

Sydney Metropolitan Bus Service Contract – Tranche 1

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

ACN

(Operator)

Contract

Bus Operator name:

Objective reference:

Contents

Clause Number	Heading	Page
1.1	Definitions	1
1.2	Interpretation	15
1.3	Precedence of documents	16
1.4	Consents or approvals	16
1.5	TfNSW's Capacity	16
1.6	Delegation	16
1.7	No fetter on TfNSW's powers	16
1.8	Transfer of Functions	17
2.1	Appointment of Representatives	17
3.1	Transition Period	17
3.2	Term	18
3.3	Extension by TfNSW	18
4.1	Conditions Precedent	18
4.2	Consequences of Non-Fulfilment of Conditions Precedent	19
4.3	Performance Bond	19
4.4	Buses	21
4.5	Compliance with Clause 4.4	21
5.1	Bus Services	21
5.2	Dedicated School Services	22
5.3	Non exclusivity	22
5.4	Service Variations	22
5.5	Expression of Support	23
5.6	Co-operation with other Road and infrastructure projects	24
6.1	Contract Service Levels	24
6.2	Timetables	24
6.3	Dedicated School Services Timetable	25
10.1	Key Performance Indicators	26

11.1	Fares	26
11.2	Ticketing	27
11.3	Prohibition on Disincentives, Penalties and Discounts	27
11.4	Travel Free of Charge	27
11.5	Government Subsidised Travel Schemes	27
11.6	Recognition of Transfers	28
11.7	Compliance by Agents	28
11.8	Revenue and Revenue Data Protection	28
12.1	Ticketing Equipment	28
12.2	New Systems and Equipment	29
12.3	Existing Systems and Equipment	30
12.4	Participation in Integrated Transport Information Service	31
12.5	OSD	31
12.6	Compatibility of Information Systems	31
13.1	Contract Buses	32
13.2	Replacement of Buses	32
13.3	TfNSW inspection of Contract Buses	33
13.4	Contract Depot Capacity	33
13.5	Contract Depot Standards	34
14.1	New Buses	34
14.2	Purchase of Buses from Bus Procurement Panel	35
14.3	New Depots	35
15.1	Security, assignment and possession of Sale Buses	36
15.2	Bus Leases and Operator Depot Leases	36
15.3	Treatment of Leased Buses on Termination of Bus Lease	37
15.4	Treatment of Depots on Termination of Operator Depot Lease	37
15.5	Bus Leases entered into during the Term	38
15.6	Sale Buses	38
15.7	Treatment of Contract Depots Termination of Contract	38
15.8	Novation Buses	39
16.1	Reporting	39

17.1	Accessible Transport Action Plan	40
17.2	Environmental Plan	40
17.3	Passenger Relations Plan	41
18.1	All Staff	42
18.2	Damage or Harm to TfNSW's Reputation by Staff	42
19.1	Engagement of Approved Subcontractor	43
19.2	Access to Approved Subcontractor information	44
19.3	Operator undertakings in relation to Approved Subcontractors	44
20.1	Payments	44
20.2	Invoices and time for payment	45
20.3	Set-off	45
20.4	Goods and Services Tax (GST exclusive prices)	45
21.1	Governance	46
21.2	Audit	46
21.3	Inquiries	46
22.1	Accreditation and Compliance with Laws and Standards	47
22.2	<i>WHS</i>	48
23.1	Warranties Correct	50
23.2	Notification of Change	53
23.3	Reliance on Representations and Warranties	53
25.1	General Principle	55
25.2	Intellectual Property Licence	55
25.3	Indemnity	55
25.4	Third Party Rights	55
25.5	Livery and Operator's Marks	56
25.6	Advertising	56
26.1	Insurance policies	57
26.2	Insurance generally	58
26.3	Premiums	59
27.1	Indemnity	59
27.2	Liability and responsibility	59

27.3	Release	60
28.1	Confidentiality	60
28.2	Maintaining confidentiality	60
28.3	Permitted disclosure	60
28.4	Publication of certain information by TfNSW	60
28.5	Privacy compliance	61
28.6	Disclosure log (GIPA Act section 25)	62
28.7	Access to information (GIPA Act section 121)	62
28.8	Consultation (GIPA Act section 54)	63
29.1	Step-in Right	64
29.2	Step-in Powers	64
29.3	Acknowledgment and Obligations of the Operator	65
29.4	Protection of a Step-in Party	66
29.5	Protection of third parties	66
29.6	Step-Out	67
30.1	Termination Events	67
30.2	Termination by TfNSW for insolvency or breach	68
30.3	Termination by TfNSW for convenience	69
30.4	Waiver on termination	69
30.5	Consequences of termination generally	69
32.1	Variation of Terms and Conditions of Employment	70
33.1	Right to appoint Successor Operator and Interim Operator	71
33.2	Maintenance as Going Concern	71
33.3	Handover Information and Market Process Information	71
33.4	Preparation for Contracting at End of Term	72
33.5	Non-frustration of Transfer	73
33.6	Assistance in Securing Continuity	73
33.7	Access	73
33.8	Successor Operator to Make Offers	73
34.1	Dispute Resolution	74
34.2	Section 65 of the PT Act	75

36.1	Assignment	75
36.2	Arrangements with Related Entities	75
38.1	General	76
38.2	Corresponding provisions	77
	Attachment A – Contract details	1
	Attachment B – Performance Bond	2
	Schedule 1 – Services	
	Schedule 2 – Service Levels (including Timetable)	
	Schedule 3 – Payment	
	Schedule 4 – Key Performance Indicators (KPI)	
	Schedule 5 – Reporting	
	Schedule 6 – Governance	
	Schedule 7 – Fares and Ticketing	
	Schedule 8 – Contract Buses and Contract Depots	
	Schedule 9 – Transition Milestones	
	Schedule 10 – Market Process	
	Schedule 11 - Contract Bus Services Employees	

Date _____ November 2012

Parties **Transport for NSW, a corporation constituted under the *Transport Administration Act 1988* (NSW) on behalf of the State of New South Wales (TfNSW) of 18 Lee Street, Sydney, New South Wales**

(ACN 000 037 409) of (the Operator)

Recitals

- A. The *Passenger Transport Act 1990* (NSW) provides that the terms and conditions on which any regular passenger service is to be carried on within, or partly within, New South Wales are to be set forth in a contract entered into between an accredited service operator and TfNSW (on behalf of the Crown).
- B. The Operator is an accredited service operator ready and able to provide the regular bus services specified in this Contract.
- C. The Operator has agreed to carry out the Contract Bus Services on the terms set out in this Contract.

It is agreed as follows.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Accessible Transport Action Plan means a plan as described in Clause 17.1.

Accreditation means accreditation for a Bus service obtained in accordance with the requirements of the PT Act including any guideline, regulation or ordinance made under the PT Act.

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

Approved Subcontractor means a subcontractor approved under Clause 19.1(a).

Approved Subcontractor Security Documents means:

- (a) any document that TfNSW requires (in its sole discretion) to be provided or entered into by any Approved Subcontractor and any other parties in connection with an Approved Subcontractor performing any Contract Bus Services; and

(b) any ancillary document required by the terms of a document referred to in paragraph (a),

in each case in a form and substance satisfactory to TfNSW and executed by the Approved Subcontractor and all relevant counterparties (except TfNSW if TfNSW is party to such document).

Associated Entity means a related entity (as defined in the Corporations Act) or an associated entity (as defined in the Corporations Act).

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

Authorisation includes any Accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with a Reporting Body.

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

Bus has the meaning given in section 3 of the PT Act.

Bus Components means any Spares or other part of any Contract Bus.

Bus Lease means any Operating Lease or Finance Lease under which a Contract Bus is leased to the Operator or an Approved Subcontractor by any party other than a TfNSW Lessor. As at the commencement of this Contract, the Bus Leases are listed in Annexure 10 to the Contract Buses and Contract Depots Schedule.

Bus Operator means an accredited service operator (as defined in the PT Act) of Bus services in New South Wales (other than the Operator and any Approved Subcontractors).

Bus Procurement Panel means TfNSW's panel for the manufacture and supply of Buses (as notified to the Operator or published by TfNSW from time to time).

Bus Route means a bus route specified or described in the Service Level Schedule and any revisions to those routes, approved by TfNSW in accordance with Clause 5.4.

Bus Services means the routine bus services, excluding the Dedicated School Services, referred to in Clause 5.1 and described in the Service Level Schedule.

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

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

Calendar Year means a period that commences on 1 January and ends on the next 31 December.

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

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

Concession Fare means the Fare that can be charged to an Approved Beneficiary for a Ticket, set out in the Fares and Ticketing Schedule, as amended from time to time.

Confidential Information means, in relation to a Party, information that:

- (a) is by its nature confidential;
- (b) is designated by TfNSW as confidential; or
- (c) the other Party knows or ought to know is confidential.

Connecting Passenger Operators means any passenger transport operator whose services connect with the Contract Bus Services.

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.

Consideration has the meaning given by the GST Act.

Contract means this Sydney Metropolitan Bus Service Contract.

Contract Bus means:

- (a) a Transfer In Contract Bus;
- (b) an Existing Bus;
- (c) a New Bus;
- (d) a Replacement Contract Bus; or
- (e) a Growth Contract Bus.

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

Contract Buses and Contract Depots Schedule means Schedule 8 to this Contract.

Contract Bus Services means the Bus Services and the Dedicated School Services.

Contract Bus Services Employees means employees employed by the Operator to carry out the Contract Bus Services during the Term, and includes Drivers.

Contract Depot means a depot used or to be used in the performance of any of the Contract Bus Services, including the Existing Depots and any New Depots and the land, buildings and other improvements comprising the depot.

Contract Material means the Disclosed Information and all material, brought or required to be brought into existence by the Operator in connection with the Operator's performance of this Contract, including the Timetables (whether prepared before or after the commencement of this Contract) and all data provided by the Operator via the OSD or ITIS.

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

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

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

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

Critical Transition Milestones means the milestones referred to in Clause 3.1(b).

Dedicated School Services means Bus services carried out primarily to cater for transport of primary or secondary school students from the schools referred to in the Service Level Schedule and that carry few, if any, fare paying passengers who are not school students, referred to in Clause 5.2 and described in the Service Level Schedule.

Dedicated School Services Timetable means each and every timetable for Dedicated School Services contained in the Service Level Schedule and any revisions to those timetables, approved by TfNSW in accordance with Clause 6.3.

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

Depot Headlease means the lease in the form contained in Annexure 7 of the Contract Buses and Contract Depots Schedule.

Director-General means the Director-General of the Department of Transport.

Discretionary Extension Period means the extended period of this Contract, referred to in Clause 3.3(b).

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

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

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

Driver Authority means any requirements with respect to drivers under the PT Act or PT Regulation, in particular Parts 3 and 4 of the PT Regulation.

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

- (a) the date which is twelve months prior to the scheduled date of expiry of the Term; or
 - (b) the date on which TfNSW notifies the Operator of a Termination Event,
- and ending on the Termination Date.

Environmental Plan means a plan which contains the information referred to in Clause 17.2(b).

ETS Agreement means the agreement between TfNSW and the Operator, in relation to the delivery of an electronic ticketing system sourced by the NSW Government, signed by TfNSW and the Operator on the same date as this Contract.

Excused Performance Incident means an Incident for which KPI Relief is granted in accordance with the KPI Schedule.

Existing Bus means any Bus that was in operation in NSW or elsewhere on or before 1 July 2012 and that is owned or used by the Operator at the date of this Contract, excluding any Transfer In Contract Buses, and as listed in Annexure 2 of the Contract Buses and Contract Depots Schedule (as amended from time to time).

Existing Depot means a Contract Depot owned or used by the Operator at the commencement of this Contract, as listed in Annexure 6 of the Contract Buses and Contract Depots Schedule.

Existing Systems and Equipment means systems and equipment, installed for or on behalf of TfNSW, on Contract Buses or in Contract Depots, as at the commencement of this Contract.

Existing Service Contract means any contract between the Operator and TfNSW (or a previous Governmental Agency) for the performance of Bus services, entered into before the commencement of this Contract.

Extension Period means any extension of the Term of this Contract, in accordance with Clause 3.3(a).

Fare means the price payable for a Ticket.

Fares and Ticketing Schedule means Schedule 7 to this Contract.

Finance Lease means a Bus Lease which is or would be classified as a “finance lease” within the meaning given in Australian Accounting Standard AASB 117 (Leases), as amended from time to time, or any replacement thereof.

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

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

- (h) an obligation to deliver assets or services paid for in advance by a financier or otherwise relating to a financing transaction.

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

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; and
- (d) fuel shortages that apply generally to the Bus industry,

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).

Full Fare means the Fare that can be charged to passengers who are not Approved Beneficiaries for a Ticket, set out in the Fares and Ticketing Schedule, as amended by TfNSW from time to time.

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

Governance Schedule means Schedule 6 to this Contract.

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

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

Growth Contract Bus means:

- (a) a Bus owned by the Operator and which is purchased or acquired by the Operator during the Term; or
- (b) a Bus in respect of which the Operator enters into a Bus Lease during the Term,

for the purposes of increasing the number of Buses in the Contract Bus Fleet in connection with performing the Contract Bus Services, as listed in Annexure 3 of the Contract Buses and Contract Depots Schedule (as amended from time to time)

GST has the meaning given by the GST Act.

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

GST Group has the meaning given by the GST Act.

Headway means the elapsed time that separates two adjacent Buses travelling the same Bus Route or group of Bus Routes.

Headway Trips means Trips that are not scheduled to a public timetable.

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

Initial Capital Value means, in respect of a Bus, the book value for that Bus as at Services Commencement Date.

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

Insolvency Event means when the Operator:

- (a) stops or suspends payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Act;
- (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;
- (g) has an application or order made or a resolution passed for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them;
- (h) has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings and that enforcement, distress, execution or similar process is not set aside within 5 Business Days; or
- (i) any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Intellectual Property includes copyright, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after the commencement of this Contract.

Interim Operator means any party appointed by TfNSW to operate the Contract Bus Services on a temporary or interim basis after the Termination Date.

Invoice has the meaning given by the GST Act.

Issuer means:

- (a) an authorised deposit-taking institution, as defined in section 5(1) of the *Banking Act 1959* (Cth); or

- (b) any other person whose usual business includes the issue of performance bonds or insurance bonds (as the case may be) and who is approved by TfNSW.

ITIS means the centralised Integrated Transport Information Service that communicates and receives data and information in relation to public transport services, through Transport Info 131500.

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

KPI Relief has the meaning set out in the KPI Schedule.

KPI Schedule means Schedule 4 to this Contract.

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

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.

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

Market Process Schedule means Schedule 10 to this Contract.

New Asset means any New Bus or New Depot.

New Bus means:

- (a) any Bus purchased by the Operator during the Term; or
(b) any Bus in respect of which the Operator enters into a Bus Lease during the Term,

including a Growth Contract Bus and a Replacement Contract Bus.

New Depot means any depot purchased or developed by the Operator or by TfNSW during the Term.

New Systems and Equipment means any systems and equipment that may be installed for or on behalf of TfNSW, on Contract Buses or Contract Depots, in accordance with Clause 12.2 including, but not limited to, Ticketing Equipment.

Non-Compliance Event means an Operator's failure to comply with a Class 1 Key Performance Indicator, set out in the KPI Schedule.

Novation Bus means any Contract Bus which is subject to a Bus Lease, but excluding any Contract Bus which is subject to a Bus Lease where that Contract Bus is an Existing Bus.

Operating Lease means a lease or other arrangement entitling the Operator to use of a bus owned by a third party, other than a Finance Lease.

Operator Owned Existing Depot means an Existing Depot owned by the Operator.

Operator Bus Lease Direct Agreement means a direct agreement materially in the form contained at Annexure 8 of the Contract Buses and Contract Depots Schedule.

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

Operator General Financier Direct Agreement means a direct agreement materially in the form contained at Annexure 9 to the Contract Buses and Contract Depots Schedule.

Operator Security Documents means any required:

- (a) Operator Bus Lease Direct Agreement;
- (b) Operator General Financier Direct Agreement; and
- (c) Performance Bond.

OSD means the operational and spatial database established by TfNSW as the centralised repository of Bus services data provided by Bus Operators, or any successor system.

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

Passenger Relations Plan means a plan which contains the information referred to in Clause 17.3(b).

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

PT Regulation means the *Passenger Transport Regulation 2007* (NSW).

Payments means those payments set out in the Payment Schedule.

Payment Schedule means Schedule 3 to this Contract.

Performance Bond means an irrevocable bank guarantee, letter of credit or insurance bond callable by TfNSW materially in the relevant form set out in Attachment B.

Performance Bond Amount means the amount specified in Item 8 of Attachment A.

Permitted Security Interest means:

- (a) a Security Interest created or outstanding in respect of any asset other than a Transfer Out Contract Bus or a Bus Lease in respect of a Transfer Out Contract Bus;
- (b) a Security Interest created or outstanding in respect of a Sale Bus or Novation Bus with the prior written consent of TfNSW, which consent will not be unreasonably withheld where the holder of that Security Interest enters into an Operator General Financier Direct Agreement; or:
- (c) a lien or charge:
 - (i) which arises by operation of law in the ordinary course of day-to-day trading;
 - (ii) which does not secure Financial Indebtedness; and
 - (iii) under which the indebtedness secured by it is paid when due or is being contested in good faith.

Personal Information has the meaning given to it in the Privacy Laws.

Power means any power, right, authority, discretion or remedy, whether express or implied.

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

Preceding Bus Services Contract means any Bus services contract between a Preceding Operator and TfNSW (or a predecessor Governmental Agency).

Preceding Operator means a Bus operator preceding the Operator in the operation of all or part of the Contract Bus Services prior to the Services Commencement Date.

Proceeds has the meaning given to that term in section 31 of the PPS Law.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth).

