

Transport for NSW

Community Transport Service Contract
Standard Terms and Conditions



Transport
for NSW

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Date

Parties

Transport for NSW (ABN 18 804 239 602) of 231 Elizabeth Street, Sydney NSW 2000 ('TfNSW').

The Service Provider named in **Item 1 of Schedule 1 (Service Contract Details)** ('Provider').

Background

- A. TfNSW administers Funding to facilitate the delivery of community transport and other services under a number of government programs.
- B. TfNSW will provide Funding to the Provider to deliver Services under each of those programs identified and the Provider has agreed to deliver the Services in accordance with the terms and conditions set out in this Service Contract.
- C. The underlying principles governing the provision of services pursuant to this Service Contract are:
 - (a) that the services are appropriately developed, planned and delivered to achieve the funding program objectives;
 - (b) that the government funding is used in an efficient, effective and transparent manner;
 - (c) to provide clean, safe and reliable transport services that meet the needs of customers;
 - (d) that all persons eligible for the services may access services that are socially and culturally appropriate, free from discrimination;
 - (e) that the needs and rights of customers are respected;
 - (f) that Providers work collaboratively to deliver services and contribute to the overall development and improvement of the services; and
 - (g) to provide support for new systems and approaches to enable improvements in service quality and efficiency.

Agreement

1. SERVICE CONTRACT DETAILS

1.1 Term

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

- (b) Should TfNSW secure Funding past the Completion Date, as specified in **Item 5 of Schedule 1 (Service Contract Details)**, TfNSW may extend if the parties agree the current Service Contract should be extended until a new service contract is released.

1.2 Representatives

- (a) The parties' Representatives are the persons named in **Items 6 and 7 of Schedule 1 (Service Contract Details)**, or such other persons as they notify each other in writing from time to time.
- (b) The Representatives will be the prime points of contact in respect of the administration of this Service Contract and the delivery of the Services.

1.3 Address for Notices

The parties nominate their address for service of Notices in **Item 3 of Schedule 1 (Service Contract Details)**, or such other address as the parties may notify each other in writing from time to time.

1.4 Funded Programs and Services

The Programs the Provider will receive Funding and related Services, are specified in **Item 8 of Schedule 1 (Service Contract Details)** and further detailed in the Schedules.

2. PROVIDER'S OBLIGATIONS IN DELIVERY OF THE SERVICES

2.1 Delivery of the Services

The Provider must deliver the Services in accordance with the Service Contract.

2.2 Provider's general obligations

In performing the Provider's obligations under this Service Contract, including delivering the Services, the Provider must:

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

3. ACCREDITATION AND COMPLIANCE

3.1 Authorisation Warranty

The Provider warrants and represents that they hold at all relevant times all Authorisations required to provide the Services.

3.2 Driver Authorisations and Accreditations

The Provider must at all times ensure that:

- (a) it holds and complies with all required Authorisations to provide the Services including those required by the PT Law;
- (b) it is accredited to operate and deliver the Services, as required by the PT Law;
- (c) all of their drivers hold and comply with all required Authorisations and meet the requirements of those Authorisations to deliver the Services; and
- (d) all of their drivers meet the commercial vehicle driver standards, as assessed by TfNSW's Licence Review Unit in accordance with the Community Transport Driver Requirements outlined in **Attachment A to Schedule 2 (General Services)**, as updated from time to time.

3.3 TfNSW statutory powers

The Provider acknowledges that nothing in this Service Contract restricts or otherwise affects TfNSW's unfettered discretion to use its statutory powers, including its statutory powers relating to the granting or revocation of any Authorisations required under the PT Law.

4. ENSURING SERVICE CONTINUITY

- (a) The Provider must do all things reasonably necessary to ensure the Services continue to be available to Eligible Customers.
- (b) The Provider must develop a '**Service Continuity Plan**' which identifies and addresses any risks that may lead to the Provider being unable to continue to deliver any part of the Services, including those arising from a Force Majeure Event or the expiry or termination of this Service Contract.
- (c) If there is a risk that the Provider is unable to provide any part of the Services, then the Provider must immediately inform TfNSW and co-operate with TfNSW and provide such assistance as TfNSW may reasonably require in order for TfNSW to continue making the Services available to Eligible Customers.

5. DEALING WITH CUSTOMER COMPLAINTS

- (a) The Provider must have a '**Complaints Management**' procedure in place and handle customer complaints in accordance with any policies, guidelines and manuals under clause 2.2(d).

- (b) The Provider must ensure adequate training to staff to provide a consistent approach and application of the Complaints Management procedure. The **'Complaints Management'** procedure should include the recording of all customer complaints, with a reasonable level of detail. TfNSW anticipates there may also be complaints from 131500 or other Transport info sources which will be referred to the Provider for consideration, management, escalation and action.
- (c) Complaints are to be resolved within 30 Business Days. For the avoidance of doubt customer enquiries or customer feedback are not customer complaints.
- (d) Customer complaints should be used as a source of learning for the Provider. The Provider should seek to understand the customer, their situation, what led to the unsatisfactory outcome/situation and what actions may have been taken to eliminate or mitigate the unsatisfactory outcome/situation.
- (e) In addition to those requirements outlined in clause 2.2(d), TfNSW may require the Provider to comply with any directions regarding the process by which complaints must be handled, on 20 Business Days' notice.
- (f) The Provider must not cease or refuse to provide any Services or otherwise take recrimination action against any person because they have made a complaint.

6. PROVIDER'S STAFF AND REQUIRED RECORD CHECKS

6.1 Definitions (Clause 6 only)

In this clause 6 only:

'Child' means an individual under the age of 18.

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

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

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

'Police Certificate Guidelines' means the police certificate guidelines set out at Appendix D of the CHSP Manual.

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

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

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

‘Relevant Person’ means each of the Provider’s:

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

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

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

‘Serious Offence’ means:

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

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

‘Vulnerable Person’ means:

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

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

6.2 Provider’s general obligations re Staff providing the Services

The Provider must ensure:

- (a) all Staff are properly qualified, trained, experienced, of good character and fit and suitable to carry out their role in providing the Services at all times and fulfil the Provider’s obligations under this Service Contract including meeting the requirements outlined in the Police Certificate Guidelines and CHSP Manual.
- (b) all Staff comply with required Laws and the Provider confirms that no Laws prohibit any Staff from being engaged in a capacity where they may have contact with Vulnerable Persons or Persons in the DIA Target Group; and

- (c) all Staff hold and comply with required Authorisations and comply with all Laws in relation to engaging or deploying Staff in a capacity where they may have contact with Vulnerable Persons or Persons in the DIA Target Group or other Eligible Customers.

6.3 Clearances for Relevant Persons

- (a) Before engaging or deploying any Relevant Person the Provider must:
 - (i) conduct a Police Check for that person or where relevant, confirm a check by appropriate authorities has occurred within the last 3 years, and
 - (ii) where clause 6.3(b) applies, ensure the Relevant Person provides an appropriate Statutory Declaration;
 - (iii) comply with clauses 6.3(c) to 6.3(g) below.
- (b) The Provider must obtain a Statutory Declaration from a Relevant Person in accordance with paragraph 3.4 (Statutory Declarations), paragraph 4.7 (New staff) and paragraph 4.8 (Staff, volunteers and executive decision makers who have resided overseas) (as relevant) of the Police Certificate Guidelines, as relevant, if the Relevant Person has:
 - (i) applied for, but has not yet received a Police Check and the circumstances described in paragraph 4.7 of the Police Certificate Guidelines apply;
 - (ii) has been a citizen or a permanent resident of a country other than Australia after the age of 16.
- (c) The Provider agrees:
 - (i) if a Police Check or other relevant check by authorities indicates that a Relevant Person has a Serious Record, or a Criminal or Court Record, not to engage, deploy or redeploy the Relevant Person unless the Provider has conducted and documented a risk assessment of that Relevant Person;
 - (ii) within 24 hours of becoming aware of a Relevant Person being charged or convicted of any Serious Offence or Other Offence, to conduct and document a risk assessment in accordance with clauses 6.3(d) to 6.3(f) and paragraph 5 (Assessing a Police Certificate) of the Police Certificate Guidelines to determine whether to allow that Relevant Person to continue performing the Services or any part of the Services; and
 - (iii) to document the actions the Provider will take as a result of conducting the risk assessment; and
 - (iv) to ensure that a Relevant Person has their Police Check renewed at least every 3 years.
- (d) The Provider will be wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Relevant Person with a Serious Record, Criminal or Court Record, to work on any of the Services or any part of the Services.
- (e) The Provider must ensure that a person who has been charged or convicted of a Serious Offence does not perform the functions and duties of an Executive Decision Maker at any time.

- (f) In undertaking the Provider's risk assessment under clauses 6.3(c) and 6.3(d) the Provider agrees to take into account the following factors:
 - (i) whether the Relevant Person's Serious Record, Criminal or Court Record is directly relevant to the role the Relevant Person will or is likely to perform in relation to the Services or any part of the Services;
 - (ii) the length of time that has passed since the Relevant Person's conviction and the Relevant Person's record since that time;
 - (iii) the nature of the offence pertaining to the Serious Record, Criminal or Court Record and the circumstances in which it occurred;
 - (iv) whether the offence involved Vulnerable Persons;
 - (v) the nature of the Services and the circumstances in which the Relevant Person will or is likely to have contact with Vulnerable Persons;
 - (vi) the particular role it is proposed the Relevant Person will undertake and / or which the Relevant Person is currently undertaking in relation to the Services and whether the fact the Relevant Person has a Serious Record, Criminal or Court Record is reasonably likely to impair the Relevant Person's ability to perform or continue to perform the inherent requirements of that role;
 - (vii) the Relevant Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake or are currently undertaking in relation to the Services or any part of the Services; and
 - (viii) the factors set out in paragraph 5.4 (Assessing information obtained from a police certificate for staff and volunteers) and paragraph 5.5 (Assessing information obtained from a police certificate for executive decision makers) of the Police Certificate Guidelines.
- (g) After taking into account the factors set out in clause 6.3(f), the Provider agrees to then determine whether it is reasonably necessary to:
 - (i) not engage, deploy or redeploy the Relevant Person in relation to the Services or any part of the Services; or
 - (ii) remove the Relevant Person from working in any position or acting in any capacity in relation to the Services or any part of the Services which involves working or having contact with Vulnerable Persons; or
 - (iii) make particular arrangements or impose conditions under which the Relevant Person's role in relation to the Services or any part of the Services and, where relevant, contact with Vulnerable Persons is to occur; or
 - (iv) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Services relate.

