

Execution Version

Conformed and redacted copy

Newcastle Integrated Services Contract

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

The State Transit Authority of New South Wales
(**STA**)

Keolis Downer Hunter Pty Limited (**Operator**)

Newcastle Integrated Services Contract

Details	10
Agreed terms	12
1. Defined terms & interpretation	12
1.1 Defined terms	12
1.2 Interpretation	40
1.3 Precedence of documents	42
1.4 Consents or approvals	42
1.5 TfNSW's capacity	42
1.6 No implied duty of good faith	42
1.7 Reasonable endeavours	42
1.8 Delegation	43
1.9 No fetter on TfNSW's powers	43
1.10 Transfer of functions	43
1.11 Effect of certificates issued by TfNSW	44
2. Parties' Representatives and Independent Certifier	44
2.1 Appointment of Parties' Representatives	44
2.2 Appointment of Independent Certifier	44
2A State Transit Authority	45
3. Contract Objectives	46
4. Contract risks	46
Part A – Contract Commencement and Term	47
5. Conditions Precedent for commencement of Contract	47
5.1 Commencement	47
5.2 Conditions precedent	47
5.3 Certificate of Contract Commencement	47
5.4 Consequences of non-fulfilment of conditions precedent	47
5.5 Additional Conditions	48
6. Term	48
6.1 Term	48
6.2 Performance review	48
6.3 Performance Benchmarks	49
6.4 No entitlement to new contract or extension of contract	49
7. Performance Bonds	49
7.1 Performance Bonds	49
7.2 Available amount	50
7.3 Trigger Date	50
7.4 Required Rating	50
7.5 Demands under bonds	50
7.6 Return of Performance Bonds	52
8. Deed of Guarantee and Indemnity	52
Part B – Day One Operator Activities	52
9. Day One Operator Activities	52

10.	NLR Delivery Activities	52
10.1	NLR Delivery Activities	52
10.2	General obligation	52
10.3	Commissioning Management Team	53
10.4	Senior Project Group	54
10.5	Provision of information	56
10.6	Review of design documents	56
10.7	Movement of light rail vehicles	57
10.8	Attendance at tests	57
10.9	Inspection of NLR Delivery Work	58
10.10	Supply and installation of equipment	58
10.11	Operational Readiness Activities	58
10.12	Delay in NLR handover	59
10.13	Provision of access after handover	59
10.14	Resolution of interface issues	60
10.15	Effect of conduct of NLR Delivery Activities	60
11.	Managing Contractor and Rolling Stock Supplier deed polls	61
11.1	Provision of deed polls	61
11.2	Circumstances where deed polls are not provided	61
	Part C – Service Commencement	63
12.	Conditions precedent for commencement of Contract Bus Services and Ferry Service	63
12.1	Conditions precedent	63
12.2	Certificate of Contract Bus and Ferry Service Commencement	63
12.3	Consequences of non-fulfilment of conditions precedent	64
13.	Conditions precedent for handover of NLR	64
13.1	Conditions precedent	64
13.2	Certificate of NLR Handover	64
13.3	Commencement of Light Rail Service	65
	Part D – Service Delivery	65
14.	Performance of Services	65
14.1	Commencement of Services	65
14.2	General Service obligations	65
14.3	Non exclusivity	66
	Part E – Service requirements	66
15.	Publication and display of public transport information and marketing	66
15.1	General requirements	66
15.2	Transport information	67
15.3	Operator Marketing Plan	67
15.4	Social media	68
15.5	Other requirements	68
15.6	Wayfinding Signage Upgrade	68
15.7	Wayfinding Signage Upgrade Program	68
15.8	Delivery of Wayfinding Signage Upgrade Program	69
16.	Service Desk	69
17.	Key Performance Indicators	70
18.	Fares and Ticketing	70

18.1	Fares	70
18.2	Ticketing and revenue protection	71
18.3	Prohibition on disincentives, penalties and discounts	71
18.4	Travel free of charge	72
18.5	Government Subsidised Travel Schemes	72
18.6	Recognition of Transfers	72
18.7	Compliance by agents	72
18.8	Operator to cooperate with TfNSW Authorised Officers, NSW Police and other emergency services	72
19.	TfNSW Systems and Equipment	72
19.1	TfNSW Systems and Equipment	72
19.2	Participation in the DCIS	74
19.3	OSD	74
19.4	Compatibility of information systems	74
20.	Requirements of Third Parties	75
20.1	Third Party Agreements	75
20.2	Requirements of relevant third parties	75
20.3	General obligations	75
	Part F – Planning and service changes	77
21.	Transport for Newcastle	77
21.1	Objectives for Transport for Newcastle	77
21.2	Introduction of Operator's Service Development Plan	77
21.3	Review of Contract Services Levels and Timetables	77
22.	Contract Service Levels and Timetables	78
22.1	Contract Service Levels	78
22.2	Timetables	79
22.3	Dedicated School Services Timetable	79
23.	Service Variations	80
	Part G – Assets	81
24.	Contract Vehicles	81
24.1	Performance of the Services using Contract Vehicles	81
24.2	Bus Charter	81
24.3	Contract Vehicle standard	81
24.4	Use of non-compliant Contract Vehicles	82
25.	Infrastructure	83
25.1	Infrastructure standards	83
25.2	State Bus Depot Lease	83
25.3	DDA compliance	84
26.	Operating Licence	84
26.1	Survey of Permanent Light Rail Corridor	84
26.2	Permanent Light Rail Corridor and NLR Fixed Infrastructure	84
26.3	Moveable Assets	85
26.4	STA Residual Furniture and Tools	85
26.5	Insurance Spares and Specialist Maintenance Tools	86
26.6	Bus Layover Area	86
26.7	Queens Wharf Office Area	86
27.	Wharf Access Deed	87

28.	Environment and Contamination	87
28.1	Condition of Infrastructure	87
28.2	Subsequent Contamination	88
28.3	Contamination at New Depots and Operator Depot	88
28.4	Clean Up Notices	88
29.	Acquisition of new assets	90
29.1	New Assets	90
29.2	Acquisition of New Buses	90
29.3	New Buses acquired as a result of a Service Variation	91
29.4	New Bus procurement requirements	91
29.5	Acquisition of New Depot	93
29.6	Acquisition and adjustments	95
Part H – Asset Management		95
30.	Asset Management	95
30.1	Asset management obligations	95
30.2	Asset Management System	95
30.3	Asset Management Plan	95
30.4	Review of Asset Management Plan	96
30.5	TfNSW may request updates of the Asset Management Plan	96
30.6	Compliance with Asset Management Plan	96
30.7	Asset Management Failures	97
31.	Dealing with Assets	97
31.1	Security, assignment and possession of State Assets	97
31.2	Security, assignment and possession of Operator Assets	97
31.3	Consequences of dealings with Assets	98
32.	Asset restructure by TfNSW	98
32.1	Assignment or Novation	98
32.2	Transfer of State Assets by other Governmental Agencies	98
32.3	Attorney	99
Part I – Contract Administration		99
33.	Access and inspections	99
33.1	TfNSW's right of entry	99
33.2	Access to information	100
34.	Reporting	101
35.	Operating Plans	101
35.1	Accessible Transport Action Plan	101
35.2	Environmental Plan	102
35.3	Customer Service Plan	102
36.	Staffing	103
36.1	All Staff	103
36.2	Key Personnel	103
37.	Subcontracting	104
38.	Key Contracts	104
38.1	Interpretation	104
38.2	Key Contract Security Documents	104
38.3	Amendment of Key Contracts	105
38.4	Assignment of Key Contracts	105

38.5	Termination of Key Contracts	105
38.6	Notices in respect of Key Contracts	106
38.7	Successor Operator	106
39.	Contract management	106
39.1	Governance	106
39.2	Audit	106
39.3	Inquiries	107
40.	Accreditation and compliance	107
40.1	Compliance with Laws	107
40.2	Authorisations and Accreditation	109
40.3	Safety Management System	109
40.4	Staff	110
40.5	Specific Bus safety requirements	111
40.6	Specific Ferry safety requirements	111
40.7	Specific rail safety requirements	111
40.8	Rail Accreditation of Managing Contractor and Rolling Stock Supplier	111
40.9	AEO	112
40.10	WHS	112
	Part J – Payment	113
41.	Payment	114
41.1	Payments	114
41.2	Invoices and time for payment	114
41.3	Set-off	114
41.4	Goods and Services Tax (GST exclusive prices)	115
41.5	Civil Penalties	115
	Part K – Insurance and indemnity	115
42.	Reinstatement of loss of damage	115
42.1	Reinstatement	115
42.2	Damage caused by Uninsurable Risk	116
42.3	Damage to third party property	116
43.	Insurance	116
43.1	Insurance policies	116
43.2	Insurance generally	118
43.3	Premiums	120
43.4	Claims and proceeds	120
44.	Indemnity and Limitation of Liability	120
44.1	Indemnity	120
44.2	Liability and responsibility	122
44.3	Release	123
44.4	Exclusion of Consequential or Indirect Loss	123
44.5	State exclusion	124
44.6	Liability for events triggering KPI Credits or liquidated damages	125
44.7	Indemnified Persons	125
	Part L – Management of change	126
45.	Native Title Claims and Artefacts	126
45.1	Native Title Claims	126

45.2	Artefacts	126
46.	Compensable Events	127
46.1	Notification	127
46.2	Condition precedent to relief or compensation	127
46.3	Relief from obligations	128
46.4	Compensation for Net Financial Impact	128
46.5	Mitigation	129
47.	Force Majeure	129
47.1	Notification	129
47.2	Relief	130
47.3	Termination for extended Force Majeure Event	130
48.	Modifications	131
48.1	TfNSW Modification Request	131
48.2	Modification Impact Proposal	131
48.3	Cost of preparing Modification Impact Proposal	132
48.4	Election by TfNSW	132
48.5	TfNSW rejects a Modification Impact Proposal	132
48.6	Parties reach agreement	132
48.7	If the Parties fail to reach agreement	132
48.8	TfNSW may direct that Modification proceed	133
48.9	Operator to implement Modification	133
48.10	Instruction to proceed	133
48.11	Omissions	134
48.12	Calculation and payment of Net Financial Impact	134
48.13	Notice regarding directions	134
48.14	Operator initiated Modifications	135
48.15	Modification required as a result of a Change in Law or Change in NSW Government Policy	136
49.	Proximate Work Activities	136
50.	Change in Law	137
50.1	Compensable Change in Law	137
50.2	Beneficial Change in Law	138
51.	NSW Government Policy	138
Part M – Termination and End of Term		138
52.	Default and cure regime	138
52.1	Non-Compliance Events	138
52.2	Issue of Non-Compliance Notice	139
52.3	Dealing with Non-Compliance Notices	140
52.4	Implementation of NCE Cure Plan	140
52.5	Extension to Cure Period	141
53.	Step in	141
53.1	Step in Rights	141
53.2	Step in Powers	143
53.3	Acknowledgment and obligations of the Operator	143
53.4	Payments during step in	144
53.5	Protection of a Step in Party	144
53.6	Protection of third parties	144
53.7	Step out	145
54.	Termination	146

54.1	Termination Events	146
54.2	Termination by TfNSW	147
54.3	Termination by TfNSW for convenience	147
54.4	Waiver on termination	148
54.5	Consequences of termination generally	148
55.	End of Term Restrictions	148
56.	End of Contract Transfer Provisions	149
56.1	Right to appoint Successor Operator and Interim Operator	149
56.2	Maintenance as going concern	149
56.3	Handover Information and Market Process Information	149
56.4	Preparation for contracting at End of Term	150
56.5	Non frustration of Transfer	151
56.6	Assistance in securing continuity	151
56.7	Access	151
57.	End of Term Asset Condition and Handover Requirements	151
57.1	Handback Audit	151
57.2	Rectification work	152
57.3	Handback obligations	152
57.4	Final inspection	153
58.	Transfer of Operator Assets	153
58.1	Transfer of Operator Assets	153
58.2	Successor Operator to make offers	154
	Part N – Miscellaneous	154
59.	Confidentiality, Privacy and Information Access	155
59.1	Confidentiality	155
59.2	Maintaining confidentiality	155
59.3	Permitted disclosure	155
59.4	Publication of certain information by TfNSW	155
59.5	Privacy compliance	156
59.6	Disclosure log (GIPA Act section 25)	156
59.7	Access to information (GIPA Act section 121)	156
59.8	Consultation (GIPA Act section 54)	157
59.9	Publicity	158
60.	Intellectual Property and Marks	158
60.1	General principle	158
60.2	Intellectual Property licence	158
60.3	Third party rights	159
60.4	Intellectual Property in Contract LRV Deliverables	159
60.5	Intellectual Property in NLR	160
60.6	Use of TfNSW Brand	160
61.	Livery and advertising	162
61.1	Livery and Operator's Marks	162
61.2	Advertising and commercial opportunities	163
61.3	Advertising by Operator	163
61.4	Revenue from advertising	164
62.	Warranties	165
62.1	Special purpose vehicle warranties	165
62.2	Special purpose vehicle undertakings	165

62.3	Warranties correct	165
62.4	Notification of change	168
62.5	Reliance on representations and warranties	168
63.	Operator acknowledgments	168
63.1	Acknowledgements	168
63.2	No TfNSW responsibility for review of documents	169
64.	Dispute resolution	170
64.1	Dispute resolution	170
64.2	Referral to expert	171
64.3	General	171
64.4	Section 65 of the PT Act 1990	171
65.	Restriction on activities	171
65.1	Assignment	171
65.2	Arrangements with Related Entities	171
66.	Relationship between Operator and TfNSW	172
67.	Personal Property Securities Act	172
67.1	Incorporation of PPS Law terms	172
67.2	General	173
67.3	Corresponding provisions	174
68.	Proportionate Liability	174
68.1	Exclusion of proportionate liability scheme	174
68.2	Operator not to apply proportionate liability scheme	174
68.3	Subcontracts	174
69.	Taxes	175
70.	Conflict of Interest	175
71.	Notices	175
72.	Entire agreement	176
73.	Amendment	176
74.	No waiver	177
75.	Further assurances	177
76.	Costs	177
77.	Governing Law and jurisdiction	177
78.	Counterparts	177
79.	Survival	177
80.	Indexation	177
	Signing page	178
	Attachment A – Contract details	179
	Attachment B – Performance Bond	180
	Attachment C – Deed of Guarantee and Indemnity	182
	Schedules	197

Details

Date 12 December 2016

Parties

Name	Transport for NSW, a corporation constituted under the <i>Transport Administration Act 1988</i> (NSW) on behalf of the State of New South Wales
Short form name	TfNSW
Notice details	18 Lee Street, Sydney, New South Wales
Name	The State Transit Authority of New South Wales, a corporation constituted under the <i>Transport Administration Act 1988</i> (NSW) on behalf of the State of New South Wales
Short form name	STA
Notice details	Level 4, 15 Bourke Road, Mascot, New South Wales
Name	Keolis Downer Hunter Pty Limited (ABN 89 614 205 766)
Short form name	Operator
Notice details	Trinity Business Campus, 39 Delhi Road, North Ryde, New South Wales

Background

- A The *Passenger Transport Act 2014* (NSW) (**PT Act 2014**) provides that TfNSW may enter into a passenger service contract on behalf of the State for the provision of a Public Passenger Service with an accredited operator of a Public Passenger Service or the operator of a Public Passenger Service who is not required to be accredited under the PT Act 2014.
- B The *Transport Administration Act 1988* (NSW) (**TA Act**) provides that TfNSW may facilitate the operation of a light rail system within New South Wales.

- F The Government of New South Wales is the employer of the Transition In Employees on or before the date of this Contract under section 68B of the TA Act.
- G The Operator has agreed to carry out the Operator Activities on the terms set out in this Contract.

H TfNSW and STA are the recipients of the benefit of the conduct of the Operator Activities by the Operator.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Contract:

Accessible Transport Action Plan means a plan which addresses the requirements referred to in Clause 35.1.

Accreditation means (as the context requires):

- (a) Rail Accreditation; or
- (b) Bus Accreditation.

Accounting Standards means:

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

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

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

Artefacts means any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical or archaeological interest.

Assets means:

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

Asset Information System means the system for the storage, processing, transmission and management of asset information as described in paragraph 6 of the Asset Schedule.

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

Asset Management Activities means the activities that the Operator is required to perform under Clause 30 and the Asset Schedule, including:

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

Asset Management Failure has the meaning given in Clause 30.7(b).

Asset Management Plan means the plan set out in Annexure 15 of the Asset Schedule.

Asset Management System means the asset management arrangements described in paragraph 1.1 the Asset Schedule within which the Asset Management Activities are undertaken.

Asset Schedule means Schedule 8 to this Contract.

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 (including a Safety Authority).

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

Authorised Officer has the meaning given in the PT Act 1990 and the PT Regulation 2007.

Boarding has the meaning given in the KPI Schedule.

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

Bus Accreditation means accreditation for a Bus service obtained in accordance with the requirements of the PT Act 1990 including any guideline, regulation or ordinance made under the PT Act 1990.

Bus Driver Authority means any requirements with respect to Drivers of Buses under the PT Act 1990 or PT Regulation 2007, in particular Parts 3 and 4 of the PT Regulation 2007.

Bus Layover Area means the bus layover area located adjacent to the Newcastle Train Station.

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 that route, approved by TfNSW in accordance with Clause 23.

Bus Services means the routine bus services, excluding the Dedicated School Services, described in the Service Level Schedule.

Bus Timetable means the timetable for the operation of the Bus Services as set out in section 2 of the Service Level Schedule, and any revision to that timetable under Clause 21.2 or approved by TfNSW in accordance with Clause 22.2.

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

Bus Transit Stop Signage means all Route, Timetable (and Dedicated School Services Timetable) and related signage at a Bus Transit Stop, including the pole to which the signage is affixed and plinths which are installed as directed by TfNSW.

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

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

Calendar Month has the meaning given in the KPI Schedule.

Cancelled Trip has the meaning given in the KPI Schedule.

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

Certificate of Completion has the meaning given in the Managing Contractor Contract.

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

Certificate of Contract Bus and Ferry Service Commencement means the certificate issued by TfNSW in accordance with Clause 12.2(b).

Certificate of Light Rail Service Commencement means the certificate issued by TfNSW in accordance with Clause 13.3(c).

Certificate of NLR Handover means the certificate issued by TfNSW in accordance with Clause 13.2(d).

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

Certificate of Operational Completion has the meaning given in the Rolling Stock Supply Contract.

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

Change in Law means any one or more of the following that occurs after the date of this Contract:

- (a) a change in, or repeal of, an existing Law; or
- (b) the enactment or making of a new Law,

but does not include:

- (a) any change in workers compensation premiums;
- (b) the introduction of any emissions tax or Law or emissions trading scheme;
- (c) the introduction of or variation to, or change in application or interpretation of, any industrial instrument to which the Operator or any Staff is or will be bound or subject to;
- (d) any change in application or interpretation of a Law (including a Law of a New South Wales Governmental Agency);
- (e) a change in or enactment or making of a new Law relating to Taxes, including the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) and any GST Law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth));
- (f) any change in or enactment or making of a new Law:
 - (i) enacted or made (but not yet commenced or effective) as at the date of this Contract;
 - (ii) which was not enacted or made as at the date of this Contract but which had been made public by way of bill, draft bill or draft statutory instrument prior to the date of this Contract and which is subsequently enacted or made in substantially the same form in which it had been made public; or
 - (iii) that a party experienced and competent in the operation of a business similar to the Operator's business would have reasonably foreseen or anticipated prior to the date of this Contract;
- (g) a change in Law relating to Part 4 of the *Civil Liability Act 2002* (NSW) or its application which limits or eliminates the impact of that part on any legal risk allocation under this Contract;
- (h) the making, amendment or repeal of any order made under the TA Act, the PT Act 1990 or the PT Act 2014;
- (i) any change to the TA Act, the PT Act 1990 or the PT Act 2014 made for the purposes of giving effect to this Contract;
- (j) an amendment, change, modification or variation to any Authorisation; or
- (k) a Change in NSW Government Policy.

Change in NSW Government Policy means any one or more of the following that occurs after the date of this Contract:

- (a) repeal of or change to a NSW Government Policy; or
- (b) the coming into effect or implementation of a new NSW Government Policy, other than any such repeal, change, coming into effect or implementation which, on the date of this Contract:
 - (c) had been published or of which public notice had been given; or
 - (d) that a party experienced and competent in the operation of a business similar to the Operator's business would have reasonably foreseen or anticipated prior to the date of this Contract.

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

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

Class 4 Key Performance Indicator has the meaning given in the KPI Schedule.

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

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

Compensable Event means:

- (a) a breach by TfNSW or STA of its obligations under this Contract or any other Transaction Document;
- (b) damage to State Assets caused by:
 - (i) TfNSW or its officers or employees; or
 - (ii) STA or its officers or employees;
- (c) a Change in Law;
- (d) a Change in NSW Government Policy;
- (e) the discovery of Pre-existing Contamination;
- (f) the Operator is required:
 - (i) to comply with a Clean Up Notice; or
 - (ii) by any Law, Authorisation, or Clean Up Notice or otherwise to dispose of, otherwise deal with or remediate Contamination,to the extent such requirement arises out of or in connection with any Pre-existing Contamination;
- (g) the Operator is directed, ordered or required to cease to perform the Operator Activities (or change the way it does so), or provide reasonable assistance in connection with dealing with a Native Title Claim as contemplated by Clause 45.1; or
- (h) TfNSW fails to give the Operator access to any State Asset under a State Asset Access Agreement,

except to the extent that the event (or its effects):

- (i) occurs or arises as a direct or indirect result of any act or omission of the Operator or the Operator's Associates;
- (j) occurs or arises as a direct or indirect result of a failure by the Operator to comply with its obligations under the Transaction Documents;
- (k) occurs or arises as a direct or indirect result of any breach of the Transaction Documents by the Operator; or
- (l) is, or ought reasonably to have been, within the control of the Operator or the Operator's Associates.

For the avoidance of doubt, delays in the occurrence of the NLR Handover Date or extensions of the Planned NLR Handover Date and the events giving rise to such delays or extensions are not Compensable Events.

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 or STA as confidential; or
- (c) the other Parties know or ought to know is confidential.

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

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

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

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

and the word 'Contaminant' has a corresponding meaning.

Continuity of the Services means:

- (a) the continued provision of the Services during the Term in accordance with this Contract;
- (b) the continued performance of the Operator's obligations under the Transaction Documents; and
- (c) the orderly handover of the Operator Activities and the transfer of assets by the Operator to a Step in Party or Successor Operator as contemplated by this Contract.

Contract means this Newcastle Integrated Services Contract.

Contract Bus means:

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

Contract Bus and Ferry Moveable Assets means the assets identified in Annexure 7 of the Asset Schedule.

Contract Bus and Ferry Service Commencement Date means the date set out in the Certificate of Contract Bus and Ferry Service Commencement.

Contract Bus Services means the Bus Services, the Dedicated School Services and the On Demand Services (as applicable).

Contract Commencement Date means the date set out in the Certificate of Contract Commencement.

Contract Depot means a depot used or to be used in the performance of any of the Contract Bus Services with the approval of TfNSW, including:

- (a) the Operator Depot;
- (b) the Existing Depots; and
- (c) any New Depots,

and the land, buildings and other improvements comprising the depot.

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

Contract Ferry means each of the Ferries listed in Annexure 1 of the Asset Schedule.

Contract LRV means a light rail vehicle supplied by the Rolling Stock Supplier under the Rolling Stock Supply Contract which the Operator must operate and maintain for the purposes of providing the Services under this Contract.

Contract LRV Defect Management Protocol means the protocol set out in Schedule 12.

Contract LRV Deliverables means all of the goods and services required to be provided by the Rolling Stock Supplier under the Rolling Stock Supply Contract including the Contract LRVs.

Contract LRV Intellectual Property means:

- (a) all Intellectual Property in:
 - (i) the operation, maintenance and training manuals provided to TfNSW under the Rolling Stock Supply Contract;
 - (ii) the design of the Contract LRVs and the related spares and special tools and equipment; and
 - (iii) the NLR Design Documentation provided to TfNSW under the Rolling Stock Supply Contract; and
- (b) any improvement to or modification, adaptation or development of the Intellectual Property described in paragraph (a).

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

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

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

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

Contract Stage Design Package means the design documentation for the NLR identified in Schedule 20.

Contract Vehicles means:

- (a) the Contract Buses;
- (b) the Contract Ferries; and
- (c) the Contract LRVs.

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

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

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

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

CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published Quarterly by the Australian Bureau of Statistics (ABS). If the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index ceases to be published Quarterly or its method of calculation substantially alters, then the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index is to be replaced by the

nearest equivalent index as selected by the TfNSW Representative and any necessary consequential amendments are to be made.

CPI Indexed has the meaning given in Clause 80.

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

Cure Period has the meaning given in Clause 52.3(b)(iv).

Cure Plan Date has the meaning given in Clause 52.2(c)(ii).

Customer Service Plan means a plan which addresses the requirements referred to in Clause 35.3(b).

DCIS means the centralised integrated transport information service that communicates and receives data and information in relation to public transport services, through Transport Infoline.

DDA Legislation means:

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

Dedicated 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, described in the Service Level Schedule.

Dedicated School Services Timetable means each and every timetable for Dedicated School Services contained in section 2 of the Service Level Schedule and any revisions to those timetables under Clause 21.2 or approved by TfNSW in accordance with Clause 22.3.

Dedicated Staff means:

- (a) Drivers, Masters and Crew;
- (b) the Operator's Authorised Officers;
- (c) members of Staff who are engaged predominantly to carry out regular maintenance in accordance with this Contract; and
- (d) members of Staff who are predominantly engaged as operations supervisors, on-road supervisors, customer service representatives, refuellers or network and service planning staff.

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

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

Depot Headlease means the lease in the form contained in Annexure 16 of the Asset Schedule.

Design Life means in respect of a State Asset that falls within an asset category referred to in paragraph 7 of the Asset Schedule, the period specified for that asset category in paragraph 7 of the Asset Schedule.

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

- (a) the Works Brief;
- (b) the LRV Specifications;

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

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

Dispute Notice has the meaning given in Clause 64.1.

Driver means a person who, in the provision of the Services, drives any Contract Bus or Contract LRV.

Early has the meaning given in the KPI Schedule.

Easements and Land Arrangements mean the easements and land arrangements identified in Annexure 11 of the Asset Schedule.

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

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

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

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

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

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

Environmental Plan means a plan which addresses the requirements referred to in Clause 35.2(b).

Excused Performance Incident has the meaning given in the KPI Schedule.

Existing Bus means each Bus listed in Annexure 1 of the Asset Schedule.

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

Existing Depot means each depot listed in Annexure 2 of the Asset Schedule.

Expert means an independent expert appointed in accordance with Clause 64.2.

Expiry Date means:

- (a) the date that is ten years after the Planned Contract Bus and Ferry Service Commencement Date; or
- (b) if this Contract is terminated under Clause 6.2, the later of:
 - (i) the date that is seven years after the Planned Contract Bus and Ferry Service Commencement Date; and
 - (ii) the date referred to in Clause 6.2(b)(ii).

Fare means the price payable for a Ticket.

Fares and Ticketing Schedule means Schedule 7 to this Contract.

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

Ferry Route means the uninterrupted route with no scheduled stops over water along which the Ferry Service is operated between the Wharves, and any revisions to that route, approved by TfNSW in accordance with Clause 23. For avoidance of doubt the Ferry Route does not allow or permit the scheduled stopping at any other wharf (or wharves) and berthing at such other wharf (or wharves).

Ferry Service means the routine Newcastle Ferry Services described in the Service Level Schedule.

Ferry Timetable means the timetable for the operation of the Ferry Service as set out in section 2 of the Service Level Schedule, and any revision to that timetable under Clause 21.2 or approved by TfNSW in accordance with Clause 22.2.

Ferry Trip means any single, one direction service between the Wharves which forms part of the Ferry Services.

Final Inspection Auditor has the meaning given in Clause 57.4(a).

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

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

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

Financier Direct Deed means a direct deed entered into between TfNSW or STA (if so directed by TfNSW), the Operator and a proposed financier under this Contract in a form approved by TfNSW.

Fleet Replacement Schedule means the fleet replacement schedule set out in Annexure 4 of the Asset Schedule.

Force Majeure Event means:

- (a) act of God, lightning, storm, explosion, flood, landslide, bush fire, tsunami or earthquake;
- (b) act of public enemy, war (declared or undeclared), terrorism, sabotage, revolution, riot, insurrection, civil commotion or epidemic;
- (c) blockade or embargo within Australia;
- (d) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (e) power shortage;
- (f) fuel shortages that apply generally to the maritime industry;
- (g) fuel shortages that apply generally to the Bus industry;
- (h) any event which causes loss of or damage to a State Asset caused by a third party that renders the State Asset unavailable or inaccessible;
- (i) any suspension or termination by RMS of any 'Access Right' (as defined in the Wharf Access Deed) under the Wharf Access Deed to the extent arising from an event described in:
 - (i) paragraphs (a) or (d) of the definition of 'Force Majeure Event' in the Wharf Access Deed; or
 - (ii) clause 9.1(b) or (d) of the Wharf Access Deed (except to the extent caused by a wrongful act or omission of TfNSW of the Operator); or
- (j) any exceptional event which TfNSW determines renders it impossible or economically non-viable for the Operator to continue to perform the Operator Activities,

the consequence of which is beyond the control of the affected Party and could not have been prevented, overcome or remedied by that Party exercising a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such prudent and competent person). For the avoidance of doubt, delays in the occurrence of the NLR Handover Date or extensions of the Planned NLR Handover Date and the events giving rise to such delays or extensions are not in any circumstances Force Majeure Events.

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.

General Change in Law means a Change in Law that it not a Project Specific Change in Law.

General Change in NSW Government Policy means a Change in NSW Government Policy that is not a Project Specific Change in NSW Government Policy.

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

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

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

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

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

Governance Schedule means Schedule 6 to this Contract.

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

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

GST has the meaning given by the GST Act.

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

GST Group has the meaning given by the GST Act.

Handback Audit has the meaning given in Clause 57.1(a).

Handback Auditor has the meaning given in Clause 57.1(a).

Handback Audit Assets has the meaning given in Clause 57.1(b).

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

Handback Condition means the required condition of the State Assets as at the Termination Date as set out in paragraph 5 of the Asset Schedule.

Handover Information has the meaning given in Clause 56.3.

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

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

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

Incomplete Trip has the meaning given in the KPI Schedule.

Indemnified Person has the meaning given in Clause 44.1(a).

Independent Certifier means SMEC Australia Pty Limited (ABN 47 065 475 149).

Independent Certifier Deed means the document of that description between TfNSW, the Managing Contractor and the Independent Certifier.

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

In-Service Kilometres has the meaning given in the KPI Schedule.

Insolvency Event means when the Operator, Keolis Downer Bus and Coachlines Pty Limited (ABN 76 604 654 140), or the Parent Company:

- (a) stops or suspends payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Act;
- (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);

- (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertakings;
- (g) has an application or order made or a resolution passed for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them;
- (h) has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings and that enforcement, distress, execution or similar process is not set aside within five Business Days; or
- (i) any event occurs which, under the Laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

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

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

Interchanges means:

- (a) the Wickham Interchange; and
- (b) the Newcastle Bus Interchange.

Interchange Handover Date means:

- (a) in the case of the Wickham Interchange, the date of completion of the Wickham Interchange as advised by TfNSW giving the Operator one month's notice; and
- (b) in the case of the Newcastle Bus Interchange, the date of completion of the Newcastle Bus Interchange as advised by TfNSW giving the Operator one month's notice.

Interchange Infrastructure means the infrastructure referred to in Annexure 9 of the Asset Schedule.

Issuer means:

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

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

- (a) maintenance or refurbishment of any State Asset;
- (b) contracts for any work to be undertaken by the Operator at a Contract Depot or in relation to the NLR;
- (c) labour hire for Drivers, Masters or Crew; or
- (d) labour hire contracts for any maintenance staff,

or that is otherwise designated as a Key Contract under Clause 38.2(b) and includes the Shipyard Outsourcing Arrangement.

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

Key Contract Security Document means:

- (a) any document that TfNSW requires (in its absolute discretion) to be provided or entered into by any Key Contractor and any other parties in connection with a Key Contract; and
- (b) any ancillary document required by the terms of a document referred to in paragraph (a),

in each case in a form and substance satisfactory to TfNSW and executed by the Key Contractor and all relevant counterparties.

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

Key Personnel has the meaning given in Clause 36.2(a).

KPI Credit has the meaning given in the KPI Schedule.

KPI Default has the meaning given in the KPI Schedule.

KPI Event has the meaning given in Clause 53.1(a)(ii).

KPI Relief has the meaning given in the KPI Schedule.

KPI Schedule means Schedule 4 to this Contract.

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

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

Late has the meaning given in the KPI Schedule.

Law means:

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

and includes the general law.

Light Rail Route means a light rail route specified or described in the Service Level Schedule and any revisions to that route, approved by TfNSW in accordance with Clause 23.

Light Rail Service means the routine light rail service described in the Service Level Schedule.

Light Rail Service Commencement Date means the date specified in the Certificate of Light Rail Service Commencement.

Light Rail Timetable means the timetable for the operation of the Light Rail Service as set out in the Service Development Plan and implemented in accordance with Clause 21.2, and any post-implementation revision to that timetable approved by TfNSW in accordance with Clause 22.2.

Light Rail Trip means any single, one direction light rail service which forms part of the Light Rail Service.

Light Rail Transit Stops means all designated stops or stations along the Light Rail Route for light rail vehicles to set down or pick up passengers.

Light Rail Transit Stop Signage means all Route, Timetable (and Dedicated School Service Timetable) and related signage at a Light Rail Transit Stop, including the pole to which the signage is affixed.

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

LRV Specification has the meaning given in the Rolling Stock Supply Contract.

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

Managing Contractor means Downer EDI Works Pty Limited (ABN 66 008 709 608).

Managing Contractor Assurance Deed Poll means a deed poll executed by the Managing Contractor in the form set out in Schedule 13.

Managing Contractor Contract means the contract between TfNSW and the Managing Contractor for the design, construction, testing and commissioning of the NLR Works dated 8 August 2016.

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

Market Process Schedule means Schedule 10 to this Contract.

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

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

Material Design Change has the meaning given in Clause 10.6(g).

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

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

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

- (a) a Modification that requires the Operator to operate and maintain additional light rail vehicles for the NLR;
- (b) a Modification that requires the Operator to operate and maintain additional Ferries for the Newcastle Ferry Service;
- (c) a Modification that requires the Operator to operate, maintain or clean additional wharves;
- (d) a Modification that requires the Operator to operate and or maintain additional bus depots;
- (e) a Modification that requires the Operator to operate and maintain any extension to the NLR designed and constructed by TfNSW or TfNSW's Associates;
- (f) a Modification that removes any mode of Service from the Operator Activities; and
- (g) a Modification that TfNSW is permitted to direct in accordance with the terms of this Contract,

but does not include a Service Variation.

Modification Approval means a notice titled 'Modification Approval' issued by TfNSW under Clause 48.14(b)(ii)(A).

Modification Impact Proposal means a proposal issued by the Operator under Clause 48.2(b).

Modification Request means a notice titled 'Modification Request' issued by TfNSW under Clause 48.1(a).

Modification Order means a notice titled 'Modification Order' issued by TfNSW under Clause 48.4 or Clause 48.8 for a Modification.

Monthly Contract Price has the meaning given in the Payment Schedule.

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

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

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

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

Native Title Claim means any claim or application for a determination of native title under the *Native Title Act 1993* (Cth) or any similar Law.

NCE Cure Plan has the meaning given in Clause 52.2(c)(ii).

Net Financial Impact means the net financial impact of a NFI Event calculated in accordance with Schedule 17.

New Bus means:

- (a) any Bus purchased by TfNSW or its nominee in accordance with this Contract; and
- (b) which is leased to the Operator under the State Bus Lease or otherwise, during the Term.

Newcastle Ferry Services has the meaning given to the term 'Newcastle ferry services' in the TA Act.

Newcastle Bus Interchange means the bus interchange identified in the plan set out in Annexure 13 of the Asset Schedule including the Interchange Infrastructure located at that site.

New Contract Material means any Material brought into existence as part of, or for the purposes of, performing this Contract and includes the Disclosed Information and the Timetables and Dedicated Bus Services Timetables (whether prepared before or after the commencement of this Contract) and all data provided by the Operator via the OSD or DCIS.

New Depot means a depot or other bus parking or stabling facility that is purchased, leased or licensed or otherwise accessed or used by the Operator with the approval of TfNSW in accordance with Clause 29.5.

NFI Event has the meaning given in Schedule 17.

NLR means the light rail system between the Wickham Interchange and Pacific Park in Newcastle and includes:

- (a) the NLR Fixed Infrastructure including:
 - (i) the NLR Maintenance and Stabling Facilities; and
 - (ii) the Light Rail Transit Stops;

- (b) the Non-Corridor Assets;
- (c) the NLR Moveable Assets;
- (d) the Wickham Interchange and related Interchange Infrastructure;
- (e) the Contract LRV Deliverables; and
- (f) any Modification of the above,

but excludes the TfNSW Systems and Equipment.

NLR Delivery Activities means the activities required to be performed by the Operator under and in accordance with Clause 10.

NLR Delivery and Testing Plans means all plans relating to the activities required to be undertaken by the Managing Contractor and the Rolling Stock Supplier to deliver the NLR that are issued to TfNSW under the Managing Contractor Contract and the Rolling Stock Supply Contract.

NLR Delivery Test Documents means all test reports and other documents issued by the Managing Contractor or the Rolling Stock Supplier in relation to the testing and commissioning of the NLR Delivery Work under the Managing Contractor Contract and the Rolling Stock Supply Contract.

NLR Delivery Work means all work required to be performed under the Managing Contractor Contract and the Rolling Stock Supply Contract including rectification of defects in the NLR Works or Contract LRV Deliverables.

NLR Design Documentation means all design documentation submitted to TfNSW under the Managing Contractor Contract or the Rolling Stock Supply Contract subsequent to the Contract Stage Design Package.

NLR Fixed Infrastructure means:

- (a) the NLR Works including:
 - (i) the rail systems;
 - (ii) the trackwork; and
 - (iii) the rail structures; and
- (b) the infrastructure identified in Annexure 8 of the Asset Schedule.

NLR Handover Date means the date specified in the Certificate of NLR Handover.

NLR Intellectual Property means:

- (a) all Intellectual Property in documentation brought into existence as part of, or for the purpose of, the performance of the NLR Works including:
 - (i) the information and material included in or annexed to the Managing Contractor Contract;
 - (ii) the operation, maintenance and training manuals provided to TfNSW under the Managing Contractor Contract; and
 - (iii) the NLR Design Documentation provided to TfNSW under the Managing Contractor Contract; and
- (b) any improvement to or modification, adaptation or development of the Intellectual Property described in paragraph (a).

NLR Maintenance and Stabling Facilities means the maintenance and stabling facility to be constructed by the Managing Contractor adjacent to Wickham Railway Station, Wickham, NSW.

NLR Moveable Assets means the assets identified in Annexure 6 of the Asset Schedule.

NLR Works means the 'Works' as defined in the Managing Contractor Contract.

NLR Site means the 'Site' as defined in the Managing Contractor Contract.

Nominated Assets has the meaning given in Clause 58.1(a).

Non-Compliance Event means an event identified as such in Clause 52.1.

Non-Corridor Assets means assets listed in Annexure 12 of the Asset Schedule as modified by TfNSW in accordance with Clause 26.1.

Non-Operational Kilometres has the meaning given in the KPI Schedule.

NSW Government Policy means any policy or guideline of the NSW Government, as published from time to time that is not a Law.

NSW Trains means the body corporate established under Part 4 of the *Transport Administration (General) Regulation 2005* (NSW).

On Demand Services means the non routine bus services described in the Service Level Schedule.

On Time has the meaning given in the KPI Schedule.

Operational Readiness Activities means the activities required to be undertaken by the Operator in order to commence revenue operation of the Light Rail Service including the activities set out in the Operational Readiness Plan.

Operational Readiness Plan has the meaning given in Clause 10.11.

Operator Activities means all things and tasks which the Operator is, or may be, required to carry out or do to comply with its obligations under this Contract, including the Services and the NLR Delivery Activities.

Operator Asset means any asset used by the Operator to conduct the Operator Activities that is not a State Asset including the Operator Depot and any Key Contracts but excluding:

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

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

Operator Depot means the depot located at 460 Main Road, Glendale, New South Wales.

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

Operator Marketing Plan means the marketing plan prepared by the Operator in accordance with Clause 15.3 (and which in the first Contract Year is the plan set out in Schedule 23).

Operator MC Confidentiality Deed Poll means a deed poll in the form set out in Schedule 22.

Operator MC Deed Poll means a deed poll in the form set out in Schedule 15.

Operator RS Confidentiality Deed Poll means a deed poll in the form set out in Schedule 21.

Operator RS Deed Poll means a deed poll in the form set out in Schedule 16.

Operator Representative has the meaning given in Clause 2.1(b).

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

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

Operator's Associates means:

- (a) any contractor, consultant or adviser of or to the Operator including any person engaged by the Operator for the purpose of enabling the Operator to comply with its obligations under the Transaction Documents;
- (b) the Parent Company;
- (c) any Related Body Corporate of the Operator; and
- (d) any director, officer, employee or agent of the Operator or any of the persons referred to in paragraphs (a) to (c) above.

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

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

Parent Company means Keolis Downer Pty Limited (ABN 51 165 343 680).

Payments means those payments set out in the Payment Schedule.

Payment Schedule means Schedule 3 to this Contract.

Performance Benchmarks has the meaning given in Clause 6.3.

Performance Bond means:

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

Permanent Light Rail Corridor means the land comprising the NLR identified in the plans set out in Annexure 10 of the Asset Schedule as modified by TfNSW in accordance with Clause 26.1 and includes the NLR Fixed Infrastructure, NLR Maintenance and Stabling Facilities and the Light Rail Transit Stops.

Permitted Security Interest means a lien or charge:

- (a) which arises by operation of Law in the ordinary course of day-to-day trading;
- (b) which does not secure Financial Indebtedness; and
- (c) under which the indebtedness secured by it is paid when due or is being contested in good faith.

Personal Information has the meaning given in the Privacy Laws.

Planned Contract Bus and Ferry Service Commencement Date means 1 July 2017.

Planned Contract Commencement Date means 15 March 2017.

Planned Light Rail Service Commencement Date means the second Business Day after the after the NLR Handover Date.

Planned NLR Handover Date means 31 March 2019 (or such earlier date as may be determined by TfNSW by giving one month's notice to the Operator).

Pollution means water, air, noise or land pollution.

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

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

Pre-existing Contamination means:

- (a) any Contamination existing in, on or under or emanated or emanating from the Existing Depots (or the land adjoining the Existing Depots) at the Contract Bus and Ferry Service Commencement Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the Contract Bus and Ferry Service Commencement Date;
- (b) any Contamination existing in, on or under or emanated or emanating from the Permanent Light Rail Corridor or the Non-Corridor Assets (or the land adjoining the Permanent Light Rail Corridor or the Non-Corridor Assets) at the NLR Handover Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the NLR Handover Date;
- (c) any Contamination existing in, on or under or emanated or emanating from the Interchanges (or the land adjoining the Interchanges) at the applicable Interchange Handover Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the applicable Interchange Handover Date; and
- (d) any Contamination existing in, on or under or emanated or emanating from any Wharf (or the land or seabed adjoining any Wharf) at the Contract Bus and Ferry Service Commencement Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the Contract Bus and Ferry Service Commencement Date;
- (e) any Contamination existing in, on or under or emanated or emanating from the Bus Layover Area or Queens Wharf Office Area at the Contract Bus and Ferry Service Commencement Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the Contract Bus and Ferry Service Commencement Date,

except to the extent the release, leaching or deterioration arises by reason of the act or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the Existing Depots, Permanent Light Rail Corridor, Non-Corridor Assets, Interchanges, Wharves, Bus Layover Area or Queens Wharf Office Area (**State Property**) from the Operator or enjoying the use or occupation of the State Property with the consent of the Operator.

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).

Project Specific Change in Law means a Change in Law:

- (a) the terms of which apply directly and exclusively to:
 - (i) the NLR, and not to other railways or other modes of transport in Australia;
 - (ii) the Operator, and not to any other person;
 - (iii) the Permanent Rail Corridor or the Non-Corridor Assets and not to any other similarly situated land or facilities or land or facilities where similar activities to the Operator Activities are undertaken;
- (b) relating specifically to the ability of disabled person to use and access bus, light rail and ferry vehicles and facilities;
- (c) relating to the handling, storage and transportation of waste, dangerous goods or hazardous substances;
- (d) relating to work health and safety (other than in relation to workers compensation premiums);
- (e) the purpose of which relates specifically to the protection of the Environment; or
- (f) relating specifically to rail, bus or ferry safety.

Project Specific Change in NSW Government Policy means a Change in NSW Government Policy the terms of which apply to:

- (a) the NLR, and not to other railways or other modes of transport in Australia;
- (b) the Operator, and not to any other person; or
- (c) the Permanent Rail Corridor or the Non-Corridor Assets and not to any other similarly situated land or facilities or land or facilities where similar activities to the Operator Activities are undertaken.

Proposal means the proposal submitted by the Operator to TfNSW in response to the Request For Proposal for Newcastle Integrated Services issued by TfNSW on 21 June 2016 (RFP Reference Number ISD-16-5361).

Proximate Work Activities means any activities that TfNSW wishes to carry out (or have carried out by a TfNSW contractor) within, adjacent to, over or under any of the State Assets or otherwise in the Newcastle region that affect the Operator Activities including the activities listed in Clause 49(a) (other than works in relation to TfNSW Systems and Equipment).

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

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

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

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

Public Passenger Service has the meaning given to the term 'public passenger service' in section 5 of the PT Act 2014 (which, for the avoidance of doubt, includes Dedicated School Services).

Published Timetabled Trips has the meaning given in the KPI Schedule.

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

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

Queens Wharf Office Space means the offices located at Queens Wharf located at Wharf Road, Newcastle, NSW as shown on the plans attached to the Wharf Access Deed.

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

Rail Accreditation means accreditation under Division 4 of the Rail Safety National Law.

Rail Safety National Law means the *Rail Safety National Law* as applied (with modifications) as a Law of NSW by the *NSW Rail Safety (Adoption of National Law) Act 2012* (NSW) and the Rail Safety National Regulations.

Rail Safety National Regulations means the national regulations as defined under the *Rail Safety National Law*.

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

Related Body Corporate has the same meaning as in the Corporations Act and in relation to the Operator, includes Keolis Downer Bus and Coachlines Pty Limited (ABN 76 604 654 140) and the Parent Company.

Related Entity has the meaning given in the Corporations Act.

Related Party Arrangement has the meaning set out in Clause 65.2(a).

Relevant Amount has the meaning set out in Clause 7.5(f)(iii).

Relevant Third Party has the meaning given in Clause 20.2.

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.

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

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

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

Roads 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).

Rolling Stock Supplier means Construcciones y Auxiliar de Ferrocarriles S.A CIF A20001020.

Rolling Stock Supplier Assurance Deed Poll means a deed poll in the form set out in Schedule 14.

Rolling Stock Supply Contract means the contract between TfNSW and the Rolling Stock Supplier titled '*Rolling Stock Supply Contract Amendment and Restatement Deed Facilitating the Incorporation of Additional Light Rail Vehicles and Additional Equipment for the Newcastle Light Rail System*' dated 26 May 2016.

Route means the Bus Routes, Ferry Route and Light Rail Route.

Safety Authority means each of RMS, the Office of the National Rail Safety Regulator and the Australian Maritime Safety Authority or its delegate.

Safety Interface Agreement means an interface agreement as defined in the Rail Safety National Law between the Operator and each of:

- (a) TfNSW;
- (b) Sydney Trains;
- (c) NSW Trains;
- (d) RMS; and
- (e) any other body who is the road manager of a public road with an interface with the NLR,

and as otherwise required under the Rail Safety National Law.

Safety Management System means, as the context requires:

- (a) a 'safety management system' as required by section 99 of the Rail Safety National Law;
- (b) a 'safety management system' as required by section 9D of the PT Act 1990; or
- (c) a 'safety management system' as required under the MS Act that ensures that the Contract Ferries and the operation of the Contract Ferries are, so far as reasonably practicable, safe.

Security 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.

Senior Project Group means the group established under Clause 10.4.

Service Commencement Date means:

- (a) in relation to the Contract Bus Services, the Contract Bus and Ferry Service Commencement Date;
- (b) in relation to the Ferry Service, the Contract Bus and Ferry Service Commencement Date; and
- (c) in relation to the Light Rail Service, Light Rail Service Commencement Date.

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

Service Development Plan means the Operator's program of Contract Service Level, Timetable and Dedicated School Services Timetable changes approved by TfNSW as set out in the Service Level Schedule and the corresponding milestones and timeframes for the implementation of those changes.

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

Service Variation means a variation to the Contract Service Levels, Timetables or Dedicated School Services Timetables in each case that requires:

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

Service Variation Notice means a notice issued in accordance with Clause 23(a).

Services means:

- (a) the Ferry Service;
- (b) the Contract Bus Services; and
- (c) the Light Rail Service.

Services Schedule means Schedule 1 to this Contract.

Shipyard means any shipyard utilised by the Operator in relation to this Contract from time to time.

Shipyard Operator means the counterparty to any Shipyard Outsourcing Arrangement.

Shipyard Outsourcing Arrangement means any arrangement entered into by the Operator from time to time with respect to the use of a Shipyard and any related services.

Smartcard has the meaning given in the PT Act 1990.

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

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

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

STA Residual Furniture and Tools means all items of furniture, equipment, tools and consumables left by STA at the Existing Depots at the Contract Bus and Ferry Service Commencement Date.

State means the State of New South Wales.

State Assets means:

- (a) the Contract Buses;
- (b) the Contract Ferries and associated parts and equipment leased to the Operator under the State Bareboat Charterparty;
- (c) the Contract LRV Deliverables;
- (d) the Existing Depots;
- (e) the Permanent Light Rail Corridor, Non-Corridor Assets, NLR Fixed Infrastructure, Light Rail Transit Stops and NLR Maintenance and Stabling Facilities;
- (f) the Interchanges and Interchange Infrastructure;
- (g) the Wharves;
- (h) the Bus Transit Stops;
- (i) the NLR Moveable Assets;
- (j) the Contract Bus and Ferry Moveable Assets;
- (k) the Bus Layover Area;
- (l) the Queens Wharf Office Area; and
- (m) any asset provided to the Operator under clause 26.5.

State Asset Access Agreements means:

- (a) the State Bareboat Charterparty;
- (b) the State Bus Lease;
- (c) the State LRV Lease;
- (d) the State Bus Depot Leases;
- (e) Clause 26; and
- (f) any other agreement or document entered into between TfNSW (or TfNSW's nominees) and the Operator in relation to access to and use of assets required to perform the Operator Activities but not including the Wharf Access Deed.

State Bareboat Charterparty means a bareboat charterparty in respect of the Contract Ferries in substantially the form set out Annexure 20 of the Asset Schedule.

State Bus Lease means a lease in respect of the Contract Buses in substantially the form set out in Annexure 17 of the Asset Schedule.

State Bus Depot Leases means each lease for the Existing Depots in substantially the form set out in Annexure 18 of the Asset Schedule.

State LRV Lease means a lease in respect of the Contract LRVs substantially in the form set out in Annexure 19 of the Asset Schedule.

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

- (a) the costs, charges and expenses of any Step in Party appointed by TfNSW to carry out any or all of the Operator Activities under this Contract or any other Transaction Document; and

- (b) TfNSW's costs, charges and expenses incurred in engaging a Step in Party including any transaction costs and the costs of any consultants and advisers engaged in connection with the appointment of the Step in Party.

Step in Event has the meaning given in Clause 53.1(a).

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

Step in Powers has the meaning given in Clause 53.2.

Step in Right has the meaning given in Clause 53.1(b).

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

Subsequent Contamination means:

- (a) any Contamination existing in, on, under or emanated or emanating from the Permanent Light Rail Corridor or the Non-Corridor Assets (or the land adjoining the Permanent Light Rail Corridor or the Non-Corridor Assets), that was not in existence at the NLR Handover Date;
- (b) any Contamination existing in, on, under or emanated or emanating from an Existing Depot (or the land adjoining an Existing Depot), that was not in existence at the Contract Bus and Ferry Service Commencement Date;
- (c) any Contamination existing in, on, under or emanated or emanating from the Interchanges (or the land adjoining the Interchanges) that was not in existence at the applicable Interchange Handover Date to the extent caused or contributed to by an act or omission of the Operator or the Operator's Associates;
- (d) any Contamination existing in, on, under or emanated or emanating from a Wharf (or the land or seabed adjoining a Wharf) that was not in existence at the Contract Bus and Ferry Service Commencement Date to the extent caused or contributed to by an act or omission of the Operator or the Operator's Associates;
- (e) any Contamination existing in, on, under or emanated or emanating from the Bus Layover Area or Queens Wharf Office Area that was not in existence at the Contract Bus and Ferry Service Commencement Date to the extent caused or contributed to by an act or omission of the Operator or the Operator's Associates;
- (f) any Contamination existing in, on or under or emanated or emanating from a Bus Transit Stop to the extent caused or contributed to by an act or omission of the Operator or the Operator's Associates;
- (g) any release, leaching or deterioration of any Pre-existing Contamination which arises by reason of the acts or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the Permanent Light Rail Corridor, Non-Corridor Assets, Existing Depots, Interchanges, Wharves, Bus Layover Area or Queens Wharf Office Area (**State Property**) from the Operator or enjoying the use or occupation of the State Property with the consent of the Operator;
- (h) any Contamination which migrates:
 - (i) to the State Property or the land or seabed adjoining any State Property as a result of an act or omission of the Operator provided that the Operator was aware, or ought reasonably to have been aware, of such Contamination; or
 - (ii) from the State Property or the land or seabed adjoining any State Property as a result of an act or omission of the Operator; or
- (i) any Contamination which otherwise arises out of or in connection with the Operator Activities.

Subsidiary has the meaning given in the Corporations Act.

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

Sydney Trains means the body corporate established under Part 3 of the *Transport Administration (General) Regulation 2005* (NSW).

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

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

Tax Invoice has the meaning given by the GST Act.

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

Term means the period determined under Clause 6.

Termination Date means:

- (a) the effective date of termination of this Contract (including where applicable the date set out in a Termination Notice); or
 - (b) the Expiry Date,
- whichever is applicable.

Termination Event means any of the events listed in Clause 54.1.

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

- (a) Clause 42.2(a)(iii);
- (b) Clause 47.3(a);
- (c) Clause 54.2(a); or
- (d) Clause 54.3(a).

TfNSW Advertising Assets has the meaning given in Clause 61.2.

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

TfNSW Brand has the meaning given in Clause 60.6(l)(ii).

TfNSW Brand Style Guide means a rule book that specifies the requirements for the manner in which all brand devices, logos, strap-lines, positioning statements and other elements of visual representation of all relevant brands will be applied to livery, equipment, uniforms and printed, electronic, video and other visual media, covering all brands including the TfNSW Brands and the Operator's brand, which as the date of this Contract is the document titled '*TfNSW Brand Style Guide*' dated 25 August 2016 as developed, amended and updated in accordance with Clause 61.1(a).

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

TfNSW Customer Complaints Policy means the policy standard and guidelines for the management of customer complaints and feedback as issued and as amended by TfNSW from time to time, which as the date of this Contract includes the document titled '*Customer complaints and feedback policy*' dated 30 March 2015 and the document titled '*Customer Complaints and Feedback Management Standard*' dated 30 March 2015.

TfNSW Marks has the meaning given in Clause 60.6(l)(iii).

TfNSW Representative has the meaning given in Clause 2.1(a).

TfNSW Social Media Policy and Framework means the policy for the management of social media published by TfNSW on 1 November 2013 as issued and amended by TfNSW from time to time.

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

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

Third Party Agreements means the agreements identified in Schedule 18.

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

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

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

Timetables means each and every timetable for the Services contained in the Service Level Schedule and any revisions to those timetables approved by TfNSW in accordance with Clause 22.2 and includes the Bus Timetable, the Ferry Timetable and the Light Rail Timetable but does not include the Dedicated School Services Timetable.

Transaction Document means:

- (a) this Contract;
- (b) the State Asset Access Agreements;
- (c) any Key Contract Security Documents to which the Operator is a party;
- (d) the Performance Bonds;
- (e) the Deed of Guarantee and Indemnity;
- (f) the Transition In Contract;
- (g) any Transfer Agreement; and
- (h) any other document or agreement that TfNSW and the Operator agree is to be a Transaction Document for the purpose of this Contract.

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

Transfer Agreement has the meaning given in Clause 58.1(b).

Transfer Agreement Date means:

- (a) if this Contract terminates by expiry, the date falling 30 Business Days prior to the Expiry Date or such later date as TfNSW and the Operator may agree; or
- (b) if this Contract terminates other than by expiry, the date notified by TfNSW to the Operator being no later than the date falling 25 Business Days after the date of termination.

Transfer Date means:

- (a) if this Contract terminates by expiry, the Expiry Date, or
- (b) if this Contract terminates other than by expiry, the date nominated in writing by TfNSW falling no later than 45 Business Days after the date of termination.

Transfer Notice has the meaning given in Clause 58.1(a).

Transferee has the meaning given in Clause 58.1(a).

Transfer Time means 3.01am on the Transfer Date.

Transition In Contract means the document titled *Transitional Agreement – Newcastle Integrated Services* between the Transport Secretary and the Operator.

Transition In Employees means the 'Transferring Employees' as defined in the Transition In Contract.

Transition In Plan means the Operator's transition in plan containing (as a minimum) the matters required by Schedule 9 (and any other matters reasonably required by TfNSW).

Transition Milestone means each milestone identified in the Transition Schedule.

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

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

Transition Schedule means Schedule 9 to this Contract.

Transit Stop means a Bus Transit Stop or a Light Rail Transit Stop.

Transit Stop Signage means Bus Transit Stop Signage and Light Rail Transit Stop Signage.

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

Transport Laws has the meaning given in Clause 40.1.

Transport Secretary means the Secretary of the Department of Transport who, pursuant to section 68C of the TA Act, exercises, on behalf of the Government of New South Wales, the employer functions of the Government in relation to the staff employed in the Transport Service.

Transport Service means the Transport Service of New South Wales as defined by section 68B of the TA Act.

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

Trip means a Bus Trip, Ferry Trip or Light Rail Trip.

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

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

Uninsurable Risk means a risk in respect of which:

- (a) the Operator has provided a notice including independent evidence satisfactory to TfNSW (**Risk Notice**) that:

- (i) insurance is not available in the international insurance market with any Authorised Insurer at the time that the insurance ought to be obtained and coverage is not available under the *Terrorism Insurance Act 2003* (Cth) or a similar legislative scheme; or
 - (ii) the insurance premium payable for insurance for that risk is at such a level, or the terms and conditions are such, that the risk is not generally being insured against in the international insurance market with Authorised Insurers by prudent, competent and experienced providers in Australia of services similar to the Operator Activities (**Prudent Operator**) at the time that the insurance sought ought to be obtained; and
- (b) has not subsequent to the issue of a Risk Notice by the Operator become insurable in the international insurance market with an Authorised Insurer on terms and conditions such that a Prudent Operator would, at the time that the insurance sought ought to be obtained, generally insure against the risk.

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

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

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

Wayfinding Signage Upgrade has the meaning given in Clause 15.6.

Wayfinding Signage Upgrade Program means the program developed by the Operator in accordance with Clause 15.7 for the removal of existing signage and installation of wayfinding signage upgrades to all Bus Transit Stops and Wharves in Newcastle in accordance with the Wayfinding Signage Specifications.

Wayfinding Strategy and Kit of Parts means the planning guide and kit of parts developed by TfNSW from time to time regarding the correct use and placement of wayfinding signage across the NSW transport network.

Wharf Access Deed means the document titled *Wharf Access Deed* between TfNSW and RMS.

Wharf Access Charge has the meaning given to the term *Access Charge* in the Wharf Access Deed.

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

Wharves means:

- (a) Queens Wharf located at Wharf Road, Newcastle, NSW;
- (b) Stockton Wharf located at Mitchell Street, Stockton, NSW; and
- (c) except in relation to the definition of Ferry Route, the definition of Ferry Trip, the definition of Wayfinding Strategy and Kit of Parts, Clause 15.2, Clause 15.6 and Clause 19.2, Throsby Creek Wharf located at Throsby Basin, Hannell Street, Wickham, NSW.

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

WHS Law means:

- (a) those Acts, regulations, by-laws, orders, awards, proclamations, standards and codes relating to work health and safety (including the WHS Act and WHS Regulation) with respect to the Operator Activities;

- (b) the requirements of any Governmental Agency relating to work health and safety with respect to the Operator Activities; and
- (c) any directions or notices relating to work health and safety issued by any relevant Governmental Agency or any code of practice or compliance code appropriate or relevant to the Operator Activities.

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

Wickham Interchange means that part of the Wickham Railway Station identified in the plan set out in Annexure 13 of the Asset Schedule including the Interchange Infrastructure located within that area.

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.

Works Brief has the meaning given in the Managing Contractor Contract.

WSUP Works has the meaning given in Clause 15.8.

1.2 Interpretation

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

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

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

- (y) TfNSW may rely on any waiver by the Operator of any Powers, including statutory Powers.
- (z) Any act or omission by or on behalf of the Operator's Associates or the Staff in relation to the Transaction Documents is deemed to be an act or omission by the Operator.
- (aa) Where:
 - (i) an obligation has been imposed on an Operator's Associate under a Transaction Document;
 - (ii) an obligation has been imposed on the Operator to procure or ensure that an Operator's Associate complies with the requirements of a Transaction Document; or
 - (iii) in order to discharge its obligations under a Transaction Document the Operator is required to, or would need to, ensure or procure that an Operator's Associate complies with that obligation,the Operator must ensure or procure that the Operator's Associate complies with that obligation.

1.3 Precedence of documents

- (a) If the Operator identifies an inconsistency, ambiguity or discrepancy within this Contract, then the Operator must notify TfNSW of the inconsistency, ambiguity or discrepancy as soon as practicable and, in any case not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (b) Within 5 Business Days of receipt of a notice issued under Clause 1.3(a), TfNSW will direct the Operator as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice given under Clause 1.3(a) which direction may require the Operator to comply with the greater, more onerous to the Operator or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by TfNSW.

1.4 Consents or approvals

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

1.5 TfNSW's capacity

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

1.6 No implied duty of good faith

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

1.7 Reasonable endeavours

If TfNSW is required under the terms of this Contract to exercise best or reasonable endeavours, the Operator acknowledges that:

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

1.8 Delegation

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

1.9 No fetter on TfNSW's powers

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

1.10 Transfer of functions

- (a) The Operator acknowledges that:

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

1.11 Effect of certificates issued by TfNSW

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

2. Parties' Representatives and Independent Certifier

2.1 Appointment of Parties' Representatives

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

2.2 Appointment of Independent Certifier

- (a) The Operator acknowledges that TfNSW will appoint the Independent Certifier to perform the functions set out in the Independent Certifier Deed.
- (b) Both Parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier:

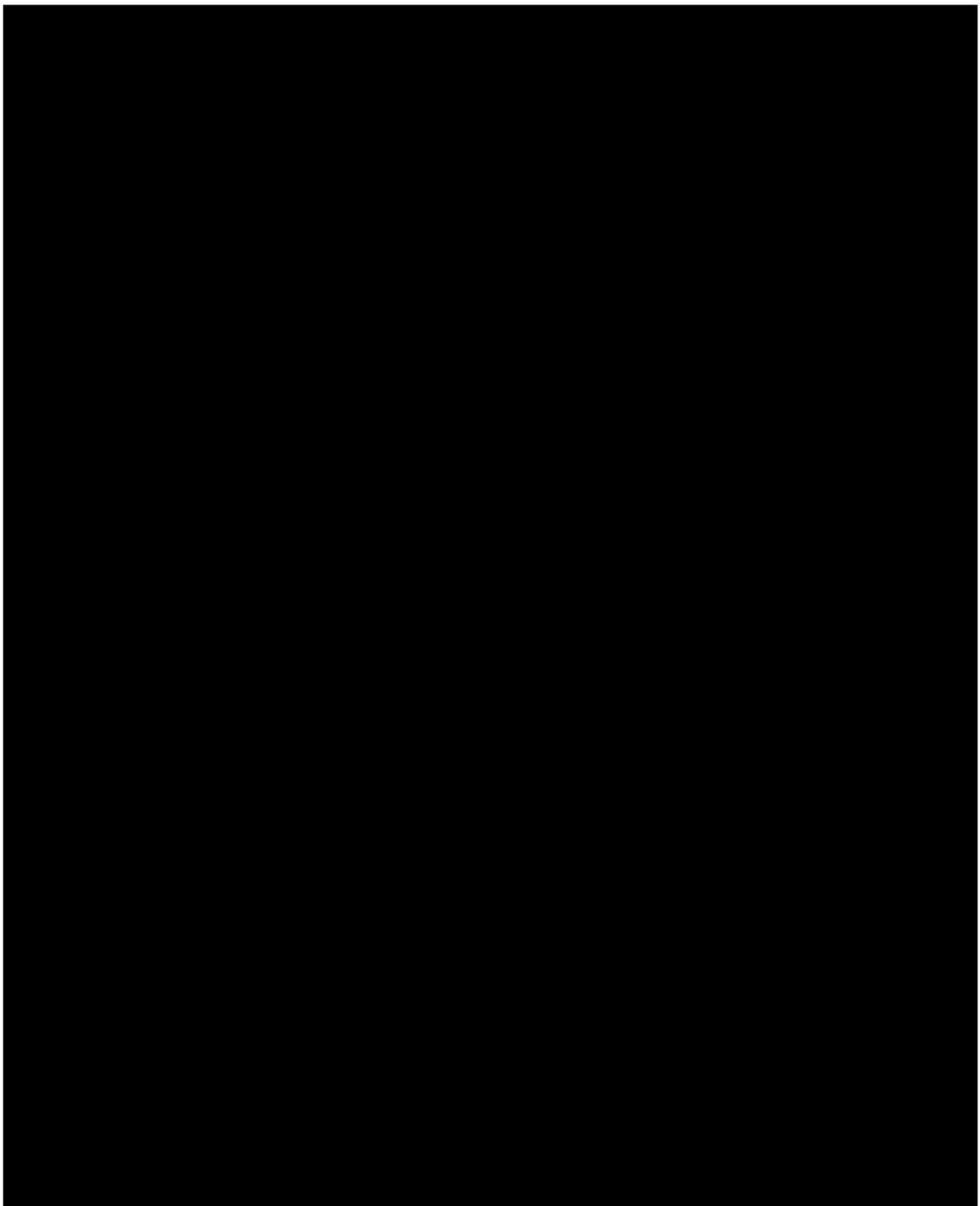
(i) to attend meetings; and

(ii) access to all premises,

as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.

