

Transport for NSW

Community Transport Service Contract Standard Terms and Conditions

The Service Contract will consist of:

- **Standard Terms and Conditions (with Commencement Asset Register to be attached and CHSP Police Certificate Guidelines attached)**
- **Contract Details**
- **General Services Schedule (with RouteMatch Hosted ASP – Recommended System Configuration attached)**
- **Commonwealth Home Support Scheme (CHSP) Services Schedule (including the CHSP Funding Table)**
- **Community Care Supports Scheme (CCSP) Services Schedule (including the CCSP Funding Table)**
- **Community Transport Program (CTP) Services Schedule (including the CTP Funding Table)**
- **Travel Training Services Schedule (including the Travel Training Funding Table)**
- **Insurance Schedule**
- **Reporting Schedule (with the Safety Incident Reporting Protocol attached)**
- **KPI Schedule**



Transport
for NSW

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Date

Parties

Transport for NSW (ABN 18 804 239 602) of Level 6, 18 Lee Street, CHIPPENDALE NSW 2008 (**us, we, TfNSW**)

The Service Provider named in Item 1 of the Service Contract Details (**you**).

Background

- A. We administer funding for community transport and other services under a number of government programs.
- B. This Service Contract sets out the terms and conditions upon which we will provide funding to you to deliver services under each of those programs.
- C. This Service Contract consists of these Standard Terms and Conditions, the Service Contract Details and Schedules.
- D. The underlying principles governing the provision of services pursuant to this Service Contract are:
 - (a) that the services are appropriately developed, planned and delivered to achieve the funding program objectives;
 - (b) that government funding is used in an efficient, effective and transparent manner;
 - (c) to provide clean, safe and reliable transport services that meet the needs of customers;
 - (d) that all persons eligible for the services may access services that are socially and culturally appropriate and free from discrimination;
 - (e) that the needs and rights of customers are respected;
 - (f) that service providers work collaboratively to deliver services and contribute to the overall development and improvement of the services; and
 - (g) to provide support for new systems and approaches to enable improvements in service quality and efficiency.

Agreement

1. DETAILS OF THIS SERVICE CONTRACT

1.1 Formation and duration of this Service Contract

- (a) This Service Contract starts on the Commencement Date and ends on the Termination Date.

- (b) Should TfNSW secure funding past the Completion Date, as specified in Item 5 of the Service Contract Details, we may extend if the parties agree the current Service Contract should be extended until a new service contract is released.

1.2 Parties' representatives

- (a) The parties appoint as their representatives the persons named in **Items 6 and 7** of the Service Contract Details, or such other persons as they notify each other in writing from time to time.
- (b) The Representatives will be the prime points of contact in respect of the administration of this Service Contract and the delivery of the Services.

1.3 Address for Notices

The parties nominate the addresses set out in **Items 1 and 3** of the Service Contract Details, or such other address as the parties may notify each other in writing from time to time, as their respective addresses for service of any Notices under this Service Contract.

1.4 Services you are funded to deliver

- (a) The Programs under which you will receive Funding, and are contracted to provide Services, are identified in **Item 8** of the Service Contract Details.
- (b) The Program Services Schedule for each Program under which you are contracted to provide Services, sets out:
 - (i) the Services you are contracted to deliver to Eligible Customers under the specified Program and the outputs you are required to achieve or deliver;
 - (ii) the Eligible Customers for Services under that Program;
 - (iii) the period during which you must deliver Services under that Program;
 - (iv) the geographical areas in which you are required to operate under each Program, by making the Services under that Program available to Eligible Customers resident in those geographical areas;
 - (v) the amount of Funding we will provide to you to deliver Services under that Program; and
 - (vi) the supplementary terms and conditions applicable to the provision of Services under that Program.

1.5 Definitions

In this Service Contract, certain words and phrases have defined meanings which are set out in clause 38. They are indicated by initial capital letters. However, "we" and "you" are not capitalised in this way.

2. YOUR OBLIGATIONS IN THE DELIVERY OF THE SERVICES

2.1 Terms and conditions governing the delivery of the Services

You must deliver the Services in accordance with these Standard Terms and Conditions and the Schedules.

2.2 Your general obligations under this Service Contract

In performing your obligations under this Service Contract, including delivering the Services, you must:

- (a) meet all the objectives and timeframes that apply to the Services;
- (b) use all due care and skill;
- (c) comply with all relevant Laws;
- (d) comply with all guidelines, manuals, policies, charters, codes of conduct and other standards set out in this Service Contract, and any others we reasonably require you to comply with by 20 Business Days' notice in writing to you;
- (e) take all reasonable action to ensure that no fraud occurs;
- (f) pay all taxes, duties and government charges you are required to pay in connection with this Service Contract and the provision of the Services; and
- (g) act in a way that is designed to prevent injury to or death of persons or damage to property.

3. ACCREDITATION AND COMPLIANCE

3.1 Authorisations

You warrant and represent that you hold at all relevant times all Authorisations required to provide the Services.

3.2 Operator Accreditation

You must at all relevant times:

- (a) be accredited to operate and deliver the Services as required by the PT Law; and
- (b) comply with all requirements relating to that accreditation.

3.3 Driver Licences and Authorities

You must ensure that all drivers you use to provide the Services will, at all relevant times:

- (a) have all Authorisations required by the PT Law; and
- (b) comply with all requirements relating to those Authorisations.

3.4 Our statutory powers

You acknowledge that nothing in this Service Contract restricts or otherwise affects our unfettered discretion to use our statutory powers, including our statutory powers relating to the granting or revocation of any Authorisations required under the PT Law.

4. ENSURING SERVICE CONTINUITY

- (a) You must do all things reasonably necessary to ensure the Services you are contracted to provide continue to be available to Eligible Customers.
- (b) You must develop a 'Service Continuity Plan' which sets out how you intend to address any risks that may lead to you being unable to continue to deliver any of the Services, including those arising from a fire, natural disaster or accident or the expiry or termination of his Service Contract.
- (c) You must immediately inform us when you believe there is a risk that you may no longer be in a position to provide any part of the Services and in such circumstances you must co-operate with us and provide us with such assistance as we may reasonably require to continue to make the Services available to Eligible Customers.

5. DEALING WITH CUSTOMER COMPLAINTS

- (a) You must actively encourage feedback from Eligible Customers about the Services they receive.
- (b) You must ensure that Eligible Customers are provided with written information regarding how they may make a complaint about the Services they receive and how that complaint will be dealt with.
- (c) You must ensure that the process you adopt for dealing with complaints is:
 - (i) simple for complainants to understand and follow;
 - (ii) fair;
 - (iii) free of charge;
 - (iv) includes established timeframes in which complaints are required to be dealt with.
- (d) We may require you to comply with any policies, guidelines or directions regarding the process by which complaints must be handled, on 20 Business Days' notice, including by requiring you to use Transportnsw.info services for dealing with complaints from Eligible Customers.
- (e) You must not cease or refuse to provide any Services or otherwise take recrimination action against any person because they have made a complaint.

6. YOUR STAFF AND REQUIRED RECORD CHECKS

6.1 Definitions

In this clause 6 only:

Child means an individual under the age of 18.

Criminal or Court Record means any record of any Other Offence.

Other Offence means a conviction, finding of guilt, on-the-spot fine for, or court order relating to:

- (a) an apprehended violence or protection order made against a person; or
- (b) one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property; or
- (c) a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance; or
- (d) a crime or offence involving violence against or the injury, but excluding the death of a person; or
- (e) a minor crime or offence involving dishonesty, other than those crimes or offences referred to in clauses (a) to (d) of this definition.

Police Certificate Guidelines means the police certificate guidelines set out at Appendix F of the Commonwealth Home Support Programme: Programme Manual 2015 and which are attached as **Annexure A to these Standard Terms and Conditions**

Police Check means a formal inquiry made to the relevant police authority in each Australian State or Territory where you know the relevant person has resided, designed to obtain details of the relevant person's criminal conviction or a finding of guilt in all places (within and outside Australia). This may include a 'National Criminal History Record Check' or a 'National Police Certificate' prepared by the Australian Federal Police, an Australian State or Territory Police Service, or a CrimTrac accredited agency.

Possible CHSP Customer means an Aboriginal and Torres Strait Islander person aged 50 and over or any other person aged 65 or over.

Relevant Board Member means a person who is a member of your Board and who works, or is likely to work, directly with a Person in the DIA Target Group in a way that involves face to face or physical contact with that person.

Relevant Person means each of your:

- (a) Executive Decision Makers;
- (b) officers, employees or contractors who are reasonably likely to interact with a Vulnerable Person;
- (c) volunteers who have unsupervised interaction with Vulnerable Persons.

Relevant Worker means a person who is engaged by you in any of the following capacities to provide any part of the Services to a Person in the DIA Target Group in a way that involves face to face or physical contact with that person as:

- (a) an employee;
- (b) a volunteer;
- (c) a person undertaking training as part of an educational or vocational course or program (other than a school student on work experience);
- (d) a self-employed person, contractor or subcontractor;
- (e) a person engaged by you as a consultant.

Serious Offence means:

- (a) a crime or offence involving the death of a person;
- (b) a sex-related offence or a crime, including sexual assault (whether against an adult or Child), Child pornography, or an indecent act involving a Child;
- (c) a crime or offence involving dishonesty that is not minor;
- (d) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services.

Serious Record means a conviction or any finding of guilt for a Serious Offence.

Vulnerable Person means:

- (a) a Possible CHSP Customer;
- (b) a Child;
- (c) an individual aged 18 years and above who is or may not be able to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

Worker Engaged in Child-related Work means a worker as defined in the *Child Protection (Working with Children) Act 2012* (NSW) who engages in child-related work as defined in the *Child Protection (Working with Children) Act 2012* (NSW).

6.2 Your general obligations in relation to Staff engaged in providing the Services

You must:

- (a) only engage and continue to engage Staff who are fit and suitable to provide the Services and fulfil your obligations under this Service Contract;
- (b) confirm that no Laws prohibit any of your Staff from being engaged in a capacity where they may have contact with Vulnerable Persons or Persons in the DIA Target Group; and
- (c) comply with all Laws in relation to engaging or deploying Staff in a capacity where they may have contact with Vulnerable Persons or Persons in the DIA Target Group or other Eligible Customers.

