



Memorandum of Understanding

Exchange of Opal Information

1	Parties	<p>Transport for NSW (ABN 18 804 239 602) of, 18 Lee Street, Chippendale NSW 2008 (TfNSW)</p> <p>The New South Wales Police Force (ABN 43 408 613 180) of Police Head Quarters, 1 Charles Street, Parramatta NSW 2150 (NSWPF)</p>
2	Background	<p>A TfNSW is responsible for operating the Opal electronic ticketing system (the Opal ETS), which can be used by cardholders to pay for travel on eligible public transport services across the greater Sydney region.</p> <p>B NSWPF is responsible for providing police services for New South Wales pursuant to the <i>Police Act</i> 1990 (NSW) (Police Services), which includes preventing and detecting crime, protecting persons from injury or death and property from damage, provision of essential services in emergencies. For the purposes of this MoU, Police Services do not include the administrative and educative functions of the NSWPF within the meaning of s.27 of the <i>Privacy and Personal Information Protection Act 1998</i>.</p> <p>C NSWPF will not have direct access to Opal Information and may make Opal Information Requests to assist with the exercise of Police Services.</p> <p>D TfNSW and NSWPF have Privacy and Governance controls relating to the collection, storage, use and disclosure of Personal Information, developed in accordance with relevant privacy laws. This MoU in no way seeks to impact on those existing controls.</p> <p>E This MoU sets out the basis on which TfNSW will disclose Opal Information to NSWPF so as to assist NSWPF to perform the Police Services.</p>
3	Definitions and interpretation	<p>Certain definitions used in this MoU, and rules for interpretation of this MoU, are set out in clause 20 of this MoU.</p>
4	Term	<p>(a) This MoU commences on the date it is signed by the parties, and subject to paragraph (b) continues for a term</p>

of 5 years.

- (b) Either party may terminate this MoU at any time and for any reason by giving at least 3 months written notice of such termination to the other party.

5	MoU not binding	In view of the subject matter of this MoU and the legislative obligations on each party, this MoU is not intended to be legally binding, other than clauses 11 (fees) and 14 (confidential information) which are intended to be legally binding.
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6	Governance	<p>Each party will have in place a governance framework with responsibility for the exchange of Personal Information and Confidential Information exchanged under this MoU.</p> <p>Existing governance arrangements for the control and exchange of Personal Information or Confidential Information are to be reviewed to determine whether they are sufficient for the purposes of this clause.</p> <p>TfNSW must consider all Opal Information Requests and disclose Personal Information or Confidential Information in accordance with the Business Rules.</p>
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7	Relationship with other MoUs	<p>The parties have entered into a number of other memorandums of understanding in relation to co-operation and sharing of information, including most relevantly the MoU Police Transport Command executed on or around 14 November 2013 (the Transport Command MoU). This MoU is not intended to supersede or vary any such other memorandums of understanding, however all requests by NSWPF for Opal Information (whether in relation to the subject matter of the Transport Command MoU or otherwise) are to be made under and subject to this MoU.</p>
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8	Exchange of Opal Information	<p>(a) TfNSW will use all reasonable endeavours to respond to an Opal Information Request made by NSWPF in accordance with this MoU, where such a request is:</p> <ul style="list-style-type: none"> (i) made in connection with proceedings for an offence or for law enforcement purposes; (ii) for the purposes of ascertaining the whereabouts of an individual who has been reported to the NSWPF as a missing person; (iii) authorised or required by subpoena or by search warrant or other statutory instrument, or (iv) reasonably necessary: <ul style="list-style-type: none"> (A) for the protection of the public revenue, or (B) in order to investigate an offence where there are reasonable grounds to believe that an offence may have been committed.
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- (b) In considering the Opal Information Request, TfNSW must have regard to the Business Rules.
 - (c) If TfNSW determines that the Opal Information Request should be complied with, it may seek to retrieve information from the ETS Contractor. In doing so, TfNSW must ensure that it deals only with authorised officers of the ETS Contractor.
 - (d) Prior to the release of any Personal Information or Confidential Information, the proposed information to be released must be vetted by the Opal privacy officer within TfNSW and approved for release by Executive Director, Ticketing & Concessions as set out in the Business Rules.
 - (e) NSWPF acknowledges that the ability of TfNSW to respond to an Opal Information Request is subject to Applicable Laws.
 - (f) Opal Information Requests will be made by NSWPF:
 - (i) via the iAsk System; or
 - (ii) if the iAsk System is unavailable, via e-mail from the NSWPF Operational Information Agency (OIA) Command.
 - (g) TfNSW will have personnel available to respond to Opal Information Requests during its normal business hours and will have personnel available on-call to respond to urgent Opal Information Requests outside such hours. TfNSW will provide NSWPF with the contact details for its on-call personnel from time to time. TfNSW will prioritise any request which NSWPF designates as urgent, and will work with NSWPF to ensure that the response time for urgent requests is as short as possible.
 - (h) Every endeavour will be made by TfNSW to process urgent requests, having regard to the circumstances and sensitivities of the information by the NSWPF through iAsk.
 - (i) NSWPF will use all reasonable endeavours to ensure that all Opal Information Requests are vetted and approved by a Commissioned Officer as per the NSWPF usual process for the submission of iAsk requests.
 - (j) NSWPF acknowledges that:
 - (i) not all Opal cards are registered;
 - (ii) TfNSW does not undertake any checks as to the accuracy of Opal Information that is provided to it by cardholders (e.g. cardholder registration information);
 - (iii) TfNSW does not take any steps to confirm that the
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user of an Opal card at any particular time is the registered cardholder; and

