

Rural & Regional Bus Service Contract (Large)

Transport for NSW

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Date

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

The Operator described in Item 1 of Attachment A (**Operator**)

Recitals

- A. The *Passenger Transport Act 2014* (NSW) provides that the terms and conditions on which any public passenger service is to be carried on within, or partly within, New South Wales are to be set forth in a passenger service contract entered into between an accredited operator of a public passenger service and TfNSW (on behalf of the Crown).
- B. The Operator is an accredited operator of bus services, and has agreed to carry out the Contract Bus Services on the terms set out in this Contract.

It is agreed as follows.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

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

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

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

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

Approved Subcontractor Security Documents means:

- (a) any document that TfNSW requires (in its sole discretion) to be provided or entered into by any Approved Subcontractor and any other parties in connection with an Approved Subcontractor performing any Contract Bus Services; and
- (b) any ancillary document required by the terms of a document referred to in Clause (a) of this definition,

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

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

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

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

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

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

Bus Category means:

- (a) for an Existing Bus, the bus category shown in Annexure 1 of the Contract Buses and Contract Depots Schedule; and
- (b) for a New Bus, the bus category determined by TfNSW based on the process set out in Clause 5.4(m), having regard to the authorised adult seating capacity of each bus category set out in the Bus Category Table.

Bus Category Table means the following table:

Bus Category	Authorised Adult Seating Capacity (excluding Driver)
1	8-14
2	15-28
3	29-43
4	44+

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

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

Bus Operator means an accredited (as defined in the PT Act) operator of bus services in New South Wales.

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

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

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

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

Bus Stop means a stop, including a transit stop, or station along a Bus Route for Buses designated to set down or pick up passengers.

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

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

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

Cancelled Trip means the whole of the advertised Timetable Trip did not complete or did not commence within 15 minutes of the Timetable, or a Dedicated School Services Timetable Trip did not complete or did not commence within 30 minutes of the Dedicated School Services Timetable.

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

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

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

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

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

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

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

- (a) loss of income or revenue;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business; and
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

Consideration has the meaning given by the GST Act.

Contract means this Rural & Regional Bus Service Contract.

Contract Bus means:

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

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

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

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

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

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

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

Contract Month means:

- (a) a period of one month commencing on the Services Commencement Date and ending on the day before:
 - (i) the corresponding date in the next calendar month; or
 - (ii) if there is no corresponding date in the next calendar month, the first day of the calendar month that next follows; and
- (b) each subsequent period of one month, extending from the relevant date in one calendar month to the day before:
 - (i) the corresponding date in the following month; or
 - (ii) if there is no corresponding date in the next calendar month, the first day of the calendar month that next follows,

during the Term.

Contract Quarter means a period of three consecutive Contract Months commencing on the Services Commencement Date and each subsequent period of three consecutive Contract Months during the Term.

Contract Year means a period of 12 consecutive Contract Months commencing on the Services Commencement Date and each subsequent period of 12 consecutive Contract Months ending on the day before each anniversary of the Services Commencement Date during the Term.

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

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

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

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

Critical Transition Milestones means the milestones referred to in Clause 4.1(a).

DCIS means the centralised Digital Customer Information Service that receives and communicates data and information in relation to public transport services, through Transportnsw.info.

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

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

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

Depot Headlease means the lease in the form contained in Annexure 4 of the Contract Buses and Contract Depots Schedule.

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

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

Discretionary Extension Period means the extended period of this Contract, referred to in Clause 3.4(a).

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

Driver Authority means any requirements with respect to drivers under the PT Act or any regulations made under the PT Act.

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

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

and ending on the Termination Date.

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

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

Existing Bus means any Bus listed in Annexure 1 of the Contract Buses and Contract Depots Schedule (as amended from time to time).

Existing Depot means a Contract Depot owned or used by the Operator at the commencement of this Contract, as listed in Annexure 3 of the Contract Buses and Contract Depots Schedule.

Extension Period means the three year extended period of this Contract, referred to in Clause 3.3(a).

Fare means the price payable for a Ticket.