6.3 Clearances for Relevant Persons

- (a) Before engaging or deploying any Relevant Person you must:
 - (i) conduct a Police Check for that person or where relevant, confirm a check by appropriate authorities has occurred within the last 3 years, and
 - (ii) where clause 6.3(b) applies, ensure the Relevant Person provides an appropriate Statutory Declaration;
 - (iii) comply with clauses 6.3(c) to (g) below.
- (b) You must obtain a Statutory Declaration from a Relevant Person in accordance with paragraphs 3.4 (Statutory Declarations), 4.7 (New staff) and 4.8 (Staff, volunteers and executive decision makers who have resided overseas) (as relevant) of the Police Certificate Guidelines, as relevant, if the Relevant Person has:

- (i) applied for, but has not yet received a Police Check and the circumstances described in paragraph 4.7 of the Police Certificate Guidelines apply;
 - (ii) has been a citizen or a permanent resident of a country other than Australia after the age of 16.
- (c) You agree:
- (i) if a Police Check or other relevant check by authorities indicates that a Relevant Person has a Serious Record, or a Criminal or Court Record, not to engage, deploy or redeploy the Relevant Person unless you have conducted and documented a risk assessment of that Relevant Person;
 - (ii) within 24 hours of becoming aware of a Relevant Person being charged or convicted of any Serious Offence or Other Offence, to conduct and document a risk assessment in accordance with clauses 6.3(d) to (f) to and paragraph 5 (Assessing a Police Certificate) of the Police Certificate Guidelines to determine whether to allow that Relevant Person to continue performing the Services or any part of the Services; and
 - (iii) to document the actions you will take as a result of conducting the risk assessment; and
 - (iv) to ensure that a Relevant Person has their Police Check renewed at least every 3 years.
- (d) You will be wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Relevant Person with a Serious Record, Criminal or Court Record, to work on any of the Services or any part of the Services.
- (e) You must ensure that a person who has been charged or convicted of a Serious Offence does not perform the functions and duties of an Executive Decision Maker at any time.
- (f) In undertaking your risk assessment under clauses 6.3(c) and (d) you agree to take into account the following factors:
- (i) whether the Relevant Person's Serious Record, Criminal or Court Record is directly relevant to the role the Relevant Person will or is likely to perform in relation to the Services or any part of the Services;
 - (ii) the length of time that has passed since the Relevant Person's conviction and the Relevant Person's record since that time;
 - (iii) the nature of the offence pertaining to the Serious Record, Criminal or Court Record and the circumstances in which it occurred;
 - (iv) whether the offence involved Vulnerable Persons;
 - (v) the nature of the Services and the circumstances in which the Relevant Person will or is likely to have contact with Vulnerable Persons;
 - (vi) the particular role it is proposed the Relevant Person will undertake and / or which the Relevant Person is currently undertaking in relation to the Services and whether the fact the Relevant Person has a Serious Record, Criminal or Court Record is reasonably likely to impair the Relevant Person's ability to perform or continue to perform the inherent requirements of that role;

- (vii) the Relevant Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake or are currently undertaking in relation to the Services or any part of the Services; and
 - (viii) the factors set out in paragraphs 5.4 (Assessing information obtained from a police certificate for staff and volunteers) and 5.5 (Assessing information obtained from a police certificate for executive decision makers) of the Police Certificate Guidelines.
- (g) After taking into account the factors set out in clause 6.3(f), you agree to then determine whether it is reasonably necessary to:
- (i) not engage, deploy or redeploy the Relevant Person in relation to the Services or any part of the Services; or
 - (ii) remove the Relevant Person from working in any position or acting in any capacity in relation to the Services or any part of the Services which involves working or having contact with Vulnerable Persons; or
 - (iii) make particular arrangements or impose conditions under which the Relevant Person's role in relation to the Services or any part of the Services and, where relevant, contact with Vulnerable Persons is to occur; or
 - (iv) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Services relate.

6.4 Clearances for Workers Engaged in Child-related Work

- (a) You must have and maintain any necessary working with children check clearances in respect of any Worker Engaged in Child-related Work as required under the CP Law.
- (b) You must not engage or deploy any Worker Engaged in Child-related Work other than in accordance with the CP Law.

6.5 Clearances for Relevant Board Members and Relevant Workers working with Persons in the DIA Target Group

- (a) You must have, assess and maintain any necessary Police Check and / or Statutory Declaration in respect of any Relevant Board Member or Relevant Worker so as to comply with the requirements set out in the DIA, including clause 32, and the DIR, including clause 10, regardless of whether the DIA and DIR apply to you directly.
- (b) You must not engage or deploy any Relevant Board Member or Relevant Worker other than as provided for in accordance with the requirements set out in the DIA and DIR, regardless of whether the DIA and DIR apply to you directly.
- (c) You must obtain at least one reference for each Relevant Board Member or Relevant Worker.

6.6 Compliance policies and processes for necessary clearances

- (a) You must have adequate policies, procedures and risk plans in place to comply with your obligations under this clause 6.

- (b) If we require, you must promptly provide evidence, in a form we require, that you have complied with the requirements of this clause 6 and the Police Certificate Guidelines.
- (c) You agree to reflect your obligations under this clause 6 and the Police Certificate Guidelines in all Subcontracts you enter into in relation to the Services or any part of the Services.

7. YOUR STAFF

- (a) You warrant and represent that all your Staff are properly accredited, trained and experienced to provide the Services and have all required Authorisations.
- (b) You must provide training to all your Staff and develop, document and maintain training materials as specified in the General Services Schedule.
- (c) You must comply with, and ensure that your Staff comply with, all obligations under Safety Laws and required Authorisations.

8. PAYMENT AND USE OF THE FUNDING

8.1 How much we will pay you

We will pay you the amounts of Funding set out in the Funding Tables (subject to clauses 8.7 of these Standard Terms and Conditions and clause 3.3(a) of the CCSP Services Schedule).

8.2 How and when we will pay you

We will pay these amounts:

- (a) by direct credit to the account in your name set out in **Item 10** of the Service Contract Details or such other account nominated by you in writing to us from time to time;
- (b) by instalments as set out in each of the Funding Tables and by the dates set out in the Funding Tables.

8.3 How you must use the Funding

You must use the Funding and the Fees only as provided in this Service Contract to deliver the Services, make payments in accordance with clause 8.5(b) or purchase or provide for the purchase of Contract Assets in accordance with clause 10.

8.4 Before you spend the Funding

Before you spend the Funding you agree to hold it in an account in your name and which you solely control. This account must be held with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia.

8.5 Additional funding for employees subject to the SACS Decision

- (a) This clause 8.5 applies to the extent that any of your employees involved in the delivery of the Services are subject to the SACS Decision.

- (b) You may only use the amount of any SACS Supplementation set out in any of the Funding Tables to meet the increase in wages for your employees involved in delivering the Services that resulted from the SACS Decision.
- (c) You must provide us, upon our request:
 - (i) with a certification from your Board or an authorised officer which sets out the amount of the SACS Supplementation you have used in accordance with this clause 8.5 and any amount that remains unspent and uncommitted; and
 - (ii) sufficient details to demonstrate the amount of the SACS Supplementation you have used in accordance with this clause 8.5.

8.6 You must obtain our consent to retain unspent Funding

- (a) If you do not spend any amount of the Funding within the Financial Year in which it is paid to you in accordance with clause 8.3, you must notify us of the unspent amount of the Funding in writing by 31 October each year, and repay us the unspent amount of the Funding in accordance with clause 21, unless you ask to retain the Funding and you obtain our consent in writing to your doing so.
- (b) You must comply with any terms and conditions of any consent we give under clause 8.6(a).
- (c) For the purpose of this clause 8.6, any Funding retained in accordance with clause 10.4 (b), does not constitute unspent Funding.
- (d) For the purpose of this clause 8.6 any Funding paid in advance (paid in one Financial Year to deliver Services in a later Financial Year) does not constitute unspent funding.

8.7 Conditions on our provision of any Funding

You acknowledge that our payment of any part of the Funding set out in the Funding Tables is conditional upon contractual arrangements with the Commonwealth, Commonwealth and State parliamentary appropriations and budget allocations, and the continuation of the Programs. You acknowledge and agree that we may change the level and allocation of Funding to reflect any changes to these matters.

9. SERVICE ASSETS AND PREMISES

9.1 Required Condition of Service Assets

You must ensure that each Service Asset:

- (a) complies with the *Road Transport (Vehicle Registration) Regulations 1998* (NSW), is registered and insured as required under PT Law and has all necessary Authorisations required for use in the delivery of the Services;
- (b) complies with all environmental and safety standards applicable at the time it was registered;

- (c) is in a safe operating condition at all times, and, in particular, is maintained, equipped and operated in compliance with all Authorisations and the Law as it applies to each Service Asset and the transport services you provide;
- (d) is operated in accordance with the manufacturer's specifications, recommendations and standards;
- (e) is clean and tidy prior to its being used in providing the Services on any day;
- (f) is removed from service and cleaned as soon as possible, if it becomes so unclean as to cause discomfort to passengers;
- (g) is roadworthy.

9.2 Inspection of Service Assets

You must allow or procure for us or any person authorised by us, and any Governmental Agency exercising powers under the Safety Laws or in relation to any Authorisations required in respect of the Services, immediate unrestricted access to any:

- (a) Service Assets;
- (b) Spares;
- (c) Service Asset maintenance records;
- (d) depots occupied by you.

9.3 Premises

You must ensure that all your Premises are kept and maintained in a condition which enables them to be safely used for their intended purpose and enables you to comply with your obligations under this Service Contract.

10. CONTRACT ASSETS

10.1 Contract Assets

- (a) You agree that the Contract Assets were purchased or leased with funding administered by us.
- (b) You warrant and represent that the Commencement Asset Register lists all of the Assets that:
 - (i) are owned by you or in your possession or control at the Commencement Date; and
 - (ii) were purchased or leased with funding administered by us.

10.2 Ownership and Use of Contract Assets and Maintenance of Owned Assets

- (a) As between you and us, you will own the Contract Assets, subject to clause 10.6 and your obligations under clause 24.2.

- (b) You must:
 - (i) not use the Contract Assets to provide transport services other than the Services you are contracted to provide under this Service Contract unless:
 - (A) the provision of those other transport services does not interfere with your ability to provide all of the Services you are required to provide under this Service Contract; and
 - (B) you recover the cost for those other transport services from the parties receiving the benefit of those other transport services, or from the funder of those other transport services (including associated capital, depreciation and operating and administrative costs) and use the amount recovered to deliver additional Services under the Programs (and in doing so comply with all the requirements for the provision of the Services under those Programs in this Service Contract);
 - (ii) comply with all of our directions and requirements regarding the acquisition, replacement, maintenance or disposal of any Contract Assets, including any directions regarding the transfer of the Contract Assets to us, our nominee or a Successor Operator.
- (c) You must service and maintain all Owned Assets in accordance with the manufacturer's specifications, recommendations and service standards.
- (d) You must carry out Maintenance Work on all Owned Assets in order to comply with your obligations under this Service Contract.

10.3 Maximum Age of Contract Assets

Unless we agree otherwise in writing:

- (a) no Contract Bus that seats more than 29 adults (including the driver) shall be used in the delivery of the Services if its age is greater than 25 years from the Purchase Date;
- (b) no Contract Bus that seats between 13 and 29 adults (including the driver) shall be used in the delivery of the Services if its age is greater than 15 years from the Purchase Date;
- (c) no Contract Car / Minibus or Contract Bus which seats between 9 and 12 adults (including the driver) shall be used in the delivery of the Services if its age is greater than 10 years from the Purchase Date or it has travelled more than 300,000 kilometres;
- (d) no Contract Car / Minibus which seats under 9 adults (including the driver) shall be used in the delivery of the Services if its age is greater than 8 years from the Purchase Date or it has travelled more than 300,000 kilometres.

10.4 New Contract Assets

- (a) Unless we have agreed in writing that you may continue to use a Contract Asset under clause 10.3 you must replace each Contract Asset which reaches its maximum age set out in clause 10.3 with an Asset of the same type and carrying capacity, provided you do not legally commit to replace a Contract Asset after the Term.

- (b) You must maintain an Asset Replacement Fund in which you hold and continue to set aside a sufficient amount of the Funding to enable you to comply with clause 10.4(a).
- (c) You must purchase any New Contract Asset wholly with the Funding, unless we give you our prior written consent to do otherwise. You acknowledge and agree that if a New Contract Asset is purchased partially with the Funding and partially with other funds (whether with our consent or otherwise), this does not prevent it from being a Contract Asset, and clause 24.2 will still apply to such Contract Asset.
- (d) You must:
 - (i) give us 7 Business Days' written notice after purchasing any New Contract Asset; and
 - (ii) if the market price of the Contract Asset you replace pursuant to clause 10.4(a) is more than \$5,000, you must sell the Contract Asset for its market price and pay the proceeds into your Asset Replacement Fund or apply the proceeds or trade-in value to the purchase price of the replacement Contract Asset.

Upon purchase of the replacement Contract Asset and compliance with this clause, the Contract Asset you replace will no longer be deemed to be a Contract Asset.