- (iv) TfNSW cannot determine if an Opal card has been lost or stolen unless this has been reported to it (and even then, TfNSW cannot confirm the accuracy of any such report),

although NSWPF may be able to separately confirm the information referred to in paragraphs (ii) to (iv) through other information obtained during an investigation.

- (k) Where any Opal Information is provided by NSWPF to another Policing Body, NSWPF will inform that Policing Body of the limitations referred to in paragraph (j).

9	Other co-operation	Upon request, TfNSW will reasonably co-operate in providing information to NSWPF and any court in relation to the operation of the Opal ETS and the manner in which the Opal Information is collected and stored, for the purposes of allowing them to understand or confirm the accuracy and limitations of the Opal Information.
10	Compliance with law	<p>(a) The parties acknowledge and agree to comply with their respective obligations under law in relation to any information exchanged between them, including their obligations under:</p> <ul style="list-style-type: none"> (i) the <i>Privacy and Personal Information Protection Act 1998 (NSW)</i> in respect of personal information; (ii) the <i>Health Records and Information Privacy Act 2002 (NSW)</i>; and (iii) the <i>Government Information (Public Access) Act 2009 (NSW)</i>, <p>(Applicable Laws).</p> <p>(b) The exchange of information between the parties is subject to, and is not intended to affect, any obligations imposed on either party by Applicable Laws. Each party will take care to ensure that it does not breach any Applicable Laws in exchanging or using any information exchanged under this MoU.</p> <p>(c) If a party is served with a subpoena, notice to produce, discovery order or summons to produce documents (a Court Order) relating to any information exchanged under this MoU, that party will:</p> <ul style="list-style-type: none"> (i) notify the other party of the Court Order and the information they intend to produce, in sufficient time to enable the other party to object to their production if necessary; and (ii) will, where the other party objects to their