Fares and Ticketing Schedule means Schedule 7 to this Contract.

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

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

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

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

Financier means any financier of the Operator that has a Security Interest over a New Bus.

Force Majeure Event means:

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

the consequence of which is beyond the control of the Parties and could not have been prevented, overcome or remedied by the exercise by a Party exercising a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such prudent and competent person).

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

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

Governance Schedule means Schedule 6 to this Contract.

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

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

Growth Contract Bus means:

- (a) a Bus owned by the Operator and which is purchased or acquired by the Operator during the Term; or
- (b) a Bus in respect of which the Operator enters into a Bus Lease during the Term, for the purposes of increasing the number of Buses in the Contract Bus Fleet in connection with performing the Contract Bus Services, as identified in Annexure 2 of the Contract Buses and Contract Depots Schedule (as amended from time to time).

GST has the meaning given by the GST Act.

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

GST Group has the meaning given by the GST Act.

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

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

Incomplete Trip means only a part of the advertised Contract Bus Service operated. This means the Trip was shortened to start or end at a point/s between the advertised start and finish, and/or intermediate Bus Stops are missed.

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

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

Initial Term means the period of five years from the Services Commencement Date, referred to in Clause 3.2(a).

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

Insolvency Event means when the Operator:

- (a) stops or suspends payment of all or a class of its debts;
- (b) becomes insolvent within the meaning of section 9 of the *Corporations Act 2001* (Cth) or bankrupt within the meaning of the *Bankruptcy Act 1966* (Cth) or is otherwise unable to pay its debts when they fall due;
- (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the *Corporations Act*;

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

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

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

Invoice has the meaning given by the GST Act.

Issuer means:

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

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

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

KPI Schedule means Schedule 4 to this Contract.

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

Lessor means any lessor in respect of a Bus Lease for a New Bus.

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

New Bus means:

- (a) any Bus purchased by the Operator during the Term; or
- (b) any Bus in respect of which the Operator enters into a Bus Lease during the Term, including a Growth Contract Bus and a Replacement Contract Bus.

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

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

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

Notifiable Safety Incident means an accident or incident described in section 88(3)(a) or section 88(3)(b) of the Passenger Transport (General) Regulation 2017 (NSW) involving a Contract Bus (whether in service or not) or a bus being used to provide a Contract Bus Service, or occurring at a Contract Depot.

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

Operator includes, if the Operator is a partnership, any partner in the partnership.

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

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

Operator Security Documents means any required Performance Bond.

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

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

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

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

Payments means those payments set out in the Payment Schedule.

Payment Schedule means Schedule 3 to this Contract.

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

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

Permitted Security Interest means:

- (a) a Security Interest created or outstanding in respect of any asset other than a Transfer Out Contract Bus or a Bus Lease in respect of a Transfer Out Contract Bus;
- (b) a Security Interest created or outstanding in respect of a Transfer Out Contract Bus with the prior written consent of TfNSW; or
- (c) a lien or charge:
 - (i) which arises by operation of law in the ordinary course of day-to-day trading;

- (ii) which does not secure Financial Indebtedness; and
- (iii) under which the indebtedness secured by it is paid when due or is being contested in good faith.

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

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

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

Previous Service Contract means a Service Contract between TfNSW (or a predecessor Governmental Agency) and the Operator, subsisting immediately before the commencement of this Contract, in relation to the provision of bus services the same as or similar to the Contract Bus Services.

Privacy Laws means:

- (a) if the Operator is an “organisation” as defined under the *Privacy Act 1988* (Cth), the *Privacy Act 1988* (Cth); or
- (b) if the Operator is not an “organisation” as defined under the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

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

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

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

RailCorp means Rail Corporation New South Wales, including Sydney Trains and NSW Trains, as the context permits.

Related Entity has the meaning given in the Corporations Act.

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

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

- (a) a Bus which reaches its maximum age, as set out in Paragraph 2 of the Contract Buses and Contract Depots Schedule; or
- (b) a Bus which is irretrievably lost, stolen, destroyed or damaged beyond economic repair,

during the Term, as identified in Annexure 2 of the Contract Buses and Contract Depots Schedule (as amended from time to time).