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

Published Timetable Trips means trips on Bus Routes that are scheduled by public timetable rather than Headway.

RailCorp means Rail Corporation New South Wales or any successor Governmental Agency.

Regular Bus Service has the meaning given in section 3 of the PT Act (which, for the avoidance of doubt, includes Dedicated School Services).

Related Entity has the meaning given in the Corporations Act.

Related Party Arrangement has the meaning set out in Clause 36.2(a).

Relevant Amount has the meaning set out in Clause 4.3(d)(iii).

Replacement Bus Lease means a Bus Lease entered into by the Operator pursuant to Clause 15.3 on the expiry or termination of a Bus Lease over a Contract Bus.

Replacement Contract Bus means a Bus which is purchased or acquired by the Operator to replace:

- (a) a Bus which reaches its maximum age, as set out in paragraph 3 of the Contract Buses and Contract Depots Schedule; or
- (b) a Bus which is irretrievably lost, stolen, destroyed or damaged beyond economic repair

during the Term, as listed in Annexure 4 of the Contract Buses and Contract Depots Schedule (as amended from time to time).

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

Reporting Schedule means Schedule 5 to this Contract.

Representatives means those representatives of the Parties specified in Item 1, Item 2 and (where applicable) Item 3 of Attachment A of this Contract.

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

Revenue and Revenue Data Protection Plan means a plan which contains the information referred to in Clause 11.8.

RMS means the Roads and Maritime Services constituted under the TA Act or any successor Governmental Agency.

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

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

Road-Related Areas has the same meaning given to that term in the *Roads Act 1993* (NSW).

Rotable Asset means a removable component or inventory item that can be repeatedly and economically restored to a fully serviceable condition.

Sale Bus means any Contract Bus owned by the Operator, but excluding any Contract Bus which is an Existing Bus.

Security Interest means:

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

Service Contract means any agreement (other than this Contract and any other Transaction Document) between TfNSW or any other Governmental Agency and the Operator or a Bus Operator for the provision of passenger Bus services in New South Wales.

Services Commencement Date means the date set out in Item 4 of Attachment A of this Contract.

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

Services Schedule means Schedule 1 to this Contract.

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

Service Variation means:

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

Service Variation Notice means a notice issued in accordance with Clause 5.4.

Spares means parts and components of Buses that are required for the purpose of carrying out maintenance services on the Contract Buses.

SSTS means the School Student Transport Scheme, being a scheme administered by TfNSW providing for free travel for school students, in accordance with SSTS Bus Operators Manual, as amended from time to time.

SSTS Bus Operators Manual means the document titled “School Student Transport Scheme Bus Operators Manual” prepared or adopted by TfNSW, as amended from time to time.

Staff means all persons whether officers, employees, agents or contractors of the Operator engaged in or in connection with the provision of Contract Bus Services.

State means the State of New South Wales.

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

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

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

Step-in Powers has the meaning given to that term in Clause 29.2.

Step-in Rights means the rights of a Step-in Party to exercise the powers under Clause 29, referred to in Clause 29.1.

Strategic Transport Corridor has the meaning given in section 3 of the PT Act.

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

Subsidiary has the meaning given in the Corporations Act.

Successor Operator means a Bus Operator succeeding the Operator in the operation of all or part of the Contract Bus Services after the Termination Date (but does not include an Interim Operator).

Taxable Supply has the meaning given by the GST Act.

Tax Invoice has the meaning given by the GST Act.

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

Term means five years from the Services Commencement Date, any Extension Period (if applicable) and any Discretionary Extension Period (if applicable).

Termination Date means the effective date of termination of this Contract set out in a valid Termination Notice or the scheduled expiry of the Term whichever is applicable.

Termination Event means any of the events listed in Clause 30.1.

Termination Notice means a notice issued by TfNSW in accordance with Clause 30.

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

TfNSW Bus Lease means any Operating Lease or Finance Lease under which a Contract Bus is leased by a TfNSW Lessor to the Operator or an Approved Subcontractor.

TfNSW Lessor means TfNSW or its nominee, agent or delegate.

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

Third Party Owned Existing Depot means an Existing Depot not owned by the Operator nor by an Associated Entity of the Operator.

Ticket means any entitlement to travel on one or more Contract Bus Services, as evidenced by a paper, electronic or magnetic ticket, coupon, card or other instrument.

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

Timetable means each and every timetable for the Bus Services contained in the Service Level Schedule and any revisions to those timetables approved by TfNSW in accordance with Clause 6.2.

Transaction Document means:

- (a) this Contract;
- (b) the Approved Subcontractor Security Documents;
- (c) the Operator Security Documents;
- (d) each TfNSW Bus Lease;
- (e) the ETS Agreement; and
- (f) any other document or agreement that TfNSW and the Operator agree is to be a Transaction Document for the purpose of this Contract.

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

Transfer In Contract Bus means:

- (c) a Bus owned (or to be owned) by the Operator and which was transferred (or is to be transferred) to the Operator by a Preceding Operator; or
- (d) a Bus subject to (or to be subject to) a Bus Lease with the Operator which was novated (or is to be novated) to the Operator by a Preceding Operator;

as listed in Annexure 1 to the Contract Buses and Contract Depots Schedule.

Transfer Out Contract Bus means any:

- (a) Sale Bus; or
- (b) Novation Bus.

Transit Stop means all designated stops or stations along a Bus Route for Buses to set down or pick up passengers.

Transit Stop Signage means all route, Timetable and related signage at a Transit Stop, including the pole to which the signage is affixed and plinths which are installed as directed by TfNSW.

Transition Period means the period commencing on the date this Contract is signed by both parties and ending on the Services Commencement Date.

Transport Info 131500 means the telephone (131500) and website (www.131500.com.au) service providing information on public transport services, or any successor public transport information system.

Trip means any single, one direction service which forms part of the Contract Bus Services.

Trip on Time means, for Published Timetable Trips, a Contract Bus departing a Transit Stop no more than 1 minute 59 seconds early and no more than 5 minutes 59 seconds late compared to Timetable and for Headway Trips means commencing each Headway Trip within 5 minutes 59 seconds of published Headway. Where Contract Buses link with train services in the Timetable, time is measured from when passengers arrive at the Transit Stop.

Vehicle Termination Payment means the amount payable for any Transfer Out Contract Bus or Bus Lease in respect of a Transfer Out Contract Bus as calculated under paragraph 4.7 of the Payment Schedule.

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

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

WHS Law means:

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

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

Worker has the meaning given to that term in section 7 of the WHS Act.

Workplace has the meaning given to that term in section 8 of the WHS Act.

1.2 Interpretation

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

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a Clause, Schedule, Attachment or Annexure is a reference to a clause of, or a schedule, attachment or annexure to, this Contract.
- (f) A reference to an agreement or document (including, without limitation, a reference to this Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail.
- (h) A reference to a party to this Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset.
- (m) A reference to any Governmental Agency or professional body includes the successors of that Governmental Agency or professional body.
- (n) A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- (o) A reference to a month or to a year is to a calendar month or a calendar year.
- (p) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

- (q) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (r) Nothing in this Contract is to be interpreted against a party solely on the ground that the party put forward this Contract or any part of it.
- (s) Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month.
- (t) A reference to the words “include”, “includes” and “including” means “including without limitation”.

1.3 Precedence of documents

In the event of an inconsistency between this Contract, any of the documents contained in the schedules or annexures to this Contract and the Transaction Documents (excluding this Contract), the documents should be interpreted in the following order:

- (a) the terms of this Contract;
- (b) the schedules and annexures to the Contract;
- (c) the attachments to this Contract; and
- (d) the Transaction Documents (excluding this Contract).

1.4 Consents or approvals

If the doing of any act, matter or thing under this Contract is dependent on the consent or approval of TfNSW or is within the discretion of TfNSW or the Director-General, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by TfNSW or the Director-General as the case may be at their absolute discretion.

1.5 TfNSW’s Capacity

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

1.6 Delegation

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

1.7 No fetter on TfNSW’s powers

No Transaction Document unlawfully restricts or otherwise affects TfNSW’s unfettered discretion to exercise its statutory Powers.

1.8 Transfer of Functions

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

2 Parties' Representatives

2.1 Appointment of Representatives

- (a) The Parties appoint as Representatives the persons named in Item 1, Item 2 and (where applicable) Item 3 in Attachment A of the Contract respectively, or such other persons as the Parties may nominate and notify to each other in writing from time to time.
- (b) The Representatives will serve as principal interface between the Parties with respect to all issues arising under this Contract.

3 Transition Period and Term

3.1 Transition Period

- (a) This Contract commences on the date it is signed by both Parties and will be in the Transition Period until the Services Commencement Date specified in Item 4 in Attachment A of the Contract.
- (b) During the Transition Period, the Operator must:
 - (i) comply with and meet the Transition Milestones contained in Schedule 9, by the date specified for their completion;
 - (ii) acquire any Transfer In Contract Bus in accordance with the terms of any Preceding Bus Services Contract;
 - (iii) acquire all other Contract Buses for the purposes of performing the Contract Bus Services;
 - (iv) do all other things necessary to complete any transfer, novation acquisition of or dealing with Contract Buses or potential Contract Buses in connection with the Contract Bus Services; and
 - (v) make offers of employment to employees of any Preceding Operator, in accordance with the terms of any Preceding Bus Services Contract,(each a **Critical Transition Milestone**).

- (c) If the Operator fails to comply with or meet a Critical Transition Milestone, TfNSW may terminate this Contract by notice in writing to the Operator with immediate effect and this Contract will be of no further effect. For the avoidance of doubt, if TfNSW terminates the Contract during the Transition Period in accordance with this Clause 3.1(c), the Operator will not be entitled to claim any amount for set-up costs or any other costs incurred during or before the Transition Period.

3.2 Term

The Term commences on the Services Commencement Date and continues for a period of five years, unless extended under Clause 3.3(a) or 3.3(b) or earlier terminated in accordance with Clause 30.

3.3 Extension by TfNSW

- (a) If TfNSW gives notice in writing, in its absolute discretion, that an Operator has not materially breached the following Key Performance Indicators, as set out in the KPI Schedule:
- (i) two or more Class 1 Key Performance Indicators, or a Class 1 Key Performance Indicator on more than one occasion, during any 6 month period;
 - (ii) three or more Class 1 Key Performance Indicators, or a Class 1 Key Performance Indicator on more than three occasions, during any 12 month period; and
 - (iii) the Key Performance Indicator for customer satisfaction (in KPI table 9 of the KPI Schedule),

during the period from the first anniversary of the Services Commencement Date until the fifth anniversary of the Services Commencement Date, the Term will be extended for an additional three year period (**Extension Period**).

- (b) TfNSW may, in its absolute discretion, by notice in writing to the Operator no later than 6 months prior to the expiration of the Term (or any Extension Period), or such other time agreed between TfNSW and the Operator, extend the Term (including any Extension Period) for an additional period of 12 months (**Discretionary Extension Period**).
- (c) Nothing in this Clause 3.3 shall be construed as affording the Operator a right or expectation of renewal or extension of this Contract. The Operator will have no Claim, and no Claim by the Operator will be justiciable, in connection with a failure by TfNSW to extend the Term, or for any Loss arising in connection with any potential Extension Period or Discretionary Extension Period.
- (d) The terms of this Contract will continue to apply during any Extension Period or Discretionary Extension Period.

4 Conditions Precedent

4.1 Conditions Precedent

- (a) The Operator must ensure that the following conditions precedent are fulfilled to TfNSW's satisfaction prior to the Services Commencement Date:
- (i) delivery to TfNSW of the Performance Bond, in accordance with Clause 4.3;

- (ii) delivery to TfNSW of the required documents under Clause 4.4; and
- (iii) fulfilment of the Critical Transition Milestones.

4.2 Consequences of Non-Fulfilment of Conditions Precedent

- (a) If the Operator fails to comply with Clause 4.1(a), TfNSW may terminate this Contract by notice in writing to the Operator with immediate effect and this Contract will be of no further effect.

4.3 Performance Bond

- (a) The Operator must, on or before the Services Commencement Date, procure the issue to TfNSW of a Performance Bond which:
 - (i) is issued by an Issuer with a Required Rating and approved by TfNSW (which approval must not be unreasonably withheld);
 - (ii) has a face amount which is no less than the Performance Bond Amount;
 - (iii) expires no earlier than five years from the Services Commencement Date; and
 - (iv) is payable at an office of the Issuer in Sydney.
- (b) If the Operator receives notice from TfNSW that the Term is to be extended for the Extension Period or the Discretionary Extension Period, in accordance with Clause 3.3, the Operator must, prior to the commencement of the Extension Period or the Discretionary Extension Period, procure the issue to TfNSW of a replacement Performance Bond which:
 - (i) complies with the requirements of Clauses 4.3(a)(i) and 4.3(a)(iv);
 - (ii) has a face amount which is no less than the Performance Bond Amount; and
 - (iii) expires no earlier than the Extension Period or the Discretionary Extension Period (whichever is applicable).
- (c) At any time on and from the Termination Date, TfNSW may make a demand under the Performance Bond on account of, and apply the Performance Bond against, any amount which TfNSW considers:
 - (i) is due and payable by the Operator to TfNSW under, or in connection with a default by the Operator leading to the termination in the observance, or performance of, a Transaction Document (which may include costs associated with enforcing the Performance Bond, any Step-in Costs and any costs associated with appointing a Successor Operator); or
 - (ii) the Operator may or will become liable to pay to TfNSW, or a Successor Operator in respect of its obligations under a Transaction Document following the Termination Date.
- (d) If:
 - (i) the Issuer of the Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 4.3(c)(i) and all or part of the amount in

respect of which demand was made was not actually due and payable by the Operator to TfNSW or a Successor Operator; or

- (ii) the Issuer of the Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 4.3(c)(ii) and the Operator does not in fact become liable to pay to TfNSW or a Successor Operator all or part of the amount in respect of which demand was made,

then TfNSW must pay to the Operator:

- (iii) the amount (the **Relevant Amount**) which was not actually due and payable by the Operator to TfNSW or a Successor Operator or for which the Operator did not in fact become liable to pay to TfNSW or a Successor Operator; and
 - (iv) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Performance Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Operator. Such interest must be paid on the date the Relevant Amount is paid to the Operator.
- (e) TfNSW must return to the Operator an existing Performance Bond once TfNSW has received a replacement Performance Bond.
 - (f) TfNSW must, subject to any rights TfNSW may have in relation to the Performance Bond, return the Performance Bond (less any amounts drawn under Clause 4.3(c)) to the Operator within 12 months after the Termination Date.
 - (g) TfNSW must, as soon as practicable after TfNSW has made a demand under the Performance Bond, give a notice to the Operator specifying TfNSW's reasons for making the demand.
 - (h) TfNSW may only make a demand under the Performance Bond in accordance with this Clause 4.3
 - (i) TfNSW may make a demand irrespective of whether or not the amount is or the circumstances relating to the amount are:
 - (i) in dispute between the parties; or
 - (ii) subject to any Court or other proceedings.
 - (j) The Operator must not take any steps to restrain or injunct TfNSW from making a demand under the Performance Bond or the Issuer paying any amounts under the Performance Bond.
 - (k) If at any time after the Services Commencement Date, the Issuer of the Performance Bond ceases to have the Required Rating, the Operator must procure the issue of a replacement Performance Bond which complies with Clauses 4.3(a) or 4.3(b)(whichever is applicable).
 - (l) If the Operator does not comply with Clauses 4.3(b) or 4.3(k), TfNSW may call down on the full value of the Performance Bond and hold the amount so drawn as cash until:
 - (A) the Operator complies with Clauses 4.3(b) or 4.3(k) (whichever is applicable); or
 - (B) if the Operator does not comply with Clauses 4.3(b) or 4.3(k), until TfNSW is required to return a Relevant Amount in accordance with Clause 4.3(d)(iii) or until Clause 4.3(f) would have applied had a Performance Bond been held.

- (m) If TfNSW is holding the amount of the Performance Bond as cash pursuant to Clause 4.3(l) and the Operator subsequently complies with Clauses 4.3(b) or 4.3(k) (whichever is applicable), TfNSW must as soon as is practicable return the cash to the Operator (for the avoidance of doubt, without any interest being owed in respect of such cash).

4.4 Buses

- (a) The Operator must provide TfNSW with the following on or before the Services Commencement Date:
 - (i) an Operator Bus Lease Direct Agreement in respect of any Novation Bus;
 - (ii) an Operator General Financier Direct Agreement in respect of any secured financiers of the Operator,
 in each case executed by the Operator and all relevant counterparties (except TfNSW if TfNSW is party to such document); and
- (b) The Operator must procure that any Approved Subcontractor provides TfNSW with the Approved Subcontractor Security Documents on or before the Services Commencement Date.

4.5 Compliance with Clause 4.4

- (a) If an Operator has substantially complied with its obligations under Clauses 4.4, TfNSW may (in its absolute discretion) waive strict compliance with Clause 4.4
- (b) TfNSW must if reasonably required by the Operator:
 - (i) at TfNSW's own cost, participate in good faith in any negotiations between the Operator and the relevant proposed counterparties to the documents referred to in Clause 4.4 relating to the form of those documents with the object of assisting the Operator to comply with its obligations under Clause 4.4; and
 - (ii) act reasonably in relation to any amendments to such documents required by the Operator or such proposed counterparties that do not materially prejudice the objectives of TfNSW in requiring the Operator to procure that those documents be provided by the Operator.

5 Performance of Contract Bus Services

5.1 Bus Services

- (a) The Operator must perform the Bus Services:
 - (i) on the Bus Routes;
 - (ii) in accordance with the Timetables and the relevant provisions of the Services Schedule; and
 - (iii) to effectively and efficiently meet any Contract Service Levels, from the Services Commencement Date and for the duration of the Term.

