selected by agreement between the Director General and the BCA as appropriate experts to resolve disputes under contracts for the provision of Regular Bus Services in Rural and Regional New South Wales (including this Contract);
- (b) the expert must disclose to the parties any conflicts of interest;
- (c) the expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 10 business days, or such longer period as may be agreed between the parties;
- (d) the expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit;
- (e) the expert's decision will be provided in writing and will be final and binding on the parties; and
- (f) the costs of the expert will be borne by the parties equally or as the expert may otherwise determine and each party will bear its own costs relating to the expert's decision.

23.5 Section 65 of the Act

The Operator acknowledges that any dispute resolution procedure brought under this clause 23 or otherwise is subject to Section 65 of the Act.

24 Consents or approvals

Unless expressly provided otherwise in the Contract, the discretion, consent or approval of the Director General may be exercised or given conditionally or unconditionally or withheld by the Director General in his absolute discretion.

25 Director General's capacity

The Director General enters into the Contract on behalf of the Crown in right of the State pursuant to the Act and an obligation or power of the Director General under the Contract is an obligation or power of the Director General in that capacity.

26 Status of the Operator

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 the Contract shall be deemed to be an employee or agent of the Director General or of the State, or employed under the *Public Sector Employment and Management Act 2002* (NSW) by reason only of execution of, or performance of, the Contract.

27 Assignment

27.1 Assignment

- (a) The Operator shall not assign or novate its interest under the Contract without the prior written consent of the Director General (which consent shall not be unreasonably withheld).
- (b) Without limiting the generality of clause 27.1(a), the Operator must have met all reporting requirements under the Contract before the Director General will provide any consent under clause 27.1(a).
- (c) In providing his consent under clause 27.1(a), the Director General shall be entitled to require the novation of the Operator's interest under any relevant existing agreement with any Neighbouring Service Provider to the transferee of the Operator's interest under the Contract.
- (d) The Operator shall reimburse the Director General's reasonable costs incurred in considering and implementing any request for consent under clause 27.1(a).

28 Amalgamation of services

28.1 Amalgamation of contracts held by the Operator

- (a) The Operator shall not amalgamate the Services with any Regular Bus Services carried out under another Rural and Regional Bus Service Contract to which the Operator or a Related Party of the Operator is a party, without the prior written consent of the Director General (not to be unreasonably withheld).
- (b) The Operator shall, at any time during the Term, be entitled to apply to the Director General to amalgamate the Services with any other Regular Bus Services, as described in clause 28.1(a) above.

29 Sub-contracting

29.1 Sub-contracting

- (a) The Operator shall not sub-contract the whole or part of the Services without the prior written consent of the Director General (which consent shall not be unreasonably withheld).
- (b) The Operator acknowledges that any consent given by the Director General under clause 29.1(a) does not release the Operator from any of its obligations under the Contract and the Operator shall remain liable for all acts and omissions of its sub-contractors as if they were acts and omissions of the Operator.

30 Entire Agreement

These terms and conditions, the Contract and any agreement entered into pursuant to 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.

31 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.

32 Further assurances

Each party agrees to execute all documents necessary or desirable to give full effect to the provisions of the Contract.

33 Warranties

33.1 Warranties correct

The Operator represents and warrants to the Director General that, except as disclosed in writing to the Director General prior to the date of the Contract, the statements in clause 33.4 below and any other statements contained in Schedule 2 to the Contract are true, correct and not misleading as at the date of the Contract and on the Service Commencement Date, as if they had also been made on that date.

33.2 Notification of change

The Operator must immediately notify the Director General upon becoming aware that a representation or warranty it has given under clause 33.1 has become untrue or misleading between the date of the Contract and the Service Commencement Date.

33.3 Reliance on warranties

The Operator acknowledges that the Director General has entered, or will enter, into the Contract and any other agreement entered into pursuant to the Contract in reliance on the representations and warranties contained in clause 33.4 below and any other statements contained in Schedule 2 to the Contract.