- (c) All notices and documents provided by TfNSW or the Operator (**NLR Parties**) to the Independent Certifier must be copied to the other NLR Party. If a NLR Party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other NLR Party within the same time period.

2A State Transit Authority





3. Contract Objectives

- (a) The Operator acknowledges that:
 - (i) the primary purpose of this Contract is to ensure that the Services are run by an efficient and experienced public transport operator, which is able to deliver improvements in service delivery and value for money, assist with and facilitate the commissioning of the NLR, assist TfNSW in developing longer term service plans and represent TfNSW as the face of public transport in Newcastle; and
 - (ii) TfNSW's principal objectives (**Contract Objectives**) in entering into this Contract are to:
 - (A) ensure the Operator is focused on the delivery of safe, reliable and customer focused integrated and sustainable multi-modal transport services which provide a seamless transport experience across all modes, including integration with train services;
 - (B) promote improved customer service over the Term;
 - (C) ensure stewardship of public transport assets is undertaken to provide safe and reliable service outcomes with the maintenance decisions of the Operator based on optimising whole of life value for money;
 - (D) partner with an experienced operator able to represent TfNSW in consultation with key stakeholders, customers and the public in relation to transport services in Newcastle;
 - (E) partner with an operator who is able to contribute to the development of medium to long term public transport plans designed to support the New South Wales Government's urban development priorities in Newcastle;
 - (F) ensure transparent reporting of operator performance;
 - (G) ensure timely commissioning of the NLR with ongoing operations and maintenance of the NLR providing value for money; and
 - (H) ensure TfNSW receives value for money for the Services.
- (b) The Operator must perform its obligations under the Transaction Documents having regard to the Contract Objectives.

4. Contract risks

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

Part A – Contract Commencement and Term

5. Conditions Precedent for commencement of Contract

5.1 Commencement

This Contract (other than Clauses 1, 2, 5, 7, 8, 9, 10, 11.1(b), 40, 43, 44, 54.5, 59, 62, 63, 64, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79) does not commence until the conditions precedent set out in Clause 5.2 have been satisfied in accordance with this Clause 5.

5.2 Conditions precedent

The Operator must ensure that the following conditions precedent are fulfilled to TfNSW's satisfaction prior to the Planned Contract Commencement Date:

- (a) delivery to TfNSW of the General Performance Bond(s), in accordance with Clause 7.1;
- (b) delivery to TfNSW of the executed Deed of Guarantee and Indemnity in accordance with Clause 8;
- (c) delivery to TfNSW of evidence satisfactory to TfNSW of the due execution of the Deed of Guarantee and Indemnity by each party to it (other than TfNSW) including, if any party is not an Australian entity, a legal opinion in form and substance, and issued by a law firm, acceptable to TfNSW;
- (d) delivery to TfNSW of the executed Operator MC Deed Poll, Operator MC Confidentiality Deed Poll, Operator RS Deed Poll and Operator RS Confidentiality Deed Poll in accordance with Clause 11.1(b);
- (e) delivery to TfNSW of the executed deed poll required under Clause 10.2(b);
- (f) delivery to TfNSW of evidence satisfactory to it that the Operator has obtained the insurances required by Clause 43.1(a); and
- (g) delivery to TfNSW, of evidence of notification under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) from the Australian Treasurer that there is 'no objection' under the FATA (either unconditionally or on conditions acceptable to TfNSW and the Operator) to all of the 'notifiable actions' and 'significant actions' (as those terms are defined in the FATA) contemplated by or otherwise related to this Contract;
- (h) delivery to TfNSW of the Transition In Contract executed by the Operator.

5.3 Certificate of Contract Commencement

- (a) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions in Clause 5.2 has been satisfied (or waived by TfNSW), TfNSW will issue to the Operator a Certificate of Contract Commencement specifying the Contract Commencement Date.
- (b) The Contract Commencement Date will be a date on or after the Planned Contract Commencement Date (unless the Parties agree otherwise).

5.4 Consequences of non-fulfilment of conditions precedent

If the Operator fails to comply with Clause 5.2, TfNSW may terminate this Contract by issuing a notice to the Operator with immediate effect and, subject to Clauses 54.5 and 79, this Contract will be of no further effect.

5.5 Additional Conditions

- (a) Without limiting any other provision of this Contract, the Operator warrants to TfNSW and STA that:
 - (i) its entry into and performance of this Contract does not constitute 'starting an Australian business' or
 - (ii) it has already obtained a statement of 'no objections' from the Commonwealth Treasurer under the FATA in respect of starting the relevant business,

for the purposes of Regulation 56(b) of the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).
- (b) The Parties agree that, despite any other provision of this Contract, the Operator will not be acquiring an 'interest' in an Australian entity, an Australian business or Australian land (as those terms are defined in the FATA) from the State in the period between the date of execution of this Contract and the Contract Commencement Date.
- (c) The Operator must indemnify TfNSW, STA, the Minister for Transport, the State and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of, or to, any of them (**Indemnified Persons**), from and against any Loss incurred by an Indemnified Person arising out of or in any way in connection with a failure by the Operator to obtain by the Planned Contract Commencement Date notification under the FATA from the Australian Treasurer advising that there is 'no objection' under the FATA (either unconditionally or on conditions acceptable to TfNSW and the Operator) to all of the 'notifiable actions' and 'significant actions' (as those terms are defined in the FATA) contemplated by or otherwise related to this Contract.

6. Term

6.1 Term

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

6.2 Performance review

- (a) Not later than the date that is 18 months prior to the seventh anniversary of the Planned Contract Bus and Ferry Service Commencement Date, TfNSW must determine whether the Operator has met the Performance Benchmarks in respect of the first five Contract Years and notify the Operator accordingly.
- (b) If TfNSW notifies the Operator under Clause 6.2(a) that the Operator has not met the Performance Benchmarks, TfNSW may, by giving notice to the Operator, terminate this Contract with effect from the later of:
 - (i) the date that is the seventh anniversary of the Planned Contract Bus and Ferry Service Commencement Date; or
 - (ii) another date nominated by TfNSW in the notice of termination issued under this Clause 6.2(b) which must be no earlier than the date that is the seventh anniversary of the Planned Contract Bus and Ferry Service Commencement Date and no later than the date that is the eighth anniversary of the Planned Contract Bus and Ferry Service Commencement Date.
- (c) The Operator has no Claim against TfNSW or STA in relation to the termination of this Contract under Clause 6.2(b).

- (d) Nothing in this Clause in any way limits TfNSW's rights in respect of any breach by the Operator or the Operator's Associates of any Transaction Document including under Clauses 52, 53 and 54 or otherwise at Law.

6.3 Performance Benchmarks

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

6.4 No entitlement to new contract or extension of contract

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

7. Performance Bonds

7.1 Performance Bonds

- (a) The Operator must, prior to the Planned Contract Commencement Date, procure the issue to TfNSW of one or more performance bonds each of which:
 - (i) is in the form of Attachment B;
 - (ii) is issued by an Issuer with the Required Rating and approved by TfNSW (which approval must not be unreasonably withheld);
 - (iii) has a face amount which, when aggregated with the face amount of any other performance bond provided under this Clause 7.1(a) (or any replacement provided under Clauses 7.2, 7.3 or 7.4), is no less than the General Performance Bond Amount;
 - (iv) is unconditional and irrevocable;
 - (v) expires no earlier than:

- (A) 12 months after the end of the Term; or
 - (B) two years after the date it is issued to TfNSW; and
- (vi) is issued, and available to be drawn at, an office of the Issuer in Sydney.
- (b) The Operator must, at least six months prior to the Expiry Date provide to TfNSW a performance bond for the amount referred to in Clause 57.1(c)(iv) (**Estimated Amount**) that complies with the requirements of Clauses 7.1(a)(i), (ii), (iv), (v) and (vi) (**Handback Security Bond**).
- (c) If the Operator fails to provide a Handback Security Bond in accordance with Clause 7.1(b), then TfNSW may withhold the Estimated Amount from the Payments (provided that TfNSW will not withhold more than [REDACTED] of the Estimated Amount from payments due in any one month). TfNSW may use the amounts so withheld on the same conditions as it may use the Handback Security Bond under this Contract and the unused part of any amounts so withheld will be paid to the Operator on the earlier of:
 - (i) the time that the Handback Security Bond would have been returned had it been provided; and
 - (ii) the time that the Operator provides the Handback Security Bond in accordance with its obligations under this Clause 7.1.

7.2 Available amount

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

7.3 Trigger Date

If the Trigger Date of a Performance Bond occurs at any time prior to the date that is 12 months after the end of the Term the Operator must procure the issue to TfNSW of a replacement performance bond which complies with the requirements of Clause 7.1 prior to the occurrence of the Trigger Date for the Performance Bond.

7.4 Required Rating

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

7.5 Demands under bonds

- (a) TfNSW may only make a demand under the Performance Bonds in accordance with this Clause 7.5.
- (b) TfNSW may have recourse to more than one of the Deed of Guarantee and Indemnity and the Performance Bonds.
- (c) TfNSW may make a demand under the Performance Bonds where:
 - (i) any amount has become due and payable (and has not been paid) by the Operator or the Operator's Associates to TfNSW or STA under or in connection with a Transaction Document;
 - (ii) TfNSW or STA has a good faith Claim to any amount whether for damages (including liquidated damages) or under an indemnity or otherwise relating to the Operator Activities or any Transaction Document; or

- (iii) the Operator or the Operator's Associates may or will become liable to pay any amount to TfNSW, STA or a Successor Operator in respect of their obligations under a Transaction Document following the Termination Date.
- (d) If the Operator does not comply with Clause 7.2, 7.3 or 7.4, TfNSW may demand the full General Performance Bond Amount as at the relevant time, provided that:
 - (i) the amount paid to TfNSW as a result of the demand must be paid to the Operator as soon as practicable after a replacement General Performance Bond is provided to TfNSW in accordance with Clause 7.2, 7.3 or 7.4 (whichever is applicable) (but for this purpose the amount received by TfNSW under this paragraph is to be disregarded in determining the General Performance Bond Amount which the replacement General Performance Bond must satisfy); or
 - (ii) if a replacement General Performance Bond has not been provided to TfNSW by the date falling 12 months after the end of the Term, TfNSW must pay the Operator the amount, if any, paid to TfNSW as a result of the demand under this Clause 7.5(d) less any amount in respect of which TfNSW was or would have been entitled to make a demand in accordance with Clause 7.5(c) at any time on or before that date,

without any interest being owed in respect of such amount.
- (e) TfNSW may make a demand irrespective of whether or not the amount is, or the circumstances relating to the amount are:
 - (i) in dispute between the Parties; or
 - (ii) subject to any Court or other proceedings.
- (f) If:
 - (i) the Issuer of a Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 7.5(c)(i) and all or part of the amount in respect of which demand was made was not actually payable by the Operator or the Operator's Associates to TfNSW or a Successor Operator; or
 - (ii) the Issuer of a Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 7.5(c)(ii) or 7.5(c)(iii) and the Operator or the Operator's Associates do not in fact become liable to pay to TfNSW, STA or a Successor Operator all or part of the amount in respect of which demand was made,

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

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

- (i) The Operator must not take any steps to restrain or injunct TfNSW from making a demand under a Performance Bond or the Issuer paying, or TfNSW using, any amounts under a Performance Bond.

7.6 Return of Performance Bonds

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

8. Deed of Guarantee and Indemnity

Prior to the date of this Contract, the Operator must provide TfNSW and STA with a Deed of Guarantee and Indemnity duly executed by the Parent Company and stamped (if required by Law).

Part B – Day One Operator Activities

9. Day One Operator Activities

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

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

so as to ensure that:

- (e) the Contract Bus Services and Ferry Services are able to be commenced by the Planned Contract Bus and Ferry Service Commencement Date;
- (f) TfNSW is not prevented from handing over the NLR by the Planned NLR Handover Date;
- (g) the Light Rail Service is able to be commenced on, and comply with this Contract from, the Planned Light Rail Service Commencement Date; and
- (h) the NLR is capable of enabling the Operator to perform its obligations under this Contract including achieving the Key Performance Indicators in relation to the Services from the NLR Handover Date.

10. NLR Delivery Activities

10.1 NLR Delivery Activities

The Operator must comply with this Clause 10 on and from the date of execution of this Contract.

10.2 General obligation

- (a) The Operator must:

- (i) co-operate with the Managing Contractor and the Rolling Stock Supplier, and do everything reasonably necessary to facilitate the execution of work by the Managing Contractor and the Rolling Stock Supplier, including providing the Managing Contractor and the Rolling Stock Supplier with such assistance as may be reasonably directed by the TfNSW Representative;
- (ii) carefully coordinate and interface the Operator Activities with the NLR Delivery Work and for this purpose:
 - (A) make proper allowance in all programs for the NLR Delivery Work;
 - (B) review the NLR Delivery and Testing Plans and confirm that they adequately allow for the Operator Activities and the interfaces of the NLR Delivery Work with the Operator Activities;
 - (C) notify the TfNSW Representative of any interface or sequence of activities that may affect the commencement, progress or completion of any NLR Delivery Work;
 - (D) provide the Managing Contractor and the Rolling Stock Supplier with sufficient information about the current and expected Operator Activities to assist them to coordinate the NLR Delivery Work with the Operator Activities;
 - (E) perform the Operator Activities so as to avoid any interference with or disruption or delay to the NLR Delivery Work;
 - (F) carry out the Operator Activities so as not to cause any harm or damage to the NLR Works or the Contract LRV Deliverables or any other property of TfNSW, the Managing Contractor or the Rolling Stock Supplier; and
 - (G) be responsible for coordinating the Operator Activities, including work sequencing, safety and industrial relations matters with those affecting, and influenced by, the Managing Contractor's or the Rolling Stock Supplier's personnel and work, including providing to the TfNSW Representative copies of working method statements for those parts of the Operator Activities which are adjacent to or interface with any NLR Delivery Work if requested to do so by TfNSW.
- (b) The Operator must:
 - (i) on or before the Planned Contract Commencement Date execute; and
 - (ii) prior to requesting that the Managing Contractor provide any Operator's Associate with access to the NLR Site, procure that the relevant Operator's Associate executes,

a deed poll in favour of the Managing Contractor, as principal contractor in respect of the NLR Site, in the form set out in Schedule 19 and provide TfNSW with an executed copy of each such deed poll.
- (c) The Operator must comply with, and procure that the Operator's Associates comply with, any reasonable direction of the Managing Contractor in relation to access to and work undertaken by the Operator or the Operator's Associates at the NLR Site, including completing induction training required by the Managing Contractor and complying with policies and procedures of the Managing Contractor relating to the NLR Site.

10.3 Commissioning Management Team

- (a) The Operator must cooperate, meet, liaise and share information so that TfNSW, the Managing Contractor and the Rolling Stock Supplier are able to comply with the Managing Contractor Contract or the Rolling Stock Supply Contract (respectively)

and all Laws and Authorisations relating to the performance of the Managing Contractor Contract and the Rolling Stock Supply Contract.

- (b) The Operator acknowledges that the Managing Contractor will establish a team including representatives of the Managing Contractor, TfNSW, the Rolling Stock Supplier, the Operator, the Independent Certifier and other technical advisers and contractors whose purpose will be to monitor and manage the delivery of the NLR (**Commissioning Management Team**).
- (c) The Operator must:
 - (i) ensure that suitably qualified and experienced Operator representatives are available as reasonably required by the TfNSW Representative to participate in the Commissioning Management Team and provide curricula vitae for those personnel; and
 - (ii) attend (and ensure that its representatives attend) all Commissioning Management Team meetings at such times as are advised by the TfNSW Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces.
- (d) The Operator must attend any other interface coordination meetings required by the TfNSW Representative at such times as are advised by the TfNSW Representative.
- (e) The chair person of the Commissioning Management Team will be:
 - (i) prior to the NLR Handover Date, a representative of the Managing Contractor nominated by the Managing Contractor; and
 - (ii) after the NLR Handover Date, a representative of the Operator nominated by the Operator.

10.4 Senior Project Group

- (a) A Senior Project Group will be established for the delivery of the NLR consisting of:
 - (i) from TfNSW:
 - (A) TfNSW's Executive Director Service Delivery & Performance;
 - (B) TfNSW's Principal Manager Transport for Newcastle ; and
 - (C) TfNSW's Project Director Newcastle Light Rail;
 - (ii) from the Managing Contractor:
 - (A) the 'Contractor's Representative' appointed under the Managing Contractor Contract; and
 - (B) two other people not holding a position more senior than the person referred to in Clause 10.4(a)(ii)(A), with at least one person from the Managing Contractor whose primary role and expertise is in respect of the NLR Works;
 - (iii) from the Rolling Stock Supplier:
 - (A) the 'Supplier's Representative' appointed under the Rolling Stock Supply Contract; and
 - (B) 2 other people not holding a position more senior than the person referred to in Clause 10.4(a)(iii)(A), with at least one person from the Rolling Stock Supplier whose primary role and expertise is in respect of the works required to be performed under the Rolling Stock Supply Contract; and
 - (iv) from the Operator:

- (A) the Operator Representative; and
 - (B) 2 other people not holding a position more senior than the person referred to in Clause 10.4(a)(iv)(A), with at least one person from the Operator whose primary role and expertise is in respect of the Operator Activities.
- (b) The objectives of the Senior Project Group are to:
 - (i) monitor the overall progress of the NLR Delivery Works;
 - (ii) review all progress reports provided by the Managing Contractor under the Managing Contractor Contract and the Rolling Stock Supplier under the Rolling Stock Supply Contract;
 - (iii) review each report provided by the Operator in relation to the Operator Activities;
 - (iv) facilitate the development of a long term, collaborative working relationship between TfNSW, the Managing Contractor, the Rolling Stock Supplier and the Operator;
 - (v) assist with the resolution of any matters referred to the Senior Project Group by TfNSW, the Managing Contractor, the Rolling Stock Supplier or the Operator; and
 - (vi) review and consider such other matters relating to the delivery of the NLR as are agreed between TfNSW, the Managing Contractor, the Rolling Stock Supplier and the Operator from time to time.
- (c) The Senior Project Group will meet monthly until the date which is three months after the NLR Handover Date.
- (d) The TfNSW Representative will convene the meetings of the Senior Project Group. The meetings will be chaired by the most senior TfNSW attendee. TfNSW will provide the secretariat.
- (e) At TfNSW's request, the Managing Contractor, the Rolling Stock Supplier or the Operator must procure the attendance of representatives of any of their subcontractors at meetings of the Senior Project Group. TfNSW is also entitled to invite representatives of the State or any Governmental Agency to attend meetings of the Senior Project Group.
- (f) The Managing Contractor, the Rolling Stock Supplier or the Operator may, with TfNSW's consent, have a representative of any of their respective subcontractors attend any meeting of the Senior Project Group.
- (g) All persons invited or directed to attend meetings as provided by Clauses 10.4(e) and (f) will do so as observers who:
 - (i) are not members of the Senior Project Group;
 - (ii) have no voting rights at meetings of the Senior Project Group; and
 - (iii) may only present such information and participate in the meeting discussions to the extent invited by the meeting chairperson.
- (h) The Senior Project Group may establish working groups as required in relation to particular aspects of the delivery of the NLR, including to prepare for commissioning and operational readiness or provide a non-binding forum for the Managing Contractor, the Rolling Stock Supplier or the Operator to present its proposed solutions and for the members to discuss the solutions.

- (i) The Senior Project Group and each working group are consultative and advisory only and nothing which occurs during a meeting of any such group will be binding on TfNSW, the Managing Contractor, the Rolling Stock Supplier or the Operator.

10.5 Provision of information

- (a) When information is reasonably required by the Operator from the Managing Contractor or the Rolling Stock Supplier, the Operator:
 - (i) must provide reasonable notice to TfNSW which must be at least 10 Business Days (except in special circumstances) or any longer period of notice required under the Managing Contractor Contract or Rolling Stock Supply Contract requesting such information and specifying the date by which such information is required; and
 - (ii) must ensure that any notice given under Clause 10.5(a)(i) provides TfNSW with the longest possible time to obtain the information from the Managing Contractor or the Rolling Stock Supplier.
- (b) The Parties acknowledge and agree that all requests for information from the Managing Contractor and the Rolling Stock Supplier regarding the Operator and the Operator Activities will be made through TfNSW.
- (c) When any information is requested from the Operator by TfNSW in response to a request received under Clause 10.5(b), including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the NLR Delivery Work with the Operator Activities, the Operator must:
 - (i) provide the information to TfNSW within the time requested by TfNSW having regard to the time within which the information is required to be provided under the Managing Contractor Contract or the Rolling Stock Supply Contract provided that this time is reasonable; and
 - (ii) ensure that the information provided is accurate.

10.6 Review of design documents

- (a) The Operator must, using Good Industry Practice:
 - (i) work with TfNSW (or where directed by TfNSW, with the Managing Contractor or the Rolling Stock Supplier) to assist them to complete the design of the NLR Works and Contract LRV Deliverables; and
 - (ii) provide all necessary information regarding the Operator Activities to TfNSW and the Managing Contractor or the Rolling Stock Supplier in respect of the NLR Works and Contract LRV Deliverables to permit the Managing Contractor and the Rolling Stock Supplier to complete the design of the NLR Works and the Contract LRV Deliverables,so that they are acceptable to the TfNSW Representative and otherwise enable the Operator to comply with this Contract.
- (b) TfNSW will provide the Operator with copies of the NLR Design Documentation to review in accordance with this Clause 10.6.
- (c) Without limiting the Operator's obligations under Clause 10.6(a) the Operator must, within five Business Days of receipt of any NLR Design Documentation, notify TfNSW if the Operator considers using Good Industry Practice that any part of the NLR Design Documentation:
 - (i) does not comply with the Contract Stage Design Package;
 - (ii) does not comply with any Law or Authorisation required to be held by the Operator in order to carry out the Operator Activities; or
 - (iii) contains Material Design Change.

- (d) Each notice issued under Clause 10.6(c) must include:
 - (i) full particulars of the matters identified; and
 - (ii) the reasons for the opinion formed by the Operator in respect of the matters identified.
- (e) If:
 - (i) TfNSW agrees that any NLR Design Documentation contains a Material Design Change; and
 - (ii) TfNSW does not direct the Managing Contractor or the Rolling Stock Supplier to make the necessary changes to the NLR Design Documentation to remove the Material Design Change or the impacts of the Material Design Change on the Operator,

then TfNSW will direct a Modification with a view to mitigating the impact of the Material Design Change on the Operator Activities.
- (f) If TfNSW and the Operator are unable to agree whether any NLR Design Documentation contains a Material Design Change within 10 Business Days of the Operator receiving the relevant NLR Design Documentation, TfNSW may refer the matter for determination by an Expert under Clause 64.2.
- (g) In this Clause 10.6, 'Material Design Change' means:
 - (i) any aspect of any NLR Design Documentation that does not comply with the Contract Stage Design Documentation;
 - (ii) which has a material impact on the ability of the Operator to comply with its obligations under this Contract or the cost of the Operator complying with its obligations under this Contract; and
 - (iii) which is not a change that should or ought to have been anticipated and taken into account by the Operator exercising Good Industry Practice in deciding to tender its Proposal and to enter into this Contract and each other Transaction Document.

10.7 Movement of light rail vehicles

- (a) The Operator must make available to TfNSW a sufficient number of Drivers of light rail vehicles for the purposes of shunting Contract LRVs within the NLR Site.
- (b) The Operator must provide a sufficient number of Drivers of light rail vehicles to enable the NLR Works and Contract LRV Deliverables to be tested and commissioned in accordance with the Managing Contractor Contract and the Rolling Stock Supply Contract.
- (c) If, on any day that testing and commissioning activities are undertaken under the Managing Contractor Contract or the Rolling Stock Supply Contract, the Operator does not provide the Drivers referred to in this Clause 10.7 or does not provide any other support or resources required to be provided by the Operator under this Contract for the purpose of carrying out those testing and commissioning activities, the Operator must pay liquidated damages to TfNSW in the amount of [REDACTED] per day.

10.8 Attendance at tests

- (a) TfNSW will give the Operator notice of any testing or commissioning to be undertaken in accordance with the Managing Contractor Contract or the Rolling Stock Supply Contract (**NLR Tests**).
- (b) NLR Tests may be attended and witnessed by the Operator.
- (c) NLR Tests may proceed whether or not the Operator chooses to attend and witness those tests.

10.9 Inspection of NLR Delivery Work

- (a) The Operator must:
 - (i) inspect any NLR Delivery Work within five Business Days after the TfNSW Representative gives notice to the Operator to do so; and
 - (ii) review any NLR Delivery Test Documents within five Business Days after those documents are made available by the Managing Contractor or the Rolling Stock Supplier (as the case may be),and, in accordance with Good Industry Practice, notify TfNSW if the NLR Delivery Work or the NLR Delivery Work to which the NLR Delivery Test Documents relate:
 - (i) does not comply with the Contract Stage Design Package; or
 - (ii) does not comply with any Law or Authorisation required to be held by the Operator in order to carry out the Operator Activities.
- (b) Each notice issued under Clause 10.9(a) must include:
 - (i) full particulars of the defects, omissions or other matters identified; and
 - (ii) the reasons for the opinion formed by the Operator in respect of the defects, omissions or matters identified.
- (c) TfNSW will provide the Operator with copies of all operating and maintenance manuals supplied by the Managing Contractor and the Rolling Stock Supplier under the Managing Contractor Contract or the Rolling Stock Supply Contract (as applicable).

10.10 Supply and installation of equipment

Prior to the Planned Light Rail Service Commencement Date, the Operator must supply and install at the NLR Maintenance and Stabling Facilities the special tools and equipment and any other items that the Operator considers are necessary to enable it to conduct the Operator Activities.

10.11 Operational Readiness Activities

- (a) The Operator must, prior to the Planned Contract Bus and Ferry Service Commencement Date, develop a plan covering all activities required to be undertaken by the Operator in order for it to commence the Light Rail Service by the Planned Light Rail Service Commencement Date which must:
 - (i) include key delivery milestones and support services to be provided by the Managing Contractor and the Rolling Stock Supplier;
 - (ii) provide details of all final fit out and stocking activities to be undertaken by the Operator at the NLR Maintenance and Stabling Facilities prior to the commencement of the Light Rail Service;
 - (iii) provide details of all special tools and equipment and spares to be procured by the Operator prior to the commencement of the Light Rail Service;
 - (iv) include a detailed program relating to all Accreditation required to be obtained by the Operator in order to perform the Light Rail Service;
 - (v) include a detailed program relating to the development of the Operator's operations and maintenance procedures and Safety Management System in relation to the NLR;
 - (vi) include a detailed program relating to updating the Operator's Asset Management System in relation to the NLR in accordance with Clause 30.2;
 - (vii) include a detailed program for uploading data into the Operator's Asset Information System in relation to the NLR so that the Asset Management System is finalised in accordance with Clause 30.2;

- (viii) include a detailed program for Staff recruitment and all training necessary to enable the Operator:
 - (A) to facilitate testing and commissioning the NLR in accordance with the Managing Contractor Contract and the Rolling Stock Supply Contract;
 - (B) to operate and maintain the NLR; and
 - (C) otherwise as necessary to commence the Light Rail Service; and
- (ix) include details of the public and key stakeholder communications to be undertaken by the Operator prior to commencement of the Light Rail Service,

(Operational Readiness Plan).

- (b) The Operator must ensure that the Operational Readiness Plan is consistent with the NLR Delivery and Testing Plans issued to the Operator by TfNSW and facilitates the completion of all work required to hand over the NLR to the Operator by the Planned NLR Handover Date.
- (c) TfNSW may provide comments on and request amendments to the Operational Readiness Plan from time to time. The Operator must amend the Operational Readiness Plan to incorporate any comments or amendments requested by TfNSW to the extent they are necessary to ensure that the Operational Readiness Plan complies with and achieves the outcomes required by this Contract or the Law.
- (d) The Operator must ensure that the Operational Readiness Plan is tabled and discussed at meetings of the Commissioning Management Team.
- (e) The Operator must update the Operational Readiness Plan from time to time so that it continues to meet the requirements of Clause 10.11(a), the Law and this Contract.
- (f) The Operator must comply with the Operational Readiness Plan.

10.12 Delay in NLR handover

If the Certificate of NLR Handover is not issued on or before the Planned NLR Handover Date:

- (a) the Operator must work collaboratively with TfNSW to mitigate the impact of that delay on the Operator Activities; and
- (b) notwithstanding anything to the contrary in this Contract, the Operator has no Claim against TfNSW in relation to any such delay.

10.13 Provision of access after handover

The Operator must at all times after the NLR Handover Date:

- (a) permit the Managing Contractor and the Rolling Stock Supplier to execute the NLR Delivery Work on the applicable parts of the NLR:
 - (i) at the same time as the Operator is performing the Operator Activities; and
 - (ii) at the times agreed with the Managing Contractor or the Rolling Stock Supplier, or failing agreement at the times determined by the TfNSW Representative acting reasonably,
 and for this purpose must ensure the Managing Contractor and the Rolling Stock Supplier:
 - (iii) have safe, clean and clear access to those parts of the NLR required by them for the purpose of carrying out the NLR Delivery Work; and

- (iv) are provided with accommodation at the NLR Maintenance and Stabling Facilities (or any other relevant part of the Permanent Light Rail Corridor) for those involved in undertaking the NLR Delivery Work,
provided that the Managing Contractor and the Rolling Stock Supplier comply with the Operator's reasonable policies and procedures regarding access to the Permanent Light Rail Corridor as notified to TfNSW;
- (b) protect the NLR from accidental damage by the Managing Contractor or the Rolling Stock Supplier or their contractors;
- (c) provide means of receiving, storing and protecting goods and equipment supplied by the Managing Contractor or the Rolling Stock Supplier to TfNSW or the Operator; and
- (d) comply with the Contract LRV Defect Management Protocol.

10.14 Resolution of interface issues

- (a) The Operator must use its reasonable endeavours to resolve any problems, and work closely and iteratively, with the Managing Contractor and the Rolling Stock Supplier, to achieve the best solution to such problems, including any issues related to:
 - (i) the provision of information;
 - (ii) the obtaining of information;
 - (iii) the adequacy of information provided to, or received from, the Managing Contractor or the Rolling Stock Supplier (as the case may be);
 - (iv) coordination in accordance with this Clause 10; or
 - (v) technical issues with the information provided to, or received from, the Managing Contractor or the Rolling Stock Supplier.
- (b) If, despite having complied with Clause 10.14(a) and using its reasonable endeavours, and working closely and iteratively with the Managing Contractor and the Rolling Stock Supplier, the Operator and the Managing Contractor or the Rolling Stock Supplier fail to resolve a problem between them, the Operator must promptly give the TfNSW Representative written notice of the interface issue or dispute with the Managing Contractor or the Rolling Stock Supplier.
- (c) Upon receipt of the Operator's notice under Clause 10.14(b), the Operator must:
 - (i) attend any coordination meetings convened by the TfNSW Representative between the Operator, the Managing Contractor or the Rolling Stock Supplier (as relevant) and any other relevant person (as determined by the TfNSW Representative acting reasonably); and
 - (ii) work in good faith with the Managing Contractor or the Rolling Stock Supplier (as relevant) to resolve the issue or dispute.

10.15 Effect of conduct of NLR Delivery Activities

- (a) The Operator must promptly advise the TfNSW Representative of all matters arising out of the liaison with the Managing Contractor or the Rolling Stock Supplier (as the case may be) and the design and delivery of the NLR Delivery Works that may have an adverse effect upon the Operator Activities or the Operator's ability to perform its obligations under this Contract.
- (b) The parties acknowledge and agree that the provision of information or notices under this Clause 10:
 - (i) will not mean that the Operator has assumed any liability or responsibility for the design or delivery of the NLR Delivery Works by the Managing Contractor or the Rolling Stock Supplier; and

- (ii) will not entitle the Operator to make any Claim against TfNSW in relation to the design or delivery of the NLR Delivery Works.
- (c) The Operator:
 - (i) acknowledges and agrees that:
 - (A) no act or omission by the Managing Contractor or the Rolling Stock Supplier will, whether or not it causes any delay, disruption or interference to the Operator Activities, constitutes an act or omission of TfNSW or the TfNSW Representative (including any breach of Contract or Modification directed by TfNSW); and
 - (B) notwithstanding anything to the contrary in this Contract, the Operator will have no Claim against TfNSW arising out of or in any way in connection with:
 - (I) the Managing Contractor or the Rolling Stock Supplier carrying out the NLR Delivery Work; or
 - (II) any act or omission of the Managing Contractor or the Rolling Stock Supplier; and
 - (ii) warrants that:
 - (A) the price payable under the Payment Schedule; and
 - (B) the Transition Schedule, Transition In Plan and Operational Readiness Plan,

contain sufficient allowances for the assumption by the Operator of the obligations and risks under this Clause 10, including the cost of all the design iterations required to accommodate the NLR Delivery Work.

11. Managing Contractor and Rolling Stock Supplier deed polls

11.1 Provision of deed polls

- (a) TfNSW will procure the execution of and delivery to the Operator of the Managing Contractor Assurance Deed Poll and the Rolling Stock Supplier Assurance Deed Poll by the Managing Contractor and the Rolling Stock Supplier respectively.
- (b) On or before the Planned Contract Commencement Date, the Operator must:
 - (i) execute the Operator MC Deed Poll and Operator MC Confidentiality Deed Poll in favour of the Managing Contractor and provide those executed documents to TfNSW; and
 - (ii) execute the Operator RS Deed Poll and Operator RS Confidentiality Deed Poll in favour of the Rolling Stock Supplier and provide those executed documents to TfNSW.

11.2 Circumstances where deed polls are not provided

- (a) This Clause 11.2 applies to the extent that TfNSW does not procure the execution and delivery of the Managing Contractor Assurance Deed Poll or Rolling Stock Supplier Assurance Deed Poll in accordance with Clause 11.1(a).
- (b) If the Operator incurs, or is likely to incur, any cost or expense in the performance of its obligations under this Contract arising solely by reason of a breach of the Managing Contractor Contract or Rolling Stock Supply Contract (as the case may be) (**NLR Supplier Breach**) by the relevant counter party (**Relevant NLR Supplier**) the Operator must as soon as practicable provide a notice to TfNSW setting out:
 - (i) details of the NLR Supplier Breach complained of;

- (ii) details of the circumstances which caused the Operator to incur, or which render it likely that the Operator will incur, a cost or expense arising solely by reason of the NLR Supplier Breach; and
 - (iii) substantiation of the costs or expenses incurred, or likely to be incurred, by the Operator arising solely as a result of the NLR Supplier Breach.
- (c) Subject to Clause 11.2(d), TfNSW must in respect of a NLR Supplier Breach, prosecute with due diligence any available claim (**NLR Supply Claim**) against the Relevant NLR Supplier whether such claim arises at Law or under the Managing Contractor Contract or Rolling Stock Supply Contract (as the case may be).
- (d) The Operator agrees that:
 - (i) TfNSW may refuse to prosecute an NLR Supply Claim if:
 - (A) TfNSW, acting reasonably, believes that prosecution of the NLR Supply Claim is likely to have a detrimental effect on the business or reputation of TfNSW or the State;
 - (B) TfNSW has received an opinion of counsel, reasonably acceptable to both TfNSW and the Operator, that there is no reasonable prospect of the NLR Supply Claim being successful; or
 - (C) the Operator is entitled to recover the cost or expense to which the NLR Supply Claim relates from insurances;
 - (ii) the Operator must indemnify TfNSW or provide reasonable security in respect of TfNSW's reasonable costs arising, or which may arise, out of the prosecution of the NLR Supply Claim;
 - (iii) the Operator must prepare and provide TfNSW with all information and documents reasonably necessary or required by TfNSW or the Relevant NLR Supplier to assist with TfNSW prosecuting the NLR Supply Claim;
 - (iv) if TfNSW recovers any amount from a Relevant NLR Supplier in respect of an NLR Supply Claim (**Recovery Amount**), whether in proceedings or by way of settlement, TfNSW agrees that it will pay the Operator the Recovery Amount but only to the extent that the Recovery Amount is referable to the cost or expense of making good the NLR Supplier Breach and subject to the following:
 - (A) a deduction in respect of all reasonable costs (including legal costs) incurred by TfNSW in the prosecution of the NLR Supply Claim;
 - (B) where the Operator has made good the NLR Supplier Breach to the satisfaction of TfNSW prior to receipt of the Recovery Amount, the Operator may hold the Recovery Amount paid to it under this Clause 11.2 for its own benefit; and
 - (C) where the Operator has not made good the NLR Supplier Breach to the satisfaction of TfNSW prior to receipt of the Recovery Amount, the Operator must apply the Recovery Amount paid to it under this Clause 11.2 in making good the NLR Supplier Breach to the satisfaction of TfNSW;
 - (v) this Clause 11.2 is exhaustive of the Operator's rights against TfNSW whether at Law or under this Contract in respect of any NLR Supplier Breach and the Operator will have no Claim against TfNSW arising out of or in any way relating to the Managing Contractor Contract or the Rolling Stock Supply Contract or a NLR Supplier Breach; and
 - (vi) nothing in this Clause 11.2 requires TfNSW to exercise its rights under the Managing Contractor Contract or the Rolling Stock Supply Contract to

ensure that hand over of the NLR occurs by the Planned NLR Handover Date.

- (e) Without affecting any other rights or obligations of the Parties under this Clause 11.2:
 - (i) the Operator may by notice request TfNSW to exercise a right or enforce an obligation under the Managing Contractor Contract or Rolling Stock Supply Contract (**NLR Request**);
 - (ii) TfNSW will, within a reasonable time, use its reasonable endeavours to comply with a NLR Request to the extent it is reasonably able to do so, except where TfNSW acting reasonably considers that the Operator is capable of discharging its obligations under this Contract without the exercise of the right or the enforcement of the obligation the subject of the NLR Request; and
 - (iii) all costs reasonably incurred by TfNSW in complying with a NLR Request are a debt due and payable by the Operator to TfNSW.

Part C – Service Commencement

12. Conditions precedent for commencement of Contract Bus Services and Ferry Service

12.1 Conditions precedent

The following conditions precedent must be fulfilled to TfNSW's satisfaction prior to the Planned Contract Bus and Ferry Service Commencement Date:

- (a) the Operator has delivered to TfNSW evidence satisfactory to TfNSW that the Operator has obtained the insurances required by Clause 43.1(b);
- (b) the Operator has delivered to TfNSW evidence satisfactory to TfNSW that the Operator and the Staff hold the necessary Authorisations to conduct the Contract Bus Services and the Ferry Service and other related Operator Activities;
- (c) delivery by the Operator to TfNSW of the executed Shipyard Outsourcing Arrangement and associated Key Contract Security Document in a form satisfactory to TfNSW;
- (d) delivery by the Operator to TfNSW of counterparts of:
 - (i) the State Bareboat Charterparty;
 - (ii) the State Bus Lease; and
 - (iii) the State Bus Depot Leases,executed by the Operator; and
- (e) TfNSW and RMS have entered into the Wharf Access Deed.

12.2 Certificate of Contract Bus and Ferry Service Commencement

- (a) The conditions precedent set out in Clause 12.1 are for the sole benefit of TfNSW and may only be waived by TfNSW giving notice to the Operator, except that TfNSW may only waive satisfaction of the condition precedent in Clause 12.1(e) with the prior consent of the Operator (acting reasonably).
- (b) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions precedent in Clause 12.1 has been satisfied (or waived by TfNSW), TfNSW will issue to the Operator a Certificate of Contract Bus and Ferry Service

Commencement specifying the Contract Bus and Ferry Service Commencement Date.

- (c) The Contract Bus and Ferry Service Commencement Date will be a date on or after the Planned Contract Bus and Ferry Service Commencement Date (unless the Parties agree otherwise).

12.3 Consequences of non-fulfilment of conditions precedent

If the Operator fails to satisfy the conditions precedent set out in Clauses 12.1(a) to (d) by the Planned Contract Bus and Ferry Services Commencement Date, TfNSW may terminate this Contract by issuing a notice to the Operator with immediate effect and, subject to Clauses 54.5 and 79, this Contract will be of no further effect.

13. Conditions precedent for handover of NLR

13.1 Conditions precedent

The following conditions precedent must be fulfilled to TfNSW's satisfaction prior to the Planned NLR Handover Date:

- (a) the Independent Certifier has issued Certificates of Completion in respect of all separable portions under the Managing Contractor Contract;
- (b) TfNSW has issued a Certificate of Operational Completion under the Rolling Stock Supply Contract;
- (c) the Operator has delivered to TfNSW evidence satisfactory to TfNSW that the Operator has obtained the insurances required by Clause 43.1(c);
- (d) the Operator has delivered to TfNSW evidence satisfactory to TfNSW that the Operator and the Staff hold the necessary Authorisations to conduct the Light Rail Service and other relevant Operator Activities; and
- (e) delivery to TfNSW of counterparts by the Operator of the State LRV Lease executed by the Operator.

13.2 Certificate of NLR Handover

- (a) The conditions precedent set out in Clause 13.1, are for the sole benefit of TfNSW and may only be waived by TfNSW giving notice to the Operator, except that TfNSW may only waive satisfaction of the conditions precedent in Clauses 13.1(a) and (b) with the prior consent of the Operator (acting reasonably).
- (b) TfNSW will give the Operator five Business Days' prior notice when it considers that:
 - (i) the Independent Certifier will issue a Certificate of Completion under the Managing Contractor Contract; and
 - (ii) TfNSW will issue a Certificate of Operational Completion under the Rolling Stock Supply Contract.
- (c) TfNSW will give the Operator notice as soon as practicable if it becomes aware that there will be a delay in the issue of any Certificate of Completion or the Certificate of Operational Completion.
- (d) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions in Clause 13.1 has been satisfied (or waived by TfNSW), TfNSW will issue to the Operator a Certificate of NLR Handover specifying the NLR Handover Date.
- (e) The NLR Handover Date will be a date on or after the Planned NLR Handover Date (unless TfNSW and the Operator agree otherwise).

- (f) The Operator acknowledges and agrees that the issue of the Certificates of Completion and the Certificate of Operational Completion is binding on the Operator in relation to the satisfaction of the conditions precedent set out in Clause 13.1.

13.3 Commencement of Light Rail Service

- (a) On and from the Contract Commencement Date the Operator must perform the Operational Readiness Activities.
- (b) The Operator must complete the Operational Readiness Activities and provide evidence of such completion to the satisfaction of TfNSW by the Planned Light Rail Service Commencement Date.
- (c) As soon as reasonably practicable after TfNSW is satisfied that the Operator has completed the Operational Readiness Activities, TfNSW will issue to the Operator a Certificate of Light Rail Service Commencement specifying the Light Rail Service Commencement Date.
- (d) The Light Rail Service Commencement Date will be a date on or after the Planned Light Rail Service Commencement Date (unless TfNSW and the Operator agree otherwise).

Part D – Service Delivery

14. Performance of Services

14.1 Commencement of Services

- (a) The Operator must:
 - (i) provide the Contract Bus Services and the Ferry Service on and from the Contract Bus and Ferry Service Commencement Date; and
 - (ii) provide the Light Rail Service on and from the Light Rail Service Commencement Date,for the duration of the Term.
- (b) In performing the Services, the Operator must comply with the requirements of the Services Schedule.

14.2 General Service obligations

The Operator must at all times during the Term:

- (a) perform its obligations under this Contract:
 - (i) in accordance with the Services Schedule and the Service Level Schedule;
 - (ii) in accordance with Good Industry Practice;
 - (iii) so as to meet or exceed the Key Performance Indicators;
 - (iv) so as to minimise disruption to the Services and to mitigate any unavoidable disruption to the fullest extent possible;
 - (v) so as to prevent injury to or death of persons and damage to property; and
 - (vi) in a proper, competent, courteous, safe and reliable manner;
- (b) be of good character and fit to conduct and manage the Operator Activities;
- (c) provide the Services (other than the Dedicated School Services):

- (i) without favouring one mode of Service over another and giving equal priority to each mode of Service;
 - (ii) on the relevant Routes;
 - (iii) in accordance with the relevant Timetables set out in section 2 of the Service Level Schedule and the relevant provisions of the Services Schedule; and
 - (iv) in a manner that effectively and efficiently carries out the Contract Service Levels set out in the Service Level Schedule; and
- (d) 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 a manner that effectively and efficiently carries out the Contract Service Levels set out in the Service Level Schedule; and
- (e) maintain, repair, replace and refurbish the Assets in accordance with the Assets Schedule.

14.3 Non exclusivity

- (a) The right to provide the Services under this Contract is non-exclusive.
- (b) The Operator acknowledges that TfNSW may contract with one or more service provider(s) to provide Public Passenger Services along or near the Routes specified in this Contract.
- (c) Nothing in, or contemplated by, the Transaction Documents or elsewhere confers on the Operator:
 - (i) any ownership of, or property or proprietary right in or over, the Routes;
 - (ii) any other right or interest to operate any Public Passenger Service or other transport service other than the Services (**Other Services**);
 - (iii) any right to provide or be paid for Other Services.
- (d) The Operator has no Claim against TfNSW or STA in relation to the award, provision, operation or amendment of Other Services or the establishment, award, provision or operation of any new Public Passenger Services by TfNSW or STA.

Part E – Service requirements

15. Publication and display of public transport information and marketing

15.1 General requirements

- (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 the Services, in accordance with Item 5 of the Services Schedule.

15.2 Transport information

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

15.3 Operator Marketing Plan

- (a) No later than 40 Business Days prior to the commencement of each Contract Year (excluding the first Contract Year), the Operator must prepare and submit to TfNSW a draft of the Operator Marketing Plan covering the relevant Contract Year which must:
 - (i) identify the context for the plan and identified marketing opportunities for the Contract Year;
 - (ii) state the marketing objectives for the Contract Year (for example, patronage growth, safe use of public transport in Newcastle or operational communication);
 - (iii) identify audience profile and insights including the Operator's approach to market segmentation and target audiences;
 - (iv) set out a planned calendar of marketing, promotional, public relations and other engagement activities, providing an overview of each activity, implementation timing and budget;
 - (v) detail the Operator's approach to creative content and the channels or resources to be used;
 - (vi) identify the social media channels to be used by the Operator during the Contract Year to provide information in relation to the Services to customers;
 - (vii) provide for the inclusion in marketing materials (where relevant) of information and references to TfNSW customer channels including the transportsw.info website and apps and relevant services and products including the Ticketing Equipment; and
 - (viii) be consistent with TfNSW policies, guidelines and programs advised to the Operator prior to the submission date.
- (b) Within 10 Business Days after submission of a draft Operator Marketing Plan under Clause 15.3(a), TfNSW may provide comments on the draft Operator Marketing Plan.
- (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under Clause 15.3(b), the Operator must provide to TfNSW for its approval a revised version of the Operator Marketing Plan amended to incorporate any comments provided by TfNSW under Clause 15.3(b).
- (d) TfNSW will approve the Operator Marketing Plan if it is consistent with TfNSW policies, guidelines and programs advised to the Operator prior to the submission date and adequately incorporates any comments required by TfNSW under Clause 15.3(b).

- (e) The Operator must only undertake marketing in accordance with:
 - (f) in respect of the first Contract Year, the marketing plan set out in Schedule 23; and
 - (g) in respect of subsequent Contract Years, the final Operator Marketing Plan approved by TfNSW under this Clause 15.3.
- (h) The parties acknowledge and agree that the Operator Marketing Plan may be updated by the Operator during the Contract Year. The Operator must notify TfNSW of any updates and follow the process set out in this Clause 15.3.
- (i) The Operator must notify TfNSW, and obtain TfNSW's approval (which approval may not be unreasonably withheld), prior to the Operator undertaking any additional marketing which is not included in the Operator Marketing Plan approved by TfNSW under this Clause 15.3.

15.4 Social media

The Operator must establish and operate throughout the Term, its own social media channels (including a Twitter feed) to provide real time information to customers regarding the availability and performance of the Services and enable customers to provide direct feedback. The Operator must operate the social media channels in accordance with the TfNSW Social Media Policy and Framework.

15.5 Other requirements

The Operator must:

- (a) unless otherwise agreed by TfNSW, ensure that all marketing materials are provided to TfNSW for approval prior to publication;
- (b) unless otherwise agreed by TfNSW, not publish or make publicly available any marketing materials which have not been approved by TfNSW;
- (c) at the Operator's cost, produce the Operator's marketing materials in accordance with the Operator Marketing Plan;
- (d) where requested to do so by TfNSW, make advertising space available on Contract Vehicles in accordance with Clause 61.3(e) and do all things reasonably required by TfNSW to install TfNSW marketing campaign materials on the Contract Vehicles; and
- (e) maintain any TfNSW marketing campaign materials in good condition, replacing them where necessary with replacement materials provided by TfNSW and removing them when required by TfNSW.

15.6 Wayfinding Signage Upgrade

- (a) The Operator acknowledges that TfNSW is undertaking a system wide upgrade of all wayfinding signage across the New South Wales public transport network covering all modes and locations (**Wayfinding Signage Upgrade**).
- (b) TfNSW will provide to the Operator free of charge all new signage and wayfinding materials required to be installed at Bus Transit Stops and Wharves in Newcastle as part of the Wayfinding Signage Upgrade.
- (c) The Operator will be responsible for the installation of new signage and wayfinding materials at Bus Transit Stops and Wharves in Newcastle as part of the Wayfinding Signage Upgrade in accordance with this Clause 15.6.

15.7 Wayfinding Signage Upgrade Program

- (a) No later than 10 Business Days after the Contract Commencement Date, the Operator must prepare and submit to TfNSW a draft of the Wayfinding Signage Upgrade Program for approval by TfNSW.

- (b) Within 10 Business Days after submission of a draft Wayfinding Signage Upgrade Program under Clause 15.7(a), TfNSW may provide comments on the draft Wayfinding Signage Upgrade Program.
- (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under Clause 15.7(b), the Operator must provide to TfNSW for its approval a revised version of the Wayfinding Signage Upgrade Program amended to incorporate any comments provided by TfNSW under Clause 15.7(b).
- (d) The Operator must not amend or deviate from the Wayfinding Signage Upgrade Program without TfNSW's consent.

15.8 Delivery of Wayfinding Signage Upgrade Program

The Operator must, at its own cost and expense:

- (a) diligently commence and proceed to execute the work under the Wayfinding Signage Upgrade Program (**WSUP Works**) and complete the WSUP Works as soon as reasonably practicable but not later than the date that is 18 months after the Contract Bus and Ferry Service Commencement Date;
- (b) obtain all Authorisations required in relation to the WSUP Works;
- (c) obtain any other third party approvals or licences required in relation to the WSUP Works (including rights to carry out work on any land that does not belong to TfNSW) and comply with the requirements of those approvals or licences;
- (d) ensure that the WSUP Works comply with the Wayfinding Signage Specification and all Laws and Authorisations;
- (e) carry out the WSUP Works:
 - (i) in a sound and workmanlike manner;
 - (ii) with due care and skill in applying accepted engineering, construction and maintenance procedures;
 - (iii) with due expedition and without unnecessary or unreasonable delays; and
 - (iv) in accordance with the Wayfinding Signage Specifications and all Laws and Authorisations;
- (f) comply with any direction from TfNSW to rectify or remove and replace any WSUP Work that does not comply with the Wayfinding Signage Specification or the requirements of this Clause 15.8; and
- (g) maintain the WSUP Works in accordance with the Services Schedule and so that at the end of the Term the WSUP Works are in good condition (fair wear and tear excepted).

16. Service Desk

- (a) The Operator must provide and operate a Service Desk, in accordance with the requirements set out in Item 7 of the Services Schedule, from the Contract Bus and Ferry Service Commencement Date and for the duration of the Term.
- (b) Without limiting the requirements of this Clause 16 and the Services Schedule:
 - (i) the Operator must manage and resolve all customer complaints in accordance with the TfNSW Customer Complaints Policy including by promptly dealing with and responding to all complaints and feedback referred from Transport Infoline;
 - (ii) while ever TfNSW is operating the Transport Infoline services, the Operator must use the Transport Infoline services for the provision of the Service Desk services under this Contract;

- (iii) the Operator must record all complaints or feedback received by the Operator's Service Desk in the TfNSW Customer Feedback System and complete the entry of all relevant data in relation to the management of complaints in respect of the Services in accordance with the TfNSW Customer Complaints Policy;
 - (iv) the Operator must, at its own cost, obtain and maintain sufficient licences in respect of the TfNSW Customer Feedback System, and ensure that sufficient Staff are trained to use that system, to enable the Operator to perform its obligations under this Clause 16(b);
 - (v) the Operator must comply with TfNSW's directions in relation to a standardised approach to the complaints handling software used as part of the TfNSW Customer Complaints Policy (including by ensuring that any other complaints management software used by the Operator is compatible and integrated with the software used by TfNSW).
- (c) Nothing in Clause 16(b):
 - (i) limits the Operator's responsibility for resolving calls or complaints received through the Operator's Service Desk, the TfNSW Customer Feedback System or the Transport Infoline services; or
 - (ii) makes TfNSW responsible for resolving calls or complaints received through the Operator's Service Desk, the TfNSW Customer Feedback System or the Transport Infoline services.
- (d) If and when TfNSW chooses to discontinue the Transport Infoline services, the Operator must cease using those services but must otherwise continue to provide the Service Desk in accordance with this Contract. The Parties acknowledge and agree that the discontinuation of the Transport Infoline services is not a Modification or a Compensable Event.

17. Key Performance Indicators

- (a) Subject to paragraph 5.7 of the KPI Schedule, the Operator must meet or exceed the Key Performance Indicators:
 - (i) in the case of the Contract Bus Services and Ferry Service, from the Planned Contract Bus and Ferry Service Commencement Date; and
 - (ii) in the case of the Light Rail Service, from the Planned Light Rail Service Commencement Date.
- (b) TfNSW will measure the Operator's performance against the Key Performance Indicators.
- (c) The Operator must comply with its obligations relating to the measurement and reporting of Key Performance Indicators and the remedy of any breaches of the Key Performance Indicators as set out in the KPI Schedule.

18. Fares and Ticketing

18.1 Fares

- (a) The Operator must offer Fares for Tickets to travel on Services in accordance with the categories and prices outlined in the Fares and Ticketing Schedule and as amended by TfNSW and notified to the Operator in writing from time to time. The Operator must comply with all directions issued by TfNSW regarding Fares for Special Event Services.

- (b) The Operator must not offer any other fare for Tickets to travel on Services without prior written approval from TfNSW of the other fare proposed, such approval being given at TfNSW's absolute discretion.
- (c) The Operator must deal with all revenue from the sale of Tickets in accordance with Item 10 of the Services Schedule and account for all revenue from the sale of Tickets in accordance with the Payment Schedule.

18.2 Ticketing and revenue protection

- (a) The Operator must take reasonable steps to ensure all passengers travelling on a Service have a valid Ticket, including that the Ticket is valid for the journey being taken by the passenger.
- (b) The Operator authorises TfNSW, and persons for and on behalf of TfNSW, to enter and remain on any Contract Vehicle providing Services or any Transit Stop, Interchanges or Wharf, 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 18.2(b).
- (d) Subject to the terms of this Contract:
 - (i) TfNSW will be responsible for the collection of fare revenue in relation to the Ticketing Equipment;
 - (ii) the Operator will be responsible for the collection of any other fare revenue on the Services;
 - (iii) the Operator will be responsible for protection of fare revenue to the extent specified in the Services Schedule;
 - (iv) the Operator is not entitled to any fine revenue received by the Operator; and
 - (v) the Operator must remit to TfNSW all fine revenue received by the Operator.
- (e) The Operator must minimise fare evasion on the Services including by:
 - (i) operating in accordance with all relevant TfNSW policies as notified by TfNSW to the Operator from time to time;
 - (ii) providing TfNSW with assurance (to the satisfaction of TfNSW) that the Operator's Authorised Officers are competent and trained to be appointed as and undertake the duties of Authorised Officers;
 - (iii) maximising fare compliance, undertaking revenue protection duties and addressing minor behavioural offences, including the issue of penalty notices, in accordance with relevant Laws;
 - (iv) producing a monthly fare evasion report as specified by TfNSW;
 - (v) co-operating with TfNSW in implementing fare evasion strategies as required by TfNSW, including twice yearly fare evasion surveys; and
 - (vi) co-operating with and providing access to TfNSW, TfNSW Authorised Officers and the NSW Police to enable them to undertake revenue protection and crime prevention activities.

18.3 Prohibition on disincentives, penalties and discounts

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

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

18.4 Travel free of charge

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

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

18.5 Government Subsidised Travel Schemes

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

18.6 Recognition of Transfers

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

18.7 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 18.

18.8 Operator to cooperate with TfNSW Authorised Officers, NSW Police and other emergency services

The Operator must at all times cooperate with and otherwise allow TfNSW Authorised Officers, NSW Police and other emergency services personnel to have full access to the Contract Vehicles, Transit Stops, Interchanges and Wharves to carry out their statutory duties and functions.

19. TfNSW Systems and Equipment

19.1 TfNSW Systems and Equipment

- (a) The Operator must ensure that TfNSW Systems and Equipment are operational at all times during the Term.
- (b) The Operator must cooperate with TfNSW in facilitating the installation, testing and ongoing maintenance of TfNSW Systems and Equipment including by:
 - (i) making each Asset and the Operator's premises and any required equipment available to TfNSW or TfNSW's Associates, on reasonable notice from TfNSW (being not more than 10 Business Days' notice), for installation, testing and maintenance of TfNSW Systems and Equipment by or on behalf of TfNSW;
 - (ii) allowing TfNSW and TfNSW's Associates to travel, free of any direct or indirect charge by the Operator to TfNSW, on each Contract Vehicle as requested to test or inspect any TfNSW Systems and Equipment; and

- (iii) liaising with TfNSW and TfNSW's Associates as required in relation to the installation, testing and ongoing maintenance of TfNSW Systems and Equipment.
- (c) The Operator must maintain TfNSW Systems and Equipment in accordance with Item 9 of the Services Schedule.
- (d) The Operator must comply with any reasonable operational procedures, guidelines, directions and training requirements for TfNSW Systems and Equipment issued by TfNSW from time to time.
- (e) The Operator acknowledges that TfNSW:
 - (i) owns any TfNSW Systems and Equipment installed during the Term, including any Intellectual Property in the TfNSW Systems and Equipment, unless TfNSW agrees otherwise in writing;
 - (ii) may use any data collected by TfNSW Systems and Equipment as the property of the State and the Operator must not modify any such data; and
 - (iii) reserves the right for the State to use the data as it sees fit, including providing other authorised service providers with access to data relating to their services.
- (f) The Operator acknowledges and agrees that it has no Claim against TfNSW or STA in respect of any delays or interruptions in the Services arising out of or in connection with any failure of any TfNSW Systems and Equipment.
- (g) If any TfNSW Systems and Equipment on a Contract Vehicle fails to operate while the Contract Vehicle is performing a Service, the Operator must ensure that the Contract Vehicle is taken out of service until the faulty system or equipment is repaired or replaced, in accordance with the following timeframes:
 - (i) immediately if a safety issue arises;
 - (ii) when the Contract Vehicle returns to the Contract Depot, NLR Maintenance and Stabling Facilities or Shipyard, if the failure occurs to a TSE Rotable Asset; or
 - (iii) at the end of the day for any other failures.

The obligation set out in this Clause 19.1(g) does not apply where the Contract Vehicles are affected by a system wide failure of the relevant TfNSW Systems and Equipment. In this Clause, 'system wide failure' means a failure that affects all public transport services that use the relevant system in Newcastle that is not caused or contributed to by any act or omission of the Operator or an Operator's Associate. Where a system wide failure of any TfNSW Systems and Equipment occurs, the Operator may seek KPI Relief in respect of the key performance indicators set out Table 18 and Table 22 in the KPI Schedule for the period that the Contract Vehicles are affected by the system wide failure on the same basis as if the system wide failure was a Force Majeure Event (provided that the Operator is not required to satisfy the requirement that 350 or more passengers are affected).

- (h) The Operator must not:
 - (i) use the TfNSW Systems and Equipment (or any Intellectual Property in the TfNSW Systems and Equipment) for any purpose other than the performance of its obligations under this Contract; or
 - (ii) use any TfNSW Systems and Equipment on vehicles that are not Contract Vehicles, without the prior written approval of TfNSW.
- (i) The Operator agrees to enter into any agreement with TfNSW, on reasonable commercial terms considered necessary by TfNSW, in relation to any TfNSW Systems and Equipment, when requested by TfNSW to do so. Such agreement will

prevail over this Clause 19.1 to the extent of any inconsistency, unless otherwise agreed.

- (j) The Operator must allow TfNSW or TfNSW's Associates to remove TfNSW Systems and Equipment from each Asset, including by making such Asset or other Operator premises available on reasonable notice from TfNSW.
- (k) If the Operator repairs any damage caused to any Asset by TfNSW when installing, testing, maintaining or removing TfNSW Systems and Equipment, TfNSW will reimburse the Operator the reasonable direct costs of repairing such damage.
- (l) Clauses 19.1(j) and (k) survive termination or expiry of this Contract.
- (m) TfNSW will use reasonable endeavours to provide the Operator with access to such data collected by the Ticketing Equipment as may be reasonably required by the Operator for the sole purpose of making determinations in relation to patronage growth, subject to reasonable conditions, qualifications or restrictions as TfNSW may impose.

19.2 Participation in the DCIS

- (a) The Operator must participate in the DCIS (or any successor or additional service developed by TfNSW or any of TfNSW's Associates for use by TfNSW).
- (b) The Operator must advertise the DCIS (or any successor service) phone number and internet address on its published Timetables and Dedicated School Services Timetables, website, promotional material and other literature at Transit Stops, Interchanges and Wharves and within Contract Vehicles in a format reasonably required by TfNSW.
- (c) TfNSW will pay the centralised costs in respect of Transport Infoline (including software licensing fees).
- (d) TfNSW may give the Operator access to data collected by DCIS as required for the purpose of managing its business and for planning and marketing purposes, subject to reasonable conditions, qualifications or restrictions as TfNSW may impose.
- (e) The Operator acknowledges that all data collected by DCIS will constitute New Contract Material and the title and property to Intellectual Property in or in relation to all data collected by DCIS will vest in TfNSW, in accordance with Clause 60.1.

19.3 OSD

- (a) The Operator must submit data to the OSD, as required by the Reporting Schedule.
- (b) The Operator acknowledges that all data submitted to the OSD will constitute New Contract Material and the title and property to Intellectual Property in or in relation to all data submitted to the OSD will vest in TfNSW, in accordance with Clause 60.1.

19.4 Compatibility of information systems

- (a) Any financial, operational or other information, data or records required to be provided to TfNSW by the Operator must be provided in a form which is compatible with the electronic data and records systems notified by TfNSW to the Operator from time to time.
- (b) The Operator must assist TfNSW to comply with the *NSW Government Open Data Policy 2016* including by ensuring that data supplied to TfNSW by the Operator under this Contract complies with the requirements of that policy.
- (c) TfNSW will use reasonable endeavours to procure six licences of the revenue protection software utilised by TfNSW on the New South Wales public transport network as at the date of this Contract (**Revenue Protection Software**) at no cost to the Operator. The licence provided under this clause will be subject to such reasonable conditions, qualifications or restrictions as TfNSW may impose. It will

be reasonable for TfNSW to require the Operator to comply with the terms of any existing licence agreement that is held by TfNSW in respect of the Revenue Protection Software.

20. Requirements of Third Parties

20.1 Third Party Agreements

- (a) In this Clause 20, a reference to a 'Third Party' is a reference to the relevant non-TfNSW party to the relevant Third Party Agreement as identified in Schedule 18.
- (b) In performing the Operator Activities, the Operator:
 - (i) must comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of each Third Party Agreement (other than those obligations set out in the relevant table in Schedule 18) as if it were named as TfNSW in that Third Party Agreement so as to ensure that TfNSW is able to fully meet its obligations under each Third Party Agreement or otherwise at Law;
 - (ii) must assist TfNSW in any way that TfNSW reasonably requires to enable TfNSW to perform the obligations identified for TfNSW to perform in each table in Schedule 18; and
 - (iii) may not exercise any of TfNSW's Powers under any Third Party Agreement unless agreed by TfNSW in writing.

20.2 Requirements of relevant third parties

- (a) This Clause is in relation to the requirements of third parties who have jurisdiction to give directions in relation to the Operator Activities (each a **Relevant Third Party**).
- (b) The Operator must in performing the Operator Activities comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of each Relevant Third Party.

20.3 General obligations

- (a) Nothing in this Clause 20 limits TfNSW's rights or affects the Operator's obligations under any clause of this Contract.
- (b) The Operator acknowledges that:
 - (i) it has been provided with copies the Third Party Agreements prior to the date of execution of this Contract; and
 - (ii) it has reviewed and carefully considered the Third Party Agreements.
- (c) To the extent that the obligations on the Operator:
 - (i) in relation to the Third Party Agreements under this Clause 20, impose greater or more onerous obligations on the Operator than other provisions of this Contract, the Operator must satisfy and meet the obligations of TfNSW under the Third Party Agreements; and
 - (ii) in relation to the requirements of Relevant Third Parties under this Clause 20, impose greater or more onerous obligations on the Operator than other provisions of this Contract, the Operator must satisfy and meet the obligations of those Relevant Third Parties.
- (d) Except as expressly set out in this Contract, the Operator bears the full risk of:
 - (i) complying with the obligations under this Clause 20; and
 - (ii) any acts or omissions of a Third Party or Relevant Third Party or its employees, agents, contractors or officers,

and the Operator has no Claim against TfNSW or STA arising out of or in any way in connection with the risks referred to in this Clause 20 or any acts or omissions of a Third Party or Relevant Third Party or their employees, agents, contractors or officers.

- (e) The Operator must, in carrying out the Operator Activities:
 - (i) comply with any reasonable directions of the TfNSW Representative relating to any Third Party Agreement or the requirements of a Relevant Third Party;
 - (ii) ensure that no act or omission of the Operator constitutes, causes or contributes to any breach by TfNSW of any Third Party Agreement or its obligations at Law;
 - (iii) comply with the restrictions, liabilities, requirements and obligations that apply to TfNSW under, and in relation to, the Third Party Agreements as if TfNSW were to exercise those functions; and
 - (iv) otherwise act consistently with the terms of each Third Party Agreement.
- (f) Where under this Clause 20 the Operator is required to give a document, notice or information to a Third Party or Relevant Third Party, the Operator must not provide any such document, notice or information directly to the Third Party or Relevant Third Party and unless and until the Operator has provided a draft of such document, notice or information to TfNSW within a reasonable time sufficient for TfNSW to review and comment on the document, notice or information prior to its release to the Third Party or Relevant Third Party.
- (g) The Operator acknowledges that to the extent that a Third Party or Relevant Third Party makes no representation as to any state of affairs, the Operator agrees that TfNSW similarly makes no representation to the Operator in respect of that state of affairs.
- (h) Whenever, pursuant to the terms of a Third Party Agreement, TfNSW makes an acknowledgement or gives a release, warranty, indemnity or covenant to the Third Party under any clause of a Third Party Agreement, the Operator is deemed to make the same acknowledgement or give the same release, warranty, indemnity or covenant to TfNSW on the same terms as the acknowledgement, release, warranty, indemnity or covenant made or given by TfNSW.
- (i) If TfNSW enters into a new third party agreement after the date of execution of this Contract, TfNSW may deem that third party agreement to be a Third Party Agreement for the purposes of this Contract.
- (j) TfNSW agrees that:
 - (i) if the final form of a Third Party Agreement is different in any material respect from any draft provided to the Operator prior to the date of execution of this Contract; or
 - (ii) TfNSW deems a third party agreement entered into after the date of this Contract to be a Third Party Agreement for the purposes of this Contract,

TfNSW will issue a Modification Request under Clause 48.1(a). TfNSW's right to withdraw the Modification Request, elect not to proceed with the proposed Modification or reject the Modification Impact Proposal in accordance with Clauses 48.1(b), 48.4(a)(ii), 48.4(a)(iii) and 48.8(c)(ii) (as applicable) will not apply. If TfNSW does not agree on any aspect of the Modification Impact Proposal submitted by the Operator, the parties will consult in good faith and use reasonable endeavours to agree on an acceptable resolution to the matters set out in the Modification Impact Proposal and Clauses 48.6 and 48.7 will apply.