5.2 Dedicated School Services

- (a) The Operator must provide the Dedicated School Services:
- (i) to the schools set out in the Dedicated School Services Timetable;
 - (ii) in accordance with the Dedicated School Services Timetable and the relevant provisions of the Services Schedule; and
 - (iii) in accordance with any Contract Service Levels,
- from the Services Commencement Date and for the duration of the Term.

5.3 Non exclusivity

- (a) The Operator acknowledges that TfNSW may contract with one or more service provider(s) to provide Bus services along or near the Bus Routes specified in this Contract.
- (b) Nothing in this Clause 5.3 or the Contract gives the Operator a right to provide or be paid for Bus services other than the Contract Bus Services.

5.4 Service Variations

- (a) TfNSW may at any time during the Term, require a Service Variation by way of written notice to the Operator (**Service Variation Notice**).
- (b) The Service Variation Notice must set out:
- (i) the particulars of the Service Variation; and
 - (ii) the date on which the Service Variation will take effect (which must be after a reasonable period of time to enable the Operator to comply with the Service Variation Notice).
- (c) The Operator must comply with the Service Variation Notice and make any necessary amendments to its operations so that it complies with the Service Variation Notice.
- (d) The Operator is entitled to Payments for a Service Variation required by TfNSW, in accordance with the Payment Schedule.
- (e) The Operator may request a Service Variation, by way of notice to TfNSW via the BSAR system. Any request for a Service Variation from the Operator is subject to TfNSW's approval (which may be withheld at TfNSW's absolute discretion).
- (f) Any request for a Service Variation from the Operator must set out:
- (i) A description of the proposed Service Variation, including any impact on the Bus Routes, Timetables or Dedicated School Services Timetables;
 - (ii) The impact of the proposed Service Variation on the Operator's ability to meet the Key Performance Indicators;
 - (iii) The proposed price adjustment, based on paragraph 5.1 of the Payment Schedule; and

- (iv) If the proposed Service Variation is based on road congestion, the request must also set out:
 - (A) The Bus Routes which are said to be affected by road congestion;
 - (B) Driver and Bus shift information for the proposed Service Variation;
 - (C) The nature of the road congestion and the means adopted by the Operator to isolate the effect of the road congestion on the relevant Contract Bus Services from other factors affecting the relevant Contract Bus Services;
 - (D) Traffic flow data to verify a change in road congestion conditions along the affected Bus Routes; and
 - (E) The impact the Operator considers the road congestion to have had on the relevant Contract Bus Services.
- (g) For the avoidance of doubt, nothing in this Clause 5.4 gives rise to an obligation on TfNSW to approve a request for a Service Variation from the Operator.
- (h) TfNSW will generally not approve any adjustments to the Payments as a result of a change to the Timetables required to correct the punctuality rate of the Bus Services (as referred to in table 2 of the KPI Schedule), within 2 years from the Services Commencement Date, if the Operator has failed to commence at least 95% of Published Timetable Trips and Headway Trips as Trips on Time.
- (i) Unless and until TfNSW approves any request from the Operator for a Service Variation:
 - (i) the request for a Service Variation will be of no effect;
 - (ii) the Operator must not act upon the request for a Service Variation; and
 - (iii) the Operator will not be entitled to any payments in connection with its request for a Service Variation.

5.5 Expression of Support

The Operator acknowledges and supports and agrees to perform the Contract Bus Services so as to fulfil, TfNSW's aims communicated to the Operator or made publicly known in relation to the Strategic Transport Corridors and the Bus Routes which, among other things, are:

- (a) the provision of modern high standard network of Bus services that will satisfy demand for passenger bus transport along the Bus Routes;
- (b) the achievement of a service strategy that facilitates integration of:
 - (i) services along the Bus Routes with those along a Strategic Transport Corridor;
 - (ii) Fares and ticketing; and
 - (iii) the strategic route network in Sydney generally;
- (c) the incremental upgrading of the infrastructure and Bus services along the Strategic Transport Corridors; and

- (d) full integration of passenger information to deliver a seamless service across metropolitan Sydney.

5.6 Co-operation with other Road and infrastructure projects

The Operator must reasonably co-operate with TfNSW in relation to any upgrade to, or works undertaken on, any infrastructure within the Bus Routes, provided that the Operator's cooperation does not extend to the Operator contributing any funds for capital expenditure.

6 Contract Service Levels and Timetables

6.1 Contract Service Levels

- (a) TfNSW may introduce new or amended Contract Service Levels, by notice to the Operator.
- (b) If TfNSW provides notice of new or amended Contract Service Levels, the Operator must:
 - (i) develop a new timetable to efficiently and effectively meet the requirements of the new or amended Contract Service Levels; and
 - (ii) submit the new timetable to TfNSW for approval, in accordance with Clauses 6.2 or 6.3,
 within the timeframe specified by TfNSW.
- (c) If TfNSW has not specified any Contract Service Levels, the Operator must deliver the Contract Bus Services to efficiently and effectively meet the base level of services required by the Timetables and the Dedicated School Services Timetable.

6.2 Timetables

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

6.3 Dedicated School Services Timetable

- (a) The Operator must liaise with the schools set out in the Service Level Schedule, by no later than 30 October of each calendar year for the duration of the Term, to ascertain the start and finish dates of the school year and the daily bell start and finish times.
- (b) The Operator must provide TfNSW with a preliminary timetable for the Dedicated School Services by no later than 1 January each calendar year for the duration of the Term, via the BSAR system.
- (c) The Operator must submit any revisions to the timetable for the Dedicated School Services, no later than 4 weeks after the start of the school year, via the BSAR system.
- (d) TfNSW may approve or reject a timetable for the Dedicated School Services submitted by the Operator within 14 days of receipt, by notice to the Operator.
- (e) If TfNSW approves a timetable for the Dedicated School Services, the Operator must operate the Dedicated School Services in accordance with the approved Dedicated School Services Timetable, within the period specified by TfNSW.
- (f) If TfNSW rejects a timetable for the Dedicated School Services (or does not respond to the Operator's request for approval), the proposed timetable will be of no effect and the Operator must continue to provide the Dedicated School Services in accordance with the approved Dedicated School Services Timetable.

7 Publication and display of Public Transport Information

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

8 Transit Stops

The Operator must, at the Operator's cost:

- (a) maintain and make good any damaged Transit Stop Signage on the Bus Routes, for the duration of the Term, in accordance with Items 6.1 and 6.2 of the Services Schedule;
- (b) ensure Transit Stop Signage which includes Timetable or Dedicated School Services Timetable information contains up to date information, which complies with any standards or guidelines issued by TfNSW, in accordance with Items 6.3 and 6.4 of the Services Schedule;
- (c) install new Transit Stop Signage, in accordance with Items 6.6, 6.7 of the Services Schedule, if there is a variation to the Bus Routes, or a new Bus Route is introduced, during the Term, in accordance with Clause 5.4;

- (d) notify the relevant authority, in accordance with Items 6.5 and 6.8 of the Services Schedule, if any infrastructure at a Transit Stop is damaged during the Term; and
- (e) comply with any other requirements regarding Transit Stops contained in Item 6 of the Services Schedule.

9 Service Desk

- (a) The Operator must provide a Service Desk, in accordance with the requirements set out in Item 7 of the Services Schedule, from the Services Commencement Date and for the duration of the Term.
- (b) Without limiting the requirements of this Clause 9 and the Services Schedule, TfNSW may, at its absolute discretion, require the Operator by notice in writing to use Transport Info 131500 services for the provision of Service Desk services under this Contract.

10 Key Performance Indicators

10.1 Key Performance Indicators

- (a) TfNSW will measure the Operator's performance against the Key Performance Indicators set out in the KPI Schedule
- (b) The Operator must comply with its obligations relating to the measurement and reporting of Key Performance Indicators and the remedy of breaches of the Key Performance Indicators, as set out in the KPI Schedule.
- (c) Other than an Excused Performance Incident for which KPI Relief is granted, an Operator's failure to comply with a Class 1 Key Performance Indicator (set out in the KPI Schedule) is a Non-Compliance Event.

11 Fares and Ticketing

11.1 Fares

- (a) The Operator must offer Fares for Tickets to travel on Contract Bus Services in accordance with the categories and prices outlined in Fares and Ticketing Schedule and as amended by TfNSW and notified to the Operator in writing from time to time.
- (b) The Operator must not offer any other fare for Tickets to travel on Contract Bus Services without prior written approval from TfNSW of the other fare proposed, such approval being given at TfNSW's absolute discretion.
- (c) Any school term pass offered by the Operator must be in accordance with the Fares and Ticketing Schedule. School term passes may only be offered to students who are not eligible for the SSTS.
- (d) The Operator must deal with all revenue from the sale of Tickets in accordance with Item 10 of the Services Schedule and account for all revenue from the sale of Tickets in accordance with the Payment Schedule.

11.2 Ticketing

- (a) The Operator must take reasonable steps to ensure all passengers travelling on a Bus Service have a valid Ticket, including that the Ticket is valid for the journey being taken by the passenger.
- (b) The Operator authorises TfNSW, and persons for and on behalf of TfNSW, to enter and remain on any Contract Bus providing Contract Bus Services, for the purpose of carrying out Ticket inspection and revenue protection activities.
- (c) The Operator must ensure that its Staff comply with any reasonable direction given to them by TfNSW, or a person for and on behalf of TfNSW, carrying out the activities referred to in Clause 11.2(b).

11.3 Prohibition on Disincentives, Penalties and Discounts

- (a) The Operator must not impose any charges, fees, penalties, restrictions or other Fare adjustments in connection with any of the Contract Bus Services that have the purpose or likely effect of:
 - (i) increasing the total cost to passengers choosing to travel on a Bus Service above the Full Fares;
 - (ii) increasing the total cost to Approved Beneficiaries choosing to travel on a Bus Service above the Concession Fares;
 - (iii) deterring passengers from purchasing Tickets at the Fares;
 - (iv) reducing the availability of Tickets to passengers wishing to travel on the Contract Bus Services; or
 - (v) reducing the revenue from Tickets.
- (b) The Operator may impose a nominal charge for replacing lost and stolen Tickets that compensates the Operator for the costs associated with replacing that Ticket.

11.4 Travel Free of Charge

- (a) The Operator must ensure that travel, free of any direct or indirect charge by the Operator, is provided to persons:
 - (i) listed in Parts 3 and 5 of the Fares and Ticketing Schedule, as amended by TfNSW and notified to the Operator in writing from time to time; or
 - (ii) notified in writing by TfNSW, from time to time.
- (b) The Operator must carry schoolchildren in accordance with the SSTS Bus Operators Manual.

11.5 Government Subsidised Travel Schemes

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

11.6 Recognition of Transfers

The Operator must recognise the Transfer rights of any passenger carrying a Ticket entitling Transfer.

11.7 Compliance by Agents

The Operator must ensure that each of its agents selling or offering to sell Tickets on the Operator's behalf complies with this Clause 11.

11.8 Revenue and Revenue Data Protection

- (a) The Operator must develop, implement and comply with a Revenue and Revenue Data Protection Plan, from the Services Commencement Date and throughout the duration of the Term.
- (b) The Revenue and Revenue Data Protection Plan must detail a procedure for managing the protection of revenue and all data relating to revenue.
- (c) The Operator must provide its Revenue and Revenue Data Protection Plan to TfNSW upon request by TfNSW.
- (d) The Operator must amend its Revenue and Revenue Data Protection Plan, as requested by TfNSW.
- (e) The Operator must annually review the Revenue and Revenue Data Protection Plan to ensure it provides sufficient protection for revenue and the security of revenue data.

12 Systems and Equipment

12.1 Ticketing Equipment

- (a) The Operator must ensure that Ticketing Equipment is operational on all Contract Buses at all times during the Term.
- (b) The Operator acknowledges that TfNSW:
 - (i) is at the date of this Contract introducing new Ticketing Equipment, as contemplated in the ETS Agreement;
 - (ii) may introduce during the Term new Ticketing Equipment, and agrees to comply with Clause 12.2.
- (c) If Ticketing Equipment has been installed by or on behalf of TfNSW on a Contract Bus prior to the commencement of this Contract, the Operator must comply with its obligations in relation to Existing Systems and Equipment, outlined in Clause 12.3.
- (d) If no Ticketing Equipment has been installed by or on behalf of TfNSW on a Contract Bus, the Operator must:
 - (i) maintain existing Ticket validation systems which are capable of issuing and validating all Tickets issued by the Operator and recording data to enable the Operator to comply with the reporting requirements set out in Clause 16; and

- (ii) install or maintain a system to account for revenue collected from all travel and use of Tickets used on that Contract Bus, in a manner and frequency to ensure that the Operator complies with the Payment Schedule.

12.2 New Systems and Equipment

- (a) The Operator acknowledges TfNSW may introduce New Systems and Equipment on a Contract Bus, in a Contract Depot or in the Operator's premises.
- (b) The Operator must co-operate with TfNSW in facilitating the installation, testing and ongoing maintenance of New Systems and Equipment. This co-operation includes, without limitation:
 - (i) making each Contract Bus, Contract Depot and the Operator's premises and any required equipment available to TfNSW or TfNSW's Associates, on 14 days' notice from TfNSW, for a reasonable period for installation of New Systems and Equipment;
 - (ii) making each Contract Bus, Contract Depot and the Operator's premises and any required equipment available to TfNSW or TfNSW's Associates, on 14 days' notice from TfNSW, for maintenance of New Systems and Equipment;
 - (iii) allowing representatives of TfNSW and any TfNSW's Associates to travel, free of any direct or indirect charge by the Operator to TfNSW, on each Contract Bus as required to test New Systems and Equipment; and
 - (iv) liaising with TfNSW and TfNSW's Associates as required in respect to the installation, testing and ongoing maintenance of New Systems and Equipment.
- (c) If the New Systems and Equipment is Ticketing Equipment dealt with in the ETS Agreement, the Operator must co-operate with TfNSW as set out in the ETS Agreement.
- (d) TfNSW must reimburse the Operator for its direct costs incurred in facilitating the installation, testing and ongoing maintenance of New Systems and Equipment, provided that if the New Systems and Equipment is Ticketing Equipment dealt with in the ETS Agreement, TfNSW must comply with the payment provisions in the ETS Agreement.
- (e) The Operator acknowledges that TfNSW:
 - (i) owns any New Systems and Equipment installed during the Term, including any Intellectual Property in the New Systems and Equipment, unless TfNSW agrees otherwise in writing;
 - (ii) may use any data collected by New Systems and Equipment (if any) as the property of the State and the Operator must not modify any such data; and
 - (iii) reserves the right for the State to use the data as it sees fit, including providing other authorised service providers with access to data relating to their services.
- (f) Subject to the ETS Agreement, the Operator must, at its own cost and without any right to an adjustment to the Payments or other claim for compensation, comply with any reasonable operational procedures, guidelines, directions and training requirements for New Systems and Equipment, issued by TfNSW from time to time.
- (g) The Operator must allow TfNSW to remove New Systems and Equipment (including Ticketing Equipment dealt with in the ETS Agreement) or any equipment of TfNSW or

TfNSW's Associates from each Contract Bus and Contract Depot and/or the Operator's premises, including by making such Contract Bus, Contract Depot and/or the Operator's premises available on reasonable notice from TfNSW.

- (h) TfNSW will reimburse the Operator the reasonable costs of repairing damage to a Contract Bus or Contract Depot, or equipment of the Operator, caused by TfNSW when installing, testing, maintaining or removing New Systems and Equipment.
- (i) The Operator must maintain New Systems and Equipment in accordance with Item 9 of the Services Schedule.
- (j) The Operator acknowledges and agrees that any failure of any New Systems and Equipment, whatever the cause, will not entitle the Operator to make any claim in respect of any delays or interruptions in the Contract Bus Services.
- (k) If any New Systems and Equipment on a Contract Bus fails to operate whilst the Contract Bus is performing a Contract Bus Service, and the Operator becomes aware, or should have become aware, of the failure, the Operator must ensure that the Contract Bus is taken out of service until the faulty equipment is repaired or replaced, in accordance with the following timeframes:
 - (i) Immediately if a safety issue arises as a result of the failure;
 - (ii) When the Contract Bus returns to the Contract Depot, if the failure occurs to a Rotable Asset; or
 - (iii) At the end of the day for any other failures.
- (l) The Operator must not use any New Systems and Equipment on Buses that are not Contract Buses, without the prior written approval of TfNSW.
- (m) The Operator agrees to enter into any agreement with TfNSW, on reasonable commercial terms considered necessary by TfNSW, in relation to any New Systems and Equipment, when requested by TfNSW to do so. Such agreement will prevail over this Clause 12.2 to the extent of any inconsistency, unless otherwise agreed.
- (n) Clauses 12.2(g) and 12.2(h) survive termination or expiry of this Contract.

12.3 Existing Systems and Equipment

- (a) The Operator must make each Contract Bus and Contract Depot the Operator's premises and any required equipment available to TfNSW or TfNSW's Associates, on 14 days' notice from TfNSW, for routine maintenance of Existing Systems and Equipment by or on behalf of TfNSW.
- (b) The Operator must maintain Existing Systems and Equipment in accordance with Item 9 of the Services Schedule.
- (c) The Operator acknowledges that Clauses 12.2(e) to 12.2(h) also apply to Existing Systems and Equipment as if references to New Systems and Equipment in those clauses include Existing Systems and Equipment.

- (d) The Operator acknowledges and agrees that any failure of any Existing Systems and Equipment will not entitle the Operator to make any claim in respect of any delays or interruptions in the Contract Bus Services, as a result of the failure.
- (e) If any Existing Systems and Equipment on a Contract Bus fails to operate whilst the Contract Bus is performing a Contract Bus Service, and the Operator becomes aware, or should have become aware, of the failure, the Operator must ensure that the Contract Bus is taken out of service until the faulty equipment is repaired or replaced, in accordance with the following timeframes:
 - (i) Immediately if a safety issue arises;
 - (ii) When the Contract Bus returns to the Contract Depot, if the failure occurs to a Rotable Asset; or
 - (iii) At the end of the day for any other failures.
- (f) The Operator must not use any Existing Systems or Equipment on buses that are not Contract Buses, without the prior written approval of TfNSW.