		production, produce the information in a separate, sealed envelope into court and notify the court that the other party objects to their production and intends to make an application to resist their production.
11	Fees	<p>(a) Subject to the continued operation of sub-clause 11(b), TfNSW agrees to waive all fees, charges or costs associated with responding to Opal Information Requests.</p> <p>(b) NSWPF agrees to waive any licence fees otherwise payable by a Transport Cluster Agency for access to the NSWPF COPS system under any deed or MoU between NSWPF and the Transport Cluster Agency entered into after the execution of this MoU.</p>
12	Public statements	The parties will consult with each other in relation to any material public statements concerning this MoU or any information exchanged between them.
13	Confidentiality generally	<p>(a) Each party, where it is a Receiving Party, must not disclose any Confidential Information of the Disclosing Party unless that disclosure:</p> <ul style="list-style-type: none"> (i) is specifically authorised in writing by the Disclosing Party; (ii) is required or allowed by law; (iii) is to Parliament or any Minister of the Crown in right of the State of New South Wales or any of its agencies or instrumentalities; or (iv) is to the Receiving Party's legal advisers for the purpose of obtaining legal advice. <p>(b) Each party, where it is a Receiving Party, will handle the Confidential Information of the Disclosing Party with a level of security consistent with the nature of the Confidential Information.</p> <p>(c) This clause 13 does not apply to ETS Contractor Confidential Information, which is dealt with in clause 14.</p>
14	ETS Contractor Confidential Information	<p>Certain information that TfNSW may disclose to NSWPF under this MoU (particularly under clause 9) may be ETS Contractor Confidential Information. Where this is the case:</p> <p>(a) NSWPF agrees:</p> <ul style="list-style-type: none"> (i) to only use such ETS Contractor Confidential Information for the purpose of providing Police Services; (ii) to keep such ETS Contractor Confidential

Information confidential, including by taking all reasonable measures necessary to prevent the ETS Contractor Confidential Information from unauthorised use or disclosure (including measures at least as stringent as those generally adopted by the NSWPF for its own confidential information); and

- (iii) not to release, disclose or otherwise make available any ETS Contractor Confidential Information to any person except:
 - (A) to its officers, employees, contractors, agents and legal and professional advisors (including lawyers) who need to know such ETS Contractor Confidential Information for the purpose of providing Police Services;
 - (B) if disclosure is required by law, provided that, prior to disclosing any such ETS Contractor Confidential Information, NSWPF has promptly notified TfNSW to allow TfNSW (if it wishes to) to take all reasonable steps to maintain such ETS Contractor Confidential Information in confidence; or
 - (C) with the prior written consent of TfNSW.
- (b) NSWPF must ensure that those persons referred to in paragraphs (a)(iii)(A) and (B) (its **Representatives**) who have obtained access to the ETS Contractor Confidential Information comply with all of the restrictions contained in this clause 14. NSWPF will be responsible for any act or omission of any Representative that would have breached this clause 14 as if the act or omission had been by the NSWPF;
- (c) NSWPF agrees not to make or allow to be made copies of the ETS Contractor Confidential Information except as is reasonably necessary for the provision of Police Services; and
- (d) NSWPF agrees that it will, if requested by TfNSW, provide TfNSW with a confidentiality deed in favour of the ETS Contractor, containing terms and conditions similar in all material respects to this clause 14 and an acknowledgement that monetary damages may not be a sufficient remedy for breach of that deed and that the disclosing party is entitled to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

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Audit

The parties are to ensure that the exchange of Opal Information is made in accordance with the terms of this MoU and will implement the following audit processes to ensure compliance.

15.1 NSWPF Obligations

1. In so far as concerns Opal Information Requests made through the the iAsk System, NSWPF must have an audit capability which generates an audit trail of each and every request by reference to the user's unique identification number and the date and time of every request.
2. Where an Opal Information Request is made by means other than the iAsk System, NSWPF will record the reason for why the iAsk System was not used, the purpose of the request and the authorising officer for the request. A copy of the Opal Information Request, recording the time and date of the request must be retained.
3. Further to clause 8(i), where an Opal Information Request has not been vetted and approved by a Commissioned Officer, NSWPF will record the purpose of the request and, where possible, retain a copy of the request from the investigating officer to OIA Command.
4. NSWPF is to require internal audits every 12 months.
5. TfNSW must (upon request) provide NSWPF with relevant details, other than Personal Information, about Opal Information Requests made to enable the conducting of audits required by NSWPF.

