



Deed of Standing Offer

Bus Procurement Panel 4

Transport for NSW
ABN 18 804 239 602

and

[**insert]
ABN [**insert]

Version 1.0

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THIS DEED is made on the _____ day of _____ 2024

BETWEEN

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

AND

[**insert], ABN [**insert] of [**insert] (**Supplier**).

BACKGROUND

- A. The Principal is a corporation constituted under the *Transport Administration Act 1988* (NSW).
- B. The Principal wishes to establish a panel of bus manufacturers and body/chassis combinations to supply complete Buses (and other related services) that represent Value for Money, to itself and to Bus Operators, for the purposes of Bus Service Contracts.
- C. On 24 October 2022, the Principal issued the Request for Proposal to establish a panel of bus manufacturers.
- D. The Supplier submitted a tender proposal that was accepted by the Principal.
- E. The Supplier irrevocably offers to supply the Services to a Bus Operator and/or the Principal, in full compliance with the terms and conditions of this Deed, if and when requested by a Bus Operator or the Principal.

NOW THE PARTIES AGREE:

1. Interpretation

1.1. Definitions

Aboriginal Participation Plan means a plan which demonstrates how the Supplier will meet one (or a combination) of the minimum requirements and targets for Aboriginal participation for NSW Government suppliers in the Aboriginal Procurement Policy and is the form of the participation plan template published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> (as updated, amended or varied from time to time), or such other participation plan template notified by the Principal to the Supplier from time to time.

Aboriginal Procurement Policy or APP means the NSW Government Aboriginal Procurement Policy published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> (as updated, amended or varied from time to time).

Acceptance means, in respect of each Bus, the stage when a Bus meets the Pre-Delivery Check Criteria.

Anti-slavery Commissioner means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

APP Order Value Threshold means the minimum contract value specified in the Aboriginal Procurement Policy which gives rise to the requirement for NSW Government suppliers to submit an Aboriginal Participation Plan.

Associates means:

- (a) in respect of the Principal, means any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of the Principal;
- (b) in respect of a Bus Operator, means any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of the relevant Bus Operator; and
- (c) in respect of the Supplier, means any personnel (including Key Personnel), officer, employee, agent, contractor, sub-contractor, consultant, nominee, licensee or advisor of the Supplier or a Related Body Corporate.

Bus means a ZEB or any other bus which meets the Specifications and is listed in the Supplier Portal.

Bus Category means each of the following categories of Buses referred to in the Introduction sheet of the Supplier's RFP Returnable Schedule 3 Response, being:

- (a) diesel euro 6 two door city bus;
- (b) diesel euro 6 one door urban bus;
- (c) diesel euro 6 school bus cat 4 bus;
- (d) diesel euro 6 14.5 CAB bus;
- (e) diesel euro 6 double deck bus;
- (f) ZEB two door city bus;
- (g) ZEB one door urban bus; and
- (h) ZEB school bus cat 4 bus.

Bus Maintenance Schedule means the schedule provided by the Supplier in accordance with clause 5.5, in the form accepted by the Principal.

Bus Operator means an accredited operator of bus services in New South Wales, who has entered into an agreement with the Principal to provide bus services.

Bus Operator Order has the meaning given to that term in clause 4.2.1.

Bus Services means the bus services provided by any Bus Operator to the Principal.

Business Critical Data has the meaning given in section 5 of the SOCI Act.

Business Days means any day other than a Saturday, a Sunday or a public holiday or a day observed as a public holiday throughout New South Wales.

Certificate of Acceptance means the written certificate issued under clauses 7.1.7 or 7.1.12 in respect of a Bus.

Change in Control means, in respect of the Supplier, any event which occurs such that a change occurs in the Control of the Supplier.

Circumstances Beyond Control means any of the following events:

- (a) act of God, extreme weather, explosion, bush fire, landslide, flood, or earthquake;
- (b) act of public enemy, war, terrorist acts, sabotage, blockade, riot, insurrection, civil commotion, epidemic, pandemic or war;
- (c) embargo, power shortage or water shortage;
- (d) fuel shortages applying to the industry of the vehicles for Deed; and
- (e) strikes or other industrial action (other than action primarily involving employees or primarily involving the Supplier's industry),

the consequence of which is beyond the control of the Party seeking relief as a result of the event, and could not have been prevented, overcome or remedied by the affected Party (including by the expenditure of reasonable money or use of technology).

Commencement Date means the date specified in Item 2 of Schedule 1.

Conflict means a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Supplier engaging in any activity or obtaining any interest that is likely to or interfere with or restrict the Supplier in providing the Services fairly and independently.

Confidential Information means, in relation to a Party, information (in any form) that:

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

All Data is Confidential Information of the Principal, and not of the Supplier.

Consequential Loss means any loss recoverable at law which is:

- (a) a loss of opportunity or goodwill;
- (b) a loss of profit, anticipated savings or business; or
- (c) a loss of value of any equipment,

but excluding in all cases any loss or damage which may fairly and reasonably be considered to arise naturally, in the usual course of things, from a breach or other act or omission giving rise to the relevant liability.

Control has the meaning given in the *Corporations Act 2001* (Cth).

Critical Infrastructure Asset has the meaning given in section 9 of the SOCI Act.

Customer means the Principal or the relevant Bus Operator (as applicable) that issues an Order to the Supplier for the supply for Services under this Deed. Customer does not include any of the Customer's Associates.

Data means all data, information, documents or records of whatever nature and in whatever form:

- (a) relating to the business, networks and operations of the Principal, a Bus Operator or their respective Associates, including data, information, documents or records in relation to the Buses, customers, employees or suppliers of the Principal or a Bus Operator; or
- (b) relating to the services provided by Bus Operators to the Principal and the performance and operation of the Buses, including telematics, CANBus, data, information, documents or records provided or required to be provided by the Bus Operator via the OSD or DCIS or otherwise relating to the performance, utilisation, maintenance or operation of any Buses,

whether subsisting before, during or after the execution of this Deed and all data, information, documents or records created, generated or processed by the Supplier as part of, or in connection with, the Services or its other obligations under this Deed, and includes:

- (c) data that is Personal Information;
- (d) data that is corporate, proprietary or financial information;
- (e) diagrammatic or schematic data, including data representing networks, maps or technology;
- (f) all data (including metadata) and telematics processed, communicated or generated in performance of the Bus Services, including coding and performance data; and
- (g) all any transformations, modifications, derivations or insights created or generation from any other Data.

Notwithstanding the foregoing, 'Data' does not include any data, information, documents or records to the extent such were brought into existence by the Supplier independently of:

- (a) this Deed;

- (b) any Order;
- (c) any other agreement or arrangement between the Principal, or a Bus Operator, and the Supplier;
- (d) the Principal and its Associates;
- (e) any Bus Operator and its Associates; and
- (f) any data, information, documents or records provided to, or otherwise obtained by, the Supplier under or in connection with this Deed or an Order.

Data Breach means any:

- (a) unauthorised access to, or unauthorised disclosure of, or breach of security relating to any Personal Information or Data;
- (b) loss, corruption or damage of any Personal Information or Data;
- (c) any SOCI Cyber Security Incident;
- (d) any notifiable data breach under the Privacy Laws;
- (e) any security breaches, cyber security incidents or similar events relating to, or affecting Personal Information or Data which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to a Government Agency or which would require a response or action under this Deed, at Law or under any of the Principal's Policies;
- (f) where there are reasonable grounds to suspect that any breaches or circumstances under paragraphs (a) to (e) have occurred or are likely to have occurred or will occur; or
- (g) any alleged occurrence of any of the above events or circumstances.

Date for Acceptance means, in respect of each Bus, the date specified in the Order on which the Bus must achieve Acceptance.

Date of Acceptance means, in respect of each Bus, the date of Acceptance as evidenced in the Certificate of Acceptance for that Bus.

Date of Acceptance SOH ZEB Battery Report means the report to be provided by the Supplier to the Principal under clause 7.4.1(c) and Schedule 8 of this Deed.

Deed means this Deed of Standing Offer for the provision of the Services, any annexures, exhibits or schedules to this Deed and any other documents or terms and conditions referred to in clause 1.3.1, as may be amended from time to time.

Deed of Warranty means a document substantially in the form of Schedule 13 to this Deed.

Demonstrator Bus means a Bus owned by the Supplier and used for demonstration or trial purposes.

Design Life means in respect of each Bus and each part or component of each Bus supplied in accordance with this Deed, the period specified for that part or component in Schedule 4 of this Deed, commencing on the Date of Acceptance and ending on the day after expiry of the period specified for that part or component in Schedule 4 of this Deed.

Digital Customer Information Systems or **DCIS** means the centralised integrated transport information service that communicates and receives data and information in relation to public transport services, through Transportnsw.info Website.

Disabling Code means any computer virus or other code which is intended to or would have the effect of intercepting, accessing, copying, disrupting, impairing, denying or otherwise adversely affecting security, performance, integrity, reliability, access to or use of any information technology, Data, equipment, network, including worms, spyware, adware, key loggers, trojans and any new types of programmed threats that may be classified.

Disaster means an event that has, or is likely to have, a material adverse effect on the provision of the Services, which cannot be managed within the context of normal service procedures.

Discharge Capacity means the maximum capacity in kWh, from a single charge, of a ZEB Battery provided with the relevant ZEB measured at any point in time after the ZEB Battery was manufactured.

Discount means the volume discount set out in Exhibit B of this Deed (the Supplier's RFP Returnable Schedule 5 Price Response) which applies to an Order based on the number of Buses of the same bus category in that Order and referred to in the Order Template in Schedule 11 of this Deed.

Environmental Law means any Law relating to the environment including the *Protection of the Environment Operations Act 1997* (NSW), the *Environmentally Hazardous Chemicals Act 1985* (NSW), and any other Law relating to the protection or preservation of the environment, flora and fauna, land use, planning, contamination or pollution of air, water, soil or groundwater, chemicals, industrial waste, the use and transport, storage and handling of dangerous goods and hazardous substances or the health or safety of any person.

Environmental and Sustainability Plan means a plan outlining the Supplier's environmental and sustainability policies, systems, initiatives and credentials of its bus supply operations based on the Supplier's responses and commitments in its RFP Part D Returnable Schedule 4 response, and may include a ZEB Battery Recycling Plan.

Existing Project Material means any Material which is existing at the date of this Deed and which may be incorporated in to the New Project Material.

Extension of Warranty Period means the later of:

- (a) the date which is 12 months after the Failure Repair is completed in accordance with this Deed; and
- (b) the date on which the Warranty Period was otherwise due to expire.

Failure means, in respect of each Bus any:

- (a) defect;
- (b) non-compliance with the Specifications, any warranty or any Law or Standard; or
- (c) incidence of malfunction, intermittent condition or degradation of any component, part or piece of equipment forming part of a Bus, which prevents its safe operation or would result in a defect being issued during a road worthiness check.

A Failure does not include degradation resulting from abuse, mishandling, improper storage, accident damage or malfunction of additional equipment not provided by the Supplier, unless caused or contributed to by the Supplier.

Failure Repair means all necessary repairs to rectify a Failure and to return a Bus to the standard required in the Specifications.

Financial Security has the meaning given to that term in clause 23.2.1.

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

Good Industry Practice means a standard of service or deliverable, in terms of quality, productivity, performance, cost and timeliness of delivery, that, when considered collectively, is equal to or better than the commonly accepted industry practice being provided at the relevant time by a supplier of like or similar services, deliverables and activities to the Services throughout the world.

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

GST is a goods and services tax and has the same meaning as in the GST Law.

GST Law means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation based on those Acts.

Information may include (as applicable) information about:

- (a) any risks of, actual or suspected occurrences of, and/or remedial action taken in respect of, Modern Slavery;
- (b) Modern Slavery policies and due diligence frameworks;
- (c) Modern Slavery training programs;
- (d) the Supplier's engagement with its supply chain and/or sub-contractors in relation to Modern Slavery;
- (e) Modern Slavery audits (including any independent audit of the Supplier or its owned or controlled entities) and factory inspections; and
- (f) the source, place and country of origin of goods and services being supplied,

but excludes Personal Information.

Innovation Bus means a bus which was not registered in New South Wales at the time of the Request for Proposal process, which was conditionally approved by the Principal for supply under this Deed subject to the requirements of clause 5.10.3 being satisfied, and is described in Part 2 of Schedule 2 of this Deed (if any).

Insolvency Event means any of the following events occurring in connection with a person:

- (a) the person suspends payments of its debts generally;
- (b) the person is or states they are insolvent for the purposes of the *Corporations Act 2001* (Cth);
- (c) an application for winding up is made and not stayed within 14 days;
- (d) a winding up order is made;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) a mortgagee enters the possession of any property;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any event which, under the Laws of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed above.

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

Key Personnel means the personnel of the Supplier specified in Item 4 of Schedule 1.

Law means:

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

Loss means any loss, liability, damage, expense or cost, including all legal and other professional costs on a full indemnity basis, and including in relation to any claim, demand, proceeding or complaint of any nature or kind.

Maintenance means maintenance, other than Failure Repair, which the Supplier identifies in the Bus Maintenance Schedule as being maintenance which is required to be carried out on a Bus from time to time.

Material includes documents, equipment, designs, templates, computer programs, software and applications, information and Data created, processed or stored by any means, including in the form of data, text or images.

Material Obligation means any of the following:

- (a) the performance of any Service or other task that involves:
 - (i) access to or use, possession or receipt of any Data or Confidential Information of the Principal or a Bus Operator; or
 - (ii) access to any premises, facilities or other physical locations of the Principal or a Bus Operator;
- (b) the manufacture or supply of a component of a Bus comprising any of the following:
 - (i) a bus body, where the manufacturer of the chassis is the Supplier;
 - (ii) the chassis, where the manufacturer of the body is the Supplier;
 - (iii) a closed circuit television system;
 - (iv) an air conditioning system;
 - (v) a fire suppression system;
 - (vi) a ZEB battery;
 - (vii) destination signage;
 - (viii) seating;
 - (ix) seatbelts;
 - (x) windows;
 - (xi) door systems; or
 - (xii) a passenger information system; or
- (c) the manufacture or supply of any component/s of a Bus with a value of more than 5% of the total value of components of such Bus.

Material Sub-Contractor means any sub-contractor of the Supplier that is identified in Schedule 9 or otherwise approved by the Principal as a Material Sub-Contractor.

Minor Sub-Contractor means any sub-contractor of the Supplier that does not and will not perform any Material Obligation.

Modern Slavery has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

Modern Slavery Laws means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).

Modern Slavery Offence has the same meaning as in the *Modern Slavery Act 2018* (NSW).

Modern Slavery Statement means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth).

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

New Project Material means any Material brought into existence as part of, or for the purpose of providing the Services including records, documents and Information stored by any means, but does not include the Data.

Nominal Capacity means the battery capacity in kWh from a single charge of a ZEB Battery to be provided with the applicable ZEB as declared by the Supplier in the Supplier's RFP Returnable Schedule 3 Response.

Operational Systems and Equipment means any software, hardware, IT infrastructure, system and equipment installed for or on behalf of the Principal or a Bus Operator on any Bus at any time whether prior to or after Acceptance or before or during the term of any Bus Services contract between the Principal and a Bus Operator, including any fleet management system, telemetry system, GPS, PTIPS, two way radios or other communication system, duress alarm system, CCTV system, and the Principal's ticketing equipment.

Order means a Bus Operator Order or a Principal Order (as the case may be).

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

Panel means the panel of bus suppliers established by the Principal for the supply of the Services pursuant to the RFP.

Parties means the Principal and the Supplier and, where a Bus Operator Order exists or the context permits, also includes the applicable Bus Operator(s).

Performance Guarantee means a document substantially in the form of Schedule 14 to this Deed.

Personal Information has the meaning given in the Privacy Laws.

PID Act means the *Public Interest Disclosure Act 2022* (NSW).

Planned Date for Customer Inspection at Supplier Site means the date identified as such in the relevant Order, or if not identified as such in the relevant Order, otherwise agreed between the Parties as being the date on which the Supplier must make the relevant Bus available for a Pre-Delivery Check.

Pre-Delivery Check means the check conducted in accordance with clause 7 prior to Acceptance of that Bus.

Pre-Delivery Check Availability Date has the meaning given in clause 7.1.2.

Pre-Delivery Check Criteria means the criteria specified in Schedule 12 to this Deed to be applied in the performance of any Pre-Delivery Check, or such other criteria determined by the Principal (acting reasonably) from time to time).

Price means the prices payable for the Services as set out in the Pricing Schedule.

Price Review Date means the 15th of March each year during the Term (or the next Business Day if the 15th of March of a particular year is not a Business Day).

Pricing Schedule means Schedule 3 to this Deed, including any variations made to it and Discounts applied in accordance with this Deed.

Principal Order has the meaning given to that term in clause 4.3.1.

Principal's Contract Manager means the Principal's employee named in Item 6 of Schedule 1 responsible for the overall administration of this Deed on behalf of the Principal.

Principal's Material means any Material, document, or Information supplied by the Principal in connection with this Deed to the Supplier by whatever means.

Principal's Policies means all of the Principal's policies and standards:

- (a) referenced in this Deed;
- (b) the Principal's Statement of Business Ethics (which includes a requirement to comply with the Transport Code of Conduct and the NSW Government Procurement Policy Framework in relation to conduct by suppliers);

- (c) published on the Principal's website (being *www.transport.nsw.gov.au* or its successor) from time to time, that are generally applicable or otherwise relevant to any part of the Services or the performance of this Deed, including all policies and standards regarding security, data and privacy; or
- (d) otherwise notified by the Principal to the Supplier from time to time.

Principal's Representative means the Principal's employee occupying the position of Director, Service Delivery or such other senior representative of the Principal notified as being the Principal's Representative to the Supplier by the Principal in writing from time to time.

Privacy Laws means *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW), the *Privacy Act 1988* (Cth) and any other applicable Laws, principles, industry codes, guidelines or codes of conduct relating to privacy or the handling of personal information or data that applies to the Principal, the relevant Bus Operator or the Supplier.

Project Bus means a Bus specified as such in the Order and is subject to payment of liquidated damages under clause 9.

Project Material means New Project Material and Existing Project Material.

Protected Information has the meaning given in section 5 of the SOCI Act.

PTIPS means the Public Transport Information and Priority System and includes service tracking and priority equipment installed on Buses, which for the avoidance of doubt forms part of the Operational Systems and Equipment.

Quarter means each period of three months commencing on 1 January, 1 April, 1 July and 1 October of each calendar year.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Related Offence Provisions means those provisions of the *Crimes Act 1900* (NSW), the *Human Tissue Act 1983* (NSW) and the Commonwealth *Criminal Code* which create slavery and associated offences, as listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

Relationship Manager means the Supplier's employee named in Item 4 of Schedule 1 of this Deed.

Request for Proposal or **RFP** means the Request for Proposal for or in connection with the subject matter of this Deed, issued by the Principal, to establish a panel for the supply of the Services, including any and all 'best and final offer' documents, conditions, annexures, schedules, attachments, addenda, clarifications and other similar things issued by the Principal.

RFP Response means:

- (a) the Supplier's proposal or other response (howsoever named) to the RFP;
- (b) any written response by or on behalf of the Supplier to a request from the Principal for clarification or further information given before the Commencement Date; and
- (c) any written statement made by or on behalf of the Supplier to the Principal before the Commencement Date in relation to its proposed provision of the Services,

including any documents set out or referred to in Exhibit C.

Risk Management Program means any risk management program required by or on behalf of the Principal under the SOCI Act.

Self-Assesses means self-assesses using a methodology that is satisfactory to the Principal, acting reasonably.

Service Contract means a contract for regular bus services entered into under Part 3 of the *Passenger Transport Act 1990* (NSW), or a passenger service contract for bus services entered into under Division 1, Part 3 of the *Passenger Transport Act 2014* (NSW).

Service Life Details means the service life (in kilometres) and change out time (in labour hours) estimated by the Supplier to replace or overhaul the major components of the chassis and body of each Bus set out in Schedule 16 to this Deed.

Services means the supply of Buses by the Supplier in accordance with this Deed, including all ancillary services to be supplied by the Supplier under this Deed.

Service Levels means a service level set out in Schedule 6 to this Deed.

Service Desk means a telephone service provided by the Supplier, to respond, or coordinate a response, to any Failure, or any serious incident reported by a Customer, or identified by the Supplier's Associates.

SME means small and medium enterprises as defined in the SME and Regional Policy.

SME and Local Participation Plan means a plan which demonstrates that the Supplier is an SME and/or how the Supplier promotes the inclusion of SMEs in its supply chain in compliance with the requirements of the SME and Regional Policy and is the form of the then current best practice participation plan template published at <https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy> (as updated, amended or varied from time to time), or such other participation plan template notified by the Principal to the Supplier from time to time.

SME and Regional Policy means the NSW Government Small and Medium Enterprise and Regional Procurement Policy published at <https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy> (as updated, amended or varied from time to time).

SME Order Value Threshold means the minimum contract value specified in the SME and Regional Policy which gives rise to the requirement for suppliers to submit a SME and Local Participation Plan.

SOCI Act means the *Security of Critical Infrastructure Act 2018* (Cth), and all associated rules, directions, orders and regulations issued pursuant to the SOCI Act.

SOCI Cyber Security Incident has the meaning given in section 12M of the SOCI Act.

Social Procurement and Workforce Diversity Plan means a plan outlining the Supplier's workforce and social procurement strategies and targets based on the Supplier's responses and commitments in its RFP Part D Returnable Schedule 4 response.

Spare Parts Purchase Order has the meaning given to that term in clause 5.8.1.

Specifications means the bus specifications contained, or referred to, in Part 1 of Schedule 2 of this Deed, and includes the Service Life Details.

Standards means all Australian standards, where such exist and are applicable to the Services, and includes international standards in the event of there being no applicable Australian standard, including but not limited the standards and codes referred to in Item 3 of Schedule 1.

State of Health or SOH means the state of health of a given ZEB Battery corresponding to its Discharge Capacity divided by its Nominal Capacity (expressed as a percentage).

Substantial Breach means any of the following events or circumstances:

- (a) a material breach by the Supplier of this Deed;
- (b) multiple non-material breaches by the Supplier of this Deed which collectively constitute a material breach of this Deed;
- (c) without limiting paragraphs (a) or (b) above, a breach by the Supplier of any of the following clauses of this Deed:
 - (i) clause 6 (Pricing and Invoicing);
 - (ii) clause 11 (No Side Deals);
 - (iii) clause 14 (Confidentiality);
 - (iv) clause 16 (Data);
 - (v) clause 18.2 (Compliance with Policies, Laws and Standards);

- (vi) clause 19.1 (Anti-bribery and corruption);
 - (vii) clause 22.1 (Minimum Insurance Requirements);
 - (viii) clause 23.1 (Performance Guarantee);
 - (ix) clause 23.2 (Financial Security);
 - (x) clause 25 (Conflict);
 - (xi) clause 28 (Supplier's Warranties); and
 - (xii) clause 32.3 (Assignment or Novation); or
 - (xiii) clause 32.12.1 (Access to information (GIPA Act section 121)); or
- (d) any rejection of a Bus under clause 7.1.11(b)(iv).

Supplier's RFP Returnable Schedule 3 Response means the Supplier's Response to the Principal's Request for Proposal Bus Procurement Panel 4 Part D Returnable Schedule 3 Compliance with the scope of works named "Part D Returnable Schedule 3 Scope of Works Bus Specification" and attached to, or incorporated into, this Deed as Exhibit A.

Term means the period of this Deed, set out in Item 2 of Schedule 1 of this Deed and includes any extension of the Term determined in accordance with clause 2.3 of this Deed.

Training and Knowledge Transfer means any services required by or associated with the provision of training by the Supplier under this Deed, including those set out in Schedule 7.

Transportnsw.info Website means the centralised New South Wales transport information service that communicates and receives data and information in relation to public transport services through the transportnsw.info website (or any replacement service that serves a similar function), call centre, website, apps and other channels provided by the Principal to customers for such purposes, including the Feedback2Go app.

Value for Money means looking at the total benefit to the community and measuring and costing it. It does not always equate to securing the lowest price or the highest quality.

Warranties means the warranties given by the Supplier in respect of each Bus, or each part or component of the Bus in accordance with clause 28 and in Schedule 4 of this Deed.

Warranty Period means, in respect of each of the Warranties, the period commencing on and from the Date of Acceptance of the relevant Bus (or, where there is no Date of Acceptance, from the date of supply of each part or component) and continuing for the relevant warranty period set out in Schedule 4 of this Deed.

Zero Emissions Bus or **ZEB** means a Bus whose primary propulsion and accessory power technologies (including battery electric and/or hydrogen) produce zero carbon emissions in its day-to-day operations.

ZEB Battery means a propulsion battery set for a ZEB referred to in Schedules 4 and 8 of this Deed.

ZEB Battery Recycling Plan means any recycling plan submitted by the Supplier from time to time.

1.2. Rules for interpreting this Deed

- 1.2.1. Headings are for convenience only, and do not affect the interpretation of this Deed.
- 1.2.2. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- 1.2.3. A reference to:
 - (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) software, document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;

- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) days is a reference to calendar days unless stated otherwise;
- (e) any thing (including a right, obligation or concept) includes each part of it; and
- (f) a reference to a Party to this Deed includes the Party's successors, permitted substitutes and permitted assignees (and, where applicable, the Party's legal personal representatives).

1.2.4.

- (a) Where the Supplier consists of more than one person or corporation, this Deed binds each of them separately and any two or more of them jointly and severally.
- (b) An obligation, representation or warranty made by the Supplier in this Deed shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in this Deed.

1.2.5. A singular word includes the plural, and vice versa.

1.2.6. A word which suggests one gender includes the other genders.

1.2.7. If a word is defined, another part of speech of that word has a corresponding meaning.

1.2.8. "Including" and other similar words are not words of limitation.

1.2.9. General words following words describing a particular class or category are not restricted to that class or category.

1.2.10. In the event that, pursuant to this Deed, an act is due to be performed on a day which is not a Business Day then that act shall be performed on the next Business Day.

1.2.11. The Parties may undertake business by the electronic exchange of information and the provisions of this Deed will be interpreted to give effect to undertaking business in this manner.

1.2.12. Unless otherwise expressly stated in this Deed, the rights, remedies, warranties, indemnities and obligations of the Parties pursuant to this Deed are in addition to and do not derogate from any other right, remedy, warranty, indemnity or obligation of the Parties under this Deed or any other agreement or deed between the Parties.

1.3. Precedence

1.3.1. In the event of any ambiguity, discrepancy or inconsistency in interpreting any terms or conditions of this Deed, the order of priority in the interpretation of such terms or conditions will be in the order of:

- (a) in respect of a Principal Order accepted under clause 4.3.4, any provisions in such Principal Order (including any document expressly incorporated into the Principal Order) that are expressed to take priority over the other terms and conditions of this Deed;
- (b) the terms and conditions of this Deed (excluding any annexures, Schedules and Exhibits to this Deed);
- (c) Schedule 1, Schedule 2 and Schedule 3 to this Deed;
- (d) any other annexures, Schedules or Exhibits to this Deed;
- (e) in respect of a Principal Order accepted under clause 4.3.4, such Principal Order (including any document expressly incorporated into the Principal Order), other than any provisions that are expressed to take priority over the other terms and conditions of this Deed;
- (f) in respect of a Bus Operator Order accepted under clause 4.2.7, such Bus Operator Order (including any document expressly incorporated into the Bus Operator Order); and
- (g) any other document expressly incorporated into this Deed.

1.4. No fetter of discretion

- 1.4.1. Nothing in this Deed is to be taken as giving effect to, or as implying in any way, the fettering of the discretion of the Principal as to the proper exercise of its respective powers, duties, rights and functions.

2. Introduction

2.1. Standing Offer

- 2.1.1. The Supplier must supply the Services to the Customer, under an Order that is issued to the Supplier during the Term, in full compliance with the terms and conditions of this Deed (including the relevant Order).
- 2.1.2. The Supplier's standing offer in clause 2.1.1 will remain open for acceptance for the Term.
- 2.1.3. The Supplier must require all Bus Operators who wish to place orders for Buses with the Supplier to place those orders under this Deed.

2.2. No assurance of volume and non-exclusive supply

- 2.2.1. The Supplier acknowledges that:
- (a) it is not the exclusive provider of the Services;
 - (b) it is one of a number of suppliers under the Panel which may be requested to supply the Services by a Bus Operator or the Principal;
 - (c) the Principal and the Bus Operators have made no representations that the Supplier will be engaged by either the Principal or a Bus Operator to carry out any Services;
 - (d) the Principal and/or the Bus Operators may request from the Supplier a discounted price for a specified volume of orders and they may also consider or evaluate other factors (such as local content and sustainability) as part of determining Value for Money when deciding whether to place any Order for Buses with the Supplier under this Deed;
 - (e) the Principal or the Bus Operators are not obliged to issue the Supplier with any Order or to request any volume of Buses from the Supplier; and
 - (f) the Principal and the Bus Operators do not guarantee a minimum number of Orders or requests for any volume of Buses from the Supplier.

2.3. Term

- 2.3.1. This Deed commences on the Commencement Date and expires on the expiry date specified in Item 2 of Schedule 1, unless sooner terminated in accordance with this Deed.
- 2.3.2. The Principal may in its sole discretion extend this Deed by written notice to the Supplier for the period or periods specified in Item 2 of Schedule 1 of this Deed.
- 2.3.3. Any such further period referred to in clause 2.3.2 will be on the same terms and conditions as set out in this Deed, but excluding the reference to extending the term for the relevant further period which has expired.