Part F – Planning and service changes

21. Transport for Newcastle

21.1 Objectives for Transport for Newcastle

The Operator must perform the Operator Activities so as to:

- (a) support the achievement of the Contract Objectives generally and by acting as the face of public transport in Newcastle in respect of the Contract Objectives set out in Clauses 3(a)(ii)(D), (E), (F) and (G);
- (b) ensure that the Operator's relationship with key stakeholders in the Newcastle area is supportive of the role of TfNSW as the funder and approver of Public Passenger Services;
- (c) support the delivery of urban renewal and public transport capital works (including the NLR) in Newcastle as proposed by TfNSW from time to time;
- (d) facilitate better access to, and greater mobility within, the Newcastle community;
- (e) facilitate network-wide efficient, coordinated and reliable movements of passengers within Newcastle;
- (f) facilitate integrated and seamless travel within and between different modes of transport;
- (g) optimise the network capacity of all Service modes and reduce journey time;
- (h) provide predictable and reliable services and journey times and minimise any inconvenience caused by disruptions to the transport system; and
- (i) enhance the usability of the transport system in Newcastle and the quality of experience of that transport system.

21.2 Introduction of Operator's Service Development Plan

- (a) The Operator must implement the Contract Service Level, Timetable and Dedicated School Services Timetable changes set out in the Service Development Plan in accordance with the milestones and timeframes set out in the Service Development Plan.
- (b) All Contract Service Level, Timetable and Dedicated School Services Timetable changes required under Clause 21.2(a) must be:
 - (i) advised to TfNSW in accordance with the Governance Schedule; and
 - (ii) notified to TfNSW via the TSAR system.
- (c) Subject to Clause 21.2(d), the Operator has no Claim against TfNSW or STA for any adjustment to the Payments or any other amount in relation to the implementation of the Contract Service Level changes, Timetable changes, Dedicated School Services Timetable changes or Service Variations required to implement the Service Development Plan.
- (d) If a Service Variation approved by TfNSW prior to the implementation of any part of the Service Development Plan requires changes to the Service Development Plan, the Operator may also submit corresponding variations to the Service Development Plan and those changes will be deemed to form part of the Service Variation for the purpose of this Contract.

21.3 Review of Contract Services Levels and Timetables

- (a) The Operator must:

- (i) develop the Services having regard to the Contract Objectives and the requirements of this Contract;
 - (ii) proactively engage and collaborate with key stakeholders including by:
 - (A) adopting appropriate processes for stakeholder engagement;
 - (B) providing transparent and reliable information to stakeholders in relation to the Operator Activities; and
 - (C) taking into account the interests of stakeholders, including transport system users and members of the Newcastle community;
 - (iii) act as a spokesperson for the Services in Newcastle in accordance with this Contract and TfNSW's policies and planning requirements;
 - (iv) undertake regular reviews of the Contract Service Levels and Timetables (including the Dedicated School Services Timetables) and develop proposals for changes designed to achieve the Contract Objectives and the requirements of this Contract;
 - (v) plan for the development of the Services as part of an integrated transport system, including by undertaking feasibility studies;
 - (vi) develop and implement policies and strategies to improve the safety of the Services and the security of the transport network in Newcastle; and
 - (vii) adopt appropriate processes and procedures for achieving the outcomes referred to in Clauses 21.3(a)(i) to (vi).
- (b) In developing proposals under Clause 21.3(a), the Operator should have regard to:
- (i) the requirements of Clause 21.1;
 - (ii) current patronage and likely future patronage changes;
 - (iii) the needs of passengers and key stakeholders in the Newcastle area;
 - (iv) TfNSW service level guidelines and policies;
 - (v) interconnectivity of the Services with other modes of transport available in Newcastle (including rail and coach services);
 - (vi) the funding envelope available for public transport in Newcastle; and
 - (vii) any new or amended Contract Service Levels requested by TfNSW.
- (c) The Operator must keep TfNSW informed of proposals being developed to change the Contract Service Levels or the Timetables (including the Dedicated School Services Timetables) and must have regard to any directions given by TfNSW in regard to developing proposals.

22. Contract Service Levels and Timetables

22.1 Contract Service Levels

- (a) TfNSW may, but is not obliged to, accept a proposal by the Operator for a change to Contract Service Levels by issuing a notice under Clause 22.1(b).
- (b) TfNSW may introduce new or amended Contract Service Levels, whether or not proposed by the Operator, by notice to the Operator.
- (c) If TfNSW provides notice of new or amended Contract Service Levels, the Operator must:
 - (i) develop a new timetable to efficiently and effectively carry out the requirements of the new or amended Contract Service Levels; and

- (ii) submit the new timetable to TfNSW for approval, in accordance with Clauses 22.2 or 22.3,
within the timeframe specified by TfNSW.
- (d) If TfNSW has not specified any Contract Service Levels, the Operator must deliver the Services in a manner that efficiently and effectively carries out the base level of services required by the Timetables and the Dedicated School Services Timetable.

22.2 Timetables

- (a) If, at any time during the Term, the Operator believes it can deliver the Services (other than the Dedicated School Services) more efficiently and effectively, or is required to submit a revised timetable under Clause 22.1, the Operator must immediately submit a revised timetable for approval by TfNSW, by notice to TfNSW via the TSAR system.
- (b) If, at any time during the Term, the Operator wishes to vary the Timetable, the Operator may submit a revised timetable for approval by TfNSW, by notice to TfNSW via the TSAR system.
- (c) TfNSW may approve or reject a timetable submitted for approval by an Operator, by notice to the Operator.
- (d) If TfNSW approves a revised Timetable, the Operator must operate the Services in accordance with the approved Timetable, within the period specified by TfNSW.
- (e) If TfNSW rejects a revised timetable (or does not respond to the Operator's request for approval), the revised timetable will be of no effect and the Operator must continue to provide the Services in accordance with the approved Timetable.
- (f) The Operator acknowledges that TfNSW may introduce a template for the preparation of timetables, by notice 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.


22.3 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 TSAR system.
- (c) The Operator must:
 - (i) submit a revised timetable under Clause 22.1 immediately after request by TfNSW; or
 - (ii) 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 TSAR system.
- (d) TfNSW may approve or reject a timetable for the Dedicated School Services submitted by the Operator within 10 Business 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.

23. 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 state:
 - (i) the particulars of the Service Variation; and
 - (ii) the date on which the Service Variation will take effect, which:
 - (A) other than in the event of an emergency (as determined by TfNSW), must be after a reasonable period of time to enable the Operator to comply with the Service Variation Notice; and
 - (B) in the event of an emergency (as determined by TfNSW), will be immediately.
- (c) The Operator must comply with the Service Variation Notice and make any necessary amendments to its operations so that it complies with the Service Variation Notice.
- (d) 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 TSAR 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). The Operator must have consulted with TfNSW in accordance with Clause 21.3 prior to submitting a Service Variation request that comprises any change to the Contract Service Levels or Timetables (including the Dedicated School Services Timetables).
- (f) For the avoidance of doubt, nothing in this Clause 23 gives rise to an obligation on TfNSW to approve a request for a Service Variation from the Operator.
- (g) 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 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 4.1 of the Payment Schedule; and
 - (iv) in respect of the Contract Bus Services and the Light Rail Service, if the proposed Service Variation is based on road congestion, the request must also set out:
 - (A) the Routes which are said to be affected by road congestion;
 - (B) Driver and vehicle 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 Services from other factors affecting the relevant Services;
 - (D) traffic flow data to verify a change in road congestion conditions along the affected Routes; and
 - (E) the impact the Operator considers the road congestion to have had on the relevant Services.

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- (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.

Part G – Assets

24. Contract Vehicles

24.1 Performance of the Services using Contract Vehicles

- (a) Subject to Clause 24.4, the Operator must perform:
 - (i) the Contract Bus Services using the Contract Buses;
 - (ii) the Ferry Service using the Contract Ferries; and
 - (iii) the Light Rail Service using the Contract LRVs.
- (b) Subject to Clause 24.2, the Operator must not use Contract Vehicles for any purpose other than the purpose of providing the Services.

24.2 Bus Charter

The Operator may only use a Contract Bus for the purpose of providing charter services:

- (a) when the Contract Bus is not required for the performance of the Services; and
- (b) provided that such use:
 - (i) does not adversely affect the ability of the Operator to provide the Services;
 - (ii) does not adversely affect the ability of the Operator to comply with Clause 57;
 - (iii) does not breach the State Bus Lease or any replacement of that lease; and
 - (iv) does not adversely affect TfNSW's rights under a Transaction Document.

24.3 Contract Vehicle standard

- (a) The Operator must ensure that:
 - (i) each Contract Vehicle is registered and licensed in accordance with all Laws;
 - (ii) each Contract Vehicle:
 - (A) complies with the Asset Schedule and all Laws;
 - (B) is operated and maintained:
 - (l) in accordance with Part H;

- (II) in accordance with Good Industry Practice and so as to ensure that it is always in a condition which enables the Operator to comply with its obligations under this Contract;
 - (C) is clean and tidy and meets the standards required under Annexure 14 of the Asset Schedule when providing the Services;
 - (D) is in a safe operating condition at all times and is maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations, including the DDA Legislation; and
 - (E) displays illuminated destination signs (if available) stating the destination and or the Route.
- (b) The Operator must:
- (i) have available to it enough Contract Vehicles to meet its obligations under this Contract;
 - (ii) only use the best available Contract Vehicles to provide the Services having regard to reasonable operational requirements and the condition, cleanliness, features and age of all Contract Vehicles;
 - (iii) comply with its obligations under the State Bareboat Charterparty, State Bus Lease and State LRV Lease or any replacement of those leases; and
 - (iv) monitor and manage the security and safety of the Staff and passengers on the Contract Vehicles.
- (c) To the extent that it is lawfully able to do so, TfNSW will assign to the Operator the benefit of any manufacturer's warranties in relation to the Existing Buses procured under the Bus Procurement Panel for the Term.
- (d) To the extent that it is lawfully able to do so, TfNSW will use reasonable endeavours to procure that the Operator receives the benefit of any manufacturer's warranty provided in relation to any New Bus procured under the Bus Procurement Panel during the Term.
- (e) Any warranty provided to the Operator under Clause 24.3(c) or (d) that is assigned to the Operator, must, if assigned for a period longer than the Term, be assigned by the Operator back to TfNSW or its nominee by the Termination Date.

24.4 Use of non-compliant Contract Vehicles

- (a) The Operator may use a replacement Bus or Ferry which is not a Contract Bus or Contract Ferry (**Emergency Replacement Vehicle**) only in an emergency and only for the minimum period necessary to overcome the emergency and in any event, for no longer than 48 hours (unless otherwise approved by TfNSW prior to the expiry of the 48 hour period).
- (b) If an Emergency Replacement Vehicle is to be used in an emergency:
 - (i) the Operator must notify TfNSW as soon as practicable (and in any event, not later than 24 hours after it is first used) explaining the particulars of the emergency and details of the Emergency Replacement Vehicle used;
 - (ii) the Operator must ensure that the Emergency Replacement Vehicle is the best available Bus or Ferry (as the case may be) and at a minimum complies with Clause 24.3(a);
 - (iii) the insurances required under Clause 43 must be effective in relation to the Emergency Replacement Vehicle and the use of the Emergency Replacement Vehicle;
 - (iv) the Operator must ensure that the use of the Emergency Replacement Vehicle will not materially adversely affect the provision of the Contract Bus Services or the Ferry Service; and

- (v) the Payments will not be adjusted.
- (c) Where the Operator is unable to provide the Light Rail Service using a Contract LRV the Operator must use a Contract Bus to provide a replacement service for the Light Rail Service.

25. Infrastructure

25.1 Infrastructure standards

The Operator must:

- (a) have access to enough suitably located Contract Depots and procure access to the Shipyard to meet its obligations under this Contract;
- (b) comply with the State Bus Depot Leases and Clause 26.2;
- (c) ensure that the Contract Depots, NLR Fixed Infrastructure, NLR Maintenance and Stabling Facilities, Non-Corridor Assets, NLR Moveable Assets, Interchanges and Light Rail Transit Stops:
 - (i) are at all times fit for the purposes of enabling the Operator to perform its obligations under the Transaction Documents;
 - (ii) comply with the Asset Schedule and all Laws, in addition to any other requirements imposed in any other Transaction Documents;
 - (iii) are operated and maintained:
 - (A) in accordance with Part H;
 - (B) in accordance with Good Industry Practice and so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract;
 - (iv) are clean and tidy and meet the standards required under Annexure 14 of the Asset Schedule;
 - (v) are in a safe operating condition at all times and are maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations, including the DDA Legislation; and
 - (vi) except to the extent necessary for the purposes of complying with this Contract, not:
 - (A) alter or modify the State Assets; and
 - (B) carry out, procure or allow the carrying out of, any works or services on the State Assets,

without the prior written consent of TfNSW and the applicable owner of the property.

25.2 State Bus Depot Lease

- (a) The Operator must, prior to the Planned Contract Bus and Ferry Service Commencement Date, execute two copies of the State Bus Depot Lease and provide them to TfNSW.
- (b) To the extent that it is not possible to do so prior to execution of the State Bus Depot Lease by the Operator, the Operator authorises TfNSW to:
 - (i) insert the Torrens title details, 'Term', 'Commencing Date' and 'Terminating Date' on the cover page of the State Bus Depot Lease;
 - (ii) insert the 'Commencement Date', 'Expiry Date', 'Premises' and 'Term' in clause 1.1 of Annexure A of the State Bus Depot Lease; and

- (iii) arrange for registration of the State Bus Depot Lease under the *Real Property Act 1990* (NSW).

25.3 DDA compliance

- (a) Without in any way limiting the application of the other provisions of this Contract, the Parties acknowledge and agree that all costs of complying with the DDA Legislation will be borne by the Operator except only for the costs of any:
 - (i) upgrades to the TfNSW Systems and Equipment necessarily required to ensure their respective compliance with relevant DDA Legislation; and
 - (ii) structural work to the NLR, or where such structural works are impossible, the replacement of such part of the NLR, necessarily required to ensure that the NLR complies with any order made by a court or tribunal under the DDA Legislation relating only to:
 - (A) the size of access paths (as that term is defined in the DDA Legislation);
 - (B) the size of manoeuvring areas (as that term is defined in the DDA Legislation);
 - (C) the size of passing areas; or
 - (D) the size of doorways and doors.
- (b) The Operator must not undertake any work of the kind described in Clauses 25.3(a)(i) or (ii) without TfNSW's prior consent.
- (c) The obligation to ensure compliance with the DDA Legislation in respect of any State Asset commences when that State Asset has been made available to the Operator in accordance with this Contract.
- (d) Notwithstanding anything else in this Contract, the Operator is not responsible for upgrading any Wharf to achieve compliance with the DDA Legislation.

26. Operating Licence

26.1 Survey of Permanent Light Rail Corridor

The Operator acknowledges that the boundaries of the Permanent Light Rail Corridor, the Non-Corridor Assets and the Third Party Agreements and Easements and Land Arrangements applicable to the Permanent Light Rail Corridor and Non-Corridor Assets will be as determined by TfNSW on completion of the NLR Works.

26.2 Permanent Light Rail Corridor and NLR Fixed Infrastructure

- (a) Subject to the terms of this Contract, TfNSW grants to the Operator a non-exclusive licence to use and occupy, and to permit the Operator's Associates to use and occupy:
 - (i) the Permanent Light Rail Corridor;
 - (ii) the Wickham Interchange; and
 - (iii) the Newcastle Bus Interchange,**(Licensed Land)** for the purpose of performing the Operator Activities.
- (b) TfNSW grants to the Operator a non-exclusive licence to access, and to permit the Operator's Associates to access, the Non-Corridor Assets for the purpose of performing the Operator Activities in relation to Non-Corridor Assets:
 - (i) only to the extent TfNSW and its authorised persons are permitted to do so under; and

- (ii) subject to and in accordance with the terms of,
any Third Party Agreements or Easements and Land Arrangements concerning,
benefiting or burdening any Non-Corridor Assets.
- (c) The licences granted under this Clause 26.2 commence on:
 - (i) in relation to the Permanent Light Rail Corridor, the NLR Handover Date;
 - (ii) in relation to the Wickham Interchange and the Newcastle Bus Interchange,
the applicable Interchange Handover Date,

(Licence Commencement Date).
- (d) The licences granted under this Clause 26.2 terminate on the Termination Date.
- (e) The rights conferred by this Clause 26.2 are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Land or any land on which any Non-Corridor Assets are located.
- (f) The Operator must comply with:
 - (i) the terms of the Third Party Agreements relating to or affecting the Licensed Land in accordance with Clause 20.1; and
 - (ii) any easements, restrictions on use, covenants, agreements or other similar arrangements burdening or benefiting the land contained in the Licensed Land as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW) as at the relevant Licence Commencement Date,

including the Easements and Land Arrangements, as if it were a party to those Easements and Land Arrangements.
- (g) The Operator must not use the Licensed Land for any purpose other than the Operator's Activities.
- (h) Without limiting the Operator's obligations to provide maintenance services in respect of the Newcastle Bus Interchange in accordance with this Contract, the Operator shall not be responsible for the payment of connection or consumption costs associated with Utility Services at the Wickham Interchange or the Newcastle Bus Interchange. Otherwise, the Operator is responsible for all costs associated with Utility Services required to perform the Operator Activities.

26.3 Moveable Assets

- (a) With effect from:
 - (i) in the case of Contract Bus and Ferry Moveable Assets, the Contract Bus and Ferry Service Commencement Date; and
 - (ii) in the case of NLR Moveable Assets, the NLR Handover Date,

TfNSW grants to the Operator an exclusive licence to use the Contract Bus and Ferry Moveable Assets and the NLR Moveable Assets (**Moveable Assets**) for the purposes of fulfilling the Operator's obligations under this Contract.
- (b) The licence granted under Clause 26.3(a) terminates on the Termination Date.

26.4 STA Residual Furniture and Tools

- (a) Within 30 Business Days after the Contract Bus and Ferry Service Commencement Date the Operator must provide TfNSW with a register of all STA Residual Furniture and Tools.
- (b) The Operator may deal with STA Residual Furniture and Tools on the same basis as if the STA Residual Furniture and Tools were Operator Assets.

- (c) If at the end of the Term, TfNSW nominates that any STA Residual Furniture and Tools not dealt with in accordance with Clause 26.4(b) are to be transferred to TfNSW or its nominee, the Operator must transfer those assets to TfNSW or its nominee, unencumbered and for consideration of [REDACTED]

26.5 Insurance Spares and Specialist Maintenance Tools

- (a) If TfNSW orders any Insurance Spares or Specialist Maintenance Tools identified in Annexure Part Z of the Rolling Stock Supply Contract prior to the last of the Defects Liability Periods, then TfNSW will, as and when those Insurance Spares or Specialist Maintenance Tool are delivered to TfNSW, provide the Operator with those Insurance Spares or Specialist Maintenance Tools for use by the Operator solely in connection the performance of the Operator Activities at no cost to the Operator.
- (b) Nothing in clause 26.5(a), obliges TfNSW to acquire or order any Insurance Spares or Specialist Maintenance Tools under the Rolling Stock Supply Contract.
- (c) The Operator will not be entitled to make any Claim against TfNSW or any of TfNSW's Associates in relation to the provision of the Insurance Spares or Specialist Maintenance Tools and is not relieved from any of its obligations or liabilities in accordance with the Transaction Documents arising out of or in connection with the Insurance Spares or Specialist Maintenance Tools.
- (d) The Operator must:
 - (i) return all Specialist Tools and unused Insurance Spares to TfNSW at the end of the Term; and
 - (ii) transfer to TfNSW for a consideration of [REDACTED] all unused spare parts and specialist tools acquired by the Operator to replace any of the Insurances Spares or Specialist Maintenance Tools delivered to the Operator under clause 26.5(a).
- (e) In this clause, the terms 'Insurance Spares', 'Specialist Maintenance Tools' and 'Defects Liability Period' have the meaning given to them in the Rolling Stock Supply Contract.

26.6 Bus Layover Area

- (a) With effect from the Contract Bus and Ferry Service Commencement Date, TfNSW grants to the Operator a non exclusive licence to use the Bus Layover Area for the purposes of fulfilling the Operator's obligations under this Contract.
- (b) The licence granted under Clause 26.6 terminates on the NLR Handover Date.

26.7 Queens Wharf Office Area

- (a) If TfNSW is able to secure a licence in respect of the Queens Wharf Office Area then, with effect from the later of the Contract Bus and Ferry Service Commencement Date and the commencement date of the relevant licence, TfNSW will grant to the Operator a licence to use the Queens Wharf Office Area for the purposes of fulfilling the Operator's obligations under this Contract.
- (b) The licence granted under Clause 27(a) terminates on the earlier of the Termination Date and the date that the relevant licence terminates.
- (c) Any provision of this Contract that applies to the Queens Wharf Office Area will only become operative in respect of the Queens Wharf Office Area on and from the date that TfNSW grants a licence to the Operator of the Queens Wharf Office Area under this Clause 26.7.

27. Wharf Access Deed

- (a) In consideration for the Operator complying with its obligations under Clause 20 in relation to the Wharf Access Deed, TfNSW grants to the Operator a licence for the Term to exercise the rights conferred on TfNSW under the Wharf Access Deed on the terms and conditions contained in the Wharf Access Deed and the Wharf Rules and subject to any other constraints or requirements stipulated in Schedule 18 or clause 27(b).
- (b) Without limiting the Operator's other obligations under Clause 20:
 - (i) the Operator is not required to pay the Wharf Access Charge to RMS under the Wharf Access Deed;
 - (ii) the Operator is responsible for any payments regarding Utility Services under the Wharf Access Deed;
 - (iii) TfNSW will pay any maintenance costs under the Wharf Access Deed except to the extent such maintenance costs arise as a result of the negligence, fraud, breach or wilful default of the Operator in which case the Operator must indemnify TfNSW and STA in relation such maintenance costs.
- (c) The Operator will, at its own cost and risk, procure any access to other wharves and shipyards as it may from time to time require to enable it to comply with its obligations under the Transaction Documents.

28. Environment and Contamination

28.1 Condition of Infrastructure

- (a) The Operator must at all times during the Term ensure that in carrying out the Operator Activities:
 - (i) Contaminants are not discharged unlawfully;
 - (ii) a condition of pollution does not arise and is not likely to arise;
 - (iii) no breach of any Environmental Law occurs;
 - (iv) no industrial waste or potentially hazardous substance is abandoned or dumped at the Permanent Light Rail Corridor, Non-Corridor Assets, Contract Depots, Wharves, Transit Stops, Interchanges, Bus Layover Area or Queens Wharf Office Area; or
 - (v) no industrial waste or potentially hazardous substance is handled in a manner which causes or is likely to cause an environment hazard.
- (b) The Operator must:
 - (i) obtain and maintain in full force and effect and comply with the terms of all Authorisations required in order to release or emit anything from the Permanent Light Rail Corridor, Non-Corridor Assets, Contract Depots, Wharves, Transit Stops, Interchanges, Bus Layover Area or Queens Wharf Office Area into the air or water or on to the ground or into the Environment;
 - (ii) permit TfNSW to enter the Permanent Light Rail Corridor, Non-Corridor Assets, Contract Depots, Wharves, Transit Stops, Interchanges, Bus Layover Area and Queens Wharf Office Area on reasonable notice to enable TfNSW to satisfy itself that the Permanent Light Rail Corridor, Non-Corridor Assets, Contract Depots, Wharves, Transit Stops, Interchanges, Bus Layover Area or Queens Wharf Office Area have not been Contaminated and that no breach of an Environmental Law has occurred;

- (iii) advise TfNSW of the existence of any Contamination of, or emanation from, the Permanent Light Rail Corridor, Non-Corridor Assets, Contract Depots, Wharves, Transit Stops, Interchanges, Bus Layover Area or Queens Wharf Office Area contrary to any Environmental Law as soon as the Operator becomes aware of the matter; and
 - (iv) as soon as reasonably practicable, and in any event within two Business Days, after receipt of any penalty notice or direction or other notice or complaint issued under any Environmental Law in relation to the Permanent Light Rail Corridor, Non-Corridor Assets, Contract Depots, Wharves, Transit Stops, Interchanges, Bus Layover Area or Queens Wharf Office Area give full details of it and copies of any notices, directions, or other instruments to TfNSW.
- (c) Not later than:
 - (i) in respect of the Existing Depots, two months after the Contract Bus and Ferry Service Commencement Date; and
 - (ii) in respect of any New Depots, two months after the Operator commences carrying out Operator Activities from the New Depot,
 the Operator must:
 - (iii) obtain, at its own cost, a report prepared by an independent and suitably qualified third party approved by TfNSW regarding the existing condition of the relevant Contract Depot including the existence of any Contamination at the Contract Depot in a form that is satisfactory to TfNSW acting reasonably (**Baseline Condition Report**); and
 - (iv) provide TfNSW with a copy of the Baseline Condition Report.

28.2 Subsequent Contamination

The Operator is responsible for all Subsequent Contamination and must:

- (a) dispose of, or otherwise deal with, Subsequent Contamination in accordance with Law; and
- (b) remediate to the standard required by Law, the Permanent Light Rail Corridor, Existing Depots, Wharves, Bus Transit Stops, the Interchanges, Bus Layover Area or Queens Wharf Office Area (**State Property**) or the land or seabed adjoining any State Property (and any other land to which any Subsequent Contamination has migrated) to the extent to which:
 - (i) it is in any way degraded by Subsequent Contamination; and
 - (ii) the Subsequent Contamination is of such a nature that an Environmental Auditor or other relevant Governmental Agency could issue a statutory notice requiring it to be remediated or it is otherwise necessary at Law for it to be remediated.

28.3 Contamination at New Depots and Operator Depot

The Operator is solely responsible for any Contamination in, on or under any New Depot or the Operator Depot.

28.4 Clean Up Notices

- (a) If a Clean Up Notice is served on TfNSW, RMS, STA, NSW Trains, Sydney Trains or the Operator relating to Contamination in, on or under (or which has emanated from or is emanating from) the Permanent Light Rail Corridor, Non-Corridor Assets, Existing Depots, Interchanges, Wharves, Bus Layover Area or Queens Wharf Office Area, then:

- (i) if the Operator receives the Clean Up Notice the Operator must promptly provide TfNSW with a copy of the Clean Up Notice;
 - (ii) if TfNSW, RMS, STA, NSW Trains or Sydney Trains receives the Clean Up Notice TfNSW must promptly provide the Operator with a copy of the Clean Up Notice;
 - (iii) TfNSW and the Operator must meet as soon as practicable after service of the Clean Up Notice to determine, to the extent possible, whether and to what extent the Clean Up Notice relates to Pre-existing Contamination or Subsequent Contamination;
 - (iv) to the extent that the Clean Up Notice relates solely to Subsequent Contamination, the Operator will at its sole cost and expense be responsible for complying with the Clean Up Notice;
 - (v) to the extent that the Clean Up Notice relates to both Pre-existing Contamination and Subsequent Contamination, the Operator will be responsible for complying with the Clean Up Notice to the extent that it relates to Subsequent Contamination; and
 - (vi) the Operator must provide TfNSW, RMS, STA, NSW Trains or Sydney Trains with such access to the Permanent Light Rail Corridor, Non-Corridor Assets, Existing Depots, Interchanges, Wharves, Bus Layover Area or Queens Wharf Office Area and other assistance as TfNSW, RMS, STA, NSW Trains or Sydney Trains may reasonably require in order to investigate, assess or manage the risk created by the existence or suspected existence of any Pre-existing Contamination.
- (b) If TfNSW and the Operator cannot agree within a reasonable period to what extent the Clean Up Notice relates to Pre-existing Contamination or to Subsequent Contamination:
- (i) TfNSW and the Operator will:
 - (A) refer the matters in dispute to be determined by an Environmental Auditor to be approved by the TfNSW and the Operator (such approval not to be unreasonably withheld or delayed). If TfNSW and the Operator cannot agree on the appointment of an Environmental Auditor within a reasonable period, TfNSW may determine who will be appointed as the Environmental Auditor;
 - (B) arrange for the Environmental Auditor to investigate the Permanent Light Rail Corridor, Non-Corridor Assets, Existing Depots, Interchanges, Wharves, Bus Layover Area or Queens Wharf Office Area the subject of the Clean Up Notice and prepare and provide to TfNSW and the Operator a report in accordance with all applicable Environmental Laws and relevant Governmental Agency guidelines and generally in accordance with Good Industry Practice **(Contamination Report)**, which:
 - (I) describes the nature and extent of any Contamination which is the subject of that Clean Up Notice **(Notified Contamination)**;
 - (II) describes the investigation undertaken to identify the nature and extent of the Notified Contamination;
 - (III) identifies, in the opinion of the Environmental Auditor, the extent to which the Notified Contamination:
 - (1) is Pre-existing Contamination; or
 - (2) is Subsequent Contamination; and

- (IV) based on the conclusions in Clause 28.4(b)(i)(B)(III), allocates liability for the Environmental Auditor's fees between TfNSW and the Operator in the same proportion as that Party's responsibility for the Contamination; and
- (C) ensure that prior to finalising the Contamination Report, the Environmental Auditor provides a draft of the Contamination Report to both TfNSW and the Operator, and allows both those Parties a reasonable period in which to provide the Environmental Auditor with comments regarding that draft Contamination Report. Those comments must also be provided by each Party to the other Party; and
- (ii) the findings of the Environmental Auditor contained in the final Contamination Report will be final and binding on the Parties (including regarding liability for the Environmental Auditor's fees) in the absence of manifest error.
- (c) If a Clean Up Notice is served on the Operator and is complied with by the Operator, then to the extent that the Clean Up Notice relates to Pre-existing Contamination, such compliance is a Compensable Event.

29. Acquisition of new assets

29.1 New Assets

- (a) The Operator must use only the State Assets for the provision of the Services, unless expressly provided for in this Contract or otherwise approved in writing by TfNSW.
- (b) Subject to Clause 24.4, the Operator:
 - (i) must not use vehicles, vessels, depots, facilities or premises that are not State Assets to perform the Operator Activities;
 - (ii) must only use or acquire new buses or bus depots for the provision of the Services in accordance with this Clause 29; and
 - (iii) must otherwise only use or acquire assets, vehicles, vessels or premises to perform the Operator Activities with the prior consent of TfNSW.

29.2 Acquisition of New Buses

- (a) The Operator must comply with the Fleet Replacement Schedule, and must arrange for the acquisition and disposal of Contract Buses in accordance with Clause 29.4.
- (b) Without limiting Clause 29.2(a) and (d), but subject to Clause 24.4, the Operator must ensure that at all times during the Term:
 - (i) the average age of the Contract Buses does not exceed 12 years; and
 - (ii) the maximum age of each Contract Bus does not exceed 25 years or such other maximum age (not being less than 25 years) as TfNSW may determine from time to time.
- (c) For the purpose of Clauses 29.2(b), the age of a Contract Bus will be taken to run from:
 - (i) where the bus has not been previously used, the date of its first registration in New South Wales;
 - (ii) where the bus has been previously used, the date of its first registration in New South Wales or any other jurisdiction; or

- (iii) where the date of first registration cannot be confirmed, the date of manufacture on its compliance plate (noting that, for older buses with separate chassis compliance plates and body compliance plates, the date of manufacture is that which appears on the chassis compliance plate).
- (d) The Operator must not depart from the Fleet Replacement Schedule without the prior consent of TfNSW.
- (e) The Operator will not be entitled to any adjustment to the Payments as a result of any alteration to the Fleet Replacement Schedule.

29.3 New Buses acquired as a result of a Service Variation

- (a) The Operator must not acquire any New Bus as a result of a Service Variation without the prior approval of TfNSW.
- (b) If the Operator requires TfNSW to acquire, or procure the acquisition of, Buses as a result of a Service Variation, the Operator must submit a business case in a form satisfactory to TfNSW (**Business Case**) which must:
 - (i) clearly identify that the Operator requires the Buses as a result of the Service Variation; and
 - (ii) state the number of Buses required and any details in relation to the proposed Buses as are available at the time.
- (c) TfNSW may liaise with the Operator in relation to any Business Case and may require the Operator to resubmit the Business Case with suggested amendments.
- (d) TfNSW must notify the Operator within 20 Business Days after receiving the original or resubmitted Business Case from the Operator under Clause 29.3(b) or (c) whether:
 - (i) the Operator's proposal for TfNSW to acquire, or procure the acquisition of, the Buses is approved (and any conditions attached to that approval);
 - (ii) the Operator's proposal for TfNSW to acquire, or procure the acquisition of, the Buses is rejected (including reasons for the rejection); or
 - (iii) TfNSW requires further time or information to consider the Business Case and the reasonable time by which the Operator must provide the information and within which TfNSW will have made its decision.
- (e) If TfNSW does not respond to the Operator in accordance with Clause 29.3(d), TfNSW will be deemed to have rejected the proposal.
- (f) If TfNSW approves the Operator's proposal to acquire, or procure the acquisition of, Buses under Clause 29.3(d)(i) then the Operator must manage the acquisition of the Bus in accordance with Clause 29.4.

29.4 New Bus procurement requirements

- (a) The Operator is responsible for procuring all New Buses approved under this Clause 29 through the Bus Procurement Panel including by:
 - (i) preparing all documentation required in order to procure a New Bus under the Bus Procurement Panel (including so that Clause 29.4(c) is satisfied); and
 - (ii) undertaking all other activities and obligations required to be undertaken in order to facilitate the delivery of a New Bus under the Bus Procurement Panel.
- (b) The Operator has no Claim against TfNSW in relation to the late delivery of any New Bus under the Bus Procurement Panel except to the extent such late delivery is due to non-payment by TfNSW of amounts owing under the Bus Procurement Panel.

- (c) Legal title in any New Bus procured under this Contract vests in TfNSW or its nominee.
- (d) All Buses procured under this Contract are Contract Buses and must, unless otherwise directed by TfNSW, become subject to the State Bus Lease (and the Operator agrees to the addition of such Buses to the State Bus Lease). Where TfNSW directs that a New Bus will become subject to a lease other than the State Bus Lease (**Alternative Bus Lease**):
 - (i) the Operator must enter into the Alternative Bus Lease as directed by TfNSW; and
 - (ii) TfNSW will:
 - (A) use reasonable endeavours to ensure that the terms of the Alternative Bus Lease are no more onerous than the State Bus Lease; or
 - (B) if:
 - (I) the amount of the lease payments required to be made by the Operator under the Alternative Bus Lease are greater than the equivalent payments required to be made by the Operator under the State Bus Lease; or
 - (II) the Operator demonstrates to TfNSW's reasonable satisfaction that the terms of the Alternative Bus Lease are more onerous than the State Bus Lease in a material way,

TfNSW will direct a Modification to the extent necessary to provide that the Operator is in no worse a position than it was under the State Bus Lease.
- (e) The Operator must provide TfNSW with any information requested by TfNSW in relation to the New Bus.
- (f) If a Contract Bus is scheduled to be retired under the Fleet Replacement Schedule, the Operator must:
 - (i) agree to the removal of the Contract Bus from the State Bus Lease; and
 - (ii) if requested by TfNSW manage the disposal of that Contract Bus in accordance with TfNSW's reasonable directions. The Operator must pay to TfNSW all proceeds received by the Operator in connection with the disposal of the retired Contract Bus (**Sale Proceeds**). In consideration for providing management services under this Clause 29.4(f), TfNSW will pay to the Operator ■■■ of the Sale Proceeds.
- (g) The Operator must give TfNSW at least two months' prior notice before commencement the procurement of a New Bus under this Clause. If directed to do so by TfNSW, the Operator must temporarily defer the procurement of the New Bus for a reasonable period as determined by TfNSW. The Operator has no Claim against TfNSW in relation to the temporary deferral of any procurement under this Clause. To the extent that a direction by TfNSW to defer the acquisition of a New Bus results in the deferral of the retirement of a Contract Bus that does not comply with Clause 29.2(b) (**Aged Bus**), TfNSW will waive the requirement to comply with Clause 29.2(b) in respect of that Aged Bus for the duration of the period of deferral.
- (h) The Operator will provide six temporary Buses (**Temporary Buses**) for use in the initial service period on the following conditions:
 - (i) the Temporary Buses must comply with all terms of this Contract applying to Contract Buses;
 - (ii) the Operator must comply with all terms of this Contract relating to Contract Buses in respect of the Temporary Buses as if they were Contract Buses

(with the exception that the On Demand Buses will not be subject to the State Bus Lease or revert to TfNSW on the Termination Date (or any earlier date) unless agreed by the Operator); and

- (iii) the Temporary Buses must not be used to provide Services after the date that is two years after the Contract Bus and Ferry Service Commencement Date.
- (i) The Operator will acquire four new Buses to be used for the purposes of providing the On Demand Services (**On Demand Buses**). The Operator warrants that the Monthly Contract Price has made allowance for the cost of the On Demand Buses.
- (j) The Operator will ensure that the On Demand Buses are used solely for the purposes of providing the On Demand Services during the following periods:
 - (i) 9.00am to 4.00pm on Business Days;
 - (ii) 7.00am to 6.00pm on Saturday;
 - (iii) 9.00am to 6.00pm on Sunday; and
 - (iv) as directed by TfNSW on Public Holidays.
- (k) The On Demand Buses must comply with all terms of this Contract applying to Contract Buses.
- (l) The Operator must comply with all terms of this Contract relating to Contract Buses in respect of the On Demand Buses as if they were Contract Buses (with the exception that the On Demand Buses will not be subject to the State Bus Lease or revert to TfNSW on the Termination Date (or any earlier date) unless agreed by the Operator).

29.5 Acquisition of New Depot

- (a) If the Operator considers that it is necessary to acquire or use a new bus depot or other parking or storage facility for the purposes of complying with its obligations under this Contract the Operator must submit a detailed business case in a form satisfactory to TfNSW setting out details of:
 - (i) the bus depot or other parking or storage facility proposed to be acquired or used;
 - (ii) the reasons for the acquisition or use;
 - (iii) the method of acquisition or access (including leasing or purchase);
 - (iv) any financial arrangements associated with a proposed acquisition;
 - (v) any financial impacts associated with the use or acquisition of the depot or facility (including a proposal in relation to the Net Financial Impact of the acquisition or access); and
 - (vi) any other information requested by TfNSW,**(New Depot Application).**
- (b) The Operator covenants that the acquisition of a New Depot by TfNSW in accordance with this Clause 29.5 will not adversely affect:
 - (i) the Continuity of the Services;
 - (ii) TfNSW's rights under any Transaction Document; or
 - (iii) the operating efficiency of the Operator Activities in a material way.
- (c) In respect of a New Depot Application, TfNSW may:
 - (i) approve the New Depot Application without conditions;
 - (ii) approve the New Depot Application with conditions including:

- (A) that the New Depot will be acquired by TfNSW (or its nominee) and leased to the Operator on substantially the same terms as the State Bus Depot Leases;
 - (B) where the New Depot is or will be owned by a third party (including an Operator's Associate) (**Lessor**) and leased or licensed to the Operator:
 - (I) a requirement that the terms of any lease or licence in respect of the New Depot allow for the New Depot to be subleased or sublicensed to TfNSW or a nominee of TfNSW;
 - (II) a requirement for the Lessor to enter into a Key Contract Security Document with TfNSW (in a form satisfactory to TfNSW) that permits TfNSW to assign or novate the relevant lease or licence to TfNSW or a nominee of TfNSW; or
 - (III) a requirement that the Lessor will on notice from TfNSW surrender the New Depot lease and enter into a Depot Headlease with TfNSW (as tenant), for a term required by TfNSW (not exceeding 2 years);
 - (C) where the New Depot is owned by the Operator or an Operator's Associate, a requirement that:
 - (I) the Operator or the Operator's Associate transfer the New Depot to TfNSW or a nominee of TfNSW by the Transfer Date on terms agreed by TfNSW and the Operator at the time of approval of the acquisition of the New Depot including the price payable in respect of the New Depot and any other terms and conditions applicable to the transfer;
 - (II) the Operator or the Operator's Associate grant a mortgage in respect of the New Depot in favour of TfNSW (in a form satisfactory to TfNSW); and
 - (III) a requirement that the Operator or the Operator's Associate procure the execution of a Financier Direct Deed with any financier of the New Depot (both in a form satisfactory to TfNSW);
 - (D) that the Operator be required to obtain the consent of any mortgagee of the New Depot to the implementation of any of the conditions referred to in Clauses 29.5(c)(ii)(A) to (C); or
 - (E) any adjustments to the Payments agreed by TfNSW which may include an adjustment to reflect the Net Financial Impact of the proposal calculated in accordance with Schedule 17; or
- (iii) reject the New Depot Application,
- and must advise the Operator of its decision with reasons within 30 Business Days of receiving the New Depot Application. If TfNSW does not approve or reject the New Depot Application within 30 Business Days it will be deemed to have rejected the New Depot Application.
- (d) The Operator has no Claim against TfNSW arising out of or in connection with a rejection by TfNSW of a New Depot Application under Clause 29.5(c)(iii).

29.6 Acquisition and adjustments

On acquisition of each New Bus or New Depot:

- (a) the Operator must update the Asset Management Plan and Asset Management System to include the relevant New Bus or New Depot;
- (b) the Operator must update the asset register required as part of the Handover Information to include the New Bus or New Depot; and
- (c) subject to Clause 29.4(d), adjustments to the Payments will be made:
 - (i) in relation to New Buses acquired in relation to a Service Variation, in accordance with Schedule 3; and
 - (ii) in relation to New Depots, in accordance with any conditions attached to TfNSW's approval issued under Clause 29.5(c)(ii)(E).

Part H – Asset Management

30. Asset Management

30.1 Asset management obligations

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

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

so that:

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

30.2 Asset Management System

- (a) The Operator must:
 - (i) prior to the Planned Contract Bus and Ferry Service Commencement Date develop, implement and update the Asset Management System;
 - (ii) prior to the Planned NLR Handover Date, regularly and progressively update the Asset Management System to include the NLR; and
 - (iii) otherwise develop and update the Asset Management System in accordance with the requirements of the Asset Schedule.

30.3 Asset Management Plan

The Operator must:

- (a) update the Asset Management Plan in accordance with the Asset Schedule;

- (b) not update the Asset Management Plan in a manner which makes TfNSW's obligations under this Contract more onerous or increases any liability or potential liability of TfNSW or TfNSW's Associates in connection with the maintenance of State Assets; and
- (c) ensure that any updated Asset Management Plan:
 - (i) imposes standards, levels of service, scope and requirements that are equal to or greater than or higher than those imposed by this Contract; and
 - (ii) provides an equal or greater level of detail than the most recent applicable Asset Management Plan.

30.4 Review of Asset Management Plan

- (a) The TfNSW Representative may:
 - (i) review any Asset Management Plan submitted under paragraph 3 of the Asset Schedule; and
 - (ii) notify the Operator if, in the opinion of the TfNSW Representative, the Asset Management Plan does not comply with the requirements of this Contract (with detailed reasons) within 20 Business Days following submission of the Asset Management Plan to the TfNSW Representative.
- (b) If the Operator receives a notice in accordance with Clause 30.4(a)(ii) the Operator must, within 20 Business Days, submit a revised Asset Management Plan to the TfNSW Representative whereupon the provisions of this Clause 30.4 will reapply to the revised Asset Management Plan.

30.5 TfNSW may request updates of the Asset Management Plan

If, at any time during the Term:

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

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

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

and the Operator must:

- (e) amend or update the Asset Management Plan as requested by TfNSW to comply with the requirements of this Contract; and
- (f) submit the amended or updated Asset Management Plan to TfNSW within the time specified under Clause 30.5(d) for review under Clause 30.4.

30.6 Compliance with Asset Management Plan

The Operator:

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

each Asset Management Plan which has been submitted to the TfNSW Representative and in respect of which the TfNSW Representative has not issued a notice under Clause 30.4(a)(ii) within 20 Business Days following submission of the Asset Management Plan.

30.7 Asset Management Failures

- (a) TfNSW and the Operator will meet annually within 3 months of the end of each Contract Year to review the Operator's compliance with the Maintenance Works Program during the previous Contract Year (as applicable).
- (b) An Asset Management Failure will occur if:
 - (i) the Operator fails to comply with the Maintenance Works Program and in TfNSW's opinion (acting reasonably), the Operator's failure to comply with the Maintenance Works Program constitutes a material non-compliance with the Asset Management Plan; or
 - (ii) the Operator fails in any material respect to comply with any of its maintenance obligations under this Contract.
- (c) If an Asset Management Failure occurs TfNSW may give the Operator a notice stating the nature of the Asset Management Failure.
- (d) The Operator must remedy the Asset Management Failure within:
 - (i) 3 months of the date on which the notice referred to in Clause 30.7(c) is issued; or
 - (ii) such other period agreed between the TfNSW and the Operator (acting reasonably),
(Remediation Period).

31. Dealing with Assets

31.1 Security, assignment and possession of State Assets

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

- (a) Dispose of any State Asset;
 - (b) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any State Asset; or
 - (c) otherwise deal with or part with possession of any State Asset,
- except as authorised by the Transaction Documents.

31.2 Security, assignment and possession of Operator Assets

- (a) All assets (other than State Assets) required by the Operator to perform its obligations under the Transaction Documents must, subject to this Clause, be owned by the Operator.
- (b) The Operator must not (directly or indirectly) without TfNSW's prior consent:
 - (i) create or allow to exist any Security Interest (other than a Permitted Security Interest) over any Operator Asset; or
 - (ii) Dispose of any Operator Asset (unless it is being replaced by an Operator Asset having a similar or better functionality or condition),
where the effect of that action would (in TfNSW's opinion) materially and adversely affect:
 - (iii) the Operator's ability to provide the Services;
 - (iv) the Continuity of the Services; or
 - (v) TfNSW's rights or obligations under a Transaction Document.

- (c) The Operator must not enter into any financing arrangement in respect of any Operator Asset that is in the nature of an operating lease, as determined under the Accounting Standards.
- (d) Prior to executing any Operator Financial Arrangement in respect of an Operator Asset the Operator must provide TfNSW with:
 - (i) details of the purchase terms, including the acquisition cost of the relevant Asset;
 - (ii) the terms of the financing with the proposed financier; and
 - (iii) if requested by TfNSW, a Financier Direct Deed executed by the Operator and the proposed financier.

31.3 Consequences of dealings with Assets

Any breach by the Operator of this Clause 31 is deemed to be a Termination Event.

32. Asset restructure by TfNSW

32.1 Assignment or Novation

- (a) Without limiting Clause 1.10 or any facilitative legislation, but subject to Clause 32.1(b), TfNSW may assign or novate this Contract or any State Asset Access Agreement, its interest in the subject matter of this Contract or any State Asset Access Agreement or any right under this Contract or any State Asset Access Agreement.
- (b) TfNSW and the Operator agree that TfNSW may only novate or assign this Contract to an entity that is not a Governmental Agency with the prior written consent of the Operator (which may be withheld in the Operator's absolute discretion).
- (c) In the case of a novation by TfNSW under this Clause 32.1:
 - (i) TfNSW will be released from its obligations under this Contract or any relevant State Asset Access Agreement and the respective rights of TfNSW and the Operator against one another under this Contract or any relevant State Asset Access Agreement will cease; and
 - (ii) the novated Contract or State Asset Access Agreement will be on substantially the same terms and conditions as this Contract or the relevant State Asset Access Agreement, such that the incoming party and the Operator will assume substantially the same obligations to one another and acquire substantially the same rights against one another as the rights and obligations discharged under Clause 32.1(c)(i), except that the incoming party replaces TfNSW for all purposes under this Contract or the relevant State Asset Access Agreement.
- (d) The Operator consents to the disclosure by or on behalf of TfNSW to the incoming party of the Operator's Confidential Information for the purposes of the assignment or novation.

32.2 Transfer of State Assets by other Governmental Agencies

- (a) The Operator acknowledges and agrees that TfNSW, STA, RMS or any other head lessor under any State Asset Access Agreement entered into during the Term may transfer the ownership of State Assets to another Governmental Agency or a private entity (**Asset Holding Entity**) during the Term.
- (b) Without limiting Clause 1.10 or any facilitative legislation, the Operator:
 - (i) consents to, and must procure that the Operator's Associates and financiers consent to any such transfer of State Assets to an Asset Holding Entity;

- (ii) agrees to the assignment or novation of any State Asset Access Agreement by TfNSW to an Asset Holding Entity in accordance with Clause 32.1; and
- (iii) agrees to:
 - (A) the termination of any State Asset Access Agreement by TfNSW;
 - (B) the release of TfNSW from its obligations under the relevant State Asset Access Agreement and the respective rights of TfNSW and the Operator against one another under the relevant State Asset Access Agreement ceasing from the date of termination under Clause 32.2(b)(iii)(A); and
 - (C) in relation to the relevant State Asset the subject of that State Asset Access Agreement, enter into a replacement lease, licence or arrangement with the Asset Holding Entity (**Asset Holding Entity Lease**). TfNSW will use reasonable endeavours to procure that the Asset Holding Entity Lease provides that the Asset Holding Entity and the Operator will assume substantially the same obligations to one another and acquire substantially the same rights against one another as the rights and obligations discharged under Clause 32.2(b)(iii)(B), except that the incoming party replaces TfNSW for all purposes under the relevant State Asset Access Agreement.
- (c) If:
 - (i) the amount of the lease payments required to be made by the Operator under the Asset Holding Entity Lease is greater than the equivalent payments required to be made by the Operator under the relevant State Asset Access Agreement; or
 - (ii) the Operator demonstrates to TfNSW's reasonable satisfaction that the terms of the Asset Holding Entity Lease are more onerous than the relevant State Asset Access Agreements that they replace in a material way,

TfNSW will direct a Modification to the extent necessary to provide that the Operator is no worse off under the Asset Holding Entity Lease than it would have been under the State Asset Access Agreement.
- (d) The Operator consents to the disclosure by or on behalf of TfNSW to the incoming party of the Operator's Confidential Information for the purposes of the transfer of State Assets to any Asset Holding Entity.

32.3 Attorney

The Operator, for valuable consideration, to secure the performance of its obligations under this Clause 32, irrevocably appoints TfNSW as its attorney to:

- (a) do all other things (and execute all other documents) necessary to complete the transactions contemplated by this Clause 32 if the Operator has not done so in sufficient time to give effect to those transactions, and
- (b) the Operator must ratify anything done by TfNSW acting under this power of attorney.

Part I – Contract Administration

33. Access and inspections

33.1 TfNSW's right of entry

- (a) TfNSW (and any person authorised by TfNSW) may, at any time, enter the Permanent Light Rail Corridor, Contract Depots, any shipyard used by the Operator and any other premises where the Operator Activities are being carried out for the purpose of:
 - (i) observing or inspecting the Operator Activities;
 - (ii) monitoring compliance by the Operator with its obligations under this Contract or any Laws; or
 - (iii) exercising any right or performing any obligation which TfNSW has under any Transaction Document.
- (b) The Operator must use reasonable endeavours to:
 - (i) coordinate the Operator Activities so they do not interfere with the exercise by TfNSW of its right of entry; and
 - (ii) provide TfNSW with every reasonable facility and other assistance necessary for any inspection by TfNSW, including providing access to any relevant systems, registers, manuals, records (including financial records), plans and programs.
- (c) If an inspection shows that the Operator has not complied or is not complying with its obligations under the Transaction Documents, TfNSW:
 - (i) may notify the Operator of the details of the non-compliance;
 - (ii) will specify a reasonable period within which the Operator must carry out appropriate rectification or remedy activities; and
 - (iii) will be entitled to be reimbursed by the Operator for the reasonable costs of the inspection including any reasonable administrative costs incurred by TfNSW in relation to the inspection.
- (d) Where, in accordance with Clause 33.1(a), TfNSW (or any person authorised by TfNSW) enters the Permanent Light Rail Corridor, Contract Depots, any shipyard or any other premises where the Operator Activities are being carried out, TfNSW must comply (or must procure that any person authorised by TfNSW complies) with reasonable site safety and security requirements as advised by the Operator.

33.2 Access to information

- (a) Without limiting any other provision of this Contract:
 - (i) TfNSW may at any time notify the Operator that it requires access to any information held by the Operator or the Operator's Associates which relates to the Operator Activities;
 - (ii) upon receipt of a notice under Clause 33.2(a), the Operator must immediately provide TfNSW (and any person authorised by TfNSW) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and
 - (iii) TfNSW (and any person authorised by TfNSW) may review, copy, retain or otherwise deal with such information.
- (b) The Operator must:
 - (i) ensure that TfNSW (and any person authorised by TfNSW) has direct access to any information, documents or material that:

- (A) is maintained by a third party (including the Operator's Associates); and
- (B) TfNSW is entitled to have access to, or have copies of, from the Operator under this Contract;
- (ii) ensure that any contractual arrangements between the Operator or the Operator's Associates and any third parties acknowledge TfNSW's right of access under Clause 33.2(b)(i); and
- (iii) on demand, provide to TfNSW written evidence (including copies of any contractual arrangements referred to in Clause 33.2(b)(ii)) showing compliance by the Operator with its obligations under Clause 33.2(b)(ii).
- (c) The Operator must cooperate, and must ensure that the Operator's Associates cooperate, with TfNSW and any persons authorised by TfNSW in the exercise of TfNSW's rights under this Clause 33.

34. 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, Master, Crew and Contract Vehicle shift information to TfNSW, on reasonable notice.

35. Operating Plans

35.1 Accessible Transport Action Plan

- (a) The Operator must develop, implement, maintain and comply with its Accessible Transport Action Plan from the Planned Contract Bus and Ferry Service Commencement Date and for the duration of the Term.
- (b) The Operator's Accessible Transport Action Plan must specify the steps the Operator will take to comply with the:
 - (i) the DDA Legislation;
 - (ii) *Anti-Discrimination Act 1977 (NSW)*;
 - (iii) *Disability Inclusion Act 2014 (NSW)*; and
 - (iv) the Guidelines for Disability Action Planning by NSW Government Agencies.
- (c) The Operator must publish its Accessible Transport Action Plan on its website and make it available to passengers, upon request, free of charge.
- (d) The Operator must annually review the Accessible Transport Action Plan to ensure it complies with Clause 35.1 and meets the needs of passengers and the requirements of Law and this Contract. Each update of the Accessible Transport Action Plan must be provided to TfNSW 20 Business Days prior to the planned date of publication.
- (e) The Operator must consult and liaise with RMS, the Roads Authority, local government authorities or any other Governmental Agency with responsibilities relevant to the Transit Stops, the Interchanges and the Wharves (**Relevant Authority**) and Connecting Passenger Operators to:
 - (i) carry out the Operator's obligations relating to Transit Stops and Transit Stop Signage and Service related signage at Wharves and Interchanges, referred to in Item 6 of the Services Schedule;

- (ii) facilitate and enable compliance by the Relevant Authority with accessibility requirements at Transit Stops, Interchanges and Wharves; and
- (iii) coordinate the Operator's accessible transport services with the accessible services and infrastructure of Connecting Passenger Operators.

35.2 Environmental Plan

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

35.3 Customer Service Plan

- (a) The Operator must develop, implement, maintain and comply with its Customer Service Plan from the Planned Contract Bus and Ferry Service Commencement Date.
- (b) The Operator's Customer Service Plan must identify how the Operator will comply with customer service requirements and must:
 - (i) as a minimum, address and detail:
 - (A) the Operator's customer service model including Staff competencies, roles, deployment and responsibilities;
 - (B) customer communication and other interfaces throughout the journey during normal, degraded and planned service disruption operations;
 - (C) customer and Staff safety and security;
 - (D) Special Event Services support;
 - (E) ticketing, revenue protection and mitigation of fare evasion;
 - (F) operational integration with other public transport services;
 - (G) customer feedback and lost property management;
 - (H) customer service training and development of Staff; and
 - (I) measures and strategies to ensure customer engagement in maintaining high standards and the continuous improvement of service delivery; and

- (ii) ensure equitable access for all customers.
- (c) The Operator must review and report annually to TfNSW to provide TfNSW with information about how all the complaints of which the Operator is aware were resolved or why complaints were not resolved, in accordance with the KPI Schedule.
- (d) The Operator must publish its Customer Service Plan on its website and make it available to passengers, upon request, free of charge.
- (e) The Operator must annually review the Customer Service Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Customer Service Plan must be provided to TfNSW 20 Business Days prior to the planned date of publication.

36. Staffing

36.1 All Staff

- (a) The Operator warrants that all Staff hold all necessary Authorisations and are properly Authorised, Accredited, trained and experienced to perform the 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.
- (c) Without limiting Clause 36.1(a) and (b), the Operator must ensure that all Staff who are engaged in, or in connection with, the Operator Activities are properly trained and experienced to a level that would ordinarily be expected of an experienced, efficient and competent operator of passenger transport in relation to the provision of services and the conduct of a passenger transport service comparable to the size, scope and complexity of the Services and the Operator Activities.
- (d) The Operator must ensure that all customer facing Staff are:
 - (i) clean and tidy; and
 - (ii) attired in a clean, well maintained and appropriate uniform that complies with WHS Laws.
- (e) TfNSW will provide Staff with travel passes free of charge for three years following the Bus and Ferry Service Commencement Date. The Operator must provide TfNSW with such information as TfNSW may request (acting reasonably) to enable TfNSW to manage the issue of Staff travel passes.

36.2 Key Personnel

- (a) The Operator must ensure that all Staff that are identified as key management personnel of the Operator in Item 3 of Attachment A (**Key Personnel**) are members of Staff on or before the time specified in Item 3 of Attachment A.
- (b) The Operator must:
 - (i) ensure that each person who is one of the Key Personnel remains dedicated to the carrying out of the performance of the Operator Activities and the Operator's obligations under this Contract in the positions and for the periods specified in Item 3 and Item 4 of Attachment A; and
 - (ii) not remove Key Personnel from their positions and identified duties during the Term (or other period specified in Item 4] of Attachment A) without the prior approval of TfNSW unless the employment of the Key Personnel is terminated.
- (c) If any of the Key Personnel do not remain dedicated to the performance of the Operator Activities and the Operator's obligations under this Contract in the position

and for the periods specified in Item 3 and Item 4 of Attachment A, the Operator must propose a replacement who is of at least equivalent skill and experience as soon as practicable for TfNSW's approval. The Operator must only appoint proposed replacements approved by TfNSW (acting reasonably). If the proposed replacements are not approved, the Operator must propose further replacements until TfNSW's approval is obtained. Any replacement personnel approved by TfNSW will be Key Personnel for the purposes of this Clause 36.2.

37. Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under a Transaction Document without the consent of TfNSW (such consent not to be unreasonably withheld or delayed). TfNSW may consent to the terms of a specific subcontract or delegation or to a class or type of subcontracts or delegations.
- (b) Without limiting Clause 37(a), a subcontract or delegation entered into by the Operator must not be for a period that exceeds the seventh anniversary of the Planned Contract Bus and Ferry Service Commencement Date without the consent of TfNSW.
- (c) The Operator must ensure that any subcontractor engaged to provide any of the Operator Activities holds all appropriate Authorisations required in relation to the activities for which it has been engaged.
- (d) The Operator:
 - (i) is not, by reason of having engaged a subcontractor, relieved of any of its liabilities or obligations under the Transaction Documents;
 - (ii) is responsible for each subcontractor engaged by it as if all the acts and omissions of the subcontractor were its own acts and omissions; and
 - (iii) agrees, that where there is a reference in a Transaction Document to the Operator and a subcontractor is performing the obligations of the Operator, the Operator must procure that each subcontractor it appoints engages in, or refrains from engaging in, conduct of the kind required or prohibited by this Contract and otherwise complies with all obligations of the Operator under the Transaction Document.
- (e) The Operator must complete a Subcontractor's Statement in relation to any subcontractor approved by TfNSW under this Clause 37. TfNSW will provide the Subcontractor's Statement to the Operator for completion.

38. Key Contracts

38.1 Interpretation

In this Clause 38:

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

38.2 Key Contract Security Documents

- (a) Subject to Clause 38.2(g), the Operator must not enter into a Key Contract unless TfNSW has previously entered into a Key Contract Security Document in respect of that Key Contract on terms acceptable to TfNSW. The Operator will not be required to comply with this Clause 38.2(a) if it notifies TfNSW prior to entering into a Key

Contract and TfNSW notifies the Operator that a Key Contract Security Document is not required in respect of that Key Contract. TfNSW must act reasonably in determining whether or not a Key Contract Security Document will be required.

- (b) TfNSW may, by notice to the Operator, designate any agreement as a Key Contract if TfNSW considers that the receipt by the Operator of the goods or services which are or will be the subject matter of the agreement is reasonably necessary for the conduct of all or any part of the Operator Activities.
- (c) The designation takes effect from the date that notice is given to the Operator under Clause 38.2(b) and may be made in respect of a particular agreement or a category of agreements.
- (d) The Operator must notify TfNSW of any agreement it proposes to enter into which it believes (acting reasonably) TfNSW may wish to designate under Clause 38.2(b), prior to entering into that agreement.
- (e) TfNSW may, by notice to the Operator, declare that a Key Contract is no longer a Key Contract for the purposes of this Contract if TfNSW considers that the receipt by the Operator of the goods or services that are the subject matter of the agreement is no longer reasonably necessary for the conduct of all or any part of the Operator Activities.
- (f) A designation or declaration takes effect from the date that notice is given to the Operator under Clause 38.2(e) and may be made in respect of a particular agreement or a category of agreements.
- (g) The Operator will not be required to comply with this Clause 38.2 in respect of any agreement with a term (including all options) of three months or less that is necessary to deal with any emergency in connection with all or any part of the Operator Activities.
- (h) The Operator acknowledges the existence of the Key Contract Security Documents and agrees to cooperate in the implementation of those Key Contract Security Documents.

38.3 Amendment of Key Contracts

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

- (a) materially amend or supplement, or consent to any material amendment or supplement of; or
- (b) expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under a Key Contract, if and to the extent that anything referred to in Clauses 38.3(a) or (b) takes effect in, or relates to the exercise of any power or the performance of any obligation under the Key Contract during the End of Contract Period or after this Contract is due to expire.

38.4 Assignment of Key Contracts

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

- (a) create or allow to exist any Security Interest over; or
- (b) in any other way Dispose of, part with possession of, create or allow any interest in, or otherwise deal with,

its rights under, or interest in, a Key Contract.

38.5 Termination of Key Contracts

- (a) The Operator must not, except as permitted by Clause 38.5(b):
 - (i) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;

- (ii) suspend the performance of any of its obligations under; or
 - (iii) do or permit anything that would enable or give grounds to another party to do anything referred to in Clause 38.5(a)(i) or (ii) in relation to, a Key Contract.
- (b) The Operator may terminate a Key Contract if TfNSW is reasonably satisfied that:
 - (i) it is no longer necessary for the Operator to have the benefit of the Key Contract; or
 - (ii) the Operator has made adequate alternative arrangements for the continued conduct of the Operator Activities.
- (c) If the Operator terminates a Key Contract in breach of this Contract, the Operator must at the request of TfNSW, enter into an agreement immediately following that request with each counterparty to the Key Contract on the terms set out in the relevant Key Contract Security Document.

38.6 Notices in respect of Key Contracts

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

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

38.7 Successor Operator

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

39. Contract management

39.1 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.

39.2 Audit

- (a) TfNSW (and any person authorised by TfNSW) may investigate any matter in connection with this Contract, including costs and pricing matters, and may at any time during the Term and for six months after the Termination Date, audit all files,

records and invoices of the Operator pertaining to the provision of the Operator Activities and related expenditures.

- (b) TfNSW may appoint an auditor for the purposes of this Clause 39.2.
- (c) TfNSW may, or may appoint persons to, carry out mystery shopper surveys, or collect customer satisfaction data, from passengers on Contract Vehicles and at Transit Stops, the Interchanges and Wharves.
- (d) TfNSW (and any person authorised by TfNSW) may conduct audits of the contents of reports and data provided by the Operator to TfNSW in accordance with the Reporting Schedule.
- (e) Without limiting Clause 39.2(d), from the Contract Bus and Ferry Service Commencement Date and for the duration of the Term, the Operator must collect the data specified in paragraph 13.1 of the Reporting Schedule.
- (f) The Operator must:
 - (i) provide all reasonable assistance to TfNSW (and any person authorised by TfNSW) in the conduct of an audit under Clause 39.2(d);
 - (ii) make available to TfNSW (and any person authorised by TfNSW) all reports and underlying data requested by TfNSW in the conduct of an audit under Clause 39.2(d); and
 - (iii) comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits.
- (g) The Operator must provide all reasonable access and assistance required in connection with this Clause 39.2.

39.3 Inquiries

- (a) The Operator must, within the timeframe required by TfNSW, provide all assistance reasonably requested by TfNSW in respect of any inquiry into or concerning the Operator Activities or this Contract. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to TfNSW) or any request for information from the NSW Auditor-General or the Independent Pricing and Regulatory Tribunal directed to TfNSW or the Minister for Transport.
- (b) Without limiting Clause 39.3(a), the assistance to be provided by the Operator includes:
 - (i) the provision of requested documents or information relevant to the Operator Activities; and
 - (ii) answering questions relevant to the Operator Activities.