15.2 TfNSW Obligations

1. TfNSW will ensure that each Opal Information Request is registered and logged and an annual audit is undertaken on the release of Personal Information and Confidential Information.
2. TfNSW must provide a copy of each audit report to its Audit and Risk Committee.

So far as practicable, the audit reports must specify:

- (a) The number of Opal Information Requests made by NSWPF during the audit period by reference to the type of Investigation in relation to which access was sought;
 - (b) Whether, in all cases, Opal Information Request was determined to be made in accordance with law and, if not, details of each case in which it was not, and why not;
 - (c) Whether, in all cases, the Opal Information Request was approved and vetted by a Commissioned Officer and, if not, details of each case in which it was not, and why not;
 - (d) Whether any complaints were made during the audit period in relation to the exchange of Opal Information, and the results of the investigation
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of these complaints; and

(e) Any unauthorised access to Opal Information by the ETS Contractor or its staff.

3. TfNSW annual report must report on the most recent audit report.

The parties will meet annually, or as required, to review all practices and systems so as to ensure that the requirements under this MOU are being met and to discuss any potential improvements.

16	Non-Compliance	<p>(a) If TfNSW or NSWPF is aware of a material non-compliance with the terms of this MOU (whether its own or not) it must give written notice to the other party.</p> <p>(b) TfNSW and NSWPF must also report any material non-compliance with the terms of this MoU to the internal Audit & Risk Committee or Professional Standards Command.</p> <p>(c) When an alleged non-compliance with this MoU is notified TfNSW and NSWPF must provide such information as may reasonably be required by the other party in relation to the alleged non-compliance (including proposed rectification, mitigation and steps to be taken to prevent any re-occurrence). The NSWPF will not provide information that may jeopardise a NSWPF investigation or criminal proceeding.</p> <p>(d) The Privacy Commissioner will be kept informed about all instances of material non-compliance with relevant privacy laws and any remedial and mitigation action either party undertakes.</p>
17	Privacy Complaints in relation to the release of Personal Information or Confidential Information	<p>(a) Privacy complaints in relation to the release of Personal Information or Confidential Information by TfNSW to the NSWPF may be made to TfNSW, the Privacy Commissioner or to the NSWPF at the discretion of the complainant, in accordance with the relevant Applicable Law.</p> <p>(b) TfNSW may, in its discretion, require NSWPF to assist TfNSW in the investigation of any privacy complaint. On receipt of such a request, NSWPF must investigate the privacy complaint and respond to TfNSW within one month. If NSWPF fails to do so then TfNSW must advise the Privacy Commissioner of the non-compliance.</p> <p>(c) The NSWPF is not required to do anything or provide any information or a report where doing so would jeopardise a current investigation or criminal proceedings.</p> <p>(d) NSWPF must cooperate with the investigation of any</p>

privacy complaint by TfNSW or the Privacy Commissioner, but is not required to do anything that would jeopardise a current investigation or criminal proceedings.

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Notices

- (a) A notice or consent under this MoU is only effective if it is in writing, signed by or on behalf of the party giving it and it is received in full and legible form at the addressee's address or email address. It is regarded as received at the time and on the day it is actually received, but if it is received on a day that is not a Business Day or after 5.00 pm on a Business Day it is regarded as received at 9.00 am on the following Business Day.
- (b) For the purposes of this clause 18, a party's address and email address are those set out below, unless the party has notified a changed address or phone number, then the notice or consent must be to that address or number:

TfNSW

Address Level 1, 18 Lee Street,
Chippendale, NSW 2008

Attention

Phone number
Email



NSWPF

Address C/- Police Headquarter, 1
Charles Street, Parramatta
2150: Locked Bag 5102
Parramatta NSW BC 2124

Attention

Phone number
Email



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General

- (a) Neither party may assign or novate this MoU or otherwise deal with the benefit of it or a right under it without the prior written consent of the other party.
- (b) Clauses 11 and 14 of this MoU are governed by the laws of New South Wales, and clauses 14 and 15 will survive termination or expiry of this MoU.
- (c) No variation of this MoU is effective unless made in writing and signed by an authorised representative of each party. Unless otherwise stated in the variation, a variation will take effect on the date it is signed by both

parties.