6.4 Clearances for Workers Engaged in Child-related Work

- (a) The Provider must have and maintain any necessary working with children check clearances in respect of any Worker Engaged in Child-related Work as required under the CP Law.

- (b) The Provider must not engage or deploy any Worker Engaged in Child-related Work other than in accordance with the CP Law.

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

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

6.6 Compliance policies and processes for necessary clearances

- (a) The Provider must have adequate policies, procedures and risk plans in place to comply with its obligations under this clause 6.
- (b) If TfNSW requires, the Provider must promptly provide evidence, in any format TfNSW requires, outlining that the Provider has complied with the requirements of this clause 6 and the Police Certificate Guidelines.
- (c) The Provider agrees to reflect its obligations under this clause 6 and the Police Certificate Guidelines in all Subcontracts the Provider enters into in relation to the Services or any part of the Services.

7. PROVIDER'S STAFF

- (a) The Provider warrants and represents that all Staff are properly accredited, trained and experienced to provide the Services and have all required Authorisations.
- (b) The Provider must provide training to all Staff and develop, document and maintain training materials as specified in **Schedule 2 (General Services)**.
- (c) The Provider must comply with, and ensure that all Staff comply with, all obligations under Safety Laws and required Authorisations.

8. PAYMENT AND USE OF THE FUNDING

8.1 Payment of Funding

Subject to clause 8.6, TfNSW will pay the Provider the Funding:

- (a) by direct credit to an account in accordance with clause 8.3 as nominated by the Provider in writing to TfNSW from time to time; and
- (b) by instalments on the dates set out in each of the Funding Tables.

8.2 Provider's use of the Funding

The Provider must use the Funding and the Fees only as provided in this Service Contract to deliver the Services, make payments in accordance with clause 8.4, or to lease any New Contract Assets in accordance with clause 10.

8.3 Provider's account requirements

The Provider must ensure that the Funding is held in an account in the Provider's name and which the Provider solely controls. This account must be held with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia.

8.4 Additional funding for employees subject to the SACS Decision

- (a) The Provider may only use the SACS Supplementation to the extent that any of the Provider's Staff is involved in the delivery of the Services are subject to the SACS Decision.
- (b) The Provider may only use the amount of any SACS Supplementation set out in any of the Funding Tables to meet the increase in wages for the Provider's Staff involved in delivering the Services that resulted from the SACS Decision.
- (c) The Provider must provide TfNSW, upon request:
 - (i) with a certification from the Provider's Board or an authorised officer which sets out the details of the SACS Supplementation the Provider has used in accordance with this clause 8.4 and any amount that remains unspent and uncommitted; and
 - (ii) sufficient details to demonstrate the amount of the SACS Supplementation it has used in accordance with this clause 8.4.

8.5 Retaining unspent Funding

- (a) The Provider must notify TfNSW of any unspent amount of the Funding in writing by 31 October each year, and repay TfNSW the unspent amount of the Funding in accordance with clause 22, unless the Provider asks to retain the Funding and the Provider obtains TfNSW's consent in writing.
- (b) The Provider must comply with any terms and conditions of any consent TfNSW provides under clause 8.5(a).
- (c) For the purpose of this clause 8.5 any Funding paid in advance (paid in one Financial Year to deliver Services in a later Financial Year) does not constitute unspent funding.

8.6 Conditions on TfNSW's provision of any Funding

The Provider acknowledges that TfNSW's payment of any part of the Funding set out in the Funding Tables is conditional upon contractual arrangements with the Commonwealth, Commonwealth and State parliamentary appropriations and budget allocations, and the continuation of the Programs. The Provider acknowledges and agrees that TfNSW may change the level and allocation of Funding to reflect any changes to these matters.

9. SERVICE ASSETS AND PREMISES

9.1 Required Condition of Service Assets

The Provider must ensure that each Service Asset:

- (a) complies with the *Road Transport (Vehicle Registration) Regulations 1998* (NSW), is registered and insured as required under PT Law and has all necessary Authorisations required for use in the delivery of the Services;
- (b) complies with all environmental and safety standards applicable at the time it was registered;
- (c) is in a safe operating condition at all times, and, in particular, is maintained, equipped and operated in compliance with all Authorisations and the Law as it applies to each Service Asset and the transport services the Provider provides;
- (d) is operated in accordance with the manufacturer's specifications, recommendations and standards;
- (e) is clean and tidy prior to its being used in providing the Services on any day;
- (f) is removed from service and cleaned as soon as possible, if it becomes so unclean as to cause discomfort to passengers; and
- (g) is roadworthy.

9.2 Inspection of Service Assets

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

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

9.3 Premises

The Provider must ensure that all of the Provider's Premises are kept and maintained in a condition which enables them to be safely used for their intended purpose and enables the Provider to comply with their obligations under this Service Contract.

10. CONTRACT ASSETS

10.1 Contract Assets and Commencement Asset Register

- (a) The Provider acknowledges and agrees that:

- (i) the Contract Assets listed in the Commencement Asset Register were either Leased or owned by the Provider using Funding administered by TfNSW prior to the Effective Date;
- (ii) any New Contract Assets must be Leased; and
- (iii) where the Provider enters into a Lease for a Contract Asset with Lease obligations extending beyond the Term:
 - (A) the Provider must indemnify TfNSW against any costs, losses or liabilities arising or in any way related to such a Lease being longer than the Term; and
 - (B) TfNSW will in no way be responsible or liable in respect of such a Lease for any matters which may arise relating to the Lease being longer than the Term.
- (b) The Provider warrants and represents that, as at the Effective Date, the Commencement Asset Register set out in Annexure A lists all of the Assets that the Provider uses in relation to the Services and that there are no other Assets owned, leased or otherwise in the Provider's possession or control which are used by the Provider in relation to the Services.

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

- (a) Subject to the Provider's end of Service Contract transfer provisions stipulated under clause 26, the Provider owns or Leases (as the case may be) the Contract Assets listed as "Contract Assets" in the Commencement Asset Register.
- (b) The Provider must:
 - (i) not use the Contract Assets to provide transport services other than the Services the Provider is contracted to provide under this Service Contract unless:
 - (A) the provision of those other transport services does not interfere with the Provider's ability to provide the Services the Provider is required to provide under this Service Contract; and
 - (B) the Provider recovers the full cost of those other transport services from the parties receiving the benefit of those other transport services, or from the funder of those other transport services (including associated capital, depreciation and operating and administrative costs) and use the amount recovered to deliver additional Services under the Programs;
 - (ii) comply with all of TfNSW's directions and requirements regarding the acquisition, Lease, operation, replacement, maintenance or disposal of any Contract Assets, including any directions regarding the transfer of the Contract Assets to TfNSW, TfNSW nominee or a Successor Operator.
- (c) The Provider must service and carry out Maintenance Work on all Contract Assets and Provider Assets in accordance with the manufacturer's specifications, recommendations and service standards in order to comply with obligations under this Service Contract.

10.3 Maximum Age of Assets

Unless TfNSW agrees otherwise in writing, no Asset:

- (a) that seats more than 29 adults (including the driver) shall be used in the delivery of the Services if its age is greater than 25 years from the Identification Date;
- (b) that seats between 13 and 29 adults (including the driver) shall be used in the delivery of the Services if its age is greater than 15 years from the Identification Date;
- (c) which seats between 9 and 12 adults (including the driver) shall be used in the delivery of the Services if its age is greater than 10 years from the Identification Date or it has travelled more than 300,000 kilometres; and
- (d) which seats under 9 adults (including the driver) shall be used in the delivery of the Services if its age is greater than 8 years from the Identification Date or it has travelled more than 300,000 kilometres.

10.4 Disposal of Contract Assets

- (a) The Provider must give TfNSW 7 Business Days' written notice after disposing of any Contract Asset. Contract Assets subject to a Lease must be disposed of in accordance with the Lease.
- (b) Where the Provider owns a Contract Asset (as listed in the Commencement Asset Register), when the Provider is seeking to dispose of such Contract Asset, the Provider must sell the Contract Asset for its market price and all proceeds received in connection with the disposal of the retired Contract Asset must be used for delivery of CHSP Services in accordance with the CHSP Manual.
- (c) Prior to disposal as outlined in this clause 10.4, the Provider must:
 - (i) remove any Systems and Equipment, such as communications and dispatch technology implemented in the Contract Asset; and
 - (ii) install the Systems and Equipment removed under clause 10.4(c)(i) into any New Contract Asset Leased by the Provider, unless otherwise directed by TfNSW.
- (d) Upon disposal of a Contract Asset, it will no longer classify as a Contract Asset under this Service Contract.

10.5 Asset Replacement Fund

The Asset Replacement Funds at the Effective Date may be used by the Provider for delivery of CHSP Services, with expenditure in accordance with the CHSP Manual.

10.6 Leasing New Contract Assets

Where the Provider enters into a Lease in respect of a New Contract Asset during the Term, the Provider must give TfNSW 7 Business Days' written notice after entering into a Lease that it has Leased a New Contract Asset.