40. Accreditation and compliance

40.1 Compliance with Laws

- (a) The Operator must:
 - (i) in performing the Operator Activities, comply with all applicable Laws including:
 - (A) the *Maritime Services Act 1935* (NSW);
 - (B) the MS Act;
 - (C) the *Navigation Act 1901* (NSW);

- (D) the PT Act 1990;
- (E) the PT Act 2014;
- (F) the *Road Transport Act 2013* (NSW);
- (G) the Rail Safety National Law;
- (H) the TA Act; and
- (I) any regulations made under any of the Laws referred to in Clauses 40.1(a)(i)(A) to (H),

(Transport Laws);

- (ii) ensure the Operator's Associates engaged in, or in connection with, the Operator Activities, comply with all applicable Laws including Transport Laws;
- (iii) ensure that the Assets are operated and maintained so as to comply with all applicable Laws including Transport Laws;
- (iv) give the TfNSW Representative copies of:
 - (A) all material documents given by the Operator or any of the Operator's Associates to a Governmental Agency; and
 - (B) details of any other material communications between the Operator or any of the Operator's Associates and any Governmental Agency,
 in connection with the Operator Activities;
- (v) without limiting Clause 40.1(a)(iv) give the TfNSW Representative copies of any notice, report or other correspondence given or received by:
 - (A) the Operator or the Operator's Associates under or in connection with:
 - (I) any applicable Law including any Transport Law under which any Authorisation required to carry out the Operator Activities is granted; or
 - (II) any Authorisation held by the Operator or the Operator's Associates,
 in connection with the Operator Activities; or
 - (B) the Operator or the Operator's Associates which may adversely affect the ability of the Operator or the Operator's Associates to carry out the Operator Activities,

as soon as practicable, but in any event no later than five Business Days after such notice, report or other correspondence is given or received by the Operator or the Operator's Associates.

- (b) The Operator must provide TfNSW, RMS, STA, RailCorp, NSW Trains and Sydney Trains with such assistance as may be required by TfNSW, RMS, STA, RailCorp, NSW Trains and Sydney Trains (acting reasonably) to enable them to comply with all applicable Laws including Transport Laws.
- (c) During the first month after the Contract Bus and Ferry Service Commencement Date and every 12 months thereafter, the Operator must certify in writing to TfNSW

that the Operator has complied with the following legislative and regulatory requirements:

- (i) *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).
- (d) The Operator must ensure that the Operator and the Operator's Associates:
- (i) promptly give any Governmental Agency such access to assets, premises and information as that Governmental Agency requests, within the time requested;
 - (ii) cooperate with and respond to any lawful requests made by any Governmental Agency, within the time requested; and
 - (iii) do not hinder or delay any Governmental Agency in carrying out its duties.
- (e) Compliance by the Operator with its obligations under this Clause 40:
- (i) does not discharge or excuse the Operator from complying with its other obligations under the Contract; and
 - (ii) is not evidence of compliance by the Operator with its other obligations under the Contract.

40.2 Authorisations and Accreditation

- (a) Prior to the commencement of any work arising under or in connection with the Operator Activities for which any Authorisation or Accreditation is required by Law, and at all times while carrying out such Operator Activities, the Operator must ensure that the Operator and the Operator's Associates:
- (i) hold all Authorisations required to carry out those Operator Activities including:
 - (A) all necessary Bus Accreditation;
 - (B) all necessary Rail Accreditation;
 - (C) all necessary Certificates of Survey; and
 - (D) all necessary Certificates of Operation; and
 - (ii) comply with all conditions of such Authorisations and all obligations of accredited persons under the applicable Laws including:
 - (A) the PT Act 1990;
 - (B) the MS Act; or
 - (C) the Rail Safety National Law.
- (b) If the Operator is a corporation, there must be at all times a designated manager or director of the Operator in accordance with section 7 of the PT Act 1990.

40.3 Safety Management System

- (a) Without limiting Clauses 40.1 and 40.2, the Operator must, and must ensure that the Operator's Associates do, to the extent required by applicable Law including Transport Laws develop, implement and maintain a Safety Management System:
 - (i) in a timely manner; and
 - (ii) in accordance with this Contract and the applicable Law including Transport Laws.
- (b) The Operator must:
 - (i) ensure that its or the Operator's Associates' Safety Management Systems contemplate and provide for the continuation of the Operator Activities following the exercise by TfNSW of its Step in Rights; and
 - (ii) provide TfNSW with:
 - (A) the then current version of its or the Operator's Associates' Safety Management System for the Operator Activities promptly upon request by TfNSW; and
 - (B) an updated version of such Safety Management System within five Business Days of any update.

40.4 Staff

- (a) Without limiting Clauses 40.1 to 40.3, the Operator must ensure that all Staff:
 - (i) are competent to carry out the work for which they are engaged for the purposes of all applicable Laws including Transport Laws; and
 - (ii) comply with their obligations under all applicable Laws including Transport Laws.
- (b) Without limiting Clause 40.4(a), the Operator must ensure that:
 - (i) with respect to Bus Driver Authorities required to be held by Drivers under the PT Act 1990, all Drivers of Buses hold such Bus Driver Authorities and will comply at all times with such Bus Driver Authorities; and
 - (ii) each Master of a Contract Ferry complies with the MS Act, including that each such Master:
 - (A) holds a current Certificate of Competency issued pursuant to the MS Act on or after from 1 July 2013; or
 - (B) if a Master does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013; and
 - (iii) each member of the Crew of a Contract Ferry complies with the MS Act, including that each such member:
 - (A) holds a current Certificate of Competency issued pursuant to the MS Act on or after 1 July 2013; or
 - (B) if a member of the Crew does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013.

40.5 Specific Bus safety requirements

Without limiting any other Authorisations required for the carrying out of the Operator Activities, the Operator must operate the Contract Bus Services only upon:

- (a) Roads and Road-Related Areas that have been approved by the appropriate Roads Authority for use by Bus traffic; or
- (b) if the Contract Bus Services are to be provided on private property, with the permission of the owner of the private property.

40.6 Specific Ferry safety requirements

- (a) Without limiting Clause 24.3 or Clause 40.2, the Operator must ensure that each Contract Ferry is maintained and operated in conformity with the MS Act, including;
 - (i) a current Certificate of Operation and Certificate of Survey issued pursuant to the MS Act; and
 - (ii) any standards, guidelines and codes of practice relating to marine safety and applicable to the Contract Ferry issued pursuant to the MS Act.
- (b) The Operator must ensure the appropriate supervision of embarking and disembarking passengers at the Wharves including by assisting with mobility ramps as required.

40.7 Specific rail safety requirements

- (a) The Operator must, and must ensure that the Operator's Associates:
 - (i) act as a 'rail transport operator' as defined in the Rail Safety National Law; and
 - (ii) comply with any obligations of a 'rail transport operator' they have under the Rail Safety National Law.
- (b) The Operator must ensure that it is able to comply at all times with Clause 40.2 if an Operator's Associate is engaged in or in connection with Operator Activities in circumstances where subsection 62(1)(b) of the Rail Safety National Law applies.
- (c) The Operator must enter into and comply with the Safety Interface Agreements.
- (d) The Operator must comply with the document titled *Newcastle Light Rail Safety Accreditation Strategy* dated 20 April 2016 as amended from time to time.

40.8 Rail Accreditation of Managing Contractor and Rolling Stock Supplier

The Operator must ensure that the Operator and the Operator's Associates within the time requested by TfNSW (which must be reasonable having regard to the circumstances), provide:

- (a) the Managing Contractor and the Rolling Stock Supplier; and
- (b) any other party at TfNSW's request,

with such access to premises, information or assistance as the party may reasonably require in relation to:

- (c) that party's Rail Accreditation; or
- (d) any duties, obligations, or requirements that party may have under the applicable Law including Transport Laws relating to that party's Rail Accreditation,

in relation to any work or services arising under or in connection with the delivery of the NLR.

40.9 AEO

The Operator must, or must procure that the Operator's Associates:

- (a) obtain prior to commencing the Operator's Activities; and
- (b) maintain during the Term,

AEO status in relation to the Operator Activities in accordance with the requirements set out at <http://www.asa.transport.nsw.gov.au/ts/asa-standards>.

40.10 WHS

- (a) In performing the Operator Activities, the Operator must ensure, so far as is reasonably practicable, the health and safety of its Workers and any persons at the Workplace (in the area under the Operator's control), including any persons performing work at the Workplace, whether or not engaged by the Operator.
- (b) The Operator acknowledges that, in performing the Operator Activities:
 - (i) for the purposes of the WHS Law, it has management and control of the Workplace and as such must ensure compliance with its obligations under WHS Law in this regard;
 - (ii) it will ensure, so far as is reasonably practicable, the health safety of any persons at the Workplace, including any persons performing work at the Workplace, whether or not engaged by the Operator;
 - (iii) in performing the Operator Activities, the Operator must ensure that (subject to Clause 40.10(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 Operator Activities;
 - (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 Operator Activities are trained in work health and safety, in particular in relation to the risks associated with performing the Operator Activities;
 - (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 Operator Activities; and
 - (I) it otherwise complies with all statutory requirements for work health, safety and rehabilitation management.
- (c) The Parties acknowledge and agree that the Operator has control of:
 - (i) the manner in which the Operator Activities are performed; and
 - (ii) all matters arising out of or as a consequence of the performing of or failure to perform the Operator Activities that give rise or may give rise to risks to health or safety.

- (d) The Operator must, prior to the performance of any part of the Operator Activities:
 - (i) undertake an assessment of the work, health and safety risks associated with the performance of the Operator Activities and identify and take all reasonably practicable steps to implement appropriate work, health and safety risk control measures to eliminate and minimise all such work, health and safety risks; and
 - (ii) as required by TfNSW, provide TfNSW with details of the work, health and safety risk assessment undertaken and evidence of implementation of appropriate work, health and safety risk control measures required under this Clause 40.10.
- (e) If the Operator engages a contractor, 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 Operator Activities,it will ensure that person complies with the obligations referred to in this Clause 40.10.
- (f) In order to meet its obligations under this Clause 40.10, 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 Operator Activities, including:
 - (i) a process to identify safety hazards, assess the risks posed by such hazards and eliminate or control the risks; and
 - (ii) mechanisms to monitor the performance of the system and adapt and improve it as necessary.
- (g) The Operator will provide to TfNSW such information about the operation and maintenance of the system referred to in Clause 40.10(f) as TfNSW requests. Any review of the operation or maintenance of the system by TfNSW under this Clause 40.10(g) does not constitute a verification or acceptance by TfNSW of the adequacy of the system.
- (h) The Operator must so far as is reasonably practicable consult, cooperate and coordinate the Operator Activities with any other person involved in performing work at the Workplace to achieve effective coordination of those activities to ensure optimal health and safety risk management and enable TfNSW and the Operator and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.
- (i) If the Operator breaches its obligations under this Clause 40.10, the breach will be a Termination Event for the purposes of Clause 54.1. In addition, the Operator has no Claim against TfNSW or STA as a result of or in any way connected with a breach of its obligations under this Clause 40.10.

Part J – Payment

41. Payment

41.1 Payments

- (a) In exchange for the Operator performing the Operator Activities 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 41.2.
- (b) The Payment amounts specified in the Payment Schedule will be fixed for the Term, unless varied in accordance with the Payment Schedule or this Contract.
- (c) Unless expressly stated in this Contract or the Schedules, the Operator must bear the cost of any steps, actions, obligations or activities required of the Operator arising from or in connection with this Contract and is not entitled to any reimbursement of expenses, payment or compensation for any such steps, actions, obligations or activities.
- (d) The Operator has no Claim against STA in relation to any Payment.

41.2 Invoices and time for payment

- (a) On a monthly basis in accordance with paragraph 2(b) of the Payment Schedule for the duration of the Term, the Operator must submit to TfNSW a valid Tax Invoice for the performance of the Operator Activities in accordance with the terms of this Contract. The Tax Invoice must specify:
 - (i) the amount of the Payments in respect of the Services for the month in arrears;
 - (ii) the amount of GST payable in respect of the provision of the Services; and
 - (iii) such other details specified in the Payment Schedule.
- (b) TfNSW must make Payments within 14 days after receipt of a Tax Invoice where:
 - (i) the amount claimed in the Tax Invoice is due for payment and correctly calculated in Australian dollars; and
 - (ii) the invoice is set out as an itemised account in accordance with the requirements of Clause 41.2(a).
- (c) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.

41.3 Set-off

- (a) TfNSW will be entitled to set off or deduct from any amount due from TfNSW to the Operator under a Transaction Document:
 - (i) any debt or other monies due from the Operator to TfNSW; and
 - (ii) any Claim to money which TfNSW may make in good faith against the Operator whether for damages or otherwise (including under any indemnity in a Transaction Document) and whether or not the amount is disputed,whether under a Transaction Document or otherwise at Law relating to the Operator Activities.
- (b) The Operator must make all payments due to TfNSW under any Transaction Document without set off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) Nothing in this Clause 41.3 affects TfNSW's right to recover from the Operator the whole of the debt or any balance that remains owing after any set off.

41.4 Goods and Services Tax (GST exclusive prices)

- (a) A reference in this Clause 41.4 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.

41.5 Civil Penalties

Clauses 10.7(c), paragraph 5 of the KPI Schedule and paragraphs 2.1(d)(3) and 4.2 of the Payment Schedule are civil penalty provisions for the purposes of section 38 of the PT Act 2014.

Part K – Insurance and indemnity

42. Reinstatement of loss of damage

42.1 Reinstatement

- (a) If any part of the State Assets is lost, damaged or destroyed, the Operator must:
 - (i) promptly provide the TfNSW Representative with notice of any such loss, damage or destruction and any required reinstatement or repair;
 - (ii) consult with the TfNSW Representative as to the programming of the works needed to effect the relevant reinstatement or repair;
 - (iii) promptly reinstate or otherwise make good the loss, or repair the damage, so that the Operator continues to comply with its obligations under the Transaction Documents to the greatest extent possible; and
 - (iv) keep the TfNSW Representative fully informed of the progress of the reinstatement and repair activities.
- (b) Existing Buses that are reinstated or repaired under this Clause 42.1 must comply with the uniform livery requirements set out in Annexure 3 to the Asset Schedule.
- (c) TfNSW may require the Operator to reinstate or repair the NLR on the basis of different specifications by directing a Modification pursuant to Clause 48. The reinstatement or repair work will only constitute a Modification to the extent that it differs from what would have otherwise been required under this Contract. The available insurance proceeds received by the Operator under policies of insurance required to be maintained under Clause 43 will be taken into account in calculating the Net Financial Impact of the Modification.

42.2 Damage caused by Uninsurable Risk

- (a) To the extent that the loss, damage or destruction of the NLR (or any material part of the NLR) arises from an Uninsurable Risk, TfNSW may either:
 - (i) pay the Operator the direct cost of carrying out the reinstatement or repair work in relation to the NLR;
 - (ii) direct a Modification under Clause 48 to remove all or any of the Light Rail Service from the Operator Activities; or
 - (iii) where the occurrence of the Uninsurable Risk causes material damage, loss or destruction to the NLR, terminate this Contract by issuing a notice to the Operator.
- (b) If this Contract is terminated by TfNSW under Clause 42.2(a)(iii), TfNSW shall pay a termination payment to the Operator calculated as the aggregate of:
 - (i) any amounts due and payable by TfNSW to the Operator in accordance with this Contract as at the Termination Date,less:
 - (ii) any amounts owing by the Operator to TfNSW under this Contract as at the Termination Date.

42.3 Damage to third party property

- (a) Without limiting Clause 44, but subject to Clause 43.2, where any damage to or loss or destruction of real or personal property of a third party occurs which arises out of a breach by the Operator of this Contract or a wrongful act or omission of the Operator, the Operator must do one of the following (where it has a legal liability to do so):
 - (i) promptly repair, replace or reinstate the damage, loss or destruction; or
 - (ii) reasonably compensate the third party.
- (b) If the Operator fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, TfNSW may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by TfNSW will be a debt due and payable from the Operator to TfNSW.

43. Insurance

43.1 Insurance policies

- (a) With effect on and from the date of this Contract, the Operator must effect and maintain for the Term:
 - (i) public liability insurance:
 - (A) covering claims in respect of:
 - (I) damage to any real or personal property; and
 - (II) injury to, or death of, any person,arising out of or in connection with the performance of the Operator Activities and use and operation of the Assets;
 - (B) in which TfNSW, STA and RMS are also a named insured in the policy; and
 - (C) for at least the amount specified in Item 5 of Attachment A; and

- (ii) workers' compensation insurance against any common law or statutory liability.
- (b) On or before the Planned Contract Bus and Ferry Service Commencement Date, the Operator must effect and maintain for the Term:
 - (i) industrial special risks insurance:
 - (A) covering the Contract Depots and other assets, infrastructure or equipment provided to, used or accessed by the Operator under the State Bus Depot Lease against physical loss, destruction or damage for an amount not less than the market value (plus allowances for claim contingencies including removal of debris, demolition costs, professional fees and expediting expenses); and
 - (B) to be effected in the joint names of TfNSW, STA and the Operator for their respective rights and interests;
 - (ii) insurance covering the Contract Buses:
 - (A) against physical loss, destruction or damage for an amount not less than the market value; and
 - (B) to be effected in the joint names of TfNSW, STA and the Operator for their respective rights and interests;
 - (iii) insurance coverage against third party property damage for all Contract Buses and any other motor vehicles used to carry out the Operator Activities for at least the amount specified in Item 6 of Attachment A;
 - (iv) marine liability insurance (or similar) in respect of the Contract Ferries and Wharves:
 - (A) against:
 - (I) fire and usual marine risks (including hull, machinery and increased value insurance on an agreed value basis);
 - (II) war risks on an agreed value basis;
 - (III) any other risk which should be effected as a matter of Good Industry Practice; and
 - (IV) usual protection and indemnity risks;
 - (B) to be effected in the joint names of TfNSW, STA, RMS and the Operator for their respective rights and interests;
 - (v) a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles which are used in connection with the Operator Activities (other than motor vehicles that are required to be insured under Clause 43.1(b)(ii));
 - (vi) compulsory third party motor vehicle insurance in respect of all registrable motor vehicles which are used in connection with the Operator Activities;
 - (vii) a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned or leased by the Operator or the Operator's Associates) which is used in connection with the carrying out of the Operator Activities relating to the Contract Bus Services and Ferry Services (including the Contract Bus and Ferry Moveable Assets);
 - (viii) terrorism insurance which covers physical loss or damage to the Contract Buses and Contract Ferries caused by a 'Terrorist Act' (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this Contract)

and including cover for business interruption arising from such loss or damage; and

- (ix) any other insurances which TfNSW reasonably requires in which it is also a named insured or which are commonly effected by the operators of public transport services comparable to the size, scope and complexity of the Operator Activities provided those insurances can be obtained on payment of a reasonable premium.
- (c) On or before the Planned Light Rail Service Commencement Date, the Operator must effect and maintain for the Term:
 - (i) an industrial special risks insurance policy:
 - (A) covering the NLR:
 - (I) against destruction, loss or damage and other insurable risks as are reasonably required by TfNSW; and
 - (II) including cover for business interruption arising from such destruction, loss or damage; and
 - (B) in the joint names of TfNSW and the Operator for their respective interests;
 - (ii) a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned or leased by the Operator or the Operator's Associates) which is used in connection with the carrying out of the Operator Activities relating to the Light Rail Service (including the NLR Moveable Assets); and
 - (iii) terrorism insurance which covers physical loss or damage to the Contract LRVs caused by a 'Terrorist Act' (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this Contract) and including cover for business interruption arising from such loss or damage.
- (d) All policies of insurance required under this Clause must be effected and maintained with an Authorised Insurer that has been approved by TfNSW.

43.2 Insurance generally

- (a) The Operator represents and warrants to TfNSW that on the date of this Contract and for the duration of the Transition Period and the Term that it has effected insurances as are required by, and in accordance with, Clause 43.1.
- (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 43.2(b) but, despite this, the contracts for insurance effected in compliance with this Contract do not contain the term referred to in Clause 43.2(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 and when any insurances are to expire.
- (e) The Operator must:
 - (i) give TfNSW acceptable proof of currency and coverage of the insurances referred to in Clause 43.1(a) on the date of this Contract;

- (ii) give TfNSW acceptable proof of currency and coverage of the insurances referred to in Clause 43.1(b) before the Planned Contract Bus and Ferry Service Commencement Date;
- (iii) give TfNSW acceptable proof of currency and coverage of the insurances referred to in Clause 43.1(c) before the Planned Light Rail Service Commencement Date;
- (iv) give TfNSW certified copies of all:
 - (A) policies;
 - (B) policy schedules;
 - (C) renewal certificates; and
 - (D) endorsement slips,
 as soon as it receives them;
- (v) give TfNSW a certificate of currency in a form satisfactory to TfNSW (acting reasonably) to confirm that the insurances which the Operator must effect and maintain under this Clause 43 have been effected and maintained in accordance with the requirements of this Clause 43, whenever requested by TfNSW; and
- (vi) in respect of any policy which names more than one insured, have each policy endorsed or a term in the policy to the effect that:
 - (A) the insurer waives its right to avoid the policy or any liability under the policy by reason of non-disclosure or inaccurate disclosure in the proposal relating to that policy by the named insureds other than the named insureds responsible for the non-disclosure or inaccurate disclosure;
 - (B) the insurer agrees to waive all rights of subrogation or action that it may have or acquire against the 'insured' parties;
 - (C) the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
 - (D) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.
- (f) The Operator must:
 - (i) not knowingly do or permit, or omit to do, anything which prejudices any insurance required to be effected and maintained under this Clause 43 (**Required Insurance**);
 - (ii) rectify anything which might prejudice any Required Insurance;
 - (iii) reinstate any Required Insurance if it lapses;
 - (iv) immediately notify TfNSW of any fact or circumstance or change in circumstances which may prejudice any Required Insurance;
 - (v) without limiting Clause 43.2(f)(iv), immediately notify TfNSW if it receives any claim or notice in connection with a Required Insurance;
 - (vi) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Required Insurance; and
 - (vii) comply at all times with the terms of each Required Insurance.

- (g) The effecting of insurances does not limit the liabilities or obligations of the Operator under this Contract. The Operator bears the risk of the Required Insurances being inadequate to enable the Operator to fulfil its obligations under this Contract.

43.3 Premiums

The Operator must punctually pay all premiums in respect of all insurance policies referred to in this Clause 43.

43.4 Claims and proceeds

- (a) If the Operator becomes entitled to claim under any insurance policy as the result of the loss of, or any damage to, any State Asset, the Operator must diligently pursue such claim and keep TfNSW notified of its progress in pursuing that claim.
- (b) Unless TfNSW agrees otherwise, the Operator must apply the proceeds of any claim referred to in Clause 43.4(a):
 - (i) to the repair of any damage to the relevant State Asset, where such repair is economic;
 - (ii) to the replacement of the relevant State Asset, where such State Asset is irretrievably lost or stolen or is damaged beyond economic repair (unless TfNSW directs otherwise); or
 - (iii) to TfNSW, where such State Asset is irretrievably lost or stolen or is damaged beyond economic repair and TfNSW directs the Operator not to replace the relevant State Asset, together with any proceeds realised by the Operator on the disposal of or scrapping of such State Assets (if directed to do so by TfNSW).
- (c) If required by TfNSW, the Operator must provide evidence to TfNSW's satisfaction (acting reasonably) that:
 - (i) if Clause 43.4(b)(i) applies, repair of any damage to a State Asset is economic;
 - (ii) if Clause 43.4(b)(ii) applies, a State Asset is irretrievably lost or stolen or is damaged beyond economic repair.
- (d) If TfNSW is not reasonably satisfied by the evidence provided by the Operator under Clause 43.4(c), TfNSW may (acting reasonably) direct the Operator to apply the insurance proceedings in another manner.
- (e) Any replacement for a State Asset procured under this Clause 43.4 will be deemed to be a State Asset and, unless TfNSW directs that an alternative lease will apply, will become subject to the same State Asset Access Agreement that the original State Asset was subject to.

44. Indemnity and Limitation of Liability

44.1 Indemnity

- (a) The Operator must indemnify TfNSW, RMS, STA, Railcorp, Sydney Trains, NSW Trains, any Roads Authority, the Minister for Transport, the State and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of, or to, any of them (**Indemnified Persons**), from and against:
 - (i) any Loss incurred by an Indemnified Person in respect of:
 - (A) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to an Indemnified Person;

- (B) damage to, loss or destruction of, or loss of use of (whether total or partial), any State Asset; and
- (C) any claim against an Indemnified Person (including by another Indemnified Person) in respect of:
 - (I) any illness, personal injury to, or death of, any person; or
 - (II) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property,
 caused by, arising out of, or as a consequence of any act or omission of the Operator;
- (ii) any Loss incurred by an Indemnified Person arising out of or any way in connection with:
 - (A) any breach of, or failure to comply with, a Transaction Document by the Operator including:
 - (I) any Non-Compliance Event; or
 - (II) any Termination Event;
 - (B) termination of this Contract under Clause 54.2; or
 - (C) any fraudulent, negligent, or other wrongful act or omission of the Operator or any of its Staff;
- (iii) any Loss incurred by an Indemnified Person in respect of any claim by a third party against an Indemnified Person or any liability of an Indemnified Person to a third party arising out of, or in any way in connection with:
 - (A) any breach of, or failure to comply with, a Transaction Document by the Operator including:
 - (I) any Non-Compliance Event;
 - (II) any Termination Event;
 - (B) termination of this Contract under Clause 54.2; or
 - (C) any fraudulent, negligent, or other wrongful act or omission of the Operator or any of its Staff;
- (iv) without limiting Clauses 44.1(a)(i), (ii) or (iii), any Loss incurred by an Indemnified Person including in respect of any Claim by a third party against an Indemnified Person or any liability of an Indemnified Person to a third party arising out of or in any way in connection with:
 - (A) the occupation or use of the Permanent Light Rail Corridor, Transit Stops, Interchanges, Wharves, Contract Depots, Bus Layover Area or Queens Wharf Office Area by the Operator or the Operator's Associates;
 - (B) any Subsequent Contamination including:
 - (I) except to the extent prohibited by Law, where arising out of or in any way in connection with any failure by the Operator to comply with any obligation under this Contract in connection with Subsequent Contamination; or
 - (II) where incurred by TfNSW, RMS, STA, Sydney Trains or NSW Trains' in complying with, or in connection with, a Clean Up Notice to the extent that the relevant the Contamination the subject of the Clean Up Notice is Subsequent Contamination;

- (C) except to the extent prohibited by Law, Contamination in, on or under (or emanated or emanating from) any New Depot or Operator Depot;
 - (D) any breach by the Operator of the terms of a Key Contract;
 - (E) TfNSW or STA:
 - (I) remedying or procuring the remedy of any default of the Operator under a Key Contract; or
 - (II) performing the obligations of the Operator under a Key Contract;
 - (F) a breach by the Operator of Clause 40.10;
 - (G) any infringement of any Intellectual Property rights by any of the Operator or any of the Operator's Associates;
 - (H) the use of the Contract LRV Intellectual Property or the NLR Intellectual Property by the Operator;
 - (I) STA's, TfNSW's or their sublicensee's use of the Contract Material produced by or on behalf of the Operator infringing a third party's Intellectual Property rights; or
 - (J) (whether directly or indirectly) any breach of Clause 62 or 63 by the Operator including any breach of a warranty given by the Operator under Clause 62 or 63.
- (b) The Operator's indemnity in Clause 44.1(a) will be reduced proportionally to the extent that the Loss is caused by or arises out of, or in any way in connection with:
- (i) any fraudulent, negligent, or other wrongful act or omission of the Indemnified Person claiming under the indemnity;
 - (ii) a breach by STA or TfNSW of its obligations under the Transaction Documents;
 - (iii) a Force Majeure Event or Compensable Event which is not insured under the insurances which the Operator is required to effect or maintain under this Contract and only if and to the extent that the Operator has been granted relief under Clause 46 or Clause 47 as the case may be.
- (c) This indemnity will not exclude any other right of TfNSW or STA to be indemnified by the Operator.
- (d) For the purposes of this Clause 44.1, 'infringement' includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 100 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth) constitute an infringement.

44.2 Liability and responsibility

The Operator acknowledges and agrees that:

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

44.3 Release

- (a) The Operator releases, and must procure that the Operator's Associates release the Indemnified Persons to the full extent permitted by Law, from all Claims for any Losses suffered or incurred by the Operator or the Operator's Associates to the extent caused or contributed to by any of the Operator Activities or any act or omission of the Operator or the Operator's Associates in connection with the Transaction Documents.
- (b) The release in Clause 44.3(a) will be reduced proportionally to the extent that the relevant Loss is caused by or arises out of, or in any way in connection with:
 - (i) any fraudulent, negligent, or other wrongful act or omission of the Indemnified Person seeking to rely on the release;
 - (ii) a breach by TfNSW or STA of its obligations under the Transaction Documents;
 - (iii) a Force Majeure Event or Compensable Event which is not insured under the insurances which the Operator is required to effect or maintain under this Contract and only if and to the extent that the Operator has been granted relief under Clause 46 or Clause 47 as the case may be.

44.4 Exclusion of Consequential or Indirect Loss

- (a) Subject to Clause 44.4(b), but otherwise despite any other provision of this Contract, the Operator has no liability to any Indemnified Person (whether in contract, tort, negligence, under an indemnity or otherwise), nor will any Indemnified Person be entitled to make any Claim against the Operator, in respect of Consequential or Indirect Loss incurred or sustained by the Indemnified Person as a result of any act or omission of the Operator (whether negligent or otherwise).
- (b) Clause 44.4(a) does not operate to limit or restrict the Operator's liability to an Indemnified Person in respect of Consequential or Indirect Loss:
 - (i) to the extent that the Operator has:
 - (A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that the Operator is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Operator,an amount in respect of that liability; and
 - (ii) to the extent that the Operator:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this Contract; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract if the Operator had:
 - (I) diligently pursued a claim under that policy of insurance;
 - (II) complied with the terms and conditions of that policy or insurance; or
 - (III) complied with its insurance obligations under this Contract;
 - (iii) in respect of any liability of an Indemnified Person to a third party (including to another Indemnified Person), in respect of property damage, personal injury or death caused by or arising out of, or as a consequence of any act or omission of the Operator or an Operator's Associate;

- (iv) in respect of any other liability of an Indemnified Person to a third party (including to another Indemnified Person) caused by or arising out of, or as a consequence of any act or omission of the Operator or an Operator's Associate, except to the extent that:
 - (A) the liability to the third party is in respect of Consequential or Indirect Loss arising under a contractual claim; or
 - (B) the Operator or Operator's Associate would not have been liable (or liable to the same extent) had the third party brought the claim directly against the Operator or Operator's Associate;
- (v) arising from any criminal acts or fraud on the part of the Operator or an Operator's Associate;
- (vi) arising from wilful misconduct on the part of the Operator or an Operator's Associate; or
- (vii) to the extent to which, by Law, the Parties cannot limit or contract out of such liability.

44.5 State exclusion

- (a) Despite any other provision of this Contract but subject to Clauses 4 and 44.5(b), none of the Indemnified Persons has any liability to the Operator (whether in contract, tort or otherwise), nor will the Operator be entitled to make any Claim against the Indemnified Persons, in respect of Consequential or Indirect Loss incurred or sustained by the Operator as a result of any act or omission of the Indemnified Persons (whether negligent or otherwise).
- (b) Clause 44.5(a) does not operate to limit or restrict the State, STA's or TfNSW's liability in respect of Consequential or Indirect Loss:
 - (i) to the extent payable for a Compensable Event or other NFI Event pursuant to Schedule 17;
 - (ii) to the extent payable under Clause 42.2 if an Uninsurable Risk materialises and TfNSW or STA (as applicable) makes an election to pay the Operator the direct cost of carrying out reinstatement or repair work in relation to the NLR;
 - (iii) to the extent payable as part of any termination payment referred to in Clause 54.4;
 - (iv) to the extent that an Indemnified Person:
 - (A) has recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that none of the Indemnified Persons are required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Indemnified Person,
 an amount in respect of that liability;
 - (v) to the extent that the an Indemnified Person:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this Contract; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract if TfNSW or STA (as applicable) had:

- (I) complied with the terms and conditions of that policy of insurance; or
- (II) complied with its insurance obligations under this Contract;
- (vi) arising from any criminal acts or fraud on the part of the Indemnified Persons;
- (vii) arising from wilful misconduct on the part of the Indemnified Persons; or
- (viii) to the extent to which, by Law, the Parties cannot limit or contract out of such liability.

44.6 Liability for events triggering KPI Credits or liquidated damages

- (a) Subject to Clauses 44.6(b) and (c), reduction of the Payments by the application of KPI Credits or payment of liquidated damages under Clause 10.7(c) (**Liquidated Damages**) will be the only monetary compensation payable by the Operator to TfNSW and STA for:
 - (i) any failure by the Operator to meet the Key Performance Indicators; and
 - (ii) any failure by the Operator to provide sufficient Drivers or other resources to facilitate testing and commissioning of the NLR in accordance with the Managing Contractor Contract and the Rolling Stock Supply Contract (**Delivery Default**).
- (b) Clause 44.6(a) does not limit or exclude:
 - (i) the Operator's liability for any KPI Credit or Liquidated Damages;
 - (ii) the Operator's liability under any indemnity contained in this Contract including the indemnity in Clause 44.1;
 - (iii) the Operator's obligations and liabilities under Clauses 52 to 54;
 - (iv) the Operator's obligations and liabilities under Clauses 55 to 58;
 - (v) any Indemnified Person's entitlement to a Claim under this Contract or at Law in respect of:
 - (A) any third party property damage; or
 - (B) any personal injury or death,
 for which the Operator or any Operator's Associate is liable;
 - (vi) STA's or TfNSW's rights under this Contract or any other Transaction Document in respect of the event that caused or contributed to the KPI Default or the Delivery Default (as opposed to the KPI Default or the Delivery Default itself); or
 - (vii) any other right under this Contract or at Law in relation to any non-monetary compensation.
- (c) If any KPI Credit or Liquidated Damages are held to be void, invalid, unenforceable or otherwise inoperative so as to disentitle TfNSW from adjusting the Payments in accordance with the KPI Schedule or Clause 10.7(c), TfNSW or STA (as applicable) will be entitled to recover common law damages for the failure to meet the Key Performance Indicators or the Delivery Default, but the Operator's liability for such damages will not be any greater than the liability which it would have had if the KPI Credit or Liquidated Damages had not been void, invalid, unenforceable or otherwise inoperative.

44.7 Indemnified Persons

- (a) To the extent that an indemnity in this Contract is for Indemnified Persons other than TfNSW or STA, TfNSW has sought and obtained that indemnity as agent on

behalf of each Indemnified Person (other than TfNSW and STA) and TfNSW confirms that it has the authority to act as agent on behalf of each Indemnified Person (other than TfNSW and STA). TfNSW may also enforce that indemnity as agent on behalf of each Indemnified Person (other than TfNSW and STA).

- (b) If TfNSW does not have authority to act as agent on behalf of an Indemnified Person (other than TfNSW and STA), then TfNSW will be deemed to have sought and obtained that indemnity as trustee for that Indemnified Person and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit of that Indemnified Person.
- (c) If the indemnity in Clause 44.1 is unenforceable to the extent that it is expressed to be given in favour of an Indemnified Person other than TfNSW or STA, all references in this Clause 44 to the Indemnified Person will be read as a reference to TfNSW and STA only.

Part L – Management of change

45. Native Title Claims and Artefacts

45.1 Native Title Claims

- (a) If there is a Native Title Claim with respect to the Permanent Light Rail Corridor or any part of the Permanent Light Rail Corridor, the Operator must:
 - (i) continue to perform the Operator Activities, except to the extent otherwise:
 - (A) directed by the TfNSW Representative;
 - (B) ordered by a court or tribunal; or
 - (C) required by Law; and
 - (ii) at the request of TfNSW, or if required to do so under any Law or by order of a court or tribunal, provide all reasonable assistance in connection with dealing with the Native Title Claim (including giving TfNSW and any other persons authorised by TfNSW access to the Permanent Light Rail Corridor or that part of the Permanent Light Rail Corridor which is the subject of the Native Title Claim when reasonably required by TfNSW for that purpose).
- (b) For the purposes of Clause 45.1(a)(i)(A), TfNSW may by notice direct the Operator to suspend performance of any or all of the Operator Activities until such time as TfNSW gives the Operator further notice.

45.2 Artefacts

- (a) All Artefacts found on or under the surface of the Permanent Light Rail Corridor will, as between the Parties, be the absolute property of TfNSW.
- (b) Where such an Artefact is found, the Operator must:
 - (i) immediately notify the TfNSW Representative;
 - (ii) ensure that the Artefact is protected and not disturbed further;
 - (iii) comply with all requirements of Governmental Agencies; and
 - (iv) continue to perform the Operator Activities, except to the extent otherwise:
 - (A) ordered by a court or tribunal; or
 - (B) required by Law.

46. Compensable Events

46.1 Notification

If a Compensable Event occurs and affects, or is likely to affect, the ability of the Operator to comply with its obligations under this Contract, the Operator must:

- (a) within 10 Business Days after it becomes aware, or ought reasonably to have become aware, that a Compensable Event is likely to affect the ability of the Operator to comply with its obligations under this Contract, give to the TfNSW Representative a notice:
 - (i) stating that a Compensable Event has occurred; and
 - (ii) stating whether the Operator proposes to seek relief from performance of its obligations or make a Claim in respect of Losses arising directly out of that Compensable Event;
- (b) within 10 Business Days of giving the notice under Clause 46.1(a), give the TfNSW Representative full particulars of the Compensable Event including (to the extent practicable):
 - (i) detailed particulars concerning the Compensable Event upon which the Claim is based;
 - (ii) details of the obligations which have been affected by the Compensable Event;
 - (iii) details of any Net Financial Impact of the Compensable Event and how it has been calculated; and
 - (iv) details of the steps which the Operator has taken to mitigate the effects of the relevant Compensable Event; and
- (c) if the Compensable Event (or its effects) is continuing:
 - (i) continue to give the information required by Clause 46.1(b) every 40 Business Days after the notice under Clause 46.1(b) was provided to the TfNSW Representative until after the Compensable Event (or its effects) has ceased; and
 - (ii) if the Operator has notified TfNSW that it proposes to seek relief or make a Claim in relation to the Compensable Event under Clause 46.1(a)(ii), provide a final written Claim within 5 Business Days after the Compensable Event (or its effects) have ceased.

46.2 Condition precedent to relief or compensation

- (a) It is a condition precedent to the Operator's entitlement to relief from its obligations under Clause 46.3 or compensation under Clause 46.4 that:
 - (i) the Operator has complied with the requirements of Clause 46.1;
 - (ii) the Operator has used all reasonable and practicable methods for mitigating the impacts of the Compensable Event; and
 - (iii) in the case of a Claim for Loss, a Compensable Event has occurred which has caused the Operator to incur a Loss.
- (b) If the Operator fails to comply with the requirements of Clauses 46.1 and 46.2(a):
 - (i) TfNSW and STA will not be liable upon any Claim by the Operator; and

- (ii) the Operator will be absolutely barred from making any Claim against TfNSW or STA,

arising out of or in connection with the relevant Compensable Event.

46.3 Relief from obligations

- (a) If a Compensable Event occurs and the conditions precedent in Clause 46.2(a) have been satisfied, TfNSW will, taking into account the notices given by the Operator under Clause 46.1:
 - (i) grant the Operator such relief from its non-financial obligations under this Contract which are affected by the Compensable Event, but only to the extent and for so long as the Compensable Event prevents the Operator from performing those obligations;
 - (ii) subject to paragraph 5.7 of the KPI Schedule grant the Operator relief from its obligation to pay any KPI Credit; and
 - (iii) grant the Operator relief from its obligation to pay liquidated damages under Clause 10.7(c) to the extent that the Operator was prevented from complying with its obligations under Clause 10.7(a) or (b) by the Compensable Event.
- (b) The Parties acknowledge and agree that any relief granted by TfNSW under this Clause 46 will not apply to extend the Planned Contract Bus and Ferry Service Commencement Date, the Planned NLR Handover Date or the Planned Light Rail Service Commencement Date.

46.4 Compensation for Net Financial Impact

- (a) If the conditions precedent in Clause 46.2(a) have been satisfied:
 - (i) to the extent that the Compensable Event results in a Service Variation, the Operator will only be entitled to compensation calculated in accordance with Clause 23(d); or
 - (ii) only to the extent that the Compensable Event does not result in a Service Variation, the Operator will be entitled to be compensated for the Net Financial Impact of the Compensable Event in accordance with this Clause 46.4 and Clauses 48.15, 50, 51 and Schedule 17.
- (b) The Net Financial Impact of a Compensable Event will be calculated and paid in accordance with Schedule 17.
- (c) The Operator's entitlement to compensation will be reduced to the extent that the Operator fails to comply with its obligations under Clause 46.5.
- (d) The Operator's entitlement to compensation will be reduced to:
 - (i) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
 - (ii) include any cost savings or additional revenue which would have been derived,had the Operator complied with its obligations under the Transaction Documents.
- (e) The Operator's entitlement to compensation will be reduced to:
 - (i) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and

- (ii) include any cost savings or additional revenue which would have been derived,

to the extent that the Compensable Event occurs or arises as a result of any act or omission of the Operator or any of the Operator's Associates.

- (f) Except as provided for in this Clause 46.4, the Operator has no Claim against TfNSW or STA arising out of or in connection with a Compensable Event, including in respect of any breach of this Contract by TfNSW.
- (g) The Parties agree that the Operator's entitlements under this Clause 46 are a limitation on TfNSW's and STA's liability to the Operator for any breach of this Contract by TfNSW or STA and that the Operator will not be entitled to make any Claim in these circumstances other than in respect of the matters for which TfNSW may be liable under this Clause 46.

46.5 Mitigation

- (a) The Operator must use all reasonable endeavours to mitigate the effects of any Compensable Event (including by putting in place temporary measures reasonably acceptable to the TfNSW Representative).
- (b) Without limiting Clause 46.5(a), the Operator must use all reasonable endeavours to:
 - (i) avoid or minimise the duration and consequences of any delay caused by a Compensable Event;
 - (ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of a Compensable Event; and
 - (iii) maximise any cost savings or additional revenue derived as a result of a Compensable Event.

47. Force Majeure

47.1 Notification

- (a) If a Party (**Affected Party**) is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, it must, as soon as practicable notify the other Parties accordingly. In the case of the Operator, notice must be given under this Clause 47.1(a) no later than 10 Business Days after the Operator becomes aware, or ought reasonably to have become aware that a Force Majeure Event is likely to affect the ability of the Operator to comply with its obligations under this Contract.
- (b) Each notice under Clause 47.1(a) must:
 - (i) specify the obligations and the extent to which the Affected Party cannot perform its obligations;
 - (ii) fully describe and provide documentary evidence of the Force Majeure Event;
 - (iii) estimate the period during which the Force Majeure Event will continue;
 - (iv) specify the measures proposed to be adopted to remedy, minimise or mitigate the effects of the Force Majeure Event; and
 - (v) indicate whether the duration of the Force Majeure Event may result in the Contract being terminated under Clause 47.3.
- (c) In the case of the Operator, if the Force Majeure Event (or its effects) is continuing the Operator must continue to give the information required by Clause 47.1(b) every

40 Business Days after the notice under Clause 47.1(a) was provided until after the Force Majeure Event (or its effects) has ceased.

- (d) If a Force Majeure Event (or its effects) continues for such a period or in such a manner that Clause 47.3 may apply, and the Affected Party has not given notice under Clause 47.1(b)(v), the Affected Party must, as soon as it forms the view that Clause 47.3 may apply, notify the other Party that it considers that Clause 47.3 may apply.

47.2 Relief

- (a) For the duration of the Force Majeure Event, the obligations of TfNSW and STA which cannot be performed because of the Force Majeure Event will be suspended.
- (b) If a Force Majeure Event occurs that prevents the Operator from carrying on its obligations under this Contract and the Operator has complied with the requirements in Clause 47.1 and Clause 47.2(d), TfNSW will, taking into account the notices given by the Operator under Clause 47.1:
 - (i) grant the Operator such relief from its non-financial obligations under this Contract which are affected by the Force majeure Event, but only to the extent and for so long on the Force Majeure Event prevents the Operator from performing those obligations;
 - (ii) subject to paragraph 5.7 of the KPI Schedule, grant the Operator relief from its obligation to pay any KPI Credit; and
 - (iii) grant the Operator relief from its obligation to pay liquidated damages under Clause 10.7(c) to the extent that Operator was prevented from complying with its obligations under Clause 10.7(a) or (b) by the Force Majeure Event.
- (c) The Parties acknowledge and agree that any relief granted by TfNSW under this Clause 47 will not apply to extend the Planned Contract Bus and Ferry Service Commencement Date, the Planned NLR Handover Date or the Planned Light Rail Service Commencement Date.
- (d) The Party that is prevented from carrying on its obligation under this Contract 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 Parties 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.
- (f) If the Operator fails to comply with the requirements of Clauses 47.1 and 47.2(d):
 - (i) the Operator will have no Claim against TfNSW or STA (in so far as it is possible to exclude such liability); and
 - (ii) the Operator will be absolutely barred from making any Claim against TfNSW and STA,

arising out of or in connection with the relevant Force Majeure Event.

47.3 Termination for extended Force Majeure Event

- (a) If a Force Majeure Event is continuing or its consequences remain such that the Affected Party has been or is unable to comply with a material part of its obligations under this Contract for a continuous period of 180 days, TfNSW may terminate this Contract by giving a notice to the Operator.

- (b) If this Contract is terminated by TfNSW under Clause 47.3(a), TfNSW shall pay a termination payment to the Operator calculated as the aggregate of:
 - (i) any amounts due and payable by TfNSW to the Operator in accordance with this Contract as at the Termination Date,
 less:
 - (ii) any amounts owing by the Operator to TfNSW under this Contract as at the Termination Date; and
 - (iii) the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) the Operator is entitled to retain, or would be entitled to retain had the Operator complied with the requirements of Clause 43 and the relevant insurance policy, under any insurance policy.

48. Modifications

48.1 TfNSW Modification Request

- (a) The TfNSW Representative may at any time issue to the Operator a Modification Request setting out the details of a proposed Modification which TfNSW is considering.
- (b) TfNSW will not be obliged to proceed with any Modification proposed in a Modification Request.

48.2 Modification Impact Proposal

- (a) If the Modification Request requests that the Operator provide an estimate of the third party costs that the Operator will incur in preparing a Modification Impact Proposal, the Operator must provide that estimate within 5 Business Days of receipt of the Modification Request.
- (b) If the Modification Request requests that the Operator provide TfNSW with a Modification Impact Proposal, then as soon as practicable after:
 - (i) receipt of a Modification Request; or
 - (ii) if the Modification Request requests that the Operator provide an estimate of the third party costs that the Operator will incur in preparing a Modification Impact Proposal, TfNSW advising the Operator that the fee estimate is acceptable,
 the Operator must provide TfNSW with a Modification Impact Proposal.
- (c) The Modification Impact Proposal must set out detailed particulars of the Operator's view on:
 - (i) the Net Financial Impact of the proposed Modification;
 - (ii) the time within which the proposed Modification will be implemented;
 - (iii) any Authorisations required to implement the proposed Modification and the effect of the proposed Modification on any existing Authorisations;
 - (iv) the effects which the proposed Modification will have on the Operator's ability to satisfy its obligations under this Contract;
 - (v) any relief which is required from the Operator's obligations under this Contract to ensure that it is left in a no better or no worse position than it would be in if the Modification were not implemented; and

- (vi) any other information requested by TfNSW in the Modification Request.

48.3 Cost of preparing Modification Impact Proposal

If the Operator prepares a Modification Impact Proposal in accordance with Clause 48.2 and TfNSW does not issue a Modification Order in respect of the proposed Modification, then TfNSW will reimburse the reasonable third party costs incurred by the Operator in preparing the Modification Impact Proposal capped at the amount of any estimate provided by the Operator for the Modification Impact Proposal under Clause 48.2(a).

48.4 Election by TfNSW

- (a) Within 30 Business Days after receiving a Modification Impact Proposal, the TfNSW Representative may:
 - (i) accept the Modification Impact Proposal;
 - (ii) reject the Modification Impact Proposal; or
 - (iii) inform the Operator that it does not wish to proceed with the proposed Modification,by notice to the Operator (which in the case of Clause 48.4(a)(i) must be a Modification Order).
- (b) If TfNSW accepts the Modification Impact Proposal in accordance with Clause 48.4(a)(i) the Operator:
 - (i) must implement the Modification on the basis of the Modification Impact Proposal (as accepted by TfNSW); and
 - (ii) the Operator will be relieved of its obligations under this Contract to the extent specified in the Modification Impact Proposal (as accepted by TfNSW).

48.5 TfNSW rejects a Modification Impact Proposal

If TfNSW rejects the Modification Impact Proposal in accordance with Clause 48.4(a)(ii), TfNSW may require that the Parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Modification Impact Proposal.

48.6 Parties reach agreement

If the Parties reach agreement on the Modification Impact Proposal and TfNSW directs the Operator to implement the Modification by issuing a Modification Order, the Operator must implement the Modification on the basis of the Modification Impact Proposal (as varied by the Parties' agreement).

48.7 If the Parties fail to reach agreement

If the Parties are unable to reach agreement within 20 Business Days after TfNSW rejects the Modification Impact Proposal, TfNSW may refer the matter for resolution by an Expert in accordance with Clause 64.2.

48.8 TfNSW may direct that Modification proceed

- (a) If TfNSW refers the matter for dispute resolution under Clause 48.7, TfNSW may also direct the Operator to implement the Modification by issuing a Modification Order whether or not any matters in dispute have been resolved in accordance with Clause 64.2.
- (b) If TfNSW issues a Modification Order under Clause 48.8(a):
 - (i) any disputed matters will, until TfNSW and the Operator otherwise agree or a determination is made in accordance with Clause 64.2, be determined by the TfNSW Representative (acting reasonably). In making a determination, the TfNSW Representative will determine all matters required to enable the Modification to be implemented;
 - (ii) the Operator must proceed to implement the Modification on the basis determined by the TfNSW Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with Clause 64.2);
 - (iii) the Operator will be relieved of its obligations under this Contract to the extent specified in the Modification Order; and
 - (iv) any necessary adjustments will be made following the determination of the dispute (where applicable).
- (c) Following determination of the dispute referred to in Clause 48.7, TfNSW may, only if it has not already exercised its rights under Clause 48.8(a), elect to do either of the following:
 - (i) require the Operator to implement the Modification in accordance with the Modification Impact Proposal as varied by the determination; or
 - (ii) withdraw the proposed Modification,by notice to the Operator (which in the case of Clause 48.8(c)(i), must be a Modification Order).

48.9 Operator to implement Modification

If TfNSW gives a Modification Order pursuant to Clause 48.8 the Operator:

- (a) must carry out the Modification described in the Modification Order on the basis of the Modification Impact Proposal (as varied by the determination once made); and
- (b) will be relieved of its obligations under the Contract to the extent specified in the Modification Impact Proposal (as varied by the determination, once made, as applicable).

48.10 Instruction to proceed

- (a) Whether or not TfNSW has issued a Modification Request under Clause 48.1 and whether or not the Operator has issued a Modification Impact Proposal under Clause 48.2(c) in response to a Modification Request, the TfNSW Representative may at any time instruct the Operator to implement a Modification by issuing a Modification Order. In these circumstances, the matters set out in Clauses 48.2(c)(i) and (v) will, until TfNSW and the Operator agree otherwise or a determination is made in accordance with Clause 64.2, be determined by the TfNSW Representative (acting reasonably).
- (b) In making a determination, the TfNSW Representative will determine all matters required to enable the Modification to be implemented.
- (c) If the Operator disagrees with a matter determined by the TfNSW Representative:

- (i) the Operator may refer the matter to an Expert for determination in accordance with Clause 64.2;
- (ii) the Operator must proceed to implement the Modification on the basis determined by the TfNSW Representative notwithstanding that the matters in dispute have not been agreed or determined in accordance with Clause 64.2;
- (iii) any necessary adjustments will be made following any agreement or determination under Clause 64.2.

48.11 Omissions

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

48.12 Calculation and payment of Net Financial Impact

- (a) The Net Financial Impact of a Modification directed by TfNSW under Clauses 48.1 to 48.11 will be calculated and paid in accordance with Schedule 17.
- (b) The Operator will have no Claim against TfNSW or STA arising out of, or in any way in connection with, any Modification, except where the Operator is directed to implement a Modification pursuant to a Modification Order issued by TfNSW under Clauses 48.1 to 48.11.

48.13 Notice regarding directions

- (a) If any decision, demand, determination, direction, instruction, order, rejection, requirement or notice given in writing by a person authorised by TfNSW to do so (**Direction**), other than a Modification Order, in the Operator's opinion constitutes a Modification, the Operator must, if it wishes to make a Claim against TfNSW or STA arising out of or in any way in connection with the Direction:
 - (i) within 10 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give a notice to the TfNSW Representative that sets out:
 - (A) that it considers the Direction constitutes or involves a Modification;
 - (B) details of the relevant Direction; and
 - (C) details of why it considers the Direction constitutes or involves a Modification;
 - (ii) within 10 Business Days of giving the notice under Clause 48.13(a)(i), submit a notice of claim to the TfNSW Representative which includes detailed particulars of the basis of the Operator's Claim; and
 - (iii) continue to carry out the Operator Activities in accordance with the Contract including a Direction in respect of which notice has been given under this Clause 48.13.
- (b) If the Operator issued a notice under Clause 48.13(a)(i), TfNSW may:
 - (i) confirm that the Direction constitutes or involves a Modification, or entitles the Operator to make a Claim, by giving a notice under this Clause 48.13(b)(i), in which case the Operator must comply with the Direction and the Direction will be deemed to be a Modification to which Clause 48.8(b) will apply;
 - (ii) deny that the Direction constitutes or involves a Modification or entitles the Operator to make a Claim, by giving a notice under this Clause 48.13(b)(ii), in which case the Operator:

- (A) may within 10 Business Days of receipt of that notice refer the matter for dispute resolution in accordance with Clause 64.2; and
 - (B) unless otherwise directed in writing by the TfNSW Representative, must comply with the Direction irrespective of any Claim or dispute in relation to the Direction or any part of it; or
- (iii) withdraw the Direction by giving a notice under this Clause 48.13(b)(iii).
- (c) If within 20 Business Days after first receipt of the notice under Clause 48.13(a)(i), the TfNSW Representative has not taken action under Clause 48.13(b), the TfNSW Representative will be deemed to have given notice under Clause 48.13(b)(ii).

48.14 Operator initiated Modifications

- (a) The Operator may propose a Modification by giving to TfNSW a notice with details of:
 - (i) the proposed Modification;
 - (ii) the reason for the proposed Modification;
 - (iii) the time within, and the manner in, which the Operator proposes to implement the proposed Modification;
 - (iv) any Authorisations required to implement the proposed Modification and the effect of the proposed Modification on any existing Authorisations;
 - (v) the effects which the proposed Modification will have on the Operator's ability to satisfy its obligations under this Contract; and
 - (vi) the value for money for TfNSW arising from the Modification, including the proposed cost savings to be paid to TfNSW.
- (b) If the Operator gives a notice under Clause 48.14(a), TfNSW:
 - (i) will consider the Operator's proposed Modification; and
 - (ii) subject to Clause 48.15, may:
 - (A) approve (with or without conditions) the proposed Modification by issuing a Modification Approval to the Operator; or
 - (B) reject the proposed Modification in its absolute discretion; and
 - (iii) will be under no obligation to approve the proposed Modification for the convenience of or to assist the Operator.
- (c) If TfNSW issues a Modification Approval under Clause 48.14(b)(ii)(A) without conditions the Operator:
 - (i) must proceed to implement the Modification on the basis set out in the Modification Approval; and
 - (ii) will be relieved of its obligations under this Contract to the extent specified in the Modification Approval.
- (d) If TfNSW issues a Modification Approval under Clause 48.14(b)(ii)(A) with conditions:
 - (i) the Operator may proceed to implement the Modification on the basis set out in the Modification Approval and TfNSW's conditions attached to the Modification Approval, in which case the Operator will be relieved of its obligations under this Contract to the extent specified in the Modification Approval; or

- (ii) the Operator may withdraw the proposed Modification if the Operator, acting reasonably, does not accept any of the conditions attached to the Modification Approval.
- (e) Unless otherwise agreed in writing by TfNSW and subject to Clause 48.15(b)(ii), the Operator will:
 - (i) bear all risks and costs associated with a Modification proposed by the Operator; and
 - (ii) have no Claim against TfNSW or STA arising out of, or in any way in connection with, a Modification proposed by the Operator.

48.15 Modification required as a result of a Change in Law or Change in NSW Government Policy

- (a) To the extent that any Modification requested by the Operator is required to ensure that the Operator Activities or the State Assets comply with:
 - (i) a Change in Law; or
 - (ii) a Change in NSW Government Policy directed by TfNSW under Clause 51(c),

TfNSW must, in its discretion, either:

 - (iii) approve the Modification proposed by the Operator by issuing a Modification Approval;
 - (iv) direct the Operator to carry out a Modification in accordance with Clauses 48.1 to 48.11 to ensure that the Operator Activities or the State Assets comply with the Change in Law or the Change in NSW Government Policy; or
 - (v) take such other action as TfNSW considers necessary to ensure the Operator Activities or the State Assets comply with the Change in Law or the Change in NSW Government Policy.
- (b) If TfNSW approves or directs a Modification in accordance with Clause 48.15(a)(iii) or (iv):
 - (i) the Operator must proceed to implement the Modification on the basis of the Operator's notice under Clause 48.14(a) or in accordance with Clauses 48.1 to 48.11; and
 - (ii) if the Modification is required to ensure that the Operator Activities or the State Assets comply with a Change in Law or a Change in NSW Government Policy in respect of which the Operator is entitled to compensation under Clause 50 or 51, Clause 50 or 51 will apply.

49. Proximate Work Activities

- (a) Subject to this Clause 49, TfNSW (or a TfNSW contractor) may carry out Proximate Work Activities, including to:
 - (i) build and connect an augmentation or other extension to the NLR;
 - (ii) alter any Light Rail Transit Stop;
 - (iii) build an additional connection between the NLR and its local environment, including by developing any areas around a Light Rail Transit Stop;

- (iv) build, operate and maintain a retail, commercial or residential development and associated infrastructure above, below or adjacent to the NLR, a Contract Depot (other than the Operator Depot) or Interchange;
 - (v) close off areas, including to prevent public access;
 - (vi) open up any areas that are closed off;
 - (vii) install, operate and maintain equipment on any State Asset;
 - (viii) install Utility Services and connect to existing Utility Services (including those under the control of the Operator);
 - (ix) build, connect, operate and maintain any other infrastructure or improvement above, below or adjacent to the NLR, a Contract Depot (other than the Operator Depot) or Interchange; and
 - (x) carry out any associated work.
- (b) If TfNSW proposes to undertake a Proximate Work Activity:
- (i) TfNSW must give the Operator reasonable written notice of its intention to do so; and
 - (ii) the Operator must cooperate with TfNSW (and its nominees) to enable TfNSW to plan the undertaking of the Proximate Work Activity.
- (c) If TfNSW carries out any Proximate Work Activity, the Operator must:
- (i) cooperate and carefully coordinate the Operator Activities with the work and activities of TfNSW and TfNSW's Associates;
 - (ii) assist TfNSW in ensuring that any works constructed as part of the Proximate Work Activity are compatible with the State Assets;
 - (iii) allow TfNSW to adjust the State Assets to interface with any works constructed as part of the Proximate Work Activity;
 - (iv) cooperate with TfNSW and its nominees to facilitate the undertaking of the Proximate Work Activity, including permitting reasonable temporary closure of parts of the NLR, Contract Depots or Interchanges, managing passengers and others in areas affected by the Proximate Work Activity and rescheduling or otherwise adjusting the Operator Activities; and
 - (v) do anything which TfNSW reasonably requires in order to give full effect to this Clause 49 (including executing any document or entering into an agreement with a third party on terms which the TfNSW Representative considers to be commercially reasonable).
- (d) This Clause 49 does not limit TfNSW's other rights under this Contract.

50. Change in Law

50.1 Compensable Change in Law

Subject to Clause 46 and Schedule 17, the Operator will be entitled to compensation for a Change In Law.

50.2 Beneficial Change in Law

Where a Change in Law occurs which results in a positive Net Financial Impact, the Operator must pay the amount of the Net Financial Impact to TfNSW calculated in accordance with Schedule 17.

51. NSW Government Policy

- (a) Subject to this Clause 51, the Operator must comply with all NSW Government Policies which apply to the Operator Activities.
- (b) The Operator must, within a reasonable time, notify TfNSW of any Change in NSW Government Policy which applies to the Operator Activities.
- (c) Upon receipt of any notification from the Operator under Clause 51(b), TfNSW may:
 - (i) direct the Operator to implement the changes required for the Operator to comply with its obligation under Clause 51(a); or
 - (ii) direct the Operator to not implement any changes, despite any Change in NSW Government Policy.
- (d) Without limiting any other provisions within this Contract, the Operator must not implement any changes as a result of a Change in NSW Government Policy unless directed to do so by TfNSW under Clause 51(c)(i).
- (e) Subject to Clause 51(f), the Operator will be liable for the consequences of, and will have no Claim against TfNSW or STA arising out of or in any way in connection with, a Change in NSW Government Policy.
- (f) Subject to 46 and Schedule 17, where TfNSW has issued a direction for the Operator to implement a change under Clause 51(c)(i), the Operator will be entitled to compensation for a Change in NSW Government Policy.
- (g) Where the Operator has implemented changes as a result of a Change in NSW Government Policy in accordance with this Clause 51 and that change results in a positive Net Financial Impact, the Operator must pay the amount of the Net Financial Impact to TfNSW in accordance with Schedule 17.

Part M – Termination and End of Term

52. Default and cure regime

52.1 Non-Compliance Events

- (a) The following are Non-Compliance Events:
 - (i) **(Non-performance of Key Performance Indicators)** the Operator:
 - (A) breaches an individual Class 1 Key Performance Indicator on two occasions within a six month period;
 - (B) breaches an individual Class 1 Key Performance Indicator on three occasions within a 12 month period; or
 - (C) breaches an individual Class 4 Key Performance Indicator in two consecutive Quarters,
- and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a cure plan provided in

accordance with the KPI Schedule, to justify waiving the breaches of the relevant Key Performance Indicators;

- (ii) **(failure to progress)** the Operator fails to diligently progress the NLR Delivery Activities;
 - (iii) **(lack or breach of Authorisation)** the Operator or any Operator's Associate:
 - (A) undertakes any of the Operator Activities which require an Authorisation without obtaining the Authorisation or being Authorised to do so; or
 - (B) breaches the terms of any Authorisation;
 - (iv) **(threatened suspension or revocation of Authorisation)** a Safety Authority notifies the Operator that:
 - (A) the Operator or an Operator's Associate must improve a part of the Operator Activities to which an Authorisation relates and failure to do so within the time specified by the Safety Authority may result in the Safety Authority suspending or revoking the Authorisation;
 - (B) the Safety Authority proposes to suspend or revoke an Authorisation held by the Operator or an Operator's Associate that is required to permit the Operator to carry out the Operator Activities; or
 - (C) a failure to take action specified by a Safety Authority within a time period specified by a Safety Authority may result in the Safety Authority suspending or revoking an Authorisation held by the Operator or an Operator's Associate that is required to permit the Operator to carry out the Operator Activities;
 - (v) **(Operator Breach)** any Operator breach of a Transaction Document other than one that is a Termination Event; or
 - (vi) **(Misrepresentation)** a representation, warranty or statement by or on behalf of the Operator in a Transaction Document, or in a document provided under or in connection with a Transaction Document, is not true in a material respect or is misleading when made or repeated which, if it had been known to TfNSW before signing this Contract would, in TfNSW's reasonable opinion, have resulted in TfNSW not entering into this Contract or any of the Transaction Documents or in TfNSW entering into this Contract or any of the Transaction Documents on materially different terms.
- (b) As soon as practicable following the Operator becoming aware of a Non-Compliance Event the Operator must give notice to TfNSW setting out in reasonable detail the relevant event and surrounding circumstances.

52.2 Issue of Non-Compliance Notice

On the occurrence of a Non-Compliance Event, TfNSW may give the Operator written notice (**Non-Compliance Notice**):

- (a) stating that a Non-Compliance Event has occurred;
- (b) setting out reasonable details of the event or circumstance constituting the Non-Compliance Event; and
- (c) stating whether TfNSW requires either one or more of:
 - (i) an immediate remedy to be implemented by the Operator (specifying a reasonable period for the Operator to effect a remedy for that event or the circumstances that gave rise to the event);
 - (ii) a plan (**NCE Cure Plan**) to be submitted by the Operator setting out all measures the Operator proposes to take to cure the Non-Compliance Event

or the events or circumstances giving rise to the Non-Compliance Event by a date specified by TfNSW (**Cure Plan Date**); and or

- (iii) implementation of Temporary Measures (specifying a reasonable period for the Operator to do so having regard to the Non-Compliance Event or the circumstances that gave rise to the Non-Compliance Event) to alleviate the impact or effect of the Non-Compliance Event (or the events or circumstances that gave rise to the Non-Compliance Event) pending a permanent cure being achieved following an immediate remedy or in accordance with a NCE Cure Plan.

52.3 Dealing with Non-Compliance Notices

- (a) If TfNSW requires the Operator to immediately remedy the Non-Compliance Event under Clause 52.2(c)(i), the Operator must remedy the Non-Compliance Event within the period stipulated by TfNSW in the Non-Compliance Notice.
- (b) If TfNSW requires the Operator to submit a NCE Cure Plan under Clause 52.2(c)(ii), the Operator must within five Business Days of receipt of the Non-Compliance Notice submit to TfNSW a NCE Cure Plan which must, in order to be a compliant NCE Cure Plan, include:
 - (i) the requirements of any cure plan previously provided by the Operator in accordance with the KPI Schedule;
 - (ii) the measures that the Operator considers necessary and proposes to take to cure the Non-Compliance Event (or the events or the circumstances giving rise to the Non-Compliance Event), including any measures over and above those provided for in any cure plan previously provided by the Operator in accordance with the KPI Schedule;
 - (iii) the Temporary Measures to be taken to alleviate the impact or effect of the Non-Compliance Event (or the events or circumstances giving rise to the Non-Compliance Event) pending implementation of the NCE Cure Plan;
 - (iv) the period within which the Operator will cure the Non-Compliance Event (or the events or the circumstances that gave rise to the Non-Compliance Event), which period must end before the Cure Plan Date (**Cure Period**);
 - (v) a work plan setting out each task to be undertaken and the time for each task to be completed;
 - (vi) the form and timing of reports to be provided by the Operator as to the status of any NCE Cure Plan together with evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan; and
 - (vii) the operational arrangements for integrating the cure with the continuing performance of Operator Activities.
- (c) If TfNSW requires the Operator to implement a Temporary Measure with respect to the Non-Compliance Event under Clause 52.2(c)(iii), the Operator must undertake that Temporary Measure within the time stipulated by TfNSW in the Non-Compliance Notice.

52.4 Implementation of NCE Cure Plan

- (a) TfNSW may, by notice to the Operator within five Business Days of submission by the Operator of a NCE Cure Plan required under Clause 52.2(c)(ii), require the Operator to amend the NCE Cure Plan if TfNSW considers, acting reasonably, that the NCE Cure Plan:
 - (i) is not likely to cure the relevant Non-Compliance Event (or the events or circumstances that gave rise to the Non-Compliance Event) within the period required in the Non-Compliance Notice; or

(ii) does not comply with all applicable provisions of this Contract.