2.4. Non-exclusive arrangement

- 2.4.1. The Supplier acknowledges that the Principal may in its sole discretion enter into an arrangement with a supplier who is not a member of the Panel, including:
- (a) to supply a Bus (or Buses), if the Supplier, or other suppliers on the Panel, cannot supply the buses within a required timeframe; or
 - (b) to supply a bus (or buses), with different specifications to the Buses, including new or emerging technologies that can best represent Value for Money.

2.5. Administration by the Principal

- 2.5.1. The Parties agree that the Principal is responsible for administration of this Deed on behalf of Bus Operators and has authority to act on behalf of Bus Operators in this respect.
- 2.5.2. The Parties agree that clause 2.5.1 does not limit the ability of a Bus Operator to issue a Bus Operator Order in accordance with clause 4.2.

2.6. Operation of this Deed in relation to Bus Operators

- 2.6.1. The Parties acknowledge and agree that:
- (a) any accepted Bus Operator Order will create a separate legal agreement between the Supplier and the Bus Operator for the supply of the Services covered by that Bus Operator Order and the legal agreement will comprise the details specified in the Bus Operator Order and the terms and conditions of this Deed that are applicable to the Bus Operator Order for the supply of those Services;
 - (b) the Principal is not a party to any accepted Bus Operator Order or any separate legal agreement between the Supplier and a Bus Operator contemplated under clause 2.6.1(a) and is not responsible for:
 - (i) payment of any price due and payable to the Supplier under any Bus Operator Order; or
 - (ii) any of the obligations or liabilities of a Bus Operator under any accepted Bus Operator Order;
 - (c) a Bus Operator, the Principal (as agent of a Bus Operator) or a Beneficiary (as defined in clause 28.1.2(b)(i)) may enforce the relevant terms and conditions of this Deed in respect of any Bus Operator Order; and
 - (d) if any term or condition of this Deed is expressed to give rights or remedies to the Principal only, the Principal may, despite anything to the contrary, direct the Supplier (which direction will be in writing) to allow a Bus Operator to exercise and enjoy those rights and/or remedies in its capacity as the Bus Operator in respect of a Bus Operator Order and the Supplier must comply with such direction and perform the obligations necessary to allow the Bus Operator to exercise and enjoy those rights. For clarity, for such purposes, relevant references in this Deed to the Principal will be deemed to be references to the Bus Operator.

3. Supplier Portal and Principal Portal

3.1. Supplier Portal

- 3.1.1. The Supplier must, during the Term and for the duration any Bus supplied under this Deed is in operation:
- (a) establish, keep and maintain an accurate, complete and up-to-date supplier portal accessible online, through which Bus Operators and the Principal can view all technical information about the Buses (Supplier Portal);
 - (b) ensure that the Bus Operators and the Principal can, at all times, access the Supplier Portal at no additional cost; and
 - (c) in the event the information management system under which the information via the Supplier Portal is provided changes, then the Supplier must provide the Principal and the Bus Operators access to a new information management system equivalent to the Supplier Portal.
- 3.1.2. The Supplier Portal must include:
- (a) details of Buses;
 - (b) the Bus Maintenance Schedule;
 - (c) a warranty book for the Buses;

- (d) manuals and documentation for the Buses; and
 - (e) any other relevant information relating to the Bus or the Order process,
- but must not contain detail in relation to Prices.

- 3.1.3. The Supplier must within 20 Business Days of the Commencement Date provide to the Principal a link to the draft Supplier Portal. Within a reasonable time of receipt of the link to the draft Supplier Portal, the Principal may suggest changes to the draft Supplier Portal and the Supplier must revise the draft Supplier Portal, to the satisfaction of the Principal and within the timeframe specified by the Principal. Once the Principal approves the draft Supplier Portal, it will be the Supplier Portal during the Term and for the duration any Bus supplied under this Deed is in operation, unless revised in accordance with this Deed.
- 3.1.4. The Supplier acknowledges that:
- (a) only those Bus models listed in the Supplier Portal are Buses for the purposes of this Deed;
 - (b) no buses, other than those Bus models approved in writing by the Principal prior to their inclusion, may be included in the Supplier Portal; and
 - (c) the Supplier must seek the prior written approval of the Principal if it wishes to make any changes to the Supplier Portal.
- 3.1.5. The Supplier must prepare a revised Supplier Portal as required by the Principal throughout the Term, and submit the revised Supplier Portal to the Principal for approval in accordance with clause 3.1.3.
- 3.1.6. The Supplier is solely responsible for the accuracy, currency and completeness of the Supplier Portal and the Principal assumes no legal liability or responsibility for the accuracy, currency or completeness of the Supplier Portal.
- 3.1.7. No review of, comment on or approval of the Supplier Portal by the Principal, including any review in accordance with clause 3.1.3, will lessen or otherwise affect the Supplier's obligations in respect of this clause 3.1.
- 3.1.8. In the event of any inconsistencies between the relevant information of the Supplier kept on the Supplier Portal and this Deed, the terms and conditions of this Deed prevail.

3.2. Principal Portal

- 3.2.1. The Principal will during the Term keep an internal procurement portal through which Bus Operators can place a Bus Operator Order (**Principal Portal**).
- 3.2.2. The Principal Portal may include details relating to the Services, Buses, Prices and any other detail relevant to the process of creating an Order.
- 3.2.3. The Supplier must cooperate with and provide the Principal with complete, accurate and up to date information that the Principal may require in relation to the Principal Portal and ensure that all information in relation to the Supplier's Buses on the Principal Portal remain complete, accurate and up to date during the Term.
- 3.2.4. The Principal assumes no legal liability or responsibility for the accuracy, currency or completeness of the information in the Principal Portal.
- 3.2.5. In the event of any inconsistencies between the information relevant to the Supplier kept on the Principal Portal and this Deed, the terms and conditions of this Deed prevail.

4. Orders

4.1. Formation of an Order

- 4.1.1. The Parties must follow the process set out in this clause in relation to an Order.

- 4.1.2. In the event of any inconsistencies between the information contained in an Order and the Principal Portal, the information in that Order will prevail, unless the Principal or the Bus Operator (as applicable) otherwise agree and this is confirmed in writing.
- 4.2. Bus Operator Order**
- 4.2.1. A Bus Operator may request that the Supplier supply the Services by issuing an order directly to the Supplier for the Services, which must contain the information listed in Schedule 11 to this Deed (**Bus Operator Order**).
- 4.2.2. If the Supplier receives a Bus Operator Order, the Supplier must promptly provide a copy of that Bus Operator Order to the Principal.
- 4.2.3. The Supplier acknowledges and agrees that any Bus Operator Order placed by a Bus Operator on the Principal Portal is not valid and should not be treated by the Supplier as a confirmed order unless and until:
- (a) the Principal has provided to the Supplier with written confirmation that the Principal has given the relevant Bus Operator approval to place the Bus Operator Order; and
 - (b) the Supplier has received confirmation from the relevant Bus Operator of its acceptance of the relevant Bus Operator Order in accordance with clause 4.2.7.
- 4.2.4. Any approval by the Principal under clause 4.2.3(a) does not:
- (a) constitute an approval by the Principal of the Supplier's performance of its obligations under this Deed;
 - (b) constitute an approval of the Principal of the information contained in the Bus Operator Order; or
 - (c) prejudice any rights or powers of the Principal.
- 4.2.5. Within 10 Business Days of receipt of a Bus Operator Order, the Supplier must respond to the relevant Bus Operator Order as follows:
- (a) by written response to the representative nominated in the relevant Bus Operator Order (with a copy to be provided to the Principal);
 - (b) providing all information requested as part of the relevant Bus Operator Order; and
 - (c) confirming its ability to provide the Services in accordance with the terms and conditions of this Deed and the relevant Bus Operator Order, including setting out the Price,
- (referred to as the **Supplier Response**).
- 4.2.6. The Supplier must make itself available to liaise with and provide the relevant Bus Operator all such information that the relevant Bus Operator may require in reviewing the Supplier Response.
- 4.2.7. Within 10 Business Days (or such other reasonable period as the Bus Operator determines) of receipt of the Supplier Response, the Bus Operator may provide written notice to the Supplier accepting the Supplier Response (either on terms originally set out in the Supplier Response or agreed between the Parties as a result of any discussions under clause 4.2.6), in which case the Supplier and the Bus Operator agree the Bus Operator Order will incorporate the Supplier Response.
- 4.2.8. If the Bus Operator does not provide written notice to the Supplier accepting the Supplier Response within the time specified in clause 4.2.7, then it is deemed to have rejected the relevant Supplier Response.
- 4.2.9. Any accepted Bus Operator Order must:
- (a) be consistent with the terms and conditions of this Deed;
 - (b) will not conflict with or detract from the terms and conditions of this Deed and/or the rights of the Principal under this Deed; and

- (c) not vary any of the terms or conditions of this Deed unless the Principal has approved the variation in writing (which may be withheld in its sole discretion) before the relevant Bus Operator Order is accepted by the Bus relevant Operator.

4.3. Principal Order

- 4.3.1. The Principal may request that the Supplier supply the Services to a Bus Operator or the Principal itself by issuing an order directly to the Supplier, which must contain the information listed in Schedule 11 to this Deed (**Principal Order**). If the relevant Principal Order requests that the Supplier supply the Services to a Bus Operator, all references to “Customer” in clauses 5.3, 5.6, 7.1 and 7.2 should be read as references to that Bus Operator.
- 4.3.2. Within 10 Business Days of receipt of a Principal Order, the Supplier must respond to the relevant Principal Order as follows:
 - (a) by written response to the representative nominated in the relevant Principal Order;
 - (b) providing all information requested as part of the relevant Principal Order; and
 - (c) confirming its ability to provide the Services, including setting out the Price,
 (referred to as the **Supplier Response**).
- 4.3.3. The Supplier must make itself available to liaise with and provide the Principal all such information that the Principal may require in reviewing the Supplier Response.
- 4.3.4. Within 10 Business Days (or such other reasonable period as the Principal determines) of receipt of the Supplier Response, the Principal may provide written notice to the Supplier accepting the Supplier Response (either on terms originally set out in the Supplier Response or agreed between the Parties as a result of any discussions under clause 4.3.3), in which case the Parties agree the relevant Principal Order will incorporate the Supplier Response. For the avoidance of doubt, a Principal Order will not be valid unless the Principal has confirmed its acceptance in writing.
- 4.3.5. If the Principal does not provide written notice to the Supplier accepting the Supplier Response within the time specified in clause 4.3.4 then it is deemed to have rejected the relevant Supplier Response.

4.4. Enforcement of Orders

- (a) Where the Principal or a Bus Operator (as applicable) has confirmed its acceptance in writing of an Order in accordance with clause 4.2.7 or clause 4.3.4, the Supplier acknowledges and agrees that:
 - (i) it will be bound by the terms and conditions of this Deed, in respect of the relevant Order; and
 - (ii) the Bus Operator may enforce the terms and conditions of this Deed as agent for the Principal, even though the Bus Operator is not a party to this Deed in its own right.
- (b) Subject to clause 4.4(a), and without limiting clause 2.6.1(a), each Order will constitute a separate binding contract between the Customer and the Supplier, which, among other things, incorporates (with the necessary changes, including for example, references to ‘this Deed’ being replaced with ‘this Order’) the terms and conditions of this Deed, including the documents or terms and conditions referred to in clause 1.3.1. For the purposes of each Order, references in this Deed to ‘this Deed’ will include a reference to such Order.

4.5. Cancellation or variation of an Order for sub-contractor’s default

- 4.5.1. Without prejudice to the Customer’s rights or remedies under this Deed or at law (including rights of termination and rights to damages), if prior to the Date for Acceptance for a Bus, the Supplier notifies the Customer it is unable to supply the Services because a sub-contractor is not willing or is unable to perform the part of the Services contracted to it for any reason or the sub-contractor suffers an Insolvency Event, then, without limiting any other rights or remedies under this Deed or otherwise, the relevant Customer may in its sole discretion, cancel or vary an Order or approve an alternate sub-contractor at the request of the Supplier to provide part of the Services, without incurring any additional costs.

4.5.2. If the Customer cancels an Order under clause 4.5.1 or 4.7:

- (a) the Customer may re-assign the supply of the Buses the subject of the Order to another supplier; and
- (b) the Supplier will not be entitled to any costs or expenses associated with the cancellation or variation of the relevant Order.

4.6. Sales report

4.6.1. Within 10 Business Days of the end of each Quarter the Supplier must provide to the Principal a sales report which relates to the relevant month, and which includes:

- (a) the total value of the amounts paid by the Principal and Bus Operators pursuant to Orders for Buses;
- (b) the names of the five Bus Operators which have paid the Supplier the most amount in the Quarter and include the amounts paid by each Bus Operator; and
- (c) such other relevant information as the Principal may reasonably require.

4.6.2. The Parties agree that the Principal may by prior notice in writing to the Supplier amend the procedure for collection of information set out in clause 4.6.1 from time to time.

4.7. Termination for delay

The Principal may in its sole discretion, terminate this Deed for cause in accordance with clause 29.1.1(j), and/or the Principal or a Bus Operator (as applicable) may cancel the relevant Order if:

- (a) the Supplier fails to make any of the Buses which are the subject of the relevant Order available for a Pre-Delivery Check within three months of the 'Planned Date for Customer Inspection at Supplier Site' for such Bus or Buses; or
- (b) the Customer considers (acting reasonably) that the Supplier has not commenced the build of any of the Buses which are the subject of the relevant Order in sufficient time to enable such Bus or Buses to be made available for a Pre-Delivery Check within three months of the relevant 'Planned Date for Customer Inspection at Supplier Site' for such Bus or Buses.

5. Supply of Services

5.1. Compliance with Specifications and Pricing

5.1.1. The Supplier warrants that any Services supplied under this Deed will comply with the terms and conditions of this Deed including:

- (a) the Specifications, as amended from time to time in accordance with clause 5.2; and
- (b) the Pricing Schedule.

5.2. Changes to Specifications

5.2.1. The Supplier must notify the Principal in writing if it proposes to make any changes to the Specifications with respect to an Order, including if the changes are proposed for reasons of safety or customer impact. The Principal must, within 10 Business Days of receiving the notice or such other time as is reasonable in the circumstances, consider the proposed changes and notify the Supplier whether:

- (a) the proposed changes are accepted with respect to that Order; or
- (b) the proposed changes are rejected, in which case if the Supplier still requires the changes it must seek to vary the Specifications in accordance with clause 13 of this Deed.

5.2.2. The Supplier must keep up to date with all Laws and Standards to identify whether any changes are required to be made to the Specifications. The Supplier must notify the Principal in writing of any such changes within 10 Business Days of the Supplier becoming aware of the changes.

5.2.3. If the Principal is satisfied that the changes identified in clause 5.2.1 are required to be made, the Parties will update the Specifications to reflect the changes identified within a reasonable time and in accordance with clause 13 of this Deed.

5.2.4. Within 10 Business Days of the Principal amending the Specifications under clause 5.2.3, the Principal will use its best endeavours to provide the amended Specifications to the Supplier.

5.3. Training and Knowledge Transfer

5.3.1. The Supplier:

- (a) must develop and maintain documentation (including any operations and maintenance manual), training materials and procedures required to provide Training and Knowledge Transfer;
- (b) provide Training and Knowledge Transfer to the Customer at the Customer's nominated location, within a reasonable time frame when requested by the Bus Operator and/or the Principal;
- (c) have available at all times, appropriately qualified staff who can provide assistance and Training and Knowledge Transfer to the Customer by phone, email and face to face to resolve any technical issues associated with a Bus within a reasonable time frame (being no more than 2 Business Days); and
- (d) bear any costs associated with Training and Knowledge Transfer other than hiring of the nominated location (if any) as per clause 5.3.1(b) to conduct the Training and Knowledge Transfer.

5.3.2. The Supplier must ensure that any documentation, training materials and procedures used to provide Training and Knowledge Transfer:

- (a) are of reasonable standard in terms of its presentation, accuracy and scope;
- (b) provide an explanation of functions, capacity and operations of the Buses;
- (c) are the most current and up to date version available; and
- (d) are in the English language.

5.3.3. The Supplier must ensure any Training and Knowledge Transfer:

- (a) is up-to-date and reflects any changes to the relevant Laws and Standards; and
- (b) reflects technological advances relevant to the Buses.

5.4. Service Desk

5.4.1. The Supplier must provide a Service Desk.

5.4.2. The Service Desk must operate 24 hours per day, every day of the year.

5.4.3. The Supplier must ensure that the Service Desk personnel are suitably skilled and trained to deliver the services associated with the Service Desk.

5.4.4. The Supplier must maintain documentation of all telephone calls received by the Service Desk, and the actions taken in response to telephone calls to the Service Desk.

5.4.5. The Supplier must provide the Principal with a Service Desk report setting out the number of times requests were logged and processed on a Quarterly basis.

5.5. Bus Maintenance Schedule

5.5.1. The Bus Maintenance Schedule for each Bus must be provided to the Principal in an electronic format within 10 Business Days from the Commencement Date and will be the Bus Maintenance Schedule for that Bus during the Term and for the duration any Bus supplied under this Deed is in operation, unless revised in accordance with this Deed.

- 5.5.2. The Bus Maintenance Schedule must set out:
- (a) the Maintenance required for the Design Life of the Bus; and
 - (b) a Maintenance program (for example, how often Maintenance may be required, the timeframes for performing such Maintenance and any other relevant detail).
- 5.5.3. The Supplier must notify the Principal in writing if it proposes to make any changes to the Bus Maintenance Schedule. The Principal must, within 10 Business Days of receiving the notice or such other time as is reasonable in the circumstances, consider the proposed changes and notify the Supplier whether:
- (a) the proposed changes are accepted; or
 - (b) the proposed changes are rejected, in which case if the Supplier still requires the changes it must seek to vary the Bus Maintenance Schedule in accordance with clause 13 of this Deed.
- 5.5.4. If the Supplier is required to perform Maintenance in respect of a Bus, the Supplier must, as a minimum, comply with the Bus Maintenance Schedule.
- 5.6. Failure Repair**
- 5.6.1. The Supplier must provide Failure Repair during the Warranty Period at the Supplier's own cost.
- 5.6.2. If during the Warranty Period, the relevant Customer believes there is or has been a Failure, the relevant Customer may direct the Supplier to provide Failure Repair in respect of that Failure.
- 5.6.3. If directed by the relevant Customer in accordance with clause 5.6.2 or clause 5.6.4, the Supplier must carry out Failure Repair within the time reasonably specified by the relevant Customer and at times and in a manner which causes as little inconvenience and disruption to the Customer as is reasonably possible.
- 5.6.4. Without limiting clause 5.6.3, if at least 25% of the Buses supplied under an Order for the supply of 20 Buses or more suffer an identical Failure during the Warranty Period, the relevant Customer may direct the Supplier to provide Failure Repair to all Buses supplied under the relevant Order.
- 5.6.5. If the Supplier fails to provide Failure Repair within the time reasonably specified by the relevant Customer, the relevant Customer may itself carry out the Failure Repair or have it carried out by a third party, at the Supplier's cost.
- 5.6.6. If the Supplier is required to provide Failure Repair during the Warranty Period, the Warranty Period in relation to the Failure Repair will be extended for the Extension of Warranty Period.
- 5.6.7. The Supplier must:
- (a) promptly notify the Principal of any Failure having occurred to a Bus during the Warranty Period; and
 - (b) provide a summary report to the Principal within 10 Business Days of the end of each Quarter of all of all Failures which occurred during that Quarter.
- 5.7. Spare Parts**
- 5.7.1. The Supplier must ensure that it maintains in the Sydney metropolitan area or within NSW with next day delivery capability, a reasonable inventory of spare parts for the Buses ordered under this Deed at all times during the Term and for the duration any Bus supplied under this Deed is in operation, including so that it can quickly provide Failure Repair. The spares parts inventory must include, as a minimum:
- (a) spare battery modules (at least one of each type);
 - (b) spare control modules (at least one of each type);
 - (c) spare vehicle drive motor;
 - (d) major chassis components, including a rear cross member and outriggers;
 - (e) a complete set of passenger doors and mechanisms; and

(f) a sectional front, rear and side body frame.

5.7.2. The Supplier must keep computerised records of the spare parts which it has in stock and keep those records up to date.

5.7.3. The Supplier must provide a spare parts inventory report to the Principal identifying the spare parts held by the Supplier on an annual basis.

5.8. Spare Parts Purchase Order

5.8.1. The Supplier must make available for purchase by the Principal or the relevant Bus Operator who is at that time using the Bus (whether as the owner or lessee of the Bus or otherwise), spare parts (including batteries) for the Buses supplied by the Supplier under this Deed.

5.9. Recalls

5.9.1. The Supplier must notify the Principal and the relevant Bus Operator who is at that time using the Bus (whether as the owner or lessee of the Bus or otherwise) immediately upon it becoming aware of or it initiating any one of the following:

- (a) any safety-related issues or recalls of any nature, including without limitation, factory recalls, voluntary recalls or recalls under any applicable Laws in respect of any Bus or any part or component of a Bus available for supply or supplied in accordance with this Deed;
- (b) any rectification program in respect of any Bus or any part or component of a Bus available for supply or supplied in accordance with this Deed;
- (c) any matters which may adversely impact on the ability of the Supplier to provide the Services;
- (d) any change in the Specifications which may impact on the Supplier's ability to provide the Services in accordance with this Deed; and
- (e) any notice received from any sub-contractors which may have an impact on the Specifications.

5.9.2. The Supplier must provide the Principal and relevant Bus Operator with all information and documents as may be required by the Principal to assess the impact of any such notice on the Services.

5.9.3. If the Principal or the relevant Bus Operator determines (in its sole discretion) that any matter under clause 5.9.1 will have an adverse impact on the Supplier's performance of the Services with respect to a particular Bus, the Principal may immediately by written notice to the Supplier remove the Bus from the Services.

5.10. Innovation Bus

5.10.1. If the Principal provided conditional approval to the Supplier offering an Innovation Bus during the Request for Proposal process, upon request of the Principal issued from time to time, the Supplier may submit the final form of the Innovation Bus to the Principal for approval.

5.10.2. The final form of the Innovation Bus submitted to the Principal for approval under this Deed must be:

- (a) substantially the same as the Innovation Bus which the Principal conditionally approved during the Request for Proposal process; and
- (b) registered in New South Wales by the time it is submitted to the Principal for approval.

5.10.3. The Principal may accept or reject the final form of the Innovation Bus, and determine when it will assess the final form of the Innovation Bus, in its sole discretion.

5.10.4. If the Principal approves the final form of the Innovation Bus, the Supplier must:

- (a) in accordance with clause 13 submit a request for variation to the Principal, seeking approval of variations to the Specifications and Pricing Schedule (and any other necessary provisions of this Deed) in order to make the final form of the Innovation Bus a Bus under this Deed; and
- (b) submit a revised Supplier Portal to the Principal for approval in accordance with clause 3.1.3.

5.11. ZEB Batteries and ZEB Battery Recycling Plan

- 5.11.1. If directed by the Customer, the Supplier must:
- (a) collect the ZEB Battery from a depot, the location of which shall be notified to the Supplier; and
 - (b) dispose of the ZEB Battery in accordance with the Supplier's ZEB Battery Recycling Plan.
- 5.11.2. Prior to supplying any ZEB under this Deed, the Supplier must ensure that it has in place a ZEB Battery Recycling Plan and has provided its then current plan to the Principal.

6. Pricing and Invoicing

6.1. Supplier's Obligations

- 6.1.1. The Supplier must supply the Services for the Price specified in the Pricing Schedule, unless the Supplier and the Principal agree otherwise.

6.2. Pricing basis

- 6.2.1. The Price is fixed for the periods indicated in the Pricing Schedule, and includes all applicable levies, duties, taxes, insurances, packaging, delivery, imposts, overheads and profits, as well as all costs and expenses that the Supplier incurs in their supply, but is exclusive of GST.

6.3. Price Variation, Rebates and Further Requirements

- 6.3.1. The Supplier may not seek to vary the Price, except in accordance with the frequencies and methodology indicated in this clause 6 and the Pricing Schedule or as a result of the Supplier's obligation to comply with clause 18.2.1 due to any change in Laws or Standards after the date of this Deed.
- 6.3.2. The Price will be reviewed annually on the Price Review Date, in accordance with the process outlined in the Pricing Schedule. Notwithstanding any other provision in this Deed, the Supplier may apply in writing to the Principal to decrease its Price at any time without any supporting documentation.
- 6.3.3. The Principal may in writing, approve any application by the Supplier to decrease the Price within 20 Business Days of receipt of the application.
- 6.3.4. The Price will not be taken to be varied unless and until:
- (a) the Principal approves the revised amount in writing; and
 - (b) the Principal Portal has been revised to refer to the varied Price,
- and will not apply to any:
- (c) Orders or Supplier Responses submitted or issued by the Supplier; or
 - (d) Orders accepted, approved or entered into by the Customer,
- before that date.
- 6.3.5. Notwithstanding any other provision in this Deed, by any appropriate sourcing methodology whatsoever, the Principal may from time to time request any or all suppliers appointed under the Panel to engage with the Principal to determine Value for Money with respect to the supply of any Buses and/or other Services. This may involve the parties agreeing what further requirements and terms will apply to relevant Order/s, such as, but not limited to requirements applying to: local content, sustainability, beneficial pricing for committed volumes (for example, volume rebates or discounts), quality, payment cadence or alternative payment arrangements, the provision of security or meeting timeframe requirements.
- 6.3.6. Unless otherwise expressly agreed in writing by the Customer, the Supplier must ensure that the Customer obtains the benefit of all representations, warranties, undertakings and information provided by the Supplier under or in connection with clause 6.3.5, in respect of any relevant Orders under this Deed.

- 6.3.7. Notwithstanding clause 6.3.5, the Principal may consider or evaluate any factors whatsoever as part of determining Value for Money when deciding whether to place any Order for Buses with the Supplier under this Deed.

6.4. Rebates received by Supplier

- 6.4.1. The Supplier warrants that if it receives any rebate, discount, commission or other subsidy from a sub-contractor or other third party suppliers in relation to Buses to be supplied under an Order, it must apply in writing to the Principal (in accordance with clause 6.3.2) to reduce the Price for those Buses to reflect the amount of the rebate, discount, commission or other subsidy.

6.5. Set offs

- 6.5.1. The Principal is entitled to set off or deduct from any amounts payable by the Principal to the Supplier under this Deed or a Principal Order:

- (a) any debt or other monies due from the Supplier to the Principal; and
- (b) any claim to money which the Principal may make in good faith against the Supplier whether for damages or otherwise (including under any indemnity) and whether or not the amount is disputed.

- 6.5.2. A Customer (if the Customer is not the Principal) is entitled to set off or deduct from any amounts payable by the relevant Customer to the Supplier under a Bus Operator Order:

- (a) any debt or other monies due from the Supplier to the relevant Customer; and
- (b) any claim to money which the relevant Customer may make in good faith against the Supplier whether for damages or otherwise (including under any indemnity) and whether or not the amount is disputed.

6.6. Continuous Best Price

- 6.6.1. Notwithstanding any other clause in this Deed, if the Principal identifies external market pricing for any Bus that it considers, in its reasonable opinion, to be more competitive than the Price under this Deed, the Principal:

- (a) will provide the Supplier with reasonable evidence of such market pricing; and
- (b) seek to negotiate with the Supplier to vary the Price to align with the market.

- 6.6.2. The Parties agree to use their best endeavours to agree to a variation to the Price under clause 6.6.1.

- 6.6.3. If the Parties cannot agree on a Price variation, the Principal may in its sole discretion:

- (a) remove the relevant Bus from the Principal Portal; and/or
- (b) order any Bus or Buses from another supplier which provides the more competitive pricing (including a supplier not appointed under the Panel).

For clarity, nothing in this clause 6.6.3 permits the Principal to cancel an existing Order (including any Buses under an existing Order).

6.7. Most favourable pricing

- 6.7.1. The Supplier must ensure that the Prices are no less favourable than any price at which the Supplier provides or offers to provide the services that are equivalent or similar to the Services to any other customer of the Supplier whose orders are of a comparable volume to those placed by the Customer under an Order. If a more favourable price is identified by the Customer or the Supplier, the Supplier must immediately reduce the Price to the more favourable price.

6.8. Partially funded buses

- 6.8.1. The Supplier acknowledges that the Principal has arrangements in place with Bus Operators for partially funded buses. This means that the Principal will pay to the Bus Operator a capped amount towards the purchase of such a Bus (provided that other terms and conditions are satisfied by the Bus Operator). The Bus Operator is solely responsible for ensuring that it has sufficient funds to pay the remainder of the Price which may be charged by the Supplier for a particular Bus.

- 6.8.2. Without limiting clause 6.8.1, the Principal will take reasonable efforts to ensure that this information is available to the Supplier.

6.9. Goods and Services Tax

- 6.9.1. In this clause and Deed:

- 6.9.2. **“Consideration”, “Tax Invoice”, “Taxable Supply” and “Supply”** have the same meaning as provided for in the GST Law. The Supplier must hold an Australian Business Number (ABN) and be registered for GST.

- 6.9.3. Every invoice issued by a Supplier when making a supply of the Services must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable by a Customer until a valid Tax Invoice is received.

- 6.9.4. If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Price must be varied so that the Supplier’s net dollar margin for the Service remains the same.