11. PROVIDER ASSETS

The Provider must give TfNSW 7 Business Days' written notice after acquiring any Provider Asset during the Term.

12. DEALING WITH CONTRACT ASSETS

12.1 Dealing with Contract Assets

The Provider must not:

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

any Contract Asset acquired other than by way of a Permitted Security Interest, in accordance with TfNSW written direction or consent and in accordance with clause 10.2(b)(ii) .

12.2 Dealing with Leased Assets

The Provider must not:

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

a Leased Asset, other than by way of a Permitted Security Interest, in accordance with TfNSW written direction or consent and in accordance with clause 10.2(b)(ii) ; or

- (d) materially amend or supplement, or consent to any material amendment or supplement of a Lease for a Leased Asset or expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under a Lease for a Leased Asset, if and to the extent that such amendment, supplement, waiver, extension or grant takes effect in, or relates to the exercise of any power or the performance of any obligation under the Lease after the Termination Date.

13. RECORDS THE PROVIDER IS REQUIRED TO KEEP, ACCESS AND AUDITS

13.1 The Provider must maintain separate records for each Program

The Provider must keep separate records regarding the receipt and use of the Funding under each Program and the outputs achieved.

13.2 Record Keeping

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

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

13.3 Timeframe for record keeping

The Provider must keep all records required under clause 13 for at least 7 years after the end of the Term, or such other longer period as is required by any relevant Law.

13.4 Access to records

The Provider must allow and provide all reasonable assistance to TfNSW or persons authorised by TfNSW to:

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

13.5 Reviews, audits and surveys

The Provider must also allow and provide all reasonable assistance to TfNSW, or a third party appointed by TfNSW, access to the Provider's Staff, Premises and the Contract Assets and Provider Assets (as the case may be) to enable TfNSW to undertake reviews, audits and surveys of the Provider's compliance with this Service Contract.

13.6 Secret and Sacred Material exception

The Provider does not have to allow access to or copying of Secret and Sacred Material, unless required by Law.

13.7 TfNSW will give notice of a request for access to the Provider's records or an audit

TfNSW will provide the Provider with at least 5 Business Days' written notice prior to exercising its rights under clauses 13.4 and 13.5, unless TfNSW are investigating a Serious Incident.

13.8 Compliance

Provider must comply with any recommendations for corrective actions TfNSW may reasonably require as a result of any audit conducted.

14. REPORTS

- (a) The Provider must issue TfNSW with reports and data as set out in the Schedule 7 (Reporting) and any other information or reports, records or documents in the connection with the delivery of Services that TfNSW reasonably requires.
- (b) At any time up to 7 years after the end of the Term TfNSW may require the Provider to send TfNSW a Statutory Declaration accounting for the expenditure of the Funding and Fees.
- (c) The Provider must issue TfNSW with any additional information or reports relating to this Service Contract, the expenditure of the Funding and Fees, delivery of the Services, the use and maintenance of the Service Assets, the Provider's compliance with Safety Laws or the Provider's operations or governance that TfNSW reasonably requires.

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

15. SAFETY LAWS, SERIOUS INCIDENTS, PROSECUTIONS AND INVESTIGATIONS

The Provider must:

- (a) comply with all legal requirements and TfNSW policies relating to reporting, documenting and dealing with Serious Incidents;
- (b) notify TfNSW of:
 - (i) the occurrence of any Serious Incident as defined in the TfNSW Serious Incident Guide. The Provider must comply with all reporting requirements and timeframes specified in the TfNSW Serious Incident Guide. TfNSW may vary or add to this Guide from time to time;
 - (ii) any actual or proposed Investigation or Prosecution;
 - (iii) any Claim or other dispute which may have a material effect on the Provider's activities under this Service Contract;
- (c) develop and implement a plan to address the consequences of any Serious Incident and the risk of any such Serious Incident re-occurring;
- (d) amend the plan detailed in clause 15(c) to take into account of any changes reasonably requested by TfNSW;
- (e) conduct, or have a third party conduct, such audits of the Provider's compliance with Safety Laws as TfNSW require and promptly report to us in writing on the outcome of the audit;
- (f) undertake any corrective work or action which an audit of the Provider's compliance with Safety Laws identifies as necessary to rectify any departure from the Safety Laws within a reasonable time given the nature of the departure;
- (g) co-operate with us, and any person with relevant authority including an Investigative Officer, in relation to any Investigation or Prosecution;
- (h) provide us with such information, documents and assistance as TfNSW reasonably require to respond to any request for information or documents, investigation, inquiry or report by an Investigative Officer; and
- (i) comply with any obligation to take corrective action arising from an Investigation or Prosecution and take such action as TfNSW require to implement any requirement or recommendation of an Investigative Officer.

16. GOVERNANCE

The Provider and TfNSW must participate in the governance of this Service Contract, as described in **Schedule 8 (Governance)**.

17. KEY PERFORMANCE INDICATORS ('KPI')

- (a) TfNSW will measure the Provider's performance against the KPIs set out in **Schedule 9 (KPI)**.
- (b) The Provider must comply with its obligations to measure, report on and remedy breaches of the KPIs as set out in **Schedule 9 (KPI)**.

18. SUBCONTRACTORS

18.1 Using Subcontractors

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

18.2 Specific requirements regarding Subcontracts

- (a) The Provider must ensure, unless TfNSW agrees otherwise, that any Subcontract entered into by the Provider for the delivery of any part of the Services of the type referred to in clause 18.1(a):
 - (i) is consistent with the Provider's obligations under this Service Contract;
 - (ii) requires the Subcontractor to ensure that it and all its Staff have all necessary Authorisations required to carry out the relevant part of the Services and comply with all conditions and requirements attaching to those Authorisations;
 - (iii) requires the Subcontractor to comply with, and all of its Staff to comply with, all obligations under Safety Laws;

- (iv) includes provisions requiring the Subcontractor to comply with the obligations imposed upon the Provider under:
 - (A) clauses 2.2(b), (c), (e), (f) and (g), clause 6, clauses 9.1, 15, 29(i), 29(j), 30 and 31 of these Standard Terms and Conditions;
 - (B) subsections 2.2 (c), (d), (g), (h) and (j) and 2.3(b) of **Schedule 2 (General Services)**;
 - (C) subsections 2.3(a) of **Schedule 2 (General Services)**, to the extent that the Subcontractor is required to provide Services to those types of Eligible Customers;
 - (D) the Charter of Aged Care Rights ('**Charter**'), as referenced and detailed in **Schedule 3 (CHSP Service)**;
 - (v) requires the Subcontractor to have adequate insurance in respect of Losses it may incur in performing the Subcontracted Services including:
 - (A) public liability insurance covering claims in respect of damage to any real or personal property and injury to, or death of any person;
 - (B) third party property insurance; and
 - (C) workers' compensation insurance;
 - (vi) requires the Subcontractor to keep accurate records regarding the Services delivered to Eligible Customers and the cost of those Services, and any other records required to enable the Provider to comply with their obligations under clause 14 and clause 18 of these Standard Terms and Conditions and **Schedule 7 (Reporting)** and **Schedule 9 (KPI)**;
 - (vii) requires the Subcontractor to provide the Provider with information and documents regarding its compliance with its obligations under the Subcontract upon request;
 - (viii) is consistent with any guidelines or policies TfNSW issue relating to Subcontracting any part of the Services and issue the Provider notice of in accordance with clause 2.2(d);
 - (ix) includes rights of termination for breaches by the Subcontractor of the types set out in clauses 25.1(a)(i), 25.1(a)(ii)(A), 25.1(c) - (f) and 25.1(h) - (p) of this Service Contract, failure to comply with the requirements in clause 9 of this Standard Terms and Conditions and failure to effect adequate insurance.
- (b) The Provider must obtain any Subcontractor's consent for the disclosure of their identity to TfNSW, the Commonwealth or the State (including their Personal Information, if the Subcontractor is an individual). The consent obtained must extend to make the disclosures and publications referred to in clause 30(b) and 32
 - (c) If TfNSW terminate or reduce the scope of this Service Contract under clause 23 or clause 24, the Provider must exercise any right of termination or reduction the Provider has against any of the Provider's Subcontractors.

18.3 Information the Provider is required to provide regarding Subcontractors

- (a) If the Provider subcontracts any Services, then TfNSW may at any time require the Provider to obtain a completed 'Subcontractor's Statement' from the subcontractor. TfNSW will provide the Subcontractor's Statement for completion. A '**Subcontractors Statement**' means a form prepared for section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2, Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW).
- (b) The Provider must keep a register of all Subcontractors the Provider uses to deliver the Services during the Term, including the term and value of any Subcontract ('**Subcontract Register**').
- (c) The Provider must provide TfNSW with a copy of the Subcontract Register, any Subcontracts and any completed 'Subcontractor's Statement' within 10 Business Day's written notice.
- (d) The Provider must provide TfNSW with any information or documents TfNSW requires regarding:
 - (i) the amounts paid to any Subcontractors;
 - (ii) a Subcontractor's compliance with the obligations referred to in clause 18.2 or any other obligations they are required to comply with either as a condition of any consent provided to the Provider under clause 18.1(b) or otherwise;on 10 Business Day's written notice to the Provider.

19. LIABILITY

19.1 Indemnity

- (a) The Provider indemnifies on demand, and must keep indemnified on demand, TfNSW, the Minister for Transport, the State or any office holder, employee, agent, contractor, consultant, delegate or adviser of, or to, TfNSW, the Minister for Transport or the State ('**Indemnified Persons**'), from and against any Loss which any of TfNSW pays, suffers, incurs or is liable for in connection with or arising from:
 - (i) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Provider or any of the Provider's Staff;
 - (ii) any Non-Compliance Event;
 - (iii) any Termination Event;
 - (iv) any breach of this Service Contract and any associated agreement by the Provider (or a Subcontractor);
 - (v) any infringement of any Intellectual Property Rights by the Provider or any of the Provider's employees, Related Entities, or contractors or agents; or
 - (vi) any death, personal injury, loss or damage suffered by any passengers or by any third party enjoying or affected by the performance of the Services

caused or contributed to by the Provider or any of the Provider's Related Entities or Staff.