A notice under this Clause 52.4(a) may include details of any amendments (generally or specifically) to the NCE Cure Plan required by TfNSW.

- (b) If TfNSW requires an amendment to the NCE Cure Plan under Clause 52.4(a), the Operator must amend its NCE Cure Plan in accordance with the requirements of TfNSW and resubmit a revised NCE Cure Plan to TfNSW and the provisions of this Clause 52.4 will re-apply.
- (c) The Operator must implement and diligently pursue any NCE Cure Plan (or, where a revised NCE Cure Plan is requested by TfNSW, any revised NCE Cure Plan) provided under this Clause 52.
- (d) The Operator must provide reports as to the status of any NCE Cure Plan and evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan. These reports and evidence must be provided by the Operator:
 - (i) in accordance with the reporting requirements set out in the NCE Cure Plan; and
 - (ii) within five Business Days of TfNSW's request.

52.5 Extension to Cure Period

- (a) Subject to Clause 52.5(b), if the Operator reasonably requires an extension of the existing Cure Period the Operator must, as soon as possible but not later than the expiration of the existing Cure Period, submit to TfNSW a request that the NCE Cure Plan be revised and provide:
 - (i) reports as to the status of the NCE Cure Plan;
 - (ii) the proposed amendment to the Cure Period (provided that the proposed amendment must not result in the total Cure Period exceeding six months);
 - (iii) evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the NCE Cure Plan but that the Non-Compliance Event cannot, with reasonable diligence, be cured within the existing Cure Period;
 - (iv) any other consequential amendments to the NCE Cure Plan; and
 - (v) any other information requested by TfNSW and relevant to the NCE Cure Plan or curing the Non-Compliance Event.
- (b) TfNSW must not unreasonably refuse to grant an extension of the Cure Period if the Operator has complied with Clause 52.5(a).
- (c) The Operator may only apply once under Clause 52.5(a) for an extension of the Cure Period in respect of any Non-Compliance Event (unless otherwise approved by TfNSW).
- (d) If TfNSW approves the requested extension or part of the requested extension under Clause 52.5(a), the Operator must submit a revised NCE Cure Plan and the provisions of Clause 52.4 will apply.

53. Step in

53.1 Step in Rights

- (a) Each of the following is a Step in Event:
 - (i) a Termination Event occurs;

- (ii) a material KPI Default in respect of a Class 1 Key Performance Indicator (**KPI Event**) occurs and TfNSW considers that the Operator is failing to address the causes of the KPI Event or has not developed a cure plan which TfNSW considers will address the KPI Event in accordance with the requirements of the KPI Schedule;
- (iii) an event or circumstance which arises out of or in connection with the Operator Activities poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (A) the health or safety of persons;
 - (B) the Environment;
 - (C) any property; or
 - (D) the safe and secure performance of the Operator Activities; or
- (iv) TfNSW forms the opinion that a breach of a Transaction Document by the Operator or any Operator's Associate:
 - (A) materially adversely affects the operation of all or any of the Services;
 - (B) materially disrupts, restricts or prevents the operation of all or any of the Services for more than 24 hours;
 - (C) materially disrupts, restricts or prevents the operation of all or any of the Public Passenger Services of any other operator for more than 24 hours;
 - (D) increases the risk of imminent death or imminent injury to any person;
 - (E) directly or indirectly avoids or materially prejudices or frustrates the transfer of the Operator Activities as a going concern at the expiry or termination of this Contract to a Successor Operator; or
 - (F) is likely to give rise to any of the above.
- (b) If a Step in Event occurs and TfNSW has given a notice to the Operator advising the Operator that a Step in Party will be appointed then a Step in Party may exercise all or any of the Step in Powers (**Step in Right**).
- (c) The notice referred to in Clause 53.1(b):
 - (i) must specify:
 - (A) the Step in Event which has triggered the Step in Right;
 - (B) the Operator Activities which TfNSW proposes the Step in Party will perform;
 - (C) the date on which the relevant Step in Party proposes to commence exercising the Step in Powers; and
 - (D) the date on which, if any, the relevant Step in Party proposes to cease performing the relevant Operator Activities; and
 - (ii) may be given orally if TfNSW considers that the Step in Event requires urgent remedy and there is insufficient time to serve a written notice. Any oral notice given under this Clause 53.1(c)(ii) must be followed within 24 hours by a written notice to the same effect.
- (d) The Step in Right is without prejudice to TfNSW's other Powers in respect of a Step in Event, and the rights set out in Clause 52 and Clause 54.

53.2 Step in Powers

A Step in Party may, in performing the Operator Activities referred to in the notice issued under Clause 53.1(b), do anything in respect of those Operator Activities that the Operator could do including:

- (a) enter into and remain in possession of all or any of the Assets used in the performance of the Operator Activities;
- (b) operate and manage all or any of the Assets used in the performance of the Operator Activities;
- (c) enter into and remain in or on any part of the Permanent Light Rail Corridor, the Contract Depots, the Wharves, the Shipyard, the Interchanges, the Transit Stops or any other premises on which Operator Activities are conducted;
- (d) exercise all or any of the Powers, and perform all or any of the obligations, of the Operator:
 - (i) in connection with the Operator Activities;
 - (ii) under or in relation to a Transaction Document or any other document to which the Operator is a party; or
 - (iii) under or in relation to any Authorisation held by the Operator, as if it were the Operator to the exclusion of the Operator;
- (e) do anything TfNSW considers necessary to remedy the relevant Step in Event or to overcome any risk or mitigate any consequences resulting from the Step in Event; and
- (f) do anything incidental to the matters listed in Clauses 53.2(a) to 53.2(e),

(Step in Powers).

53.3 Acknowledgment and obligations of the Operator

- (a) The Operator must (and must procure that the Operator's Associates):
 - (i) cooperate with the Step in Party in the exercise of the Step in Powers;
 - (ii) assist the Step in Party to enable the Step in Party to perform all or any of the Operator's obligations under or in relation to any Authorisation held by the Operator or the Operator's Associates;
 - (iii) take any step which the Step in Party considers necessary or desirable to remedy the Step in Event or overcome the risk or mitigate any consequences resulting from the Step in Event.
- (b) Without limiting Clause 53.3(a), the Operator must (and must procure that the Operator's Associates):
 - (i) give access to a Step in Party to:
 - (A) all or any of the Assets used in the Operator Activities;
 - (B) its Staff; and
 - (C) any information the Step in Party reasonably requires;
 - (ii) to the extent necessary, the Operator must procure any consents to disclose Personal Information to the Step in Party;
 - (iii) assist the Step in Party in dealing with a Safety Authority in relation to any Authorisations; and
 - (iv) comply with all reasonable directions given by the Step in Party, to enable the Step in Party to exercise the Step in Powers.

- (c) The Operator irrevocably appoints TfNSW as its attorney with full power to exercise the Step in Powers (or to delegate the exercise of the Step in Powers to another Step in Party).
- (d) The Operator's obligations under this Contract will be suspended to the extent and for such period as is necessary to permit TfNSW to exercise its Step in Rights.
- (e) The Operator acknowledges that a Step in Party is not under any obligation to remedy a Step in Event, nor to overcome any risk or mitigate any consequences resulting from a Step in Event.

53.4 Payments during step in

- (a) During the period when TfNSW is exercising its Step in Rights, if the Operator's performance of obligations under this Contract which affect the calculation of the Payment:
 - (i) is continuing, then those parts of the Payment affected by the Operator's performance will continue to be calculated in accordance with the Payment Schedule based on the actual performance of those obligations by the Operator during the period when TfNSW is exercising its Step in Rights; or
 - (ii) is suspended, then those parts of the Payment which would have been affected but for the Operator's suspension will continue to be calculated in accordance with the Payment Schedule based on the average performance of those obligations by the Operator for the six months immediately prior to TfNSW exercising the Step in Right (provided that KPI Credits calculated under the KPI Schedules will continue to be calculated based on actual performance by the Operator).
- (b) TfNSW will be entitled to deduct the following amount, without double counting from any Payment payable in respect of a period when TfNSW is exercising its Step in Right:
 - (i) where the Step in Event was an event identified in Clauses 53.1(a)(i), (ii) or (iv):
 - (A) the costs avoided by the Operator as a result of the exercise of the Step in Right;
 - (B) the Step in Costs incurred by TfNSW in exercising the Step in Rights; and
 - (ii) where the Step in Event was an event identified in Clause 53.1(a)(iii) the costs avoided by the Operator as a result of the Step in Right.
- (c) If the aggregate amount to be deducted under Clause 53.4(b) is greater than the Payments payable in respect of the relevant period, the difference will be a debt due and payable from the Operator to TfNSW.

53.5 Protection of a Step in Party

The Operator acknowledges that the Operator has no Claim against TfNSW or STA arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non exercise of a Step in Power; or
 - (b) any Loss which results,
- except where it arises from fraud, wilful default or gross negligence on the part of the Step in Party.

53.6 Protection of third parties

- (a) A party to any Dealing (as defined in Clause 53.6(c)):

- (i) need not enquire:
 - (A) as to whether the Step in Right has become exercisable;
 - (B) as to whether a person who is, or purports or is purported to be, the Step in Party is duly appointed;
 - (C) in any other way as to the propriety or regularity of the Dealing; and
- (ii) is not affected by express notice that the Dealing is unnecessary or improper.
- (b) For the protection of any party to a Dealing, the Dealing will be taken to be authorised by this Contract and accordingly will be valid, even if there is any irregularity or impropriety in the Dealing.
- (c) In this Clause 53.6, a **Dealing** is:
 - (i) any payment, or any delivery or handing over of an asset, to; or
 - (ii) any acquisition, incurring of Financial Indebtedness, receipt, sale, lease, disposal or other dealing, by,
 any Step in Party or any person who purports, or is purported, to be a Step in Party.
- (d) The receipt by TfNSW or any Step in Party (or person who purports, or is purported, to be a Step in Party) of any money or assets payable to or receivable or received by it exonerates the person paying that money or handing over that asset from being concerned as to their application or from being liable or accountable for their loss or misapplication.

53.7 Step out

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

54. Termination

54.1 Termination Events

The following are Termination Events:

- (a) **(Immediate action)** the Operator fails to remedy a Non-Compliance Event when required to do so under (or within the time period required by) Clause 52.3(a);
- (b) **(Temporary Measure)** the Operator fails to take a Temporary Measure when required to do so under (or within the time period required by) Clause 52.3(c);
- (c) **(NCE Cure Plan)** the Operator fails to submit a NCE Cure Plan in accordance with (or within the time period required by) Clause 52.3(b) or a revised NCE Cure Plan in accordance with Clause 52.4(b);
- (d) **(Failure to pursue NCE Cure Plan)** TfNSW forms the opinion, acting reasonably, that the Operator has not diligently pursued or is not continuing to diligently pursue a cure in accordance with a NCE Cure Plan, or the Operator fails to provide the evidence required (or within the time period required) by Clause 52.4(d);
- (e) **(Failure to cure)** the Operator took action required under Clause 52.3(a) or Clause 52.3(c) or pursued a cure in accordance with Clause 52.4(c) but, in the opinion of TfNSW has failed to cure the Non-Compliance Event or the circumstances giving rise to the Non-Compliance Event in the period prescribed under Clause 52;
- (f) **(Persistent breaches)** a persistent failure by the Operator to perform, or comply to a material extent with, any one or more of its obligations under this Contract or the Transaction Documents in circumstances where TfNSW has previously notified the Operator of the failures or non-compliances and has put the Operator on notice that continued failure or non-compliance would constitute a persistent failure or non-compliance for the purposes of this Clause 54.1;
- (g) **(Material non-performance of Key Performance Indicators)** the Operator:
 - (i) breaches an individual Class 1 Key Performance Indicator on three occasions within a six month period;
 - (ii) breaches an individual Class 1 Key Performance Indicator on four occasions within a 12 month period; or
 - (iii) breaches an individual Class 4 Key Performance Indicator in three consecutive Quarters,and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a cure plan provided in accordance with the KPI Schedule, to justify waiving the breaches of the Key Performance Indicators;
- (h) **(Safety)** the circumstances described in Clause 40.10(i) occur;
- (i) **(Unlawful)** it becomes unlawful for the Operator to perform all or a material number of Operator Activities;
- (j) **(Dealing with Assets)** the Operator breaches Clause 31;
- (k) **(Abandonment)** the Operator abandons, ceases or suspends the conduct of all or a substantial part of the Operator Activities or it threatens or expresses an intention to do so;
- (l) **(Failure to insure)** the Operator does not effect and maintain (or cause to be affected or maintained) any insurance as required by this Contract, and fails to do so within 10 Business Days after receipt of a notice from TfNSW directing it to do so;
- (m) **(Assignment)** a purported assignment by the Operator of a Transaction Document or any of its obligations under any Transaction Document occurs without the prior consent of TfNSW;

- (n) **(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;
- (o) **(Revocation of Accreditation or Authorisation)** 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 Operator Activities, is cancelled, suspended, repealed, revoked, terminated, expires or is varied, modified or amended, or conditions are attached to it in a manner unacceptable to TfNSW, and is not replaced by another Authorisation acceptable to TfNSW;
- (p) **(Repudiation)** the Operator repudiates this Contract;
- (q) **(Fraud)** the Operator has acted fraudulently or dishonestly in relation to the Operator Activities, the provision of the Operator Activities or the performance of any of its obligations under the Transaction Documents;
- (r) **(ICAC)** the Independent Commission Against Corruption or similar Governmental Agency determines that the Operator has engaged in corrupt conduct, collusive pricing or other similar activity;
- (s) **(Conflict of Interest)** in TfNSW's view, a conflict of interest exists for the Operator which prevents the proper performance of this Contract;
- (t) **(Harm to TfNSW reputation)** in TfNSW's reasonable opinion, the Operator has caused damage or harm to TfNSW's or the State's reputation;
- (u) **(Insolvency Event)** an Insolvency Event occurs; or
- (v) **(Termination of Transaction Document)** a Transaction Document (other than this Contract) is terminated as a result of an act or omission of the Operator or any of the Operator's Associates.

54.2 Termination by TfNSW

- (a) TfNSW may terminate the whole or any part of this Contract with effect immediately, or on a date determined by TfNSW, by giving notice to the Operator if a Termination Event occurs.
- (b) This Contract will terminate on the date specified in the Termination Notice.
- (c) The termination right under Clause 54.2(a) is without prejudice to TfNSW's rights under Clause 53 and TfNSW's right to exercise all legal and equitable rights and remedies available to TfNSW in respect of the relevant Termination Event (whether under this Contract or not).

54.3 Termination by TfNSW for convenience

- (a) TfNSW may at any time at its absolute discretion by giving notice to the Operator, terminate this Contract, whether or not the Operator is in default.
- (b) If TfNSW terminates this Contract in accordance with Clause 54.3(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 may itself, or through a third party, carry out the Operator Activities after termination under this Clause 54.3.

54.4 Waiver on termination

- (a) If TfNSW terminates this Contract under Clause 54.2(a) 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 Services completed in accordance with this Contract before the Termination Date.
- (b) If TfNSW terminates this Contract under:
 - (i) Clause 42.2(a)(iii), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with Clause 42.2(b);
 - (ii) Clause 47.3(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with Clause 47.3(b);
 - (iii) Clause 54.3(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with Clause 54.3(b).

54.5 Consequences of termination generally

- (a) Upon expiry or termination of this Contract, the rights and obligations of the Parties under this Contract will cease except for:
 - (i) any accrued rights and obligations under this Contract, including those arising out of the expiry or termination of this Contract; and
 - (ii) any rights and obligations which expressly or impliedly continue after expiry or termination of this Contract (including those referred to in Clause 79).
- (b) The termination of the Operator's engagement under this Contract does not affect any of TfNSW's other rights or remedies.

55. End of Term Restrictions

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 Employee where:

- (a) the variation takes effect in the End of Contract Period unless:
 - (i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Contract Employee of no more than the percentage increase in the wage price indices referred to in the first and second lines in the table set out in paragraph 4.5(c) 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 Termination Date;
- (c) the variation results in the employment being for a fixed term, the expiry of which is more than six months after the Termination Date;
- (d) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at Law);

- (e) the variation relates to the provision of a benefit (but excluding base salary and the Contract Employee's legal entitlements) which the Staff will or may have a contractual right to receive after the Termination Date; or
- (f) the variation prevents, restricts or hinders the Contract Employee from working for a Successor Operator or from performing the duties the Contract Employee performed in the Operator Activities.

56. End of Contract Transfer Provisions

56.1 Right to appoint Successor Operator and Interim Operator

- (a) The Operator acknowledges that TfNSW may, on or before the Termination Date, invite any person (including the Operator) to perform all or any part of the Operator Activities for the period commencing after the Termination Date.
- (b) The following Clauses will not apply if the Operator is the Successor Operator:
 - (i) Clause 56.7; and
 - (ii) Clause 58.

56.2 Maintenance as going concern

The Operator must maintain and manage the Operator Activities 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 Operator Activities as a going concern.

56.3 Handover Information and Market Process Information

- (a) The Operator must, as soon as practicable and in any event no later than six months after the Contract Bus and Ferry Service Commencement Date, prepare and maintain information on:
 - (i) all premises from which the Operator Activities are carried out, including the NLR Maintenance and Stabling Facilities, Contract Depots, Shipyards and other offices;
 - (ii) material contracts relating to the Services (including Key Contracts);
 - (iii) computer and other information systems;
 - (iv) an asset register for Assets used in relation to the Operator Activities (including an inventory of spares and special tools and equipment);
 - (v) Contract Employee details (including a list of names, terms and conditions of employment, rosters and all information required to be provided under Clause 56.3(f));
 - (vi) its organisational structure;
 - (vii) an up to date and complete copy of the Asset Information System; and
 - (viii) such other information as is reasonably requested by TfNSW to facilitate smooth handover of the Operator Activities to a Step in Party, Successor Operator (or nominee of TfNSW) or Interim Operator,

(Handover Information).
- (b) The Operator must, as soon as practicable and in any event no later than six months after the Contract Bus and Ferry Service Commencement Date, prepare and maintain the Market Process Information.
- (c) The Operator must, as soon as practicable and in any event no later than six months after the Light Rail Service Commencement Date, update the materials provided

under Clauses 56.3(a) and 56.3(b) to include all relevant information regarding the Light Rail Service and the NLR.

- (d) The Operator must keep the information referred to in Clauses 56.3(a), 56.3(b) and 56.3(c) 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) the date that is six months prior to the Expiry Date; and
 - (iii) one week after the commencement of the End of Contract Period.
- (e) 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 56.3(a) and 56.3(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) the date that is six months prior to the Expiry Date; and
 - (iv) one week after the commencement of the End of Contract Period.
- (f) No later than 30 Business Days prior to the Expiry Date, or, in the event that TfNSW gives a Termination Notice, within seven Business Days of the Termination Notice, the Operator must provide to each Contract Employee a statement setting out that Contract Employee's:
 - (i) grade/classification;
 - (ii) rate of pay;
 - (iii) date of commencement of employment; and
 - (iv) estimated accrued entitlements (including annual leave, long-service leave, sick/personal/carers leave and rostered days off) as at the Termination Date.
- (g) In the event that a Contract Employee notifies the Operator that he or she disputes any of the information contained in the statement provided to that Contract Employee pursuant to Clause 56.3(f), the Operator must notify TfNSW of such dispute and TfNSW shall refer the disputed issue to an actuary.

56.4 Preparation for contracting at End of Term

- (a) The Operator must, to the extent permitted by Law, provide TfNSW with reasonable access to the Staff and the information, books and records kept by or on behalf of the Operator in connection with the Operator Activities for the purpose of TfNSW preparing reports and documents in connection with any procurement process for the operation of all or part of the Operator Activities or any other associated services.
- (b) The Operator must use reasonable endeavours to assist TfNSW in the preparation for, and the conduct of the procurement process including, where required by TfNSW, a fair and competitive expression of interest or tendering process.
- (c) Without limiting Clause 56.4(b), the Operator must, to the extent permitted by Law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as TfNSW reasonably requires in connection with the procurement process for the Operator Activities or any other associated services.
- (d) The Operator warrants to TfNSW that to the best of its belief, all information provided under Clauses 56.3(a), 56.3(b), 56.3(c) and 56.4(c) will be, at the time it is

provided, true and correct in all material respects and will not be misleading by omission or otherwise.

- (e) The Operator must warrant to a Successor Operator that to the best of its belief, any other information made available to the Successor Operator by the Operator or the Operator's Associates is true and correct.

56.5 Non frustration of Transfer

The Operator must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer as a going concern of the Operator Activities at the Termination Date to a Successor Operator (or nominee of TfNSW) or Interim Operator.

56.6 Assistance in securing continuity

The Operator must do everything, both before and after the Termination Date, as TfNSW may reasonably require to assist and advise any Step in Party, prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW in performing the Operator Activities, including the provision of information and records related to the operation of the Operator Activities (excluding confidential financial information but including all records relating to the Staff).

56.7 Access

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

- (a) the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW receiving information in respect of the Operator Activities; and
- (b) preparations by the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW to take over the Operator Activities on the Termination Date,

but only to the extent that any of the above does not unduly interfere with the performance of the Operator Activities.

57. End of Term Asset Condition and Handover Requirements

57.1 Handback Audit

- (a) Without limiting Clause 33:
 - (i) no earlier than 18 months; and
 - (ii) no later than eight months,
prior to the Expiry Date, the TfNSW Representative may procure the carrying out of an audit of the State Assets (**Handback Audit**) by an independent expert (**Handback Auditor**):
 - (iii) appointed by agreement between TfNSW and the Operator; or
 - (iv) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia.

- (b) The TfNSW Representative must:
 - (i) notify the Operator at least 10 Business Days in advance of the date it wishes to procure the carrying out of a Handback Audit and specify the State Assets that will be the subject of the Handback Audit (**Handback Audit Assets**); and
 - (ii) consider in good faith any reasonable request by the Operator for the Handback Audit to be carried out on a different date.
- (c) The Handback Auditor will inspect and assess the Handback Audit Assets and notify TfNSW and the Operator in writing of:
 - (i) whether the Handback Audit Assets have been and are being maintained by the Operator in accordance with this Contract;
 - (ii) any rectification, maintenance and remediation works required to be carried out by the Operator to bring the condition of the Handback Audit Assets to the condition they would have been in had the Operator complied with its obligations under this Contract;
 - (iii) any rectification, maintenance and remediation works required to be carried out by the Operator to bring the condition of the Handback Audit Assets to the Handback Condition at the Expiry Date; and
 - (iv) the Handback Auditor's estimate of the value of the rectification, maintenance and remediation works referred to in Clauses 57.1(c)(ii) and (iii).
- (d) The Operator must, at its cost, cooperate with the Handback Auditor and provide the Handback Auditor with any reasonable assistance required by the Handback Auditor.
- (e) The TfNSW Representative must use its reasonable endeavours to procure that the Handback Auditor minimises any disruption caused to the Operator Activities by the Handback Audit.
- (f) The cost of the Handback Audit will be borne by TfNSW, except where the results of the Handback Audit show that the Operator has not complied with its obligations under this Contract in relation to the maintenance of the Handback Audit Assets, in which case the cost of the Handback Audit will be a debt due and payable by the Operator to TfNSW.

57.2 Rectification work

The Operator must carry out any required rectification, maintenance and remediation work notified pursuant to Clauses 57.1(c)(ii) and (iii):

- (a) to the satisfaction of the Handback Auditor; and
- (b) so as to satisfy the standards and other requirements applicable to the State Assets under this Contract,

prior to the Expiry Date and any costs it incurs in carrying out such rectification, maintenance or remediation work will be at the Operator's own expense.

57.3 Handback obligations

At the Termination Date, the Operator must:

- (a) surrender and return to TfNSW or TfNSW's nominee the State Assets and the TfNSW Systems and Equipment;
- (b) transfer all of the Operator's rights, title and interest (if any) in the State Assets to TfNSW or TfNSW's nominee free from any Security Interests;

- (c) ensure that the State Assets are in a state and condition which complies with the requirements of this Contract including the Handback Condition;
- (d) have completed all works scheduled to be carried out under the current Maintenance Works Program;
- (e) have completed the transfer of the Asset Information System database to TfNSW or TfNSW's nominee such that:
 - (i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
 - (ii) the Asset Information System database remains fully functional and retains interface capabilities;
 - (iii) all data entry is fully up to date;
 - (iv) all data archives are included; and
 - (v) all supporting documentation is included.

57.4 Final inspection

- (a) As soon as practicable following the Termination Date, an independent expert (**Final Inspection Auditor**):
 - (i) appointed by agreement between TfNSW and the Operator; or
 - (ii) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia,

will inspect and assess the State Assets and notify TfNSW and the Operator in writing of the estimated cost (without double counting) of making good or rectifying any failure by the Operator to carry out:

 - (iii) where the end of the Term is the Expiry Date, the work (if any) required under Clauses 57.1(c)(ii) and 57.1(c)(iii); and
 - (iv) the Operator's obligations under Clause 57.3.
- (b) The amount notified by the Final Inspection Auditor under Clause 57.4(a) will be a debt due and payable from the Operator to TfNSW.
- (c) TfNSW may deduct or set off any amount payable by the Operator under Clause 57.4(b) against any amount otherwise payable by TfNSW to the Operator, or may take other enforcement action available to it including under the Handback Security Bond or any other security provided under Clause 7.

58. Transfer of Operator Assets

58.1 Transfer of Operator Assets

- (a) Not later than 60 Business Days prior to the Expiry Date, or if this Contract is terminated earlier than that date, not later than 20 Business Days after the date of termination, TfNSW must provide written notice (**Transfer Notice**) to the Operator identifying any Operator Assets (other than the Operator Depot) (**Nominated Assets**) that TfNSW wishes to transfer from the Operator to TfNSW or a nominee of TfNSW (**Transferee**).
- (b) The Operator must negotiate in good faith with the Transferee to agree and execute an agreement (**Transfer Agreement**) setting out the terms and conditions (including the price) on which the Nominated Assets will be transferred to the Transferee which terms must include that the Nominated Asset will be transferred with effect from the Transfer Time free of any Security Interest.

- (c) If TfNSW and the Operator are unable to agree the terms of the Transfer Agreement by the Transfer Agreement Date, then good faith negotiations will cease and the Operator shall have no Claim against TfNSW or STA in respect of the transfer of the Nominated Assets.

58.2 Successor Operator to make offers

- (a) The Operator must ensure that at the Termination Date all Dedicated Staff are employed by the Operator and available to be made offers of employment by any Successor Operator.
- (b) TfNSW must procure that any Successor Operator makes offers of employment on equivalent terms and conditions (including all accrued entitlements) to Contract Employees (other than the persons named in Schedule 11). Offers made by a Successor Operator must take effect from the Termination Date.
- (c) If a Contract Employee accepts an offer of employment from the Successor Operator made in accordance with Clause 58.2:
 - (i) on termination or expiry of the Contract, the Operator must pay to TfNSW or the Successor Operator (as directed by TfNSW) a sum determined in accordance with the following formula:

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

where:

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

t is the corporate tax rate which applies on the Termination Date expressed as a decimal figure; and

L is the amount applicable in respect of the value of leave entitlements (including annual leave and long service leave and applicable loadings thereon as governed by the relevant industrial instrument but excluding personal/carer's/sick leave) of all Contract Employees who accept offers under Clause 58.2(b) (**Acquired Employee**) which accrued for service to the Termination Date 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 Standard AASB 119: Employee Benefits, or any successor standard issued by the Australian Accounting Standards Board. The actuary will be appointed by agreement between the Operator, Successor Operator and TfNSW or, in the absence of such agreement, by the President of the Council of the 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.

Part N – Miscellaneous

59. Confidentiality, Privacy and Information Access

59.1 Confidentiality

Subject to Clauses 59.3 and 59.4, a Party must not disclose to a third party without the prior written consent of the other Parties (which will not be withheld if the disclosure is required by Law), any Confidential Information which is:

- (a) supplied or made available by a Party to another Party in relation to the performance of the Operator Activities; or
- (b) brought into existence by the Operator in performing the Operator Activities.

59.2 Maintaining confidentiality

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

59.3 Permitted disclosure

Clauses 59.1 and 59.2 do not apply to disclosures to the extent the disclosure is:

- (a) with the prior written consent of the Party whose Confidential Information is proposed to be disclosed;
- (b) required or permitted by this Contract or by Law;
- (c) in enforcing this Contract or in proceedings arising out of or in connection with this Contract;
- (d) to the Operator's Associates, provided the Operator's Associates are under a similar obligation of confidentiality with respect to the information as the Operator is bound to under Clause 59.1; or
- (e) to a Party's legal advisers and its consultants.

59.4 Publication of certain information by TfNSW

- (a) Subject to Clause 59.4(e), despite any other provisions of this Contract, TfNSW may publish or require the Operator to publish in any form and at times TfNSW considers appropriate, any information obtained by TfNSW from the Operator in accordance with the Reporting Schedule or information collected from the TfNSW Systems and Equipment.
- (b) Subject to Clause 59.4(e), despite any other provisions of this Contract, TfNSW may publish the Handover Information, the Market Process Information and any other information reasonably required in connection with the re-tendering or contracting of all or any part of the Operator Activities, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting.
- (c) Nothing in this Contract restricts TfNSW's or STA's provision of information to any Minister of the Crown in right of the State or any of its agencies, instrumentalities or Governmental Agencies.
- (d) For the avoidance of any doubt, and without limiting Clause 59.4(a), TfNSW or STA may publish:
 - (i) information collected via DCIS and the OSD;
 - (ii) performance information;
 - (iii) ticketing information; and
 - (iv) information regarding Payments made under this Contract.
- (e) TfNSW and STA 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 59.4(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 60.2); and
 - (iv) any other matter the disclosure of which TfNSW or STA 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.

59.5 Privacy compliance

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

in respect of any Personal Information which TfNSW, STA or the Operator receives or has access to under this Contract or any Transaction Document.
- (b) The Operator must cooperate with TfNSW and STA in the resolution of any complaint alleging a breach of the Privacy Laws, a privacy policy or an approved privacy code.

59.6 Disclosure log (GIPA Act section 25)

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

59.7 Access to information (GIPA Act section 121)

- (a) The Operator must, within 7 Business Days of receiving a written request by TfNSW or STA, provide TfNSW or STA (as the case may be) with immediate access to the following information contained in records held by the Operator:
 - (i) information that relates directly to the performance of the Operator Activities provided to the Operator by TfNSW or STA pursuant to this Contract;
 - (ii) information collected by the Operator from members of the public to whom it provides, or offers to provide, the Services pursuant to this Contract; and
 - (iii) information received by the Operator from TfNSW or STA to enable it to perform the Operator Activities pursuant to this Contract.
- (b) For the purposes of Clause 59.7, such information does not include:
 - (i) information that discloses or would tend to disclose the Operator's financing arrangements, financial modelling, cost structure or profit margin;

- (ii) information that the Operator is prohibited from disclosing to TfNSW or STA by provision made by or under any Act, whether of any Australian state or territory, or of the Commonwealth; or
- (iii) information that, if disclosed to TfNSW or STA, could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to TfNSW or STA (as the case may be), whether at present or in the future.
- (c) The Operator must provide copies of any of the information requested by TfNSW or STA in accordance with Clause 59.7(a) at the Operator's own expense.

59.8 Consultation (GIPA Act section 54)

- (a) TfNSW and STA will take reasonably practicable steps to consult with the Operator before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, if it appears that:
 - (i) the information:
 - (A) includes Personal Information about the Operator or its employees;
 - (B) concerns the Operator's business, commercial, professional or financial interests;
 - (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Operator; or
 - (D) concerns the affairs of a government of the Commonwealth or another Australian state or territory;
 - (ii) the Operator may reasonably be expected to have concerns about the disclosure of the information; and
 - (iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (b) If, following consultation between TfNSW or STA and the Operator, the Operator objects to disclosure of some or all of the information, the Operator must provide details of any such objection (including the information objected to and the reasons for any such objection) to TfNSW or STA (as the case may be) within five Business Days of the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of the information, TfNSW and STA will take into account any objection received from the Operator.
- (d) If the Operator objects to the disclosure of some or all of the information but TfNSW or STA nonetheless decides to release the information, TfNSW or STA (as the case may be) must not provide access to that information until it has given the Operator notice of its decision and notice of the Operator's right to have that decision reviewed.
- (e) Where TfNSW or STA has given notice to the Operator in accordance with Clause 59.8(a), TfNSW or STA (as the case may be) 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 59.8(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.

59.9 Publicity

Except for notices which the Operator is required to disclose to any recognised stock exchange, the Operator must:

- (a) not make any public announcements or statements in relation to the Operator Activities (including by posting any information related to the Operator Activities on any website) without TfNSW's prior consent;
- (b) give TfNSW a draft of any proposed media release relating to the Operator Activities and obtain TfNSW's approval of the media release before distributing it;
- (c) prior to release, revise the wording and timing of all media releases, public announcements and statements by the Operator or the Operator's Associates relating to the Services as requested by TfNSW; and
- (d) ensure that the Operator's Associates comply with the requirements referred to in this clause 59.9.

60. Intellectual Property and Marks

60.1 General principle

- (a) The Operator acknowledges that TfNSW endorses open government principles and that any and all New Contract Material may be shared by TfNSW with other persons or made publicly available (including online) and that TfNSW may grant such other persons or members of the public broad licences to use and sub-licence the New Contract Material either on a fee or free fee basis. The Operator acknowledges that the New Contract Material may be branded by TfNSW or a sub-licensee of TfNSW with TfNSW's or the licensee's branding with no acknowledgement of the Operator's input, Intellectual Property or Moral Rights.
- (b) The Parties agree that ownership of Intellectual Property in or in relation to all New Contract Material vests upon its creation in the Crown in right of the State of New South Wales acting through TfNSW without the need for further assurance.
- (c) With respect to any New Contract Material, irrespective of where it is created, if requested by TfNSW, the Operator must:
 - (i) sign, execute or otherwise deal with; and
 - (ii) ensure that any third party that creates any New Contract Material signs, executes or otherwise deals with,any document which may be necessary to vest all rights in and title to the Intellectual Property in the New Contract Material to TfNSW.

60.2 Intellectual Property licence

- (a) Subject to Clauses 60.4, 60.5 and 60.6, the Operator grants to TfNSW an irrevocable, royalty-free licence to use all Existing Contract Material for the purposes of providing public transport in New South Wales which licence will be for the duration of the Intellectual Property in that material and will include a right to sublicense.
- (b) The licence granted under Clause 60.2(a) only applies in respect of the Operator's registered business name, company name, trademark or logo (**Operator Identification**) for such period that any Operator Identification remains affixed to any Asset used or acquired by the Successor Operator or Interim Operator.
- (c) The Operator agrees to obtain, at its own cost, irrevocable, royalty free licences in favour of TfNSW to use all Third Party Contract Material for the purposes of providing public transport in New South Wales which licences will be for the

duration of the Intellectual Property in that material and will include a right to sub-licence.

- (d) TfNSW grants the Operator a non-exclusive, non-assignable, royalty-free licence to use the Intellectual Property in the New Contract Material and TfNSW's Existing Contract Material for the purpose of performing the Operator's obligations under this Contract. The licence granted by this Clause 60.2(d) does not, however, extend to a licence to use TfNSW's trade marks, logos or branding so as to represent or give the impression that the Operator represents TfNSW. Express written permission is required for such use.
- (e) The Operator warrants that it holds all necessary rights and has obtained all necessary approvals, consents and licences to grant the assignments and licences referred to in this Clause 60.2 and that TfNSW will not, by using, publishing or licensing the Contract Material or the Intellectual Property in the Contract Material, infringe any Intellectual Property in the Contract Material.
- (f) The Operator agrees that it will create and execute any documents necessary to give effect to the terms and intention of this Clause 60.2 so as to ensure that TfNSW is unimpeded in its power to use, publish and licence the Contract Material and any Intellectual Property in the Contract Material.
- (g) The Operator agrees that it will obtain signed waivers from each person who has, or comes to have, Moral Rights in the Contract Material or Intellectual Property in the Contract Material irrevocably:
 - (i) waiving that person's Moral Rights in the Contract Material or Intellectual Property in the Contract Material; and
 - (ii) authorising TfNSW to do acts with the Contract Material or Intellectual Property in the Contract Material that would, but for the waiver, breach that person's Moral Rights.

60.3 Third party rights

Where the use by TfNSW or its sub-licencees of any Contract Material supplied by the Operator does, or is likely to, infringe the rights of any third party's Intellectual Property which does, or may, prevent TfNSW or its sub-licencees from using that Contract Material, the Operator must, where requested by TfNSW and to TfNSW's reasonable satisfaction obtain such consents from the relevant third party that will allow TfNSW or its sub-licencees to use that Contract Material without infringing that third party's Intellectual Property.

60.4 Intellectual Property in Contract LRV Deliverables

- (a) To the extent permitted under the Rolling Stock Supply Contract, TfNSW grants to the Operator a non-exclusive and royalty free licence to:
 - (i) use;
 - (ii) maintain;
 - (iii) repair;
 - (iv) service;
 - (v) integrate other systems with;
 - (vi) reproduce and adapt; and
 - (vii) with the approval of TfNSW (which may be given with conditions), sublicense,

the Contract LRV Intellectual Property for the purposes of commissioning, operation, maintenance and repair of the Contract LRV Deliverables during the Term.

- (b) The licence granted in Clause 60.4(a) arises in respect of each component of the Contract LRV Intellectual Property on the later of the NLR Handover Date and the date of creation of that component.
- (c) The Operator acknowledges that as between the Operator and TfNSW, TfNSW owns any improvement to or modification, adaptation or development of the Contract LRV Intellectual Property.
- (d) The Operator must comply with reasonable directions given by TfNSW in relation to the protection or security of the Contract LRV Intellectual Property.

60.5 Intellectual Property in NLR

- (a) To the extent permitted under the Managing Contractor Contract, TfNSW grants to the Operator a non-exclusive and royalty free licence:
 - (i) to use (including to modify, adapt, alter, reproduce, communicate or maintain) the NLR Intellectual Property for the purposes of commissioning, operation, maintenance and repair of the NLR Works during the Term;
 - (ii) which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the NLR Works as may be required under this Contract; and
 - (iii) which is capable of being sub-licensed with the approval of TfNSW (which may be given with conditions).
- (b) The licence granted in Clause 60.5(a) arises in respect of each component of the NLR Intellectual Property on the later of the NLR Handover Date and the date of creation of that component.
- (c) The Operator acknowledges that as between the Operator and TfNSW, TfNSW owns any improvement to or modification, adaptation or development of the NLR Intellectual Property.
- (d) The Operator must comply with reasonable directions given by TfNSW in relation to the protection or security of the NLR Intellectual Property.

60.6 Use of TfNSW Brand

- (a) The Operator must only use the TfNSW Brand in material if TfNSW has given that material to the Operator or if the Operator has submitted representative material including the TfNSW Brand to TfNSW and TfNSW has approved their use in writing.
- (b) The Operator acknowledges and agrees that:
 - (i) the TfNSW Brand is extremely important and valuable to TfNSW;
 - (ii) TfNSW owns all right, title and interest in the TfNSW Brand and the Operator has no right, title or interest in the TfNSW Brand and, in particular, in respect of the TfNSW Marks the powers conferred on authorised users by section 25 of the *Trade Marks Act 1995* (Cth) are expressly excluded;
 - (iii) any goodwill and any other right, title or interest from the Operator's use of the TfNSW Brand accrues solely for TfNSW's benefit;
 - (iv) the Operator will, at TfNSW's request, immediately amend or withdraw any document or thing bearing the TfNSW Brand;
 - (v) the Operator must only use the TfNSW Brand in a manner which strictly accords with the terms of this Contract and any directions or guidelines which TfNSW provides to the Operator from time to time; and
 - (vi) TfNSW may request access to any material bearing the TfNSW Brand to ensure compliance with this Contract and any directions or guidelines for use of the TfNSW Brand and upon receipt of such a request, the Operator

will provide TfNSW with access to the relevant material within five Business Days.

- (c) The Operator must do all things necessary (including executing documents) and provide TfNSW with all such assistance as is reasonably required by TfNSW to register any part of the TfNSW Brand in the name of TfNSW and to maintain that registration throughout the Term.
- (d) The Operator must ensure that where the TfNSW Marks appear in any written material (including any electronic material) published by or on behalf of the Operator, unless otherwise authorised by TfNSW in writing:
 - (i) the ® symbol must appear next to TfNSW Marks which are registered and the "TM" symbol must appear next to TfNSW Marks which are not registered; and
 - (ii) the TfNSW Marks must be accompanied by the following footnote:
"The [to be inserted] trade mark is used by [insert Operator name] under licence from TfNSW."
- (e) The Operator must not use the TfNSW Brand in a manner which is prejudicial to TfNSW or likely to prejudice the distinctiveness of the TfNSW Brand or the validity of any registration for any of the TfNSW Marks.
- (f) The Operator must comply with any standards, directions and specifications notified in writing by TfNSW from time to time during the Term as to the appearance, colour, size and positioning of the TfNSW Marks and the footnote referred to in Clause 60.6(d)(ii).
- (g) The Operator must not at any time during the Term use the TfNSW Marks in juxtaposition to any other trade mark, embellishment or device without the prior written consent of TfNSW.
- (h) The Operator will:
 - (i) if requested by TfNSW, take all necessary action and execute and deliver to TfNSW all necessary documents and instruments to record the Operator as a registered user of the TfNSW Marks;
 - (ii) if requested by TfNSW, submit to TfNSW, samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the TfNSW Brand for TfNSW's prior written approval;
 - (iii) except to the extent expressly permitted by this Contract, not use or apply to register any TfNSW Marks as part of its corporate, business, trading or domain name;
 - (iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose TfNSW's ownership of the TfNSW Brand;
 - (v) not register or use any trade mark, trade name, company name or domain name which includes any part of the TfNSW Brand or which is substantially identical or deceptively similar to any part of the TfNSW Brand; and
 - (vi) not challenge the TfNSW Brand or TfNSW's ownership of the TfNSW Brand or assist a third party to do these things.
- (i) If, during the Term, the Operator becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the TfNSW Marks, the Operator must promptly notify TfNSW.
- (j) TfNSW will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the TfNSW Marks and will in its sole discretion decide what action if any to

take in respect of that matter. The Operator must, at TfNSW's reasonable cost, take any action which TfNSW reasonably requests to bring the matter to an end.

- (k) The Operator shall, upon termination or expiry of this Contract, procure that any part of the TfNSW Brand which is listed or registered in the name of the Operator, or any person acting on its behalf, is transferred to TfNSW and procure that all telephone numbers, email addresses and all other electronic addresses which are designated by the Operator for use by the general public to make contact with the Operator in relation to the Operator Activities using a telecommunication network be transferred to TfNSW.
- (l) In this Clause:
 - (i) 'Marks' means any mark, trade mark, logo, indicia or image;
 - (ii) 'TfNSW Brand' means all Marks, livery, colours or other get up or brand used on or in relation to the State Assets or any part of them including:
 - (A) the TfNSW Marks;
 - (B) all names including business names, domain names and company names registered or used in relation to the Operator Activities (other than those business names, domain names and company names of the Operator or Operator's Associates which are used in their business generally); and
 - (C) all telephone numbers, email addresses, websites, social media accounts and all other addresses or means of communication in any medium, whether in existence at the date of this Contract or not, registered or used in relation to the Operator Activities (other than those of the Operator or Operator's Associates which are used in their business generally); and
 - (iii) 'TfNSW Marks' means the Marks notified by TfNSW to the Operator from time to time and any other Marks used by or on behalf of the Operator in relation to the Operator Activities (other than those Marks of the Operator's Associates which are used in their business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any Marks which are created or developed in connection with, the Operator Activities or any part of the Operator Activities).

61. Livery and advertising

61.1 Livery and Operator's Marks

- (a) TfNSW will, in consultation with the Operator, develop, amend and periodically update the TfNSW Brand Style Guide to provide specifically for use of TfNSW Brands in relation to the Services in Newcastle.
- (b) The Operator must:
 - (i) ensure that the State Assets incorporate the TfNSW Brand for the relevant mode of Service;
 - (ii) incorporate the TfNSW Brand in a manner that enables the State Assets to be identified as part of an integrated transport network;
 - (iii) comply with the TfNSW Brand Style Guide including by ensuring that:
 - (A) the TfNSW Brand is applied in accordance with the TfNSW Brand Style Guide;

- (B) any Operator brand placement is co-branded with the relevant TfNSW Brand and in a format and relative scale in accordance with the TfNSW Brand Style Guide;
- (C) all customer facing surfaces on vehicles, equipment, electronic displays, printed, promotional or other branded materials display the relevant TfNSW Brand for the mode of Service and the Operator brand in a manner that complies with the TfNSW Brand Style Guide; and
- (D) the Operator does not use primary colours or other distinctive colour schemes unless it can be demonstrated to TfNSW's satisfaction that it is complementary to and or consistent with the TfNSW Brand Style Guide;
- (iv) comply with a visual language as determined by TfNSW; and
- (v) ensure that the Contract LRVs, Contract Ferries and New Buses conform to uniform livery requirements, set out in Annexure 3 to the Asset Schedule, or as otherwise prescribed by TfNSW from time to time.
- (c) If TfNSW prescribes or varies any existing uniform livery requirements in respect of all Contract LRVs and New Buses or requires that the livery of Existing Buses be updated to conform with uniform livery requirements:
 - (i) the Operator must comply with that new or varied uniform livery requirement; and
 - (ii) TfNSW must compensate the Operator for all reasonable incremental costs of complying with that new or varied uniform livery requirement but only to the extent that such costs exceed the costs that the Operator would have incurred had TfNSW not required the new or varied uniform livery requirements.

61.2 Advertising and commercial opportunities

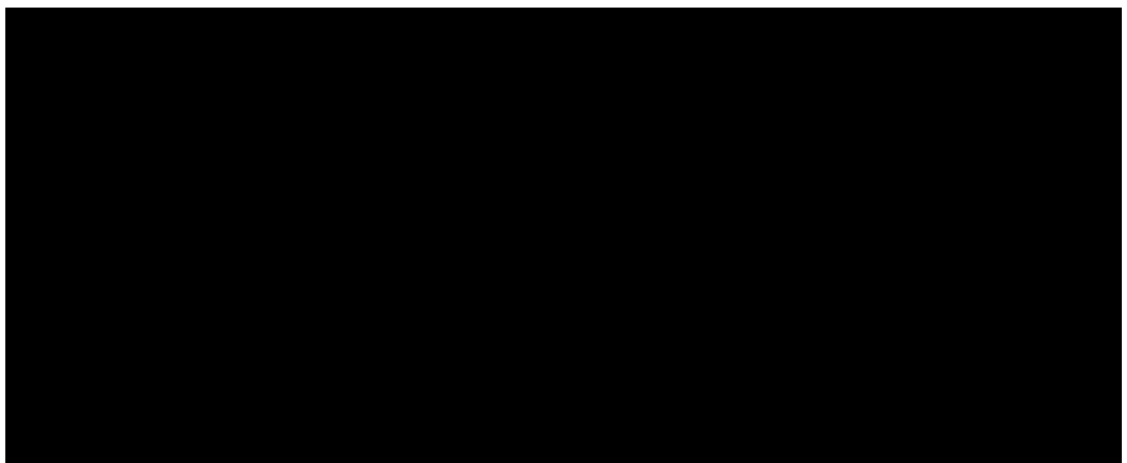
- (a) The Parties acknowledge and agree that:
 - (i) the Operator has the exclusive right under this Contract to advertise, and grant rights to third parties to advertise:
 - (A) on the interior of the Contract Vehicles; and
 - (B) on the exterior of Contract LRVs and Contract Buses, subject always to the requirements set out in Clause 61.1;
 - (ii) TfNSW has the exclusive right under this Contract to advertise, and grant rights to third parties to advertise, on the Permanent Light Rail Corridor, Bus Transit Stops and the Interchanges (**TfNSW Advertising Assets**); and
 - (iii) no Party may advertise on the Wharves.
- (b) The Parties acknowledge and agree that the Operator may pursue other commercial opportunities in relation to the Services (including advertising, or granting rights to third parties to advertise, on TfNSW Advertising Assets) provided it first obtains the consent of TfNSW and complies with any conditions that may be imposed by TfNSW in respect of such opportunities.

61.3 Advertising by Operator

- (a) Any advertising placed by the Operator on a State Asset 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 61.1;
 - (iv) comply with codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by a Governmental Agency, the Advertising Standards Bureau of Australia, Office of Film and Literature Classification, Australian Association of National Advertising, Outdoor Advertising Association of Australia, Australian Advertising Standards Board and the TfNSW Centre for Road Safety;
 - (v) not depict political, religious or other similar subject matter;
 - (vi) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour;
 - (vii) not cause, or have the potential to cause, any damage or harm to TfNSW's reputation;
 - (viii) not be offensive;
 - (ix) not obscure the route number and destination details on the Contract Vehicle;
 - (x) not obscure any transport information or wayfinding information; and
 - (xi) not obscure any safety information or signage.
- (b) Where, in TfNSW's reasonable opinion, advertising on a Contract Vehicle does not comply with Clause 61.3(a), TfNSW may require the Operator to remove an advertising item from that Contract Vehicle.
 - (c) The Operator must comply with a direction of TfNSW made pursuant to Clause 61.3(b) within 1 Business Day of receipt of the direction.
 - (d) The Operator must not install any digital advertising equipment on Contract Vehicles without the prior consent of TfNSW which consent may be subject to conditions, including conditions protecting TfNSW's rights in relation to the Contract Vehicles.
 - (e) The Operator must, when requested to do so by TfNSW, allow TfNSW to utilise such advertising panels and spaces on Contract Vehicles (including any digital media) for such reasonable periods as are required by TfNSW, at no cost to TfNSW, to enable TfNSW to promote transport and safety initiatives.

61.4



62. Warranties

62.1 Special purpose vehicle warranties

In addition to the warranties in Clauses 62.2 and 62.3, the Operator represents and warrants to TfNSW and STA that:

- (a) as at the date of this Contract and on the Contract Commencement Date:
 - (i) it is a proprietary company incorporated under the Corporations Act solely for the purposes of performing the Operator Activities or other activities permitted under this Contract;
 - (ii) it has not traded or engaged in any form of business activities prior to the date of this Contract; and
 - (iii) it is a wholly owned subsidiary of Keolis Downer Bus and Coachlines Pty Limited (ABN 76 604 654 140) (**KDBC**); and
 - (iv) KDBC is a wholly owned subsidiary of the Parent Company; and
- (b) as at the Contract Bus and Ferry Service Commencement Date and throughout the Term:
 - (i) its only assets will be the Assets acquired by it in accordance with this Contract;
 - (ii) its only liabilities will be liabilities which are related to the Assets and the Staff or as otherwise contemplated by the Transaction Documents; and
 - (iii) it will be the employer for all of the Dedicated Staff.

62.2 Special purpose vehicle undertakings

The Operator must not during the Term, without the prior consent of TfNSW:

- (a) engage in any business activity other than:
 - (i) performing the Operator Activities;
 - (ii) providing advertising on Contract Vehicles in a manner consistent with Clauses 61.2 and 61.3; and
 - (iii) providing charter Bus services in accordance with this Contract;
- (b) permit or engage any Dedicated Staff to perform duties or activities not associated with the Operator Activities;
- (c) acquire or use any assets for purposes other than the performance of its obligations under the Transaction Documents to which it is a party;
- (d) acquire or use any premises, facilities, bus, ferry or light rail vehicle for the purposes of the Operator Activities and then only on the terms set out in the Transaction Documents; or
- (e) enter into any subcontracts or Related Party Arrangements in respect of matters which are not for the purposes of the performance of its obligations under this Contract.

62.3 Warranties correct

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

- (a) it is a corporation duly incorporated and validly existing under the Laws of New South Wales;

- (b) it has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- (c) it has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents;
- (d) each Transaction Document to which it is expressed to be a party creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (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 that may have an adverse effect on the performance of this Contract;
- (g) no resolution has been passed for its winding up;
- (h) no resolution has been passed for the appointment of an administrator to it;
- (i) there is no unsatisfied judgment against it;
- (j) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its undertakings or assets or income;
- (k) each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents; and
 - (ii) its business as now conducted or contemplated and that is material (including, under the PT Act 1990, MS Act or Rail Safety National Law),
 has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Service Commencement Date, it is only given as at the Service Commencement Date;
- (l) all returns, notices and other documents required to be lodged or given by it under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (m) there are no notices of any Reporting Body outstanding against it;
- (n) all Authorisations necessary for the conduct of its business are validly subsisting and are held by it;
- (o) it has duly observed and complied in all respects with the provisions of all Laws and regulations and all orders, notices, awards and determinations made by any statutory or other competent authority in any way relating to or binding on it or any property owned or occupied by it;

- (p) all copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to TfNSW or STA (or both) are true and complete copies. Where applicable, those documents are in full force and effect;
- (q) none of its property is subject to any Security Interest (other than a Permitted Security Interest);
- (r) it does not hold any assets as the trustee of any trust;
- (s) it complies with the Privacy Laws, and any guidelines issued by the Commissioner under the relevant Privacy Law;
- (t) it can commence the Services on the relevant Service Commencement Date;
- (u) it is and will be able to comply with the Services Schedule, the Service Level Schedule, the Key Performance Indicators and any outcomes or indicators agreed in this Contract;
- (v) its performance of this Contract will not infringe the Intellectual Property rights of any third person;
- (w) its Accessible Transport Action Plan, Environmental Plan and Customer Service Plan are updated annually;
- (x) it will perform the Services in accordance with the degree of skill, diligence, prudence and practice that would be exercised by a skilled and experienced operator of public transport services and public transport services comparable to the size, scope and complexity of the Services and to TfNSW's and STA's reasonable satisfaction;
- (y) it will perform the Services:
 - (i) in a competent, courteous, safe and reliable manner;
 - (ii) having primary regard to the needs and interests of passengers and to build an integrated transport service for Newcastle; and
 - (iii) in accordance with the requirements of this Contract; and
- (z) it:
 - (i) has examined this Contract and the Disclosed Information and any other information that was made available in writing by TfNSW or STA or any other person on TfNSW's or STA's behalf;
 - (ii) has been given the opportunity prior to submitting its Proposal to itself undertake tests, enquiries and investigations:
 - (A) relating to the subject matter of the Disclosed Information; and
 - (B) relating to the State Assets;
 - (iii) has had a sufficient opportunity to obtain and obtained all necessary legal and other technical advice in relation to this Contract, the Disclosed Information and the State Assets as well as the risks, contingencies and other circumstances having an effect on its Proposal and the performance of its obligations and liabilities under this Contract;
 - (iv) has had sufficient access to the Disclosed Information and the State Assets and undertaken sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and potential risks and liabilities which it imposes on the Operator; and
 - (v) has satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its

obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the Operator Activities.

62.4 Notification of change

The Operator must immediately notify the TfNSW Representative in writing upon becoming aware that a representation or warranty it has given under this Clause 62 has become untrue or misleading at any time during the Term.

62.5 Reliance on representations and warranties

- (a) The Operator acknowledges that TfNSW and STA have entered into, or will enter into, the Transaction Documents in reliance on the representations and warranties made by the Operator in this Clause 62.
- (b) Each warranty and representation is separate and independent from the other and not limited by reference to another warranty or representation.

63. Operator acknowledgments

63.1 Acknowledgements

- (a) The Operator acknowledges that it has made its own enquiries and has not relied on any representations made by TfNSW or STA, nor any other person acting on behalf of TfNSW or STA, in respect of this Contract and each other Transaction Document.
- (b) Without limiting the generality of Clause 63.1(a), the Operator acknowledges the following:
 - (i) neither TfNSW nor STA, nor any other person acting on behalf of TfNSW or STA, has verified the accuracy, reliability or completeness of the Disclosed Information;
 - (ii) neither TfNSW nor STA, nor any other person acting on behalf of TfNSW or STA, has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
 - (iii) the Operator has not relied in any way on the skill or judgment of TfNSW or STA, or any person acting on behalf of or associated with TfNSW or STA, 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 and STA in good faith and that:
 - (A) TfNSW and STA have no knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither TfNSW nor STA, or any person acting on behalf of or

associated with TfNSW or STA, is under no obligation to make, and that none of them has made, enquiries to verify that state of knowledge); and

- (B) any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by TfNSW or STA, or any person acting on behalf of or associated with TfNSW or STA, in any prior negotiation, arrangement, understanding or agreement has no effect except to the extent expressly set out or incorporated in this Contract or the other Transaction Documents;
- (vi) for the avoidance of doubt:
 - (A) neither TfNSW nor STA, nor any person acting on behalf of TfNSW or STA, has made or makes any representation or warranty either express or implied as to the condition of the State Assets or the STA Residual Furniture and Tools; and
 - (B) The Operator accepts the State Assets and the STA Residual Furniture and Tools in their condition at the date they are first licensed or leased to the Operator subject to all defects and agrees that it is responsible for, and assumes the risk of
 - (i) all Loss, delay or disruption it suffers or incurs; and
 - (ii) any adverse effect on the Operator Activities, arising out of or in any way in connection with the State Assets or the STA Residual Furniture and Tools.
- (iii) the acknowledgments under this Clause 63.1(b) 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 and STA that the Operator is aware that TfNSW and STA have relied on the acknowledgments contained in this Clause 63 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 STA, or any person acting on behalf of or associated with any of TfNSW or STA, arising (directly or indirectly) out of any alleged misrepresentation or misleading or deceptive conduct on the part of TfNSW or STA, or any person acting on behalf of or associated with TfNSW or STA, in providing the Disclosed Information or in connection with this Contract or any other Transaction Document (except for any misrepresentation or misleading or deceptive conduct of TfNSW or STA that is deliberate or negligent).
- (e) The Operator acknowledges that this Clause 63 is intended to benefit and is to be interpreted as benefiting TfNSW and STA and is to be enforceable by TfNSW and STA against the Operator. TfNSW holds the benefit of the Operator's representations, warranties, acknowledgments and agreements under this Clause 63 on trust for TfNSW's Associates, RMS, RailCorp, NSW Trains, Sydney Trains, any Roads Authority, the Minister for Transport and the State.

63.2 No TfNSW responsibility for review of documents

- (a) The Operator:
 - (i) must develop, amend or update (and resubmit to TfNSW) any documents required to be submitted to TfNSW under this Contract (**Operator Documents**) in accordance with the requirements of this Contract or, where no requirement is specified, from time to time as and when either the Operator or TfNSW reasonably consider it is necessary to do so to comply with this Contract; and

- (ii) warrants that the Operator Documents will be fit for their intended purposes and will otherwise comply with the requirements of this Contract.
- (b) TfNSW does not assume or owe any duty of care to the Operator to review, or when reviewing, to assess any Operator Document for errors, omissions or compliance with this Contract.
- (c) The Operator agrees that:
 - (i) review of, comments upon, or failure to comment upon, or rejection of (including the reasons for rejection) or failure to reject, an Operator Document or any other direction by TfNSW about such document;
 - (ii) the Operator's compliance with any Operator Document, will not:
 - (iii) relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise according to Law; or
 - (iv) prejudice TfNSW's rights against the Operator whether under this Contract or otherwise according to Law.
- (d) Without limiting Clauses 63.2(a) and 63.2(c), TfNSW is not assuming any management or control of the Operator Activities or the Services.

64. Dispute resolution

64.1 Dispute resolution

- (a) This Clause 64 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 64 (**Dispute**).
- (b) Subject to Clause 64.1(c), a Party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first complying with the provisions of this Clause 64.
- (c) This Clause does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensable in damages.
- (d) If a Party considers that a Dispute has arisen, it may issue a written notice to the other Party or Parties (as applicable), setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (e) Subject to Clause 64.2, the Parties must promptly hold good faith discussions between the Operator Representative and the TfNSW 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 or Parties (as applicable) all information with respect to the Dispute which is appropriate in connection with its resolution.
- (f) If the Dispute has not been resolved within 10 Business Days after commencement of First Level Discussions, the Parties to the Dispute must attempt to resolve the Dispute by holding good faith discussions between the Operator's Managing Director (or equivalent) and the Executive General Manager, Service Delivery and Performance, TfNSW (or such other position notified to the Operator by TfNSW from time to time) (**Second Level Discussions**).
- (g) If the Dispute has not been resolved within 10 Business Days after commencement of Second Level Discussions, a Party to the Dispute may pursue its rights and remedies under this Contract as it sees fit.

64.2 Referral to expert

- (a) If this Contract requires that a Dispute be resolved by an independent expert, or if the Parties to the Dispute agree that a Dispute will be referred to an independent expert, those Parties must refer that Dispute for resolution under this Clause 64.2 to a person who is an independent expert in its subject matter appointed by agreement between the Parties (**Expert**).
- (b) If the parties are unable to agree on whom to appoint as an Expert within 20 Business Days after the date of the Dispute Notice, the Expert will be appointed on the application of any Party by (unless otherwise agreed) the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Institute of Arbitrators and Mediators Australia.
- (c) The Expert appointed under Clause 64.2(a) or (b) acts as an expert and not as an arbitrator.
- (d) Each Party to a Dispute which is referred to the Expert for determination must have a reasonable opportunity to make submissions to the Expert.
- (e) Unless otherwise stated in this Contract, the costs of the Expert must be borne in equal shares by the Parties to the Dispute.
- (f) The Expert's decision is final and binding on the Parties to the Dispute, except to the extent of fraud, gross negligence or a manifest error.
- (g) The provisions of the *Commercial Arbitration Act 2010* (NSW) will not apply to the dispute resolution proceedings under this Clause 64.2.

64.3 General

- (a) This Clause does not apply to any Dispute relating to or arising out of the exercise or non exercise by TfNSW of any Power conferred on TfNSW by the TA Act, PT Act 1990, PT Act 2014 or otherwise by Law.
- (b) The Parties will continue performing their respective obligations under the Transaction Documents while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Contract.

64.4 Section 65 of the PT Act 1990

The Operator acknowledges that any dispute resolution procedure brought under this Clause 64 or otherwise is subject to section 65 of the PT Act 1990.

65. Restriction on activities

65.1 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) Without limiting Clauses 1.10 and 32, TfNSW may assign or transfer its rights or obligations under the Transaction Documents to another Governmental Agency.

65.2 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,

and the following requirements have also been satisfied:

- (iv) TfNSW and the Related Entity have entered into an agreement on terms acceptable to TfNSW in respect of the Related Party Arrangement;
 - (v) if required by TfNSW, acting reasonably, the Related Entity has provided a Security Interest in favour of TfNSW in a form satisfactory to TfNSW; and
 - (vi) if required by TfNSW, acting reasonably, TfNSW has obtained a parent company guarantee in respect of the obligations of the Related Entity under the agreement referred to in Clause 65.2(a)(iv).
- (b) In acting reasonably under Clause 65.2(a)(v) and 65.2(a)(vi), TfNSW must have regard to the need to ensure the Continuity of the Services on expiry or termination of this Contract or if a Termination Event or Non-Compliance Event occurs.
 - (c) If the Operator enters into a Related Party Arrangement in breach of Clause 65.2(a), then TfNSW may request the Operator to terminate the Related Party Arrangement and the Operator must, as soon as practicable, comply with that request.
 - (d) No later than 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 one month of TfNSW's request. If, on the basis of the information provided under this Clause 65.2(d) or otherwise available to TfNSW, TfNSW reasonably considers that any Related Party Arrangements are not on arm's 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 from entering into Related Party Arrangements without the approval of TfNSW. The Operator must comply with any conditions specified by TfNSW under this Clause 65.2(d).

66. 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, STA 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, STA or the State.

67. Personal Property Securities Act

67.1 Incorporation of PPS Law terms

In this Clause 67 the following words and expressions have the same meanings given to them in the PPS Law:

- (a) registration;
- (b) secured party;

- (c) verification statement;
- (d) financing statement;
- (e) personal property; and
- (f) financing change statement.

67.2 General

The Operator acknowledges and agrees that:

- (a) if and to the extent that TfNSW at any time forms a belief on reasonable grounds that TfNSW is, or will become, a secured party in respect of a Security Interest arising out of or in connection with this Contract or any other Transaction Document, TfNSW or its agents, attorneys or nominees (**Relevant Party**), may at the Operator's expense take all steps that the Relevant Party considers advisable to:
 - (i) perfect, protect, record, register, amend or remove the registration of TfNSW's Security Interest in any personal property that is the subject of the Security Interest (**Relevant Personal Property**); and
 - (ii) better secure TfNSW's position in respect of the Relevant Personal Property under the PPS Law;
- (b) it will execute such other documents, deeds and other agreements including the execution of additional Security Interests, and otherwise take whatever action that the Relevant Party may reasonably require, including the giving of all notices, orders, instructions and directions whatsoever, to:
 - (i) do anything referred to in Clause 67.2(a)(i) or (ii);
 - (ii) facilitate the realisation or enforcement of such Security Interest;
 - (iii) facilitate the exercise of any of the Relevant Party's rights, powers or discretions under the Transaction Documents;
 - (iv) ensure that any Transaction Document is stamped for the proper amount in each state and territory of Australia in which the Transaction Document is required to be stamped; and
 - (v) confer on the Relevant Party security over the secured property (in whatever jurisdiction situated) equivalent or similar to the security intended to be conferred by any Transaction Document;
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Relevant Party in the Relevant Personal Property;
- (d) if TfNSW becomes a secured party in relation to the Relevant Personal Property, and to the extent that Chapter 4 of the PPS Law would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, the Operator and TfNSW agree that pursuant to section 115 of the PPS Law, sections 117, 118, 120, 121(4), 125, 129, 130, 132(3)(d), 132(4), 142 and 143 of the PPS Law do not apply in relation to those Security Interests;
- (e) other than in relation to Security Interests arising in the ordinary course of the Operator Activities and Security Interests described in section 12(3) of the PPS Law of which the Operator is the grantor (but only where the interest does not secure payment or performance of an obligation), it must immediately notify TfNSW if the Operator becomes aware of any person other than the Operator taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and

- (f) other than in relation to Security Interests arising in the ordinary course of the Operator Activities and Security Interests described in section 12(3) of the PPS Law of which the Operator is the grantor (but only where the interest does not secure payment or performance of an obligation), it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of TfNSW's interest in Relevant Personal Property.

67.3 Corresponding provisions

Any document required to be executed by the Operator under Clause 67.2 will be in a form and substance satisfactory to the Relevant Party.

68. Proportionate Liability

68.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of the Parties under this Contract whether those rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting Clause 68.1, the rights, obligations and liabilities of TfNSW and the Operator under this Contract with respect to proportionate liability are as specified in this Contract and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

68.2 Operator not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the Operator must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by TfNSW against the Operator (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by TfNSW against the Operator (whether in contract, tort or otherwise), the Operator will indemnify TfNSW against any loss, damage, cost or expense that forms part of a claim by TfNSW against the Operator which TfNSW cannot recover from the Operator because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

68.3 Subcontracts

The Operator must:

- (a) in each subcontract into which it enters for the performance of the Operator Activities, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each subcontractor to include, in any further contract that it enters into with a third party for the performance of the Operator Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

69. Taxes

Subject to Clause 41.4, the Operator must indemnify TfNSW and STA against, and must pay TfNSW or STA (as applicable) on demand the amount of, all Taxes (excluding in respect of the Existing Depots, Rates, Land Tax and any stamp or like duty (**Duty**), and any penalty, fine, charge or interest in respect of any Rates, Land Tax or Duty) incurred in connection with:

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

The Operator is solely responsible for the payment of any Rates and Taxes in respect of the Operator Depot.