- (e) You must obtain our written consent to the purchase of any New Contract Asset other than in accordance with clause 10.4(a) and provide us with all information we reasonably require prior to determining whether to give our approval.
- (f) You must remove any New Systems and Equipment, such as communications and dispatch technology implemented in vehicles and funded by TfNSW, prior to its replacement and sale and install them in the replacement Contract Asset, unless otherwise directed by us.
- (g) You must not enter into a Lease in respect of any New Contract Asset during the Term.

10.5 Asset Replacement Plan

By 31 May each year you must provide us with a plan for complying with the requirements set out in clauses 10.4(a) and (b) (**Asset Replacement Plan**) in respect of each Contract Asset including details of the Funding that you have set aside and will set aside in your Asset Replacement Fund and the proposed date of replacement of each Contract Asset.

10.6 New Contract Asset panel and leasing

We may, by 90 days' notice in writing to you commencing at the end of the end of the 90 day period:

- (a) require you to procure any New Contract Asset from a panel of suppliers or manufacturers established by us or from a local supplier not on the panel for the same price offered by the suppliers or manufacturers on the panel;

- (b) require any New Contract Asset to be purchased by a TfNSW Lessor and leased to you.

11. NEW SERVICE ASSETS

If you purchase any Service Asset during the Term with money other than the Funding, you must provide us with details of the Service Asset.

12. DEALING WITH CONTRACT ASSETS

12.1 Dealing with Contract Assets

You must not:

- (a) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any Contract Asset; or
- (b) in any other way:
 - (i) assign, transfer or otherwise dispose of;
 - (ii) create or allow any interest in; or
 - (iii) part with possession of;

any Contract Asset other than by way of a Permitted Security Interest, in accordance with our written direction or consent or as provided for in clause 10.4(d).

12.2 Dealing with Leased Assets

You must not:

- (a) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
- (b) suspend the performance of any of your obligations under;
- (c) do or permit anything that would enable or give grounds to another party to do anything referred to in clauses 12.2(a) and (b) in relation to,

a Leased Asset, other than by way of a Permitted Security Interest, in accordance with our written direction or consent or as provided for in clause 10.4(d); or

- (d) materially amend or supplement, or consent to any material amendment or supplement of a Lease for a Leased Asset or expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under a Lease for a Leased Asset, 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 Lease after the Termination Date.

13. RECORDS YOUR ARE REQUIRED TO KEEP, ACCESS AND AUDITS

13.1 You must maintain separate records for each Program you receive funding under

You must keep separate records regarding the receipt and use of the Funding provided to you under each Program and the outputs achieved.

13.2 What records must you keep?

You must keep, in any form requested by us from time to time, accurate records relating to this Service Contract, the expenditure of the Funding and the Fees, delivery of the Services, the maintenance and use of the Service Assets and your operations and governance including, but not limited to:

- (a) all receipts, bank statements and other records regarding the Fees;
- (b) all original receipts, proof of purchases, invoices, accounts, bank statements and other records showing how you spent the Funding and Fees and plan and deliver the Services;
- (c) copies of all correspondence and other materials received or created by you in connection with any complaints relating to the Services;
- (d) a record of all instances when you were unable to, or did not provide, the Services to Eligible Customers, detailing the nature of the trip and the reason why the Services were not provided;
- (e) all receipts, invoices, accounts, bank statements and other records relating to the source of the funds used and the cost or price of any acquisition, improvement or modification of each Provider Asset;
- (f) an asset register of all Contract Assets which contains:
 - (i) a description of each Contract Asset, including its first registration date, age and make;
 - (ii) the date of acquisition of each Contract Asset, the price of the Contract Asset and the source of the funds used to acquire the Contract Asset;
 - (iii) a description of any improvement or modification made to each Contract Asset, the date it was made, the cost of the improvement or modification and the source of the funds used;
- (g) customer records in accordance with this Service Contract and any Law including Privacy Law;
- (h) your use and maintenance of the Service Assets;
- (i) compliance with Safety Laws;
- (j) your policies relating to the delivery of the Services and the use of the Funding and Fees;
- (k) any Authorisations required for the delivery of the Services and compliance with your obligations under this Service Contract;

- (l) the cost of the delivery of the Services; and
- (m) any customer complaints, and investigations into Staff incidents or accidents.

13.3 How long must you keep your records?

You must keep the records for at least 7 years after the end of the Term, or such other longer period as is required by any relevant Law.

13.4 Access to records

You must allow us or persons authorised by us to:

- (a) access and copy any of your records referred to in clause 13.2; and
- (b) provide copies of any of those records to any third parties as required by Information Legislation or any other Law.

13.5 Reviews, audits and surveys

You must also allow us, or a third party appointed by us, access to your Staff, Premises and the Owned Assets to enable us to undertake reviews, audits and surveys of your compliance with this Service Contract, your expenditure of the Funding and Fees, your delivery of the Services, your maintenance and use of the Owned Assets, your compliance with Safety Laws or your operations or governance.

13.6 Secret and Sacred Material exception

You do not have to allow access to or copying of Secret and Sacred Material, unless required by Law.

13.7 We will generally give you notice of a request for access to your records or an audit

We will provide you with at least 5 Business Days' written notice prior to exercising our rights under clauses 13.4 and 13.5, unless we are investigating a Serious Incident.

13.8 You must assist us

You must provide us with all assistance reasonably requested by us in respect of your obligations under clauses 13.4 and 13.5.

14. REPORTS YOU ARE REQUIRED TO PROVIDE TO US

- (a) You must provide us with reports and data as set out in the Reporting Schedule.
- (b) At any time up to 7 years after the end of the Term we may require you to send us a Statutory Declaration accounting for the expenditure of the Funding and Fees.
- (c) You must provide us with any additional information or reports relating to this Service Contract, the expenditure of the Funding and Fees, delivery of the Services, the use and maintenance of the Service Assets, your compliance with Safety Laws or your operations or governance that we reasonably require.

- (d) You must submit a revised report within 10 Business Days of us giving you notice that the content of a particular report is not adequate for our purposes.

15. SAFETY LAWS, SERIOUS INCIDENTS AND PROSECUTIONS AND INVESTIGATIONS

You must:

- (a) comply with all legal requirements relating to reporting, documenting and dealing with Serious Incidents;
- (b) notify us of:
 - (i) the occurrence of any incident of the type listed in Part 1 of the Safety Incident Reporting Protocol (as provided by us to you from time to time) as soon as is reasonably possible and in any event within 1 hour of the incident;
 - (ii) the occurrence of any incident of the type listed in the Safety Incident Reporting Protocol, by providing us with Safety Reports as set out in clause 3 of the Reporting Schedule;
 - (iii) any actual or proposed Investigation or Prosecution;
 - (iv) any litigation or other dispute which may have a material effect on your activities under this Service Contract;
- (c) develop and implement a plan to address the consequences of any incident of the type set out in the Safety Incident Reporting Protocol and the risk of any such incident re-occurring;
- (d) conduct, or have a third party conduct, such audits of your compliance with Safety Laws as we require and promptly report to us in writing on the outcome of the audit;
- (e) undertake any corrective work or action which an audit of your compliance with Safety Laws identifies as necessary to rectify any departure from the Safety Laws within a reasonable time given the nature of the departure;
- (f) co-operate with us, and any person with relevant authority including an Investigative Officer, in relation to any Investigation or Prosecution;
- (g) provide us with such information, documents and assistance as we reasonably require to respond to any request for information or documents, investigation, inquiry or report by an Investigative Officer; and
- (h) comply with any obligation to take corrective action arising from an Investigation or Prosecution and take such action as we require to implement any requirement or recommendation of an Investigative Officer.

16. KEY PERFORMANCE INDICATORS

- (a) We will measure your performance against the KPIs set out in the KPI Schedule.

- (b) You must comply with your obligations to measure, report on and remedy breaches of the KPIs as set out in the KPI Schedule.

17. USE OF SUBCONTRACTORS

17.1 When you may use Subcontractors

- (a) You may engage Subcontractors to deliver part of the Services under a particular Program without first obtaining our consent, provided you maintain control over the planning of those Services and the assessment of customer eligibility (other than in the case of the CHSP, where this process is undertaken through MAC).
- (b) You must not Subcontract the delivery of all of the Services under a particular Program without obtaining our written consent, and if we give our consent you must comply with any conditions we consider appropriate.
- (c) You are not relieved of your obligation to deliver the Services as required by this Service Contract merely because you Subcontract any part of the delivery of the Services.
- (d) You must only engage Subcontractors who you are satisfied can deliver the Services they are subcontracted to provide in a manner that conforms with your obligations under this Service Contract.
- (e) You agree that you are responsible for resolving any complaints about any Subcontractors.
- (f) In engaging any Subcontractors to deliver any part of the Services you must comply with any guidelines or policies we issue and notify you of in accordance with clause 2.2(d).

17.2 Specific requirements regarding Subcontracts

- (a) You must ensure, unless we agree otherwise, that any Subcontract entered into by you for the delivery of any part of the Services of the type referred to in clause 17.1(a):
 - (i) is consistent with your obligations under this Service Contract;
 - (ii) requires the Subcontractor to ensure that it and all its Staff have all necessary Authorisations required to carry out the relevant part of the Services and comply with all conditions and requirements attaching to those Authorisations;
 - (iii) requires the Subcontractor to comply with, and all of its Staff to comply with, all obligations under Safety Laws;
 - (iv) includes provisions requiring the Subcontractor to comply with the obligations imposed upon you under:
 - (i) clauses 2.2 (b), (c), (e), (f) and (g), 6, 9.1, 15, 27(i) and (j), 28 and 29 of these Standard Terms and Conditions;
 - (ii) clauses 2.2 (c), (d), (g), (h) and (j) and 2.3(b) of the General Services Schedule;

- (iii) clause 2.3 (a) of the General Services Schedule, to the extent that the Subcontractor is required to provide Services to those types of Eligible Customers;
 - (iv) the Charter of Care Recipients' Rights and Responsibilities – Home Care (as referenced and detailed in the CHSP Service Schedule);
 - (v) requires the Subcontractor to have adequate insurance in respect of Losses it may incur in performing the Subcontracted Services including:
 - (A) public liability insurance covering claims in respect of damage to any real or personal property and injury to, or death of any person;
 - (B) third party property insurance; and
 - (C) workers' compensation insurance;
 - (vi) requires the Subcontractor to keep accurate records regarding the Services delivered to Eligible Customers and the cost of those Services, and any other records required to enable you to comply with your obligations under clauses 14 and 16 of these Standard Terms and Conditions and the Reporting and KPI Schedules;
 - (vii) requires the Subcontractor to provide you with information and documents regarding its compliance with its obligations under the Subcontract upon request;
 - (viii) is consistent with any guidelines or policies we issue relating to Subcontracting any part of the Services and provide you notice of in accordance with clause 2.2(d);
 - (ix) includes rights of termination for breaches by the Subcontractor of the types set out in clauses 23.2(a), (b)(i), (d) to (g), (i) and (j) of this Service Contract, failure to comply with the requirements in clause 9 of this Standard Terms and Conditions and failure to effect adequate insurance.
- (b) You must obtain any Subcontractor's consent for the disclosure of their identity to us, the Commonwealth or the State (including their Personal Information, if the Subcontractor is an individual). The consent obtained must extend to make the disclosures and publications referred to in clauses 28(b) and 30.
 - (c) If we terminate or reduce the scope of this Service Contract under either clauses 22 or 23, you must exercise any right of termination or reduction you have against any of your Subcontractors.

17.3 Information you are required to provide regarding Subcontractors

- (a) You must keep a register of all Subcontractors you use to deliver the Services during the Term including the term and value of any Subcontract (Subcontract Register).
- (b) You must provide us with a copy of the Subcontract Register and any Subcontracts we request, on 1 Business Days' notice.
- (c) You must provide us with any information or documents we require regarding:
 - (i) the amounts paid to any Subcontractors;

- (ii) a Subcontractor's compliance with the obligations referred to in clause 17.2 or any other obligations they are required to comply with either as a condition of any consent provided to you under clause 17.1(b) or otherwise;
- on 10 Business Day's written notice to you.