- (b) The Provider's indemnity in clause 19.1(a) will be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Indemnified Persons caused or contributed to the loss.
- (c) This indemnity will not exclude any other right TfNSW has to be indemnified by the Provider.
- (d) For the avoidance of doubt the Losses that must be indemnified under clause 19.1(a) include any Losses arising as a result of a Non-Compliance Event or Termination Event.
- (e) The Provider's indemnity in clause 19.1(a) is capped at the amount stated in **Item 11 of Schedule 1 (Service Contract Details)**.
- (f) TfNSW indemnifies the Provider on demand and must keep the Provider indemnified on demand from and against any Loss which the Provider pays, suffers, incurs or is liable for, in connection with or arising from infringement of any third party Intellectual Property Rights in respect of its use of the Systems and Equipment, or any other Materials that TfNSW provided to the Provider,
- (g) TfNSW's indemnity in clause 19.1(f) will be reduced proportionally to the extent that:
 - (i) any unlawful, negligent, or deliberately wrongful act or omission of the Provider caused or contributed to the Loss;
 - (ii) the Provider's use of the Systems and Equipment, or any other Materials that TfNSW provided to the Provider, is not in accordance with this Service Contract;
 - (iii) any Loss arises from any unauthorised modification or amendment by the Provider of the Systems and Equipment, or any other Materials that TfNSW provided to the Provider.

19.2 Provider's liability and responsibility

The Provider 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 Provider or any Related Entity of the Provider;
- (b) the Indemnified Persons are not liable for any Loss caused or incurred by the Provider or any Related Entity of the Provider; and
- (c) the Provider will provide and perform the Services required under this Service Contract at the Provider's own cost and risk, without recourse to TfNSW or government funds or guarantees, except as expressly provided otherwise in this Service Contract.

19.3 TfNSW liability and release

- (a) The Provider releases TfNSW and TfNSW Associates (**'Released Parties'**) to the full extent permitted by law, from all Losses which arise in connection with this Service Contract, except in relation to direct losses directly or indirectly arising from TfNSW's breach of this Service Contract by act or omission.
- (b) The Released Parties are not liable for, and no measure of loss or damages will, under any circumstances, include, Consequential Loss (whether in contract, tort, in equity, under statute or any other basis, whether or not the loss or damage was foreseeable and even if advised of the possibility of the loss or damage).
- (c) To the fullest extent permitted by Law, TfNSW's liability arising in connection with this Service Contract is capped at the amount stated in **Item 12 of Schedule 1 (Service Contract Details)**.

20. PROVIDER'S INSURANCE OBLIGATIONS

The Provider must comply with the requirements relating to insurance set out in **Schedule 6 (Insurance)**.

21. AMENDMENTS TO THE SERVICE CONTRACT

- (a) Any
 - (i) amendment of these Standard Terms and Conditions;
 - (ii) amendments in the program specific Service outputs the Provider is required to deliver;
 - (iii) other amendments to this Service Contract, that are not covered by clauses 21(b) and 21(c);

shall only be valid and binding if made in writing and executed by the Provider and TfNSW.

- (b) The Provider acknowledges that the guidelines, manuals, policies, charters, codes of conduct and other standards set out in this Service Contract, and any others TfNSW notifies the Provider of in accordance with clause 2.2(d), may be varied from time to time, by written notice to the Provider. For the avoidance of doubt this clause does not give TfNSW any right to vary the consequences for failure to comply with the KPI obligations.
- (c) Subject to clauses 21(a)(i) to 21(a)(iii) the Provider acknowledges and agrees that TfNSW may give the Provider written notice of any:
 - (i) SACS Supplementation or any increase in the Funding due to indexation;
 - (ii) variation to the Services Schedules, the **Schedule 7 (Reporting)** and the **Schedule 9 (KPI)**, excluding consequences for failure to comply with the KPI obligations, in order to improve the delivery of any of the Services, obtain additional information regarding the use of the Funding or reflect changes in Program requirements or government policies.

- (d) Unless the Provider gives TfNSW notice in writing to the contrary, within 20 Business Days of TfNSW giving the Provider notification of any variation in accordance with clause 21(b) and 21(c), the Provider will be deemed to have agreed to the variation.

22. REPAYMENT OF THE FUNDING

22.1 Circumstances where the Provider must repay the Funding

- (a) If:
 - (i) TfNSW overpays the Provider an amount;
 - (ii) TfNSW pays the Provider an amount that the Provider incorrectly claims;
 - (iii) TfNSW pays the Provider an amount that the Provider is unable to spend in accordance with this Service Contract and the Provider does not obtain consent from TfNSW to retain that amount in accordance with clause 8.5(a);
 - (iv) the Provider spends any Funding or Fees other than in accordance with this Service Contract;
 - (v) the Provider retains any Funding or Fees at the end of the Term the Provider has not legally committed to spend in accordance with this Service Contract during the Term; or
 - (vi) the Provider fails to deliver all of the Funded Trips for a Program

the Provider must notify TfNSW immediately and repay TfNSW that amount of the Funding (or any lesser amount of which TfNSW notifies the Provider of in writing).

- (b) In the event of the occurrence of clause 22.1(a)(vi), the Provider:
 - (i) must notify TfNSW in writing of the number of Funded Trips not delivered by 31 August each year during the Term; and
 - (ii) subject to clause 8.5(a), may be required to repay to TfNSW up to 85% of the per cost trip of each Funded Trip not delivered.

22.2 Repayment

If the Provider must repay an amount under clause 22.1:

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

22.3 Recovery of Funding

TfNSW can recover all or any of the amount the Provider must repay TfNSW under clauses 22.1 and 22.2 by deducting it from subsequent amounts TfNSW has agreed to pay the Provider under this Service Contract.

23. NON-COMPLIANCE EVENT

23.1 Provider's Non-Compliance Event

- (a) Upon the occurrence of a Non-Compliance Event TfNSW may:
 - (i) give the Provider written notice requiring the Provider to remedy the Non-Compliance Event in accordance with clause 23.1(b); and
 - (ii) withhold all or part of the Funding, at TfNSW's absolute discretion.
- (b) Any notice TfNSW serves on the Provider, pursuant to clause 23.1(a) must state:
 - (i) that a Non-Compliance Event has occurred and set out reasonable details of the event or circumstances constituting the Non-Compliance Event;
 - (ii) that the Provider must, within 7 days of receipt of the notice, or such longer period as TfNSW specifies in the notice, rectify the breach;
 - (iii) if TfNSW requires, the Provider must also issue TfNSW, by the date set out in TfNSW's notice, with a Rectification Plan.
- (c) The Provider must issue any Rectification Plan TfNSW require pursuant to a notice under clause 23.1(b) by the date set out in the notice and it must:
 - (i) set out all of the steps the Provider intends to take to rectify the Non-Compliance Event and prevent a re-occurrence; and
 - (ii) when the Provider will complete each of those steps.
- (d) Within 7 days of receiving the Provider's Rectification Plan TfNSW will either approve it or require the Provider to make any amendments to it that TfNSW considers, acting reasonably, need to be made to rectify the Non-Compliance Event, which amendments must be made within 2 Business Days.
- (e) The Provider must:
 - (i) comply with any Rectification Plan approved by TfNSW;
 - (ii) rectify any Non-Compliance Event the subject of a notice under clause 23.1(b) within the time provided in the notice; and
 - (iii) provide TfNSW with any reports TfNSW require regarding the implementation of the approved Rectification Plan.
- (f) If TfNSW withholds all or part of the Funding pursuant to clause 23.1(a)(ii) TfNSW will pay the Provider the withheld Funding when the Provider has rectified the Non-Compliance Event.

24. TERMINATION FOR CONVENIENCE OR REDUCTION IN SCOPE

24.1 TfNSW's right to terminate for convenience or reduce scope

- (a) Even though the Provider is not in default, TfNSW can (subject to any applicable Laws) terminate this Service Contract, suspend or reduce its scope:
 - (i) at any time by giving the Provider written notice, if the Commonwealth terminates or reduces TfNSW's contract with it in relation to the CHSP; or
 - (ii) by giving the Provider 3 months' written notice specifying the date on which the reduction, suspension or termination is to take effect. TfNSW is only permitted to give a notice in accordance with this clause if it is reasonable in the circumstances to do so and TfNSW must when giving a notice in accordance with this clause give TfNSW's reasons for doing so which show it is reasonable in the circumstances.
- (b) If TfNSW gives the Provider a notice reducing the scope or suspension of this Service Contract TfNSW must specify the extent of the reduction or suspension and those Contract Assets that must be transferred to TfNSW, its nominee or a Successor Operator (if any) in accordance with clause 26.2.

24.2 TfNSW liability

- (a) If TfNSW terminates this Service Contract or reduces or suspends the scope, under clause 24.1 TfNSW is only liable to the Provider for:
 - (i) payments that were due to the Provider in respect of Services delivered before the date of termination, suspension or reduction; and
 - (ii) reasonable costs the Provider incurs as a direct result of the termination, suspension or reduction, subject to clauses 24.2(b), (c) and (d);
- (b) TfNSW need only pay the Provider the reasonable costs in clause 24.2(a) if the Provider:
 - (i) complies strictly with this clause 24; and
 - (ii) provides written evidence to satisfy TfNSW of the amounts claimed.
- (c) TfNSW is not liable to pay the Provider compensation for any loss of revenue, profits or benefits that the Provider would have received had the termination, suspension or reduction not occurred.
- (d) TfNSW will not be liable to pay any amount under clause 24.2(a) in respect of any of the Services which would, when added to any of the Funding already paid to the Provider under this Service Contract for those Services, together exceed the total amount of Funding to be paid to the Provider for those Services under this Service Contract.