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

Reporting Schedule means Schedule 5 to this Contract.

Representatives means those representatives of the Parties specified in Item 2 and Item 3 of Attachment A of this Contract.

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

Revenue and Revenue Data Protection Plan means a plan prepared by the Operator outlining how the Operator will protect revenue and revenue data under this Contract.

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

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

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

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

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

Seat Belts in Buses Program means the NSW government's program, which commenced in August 2013, to install seat belts on nominated school buses.

Secretary means the Secretary of the Department of Transport.

Security Interest means:

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

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

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

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

Services Schedule means Schedule 1 to this Contract.

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

Service Variation means:

- (a) a temporary or continuing change in the nature, scope or level of the Contract Bus Services (including the removal of a Trip);
- (b) a temporary or continuing variation to a Bus Route (including the creation of a new Bus Route or the removal of an existing Bus Route);
- (c) a temporary or continuing variation to the Bus Schedules;
- (d) a temporary or continuing change to the Bus Category of the Contract Bus required to service a Bus Route; or

- (e) a new Bus being introduced into the Contract Bus Fleet under the Seat Belts in Buses Program.

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

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

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

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

State means the State of New South Wales.

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

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

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

Step-in Powers has the meaning given to that term in Clause 29.1(a).

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

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

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

Subsidiary has the meaning given in the Corporations Act.

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

Taxable Supply has the meaning given by the GST Act.

Tax Invoice has the meaning given by the GST Act.

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

Term means the Initial Term and any Extension Period or Discretionary Extension Period (if applicable).

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

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

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

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

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

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

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

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

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

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

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

Transaction Document means:

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

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

Transfer Out Contract Bus means any Contract Bus, other than an Existing Bus, which the Operator may be required to sell or transfer in accordance with Clause 15.5.

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

Transportnsw.info means the call centre service (telephone 131500) and website service (www.transportnsw.info) providing information on public transport services, or any successor public transport information system.

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

Trip on Time means, for Published Timetable Trips, a Contract Bus departing a Bus Stop no more than 1 minute 59 seconds early and no more than 5 minutes 59 seconds late compared to Timetable and for Headway Trips means commencing each Headway Trip within 5 minutes

59 seconds of published Headway. Where Contract Buses link with train services in the Timetable, time is measured from when passengers arrive at the Bus Stop.

Trust means the trust (if any) described in Item 10 of Attachment A.

Trust Deed means the trust deed (if any) described in Item 11 of Attachment A.

Trust Property means all assets and property of and in respect of the Trust.

TS 150 means technical specification 150, titled "safety warning system for school buses" (or similar), published by RMS.

Vehicle Termination Payment means the amount calculated under Paragraph 4.6 of the Payment Schedule.

Viability Review means a review conducted by TfNSW to determine the number of passengers using a Dedicated School Service over a two year period, commencing from the date notified by TfNSW to the Operator (whether such notification has been given under the Previous Service Contract or is given under this Contract).

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

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

WHS Law means:

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

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

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

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

1.2 Interpretation

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

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a Clause, Schedule, Attachment or Annexure is a reference to a Clause of, or a Schedule, Attachment or Annexure to, this Contract.

- (f) A reference to an agreement or document (including, without limitation, a reference to this Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail.
- (h) A reference to a party to this Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset.
- (m) A reference to any Governmental Agency or professional body includes the successors of that Governmental Agency or professional body.
- (n) A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- (o) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (p) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (q) Nothing in this Contract is to be interpreted against a party solely on the ground that the party put forward this Contract or any part of it.
- (r) Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month.
- (s) A reference to the words "include", "includes" and "including" means "including without limitation".

1.3 *Schedules*

- (a) All terms that have defined meanings in the Contract have the same meaning in the Schedules as they do in the Contract.
- (b) A reference to a Clause contained in a Schedule is a reference to a Clause in the Contract.
- (c) A reference to an Item or Paragraph is a reference to an Item or Paragraph of a Schedule or Attachment.