- 6.9.5. Any contract entered into by a Party to this Deed with a third party which involves a Service being supplied, the cost of which will affect the cost of any Service under or in connection with this Deed, must include a clause in equivalent terms to clause 6.9.4.

6.10. Invoicing

- 6.10.1. The Supplier can only invoice for the Services on or after the Date of Acceptance for the relevant Bus.

- 6.10.2. Subject to clause 7.6, the Supplier must send any invoices for any amount due to the Customer placing the Order at the address stated in the Order, unless the Bus Operator Order states the Price of the Bus will be paid by the Principal directly to the Supplier, in which case the Supplier must send any invoices for the Price of the Bus due to the Principal at the address stated in the Order.

- 6.10.3. If the Customer disputes an invoiced amount the Customer must provide the Supplier with written notice of the dispute, such written notice to be given within 10 Business Days from the date of receipt of the invoice.

6.11. Payment not a waiver

Payment, in part or in total, of any amount under this Deed does not constitute an acceptance by the Principal of the Services and does not amount to a waiver of any right or action which the Principal may have at any time against the Supplier.

7. Pre-Delivery Check and Acceptance, Title and Risk

7.1. Pre-Delivery Check

- 7.1.1. Unless otherwise required by the Principal, the rights and obligations of the ‘Customer’ under this clause 7.1 will be exercised and performed by the relevant Bus Operator, even in respect of Principal Orders.

- 7.1.2. The Supplier must give the Customer written notice at least 10 Business Days prior to the date on which each Bus will be ready for a Pre-Delivery Check (the **Pre-Delivery Check Availability Date**), specifying that the relevant Bus will be ready for a Pre-Delivery Check on such date. The Supplier must ensure that each such Bus is available for a Pre-Delivery Check on and from the Pre-Delivery Check Availability Date.

- 7.1.3. Subject to the Customer’s receipt of the notice issued by the Supplier in accordance with clause 7.1.2, and subject to the relevant Bus being made available by the Supplier for a Pre-Delivery Check on and from the Pre-Delivery Check Availability Date, the Customer will conduct a Pre-Delivery Check of the Bus at the Supplier’s nominated site (or such other site agreed by the Parties) within five Business Days of the Pre-Delivery Check Availability Date, in accordance with the Pre-Delivery Check Criteria.

Any costs incurred by the Customer in conducting the Pre-Delivery Check of the Bus at the Supplier's nominated site or agreed site will be borne by the Customer.

- 7.1.4. The Customer is not obliged to perform any Pre-Delivery Check at any time earlier than required under this clause 7.1, even where the Supplier is liable, or will in the future be liable, to pay liquidated damages under clause 9.
- 7.1.5. The Supplier must provide all reasonable cooperation and assistance to enable the performance of any Pre-Delivery Checks by the Customer.
- 7.1.6. Within two Business Days of the Customer completing the Pre-Delivery Check, the Customer must provide the Supplier a written notification with:
 - (a) a completed Pre-Delivery Check checklist in the form required by the Principal from time to time;
 - (b) a written summary of the Pre-Delivery Checks;
 - (c) the results achieved from those Pre-Delivery Checks; and
 - (d) any items identified as not compliant with the Pre-Delivery Check Criteria with a description of the non-compliance.
- 7.1.7. If the Bus meets the Pre-Delivery Check Criteria, the Customer will also issue a Certificate of Acceptance to the Supplier within two Business Days of the Customer completing the Pre-Delivery Check.
- 7.1.8. If the Bus does not meet the Pre-Delivery Check Criteria then the Customer will also, within two Business Days of the Customer completing the Pre-Delivery Check, give the Supplier written notice that the Customer requires that the Supplier remedy the non-compliant items, in which case the Supplier must:
 - (a) remedy the non-compliant items at its own expense within a reasonable period of time; and
 - (b) once the non-compliant items have been remedied, notify the Customer that the Bus is ready for a further Pre-Delivery Check.
- 7.1.9. Within five Business Days of the Customer receiving the notice from the Supplier under clause 7.1.8(b), the Customer must:
 - (a) conduct a second Pre-Delivery Check to test the non-compliant items and perform any necessary regression testing, at the Supplier's cost and expense; and
 - (b) within two Business Days of conducting that second Pre-Delivery Check, give the Supplier written notice that either:
 - (i) the Bus now meets the Pre-Delivery Check Criteria; or
 - (ii) the Customer requires the Supplier remedy the remaining non-compliant items.
- 7.1.10. If the Supplier receives a notice under clause 7.1.9(b)(ii), the Supplier must:
 - (a) remedy the non-compliant items at its own expense within a reasonable period of time; and
 - (b) once the non-compliant items have been remedied, notify the Customer that the Bus is ready for a further Pre-Delivery Check.
- 7.1.11. Within five Business Days of the Customer receiving notice from the Supplier under clause 7.1.10, the Customer must:
 - (a) conduct a further Pre-Delivery Check to test the non-compliant items and perform any necessary regression testing, at the Supplier's cost and expense; and
 - (b) within two Business Days of conducting that further Pre-Delivery Check, give the Supplier written notice that:
 - (i) the Bus now meets the Pre-Delivery Check Criteria;

- (ii) the Customer requires the Supplier remedy the remaining non-compliant items (in which case, the process in clause 7.1.10 and this clause 7.1.11 must be repeated);
- (iii) the Customer will engage a third party to remedy the non-compliant items at the Supplier's expense; or
- (iv) the Customer rejects the Bus.

7.1.12. Where a further Pre-Delivery Check performed under clauses 7.1.9 or 7.1.11 demonstrates that the Bus meets the Pre-Delivery Check Criteria, within 2 Business Days of the Customer conducting that the relevant Pre-Delivery Check the Customer must issue a Certificate of Acceptance to the Supplier.

7.1.13. If the Customer provides a notice to the Supplier under clause 7.1.11(b)(iii), the costs incurred by the Customer in engaging a third party to remedy the non-compliant items shall be a debt due and payable by the Supplier to the Customer upon demand by the Customer.

7.1.14. If:

- (a) the Customer provides a notice to the Supplier under clause 7.1.11(b)(iv); and
- (b) the Bus is at the Customer's site,

the Supplier must remove the Bus from the Customer's site at the Supplier's expense.

7.1.15. The Supplier acknowledges and agrees that:

- (a) Pre-Delivery Checks may not comprise comprehensive checks or inspections of relevant Buses;
- (b) the Principal or the relevant Bus Operator undertaking a Pre-Delivery Check does not owe any obligation to the Supplier in relation to Pre-Delivery Checks, except as expressly set out in this clause 7.1;
- (c) a failure by the Principal or the relevant Bus Operator to conduct a Pre-Delivery Check in relation to one or more Buses does not waive any rights of the Principal or the relevant Bus Operator to conduct any other Pre-Delivery Check/s; and
- (d) the conduct of (or failure to conduct) any Pre-Delivery Check by the Principal or a Bus Operator, and all associated activities (including the confirmation that a Bus meets the Pre-Delivery Check Criteria) will not be taken as an admission or evidence that the Buses comply with, or that the Supplier has performed its obligations under, this Deed or the relevant Order and will not prejudice any right or remedy of the Principal or a Bus Operator may have under or in connection with this Deed or the relevant Order.

7.2. Risk

If a Bus is delivered to the Customer for Pre-Delivery Check, risk in the Bus passes to the Customer and will remain with the Customer unless the Customer rejects the Bus and then the risk in the Bus passes to the Supplier once the Supplier embarks on removing the Bus from the Customer's site.

7.3. Title and Delivery

7.3.1. Subject to clause 7.6, title to and ownership of a Bus passes to the Customer on the Date of Acceptance.

7.3.2. If the Bus not already at the Customer's site, the Supplier must deliver each Bus to the locations and between the hours specified in the Order within 5 Business Days of receiving the Certificate of Acceptance.

7.4. ZEB Battery SOH Capacity and Monitoring

7.4.1. In relation to any ZEB ordered under this Deed:

- (a) the Supplier must provide the ZEB Battery SOH degradation profiles for the relevant ZEB Batteries over a minimum of 8 years from the Date of Acceptance of a ZEB for the range of acceptable charging and bus operational duty cycles nominated by the Supplier;

- (b) the Principal, the relevant Bus Operator and the Supplier must use reasonable endeavours to agree the SOH ZEB Battery monitoring process and reporting format referred to in this clause 7.4.1 by no later than at the Date of Acceptance for the relevant ZEB;
- (c) the Supplier must undertake the agreed SOH ZEB Battery monitoring process and provide the Date of Acceptance SOH ZEB Battery Report in the agreed format to the Principal and the relevant Bus Operator no later than 20 Business Days after the Date of Acceptance for the relevant ZEB;
- (d) the Supplier must undertake the agreed SOH ZEB Battery monitoring process and provide the annual SOH ZEB Battery report in the agreed format (referred to in clause 7.4.1(b)) for each ZEB to the Principal and the relevant Bus Operator annually from the Date of Acceptance by the Customer no later than 20 Business Days after the anniversary date of the Date of Acceptance for the relevant ZEB; and
- (e) within 20 Business Days of receiving each of the reports referred to in clauses 7.4.1(c) and 7.4.1(d), the Principal and the relevant Bus Operator will review those reports and compare them with the profiles provided by the Supplier in clause 7.4.1(a) to determine whether there is a breach of any of the ZEB Battery Warranties set out in Schedule 4 and whether the Supplier is required to undertake any remedial action.

7.5. Personal Property Securities Registration

7.5.1. The Supplier agrees that this Deed (or any transaction in connection with it) may contain a Security Interest for the purposes of the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") and the Customer will be entitled to Perfect such Security Interest by registration on the PPSA.

7.5.2. The Supplier agrees that:

- (a) to perfect any such Security Interest, the Principal may register a financing statement(s) on the Personal Property Securities Register;
- (b) the Supplier shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPSA;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA;
- (d) the Supplier waives its right to receive notice of a verification statement under section 157 of the PPSA; and
- (e) the Supplier shall, promptly on request by the Principal, provide any such information and execute and deliver any such documents as the Principal may reasonably require to protect the Security Interests granted to the Principal by the Supplier under or in relation to this Deed.

7.5.3. In this clause:

- (a) "Perfected" has the meaning given to that term in the PPSA; and
- (b) "Security Interest" has the meaning given to that term in the PPSA.

7.6. Purchase by the Principal

7.6.1. In this clause 7, if a Bus is supplied pursuant to a Bus Operator Order which states that the Price of the Bus will be paid by the Principal directly to the Supplier, all references to "Customer" in clauses 6.10, 7.4 and 7.5 should be read as references to the Principal.

8. Extension of time

8.1.1. As soon as reasonably practicable upon becoming aware, and in any event within 5 Business Days of it becoming aware or having constructive knowledge, of anything which will or is likely to cause delay to the Services, the Supplier shall give to the Customer written notice of that cause and the estimated delay.

- 8.1.2. The Supplier will be entitled to an extension of time for carrying out the Services and achieving Acceptance by the Date for Acceptance if:
- (a) the Supplier is or will be delayed in achieving Acceptance by the Date for Acceptance as a result of any:
 - (i) Circumstances Beyond Control of the Supplier; or
 - (ii) breach of this Deed by the Customer or the Customer's Associates;
 - (b) the Supplier complies with clause 8.1.1;
 - (c) within 5 Business Days of the Supplier becoming aware, or having constructive knowledge, of the event giving rise to the delay, the Supplier gives to the Customer a written claim for an extension of time with full supporting details of the claim, including the period by which the Date for Acceptance should be extended, or where an event has a continuing effect, a statement to that effect; and
 - (d) the Supplier has used best endeavours to minimise the delay.
- 8.1.3. Within 10 Business Days of receiving a claim under clause 8.1.2, the Customer shall give the Supplier:
- (a) written notice that an extension of time has been granted and the details of that extension of time; or
 - (b) if no extension has been granted, written notice of that decision and the reasons for that decision.
- 8.1.4. Notwithstanding that the Supplier is not entitled to, or has not claimed, an extension of time, the Principal and the Supplier may at any time agree in writing that an extension of time will apply in relation to some or all of the timeframes applicable under an Order.
- 8.1.5. The Supplier acknowledges and agrees that, notwithstanding any extension of time granted under this clause 8, the Supplier is not entitled to payment of any costs associated with that delay (unless otherwise agreed between the Parties under clause 8.1.4).

9. Liquidated damages

9.1. Project Buses subject to liquidated damages

- 9.1.1. Where a Bus is nominated as a Project Bus in the Order, liquidated damages will be payable for the late delivery of each Project Bus and this clause 9 applies.
- 9.1.2. Where the Supplier has not achieved Acceptance for a Project Bus by the Date for Acceptance, or if the Date for Acceptance has been varied by any approved variation requests or otherwise in accordance with this Deed, the Supplier must pay liquidated damages in the amount specified in the Order to the Customer for that Project Bus for each calendar day the Date for Acceptance is not met.
- 9.1.3. Each Party acknowledges that the liquidated damages specified in the Order are a genuine pre-estimate of the Loss that the Customer will suffer during the period in which liquidated damages are payable under clause 9.1.2 as a result of the Supplier not achieving Acceptance for the Project Bus by the Date for Acceptance.
- 9.1.4. The Supplier must pay any liquidated damages that are due from the Date for Acceptance until the earlier of:
- (a) the Date of Acceptance for the relevant Project Bus in relation to which the liquidated damages have been applied;
 - (b) the date on which the maximum number of days for which liquidated damages are payable as specified in the Order have elapsed (**Longstop Date**); or
 - (c) the date on which the Order under which the relevant Project Bus is required to be delivered is cancelled or terminated by the Customer.

- 9.1.5. Liquidated damages paid under this clause 9:
- (a) are, subject to clause 9.1.6, the Customer's sole and exclusive financial remedy for the Loss that the Customer suffers during the period in which liquidated damages are payable under clause 9.1.2 in respect of the Supplier not achieving Acceptance for the Project Bus by the Date for Acceptance; but
 - (b) do not relieve the Supplier from any other liability or from meeting any other obligation under this Deed.
- 9.1.6. The Parties agree that where the Supplier has not achieved Acceptance in relation to which the liquidated damages have been applied by the Longstop Date, the payment of liquidated damages by the Supplier under clause 9.1.2 is without prejudice to the Customer's rights to claim damages at large in respect of Loss that arise after the Longstop Date out of or in connection with the Supplier achieving Acceptance for the Project Bus by the Longstop Date.

10. Service Levels

10.1. Service Levels

- 10.1.1. The Supplier must perform its obligations to meet the Service Levels.
- 10.1.2. The Supplier must:
- (a) monitor its performance against the Service Levels; and
 - (b) report its performance to the Principal's Contract Manager,
- in accordance with the frequencies and formats specified in Schedule 6 to this Deed.
- 10.1.3. Where the Supplier commits a breach of any Service Level or if the Principal deems it otherwise necessary, the Principal may require the Supplier to undertake more frequent performance reporting in addition to the requirements specified in Schedule 6.
- 10.1.4. Where the Principal determines that the Supplier has committed:
- (a) three breaches of any Service Level within a six month period; or
 - (b) four breaches of any Service Level within a twelve month period,
- the Principal may, in its sole discretion, terminate this Deed for cause in accordance with clause 29.1.1(j).
- 10.1.5. The remedies in clauses 10.1.3 and 10.1.4 are in addition to any other rights or remedies available to the Principal to deal with the inability of the Supplier to meet its Service Level obligations under this Deed and at law.
- 10.1.6. The measurements and tolerances in the Service Levels specified in Schedule 6 may be amended, added to, or deleted by the Principal in accordance with clause 13 of this Deed.

11. No side deals

11.1. Side deals

- 11.1.1. Subject to clause 11.2 (and unless otherwise approved in writing by the Principal), the Supplier:
- (a) warrants that it has not and its Related Body Corporates have not entered into any arrangement, agreement or understanding with a Bus Operator in relation to the Services, which is intended to circumvent or is inconsistent with the Specifications or the Price; and
 - (b) must not, and must ensure that its Related Body Corporates do not, enter into any arrangement, agreement or understanding with a Bus Operator in relation to the Services, which is intended to circumvent or is inconsistent with the Specifications or the Price.

- 11.1.2. The Supplier must, within 5 Business Days of the date of a request from the Principal, provide the Principal such assurance as the Principal considers reasonably necessary as evidence of compliance with clause 11.1.1, including, but not limited to, the execution of a statutory declaration.
- 11.1.3. The Supplier must, notify the Principal of any intended inducement or offers of travel for any reason including inspection of buses or group factory visits a minimum of 20 Business Days prior to any such offer taking place with any Bus Operator. The Supplier must limit any offers of travel and visits to premises. The Principal can in its sole discretion seek the Supplier to withdraw any offers for inducements or travel. For clarity, an intended inducement or any offer of travel, within the meaning of this clause 11.1.3, includes any intended inducement, or any offer of travel occurring in connection with, or at, a third party or external site.
- 11.2. Demonstrator Buses**
- 11.2.1. If the Supplier wishes to provide a Bus Operator with a Demonstrator Bus, the Supplier must seek the Principal's prior written consent and comply with the Principals requirements that may include the inclusion of OPAL fare collection equipment and PTIPS at the Supplier's costs.

12. Sub-Contractors

12.1. Approval of sub-contractors

- 12.1.1. The Supplier must not sub-contract any part of the Material Obligations without the prior written consent of the Principal. The Supplier may:
- (a) with the prior written consent of the Principal, sub-contract any part of the Supplier's obligations under this Deed (including any Material Obligations) to a Material Sub-Contractor; and
 - (b) without obtaining the Principal's written consent, sub-contract any of the Supplier's obligations under this Deed that are not Material Obligations to a third party.
- 12.1.2. The Supplier must ensure that all sub-contractors are safe, skilful, experienced and competent in their field. Where requested by the Principal, the Supplier must demonstrate to the Principal (including by providing all information requested by the Principal) that the relevant sub-contractor has the required skills and experience to perform the sub-contracted Services.
- 12.1.3. The Supplier must make its sub-contractors aware of the terms and conditions of this Deed and this clause 12.1.
- 12.1.4. The terms and conditions of any sub-contract entered into with a sub-contractor must:
- (a) be consistent with this Deed;
 - (b) not conflict with or detract from the rights and entitlements of the Principal or any Bus Operators under this Deed; and
 - (c) contain a provision that the sub-contractor agrees to:
 - (i) the Supplier novating the sub-contract to the Principal (or another party nominated by the Principal) if this Deed is terminated for any reason; and
 - (ii) executing all such documents as may be necessary to give effect to this clause.
- 12.1.5. Where the value of components of a Bus provided by an sub-contractor is more than 5% of the total value of components of a Bus (whether under a single sub-contract or in the aggregate), the Supplier must procure a Deed of Warranty from the sub-contractor prior to the Pre-Delivery Check Availability Date for the relevant Bus (or if the relevant threshold is met after the Pre-Delivery Check Availability Date, within 5 Business Days of such threshold being met).

- 12.1.6. The Supplier must ensure that for any services a sub-contractor performs in relation to this Deed, each sub-contractor will provide a written statement (together with any supporting evidence that may reasonably be required by the Principal) regarding payment to workers engaged by the sub-contractor in connection with the sub-contracted Services or tasks, stating:
- (a) that all workers who have at any time been engaged by the sub-contractor in connection with the sub-contracted Services have as at the date of the statement been paid all moneys due and payable to them and otherwise had accrued to their account all benefits to which they are entitled from the sub-contractor, in respect of their work on the sub-contracted Services; and
 - (b) details of any amounts due and payable or benefits due to be received or accrued which have not been paid or accrued for workers engaged by the sub-contractor in connection with the sub-contracted Services; and
 - (c) where the sub-contractor operates in NSW or is subject to the laws of NSW, a written statement under 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).
- 12.1.7. Nothing in clause 12.1.6 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).
- 12.1.8. The Supplier is vicariously liable for the performance of the obligations under this Deed and will continue to be bound by, and responsible for performance of this Deed notwithstanding that any or all of the Services may have been sub-contracted.
- 12.1.9. The Principal may by notice in writing to the Supplier, without incurring any liability, withdraw its approval of a Material Sub-Contractor (or require the Supplier to cease using a Minor Sub-contractor) if, in the Principal's reasonable opinion:
- (a) the relevant sub-contractor has breached, or has caused the Supplier to breach, the requirements of this Deed; and
 - (b) if the relevant breach is capable of remedy, the sub-contractor has failed to remedy such breach within 10 Business Days of the Customer issuing a notice in writing to the Supplier requiring the Supplier or the sub-contractor to remedy such breach,
- in which case the Supplier must immediately ensure that the sub-contractor ceases to perform work in connection with this Deed, any Order, the Principal and any relevant Bus Operator and returns all Data and Confidential Information of the Principal and any relevant Bus Operator to the Supplier.
- 12.1.10. The Supplier:
- (a) is liable for any acts or omissions of any sub-contractor or any employee, agent, sub-contractor or other representative of the sub-contractor as fully as if they were the acts or omissions of the Supplier; and
 - (b) indemnifies and releases the Principal and each Bus Operator from any liability or Loss resulting from the acts or omissions of any sub-contractor, or any employee, agent, sub-contractor or other representative of a sub-contractor.
- 12.1.11. Within 5 Business Days of a request of the Principal issued from time to time, the Supplier must provide the Principal a list of all Minor Sub-Contractors engaged or to be engaged by the Supplier.

13. Variations to Deed

13.1. Variations to Deed

- 13.1.1. Subject to clause 6.3, this Deed may not be varied except in writing signed by both the Principal and the Supplier in accordance with this clause 13.

- 13.1.2. The Parties acknowledge that either Party may seek to vary the terms and conditions of this Deed (including the Specifications and Service Levels) under this clause.

13.2. Variation process

- 13.2.1. The Parties agree that the process for implementing variations to this Deed is as follows:
- (a) the Party requesting the variation (**Requesting Party**) must submit a request for variation in the format specified in Schedule 10 of this Deed to the other Party (**Receiving Party**);
 - (b) unless specified otherwise in this Deed, a request for variation that is not in the format specified in Schedule 10 of this Deed will not be a valid request for variation;
 - (c) the Receiving Party must, within 20 Business Days of receipt of the request for variation or such other time as is reasonable in the circumstances, consider the terms and conditions of the proposed variation and notify the Requesting Party whether the proposed variation is accepted or rejected, or if accepted subject to conditions, specify the conditions;
 - (d) the Receiving Party may request further information from the Requesting Party about the variations proposed;
 - (e) the Receiving Party is not bound to accept any proposed variation; and
 - (f) the Requesting Party is not bound to accept any conditions sought to the proposed variation.

13.3. Consequence

- 13.3.1. The Parties agree:
- (a) that subject to clause 18.3, there is no consequence for failure to agree to a proposed variation; and
 - (b) a variation to this Deed will not be valid unless a Deed of Variation in the format specified in Schedule 10 of this Deed is signed by both Parties.
- 13.3.2. A variation to this Deed takes effect from the date the Deed of Variation is signed by both Parties.

14. Confidentiality

14.1. Obligations of Parties

- 14.1.1. Except to the extent necessary to comply with any Laws relating to the public disclosure of Confidential Information (including the *Government Information (Public Access) Act 2009* (NSW) and SOCI Act) or in accordance with clause 14.1.10 and 14.1.4, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Deed, unless the other Party gives its prior written consent.
- 14.1.2. Each Party may disclose Confidential Information to its Associates where such disclosure is essential to carrying out their duties in accordance with, or exercising their rights under, this Deed.
- 14.1.3. The Supplier acknowledges and agrees that the Principal will disclose the Prices for the Services to Bus Operators (and any other information necessary to enable Bus Operators to place Orders) and that the Bus Operators may disclose any information provided by the Supplier to the Principal.
- 14.1.4. Each Party must ensure the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Deed.
- 14.1.5. The Principal may at any time require the Supplier to arrange for its Associates engaged in the performance of this Deed to execute without delay a Deed of Confidentiality, substantially in the form of Schedule 5 of this Deed.

- 14.1.6. If any Associate of the Supplier, who has had access to Confidential Information, leaves the service or employ of the Supplier, then the Supplier must ensure that that person does not do or permit to be done anything which, if done or permitted to be done by the Supplier, would be a breach of the obligations of the Supplier under this Deed.
- 14.1.7. Each Party must take all steps and do all such things as may be reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other Party.
- 14.1.8. Each Party must promptly notify the other Party if it becomes aware that:
- (a) a disclosure of the other Party's Confidential Information may be required in the circumstances envisaged by clause 14.1.1; or
 - (b) an unauthorised disclosure of the other Party's Confidential Information has occurred.
- 14.1.9. Each Party acknowledges that the value of the other Party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause is breached.
- 14.1.10. Despite any other provisions of this Deed and without limiting the Principal's rights under this Deed, the Principal may:
- (a) disclose to Bus Operators this Deed, any Orders, any Data and any reports and other information obtained by the Principal from the Supplier or its Associates under or in connection with this Deed or any Order; and
 - (b) disclose to any third parties and/or publish in any form and at times the Principal considers appropriate any Data and/or Confidential Information of the Principal or any Bus Operator.
- 14.1.11. On termination or expiration of this Deed the Supplier must immediately:
- (a) deliver to the Principal all Material containing, recording or referring to Confidential Information; and
 - (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,
- which are in the possession, power or control of the Supplier or of any person to whom the Supplier has given access, except where any Confidential Information must be retained for the purpose of compliance with applicable Law (in which case the Supplier must only retain one copy of such Confidential Information and continue to treat such information as Confidential Information and to protect such information in accordance with this Deed).
- 14.1.12. Within 5 Business Days of the expiration or termination of this Deed, the Supplier must provide a written certification to the Principal confirming that the Supplier has complied with its obligations under clause 14.1.11 and confirming that all Confidential Information has been securely deleted from all servers.
- 14.1.13. A Party may seek and obtain an ex parte interlocutory or final injunction to prohibit or restrain the other Party or its Associates from any breach or threatened breach of this clause.
- 14.1.14. This clause will survive the termination or expiration of this Deed.
- 14.1.15. Despite any other provisions of this Deed, each Party may disclose Confidential Information of the other Party where requested by or required to be disclosed to a Governmental Agency in connection with the SOCI Act.

15. Intellectual Property

15.1. Ownership

- 15.1.1. Intellectual Property Rights created in relation to New Project Material will be owned by the Supplier upon its creation.

- 15.1.2. With respect to any Project Material, irrespective of when it is created, if requested by the Principal, the Supplier must:
- (a) sign, execute or otherwise deal with; and
 - (b) ensure that any third party or sub-contractor that creates any Project Material signs, executes or otherwise deals with,
- any document which may be necessary to vest the licence referred to in clause 15.2 of this Deed with the Principal.
- 15.1.3. The Parties acknowledge and agree that the Parties or, where applicable, particular third parties, are the sole owners of their Intellectual Property Rights in or in relation to the Existing Project Material.
- 15.1.4. Upon completion of this Deed, or at such other time as this Deed or the Principal may require, the Supplier must fully and promptly disclose to the Principal all New Project Material created or developed under or in connection with this Deed.

15.2. Licence

- 15.2.1. The Supplier irrevocably grants to the Principal a non-exclusive, perpetual, irrevocable, world-wide, royalty free and transferable licence to use the Intellectual Property Rights in the Project Material for any purpose associated with operating and maintaining the Buses for so long as the Principal may require.
- 15.2.2. The Supplier must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property Rights or Project Material necessary for the provision of the Services.

15.3. Indemnity

- 15.3.1. The Supplier indemnifies the Principal and each Customer (if the Customer is not the Principal) against all Loss arising out of or in connection with a claim by a third party that the Supplier's performance of this Deed, or the Principal's use of the Project Material, infringes their Intellectual Property Rights or Moral Rights.

16. Data

16.1. General

- 16.1.1. Despite any other provision of this Deed, the Data is and remains the property and Confidential Information of the Principal or the relevant Bus Operator (as applicable) and all rights, title and interests, including Intellectual Property Rights, in the Data will remain with or vest in the Principal or the relevant Bus Operator (as applicable).
- 16.1.2. To the extent necessary to give effect to this clause, the Supplier hereby assigns to the Principal or the relevant Bus Operator (as applicable) all rights, title and interest, including Intellectual Property Rights, in the Data. The Supplier shall not obtain any right, title or interest to the Data.
- 16.1.3. The Supplier must ensure the Principal and the relevant Bus Operators have access at all times (and without condition or additional charge) to the Data (in an industry standard format) whilst in the possession or under the control of the Supplier or any of its sub-contractors.

16.2. Security and confidentiality of the Data

- 16.2.1. The Supplier acknowledges that Data is Confidential Information of the Principal or the relevant Bus Operator (as applicable) (and not of the Supplier) and is subject to the confidentiality obligations in clause 14.

- 16.2.2. The Supplier must maintain, enforce and continuously improve a security environment and safety and security procedures and safeguards (including procedures and safeguards against the destruction, loss, disclosure, alteration or unauthorised access or use of Data) that are:
- (a) in accordance with Good Industry Practice and any policies, procedures or standards as may be reasonably advised by the Principal from time to time;
 - (b) consistent with the following International Standards for Information Security (available from the Australian Standards website, "www.standards.org.au" (or any successor website):
 - (i) AS/NZS ISO/IEC 27001:2022 Information Security Management Systems – Requirements;
 - (ii) AS/NZS ISO/IEC 27002:2022 Code of Practice for Information Security Management; and
 - (iii) ISO/IEC 27005:2022 Information Security Risk Management; and
 - (c) comply with all Laws applicable to the Supplier's use and custody of the Data.