24.3 Provider's obligations

If TfNSW terminates, suspends or reduces the scope of this Service Contract under clause 24.1 the Provider must:

- (a) immediately cease carrying out the Provider's obligations under this Service Contract (or, in the case of a reduction in scope or suspension, the obligations

removed by the reduction or suspension) in accordance with the notice TfNSW serve upon the Provider;

- (b) immediately do everything the Provider can to lessen all losses, costs and expenses that the Provider may suffer from the termination, suspension or reduction;
- (c) repay any part of the Funding paid to the Provider in respect of the Services the Provider is no longer required to provide, as if TfNSW had given the Provider a notice to repay under clause 22.2; and
- (d) transfer to TfNSW, TfNSW's Lessor or a Successor Operator, in accordance with clause 26.2 of this Service Contract:
 - (i) all of the Contract Assets purchased or Leased with the Funding, if this Service Contract is terminated; or
 - (ii) the Contract Assets specified in the notice served upon the Provider in accordance with clause 24.1, in the case of a reduction or suspension in the scope of this Service Contract; and
 - (iii) comply with the Provider's obligations in clause 26 of this Service Contract in respect of the transfer of the Services and the return of the relevant Contract Assets.

25. TERMINATION EVENT

25.1 Occurrence of Termination Event

- (a) The Provider will not allow a Termination Event to occur. If a Termination Event occurs, the Provider will immediately notify TfNSW of the event and give full details to allow TfNSW to assess the event. A 'Termination Event' means any of the following (whether or not caused by anything outside the control of the Provider):
 - (i) any person suffers a Serious Injury or Illness or dies due to any unlawful, negligent, reckless or deliberately wrongful act or omission by the Provider or the Provider's Staff in the delivery of the Services;
 - (ii) Non-Compliance Event occurs and:
 - (A) TfNSW considers in its absolute discretion that it cannot be rectified; or
 - (B) the Provider fails to rectify it in accordance with a notice served upon the Provider in accordance with clause 23.1(a) or a Rectification Plan approved in accordance with clause 23.1(d);
- (b) the Provider fails to comply with any of their obligations arising under clauses 2.2(c), 6, 12, 15 and 20;
- (c) the Provider regularly or habitually commits breaches of this Service Contract which, in TfNSW's reasonable opinion, when taken in total amount to a material breach of this Service Contract or which collectively have a material adverse effect on the delivery of the Services;

- (d) TfNSW is satisfied on reasonable grounds that the Provider is unable or unwilling to satisfy the terms of this Service Contract;
- (e) it becomes unlawful for the Provider to perform any of the Services;
- (f) the Provider does not have any Authorisation that is material to their performance of this Contract or the provision of the Services or that Authorisation is revoked, terminated or expires or is modified or amended or conditions are attached in a manner that is unacceptable to TfNSW, and it is not replaced by an Authorisation acceptable to TfNSW;
- (g) the Provider spends the Funding other than as required under this Service Contract;
- (h) prior to or during the Term of this Service Contract the Provider issued TfNSW with incorrect, incomplete, false, misleading or deceptive information;
- (i) prior to or during the Term of this Service Contract the Provider makes any statement that is incorrect or incomplete in a way which would have affected the original decision to enter this Service Contract;
- (j) prior to or during the Term of this Service Contract a representation, warranty or statement made by the Provider (including under this Service Contract) is not true or is misleading;
- (k) it have become unlawful for the Provider to perform all or a material part of the Services;
- (l) the Provider abandons, ceases or suspends all or a substantial part of the Services or threatens to do so;
- (m) the Provider's Authorisation that is material to the performance by the Provider of this Service Contract is repealed, revoked or terminated or expires, or is modified or amended or conditions are attached which are unacceptable to TfNSW;
- (n) TfNSW believes that to continue the Service Contract may bring into disrepute, or affect the reputation of, or be detrimental to, TfNSW;
- (o) the Provider has acted fraudulently or dishonestly in connection with this Service Contract;
- (p) Insolvency Event occurs;
- (q) KPI Termination Event occurs; or
- (r) Change of Control occurs, which TfNSW have not consented to in writing.

25.2 Termination of Service Contract

TfNSW may terminate this Service Contract:

- (a) immediately upon the occurrence of a Termination Event set out in clause 25.1(a);
or

- (b) on 7 days' notice to the Provider upon the occurrence of any other Termination Event;

In either case TfNSW shall give the Provider written notice of the termination which specifies when the termination is to take effect. This clause 25.2 does not limit any of TfNSW's other rights or at Law and termination of this Service Contract for any reason will be without prejudice to any rights which either party may have accrued before termination.

25.3 After termination

If TfNSW terminates this Service Contract under this clause 25 the Provider must:

- (a) repay any part of the Funding and Fees that the Provider has not:
 - (i) already spent in accordance with this Service Contract; or
 - (ii) legally committed to spend under this Service Contract prior to receiving notice under clause 25.2,as if TfNSW had given the Provider a notice to repay that amount under clause 22.2 on the date the termination or reduction takes effect.
- (b) repay any part of the Funding that TfNSW considers the Provider has not spent in accordance with this Service Contract in accordance with a demand served upon the Provider in accordance with clause 22.2;
- (c) comply with the Provider's obligations in clause 26 of this Service Contract in respect of the transfer of the Services and the Contract Assets.

25.4 Invalid termination

If TfNSW purports to terminate the Service Contract under this clause 25 and that termination is determined by a competent authority not to be properly a termination under this clause, then that termination by TfNSW will be deemed to be a termination under clause 24 effective from the date of the notice of termination referred to in clause 25.2.

26. END OF SERVICE CONTRACT TRANSFER PROVISIONS

26.1 Appointment of successor

The Provider acknowledges that TfNSW may, on or before the end of the Term, invite any person to perform all or any part of the Services after the end of the Term.

26.2 Transferring the Contract Assets to a Successor

- (a) Unless otherwise notified by TfNSW in writing, if this Contract is terminated or the Term otherwise expires, the Provider must take all steps necessary to:
 - (i) transfer the legal and beneficial title and registration; and
 - (ii) deliver possession;

of all of the Contract Assets (excluding any Contract Assets that are subject to a Lease) to TfNSW, TfNSW's Lessor or a Successor Operator (upon payment of \$10 consideration):

- (iii) if this contract is terminated, within 5 Business Days of TfNSW's Termination Notice taking effect;
 - (iv) or otherwise, within the period of 30 days immediately preceding the end of the Term.
- (b) If the scope of this Contract is reduced pursuant to clause 24, the Provider must take all steps necessary to:
- (i) transfer the legal and beneficial title and the registration; and
 - (ii) deliver possession;

of the Contract Assets specified in the notice served upon the Provider pursuant to clause 24.1 to TfNSW, TfNSW's Lessor or a Successor Operator (upon payment of \$10 consideration) within 5 Business Days of TfNSW's notice reducing the scope of this Service Contract taking effect.

- (c) The Provider must ensure at the time the Provider is required to deliver possession of the Contract Assets to TfNSW, TfNSW Lessor or a Successor Operator that they are:
- (i) operational and free from damage;
 - (ii) in at least the same condition as at the Effective Date or date the New Contract Asset (if any) was notified to TfNSW in writing;
 - (iii) compliant with clause 9.1;

subject to fair wear and tear.

- (d) If any Contract Asset is not in the condition required by clause 26.2(c):
- (i) TfNSW may direct the Provider to restore the Contract Asset to the required condition within 7 days, or such longer period as TfNSW may agree with the Provider; or
 - (ii) the Provider must pay an amount reasonably determined by TfNSW to be the cost of restoring the Contract Asset to the required condition.

26.3 Continuation of Services

The Provider must maintain and manage the Services in a way that a Successor Operator or TfNSW's Lessor is able at any time to take over the Services without interruption to any of the Services.

26.4 Handover

- (a) The Provider must prepare and maintain the following information, in addition to the records identified in clause 13:
- (i) information regarding material contracts relating to the Services;

- (ii) information regarding computer and other information systems (if any) the Provider uses to perform the Services or store any Commonwealth Material or State Material;
 - (iii) the asset register referred to in clause 13.2(f);
 - (iv) information regarding Service Assets used in the Services, including the extent to which they are used in the Services;
 - (v) an inventory of Spares;
 - (vi) maintenance records for all Contract Assets;
 - (vii) details of scheduled timetabled transport services;
 - (viii) the names, addresses, contact details and service requirements of all active clients, in accordance with Privacy Laws;
 - (ix) a schedule of information regarding the Provider's Staff at an aggregate level including date of joining, contract / award terms, grade, accrued entitlements and training records; and
 - (x) such other information as is reasonably requested by TfNSW to facilitate smooth handover of the Services, or any part of the Services, to TfNSW or TfNSW's Lessor or a Successor Operator.
- (b) The Provider must keep the information described in clause 26.4(a) up to date and provide copies to TfNSW on reasonable notice, or in any case, immediately in the event of TfNSW issuing a Termination Notice.
 - (c) The Provider must ensure that a prospective Successor Operator, Successor Operator or TfNSW's Lessor has, to the extent permitted by Law, immediate access to the information referred to in 26.4(a) on reasonable notice from TfNSW, or in any case, immediately in the event of TfNSW issuing a Termination Notice.