70. Conflict of Interest

- (a) The Operator promises that, to the best of its knowledge, no conflict of interest of the Operator, its employees, agents or subcontractors exists or is likely to arise in the performance of its obligations under this Contract.
- (b) The Operator must:
 - (i) notify 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.

71. Notices

Subject to the notices referred to in Clauses 23(e), 22.2(a) and 22.2(b) and the information referred to in Clauses 22.3(b) and 22.3(c) which are to be submitted via the TSAR system, any notice, demand, consent or other communication (**Notice**) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (or, if posted to an address in another country, by registered airmail), by hand or by 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:
Attention: Principal Manager
Transport for New South Wales
18 Lee Street, Sydney, New South Wales
Fax: 02 8202 3191
 - (ii) to STA:
Attention: Principal Manager

Transport for New South Wales

18 Lee Street, Sydney, New South Wales

Fax: 02 8202 3191

(iii) to the Operator:

Attention:

Keolis Downer Hunter Pty Limited

Level 3, Trinita 1, Trinita Business Campus, 39 Delhi Road North Ryde 2113

Fax: 02 9813 8915

or by email (in accordance with an email authorisation procedure agreed between the Parties);

(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;
- (iv) in the case of delivery by email, on the earlier to occur of:
 - (A) receipt by the sender of any email acknowledgement from the intended recipient's information system showing that the Notice has been delivered to the email address of the recipient;
 - (B) the time that the Notice enters an information system which is under the control of the intended recipient; or
 - (C) the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or 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.

72. Entire agreement

This Contract and the Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and supersede all prior agreements and understandings between the Parties in connection with it.

73. Amendment

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

74. 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.

75. 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.

76. Costs

- (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.

77. 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.

78. Counterparts

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

79. Survival

Clauses 1, 4, 6.4, 7, 10.12(b), 12.3, 14.3, 19.1(j), 19.1(k), 28, 33.2, 34, 39, 41.3, 41.5, 42, 43, 44, 47.3, 52, 53, 54, 55, 56, 57, 58, 59, 59.9, 62, 63, 64, 65, 66, 67, 68, 69, 71, 75, 77 and this Clause 79 continue to apply after the expiration or termination of this Contract.

80.

Signing page

EXECUTED as a deed.

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

T Reardon

Signature of authorised delegate

Witness redacted

Signature of witness

Timothy Reardon

Name of authorised delegate (block letters)

Witness redacted

Name of witness (block letters)

Executed for and on behalf of the **State Transit Authority of New South Wales (ABN 51 750 635 629)**, by **Transport for NSW** as its authorised delegate under section 3J(2) of the TA Act:

S Troughton

Signature of authorised delegate

Witness redacted

Signature of witness

Stephen Troughton

Name of authorised delegate (block letters)

Witness redacted

Name of witness (block letters)

Executed by **Keolis Downer Hunter Pty Limited (ABN 89 614 205 766)** in accordance with Section 127 of the *Corporations Act 2001*

L Frances

Signature of director

P Tompkins

Signature of director/company secretary
(Please delete as applicable)

Leila Frances

Name of director (print)

Peter Tompkins

Name of director/company secretary (print)

Attachment A – Contract details

Item	Clause	Term	Details		
Item 1	2.1(a)	TfNSW Representative	Principal Manager, Transport for Newcastle		
Item 2	2.1(b)	Operator Representative	Managing Director being (at the date of this Contract) [REDACTED]		
Item 3	36.2(b)	Key Personnel Details and Roles	Role	Name	Time for Commencement
			Managing Director	[REDACTED]	Date of this Contract
			Head of Operations	[REDACTED]	Planned Contract Bus and Ferry Service Commencement Date
			Head of Assets	[REDACTED]	Date of this Contract
			Safety/Security Manager	[REDACTED]	Date of this Contract
			Customer Service / Experience Manager	[REDACTED]	Date of this Contract
			Head of HR/IR	[REDACTED]	Date of this Contract
Item 4	36.2(b)	Key Personnel – Duration of Appointment	Three years from Time for Commencement specified in Item 3		
Item 5	43.1(a)(i)(C)	Public liability insurance	[REDACTED]		
Item 6	43.1(b)(iii)	Third party property damage insurance	[REDACTED]		
Item 7	7.1	General Performance Bond Amount	[REDACTED]		

Attachment B – Performance Bond

[Insert date]

TO: Transport for NSW on behalf of the State of New South Wales (**Beneficiary**)
Address: 18 Lee Street, Sydney, New South Wales
Facsimile: [insert]
Attention: [insert]

Keolis Downer Hunter Pty Ltd (**Operator**) has entered into a document with the Beneficiary and the State Transit Authority of New South Wales under which the Operator has agreed to, among other things, provide bus, light rail and ferry services in Newcastle, New South Wales in accordance with the terms of that document (**Document**).

At the request of the Operator, and in consideration of the Beneficiary agreeing to accept the form of this bond (**Bond**):

[Insert] (**Issuer**),

unconditionally and irrevocably covenants to pay to the Beneficiary on first demand by the Beneficiary any sum or sums which may be demanded by the Beneficiary up to an aggregate maximum of:

A\$[Insert].

Payment or payments under this Bond will be made by the Issuer to the Beneficiary:

1. without reference to the Operator or any agreement between the Beneficiary and the Operator;
2. despite any notice by the Operator or any other person (aside from the Beneficiary) to the Issuer not to pay the whole or any part of the sum; and
3. despite anything which but for this provision might operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
 - (a) any variation or alteration to any contract between the Beneficiary and the Operator; or
 - (b) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person.

This Bond expires on [Insert] (**Expiry Date**).

The Issuer will have no liability in respect of any claim under this Bond after the Expiry Date.

The Beneficiary may assign its rights under this Bond to any person to whom it has assigned some or all of its rights under the Document provided that the relevant Beneficiary has notified the Issuer of that assignment.

Other than as set out above, the Beneficiary cannot assign or transfer its rights under this Bond without the prior consent of the Issuer, not to be unreasonably withheld.

Despite anything else in this bond, the Issuer may terminate it at any time by payment to the Beneficiary of the guarantee amount at that time or any lesser amount that the Beneficiary may agree.

This Bond is governed by the laws of the State of New South Wales.

EXECUTED as a deed.

If this Bond is being executed under power of attorney, the attorney executing this Bond states that he or she has no notice of revocation or suspension of his or her power of attorney.

[insert execution block of Issuer]

Attachment C – Deed of Guarantee and Indemnity

Deed of Guarantee

Newcastle Integrated Services Contract

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

The State Transit Authority of New South Wales (**STA**)

Keolis Downer Pty Limited (**Guarantor**)

Details

Date

Parties

Name Keolis Downer Pty Limited

ABN 51 165 343 680

Short form name **Guarantor**

Notice details [TfNSW note to Proponents: Insert details]

Facsimile: [TfNSW note to Proponents: Insert details]

Attention: [TfNSW note to Proponents: Insert details]

Name **Transport for NSW, a corporation constituted under the Transport Administration Act 1988 (NSW) on behalf of the State of New South Wales**

Short form name **TfNSW**

Notice details 18 Lee Street, Sydney, New South Wales

Facsimile: [TfNSW note to Proponents: Insert details]

Attention: [TfNSW note to Proponents: Insert details]

Name **The State Transit Authority of New South Wales, a corporation constituted under the Transport Administration Act 1988 (NSW) on behalf of the State of New South Wales**

Short form name **STA**

Notice details Level 4, 15 Bourke Road, Mascot, New South Wales

Background

- A TfNSW and STA have entered into an agreement with the Operator for the supply of bus, light rail and ferry services in the Newcastle area (**Newcastle Integrated Services Contract**).
- B Under the Newcastle Integrated Services Contract, the Operator is required to provide TfNSW and STA with a parent company guarantee in the form of this deed.
- C The Guarantor understands and is aware of the obligations and liabilities of the Operator under the Transaction Documents and is prepared to give and execute the parent company guarantee in this deed.

Agreed terms

1. Defined terms

1.1 Existing definitions

Unless the context requires otherwise and other than as defined below, all terms in capitals in this deed have the definition given to them in the Newcastle Integrated Services Contract.

1.2 New definitions

In this deed:

External Administrator means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Guarantee means an obligation or offer to provide funds (including by subscription or purchase) or otherwise be responsible in respect of an obligation or indebtedness, or the financial condition or solvency, of another person. It includes a guarantee, indemnity, letter of credit or legally binding letter of comfort, or an obligation or offer to purchase an obligation or indebtedness of another person.

Liquidation means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

Power means a power, right, authority, discretion or remedy that is conferred on TfNSW or STA:

- (a) by this deed; or
- (b) by law in relation to this deed.

Obligations means all obligations of the Operator (whether present, prospective or contingent and whether owed alone or not and in any capacity) to TfNSW (whether alone or not and in any capacity) and or STA (whether alone or not and in any capacity) under or in connection with a Transaction Document. It includes obligations:

- (a) whether arising or contemplated before or after the date of this deed or as a result of the assignment (with or without the Operator's consent) of any debt, liability or Transaction Document;
- (b) in the nature of interest, fees, costs, charges, expenses, duties, indemnities, Guarantee obligations or damages;
- (c) whether liquidated or sounding in damages only;
- (d) whether relating to the payment of money or the performance or omission of any act;
- (e) whether accruing as a result of a default or breach of any Transaction Document including a Non-Compliance Event or Termination Event; or
- (f) which a person would be liable for but for an Insolvency Event in respect of that person.

It includes, without limitation, all money and amounts (in any currency) which the Operator is or may become liable at any time (presently, prospectively or contingently, whether alone or not in

any capacity), to pay to or for the account of TfNSW (whether alone or not and in any capacity) or STA (whether alone or not and in any capacity).

1.3 Interpretation

The provisions of clauses 1.2 and 1.3 of the Newcastle Integrated Services Contract are incorporated in, and apply to, this document as if set out in full with any necessary amendments.

1.4 Territory's power and discretions

- (a) The provisions of clauses 1.5, 1.6, 1.7, 1.8, 1.9, 1.10 and 1.11 of the Newcastle Integrated Services Contract are incorporated in, and apply to, this deed as if set out in full with any necessary amendments.
- (b) TfNSW has appointed the TfNSW Representative to exercise any power, right or remedy of TfNSW under this document.

2. Guarantee

2.1 Consideration

The Guarantor enters into this deed for valuable consideration which includes TfNSW and STA entering into the Transaction Documents at its request. Its obligations are unconditional and irrevocable.

2.2 Guarantee

- (a) The Guarantor guarantees to TfNSW and STA the due and punctual payment and performance of the Obligations.
- (b) If the Operator does not perform any of the Obligations, the Guarantor must perform, or procure the performance of, those Obligations (without the need for demand by TfNSW or STA) in accordance with the Transaction Documents.

2.3 Indemnities

- (a) If any Obligation is not owing by or recoverable from the Operator or is otherwise unenforceable, invalid or illegal, or the Operator fails or is unable to perform any Obligation, for any reason, and whether or not TfNSW or STA knew or ought to have known anything about those matters, the Guarantor must indemnify TfNSW and STA against any Loss. The amount of that Loss will equal the amount TfNSW or STA would otherwise have been entitled to recover.
- (b) The Guarantor indemnifies TfNSW and STA in respect of all liabilities, including all claims, actions, proceedings, judgments, damages, losses, costs and expenses of any nature, which may be incurred by, brought, made or recovered against, TfNSW or STA consequent on or arising directly or indirectly out of any default or delay by the Operator in performing, observing or fulfilling the Obligations.

2.4 Payment obligation

If any of the Obligations comprise an amount due and payable, or an amount that would be due and payable but for some reason, the Guarantor must pay an amount equal to that amount to TfNSW on demand. If TfNSW or STA is entitled to make a claim against the Guarantor under clause 2.3, the Guarantor must pay the amount claimed by TfNSW or STA on demand (including amounts claimed by TfNSW on behalf of STA). In each case, the Guarantor must pay that amount in the same manner and currency which the Operator is, or would have been, required to pay. A demand need only specify the amount owing. It need not specify the basis of calculation of that amount.

2.5 Unconditional nature of obligation

Neither this deed nor the obligations of the Guarantor under it will be affected by anything which but for this provision might operate to release, prejudicially affect or discharge them or in any way relieve the Guarantor from any obligation. This includes:

- (a) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person;
- (b) any transaction or arrangement that may take place between TfNSW, STA and or any person;
- (c) the Liquidation of any person;
- (d) TfNSW or STA becoming a party to or bound by any compromise, moratorium, assignment of property, scheme of arrangement, deed of company arrangement, composition of debts or scheme of reconstruction by or relating to any person;
- (e) TfNSW or STA exercising or delaying or refraining from exercising or enforcing any document or agreement or any right, power or remedy conferred on it by law or by any Transaction Document or by any document or agreement with any person;
- (f) the amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, termination, loss, release, discharge, abandonment, assignment or transfer, in whole or in part and with or without consideration, of any Transaction Document, or of any other document or agreement held by TfNSW or STA at any time or of any right, obligation, Power or remedy;
- (g) the taking or perfection or failure to take or perfect any document or agreement;
- (h) the failure by any person, STA or TfNSW to notify the Guarantor of any default by any person under any Transaction Document or any other document or agreement or other circumstance;
- (i) TfNSW or STA obtaining a judgment against any person for the payment or performance of any Obligation;
- (j) any legal limitation, disability, incapacity or other circumstance relating to any person;
- (k) any change in any circumstance (including in the members or constitution of any person);
- (l) this deed, any Transaction Document or any other document or agreement not being valid or executed by, or binding on, any person; or
- (m) any increase in the Obligations for any reason (including as a result of anything referred to above),

whether with or without the consent or knowledge of the Guarantor. None of the clauses above limits the generality of any other.

2.6 Principal and independent obligation

This clause is a principal and independent obligation. Except for stamp duty purposes, it is not ancillary or collateral to another document, agreement, right or obligation.

2.7 No marshalling

TfNSW and STA are not obliged to perfect or to marshal or appropriate in favour of the Guarantor or to exercise, apply or recover:

- (a) any Security Interest, Guarantee, document or agreement (including, without limitation, any Transaction Document) held by TfNSW or STA at any time; or
- (b) any of the funds or assets that TfNSW or STA may be entitled to receive or have a claim on.

2.8 No competition

- (a) Until the Obligations and any money secured or guaranteed by any Security Interest or Guarantee referred to below has been irrevocably paid and discharged in full the Guarantor is not entitled to and must not, except as directed by TfNSW or STA (as applicable):
 - (i) be subrogated to TfNSW or STA, or claim the benefit of any Security Interest or Guarantee held by TfNSW or STA at any time;
 - (ii) either directly or indirectly prove in, claim or receive the benefit of, any distribution, dividend or payment arising out of or relating to the Liquidation of the Operator or any other person who gives a Guarantee or Security Interest in respect of any Obligations; or
 - (iii) have or claim any right of contribution or indemnity from the Operator or any other person who gives a Guarantee or Security Interest in respect of any Obligation.
- (b) The receipt of any distribution, dividend or other payment by TfNSW or STA out of or relating to any Liquidation will not prejudice the right of TfNSW and or STA (as applicable) to recover the Obligations by enforcement of this deed.
- (c) The Guarantor must comply with any direction under this clause. That direction may require that any proceeds be held on trust for, and promptly paid to, TfNSW.

2.9 Suspense account

In the event of the Liquidation of the Operator or any other person, the Guarantor authorises TfNSW and STA to prove in the Liquidation of the Operator for all money that the Guarantor can claim against the Operator on any account and:

- (a) to retain and carry to a suspense account (without applying it); and
- (b) to appropriate at the discretion of TfNSW and STA,

any dividend received in the Liquidation of the Operator or any other person and any other money received in respect of the Obligations, until the Obligations have been performed and satisfied in full.

2.10 Rescission of payment

If, for any reason (including, without limitation, under any law relating to Liquidation, fiduciary obligations or the protection of creditors):

- (a) all or part of any transaction of any nature (including, without limitation, any payment or transfer) that affects or relates in any way to the Obligations is void, set aside or voidable;
- (b) any claim that anything contemplated by this clause 2.10 is so is upheld, conceded or compromised; or
- (c) TfNSW or STA is required to return or repay any money or asset received by it under any transaction or the equivalent in value of that money or asset,

TfNSW and or STA (as applicable) will immediately become entitled against the Guarantor to all rights in respect of the Obligations that TfNSW and or STA (as applicable) would have had if all or the relevant part of the transaction or receipt had not taken place. The Guarantor indemnifies TfNSW and STA against any resulting Loss that may be incurred or sustained by TfNSW or STA (as applicable). Unless TfNSW and STA expressly agree otherwise in writing, this clause 2.10 continues after the discharge of this deed.

2.11 Continuing guarantee and indemnity

This deed:

- (a) is a continuing guarantee and indemnity;

- (b) will not be taken to be wholly or partially discharged by the payment or performance at any time of any Obligations or by any settlement of account or other matter or thing; and
- (c) remains in full force until all Obligations have been satisfied and there are no liabilities or obligations which will subsequently fall within the description of the Obligations.

2.12 Variations

Without limiting any other provision, this deed covers the Obligations as varied including, without limitation, as a result of any amendment to any Transaction Document and whether or not with the consent of or notice to the Guarantor.

2.13 Judgment

A judgment obtained against the Operator will be conclusive against the Guarantor.

3. Representations and warranties

3.1 Representations and warranties

The Guarantor makes the following representations and warranties:

- (a) **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- (b) **(Power)** 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) **(Corporate authorisations)** 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) **(Documents binding)** Each Transaction Document to which it is expressed to be a party is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration, laws generally affecting creditors' rights and general principles of equity.
- (e) **(Transactions permitted)** The execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement that is binding on it,

and, except as provided by the Transaction Documents, did not and will not create or impose a Security Interest on any of its assets.

- (f) **(Authorisations)** 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) the validity and enforceability of those documents and the effectiveness or priority of this deed,

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.

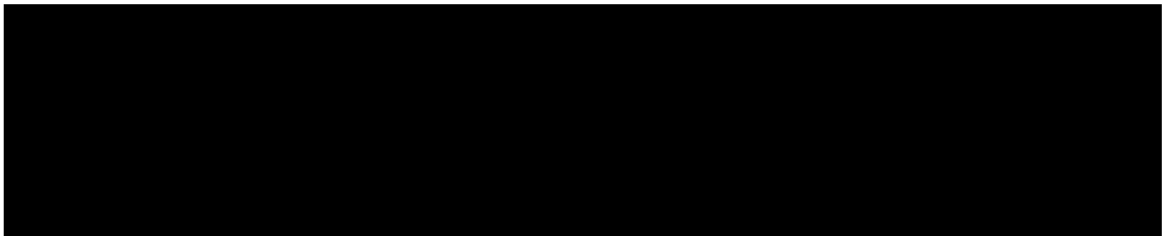
- (g) **(No misrepresentation)** All information provided by it to TfNSW and STA is true in all material respects at the date of this deed or, if later, when provided. Neither that information nor its conduct in relation to the transactions contemplated by the Transaction Documents to which it is a party, was or is misleading, by omission or otherwise.
- (h) **(Law)** It has complied with all laws binding on it where breach may have a material adverse effect on the ability of the Guarantor to perform its obligations under a Transaction Document.
- (i) **(Corporate tree)** It is the direct or indirect owner of all shares in the Operator.

3.2 Reliance on representations and warranties

The Guarantor acknowledges that TfNSW and STA have entered the Transaction Documents in reliance on the representations and warranties in this clause.

4. Payment and release

4.1 Limitation



4.2 No deductions

The Guarantor must make all payments without set off, counter claim or other deduction (except any compulsory deduction for Tax) by bank cheque delivered to TfNSW or in immediately available funds to the account specified by TfNSW by 11.00am on the due date.

4.3 Release

TfNSW and STA must release the Guarantor from its obligations under this deed once TfNSW and STA are satisfied, in their sole discretion, that the Obligations have been fully and finally repaid and performed and there are no liabilities or obligations which will subsequently fall within the description of the Obligations.

5. Interest on overdue amounts

5.1 Accrual

Interest accrues on each unpaid amount that is due and payable by the Guarantor under or in respect of any Transaction Document (including interest payable under this clause):

- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the Default Rate,

provided that no default interest will accrue under this clause on any unpaid amount for any period to the extent that default interest is accruing on that amount for that period, and is payable, under any other Transaction Document.

5.2 Payment

The Guarantor must pay interest accrued under this clause on demand and on the last Business Day of each month.

6. Expenses and indemnity

6.1 Expenses

On demand the Guarantor must pay or reimburse TfNSW and STA for their expenses in relation to any enforcement of this deed or the exercise of any Power under this deed including legal costs and expenses (including in house lawyers charged at their usual rates) on a full indemnity basis. The Guarantor waives in favour of TfNSW, STA and their solicitors, counsel and in house lawyers its rights (if any) to require any legal costs and expenses to be taxed.

6.2 Indemnity

The Guarantor indemnifies TfNSW and STA against any claim, loss, liability, cost and expense that may be incurred or sustained by TfNSW or STA (or any of its officers or employees) as a direct or indirect consequence of:

- (a) any enforcement of this deed; or
- (b) any exercise or attempted exercise of any Power or the failure to exercise any Power.

6.3 Amounts in foreign currency

Where an amount to be reimbursed or indemnified against is denominated in another currency, if the person to be indemnified so requests, the Guarantor must reimburse or indemnify it against the amount of dollars that the person certifies that it used to buy the relevant amount of the other currency in accordance with its normal procedures. If the person does not so request, the Guarantor must reimburse or indemnify it in the relevant currency.

7. End of Contract Transfer

The Guarantor undertakes to TfNSW and STA the due and proper performance and observance by the Operator of its obligations under clause 58 of the Newcastle Integrated Services Contract.

8. Undertakings

- (a) The Guarantor must ensure that TfNSW and STA are notified, with reasonable details, on becoming aware of any matter which could potentially give rise to an Insolvency Event with regards to the Operator, Keolis Downer Bus and Coachlines Pty Ltd or the Guarantor.
- (b) Without limiting the Guarantor's obligations under this deed, if the Operator does not comply with its obligations under clause 7.1 of the Newcastle Integrated Services Contract within the time required under that clause, the Guarantor must immediately (on demand by TfNSW) either:
 - (i) procure the issue to TfNSW of a performance bond(s) that satisfies the requirements of clause 7.1 of the Newcastle Integrated Services Contract; or
 - (ii) pay to TfNSW an amount equal to the General Performance Bond Amount or the Estimated Amount (as defined in clause 7.1(b) of the Newcastle Integrated Services Contract) as the case may be.
- (c) TfNSW may use the amounts paid under clause 8(b) on the same conditions as it may use the General Performance Bond or Handback Security Bond under the Newcastle Integrated Services Contract and the unused part of any amounts so paid will be returned to the Guarantor on the earlier of:
 - (i) the time that the General Performance Bond or Handback Security Bond would have been returned to the Operator had it been provided; and
 - (ii) the time that the Operator provides the missing performance bond in accordance with its obligations under clause 7.1.

9. Cost and stamp duty

- (a) Subject to any express provision in this deed to the contrary, each party must bear its own costs and expenses relating directly or indirectly to the negotiation, preparation, execution and performance of its obligations under this deed.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this deed and any instrument executed under this deed must be borne by the Guarantor.

10. GST

10.1 Recovery of GST

If GST is payable on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply (**GST Amount**). The GST Amount is not payable until the supplier gives the recipient a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive.

10.2 Liability net of GST

Where any payment under this deed is based on or calculated by reference to any cost, expense or other liability, it must be reduced by any input tax credit entitlement in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the payment must be made.

10.3 Definitions

- (a) Words used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**)) will have the same meaning in this clause.
- (b) GST includes an amount an entity is notionally liable to pay as GST or an amount which is treated as GST under the GST Act.
- (c) Input tax credit includes any notional input tax credit under the GST Act.

10.4 Survival

This clause will continue to apply after expiration or termination of this deed.

11. Set off

The Guarantor irrevocably authorises TfNSW and STA to set off against any payment payable by them to the Guarantor under a Transaction Document any amount payable to TfNSW or STA (as applicable) by the Guarantor under a Transaction Document. TfNSW and STA are not obliged to exercise this set off right.

12. Severability of provisions

Any provision of this deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this deed nor affect the validity or enforceability of that provision in any other jurisdiction.

13. Waivers, remedies cumulative

- (a) 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 under writing.

- (b) The rights, powers and remedies of a party under this deed are cumulative and are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

14. Survival of representations and indemnities

- (a) All representations and warranties in this deed survive the execution and delivery of this deed and the Transaction Documents.
- (b) Each indemnity in this deed:
 - (i) is a continuing obligation;
 - (ii) is a separate and independent obligation; and
 - (iii) survives the termination or discharge of this deed and any other Transaction Document and the satisfaction of the Obligations.

15. Assignments

15.1 Assignment by Guarantor

The Guarantor may not assign or transfer any of its rights or obligations under this deed without the prior consent of TfNSW.

15.2 Assignment by TfNSW

TfNSW and STA may assign or transfer any of their rights or obligations under this deed at any time to a Governmental Agency or to otherwise facilitate a transfer or restructure contemplated by clause 1.10 or 32 of the Newcastle Integrated Services Contract. If TfNSW's or STA's rights under this deed are assigned, the Obligations will include all actual and contingent liability of the Operator to the assignee, whether or not it was incurred before the assignment or in contemplation of it.

16. Nominated officers

- (a) The Guarantor irrevocably authorises TfNSW and STA to rely on a certificate signed by two persons purporting to be its directors or its director and secretary as to the identity and signatures of its nominated officers. The Guarantor warrants that those persons have been authorised to give notices and communications under or in connection with this deed.
- (b) A certificate signed by the TfNSW Representative is sufficient evidence against the Guarantor unless proven wrong:
 - (i) as to the amount or the nature of any Obligation; and
 - (ii) that TfNSW is of the opinion stated in the certificate.

17. Governing Law and jurisdiction

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

18. Notices and other communications

- (a) A notice, demand, consent, approval or communication given under this deed (**Notice**) must be:

- (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this document); and
 - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 18(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery; and
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice,but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

19. Counterparts

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

20. Acknowledgement by Guarantor

The Guarantor confirms that:

- (a) it has not entered into any Transaction Document in reliance on, or as a result of, any conduct of any kind of or on behalf of TfNSW or STA (including any advice, warranty, representation or undertaking); and
- (b) TfNSW and STA are not obliged to do anything (including disclose anything or give advice),

except as expressly set out in the Transaction Documents.

Signing page

EXECUTED as a deed

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

Signature of authorised delegate

Signature of witness

Name of authorised delegate (block letters)

Name of witness (block letters)

[TfNSW note to Proponents: insert execution block of Guarantor]

[TfNSW note to Proponents: execution block of STA to be updated]

Executed for and on behalf of the State Transit
Authority (ABN [*insert*]), by Transport for NSW as
its authorised delegate under section 35 of the TA
Act:

Signature of authorised delegate

Signature of witness

Name of authorised delegate (block letters)

Name of witness (block letters)

Schedule 1 – Services

1. Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to an item is a reference to an item in this Schedule.

In this Schedule, the following words have the following meanings:

Declared School Year means, in relation to each school set out in the Service Level Schedule, the period between the school's first term start date and the school's final term finish date in each calendar year during the Term.

Newcastle Service Planning Guidelines means the service planning guidelines prepared by TfNSW to develop transport service plans in outer metropolitan areas (as amended from time to time) being at the date of this Contract the document titled *Integrated Service Planning Guidelines – Outer Metropolitan Area – Final* dated June 2016.

NSW Transit Stop Numbering and Naming Standard means the standard developed by TfNSW for numbering and naming transit stops and other locations where passengers access public transport, included in Annexure 1 to this Schedule and as amended by TfNSW from time to time.

Standard Working Timetable (SWTT) means the base scheduled timetable approved by TfNSW of route timetable, stopping patterns, days of operation, route path and accessibility.

The following table sets out the meaning of the column headings in the roles and responsibilities tables set out in this Schedule. 'T' in any of the columns means that TfNSW is the relevant Party. 'O' in any of the columns means that the Operator is the relevant Party.

Term	Description
Responsible	The Party that has to do the activity.
Accountable	The Party ultimately answerable for the correct and full completion of the activity. There must be only one Party accountable for each activity.
Support	The Party that is to provide support to assist in completing the activity.
Consulted	The Party that is consulted by the responsible Party as part of the process of carrying out the activity.
Informed	The Party that has to be kept up-to-date, by the responsible Party.
When	When the activity must be performed.
Contract clause	The clause in the Contract that the activity must be performed in accordance with.

2. Services Overview

The following are the key objectives for the provision of the Services under the Contract by the Operator:

- (a) provide reliable, safe and clean Services to customers;
- (b) develop Timetables and Dedicated School Services Timetables to efficiently meet the Contract Objectives and the requirements of Clause 21;
- (c) operate the Services to the approved Timetables;

- (d) ensure customers are provided with accurate Timetable information and kept informed of Service changes and Incidents;
- (e) provide passenger information to deliver a seamless passenger service across the Newcastle region;
- (f) ensure Staff receive appropriate training and are competent and capable of providing excellent Services;
- (g) develop and operate the On Demand Services in accordance with the Service Development Plan;
- (h) improving the provision of Services to customers; and
- (i) provide support for TfNSW Systems and Equipment required to improve and upgrade the Services.

3. Contract Service Levels and Timetables

The following table identifies the general roles and responsibilities associated with Contract Service Levels and Timetables

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.1	Update Newcastle Service Planning Guidelines.	T	T	O		O	As required throughout the Term
3.2	Develop Contract Service Levels for all modes.	O	O	T	T	T	As required throughout the Term
3.3	Develop Timetables for all modes of Service to efficiently and effectively meet the requirements of the Contract Service Levels.	O	O	T	T	T	As required throughout the Term
3.4	Ensure that timetabling provides passengers with effective connectivity so as to deliver seamless Services across all modes, including integration with heavy rail services at Wickham station.	O	O	T	T	T	Continuing throughout the Term
3.5	Consult with passengers, the broader Newcastle community, relevant local councils, RMS, local business groups, education and health providers, relevant tourism bodies and other key stakeholders in relation to planned service changes, special events service satisfaction levels, service initiatives and improvement opportunities.	O	O	T	T	T	As required throughout the Term and at least twice each Contract Year
3.6	Provide evidence through cost benefit analysis in support of changes in Contract Service Levels or Timetables, including the impact of changes in improving the customer experience. The analysis requires provision of the detail and outcome of the consultation process to demonstrate community support for the changes.	O	O		T	T	For each Timetable change throughout the Term
3.7	Maintain a prioritised list of Contract Service Level or Timetable changes that are considered worthwhile	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	implementing and which are compliant with the Newcastle Service Planning Guidelines.						
3.8	For each change in Contract Service Levels or Timetables, provide confirmation of compliance with the Newcastle Service Planning Guidelines. Any change that is not compliant with the Newcastle Service Planning Guidelines must be expressly advised detailing how the non-compliance will provide an improved customer experience / service outcome.	O	O		T	T	For each Timetable change throughout the Term
3.9	Approve Contract Service Level and Timetables for all modes of Service.	T	T	O	O	O	As required throughout the Term
3.10	Contact each school set out in the Service Level Schedule to ascertain the Declared School Year and the daily start and finish times, for the following school year.	O	O		T	T	By 30 October each year
3.11	Prepare a provisional timetable for the Dedicated School Services for the Declared School Year, based on the start and finish dates and times ascertained in accordance with item 3.10 above.	O	O	T	T	T	By 1 January each year
3.12	Prepare a final timetable for the Dedicated School Services for the year, based on the start and finish dates and times ascertained in accordance with item 3.10 above.	O	O	T	T	T	Within 4 weeks of the start of each Declared School Year
3.13	Operate all modes of Service in accordance with the approved Contract Service Levels and approved Timetables and Dedicated School Services Timetables.	O	O		T	T	Continuing throughout the Term
3.14	Maintain high levels of passenger and Staff security on all modes of Service and monitor and manage passenger and Staff safety, including responding to the activation of duress alarms in accordance with response time standards in the KPI Schedule.	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	amendments to Timetables and Dedicated School Services Timetables are provided to transportnsw.info and Transport Infoline.						Services, unless otherwise approved by TfNSW Ensure data is provided at least 21 days prior to the introduction of the Services, unless otherwise approved by TfNSW
4.2	Provide Timetables for all modes of Service, including Dedicated School Services Timetables, to TfNSW for approval.	O	O		T	T	Prior to the introduction of a new or revised Timetable or Dedicated School Services Timetables
4.3	Approve all Timetables for all modes of Service, including Dedicated School Services Timetables, prior to publication.	T	T	O	O	O	Continuing throughout the Term
4.4	If a Timetable or Dedicated School Services Timetable is approved by TfNSW, provide: a) TfNSW with the updated Timetable or Dedicated School Services Timetable in electronic format (as reasonably required by the TfNSW) suitable for website display; and b) the public with the updated printed Timetable or Dedicated School Services Timetable.	O	O			T	Ensure Timetables are provided to TfNSW at least 21 days, and on display to customers from 14 days (or as otherwise agreed with TfNSW), prior to the implementation of the new Timetable or Dedicated School Services Timetable
4.5	If a Timetable is approved, provide Standard Working Timetable (SWTT) data to TfNSW on	O	O			T	Ensure data is provided at least 14

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	approved timetables to support TfNSW data quality assurance and data change management.						days prior to the implementation date each time a change has been made to the underlying Standard Working Timetable.
4.6	<p>If TfNSW approves an amendment to a Timetable or Dedicated School Services Timetable, provide notice to the public of any material amendments to the Timetable by:</p> <ul style="list-style-type: none"> a) notifying TfNSW of relevant details; b) displaying signs prominently in each mode of Service for which the Timetable has applicability; c) updating the Operator's website; d) displaying advertisements in the local newspapers covering the affected Route; e) displaying signs at Transit Stops, Wharves and Interchanges; f) making announcements on local radio; and g) other appropriate means. 	O	O			T	Ensure details are provided at least 21 days out to TfNSW and on display to customers from 14 days (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable or Dedicated School Services Timetable
4.7	If requested by a member of the public, provide complete and up-to-date information about the accessibility of the Services.	O	O			T	Within a reasonable timeframe
4.8	Ensure accurate Timetables and Dedicated School Services Timetables are displayed at all locations across the network where timetables are on display.	O	O			T	Continuing throughout the Term
4.9	Ensure that Timetables and Dedicated School Services Timetables are in the format specified by TfNSW.	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
4.10	Ensure Timetables and Dedicated School Services Timetables indicate all Services which are accessible.	O	O			T	Continuing throughout the Term
4.11	Ensure Timetables and Dedicated School Services Timetables comply with TfNSW requirements.	O	O			T	Continuing throughout the Term
4.12	Provide the destination information, to be displayed on all modes of Service, in data submitted to TfNSW in Timetables, on the Operator website and in any other relevant location, to TfNSW for approval.	O	O		T	T	Prior to publication of the destination information
4.13	Approve destination information for all modes of Service, to ensure it complies with current TfNSW standards or guidelines.	T	T	O	O	O	Continuing throughout the Term
4.14	Display the destination clearly on the front and side of all Contract Buses in service, excluding any Contract Buses without side destination signage.	O	O		T	T	Continuing throughout the Term
4.15	Display the destination clearly on the front and side of all Contract LRVs in service.	O	O		T	T	Continuing throughout the Term
4.16	Display the route number clearly on the front, side and rear of all Contract Buses in service, excluding Contract Buses without side and rear route number signage.	O	O			T	Continuing throughout the Term
4.17	Ensure all Timetables for all modes of Service and Dedicated School Services Timetables provide times at Transit Stops, Interchanges and Wharves and do not reflect operational timing points that are not Transit Stops, Interchanges and Wharves.	O	O		T	T	Continuing throughout the Term
4.18	Use timetable template(s) which may be changed by TfNSW from time to time.	O	O		T	T	Continuing throughout the Term (if notice is given by TfNSW under Clause 22.2(f) of the

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
							Contract)
4.19	Publish NSW Trains timetable information and/or integrate NSW Trains timetable information into Timetable information to facilitate more effective and seamless transfer of passengers between transport modes.	O	O		T	T	Continuing throughout the Term
4.20	Provide a real-time data feed to TfNSW in 'SIRI' format that includes: a) Contract Bus, Contract Ferry and Contract LRV locations; b) predicted arrival times at all subsequent Transit Stops, Interchanges or Wharves on the Trip; c) information on Services and status of Services and Transit Stops, Interchanges and Wharves; and d) real-time running status information.	O	O		T	T	At a 15 second interval frequency
4.21	Provide a static timetable data feed to TfNSW in 'Transmodel' format (TransNet) that provides upcoming Timetable and Dedicated School Service Timetable changes due to a TfNSW approved change, holidays, Special Event Services and maintenance works.	O	O		T	T	Ensure a static timetable data feed is provided at least 21 days prior to Timetable change (or as otherwise agreed with TfNSW) prior to the implementation of the new or revised Timetable
4.22	Provide an electronic feed of information in a format acceptable to TfNSW (including GTFS, GTFS-R and TransXchange as appropriate) to integrate into the TfNSW journey planner and feeds to other third parties to integrate into relevant systems.	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
4.23	For Special Event Services, ensure accurate data is provided to TfNSW in TfNSW's required format.	O	O		T	T	Ensure data is provided at least 21 days prior to the relevant event (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable
4.24	When notified by TfNSW, fix any errors in the information provided on the Operator website or OSD.	O	O		T	T	Within 24 hours of the notification from TfNSW
4.25	For On Demand Services provide: a) information to all prospective customers on the hours of operation and how to book and use the On Demand Services; b) provide access to an easy to use On Demand booking application, available on any smartphone or computer, that allows customers to book On Demand Services and advise customers of service pick-up and drop-off times, pick-up locations and drop-off destination; and c) provide access for prospective customers who do not have access to smartphone or computer applications.	O	O		T	T	From 14 January 2018 and then continuing throughout the Term

5. Services Information

The following table identifies the general roles and responsibilities associated with providing information about the Services

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.1	Inform passengers on a Service for all modes of any	O	O			T	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	relevant Service delays.						throughout the Term.
5.2	When an Incident occurs, categorise the Incident using the Incident Classification and Management System in Attachment 1 of the KPI Schedule.	O	O	T	T	T	Continuing throughout the Term
5.3	When an Incident occurs, inform TfNSW of service delays to any Service and work with TfNSW as required from time to time to minimise the impact of delays on customers.	O	O	T	T	T	Continuing throughout the Term.
5.4	Provide interim status updates to TfNSW as required in Attachment 1 of KPI Schedule (Incident Classification and Management).	O	O	T	T	T	Continuing throughout the Term

6. Signage

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.1	For all Transit Stop Signage and other transport signage at Interchanges and Wharves (Other Signage), other than plinths associated with Bus Transit Stop Signage, maintain Transit Stop Signage and Other Signage, including but not limited to: <ul style="list-style-type: none"> • repair; • replacement; • cleaning; and • graffiti removal. 	O	O	T	T	T	Continuing throughout the Term.
6.2	For all plinths associated with Bus Transit Stop Signage, carry out: <ul style="list-style-type: none"> • minor repairs (parts to be provided by TfNSW); • cleaning; and 	O	O			T	Within 7 days of the Operator becoming aware of the damage

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	• graffiti removal.						
6.3	Ensure Transit Stop Signage and Other Signage for all locations serviced by any Service, which includes Timetable or Dedicated School Services Timetable information, contains up to date timetable information and complies with any standards or guidelines issued by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the Term
6.4	Ensure Transit Stop, Interchange and Wharf identification numbers and names comply with the NSW Transit Stop Numbering and Naming Standard and are registered with TfNSW.	O	O			T	Continuing throughout the Term
6.5	If there is a change to a Bus Route or Ferry Route, or a new Bus Route, Ferry Route or Light Rail Route is introduced, ensure that all new Transit Stop Signage and Other Signage meets TfNSW standards and is updated in the TfNSW 'Transit Stop Management System' operated by TfNSW or any replacement of that system.	O	O			T	Before commencement of the new or changed Bus Route or Ferry Route
6.6	If there is a change to a Bus Route or Ferry Route, or a new Bus Route, Ferry Route or Light Rail Route is introduced provide the 'X/Y' coordinates of the new stop to TfNSW.	O	O			T	21 Days before commencement of the new or changed Bus Route or Ferry Route
6.7	Liaise with the Roads Authority, Australian Maritime Safety Authority, RMS, local government authority or any other Governmental Agency with responsibilities relevant to Transit Stops, Interchange or Wharves and local residents, as appropriate, about the installation of Transit Stop Signage and Other Signage.	O	O			T	Before installing Transit Stop Signage or Other Signage
6.8	Notify the relevant authority if any infrastructure at a Bus Transit Stop or signage at Interchanges or	T	T			O	Within 24 hours of the Operator becoming

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	Wharves is damaged or in need of maintenance or repair.						aware of the damage
6.9	Document and maintain a proper record of all communications relating to Transit Stops, Interchanges and Wharves and Transit Stop Signage and Other Signage.	O	O			T	Continuing throughout the Term
6.10	If a new Bus Transit Stop is approved by TfNSW as part of a Services Variation requested by the Operator or the Operator requires a new Bus Transit Stop as part of the Service Development Plan, supply and install Bus Transit Stop Signage in line with TfNSW standards	O	O			T	Before the Service Variation commences

7. Service Desk

The following table identifies the Service Desk roles and responsibilities:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.1	Use the call centre provided as part of Transport Infoline or another call centre as nominated by TfNSW from time to time for the provision of call centre information services.	O	O			T	Continuing throughout the Term.
7.2	Manage all complaints and feedback recorded in the TfNSW Customer Feedback System in relation to the Operator Activities from receipt to closure.	O	O			T	Continuing throughout the Term.
7.3	Log, classify and assign a reference number to all complaints and feedback in accordance with the TfNSW Customer Complaints Policy.	O	O			T	Continuing throughout the Term
7.4	Assign a priority to all complaints and feedback received by the Service Desk to reflect the severity of the issue in accordance with the TfNSW Customer Complaints Policy or as otherwise	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	directed by TfNSW						
7.5	Collaborate and cooperate with the Transport Infoline and the TfNSW Customer Feedback System, as required, to manage complaints and feedback received by the Service Desk and resolve Incidents.	O	O			T	Continuing throughout the Term
7.6	Refer any calls received by the Service Desk which do not relate to the Services to the TfNSW Customer Feedback System.	O	O			T	Within 2 hours of receipt of call
7.7	Immediately notify TfNSW of Incidents and any other unplanned maintenance issues.	O	O			T	Immediately after the Incident or unplanned maintenance issue
7.8	Report all Service Desk calls received that remain unresolved for more than 30 Business Days, at the end of each month to TfNSW.	O	O			T	Monthly throughout the Term
7.9	Maintain appropriate documentation of all complaints and feedback in relation to the Services recorded on the TfNSW Customer Feedback System, including details of the closure of all calls.	O	O			T	Continuing throughout the Term
7.10	Perform trend analysis on complaints and feedback in relation to the Services recorded on the TfNSW Customer Feedback System.	O	O			T	Monthly throughout the Term
7.11	Identify any problems of a systemic nature revealed by the trend analysis and when identified, inform TfNSW and implement processes to improve performance.	O	O			T	As soon as practicable
7.12	Ensure the Service Desk is staffed with personnel who are suitably skilled and trained to deliver support services and to interface with the TfNSW Customer Feedback System.	O	O			T	Continuing throughout the Term

8. Staff Training and knowledge transfer

The following table identifies training and knowledge transfer roles and responsibilities.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.1	Provide all customer facing Staff with passenger service training, in particular: a) training with regard to requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds; and b) training with regard to the management of confrontation, difficult passengers and personal safety.	O	O			T	Before the individual commences providing Service
8.2	Provide training to all relevant Staff regarding the following, as applicable to the Services for which the relevant Staff are engaged to work including in relation to: a) the Tickets, Full Fares, Concession Fares and SSTs; b) the Routes and the Contract Depots, NLR Maintenance and Stabling Facilities, Transit Stops, Interchanges and Wharves; c) the Timetables; and d) for Light Rail Services operating to and from the Wickham Interchange.	O	O			T	Before the individual commences working on the relevant Services
8.3	Provide training to all Staff regarding compliance with: a) Environmental Law; and b) work health and safety and WHS Law.	O	O			T	Continuing throughout the Term
8.4	Provide additional training to Staff to meet the requirements of items 8.1, 8.2 and 8.3 above, if required when a change in the Services is	O	O			T	Before the implementation of the change in the

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	implemented.						Services
8.5	Develop, document and maintain training materials to provide to Staff to support the training referred to at items 8.1, 8.2 and 8.3 above.	O	O			T	As required throughout the Term

9. TfNSW Systems and Equipment

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
9.1	Develop operational procedures, guidelines and training requirements for TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations, as required.	T	T		O		As required by TfNSW throughout the Term
9.2	Comply with any reasonable operational procedures, guidelines and training requirements for TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations issued by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the Term.
9.3	Ensure TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations are in operational condition.	O	O	T	T	T	Continuing throughout the Term
9.4	Protect TfNSW Systems and Equipment associated with the provision of the Services and related contractual obligations and use reasonable endeavours to ensure TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations are not mishandled or mistreated.	O	O	T	T	T	Continuing throughout the Term
9.5	Check TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations for faults, malfunctions security breaches or viruses regularly.	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
9.6	Report any fault, malfunction, security breach or virus in TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations to TfNSW promptly.	O	O	T	T	T	Within 24 hours of the fault, malfunction, security breach or virus being identified
9.7	Replace TSE Rotable Assets associated with TfNSW Systems and Equipment as required.	O	O	T	T	T	Continuing throughout the Term
9.8	Ensure all spare TSE Rotable Assets associated with TfNSW Systems and Equipment are kept in a secure location.	O	O	T	T	T	Continuing throughout the Term
9.9	Maintain a record of all TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations, which includes information regarding the location and movement of all TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations (including TSE Rotable Assets).	O	O	T	T	T	Continuing throughout the Term

10. Collection Services

(a) Cash Collection

The Operator must take the following steps to securely collect and store cash received for Fares and to remit all revenue from cash Ticket sales to TfNSW:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.1	Sell and accurately record all Service cash Ticket sales.	O	O			T	Continuing throughout the Term.
10.2	Ensure amounts reported to TfNSW equal actual cash Ticket sales.	O	O			T	Continuing throughout the Term.
10.3	Ensure bank deposits equal actual receipts.	O	O			T	Continuing throughout the Term.
10.4	Securely manage all cash at all times.	O	O			T	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
							throughout the Term.
10.5	Offset all cash receipts against the charges in the Tax Invoice each month.	O	O			T	Monthly throughout the Term

(b) Smartcard Collection

The Operator irrevocably authorises TfNSW as follows, in relation to the revenue from Ticket sales collected on the Operator's behalf by TfNSW through Smartcards:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.6	Authorises TfNSW to hold all revenue from Ticket sales collected by the Operator through Smartcards.	O	O			T	Continuing throughout the Term.

(c) Revenue Collection

The Operator is empowered and incentivized to maximise the number of fare paying passengers and minimise Fare loss:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.7	Deploy Operator's Authorised Officers to minimise revenue loss.	O	O	T	T	T	Continuing throughout the Term.
10.8	Issue penalty notices.	O	O	T	T	T	Continuing throughout the Term.
10.9	Issue fines and commence proceedings to collect unpaid fines.	T	T	O			Continuing throughout the Term.
10.10	Attend court hearings as a witness in relation to proceedings concerning unpaid fines.	O	O	T	T	T	Continuing throughout the Term.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.11	Develop and implement Authorised Officer training programs which are consistent with Law and with similar programs for the training of Authorised Officers in other parts of New South Wales and which address revenue protection issues as notified by TfNSW from time to time	O	O	T	T	T	Continuing throughout the term
10.12	Use reasonable endeavours to ensure that sufficiently trained personnel who are submitted to be authorised as an Authorised Officer are granted such authorisation	T	T	O	O	O	Continuing throughout the term

11. KPI Management

KPI Management is the activities associated with monitoring and reporting on the Key Performance Indicators and information required to be reported to TfNSW.

The following table identifies KPI Management roles and responsibilities.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
11.1	Define and document KPI and reporting requirements.	T	T	T	O	O	Before the Commencement Date and as amended from time to time in accordance with the KPI Schedule
11.2	Coordinate KPI monitoring and reporting with TfNSW and third-party providers as required.	O	O		T	T	Continuing throughout the Term.
11.3	Measure, analyse, and provide reports on performance against KPIs and other information as requested.	O	O			T	As stated in the KPI Schedule and the Reporting Schedule

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
11.4	Track KPI performance for individual Incidents and escalating KPI Default.	O	O			T	As stated in the KPI Schedule
11.5	Develop and document KPI cure plans where required under the KPI Schedule.	O	O	T	T	T	As required throughout the Term
11.6	Implement and diligently pursue cure plans developed under the KPI Schedule.	O	O	T	T	T	As required throughout the Term
11.7	Report to TfNSW on KPI cure plan results.	O	O	T	T	T	As required throughout the Term
11.8	Collaborate with TfNSW Authorised Officers.	O	O	T	T	T	As required throughout the Term

12. Account Management

The Operator must possess contemporary account management, service and reporting capabilities including, but not limited to, the roles and responsibilities detailed in the following table:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
12.1	Continuously monitor trends in all Services and transport modes, including more broadly integrated transit service modal operations, through independent research.	O	O			T	Continuing throughout the Term
12.2	Document and report to TfNSW on products and services to improve Services and customer outcomes.	O	O			T	Continuing throughout the Term
12.3	Act in accordance with and support the governance process, as set out in the Governance Schedule.	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
12.4	Provide accurate, robust and proven billing systems and methodology.	O	O			T	Continuing throughout the Term
12.5	Engage and maintain a qualified and experienced account management team.	O	O			T	Continuing throughout the Term

13. Government Subsidised Travel Schemes, including SSTs

The Operator must provide the necessary systems and process to ensure all students have appropriate bus passes under SSTs and persons eligible for other Government Subsidised Travel Schemes have access to concessional and free transport, as required by TfNSW, and outlined below:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
13.1	Provide administration of any Government Subsidised Travel Schemes approved by the Minister for Transport in accordance with clause 8 of Schedule 1 of the TA Act and notified to the Operator by TfNSW from time to time (including SSTs). Administration activities may include: a) receiving and retaining applications; b) assessing the eligibility of applicants; and c) maintaining administration records.	T	T	O	O	O	Continuing throughout the Term
13.2A	Manage travel entitlements conferred by Government Subsidised Travel Schemes.	T	T	O	O	O	Continuing throughout the Term
13.2B	Planning and determining the most cost effective mode and route of travel on the Routes.	O	O		T	T	Continuing throughout the Term
13.3	Issue new and replacement instruments	O	O		T	T	Continuing

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	evidencing proof of entitlement under a Government Subsidised Travel Scheme, whether purchased or not e.g. travel passes, term passes, concession cards.						throughout the Term
13.4	Liaise with schools, TAFE colleges and other relevant organisations where school students or concessional customers are serviced by the Routes, to ensure the Services are meeting the requirements of those persons.	O	O		T	T	On a regular basis, continuing throughout the Term
13.5	Attend schools, TAFE colleges and other relevant organisations for meetings with relevant persons to communicate transport arrangements and work through and resolve service issues	O	O		T	T	As required throughout the Term
13.6	Ensure all schools and TAFE colleges serviced by the Routes have access to specific timetable information regarding the individual school or TAFE college and the information is available on the Operator's website.	O	O		T	T	Continuing throughout the Term
13.7	Comply with the requirements of any guidelines regarding carrying school children issued by TfNSW from time to time.	O	O		T	T	Continuing throughout the Term
13.8	In addition to validation of the instruments referred to in item 13.4 above, ensure that Tickets issued to instrument holders are also validated.	O	O		T	T	Continuing throughout the Term

14. Interchange Management

The Operator must ensure that passengers enjoy facilities and services connectivity that deliver a seamless experience when transferring between modes of transport (including walking, cycling etc.) at Interchanges, including, but not limited to the roles and responsibilities detailed in the following table:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
14.1	Ensure all passengers can readily find and interpret information to establish the best way to their required destination.	O	O	T	T	T	Continuing throughout the Term
14.2	Perform day to day maintenance of the Interchanges.	O	O			T	Continuing throughout the Term
14.3	Inspect, weed, trim, mow, water, dewater, fertilise, repair, replace, plant all landscaped areas of the Interchanges	O	O			T	Continuing throughout the Term
14.4	Clean publicly accessible areas within the Interchange area (including toilets).	O	O			T	Continuing throughout the Term
14.5	Remove graffiti from publicly accessible areas within the Interchange area (including toilets).	O	O			T	Continuing throughout the Term
14.6	Clean third party infrastructure such as TfNSW Systems and Equipment in the Interchange area.	O	O			T	Continuing throughout the Term
14.7	Operate the Wickham Interchange gate line, provide customer information in the station area and be responsible for announcements within the station (including the plaza area).	T	T			O	Continuing throughout the Term
14.8	Manage wayfinding and customer service within the Interchange area maintained by the Operator.	O	O			T	Continuing throughout the Term
14.9	Maintain and operate CCTV provided as part of the Wickham Interchange (with selected feeds to be provided to Operator).	T	T			O	Continuing throughout the Term
14.10	Maintain and operate CCTV and PA equipment provided by TfNSW as part of the	O	O		T	T	Continuing throughout the

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	Newcastle Bus Interchange.						Term
14.11	Establish a process whereby a report of cleanliness or minor issues in the Interchange areas by members of the public either to Staff or NSW Trains staff (however communicated) results in prompt remedial action by the Operator.	O	O	T	T	T	Continuing throughout the Term
14.12	Report major maintenance issues at the Interchanges to TfNSW or as otherwise required by the Contract.	O	O		T	T	Continuing throughout the Term
14.13	If facilities for Staff are provided as part of the Interchange, clean the facilities. Allow access to other bus operators as requested by TfNSW to staff facilities at the Newcastle Bus Interchange.	O	O		T	T	Continuing throughout the Term
14.14	Agree protocols with NSW Trains to ensure customers experience a seamless service at Wickham Interchange.	O	O		T	T	Continuing throughout the Term
14.15	Establish emergency management protocols for the Interchange to ensure that any emergencies are responded to promptly.	O	O		T	T	Continuing throughout the Term

REDACTIONS

The following item has been redacted:

- Annexure 1 (NSW Transit Stop Numbering and Naming Standard)

Schedule 2 - Service Levels (including Timetable) and Service Development Plan

1. Service Levels

The Operator must provide the Services to the public, in accordance with the requirements of Clauses 14 and 22 of the Contract and this Schedule 2.

The Service Levels for the Services, including Change 1, Change 2 and Change 3 are detailed in the tab labelled "Proposed Services - Sc.2" a compact disc initialled and exchanged between the parties and dated with the date of this Contract and labelled as 'Schedules CD – Volume 1'.

On Demand Services to be provided on the following basis:

- (a) On Demand Services will be provided in the area covered by 4 routes (310/313/317/322T) and will operate from 9am-4pm each weekday, 7-6pm Saturday and 9-6pm Sunday. In weekday peaks, regular bus services will run
- (b) The routes will service the following areas:
 - (i) Mount Hutton (131 stops);
 - (ii) Dudley (54 stops);
 - (iii) Redhead (54 stops); and
 - (iv) Valentine (115 stops).
- (c) Passengers will be:
 - (i) picked up at any Bus Stop and dropped off at any destination; and
 - (ii) can be picked up at any destination and dropped off any Bus Stop
- (d) The end location can be a maximum of 30 minutes one way.
- (e) Stops may be current bus stops plus other 'meeting points'.
- (f) On Demand Services can be booked maximum 3 months in advance, minimum 1 hour before. Several On Demand Services can be booked in advance.
- (g) Operator to provide systems for booking and managing the On Demand Services.
- (h) Phone booking centre open Monday-Friday 8.00am to 6.00pm and Saturday 9.00am-5.00pm.
- (i) On Demand Services will start on 14 January 2018.
- (j) On Demand Bus Stops and destinations are defined in the Table below:

Demand	Connections	Destinations
Dudley	Charlestown – Dudley – Whitebridge	Dudley Beach White Bridge Shops Charlestown Square North Charlestown Square South Lake Macquarie Hospital
Valentine	Belmont – Valentine – Floraville – Croudace Bay Number of bus stops: 113	Croudace Bay Valentine Swimming Pool Belmont Hospital

Demand	Connections	Destinations
	Number of new stops: 2	Black Jacks Point Tingira Royal Institute Marks Oval Bunnings Belmont Belmont City Centre
Mont Hutton	Warners Bay – Windale – Mount Hutton – Eleebana Number of bus stops: 123 Number of new stops: 8	Warners Bay Charlestown Croudance Bay Lake Macquarie Hospital Gateshead Lake Macquarie Fair Tulootaba Park
Redhead	Belmont – Jewels – Redhead Number of bus stops: 51 Number of new stops: 3	Redhead Beach Redhead Industrial Area Jewellstown Plaza Bunnings Belmont Belmont Citi Centre

2. Timetables and Dedicated School Services Timetables

Timetables and Dedicated School Services Timetables to be provided separately to this document on a compact disc initialled and exchanged between the parties and dated with the date of this Contract and labelled as '*Schedules CD – Volume 2*'.

3. Service Development Plan

Program of Contract Service Level, Timetable and Dedicated School Services Timetable changes as follows:

- (a) Change 1: Contract Bus and Ferry Service Commencement Date
- (b) Change 2: 14 January 2018 in relation to On Demand Services (and APP)
- (c) Change 3: Light Rail Service Commencement Date

Schedule 3 - Payment

1. Definitions and Interpretation

(a) In this Schedule:

- (i) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (ii) a reference to a Clause is a reference to a Clause in the Contract; and
- (iii) a reference to a paragraph is a reference to a paragraph in this Schedule.

(b) In this Schedule, the following words have the following meanings:

Monthly Contract Price means the sum of the NLR Delivery Activities Price, the Monthly Contract Bus and Ferry Service Price and the Monthly Light Rail Service Price to be paid by TfNSW to the Operator for the Operator Activities provided in any month.

Monthly Contract Bus and Ferry Service Price means the monthly amount payable to the Operator in consideration for the provision of the Contract Bus Services and Ferry Service and associated Operator Activities calculated in accordance with this Schedule.

Monthly Light Rail Service Price means the monthly amount payable to the Operator in consideration for the provision of the Light Rail Service and associated Operator Activities calculated in accordance with this Schedule.

Patronage Incentive Payment or PIP means a payment by TfNSW to the Operator in accordance with paragraph 4.6 of this Schedule.

Peak Bus means a Contract Bus of a particular Bus type that must be absent from the Contract Depots at the same time that the maximum number of Contract Buses of that Bus type must be absent from the Contract Depots in order to efficiently provide the Contract Bus Services.

NLR Delivery Activities Price means the monthly amount payable to the Operator in consideration for the performance of the NLR Delivery Activities as determined in accordance with this Schedule.

Service Bus Hrs means any hour that a Contract Bus of a particular Bus type must be absent from the Contract Depots in order to efficiently provide the Contract Bus Services including time for that Contract Bus to travel the most direct practicable route between the finishing point of that Contract Bus Service and the starting point of the next Contract Bus Service or between a Contract Depot and a starting or finishing point of that Contract Bus Service, excluding time allowed for unpaid meal breaks or non driving idle time.

Service Bus Kms means any kilometre that a Contract Bus of a particular Bus type must travel outside of the Contract Depots in order to efficiently provide the Contract Bus Services including distance for that Contract Bus to travel the most direct practicable route between the finishing point of that Contract Bus Service and the starting point of the next Contract Bus Service or between a Contract Depot and a starting or finishing point of that Contract Bus Service.

Service Ferry Hrs means total Contract Ferry operating hours for the provision of Ferry Services less non-revenue movements for maintenance, light running, idle time, testing and training.

Service Light Rail Hrs means any hour that a Contract LRV must be absent from the NLR Maintenance and Stabling Facilities in order to efficiently provide the Light Rail Service including time for that Contract LRV to travel between the NLR Maintenance and Stabling Facilities and a starting or finishing point of that Light Rail Service.

Unit Rate means the rates contained in Annexure B to this Schedule.

Written Off Bus means a Contract Bus which is irretrievably lost, stolen, destroyed or damaged beyond economic repair during the Term.

2. General Requirements

- (a) In consideration for the proper performance of the Operator Activities, TfNSW will, subject to the Contract, pay to the Operator:
 - (i) the NLR Delivery Activities Price from the Contract Commencement Date until the Light Rail Services Commencement Date as set out in Annexure A to this Schedule;
 - (ii) the Monthly Contract Bus and Ferry Service Price from the Contract Bus and Ferry Service Commencement Date as set out in Annexure A to this Schedule;
 - (iii) the Monthly Light Rail Service Price from the Light Rail Service Commencement Date as set out in Annexure A to this Schedule.
- (b) In accordance with Clauses 41.1 and 41.2 of the Contract, the Operator must, within 5 Business Days after the last day of each month during the Term, provide a Tax Invoice to TfNSW, in a form approved by TfNSW from time to time, which identifies:
 - (i) the amount of the Monthly Contract Price for that month;
 - (ii) in each August Tax Invoice, the amount of the Patronage Incentive Payment for the previous Contract Year;
 - (iii) the amount to be set-off from the aggregate of the amounts referred to in paragraphs 2(b)(i) to 2(b)(ii) above, being:
 - (A) the amount received (if any) by the Operator from cash Ticket sales in the month (in accordance with Item 10 of the Services Schedule);
 - (B) [REDACTED] of the amount received (if any) by the Operator from commercial activities undertaken in that month in accordance with Clause 61;
 - (C) the amount to be deducted from the total Payment for all KPI Credits incurred in that month; and
 - (D) any amount to otherwise be deducted in accordance with the Contract including any liquidated damages amount for that month;
 - (iv) the net Payment owed by TfNSW to the Operator, having regard to paragraphs 2(b)(i) to 2(b)(iii) above; and
 - (v) the amount of GST chargeable on the amount referred to in paragraph 2(b)(iv).
- (c) The Operator must provide TfNSW with supporting evidence showing that the amounts identified in any Tax Invoice issued under paragraph 2(b) are correctly calculated in accordance with the Contract and this Schedule.
- (d) The Tax Invoice must be addressed to the TfNSW nominated officer.

3. Monthly Contract Price

- (a) The Monthly Contract Price is fixed for the Term, unless varied in accordance with the Contract.
- (b) The Parties acknowledge there will be no negotiation of the Monthly Contract Price, other than through Service Variations in accordance with this Schedule or a Modification, Compensable Event or NFI Event under the Contract or in respect of additional On Demand Services under paragraph 4.7 of this Schedule.
- (c) The amount to be paid to the Operator in respect of each of the State Asset Access Agreements shown in items 4, 5, 9, 10 and 14 of Annexure A shall be determined by TfNSW and be consistent with the amounts to be paid by the Operator under the respective State Asset Access Arrangements. From the Contract Commencement Date the amount to be paid will be [REDACTED] for each item per month which will be fixed over the Contract Term (on fleet basis and not for individual vessels or vehicles). If TfNSW restructures the arrangements for State Asset ownership as contemplated by Clauses 1.10 and 32, TfNSW may alter the amount in items 4, 5, 9, 10 and 14 (including by moving

from a fleet based payment to a per asset based payment) and amend paragraph 4.3, paragraph 4.4 (to provide for payment adjustment in respect of written off assets) or paragraph 4.5 subject to the requirements of Clause 32. The Operator will not be paid a margin on any additional rental amount payable in respect of State Assets under any restructured arrangements.

4. Variation to Monthly Contract Price

The Parties acknowledge and agree the Monthly Contract Price may be varied in accordance with this paragraph 4.

4.1 Adjustments for Service Variations

- (a) The Monthly Contract Price may be adjusted if TfNSW provides a Service Variation Notice pursuant to Clause 23.1(a) or approves a Service Variation requested by the Operator pursuant to Clause 23.1(e).
- (b) Subject to paragraph 4.1(g), for each approved Service Variation, TfNSW will increase or decrease the Monthly Contract Price, for the duration of the Service Variation, by applying the following calculation(s):
 - (i) the change in daily Service Bus Kms as a result of the Service Variation, multiplied by the Unit Rate per Service Bus Km (for the applicable Bus type and day type) multiplied by the number of days in the month for which the Service Variation will operate;
 - (ii) the change in daily Service Bus Hrs as a result of the Service Variation, multiplied by the Unit Rate per Service Bus Hr (for the applicable Bus type and day type), multiplied by the number of days in the month for which the Service Variation will operate;
 - (iii) the change in daily Service Ferry Hrs as a result of the Service Variation, multiplied by the Unit Rate per Service Ferry Hrs multiplied by the number of days in the month for which the Service Variation will operate;
 - (iv) the change in daily Service Light Rail Hrs as a result of the Service Variation, multiplied by the Unit Rate per Service Light Rail Hr, multiplied by the number of days in the month for which the Service Variation will operate;
 - (v) for any Service Variation requiring an increase or decrease in the number of Peak Buses the price for the number of New Buses or reduction in the number of Contract Buses as a result of the Service Variation approved by TfNSW will be calculated in accordance with paragraph 4.3 of this Schedule.
- (c) Unit Rates will be inflation adjusted by application of the inflation indices in the table in paragraph 4.5(c), applied in the following manner:

Unit Rate	Inflation Indices to be Applied
Per Bus Km	
Per Bus Hr	
Per Ferry Hr	

Unit Rate	Inflation Indices to be Applied
Per Light Rail Hr	

- (d) If the Monthly Contract Price has been varied due to a Service Variation, any future inflation adjustment for the varied Monthly Contract Price will be treated in accordance with paragraph 4.5.
- (e) At any given time, TfNSW shall record the inflation adjusted value of the Monthly Contract Price, as at the Service Commencement Date, separately from the inflation adjusted total value of all Service Variations.
- (f) TfNSW must notify the Operator of the variation to the Monthly Contract Price by notice in writing and adjust the Monthly Contract Price accordingly for payment purposes.
- (g) The Monthly Contract Price will not be increased or decreased for an approved Service Variation which:
 - (i) was proposed by the Operator in accordance with Clause 23; and
 - (ii) changes the Timetable in Schedule 2 with no change to the Contract Service Levels.

4.2 Price Adjustments for Failure to Achieve Key Performance Indicators

- (a) Unless TfNSW agrees otherwise, the Monthly Contract Price will be adjusted in the event that the Operator fails to meet a Key Performance Indicator that is subject to a KPI Credit, by the amount of KPI Credits for the relevant month determined in accordance with the KPI Schedule.
- (b) In the event the Operator fails to meet a KPI that is subject to a KPI Credit in any given month, the Monthly Contract Price due to the Operator for that month will be reduced by the amount of the KPI Credit for that month calculated in accordance with the KPI Schedule.