18. LIABILITY

18.1 Indemnity

- (a) You indemnify on demand and must keep indemnified on demand us, the Minister for Transport, the State or any office holder, employee, agent, contractor, consultant, delegate or adviser of, or to, us, the Minister for Transport or the State (**Indemnified Persons**), from and against any Loss which any of us pays, suffers, incurs or is liable for in connection with or arising from:
 - (i) any unlawful, negligent, reckless or deliberately wrongful act or omission of you or any of your Staff;
 - (ii) any Non-Compliance Event;
 - (iii) any Termination Event;
 - (iv) any breach of this Service Contract and any associated agreement by you (or a Subcontractor);
 - (v) any infringement of any Intellectual Property Rights by you or any of your employees, Related Entities, or contractors or agents; or
 - (vi) any death, personal injury, loss or damage suffered by any passengers or by any third party enjoying or affected by the performance of the Services caused or contributed to by you or any of your Related Entities or Staff.
- (b) Your indemnity in clause 18.1(a) will be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Indemnified Persons caused or contributed to the loss.
- (c) This indemnity will not exclude any other right we have to be indemnified by you.
- (d) For the avoidance of doubt the Losses that must be indemnified under clause 18.1(a) include any Losses arising as a result of a Non-Compliance Event or Termination Event.
- (e) Your indemnity in clause 18.1(a) is capped at the amount stated in **Item 11** of the Service Contract Details.
- (f) We indemnify you on demand and must keep you indemnified on demand from and against any Loss which any you pay, suffer, incur or are liable for, in connection with or arising from infringement of any third party Intellectual Property Rights in respect of your use of the New Systems and Equipment, or any other Materials that we provided to you,
- (g) Our indemnity in clause 18.1(f) will be reduced proportionally to the extent that:

- (i) any unlawful, negligent, or deliberately wrongful act or omission of you caused or contributed to the Loss;
- (ii) your use of the New Systems and Equipment, or any other Materials that we provided to you, is not in accordance with this Service Contract;
- (iii) any Loss arises from any unauthorised modification or amendment by you of the New Systems and Equipment, or any other Materials that we provided to you.

18.2 Your liability and responsibility

You acknowledge and agree that:

- (a) the Indemnified Persons are not responsible for and have no obligations in connection with the actions or omissions of you or any Related Entity of yours;
- (b) the Indemnified Persons are not liable for any Loss caused or incurred by you or any Related Entity of yours; and
- (c) you will provide and perform the Services required under this Service Contract at your own cost and risk, without recourse to us or government funds or guarantees, except as expressly provided otherwise in this Service Contract.

18.3 Our liability and release

- (a) You release us and Our Associates (**Released Parties**) to the full extent permitted by law, from all Losses which arise in connection with this Service Contract, except in relation to direct losses directly or indirectly arising from our breach of this Service Contract by act or omission.
- (b) The Released Parties are not liable for, and no measure of loss or damages will, under any circumstances, include, Consequential Loss (whether in contract, tort, in equity, under statute or any other basis, whether or not the loss or damage was foreseeable and even if advised of the possibility of the loss or damage).
- (c) To the fullest extent permitted by Law, our liability arising in connection with this Service Contract is capped at the amount stated in **Item 12** of the Service Contract Details.

19. YOUR INSURANCE OBLIGATIONS

You must comply with the requirements relating to insurance set out in the Insurance Schedule.

20. HOW CHANGES CAN BE MADE TO THIS SERVICE CONTRACT

- (a) Any
 - (i) amendment of these Standard Terms and Conditions;
 - (ii) increase in the program specific Service outputs you are required to deliver;

- (iii) other amendments to this Service Contract, that are not covered by clauses 20(b) and (c);

shall only be valid and binding if made in writing and executed by you and us.

- (b) You acknowledge that the guidelines, manuals, policies, charters, codes of conduct and other standards set out in this Service Contract, and any others we notify you of in accordance with clause 2.2(d), may be varied from time to time, by written notice to you. For the avoidance of doubt this clause does not give us any right to vary the consequences for failure to comply with the KPI obligations.
- (c) Subject to clauses 20(a)(i) to (iii) you acknowledge and agree that we may give you written notice of any:
 - (i) SACs Supplementation or any increase in the Funding set out in the Funding Tables to take account of consumer price increases;
 - (ii) variation to the requirements relating to the Services set out in the Services Schedules, the reporting obligations set out in the Reporting Schedule and the KPI obligations (excluding consequences for failure to comply with the KPI obligations) set out in the KPI Schedule in order to improve the delivery of any of the Services, obtain additional information regarding the use of the Funding or reflect changes in Program requirements or government policies.
- (d) Unless you give us notice in writing to the contrary, within 20 Business Days of us giving you notification of any variation in accordance with clause 20(b) and (c), you will be deemed to have agreed to the variation.

21. REPAYMENT OF THE FUNDING

21.1 Circumstances in which you must repay the Funding

If:

- (a) we overpay you an amount;
- (b) we pay you an amount that you incorrectly claim;
- (c) we pay you an amount that you are unable to spend in accordance with this Service Contract and you do not obtain our consent to retain that amount in accordance with clause 8.6(a); or
- (d) you spend any Funding or Fees other than in accordance with this Service Contract;
- (e) you retain any Funding or Fees (including as part of the Asset Replacement Fund) at the end of the Term that you have not legally committed to spend in accordance with this Service Contract during the Term;

you must notify us immediately and repay us that amount of the Funding (or any lesser amount of which we notify you in writing).

21.2 How the Funding may be repaid

If you must repay an amount under clause 21.1:

- (a) you must do so within 15 Business Days after we give you a notice in writing; and
- (b) you must pay Interest on any part of the amount that is outstanding after the end of the 15 Business Days until the date that the outstanding amount is repaid in full; and
- (c) we may recover the amount and any Interest as a debt due to us.

21.3 How we can recover the Funding

We can recover all or any of the amount you must repay us under clauses 21.1 and 21.2 by deducting it from subsequent amounts we have agreed to pay you under this Service Contract.

22. WE MAY TERMINATE OR REDUCE THE SCOPE OF THIS SERVICE CONTRACT EVEN THOUGH YOU ARE NOT IN DEFAULT

22.1 Our right to terminate

- (a) Even though you are not in default, we can (subject to any applicable Laws) terminate this Service Contract, or reduce its scope:
 - (i) at any time by giving you written notice, if the Commonwealth terminates or reduces our contract with it in relation to the CHSP; or
 - (ii) by giving you 2 months' written notice specifying the date on which the reduction or termination is to take effect. We are only permitted to give a notice in accordance with this clause if it is reasonable in the circumstances to do so and we must when giving a notice in accordance with this clause give our reasons for doing so which show it is reasonable in the circumstances.
- (b) If we give you a notice reducing the scope of this Service Contract we must specify the extent of the reduction and those Contract Assets that must be transferred to us, our nominee or a Successor Operator in accordance with clause 24.2.

22.2 Our liability

- (a) If we terminate this Service Contract or reduce its scope, under clause 22.1 we are only liable to you for:
 - (i) payments that were due to you in respect of Services delivered before the date of termination or reduction; and
 - (ii) reasonable costs you incur as a direct result of the termination or reduction, subject to clauses 22.2(b), (c) and (d);
- (b) We need only pay you the reasonable costs in clause 22.2(a) if you:
 - (i) comply strictly with this clause 22; and
 - (ii) provide written evidence to satisfy us of the amounts claimed.

- (c) We are not liable to pay you compensation for any loss of revenue, profits or benefits that you would have received had the termination or reduction not occurred.
- (d) We will not be liable to pay any amount under clause 22.2(a) in respect of any of the Services which would, when added to any of the Funding already paid to you under this Service Contract for those Services, together exceed the total amount of Funding to be paid to you for those Services under this Service Contract.

22.3 Your obligations

If we terminate or reduce the scope of this Service Contract under clause 22.1 you must:

- (a) immediately cease carrying out your obligations under this Service Contract (or, in the case of a reduction in scope, the obligations removed by the reduction) in accordance with the notice we serve upon you;
- (b) immediately do everything you can to lessen all losses, costs and expenses that you may suffer from the termination or reduction;
- (c) repay any part of the Funding paid to you in respect of the Services you are no longer required to provide (including any Funding held by your for the replacement of Contract Assets), as if we had given you a notice to repay under clause 21.2; and
- (d) transfer to us, our nominee or a Successor Operator, in accordance with clause 24.2 of this Service Contract:
 - (i) all of the Contract Assets, if this Service Contract is terminated; or
 - (ii) the Contract Assets specified in the notice served upon you in accordance with clause 22.1, in the case of a reduction in the scope of this Service Contract; and
 - (iii) comply with your obligations in clause 24 of this Service Contract in respect of the transfer of the Services and the return of the relevant Contract Assets.

23. ACTION WE MAY TAKE FOR YOUR BREACH OR POOR FINANCIAL PERFORMANCE

23.1 If you are in default

- (a) Upon the occurrence of a Non-Compliance Event we may;
 - (i) give you written notice requiring you to remedy the Non-Compliance Event in accordance with clause 23.1 (b); and
 - (ii) withhold all or part of the Funding, at our discretion.
- (b) Any notice we serve on you, pursuant to clause 23.1(a) must state:
 - (i) that a Non-Compliance Event has occurred and set out reasonable details of the event or circumstances constituting the Non-Compliance Event;
 - (ii) that you must, within 7 days of receipt of the notice, or such longer period as we specify in the notice, rectify the breach;

- (iii) if we require it, that you must also provide us, by the date set out in our notice, with a Rectification Plan.
- (c) You must provide any Rectification Plan we require pursuant to a notice under clause 23.1(b) by the date set out in the notice and it must:
 - (i) set out all of the steps you intend to take to rectify the Non-Compliance Event and prevent a re-occurrence; and
 - (ii) when you will complete each of those steps.
- (d) Within 7 days of receiving your Rectification Plan we will either approve it or require you to make any amendments to it that we consider, acting reasonably, need to be made to rectify the Non-Compliance Event, which amendments must be made within 2 Business Days.
- (e) You must:
 - (i) comply with any Rectification Plan approved by us;
 - (ii) rectify any Non-Compliance Event the subject of a notice under clause 23.1(b) within the time provided in the notice; and
 - (iii) provide us with any reports we require regarding the implementation of the approved Rectification Plan.
- (f) If we withhold all or part of the Funding pursuant to clause 23.1(a)(ii) we will pay you the withheld Funding when you have rectified the Non-Compliance Event.

23.2 Termination Event

It is a Termination Event if:

- (a) any person suffers a Serious Injury or Illness or dies due to any unlawful, negligent, reckless or deliberately wrongful act or omission by you or your Staff in the delivery of the Services;
- (b) a Non-Compliance Event occurs and:
 - (i) we consider that it cannot be rectified; or
 - (ii) you fail to rectify it in accordance with a notice served upon you in accordance with clause 23.1(a) or a Rectification Plan approved in accordance with clause 23.1(d);
- (c) you fail to comply with any of your obligations arising under clauses 2.2(c), 6, 12, 15 and 19;
- (d) you regularly or habitually commit breaches of this Service Contract which, in our reasonable opinion, when taken in total amount to a material breach of this Service Contract or which collectively have a material adverse effect on the delivery of the Services;
- (e) we are satisfied on reasonable grounds that you are unable or unwilling to satisfy the terms of this Service Contract;
- (f) it becomes unlawful for you to perform any of the Services;

- (g) you do not have any Authorisation that is material to your performance of this Contract or the provision of the Services or that Authorisation is revoked, terminated or expires or is modified or amended or conditions are attached in a manner that is unacceptable to us, and it is not replaced by an Authorisation acceptable to us;
- (h) you spend the Funding other than as required under this Service Contract;
- (i) prior to or during the Term of this Service Contract you provided us with incorrect, incomplete, false, misleading or deceptive information;
- (j) an Insolvency Event occurs;
- (k) a KPI Termination Event occurs;
- (l) a Change of Control occurs, which we have not consented to in writing.