26.5 Information required to enable Service continuity

- (a) The Provider must, to the extent permitted by Law, provide TfNSW with reasonable access to the Provider's Staff and the information, books and records, kept by the Provider or on the Provider's behalf in connection with the Services, for the purpose of TfNSW preparing reports and documents in connection with any invitation to a person to operate all or part of the Services or any other associated services.
- (b) The Provider 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 require in connection with the contracting of the Services.
- (c) The Provider warrants and represents to TfNSW that to the best of the Provider's belief all information provided under clauses 26.4(a) and 26.5(a) will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.
- (d) The Provider must warrant to a Successor Operator that to the best of the Provider's belief any other information made available is true and correct.

26.6 The Provider must not frustrate the transfer of the Services

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

- (a) the transfer of the Services or any part of them at the end of the Term to a Successor Operator or TfNSW's Lessor; or
- (b) the ongoing delivery of the Services.

26.7 Assistance to enable the Services continuity

The Provider must do all things, both before and after the Termination Date, TfNSW reasonably requires the Provider to do to assist and advise any prospective Successor Operator, Successor Operator or TfNSW's Lessor in the operation of the Services, including providing information and records related to the operation of the Services (excluding confidential financial information but including all records relating to the Staff).

26.8 Access to enable the Service continuity

The Provider must ensure that a prospective Successor Operator, Successor Operator or TfNSW Lessor has access to the Provider's Staff, the Contract Assets, Spares, and any premises or depots at which the Contract Assets are kept for the purpose of:

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

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

26.9 Obligations subject to Privacy Laws

The Provider's obligation to provide information as required by this clause 26 is subject to compliance with the Provider's, TfNSW and any Successor Operator's obligations under Privacy Laws.

27. CONFLICT OF INTEREST

27.1 No conflict of interest

The Provider warrants, represents and will ensure that, to the best of its knowledge, no Conflict of Interest of the Provider and the Provider's Staff exists or is likely to arise in the performance of the Service Contract.

27.2 Notification of Conflict of Interest

The Provider must:

- (a) notify TfNSW in writing immediately if a Conflict of Interest arises, or could reasonably be perceived by others to have arisen; and

- (b) make full disclosure of all relevant information relating to the Conflict of Interest; and
- (c) comply with any direction given by TfNSW for the appropriate management or resolution of the Conflict of Interest within the time frame stipulated by TfNSW.

28. ACKNOWLEDGEMENT OF THE COMMONWEALTH AND / OR THE STATE FUNDING

- (a) The Provider must acknowledge the Funding and other support provided by the Commonwealth or the State (as appropriate) in any Service Contract Material the Provider publishes.
- (b) When doing so, the Provider must use any form of acknowledgement TfNSW reasonably specifies.

29. INTELLECTUAL PROPERTY RIGHTS

- (a) The Provider owns the Intellectual Property Rights in all Service Contract Material subject to clauses 29(b) and (c).
- (b) The Commonwealth owns all Commonwealth Material, including Intellectual Property Rights in that Material.
- (c) TfNSW, or the State own all State Material, including Intellectual Property Rights in that Material.
- (d) The Provider grants TfNSW a licence to use, reproduce, publish and adapt the Intellectual Property Rights in Service Contract Material and Existing Material, (excluding Secret and Sacred Material) for any Commonwealth or State purpose. This licence is permanent, irrevocable, free, worldwide, non-exclusive and includes a right of sub-licence.
- (e) TfNSW licenses the Provider to use the Commonwealth Material and the State Material (including copying it and supplying it to others), but only for the purposes of this Service Contract.
- (f) The Provider must ensure that the Provider has the right, or will have the right at the relevant time, to deal with the Intellectual Property Rights in the Service Contract Material and any Existing Material under this clause 29.
- (g) If TfNSW requires, the Provider must bring into existence, sign or otherwise deal with any document which TfNSW considers is necessary or desirable to give effect to this clause 29.
- (h) The Provider must obtain, from each author of any Service Contract Material or Existing Material, a written consent to the Specified Acts. The consent must cover Specified Acts done before or after the date of the consent, and whether done by TfNSW or by someone claiming under or through TfNSW. If TfNSW asks, the Provider must give TfNSW the original of the consent.
- (i) The Provider must keep safe and maintain all State and Commonwealth Material. The Provider accepts all risk relating to that Material.

- (j) The Provider must promptly return all State and Commonwealth Material when this Service Contract ends or is terminated, unless TfNSW otherwise direct.

30. CONFIDENTIAL INFORMATION

- (a) Subject to clause 30(b), a party must not disclose Confidential Information to anyone, without the prior written consent of the other party.
- (b) A party can disclose Confidential Information to the extent that it:
 - (i) is disclosed to its internal management solely to enable effective management or auditing of Service Contract-related activities;
 - (ii) is disclosed by TfNSW to an external consultant or contractor, who is engaged to conduct reviews or research and / or make recommendations aimed at achieving more effective use of the Funding, improving the delivery of the Services or the Provider's operations or governance;
 - (iii) is disclosed by TfNSW to any Minister of the Commonwealth or the State;
 - (iv) is disclosed by TfNSW, in response to a request by a House or a Committee of the Parliament of the Commonwealth or the State;
 - (v) is shared within TfNSW, or with another Governmental Agency, where this serves TfNSW's, the Commonwealth's or the State's legitimate interests;
 - (vi) is authorised or required by law to be disclosed;
 - (vii) is in the public domain otherwise than due to a breach of this clause 30 or the law;
 - (viii) is required to be disclosed to a party's legal advisers or for the purpose of enforcing this Service Contract or in any proceedings arising out of or in connection with this Service Contract;
 - (ix) is required to be disclosed to professional advisors including accountants, auditors and insurance brokers to enable a party to comply with its legal obligations; or
 - (x) is authorised or required under Information Legislation.
- (c) Where a party discloses Confidential Information to another person under clause 30(b) they must:
 - (i) notify the receiving party that the information is confidential; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential.
- (d) If TfNSW asks, the Provider must promptly arrange for any of the Provider's Subcontractors, employees and volunteers to give TfNSW a signed confidentiality deed, in a form TfNSW provides, relating to the use and non-disclosure of TfNSW's Confidential Information.
- (e) The Provider must secure all TfNSW's Confidential Information against loss and unauthorised access, use, modification or disclosure.

31. PRIVACY

- (a) The Provider must:
 - (i) comply with the Privacy Laws and any guidelines issued by the Federal or NSW Privacy commissioner;
 - (ii) comply with any privacy policy or approved privacy code which has been adopted by TfNSW and which TfNSW notify the Provider of in accordance with clause 2.2(d);
 - (iii) do all that is reasonably necessary on the Provider's part to enable TfNSW to comply with the Privacy Law and any privacy policy or code TfNSW adopt.
- (b) The Provider agrees to follow any reasonable TfNSW direction regarding how to comply with any such Privacy Law and any privacy policy or code, in respect of any Personal Information the Provider receives or has access to under this Service Contract and the performance of the Services.
- (c) The Provider must comply with all Privacy Laws. This means even if the Provider is not legally required to comply with the Privacy Act 1988 (Cth), then, for the purposes of this Service Contract, it must do so.
- (d) The Provider must immediately notify TfNSW in writing upon becoming aware of any breach of this clause 31 and co-operate with TfNSW in the resolution of any complaint alleging a breach of the Privacy Law, a privacy policy or an approved privacy code, arising out of or in connection with this Service Contract.

32. DISCLOSURE OF CERTAIN INFORMATION

- (a) Subject to TfNSW's obligations at Law, the Provider acknowledges that TfNSW, the Commonwealth or the State may disclose or publish any information or details about this Service Contract, Subcontracts, or the Services and/or require the Provider to, in any form and at times TfNSW considers appropriate. The information or details may include (but are not limited to) the Provider's name, the amount of the Funding, the location where the Services are being delivered and performance, patronage, the results of any passenger counts or surveys and safety information, including any information obtained from the Provider in accordance with the **Schedule 7 (Reporting)** or information collected from Systems and Equipment.
- (b) TfNSW will not publish information under clause 32(a) that is Personal Information or Confidential Information.
- (c) The Provider acknowledges that information may also be disclosed in accordance with TfNSW's obligations or those of the State or the Commonwealth under Information Legislation.
- (d) In order for TfNSW to monitor the Services and the Provider's performance, the Provider is required to report various information and data to TfNSW which may include Personal Information about passengers of the Services.
- (e) For all passengers of the Services, the Provider must obtain their authorisation for the collection, use and disclosure of their Personal Information to and by TfNSW.

In obtaining such authorisation, the Provider must prominently display or otherwise include in its privacy policy a statement which substantially covers the following:

*Personal information (information or an opinion), collected from passengers, such as name, date of birth, contact details, or sensitive personal information (including information about mobility/accessibility requirements) (together **Personal Information**) collected by [insert the Provider's name] may be disclosed to Transport for New South Wales (TfNSW).*

TfNSW may disclose such Personal Information to other Australian government agencies. These government agencies may use Personal Information for any purpose relating to the exercise of their government functions. Such Personal Information may also be disclosed to other third parties if required by law.

TfNSW will be evaluating the delivery and use of this service. TfNSW may disclose Personal Information to third parties assisting with evaluation and survey purposes. This includes using contact details of passengers to conduct surveys relating to the service provided by [insert the Provider's name].

By using these services, passengers consent to the collection, use and disclosure of their Personal Information in the manner outlined above.

You also consent to TfNSW directly contacting you before or after you use the service. This may involve seeking your participation in survey exercises from time to time. TfNSW may contact you about transportation related matters including use of the service.

33. DISPUTE RESOLUTION

33.1 Dispute resolution process

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

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

33.2 Restriction on commencing legal proceedings

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

- (a) the negotiations fail to resolve the dispute within 20 Business Days of when notice pursuant to clause 33.1(a) is given; or
- (b) where a party submits the dispute to alternative dispute resolution under clause 33.1(c), the dispute is not resolved within 20 Business Days of that submission (or any extended time the parties have agreed to in writing before the expiry of the 20 Business Days).