- 16.2.3. Without limiting clauses 16.2.2 and 16.7, the Supplier must:
- (a) at all times use the most appropriate, sophisticated and up-to-date pro-active security prevention software, including virus detection systems and intrusion detection systems for preventing and detecting Disabling Code;
 - (b) ensure that all systems are constantly updated throughout the term of this Deed to address security vulnerabilities and changes in the threat environment;
 - (c) not remove or transfer Data to any premises which are not the Principal's or the Bus Operator's premises or from the Operational Systems and Equipment without obtaining the prior approval of the Principal or the Bus Operator (as appropriate) or as expressly authorised by and in accordance with this Deed; and
 - (d) promptly inform the Principal or the Bus Operator (as appropriate) of any security threats or Disabling Code and the steps necessary to avoid their introduction.

16.3. Notification of a Data Breach

- 16.3.1. Without limiting clause 16.6, if the Supplier becomes aware of or has reasonable grounds to suspect a Data Breach, the Supplier must:
- (a) immediately notify the Principal and (as appropriate) the Bus Operator; and
 - (b) at the same time as providing notice pursuant to clause 16.3.1(a) provide to the Principal and (as appropriate) the Bus Operator, to the extent known at the time, all information relating to the Data Breach that the Principal requests in order to comply with Privacy Laws (and as notified to the Supplier).

16.4. Actions required in relation to a Data Breach

- (a) Where the:
 - (i) Supplier becomes aware, or has reasonable grounds to suspect, that there has been a Data Breach; or
 - (ii) Principal notifies the Supplier that the Principal has reasonable grounds to suspect that a Data Breach has occurred or is about to occur,
 then, the Supplier must:
 - (iii) comply with clause 16.3;
 - (iv) expeditiously assess, investigate and diagnose the Data Breach (including to identify the root cause of the Data Breach, the risks posed by the Data Breach and identify how these risks could be addressed) and, on the Principal's request, provide the results of that assessment and investigation to the Principal's Representative within the timeframe requested by the Principal;

- (v) immediately make all reasonable efforts to contain the Data Breach and all reasonable attempts to mitigate the harm of the Data Breach (working on a 24 x 7 basis if required);
- (vi) do all within its power to remedy any Data Breach and take all reasonable steps to prevent any recurrence of such Data Breach;
- (vii) cooperate with the Principal or any assessor appointed by the Principal in connection with the assessment, investigation, diagnosis, response and resolution of the Data Breach (including so as to ensure the Principal is able to satisfy its notification and reporting obligations within the timeframes and requirements under the Privacy Laws);
- (viii) provide any assistance reasonably required by the Principal or any Government Agency in relation to any criminal, regulatory or other investigation or inquiry relating to the Data Breach;
- (ix) unless otherwise directed by the Principal, comply with the Principal's published data breach policy and any data breach procedures and documentation, as well as any other of the Principal's Policies relevant to the management, mitigation and response to a Data Breach;
- (x) comply with any reasonable direction (including as to timeframes) from the Principal with respect to a Data Breach (which may include, for example, activities to support the Principal's response to the incident and compliance with the New South Wales mandatory notification of data breach scheme); and
- (xi) review and learn from the Data Breach to improve security and data handling practices and prevent future a Data Breach from occurring.

16.4.2. In the event of any conflict between any data or security requirements, the most stringent or higher level of security standard will apply.

16.5. Ceasing use of Data

16.5.1. Without limiting any other obligation of the Supplier under this Deed, on the date that any Data is no longer needed for the purposes of the Supplier carrying out the Services (or should the Customer notify the Supplier that the Data is no longer needed to be retained by the Supplier), the Supplier must at its sole cost:

- (a) immediately stop using the relevant Data;
- (b) as soon as practicable (and in any event within two Business Days), deliver to the Principal the relevant Data and all Material containing, recording or referring to the relevant Data;
- (c) subject to clause 16.5.2, as soon as practicable (and in any event within two Business Days), erase or destroy in another way all electronic and other intangible records containing, recording or referring to the relevant Data; and
- (d) within five Business Days, provide a written certification to the Principal confirming that the Supplier has complied with its obligations under this clause 16.5 and confirming that all relevant Data has been securely deleted from all servers.

16.5.2. Notwithstanding clause 16.5, where any Data must be retained for the purpose of compliance with applicable Law, the Supplier will be entitled to retain one copy of such Data, provided that the Supplier must continue to treat such data as Data and to protect such Data in accordance with this Deed.

16.6. Security of Critical Infrastructure

16.6.1. The Supplier:

- (a) acknowledges that the Principal has assets that are Critical Infrastructure Assets governed by the SOCI Act, which may include the Buses and Bus Services;

- (b) if any Bus and/or Bus Services relate to a Critical Infrastructure Asset, must:
 - (i) retain and provide to the Principal such records and reports as may be required; and
 - (ii) comply with any direction of the Principal,
 for the purposes of the Principal's compliance with the SOCI Act or associated directions or orders of a Governmental Agency;
- (c) in respect of a SOCI Cyber Security Incident, without limiting clause 18.2 or this clause 16.6, must notify the Principal within 4 hours if it becomes aware of any grounds to believe or suspect that a SOCI Cyber Security Incident has occurred, is occurring or is imminent. Each notification must (to the extent then known, after making reasonable inquiries) include:
 - (i) the nature and details of the SOCI Cyber Security Incident;
 - (ii) the kinds of information and assets affected (or suspected to be affected) by the SOCI Cyber Security Incident;
 - (iii) the impact of the SOCI Cyber Security Incident on the availability, integrity, reliability or confidentiality of an asset;
 - (iv) any actions that have been undertaken and/or are recommended to be taken by the Supplier, the Principal and/or persons who are or may be affected by the SOCI Cyber Security Incident;
- (d) must continue to provide to the Principal all information and assistance requested by the Principal relating to the SOCI Cyber Security Incident; and
- (e) if a Risk Management Program is required in connection with any Services, must on request by the Principal:
 - (i) provide reasonable assistance to the Principal by:
 - a) drafting, reviewing and updating the Risk Management Program; and
 - b) preparing its annual report on the Risk Management Program as required under the SOCI Act; and
 - (ii) comply with the Risk Management Program, as updated by the Principal and notified to the Supplier from time to time.

16.6.2. As at the Commencement Date, the Parties acknowledge that the Supplier is not providing a data storage or processing service within the meaning of the SOCI Act that relates to Business Critical Data under or in connection with this Deed. If either Party becomes aware that the Supplier is providing a data storage or processing service within the meaning of the SOCI Act for Business Critical Data under or in connection with this Deed, it must notify the other Party in writing as soon as practicable.

16.7. Disabling Code

16.7.1. The Supplier must not and must ensure its Associates do not:

- (a) supply or connect to the Operational Systems and Equipment any product containing a Disabling Code; or
- (b) insert or activate any Disabling Code into the Operational Systems and Equipment at any time.

16.7.2. If the Supplier becomes aware that any Disabling Code is found to have been installed, released or otherwise introduced into any part of the Operational Systems and Equipment by the Supplier or its Associates:

- (a) the Supplier must promptly provide all information reasonably requested by the Principal in relation to the Disabling Code, its manner of introduction and the effect the Disabling Code has had or is likely to have;
- (b) if the Disabling Code causes a loss of operational efficiency or loss of data, assist the Principal to mitigate the effect of the Disabling Code and to assist the Principal to recover the efficiency and/or data; and

- (c) in addition to any other rights that the Principal has, must pay the Losses incurred by the Principal relating to:
 - (i) identifying and removing the Disabling Code; and
 - (ii) restoring any data lost, damaged or corrupted as a result of the Disabling Code to the last backed-up version of that data and otherwise remedying the impact of the Disabling Code.

16.8. No transfer of Data outside of NSW

- 16.8.1. The Supplier must not and must ensure that its Associates do not, without the Principal's Representative's prior written approval (with such written approval referring to this clause 16.8):
 - (a) transfer, or permit the transfer, outside of New South Wales any Data accessed or held in connection with this Deed; or
 - (b) allow or permit access to such Data by any person who is outside of New South Wales at the time of such access.
- 16.8.2. Any approval issued by the Principal's Representative under clause 16.8.1:
 - (a) may be granted or withheld in the sole discretion of the Principal's Representative; and
 - (b) may be granted subject to conditions, qualifications and/or additional requirements specified in the Principal's Representatives written approval, and the Supplier must comply with any such conditions, qualifications and/or additional requirements.

17. Marketing

17.1. Marketing by the Supplier

- 17.1.1. The Supplier is responsible for the proactive marketing of its organisation's capability to the Principal and the Bus Operators.

18. Accreditation and compliance

18.1. Licences and Approvals

- 18.1.1. The Supplier must and must ensure its Associates obtain at its own cost all licences, approvals and consents necessary to perform this Deed.

18.2. Compliance with Policies, Laws and Standards

- 18.2.1. The Supplier must and must ensure its Associates, in the performance of this Deed, comply with:
 - (a) all applicable Laws;
 - (b) the Principal's Policies;
 - (c) the NSW Government codes, policies, guidelines and Standards listed in Item 3 of Schedule 1 of this Deed or any other codes, policies, guidelines and Standards specified in writing by the Principal to the Supplier, as revised, amended, supplemented, altered or reissued from time to time; and
 - (d) any particular Standard which has been agreed between the Supplier and the Principal, and if that Standard is revised, the Supplier must submit evidence of compliance with the revised Standard within a reasonable period of time.

- 18.2.2. The Supplier must and must ensure its Associates, in the performance of this Deed:
- (a) comply with the obligations imposed on the Principal by the Privacy Laws in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Supplier in accordance with this Deed as though the Supplier were, as far as reasonably practicable, the Principal in relation to any such Personal Information;
 - (b) protect the Personal Information from loss, unauthorised access, use, disclosure, modification and other misuse and in accordance with the security requirements under this Deed;
 - (c) comply with any request of the Principal in relation to Personal Information; and
 - (d) not do anything that would cause the Principal to be in breach of its obligations under the Privacy Laws.

18.3. Introduction of new fire safety standards

- 18.3.1. The Supplier acknowledges that the Principal intends to introduce and implement additional standards in relation to:

- (a) fire safety requirements; and
- (b) fire performance of bus materials,

for Buses to be supplied to and/or operated by the Principal or a Bus Operator (**New Fire Safety Standards**).

- 18.3.2. If the Principal introduces the New Fire Safety Standards during the Term, the Principal will request a variation in accordance with clause 13.2.

- 18.3.3. If, in relation to variation requested under clause 18.3.2:

- (a) the Supplier rejects the proposed variation; or
- (b) the Parties fail to agree to a proposed variation,

the Principal may, in its sole discretion, terminate this Deed for cause in accordance with clause 29.1.1(j) of this Deed.

18.4. ANCAP Rescue Application

- 18.4.1. The Supplier must develop a draft Rescue Sheet and Emergency Response Guide for each Bus, and provide such draft Rescue Sheet and Emergency Response Guide to the Principal for approval at least 40 Business Days prior to the Pre-Delivery Check Availability Date for such Bus.

- 18.4.2. The Supplier must amend the draft Rescue Sheet and Emergency Response Guide for each Bus within 5 Business Days of the Principal providing feedback to the Supplier requiring the Supplier to do so, to reflect the feedback provided by the Principal.

- 18.4.3. Prior to the Pre-Delivery Check Availability Date for a Bus (or on such later date required by the Principal), the Supplier must ensure that the final Rescue Sheet and Emergency Response Guide for the relevant Bus (as approved in writing by the Principal) are uploaded to the ANCAP Rescue App in accordance with the requirements of ANCAP.

- 18.4.4. The Supplier must ensure that the Rescue Sheet and Emergency Response Guide for each Bus is updated, and the updated versions of such documents are uploaded by the Supplier to the ANCAP Rescue App:

- (a) annually, by no later than 30 June each year;
- (b) prior to any relevant changes being made to a Bus that are relevant to:
 - (i) the Rescue Sheet;
 - (ii) the Emergency Response Guide;
 - (iii) the management by emergency services personnel of an incident involving a Bus; or
 - (iv) the towing/securing of a Bus; and

- (c) as and when requested by the Principal from time to time.

18.4.5. In this clause 18.4:

- (a) **ANCAP** means ANCAP Australasia Limited ACN 120 448 044;
- (b) **ANCAP Rescue App** means the 'ANCAP Rescue application' containing Rescue Sheets and other information relating to vehicles relevant to emergency services personnel, as made available by ANCAP, or any application replacing such application from time to time;
- (c) **Emergency Response Guide** means a document outlining (including in diagrammatic form) information required for emergency services personnel to manage an incident involving a Bus, in the form required by ANCAP from time to time; and
- (d) **Rescue Sheet** means a document comprising a colour-coded illustration of a range of vehicles, highlighting the location of features including high-voltage batteries, fuel tanks, airbag inflators and seatbelt pretensioners, in the form required by ANCAP from time to time. Without limitation, the Rescue Sheet must include information relevant to the towing and securing of the relevant Bus.

19. Anti-bribery, anti-corruption and modern slavery

19.1. Anti-bribery and anti-corruption

19.1.1. Without limiting any other provision of this Deed, the Supplier must:

- (a) comply with all applicable anti-bribery and anti-corruption legislation, including the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) and similar Laws of other countries that are applicable;
- (b) comply with the Principal's Statement of Business Ethics (which includes a requirement to comply with the *Transport Code of Conduct* and the *NSW Government Procurement Policy Framework* in relation to conduct by suppliers);
- (c) maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
- (d) ensure that its Associates comply with this clause.

19.2. Modern slavery compliance

19.2.1. The Supplier warrants that, as at the date of its execution of this Deed:

- (a) any Information it has provided to the Principal in relation to Modern Slavery is, to the best of its knowledge, complete and accurate;
- (b) neither the Supplier, any entity that it owns or controls nor, to the best of its knowledge, any sub-contractor of the Supplier, has been convicted of a Modern Slavery Offence; and
- (c) the Supplier is not aware of any circumstances within its operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.

19.2.2. The Supplier:

- (a) must not, and must take reasonable steps to ensure that any entity that it owns or controls does not, engage in any activity or practice in the nature of Modern Slavery in its operations;
- (b) must take reasonable steps to ensure that Modern Slavery is not occurring in its (or in any entity that it owns or controls) supply chains; and
- (c) must otherwise comply, and take reasonable steps to ensure that any entity that it owns or controls complies, with the Modern Slavery Laws and the Related Offence Provisions, to the extent applicable.

19.3. Provision of information relating to modern slavery compliance

19.3.1. The Supplier must:

- (a) subject to any restrictions under any applicable Laws by which it is bound, provide to the Principal, within 30 days of a request by the Principal, any Information and other assistance, as reasonably requested by the Principal, to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and any NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office and providing reasonable access to the Principal's/Audit Office's auditors to interview the Supplier's staff;
- (b) within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Customer; and
- (c) notify the Customer in writing as soon as it becomes aware of either or both of the following:
 - (i) a material change to any of the Information it has provided to the Customer in relation to Modern Slavery; and
 - (ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).

19.3.2. Without limiting clause 19.3.1(b), in providing Information to the Principal as to any actual or suspected occurrence of Modern Slavery in the Supplier's operations or supply chains (or in those of any entity that it owns or controls), the Supplier must provide sufficient Information:

- (a) to identify where the occurrence has arisen in those operations or supply chains and its scale and severity; and
- (b) to enable the Customer to be satisfied, acting reasonably, that the Supplier is taking reasonable steps to respond to and address that occurrence in accordance with any internal Modern Slavery policy and procedures of the Supplier and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board.

19.3.3. Promptly following execution of this Deed, the Supplier must communicate to its Associates (and those of any entity that it owns or controls):

- (a) the name and contact details of a specified representative of the Supplier whom staff are invited to contact in respect of any actual or suspected occurrence of Modern Slavery in the Supplier's operations and supply chains (or in those of any entity that it owns or controls); and
- (b) where to access further information about Modern Slavery Laws, including contact details for the Anti-slavery Commissioner.

19.3.4. In providing any requested Information to the Customer, the Supplier must:

- (a) make such inquiries in relation to its operations and supply chains as may be reasonably expected to inform its response; and
- (b) communicate openly about the extent to which the Information it provides is complete and accurate (including a statement as to the limitations of the Information provided).

19.3.5. The Supplier may provide any Information or report requested by the Customer in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Information from another Australian public sector agency, or refer the Customer to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Customer.

- 19.3.6. The Supplier must, during the term of this Deed and for a further period of seven (7) years:
- (a) maintain; and
 - (b) upon the Customer's reasonable request, give the Customer access to, and/or copies of, a complete set of records in the possession or control of the Supplier to trace, so far as practicable, the supply chain of all goods and services provided under this Deed and to enable the Customer to assess the Supplier's compliance with this clause 19.
- 19.3.7. The Supplier consents to the Customer sharing Information obtained from the Supplier in respect of Modern Slavery, including records referred to in clause 19.3.6, with any other NSW Government agency or entity:
- (a) for the purpose of identifying or addressing that actual or potential Modern Slavery; or
 - (b) to the extent the Customer has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or supply chains of the Supplier or any entity that it owns or controls.
- 19.3.8. Without limiting any other provision of this clause 19.3, the Supplier:
- (a) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (b) releases and indemnifies the Customer and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

19.4. Modern slavery policy, due diligence processes, staff programs and training

- 19.4.1. The Supplier must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Supplier and any entity that it owns or controls.
- 19.4.2. Without affecting the generality of clause 19.4.1, if the Supplier:
- (a) submits a Modern Slavery Statement; or
 - (b) Self-Assesses as at high risk of causing or contributing to Modern Slavery in its operations or supply chains,
- the Supplier must, if, and to the extent, requested by the Customer:
- (c) develop and implement, and ensure that any entity that it owns or controls and which is exposed to similar risks develops and implements, a Modern Slavery plan, which includes a strategy on how to respond to and address an actual or suspected case of Modern Slavery and due diligence processes in relation to Modern Slavery in its operations and supply chains;
 - (d) provide programs and training for its staff about Modern Slavery, including to:
 - (i) ensure compliance with the Modern Slavery Laws and any Modern Slavery strategy and due diligence processes of the Supplier;
 - (ii) promote awareness of the risks of Modern Slavery taking place in the Supplier's operations and supply chains; and
 - (iii) develop capacity to assess and effectively address such risks; and
 - (e) provide the Customer with:
 - (i) a copy of each of the strategy and processes referred to in clause 19.4.2(d) and Information on their implementation; and
 - (ii) Information on implemented training and programs.

19.5. Sub-contractors

- 19.5.1. The Supplier must take reasonable steps to ensure that all sub-contracts of the whole or part of this Deed contain:
- (a) in relation to sub-contracts that relate exclusively to the Principal, provisions in relation to Modern Slavery that are substantially the same as this clause 19; and
 - (b) in all other cases, Modern Slavery provisions that are reasonably consistent with the provisions in this clause 19.

19.6. Response to Modern Slavery incident

- 19.6.1. If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to and address the occurrence in accordance with any applicable policies and guidance as identified in clause 19.3.2(b).
- 19.6.2. Any action taken by the Supplier under clause 19.6.1 will not affect any rights of the Customer under this Deed, including its rights under clause 19.7.

19.7. Termination on ground of Modern Slavery

- 19.7.1. The Principal may, in its sole discretion, terminate this Deed for cause in accordance with clause 29.1.1(j) if any of the following events or circumstances occur:
- (a) The Supplier has failed to disclose to the Customer, prior to execution of this Deed, that the Supplier, or any entity owned or controlled by the Supplier, has been convicted of a Modern Slavery Offence;
 - (b) The Supplier, or any entity owned or controlled by the Supplier, is convicted of a Modern Slavery Offence during the term of this Deed;
 - (c) In the Customer's reasonable view, the Supplier has failed to notify the Customer as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
 - (d) In the Customer's reasonable view the Supplier has failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or
 - (e) In the Customer's reasonable view, the Supplier has otherwise committed a material breach or multiple non-material breaches which collectively constitute a material breach of clause 19.2, clause 19.3 and/or clause 19.5.

20. Social, Environmental and Sustainability Requirements

20.1. Environmental and Sustainability Requirements

- 20.1.1. The Supplier must carry out all Services (including the manufacture and supply of Buses) under this Deed:
- (a) in such a manner as to avoid nuisance and/or damage to the environment; and
 - (b) in compliance with all Environmental Laws and the Principal's requirements.

20.2. Environmental Product Declaration

20.2.1. Within 2 years of the day on which the total aggregate value (inclusive of GST) of all Orders for Buses and other Services under this Deed (including Orders placed with the Supplier and confirmed in accordance with clause 4.2.7 or clause 4.3.4), equals or exceeds \$10,000,000 (the **EPD Threshold**), the Supplier must:

- (a) develop an Environmental Product Declaration (**EPD**) for all ZEBs supplied and/or ordered under Orders under this Deed (including Orders placed with the Supplier and confirmed in accordance with clause 4.2.7 or clause 4.3.4), as at or prior to the date on which the EPD Threshold was met, in accordance with the applicable Product Category Rules (for example, PCR 2016:04 Public and private passenger buses and coaches (2.0));
- (b) obtain independent verification of the EPD; and
- (c) register the EPD with EPD Australasia.

The Principal will assist with this process by standardising the EPD inclusions and reporting templates to ensure alignment with relevant policies and guidelines.

20.2.2. If, after the EPD Threshold has been met or exceeded:

- (a) the type of ZEBs to be supplied by the Supplier under this Deed changes; or
 - (b) the Specifications for ZEBs to be supplied by the Supplier under this Deed changes,
- the Supplier must engage in good faith discussions with the Principal in relation to any required updates that may need to be made to the EPD, to the extent required by the Principal.

20.3. Plans required when Order Value Threshold met

20.3.1. Within 20 Business Days of the total value (inclusive of GST) of all Orders for Buses and other Services under this Deed (including Orders placed with the Supplier and confirmed in accordance with clause 4.2.7 or clause 4.3.4) being equal to or exceeding the SME Order Value Threshold, the Supplier must submit to the Principal a draft:

- (a) SME and Local Participation Plan;
- (b) Social Procurement and Workforce Diversity Plan; and
- (c) Environmental and Sustainability Plan.

20.3.2. Within 20 Business Days of the total value (inclusive of GST) of all Orders for Buses and other Services under this Deed (including Orders placed with the Supplier and confirmed in accordance with clause 4.2.7 or clause 4.3.4) being equal to or exceeding the APP Order Value Threshold, the Supplier must submit to the Principal a draft Aboriginal Participation Plan.

20.4. Plan Reporting

20.4.1. The plans referred to in clauses 20.3.1 and 20.3.2 will be reviewed by the Principal and within one month of receiving the Principal's review (and feedback), the Supplier must provide a formal response to the Principal's questions.

20.4.2. The Supplier must:

- (a) implement, maintain and comply with its plans referred to in clauses 20.3.1 and 20.3.2 for the Term of this Deed;
- (b) conduct an annual review of its plans referred to in clauses 20.3.1 and 20.3.2 and make such amendments as may be required to ensure ongoing compliance with this Deed; and
- (c) provide a Quarterly report to the Principal which certifies its compliance with its commitments in its then current plans referred to in clauses 20.3.1 and 20.3.2 in accordance with Schedule 8 of this Deed.

20.5. ZEB Aboriginal participation strategy

- 20.5.1. The Principal is currently considering a ZEB Aboriginal participation strategy and, if it is approved by the Principal, the Principal will require the Supplier to address the requirements of this strategy in any subsequent 'request for proposal' (or similar) that is issued for ZEB under this Deed or other arrangement.

21. Reporting

- 21.1.1. Subject to this clause 21, during the Term, the Supplier must report to the Principal in accordance with Schedule 8 of this Deed.
- 21.1.2. For any ZEB supplied under this Deed during the Term, the Supplier must report to the Principal and the relevant Bus Operator in accordance with the ZEB Battery Reporting requirements in Schedule 8 of this Deed.
- 21.1.3. Notwithstanding clauses 21.1.1 and 22.1.2, the Principal may require the Supplier, by written notice, to provide other information relating to the Services (including the Buses and all components, parts and spare parts of Buses). The Supplier must, within ten (10) Business Days of receipt of this notice, provide the Principal with the requested information.

22. Insurance

22.1. Minimum Insurance Requirements

- 22.1.1. The Supplier must hold and maintain, and must ensure that all sub-contractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Deed for the particular policy:
- (a) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in Item 5 of Schedule 1 in respect of each claim for at least the period of time specified in Item 5; and
 - (b) products liability insurance for at least the amount specified in Item 5 of Schedule 1 for the total aggregate liability for all claims arising out of the Supplier's products (including all claims arising from a defect in or defective design of those products) for the period of cover for at least the period of time specified in Item 5;
 - (c) workers' compensation insurance in accordance with applicable legislation for all the Supplier's employees;
 - (d) fire and extraneous perils insurance for at least the amount specified in Item 5 of Schedule 1 in respect of each claim for at least the period of time specified in Item 5; and
 - (e) such other insurances as are specified in Item 5 of Schedule 1.
- 22.1.2. All policies of insurance must be effected with an insurer rated A – or better by AM Best or an equivalent rating organisation.
- 22.1.3. If required by the Principal, the Supplier must arrange for the Principal and each Bus Operator to be named as an insured or be noted as a beneficiary on any of the insurances set out in clauses 22.1.1(a), 22.1.1(b), 22.1.1(d) and 22.1.1(e). Where the Supplier's insurer is authorised to carry on insurance business in Australia under the *Insurance Contracts Act 1973* (Cth), then the Principal's interest or the Bus Operator's interest is to be noted as "a third party beneficiary for the purposes of section 48 of the *Insurance Contracts Act 1984* (Cth)".

- 22.1.4. The Supplier must, and must ensure sub-contractors, as soon as practicable, but at least within 14 days after becoming aware, inform the Principal in writing of the occurrence of an event that may give rise to a material claim under a policy of insurance effected as required by this Deed and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 22.1.5. For the purpose of the preceding clause 22.1.4, “material claim” means, in an annual period of insurance:
- (a) The estimated value of a claim exceeding 50% of the value of coverage for any one occurrence; or
 - (b) The annual aggregate of all claims exceeding 75% of the value of coverage.
- 22.1.6. Any insurance required to be effected in joint names in accordance with this Deed shall include a cross liability clause in which the insurer agrees:
- (a) to waive all rights of subrogation or action against any of the persons constituting the insured;
 - (b) for the purpose of which the insurer accepts the term ‘insured’ as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby); and
 - (c) that any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any insurance.
- 22.1.7. The Supplier must, when requested in writing by the Principal, arrange for its insurer to complete a “Certificate of Currency of Insurance Obtained” within 20 Business Days.
- 22.1.8. Where the Supplier is insured under its parent company’s insurance policy, the parent company’s insurance policy must clearly indicate that it applies and extends coverage to the Supplier.
- 22.1.9. The effecting of insurance shall not limit the liabilities or obligations of the Supplier under other provisions of this Deed.

23. Performance guarantee and financial security

23.1. Performance Guarantee

- 23.1.1. On the date of this Deed or such other date as approved in writing by the Principal, or at any time during the Term on the reasonable request of the Principal, the Supplier must arrange for a guarantor approved in writing by the Principal to enter into an agreement with the Principal substantially in the form of the agreement set out in Schedule 14, or such other document reasonably acceptable to the Principal.
- 23.1.2. Where the guarantor is not domiciled in Australia the Principal may not refuse to accept an alternative form of guarantee solely on the basis that the jurisdiction and law of the guarantee is the jurisdiction and law of the country of the guarantor, provided that the guarantor must provide to the Principal, a legal opinion from a lawyer admitted to practice in the jurisdiction of the guarantee, confirming the due execution of the guarantee and the enforceability of the guarantee against the guarantor.
- 23.1.3. The Supplier acknowledges and agrees that any Performance Guarantee provided under clause 23.1.1 is provided in favour of the Principal in its own right as well as in its capacity as an agent for the Bus Operator. Any Performance Guarantee that is provided under clause 23.1.1 can be enforced by the Principal, the Bus Operator or the Principal acting on behalf of the Bus Operator.

- 23.1.4. If a Bus Operator issues an Order to the Supplier under this Deed, the Bus Operator may specify in that Order that it requires the Supplier to provide a Performance Guarantee in favour of the Bus Operator in respect of that Order. This Performance Guarantee must be substantially in the form of the agreement set out in Schedule 14, or such other document reasonably acceptable to the Bus Operator. Where the guarantor is not domiciled in Australia the Bus Operator may not refuse to accept an alternative form of guarantee solely on the basis that the jurisdiction and law of the guarantee is the jurisdiction and law of the country of the guarantor. This Performance Guarantee must be provided to the Bus Operator within 10 Business Days of the date that the Bus Operator accepts the Order under clause 4.2.7.