33.4 Warranties

The Operator warrants and represents to the Director General that:

- (a) all of the information, representations and other matters of fact communicated in writing to the Director General or the Director General's Associates by it and its directors, officers, employees, servants or agents in connection with or arising out of the negotiations in relation to the Contract were (at the dates submitted) and remain, in all material respects, true, accurate and not misleading;
- (b) where the Operator is an incorporated entity, it is a corporation duly incorporated and validly existing under the laws of the State of New South Wales;
- (c) it has the power to enter into and perform its obligations under the Contract, to carry out the transactions contemplated by the Contract and to carry on its business as now conducted or contemplated;
- (d) it has taken all necessary action to authorise the entry into and performance of the Contract and to carry out the transactions contemplated by the Contract;
- (e) the Contract creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (f) the execution and performance by it of the Contract and each transaction contemplated under the Contract did not and will not violate in any respect a provision of its constitution or other constituent documents (if any);
- (g) except as otherwise disclosed to the Director General prior to the date of the Contract, no suit, cause of action, proceeding, application, claim or investigation is current, pending or threatened or in prospect against it or its Subsidiaries (if any) and in particular there is no outstanding workers' compensation claim;
- (h) where the Operator is a company, no resolution has been passed for its winding up or the appointment of an administrator to it and there is no unsatisfied judgment against it;
- (i) where the Operator is a company, there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its assets or income;
- (j) where the Operator is not a company, it has not become bankrupt or committed any act of bankruptcy or brought its estate within the operation of any Law relating to bankrupts;
- (k) each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Contract and the transactions contemplated by the Contract (including the provision of the Services); and
 - (ii) its business as now conducted or contemplated and that is material (including, under the Act),

has been obtained or effected. Each Authorisation 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 the Service Commencement Date;

- (l) 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;
- (m) no breach of the Existing Service Contract has occurred and is continuing; and
- (n) it does not hold any assets which are used in the provision of the Services as the trustee of any trust.

34 Costs and stamp duty

34.1 Except as otherwise agreed in writing by the parties, each party will pay its own costs of negotiation, preparation and execution of the Contract and any other agreement entered into pursuant to the Contract.

34.2 All stamp duty (including fines, penalties and interest) that may be payable on or in connection with the Contract and any other agreement entered into pursuant to the Contract will be borne by the Operator. The Operator must indemnify the Director General on demand against any liability for those costs and that stamp duty.

35 Counterparts

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

36 Governing law and jurisdiction

The 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 the Contract.

Schedule – Dictionary and Interpretation

A. Dictionary

When used in these Standard Terms and Conditions, the following terms have the meanings set out below:

Act means the *Passenger Transport Act 1990* and any Regulations made under the *Passenger Transport Act 1990*.

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 government or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority or any self-regulatory organisation established under statute or a stock exchange.

BCA means the Bus and Coach Association (NSW) Incorporated (or any successor entity which has identical or substantially similar objectives and members).

Change Event means any of the matters listed in clause 6.

Change in Industry Standard means a requirement by the Director General for the Operator to comply with:

- (a) An industry standard or guideline other than the Fleet Procurement Guidelines or any accreditation requirement; or
- (b) any accreditation requirement or Fleet Procurement Guideline which has been amended after the date of the Contract.

Change in Law means the imposition of, change in or repeal of a Law, after the date of the Contract and with which the Operator is bound to comply, which is:

- (a) the imposition of, change in or repeal of a Law of New South Wales; and
- (b) specific to bus operators in the New South Wales bus industry or to the public transport industry in New South Wales,

but excludes:

- (c) any change in application or interpretation of a Law (including a Law of a New South Wales government agency);
- (d) the introduction of or variation to, or change in application or interpretation of, any industrial instrument to which the Operator or an employee of the Operator is or will be bound or subject to;
- (e) a Change in Tax; or
- (f) any change in workers compensation premiums.

Change in Tax means the imposition of, change in (or change in application or interpretation of) or repeal of a tax, levy, impost, duty, charge, assessment, fee or allowance of any nature that is imposed by any governmental agency (including a taxation authority).

Consideration has the meaning given by the GST Act.

Contract Management Plan means a contract management plan prepared and agreed in accordance with clause 11.

Contract means a bus service contract entered into between the Director General and an Operator for the provision of Regular Bus Services in Rural and Regional New South Wales.

Corporations Act means the Corporations Act 2001 (Cth).

Dedicated School Services means Regular Bus Services carried out primarily to cater for the transport of school students.

Director General means the Director General of Transport for NSW or the person acting in such position from time to time and includes the nominees or delegates of the Director General.