33.3 Exception to restriction on commencing legal proceedings

- (a) A party does not need to follow the dispute resolution procedures set out in clause 33.1 and 33.2 if they are seeking urgent interlocutory or interim relief from a court.
- (b) Clauses 33.1 and 33.2 do not apply in relation to actions TfNSW takes under clauses 22, 23 and 24.

33.4 Obligation to perform

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

34. NOTICES

34.1 Notices in writing

Any Notice under this Service Contract:

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

34.2 When Notice is received

A Notice given under this Service Contract in accordance with clause 33.1 will be taken to be duly given:

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

but if the result is that the Notice would be taken to be given on a day that is not a Business Day or is given after 5:00pm (addressee's time), the Notice will instead be taken to have been given at 9:00am on the next Business Day.

35. THIRD PARTY DISPUTES

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

36. RELATIONSHIP

- (a) The Provider acknowledges that neither the Provider nor any person employed or engaged by the Provider are an employee, partner or agent of TfNSW or of the

State or the Commonwealth by reason of the execution or performance of this Service Contract.

- (b) The Provider must not misrepresent their relationship with Transport for New South Wales, the State or the Commonwealth.
- (c) The Provider is not authorised to legally commit or represent TfNSW in any way, and must not attempt to bind or represent TfNSW in any way,

37. FORCE MAJEURE EVENT

37.1 Suspension of obligations by reason of a Force Majeure Event

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

- (a) as soon as reasonably practicable, notifies the other party of the nature and impact of the Force Majeure Event and of extent to which it is unable to perform its obligations; and;
- (b) uses its best endeavours to remedy or minimise the effects of the Force Majeure Event.

37.2 No extension of the Term

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

38. GST

38.1 Definitions

In this clause 38:

- (a) a term used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('**GST Act**') is defined or used in that Act;
- (b) any amount relevant in determining a payment to be made by a party is exclusive of any GST unless indicated otherwise; and
- (c) If GST is imposed on a supply, the consideration provided for that supply is increased by the rate at which that GST is imposed. It is payable at the same time as the consideration to which it relates; and
- (d) If one of the parties is entitled to be reimbursed for an expense or outgoing, 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; and
- (e) the term '**RCTI**' means a 'recipient created tax invoice' as defined in the GST Act. For the purpose of this Service Contract, an RCTI is a tax invoice belonging to a class of tax invoices that the Australian Commissioner of Taxation has determined in writing may be issued by the receiver of the supply.

38.2 Organisation is registered or required to be registered for GST

- (a) If one party ('**supplier**') makes a taxable supply to the other party ('**receiver of the supply**') under this Service Contract the receiver of the supply will pay without set-off, on provision of a tax invoice or RCTI, an additional amount to the supplier equal to the GST imposed on the supply in question.
- (b) If an amount on account of GST has been included in the consideration for a supply under this Service Contract, the amount of GST is as specified in the Funding Tables to this Contract.
- (c) If an amount on account of GST has been included in the consideration for a supply under this Service Contract and the supply is not a taxable supply for any reason, the supplier must, on demand, refund the amount paid on account of GST to the receiver of the supply.
- (d) No party may claim or retain from the other party any amount in relation to a supply made under this Service Contract for which the first party can obtain an input tax credit or decreasing adjustment.
- (e) The parties acknowledge and agree that each party:
 - (i) is registered for GST purposes;
 - (ii) has quoted its Australian Business Number to the other; and
 - (iii) must tell the other of any changes to the matters covered by this clause.
- (f) TfNSW (as the receiver of the supply) will issue RCTI(s) and any adjustment notes for any taxable supplies the Provider make to TfNSW under this Service Contract within 28 days of TfNSW determining the value of the taxable supplies in question.
- (g) The Provider must not issue tax invoices or adjustment notes for taxable supplies the Provider make to TfNSW under this Service Contract.
- (h) Both parties must comply with the determination scheduled to GST Ruling 2000/10.
- (i) TfNSW will not issue RCTI(s) or adjustment notes for taxable supplies the Provider make to TfNSW under this Service Contract at any time that either party fails to comply with any of the requirements in clauses 38.2(e) to 38.2(i).

38.3 Government Related Entities

- (a) This clause applies if the Provider are a Local Council or other Government related entity, see **Items 2 and 9** of the **Schedule 1 (Service Contract Details)**.
- (b) Other than as set out in this clause, where this clause applies clauses 38.2 and 38.4 do not apply.
- (c) The parties have entered into this Service Contract on the understanding that:
 - (i) the parties are both 'government related entities' as defined in the GST Act; and either:
 - (ii) the payment of the Funding:
 - (A) is covered by an appropriation under an Australian law; and
 - (B) is calculated on the basis that the sum of the Funding and anything else the Provider receive from another entity in connection with, or in response to, or for the inducement of that supply under this Service

- Contract, or a related supply does not exceed the Provider's anticipated or actual costs of making those supplies; or
- (iii) the payment of the Funding is a kind of payment specified in regulations made for the purposes of s 9-17 of the GST Act.
 - (d) If despite clauses 38.3(c) and 38.3(e) one party ('**supplier**') makes a taxable supply to the other party ('**receiver of the supply**') under this Service Contract the receiver of the supply will pay without set-off, on provision of a tax invoice, an additional amount to the supplier equal to the GST imposed on the supply in question.
 - (e) The parties acknowledge and agree that each party:
 - (i) has quoted its Australian Business Number to the other; and
 - (ii) must tell the other of any changes to the matters covered by this clause.
 - (e) On the basis of the matter described in clause 38.3(c), the parties rely on s.9-17 of the GST Act for no GST being imposed in connection with a supply made under this Service Contract.

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

- (a) This clause applies if the Provider are not registered or required to be registered for GST, see **Item 9 of Schedule 1(Service Contract Details)**.
- (b) Other than as set out in this clause, where this clause applies clauses 38.2 and 38.3 do not apply.
- (c) The parties knowledge and agree that they each:
 - (i) have quoted their Australian Business Number to the other; and
 - (ii) must tell the other of any changes to the matters covered by this clause.
- (d) If the Provider become registered for GST, or become required to be registered for GST, during the Term of this Service Contract, then:
 - (i) the Provider must notify TfNSW in writing within 7 days after the Provider become registered for GST; and
 - (ii) clause 38.2 will apply in its entirety from the date the Provider's GST registration takes effect.

39. GENERAL

39.1 Entire agreement

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

39.2 Benefit of this Service Contract

- (a) The Provider acknowledges and agrees that TfNSW holds the benefit of the Provider's obligations, TfNSW's rights and any releases or indemnities under this Service Contract as principal and on trust for each Indemnified Party, each of the TfNSW Associates and any Successor Operator (each being a **Beneficiary**), as if the obligation, right, release or indemnity had been expressed for the benefit of each Beneficiary.

- (b) If any Beneficiary suffers Losses as result of one or more of the Provider's acts or omissions or any of the Provider's Staff relating to the performance, non-performance or termination of this Service Contract, TfNSW will be able to recover those Losses from the Provider as if the Losses were suffered or incurred by TfNSW;
 - (i) to the extent that Losses would have been capable of being recovered by TfNSW had TfNSW suffered those Losses; and
 - (ii) subject to the limitations and exclusions of liability set out in this Service Contract.

39.3 Counterparts

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

39.4 Variation of this Service Contract

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

39.5 Effect of invalidity

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

39.6 Further assistance

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

39.7 PPS Law

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

39.8 Assignment

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

39.9 Enforcement of rights and waiver

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

39.10 Governing law and jurisdiction

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

39.11 Survival

Clauses: Compliance policies and processes for necessary clearances 6.6(b), Retaining unspent Funding 8.5(c), 9.2 (Inspection of Service Assets), Use of Contract Assets 10.2(b)(i), 11 (New Service Assets), 12 (Dealing with Contract Assets), 13 (Records Required to Keep, Access and Audits), 14 (Reports), Safety Laws, Serious Incidents, Prosecutions and Investigations: 15(a), (b)(iii), (f) inclusive to (h), 18.3 (Information regarding Subcontractors), 19 (Liability), 20 (Provider's Insurance Obligations), 22 (Repayment of Funding), 24.2 (TfNSW liability), 24.3 (Provider's obligations), 25.3 (After Termination), 25.4 (Invalid Termination), 26 (End of Service Contract Transfer Provisions), 28 (Acknowledgement of Commonwealth and/or State Funding), 29 (Intellectual Property Rights), 30 (Confidential Information), 31 (Privacy), 32 (Disclosure of Certain Information), 33 (Dispute Resolution), 35 (Third Party Disputes), 38 (GST) and 39 (General) of these Standard Terms and Conditions and **subsections** 3(h), 3(i)(iii), 3(iii)(iv), 4(c)(iv) of **Schedule 2 (General Services)** and the Provider's obligations under **Schedule 6 (Insurances)** and **Schedule 7 (Reporting)** in respect of Services delivered during the Term, and any other clause which by its nature should survive termination or expiry of this Service Contract on any basis, survive the termination or expiry of this Service Contract on any basis.

40. DEFINITIONS AND INTERPRETATIONS

40.1 Definitions

In this Service Contract, unless the contrary appears, these words have the following meaning:

Asset means any Bus, Car / Minibus or Trailer.

Asset Replacement Fund means a bank account the Provider has maintained for the replacement of Contract Assets once they reach maximum age or maximum kilometres.

Authorisation includes any registration, filing, lodgement, franchise, agreement, notarisationalion, direction, declaration, authority, consent, authorisation, permit, certificate, permission, licence, approval or exemption from, by or with a Governmental Agency. It

also includes any accreditation or certification of competency required by any Law (including any PT Law) including any guideline.