23.2. Financial Security

- 23.2.1. In the alternative, or in addition, to the Performance Guarantee under clause 23.1, the Principal may, in its sole discretion, require the Supplier to provide a financial security, at its own cost, substantially in the form of Schedule 15 or as otherwise approved in writing by the Principal, for an amount that is equivalent to 10% of each Order (**Financial Security**). The Supplier must, following such a request, ensure that the Financial Security is provided within ten (10) Business Days of the date that the Bus Operator or the Principal accepts the Order under clause 4.2.7 or 4.3.4, or such other date as approved in writing by the Principal.
- 23.2.2. The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Supplier under this Deed and the relevant Order.
- 23.2.3. The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution (**Issuer**) acceptable to the Principal.
- 23.2.4. If the Supplier fails to properly perform and complete its obligations under this Deed or a relevant Order, or if any of event identified in clause 29.1 occurs (whether or not the Principal exercises its right to issue a Notice of Termination for Cause as defined in the clause), and the Principal or any Bus Operators suffer Loss arising from, or in connection with, such failure by the Supplier or as a result of the event, the Principal may deduct such Loss (in so far as those Losses may be payable by the Supplier taking into account the terms and conditions of this Deed) from the Financial Security.
- 23.2.5. If the Principal makes a demand under the Financial Security in accordance with clause 23.2.4, the Principal:
- (a) does not hold the amount received on trust for the Supplier; and
 - (b) is not obliged to pay the Supplier interest on that amount.
- 23.2.6. The Supplier agrees that the Principal will have no liability for any Loss suffered or incurred by the Supplier where the Principal exercises its rights in accordance with clause 23.2.4 in good faith.
- 23.2.7. Upon performance of part of this Deed in accordance with its terms and by reference to the relevant Order, the Supplier may request the Principal to consent to the discharge of the Financial Security provided under this Deed and the substitution of another Financial Security in substantially the same form but for a lesser maximum aggregate sum. The Principal must not unreasonably withhold its consent to the substitution where the part performance of this Deed and the relevant Order has proportionately reduced the risk for which the Financial Security was originally provided.
- 23.2.8. The Financial Security will be released on the earlier of:
- (a) the date when payment is made by the Issuer up to the maximum amount required under the Financial Security;
 - (b) six (6) months from the date this Deed terminates or expires;
 - (c) the date the Principal and Supplier agree in writing to release the Issuer; or
 - (d) the date the Principal notifies the Issuer that the Financial Security is no longer required.
- 23.2.9. The Supplier acknowledges and agrees that any Financial Security provided under clause 23.2.1 is provided in favour of the Principal in its own right as well as in its capacity as an agent for the Bus Operators. Any Financial Security that is provided under clause 23.2.1 can be enforced by the Principal, the Bus Operator or the Principal acting on behalf of the Bus Operator.

- 23.2.10. If a Bus Operator issues an Order to the Supplier under this Deed, the Bus Operator may specify in that Order that it requires the Supplier to provide a Financial Security in favour of the Bus Operator in respect of that Order. This Financial Security must comply the requirements in this clause 23.2, unless otherwise agreed by the Supplier and the Bus Operator. This Financial Security must be provided to the Bus Operator within ten (10) Business Days of the date that the Bus Operator accepts the Order under clause 4.2.7.

24. Indemnity, Liability and Supplier changes

24.1. General Indemnity

- 24.1.1. The Supplier is liable in respect of, and indemnifies, and shall keep indemnified, the Principal and each Bus Operator and their Associates (**Indemnified Persons**) against any Loss suffered or incurred (including legal costs on a solicitor and client basis) arising out of, or in connection with, any one or more of the following:
- (a) any breach of this Deed by the Supplier or its Associates;
 - (b) the provision of the Services by or on behalf of the Supplier;
 - (c) any negligence, recklessness or other wrongful act or omission of the Supplier or its Associates or of any other person for whose acts or omissions the Supplier is vicariously liable in providing the Services;
 - (d) any damage to property, real or personal, caused by or contributed to by the Supplier or its Associates in connection with the Services;
 - (e) any infringement of third party Intellectual Property Rights or Moral Rights caused by or contributed to by the Supplier or its Associates; or
 - (f) any injury to persons, including resulting in death caused or contributed to by the Supplier or its Associates in connection with the Services.
- 24.1.2. The Supplier will not be liable to the Principal or any Bus Operator for any Consequential Loss suffered by the Principal or Bus Operator in connection with this Deed or any Order except:
- (a) to the extent the Supplier:
 - (i) is indemnified or covered in respect of that liability by a policy of insurance required under this Deed; or
 - (ii) would have been indemnified or covered in respect of that liability by a policy of insurance required under this Deed if the Supplier had:
 - A. diligently pursued a claim under that policy of insurance;
 - B. complied with the terms and conditions of that policy of insurance; and
 - C. complied with its insurance obligations under this Deed; or
 - (b) where that loss arises from:
 - (i) the Supplier's breach of its confidentiality obligations under clause 14;
 - (ii) the Supplier's breach of its obligations in relation to data under clause 16;
 - (iii) the Supplier's breach of its privacy obligations under clause 18.2.2;
 - (iv) the Supplier's breach of the Law;
 - (v) the Supplier engaging in fraudulent conduct or malicious acts;
 - (vi) the Supplier infringing the Intellectual Property Rights or Moral Rights of the Principal or Bus Operator; or

- (vii) the Supplier causing the Principal or Bus Operator to suffer a third party Intellectual Property Rights or Moral Rights infringement claim.

24.1.3. The Supplier's liability in respect of, and indemnity given in, clause 24.1.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal or a Bus Operator or their Associates caused or contributed to the loss.

24.2. Liability of the Principal and Bus Operators

24.2.1. The Supplier acknowledges that, except to the extent expressly provided for in this Deed, neither the Principal nor a Bus Operator is liable to the Supplier for any Loss arising out of the provision of the Services, whether under contract, negligence or other tort, equity or otherwise, other than in respect of the liability to pay the Price for the Services the subject of an Order placed by the Principal or applicable Bus Operator.

24.3. Notification of Change in Control or Transfer of Ownership

24.3.1. During the Term, the Supplier must immediately notify the Principal under this Deed in writing of any Change in Control or other action to reconstruct or amalgamate itself.

24.4. Notification of Supplier's Insolvency

24.4.1. The Supplier must immediately notify the Principal in writing of an Insolvency Event in respect of the Supplier and disclose the details of any:

- (a) action taken in relation to the Insolvency Event in so far as it affects this Deed; and
- (b) existing Orders which the Supplier has entered into under this Deed.

25. Conflict

25.1. Warranty

25.1.1. The Supplier warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of its obligations under this Deed.

25.2. Notification of a conflict of interest

- (a) If, during the Term, a Conflict arises, or appears likely to arise, the Supplier must:
 - (i) immediately notify the Principal in writing of that Conflict and of the steps proposed to take to resolve or otherwise deal with the Conflict;
 - (ii) make full disclosure to the Principal of all relevant information relating to the Conflict; and
 - (iii) take steps as the Principal may reasonably require to resolve or otherwise deal with the Conflict.
- (b) If the Supplier is unable or unwilling to resolve or deal with the Conflict as required, the Principal may, in its sole discretion, terminate this Deed for cause in accordance with clause 29.1.1(j) of this Deed.

26. Personnel

26.1. Principal's Contract Manager

26.1.1. The Principal has nominated the Principal's Contract Manager in Item 6 of Schedule 1 of this Deed to oversee the performance of this Deed. The Principal may, by notice in writing to the Supplier, nominate a replacement Principal's Contract Manager.

26.2. Supplier's Relationship Manager

26.2.1. For the purpose of ensuring an efficient relationship with the Principal the Supplier has appointed the Relationship Manager indicated in Item 4 of Schedule 1 of this Deed. The Relationship Manager must:

- (a) act as the representative of the Supplier and have the legal power to bind the Supplier in all matters pertaining to this Deed;
- (b) serve as the principal point of contact for the Supplier with respect to the overall administration of this Deed;
- (c) have the authority to implement such actions (including issuing of directives through the Supplier's organisation), as may be required for the Supplier to comply with this Deed;
- (d) meet with the Principal's Contract Manager once a month or as agreed by the Parties to provide information regarding the Supplier's performance under this Deed, with particular reference to the Service Levels in clause 10 of this Deed; and
- (e) answer the Principal's queries and work with the Principal to address issues relating to matters deemed urgent by the Principal arising out of this Deed.

26.2.2. The Relationship Manager must be available at all times during business hours and at all other times on reasonable notice by the Principal's Contract Manager to meet with the Principal's Contract Manager to discuss any queries, concerns or issues arising in connection with this Deed.

26.2.3. The Relationship Manager must be supported by the Key Personnel in respect of the Principal. The Relationship Manager and/or the Key Personnel must be available to attend periodic meetings as required by the Principal or the Principal's Contract Manager.

26.3. The Supplier's Personnel

26.3.1. The Supplier warrants that all personnel engaged in the provision of the Services are appropriately qualified, competent and experienced including the Supplier's Relationship Manager and the Key Personnel.

26.3.2. The Supplier must:

- (a) employ only such persons as are careful, skilled and experienced in the provision of the Services or similar services; and
- (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.

26.3.3. The Principal's Representative may object to and direct the Supplier to remove any of its personnel (including the Relationship Manager and Key Personnel) who in its opinion are incompetent, unsuitable, or who has been guilty of neglect, or other improper behaviour. Such named personnel so removed may not be engaged by the Supplier for the performance of the Services under this Deed.

27. Conduct and Dispute Management

27.1. Co-operation

27.1.1. The Parties must do all they reasonably can to co-operate in matters relating to this Deed, but their rights and responsibilities under this Deed remain unchanged unless the Parties agree in writing to vary them in accordance with clause 13 of this Deed.

27.2. Duty not to Hinder Performance

27.2.1. Each Party must do all it reasonably can to avoid hindering the performance of the other under this Deed.

27.3. Dispute Resolution

- 27.3.1. This clause applies to any dispute which arises between the Parties in connection with this Deed (**Dispute**). The Parties must follow the dispute resolution process in this clause before either commences court proceedings or takes similar action, except to seek an urgent injunction or declaration.
- 27.3.2. If a Party considers that a Dispute has arisen, it may give notice to the other Party of the Dispute, setting out reasonable particulars of the matters in dispute, (**Dispute Notice**). The Dispute Notice must be given within 10 Business Days of the Party becoming aware of the issue.
- 27.3.3. The Party submitting the Dispute Notice must submit it to the other Party's authorised representative, which in the case of the Principal is the Principal's Representative, and in the case of the Supplier is the Relationship Manager.
- 27.3.4. The Parties must promptly hold good faith discussions between their authorised representatives after issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussions**), and must (subject to privilege) furnish to the other Party all information with respect to the Dispute which is appropriate in connection with its resolution.
- 27.3.5. If the Dispute has not been resolved within 10 Business Days after commencement of First Level Discussions (or such further period agreed between the Parties), the Parties must attempt to resolve the Dispute by holding good faith discussions between a senior executive to be nominated by each Party (**Second Level Discussions**).
- 27.3.6. If the Dispute has not been resolved within 25 Business Days after commencement of Second Level Discussions (or such further period agreed between the Parties), either Party may pursue its rights and remedies under this Deed as it sees fit.
- 27.3.7. The Parties will continue performing their respective obligations under this Deed while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Deed.

28. Supplier's warranties

28.1. Warranties

- 28.1.1. The Supplier warrants that:
- (a) it has conducted its own analysis and review of information provided by the Principal and has satisfied itself as to the accuracy, completeness and fitness for purpose of all information provided by the Principal upon which it places reliance;
 - (b) it will provide the Services in a timely and professional manner in accordance with industry best practice;
 - (c) it will provide the Services using an adequate number of appropriately trained, licensed and experienced personnel;
 - (d) the supply of the Services by the Supplier and the use by the Principal or a Bus Operator of any Services or Buses supplied under this Deed will not infringe the Intellectual Property Rights or Moral Rights of any third party;
 - (e) it will supply the Services and perform its obligations under this Deed in accordance with, and will at all times comply with, all applicable Laws (as amended from time to time);
 - (f) it will not represent that it is authorised to act on behalf of the Principal or a Bus Operator, except where previously authorised to do so in writing by the Principal;
 - (g) as at the date of this Deed, no Insolvency Event in respect of the Supplier has occurred and remains current in respect of the Supplier, and there are no circumstances which could give rise to an Insolvency Event in respect of the Supplier;

- (h) it has all licences, authorisations, consents, approvals and permits required by applicable laws in order to supply the Services and perform its obligations under this Deed;
- (i) where the Buses are supplied by reference to a sample or style guide, that the Buses will correspond with that sample or style guide;
- (j) the Services supplied will be fit for purpose and of merchantable quality;
- (k) the Buses supplied will be free of Failure;
- (l) on and from the Date of Acceptance for each Bus supplied in accordance with this Deed:
 - (i) that the Bus, and each part or component of each Bus, will remain operational and fit for its intended purpose; and
 - (ii) that it gives the Warranties for each Bus, and each part or component of each Bus, for the duration of the relevant Warranty Periods set out in this Deed;
- (m) on and from the Date of Acceptance for each Bus supplied in accordance with this Deed, the Bus, and each part or component of each Bus, must comply with:
 - (i) the Specifications;
 - (ii) all applicable Laws and Standards; and
 - (iii) all other requirements detailed, described or referred to in the Specifications.
- (n) that each Bus, and each part or component of each Bus, supplied in accordance with this Deed will:
 - (i) be designed and constructed so that on the Date of Acceptance for each Bus it is fit for its intended purpose; and
 - (ii) be capable of remaining fit for its intended purpose at all times during its Design Life set out in this Deed;
- (o) that any guarantee and/or warranty issued by the manufacturers of materials and equipment incorporated into the Buses or the Services provides for the Principal and/or a Bus Operator to enjoy the same benefits and protection provided by such guarantee and/or warranty as does the Supplier or any of its personnel which have procured these materials or equipment; and
- (p) the Supplier's performance of this Deed and, subject to clause 15 of this Deed, the Principal's use of the Project Material, will not infringe the Intellectual Property Rights or Moral Rights of any person.

28.1.2. The Supplier acknowledges and agrees that:

- (a) the ownership or use of the Buses supplied in accordance with this Deed may from time to time be transferred, assigned or leased by the Principal or the Principal's nominee, agent or assignee to various Bus Operators and transferred between Bus Operators; and
- (b) each of the warranties given by the Supplier in this clause 28 (including the Warranties) and each of the guarantees and/or warranties issued by the manufacturers of materials and equipment incorporated into the Buses or the Services referred to in clause 28.1.1:
 - (i) is given in favour of, and may be enforced by, the Principal, the Principal's nominee, agent or assignee, each and any Bus Operator who orders, owns, accepts delivery of, leases or uses at any time any Bus or other Services supplied by the Supplier under this Deed (each a **Beneficiary**), and
 - (ii) may be assigned, or the benefit otherwise transferred, by any Beneficiary, or any of their successors, to any person without the consent of the Supplier.

28.1.3. The Supplier:

- (a) acknowledges and agrees that, in entering into this Deed, each Principal Order and each Bus Operator Order (as applicable), the Principal and/or the relevant Bus Operator (as applicable)

has relied upon the representations, warranties, undertakings and information provided by the Supplier in the RFP Response; and

- (b) without limiting the terms and conditions of this Deed, any Principal Order or any Bus Operator Order, must ensure that it complies with any representations, warranties, undertakings and information provided by the Supplier in the RFP Response,

provided that, in the event of any ambiguity, discrepancy or inconsistency between:

- (c) the RFP Response; and
- (d) this Deed, any Principal Order and/or any Bus Operator Order,

this Deed, the relevant Principal Order and/or the relevant Bus Operator Order will take priority over the RFP Response to the extent of any such ambiguity, discrepancy or inconsistency.

28.2. Notification of non-compliance

- 28.2.1. The Supplier must immediately upon becoming aware of any breach of its obligations under clause 28.1 or any matter which is likely to impact on its ability to comply with its obligations under clause 28.1 provide the Principal with written notice outlining the circumstances.

28.3. No express representations or warranties by the Principal

- 28.3.1. The Supplier agrees that no representations or warranties were made or given to it by the Principal or any other person in relation to this Deed.

28.4. Warranties separate

- 28.4.1. Each of the representations and warranties made under or contemplated by this Deed is to be construed independently of the others and is not limited by reference to any other representation or warranty.
- 28.4.2. The Supplier acknowledges that the Principal, in entering into this Deed, is relying on the warranties and the representations made by the Supplier in this Deed.

29. Termination

29.1. Termination for Cause

- 29.1.1. Without prejudice to its rights or remedies under this Deed or at law (including rights of termination and rights to damages), the Principal may (in its sole discretion) terminate this Deed for cause, in whole or in part, including in respect of one or more Orders, by written notice to the Supplier ("**Notice of Termination for Cause**"), with effect from the date stated in the Notice of Termination for Cause:
 - (a) if the Principal considers that the Supplier has made a statement or representation or provided material (including in response to the Request for Proposal) which is false, untrue, or incorrect in a way which materially affects this Deed;
 - (b) if proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Supplier including for corrupt conduct or for collusive pricing;
 - (c) if the Supplier commits a Substantial Breach of this Deed that the Principal considers is not capable of remedy;
 - (d) if the Supplier commits a Substantial Breach of this Deed in a manner that is capable of remedy and does not remedy the breach within 20 Business Days of receiving a notice from the Principal requiring it to do so;
 - (e) if the Supplier assigns its rights and/or obligations, or novates this Deed or sub-contracts any part of the Services except in accordance with this Deed;
 - (f) in the case of an Insolvency Event in respect of the Supplier;

- (g) if in the Principal's view a Conflict exists for the Supplier which prevents the proper performance of this Deed;
- (h) if the Principal is entitled to terminate this Deed under clause 18.3.3;
- (i) if the Principal is entitled to terminate this Deed for the Supplier's breaches of any Service Level under clause 10.1.4; or
- (j) the Principal has rights of termination under any provision of this Deed (including clauses 4.7, 10.1.4, 18.3.3, 19.7, 25.2(b), 31.3 and 31.4.7(b)).

29.2. Effect of Termination for Cause

29.2.1. If the Principal terminates this Deed for cause in whole or in part:

- (a) all Orders entered into under this Deed immediately terminate unless the Principal specifies otherwise, in which case this Deed will continue in force in respect of each Order until the Parties have performed their obligations under that Order;
- (b) without limiting clause 29.2.1(c), the Supplier will not be entitled to receive or claim payment of any Loss in respect of such termination (other than to the extent agreed in writing between the Parties or the Customer is required by a court of competent jurisdiction to pay such compensation); and
- (c) the Principal may:
 - (i) obtain from any other source a reasonably similar alternative to the Services in which case the Supplier will be liable to the Customer for any reasonable Losses incurred (including any price difference between the Services and the similar alternative) or suffered by the Customer;
 - (ii) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by the Principal from any money due; and
 - (iii) recover from the Supplier in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Supplier to the Principal.

29.3. Termination for the Principal's Convenience

29.3.1. The Principal may terminate this Deed in whole or in part including in respect of one or more Orders, for its convenience by giving 10 Business Days written notice ("**Notice of Termination for Convenience**") with effect from the date stated in the notice and without the need to provide reasons.

29.4. Effect of Termination for Convenience

29.4.1. If the Principal terminates this Deed for convenience in whole or in part, all Orders entered into under this Deed immediately terminate unless the Principal specifies otherwise, in which case this Deed will continue in force in respect of each Order until the Parties have performed their obligations under that Order.

29.4.2. The Principal shall reimburse the Supplier its unavoidable costs directly incurred as a result of termination under clause 29.3 of this Deed provided that any claim by the Supplier:

- (a) must be supported by written evidence of the costs claimed; and
- (b) will be in total satisfaction of the liability of the Principal to the Supplier in respect of this Deed and its termination.

29.4.3. The Principal shall not in any circumstances be liable for any Consequential Loss or loss of profits suffered by the Supplier as a result of the termination of this Deed by the Principal under clause 29.3 of this Deed.

29.5. Effect of Termination generally

29.5.1. Termination of this Deed is without prejudice to any other right of action or remedy that has accrued or may accrue to either Party.

29.5.2. Any termination or expiration of this Deed does not relieve either Party from complying with any duties or obligations with which they must comply consequent upon termination or expiration of this Deed or which survive termination or expiration of this Deed.

29.5.3. The Supplier must comply with any other reasonable direction issued by the Customer where permitted by this Deed.

29.6. Termination by a Bus Operator

29.6.1. A Bus Operator may terminate a Bus Operator Order in any circumstances where the Principal would be entitled to terminate a Principal Order under this clause 29 and all provisions in this clause 29 that apply to the termination of a Principal Order will apply mutatis mutandis to the termination of a Bus Operator Order by a Bus Operator.

30. Circumstances Beyond Control

30.1. Circumstances Beyond Control

30.1.1. A Party will not be liable for any failure or delay:

- (a) in the case of the Supplier, in the performance or discharge of its obligation to provide the Services pursuant to this Deed;
- (b) in the case of the Principal or a Bus Operator, in the performance or discharge of its obligations pursuant to this Deed,

to the extent that such failure or delay is caused, directly or indirectly, by Circumstances Beyond Control, provided such failure or delay:

- (c) could not have been prevented by reasonable precautions; or
- (d) could not have reasonably been circumvented by the non-performing Party by means of alternative sources, workarounds or by using its best endeavours.

30.1.2. This clause 30 does not apply if any Circumstances Beyond Control is caused or contributed to by a breach of this Deed by the Party claiming the Circumstances Beyond Control has occurred.

30.2. Claim for relief and suspension

30.2.1. If a Party is unable to carry out its obligations as a result of Circumstances Beyond Control, then that Party's obligations which cannot be performed because of the event will be suspended for the period of time they are affected provided it:

- (a) notifies the other promptly of the event, but not later than 48 hours after it becomes aware, or has constructive knowledge, of the event; and
- (b) as soon as practicable thereafter, provides reasonable details including:
 - (i) the impact on its obligations;
 - (ii) estimated time the event will continue; and
 - (iii) proposed actions to remedy or minimise the effects of the event.

30.3. Resolving and termination

30.3.1. If after 7 days the Circumstances Beyond Control has not ceased, the Parties will meet to attempt to achieve a satisfactory resolution. If not resolved within a further 21 days then, in the case of Circumstances Beyond Control affecting the Supplier, the Principal may terminate this Deed immediately by notice to the Supplier.

30.3.2. Neither Party will be entitled to any form of compensation and must not make any claims for any Loss arising out of or in connection with Circumstances Beyond Control or termination under this clause 30.

30.4. Mitigation

- 30.4.1. The Party that is prevented from carrying on its obligations must:
- (a) remedy or minimise the effects of the event to the extent reasonably practicable; and
 - (b) take all action reasonably practicable to mitigate any Loss suffered by the other Party or any Bus Operator as a result of the Party's failure to carry out its obligations under this Deed.
- 30.4.2. The Term will not be extended by the period of an event.

31. Records, Audit Rights and Public Interest Disclosures

31.1. Records

- 31.1.1. The Supplier must keep proper accounts and records in accordance with principles generally applied in commercial practice.
- 31.1.2. The Supplier must, within a reasonable time of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the Supplier's obligations under this Deed, and any financial information, that the Principal reasonably requires, including, but not limited to, information in relation to Failures in circumstances where such information is relevant to the operation of the Buses or the performance of the Supplier's obligations under this Deed and such information is not considered the Confidential Information of the Supplier (including but without limitation forecast information, bus sell prices and costs, supplier and customer information).

31.2. Audit rights

- 31.2.1. The Principal may at any time during the Term and for the duration any Bus supplied under this Deed is in operation, by giving reasonable notice to the Supplier (reasonable not being less than 3 Business Days unless in the event of an emergency (as determined by the Principal)) audit and inspect, and appoint one or more auditors, regulators or authorised representatives to audit and inspect, any premises, systems, documents, records, practices, data (including technical data) and matters relating to the Supplier's performance of this Deed. Copies and extracts of any records and accounts may be taken for these purposes.
- 31.2.2. In addition to its rights under clause 31.2.1, the Principal may conduct an annual audit of the Supplier's compliance with the Specification.
- 31.2.3. The Supplier must provide all reasonable assistance and must meet all of the Supplier's costs and expenses associated with such audits.
- 31.2.4. The Supplier must maintain complete records pertaining to provision of the Services, including but not limited to records relating to costs, payments, delivery times, and all other information related to this Deed for the duration of the Term and for 6 months after all Buses supplied under this Deed ceases to be in operation.
- 31.2.5. The auditor shall report to the Principal which, in its sole discretion, may provide a copy to the Supplier. The report will determine whether the auditor believes that the Supplier has complied with its obligations under this Deed, any amount necessary for the Supplier to compensate the Principal and/or any Bus Operators for any non-compliance with this Deed.

31.3. Consequence

- 31.3.1. If the Principal determines in its sole discretion that the Supplier is not meeting any or all of its obligations under this Deed and that steps are required to be undertaken to remedy such non-compliance with its obligations, the Supplier must comply with any request made by the Principal for rectification steps to be taken within a reasonable time (not to exceed 20 Business Days). If the Supplier does not comply with a notice issued by the Principal in accordance with this clause within 20 Business Days of receipt of such notice, the Principal may, in its sole discretion, terminate this Deed for cause in accordance with clause 29.1.1(j) of this Deed.
- 31.3.2. Nothing in this clause 31 derogates from any other remedy or remedies that may be available to the Principal in respect of a breach of this Deed by the Supplier.

31.4. Public Interest Disclosures

- 31.4.1. This clause 31.4 only applies if the Supplier is providing services on behalf of the Principal.
- 31.4.2. In this clause 31.4, words and expressions which are not defined in this Deed, but which have a defined meaning in the PID Act, have the same meaning as in the PID Act.
- 31.4.3. The Supplier must ensure that all individuals involved in providing services under this Deed are made aware of the following:
- (a) that those individuals are public officials for the purposes of the PID Act;
 - (b) how to make a voluntary public interest disclosure;
 - (c) the Principal's public interest disclosure policy which is available at <https://www.transport.nsw.gov.au/about-us/contact/transport-conduct-reporting-platform-fraud-corruption-and-misconduct>; and
 - (d) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Law.
- 31.4.4. The Supplier must notify the Principal as soon as practicable in writing of a voluntary public interest disclosure of which the Supplier becomes aware where either:
- (a) the disclosure relates to the Principal; or
 - (b) the maker of the disclosure is known to be a public official associated with the Principal.
- 31.4.5. The Supplier must notify the Principal as soon as practicable in writing of any serious wrongdoing committed, or alleged to be committed, by an individual providing services under this Deed.
- 31.4.6. The Supplier must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of the Principal or any other agency (as defined in the PID Act).
- 31.4.7. The Supplier acknowledges and agrees that:
- (a) the Principal has an obligation to take corrective action under section 66 of the PID Act; and
 - (b) notwithstanding any other provision of this Deed, and without limiting the Principal's rights under this Deed, the Principal may, in its sole discretion, immediately terminate this Deed upon written notice to the Supplier, without any requirement to pay compensation (other than payment for work performed under this Deed and unpaid at the date of termination) if a finding of serious wrongdoing or other misconduct is made involving the Supplier or an individual providing services under this Deed.
- 31.4.8. If the Supplier sub-contracts this Deed in whole or in part, the Supplier must ensure that the sub-contract contains terms binding the person or body engaged under the sub-contract that are equivalent to the terms binding the Supplier in this clause 31.4.

32. General

32.1. Innovation and Continuous Improvement

- 32.1.1. The Supplier must provide a report, at its own cost, on each anniversary of the Commencement Date identifying innovative solutions for mutual value enhancement in connection with this Deed, with a view to achieving continuous improvement. Innovations may include new features or technology enhancements relating to safety or comfort. Where there is an agreed and warranted business case, the Supplier and the Principal will cooperate to further develop the innovation.
- 32.1.2. The Supplier must submit in writing to the Principal, at its own cost, detailed proposals for changes to the Services and associated supply chain solutions which are likely to offer significant (including repeated and long term) benefits to the Principal in accordance with the requirements of Schedule 2 of this Deed.
- 32.1.3. The Supplier must ensure that such solutions do not include anything which might adversely affect the quality of the Services and that any proposed changes are consistent with the purpose and intent of this Deed.
- 32.1.4. The Principal must consider the Supplier's proposals, but is not bound to accept any proposal. The Principal may also accept the proposed changes subject to conditions. The Supplier shall have no claim arising out of the Principal's failure to accept any proposal or proposed changes.
- 32.1.5. If the Principal accepts any changes proposed by the Supplier, the Price must be reduced by the amount of any direct savings in the cost to the Supplier of supplying the Services.

32.2. Exchange of Information Between Government Agencies

- 32.2.1. The Supplier authorises the Principal and its Associates to make available to NSW Government departments or agencies information concerning the Supplier, including any information provided by the Supplier to the Principal and any Information relating to the Supplier's performance under this Deed, or the Supplier's financial position.
- 32.2.2. The Supplier acknowledges that information about the Supplier from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Supplier future opportunities for NSW Government work.
- 32.2.3. The Principal regards the provision of information about the Supplier to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).
- 32.2.4. The Supplier releases and indemnifies the Principal from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Supplier releases the Principal from any claim it may have for any Loss to the Supplier arising out of the provision of information or relating to the use of such Information by the recipient of the information.

32.3. Assignment or Novation

- 32.3.1. The Supplier must not assign or novate this Deed without first obtaining the prior written consent of the Principal as applicable, which consent may be withheld in the Principal's sole discretion.
- 32.3.2. The Supplier acknowledges that the Principal may carry out financial checks and due diligence checks on the entity proposing to take over this Deed before determining whether or not to give consent to the assignment or novation.
- 32.3.3. The Principal may assign, novate or otherwise transfer this Deed, its interest in the subject matter of this Deed or any right under this Deed to any person without the consent of the Supplier.

32.4. Waiver

- 32.4.1. A waiver in respect of a breach of a term of this Deed by the other Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Deed will not be interpreted as a waiver of that term.

32.5. Severability

- 32.5.1. If any part of this Deed is void or voidable, then that part is severed from this Deed but without affecting the continued operation of the remainder of this Deed.