Director General's Associates means Transport for NSW, the Transport Administration Corporation (established under the *Transport Administration Act 1988* (NSW)), the Roads and Traffic Authority of New South Wales constituted under the *Transport Administration Act 1988* (NSW), Rail Corporation New South Wales, the Department of Planning, the Minister for Transport and any relevant Roads Authority (as defined in the *Roads Act 1993* (NSW)), the State or any employee, agent, representative, contractor, consultant, delegate or adviser of, or to, the Director-General or those entities.

Fleet Procurement Guidelines means those guidelines set out in Schedule 8 to the Contract.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, 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 Amount means, in relation to a Taxable Supply, the amount of GST payable on that Taxable Supply, being the Consideration to be provided for the supply under the Contract (other than under clause 16.3) multiplied by the prevailing rate of GST (currently 10%).

GST Group has the meaning given by the GST Act.

Guidelines for Managing School Student Behaviour on Buses means the document titled "Guidelines for Managing School Student Behaviour on Buses. A code of conduct for school students and procedures for bus drivers, operators, school principals and parents / guardians / carers" prepared or adopted by the Director General, as amended from time to time.

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.

Invoice has the meaning given by the GST Act.

IPART means the Independent Pricing and Regulatory Tribunal established under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

Journey means a service that consists of both a forward and return trip both of which are shown on a publicly available timetable.

Key Performance Indicators means the indicators specified in Schedule 6 to the Contract as amended from time to time by the Director General.

Law means any statute, regulation, order, rule, subordinate legislation or other document or direction enforceable under any statute, regulation, order, rule or subordinate legislation.

Neighbouring Service Provider has the meaning given to that term in clause 18.1.

Operator means the party identified as the "Operator" in the Contract.

Regular Bus Services has the meaning given in Section 3 of the Act (and, for the avoidance of doubt, includes School Services).

A person is a **Related Party** of a second person if that first person is:

- (a) in partnership or consortium with that second person;
- (b) a related body corporate of that second person (as that term is defined in the Corporations Act);
- (c) controlled by the second person (as that term is defined in the Corporations Act) or they are both controlled by a common person;
- (d) a director or officer of the second person;
- (e) a spouse, de facto spouse, parent or child of that second person or of any person described in (d) above.

Road Transport Legislation means the Road Transport (General) Act 1999 (NSW), the Road Transport (Driver Licensing) Act 1998 (NSW), the Road Transport (Heavy Vehicles Registration Charges) Act 1995 (NSW), the Road Transport (Safety and Traffic Management) Act 1999 (NSW), the Road Transport (Vehicle Registration) Act 1997 (NSW) and any regulation made under any of those acts.

Rural and Regional Bus Service Contract means a contract for the provision of Regular Bus Services in Rural and Regional New South Wales, including the Contract.

School Services means services carried out primarily to cater for transport of primary or secondary school students and that carry few, if any, fare paying passengers who are not school students.

Services means the Regular Bus Services described in Schedule 5 to the Contract.

Service Commencement Date has the meaning given to that term in the Contract.

Service Planning Guidelines means the service planning guidelines set out in Schedule 10 to the Contract, as amended by the Director General from time to time.

Service Viability Review has the meaning given to that term in the Contract.

SSTS Bus Operators Manual means the document titled "School Student Transport Scheme Bus Operators Manual" prepared or adopted by the Director General, as amended from time to time.

Subsidiary has the meaning given to that term in the Corporations Act.

Taxable Supply has the meaning given by the GST Act.

Tax Invoice has the meaning given by the GST Act.

Term has the meaning given to that word in clause 1.1.

Trip means a single trip shown on a publicly available timetable.

B. Interpretation

Except where the context otherwise requires in these terms and conditions or in the Contract:

- (c) The singular includes the plural and conversely and a gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to an agreement or document (including, without limitation, a reference to the Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by the 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 the 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 any governmental department or professional body includes the successors of that body.
- (m) A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- (n) Nothing in the Contract is to be interpreted against a party solely on the ground that the party put forward the Contract or any part of it.
- (o) Where a matter is expressed by reference to a period of months before or after a specified date (the **reference date**), that time period will be determined by reference to whole calendar months expiring on 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).
- (p) A reference to the words "include", "includes" and "including" means "including without limitation".
- (q) A business day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales.