

# Ferry System Contract

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

Transdev Sydney Ferries Pty Ltd in its personal capacity and as nominee for each of the Partners and the Partnership (**Operator**)

ACN 154 815 611 Pty Ltd jointly and severally in its capacity as partner of the Partnership (**Partner**)

ACN 087 535 224 Pty Ltd jointly and severally in its capacity as partner of the Partnership (**Partner**)

(Volume 1 of 3)

# Ferry System Contract

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# Details

Date 20 February 2019

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## Parties

Name **Transport for NSW, a corporation constituted under the *Transport Administration Act 1988 (NSW)* on behalf of the State of New South Wales**  
Short form name **TfNSW**  
Notice details Level 6, 18 Lee Street, Chippendale, New South Wales 2008

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Name **Transdev Sydney Ferries Pty Ltd** ABN 57 156 137 236 in its personal capacity and as nominee for each of the Partners and the Partnership  
Short form name **Operator**  
Notice details Level 8, 469 LaTrobe Street, Melbourne Victoria 3000

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Name **ACN 154 815 611 Pty Ltd** ACN 154 815 611 jointly and severally in its capacity as partner of the Partnership (under the name 'Harbour City Ferries Partnership')  
Short form name **Partner**  
Notice details Level 8, 469 LaTrobe Street, Melbourne Victoria 3000

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Name **ACN 087 535 224 Pty Ltd** ACN 087 535 224 jointly and severally in its capacity as partner of the Partnership (under the name 'Harbour City Ferries Partnership')  
Short form name **Partner**  
Notice details Level 8, 469 LaTrobe Street, Melbourne Victoria 3000

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## Background

- A The PT Act 2014 provides that TfNSW may enter into a passenger service contract on behalf of the State for the provision of a Public Passenger Service with an accredited operator of a Public Passenger Service or the operator of a Public Passenger Service who is not required to be accredited under the PT Act 2014.
- B This Contract is a passenger service contract within the meaning, and for the purposes, of section 39 of the PT Act 2014.
- C The Operator is entering into this Contract in its personal capacity and as nominee for each of the Partners and the Partnership.
- D The Operator, each of the Partners and the Partnership are jointly and severally liable for the obligations of the Operator under this Contract.
- E The Operator has agreed to carry out the Operator Activities on the terms set out in this Contract.
- F TfNSW is the recipient of the benefit of the conduct of the Operator Activities by the Operator.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this Contract:

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

**Accounting Standards** means:

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

**Accreditation** means accreditation or certification of competency to be obtained in accordance with the requirements of any Law including any guideline, regulation or ordinance made pursuant to the PT Act 1990.

**ACMA** means the Australian Communications and Media Authority established under section 6 of the *Australian Communications and Media Authority Act 2005* (Cth).

**ACMA Licences** has the meaning given in the Sydney Ferries ACMA Authorisation.

**Actual Lease Payment** has the meaning given in paragraph 1 of the Payment Schedule.

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

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

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

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

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

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

**Asset Management Audit** has the meaning given in Clause 25.8.

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

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

**Asset Management Plan** means the plan set out in Annexure 6 of the Asset Schedule.

**Asset Schedule** means Schedule 8 to this Contract.

**Assets** means:

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

**Authorisation** includes any Accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, order, declaration, determination, authority or exemption from, by or with a Governmental Agency (including a Safety Authority).

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

**Authorised Officer** has the meaning given in the PT Act 1990 and the PT Regulations.

**Barangaroo Bird Eye Camera Equipment** means the bird eye camera equipment and associated equipment located at each of the locations that is the subject of the Barangaroo Bird Eye Camera Licence.

**Barangaroo Bird Eye Camera Licence** means the document titled *Bird's Eye Camera licence – Barangaroo South – T2 and T3* between Lendlease IMT (LLITST ST) Pty Limited and Lendlease IMT (LLITST) Pty Limited and TfNSW dated 25 October 2017.

**Barangaroo Facility Licence** means a licence between TfNSW and the Operator in the form set out in Annexure 12 of the Asset Schedule.

**Boardings** has the meaning given in the KPI Schedule.

**Boat Builder** has the meaning given in Clause 24.8(a)(i).

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

**Calendar Month** means the period that commences on the first day of the month and ends on the last day of the month.

**Cancelled Trip** has the meaning given in the KPI Schedule.

**Certificate of Competency** has the meaning given in the MS Act.

**Certificate of Operation** has the meaning given in the MS Act.

**Certificate of Survey** has the meaning given in the MS Act.

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

**Change Event** has the meaning given in Clause 41.

**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;
- (b) specifically directed at the Ferry Operations 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 Governmental Agency);
- (d) the introduction of or variation to, or change in application or interpretation of, any industrial instrument to which the Operator or any Staff is or will be bound or subject to;
- (e) any applicable judgment of a relevant court of law which changes a binding precedent;
- (f) any Change in Tax;
- (g) any change in workers compensation premiums;
- (h) a change in Law which was not in force at the date of this Contract but which:
  - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to publicly prior to the date of this Contract; or
  - (ii) a party experienced and competent in the provision of services similar to the Services would have reasonably foreseen or anticipated prior to the date of this Contract;
- (h) the introduction of any emissions tax or law or emissions trading scheme; or
- (i) the imposition of, change in or repeal of an Authorisation after the date of the Contract.

**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).

**Change Notice** means a notice or notices issued by the Operator to TfNSW under Clause 41.3(a) or Clause 41.3(c).

**Change Order** has the meaning given in Clause 41.3(a).

**Circular Quay Redevelopment** has the meaning given in Clause 44.1(a).

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

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

**Class 3 Key Performance Indicator** has the meaning given in the KPI Schedule.

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

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

**Compulsory Acquisition** means requisition for title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, forfeiture or confiscation for any reason of a Contract Ferry by any Governmental Agency, but excludes requisition for use or hire not involving requisition for title.

**Concession Fare** means the Fare that can be charged to an Approved Beneficiary for a Ticket as determined by TfNSW from time to time and which as at the date of this Contract are set out in the Fares and Ticketing Schedule.

**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 recipient party knows or ought to know is confidential.

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

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

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

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

and the word 'Contaminant' has a corresponding meaning.

**Consumer Price Index** or **CPI** has the meaning given in paragraph 1(b) of the Payment Schedule.

**Continuity of the Services** means:

- (a) the continued provision of the Services during the Term in accordance with this Contract (including the requirement to meet or exceed the Key Performance Indicators);
- (b) the continued performance of the Operator's obligations under the Transaction Documents; and

- (c) the orderly handover of the Operator Activities and the transfer of assets by the Operator and the Lead Financier to a Step in Party or Successor Operator as contemplated by this Contract.

**Contract** means this Ferry System Contract.

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

**Contract Ferry** means:

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

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

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

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

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

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

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

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

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

**CPI Annual Multiplier** has the meaning give in paragraph 1(b) of the Payment Schedule.

**CPI Indexed** has the meaning given in Clause 76.

**CQ Disruption Parameters** means the delivery parameters set out in Schedule 17.

**Crew** means individuals employed or engaged by the Operator in any capacity on board a Contract Ferry but excluding a Master.

**Cure Period** has the meaning given in Clause 48.3(b)(iv).

**Cure Plan Date** has the meaning given in Clause 48.2(c)(ii).

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

**DCIS** or **Digital Customer Information System** means the centralised integrated transport information ecosystem that communicates and receives data and information in relation to public transport services, through websites, apps, trip planners, virtual assistants, customer feedback systems and the Transport Infoline.

**DDA Legislation** means:

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

**Dedicated Staff** means:

- (a) Masters and Crew;
- (b) the Operator's Authorised Officers;
- (c) members of Staff who are engaged predominantly to carry out regular maintenance in accordance with this Contract; and

- (d) members of Staff who are predominantly engaged as operations supervisors, customer service representatives and general purpose hands.

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

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

**Defined Benefit Scheme** means each of the following:

- (a) the State Superannuation Scheme or SSS, as constituted pursuant to the *Superannuation Act 1916* (NSW);
- (b) the State Authorities Superannuation Scheme or SASS, as constituted pursuant to the *State Authorities Superannuation Act 1987* (NSW); and
- (c) the State Authorities Non-Contributory Superannuation Scheme or SANCS, as constituted pursuant to the *State Authorities Non-Contributory Superannuation Act 1987* (NSW).

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

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

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

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

**Dispute** has the meaning given in Clause 60.1(a)

**Dispute Notice** has the meaning given in Clause 60.1(d).

**Disruption Event** has the meaning given in Clause 40.1(a).

**Disruption Service Remedy Proposal** has the meaning give in Clause 40.2(b).

**Emergency Replacement Vessel** has the meaning given in Clause 19.5(a).

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

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

and ending on the Termination Date.

**End of Term Novation Notice** means a notice issued under Clause 54.7(b)(ii).

**End of Term Sale Notice** means a notice issued under Clause 54.7(b)(i).

**Environment** means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;



- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

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

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

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

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

**Exclusive Access Wharves** means the RMS Wharves identified as such in Annexure 10 of the Asset Schedule.

**Expenditure** has the meaning given in Clause 41.2(a).

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

**Existing Facility** means each facility listed in Annexure 2 of the Asset Schedule.

**Existing Ferry** means each vessel listed in Annexure 1 of the Asset Schedule.

**Expenditure** has the meaning given in Clause 41.2(a).

**Expert** means an independent expert appointed in accordance with Clause 60.2.

**Expiry Date** means:

- (a) if this Contract is terminated under Clause 6.2, the later of:
  - (i) the date that is five years after the Planned Service Commencement Date; and
  - (ii) the date referred to in Clause 6.2(b)(ii);
- (b) if this Contract is terminated under Clause 6.4, the date that is eight years after the Planned Service Commencement Date; or
- (c) otherwise, the date that is nine years after the Planned Service Commencement Date.

**Fare** means the price payable for a Ticket.

**Fares and Ticketing Schedule** means Schedule 7 to this Contract.

**FATA** has the meaning given in Clause 5.2(k).

**Ferry** has the meaning give in section 4 of the PT Act 2014.

**Ferry Layover** means a designated place (including the Shipyard) where a Contract Ferry is moored overnight or between Service peaks.

**Ferry Operations** means the business of:

- (a) providing the Services (excluding any other use);
- (b) the operation and maintenance of the assets used in the provision of the Services;
- (c) any business or activity associated with the activities described in paragraphs (a) and (b),

to be conducted by the Operator on and from the Service Commencement Date.

**Ferry Operations Systems** means:

- (a) the FOCIS Assets;
- (b) the Microwave Network Repeater Equipment; and
- (c) the Barangaroo Bird Eye Camera Equipment.

**Ferry Operations Systems Modification** means any change, supplement, modification, upgrade, replacement, removal or decommissioning of any or all of the Ferry Operations Systems that is initiated by TfNSW.

**Final Inspection Auditor** has the meaning given in Clause 53.4(a).

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

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

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

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

**Fleet Deployment Plan** means the fleet deployment and replacement schedule set out in Part A of Annexure 3 of the Asset Schedule.

**Fleet Security Deed** means a security deed under which the Operator grants to TfNSW a Security Interest in an Operator New Ferry or Operator Ferry Charterparty in such form as is approved by TfNSW.

**FOCIS Agreement** means the contract entitled *Sydney Ferries Ferry Operations and Customer Information System (FOCIS) Agreement* between Sydney Ferries (its successors or assigns) and Thales Australia Limited, as amended or replaced from time to time.

**FOCIS Assets** means the ferry operations and customer information system and assets which includes the hardware and software solution provided under the FOCIS Agreement.

**Force Majeure Event** means:

- (a) act of public enemy, war (declared or undeclared), terrorism, sabotage, revolution, riot, insurrection, civil commotion or epidemic;
- (b) 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; or
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

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

**Full Fare** means the Fare that can be charged to passengers who are not Approved Beneficiaries for a Ticket as determined by TfNSW from time to time and which as at the date of this Contract are set out in the Fares and Ticketing Schedule.

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

**General Performance Bond Amount** means, subject to Clause 7.7, on any day, the amount which is equal to:

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

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

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

**Governance Schedule** means Schedule 6 to this Contract.

**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) and includes a self regulatory organisation established under statute or a stock exchange.

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

**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.

**Guarantee** means a guarantee, indemnity, letter of credit, legally binding letter of comfort or other obligation of any kind:

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
- (b) to indemnify any person against the consequences of default in the payment of; or
- (c) to be responsible for,

an obligation or monetary liability of another person or the assumption of any responsibility or obligation in respect of the solvency or financial condition of another person.

**Handback Audit** has the meaning given in Clause 53.1(a).

**Handback Audit Assets** has the meaning given in Clause 53.1(b).

**Handback Auditor** has the meaning given in Clause 53.1(a).

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

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

**Handover Information** has the meaning given in Clause 52.3.

**HCF Contract** means the document titled *Ferry System Contract* between TfNSW, the Operator and the Partners dated 3 May 2012.

**HCF Operator** means Harbour City Ferries Pty Ltd ABN 57 156 137 236 (**HCF**) (now Transdev Sydney Ferries Pty Limited) in its personal capacity and as nominee for each of Transdev (Sydney Ferries) Pty Ltd ABN 36 154 815 611 (now ACN 154 815 611 Pty Ltd) and Transdev Ferries Sydney Pty Ltd ABN 83 087 535 224 (now ACN 087 535 224 Pty Ltd) (together the **Partners**), and the partnership under the name 'Harbour City Ferries Partnership' constituted by the Partnership Agreement.

**HCF Service Commencement Date** means 28 July 2012 on or around 2.00am.

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

**Incomplete Trip** has the meaning given in the KPI Schedule.

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

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

**In-Service Hour** means time in hours travelled in performing the Services, in which passengers are able to board the Contract Ferry (for the avoidance of doubt this excludes the time for that Contract Ferry to travel the most direct practicable route between the finishing point of that Service and the starting point of the next Service or between a Ferry Layover and a starting or finishing point of that Service).

**Insolvency Event** means when the Operator, a Partner, the Partnership or the Parent Company:

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

or any other event in respect of the Operator, a Partner, the Partnership or the Parent Company occurs which, under the Laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

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

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

**Issuer** means:

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

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

- (a) any lease, licence or other access to wharves, shipyards or layover areas (other than the State Assets);
- (b) any lease, licence or other access to premises (other than the State Assets);
- (c) any lease, licence or other access to vessels (other than the State Assets);
- (d) any design, construction, procurement, maintenance or refurbishment of any State Asset or Operator New Ferry;
- (e) any work to be undertaken by the Operator at any State Premises or any work undertaken by the Operator, or supply procured by the Operator, in relation to any replacement of a State Asset (including as part of an Offer Commitment);
- (f) any labour hire for Masters, Crew or general purpose hands;
- (g) any labour hire contracts for any maintenance staff; or
- (h) any arrangement with a term that exceeds the Expiry Date,

or that is otherwise designated as a Key Contract under Clause 20.2(l) or Clause 33.2(b).

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

**Key Contract Security Document** means:

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

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

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

**KPI Credit** has the meaning given in the KPI Schedule.

**KPI Default** has the meaning given in the KPI Schedule.

**KPI Event** has the meaning given in Clause 49.1(a)(ii).

**KPI Schedule** means Schedule 4 to this Contract.

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

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

**Late** has the meaning given in the KPI Schedule.

**Law** means:

- (a) any statute, regulation, order, rule or subordinate legislation;
- (b) any other document or direction enforceable under any statute, regulation, order, rule or subordinate legislation; or
- (c) any rules, guidelines, policies, standards, procedures, directives, circulars, codes of practice or requirements relating to or affecting the Operator Activities as may be published by the Commonwealth or New South Wales governments or local councils or Governmental Agencies, with which the Operator is legally required to comply,

and includes the general law.

**Lead Financier** means a financier nominated by the Operator and approved by TfNSW in its absolute discretion.

**Lead Financing Arrangement** means each Operator Ferry Charterparty between the Operator and the Lead Financier.

**Lead Financier Direct Agreement** means an Operator Ferry Charterparty Direct Agreement between the Lead Financier, TfNSW, the Operator and the Partners.

**Lead Financier Leased Asset** means each Operator New Ferry that is the subject to the Lead Financier Agreement.

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

**Licensed Infrastructure** means the infrastructure affixed to the Licensed Area.

**Licensed Area Handover Date** in respect of a Licensed Area, means the handover date specified in Annexure 4 of the Asset Schedule for that Licensed Area.

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

**Manly Ferry Service** means the F1 route between Manly and Circular Quay described in the Service Level Schedule.

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

**Major Projects** has the meaning given in Clause 44.1(a).

**Major Projects Disruption Event** has the meaning given in Clause 44.2.

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

**Market Process Schedule** means Schedule 10 to this Contract.

**Master** means the person in command or charge of a Contract Ferry.

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

**Microwave Network Repeater Equipment** means the microwave transmission equipment and associated equipment located at each of the locations that is the subject of the Microwave Network Repeater Licences and at Circular Quay.

**Microwave Network Repeater Licences** means:

- (a) the agreement dated on or about 2 September 2000 between RMS and TfNSW for premises located on the Sydney Harbour Bridge (Southern Pylon);
- (b) the agreement dated 10 November 2014 between the Owners of Strata Plan No. 6677 C/- Medium Density Management and TfNSW in its own capacity and on behalf of Sydney Ferries for premises located at 2 Bortfield Drive, Chiswick NSW;
- (c) the agreement dated 28 June 2013 between CFO Parramatta Pty Ltd (formerly TAHL Parramatta Pty Ltd) and TfNSW for premises located at the Mercure Sydney Parramatta, 106 Hassall Street, Rosehill NSW;
- (d) the agreement dated 25 June 2015 between the Owners of Strata Plan No. 3601 and TfNSW for premises located at 442-446 Edgecliff Road, Edgecliff NSW;
- (e) the agreement dated 14 November 2011 between the Owners of Strata Plan No. 957 and TfNSW for premises located at 4-8 Kareela Road, Cremorne Point NSW;
- (f) the agreement dated 1 July 2016 between Superloop Limited (previously BigAir Group Pty Ltd) and TfNSW for part of premises located at Concord Repatriation General Hospital, Hospital Road, Concord NSW; and
- (g) the agreement dated 12 September 2011 between Owners of Stata Plan No. 60544 (Licensor) and TfNSW for premises located at 7-17 Wollestonecraft Street, Sinclair.

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

- (a) the Assets; or
- (b) the Operator Activities (or the sequencing or timing of them),

including any addition, extension, reduction, increase, decrease or omission to or from them and includes:

- (c) a Modification that requires the Operator to operate and or maintain additional wharves or shipyards;
- (d) a Modification that TfNSW is permitted to direct in accordance with the terms of this Contract,

but does not include a Service Variation, a Change Event, a Wharf Access Disruption Event or the implementation of any Major Project.

**Modification Approval** means a notice titled 'Modification Approval' issued by TfNSW under Clause 46.3(b)(ii)(A).

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

- (a) the Net Financial Impact of the proposed Modification or, if requested by TfNSW under Clause 47, a Procurement Proposal;
- (b) the time within which the proposed Modification will be implemented;
- (c) any Authorisations required to implement the proposed Modification and the effect of the proposed Modification on any existing Authorisations;
- (d) the effect which the proposed Modification will have on the Operator's ability to satisfy its obligations under this Contract;
- (e) any relief which is required from the Operator's obligation under this Contract to ensure that it is left in a no better or no worse position than it would be in if the Modification were not implemented; and
- (f) any other information required by TfNSW in a Modification Request.

**Modification Order** means a notice titled 'Modification Order' issued by TfNSW under Clause 46.2 or Clause 46.3 for a Modification.

**Modification Request** means a notice titled 'Modification Request' issued by TfNSW under Clause 46.1(a).

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

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

**Monthly Service Payment** means the payment calculated in accordance with paragraph 3 of the Payment Schedule.

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

**Mort Bay Premises** means the premises located at Waterview Street, Balmain with Folio Identifier 1/872105.

**Mort Bay Sublease** means a sublease of the Mort Bay Premises between the Sydney Ferries and the Operator in the form set out in Part A of Annexure 11 of the Asset Schedule.

**Mort Bay Deed of Consent** means a deed of consent in the form set out in Part B of Annexure 11 of the Asset Schedule.

**MS Act** means the *Marine Safety Act 1998* (NSW), and the Marine Safety (Domestic Commercial Vessel) National Law contained within it.

**NCE Cure Plan** has the meaning given in Clause 48.2(c)(ii).

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

**New Contract Material** means any Material brought into existence as part of, or for the purposes of, performing this Contract and includes the Disclosed Information and the Timetables (whether

prepared before or after the commencement of this Contract) and all data provided by the Operator via the OSD or Ferry Operations Systems or DCIS.

**New Ferry** means:

- (a) any Operator New Ferry; and
- (b) any vessel which is acquired by TfNSW or its nominee and which is leased to the Operator under the State Bareboat Charterparty or otherwise during the Term.

**NFI Event** has the meaning given in Schedule 12.

**Non-Compliance Event** means an event identified as such in Clause 48.1.

**Non-Compliance Notice** has the meaning given in Clause 48.2.

**Non-State Fleet Lease Payment** means the payment calculated in accordance with paragraph 6.2 of the Payment Schedule.

**Offer Commitment** means an offer commitment given in paragraph 5 of Schedule 13.

[REDACTED]

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

[REDACTED]

**On Time** has the meaning given in the KPI Schedule.

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

**OpalPay** means the system comprising the OpalPay API, the POS Device App and the POS Device which interfaces with the Opal Ticketing System.

**OpalPay API** means the OpalPay application programming interface (API) developed by TfNSW to permit the POS Devices to connect to the Opal Ticketing System.

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

**Operational Commencement Date** means the date set out in the Business Case for the New Ferry approved by TfNSW under Clause 24.3 by which a New Ferry must be performing all of the Services which the Ferry or vessel is required under the Fleet Deployment Plan or Service Variation.

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

**Operator Asset** means any asset used by the Operator to conduct the Operator Activities including any systems and equipment used by the Operator to provide the On Demand Services, Operator New Ferries and Key Contracts but excluding:

- (a) the State Assets;
- (b) any sum placed on deposit with a bank or other financial institution by the Operator; and



- (c) an asset which TfNSW notifies the Operator is not to be an Operator Asset for the purposes of this Contract.

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

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

**Operator Ferry Charterparty** means a lease, licence or other arrangement under which an Operator New Ferry is leased, licensed, hired or otherwise made available to the Operator by any party other than TfNSW or a TfNSW nominee.

**Operator Ferry Charterparty Direct Agreement** has the meaning given in Clause 26.3(a).

**Operator Financial Arrangement** means any financing arrangement for the purchase of an Operator Asset including a finance lease, hire purchase or chattel mortgage by the Operator from a financier for use in the provision of the Operator Activities. It includes a Lead Financing Arrangement, but excludes any other arrangement that is in the nature of an operating lease, as determined under the Accounting Standards.

**Operator Intellectual Property** means those brands, logos and other registered trade marks used in undertaking the Operator Activities that are owned by, or licensed to, the Operator other than the TfNSW Brand and the TfNSW Marks.

**Operator Leased Ferry** means an Operator New Ferry that is subject to an Operator Ferry Charterparty.

**Operator New Ferry** means a vessel that is purchased, leased, licensed, hired or otherwise accessed or used by, or otherwise made available to, the Operator, with the approval of TfNSW, in accordance with Clause 24 during the Term but does not include a vessel that is leased, licensed, hired or otherwise made available to the Operator by TfNSW or any nominee of TfNSW under the State Bareboat Charterparty or otherwise.

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

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

**Operator Security Deed** means each of the following general security deeds dated on or about the Service Commencement Date:

- (a) a general security deed granted by the Operator in favour of TfNSW;
- (b) a general security deed granted by ACN 154 815 611 PTY LTD (ACN 154 815 611) in favour of TfNSW; and
- (c) a general security deed granted by ACN 087 535 224 PTY LTD (ACN 087 535 224) in favour of TfNSW,

each in substantially the form set out in Part A of Schedule 18.

**Operator Stakeholder Engagement Plan** means the stakeholder engagement plan prepared by the Operator in accordance with Clause 11.7 (and which in the first Contract Year is the plan set out in Schedule 14).

**Operator Owned Ferry** means an Operator New Ferry that is owned by the Operator.

**Operator Ticket Income** means amounts in respect of the Fares for each Ticket received by the Operator from cash, credit card or other Ticket sales. For the avoidance of doubt, Operator Ticket Income does not include Ticketing System Income.

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

**Operator's Associates** means:

- (a) any contractor, consultant or adviser of or to the Operator including any person engaged by the Operator for the purpose of enabling the Operator to comply with its obligations under the Transaction Documents;
- (b) the Parent Company;

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

**Operator's Disruption Management Plan** means the plan set out in Schedule 21 as amended from time to time with TfNSW's approval.

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

**Parramatta River Vessels** means the four vessels identified as "River Class (TfNSW) x4" in the fifth column of the table set out Section 1 of Part A of the Fleet Deployment Plan.

**Partnership** means the partnership under the name 'Harbour City Ferries Partnership' constituted by the Partners.

**Partnership Agreement** means the agreement titled 'Harbour City Ferries Partnership Agreement' between Transdev Sydney Ferries Pty Ltd, ACN 154 815 611 Pty Ltd and ACN 087 535 224 Pty Ltd constituting the Partnership between the Partners dated 20 April 2012 as amended on 13 December 2016.

**Parent Company** means Transdev Australasia Pty Limited (ABN 40 079 303 816).

**Payment Schedule** means Schedule 3 to this Contract.

**Payments** means those payments set out in the Payment Schedule.

**Performance Benchmarks** has the meaning given in Clause 6.3.

**Performance Bond** means:

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

**Permitted Security Interest** means:

- (a) each Security or any collateral security relating to it;
- (b) a Security Interest created or outstanding with the consent of TfNSW (including each Security Interest permitted under an Operator Ferry Charterparty Direct Agreement);
- (c) a Security Interest created or outstanding in respect of an Operator New Ferry with the consent of TfNSW, which consent will not be unreasonably withheld where the holder of that Security Interest enters into a Financier Direct Agreement if required by TfNSW; or
- (d) a lien or charge:
  - (i) which arises by operation of Law or which is in favour of a repairman, workman, storeman or contractor and which arises in the ordinary course of day-to-day trading;
  - (ii) that is a maritime lien on a Contract Ferry for current Master's, officers' or crew wages outstanding in the ordinary course of trading and any lien for salvage or general usage;
  - (iii) that is a statutory lien arising out of any other claim against a Contract Ferry where the liability for such claim is covered by the insurances required to be maintained under this Contract, or where a bond or other counter-security has been posted as security for the full value of the relevant claim;
  - (iv) which does not secure Financial Indebtedness; and
  - (v) under which the indebtedness secured by it is paid when due or is being contested in good faith;
- (e) a Security Interest in favour of a Governmental Agency securing public statutory obligations as long as there is no default in payment of the amount secured or the payment of the amount secured is being contested in good faith; or
- (f) any netting or set off arrangements entered into by the Operator in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances.

**Personal Information** has the meaning given in the Privacy Laws.

**Personal Property Securities Register** means the register established under section 147 of the *Personal Property Securities Act 2009* (Cth).

**Planned Service Commencement Date** means 28 July 2019 at 12.01 am.

[REDACTED]

**Pollution** has the same meaning set out in the *Protection of the Environment Operations Act 1997* (NSW).

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

**POS Device App** means an application and associated network infrastructure developed or utilised by the Operator to connect with the OpalPay API, the Opal Ticketing System or other ticketing system used by TfNSW.

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

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

**Pre-existing Contamination** means any Contamination existing in, on or under or emanated or emanating from any of the RMS Wharves or the Shipyard (or the land or seabed adjoining the RMS Wharves or the Shipyard) at the Service Commencement Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the Service Commencement Date except to the extent the release, leaching or deterioration arises by reason of the act or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the RMS Wharves or the Shipyard from the Operator or enjoying the use or occupation of the RMS Wharves or the Shipyard with the consent of the Operator.

**Pre-existing Superannuation Fund** means a superannuation fund (including Defined Benefit Schemes) of which a Transition In Employee was a member immediately prior to the Service Commencement Date.

**Pre-HCF Employee** means a Transition-In Employee whose employment transferred from Sydney Ferries to the HCF Operator on or about the HCF Service Commencement Date.

**Priority Access Wharves** means the RMS Wharves identified as such in Annexure 10 of the Asset Schedule.

**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).

**Procurement Proposal** has the meaning given in Clause 47.2.

**Proposal** means the proposal submitted by the Operator to TfNSW in response to the Request For Tender issued by TfNSW dated 20 August 2018 with reference number TfNSW2018/032.

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

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

**PT Regulation** means any regulation issued under the PT Act 1990 or the PT Act 2014.

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

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

**Published Timetable Trips** has the meaning given in the KPI Schedule.

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

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

**Radiocommunications Licences** has the meaning given in Clause 11.11(b).

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

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

**Related Entity** has the meaning given in the Corporations Act.

**Related Party Arrangement** has the meaning given in Clause 61.2(a).

**Relevant Amount** has the meaning given in Clause 7.5(f)(iii).

**Relevant Leave** means annual leave, extended/long service leave, accumulated days off (including public holiday leave), leisure leave and maritime leave.

**Reporting Schedule** means Schedule 5 to this Contract.

**Restricted Activity** means any activity (whether commercial or otherwise) that relates to or includes:

- (a) the sale, provision, making available or service of alcohol, tobacco or tobacco products;
- (b) gambling, betting or gaming; or
- (c) anything which is or may be considered to be contentious or offensive.

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

**RMS Wharf** means a wharf identified in Annexure 10 to the Asset Schedule.

**RMS Wharf Upgrade Program** has the meaning given in Clause 44(a)(i)(A)(I).

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

**Route** means the uninterrupted route with no scheduled stops over water along which the Services are operated between the Wharves as specified or described in the Service Level Schedule and any revisions to that route, approved by TfNSW in accordance with Clause 18. For the avoidance of doubt, the Route does not allow or permit the scheduled stopping at any other wharf (or wharves) or berthing at such other wharf (or wharves).

**Safety Authority** means each of RMS, the Australian Maritime Safety Authority, the Office of Transport Safety Investigations, the Australian Transport Safety Bureau, the NSW Coroner, SafeWork NSW, the Port Authority of New South Wales (including the Harbour Master and Vessel Traffic Services) and any other relevant authority under the Transport Laws and WHS Law and any persons appointed by those entities authorised to exercised powers under the Transport Law or WHS Law or otherwise.

**Safety Management Plan** means the Operator's plan for management of safety (including work health and safety and maritime safety) set out in Schedule 16.

**Safety Management System** means a 'safety management system' as required under the MS Act that ensures that the Contract Ferries and the operation of the Contract Ferries are, so far as reasonably practicable, safe.

**Security** means:

- (a) each Operator Security Deed;
- (b) each Specific Security Deed;
- (c) each Fleet Security Deed; and
- (c) each other present or future Security Interest, Guarantee or other document or agreement created or entered into as security (directly or indirectly) for the payment of money or the performance of any obligation in favour of TfNSW under a Transaction Document.

**Security Interest** means:

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

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

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

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

**Service Variation** means a variation to the Contract Service Levels or Timetables in each case that requires:

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

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

**Services** means the timetabled ferry services to be carried on by the Operator on the Routes described in the Service Level Schedule as amended from time to time in accordance with this Contract, and the On Demand Services.

**Services Schedule** means Schedule 1 to this Contract.

**Shipyard** means the premises the subject of the Shipyard Lease and which are known as the Balmain Shipyard.

**Shipyard Fuel Tanks** means the fuel tanks at the Shipyard.

**Shipyard Infrastructure** has the meaning given to that term in the Shipyard Lease.

**Shipyard Lease** means a premises and infrastructure lease between the State Lessor and the Operator in the form set out in Annexure 7 of the Asset Schedule.

**Smartcard** has the meaning given in the PT Act 1990.

**Spares** means rotables, parts and components of Contract Ferries that are required as part of, or for the purpose of carrying out, Asset Management Activities in relation to any aspect of the Operator Activities.

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

**Specific Security Deed** means each of the following specific security deeds dated on or about the Service Commencement Date:

- (a) a specific security deed under which the Parent Company grants to TfNSW a Security Interest in all of the share capital of ACN 154 815 611 Pty Ltd (ACN 154 815 611);
- (b) a specific security deed under which the Parent Company grants to TfNSW a Security Interest in all of the share capital of ACN 087 535 224 Pty Ltd (ACN 087 535 224);
- (c) a specific security deed under which ACN 154 815 611 Pty Ltd (ACN 154 815 611) grants to TfNSW a Security Interest in all of its share capital in the Operator; and

- (d) a specific security deed under which ACN 087 535 224 Pty Ltd (ACN 087 535 224) grants to TfNSW a Security Interest in all of its share capital in the Operator,

each in substantially the form set out in Part B of Schedule 18.

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

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

**State** means the State of New South Wales.

**State Asset Access Agreements** means:

- (a) the State Bareboat Charterparty;
- (b) the Shipyard Lease;
- (c) the Mort Bay Sublease and Mort Bay Deed of Consent;
- (d) the Barangaroo Facility Licence;
- (e) any other agreement or document entered into between TfNSW (or TfNSW's nominees) and the Operator in relation to access to and use of assets required to perform the Operator Activities,

but does not include the Wharf Access Deed.

**State Assets** means:

- (a) the Existing Ferries and associated parts and equipment leased to the Operator under the State Bareboat Charterparty;
- (b) any New Ferry and associated parts and equipment which are acquired by TfNSW or its nominee and which are leased to the Operator under the State Bareboat Charterparty or otherwise during the Term;
- (c) the FOCIS Assets;
- (d) the Barangaroo Bird Eye Camera Equipment;
- (e) Microwave Network Repeater Equipment; and
- (f) the State Premises and the Shipyard Infrastructure.

**State Bareboat Charterparty** means a bareboat charterparty in respect of the Contract Ferries between the State Lessor and the Operator in substantially the form set out in Annexure 8 of the Asset Schedule.

**State Existing Facility Lease** means each lease for the Existing Facilities set out in Annexure 2 of the Asset Schedule in substantially the form set out in Annexure 9 of the Asset Schedule.

**State Lessor** means the entity or entities granting the State Bareboat Charterparty and the Shipyard Lease.

**State Premises** means:

- (a) the RMS Wharves;
- (b) the Shipyard;
- (c) the Mort Bay Premises;
- (d) the premises the subject of the Barangaroo Facility Licence;
- (e) each of the premises the subject of the Barangaroo Bird Eye Camera Licence;
- (f) each of the premises the subject of the Microwave Network Repeater Licences;
- (g) the Existing Facilities; and
- (h) the Licensed Areas.

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

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

**Step in Event** has the meaning given in Clause 49.1(a).

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

**Step in Powers** has the meaning given in Clause 49.2.

**Step in Right** has the meaning given in Clause 49.1(b).

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

**Subsequent Contamination** means:

- (a) any Contamination existing in, on, under or emanated or emanating from any State Premises (or the land or seabed adjoining any State Premises) that was not in existence at the Service Commencement Date to the extent caused or contributed to by an act or omission of the Operator or the Operator's Associates;
- (b) any release, leaching or deterioration of any Pre-existing Contamination which arises by reason of the acts or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the State Premises from the Operator or enjoying the use or occupation of the State Premises with the consent of the Operator;
- (c) any Contamination which migrates:
  - (i) to the State Premises or the land or seabed adjoining any State Premises as a result of an act or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the State Premises from the Operator or enjoying the use or occupation of the State Premises with the consent of the Operator; or
  - (ii) from the State Premises or the land or seabed adjoining any State Premises as a result of an act or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the State Premises from the Operator or enjoying the use or occupation of the State Premises with the consent of the Operator; or
- (d) any Contamination which otherwise arises out of or in connection with the Operator Activities.

**Subsidiary** has the meaning given in the Corporations Act.

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

**Sydney Ferries** means Sydney Ferries being a corporation constituted by section 35A of the TA Act.

**Sydney Ferries ACMA Authorisation** means an authorisation granted by Sydney Ferries to the Operator in the form set out in Annexure 15 of the Asset Schedule.

**Sydney Ferries IP and Records Licence** means a licence agreement between Sydney Ferries and the Operator in the form set out in Annexure 14 of the Asset Schedule.

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

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

**Tax Invoice** has the meaning given by the GST Act.

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

**Term** means the period determined under Clause 6.

**Termination Date** means:

(a) the effective date of termination of this Contract (including where applicable the date set out in a Termination Notice) other than where termination occurs under Clause 6; or

(b) the Expiry Date;

whichever is applicable.

**Termination Event** means any of the events listed in Clause 50.1.

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

(a) Clause 50.2(a); or

(b) Clause 50.3(a).

**TfNSW Advertising Assets** has the meaning given in Clause 57.2.

**TfNSW Asset Information Standards** means the standards and requirements set out in the document titled 'Management of Asset Information Standard' (version 1.0) issued by the Asset Standards Authority on 19 March 2018.

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

**TfNSW Brand** has the meaning given in Clause 56.4(l)(ii).

**TfNSW Brand Style Guide** means a rule book that specifies the requirements for the manner in which all brand devices, logos, strap-lines, positioning statements and other elements of visual representation of all relevant brands will be applied to livery, equipment, uniforms and printed, electronic, video and other visual media, covering all brands including the TfNSW Brand and the Operator's brand, which as the date of this Contract is the document titled *TfNSW Brand Style Guide* dated December 2018 as amended and updated by TfNSW from time to time.

**TfNSW Configuration Management Plan** has the meaning given in paragraph 2(e) of Schedule 8.

**TfNSW Customer Complaints Policy** means any policies, standards and guidelines for the management of customer complaints and feedback as issued and amended by TfNSW from time to time, which as the date of this Contract includes the document titled *Customer Complaints and Feedback Policy* effective from July 2018 and the document titled *Customer Complaints and Feedback Management Standard* dated 30 March 2015 and reviewed on 30 March 2016.

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

**TfNSW Ferry Advertising Guidelines** means the guidelines for advertising on Contract Ferries as issued and amended by TfNSW from time to time, which as the date of this Contract include the panel location diagrams as set out in Schedule 19.

**TfNSW Marks** has the meaning given in Clause 56.4(l)(iii).

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

**TfNSW Systems and Equipment** means systems and equipment installed for or on behalf of TfNSW on any Asset at any time before or during the Term including Ticketing Equipment but excluding the Ferry Operations Systems and OpalPay.

**TfNSW Transport Service Provider Asset Management Plan Standard** means TfNSW's information and analysis requirements for service provider asset management plans as issued and amended by TfNSW from time to time, which as the date of this Contract is the document titled *Transport Service Provider Asset Management Plan Standard* dated December 2016 and reviewed in July 2018.



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

**Third Party Agreements** means:

- (a) the Microwave Network Repeater Licences; and
- (b) the Barangaroo Bird Eye Camera Licence.

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

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

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

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

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

**Transaction Document** means:

- (a) this Contract;
- (b) the State Asset Access Agreements;
- (c) the Wharf Access Deed;
- (d) the Sydney Ferries IP and Records Licence;
- (e) the Sydney Ferries ACMA Authorisation;
- (f) any Key Contract Security Documents, Operator Ferry Charterparty Direct Agreements or Financier Direct Agreements to which the Operator is a party;
- (g) the Performance Bonds;
- (h) the Deed of Guarantee and Indemnity;
- (i) each Security;
- (j) not used;
- (k) any Transfer Out Agreement; and
- (l) any other document or agreement that TfNSW and the Operator agree is to be a Transaction Document for the purpose of this Contract.

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

**Transfer Date** means:

- (a) if this Contract terminates by expiry or otherwise under Clause 6, the Expiry Date, or
- (b) if this Contract terminates other than by expiry (or otherwise under Clause 6), the date notified by TfNSW falling no later than 45 Business Days after the date of termination.

**Transfer Out Agreement** means an agreement entered into in accordance with Clause 54.9 which must be in the form set out in Schedule 20.

**Transfer Time** means 12.01 am (or such other time as is determined by TfNSW) on the Transfer Date.

**Transferee** has the meaning given in Clause 54.3.

**Transition In Assets** means the Assets being used by the HCF Operator to perform its obligations under the HCF Contract but does not include the State Assets.

**Transition In Employees** means the employees of the HCF Operator as at the date that is 30 Business Days prior to the Service Commencement Date.

**Transition In Plan** means the Operator's transition in plan as set out in the Transition Schedule (including the gantt chart attached to the Transition Schedule).

**Transition Milestone** means each milestone identified in the Transition Schedule.

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

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

**Transition Schedule** means Schedule 9 to this Contract.

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

**Transport Laws** has the meaning given in Clause 35.1.

**Transport Minister** means the New South Wales Minister for Transport and Infrastructure.

**Trial Closure Date** has the meaning given in Clause 16.3(h)(ii).

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

**Trip** means any single, one direction service between the Wharves (or any other wharves approved by TfNSW) which forms part of the Services.

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

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

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

**Vessel Termination Payment** means the amount payable for any Operator New Ferry or Operator Ferry Charterparty in respect of an Operator New Ferry as determined by TfNSW in accordance with paragraph 6.3 of the Payment Schedule.

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

**Wage Price Index** or **WPI** has the meaning given in paragraph 1(b) of the Payment Schedule.

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

**Wharf** means a wharf:

- (a) at which a Contract Ferry is capable of stopping to pick up or set down passengers;
  - (b) whether fixed or floating, permanent or temporary,
- and
- (c) which is an RMS Wharf; or

(d) which the Operator may use from time to time with TfNSW's approval.

**Wharf Access Deed** means the document titled *Wharf Access Deed* between TfNSW and RMS as amended from time to time.

**Wharf Access Deed Schedule** means Annexure 10 to the Asset Schedule.

**Wharf Access Disruption Event** has the meaning given in Clause 43.1.

**Wharf Rules** means the 'Wharf Rules' as set out in the Wharf Access Deed.

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

**WHS Law** means:

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

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

**WPI Annual Multiplier** has the meaning given in paragraph 1(b) of the Payment Schedule.

## 1.2 Interpretation

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

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

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

- (aa) Where:
- (i) an obligation has been imposed on an Operator's Associate or the Lead Financier under a Transaction Document;
  - (ii) an obligation has been imposed on the Operator to procure or ensure that an Operator's Associate or the Lead Financier complies with the requirements of a Transaction Document; or
  - (iii) in order to discharge its obligations under a Transaction Document the Operator is required to, or would need to, ensure or procure that an Operator's Associate or Lead Financier complies with that obligation,
- the Operator must ensure or procure that the Operator's Associate or Lead Financier (as the case may be) complies with that obligation.
- (bb) A reference to A\$, \$A, dollar or \$ is to Australian currency.
- (cc) A reference to a consent or approval means prior consent or approval.

### **1.3 Precedence of documents**

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

### **1.4 Consents or approvals**

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

### **1.5 TfNSW's capacity**

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

### **1.6 No implied duty of good faith**

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

### **1.7 Reasonable endeavours**

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

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

## 1.8 Delegation

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

## 1.9 No fetter on TfNSW's Powers

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

## 1.10 Transfer of functions

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

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

### 1.11 Effect of certificates issued by TfNSW

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

### 1.12 Joint and several liability of the Operator, the Partners and the Partnership

- (a) The Operator enters into the Transaction Documents in its personal capacity and as nominee for each of the Partners and the Partnership. References to the Operator in the Transaction Documents include the Operator in those capacities, the Partnership and the Partners.
- (b) The obligations, undertakings, representations, warranties, indemnities and liabilities of the Operator are given and assumed jointly and severally by each of the Operator, the Partners and the Partnership. They bind each of the Operator, the Partners and the Partnership jointly and severally.
- (c) Any notice, consent, approval, waiver, acknowledgement, representation, warranty, promise, undertaking, nomination, agreement or similar act or thing given by or to the Operator under or in connection with any Transaction Document binds the Operator, each of the Partners and the Partnership and is deemed to have been given by or to the Operator, each of the Partners and the Partnership.
- (d) The Transaction Documents continue to bind each of the Operator, the Partners and the Partnership despite the dissolution or change at any time in the constitution of the Partnership.
- (e) TfNSW may conclusively rely on any conduct or document of or signed by the Operator as being authorised by and binding on each of the Operator, the Partners or the Partnership without the need for further enquiry.

## 2. Parties' Representatives

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

### 3. Contract Objectives

- (a) The Operator acknowledges that:
- (i) the primary purpose of this Contract is to ensure that the Services are run by an efficient and experienced ferry transport operator, which is able to sustain improvements in service delivery and value for money and assist TfNSW in developing longer term service expansion and fleet procurement strategies; and
  - (ii) TfNSW's principal objectives (**Contract Objectives**) in entering into this Contract are to:
    - (A) enhance the mobility of residents and visitors in Sydney to support the maintenance and ongoing development of successful and sustainable communities;
    - (B) deliver best in class transport services with an experienced, capable and innovative operator that meets contractual targets;
    - (C) provide transport journeys and related customer services that are safe for passengers, employees and the general public;
    - (D) improve the customer experience, service delivery and integration of public transport services between the ferry network and other modes;
    - (E) realise TfNSW's plans for Sydney's local and intermediate transport network (including on demand ferry services);
    - (F) increase value for money for TfNSW, with scope for the Operator to realise more efficient and productive approaches to service delivery and maintenance;
    - (G) ensure strong asset stewardship from a whole of life perspective using robust and evidence based asset management practices;
    - (H) maintain reliable, timely and transparent reporting and data management on the performance of the operations and contract activities; and
    - (I) enshrine values of financial, environmental and social sustainability.
- (b) The Operator must perform its obligations under the Transaction Documents having regard to the Contract Objectives.

### 4. Contract risks

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

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## Part A– Service Commencement and Term

### 5. Conditions Precedent for commencement of Contract

#### 5.1 Commencement

This Contract (other than Clauses 1, 2, 5, 7, 8, 9, 11.3, 35, 38, 39, 48, 50, 55, 56, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75) does not commence until the conditions precedent set out in Clause 5.2 have been satisfied in accordance with this Clause 5.



## 5.2 Conditions precedent

Subject to Clause 5.3(a), the Operator must ensure that the following conditions precedent are fulfilled to TfNSW's satisfaction prior to the Planned Service Commencement Date:

- (a) delivery to TfNSW of the General Performance Bond(s), in accordance with Clause 7.1;
- (b) delivery to TfNSW of the executed Deed of Guarantee and Indemnity in accordance with Clause 8;
- (c) the Operator has obtained approval of the first Operator Communications and Marketing Plan by TfNSW in accordance with Clause 11.3(d);
- (d) delivery to TfNSW of evidence satisfactory to it that the Operator has obtained the insurances required by Clause 38.1;
- (e) delivery to TfNSW of evidence satisfactory to TfNSW that the Operator and the Staff hold the necessary Authorisations to conduct the Services and other related Operator Activities;
- (f) delivery to TfNSW of counterparts of:
  - (i) the State Bareboat Charterparty;
  - (ii) the Shipyard Lease;
  - (iii) all documents and information required under the Wharf Access Deed to enable a licence to be granted to the Operator pursuant to Clause 22; and
  - (iv) the Mort Bay Sublease;
  - (v) the Mort Bay Deed of Consent;
  - (vi) the Barangaroo Facility Licence;
  - (vii) the Sydney Ferries IP and Records Licence;
  - (viii) the Sydney Ferries ACMA Authorisation; and
  - (ix) the State Existing Facility Leases,executed by the Operator;
- (g) delivery to TfNSW of counterparts of each Operator Security Deed executed by:
  - (i) the Operator;
  - (ii) ACN 154 815 611 PTY LTD (ACN 154 815 611); and
  - (iii) ACN 087 535 224 PTY LTD (ACN 087 535 224),as applicable;
- (h) delivery to TfNSW of counterparts of each Specific Security Deed executed by:
  - (i) the Operator;
  - (ii) the Parent Company;
  - (iii) ACN 154 815 611 PTY LTD (ACN 154 815 611); and
  - (iv) ACN 087 535 224 PTY LTD (ACN 087 535 224),as applicable;
- (i) delivery to TfNSW of a certified copy of each Lead Financing Arrangement properly executed by the Operator and the Lead Financier;
- (j) delivery to TfNSW of counterparts of the Lead Financier Direct Agreement properly executed by the Lead Financier and the Operator;
- (k) delivery to TfNSW of evidence of notification under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) from the Australian Treasurer that there is 'no objection' under the FATA (either unconditionally or on conditions acceptable to TfNSW and the Operator) to all of the 'notifiable actions' and 'significant actions' (as those terms are defined in the FATA) contemplated by or otherwise related to this Contract;

- (l) delivery to TfNSW of evidence to TfNSW's satisfaction that the Operator is authorised to enter into each Transaction Document and any other document to be entered into in connection with this Contract including any necessary amendment to the Partnership Agreement;
- (m) not used;
- (n) delivery to TfNSW of evidence satisfactory to TfNSW of the due execution and enforceability of the Deed of Guarantee and Indemnity by each party to it (other than TfNSW) including, if any party is not an Australian entity, a legal opinion in form and substance, and issued by a law firm, acceptable to TfNSW;
- (o) TfNSW being satisfied that each document required to be delivered under Clause 5.2 has been duly executed in a form approved by TfNSW and is in full force and effect or is conditional only on the occurrence of the Service Commencement Date under this Contract;
- (p) delivery to TfNSW of each certificate, confirmation, grant, assurance, conveyance, deed and other document of title or evidencing title to, or rights to acquire, possess, use or dispose of, any property secured by each Security that is required to be delivered under this Clause 5.2;
- (q) TfNSW having received each document required to be delivered under Clauses 5.2(g), 5.2(h) and 5.2(j) (**Security Documents**), properly executed by the relevant parties and:
  - (i) in registrable form, together with all things (including documents) necessary to register the Security Documents in each relevant jurisdiction and evidence satisfactory to TfNSW of the registration on the Personal Property Securities Register of each financing statement (each as defined by the PPS Law) required by TfNSW to perfect any Security Interest created under the Security Documents;
  - (ii) evidence satisfactory to TfNSW that each Security Document has been stamped in all relevant jurisdictions and any other taxes of a similar nature have been paid;
  - (iii) results satisfactory to TfNSW of all searches and enquiries relating to the property granted as security under each Security Document; and
  - (iv) duly completed and executed discharges and releases, in registrable form, of any Security Interest (other than a Permitted Security Interest) existing over the property the subject of a Security Document;
- (r) TfNSW being satisfied of there being no material breach, and there being no facts or circumstances that may reasonably be expected to lead to a material breach, of any of the warranties set out in Clause 58; and
- (s) TfNSW being satisfied that the Operator has satisfied or complied with any other requirements that the Operator is required to satisfy or comply with under the Transaction Documents on or prior to the Planned Service Commencement Date.

### 5.3 Certificate of Service Commencement

- (a) Without limiting Clause 5.2, the Operator must satisfy, or procure the satisfaction of, the conditions precedent in Clauses 5.2(i) and 5.2(j) by no later than 1 May 2019.
- (b) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions in Clause 5.2 has been satisfied (or waived by TfNSW), TfNSW will issue to the Operator a Certificate of Service Commencement specifying the Service Commencement Date.
- (c) The Service Commencement Date will be a date on or after the Planned Service Commencement Date (unless TfNSW and the Operator agree otherwise).

### 5.4 Consequences of non-fulfilment of conditions precedent

If the Operator fails to:

- (a) comply with the conditions precedent in Clauses 5.2(i) and 5.2(j) by 1 May 2019. or
- (b) otherwise comply with Clause 5.2,

TfNSW may terminate this Contract by issuing a notice to the Operator with immediate effect and, subject to Clauses 50.5 and 75, this Contract will be of no further effect and the Operator has no Claim against TfNSW in respect of such termination.

## 6. Term

### 6.1 Term

- (a) The Term commences on the Service Commencement Date and continues until the Expiry Date, unless earlier terminated in accordance with this Contract (other than under this Clause 6).
- (b) For the avoidance of doubt, the Term is not extended if the Services are not commenced (regardless of the reason) by the Planned Service Commencement Date.

### 6.2 Performance review

- (a) Not later than the date that is nine months prior to the fifth anniversary of the Planned Service Commencement Date, TfNSW must determine whether the Operator has met the Performance Benchmarks as at the end of the fourth Contract Year and notify the Operator accordingly.
- (b) If TfNSW notifies the Operator under Clause 6.2(a) that the Operator has not met the Performance Benchmarks, TfNSW may, by giving notice to the Operator, terminate this Contract with effect from the later of:
  - (i) the date that is the fifth anniversary of the Planned Service Commencement Date; or
  - (ii) another date nominated by TfNSW in the notice of termination issued under this Clause 6.2(b) which must be no earlier than the date that is the fifth anniversary of the Planned Service Commencement Date and no later than the date that is the sixth anniversary of the Planned Service Commencement Date.
- (c) The Operator has no Claim against TfNSW in relation to the termination of this Contract under Clause 6.2(b).
- (d) Nothing in this Clause 6 in any way limits TfNSW's rights in respect of any breach by the Operator or the Operator's Associates of any Transaction Document including under Clauses 48, 49 and 50 or otherwise at Law.
- (e) For the avoidance of doubt, TfNSW may itself, or through a third party, carry out the Operator Activities after termination under this Clause 6.2.

### 6.3 Performance Benchmarks

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

(b) TfNSW may waive any of the Performance Benchmarks or any non compliance with them.

**6.4 Early termination at end of eighth Contract Year**

(a) TfNSW may, by giving not less than 12 months' notice to the Operator, terminate this Contract for any reason with effect from the date that is the eighth anniversary of the Planned Service Commencement Date.

[Redacted text block]

(c) If TfNSW terminates this Contract pursuant to this Clause 6.4, the Operator will be entitled to payment in accordance with Clause 50.3(b) but otherwise has no Claim against TfNSW in relation to such termination.

(d) For the avoidance of doubt, TfNSW may itself, or through a third party, carry out the Operator Activities after termination under this Clause 6.4.

[Large redacted text block]

## 6.6 No entitlement to new contract or extension of contract

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

## 7. Performance Bonds

### 7.1 Performance Bonds

- (a) The Operator must, prior to the Planned Service Commencement Date, procure the issue to TfNSW of one or more performance bonds each of which:
  - (i) is in the form set out in Attachment B;
  - (ii) is issued by an Issuer with the Required Rating and approved by TfNSW (which approval must not be unreasonably withheld);
  - (iii) has a face amount which, when aggregated with the face amount of any other performance bond provided under this Clause 7.1(a) (or any replacement provided under Clauses 7.2, 7.3 or 7.4), is no less than the General Performance Bond Amount;
  - (iv) is unconditional and irrevocable;
  - (v) expires no earlier than:
    - (A) 12 months after the end of the Term; or
    - (B) two years after the date it is issued to TfNSW; and
  - (vi) is issued, and available to be drawn at, an office of the Issuer in Sydney.
- (b) The Operator must, at least six months prior to the Expiry Date provide to TfNSW a performance bond for the amount referred to in Clause 53.1(c)(iv) (**Estimated Amount**) that complies with the requirements of Clauses 7.1(a)(i), (ii), (iv), (v) and (vi) (**Handback Security Bond**).
- (c) If the Operator fails to provide a Handback Security Bond in accordance with Clause 7.1(b), then TfNSW may withhold the Estimated Amount from the Payments (provided that TfNSW will not withhold more than ■■■ of the Estimated Amount from payments due in any one month). TfNSW may use the amounts withheld on the same conditions as it may use the Handback Security Bond under this Contract and the unused part of any amounts withheld will be paid to the Operator on the earlier of:
  - (i) the time that the Handback Security Bond would have been returned had it been provided; and
  - (ii) the time that the Operator provides the Handback Security Bond in accordance with its obligations under this Clause 7.1.

### 7.2 Available amount

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

### 7.3 Trigger Date

If the Trigger Date of a Performance Bond occurs at any time prior to the date that is 12 months after the end of the Term the Operator must procure the issue to TfNSW of a replacement

performance bond which complies with the requirements of Clause 7.1 prior to the occurrence of the Trigger Date for the Performance Bond.

#### **7.4 Required Rating**

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

#### **7.5 Demands under bonds**

- (a) TfNSW may only make a demand under the Performance Bonds in accordance with this Clause 7.5.
- (b) TfNSW may have recourse to more than one of the Deed of Guarantee and Indemnity and the Performance Bonds.
- (c) TfNSW may make a demand under the Performance Bonds where:
  - (i) any amount has become due and payable (and has not been paid) by the Operator or the Operator's Associates to TfNSW or a Successor Operator under or in connection with a Transaction Document (including any amount which TfNSW is entitled to set off under the Transaction Document);
  - (ii) TfNSW has a good faith Claim to any amount whether for damages (including liquidated damages) or under an indemnity or otherwise relating to the Operator Activities or any Transaction Document; and
  - (iii) the Operator or the Operator's Associates may or will become liable to pay any amount to TfNSW or a Successor Operator in respect of their obligations under a Transaction Document following the Termination Date.
- (d) If the Operator does not comply with Clause 7.2, 7.3 or 7.4, TfNSW may demand the full General Performance Bond Amount as at the relevant time, provided that:
  - (i) the amount paid to TfNSW as a result of the demand must be paid to the Operator as soon as practicable after a replacement General Performance Bond is provided to TfNSW in accordance with Clause 7.2, 7.3 or 7.4 (whichever is applicable) (but for this purpose the amount received by TfNSW under this paragraph is to be disregarded in determining the General Performance Bond Amount which the replacement General Performance Bond must satisfy); or
  - (ii) if a replacement General Performance Bond has not been provided to TfNSW by the date falling 12 months after the end of the Term, TfNSW must pay the Operator the amount, if any, paid to TfNSW as a result of the demand under this Clause 7.5(d) less any amount in respect of which TfNSW was or would have been entitled to make a demand in accordance with Clause 7.5(c) at any time on or before that date,  
  
without any interest being owed in respect of such amount.
- (e) TfNSW may make a demand irrespective of whether or not the amount is, or the circumstances relating to the amount are:
  - (i) in dispute between the parties; or
  - (ii) subject to any court or other proceedings.
- (f) If:
  - (i) the Issuer of a Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 7.5(c)(i) and all or part of the amount in respect of which demand was made was not actually payable by the Operator or the Operator's Associates to TfNSW or a Successor Operator; or
  - (ii) the Issuer of a Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 7.5(c)(ii) or 7.5(c)(iii) and the Operator or the Operator's Associates do not in fact become liable to pay to TfNSW or a

Successor Operator all or part of the amount in respect of which the demand was made,

then TfNSW must pay to the Operator (as the Operator's sole remedy):

- (iii) the amount which was not actually due and payable by the Operator or the Operator's Associates to TfNSW or a Successor Operator or for which the Operator or the Operator's Associates did not in fact become liable to pay to TfNSW or a Successor Operator (**Relevant Amount**); and
- (iv) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Performance Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Operator. Such interest must be paid on the date the Relevant Amount is paid to the Operator.
- (g) TfNSW must, as soon as practicable after TfNSW has made a demand under a Performance Bond, give a notice to the Operator specifying TfNSW's reasons for making the demand.
- (h) The aggregate amount of demands that TfNSW may make under all of the General Performance Bonds may not exceed the General Performance Bond Amount as at the relevant time.
- (i) The Operator must not take any steps to restrain or injunct TfNSW from making a demand under a Performance Bond or the Issuer paying, or TfNSW using, any amounts under a Performance Bond.

## 7.6 Return of Performance Bonds

- (a) TfNSW must return to the Operator an existing Performance Bond once TfNSW has received a replacement Performance Bond under Clause 7.2, 7.3 or 7.4.
- (b) TfNSW must, subject to any rights TfNSW may have in relation to the Performance Bond, return the Performance Bonds (less any amounts drawn under Clause 7.5) to the Operator within 10 Business Days after the date this is 12 months after the end of the Term.

## 7.7 HCF Performance Bond

- (a) This Clause 7.7 applies if TfNSW returns to the Operator the performance bond(s) that was provided by the Operator under the HCF Contract (**HCF Performance Bond**).
- (b) The Operator acknowledges and agrees that, in addition to TfNSW's rights under Clause 7.5, TfNSW may make a demand under the Performance Bond(s) in relation to any matter or circumstance where TfNSW would have been entitled to make a demand under the HCF Performance Bond in accordance with the HCF Contract but for the expiry of the HCF Contract and as if those obligations subsisted.
- (c) There will be no adjustment to the General Performance Bond Amount under the definition of General Performance Bond Amount in relation to any demand on the Performance Bond(s) made by TfNSW under this Clause 7.7. For the avoidance of doubt, if TfNSW makes a demand on the Performance Bond(s) under this Clause 7.7, the Operator must within 10 Business Days after such demand is paid to TfNSW provide TfNSW with a replacement performance bond that complies with Clause 7.1(a) in the amount so paid.

## 8. Deed of Guarantee and Indemnity

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

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## Part B– Day One Operator Activities

### 9. Day One Operator Activities

#### 9.1 Transition

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

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

so as to ensure that the Services are able to be commenced by the Planned Service Commencement Date. The Operator must comply with Clause 24 in relation to the new river class vessels (1 to 10) and the new emerald class vessels (1 to 3) identified in the Fleet Deployment Plan.

#### 9.2 Consequences of failure to achieve Key On Demand Milestones

If the Operator fails to achieve any of the transition milestones referred to in items 4, 7 and 11 in the table headed "On Demand Transition Milestones [Bays Precinct On Demand Trial]" set out in Schedule 15 (**Key On Demand Milestones**) by the relevant transition milestone date for each of those milestones set out in that table respectively then:

- (a) that failure will be deemed to be a Non-Compliance Event;
- (b) TfNSW may nominate one or more of TfNSW's Associates (**Nominated Party**) to undertake the necessary works or actions required to ensure compliance with the Key On Demand Milestone in which case the Operator must cooperate, and procure the cooperation of the Operator's Associates, with TfNSW and the Nominated Party in the exercise of TfNSW's rights under Clause 9.2(b);
- (c) without limiting Clause 9.2(b), the Operator must give access, and procure that the Operator's Associates gives access, to TfNSW and the Nominated Party to:
  - (i) the State Premises or any other premises from which Ferry Operations are conducted; and
  - (ii) any information TfNSW or the Nominated Party reasonably requires, to enable TfNSW or the Nominated Party to exercise TfNSW's rights under Clause 9.2(b),
- (d) the Operator must pay to TfNSW on demand all costs and expenses reasonably incurred by TfNSW in exercising its rights under Clause 9.2(b), including the costs and fees of the Nominated Party; and
- (e) to the extent TfNSW considers it necessary to:
  - (i) undertake any activity; or
  - (ii) give any direction,

the Operator indemnifies and at all times will keep indemnified on demand TfNSW, TfNSW's Associates and the Nominated Party from and against any Loss that TfNSW, TfNSW's Associates or the Nominated Party may suffer or incur to or from any person (including any liability to the Operator or any Operator's Associate) arising out of the undertaking of the activity, giving of any direction, or performance or authorisation of the performance of any works or activity.



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## Part C – Service Delivery

### 10. Performance of Services

#### 10.1 Commencement of Services

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

#### 10.2 General Service obligations

The Operator must at all times during the Term:

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

#### 10.3 Non exclusivity

- (a) The right to provide the Services under this Contract is non-exclusive.
- (b) The Operator acknowledges that TfNSW may contract with one or more service providers to provide Public Passenger Services along or near the Routes and catchment zones for On Demand Services specified in this Contract.
- (c) Nothing in, or contemplated by, the Transaction Documents or elsewhere confers on the Operator:
  - (i) any ownership of, or property or proprietary right in or over, the Routes or catchment zone for any On Demand Services;
  - (ii) any other right or interest to operate any Public Passenger Service or other transport service other than the Services (**Other Services**); or

- (iii) any right to provide or be paid for Other Services.
- (d) The Operator has no Claim against TfNSW in relation to the award, provision, operation or amendment of Other Services or the establishment, award, provision or operation of any new Public Passenger Services by TfNSW.
- (e) If a Service Variation decreases, omits, deletes or removes any part of the Routes or Services, TfNSW may thereafter carry out the omitted routes or services itself or by engaging another person to provide the routes or services.

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## Part D– Service requirements

### 11. Publication and display of public transport information and marketing

#### 11.1 General requirements

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

#### 11.2 Transport information

- (a) The Operator must provide real time information to TfNSW and customers in accordance with the Services Schedule.
- (b) The Operator must:
  - (i) actively participate in the governance processes for Transport Infoline as reasonably required by TfNSW;
  - (ii) promote Transport Infoline as the primary customer interface for information regarding the Services, trip planning and customer feedback, particularly on published information such as websites, promotional material and other literature at Wharves and within Contract Ferries in a format reasonably required by TfNSW; and
  - (iii) not compete with or duplicate Transport Infoline.

#### 11.3 Operator Communications and Marketing Plan

- (a) No later than:
  - (i) 20 Business Days prior to the Planned Service Commencement Date; and
  - (ii) subsequently, 40 Business Days prior to the commencement of each Contract Year (excluding the first Contract Year),

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

- (iii) identify the marketing context for the plan and identified marketing opportunities for the Contract Year;
- (iv) state the marketing objectives for the Contract Year (for example, patronage growth, safe use of public transport or operational communication);
- (v) identify audience profile and insights including the Operator's approach to market segmentation and target audiences;

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

#### **11.4 Social media**

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

#### **11.5 Other requirements**

The Operator must:

- (a) unless otherwise agreed by TfNSW, ensure that all marketing materials are provided to TfNSW for approval prior to publication;
- (b) unless otherwise agreed by TfNSW, not publish or make publicly available any marketing materials which have not been approved by TfNSW;
- (c) produce the Operator's marketing materials in accordance with the Operator Communications and Marketing Plan;
- (d) where requested to do so by TfNSW, make advertising space available on Contract Ferries in accordance with Clause 57.3(e) and do all things reasonably required by TfNSW to install TfNSW marketing campaign materials on the Contract Ferries; and
- (e) maintain any TfNSW marketing campaign materials in good condition, replacing them where necessary with replacement materials provided by TfNSW and removing them when required by TfNSW.

## 11.6 Wayfinding Signage Upgrade

- (a) The Operator acknowledges that TfNSW is undertaking a system wide upgrade of all wayfinding signage across the New South Wales public transport network covering all modes and locations.
- (b) The Operator must ensure that any new signage installed on the Assets during the Term complies with the Wayfinding Guidance Documents.

## 11.7 Operator Stakeholder Engagement Plan

- (a) No later than 40 Business Days prior to the commencement of each Contract Year (excluding the first Contract Year), the Operator must prepare and submit to TfNSW a draft of the Operator Stakeholder Engagement Plan covering the relevant forthcoming Contract Year which must:
  - (i) identify the stakeholder engagement activities to be undertaken by the Operator including providing details of:
    - (A) relevant stakeholders to be engaged with during the Contract Year;
    - (B) focus areas for engagement;
    - (C) information to be provided to stakeholders;
    - (D) the proposed format of reporting on stakeholder responses and feedback to TfNSW; and
    - (E) how the proposed engagement is aligned with TfNSW stakeholder engagement plans for the relevant Contract Year and any other TfNSW stakeholder engagement policies or directions issued in respect of the relevant Contract Year;
  - (ii) be in a form that is no less detailed than the initial Operator Stakeholder Engagement Plan set out in Schedule 14; and
  - (iii) be consistent with TfNSW policies, guidelines and programs advised to the Operator prior to the submission date and updated from time to time.
- (b) Within 10 Business Days after submission of a draft Operator Stakeholder Engagement Plan under Clause 11.7(a), TfNSW may provide comments on the draft Operator Stakeholder Engagement Plan.
- (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under Clause 11.7(b), the Operator must provide to TfNSW for its approval a revised version of the Operator Stakeholder Engagement Plan amended to incorporate any comments provided by TfNSW under Clause 11.7(b).
- (d) The Operator must only undertake stakeholder engagement and community consultation in accordance with the final Operator Stakeholder Engagement Plan approved by TfNSW under this Clause 11.7 (or in the first Contract Year, in accordance with the initial Operator Stakeholder Engagement Plan set out in Schedule 14).
- (e) The parties acknowledge and agree that the Operator Stakeholder Engagement Plan may be updated by the Operator during the Contract Year. The Operator must notify TfNSW of any updates and follow the process set out in this Clause 11.7.

## 11.8 Safety of passengers and the public

The Operator must discharge its obligations in relation to the safety of passengers and the public under:

- (a) its duty of care at common law; and
- (b) all other applicable Laws, including the Transport Laws and WHS Law.

## 11.9 Offer Commitments

- (a) The Operator must meet its obligations in respect of Offer Commitments as set out in Schedule 13.

- (b) Any failure by the Operator to meet its obligations in respect of an Offer Commitment has the consequences specified in relation to that Offer Commitment in Schedule 13, or where no consequence is specified, will be deemed to be a Non-Compliance Event.

#### **11.10 Lost property system**

The Operator must obtain and maintain sufficient software licences in respect of TfNSW's lost property management system from time to time, and ensure that sufficient Staff are trained to use that system, to enable the Operator to perform its obligations under the Services Schedule.

#### **11.11 Sydney Ferries IP and Records Licence and Sydney Ferries ACMA Authorisation**

- (a) The Operator must at all times during the Term comply with the Sydney Ferries IP and Records Licence and the Sydney Ferries ACMA Authorisation.
- (b) The Operator acknowledges that the ACMA Licences the subject of the Sydney Ferries ACMA Authorisation expire during the Term and that the Operator may require replacement licences or alternative or additional licences for the purposes of the Ferry Operations during the Term (**Radiocommunications Licences**).
- (c) The Operator will be responsible for procuring Radiocommunications Licences including by obtaining apparatus licences from the ACMA under the *Radiocommunications Act 1992* (Cth).
- (d) The Operator must obtain TfNSW's consent prior to applying for any Radiocommunications Licence.
- (e) The Operator must comply with any reasonable direction of TfNSW in relation to a Radiocommunications Licence including to facilitate the transfer of a Radiocommunications Licence to, or use of a Radiocommunications Licence by, a third party (for example, by granting a third party authorisation or by cancellation of a Radiocommunications Licence).

#### **11.12 Compliance with NSW Government, TfNSW and other standards**

Without limiting the Operator's other obligations under the Transaction Documents, the Operator must comply with:

- (a) all New South Wales Government and TfNSW policies and guidelines as notified to the Operator by TfNSW from time to time; and
- (b) all Australian standards,

to the extent that they relate to or affect the provision of the Services.

#### **11.13 Commercial opportunities**

- (a) Except as provided for in Clause 19.2, Clause 20.3 and Clause 57 the Operator may only pursue commercial opportunities in relation to the Assets or the Services (including advertising, or granting rights to third parties to advertise, on TfNSW Advertising Assets) provided it first obtains the consent of TfNSW and complies with any conditions that may be imposed by TfNSW in respect of such opportunities (including revenue sharing arrangements for the purposes of paragraph 7 of the Payment Schedule).
- (b) Notwithstanding any other provision of this Contract, the Operator must not, and must not permit any other person to carry on any Restricted Activity in relation to or in connection with the Ferry Operations or, on or in connection with any of the Assets, without the consent of TfNSW.
- (c) The gross revenue from any other use authorised under this Clause 11.13 will be shared between the Operator and TfNSW and accounted for in the manner set out in paragraph 7 of the Payment Schedule as amended in accordance with any conditions imposed by TfNSW under Clause 11.3(a).

## 12. Service Desk

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

## 13. Key Performance Indicators

- (a) Unless expressly provided for in the KPI Schedule, the Operator must meet or exceed the Key Performance Indicators from the Service Commencement Date.
- (b) TfNSW will measure the Operator's performance against the Key Performance Indicators.
- (c) The Operator must comply with its obligations relating to the measurement and reporting of Key Performance Indicators and the remedy of any breaches of the Key Performance Indicators as set out in the KPI Schedule.

## 14. Fares and Ticketing

### 14.1 Fares

- (a) The Operator must offer Fares for Tickets to travel on Services in accordance with the categories and prices outlined in the Fares and Ticketing Schedule and as amended by TfNSW and notified to the Operator from time to time. The Operator must comply with all directions issued by TfNSW regarding Fares for Special Event Services.
- (b) The Operator must not offer or charge any other fare for Tickets to travel on Services without approval from TfNSW of the other fare proposed, such approval being given at TfNSW's absolute discretion.
- (c) The Operator must deal with all revenue from the sale of Tickets in accordance with Item 10 of the Services Schedule and account for all revenue from the sale of Tickets in accordance with the Payment Schedule.
- (d) The Operator:
  - (i) acknowledges and agrees that Division 2 of the PT Act 2014 applies to this Contract; and
  - (ii) must cooperate with any review of fares and other charges undertaken by the Independent Pricing and Regulatory Tribunal of New South Wales (**IPART**) and comply with all directions to provide information to IPART.

### 14.2 Ticketing and revenue protection

- (a) The Operator must take reasonable steps to ensure all passengers travelling on a Service have a valid Ticket, including that the Ticket is valid for the journey being taken by the passenger.
- (b) The Operator authorises TfNSW, and persons for and on behalf of TfNSW, to enter and remain on any Contract Ferry providing Services or any Wharf for the purpose of carrying out Ticket inspection and revenue protection activities.
- (c) The Operator must ensure that the Staff comply with any reasonable direction given to them by TfNSW, or a person for and on behalf of TfNSW, carrying out the activities referred to in Clause 14.2(b).
- (d) Subject to the terms of this Contract:
  - (i) TfNSW will be responsible for the collection of fare revenue in using the Ticketing Equipment and OpalPay. The Operator acknowledges and agrees that:
    - (A) subject to Clause 14.2(d)(i)(B), TfNSW will remit the Ticketing System Income to the Operator. TfNSW may from time to time issue policies and procedures to the Operator regarding the calculation and transfer of Ticketing System Income with which the Operator must comply.; and
    - (B) TfNSW may direct the Operator that Operator Ticket Income and or Ticketing System Income will be retained by TfNSW in which case:
      - (I) in the case of Operator Ticket Income, TfNSW may direct the Operator to remit the Operator Ticket Income to TfNSW by way of an off set in accordance with paragraph 3.1 of the Payment Schedule; and
      - (II) in the case of Ticketing System Income, paragraph 12(b) of the Payment Schedule will apply;
    - (C) if the aggregate of Operator Ticket Income and the Ticketing System Income in any Calendar Month exceeds the Monthly Service Payment for that Calendar Month the Operator must pay to TfNSW the amount of the excess within 20 Business Days after the end of that Calendar Month;
  - (ii) the Operator will be responsible for the collection of any other fare revenue on the Services (including, for the avoidance of doubt, on any On Demand Services which is not connected to the Opal Ticketing System or OpalPay);

- (iii) the Operator will be responsible for protection of fare revenue to the extent specified in the Services Schedule;
  - (iv) the Operator is not entitled to any fine revenue received by the Operator; and
  - (v) the Operator must remit to TfNSW all fine revenue received by the Operator.
- (e) The Operator must minimise fare evasion on the Services including by:
- (i) operating in accordance with all relevant TfNSW policies as notified by TfNSW to the Operator from time to time;
  - (ii) providing TfNSW with assurance (to the satisfaction of TfNSW) that the Operator's Authorised Officers (to the extent that the Operator chooses to engage Operator's Authorised Officers) are competent and trained to be appointed as and undertake the duties of Authorised Officers;
  - (iii) producing a monthly fare evasion report as specified by TfNSW;
  - (iv) co-operating with TfNSW in implementing fare evasion strategies as required by TfNSW, including twice yearly fare evasion surveys; and
  - (v) co-operating with and providing access to TfNSW, TfNSW Authorised Officers and the NSW Police to enable them to undertake revenue protection and crime prevention activities.

#### **14.3 Prohibition on disincentives, penalties and discounts**

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

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

#### **14.4 Travel free of charge**

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

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

The requirements of this Clause 14.4 do not apply in relation to On Demand Services.

#### **14.5 Government Subsidised Travel Schemes**

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

#### **14.6 Compliance by agents**

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

#### **14.7 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 Ferries, and any premises or facilities used by the Operator or the Operator's Associates (including the State Premises), to carry out their statutory duties and functions.



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[REDACTED]

## 15. TfNSW Systems and Equipment

### 15.1 TfNSW Systems and Equipment

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

- (g) If any TfNSW Systems and Equipment on a Contract Ferry fails to operate while the Contract Ferry is performing a Service, the Operator must ensure that the Contract Ferry is taken out of service until the faulty system or equipment is repaired or replaced, in accordance with the following timeframes:
  - (i) immediately if a safety issue arises;
  - (ii) when the Contract Ferry returns to the Shipyard or other maintenance facility, if the failure occurs to a TSE Rotable Asset; or
  - (iii) at the end of the day for any other failures.
- (h) The Operator must not:
  - (i) use the TfNSW Systems and Equipment (or any Intellectual Property in the TfNSW Systems and Equipment) for any purpose other than the performance of its obligations under this Contract; or
  - (ii) use any TfNSW Systems and Equipment on vessels that are not Contract Ferries, without the approval of TfNSW.
- (i) The Operator agrees to enter into any agreement with TfNSW or its nominee, on reasonable commercial terms considered necessary by TfNSW, in relation to any TfNSW Systems and Equipment, when requested by TfNSW to do so. Such agreement will prevail over this Clause 15.1 to the extent of any inconsistency, unless otherwise agreed.
- (j) The Operator must allow TfNSW or TfNSW's Associates to remove TfNSW Systems and Equipment from each Asset, including by making such Asset or other Operator premises available on reasonable notice from TfNSW.
- (k) If the Operator repairs any damage to any Asset caused by TfNSW when installing, testing, maintaining or removing TfNSW Systems and Equipment, TfNSW will reimburse the Operator the reasonable direct costs of repairing such damage.

## 15.2 Participation in the DCIS

- (a) The Operator must participate in the DCIS (or any successor or additional service developed by TfNSW or any of TfNSW's Associates for use by TfNSW).
- (b) The Operator must advertise the DCIS (or any successor service) phone number and internet address on its published Timetables, website, promotional material and other literature at Wharves and within Contract Ferries in a format reasonably required by TfNSW.
- (c) TfNSW will pay the centralised costs in respect of Transport Infoline (including software licensing fees).
- (d) TfNSW may give the Operator access to data collected by DCIS as required for the purpose of managing its business and for planning and marketing purposes, subject to reasonable conditions, qualifications or restrictions as TfNSW may impose.
- (e) The Operator acknowledges that all data collected by DCIS will constitute New Contract Material and the title and property to Intellectual Property in or in relation to all data collected by DCIS will vest in TfNSW, in accordance with Clause 56.1.

## 15.3 Ferry Operations Systems

- (a) TfNSW grants to the Operator a non-exclusive, non-transferable licence to use the Ferry Operations Systems for the sole purpose of undertaking the Ferry Operations during the Term.
- (b) The licence granted under Clause 15.3(a) terminates in respect of any Ferry Operations System on the earlier of the removal or decommissioning of a Ferry Operations System pursuant to a Ferry Operations System Modification or an Offer Commitment.
- (c) The Operator acknowledges and agrees that:
  - (i) it accepts the Ferry Operations Systems on an "as is" basis, in whatever condition they are in when they are made available to the Operator;

- (ii) TfNSW and TfNSW's Associates make no warranty, representation or guarantee with respect to the condition, functionality or adequacy of the Ferry Operations Systems for the purpose of undertaking the Ferry Operations or facilitating the ability of the Operator to meet its obligations under the Transaction Documents, and the Operator has no Claim against TfNSW in respect of any Losses that arise in this regard; and
- (d) to the extent that the Operator makes use of the Ferry Operations System and any Ferry Operations System Modification, it does so at its sole cost and risk.

**15.4 OSD**

- (a) The Operator must submit data to the OSD, as required by the Reporting Schedule.
- (b) The Operator acknowledges that all data submitted to the OSD will constitute New Contract Material and the title and property to Intellectual Property in or in relation to all data submitted to the OSD will vest in TfNSW, in accordance with Clause 56.1.

**15.5 Compatibility of information systems**

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

**15.6 Development of customer facing information systems**

Without limiting Clause 15.5, during the Term the Operator must:

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

in a timely manner and without delay, to ensure that the Operator's customer facing systems are co-ordinated, compatible, interoperable and integrated with TfNSW's customer facing systems in a way that enables customers to plan, book, pay and provide feedback for an end-to-end journey using the channel (including phone, single applications, intelligent personal assistant and website) of their choice.

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## Part E– Planning and service changes

### 16. Operator role in planning

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**16.2 Review of Contract Services Levels and Timetables**

- (a) The Operator must:
  - (i) undertake reviews of the Contract Service Levels and Timetables at least annually;
  - (ii) work collaboratively with TfNSW to:
    - (A) develop the Services having regard to the Contract Objectives and the requirements of this Contract; and
    - (B) consider and develop innovative strategies to:
      - (I) utilise capacity;
      - (II) optimally manage dead running and the efficient use of Wharves;
      - (III) improve the safety of the Services and minimise impacts on the Environment; and
      - (IV) improve the security of the Operator's transport network; and
  - (iii) proactively engage and collaborate with key stakeholders in accordance with the Operator Stakeholder Engagement Plan.

- (b) Within 40 Business Days after the end of each Contract Year the Operator must submit to TfNSW a report recommending any changes to the Contract Service Levels and Timetables to facilitate the outcomes of the reviews conducted under Clause 16.2(a).
- (c) In developing the report required under Clause 16.2(b) and in submitting any other proposals to TfNSW in respect of proposed changes to the Contract Service Levels and Timetables, the Operator must have regard to:
  - (i) navigational safety, especially in areas of congestion on Sydney Harbour and the Parramatta River, and Environmental impacts;
  - (ii) current patronage and likely future patronage changes;
  - (iii) the needs of passengers and key stakeholders;
  - (iv) TfNSW service level guidelines and polices;
  - (v) efficient use of Wharves and management of capacity and dead running;
  - (vi) interconnectivity of the Services with other transport services (other than the Services) available in Sydney (including rail, light rail and bus services);
  - (vii) innovation, including the introduction of on demand services;
  - (viii) the funding envelope and timing of funding available for public transport in Sydney; and
  - (ix) any new or amended Contract Service Levels requested by TfNSW.
- (d) TfNSW is not obliged to in any way to adopt the recommendations provided in the Operator's report submitted in accordance with Clause 16.2(b), and the Operator must not make any changes to the Contract Service Levels or Timetables described in the report unless and until TfNSW issues a notice for a change to Contract Service Levels under Clause 17.1(b).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

17. Contract Service Levels and Timetables

17.1 Contract Service Levels

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

## 17.2 Timetables

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

## 18. Service Variations

- (a) TfNSW may at any time during the Term, require a Service Variation by way of notice to the Operator (**Service Variation Notice**).
- (b) The Service Variation Notice must state:
  - (i) the particulars of the Service Variation; and
  - (ii) the date on which the Service Variation will take effect, which:
    - (A) other than in the event of an emergency (as determined by TfNSW), must be after a reasonable period of time determined by TfNSW to enable the Operator to comply with the Service Variation Notice; and
    - (B) in the event of an emergency (as determined by TfNSW), will be immediately.
- (c) The Operator must comply with the Service Variation Notice and make any necessary amendments to its operations so that it complies with the Service Variation Notice.
- (d) Subject to Clause 40.2(d), the Operator is entitled to Payment for a Service Variation required by TfNSW in accordance with the Payment Schedule.
- (e) The Operator may request a Service Variation, by way of notice to TfNSW via the TSAR system. The Operator must have consulted with TfNSW in accordance with Clause 16.2 prior to submitting a Service Variation request that comprises any change to the Contract Service Levels or Timetables.
- (f) TfNSW may approve or reject a request for a Service Variation from the Operator.
- (g) Any request for a Service Variation from the Operator must as a minimum set out:
  - (i) a description of the proposed Service Variation, including any impact on the Routes and Timetables;
  - (ii) the impact of the proposed Service Variation on the Operator's ability to meet the Key Performance Indicators; and
  - (iii) the proposed price adjustment, based on paragraphs 4.2, 4.3 and 4.4 of the Payment Schedule (including any pricing adjustments required to be provided under Clause 16.1(n)).
- (h) Unless and until TfNSW approves any request from the Operator for a Service Variation:
  - (i) the request for a Service Variation will be of no effect;

- (ii) the Operator must not act upon the request for a Service Variation; and
- (iii) the Operator will not be entitled to any payments in connection with its request for a Service Variation.

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## Part F– Assets

### 19. Contract Ferries

#### 19.1 Performance of the Services using Contract Ferries

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

#### 19.2 Other Use of Contract Ferries

- (a) The Operator may only use a Contract Ferry for a purpose other than the provision of the Services:
  - (i) when the Contract Ferry is not required for the performance of the Services; and
  - (ii) provided that such use:
    - (A) does not adversely affect the Continuity of the Services;
    - (B) does not adversely affect the ability of the Operator to comply with Clause 53;
    - (C) does not breach the State Bareboat Charterparty or any replacement of that lease;
    - (D) does not adversely affect TfNSW's rights under a Transaction Document; and
    - (E) is otherwise at the Operator's sole cost and risk.
- (b) Without limiting Clause 19.2(a), the Operator must ensure that the use of Contract Ferries for the purposes of providing charter services does not affect the ability of the Operator to comply with Clause 19.3(b)(ii).
- (c) The gross revenue from any other use authorised under this Clause 19.2 will be shared between the Operator and TfNSW and accounted for in the manner set out in paragraph 7 of the Payment Schedule.

#### 19.3 Contract Ferry standard

- (a) The Operator must ensure that:
  - (i) each Contract Ferry is registered and licensed in accordance with all Laws and complies with all Authorisations;
  - (ii) each Contract Ferry:
    - (A) complies with the Asset Schedule and all Laws;
    - (B) is operated and maintained:
      - (I) in accordance with Part G; and
      - (II) in accordance with Good Industry Practice and so as to ensure that it is always in a condition which enables the Operator to comply with its obligations under this Contract;
    - (C) is clean and tidy and meets the standards required under Annexure 5 of the Asset Schedule when providing the Services;

- (D) is in a safe operating condition at all times and is maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations, including the DDA Legislation; and
  - (E) displays illuminated destination signs (if available) stating the destination and or the Route.
- (b) The Operator must:
- (i) have available to it enough Contract Ferries to meet its obligations under this Contract;
  - (ii) only use the best available Contract Ferries to provide the Services having regard to reasonable operational requirements and the condition, cleanliness, features and age of all Contract Ferries;
  - (iii) comply with its obligations under the State Bareboat Charterparty or any replacement of that lease; and
  - (iv) monitor and manage the security and safety of the Staff and passengers on the Contract Ferries.
- (c) Without in any way limiting the application of the other provisions of this Contract, the parties acknowledge and agree that all costs of complying with the DDA Legislation will be borne by the Operator except only for the costs of any:
- (i) works to RMS Wharves which are Priority Access Wharves (as defined in the Wharf Access Deed);
  - (ii) upgrades to the Ticketing Equipment; or
  - (iii) implementation of or changes to the Ferry Operations Systems but excluding any replacement of the Ferry Operations Systems delivered by the Operator as an Offer Commitment;

in each case necessarily required to ensure their respective compliance with relevant DDA Legislation; or

- (iv) structural works to any Contract Ferry existing at the date of this Contract or procured by the State, or where such structural works are impossible, the replacement of such Contract Ferry with the approval of TfNSW, necessarily required to ensure that the relevant Contract Ferry complies with applicable requirements under DDA Legislation relating only to:
  - (A) the size and accessibility of toilets;
  - (B) the size of access paths (as that term is defined in the DDA Legislation);
  - (C) the size of manoeuvring areas (as that term is defined in the DDA Legislation);
  - (D) the size of passing areas; or
  - (E) the size of doorways and doors.

#### **19.4 Non compliant Contract Ferries**

If a Contract Ferry is damaged or vandalised so as to affect the Continuity of the Services or does not meet the requirements set out in Clause 19.3 the Operator must:

- (a) remove it from service as soon as practicable, having regard to the nature of the failure, the Law and Authorisations, and the best interests of passengers;
- (b) replace it with a compliant Contract Ferry;
- (c) promptly repair or restore it; and
- (d) not return it to use until it meets the requirements set out in Clause 19.3 and the Continuity of the Services are no longer affected.

## 19.5 Use of non-compliant Contract Ferries

- (a) The Operator may use a replacement Ferry or other vessel which is not a Contract Ferry (**Emergency Replacement Vessel**) 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 Vessel is to be used in an emergency:
  - (i) the Operator must notify TfNSW as soon as practicable (and in any event, not later than 24 hours after it is first used) explaining the particulars of the emergency and details of the Emergency Replacement Vessel used;
  - (ii) the Operator must ensure that the Emergency Replacement Vessel is the best available Ferry or other vessel and at a minimum complies with Clause 19.3(a);
  - (iii) the insurances required under Clause 38 must be effective in relation to the Emergency Replacement Vessel and the use of the Emergency Replacement Vessel;
  - (iv) the Operator must ensure that the use of the Emergency Replacement Vessel will not materially adversely affect the provision of the Services; and
  - (v) the Payments will not be adjusted.

## 20. Infrastructure

### 20.1 Infrastructure standards

The Operator must:

- (a) comply with the State Asset Access Agreements that relate to the State Premises;
- (b) monitor and manage the safety and security of Staff at, and visitors to, the State Premises and all other premises used by the Operator in the conduct of the Operator Activities (**Other Premises**);
- (c) consider, manage and take reasonable steps to minimise the impact of the Ferry Operations conducted at the State Premises and Other Premises on neighbouring properties;
- (d) use the Shipyard Infrastructure in accordance with the manufacturers' and suppliers' specifications, recommendations and services standards;
- (e) ensure that the State Premises and any other premises used by the Operator in connection with the Ferry Operations:
  - (i) are and remain at all times fit for the purposes of enabling the Operator to perform its obligations under the Transaction Documents;
  - (ii) comply with the Asset Schedule and all Laws and Authorisations, in addition to any other requirements imposed in any other Transaction Documents;
  - (iii) are maintained:
    - (A) in accordance with Part G; and
    - (B) in accordance with Good Industry Practice and so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract;
  - (iv) are clean and tidy and meet the standards required under Annexure 5 of the Asset Schedule (if applicable); and
  - (v) are in a safe operating condition at all times and are maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations, including the DDA Legislation; and

- (f) ensure that the State Premises and any other premises used by the Operator in connection with the Ferry Operations:
  - (i) are operated in accordance with all Laws and Authorisations and any other requirements imposed in any other Transaction Documents; and
  - (ii) are operated in accordance with Good Industry Practice and so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract; and
- (g) except to the extent necessary for the purposes of complying with this Contract, not:
  - (i) alter or modify the State Assets; or
  - (ii) carry out, procure or allow the carrying out of, any works or services on the State Assets,
 without the consent of TfNSW and the applicable owner of the property.

## 20.2 Third Party Agreements

- (a) In this Clause 20.2, a reference to a 'Third Party' is a reference to the licensor under the relevant Third Party Agreement as identified in Annexure 13 of the Asset Schedule.
- (b) In performing the Operator Activities, the Operator:
  - (i) must comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of each Third Party Agreement (other than those obligations identified in the relevant table in Annexure 13 of the Asset Schedule as being obligations that the Operator is not required to perform) as if it were named as the relevant licensee in that Third Party Agreement so as to ensure that TfNSW is able to fully meet (or procure compliance with) the licensee's obligations under each Third Party Agreement or otherwise at Law;
  - (ii) must assist TfNSW in any way that TfNSW reasonably requires to enable TfNSW to perform (or ensure the performance of) the obligations identified as not being obligations that the Operator is required to perform in each table in Annexure 13 of the Asset Schedule;
  - (iii) must comply with any conditions set out in each table in Annexure 13 of the Asset Schedule; and
  - (iv) may not exercise any of the licensee's Powers under any Third Party Agreement without the consent of TfNSW.
- (c) Nothing in this Clause 20.2 limits TfNSW's rights or affects the Operator's obligations under this Contract.
- (d) The Operator acknowledges that:
  - (i) it has been provided with copies of the Third Party Agreements prior to the date of execution of this Contract; and
  - (ii) it has reviewed and carefully considered the Third Party Agreements.
- (e) To the extent that the obligations on the Operator in relation to the Third Party Agreements under this Clause 20.2 impose greater or more onerous obligations on the Operator than other provisions of this Contract, the Operator must satisfy and meet the obligations of the licensees under the Third Party Agreements.
- (f) Except as expressly set out in this Contract, the Operator bears the full risk of:
  - (i) complying with the obligations under this Clause 20.2; and
  - (ii) any acts or omissions of a Third Party or its employees, agents, contractors or officers,

and the Operator has no Claim against TfNSW, Sydney Ferries or the State Transit Authority of NSW arising out of or in any way in connection with the risks referred to in this Clause 20.2 or any acts or omissions of a Third Party or their employees, agents, contractors or officers.

- (g) The Operator must, in carrying out the Operator Activities:
  - (i) comply with any reasonable directions of the TfNSW Representative relating to any Third Party Agreements;
  - (ii) ensure that no act or omission of the Operator constitutes, causes or contributes to any breach by TfNSW, Sydney Ferries or the State Transit Authority of NSW of any Third Party Agreement or TfNSW's, Sydney Ferries' or the State Transit Authority of NSW's obligations at Law;
  - (iii) comply with the restrictions, liabilities, requirements and obligations that apply to the relevant licensee under, and in relation to, the Third Party Agreements as if the licensee were to exercise those functions; and
  - (iv) otherwise act consistently with the terms of each Third Party Agreement.
- (h) The Operator must promptly provide TfNSW with copies of all documents, notices, information or other communications received from any Third Party under any of the Third Party Agreements.
- (i) Where under this Clause 20.2 the Operator is required to give a document, notice or information to a Third Party, the Operator must not provide any such document, notice or information directly to the Third Party unless and until the Operator has provided a draft of such document, notice or information to TfNSW within a reasonable time sufficient for TfNSW to review and comment on the document, notice or information prior to its release to the Third Party.
- (j) The Operator acknowledges that to the extent that a Third Party makes no representation as to any state of affairs, the Operator agrees that TfNSW similarly makes no representation to the Operator in respect of that state of affairs.
- (k) Whenever, pursuant to the terms of a Third Party Agreement, the relevant licensee makes an acknowledgement or gives a release, warranty, indemnity or covenant to the Third Party under any clause of a Third Party Agreement, the Operator is deemed to make the same acknowledgement or give the same release, warranty, indemnity or covenant to TfNSW on the same terms as the acknowledgement, release, warranty, indemnity or covenant made or given by the relevant licensee.
- (l) The Operator acknowledges that the Microwave Network Repeater Licences expire during the Term and that the Operator may require the premises the subject of the Microwave Network Repeater Licences or alternative or additional premises for the purposes of operating the Microwave Network Repeater Equipment or other equipment for the purposes of the Ferry Operations during the Term (**Operational Sites**).
- (m) The Operator will be responsible for procuring access to such Operational Sites including by entering into formal licence agreements or other arrangements in relation to the Operational Sites. The Operator must obtain TfNSW's consent prior to entering into any licence agreement or other arrangements in relation to any Operational Site. Any such licences or access arrangements are deemed to be Key Contracts.

### 20.3 Other Use

- (a) The Operator may only use the Shipyard for a purpose other than conducting the Ferry Operations if it does not:
  - (i) adversely affect the Continuity of the Services;
  - (ii) breach the Shipyard Lease or any replacement of that lease;
  - (iii) adversely affect TfNSW's rights under a Transaction Document; or
  - (iv) increase the likelihood of a Clean Up Notice being served on either party in respect of the Shipyard.
- (b) The gross revenue from any other use authorised under this Clause 20.3 will be shared between the Operator and TfNSW and accounted for in the manner set out in paragraph 7 of the Payment Schedule.



## 21. Operating Licence

### 21.1 Licensed Areas

- (a) Subject to the terms of this Contract, TfNSW grants to the Operator a non-exclusive licence to use and occupy, and to permit the Operator's Associates to use and occupy the areas identified in Annexure 4 of the Asset Schedule as 'Licensed Areas' (**Licensed Area**) for the purpose of performing the Operator Activities.
- (b) The licences granted under this Clause 21.1 commence on the applicable Licensed Area Handover Date (**Licence Commencement Date**) and terminate on the Termination Date.
- (c) The rights conferred by this Clause 21.1 are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Area.
- (d) The Operator must comply with any easements, restrictions on use, covenants, agreements or other similar arrangements burdening or benefiting the land contained in the Licensed Area as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW) as at the relevant Licence Commencement Date.
- (e) The Operator must not use the Licensed Area for any purpose other than the Operator Activities.

### 21.2 Utility Services and Rates

The Operator is responsible for all costs associated with Rates and Utility Services required to perform the Operator Activities (including in respect of State Premises).

### 21.3 Access to waterways

The Operator is solely responsible for procuring access to any waterway (including Sydney Harbour and the Parramatta River) for the purposes of performing its obligations under the Transaction Documents.

## 22. Wharf Access Deed

### 22.1 Wharf Access

- (a) In consideration of the Operator complying with its obligations under Clause 22.2, TfNSW grants the Operator a licence for the Term to exercise the rights conferred on TfNSW under the Wharf Access Deed in relation to the RMS Wharves on the terms and conditions contained in the Wharf Access Deed and the Wharf Rules, but subject to the constraints stipulated in the Wharf Access Deed Schedule.
- (b) The Operator must procure such access to Wharves that are not RMS Wharves as it may from time to time require to enable it to comply with its obligations under the Transaction Documents. The Operator must obtain and comply with all Authorisations necessary to use such other Wharves for the purposes of complying with its obligations under the Transaction Documents.

### 22.2 Wharf Access Deed

The Operator must:

- (a) perform and comply with all of TfNSW's obligations under the Wharf Access Deed (including the Wharf Rules) as if those obligations were restated in full in this Contract for the benefit of TfNSW, except to the extent expressly stated otherwise in the Wharf Access Deed Schedule; and
- (b) unless directed in writing otherwise by TfNSW, deal directly with Roads and Maritime Services in relation to its performance of those obligations.

### **22.3 Variation, replacement or termination of the Wharf Access Deed**

- (a) Without affecting any of the parties' other rights and obligations under this Contract, TfNSW may vary, replace or otherwise terminate the Wharf Access Deed at any time during the Term.
- (b) Where the Wharf Access Deed is varied, replaced or terminated, the Operator agrees, at its sole cost and expense subject to Clause 43, to do all such things as may be reasonably necessary to give effect to the new arrangements for the purposes of the Transaction Documents.

## **23. Environment and Contamination**

### **23.1 Condition of Infrastructure**

- (a) The Operator must at all times during the Term ensure that in carrying out the Operator Activities:
  - (i) Contaminants are not discharged without an Authorisation;
  - (ii) a condition of pollution does not arise and is not likely to arise;
  - (iii) no breach of any Environmental Law occurs;
  - (iv) no industrial waste or potentially hazardous substance is abandoned, disposed of or dumped at the State Premises; and
  - (v) no industrial waste or potentially hazardous substance is handled in a manner which causes or is likely to cause an environment hazard or breaches any Environmental Law.
- (b) The Operator must:
  - (i) obtain and maintain in full force and effect and comply with the terms of all Authorisations required in order to perform the Operator Activities or release or emit anything from the State Premises into the air or water or on to the ground or into the Environment;
  - (ii) permit TfNSW to enter the State Premises on reasonable notice to enable TfNSW to satisfy itself that the State Premises have not been Contaminated (including without limitation to conduct any sampling or testing required to ascertain the nature of any Contamination) and that no breach of an Environmental Law has occurred;
  - (iii) advise TfNSW of the existence of any Contamination or Pollution of, or emanation from, the State Premises contrary to any Environmental Law as soon as the Operator becomes aware of the matter; and
  - (iv) as soon as reasonably practicable, and in any event within two Business Days, after receipt of any penalty notice or direction or other notice or complaint issued under any Environmental Law in relation to the State Premises give full details of it and copies of any notices, directions, or other instruments to TfNSW.
- (c) Not later than:
  - (i) in respect of the State Premises made available to the Operator at the Service Commencement Date, two months after the Service Commencement Date; and
  - (ii) in respect of any State Premises made available to the Operator after the Service Commencement Date, two months after the Operator commences carrying out Operator Activities from those premises,

the Operator must:

- (iii) obtain a report prepared by an independent and suitably qualified third party approved by TfNSW regarding the existing condition of the State Premises including the existence of any Contamination at the State Premises in a form (including sampling and testing methodology) that is satisfactory to TfNSW acting reasonably (**Baseline Condition Report**); and
- (iv) provide TfNSW with a copy of the Baseline Condition Report.

### **23.2 Subsequent Contamination**

The Operator is responsible for all Subsequent Contamination and must:

- (a) dispose of, or otherwise deal with, Subsequent Contamination in accordance with Law and Authorisations; and
- (b) remediate to the standard required by Law and Authorisations, the State Premises to the extent to which:
  - (i) they are in any way degraded by Subsequent Contamination; or
  - (ii) the Subsequent Contamination is of such a nature that an Environmental Auditor or other relevant Governmental Agency could issue a statutory notice requiring it to be remediated or it is otherwise necessary at Law for it to be remediated;
- (c) remediate to the standard required by Law and Authorisations the land and seabed adjoining any State Premises (and any other land to which any Subsequent Contamination has migrated) to the extent to which:
  - (i) it is in any way degraded by Subsequent Contamination; and
  - (ii) the Subsequent Contamination is of such a nature that an Environmental Auditor or other relevant Governmental Agency could issue a statutory notice requiring it to be remediated or it is otherwise necessary at Law for it to be remediated.

In this Clause 23.2 the term 'remediate' includes to remove, disperse, abate, destroy, dispose of, treat, cap, contain, evacuate or manage and any associated testing, monitoring and assessment.

### **23.3 Contamination at other premises**

The Operator is solely responsible for any Contamination in, on or under any land or premises supplied by the Operator for the purposes of performing the Operator Activities (including Wharves that are not RMS Wharves).

### **23.4 Clean Up Notices**

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

- (vi) to the extent that the Clean Up Notice relates to Pre-existing Contamination, TfNSW will at its sole cost and expense be responsible for complying with the Clean Up Notice; and
  - (vii) the Operator must provide TfNSW, RMS or Sydney Ferries with such access to the State Premises and other assistance as TfNSW, RMS or Sydney Ferries may reasonably require in order to investigate, assess or manage the risk created by the existence or suspected existence of any Pre-existing Contamination.
- (b) If TfNSW and the Operator cannot agree within a reasonable period to what extent the Clean Up Notice relates to Pre-existing Contamination or to Subsequent Contamination:
- (i) TfNSW and the Operator will:
    - (A) refer the matters in dispute to be determined by an Environmental Auditor to be approved by TfNSW and the Operator (such approval not to be unreasonably withheld or delayed). If TfNSW and the Operator cannot agree on the appointment of an Environmental Auditor within a reasonable period, TfNSW may determine who will be appointed as the Environmental Auditor;
    - (B) arrange for the Environmental Auditor to investigate the State Premises the subject of the Clean Up Notice and prepare and provide to TfNSW and the Operator a report in accordance with all applicable Environmental Laws and relevant Governmental Agency guidelines and in accordance with the 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 those performed by the Environmental Auditor under this Clause 23.4(b) under the same or similar circumstances (**Contamination Report**), which:
      - (I) describes the nature and extent of any Contamination which is the subject of that Clean Up Notice (**Notified Contamination**);
      - (II) describes the investigation undertaken to identify the nature and extent of the Notified Contamination;
      - (III) identifies, in the opinion of the Environmental Auditor, the extent to which the Notified Contamination:
        - (1) is Pre-existing Contamination; or
        - (2) is Subsequent Contamination; and
      - (IV) based on the conclusions in Clause 23.4(b)(i)(B)(III), allocates liability for the Environmental Auditor's fees between TfNSW and the Operator in the same proportion as their responsibility for the Contamination; and
    - (C) ensure that prior to finalising the Contamination Report, the Environmental Auditor provides a draft of the Contamination Report to TfNSW and the Operator, and allows TfNSW and the Operator a reasonable period in which to provide the Environmental Auditor with comments regarding that draft Contamination Report. Those comments must also be provided by each of TfNSW and the Operator to the other; and
  - (ii) the findings of the Environmental Auditor contained in the final Contamination Report will be final and binding on the parties (including regarding liability for the Environmental Auditor's fees) in the absence of manifest error.

## 24. Acquisition of new assets

### 24.1 State Assets

- (a) The Operator must use only the State Assets and Operator New Ferries for the provision of the Services, unless expressly provided for in this Contract or otherwise with approval by TfNSW.
- (b) Subject to Clause 19.4, the Operator:
  - (i) must not use vessels, vehicles, wharves, layover areas, facilities or premises that are not State Assets or Operator New Ferries to perform the Operator Activities;
  - (ii) must only use or acquire new Ferries or vessels for the provision of the Services in accordance with this Clause 24; and
  - (iii) must otherwise only use or acquire assets including Ferries, vessels, vehicles, wharves, layover areas, facilities or premises to perform the Operator Activities with the consent of TfNSW.

[REDACTED]

- (d) The Operator must provide TfNSW with any information requested by TfNSW in relation to each new Ferry or vessel.
- (e) If an Existing Ferry is scheduled to be retired under the Fleet Deployment Plan, the Operator must:
  - (i) agree to the removal of the Existing Ferry from the State Bareboat Charterparty or other relevant arrangement; and

[REDACTED]

- (f) The Operator must give TfNSW at least two months' prior notice before commencing the procurement of a new Ferry or vessel under this Clause 24 (other than the new river class vessels (1 to 10) and the new emerald class vessels (1 to 3) identified in the Fleet Deployment Plan). If directed to do so by TfNSW, the Operator must temporarily defer the procurement of the new Ferry or vessel for a reasonable period as determined by TfNSW. The Operator has no Claim against TfNSW in relation to the temporary deferral of any procurement under this Clause 24.
- (g) TfNSW reserves the right to determine the name of each New Ferry.

### 24.2 Acquisition of New Ferries under Fleet Deployment Plan

- (a) The Operator must comply with the Fleet Deployment Plan, and must arrange for the acquisition and disposal of Contract Ferries in accordance with Clause 24.4 or Clause 24.5 (as determined by TfNSW under Clause 24.1(c)).
- (b) The Operator must not depart from the Fleet Deployment Plan without the consent of TfNSW.

### 24.3 New Ferries acquired as a result of a Service Variation, implementation of Planned Service Phases or On Demand Services or under Fleet Deployment Plan

- (a) The Operator must not acquire any new Ferry or vessel as a result of a Service Variation, or the implementation of Planned Service Phase (2) or any On Demand Service or otherwise under the Fleet Deployment Plan, without the approval of TfNSW. [REDACTED]



- (b) If the Operator wishes to acquire new Ferries or vessels as a result of a Service Variation, or the implementation of Planned Service Phase (2) or any On Demand Service or the Fleet Deployment Plan, 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 Ferries or vessels as a result of the Service Variation or the implementation of Planned Service Phase (2) or any On Demand Service or the Fleet Deployment Plan;
  - (ii) state the number of Ferries or vessels required and any details in relation to the proposed Ferries or vessels as are available at the time;
  - (iii) identify whether the new Ferries or vessels will be owned by the Operator or subject to an Operator Ferry Charterparty (and the term of such Operator Ferry Charterparty);
  - (iv) include a detailed proposal in relation to the expected capital cost of the new Ferry or vessel for the purposes of paragraphs 6.2 and 6.3 of the Payment Schedule; and
  - (v) include the date by which the new Ferry or vessels must be performing all of the Services for which the Ferry or vessel is required under the Fleet Deployment Plan or Service Variation (**Operational Commencement Date**). The Operational Commencement Date must be consistent with and not later than with the relevant date specified in the Fleet Deployment Plan.
- (c) TfNSW may liaise with the Operator in relation to any Business Case and may require the Operator to resubmit the Business Case with suggested amendments.
- (d) TfNSW must notify the Operator within 20 Business Days after receiving the original or resubmitted Business Case from the Operator under Clause 24.3(b) or (c) whether:
- (i) the Operator's proposal to acquire the new Ferries or vessels is approved (and any conditions attached to that approval);
  - (ii) the Operator's proposal to acquire the new Ferries or vessels is rejected (including reasons for the rejection); or
  - (iii) TfNSW requires further time or information to consider the Business Case and the reasonable time by which the Operator must provide the information and within which TfNSW will have made its decision.

The period specified by TfNSW under Clause 24.3(d)(iii) must not be greater 30 Business Days in the case of Ferries or vessels identified in the Fleet Deployment Plan.

- (e) If TfNSW does not respond to the Operator in accordance with Clause 24.3(d), TfNSW will be deemed to have rejected the proposal.
- (f) If TfNSW approves the Operator's proposal to acquire, or procure the acquisition of, Ferries or vessels by the Operator under Clause 24.3(d)(i) then the Operator must manage the acquisition of the Ferries or vessels in accordance with Clause 24.4 or Clause 24.5 (as determined by TfNSW under Clause 24.1(c)).

#### **24.4 Procurement of new Ferries or vessels by Operator**

- (a) This Clause 24.4 applies in relation to new Ferries or vessels that are to be acquired by the Operator.
- (b) The Operator must do the following in relation to any New Ferries approved by TfNSW:
- (i) comply with any conditions notified to it by TfNSW (subject to Clause 24.4(c)), provided such conditions are not inconsistent TfNSW Configuration Management

Plan and the requirements set out in the vessel specifications set out in Part C of Annexure 3 of Schedule 8; and

- (ii) if the New Ferry is to be leased or licensed or otherwise made available to the Operator by any party other than TfNSW (or a nominee of TfNSW):
    - (A) execute an Operator Ferry Charterparty in respect of the New Ferry, which must:
      - (I) contain terms that:
        - (1) grant the Operator an entitlement to acquire the New Ferry at the end of the Operator Ferry Charterparty or an expiry or termination of this Contract; and
        - (2) grant the Operator an entitlement to novate the Operator Ferry Charterparty to TfNSW or its nominee on expiry or termination of this Contract;
      - (II) otherwise be on terms approved by TfNSW; and
    - (B) if required by TfNSW:
      - (I) execute an Operator Ferry Charterparty Direct Agreement, with the relevant lessor and TfNSW on terms that are acceptable to TfNSW in accordance with Clause 26.3;
      - (II) grant a Fleet Security Deed in favour of TfNSW in relation to the Operator Ferry Charterparty in a form acceptable to TfNSW; and
      - (III) execute a Financier Direct Agreement, with the secured financiers in respect of the New Ferry; or
  - (iii) if the New Ferry is to be purchased by the Operator:
    - (A) execute a purchase agreement on terms approved by TfNSW;
    - (B) grant a Fleet Security Deed in favour of TfNSW in relation to the New Ferry; and
    - (C) execute a Financier Direct Agreement, with the secured financiers of the Operator and TfNSW.
- (c) TfNSW will use its reasonable endeavours to respond to documentation provided in relation to the design, acceptance and handover of the New Ferries in accordance with the timeframes set out in the programme attached in Part E of Annexure 3 of the Asset Schedule. If TfNSW does not respond within those timeframes then the Operator may proceed but will have no Claim against TfNSW arising out of or in connection with the delay by TfNSW. If TfNSW subsequently requests changes to the relevant documents (and such changes are not required as a result of the Operator's failure to comply with this Contract or the TfNSW Configuration Management Plan) such request will be treated as a Modification.

## 24.5 Procurement of New Ferries by TfNSW

- (a) This Clause 24.5 applies if TfNSW has determined that any New Ferry (**TfNSW Nominated New Ferry**) will be purchased by TfNSW or its nominee and leased, licensed or otherwise made available to the Operator by TfNSW or its nominee.
- (b) All TfNSW Nominated New Ferries procured under this Clause 24 are Contract Ferries and must, unless otherwise directed by TfNSW, become subject to the State Bareboat Charterparty (and the Operator agrees to the addition of such Ferries to the State Bareboat Charterparty). Where TfNSW directs that a TfNSW Nominated New Ferry will become subject to a lease other than the State Bareboat Charterparty (**Alternative Charterparty**):
  - (i) the Operator must enter into the Alternative Charterparty as directed by TfNSW; and

- (ii) TfNSW will:
    - (A) use reasonable endeavours to ensure that the terms of the Alternative Charterparty are no more onerous than the State Bareboat Charterparty; or
    - (B) if:
      - (I) the amount of the lease payments required to be made by the Operator under the Alternative Charterparty are not the same as the equivalent payments required to be made by the Operator under the State Bareboat Charterparty (or in the case of New Ferries acquired in relation to the implementation of Planned Service Phase (2), any On Demand Service Option or the Fleet Deployment Plan, are not the same as the allowances made in the Payment Schedule); or
      - (II) the Operator demonstrates to TfNSW's reasonable satisfaction that the terms of the Alternative Charterparty are more onerous than the State Bareboat Charterparty in a material way,
- direct a Modification to the extent necessary to provide that the Operator is in no better or worse a position than it was under the State Bareboat Charterparty.

## 24.6 Payment

- (a) Subject to Clause 24.5(b) and Clause 24.9, if a New Ferry is acquired by the Operator as a result of a Service Variation, the implementation of Planned Service Phase (2) or any On Demand Service Option or the Fleet Deployment Plan then the Operator is not entitled to any adjustment to the Payments in relation to that New Ferry other than an adjustment in accordance with paragraph 6.2 the Payment Schedule.
- (b) If any New Ferry approved by TfNSW under Clause 24.3(d) is not in service and performing all of the Services for which the New Ferry is required under the Fleet Deployment Plan or Service Variation (as the case may be) within six months after the Operational Commencement Date set out in the Business Case approved by TfNSW under Clause 24.3(d) for the New Ferry (or such other later date as is approved by TfNSW), TfNSW may suspend the Fleet Service Payment (as defined in the Payment Schedule) in relation to such New Ferry until such time as the New Ferry has been introduced into Service and is performing all Services that it is expected to perform under the Fleet Deployment Plan or Service Variation (as the case may be). For the avoidance of doubt, if, as at the Termination Date, the relevant New Ferry has not been introduced into Service and is not performing all Services that it is expected to perform under the Fleet Deployment Plan, TfNSW is not obliged to pay to the Operator any amounts that have been suspended under this Clause 24.6.
- (c) The Operator must ensure that:
  - (i) it will not obtain, or seek to obtain, a Certificate of Survey and Certificate of Operation for any Operator New Ferry until on or after the date on which Ferry Service Payment for the Operator New Ferry is due to commence under paragraph 6.2 of the Payment Schedule;
  - (ii) any subcontract it enters into in relation to the supply of the Operator New Ferries will contain a term which gives effect to Clause 24.6(c)(i); and
  - (iii) each Operator New Ferry is in operational service and providing all services that it is expected to provide in accordance with the Service Level Schedule, Fleet Deployment Plan or Service Variation as the case may be, promptly after it is issued a Certificate of Survey and Certificate of Operation.



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**24.9 Vessel work costs**

- (a) If TfNSW approves a Service Variation and as a direct result it is necessary for additional work in relation to any Existing Ferries to be undertaken in order for the Operator, exercising Good Industry Practice, to be able to provide the Services in accordance with this Contract, then provided that:
  - (i) such works do not arise as a result of any failure by the Operator to comply with its obligations under Part G;
  - (ii) the Service Variation is not issued by TfNSW following the rejection of a Disruption Service Remedy Proposal by TfNSW;
  - (iii) the Service Variation is not issued as a result of any breach by the Operator of the Transaction Documents; and
  - (iv) the Operator provides TfNSW with a scope of works and project plan that meets the requirements of the TfNSW Configuration Management Plan and is otherwise acceptable to TfNSW (acting reasonably),

TfNSW will direct that the works be undertaken by the Operator in relation to one or more Existing Ferries as a Modification.

- (b) If TfNSW issues a notice under Clause 24.7(g) and as a direct result, it is necessary for the work referred to in paragraph 7 of the Asset Schedule and Appendix C of the Asset Management Plan to be undertaken in relation to one or more "RiverCat Class" Existing Ferries in order for the Operator, exercising Good Industry Practice, to be able to provide the Services in accordance with this Contract, then provided that:
  - (i) such works do not arise as a result of any failure by the Operator to comply with its obligations under Part G;
  - (ii) the notice under Clause 24.7(g) is not issued as a result of any breach by the Operator of the Transaction Documents; and
  - (iii) the Operator provides TfNSW with a scope of works and project plan that meets the requirements of the TfNSW Configuration Management Plan and is otherwise acceptable to TfNSW (acting reasonably),

TfNSW will direct that the works be undertaken by the Operator in relation to one or more Existing Ferries as a Modification provided that, the consideration payable by TfNSW for the completion of such works shall, notwithstanding anything in Clauses 46 and 47, not exceed an amount equal to [REDACTED] multiplied by the CPI Annual Multiplier per vessel.

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## Part G– Asset Management

### 25. Asset Management

#### 25.1 Asset management obligations

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

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

so that:

- (e) the Assets comply with the requirements of the Transaction Documents;
- (f) the Assets are and remain fit for purpose during the Term;
- (g) the Assets are in a condition to permit the Services to be provided in accordance with this Contract;
- (h) the Assets comply with the Handback Condition at the end of the Term; and
- (i) provided each State Asset and Operator New Ferry is operated and maintained after the end of the Term in accordance with the Asset Management Framework, each State Asset and Operator New Ferry is capable of remaining fit for its intended purpose throughout the Design Life of that State Asset and Operator New Ferry.

#### 25.2 Asset Management Framework

The Operator must:

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

#### 25.3 Asset Management Plan

The Operator must:

- (a) update the Asset Management Plan in accordance with the Asset Schedule;
- (b) not defer any Asset Management Activity in the End of Contract Period without TfNSW's consent, and not otherwise defer any Asset Management Activity to a subsequent Contract Year without first notifying TfNSW and providing TfNSW with a statement signed by a director of the Operator confirming that the deferral of the activity will not have any impact on safety;
- (c) not update the Asset Management Plan in a manner which makes TfNSW's obligations under this Contract more onerous or increases any Loss or potential Loss of TfNSW or TfNSW's Associates in connection with the condition or maintenance of State Assets or Operator New Ferries;
- (d) ensure that any updated Asset Management Plan:
  - (i) imposes standards, levels and frequencies of service, scope and requirements that are equal to or greater than or higher than those imposed by this Contract and the most recent applicable Asset Management Plan; and
  - (ii) provides an equal or greater level of detail than the most recent applicable Asset Management Plan; and
- (e) comply with any direction given by TfNSW requiring the Operator to undertake maintenance activities in accordance with the Asset Management Plan (including a

direction to bring forward an activity that has been deferred to the original proposed time of delivery).

#### **25.4 Review of Asset Management Plan**

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

#### **25.5 TfNSW may request updates of the Asset Management Plan**

If, at any time during the Term:

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

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

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

and the Operator must:

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

#### **25.6 Compliance with Asset Management Plan**

The Operator:

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

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

#### **25.7 Asset Management Failures**

- (a) Unless TfNSW determines otherwise, TfNSW and the Operator will meet annually within three months after the end of each Contract Year to review the Operator's compliance with the Maintenance Works Program during the previous Contract Year (as applicable).
- (b) An Asset Management Failure will occur if:
  - (i) the Operator fails to comply with the Maintenance Works Program and in TfNSW's opinion (acting reasonably), the Operator's failure to comply with the Maintenance Works Program constitutes a material non-compliance with the Asset Management Plan or will, or is likely to, result in breach of Clauses 25.1(a) to (i); or

- (ii) the Operator fails in any material respect to comply with any of its maintenance obligations under this Contract.
- (c) If an Asset Management Failure occurs TfNSW may give the Operator a notice stating the nature of the Asset Management Failure.
- (d) The Operator must remedy the Asset Management Failure within:
  - (i) three months after the date on which the notice referred to in Clause 25.7(c) is issued; or
  - (ii) such other period agreed between TfNSW and the Operator (acting reasonably), **(Remediation Period)**.

## 25.8 Asset Management Audit

- (a) Without limiting Clause 25.7, TfNSW may elect to undertake an independent asset management audit once every two years during the Term to audit the Operator's compliance with the Asset Management Plan (**Asset Management Audit**). If TfNSW elects to undertake the Asset Management Audit:
  - (i) TfNSW must notify the Operator in writing and advise which State Assets TfNSW is seeking to have audited in accordance with this Clause 25.8 (**Audit Notice**);
  - (ii) TfNSW and the Operator must use reasonable endeavours to agree a suitably qualified independent auditor to perform the Asset Management Audit within 10 Business Days after the date of the Audit Notice and, on agreement, TfNSW and the Operator must jointly appoint the independent auditor with the costs of the independent auditor to be shared equally by TfNSW and the Operator, and each party must otherwise bear its own costs associated with the Asset Management Audit; and
  - (iii) if TfNSW and the Operator do not agree the identity of the independent auditor or otherwise do not affect the joint appointment of the independent auditor within 10 Business Days after the date of the Audit Notice, TfNSW may request that the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute nominate the independent auditor. TfNSW and the Operator must jointly appoint the independent auditor so nominated with the costs of the independent auditor to be shared equally by TfNSW and the Operator, and each party must otherwise bear its own costs associated with the Asset Management Audit.
- (b) The Operator must:
  - (i) co-operate with and provide all reasonable assistance to the independent auditor in the conduct of and otherwise facilitate the Asset Management Audit;
  - (ii) make available to TfNSW and the independent auditor all State Assets, personnel, reports and underlying maintenance data requested by the independent auditor as reasonably required to conduct the Asset Management Audit;
  - (iii) comply, at its own cost, with any recommendations for corrective actions that the independent auditor reasonably recommends to address asset management failures or omissions of the Operator in complying with (or failing to comply with) the Asset Management Plan and its related obligations under this Contract to the reasonable satisfaction of TfNSW; and
  - (iv) where the Asset Management Audit determines that there are material asset management failures or material omissions of the Operator in complying with (or failing to comply with) the Asset Management Plan or the Operator's related obligations under this Contract, then the Operator must promptly reimburse TfNSW for the costs paid by TfNSW to engage the independent auditor for the relevant Asset Management Audit.
- (c) TfNSW and the Operator acknowledge and agree that the independent auditor conducting the Asset Management Audit will give reasonable consideration to minimising disruption to



the Ferry Operations and the performance by the Operator of the relevant Maintenance Works Program whilst undertaking the Asset Management Audit.

## 26. Dealing with Assets

### 26.1 Security, assignment and possession of State Assets and Operator Sale Ferries

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

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

except as authorised by the Transaction Documents.

### 26.2 Security, assignment and possession of Operator Assets

- (a) All assets (other than State Assets) required by the Operator to perform its obligations under the Transaction Documents must, subject to Clause 24.3(a), Clause 26.2 or 26.3, be owned by the Operator.
- (b) Subject to Clauses 26.1 and 26.3, the Operator must not (directly or indirectly) without TfNSW's consent:

- (i) create or allow to exist any Security Interest (other than a Permitted Security Interest) over any Operator Asset; or
- (ii) Dispose of any Operator Asset (unless it is being replaced by an Operator Asset having a substantially similar or better functionality or condition),

where the effect of that action would (in TfNSW's opinion) materially and adversely affect:

- (iii) the Operator's ability to provide the Services;
  - (iv) the Continuity of the Services; or
  - (v) TfNSW's rights or obligations under a Transaction Document.
- (c) Prior to executing any Operator Financial Arrangement in respect of an Operator Asset, the Operator must provide TfNSW with:
    - (i) details of the purchase terms, including the acquisition cost of the relevant Asset;
    - (ii) the terms of the financing with the proposed financier; and
    - (iii) if requested by TfNSW, a Financier Direct Agreement executed by the Operator and the proposed financier.

### 26.3 Operator Ferry Charterparty Direct Agreement

- (a) In addition to its rights under Clause 26.2 to require a Financier Direct Agreement, TfNSW may, at any time during the Term, require that an agreement is entered into with the owner or lessor of any Operator New Ferry in the form set out in Schedule 22 (or such other form as is approved by TfNSW) which:

- (i) recognises TfNSW's rights under this Contract in respect of the Operator New Ferry; and
- (ii) is on such terms as are customarily used by TfNSW for an agreement of such nature (including such terms as are necessary to give effect to TfNSW's Powers under the Transaction Documents including with respect to step in and novation),

(each such agreement an **Operator Ferry Charterparty Direct Agreement**).

- (b) If TfNSW notifies the Operator that it requires an Operator Ferry Charterparty Direct Agreement to be entered in accordance with Clause 26.3(a) (such notification to identify

the relevant Operator New Ferry), the Operator must procure that the relevant owner or lessor promptly enters into an Operator Ferry Charterparty Direct Agreement with TfNSW.

- (c) The Operator must not, except with the consent of TfNSW (such consent not to be unreasonably withheld or delayed):
- (i) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any Operator Ferry Charterparty;
  - (ii) in any other way:
    - (A) Dispose of; or
    - (B) create or allow any interest in, its rights under, or interest in, an Operator Ferry Charterparty, or:
    - (C) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
    - (D) suspend the performance of any of its obligations under; or
    - (E) do or permit anything that would enable or give grounds to another party to do anything referred to in Clauses 26.3(c)(ii)(C) or (D) in relation to, an Operator Ferry Charterparty, other than by way of a Permitted Security Interest; or
  - (iii) materially amend or supplement, or consent to any material amendment or supplement of an Operator Ferry Charterparty or expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under an Operator Ferry Charterparty if and to the extent that such amendment, supplement, waiver, extension or grant takes effect in, or relates to the exercise of any Power or the performance of any obligation under the Operator Ferry Charterparty during the End of Contract Period or after the Termination Date.

#### **26.4 Not used**

#### **26.5 Consequences of dealings with Assets**

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

### **27. Asset restructure by TfNSW**

#### **27.1 Assignment or Novation**

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

rights and obligations discharged under Clause 27.1(c)(i), except that the incoming party replaces TfNSW for all purposes under this Contract, the Wharf Access Deed or the relevant State Asset Access Agreement.

- (d) The Operator consents to the disclosure by or on behalf of TfNSW to the incoming party of the Operator's Confidential Information for the purposes of the assignment or novation.

## 27.2 Transfer of State Assets by other Governmental Agencies

- (a) The Operator acknowledges and agrees that TfNSW, Sydney Ferries, RMS or any other head lessor under the Wharf Access Deed or any State Asset Access Agreement entered into during the Term may transfer the ownership or control of State Assets to another Governmental Agency or a private entity (**Asset Holding Entity**) during the Term.
- (b) Without limiting Clause 1.10 or any facilitative legislation, the Operator:
- (i) consents to, and must procure that the Operator's Associates and financiers consent to any such transfer of State Assets to an Asset Holding Entity;
  - (ii) agrees to the assignment or novation of any the Wharf Access Deed or State Asset Access Agreement by TfNSW, Sydney Ferries or RMS to an Asset Holding Entity in accordance with Clause 27.1; and
  - (iii) agrees to:
    - (A) the termination of the Wharf Access Deed or any State Asset Access Agreement by TfNSW, Sydney Ferries or RMS as applicable;
    - (B) the release of TfNSW, Sydney Ferries or RMS from their obligations under the Wharf Access Deed or relevant State Asset Access Agreement and the respective rights of TfNSW, Sydney Ferries or RMS and the Operator against one another under the Wharf Access Deed or the relevant State Asset Access Agreement ceasing from the date of termination under Clause 27.2(b)(iii)(A); and
    - (C) in relation to the relevant State Asset the subject of the Wharf Access Deed or that State Asset Access Agreement, enter into a replacement lease, licence or arrangement with the Asset Holding Entity (**Asset Holding Entity Lease**). TfNSW will use reasonable endeavours to procure that the Asset Holding Entity Lease provides that the Asset Holding Entity and the Operator will assume substantially the same obligations to one another and acquire substantially the same rights against one another as the rights and obligations discharged under Clause 27.2(b)(iii)(B), except that the incoming party replaces TfNSW, Sydney Ferries or RMS (as applicable) for all purposes under the Wharf Access Deed or the relevant State Asset Access Agreement.
- (c) If:
- (i) the amount of the lease payments required to be made by the Operator under the Asset Holding Entity Lease is not the same as the equivalent payments required to be made by the Operator under the relevant State Asset Access Agreement; or
  - (ii) the Operator demonstrates to TfNSW's reasonable satisfaction that the terms of the Asset Holding Entity Lease are more onerous than the relevant State Asset Access Agreements that they replace in a material way,
- TfNSW will direct a Modification to the extent necessary to provide that the Operator is no better or worse off under the Asset Holding Entity Lease than it would have been under the State Asset Access Agreement.
- (d) The Operator consents to the disclosure by or on behalf of TfNSW to the incoming party of the Operator's Confidential Information for the purposes of the transfer of State Assets to any Asset Holding Entity.

### 27.3 Attorney

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

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

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## Part H– Contract Administration

### 28. Access and inspections

#### 28.1 TfNSW's right of entry

- (a) The Operator and each Partner must maintain those financial and financial planning records that would ordinarily be maintained by a skilled and experienced operator of Ferries and ferry services comparable to the size, scope and complexity of the Ferry Services.
- (b) TfNSW (and any person authorised by TfNSW) may, at any time, enter the State Premises and any other premises (including premises of the Partners) where the Operator Activities are being carried out for the purpose of:
  - (i) observing or inspecting the Operator Activities;
  - (ii) monitoring compliance by the Operator with its obligations under this Contract or any Laws; or
  - (iii) exercising any right or performing any obligation which TfNSW has under any Transaction Document.
- (c) The Operator and the Partners must:
  - (i) use reasonable endeavours to coordinate the Operator Activities so they do not interfere with the exercise by TfNSW of its right of entry; and
  - (ii) provide TfNSW with every reasonable facility and other assistance necessary for any inspection by TfNSW, including providing access to any Assets, relevant systems, registers, manuals, records (including financial records), plans and programs.
- (d) If an inspection shows that the Operator has not complied or is not complying with its obligations under the Transaction Documents, TfNSW:
  - (i) may notify the Operator of the details of the non-compliance;
  - (ii) will specify a reasonable period within which the Operator must carry out appropriate rectification or remedy activities; and
  - (iii) will be entitled to be reimbursed by the Operator for the reasonable costs of the inspection including any reasonable administrative costs incurred by TfNSW in relation to the inspection.
- (e) Where, in accordance with Clause 28.1(b), TfNSW (or any person authorised by TfNSW) enters the State Premises or any other premises (including premises of the Partners) where the Operator Activities are being carried out, TfNSW must comply (or must procure that any person authorised by TfNSW complies) with reasonable site safety and security requirements as advised by the Operator or the Partners (as the case may be).

## 28.2 Access to information

- (a) Without limiting any other provision of this Contract:
  - (i) TfNSW may at any time notify the Operator that it requires access to any information held by the Operator or the Operator's Associates which relates to the Operator Activities;
  - (ii) upon receipt of a notice under Clause 28.2(a)(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 28.2(b)(i); and
  - (iii) on demand, provide to TfNSW written evidence (including copies of any contractual arrangements referred to in Clause 28.2(b)(ii)) showing compliance by the Operator with its obligations under Clause 28.2(b)(ii).
- (c) The Operator must cooperate, and must ensure that the Operator's Associates cooperate, with TfNSW and any persons authorised by TfNSW in the exercise of TfNSW's rights under this Clause 28.

## 29. Reporting

### 29.1 Reporting

- (a) The Operator and the Partners (where applicable) must report to TfNSW during the Term, in accordance with the Reporting Schedule.
- (b) If requested by TfNSW, the Operator must provide Master, Crew and Contract Ferry shift information to TfNSW, on reasonable notice.
- (c) No later than 30 April in each Contract Year, the Operator must provide TfNSW with certified true copies of the audited accounts of each Partner and the Partnership, together with all related directors' and auditor's reports.
- (d) If requested by TfNSW, the Operator must reconcile the information provided to TfNSW under Clause 29.1(c) to the audited accounts for the Operator for the same period provided to TfNSW under Clause 29.1(a).
- (e) Any changes to the accounting policies of the Operator, any Partner or the Partnership must be notified to TfNSW on submission of the accounts.

## 29.2 Immediate notification

The Operator must inform TfNSW as soon as practicable of any material change or material issues (whether proposed, anticipated or that have occurred) affecting the Ferry Operations, including:

- (a) the employment or the termination of employment of any key Staff;
- (b) any litigation or other dispute which may have a material effect on the Ferry Operations;
- (c) any material change in, or restructuring of, the capitalisation or financing of the Operator or the Partners or the Partnership;
- (d) any fact, matter or circumstance of which it becomes aware that may prejudice its ability to perform its obligations under any Transaction Document or its ability to operate the Ferry Operations;
- (e) any actual or proposed investigation or inquiry by a Governmental Agency into any aspect of the Ferry Operations;
- (f) any requisition of a Contract Ferry for hire;
- (g) any occurrence in consequence of which a Contract Ferry has or may become damaged beyond economic repair;
- (h) proceedings being instituted against a Contract Ferry, or any arrest, detention, attachment or levy upon a Contract Ferry, or any exercise (or purported exercise) of a lien or other claim in connection with:
  - (i) a Contract Ferry;
  - (ii) the insurances required to be maintained by the Operator under this Contract in relation to the Contract Ferries; or
  - (iii) any Requisition Compensation (as defined in the Bareboat Charterparty); or
- (i) actual or proposed revocation of, or imposition of conditions on, the Operator's Authorisations,

and must provide sufficient details with that notice and outline any steps taken, or proposed to be taken, by the Operator to overcome or mitigate the impact of that fact, matter or circumstance.

## 29.3 Misinformation

If the Operator or any Partner:

- (a) provides information used in calculation of payments, or assessing performance, under this Contract which is deliberately false or misleading in any material respect; or
- (b) takes any action to artificially inflate the calculation of payments to be made to the Operator or to artificially deflate the calculation of payments to be made by the Operator under this Contract, or to artificially improve the measure of the Operator's performance,

(in each case **Misinformation**), this will constitute a Termination Event and (in addition to TfNSW's rights in respect of the Termination Event) TfNSW may refuse to make a payment affected by the Misinformation and may:

- (c) demand that the Operator pay to TfNSW any shortfall in payments previously made, or to be made, by the Operator which have been deflated as a result of the Misinformation; or
- (d) demand that the Operator pay to TfNSW any excess in payments previously made, or to be made, to the Operator, which have been inflated as a result of the Misinformation,

together with interest at the Default Rate calculated on a daily basis from (and including) the date on which the shortfall or excess payments were made to the date the amount is paid in full. The Operator must make any payment in accordance with a demand under Clause 29.3(c) or 29.3(d).

## 30. Operating Plans

### 30.1 Accessible Transport Action Plan

- (a) The Operator must develop, implement, maintain and comply with its Accessible Transport Action Plan from the Planned Service Commencement Date and for the duration of the Term.
- (b) The Operator's Accessible Transport Action Plan must specify the steps the Operator will take to comply with:
  - (i) the DDA Legislation;
  - (ii) the *Anti-Discrimination Act 1977* (NSW);
  - (iii) the *Disability Inclusion Act 2014* (NSW); and
  - (iv) any 'Guidelines for Disability Action Planning', or similar guidelines, issued by NSW Governmental Agencies.
- (c) The Operator must publish its Accessible Transport Action Plan on its website and make it available to passengers, upon request, free of charge.
- (d) The Operator must annually review the Accessible Transport Action Plan to ensure it complies with this Clause 30.1 and meets the needs of passengers and the requirements of Law and this Contract. Each update of the Accessible Transport Action Plan must be provided to TfNSW at least 20 Business Days prior to the planned date of publication.
- (e) The Operator must consult and liaise with TfNSW, Sydney Ferries, RMS, local government authorities or any other Governmental Agency with responsibilities relevant to the State Premises (**Relevant Authority**) and Connecting Passenger Operators to:
  - (i) carry out the Operator's obligations relating to State Premises and Service related signage and barriers at State Premises, referred to in Item 6 of the Services Schedule;
  - (ii) facilitate and enable compliance by the Relevant Authority with accessibility requirements at State Premises; and
  - (iii) coordinate the Operator's accessible transport services with the accessible services and infrastructure of Connecting Passenger Operators.

### 30.2 Environmental Plan

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

### 30.3 Customer Service Plan

- (a) The Operator must develop, implement, maintain and comply with its Customer Service Plan from the Planned Service Commencement Date.
- (b) The Operator's Customer Service Plan must identify how the Operator will comply with customer service requirements and must:
  - (i) as a minimum, address and detail:
    - (A) the Operator's customer service model including Staff competencies, roles, deployment and responsibilities;
    - (B) customer communication and other interfaces throughout the journey during normal, degraded and planned service disruption operations;
    - (C) customer and Staff safety and security;
    - (D) Special Event Services support;
    - (E) ticketing, revenue protection and mitigation of fare evasion;
    - (F) operational integration with other public transport services;
    - (G) customer feedback and lost property management;
    - (H) customer service training and development of Staff; and
    - (I) measures and strategies to ensure customer engagement in maintaining high standards and the continuous improvement of service delivery; and
  - (ii) ensure equitable access for all customers.
- (c) The Operator must review and report annually to TfNSW to provide TfNSW with information about how all the complaints of which the Operator is aware were resolved or why complaints were not resolved, in accordance with the KPI Schedule.
- (d) The Operator must publish its Customer Service Plan on its website and make it available to passengers, upon request, free of charge.
- (e) The Operator must annually review the Customer Service Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Customer Service Plan must be provided to TfNSW at least 20 Business Days prior to the planned date of publication.

## 31. Staffing

### 31.1 All Staff

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



### 31.2 Key Personnel

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

### 31.3 Employee entitlements

- (a) TfNSW will take all steps reasonably necessary to:
  - (i) enable the Operator to remain, with effect from the Service Commencement Date, a participating employer or contributor of each Defined Benefits Scheme that a Transition In Employee was a contributor, member or employee of immediately prior to the Service Commencement Date (including, if necessary, by applying for an appropriate order to schedule the Operator as an Employer under the relevant legislation governing each Defined Benefits Scheme);
  - (ii) if necessary, request the Treasurer to make any orders as are necessary to give effect to the transactions contemplated by this Clause 31.3; and
  - (iii) procure that:
    - (A) STC continue the Employer Reserve in each Defined Benefit Scheme attributable to the HCF Operator which relates to the Transition In Employees who are members of that Defined Benefit Scheme (each such account to be known as the Operator's Employer Reserve); and
    - (B) the STC Actuary calculates the total of the past service liabilities of the HCF Operator attributable to those Transition In Employees as at the Service Commencement Date (**Past Service Liabilities**).
- (b) The Operator must do all things necessary to ensure that, with effect on and from the Service Commencement Date:
  - (i) the Operator remains a participating employer or contributor of each Transition In Employee's Pre-existing Superannuation Fund, including remaining an Employer under each Defined Benefit Scheme to which contributions were made on behalf of the Transition In Employee by the HCF Operator prior to the Service Commencement Date; and
  - (ii) each Transition In Employee is entitled to continue as a contributor, member or employee in respect of each employee's Pre-existing Superannuation Fund (including any Defined Benefits Scheme) to which the HCF Operator contributed or had an obligation to contribute on behalf of the Transition In Employee prior to the Service Commencement Date.

- (c) The Operator will be bound by the governing rules of the Pre-existing Superannuation Fund for as long as the Operator is a participating employer or contributor of the Pre-existing Superannuation Fund for the purposes of those rules.
- (d) The Operator:
  - (i) will be responsible for funding, and will fund, any superannuation benefits accruing to Transition In Employees on and from the Service Commencement Date;
  - (ii) must:
    - (A) make Minimum Superannuation Contributions on behalf of all Transition In Employees to an account nominated by the employee, subject to it being a complying superannuation fund;
    - (B) in respect of DB Scheme Employees (at any time that the employee is a member of a Defined Benefit Scheme, including as a recipient of a pension payable under the Defined Benefit Scheme, or any surviving spouse or other beneficiary of the employee is entitled to a benefit from the Defined Benefit Scheme, or any other benefit otherwise remains payable from the Defined Benefit Scheme in respect of the employee's membership of the Defined Benefit Scheme) make contributions at a rate required by the governing rules of the Defined Benefit Scheme to fund the benefits provided by those Defined Benefit Schemes in relation to the DB Scheme Employee;
  - (iii) must make provision for the Transition In Employees entitlements in its accounts in accordance with the requirements of applicable Accounting Standards;
  - (iv) must ensure that it has sufficient resources to honour all its staff rates of pay, leave and other employee benefits and entitlements as and when they fall due or are taken; and
  - (v) must honour all its staff rates of pay, leave and other employee benefits and entitlements as and when they fall due or are taken.
- (e) Where, in any Post-Service Commencement Period, the total of the DB Contributions for a DB Scheme Employee exceeds the Minimum Superannuation Contribution for that DB Scheme Employee, TfNSW will pay to the Operator annually in arrears an amount equal to the amount by which the DB Contributions exceed the Minimum Superannuation Contribution for the DB Scheme Employee.
- (f) Except as otherwise provided in Clause 31.3(e), the State, TfNSW and TfNSW's Associates will cease to be responsible for funding any superannuation benefits accruing to each Transition In Employee in respect of periods of service, on and after the Service Commencement Date.
- (g) The Operator must notify TfNSW if it suspects or discovers any serious breach of the *Fair Work Act 2009* (Cth) by it or any of its subcontractors that may result in civil penalties being imposed on it or a subcontractor.
- (h) The Operator:
  - (i) acknowledges that it does not have an interest in the State's Employer Reserve in a Defined Benefit Scheme;
  - (ii) must not make a claim on any part of the State's Employer Reserve in a Defined Benefit Scheme;
  - (iii) releases TfNSW, Sydney Ferries and STC from any claim on the State's Employer Reserve in a Defined Benefit Scheme that the Operator may have;
  - (iv) indemnifies TfNSW, Sydney Ferries and STC against any claim that the Operator may make on the State's Employer Reserve in a Defined Benefit Scheme;
  - (v) acknowledges that the State's Employer Reserve in a Defined Benefit Scheme remains available for the sole use and benefit of TfNSW or Sydney Ferries (as applicable) subject to the governing rules of the Defined Benefit Scheme; and

- (vi) if at any time after the Service Commencement Date, the STC Actuary determines that the State's Employer Reserve in a Defined Benefit Scheme is in surplus:
  - (A) TfNSW may procure that STC allocates such surplus as agreed between TfNSW and STC, including to the State's Employer Reserves or to the Employer Reserve of any other Employer within the Defined Benefit Scheme; and
  - (B) the Operator must nonetheless continue to contribute to the Defined Benefit Scheme in accordance with Clause 31.3(c).
- (i) In this Clause 31.3:
  - (i) **DB Contribution** means, in respect of a DB Scheme Employee, the contributions that the STC Actuary determines are payable in respect of that DB Scheme Employee in the Defined Benefit Scheme on and from the Service Commencement Date, having regard to the Operator's Employer Reserve in the Defined Benefit Scheme at the time;
  - (ii) **DB Scheme Employee** means a Transition In Employee who remains a member of a Defined Benefit Scheme;
  - (iii) **Employer** has the meaning given to that term in the governing rules of a Defined Benefit Scheme;
  - (iv) **Employer Reserve** has the meaning given to that term in the governing rules of the Defined Benefit Scheme;
  - (v) **Minimum Superannuation Contribution** means the 'charge percentage' of an employee's 'ordinary time earnings' (as those expressions are defined in the Superannuation Guarantee Legislation) or such other amount as is required to:
    - (A) avoid the imposition of the superannuation guarantee charge under the Superannuation Guarantee Legislation; or
    - (B) comply with any other legal obligation pertaining to employee superannuation contributions (including, but not limited to, under a contract of employment, an industrial instrument such as an award or agreement or any other law);
  - (vi) **Post-Service Commencement Period** means:
    - (A) the period commencing on the Service Commencement Date and ending on the next 30 June preceding the Service Commencement Date; and
    - (B) any financial year commencing after the period identified in paragraph (a) of this definition;
  - (vii) **STC** means the SAS Trustee Corporation, the trustee of each Defined Benefit Scheme;
  - (viii) **STC Actuary** means the actuary or firm of actuaries as may be appointed as the actuary for the Defined Benefit Scheme by STC from time to time; and
  - (ix) **Superannuation Guarantee Legislation** means:
    - (A) the *Superannuation Guarantee Charge Act 1992* (Cth); and
    - (B) the *Superannuation Guarantee (Administration) Act 1992* (Cth), as amended from time to time.

#### 31.4 Employee Free Travel Passes

- (a) Where an employee of the Operator is entitled to receive an Employee Free Travel Pass in accordance with an applicable enterprise agreement or other industrial award or otherwise the Operator is responsible for funding that entitlement by way of payment to TfNSW of the relevant amount determined by TfNSW from time to time.
- (b) In this Clause 31.4, the term 'Employee Free Travel Pass' means a free travel pass issued by TfNSW other than a 'Gold Travel Pass'.

### 31.5 Operator Ferry Charterparty

- (a) This Clause 31.5 applies in relation to any Operator Ferry Charterparty that is entered into by the Operator in respect of an Operator New Ferry that is used for Core Services.
- (b) Subject to Clause 31.5(a), the Operator must not, in relation to any Operator New Ferry, enter into one or more Operator Ferry Charterparties where the result of those arrangements would be that the Operator New Ferry is being supplied with masters, crew or other personnel to operate the Operator New Ferry (**Charterparty Hired Crew**) for a period that is longer than it takes for the Operator to recruit and train its own employees to operate that Operator New Ferry, and in any event which period must not be more than six months from the date that the initial Operator Ferry Charterparty commenced in respect of that Operator New Ferry. The Operator must:
  - (i) ensure that the recruitment and training of its employees under this Clause 31.5(b) is carried out as soon as practicable; and
  - (ii) not substitute one Operator New Ferry for another Operator New Ferry for the purpose of extending or recommencing the six month period under this Clause 31.5(b).
- (c) Subject to Clauses 31.5(a) and 31.5(d), without limiting the Operator's obligations under Clauses 19, 24 and 33, the Operator must ensure that each Operator Ferry Charterparty entered into by the Operator that includes the supply of Charterparty Hired Crew contains provisions that comply with the following requirements:
  - (i) the supply of Charterparty Hired Crew in respect of an Operator New Ferry may only continue for the period permitted under Clause 31.5(b);
  - (ii) all Charterparty Hired Crew members must be inducted in accordance with the Operator's Safety Management System; and
  - (iii) for all work performed by Charterparty Hired Crew in providing Core Services, the minimum pay and conditions of Charterparty Hired Crew must be at least equivalent to those contained in the *Ports, Harbours and Enclosed Vessels Award 2010*, regardless of whether that award applies at Law.
- (d) The Operator may enter into an Operator Ferry Charterparty that does not comply with the requirements set out in Clause 31.5(c)(i) if an Operator New Ferry is required on an ad hoc basis, including:
  - (i) as a result of an emergency (including an operational breakdown);
  - (ii) in connection with any works related to wharf infrastructure (provided that the Operator has first used best endeavours to procure the use of a Contract Ferry that is not an Operator New Ferry the subject of an Operator Ferry Charterparty);
  - (iii) in connection with the provision of a Special Event Service; or
  - (iv) to provide supplementary Services in the summer time period (as that term is defined in section 2A of the *Standard Time Act 1987* (NSW)).
- (e) The Operator must carry out consultation in respect of the matters set out in this Clause 31.5 in accordance with the applicable enterprise agreement or other industrial instrument.
- (f) In this Clause 31.5, **Core Services** means normal timetabled Services as set out in the timetable published by TfNSW as at October 2018 (**Reference Timetable**), including future associated service variations. Services outside of the Reference Timetable, or amended Reference Timetable, such as fast ferry or on demand services do not form part of the Core Services.

### 31.6 Industrial relations

The Operator:

- (a) is responsible for monitoring and managing all risks associated with industrial relations during the Term (including any industrial relations reforms it may require to implement the Services); and

- (b) must develop and maintain internal processes and procedures for monitoring and managing industrial relations risks to ensure that the Operator is able to perform the Operator Activities in accordance with this Contract.

## 32. Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under a Transaction Document without the consent of TfNSW (such consent not to be unreasonably withheld or delayed). TfNSW may consent to the terms of a specific subcontract or delegation or to a class or type of subcontracts or delegations.
- (b) Without limiting Clause 32(a), a subcontract or delegation entered into by the Operator must not be for a period that exceeds the fifth anniversary of the Planned Service Commencement Date without:
  - (i) the subcontract or delegation including a provision which allows the Operator to terminate the subcontract or delegation (as applicable) if this Contract is terminated under Clause 6.2(b) or 6.4; or
  - (ii) the consent of TfNSW.
- (c) The Operator must ensure that any subcontractor engaged to provide any of the Operator Activities holds all appropriate Authorisations required in relation to the activities for which it has been engaged.
- (d) The Operator:
  - (i) is not, by reason of having engaged a subcontractor, relieved of any of its liabilities or obligations under the Transaction Documents;
  - (ii) is responsible for each subcontractor engaged by it as if all the acts and omissions of the subcontractor were its own acts and omissions; and
  - (iii) agrees, that where there is a reference in a Transaction Document to the Operator and a subcontractor is performing the obligations of the Operator, the Operator must procure that each subcontractor it appoints engages in, or refrains from engaging in, conduct of the kind required or prohibited by this Contract and otherwise complies with all obligations of the Operator under the Transaction Document.
- (e) The Operator must complete a Subcontractor's Statement in relation to any subcontractor approved by TfNSW under this Clause 32. TfNSW will provide the Subcontractor's Statement to the Operator for completion.

## 33. Key Contracts

### 33.1 Interpretation

In this Clause 33:

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

### 33.2 Key Contract Security Documents

- (a) Subject to Clause 33.2(g), the Operator must not enter into a Key Contract unless TfNSW has previously entered into a Key Contract Security Document in respect of that Key Contract on terms acceptable to TfNSW. The Operator will not be required to comply with this Clause 33.2(a) if it notifies TfNSW prior to entering into a Key Contract and TfNSW notifies the Operator that a Key Contract Security Document is not required in respect of that Key Contract. TfNSW must act reasonably in determining whether or not a Key Contract Security Document will be required.

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

### **33.3 Amendment of Key Contracts**

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

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

### **33.4 Assignment of Key Contracts**

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

- (a) create or allow to exist any Security Interest over; or
- (b) in any other way Dispose of or create or allow any interest in, or otherwise deal with, its rights under, or interest in, a Key Contract.

### **33.5 Termination of Key Contracts**

- (a) The Operator must not, except as permitted by Clause 33.5(b):
  - (i) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
  - (ii) suspend the performance of any of its obligations under; or
  - (iii) do or permit anything that would enable or give grounds to another party to do anything referred to in Clause 33.5(a)(i) or (ii) in relation to, a Key Contract.
- (b) The Operator may terminate a Key Contract if TfNSW is reasonably satisfied that:
  - (i) it is no longer necessary for the Operator to have the benefit of the Key Contract; or

- (ii) the Operator has made adequate alternative arrangements for the continued conduct of the Operator Activities.
- (c) If the Operator terminates a Key Contract in breach of this Contract, the Operator must at the request of TfNSW, enter into an agreement immediately following that request with each counterparty to the Key Contract on the terms set out in the relevant Key Contract Security Document.

### **33.6 Notices in respect of Key Contracts**

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

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

### **33.7 Successor Operator**

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

### **33.8 Constituent Documents**

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

- (a) amend or supplement, or consent to any amendments or supplement of; or
- (b) expressly or impliedly, waive, or extend or grant time or indulgence regarding, any material provision of, or material obligation under,

any of the following documents:

- (c) the constitution (and any other constituent document) of the Operator and any Partner;
- (d) the Partnership Agreement; or
- (e) any shareholder agreement relating to the shares in the Operator.

## **34. Contract management**

### **34.1 Governance**

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

### **34.2 Audit**

- (a) TfNSW (and any person authorised by TfNSW) may investigate any matter in connection with this Contract, including costs and pricing matters, and may at any time during the

Term and for six months after the Termination Date, audit all files, records and invoices of the Operator pertaining to the provision of the Operator Activities and related expenditures.

- (b) TfNSW may appoint an auditor for the purposes of this Clause 34.2.
- (c) TfNSW may, or may appoint persons to, carry out mystery shopper surveys, or collect customer satisfaction data, from passengers on Contract Ferries and at Wharves.
- (d) TfNSW (and any person authorised by TfNSW) may conduct audits of the contents of reports and data provided by the Operator to TfNSW in accordance with the Reporting Schedule.
- (e) Without limiting Clause 34.2(d), from the Service Commencement Date and for the duration of the Term, the Operator must collect the data specified in paragraph 12(a) of the Reporting Schedule.
- (f) The Operator must:
  - (i) provide all reasonable assistance to TfNSW (and any person authorised by TfNSW) in the conduct of an audit under Clause 34.2(d);
  - (ii) make available to TfNSW (and any person authorised by TfNSW) all reports and underlying data requested by TfNSW in the conduct of an audit under Clause 34.2(d); and
  - (iii) comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits.
- (g) The Operator must provide all reasonable access and assistance required in connection with this Clause 34.2.

### **34.3 Inquiries**

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

## **35. Compliance**

### **35.1 Compliance with Laws**

- (a) The Operator must:
  - (i) in performing the Operator Activities, comply with all applicable Laws including:
    - (A) the MS Act;
    - (B) the *Ports and Maritime Administration Act 1995* (NSW);
    - (C) the PT Act 1990;
    - (D) the PT Act 2014;
    - (E) the TA Act; and



(F) any regulations made under any of the Laws referred to in Clauses 35.1(a)(i)(A) to (E),

**(Transport Laws);**

- (ii) ensure the Operator's Associates engaged in, or in connection with, the Operator Activities, comply with all applicable Laws including Transport Laws;
  - (iii) ensure that the Assets are operated and maintained so as to comply with all applicable Laws including Transport Laws;
  - (iv) give the TfNSW Representative copies of:
    - (A) all material documents given by the Operator or any of the Operator's Associates to a Governmental Agency; and
    - (B) any other material communications between the Operator or any of the Operator's Associates and any Governmental Agency,in connection with the Operator Activities;
  - (v) without limiting Clause 35.1(a)(iv), give the TfNSW Representative copies of any notice, report or other correspondence given or received by:
    - (A) the Operator or the Operator's Associates under or in connection with:
      - (I) any applicable Law including any Transport Law under which any Authorisation required to carry out the Operator Activities is granted; or
      - (II) any Authorisation held by the Operator or the Operator's Associates,in connection with the Operator Activities; or
    - (B) the Operator or the Operator's Associates which may adversely affect the ability of the Operator or the Operator's Associates to carry out the Operator Activities,as soon as practicable, but in any event no later than five Business Days after such notice, report or other correspondence is given or received by the Operator or the Operator's Associates.
- (b) The Operator must provide TfNSW, RMS and Sydney Ferries with such assistance as may be required by TfNSW, RMS and Sydney Ferries (acting reasonably) to enable them to comply with all applicable Laws including Transport Laws.
- (c) During the first month after the Service Commencement Date and every 12 months thereafter, the Operator must certify in writing to TfNSW that the Operator has complied with the following legislative and regulatory requirements:
- (i) DDA Legislation;
  - (ii) *Anti-Discrimination Act 1977* (NSW);
  - (iii) Environmental Law, including but not limited to the *Protection of the Environment Operations Act 1997* (NSW) and the *Marine Pollution Act 2012* (NSW);
  - (iv) *Fair Work Act 2009* (Cth) and applicable industrial instruments; and
  - (v) *Child Protection (Working with Children) Act 2012* (NSW).

- (d) The Operator must, and must ensure that the Operator's Associates:
  - (i) promptly give any Governmental Agency such access to assets, premises and information as that Governmental Agency requests, within the time requested;
  - (ii) cooperate with and respond to any lawful requests made by any Governmental Agency, within the time requested; and
  - (iii) not hinder or delay any Governmental Agency in carrying out its duties.
- (e) Compliance by the Operator with its obligations under this Clause 35:
  - (i) does not discharge or excuse the Operator from complying with its other obligations under the Contract; and
  - (ii) is not evidence of compliance by the Operator with its other obligations under the Contract.

### **35.2 Authorisations**

Prior to the commencement of any work arising under or in connection with the Operator Activities for which any Authorisation is required by Law, and at all times while carrying out such Operator Activities, the Operator must, and must ensure that the Operator's Associates:

- (a) hold all Authorisations required to carry out those Operator Activities including:
  - (i) all necessary Certificates of Survey; and
  - (ii) all necessary Certificates of Operation; and
- (b) comply with all conditions of such Authorisations and all obligations of accredited persons under the applicable Laws including:
  - (i) the PT Act 1990; or
  - (ii) the MS Act.

### **35.3 Safety Management System**

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

### **35.4 Staff**

- (a) Without limiting Clauses 35.1 to 35.3, the Operator must ensure that all Staff:
  - (i) are competent to carry out the work for which they are engaged for the purposes of all applicable Laws including Transport Laws; and
  - (ii) comply with their obligations under all applicable Laws including Transport Laws.

- (b) Without limiting Clause 35.4(a), the Operator must ensure that:
  - (i) each Master of a Contract Ferry complies with the MS Act, including that each such Master:
    - (A) holds a current Certificate of Competency issued pursuant to the MS Act on or after 1 July 2013; or
    - (B) if a Master does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013; and
  - (ii) each Crew member of a Contract Ferry complies with the MS Act, including that each such member:
    - (A) holds a current Certificate of Competency issued pursuant to the MS Act on or after 1 July 2013; or
    - (B) if the Crew member does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013.

### **35.5 Specific Contract Ferry safety requirements**

- (a) Without limiting Clause 19.3 or Clause 35.2, the Operator must ensure that each Contract Ferry is maintained and operated in conformity with the MS Act, including by:
  - (i) holding and complying with a current Certificate of Operation and Certificate of Survey issued pursuant to the MS Act; and
  - (ii) complying with any standards, guidelines and codes of practice relating to maritime safety and applicable to the Contract Ferry issued pursuant to the MS Act.
- (b) The Operator must ensure the appropriate supervision of embarking and disembarking passengers at the Wharves including by assisting with mobility ramps as required.
- (c) The Operator must consult and cooperate with TfNSW and RMS in relation to the management of safety at the Wharves and in respect of the use of navigation channels.

### **35.6 AEO**

- (a) The Operator must, or must procure that each of the relevant Operator's Associates demonstrate achievement of compliance with the ISO 55000 series of standards with a view to achieving AEO status in relation to the Operator Activities in accordance with the requirements set out from time to time at <http://www.asa.transport.nsw.gov.au/ts/asa-standards> within six months after the Planned Service Commencement Date or after the requirements for achievement of AEO status have been made available to the Operator, whichever is later.
- (b) Regardless of whether or not the Operator achieves AEO status, the Operator must comply with the TfNSW Configuration Management Plan. TfNSW may appoint a representative on the configuration control board established in accordance with that plan.
- (c) For clarification, a change in the requirements referred to in Clause 35.6(a) is not a Change in Law.

### **35.7 WHS**

- (a) In performing the Operator Activities, the Operator must ensure, so far as is reasonably practicable, the health and safety of its Workers and any persons in relation to the Operator Activities, including any persons performing work at the Workplace, whether or not engaged by the Operator.
- (b) The Operator acknowledges that, in performing the Operator Activities:
  - (i) it must comply with its obligations under WHS Law and must require that the Operator's Associates and all of the Operator's or Operator's Associates' subcontractors comply with the Operator's and their own obligations under the WHS Law;

- (ii) the Operator must ensure that (subject to Clause 35.7(e)):
  - (A) it is responsible for ensuring work health and safety in relation to the Operator Activities;
  - (B) it provides appropriate training and supervision for all persons employed or engaged by it or subject to its control in relation to the Operator Activities;
  - (C) it controls or directs the performance of work associated with the Operator Activities;
  - (D) it establishes and maintains safe work practices;
  - (E) it engages competent persons to carry out risk audits every two years. Such audits must be undertaken in compliance with good risk management principles and must identify, assess and control any work health and safety risks associated with the Operator Activities;
  - (F) all Staff performing the Operator Activities are trained in work health and safety, in particular in relation to the risks associated with performing the Operator Activities;
  - (G) it will inform TfNSW of any changes of any Staff, corporate structure, management structure or supervisors that may affect the safety of the Staff or Workers in performing the Operator Activities; and
  - (H) it otherwise complies with all statutory requirements for work health, safety and rehabilitation management.
- (c) TfNSW and the Operator acknowledge and agree that the Operator has control of:
  - (i) the manner in which the Operator Activities are performed; and
  - (ii) all matters arising out of or as a consequence of the performing of or failure to perform the Operator Activities that give rise or may give rise to risks to health or safety.
- (d) The Operator must, prior to the performance of any part of the Operator Activities:
  - (i) undertake an assessment of the work, health and safety risks associated with the performance of the Operator Activities and identify and take all reasonably practicable steps to implement appropriate work, health and safety risk control measures to eliminate and minimise all such work, health and safety risks; and
  - (ii) as required by TfNSW, provide TfNSW with details of the work, health and safety risk assessment undertaken and evidence of implementation of appropriate work, health and safety risk control measures required under this Clause 35.7.
- (e) If the Operator engages a contractor, or otherwise relinquishes to, or shares with, any person:
  - (i) the management or control of a Workplace; or
  - (ii) control over the performance of work associated with the Operator Activities,
 it will ensure that person complies with the obligations referred to in this Clause 35.7.
- (f) In order to meet its obligations under this Clause 35.7, the Operator must adopt a work health, safety and rehabilitation management system that supports a systematic approach to managing risks to health and safety posed by any Workplace or the Operator Activities, including:
  - (i) a process to identify safety hazards, assess the risks posed by such hazards and eliminate or control the risks; and
  - (ii) mechanisms to monitor the performance of the system and adapt and improve it as necessary.
- (g) The Operator will provide to TfNSW such information about the operation and maintenance of the system referred to in Clause 35.7(f) as TfNSW requests. Any review of the operation or maintenance of the system by TfNSW under this Clause 35.7(g) does not constitute a verification or acceptance by TfNSW of the adequacy of the system.

- (h) The Operator must so far as is reasonably practicable consult, cooperate and coordinate the Operator Activities with any other person involved in performing work associated with or connected with the Operator Activities to achieve effective coordination of those activities to ensure optimal health and safety risk management and enable TfNSW and the Operator and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.
- (i) Without limiting the Operator's obligations under any other provision of this Contract, to the extent that the Operator Activities include construction work at any State Premises that is owned by TfNSW (**TfNSW Site**):
  - (i) TfNSW engages the Operator as the principal contractor in respect of that TfNSW Site and authorises the Operator to have management and control of each workplace at which such Operator Activity is to be carried out and to discharge the duties of a principal contractor under the WHS Law;
  - (ii) the Operator accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Law and perform all such other activities as are necessary to ensure that TfNSW does not breach its obligations under the WHS Law; and
  - (iii) the Operator's engagement and authorisation as a principal contractor will continue until the point in time when the relevant Operator Activity is completed.
- (j) If the Operator breaches its obligations under this Clause 35.7, the breach will be a Termination Event for the purposes of Clause 50.1. In addition, the Operator has no Claim against TfNSW as a result of or in any way connected with a breach of its obligations under this Clause 35.7.
- (k) In this Clause 35.7 the terms "principal contractor" and "construction work" have the same meanings given to those terms in the WHS Law.

### **35.8 Safety Management Plan**

- (a) Without limiting Clauses 35.1 to 35.7, the Operator must comply with the Safety Management Plan.
- (b) The Operator must maintain current versions of the Safety Management Plan at all times during the Term.
- (c) If requested by TfNSW, the Operator must provide TfNSW with a complete and accurate copy of its then current Safety Management Plan.
- (d) The Safety Management Plan has been, and will be, provided to TfNSW to demonstrate to TfNSW that the Operator has the understanding, capacity and capability to perform the Operator Activities safely and in accordance with the requirements of this Contract and relevant Laws. Without limiting Clause 59.2, TfNSW and TfNSW's Associates do not assume or owe any duty of care to the Operator to review, or when reviewing, the Safety Management Plan and any review of, comments upon, or failure to comment upon the Safety Management Plan by TfNSW or TfNSW's Associates will not impose any additional obligations whatsoever on TfNSW or relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise according to Law.

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## **Part I – Payment**

### **36. Payment**

#### **36.1 Payments**

- (a) In exchange for the Operator performing the Operator Activities in accordance with this Contract, TfNSW must pay to or at the direction of the Operator the Payments, after receipt of a valid Tax Invoice from the Operator in accordance with Clause 36.2.

- (b) The Payment amounts specified in the Payment Schedule will be fixed for the Term, unless varied in accordance with the Payment Schedule or this Contract.
- (c) Unless expressly stated in this Contract or the Schedules, the Operator must bear the cost of any steps, actions, obligations or activities required of the Operator arising from or in connection with this Contract and is not entitled to any reimbursement of expenses, payment or compensation for any such steps, actions, obligations or activities.
- (d) The Operator irrevocably and, subject to Clause 36.3(d) and the Lead Financier Direct Agreement, unconditionally authorises and directs TfNSW to pay all the Actual Lease Payment and (if applicable ) the Vessel Termination Payment in respect of the Lead Financier Leased Assets (**Receivables**) to the Lead Financier in accordance with the payment method requested by the Lead Financier acting reasonably.
- (e) The Operator confirms that TfNSW's obligation to pay any Receivable to the Operator under the Ferry System Contract will be satisfied upon payment of such amount to or at the direction of the Lead Financier.

### 36.2 Invoices and time for payment

- (a) On a monthly basis in accordance with paragraph 13 of the Payment Schedule for the duration of the Term, the Operator (or in the case of Operator New Fleet Vessel Lease Costs, the Lead Financier, if approved by TfNSW) must submit to TfNSW a valid Tax Invoice for the performance of the Operator Activities in accordance with the terms of this Contract. The Tax Invoice must specify:
  - (i) the amount of the Payments in respect of the Services for the month in arrears;
  - (ii) the amount of GST payable in respect of the provision of the Services; and
  - (iii) such other details specified in the Payment Schedule.
- (b) TfNSW must make Payments within 14 days after receipt of a Tax Invoice where:
  - (i) the amount claimed in the Tax Invoice is due for payment and correctly calculated in Australian dollars; and
  - (ii) the invoice is set out as an itemised account in accordance with the requirements of Clause 36.2(a).
- (c) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.

### 36.3 Set off

- (a) TfNSW will be entitled to set off or deduct from any amount due from TfNSW to the Operator under a Transaction Document (other than to the extent set out in the Lead Financier Direct Agreement):
  - (i) any debt or other monies due from the Operator to TfNSW; and
  - (ii) any Claim to money which TfNSW may make in good faith against the Operator whether for damages or otherwise (including under any indemnity in a Transaction Document) and whether or not the amount is subject to a dispute between the parties or subject to any court or other proceedings,
 

whether under a Transaction Document or otherwise at Law relating to the Operator Activities.
- (b) The Operator must make all payments due to TfNSW under any Transaction Document without set off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) Nothing in this Clause 36.3 or in the Lead Financier Direct Agreement affects TfNSW's right to recover from the Operator the whole of the debt or any balance that remains owing after any set off.
- (d) Notwithstanding the Lead Financier Direct Agreement, TfNSW may withhold any amount payable under or in relation to the Receivables if:
  - (i) the Lead Financier is taking any action or failing to take any action in accordance with the Lead Financier Direct Agreement that prevents an Operator New Ferry

from being available to the Operator during the term of this Contract (whether or not permitted under this document); or

- (ii) the Lead Financier is in breach of the Lead Financier Direct Agreement and such breach has not been remedied to the reasonable satisfaction of TfNSW.

### 36.4 Goods and Services Tax (GST exclusive prices)

- (a) In this Clause 36.4:
  - (i) a reference 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 (as amended from time to time).
  - (ii) any part of a supply that is treated as a separate supply for GST purposes (including for the purpose of attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this Clause 36.
  - (iii) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
  - (iv) a reference to GST payable by or input tax credit entitlement of a party includes any GST payable by or input tax credit entitlement of the representative member of any GST group of which that party (or the entity on whose behalf that party is acting) is a member.
  - (v) a reference to GST payable or input tax credit entitlements includes GST and input tax credits to which an entity is notionally liable or entitled in accordance with Division 177 of the GST Act.
- (b) Any amount referred to in this Contract which is relevant in determining or calculating a payment to be made by one of the parties to the other is exclusive of any GST unless expressly stated 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 amount of GST payable on that supply (**GST Amount**). The GST Amount is payable at the same time as the consideration to which it relates. This Clause 36.4(c) does not apply to any amount that is expressly stated to be inclusive of GST.
- (d) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Contract, the amount of the reimbursement will be net of any Input Tax Credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.
- (e) Subject to Clauses 36.4(f) and (g), the Operator acknowledges that:
  - (i) the Operator Ticket Income and Ticketing System Income is collected by and paid to the Operator on its own account;
  - (ii) the Operator Ticket Income and Ticketing System Income is consideration for a supply made by the Operator to passengers and the Operator will remit the GST on that Operator Ticket Income and 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 Operator Ticket Income and Ticketing System Income are consideration.
- (g) If TfNSW issues a notice under Clause 14.2(d)(i)(B), then from the date that this notice is effective, the parties agree and acknowledge that for GST purposes:
  - (i) the Operator Ticket Income and Ticketing System Income will be collected and retained by TfNSW for its own account; and
  - (ii) the Operator Ticket Income and Ticketing System Income will be consideration for a supply made by TfNSW to passengers and TfNSW will remit the GST on that Operator Ticket Income and Ticketing System Income.

### **36.5 Civil Penalties**

Paragraph 5 of the KPI Schedule and paragraphs 3 and 8 of the Payment Schedule are civil penalty provisions for the purposes of section 38 of the PT Act 2014.

### **36.6 Subcontractor's Statements**

With each invoice submitted by the Operator, the Operator must provide TfNSW with a properly completed and correct Subcontractor's Statement for the period to which the invoice relates. The Operator acknowledges that it is not entitled to payment of the invoice unless such a statement is provided.

### **36.7 Certification of employee entitlements**

As a condition of payment of amounts due under Clause 36.1, the Operator will be required, on request by TfNSW, to certify that all Staff entitlements (including those referred to in Clause 31.3(c)(i)(B)) have been paid or properly accrued and TfNSW may inspect the Operator's records in this regard.

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## **Part J– Insurance and indemnity**

### **37. Reinstatement of loss of damage**

#### **37.1 Reinstatement**

- (a) If, at any time during the Term, any Asset is lost, destroyed or damaged beyond economic repair:
  - (i) the Operator must replace that Asset with an equivalent asset. The replacement must be of equal or better specification than the replaced Asset as it existed immediately prior to it being lost, destroyed or damaged beyond economic repair; and
  - (ii) the Payments will be adjusted in accordance with Schedule 12, but only to the extent that the NFI Event results in a positive Net Financial Impact.
- (b) To the extent that the loss, destruction or damage to the Asset occurs as a direct result of:
  - (i) a breach by TfNSW of any Transaction Document to which TfNSW is a party;
  - (ii) a reckless, unlawful or malicious act or omission by TfNSW or any of TfNSW's Associates when acting in respect of a Transaction Document; or
  - (iii) a negligent act or omission of a contractor of TfNSW when acting in respect of a Transaction Document,and is not caused by an act or omission of the Operator or any of the Operator's Associates, the cost of replacing the Asset is payable by TfNSW in accordance with Clause 41.
- (c) Contract Ferries that are replaced under this Clause 37.1 must comply with the uniform livery requirements set out in the TfNSW Brand Style Guide.
- (d) The Operator must repair or reinstate any other damage to any Assets unless otherwise expressly provided for in this Contract.

#### **37.2 Damage to third party property**

- (a) Without limiting Clause 39, but subject to Clause 38.2, where any damage to or loss or destruction of real or personal property of a third party occurs which arises out of a breach by the Operator of this Contract or an act or omission of the Operator, the Operator must do one of the following (where it has a legal liability to do so):
  - (i) promptly repair, replace or reinstate the damage, loss or destruction; or



- (ii) reasonably compensate the third party.
- (b) If the Operator fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, TfNSW may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by TfNSW will be a debt due and payable from the Operator to TfNSW.

## 38. Insurance

### 38.1 Insurance policies

- (a) On or before the Planned Service Commencement Date, the Operator must effect and maintain for the Term:
  - (i) public liability insurance:
    - (A) covering claims in respect of:
      - (I) damage to any real or personal property; and
      - (II) injury to, or death of, any person,
 arising out of or in connection with the performance of the Operator Activities and use and operation of the Assets;
    - (B) in which TfNSW, the State, the Transport Minister, Sydney Ferries and RMS are also a named insured in the policy; and
    - (C) for at least the amount specified in Item 5 of Attachment A;
  - (ii) workers' compensation insurance against any common law or statutory liability;
  - (iii) industrial special risks insurance:
    - (A) covering the State Premises (other than the RMS Wharves), Shipyard Infrastructure, Spares and all other movable plant or equipment used or accessed by the Operator in the conduct of the Operator Activities against physical loss, destruction or damage for an amount not less than the market value (plus allowances for claim contingencies including removal of debris, demolition costs, professional fees and expediting expenses); and
    - (B) to be effected in the joint names of TfNSW, the State, the Transport Minister, Sydney Ferries and RMS for their respective rights and interests;
  - (iv) marine liability insurance (or similar) in respect of the Contract Ferries and Shipyards:
    - (A) against:
      - (I) fire and usual marine risks (including hull, machinery and increased value insurance on an agreed value basis);
      - (II) war risks on an agreed value basis;
      - (III) any other risk which should be effected as a matter of Good Industry Practice; and
      - (IV) usual protection and indemnity risks (including risks in respect of pollution of the sea and environment) for at least [REDACTED]
    - (B) to be effected in the joint names of TfNSW, the State, the Transport Minister, Sydney Ferries and RMS and the Operator for their respective rights and interests;
  - (v) a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles which are used in connection with the Operator Activities;
  - (vi) compulsory third party motor vehicle insurance in respect of all registrable motor vehicles which are used in connection with the Operator Activities;

- (vii) insurance coverage against third party property damage for all motor vehicles used to carry out the Operator Activities for at least the amount specified in Item 6 of Attachment A;
  - (viii) terrorism insurance which covers physical loss or damage to the Contract Ferries caused by a 'Terrorist Act' (as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this Contract) and including cover for business interruption arising from such loss or damage; and
  - (ix) any other insurances which TfNSW reasonably requires in which it is also a named insured or which are commonly effected by the operators of public transport services comparable to the size, scope and complexity of the Operator Activities provided those insurances can be obtained on payment of a reasonable premium.
- (b) All policies of insurance required under this Clause 38 must be effected and maintained with an Authorised Insurer that has been approved by TfNSW.

### **38.2 Insurance generally**

- (a) The Operator represents and warrants to TfNSW that on the Service Commencement Date and for the duration of the Term that it has effected insurances as are required by, and in accordance with, Clause 38.1.
- (b) The Operator must use reasonable endeavours to ensure that all contracts for insurance the Operator effects in compliance with this Contract contain a term that requires the insurer to notify TfNSW in writing whenever the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy.
- (c) If the Operator has used reasonable endeavours as required by Clause 38.2(b) but, despite this, the contracts for insurance effected in compliance with this Contract do not contain the term referred to in Clause 38.2(b), the Operator must immediately notify TfNSW if the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy, including particulars of that notice from the insurer.
- (d) The Operator must provide notice to TfNSW of any intended cancellation of insurances effected in compliance with this Contract by the Operator and when any insurances are to expire.
- (e) The Operator must:
  - (i) give TfNSW proof of currency and coverage of the insurances referred to in Clause 38.1 that is acceptable to TfNSW before the Planned Service Commencement Date;
  - (ii) give TfNSW certified copies of all:
    - (A) policies;
    - (B) policy schedules;
    - (C) renewal certificates; and
    - (D) endorsement slips,
 as soon as it receives them;
  - (iii) give TfNSW a certificate of currency in a form satisfactory to TfNSW (acting reasonably) to confirm that the insurances which the Operator must effect and maintain under this Clause 38 have been effected and maintained in accordance with the requirements of this Clause 38, whenever any policy or insurance is renewed or replaced and whenever reasonably requested by TfNSW; and
  - (iv) in respect of any policy which names more than one insured, have each policy endorsed or a term in the policy to the effect that:
    - (A) the insurer waives its right to avoid the policy or any liability under the policy by reason of non-disclosure or inaccurate disclosure in the proposal relating to that policy by the named insureds other than the named insureds responsible for the non-disclosure or inaccurate disclosure;

- (B) the insurer agrees to waive all rights of subrogation or action that it may have or acquire against the 'insured' parties;
  - (C) the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
  - (D) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.
- (f) The Operator must:
- (i) not knowingly do or permit, or omit to do, anything which prejudices any insurance required to be effected and maintained under this Clause 38 (**Required Insurance**);
  - (ii) rectify anything which might prejudice any Required Insurance;
  - (iii) reinstate any Required Insurance if it lapses;
  - (iv) immediately notify TfNSW of any fact or circumstance or change in circumstances which may prejudice any Required Insurance;
  - (v) without limiting Clause 38.2(f)(iv), immediately notify TfNSW if it receives any claim or notice in connection with a Required Insurance;
  - (vi) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Required Insurance; and
  - (vii) comply at all times with the terms of each Required Insurance.
- (g) The effecting of insurances does not limit the liabilities or obligations of the Operator under this Contract. The Operator bears the risk of the Required Insurances being inadequate to enable the Operator to fulfil its obligations under this Contract.

### 38.3 Premiums

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

### 38.4 Claims and proceeds

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

## 39. Indemnity and Limitation of Liability

### 39.1 Indemnity

- (a) The Operator must indemnify TfNSW, RMS, Sydney Ferries, the Transport Minister, the State and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of, or to, any of them (**Indemnified Persons**), from and against:
- (i) any Loss incurred by an Indemnified Person in respect of:
    - (A) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to an Indemnified Person;
    - (B) damage to, loss or destruction of, or loss of use of (whether total or partial), any State Asset; and
    - (C) any Claim against an Indemnified Person (including by another Indemnified Person) in respect of:
      - (I) any illness, personal injury to, or death of, any person;
      - (II) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property; or
      - (III) breach of any Law or Authorisations,caused by, arising out of, or as a consequence of any act or omission of the Operator;
  - (ii) any Loss incurred by an Indemnified Person arising out of or any way in connection with:
    - (A) any breach of, or failure to comply with, a Transaction Document by the Operator including:
      - (I) any Non-Compliance Event; or
      - (II) any Termination Event;
    - (B) termination of this Contract under Clause 50.2; or
    - (C) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or any of the Staff;
  - (iii) any Loss incurred by an Indemnified Person in respect of any Claim by a third party against an Indemnified Person or any liability of an Indemnified Person to a third party arising out of, or in any way in connection with:
    - (A) any breach of, or failure to comply with, a Transaction Document by the Operator including:
      - (I) any Non-Compliance Event; or
      - (II) any Termination Event;
    - (B) termination of this Contract under Clause 50.2; or
    - (C) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or any of the Staff;
  - (iv) without limiting Clauses 39.1(a)(i), (ii) or (iii), any Loss incurred by an Indemnified Person including in respect of any Claim by a third party against an Indemnified Person or any liability of an Indemnified Person to a third party arising out of or in any way in connection with:
    - (A) the occupation or use of the Contract Ferries or the State Premises by the Operator or the Operator's Associates;
    - (B) any Subsequent Contamination including:
      - (I) except to the extent prohibited by Law, where arising out of or in any way in connection with any failure by the Operator to comply

- with any obligation under this Contract in connection with Subsequent Contamination; or
- (II) where incurred by TfNSW, RMS or Sydney Ferries in complying with, or in connection with, a Clean Up Notice to the extent that the relevant Contamination the subject of the Clean Up Notice is Subsequent Contamination;
- (C) except to the extent prohibited by Law:
    - (I) Contamination or Pollution in, on or under (or emanated or emanating from) any premises (other than the State Premises) used by the Operator in conducting the Operator Activities (**Other Premises**);
    - (II) any Contamination or Pollution of, to, around or emanating from any Other Premises or Sydney Harbour in connection with the Operator Activities;
    - (III) any Contamination or Pollution of, to, around or emanating from the Parramatta River in connection with the Operator Activities arising out of, or as a consequence of, any act or omission of the Operator or any of the Operator's Associates; and
    - (IV) any Contamination or Pollution occurring or emanating from any Other Premises or a Contract Ferry at any time after the Service Commencement Date;
  - (D) any liability of TfNSW under the Wharf Access Deed arising as a result of any act, default or omission of the Operator or any Operator's Associate;
  - (E) any breach by the Operator of the terms of a Key Contract;
  - (F) TfNSW:
    - (I) remedying or procuring the remedy of any default of the Operator under a Key Contract; or
    - (II) performing the obligations of the Operator under a Key Contract;
  - (G) a breach by the Operator of Clause 35.7;
  - (H) any infringement of any Intellectual Property rights by the Operator or any of the Operator's Associates;
  - (I) TfNSW's or its sublicensee's use of the Contract Material produced by or on behalf of the Operator infringing a third party's Intellectual Property rights; or
  - (J) (whether directly or indirectly) any breach of Clause 58 or 59 by the Operator including any breach of a warranty given by the Operator under Clause 58 or 59.
- (b) The Operator's indemnity in Clause 39.1(a) will be reduced proportionally to the extent that the Loss is caused by or arises out of, or in any way in connection with:
    - (i) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Indemnified Person claiming under the indemnity; or
    - (ii) a breach by TfNSW of its obligations under the Transaction Documents.
  - (c) This indemnity will not exclude any other right of TfNSW to be indemnified by the Operator.
  - (d) For the purposes of this Clause 39.1, 'infringement' includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 100 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth) constitute an infringement.

- (e) TfNSW may recover a payment under an indemnity in this Contract before the Indemnified Person for that indemnity makes the payment in respect of which the indemnity is given. Each indemnity is an on demand indemnity.

### **39.2 Liability and responsibility**

The Operator acknowledges and agrees that:

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

except as expressly provided otherwise in this Contract.

### **39.3 Release**

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

### **39.4 Exclusion of Consequential or Indirect Loss**

- (a) Subject to Clause 39.4(b), but otherwise despite any other provision of this Contract, the Operator has no liability to any Indemnified Person (whether in contract, tort, negligence, under an indemnity or otherwise), nor will any Indemnified Person be entitled to make any Claim against the Operator, in respect of Consequential or Indirect Loss incurred or sustained by the Indemnified Person as a result of any act or omission of the Operator (whether negligent or otherwise).
- (b) Clause 39.4(a) does not operate to limit or restrict the Operator's liability to an Indemnified Person in respect of Consequential or Indirect Loss:
  - (i) to the extent that the Operator has:
    - (A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
    - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that the Operator is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Operator,an amount in respect of that liability; and
  - (ii) to the extent that the Operator:
    - (A) is indemnified in respect of that liability by a policy of insurance required under this Contract; or
    - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract if the Operator had:
      - (I) diligently pursued a claim under that policy of insurance;
      - (II) complied with the terms and conditions of that policy or insurance;or

- (III) complied with its insurance obligations under this Contract;
- (iii) in respect of any Claim against an Indemnified Person by, or 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 the indemnity given under Clause 39.1(a)(i);
- (v) arising from any criminal acts or fraud on the part of the Operator or an Operator's Associate;
- (vi) arising from wilful misconduct on the part of the Operator or an Operator's Associate; or
- (vii) to the extent to which, by Law, the parties cannot limit or contract out of such liability.

### 39.5 State exclusion

- (a) Despite any other provision of this Contract but subject to Clauses 4 and 39.5(b), none of the Indemnified Persons has any liability to the Operator (whether in contract, tort or otherwise), nor will the Operator be entitled to make any Claim against the Indemnified Persons, in respect of Consequential or Indirect Loss incurred or sustained by the Operator as a result of any act or omission of the Indemnified Persons (whether negligent or otherwise).
- (b) Clause 39.5(a) does not operate to limit or restrict the State or TfNSW's liability in respect of Consequential or Indirect Loss:
  - (i) to the extent payable pursuant to Schedule 12;
  - (ii) to the extent payable as part of any termination payment referred to in Clause 50.4;
  - (iii) to the extent that an Indemnified Person:
    - (A) has recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
    - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that none of the Indemnified Persons are required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Indemnified Person,
 an amount in respect of that liability;
  - (iv) to the extent that the an Indemnified Person:
    - (A) is indemnified in respect of that liability by a policy of insurance required under this Contract; or
    - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract if TfNSW had:
      - (I) complied with the terms and conditions of that policy of insurance; or
      - (II) complied with its insurance obligations under this Contract;
  - (v) arising from any criminal acts or fraud on the part of the Indemnified Persons;
  - (vi) arising from wilful misconduct on the part of the Indemnified Persons; or
  - (vii) to the extent to which, by Law, the parties cannot limit or contract out of such liability.

### 39.6 Liability for events triggering KPI Credits

- (a) Subject to Clauses 39.6(b) and (c), reduction of the Payments by the application of KPI Credits will be the only monetary compensation payable by the Operator to TfNSW for any failure by the Operator to meet the Key Performance Indicators.

- (b) Clause 39.6(a) does not limit or exclude:
  - (i) the Operator's liability for any KPI Credit;
  - (ii) the Operator's liability under any indemnity contained in this Contract including the indemnity in Clause 39.1;
  - (iii) the Operator's obligations and liabilities under Clauses 48 to 50;
  - (iv) the Operator's obligations and liabilities under Clauses 51 to 54;
  - (v) any Indemnified Person's entitlement to a Claim under this Contract or at Law in respect of:
    - (A) any third party property damage; or
    - (B) any personal injury or death,
 for which the Operator or any Operator's Associate is liable;
  - (vi) TfNSW's rights under this Contract or any other Transaction Document in respect of the event that caused or contributed to the KPI Default (as opposed to the KPI Default itself); or
  - (vii) any other right under this Contract or at Law in relation to any non-monetary compensation.
- (c) If any KPI Credit is held to be void, invalid, unenforceable or otherwise inoperative so as to disentitle TfNSW from adjusting the Payments in accordance with the KPI Schedule, TfNSW will be entitled to recover common law damages for the failure to meet the Key Performance Indicators, but the Operator's liability for such damages will not be any greater than the liability which it would have had if the KPI Credit had not been void, invalid, unenforceable or otherwise inoperative.

### **39.7 Indemnified Persons**

- (a) To the extent that an indemnity in this Contract is for Indemnified Persons other than TfNSW, TfNSW has sought and obtained that indemnity as agent on behalf of each Indemnified Person (other than TfNSW) and TfNSW confirms that it has the authority to act as agent on behalf of each Indemnified Person (other than TfNSW). TfNSW may also enforce that indemnity as agent on behalf of each Indemnified Person (other than TfNSW).
- (b) If TfNSW does not have authority to act as agent on behalf of an Indemnified Person (other than TfNSW), then TfNSW will be deemed to have sought and obtained that indemnity as trustee for that Indemnified Person and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit of that Indemnified Person.
- (c) If the indemnity in Clause 39.1 is unenforceable to the extent that it is expressed to be given in favour of an Indemnified Person other than TfNSW, all references in this Clause 39 to the Indemnified Person will be read as a reference to TfNSW only.

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## **Part K– Management of change**

### **40. Management of disruption to Services**

#### **40.1 Disruption Event**

- (a) The Operator acknowledges and agrees:
  - (i) that the Services may be delayed or disrupted by:
    - (A) Change Events;
    - (B) Force Majeure Events;



- (C) Wharf Access Disruption Events;
  - (D) Major Projects Disruption Events,
- (Disruption Events);**
- (ii) the Operator has been engaged on the basis of its capacity to manage such disruptions and delays and to ensure Continuity of the Services; and
  - (iii) the Operator is primarily responsible for ensuring that Disruption Events cause no, or where this is not possible, minimises disruption to the Services to the fullest extent possible.
- (b) In addition to the obligations under Clauses 41, 42, 43 and 44, the Operator must comply with the process set out in Clause 40.2. It is a condition precedent to any entitlement of the Operator to any additional payment or relief that the Operator has complied with the notice requirements in these Clauses.

#### **40.2 Operator obligations regarding management of disruption**

- (a) If a Disruption Event unavoidably and permanently prevents, or will unavoidably and permanently prevent, the Operator from complying with its obligations under the Transaction Documents in respect of the Services, the Operator must:
- (i) mitigate any delay or disruption to the Services to the fullest extent possible and in accordance with the Operator's Disruption Management Plan;
  - (ii) as soon as possible and in any event within two Business Days after the Operator becomes aware, or ought reasonably to have become aware, that a Disruption Event has, or will unavoidably and permanently prevent the Operator from complying with its obligations under the Transaction Documents, give the TfNSW Representative a notice stating that a Disruption Event has occurred; and
  - (iii) as soon as possible and in any event within 10 Business Days after giving notice under Clause 40.2(b)(ii), give the TfNSW Representative full particulars of the Disruption Event including (to the extent practicable):
    - (A) details of the obligations which have been affected by the Disruption Event;
    - (B) details of the steps which the Operator has taken and will take to mitigate the effects of the Disruption Event; and
    - (C) adopting Good Industry Practice, details of any changes to the Contract Service Levels, Timetables or any Service Variations reasonably necessary to overcome the effects of the Disruption Event and to ensure Continuity of the Services (**Disruption Service Remedy Proposal**). The Disruption Service Remedy Proposal must be developed consistently with the requirements of Clause 16.
- (b) Within 20 Business Days after receiving a Disruption Service Remedy Proposal from the Operator, the TfNSW Representative may:
- (i) accept the Disruption Service Remedy Proposal;
  - (ii) by giving reasons, reject the Disruption Service Remedy Proposal; or
  - (iii) inform the Operator that it requires further time or information to assess the Disruption Service Remedy Proposal in which case the TfNSW Representative must advise the Operator of the further information required and the reasonable time within which such information must be provided and within which a determination will be made,
- by notice to the Operator. The Operator must comply with any request to provide further information issued by the TfNSW Representative under this Clause 40.2(b) in accordance with the timeframe advised by the TfNSW Representative under this Clause 40.2(b).

- (c) If TfNSW accepts the Disruption Service Remedy Proposal in accordance with Clause 40.2(b)(i):
  - (i) the Disruption Service Remedy Proposal will be implemented in accordance with Clauses 17 and 18;
  - (ii) subject to Clause 40.2(d), the Payments will be adjusted in accordance with Clause 18(d); and
  - (iii) the Operator will not have any other Claim against TfNSW in respect of the Disruption Event.
- (d) Notwithstanding any other provision in the Transaction Documents:
  - (i) to the extent a Disruption Event:
    - (A) arises out of or in connection with any safety issue or the protection of people and property;
    - (B) is caused or contributed to by an act or omission of the Operator or any Operator's Associate; or
    - (C) ought to have been reasonably foreseen by the Operator based on information provided to the Operator by TfNSW or based on information in the public domain and incorporated into the last review conducted by the Operator under Clause 16.2 prior to the Disruption Event occurring; or
  - (ii) without limiting Clause 40.2(d)(i), in the case of:
    - (A) a Wharf Access Disruption Event, if TfNSW has provided the Operator with access to a replacement Wharf with sufficient functionality and capacity to accommodate the Services provided at the Wharf that is affected by the Wharf Access Disruption Event to enable Continuity of the Services;
    - (B) any Disruption Event, the relevant event is within the scope of the CQ Disruption Parameters,

the Operator shall not be entitled to any increase to the Payments or any other compensation in relation to the Disruption Event.
- (e) Regardless of whether the Operator has delivered a Disruption Service Remedy Proposal under Clause 40.2(a), the TfNSW Representative may at any time (including after it has rejected a Disruption Service Remedy Proposal under Clause 40.2(b)), instruct the Operator to implement a change to the Contract Service Levels or Timetables or implement a Service Variation under Clauses 17 and 18.

## 41. Change Events

### 41.1 Change Event

A Change Event is any one of the following events:

- (a) a Change in Law;
- (b) the undertaking of remediation to the Shipyard in relation to Pre-existing Contamination to the extent that such remediation will cause disruption to the Ferry Operations;
- (c) the loss, destruction or damage beyond economic repair of an Asset in the circumstances set out in Clause 37.1(b); and

where such event:

- (d) occurs on or after the date of this Contract;
- (e) affects the Operator's obligations under this Contract or affects the Services; and
- (f) is not:
  - (i) a Major Projects Disruption Event;
  - (ii) a Wharf Access Disruption Event; or

- (iii) a Modification otherwise the subject of Clause 46 or any other provision of this Contract containing a mechanism for implementing an amendment as a consequence of the event, and whether or not providing for (or excluding) compensation to apply to that amendment.

#### 41.2 Management of disruption arising in connection with Change Event

The Operator must comply with Clause 40.2 in relation to any delay or disruption to the Services arising in connection with the Change Event, including the undertaking of works by the State or its contractors in connection with a Change Event.

#### 41.3 Notification of Change Event

(a) If the Operator reasonably considers that:

- (i) there is a Change Event and the Operator will incur or be required to incur expenditure or will receive reduced income, that:
  - (A) the Operator would not have otherwise incurred or received (as the case may be); and
  - (B) is necessary to ensure continued compliance by the Operator with its obligations under the Transaction Documents in the context of the Change Event,

other than any increased expenditure or reduced income that is otherwise the subject of a Service Variation (**Expenditure**);

- (ii) recovery of the Expenditure is consistent with the provisions of this Clause 41;
- (iii) the Operator has not or will not be otherwise compensated under a Transaction Document for or in connection with the Change Event,

then the Operator may by notice apply to TfNSW for a change to the payments made under this Contract (**Change Order**), provided that Expenditure recoverable under this Clause 41 will, in the case of a Change Event contemplated in Clause 41.1(c), be limited to the cost of replacing the Asset with an equivalent Asset.

(b) A Change Notice issued under Clause 41.3(a) must be given in the time periods stated in Clause 41.3(c) and include information about:

- (i) the event or circumstance that the Operator considers constitutes a Change Event;
- (ii) the amendments to the Ferry Operations or Operator Activities or procedures that the Operator proposes to make to ensure continued compliance with its obligations under the Transaction Documents in the context of the Change Event and the timing of such amendments (other than Service Variations proposed under Clause 40.2);
- (iii) the mechanics for integrating the Change Event with the continued provision of the Services (other than Service Variations proposed under Clause 40.2);
- (iv) the Expenditure and substantiating documentation;
- (v) working papers supporting on an open book basis the determination of the Expenditure;
- (vi) the proposed method of funding the Expenditure and justification for the proposed method of funding;
- (vii) whether or not any or all of the Expenditure could be accommodated in any subsequent replacement or procurement of any Assets used in performing the Operator's obligations under this Contract or the performance of the Services;
- (viii) having regard to the Expenditure, the Operator's proposal for a Net Financial Impact adjustment, prepared in accordance with Schedule 12;
- (ix) a statement of the Expenditure certified by an accountant independent of the Operator and who is a member of the Australian Society of Certified Practising Accountants or of the Institute of Chartered Accountants;

- (x) a statutory declaration from two directors (or a director and secretary) of the Operator confirming that in their opinions:
  - (A) the Change Event cannot be accommodated within the current Ferry Operations or any amendment to those operations or procedures without incurring the Expenditure; and
  - (B) the financial information provided to TfNSW is accurate, true and fair; and
- (xi) evidence of compliance with Clause 45.
- (c) If a Change Event or a Force Majeure Event occurs and prevents, or will prevent, the ability of the Operator to comply with its obligations under this Contract, the Operator must:
  - (i) within two Business Days after it becomes aware, or ought reasonably to have become aware, that a Change Event or Force Majeure Event is likely to affect the ability of the Operator to comply with its obligations under this Contract, give to the TfNSW Representative a notice:
    - (A) stating that a Change Event or Force Majeure Event has occurred;
    - (B) stating whether the Operator proposes to seek relief from performance of its obligations arising directly out of that Change Event or Force Majeure Event and in the case of a Change Event, payment; and
  - (ii) within 10 Business Days after giving the notice under Clause 41.3(c)(i), give the TfNSW Representative full particulars of the Change Event or Force Majeure Event including (to the extent practicable):
    - (A) detailed particulars concerning the Change Event or Force Majeure Event upon which the Claim is based;
    - (B) details of the obligations which have been prevented by the Change Event or Force Majeure Event;
    - (C) details of the steps which the Operator has taken to mitigate the effects of the relevant Change Event or Force Majeure Event; and
    - (D) in the case of a Change Event, the information in Clause 41.3(b); and
  - (iii) if the Change Event or Force Majeure Event (or its effects) is continuing:
    - (A) continue to give the information required by Clause 41.3(c)(ii) every 40 Business Days after the notice under Clause 41.3(c)(i) was provided to the TfNSW Representative until after the Change Event or Force Majeure Event (or its effects) has ceased; and
    - (B) if the Operator has notified TfNSW that it proposes to seek relief under Clause 41.3(c)(i)(B), provide a final written Claim within five Business Days after the Change Event or Force Majeure Event (or its effects) have ceased.
- (d) If the Operator is permitted to issue a Change Notice under both Clauses 41.3(a) and 41.3(c) in respect of the one event, the Operator may issue a single Change Notice in respect of both Clauses 41.3(a) and 41.3(c) provided that the subject matter heading of the Change Notice clearly identifies that the notice has been issued under both Clauses and the content of the notice clearly and separately addresses each of the requirements of both Clauses.
- (e) TfNSW may request that other information it reasonably considers relevant with respect to any of the matters listed in Clauses 41.3(b) and 41.3(c) be provided to it within a reasonable time.
- (f) The Operator must comply with a request from TfNSW under Clause 41.3(e).

- (g) If TfNSW:
  - (i) reasonably considers that:
    - (A) there is a Change Event and the Operator will no longer be required to make an expenditure or the Operator's expenditures will be reduced and payments made under this Contract will not otherwise be reduced;
    - (B) there is a Change Event and the Operator may or will be prevented from performing its obligations under this Contract; or
  - (ii) identifies a Change Event which would or is likely to arise out of any proposed or anticipated action by TfNSW or the TfNSW's Associates,

then TfNSW may by notice require the Operator to submit a Change Notice to TfNSW and the provisions of this Clause 41 will apply. TfNSW is not required to exercise this discretion for the benefit of the Operator nor does it have any obligation, to issue, or consider whether it should issue, a Change Order.

#### **41.4 TfNSW's response**

- (a) Within 20 Business Days after the later of the receipt by TfNSW of a Change Notice issued under Clause 41.3(a) (or any longer period agreed by TfNSW and the Operator) and the provision of any additional information under Clause 41.3(e), TfNSW must notify the Operator that:
  - (i) it accepts the application for a Change Order; or
  - (ii) it rejects the application for a Change Order and reasonably considers that:
    - (A) an event or circumstance that the Operator has claimed to be a Change Event is not a Change Event;
    - (B) the proposed method of addressing the Expenditure is not the best cost option for the Operator (after having regard to the Operator's circumstances and TfNSW's available funding);
    - (C) the recovery of the Expenditure does not satisfy the requirements of Clause 41.3(a);
    - (D) the Change Notice does not comply with Clause 41.3(b);
    - (E) the Operator has not complied with Clause 41.3(f);
    - (F) the Operator has not complied with Clause 45; or
    - (G) the Change Event or proposed Change Event will not proceed or is amended or withdrawn.
- (b) If TfNSW notifies the Operator under Clause 41.4(a)(i) that it has accepted the application for a Change Order, a Change Order occurs and the Net Financial Impact arising from the Change Event will be determined and receivable or payable (as the case may be) in accordance with, and subject to, Schedule 12.
- (c) If TfNSW notifies the Operator under Clause 41.4(a)(ii) that it has rejected the application for a Change Order, the Operator may either:
  - (i) withdraw the Change Notice; or
  - (ii) refer the matter to dispute resolution by the Expert under Clause 60.
- (d) If TfNSW fails to give notice to the Operator under (or within the time required by) Clause 41.4(a)(i) or Clause 41.4(a)(ii), TfNSW is not deemed to have accepted the Change Order under Clause 41.4(a)(i).
- (e) If the dispute resolution process commenced following a notice under Clause 41.4(c)(ii) determines the matter in dispute:
  - (i) in favour of the Operator, a Change Order occurs; or
  - (ii) in favour of TfNSW, the Change Notice is deemed withdrawn under Clause 41.4(c)(i).

## 41.5 Relief

- (a) If a Change Event or Force Majeure Event occurs that prevents the Operator from carrying on its obligations under this Contract and the Operator has complied with the requirements in Clause 41.3 and this Clause 41.5, TfNSW will grant the Operator such relief from its non-financial obligations under this Contract which are prevented by the Change Event or Force Majeure Event, but only to the extent and for so long as the Change Event or Force Majeure Event prevents the Operator from performing those obligations provided that for the purposes of determining the Operator's compliance with the Key Performance Indicators, the Operator's obligations under this Contract that are affected by the Change Event will be deemed to be subsisting for the duration of the Change Event.
- (b) The Operator must:
  - (i) remedy or minimise the effects of the Change Event or Force Majeure to the extent reasonably practicable; and
  - (ii) take all action reasonably practicable to mitigate any loss suffered by TfNSW or any passengers as a result of the Operator's failure to carry out its obligations under this Contract. The Operator is not required to test the validity, or refrain from testing the validity, of any Law.
- (c) The Operator acknowledges and agrees that any relief granted by TfNSW under this Clause 41.5 will not apply to extend the Planned Service Commencement Date.
- (d) The Term will not be extended by the period of a Change Event or Force Majeure Event.

## 42. Force Majeure

### 42.1 Claims for relief

- (a) If a party (**Affected Party**) is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, it must as soon as practicable, notify the other parties accordingly.
- (b) Each notice given under Clause 42.1(a) must:
  - (i) specify the obligations and the extent to which the Affected Party cannot perform those obligations;
  - (ii) fully describe and provide documentary evidence of the Force Majeure Event;
  - (iii) estimate the time during which the Force Majeure Event will continue; and
  - (iv) specify the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.

### 42.2 Suspension of TfNSW obligations

- (a) For the duration of a Force Majeure Event, the obligations of TfNSW which cannot be performed because of the Force Majeure Event will be suspended.
- (b) TfNSW will:
  - (i) remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
  - (ii) take all action reasonably practicable to mitigate any Loss suffered by the Operator as a result of TfNSW's failure to carry out its obligations under this Contract. TfNSW is not required to test the validity, or refrain from testing the validity, of any Law.

### **42.3 Suspension of Operator obligations**

- (a) The Operator may submit a Change Notice in relation to a Force Majeure Event under Clause 41.3(c).
- (b) The Operator acknowledges and agrees that for the purposes of determining the Operator's compliance with the Key Performance Indicators, the Operator's obligations under this Contract that are unaffected by the Force Majeure Event will be deemed to be subsisting for the duration of the Force Majeure Event.

### **42.4 Term**

The Term will not be extended by the period of a Force Majeure Event.

### **42.5 Management of disruption caused by Force Majeure Events**

The Operator must comply with Clause 40.2 in relation to any delay or disruption to the Services arising out of or in connection with the Force Majeure Event, including the undertaking of works by the State or its contractors in connection with a Force Majeure Event.

## **43. Management of disruption to Wharf access**

### **43.1 Disruption to Wharf access**

Without limiting the Operator's right to issue a Disruption Service Remedy Proposal under Clause 40.2(a), the Operator acknowledges that it is responsible for ensuring Continuity of the Services notwithstanding that access to Wharves may be disrupted, interfered with, removed or made more onerous including as a result of any of the following:

- (a) any matter relating to the safety of any person or property;
- (b) the occurrence of a 'Force Majeure Event' (as that term is defined in the Wharf Access Deed);
- (c) a suspension under clause 8 of the Wharf Access Deed;
- (d) the permanent removal of access to a RMS Wharf under clause 9.6 of the Wharf Access Deed;
- (e) a material change to any Wharf Rule;
- (f) a RMS Wharf which, at the date of this Contract, is designated as an Exclusive Access Wharf being designated as a Priority Access Wharf under the Wharf Access Deed during the Term; or
- (g) a variation, replacement or termination of the Wharf Access Deed pursuant to Clause 22.3,

**(Wharf Access Disruption Event).**

### **43.2 Operator obligations regarding disruption to access**

The Operator must comply with Clause 40.2 in relation to any delay or disruption to the Services arising in connection with any Wharf Access Disruption Event.

## 44. Major Projects

### 44.1 Major Projects

- (a) The Operator acknowledges that:
- (i) the State (including through Governmental Agencies) may undertake:
    - (A) major works (including planning and advisory work, interface management, design, construction, testing, commissioning and ongoing operation and maintenance) in relation to or affecting the State Assets and the Services (**Major Projects**) including:
      - (I) undertaking projects to upgrade the condition and characteristics of certain RMS Wharves and associated infrastructure (**RMS Wharf Upgrade Program**);
      - (II) undertaking projects to upgrade and redevelop Circular Quay (**Circular Quay Redevelopment**); and
      - (III) procuring new vessels including new vessels to provide Services on the Parramatta River (**State Fleet Procurement**);
    - (B) other major works (including planning and advisory work, interface management, design, construction, testing, commissioning and ongoing operation and maintenance) that impact the delivery of the Services including:
      - (I) the Parramatta Light Rail Project;
      - (II) the Sydney Metro City and Southwest Project;
      - (III) the Sydney Metro West Project;
      - (IV) the Australian National Maritime Museum Redevelopment;
      - (V) the King Street Wharf Maintenance and Rectification Program;
      - (VI) the Western Harbour Tunnel Project; and
      - (VII) the Transport Access Program or equivalent programs to upgrade infrastructure and interchange facilities at Sydney Harbour wharves,  
**(Major Projects)**;
  - (ii) Major Projects may be implemented during the Term; and
  - (iii) Major Projects may impact on the Services.
- (b) The Operator must cooperate with TfNSW, the State and its contractors and agents regarding all aspects of the implementation of any Major Project, including by:
- (i) participating in consultation, discussions and forums with key stakeholders and ensuring that passengers are provided up to date and accurate information regarding the impacts of the Major Project on the Services;
  - (ii) assisting TfNSW and the State to implement arrangements, procedures and protocols to minimise disruptions to the Services;
  - (iii) providing any response, information, assistance or documentation reasonably requested by the State within a reasonable time of the request;
  - (iv) conducting the Ferry Operations in a way that facilitates the implementation of the Major Project in a safe, expeditious and efficient manner;
  - (v) cooperating and carefully coordinating the Operator Activities with the work and activities of the State and its contractors and agents;
  - (vi) assisting TfNSW and the State in ensuring that any works designed and constructed as part of the Major Project are compatible with the State Assets or Operator New Ferries including assisting with testing and commissioning;



- (vii) allowing TfNSW to adjust the State Assets or Operator New Ferries to interface with any works constructed as part of the Major Project;
- (viii) cooperating with TfNSW and the State and their nominees to facilitate the undertaking of the Major Project, including permitting contemporaneous access to, or reasonable temporary closure of parts of the Wharves, managing passengers and others in areas affected by the Major Project and rescheduling or adjusting the Operator Activities;
- (ix) mitigating Loss suffered by the Operator as a result of the establishment, commissioning and or operation of the Major Project; and
- (x) complying with directions issued by and doing all other things reasonably required by TfNSW or the State to facilitate the Major Project (including executing any document or entering into an agreement with a third party on term which the TfNSW Representative considers to be commercially reasonable).

#### **44.2 Management of disruption caused by Major Projects**

The Operator must comply with Clause 40.2 in relation to any delay or disruption to the Services arising out of or in connection with a Major Project including the undertaking of works by the State or its contractors in connection with a Major Project (**Major Projects Disruption Event**).

#### **44.3 Special Requirements for Circular Quay Redevelopment**

- (a) Without limiting the Operator's obligations under Clauses 40, 44.1 and 44.2, the Operator must, in relation to the Circular Quay Redevelopment:
  - (i) comply with the Operator's Disruption Management Plan as it applies to the Circular Quay Redevelopment;
  - (ii) within 10 Business Days after being directed to do so by TfNSW, provide TfNSW with a draft disruption management plan in respect of any stage of the Circular Quay Redevelopment (**CQR Stage Disruption Management Plan**) which must at minimum:
    - (A) include a Disruption Service Remedy Proposal that complies with the requirements of Clause 40.2; and
    - (B) be consistent with the Operator's Disruption Management Plan.
- (b) TfNSW may provide comments on the draft CQR Stage Disruption Management Plan, within 10 Business Days after receipt of a draft CQR Stage Disruption Management Plan under Clause 44.3(a)(ii).
- (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under Clause 44.3(b), the Operator must provide to TfNSW for its approval a revised version of the CQR Stage Disruption Management amended to incorporate any comments provided by TfNSW under Clause 44.3(b).
- (d) The Operator must comply with the CQR Stage Disruption Management Plan approved by TfNSW under Clause 44.3(c).
- (e) The CQR Stage Disruption Management Plan must not be amended without TfNSW's approval.
- (f) The Operator acknowledges and agrees that it is responsible for relocating the control room located on Wharf 3 of Circular Quay in a timely manner and so as to ensure Continuity of the Services while not interfering with the Circular Quay Redevelopment.

#### **44.4 No other Claims**

Except as expressly set out in in Clause 44.2 or Clause 40.2, and despite anything to the contrary in the Transaction Documents, the Operator has no Claim against TfNSW in relation to any Major Projects Disruption Event.

## 45. Mitigation

### 45.1 Operator to mitigate Loss

In respect of any claim for compensation by the Operator from TfNSW under this Contract arising in respect of a Modification, Force Majeure Event, Change Event, Major Projects Disruption Event or Wharf Access Disruption Event or any other event contemplated by this Contract, the Operator must (to the extent of its financial, technical and other relevant resources) use its reasonable endeavours to mitigate the amount of any Loss associated with the circumstances giving rise to the claim (or potential claim) for compensation.

### 45.2 Failure to mitigate

To the extent that the Operator fails to comply with Clause 45.1, such amounts that TfNSW (acting fairly, reasonably and in good faith) considers would otherwise have been mitigated or minimised had the Operator complied with Clause 45.1 are:

- (a) not recoverable under this Contract; and
- (b) to be excluded from any Net Financial Impact calculations under Schedule 12.

## 46. Modifications

### 46.1 TfNSW Modification Request

- (a) The TfNSW Representative may at any time issue to the Operator a Modification Request setting out the details of a proposed Modification which TfNSW is considering.
- (b) The Operator must provide TfNSW with a Modification Impact Proposal as soon as practicable (but no later than 10 Business Days or, if a direction is issued under Clause 47, 20 Business Days) after receipt of a Modification Request.
- (c) TfNSW will not be obliged to proceed with any Modification proposed in a Modification Request.

### 46.2 Modification Order

- (a) Within 40 Business Days after receiving a Modification Impact Proposal, the TfNSW Representative may:
  - (i) accept the Modification Impact Proposal by issuing a Modification Order on the basis set out in the Modification Impact Proposal;
  - (ii) reject the Modification Impact Proposal;
  - (iii) inform the Operator that it does not wish to proceed with the proposed Modification;
  - (iv) if Clause 47 applies, provide comments or recommendation regarding the Procurement Proposal under Clause 47.7; or
  - (v) inform the Operator that it requires further time or information to assess the Modification Impact Proposal in which case TfNSW must advise the Operator of the further information required and the reasonable time within which such information must be provided and within which a determination will be made, by notice to the Operator. The Operator must comply with any request to provide further information issued by TfNSW under this Clause 46.2(a) in accordance with the timeframe advised by TfNSW under this Clause 46.2(a).
- (b) If TfNSW accepts the Modification Impact Proposal in accordance with Clause 46.2(a)(i):
  - (i) the Operator must implement the Modification on the basis of the Modification Impact Proposal (as accepted by TfNSW); and
  - (ii) the Operator's obligations under this Contract will be modified to the extent specified in the Modification Impact Proposal (as accepted by TfNSW).

- (c) Whether or not TfNSW has issued a Modification Request under Clause 46.1, the TfNSW Representative may at any time instruct the Operator to implement a Modification by issuing a Modification Order. In these circumstances TfNSW will determine all matters required to enable the Modification to be implemented.
- (d) If the Operator disagrees with a matter determined by TfNSW under Clause 46.2(c):
  - (i) the Operator may refer the matter to an Expert for determination in accordance with Clause 60.2;
  - (ii) the Operator must proceed to implement the Modification on the basis determined by TfNSW notwithstanding that the matters in dispute have not been agreed or determined in accordance with Clause 60.2; and
  - (iii) any necessary adjustments will be made following any agreement or determination under Clause 60.2.

### 46.3 Operator initiated Modifications

- (a) The Operator may propose a Modification by giving to TfNSW a notice with details of:
  - (i) the proposed Modification;
  - (ii) the reason for the proposed Modification;
  - (iii) the time within, and the manner in, which the Operator proposes to implement the proposed Modification;
  - (iv) any Authorisations required to implement the proposed Modification and the effect of the proposed Modification on any existing Authorisations;
  - (v) the effects which the proposed Modification will have on the Operator's ability to satisfy its obligations under this Contract; and
  - (vi) the value for money for TfNSW arising from the Modification, including the proposed cost savings to be paid to TfNSW.
- (b) If the Operator gives a notice under Clause 46.3(a), TfNSW:
  - (i) will consider the Operator's proposed Modification; and
  - (ii) may:
    - (A) approve the proposed Modification by issuing a Modification Order on the basis set out in the Operator's notice under Clause 46.3(a) to the Operator; or
    - (B) reject the proposed Modification; and
  - (iii) will be under no obligation to approve the proposed Modification for the convenience of or to assist the Operator.
- (c) The Operator will:
  - (i) bear all risks and costs associated with a Modification proposed by the Operator; and
  - (ii) have no Claim against TfNSW arising out of, or in any way in connection with, a Modification proposed by the Operator.
- (d) If a decision, demand, determination, direction, instruction, order, rejection, requirement or notice given to it in writing by a person authorised by TfNSW to do so (**Direction**), other than a Modification Order, in the Operator's opinion constitutes a Modification, the Operator must, if it wishes to make a Claim against TfNSW arising out of or in any way in connection with the Direction, issue a notice under Clause 46.3(a) in respect of the Direction within 10 Business Days after receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction.
- (e) TfNSW will have no liability in respect of any Claim by the Operator arising out of or in connection with a Direction if the Operator fails to comply with the requirements of Clause 46.3(d).

#### **46.4 Operator to implement Modification**

If TfNSW gives a Modification Order:

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

#### **46.5 Omissions**

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

#### **46.6 Payment**

- (a) Where TfNSW has issued a direction under Clause 47 and issued a Modification Order accepting a Procurement Proposal, the Operator will be paid for the relevant modification in accordance with the Procurement Proposal. Otherwise, the Net Financial Impact of a Modification directed by TfNSW under Clauses 46.1 to 46.5 will be calculated and paid in accordance with Schedule 12.
- (b) The Operator will have no Claim against TfNSW arising out of, or in any way in connection with, any Modification, except where the Operator is directed to implement a Modification pursuant to a Modification Order issued by TfNSW under Clauses 46.1 to 46.5.

#### **46.7 Other contractor to perform Modification**

If TfNSW notifies the Operator that it wishes to withdraw a Modification Request then:

- (a) TfNSW may undertake, or appoint any of TfNSW's Associates (including another contractor) to undertake the Modification;
- (b) the Operator must co-operate with, and not hinder, prevent or delay TfNSW or TfNSW's Associates from undertaking the Modification and must provide TfNSW or any of TfNSW's Associates with all assistance and information about the Ferry Operations that TfNSW or TfNSW's Associates reasonably require; and
- (c) TfNSW may request and the Operator will, in good faith, enter into an interface protocol with any of TfNSW's Associates in respect of any aspect of the Modification and its procurement.

#### **46.8 Implementation of Modification**

- (a) All Modifications implemented by the Operator:
  - (i) must be designed, constructed and completed so that:
    - (A) the Operator provides and will continue to provide the Ferry Operations in accordance with the Transaction Documents;
    - (B) the Operator will at all times comply with its obligations under the Transaction Documents; and
    - (C) any equipment or materials forming part of the Modification are selected, procured, manufactured, installed, commissioned and tested in accordance with Good Industry Practice and are fit for purpose; and
  - (ii) must be implemented so as to cause no disruption to the provision of the Services by the Operator, save to the extent of disruptions or suspension of obligations agreed by the Operator and TfNSW in consultation prior to the issue of, and as specified in, the Modification Request or Procurement Proposal.
- (b) Except as expressly agreed by TfNSW and the Operator in a Modification Order, the Operator releases TfNSW and TfNSW's Associates from any Losses of the Operator (or any person claiming through or on behalf of the Operator, including any of the Operator's Associates) in respect of or in connection with such Modification.

## 47. Procurement of Modifications

### 47.1 Procurement process

TfNSW may as part of a Modification Request direct the Operator to provide any goods or services required as part of a TfNSW initiated Modification to be procured in accordance with the process set out in this Clause 47.

### 47.2 Procurement Proposal

If TfNSW gives a direction under Clause 47.1 (**Procurement Proposal Notice**), the Operator must, as part of its Modification Impact Proposal, prepare and submit to TfNSW a detailed proposal for the procurement of the Modification (**Procurement Proposal**) which includes:

- (a) if requested in the Procurement Proposal Notice, the scope of works required to deliver the Modification;
- (b) the Operator's proposed methodology and processes for performing or procuring the performance of the Modification;
- (c) the concept design of the Modification;
- (d) the programme for implementing the Modification and the time within which the Modification will be implemented;
- (e) the identity, nature, scope, pricing and terms of any subcontractor, consultant or supplier required to undertake any aspect of the Modification;
- (f) the cost of the proposed Modification, calculated in accordance with Clauses 47.3, 47.4 and 47.5 and including calculations supporting the requirements for:
  - (i) staged payments matching the payments to relevant subcontractors;
  - (ii) if appropriate:
    - (A) a lump sum amount for the capital component of any Modification together with the Operator's proposal in relation to the timing of such payment; and
    - (B) any adjustment to the Monthly Service Payments;
- (g) the mechanics for integrating the Modification with the continued provision of the Services;
- (h) the Expenditure and substantiating documentation including:
  - (i) working papers supporting the determination of the Expenditure;
  - (ii) a statutory declaration from two directors (or a director and secretary) of the Operator confirming that in their opinion the financial information provided to TfNSW is accurate, true and fair; and
  - (iii) evidence of compliance with Clause 45;
- (i) a margin commensurate with the identifiable risk of undertaking the Modification but which must not exceed █████ for the Operator on any work carried out by any arm's length subcontractor; and
- (j) any other information requested by TfNSW in respect of the Modification in such form as may be requested.

### 47.3 Value for money

In determining the cost under Clause 47.2, the overriding considerations are:

- (a) that TfNSW receives value for money and that the cost proposed pursuant to Clause 47.2 is fair and reasonable and is calculated in a manner that is transparent and avoids any double counting; and
- (b) the Operator will not be compensated by TfNSW for Modification (among other things) the cost of which is included in the Monthly Service Payment or for which the Operator is compensated by other means;
- (c) that rates proposed for services must not exceed the rates set out in relation to those services in Annexure A to Schedule 12.

#### 47.4 Open book

The Operator must:

- (a) provide (and must procure that the subcontractors provide) all information on an open book basis; and
- (b) ensure that any unit prices or amounts of compensation are calculated based on the most efficient form of delivery which offers the best value for money to TfNSW in order to comply with the Procurement Proposal Notice.

#### 47.5 Calculation of cost

The Operator must calculate any cost avoided (including tax, financing or other benefits associated with deferred expenditure) made by or accruing to the Operator as a result of the Modification.

#### 47.6 Obtaining quotes and tendering

- (a) If the proposed value of the Modification is equal to or greater than ██████████ but less than ██████████ (CPI Indexed and GST inclusive), the Procurement Proposal must include not less than three written quotes from three different contractors nominated by the Operator to carry out the relevant Modification in accordance with the methodology and processes for procuring the performance of the Modification set out in the Procurement Proposal.
- (b) If the proposed value of the Modification is equal to or greater than ██████████ (CPI Indexed and GST inclusive), the Procurement Proposal must be a proposal in which the Operator is engaged by TfNSW in the capacity of a managing contractor to issue a public call for tender.
- (c) The Operator must ensure that all tender processes for the Modification are conducted:
  - (i) in a manner consistent with Australian Standard AS 4120-1994 *Code of Tendering* or such other standard, policy or procedure as TfNSW may notify to the Operator;
  - (ii) on terms which provide value for money for TfNSW; and
  - (iii) with the highest standards of probity and fairness on a commercial arm's length basis.
- (d) The Operator must do each of the following as part of the Procurement Proposal (if Clause 47.6(a) applies) or as part of a tender process (if Clause 47.6(b) applies):
  - (i) examine and analyse all quotes and tenders received;
  - (ii) recommend to TfNSW which quote or tender, if any, should be accepted by the Operator; and
  - (iii) submit together with any such recommendation, the proposed subcontract (including subcontract price), as well as the amounts quoted or tendered by other suppliers and such other information required by TfNSW.

#### 47.7 TfNSW response

- (a) Within 40 Business Days after receiving the Procurement Proposal, TfNSW may by notice give the Operator comments or recommendations regarding the Procurement Proposal.
- (b) If TfNSW:
  - (i) does not consent to the Operator's recommended quote or tender; or
  - (ii) gives the Operator other comments or recommendations regarding the Procurement Proposal,

the Operator must identify another quote or supplier which would be acceptable to TfNSW and amend the Procurement Proposal to reflect that new quote or supplier and TfNSW's other comments or recommendations and the Procurement Proposal must be re-submitted by the Operator within 10 Business Days.

- (c) If required by TfNSW, the Operator will meet at such times and procure such further details and access to such appropriately qualified personnel, as may be reasonably necessary to enable TfNSW to assess any Procurement Proposal.

- (d) No consent or withholding of consent by TfNSW will in any way relieve the Operator from any of the Operator's liabilities or obligations under the Transaction Documents.

#### 47.8 Agreed Procurement Proposal and Approved Tenderer

- (a) If TfNSW issues a Modification Order in relation to a Modification Request, the Procurement Proposal relating to that Modification Request is deemed to be accepted by TfNSW and the Operator must implement it in accordance with its terms and the Operator must promptly enter into the subcontract with any approved tenderer on the basis provided to TfNSW in the Procurement Proposal or with such amendments as TfNSW may approve.
- (b) The Operator must not terminate that subcontract except with the approval of TfNSW.

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## Part L– Termination and End of Term

### 48. Default and cure regime

#### 48.1 Non-Compliance Events

- (a) The following are Non-Compliance Events:

- (i) **(Non-performance of Key Performance Indicators)** the Operator:

- (A) breaches an individual Class 1 Key Performance Indicator on two occasions within a six month period;
- (B) breaches an individual Class 1 Key Performance Indicator on three occasions within a 12 month period; or
- (C) breaches an individual Class 3 Key Performance Indicator in two consecutive Quarters,

and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a cure plan provided in accordance with the KPI Schedule, to justify waiving the breaches of the relevant Key Performance Indicators for the purposes of this Clause 48.1;

- (ii) **(lack or breach of Authorisation)** the Operator or any Operator's Associate:

- (A) undertakes any of the Operator Activities which require an Authorisation without obtaining the Authorisation or being Authorised to do so; or
- (B) breaches the terms of any Authorisation;

- (iii) **(threatened suspension or revocation of Authorisation)** a Safety Authority notifies the Operator that:

- (A) the Operator or an Operator's Associate must improve a part of the Operator Activities to which an Authorisation relates and failure to do so within the time specified by the Safety Authority may result in the Safety Authority suspending or revoking the Authorisation;
- (B) a Safety Authority proposes to suspend or revoke an Authorisation held by the Operator or an Operator's Associate that is required to permit the Operator to carry out the Operator Activities; or
- (C) a failure to take action specified by a Safety Authority within a time period specified by the Safety Authority may result in the Safety Authority suspending or revoking an Authorisation held by the Operator or an Operator's Associate that is required to permit the Operator to carry out the Operator Activities;

- (iv) **(Offer Commitment)** a failure by the Operator:
    - (A) to provide any Design and Business Rules (as defined in paragraph 5 of Schedule 13) in accordance with paragraph 5 of Schedule 13; or
    - (B) to achieve the Offer Commitments set out in paragraph 5 of Schedule 13;
  - (v) **(Operator Breach)** any Operator breach of a Transaction Document other than one that is a Termination Event;
  - (vi) **(Failure to achieve Transition Milestone)** a breach of the kind referred to in Clause 9.2(a); or
  - (vii) **(Misrepresentation)** a material representation, warranty or statement by or on behalf of the Operator in a Transaction Document, or in a document provided under or in connection with a Transaction Document, is not true in a material respect or is misleading when made or repeated (other than where Clause 29.3 applies).
- (b) As soon as practicable following the Operator becoming aware of a Non-Compliance Event the Operator must give notice to TfNSW setting out in reasonable detail the relevant event and surrounding circumstances.

#### 48.2 Issue of Non-Compliance Notice

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

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

#### 48.3 Dealing with Non-Compliance Notices

- (a) If TfNSW requires the Operator to immediately remedy the Non-Compliance Event under Clause 48.2(c)(i), the Operator must remedy the Non-Compliance Event within the period stipulated by TfNSW in the Non-Compliance Notice.
- (b) If TfNSW requires the Operator to submit a NCE Cure Plan under Clause 48.2(c)(ii), the Operator must within five Business Days after receipt of the Non-Compliance Notice submit to TfNSW a NCE Cure Plan which must, in order to be a compliant NCE Cure Plan, include:
  - (i) the requirements of any cure plan previously provided by the Operator in accordance with the KPI Schedule;
  - (ii) the measures that the Operator considers necessary and proposes to take to cure the Non-Compliance Event (or the events or the circumstances giving rise to the Non-Compliance Event), including any measures over and above those provided for in any cure plan previously provided by the Operator in accordance with the KPI Schedule;



- (iii) the Temporary Measures to be taken to alleviate the impact or effect of the Non-Compliance Event (or the events or circumstances giving rise to the Non-Compliance Event) pending implementation of the NCE Cure Plan;
  - (iv) the period within which the Operator will cure the Non-Compliance Event (or the events or the circumstances that gave rise to the Non-Compliance Event), which period must end before the Cure Plan Date (**Cure Period**);
  - (v) a work plan setting out each task to be undertaken and the time for each task to be completed;
  - (vi) the form and timing of reports to be provided by the Operator as to the status of any NCE Cure Plan together with evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan; and
  - (vii) the operational arrangements for integrating the cure with the continuing performance of Operator Activities.
- (c) If TfNSW requires the Operator to implement a Temporary Measure with respect to the Non-Compliance Event under Clause 48.2(c)(iii), the Operator must undertake that Temporary Measure within the time stipulated by TfNSW in the Non-Compliance Notice.

#### **48.4 Implementation of NCE Cure Plan**

- (a) TfNSW may, by notice to the Operator within five Business Days after submission by the Operator of a NCE Cure Plan required under Clause 48.2(c)(ii), require the Operator to amend the NCE Cure Plan if TfNSW considers, acting reasonably, that the NCE Cure Plan:
- (i) is not likely to cure the relevant Non-Compliance Event (or the events or circumstances that gave rise to the Non-Compliance Event) within the period required in the Non-Compliance Notice; or
  - (ii) does not comply with all applicable provisions of this Contract.

A notice under this Clause 48.4(a) may include details of any amendments (generally or specifically) to the NCE Cure Plan required by TfNSW.

- (b) If TfNSW requires an amendment to the NCE Cure Plan under Clause 48.4(a), the Operator must amend its NCE Cure Plan in accordance with the requirements of TfNSW and resubmit a revised NCE Cure Plan to TfNSW and the provisions of this Clause 48.4 will re-apply.
- (c) The Operator must implement and diligently pursue any NCE Cure Plan (or, where a revised NCE Cure Plan is requested by TfNSW, any revised NCE Cure Plan) provided under this Clause 48.
- (d) The Operator must provide reports as to the status of any NCE Cure Plan and evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan. These reports and evidence must be provided by the Operator to TfNSW:
- (i) in accordance with the reporting requirements set out in the NCE Cure Plan; and
  - (ii) within five Business Days after TfNSW's request.

#### **48.5 Extension to Cure Period**

- (a) Subject to Clause 48.5(b), if the Operator reasonably requires an extension of the existing Cure Period the Operator must, as soon as possible but not later than the expiration of the existing Cure Period, submit to TfNSW a request that the NCE Cure Plan be revised and provide:
- (i) reports as to the status of the NCE Cure Plan;
  - (ii) the proposed amendment to the Cure Period (provided that the proposed amendment must not result in the total Cure Period exceeding six months);

- (iii) evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan but that the Non-Compliance Event cannot, with reasonable diligence, be cured within the existing Cure Period;
  - (iv) any other consequential amendments to the NCE Cure Plan; and
  - (v) any other information requested by TfNSW and relevant to the NCE Cure Plan or curing the Non-Compliance Event.
- (b) TfNSW must not unreasonably refuse to grant an extension of the Cure Period if the Operator has complied with Clause 48.5(a).
  - (c) The Operator may only apply once under Clause 48.5(a) for an extension of the Cure Period in respect of any Non-Compliance Event (unless otherwise approved by TfNSW).
  - (d) If TfNSW approves the requested extension or part of the requested extension under Clause 48.5(a), the Operator must submit a revised NCE Cure Plan and the provisions of Clause 48.4 will apply.

#### 48.6 Wharf Access Deed Default

- (a) If an Event of Default (as that term is defined in the Wharf Access Deed) has occurred as a result of any act, default or omission of the Operator or an Operator's Associate (**Wharf Default**), TfNSW may give the Operator a notice of default (**Wharf Default Notice**) that:
  - (i) provides details of the alleged Wharf Default;
  - (ii) requires the Operator:
    - (A) to remedy the Wharf Default, if capable of remedy; and/or
    - (B) if TfNSW considers appropriate, to prepare a rectification plan for approval by TfNSW; and
  - (iii) specifies any time requirement for response or action.
- (b) The Operator must, within three Business Days after receipt of a Wharf Default Notice (or such longer period as may be specified by TfNSW in the Wharf Default Notice), give notice to TfNSW advising:
  - (i) that the Wharf Default has been remedied or, if not remedied, the date on which it will be remedied; or
  - (ii) the plan for rectification of the Wharf Default.
- (c) If, after the expiration of seven Business Days following the date of service of the Wharf Default Notice on the Operator (or such other time period as agreed between TfNSW and the Operator):
  - (i) TfNSW is dissatisfied with the action taken by the Operator;
  - (ii) if TfNSW and the Operator (acting reasonably) cannot agree on a plan for rectification; or
  - (iii) the Operator has not responded,
 this will be a Termination Event under Clause 50.1.
- (d) The Operator acknowledges that TfNSW may take into account any decision or requirement of Roads and Maritime Services under the Wharf Access Deed in respect of the Wharf Default.

## 49. Step in

### 49.1 Step in Rights

- (a) Each of the following is a Step in Event:
  - (i) a Termination Event occurs;
  - (ii) a material KPI Default in respect of a Class 1 Key Performance Indicator (**KPI Event**) occurs and TfNSW considers that the Operator is failing to address the causes of the KPI Event or has not developed a cure plan which TfNSW considers will address the KPI Event in accordance with the requirements of the KPI Schedule;
  - (iii) an event or circumstance which arises out of or in connection with the Operator Activities poses a serious threat to, or causes or will cause material damage or material disruption to:
    - (A) the health or safety of persons;
    - (B) the Environment;
    - (C) any property; or
    - (D) the safe and secure performance of the Operator Activities; or
  - (iv) TfNSW forms the opinion that a breach of a Transaction Document by the Operator or any Operator's Associate:
    - (A) materially adversely affects the operation of all or any of the Services;
    - (B) materially disrupts, restricts or prevents the operation of all or any of the Services for more than 24 hours;
    - (C) materially disrupts, restricts or prevents the operation of all or any of the Public Passenger Services of any other operator for more than 24 hours;
    - (D) increases the risk of imminent death or imminent injury to any person;
    - (E) directly or indirectly avoids or materially prejudices or frustrates the transfer of the Operator Activities as a going concern at the expiry or termination of this Contract to a Successor Operator; or
    - (F) is likely to give rise to any of the above.
- (b) If a Step in Event occurs and TfNSW has given a notice to the Operator advising the Operator that a Step in Party will be appointed then a Step in Party may exercise all or any of the Step in Powers (**Step in Right**).
- (c) The notice referred to in Clause 49.1(b):
  - (i) must specify:
    - (A) the Step in Event which has triggered the Step in Right;
    - (B) the Operator Activities which TfNSW proposes the Step in Party will perform;
    - (C) the date on which the relevant Step in Party proposes to commence exercising the Step in Powers; and
    - (D) the date on which, if any, the relevant Step in Party proposes to cease performing the relevant Operator Activities; and
  - (ii) may be given orally if TfNSW considers that the Step in Event requires urgent remedy and there is insufficient time to serve a notice. Any oral notice given under this Clause 49.1(c)(ii) must be followed within 24 hours by a notice to the same effect.
- (d) The Step in Right is without prejudice to TfNSW's other Powers in respect of a Step in Event, and the rights set out in Clause 48 and Clause 50.

## 49.2 Step in Powers

A Step in Party may, in performing the Operator Activities referred to in the notice issued under Clause 49.1(b), do anything in respect of those Operator Activities that the Operator could do including:

- (a) enter into and remain in possession of all or any of the Assets used in the performance of the Operator Activities;
- (b) operate and manage all or any of the Assets used in the performance of the Operator Activities;
- (c) enter into and remain in or on any part of the State Premises or any other premises on which Operator Activities are conducted;
- (d) exercise all or any of the Powers, and perform all or any of the obligations, of the Operator:
  - (i) in connection with the Operator Activities;
  - (ii) under or in relation to a Transaction Document or any other document to which the Operator is a party; or
  - (iii) under or in relation to any Authorisation held by the Operator, as if it were the Operator to the exclusion of the Operator;
- (e) do anything TfNSW considers necessary to remedy the relevant Step in Event or to overcome any risk or mitigate any consequences resulting from the Step in Event; and
- (f) do anything incidental to the matters listed in Clauses 49.2(a) to 49.2(e),  
(Step in Powers).

## 49.3 Acknowledgment and obligations of the Operator

- (a) The Operator must (and must procure that the Operator's Associates):
  - (i) cooperate with the Step in Party in the exercise of the Step in Powers;
  - (ii) assist the Step in Party to enable the Step in Party to perform all or any of the Operator's obligations under or in relation to any Authorisation held by the Operator or the Operator's Associates; and
  - (iii) take any step which the Step in Party considers necessary or desirable to remedy the Step in Event or overcome the risk or mitigate any consequences resulting from the Step in Event.
- (b) Without limiting Clause 49.3(a), the Operator must (and must procure that the Operator's Associates):
  - (i) give access to a Step in Party to:
    - (A) all or any of the Assets used in the Operator Activities;
    - (B) the Staff; and
    - (C) any information the Step in Party reasonably requires;
  - (ii) to the extent necessary, procure any consents to disclose Personal Information to the Step in Party;
  - (iii) assist the Step in Party in dealing with a Safety Authority or other Governmental Agency in relation to any Authorisations; and
  - (iv) comply with all reasonable directions given by the Step in Party, to enable the Step in Party to exercise the Step in Powers.
- (c) The Operator irrevocably appoints TfNSW as its attorney with full power to exercise the Step in Powers (or to delegate the exercise of the Step in Powers to another Step in Party).
- (d) The Operator's obligations under this Contract will be suspended to the extent and for such period as is necessary to permit TfNSW to exercise its Step in Rights.

- (e) The Operator acknowledges that a Step in Party is not under any obligation to remedy a Step in Event, nor to overcome any risk or mitigate any consequences resulting from a Step in Event.

#### **49.4 Payments during step in**

- (a) During the period when TfNSW is exercising its Step in Rights, if the Operator's performance of its obligations under this Contract which affect the calculation of the Payment:
  - (i) is continuing, then those parts of the Payment affected by the Operator's performance will continue to be calculated in accordance with the Payment Schedule based on the actual performance of those obligations by the Operator during the period when TfNSW is exercising its Step in Rights; or
  - (ii) is suspended, then those parts of the Payment which would have been affected but for the Operator's suspension will continue to be calculated in accordance with the Payment Schedule based on the average performance of those suspended obligations by the Operator for the six months immediately prior to TfNSW exercising the Step in Right (provided that KPI Credits calculated under the KPI Schedule will continue to be calculated based on actual performance by the Operator).
- (b) TfNSW will be entitled to deduct the following amount, without double counting, from any Payment payable in respect of a period when TfNSW is exercising its Step in Right:
  - (i) where the Step in Event was an event identified in Clauses 49.1(a)(i), (ii) or (iv) or where the Step in Event was an event identified in Clause 49.1(a)(iii) and was caused or contributed to by the Operator or the Operator's Associates:
    - (A) the costs avoided by the Operator as a result of the exercise of the Step in Right;
    - (B) the Step in Costs incurred by TfNSW in exercising the Step in Rights; and
  - (ii) where the Step in Event was an event identified in Clause 49.1(a)(iii) and was not caused or contributed to by the Operator or the Operator's Associates the costs avoided by the Operator as a result of the Step in Right (other than to the extent TfNSW otherwise agrees in the Lead Financier Direct Agreement)..
- (c) If the aggregate amount to be deducted under Clause 49.4(b) is greater than the Payments payable in respect of the relevant period, the difference will be a debt due and payable from the Operator to TfNSW.

#### **49.5 Protection of a Step in Party**

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

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

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

#### **49.6 Protection of third parties**

- (a) A party to any Dealing (as defined in Clause 49.6(c)):
  - (i) need not enquire:
    - (A) as to whether the Step in Right has become exercisable;
    - (B) as to whether a person who is, or purports or is purported to be, the Step in Party is duly appointed;
    - (C) in any other way as to the propriety or regularity of the Dealing; and
  - (ii) is not affected by express notice that the Dealing is unnecessary or improper.

- (b) For the protection of any party to a Dealing, the Dealing will be taken to be authorised by this Contract and accordingly will be valid, even if there is any irregularity or impropriety in the Dealing.
- (c) In this Clause 49.6, a **Dealing** is:
  - (i) any payment, or any delivery or handing over of an asset, to; or
  - (ii) any acquisition, incurring of Financial Indebtedness, receipt, sale, lease, disposal or other dealing, by,
 any Step in Party or any person who purports, or is purported, to be a Step in Party.
- (d) The receipt by TfNSW or any Step in Party (or person who purports, or is purported, to be a Step in Party) of any money or assets payable to or receivable or received by it exonerates the person paying that money or handing over that asset from being concerned as to their application or from being liable or accountable for their loss or misapplication.

#### 49.7 Step out

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

## 50. Termination

### 50.1 Termination Events

The following are Termination Events:

- (a) (**Immediate action**) the Operator fails to remedy a Non-Compliance Event when required to do so under (or within the time period required by) Clause 48.3(a);
- (b) (**Temporary Measure**) the Operator fails to take a Temporary Measure when required to do so under (or within the time period required by) Clause 48.3(c);
- (c) (**NCE Cure Plan**) the Operator fails to submit a NCE Cure Plan in accordance with (or within the time period required by) Clause 48.3(b) or a revised NCE Cure Plan in accordance with Clause 48.4(b);
- (d) (**Failure to pursue NCE Cure Plan**) TfNSW forms the opinion, acting reasonably, that the Operator has not diligently pursued or is not continuing to diligently pursue a cure in accordance with a NCE Cure Plan, or the Operator fails to provide the evidence required (or within the time period required) by Clause 48.4(d);
- (e) (**Failure to cure**) the Operator took action required under Clause 48.3(a) or Clause 48.3(c) or pursued a cure in accordance with Clause 48.4(c) but, in the opinion of

TfNSW has failed to cure the Non-Compliance Event or the circumstances giving rise to the Non-Compliance Event in the period prescribed under Clause 48;

- (f) (**Persistent breaches**) a persistent failure by the Operator to perform, or comply to a material extent with, any one or more of its obligations under this Contract or the Transaction Documents in circumstances where TfNSW has previously notified the Operator of the failures or non-compliances and has put the Operator on notice that continued failure or non-compliance would constitute a persistent failure or non-compliance for the purposes of this Clause 50.1;
- (g) (**Material non-performance of Key Performance Indicators**) the Operator:
  - (i) breaches an individual Class 1 Key Performance Indicator on three occasions within a six month period;
  - (ii) breaches an individual Class 1 Key Performance Indicator on four occasions within a 12 month period; or
  - (iii) breaches an individual Class 3 Key Performance Indicator in three consecutive Quarters,

and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a cure plan provided in accordance with the KPI Schedule, to justify waiving the breaches of the Key Performance Indicators for the purposes of this Clause 50;

- (h) (**Safety**) the circumstances described in Clause 35.7(j) occur;
- (i) (**Unlawful**) it becomes unlawful for the Operator to perform all or a material part or number of the Operator Activities;
- (j) (**Dealing with Assets**) the Operator breaches Clause 26;
- (k) (**Abandonment**) the Operator abandons, ceases or suspends the conduct of all or a substantial part of the Operator Activities or it threatens or expresses an intention to do so;
- (l) (**Failure to insure**) the Operator does not effect and maintain (or cause to be effected or maintained) any insurance as required by this Contract, and fails to do so within 10 Business Days after receipt of a notice from TfNSW directing it to do so;
- (m) (**Assignment**) a purported assignment by the Operator of a Transaction Document or any of its obligations under any Transaction Document occurs without the consent of TfNSW;
- (n) (**Change of Control**) without the consent of TfNSW:
  - (i) the Operator, a Partner or the Parent Company becomes a Subsidiary of a person (of which it was not a Subsidiary on the commencement of this Contract);
  - (ii) a person's Voting Power in the Operator, a Partner or the Parent Company increases from below 50% to 50% or more after the commencement of this Contract; or
  - (iii) a person is able to Control the Operator, a Partner or the Parent Company where that person was not able to Control the Operator, the Partner or the Parent Company on the commencement of this Contract;
- (o) (**Revocation of Authorisation**) any Authorisation that is material to the performance by the Operator of a Transaction Document, or to the validity and enforceability of a Transaction Document, or for the performance of the Operator Activities, is cancelled, suspended, repealed, revoked, terminated, expires or is varied, modified or amended, or conditions are attached to it in a manner unacceptable to TfNSW, and is not replaced by another Authorisation acceptable to TfNSW;
- (p) (**Repudiation**) the Operator repudiates this Contract;
- (q) (**Misinformation**) the Operator engages in any conduct of the kind set out in Clause 29.3;
- (r) (**Fraud**) the Operator has acted fraudulently or dishonestly in relation to the Operator Activities, the provision of the Operator Activities or the performance of any of its obligations under the Transaction Documents;

- (s) (**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;
- (t) (**Conflict of Interest**) in TfNSW's opinion, a conflict of interest exists for the Operator which prevents the proper performance of this Contract;
- (u) (**Harm to TfNSW reputation**) in TfNSW's reasonable opinion, the Operator has caused damage or harm to TfNSW's or the State's reputation;
- (v) (**Insolvency Event**) an Insolvency Event occurs;
- (w) (**Deed of Guarantee and Indemnity**) the Deed of Guarantee and Indemnity is validly terminated or is or becomes void, illegal, invalid or unenforceable (or a party becomes entitled to terminate, rescind or avoid the Deed of Guarantee and Indemnity) for any reason and such situation is not remedied within five Business Days after it first arises;
- (x) (**Lead Financing Arrangement terminated**):
  - (i) an event of default, termination event or similar event (whatever called) under a Lead Financing Arrangement occurs; or
  - (ii) any other event or circumstance occurs which would entitle the Lead Financier to:
    - (A) avoid, terminate, discharge or rescind a Lead Financing Arrangement or treat a Lead Financing Arrangement as repudiated; or
    - (B) suspend the Lead Financier's performance of obligations under a Lead Financing Arrangement or permit the Lead Financier to take possession of an Operator New Ferry;
- (y) (**Compulsory Acquisition**) a Contract Ferry becomes subject to Compulsory Acquisition as a result of a breach of a Transaction Document by the Operator;
- (z) (**Wharf Default**) Clause 48.6(c) applies; or
- (aa) (**Termination of Transaction Document**) a Transaction Document (other than this Contract) is terminated as a result of an act or omission of the Operator or any of the Operator's Associates.

## 50.2 Termination by TfNSW

- (a) TfNSW may terminate the whole or any part of this Contract with effect immediately, or on a date determined by TfNSW, by giving notice to the Operator if a Termination Event occurs.
- (b) This Contract will terminate on the date specified in the Termination Notice.
- (c) The termination right under Clause 50.2(a) is without prejudice to TfNSW's rights under Clause 49 and TfNSW's right to exercise all legal and equitable rights and remedies available to TfNSW in respect of the relevant Termination Event (whether under this Contract or not).

## 50.3 Termination by TfNSW for convenience

- (a) TfNSW may at any time at its absolute discretion by giving notice to the Operator, terminate this Contract (in whole or in part), whether or not the Operator is in default.
- (b) If TfNSW terminates this Contract in whole or in part in accordance with Clause 50.3(a):
  - (i) Clause 54 will apply; and
  - (ii) TfNSW will reimburse the Operator its unavoidable costs directly incurred as a result of the termination, as follows:
    - (A) any outstanding Payments owed to the Operator, calculated in accordance with the Payment Schedule; and
    - (B) any reasonable and mitigated costs incurred by the Operator in winding down or providing disengagement assistance.



- (c) TfNSW may itself, or through a third party, carry out the Operator Activities after termination under this Clause 50.3.

#### **50.4 Waiver on termination**

- (a) If TfNSW terminates this Contract under Clause 50.2(a) the Operator's sole right and remedy will be to require TfNSW (subject to Clause 36.3) to pay a proper valuation under this Contract of all amounts due and not previously paid to the Operator for performance of the Services completed in accordance with this Contract before the Termination Date.
- (b) If TfNSW terminates this Contract under Clause 50.3(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with Clause 50.3(b).

#### **50.5 Consequences of termination generally**

- (a) Upon expiry or termination of this Contract, the rights and obligations of the parties under this Contract will cease except for:
  - (i) any accrued rights and obligations under this Contract, including those arising out of the expiry or termination of this Contract; and
  - (ii) any rights and obligations which expressly or impliedly continue after expiry or termination of this Contract (including those referred to in Clause 75).
- (b) The expiry or termination of the Operator's engagement under this Contract does not affect any of TfNSW's other rights or remedies.

### **51. End of Term Restrictions**

#### **51.1 Engagement of new Staff**

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

- (a) the variation takes effect in the End of Contract Period unless:
  - (i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Contract Employee of no more than the percentage increase in the WPI Annual Multiplier over the twelve month period ending on the month for which that index was last published; or
  - (ii) is a variation imposed by a determination of Fair Work Australia, the New South Wales Industrial Relations Commission or Law;
- (b) all or part of the variation first takes effect after the Termination Date;
- (c) the variation results in the employment being for a fixed term, the expiry of which is more than six months after the Termination Date;
- (d) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at Law);
- (e) the variation relates to the provision of a benefit (but excluding base salary and the Contract Employee's legal entitlements) which the Contract Employee will or may have a contractual right to receive after the Termination Date; or
- (f) the variation prevents, restricts or hinders the Contract Employee from working for a Successor Operator or Interim Operator, or from performing the duties the Contract Employee performed in the Operator Activities.

#### **51.2 Engagement of new Staff**

In the End of Contract Period, the Operator must not engage new Staff (other than to replace existing Staff) without the consent of TfNSW (which consent must not be unreasonably withheld

or delayed where the Operator can demonstrate to the reasonable satisfaction of TfNSW that new Staff are necessary for the provision of the Services).

## 52. End of Contract Retendering Provisions

### 52.1 Right to appoint Successor Operator and Interim Operator

- (a) The Operator acknowledges and agrees that TfNSW may, on or before the Termination Date, invite any person (including the Operator) to perform all or any part of the Operator Activities for the period commencing after the Termination Date.
- (b) The following Clauses will not apply if the Operator is the Successor Operator:
  - (i) Clause 52.7; and
  - (ii) Clause 54.

### 52.2 Maintenance as going concern

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

### 52.3 Handover Information and Market Process Information

- (a) The Operator must, as soon as practicable and in any event no later than six months after the Service Commencement Date, prepare and maintain information on:
  - (i) all premises from which the Operator Activities are carried out, including the State Premises;
  - (ii) material contracts relating to the Services (including Key Contracts);
  - (iii) computer and other information systems;
  - (iv) an asset register for Assets used in relation to the Operator Activities (including an inventory of spares and special tools and equipment);
  - (v) Contract Employee details (including a list of names, terms and conditions of employment, rosters and all information required to be provided under Clause 52.3(e));
  - (vi) its organisational structure;
  - (vii) an up to date and complete copy of the Asset Information System; and
  - (viii) such other information as is reasonably requested by TfNSW to facilitate smooth handover of the Operator Activities to a Step in Party, Successor Operator (or nominee of TfNSW) or Interim Operator,

**(Handover Information).**
- (b) The Operator must, as soon as practicable and in any event no later than six months after the Service Commencement Date, prepare and maintain the Market Process Information.
- (c) The Operator must keep the information referred to in Clauses 52.3(a) and 52.3(b) up to date and provide copies to TfNSW on reasonable notice, and in any case on the earlier of:
  - (i) TfNSW issuing a Termination Notice;
  - (ii) the date that is six months prior to the Expiry Date; and
  - (iii) one week after the commencement of the End of Contract Period.
- (d) The Operator must ensure that a Step in Party, prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW has, to the extent permitted by Law, immediate access to the information referred to in Clauses 52.3(a) and 52.3(b) on reasonable notice from TfNSW, and in any case on the earlier of:
  - (i) the exercise of the Step in Rights;
  - (ii) TfNSW issuing a Termination Notice;

- (iii) the date that is six months prior to the Expiry Date; and
  - (iv) one week after the commencement of the End of Contract Period.
- (e) No later than 30 Business Days prior to the Expiry Date or, in the event that TfNSW gives a Termination Notice, within seven Business Days after the Termination Notice, the Operator must provide to each Contract Employee a statement setting out that Contract Employee's:
- (i) grade/classification;
  - (ii) rate of pay;
  - (iii) date of commencement of employment; and
  - (iv) estimated accrued entitlements (including annual leave, long-service leave, sick/personal/carers leave and rostered days off) as at the Termination Date.
- (f) In the event that a Contract Employee notifies the Operator that he or she disputes any of the information contained in the statement provided to that Contract Employee pursuant to Clause 52.3(e), the Operator must notify TfNSW of such dispute and TfNSW shall refer the disputed issue to an actuary.

#### **52.4 Preparation for contracting at End of Term**

- (a) The Operator must, to the extent permitted by Law, provide TfNSW with reasonable access to the Staff and the information, books and records kept by or on behalf of the Operator in connection with the Operator Activities for the purpose of TfNSW preparing reports and documents in connection with any procurement process for the operation of all or part of the Operator Activities or any other associated services.
- (b) The Operator must use reasonable endeavours to assist TfNSW in the preparation for, and the conduct of the procurement process including, where required by TfNSW, a fair and competitive expression of interest or tendering process.
- (c) Without limiting Clause 52.4(b), the Operator must, to the extent permitted by Law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as TfNSW reasonably requires in connection with the procurement process for the Operator Activities or any other associated services.
- (d) The Operator warrants to TfNSW that to the best of its belief, all information provided under Clauses 52.3(a), 52.3(b) and 52.4(c) will be, at the time it is provided, true and correct in all material respects and will not be misleading by omission or otherwise.
- (e) The Operator must warrant to a Successor Operator that to the best of its belief, any other information made available to the Successor Operator by the Operator or the Operator's Associates is true and correct.

#### **52.5 Non frustration of transfer**

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

#### **52.6 Assistance in securing continuity**

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

## 52.7 Access

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

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

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

## 53. End of Term Asset Condition and Handover Requirements

### 53.1 Handback Audit

- (a) Without limiting Clause 28, no earlier than 12 months prior to the Expiry Date, the TfNSW Representative may procure the carrying out of an audit of the State Assets and Operator New Ferries (**Handback Audit**) by an independent expert (**Handback Auditor**):
  - (i) appointed by agreement between TfNSW and the Operator; or
  - (ii) failing agreement within 10 Business Days after a request is made in writing by TfNSW, nominated by the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute.
- (b) The TfNSW Representative must:
  - (i) notify the Operator at least 10 Business Days in advance of the date it wishes to procure the carrying out of a Handback Audit and specify the State Assets and Operator New Ferries that will be the subject of the Handback Audit (**Handback Audit Assets**); and
  - (ii) consider in good faith any reasonable request by the Operator for the Handback Audit to be carried out on a different date.
- (c) The Handback Auditor will inspect and assess the Handback Audit Assets and notify TfNSW and the Operator in writing of:
  - (i) whether the Handback Audit Assets have been and are being maintained by the Operator in accordance with this Contract;
  - (ii) any rectification, maintenance or remediation works required to be carried out by the Operator to bring the condition of the Handback Audit Assets to the condition they would have been in had the Operator complied with its obligations under this Contract;
  - (iii) any rectification, maintenance or remediation works required to be carried out by the Operator to bring the condition of the Handback Audit Assets to the Handback Condition at the Expiry Date; and
  - (iv) the Handback Auditor's estimate of the value of the rectification, maintenance and remediation works referred to in Clauses 53.1(c)(ii) and (iii).
- (d) The Operator must cooperate with the Handback Auditor and provide the Handback Auditor with any reasonable assistance required by the Handback Auditor.
- (e) The TfNSW Representative must use its reasonable endeavours to procure that the Handback Auditor minimises any disruption caused to the Operator Activities by the Handback Audit.
- (f) The costs of performing the Handback Audit incurred by TfNSW will be borne by TfNSW, except where the results of the Handback Audit show that the Operator has not complied with its obligations under this Contract in relation to the maintenance of the Handback Audit Assets, in which case the cost of the Handback Audit will be a debt due and payable by the Operator to TfNSW.

### 53.2 Rectification work

The Operator must carry out any required rectification, maintenance or remediation work notified pursuant to Clauses 53.1(c)(ii) and (iii):

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

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

### 53.3 Handback obligations

At the Termination Date, the Operator must:

- (a) surrender and return to TfNSW the State Assets and the TfNSW Systems and Equipment in accordance with Clause 54;
- (b) transfer all of the Operator's rights, title and interest (if any) in the State Assets to TfNSW or TfNSW's nominee free from any Security Interests;
- (c) ensure that the State Assets and Operator New Ferries are in a state and condition which complies with the requirements of this Contract, including the Handback Condition;
- (d) have completed all works scheduled to be carried out under the current Maintenance Works Program; and
- (e) have completed the transfer of the Asset Information System database to TfNSW or TfNSW's nominee such that:
  - (i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
  - (ii) the Asset Information System database remains fully functional and retains interface capabilities;
  - (iii) all data entry is fully up to date;
  - (iv) all data archives are included; and
  - (v) all supporting documentation is included.

### 53.4 Final inspection

- (a) As soon as practicable following the Termination Date, an independent expert (**Final Inspection Auditor**):

- (i) appointed by agreement between TfNSW and the Operator; or
- (ii) failing agreement within 10 Business Days after a request is made in writing by TfNSW, nominated by the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute,

will inspect and assess the State Assets and Operator New Ferries and notify TfNSW and the Operator in writing of the estimated cost (without double counting) of making good or rectifying any failure by the Operator to carry out:

- (iii) where the end of the Term is the Expiry Date, the work (if any) required under Clauses 53.1(c)(ii) and 53.1(c)(iii); and
  - (iv) the Operator's obligations under Clause 53.3.
- (b) The amount notified by the Final Inspection Auditor under Clause 53.4(a) will be a debt due and payable from the Operator to TfNSW.
  - (c) TfNSW may deduct or set off any amount payable by the Operator under Clause 53.4(b) against any amount otherwise payable by TfNSW to the Operator, or may take other enforcement action available to it including under the Handback Security Bond or any other security provided under Clause 7.

### 53.5 Operator Assurance Letter

No later than 10 Business Days prior to the Termination Date, the Operator must provide TfNSW with written assurance signed by two directors of the Operator that the State Assets and Operator New Ferries have been maintained and operated in accordance with the Transaction Documents and are in the condition required by the Transaction Documents.

## 54. Handback and transfer of Assets

### 54.1 Handback of State Assets

The Operator must hand back the State Assets and TfNSW Systems and Equipment to TfNSW or TfNSW's nominee (including Sydney Ferries):

- (a) in accordance with the requirements of the Transaction Documents;
- (b) at a location determined by TfNSW; and
- (c) at the Transfer Time.

### 54.2 Indicative Statement

TfNSW may, by notice to the Operator given a reasonable time before the Transfer Date, require the Operator to prepare an indicative statement for all Assets held by the Operator as at the date of TfNSW's notice, setting out the current value of each of those Assets (calculated on the basis of the Accounting Standards) (**Indicative Statement**). The Operator must provide the Indicative Statement to TfNSW within one month after the date of TfNSW's notice.

### 54.3 Transfer

Subject to Clauses 54.1 and 54.7, the Operator must transfer each Operator Asset (and all improvements on the Operator Assets) other than the Operator Intellectual Property to TfNSW or any one or more transferees nominated by TfNSW (in each case, a **Transferee**):

- (a) with effect from the Transfer Time;
- (b) free of any Security Interests or any claim by any person, and

### 54.4 Delivery

- (a) The Operator must deliver possession of each of the Operator Assets other than the Operator Intellectual Property to a Transferee at the Transfer Time at a location in Sydney to be nominated by TfNSW.
- (b) The Operator must deliver to the relevant Transferee at or before the relevant Transfer Time at the location determined under Clause 54.4(a) all documents of title, books of account, accounts, records, data and all other documents relating to each of the Assets transferred to the Transferee.

### 54.5 Shipyard fuel

The Operator must ensure that at the Transfer Time the Shipyard Fuel Tanks, and the fuel tanks of the Contract Ferries that are required to be transferred to TfNSW or its nominee in accordance with this Contract, are full.

### 54.6 Payments

Any amount payable under this Clause 54 must be tendered by a draft or cheque drawn by a bank as defined in the *Banking Act 1959* (Cth).

## 54.7 Transfer of Operator New Ferries

- (a) Subject to Clause 54.7(f), the Operator grants to TfNSW an option in relation to each Operator New Ferry to either:
- (i) purchase (itself or through a nominee) that Operator New Ferries; or
  - (ii) take a novation (itself or through a nominee) of the Operator Ferry Charterparty in relation to that Operator New Ferry,

in accordance with this Clause 54.7 (**End of Term Option**). For the avoidance of doubt, TfNSW must exercise the End of Term Option in respect of each relevant Operator New Ferry provided that, if the Operator fails to comply, or procure compliance, with Clause 54.7(d)(i) in respect of an Operator New Ferry, TfNSW may, but is not obliged to, purchase that Operator New Ferry under Clause 54.7(a)(i).

- (b) TfNSW may exercise the End of Term Option by issuing a notice to the Operator, directing the Operator in relation to each Operator New Ferry to either:
- (i) procure the sale of the Operator New Ferry to TfNSW or its nominee in accordance with Clause 54.7(c) (**End of Term Sale Notice**); or
  - (ii) procure the novation of the Operator Ferry Charterparty in relation to the Operator New Ferry to TfNSW or its nominee in accordance with Clause 54.7(d) (**End of Term Novation Notice**).

An End of Term Sale Notice or End of Term Novation Notice must be issued by TfNSW no later than 30 days prior to the Expiry Date (if this Contract expires) or 20 Business Days after the date of the Termination Notice issued by TfNSW.

- (c) If TfNSW issues an End of Term Sale Notice in relation to an Operator New Ferry then, on or within the period of 30 days immediately preceding the Termination Date:
- (i) the Operator must ensure that the Operator New Ferry is sold to TfNSW or its nominee (**Purchaser**); and
  - (ii) TfNSW shall procure that the Purchaser purchases the Operator New Ferry, as required by TfNSW, including in accordance with the terms of this Contract and any other Transaction Document.
- (d) If TfNSW issues an End of Term Novation Notice in relation to an Operator New Ferry then, on or within the period of 30 days immediately preceding the Termination Date:
- (i) the Operator must ensure that the Operator Ferry Charterparty in respect of the Operator New Ferry is novated to TfNSW or its nominee (**Novatee**); and
  - (ii) provided the Operator has complied with Clause 54.7(d)(i), TfNSW shall procure that the Novatee executes documentation to ensure the novation of the Operator Ferry Charterparty as contemplated under this Clause 54.7(d),

as required by TfNSW, including in accordance with the terms of this Contract and any other Transaction Document.

- (e) The transfer of the Operator New Ferries under Clause 54.7(c) and Clause 54.7(d) shall be on the following terms and conditions:
- (i) in respect of any Operator New Ferry that is the subject of an End of Term Sale Notice the Operator must:
    - (A) sell;
    - (B) transfer full legal and beneficial title to; and
    - (C) deliver possession of,such Operator New Ferry to the Purchaser free from all Security Interests as required by TfNSW and on terms otherwise acceptable to TfNSW;
  - (ii) in respect of any Operator New Ferry that is the subject of an End of Term Novation Notice the Operator must:
    - (A) novate the Operator Ferry Charterparty in respect of; and

- (B) deliver possession of,
  - such Operator New Ferry to the Novatee as required by TfNSW and on terms otherwise acceptable to TfNSW;
- (iii) the Purchaser and Novatee may conduct due diligence on the Operator New Ferry;
- (iv) the Operator must assign any warranties held by it in respect of the Operator New Ferries to the Purchaser or Novatee (as the case may be);
- (v) the Operator agrees that:
  - (A) the amount payable by the Purchaser to the Operator in respect of the sale of an Operator New Ferry that is the subject of an End of Term Sale Notice is the Vessel Termination Payment; and
  - (B) no consideration is payable by the Novatee to the Operator in respect of the novation of an Operator Ferry Charterparty in respect of an Operator New Ferry that is the subject of an End of Term Novation Notice however such novation does not limit the obligation of the Novatee or TfNSW to make payment of the Actual Lease Payment or Vessel Termination Payment in accordance with the Operator Lead Financier Direct Agreement; and
- (vi) the Operator shall have no Claim against TfNSW in respect of the termination of any Operator Ferry Charterparty (including payment of any costs under that arrangement).
- (f) Clauses 54.7(a) to 54.7(e) do not apply in relation to Operator New Ferries that are used primarily to provide On Demand Services and any equipment installed on the Operator New Ferries (including equipment installed pursuant to Clause 14.8 that is not owned by TfNSW) (**On Demand Ferry Assets**).
- (g) The Operator must negotiate in good faith with TfNSW or its nominee in relation to the transfer of the On Demand Ferry Assets to TfNSW or its nominee on or prior to the Termination Date.
- (h) If the Operator and TfNSW or its nominee are unable to agree on the terms of such transfer prior to the Termination Date, then:
  - (i) unless otherwise directed by TfNSW, the Operator must remove any equipment that belongs to TfNSW (including TfNSW Systems and Equipment) from the On Demand Assets and return it to TfNSW in the condition required under the Asset Schedule; and
  - (ii) TfNSW and its nominee will be under no obligation to acquire the On Demand Ferry Assets and the Operator will have no Claim against TfNSW or its nominee in relation to the On Demand Ferry Assets.

#### **54.8 Successor Operator to make offers**

- (a) The Operator must ensure that at the Termination Date all Dedicated Staff are employed by the Operator and it must use reasonable endeavours to facilitate offers of employment to be made to Dedicated Staff by any Successor Operator.
- (b) TfNSW must procure that any Successor Operator makes offers of employment to Contract Employees (other than the persons named in Schedule 11):
  - (i) on the same terms and conditions or substantially similar terms and conditions which (considered on an overall basis) are no less favourable than, the relevant Contract Employees' terms and conditions of employment with the Operator immediately before the Termination Date;
  - (ii) which recognise all accrued but untaken leave entitlements;
  - (iii) which recognises service recognised by the Operator immediately prior to the Termination Date for all purposes; and
  - (iv) which take effect from the Termination Date.



- (c) If a Contract Employee accepts an offer of employment from the Successor Operator made in accordance with this Clause 54.8:
- (i) on termination or expiry of the Contract, the Operator must pay to TfNSW or the Successor Operator (as directed by TfNSW) a sum determined in accordance with the following formula:
- $$P = (1 - t) \times L$$
- where:
- P is the amount to be paid by the Operator to TfNSW or the Successor Operator;
- t is the corporate tax rate which applies on the Termination Date expressed as a decimal figure; and
- L is the amount applicable in respect of the value of Relevant Leave and applicable loadings thereon as governed by the relevant industrial instrument of all Contract Employees who accept offers made under Clause 54.8(b) (**Acquired Employee**) which recognises accrued service from the HCF Service Commencement Date to the Termination Date.
- The value of leave entitlements will be determined by an actuary in accordance with the methodology set out in Australian Accounting Standards Board Standard AASB 119: Employee Benefits, or any successor standard issued by the Australian Accounting Standards Board. The actuary will be appointed by agreement between the Operator, Successor Operator and TfNSW or, in the absence of such agreement, by the President of the Council of the Actuaries Institute;
- (ii) on termination or expiry of the Contract the Operator must deliver to TfNSW and Successor Operator a schedule setting out against each Acquired Employee the respective amounts for accrued Relevant Leave and applicable loadings; and
- (iii) the cost of appointing an actuary in accordance with Clause 54.8 will be shared equally between the Operator and the Successor Operator.
- (iv) Within 10 Business Days after the Termination Date the Operator must pay to TfNSW an amount equal to:
- (A) the value of the outstanding balance as at the Termination Date of Relevant Leave accrued by Pre-HCF Employees prior to the HCF Service Commencement Date calculated using the actual rate of pay of the Pre-HCF Employees at the Termination Date; less
- (B) the value of the outstanding balance as at the Termination Date of Relevant Leave accrued by Pre-HCF Employees prior to the HCF Service Commencement Date calculated using the formula set out in paragraph 16 of the Payment Schedule.
- (v) For the avoidance of doubt, if the amount calculated under this Clause 54.8(c) is a negative amount then no payment is required to be made by the Operator to TfNSW.

## 54.9 Transfer Out Agreement

In addition to the matters set out in Clauses 54.3, 54.7 and 54.8, the Operator must, transfer the Operator Assets to TfNSW or its nominee on the following terms and conditions:

- (a) TfNSW or its nominee may conduct due diligence on the relevant Operator Assets;
- (b) any leases not specifically covered by Clause 54.7 must be novated to TfNSW or its nominee (as relevant) in accordance with the Transfer Out Agreement;
- (c) the Transfer Out Agreement will be entered into between TfNSW, its nominee (if any) and each vendor or assignor of the relevant Operator Assets, at least 30 Business Days prior to the Termination Date (**Transfer Agreement Date**); and
- (d) the Operator for valuable consideration, to secure the performance of its obligation under Clause 54.9(c) to enter into the Transfer Our Agreement, irrevocably appoints TfNSW as

its attorney to complete all schedules to, and execute, the Transfer Out Agreement and all ancillary documents and to do all other things necessary to complete the transactions contemplated by the Transfer Out Agreement, if the Operator has not signed the Transfer Out Agreement by the Transfer Agreement Date. The Operator must ratify anything done by TfNSW acting under this power of attorney.

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## Part M– Miscellaneous

### 55. Confidentiality, Privacy and Information Access

#### 55.1 Confidentiality

Subject to Clauses 55.3, 55.4 and 55.6, a party must not disclose to a third party without the consent of the other parties, any Confidential Information which is:

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

#### 55.2 Maintaining confidentiality

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

#### 55.3 Permitted disclosure

Clauses 55.1, 55.2 and 55.4(e)(ii) do not apply to disclosures to the extent the disclosure is:

- (a) with the consent of the party whose Confidential Information is proposed to be disclosed;
- (b) required or permitted by this Contract or by Law;
- (c) in enforcing this Contract or in proceedings arising out of or in connection with this Contract;
- (d) to the Operator's Associates, provided the Operator's Associates are under a similar obligation of confidentiality with respect to the information as the Operator is bound to under Clauses 55.1 and 55.2; or
- (e) to a party's legal advisers or its consultants.

For the avoidance of doubt, the Operator agrees that TfNSW may publish a complete copy of the Transaction Documents and any plan or other document provided by the Operator under the Transaction Documents (other than financial information, an Operator Ferry Charterparty Direct Agreement, Lead Financier Direct Agreement or Financier Direct Agreement, the Transition In Plan, any transition plan submitted by the Operator under Clause 16.3 and the Asset Management Plan to the extent that it does not relate to operational service and maintenance at Circular Quay), subject only to redaction of financial information, in any data room published by the State, TfNSW or any Governmental Agency of the State relating to the procurement of the construction, commissioning, operation and maintenance of the Circular Quay Redevelopment provided that persons who are given access to such data rooms are subject to standard conditions of confidentiality as used by TfNSW for the procurement of major infrastructure projects.

#### 55.4 Publication of certain information by TfNSW

- (a) Subject to Clause 55.4(e), despite any other provisions of this Contract, TfNSW may publish or require the Operator to publish in any form and at times TfNSW considers appropriate, any information obtained by TfNSW from the Operator in accordance with the KPI Schedule or the Reporting Schedule or information collected from the TfNSW Systems and Equipment.

- (b) Subject to Clause 55.4(e), despite any other provisions of this Contract, TfNSW may publish the Handover Information, the Market Process Information and any other information reasonably required in connection with the re-tendering or contracting of all or any part of the Operator Activities, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting.
- (c) Nothing in the Transaction Documents restricts TfNSW's provision of information to any Minister of the Crown in right of the State or any of its agencies, instrumentalities or Governmental Agencies.
- (d) For the avoidance of any doubt, and without limiting Clause 55.4(a), TfNSW may publish:
  - (i) information collected via DCIS, Ferry Operations Systems and the OSD;
  - (ii) performance information;
  - (iii) ticketing information; and
  - (iv) information regarding Payments made under this Contract.
- (e) TfNSW must not publish the following information:
  - (i) Personal Information; and
  - (ii) subject to Clause 55.3, information that TfNSW considers is commercial-in confidence information.
- (f) For the purposes of Clause 55.4(e)(ii) 'commercial-in-confidence' information means information which TfNSW considers to show:
  - (i) the Operator's financing arrangements;
  - (ii) the Operator's cost structure or profit margins;
  - (iii) any Intellectual Property in which the Operator has an interest (other than Intellectual Property in the Contract Material or Intellectual Property which is licenced to TfNSW under Clause 56.2); or
  - (iv) any other matter the disclosure of which TfNSW reasonably considers could place the Operator at a substantial commercial disadvantage in relation to other operators or potential operators, whether at the time of the proposed disclosure or in the future.

## 55.5 Privacy compliance

- (a) TfNSW and the Operator must comply with:
  - (i) the Privacy Laws and any guidelines issued by the Commissioner;
  - (ii) any privacy policy or approved privacy code which has been adopted by TfNSW and that is reasonable having regard to the requirements of Law; and
  - (iii) any reasonable direction of TfNSW regarding how to comply with any such Privacy Laws, privacy policy or code,
 in respect of any Personal Information which TfNSW or the Operator receives or has access to under this Contract or any Transaction Document.
- (b) The Operator must cooperate with TfNSW in the resolution of any complaint alleging a breach of the Privacy Laws, a privacy policy or an approved privacy code.

## 55.6 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.

## 55.7 Access to information (GIPA Act section 121)

- (a) The Operator must, within five Business Days after receiving a written request by TfNSW, provide TfNSW with immediate access to the following information contained in records held by or under the control of the Operator or the Operator's Associates:
  - (i) information that relates directly to the performance of the Operator Activities provided to the Operator by TfNSW pursuant to this Contract;
  - (ii) information collected by the Operator from members of the public to whom it provides, or offers to provide, the Services pursuant to this Contract; and
  - (iii) information received by the Operator from TfNSW to enable it to perform the Operator Activities pursuant to this Contract.
- (b) For the purposes of Clause 55.7, such information does not include:
  - (i) information that discloses or would tend to disclose the Operator's financing arrangements, financial modelling, cost structure or profit margin;
  - (ii) information that the Operator is prohibited from disclosing to TfNSW by provision made by or under any Act, whether of any Australian state or territory, or of the Commonwealth; or
  - (iii) information that, if disclosed to TfNSW, could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to TfNSW, whether at present or in the future.
- (c) The Operator must provide copies of any of the information requested by TfNSW in accordance with Clause 55.7(a) at the Operator's own expense.

## 55.8 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 after the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of the information, TfNSW will take into account any objection received from the Operator.
- (d) If the Operator objects to the disclosure of some or all of the information but TfNSW nonetheless decides to release the information, TfNSW must not provide access to that information until it has given the Operator notice of TfNSW's decision and notice of the Operator's right to have that decision reviewed.

- (e) Where TfNSW has given notice to the Operator in accordance with Clause 55.8(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 55.8(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.

## 55.9 Publicity

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

- (a) not make any public announcements or statements in relation to the Operator Activities (including by posting any information related to the Operator Activities on any website) without TfNSW's consent;
- (b) give TfNSW a draft of any proposed media release relating to the Operator Activities and obtain TfNSW's approval of the media release before distributing it;
- (c) prior to release, revise the wording and timing of all media releases, public announcements and statements by the Operator or the Operator's Associates relating to the Services as requested by TfNSW; and
- (d) ensure that the Operator's Associates comply with the requirements referred to in this Clause 55.9.

## 56. Intellectual Property and Marks

### 56.1 General principle

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

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

### 56.2 Intellectual Property licence

- (a) Subject to Clause 56.4, the Operator grants to TfNSW an irrevocable, royalty-free licence to use all Existing Contract Material for the purposes of providing public transport in New South Wales which licence will be for the duration of the Intellectual Property in that material and will include a right to sublicense.
- (b) The licence granted under Clause 56.2(a) only applies in respect of the Operator's registered business name, company name, trademark or logo (**Operator Identification**)

for such period that any Operator Identification remains affixed to any Asset used or acquired by the Successor Operator or Interim Operator.

- (c) The Operator agrees to obtain irrevocable, royalty free licences in favour of TfNSW to use all Third Party Contract Material for the purposes of providing public transport in New South Wales which licences will be for the duration of the Intellectual Property in that material and will include a right to sub-licence.
- (d) TfNSW grants the Operator a non-exclusive, non-assignable, royalty-free licence to use the Intellectual Property in the New Contract Material and TfNSW's Existing Contract Material for the purpose of performing the Operator's obligations under this Contract. The licence granted by this Clause 56.2(d) does not, however, extend to a licence to use TfNSW's trade marks, logos or branding so as to represent or give the impression that the Operator represents TfNSW. Express approval is required for such use.
- (e) The Operator warrants that it holds all necessary rights and has obtained all necessary approvals, consents and licences to grant the assignments and licences referred to in this Clause 56.2 and that TfNSW will not, by using, publishing or licensing the Contract Material or the Intellectual Property in the Contract Material, infringe any Intellectual Property in the Contract Material.
- (f) The Operator agrees that it will create and execute any documents necessary to give effect to the terms and intention of this Clause 56.2 so as to ensure that TfNSW is unimpeded in its Power to use, publish and licence the Contract Material and any Intellectual Property in the Contract Material.
- (g) The Operator agrees that it will obtain signed waivers from each person who has, or comes to have, Moral Rights in the Contract Material or Intellectual Property in the Contract Material irrevocably:
  - (i) waiving that person's Moral Rights in the Contract Material or Intellectual Property in the Contract Material; and
  - (ii) authorising TfNSW to do acts with the Contract Material or Intellectual Property in the Contract Material that would, but for the waiver, breach that person's Moral Rights.

### 56.3 Third party rights

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

### 56.4 Use of TfNSW Brand

- (a) The Operator must only use the TfNSW Brand in material if TfNSW has given that material to the Operator or if the Operator has submitted representative material including the TfNSW Brand to TfNSW and TfNSW has approved their use.
- (b) The Operator acknowledges and agrees that:
  - (i) the TfNSW Brand is extremely important and valuable to TfNSW;
  - (ii) TfNSW owns all right, title and interest in the TfNSW Brand and the Operator has no right, title or interest in the TfNSW Brand and, in particular, in respect of the TfNSW Marks the powers conferred on authorised users by section 25 of the *Trade Marks Act 1995* (Cth) are expressly excluded;
  - (iii) any goodwill and any other right, title or interest from the Operator's use of the TfNSW Brand accrues solely for TfNSW's benefit;
  - (iv) the Operator will, at TfNSW's request, immediately amend or withdraw any document or thing bearing the TfNSW Brand;

- (v) the Operator must only use the TfNSW Brand in a manner which strictly accords with the terms of this Contract and any directions or guidelines which TfNSW provides to the Operator from time to time; and
  - (vi) TfNSW may request access to any material bearing the TfNSW Brand to ensure compliance with this Contract and any directions or guidelines for use of the TfNSW Brand and the Operator must provide TfNSW with access to the relevant material within five Business Days after receipt of such a request.
- (c) The Operator must do all things necessary (including executing documents) and provide TfNSW with all such assistance as is reasonably required by TfNSW to register any part of the TfNSW Brand in the name of TfNSW and to maintain that registration throughout the Term.
- (d) The Operator must ensure that where the TfNSW Marks appear in any written material (including any electronic material) published by or on behalf of the Operator, unless otherwise approved by TfNSW:
- (i) the ® symbol must appear next to TfNSW Marks which are registered and the "TM" symbol must appear next to TfNSW Marks which are not registered; and
  - (ii) the TfNSW Marks must be accompanied by the following footnote:  
*"The [to be inserted] trade mark is used by [insert Operator name] under licence from TfNSW."*
- (e) The Operator must not use the TfNSW Brand in a manner which is prejudicial to TfNSW or likely to prejudice the distinctiveness of the TfNSW Brand or the validity of any registration for any of the TfNSW Marks.
- (f) The Operator must comply with any standards, directions and specifications notified by TfNSW from time to time during the Term as to the appearance, colour, size and positioning of the TfNSW Marks and the footnote referred to in Clause 56.4(d)(ii).
- (g) The Operator must not at any time during the Term use the TfNSW Marks in juxtaposition to any other trade mark, embellishment or device without the consent of TfNSW.
- (h) The Operator will:
- (i) if requested by TfNSW, take all necessary action and execute and deliver to TfNSW all necessary documents and instruments to record the Operator as a registered user of the TfNSW Marks;
  - (ii) if requested by TfNSW, submit to TfNSW samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the TfNSW Brand for TfNSW's approval;
  - (iii) except to the extent expressly permitted by this Contract, not use or apply to register any TfNSW Marks as part of its corporate, business, trading or domain name;
  - (iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose TfNSW's ownership of the TfNSW Brand;
  - (v) not register or use any trade mark, trade name, company name or domain name which includes any part of the TfNSW Brand or which is substantially identical or deceptively similar to any part of the TfNSW Brand; and
  - (vi) not challenge the TfNSW Brand or TfNSW's ownership of the TfNSW Brand or assist a third party to do these things.
- (i) If, during the Term, the Operator becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the TfNSW Marks, the Operator must promptly notify TfNSW.
- (j) TfNSW will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the TfNSW Marks and may decide what action if any to take in respect of that matter. The Operator must, at TfNSW's reasonable cost, take any action which TfNSW reasonably requests to bring the matter to an end.

- (k) The Operator shall, upon termination or expiry of this Contract, procure that any part of the TfNSW Brand which is listed or registered in the name of the Operator, or any person acting on its behalf, is transferred to TfNSW and procure that all telephone numbers, email addresses and all other electronic addresses which are designated by the Operator for use by the general public to make contact with the Operator in relation to the Operator Activities using a telecommunication network be transferred to TfNSW.
- (l) In this Clause 56:
  - (i) 'Marks' means any mark, trade mark, logo, indicia or image;
  - (ii) 'TfNSW Brand' means all Marks, livery, colours or other get up or brand used on or in relation to the State Assets and Operator New Ferries or any part of them including:
    - (A) the TfNSW Marks;
    - (B) all names including business names, domain names and company names registered or used in relation to the Operator Activities (other than those business names, domain names and company names of the Operator or Operator's Associates which are used in their business generally); and
    - (C) all telephone numbers, email addresses, websites, social media accounts and all other addresses or means of communication in any medium, whether in existence at the date of this Contract or not, registered or used in relation to the Operator Activities (other than those of the Operator or Operator's Associates which are used in their business generally); and
  - (iii) 'TfNSW Marks' means the Marks notified by TfNSW to the Operator from time to time and any other Marks used by or on behalf of the Operator in relation to the Operator Activities (other than those Marks of the Operator's Associates which are used in their business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any Marks which are created or developed in connection with, the Operator Activities or any part of the Operator Activities).

## 57. Livery and advertising

### 57.1 Livery and Operator's Marks

- (a) The Operator must:
    - (i) ensure that the State Assets and Operator New Ferries incorporate the TfNSW Brand;
    - (ii) incorporate the TfNSW Brand in a manner that enables the State Assets and Operator New Ferries to be identified as part of an integrated transport network;
    - (iii) comply with all NSW Government policies regarding application of NSW Government brands (**NSW Brand Policies**) and with the TfNSW Brand Style Guide including by ensuring that:
      - (A) the TfNSW Brand is applied in accordance with NSW Brand Policies and the TfNSW Brand Style Guide; and
      - (B) any Operator brand placement is co-branded with the relevant TfNSW Brand and in a format and relative scale in accordance with NSW Brand Policies and the TfNSW Brand Style Guide,
- on all things in the public domain, including:
- (C) all printed and digital materials (including promotional or other branded materials);
  - (D) all signage and electronic displays;
  - (E) Staff uniforms; and



- (F) livery (including all customer facing surfaces on vessels, vehicles and equipment);
  - (iv) not use primary colours or other distinctive colour schemes unless it can be demonstrated to TfNSW's satisfaction that it is complementary to and or consistent with the NSW Brand Policies and the TfNSW Brand Style Guide;
  - (v) comply with a visual language as determined by TfNSW; and
  - (vi) ensure that the New Ferries conform to uniform livery requirements, set out in the TfNSW Brand Style Guide, or as otherwise prescribed by TfNSW from time to time.
- (b) If there is any inconsistency between any NSW Brand Policy and the TfNSW Brand Style Guide, the Operator must request that TfNSW provide a direction in relation to the relevant requirements that must be complied with. The Operator must comply with any direction issued by TfNSW under this Clause 57.1(b).
- (c) If TfNSW prescribes or varies any existing uniform livery requirements in respect of all New Ferries or requires that the livery of Existing Ferries be updated to conform with any new or varied uniform livery requirements:
- (i) the Operator must comply with that new or varied uniform livery requirement; and
  - (ii) TfNSW must compensate the Operator for all reasonable incremental direct costs of complying with that new or varied uniform livery requirement but only to the extent that such costs exceed the costs that the Operator would have incurred had TfNSW not required the new or varied uniform livery requirements.

## 57.2 Advertising

The parties acknowledge and agree that:

- (a) the Operator has the exclusive right under this Contract to advertise, and grant rights to third parties to advertise on the interior of Contract Ferries subject always to the requirements set out in Clause 57.1;
- (b) the Operator must not advertise on the State Premises or the exterior of Contract Ferries; and
- (c) TfNSW has the right under this Contract to advertise, and grant rights to third parties to advertise, on the State Premises or the exterior of Contract Ferries (**TfNSW Advertising Assets**).

## 57.3 Advertising by Operator

- (a) Any advertising placed by the Operator on a State Asset or Operator New Ferry must:
  - (i) comply with all applicable Laws;
  - (ii) comply with:
    - (A) the TfNSW Ferry Advertising Guidelines; and
    - (B) any other guidelines, standards or directions issued by TfNSW from time to time;
  - (iii) comply with the requirements of Clause 57.1;
  - (iv) comply with codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by a Governmental Agency, the Advertising Standards Bureau of Australia, the Office of Film and Literature Classification, the Australian Association of National Advertising, the Outdoor Advertising Association of Australia and the Australian Advertising Standards Board;
  - (v) not depict political, religious or other similar subject matter;
  - (vi) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour;

- (vii) not cause, or have the potential to cause, any damage or harm to TfNSW's reputation;
  - (viii) not be offensive;
  - (ix) not obscure the route number and destination details on the Contract Ferry;
  - (x) not obscure any transport information or wayfinding information; and
  - (xi) not obscure or distract from any safety information or signage.
- (b) Where, in TfNSW's reasonable opinion, advertising on a State Asset or Operator New Ferry does not comply with Clause 57.3(a), TfNSW may require the Operator to remove an advertising item from that State Asset or Operator New Ferry.
- (c) The Operator must comply with a direction of TfNSW made pursuant to Clause 57.3(b) within one Business Day after receipt of the direction.
- (d) The Operator must not install any digital advertising equipment on Contract Ferries without the consent of TfNSW which consent may be subject to conditions, including conditions protecting TfNSW's rights in relation to the Contract Ferries.
- (e) The Operator must, when requested to do so by TfNSW, allow TfNSW to utilise such advertising panels and spaces on Contract Ferries (including any digital media) for such reasonable periods as are required by TfNSW, at no cost to TfNSW, to enable TfNSW to promote transport and safety initiatives.

#### **57.4 Revenue from advertising activities**

The gross revenue derived from all advertising activities conducted by or on behalf of the Operator in accordance with this Clause 57.4 will be shared between the Operator and TfNSW and accounted for in the manner set out in paragraph 7 of the Payment Schedule.

## **58. Warranties**

### **58.1 Special purpose vehicle warranties**

In addition to the warranties in Clauses 58.2 and 58.3, the Operator represents and warrants that:

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

### **58.2 Special purpose vehicle undertakings**

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

- (a) engage in any business activity other than:
  - (i) performing the Operator Activities;
  - (ii) providing advertising on Contract Ferries in a manner consistent with Clauses 57.2 and 57.3; and

- (iii) undertaking commercial opportunities (including providing charter services) in accordance with this Contract;
- (b) permit or engage any Dedicated Staff to perform duties or activities not associated with the Operator Activities;
- (c) acquire or use any assets for purposes other than the performance of its obligations under the Transaction Documents to which it is a party;
- (d) acquire or use any premises, facilities, ferry, vessel or vehicle, for the purposes of the Operator Activities and then only on the terms set out in the Transaction Documents; or
- (e) enter into any subcontracts or Related Party Arrangements in respect of matters which are not for the purposes of the performance of its obligations under this Contract.

### 58.3 Warranties correct

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

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

- (ii) the validity and enforceability of those documents and the effectiveness or priority of each Operator Security Deed and each Specific Security Deed; and
- (iii) its business as now conducted or contemplated and that is material (including, under the PT Act 1990 and the MS 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;

- (l) all returns, notices and other documents required to be lodged or given by it under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (m) there are no notices of any Governmental Agency outstanding against it;
- (n) all Authorisations necessary for the conduct of its business are validly subsisting and are held by it;
- (o) it has duly observed and complied in all respects with the provisions of all Laws and regulations and all orders, notices, awards and determinations made by any statutory or other competent authority in any way relating to or binding on it or any property owned or occupied by it;
- (p) all copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to TfNSW are true and complete copies. Where applicable, those documents are in full force and effect;
- (q) all information provided by the Operator to TfNSW is true in all material respects at the date of this Contract or, if later, when provided. Neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by the Transaction Documents was or is or will be misleading, by omission or otherwise;
- (r) none of its property or the property of the Partnership is subject to any Security Interest (other than a Permitted Security Interest);
- (s) it does not carry out any activities or hold any assets as the trustee of any trust;
- (t) it complies with the Privacy Laws, and any guidelines issued by the Commissioner under the relevant Privacy Law;
- (u) it can commence the Services on and from the Service Commencement Date;
- (v) it is and will be able to comply with the Services Schedule, the Service Level Schedule, the Key Performance Indicators and any outcomes or indicators agreed in this Contract;
- (w) its performance of this Contract will not infringe the Intellectual Property rights of any third person;
- (x) its Accessible Transport Action Plan, Environmental Plan and Customer Service Plan are updated annually;
- (y) it will perform the Services in accordance with Good Industry Practice and to TfNSW's reasonable satisfaction;
- (z) 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;
- (aa) it:
  - (i) has examined this Contract and the Disclosed Information and any other information that was made available in writing by TfNSW or any other person on TfNSW's behalf;

- (ii) has been given the opportunity prior to submitting its Proposal to itself undertake tests, enquiries and investigations:
  - (A) relating to the subject matter of the Disclosed Information; and
  - (B) relating to the State Assets, the TfNSW Systems and Equipment and the Transition In Assets;
- (iii) has had a sufficient opportunity to obtain and obtained all necessary legal and other technical advice in relation to this Contract, the Disclosed Information, the State Assets, the TfNSW Systems and Equipment and the Transition In Assets as well as the risks, contingencies and other circumstances having an effect on its Proposal and the performance of its obligations and liabilities under this Contract;
- (iv) has had sufficient access to the Disclosed Information, the State Assets, the TfNSW Systems and Equipment and the Transition In Assets and undertaken sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and potential risks and liabilities which it imposes on the Operator;
- (v) has satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the Operator Activities;
- (bb) the Partnership Agreement governing the Partnership produced to TfNSW at the date of this Contract and signed by its solicitors for the purposes of identification is the partnership agreement for the Partnership including all resolutions affecting it;
- (cc) the Partnership Agreement complies with all applicable Laws and discloses all the terms of the Partnership and of the Operator's appointment as agent and nominee of the Partnership;
- (dd) the Operator is empowered by each Partner to carry on its business as now conducted or contemplated in its capacity as agent and nominee of the Partnership for all Transaction Documents to which it is a party;
- (ee) the Partnership has not been terminated, and no property of the Partnership has been re-settled or set aside or transferred to any trust;
- (ff) the Partners are all the partners of the Partnership; and
- (gg) each Partner has complied with its obligations and duties under the Partnership Agreement and at Law, and to the best of its knowledge and belief no one has alleged that it has not complied.

#### **58.4 Notification of change**

The Operator must immediately notify the TfNSW Representative upon becoming aware that a representation or warranty it has given under this Clause 58 has become untrue or misleading at any time during the Term.

#### **58.5 Reliance on representations and warranties**

- (a) The Operator acknowledges that TfNSW has entered into, or will enter into, the Transaction Documents in reliance on the representations and warranties made by the Operator in this Clause 58.
- (b) Each warranty and representation is separate and independent from the other and not limited by reference to another warranty or representation.

### **59. Operator acknowledgments**

#### **59.1 Acknowledgements**

- (a) The Operator acknowledges and agrees that it has made its own enquiries and has not relied on any representations made by TfNSW, the State or any other person acting on

behalf of TfNSW or the State, in respect of this Contract and each other Transaction Document.

- (b) Without limiting the generality of Clause 59.1(a), the Operator acknowledges and agrees the following:
- (i) neither TfNSW, the State nor any other person acting on behalf of TfNSW or the State has verified the accuracy, reliability or completeness of the Disclosed Information;
  - (ii) neither TfNSW, the State nor any other person acting on behalf of TfNSW or the State has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
  - (iii) the Operator has not relied in any way on the skill or judgment of TfNSW, the State or any person acting on behalf of or associated with TfNSW or the State and has relied absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to tender a proposal and to enter into this Contract and each other Transaction Document;
  - (iv) the Operator has carried out all relevant investigations and has examined and acquainted itself concerning:
    - (A) the contents, correctness and sufficiency of the Disclosed Information;
    - (B) all information which is relevant to the risks, contingencies and other circumstances which could affect its decision to enter into this Contract and each other Transaction Document; and
    - (C) all amounts payable between the parties to this Contract and the other Transaction Documents;
  - (v) the Disclosed Information has been provided by TfNSW or the State in good faith and that:
    - (A) neither TfNSW nor the State has any knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither TfNSW, the State nor any person acting on behalf of or associated with TfNSW or the State is under an obligation to make, and that none of them has made, enquiries to verify that state of knowledge); and
    - (B) any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by TfNSW, the State or any person acting on behalf of or associated with TfNSW or the State, in any prior negotiation, arrangement, understanding or agreement has no effect except to the extent expressly set out or incorporated in this Contract or the other Transaction Documents;
  - (vi) for the avoidance of doubt:
    - (A) neither TfNSW, the State nor any person acting on behalf of TfNSW or the State has made or makes any representation or warranty either express or implied as to the condition of the State Assets, the TfNSW Systems and Equipment, the Transition In Assets, the Ferry Operations or any matter in connection with any Transaction Document or any transaction or arrangement contemplated under a Transaction Document; and
    - (B) the Operator accepts the State Assets, the TfNSW Systems and Equipment and the Transition In Assets in their condition at the date they are first licensed, leased or made available to the Operator subject to all defects and agrees that it is responsible for, and assumes the risk of:
      - (i) all Loss, delay or disruption it suffers or incurs; and
      - (ii) any adverse effect on the Operator Activities,arising out of or in any way in connection with the State Assets, the TfNSW Systems and Equipment or the Transition In Assets; and

- (vii) the acknowledgments under this Clause 59.1(b) are in addition to and do not limit the terms and conditions already agreed to or accepted by the Operator when receiving the Disclosed Information.
- (c) The Operator warrants to TfNSW that the Operator is aware that TfNSW has relied on the acknowledgments contained in this Clause 59 in entering into this Contract and each of the other Transaction Documents.
- (d) To the extent permitted by Law, the Operator expressly waives any right which it has (whether at the commencement of this Contract or otherwise) to bring any action or make any Claim against TfNSW, the State or any person acting on behalf of or associated with any of TfNSW or the State, arising (directly or indirectly) out of any alleged misrepresentation or misleading or deceptive conduct on the part of TfNSW or the State, or any person acting on behalf of or associated with TfNSW or the State, in providing the Disclosed Information or in connection with this Contract or any other Transaction Document (except for any misrepresentation or misleading or deceptive conduct of TfNSW or the State that is deliberate or negligent).
- (e) The Operator acknowledges that this Clause 59 is intended to benefit and is to be interpreted as benefiting TfNSW and the State and is to be enforceable by TfNSW and the State against the Operator. TfNSW holds the benefit of the Operator's representations, warranties, acknowledgments and agreements under this Clause 59 on trust for TfNSW's Associates, Sydney Ferries, RMS, the Transport Minister and the State.

## 59.2 No TfNSW responsibility for review of documents

- (a) The Operator:
  - (i) must develop, amend or update (and resubmit to TfNSW) any documents required to be submitted to TfNSW under this Contract (**Operator Documents**) in accordance with the requirements of this Contract or, where no requirement is specified, from time to time as and when either the Operator or TfNSW reasonably consider it is necessary to do so to comply with this Contract; and
  - (ii) warrants that the Operator Documents will be fit for their intended purposes and will otherwise comply with the requirements of this Contract.
- (b) TfNSW does not assume or owe any duty of care to the Operator to review, or when reviewing, to assess any Operator Document for errors, omissions or compliance with this Contract.
- (c) The Operator agrees that:
  - (i) review of, comments upon, or failure to comment upon, or rejection of (including the reasons for rejection) or failure to reject, an Operator Document or any other direction by TfNSW about such document; and
  - (ii) the Operator's compliance with any Operator Document,
 will not:
  - (iii) relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise according to Law;
  - (iv) prejudice TfNSW's rights against the Operator whether under this Contract or otherwise according to Law; or
  - (v) entitle the Operator to make any Claim against TfNSW in connection with such review, comments, or failure to comment, or rejection or failure to reject, or other direction by TfNSW.
- (d) Without limiting Clauses 59.2(a) to 59.2(c), TfNSW is not assuming any management or control of the Operator Activities or the Services.

## 60. Dispute resolution

### 60.1 Dispute resolution

- (a) This Clause 60 applies to any dispute which arises between TfNSW (on the one part) and the Operator and or the Partners (on the other part) in connection with this Contract, except disputes relating to the construction of this Contract including this Clause 60 (**Dispute**).
- (b) Subject to Clause 60.1(c), a party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first complying with the provisions of this Clause 60.
- (c) This Clause 60 does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensable in damages.
- (d) If a party considers that a Dispute has arisen, it may issue a notice to the other parties, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (e) Subject to Clause 60.2, the parties must promptly (and in any event within 10 Business Days after the date of the Dispute Notice):
  - (i) subject to legal professional privilege, furnish to each other party all information with respect to the Dispute which is appropriate in connection with its resolution; and
  - (ii) hold good faith discussions between the Operator Representative and the TfNSW Representative to attempt to resolve the Dispute.
- (f) If the Dispute has not been resolved within 10 Business Days after the date of the Dispute Notice, the parties must attempt to resolve the Dispute by holding good faith discussions between the Operator's Chief Executive Officer (or equivalent) and the Executive General Manager, Service Delivery and Performance, TfNSW (or such other position notified to the Operator by TfNSW from time to time).
- (g) If the Dispute is not resolved within 20 Business Days after the date of the Dispute Notice, a party may:
  - (i) if the Dispute is of a technical nature or if this Contract requires, refer it for resolution under Clause 60.2; or
  - (ii) if the Dispute is not of a technical nature, refer it for resolution under Clause 60.3.
- (h) A Dispute is of a technical nature if it is of a kind that, if it were litigated, could be resolved on expert evidence alone. If the parties are unable to agree whether or not an issue is of a technical nature, the opinion of TfNSW as to whether or not the issue should be referred for resolution under Clause 60.2 prevails.

### 60.2 Referral to expert

- (a) If this Contract requires that a Dispute be resolved by an independent expert, or if it is determined under Clause 60.1(g) and (h) that a Dispute will be referred for resolution under this Clause 60.2, the parties must refer that Dispute for resolution under this Clause 60.2 to a person who is an independent expert in its subject matter appointed by agreement between the parties (**Expert**).
- (b) If the parties are unable to agree on whom to appoint as an Expert within 20 Business Days after the date of the Dispute Notice, the Expert will be appointed on the application of any party by (unless otherwise agreed) the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute.
- (c) The Expert appointed under Clause 60.2(a) or (b) acts as an expert and not as an arbitrator.
- (d) The parties must have a reasonable opportunity to make submissions to the Expert.
- (e) Unless otherwise stated in this Contract, the costs of the Expert must be borne in equal shares by TfNSW and the Operator.



- (f) Subject to Clause 60.2(g), the Expert's decision is final and binding on the parties to the Dispute, except to the extent of fraud, gross negligence or a manifest error.
- (g) If the expert makes a decision that one party is liable to another party in an amount exceeding [REDACTED] then any party may give a notice of appeal to the other parties within 20 Business Days after receipt of the decision. If a notice of appeal is given under and in accordance with this Clause 60.2(g), the Dispute must be referred to arbitration in accordance with Clause 60.3.
- (h) The provisions of the *Commercial Arbitration Act 2010* (NSW) will not apply to the dispute resolution proceedings under this Clause 60.2.
- (i) Despite anything else, to the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).

### 60.3 Arbitration

- (a) Any Dispute which is referred to arbitration will be conducted before a person to be:
  - (i) agreed between the parties; or
  - (ii) failing agreement within 10 Business Days after the giving of the notice under Clause 60.1(g)(i) or 60.2(g), appointed by the Australian Centre for International Commercial Arbitration.
- (b) To the extent that they are not inconsistent with this Contract, the Arbitration Rules of the Australian Centre for International Commercial Arbitration will apply to the arbitration.
- (c) The seat of the arbitration will be Sydney, Australia and the language of the arbitration will be English.
- (d) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an Expert under Clause 60.2.
- (e) The parties agree that:
  - (i) section 26 of the *Commercial Arbitration Act 2010* (NSW) will not apply in the arbitration; and
  - (ii) the decision of the arbitrator will be final and binding on the parties and is not subject to review or appeal except in the case of an error of law.
- (f) Despite anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).
- (g) All aspects of the arbitration, including:
  - (i) any proceedings or hearings;
  - (ii) any meetings;
  - (iii) any submissions;
  - (iv) any materials in the proceedings created for the purpose of the arbitration; and
  - (v) documents produced in the proceedings which are not otherwise in the public domain,
 must be kept private and confidential in accordance with the provisions of Clause 55.

### 60.4 General

- (a) This Clause 60 does not apply to any Dispute relating to or arising out of the exercise or non exercise by TfNSW of any Power conferred on TfNSW by the TA Act, PT Act 1990, PT Act 2014 or otherwise by Law.
- (b) The parties will continue performing their respective obligations under the Transaction Documents while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Contract.