12.4 Participation in Integrated Transport Information Service

- (a) The Operator must participate in the ITIS (or any successor or additional service developed by TfNSW or an associate of TfNSW for use by TfNSW).
- (b) The Operator must advertise the ITIS (or any successor service) phone number and internet address on its published Timetables, website, promotional material and other literature at Stops and within Contract Buses in a format reasonably required by TfNSW.
- (c) TfNSW will pay the centralised costs in respect of Transport Info 131500 (including software licensing fees).
- (d) TfNSW may give the Operator access to data collected by ITIS as required for the purpose of managing its business and for planning and marketing purposes, subject to reasonable conditions, qualifications or restrictions as the TfNSW may impose.
- (e) The Operator acknowledges that all data collected by ITIS will constitute Contract Material and the title and property to Intellectual Property in or in relation to all data collected by ITIS will vest in TfNSW, in accordance with Clause 25.1.

12.5 OSD

- (a) The Operator must submit data to the OSD, as required by the Reporting Schedule.
- (b) The Operator acknowledges that all data submitted to the OSD will constitute Contract Material and the title and property to Intellectual Property in or in relation to all data submitted to the OSD will vest in TfNSW, in accordance with Clause 25.1.

12.6 Compatibility of Information Systems

- (a) Any financial, operational or other information, data or records required to be provided to TfNSW by the Operator must be provided in a form which is compatible with the electronic data and records systems notified by TfNSW to the Operator from time to time.

- (b) The Operator must install hardware and office equipment to enable its systems to interact with TfNSW’s data and records systems.
- (c) If TfNSW requires the Operator to install hardware and office equipment under Clause 12.6(b):
 - (i) the Operator must comply with the requirement;
 - (ii) the Operator must notify TfNSW of the likely or known costs associated with complying with the requirement; and
 - (iii) the Operator and TfNSW must in good faith agree on costs that TfNSW will pay to the Operator as compensation for complying with the requirement.

13 Contract Buses and Contract Depots

13.1 Contract Buses

- (a) The Operator must perform the Contract Bus Services using Contract Buses.
- (b) The Operator must only use the Contract Buses for purposes other than the Contract Bus Services, when not required for the performance of the Contract Bus Services.
- (c) A Contract Bus must not be exchanged or interchanged with a Bus used for the performance of other Service Contracts, without the prior written approval of TfNSW.
- (d) The Operator must ensure that all Contract Buses comply with the standards in the Contract Buses and Contract Depots Schedule, in addition to any other requirements imposed in any other Transaction Documents.

13.2 Replacement of Buses

- (a) The Operator must replace any Bus which:
 - (i) reaches its maximum age, as set out in paragraph 3 of the Contract Buses and Contract Depots Schedule; or
 - (ii) is irretrievably lost, stolen, destroyed or damaged beyond economic repair

during the Term, with a Replacement Contract Bus, unless TfNSW agrees otherwise in writing with the Operator.
- (b) Any Bus that has been replaced in accordance with Clause 13.2(a) shall be deemed to no longer be a Contract Bus and the Operator may dispose of the Bus and retain all sale and/or insurance proceeds from the sale.
- (c) The Operator must provide TfNSW with notice when a Bus is replaced in accordance with Clause 13.2(a) (and at least 21 days’ prior notice if the Operator intends to dispose of a the Bus), to allow TfNSW to remove any New Systems and Equipment or Existing Systems and Equipment, in accordance with Clause 12.2(g).

13.3 TfNSW inspection of Contract Buses

- (a) At any time during a Business Day, the Operator must allow, or obtain for (as the case may be), TfNSW or any of TfNSW's Associates (or any person authorised by TfNSW or any of TfNSW's Associates) immediate unrestricted access to:
- (i) any Contract Bus or any Bus Components;
 - (ii) any Contract Bus maintenance records;
 - (iii) the Operator's premises and/or any Contract Depot for the purposes of inspecting any Contract Buses or any Bus Components or exercising any rights under or in connection with the Contract; and
 - (iv) any other premises or property on which any Contract Bus or any Bus Components may be located.
- (b) At any time during the period 6 months before the expiry of the Term, or in the event that TfNSW issues a termination notice, TfNSW may, in its absolute discretion, appoint an independent valuer to inspect the Novation Buses and Sale Buses, in accordance with Clause 13.3(a).
- (c) If the independent valuer forms the view that any Novation Bus or Sale Bus:
- (i) is not in good repair or condition, consistent with its age;
 - (ii) is not in satisfactory working order;
 - (iii) has not been properly maintained or serviced in accordance with, or does not otherwise comply with, the terms of this Contract; or
 - (iv) is dangerous or unsuitable for the purpose for which it is used,

TfNSW will provide the Operator with notice of the independent valuer's view and allow the Operator 14 days to comment on the views of the independent valuer.

- (d) If:
- (i) following the expiry of the 14 day period referred to in Clause 13.3(b); and
 - (ii) taking into account any comments provided by the Operator,

TfNSW forms the view that the defects identified by the independent valuer should be remedied by the Operator, the Operator must, at the Operator's own cost, make good the defects identified by the independent valuer.

13.4 Contract Depot Capacity

- (a) The Operator must be able to provide the Contract Depot capacity referred to in Clause 13.4(b) on the Services Commencement Date and throughout the Term.
- (b) The Operator must be able to provide Contract Depots sufficient to:
- (i) accommodate the following:

- (A) the number and type of Buses required for the proper and efficient operation of the Contract Bus Services as at the Services Commencement Date;
 - (B) additional Buses to allow for an increase of up to 20% of the total seating capacity of the Buses referred to in Clause 13.4(b)(i)(A); and
 - (C) the number of spare Buses required for the proper and efficient operation of the Contract Bus Services as at the Services Commencement Date, plus any additional spare Buses required for the potential increase referred to in Clause 13.4(b)(i)(A); and
- (ii) accommodate the number of Staff and the activities necessary for the proper operation of the Contract Bus Services as at the Services Commencement Date, plus any additional capacity required for the potential increase referred to in Clause 13.4(b)(i)(B).
- (c) The Operator may achieve the Contract Depot capacity referred to in Clause 13.4(b) through the use of Existing Depots or New Depots.

13.5 Contract Depot Standards

The Operator must ensure that all Contract Depots comply with the standards contained in the Contract Buses and Contract Depots Schedule, in addition to any other requirements imposed in any other Transaction Documents.

14 New Assets

14.1 New Buses

- (a) The Operator may seek Payments from TfNSW in respect of a New Bus, in accordance with this Clause 14.1 and any procedure or guideline regarding the approval process for a New Bus, issued by TfNSW from time to time.
- (b) TfNSW may, in its absolute discretion, approve or decline an application for Payments in respect of a New Bus. If the Operator acquires a New Bus, without TfNSW's prior written approval, the Operator will not be entitled to any Payments in respect of the New Bus.
- (c) The Operator must provide its proposed program for New Buses it proposes to acquire during the Term (**New Bus Program**), to TfNSW, on the commencement of this Contract.
- (d) TfNSW will approve, amend or decline the New Bus Program for the first Contract year, within 7 days of receiving the New Bus Program from the Operator, and every 12 months thereafter for the rest of the Term.
- (e) TfNSW will notify the Operator of the program for Growth Contract Buses each year.
- (f) On 1 July each year during the Term, the Operator must notify TfNSW of any proposed changes to the New Bus Program (as approved by TfNSW), for the following two financial years.
- (g) TfNSW will approve, amend or decline the proposed changes to the New Bus Program.
- (h) The Operator must do the following in relation to any New Buses approved by TfNSW:

- (i) comply with any conditions notified to it by TfNSW;
- (ii) if the New Bus is to be leased to the Operator by any party other than a TfNSW Lessor, execute:
 - (A) a Bus Lease in respect of the New Bus, which must:
 - (I) contain terms that grant the Operator an entitlement to acquire the New Bus at the end of the Bus Lease; and
 - (II) be on terms approved by TfNSW; and
 - (B) an Operator Bus Lease Direct Agreement, with the relevant lessor and TfNSW;
- (iii) if the New Bus is to be purchased by the Operator, execute:
 - (A) a purchase agreement on terms approved by TfNSW; and
 - (B) an Operator General Financier Direct Agreement, with the secured financiers of the Operator and TfNSW.
- (i) The Operator acknowledges that TfNSW may, in its sole discretion, determine that any New Bus will be purchased by a TfNSW Lessor and leased to the Operator.
- (j) If TfNSW notifies the Operator that a TfNSW Lessor will purchase a New Bus, the Operator:
 - (i) agrees to lease such New Bus from the TfNSW Lessor;
 - (ii) must comply with any conditions or requirements in connection with the New Bus notified by TfNSW and/or the TfNSW Lessor to the Operator;
 - (iii) must execute a TfNSW Bus Lease in form and substance satisfactory to TfNSW and/or the TfNSW Lessor
 - (iv) must ensure that no Security Interest is created or allowed to exist over or in connection with such New Bus or TfNSW Bus Lease, other than a Permitted Security Interest; and
 - (v) agrees to execute any documentation or amendments to documentation (including any amendments to an Operator General Financier Direct Agreement) required by TfNSW and/or the TfNSW Lessor to ensure that any Security Interest of the TfNSW Lessor in respect of such New Bus and its Proceeds will rank in priority over any Security Interest over the Operator's assets.

14.2 Purchase of Buses from Bus Procurement Panel

The Operator acknowledges that all New Buses must be supplied, manufactured or purchased by or from the Bus Procurement Panel, unless TfNSW otherwise notifies the Operator in writing.

14.3 New Depots

- (a) If New Depots are required during the Term, to cater for growth above the Contract Depot capacity referred to in Clause 13.2:

- (i) The Operator may, at the Operator's own cost, provide a New Depot; or
- (ii) TfNSW may, at its sole discretion, enter into arrangements outside of this Contract for the establishment of a New Depot; or
- (iii) TfNSW may, at its sole discretion, permit a group of Bus Operators (including the Operator) to share a New Depot established by TfNSW.

15 Dealing with Operator Assets

15.1 Security, assignment and possession of Sale Buses

The Operator must not, except with the consent of TfNSW (such consent not to be unreasonably withheld or delayed):

- (a) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any Sale Bus; 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 Sale Bus, other than by way of a Permitted Security Interest.

15.2 Bus Leases and Operator Depot Leases

The Operator must not, except with the consent of TfNSW (such consent not to be unreasonably withheld or delayed):

- (a) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any Bus Lease or Operator Depot Lease;
- (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, its rights under, or interest in, a Bus Lease or Operator Depot Lease, or:
 - (iv) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
 - (v) suspend the performance of any of its obligations under; or
 - (vi) do or permit anything that would enable or give grounds to another party to do anything referred to in Clauses 15.2(b)(iv) or 15.2(b)(v) in relation to, a Bus Lease or a Operator Depot Lease, other than by way of a Permitted Security Interest; or

- (c) materially amend or supplement, or consent to any material amendment or supplement of a Bus Lease or an Operator Depot Lease or expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under a Bus Lease or an Operator Depot Lease if and to the extent that such amendment, supplement, waiver, extension or grant takes effect in, or relates to the exercise of any power or the performance of any obligation under the Bus Lease or Operator Depot Lease during the End of Contract Period or after the Termination Date.

15.3 Treatment of Leased Buses on Termination of Bus Lease

- (a) On the termination or expiry of a Finance Lease over any Contract Bus the Operator must:
- (i) where the Bus Lease grants an entitlement to acquire the relevant Bus, ensure that the Bus is acquired in accordance with the terms of the Bus Lease; and
 - (ii) where the Bus Lease does not grant an entitlement to acquire the relevant Bus, use its best endeavours to:
 - (A) negotiate the acquisition of the relevant Bus for a value not exceeding its residual value; or
 - (B) enter into a Replacement Bus Lease for the relevant Bus, based on its residual value,
 in each case on terms approved by TfNSW.
- (b) Prior to the termination or expiry of an Operating Lease over any Contract Bus that is not leased to the Operator by a TfNSW Lessor, the Operator must submit a proposal to TfNSW recommending that it either:
- (i) negotiate the acquisition of the relevant Bus for a value not exceeding its residual value;
 - (ii) refinance the relevant Bus as a replacement Operating Lease;
 - (iii) refinance the relevant Bus as a Finance Lease for its residual value; or
 - (iv) let the relevant Bus Lease terminate or expire without further action.
- (c) Any proposal under Clause 15.3(b) recommending the acquisition or further leasing of a Bus shall be deemed an application in respect of a New Bus.

15.4 Treatment of Depots on Termination of Operator Depot Lease

- (a) Where the term of an Operator Depot Lease expires during the Term of this Contract the Operator must:
- (i) notify TfNSW of the date of expiry (or termination) in the Operator Depot Lease no later than the earlier of:
 - (A) 18 months before the date of expiry (or termination); and
 - (B) 18 months before the last date the Operator is permitted to exercise an option to renew in that Operator Depot Lease;

- (ii) notify TfNSW of the Operator’s intentions whether or not to renew the Operator Depot Lease at the date of expiry (or termination) or to purchase the Existing Depot including details of the terms of the new lease (if they have been negotiated with the owner of the Existing Depot);
- (iii) liaise with TfNSW in good faith to determine whether:
 - (A) the Operator Depot Lease should be renewed or extended;
 - (B) the Existing Depot should be purchased by the Operator or TfNSW and on what terms; or
 - (C) the Operator should cease to use that Existing Depot.
- (b) Where an Operator Depot Lease over a Contract Depot grants the Operator an option or other right to purchase the relevant Contract Depot, the Operator must ensure that if it does not acquire the Contract Depot, it provides TfNSW or TfNSW’s nominee with the opportunity to acquire the Contract Depot, to the extent such opportunity arises under the relevant Operator Depot Lease (whether as the nominee of the Operator or otherwise).

15.5 Bus Leases entered into during the Term

The Operator must ensure that each Bus Lease entered into (or proposed to be entered into) by the Operator in respect of a New Bus, Replacement Contract Bus and Growth Contract Bus contains terms that grant the Operator an entitlement to acquire the relevant Bus at the end of the term for the Bus Lease.

15.6 Sale Buses

On or within the period of 30 days immediately preceding the Termination Date:

- (a) the Operator must ensure that all Sale Buses are sold to the Successor Operator or a TfNSW Lessor; and
- (b) TfNSW shall procure that the Successor Operator or a TfNSW Lessor (as required by TfNSW) purchases all Sale Buses,

as required by TfNSW, including in accordance with the Contract Buses and Contract Depots Schedule and any other terms of this Contract and any other Transaction Document.

15.7 Treatment of Contract Depots Termination of Contract

If TfNSW has a right to terminate this Contract under Clause 30.2, then TfNSW may require by notice to the Operator:

- (a) where there is an Operator Owned Existing Depot or a New Depot owned by the Operator, that the Operator (as landlord) must enter into the Depot Headlease with TfNSW (as tenant), for a term required by TfNSW in its absolute discretion, but not exceeding 2 years from the date of the notice from TfNSW;
- (b) where there is an Associated Entity Owned Existing Depot or a New Depot owned by an Associated Entity of the Operator, that:

- (i) the Operator must procure the Associated Entity of the Operator (as landlord) to enter into the Depot Headlease with TfNSW (as tenant), for a term required by TfNSW in its absolute discretion, but not exceeding 2 years from the date of the notice from TfNSW; and
 - (ii) the Operator must procure the Operator Depot Lease for that Associated Entity Owned Existing Depot or New Depot (as the case may be) is surrendered on the date of the notice from TfNSW;
- (c) where there is a Third Party Owned Existing Depot or a New Depot owned by a Third Party Owner, that the Operator must use its best endeavours to either:
- (i) seek to procure a surrender of the Operator Depot Lease for that Third Party Owned Existing Depot or New Depot (as the case may be) by no later than the day notified by TfNSW and have the Third Party Owner (as landlord) enter into the Depot Headlease with TfNSW (as tenant) for a term required by TfNSW in its absolute discretion, but not exceeding 2 years from the date of the notice from TfNSW; or
 - (ii) If the Operator is unable to achieve the matters referred to in Clause 15.7(c)(i), then the Operator must procure the assignment of that Operator Depot Lease to TfNSW (as assignee) from the date of the notice from TfNSW.
- (d) The Operator must obtain the consent of any mortgagee of a Contract Depot and/or mortgagee of an Operator Depot Lease to:
- (i) the Depot Headlease in Clause 15.7(a), Clause 15.7(b) and Clause 15.7(c);
 - (ii) to the surrender of the Operator Depot Lease in Clause 15.7(b)(ii); or
 - (iii) to the assignment of the Operator Depot Lease in Clause 15.7(b)(ii),
- whichever applies.

15.8 Novation Buses

On or within the period of 30 days immediately preceding the Termination Date:

- (a) the Operator must ensure that all Bus Leases in respect of Novation Buses are novated to the Successor Operator or a TfNSW Lessor; and
- (b) TfNSW shall procure that the Successor Operator or a TfNSW Lessor (as required by TfNSW) executes documentation to ensure the novation of Bus Leases as contemplated under Clause 15.8(a),

as required by TfNSW, including in accordance with the terms of the Contract Buses and Contract Depots Schedule and any other terms of this Contract and any other Transaction Document.

16 Reporting

16.1 Reporting

- (a) The Operator must report to TfNSW during the Term, in accordance with the Reporting Schedule.

- (b) If requested by TfNSW, the Operator must provide Driver and Bus shift information to TfNSW, on reasonable notice.

17 Operating Plans

17.1 Accessible Transport Action Plan

- (a) The Operator must develop, implement and comply with its Accessible Transport Action Plan from the Services Commencement Date and for the duration of the Term.
- (b) The Accessible Transport Action Plan must specify the steps the Operator will take to comply with the:
 - (i) *Disability Discrimination Act 1992* (Cth);
 - (ii) *Disability Standards for Accessible Public Transport 2002* (Cth);
 - (iii) *Anti-Discrimination Act 1977* (NSW);
 - (iv) principles in Schedule 1 of the *Disability Services Act 1993* (NSW); and
 - (v) Guidelines for Disability Action Planning by NSW Government Agencies.
- (c) If requested, the Operator must submit its Accessible Transport Action Plan to TfNSW.
- (d) The Operator must publish its Accessible Transport Action Plan on its website and make it available to passenger, upon request, free of charge.
- (e) The Operator must annually review the Accessible Transport Action Plan to ensure it complies with Clause 17.1(b) and meets the needs of passengers.
- (f) The Operator must consult and liaise with the Road Authority, local government authority or any other authority with responsibilities relevant to the Transit Stops (**Relevant Authority**) and Connecting Passenger Operators to:
 - (i) carry out the Operator’s obligations relating to Transit Stops and Transit Stop Signage, referred to in Item 6 of the Services Schedule;
 - (ii) facilitate and enable compliance by the Relevant Authority with accessibility requirements at Transit Stops; and
 - (iii) coordinate the Operator’s accessible transport services with the accessible services and infrastructure of Connecting Passenger Operators.

17.2 Environmental Plan

- (a) The Operator must develop, implement and maintain its Environmental Plan from the Services Commencement Date and for the duration of the Term.
- (b) The Environment Plan must:

- (i) be generally consistent with or address the environmental system requirements set out in ISO 14001 “Environmental Management System – Specification with guidance for use”; and
 - (ii) have regard to the need to preserve the environment and the need to mitigate any adverse effects on the environment and must ensure all material and consumables used in the performance of the Contract Bus Services are environmentally friendly and kept and disposed of in an environmentally safe and lawful manner.
- (c) If requested, the Operator must submit its Environmental Plan to TfNSW, or demonstrate that it has appropriate environmental management systems in place.
 - (d) The Operator must publish its Environmental Plan on its website and make it available to passenger, upon request, free of charge.
 - (e) The Operator must annually review the Environmental Plan and make such amendments as may be required.

17.3 Passenger Relations Plan

- (a) The Operator must develop, implement and comply with its Passenger Relations Plan from the Services Commencement Date and for the duration of the Term.
- (b) The Passenger Relations Plan must:
 - (i) detail the Operator’s procedure for handling passenger complaints, enquiries, (including lost property) and other matters concerning the public
 - (ii) describe arrangements for provision of information about Contract Bus Services to passengers;
 - (iii) detail the Operator’s arrangements for provision of the Service Desk and participation in Transport Info 131500;
 - (iv) detail the Operator’s procedures to manage and resolve passenger complaints and enquiries, however received, including procedures to:
 - (A) log the complaint or enquiry into a web based system that is nominated by TfNSW;
 - (B) ensure the most appropriate person deals with the complaint or enquiry;
 - (C) ensure the complaint or enquiry is responded to promptly by the Operator, or assistance is provided to Transport Info 131500 to ensure the complaint or enquiry is responded to promptly, and appropriate action is taken to address the complaint or enquiry, and, where a complaint is involved, that the matter causing the complaint does not re-occur;
 - (D) monitor action taken in response to a complaint or enquiry; and
 - (E) identify any problems of a systemic nature revealed by the complaints and enquiries;

- (v) incorporate a guarantee of response times to complaints and enquiries received by telephone, mail and electronic mail, within at least the response time detailed in the customer response Key Performance Indicator set out in KPI table 6 of the KPI Schedule;
 - (vi) have regard to Australian Standard AS4269-1995 or any successor standard issued by Standards Australia relating to complaints handling;
 - (vii) detail the Operator’s plan for dealing with lost children and other emergencies;
 - (viii) detail the Operator’s customer relations strategy, including objectives, specific initiatives to achieve the objectives and tangible measures of performance;
 - (ix) detail a program for passenger training to facilitate the uptake of bus travel by the elderly, disabled or culturally and linguistically diverse members of the community;
 - (x) detail the manner in which the benefits of the Contract Bus Services will be marketed, advertised and made available to public; and
 - (xi) detail any customer research to be undertaken including, but not limited to, patronage surveys, loading counts, origin and destination surveys, focus groups, community consultation and any other product or market research.
- (c) The Operator must review and report annually to TfNSW to provide TfNSW with information about how all the complaints of which the Operator is aware were resolved or why complaints were not resolved, in accordance with the KPI Schedule.
 - (d) If requested, the Operator must submit its Passenger Relations Plan to TfNSW.
 - (e) The Operator must publish its Passenger Relations Plan on its website and make it available to passenger, upon request, free of charge.

18 Staffing

18.1 All Staff

- (a) The Operator warrants that all Staff are properly authorised, accredited, trained and experienced to perform the Contract Bus Services for the duration of the Term.
- (b) The Operator must provide training to its Staff and develop, document and maintain training materials in accordance with Item 8 of the Services Schedule.

18.2 Damage or Harm to TfNSW’s Reputation by Staff

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

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

19 Subcontracting

19.1 Engagement of Approved Subcontractor

- (a) The Operator must not engage a subcontractor to perform any part of the Contract Bus Services without prior written approval of TfNSW (**Approved Subcontractor**).
- (b) The Operator must:
 - (i) make an Approved Subcontractor aware of the terms and conditions of this Contract; and
 - (ii) ensure that an Approved Subcontractor enters into and provides TfNSW with the Approved Subcontractor Security Documents prior to performing any part of the Contract Bus Services.
- (c) The terms and conditions of any subcontract between the Operator and an Approved Subcontractor must be consistent with the terms and conditions of this Contract.
- (d) The Operator will continue to be bound by, and responsible for performance of this Contract notwithstanding that part or all of the Contract Bus Services may have been subcontracted under this Clause 19.1.
- (e) TfNSW may, without incurring any liability, give the Operator written notice of its withdrawal of its approval of an Approved Subcontractor at any time during the Term, if in TfNSW's reasonable opinion the Approved Subcontractor is not complying with the requirements of this Contract, or the Approved Subcontractor has caused damage or harm to TfNSW's reputation.
- (f) Upon receipt of written notice under Clause 19.1(e), the Operator must immediately terminate its arrangement with the Approved Subcontractor and provide TfNSW with such evidence as TfNSW may reasonably require as to the Operator's arrangements for the ongoing performance of the Contract Bus Services by the Operator.
- (g) The Operator must give TfNSW written notice of its intention (if any) to change an Approved Subcontractor and obtain approval under Clause 19.1(a) for any replacement subcontractor.
- (h) The Operator must give TfNSW 60 days prior written notice of its intention to terminate an Approved Subcontractor for any reason and provide TfNSW with such evidence as TfNSW may reasonably require as to the Operator's arrangements for the ongoing performance of the Contract Bus Services by the Operator.
- (i) To the extent that Loss is not attributable to TfNSW's withdrawal of approval of an Approved Subcontractor:
 - (i) the Operator is liable for any acts or omissions of any Approved Subcontractor or any employee or agent of the Approved Subcontractor as fully as if they were the acts or omissions of the Operator, and
 - (ii) the Operator must indemnify and release TfNSW from any liability or loss resulting from the acts or omissions of any Approved Subcontractor.

- (j) The Operator must complete a Subcontractor’s Statement in relation to any Approved Subcontractor. TfNSW will provide the Subcontractor’s Statement to the Operator for completion.

19.2 Access to Approved Subcontractor information

- (a) The Operator must ensure that any Approved Subcontractor engaged in accordance with Clause 19.1:
 - (i) maintains those financial and financial planning records that would ordinarily be maintained by a skilled and experienced operator of Buses and bus services comparable to the size, scope and complexity of the Contract Bus Services; and
 - (ii) provides the information required by the Reporting Schedule to TfNSW.

19.3 Operator undertakings in relation to Approved Subcontractors

- (a) The Operator undertakes to ensure that:
 - (i) in respect of any Contract Bus used by an Approved Subcontractor in connection with the performance of the Contract Bus Services that is not owned by the Approved Subcontractor prior to the Services Commencement Date, either:
 - (A) that Contract Bus is sold to the Successor Operator or a TfNSW Lessor (as required by TfNSW) on or within the period of 30 days immediately preceding the Termination Date in accordance with the terms of Clause 15.6, as if such Contract Bus is a “Sale Bus”; or
 - (B) the Bus Lease in respect of that Contract Bus is novated to the Successor Operator or a TfNSW Lessor (as required by TfNSW) on or within the period of 30 days immediately preceding the Termination Date in accordance with the terms of Clause 15.8, as if such Bus Lease is a “Novation Bus”; and
 - (ii) as at the Termination Date (or any earlier date on which the sale or novation (as relevant) occurs under Clause 15.6 or 15.8), an Approved Subcontractor:
 - (A) will be the legal and beneficial owner of any Contract Bus to be sold under Clause 15.6;
 - (B) will have full power and authority to transfer good legal and equitable title to any Contract Bus (which must be free from any Security Interest) to be sold under Clause 15.6; and
 - (C) will have full power and authority to novate any Bus Lease (which must be free from any Security Interest) to be novated under Clause 15.8.

20 Payment

20.1 Payments

- (a) In exchange for the Operator performing the Contract Bus Services in accordance with this Contract, TfNSW must pay the Operator the Payments, after receipt of a valid Tax Invoice from the Operator in accordance with Clause 20.2.

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

20.2 Invoices and time for payment

- (a) On a monthly basis from the Services Commencement Date and for the duration of the Term, the Operator must submit to TfNSW a valid Tax Invoice for the performance of the Contract Bus Services in accordance with the terms of this Contract. The Tax Invoice must specify:
 - (i) the amount of the Payments in respect of the Contract Bus Services for the month in arrears;
 - (ii) the amount of GST payable in respect of the provision of the Contract Bus Services;
 - (iii) such other details specified in the Payment Schedule.
- (b) TfNSW must make Payments within 14 days after receipt of a Tax Invoice where:
 - (i) the amount claimed in the Tax Invoice is due for payment and correctly calculated in Australian dollars; and
 - (ii) the invoice is set out as an itemised account in accordance with the requirements of Clause 20.2(a).
- (c) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.

20.3 Set-off

- (a) TfNSW may deduct from Payments due to the Operator any amounts due from the Operator to TfNSW whether under, or in connection with, this Contract or otherwise.
- (b) If that money referred to in Clause 20.3(a) is insufficient for that purpose, the balance remaining unpaid will be a debt due to TfNSW by the Operator and may be recovered from the Operator by TfNSW in any court of competent jurisdiction.

20.4 Goods and Services Tax (GST exclusive prices)

- (a) A reference in this Clause 20.4 to a term defined or used in the *GST Act* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this Contract which is relevant in determining a payment to be made by one of the Parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this Contract, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- (d) If one of the Parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Contract, the amount of the reimbursement will be net of any Input Tax

Credit which may be claimed by the Party being reimbursed in relation to that expense or outgoing.

21 Contract management

21.1 Governance

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

21.2 Audit

- (a) TfNSW may investigate any matter in connection with this Contract, including costs and pricing matters, and may at any time during the Term and for six months after termination or expiration of the Contract, audit all files, records and invoices of the Operator pertaining to the provision of the Contract Bus Services and related expenditures.
- (b) TfNSW may appoint an auditor for the purposes of Clause 21.2.
- (c) TfNSW may, or may appoint persons to, carry out mystery shopper surveys, or collect customer satisfaction data, from passengers on Contract Buses.
- (d) TfNSW, or its agent, may conduct audits on the contents of reports and data provided by the Operator to TfNSW in accordance with Clause 16 and the Reporting Schedule.
- (e) Without limiting Clause 21.2(d), from the Services Commencement Date and for the duration of the Term, the Operator must collect the data specified in paragraph 12.1 of the Reporting Schedule.
- (f) The Operator must:
 - (i) provide all reasonable assistance to TfNSW or its agent in the conduct of an audit under Clause 21.2(d);
 - (ii) make available to TfNSW or its agent all reports and underlying data requested by TfNSW in the conduct of an audit under Clause 21.2(d); and
 - (iii) comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits.
- (g) The Operator must provide all reasonable access and assistance and must meet all of the Operator's costs and expenses, in connection with this Clause 21.2.

21.3 Inquiries

- (a) The Operator must, within the timeframe required by TfNSW, provide all assistance reasonably requested by TfNSW in respect of any inquiry into or concerning the Contract Bus Services or this Contract. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to TfNSW), or any request for

information from the NSW Auditor-General or the Independent Pricing and Regulatory Tribunal directed to TfNSW or the Minister for Transport.

- (b) Without limiting Clause 21.3(a), the assistance to be provided by the Operator includes:
 - (i) the provision of requested documents or information relevant to the Contract Bus Services; and
 - (ii) answering questions relevant to the Contract Bus Services.

22 Accreditation and compliance

22.1 Accreditation and Compliance with Laws and Standards

- (a) The Operator warrants that it will hold, for the duration of the Term, all Authorisations required to operate the Contract Bus Services in accordance with, and to perform its obligations under, this Contract.
- (b) In operating the Contract Bus Services, and in performing its obligations under this Contract, the Operator must:
 - (i) comply at all times with all Authorisations required to be held by the Operator under Clause 22.1(a); and
 - (ii) procure that with respect to Driver Authorities required to be held by Drivers under Clause 22.1(a), the Driver will comply at all times with such Driver Authorities required to be held by the Driver.
- (c) The Operator acknowledges that nothing in this Contract restricts or otherwise affects TfNSW's unfettered discretion to use its statutory powers, including its statutory powers relating to Accreditation under the PT Act. The Operator must immediately notify the TfNSW Representative of any circumstance which may affect the Operator's Accreditation.
- (d) If the Operator is a corporation, there must be at all times a designated manager or director of the Operator in accordance with section 7 of the PT Act.
- (e) Without limitation to any other provision of this Contract, the Operator must comply with all applicable Laws and all quality and safety plans from time to time applicable to the Contract Bus Services.
- (f) Without limiting any other approvals or permissions required for the provision of the Contract Bus Services, the Operator must operate the Contract Bus Services only upon:
 - (i) Roads and Road-Related Areas that have been approved by the appropriate Road Authority for use by Bus traffic; or
 - (ii) if the Contract Bus Services are to be provided on private property, with the permission of the owner of the private property.
- (g) During the first month after the Services Commencement Date and every 12 months thereafter, the Operator must certify in writing to TfNSW compliance with the following legislative and regulatory requirements:

- (i) *Disability Discrimination Act 1992* (Cth);
- (ii) *Anti-Discrimination Act 1977* (NSW);
- (iii) Environmental legislation, including but not limited to the *Protection of the Environment Operations Act 1997* (NSW); and
- (iv) *Industrial Relations Act 1996* (NSW).

22.2 WHS

- (a) In performing the services required under this Contract, the Operator must ensure, so far as is reasonably practicable, the health and safety of its Workers and any persons at the Workplace (in the area under the Operator’s control), including any persons performing work at the Workplace, whether or not engaged by the Operator; and
- (b) The Operator acknowledges that, in performing the services required under this Contract:
 - (i) for the purposes of the WHS Law, it is the controller or person in charge of the Workplace and as such must ensure compliance with its obligations under WHS Law in this regard;
 - (ii) it will use its best endeavours to ensure, so far as is reasonably practicable the health safety of any persons at the Workplace (in those areas not under the Operator’s control), including any persons performing work at the Workplace, whether or not engaged by the Operator;
 - (iii) In performing the services required under this Contract, the Operator must ensure that (subject to Clause 22.2(e)):
 - (A) it manages or controls the Workplace;
 - (B) it provides appropriate training and supervision for all persons employed or engaged by it at the Workplace;
 - (C) it controls or directs the performance of work associated with the services required under this Contract;
 - (D) it establishes and maintains safe work practices;
 - (E) it engages competent persons to carry out risk audits at its Workplace every two years. Such audits must be undertaken in compliance with good risk management principles and must identify, assess and control any work health and safety risks present at the Workplace;
 - (F) all Staff performing the services required under this Contract are trained in work health and safety, in particular in relation to the risks associated with performing the services required under this Contract;
 - (G) it otherwise complies with all WHS Law;
 - (H) it will inform TfNSW of any changes of any Staff, corporate structure, management structure or supervisors that may affect the safety of its Staff or workers in performing the services required under this Contract; and

- (iv) it otherwise complies with all statutory requirements for work health, safety and rehabilitation management.
- (c) TfNSW and the Operator acknowledge and agree that the Operator has control of:
 - (i) the manner in which the services required under this Contract are performed; and
 - (ii) all matters arising out of or as a consequence of the performing of or failure to perform the services required under this Contract that give rise or may give rise to risks to health or safety.
- (d) The Operator must, prior to the performance of any part of the services required under this Contract:
 - (i) undertake an assessment of the WHS risks associated with the performance of the services and identify and take all reasonably practicable steps to implement appropriate WHS risk control measures to eliminate and minimise all such WHS risks; and
 - (ii) as required by TfNSW, provide TfNSW with details of the WHS risk assessment undertaken and evidence of implementation of appropriate WHS risk control measures required under this Clause 22.2.
- (e) If the Operator engages an Approved Subcontractor (in accordance with Clause 19) or otherwise relinquishes to, or shares with, any person:
 - (i) the management or control of the Workplace; or
 - (ii) control over the performance of work associated with the services required under this Contract,

it will ensure that person complies with the obligations referred to in this Clause 22.2.
- (f) In order to meet its obligations under this Clause 22.2, the Operator must adopt a work health, safety and rehabilitation management system that supports a systematic approach to managing risks to health and safety posed by the Workplace or the services required under this Contract, including:
 - (i) a process to identify safety hazards, assess the risks posed by such hazards and eliminate or control the risks; and
 - (ii) mechanisms to monitor the performance of the system adapt and improve it as necessary.
- (g) The Operator will provide to TfNSW such information about the operation and maintenance of the system referred to in Clause 22.2(f) as TfNSW requests. Any review of the operation or maintenance of the system by TfNSW under this sub-clause does not constitute a verification or acceptance by TfNSW of the adequacy of the system.
- (h) The Operator must ensure that it reasonably participates, and that its Staff reasonably participate, in any investigation carried out by TfNSW relating to any Workplace incident notifiable under a WHS Law in connection with the performance of the services required under this Contract that arises during the Term (**Notifiable incident**). This will include:

- (i) providing TfNSW with the names and details of all of the Staff and workers who were involved in the Notifiable incident;
 - (ii) ensuring that TfNSW has immediate unrestricted access to, and cooperation by, all of the relevant Staff;
 - (iii) ensuring that all of the relevant Staff promptly provide any written or oral statement as is reasonably required by TfNSW;
 - (iv) providing immediate access to the Operator's records together with the right of TfNSW, at its cost, to make copies of such records as TfNSW reasonably requires; and
 - (v) providing the contact information (including address and telephone number) for all of the Operator's past and current relevant Staff and workers involved in or with knowledge of the Incident and in doing so the Operator must comply with the Privacy Laws.
- (i) The Operator must so far as is reasonably practicable consult, cooperate and coordinate the services required under this Contract with any other person involved in performing work at the Workplace to achieve effective coordination of the services to ensure optimal health and safety risk management and enable TfNSW and the Operator and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.
 - (j) If the Operator breaches its obligations under this Clause 22.2, the breach will be a Termination Event for the purposes of Clause 30.2. In addition, the Operator will not be entitled to make a Claim against TfNSW as a result of or in any way connected with a breach of its obligations under this Clause 22.2.
 - (k) The Operator indemnifies TfNSW, against any cost, expense, loss, damage or other liability suffered or incurred by TfNSW to the extent it arises from a breach by the Operator of this Clause 22.2.

23 Warranties

23.1 Warranties Correct

The Operator represents and warrants to TfNSW that the following warranties are true and correct and not misleading on the commencement of this Contract and for the duration of the Transition Period and the Term:

- (a) It is a corporation duly incorporated and validly existing under the laws of New South Wales;
- (b) It has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- (c) It has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents;

- (d) Each Transaction Document to which it is expressed to be a party creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (e) The execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Reporting Body binding on it; or
 - (ii) its constitution or other constituent documents;
- (f) No suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it or its Subsidiaries that may have an adverse effect on the performance of the Contract;
- (g) No resolution has been passed for its winding up or the winding up of any of its Subsidiaries;
- (h) No resolution has been passed for the appointment of an administrator to it or any of its Subsidiaries;
- (i) There is no unsatisfied judgment against it or any of its Subsidiaries;
- (j) There are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any of its Subsidiaries or any part of its or any of its Subsidiaries' undertaking or assets or income;
- (k) Each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents; and
 - (ii) its business as now conducted or contemplated and that is material (including, under the PT Act),
 has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Services Commencement Date, it is only given as at the Services Commencement Date;
- (l) All returns, notices and other documents required to be lodged or given by it or any of its Subsidiaries under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (m) There are no notices of any Reporting Body outstanding against it or any of its Subsidiaries;
- (n) All Authorisations necessary for the conduct of its business and the business of its Subsidiaries are validly subsisting and are held by it and the business of its Subsidiaries;
- (o) It and each of its Subsidiaries has duly observed and complied in all respects with the provisions of all laws and regulations and all orders, notices, awards and determinations made

by any statutory or other competent authority in any way relating to or binding on it or any of its Subsidiaries or any property owned or occupied by it or any of its Subsidiaries;

- (p) All copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to TfNSW are true and complete copies. Where applicable, those documents are in full force and effect;
- (q) No breach of the Existing Services Contract has occurred and is continuing that has not been disclosed to TfNSW;
- (r) None of its property, and no property of any of its Subsidiaries, is subject to any Security Interest (other than a Permitted Security Interest);
- (s) It does not hold any assets as the trustee of any trust;
- (t) It complies with the Privacy Laws, and any guidelines issued by the Commissioner under the relevant Privacy Law;
- (u) As at the Termination Date (or any earlier date on which a sale or novation (as relevant) occurs under Clause 15.6 or 15.8), the Operator:
 - (i) will be the legal and beneficial owner of all Sale Buses free from any Security Interest;
 - (ii) will have full power and authority to transfer to the Successor Operator or the TfNSW Lessor (as required by TfNSW) good legal and equitable title to the Sale Buses free from any Security Interest;
 - (iii) will have ensured that each Sale Bus and Novation Bus:
 - (A) is, consistent with its age, in good repair and condition;
 - (B) is in satisfactory working order;
 - (C) has been properly maintained and serviced in accordance with, and otherwise complies with, the terms of this Contract;
 - (D) is not dangerous or unsuitable for the purpose for which it is used; and
 - (E) is, to the best of the Operator's then knowledge and belief, capable of doing the work for which it was designed or purchased and will be capable (subject to fair wear and tear) of doing so over its normal serviceable life; and
 - (iv) will have ensured that all arrangements in connection with any fleet maintenance plan are in full force and effect in respect of any Sale Bus or Novation Bus.
- (v) It can commence the Contract Bus Services on the Services Commencement Date;
- (w) It is and will be able to comply with the Services Schedule, Service Level Schedule, Key Performance Indicators and any outcomes or indicators agreed in this Contract;
- (x) Its performance of this Contract will not infringe the Intellectual Property rights of any third person;

- (y) Its Revenue and Revenue Data Protection Plan is updated annually and provides sufficient protection for Revenue;
- (z) Its Accessible Transport Action Plan, Environmental Plan and Passenger Transport Plan are updated annually;
- (aa) It will perform the Contract Bus Services in accordance with the degree of skill, diligence, prudence and practice that would be exercised by a skilled and experienced operator of buses and bus services comparable to the size, scope and complexity of the Contract Bus Services and to TfNSW's reasonable satisfaction; and
- (bb) It will perform the Contract Bus Services:
 - (i) in a competent, courteous, safe and reliable manner;
 - (ii) having primary regard to the needs and interests of passengers and to build an integrated Route Network; and
 - (iii) in accordance with the requirements of this Contract.

23.2 Notification of Change

The Operator must immediately notify TfNSW's Representative in writing upon becoming aware that a representation or warranty it has given under this Clause 23 has become untrue or misleading at any time during the Term.

23.3 Reliance on Representations and Warranties

- (a) The Operator acknowledges that TfNSW has entered into, or will enter into, the Transaction Documents in reliance on the representations and warranties made by the Operator in this Clause 23.
- (b) Each warranty and representation is separate and independent from the other and not limited by reference to another warranty or representation.

24 Operator acknowledgments

- (a) The Operator acknowledges that it has made its own enquiries and has not relied on any representations made by TfNSW, nor any other person acting on behalf of TfNSW, in respect of this Contract and the Transaction Documents.
- (b) Without limiting the generality of Clause 24(a), the Operator acknowledges the following:
 - (i) TfNSW, or any other person acting on behalf of TfNSW, has not verified the accuracy, reliability or completeness of the Disclosed Information;
 - (ii) TfNSW, or any other person acting on behalf of TfNSW, has not made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
 - (iii) the Operator has not relied in any way on the skill or judgment of TfNSW or any person acting on behalf of or associated with TfNSW and has relied absolutely on its own opinion and professional advice based upon its own independent analysis,

- assessment, investigation and appraisal in deciding to tender a proposal and to enter into this Contract and each other Transaction Document;
- (iv) the Operator has carried out all relevant investigations and has examined and acquainted itself concerning:
 - (A) the contents, correctness and sufficiency of the Disclosed Information;
 - (B) all information which is relevant to the risks, contingencies and other circumstances which could affect its decision to enter into this Contract and each other Transaction Document; and
 - (C) all amounts payable between the parties to this Contract and the other Transaction Documents;
 - (v) the Disclosed Information has been provided by TfNSW in good faith and that TfNSW has no knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither TfNSW, or any person acting on behalf of or associated with TfNSW, is under no obligation to make, and that none of them has made, enquiries to verify that state of knowledge), any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by TfNSW, or any person acting on behalf of or associated with TfNSW, in any prior negotiation, arrangement, understanding or agreement has no effect except to the extent expressly set out or incorporated in this Contract or the other Transaction Documents; and
 - (vi) the acknowledgments under this Clause are in addition to and do not replace the terms and conditions already agreed to or accepted by the Operator when receiving the Disclosed Information.
- (c) The Operator warrants to TfNSW that in entering into this Contract and each other Transaction Document, the Operator is aware that TfNSW has relied on the acknowledgments contained in this Clause 24 in entering into this Contract and each of the other Transaction Documents.
 - (d) To the extent permitted by law, the Operator expressly waives any right which it has (whether at the commencement of this Contract or otherwise) to bring any action or make any claim against TfNSW, or any person acting on behalf of or associated with any of TfNSW, arising (directly or indirectly) out of any alleged misrepresentation or misleading or deceptive conduct on the part of TfNSW, or any person acting on behalf of or associated with TfNSW, in providing the Disclosed Information or in connection with this Contract or any other Transaction Document (except for misrepresentations or misleading or deceptive conduct of TfNSW that is deliberate or negligent).
 - (e) The Operator indemnifies TfNSW on demand and will hold TfNSW harmless against all claims, proceedings, costs, expenses, loss, liability or damage that TfNSW may sustain or incur as a result of or in connection with (whether directly or indirectly) any breach of this Clause 24 by the Operator including, any breach of a warranty given by the Operator under this Clause 24.
 - (f) The Operator acknowledges that this Clause 24 is intended to benefit and is to be interpreted as benefiting TfNSW to the extent that this Clause 24 applies to them and is to be enforceable by TfNSW against the Operator. TfNSW holds the benefit of the Operator's representations, warranties, acknowledgments and agreements under this Clause 24 on trust for TfNSW.

25 Intellectual Property, Marks and Advertising

25.1 General Principle

- (a) The title to and Intellectual Property in or in relation to all Contract Material vests on their creation in TfNSW without the need for further assurance.
- (b) With respect to any Contract Material, irrespective of where it is created, if requested by TfNSW, the Operator must:
 - (i) sign, execute or otherwise deal with; and
 - (ii) ensure that any third party that creates any Contract Material signs, executes or otherwise deals with,

any document which may be necessary to vest all rights in and title to the Intellectual Property in the Contract Material to TfNSW.

25.2 Intellectual Property Licence

- (a) Where any of the Intellectual Property used by the Operator in connection with the performance of the Contract Bus Services is owned by the Operator, the Operator grants to TfNSW a perpetual, irrevocable, non-exclusive, transferable licence (with the right to sublicense) to use all of the Intellectual Property:
 - (i) in connection with this Contract; or
 - (ii) for the purpose of permitting any Successor Operator (or nominee of TfNSW) or Interim Operator to provide all or any part of the Contract Bus Services after the termination or expiry of the Term.
- (b) Where any third party Intellectual Property rights are embodied in any of the Contract Material, the Operator grants TfNSW a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence (including the right to sublicense) to use, reproduce and adapt such Contract Material for TfNSW's own use in connection with this Contract.
- (c) TfNSW grants the Operator a perpetual, irrevocable, world-wide and royalty-free licence to use, reproduce and adapt the Contract Materials for the performance of this Contract.

25.3 Indemnity

- (a) The Operator indemnifies TfNSW on demand against all Losses, liability or expense arising out of or in connection with a Claim by a third party that TfNSW's use of the Contract Material infringes their Intellectual Property rights.
- (b) For the purposes of this Clause 25.3, "infringement" includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990*, section 100 of the *Designs Act 2003*, section 183 of the *Copyright Act 1968* and section 25 of the *Circuit Layouts Act 1989* constitute an infringement.

25.4 Third Party Rights

- (a) Where, in the reasonable opinion of the Operator, any Contract Material does or is likely to infringe the rights of any third party's Intellectual Property which does or may prevent

TfNSW from using the Contract Material, the Operator will, where requested by TfNSW and to TfNSW's reasonable satisfaction obtain such consents from the relevant third party that will allow TfNSW to use the Contract Material without infringing that third party's Intellectual Property.

25.5 Livery and Operator's Marks

- (a) The Contract Buses referred to in paragraph 4 of the Contract Buses and Contract Depots Schedule must conform to uniform livery requirements, annexed to the Contract Buses and Contract Depots Schedule, or as otherwise prescribed by TfNSW from time to time.
- (b) If TfNSW prescribes or varies any existing uniform livery requirements in respect of all Contract Buses:
 - (i) the Operator must comply with that new or varied uniform livery requirement; and
 - (ii) TfNSW must compensate the Operator for all reasonable costs of complying with that new or varied uniform livery requirement but only to the extent such costs exceed the costs that the Operator would have incurred had TfNSW not required the new or varied uniform livery requirements.
- (c) Subject to Clauses 25.5(a) and 25.6 the Operator may apply marks and advertising to any Contract Buses.

25.6 Advertising

- (a) Any advertising placed by the Operator on a Contract Buses must:
 - (i) comply with all applicable Laws;
 - (ii) comply with any directions issued by TfNSW from time to time;
 - (iii) comply with the requirements of Clause 25.5;
 - (iv) comply with codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by a Governmental Agency, the Advertising Standards Bureau of Australia, Office of Film and Literature Classification, Australian Association of National Advertising, Outdoor Advertising Association of Australia and Buspak;
 - (v) not depict political, religious or other similar subject matter;
 - (vi) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour;
 - (vii) not cause, or have the potential to cause, any damage or harm to TfNSW's reputation;
 - (viii) not be offensive; and
 - (ix) not obscure the route number and destination details on a Contract Bus.
- (b) Where, in TfNSW's reasonable opinion, advertising on a Contract Bus does not comply with Clause 25.6(a), TfNSW may require the Operator to remove an advertising item from a Contract Bus.

- (c) The Operator must comply with a direction of TfNSW made pursuant to Clause 25.6(b) within 1 Business Day of receipt of the direction.

26 Insurance

26.1 Insurance policies

- (a) No later than the Services Commencement Date, the Operator must effect and maintain for the Term and any extension of the Term:
- (i) public liability insurance:
 - (A) covering Claims in respect of:
 - I damage to any real or personal property; and
 - II the injury to, or death of, any person,
 in the performance of the Contract Bus Services and use and operation of the Contract Buses;
 - (B) in which TfNSW is also a named insured in the policy;
 - (C) for at least the amount specified in Item 6 of Attachment A; and
 - (D) including a cross-liability clause:
 - I in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against the “insured” parties; and
 - II for the purpose of which the insurer accepts the term “insured” as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result);
 - (ii) workers’ compensation insurance against any common law or statutory liability;
 - (iii) insurance coverage against property damage which is adequate for all Contract Buses and Contract Depots;
 - (iv) insurance coverage against third party property damage:
 - (A) for all Contract Buses; and
 - (B) for at least the amount specified in Item 7 of Attachment A;
 - (v) any other insurances which TfNSW reasonably requires in which it is also a named insured and which are commonly effected by the operators of buses and bus services comparable to the size, scope and complexity of the Contract Bus Services provided those insurances can be obtained on payment of a reasonable premium.
- (b) Any property damage insurance must be effected and maintained with an Authorised Insurer.

26.2 Insurance generally

- (a) The Operator represents and warrants to TfNSW that on the commencement of this Contract and for the duration of the Transition Period and the Term that it has effected insurances as are required by Clause 26.1.
- (b) The Operator must use reasonable endeavours to ensure that all contracts for insurance the Operator effects in compliance with this Contract contain a term that requires the insurer to notify TfNSW in writing whenever the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy.
- (c) If the Operator has used reasonable endeavours as required by Clause 26.2(b) but, despite this, the contracts for insurance effected in compliance with this Contract do not contain the term referred to in Clause 26.2(b), the Operator must immediately notify TfNSW in writing if the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy, including particulars of that notice from the insurer.
- (d) The Operator must provide notice to TfNSW of any intended cancellation of insurances effected in compliance with this Contract by the Operator.
- (e) The Operator must:
 - (i) give TfNSW acceptable proof of currency and coverage of the insurances referred to in Clause 26.1(a) before the Services Commencement Date;
 - (ii) give TfNSW certified copies of all:
 - (A) policies;
 - (B) policy schedules;
 - (C) renewal certificates; and
 - (D) endorsement slips,
 as soon as it receives them; and
 - (iii) use reasonable endeavours (including paying any reasonable premium) to have each policy endorsed or a term in the policy to the effect that the insurer waives its right to avoid the policy or any liability under the policy by reason of non-disclosure or inaccurate disclosure in the proposal relating to that policy by the named insureds other than the named insureds responsible for the non-disclosure or inaccurate disclosure.
- (f) The Operator hereby indemnifies TfNSW on demand for and against any damage to, or Loss in connection with, a New Bus or New Depot to the extent that:
 - (i) any insurance required by this Contract is not available for the benefit of TfNSW due to any misrepresentation or fraud on behalf of the Operator or breach of this Contract by the Operator; or
 - (ii) the proceeds of insurance are not available for the benefit of TfNSW or are not sufficient to meet the costs of replacing the relevant New Bus or New Depot, where the damage or loss was caused or contributed to by a breach of this Contract or the wilful default or negligence of the Operator.

26.3 Premiums

The Operator must punctually pay all premiums in respect of all insurance policies referred to in Clause 26.

27 Indemnity and Limitation of Liability

27.1 Indemnity

- (a) The Operator indemnifies on demand and must keep indemnified on demand TfNSW, the Minister for Transport, the State or any office holder, employee, agent, contractor, consultant, delegate or adviser of, or to, TfNSW, the Minister for Transport or the State (**Indemnified Persons**), from and against any Loss which any of them 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 the Operator or any of its Staff;
 - (ii) any Non-Compliance Event;
 - (iii) any Termination Event;
 - (iv) any breach of a Transaction Document by the Operator (or an Approved Subcontractor (if any));
 - (v) any infringement of any Intellectual Property rights by any of the Operator or any of its 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 Contract Bus Services caused or contributed to by the Operator or any of its Related Entities or Staff.
- (b) The Operator's indemnity in Clause 27.1(a) will be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Indemnified Persons caused or contributed to the loss.
- (c) This indemnity will not exclude any other right of TfNSW to be indemnified by the Operator.
- (d) For the avoidance of doubt the Losses that must be indemnified under Clause 27.1(a) include any Losses arising as a result of a Non-Compliance Event or Termination Event and any Step-in Costs.

27.2 Liability and responsibility

The Operator acknowledges and agrees that:

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

except as expressly provided otherwise in this Contract.

27.3 Release

- (a) The Operator releases TfNSW and TfNSW's Associates (**Released Parties**) to the full extent permitted by law, from all Losses which arise in connection with this Contract, except in relation to direct losses arising from a breach of this Contract.
- (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).

28 Confidentiality, Privacy and Information Access

28.1 Confidentiality

- (a) Subject to Clauses 28.3 and 28.4, a Party must not disclose to a third party without prior written consent of the other Party (which will not be withheld if the disclosure is required by law), any Confidential Information which is:
 - (i) supplied or made available by a Party to the other Party in relation to the performance of the Contract Bus Services; or
 - (ii) brought into existence by the Operator in performing or for the purpose of providing the Contract Bus Services.

28.2 Maintaining confidentiality

The Parties must take or cause to be taken all precautions necessary to maintain confidentiality and prevent disclosure of Confidential Information.

28.3 Permitted disclosure

Clauses 28.1 and 28.2 do not apply to disclosures to the extent the disclosure:

- (a) is with the prior written consent of the Party whose Confidential Information is proposed to be disclosed;
- (b) is required or permitted by this Contract or by Law;
- (c) in enforcing this Contract or in proceedings arising out of or in connection with this Contract;
- (d) is to the Operator's Related Entities, provided the Operator's Related Entities are under a similar obligation of confidentiality with respect to the information as the Operator is bound to under Clause 28.1; and
- (e) to a Party's legal advisers and its consultants.

28.4 Publication of certain information by TfNSW

- (a) Subject to clause 28.4(e), despite any other provisions of the Contract, TfNSW may publish or require the Operator to publish in any form and at times TfNSW considers appropriate, any

information obtained by TfNSW from the Operator in accordance with the Reporting Schedule or information collected from Existing Systems and Equipment or New Systems and Equipment.

- (b) Subject to Clause 28.4(e), despite any other provisions of this Contract, TfNSW may publish the handover information referred to in Clause 33.3(a), the Market Process Information and any other information reasonably required in connection with the re-tendering or contracting of all or any part of the Contract Bus Services, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting.
- (c) Nothing in this Contract restricts TfNSW's provision of information to any Minister of the Crown in right of the State or any of its agencies, instrumentalities or Governmental Agencies (other than State Transit Authority).
- (d) For the avoidance of any doubt, and without limiting Clause 28.4(a), TfNSW may publish:
 - (i) information collected via ITIS and the OSD;
 - (ii) performance information;
 - (iii) ticketing information; and
 - (iv) information regarding Payments made under this Contract.
- (e) TfNSW must not publish the following information:
 - (i) Personal Information; and
 - (ii) information that TfNSW considers is commercial-in confidence information.
- (f) For the purposes of Clause 28.4(e)(ii) "commercial-in-confidence" information means information which TfNSW considers to show:
 - (i) the Operator's financing arrangements;
 - (ii) the Operator's cost structure or profit margins;
 - (iii) any Intellectual Property in which the Operator has an interest (other than Intellectual Property in the Contract Material or Intellectual Property which is licenced to TfNSW under Clause 25.2); and
 - (iv) any other matter the disclosure of which TfNSW reasonably considers could place the Operator at a substantial commercial disadvantage in relation to other operators or potential operators, whether at the time of the proposed disclosure or in the future.

28.5 Privacy compliance

- (a) TfNSW and Operator must comply with:
 - (i) the Privacy Laws and any guidelines issued by the Commissioner;
 - (ii) any privacy policy or approved privacy code which has been adopted by the TfNSW and that is reasonable having regard to the requirements of Law; and

(iii) any reasonable direction of TfNSW regarding how to comply with any such legislation, privacy policy or code,

in respect of any Personal Information which TfNSW or Operator receives or has access to under this Contract or any Transaction Document.

(b) The Operator must co-operate with the TfNSW in the resolution of any complaint alleging a breach of the Privacy Laws, a privacy policy or an approved privacy code.

28.6 Disclosure log (GIPA Act section 25)

(a) The Operator acknowledges that TfNSW may disclose certain information about this Contract in accordance with the TfNSW's obligations under the GIPA Act, including making certain information about this Contract (and a copy of the Contract) publicly available in any disclosure log of contracts TfNSW is required to maintain.

28.7 Access to information (GIPA Act section 121)

(a) The Operator must, within 7 Business Days of receiving a written request by TfNSW, provide TfNSW with immediate access to the following information contained in records held by the Operator:

- (i) information that relates directly to the performance of the Contract Bus Services provided to the Operator by TfNSW pursuant to this Contract;
- (ii) information collected by the Operator from members of the public to whom it provides, or offers to provide, the Contract Bus Services pursuant to the Contract; and
- (iii) information received by the Operator from TfNSW to enable it to provide the Contract Bus Services pursuant to this Contract.

(b) For the purposes of Clause 28.7(a), such information does not include:

- (i) information that discloses or would tend to disclose the Operator's financing arrangements, financial modelling, cost structure or profit margin;
- (ii) information that the Operator is prohibited from disclosing to TfNSW by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- (iii) information that, if disclosed to TfNSW, could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to TfNSW, whether at present or in the future.

(c) The Operator must provide copies of any of the information requested by TfNSW, in accordance with Clause 28.7(a), at the Operator's own expense.

(d) Any failure by the Operator to comply with any request pursuant to Clause 28.7(a) will be considered a breach of an essential term and will allow TfNSW to terminate this Contract by providing notice in writing of its intention to do so with the termination to take effect 7 Business Days after receipt of the notice. Once the Operator receives the notice, if it fails to remedy the breach within the 7 Business Day period to the satisfaction of TfNSW, then the termination will take effect 7 Business Days after receipt of the notice.

- (e) Nothing in Clause 28.7(d) derogates from any other remedy or remedies that may be available to TfNSW in respect of a breach of this Deed by the Operator.

28.8 Consultation (GIPA Act section 54)

- (a) TfNSW will take reasonably practicable steps to consult with the Operator before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, if it appears that:
- (i) the information:
 - (A) includes Personal Information about the Operator or its employees;
 - (B) concerns the Operator's business, commercial, professional or financial interests; or
 - (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Operator; or
 - (D) concerns the affairs of a government of the Commonwealth or another State (and the Operator is that government); and
 - (ii) the Operator may reasonably be expected to have concerns about the disclosure of the information; and
 - (iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (b) If, following consultation between TfNSW and the Operator, the Operator objects to disclosure of some or all of the information, the Operator must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 Business Days of the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of the information, TfNSW will take into account any objection received by the Operator.
- (d) If the Operator objects to the disclosure of some or all of the information but TfNSW nonetheless decides to release the information, TfNSW must not provide access to that information until it has given the Operator notice of TfNSW's decision and notice of the Operator's right to have that decision reviewed.
- (e) Where TfNSW has given notice to the Operator in accordance with Clause 28.8(a), TfNSW must not provide access to the information:
- (i) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - (ii) where any review of the decision duly applied for is pending.
- (f) The reference in clause 28.8(e)(i) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

29 Step-in for Operator Breach

29.1 Step-in Right

- (a) If:
- (i) a Termination Event has occurred; or
 - (ii) a material Non-Compliance Event has occurred and TfNSW considers that the Operator is failing to address the causes of the Non-Compliance Event or has not developed a cure plan which TfNSW considers will address the Non-Compliance Event, and
 - (iii) TfNSW has given notice to the Operator in accordance with Clause 29.1(b),
- then, a Step-in Party may exercise all or any of the Powers set out in Clause 29.2 (in this Clause 29.2, the **Step-in Powers**) in an endeavour to remedy the Termination Event or the Non-Compliance Event or to overcome any risk or mitigate the consequences resulting from the Termination Event or the Non-Compliance Event (the **Step-in Right**).
- (b) The notice referred to in Clause 29.1(a)(iii):
- (i) must specify:
 - (A) the Termination Event or the Non-Compliance Event which has triggered the Step-in Right; and
 - (B) the date on which the relevant Step-in Party proposes to commence exercising the Step-in Powers; and
 - (ii) may be given orally if TfNSW considers that the Termination Event or Non-Compliance Event requires urgent remedy and there is insufficient time to serve a written notice. Any oral notice must be followed within 24 hours by a written notice.
- (c) The Step-in Right is without prejudice to TfNSW's other Powers in respect of a Non-Compliance Event or Termination Event, and the right to terminate in the circumstances set out in Clause 30.
- (d) TfNSW may:
- (i) deduct from an amount payable to the Operator under Clause 20 or under any other Clause of this Contract, the amount of any costs and expenses it reasonably considers will be incurred by a Step-in Party in exercising the Step-in Powers; and
 - (ii) apply the amount deducted to meet such costs and expenses.

29.2 Step-in Powers

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

- (a) enter into and remain in possession of all or any of the assets used in the operation of the Contract Bus Services;

- (b) operate and manage all or any assets used in the operation of the Contract Bus Services;
- (c) exercise all or any of the Powers, and perform all or any of the obligations, of the Operator:
 - (i) in connection with the Contract Bus Services; or
 - (ii) under or in relation to a Transaction Document or any other document to which any of the Operator is a party,
 as if it were the Operator to the exclusion of the Operator;
- (d) do anything TfNSW considers necessary to remedy the relevant Termination Event or Non-Compliance Event or to overcome any risk or mitigate any consequences resulting from the Termination Event or Non-Compliance Event; and
- (e) do anything incidental to the matters listed in Clauses 29.2(a) to 29.2(d),

(Step-in Powers).

29.3 Acknowledgment and Obligations of the Operator

- (a) The Operator must immediately take such steps as are necessary to remedy the Termination Event or Non-Compliance Event to TfNSW's satisfaction.
- (b) The Operator acknowledges that a Step-in Party is not under any obligation to remedy a Termination Event or Non-Compliance Event nor to overcome any risk or mitigate any consequences resulting from a Termination Event or Non-Compliance Event.
- (c) The Operator must cooperate with the Step-in Party in the exercise of the Step-in Powers.
- (d) Without limiting Clause 29.3(c):
 - (i) the Operator must give access to a Step-in Party to:
 - (A) all or any of the assets used in the operation of the Contract Bus Services;
 - (B) its Staff; and
 - (C) any information the Step-in Party reasonably requires; and
 - (ii) to the extent necessary, the Operator must procure any consents to disclose Personal Information to the Step-in-Party,
 to enable the Step-in Party to exercise the Step-in Powers.
- (e) The Operator must pay to TfNSW on demand all reasonable Step-In Costs and all Losses incurred by a Step-in Party in exercising the Step-in Powers (less any amount applied to meet those costs and expenses pursuant to Clause 29.1(d)).
- (f) Any Step-in Party acts as agent of the Operator at all times during which it is exercising the Step-in Powers and:
 - (i) subject to Clause 29.3(g), the Operator indemnifies the Step-in Party and TfNSW from and against all reasonable Step-in Costs and all Losses in respect of or arising from the exercise of the Step-in Powers by the Step-in Party or arising in connection

with the Termination Event or the Non-Compliance Event which has triggered the Step-in Right, except to the extent it arises from the fraud, wilful default, or gross negligence on the part of the Step-in Party.

- (g) The Operator is not liable for and provides no indemnity in respect of any Operator Breach or Termination Event caused by the Step-in Party.

29.4 Protection of a Step-in Party

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

- (a) any conduct, delay, negligence or breach of duty in the exercise or non- exercise of a Power; nor
- (b) for any loss (including consequential loss) which results, except where it arises from fraud, wilful default or gross negligence on the part of the Step-in Party.

29.5 Protection of third parties

- (a) A party to any Dealing (as defined in clause 29.5(c)):
 - (i) need not enquire:
 - (A) as to whether the Step-in Right has become exercisable;
 - (B) as to whether a person who is, or, purports or is purported to be, the Step-in Party is duly appointed; or
 - (C) in any other way as to the propriety or regularity of the Dealing; or
 - (ii) is affected by express notice that the Dealing is unnecessary or improper.
- (b) For the protection of any party to a Dealing, the Dealing will be taken to be authorised by this Contract and will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.
- (c) In this Clause 29.5, a **Dealing** is:
 - (i) any payment, or any delivery or handing over of an asset, to; or
 - (ii) any acquisition, incurring of Financial Indebtedness, receipt, sale, lease, disposal or other dealing, by,

any Step-in Party or any person who purports or is purported to be a Step-in Party.
- (d) The receipt of TfNSW or any Step-in Party (or person who purports, or is purported, to be a Step-in Party) for any money or assets payable to or receivable or received by it exonerates the person paying that money or handing over that asset from being concerned as to their application, or from being liable or accountable for their loss or misapplication.

29.6 Step-Out

- (a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, upon the earlier to occur of:
- (i) the relevant Termination Event or Non-Compliance Event being remedied by the Operator to the satisfaction of TfNSW; and
 - (ii) TfNSW notifying the Operator in writing that the Step-in Party will no longer exercise the Step-in Powers.
- (b) TfNSW must give written notice to the Operator of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by TfNSW to the Operator a reasonable time prior to the date the Step-in Party proposes to cease to exercise the Step-in Powers).
- (c) TfNSW and the Operator must consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to the Operator resuming the performance of the Contract Bus Services and the operation of the Contract Bus Services is effected without interruption to the Contract Bus Services.
- (d) Upon the Step-in Party ceasing to exercise the Step-in Powers, the Operator must resume the operation of the Contract Bus Services in accordance with this Contract (unless this Contract has been terminated).

30 Termination

30.1 Termination Events

The following are Termination Events:

- (a) **(Material Non-Performance of Key Performance Indicators)** The Operator:
- (i) breaches an individual Class 1 Key Performance Indicator (set out in the KPI Schedule) on three occasions within a 6 month period;
 - (ii) breaches an individual Class 1 Key Performance Indicator (set out in the KPI Schedule) on four occasions within a 12 month period; or
 - (iii) consecutively breaches an individual Class 4 Key Performance Indicator (set out in the KPI Schedule),
- and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a cure plan, to justify waiving the breaches of the Key Performance Indicators.
- (b) **(Unlawful)** It becomes unlawful for the Operator to perform all or a material number of the Contract Bus Services.
- (c) **(Change of Control)** Without the prior written consent of TfNSW:
- (i) the Operator becomes a Subsidiary of a person (of which it was not a Subsidiary on the commencement of this Contract);

- (ii) a person's Voting Power in the Operator increases from below 50% to 50% or more after the commencement of this Contract; or
 - (iii) a person is able to Control the Operator where that person was not able to Control the Operator on the commencement of this Contract.
- (d) **(Cross ownership)** Without the prior written approval of TfNSW, the Operator:
- (i) operates Regular Bus Services utilising more than 55% of the total number of Buses providing Regular Bus Services in the Sydney metropolitan area;
 - (ii) owns shares or any other equity interest in, has Voting Power in, or Controls, one or more entities that between them has:
 - (A) more than six Service Contracts for the performance of Regular Bus Services in Metropolitan Sydney, Newcastle, Wollongong, Central Coast and Blue Mountains; or
 - (B) more than five Service Contracts for the performance of Regular Bus Services in the Sydney metropolitan area; or
- (e) **(Revocation of Accreditation)** The Operator's Accreditation, or any other Authorisation that is material to the performance by the Operator of a Transaction Document, or to the validity and enforceability of a Transaction Document or for the performance of the Contract Bus Services, is repealed, revoked or terminated or expires, or is modified or amended or conditions are attached to it in a manner unacceptable to TfNSW, and is not replaced by another Authorisation acceptable to TfNSW.

30.2 Termination by TfNSW for insolvency or breach

- (a) TfNSW may terminate the whole or any part of this Contract immediately by giving notice (a **Termination Notice**) to the Operator, if:
- (i) an Insolvency Event in relation to the Operator occurs; or
 - (ii) the Operator commits a Termination Event;
 - (iii) the Operator regularly or habitually commits breaches of this Contract which, in TfNSW's reasonable opinion, when taken in total amount to a material breach of the Contract or which collectively have a material adverse effect on the performance of the Contract Bus Services;
 - (iv) the Independent Commission Against Corruption or similar public body determines that the Operator has engaged in corrupt conduct, collusive pricing or other similar activity;
 - (v) in TfNSW's view, a conflict of interest exists for the Operator which prevents the proper performance of this Contract; or
 - (vi) in TfNSW's reasonable opinion, the Operator has caused damage or harm to TfNSW's or the State's reputation.
- (b) This Contract will terminate on the date specified in the Termination Notice.

- (c) This termination right is without prejudice to TfNSW's rights under Clause 29 in relation to Step-in Parties and TfNSW's right to exercise all legal and equitable rights and remedies available to TfNSW in respect of the Termination Event (whether under this Contract or not).