- (d) The parties will meet every 12 months, or more frequently if the need arises, to review this MOU and discuss whether amendment is required.

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**Definitions
and
interpretation**

- (a) In this MoU:

Applicable Laws has the meaning given in clause 10(a).

Business Day means a day on which trading banks are generally open for business in Sydney, excluding a Saturday, Sunday or recognised public holiday.

Business Rules means the Business Rules for the Exchange of Opal Information, contained at **Annexure A**, and as amended from time to time.

Confidential Information means information provided by one party (the **Disclosing Party**) to the other party (the **Receiving Party**) under or in relation to this MoU that is by its nature confidential, is designated by the Disclosing Party as confidential, or which the Receiving Party knows or reasonably ought to know is confidential (including where NSWPF is the Disclosing Party, any Opal Information Requests, and where TfNSW is the Disclosing Party, any Opal Information), but does not include information that:

- (i) is published or has otherwise entered the public domain without a breach of clause 13 or other obligation of confidence;
- (ii) is obtained from a third party who has no obligation of confidentiality to the Disclosing Party; or
- (iii) is already known, rightfully received or independently developed, by the Receiving Party free of any obligation of confidence and without breach of clause 13.

Disclosing Party has the meaning given in the definition of the term Confidential Information.

ETS Contractor means Cubic Transportation Systems (Australia) Pty Limited (ABN 82 003 617 561) of Level 23, 219 – 227 Elizabeth Street, Sydney NSW 2000.

ETS Contractor Confidential Information means information provided by the ETS Contractor to TfNSW or NSWPF that is by its nature confidential, is designated by the ETS Contractor as confidential, or which NSWPF knows or reasonably ought to know is confidential, but does not include information that:

- (i) is published or has otherwise entered the public domain without a breach of clause 14 or other obligation of confidence;
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- (ii) is obtained from a third party who has no obligation of confidentiality to the ETS Contractor or TfNSW; or
 - (iii) is already known, rightfully received or independently developed by NSWPF free of any obligation of confidence and without breach of clause 14.

iAsk System means the corporate web based system which facilitates information requests to, and the receipt of information from, agencies external to NSWPF.

Opal ETS has the meaning given in the background section of this MoU.

Opal Information means information that is held by TfNSW within the Opal ETS relating to a cardholder or the use of any Opal card.

Opal Information Request means a request by NSWPF to TfNSW for Personal Information and/or travel history information relating to Opal card customers

Personal Information means information about an individual whose identity is apparent or can reasonably be ascertained from the information

Police Services has the meaning given in the background section of this MoU.

Policing Body means any:

- (i) other police force (e.g. Victoria Police);
- (ii) criminal investigative governmental agency (e.g. the United States FBI); or
- (iii) police or criminal investigative inter-governmental agency (e.g. Interpol),

in any jurisdiction, whether within or outside Australia.

Receiving Party has the meaning given in the definition of the term Confidential Information.

Transport Cluster Agency means TfNSW, Sydney Trains, NSW Trains and State Transit Authority

- (b) In this MoU, unless the context otherwise requires:
 - (i) the words 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation; and
 - (ii) a law is a reference to that law as amended, consolidated or replaced.
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Execution

Signed by **Transport for NSW** by its authorised signatory in the presence of:

Signature of witness

Name of witness (print)

Signature of authorised representative

Name of authorised representative (print)

30/9/15

Signed for and on behalf of **The New South Wales Police Force** by General Counsel as the authorised delegate of the Commissioner of Police:

Signature of witness

Name of witness (print)

General Counsel

Dated

6/10/15