## 61. Restriction on activities

### 61.1 Assignment

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

### 61.2 Arrangements with Related Entities

- (a) The Operator must not enter into any agreement or arrangement (whether legally enforceable or not) between it and a Related Entity (a **Related Party Arrangement**) unless the Related Party Arrangement is on arm's length commercial terms for:
  - (i) the provision of services or goods by the Related Entity to the Operator;
  - (ii) the transfer, secondment or sharing of any employee to or with the Related Entity; or
  - (iii) the lease, licence or sharing of any assets or facilities of the Related Entity by the Operator,and the following requirements have also been satisfied:
  - (iv) TfNSW and the Related Entity have entered into an agreement on terms acceptable to TfNSW in respect of the Related Party Arrangement;
  - (v) if required by TfNSW acting reasonably, the Related Entity has provided a Security Interest in favour of TfNSW in a form satisfactory to TfNSW; and
  - (vi) if required by TfNSW acting reasonably, TfNSW has obtained a parent company guarantee in respect of the obligations of the Related Entity under the agreement referred to in Clause 61.2(a)(iv).
- (b) In acting reasonably under Clause 61.2(a)(v) and 61.2(a)(vi), TfNSW must have regard to the need to ensure the Continuity of the Services on expiry or termination of this Contract or if a Termination Event or Non-Compliance Event occurs.
- (c) If the Operator enters into a Related Party Arrangement in breach of Clause 61.2(a), then TfNSW may request the Operator to terminate the Related Party Arrangement and the Operator must, as soon as practicable, comply with that request.
- (d) No later than three months prior to the end of each Financial Year the Operator must provide to TfNSW a summary list of all Related Party Arrangements to which it is a party. TfNSW may seek further information about any Related Party Arrangement (including copies of any contracts) identified on the list and the Operator must provide that information within one month of TfNSW's request. If, on the basis of the information provided under this Clause 61.2(d) or otherwise available to TfNSW, TfNSW reasonably considers that any Related Party Arrangements are not on arm's length commercial terms TfNSW may provide a notice to the Operator specifying conditions to which any future Related Party Arrangements may be subject. The conditions so specified may include a condition prohibiting the Operator from entering into Related Party Arrangements without the approval of TfNSW. The Operator must comply with any conditions specified by TfNSW under this Clause 61.2(d).

## 62. Relationship between Operator and TfNSW

- (a) The Operator acknowledges that neither the Operator, nor any person employed or engaged by the Operator for the purpose of carrying out its obligations under this Contract or any other Transaction Document shall be deemed to be an employee, partner or agent of TfNSW or the State, by reason only of execution of, or performance of, this Contract or any other Transaction Document.

- (b) The Operator must not, and must procure that none of the Staff represent themselves as being the employees, partners or agents of TfNSW or the State.

## 63. Personal Property Securities Act

### 63.1 Incorporation of PPS Law terms

In this Clause 63 the following words and expressions have the same meanings given to them in the PPS Law:

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

### 63.2 General

The Operator acknowledges and agrees that:

- (a) if and to the extent that TfNSW at any time forms a belief on reasonable grounds that TfNSW is, or will become, a secured party in respect of a Security Interest arising out of or in connection with this Contract or any other Transaction Document, TfNSW or its agents, attorneys or nominees (**Relevant Party**) may at the Operator's expense take all steps that the Relevant Party considers advisable to:
  - (i) perfect, protect, record, register, amend or remove the registration of TfNSW's Security Interest in any personal property that is the subject of the Security Interest (**Relevant Personal Property**); and
  - (ii) better secure TfNSW's position in respect of the Relevant Personal Property under the PPS Law;
- (b) it will execute such other documents, deeds and other agreements including the execution of additional Security Interests, and otherwise take whatever action that the Relevant Party may reasonably require, including the giving of all notices, orders, instructions and directions whatsoever, to:
  - (i) do anything referred to in Clause 63.2(a)(i) or (ii);
  - (ii) facilitate the realisation or enforcement of such Security Interest;
  - (iii) facilitate the exercise of any of the Relevant Party's Powers under the Transaction Documents;
  - (iv) ensure that any Transaction Document is stamped for the proper amount in each state and territory of Australia in which the Transaction Document is required to be stamped; and
  - (v) confer on the Relevant Party security over the secured property (in whatever jurisdiction situated) equivalent or similar to the security intended to be conferred by any Transaction Document;
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Relevant Party in the Relevant Personal Property;
- (d) if TfNSW becomes a secured party in relation to the Relevant Personal Property, and to the extent that Chapter 4 of the PPS Law would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, the Operator and TfNSW agree that pursuant to section 115 of the PPS Law, sections 117, 118, 120, 121(4), 125, 129, 130, 132(3)(d), 132(4), 142 and 143 of the PPS Law do not apply in relation to those Security Interests;

- (e) other than in relation to Security Interests arising in the ordinary course of the Operator Activities and Security Interests described in section 12(3) of the PPS Law of which the Operator is the grantor (but only where the interest does not secure payment or performance of an obligation), it must immediately notify TfNSW if the Operator becomes aware of any person other than the Operator taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and
- (f) other than in relation to Security Interests arising in the ordinary course of the Operator Activities and Security Interests described in section 12(3) of the PPS Law of which the Operator is the grantor (but only where the interest does not secure payment or performance of an obligation), it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of TfNSW's interest in Relevant Personal Property.

### **63.3 Corresponding provisions**

Any document required to be executed by the Operator under Clause 63.2 must be in a form and substance satisfactory to the Relevant Party.

## **64. Proportionate Liability**

### **64.1 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 64.1, 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.

### **64.2 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).

### **64.3 Subcontracts**

The Operator must:

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

## 65. Taxes

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

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

## 66. Conflict of Interest

- (a) The Operator promises that, to the best of its knowledge, no conflict of interest of the Operator, its employees, agents or subcontractors exists or is likely to arise in the performance of its obligations under this Contract.
- (b) The Operator must:
  - (i) notify, and consult with, TfNSW immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
  - (ii) comply with any direction given by TfNSW in relation to those circumstances designed to manage that conflict of interest.
- (c) For the purposes of this Clause 66, 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.

## 67. Notices

Subject to the notices referred to in Clauses 17.2(a), 17.2(b) and 18(e), and the information referred to in Clauses 16.1(l) and 16.3(j), which are to be submitted via the TSAR system, any notice, demand, approval, consent, direction or other communication (**Notice**) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (or, if posted to an address in another country, by registered airmail) or by hand to the address below or the address last notified by the intended recipient to the sender:
  - (i) to TfNSW:  
Attention: Principal Manager Ferry Contract  
Transport for NSW  
Level 6, 18 Lee Street,  
CHIPPENDALE NSW 2008
  - (ii) to the Operator:  
Attention: Company Secretary  
Transdev Sydney Ferries Pty Ltd  
Level 8, 469 LaTrobe Street  
MELBOURNE VIC 3000
  - (iii) to ACN 154 815 611 Pty Ltd:  
Attention: Company Secretary  
ACN 154 815 611 Pty Ltd

Level 8, 469 LaTrobe Street  
MELBOURNE VIC 3000

- (iv) to ACN 087 535 224 Pty Ltd:  
Attention: Company Secretary  
ACN 087 535 224 Pty Ltd  
Level 8, 469 LaTrobe Street  
MELBOURNE VIC 3000

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

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

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

## 68. Entire agreement

This Contract and the Transaction Documents contain the entire agreement between the parties with respect to their subject matter and supersede all prior agreements and understandings between the parties in connection with that subject matter.

## 69. Amendment

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

## 70. No waiver

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

## 71. 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.

## 72. Costs

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

## 73. 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.

## 74. Counterparts

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

## 75. Survival

Clauses 1, 4, 6.4, 7, 10.3, 15.1(j), 15.1(k), 15.2(e), 15.4(b), 23, 28.2, 29, 33.7, 34, 36.3, 36.5, 36.6, 36.7, 37, 38, 39, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 76 and this Clause 75 continue to apply after the expiration or termination of this Contract.

## 76. Indexation

- (a) Unless otherwise expressly provided in this Contract, a reference to:
  - (i) "CPI Indexed" means that the relevant amount will be indexed for movements in CPI by multiplying the relevant amount by the CPI Annual Multiplier; and
  - (ii) "WPI Indexed" means that the relevant amount will be indexed for movements in WPI by multiplying the relevant amount by the WPI Annual Multiplier.
- (b) All amounts required to be adjusted under this Contract by an index will be indexed in accordance with the Payment Schedule. Any changes to indexes will be calculated in accordance with the Payment Schedule.

## 77. No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by a Transaction Document. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

## 78. Severability

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

## 79. Aboriginal participation

- (a) The Operator must comply with the New South Wales Government Aboriginal Procurement Policy (May 2018) (**APP**).

- (b) The Operator must:
  - (i) document and submit to TfNSW an Aboriginal participation plan for approval by TfNSW prior to the Planned Service Commencement Date (**Aboriginal Participation Plan**); and
  - (ii) implement and comply with the Aboriginal Participation Plan.
- (c) The Operator must systematically manage its Aboriginal participation processes in accordance with the Aboriginal Participation Plan.
- (d) The Operator must demonstrate to TfNSW, whenever requested, that it has met and is meeting at all times its obligations under Clauses 79(a) to 79(c) (inclusive).
- (e) The Operator acknowledges and agrees that TfNSW may review the Aboriginal Participation Plan periodically during the Term including by conducting an on-site verification that the Aboriginal Participation Plan is being correctly implemented, that performance targets are being met and that the stated outcomes are being achieved.
- (f) The Operator must provide progress reports against the Aboriginal Participation Plan to TfNSW monthly or more frequently as determined by TfNSW, in a format specified by TfNSW.
- (g) The Operator must provide an Aboriginal participation report on a periodic basis as determined by TfNSW and on expiry or termination of this Contract. The report must comply with the requirements of the APP and any other requirements of TfNSW.

## 80. Compliance with the NSW Government: Small and Medium Enterprise Policy Framework

To the extent that the Small and Medium Enterprise Policy Framework applies to the provision of goods or services under this Contract, the Operator must comply with the requirements of the Small and Medium Enterprise Policy Framework as follows:

- (a) depending on the threshold value of the procurement to be made via competitive quotes, the Operator acknowledges that it may be required to complete a SME Participation Plan (**SMEPP**);
- (b) the Operator acknowledges that, where a SMEPP is required in competitive quotes, reliance will be placed on the SMEPP in the evaluation of the quotation submitted by the Operator and in TfNSW entering into any agreement with the Operator;
- (c) the Operator must comply with the requirements and commitments provided for in the SMEPP or in any future SMEPP tendered by Operator and to take all steps reasonably required to enable TfNSW to monitor compliance by the Supplier with the SMEPP or any future SMEPP; and
- (d) the Operator and TfNSW agree that TfNSW may establish mechanisms to monitor compliance by the Operator with the requirements of, and its commitments under, the SMEPP or any future SMEPP. The Operator and TfNSW agree that non-compliance by the Operator with the SMEPP or any future SMEPP commitments will entitle TfNSW to terminate this Contract for cause. Further, the Operator agrees that TfNSW may take into consideration non-compliance by the Operator with the SMEPP or any future tendered SMEPP when evaluating tenders submitted by the Operator in the future for other agreements.



# Signing page

**EXECUTED** as a deed.

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

*Elizabeth Mildwater*

Signature of authorised delegate

ELIZABETH MILDWATER

Name of authorised delegate (block letters)

*Jenny Birch*

Signature of witness

JENNY BIRCH

Name of witness (block letters)

**Executed** by **Transdev Sydney Ferries Pty Ltd ABN 57 156 137 236** in accordance with Section 127 of the *Corporations Act 2001*

*Pierre Talgorn*

Signature of director

PIERRE TALGORN

Name of director (print)

*Nathan Lanthois*

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

NATHAN LANTHOIS

Name of director/company secretary (print)

**Executed** by **ACN 154 815 611 Pty Ltd ACN 154 815 611** in accordance with Section 127 of the *Corporations Act 2001*

*Pierre Talgorn*

Signature of director

PIERRE TALGORN

Name of director (print)

*Nathan Lanthois*

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

NATHAN LANTHOIS

Name of director/company secretary (print)

**Executed** by **ACN 087 535 224 Pty Ltd ACN 087 535 224** in accordance with Section 127 of the *Corporations Act 2001*

*Pierre Talgorn*

Signature of director

PIERRE TALGORN

Name of director (print)

*Nathan Lanthois*

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

NATHAN LANTHOIS

Name of director/company secretary (print)

# Attachment A – Contract details

Item	Clause	Term	Details		
Item 1	2(a)	TfNSW Representative	Principal Manager Ferry Contracts		
Item 2	2(b)	Operator Representative	<p>██████████</p> <p>Chief Officer Train &amp; Ferry Operations</p> <p>██████████</p> <p>██████████</p> <p>██████████</p> <p>██████████</p> <p>██████████</p>		
Item 3	31.2(b)	Key Personnel Details and Roles	Role	Name	Time for Commencement
			Managing Director	██████████	Service Commencement Date
			GM Asset Management	██████████	Service Commencement Date
			GM SHEQ	██████████	Service Commencement Date
			GM Operations	To be agreed in conjunction with TfNSW within 60 days of the date of execution of this Contract	Service Commencement Date
			GM Customer Service	To be agreed in conjunction with TfNSW within 60 days of the date of execution of this Contract	Service Commencement Date
			GM People	██████████	Service Commencement Date
			GM Finance	██████████	Service Commencement Date
			Asset Engineering Manager	██████████	Service Commencement Date
			Planning & Rostering Officer	██████████	Service Commencement Date
			Change Manager	To be agreed in conjunction with TfNSW within 60 days of the date of execution of this Contract	Service Commencement Date

Item	Clause	Term	Details		
			Dedicated Transition Manager	[REDACTED]	Five months prior to the Planned Service Commencement Date
<b>Item 4</b>	31.2(b)	Key Personnel – Duration of Appointment	Three years from Time for Commencement specified in Item 3		
<b>Item 5</b>	38.1(a)(i)(C)	Public liability insurance	[REDACTED]		
<b>Item 6</b>	38.1(a)(vii)	Third party property damage insurance	[REDACTED]		
<b>Item 7</b>	7.1	General Performance Bond Amount	[REDACTED]		

# Attachment B – Performance Bond

[insert date]

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

[Insert name and ABN of Operator] (**Operator**) has entered into a document with the Beneficiary under which the Operator has agreed to, among other things, provide ferry services in Sydney, New South Wales in accordance with the terms of that document (**Document**).

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

[insert] (**Issuer**),

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

A\$[insert].

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

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

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

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

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

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

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

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

**EXECUTED** as a deed.

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

[insert execution block of Issuer]

# Attachment C – Deed of Guarantee and Indemnity

Attachment redacted

# Schedule 1 – Services

## 1. Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to an item is a reference to an item in this Schedule.

In this Schedule, the following words have the following meanings:

**Holiday or Special Event Period** means each summer school holiday or special event period as set out in the Service Level Schedule or otherwise approved by TfNSW under Clause 18.

**KPI Management** means the activities associated with monitoring and reporting on the Key Performance Indicators and providing the information required to be reported to TfNSW.

**National Terrorism Threat Advisory System** means the scale of five levels published by the Australian Government on the likelihood of an act of terrorism occurring in Australia.

**Service Planning Guidelines** means the service planning guidelines prepared by TfNSW to develop transport service plans in metropolitan areas (as amended from time to time) being at the date of this Contract the document titled *Integrated Service Planning Guidelines – Sydney Metropolitan Area – Final* dated December 2013.

**Standard Working Timetable (SWTT)** means the base scheduled timetable approved by TfNSW of route timetable, stopping patterns, days of operation, route path and accessibility.

**TfNSW Systems and Equipment** or **TSE** has the meaning given in Clause 1.1.

The following table sets out the meaning of the column headings in the roles and responsibilities tables set out in this Schedule. 'T' in any of the columns means that TfNSW is the relevant party. 'O' in any of the columns means that the Operator is the relevant party.

Term	Description
Responsible	The party that has to do the activity.
Accountable	The party ultimately answerable for the correct and full completion of the activity. There must be only one party accountable for each activity.
Support	The party that is to provide support to assist in completing the activity.
Consulted	The party that is consulted by the responsible party as part of the process of carrying out the activity.
Informed	The party that has to be kept up-to-date, by the responsible party.
When	When the activity must be performed.
Contract Clause	The Clause in the Contract that the activity must be performed in accordance with.

## 2. Services Overview

The following are the key objectives for the provision of the Services by the Operator under the Contract:

- (a) provide reliable, safe and clean Services to customers;
- (b) develop Services to efficiently meet the Contract Objectives and the requirements of Clause 16;
- (c) operate the Services to the approved Timetables;

- (d) operate the On Demand Services in accordance with the Service Level Schedule and Planned Service Phase (2);
- (e) ensure customers are provided with accurate Timetable information and kept informed of Service changes and Incidents;
- (f) provide passenger information to deliver a seamless passenger service;
- (g) ensure Staff receive appropriate training and are competent and capable of providing excellent Services;
- (h) recommend Service improvements annually;
- (i) improve the provision of Services to customers; and
- (j) provide support for TfNSW Systems and Equipment required to improve and upgrade the Services.

### 3. Contract Service Levels and Timetables

The following table identifies the general roles and responsibilities associated with Contract Service Levels and Timetables

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.1	Update Service Planning Guidelines.	T	T	O		O	As required throughout the Term
3.2	Develop Contract Service Levels.	T	T	O		O	As required throughout the Term
3.3	Develop Timetables to efficiently and effectively meet the requirements of the Contract Service Levels.	O	O	T	T	T	As required throughout the Term
3.4	Address navigational safety requirements, in particular in congested parts of the network, when developing Timetables.	O	O	T	T	T	As required throughout the Term
3.5	Address environmental requirements, including wash impacts when developing Timetables.	O	O	T	T	T	As required throughout the Term
3.6	Ensure that timetabling provides passengers with effective connectivity to other ferry services and to services on adjacent modes so as to deliver seamless Services.	O	O	T	T	T	Continuing throughout the Term
3.7	Consult with passengers, the broader community, relevant Governmental Agencies (including local councils, Safety Authorities, Port Authority of New South Wales), local business groups, education and health providers, relevant tourism bodies and other key stakeholders (including Sydney Harbour Federation Trust and the developer, operator or maintainer of Circular Quay from time to time) in relation to planned service changes, special events service satisfaction levels, service initiatives and improvement opportunities.	O	O	T	T	T	As required throughout the Term and at least twice each Contract Year
3.8	Carry out Service reviews at least annually to develop Service improvement plans and submit any	O	O	T	T	T	Annually at a minimum



	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	recommended variations to TfNSW for consideration.						
3.9	Provide evidence through cost benefit analysis in support of changes in Contract Service Levels or Timetables, including the impact of changes in improving the customer experience. The analysis requires provision of the detail and outcome of the consultation process to demonstrate community support for the changes.	O	O		T	T	For each Timetable change throughout the Term
3.10	Maintain a prioritised list of Contract Service Level or Timetable changes that are considered worthwhile implementing and which are compliant with the Service Planning Guidelines and the requirements of the Contract.	O	O		T	T	Continuing throughout the Term
3.11	For each change in Contract Service Levels or Timetables, provide confirmation of compliance with the Service Planning Guidelines. Any change that is not compliant with the Service Planning Guidelines must be expressly advised detailing how the non-compliance will provide an improved customer experience / service outcome.	O	O		T	T	For each Timetable change throughout the Term
3.12	Approve Contract Service Levels and Timetables.	T	T	O	O	O	As required throughout the Term
3.13	Engage with special event organisers and participate in NSW Government Planning committees for major events to plan for Holiday or Special Event Periods	O	O	T	T	T	As required throughout the Term
3.14	Prepare a provisional timetable for each Holiday or Special Event Period.	O	O	T	T	T	At least four weeks prior to the start of the Holiday or Special Event Period
3.15	Prepare a final timetable for each Holiday or Special Event Period based on the start and finish dates and times ascertained in accordance with Item 3.14.	O	O	T	T	T	At least 21 days prior to the start of the Holiday or Special Event Period

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.16	Operate the Services (other than On Demand Services) in accordance with the approved Contract Service Levels and approved Timetables (including Timetables for Holiday or Special Event Periods).	O	O		T	T	Continuing throughout the Term
3.17	Maintain high levels of passenger and Staff security on the Services and monitor and manage passenger and Staff safety, including responding to the activation of duress alarms in accordance with response time standards in the KPI Schedule.	O	O		T	T	Continuing throughout the Term
3.18	Deploy customer service personnel across the network to provide a regular presence for customer engagement and receipt of feedback, support special events and mitigate the customer impact of network disruption.	O	O		T	T	Continuing throughout the Term
3.19	Declare an emergency situation and specify amended and/or additional ferry services to contribute to the integrity of the broader transport network and/or public safety.	T	T	O	O	O	Continuing throughout the Term
3.20	Amend the Services and/or provide additional Services at short notice as directed by TfNSW in response to an emergency situation.  An emergency situation may include major disruptions to the broader transport network, or any situation where public safety is at risk.  Emergency ferry services may be required to operate to and from wharves that are not usually part of the network used by the Operator under this Contract.	O	O	T	T	T	Continuing throughout the Term
3.21	Procure ferry replacement bus services on the Parramatta – Rydalmere and Manly – Circular Quay segments of the network when it is not possible to operate the Service using vessels that comply with the requirements of this Contract (unless otherwise agreed by TfNSW) where:	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<ul style="list-style-type: none"> <li>in the case of planned disruptions (including tidal events), 1 or more regular services cannot operate; or</li> <li>in the case of unplanned disruptions, 3 or more regular services cannot operate.</li> </ul> <p>The replacement bus service must operate at least as frequently as the usual Service at that time, and with a sufficient number of buses to cater for the expected demand.</p> <p>In the case of the Parramatta – Rydalmere segment, the bus service must provide a connection to the Service at Rydalmere.</p> <p>If Opal-enabled buses are available, these must be used in preference to buses that are not Opal-enabled to allow for correct adjustment of the fare and real time tracking.</p> <p>Timetable data must be provided for all ferry replacement services.</p> <p>Replacement buses must stop only at stops registered in the TfNSW Transit Stop Management (TSM) database.</p>						

#### 4. Publication, display and exchange of Public Transport Information

Publication and display of public transport information includes the activities required to ensure that passengers are provided with adequate, reliable information regarding the Services.

A reference in the table below to the Services excludes a reference to the On Demand Services (except in relation to Item 4.6, 4.16, 4.20, 4.21, 4.22, 4.23 and 4.24).

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
4.1	Provide Timetables for the Services, including during Holiday or Special Event Periods, to TfNSW for approval.	O	O		T	T	Prior to the introduction of a new or revised Timetable
4.2	Approve all Timetables for the Services, including	T	T	O	O	O	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	for Holiday or Special Event Periods, prior to publication.						throughout the Term
4.3	<p>If a Timetable (including a Timetable for a Holiday or Special Event Period) is approved by TfNSW, provide:</p> <p>a) TfNSW with the updated Timetable in electronic format (as reasonably required by TfNSW); and</p> <p>b) the public with the updated printed Timetable.</p>	O	O			T	Ensure Timetables are provided to TfNSW at least 30 days, and on display to customers from 14 days (or as otherwise agreed with TfNSW), prior to the implementation of the new Timetable
4.4	If a Timetable (including a Timetable for a Holiday or Special Event Period) is approved, provide Standard Working Timetable (SWTT) data to TfNSW on approved timetables to support TfNSW data quality assurance and data change management.	O	O			T	Ensure data is provided at least 30 days prior to the implementation date each time a change has been made to the underlying Standard Working Timetable (SWTT)
4.5	<p>If TfNSW approves an amendment to a Timetable (including a Timetable for a Holiday or Special Event Period), provide notice to the public of any material amendments to the Timetable by:</p> <p>a) notifying TfNSW of relevant details;</p> <p>b) displaying signs prominently;</p> <p>c) displaying advertisements in the local newspapers covering the affected Route;</p> <p>d) displaying signs/posters at Wharves; and</p> <p>e) other appropriate means.</p>	O	O			T	Ensure details are provided at least 30 days out to TfNSW and on display to customers from 14 days (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable
4.6	If requested by a member of the public, provide complete and up-to-date information about the	O	O			T	Within a reasonable timeframe

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	accessibility of the Services.						
4.7	Ensure accurate Timetables (including Timetables for Holiday or Special Event Periods) are displayed at all locations on or near the Routes where timetables are on display.	O	O			T	Continuing throughout the Term
4.8	Ensure that Timetables (including Timetables for Holiday or Special Event Periods) are in the format specified by TfNSW.	O	O			T	Continuing throughout the Term
4.9	Ensure Timetables (including Timetables for Holiday or Special Event Periods) indicate all Services which are accessible.	O	O			T	Continuing throughout the Term
4.10	Ensure Timetables (including Timetables for Holiday or Special Event Periods) comply with TfNSW requirements.	O	O			T	Continuing throughout the Term
4.11	Provide the destination information, to be displayed on all Contract Ferries, in data submitted to TfNSW in Timetables (including Timetables for Holiday or Special Event Periods) and in any other relevant location, to TfNSW for approval.	O	O		T	T	Prior to publication of the destination information
4.12	Approve destination information for all Services, to ensure it complies with current TfNSW standards or guidelines.	T	T	O	O	O	Continuing throughout the Term
4.13	Display the destination clearly on the front and side of all Contract Ferries in service, excluding any Contract Ferries without front destination signage.	O	O		T	T	Continuing throughout the Term
4.14	Ensure all Timetables (including Timetables for Holiday or Special Event Periods) provide times at Wharves and do not reflect operational timing points that are not Wharves.	O	O		T	T	Continuing throughout the Term
4.15	Provide timetable data in the format specified by TfNSW, which may be changed by TfNSW from time to time, including sufficient context for	O	O		T	T	Continuing throughout the Term (if notice is given by

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	customers to fully plan their journey (e.g. wharf side of departure).						TfNSW under Clause 17.2(f) of the Contract)
4.16	<p>Provide a real-time data feed to TfNSW in the format specified by TfNSW that includes:</p> <ul style="list-style-type: none"> <li>a) Contract Ferry locations;</li> <li>b) predicted arrival times at all subsequent Wharves on the Trip;</li> <li>c) information on Services and status of Services and Wharves (including crowding and capacity);</li> <li>d) real-time running status information; and</li> <li>e) service alert messaging to support customer information and transport operations,</li> </ul> <p>including changes to the side of the Wharf that the Service is operating from.</p>	O	O		T	T	At an interval frequency of at least 15 seconds
4.17	Provide a static timetable data feed to TfNSW in the format specified by TfNSW (for example, TransXchange) that provides upcoming Timetable changes due to a TfNSW approved change, Holidays or Special Event Periods, projects (for example Wharf upgrades) and maintenance works.	O	O		T	T	Ensure a static timetable data feed is provided at least 21 days prior to Timetable change (or as otherwise agreed with TfNSW) prior to the implementation of the new or revised Timetable
4.18	<p>Electronically exchange data and information with TfNSW in accordance with:</p> <ul style="list-style-type: none"> <li>• <i>Information Requirements for Ferry Operator Contracts</i> (13 August 2018);</li> <li>• <i>TfNSW Customer Channel Integration Specification</i> version 1.1 (06 February</li> </ul>	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<p>2018); and</p> <ul style="list-style-type: none"> <li>Integration and quality guidelines issued by TfNSW from time to time.</li> </ul> <p>The exchanged data and information, having regard to its purpose and use, must conform to the appropriate specifications, as set out below:</p> <ul style="list-style-type: none"> <li>GTFS and GTFS R – TfNSW Implementation Specification;</li> <li>Draft Version 0.6; and</li> <li>the specifications available from <a href="https://www.transport.nsw.gov.au/industry/as-set-standards-authority/reference-material">https://www.transport.nsw.gov.au/industry/as-set-standards-authority/reference-material</a>, namely: <ul style="list-style-type: none"> <li>SIRI 2.0 - TfNSW Implementation Specification - Using SIRI at TfNSW</li> <li>SIRI XML snippets; and</li> <li>TfNSW TransXchange Implementation Specification.</li> </ul> </li> </ul>						
4.19	For Services provided for Holiday or Special Event Periods, ensure accurate data is provided to TfNSW in TfNSW's required format.	O	O		T	T	Ensure data is provided at least 21 days prior to the relevant event (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable
4.20	When notified by TfNSW, fix any errors in the information provided on the Operator website or any data provided to TfNSW.	O	O		T	T	Within 24 hours of the notification from TfNSW
4.21	For On Demand Services, provide: <ul style="list-style-type: none"> <li>a) those Services using a technology platform approved by TfNSW;</li> <li>b) information to all prospective customers on</li> </ul>	O	O		T	T	From the commencement of the relevant On Demand Service

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<p>the hours of operation, locations from and to which the Services operate, and how to book and use the On Demand Services, which may be used by TfNSW for other channels;</p> <p>c) access to an easy to use on demand booking and ticketing platform and application, available on any smartphone, that:</p> <ul style="list-style-type: none"> <li>• shows the Fares for the On Demand Services,</li> <li>• accepts credit/debit card payment for On Demand Services;</li> <li>• sends a booking confirmation (including details of the pick-up location, drop-off location, time for pick-up and drop-off, walking directions to pick-up location (if applicable), booking information to present to the Crew, details of the vessel providing the service and estimated journey time) to the customer within five minutes of completing the booking;</li> <li>• allows customers to book On Demand Services;</li> <li>• enables the customer to track their booked ferry in real time;</li> <li>• provides customers with feedback options including a 5-star rating system against nominated criteria and a detailed feedback form; and</li> <li>• advises customers of service pick-up and drop-off times, pick-up locations and drop-off destination; and</li> </ul> <p>d) access (including a phone booking service)</p>						Option



	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	for prospective customers who do not have access to smartphone applications.						
4.22	Accept bookings for On Demand Services before the start of the Trip.	O	O		T	T	From the commencement of the relevant On Demand Service Option
4.23	Provide no less than the number of Contract Ferries indicated in Part 3 of the Service Level Schedule for each On Demand Service Option.	O	O		T	T	From the commencement of the relevant On Demand Service Option
4.24	Provide free Wi-Fi to passengers on all Contract Ferries.	O	O	T	T	T	Continuing throughout the Term, unless TfNSW directs that the Wi-Fi service is to be discontinued.

## 5. Customer Information, marketing and branding

The following table identifies the general roles and responsibilities associated with marketing, branding and providing information to customers of the Services:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.1	Inform passengers on a Service of any relevant Service delays.	O	O			T	Continuing throughout the Term
5.2	When an Incident occurs, categorise the Incident using the Incident Classification and Management Table in Attachment 1 of the KPI Schedule.	O	O	T	T	T	Continuing throughout the Term
5.3	When an Incident occurs, inform TfNSW of delays to any Service and work with TfNSW as required from time to time to minimise the impact of delays on customers.	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.4	Provide interim status updates to TfNSW as required in Attachment 1 of KPI Schedule (Incident Classification and Management).	O	O	T	T	T	Continuing throughout the Term
5.5	Provide, operate and maintain a customer information system on board all Contract Ferries and at all Wharves that: <ul style="list-style-type: none"> <li>a) provides real-time information about the Service, interchanges and any other transport services specified by TfNSW;</li> <li>b) is compliant with all TfNSW wayfinding and branding standards, guidelines or policies; and</li> <li>c) Complies with the <i>Customer Information Systems for Public Transport Buildings and Conveyances Standard</i> (and its successors); and</li> <li>d) Complies with any other applicable Laws or standards.</li> </ul>	O	O	T	T	T	Continuing throughout the Term
5.6	Adhere to and support the effective implementation of the TfNSW Channel Integration Specification, or any successor document.	O	O	T	T	T	Continuing throughout the Term

## 6. Signage and barriers

The following table identifies the general roles and responsibilities associated with signage and barriers at wharves:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.1	Install and maintain TfNSW-supplied customer information materials on Contract Ferries and ferry passenger Wharves including maps, timetables, posters and information notices	O	O	T	T	T	Continuing throughout the Term
6.2	Monitor and attend ticketing barriers at Wharves at all times when in use	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.3	Oversee, monitor and manage passenger flows through ticketing barriers at Wharves at all times when in use	O	O		T	T	Continuing throughout the Term
6.4	Report all incidents involving passenger accidents or injuries at ticketing barriers to TfNSW as soon as practicable and in any event within two Business Days after their occurrence or, in cases where ambulance or other medical attendance is required, immediately	O	O		T	T	Continuing throughout the Term

## 7. Service Desk

The following table identifies the Service Desk roles and responsibilities:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.1	Use the call centre provided as part of Transport Infoline or another call centre as nominated by TfNSW from time to time for the provision of call centre information services.	O	O			T	Continuing throughout the Term
7.2	Manage all complaints and feedback recorded in the TfNSW Customer Feedback System in relation to the Operator Activities from receipt to closure.	O	O			T	Continuing throughout the Term
7.3	Log and classify all complaints and feedback in the TfNSW Customer Feedback System in accordance with the TfNSW Customer Complaints Policy. This includes complaints addressed to and/or received directly by the Operator with regard to the Service, as well as complaints received via TfNSW channels.	O	O			T	Continuing throughout the Term
7.4	Assign a priority to all complaints and feedback received by the Service Desk to reflect the severity of the issue in accordance with the TfNSW Customer Complaints Policy or as otherwise	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	directed by TfNSW. All complaints, regardless of priority, must be assigned a complaint manager.						
7.5	Collaborate and cooperate with the Transport Infoline and the TfNSW Customer Feedback System, as required, to manage complaints and feedback received by the Service Desk and resolve Incidents.	O	O			T	Continuing throughout the Term
7.6	Refer any calls received by the Service Desk which do not relate to the Services to the TfNSW Customer Feedback System.	O	O			T	Within 2 hours of receipt of call
7.7	Immediately notify TfNSW of Incidents and any other unplanned maintenance issues.	O	O			T	Immediately after the Incident or unplanned maintenance issue
7.8	Report all Service Desk calls received that remain unresolved for more than 30 Business Days, at the end of each month to TfNSW.	O	O			T	Monthly throughout the Term
7.9	Maintain relevant records pertaining to all complaints and feedback in relation to the Services recorded on the TfNSW Customer Feedback System, including details of the closure of all calls. Clear notes on all interactions with the customer in relation to their case must be entered into the TfNSW Customer Feedback System.	O	O			T	Continuing throughout the Term
7.10	Perform trend analysis on complaints and feedback in relation to the Services recorded on the TfNSW Customer Feedback System.	O	O			T	Monthly throughout the Term
7.11	Identify any problems of a systemic nature revealed by the trend analysis and when identified, inform TfNSW and implement processes to improve performance.	O	O			T	As soon as practicable
7.12	Ensure the Service Desk is staffed with personnel	O	O			T	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	who are suitably skilled and trained to deliver support services and to interface with the TfNSW Customer Feedback System.						throughout the Term
7.13	Ensure the Service Desk can deliver On Demand Service support including accepting telephone bookings for On Demand Services, resolution of billing issues, general technical support on the On Demand Services application and answer all operational inquiries.	O	O		T	T	Continuing throughout the Term
7.14	Manage lost property in accordance with any TfNSW lost property policy and integrate with any lost property process and, when it becomes available, use the system provided by TfNSW (including, for example, by obtaining software licences).	O	O		T	T	Continuing throughout the Term

## 8. Staff training and knowledge transfer

The following table identifies training and knowledge transfer roles and responsibilities.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.1	Provide all customer facing Staff with passenger service training, in particular: a) training with regard to requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds; and b) training with regard to the management of confrontation, difficult passengers and personal safety.	O	O			T	Before the individual commences providing Service

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.2	<p>Provide training to all relevant Staff regarding the following, as applicable to the Services for which the relevant Staff are engaged to work:</p> <p>a) the Tickets, Full Fares, Concession Fares and SSTs;</p> <p>b) the Routes, Shipyard and Wharves;</p> <p>c) the Timetables; and</p> <p>d) relevant interchange information for each Wharf on the Service, for example, "Luna Park is adjacent to Milsons Point Wharf" or "Bus services to North Head are available from Manly Wharf".</p>	O	O			T	Before the individual commences working on the relevant Services
8.3	<p>Provide training to all Staff regarding compliance with:</p> <p>a) Environmental Law;</p> <p>b) work health and safety and WHS Law; and</p> <p>c) emergency and incident management and response procedures and protocols, including protocols for passenger emergency evacuation and operation of fire safety equipment.</p>	O	O			T	Continuing throughout the Term
8.4	<p>Provide additional training to Staff to meet the requirements of items 8.1, 8.2 and 8.3 above, if required when a change in the Services is implemented.</p>	O	O			T	Before the implementation of the change in the Services
8.5	<p>Develop, document and maintain training materials to provide to Staff to support the training referred to at items 8.1, 8.2 and 8.3 above.</p>	O	O			T	As required throughout the Term
8.6	<p>Provide all staff with customer service training in the three months after the Service Commencement Date, and on an annual basis.</p>	O	O			T	Within three months after the Service Commencement and Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
							throughout the Term

## 9. TfNSW Systems and Equipment

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
9.1	Develop operational procedures, guidelines and training requirements for TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations, as required.	T	T		O		As required by TfNSW throughout the Term
9.2	Comply with any reasonable operational procedures, guidelines and training requirements for TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations issued by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the Term
9.3	Ensure TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations are in operational condition (including by supplying power and communications connections).	O	O	T	T	T	Continuing throughout the Term
9.4	Protect TfNSW Systems and Equipment associated with the provision of the Services and related contractual obligations and use reasonable endeavours to ensure TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations are not mishandled or mistreated.	O	O	T	T	T	Continuing throughout the Term
9.5	Check TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations for faults, malfunctions security breaches or viruses regularly.	O	O	T	T	T	Continuing throughout the Term
9.6	Report any fault, malfunction, security breach or virus in TfNSW Systems and Equipment associated	O	O	T	T	T	Within 24 hours of the fault, malfunction,

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	with the provision of Services and related contractual obligations to TfNSW promptly.						security breach or virus being identified
9.7	Replace TSE Rotable Assets associated with TfNSW Systems and Equipment as required.	O	O	T	T	T	Continuing throughout the Term
9.8	Ensure all spare TSE Rotable Assets associated with TfNSW Systems and Equipment are kept in a secure location.	O	O	T	T	T	Continuing throughout the Term
9.9	Maintain a record of all TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations, which includes information regarding the location and movement of all TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations (including TSE Rotable Assets).	O	O	T	T	T	Continuing throughout the Term

## 10. Collection Services

### (a) Operator Ticket Income

The Operator must take the following steps to securely collect and store Operator Ticket Income:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.1	Sell and accurately record all Operator Ticket Income.	O	O			T	Continuing throughout the Term
10.2	Ensure amounts reported to TfNSW equal actual Operator Ticket Income.	O	O			T	Continuing throughout the Term
10.3	Ensure bank deposits equal actual receipts.	O	O			T	Continuing throughout the Term
10.4	Securely manage all cash at all times.	O	O			T	Continuing throughout the Term
10.5	Offset the amount of all Operator Ticket Income against the amounts in the Tax Invoice each month	O	O			T	Monthly throughout the Term



	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	in accordance with paragraph 3.1 of the Payment Schedule.						

(b) **Ticketing System Income**

Except where TfNSW issues a notice under Clause 14.2(d)(i)(B), in relation to Ticketing System Income collected on the Operator's behalf through the TfNSW Systems and Equipment or OpalPay, the Operator:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.6	Irrevocably authorises TfNSW or its nominee to hold Ticketing System Income collected on the Operator's behalf through the TfNSW Systems and Equipment or OpalPay	O	O			T	Continuing throughout the Term
10.7	Irrevocably authorises TfNSW to remit the Ticketing System Income to the Operator	O	O			T	Continuing throughout the Term
10.8	Must offset the Ticketing System Income against the amounts in the Tax Invoice each month in accordance with paragraph 3.1 of the Payment Schedule	O	O			T	Continuing throughout the Term

(c) **Revenue Collection**

The Operator is empowered and incentivised to maximise the number of Fare paying passengers and minimise Fare loss:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.8	Deploy Operator's Authorised Officers to minimise revenue loss.	O	O	T	T	T	At the Operator's discretion
10.9	Issue penalty notices.	O	O	T	T	T	Continuing throughout the Term if Operator's Authorised

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
							Officers are engaged
10.10	Issue fines and commence proceedings to collect unpaid fines.	T	T	O			Continuing throughout the Term
10.11	Attend court hearings as a witness in relation to proceedings concerning unpaid fines.	O	O	T	T	T	Continuing throughout the Term
10.12	Develop and implement Authorised Officer training programs which are consistent with Law and with similar programs for the training of Authorised Officers in other parts of New South Wales and which address revenue protection issues as notified by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the term if Operator's Authorised Officers are engaged
10.13	Use reasonable endeavours to ensure that sufficiently trained personnel who are submitted to be authorised as an Authorised Officer are granted such authorisation.	T	T	O	O	O	Continuing throughout the term if the Operator submits sufficiently trained personnel to be authorised as an Authorised Officer

## 11. KPI Management

The following table identifies KPI Management roles and responsibilities.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
11.1	Define and document Key Performance Indicator and reporting requirements.	T	T	T	O	O	Before the Commencement Date and as amended from time to time in

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
							accordance with the KPI Schedule
11.2	Coordinate Key Performance Indicator monitoring and reporting with TfNSW and third-party providers as required.	O	O		T	T	Continuing throughout the Term
11.3	Measure, analyse, and provide reports on performance against Key Performance Indicators and other information as requested.	O	O			T	As stated in the KPI Schedule and the Reporting Schedule
11.4	Track KPI performance for individual Incidents and escalating KPI Default.	O	O			T	As stated in the KPI Schedule
11.5	Develop and document Key Performance Indicator cure plans where required under the KPI Schedule.	O	O	T	T	T	As required throughout the Term
11.6	Implement and diligently pursue cure plans developed under the KPI Schedule.	O	O	T	T	T	As required throughout the Term
11.7	Report to TfNSW on Key Performance Indicator cure plan results.	O	O	T	T	T	As required throughout the Term
11.8	Collaborate with TfNSW Authorised Officers.	O	O	T	T	T	As required throughout the Term
11.9	Implement a mystery traveller program. The mystery traveller will roam the network on a random day each week, recording service performance and areas for improvement under customer service and cleanliness. The results of the mystery traveller program will be provided to TfNSW under the Reporting Schedule.	O	O		T	T	Continuing throughout the Term

## 12. Account Management

The Operator must possess contemporary account management, service and reporting capabilities including, but not limited to, the roles and responsibilities detailed in the following table:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
12.1	Continuously monitor trends in all Services through independent research.	O	O			T	Continuing throughout the Term
12.2	Document and report to TfNSW on products and services to improve Services and customer outcomes.	O	O			T	Continuing throughout the Term
12.3	Act in accordance with and support the governance process, as set out in the Governance Schedule.	O	O			T	Continuing throughout the Term
12.4	Provide accurate, robust and proven billing systems and methodology.	O	O			T	Continuing throughout the Term
12.5	Engage and maintain a qualified and experienced account management team.	O	O			T	Continuing throughout the Term

## 13. Government Subsidised Travel Schemes, including SSTS

The Operator must ensure that persons eligible for Government Subsidised Travel Schemes (including SSTS) have access to concessional and free transport, as required by TfNSW, and outlined below:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
13.1	Manage travel entitlements conferred by Government Subsidised Travel Schemes.	T	T	O	O	O	Continuing throughout the Term
13.2	Comply with the requirements of any guidelines regarding carrying school children issued by TfNSW from time to time.	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
13.8	In addition to validation of proof of entitlement instruments, ensure that Tickets issued to instrument holders are also validated.	O	O		T	T	Continuing throughout the Term

## 14. Licensed Area Management

The obligations set out in this table do not limit the obligations of the Operator under Annexure 5 of the Asset Schedule.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
14.1	Perform day to day maintenance of the Licensed Areas.	O	O			T	Continuing throughout the Term
14.2	Inspect, weed, trim, mow, water, dewater, fertilise, repair, replace, plant all landscaped areas of the Licensed Areas.	O	O			T	Continuing throughout the Term
14.3	Clean third party infrastructure such as TfNSW Systems and Equipment in the Licensed Areas.	O	O			T	Continuing throughout the Term
14.4	Report major maintenance issues at the Licensed Areas to TfNSW or as otherwise required by the Contract.	O	O		T	T	Continuing throughout the Term
14.5	If facilities for Staff are provided as part of the Licensed Areas, clean the facilities.	O	O		T	T	Continuing throughout the Term

## 15. Security Management

The Operator must ensure that security risk management requirements in relation to the delivery of transport services, arising from the National Terrorism Threat Advisory System and general security arrangements, are implemented and participate with TfNSW on ensuring that potential security threats are identified and managed appropriately:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
15.1	Carry out regular risk assessments of terrorism related threats to the Operator Activities.	O	O	T	T	T	Continuing throughout the Term
15.2	Implement security measures as identified in the Operator's risk assessment.	O	O	T	T	T	Continuing throughout the Term
15.3	Develop and implement security measures that align to the Operator's risk assessment and the relevant level identified under the National Terrorism Advisory System.	O	O	T	T	T	Continuing throughout the Term
15.4	Implement procedures to notify NSW Police and TfNSW of the following incidents: a) assault; b) sexual offences; c) robbery; d) harassment, threatening behaviour and private nuisance; e) other offences against the person; f) theft; g) arson; h) malicious damage to property; i) drug offences; j) prohibited and regulated weapons offences; k) disorderly conduct, each as defined in the 'definitions and explanations' section of the NSW Bureau of	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<p>Crime Statistics and Research website, and:</p> <ul style="list-style-type: none"> <li>l) offences against transport services;</li> <li>m) other street offences;</li> <li>n) terrorism offences;</li> <li>o) offences under Part 5 Divisions 2 and 3 and Part 6 (as it relates to ticketing offences) of the PT(General) Regulation.</li> </ul>						
15.5	<p>Provide Closed Circuit Television (<b>CCTV</b>) at all Wharves that provides coverage of passenger and operational areas of the Wharf.</p> <p>The wharf-based system must:</p> <ul style="list-style-type: none"> <li>a) comply with the <i>Public Transport Closed Circuit Television (CCTV) Functional Requirements Standard</i>, and any subsequent standards;</li> <li>b) be made available either live or as a digital file extract to any Transport cluster agency, the NSW Police, Federal security agencies or other Governmental Agency at no charge; and</li> <li>c) be made available to other ferry operators that use a Wharf on an at-cost plus margin basis.</li> </ul> <p>Provide CCTV on the Contract Ferries which complies with the <i>Public Transport Closed Circuit Television (CCTV) Functional Requirements Standard</i>, and any subsequent standards.</p>	O	O	T	T	T	Continuing throughout the Term
15.6	<p>Provide help points at Wharves and on multi-deck Contract Ferries that have a passenger capacity of 300 customers or more. The help points must comply with the Help Points</p>	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	Standard.						
15.7	Integrate RMS Life Ring monitoring alarms (where fitted) into the CCTV and Help Point system to allow a timely response to the use of a Life Ring in an emergency.	O	O	T	T	T	Continuing throughout the Term



Schedule 2 redacted.

# Schedule 3 - Payment

## 1. Definitions and Interpretation

(a) In this Schedule:

- (i) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (ii) a reference to a Clause is a reference to a Clause in the Contract;
- (iii) a reference to a paragraph is a reference to a paragraph in this Schedule; and
- (iv) a reference to an Annexure is a reference to an Annexure to this Schedule.

(b) In this Schedule, the following words have the following meanings:

**Actual Lease Payment** for an Operator New Ferry, means the amount determined by TfNSW in accordance with paragraph 6.2(c) of this Schedule for the Operator New Ferry.

**Base Service Fee** has the meaning given in paragraph 4.

**Bid Capital Expenditure** means the amount set out in Annexure A, Table 7 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 7 will apply with effect from the Planned Service Phase Commencement Date.

**Bid Commercial Revenue** means the amount set out in Annexure A, Table 6 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 6 will apply with effect from the Planned Service Phase Commencement Date.

**Bid Fuel Price** means [REDACTED]

**Bid Fuel Volume** means the volume set out in Annexure A, Table 2, Ref 1 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 2, Ref 1 will apply with effect from the Planned Service Phase Commencement Date.

**Calendar Month** means the period that commences on the first day of the month and ends on the last day of the month.

**Capital Cost** for an Operator New Ferry, means the amount determined by TfNSW in accordance with paragraph 6.4 of this Schedule for the Operator New Ferry.

**Commercial Revenue Adjustment** has the meaning given in paragraph 7.

**Consumer Price Index** or **CPI** means the Consumer Price Index for Sydney published quarterly by the Australian Bureau of Statistics (ABS Consumer Price Index (CPI), Cat 6401.0, - quarter, Index Numbers; All groups CPI; Sydney; Series ID: A2325806K) or, if paragraph 2.2 applies, the index determined in accordance with that paragraph.

**CPI Annual Multiplier** means, for the current Financial Year:

- (A) the CPI for the Quarter ending 31 March of the previous Financial Year divided by:
- (B) the CPI for the Quarter ended 31 March 2019.

**Fleet Lease Payment** has the meaning given in paragraph 6.

**Fleet Service Payment** for an Operator New Ferry, means the amount determined by TfNSW in accordance with paragraph 6.2(b) of this Schedule for the Operator New Ferry.

**Fuel Adjustment** has the meaning given in paragraph 5.

**Fuel Index Multiplier** or **FIM** means the multiplier determined under paragraph 5.2.

**Fuel Price** means the daily "Mobil Terminal Gate Price" Sydney Diesel (in AUS\$/litre excluding GST) quoted on the website [http://apps.exxonmobil.com.au/apps/htm/mn\\_mobil\\_products\\_automotive\\_pricing.asp](http://apps.exxonmobil.com.au/apps/htm/mn_mobil_products_automotive_pricing.asp).

**Fuel Tax Credit** means the fuel credits received per litre under the single system of fuel tax credits introduced under the *Fuel Tax Act 2006* (Cth) on and from 1 July 2006.

**Gross Unit Price** means the relevant amounts set out in Annexure B and Annexure C.

**KPI Abatement** has the meaning given in paragraph 8.

**Month n** means a particular month during the Term, where n signifies the number of months from the Service Commencement Date.

**Operator Ticket Income Adjustment** means the adjustment determined in accordance with paragraph 11.

**On Demand Service Hours** means, in respect of the On Demand Services, the time in hours:

- (A) travelled in performing the On Demand Services, in which passengers are able to board the Contract Ferry;
- (B) travelled from the nominated hold over point to a pick up point, or from a drop off point to the nominated hold over point; and
- (C) dormant at the nominated hold over point,

and which for the avoidance of doubt excludes the time for that Contract Ferry to travel from the Shipyard and Ferry Layover to a pick up point or the nominated hold over point (as applicable) and to travel from a drop off point or the nominated hold over point (as applicable) to the Shipyard and Ferry Layover.

**Variation Index Multiplier** means the relevant percentage set out in Annexure A, Table 4 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 4 will apply with effect from the Planned Service Phase Commencement Date.

**Wage Price Index** or **WPI** means the Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses (New South Wales, All Industries, Public and Private) published quarterly by the Australian Bureau of Statistics (ABS Quarterly Wage Price Index; Cat 6345.0, Table 5b, Total hourly rates of pay excluding bonuses; Private and Public; Transport, postal and warehousing A2603469T) or, if paragraph 2.2 applies, the index determined in accordance with that paragraph.

**WPI Annual Multiplier** means, for the current Financial Year:

- (A) the WPI for the Quarter ending 31 March of the previous Financial Year divided by
- (B) the WPI for the Quarter ended 31 March 2019.

## 2. Indexation

### 2.1 Indexation

All amounts to be "indexed" under this Contract are indexed by multiplying the relevant amount by the CPI Annual Multiplier, the Fuel Index Multiplier or the WPI Annual Multiplier (as applicable).

### 2.2 Changes to Indexation

In this Contract, a reference to an index includes a reference to any replacement index or renamed index performing substantially the same function as the named index and a reference to a Governmental Agency or organisation responsible for publishing an index includes a reference to any Governmental Agency or other body performing substantially the same function in relation to the index.

### 3. Monthly Service Payment

#### 3.1 Calculation of the Monthly Service Payment

The Monthly Service Payment for Month n (**MSP<sub>n</sub>**) is determined as follows:

$$\mathbf{MSP}_n = \mathbf{BSF}_n + \mathbf{FA}_n + \mathbf{FLP}_n - \mathbf{CR}_n - \mathbf{KA}_n + \mathbf{ODP}_n + \mathbf{NFI}_n - \mathbf{OTIA}_n - \mathbf{TSIA}_n$$

Where:

**BSF<sub>n</sub>** = the Base Service Fee for Month n, calculated in accordance with paragraph 4;

**FA<sub>n</sub>** = the Fuel Adjustment for Month n, calculated in accordance with paragraph 5;

**FLP<sub>n</sub>** = the Fleet Lease Payment for Month n, calculated in accordance with paragraph 6;

**CR<sub>n</sub>** = the Commercial Revenue Adjustment for Month n, calculated in accordance with paragraph 7;

**KA<sub>n</sub>** = the KPI Abatement for Month n, calculated in accordance with paragraph 8;

**ODP<sub>n</sub>** = the On Demand Payment for Month n, calculated in accordance with paragraph 9;

**NFI<sub>n</sub>** = the Net Financial Impact for Month n, calculated in accordance with paragraph 10;

**OTIA<sub>n</sub>** = the Operator Ticket Income Adjustment for Month n, calculated in accordance with paragraph 11; and

**TSIA<sub>n</sub>** = the Ticketing System Income Adjustment for Month n, calculated in accordance with paragraph 12.

#### 3.2 First and last Month n of the Contract

- (a) Where Month n does not commence on the first day of a Calendar Month or complete on the last day of a Calendar Month, the Monthly Service Payment will be adjusted proportionately having regard to the number of days in Month n that this Contract is in place (**Relevant Days**) as a percentage of the total number of days in the full Calendar Month.
- (b) If the number of Relevant Days is less than 7 Business Days then the Payment for Month n will be paid as part of the next Monthly Service Payment (unless Month n is the last month of the Term).
- (c) A one off adjustment payment of [REDACTED] is payable to the Operator on Service Commencement Date as a lump sum payment.
- (d) A one off adjustment payment of [REDACTED] multiplied by the CPI Annual Multiplier is due and payable by the Operator to TfNSW on the Termination Date as a lump sum payment. If this Contract is terminated by TfNSW other than under Clause 6, the one off adjustment payment referred to in this paragraph will be adjusted to take into account the number of days in the Contract Year in which the Termination Date occurred on which the Contract was on foot.

### 4. Base Service Fee

#### 4.1 Base Service Fee

The Base Service Fee for Month n (**BSF<sub>n</sub>**) is determined as follows:

$$\mathbf{BSF}_n = \left( \frac{\mathbf{LC}_n}{\mathbf{NM}} + \mathbf{VLC}_n \right) \times \mathbf{WPIM}_n + \left( \frac{\mathbf{NL}_n}{\mathbf{NM}} + \mathbf{VNL}_n \right) \times \mathbf{CPIM}_n + \frac{\mathbf{NIC}_n}{\mathbf{NM}} + \left( \frac{\mathbf{BFV}_n \times (\mathbf{BFP} - \mathbf{FC}_n)}{\mathbf{NM}} + \mathbf{VFC}_n \right)$$

Where:

**LC<sub>n</sub>** = the Labour Payment Component in which Month n occurs, as set out in Annexure A, Table 1, Ref 1 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 1, Ref 1 will apply with effect from the Planned Service Phase Commencement Date;

**VLC<sub>n</sub>** = the Variation Labour Component in which Month n occurs, calculated in accordance with paragraph 4.2;

**NL<sub>n</sub>** = the Non Labour Payment Component in which Month n occurs, as set out in Annexure A, Table 1, Ref 2 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 1, Ref 2 will apply with effect from the Planned Service Phase Commencement Date;

**VNL<sub>n</sub>** = the Variation Non Labour Component in which Month n occurs, calculated in accordance with paragraph 4.3;

**NIC<sub>n</sub>** = the Non Indexed Payment Component in which Month n occurs, as set out in Annexure A, Table 1, Ref 3 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 1, Ref 3 will apply with effect from the Planned Service Phase Commencement Date;

**VFC<sub>n</sub>** = the Variation Fuel Component in which Month n occurs, calculated in accordance with paragraph 4.4;

**BFV<sub>n</sub>** = the Bid Fuel Volume in which Month n occurs, as set out in Annexure A, Table 2, Ref 1 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 2, Ref 1 will apply with effect from the Planned Service Phase Commencement Date;

**BFP** = the Bid Fuel Price;

**WPIM<sub>n</sub>** = the WPI Annual Multiplier applicable for Month n;

**FC<sub>n</sub>** = the Fuel Tax Credit per litre;

**CPIM<sub>n</sub>** = the CPI Annual Multiplier applicable for Month n; and

**NM** = 12.

## 4.2 Variation Labour Component

The Variation Labour Component for Month n (**VLC<sub>n</sub>**) is determined as follows:

$$\text{VLC}_n = (\text{SVP}_n) \times X\%$$

Where:

**SVP<sub>n</sub>** = the Service Variation Payment for Month n, calculated by multiplying the incremental adjustment to In-Service Hours in Month n (compared to the In Service Hours on the Service Commencement Date) by the applicable Gross Unit Price for Service Variations (by vessel class) set out in Annexure B. This process is to be repeated for each vessel class used in a Service Variation during Month n. The SVP<sub>n</sub> total will be the sum of the individual vessel class calculations; and

**X%** = the Labour Component percentage of the Variation Index Multiplier, as set out in Annexure A, Table 4, Ref 1 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 4, Ref 1 will apply with effect from the Planned Service Phase Commencement Date.

### 4.3 Variation Non Labour Component

The Variation Labour Component for Month n (**VNL<sub>n</sub>**) is determined as follows:

$$\mathbf{VNL_n = (SVP_n) \times Y\%}$$

Where:

**SVP<sub>n</sub>** = the Service Variation Payment for Month n, calculated by multiplying the incremental adjustment to In-Service Hours in Month n (compared to the In Service Hours on the Service Commencement Date) by the applicable Gross Unit Price for Service Variations (by vessel class) set out in Annexure B. This process is to be repeated for each vessel class used in a Service Variation during Month n. The SVP<sub>n</sub> total will be the sum of the individual vessel class calculations; and

**Y%** = the Non Labour Component percentage of the Variation Index Multiplier, as set out in Annexure A, Table 4, Ref 2 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 4, Ref 2 will apply with effect from the Planned Service Phase Commencement Date.

### 4.4 Variation Fuel Component

The Variation Fuel Component for Month n (**VFC<sub>n</sub>**) is determined as follows:

$$\mathbf{VFC_n = (SVP_n) \times Z\%}$$

Where:

**SVP<sub>n</sub>** = the Service Variation Payment for Month n, calculated by multiplying the incremental adjustment to In-Service Hours in Month n (compared to the In Service Hours on the Service Commencement Date) by the applicable Gross Unit Price for Service Variations (by vessel class) set out in Annexure B. This process is to be repeated for each vessel class used in a Service Variation during Month n. The SVP<sub>n</sub> total will be the sum of the individual vessel class calculations; and

**Z%** = the Fuel Component percentage of the Variation Index Multiplier, as set out Annexure A, Table 4, Ref 3 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 4, Ref 3 will apply with effect from the Planned Service Phase Commencement Date.

## 5. Fuel Adjustment

### 5.1 Fuel Adjustment

The Fuel Adjustment for Month n (**FA<sub>n</sub>**) is determined as follows:

$$\mathbf{FA_n = \left( \frac{BFV_n \times (BFP - FC_n)}{NM} + VFC_n \right) \times (FIM_n - 1)}$$

Where:

**BFV<sub>n</sub>** = the Bid Fuel Volume in which Month n occurs;

**NM** = 12;

**BFP** = the Bid Fuel Price;

**FC<sub>n</sub>** = the Fuel Tax Credit for the previous Calendar Month;

**VFC<sub>n</sub>** = the Variation Fuel Component in which Month n occurs, calculated in accordance with paragraph 4.4; and

**FIM<sub>n</sub>** = the Fuel Index Annual Multiplier applicable for Month n.

## 5.2 Fuel Index Multiplier

The Fuel Index Multiplier for the Month n (**FIM<sub>n</sub>**) is determined as follows:

$$\mathbf{FIM}_n = \frac{AP_n - FC_n}{BFP - FC_n}$$

Where:

**AP<sub>n</sub>** = the average Fuel Price for the previous Calendar Month;

**BFP** = the Bid Fuel Price; and

**FC<sub>n</sub>** = the Fuel Tax Credit for the previous Calendar Month.

## 6. Fleet Lease Payments

### 6.1 Fleet Lease Payments

The Fleet Lease Payment for Month n (**FLP<sub>n</sub>**) is determined as follows:

$$\mathbf{FLP}_n = (\sum \mathbf{SLP}_n \times \mathbf{CPIM}) + \mathbf{NLP}_n$$

Where:

**SLP<sub>n</sub>** = subject to Clauses 24.7(i) and 24.7(j), the State Fleet Lease Payment for Month n, is the sum of the values set out in Annexure A, Table 3A unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount is the sum of the values set out in Annexure D, Table 3A which will apply with effect from the Planned Service Phase Commencement Date;

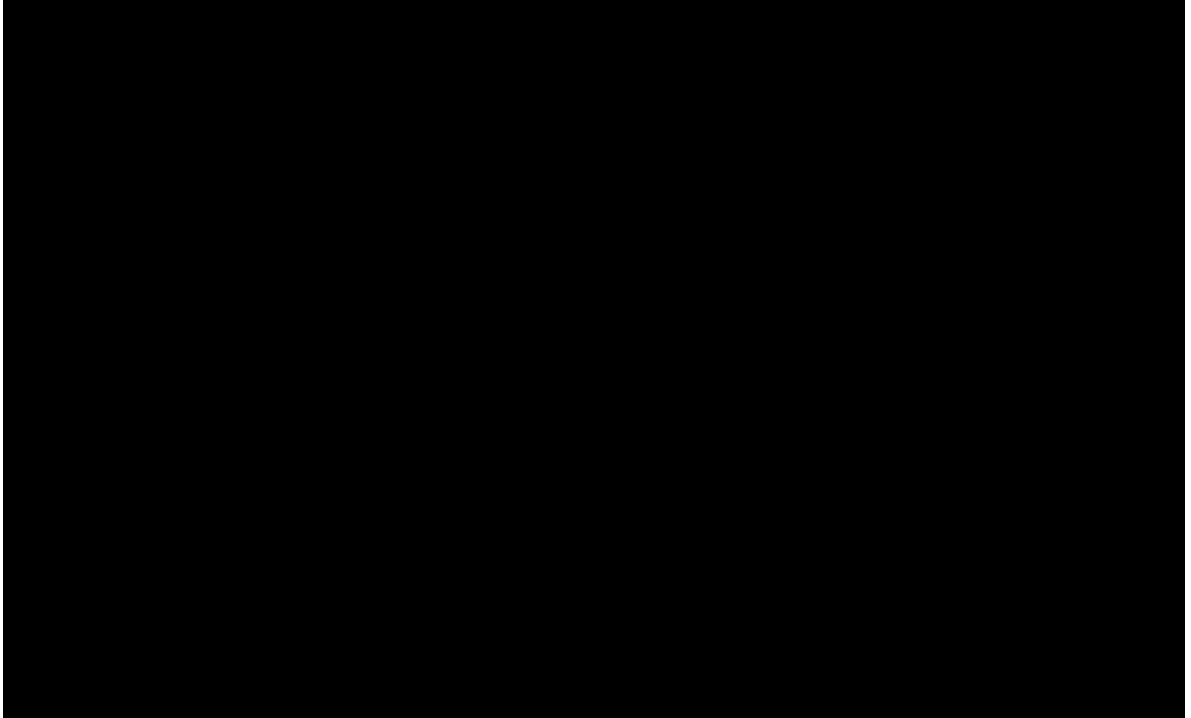
**CPIM<sub>n</sub>** = the CPI Annual Multiplier applicable for Month n; and

**NLP<sub>n</sub>** = the Non-State Fleet Lease Payment in which Month n occurs, calculated in accordance with paragraph 6.2 of this Schedule.

### 6.2 Non-State Fleet Lease Payments

- (a) Subject to paragraph 6.2(d) of this Schedule and Clause 24.6(b), the Non-State Lease Payment (**NLP<sub>n</sub>**) for Month n for Operator New Ferries listed in the Fleet Deployment Plan and approved by TfNSW in accordance with Clauses 24.3 (**FDP Ferries**), and Operator New Ferries acquired as a result of a Service Variation in accordance with Clause 24.3 (**SV Ferries**) will be determined by TfNSW as the aggregate of the following for each Operator New Ferry (subject to paragraph 6.2(e) and 6.2(f) of this Schedule):
- (i) where a Fleet Service Payment for an Operator New Ferry is specified for Month n but the relevant Operator New Ferry has not been issued a Certificate of Survey and Certificate of Operation, the Fleet Service Payment for that Operator New Ferry in Month n; and
  - (ii) where an Operator New Ferry is procured in accordance with Clause 24 and has been issued a Certificate of Survey and Certificate of Operation, the Actual Lease Payment for the Operator New Ferry.
- (b) The Fleet Service Payment for an Operator New Ferry procured in accordance with Clause 24 is the amount set out in Annexure A, Table 3B for Month n in respect of that Operator New Ferry in Month n unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 3B will apply in respect of that Operator New Ferry for Month n with effect from the Planned Service Phase Commencement Date. For the avoidance of doubt, where no Fleet Service Payment is specified for an Operator New Ferry in Month n, the Fleet Service Payment for the Operator New Ferry is deemed to be \$nil.

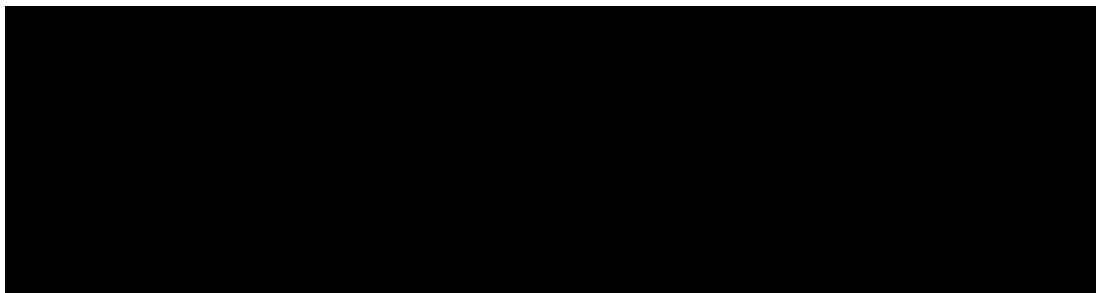
- (c) The Actual Lease Payment for an Operator New Ferry procured in accordance with Clause 24 in Month n will be determined by TfNSW in accordance with the following formula:



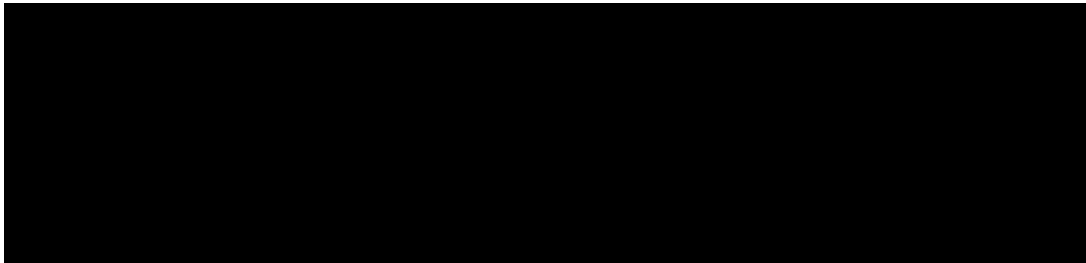
- (d) This paragraph does not apply to Operator New Ferries that are used primarily to provide On Demand Services.
- (e) If an Operator New Ferry is issued with a Certificate of Survey and Certificate of Operation part way through a Contract Month:
- (i) the Fleet Service Payment for Month n will be pro rata adjusted and payable in respect of the number of days in Month n where the Operator New Ferry did not have a Certificate of Survey and Certificate of Operation;
  - (ii) the Actual Lease Payment for Month n will be pro rata adjusted and payable in respect of the number of days in Month n where the Operator New Ferry did have a Certificate of Survey and Certificate of Operation; and
  - (iii) both amounts will be paid to the Operator in the next Contract Month.
- (f) For the avoidance of doubt, the Operator is not entitled to payment of both the Fleet Service Payment and the Actual Lease Payment in any one Contract Month.

### **6.3 Vessel Termination Payment**

- (a) Subject to paragraphs 6.3(b) and 6.3(d) of this Schedule, the Vessel Termination Payment payable under Clause 54.7 for the sale of an Operator New Ferry that is subject to and End of Term Sale Notice, will be determined by TfNSW in accordance with the following formula:







- (b) No Vessel Termination Payment will be payable in connection with any Operator New Ferry (including the novation of the Operator Ferry Charterparty in respect of an Operator New Ferry) where the Operator New Ferry has been in service for more than 240 months.
- (c) TfNSW or the Successor Operator must pay any Vessel Termination Payment in accordance with the Transfer Out Agreement.
- (d) This paragraph does not apply to Operator New Ferries that are used primarily to provide On Demand Services.

**6.4 Capital Cost**

- (a) Subject to paragraph 6.4(b) of this Schedule, the Capital Cost determined by TfNSW in relation to an Operator New Ferry will be the lower of the actual capital cost of the Operator New Ferry approved by TfNSW in the Business Case for the Operator New Ferry under Clause 24.3 and the capital cost for the relevant class of Operator New Ferry determined in accordance with the following table multiplied by the CPI Annual Multiplier as at the date that the Certificate of Survey and Certificate of Operation is issued for the Operator New Ferry:

Vessel Class	Capital cost (in 2019/202 \$A exclusive of GST)
New Emerald	██████████
24.9m river cat	██████████
12m mini cat	██████████

- (b) If TfNSW requests a departure from the vessel specifications set out in Part C of Annexure 3 of the Asset Schedule (other than a departure that is immaterial in nature) in respect of a new Ferry or vessel, then the Operator must, as part of the Business Case submitted under Clause 24.3 in relation to the new Ferry or vessel submit a detailed cost proposal in relation to any increase in the cost as a result of the departure. If TfNSW does not agree to the cost proposal submitted by the Operator TfNSW must withdraw the requested departure from the vessel specifications.

**7. Commercial Revenue Adjustment**

The Commercial Revenue Adjustment for Month n (**CR<sub>n</sub>**) is determined as follows:

$$CR_n = \sum \left( \frac{BCR_n \times CRB\%}{NM} \right) \times CPIM_n$$

Where:

**BCR<sub>n</sub>** = the Bid Commercial Revenue (being the gross commercial revenue) in which Month n occurs, as set out in Annexure A, Table 6, Ref 1 to 12 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the amount set out in Annexure D, Table 6, Ref 1 to 12 will apply with effect from the Planned Service Phase Commencement Date;

**CRB%** = the Commercial Revenue Bid percentage, as set out in Annexure A, Table 5, Ref 1 to 12 unless TfNSW issues a Planned Service Phase Withdrawal Notice in which case the

amount set out in Annexure D, Table 5, Ref 1 to 12 will apply with effect from the Planned Service Phase Commencement Date;

NM = 12; and

**CPIM<sub>n</sub>** = the CPI Annual Multiplier applicable for Month n.

For the avoidance of doubt, where a new commercial revenue opportunity is approved by TfNSW under Clause 11.13, Annexure A and Annexure D will be amended to reflect the gross commercial revenue amount and relevant revenue share percentage directed or approved by TfNSW under Clause 11.13 in relation to that new commercial opportunity.

If the actions of TfNSW or another New South Wales Governmental Agency prevents the Operator from being able to undertake a commercial revenue opportunity identified in Annexure A or Annexure D, the Operator must submit a notice to TfNSW setting out a detailed proposal in relation a reduction of the Commercial Revenue Adjustment (**CRA Reduction Notice**). TfNSW and the Operator must negotiate a proportionate reduction of the amount payable by the Operator to TfNSW under this paragraph 7 of this Schedule. If the parties are unable to agree that amounts of the reduction within 60 Business Days after the date that TfNSW receives the CRA Reduction Notice, either party may refer the matter for resolution in accordance with Clause 60.2.

## 8. KPI Abatement

- (a) The KPI Abatement for Month n (**KA<sub>n</sub>**) is the KPI Credit calculated in accordance with the KPI Schedule in respect of the Calendar Month immediately preceding Month n.
- (b) The parties acknowledge and agree that:
  - (i) the KPI Abatement is calculated on a one month lag basis; and
  - (ii) at the end of the Contract the final KPI Abatement will be a debt due and payable by the Operator to TfNSW.

## 9. On Demand Service Option

### 9.1 On Demand Payment

The On Demand Payment for Month n (**ODP<sub>n</sub>**) is determined as follows:

$$\text{ODP}_n = \text{FODP}_n + \text{VODP}_n - \text{HPD}_n$$

Where:

**FODP<sub>n</sub>** = the Fixed On Demand Payment for Month n, calculated in accordance with paragraph 9.2 of this Schedule;

**VODP<sub>n</sub>** = the Variable On Demand Payment for Month n, calculated in accordance with paragraph 9.3 of this Schedule; and

**HPD<sub>n</sub>** = the Hourly Payment Discount for Month n, calculated in accordance with paragraph 9.4 of this Schedule.

### 9.2 Fixed On Demand Payment

- (a) The Fixed On Demand Payment for Month n (**FODP<sub>n</sub>**) is determined as follows:

$$\text{FODP}_n = (\text{BFSP}_n + \text{BOP}_n + \text{OZSUP}_n) \times \text{CPIM}_n$$

Where:

**BFSP<sub>n</sub>** = the Base Fixed Start Up Payment per Month n, calculated in accordance with paragraphs 9.2(b), 9.2(c) and 9.2(d) of this Schedule;

**BOP<sub>n</sub>** = the Base On Going Payment for Month n, calculated by dividing the Contract Year n payment as set out in Annexure E, Table 1, Ref 1 into 12 equal monthly payments. This amount is not payable where no On Demand Services are provided in Month n;

**OZSUP<sub>n</sub>** = the On Demand Zone Service Option Start Up Payment for Month n, calculated by adding:

- (a) the per zone activation payment for the relevant On Demand Service Options that are the subject of an On Demand Service Option Trial Notice as set out in Annexure E, Table 2, Ref 1 to 2 and
- (b) the start-up cost of the Opal Ticketing System option selected by TfNSW for the On Demand Service Option as set out in Annexure E, Table 2, Ref 3 to 7,

paid in accordance with paragraph 9.2(e) of this Schedule; and

**CPIM<sub>n</sub>** = the CPI Annual Multiplier applicable for Month n.

- (b) The one off Base Fixed Start Up Payment of [REDACTED] for the base deployment of the On Demand capability for Contract Months 1-6 is to be paid in three milestones payments:
  - (i) [REDACTED] due 30 days after the date of execution of this Contract (**Execution Date**);
  - (ii) [REDACTED] on the three month anniversary date of the Execution Date; and
  - (iii) [REDACTED] on the On Demand Service Option Trial Commencement Date for the Bays Precinct On Demand Trial.
- (c) The one off Base Fixed Start Up Payment of [REDACTED] for the base deployment of the On Demand capability for Contract Months 7-12 will be paid if TfNSW issues a notice under Clause 16.3(h)(i) in relation to the Bays Precinct On Demand Trial. If TfNSW issues a notice under Clause 16.3(h)(i), the Base Fixed Start Up Payment of [REDACTED] will be paid in equal monthly instalments, the first instalment starting for Contract Month 7.
- (d) The one off Base Fixed Start Up Payment of [REDACTED] for the base deployment of the On Demand capability for Year 2 will be paid in 12 equal monthly instalments, the first instalment starting on the first anniversary of the On Demand Service Option Trial Commencement Date for the Bays Precinct On Demand Trial.
- (e) The On Demand Zone Service Option Start Up Payment for each On Demand Service Option that is the subject of the On Demand Service Option Trial Notice, inclusive of the costs for the relevant ticketing option, become due as follows:
  - (i) [REDACTED] when the On Demand Service Option Trial Notice is issued in respect of the On Demand Services Option (for the Bays Precinct On Demand Trial, by exception, this will be due three months after the Execution Date); and
  - (ii) [REDACTED] when the On Demand Services the subject of the On Demand Service Option Trial Notice commence operation (or when the Bays Precinct On Demand Trial commences operation).
- (f) No mobilisation discount can be provided in the event when two or more zones are activated at the same time.