32.6. Notices

- 32.6.1. Notices must be sent to the other Party at the address shown in Item 7 and Item 8 of Schedule 1 of this Deed, or the address last notified to the other Party in writing, or in the case of the Supplier, at the Supplier's registered office.
- 32.6.2. All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or email.
- 32.6.3. If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

32.7. Counterparts

- 32.7.1. If there are a number of counterparts of this Deed, the counterparts taken together constitute one and the same instrument.

32.8. Applicable Law

- 32.8.1. This Deed is governed by the laws of the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the Commonwealth of Australia.

32.9. No agency/no employment/no partnership

- 32.9.1. The Supplier agrees that the Supplier will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Principal and shall not bind the Principal.

32.10. Disengagement Period

- 32.10.1. For 6 months following the expiry or termination of this Deed (or part thereof) the Supplier must provide such assistance as is reasonably requested by the Principal for the supply of the Services to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider to the Principal. Such assistance includes (without limitation):
- (a) providing reasonable co-operation with the Principal and a third party supplier nominated by the Principal, and
 - (b) providing the Principal with data, information and materials that may be required to enable transacting with a new provider as requested by the Principal, except that this does not require the Supplier to provide any Confidential Information of the Supplier or an sub-contractor.

32.11. Disclosure log (GIPA Act section 25)

- 32.11.1. The Supplier acknowledges that the Principal may disclose certain information about this Deed in accordance with the Principal's obligations under the GIPA Act, including making certain information about this Deed publicly available in any disclosure log of contracts the Principal is required to maintain.

32.12. Access to information (GIPA Act section 121)

- 32.12.1. The Supplier must, within 7 Business Days of receiving a written request by the Principal, provide the Principal with immediate access to the following information contained in records held by the Supplier:
- (a) information that relates directly to the performance of the Services provided to the Principal by the Supplier pursuant to this Deed;
 - (b) information collected by the Supplier from members of the public to whom it provides, or offers to provide, the Services pursuant to this Deed; and
 - (c) information received by the Supplier from the Principal to enable it to provide the Services pursuant to this Deed.

- 32.12.2. For the purposes of clause 32.12.1, such information does not include:
- (a) information that discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
 - (b) information that the Supplier is prohibited from disclosing to the Principal by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (c) information that, if disclosed to the Principal, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Principal, whether at present or in the future.
- 32.12.3. The Supplier must provide copies of any of the information requested by the Principal, in accordance with clause 32.12.1, at the Supplier's own expense.
- 32.13. Consultation (GIPA Act section 54)**
- 32.13.1. The Principal will take reasonably practicable steps to consult with the Supplier before providing any person with access to information relating to this Deed, in response to an access application under the GIPA Act, if it appears that:
- (a) the information:
 - (i) includes Personal Information about the Supplier or its employees;
 - (ii) concerns the Supplier's business, commercial, professional or financial interests; or
 - (iii) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Supplier; or
 - (iv) concerns the affairs of a government of the Commonwealth or another State (and the Supplier is that government); and
 - (b) the Supplier may reasonably be expected to have concerns about the disclosure of the information; and
 - (c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- 32.13.2. If, following consultation between the Principal and the Supplier, the Supplier objects to disclosure of some or all of the information, the Supplier must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 Business Days of the conclusion of the consultation process.
- 32.13.3. In determining whether there is an overriding public interest against disclosure of the information, the Principal will take into account any objection received by the Supplier.
- 32.13.4. If the Supplier objects to the disclosure of some or all of the information but the Principal nonetheless decides to release the information, the Principal must not provide access to that information until it has given the Supplier notice of the Principal's decision and notice of the Supplier's right to have that decision reviewed.
- 32.13.5. Where the Principal has given notice to the Supplier in accordance with clause 32.13.4, the Principal must not provide access to the information:
- (a) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - (b) where any review of the decision duly applied for is pending.
- 32.13.6. The reference in clause 32.13.5(a) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

32.14. Proportionate Liability

- 32.14.1. All rights, obligations and liabilities under or in connection with this Deed are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)), unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities.

32.15. Entire agreement

- 32.15.1. This Deed constitutes the entire Deed between the Parties and supersedes all prior representations, Deeds, statements and understandings, whether verbal or in writing.

32.16. Survival

- 32.16.1. The following clauses survive the expiration or earlier termination of this Deed: 3.1 (Supplier Portal), 5.4 (Service Desk), 5.5 (Bus Maintenance Schedule), 5.7 (Spare Parts), 5.8 (Spare Parts Purchaser Order), 5.6 (Failure Repair), 5.9 (Recalls), 6 (Pricing and Invoicing), 10 (Service Levels), 12 (Sub-Contractors), 14 (Confidentiality), 15 (Intellectual Property), 22.1 (Minimum Insurance Requirements), 23.1 (Performance Guarantee), 23.2 (Financial Security), 24.1 (General Indemnity), 24.2 (Liability of the Principal), 28 (Warranties), 29 (Termination by the Principal), 31.2 (Audit Rights), 32.2 (Exchange of Information), and 32.10 (Disengagement) and any other clause which is specified to, intended to, or naturally should, survive termination or expiry of this Deed.

32.17. Electronic execution

- 32.17.1. Subject to applicable Laws, the Parties may execute this Deed and any document entered into under it, electronically (including through an electronic platform) and in one or more counterparts. Each Party consents to the other Party signing by electronic means. The Parties agree that if any Party signs this Deed electronically, then:
- (a) an electronic form of this Deed with that Party's electronic signature(s) appearing will constitute an executed counterpart; and
 - (b) a print-out of this Deed with that Party's electronic signature(s) appearing will also constitute an executed counterpart.

Schedule 1 - Deed Details

Item 1	Supplier's Name: [**insert]
Item 2	Term (clause 2.3.1): Commencement Date: the Commencement Date is the date on which the last of the parties signs this Deed. Expiry Date: the Expiry Date is 28 February 2027 Extension period(s) (clause 2.3.2): 2 X 3 year optional extensions
Item 3	Codes and Standards (clause 18.2.1) 1. NSW Government SME and Regional Procurement Policy 2. NSW Government Aboriginal Procurement Policy 3. NSW Procurement Policy Framework 4. the Principal's Statement of Business Ethics, including as found at https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/statement-business-ethics_0.pdf
Item 4	Key Personnel (clause 26.2.3) Name: [**insert] Address: [**insert] Position: [**insert] Telephone: [**insert] Email: [**insert] Relationship Manager (clause 26.2) Name: [**insert] Address: [**insert] Position: [**insert] Telephone: [**insert] Email: [**insert]

Item 5	<p>Insurances (clause 22.1.1)</p> <p>Public Liability Insurance minimum:</p> <table border="1" data-bbox="331 322 1423 913"> <thead> <tr> <th>Category of Bus</th><th>Minimum Insurance requirement</th></tr> </thead> <tbody> <tr> <td>Two Door City Bus (Diesel) (Bus Category Code A) 14.5 Metre CAB Two Door City Bus (Diesel) (Bus Category Code E)</td><td>\$75,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.</td></tr> <tr> <td>School Bus (Rural and Regional Category 4) (Diesel) (Bus Category Code D) One Door Urban Bus (Rural and Regional) (Diesel) (Bus Category Code B)</td><td>\$50,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.</td></tr> <tr> <td>Double Decker Bus (Diesel) (Bus Category Code F) Any category of ZEB (including Bus Category Codes G, H, J, K, L and M)</td><td>\$100,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.</td></tr> </tbody> </table> <p>If the Supplier is approved by the Principal to supply Buses with different minimum insurance amounts, the higher of those amounts will be the applicable minimum insurance amount.</p> <p>The Supplier must hold public liability insurance from at least 5 Business Days after the first Order (if not before) and the insurance must remain valid for a minimum of 7 years from the Commencement Date.</p> <p>Product Liability Insurance minimum:</p> <table border="1" data-bbox="331 1238 1423 1861"> <thead> <tr> <th>Category of Bus</th><th>Minimum Insurance requirement</th></tr> </thead> <tbody> <tr> <td>Two Door City Bus (Diesel) (Bus Category Code A) 14.5 Metre CAB Two Door City Bus (Diesel) (Bus Category Code E)</td><td>\$75,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance</td></tr> <tr> <td>School Bus (Rural and Regional Category 4) (Diesel) (Bus Category Code D) One Door Urban Bus (Rural and Regional) (Diesel) (Bus Category Code B)</td><td>\$50,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.</td></tr> <tr> <td>Double Decker Bus (Diesel) (Bus Category Code F) Any category of ZEB (including Bus Category Codes G, H, J, K, L and M)</td><td>\$100,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.</td></tr> </tbody> </table> <p>If the Supplier is approved by the Principal to supply Buses with different minimum insurance amounts, the higher of those amounts will be the applicable minimum insurance amount.</p>	Category of Bus	Minimum Insurance requirement	Two Door City Bus (Diesel) (Bus Category Code A) 14.5 Metre CAB Two Door City Bus (Diesel) (Bus Category Code E)	\$75,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.	School Bus (Rural and Regional Category 4) (Diesel) (Bus Category Code D) One Door Urban Bus (Rural and Regional) (Diesel) (Bus Category Code B)	\$50,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.	Double Decker Bus (Diesel) (Bus Category Code F) Any category of ZEB (including Bus Category Codes G, H, J, K, L and M)	\$100,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.	Category of Bus	Minimum Insurance requirement	Two Door City Bus (Diesel) (Bus Category Code A) 14.5 Metre CAB Two Door City Bus (Diesel) (Bus Category Code E)	\$75,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance	School Bus (Rural and Regional Category 4) (Diesel) (Bus Category Code D) One Door Urban Bus (Rural and Regional) (Diesel) (Bus Category Code B)	\$50,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.	Double Decker Bus (Diesel) (Bus Category Code F) Any category of ZEB (including Bus Category Codes G, H, J, K, L and M)	\$100,000,000 for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.
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	<p>The Supplier must hold product liability insurance from at least 5 Business Days after the first Order (if not before) and the insurance must remain valid for a minimum of 7 years from the Commencement Date of this Deed.</p> <p>Fire and Extraneous Perils Insurance - minimum requirement</p> <table> <tr> <th>Category of Bus</th><th>Minimum Insurance requirement</th></tr> <tr> <td>All Buses</td><td>Replacement value of assets, materials, stock and incidentals expenses</td></tr> </table> <p>The Supplier must hold fire and extraneous perils insurance from at least 5 Business Days after the first Order (if not before) and the insurance must remain valid for a minimum of 7 years from the Commencement Date of this Deed.</p>	Category of Bus	Minimum Insurance requirement	All Buses	Replacement value of assets, materials, stock and incidentals expenses
Category of Bus	Minimum Insurance requirement				
All Buses	Replacement value of assets, materials, stock and incidentals expenses				
Item 6	<p>Principal's Contract Manager (clause 26.1) Position: Transport for NSW Fleet Officer Address: 231 Elizabeth Street, Sydney NSW 2000 Telephone: (02) 8202 2200 Email: busprocurementpanel@transport.nsw.gov.au</p>				
Item 7	<p>Notices (clause 32.6) The Supplier's contact name and address: Position: [**insert] Address: [**insert] Email: [**insert]</p>				
Item 8	<p>Notices (clause 32.6) The Principal's contact name and address: Position: Barry O'Neill, Director Service Delivery Address: 231 Elizabeth Street, Sydney NSW 2000 Email: busprocurementpanel@transport.nsw.gov.au</p>				

Schedule 2 - Specifications

PART 1 - ACCEPTED OFFERS (["**insert"])

Bus Type	Bus Panel 4 ID	Technical Details
		Refer to Exhibit A

PART 2 - INNOVATION OFFERS ACCEPTED (["**insert"])

Bus Type	Bus Panel 4 ID	Technical Details
		Refer to Exhibit A

PART 3 - REJECTED OFFERS (["**insert"])

Bus Type	Bus Panel 4 ID

Bus Type	Bus Panel 4 ID

Schedule 3- Pricing Schedule

In this Schedule, all terms that have defined meanings in the Deed have the same meaning in this Schedule as they do in the Deed and the following words have the following meanings:

Base Price Table means the table titled “Base Price Table”, contained, or referred to, in Annexure A to this Schedule.

Options Price Table means the table titled “Options Price Table”, contained, or referred to, in Annexure A to this Schedule.

Price Variation Formula means the price variation formula, contained, or referred to, in Annexure A to this Schedule.

- | | |
|----------|---|
| 1 | Price |
| 1.1 | The Price for a Bus is to be calculated using the Base Price Table and Options Price Table. (as varied in accordance with the Deed and this Pricing Schedule). |
| 2 | Price Variation |
| 2.1 | The Supplier must submit a price review to the Principal at least 5 Business Days before the annual Price Review Date. |
| 2.2 | The price review must: <ul style="list-style-type: none"> (a) outline the application of the Price Variation Formula to the Price; and (b) state the varied Price (if any) sought by the Supplier. |
| 2.3 | The Principal will check and approve the calculations used by the Supplier to prepare a price review, and a price review will be of no effect until the date specified in clause 6.3.4 of the Deed. |
| 2.4 | If the application of the Price Variation Formula leads to a decrease in the Price, the Price must be varied to the decreased Price. |
| 2.5 | If the application of the Price Variation Formula leads to an increase in the Price, subject to the Principal’s written approval, which will not be unreasonably withheld, the Price may be varied up to the amount of the increase in the Price. |
| 2.6 | The Base Price Table and Options Price Table will be updated to include any varied Price. |

Annexure A

Base Price Table

Refer to **Part D (Returnable Schedule 5 Pricing Template)** of the RFP Response.

Options Price Table

Refer to **Part D (Returnable Schedule 5 Pricing Template)** of the RFP Response.

Price Variation Formula

[illegible]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

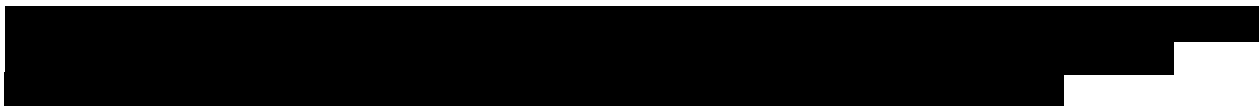
[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Schedule 4 – Product Warranties and Design Life

Product Warranties

The Supplier gives the following warranties from the Date of Acceptance for each Bus (or, where there is no Date of Acceptance, from the date of supply of each part or component):

Component	Product Warranty	Minimum Warranty Period
Body & chassis frames	The body and chassis frames will not be compromised due to corrosion and will remain operational and fit for their intended purpose in accordance with requirements of this Deed.	20 years
Body frame	The body frame will not fail due to structural deficiencies and will remain operational and fit for its intended purpose in accordance with the requirements of this Deed.	20 years
Panels, floor structure, insulating materials, shields, electrical cable and wiring system	The panels, floor structure, insulating materials, shields, electrical cable and wiring system will remain operational and fit for their intended purpose in accordance with the requirements of the Deed.	20 years
Replacement of parts and labour for all components (with exclusions)	Replacement of parts and labour for all components, excluding: <ul style="list-style-type: none"> • items to be replaced at nominated services; • drive belts for fan, alternator and refrigerant compressor or belt adjustments; • engine tuning; cooling inhibitor maintenance; • recharge of air conditioning; • re-torquing of bolts; • wheel balance and alignment; • wheel bearing adjustments; • filters; • panel adjustments; • light globes other than headlamps; • fuses; • windscreen wiper blades, brake and clutch linings except where specifically warranted; and • items damaged by collisions, projectiles, mishandling or abuse. 	3 years
Destination equipment	Destination equipment will remain operational and fit for their intended purpose in accordance with the requirements of the Deed.	10 years
Air conditioning piping, compressor, condenser and evaporator coils	Air conditioning piping, compressor, condenser and evaporator coils will remain operational and fit for their intended purpose in accordance with the requirements of the Deed.	5 years
Various electronic and other components and parts	Electronic logic circuits, pressure switches, expansion valves, receiver, valves, thermostats and other control items, condenser fans, evaporator fans, dryer and compressor clutch will remain operational and fit for their	3 years

Component	Product Warranty	Minimum Warranty Period
	intended purpose in accordance with the requirements of the Deed.	
Drive belts	Drive belts will remain operational and fit for their intended purpose in accordance with the requirements of the Deed.	1 year
Floor covering	Floor covering will remain operational and fit for their intended purpose in accordance with the requirements of the Deed.	5 years
Spare Parts	Spare parts will be available for a period of not less than 25 years. Where advances in technology, particularly, but not limited to electrical and electronic equipment, make provision of identical spare parts impractical, the Supplier guarantees that replacement non-identical spare parts will be interchangeable and will not degrade the performance or life of the Buses.	25 years
Disc pads	All disc pads will provide a minimum service life of 50,000km when used in normal operation before replacement is required.	Minimum service life of 50,000km
Internally-fitted decals	Internally fitted decals are warranted not to peel, crack, fade, or lose resistance to all cleaning chemicals including graffiti removers.	3 years
Externally-fitted decals	Externally fitted decals are warranted not to peel, crack, fade, or lose resistance to all cleaning chemicals including graffiti removers.	3 years
Rain or wash water	Rain or wash water will not penetrate the structure, panelling or the interior of the Bus.	20 years
ZEB Battery at the Date of Acceptance	The Date of Acceptance SOH of a ZEB Battery will not be degraded by more than 1% of the Nominal Capacity.	
ZEB Battery Degradation over 8 years	<p>The SOH of a ZEB Battery will not degrade by more than 20% from the SOH of the relevant ZEB Battery reported at the Date of Acceptance for that ZEB operating under normal operating conditions.</p> <p>Where the SOH of the relevant ZEB Battery degrades by an amount greater than 20% in comparison with the SOH at the Date of Acceptance for that ZEB, the Supplier must repair or replace that ZEB Battery so that the SOH degradation of that ZEB Battery is no worse than the SOH degradation in the relevant SOH ZEB Battery profile provided by the Supplier.</p>	Minimum period of 8 years

Component	Product Warranty	Minimum Warranty Period
ZEB Battery Annual Degradation	<p>The annual SOH of a ZEB Battery will not degrade by more than 3.5% in comparison with the annual SOH for that ZEB Battery for the immediately preceding year for that ZEB operating under normal operating conditions. Within the warranty period, any variations where the Annual SOH degrades by an amount of more than 3.5% of the original SOH in any year, the Supplier must rectify the battery set so that the degradation at least matches the SOH degradation in the relevant profile provided by the Supplier in the Supplier's RFP Returnable Schedule 3 Response.</p> <p>Where the annual SOH of the relevant ZEB Battery degrades by an amount greater than 3.5% in comparison with the annual SOH for the immediately preceding year, the Supplier must repair or replace that ZEB Battery so that the annual SOH degradation of that ZEB Battery is no greater than the annual SOH ZEB Battery degradation in the relevant profile provided by the Supplier in the Supplier's RFP Returnable Schedule 3 Response.</p>	Minimum period of 8 years
ZEB Electric Motor Propulsion System	The electric motor propulsion system will remain operational and fit for its intended purpose in accordance with the requirements of the Deed, when serviced in accordance with the requirements of the Deed.	20 years
Battery tray	The battery tray will not corrode for the lifetime of the Bus	25 years

Design Life

The Supplier warrants that the following components have been designed via analysis, testing and/or specification from the relevant sub-contractor to have the following Design Life:

Component	Design Life	Design Life
Chassis & body	Each Bus (chassis and body) must be designed to withstand the dynamic and operational loads imposed on it during normal operations for 25 years.	25 years.
Floor structure	The floor structure must be designed for the operational life of the Bus.	25 years.
Internally fitted decals	Internally fitted decals must be fit for their intended purpose and be designed for a minimum of 7 years.	7 years.
Externally fitted decals	Externally fitted decals must be fit for their intended purpose and be designed for a minimum of 5 years.	5 years.

Schedule 5 - Deed of Confidentiality

THIS DEED DATED THE _____ day of _____ 20__

BETWEEN *[Name and address of Principal]* ("the Principal")

AND *[Name and address of officer, employee, agent or contractor of Supplier]* ("the Confidant")

RECITALS:

- A. In the course of the Confidant assisting the Supplier to perform its obligations under the Deed of Standing Offer, the Confidant will have access to and may become aware of Confidential Information belonging to or in the possession of the Principal.
- B. Improper use or disclosure of the Confidential Information may severely damage the Principal's ability to perform its governmental/statutory functions and may severely damage the commercial interests of the Principal.
- C. The Principal requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Principal's Confidential Information is kept confidential and that the Supplier provides the Deliverables faithfully and without any conflicting interest.
- D. This Deed sets out the terms on which the Confidant will have access to the Confidential Information

OPERATIVE PROVISIONS:

1 Recitals

The Parties acknowledge the truth and accuracy of the Recitals in every particular.

2 Interpretation

2.1 Definitions

In the interpretation of this Deed, unless a contrary intention appears, the following expressions will have the following meanings:

Confidential Information means information that:

- (a) is by its nature confidential;
 - (b) is designated by the Principal as confidential; or
 - (c) the Confidant knows or ought to know is confidential;
- and includes but is in no way limited to:
- (d) the Project Material;
 - (e) the Principal's Material, including the financial information, the corporate information and the commercial information of the Principal;
 - (f) any material which relates to the affairs of a third party;
 - (g) information relating to the policies, strategies, practices and procedures of the NSW Government.

Deed of Standing Offer means the deed of standing offer between the Principal and the Supplier dated *[insert date]*.

Deliverables means the goods or services which the Supplier offers to supply under the Deed of Standing Offer.

Express Purpose means the Confidant assisting the Supplier to performing its obligations under the Deed of Standing Offer.

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

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

Notice means notice in writing given in accordance with this Deed.

Principal's Material means any Material supplied by or on behalf of the Principal to the Supplier.

Project Material means:

- (a) any Material created, written or otherwise brought into existence as part of, or for the purpose of performing the Deliverables including but not in any way limited to all Records, working papers, programs, flow charts, reports, including documents, equipment and information and data stored by any means ("New Project Material");
- (b) any Material which is existing at the date of the Deed of Standing Offer and which is incorporated with the New Project Material ("Existing Project Material").

Records includes the Project Material and any other Material or data brought into existence by any means and stored by any means in connection with the performance of the Deed of Standing Offer.

Supplier means [insert name of Supplier].

2.2 General

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or Deed, or a provision of a document or Deed, is a reference to that document, Deed or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (c) If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- (d) A singular word includes the plural, and vice versa.
- (e) A word which suggests one gender includes the other genders.
- (f) If a word is defined, another part of speech of that word has a corresponding meaning.

3 Non disclosure

- (a) The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- (b) The Principal may grant or withhold its consent in its sole discretion.
- (c) If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Confidant procure the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.
- (d) If the Principal grants consent subject to conditions, the Confidant must comply with those conditions.
- (e) Despite clause 3(a), the Confidant may disclose the Confidential Information to the Supplier's directors, officers, employees, and contractors ("permitted recipients") for the Express Purpose.
- (f) Before disclosing the Confidential Information to a permitted recipient, the Confidant must ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- (g) The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Principal, except as for such copies as may be reasonably required for the Express Purpose.
- (h) The Principal may at any time require the Supplier or Confidant to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- (i) The requirements of this Deed do not affect the obligations of the Confidant or the Supplier to disclose any Confidential Information where required to do so by law.

4 Restriction on use

- 4.1 The Confidant must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Principal use the Confidential Information for any purpose other than the Express Purpose.

- 4.2 The Confidant must, unless otherwise authorised by the prior written consent of the Principal:
- (a) treat as confidential and secret all of the Confidential Information which the Confidant has already acquired or will acquire from the Principal;
 - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
 - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
 - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
 - (e) ensure that the permitted recipients comply with the terms and conditions of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5 Survival

This Deed will survive the termination or expiry of the Deed of Standing Offer.

6 Rights of the Disclosing Party

6.1 Production of Documents

- (a) The Principal may demand the delivery up to the Principal of all documents in the possession or control of the Confidant containing the Confidential Information.
- (b) The Confidant must immediately comply with a demand under this Clause 6.
- (c) If the Principal makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.
- (d) In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

The Principal may take legal proceeding against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7 Indemnity and release

- 7.1 The Confidant is liable for and agrees to indemnify and keep indemnified the Principal in respect of any claim, damage, loss, liability, cost, expense, or payment which the Principal suffers or incurs as a result of:
- (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
 - (b) the disclosure or use of the Confidential Information by the Confidant or the permitted recipients other than in accordance with this Deed.

8 No exclusion of law or equity

This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

9 Waiver

- 9.1 No waiver by the Principal of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 9.2 None of the provisions of this Deed will be taken to have been varied, waived, discharged or released by the Principal unless by its express consent in writing.

10 Rights, remedies, warranties, indemnities and obligations cumulative

Unless otherwise expressly stated in this Deed, the rights, remedies, warranties, indemnities and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right, remedy, warranty, indemnity or obligation of the parties under this Deed or any other agreement or deed between the parties.

11 Variations and amendments

No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

12 Applicable law

This Deed will be governed and construed in accordance with the laws of New South Wales and the Commonwealth of Australia.

13 Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or email.
- 13.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

14 Electronic execution

- 14.1 Subject to applicable laws, the parties may execute this Deed and any document entered into under it, electronically (including through an electronic platform) and in one or more counterparts. Each party consents to the other party signing by electronic means. The parties agree that if any party signs this Deed electronically, then:
 - (a) an electronic form of this Deed with that party's electronic signature(s) appearing will constitute an executed counterpart; and
 - (b) a print-out of this Deed with that party's electronic signature(s) appearing will also constitute an executed counterpart.

Executed as a Deed

SIGNED, SEALED AND DELIVERED by the signatory for)
Transport for NSW but not so as to incur any)
personal liability in the presence of:)

Print Name

Print Signatory Name

Position

SIGNED, SEALED AND DELIVERED)
by **[the Confidant]** in the presence of:)
)

Print Witness Name

Print Signatory Name

Position

Schedule 6 - Service Levels

1 Definitions:

- 1.1 In this Schedule 6, the following definitions apply in addition to the definitions contained in the Deed:
- Buses Delivered On Time** means a Bus is delivered within 20 Business Days of the Date for Acceptance as varied by any approved change requests.
- Excused Performance Incident (EPI)** has the same meaning as Circumstances Beyond Control.
- Reporting Period** means the period during which Supplier's performance is measured for Service Level compliance purposes, which period will be a calendar month unless otherwise expressly stated in this Schedule to be another period.
- Service Level Default** means Supplier's level of performance for a particular Service Level does not meet the applicable Service Level.
- Service Level Relief** means a Supplier's relief from a Service Level Default due to an Excused Performance Incident.
- Vehicle Off the Road (VOR)** is a vehicle off road due to a Failure which prevents it being used for passenger services.
- Warranty Response** means the Supplier has responded to a notification of Failure occurring during the Warranty Period and providing a reasonable cure plan to the Bus Operator.

2 Introduction

- 2.1 This Schedule sets out the Service Levels the Supplier must meet in delivering the Services described in the Specifications at the Prices set out in the Pricing Schedule. It also describes the calculation processes for the Service Levels, the reporting and review processes and the consequences of non-performance.
- 2.2 Suppliers must report on each Service Level.
- 2.3 In this Schedule, each Service Level is set out in the following format.

3 Service Level Table Template

Name	<i>The name of the Service Level</i>
Description	<i>A description of what the Service Level does and, at a high level, how it is measured and calculated</i>
Hours measured	<i>The hours during which the service level calculation is applied</i>
Service Level	<i>The minimum or maximum level of performance which the Supplier is expected to meet.</i>
Measurement methodology	
Measurement starting point	<i>The point in time at which the Supplier must commence measurement for any Reporting Period</i>
Calculation	<i>The algorithm for calculation of the level of performance for the Reporting Period</i>
Period of calculation	<i>The period over which the performance must be calculated in each report</i>
Measurement unit	<i>The units used for the Service Level.</i>
Data source	<i>The agreed data sources used as inputs to the Calculations.</i>
Measurement responsibility	<i>The person responsible for the collection and calculation of the Service Level.</i>
Reporting frequency	<i>The frequency that a Service Level shall be reported (typically this is each Calendar Month)</i>

4 Principles

- 4.1 The following principles underlie the provisions set out in this Schedule:

- (a) The Service Levels are a statement of the minimum level of performance required to meet the business requirements of the Principal;
- (b) The emphasis of the Service Level regime is on performance improvement where the Service fail to meet the requirements;
- (c) The Principal requires reasonable flexibility to modify Service Levels and the management regime in order to keep pace with the changing business environment.

5 Service Level Measurement and Reporting

5.1 Reporting Content

For every Service Level, the Supplier must provide the following details:

- (a) The definition of the Service Level and how it is calculated;
- (b) Numerical data setting out the performance achieved during the Reporting Period against, where applicable, the data for the preceding Quarter and 12 months;
- (c) A graphical representation of those data highlighting the Service Level, the actual performance during the Reporting Period and the performance for the previous Quarter, 6 months or 12 months (as applicable);
- (d) A commentary explaining any performance variations and performance trends;
- (e) Where, for the Reporting Period, there is a Service Level Default, or there is an indication of a negative trend in the data, an explanation of the causes of the Service Level Default or negative trend;
- (f) A proposed action plan, for agreement by the Principal, to address the causes of any Service Level Default or negative trend, including actions that fall either on the Supplier or the Principal.
- (g) Where there has been a previous action plan for the Service Level, the status of the actions and an explanation of any relationship between the action plans and current performance.