23.3 Action we may take if a Termination Event occurs

We may terminate this Service Contract:

- (a) immediately upon the occurrence of a Termination Event set out in clause 23.2(a);
or
- (b) on 7 days' notice to you upon the occurrence of any other Termination Event;

In either case we shall give you written notice of the termination which specifies when the termination is to take effect.

23.4 What happens if we terminate this Service Contract?

If we terminate this Service Contract under this clause 23 you must:

- (a) repay any part of the Funding and Fees that you:
 - (i) have not already spent in accordance with this Service Contract; or
 - (ii) have not legally committed to spend under this Service Contract prior to receiving notice under clause 23.3;
 as if we had given you a notice to repay that amount under clause 21.2 on the date the termination or reduction takes effect.
- (b) repay any part of the Funding that we consider you have not spent in accordance with this Service Contract in accordance with a demand served upon you in accordance with clause 21.2;
- (c) comply with your obligations in clause 24 of this Service Contract in respect of the transfer of the Services and the Contract Assets.

23.5 Invalid termination under this clause to be a termination under clause 22

If we purport to terminate the Service Contract under this clause 23 and that termination is determined by a competent authority not to be properly a termination under this clause, then that termination by us will be deemed to be a termination under clause 22 effective from the date of the notice of termination referred to in clause 23.3.

24. END OF SERVICE CONTRACT TRANSFER PROVISIONS

24.1 We may appoint a successor

You acknowledge that we may, on or before the end of the Term, invite any person to perform all or any part of the Services after the end of the Term.

24.2 Transferring the Contract Assets to a successor

(a) Unless otherwise notified by us in writing, if this Contract is terminated or the Term otherwise expires, you must take all steps necessary to:

- (i) transfer the legal and beneficial title and registration; and
- (ii) deliver possession;

of all of the Contract Assets, including Contract Assets that are subject to a Lease, to us, our nominee or a Successor Operator (upon payment of \$10 consideration):

- (iii) if this contract is terminated, within 5 Business Days of our Termination Notice taking effect;
- (iv) or otherwise, within the period of 30 days immediately preceding the end of the Term.

(b) If the scope of this Contract is reduced pursuant to clause 22, you must take all steps necessary to:

- (i) transfer the legal and beneficial title and the registration; and
- (ii) deliver possession;

of the Contract Assets specified in the notice served upon you pursuant to clause 22.1 to us, our nominee or a Successor Operator (upon payment of \$10 consideration) within 5 Business Days of our notice reducing the scope of this Service Contract taking effect.

(c) You must ensure at the time you are required to deliver possession of the Contract Assets to us, our nominee or a Successor Operator that they are:

- (i) operational and free from damage;
- (ii) in at least the same condition as at the Commencement Date;
- (iii) compliant with clause 9.1;

subject to fair wear and tear.

(d) If any Contract Asset is not in the condition required by clause 24.2(c):

- (i) we may direct you to restore the Contract Asset to the required condition within 7 days, or such longer period as we may agree with you; or
- (ii) you must pay an amount reasonably determined by us to be the cost of restoring the Contract Asset to the required condition.

24.3 Managing the Services to enable their continuation

You must maintain and manage the Services in a way that a Successor Operator or our nominee is able at any time to take over the Services without interruption to any of the Services.

24.4 Preparing and maintaining handover information

- (a) You must prepare and maintain the following information, in addition to the records identified in clause 13:
 - (i) information regarding material contracts relating to the Services;
 - (ii) information regarding computer and other information systems (if any) you use to perform the Services or store any Commonwealth Material or State Material;
 - (iii) the asset register referred to in clause 13.2(f);
 - (iv) information regarding Service Assets used in the Services, including the extent to which they are used in the Services;
 - (v) an inventory of Spares;
 - (vi) maintenance records for all Contract Assets;
 - (vii) details of scheduled timetabled transport services;
 - (viii) the names, addresses, contact details and service requirements of all active clients, in accordance with Privacy Laws;
 - (ix) a schedule of information regarding your Staff at an aggregate level including date of joining, contract / award terms, grade, accrued entitlements and training records; and
 - (x) such other information as is reasonably requested by us to facilitate smooth handover of the Services, or any part of the Services, to us or our nominee or a Successor Operator.
- (b) You must keep the information described in clause 24.4(a) up to date and provide copies to us on reasonable notice, or in any case, immediately in the event of us issuing a Termination Notice.
- (c) You must ensure that a prospective Successor Operator, Successor Operator or our nominee has, to the extent permitted by Law, immediate access to the information referred to in 24.4(a) on reasonable notice from us, or in any case, immediately in the event of us issuing a Termination Notice.

24.5 Providing us with information to enable the Services to continue

- (a) You must, to the extent permitted by Law, provide us with reasonable access to your Staff and the information, books and records, kept by you or on your behalf in connection with the Services, for the purpose of us preparing reports and documents in connection with any invitation to a person to operate all or part of the Services or any other associated services.

- (b) You must, to the extent permitted by Law, make available to us any information, and assist in the verification of any information (including the provision of answers to verification questions), as we reasonably require in connection with the contracting of the Services.
- (c) You warrant and represent to us that to the best of your belief all information provided under clauses 24.4(a) and 24.5(b) will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.
- (d) You must warrant to a Successor Operator that to the best of your belief any other information made available is true and correct.

24.6 You must not frustrate the transfer of the Services

You must not do anything that directly or indirectly avoids or materially prejudices or frustrates:

- (a) the transfer of the Services or any part of them at the end of the Term to a Successor Operator or our nominee; or
- (b) the ongoing delivery of the Services.

24.7 Providing a successor with assistance to enable the Services to continue

You must do all things, both before and after the Termination Date, we reasonably require you to do to assist and advise any prospective Successor Operator, Successor Operator or our nominee in the operation of the Services, including providing information and records related to the operation of the Services (excluding confidential financial information but including all records relating to the Staff).

24.8 Providing a successor with access to enable the Services to continue

You must ensure that a prospective Successor Operator, Successor Operator or our nominee has access to your Staff, the Contract Assets, Spares, and any premises or depots at which the Contract Assets are kept for the purpose of:

- (a) the prospective Successor Operator, Successor Operator or our nominee receiving information in respect of the Services; and
- (b) preparations by the prospective Successor Operator, Successor Operator, or our nominee to take over the Services or part of the Services at the end of the Term,

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

24.9 Obligations subject to Privacy Laws

Your obligation to provide information as required by this clause 24 is subject to compliance with your, our and any Successor Operator's obligations under Privacy Laws.

25. CONFLICT OF INTEREST

25.1 Meaning of conflict of interest

For the purposes of this clause a 'Conflict of Interest' includes you or your Staff engaging in any activity or obtaining any interest likely to conflict with or restrict your performance of your obligations under this Service Contract and delivering the Services fairly and independently.

25.2 You warrant no conflict of interest exists or is likely to arise

You warrant and represent that, to the best of your knowledge after making diligent inquiry, no Conflict of Interest exists, or could reasonably be perceived by others to exist.

25.3 You must notify us of any actual or potential conflict of interest

You must:

- (a) notify us in writing immediately if a Conflict of Interest arises, or could reasonably be perceived by others to have arisen; and
- (b) make full disclosure of all relevant information relating to the Conflict of Interest; and
- (c) comply with any reasonable direction given by us for the appropriate management or resolution of the Conflict of Interest within the time frame stipulated by us.

26. YOU MUST ACKNOWLEDGE THE COMMONWEALTH AND / OR THE STATE AS THE SOURCE OF THE FUNDING

- (a) You must acknowledge the Funding and other support provided by the Commonwealth or the State (as appropriate) in any Service Contract Material you publish.
- (b) When doing so, you must use any form of acknowledgement we reasonably specify.

27. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

- (a) You own the Intellectual Property Rights in all Service Contract Material subject to clauses 27(b) and (c).
- (b) The Commonwealth owns all Commonwealth Material, including Intellectual Property Rights in that Material.
- (c) We, or the State own all State Material, including Intellectual Property Rights in that Material.
- (d) You grant us a licence to use, reproduce, publish and adapt the Intellectual Property Rights in Service Contract Material and Existing Material, (excluding Secret and Sacred Material) for any Commonwealth or State purpose. This licence is permanent, irrevocable, free, worldwide, non-exclusive and includes a right of sub-licence.

- (e) We license you to use the Commonwealth Material and the State Material (including copying it and supplying it to others), but only for the purposes of this Service Contract.
- (f) You must ensure that you have the right, or will have the right at the relevant time, to deal with the Intellectual Property Rights in the Service Contract Material and any Existing Material under this clause 27.
- (g) If we require, you must bring into existence, sign or otherwise deal with any document which we consider is necessary or desirable to give effect to this clause 27.
- (h) You must obtain, from each author of any Service Contract Material or Existing Material, a written consent to the Specified Acts. The consent must cover Specified Acts done before or after the date of the consent, and whether done by us or by someone claiming under or through us. If we ask, you must give us the original of the consent.
- (i) You must keep safe and maintain all State and Commonwealth Material. You accept all risk relating to that Material.
- (j) You must promptly return all State and Commonwealth Material when this Service Contract ends or is terminated, unless we otherwise direct.

28. PROTECTION OF CONFIDENTIAL INFORMATION

- (a) Subject to clause 28(b), a party must not disclose Confidential Information to anyone, without the prior written consent of the other party.
- (b) A party can disclose Confidential Information to the extent that it:
 - (i) is disclosed to its internal management solely to enable effective management or auditing of Service Contract-related activities;
 - (ii) is disclosed by us to an external consultant or contractor, who is engaged to conduct reviews or research and / or make recommendations aimed at achieving more effective use of the Funding, improving the delivery of the Services or your operations or governance;
 - (iii) is disclosed by us to any Minister of the Commonwealth or the State;
 - (iv) is disclosed by us, in response to a request by a House or a Committee of the Parliament of the Commonwealth or the State;
 - (v) is shared within TfNSW, or with another Governmental Agency, where this serves our, the Commonwealth's or the State's legitimate interests;
 - (vi) is authorised or required by law to be disclosed;
 - (vii) is in the public domain otherwise than due to a breach of this clause 28 or the law;
 - (viii) is required to be disclosed to a party's legal advisers or for the purpose of enforcing this Service Contract or in any proceedings arising out of or in connection with this Service Contract;

- (ix) is required to be disclosed to professional advisors including accountants, auditors and insurance brokers to enable a party to comply with its legal obligations; or
 - (x) is authorised or required under Information Legislation.
- (c) Where a party discloses Confidential Information to another person under clause 28(b) they must:
- (i) notify the receiving party that the information is confidential; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential.
- (d) If we ask, you must promptly arrange for any of your Subcontractors, employees and volunteers to give us a signed confidentiality deed, in a form we provide, relating to the use and non-disclosure of our Confidential Information.
- (e) You must secure all our Confidential Information against loss and unauthorised access, use, modification or disclosure.

29. PRIVACY

- (a) In carrying out your obligations under this Service Contract:
- (i) you must not do anything which, if done by you, us, the State or the Commonwealth, would be a breach of Privacy Law, and
 - (ii) you must comply with any privacy policy or approved privacy code which has been adopted by TfNSW and that is reasonable having regard to the requirements of the Law and which we notify you of in accordance with clause 2.2(d);
 - (iii) you must do all that is reasonably necessary on your part to enable us to comply with the Privacy Law and any privacy policy or code we adopt.
- (b) You agree to follow such reasonable written direction as to privacy measures as we advise from time to time.
- (c) You must immediately notify us in writing upon becoming aware of any breach of this clause 29 and co-operate with us in the resolution of any complaint alleging a breach of the Privacy Law, a privacy policy or an approved privacy code.

30. DISCLOSURE OF CERTAIN INFORMATION

- (a) You acknowledge that we, the Commonwealth or the State may disclose or publish details about this Service Contract, Subcontracts, or the Services. The details may include (but are not limited to) your name, the amount of the Funding, the location where the Services are being delivered and performance and safety information, including any information obtained from you in accordance with the Reporting Schedule or information collected from New Systems and Equipment.
- (b) We will not publish information under clause 30(a) that is Personal Information or Confidential Information.

- (c) You acknowledge that information may also be disclosed in accordance with our obligations or those of the State or the Commonwealth under Information Legislation.

31. DISPUTE RESOLUTION

31.1 Dispute resolution process

If a dispute arises between you and us, both parties agree to deal with the dispute in the following way:

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

31.2 Restriction on commencing legal proceedings

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

- (a) the negotiations fail to resolve the dispute within 20 Business Days of when notice pursuant to clause 31.1(a) is given; or
- (b) where a party submits the dispute to alternative dispute resolution under clause 31.1(c), the dispute is not resolved within 20 Business Days of that submission (or any extended time the parties have agreed to in writing before the expiry of the 20 Business Days).

31.3 Exception to restriction on commencing legal proceedings

- (a) A party does not need to follow the dispute resolution procedures set out in clause 31.1 and 31.2 if they are seeking urgent interlocutory or interim relief from a court.
- (b) Clauses 31.1 and 31.2 do not apply in relation to actions we take under clauses 21, 22 and 23.

31.4 Obligation to perform despite dispute

Whether or not a dispute exists, each party must continue to perform its obligations under this Service Contract.

32. NOTICES UNDER THIS SERVICE CONTRACT

32.1 How to give a Notice under this Service Contract

Any Notice under this Service Contract:

- (a) must be in writing, in English and signed by the person giving it or someone authorised by that person to sign it;
- (b) must be hand delivered, sent by pre-paid post or email; and
- (c) must be sent to the Representative of the intended recipient at the address specified.

32.2 When will the Notice be taken to have been given?

A Notice given under this Service Contract in accordance with clause 32.1 will be taken to be duly given:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, on the fifth Business Day after the date of posting; or
- (c) if sent by email, when received by the addressee,

but if the result is that the Notice would be taken to be given on a day that is not a Business Day or is given after 4:00pm (addressee's time), the Notice will instead be taken to have been given at 9:00am on the next Business Day.

33. ASSISTANCE WITH DISPUTES WITH THIRD PARTIES

At our request, you must provide us with all reasonable assistance that we may require to resolve any dispute we may have with a third party (including with the Commonwealth) from time to time in relation to this Service Contract or the Services.

34. YOUR RELATIONSHIP WITH TRANSPORT FOR NSW

- (a) You acknowledge that neither you nor any person employed or engaged by you are an employee, partner or agent of us or of the State or the Commonwealth by reason of the execution or performance of this Service Contract.
- (b) You must not misrepresent your relationship with Transport for New South Wales, the State or the Commonwealth.
- (c) You are not authorised to legally commit or represent us in any way, and must not attempt to bind or represent us in any way,

35. FORCE MAJEURE EVENT

35.1 Suspension of obligations by reason of a Force Majeure Event

If a party is prevented from carrying out any of its obligations under this Service Contract as a result of a Force Majeure Event, those obligations will be suspended for the duration of the Force Majeure Event, provided that the party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practicable, notifies the other party of the nature and impact of the Force Majeure Event and of extent to which it is unable to perform its obligations; and

- (b) uses its best endeavours to remedy or minimise the effects of the Force Majeure Event.

35.2 No extension of the term of this Service Contract

The term of this Service Contract will not be extended by the period of any Force Majeure Event.

36. GST

36.1 Definitions

In this clause 36:

- (a) the term '**GST Act**' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) the terms '**supply**', '**supplier**', '**taxable supply**', '**tax invoice**', '**GST**', '**input tax credit**', '**decreasing adjustment**' and '**adjustment note**' have the same meaning as given in the GST Act; and
- (c) the term '**RCTI**' means a 'recipient created tax invoice' as defined in the GST Act. For the purpose of this Service Contract, an RCTI is a tax invoice belonging to a class of tax invoices that the Australian Commissioner of Taxation has determined in writing may be issued by the receiver of the supply; and
- (d) '**receiver of the supply**' has the same meaning as the term 'recipient' has in the GST Act.

36.2 Organisation is registered or required to be registered for GST

- (a) If one party ('**supplier**') makes a taxable supply to the other party ('**receiver of the supply**') under this Service Contract the receiver of the supply will pay without set-off, on provision of a tax invoice or RCTI, an additional amount to the supplier equal to the GST imposed on the supply in question.
- (b) If an amount on account of GST has been included in the consideration for a supply under this Service Contract, the amount of GST is as specified in the Funding Tables to this Contract.
- (c) If an amount on account of GST has been included in the consideration for a supply under this Service Contract and the supply is not a taxable supply for any reason, the supplier must, on demand, refund the amount paid on account of GST to the receiver of the supply.
- (d) No party may claim or retain from the other party any amount in relation to a supply made under this Service Contract for which the first party can obtain an input tax credit or decreasing adjustment.
- (e) The parties acknowledge and agree that each party:
 - (i) is registered for GST purposes;
 - (ii) has quoted its Australian Business Number to the other; and
 - (iii) must tell the other of any changes to the matters covered by this clause.
- (f) We (as the receiver of the supply) will issue RCTI(s) and any adjustment notes for any taxable supplies you make to us under this Service Contract within 28 days of us determining the value of the taxable supplies in question.

- (g) You must not issue tax invoices or adjustment notes for taxable supplies you make to us under this Service Contract.
- (h) Both parties must comply with the determination scheduled to GST Ruling 2000/10.
- (i) We will not issue RCTI(s) or adjustment notes for taxable supplies you make to us under this Service Contract at any time that either party fails to comply with any of the requirements in clauses 36.2(e) to 36.2(i).

36.3 Government Related Entities

- (a) This clause applies if you are a Local Council or other Government related entity (see **Items 2 and 9** of the Service Contract Details).
- (b) Other than as set out in this clause, where this clause applies clauses 36.2 and 36.4 do not apply.
- (c) The parties have entered into this Service Contract on the understanding that:
 - (i) the parties are both 'government related entities' as defined in the GST Act; and either:
 - (ii) the payment of the Funding:
 - (A) is covered by an appropriation under an Australian law; and
 - (B) is calculated on the basis that the sum of the Funding and anything else you receive from another entity in connection with, or in response to, or for the inducement of that supply under this Service Contract, or a related supply does not exceed your anticipated or actual costs of making those supplies; or
 - (iii) the payment of the Funding is a kind of payment specified in regulations made for the purposes of s 9-17 of the GST Act.
- (d) If despite clauses 36.3(c) and 36.3(e) one party ('supplier') makes a taxable supply to the other party ('receiver of the supply') under this Service Contract the receiver of the supply will pay without set-off, on provision of a tax invoice, an additional amount to the supplier equal to the GST imposed on the supply in question.
- (e) The parties acknowledge and agree that each party:
 - (i) has quoted its Australian Business Number to the other; and
 - (ii) must tell the other of any changes to the matters covered by this clause.
- (e) On the basis of the matter described in clause 36.3(c), the parties rely on s.9-17 of the GST Act for no GST being imposed in connection with a supply made under this Service Contract.

36.4 Organisation is not registered or required to be registered for GST

- (a) This clause applies if you are not registered or required to be registered for GST (see **Item 9** of the Service Contract Details).
- (b) Other than as set out in this clause, where this clause applies clauses 36.2 and 36.3 do not apply.
- (c) The parties knowledge and agree that they each:
 - (i) have quoted their Australian Business Number to the other; and
 - (ii) must tell the other of any changes to the matters covered by this clause.

- (d) If you become registered for GST, or become required to be registered for GST, during the Term of this Service Contract, then:
 - (i) you must notify us in writing within 7 days after you become registered for GST; and
 - (ii) clause 36.2 will apply in its entirety from the date your GST registration takes effect.

37. OTHER LEGAL MATTERS

37.1 Entire agreement

This Service Contract constitutes the entire agreement between the parties about the subject matter of this Service Contract. It supersedes all earlier discussions, agreements or understandings in connection with it, whether oral or written.

37.2 Benefit of this Service Contract

- (a) You acknowledge and agree that we hold the benefit of your obligations, our rights and any releases or indemnities under this Service Contract as principal and on trust for each Indemnified Party, each of Our Associates and any Successor Operator (each being a **Beneficiary**), as if the obligation, right, release or indemnity had been expressed for the benefit of each Beneficiary.
- (b) If any Beneficiary suffers Losses as result of one or more of your acts or omissions or any of your Staff relating to the performance, non-performance or termination of this Service Contract, we will be able to recover those Losses from you as if the Losses were suffered or incurred by us;
 - (i) to the extent that Losses would have been capable of being recovered by us had we suffered those Losses; and
 - (ii) subject to the limitations and exclusions of liability set out in this Service Contract.

37.3 Counterparts

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

37.4 Variation of this Service Contract

This Service Contract may only be varied in writing, signed by both parties.

37.5 Effect of invalidity

If part of this Service Agreement is found to be invalid, the rest of this Service Contract continues as if the invalid part were excluded.

37.6 Further assistance

Each party agrees to execute all deeds, instruments, transfers or documents as may be necessary or desirable to give full effect to the provisions of this Service Contract.

37.7 PPS Law

- (a) You acknowledge that this Contract may give us a Security Interest in the Contract Assets and that we may register a financing statement in relation to our Security Interest in the Contract Assets. You waive your right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- (b) You must promptly do anything we require to ensure that any Security Interest we have in the Contract Assets is a perfected Security Interest and has priority over all other Security Interests.
- (c) To the extent that the PPS Law allows them to be excluded, the enforcement provisions in Chapter 4 of the PPSA do not apply to any enforcement of our rights in respect of any Security Interest in the Contract Assets or to the exercise of our rights in respect of the Contract Assets.

37.8 Assignment

- (a) Except where this Service Contract expressly provides otherwise you must not assign, novate, transfer, encumber or otherwise deal with any of your rights or interests under this Service Contract without our prior written consent.
- (b) We may assign or transfer our rights or obligations under this Service Contract to another Governmental Agency. You must execute any document reasonably required to give effect to any such assignment or transfer.

37.9 Enforcement of rights and waiver

- (a) A party is not prevented from enforcing any part of this Service Contract merely because:
 - (i) it did not enforce that part on an earlier occasion;
 - (ii) it did not enforce another part.
- (b) A waiver is not valid or binding on the party granting the waiver unless made in writing.

37.10 Governing law and jurisdiction

This Service Contract is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of NSW and any courts which have jurisdiction to hear appeals from those courts in connection with matters concerning this Service Contract.

37.11 Survival

Clauses 6.6(b), 8.5(c), 9.2, 10.2(b)(ii), 11, 12, 13, 14 (b), (c) and (d), 15(a), (b)(iii), (f) to (h), 17.3, 18, 19, 21, 22.2, 22.3, 23.4, 23.5, 24, 26, 27(a), (b), (c), (g), (h), (i) and (j), 28, 29, 30, 31, 33, 36 and 37 of these Standard Terms and Conditions and clauses 3(c), (d) (iii) and (iv), (f) (viii) of the General Services Schedule and clause 3(f) of the Travel Training Schedule and your obligations under the Reporting and Insurances Schedules in respect of Services delivered during the Term, and any other clause which by its nature should survive termination or expiry of this Service Contract on any basis, survive the termination or expiry of this Service Contract on any basis.