### 9.3 Variable On Demand Payment

The Variable On Demand Payment for Month n (**VODP<sub>n</sub>**) is determined as follows:

$$\mathbf{VODP_n = OVP_n \times (X\% \times WPIM_n + Y\% \times CPIM_n + Z\% \times FIM_n)}$$

Where:

- OVP<sub>n</sub>** = the On Demand Service Variation Payment for Month n, calculated by multiplying the On Demand Service Hours in Month n by the applicable Service Variation rate for On Demand Service Options set out in Annexure C. This process is to be repeated for each On Demand Service Option operated during Month n. The OVP<sub>n</sub> total will be the sum of the individual On Demand Service Option calculations;
- WPIM<sub>n</sub>** = the WPI Annual Multiplier applicable for Month n;
- CPIM<sub>n</sub>** = the CPI Annual Multiplier applicable for Month n;
- FIM<sub>n</sub>** = the Fuel Index Annual Multiplier applicable for Month n;
- X%** = the Labour Component percentage of the Variation Index Multiplier, as set out Annexure A, Table 4, Ref 1;
- Y%** = the Non Labour Component percentage of the Variation Index Multiplier, as set out Annexure A, Table 4, Ref 2; and
- Z%** = the Fuel Component percentage of the Variation Index Multiplier, as set out Annexure A, Table 4, Ref 3.

#### 9.4 Hourly Payment Discount

The Hourly Payment Discount for Month n (**HDP<sub>n</sub>**) is determined as follows:

$$\text{HDP}_n = ((\text{AODO}_n - 1) \times \text{DF} \times \sum \text{ODH}_n) \times \text{CPIM}_n$$

Where:

- AODO<sub>n</sub>** = the number of On Demand Service Options concurrently operating during Month n;
- DF** = the discount factor [REDACTED];
- ∑ODH<sub>n</sub>** = the total On Demand Service Hours for all On Demand Service Options during Month n; and
- CPIM<sub>n</sub>** = the CPI Annual Multiplier applicable for Month n.

### 10. Net Financial Impact

The Net Financial Impact adjustment for Month n (**NFI<sub>n</sub>**) is the amount calculated in accordance with Schedule 12.

### 11. Operator Ticket Income Adjustment

The Operator Ticket Income Adjustment for Month n will be determined by aggregating the Operator Ticket Income during Month n or that has been received by the Operator in earlier months but not yet off set from the Monthly Service Payment in accordance with paragraph 3.1 of this Schedule.

### 12. Ticketing System Income Adjustment

- (a) Subject to paragraph 11.1(b):
- (i) not used; and
  - (ii) the Ticketing System Income Adjustment for Month n will be determined by aggregating the Ticketing System Income that has been remitted to the Operator in accordance with Item 10.7 of the Services Schedule during the previous Month n (or where applicable, part Month n).

- (b) If TfNSW issues a notice to the Operator under Clause 14.2(d)(i)(B), the Ticketing System Income Adjustment is \$nil.

## 13. Monthly Service Payment process

- (a) In accordance with Clauses 36.2 and 36.3 of the Contract, the Operator must, within five Business Days after the last day of each Contract Month during the Term, provide a Tax Invoice to TfNSW, in a form approved by TfNSW from time to time, which identifies:
  - (i) the amount of the Monthly Service Payment for the previous month, calculated in accordance with paragraph 3;
  - (ii) the amount of GST chargeable on the amount referred to in paragraph 13(a)(i).
- (b) The Operator must provide TfNSW with supporting evidence showing that the amounts identified in this Schedule are correctly calculated in accordance with the Contract and this Schedule and details identifying and clarifying changes from the prior month's invoice line item charges.
- (c) The Tax Invoice must be addressed to the TfNSW officer notified by TfNSW from time to time.

## 14. Capital Expenditure

### 14.1 Reimbursement on Completion

TfNSW will approve and reimburse the Operator for the cost of the Bid Capital Expenditure initiated by the Operator set out in Annexure A, Table 7 (or, if TfNSW issues a Planned Service Phase Withdrawal Notice, as set in Annexure D, Table 7 with effect from the Planned Service Phase Commencement Date), provided that the Operator has demonstrated to the reasonable satisfaction of TfNSW the following:

- (a) the amount claimed is supported by independent documentation relating to the cost and completion of the project. TfNSW may require further information, acting reasonably;
- (b) the amount claimed does not exceed the value set out in Annexure A, Table 7 (or, if TfNSW issues a Planned Service Phase Withdrawal Notice, as set in Annexure D, Table 7 with effect from the Planned Service Phase Commencement Date) adjusted by the CPI Annual Multiplier for the Financial Year in which the costs are incurred;
- (c) the costs relating to the annual amount claimed have not already been recovered through the Monthly Service Payments or other Payments;
- (d) the associated asset is operational and shown to be delivering the intended benefits; and
- (e) the associated asset will be an Asset for the purposes of this Contract, unless otherwise agreed between the Operator and TfNSW.

For the avoidance of doubt, the value of the Capital Expenditure to be reimbursed is capped at the tendered amount as set out in Annexure A, Table 7 (or, if TfNSW issues a Planned Service Phase Withdrawal Notice, as set in Annexure D, Table 7 with effect from the Planned Service Phase Commencement Date).

### 14.2 Reporting

The Operator must include a status report of all the projects included within the Bid Capital Expenditure amount set out in Annexure A, Table 7 (or, if TfNSW issues a Planned Service Phase Withdrawal Notice, as set in Annexure D, Table 7 with effect from the Planned Service Phase Commencement Date) as part of its Asset Management Plan.

### 14.3 Capital expenditure payment process

TfNSW will pay the Operator the reimbursement amount under paragraph 14.1 on the first Monthly Service Payment Date TfNSW notifies the Operator that the claim has been approved.

For the avoidance of doubt, TfNSW will only reimburse the Operator upon completion of the project, TfNSW must approve the completion status of the project as set out in paragraph 14.1(a).

## 15. Vessel Procurement Project Costs

### 15.1 Reimbursement at Milestones

TfNSW will approve and reimburse the Operator for the cost of the Vessel Procurement Project Management Costs incurred by the Operator set out in Annexure A, Table 8 (or, if TfNSW issues a Planned Service Phase Withdrawal Notice, as set in Annexure D, Table 8 with effect from the Planned Service Phase Commencement Date), provided that the Operator has demonstrated to the reasonable satisfaction of TfNSW the following:

- (a) the amount claimed does not exceed the value set out in Annexure A, Table 8 (or, if TfNSW issues a Planned Service Phase Withdrawal Notice, as set in Annexure D, Table 8 with effect from the Planned Service Phase Commencement Date) adjusted by the WPI Annual Multiplier for the Financial Year in which the costs are incurred;
- (b) the costs relating to the annual amount claimed have not already been recovered through the Monthly Service Payments or other Payments;
- (c) TfNSW has not issued a notice under Clause 24.7(g); and
- (d) the Parramatta River Vessels and associated assets will be State Assets for the purposes of this Contract, unless otherwise agreed between the Operator and TfNSW.

For the avoidance of doubt, the value of the Vessel Procurement Project Management Costs to be reimbursed is capped at the tendered amount as set out in Annexure A, Table 8 (or, if TfNSW issues a Planned Service Phase Withdrawal Notice, as set in Annexure D, Table 8 with effect from the Planned Service Phase Commencement Date).

### 15.2 Reporting

The Operator must include a status report in relation to the procurement of the Parramatta River Vessels in a form satisfactory to TfNSW as part of its Asset Management Plan.

### 15.3 Vessel procurement project management costs – TfNSW Vessels

For the avoidance of doubt, TfNSW is not required to reimburse the Operator in respect of the Vessel Procurement Project Management Costs if TfNSW issues a notice under Clause 24.7(g).

TfNSW will pay the Operator the reimbursement amount under paragraph 15.1 of this Schedule as an additional monthly Payment in Contract Year 3 (Financial Year ended 30/06/2021) in 12 equal monthly instalments as per the table below:

Contract Month	Contract Month End Date	Proportion to be paid
25	31 July 2021	■
26	31 August 2021	■
27	30 September 2021	■
28	31 October 2021	■
29	30 November 2021	■
30	31 December 2021	■
31	31 January 2022	■
32	28 February 2022	■
33	31 March 2022	■

Contract Month	Contract Month End Date	Proportion to be paid
34	30 April 2022	■
35	31 May 2022	■
36	30 June 2022	■

## 16. Pre HCF Service Commencement Accrued Leave Adjustment

- (a) TfNSW agrees to pay to the Operator in respect of each Pre-HCF Employee, an amount (Pre-HCF Commencement Accrued Leave Adjustment) for any Relevant Leave taken by or paid to a Pre-HCF Employee during each Quarter, which accrued before the HCF Service Commencement Date. The Pre-HCF Commencement Accrued Leave Adjustment will be calculated in accordance with the following formula:

$$PCAL = SASC \times WPIM$$

Where:

PCAL is the amount of Pre-HCF Commencement Accrued Leave Adjustment for a Pre-HCF Employee paid by TfNSW to the Operator;

SASC is the amount equal to the rate of pay of the Pre-HCF Employee at the Service Commencement Date applicable for the period of Relevant Leave taken or paid during the Quarter; and

WPIM is the WPI Annual Multiplier for the Financial Year.

In this regard:

- (i) the Pre-HCF Employee is deemed to take or be paid the earliest accrued leave first; and
  - (ii) long service leave will be deemed to accrue after 5 years' service in accordance with the provisions of the *Long Service Leave Act 1955* (NSW).
- (b) The Operator must, within 10 Business Days after the last day of each Quarter during the Term, provide a Tax Invoice to TfNSW, in a form approved by TfNSW from time to time, which identifies the amount of the Pre-HCF Commencement Accrued Leave Adjustment for that Quarter.
- (c) The Operator must provide such information and documentation as TfNSW may require to substantiate the amount of any Pre-HCF Commencement Accrued Leave Adjustment.
- (d) The Operator must provide running reconciliations of the accrued opening and closing balances of Relevant Leave by employee including the WPI Annual Multiplier adjustment for each Financial Year to TfNSW by no later than 20 Business Days after the end of that Financial Year.
- (e) The Operator must allow TfNSW to inspect its records to verify amounts of Pre-HCF Commencement Accrued Leave Adjustment.
- (f) TfNSW will no later than 30 days after the Service Commencement Date provide to the Operator for each Pre-HCF Employee and each category of Relevant Leave:
- (i) the days or hours of accrued leave as at the HCF Service Commencement Date;
  - (ii) the rate of pay as at the HCF Service Commencement Date; and
  - (iii) the amount of Relevant Leave held by the Pre-HCF Employee as at the Service Commencement Date which accrued before the HCF Service Commencement Date.

The information under paragraph 16(f)(i) and 16(f)(ii) will form the basis of calculating the total Relevant Leave entitlement balances for each Pre-HCF Employee and each category of Relevant Leave which, adjusted for the WPI Annual Multiplier, will be the maximum amounts payable to the Operator in accordance with this paragraph 16.

- (g) The parties acknowledge and agree that, for GST purposes, the payment of the Pre-HCF Commencement Accrued Leave Adjustment is additional Payment for the Operator's supply of the Operator Activities.

## 17. General

- (a) Annexure A and Annexure D components are fixed for the Term, unless varied in accordance with this Schedule.
- (b) The parties acknowledge there will be no negotiation of the amounts set out in Annexure A or Annexure D, other than variations in accordance with this Schedule.
- (c) The amount to be paid to the Operator in respect of each of the State Asset Access Agreements in Annexure A, B and D to this Schedule shall be determined by TfNSW and be consistent with the amounts to be paid by the Operator under the respective State Asset Access Agreements. If TfNSW restructures the arrangements for State Asset ownership as contemplated by Clauses 1.10 and 27, TfNSW may alter the amount in Annexure A and D to this Schedule (including by moving from a fleet based payment to a per asset based payment) subject to the requirements of Clause 27. For the avoidance of doubt, the Operator will not be paid a margin on any additional rental amount payable in respect of State Assets under any restructured arrangements.



Annexures redacted.

# Schedule 4 - Key Performance Indicators

## 1. Definitions and Interpretation

(a) In this Schedule:

- (i) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (ii) a reference to a Clause is a reference to a Clause in the Contract; and
- (iii) a reference to a paragraph is a reference to a paragraph in this Schedule.

(b) In this Schedule, the following words have the following meanings:

**Boardings** means the number of Trips taken by all passengers.

**Booked On Demand Services** means an On Demand Service that has been booked by a passenger and a booking confirmation has been provided to the passenger by or on behalf of the Operator.

**Cancelled Trip** means the whole of the Published Timetable Trip was cancelled or did not operate.

**Class 1 Key Performance Indicator** means a KPI identified as such in this Schedule.

**Class 2 Key Performance Indicator** means a KPI identified as such in this Schedule.

**Class 3 Key Performance Indicator** means a KPI identified as such in this Schedule.

**Complaint** means each report of a negative experience in relation to the Services.

**Crowded** means Contract Ferry full on Route which leaves customers behind.

**Incomplete Trip** means only a part of the Published Timetable Trip operated. This means the Published Timetable Trip was shortened to start or end at a point/s between the timetabled or published start and finish, and/or intermediate Wharves are missed.

**KPI** means a Key Performance Indicator.

**KPI Class** means the classification of the KPI as a Class 1 Key Performance Indicator, Class 2 Key Performance Indicator or Class 3 Key Performance Indicator.

**KPI Credit** means the amount payable by the Operator to TfNSW for non-performance or non-achievement of KPIs, being a civil penalty provision for the purposes of section 38 of the PT Act 2014 and a genuine pre-estimate, agreed by the parties as proportionate and not extravagant, to off-set part of TfNSW's direct or indirect costs and losses arising from the Operator's non-performance.

**KPI Credit Allocation Percentage** means the percentage defined in the table set out in paragraph 6 of this Schedule.

**KPI Default** means failure to comply with a KPI.

**KPI Negative Trend** means a trend in the measured results of a KPI which demonstrates a reduction in the achievement of that KPI resulting in, or likely to result in, a KPI Default.

**KPI Reporting Period** means the frequency with which the period of time in which the Operator's performance of the KPI will be measured as determined in accordance with the relevant KPI Table.

**KPI Satisfaction** means that the Operator has meet or exceeded a Class 1 Key Performance Indicator or Class 3 Key Performance Indicator.

**KPI Table** means the KPI tables set out in paragraph 7 of this Schedule.

**Late** means a Contract Ferry departing a Wharf more than 4 minutes 59 seconds later than timetabled.

**On Time** means:

- (i) for Published Timetable Trips, a Contract Ferry departing a Wharf no earlier than the timetabled departure time and no more than 4 minutes 59 seconds late compared to Timetable; and
- (ii) for Trips that are On Demand Services:
  - (A) in respect of the arrival of the Trip at its pick up location, a Contract Ferry arriving the correct pick up location within 4 minutes and 59 seconds after the end of the booked time window provided at the time of booking; and
  - (B) in respect of the arrival of the Trip at its destination, a Contract Ferry arriving the nominated destination within 4 minutes and 59 seconds after the end of the scheduled arrival window provided at the time of booking.

**Published Timetable Trips** means Trips on Routes that are scheduled by public timetable.

- (c) The following table sets out how the KPI Tables included in this Schedule 4 are to be interpreted:

Name	The name of the KPI
Description	A description of what the KPI does and, at a high level, how it is measured and calculated
Hours measured	The hours during which the KPI calculation is applied
KPI	The level which the delivery performance of the Operator (calculation) must equal or exceed. If multiple levels are specified each level can cause a KPI Defaults and multiple KPI Defaults can result from the KPI.
KPI Credit Thresholds	The thresholds that determine which KPI Credit Allocation Percentages are applied.
Class	Either Class 1, Class 2 or Class 3
Measurement methodology	
Measurement starting point	The point in time at which the Operator must commence measurement for any KPI Reporting Period
Calculation	The algorithm for calculation of the level of performance of the KPI for the KPI Reporting Period
Period of calculation	The period over which the performance of the KPI must be calculated in each report
Measurement unit	The granularity with which the KPI performance must be measured and reported against
Data source	The data sources TfNSW will consider in order to provide an accurate measurement
Measurement responsibility	Whether it is the responsibility of the Operator, TfNSW or a third party to measure (or collect the measurement of) and then calculate the KPI
Reporting frequency	How frequently performance against this KPI should be reported (typically this is each Calendar Month unless specified otherwise in this Schedule 4 (KPI Reporting Period))

## 2. KPI Principles

- (a) In accordance with Clauses 10 and 13 of the Contract, the Operator must perform the Services described in the Services Schedule and the Service Level Schedule of the Contract measured against the KPIs set out in this Schedule 4.

- (b) The Operator acknowledges and agrees:
  - (i) the emphasis of the KPI regime is on delivery of the Services to meet TfNSW's business requirements and on performance improvement where the Services fail to meet the requirements;
  - (ii) unless otherwise specified in this Schedule 4 or directed by TfNSW, KPIs apply from the Service Commencement Date and data must be sourced from all available sources and by all available means if automation of data collection is not available;
  - (iii) TfNSW requires flexibility to modify KPIs and the management regime in order to keep pace with the changing business environment; and
  - (iv) TfNSW may classify KPIs to guide the Operator as to which KPIs are the most important, but TfNSW may change this classification as the business environment or the performance of the Operator changes.

### 3. KPI Reporting

- (a) In accordance with the reporting frequency specified for every KPI in the relevant KPI Table, the Operator must provide a written report to TfNSW containing, at a minimum, the following information:
  - (i) numerical data setting out the KPI performance achieved during the KPI Reporting Period against, where applicable, the data for the preceding Quarter, 6 Calendar Months and 12 Calendar Months;
  - (ii) a graphical representation of that data highlighting the KPI, the actual performance during the KPI Reporting Period and the performance for the previous Quarter, 6 Calendar Months or 12 Calendar Months (as applicable);
  - (iii) a summary table demonstrating performance for each KPI;
  - (iv) details of any KPI Credits incurred during the KPI Reporting Period;
  - (v) commentary explaining any performance variations and performance trends;
  - (vi) where, for the KPI Reporting Period, there is a KPI Default, or there is an indication of a KPI Negative Trend, an explanation of the causes of the KPI Default or KPI Negative Trend;
  - (vii) a proposed cure plan, developed by the Operator to address the causes of any KPI Default or KPI Negative Trend, including proposed actions (and timings) for the Operator;
  - (viii) where there has been a previous cure plan for the KPI, the status of the actions and an explanation of any relationship between the cure plans and current performance;
  - (ix) the total amount of KPI Credits imposed for KPI Defaults in the preceding 12 Calendar Months; and
  - (x) any other information required by the Reporting Schedule.
- (b) The Operator must include such other information in its reports to TfNSW as is specified in this Schedule 4 or as otherwise required by TfNSW from time to time.
- (c) The Operator must use the format for KPI reporting specified in paragraph 2 of the Reporting Schedule.
- (d) Where the Operator develops a cure plan under paragraph 3(a)(vii) of this Schedule 4 to address the causes of any KPI Default or a KPI Negative Trend in a KPI performance and proposes actions to be performed by TfNSW, the Operator acknowledges and agrees that:
  - (i) TfNSW may accept or reject those proposed actions; and
  - (ii) nothing in the proposed cure plan derogates from the Operator's responsibility to perform the Services.

- (e) The Operator must implement and diligently pursue any cure plan required to be provided under paragraph 3(a)(vii) of this Schedule 4 to address the causes and remedy the effects of any KPI Default or a KPI Negative Trend in a KPI performance.
- (f) TfNSW may, from time to time, redefine its requirements for KPI reporting or request additional material to be provided by the Operator for any KPI, which the Operator must comply with and provide.
- (g) The Operator may propose additional or alternative data sources that would, in the reasonable opinion of the Operator, improve the quality of measurement and reporting against the KPI. TfNSW may consider any additional or alternative data sources proposed.
- (h) In addition to reporting in the KPI Reporting Period specified for each KPI, within 15 days after each KPI Reporting Period, the Operator must provide a report to TfNSW that includes, with respect to each KPI for which there was a KPI Default during the preceding 12 months, the following:
  - (i) statistics on the Operator's monthly performance against each of the KPIs included in the report during the preceding year;
  - (ii) the yearly performance average for the KPIs included in the report; and
  - (iii) the total amount of KPI Credits imposed for KPI Defaults.

#### 4. KPI Classes

The parties acknowledge and agree that KPIs are classified into KPI Classes as defined in the table below:

KPI Class	Description	Management
Class 1	The measurement, management, reporting and achievement of the KPI must be met by the Operator.	Actively monitored and managed by the Operator; breaches within any KPI Reporting Period require the Operator to develop an incident report in accordance with paragraph 3(a) of this Schedule 4 with an explanation and remedial action proposed to ensure the KPI is met.  The Operator's performance against the KPI must be reported, presented and reviewed at the regular monthly meeting.
Class 2	The KPI information is to be measured, captured and reported on a regular basis.	Performance is monitored and reported on a monthly basis by the Operator (unless otherwise stated in the KPI description). Where the KPI is not met, the Operator must take remedial action where it is necessary to continue to meet the KPI.
Class 3	Applies to Customer Satisfaction and Passenger Information only.	Actively monitored and managed by the Operator; breaches within any reporting period require an incident report with explanation and remedial action if required.  Will be reported, presented and reviewed at the regular monthly meeting.

#### 5. Calculation of KPI Credits

##### 5.1 Applicability

The Operator must pay KPI Credits to TfNSW for a KPI Default of a KPI as specified in the KPI Tables.

##### 5.2 Calculation of KPI Credits

- (a) KPI Credits are calculated in the Calendar Month following the KPI Reporting Period for each KPI as specified in the KPI Tables.

- (b) Subject to paragraph 5.1 of this Schedule 4, in the event of a KPI Default of a KPI as specified in the KPI Tables, the Operator must pay to TfNSW a KPI Credit as calculated below.
- (c) The Operator must pay to TfNSW a KPI Credit for a KPI Default computed in accordance with the following formulae:
  - (i) in the event of a KPI Default (in respect of a Class 1 Key Performance Indicator or a Class 2 Key Performance Indicator that is nominated under the table in paragraph 6(a)):

$$KPI\ Credit = A \times B \times C$$

where:

A = the KPI Credit Allocation Percentage for the KPI Default as shown in the KPI Credit table in paragraph 6 of this Schedule 4;

B = the At Risk Amount – [REDACTED]; and

C = the Monthly Service Payment for the most recent month in the KPI Reporting Period; and

- (ii) in the event of a KPI Default in respect of a Class 3 Key Performance Indicator:

$$KPI\ Credit = A \times B$$

where:

A = the KPI Credit Allocation Percentage for the KPI Default as shown in the KPI Credit tables in paragraph 6 of this Schedule 4; and

B = the Monthly Service Payment for the most recent month in the KPI Reporting Period.

### 5.3 KPI Credit

The parties acknowledge that the aggregate amount of Class 1 and Class 2 KPI Credits payable by the Operator to TfNSW with respect to all Class 1 and Class 2 KPI Defaults calculated in a Calendar Month must not exceed the At Risk Amount for KPI Credits set out in paragraph 5.2 multiplied by the Monthly Service Payment (**Credit Cap**). For the avoidance of doubt the Credit Cap does not apply to Class 3 KPI Credits.

### 5.4 Multiple KPI Defaults

- (a) For each KPI, if more than one KPI Default has occurred in a single Calendar Month, the Operator must credit the sum of the corresponding KPI Credits to TfNSW in accordance with the Payment Schedule.
- (b) For the avoidance of doubt, a single incident may give rise to multiple KPI Defaults in respect of a single KPI or in respect of different KPIs including where a KPI Table includes multiple KPIs.

### 5.5 KPI Credit Reporting

The Operator must immediately notify TfNSW if TfNSW becomes entitled to a KPI Credit and must include any such notification in its reporting for each KPI in accordance with the reporting frequency specified for the KPI.

### 5.6 Not used

## 6. KPI Credits

- (a) Subject to paragraph 6(b) below, the KPI Credit Allocation Percentages for each KPI as at the Service Commencement Date are set out in the following table:

Table No	KPI	KPI Credit Allocation Percentage
1A	Service Reliability – Punctuality Rate – On Time	[REDACTED]

Table No	KPI	KPI Credit Allocation Percentage
	Running (OTR)	████████████████████ ████████████████████
3A	Incomplete Trips	████
3B	Cancelled Trips	████
3C	Cancelled and Incomplete Trips	████
5	Complaint per Boarding	████
8	Customer Satisfaction (Class 3)	████
9	Passenger Information (Class 3)	████
10	Asset Presentation	████
11	Asset Condition	████
12	Contract Ferry Maintenance Major Defects	████
13	Contract Ferry Maintenance Minor Defects	████
15	Revenue Collection Rate	████
18	Data Maintenance	████
20	Class 2 KPI (1), which as at the date of this Contract is KPI Table 16 (Reporting)	████
21	Class 2 KPI (2), which as at the date of this Contract is KPI Table 14 (CCTV and Duress Alarm Reliability)	████

- (b) If a KPI Table contains KPI Credit Bands, the relevant KPI Credit Allocation Percentage for that KPI will be the relevant KPI Credit Band percentage corresponding to the extent of the KPI Default.
- (c) The parties acknowledge that the KPI Credit Table contains KPIs the performance of which have a significant business impact to TfNSW.
- (d) TfNSW may substitute the Class 2 Key Performance Indicators included in items 20 and 21 in the KPI Credit Table with any other Class 2 Key Performance Indicator by no less than 30 days' notice to the Operator.

## 7. KPIs

KPI	Table 1A (Punctuality Rate – On Time Running (OTR))
Description	This KPI aims to ensure that Services run to Timetable. It will measure the variation from Timetable for all Trips each month, measured at the start, mid and end point of each Trip.
Hours measured	All hours of operation
KPI	<p>The minimum weighted On Time performance is expected to be 95%:</p> <ul style="list-style-type: none"> <li>• at least 95% of Trips that are Published Timetable Trips leave the first Wharf of each Trip On Time (75% weighting)</li> <li>• at least 95% of Trips that are Published Timetable Trips leave the TfNSW nominated mid-point Wharf On Time (15% weighting)</li> </ul>

KPI	Table 1A (Punctuality Rate – On Time Running (OTR))
	<ul style="list-style-type: none"> <li>at least 95% of Trips that are Published Timetable Trips arrive at the TfNSW nominated Wharf close to the end of each Trip On Time (10% weighting)</li> </ul> <p>In the first 6 KPI Reporting Periods from the Service Commencement Date the minimum weighted On-Time performance will be:</p> <p>KPI Reporting Period 1: 87.5%</p> <p>KPI Reporting Period 2: 87.5%</p> <p>KPI Reporting Period 3: 90.0%</p> <p>KPI Reporting Period 4: 91.5%</p> <p>KPI Reporting Period 5: 93.0%</p> <p>KPI Reporting Period 6: 94.0%</p>
KPI Credit Thresholds	<p>First KPI Credit Band: 94% to 94.99%</p> <p>Second KPI Credit Band: 93% to 93.99%</p> <p>Third KPI Credit Band: 93% or less</p>
Class	Class 1
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	<p>A. (Number of Trips that are Published Timetable Trips that leave the first Wharf On Time / Total number of Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100%</p> <p>B. (Number of mid-point Wharves departed On Time for Trips that are Published Timetable Trips / Total number of mid-point Wharves for Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100%</p> <p>C. (Number of Trips that are Published Timetable Trips arrived the nominated Wharf close to the end of the Trip On Time/ Total number of the nominated Wharves for Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100%</p> <p>KPI result = (A x 0.75) + (B x 0.15) + (C x 0.10) + 0.01</p>
KPI Reporting Period	Monthly
Measurement unit	% of Wharves for which a Trip is On Time
Data source	Relevant system such as FOCIS, analysed to provide performance information. KPI will be based on TfNSW nominated Wharves for all Routes for which automated data is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 1B (Punctuality Rate – On Time Pick-Up (OTP))
Description	This KPI aims to ensure that On Demand Services arrive at the correct pick up time
Hours measured	All hours of operation



KPI	Table 1B (Punctuality Rate – On Time Pick-Up (OTP))
KPI	At least 95% of On Demand Services arrive On Time
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	$100 \times (\text{Number of Booked On Demand Services that arrive On Time} / \text{Total number of Booked On Demand Services measured in the KPI Reporting Period})\%$
KPI Reporting Period	Monthly
Measurement unit	Pick ups for which an On Demand Service are On Time
Data source	Relevant system such as FOCIS or On Demand Service systems, analysed to provide performance information, Operator systems and or apps.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 2 (Reliability of On Demand Services)
Description	This KPI aims to ensure that On Demand Services arrive at the nominated destination at the time provided by the Operator in a booking confirmation.
Hours measured	All hours of operation
KPI	At least 95% of On Demand Services arrive at the nominated destination On Time
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	$100 \times (\text{Number of Booked On Demand Services that are On Time Destination Services} / \text{Total number of Booked On Demand Services measured in the KPI Reporting Period})\%$
KPI Reporting Period	Monthly
Measurement unit	On-Demand Service which do arrive On Time
Data source	Relevant system such as FOCIS or On-Demand systems, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 3A (Incomplete Trips)
Description	This KPI aims to ensure that Services are delivered in full, and Wharves are not missed to correct timetable or frequency issues. All Incomplete Trips must be reported against the total Trips for the period. This KPI does not apply to On

KPI	Table 3A (Incomplete Trips)
	Demand Services.
Hours measured	All hours of operation
KPI	<0.5% Incomplete Trips
KPI Credit Threshold	KPI Credit Band: More than 0.5%
Class	Class 1
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	(Incomplete Trips)/Total Trips x 100%
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Relevant system such as FOCIS, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 3B (Cancelled Trips)
Description	This KPI aims to ensure that Services are delivered. All Cancelled Trips must be reported against the total Trips for the period. This KPI does not apply to On Demand Services.
Hours measured	All hours of operation
KPI	<0.5% Cancelled Trips
KPI Credit Band	KPI Credit Band: More than 0.5%
Class	Class 1
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	(Cancelled Trips)/Total Trips x 100%
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Relevant system such as FOCIS, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 3C (Cancelled and Incomplete Trips)
Description	This KPI aims to ensure that Services are available and delivered. All Cancelled Trips and Incomplete Trips must be reported against the total Trips for the period. This KPI does not apply to On Demand Services.
Hours measured	All hours of operation
KPI	<0.75% Incomplete Trips and Cancelled Trips
KPI Credit Band	KPI Credit Band: More than 0.75%
Class	Class 1
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	Sum of Incomplete Trips and Cancelled Trips as calculated in Table 3A and 3B.
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Relevant system such as FOCIS, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

If a KPI Default occurs on KPI 3C (Cancelled and Incomplete Trips), the KPI Credit Allocation Percentages for KPI 3A or 3B will not be applied.

KPI	Table 4 (Accessible Ferry Services)
Description	<p>Where the Operator undertakes works the Operator must address DDA requirements to the extent that they apply to the works. For every instance where such works are undertaken, the Operator must meet DDA requirements (<b>DDA Works Requirements</b>).</p> <p>Where facilities are required to comply with DDA requirements, any event which renders those facilities unable to meet those requirements (for example, aisle way widths, hearing loops, accessible toilets) the Operator must maintain these so as to continue to address DDA requirements (<b>DDA Maintenance Requirements</b>).</p> <p><b>DDA Incident</b> means any instance where the operator fails to meet the DDA Works Requirements or DDA Maintenance Requirements.</p> <p><b>DDA requirements</b> means the requirements of the DDA Legislation.</p>
Hours measured	All hours of operation
KPI	No DDA Incidents within the KPI Reporting Period
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	The sum of Complaints that have been determined to have a DDA Incident as the cause and DDA Incidents identified during inspection of assets.

KPI	Table 4 (Accessible Ferry Services)
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Operator and TfNSW Customer Feedback System, Transport Infoline and inspections carried out by TfNSW or other Governmental Agency.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 5 (Complaint per Boardings)
Description	Measures the level of Complaints per 100,000 Boardings to ensure that the level of Complaints is effectively managed and improvements are implemented to enhance customer satisfaction.
Hours measured	All hours of operation
KPI	<3.3 Complaints per 100,000 Boardings
KPI Credit Threshold	KPI Credit Band: More than 3.3 Complaints per 100,000 Boardings
Class	Class 1
Measurement methodology	
Measurement starting point	Beginning of each Contract Year
Calculation	Complaints received during the previous Contract Year per 100,000 Boardings for the previous Contract Year
KPI Reporting Period	Contract Year
Measurement unit	Complaints
Data source	Operator and TfNSW Customer Feedback System, Transport Infoline, Boardings (from Opal system)
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 6 (Complaint Resolution)
Description	<b>Complaint Resolution</b> means the satisfactory closure of Complaints within agreed timeframes. It is measured from the time of receipt of the complaint by the Operator to the resolution and closure of the complaint in accordance with the Customer Service Plan
Hours measured	24/7
KPI	Each of the following: <ul style="list-style-type: none"> <li>KPI 6(i): 70% of all Complaints and feedback (when the customer has requested a response) are resolved within two Business Days after the complaint is received by the Operator</li> </ul>

KPI	Table 6 (Complaint Resolution)
	<ul style="list-style-type: none"> <li>KPI 6(ii): 100% of customers with an unresolved Complaints are contacted by the Operator within 20 Business Days after the Complaint is received by the Operator</li> <li>KPI 6(iii): 95% of all Complaints received up until five Business Days before the end of the KPI Reporting Period are resolved within the KPI Reporting Period</li> <li>KPI 6(iv): 100% of calls received in KPI Reporting Period are included in the TfNSW Customer Feedback System.</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
Class	Class 2
Measurement methodology	
Measurement starting point	First Day of each KPI Reporting Period
Calculation	<ul style="list-style-type: none"> <li>KPI 6(i): <math>100 \times (\text{Complaints and feedback (when the customer has requested a response) resolved within two Business Days during the KPI Reporting Period} / \text{Total Complaints and feedback (where the customer has requested a response) received for the KPI Reporting Period})\%</math></li> <li>KPI 6 (ii): <math>100 \times (\text{customers with unresolved Complaints contacted within 20 Business Days after Complaint is received during the KPI Reporting Period} / \text{Total unresolved Complaints received for the KPI Reporting Period})\%</math></li> <li>KPI 6(iii): <math>100 \times (\text{Complaints received until five Business Days before end of KPI Reporting Period resolved within the KPI Reporting Period} / \text{Total Complaints received until five Business Days before the end of the KPI Reporting Period})\%</math></li> <li>KPI 6(iv): <math>100 \times (\text{Calls received within the KPI Reporting Period included in the TfNSW Customer Feedback System} / \text{Total calls received for the KPI Reporting Period})\%</math></li> </ul>
KPI Reporting Period	Monthly
Measurement unit	Complaints
Data source	TfNSW Customer Feedback System and other Complaints and feedback registers as advised by TfNSW from time to time
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 7 (Customer response times for On Demand Services)
Description	<p>Measures the Operator's response times in answering booking requests for On Demand Services.</p> <p>Customers should receive a response to their booking request (via telephone or app) for an On Demand Service within 1 minute</p>
Hours measured	All hours of operation
KPI	95% of calls received in KPI Reporting Period are responded to within 1 minute

KPI	Table 7 (Customer response times for On Demand Services)
Class	Class 2
Measurement methodology	
Measurement starting point	First Day of each KPI Reporting Period
Calculation	100 x (Total booking requests received during the KPI Reporting Period responded to within 1 minute / Total booking requests received during the KPI Reporting Period) %
KPI Reporting Period	Monthly
Measurement unit	Booking requests
Data source	TfNSW Customer Feedback System, Operator systems, apps
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 8 (Customer Satisfaction)
Description	<b>Customer Satisfaction</b> means the level of satisfaction with the Operator's performance as expressed by a representative sample of the passengers (TfNSW to approve) as measured on a Likert Scale. The survey questions used in the calculation of this KPI will relate to services largely under the control of the Operator.
Hours measured	N/A – by survey
KPI	95% of all ratings above the mid-point of the Likert Scale, based on historical performance on services largely under the control of the Operator
KPI Credit Threshold	KPI Credit Band: Less than 95%
Class	Class 3
Measurement methodology	
Measurement starting point	First Day of the KPI Reporting Period
Calculation	On the basis of a survey (the structure and content to be defined by TfNSW) on a Likert Scale, the number of the ratings above the mid-point divided by the total number of ratings times 100.
KPI Reporting Period	Semi-annual or other periods as advised by TfNSW.
Measurement unit	Rating
Data source	Surveys of customer satisfaction
Measurement responsibility	TfNSW
Reporting frequency	Semi- annual

KPI	Table 9 (Passenger Information)
Description	This measures how well-informed passengers are in regards to the Services.
Hours measured	24x7
KPI	> 75% of passengers on Contract Ferries are satisfied with information (based on a non-weighted average across the four customer satisfaction survey measures: availability of information for this ferry, availability of next Wharf information for this ferry, availability of information about service delays and ease of finding information (routes, Wharves, timetables)
KPI Credit Threshold	KPI Credit Band: Less than 75%
Class	Class 3
Measurement methodology	
Measurement starting point	First day of Quarter
Calculation	100 x (The number of surveyed passengers satisfied with passenger information / the number of passengers surveyed)%
KPI Reporting Period	Semi-annual or other periods as advised by TfNSW.
Measurement unit	Passengers
Data source	Customer satisfaction surveys, mystery shopper
Measurement responsibility	TfNSW
Reporting frequency	Semi-annual

KPI	Table 10 (Asset Presentation)
Description	This KPI aims to ensure that all Contract Ferries, Wharves and the Shipyard are clean and tidy. Clean and tidy (includes general presentation including, clean at the beginning of each Trip, free of graffiti, good external presentation and paintwork, minimal window etching etc.) in accordance with the Asset Presentation Schedule set out in Annexure 5 of the Asset Schedule.
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>• KPI 10(i): &gt; 95% of passengers surveyed are satisfied with Contract Ferry presentation;</li> <li>• KPI 10(ii): 100% of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period meet or exceed presentation standard 3 (Moderately Dirty) in accordance with the table in paragraph 1.3 of Annexure 5 to the Asset Schedule; or</li> <li>• KPI 10(iii): &gt; 90% of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period meet or exceed presentation standard 4 (Moderately Clean) in accordance with the table in paragraph 1.3 of Annexure 5 to the Asset Schedule.</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	KPI Credit Band: Failure of any one of the requirements set out under KPI.

KPI	Table 10 (Asset Presentation)
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Contract Year
Calculation	<ul style="list-style-type: none"> <li>KPI 10(i): <math>100 \times (\text{The number of passengers surveyed in the KPI Reporting Period satisfied with Contract Ferry presentation} / \text{the number of passengers surveyed in the KPI Reporting Period})\%</math>; or</li> <li>KPI 10(ii): <math>100 \times (\text{The number of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period which meet or exceed presentation standard 3 (Moderately Dirty)} / \text{The number of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period})\%</math>; or</li> <li>KPI 10(iii): <math>100 \times (\text{The number of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period which meet or exceed presentation standard 4 (Moderately Clean)} / \text{The number of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period})\%</math></li> </ul>
KPI Reporting Period	Contract Year
Measurement unit	Passengers and inspections
Data source	Complaints, customer satisfaction survey, random survey of presentation, mystery shopper and inspections
Measurement responsibility	TfNSW via customer surveys and audits
Reporting frequency	Annually

KPI	Table 11 (Asset Condition)
Description	This KPI aims to ensure that all Contract Ferries, Wharves and the Shipyard are properly maintained.
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>KPI 11(i): 100% of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period meet or exceed presentation standard 4 (Moderate wear and tear) in accordance with the table in paragraph 2.3 of Annexure 5 to the Asset Schedule; or</li> <li>KPI 11(ii): &gt; 90% of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period meet or exceed condition standard 5 (Minor wear and tear) in accordance with the table in paragraph 2.3 of Annexure 5 to the Asset Schedule.</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	KPI Credit Band: Failure of any one of the requirements set out under KPI.
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Contract Year



KPI	Table 11 (Asset Condition)
Calculation	<ul style="list-style-type: none"> <li>KPI 11(i): <math>100 \times (\text{The number of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period which meet or exceed condition standard 4 (Moderate wear and tear) / The number of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period})\%</math>; or</li> <li>KPI 11(ii): <math>100 \times (\text{The number of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period which meet or exceed condition standard 5 (Minor wear and tear) / The number of Contract Ferry, Wharf and Shipyard inspections in the KPI Reporting Period})\%</math></li> </ul>
KPI Reporting Period	Contract Year
Measurement unit	Inspections
Data source	Inspections
Measurement responsibility	TfNSW via inspections
Reporting frequency	Annually

KPI	Table 12 (Contract Ferry Maintenance – Major defects or incidents)
Description	<p>This KPI aims to ensure that all Contract Ferries are properly maintained and do not have major defects or Major Preventable Incidents which potentially impact reliability and safety.</p> <p>In this KPI:</p> <p><b>Contract Ferry Accident</b> means any reportable accident involving a Contract Ferry which results in damage to a vessel, wharf or other property.</p> <p><b>Major Defect Notice</b> means a notification, including a prohibition notice or a direction notice, issued by RMS or any other Governmental Agency in relation to a major defect identified in a Contract Ferry during regular and random inspections by a Safety Authority or another Governmental Agency.</p> <p><b>Major Preventable Incident</b> means an accident or incident involving a Contract Ferry that is caused by:</p> <ul style="list-style-type: none"> <li>fire;</li> <li>major failure to perform adequate maintenance (including fluid leaks, etc.); or</li> <li>dangerous operation resulting in critical injuries or death.</li> </ul>
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>KPI 12(i): Nil Major Defect Notices issued in respect of Contract Ferries.</li> <li>KPI 12(ii): Nil Major Preventable Incidents or Contract Ferry Accidents</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	<p>KPI Credit Band:</p> <ul style="list-style-type: none"> <li>For KPI 12(i): One or more Major Defect Notices issued in KPI Reporting Period</li> <li>For KPI 12(ii): <ul style="list-style-type: none"> <li>One or more Major Preventable Incidents in the KPI Reporting</li> </ul> </li> </ul>

KPI	Table 12 (Contract Ferry Maintenance – Major defects or incidents)
	<p>Periods</p> <ul style="list-style-type: none"> <li>o One or more Contract Ferry Accidents</li> </ul>
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	<p>For KPI 12(i):</p> <p>Number of Contract Ferries in respect of which a Major Defect Notice is issued.</p> <p>For KPI 12(ii):</p> <p>Number of Major Preventable Incidents</p> <p>Number of Contract Ferry Accidents</p>
KPI Reporting Period	Monthly
Measurement unit	<p>Contract Ferries</p> <p>Major Defect Notices</p> <p>Major Preventable Incidents</p> <p>Accidents</p>
Data source	Contract Ferry maintenance records, Safety Authorities, notices issued by Safety Authorities or other Governmental Agencies, TfNSW data sources
Measurement responsibility	Operator, with selected audit by TfNSW.
Reporting frequency	Monthly

KPI	Table 13 (Contract Ferry Maintenance – Minor Defects)
Description	<p>This KPI aims to ensure that all Contract Ferries are properly maintained and do not have minor defects which potentially impact reliability and safety.</p> <p><b>Minor Defect Notice</b> means a notification, including an improvement notice, issued by RMS or any Safety Authority or any other Governmental Agency in relation to a minor defect identified in a Contract Ferry.</p> <p>In this KPI:</p> <p>&lt;8% of Contract Ferries subject to a Minor Defect Notice issued by Safety Authorities or other Governmental Agencies</p>
Hours measured	All hours of operation
KPI	<p>&lt;8% of Contract Ferries subject to Minor Defect Notice issued by Safety Authorities or other Governmental Agencies</p> <p>In the first 6 KPI Reporting Periods from the Service Commencement Date the target will be:</p> <p>KPI Reporting Period 1: 20.0%</p> <p>KPI Reporting Period 2: 20.0%</p> <p>KPI Reporting Period 3: 17.5%</p> <p>KPI Reporting Period 4: 15.0%</p>

KPI	Table 13 (Contract Ferry Maintenance – Minor Defects)
	KPI Reporting Period 5: 15.0% KPI Reporting Period 6: 10.0%
KPI Credit Threshold	KPI Credit Band: More than 8% of Contract Ferries subject to Minor Defect Notice issued by Safety Authorities or other Governmental Agencies.
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	Number of Contract Ferries subject to Minor Defect Notice
KPI Reporting Period	Monthly
Measurement unit	Contract Ferries subject to Minor Defect Notice issued by Safety Authorities or other Governmental Agencies
Data source	Contract Ferries maintenance records, Safety Authorities, notices issued by Safety Authorities or other Governmental Agencies
Measurement responsibility	Operator, with selected audit by TfNSW.
Reporting frequency	Monthly

KPI	Table 14 (CCTV and Duress Alarm Reliability)
Description	Measures the reliability of the Closed Circuit Television ( <b>CCTV</b> ) and duress alarm system. For avoidance of doubt: <ul style="list-style-type: none"> <li>CCTV data reliability measures the retrieval of quality images from designated coverage areas</li> <li>Failure to identify people in CCTV images due to improper maintenance, including cleaning, is deemed to be a failure to retrieve images</li> <li>Measures the reliability of the duress alarm system.</li> </ul>
Hours measured	N/A
KPI	Each of the following: <ul style="list-style-type: none"> <li>KPI 14(i): 100% of CCTV images successfully retrieved</li> <li>KPI 14(ii): 100% of duress alarms responded to within 30 seconds</li> </ul> For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each Calendar Month
Calculation	For KPI 14(i): $100 \times (\text{Number of incidents for which CCTV images were successfully retrieved}) / (\text{Total number of incidents requiring retrieval of CCTV images})$  For KPI 14(ii): $100 \times (\text{Number of duress alarms responded to within 30 seconds}) / (\text{Total number of incidents for which the duress alarm was activated})$

KPI	Table 14 (CCTV and Duress Alarm Reliability)
KPI Reporting Period	Monthly
Measurement unit	Percentage of CCTV images successfully retrieved and duress alarms responded to within 30 seconds (as relevant to each KPI)
Data source	Requests for images / Records of duress alarm calls
Measurement responsibility	Operator
Reporting frequency	Monthly

KPI	Table 15 (Contract Ferry Revenue Collection Rate)
Description	<p>This KPI aims to ensure that the Operator ensures passengers travel with a valid ticket when travelling on the Services. The percentage of passengers travelling without paying the correct fare should be within acceptable limits and reducing as revenue management strategies improve compliance.</p> <p>The percentage of paying passengers will be determined from the results of fare compliance surveys undertaken by TfNSW.</p>
Hours measured	As determined by TfNSW based on patronage
KPI	A fare compliance survey result of at least 96% fare compliance
KPI Credit Threshold	KPI Credit Band: Less than 96%
Class	Class 1
Measurement methodology	
Measurement starting point	Six monthly periods commencing on 1 July and 1 January
Calculation	The fare compliance survey is a sampling survey undertaken in accordance with standard methodologies used by TfNSW where the sample size is sufficient to enable the results to be considered representative of the total patronage, with minimal sample error.
KPI Reporting Period	Six monthly
Measurement unit	Passengers who have travelled with a valid Ticket on the Contract Ferry as measured in accordance with the fare compliance survey.
Data source	TfNSW fare compliance survey
Measurement responsibility	TfNSW
Reporting frequency	Six monthly

KPI	Table 16 (Reporting)
Description	This KPI aims to ensure all agreed reports are available to TfNSW within the agreed timeframe. This Reporting KPI measures the time taken to deliver reports starting from the end of the reporting period until the time that the reports are available for TfNSW. The scope is for all reports as set out in the Reporting Schedule and for avoidance of doubt, includes the reporting requirements outlined in this Schedule 4 and the Governance Schedule. Reports are to be available in

KPI	Table 16 (Reporting)
	<p>an agreed repository or otherwise provided to TfNSW (eg, provision to TfNSW of on-line access) within the timeframes nominated in the Reporting Schedule.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% of reports required under this Schedule 4, the Reporting Schedule and the Governance Schedule are delivered to TfNSW within the timeframe nominated in those Schedules.
Class	Class 2
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of reports presented within the required timeframe during the KPI Reporting Period / total number of reports due to be presented during the KPI Reporting Period)
KPI Reporting Period	Monthly
Measurement unit	Report
Data source	Where possible, report to be generated directly from installed automated systems
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 17 (Provision of Information)
Description	<p>This KPI aims to ensure that responses to request for information about Services are provided in a reasonable timeframe as determined by TfNSW. Such requests for information could arise from varying sourcing, but would include information required to provide Ministerial responses, answering customer enquiries, providing information required by Law, providing information to support transport planning etc.</p> <p>Any information which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% within the timeframe specified in the relevant request for information (provided that such timeframe must be reasonable in the circumstances)
Class	Class 2
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of information requests responded to within the required timeframe during the KPI Reporting Period / total number of information requests during the KPI Reporting Period)
KPI Reporting Period	Monthly

KPI	Table 17 (Provision of Information)
Measurement unit	Requests for information
Data source	Record of requests
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 18 (Data Maintenance)
Description	<p>This KPI aims to ensure critical information is accurate and available to customers and TfNSW within the timeframe determined by TfNSW. The Data Maintenance KPI measures the currency and accuracy of information relating to timetables, routes, mapping, Wharves, schedules, etc. Information must be accurate and current.</p> <p>In this KPI:</p> <p><b>Data Error</b> means any error, due to error or omission on the part of the Operator, in published timetables or Operator scheduling data uploads to TfNSW (TODIS, GTFS, SIRI or equivalent acceptable to TfNSW) for the Services, including a route mapping, Wharf, schedule, timetable or similar error, which affects one Trip or multiple Trip (where it is a common error).</p> <p><b>Missing Data Incident</b> means a failure by the Operator to provide published timetables or operator scheduling data uploads to TfNSW (GTFS, TransXchange, SIRI or equivalent acceptable to TfNSW) for the Services for one or more routes for a given day, due to error or omission on the part of the Operator, which impacts information being made available to customers or ticketing equipment for the affected route(s).</p> <p>For the avoidance of doubt, where an Operator engages a third party to prepare or provide any of the abovementioned data for the Services on its behalf, then an error or omission by that third party will be deemed to be an error or omission on the part of the Operator.</p>
Hours measured	24 x 7
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>• KPI 18(i): Zero (0) Missing Data Incidents for the Services; and</li> <li>• KPI 18(ii): No more than two (2) Data Errors for the Services, provided that all such Data Errors are rectified no later than two Business Days after the date of identification.</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	<p>For KPI 18(i) Missing Data Incident:</p> <p>KPI Credit Band: One Missing Data Incident or more in the KPI Reporting Period</p> <p>For KPI 18(ii) Data Errors:</p> <p>KPI Credit Band: More than two Data Errors that are not rectified within two Business Days after date of identification in the KPI Reporting Period</p>
Class	Class 1

KPI	Table 18 (Data Maintenance)
Measurement methodology	
Measurement starting point	Number of Missing Data Incidents or Data Errors identified during the month for the KPI Reporting Period
Calculation	Number of Missing Data Incidents Number of Data Errors Number of Data Errors not rectified within two Business Days after the date of identification
KPI Reporting Period	Monthly
Measurement unit	Services
Data source	Website, TransXchange, TSM, change.id, FOCIS or other system approved by TfNSW
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 19 (Project On Time Delivery)
Description	Measures the % of Projects that are delivered On Time. Of particular interest to TfNSW is the implementation of Government initiatives.  In this KPI: <b>On Time</b> means a Project is delivered to within 5% of the original agreed schedule as varied by any approved change requests. <b>Project</b> means any project nominated by TfNSW.
Hours measured	N/A
KPI	100% of Projects are delivered On Time
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each Calendar Month
Calculation	$100 \times \text{Number of Projects delivered On Time} / \text{Total number of Projects required to be delivered}$
KPI Reporting Period	Calendar Month
Measurement unit	Percentage
Data source	Project reports, plans and records
Measurement responsibility	Operator
Reporting frequency	Monthly

## Annexure 1 – Incident classification and management

DEFINITION	MAJOR INCIDENT	SIGNIFICANT INCIDENT	MINOR INCIDENT
Impact on Service Performance	Service unavailable or seriously delayed for affected customers	Service seriously delayed for affected customers. A recurring Minor Incident	Service is delayed causing minor disruption or inconvenience for affected users
Extent of Impact	Potentially impacts 350 or more customers of the Operator. Any serious injury	Potentially impacts more than 50 but less than 350 customers of the Operator	Impacts less than 50 customers of the Operator
Impact on productivity and reputation	Potential for adverse impact on TfNSW and Operator's reputation through negative press coverage and many unsatisfied customers	May result in customer inconvenience and increase in unsatisfied customers. Likely to raise serious public concern	May result in some customer inconvenience and unsatisfied customers
The Operator must work to resolve the Incident	Continuously	Continuously until the Incident is resolved	Within Business Hours until the Incident is resolved
Examples			
Interim Status Update Timeframe	Every 15 minutes	15 mins then every 30 minutes	On request
If Incident is not resolved within the required timeframe	Escalate according to agreed processes	Escalate according to agreed processes	Escalate according to agreed processes
If Incident is not resolved within two times the required timeframe	Escalate according to agreed processes	Reclassify Incident as Major Incident	Escalate according to agreed processes



# Schedule 5 – Reporting

## 1. Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to a paragraph is a reference to a paragraph in this Schedule.

In this Schedule, the following words have the following meanings:

**Ad Hoc Reports** or **AHR** has the meaning given in paragraphs 3 and 10 of this Schedule.

**Annual Financial Report** or **AFR** has the meaning given in paragraphs 3 and 8(b) of this Schedule.

**FOCIS** means the service tracking and priority equipment installed on Contract Ferries, which for the avoidance of doubt comprise the FOCIS Assets, or any system of similar functionality that supersedes it whether it is provided by the Operator or TfNSW.

**Half Yearly Financial Report** or **HFR** has the meaning given in paragraphs 3 and 8(a) of this Schedule.

**KPI Report** means the reporting required to be provided under paragraph 3 of the KPI Schedule of the Contract.

**Monthly Asset Management Report** or **MAMR** has the meaning given in paragraph 9 of this Schedule.

**Monthly Commercial Report** or **MCR** has the meaning given in paragraph 3 and 6 of this Schedule.

**Monthly On Demand Service Report** or **MODSR** has the meaning given in paragraph 3 and 11 of this Schedule.

**Monthly Operational Report** or **MOR** has the meaning given in paragraph 3 and 4 of this Schedule.

**Monthly Performance Report** or **MPR** has the meaning given in paragraph 3 and 5 of this Schedule.

**Quarterly Asset Management Report** or **QAMR** has the meaning given in paragraph 9 of this Schedule.

**Quarterly Executive Report** or **QER** has the meaning given in paragraph 3 and 7 of this Schedule.

**TODIS** means the Transport Operational Data Interface Specification as advised by TfNSW from time to time.

## 2. Reporting Principles

- (a) In accordance with Clause 29, the Operator must provide all reports and data to TfNSW (or any person authorised by TfNSW):
  - (i) so that they are accurate and complete and in accordance with the timeframes specified in this Schedule 5 (or other times as may be required by TfNSW from time to time); and
  - (ii) in any one or more of the following formats (or any other format set out in this Schedule 5 or requested by TfNSW from time to time):
    - (A) hard copy (printed) report, printed in colour where applicable;
    - (B) electronic copy report; or

- (C) electronic transfer in a format reasonably required by TfNSW, including:
  - (I) TODIS for OSD;
  - (II) travel and Trip data including through electronic interfaces such as SIRI and GTFS-(R); and
  - (III) reports submitted electronically via a reporting interface and/or web-portal.
- (b) In accordance with Clause 34.2, the Operator acknowledges and agrees that TfNSW, or a person authorised by TfNSW, may conduct audits on the contents of reports and data provided by the Operator and the Operator must comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits. Such audit reports will be considered in the relevant governance forums as set out in the Governance Schedule of the Contract. The Operator must make available to TfNSW on request all reports and underlying data in the format as required by TfNSW.

### 3. Overview of Reporting Requirements

The Operator must provide the following reports and data to TfNSW (or any person authorised by TfNSW) in accordance with this Schedule 5 (and any Annexures to this Schedule 5) at the following times:

- (a) Monthly Operational Report: Within 10 Business Days after the start of each Calendar Month of the Term.
- (b) Monthly Performance Report: Within 10 Business Days after the start of each Calendar Month of the Term.
- (c) Monthly Commercial Report: Within 10 Business Days after the start of each Calendar Month of the Term.
- (d) Monthly Asset Management Report: Within 10 Business Days after the start of each Calendar Month of the Term.
- (e) Quarterly Asset Management Report: Within 15 Business Days after the start of each Quarter of the Term.
- (f) Quarterly Executive Report: No later than 15 Business Days prior to the date of the Quarterly Executive Forum meeting referred to in paragraph 2.1(c) of the Governance Schedule.
- (g) Half Yearly Financial Report: No later than 15 July of any Contract Year during the Term.
- (h) Annual Financial Report: No later than 30 April in any Contract Year during the Term.
- (i) Ad-Hoc Reports: At such times as requested by TfNSW from time to time during the Term.
- (j) Data: The Operator must provide TfNSW with access to all asset, ticketing, OSD, FOCIS and SSTS data held by the Operator at such times as requested by TfNSW in accordance with Clause 15.
- (k) KPIs: The Operator must provide reporting in relation to Key Performance Indicators as required under the KPI Schedule.
- (l) Tax Invoice Reporting: The Operator must provide reporting in relation to Tax Invoices as required under the Payment Schedule.
- (m) Monthly On Demand Service Report: Within 10 Business Days after the start of each Calendar Month of the Term.

#### 4. Reporting requirement - Monthly Operational Reporting

The Operator acknowledges and agrees that the Monthly Operational Report (or MOR) must satisfy the following requirements. TfNSW may provide a reporting interface, and if so, the Operator must use it, but in any case, the Operator must report the following at a minimum:

Monthly Operational Report	Description
<p><b>MOR 1:</b> Ticket sales and cash</p>	<p>MOR 1 reflects the value of ticket sales and the actual cash received by the Operator from Ticket sales for the Calendar Month by Ticket type. The Operator must accurately report in the MOR all cash or other payment received for the sale of every approved Ticket type.</p>
<p><b>MOR 2:</b> Operational hours completed</p>	<p>MOR 2 reflects the actual operational hours completed by Contract Ferries in the performance of the Services for the Calendar Month (as a network aggregate and by individual route) including:</p> <ul style="list-style-type: none"> <li>▪ total Services;</li> <li>▪ minus Cancelled Trips and Incomplete Trip hours;</li> <li>▪ total operated In-Service Hours;</li> <li>▪ total In-Service Hours provided for Holiday and Special Event Periods;</li> <li>▪ minus Cancelled Trip and Incomplete Trip hours for the Services provided for Holiday and Special Event Periods;</li> <li>▪ total In-Service Hours;</li> <li>▪ total other operational hours; and</li> <li>▪ total dead running operational hours.</li> </ul>
<p><b>MOR 3:</b> Operational performance data</p>	<p>MOR 3 reflects a number of key operational performance results for each Calendar Month:</p> <ul style="list-style-type: none"> <li>▪ Service by Route;</li> <li>▪ Route description;</li> <li>▪ Published Timetable Trips;</li> <li>▪ number of Incomplete Trips;</li> <li>▪ number of Cancelled Trips;</li> <li>▪ Trips that are Late;</li> </ul>

Monthly Operational Report	Description
	<ul style="list-style-type: none"> <li>▪ Trips that are Late as a result of late connecting service;</li> <li>▪ Contract Ferry crowded on Route;</li> <li>▪ Timetabled accessible Trips; and</li> <li>▪ accessible Trips that are Incomplete Trips or Cancelled Trips. For the avoidance of doubt this means accessible Services not operating to accessible timetabled Trip/s.</li> </ul>
<p><b>MOR 4:</b> Incomplete or Cancelled Trips</p>	<p>MOR 4 reflects the actual planned In-Service Hours that were not completed for the Calendar Month:</p> <ul style="list-style-type: none"> <li>▪ Service by Route and direction;</li> <li>▪ identification (registration number or equivalent);</li> <li>▪ scheduled time;</li> <li>▪ scheduled date;</li> <li>▪ status as Incomplete Trip or Cancelled Trip;</li> <li>▪ hours run as positioning or other incidental movements of Contract Ferries;</li> <li>▪ details of reason for Incomplete Trip or Cancelled Trip.</li> </ul>
<p><b>MOR 5:</b> Customer feedback</p>	<p>MOR 5 records the total number of different types of customer feedback received by the Operator or on the Operator's behalf.</p> <p>MOR 5 must include details of customer feedback received from the following sources:</p> <ul style="list-style-type: none"> <li>▪ mail;</li> <li>▪ telephone;</li> <li>▪ email;</li> <li>▪ DCIS (Transport Infoline);</li> <li>▪ the Operator's website;</li> <li>▪ the Operator's mystery traveller program;</li> <li>▪ matters referred to the Operator by TfNSW; and</li> <li>▪ any new TfNSW Systems and Equipment that may be introduced in accordance with Clause 15.</li> </ul>

Monthly Operational Report	Description
<p><b>MOR 6:</b> Contract Ferry movements</p>	<p>MOR 6 reflects Contract Ferry movements that occurred in the preceding Calendar Month.</p> <p>These include new purchased and leased ferries, retired and replaced ferries.</p> <p>Where there have been no changes to any of the above reports in the preceding Calendar Month the Operator must submit MOR 8 with a “nil” record.</p>
<p><b>MOR 7:</b> Safety performance indicators</p>	<p>MOR 7 provides a set of safety related performance indicators.</p> <p>The safety performance section of the Monthly Operations Report must include as a minimum:</p> <ul style="list-style-type: none"> <li>▪ proactive management, including: <ul style="list-style-type: none"> <li>A. percentage of planned leadership visits completed (the total number of planned visits completed as compared to the total number planned for the month);</li> <li>B. percentage of planned safety actions closed out (within timeframe);</li> <li>C. percentage of planned safety audits completed; and</li> <li>D. safety audits, including the type, outcomes and non-conformances, status (raised/closed) of issues, preventative actions.</li> </ul> </li> <li>▪ operations and staff, including: <ul style="list-style-type: none"> <li>A. lost time injury frequency rate (injury and illness) based on the following formula: <p style="margin-left: 40px;">Lost time injury frequency rate = Number of lost time injuries/illnesses in the month/(Total hours worked in the month) x 1,000,000;</p> <p style="margin-left: 40px;">A lost time injury is as defined in the Australian Standard: Workplace Injury and Disease Recording Standard (Australian Standard 1885.1 - 1990);</p> <p style="margin-left: 40px;">Work related (compensable) injuries and illnesses are to be included;</p> </li> <li>B. notifiable incidents (safety and environmental) with a description;</li> <li>C. Crew/Master human error incidents per vehicle operating hour; and</li> <li>D. the number of drug and alcohol tests undertaken and the total number of negative and positive results.</li> </ul> </li> <li>▪ customer impact, including: <ul style="list-style-type: none"> <li>A. number of customer injuries that are serious enough to require transportation to hospital or result in a fatality, per 100,000 customer Boardings (directly attributable to the Operator Activities);</li> </ul> </li> </ul>

	<p>B. number of customer injuries from slips, trips and falls per 100,000 customer journeys (subset of above); and</p> <p>C. fatalities (on and off board) (all fatalities with a subset of those related to self-harm);</p> <ul style="list-style-type: none"> <li>▪ the disruption to Services arising from any accident; and</li> <li>▪ any Incident and accident investigation, including the lessons learnt, recommendations made, actions taken and any changes to procedures, working practices and/or the Safety Management System.</li> </ul> <p><b>Accreditation and Authorisations</b></p> <p>The Accreditation and Authorisations section of the Monthly Operations Report must include as a minimum:</p> <ul style="list-style-type: none"> <li>▪ record of engagements with any Safety Authority; and</li> <li>▪ ongoing actions for maintaining Accreditation and similar Authorisations relevant to conducting the Services eg. Certificates of Survey and Certificates of Operation.</li> </ul>
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## 5. Reporting Requirement - Monthly Performance Report

The Operator acknowledges and agrees the Monthly Performance Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
<b>Monthly Service Delivery Forum</b>	<p>KPI Report, including trend analysis</p> <p>The following to be provided by exception as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> <li>▪ new and outstanding root cause analyses identifying appropriate preventative action;</li> <li>▪ post Incident review reports;</li> <li>▪ new and existing escalations and plans to resolve;</li> <li>▪ recommended improvements to operational processes;</li> <li>▪ progress against improvement plans;</li> <li>▪ customer feedback report, including results of the Operator's mystery traveller program;</li> <li>▪ delivery of initiatives to support delivery of the Customer Service Plan and progress in achieving the targets in Annexure 2 of this Schedule;</li> <li>▪ Incomplete Trips or Cancelled Trips report;</li> </ul>	Within 10 Business Days after the start of the Calendar Month	Electronic Copy

Forum	Report Items	Frequency	Format
	<ul style="list-style-type: none"> <li>▪ total number of Fare paying passengers travelling on the Services;</li> <li>▪ actual patronage Boarding by Route and Ticket type;</li> <li>▪ patronage and type of patronage per Route (cash/pre-paid/adult/concession/SSTS /Pensioner Excursion Travel/travel free of charge etc.); and</li> <li>▪ status of actions to improve interactions with any and all third party operators.</li> </ul>		

## 6. Reporting Requirement - Monthly Commercial Report

The Operator acknowledges and agrees the Monthly Commercial Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
<b>Monthly Commercial Forum</b>	<p>The following to be provided as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> <li>▪ Operator organisational changes, including requests for changes to Key Personnel;</li> <li>▪ any commercial changes to the Services environment;</li> <li>▪ any Service Variations;</li> <li>▪ KPI Report;</li> <li>▪ financial summary (monthly and year to date and trend analysis;</li> <li>▪ status of invoicing, payment issues, rate validation issues and billing disputes outstanding;</li> <li>▪ inventory report including Contract Ferry movements and Contract Ferry movement reports;</li> <li>▪ any allegations of fraud and corrupt conduct; and</li> <li>▪ any Incidents which may generate public and/or media interest in the Operator.</li> </ul>	Within 10 Business Days from the start of the Calendar Month	Electronic Copy

## 7. Reporting requirement - Quarterly Executive Report

The Operator acknowledges and agrees the Quarterly Executive Report must satisfy the following requirements:

Forum	Report Description	Frequency	Format
<b>Quarterly Executive Forum</b>	<p>Quarterly summary of KPI Report</p> <p>The following to be provided as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> <li>▪ achievements, completed activities and projects;</li> <li>▪ overall performance against the results of customer satisfaction surveys in accordance with the Governance Schedule, the Operator's mystery traveller program, trend analysis and the Operator targets for customer satisfaction attributes in Annexure 2 of this Schedule;</li> <li>▪ improvement opportunities, including any strategic reviews of the Customer Service Plan;</li> <li>▪ list of upcoming activities and projects;</li> <li>▪ relationship effectiveness issues between the Operator and TfNSW;</li> <li>▪ engagement processes issues;</li> <li>▪ Operator organisational changes;</li> <li>▪ Operator strategic changes;</li> <li>▪ Service trends, including capacity report on the Service, covering peaks and floors, trends, utilisation and planning to assess the Sydney public transport network and its utilisation;</li> <li>▪ Contract Ferry and Wharf, lay over area or berthing area utilisation plans (detailing the forecast for the following two 12 month Financial Year periods);</li> <li>▪ refresh plans for assets nearing end of useful life;</li> <li>▪ any exceptions to the Maintenance Works Program that are impacting the Services;</li> <li>▪ status of any recommendations from an asset management audit conducted under Clause 25.8, or any other review, audit, investigation, inquiry or inspection by a Safety Authority or other Governmental Authority;</li> <li>▪ Quarterly financial report (balance sheet, cashflow and profit and loss statement) and trend analysis;</li> <li>▪ any allegations of fraud and corrupt conduct; and</li> </ul>	<p>No later than 10 Business Days prior to the Quarterly Executive Forum</p>	<p>Electronic Copy</p>



Forum	Report Description	Frequency	Format
	<ul style="list-style-type: none"> <li>▪ any Incidents which may generate public and/or media interest in the Operator.</li> </ul>		

## 8. Reporting requirement – Half Yearly Financial Report and Annual Financial Report

- (a) Half Yearly Financial Report - The Operator must provide to TfNSW by no later than 15 July in each year of the Term:
- (i) a half yearly Financial Report for the six month period ending 30 June; and
  - (ii) a detailed line item report in the format specified in Annexure 1 to this Schedule 5 for the six month period ending 30 June.
- (b) Annual Financial Report - The Operator must provide to TfNSW by no later than 30 April in each year of the Term:
- (i) an annual Financial Report for the year ended 31 December which is independently audited and which must contain at a minimum:
    - (A) balance sheets;
    - (B) cash flow reports;
    - (C) profit and loss statements; and
    - (D) any other financial analysis required by TfNSW;
  - (ii) a detailed line item report in the format specified in Annexure 1 to this Schedule 5 for the preceding calendar year; and.
  - (iii) certified copies of its audited annual financial statements for the previous calendar year together with all related directors' and auditor's reports to TfNSW.
- (c) Each of the documents specified in paragraphs 8(a) to 8(iii) above must be submitted to TfNSW in electronic format.

## 9. Reporting Requirement – Monthly Asset Management Report and Quarterly Asset Management Report

- (a) The Operator must provide regular reports that meet the requirements of the Transport Service Provider Asset Management Reporting Standard (dated 27 November 2017 and published by the Asset Standards Authority), or any successor standard for each Calendar Month (**Monthly Asset Management Report**) and each Quarter (**Quarterly Asset Management Report**) during the Term.
- (b) The Operator must provide each Monthly Asset Management Report to TfNSW within 10 Business Days after the end of the Calendar Month of the Term to which the report relates.
- (c) The Operator must provide the Quarterly Asset Management Report to TfNSW no later than 15 Business Days after the end of the Quarter during the Term to which the report relates.

## 10. Reporting requirement - Ad-Hoc Reports

The Operator acknowledges and agrees that TfNSW may require the Operator to submit Ad-Hoc Reports to TfNSW from time to time in the format required by TfNSW.

## 11. Reporting Requirement – Monthly On Demand Service Report

The Operator acknowledges and agrees the Monthly On Demand Service Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format	
<b>Monthly Service Delivery Forum</b>	The following to be provided as required and agreed for each meeting agenda (with additional commentary as required):	Within 10 Business Days after the start of the Calendar Month	Electronic Copy	
<b>Quarterly Executive Forum</b>	Capacity			Summarised view of vessel occupancy according to time of day and day of the week - Weekday, Saturday, Sunday and Public Holiday periods
	Operations			<ul style="list-style-type: none"> <li>Total passenger bookings, including proportion of booking accepted vs. rejected</li> <li>Total customer cancellations and no shows</li> <li>Total passenger trips delivered</li> <li>Total vessel berthing by wharf</li> <li>Total vessel service hours (in and out of service)</li> <li>Most popular service stops and most popular origin-destination points</li> </ul>
	Efficiency			<ul style="list-style-type: none"> <li>Average cost per passenger served</li> <li>Average cost per service hour</li> </ul>
	Ticketing			<ul style="list-style-type: none"> <li>Value of Ticket sales by payment method (credit card, other)</li> <li>Number of Tickets purchased by payment method (credit card, other)</li> <li>Distribution of fare types (standard, concession)</li> <li>Distribution of booking type (application, phone call)</li> <li>Distribution of payment types (in-application)</li> </ul>
	Technology			<ul style="list-style-type: none"> <li>Software development milestones reached / goals</li> </ul>

Forum	Report Items	Frequency	Format
	<ul style="list-style-type: none"> <li>Number of application downloads</li> <li>Summary of technology feedback</li> <li>Ratings</li> <li>Positive / negative comments (relating to the app)</li> </ul>		
	<b>Customer Satisfaction</b> <ul style="list-style-type: none"> <li>Customer Service Plan</li> <li>Number of feedback responses</li> <li>Number of feedback responses by rating (i.e. pilots which offer a 5 star feedback rating to provide number of responses for each level of rating)</li> <li>Average Crew rating</li> <li>Summary of service feedback</li> <li>Customer behaviour insights</li> <li>Verbatim feedback comments</li> </ul>		
	<b>Milestones and Performance</b> <ul style="list-style-type: none"> <li>Key achievements and completed activities</li> <li>Goals / upcoming milestones</li> <li>Service delivery benefits, concerns, obstacles or challenges</li> <li>Public and/or media interest</li> <li>Recommended or potential improvements to operational processes</li> </ul>		

As part of the Monthly On Demand Service Report, the Operator must also provide a data extract of the On Demand Services for the previous month.

TfNSW will provide a reporting template and required file format prior to the commencement of Services.

The database of service activities should be readily interpreted in a format similar to that described below.