4.3 Price Adjustment for a scheduled replacement Contract Bus or for a change in the number of Peak Buses as a result of a Service Variation

There is no adjustment to the Monthly Price except in relation to the adjustments in paragraph 4.1 of this Schedule.

4.4 Price Adjustment for Written Off Contract Bus

There is no adjustment to the Monthly Price in the event of a Contract Bus becoming a Written Off Bus.

4.5 Price Adjustments for Inflation

- (a) The Monthly Contract Price must be adjusted to take into account inflation.
- (b) At the periods as specified in the table in paragraph 4.5(c), TfNSW must apply the inflation index and multiplier specified in the table in paragraph 4.5(c) to the relevant items specified in the table in paragraph 4.5(c) and notify the Operator in writing of the adjusted Monthly Contract Price.
- (c) For the purposes of this paragraph 4.5, the following inflation indices will be adopted and applied to the prices shown in Annexure A.

Ref.	Item (from table in Annexure A)	Inflation Mechanism	Inflation Timing, Base and Multiplier

Ref.	Item	Inflation Mechanism	Inflation Timing, Base and Multiplier
	(from table in Annexure A)		

4.6 Patronage Incentive Payment (PIP)

- (a) The Operator will receive or pay a Patronage Incentive Payment in each Contract Year at the rate of [REDACTED] (GST exclusive) per passenger for each passenger (excluding STSS passengers) travelling on the Services above or below the base level shown in the Table below. The PIP is calculated and paid on an annual basis. For the avoidance of doubt, the PIP can be a negative payment adjustment which can be set off against the Monthly Contract Price.

Year	Base passengers (excluding SSTS passenger) per annum
2017-18	[REDACTED]
2018-19	
2019-20	
2020-21	
2021-22	
2022-23	
2023-24	
2024-25	
2025-26	
2026-27	

- (b) The Operator must accurately record the total number of passengers travelling on the Services each month and submit those total numbers to TfNSW in its monthly Tax Invoice to TfNSW.
- (c) The Operator is to present the payment claim for the PIP in the August invoice by calculating the actual passenger numbers above or below the base (in the table set out in paragraph 4.6(a)) for the full 12 months of the prior year – 1 July to 30 June.
- (d) The PIP payment rate of [REDACTED] (GST exclusive) in paragraph 4.6(a) will be adjusted for inflation as per item 16 in the table at paragraph 4.5(c).
- (e) The PIP will commence from the Contract Bus and Ferry Services Commencement Date and will continue until the end of the Term.

4.7 Price Adjustment if On Demand Service exceed base level

- (a) The Monthly Contract Price will be adjusted in the event that additional On Demand Services buses are required.

- (b) If the Monthly Contract Price is to be adjusted under paragraph 4.7(a), TfNSW will increase the Monthly Contract Price in respect of that month by an amount calculated in accordance with the following calculation:



Annexure A – Monthly Contract Price - \$ (June 2016)

Ref.	Item	Payment Commencement	Contract Year 1	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5	Contract Year 6
Contract Bus Services:								
1	Contract Bus Salaries and Wages (including labour on-costs)	Contract Bus and Ferry Services Commencement Date						
2	Contract Bus Maintenance and Repair (non-labour)	Contract Bus and Ferry Services Commencement Date						
3	Contract Bus Fuel and Oil	Contract Bus and Ferry Services Commencement Date						
4	State Bus Lease	Contract Bus and Ferry Services Commencement Date						
5	State Bus Depot Leases	Contract Bus and Ferry Services Commencement Date						
5A	Operator Bus Payments	Contract Bus and Ferry Services Commencement Date						
5B	Operator Depot Payments	Contract Bus and Ferry Services Commencement Date						
Ferry Services								
6	Ferry Salaries and Wages (including labour on-costs)	Contract Bus and Ferry Services Commencement Date						
7	Ferry Maintenance and Repair (non-labour)	Contract Bus and Ferry Services Commencement Date						
8	Ferry Fuel and Oil	Contract Bus and Ferry Services Commencement Date						
9	State Bareboat Charterparty	Contract Bus and Ferry Services Commencement Date						
10	Not used							
Light Rail Services								

Ref.	Item	Payment Commencement	Contract Year 1	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5	Contract Year 6
11	NLR Salaries and Wages (including labour on-costs)	Light Rail Service Commencement Date						
12	NLR Maintenance and Repair (non-labour)	Light Rail Service Commencement Date						
13	Traction Energy	Light Rail Service Commencement Date						
14	State LRV Lease	NLR Handover Date						
15	NLR Delivery Activities ¹	Contract Commencement Date						
Services								
16	Passenger Incentive Payment	Contract Bus and Ferry Service Commencement Date						
	Monthly Contract Price							

Note 1- the NLR Delivery Activities payment ceases at the Light Rail Service Commencement Date.

Ref.	Item	Payment Commencement	Contract Year 7	Contract Year 8	Contract Year 9	Contract Year 10	Contract Year 11	
Contract Bus Services:								
1	Contract Bus Salaries and Wages (including labour on-costs)	Contract Bus and Ferry Services Commencement Date						
2	Contract Bus Maintenance and Repair (non-labour)	Contract Bus and Ferry Services Commencement Date						
3	Contract Bus Fuel and Oil	Contract Bus and Ferry Services Commencement Date						
4	State Bus Lease	Contract Bus and Ferry Services Commencement Date						
5	State Bus Depot Leases	Contract Bus and Ferry Services Commencement Date						
5A	Operator Bus Payments	Contract Bus and Ferry Services Commencement Date						
5B	Operator Depot Payments	Contract Bus and Ferry Services Commencement Date						
Ferry Services								
6	Ferry Salaries and Wages (including labour on-costs)	Contract Bus and Ferry Services Commencement Date						
7	Ferry Maintenance and Repair (non-labour)	Contract Bus and Ferry Services Commencement Date						
8	Ferry Fuel and Oil	Contract Bus and Ferry Services Commencement Date						
9	State Bareboat Charterparty	Contract Bus and Ferry Services Commencement Date						
10	Not used							
Light Rail Services								

Ref.	Item	Payment Commencement	Contract Year 7	Contract Year 8	Contract Year 9	Contract Year 10	Contract Year 11	
11	NLR Salaries and Wages (including labour on-costs)	Light Rail Service Commencement Date						
12	NLR Maintenance and Repair (non-labour)	Light Rail Service Commencement Date						
13	Traction Energy	Light Rail Service Commencement Date						
14	State LRV Lease	NLR Handover Date						
15	NLR Delivery Activities ¹	Contract Commencement Date						
	NLR Delivery Activities Price							
Services								
16	Passenger Incentive Payment	Contract Bus and Ferry Services Commencement Date						I
	Monthly Contract Price							

Note 1- the NLR Delivery Activities payment ceases at the Light Rail Service Commencement Date.

Annexure B - Gross Unit Prices for Service Variations

Gross Unit Prices for Service Variations for Contract Bus Services and On Demand Services

Day Type	Resource Measure	Year (June 2016 \$)			
		High Capacity Bus	Standard Bus and School Bus	Midi Bus	On Demand Services
Weekday Timetable Days	Service Bus Kms				
	Service Bus Hrs				
	0500-2400				
	Service Bus Hrs				
	0001-0459				
Saturday Timetable Days	Service Bus Kms				
	Service Bus Hrs				
Sunday Timetable Days	Service Bus Kms				
	Service Bus Hrs				

Gross Unit Prices for Service Variations for Light Rail Services

Day Type	Resource Measure	Year (June 2016 \$)
Weekday Timetable		

Day Type	Resource Measure	Year (June 2016 \$)
Days	Service Light Rail Hrs 0500-2400	
	Service Light Rail Hrs 0001-0459	
Saturday Timetable Days	Service Light Rail Hrs	
Sunday Timetable Days	Service Light Rail Hrs	

Gross Unit Prices for Service Variations for Ferry Services

Day Type	Resource Measure	Year (June 2016 \$)
Weekday Timetable Days		
	Service Ferry Hrs	
	0500-2400	
	Service Ferry Hrs	
	0001-0459	
Saturday Timetable Days	Service Ferry Hrs	
Sunday Timetable Days	Service Ferry Hrs	

Schedule 4 - Key Performance Indicators

1. Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to a paragraph is a reference to a paragraph in this Schedule.

In this Schedule, the following words have the following meanings:

At Risk Amount means 

Boardings means the number of Trips taken by all passengers.

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

Cancelled Trip means the whole of the advertised Timetable or Dedicated School Services Timetable Trip did not operate or the full number of Contract Bus Services required per rolling hour were not operated (for Trips that operate to a published Headway).

Cascade means when a single Incident results in the Operator incurring more than one Class 1 Key Performance Indicator KPI Default.

Class 1 Key Performance Indicator means a KPI that is classified as 'Class 1' in the KPI Tables.

Class 2 Key Performance Indicator means a KPI that is classified as 'Class 2' in the KPI Tables.

Class 4 Key Performance Indicator means a KPI that is classified as 'Class 4' in the KPI Tables.

Early means:

- (a) for Bus Trips that are Published Timetable Trips, a Contract Bus departing a Bus Transit Stop before the published time; and
- (b) for Light Rail Trips and Ferry Trips, a Contract LRV or Contract Ferry departing a Light Rail Transit Stop or a Wharf (as applicable) before the published time.



First Stop means the first Light Rail Transit Stop or Wharf (as applicable) for each Route.

In-Service Kilometres means kilometres travelled in performing the Contract Bus Services, in which passengers are able to board the Contract Bus (for the avoidance of doubt this excludes Non-Operational Kilometres).

Incomplete Trip means only a part of the published/scheduled Contract Bus Service, Ferry Service or the Light Rail Service operated. This means the Trip was shortened to start or end at a point/s between the published/scheduled start and finish, and/or intermediate Transit Stops or Wharves are missed.

KPI means a key performance indicator specified in this Schedule 4.

KPI Class means the classification of the KPI as a Class 1 Key Performance Indicator, Class 2 Key Performance Indicator or Class 4 Key Performance Indicator as set out in the KPI Tables.

KPI Credit Allocation Percentage means the percentage allocation for a KPI defined in the table set out in paragraph 6 of this Schedule 4.

KPI Credit Loading means the increase in KPI Credits payable by the Operator under paragraph 5.3 of this Schedule 4.

KPI Credit means the amount payable by the Operator to TfNSW for non-performance of KPIs, being a civil penalty provision for the purposes of section 38 of the PT Act 2014 and a genuine pre-estimate, agreed by the Parties, to off-set part of TfNSW's direct or indirect costs arising from the Operator's failure to meet or exceed the KPIs.

KPI Credit Table means the table set out in paragraph 6 of this Schedule 4.

KPI Default means failure to meet or exceed a KPI.

KPI Negative Trend means a trend in the measured results of a KPI which demonstrate a reduction in the achievement of that KPI.

KPI Relief means the Operator is excused from non-performance of a KPI as a result of an Excused Performance Incident in accordance with the Contract.

KPI Reporting Period means the period of time in which the Operator's performance of the KPI will be measured.

KPI Tables means the tables set out in paragraph 9 of this Schedule 4.

Late means:

- (a) for Bus Trips that are Published Timetable Trips, a Contract Bus departing a Bus Transit Stop more than 4 minutes 59 seconds later than the published time;
- (b) for Light Rail Trips and Ferry Trips, a Contract LRV or Contract Ferry departing a Light Rail Transit Stop or Wharf (as applicable) more than 59 seconds later than the published time.

Non-Operational Kilometres means kilometres run as positioning or other incidental movements of Contract Buses.

On Time means:

- (a) for Bus Trips that are Published Timetable Trips a Contract Bus departing a Bus Transit Stop neither Early nor Late;
- (b) for Bus Trips that are Headway Trips a Contract Bus departing a Bus Transit Stop within 2 minutes 29 seconds of the published Headway; or
- (c) for Light Rail Trips, a Contract LRV departing a Light Rail Transit Stop neither Early nor Late;
- (d) for Ferry Trips, a Contract Ferry departing a Wharf neither Early nor Late.

PTIPS means the Public Transport Information and Priority System operated by TfNSW or another Governmental Agency.

Published Timetable Trips means trips that are scheduled by timetable rather than Headway.

The following table sets out how the KPI Tables included in this Schedule 4 are to be interpreted:

Name	<i>The name of the KPI</i>
Description	<i>A description of what the KPI does and, at a high level, how it is measured and calculated</i>
Hours measured	<i>The hours during which the KPI calculation is applied</i>
KPI	<i>The level which the delivery performance of the Operator (calculation) must equal or exceed</i>
Class	<i>Either Class 1, Class 2 or Class 4</i>
Measurement methodology	
Measurement starting point	<i>The point in time at which the Operator must commence measurement for any KPI Reporting Period</i>
Calculation	<i>The algorithm for calculation of the level of performance of the KPI for the KPI Reporting Period</i>
KPI Reporting Period	<i>The period over which the performance of the KPI must be calculated in each report</i>
Measurement unit	<i>The granularity with which the KPI performance must be measured and reported against</i>
Data source	<i>The data sources TfNSW will consider in order to provide an accurate measurement</i>
Measurement responsibility	<i>Whether it is the responsibility of the Operator, TfNSW or a third party to measure (or collect the measurement of) and then calculate the KPI</i>
Reporting frequency	<i>How frequently performance against this KPI should be reported (typically this is each Calendar Month unless specified otherwise in this Schedule 4 (KPI Reporting Period))</i>

2. KPI Principles

- (a) In accordance with clause 14 of the Contract, the Operator must perform the Services described in Schedule 1 (Services Schedule) and Schedule 2 (Service Levels) of the Contract measured against the KPIs set out in this Schedule 4.
- (b) The Operator acknowledges:
 - (i) the emphasis of the KPI regime is on delivery of the Services to meet TfNSW's business requirements and on performance improvement where the Services fail to meet the requirements;
 - (ii) KPIs apply to Contract Bus Services and Ferry Services from the Planned Contract Bus and Ferry Service Commencement Date and to the Light Rail Services from the Planned Light Rail Service Commencement Date and data must be sourced from available sources if automation of data collection is not available;
 - (iii) subject to paragraph 8 of this Schedule, TfNSW may by notice to the Operator modify KPIs and the management regime in order to keep pace with the changing business environment; and
 - (iv) TfNSW may by notice to the Operator change the classification of a KPI.

3. KPI Reporting

3.1 Reporting Content

- (a) The Operator must 5 Business Days before each Monthly Service Delivery Forum provide a report to TfNSW containing, at a minimum, the following information:

- (i) numerical data setting out the KPI performance achieved during the KPI Reporting Period against, where applicable, the data for the preceding Quarter and 12 Calendar Months;
 - (ii) a graphical representation of that data highlighting the KPI, the actual performance during the KPI Reporting Period and the performance for the previous Quarter, 6 Calendar Months or 12 Calendar Months (as applicable);
 - (iii) a summary table demonstrating performance for each KPI;
 - (iv) details of the KPI Credits and KPI Credit Loadings incurred during the KPI Reporting Period;
 - (v) a commentary explaining any performance variations and performance trends;
 - (vi) where, for the KPI Reporting Period, there is a KPI Default, or there is an indication of a KPI Negative Trend, an explanation of the causes of the KPI Default or KPI Negative Trend;
 - (vii) a proposed cure plan, developed by the Operator to address the causes of any KPI Default or KPI Negative Trend, including proposed actions for the Operator;
 - (viii) where there has been a previous cure plan for the KPI, the status of the actions and an explanation of any relationship between the cure plans and current performance; and
 - (ix) any other information required by the Reporting Schedule.
- (b) The Operator must include such other information in its reports to TfNSW as is specified in this Schedule 4 or as otherwise required by TfNSW from time to time.
 - (c) The Operator must use the format for KPI reporting specified in paragraphs 5 and 6 of the Reporting Schedule.
 - (d) The Operator must implement and diligently pursue any cure plan required to be provided under paragraph 3.1(a)(vii) of this Schedule 4 to address the causes of any KPI Default or a KPI Negative Trend in a KPI performance .
 - (e) TfNSW may, from time to time, redefine its requirements for KPI reporting or request additional material to be provided by the Operator for any KPI, which the Operator must provide.
 - (f) The Operator may propose additional or alternative data sources that would, in the reasonable opinion of the Operator, improve the quality of measurement and reporting against the KPI.
 - (g) In addition to reporting in the KPI Reporting Period specified for each KPI, within 10 Business Days of each KPI Reporting Period, the Operator must provide a report to TfNSW that includes, with respect to each KPI for which there was a KPI Default during the preceding 12 Calendar Months, the following:
 - (i) statistics on the Operator's monthly performance against each of the KPIs included in the report during the preceding year;
 - (ii) the yearly performance average for the KPIs included in the report; and
 - (iii) the total amount of KPI Credits imposed for KPI Defaults.

4. KPI Classes

The Parties acknowledge and agree that KPIs are classified into KPI Classes as defined in the table below:

KPI Class	Description	Management
Class 1	The measurement, management, reporting and achievement of the KPI must be met by the Operator and failure to meet the KPI requirement may result in a KPI Credit.	Actively monitored and managed by the Operator; breaches within any KPI Reporting Period require the Operator to develop an incident report in accordance with paragraph 3.1 of this Schedule 4 with an explanation and remedial action proposed to ensure the KPI is met. The Operator's performance against the KPI must be reported, presented and reviewed at the regular monthly meeting.
Class 2	The KPI information is to be measured, captured and reported on a regular basis but non-performance does not result in a KPI Credit except for the two Class 2 Key Performance Indicators identified in the KPI Credit Table.	Performance is monitored and reported on a monthly basis by the Operator (unless otherwise stated in the KPI description). Where the KPI is not met, the Operator must take remedial action where it is necessary to continue to meet the KPI.
Class 3	Not applicable	Not applicable
Class 4	Applies to customer satisfaction only. Failure to meet the KPI requirement may result in a KPI Credit.	Actively monitored and managed by the Operator; breaches within any reporting period require an incident report with explanation and remedial action if required. Will be reported, presented and reviewed at the regular monthly meeting.

5. KPI Credits

5.1 Applicability

The Operator must pay KPI Credits to TfNSW for a KPI Default of a KPI specified in the KPI Credit Table other than where non-compliance with a KPI is as a result of an Excused Performance Incident for which the Operator has been granted KPI Relief in accordance with the Contract.

5.2 Calculation of KPI Credit

- (a) Subject to paragraph 5.1 of this Schedule 4, in the event of a KPI Default of a KPI specified in the KPI Credit Table, the Operator must pay to TfNSW a KPI Credit as calculated below.
- (b) The Operator must pay to TfNSW a KPI Credit for a KPI Default computed in accordance with the following formulae:
 - (i) in the event of a KPI Default (other than a Class 4 Key Performance Indicator KPI Default):

$$\text{KPI Credit} = A \times B \times C \times D$$
 where:
 - A = The KPI Credit Allocation Percentage for the KPI in respect of which the KPI Default occurred as shown in the KPI Credit Table
 - B = At Risk Amount
 - C = KPI Credit Loading for repeated failures of the relevant KPI
 - D = Monthly Contract Price for the KPI Reporting Period
 - (ii) in the event of a Class 4 Key Performance Indicator KPI Default:

KPI Credit = [REDACTED] x aggregate Monthly Contract Price for each Calendar Month in the relevant Contract Year.

5.3 Repeated Failure

The Parties agree the KPI Credit Loading regime will operate as follows:

- (a) if the Operator repeatedly fails to meet a KPI listed in the KPI Credit Table in consecutive KPI Reporting Periods, in addition to any other rights TfNSW may have under the Contract, the KPI Credit payable by the Operator (as set out in paragraph 6 of this Schedule 4) will increase (the KPI Credit Loading) as follows:

Number of KPI Reporting Periods in which the same KPI has failed	KPI Credit Loading
First Occurrence	[REDACTED]
2 consecutively	[REDACTED]
3 consecutively	[REDACTED]
4 or more in a rolling 6 KPI Reporting Periods	[REDACTED]

- (b) the KPI Credit Loading will only apply to the KPI Credits for the same KPI for the relevant KPI Reporting Periods.
- (c) The Operator must report to TfNSW on KPI Credit Loadings in the monthly report for the Reporting Period following the Reporting Periods in which KPI Credit Loading is incurred and provide the corresponding KPI Credit in the invoice for the same Calendar Month.

5.4 Multiple KPI Defaults and No Cascade

- (a) Subject to paragraph 5.4(b), if more than one KPI Default has occurred in a single Calendar Month, the Operator must credit the sum of the corresponding KPI Credits to TfNSW in accordance with Schedule 3 (Payment Schedule).
- (b) If a Cascade occurs, TfNSW may select any one of such KPI Defaults for which it will be entitled to receive a KPI Credit. Without prejudice to TfNSW's other rights under the Contract, TfNSW is not entitled to more than one KPI Credit for a single Incident that gives rise to multiple KPI Defaults within the same KPI Reporting Period.

5.5 Monthly KPI Credit Cap

[REDACTED]
[REDACTED]

5.6 KPI Credit Reporting

The Operator must immediately notify TfNSW in writing if TfNSW becomes entitled to a KPI Credit, and must include any such notification in its reporting for each KPI in accordance with the reporting frequency specified for the KPI.

5.7 Excused Performance Incident

- (a) In the event of an Excused Performance Incident, the Operator must:
- (i) if the Excused Performance Incident relates to a Compensable Event, apply for relief or compensation in accordance with Clause 46; or
 - (ii) if the Excused Performance Incident relates to a Force Majeure Event, apply for relief in accordance with Clause 47;

- (iii) in any other case, apply for the relief event as if it were a Force Majeure Event in accordance with Clauses 47.1 and 47.2.
- (b) The Operator acknowledges if TfNSW does not receive written notification in accordance with Clause 46 or Clause 47 (as applicable), the Incident will not be an Excused Performance Incident for the purposes of this Schedule 4.
- (c) In support of an application for KPI Relief, the Operator must provide TfNSW supporting documentation detailing the circumstances of the Excused Performance Incident and the effect of the Excused Performance Incident on one or more of the KPIs.
- (d) The Operator acknowledges that, in the event of a KPI Default which is caused by an Excused Performance Incident and for which KPI Relief is granted, the Operator's obligations in relation to the performance of the Services and compliance with the KPIs which are not affected by the Excused Performance Incident continue and include, but are not limited to:
 - (i) an obligation to use commercially reasonable efforts to reinstate the Services affected by the Excused Performance Incident and meet the KPIs affected by the Excused Performance Incident as soon as possible in the circumstances;
 - (ii) track and monitor the performance against the KPIs affected by the Excused Performance Incident; and
 - (iii) continue to report Excused Performance Incidents as if they were any other Incidents for the purposes of analysis and corrective action.

6. KPI Credits weighting

The KPI Credit Allocation Percentages for each KPI as at the Contract Commencement Date are set out in the following KPI Credit Table:

No	KPI	KPI Credit Allocation Percentage
1	Punctuality Rate – Bus	
2	Punctuality Rate – Light Rail	
3	Punctuality Rate - Ferry	
4	Incomplete Trips	
5	Cancelled Trips	
7	Customer Complaints per Boardings	
10	Customer Satisfaction	
12	Asset Presentation	
13	Asset Condition	
16	Contract Bus Maintenance Major Defects	
18	Revenue Collection Rate	
22	Data Maintenance	
24	CCTV and Duress Alarm Reliability	
	Class 2 KPI (1)	
	Class 2 KPI (2)	

- (a) The Parties acknowledge that the KPI Credit Table contains KPIs the performance of which have a significant business impact to TfNSW.

- (b) TfNSW may include two Class 2 KPIs in the KPI Credit Table by giving no less than 30 days written notice to the Operator.
- (c) TfNSW may substitute the Class 2 Key Performance Indicators included in the KPI Credit Table with new KPIs by no less than 30 days written notice to the Operator.

7. Not used

8. Additions and Deletions of KPIs

- (a) TfNSW may change the KPI regime by:
 - (i) adding a new Class 2 Key Performance Indicator;
 - (ii) removing a KPI; or
 - (iii) varying the KPI Reporting Period of a KPI.
- (b) The Parties acknowledge if TfNSW intends to add a KPI in accordance with paragraph 8(a) of this Schedule 4, TfNSW will measure the Operator's performance against the KPI over a period of 3 Calendar Months before setting the KPI, unless the Parties agree in writing to a different KPI measurement period.

9. KPIs

9.1 Service Reliability

KPI	Table 1
Name	Punctuality Rate – Bus
Description	<p>This KPI aims to ensure that Contract Bus Services run to Timetable, Dedicated School Services run to Timetable and/or Headway frequency.</p> <p>Each Calendar Month it will measure for all Bus Trips the On Time performance at the beginning and selected mid-point of each Trip and a selected Transit Stop close to the end of each Trip.</p> <p>The minimum On Time performance is expected to be:</p> <p>at least 95% of Bus Trips that are Published Timetable Trips or Headway Trips leave the first Bus Transit Stop of each Trip On Time. Where the Dedicated School Service is directed by a school employee or bus marshal to leave early, the Dedicated School Service will be deemed to be On Time</p> <p>at least 95% of Bus Trips that are Published Timetable Bus Trips or Headway Trips leave the TfNSW nominated mid-point Bus Transit Stop On Time</p> <p>at least 95% of Bus Trips that are Published Timetable Bus Trips or Headway Trips arrive at the TfNSW nominated Bus Transit Stop close to the end of each Trip On Time</p>
Hours measured	All hours of operation
KPI	The KPI Result (below) is at least 95%.
Class	Class 1
Measurement methodology	
Measurement starting point	First Bus Trip of each KPI Reporting Period
Calculation	<p>A. (Number of Bus Trips that are Published Timetable Trips or Headway Trips that leave the first Bus Transit Stop On Time / Total number of Bus Trips that are Published Timetable Trips and Headway Trips measured in the KPI Reporting Period) x100%</p> <p>B. (Number of mid-point Bus Transit Stops departed On Time for Bus Trips that are Published Timetable Trips or Headway Trips / Total number of mid-point Bus Transit Stops for Bus Trips that are Published Timetable Trips or Headway Trips measured in the KPI Reporting Period) x100%</p> <p>C. (Number of Bus Trips that are Published Timetable Trips or Headway Trips arrived the nominated Bus Transit Stop close to the end of the Trip On Time/ Total number of the nominated Bus Transit Stops for Bus Trips that are Published Timetable Trips or Headway Trips measured in the KPI Reporting Period) x100%</p> <p>KPI result = $(A \cdot 0.6) + (B \cdot 0.2) + (C \cdot 0.2)$</p>
KPI Reporting Period	Calendar Month
Measurement unit	Number of Bus Trips at selected Bus Transit Stops for which a Contract Bus Service is On Time
Data source	Relevant system such as PTIPS, analysed to provide performance information. KPI will be based on TfNSW nominated Bus Transit Stops for all Bus Routes for which automated data is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 2
Name	Punctuality Rate – Light Rail
Description	<p>This KPI aims to ensure that Light Rail Services run to Timetable.</p> <p>Each Calendar Month it will measure the On Time performance for each Light Rail Trip at the First Stop.</p> <p>The minimum On Time performance is expected to be at least 95% of Light Rail Trips that are Published Timetable Trips depart the First Stop On Time.</p>
Hours measured	All hours of operation
KPI	The KPI Result (below) is at least 95%.
Class	Class 1
Measurement methodology	
Measurement starting point	First Light Rail Trip of each KPI Reporting Period
Calculation	(Number of Light Rail Trips that are Published Timetable Trips departed On Time / Total number of Light Rail Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100%
KPI Reporting Period	Calendar Month
Measurement unit	Number of Light Rail Trips that depart the First Stop On Time
Data source	SCADA or similar systems analysed to provide performance information
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 3
Name	Punctuality Rate – Ferry
Description	<p>This KPI aims to ensure that Ferry Services run to Timetable.</p> <p>KPI will measure for each Calendar Month the On Time performance for each Ferry Trip at the First Stop.</p> <p>The minimum On Time performance is expected to be at least 95% of Ferry Trips that are Published Timetable Trips depart the First Stop On Time.</p>
Hours measured	All hours of operation
KPI	The KPI Result (below) is at least 95%.
Class	Class 1
Measurement methodology	
Measurement starting point	First Ferry Trip of each KPI Reporting Period
Calculation	(Number of Ferry Trips that are Published Timetable Trips departed On Time / Total number of Ferry Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100%
KPI Reporting Period	Calendar Month
Measurement unit	Number of Ferry Trips the depart the First Stop On Time
Data source	MT Data or similar mobile tracking and data systems analysed to record position and time to provide performance information
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 4
Name	Incomplete Trips
Description	This KPI aims to ensure that all Services are delivered in full (Published Timetable Trips or Dedicated School Services Timetable Trips), including Headway services, i.e. Transit Stops or Wharves are not missed to correct timetable or frequency issues. All Incomplete Trips must be reported against the Published Timetable Trips for the KPI Reporting Period.
Hours measured	All hours of operation
KPI	<1% Incomplete Trips
Class	Class 1
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	Number of Incomplete Trips in KPI Reporting Period / Number of Published Timetable and Headway Trips in KPI Reporting Period
KPI Reporting Period	Calendar Month
Measurement unit	Trips
Data source	Drivers, Co-ordinator and customer complaints Relevant system such as PTIPS, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 5
Name	Cancelled Trips
Description	This KPI aims to ensure that all Services are delivered (Published Timetable Trips or Dedicated School Services Timetable Trips), including Headway services. All Cancelled Trips must be reported against the Published Timetable Trips for the KPI Reporting Period.
Hours measured	All hours of operation
KPI	<0.5% Cancelled Trips
Class	Class 1
Measurement methodology	
Measurement starting point	First Day of each KPI Reporting Period
Calculation	Number of Cancelled Trips in KPI Reporting Period / Number of Published Timetable and Headway Trips in KPI Reporting Period
KPI Reporting Period	Calendar Month
Measurement unit	Trips
Data source	Drivers, Co-ordinator and customer complaints Relevant system such as PTIPS, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 5A
Name	Reliability of On Demand Services
Description	<p>This KPI aims to ensure that On Demand Services arrive at the correct pick-up.</p> <p>Each Calendar Month it will measure reliability for all On Demand Services.</p> <p>The minimum reliability is expected to be at least 98% of booked On Demand Bus Trips depart from the nominated pick-up Bus Transit Stop</p>
Hours measured	All hours of operation
KPI	The KPI Result (below) is at least 98%.
Class	Class 2
Measurement methodology	
Measurement starting point	First Bus Trip of each KPI Reporting Period
Calculation	Total number of booked On Demand Services arriving at the correct pick-up location/Total number of On Demand Bus bookings] x 100%
KPI Reporting Period	Calendar Month
Measurement unit	Number of booked On Demand Services
Data source	Relevant system such as PTIPS, analysed to provide performance information. KPI will be based on TfNSW nominated Bus Transit Stops for all Bus Routes for which automated data is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 6
Name	Accessible Bus Services
Description	<p>This KPI aims to ensure that Timetabled Accessible Services are available as advertised. All Accessible Services Not Operated must be reported against the total Bus Trips for the KPI Reporting Period.</p> <p>In this KPI 6:</p> <p>Timetabled Accessible Services is defined as the number of Wheelchair Accessible Bus Trips that are Published Timetable Trips or Headway Trips during the KPI Reporting Period.</p> <p>Wheelchair Accessible is defined as a Bus which has wheelchair access such as a ramp.</p> <p>Accessible Services Not Operated is defined as the total Wheelchair Accessible Bus Trips not operated in full or in part during the KPI Reporting Period.</p>
Hours measured	All hours of operation
KPI	At least 99% of Timetabled Accessible Services operate
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	100 X (Accessible Services Not Operated for the KPI Reporting Period/ Timetabled & Headway Accessible Services for the KPI Reporting Period)%
KPI Reporting Period	Calendar Month
Measurement unit	Trips
Data source	<p>Relevant Systems such as PTIPS</p> <p>Driver, customer complaints, mystery shopper.</p> <p>Contract Bus designation to include information on accessibility.</p>
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

9.2 Service Quality and Customer Satisfaction

KPI	Table 7
Name	Customer Complaint per Boardings
Description	<p>Measures the level of customer complaints per 100,000 Boardings to ensure that the level of complaints is effectively managed and improvements are implemented to enhance customer satisfaction.</p> <p>In this KPI, Complaint means each report of a negative experience in relation to the Services recorded in the TfNSW Customer Feedback System.</p>
Hours measured	All hours of operation
KPI	<22 Complaints per 100,000 Boardings
Class	Class 1
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	Complaints received during the previous KPI Reporting Period per 100,000 Boardings for the previous KPI Reporting Period
KPI Reporting Period	Contract Year
Measurement unit	Complaints
Data source	Operator and TfNSW Customer Feedback System, Transport Infoline, Boardings (from Opal system)
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 8
Name	Customer Complaint Resolution
Description	Customer complaint resolution means the satisfactory closure of customer complaints and customer feedback requests within agreed timeframes. It is measured from the time of receipt of the complaint by the Operator to the resolution and closure of the complaint in accordance with the Customer Services Plan
Hours measured	24/7
KPI	In each KPI Reporting Period: (i) 70% of all complaints and feedback (when the customer has requested a response) are resolved within 2 Business Days from receiving; and (ii) 100% of Customers with an unresolved complaint are contacted within 20 Business Days; and (iii) 95% of all complaints are resolved within the KPI Reporting Period.
Class	Class 2
Measurement methodology	
Measurement starting point	First Business Day of each KPI Reporting Period
Calculation	100 x (Complaints resolved within 2 Business Days during the KPI Reporting Period / Total complaints received for the KPI Reporting Period)%; and 100 x (Number of customers with an unresolved complaint that are contacted by 20 Business Days after the complaint/ Total number of customers with a complaint); and 100 x (Complaints resolved within the KPI Reporting Period / Total complaints received for the KPI Reporting Period)%
KPI Reporting Period	Calendar Month
Measurement unit	Complaints
Data source	TfNSW Customer Feedback System and other customer complaints registers as advised by TfNSW from time to time
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 9
Name	Customer Complaint/Enquiries Database
Description	Customer complaint database measures the completeness of the TfNSW Customer Feedback System (or similar system used by TfNSW) by ensuring that all complaints and enquiries received directly by the Operator are referred to the TfNSW Customer Feedback System or other system as specified by TfNSW.
Hours measured	All hours of operation
KPI	100% of calls received in KPI Reporting Period are included in the TfNSW Customer Feedback System
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	$100 \times (\text{Total complaints and enquiries recorded in the TfNSW Customer Feedback System in respect of the Services for the KPI Reporting Period} / \text{Total complaints and enquiries received during the KPI Reporting Period}) \%$
KPI Reporting Period	Calendar Month
Measurement unit	Complaints
Data source	TfNSW Customer Feedback System and other customer complaints registers advised by TfNSW from time to time
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 9A
Name	Customer response times for On Demand Services
Description	Measures the Operator's response times in answering requests for On Demand Services. Customers should receive a response to their request (via telephone or app) for an On Demand Service within 1 minute
Hours measured	All hours of operation
KPI	95% of calls received in KPI Reporting Period are responded to within 1 minute
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	$100 \times (\text{Total calls received during the KPI Reporting Period responded to within 1 minute} / \text{Total calls received during the KPI Reporting Period}) \%$
KPI Reporting Period	Calendar Month
Measurement unit	Calls
Data source	TfNSW Customer Feedback System, Operator app
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 10
Name	Customer Satisfaction
Description	Customer satisfaction means the level of satisfaction with the Operator's performance as expressed by a representative sample of the passengers (TfNSW to approve) as measured on a Likert Scale. The survey questions used in the calculation of this KPI will relate to Services.
Hours measured	N/A
KPI	85% of all ratings above the mid-point of the Likert Scale, based on historical performance on Services
Class	Class 4
Measurement methodology	
Measurement starting point	First day of Contract Year
Calculation	On the basis of a survey (the structure and content to be defined by TfNSW) on a Likert Scale, the number of the ratings above the mid-point divided by the total number of ratings times 100.
KPI Reporting Period	Contract Year
Measurement unit	Rating
Data source	Surveys of customer satisfaction
Measurement responsibility	TfNSW
Reporting frequency	Annually

KPI	Table 11
Name	Passenger Information
Description	This measures how passengers are kept informed of delays in scheduled services and notification of delays to Transport Infoline
Hours measured	24x7
KPI	> 95% of passengers are kept informed of delays on that Service
Class	Class 2
Measurement methodology	
Measurement starting point	First day of Quarter
Calculation	$100 \times (\text{The number of passengers surveyed in the KPI Reporting Period satisfied with passenger information}) / \text{the number of passengers surveyed in the KPI Reporting Period})\%$
KPI Reporting Period	Quarterly
Measurement unit	Passengers
Data source	Customer satisfaction surveys, mystery shopper
Measurement responsibility	TfNSW
Reporting frequency	Quarterly

KPI	Table 12
Name	Asset Presentation
Description	This KPI aims to ensure that all Assets are clean and tidy
Hours measured	All hours of operation
KPI	<p>(i) > 95% of passengers surveyed in the KPI Reporting Period are satisfied with Asset presentation; or</p> <p>(ii) 100% of Assets inspected in the KPI Reporting Period meet or exceed presentation standard 3 (Moderately Dirty) in accordance with the table in paragraph 1 of Annexure 14 to Schedule 8; or</p> <p>(ii) > 90% of Assets inspected in the KPI Reporting Period meet or exceed presentation standard 4 (Moderately Clean) in accordance with the table in paragraph 1 of Annexure 14 to Schedule 8.</p>
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Contract Year
Calculation	<p>100 x (The number of passengers surveyed in the KPI Reporting Period satisfied with Asset presentation / the number of passengers surveyed in the KPI Reporting Period)%; or</p> <p>100 x (The number of Assets inspected in the KPI Reporting Period for Asset presentation which meet or exceed presentation standard 3 (Moderately Dirty) / The number of Assets inspected in the KPI Reporting Period for Asset presentation)%; or</p> <p>100 x (The number of Assets inspected in the KPI Reporting Period for Asset presentation which meet or exceed presentation standard 4 (Moderately Clean) / The number of Assets inspected in the KPI Reporting Period for Asset presentation)%</p>
KPI Reporting Period	Contract Year
Measurement unit	Passengers
Data source	Customer complaints, customer satisfaction survey, random survey of presentation, mystery shopper and inspections
Measurement responsibility	TfNSW via customer surveys, inspections and audits
Reporting frequency	Annually

KPI	Table 13
Name	Asset Condition
Description	This KPI aims to ensure that all Assets are properly maintained
Hours measured	All hours of operation
KPI	<p>(i) 100% of assets inspected in the KPI Reporting Period meet or exceed presentation standard 4 (Moderate wear and tear) in accordance with the table in paragraph 2 of Annexure 14 to Schedule 8; or</p> <p>(ii) > 90% of assets inspected in the KPI Reporting Period meet or exceed condition standard 5 (Minor wear and tear) in accordance with the table in paragraph 2 of Annexure 14 to Schedule 8.</p>
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Contract Year
Calculation	<p>100 x (The number of assets inspected in the KPI Reporting Period which meet or exceed condition standard 4 (Moderate wear and tear) / The number of assets inspected in the KPI Reporting Period)%; or</p> <p>100 x (The number of assets inspected in the KPI Reporting Period which meet or exceed condition standard 5 (Minor wear and tear) / The number of asset inspected in the KPI Reporting Period)%</p>
KPI Reporting Period	Contract Year
Measurement unit	Inspections
Data source	Inspections
Measurement responsibility	TfNSW via inspections and audits
Reporting frequency	Annually

KPI	Table 14
Name	Toilet Cleanliness and Condition
Description	This KPI aims to ensure that all toilets are properly maintained. Clean and tidy includes general presentation including, clean and functional for use, free of graffiti.
Hours measured	All hours of operation
KPI	(i) 100% of toilets inspected in the KPI Reporting Period exceed cleanliness and condition standard 3 (Moderately Dirty with Minor damage) in accordance with the table in paragraph 3 of Annexure 14 to Schedule 8; or (ii) > 90% of toilets inspected in the KPI Reporting Period exceed cleanliness and condition standard 4 (Moderately Clean with Minor wear & tear) in accordance with the table in paragraph 3 of Annexure 14 to Schedule 8.
Class	Class 2
Measurement methodology	
Measurement starting point	First day of Contract Year
Calculation	100 x (The number of toilets inspected in the KPI Reporting Period which exceed condition standard 3 (Moderately Dirty with Minor damage) / The number of toilets inspected in the KPI Reporting Period)%; or 100 x (The number of toilets inspected in the KPI Reporting Period which meet or exceed cleanliness and condition standard 5 (Moderately Clean with Minor wear & tear) / The number of toilets inspected in the KPI Reporting Period)%
KPI Reporting Period	Contract Year
Measurement unit	Inspections
Data source	Inspections
Measurement responsibility	TfNSW via inspections and audits
Reporting frequency	Annually

9.3 Safety and Contract Vehicle Maintenance

KPI	Table 15
Name	Incidents Due to Failure to Conduct Contract Vehicle Maintenance
Description	This measures the diligence with which the Operator undertakes maintenance of Contract Vehicles.
Hours measured	24x7
KPI	<5% of Late Trips, Cancelled Trips and Incomplete Trips are caused due to Contract Vehicle failure arising from maintenance issues
Class	Class 2
Measurement methodology	
Measurement starting point	First day of Calendar Month
Calculation	100 x The number of Late Trips and Cancelled Trips and Incomplete Trips in the KPI Reporting Period that would have been avoided if Contract Vehicles had been maintained in accordance with the Contract / Total number of Late Trips and Cancelled Trips and Incomplete Trips in the KPI Reporting Period.
KPI Reporting Period	Calendar Month
Measurement unit	Each Late Trip and Cancelled and Incomplete Trip due to maintenance not being carried out in accordance with the Contract
Data source	Drivers, customer complaints, maintenance records, RMS, changeover records, PTIPS
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 16
Name	Contract Bus Maintenance – Major Defects
Description	<p>This KPI aims to ensure that all Contract Buses are properly maintained and do not have major defects which potentially impact reliability and safety.</p> <p>In this KPI 18:</p> <p>Major Defect is defined as a defect identified in regular or random inspections by the RMS or other Governmental Agencies (or during any Authorisation process for the Contract Bus) as a major defect requiring the relevant Contract Bus to be removed from Service.</p>
Hours measured	All hours of operation
KPI	Nil Major Defect notices issued by the RMS or other Governmental Agencies in respect of Contract Buses for the KPI Reporting Period
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	Number of Major Defect notices issued by the RMS or other Governmental Agencies in respect of Contract Buses in the KPI Reporting Period.
Period of calculation	Calendar Month
Measurement unit	Contract Buses subject to Major Defects notice issued by the RMS or other Governmental Agencies
Data source	Contract Bus maintenance records, RMS, notices issued by Governmental Agencies
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 17
Name	Maintenance Regime – Contract Vehicles
Description	This KPI aims to ensure that all Contract Vehicles are properly maintained and operated.
Hours measured	All hours of operation
KPI	The number of Contract Vehicles subject to notices regarding maintenance issues issued by RMS or other Governmental Agencies or other bodies is less than 8% of the total Contract Vehicle fleet number.
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each Contract Year
Calculation	$100 \times \text{Number of Contract Vehicles subject to maintenance notices issued by RMS or other Governmental Agencies or other bodies in KPI Reporting Period} / \text{Total number of Contract Vehicle in fleet during the KPI Reporting Period}$
KPI Reporting Period	Contract Year
Measurement unit	Contract Vehicles subject to notices regarding maintenance issues issued by RMS or other Governmental Agencies or other bodies
Data source	Accident reports, maintenance records, defect reports, HVIS TfNSW on-line incident report system
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Annually

9.4 Revenue Protection

KPI	Table 18
Name	Revenue Collection Rate
Description	<p>This KPI aims to ensure that the Operator ensures passengers travel with a valid ticket when travelling on Services. The percentage of passengers travelling without paying the correct fare should be within acceptable limits and reducing as revenue management strategies improve compliance.</p> <p>The percentage of paying passengers will be determined from the results of Fare Compliance Surveys undertaken by TfNSW.</p>
Hours measured	As determined by TfNSW based on patronage
KPI	At least 95% of passengers inspected are travelling with a valid ticket
Class	Class 1
Measurement methodology	
Measurement starting point	Six monthly periods commencing on 1 July and 1 January
Calculation	<p>The Fare Compliance Survey is a sampling survey undertaken where the sample size is sufficient to enable the results to be considered representative of the total patronage, with minimal sample error.</p> <p>The number of passengers identified to be travelling with a non-valid ticket is divided by the number of passengers surveyed to provide an initial estimate, which is then adjusted by relevant patronage to provide a population estimator of fare evasion.</p>
KPI Reporting Period	Six-Monthly
Measurement unit	Passengers who are travelling with a valid ticket on the Contract Bus, Contract LRV or Contract Ferry
Data source	TfNSW Fare Compliance Survey
Measurement responsibility	TfNSW
Reporting frequency	Six-Monthly

9.5 Incident Management

KPI	Table 19
Name	Incident Resolution
Description	<p>Incident resolution aims to ensure that Incidents are managed in a timely and orderly manner, such that passenger services may resume as quickly as possible, and operate in accordance with the Timetable.</p> <p>The Operator must commence and continue work to minimise the impact of the Incident, including the implementation of mitigation strategies, in accordance with Incident Classification and Management Table in Attachment 1 of this Schedule 4.</p> <p>In this KPI:</p> <p>Incident means any unplanned event which impacts a Service and causes, or may cause, an interruption to a Service operating in accordance with a Timetable or Dedicated School Service Timetable.</p> <p>Such unplanned events include the degradation of the performance of any Service.</p> <p>Replacement Bus means a Bus used to provide a Service which cannot be provided using a Contract Vehicle.</p> <p>Major Incidents means an Incident classified as a 'Major Incident' under the Incident Classification and Management Table in Attachment 1 of this Schedule 4.</p> <p>Significant Incidents means an Incident classified as a 'Significant Incident' under the Incident Classification and Management Table at Attachment 1 of this Schedule 4.</p> <p>Minor Incidents means an Incident classified as a 'Minor Incident' under the Incident Classification and Management Table at Attachment 1 of this Schedule 4.</p>
Hours measured	24 x 7
KPI	<p>(i) All Major Incidents are managed in accordance with the Incident Classification and Management Table in Attachment 1 of this Schedule 4.</p> <p>and</p> <p>(ii) No more than 1 Significant Incident is not managed in accordance with the Incident Classification and Management Table in Attachment 1 of this Schedule 4.</p>
Class	Class 2
Measurement methodology	
Measurement starting point	<p>In relation to the KPI Reporting Period, the starting point is the first day of the KPI Reporting Period</p> <p>In relation to the individual KPI resolution starting point, the starting point is the point at which an Incident has been identified by the Operator (or should have been identified by the Operator). TfNSW must be informed of the Incident in accordance with the Incident Classification and Management Table in Attachment 1</p>
Calculation	<p>The number of Major Incidents managed in accordance with Incident Classification and Management Table in Attachment 1 of this Schedule 4.</p> <p>The number of Significant Incidents not managed in accordance with the Incident Classification and Management Table in Attachment 1 of this Schedule 4.</p>
KPI Reporting Period	Calendar Month
Measurement unit	Incident
Data source	Operator Incident records, Transport Management Centre operated by RMS Supported by on-time running data including PTIPS
Measurement responsibility	Operator

KPI	Table 19
Name	Incident Resolution
Reporting frequency	Monthly

9.6 Reporting

KPI	Table 20
Name	Reporting
Description	<p>This KPI aims to ensure all reports required to be provided under the Transaction Documents are available to TfNSW within the contractually agreed timeframe. This KPI measures the time taken to deliver reports starting from the report is due until the time that the reports are available for TfNSW. The scope is for all reports as set out in the Reporting Schedule.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% within requirements of Reporting Schedule
Class	Class 2
Measurement methodology	
Measurement starting point	<p>In relation to the KPI Reporting Period, the starting point is the first day of the KPI Reporting Period</p> <p>In relation to the individual KPI resolution starting point, the starting point is the point at which a Monthly Operational Report is due in accordance with Schedule 5 (Reporting).</p>
Calculation	100 x (Total number of reports presented within the required timeframe during the KPI Reporting Period / total number of reports due to be presented during the KPI Reporting Period)
KPI Reporting Period	Calendar Month
Measurement unit	Reports
Data source	<p>Prior to Automation of data source(s): Reporting tools</p> <p>Post Automation of data source(s): Where possible, report to be generated directly from installed automated systems such as ticketing, traffic priority etc</p>
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 21
Name	Provision of Information
Description	<p>This KPI aims to ensure that responses to requests for information about Services are provided in a reasonable timeframe. Such requests for information could arise from varying sources, but would include information required to provide Ministerial responses, answering customer enquiries, providing information required by legislation, providing information to support transport planning etc.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% within agreed timeframe (timeframe to be agreed for categories of information)
Class	Class 2
Measurement methodology	
Measurement starting point	<p>In relation to the KPI Reporting Period, the starting point is the first day of the KPI Reporting Period</p> <p>In relation to the individual KPI resolution starting point, the starting point is to be agreed for categories of information nominated above</p>
Calculation	100 x (Total number of information requests responded to within the required timeframe during the KPI Reporting Period / total number of information requests during the KPI Reporting Period)
Period of calculation	Calendar Month
Measurement unit	Requests for information
Data source	Record of requests
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

9.7 Data Maintenance

KPI	Table 22
Name	Data Maintenance
Description	This KPI aims to ensure critical information is accurate and available to customers and TfNSW within the times set out in accordance with the Contract. This KPI measures the currency and accuracy of Timetable, Routes, GIS mapping, Transit Stops, etc. Information which impacts passenger information or the correct calculation of fares must be accurate and current.
Hours measured	24 x 7
KPI	Zero errors in information on the Operator website and OSD which impacts passenger information for all Services operated
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	Zero errors in Route, GIS mapping, Transit Stop and Timetable information which impacts passenger information or the correct calculation of fares provided on the Operator website and OSD counted over the Calendar Month
KPI Reporting Period	Calendar Month
Measurement unit	Errors in information provided
Data source	Website, OSD
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

9.8 Implementation of projects

KPI	Table 23
Name	Project On Time Delivery
Description	<p>Measures the percentage of Projects that are delivered On Time. Of particular interest to TfNSW is the implementation of Governmental Agency initiatives.</p> <p>In this KPI 23 only:</p> <p>On Time means a Project is delivered to within 5% of the original agreed schedule as varied by any approved change requests.</p> <p>Project means any project nominated by TfNSW (including any nominated Proximate Work Activity),</p>
Hours measured	N/A
KPI	100%
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	100 x Number of Projects delivered On Time in the KPI Reporting Period/ Total number of Projects delivered in the KPI Reporting Period
KPI Reporting Period	Calendar Month
Measurement unit	Percentage of Projects delivered On Time
Data source	Project reports, plans and records
Measurement responsibility	Operator
Reporting frequency	Monthly

9.9 CCTV and Duress Alarm

KPI	Table 24
Name	CCTV and Duress Alarm Reliability
Description	<p>Measures the reliability of the closed circuit television (CCTV) system. For avoidance of doubt:</p> <ul style="list-style-type: none"> • CCTV data reliability measures the retrieval of quality images from designed coverage areas; and • failure to identify people in CCTV images due to improper maintenance, including cleaning, is deemed to be a failure to retrieve images. <p>Measures the reliability of the duress alarm system. For avoidance of doubt duress alarm reliability does not include known communication black spots.</p>
Hours measured	N/A
KPI	<p>100% of CCTV images successfully retrieved</p> <p>100% of duress alarms responded to within 30 seconds</p>
Class	Class 1
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	$100 \times (\text{Number of Incidents for which CCTV images were successfully retrieved and duress alarms responded to within 30 seconds}) / (\text{Total number of Incidents requiring retrieval of CCTV images plus Total number of Incidents for which the duress alarm was activated})$
KPI Reporting Period	Calendar Month
Measurement unit	Percentage of CCTV images successfully retrieved and duress alarms responded to within 30 seconds
Data source	Requests for images/Records of duress alarm calls
Measurement responsibility	Operator
Reporting frequency	Monthly

Attachment 1 - Incident Classification and Management

DEFINITION	MAJOR INCIDENT	SIGNIFICANT INCIDENT	MINOR INCIDENT
Impact on Service performance	Service unavailable or seriously delayed for affected customers	Service seriously delayed for affected customers. A recurring Minor Incident	Service is delayed causing minor disruption or inconvenience for affected users
Extent of Impact	Impacts 350 or more customers. Any serious injury	Potentially impacts more than 50 but less than 350 customers	Impacts less than 50 customers
Impact on productivity and reputation	Potential for adverse impact on TfNSW and Operator's reputation through negative press coverage and many unsatisfied customers.	May result in customer inconvenience and increase in unsatisfied customers. Likely to raise serious public concern.	May result in some customer inconvenience and unsatisfied customers
The Operator must work to resolve the Incident as quickly as possible	Continuously until the Incident is resolved	Continuously until the Incident is resolved	Within business hours until the Incident is resolved
Minimise impact of the Incident	The Operator must immediately commence mitigation of the Incident to mitigate the impact on customers. Mitigation may include redeployment of other Service modes, subject to reasonable performance being maintained on other Service modes impacted by the mitigation.	The Operator must immediately commence mitigation of the Incident to mitigate the impact on customers. Mitigation may include redeployment of other Services modes, subject to reasonable performance being maintained on other Service modes impacted by the mitigation.	N/A
KPI Credits	If the Incident is caused by the Operator, KPI Credits will only apply to Services directly impacted by the Incident and will not apply to Services degraded by reasonable mitigation strategies.	If the Incident is caused by the Operator, KPI Credits will only apply to Services directly impacted by the Incident and will not apply to Services degraded by reasonable mitigation strategies.	N/A
Timeframe to inform TfNSW and customers on a Service of delay to the Service in accordance with paragraph 5 of Schedule 1	Every 15 mins	15 mins then as requested by TfNSW	On request
If Incident is not resolved within the required timeframe	Escalate according to agreed processes	Escalate according to agreed processes	Escalate according to agreed processes

DEFINITION	MAJOR INCIDENT	SIGNIFICANT INCIDENT	MINOR INCIDENT
If Incident is not resolved within two times the required timeframe	Escalate according to agreed processes	Reclassify Incident as Major Incident	Escalate according to agreed processes

Schedule 5 - Reporting

Definitions and Interpretation

1.1 In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to a paragraph is a reference to a paragraph in this Schedule.

1.2 In this Schedule, the following words have the following meanings:

Ad Hoc Reports or **AHR** has the meaning given in paragraphs 4 and 11 to this Schedule.

Annual Financial Report or **AFR** has the meaning given in paragraphs 4 and 10.

Half Yearly Financial Report or **HFR** has the meaning given in paragraphs 4 and 10.

Monthly Commercial Report or **MCR** has the meaning given in paragraph 4 and 7.

Monthly Invoice Report or **MIR** has the meaning given in paragraph 4 and 8.

Monthly Operational Report or **MOR** has the meaning given in paragraph 4 and 5.

Monthly Performance Report or **MPR** has the meaning given in paragraph 4 and 6.

PTIPS means the service tracking and priority equipment installed on Contract Vehicles, which for the avoidance of doubt forms part of the TfNSW Systems and Equipment.

Quarterly Executive Report or **QER** has the meaning given in paragraph 4 and 9.

TODIS means the Transport Operational Data Interface Specification as advised by TfNSW from time to time.

2. Reporting Principles

- 2.1 In accordance with Clause 34 of the Contract, the Operator must provide all reports and data in accordance with this Schedule 5 and at such other times TfNSW may require from time to time.
- 2.2 In accordance with Clause 39.2 of the Contract, the Operator acknowledges and agrees that TfNSW, or a person authorised by TfNSW, may conduct audits on the contents of reports and data provided by the Operator and the Operator must comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits. Such audit reports will be considered in the relevant governance forums as set out in Schedule 6 of the Contract. The Operator must make available to TfNSW on request all reports and underlying data in the format as required by TfNSW.

3. Frequency and Format of Reporting

- 3.1 The Operator must provide reports and data to TfNSW (or any person authorised by TfNSW) in accordance with the timeframes specified in this Schedule 5 and at such other times as may be required by TfNSW from time to time.
- 3.2 The Operator must provide reports and data to TfNSW (or any person authorised by TfNSW) in the format specified in this Schedule 5 for the reports and data identified or in such other format as TfNSW may specify from time to time.
- 3.3 The Operator acknowledges it may be required to provide reports and/or data under this paragraph 3 in any one or more of the following formats:

- (a) Hard copy (printed) report. If the report contains information that is presented in colour, the hard copy must also be in colour.
- (b) Electronic copy report meaning a report that is presented in an electronic format reasonably required by TfNSW.
- (c) Electronic transfer meaning a report that is presented in a format reasonably required by TfNSW, including but not limited to the TODIS for OSD and reports submitted electronically via a reporting interface and/or web-portal specified by TfNSW from time to time.

4. Overview of Reporting Requirements

4.1 The Operator must provide the following reports and data to TfNSW (or any person authorised by TfNSW) in accordance with this Schedule 5 (and any Annexures to this Schedule 5) at the following times:

- (a) Monthly Operational Report: Within 10 Business Days of the start of the Calendar Month.
- (b) Monthly Performance Report: No later than 5 Business Days prior to the date of the Monthly Service Delivery Forum meeting referred to in paragraph 2.1(a) of the Governance Schedule.
- (c) Monthly Commercial Report: A written report no later than 5 Business Days prior to the date of the Monthly Commercial Forum meeting referred to in paragraph 2.1(b) of the Governance Schedule.
- (d) Monthly Invoice Report: A report provided by the Operator to TfNSW in accordance with paragraph 8 of this Schedule 5 within 5 Business Days prior to the start of the Calendar Month.
- (e) Quarterly Executive Report: A report provided by the Operator to TfNSW no later than 10 Business Days prior to the date of the Quarterly Executive Forum meeting referred to in paragraph 2.1(c) of the Governance Schedule.
- (f) Half Yearly Financial Report: No later than 15 January of any Contract Year during the Term.
- (g) Annual Financial Report: No later than two months of the end of each Financial Year during the Term.
- (h) Ad-Hoc Reports: In the format and at such times as requested by TfNSW from time to time during the Term.
- (i) Data: The Operator must provide TfNSW with access to all ticketing, OSD, PTIPS and SSTS data at such times as requested by TfNSW in accordance with Clause 19 of the Contract.

5. Reporting requirement - Monthly Operational Reporting:

5.1 The Operator acknowledges and agrees the Monthly Operational Report must satisfy the following requirements:

Monthly Operational Report	Description
MOR 1: Value of ticket sales, actual cash received for Ticket sales by Ticket type	MOR 1 reflects the value of ticket sales and the actual cash received by the Operator from Ticket sales for the Calendar Month by Ticket type. The Operator must accurately report in the MOR all cash or other payment received for the sale of every approved Ticket type.
MOR 2: Service Kilometres Travelled	MOR 2 reflects the actual Service kilometres travelled by Contract Vehicles in the performance of the Services for the Calendar Month including: <ul style="list-style-type: none">▪ total Services;▪ minus Cancelled Trips and Incomplete Trip kilometres;▪ total operated In-Service kilometres;▪ total Dedicated School Service In-Service Kilometres;▪ minus Cancelled Trip and Incomplete Trip kilometres for the Dedicated School Service;▪ total In-Service Kilometres;▪ total other kilometres; and▪ total dead running kilometres.
MOR 3: Operational performance data	MOR 3 reflects a number of key operational performance results for each Calendar Month: <ul style="list-style-type: none">▪ Service by Route;▪ Route description;▪ Published Timetabled Trips;▪ number of Incomplete Trips;▪ number of Cancelled Trips;▪ Trips that are Early;

Monthly Operational Report	Description
	<ul style="list-style-type: none"> ▪ Trips that are Late ▪ Trips that are Late as a result of late train arrival at station; ▪ Contract Vehicle crowded on Route; ▪ Timetabled accessible Trips; and ▪ accessible Trips that are Incomplete Trips or Cancelled Trips. For the avoidance of doubt this means accessible Services not operating to accessible timetabled trip/s.
MOR 4: Incomplete or cancelled Trips	MOR 4 reflects the actual kilometres travelled for the Calendar Month: <ul style="list-style-type: none"> ▪ Service by Route; ▪ identification (registration number or equivalent); ▪ scheduled time; ▪ scheduled date; ▪ Incomplete Trip or Cancelled Trip; ▪ Non-Operational Kilometres; ▪ details of reason for Incomplete Trip or Cancelled Trip.
MOR 5: Passenger data by Route	MOR 5 provides the patronage data per Route for the Calendar Month.
MOR 6: Customer Feedback	MOR 6 records the total number of different types of customer feedback received by the Operator or on the Operator's behalf. MOR 6 must include details of customer feedback received from the following sources: <ul style="list-style-type: none"> ▪ mail; ▪ telephone; ▪ email; ▪ DCIS (Transport Infoline); ▪ the Operator's website;

Monthly Operational Report	Description																																													
	<ul style="list-style-type: none">▪ matters referred to the Operator by TfNSW; and▪ any new TfNSW Systems and Equipment that may be introduced in accordance with Clause 19 of the Contract.																																													
MOR 7: Timetable and Route Changes	MOR 7 reflects any Timetable change and any change to a Trip or Service during the preceding Calendar Month.																																													
MOR 8: Contract Bus Movements	<p>MOR 8 reflects Contract Bus movements that occurred in the preceding Calendar Month.</p> <table><tr><td colspan="3">SUMMARY SHEET</td></tr><tr><td colspan="3">MONTHLY REPORT</td></tr><tr><td colspan="3">CHANGES TO CONTRACTED BUS FLEET</td></tr><tr><td></td><td>PERIOD COVERED</td><td>Jan-13</td></tr><tr><td></td><td>REGION</td><td></td></tr><tr><td></td><td>OPERATORS NAME</td><td></td></tr><tr><td></td><td>REPORT SUBMITTED BY:</td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td>FORM NO</td><td>BUS FLEET CHANGE EVENT</td><td>TOTAL CHANGES IN THIS PERIOD</td></tr><tr><td>NB1</td><td>NEW REPLACEMENT BUS and RETIRED BUS</td><td></td></tr><tr><td>NB2</td><td>NEW GROWTH BUS</td><td></td></tr><tr><td>NB3</td><td>REGISTRATION CHANGE</td><td></td></tr><tr><td>NB4</td><td>CHANGE OF BUS LOCATION</td><td></td></tr><tr><td>NB5</td><td>BUS RETIRED FROM SERVICE (NOT REPLACED)</td><td></td></tr><tr><td>NB 1 TO NB5</td><td>COMBINED TOTAL</td><td>0</td></tr></table> <p>Where there have been no changes to any of the above reports in the preceding Calendar Month the Operator must submit MOR 8 with a “nil” record.</p>	SUMMARY SHEET			MONTHLY REPORT			CHANGES TO CONTRACTED BUS FLEET				PERIOD COVERED	Jan-13		REGION			OPERATORS NAME			REPORT SUBMITTED BY:					FORM NO	BUS FLEET CHANGE EVENT	TOTAL CHANGES IN THIS PERIOD	NB1	NEW REPLACEMENT BUS and RETIRED BUS		NB2	NEW GROWTH BUS		NB3	REGISTRATION CHANGE		NB4	CHANGE OF BUS LOCATION		NB5	BUS RETIRED FROM SERVICE (NOT REPLACED)		NB 1 TO NB5	COMBINED TOTAL	0
SUMMARY SHEET																																														
MONTHLY REPORT																																														
CHANGES TO CONTRACTED BUS FLEET																																														
	PERIOD COVERED	Jan-13																																												
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NB5	BUS RETIRED FROM SERVICE (NOT REPLACED)																																													
NB 1 TO NB5	COMBINED TOTAL	0																																												
MOR 9: Patronage by time of day	MOR 9 is used to record the total number of passengers by time of day.																																													

<p>MOR 10:</p> <p>Safety performance indicators</p>	<p>MOR 10 provides a set of safety related performance indicators.</p> <p>The safety performance section of the Monthly Operations Report must include as a minimum:</p> <ul style="list-style-type: none"> ▪ proactive management, including: <ul style="list-style-type: none"> A. percentage of planned leadership visits completed (the total number of planned visits completed as compared to the total number planned for the month); B. percentage of planned safety actions closed out (within timeframe); C. percentage of planned safety audits completed; and D. safety audits, including the type, outcomes and non-conformances, status (raised/closed) of issues, preventative actions. ▪ operations and staff, including: <ul style="list-style-type: none"> A. lost time injury frequency rate (injury and illness) based on the following formula: <p>Lost time injury frequency rate = Number of lost time injuries/illnesses in the month/(Total hours worked in the month) x 1,000,000;</p> <p>A lost time injury is as defined in the Australian Standard: Workplace Injury and Disease Recording Standard (Australian Standard 1885.1 - 1990);</p> <p>Work related (compensable) injuries and illnesses are to be included;</p> B. notifiable incidents (safety and environmental) with a description; C. driver human error incidents per vehicle operating kilometre; and D. the number of drug and alcohol tests undertaken and the total number of negative and positive results. ▪ customer impact, including: <ul style="list-style-type: none"> A. number of customer injuries per 100,000 customer Boardings (directly attributable to the Operator Activities); B. number of customer injuries from slips, trips and falls per 100,000 customer journeys (subset of above); and C. fatalities (on and off board) (all fatalities with a subset of those related to self harm);
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	<ul style="list-style-type: none"> the disruption to Services arising from any accident; and any Incident and accident investigation, including the lessons learnt, recommendations made, actions taken and any changes to procedures, working practices and/or the Safety Management System. <p>Accreditation, Bus Accreditation, Certificates of Operation and Certificates of Survey</p> <p>The Accreditation, Bus Authorisation, Certificates of Operation and Certificates of Survey section of the Monthly Operations Report must include as a minimum:</p> <ul style="list-style-type: none"> record of engagements with the Office of the National Rail Safety Regulator (ONRSR), Safework NSW, the Australian Maritime Safety Authority and RMS; and ongoing actions for maintaining Accreditation and similar Authorisations relevant to conducting the Services.
MOR 11	<p>MOR 11 provides reports on critical asset management performance of the Assets</p> <p>This report should identify any Asset Management Activities scheduled as part of the Asset Management Plan or Maintenance Works Program for the relevant month which have not been undertaken during the month and any non scheduled Asset Management Activities undertaken during the month. It should also identify any changes to the Asset Maintenance Standards made during the month.</p>

6. Reporting Requirement - Monthly Performance Report

6.1 The Operator must provide the Monthly Performance Report in accordance with paragraph 3 of Schedule 4 of the Contract.