38. DEFINITIONS AND INTERPRETATIONS

38.1 Definitions of we, us and you

In this Service Contract, unless the contrary appears:

we or **us** (and grammatical versions such as ours) or TfNSW means Transport for NSW;

you means the legal entity set out in Item 1 in Service Contract Details.

38.2 Defined terms

In this Service Contract, unless the contrary appears:

ADHC means the Ageing, Disability and Home Care Division within FACS.

Asset means any Bus, Car / Minibus or trailer.

Asset Replacement Fund means a bank account maintained by you in accordance with clause 10.4 (b) for the replacement of Contract Assets.

ASTP means the Assisted School Travel Program which provides eligible school students with a disability with transport services to enable them to attend school.

Authorisation includes any accreditation, authority, consent, authorisation, permit, certificate, permission, licence, approval or exemption from, by or with a Governmental Agency.

Board means:

- (a) if you are a company your Board of Directors;
- (b) if you are an incorporated association your Management Committee;
- (c) if you are an co-operative your Board of Directors;
- (d) if you are a Council your Councillors.

Bus has the same meaning as in the PT Law.

Business Day means any day other than a Saturday, Sunday or a public holiday in New South Wales.

Car / Minibus means a motor vehicle with less seating capacity than a Bus.

CCSP means the Community Care Supports Program funded by the State through the Department of Family and Community Services, Ageing, Disability and Home Care.

CCSP Services means the Services you are contracted to provide under the CCSP as defined in the CCSP Services Schedule.

Change of Control means:

- (a) any change which results in any person's shareholding or voting power in your organisation increasing above 49%;
- (b) your becoming a subsidiary, partner or joint venturer with any other person;
- (c) any change in the persons who have the capacity to determine the outcome of decisions about your financing or operating policies as defined in section 50AA *Corporations Act 2001* (Cth).

CHSP means the Commonwealth Home Support Program funded by the Commonwealth through the DoH (previously DSS).

CHSP Services means the Services you are contracted to provide under the CHSP as defined in the CHSP Services Schedule.

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

Commencement Asset Register means the register of Contract Buses, Contract Car / Minibuses and Contract Trailers annexed to this Service Contract.

Commencement Date means the date on which this Service Contract is signed by the last party to do so or the date specified in **Item 4** of the Service Contract Details, whichever is the later.

Commonwealth means the Commonwealth of Australia.

Commonwealth Material means any Material created by the Commonwealth in respect of the CHSP or which is copied or derived from that Material.

Completion Date means the date specified in **Item 5** of the Service Contract Details or any other extended date agreed to by the parties in writing.

Confidential Information means information that:

- (a) by its nature is confidential; or
- (b) the parties know or ought to know is confidential; or
- (c) is designated by us, the State or the Commonwealth as confidential information; or
- (d) is Secret and Sacred Material.

Consequential Loss means any loss recoverable at law (other than loss arising in the usual course of things) which is consequential upon other loss, including:

- (a) loss of income or revenue;
 - (b) a loss of opportunity or goodwill;
 - (c) a loss of profits;
 - (d) a loss of anticipated savings or business; and
 - (e) loss of value of any equipment,
- and any costs or expenses in connection with the foregoing.

Contract Asset means each Contract Bus, Contract Car / Minibus or Contract Trailer.

Contract Bus means each Bus listed in the Commencement Asset Register annexed to this Service Contract and each New Contract Bus.

Contract Car / Minibus means each Car / Minibus listed in the Commencement Asset Register annexed to this Service Contract and each New Contract Car / Minibus.

Contract Trailer means each trailer listed in the Commencement Asset Register annexed to this Service Contract and any New Contract Trailer.

CP Law means *Child Protection (Working with Children) Act 2012* (NSW) and any regulation, order, rule, subordinate legislation or other document or direction made under it.

CTABS means Centralised Trip Allocation and Booking System.

CTABS Supplier means the supplier of CTABS as appointed by us from time to time.

CTP means the Community Transport Program funded by the State through Transport for New South Wales.

CTP Services means the Services you are contracted to provide under the CTP as defined in the CTP Services Schedule.

DIA means the *Disability Inclusion Act 2014* (NSW).

DIR means the *Disability Inclusion Regulation 2014* (NSW).

Direct Costs in relation to the provision of transport under any Program means costs that relate directly to delivering trips to Eligible Customers and their carers including:

- (a) vehicle expenses such as brokerage fees, fuel, insurance, registration costs, maintenance costs, cost of tyres;
- (b) the amounts paid to Staff involved in the direct delivery of services;
- (c) booking and scheduling costs.

Disability includes a long-term physical, psychiatric, intellectual or sensory impairment that, in interaction with various barriers, may hinder the person's full and effective participation in the community on an equal basis with others.

Disability Principles means the Disability Principles set out in sections 4 and 5 of the DIA.

Disability Service Standards means the Disability Service Standards set out in Schedule 1 of the DIR.

DoH means the Commonwealth Department of Health.

DSS means the Commonwealth Department of Social Services.

Eligible Customer means any person described as a person eligible to receive services under a particular Program in the Program Services Schedules.

Executive Decision Maker means:

- (a) any member of the group of persons who is responsible for your executive decisions; or
- (b) any person who has responsibility for, or significant influence over, planning, directing or controlling the Services or part of the Services;
- (c) any person who is responsible for your day-to-day operations, whether or not the person is an employee.

Existing Material means all Material in existence prior to the commencement of this Service Contract or developed independently of this Service Contract that is:

- (a) incorporated in the Service Contract Material
- (b) supplied with, or as part of, the Service Contract Material
- (c) required to be supplied with, or as part of the Service Contract Material.

FACS means the NSW Department of Family and Community Services.

Fees means the contributions you receive from Eligible Customers for Services provided under each Program.

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) the deferred purchase price (for more than 90 days) of an asset or service;
- (d) an obligation to deliver assets or services paid for in advance by a financier or otherwise relating to a financial transaction.

Financial Year means 1 July to 30 June.

Force Majeure Event means:

- (a) act of God, lightning, storm, explosion, flood, landslide, bush fire, tsunami, or earthquake;
- (b) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (c) embargo, power shortage, or water shortage;
- (d) fuel shortages that apply generally to the industry involving provision of transport by bus and car,

the consequence of which is beyond the control of the parties and could not have been prevented, overcome or remedied by the exercise by a 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) including, in your case, taking the steps set out in 'Service Continuity Plan' that you are required to develop under clause 4(b).

Funding means the money, or any part of it:

- (a) paid to you during the Term as set out in the Funding Table attached to each Program Service Schedule or otherwise pursuant to this Service Contract; or
- (b) paid to you under any prior contract with us for the delivery of community transport services under the HACC, CHSP, CTP or any related programs, and currently retained by you, whether for the replacement of Assets used in the delivery of those services or otherwise.

Funding Table means each funding table attached to each Program Services Schedule.

Governmental Agency means any Commonwealth, State or local government or semi-government entity or authority, statutory, municipal, or judicial department, agency, commission, instrumentality, authority, body, tribunal, entity or commissioner or other office-holder.

HACC means the Home and Community Care Program funded by the Commonwealth and the State.

Indemnified Persons has the meaning given in clause 18.1(a).

Indirect Costs means your costs in relation to the provision of transport under each Program that are not Direct Costs.

Information Legislation means the *Government Information (Public Access) Act 2009* (NSW), *Government Information (Information Commissioner) Act 2009* (NSW), *Freedom of Information Act 1982* (Cth) and any regulation, order, rule, subordinate legislation or other document or direction made under them.

Insolvency Event means when you:

- (a) stop or suspend payment of all or a class of your debts;
- (b) are insolvent within the meaning of s95A *Corporations Act 2001* (Cth);
- (c) must be presumed by a Court to be insolvent by reason of s459C(2) of the *Corporations Act 2001* (Cth);
- (d) fail to comply with a statutory demand (within the meaning of s459F(1)) of the *Corporations Act 2001* (Cth)
- (e) have an administrator appointed over all or any of your assets or undertaking;
- (f) you have a controller within the meaning of s9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of your assets or undertaking;
- (g) have an application or order made or resolution passed for your winding up or dissolution or enter into an arrangement, compromise or composition with or assignment for the benefit of your creditors, a class of them or any of them;
- (h) have a receiver or other similar officer appointed over all or any of your assets or undertaking or any step preliminary to the appointment of a receiver or other similar officer is taken;
- (i) have 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 the enforcement, distress, execution or similar process is not set aside within 5 Business Days; or
- (j) any event occurs which, under the laws of any relevant jurisdiction, including the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), *Associations Incorporation Act 2009* (NSW), *Co-operatives National Law* adopted in New South Wales under the *Co-operatives (Adoption of a National Law) Act 2012* (NSW) has an analogous or equivalent effect to any of the events listed above.

Intellectual Property Rights means all copyright, patent, rights in relation to inventions, trademark (including service mark), design, semi-conductor or circuit layout rights, business or company names or other rights resulting from intellectual activity in industrial, scientific, literary or artistic field, and other proprietary rights or any rights to the registration of such rights, but does not include Moral Rights.

Interest means interest calculated at an interest rate equal to the general interest charge rate as specified in section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis.

Investigation or Prosecution means:

- (a) any investigation in connection with safety or a Serious Incident;
- (b) any actual or prospective prosecution in connection with a possible breach of the Safety Laws;
- (c) any coronial inquest;
- (d) any other investigation by an Investigative Officer.

Investigative Officer means:

- (a) the Commonwealth Auditor-General;
- (b) the New South Wales Auditor-General;
- (c) the Australian Information Commissioner, the Privacy Commissioner and the Freedom of Information Commissioner;
- (d) the New South Wales Information Commissioner and the New South Wales Privacy Commissioner
- (e) an Ombudsman appointed under the *Ombudsman Act 1974* (NSW);
- (f) a Commonwealth Ombudsman appointed under the *Ombudsman Act 1976* (Cth);
- (g) the CEO of the NDIA;
- (h) the Chief Investigative Officer of the Office of Transport and Safety Investigations
- (i) any investigator exercising authority to investigate any occurrences, accidents or incidents under PT Law;

(j) any investigator exercising authority to investigate any occurrences, accidents or incidents under WHS Law; and any of their authorised delegates.

IPTAAS means the Isolated Patient Travel and Accommodation Assistance Scheme Subsidy Program.

KPI means a key performance indicator set out in the KPI Schedule.

KPI Action Plan has the meaning given in the KPI Schedule.

KPI Termination Event has the meaning given in the KPI Schedule.

KPI Report means any reports you are required to provide to us in respect of each KPI as set out in clause 3 of the KPI Schedule.

Law means any statute, regulation, order, rule, subordinate legislation, standard, code or direction enforceable under any statute, regulation, order, rule or subordinate legislation.

Lease means any financing or operating lease which entitles you to the exclusive use of an asset owned by a third party for a period of greater than a year.

Leased Asset means a Contract Asset subject to a Lease as listed in the Commencement Asset Register.

LGA means a Local Government 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 Loss.

MAC means the site known as My Aged Care established by the Commonwealth Government as the main webportal for individuals accessing the aged care system.

Maintenance Work means the conduct of activities to maintain the condition of the Contract Assets, such as but not limited to inspection, examination, condition assessment, servicing, adjustments, alterations, additions, repairs, reconditioning, replacement of component parts or modifications.

Material includes all originals, copies and extracts of documents, reports, equipment, software (including source code and object code versions), goods, information and data stored by any means.

Moral Rights includes the following rights of an author of copyright Material:

- (a) the right of attribution of authorship; and
- (b) the right of integrity of authorship; and
- (c) the right to not have authorship falsely attributed.

NDIA means the National Disability Insurance Agency.

NDIS has the meaning given to the term National Disability Insurance Scheme in the *National Disability Insurance Scheme Act 2013* (Cth).

NEPT means the Non-Emergency Patient Transport program developed by NSW Health.