Field	Description	Variants (if applicable)
Trip ID	A unique identifier for each trip conducted (if a loop service or equivalent, otherwise N/A)	-

Field	Description	Variants (if applicable)
Vessel ID	A unique identifier for each vessel	-
Passenger ID	A unique identifier for each passenger	-
Passenger fare type	The type of fare charged for a passenger	Standard Concession
Booking type	The method by which a passenger booked the service	Application Web Phone
Booking time	The time at which a passenger places a booking for a service	-
Payment type	The payment method used by a passenger	Credit card (application) Credit card (phone call)
Successful pickup	Whether or not a potential passenger got on board or not	Yes No
Pickup failure reason	The reason for an unsuccessful pickup	Customer cancellation Operator failure Other
Pickup date/time - scheduled	The time and date at which the service is scheduled to arrive at a passenger's pickup location	-
Pickup date/time - actual*	The time and date at which the service arrives at a passenger's pickup location	-
Pickup information	Unique identifier / latitude and longitude for each drop-off stop	-
Pickup location	Latitude and longitude of pickup location	-
Drop-off date/time - scheduled	The time and date at which the service is scheduled to arrive at a passenger's drop-off location	-
Drop-off date/time - actual*	The time and date at which the service arrives at a passenger's drop-off location	-

Field	Description	Variants (if applicable)
Drop-off information	Unique identifier / latitude and longitude for each pickup stop	-
Distance travelled (km)	The distance travelled between origin and destination	-
Accessibility requirements	Whether or not the customer had additional accessibility requirements	Yes / No
Positioning Hours	Hours the vessel did not carry any passengers during Service availability	-

## 12. Data Requirements

- (a) The Operator acknowledges and agrees that TfNSW may require access to data collected by the Operator from time to time in accordance with Clauses 28 and 34.2 of the Contract. The following table outlines specific data requirements the Operator must collect commencing from the Service Commencement Date and for the duration of the Term.
- (b) The Operator acknowledges and agrees that TfNSW may request additional data for Projects (as defined in Table 19 of the KPI Schedule) from time to time during the Term:

Service	Report	Frequency	Format
<b>OSD data transfer</b>	<ul style="list-style-type: none"> <li>Data required of the type and in the format specified in TODIS or any replacement system, as modified from time to time by TfNSW, including: <ul style="list-style-type: none"> <li>Timetable, Route and Wharf data; and</li> <li>shift data, including Master and Crew shifts.</li> </ul> </li> <li>Data required from automated and electronic ticketing systems</li> </ul>	<p>As specified in the TODIS</p> <p>3 weeks in advance of any change</p>	Data transfer as specified by TODIS
<b>Ferry Incident Management Database</b>	Operators are required to notify TfNSW of incidents and accidents	In accordance with the PT Regulations	Submission of an incident report to the BIMS system
<b>FOCIS</b>	Provide continued access to all FOCIS data	Daily	As specified by TfNSW's FOCIS requirements as set out in Part 4 of the Services Schedule
<b>Ticketing data</b>	Provide continued access to all Ticketing data	Daily	As specified by TfNSW's electronic ticketing system

			requirements as set out in Part 4 of the Services Schedule
<b>Asset data</b>	Provide continued access to all Asset data	Daily	As specified by the TfNSW Asset Information Standards and the Asset Information and Register Requirements (published by the Asset Standards Authority dated 28 April 2016), or any successor documents.

## Annexure 1 Line Item Report

As set out in paragraph 8(a) and 8(b) the Operator is to provide detailed revenues and costs per line item in accordance with the category list as set out below:

### Ferry

		<b>Reporting period ending DD MM YY</b>	<b>Previous reporting period ending DD MM YY</b>
<b>Commercial revenue line items (2015-16)</b>			
Revenues from advertising	\$'000	0	0
Revenues from charter services	\$'000	0	0
Revenues from other commercial opportunities			
<b>Total Commercial Revenue</b>	<b>\$'000</b>	<b>0</b>	<b>0</b>
<b>Cost line items (2015-16)</b>			
Master, Crew and general purpose hand - Salary, wages, overtime and oncosts	\$'000	0	0
Maintenance Staff - Salary, wages, overtime and oncosts	\$'000	0	0
Cleaners - salary, wages, overtime and oncosts	\$'000	0	0
Other staff - salary, wages, overtime and oncosts			
Fuel - Diesel	\$'000	0	0
Contract Ferry other parts and consumables	\$'000	0	0
Contract Ferry maintenance and repairs	\$'000	0	0
Contract cleaning	\$'000	0	0
Wharf, Shipyard and other premises related cleaning, maintenance and repairs	\$'000	0	0
Contract Ferry operating costs - signage	\$'000	0	0
Contract Ferry operating costs - Timetables	\$'000	0	0
Contract Ferry operating costs - Livery	\$'000	0	0
Contract Ferry operating costs - Uniforms	\$'000	0	0
Contract Ferry survey costs	\$'000	0	0
Contract Ferry refurbishments	\$'000	0	0
Insurance - Ferry specific	\$'000	0	0
Ticketing costs	\$'000	0	0
Security	\$'000	0	0
Cash collection	\$'000	0	0
Operating lease expenses	\$'000	0	0
Other Contract Ferry specific overhead costs	\$'000	0	0
Other costs	\$'000	0	0
<b>Total Operating Costs</b>	<b>\$'000</b>	<b>0</b>	<b>0</b>
<b>Net Operating Costs (Cost – Commercial Revenue)</b>	<b>\$'000</b>	<b>0</b>	<b>0</b>
<b>Statement of FTEs</b>			
Masters, Crew and general purpose hands	FTEs	0	0
Maintenance	FTEs	0	0
Cleaners	FTEs	0	0
Other	FTEs	0	0
<b>Total</b>	<b>FTEs</b>	<b>0</b>	<b>0</b>

**Operational parameters - Services**

Number of Contract Ferries	number	0	0
Contract Ferry hours per year - in service	hours	0	0
Contract Ferry hours per year - dead running	hours	0	0
Total Contract Ferry hours		0	0
Passenger journeys	'000	0	0
Net Operating Cost per total Contract Ferry hours	\$	0	0
Net Operating Cost per passenger journey	\$	0	0
Fuel Consumed - Diesel	Litres	0	0

**Corporate and Commercial**

**Operational parameters – Charter Services**

		Year ending	
		30 June	30 June
Contract Ferry Charter hours per year - in service and dead running	hours	0	0

**Corporate Costs**

Corporate Staff - Salaries, wages, overtime and oncosts	\$'000	0	0
Other corporate expenses	\$'000	0	0
Total	\$'000	0	0

**Statement of FTEs**

Corporate Staff	FTEs	0	0
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## Annexure 2 Line Item Report - Customer Satisfaction Attribute Targets

Customer Satisfaction Attributes	Target 2020	Target 2022	Target 2024
Overall Satisfaction with Ticketing	96%	97%	97%
Ease of purchasing my ticket	94%	95%	96%
Ease of using my Opal Card	98%	98%	98%
Overall Satisfaction with Convenience	95%	97%	98%
Ease of getting to the ferry wharf	96%	98%	98%
Ease of connection with other modes of transport	95%	97%	98%
Overall Satisfaction with Accessibility	97%	98%	98%
Ease of accessing the ferry wharf	98%	99%	99%
Ease of getting on and off the ferry	99%	99%	99%
Usefulness of signs to help you find your way	95%	96%	97%
Overall Satisfaction with Cleanliness	97%	98%	98%
Cleanliness of the ferry wharf	97%	98%	98%
Cleanliness of this ferry	98%	98%	98%
Overall Satisfaction with Comfort	96%	97%	97%
Comfort at the ferry wharf (shelter and seating)	93%	94%	95%
Seat availability on this ferry	98%	98%	98%
Seat comfort on this ferry	95%	97%	97%
Temperature on this ferry	95%	95%	95%
Personal space on this ferry	97%	97%	97%
Smoothness of this ferry trip	98%	99%	99%
Overall Satisfaction with Customer Service	96%	97%	97%
Willingness of ferry staff to help	95%	96%	97%
Knowledge of ferry staff	95%	96%	97%
Presentation of ferry staff	97%	98%	98%
Overall Satisfaction with Information	95%	96%	96%
Availability of arrival information for this ferry	96%	98%	98%
Availability of next stop information on this ferry	97%	98%	98%
Availability of information about service delays	94%	94%	95%
Ease of finding information (routes, stops, timetables)	92%	93%	94%

# Schedule 6 – Governance

## 1. Introduction

### 1.1 Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to a paragraph is a reference to a paragraph in this Schedule.

In this Schedule, the following words have the following meanings:

**Monthly Commercial Forum** means the monthly forum which will focus on commercial matters, described in paragraph 2.1(b).

**Monthly Service Delivery Forum** means the monthly forum which will focus on the delivery of the services, described in paragraph 2.1(a).

**Quarterly Executive Forum** means the quarterly forum which will focus on the ongoing relationship between TfNSW and the Operator, described in paragraph 2.1(c).

### 1.2 General Requirements

The Operator must:

- (a) provide effective governance for its own team to ensure the Services are delivered in accordance with the Contract;
- (b) ensure that the governance model used is aligned with and, where appropriate, integrated with the TfNSW business model;
- (c) take sole responsibility and accountability for the performance of its own subcontractors. Such subcontractors are not required to attend the TfNSW governance forums described in this Schedule; and
- (d) raise issues relating to the delivery of the Services at the Monthly Service Delivery Forums.

## 2. Governance Regime

### 2.1 Operational Forums and Reviews

There are a number of forums and reviews the parties will utilise to manage the relationship and measure the Operator's compliance with the Contract (including its objectives). In addition to these forums and reviews, the Operator must attend ad-hoc meetings with TfNSW as required, such as specific root cause analysis reviews, Project (as defined in Table 19 of the KPI Schedule) status meetings, operational meetings and informal discussions.

The Operator must also meet in a multi operator forum, should TfNSW require.

- (a) Monthly Service Delivery Forum

The Monthly Service Delivery Forums will focus on the ongoing delivery of the services required under the Contract, including service management activities, Key Performance Indicator performance and reporting and customer satisfaction assessments.

The Monthly Service Delivery Forum will take place by the end of the third week of each month and be attended by:

TfNSW Attendees	Operator Attendees
Principal Manager (as required)	Chief Executive Officer / General Manager (as required)
Manager Contracts (Chairperson)	Senior Manager
Senior Contracts Officer	Contract Manager or equivalent
	Operations Manager

The attendees at the Monthly Service Delivery Forum will address the following, as required:

- (i) Operator's performance in the delivery of the Services and Operator Activities;
- (ii) Service improvement opportunities and service change plans being considered;
- (iii) feedback from community and stakeholder groups on whether the Services are meeting expectations;
- (iv) patronage trends and plans to increase patronage;
- (v) Operator's performance against the Key Performance Indicators, in particular:
  - (A) monthly reporting, including emerging trends;
  - (B) new and outstanding root cause analyses and appropriate preventative action;
  - (C) management of any Incidents; and
  - (D) post Incident reports and cure plans as required under the KPI Schedule or otherwise;
- (vi) customer satisfaction surveys;
- (vii) Operator's handling and management of any customer complaints;
- (viii) any workforce/industrial relations issues affecting current/recent performance/service delivery;
- (ix) any emerging significant industrial relations issues with the potential/capacity to effect the overall performance of the Contract;
- (x) identify and approve any improvements to operational processes;
- (xi) any breaches by the Operator, corrective actions to resolve such breaches and progress of corrective actions;
- (xii) interactions between the Operator and other operators (if appropriate) and ways to improve those interactions;
- (xiii) disputes between the Operator and another operator that cannot be resolved by the Operator;
- (xiv) Service Variations or other changes to Services;
- (xv) lifecycle management of assets by the Operator, and tracking against the Maintenance Works Program;
- (xvi) implementation and management of new spares, special tools and equipment by TfNSW and the Operator;
- (xvii) implementation of Planned Service Phase (2); and
- (xviii) any other issues relating to the performance of the Services or the Operator Activities.

Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Monthly Service Delivery Forum.

(b) Monthly Commercial Forum

The Monthly Commercial Forums will focus on all commercial matters under the Contract. This includes Payments, KPI Credits, set offs, deductions, disputes, contract negotiations, Service Variations and Modifications.

The Monthly Commercial Forum will take place by the end of the third week of each month and be attended by:

TfNSW Attendees	Operator Attendees
Principal Manager (as required)	Senior Manager
Manager Contracts (Chairperson)	Contract Manager or equivalent
Senior Contracts Officer	Chief Financial Officer
Finance Manager (as required)	

The attendees at the Monthly Commercial Forum will address the following, as required:

- (i) Staff issues, including changes to any of the Operator's key personnel;
- (ii) organisational changes;
- (iii) raise and attempt to resolve any contractual disputes, prior to issuing a Dispute Notice under the Contract. This includes:
  - (A) review of any Service delivery issues and its significance for TfNSW;
  - (B) review of any Contract issues raised by TfNSW; and
  - (C) tabling KPI Defaults and associated KPI Credits;
- (iv) raise and attempt to resolve disputes between the Operator and another operator that cannot be resolved between the Operator and the other operator or through the Monthly Service Delivery Forum;
- (v) table and discuss proposed Service changes and other proposed amendments to the Contract;
- (vi) assist with budget planning activities;
- (vii) review financial summary and trending;
- (viii) address any Payment issues, including invoicing, rate validation and billing disputes, and results of benchmarking;
- (ix) review and manage audit activities and outcomes;
- (x) implementation of Planned Service Phase (2).

Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Monthly Commercial Forum.

(c) Quarterly Executive Forum

The Quarterly Executive Forum will focus on the ongoing relationship between TfNSW and the Operator, the alignment of the Operator and the Contract to TfNSW's business strategies and objectives, performance management, the management of escalated issues and continuing alignment to the governance requirements.

The Quarterly Executive Forum will be held within a month of the end of the relevant Quarter and the attendees will be:

TfNSW Attendees	Operator Attendees
Executive Management (as required)	Chief Executive Officer or General Manager
Principal Manager (Chairperson)	Senior Manager or equivalent
Manager Ferry Contracts	

The attendees at the Quarterly Executive Forum will address the following:

- (i) share achievements, completed activities and projects;
- (ii) identify opportunities for improvement;
- (iii) discuss any improvement initiatives identified by the Operator;
- (iv) Service improvement opportunities and service change plans being considered;
- (v) feedback from community and stakeholder groups on whether the Services are meeting expectations;
- (vi) feedback on the state of working relationships with key stakeholders,
- (vii) patronage trends and plans to increase patronage;
- (viii) analysis of capacity utilisation by Route, including identification of Routes which are overcrowded and Routes which have excess capacity;
- (ix) review of cure plans;
- (x) any emerging significant industrial relations issues with the potential/capacity to effect the overall performance of the Contract;
- (xi) any exceptions to the Maintenance Works Program that are impacting Services or any Asset Management Failures;
- (xii) communicate TfNSW's strategic direction where appropriate;
- (xiii) review the effectiveness of the relationship between the Operator and TfNSW and related concerns and issues;
- (xiv) communicate organisational changes;
- (xv) enable the Operator to communicate new technologies and service offerings;
- (xvi) review the development of customer facing information and the effectiveness of the interface of Operator systems and information with TfNSW application programming interfaces and systems;
- (xvii) develop objectives for the following Quarter;
- (xviii) report on performance against the requirements set out in Part 15 of the Services Schedule; and
- (xix) implementation of Planned Service Phase (2).

Reports addressing the above items must be delivered by the Operator to TfNSW at least two days prior to each Quarterly Executive Forum.

The Operator represents that its senior executives are committed to making the relationship with TfNSW a success.

(d) Conduct of meetings

All meetings must be conducted in accordance with the following:

- (i) TfNSW will be responsible for publishing the agenda and scheduling the meeting;
- (ii) TfNSW will record the minutes and action items from each meeting and distribute with the agenda for the next meeting;
- (iii) action items not resolved within the agreed timeframe will be escalated as follows:
  - (A) from the Monthly Service Delivery Forum to the Monthly Commercial Forum, or straight to the Quarterly Executive Forum if considered necessary by TfNSW; and
  - (B) from the Monthly Commercial Forum to the Quarterly Executive Forum; and
- (iv) each party will bear its own costs for attending meetings.

# Schedule 7 - Fares and Ticketing

## 1. Full Fares and Concession Fares applicable on Services (other than On Demand Services)

Current Opal Fare Prices as at 31 January 2019.

Distance	0-9km	>9km
Adult Opal card	\$6.01	\$7.51
Adult Opal single trip ticket	\$7.40	\$9.20
Child/Youth Opal card	\$3.00	\$3.75
Child/Youth Opal single trip ticket	\$3.70	\$4.60
Concession Opal card	\$3.00	\$3.75
Gold Opal card	\$2.50	\$2.50

## 2. Full Fares and Concessions Fares applicable on Services (other than On Demand Services)

The persons identified in the following are Approved Beneficiaries eligible for concession fares prices.

Customer Group	Concession card/s	Concession fares
Aged 4-15 (inclusive)	No card (Proof of Age Card available to verify holder is under 16)	Child/Youth fare
	Full time NSW/ACT school students aged 16 and older with a NSW Senior Secondary Student Concession Card	
Aged 16 and over	NSW Tertiary Student Concession Card	Half fare
	NSW Tertiary Student Identification Card	
	NSW Half Fare Entitlement Card for Jobseekers	
	Apprentice and Trainee Card	
<b>Pensioners (all ages), seniors, asylum seekers and carers</b>	Pensioner Concession Card	Half fare (with \$2.50 cap)
	Seniors Card – NSW and interstate	
	NSW War Widow/ers card	
	Concession Entitlement Card (asylum seekers)	

## 3. Approved Beneficiaries of travel free of charge on Services

The persons identified in the following table will be eligible for free travel

Customer Group	Concession Card/s	Concession fares
Aged 0-3 (inclusive)	No card	Free Travel
School students eligible for free travel	SSTS card	Free Travel (To/from school/college)

Customer Group	Concession Card/s	Concession fares
People with disabilities	Ex-member of Defence Forces Pass	Free Travel
	Ex-member of Defence Forces Pass – Blinded Soldier	
	Vision Impaired Persons Pass – NSW and interstate	
Attendant	Transport concession cards marked ' Plus Attendant'	Free travel for Attendant when accompanying card holder
	Companion Card	
Recognised for service	NSW Travelcard	Free Travel
	World War 1 Veteran/Widow	
Employee	Employee Passes issued by TfNSW	Free Travel

#### 4. Form of concession cards

Concession cards referred to in sections 2 and 3 above are to be in the form approved and advised (including where by publication on TfNSW's website) by TfNSW from time to time.

#### 5. On Demand Services

Fares applicable on Demand Services to be notified by TfNSW to the Operator prior to the Planned Service Commencement Date.

# Ferry System Contract

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

Transdev Sydney Ferries Pty Ltd in its personal capacity and as nominee for each of the Partners and the Partnership (**Operator**)

ACN 154 815 611 Pty Ltd jointly and severally in its capacity as partner of the Partnership (**Partner**)

ACN 087 535 224 Pty Ltd jointly and severally in its capacity as partner of the Partnership (**Partner**)

(Volume 2 of 3)



This Volume 2 contains Schedule 8 of the Ferry System Contract dated on or around

20 February 2019

between Transport for NSW on behalf of the State of New South Wales, Transdev Sydney Ferries Pty Ltd in its personal capacity and as nominee for each of the Partners and the Partnership, ACN 154 815 611 Pty Ltd jointly and severally in its capacity as partner of the Partnership and ACN 087 535 224 Pty Ltd jointly and severally in its capacity as partner of the Partnership.

Each attorney executing this Contract states that he or she has no notice of revocation or suspension of his or her power of attorney.

**EXECUTED** as a deed.

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

*Elizabeth Mildwater*

Signature of authorised delegate

ELIZABETH MILDWATER

Name of authorised delegate (block letters)

*Jenny Birch*

Signature of witness

JENNY BIRCH

Name of witness (block letters)

**Executed** by **Transdev Sydney Ferries Pty Ltd ABN 57 156 137 236** in accordance with Section 127 of the *Corporations Act 2001*

*Pierre Talgorn*

Signature of director

PIERRE TALGORN

Name of director (print)

*Nathan Lanthois*

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

NATHAN LANTHOIS

Name of director/company secretary (print)

**Executed** by **ACN 154 815 611 Pty Ltd ACN 154 815 611** in accordance with Section 127 of the *Corporations Act 2001*

*Pierre Talgorn*

Signature of director

PIERRE TALGORN

Name of director (print)

*Nathan Lanthois*

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

NATHAN LANTHOIS

Name of director/company secretary (print)

**Executed by ACN 087 535 224 Pty Ltd ACN 087 535 224** in accordance with Section 127 of the *Corporations Act 2001*

*Pierre Talgorn*

Signature of director

PIERRE TALGORN

Name of director (print)

*Nathan Lanthois*

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

NATHAN LANTHOIS

Name of director/company secretary (print)

# Schedule 8 - Asset Schedule

## 1. Asset Management Obligations

### 1.1 Application of Schedule

In this Schedule, unless the context requires otherwise, references to Assets exclude:

- (a) the Licensed Areas; and
- (b) any Wharf infrastructure (but do not exclude wharves located at the Shipyard, the Circular Quay and Manly hydraulic ramps and CCTV assets, Ferry Operations Systems (including passenger information displays and help points) located on RMS Wharves.

Performance of the Asset Management Activities must enable the Operator to comply with its maintenance obligations under any State Asset Access Agreements.

### 1.2 Asset Management Framework requirement

[Redacted text]

### 1.3 General obligations

The Operator must:

- (a) carry out the Asset Management Activities to ensure the performance of the Assets enables the Operator to satisfy all requirements of the Contract;
- (b) ensure that only suitably trained and competent personnel are engaged in respect of the Asset Management Activities;
- (c) keep the Assets in a clean and tidy condition and remove all waste, spillage, graffiti, litter and debris, including incident debris, and repair all damage;
- (d) maintain records of all Asset Management Activities carried out in the Asset Information System within 24 hours of the activity occurring;
- (e) conduct Asset Management Activities in accordance with the Asset Management Plan and the Maintenance Works Program;
- (f) inspect, weed, trim, mow, water, dewater, fertilise, repair, replace, plant all landscaped areas and non-structure areas of the Assets;
- (g) retain appropriate levels of spares (including any rotatable spares); and
- (h) procure, maintain and update an Asset Information System which must be capable of exchanging data with the TfNSW enterprise asset management system (EAM).

### 1.4 Asset inspection and routine preventative maintenance

- (a) Inspections and routine maintenance of the Assets must be conducted in accordance with the Asset Maintenance Standards and compliant technical maintenance plans.
- (b) Inspections must identify non-compliances and potential non-compliances in the performance of the Operator Activities, defects in and the condition of the Assets.
- (c) The outcomes of inspections must be recorded in the Asset Information System together with an action plan to rectify any non-compliance promptly.

## 1.5 Asset replacement and refurbishment

- (a) Replacement and refurbishment of an Asset must be undertaken by the Operator in accordance with the Asset Management Plan and otherwise where replacement or refurbishment of an Asset or components of an Asset is necessary for the Operator to meet the requirements of the Contract or for the Asset to achieve its Design Life.
- (b) Replacement or refurbishment of an Asset must meet the following requirements:
  - (i) where refurbishment of an Asset is undertaken, the functionality and performance of the refurbished Asset must be equivalent to the functionality and performance of the Asset when new;
  - (ii) where replacement is undertaken with a new Asset, the functionality, performance and Design Life of the new Asset must be equivalent to or exceed the functionality, performance and Design Life of the replaced Asset when it was new;
  - (iii) the requirements of the TfNSW Configuration Management Plan (as defined in paragraph 2(e) of this Schedule) and processes.

## 1.6 Maintenance equipment

The Operator must procure any tools and equipment not comprising the State Assets and the TfNSW Systems and Equipment that are required to enable the Operator to comply with the requirements of the Contract including maintaining the Assets in accordance with this Schedule.

## 1.7 Inventory and inventory control

The Operator must maintain a spares inventory at levels that permit the timely maintenance of the Assets through the Term and at the end of the Term, on the basis of continued operation as a going concern.

## 1.8 Condition monitoring

- (a) The Asset Management Framework must include a description of how condition monitoring will be used to assess the condition of Assets and how it will be used to inform changes to the Asset Management Plan. The Operator must undertake condition monitoring in order to:
  - (i) identify and prevent as far as practicable, future Asset failures;
  - (ii) identify Assets that require maintenance, replacement or refurbishment;
  - (iii) provide objective analysis of the condition of the Asset which can be used to determine remaining serviceable life; and
  - (iv) enable analysis of trends in performance and reliability of Assets referable to location and system.
- (b) The method and frequency of condition monitoring and the minimum performance at which intervention is required must be:
  - (i) as defined in the Asset Maintenance Standards for that Asset;
  - (ii) as nominated by the manufacturer; and
  - (iii) otherwise sufficient to ensure the Operator's compliance with the requirements of the Contract.
- (c) The Operator must undertake an Asset condition assessment of the State Assets within six months after the Service Commencement Date (or if a State Asset is not made available on the Service Commencement Date, within six months after commencement of the relevant State Asset Access Agreement for each State Asset).

## 2. Asset Maintenance Standards

- (a) The Operator must document and adopt Asset Maintenance Standards that include manufacturer's requirements in technical specifications and performance standards or such higher standards as may be required to meet the obligations of the Contract.

- (b) [REDACTED]
- (c) The Asset Maintenance Standards must cover each Asset and include;
- (i) the specific performance characteristics which must be maintained;
  - (ii) potential faults or hazards which could affect each performance characteristic;
  - (iii) clearly defined severity ratings for each potential fault or hazard;
  - (iv) the severity ratings at which the fault must be rectified or the hazard removed (intervention level);
  - (v) the time period / response time within which any faults must be rectified or hazard removed; and
  - (vi) condition indicators and condition ratings for each specific performance characteristic that will be used to record an objective assessment of the condition of the Asset and Asset type.
- (d) The Operator must review and improve the Asset Maintenance Standards on an ongoing basis throughout the Term to ensure that the Asset Maintenance Standards enable the Operator to comply with its obligations under the Contract.
- (e) [REDACTED]
- (f) The Operator will establish a 'Configuration Change Board' in accordance with the TfNSW Configuration Management Plan.
- (g) The Operator must consult with the TfNSW Asset Standards Authority in relation to any change in Asset Maintenance Standards.
- (h) The Operator must demonstrate compliance with the ISO 55000 series of standards with a view to achieving Authorised Engineering Organisation status with the TfNSW Asset Standards Authority within six months of the Planned Service Commencement Date or of the requirements for achievement of the status being made available to the Operator, whichever is later.

### 3. Asset Management Plan

- (a) The Operator must develop, update and maintain the Asset Management Plan in accordance with the TfNSW Transport Service Provider Asset Management Plan Standard and in accordance with the Asset Management ISO 55000 suite of standards. The plan is to consider the Design Life of the Assets (not the length of the Contract). The Asset Management Plan must:
- (i) include an Asset management policy;
  - (ii) include a risk management policy;
  - (iii) describe the risk management process;
  - (iv) include an assurance and audit program; and
  - (v) include a management plan for subcontracted maintenance.
- (b) The Asset Management Plan must also contain a 30 year (rolling) forecast works program for the maintenance (planned, preventative and reactive), refurbishment and/or replacement of Assets.

- (c) The program must include the following:
  - (i) Assets to be renewed with supporting justification;
  - (ii) timing of works;
  - (iii) location and scope of works; and
  - (iv) the Fleet Deployment Plan plus the projected fleet replacement beyond the Term to meet TfNSW's fleet age requirements.
- (d) As part of the Asset Management Plan, the Operator must develop, implement and maintain a Maintenance Works Program which:
  - (i) describes the Asset Management Activities to be undertaken to meet the requirements of the Contract;
  - (ii) describes the Asset interventions to be carried out during the following 24 months in sufficient detail to facilitate effective monitoring of all Asset Management Activities;
  - (iii) must include a rolling seven-year docking plan that addresses Australian Maritime Safety Authority and vessel technical maintenance plan requirements.
- (e) The Asset Management Plan must incorporate the requirements of appropriate Asset Maintenance Standards as amended to meet the requirements of the Contract and the Australian Maritime Safety Authority.
- (f) The Asset Management Plan must incorporate an obsolescence management plan that describes how Assets will meet their Design Life.
- (g) The Operator must submit the updated Asset Management Plan to TfNSW:
  - (i) as part of the development of the Asset Management Framework in accordance with Clause 25.2 including three months prior to the Planned Service Commencement Date;
  - (ii) thereafter, at yearly intervals by no later than 1 July in each Contract Year and if the Operator materially amends the Asset Management Plan including the technical maintenance plans.

#### 4. Handback Condition

At the Termination Date, the Operator must ensure that:

- (a) the Assets are in such condition to ensure a safe and reliable operation of the Services and comply with the requirements of the Contract;
- (b) all Asset Management Activities required under the Asset Management Plan are complete;
- (c) any deficiencies in any State Asset or Operator New Ferry that mean the Design Life, or the residual life, of the State Asset or Operator New Ferry will not be achieved are rectified (unless such deficiencies were forecast with the approval of TfNSW to be rectified after expiry of the Term in the course of Asset Management Activities undertaken in accordance with the Asset Management Plan);
- (d) any rotatable spares are in as new condition or refurbished in accordance with the Asset Management Plan;
- (e) all special tools and equipment are maintained and fit for purpose and are suitable to maintain the State Assets and Operator New Ferries as a going concern;
- (f) the State Premises in no worse a condition than identified in the Baseline Condition Report under Clause 23.1;
- (g) all Assets are performing to their intended function and are fault free;
- (h) Assets are clean and free from graffiti, vandalism and defects (subject only to fair wear and tear); and

- (i) an assurance statement is provided in accordance with Clause 53.5 of the Contract.

## 5. Asset Information System

### 5.1 General requirements of the Asset Information System

- (a) The Operator must provide, maintain, keep up to date and support an Asset Information System covering all Assets.
- (b) The Operator must:
  - (i) [REDACTED]
  - (ii) record all Asset information in the Asset Information System and keep such information up-to-date and accurate throughout the Term, including changes arising from:
    - (I) configuration changes to the Assets;
    - (II) like-for-like exchange of components;
    - (III) Asset faults reported and corrective actions taken; and
    - (IV) Asset Management Activities undertaken;
  - (iii) record the procurement, acquisition, maintenance and disposal of all Assets;
  - (iv) use the Asset Information System to generate reports on:
    - (A) the achieved performance and condition of the Assets; and
    - (B) Asset use;
  - (v) use the Asset Information System to support Asset performance analysis;
  - (vi) record the spares and consumables inventory data within the Asset Information System;
  - (vii) provide the necessary database tools, manuals, documentation and training required to enable the maintenance and exporting of Asset Information System data to be performed;
  - (viii) provide on-going training on the Asset Information System for TfNSW's staff; and
  - (ix) allow TfNSW to audit the validity, accuracy and currency of all data held within the Asset Information System at any time.
- (c) The data within the Asset Information System will be the property of TfNSW.
- (d) The Operator must make available to TfNSW all data and reports held in the Asset Information System in password-protected real-time format which incorporates full monitoring, review, searching and custom report generation facilities.
- (e) The Operator must participate with TfNSW to develop Asset data rules (**Asset Data Rules**). The Operator will then work in accordance with the Asset Data Rules prescribed by TfNSW.

### 5.2 Standards Conformance

- (a) The Operator must hold all relevant asset information as required by TfNSW and governed by the TfNSW Asset Information Standards, including but not limited to the data extract information defined in paragraph 5.3 of this Schedule.
- (b) The Operator must prove compliance with TfNSW Asset Information Standards as they evolve and mature over time.

### 5.3 Asset Information Data Extract

- (a) TfNSW may require at a future date for the Operator to transmit to TfNSW asset related information for all maintained infrastructure assets (linear and non-linear) and fleet assets, in a standard format prescribed by TfNSW. This format will cover both structured and unstructured asset related data.
- (b) Structured data will include (but is currently not limited to):
  - (i) asset identification data;
  - (ii) asset classification data;
  - (iii) asset hierarchy data;
  - (iv) asset location data;
  - (v) asset condition data;
  - (vi) asset attributes (including e.g. configuration, warranty, make and model);
  - (vii) asset related work orders (including measurements, service records); and
  - (viii) asset related defects.
- (c) Unstructured data related to assets will include (but is currently not limited to):
  - (i) diagrams;
  - (ii) drawings;
  - (iii) manuals;
  - (iv) reports;
  - (v) technical maintenance plans;
  - (vi) certificates; and
  - (vii) other asset maintenance related documents.
- (d) If requested to do so by TfNSW, the Operator must:
  - (i) provide structured data in a common industry standard file format for information interchange (determined by TfNSW);
  - (ii) deliver the structured data file(s) along with the related unstructured data files to a standard location (determined by TfNSW) on a regular basis.
- (e) The extracts may be both full or delta in nature (determined by TfNSW) and will need to be provided across the life of the Contract, including any final handover extracts as TfNSW requests.

### 5.4 Operator Extract General Obligations

- (a) The Operator must manage the operation of the extract process covered in paragraph 5.3 of this Schedule in an ongoing basis on the Operator side of the interface. This will include but is not limited to:
  - (i) nominating contacts within the Operator for TfNSW to operationally liaise with around the extract process;
  - (ii) ensuring extracts run at intervals prescribed by TfNSW;
  - (iii) ensuring extracts run successfully;
  - (iv) ensuring data produced is correct and up to date;
  - (v) ensuring any extraction failures are investigated and remediated quickly and efficiently, and reported to TfNSW; and
  - (vi) ensuring any requests for out-of-band extract runs are facilitated expeditiously.



## 5.5 Information requirements for the Asset Information System

- (a) Assets must be labelled at an appropriate level of disaggregation to allow asset management and reporting in accordance with the Contract and the TfNSW Assets Standards Authority naming convention.
- (b) The Asset Information System must include for all Assets unless otherwise agreed with TfNSW:
  - (i) a complete Asset register;
  - (ii) design information (i.e. design documentation, calculations, drawings etc.);
  - (iii) as built information;
  - (iv) supplier/vendor information;
  - (v) Asset type, function and output association;
  - (vi) Asset identifier including serial number;
  - (vii) age of Asset;
  - (viii) location of Assets;
  - (ix) current operational status;
  - (x) failure profile including operational impact assessment and failure history;
  - (xi) reliability analysis aligned with FMECA (Failure Mode, Effects, and Criticality Analysis);
  - (xii) maintenance history, including pre-approval activities and warranty history;
  - (xiii) forward Asset maintenance and replacement and refurbishment plans;
  - (xiv) manufacturer's maintenance requirements;
  - (xv) Asset Design Life and remaining life;
  - (xvi) Asset dependency conditions;
  - (xvii) planned, actual, and projected financial cost;
  - (xviii) Asset condition data and models;
  - (xix) testing and commissioning records;
  - (xx) inventory of spares and consumables;
  - (xxi) minimum levels for re-ordering;
  - (xxii) Asset criticality;
  - (xxiii) special conditions (i.e. environmental, heritage, confined space, dangerous materials etc.); and
  - (xxiv) capital acquisition cost, depreciation and residual value.
- (c) The Asset Information System must hold supporting information including:
  - (i) operations and maintenance manuals;
  - (ii) original equipment manufacturer manuals;
  - (iii) Asset Maintenance Standards including technical maintenance plans and manuals;
  - (iv) training materials, and
  - (v) drawings.
- (d) Asset records must be structured to reflect the requirements of the Asset Management Plan including, but not limited to, supporting effective monitoring of scheduling of maintenance activities and defect rectification.

- (e) The Asset Information System must be developed no later than three months before the Operator takes possession of the State Assets and data must be entered into the Asset Information System in accordance with this schedule from that time.

### 5.6 Asset Information System design requirements

The Asset Information System must:

- (a) be able to export data in standard industry format (including Excel) retaining all Asset details and hierarchies;
- (b) have the capability of integrating Asset data into a common user format;
- (c) be capable of providing integrated Asset information (including Asset performance) within a "dashboard" format to TfNSW and all approved stakeholders covering the data required under paragraph 5.2 of this Schedule;
- (d) have the capability for scheduling, prioritising and altering Asset Management Activities;
- (e) provide records in respect of inventory management, generation of work orders, bills of materials, tracking of costs and Asset warranty data;
- (f) apply version control to all maintenance procedures which is capable of identifying what version of a maintenance procedure was applied to an Asset at any given point in time;
- (g) be capable of recording all asset management activities; and
- (h) record and report on asset failure system responses.

## 6. Design Life

Number	Asset	Design Life from entry into service
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		

Number	Asset	Design Life from
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

Number	Asset	Design Life from entry into service
29		

**7. Life extension work**

The Operator must undertake the Existing Ferry life extension works described in Part D of Annexure 3 of this Asset Schedule.

**8. Lady Northcott and Lady Herron**

The Operator will provide berthing, survey, maintenance, security and insurance in relation to the Lady Northcott and Lady Herron.

TfNSW agrees to pay to the Operator the incremental costs reasonably and properly incurred by the Operator in relation to the provision of such services.

Annexures 1 to 4 redacted.

**Annexure 5 - Asset Presentation Schedule**

**1. Cleanliness**

**1.1 Customer outcome**

(a) Contract Ferries

Customers shall be provided with Contract Ferries that are clean and free from the effects of dirt and grime. This includes:

- (i) seats and armrests;
- (ii) entry and exit area and luggage storage;
- (iii) all surfaces inside and outside the Contract Ferries (including the floor, ceilings, walls, doors, decals, handrails, draught screens and grab-handles); and
- (iv) windows and frames.

(b) Wharves, Shipyard and Licensed Areas

Wharves, the Shipyard and Licensed Areas shall be clean and free from the effects of dirt and grime. This includes:

- (i) seats;
- (ii) canopies;
- (iii) floors and walls;
- (iv) stairs and ramp;
- (v) lifts;
- (vi) platforms;
- (vii) ticketing, public transport and local area information and wayfinding signage; and
- (viii) Ticketing Equipment.

**1.2 Standard – Performance**

[REDACTED]

**1.3 Standard – Remediation**

When an area of a Contract Ferry, a Wharf, the Shipyard or a Licensed Area outlined above has been observed by a member of Staff, or reported by a customer, to be in a condition such that it may soil clothing or property, the relevant area shall be cleaned at the earliest opportunity. Contract Ferries which are at level 1 for cleanliness (as defined in the table below) shall be remediated or removed from service immediately.

Once a major instance of graffiti has been observed by a Staff member, or reported by a customer, it shall be removed at the earliest opportunity.

(a) Definition: Cleanliness (includes all areas outlined in 'Cleanliness - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]





### 2.3 Standard – Remediation

When a part of a Contract Ferry or an area of a Wharf, the Shipyard or a Licensed Area has been observed by a Staff member, or reported by a customer, as broken or missing it shall be repaired or replaced at the earliest opportunity.

Once a major maintenance or safety issue has been observed by a Staff member, or reported by a customer, it shall be made safe and rectified at the earliest opportunity.

(a) Definition: Condition (includes all areas outlined in 'Condition - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Level	Label	Standard
		[REDACTED]

Annexures 6 to 15 redacted.

# Ferry System Contract

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

Transdev Sydney Ferries Pty Ltd in its personal capacity and as nominee for each of the Partners and the Partnership (**Operator**)

ACN 154 815 611 Pty Ltd jointly and severally in its capacity as partner of the Partnership (**Partner**)

ACN 087 535 224 Pty Ltd jointly and severally in its capacity as partner of the Partnership (**Partner**)

(Volume 3 of 3)

This Volume 3 contains Schedule 9 to Schedule 22 of the Ferry System Contract dated on or around  
20 February 2019

\_\_\_\_\_ between Transport for NSW on behalf of the State of New South Wales, Transdev Sydney Ferries Pty Ltd in its personal capacity and as nominee for each of the Partners and the Partnership, ACN 154 815 611 Pty Ltd jointly and severally in its capacity as partner of the Partnership and ACN 087 535 224 Pty Ltd jointly and severally in its capacity as partner of the Partnership.

Each attorney executing this Contract states that he or she has no notice of revocation or suspension of his or her power of attorney.

**EXECUTED** as a deed.

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

Elizabeth Mildwater  
Signature of authorised delegate

ELIZABETH MILDWATER  
Name of authorised delegate (block letters)

Jenny Birch  
Signature of witness

JENNY BIRCH  
Name of witness (block letters)

**Executed** by **Transdev Sydney Ferries Pty Ltd ABN 57 156 137 236** in accordance with Section 127 of the *Corporations Act 2001*

Pierre Talgorn  
Signature of director

PIERRE TALGORN  
Name of director (print)

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

NATHAN LANTHOIS  
Name of director/company secretary (print)

**Executed** by **ACN 154 815 611 Pty Ltd ACN 154 815 611** in accordance with Section 127 of the *Corporations Act 2001*

Pierre Talgorn  
Signature of director

PIERRE TALGORN  
Name of director (print)

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

NATHAN LANTHOIS  
Name of director/company secretary (print)

**Executed by ACN 087 535 224 Pty Ltd ACN 087 535 224** in accordance with Section 127 of the *Corporations Act 2001*

*Pierre Talgorn*

Signature of director

PIERRE TALGORN

Name of director (print)

*Nathan Lanthois*

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

NATHAN LANTHOIS

Name of director/company secretary (print)



Attachment redacted.



# Schedule 10- Market Process

In accordance with Clause 52.3 of the Contract, the Operator must prepare, maintain and keep up to date the following information to be used and published in any market process, being any process in connection with the re-tendering or contracting of all or any part of the Services by TfNSW:

- (a) employee information at an aggregate and at an individual level, including date of joining, contract / award terms, grade, accrued entitlements and training record, set out in the following manner.

Aggregate employee information – Number of Staff by Staff category (full time equivalents)

Category	Two Years Ago	Last Year	Current Year to Date
Management			
Administration			
Masters			
Customer Service Assistants			
General purpose hands			
Engineers			
Shipyards			
Operations			
Other			
Total			

Individual employee information – Accrued entitlements owing

Category	Start date	Service (years and months)	Long service leave (days/hrs)	Annual leave (days/hrs)	Other accrued entitlements	Training records
Number of months						
<b>Management</b>						
Person 1						
Person 2						
Person etc						
Sub total						
<b>Administration</b>						
Person 3						
Person 4						
Person etc						
Sub total						
<b>Masters</b>						

Category	Start date	Service (years and months)	Long service leave (days/hrs)	Annual leave (days/hrs)	Other accrued entitlements	Training records
Person 5						
Person 6						
Person etc						
Sub Total						
<b>Customer Service Assistants</b>						
Person 7						
Person 8						
Person etc						
Sub Total						
<b>General purpose hands</b>						
Person 9						
Person 10						
Person etc						
Sub Total						
<b>Engineers</b>						
Person 11						
Person 12						
Person etc						
Sub Total						
<b>Shipyard</b>						
Person 13						
Person 14						
Person etc						
<b>Operations</b>						
Person 17						
Person 18						
Person etc						
<b>Others</b>						
Person 19						
Person 20						
Person etc						

(b) payroll details at an aggregate and at an individual level, including wages and salaries, allowances and awards, overtime and penalties, set out in the following manner;

(c) general information on overtime, absenteeism, sick leave and industrial relations issues.

Aggregate payroll details: Annual wage / salary payments (incl. overtime payment)

Category	Two years ago	Last Year	Current year to date
Number of months	12	12	
Management			
Administration			
Masters			
Customer Service Assistants			
General purpose hands			
Engineers			
Shipyards			
Operations			
Other			
Total			

Individual payroll details: Current year to date (\$)

Category	Award	Grade	Ordinary time hour rate	Ordinary time payments	Overtime payments	Allowance payments	Total payments
Number of months							
<b>Management</b>							
Person 1							
Person 2							
Person etc							
Sub total							
<b>Administration</b>							
Person 3							
Person 4							
Person etc							
Sub total							
<b>Masters</b>							
Person 5							
Person 6							
Person etc							
Sub Total							
<b>Customer Assistant Officers</b>							

Category	Award	Grade	Ordinary time hour rate	Ordinary time payments	Overtime payments	Allowance payments	Total payments
Person 7							
Person 8							
Person etc							
Sub Total							
<b>General purpose hands</b>							
Person 9							
Person 10							
Person etc							
Sub Total							
<b>Engineers</b>							
Person 11							
Person 12							
Person etc							
<b>Shipyard</b>							
Person 13							
Person 14							
Person etc							
Sub Total							
<b>Operations</b>							
Person 17							
Person 18							
Person etc							
Sub Total							
<b>Other</b>							
Person 19							
Person 20							
Sub Total							
<b>Total</b>							

# Schedule 11 – Excluded Contract Employees

[Redacted content]

# Schedule 12 – Net Financial Impact

## 1. Application

- (a) Subject to the Contract, the Operator is entitled to be compensated for the negative Net Financial Impact of the following events (**NFI Events**):
  - (i) Change Events under Clause 41;
  - (ii) Modifications directed by TfNSW under Clause 46;
  - (iii) exercise by TfNSW of its rights under Clause 6.5; and
  - (iv) issue by TfNSW of a direction under Clause 24.3(d)(i).
- (b) Subject to the Contract, TfNSW is entitled to be paid an amount calculated by reference to the positive Net Financial Impact of the NFI Events referred to in paragraph 1(a) of this Schedule or if any Asset is lost, destroyed or damaged beyond economic repair (which for the purposes of this Schedule 12 is also deemed to be an NFI Event).

## 2. Calculation of Net Financial Impact

- (a) The Net Financial Impact of an NFI Event will be calculated having regard to:
  - (i) the incremental costs which the Operator incurs or will incur as a result of the NFI Event, including:
    - (A) design, construction, operating and maintenance costs which are the actual incremental direct costs of plant, labour, materials and subcontractors directly engaged in such activities directly required in relation to the NFI Event;
    - (B) manufacturing costs;
    - (C) financing costs;
    - (D) external third party advisory costs;
    - (E) subcontractor direct on-site overhead costs;
    - (F) subject to paragraph 3.8 of this Schedule, a reasonable amount (having regard to the NFI Event) in respect of the Operator's overhead costs;
  - (ii) any cost savings which accrue or will accrue to the Operator as a result of the NFI Event;
  - (iii) any insurance proceeds, damages, compensation or other revenue which the Operator receives or is entitled to receive (or would have received but for its acts, defaults or omissions or those of the Operator's Associates) as a result of the NFI Event; and
  - (iv) any liability to third parties (including subcontractors) incurred by the Operator as a result of the NFI Event.
- (b) If in any month the incremental costs and loss incurred or suffered by the Operator as a result of a NFI Event exceeds the cost savings derived by the Operator as a result of the NFI Event, the Net Financial Impact for that month will be a negative amount.
- (c) If in any month the cost savings derived by the Operator as a result of a NFI Event exceeds the incremental costs and loss incurred or suffered by the Operator as a result of the NFI Event, the Net Financial Impact for that month will be a positive amount.

### 3. Principles for calculating Net Financial Impact

#### 3.1 Overriding considerations

The overriding considerations for calculating Net Financial Impact will be that:

- (a) TfNSW is receiving value for money;
- (b) the compensation amount is fair and reasonable and is calculated in a manner that is transparent.

#### 3.2 Open book basis

The Operator must and must procure that the Operator's Associates:

- (a) provide all information in relation to the Operator's calculations on an open book basis;
- (b) if required by TfNSW, make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
- (c) allow TfNSW to review and undertake audits to enable it to verify compliance with paragraph 3.2(b),

in order to enable TfNSW to make an accurate assessment of the actual costs and savings. "Open book basis" will include the Operator providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs and overheads of the Operator and the Operator's Associates in a clear and transparent manner and other information reasonably required by TfNSW including reasonable available source documents required to verify such calculation.

#### 3.3 No double counting or double compensation

- (a) No amounts will be double counted and no costs will be payable more than once, whether as part of the Net Financial Impact or otherwise under this Contract.
- (b) Without limitation to paragraph 3.3(a), no amount will be included in the Net Financial Impact to the extent that the Operator is otherwise compensated for that amount under this Contract, including in any indexation.

#### 3.4 Incremental costs only

Changes in costs are to be determined on an incremental basis where:

- (a) in the case of an increase in costs, only costs that would not be incurred but for the NFI Event are taken into account; and
- (b) in the case of a reduction in costs, only savings that would not have accrued but for the NFI Event are taken into account.

#### 3.5 Fair and reasonable, arm's length arrangements

All increases or decreases in costs included in the calculation must:

- (a) be fair and reasonable; and
- (b) reflect commercial arm's length arrangements.

#### 3.6 Non-compliance with other obligations

The Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not have been incurred or suffered; and
- (b) include any cost savings which would have been derived,

had the Operator complied with its obligations under this Contract, other than to the extent the parties agree that an obligation is adversely affected by the relevant NFI Event.

### **3.7 Mitigation**

Without limiting paragraph 3.6, the Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not have been incurred or suffered; and
  - (b) include any costs savings which would have been derived,
- had the Operator complied with Clause 45.

### **3.8 Redundancy**

Any redundancy payments which are necessary and a direct and unavoidable result of a NFI Event (but excluding annual leave, rostered days off and long service leave entitlements) will be included provided the Operator has used reasonable endeavours to avoid or minimise those redundancies.

### **3.9 Insurance costs**

All insurance cost impacts must be included in the calculations.

### **3.10 Bid rates**

TfNSW may have regard to the rates set out in Annexure A to this Schedule 12 in calculating the Net Financial Impact component of any Adjustment Event.

## **4. Compensation Arrangements**

### **4.1 If agreed**

- (a) Subject to paragraph 4.2, the parties can agree that the Operator will be compensated or TfNSW will be paid for the Net Financial Impact of a NFI Event by:
  - (i) single lump sum payment, or a series of lump sum payments;
  - (ii) milestone payments; or
  - (iii) any other means which the parties may agree.
- (b) If the parties agree the arrangements by which the Operator will be compensated or TfNSW will be paid, then TfNSW must provide the agreed compensation, or the Operator must make the agreed payment, in accordance with the agreed arrangements.

### **4.2 If not agreed**

If the parties do not agree upon an arrangement for the payment of compensation under paragraph 4.1 of this Schedule, then:

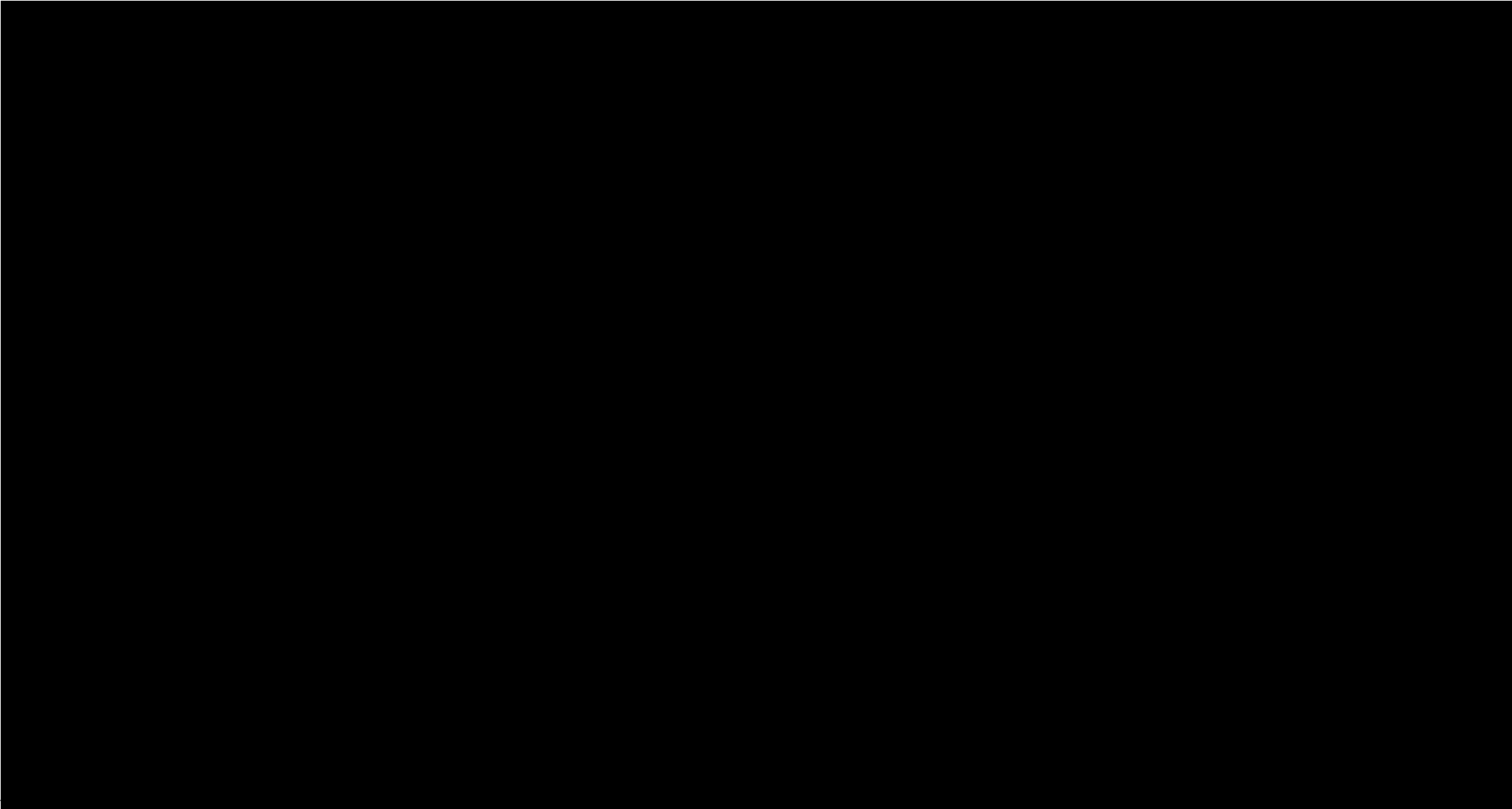
- (a) if the actual Net Financial Impact of a NFI Event in any month is a negative amount, that amount will become payable by TfNSW to the Operator after the end of the relevant month; and
- (b) if the actual Net Financial Impact of a NFI Event in any month is a positive amount, that amount will become payable by the Operator to TfNSW after the end of the relevant month.

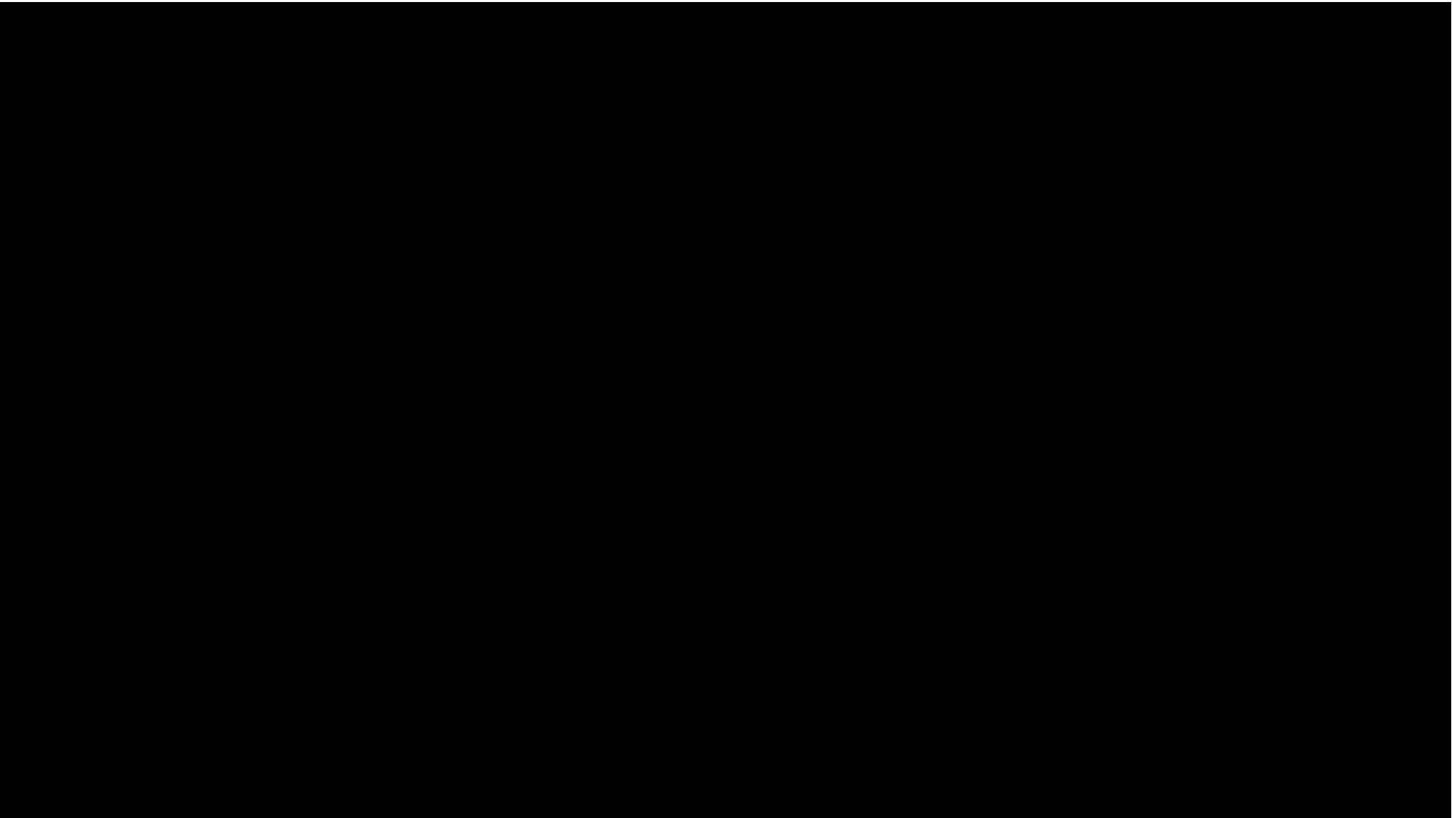
### **4.3 Claims for payment**

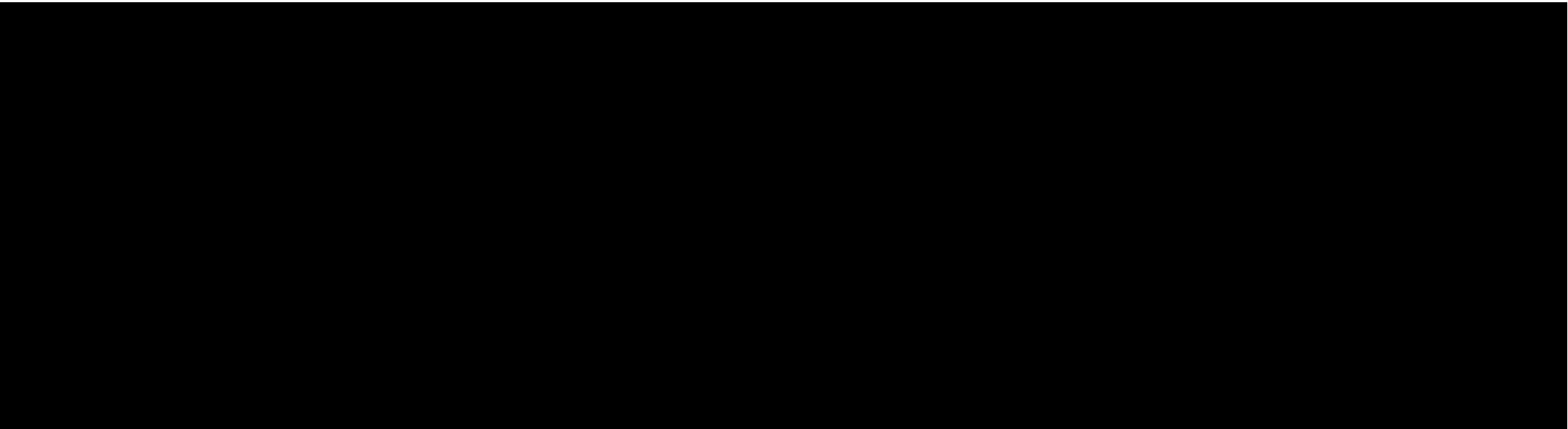
The Operator may submit claims for payment due under this paragraph 4 in accordance with Clause 36.



**Annexure A to Schedule 12 – Rates**







# Schedule 13 – Offer Commitments

## 1. Definitions

The following definitions apply in this Schedule unless the context requires otherwise:

**Acceptance Certificate** means an acceptance certificate provided by the Operator to TfNSW under paragraph 2.6(a) of this Schedule in relation to an Offer Commitment containing the information specified in paragraph 2.6(b) of this Schedule.

**Commitment Brief** in relation to an Offer Commitment means the brief relating to that Offer Commitment set out in paragraph 5 of this Schedule.

**Design and Business Rules** has the meaning given in paragraph 2.1(b) of this Schedule.

**Target Completion Date** means the target completion date specified in respect of an Offer Commitment in paragraph 5 of this Schedule.

## 2. Commitment Briefs and Design and Business Rules

### 2.1 Obligations

- (a) The Operator must complete or comply with, as the context requires, each Offer Commitment in accordance with the Commitment Brief relating to that Offer Commitment.
- (b) The Operator must work collaboratively with TfNSW to develop a detailed design and business rules governing the output of the new assets the subject of the Offer Commitment (**Design and Business Rules**) by the relevant date specified in paragraph 5 of this Schedule.

### 2.2 Acknowledgements

- (a) The Operator acknowledges and agrees that:
  - (i) it is entirely responsible for ensuring that each Offer Commitment is undertaken and completed in accordance with the relevant Commitment Brief and Design and Business Rules;
  - (ii) it will undertake and rely on its own investigations, review and analysis of each Commitment Brief and related Design and Business Rules and has made its own determination as to the activities that will need to be undertaken to enable the Operator to complete each Offer Commitment in accordance with its obligations under this Contract;
  - (iii) TfNSW has not made any representation or warranty in relation to the activities that will need to be undertaken by the Operator to enable it to complete the Offer Commitment in accordance with its obligations under this Contract; and
  - (iv) the risk that a Commitment Brief and related Design and Business Rules are inadequate or need to be varied in any way lies with the Operator, and TfNSW will not be liable to pay or reimburse the Operator for any variations to a Commitment Brief or related Design and Business Rules.
- (b) The Operator must provide to TfNSW details of the processes used to undertake an Offer Commitment as soon as reasonably practicable after receiving a request from TfNSW for these details.
- (c) TfNSW may notify the Operator if TfNSW considers that the processes used to undertake an Offer Commitment are inconsistent with the relevant Commitment Brief or the Operator's obligations under paragraph 2.3 of this Schedule.
- (d) The Operator must notify TfNSW of any material change proposed to the processes used to undertake an Offer Commitment provided to TfNSW under paragraph 2.2(b) of this Schedule.

## 2.3 Standard of works

The Operator must, in undertaking each Offer Commitment:

- (a) execute and complete the Offer Commitment in accordance with the relevant Commitment Brief and Design and Business Rules;
- (b) comply with all relevant Laws;
- (c) obtain and comply with all relevant Authorisations;
- (d) ensure that the Offer Commitment is undertaken by people who are suitably qualified and experienced;
- (e) ensure that the Offer Commitment is undertaken with due skill, care and diligence having regard to the nature of the activities;
- (f) undertake the Offer Commitment in a proper and workmanlike manner, consistent with the manner in which the Offer Commitment would be undertaken by a prudent, efficient and experienced ferry operator, construction manager or project manager;
- (g) minimise the disruption to the New South Wales transport network, Ferry Operations and Operators Activities to the extent reasonably practicable in the circumstances, having regard to the objective of the cost effective and timely delivery of the Offer Commitment; and
- (h) do all things reasonably required to ensure that the Offer Commitment does not compromise the operation of the New South Wales transport network as an integrated transport system.

## 2.4 Reporting requirements

- (a) No later than 14 days after the end of each Quarter, the Operator must provide to TfNSW a written report on the status of each Offer Commitment that has been, or that is being, undertaken during the Quarter.
- (b) Each report submitted by the Operator under paragraph 2.4(a) of this Schedule must contain details of the following:
  - (i) the status of the Offer Commitment including a list of activities/milestones completed during the report period and activities/milestones to be completed during the next report period;
  - (ii) a description of the financial status of the Offer Commitment including its value, the value of that part of the Offer Commitment completed during the report period and the value of that part of the Offer Commitment expected to be completed during the next report period; and
  - (iii) a statement relating to the completion of the Offer Commitment, including the likely completion date of the Offer Commitment (compared with the Target Completion Date) and any issue threatening to delay the completion of the Offer Commitment by the Target Completion Date along with a proposed delay mitigation strategy.

## 2.5 Timetable and date for completion of each Offer Commitment

The Operator must comply with the agreed timing for completion of each Offer Commitment as set out in each Commitment Brief.

## 2.6 Completion of Offer Commitment

- (a) The Operator must provide an Acceptance Certificate to TfNSW when the Operator considers that an Offer Commitment has been completed or achieved.
- (b) An Acceptance Certificate must include satisfactory evidence that the Offer Commitment has been completed or achieved in accordance with the relevant Commitment Brief and the Operator's obligations under paragraph 2.3 of this Schedule.
- (c) The Operator must provide to TfNSW any information or documentation reasonably requested by TfNSW to assist TfNSW to consider whether the Operator has satisfied the

requirements in paragraph 2.6(a) and (b) of this Schedule and that the information contained in an Acceptance Certificate is correct.

- (d) If the Operator and TfNSW are unable to agree whether the Operator has satisfied the requirements in paragraph 2.6(b) of this Schedule or that the information contained in an Acceptance Certificate is correct, then either party may refer the matters in dispute to the Expert for determination under Clause 60.

## 2.7 Intellectual Property

The parties acknowledge that any Intellectual Property subsisting in any Materials (including, for the purpose of this Schedule, in any information, records, reports, documents, drawings, specifications, instructions, procedures, training materials, photographs, management plans, software (including source code), operating plans and schedules) that may be developed by or on behalf of the Operator in connection with the performance of its obligations under this Schedule will be deemed to be New Contract Material for the purposes of Clause 56.

## 3. Withholding Amounts

TfNSW may, by notice to the Operator, withhold payment of any or all of any Payments an amount not exceeding the specified withholding amount for each Offer Commitment where the Operator has not completed or achieved an Offer Commitment by the relevant Target Completion Date. Amounts withheld by TfNSW under this paragraph 3 will be paid by TfNSW on TfNSW being satisfied that the Operator has completed or achieved the relevant Offer Commitment. The right to withhold payment under this paragraph is in addition to, and not in substitution of, any other right conferred on TfNSW at Law or under another Transaction Document.

## 4. Records and Reporting

### 4.1 Records

- (a) The Operator must, in respect of each Offer Commitment, maintain true, up to date and complete copies of all documentation and records prepared, created or obtained by the Operator (or by any other person and provided to the Operator) for the purposes of planning, developing and implementing the Offer Commitment as the case may be (**Commitment Records**).
- (b) The Commitment Records must be held by the Operator for six years after completion of the relevant Offer Commitment unless otherwise specified or directed by TfNSW.
- (c) The Operator must:
- (i) deliver to TfNSW any Commitment Records as and when requested by TfNSW; and
  - (ii) respond to any questions relating to, or connected with, the Commitment Records as reasonably requested by, and within the period reasonably specified by, TfNSW.
- (d) Any Commitment Records or other information or material required to be provided to TfNSW under this Contract must be provided in a format which is compatible with TfNSW's databases and record systems.

### 4.2 Documentation to be provided following completion of Offer Commitments

- (a) The Operator must provide TfNSW with all data, drawings, information, records, plans and other material relating to the activities undertaken by or for the Operator in respect of any Offer Commitment which TfNSW requires to update TfNSW's databases and records systems no later than one month after any request by TfNSW for such material.
- (b) All data, drawings, information, records, plans and other materials provided under this paragraph 4 must be submitted to TfNSW in a format which is compatible with TfNSW's databases and record systems, as specified by the database maintainer.

## 5. Offer Commitments

### 5.1 Commitment 1 – Replacement of the Ferry Operations Customer Information System

- (a) Replacement of the current FOCIS system with new operational telematics software. The replacement FOCIS system must:
- (i) be an ISO9001 compliant, turn-key solution in support to replace the life expired Fleet Operations and Customer Information System (**FOCIS**) presently used to track ferries and provide customer information via Passenger Information Displays (**PIDs**);
  - (ii) enable tracking of mobile assets;
  - (iii) enable planning and operations functions;
  - (iv) provide passenger information on wharves;
  - (v) provide real-time feed of service status data through TfNSW to end-user apps;
  - (vi) provide timetable creation to enable the monitoring of ferry performance against timetable;
  - (vii) provide a comprehensive reporting suite;
  - (viii) provide real-time KPI dashboard;
  - (ix) provide automatic calculation of ferry performance against timetable;
  - (x) provide secure remote access via mobile applications (iOS and Android);
  - (xi) provide real time Master feedback;
  - (xii) be installed on all RMS Wharves and Existing Ferries; and
  - (xiii) otherwise ensure that the new system complies with the function and technical specific set out in Attachment A and Attachment B to this Schedule. To the extent there is any inconsistency between paragraph (i) to (xi) above and Attachment A and Attachment B, paragraph (i) to (xi) above prevail.

In addition, the Operator must arrange for the decommissioning and disposal of the existing life expired assets (including in accordance with the make good requirements of any relevant owner of premises at which those assets are located).

- (b) The scope of the replacement of the current FOCIS system includes the following:
- (i) all Existing Ferries will be fitted with 4Tel;
  - (ii) all New Ferries will be fitted with 4Tel during commissioning;
  - (iii) every PID will (either on wharf or Contract Ferries) be updated to be compatible with the 4Tel system in order to provide customer information;
  - (iv) during the initial transition, the PIDs will only be replaced on an 'as needs' basis if the screen is not operating or operating in a degraded state; and
  - (v) decommissioned Contract Ferries will have 4Tel systems removed for use as spares or refitting into New Ferries.
- (c) The Design and Business Rules must be finalised [REDACTED]
- (d) The completion date for the achievement of this Offer Commitment is [REDACTED]. Installation of the new FOCIS system on New Ferries is to be completed at the time of delivery of those New Ferries.
- (e) Failure to:
- (i) finalise the Design and Business Rules by the date specified in paragraph 5.1(c) of this Schedule; or
  - (ii) achieve the Offer Commitment by the date specified in paragraph 5.1(d) of this Schedule,

will constitute a Non-Compliance Event and will entitle TfNSW to withhold from the Payments payable to the Operator an amount not exceeding [REDACTED] until such time as the FOCIS replacement system is established in accordance with paragraph 5.1(a) of this Schedule.

## 5.2 Commitment 2 – Replacement of Microwave Network Repeater Equipment

- (a) Replacement of the Microwave Network Repeater Equipment. The replacement Microwave Network Repeater Equipment must:
- (i) replace all life expired equipment and Assets within the network with current, fit-for-purpose equipment;
  - (ii) provide an efficient, reliable, and resilient connection of the systems supporting the Ferry Operations; and
  - (iii) otherwise ensure that the new system complies with the function and technical specific set out in Attachment A and Attachment C to this Schedule. To the extent there is any inconsistency between paragraph (i) to (ii) above and Annexure A and Annexure C, paragraph (i) to (xi) above prevail.

In addition, the Operator must arrange for the decommissioning and disposal of the existing life expired assets (including in accordance with the make good requirements of any relevant owner of premises at which those assets are located). This work be delivered pursuant to the process set out in Clause 47.8.

- (b) The Design and Business Rules must be finalised by [REDACTED]
- (c) The completion date for the achievement of this Offer Commitment is [REDACTED]
- (d) Failure to:
- (i) finalise the Design and Business Rules by the date specified in paragraph 5.2(b) of this Schedule; or
  - (ii) achieve the Offer Commitment by the date specified in paragraph 5.2(c) of this Schedule,

will constitute a Non-Compliance Event and will entitle TfNSW to withhold from the Payments payable to the Operator an amount not exceeding [REDACTED] until such time as the Microwave Network Repeater Equipment is operational in accordance with paragraph 5.2(a) of this Schedule. Completion of this Offer Commitment is subject to approval of the licensors under the Microwave Network Repeater Licences, provided the Operator has used its best endeavours to obtain such approvals.

## 5.3 Commitment 3 – Replacement of the CCTV System

- (a) Replacement of the existing CCTV system with a new closed circuit television system in accordance with the following:
- (i) CCTV will be upgraded for all existing cameras and new cameras added to the system on RMS Wharves or Contract Ferries;
  - (ii) cameras and video recording hardware will be upgraded at all RMS Wharves existing as at date of execution of this Contract;
  - (iii) new CCTV system will be installed on all New Ferries deployed;
  - (iv) new CCTV system will be installed on all applicable First Fleet class Contract Ferries during the life extension works;
  - (v) CCTV system will be upgraded/refreshed (to be compatible with new system) on all existing Emerald class Contract Ferries (this upgrade will be undertaken in line with regular maintenance schedules); and
  - (vi) CCTV will not be fitted to Existing Ferries for vessels that are planned to be discontinued under the Fleet Deployment Plan.



- (b) The replacement CCTV system must:
- (i) enable reasonably comprehensive observation of all passenger spaces including on wharves, and vessels, except inside toilets;
  - (ii) record images from all cameras in all operational modes and environmental conditions;
  - (iii) be tamper resistant such that any tampering and any corruption of data can be detected and identified;
  - (iv) comply with National Code of Practice for CCTV Systems for Mass Passenger Transport for Counter-Terrorism and the Public Transport Closed Circuit Television (CCTV) Functional Requirements Standard published by the Asset Standards Authority;
  - (v) enable identification as defined in AS4806.2 of individuals within the passenger areas of vessels and wharves;
  - (vi) be vandal proof;
  - (vii) only be accessible and downloadable by authorised personnel including authorised personnel of TfNSW and TfNSW's Associates;
  - (viii) include a search facility to enable the image data to be searched by camera and date and time;
  - (ix) be removable by authorised personnel without affecting the stored data to enable chain of custody and evidence processes to be followed;
  - (x) be weather proof if exposed to the environment;
  - (xi) enable the Master to view fore and aft from the wheelhouse control station whilst berthing;
  - (xii) enable the Crew to observe engine rooms;
  - (xiii) record and maintain a minimum of seven days of CCTV images before overwriting;
  - (xiv) record the date, time, camera location and geographical location with all stored image data;
  - (xv) enable authorised personnel to remotely download data;
  - (xvi) enable authorised personnel to concurrently view at least two CCTV camera images remotely in near real time;
  - (xvii) periodically download data for all cameras within each Vessel to the central storage;
  - (xviii) be installed on all RMS Wharves and Existing Ferries; and
  - (xix) otherwise ensure that the new system complies with the function and technical specific set out in Annexure A and Annexure D to this Schedule. To the extent there is any inconsistency between paragraph (i) to (xviii) above and Annexure A and Annexure D, paragraph (i) to (xi) above prevail.

In addition, the Operator must arrange for the decommissioning and disposal of the existing life expired assets (including in accordance with the make good requirements of any relevant owner of premises at which those assets are located) except in relation to Contract Ferries that are due to be retired in accordance with the Fleet Replacement Plan.

- (c) The Design and Business Rules must be finalised by [REDACTED]
- (d) The target completion date for the achievement of this Offer Commitment is the later of:
- (i) nine months after the date of approval of the Design and Business Rules; or
  - (ii) [REDACTED]

Installation of the new system on New Ferries is to be completed at the time of delivery of the New Ferries.

- (e) Failure to:
  - (i) finalise the Design and the Business Rules by the date specified in paragraph 5.3(c) of this Schedule; or
  - (ii) achieve the Offer Commitment by the date specified in paragraph 5.3(d) of this Schedule,

will constitute a Non-Compliance Event and will entitle TfNSW to withhold from the Payments payable to the Operator an amount not exceeding [REDACTED] until such time as the CCTV system is established in accordance with paragraph 5.3(a) of this Schedule.

- (f) Implementation of the replacement of the CCTV system will be consistent with the timeframes contained in Table 1 of Annexure DA to this Schedule.

#### **5.4 Commitment 4 – ISO 55001 Accreditation**

- (a) The Operator must obtain ISO 55001 accreditation for the Asset Management Plan Framework.

- (b) The Design and Business Rules must be finalised [REDACTED]

- (c) The completion date for the achievement of this Offer Commitment is [REDACTED]

- (d) Failure to:

- (i) finalise the Design and the Business Rules by the date specified in paragraph 5.4(b) of this Schedule; or
- (ii) achieve the Offer Commitment by the date specified in paragraph 5.4(c) of this Schedule,

will constitute a Non-Compliance Event and will entitle TfNSW to withhold from the Payments payable to the Operator an amount not exceeding [REDACTED] until such time as ISO 55001 accreditation is achieved in accordance with paragraph 5.4(a) of this Schedule.