6.2 The Operator acknowledges and agrees the Monthly Performance Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
Monthly Service Delivery Forum	<p>MPR for all KPIs including trend analysis</p> <p>The following to be provided by exception as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> KPI corrective action plan for KPI Defaults in the preceding Calendar Month; KPI performance and performance exceptions; Service trends including any capacity constraints; 	<p>5 Business Days</p> <p>prior to the Monthly Service Delivery Forum</p>	<p>Electronic Copy</p> <p>To TfNSW or any person authorised by TfNSW</p>

	<ul style="list-style-type: none"> ▪ new and outstanding root cause analyses identifying appropriate preventative action; ▪ post Incident review reports; ▪ new and existing escalations and plans to resolve; ▪ recommended improvements to operational processes; ▪ progress against improvement plans; ▪ satisfaction survey results and trend analysis; ▪ customer feedback report; ▪ Incomplete Trips or Cancelled Trips report; ▪ actual patronage Boarding by Route and Ticket type; ▪ patronage and type of patronage per Route (cash/pre-paid/adult/concession/SSTS /Pensioner Excursion Travel/travel free of charge etc.); ▪ status of actions to improve interactions with any and all third party operators; and ▪ refresh plans for assets nearing end of useful life. 		
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7. Reporting Requirement - Monthly Commercial Report

7.1 The Operator acknowledges and agrees the Monthly Commercial Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
Monthly Commercial Forum	<p>The following to be provided as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> ▪ Operator organisational changes, including requests for changes to Key Personnel; ▪ any commercial changes to the Services environment; ▪ any Service Variations; 	No later than 5 Business Days prior to the Monthly Commercial Forum	<p>Electronic Copy</p> <p>To TfNSW or any person authorised by TfNSW.</p>

	<ul style="list-style-type: none"> ▪ KPI Defaults and associated KPI Credits and accounting of KPI Credits to date; ▪ applications for an Excused Performance Incident in accordance with the KPI Schedule; ▪ financial summary (year to date) and trend analysis; ▪ status of invoicing, payment issues, rate validation issues and billing disputes outstanding; ▪ inventory report including Contract Bus movements and Contract Bus movement reports; ▪ Contract Vehicle and or Contract Depot replacement plans (detailing the forecast for the following two 12 month Financial Year periods); ▪ any allegations of fraud and corrupt conduct; and ▪ any Incidents which may generate public and/or media interest in the Operator. 		
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8. Reporting requirement - Monthly Invoice Report

8.1 The Operator acknowledges and agrees that it must retain records of invoicing information for the duration of the Term and as otherwise required by Law.

8.2 The Operator acknowledges and agrees the Monthly Invoice Report must satisfy the following requirements:

Report	Description	Frequency	Format
Variance Report	Identification and clarification of changes from the prior month's invoice line item charges.	Within 5 Business Days of the start of the Calendar Month for the preceding Calendar Month	Electronic Copy
Project Report	Tracking of Project (as defined in Table 23 of the KPI Schedule) expenditure by financial year and for the life of the Project (as defined in Table 23 of the KPI Schedule).	Within 5 Business Days of the start of the Calendar Month for the preceding Calendar Month	To TfNSW or any person authorised by TfNSW

Budget Support	Invoicing information to support budgeting and forecasting requirements.	On request
Fares	<p>Actual fare collection by Ticket type.</p> <p>Calculated fares by Ticket type.</p> <p>Actual cash collected for the preceding Calendar Month.</p>	<p>Within 5 Business Days of the start of the Calendar Month for the preceding Calendar Month</p>

9. Reporting requirement - Quarterly Executive Report

9.1 The Operator acknowledges and agrees the Quarterly Executive Report must satisfy the following requirements:

Forum	Report Description	Frequency	Format
Quarterly Executive Forum	<ul style="list-style-type: none"> MPR Quarterly Summary for all KPIs including trend analysis <p>The following to be provided as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> achievements, completed activities and projects; overall performance against the results of customer satisfaction surveys in accordance with Schedule 6; improvement opportunities; list of upcoming activities and projects; relationship effectiveness issues between the Operator and TfNSW; engagement processes issues; Operator organisational changes; Operator strategic changes; capacity report on the Service, covering peaks and floors, trends, utilisation and planning to assess the Newcastle public transport network and the Newcastle public transport network utilisation; any exceptions to the Maintenance Works Program that are impacting the Services; any allegations of fraud and corrupt conduct; and any Incidents which may generate public and/or media interest in the Operator. 	No later than 10 Business Days prior to the Quarterly Executive Forum	Electronic Copy

10. Reporting requirement – Half Yearly Financial Report and Annual Financial Report

- 10.1 Half Yearly Financial Report - The Operator must provide a half yearly Financial Report, to TfNSW within 10 Business Days of completion, and by no later than 15 January in each Contract Year of the Term.
- 10.2 Annual Financial Report - The Operator must provide an annual Financial Report, independently audited, to TfNSW within 2 months of the end of each Financial Year of the Term.
- 10.3 Audited Financial Statements - The Operator must also provide certified copies of its audited annual financial statements for each Financial Year together with all related directors' and auditor's reports, to TfNSW as soon as is practicable, and by no later than 31 October each Contract Year of the Term.
- 10.4 Annual Total Cost Line Item Report - The Operator must provide the detailed costs per cost line item report in the format specified in Annexure 1 to this Schedule 5 to TfNSW annually within 20 Business Days of the end of each Financial Year of the Term.
- 10.5 Each of the documents specified in paragraphs 10.1 to 10.4 above must be submitted to TfNSW in electronic format.
- 10.6 For the purposes of this item 10, each 'Financial Report' a detailed report and analysis of the Operator's financial performance which must include the following information:
 - 10.6.1 balance sheets;
 - 10.6.2 cash flow reports;
 - 10.6.3 profit and loss statements;
 - 10.6.4 any other financial analysis required by TfNSW.

11. Maintenance Reports

- 11.1 The Operator must provide a report on its compliance with the then current Maintenance Works Program within 20 Business Days after each anniversary of the NLR Handover Date.
- 11.2 The Operator must provide an updated copy of the Operator plans in accordance with Clause 35 and the Asset Management Plan in accordance with Clause 30.3.

Ad-Hoc ReportsFleet availability, performance
and defect profile**(i) Operator's Contract Bus fleet availability, performance and defect profile.**

Category	Total number
Fleet size (total No. contracted buses)	
AM peak requirement (weekday)	
AM peak time (weekday) insert times from to	
PM peak requirement (weekday)	
PM peak time (weekday) insert times from to	
Spare buses available at AM	0
Spare buses available at PM	0
Percentage AM spare buses	
Percentage PM spare buses	
RMS Defect Notices issued during reporting period	
Caution	0
Minor	0
Major	0
TOTAL	0
Driver bus work requests generated at depot	
No. of bus change overs in service for mechanical/electrical fault or breakdown	
No. of bus change overs in service for collision, other incident or non- mech/elec problem	
% of all services requiring change over (Note: a)	
Service faults per 100,000 kms (Note: b)	

a) Total No. of Change Overs divided by the total number of services.

b) Total No. of RMS and Driver bus work requests divided by (Total No. of Kms divided by 100,000).

c) This report shows last working weekday of reporting quarter - excluding public holiday.

(ii) Operator's Contract LRV availability, performance and defect profile

	<p>The reporting requirements in relation to Contract LRV availability, performance and defect profile will be advised on an ad hoc basis</p> <p>(iii) Operator's Contract Ferry availability, performance and defect profile</p> <p>The reporting requirements in relation to Contract Ferry availability, performance and defect profile will be advised on an ad hoc basis</p>
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13. Data Requirements

- 13.1 The Operator acknowledges and agrees that TfNSW may require access to data collected by the Operator from time to time in accordance with Clauses 33 and 39.2 of the Contract. The following table outlines specific data requirements the Operator must collect commencing from the Services Commencement Date and for the duration of the Term.
- 13.2 The Operator acknowledges and agrees that TfNSW may request additional data for Projects (as defined in Table 23 of the KPI Schedule) from time to time during the Term:

Service	Report	Frequency	Format
OSD data transfer	<ul style="list-style-type: none"> Data required of the type and in the format specified in TODIS or any replacement system, as modified from time to time, including <ul style="list-style-type: none"> Timetable, Route and Transit Stop data; and shift data, including Driver, Master and Crew shifts. Data required from automated and electronic ticketing systems 	<p>As specified in the TODIS</p> <p>2 weeks in advance of any change</p>	Data transfer as specified by TODIS
PTIPS	<ul style="list-style-type: none"> Provide continued access to all PTIPS data 	Daily	As specified by TfNSW's PTIPS requirements as set out in section 4 of Schedule 1
Ticketing data	<ul style="list-style-type: none"> Provide continued access to all Ticketing data 	Daily	As specified by TfNSW's electronic ticketing system requirements as set out in section 4 of Schedule 1

Annexure 1

Annual Total Cost Line Item Report

As set out in paragraph 10.4 the Operator is to provide detailed costs per cost line item in accordance with the cost category list as set out below:

Bus			
Cost line items (2015-16)		Reporting year	Previous Year
		30 June	30 June
Drivers - Salary, wages, overtime and oncosts	\$'000	0	0
Workshop Staff - Salary, wages, overtime and oncosts	\$'000	0	0
Cleaners - salary, wages, overtime and oncosts	\$'000	0	0
Fuel - Diesel	\$'000	0	0
Fuel - LPG	\$'000	0	0
Fuel - CNG	\$'000	0	0
Contract Bus other parts and consumables	\$'000	0	0
Contract Bus maintenance and repairs	\$'000	0	0
Contract cleaning	\$'000	0	0
Depot related cleaning, maintenance and repairs	\$'000	0	0
Contract Bus operating costs - Transit Stop signage	\$'000	0	0
Contract Bus operating costs - Timetables	\$'000	0	0
Contract Bus operating costs - Livery	\$'000	0	0
Contract Bus operating costs - Uniforms	\$'000	0	0
Contract Bus registration costs	\$'000	0	0
Contract Bus refurbishments	\$'000	0	0
Insurance - Bus specific	\$'000	0	0
Ticketing costs	\$'000	0	0
Security	\$'000	0	0
Cash collection	\$'000	0	0
Operating lease expenses	\$'000	0	0
Other Contract Bus specific overhead costs	\$'000	0	0
Other costs	\$'000	0	0
Total	\$'000	0	0
Statement of FTEs			
Drivers	FTEs	0	0
Workshop	FTEs	0	0
Cleaners	FTEs	0	0
Other	FTEs	0	0
Total	FTEs	0	0
Operational parameters			
Number of Contract Buses	number	0	0
Contract Bus kilometres per year - in service	km	0	0
Contract Bus kilometres per year - dead running	km	0	0
Fuel Consumed - Diesel	Litres	0	0
Fuel Consumed - LPG	Litres	0	0

Fuel Consumed - CNG

Litres

0	0
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Light Rail

Cost line items(2015-16)		Year ending	
		30 June	30 June
Drivers - Salary, wages, overtime and oncosts	\$'000	0	0
Customer Service Officers - Salary, wages, overtime and oncosts	\$'000	0	0
Operations Control Centre Staff - Salary, wages, overtime and oncosts	\$'000	0	0
Workshop Staff - Salary, Wages, overtime and oncosts	\$'000	0	0
Cleaners - Salary, wages, overtime and oncosts	\$'000	0	0
Contract Cleaning	\$'000	0	0
Electricity - Traction	\$'000	0	0
Contract LRV Maintenance - Parts and consumables	\$'000	0	0
Contract LRV Maintenance - Third party	\$'000	0	0
Contract LRV Refurbishments - Parts and consumables	\$'000	0	0
Contract LRV Refurbishments - Third party	\$'000	0	0
NLR Fixed Infrastructure Maintenance - Parts and consumables	\$'000	0	0
NLR Fixed Infrastructure Maintenance - Third party	\$'000	0	0
NLR Fixed Infrastructure Refurbishments - Parts and consumables	\$'000	0	0
NLR Fixed Infrastructure Refurbishments - Third party	\$'000	0	0
Systems (e.g. control system)	\$'000	0	0
Contract LRV Operating Costs - Timetables	\$'000	0	0
Contract LRV Operating Costs - Livery	\$'000	0	0
Contract LRV Operating Costs - Uniforms	\$'000	0	0
Insurance - Contract LRV Specific	\$'000	0	0
Ticketing costs	\$'000	0	0
Security	\$'000	0	0
Cash collection	\$'000	0	0
Operating lease expenses	\$'000	0	0
Other Contract LRV specific overhead costs	\$'000	0	0
Other costs	\$'000	0	0
Total	\$'000	0	0

Statement of FTEs

Drivers	FTEs	0	0
Customer service officers	FTEs	0	0
Operations control centre Staff	FTEs	0	0
Workshop	FTEs	0	0
Cleaners	FTEs	0	0
Other	FTEs	0	0
Total	FTEs	0	0

Operational parameters

Number of Contract LRVs	number	0	0
Contract LRV kilometres per year - in service	km	0	0

Contract LRV kilometres per year - dead running	km	0	0
Energy consumed - Traction	MWh	0	0

Ferry

Cost line items (2015-16)		Year ending	
		30 June	30 June
Masters - Salary, wages, overtime and oncosts	\$'000	0	0
Crew - Salary, wages, overtime and oncosts	\$'000	0	0
Workshop Staff - Salary, wages, overtime and oncosts	\$'000	0	0
Cleaners - Salary, wages, overtime and oncosts	\$'000	0	0
Fuel	\$'000	0	0
Lubricants	\$'000	0	0
Contract Ferry other parts and consumables	\$'000	0	0
Contract Ferry maintenance and repairs	\$'000	0	0
Contract cleaning	\$'000	0	0
Non- Contract Ferry related cleaning, maintenance and repairs	\$'000	0	0
Other variable costs	\$'000	0	0
Contract Ferry operating costs - Wharf signage	\$'000	0	0
Contract Ferry operating costs - Timetables	\$'000	0	0
Contract Ferry operating costs - Livery	\$'000	0	0
Contract Ferry operating costs - Uniforms	\$'000	0	0
Contract Ferry refurbishments	\$'000	0	0
Insurance – Contract Ferry specific	\$'000	0	0
Ticketing costs	\$'000	0	0
Security	\$'000	0	0
Cash collection	\$'000	0	0
Operating lease expenses	\$'000	0	0
Other Contract Ferry specific overhead costs	\$'000	0	0
Other costs	\$'000	0	0
Total	\$'000	0	0

Statement of FTEs

Masters	FTEs	0	0
Crew	FTEs	0	0
Workshop	FTEs	0	0
Cleaners	FTEs	0	0
Other	FTEs	0	0
Total	FTEs	0	0

Operational parameters

Number of Contract Ferries	number	0	0
Contract Ferry kilometres per year - in service	km	0	0
Contract Ferry kilometres per year - dead running	km	0	0
Fuel	Litres	0	0

Corporate

Cost line items (2015-16)		Year ending	
		30 June	30 June
Corporate Staff - Salaries, wages, overtime and oncosts	\$'000	0	0
Other corporate expenses	\$'000	0	0
Total	\$'000	0	0
Statement of FTEs			
Corporate Staff	FTEs	0	0

Schedule 6 - Governance

1. Introduction

1.1 Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to a paragraph is a reference to a paragraph in this Schedule.

In this Schedule, the following words have the following meanings:

Monthly Commercial Forum means the monthly forum which will focus on commercial matters, described in paragraph 2.1(b).

Monthly Service Delivery Forum means the monthly forum which will focus on the delivery of the services, described in paragraph 2.1(a).

Quarterly Executive Forum means the quarterly forum which will focus on the ongoing relationship between TfNSW and the Operator, described in paragraph 2.1(c).

1.2 General Requirements

The Operator must:

- (a) provide effective governance for its own team to ensure the Services are delivered in accordance with the Contract;
- (b) ensure that the governance model used is aligned with and, where appropriate, integrated with the TfNSW business model;
- (c) take sole responsibility and accountability for the performance of its own subcontractors. Such subcontractors are not required to attend the TfNSW governance forums described in this Schedule; and
- (d) raise issues relating to the delivery of the Services at the Monthly Service Delivery Forums.

2. Governance Regime

2.1 Operational Forums and Reviews

There are a number of forums and reviews the Parties will utilise to manage the relationship and measure the Operator's compliance with the Contract (including its objectives). In addition to these forums and reviews, the Operator must attend ad-hoc meetings with TfNSW as required, such as specific root cause analysis reviews, Project (as defined in Table 23 of the KPI Schedule) status meetings, operational meetings and informal discussions.

The Operator must also meet in a multi operator forum, should TfNSW require.

- (a) Monthly Service Delivery Forum

The Monthly Services Delivery Forums will focus on the ongoing delivery of the services required under the Contract, including service management activities, KPI performance and reporting and customer satisfaction assessments.

The Monthly Services Delivery Forum will take place by the end of the third week of each month and be attended by:

TfNSW Attendees	Operator Attendees
Principal Manager (North and West) (as required)	Managing Director / Chief Executive Officer / General Manager (as required)
Manager Contracts (Chairperson)	Senior Manager
Senior Contracts Officer	Contract Manager or equivalent
	Operations Manager
TfNSW Representative (if not one of the above)	Operator Representative (if not one of the above)

The attendees at the Monthly Services Delivery Forum will address the following, as required:

- (i) Operator's performance in the delivery of the Services and Operator Activities;
- (ii) Service improvement opportunities and service change plans being considered;
- (iii) feedback from community and stakeholder groups on whether the Services are meeting expectations;
- (iv) patronage trends and plans to increase patronage;
- (v) Operator's performance against the Key Performance Indicators, in particular:
 - (A) monthly reporting, including emerging trends;
 - (B) new and outstanding root cause analyses and appropriate preventative action;
 - (C) management of any Incidents; and
 - (D) post Incident reports and cure plans;
- (vi) customer satisfaction surveys;
- (vii) Operator's handling and management of any customer complaints;
- (viii) any workforce/industrial relations issues affecting current/recent performance/service delivery;
- (ix) any emerging significant industrial relations issues with the potential/capacity to effect the overall performance of the Contract;
- (x) identify and approve any improvements to operational processes;
- (xi) any breaches by the Operator, corrective actions to resolve such breaches and progress of corrective actions;
- (xii) interactions between the Operator and other operators (if appropriate) and ways to improve those interactions;
- (xiii) disputes between the Operator and another operator that cannot be resolved by the Operator;
- (xiv) Service Variation or other changes to Services;
- (xv) lifecycle management of assets by the Operator, and tracking against the Maintenance Works Program;
- (xvi) implementation and management of new spares, special tools and equipment by TfNSW and the Operator;
- (xvii) implementation of the Service Development Plan; and
- (xviii) any other issues relating to the performance of the Services or the Operator Activities.

Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Monthly Service Delivery Forum.

(b) Monthly Commercial Forum

The Monthly Commercial Forums will focus on all commercial matters under the Contract. This includes Payments, KPI Credits, set offs, deductions, disputes, contract negotiations, Service Variations and Modifications.

The Monthly Commercial Forum will take place by the end of the third week of each month and be attended by:

TfNSW Attendees	Operator Attendees
Principal Manager North & West (as required)	Senior Manager
Manager Contracts (Chairperson)	Contract Manager or equivalent
Senior Contracts Officer	Chief Financial Officer
Finance Manager (as required)	
TfNSW Representative (if not one of the above)	Operator Representative (if not one of the above)

The attendees at the Monthly Commercial Forum will address the following, as required:

- (i) Staff issues, including changes to any of the Operator's key personnel;
- (ii) organisational changes;
- (iii) raise and attempt to resolve any contractual disputes, prior to issuing a Dispute Notice under the Contract. This includes:
 - (A) review of any Service delivery issues and its significance for TfNSW;
 - (B) review of any Contract issues raised by TfNSW; and
 - (C) tabling KPI Defaults and associated KPI Credits;
- (iv) raise and attempt to resolve disputes between the Operator and another Operator that cannot be resolved between the Operator and the Operator or through the Monthly Service Delivery Forum;
- (v) table and discuss proposed Service changes and other proposed amendments to the Contract;
- (vi) assist with budget planning activities;
- (vii) review financial summary and trending;
- (viii) address any Payment issues, including invoicing, rate validation and billing disputes, and results of benchmarking;
- (ix) review and manage audit activities and outcomes;
- (x) implementation of the Service Development Plan.

Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Monthly Commercial Forum.

(c) Quarterly Executive Forum

The Quarterly Executive Forum will focus on the ongoing relationship between TfNSW and the Operator, the alignment of the Operator and the Contract to TfNSW's business strategies and objectives, performance management, the management of escalated issues and continuing alignment to the governance requirements.

The Quarterly Executive Forum will be held within a month of the end of the relevant quarter and the attendees will be:

TfNSW Attendees	Operator Attendees
Executive Management (as required)	Managing Director or Chief Executive Officer or General Manager
Principal Manager North and West (Chairperson)	Senior Manager or equivalent
Manager Bus Contracts	
TfNSW Representative (if not one of the above)	Operator Representative (if not one of the above)

The attendees at the Quarterly Executive Forum will address the following:

- (i) share achievements, completed activities and projects;
- (ii) table and discuss overall performance feedback and performance of the Operator in its role as representing TfNSW in Newcastle. Where TfNSW considers that the Operator is not performing at the level 'Satisfactory' or 'Good' as defined in paragraph 2.1(e) of this Schedule, the Operator is to advise what action it is taken by it to improve its performance;
- (iii) identify opportunities for improvement;
- (iv) discuss any improvement initiatives identified by the Operator;
- (v) Service improvement opportunities and service change plans being considered;
- (vi) feedback from community and stakeholder groups on whether the Services are meeting expectations;
- (vii) feedback on the state of working relationships with key stakeholders in Newcastle;
- (viii) patronage trends and plans to increase patronage;
- (ix) review of Excused Performance Incidents, Major Incidents (as defined in Attachment 1 of the KPI Schedule) and cure plans;
- (x) any emerging significant industrial relations issues with the potential/capacity to effect the overall performance of the Contract;
- (xi) any exceptions to the Maintenance Works Program that are impacting Services or any Asset Management Failures;
- (xii) communicate TfNSW's strategic direction where appropriate;
- (xiii) review the effectiveness of the relationship between the Operator and TfNSW and related concerns and issues;
- (xiv) communicate organisational changes;
- (xv) enable the Operator to communicate new technologies and service offerings;
- (xvi) develop objectives for the following quarter; and
- (xvii) implementation of the Service Development Plan.

Reports addressing the above items must be delivered by the Operator to TfNSW at least two days prior to each Quarterly Executive Forum.

The Operator represents that its senior executives are committed to making the relationship with TfNSW a success.

(d) Conduct of meetings

All meetings must be conducted in accordance with the following:

- (i) TfNSW will be responsible for publishing the agenda and scheduling the meeting;
- (ii) TfNSW will record the minutes and action items from each meeting and distribute with the agenda for the next meeting;

- (iii) action items not resolved within the agreed timeframe will be escalated as follows:
 - (A) from the Monthly Service Delivery Forum to the Monthly Commercial Forum, or straight to the Quarterly Executive Forum if considered necessary by TfNSW; and
 - (B) from the Monthly Commercial Forum to the Quarterly Executive Forum; and
- (iv) each Party will bear its own costs for attending meetings.

(e) Assessment of Operator's Role As Transport for Newcastle

Following the Quarterly Executive Forum following the end of the Financial Year TfNSW will provide a written assessment of the Operator's performance in representing TfNSW in consultations with stakeholders, planning and delivering a multimodal integrated service for Newcastle and implementing new service initiatives approved by TfNSW. The assessment will be:

- (i) Good – The operator has developed a strong and cooperative working relationship with key stakeholders in Newcastle, has developed high quality service plans in line with TfNSW policy (or has assisted TfNSW in modifying current policy on the basis of evidence based alternative proposals), has fulfilled the requirements outlined in Schedule 1 part 3, has performed its role in introducing new services (including the Light Rail Services) capably and has satisfactorily addressed areas of improvement outlined in previous assessments. There are no areas of improvement identified for the coming year; or
- (ii) Satisfactory – The operator has developed a good working relationship with key stakeholders in Newcastle, has developed service plans in line with TfNSW policy, has generally fulfilled the requirements outlined in Schedule 1 part 3, has performed its role in introducing new services (including the Light Rail Service) adequately and has addressed areas of improvement outlined in previous assessments. There are one or more areas where TfNSW considers there could be improvement in the following year; or
- (iii) Unsatisfactory – the Operator has not diligently managed stakeholder expectations, has weakened TfNSW policy positions in its discussions with third parties, has not fulfilled the requirements of Schedule 1 part 3, has not satisfactorily performed its role in introducing new services (including the Light Rail Services) or has not addressed areas of improvement outlined in previous assessments.

Unless TfNSW has advised the Operator at one of the four quarterly meetings prior to the end of the relevant financial year that TfNSW considers that the Operator is not performing at the level 'Satisfactory' or 'Good', TfNSW cannot assess the annual performance as 'Unsatisfactory'.

Schedule 7 - Fares and Ticketing

1. Full Fares and Concession Fares Applicable on Services

Current Opal Fare Prices as at March 2016.

	Distance	Adult fare	Gold Senior/Pensioner Fare	Concession Fare	Child/Youth Fare
Bus	0-3km	\$2.10	\$1.05	\$1.05	\$1.05
	3-8km	\$3.50	\$1.75	\$1.75	\$1.75
	8+km	\$4.50	\$2.25	\$2.25	\$2.25
Ferry	N/A	\$2.10	\$1.05	\$1.05	\$1.05
Light Rail	N/A	\$2.10	\$1.05	\$1.05	\$1.05

2. Full Fares and Concessions Fares Applicable on Services

The persons identified in the following are Approved Beneficiaries eligible for concession fares prices.

Customer Group	Concession card/s (a sample of which is set out in Part 4 of this Schedule)	Concession fares
Aged 4-15 (inclusive)	No card (Proof of Age Card available to verify holder is under 16)	Child fare
Aged 16 and over	NSW Senior Secondary Card	Half fare
	NSW Tertiary Student Concession Card	
	NSW Tertiary Student Identification Card	
	NSW Half Fare Entitlement Card for Jobseekers	
	Apprentice and Trainee Card	
Pensioners (all ages), seniors, asylum seekers and carers	Pensioner Concession Card Seniors Card – NSW and interstate Concession Entitlement Card (asylum seekers)	Pensioner fares (Pensioner excursion (PET) fare or half fare)











3. Approved Beneficiaries of travel free of charge on Services

The persons identified in the following table will be eligible for free travel

Customer Group	Concession Card/s (a sample of which is set out in Part 4 of this Schedule)	Concession fares
Aged 0-3 (inclusive)	No card	Free Travel
School students eligible for free travel	SSTS card	Free Travel (To/from school/college)
People with disabilities	Ex-member of Defence Forces Pass	Free Travel
	Ex-member of Defence Forces Pass – Blinded Soldier	
	Vision Impaired Persons Pass – NSW and interstate	

Customer Group	Concession Card/s (a sample of which is set out in Part 4 of this Schedule)	Concession fares
Attendant	Transport concession cards marked ' Plus Attendant'	Free travel for Attendant when accompanying card holder
	Companion Card	
Recognised for service	NSW Travelcard	Free Travel
	World War 1 Veteran/Widow	
Employee	Employee Passes issued by TfNSW	Free Travel

4. Sample of concession cards as advised by TfNSW from time to time

Half fare		
Proof of Age Card	NSW Senior Secondary Student	Mature Aged Secondary Student
		
NSW Tertiary Student		
		
NSW Jobseekers	NSW Apprentice/Trainee	
		
Pensioner fares (excursion fare or half fare)		
Pensioners (NSW and Interstate)	Seniors (NSW and Interstate)	NSW War Widow/ers
		

Free travel		
Vision Impaired Person (NSW and Interstate)*	Ex-member of Defence Forces*	Blinded Soldier's Pass
		
WW1 Veteran's Pass	Operator Issued SSTS Travel Pass	NSW Travelcard
		
Attendant (NSW and Interstate)	Assistance Animal Permit	Operator Issued Employee Pass
		

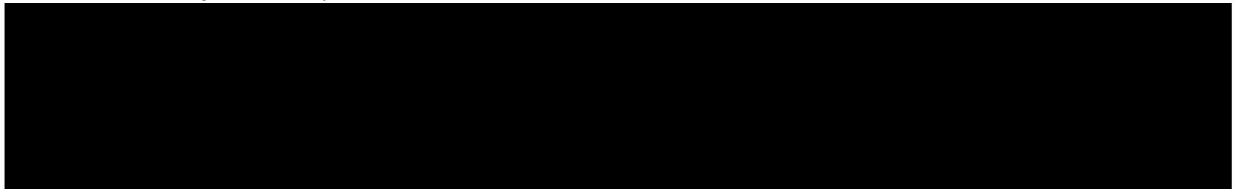
Schedule 8 - Asset Schedule

1. Asset Management Obligations

1.1A Application of Schedule

In this Schedule, unless the context requires otherwise, references to Assets exclude Wickham Interchange, Newcastle Bus Interchange, Wharves and Bus Transit Stops (other than Bus Transit Stop Signage).

1.1 Asset Management System standard



1.2 General obligations

The Operator must:

- (a) carry out the Asset Management Activities to ensure the performance of the Assets enables the Operator to satisfy all requirements of the Contract;
- (b) ensure that only suitably trained and competent personnel are engaged in respect of the Asset Management Activities;
- (c) keep the Assets in a clean and tidy condition and remove all waste, spillage, graffiti, litter and debris, including incident debris, and repair all damage;
- (d) maintain records of all Asset Management Activities carried out in the Asset Information System within 24 hours of the activity occurring;
- (e) conduct Asset Management Activities in accordance with the Asset Management Plan;
- (f) inspect, weed, trim, mow, water, dewater, fertilise, repair, replace, plant all landscaped areas and non-structure areas of the Assets;
- (g) retain appropriate levels of spares (including any rotatable spares); and
- (h) procure, maintain and update an Asset Information System.

1.3 Asset inspection and routine preventative maintenance

- (a) Inspections and routine maintenance of the Assets must be conducted in accordance with the Asset Maintenance Standards.
- (b) Inspections must identify non-compliances and potential non-compliances in the performance of the Operator Activities, defects in and the condition of the Assets.
- (c) The outcomes of inspections must be recorded in the Asset Information System together with the Operator's action plan to rectify any non-compliance.

1.4 Asset replacement and refurbishment

- (a) Replacement and refurbishment of an Asset must be undertaken by the Operator where replacement or restoration of an Asset or components of an Asset is necessary for the Operator to meet the requirements of the Contract and for the Asset to achieve its Design Life.
- (b) Replacement or refurbishment of an Asset must meet the following requirements:
 - (i) where refurbishment of an Asset is undertaken, the functionality and performance of the refurbished Asset must be equivalent to the functionality and performance of the Asset when new; and

- (ii) where replacement is undertaken with a new Asset, the functionality, performance and Design Life of the new Asset must be equivalent to or exceed the functionality, performance and Design Life of the replaced Asset when it was new.

1.5 Maintenance equipment

The Operator must procure any tools and equipment not comprising the State Assets and the TfNSW Systems and Equipment that are required to enable the Operator to comply with the requirements of the Contract including maintaining the Assets in accordance with this Schedule.

1.6 Inventory and inventory control

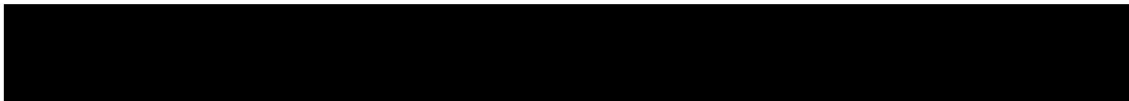
The Operator must maintain a spares inventory at levels that permit the timely maintenance of the Assets through the Term and at the end of the Term, on the basis of continued operation as a going concern.

1.7 Condition monitoring

- (a) The Asset Management System must include a description of how condition monitoring will be used to assess the condition of Assets and how it will be used to inform changes to the Asset Management Plan. The Operator must undertake condition monitoring in order to:
 - (i) identify and prevent as far as practicable, future Asset failures;
 - (ii) identify Assets that require maintenance, replacement or refurbishment;
 - (iii) provide objective analysis of the condition of the Asset which can be used to determine remaining serviceable life; and
 - (iv) enable analysis of trends in performance and reliability of Assets referable to location and system.
- (b) The method and frequency of condition monitoring and the minimum performance at which intervention is required must be:
 - (i) as defined in the Asset Maintenance Standards for that Asset;
 - (ii) as nominated by the manufacturer; and
 - (iii) otherwise sufficient to ensure the Operator's compliance with the requirements of the Contract.
- (c) The Operator must undertake an Asset condition assessment of the State Assets within 6 months of commencement of the relevant State Asset Access Agreement for each State Asset.

2. Asset Maintenance Standards

- (a) The Operator must document and adopt Asset Maintenance Standards that include manufacturer's requirements in technical specifications and performance standards or such higher standards as may be required to meet the obligations of the Contract.
- (b) Where there are no manufacturer's technical maintenance standards for an item of infrastructure the Operator must develop standards in accordance with the following TfNSW documents:



- (c) The Asset Maintenance Standards must cover each Asset and include:
 - (i) the specific performance characteristics which must be maintained;
 - (ii) potential faults or hazards which could affect each performance characteristic;
 - (iii) clearly defined severity ratings for each potential fault or hazard;

- (iv) the severity ratings at which the fault must be rectified or the hazard removed (intervention level);
 - (v) the time period / response time within which any faults must be rectified or hazard removed; and
 - (vi) condition indicators and condition ratings for each specific performance characteristic that will be used to record an objective assessment of the condition of the Asset and Asset type.
- (d) The Operator must review and improve the Asset Maintenance Standards on an ongoing basis throughout the Term to ensure that the Asset Maintenance Standards enable the Operator to comply with its obligations under the Contract.

- (f) The Operator will establish a 'Configuration Change Board' in accordance with the TfNSW Configuration Management Plan.
- (g) The Operator must consult with the TfNSW Asset Standard Authority in relation to any change in Asset Maintenance Standards.

3. Asset Management Plan

- (a) The Operator must update and maintain the Asset Management Plan.
- (b) The Asset Management Plan must contain a 30 year forecast program for the replacement and refurbishment of Assets.
- (c) The program should include the following:
 - (i) Assets to be renewed with supporting justification;
 - (ii) timing of works;
 - (iii) location and scope of works; and
 - (iv) the Fleet Replacement Schedule plus the projected fleet replacement beyond the Term to meet TfNSW's fleet age requirements.
- (d) As part of the Asset Management Plan, the Operator must develop, implement and maintain a Maintenance Works Program which:
 - (i) describes the Asset Management Activities to be undertaken to meet the requirements of the Contract; and
 - (ii) describes the Asset interventions to be carried out during the following 24 months in sufficient detail to facilitate effective monitoring of all Asset Management Activities.
- (e) The Asset Management Plan must incorporate the requirements of appropriate Asset Maintenance Standards as amended to meet the requirements of the Contract.
- (f) The Asset Management Plan must incorporate an obsolescence management plan that describes how Assets can meet their Design Life.
- (g) The Operator must submit the updated Asset Management Plan to TfNSW:
 - (i) as part of the development of the Asset Management System in accordance with Clause 30.2 including;
 - (A) three months prior to the Planned Contract Bus and Ferry Service Commencement Date;
 - (B) regularly and progressively to include the NLR prior to the Planned NLR Handover Date; and

- (ii) thereafter, at yearly intervals by no later than 1 July in each Contract Year and if the Operator materially amends the Asset Management Plan including the technical maintenance plans.

4. Management of stray currents

The Operator must establish a stray current management regime that complies with the *Electricity Supply (Corrosion Protection) Regulation 2014* (NSW). In doing so, the Operator must put in place such technical and administrative arrangements necessary to mitigate and manage the effects of any stray electrical current that results from the operation of the NLR.

5. Handback Condition


At the Termination Date, the Operator must ensure that:

- (a) the Assets are in such condition to ensure a safe and reliable operation of the Services and comply with the requirements of the Contract;
- (b) all Asset Management Activities required under the Asset Management Plan are complete;
- (c) any deficiencies in any State Asset that mean the Design Life, or the residual life, of the State Asset will not be achieved are rectified (unless such deficiencies were forecast with the approval of TfNSW to be rectified after expiry of the Term in the course of Asset Management Activities undertaken in accordance with the Asset Management Plan);
- (d) any rotatable spares are in as new condition or refurbished in accordance with the Asset Management Plan;
- (e) all special tools and equipment (including NLR Moveable Assets and Contract Bus and Ferry Movable Assets) are maintained and fit for purpose and are suitable to maintain the State Assets as a going concern;
- (f) the Contract Depots are in no worse a condition than identified in the Baseline Condition Report under clause 28.1 of the Contract;
- (g) all Assets are performing to their intended function and are fault free; and
- (h) Assets are clean and free from graffiti and defects (subject to fair wear and tear).

6. Asset Information System

6.1 General requirements of the Asset Information System

- (a) The Operator must provide, maintain, keep up to date and support an Asset Information System covering all Assets.
- (b) The Operator must:
 - (i) as far as practicable adopt processes and naming conventions consistent with the following documents:


 - (ii) record all Asset information in the Asset Information System and keep such information up-to-date and accurate throughout the Term, including changes arising from:
 - (I) configuration changes to the Assets;
 - (II) like-for-like exchange of components;
 - (III) Asset faults reported and corrective actions taken; and

- (IV) Asset Management Activities undertaken;
- (iii) record the procurement, acquisition, maintenance and disposal of all Assets;
- (iv) use the Asset Information System to generate reports on:
 - (A) the achieved performance and condition of the Assets; and
 - (B) Asset use;
- (v) use the Asset Information System to support Asset performance analysis;
- (vi) record the spares and consumables inventory data within the Asset Information System;
- (vii) provide the necessary database tools, manuals, documentation and training required to enable the maintenance and exporting of Asset Information System data to be performed;
- (viii) provide on-going training on the Asset Information System for TfNSW's staff; and
- (ix) allow TfNSW to audit the validity, accuracy and currency of all data held within the Asset Information System at any time.
- (c) The data within the Asset Information System will be the property of TfNSW.
- (d) The Operator must make available to TfNSW all data and reports held in the Asset Information System in password-protected real-time format which incorporates full monitoring, review, searching and custom report generation facilities.

6.2 Information requirements of the Asset Information System

- (a) Assets must be labelled at an appropriate level of disaggregation to allow asset management and reporting in accordance with the Contract and the Assets Standards Authority naming convention including but not limited to buses, ferries, light rail vehicles, track, power, overhead, systems, maintenance equipment, buildings, stops and systems.
- (b) The Asset Information System must include for all Assets unless otherwise agreed with TfNSW:
 - (i) design information (i.e. design documentation, calculations, drawings etc.);
 - (ii) as built information;
 - (iii) supplier/vendor information;
 - (iv) Asset type, function and output association;
 - (v) Asset identifier including serial number;
 - (vi) age of Asset;
 - (vii) location of Assets;
 - (viii) current operational status;
 - (ix) failure profile including operational impact assessment and failure history;
 - (x) reliability analysis aligned with FMECA (Failure Mode, Effects, and Criticality Analysis);
 - (xi) maintenance history, including pre-approval activities and warranty history;
 - (xii) forward Asset maintenance and replacement and refurbishment plans;
 - (xiii) manufacturer's maintenance requirements;
 - (xiv) Asset Design Life and remaining life;
 - (xv) Asset dependency conditions;
 - (xvi) planned, actual, and projected financial cost;
 - (xvii) Asset condition data and models;

- (xviii) testing and commissioning records;
 - (xix) inventory of spares and consumables;
 - (xx) minimum levels for re-ordering;
 - (xxi) Asset criticality;
 - (xxii) special conditions (i.e. environmental, heritage, confined space, dangerous materials etc.); and
 - (xxiii) capital acquisition cost, depreciation and residual value.
- (c) The Asset Information System must hold supporting information including:
- (i) operations and maintenance manuals;
 - (ii) original equipment manufacturer manuals;
 - (iii) Asset Maintenance Standards including technical maintenance plans and manuals;
 - (iv) training materials, and
 - (v) drawings.
- (d) Asset records must be structured to reflect the requirements of the Asset Management Plan including, but not limited to, supporting effective monitoring of scheduling of maintenance activities and defect rectification.
- (e) The Asset Information System must be developed no later than three months before the Operator takes possession of the State Assets and data must be entered into the Asset Information System in accordance with this schedule from that time.

6.3 Asset Information System design requirements

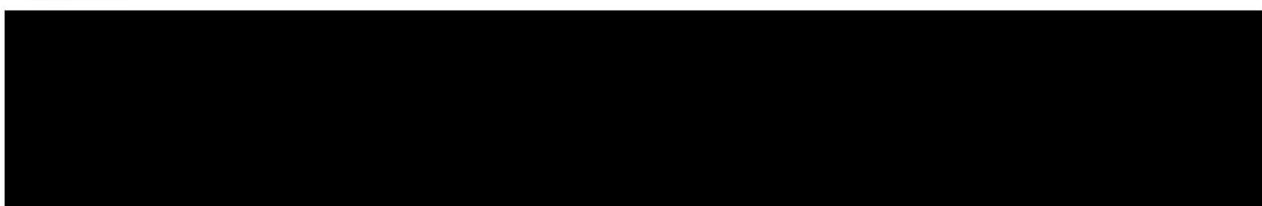
The Asset Information System must:

- (a) be able to export data in standard industry format (including Excel) retaining all Asset details and hierarchies;
- (b) have the capability of integrating Asset data into a common user format;
- (c) be capable of providing integrated Asset information (including Asset performance) within a "dashboard" format to TfNSW and all approved stakeholders covering the data required under clause 6.2 of this Schedule;
- (d) have the capability for scheduling, prioritising and altering Asset Management Activities;
- (e) provide records in respect of inventory management, generation of work orders, bills of materials, tracking of costs and Asset warranty data;
- (f) be capable of recording all asset management activities; and
- (g) record and report on asset failure system responses.

7. Design Life

Number	Asset	Design Life from entry into service
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General



Number	Asset	Design Life from entry into service

Number	Asset	Design Life from entry into service

REDACTIONS

The following items have been redacted:

- Annexure 1 (Existing buses and contract ferries)
- Annexure 2 (Bus depots)
- Annexure 3 (Uniform Livery Requirements)
- Annexure 4 (Fleet replacement schedule)

Annexure 5 – Not used

Annexure 6 – NLR Moveable Assets



Annexure 7 – Contract Bus and Ferry Moveable Assets



Annexure 8 – NLR Fixed Infrastructure



Annexure 9 – Interchange Infrastructure



Annexure 10 – Permanent Light Rail Corridor



Annexure 11 – Easements and Land Arrangements



Annexure 12 – Non Corridor Assets



Annexure 13 – Interchange Plans



1. Cleanliness

1.1 Customer outcome

- (a) Contract Vehicles (includes Contract Buses, Contract Ferries and Contract LRVs)

Customers shall be provided with Contract Vehicles that are clean and free from the effects of dirt and grime. This includes:

- (i) seats and armrests;
- (ii) entry and exit area and luggage storage;
- (iii) all surfaces inside and outside the Contract Vehicle (including the floor, ceilings, walls, doors, decals, handrails, draught screens and grab-handles); and
- (iv) windows and frames.

- (b) Interchanges/Wharves/Light Rail Transit Stops

Customers shall be provided with interchanges (including Wickham Interchange) / Wharves/ Light Rail Transit Stops that are clean and free from the effects of dirt and grime. This includes:

- (i) seats;
- (ii) canopies;
- (iii) floors and walls;
- (iv) stairs and ramp;
- (v) lifts;
- (vi) platforms;
- (vii) ticketing, public transport and local area information and wayfinding signage; and
- (viii) Ticketing Equipment.

1.2 Standard – Performance

- (a) Contract Vehicles

Contract Vehicles shall be of such a standard that the following targets shall be met:

- (i) on entry into service, 100% of Contract Vehicles shall meet level 6 or 7 for cleanliness(as defined in the table below); and
- (ii) at all times, Contract Vehicles must meet or exceed level 3 for cleanliness (as defined in the table below).

- (b) Interchanges/Wharves/Light Rail Transit Stops

Interchanges/Wharves/Light Rail Transit Stops shall be of such a standard that the following targets shall be met:

- (i) immediately after cleaning, interchanges (including Wickham Interchange) / Wharves / Light Rail Transit Stops shall meet level 6 or 7 for cleanliness (as defined in the table below); and
- (ii) at all times interchanges (including Wickham Interchange)/Wharves/Light Rail Transit Stops must meet or exceed level 3 for cleanliness (as defined in the table below).

1.3 Standard – Remediation

When an area of a Contract Vehicle or interchange (including Wickham Interchange) /Wharf/Light Rail Transit Stop outlined above has been observed by a member of Staff, or reported by a customer, to be in a condition such that it may soil clothing or property, the relevant area shall be cleaned at the earliest opportunity. Contract Vehicles which are at level 1 for cleanliness (as defined in the table below) shall be remediated or removed from service immediately.

Once a major instance of graffiti has been observed by a Staff member, or reported by a customer, it shall be removed at the earliest opportunity.

- (a) Definition: Cleanliness (includes all areas outlined in 'Cleanliness - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard

Level	Label	Standard

2. Condition

2.1 Customer outcome

- (a) Contract Vehicles (includes Contract Buses, Contract Ferries and Contract LRVs)

Customers shall be provided with Contract Vehicles that are in good condition and free from damage (including graffiti and vandalism). This includes:

- (i) seats & armrests;
- (ii) entry and exit area and luggage storage;
- (iii) all interior and exterior surfaces of Contract Vehicles (including the floor, ceilings, walls, doors, decals, handrails, draught screens and grab-handles); and
- (iv) windows and frames (including window etching).

- (b) Interchanges/Light Rail Transit Stops

Customers shall be provided with Interchanges (including Wickham Interchange) /Light Rail Transit Stops that are in good condition and free from damage. This includes:

- (i) seats;
- (ii) canopies;

- (iii) floors and walls;
- (iv) stairs and ramp;
- (v) lifts;
- (vi) platforms;
- (vii) ticketing, public transport and local area information and wayfinding signage; and
- (viii) Ticketing Equipment.

(c) Garden Areas

Garden areas located with the Permanent Light Rail Corridor / Light Rail Transit Stops / Depots and Interchanges (**Garden Areas**) must be maintained in good condition including watering, mowing, weeding and pruning.

2.2 Standard – Performance

Contract Vehicles and interchanges (including Wickham Interchange)/Light Rail Transit Stops shall be maintained to ensure that at all times, Contract Vehicles and Interchanges (including Wickham Interchange)/Light Rail Transit Stops and Garden Areas meet or exceed level 4 for condition (as defined in the table below).

2.3 Standard – Remediation

When an area of a Contract Vehicle or interchange (including Wickham Interchange) /Light Rail Transit Stop outlined above has been observed by a Staff member, or reported by a customer, as broken or missing it shall be repaired or replaced at the earliest opportunity.

Once a major maintenance or safety issue has been observed by a Staff member, or reported by a customer, it shall be made safe and rectified at the earliest opportunity.

(a) Definition: Condition (includes all areas outlined in 'Condition - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard

Level	Label	Standard

3. Toilets at interchanges

3.1 Customer outcome

Toilets shall be open for use for customers at interchanges (including Wickham Interchange). Customers shall be provided with a toilet cubicle that is operational, clean and free from damage and odours.

3.2 Standard – Performance

Toilets shall be of such a standard that the following targets shall be met:

- (a) Immediately after cleaning toilets shall meet level 6 or 7 for cleanliness; and
- (b) at all times toilets must meet or exceed level 4 for cleanliness (as defined in the table below).

3.3 Standard – Remediation

When a toilet has been observed by a member of Staff, or reported by a customer, to be 'Dirty' or 'Very dirty' (level 2 or 1 respectively in the table below), that toilet shall be cleaned to a minimum level 5 for cleanliness (as defined in the table below) immediately.

When a toilet has been observed by a Staff member, or reported by a customer, to be in a condition requiring immediate attention (either level 1 or 2 as per the table below), it shall be addressed immediately.

1.3 Standard – Remediation

When an area of a Contract Vehicle or interchange (including Wickham Interchange) /Wharf/Light Rail Transit Stop outlined above has been observed by a member of Staff, or reported by a customer, to be in a condition such that it may soil clothing or property, the relevant area shall be cleaned at the earliest opportunity. Contract Vehicles which are at level 1 for cleanliness (as defined in the table below) shall be remediated or removed from service immediately.

Once a major instance of graffiti has been observed by a Staff member, or reported by a customer, it shall be removed at the earliest opportunity.

- (a) Definition: Cleanliness (includes all areas outlined in 'Cleanliness - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard

4. Ferry refurbishment

- (a) Without limiting the Operator's general maintenance and refurbishment obligations under this Contract, the Operator must carry out refurbishment to the Contract Ferries in accordance with this paragraph 4.
- (b) The Operator's obligation to refurbish the Contract Ferries:
 - (i) includes upgrading the seating arrangements in the Contract Ferries in order to improve the customer amenity and to ensure compliance with DDA Legislation; and
 - (ii) must be completed in the first year following Contract Bus and Ferry Services Commencement.
- (c) The Operator must notify TfNSW:
 - (i) prior to carrying out the refurbishment of the Contract Ferries; and
 - (ii) on completion of the refurbishment of the Contract Ferries,under this paragraph 4.

Annexure 15 – Asset Management Plan

See attached.

REDACTIONS

The following items have been redacted:

- Annexure 15 (Asset management plan)
- Annexure 16 (Depot headlease)
- Annexure 17 (State bus lease)
- Annexure 18 (State bus depot lease)
- Annexure 19 (State LRV lease)
- Annexure 20 (State bareboat charterparty)

REDACTIONS

The following item has been redacted:

- Schedule 9 (Transition schedule)

Schedule 10 - Market Process

In accordance with Clause 56.3 of the Contract, the Operator must prepare, maintain and keep up to date the following information to be used and published in any market process, being any process in connection with the re-tendering or contracting of all or any part of the Services by TfNSW:

- (a) employee information at an aggregate and at an individual level, including date of joining, contract / award terms, grade, accrued entitlements and training record, set out in the following manner.

Aggregate employee information – Number of Staff by Staff category (full time equivalents)

Category	Two Years Ago	Last Year	Current Year to Date
Management			
Clerical			
Drivers			
Mechanics			
Body Shop			
Cleaners			
Operations			
Other			
Total			

Individual employee information – Accrued entitlements owing

Category	Start date	Service (years and months)	Long service leave (days/hrs)	Annual leave (days/hrs)	Other accrued entitlements	Training records
Number of months						
Management						
Person 1						
Person 2						
Person etc						
Sub total						
Clerical						
Person 3						
Person 4						
Person etc						
Sub total						
Drivers						
Person 5						
Person 6						
Person etc						

Category	Start date	Service (years and months)	Long service leave (days/hrs)	Annual leave (days/hrs)	Other accrued entitlements	Training records
Sub Total						
Mechanics						
Person 7						
Person 8						
Person etc						

- (b) payroll details at an aggregate and at an individual level, including wages and salaries, allowances and awards, overtime and penalties, set out in the following manner;
- (c) general information on overtime, absenteeism, sick leave and industrial relations issues.

Aggregate payroll details: Annual wage / salary payments (incl. overtime payment)

Category	Two years ago	Last Year	Current year to date
Number of months	12	12	
Management			
Clerical			
Drivers			
Mechanics			
Body Shop			
Cleaners			
Operations			
Other			
Total			

Individual payroll details: Current year to date (\$)

Category	Award	Grade	Ordinary time hour rate	Ordinary time payments	Overtime payments	Allowance payments	Total payments
Number of months							
Management							
Person 1							
Person 2							
Person etc							
Sub total							
Clerical							
Person 3							
Person 4							
Person etc							
Sub total							

Category	Award	Grade	Ordinary time hour rate	Ordinary time payments	Overtime payments	Allowance payments	Total payments
Drivers							
Person 5							
Person 6							
Person etc							
Sub Total							
Mechanics							
Person 7							
Person 8							
Person etc							
Body Shop							
Person 9							
Person 10							
Person etc							
Sub Total							
Cleaners							
Person 13							
Person 14							
Person etc							
Sub Total							
Other							
Person 15							
Person 16							
Sub Total							
Total							

Schedule 11 - Contract Employees

For the purposes of Clause 58.2, TfNSW is not required to procure that any Successor Operator make offers of employment to the following Contract Employees:

- (a) Any person employed in the position of General Manager or carrying out a similar function or job description; and
- (b) Any person appointed to the Board of Directors or carrying out a similar function or job description.

REDACTIONS

The following items have been redacted:

- Schedule 12 (Contract LRV defect management protocol)
- Schedule 13 (Managing contractor assurance deed poll)
- Schedule 14 (Rolling stock supplier assurance deed poll)
- Schedule 15 (Operator MC deed poll)
- Schedule 16 (Operator RS deed poll)

Schedule 17 – Net Financial Impact

1. Application

- (a) Subject to the Contract, the Operator is entitled to be compensated for the negative Net Financial Impact of the following events (**NFI Events**):
 - (i) if agreed to by TfNSW, acquisition of a New Depot;
 - (ii) Compensable Events; and
 - (iii) Modifications directed by TfNSW under Clause 48;
 - (iv) in the circumstances set out in Clause 50 and 51.
- (b) Subject to the Contract, TfNSW is entitled to be paid an amount calculated by reference to the positive Net Financial Impact of the NFI Events referred to in paragraph 1(a)(iii) and 1(a)(iv).

2. Calculation of Net Financial Impact

- (a) The Net Financial impact of an NFI Event will be calculated having regard to:
 - (i) the incremental costs which the Operator incurs or will incur as a result of the NFI Event, including:
 - (A) design and construction costs which are the actual incremental direct costs of plant, labour, materials and subcontractors directly engaged in construction required in relation to the NFI Event;
 - (B) manufacturing costs;
 - (C) financing costs;
 - (D) external third party advisory costs;
 - (E) subcontractor overhead and margin costs;
 - (F) the Operator's overhead and margin costs;
 - (ii) any cost savings which accrue or will accrue to the Operator as a result of the NFI Event;
 - (iii) any insurance proceeds, damages, compensation or other revenue which the Operator receives or is entitled to receive as a result of the NFI Event; and
 - (iv) any liability to third parties (including subcontractors) incurred by the Operator as a result of the NFI Event.
- (b) If in any month the incremental costs and loss incurred or suffered by the Operator as a result of a NFI Event exceeds the cost savings derived by the Operator as a result of the NFI Event, the Net Financial Impact for that month will be a negative amount.
- (c) If in any month the cost savings derived by the Operator as a result of a NFI Event exceeds the incremental cost and loss incurred or suffered by the Operator as a result of the NFI Event, the Net Financial Impact for that month will be a positive amount.

3. Principles for calculating Net Financial Impact

3.1 Overriding considerations

The overriding considerations for calculating Net Financial Impact will be that:

- (a) TfNSW is receiving value for money;
- (b) the compensation amount is fair and reasonable and is calculated in a manner that is transparent.

3.2 Open book basis

The Operator must and must procure that the Operator's Associates:

- (a) provide all information in relation to the Operator's calculations on an open book basis;
- (b) if required by TfNSW, make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
- (c) allow TfNSW to review and undertake audits to enable it to verify compliance with paragraph 3.2(b),

in order to enable TfNSW to make an accurate assessment of the actual costs and savings. "Open book basis" will include the Operator providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs and margins of the Operator and the Operator's Associates in a clear and transparent manner and other information reasonably required by TfNSW including reasonable available source documents required to verify such calculation.

3.3 No double counting

No amounts will be double counted and no costs will be payable more than once.

3.4 Incremental costs only

Changes in costs are to be determined on an incremental basis where:

- (a) in the case of an increase in costs, only costs that would not be incurred but for the NFI Event are taken into account; and
- (b) in the case of a reduction in costs, only savings that would not have accrued but for the NFI Event are taken into account.

3.5 Fair and reasonable, arm's length arrangements

All increases or decreases in costs included in the calculation must:

- (a) be fair and reasonable; and
- (b) reflect commercial arm's length arrangements.

3.6 Non-compliance with other obligations

The Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not be incurred or suffered; and
- (b) include any cost savings which would have been derived,

had the Operator complied with its obligations under this Contract, other than to the extent the Parties agree that an obligation is adversely affected by the relevant NFI Event.

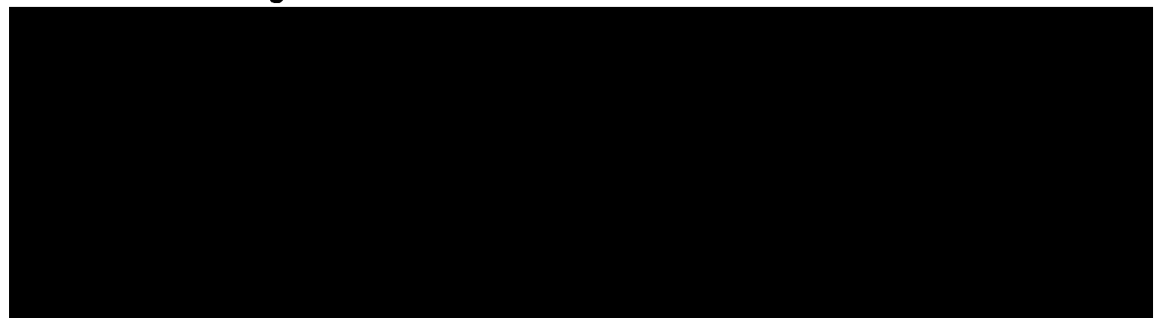
3.7 Mitigation

Without limiting paragraph 3.6, the Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not have been incurred or suffered; and
- (b) include any costs savings which would have been derived,

had the Operator complied with Clause 46.4(e).

3.8 Overheads and margin

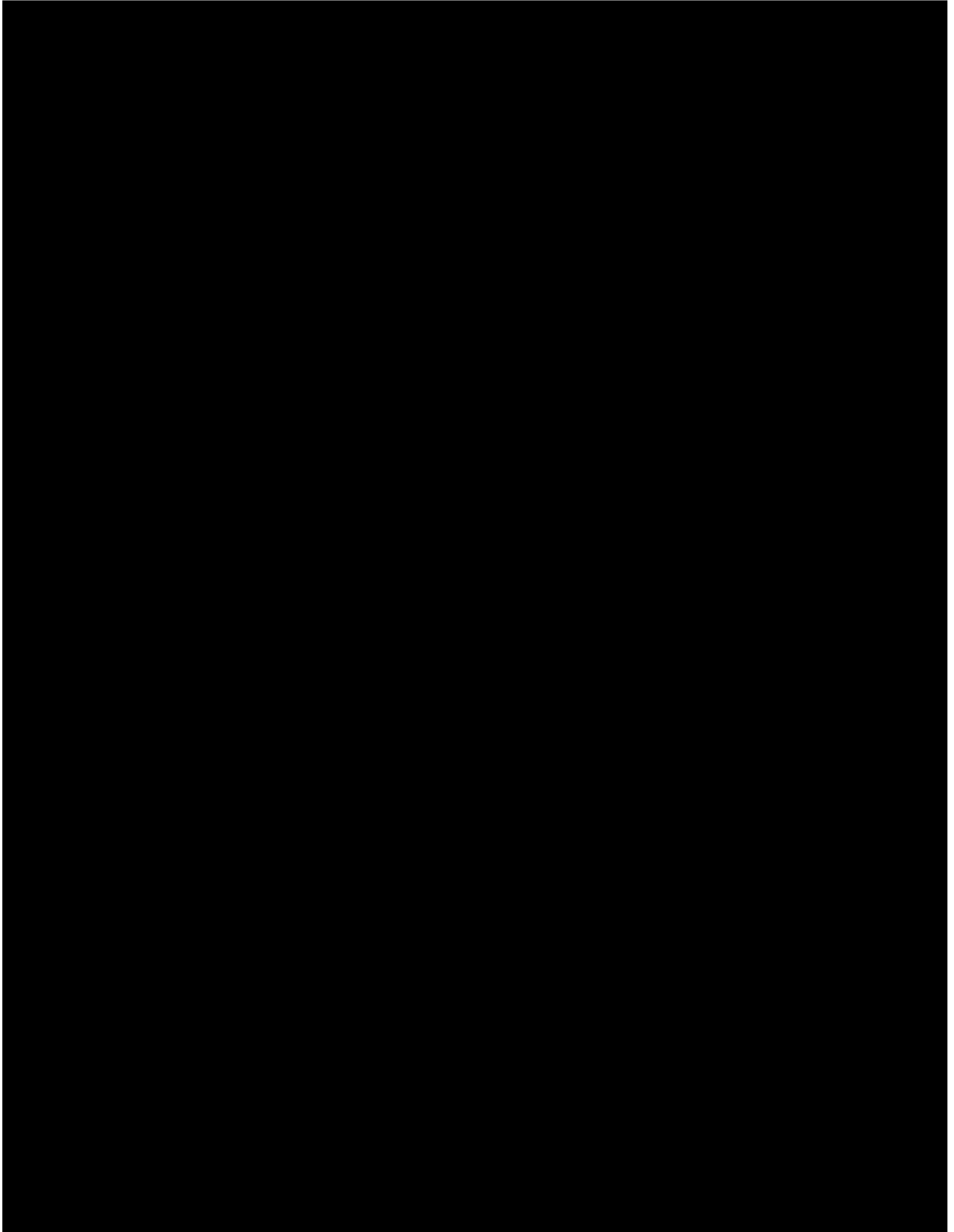


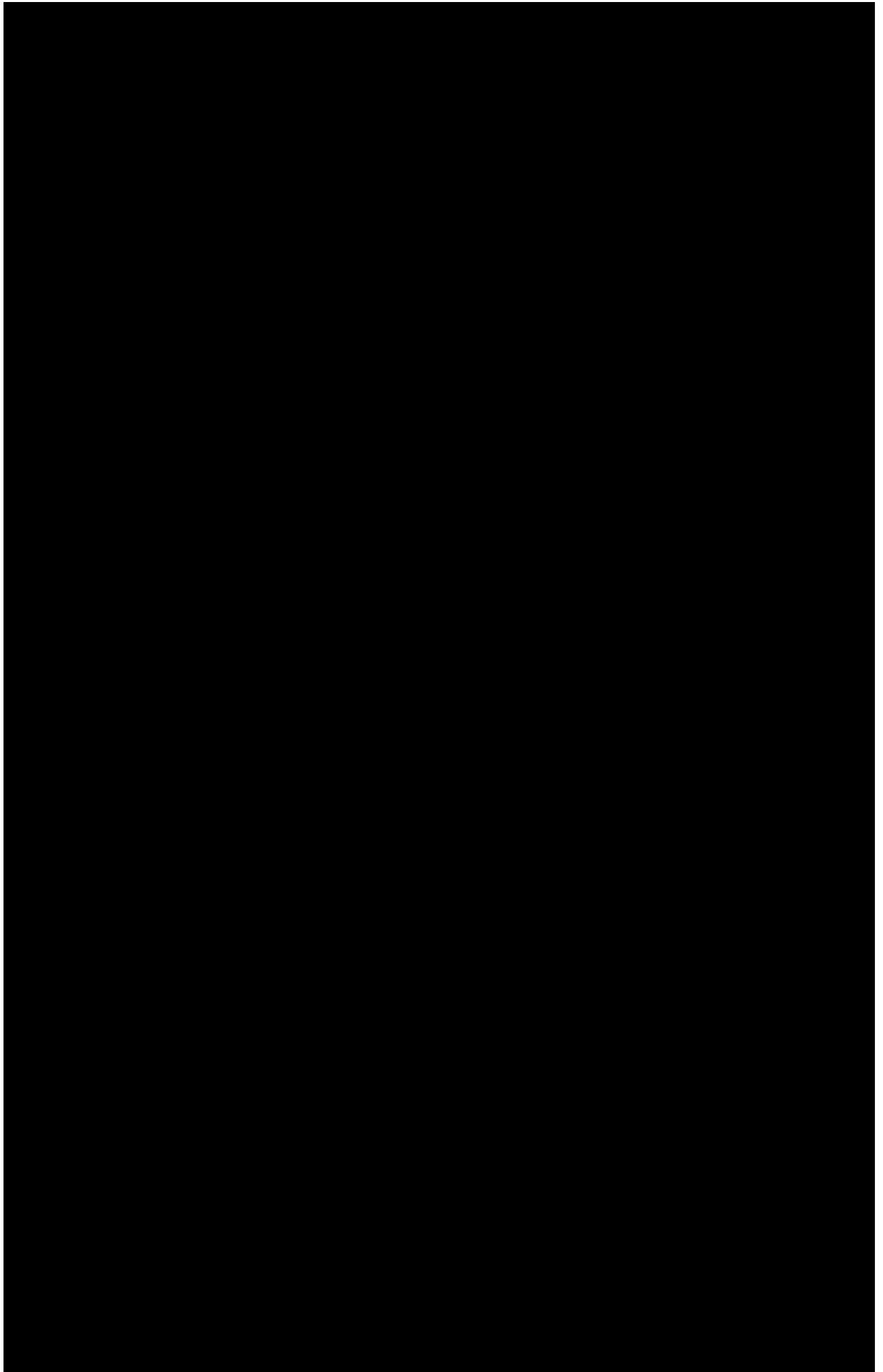
3.9 Redundancy

Any redundancy payments which are necessary as a result of a NFI Event (but excluding annual leave, rostered days off and long service leave entitlements) will be included provided the Operator has used reasonable endeavours to avoid or minimise those redundancies.

3.10 Insurance costs

All insurance cost impacts must be included in the calculations.





5. Compensation Arrangements

5.1 If agreed

- (a) Subject to paragraph 5.2, the Parties can agree that the Operator will be compensated or TfNSW will be paid for the Net Financial Impact of a NFI Event by:
 - (i) single lump sum payment, or a series of lump sum payments;
 - (ii) milestone payments; or
 - (iii) any other means which the Parties may agree.
- (b) if the Parties agree the arrangements by which the Operator will be compensated or TfNSW will be paid, then TfNSW must provide the agreed compensation, or the Operator must make the agreed payment, in accordance with the agreed arrangements.

5.2 If not agreed

If the Parties do not agree upon an arrangement for the payment of compensation, then:

- (a) if the actual Net Financial Impact of a NFI Event in any month is a negative amount, that amount will become payable by TfNSW to the Operator after the end of the relevant month; and
- (b) if the actual Net Financial Impact of a NFI Event in any month is a positive amount, that amount will become payable by the Operator to TfNSW after the end of the relevant month.

5.3 Claims for payment

The Operator may submit claims for payment due under this paragraph 5 in accordance with Clause 41.

REDACTIONS

The following items have been redacted:

- Schedule 18 (Third party agreements)
- Schedule 19 (Principal contractor deed poll)

Schedule 20 – Contract Stage Design Package

Schedule to be provided separately to this document on compact discs initialled and exchanged between the parties and dated with the date of this Contract and labelled as '*Schedules CD – Volume 3*' and '*Schedules CD – Volume 4*'.

REDACTIONS

The following items have been redacted:

- Schedule 21 (Rolling stock supplier confidentiality deed poll)
- Schedule 22 (Managing contractor confidentiality deed poll)
- Schedule 23 (Initial marketing plan)