New Contract Asset means any New Contract Bus, New Contract Car / Minibus or New Contract Trailer.

New Contract Bus means any Bus purchased or otherwise acquired by you after the Commencement Date either wholly or partly with the Funding. This definition applies to both new and second hand Buses.

New Contract Car / Minibus means any Car / Minibus purchased or otherwise acquired by you after the Commencement Date either wholly or partly with the Funding. This definition applies to both new and second hand Cars or Minibuses.

New Contract Trailer means any trailer purchased or otherwise acquired by you after the Commencement Date either wholly or partly with the Funding. This definition applies to both new and second hand trailers.

New Systems and Equipment means any systems and equipment supplied to operators by TfNSW for the purposes of vehicle tracking, reporting, scheduling or similar activities. For example CTABS, that may be installed for or on behalf of TfNSW on the Service Assets or Premises, as set out in the General Services Schedule.

Non-Compliance Event means any breach of this Service Contract other than a breach of a KPI, but includes a failure to provide a KPI Report or KPI Action Plan, and any failure to comply with a KPI Action Plan including any changes required pursuant to clause 3(g) of the KPI Schedule.

Notice means any notice, demand or other communication to be given under this Service Contract.

Our Associates means RMS, RailCorp, the Minister for Transport and any relevant Road Authority, the State or any employee, agent, representative, contractor, consultant, delegate, successor or adviser of, or to, us or those entities.

Owned Asset means any Contract Asset and Provider Asset.

Passenger Kilometres - Direct means the number of kilometres of one way completed journeys provided directly by you to each Eligible Customer including each associated carer. It does not include trips provided by subcontracted transport service providers, such as taxis or other point to point transport services. It does not include dead running (being the kilometres travelled when a vehicle is empty, for example from the depot to the first point at which a passenger is collected).

Passenger Kilometres - Indirect means the number of kilometres of one way completed journeys provided to each Eligible Customer including each associated carer indirectly through the use of subcontracted service providers such as taxis or other point to point transport service providers. It does not include dead running (being the kilometres travelled when a vehicle is empty, for example from the depot to the first point at which a passenger is collected).

Passenger Kilometres – Total means the total of Passenger Kilometres - Direct plus Passenger Kilometres - Indirect

Permitted Security Interest means:

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

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Privacy Act 1988* (Cth)).

Person in the DIA Target Group means a person who has a Disability, whether or not of a chronic episodic nature, that:

- (a) is attributable to an intellectual, cognitive, neurological, psychiatric, sensory or physical impairment, or a combination of any of those impairments; and
- (b) is permanent or likely to be permanent; and
- (c) results in a significant reduction in a person's functional capacity in one or more areas of major life activity, including for example, communication, social interaction, learning, mobility, decision-making, self-care and self-management; and
- (d) results in the need for support, whether or not of an ongoing nature as set out in the DIA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Law means the PPSA, the regulations made under it and any amendment made at any time to any other Laws as a consequence of that Act.

Premises means any location where you store any of your records, provide or plan the Services or keep the Owned Assets.

Privacy Law 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) and includes any regulation, order, rule, subordinate legislation, standard or codes of practice and principles made under them.

Program means each of the government programs identified in this Service Contract under which you receive Funding.

Program Services Schedule means each of the Schedules attached to this Service Contract setting out your specific obligations in respect of each Program.

Provider Asset means any Bus, Car / Minibus and trailer, used by you in the delivery of Services and purchased by you wholly with funds other than the Funding.

PT Law means each of the following, as in force from time to time, the *Passenger Transport Act 1990* (NSW), the *Passenger Transport Regulation 2007* (NSW), the *Passenger Transport Act 2014* (NSW), the *Passenger Transport Regulation 2014* (NSW) and any order, rule, subordinate legislation, ordinance, standard, code or guideline made under them.

Public Transport means scheduled bus, train and ferry services provided by the State that are available for use by the general public.

Purchase Date means the first purchase date for each Contract Asset specified in the Commencement Asset Register or otherwise, the date of first registration of the Contract Asset, anywhere in the world.

RailCorp means Rail Corporation New South Wales, including Sydney Trains and NSW Trains, as the context permits, or any successor Governmental Agency.

Related Entity has the meaning given in the *Corporations Act 2001*.

Representatives means the representatives of the Parties as nominated pursuant to clause 1.2(a).

RMS means the Roads and Maritime Services constituted under the *Transport Administration Act 1988* (NSW) or any successor Governmental Agency.

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

SACS Award means the *Social, Community, Home Care and Disability Services Industry Award 2010*.

SACS Decision means each of the decisions made by:

- (a) the Full Bench of Fair Work Australia on 1 February 2012 as brought into effect by the terms of the equal remuneration order issued by the Full Bench of Fair Work Australia on 22 June 2012, in respect of persons covered by Schedule B (Social and Community Services Employees) or Schedule C (Crisis Accommodation Employees) of the SACS Award;
- (b) the Western Australia Industrial Relations Commission on 29 August 2013

SACS Supplementation means the amount specified as a SACS Supplementation in any of the Funding Tables.

Safety Incident Reporting Protocol means the Safety Incident Reporting Protocol attached to the Reporting Schedule which sets out the types of incidents you must notify us of in accordance with clause 15(b)(i) and (ii) of these Standard Terms and Conditions.

Safety Laws means the PT Law and the WHS Law.

Schedule means a schedule to this Agreement. It may include annexures and incorporate other documents by reference.

Secret and Sacred Material means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to the Aboriginal Tradition as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

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 under the PPS Law; and
- (c) an agreement to create or give any arrangement referred to in (a) or (b).

Serious Incident means:

- (a) any occurrence, accident or incident you are required to report to RMS, the (Chief Investigator of the) Office of Transport Safety Investigations or any other regulator under the PT Law;
- (b) any accident or incident that you are required to report to SafeWork NSW under WHS Law;
- (c) any accident or incident you are required to report to the police;
- (d) any Significant Misconduct or allegation of any Significant Misconduct made by any person in relation to your Staff.

Serious Injury or Illness has the same meaning as in the *Work Health and Safety Act 2011* (NSW) (section 36).

Service Asset means any Car / Minibus, Bus or trailer used by you in the delivery of the Services.

Service Contract means these Standard Terms and Conditions, the Service Contract Details and the Schedules.

Service Contract Material means all Material:

- (a) which you bring into existence in performing this Service Contract;
- (b) copied or derived from Material referred to in (a).

Services Schedules means the General Services Schedule and the Program Services Schedules.

Services means any of the services, tasks or activities you are required to perform under this Service Contract.

Significant Misconduct means any fraudulent conduct, conduct that has resulted in or will, or is likely to, result in, death, harm or injury to any person, or breaches the PT Law.

Spare means any parts or components that you own for the purpose of carrying out Maintenance Works on any of the Service Assets.

Special Needs Groups means the groups identified as such in each Program Services Schedule

Specified Acts means any of the following types of acts or omissions

- (a) using, reproducing, adapting or exploiting all or any part of the Service Contract Material, with or without attribution of authorship;
- (b) supplementing Service Contract Material with other Material;
- (c) using the Service Contract Material in a different context to that originally envisaged;

but does not include false attribution of authorship.

Staff means all persons engaged in or in connection with the delivery of the Services including:

- (a) your Executive Decision Makers, officers, employees, volunteers, agents;
- (b) consultants, contractors, sub-contractors (whether engaged directly by you or otherwise) and their officers, employees and agents;
- (c) persons seconded to you.

State means the State of New South Wales.

State Material means any material apart from the Commonwealth Material:

- (a) we provide to you for the purposes of the Services; or
 - (b) copied or derived at any time from the Material referred to in (a);
- other than the Material referred to in clause 3(c)(i) and (ii) of the General Services Schedule.

Statutory Declaration means a statutory declaration made in accordance with the *Statutory Declarations Act 1959* (Cth) or the *Oaths Act 1900* (NSW), whichever is applicable.

Subcontractor means any contractor that is engaged by you to perform any part of your obligations under this Service Contract and any of their subcontractors. **Subcontract** has a corresponding meaning.

Successor Operator means any operator appointed to succeed you in delivering all or part of the Services after the Termination Date.

Term means the period from the Commencement Date to the Termination Date.

Termination Date means the effective date of termination of this Service Contract set out in a valid Termination Notice or the Completion Date, whichever is applicable.

Termination Event means any of the events listed in clause 23.2.

Termination Notice means a notice issued by us in accordance with clauses 22.1 or 23.3.

TfNSW Lessor means us or our nominee, agent or delegate.

Trips means the total of Trips – Direct and Trips – Indirect.

Trips - Direct means the number of one way completed journeys provided directly by you to each Eligible Customer including each associated carer. It does not include trips provided by subcontracted transport service providers, such as taxis or other point to point transport services.

Trips - Indirect means the number of one way completed journeys provided to each Eligible Customer including each associated carer indirectly through the use of subcontracted service providers such as taxis or other point to point transport service providers. A single one way trip provided by a subcontracted transport service must only be counted as one trip (even if it is paid for by more than one voucher).

TTSS means the Taxi Transport Subsidy Scheme.

WHS Law means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2011* (NSW); and
- (b) all other statutes, regulations, by-laws, orders, rules, ordinances, standards, codes or guidelines relating to work health and safety with respect to the Services.

38.3 Interpretation

In this Service Contract:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (c) 'person' includes an individual, the estate of an individual, a corporation, an authority, an incorporated association, a co-operative, a joint venture (incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (e) a reference to a Governmental Agency includes the successors of that Governmental Agency;
 - (f) a reference to a document (including this Service Contract) is to that document as amended, novated or replaced from time to time, except to the extent prohibited by this Service Contract or that other document;
 - (g) a reference to legislation or a legislative provision includes its delegated legislation and consolidations, amendments, re-enactments and replacements;
 - (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Service Contract, and a reference to this Service Contract includes all schedules, exhibits, attachments and annexures to it;
 - (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (k) nothing in this Service Contract is to be interpreted against a party solely because the party put forward this contract or any part of it;
 - (l) "includes" in any form is not a word of limitation; and
 - (m) a reference to "\$" or "dollar" is to Australian currency.

38.4 Schedules

All terms that have defined meanings in these terms and conditions have the same meaning in the Schedules.

38.5 Priority of documents

If there is any conflict or inconsistency, the provisions in documents forming part of this Service Contract take priority in the following order:

- (a) these Standard Terms and Conditions;
- (b) Service Contract Details;
- (c) the Schedules; and

- (d) any documents incorporated by reference in these Standard Terms and Conditions or the Schedules..

38.6 Consents or approvals

If the doing of any act under this Service Contract is dependent on our consent or approval or is within our discretion, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by us at our absolute discretion but we must at all times act reasonably in exercising our discretion.

EXECUTED AS AN AGREEMENT

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

(Full name of authorised delegate) (Signature) (Date)

in the presence of:

(Full name of witness) (Signature)

[This execution block to be used if the Service Provider is an Incorporated Association]

SIGNED for and on behalf of ****Missing Field**** _____
(insert your full legal name) (ABN)

in accordance with its constitution and section 22 of the *Associations Incorporation Act 2009* (NSW):

(Full name of authorised signatory) (Signature) (Date)

(Full name of authorised signatory) (Signature) (Date)

[This execution block to be used if the Service Provider is a Council or other Government body]

SIGNED for and on behalf of _____

(insert your full legal name) (ABN)

by its authorised delegate

(Full name of authorised delegate)

(Signature)

(Date)

in the presence of:

(Full name of witness)

(Signature)

[This execution block to be used if the Service Provider is a company]

EXECUTED by _____

(insert your full legal name) (ABN)

in accordance with its section 127 of the *Corporations Act 2001* (Cth):

(Full name if Director)

(Signature)

(Date)

(Full name of Director/Secretary)

(Signature)

(Date)