30.3 Termination by TfNSW for convenience

- (a) TfNSW may at any time at its absolute discretion by written notice to the Operator terminate this Contract, whether or not the Operator is in default.
- (b) If TfNSW terminates this Contract in accordance with Clause 30.3(a), TfNSW will reimburse the Operator its unavoidable costs directly incurred as a result of the termination, as follows:
 - (i) any outstanding Payments owed to the Operator, calculated in accordance with the Payment Schedule; and
 - (ii) any reasonable and mitigated costs incurred by the Operator in winding down or providing disengagement assistance.
- (c) TfNSW will not, in any circumstance, be liable for any Consequential Loss suffered by the Operator as a result of the termination of this Contract by TfNSW under Clause 30.3(a)

30.4 Waiver on termination

If TfNSW terminates this Contract under Clause 30.2, the Operator's sole right and remedy will be to require TfNSW to pay a proper valuation under this Contract of all amounts due and not previously paid to the Operator for performance of the Contract Bus Services completed in accordance with this Contract before the notice of termination.

30.5 Consequences of termination generally

- (a) The termination of the Operator's engagement under this Contract does not affect any of TfNSW's other rights or remedies.
- (b) If the Operator's engagement under this Contract is terminated under Clause 30.2, the Operator is liable for and indemnifies TfNSW on demand against any loss suffered by TfNSW as a result of the termination.

31 Force Majeure

- (a) If either of the Parties is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, it must as soon as practicable notify the other Party in writing accordingly.
- (b) Each notice under Clause 31(a) must:
 - (i) specify the obligations and the extent to which the Party cannot perform those obligations;
 - (ii) fully describe and provide documentary evidence of the Force Majeure Event;
 - (iii) estimate the time during which the Force Majeure Event will continue; and

- (iv) specify the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.
- (c) For the duration of the Force Majeure Event, the obligations which cannot be performed, or penalties which would have applied, because of the Force Majeure Event will be suspended.
- (d) The Party that is prevented from carrying on its obligation under this Contract, or is subject to the payment of penalties, because of the impact of a Force Majeure Event, must:
 - (i) remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
 - (ii) take all action reasonably practicable to mitigate any loss suffered by the other Party or any passengers as a result of the Party's failure to carry out its obligations under this Contract. The Party is not required to test the validity or refrain from testing the validity of any Law.
- (e) The Term will not be extended by the period of a Force Majeure Event.

32 End of Term Restrictions

32.1 Variation of Terms and Conditions of Employment

The Operator must not, without the prior written consent of TfNSW (which may not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Contract Bus Services Employee where:

- (a) the variation takes effect in the End of Contract Period unless:
 - (i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Contract Bus Services Employee of no more than the percentage increase in the index referred to in paragraph 5.3(c)(1) of the Payment Schedule over the twelve month period ending on the month for which that index was last published; or
 - (ii) is a variation imposed by a determination of Fair Work Australia or the New South Wales Industrial Relations Commission;
- (b) all or part of the variation first takes effect after the expiry or termination of the Term;
- (c) the variation results in the employment being for a fixed term, the expiry of which is more than six months after the expiry or termination of the Term;
- (d) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at law);
- (e) the variation relates to the provision of a benefit (but excluding base salary and the Contract Bus Services Employee's legal entitlements) which the Staff will or may have a contractual right to receive after the expiry or termination of the Term; or
- (f) the variation prevents, restricts or hinders the Contract Bus Services Employee from working for a Successor Operator or from performing the duties the Contract Bus Services Employee performed in the Contract Bus Services.

33 End of Contract Transfer Provisions

33.1 Right to appoint Successor Operator and Interim Operator

- (a) The Operator acknowledges that TfNSW may, on or before the expiry or termination of the Term, invite any person (including the Operator) to perform all or any part of the Contract Bus Services for the period commencing after expiry or termination of the Term.
- (b) The following clauses will not apply if the Operator is the Successor Operator:
 - (i) Clause 33.7; and
 - (ii) Clause 33.8.

33.2 Maintenance as Going Concern

The Operator must maintain and manage the Contract Bus Services in a way that a Step-In Party, Successor Operator (or nominee of TfNSW) or Interim Operator is able at any time to immediately take over the Contract Bus Services as a going concern.

33.3 Handover Information and Market Process Information

- (a) The Operator must as soon as practicable and in any event no later than 6 months after the Services Commencement Date prepare and maintain information on:
 - (i) all premises from which the Contract Bus Services are operated, including offices and Contract Depots;
 - (ii) material contracts relating to the Contract Bus Services;
 - (iii) computer and other information systems;
 - (iv) an asset register for assets used in relation to the Contract Bus Services including an inventory of Spares;
 - (v) Contract Bus Services Employee details (list of names, terms & conditions of employment, roster and all information required to be provided under Clause 26.3(d));
 - (vi) its organisational structure;
 - (vii) ‘Whole of life’ Bus maintenance records; and
 - (viii) such other information as is reasonably requested by TfNSW to facilitate smooth handover of the Contract Bus Services to a Step-in Party, Successor Operator (or nominee of TfNSW) or Interim Operator.
- (b) The Operator must as soon as practicable and in any event no later than 6 months after the Services Commencement Date prepare and maintain the Market Process Information.
- (c) The Operator must keep the information in Clauses 33.3(a) and 33.3(b) up to date and provide copies to TfNSW on reasonable notice, or in any case, on the earlier of:
 - (i) TfNSW issuing a Termination Notice;

- (ii) 6 months prior to the expiry of the Term; and
 - (iii) one week after the commencement of the End of Contract Period.
- (d) The Operator must ensure that a Step-In Party, prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW has, to the extent permitted by Law, immediate access to the information referred to in Clauses 33.3(a) and 33.3(b) on reasonable notice from TfNSW, or in any case, on the earlier of:
- (i) the exercise of the Step-in Rights;
 - (ii) TfNSW issuing a Termination Notice;
 - (iii) 6 months prior to the expiry of the Term; and
 - (iv) one week after the commencement of the End of Contract Period.
- (e) No later than 30 Business Days prior to the expiry of this Contract, or, in the event that TfNSW gives a Termination Notice, within 7 Business Days of the Termination Notice, the Operator must provide to each Contract Bus Services Employee a statement setting out that Contract Bus Services Employee's:
- (i) grade/classification;
 - (ii) rate of pay;
 - (iii) date of commencement of employment; and
 - (iv) estimated accrued entitlements (including annual leave, long-service leave, sick pay and rostered days off) as at the date of expiry or termination of this Contract.
- (f) In the event that a Contract Bus Services Employee notifies the Operator that he or she disputes any of the information contained in the statement provided to that Contract Bus Services Employee pursuant to Clause 33.3(d), the Operator must notify TfNSW of such dispute and TfNSW shall refer the disputed issue to an actuary.

33.4 Preparation for Contracting at End of Term

- (a) The Operator must, to the extent permitted by Law, provide TfNSW with reasonable access to the Staff and the information, books and records, kept by or on behalf of the Operator in connection with the Contract Bus Services, for the purpose of TfNSW preparing reports and documents in connection with any invitation to a person for the operation of all or part of the Contract Bus Services or any other associated services.
- (b) The Operator must use reasonable endeavours to assist TfNSW in the preparation for, and the conduct of, a fair and competitive expression of interest or tendering process.
- (c) Without limiting Clause 33.4(b), the Operator must, to the extent permitted by Law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as they reasonably require in connection with the contracting of the Contract Bus Services.

- (d) The Operator warrants to TfNSW that to the best of its belief all information provided under Clauses 33.3(a), 33.3(b) and 33.4(c) will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.
- (e) The Operator must warrant to a Successor Operator that to the best of its belief any other information made available is true and correct.

33.5 Non-frustration of Transfer

The Operator must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer as a going concern of the Contract Bus Services at termination or expiry of the Term to a Successor Operator (or nominee of TfNSW) or Interim Operator.

33.6 Assistance in Securing Continuity

The Operator must do everything, both before and after the expiry or termination of the Term, as TfNSW may reasonably require to assist and advise any prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW in operating the Contract Bus Services, including the provision of information and records related to the operation of the Contract Bus Services (excluding confidential financial information but including all records relating to the Staff).

33.7 Access

The Operator must ensure that a prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW has access to the Staff, the Contract Buses, Spares, and the Contract Depots for the purpose of:

- (a) the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW receiving information in respect of the Contract Bus Services; and
- (b) preparations by the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW to take over the Contract Bus Services following expiry or termination of the Term,

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

33.8 Successor Operator to Make Offers

- (a) TfNSW must procure that any Successor Operator makes offers of employment on equivalent terms and conditions (including all accrued entitlements) to Contract Bus Services Employees (other than the persons named in Schedule 11). Offers made by a Successor Operator must take effect from the expiry or termination of this Contract.
- (b) If a Contract Bus Services Employee accepts an offer of employment from the Successor Operator made in accordance with Clause 33.8(a):
 - (i) On termination or expiry of the Contract, the Operator must pay to TfNSW or the Successor Operator (as directed by TfNSW) a sum determined in accordance with the following formula:

$$P = (1 - t) \times L$$

where:

P is the amount to be paid by the Operator to TfNSW or the Successor Operator;

t is the corporate tax rate which applies on the date of termination or expiry of this Contract expressed as a decimal figure; and

L is the amount applicable in respect of the value of leave entitlements (including annual leave, long service leave and applicable loadings thereon as governed by the relevant industrial instrument) of all Contract Bus Services Employees who accept offers under Clause 33.8(a) (**Acquired Employee**) accrued for service to the date of expiry or termination with the Operator or with any prior employer and transferred to the Successor Operator or to TfNSW as the case may be.

The value of leave entitlements will be determined by an actuary in accordance with the methodology set out in Australian Accounting Standards Board No 1028: 'Accounting for Employee Entitlements' or any successor standard issued by the Australian Accounting Standards Board. The actuary will be appointed by agreement between the Operator, Successor Operator and TfNSW or, in the absence of such agreement, by the President of the Institute of Actuaries of Australia.

- (ii) On termination or expiry of the Contract the Operator must deliver to TfNSW or a Successor Operator a schedule setting out against each Acquired Employee the respective amounts for accrued annual leave, long service leave and sick pay.

34 Dispute Resolution

34.1 Dispute Resolution

- (a) This Clause 34 applies to any dispute which arises between the Parties in connection with this Contract, except disputes relating to the construction of this Contract including this Clause 34 (**Dispute**).
- (b) Subject to Clause 34(h) below, a Party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with the provisions of this Clause 34.
- (c) If a Party considers that a Dispute has arisen, it may issue a written Notice to the other Party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (d) The Parties must promptly hold good faith discussions between the Operator's Representative and TfNSW's Representative after issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussions**), and must (subject to privilege) furnish to the other party all information with respect to the Dispute which is appropriate in connection with its resolution.
- (e) If the Dispute has not been resolved within ten Business Days after commencement of First Level Discussions, the Parties must attempt to resolve the Dispute by holding good faith discussion between the Operator's Managing Director (or equivalent) and the Executive General Manager, Service Procurement and Performance, TfNSW (or such other position notified to the Operator by TfNSW from time to time) (**Second Level Discussions**).
- (f) If the Dispute has not been resolved within ten Business Days after commencement of Second Level Discussions, either Party may pursue its rights and remedies under this Deed as it sees fit.

- (g) The Parties will continue performing their respective obligations under this Deed while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Deed.
- (h) Notwithstanding anything in this Clause 34, a Party at any time may commence court proceedings in relation to a Dispute or Claim arising in connection with this Contract where that Party seeks urgent interlocutory relief.

34.2 Section 65 of the PT Act

The Operator acknowledges that any dispute resolution procedure brought under this Clause 34 or otherwise is subject to section 65 of the PT Act.

35 Not Used

36 Restriction on Activities

36.1 Assignment

- (a) Except where this Contract expressly provides otherwise, the Operator may not assign, transfer, encumber or otherwise deal with its interest under the Transaction Documents without the consent in writing of TfNSW which may be granted or refused at TfNSW's discretion and on such conditions as TfNSW may impose.
- (b) TfNSW may assign or transfer its rights or obligations under the Transaction Documents to another Governmental Agency.

36.2 Arrangements with Related Entities

- (a) The Operator must not enter into any agreement or arrangement (whether legally enforceable or not) between it and a Related Entity (a **Related Party Arrangement**) unless the Related Party Arrangement is on arm's length commercial terms for:
 - (i) the provision of services or goods by the Related Entity to the Operator;
 - (ii) the transfer, secondment or sharing of any employee to or with a Related Entity of the Operator; or
 - (iii) the lease, licence or sharing of any assets or facilities of the Related Entity by the Operator,

the following requirements must also be satisfied:

- (iv) TfNSW and the Related Entity have entered into an agreement on terms acceptable to TfNSW in respect of the Related Party Arrangement;
- (v) if required by TfNSW, acting reasonably, the Related Entity has provided a Security Interest in favour of TfNSW in a form satisfactory to TfNSW; and
- (vi) if required by TfNSW, acting reasonably, TfNSW has obtained a parent company guarantee in respect of the obligations of the Related Entity under the agreement referred to in Clause 36.2(a)(iv).

In acting reasonably under Clause 36.2(a)(v) and 36.2(a)(vi), TfNSW must have regard to the need to ensure continuity of performance of the Contract Bus Services on expiry or termination of this Contract or if a Termination Event occurs.

- (b) If the Operator enters into a Related Party Arrangement in breach of Clause 36.2(a), then TfNSW may request the Operator to terminate the Related Party Arrangement at their cost and the Operator must, as soon as practicable, comply with that request.
- (c) No later than 3 months prior to the end of each Financial Year the Operator must provide to TfNSW a summary list of all Related Party Arrangements to which it is a party. TfNSW may seek further information about any Related Party Arrangement (including copies of any contracts) identified on the list and the Operator must provide that information within 1 month of TfNSW's request. If, on the basis of the information provided under this Clause 36.2(c) or otherwise available to TfNSW, TfNSW reasonably considers that any Related Party Arrangements are not on arms length terms TfNSW may provide a notice to the Operator specifying conditions to which any future Related Party Arrangements may be subject. The conditions so specified may include a condition prohibiting the Operator or from entering into Related Party Arrangements without the approval of TfNSW. The Operator must comply with any conditions specified by TfNSW under this Clause 36.2(c).

37 Relationship between Operator and TfNSW

- (a) The Operator acknowledges that neither the Operator, nor any person employed or engaged by the Operator for the purpose of carrying out its obligations under this Contract shall be deemed to be an employee, partner or agent of TfNSW or of the State, by reason only of execution of, or performance of, this Contract.
- (b) The Operator must not, and must procure that none of its Staff represent themselves as being the employees, partners or agents of TfNSW or the State.

38 Personal Property Securities Act

38.1 General

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

- (v) to ensure that any Transaction Document is stamped for the proper amount in each state and territory of Australia in which the Transaction Document is required to be stamped;
 - (vi) to confer on the Relevant Party security over the secured property (in whatever jurisdiction situated) equivalent or similar to the security intended to be conferred by any Transaction Document; and
 - (vii) to enable the Relevant Party to better exercise its rights over the relevant secured property,
- including, without limitation, the execution of additional Security Interests and other documents and the giving of all notices, orders, instructions and directions whatsoever.

38.2 Corresponding provisions

Any document required to be executed by the Operator under Clause 38.1 will be in form and substance satisfactory to the Relevant Party.

39 Conflict of Interest

- (a) The Operator promises that, to the best of its knowledge, no conflict of interest of the Operator, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under this Contract.
- (b) The Operator must:
 - (i) notify in writing, and consult with, TfNSW immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
 - (ii) comply with any direction given by TfNSW in relation to those circumstances designed to manage that conflict of interest.
- (c) For the purposes of this clause, a “conflict of interest” includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Operator of, or to restrict the Operator in performing, its obligations under this Contract.

40 Notices

Subject to the notices referred to in Clauses 5.4(e), 6.2(a) and 6.2(b) and the information referred to in Clauses 6.3(b) and 6.3(c) which are to be submitted via the BSAR system, any notice, demand, consent or other communication (the Notice) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
 - (i) to TfNSW:
 - Principal Manager, Bus and Ferry Contracts
 - Level 2, 18 Lee Street
 - CHIPPENDALE NSW 2008

- (ii) to the Operator:
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two business days after the date of posting (if posted to an address in the same country) or seven business days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

41 Entire agreement

Subject to Clause 24(b), this Contract and the Transaction Documents contain the entire agreement between the parties with respect to their subject matter and supersede all prior agreements and understandings between the parties in connection with it.

42 Amendment

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

43 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a Party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

44 Further assurances

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

45 Costs and stamp duty

- (a) Each party will pay its own costs of negotiation, preparation and execution of this Contract and the other Transaction Documents.
- (b) TfNSW may require the Operator to pay the reasonable costs of any variations to this Contract or any of the Transaction Documents sought by the Operator, at TfNSW's absolute discretion.

- (c) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Contract any Transaction Document and any instrument executed under this Contract or any Transaction Document must be borne by the Operator. The Operator must indemnify TfNSW on demand against any liability for those costs and that stamp duty.

46 Governing law and jurisdiction

This Contract is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Contract.

47 Counterparts

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

48 Survival

Clauses 1, 12.2(h), 19, 24, 25, 26, 27, 28, 29, 35, 37, 44 and 47 continue to apply after the expiration or termination of this Contract.

Signing page

Executed as a Contract

Signed by the Director-General of the)
Department of Transport, on behalf of)
Transport for NSW on behalf of the State)
of New South Wales)

In the presence of:

Signature of Director-General

Print name of Witness

Signature of Witness

Signed by ACN in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)
)

Signature of Director

Signature of Director/Secretary

Print name of Director

Print name of Director/Secretary

Attachment A – Contract details

Item	Clause	Term	Details
Item 1	2.1	TfNSW Representative	Manager Bus Contracts (or such other position notified to the Operator by TfNSW from time to time)
Item 2	2.1	Operator's Representative	
Item 3	2.1	Parent Guarantor's Representative	
Item 4	3.1	Services Commencement Date	
Item 5	Not Used		
Item 6	26.1(a)(i)(B)	Public liability insurance	
Item 7	26.1(a)(iv)(B)	Third party property insurance	
Item 8	4.3	Performance Bond Amount	

Attachment B – Performance Bond