Board means:

- (a) if the Provider is a company their Board of Directors;
- (b) if the Provider is an incorporated association their Management Committee;
- (c) if the Provider is an co-operative their Board of Directors;
- (d) if the Provider is a Council their Councillors.

Bus has the same meaning as in the PT Law.

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

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

Change of Control means:

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

CHSP means the Commonwealth Home Support Programme funded by the Commonwealth through the Department of Health (previously DSS).

CHSP Manual means the Commonwealth Home Support Programme (CHSP) Manual available from <https://www.health.gov.au/resources/publications/commonwealth-home-support-programme-chsp-manual>, as updated from time to time.

CHSP Services means the Services the Provider is contracted to provide under the CHSP as defined in **Schedule 3 (CHSP Services)**.

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

Commencement Asset Register means the register of Contract Assets and Provider Assets as at the Effective Date and **annexed** to this Service Contract at **Annexure A**.

Commencement Date means the date specified in Item 4 of Schedule 1 (Service Contract Details).

Commonwealth means the Commonwealth of Australia.

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

Completion Date means the date specified in **Item 5 of Schedule 1 (Service Contract Details)** or any other extended date agreed to by the parties in writing.

Confidential Information means information that:

- (a) by its nature is confidential; or
- (b) the parties know or ought to know is confidential; or
- (c) is designated by TfNSW, the State or the Commonwealth as confidential information; or

(d) is Secret and Sacred Material.

Conflict of Interest means engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Provider of, or to restrict the Provider in performing, its obligations under this Service Contract.

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

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

Contract Asset means each Asset listed in the Commencement Asset Register as a "Contract Asset" and each New Contract Asset.

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

CTABS means Centralised Trip Allocation and Booking System solution.

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

CTP means the Community Transport Program funded by the State through TfNSW.

CTP Services means the Services the Provider are contracted to provide under the CTP as defined in Schedule 4 (CTP Services).

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

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

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

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

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

Effective Date means 1 January 2021.

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

Executive Decision Maker means:

- (a) any member of the group of persons who is responsible for the Provider's executive decisions; or

- (b) any personnel of the Provider who has responsibility for, or significant influence over, planning, directing or controlling the Services or part of the Services;
- (c) any person who is responsible for the Provider's day-to-day operations, whether or not the person is an employee.

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

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

Fees means the contributions the Provider receives from Eligible Customers for Services provided under each Program.

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

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

Financial Year means 1 July of each calendar year to 30 June of the following year.

Force Majeure Event means:

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

the consequence of which is beyond the control of the parties and could not have been prevented, overcome or remedied by the exercise by a party exercising a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such prudent and competent person) including, in the Provider's case, taking the steps set out in 'Service Continuity Plan' that the Provider is required to develop under clause 4(b).

Funded Trips means the "No. of Units" set out in the Funding Table, required to be delivered as part of the Services.

Funding means the money, or any part of it:

- (a) paid to the Provider during the Term as set out in the Funding Table or otherwise pursuant to this Service Contract; or
- (b) paid to the Provider under any prior contract with TfNSW for the delivery of community transport services, and currently retained by the Provider, including the Asset Replacement Fund.

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

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

Identification Date means the date listed on a vehicle's Identification Plate (previously known as Compliance Plate).

Indemnified Persons has the meaning given in clause 19.1(a).

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

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

Insolvency Event means when the Provider:

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

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

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

Investigation or Prosecution means:

- (a) any investigation in connection with safety or a Serious Incident;

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

Investigative Officer means:

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

KPI means a key performance indicator set out in **Schedule 9 (KPI)**.

KPI Action Plan has the meaning given in **Schedule 9 (KPI)**.

KPI Report means any reports the Provider is required to provide to TfNSW in respect of each KPI as set out in **section 3** of the **Schedule 9 (KPI)**.

KPI Termination Event has the meaning given in **Schedule 9 (KPI)**.

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

Lease means any finance lease or operating lease which entitles the Provider to the exclusive use of an asset owned by a third party.

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

LGA means a Local Government Area.

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

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

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

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

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

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

NDIA means the National Disability Insurance Agency.

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

New Contract Asset means any Asset Leased on or after the Effective Date using any part of the Funding.

Non-Compliance Event means the Provider has not complied with any term or condition of this Service Contract or any breach of this Service Contract other than a breach of a KPI, but includes a failure to provide a KPI Report or KPI Action Plan, and any failure to comply with a KPI Action Plan for any KPI including any changes required pursuant to **section 3(g) of Schedule 9 (KPI)**.

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

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

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

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

Permitted Security Interest means:

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

Personal Information has the meaning given by Privacy Laws.

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

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

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

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

Premises means any location where the Provider stores any of their records, provide or plan the Services or keep the Contract Assets or Provider Assets.

Privacy Law means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth) and includes any regulation, order, rule, subordinate legislation, standard or codes of practice and principles made under them.

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

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

Provider means the legal entity set out in Item 1 of Schedule 1 (Service Contract Details).

Provider Asset means any Asset, used by the Provider in the delivery of Services and purchased by the Provider wholly with funds other than the Funding.

PT Law means each of the following, as in force from time to time, the *Passenger Transport Act 1990* (NSW), the *Passenger Transport Regulation 2007* (NSW), the *Passenger Transport Act 2014* (NSW), the *Passenger Transport Regulation 2014* (NSW), the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) and any order, rule, subordinate legislation, ordinance, standard, code or guideline made under them.

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

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

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

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

SACS Decision means each of the decisions made by:

- (a) the Full Bench of Fair Work Australia on 1 February 2012 as bought into effect by the terms of the equal remuneration order issued by the Full Bench of Fair Work

- Australia on 22 June 2012, in respect of persons covered by Schedule B (Social and Community Services Employees) or Schedule C (Crisis Accommodation Employees) of the SACS Award;
- (b) the Western Australia Industrial Relations Commission on 29 August 2013

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

Safety Laws means the PT Law and the WHS Law.

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

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

Security Interest means:

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

Serious Incident means:

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

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

Service Asset means any Asset used by the Provider in the delivery of the Services.

Service Contract means collectively the:

- (a) Standard Terms and Conditions; and
- (i) **(CHSP Police Certificate Guidelines)** located here: <https://www.health.gov.au/resources/publications/police-certificate-guidelines-for-aged-care-providers>, as updated from time to time; and
- (ii) **(Annexure A)** Commencement Asset Register
- (b) the following Schedules:
- (i) **(Schedule 1)** Service Contract Details;
- (ii) **(Schedule 2)** General Services:
- i. **Attachment A** – Community Transport Driver Requirements;
- (iii) **(Schedule 3)** Commonwealth Home Support Programme (CHSP) Services;
- i. **Attachment A** - CHSP Funding Table;
- (iv) **(Schedule 4)** Community Transport Program (CTP) Services;

- i. **Attachment A** - CTP Funding Table;
- (v) **(Schedule 5)** NSW Health NGO Grants Program Services;
 - i. **Attachment A** – NGO Grants Program Funding Table;
- (vi) **(Schedule 6)** Insurance;
- (vii) **(Schedule 7)** Reporting;
 - i. **Attachment A** - TfNSW Serious Incident Guide
- (viii) **(Schedule 8)** Governance; and
- (ix) **(Schedule 9)** KPI.

Service Contract Material means all Material:

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

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

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

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

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

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

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

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

but does not include false attribution of authorship.

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

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

Standard Terms and Conditions means the terms and conditions contained within clause 1 to 40 including the 'Background'.

State means the State of New South Wales.

State Material means any material apart from the Commonwealth Material:

- (a) TfNSW provide to the Provider for the purposes of the Services; or
- (b) copied or derived at any time from the Material referred to in (a); other than the Material referred to in clause 3(h)(i) and (ii) of the Schedule 2 (General Services).

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

Subcontractor means any contractor that is engaged by the Provider to perform any part of the Provider's obligations under this Service Contract and any of their subcontractors.

Subcontract has a corresponding meaning.

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

Systems and Equipment means any systems and equipment that may be installed for or on behalf of TfNSW on the Service Assets or Premises.

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

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

Termination Event means any of the events listed in clause 25.

Termination Notice means a notice issued by TfNSW in accordance with clauses 24.1 or 25.2.

TfNSW means Transport for NSW.

TfNSW Associates means TfNSW's personnel (including its employees, agent, officer, subcontractor or contractor) and any Government Agency forming part of the Transport cluster and any relevant Roads Authority (*defined under the Roads Act 1993* (NSW)) or *any of their personnel*, as amended.

TfNSW Lessor means TfNSW or TfNSW's nominee, agent or delegate.

TfNSW Serious Incident Guide means the guide attached to Schedule 7 (Reporting Schedule) which sets out the types of incidents the Provider must notify TfNSW of in accordance with clause 15(b)(ii) of these Standard Terms and Conditions.

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

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

WHS Law means:

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

40.2 Interpretation

In this Service Contract:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

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

40.3 Schedules

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

40.4 Priority of documents

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

- (a) Standard Terms and Conditions;

- (b) Service Contract Details;
- (c) Schedules including any annexures and attachments; and
- (d) any documents incorporated by reference in these Standard Terms and Conditions or the Schedules.

40.5 Consents or approvals

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

EXECUTED AS AN AGREEMENT

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

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

in the presence of:

(Full name of witness) (Signature)

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

SIGNED for and on behalf of _____
(insert Provider full legal name) (ABN)

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

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

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

SIGNED for and on behalf of _____
(insert Provider full legal name) (ABN)

by its authorised delegate

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

in the presence of:

(Full name of witness) (Signature)

EXECUTED by _____
(insert Provider full legal name) (ABN)

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

(Full name if Director) (Signature) (Date)

(Full name of Director/Secretary) (Signature) (Date)