The Principal may, from time to time, redefine its requirements for Service Level reporting or request reasonable additional Material to be provided for any Service Level and the Supplier must accommodate such requests.

6 Excused Performance Procedures

6.1 Obligation to use Commercially Reasonable Efforts

In the event of a Service Level Default which is caused by an Excused Performance Incident, the Supplier's obligations in connection with the Services and Service Levels which are not affected, continue, including, but not limited to:

- (a) An obligation to use commercially reasonable efforts to reinstate the affected Services and meet the Service Levels within the minimum time possible under the circumstances; and
- (b) Track and monitor the performance against the required Service Levels.

7 Additions and Deletions of Service Levels

7.1 Rights

Subject to paragraph 7.2 below, the Principal may add or delete Service Levels. Such change notice will include changes necessary to accommodate the addition of new Service Levels.

7.2 Notice for Additions, Deletions and Modifications of Service Levels

The Principal may add new Service Levels in accordance with the variation process in Clause 13 of the Deed. Service Level commitments associated with added Service Levels will be computed in accordance with actual performance over 6 months, unless a Service Level is expressly agreed at the outset or as otherwise agreed by the Parties.

The Principal may delete Service Levels by written notice to the Supplier.

8 Service Level Relief

If the Supplier is seeking relief from a Service Level Default due to an Excused Performance Incident, the following process will apply:

- (a) The Supplier must apply for Service Level Relief and provide detailed supporting documentation;

- (b) The Principal must formally accept or reject the Supplier's application for Service Level Relief within 4 weeks of the request and provision of all information required by this section 8. The Principal may not unreasonably reject the Supplier's application for relief.
- (c) If the Supplier complies with all requirements of this paragraph and the Principal does not formally accept or reject the Supplier's application for Service Level Relief within 4 weeks of the Supplier providing to the Principal all information required by this paragraph, the Service Level Relief sought will be granted.

9 Services Levels

The following business principles underlie the Service Levels:

- (a) Buses shall have minimum levels of non-compliance at delivery to reduce the need of retaining old buses;
- (b) Buses shall have minimal Failures during the Warranty Period to reduce VOR;
- (c) Warranty Response is prompt to reduce VOR;
- (d) Service Level reporting is timely and complete to allow management of VOR;
- (e) Buses shall be delivered on time to reduce the need of retaining old buses;
- (f) Spare parts are to be readily available to reduce VOR.

9.2 Minimising non-compliance at delivery

Name	Pre-Delivery Check Non-Compliance
Description	This Service Level aims to ensure that Buses have minimal non-compliance with the Pre-Delivery Check Criteria on delivery.
Hours measured	24 hours per day
Service Level	Average Number of non-compliant Pre-Delivery Check items per Bus to be no more than 1.
Measurement methodology	
Measurement starting point	First day of each Reporting Period
Calculation	(Total number of non-compliant items occurring at New Bus Pre-Delivery Check / total number of Buses delivered that month)
Period of calculation	Calendar month
Measurement unit	Non-compliant items per New Bus. If no Buses checked then report unit as N/A
Data source	Pre-Delivery Check Criteria
Measurement responsibility	Supplier
Reporting frequency	Monthly

9.3 Reliability

Name	Reliability during the first 3 years of the Warranty Period
Description	This Service Level aims to ensure that Buses do not have excessive VOR during the first 3 years of the Warranty Period.
Hours measured	24 hours per day
Service Level	Average Failures per bus to be less than 5%.
Measurement methodology	
Measurement starting point	First day of each Reporting Period
Calculation	$100 \times (\text{Total Number of Failures on Buses during the first 3 years of the Warranty Period} / \text{Total Number of Buses during the first 3 years of the Warranty Period})\%$
Period of calculation	Calendar month
Measurement unit	Percent
Data source	Service desk record of incidents, Bus Operator maintenance records
Measurement responsibility	Supplier
Reporting frequency	Monthly

9.4 Warranty Response

Name	Warranty Response
Description	This Service Level aims to ensure that Failures during the During Warranty Period are responded to promptly.
Hours measured	24 hours per day
Service Level	95% of Failures have a Warranty Response within 24 hours.
Measurement methodology	
Measurement starting point	First day of each Reporting Period
Calculation	$100 \times (\text{Number of Failures responded to within 24 hours} / \text{Number of Failures for that Reporting Period}) \%$
Period of calculation	Calendar Month
Measurement unit	%
Data source	Service desk
Measurement responsibility	Supplier
Reporting frequency	Monthly

9.5 Reporting

Name	Reporting
Description	<p>This Service Level aims to ensure all reports are forwarded on time to the Principal in the agreed format to allow assessment of performance.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 hours per day
Service Level	100%
Measurement methodology	
Measurement starting point	First day of each Reporting Period
Calculation	$100 \times (\text{Total number of the scheduled reports presented by the 15}^{\text{th}} \text{ of the month} / \text{total number of scheduled reports for that Reporting Period}) \%$
Period of calculation	Monthly
Measurement unit	%
Data source	Reporting channel as agreed
Measurement responsibility	Supplier
Reporting frequency	Monthly

9.6 Buses Delivered On Time

Name	Bus Delivered On Time
Description	Measures the % of Buses Delivered On Time.
Hours measured	24 hours per day
Service Level	100%
Measurement methodology	
Measurement starting point	First day of each Reporting Period
Calculation	$100 \times (\text{Number of Buses Delivered On Time} / \text{Total number of Buses planned to be delivered in that Reporting Period}) \%$
Period of calculation	Calendar Month
Measurement unit	%
Data source	Supplier records, Principal's agreed delivery schedule
Measurement responsibility	Supplier
Reporting frequency	Monthly

9.7 On Time Spare Parts Delivery

Name	On Time Spare Parts Delivery
Description	Measures the % of Spare Parts Purchase Orders that are delivered to Bus Operators within 24 hours.
Hours measured	24 hours per day
Service Level	95%
Measurement methodology	
Measurement starting point	First day of each Reporting Period
Calculation	$100 \times (\text{Number of Spare Parts Purchase Orders delivered within 24 Hours of order} / \text{Total number of Spare Parts Purchase Orders placed in that Reporting Period}) \%$
Period of calculation	Calendar Month
Measurement unit	%
Data source	Supplier purchase order system
Measurement responsibility	Supplier
Reporting frequency	Monthly

Schedule 7 - Roles and Responsibilities

1 Roles & Responsibilities

The following table sets out the meaning of the letters used as column headings in the roles and responsibilities tables set out in each of the subsequent sections.

"T" in any of the RASCI columns means that the Principal is the relevant Party.

"M" in any of the columns means that the manufacturer (Supplier) is the relevant Party.

"O" in any of the columns means that the Bus Operator is the relevant Party.

All terms in this Schedule that have defined meanings in the Deed have the same meaning in this Schedule as they do in the Deed.

2 General

Letter	Meaning	Description
R	Responsible	The role that has to do the activity. There can be multiple roles responsible.
A	Accountable	The role ultimately answerable for the correct and full completion of the activity. There must be exactly one role accountable for each activity.
S	Support	Provide support to assist in completing the task
C	Consulted	The role that helps to do the activity.
I	Informed	The role that has to be kept up-to-date.

The following table identifies the general roles and responsibilities associated with Service Management Services.

	Functional Description	R	A	S	C	I	Comments/ Exclusions
1	Bus Specification						
2	Development of Specifications	T	T	O, M	O, M	O, M	
3	Submission of Buses which meet Specifications, updated to include latest models as models change	M	M	O	T	O	
4	Responsible for ensuring Buses continue meet requirements, including compliance with Specifications, standards and applicable regulations	M	M		T	O	
5	Identify change in legislation which impact bus Specifications	M	M		T	O	
6	Identify and report annually on new and emerging vehicle safety technologies	M	M		T	O	
7	Identify and publish information for all Bus Operators on the whole of life cost of Bus configurations	M	M		T	O	
8	Develop, manage and publish on the Supplier Portal, a catalogue of approved Bus configurations and spare parts for the Buses	M	M		T	O	
9	Developing and managing an automated ordering process to facilitate efficient ordering of Buses and spare parts for the Buses	M	M		T	O	

	Functional Description	R	A	S	C	I	Comments/ Exclusions
10	Reporting performance against Service Levels	M	M	T		T, O	
11	Monitoring and auditing performance against Service Levels	T	T		M	M	
12	Performing periodic compliance checks to ensure standards and regulatory compliance are maintained, e.g. Buses, options, spare parts, configuration	M	M	T		T, O	
13	Delivery of spare parts for Buses after receiving a Spare Parts Purchase Order	M	M	O		O	

3 Supplier Portal

The following table identifies Supplier Portal roles and responsibilities.

	Functional Description	R	A	S	C	I	Comments/ Exclusions
1	Determining and defining bus configurations to include in the Supplier Portal	M	M	O	T	O	
2	Developing a detailed Supplier Portal which details Bus configurations offered including all approved options, spare parts and order process	M	M		T	O	
3	Documenting Bus request approvals and Service Levels for each configuration within the Supplier Portal.	M	M		T	O	
4	Approving publication of a configuration in the Supplier Portal	O	O		M	M	
5	Publishing the Supplier Portal in a form approved by the Principal	M	M		T, O	T, O	

4 Service Level Management

Service Level Management Services are the activities associated with monitoring and reporting on Service delivery with respect to the Service Levels. In addition, the Supplier will report Service Level management information to the designated representatives of the Principal in a format satisfactory to the Principal.

The following table identifies Service Level Management roles and responsibilities.

	Functional Description	R	A	S	C	I	Comments/ Exclusions
1	Defining and documenting Service Level requirements	T	T	T	M		
2	Documenting Service Level and reporting cycles	M	M	M T	T		
3	Reviewing Service Level metrics and performance report design	M T	M	T	T		
4	Providing the Principal with reports monitoring its performance against the Service Levels	M	M			T	
5	Coordinating Service Level monitoring and reporting with designated	M	M		T	T	

	Functional Description	R	A	S	C	I	Comments/ Exclusions
	representatives of the Principal and third-party vendors, as required						
6	Measuring, analysing, and providing management reports on performance relative to Service Levels	M	M			T	
7	Developing and documenting Service Level corrective action plans where appropriate	M	M	T	T		
8	Implementing corrective action plans	M	M			T	
9	Reporting on Service Level corrective action results	M	M	T		T	

5 Failure Repair

5.1 Failure Repair Services are the activities associated with the maintenance and repair of all Failures.

5.2 Specifically, the Supplier must provide the following services:

- (a) Develop and maintain a Bus Maintenance Schedule designed to ensure the reliability of Buses;
- (b) Device Failure Repair through on-site support services and delivery of spare parts to provide technical diagnosis and repair of defective Buses at Bus Operator locations. The services include the labour and parts required to restore the Bus to normal operation.

5.3 The following table identifies Maintenance roles and responsibilities.

	Functional Description	R	A	S	C	I	Comments/ Exclusions
1	Defining Maintenance and repair policies, procedures and schedules	M	M	T	T		
2	Providing and maintaining list of Bus Operator locations	T	T	O		M	
3	Defining dispatch requirements and point-of-service locations to ensure appropriate maintenance coverage for all Service components to meet Service Levels	M	M		T	T	
4	Providing Failure Repair support at Bus Operator locations, including dispatching repair technicians to the location if necessary	M	M			T	
5	Performing diagnostics and Maintenance on Service components including hardware, software, circuits and special-purpose devices as appropriate.	M	M			T	
6	Conducting Maintenance and spare parts management and monitoring, including off-warranty periods	M	M			T	

6 Training and Knowledge Transfer

6.1 Training and Knowledge Transfer Services consist of the provision of training for:

- (a) Bus Operator technical staff to ensure that they are fully aware of:
 - (i) any impacts changes may have on the maintenance and repair of Buses;

- (ii) potential safety hazards associated with each Bus, including any safe working instructions and safe work procedures;
- (b) How Bus Operators may be able to reduce the total cost of ownership for Buses;
- (c) Bus Operator staff in the use of the catalogue and ordering system; and
- (d) Train the trainer training for Bus Operator staff, so that Bus Operator staff may train new drivers on Bus operations and update current drivers on changes to Buses.

6.2 The following table identifies Training and Knowledge Transfer roles and responsibilities.

	Functional Description	R	A	S	C	I	Comments/ Exclusions
1	Developing, documenting and maintaining training and knowledge database requirements and policies, including refresher courses as needed and instruction on new functionality	M	M	T	T		
2	Developing and documenting procedures that meet training requirements and adhere to defined policies. Defining locations to which this training is provided	M	M	T	T		
3	Developing a training program to instruct Bus Operator staff on the provision of the Services (e.g., ordering Buses)	M	M	T	T	T	
4	Remaining up to date with current technology trends pertaining to technology advances relevant to the Services	M	M			T,O	
5	Training Bus Operator technical staff of any change in requirements when a substantive change in Buses is implemented	M	M			T,O	
6	Providing training materials for Bus Operator staff	M	M			T,O	
7	Provide advice to Bus Operators on how the total cost of ownership of Buses can be reduced	T	T			M, O	
8	Train the trainer training to Bus Operator staff	M	M				

7 Service Desk Services

- 7.1 Service Desk Services are the Services and activities required to coordinate and to respond to Failures and any other serious incidents (reported by a Bus Operator, or proactively identified by the Supplier or its Associates).
- 7.2 The Service Desk will provide support functions to Bus Operators 24 hours per day, 365 days per year.
- 7.3 The following table identifies the Service Desk roles and responsibilities:

	Functional Description	R	A	S	C	I	Comments/ Exclusions
1	Providing a Service Desk	M	M			T, O	
2	Managing all calls from receipt to closure	M	M			T, O	

	Functional Description	R	A	S	C	I	Comments/ Exclusions
3	Providing a single point of contact for Services support.	M	M			T, O	
4	Staffing the Service Desk with personnel who are suitably skilled and trained to deliver support services	M	M			T, O	
5	Notifying nominated Principal users of Failures and any other unplanned maintenance issues in accordance with agreed Procedures.	M	M			T, O	
6	Maintaining a full audit trail of the process undertaken to restore Buses that have Failed	M	M			T, O	

8 Account Management

- 8.1 Account Management Services are the activities associated with the ongoing management of the Service environment. The Supplier shall possess contemporary account management, service and reporting capabilities including, but not limited to the roles and responsibilities detailed in the following table:

	Functional Description	R	A	S	C	I	Comments/ Exclusions
1	Continuously monitoring trends in bussing through independent research. Documenting and reporting on products and services with potential use for the Principal	M	M			T	
2	Providing electronic and/or online reporting (e.g., statistics, trends, audits)	M	M			T	
3	Provide accurate, robust and proven billing systems and methodology	M	M			T	
4	Experienced account management team	M	M			T	
5	Develop protocols and procedures to be followed in emergency situations	M	M			T	
6	24 hour emergency contacts for each of the network areas in NSW	M	M			T	

Schedule 8 - Reporting

1 Reporting Requirements

The Supplier must conduct the following reviews and provide the following reports, plans and data to the Principal (or any person authorised by the Principal) in accordance with this Schedule at the following times:

- (a) The Supplier must undertake the agreed SOH ZEB Battery monitoring process and provide the Date of Acceptance SOH ZEB Battery Report in the agreed format to the Principal and the relevant Bus Operator no later than 20 Business Days after the Date of Acceptance for the relevant ZEB.
- (b) The Supplier must undertake the agreed SOH ZEB Battery monitoring process and provide the annual SOH ZEB Battery report in the agreed format (referred to in clause 7.4.1(b)) for each ZEB to the Principal and the relevant Bus Operator every 12 months from the Date of Acceptance by the Customer no later than 20 Business Days after the anniversary date of the Date of Acceptance for the relevant ZEB.
- (c) Within 20 Business Days of receiving each of the reports referred to in clause 7.4.1(c) and 7.4.1(d), the Principal and the relevant Bus Operator will review those reports and compare them with the profiles provided by the Supplier in clause 7.4.1(a) to determine whether there is a breach of any of the ZEB Battery Warranties set out in Schedule 4.

Report/Statement	Timeframe
Date of Acceptance SOH ZEB Battery Report	No later than twenty (20) Business Days after of the Date of Acceptance of each ZEB supplied pursuant to this Deed, provide the Date of Acceptance SOH ZEB Battery Report for the relevant ZEB Battery in the agreed format to the Principal and the relevant Bus Operator
Annual SOH ZEB Battery Report	No later than twenty (20) Business Days after of the anniversary date of the Date of Acceptance of each ZEB supplied pursuant to this Deed, provide the Annual SOH ZEB Battery Report for the relevant ZEB Battery in the agreed format to the Principal and the relevant Bus Operator
Modern Slavery Statement	Within seven (7) Business Days of the Supplier providing a Modern Slavery Statement to the Commonwealth Government, provide a copy of that Modern Slavery Statement to the Principal.
SME and Local Participation Report*	Quarterly, within twenty (20) Business Days of the end of the financial year quarter during the Term of this Deed, provide a report to the Principal which certifies its compliance with its commitments in its then current SME and Local Participation Plan, and if requested by the Principal, in the format or using the template notified by the Principal from time to time.
Social Procurement and Workforce Diversity Report*	Quarterly, within twenty (20) Business Days of the end of the financial year quarter during the Term of this Deed, provide a report to the Principal which certifies its compliance with its commitments in its then current Social Procurement and Workforce Diversity Plan, and if requested by the Principal, in the format or using the template notified by the Principal from time to time.
Environmental and Sustainability Report*	Annually, within twenty (20) Business Days of the anniversary of the Commencement Date of this Deed:

Report/Statement	Timeframe
	<ol style="list-style-type: none"> 1. conduct a review of its current Environmental and Sustainability Plan and make such amendments as may be required to ensure ongoing compliance with Environmental Laws and this Deed; and 2. provide a report to the Principal which certifies its compliance with all Environmental Laws and with its environmental and sustainability commitments in its then current Environmental and Sustainability Plan.
Aboriginal Participation Report**	Quarterly, within twenty (20) Business Days of the end of the financial year quarter during the Term of this Deed provide a report to the Principal which certifies its compliance with its commitments in its then current Aboriginal Participation Plan, and if requested by the Principal, in the format or using the template notified by the Principal from time to time.

*The obligations of the Supplier to provide the:

- SME and Local Participation Report;
- Social Procurement and Workforce Diversity Report; and
- Environmental and Sustainability Report,

commence within 20 Business Days of the total value (inclusive of GST) of all Orders for Buses and other Services under this Deed (including Orders placed with the Supplier and confirmed in accordance with clause 4.2.7 or clause 4.3.4) being equal to or exceeding the SME Order Value Threshold.

**The obligation of the Supplier to provide the Aboriginal Participation Report commences within 20 Business Days of the total value (inclusive of GST) of all Orders for Buses and other Services under this Deed (including Orders placed with the Supplier and confirmed in accordance with clause 4.2.7 or clause 4.3.4) being equal to or exceeding the APP Order Value Threshold.

- (d) Within 20 Business Days of the total value (inclusive of GST) of all Orders for Buses and other Services under this Deed (including Orders placed with the Supplier and confirmed in accordance with clause 4.2.7 or clause 4.3.4) being equal to or exceeding the SME Order Value Threshold, the Supplier must submit to the Principal a draft:
 - (i) SME and Local Participation Plan;
 - (ii) Social Procurement and Workforce Diversity Plan; and
 - (iii) Environmental and Sustainability Plan.
- (e) Within 20 Business Days of the total value (inclusive of GST) of all Orders for Buses and other Services under this Deed (including Orders placed with the Supplier and confirmed in accordance with clause 4.2.7 or clause 4.3.4) being equal to or exceeding the APP Order Value Threshold, the Supplier must submit to the Principal a draft Aboriginal Participation Plan.

Schedule 9 - List of Material Sub-Contractors

Name	Details	Items to be supplied
[**insert]		

Schedule 10 - Variation to Deed

Variation Request Form

2 Parties details

3 Variation request summary

Date of variation request	
Originator of variation request (Requesting Party)	Supplier <input type="checkbox"/> Principal <input type="checkbox"/> [Tick relevant box]
Summary of proposed variation	[Briefly describe the proposed variation. For example, indicate whether you propose a variation to the Deed, Specifications or Service Levels, by reference to the clause number if possible].
Proposed commencement date for variation	
Proposed cost of variation	

4 Details of variation requested

[Insert a detailed description of the variation proposed and proposed drafting of variation to Deed, Specification or Service Levels].

5 Effect of variation on Specification

6 Plan for implementing variation

7 Responsibilities of Parties to implement variation

8 Estimated costs of variation and allocation of payment of costs

9 Further information and supporting documentation for variation

10 Acknowledgement

In accordance with clause 13 of the Deed, the Parties acknowledge that they must comply with the terms and conditions of the Deed and any variation has no effect until a Deed of Variation is signed by both Parties.

11 Decision

11.1 This variation is:

- (a) Agreed by the Receiving Party ☐
- (b) Agreed by the Receiving Party, subject to the following conditions ☐

[Set out the conditions required in order for agreement to be reached on the variation].

[Where agreement is reached, the Parties must execute the Deed of Variation which forms part of this Schedule 8. If no agreement is reached, no further action is required].

- (c) Rejected by the Receiving Party ☐

DEED OF VARIATION

THIS DEED DATED THE _____ day of _____ 20__

BETWEEN Transport for NSW of 231 Elizabeth Street, Sydney 2000, in the State of New South Wales, ABN 18 804 239 602 ("the Principal")

AND [Name, address and ABN of Supplier] ("the Supplier ")

RECITALS:

- A. The Principal and Supplier are parties to a Deed dated _____ day of _____ 20__ (**Deed**).
- B. The parties wish to vary the terms and conditions of the Deed as set out below.

OPERATIVE PROVISIONS:

- 1 [insert]
- 2 [insert]
- 3 Subject to applicable laws, the parties may execute this deed and any document entered into under it, electronically (including through an electronic platform) and in one or more counterparts. Each party consents to the other party signing by electronic means. The parties agree that if any party signs this deed electronically, then:
- a. an electronic form of this deed with that party's electronic signature(s) appearing will constitute an executed counterpart; and
 - b. a print-out of this deed with that party's electronic signature(s) appearing will also constitute an executed counterpart.

Executed as a Deed

SIGNED, SEALED AND DELIVERED)
)
by [*name and position of person signing*]) _____
for and on behalf of the Principal)
but not so as to incur any personal)
liability in the presence of:)
)
_____) _____
[insert name of Witness]) (signature of Witness)

SIGNED, SEALED AND DELIVERED)
)
by _____) _____
[insert name of Supplier]) (signature of Supplier)
)
in the presence of _____) _____
[insert name of Witness]) (signature of Witness)

Schedule 11- Order Template

Order Template

Transport for NSW Deed of Standing Offer - Bus Procurement Panel 4 Order for the Services (including Buses)

This Order is placed with the Supplier for the Services (including Buses) on the terms and conditions of the Deed of Standing Offer for Bus Procurement Panel 4 Deed between the Principal and the Supplier dated [insert].

Any accepted Bus Operator Order will create a separate legal agreement between the Supplier and the Bus Operator for the supply of the Services covered by that Bus Operator Order and the legal agreement will comprise the details specified in the Bus Operator Order, and the terms and conditions of the Deed that are applicable to the Bus Operator Order for the supply of those Services.

Any accepted Principal Order will create a separate legal agreement between the Supplier and the Principal for the supply of the Services covered by that Principal Order and the legal agreement will comprise the details specified in the Principal Order, and the terms and conditions of the Deed that are applicable to the Principal Order for the supply of those Services.

Item No.	Item	Details
1	Date of Order placement	
2	Order reference	
3	TfNSW Bus Procurement Panel Order Reference ID	
4	Name of the Panel Supplier	
5	Number of Buses being ordered	
6	Type of Bus being ordered	
7	Make and Model of Bus Chassis	
8	Make and Model of Bus Body	
	If Bus Operator is placing this Bus Operator Order	
9	Name of Bus Operator placing this Bus Operator Order	
10	Name of TfNSW Bus Service Contract and Contract Number	
11	Name of person placing this Bus Operator Order on behalf of the Bus Operator	
12	Title of person placing this Bus Operator Order on behalf of the Bus Operator	
13	Email address of person placing this Bus Operator Order on behalf of the Bus Operator	

	If the Principal is placing this Principal Order	
14	Name of TfNSW person placing this Principal Order on behalf of the Principal	
15	Position title of TfNSW person placing this Principal Order on behalf of the Principal	
16	Bus Operator taking delivery of bus/es under this Principal Order	
17	TfNSW Bus Service Contract Number receiving bus/es under this Principal Order	
18	TfNSW Purchase Order (PO) Number:	
	Payment	
19	Will the Price of the Buses in this Order be paid by the Principal directly to the Supplier?	Yes/No
	Bus Status	
20	Is this Order for Replacement Buses?	Yes/No
21	Is this Order for Growth or Additional Buses?	Yes/No
22	Is this Order for Project Buses?	Yes/No
23	Date/s for Acceptance of Project Bus/es	See Attachment 4
24	Liquidated damages payable for each calendar day a Project Bus has not achieved Acceptance after the Date for Acceptance (clause 9 of the Deed)	[\$[.....]] for each Project Bus
25	Maximum number of calendar days for which liquidated damages are payable for each Project Bus (clause 9.1.4(b)) of the Deed	[...] calendar days
	Other Details	
26	Is a Performance Guarantee required by the entity placing the Order? <u>If yes, provide details.</u>	Yes/No
27	Is a Financial Security required by the entity placing the Order? <u>If yes, provide details.</u>	Yes/No

28	Additional Order details	<p>Please see the following Attachments to this Order:</p> <p>Attachment 1 - Authorisation Letter from the Principal confirming its agreement to these Order Details (if Bus Operator's Order) or from the Bus Operator confirming its agreement to these Order Details (if Principal's Order) (as applicable)</p> <p>Attachment 2 - Copy of the Principal's Portal printout confirming details of the Services ordered (if the Order is issued by a Bus Operator)</p> <p>Attachment 3 - Details and Pricing of Buses and Other Services</p> <p>Attachment 4 - Delivery & Acceptance Dates</p>
29	Further Order requirements	<p>[Drafting Note: In accordance with clause 1.3 (Precedence) of the Deed, for Principal Orders only (i.e. not for Bus Operator Orders), provisions in this Order that are expressed to take priority over the terms of the Deed will take priority over the terms of the Deed. Accordingly, for Principal Orders, where TfNSW wishes to incorporate terms into this Order that are intended to take priority over the Deed, insert the following: 'The following provisions take priority over the other terms and conditions of the Deed for the purposes of clause 1.3 (Precedence) of the Deed: [insert provisions].']</p>

	This Order is not effective:	<ol style="list-style-type: none"> 1. Until the Principal has approved and issued a formal letter of approval for this Order (if this Order is placed by a Bus Operator) or until the Bus Operator has approved and issued a formal letter of approval for this Order (if this Order is placed by the Principal) (Attachment 1 to this Order); and 2. the Customer has placed the Order with the Supplier and this Order is accepted by the Supplier in writing.
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This Order is not effective

1. until the Principal or Bus Operator (as applicable) has approved and issued a formal letter of approval and
2. the Customer has placed the Order with the Supplier and it is accepted by the Supplier in writing.