#### **5.5 Commitment 5 – New Operations Control Centre (OCC) Setup**

- (a) The Operator must establish a new Operations Control Centre (**OCC**), being a centralised facility with the capability to manage disruption, crew changes, incident management, vessel breakdown and send information to staff and customers about service conditions and problems on the network.

- (b) The Design and Business Rules must be finalised by [REDACTED]

- (c) The completion date for the achievement of this Offer Commitment is [REDACTED]

- (d) Failure to:

- (i) finalise the Design and the Business Rules by the date specified in paragraph 5.5(b) of this Schedule; or
- (ii) achieve the Offer Commitment by the date specified in paragraph 5.5(c) of this Schedule,

will constitute a Non-Compliance Event and will entitle TfNSW to withhold from the Payments payable to the Operator an amount not exceeding [REDACTED] until such time as the new OCC is established in accordance with paragraph 5.5(a) of this Schedule.

#### **5.6 Commitment 6 – BlueFlow Condition Monitoring**

- (a) The Operator must introduce BlueFlow condition monitoring, which tracks hull condition by monitoring average fuel consumption.

- (b) The Design and Business Rules must be finalised by [REDACTED]

- (c) The completion date for the achievement of this Offer Commitment is [REDACTED]

- (d) Failure to:

- (i) finalise the Design and the Business Rules by the date specified in paragraph 5.6(b) of this Schedule; or
- (ii) achieve the Offer Commitment by the date specified in paragraph 5.6(c) of this Schedule,

will constitute a Non-Compliance Event and will entitle TfNSW to withhold from the Payments payable to the Operator an amount not exceeding [REDACTED] until such time as the Blue Flow condition monitoring is established in accordance with paragraph 5.6(a) of this Schedule.

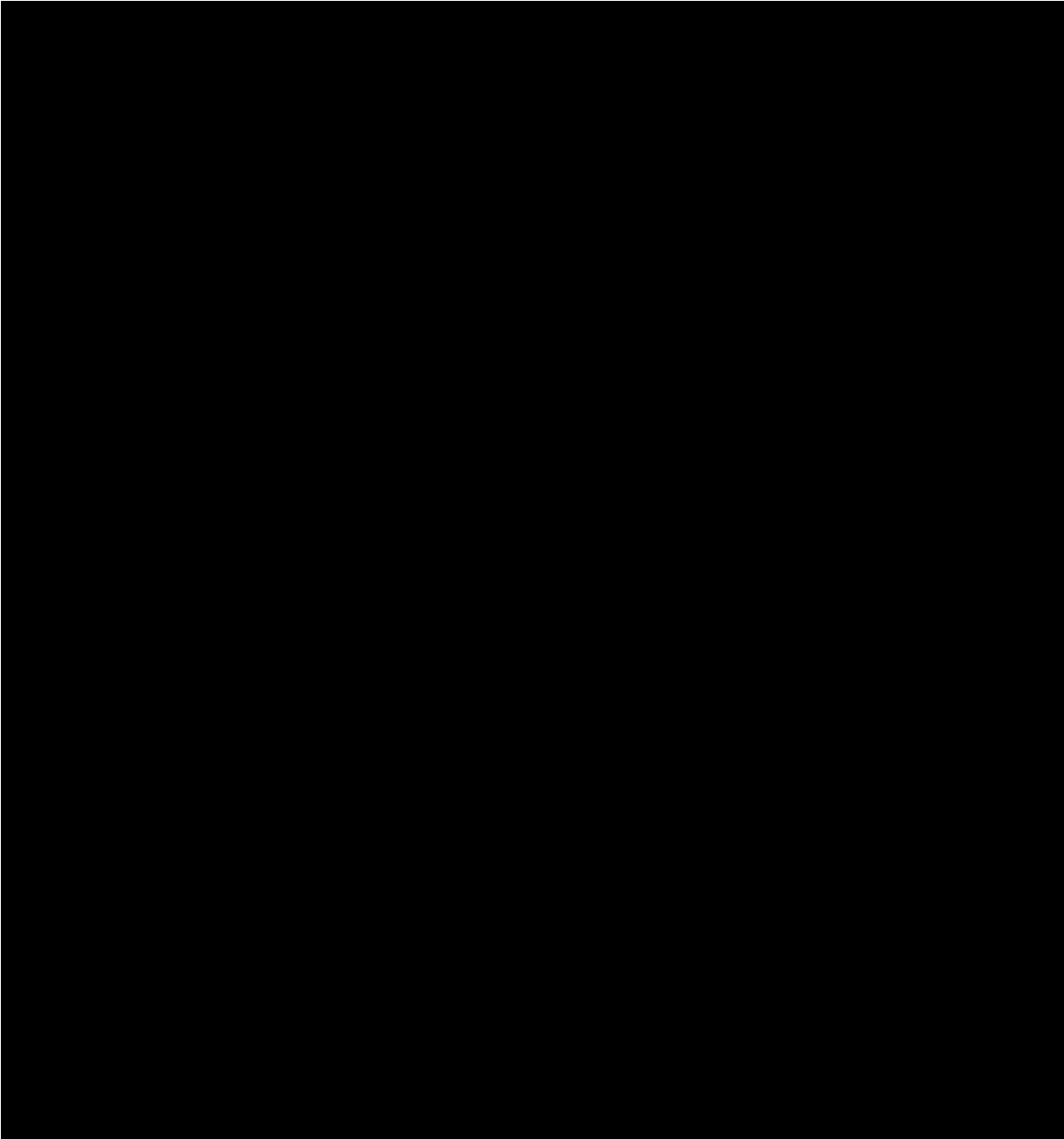
Annexures A to DA redacted.

# Schedule 14 – Operator Stakeholder Engagement Plan

Attachment redacted

# Schedule 15 – On Demand Service Transition Plan

On Demand Transition Milestones [Bays Precinct On Demand Trial]



**Bays Precinct Transition Plan**

Attachment redacted

## Reporting Requirements

The Operator's reports in relation to any trial of an On Demand Service Option must include at minimum the following:

- (a) data generated from customer feedback records;
- (b) data about the reliability of the On Demand Services and potential improvements;
- (c) data regarding patronage demand including recommendation regarding any additional vessels and associated equipment or adjustment of the Operator's personnel classification and or resourcing required for the provision of On Demand Services;
- (d) data regarding wharf access (including wharves in Catchment Zone) and potential changes to wharf access including the level of investment required (over and above priced inclusions) for the provision of compliant and customer focused amenities for On Demand Services;
- (e) information about the booking and ticketing infrastructure or related technological solutions and any potential improvements;
- (f) data regarding trends or changes in the demographics, land use and infrastructure that impact on the On Demand Services;
- (g) information regarding identified inefficiencies and potential strategies to overcome such inefficiencies;
- (h) information from incidents and accidents and associated recommendations;
- (i) information regarding security issues or matters that affect passenger or public safety and recommended measures to address such issues or matters;
- (j) information regarding changes to legislative requirements and governing standards; and
- (k) recommended measures to improve customer amenity in connection with On Demand Services.

## Reporting Template

The On Demand Service Option final report should include the following where applicable:

- (a) Executive Summary
- (b) Introduction
  - (i) Description of project
  - (ii) Technology platform
  - (iii) Assets and staff
  - (iv) Booking process
  - (v) Safety
- (c) Marketing and advertising
  - (i) Marketing activities undertaken
  - (ii) Engagement with customers
- (d) Operations
  - (i) Competition environment
  - (ii) Intermodal connectivity and demand
  - (iii) Total passenger bookings
  - (iv) Proportion of bookings accepted vs rejected
  - (v) Total customer cancellations and no shows
  - (vi) Total passenger trips delivered



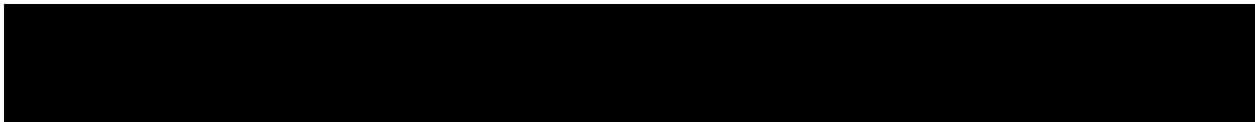
- (vii) Total ferry service hours (in and out of service)
- (viii) Most popular service stops (nature and trends)
- (ix) Reliability and potential improvements
- (e) Safety
  - (i) Approach
  - (ii) Incidents, issues and analysis
  - (iii) Actions & recommendations
  - (iv) Security or matters impacting public safety
- (f) Technology
  - (i) Number of application downloads
  - (ii) Summary of technology feedback (ratings, positive / negative comments relating to App)
  - (iii) Booking and ticketing infrastructure or related technology solutions
- (g) KPI Calculations (for each KPI)
  - (i) Month by month
  - (ii) Overall
  - (iii) Trend analysis
- (h) Ticketing
  - (i) Number of tickets purchased
  - (ii) Distribution of fare types (standard, concession)
  - (iii) Distribution of booking types (in application, service desk)
  - (iv) Service desk contact (nature and trends)
- (i) Financial summary
  - (i) Value of ticket sales by booking types (in application, service desk)
  - (ii) Cost overview
  - (iii) Efficiency analysis
    - (A) Average cost per passenger
    - (B) Average cost per service hour
    - (C) Other identified inefficiencies and potential strategies to overcome
- (j) Customer satisfaction
  - (i) Overview of feedback process and response rates
  - (ii) Summary of service feedback
  - (iii) Customer behaviour insights
  - (iv) Feedback comments
- (k) Stakeholder engagement and communications
  - (i) Stakeholder feedback
  - (ii) Public and/or media interest
- (l) Wharves
  - (i) Data regarding wharf access (including wharves in catchment zone)
  - (ii) Potential changes to wharf access for On Demand Services

- (m) Trends and changes to demographics, land use and infrastructure impacting On Demand Services
- (n) Legislation and governing standards
- (o) Lessons learned
  - (i) Service delivery
  - (ii) Stakeholder
  - (iii) Concerns
  - (iv) Obstacles or challenges
  - (v) Financials
  - (vi) Recommended improvements (including to reliability, patronage (e.g. requirements for additional vessels or personnel changes), responding to trends and changes, security and public safety and customer amenity)
  - (vii) Recommendations.

# Schedule 16 – Safety Management Plan

Attachment redacted

# Schedule 17– CQ Disruption Parameters



# Schedule 18 – Security Deeds

## Part A – Operator Security Deed

Attachment redacted

**Part B – Specific Security Deed**

Attachment redacted

# Schedule 19 – Ferry Advertising Panels

See attached

# Vessel Zones

MANLY FERRIES: COLLAROY

Lower Deck

**Key:**

Tall Portrait Panels - TP

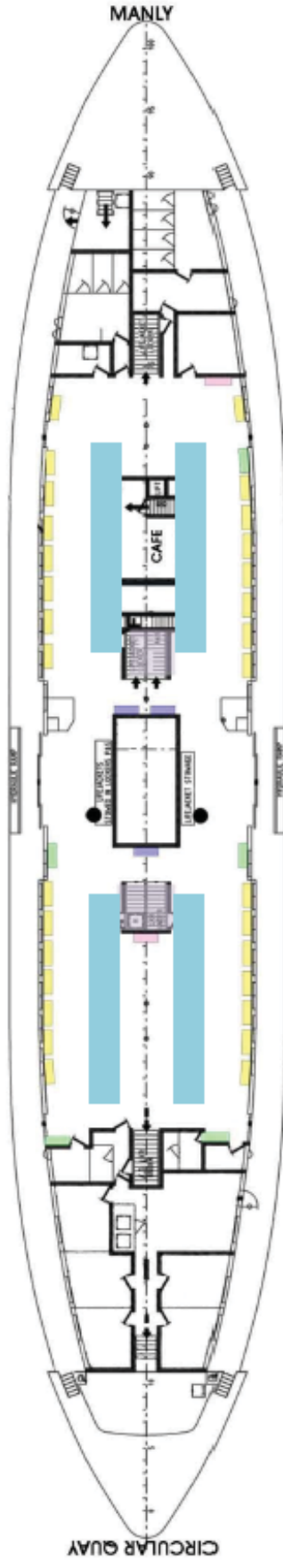
Ceiling Panels - CP

Framed Landscape Panels - FL

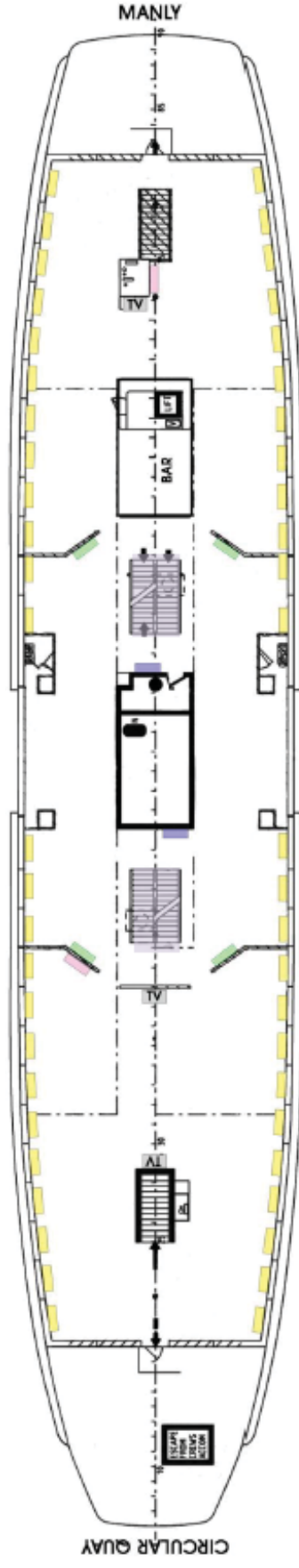
Mega Portrait Panels - MP

Stair Takeover - ST

Large Format Floor Decal



Upper Deck





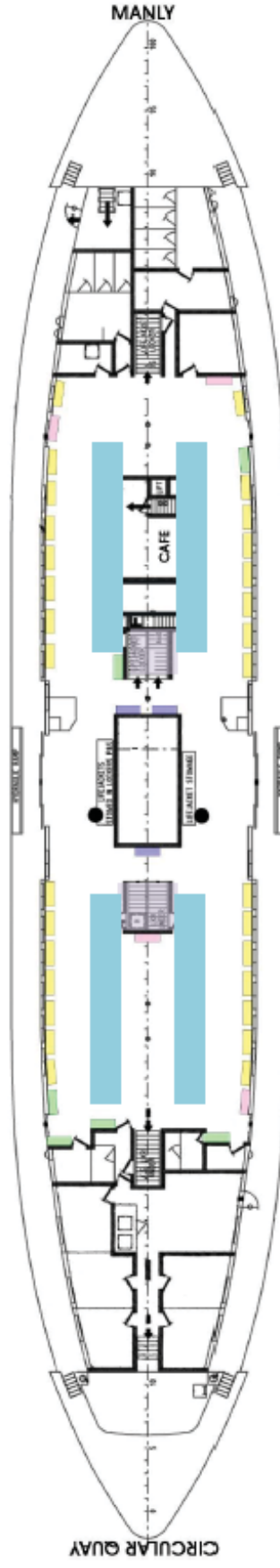
# Vessel Zones

## MANLY FERRIES: FRESHWATER

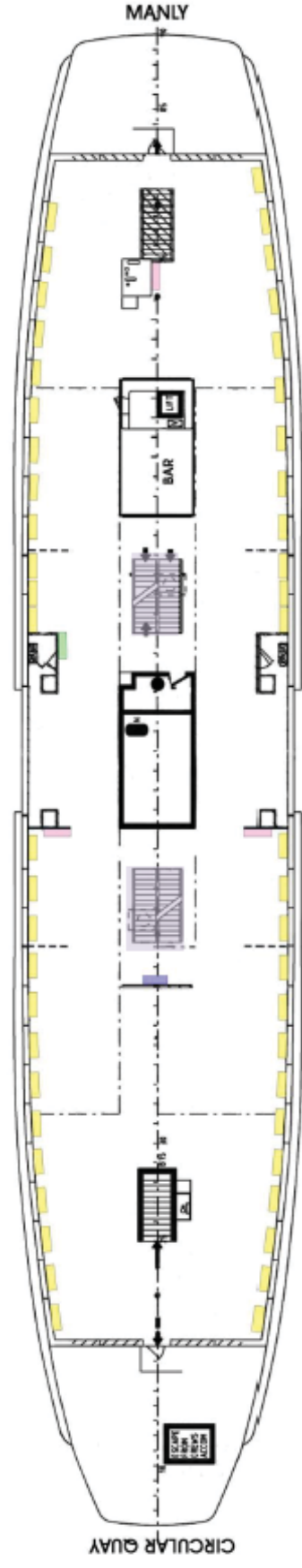
### Lower Deck

#### Key:

- Tail Portrait Panels - TP
- Ceiling Panels - CP
- Framed Landscape Panels - FL
- Mega Portrait Panels - MP
- Stair Takeover - ST
- Large Format Floor Decal



### Upper Deck



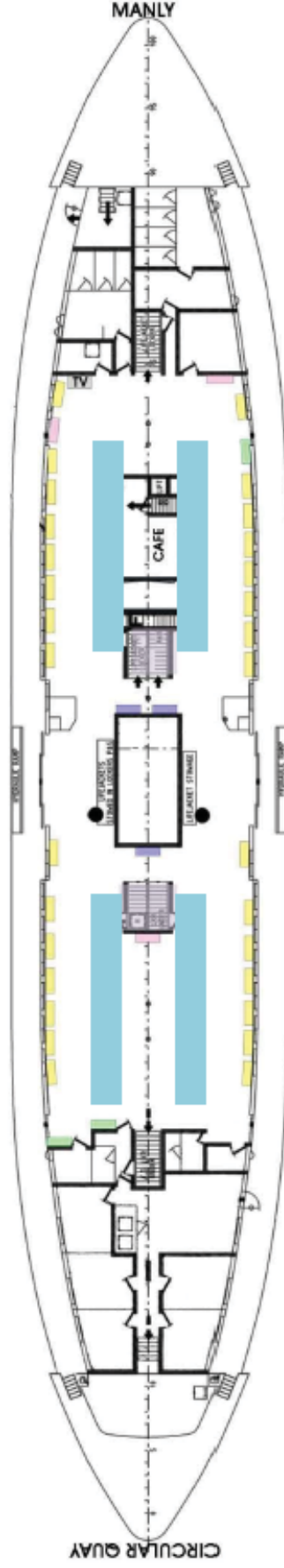
# Vessel Zones

## MANLY FERRIES: NARRABEEN

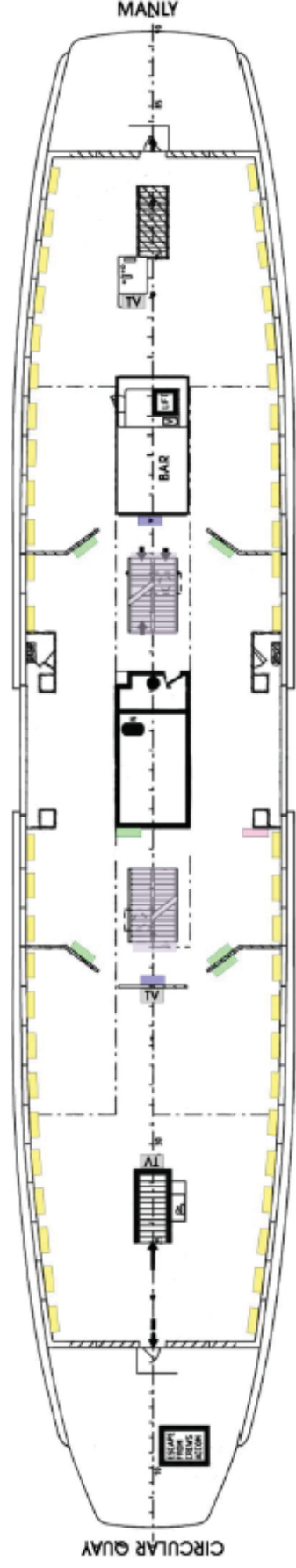
### Lower Deck

#### Key:

- Tall Portrait Panels - TP
- Ceiling Panels - CP
- Framed Landscape Panels - FL
- Mega Portrait Panels - MP
- Stair Takeover - ST
- Large Format Floor Decal



### Upper Deck



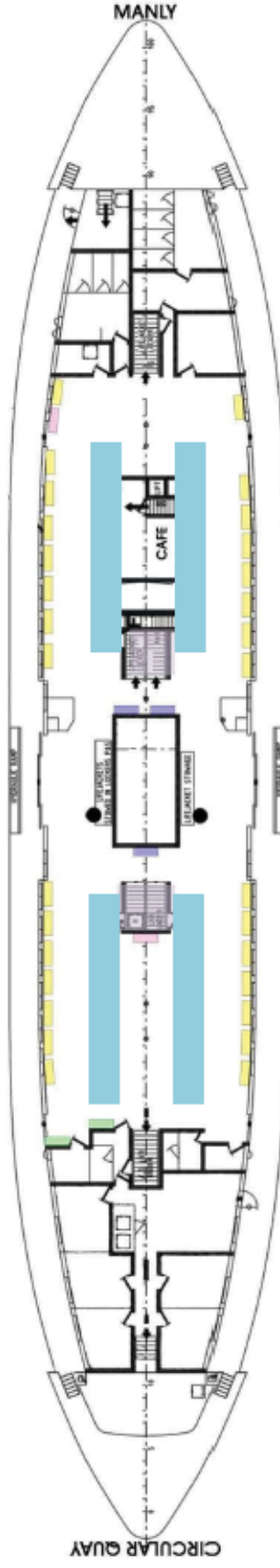
# Vessel Zones

## MANLY FERRIES: QUEENSCLIFF

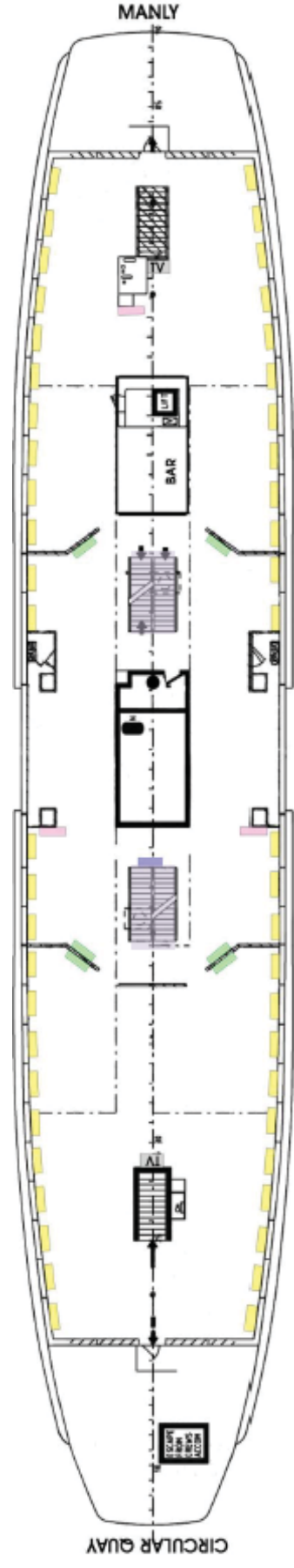
### Lower Deck

#### Key:

- Tall Portrait Panels - TP
- Ceiling Panels - CP
- Framed Landscape Panels - FL
- Mega Portrait Panels - MP
- Stair Takeover - ST
- Large Format Floor Decal



### Upper Deck



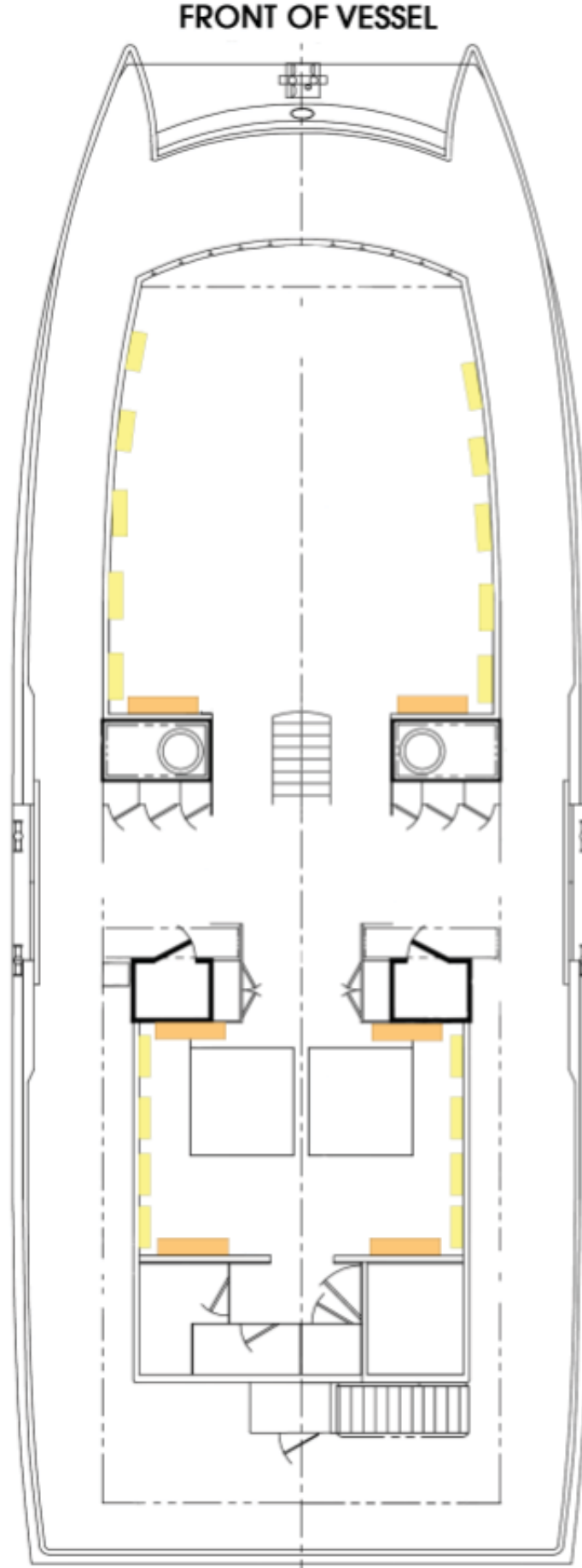
# Vessel Zones

FIRST FLEET FERRIES: FRIENDSHIP

Lower Deck

**Key:**

- Ceiling Panels
- Medium Portrait Panels



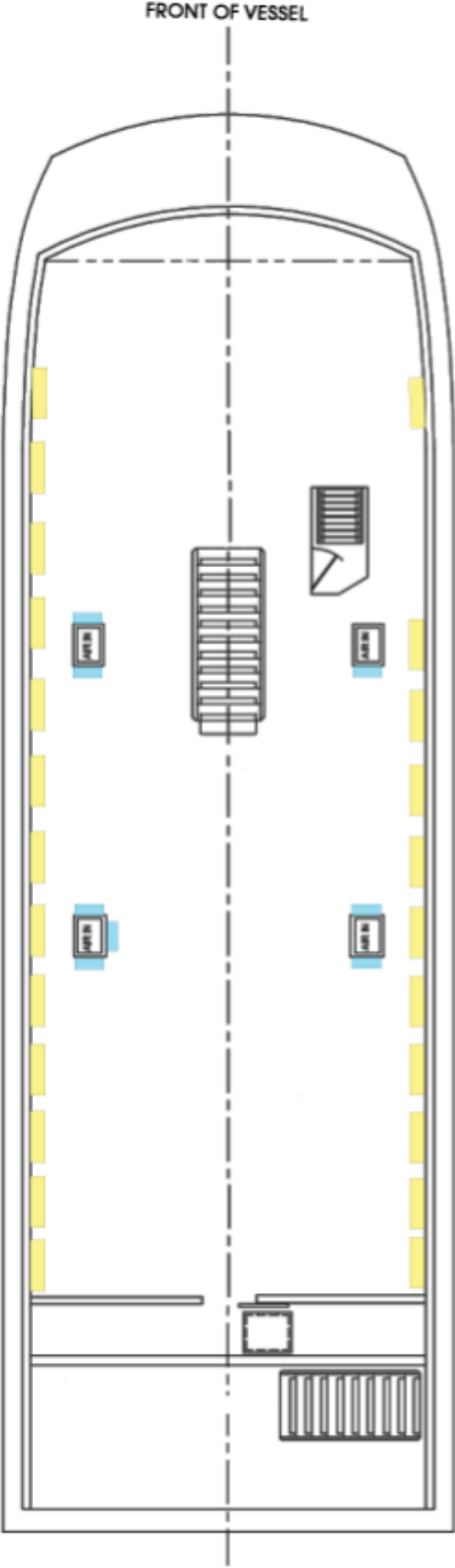
# Vessel Zones

FIRST FLEET FERRIES: FRIENDSHIP

Upper Deck

**Key:**

- Ceiling Panels - CP
- Slim Portrait Panels - SP



# Vessel Zones

## RIVER CAT FERRIES: EVONNE GOOLAGONG

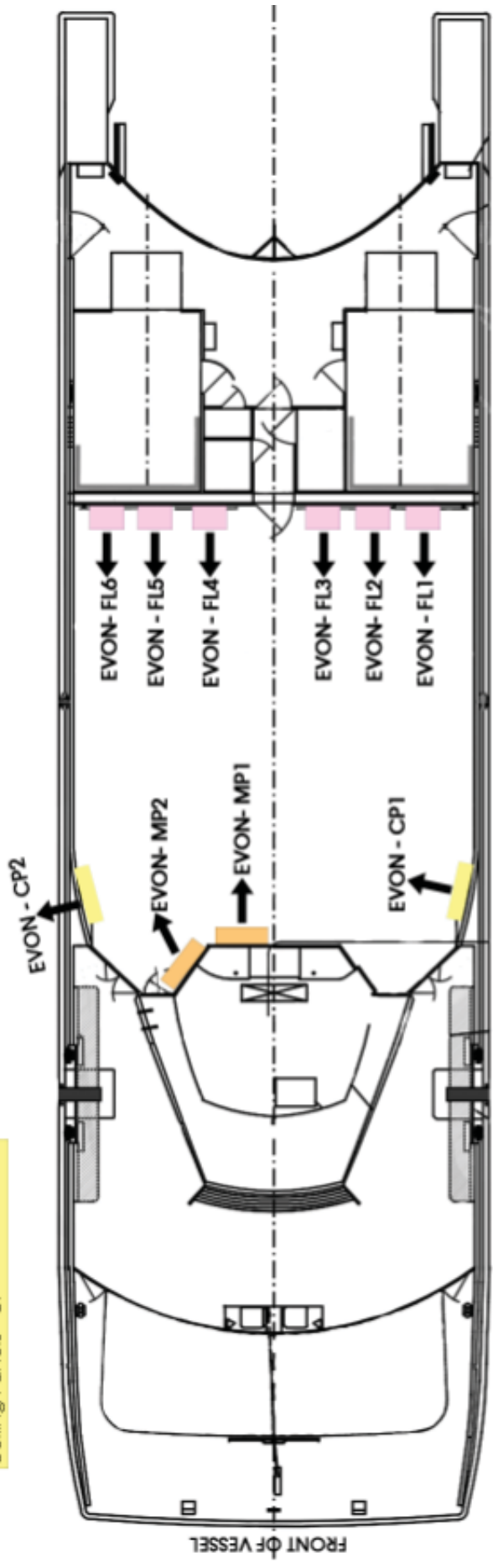
Main Deck

### Key:

Framed Landscape Panels - FL

Medium Portrait Panels - MP

Ceiling Panels - CP



# Vessel Zones

RIVER CAT FERRIES: MARLENE MATHEWS

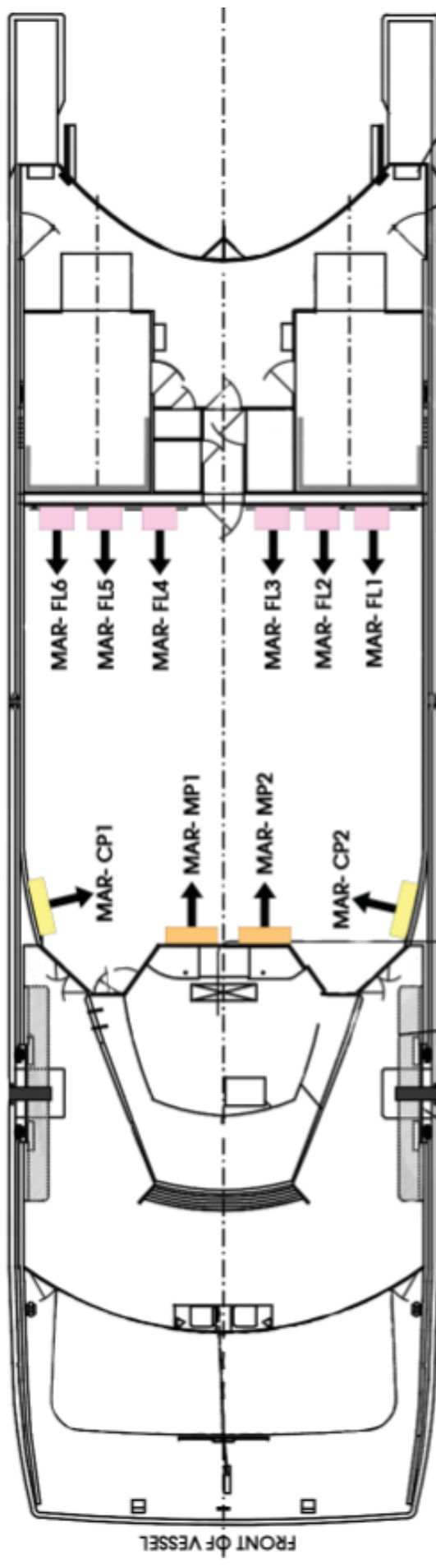
Main Deck

## Key:

Framed Landscape Panels - FL

Medium Portrait Panels - MP

Ceiling Panels - CP



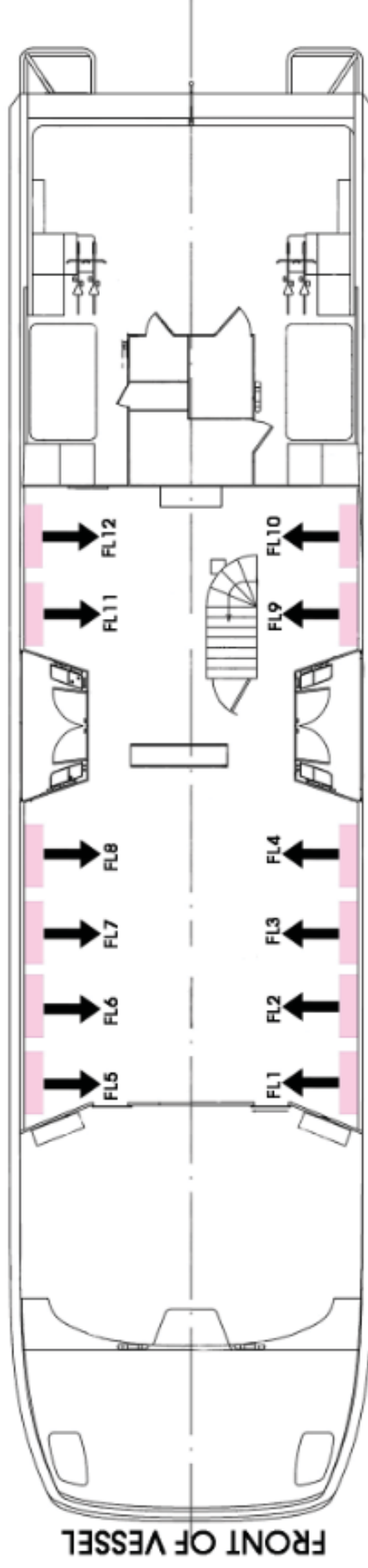
# Vessel Zones

SUPERCAT FERRIES: IV

Main Deck

## Key:

Framed Landscape Panels - FL





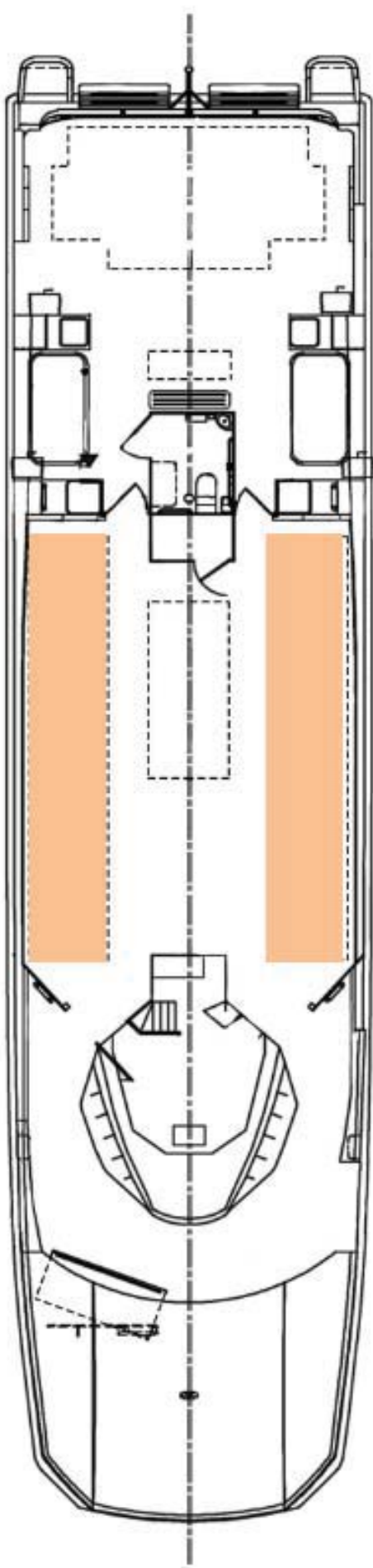
# Vessel Zones

HARBOUR CAT FERRIES: ANN SEARGENT

Main Deck

## Key:

Large Format Ceiling Panels



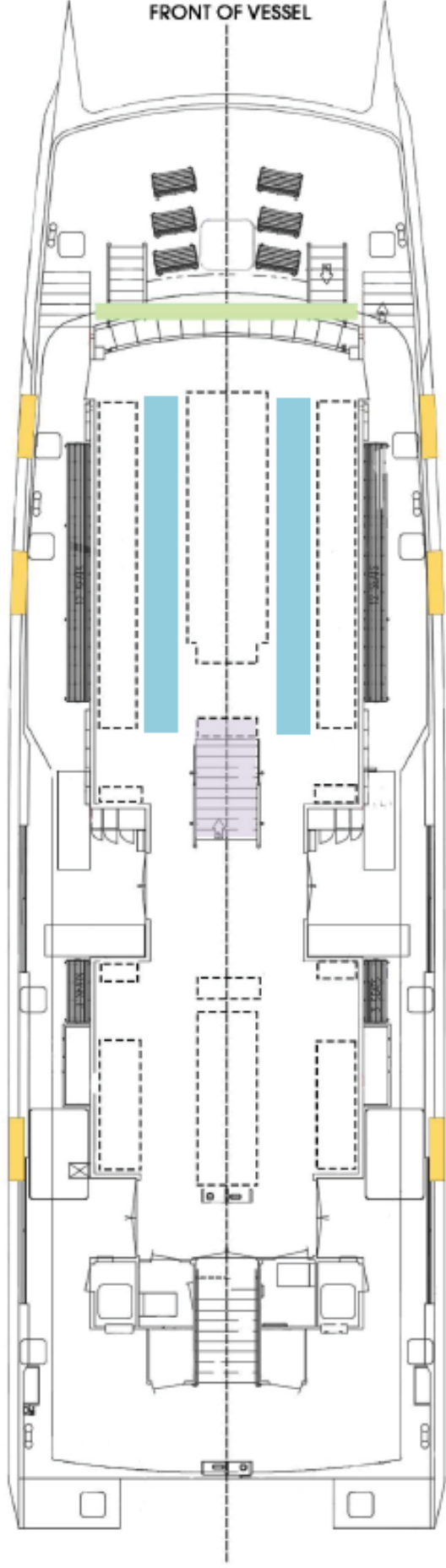
# Vessel Zones

## EMERALD FERRIES

### Lower Deck

#### Key:

- Large Ceiling Panel - LC
- Bow End Wrap - BW
- Stair Takeover - ST
- Large Format Floor Decal



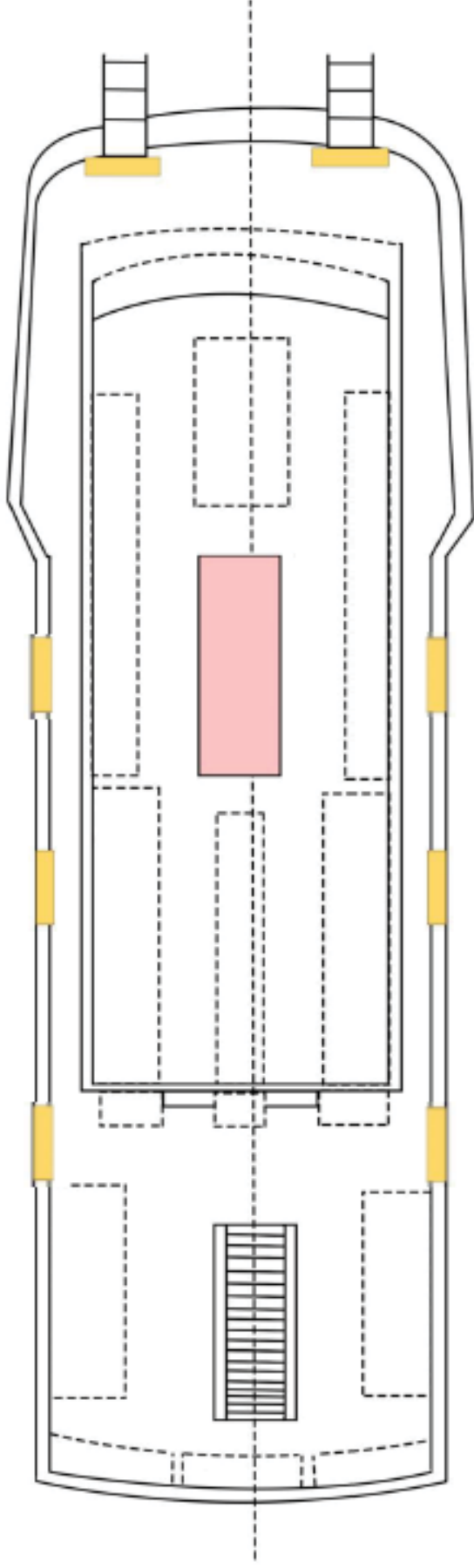
# Vessel Zones

EMERALD FERRIES

Upper Deck

## Key:

- Large Ceiling Panel - LC
- Above Stairs Panel - AS



# Vessel Zones

MANLY FERRIES: COLLAROY

Lower Deck

**Key:**

Tall Portrait Panels - TP

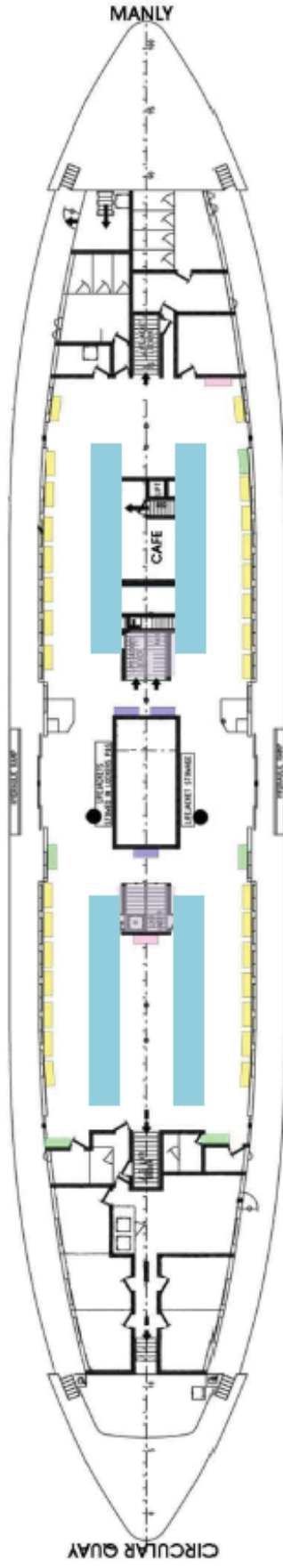
Ceiling Panels - CP

Framed Landscape Panels - FL

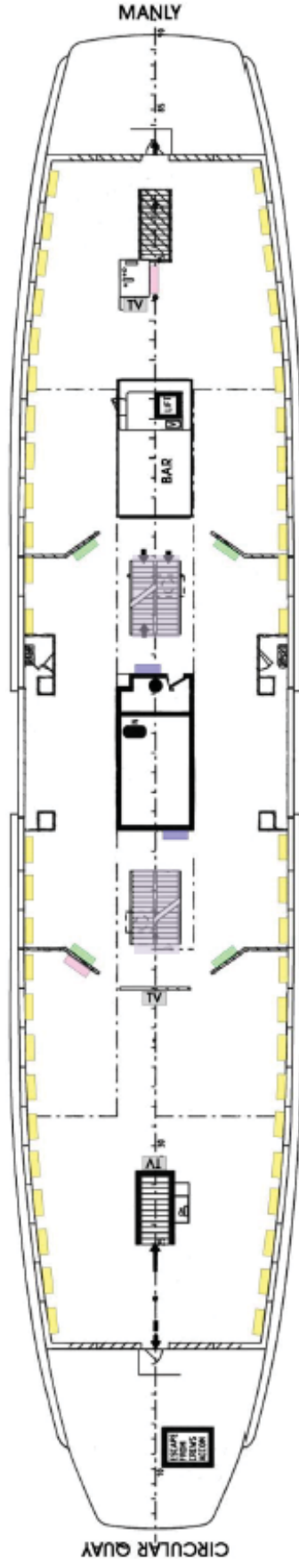
Mega Portrait Panels - MP

Stair Takeover - ST

Large Format Floor Decal



Upper Deck



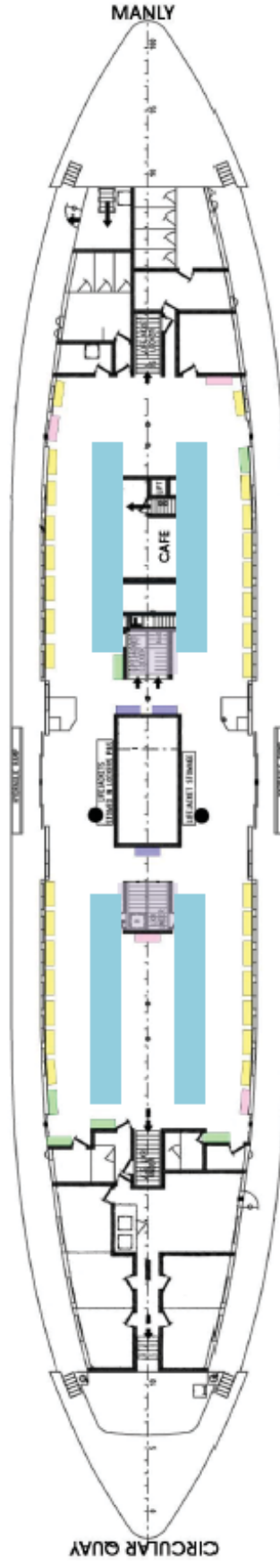
# Vessel Zones

## MANLY FERRIES: FRESHWATER

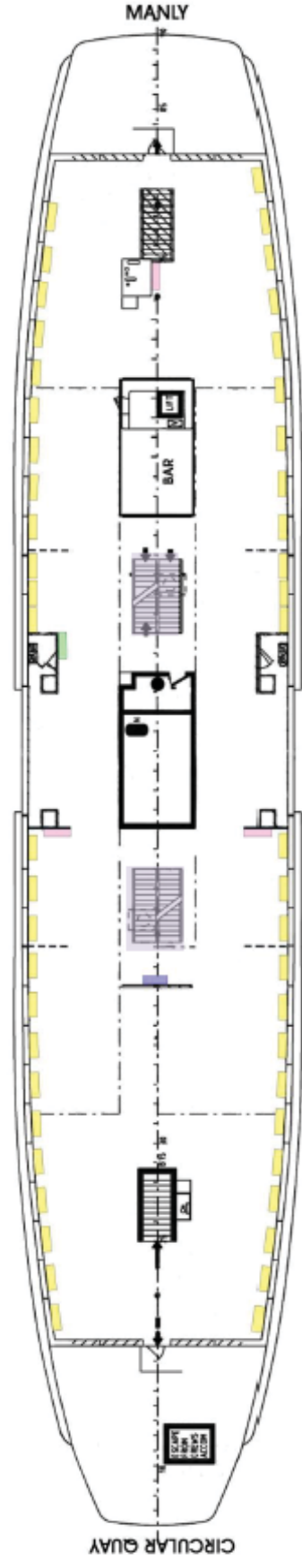
### Lower Deck

#### Key:

- Tail Portrait Panels - TP
- Ceiling Panels - CP
- Framed Landscape Panels - FL
- Mega Portrait Panels - MP
- Stair Takeover - ST
- Large Format Floor Decal



### Upper Deck



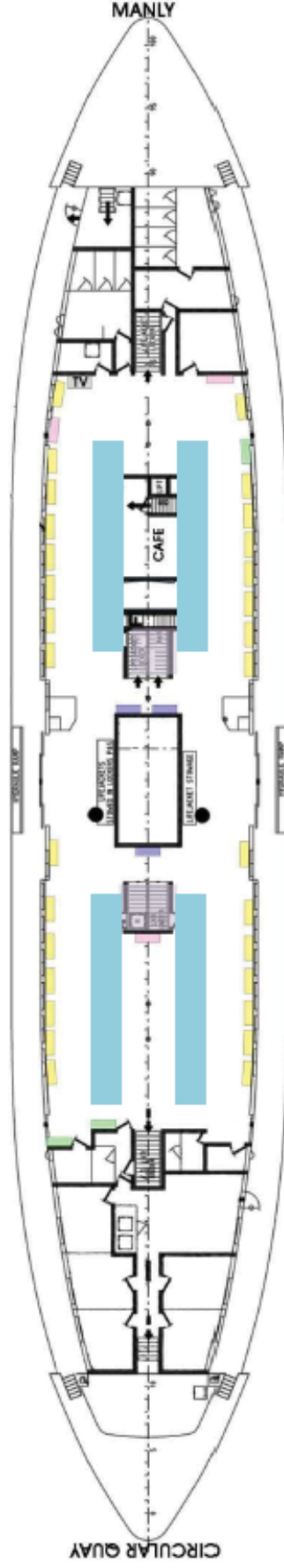
# Vessel Zones

## MANLY FERRIES: NARRABEEN

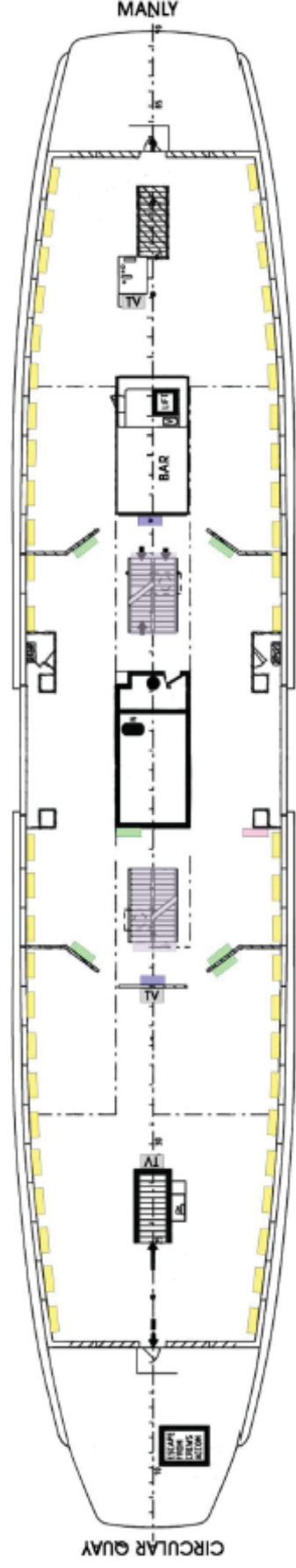
### Lower Deck

#### Key:

- Tall Portrait Panels - TP
- Ceiling Panels - CP
- Framed Landscape Panels - FL
- Mega Portrait Panels - MP
- Stair Takeover - ST
- Large Format Floor Decal



### Upper Deck



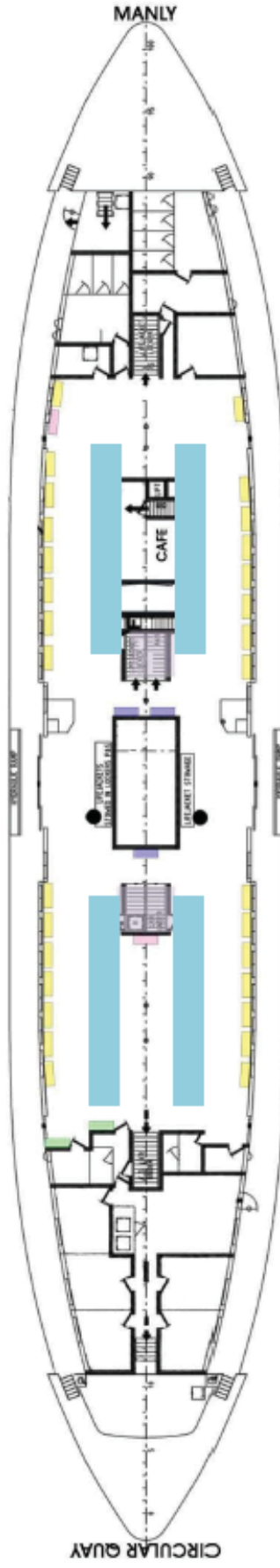
# Vessel Zones

## MANLY FERRIES: QUEENSCLIFF

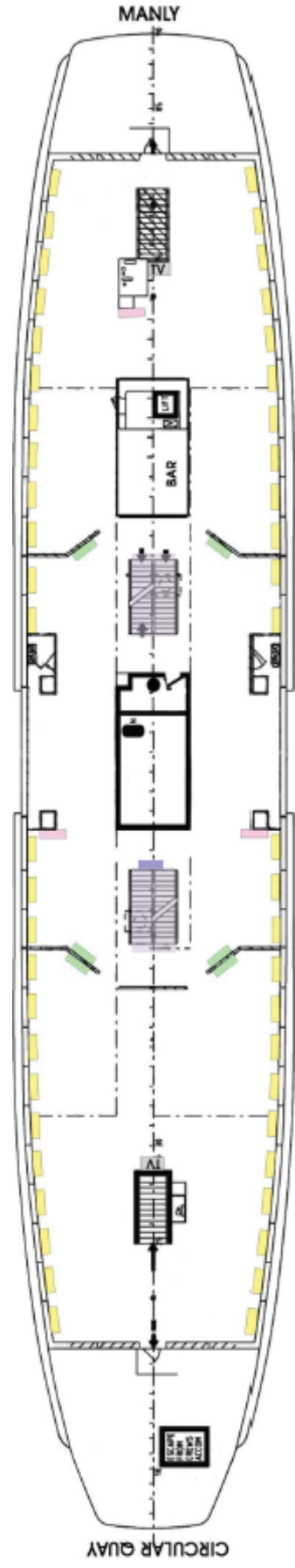
### Lower Deck

#### Key:

- Tall Portrait Panels - TP
- Ceiling Panels - CP
- Framed Landscape Panels - FL
- Mega Portrait Panels - MP
- Stair Takeover - ST
- Large Format Floor Decal



### Upper Deck



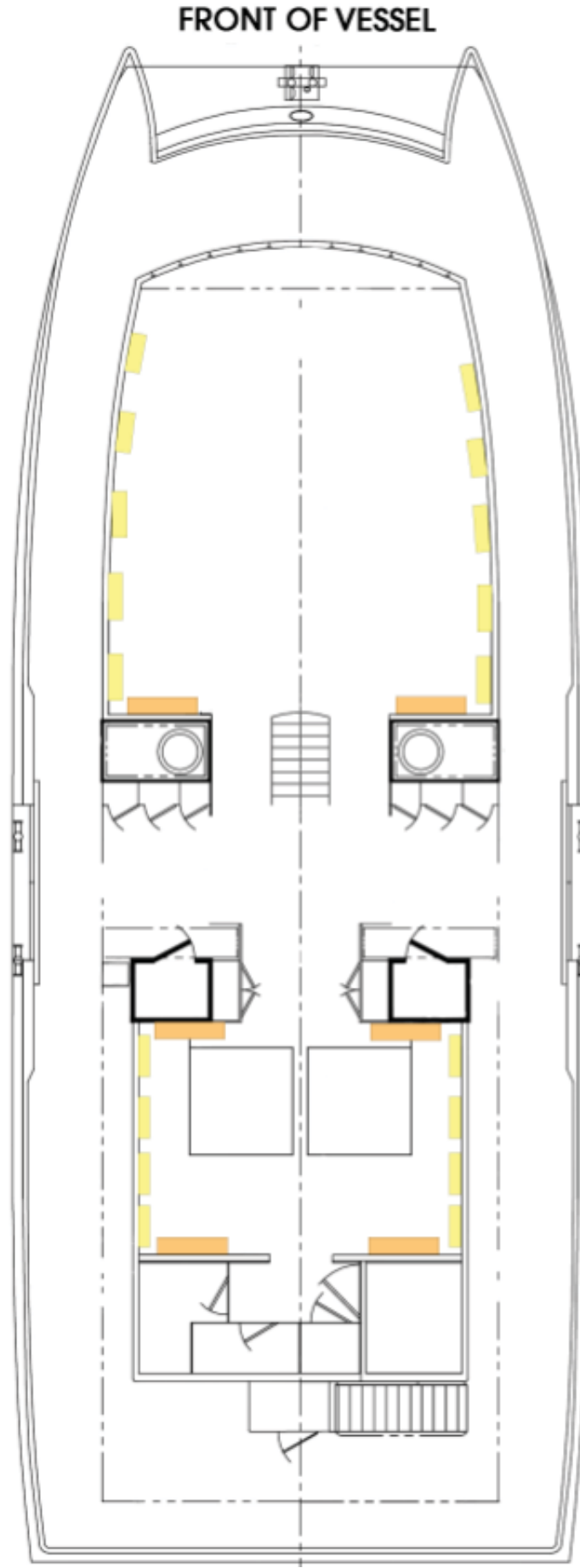
# Vessel Zones

FIRST FLEET FERRIES: FRIENDSHIP

Lower Deck

**Key:**

- Ceiling Panels
- Medium Portrait Panels





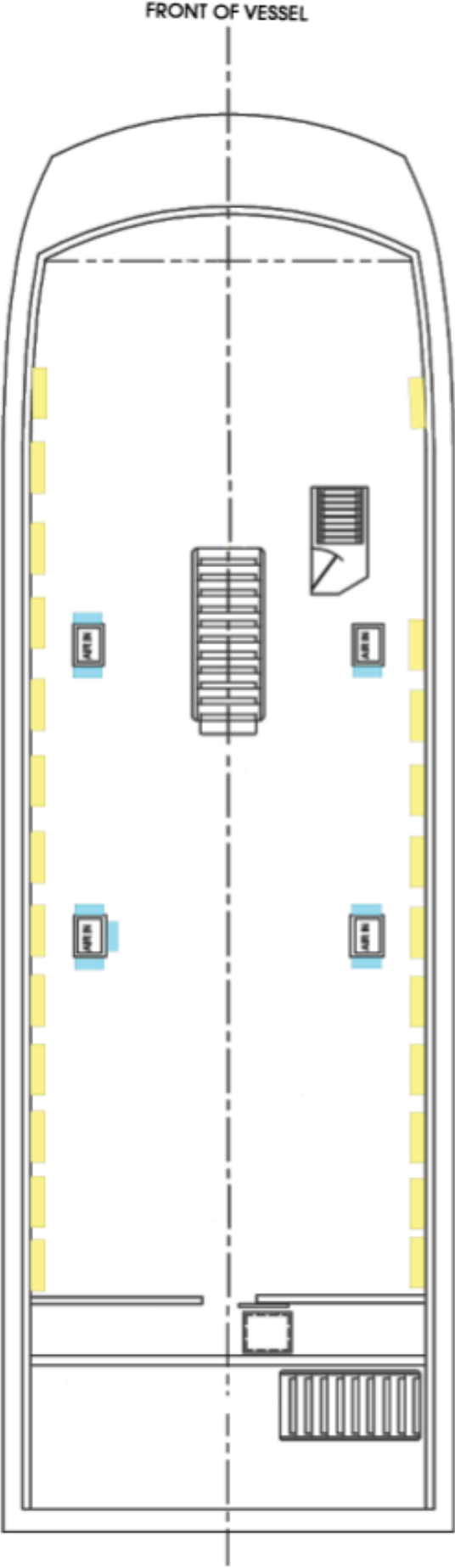
# Vessel Zones

FIRST FLEET FERRIES: FRIENDSHIP

Upper Deck

**Key:**

- Ceiling Panels - CP
- Slim Portrait Panels - SP



# Vessel Zones

RIVER CAT FERRIES: EVONNE GOOLAGONG

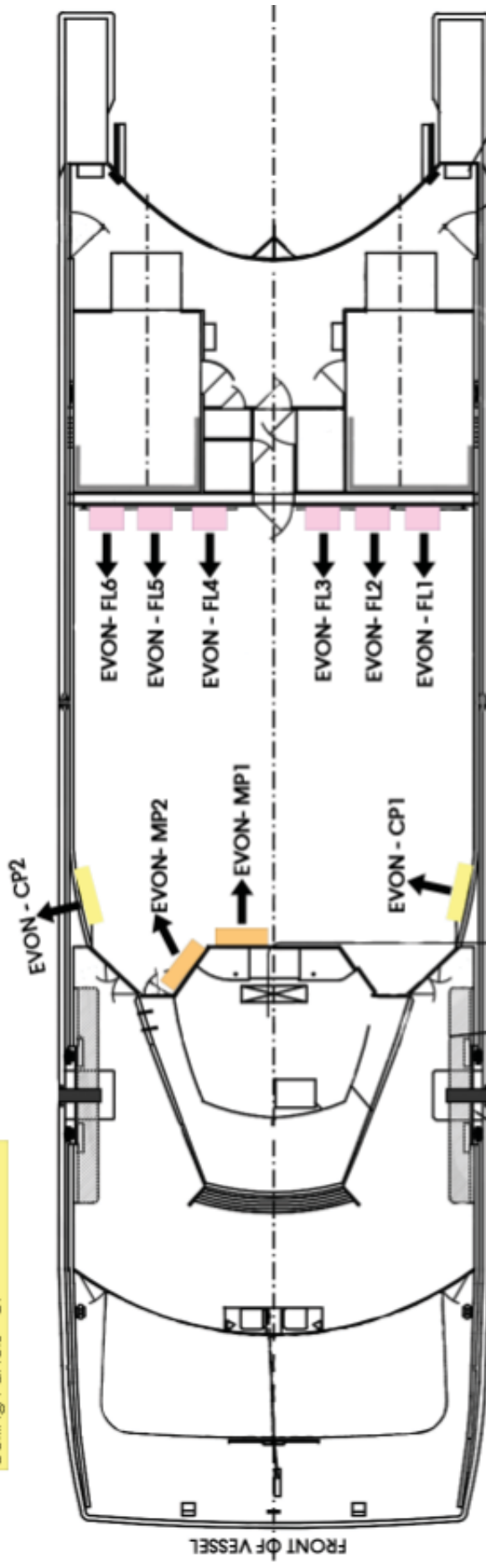
Main Deck

## Key:

Framed Landscape Panels - FL

Medium Portrait Panels - MP

Ceiling Panels - CP



# Vessel Zones

RIVER CAT FERRIES: MARLENE MATHEWS

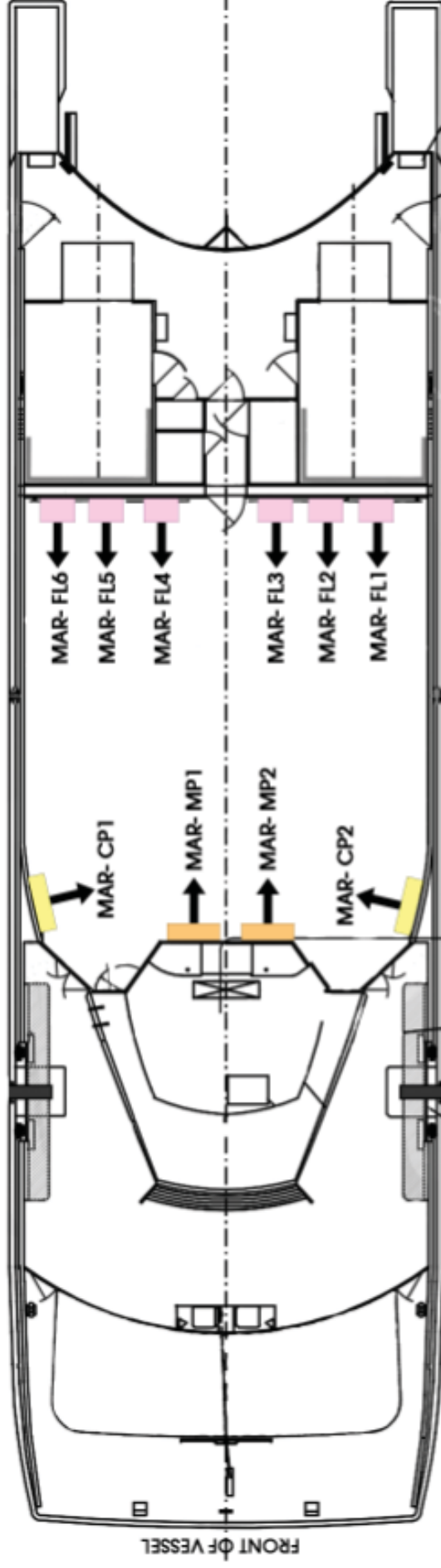
Main Deck

## Key:

Framed Landscape Panels - FL

Medium Portrait Panels - MP

Ceiling Panels - CP



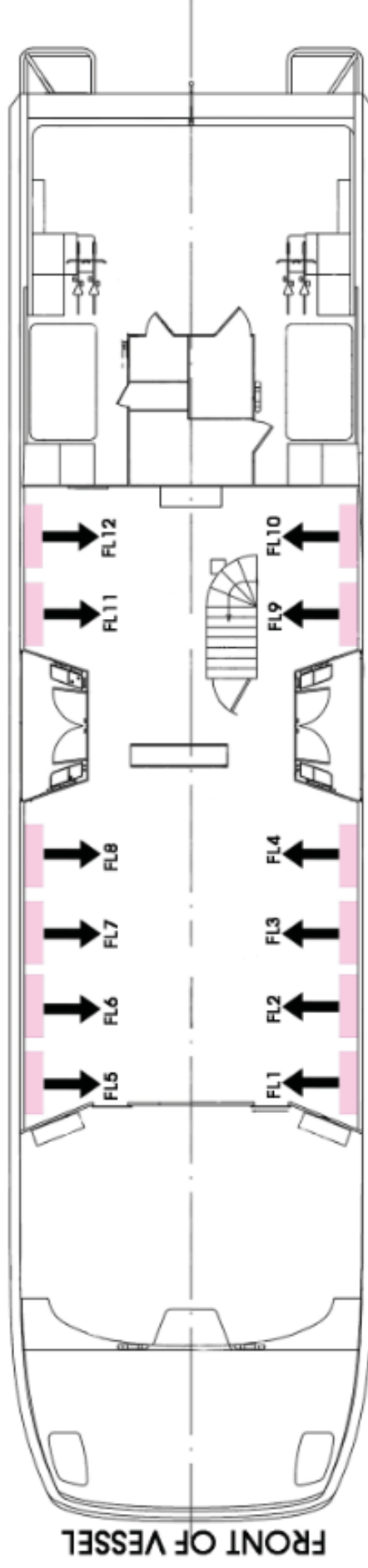
# Vessel Zones

SUPERCAT FERRIES: IV

Main Deck

## Key:

Framed Landscape Panels - FL



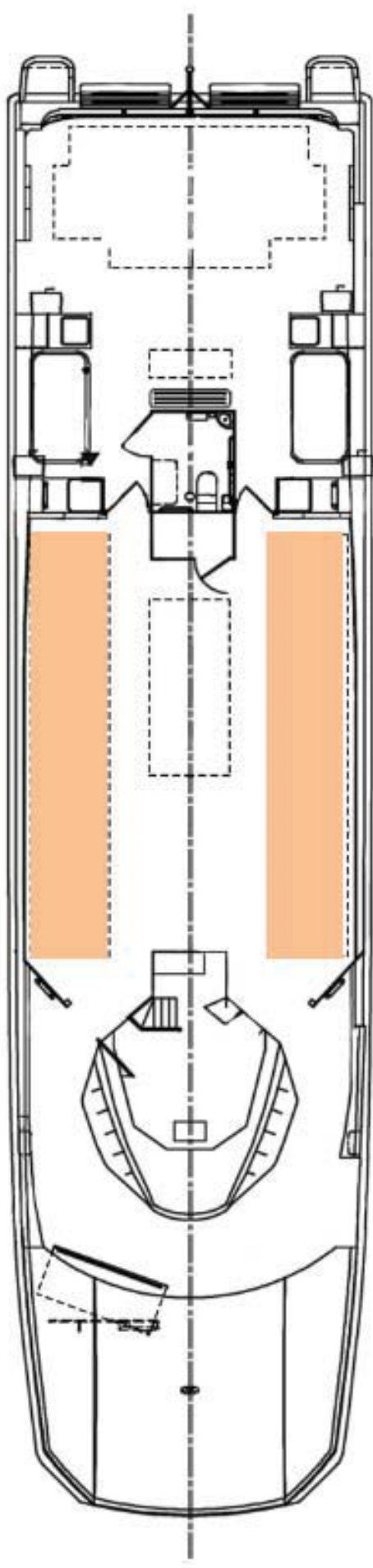
# Vessel Zones

HARBOUR CAT FERRIES: ANN SEARGENT

Main Deck

**Key:**

Large Format Ceiling Panels



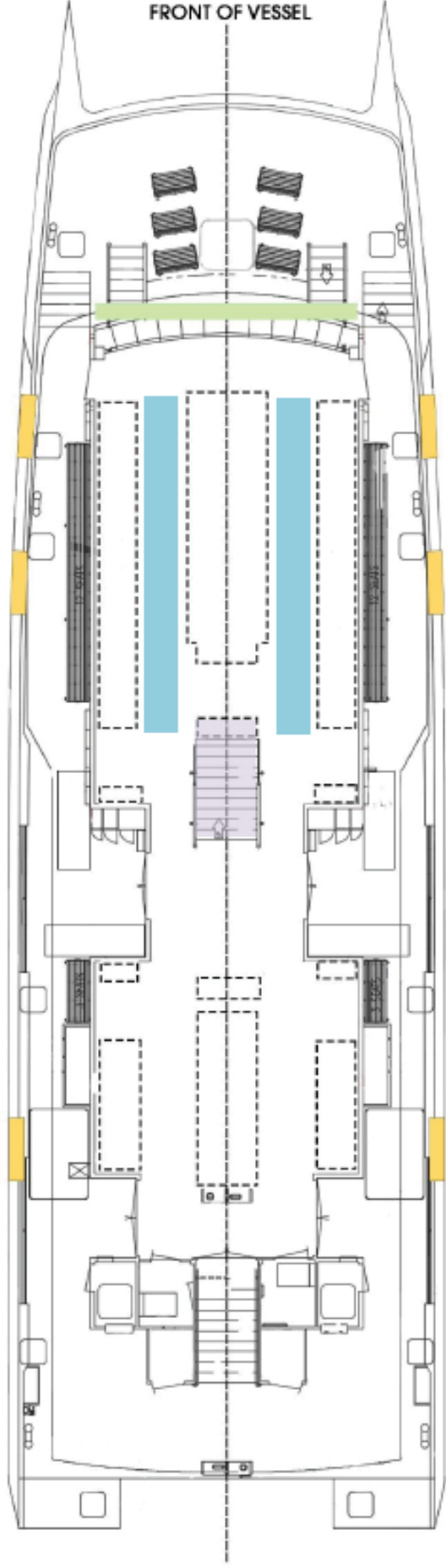
# Vessel Zones

## EMERALD FERRIES

### Lower Deck

#### Key:

- Large Ceiling Panel - LC
- Bow End Wrap - BW
- Stair Takeover - ST
- Large Format Floor Decal



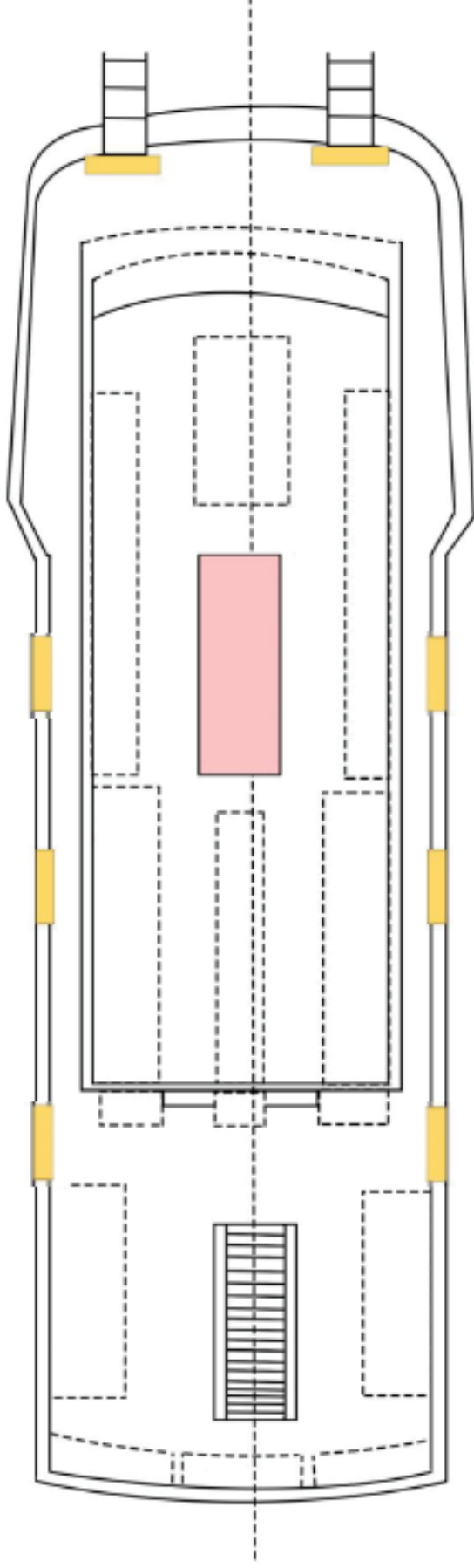
# Vessel Zones

EMERALD FERRIES

Upper Deck

## Key:

- Large Ceiling Panel - LC
- Above Stairs Panel - AS



# Schedule 20 – Transfer Out Agreement

Attachment redacted



# Schedule 21 – Operator's Disruption Management Plan

Attachment redacted

# Schedule 22 – Operator Ferry Charterparty Direct Agreement

Attachment redacted