Order - Attachment 1

Authorisation Letter

**From the Principal confirming its agreement to these Order Details
(if Bus Operator Order)**

or

**From the Bus Operator confirming its agreement to these Order Details
(if Principal Order)**

(as applicable)

Order - Attachment 2

Copy of the Principal’s Portal printout confirming details of the Services ordered

Order - Attachment 3

Details and Pricing of Buses and Other Services

Description				
Bus description				
Chassis				
Other				
Base Purchase Price per Bus (excl GST)				
Technical Options from Bus Panel (& Details)				
Authorised additional requirements/deletions (if any)				
Total Purchase Price per Bus (excl GST) (before any Discount is applied)				
Less Discount (if applicable)				
-Chassis	No of Buses being ordered	Applicable Discount %	Total Discount (in \$) (excl GST)	
-Body	No of Buses being ordered	Applicable Discount %	Total Discount (in \$) (excl GST)	
Total Purchase Price per Bus (excl GST) (after any Discount is applied)				
TfNSW Fully Funded Amount				
Operator Funded Amount (OFA)				
Operator Funded Option				

Total Operator Funded Amount	
Total Purchase Price per Bus (excl GST) (after any discount)	
No of Buses being ordered in this Order	
Total Purchase Price for Buses in this Order (excl GST)	

Order - Attachment 4**Delivery and Acceptance Dates**

Planned date(s) on which each Bus must achieve delivery and Acceptance in accordance with clause 7 of the Bus Panel 4 Deed (**Date for Acceptance**) and Agreed Date for Acceptance of each Project Bus (if applicable) at time of placing the Order:

Bus No.	Planned Build Commencement Date	Planned Delivery Date or Date for Customer Inspection at Supplier Site	Planned Date for Acceptance	Project Bus Yes/No	Agreed Date of Acceptance for Project Bus (if applicable)	Amount of liquidated damages (LD) payable per day for each Project Bus (if applicable) (see clause 8)	Max no of days LDs are payable for each Project Bus (if applicable)

Schedule 12 - Pre-Delivery Check Criteria

TfNSW PANEL 4 PRE-DELIVERY INSPECTION CHECKLIST v1.0

Bus Manufacturer:		Engine Number:	
Body Model:		Transmission Number:	
Bus Build Number:		Transitag Number:	
Bus Configuration:		Radio Number:	
Chassis Manufacturer:		Differential Number:	
Chassis Model:		PTIPS OBU Number:	
Registration Number:		Euro Emission Standard:	
Fleet Number:		Date of Initial Inspection:	
VIN:		Date of Final inspection:	
		Type Approval No:	
Chassis Number :		Compliance Date:	

Check item	General	Yes (V) No (X)	Comment	Rectified
0.01	Ignition Key			
0.02	Body Access Keys (two)			
0.03	Budget lock key			
0.04	Driver's Locker Key			
0.05	Weighbridge ticket with correct VIN and axle masses (comparable to type approval?)			
0.06	Wheel alignment figures provided by Supplier for each bus			
0.07	Certification plate: TS147 - Field of view of the passenger entrance doors of a bus			

0.08	Certification plate: TS148 - Padding for seatback, hand rails and partitions on buses.			
0.09	Certification plate: TS150 – Warning signs and lights for school buses.			
0.10	Certification plate: TS160 - Bus door safety systems.			
0.11	NSW Registration plates front and rear			
0.12	NSW Registration papers			
0.13	Manufacturer's Compliance plate fitted			
0.14	Chassis SARN plate fitted			
0.15	Pre-delivery chassis completed and signed			
0.16	Pre-delivery body completed and signed			
0.17	Pre-delivery air conditioning completed and signed			
0.18	Pre-delivery destination signs completed and signed			
0.19	Pre-delivery transmission completed and signed			
0.20	Pre-delivery door certification completed and signed.			
0.21	Fire suppression (EBFSS) commissioning reports.			
0.22	Tyre Pressure Monitoring (TPMS) commissioning reports.			
0.23	Electronic Ticketing System commissioning document			
Check item	Under Body	Yes (✓) No (X)	Comment	Rectified
1.01	All electrical cables secure and protected			
1.02	All air lines secure and protected			
1.03	Heater hoses secure and protected			
1.04	Power steering pipes secure and protected			
1.05	Flooring to frames joints sealed			
1.06	Service holes in floor sealed			

1.07	All chassis and body frame components painted where required			
1.08	Coverage of under body sealer where required.			
1.09	All engine covers and protection plates fitted as required			
Check item	Engine	Yes (v) No (X)	Comment	Rectified
2.01	Air pipes hoses or joints loose, fouling other components			
2.02	Air leaks			
2.03	Fuel leaks			
2.04	Oil leaks			
2.05	Alternator drive belts secure			
2.06	Other drive belts secure			
2.07	Air cleaner and intake system clear and secure			
2.08	Encapsulation panels			
2.09	Oil filler pipe			
2.10	Engine oil level			
2.11	Hydraulic oil tank level and decal.			
2.12	Heat shield on turbo and other items as per type approval			
2.13	Hydraulic hoses not twisted			
Check item	Cooling System	Yes (v) No (X)	Comment	Rectified
3.01	Coolant level			
3.02	Coolant leaks			
3.03	All mountings, fittings, pipes, hoses secure			
3.04	Fan or debris not fowling cowling			
3.05	Hydraulic fan system			

3.06	General - Cooling			
Check item	Air-Conditioning	Yes (✓) No (X)	Comment	Rectified
4.01	A/C functioning			
4.02	A/C Controls			
4.03	A/C Saloon temperature			
4.04	A/C mount			
4.05	A/C noise level			
4.06	A/C Belt alignment			
4.07	A/C pipes/hoses secure and not fouling other components			
4.08	A/C compressor, pulleys and belts secure			
4.09	A/C pipes correctly sealed through the body			
4.10	Fitment of heater box and flexible hoses			
4.11	General - Air Conditioning.			
Check item	Fuel/Energy System	Yes (✓) No (X)	Comment	Rectified
5.01	Access to fuel tank filler			
5.02	Fuel tank and straps secure			
5.03	Fuel spill panel			
5.04	Fuel gauge – operation			
5.05	Fuel tank breather			
5.06	Fuel tank level			
5.08	ZEB battery SOC			
5.09	ZEB battery charge points			
Check item	Brakes	Yes (✓) No (X)	Comment	Rectified

6.01	Footbrake operation			
6.02	Park brake operation			
6.03	Centre/Rear door brake interlock			
6.04	Front door brake interlock			
6.05	Brake system air leaks			
6.06	Handbrake warning system			
6.07	Cabin door alarm			
6.08	General - Brake Function and Operation.			
Check item	Driveline	Yes (✓) No (X)	Comment	Rectified
7.01	Automatic Transmission - Shift quality			
7.02	Automatic Transmission - Up shift			
7.03	Automatic Transmission - Down shift			
7.04	Welding Decals			
7.05	Automatic Transmission - Retarder dash display			
7.06	Automatic Transmission - Retarder operation			
7.07	Automatic Transmission - Brake pedal function with retarder.			
7.08	Automatic Transmission - Retarder on/off switch			
7.09	General - Automatic Transmission.			
7.10	Rear Axle - Differential.			
7.11	Rear Axle - Drive Shaft			
7.12	Rear Axle - Wheels and Tyres.			
7.13	Rear Axle Noise Level			
7.14	Transmission company Warning Decals installed			
Check item	Suspension and Steering	Yes (✓) No (X)	Comment	Rectified

8.01	Ferry lift operation			
8.02	Kneeling operation			
8.03	Kneeling with doors open and closed			
8.04	Correct air bag height			
8.05	Air leaks - Suspension			
8.06	General - Suspension.			
8.07	Steering - Operation.			
8.08	Steering - Clearances.			
8.09	Steering - Front Axle.			
8.10	Steering - Linkages and Pivot Arms			
8.11	General - Steering			
Check item	Chassis Lubricants	Yes (✓) No (X)	Comment	Rectified
9.01	All greasing points lubricated			
Check item	Windows Exterior	Yes (✓) No (X)	Comment	Rectified
10.01	Left hand side saloon windows - clean and scratch free			
10.02	Right hand saloon windows - clean and scratch free			
10.03	Windscreen and peep glass - clean and scratch free			
10.04	Rear window - clean and scratch free			
10.05	Rear desto - clean and scratch free			
10.06	Front desto - clean and scratch free			
10.07	All windows - backfill			
Check item	Mirrors	Yes (✓) No (X)	Comment	Rectified
11.01	Left hand side mirror - position and operation			

11.02	Right hand mirror - position and operation			
11.03	Internal mirror position and operation			
Check item	Windscreen, Wipers and Washers	Yes (v) No (X)	Comment	Rectified
12.01	Wiper function - park – intermittent - normal - fast			
12.02	Washer function			
12.03	Washer bottle full			
Check item	Exterior Lighting	Yes (v) No (X)	Comment	Rectified
13.01	All exterior lights operate			
13.02	Exterior door lights operate			
13.03	Multiplexed system check operates correctly			
13.04	Reverse buzzer operates			
Check item	Interior Lighting	Yes (v) No (X)	Comment	Rectified
14.01	Saloon lights - operation			
14.02	Drivers cab light - operation			
14.03	Drivers cash tray light - operation			
14.04	Step lights - operation			
14.05	Blue stopping light			
14.06	School bus lights functional.			
Check item	Saloon Interior	Yes (v) No (X)	Comment	Rectified
15.01	Ceiling handrails secure			
15.02	All stanchions to seats secure			
15.03	Modesty panels correctly mounted and secure			

15.04	Standee straps secure			
15.05	Left hand side luggage rack secure			
15.06	Right hand luggage rack secure			
15.07	Welded or sealed joints			
15.08	Aluminium step edging and insert			
15.09	Wheel chair and no standing lettering			
15.10	Floor traps			
15.11	Floor Cover plates			
15.12	Saloon Seats			
15.13	Seat frames secure			
15.14	Seat cushions secure and clean			
15.15	Seat squabs secure and clean			
15.16	Disabled seats secure and clean			
15.17	5 passenger seat secure and clean			
15.18	Drivers door and screen - secure			
15.19	Automatic ticketing wiring installed			
15.20	Electrical- finish			
15.21	Electrical centre - finish			
15.22	Passenger bus stop button operation			
15.23	Wheelchair bus stop button operation			
15.24	Emergency hammers - function			
15.25	Interior panels			
15.26	Impact film fitted without bubbles and creases to windows			
15.27	No impact film on emergency exit windows			
15.28	Emergency Exit signs fitted			
15.29	EDR decals fitted 'self illuminating'			

15.30	Stair case (if applicable)			
Check item	Driver's Compartment	Yes (✓) No (X)	Comment	Rectified
18.01	Drivers seat mountings belt and controls			
18.02	Drivers blind's - secure and function			
18.03	Security of switches and controls			
18.04	Labelling of all switches and controls			
18.05	Operation of all switches and controls			
18.06	Fire extinguisher – secure, size, date and tag			
18.07	Steering column adjustment			
18.08	Instruments dash display			
Check item	Exhaust	Yes (✓) No (X)	Comment	Rectified
19.01	Muffler, exhaust pipes and flexible sections secure			
19.02	Adequate clearance around all exhaust components			
19.03	Heat shields and insulation fitted (where applicable)			
19.04	No leaks or rattles			
19.05	Catalytic converter installation Euro V/VI Chassis.			
19.06	Catalytic converter sensors - Euro V/VI Chassis.			
Check item	Chassis Electrics	Yes (✓) No (X)	Comment	Rectified
20.01	Battery cradle secure - check operation			
20.02	Battery cradle – locking device - operation			
20.03	Battery cradle - check leads not chafing when swung out and back			
20.04	Batteries secure			

20.05	All battery leads secure with insulation to prevent accidental shorting			
20.06	All electrical wiring installed securely and in accordance with Section 50 in specification.			
20.07	Battery boost plug securely mounted			
20.08	Battery cover fitted			
20.09	Driver controlled power isolation switch			
20.10	Battery manual master switch			
Check item	Panel, Paint and Exterior	Yes (✓) No (X)	Comment	Rectified
21.01	Exterior roof panels			
21.02	Exterior side panels			
21.03	Front canopy			
21.04	Lower front panels and bumper bar			
21.05	Rear canopy			
21.06	Rear corner panels			
21.07	Rear bumper bar			
Check item	Access Doors - Exterior	Yes (✓) No (X)	Comment	Rectified
22.01	Rear engine door - aligned and finish			
22.02	Left hand side engine door - aligned and finish			
22.03	Right hand engine door - aligned and finish			
22.04	Fuel tank door - aligned and finish			
22.05	Right hand fuel tank door - aligned and finish			
22.06	Battery door - aligned and finish			

22.07	All pinch weld fitted and secure			
22.08	All budget locks fitted and operational			
22.09	All gas stays secure and operational			
Check item	Bus Exterior	Yes (✓) No (X)	Comment	Rectified
23.01	Engine bay lights – operation			
23.02	Rear engine door safety switch			
23.03	Accessories – Exterior			
23.04	Check Recovery Coupling			
23.05	Condition Wheel Rims.			
23.06	Front Wheel Trims Fitted			
23.07	Emergency Exit signs fitted 'Retroreflective'			
23.08	EDR decals fitted 'retroreflective'			
Check item	Radio and CCTV	Yes (✓) No (X)	Comment	Rectified
24.01	2-way installation - finish			
24.02	2-way installation - commissioned			
24.03	CCTV installation - finish			
24.04	CCTV installation - commissioned			
24.05	CCTV Monitors			
Check item	Signage	Yes (✓) No (X)	Comment	Rectified
25.01	Supply and fit wiring diagrams			
25.02	Signage and Decals			
25.03	Signage as per customer specifications			

Check item	Detailing	Yes (✓) No (X)	Comment	Rectified
26.01	Bus Cleanliness – Interior			
26.02	Bus Cleanliness – Exterior			
Check item	Road Test	Yes (✓) No (X)	Comment	Rectified
27.01	Departure Check: Bring engine to operating temperature.			
27.02	Departure Check - Bring A/C saloon to operating temperature.			
27.03	Record : Road Condition Dry / Wet / Other.			
27.04	Record :Traffic Conditions Light/ Average/ Heavy.			
27.05	Record: Ambient Temperature			
27.06	Record: Time Out			
27.07	Record : Time In			
27.08	Record: Saloon Audible Reading. Drivers Area / TT/ Rear Seat			
27.09	Check Front Saloon Door Operation TS 155			
27.10	Check Rear Saloon Door Operation TS 155			
27.11	Check Voice Over - Handbrake.			
27.12	Check Voice Over - Driver's Door Ajar.			
27.13	Check Voice Over - Emergency Hammer			
27.14	Check Wheelchair Ramp Operation.			
27.15	Check Operation of Driver's Seat			
27.16	Check Operation of Steering Wheel Adjustment.			
27.17	Check Neutral Start Function.			
27.18	Check Hand Brake - Apply and Attempt to Drive Off			
27.19	Check Foot Brake Operation - Under Harsh Brake Application.			

27.20	Check Door Brake - Front Saloon Door.			
27.21	Check Door Brake - Rear Saloon Door.			
27.22	Check Internal Exhaust Pipe Temperature.			
27.23	Check All Instrument Readings and Icon Alarms.			
27.24	Check Engine Start from Engine Bay.			
27.25	Check Engine Stop from Engine Bay.			
27.26	Inspector/or nominee to Drive and Operate Bus.			
27.27	Check Gear shift - Non select without engaging neutral first.			
27.28	Check Gear shift - Non select without engaging foot brake.			
Check item	General	Yes (✓) No (X)	Comment	Rectified
28.01	Fire Suppression System: Use 6 month checklist			
28.02	Tyre Pressure Monitoring System: Use 6 month checklist			
28.03	PID check			

TOTAL DEFECTS DETECTED AT INITIAL PRE - DELIVERY	
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Comments:

Supplier Company: _____
Name Supplier Representative: _____
Signature : _____
Date : _____

Operator Company: _____
Name Operator Representative: _____
Signature : _____
Date : _____

Schedule 13 - Deed of Warranty

THIS DEED DATED THE _____ day of _____ 20__

BETWEEN Transport for NSW of 231 Elizabeth Street, Sydney NSW 2000 , ABN 18 804 239 602 ("the Principal")

AND [Name, address and ABN of Warrantor] ("the Warrantor ")

RECITALS:

- A The Warrantor has supplied [insert details] ("Equipment") to [Insert full legal name and ACN/ABN of the Supplier] ("the Supplier") or a sub-contractor of the Supplier for the services ("Services") being supplied by the Supplier under the Deed of Standing Offer for Buses Procurement dated [insert date] between the Supplier and the Principal ("Deed").
- B It is a requirement of the Deed that the Supplier procure the Warrantor to give the following warranties in favour of the Principal with respect to the Equipment.

OPERATIVE PROVISIONS:

- 1 The definitions in the Deed apply to this Deed of Warranty.
- 2 The Warrantor:
- (a) warrants to the Principal that the Equipment will be to the quality and standard stipulated by the Deed and will be of merchantable quality and fit for the purpose for which it is required; and
 - (b) gives the below warranty with respect to the Equipment:
 - (i) [insert detail of warranties];
- The each of the above warranties are in addition to and do not derogate from any other warranty applicable under or in connection with the Deed or this Deed of Warranty (including at law).
- 3 The Warrantor warrants to the Principal that it will replace so much of the Equipment as within the period referred to in clause 2 above:
- (a) is found to be of a lower quality or standard than that referred to in clause 2; or
 - (b) shows deterioration of such extent that in the opinion of the Principal the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.
- 4 The Warrantor covenants to the Principal that it will bear the cost of any work necessary to any part of the Services to enable the requirements of clause 3 to be carried out or to make good the Services afterwards.

- 5 The Warrantor acknowledges and agrees that:
- (a) the Equipment may be incorporated into the Buses or the Services will be installed on or form a part a part of the Buses;
 - (b) the ownership or use of the Buses supplied in accordance with this Deed may from time to time be transferred, assigned or leased by the Principal or the Principal's nominee, agent or assignee to various Bus Operators and transferred between Bus Operators; and
 - (c) each of the warranties given by the Warrantor in this Deed of Warranty:
 - (i) is given in favour of, and may be enforced by, the Principal, the Principal's nominee, agent or assignee, each and any Bus Operator who orders, owns, accepts delivery of, leases or uses at any time any Bus or other Services into which the Equipment is incorporated and supplied by the Supplier under the Deed (each a **Beneficiary**); and
 - (ii) may be assigned, or the benefit otherwise transferred, by any Beneficiary, or any of their successors, to any person without the consent of the Warrantor.
- 6 The Warrantor acknowledges to the Principal that nothing contained in this Deed of Warranty is intended to nor will render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.
- 7 This Deed of Warranty may not be revoked or otherwise modified without the prior written consent of the Principal.
- 8 A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy by email to the address last advised by one of them to the other.
- 9 The address for services of a notice or other communication under this Deed of Warranty for a party is, in the case of the:

Warrantor

Physical address

Postal address

Email address

Supplier

Physical address

Postal address

Email address

Principal

Physical address

Postal address

Email address

Or such other address as a party may notify to the other party in writing from time to time.

- 10 A notice or other communication is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after 3 Business Days;
 - (c) sent by post from or to an address outside Australia, after 10 Business Days; or
 - (d) sent by email, when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).
- 11 The laws of New South Wales govern this Deed of Warranty and the parties submit to the exclusive jurisdiction of the courts of New South Wales.
- 12 Subject to applicable laws, the parties may execute this Deed of Warranty and any document entered into under it, electronically (including through an electronic platform) and in one or more counterparts. Each party consents to the other party signing by electronic means.
- 13 The parties agree that if any party signs this Deed of Warranty under clause 12, then:
- a. an electronic form of this Deed of Warranty with that party's electronic signature(s) appearing will constitute an executed counterpart; and
 - b. a print-out of this Deed of Warranty with that party's electronic signature(s) appearing will also constitute an executed counterpart.

Executed as a Deed

SIGNED, SEALED AND DELIVERED)	
)	
by [name and position of person signing])	_____
for and on behalf of the Principal)	
but not so as to incur any personal)	
liability in the presence of:)	
_____)	_____
[insert name of Witness])	(signature of Witness)

SIGNED, SEALED AND DELIVERED)	
)	
by _____)	_____
[insert name of Warrantor])	(signature of Warrantor)
)	
in the presence of _____)	_____
[insert name of Witness])	(signature of Witness)

Schedule 14- Performance Guarantee

THIS DEED DATED THE _____ day of _____ 20__

BETWEEN [Transport for NSW of 231 Elizabeth Street, Sydney NSW 2000 ABN 18 804 239 602] or
[Name, address and ABN of Bus Operator] (***delete as applicable***) ("the Beneficiary")

AND [Name, address and ABN of Guarantor] ("the Guarantor ")

RECITALS:

- A [Insert full legal name and ACN/ABN of the Supplier] ("the Supplier") has agreed to supply Services to Transport for NSW ("TfNSW") and TfNSW contracted bus operators under the Deed of Standing Offer for Buses Procurement dated [insert date] between the Supplier and TfNSW ("Deed").
- B In the event the Beneficiary named in this Performance Guarantee is a TfNSW contracted bus operator, then the bus operator has issued an Order for the Supplier to supply Services to the bus operator under the Deed.
- C The Guarantor agrees to provide the guarantees and indemnities in this Performance Guarantee to the Beneficiary.

OPERATIVE PROVISIONS:

The Guarantor guarantees to the Beneficiary the performance of the obligations undertaken by the Supplier under the Deed on the following terms and conditions:

- 1 The definitions in the Deed apply to this Performance Guarantee.
- 2 In the event the Beneficiary named in this Performance Guarantee is TfNSW, then this Performance Guarantee is provided in favour of TfNSW in its own right as well as in its capacity as an agent for TfNSW contracted bus operators that has issued an Order for the Supplier to supply Services to the bus operator under the Deed. This Performance Guarantee can be enforced by the Principal, the TfNSW contracted Bus Operator and/or the Principal acting on behalf of the TfNSW contracted bus operator.
- 3 The Guarantor unconditionally and irrevocably guarantees to the Beneficiary that the Supplier will perform and observe all of the Supplier's obligations under the Deed and will discharge all of its liabilities under the Deed.
- 4 In the event of default by the Supplier, the Guarantor covenants with the Beneficiary to perform and observe all of the Supplier's obligations under the Deed and to discharge all of the Suppliers liabilities under the Deed or to cause those obligations to be performed and observed or liabilities to be discharged.
- 5 Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Performance Guarantee and the Beneficiary may enforce this Performance Guarantee against all or any of the persons who constitute the Guarantor.

- 6 The Guarantor, as a separate, additional and primary liability, unconditionally and irrevocably will indemnify and keep indemnified the Beneficiary from and against all losses, damages, costs and expenses of any kind which may be suffered or incurred by the Beneficiary by reason or in consequence of:
- (a) default by the Supplier in performing or observing its obligations or discharging its liabilities under the Deed;
 - (b) the Beneficiary attempting to enforce any of the Supplier's obligations under the Deed; or
 - (c) the Beneficiary attempting to enforce or preserve any of its rights under this Performance Guarantee.
- 7 The liability of the Guarantor under this Performance Guarantee will be absolute and will not be subject to the execution of this Performance Guarantee or any other instrument or document by any person other than the Guarantor, and will not be subject to the performance of any condition precedent or subsequent.
- 8 The liability of the Guarantor under this Performance Guarantee will not be affected by any act, omission, matter or thing that would otherwise operate in law or in equity to reduce or release the Guarantor from that liability. Without limitation, that liability will not be affected by:
- (a) the granting by the Beneficiary to the Supplier of time, waiver, indulgence or concession or the making of any composition or compromise with the Supplier;
 - (b) the Beneficiary forbearing to enforce or neglecting to exercise any right against the Supplier;
 - (c) any laches, acquiescence or other act, neglect, default, omission or mistake by the Beneficiary;
 - (d) any variation of any of the obligations and liabilities under the Deed, made either with or without the knowledge of the Guarantor;
 - (e) the release of any of the obligations and liabilities under the Deed; or
 - (f) any failure by the Beneficiary to disclose to the Guarantor any fact, circumstance or event relating to the Supplier at any time prior to or during the currency of this Performance Guarantee.
- 9 All payments by the Guarantor under this Performance Guarantee are to be free of any set-off or counterclaim and without deduction or withholding.
- 10 The Beneficiary will not be required to make any claim or demand upon the Supplier or to enforce any right, power or remedy against the Supplier in respect of its obligations and liabilities under the Deed before making any claim or demand on the Guarantor under this Performance Guarantee.
- 11 The obligations of the Supplier will continue in force and effect until the completion of the undertakings of this Performance Guarantee by the Guarantor.
- 12 Where the Supplier has failed to perform under the Deed, the obligations of the Guarantor will continue even though the Supplier has been the subject of an Insolvency Event.
- 13 The rights and obligations under this Performance Guarantee will continue until all obligations of the Supplier under the Deed have been performed, observed and discharged.

- 14 Any provision of this Performance Guarantee which is illegal, void or unenforceable will be ineffective to the extent only of the illegality, voidness or unenforceability without invalidating the remaining provisions of this Performance Guarantee.
- 15 Any settlement between the Guarantor and the Beneficiary will be conditional upon any security or payment given or made to Beneficiary by the Supplier, the Guarantor or any other person in relation to the obligations and liabilities under the Deed not being avoided, repaid or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force.
- 16 In the event of any avoidance, repayment or reduction, the Beneficiary may recover the value or amount of the security or payment avoided, repaid or reduced from the Guarantor subsequently, as if the settlement or discharge had not occurred.
- 17 A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy by email to the address last advised by one of them to the other.
- 18 The address for services of a notice or other communication under this Performance Guarantee for a party is, in the case of the:

Guarantor

Physical address

Postal address

Email address

Supplier

Physical address

Postal address

Email address

Beneficiary

Physical address

Postal address

Email address

Or such other address as a party may notify to the other party in writing from time to time.

- 19 A notice or other communication is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after 3 Business Days;
 - (c) sent by post from or to an address outside Australia, after 10 Business Days; or

- (d) sent by email, when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).
- 20 The laws of New South Wales govern this Performance Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.
- 21 Subject to applicable laws, the parties may execute this Performance Guarantee and any document entered into under it, electronically (including through an electronic platform) and in one or more counterparts. Each party consents to the other party signing by electronic means. The parties agree that if any party signs this Performance Guarantee electronically, then:
- an electronic form of this Performance Guarantee with that party's electronic signature(s) appearing will constitute an executed counterpart; and
 - a print-out of this Performance Guarantee with that party's electronic signature(s) appearing will also constitute an executed counterpart.

Executed as a Deed

SIGNED, SEALED AND DELIVERED)	
)	
by <i>[name and position of person signing]</i>)	_____
for and on behalf of the Beneficiary)	
but not so as to incur any personal)	
liability in the presence of:)	
_____)	_____
[insert name of Witness])	(signature of Witness)

SIGNED, SEALED AND DELIVERED)	
)	
by _____)	_____
[insert name of Guarantor])	(signature of Guarantor)
)	
in the presence of _____)	_____
[insert name of Witness])	(signature of Witness)

Schedule 15 - Financial Security

[insert date]

TO: Transport for NSW on behalf of the State of New South Wales (**Beneficiary**)

Address: 231 Elizabeth Street

Sydney NSW 2000

Attention: Director, Service Delivery

1 [insert] ABN [insert] (**Supplier**) has entered into an agreement with the Beneficiary under which the Supplier has agreed to, among other things, provide bus services in Sydney, New South Wales in accordance with the terms and conditions of that agreement (**Contract**).

2 At the request of the Supplier, and in consideration of the Beneficiary agreeing to enter into the Contract and accept the form of this bond for the purposes of the Contract (**Bond**):

[Insert issuer] (**Issuer**),

unconditionally and irrevocably covenants to pay to the Beneficiary on receipt of first demand by the Beneficiary any sum or sums which may be demanded by the Beneficiary up to an aggregate maximum of:

A\$[insert] ([insert amount in words]) (**Guaranteed Amount**).

3 Payment under this Bond will be made by the Issuer to the Beneficiary:

- a. without reference to the Supplier or any agreement between the Beneficiary and the Supplier;
- b. despite any notice by the Supplier or any other person (aside from the Beneficiary) to the Issuer not to pay the whole or any part of the sum demanded; and
- c. despite anything which but for this provision might operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
 - i. any variation or alteration to any contract between the Beneficiary and the Supplier; or
 - ii. the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person.

4 This Bond expires at 4.00 pm Sydney time on [insert dd/mm/yyyy] (**Expiry Date**).

5 The Issuer will have no liability in respect of any claim under this Bond after the Expiry Date.

6 The Beneficiary may make a claim under this Bond by delivering a written demand purportedly signed by an authorised officer of the Beneficiary to the Issuer as its address set out above. The Beneficiary can make one or more demands under this Bond. The Guaranteed Amount will reduce by the aggregate of all payments made by the Issuer to the Beneficiary under this Bond. The Beneficiary may assign its rights under this Bond to any person to whom it has assigned some or all of its rights under the Contract provided that the Beneficiary has notified the Issuer of that assignment.

- 7 Other than as set out above, the Beneficiary cannot assign or transfer its rights under this Bond without the prior consent of the Issuer, not to be unreasonably withheld.
- 8 Despite anything else in this Bond, the Issuer may terminate this Bond at any time by payment to the Beneficiary of the Guaranteed Amount at that time or any lesser amount that the Beneficiary may agree in writing.
- 9 This Bond is governed by the laws of the State of New South Wales and is subject to the exclusive jurisdiction of the courts of the State of New South Wales.

EXECUTED as a deed.

If this Bond is being executed under power of attorney, the attorney executing this Bond states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed, sealed and delivered for #name# by #his/her/its# attorney under power of attorney dated #date# who has no notice of revocation of that power of attorney in the presence of:	
Signature of witness	Signature of attorney
Name of witness (print)	Name of attorney (print)

Schedule 16 - Service Life Details

Service life and change out time for major components

The service life (measured as a distance or time) and the standard replacement or overhaul time for each component is set out in the Supplier's RFP Returnable Schedule 3 Response.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED by the signatory)
for **Transport for NSW ABN 18 804 239 602** but not)
so as to incur any personal liability in the presence)
of:

Witness

Signatory

Print Name

Print Name

Date

Position

☐ If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW), and the witness affixed their electronic signature to a counterpart of this document.

☐ If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

SIGNED, SEALED AND DELIVERED by [****insert**] ABN)
[****insert**] in accordance with section 127 of the)
Corporations Act:)

Director/Secretary or witness (if sole director and
secretary) ~~strikeout whichever is not applicable~~

Director

Print Name

Print Name

Date

Date

☐ If ticked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW), and the witness affixed their electronic signature to a counterpart of this document.

☐ If ticked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

EXHIBIT– A

The Supplier's RFP Returnable Schedule 3 (Compliance with Scope of Work) Response titled '[**insert]' and dated '[**insert]' is deemed to be incorporated into this Exhibit.

Refer to Exhibit C for additional relevant details.

EXHIBIT– B

The Supplier's RFP Returnable Schedule 5 Price Response titled '[**insert]' and dated '[**insert]' is deemed to be incorporated into this Exhibit.

EXHIBIT– C

The Supplier's RFP Response includes the Supplier's:

1. original RFP response (excluding any ZEB RFI Response);
2. clarification responses; and
3. other documents submitted to the Principal in connection with the RFP process.

As at the Commencement Date, the Principal has elected to store (for its own record keeping purposes) copies of the Supplier's RFP Response in the internal electronic document repository which is accessible by the Principal and referred to as 'Objective ECM Navigator' (<http://Objective.transport.nsw.gov.au:8008> reference: qT980966 22/004412).