1.4 *Precedence of documents*

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

- (a) the terms of this Contract;
- (b) the Schedules and Annexures to the Contract;
- (c) the Attachments to this Contract; and
- (d) the Transaction Documents (excluding this Contract).

1.5 *Consents or approvals*

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

1.6 *TfNSW's Capacity*

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

1.7 *Delegation*

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

1.8 *No fetter on TfNSW's powers*

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

1.9 *Transfer of Functions*

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

2 Parties' Representatives

2.1 Appointment of Representatives

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

3 Transition Period and Term

3.1 Transition Period

- (a) This Contract commences on the date it is signed by both Parties and will be in the Transition Period until the Services Commencement Date specified in Item 4 in Attachment A of the Contract.

3.2 Term

- (a) The Term commences on the Services Commencement Date and continues for a period of five years (**Initial Term**), unless extended under Clause 3.3 or Clause 3.4, or earlier terminated in accordance with Clause 30.

3.3 Extension by TfNSW

- (a) The Term will be extended for an additional three year period (**Extension Period**) automatically, provided that TfNSW, in its absolute discretion, has determined that the Operator has not materially breached the following Key Performance Indicators during the Initial Term:
 - (i) any Class 1 Key Performance Indicator on three or more occasions (whether it is the same Key Performance Indicator or a different Key Performance Indicator on each occasion), during any 6 month period; or
 - (ii) any Class 1 Key Performance Indicator on four or more occasions (whether it is the same Key Performance Indicator or a different Key Performance Indicator on each occasion), during any 12 month period.
- (b) TfNSW must give the Operator notice in writing prior to the end of the Initial Term, advising the Operator of TfNSW's determination for the purposes of Clause 3.3(a).
- (c) The terms of this Contract will continue to apply during any Extension Period.

3.4 Discretionary Extension Period

- (a) TfNSW may in its absolute discretion, extend the Term for an additional period of 12 months (**Discretionary Extension Period**), by notice in writing to the Operator 6 months prior to the expiration of the Term, or such other time agreed between TfNSW and the Operator.
- (b) Nothing in this Clause 3.4 shall be construed as affording the Operator a right or expectation of renewal or extension of this Contract. The Operator will have no Claim in connection with a failure by TfNSW to extend the Term by the Discretionary Extension Period, or for any Loss arising in connection with any potential Discretionary Extension Period.

- (c) The terms of this Contract will continue to apply during any Discretionary Extension Period.

3.5 *New Contract*

- (a) If TfNSW, in its absolute discretion, determines that it is in the public interest that the Contract Bus Services continue to be provided following the expiry of the Term, then TfNSW must notify the Operator that TfNSW proposes to enter into a further contract for the provision of the Contract Bus Services (**New Contract**), no later than 12 months before the expiry of the Term.
- (b) If TfNSW proposes to enter into a New Contract in accordance with Clause 3.5(a), TfNSW must give the Operator a first right to negotiate the New Contract, unless:
 - (i) A Termination Event has occurred at any time during the Term; or
 - (ii) The Operator fails to satisfy the requirements of Clause 3.3(a) and accordingly the Term is not extended for the Extension Period.
- (c) If TfNSW is required to give the Operator a first right to negotiate the New Contract, then TfNSW and the Operator must negotiate in good faith to agree the terms and conditions of the New Contract, including term, payments, reporting, service variations and key performance indicators.

4 Critical Transition Milestones

4.1 *Critical Transition Milestones*

- (a) The Operator must fulfil the following critical transition milestones, to TfNSW's satisfaction, by the timeframes stated below:
 - (i) consider the information contained in the Service Level Schedule (as at the commencement of this Contract) and by the Services Commencement Date, prepare Timetables or Dedicated School Services Timetables (as applicable) and Bus Route maps and descriptions, in a format determined by TfNSW;
 - (ii) demonstrate that it can submit data to OSD, in compliance with the following TfNSW specifications:
 - (A) "Operator to OSD Interface Requirements Specification" (version 4.0); and
 - (B) "Transport Operations Data Interchange Specification" (version 2.5.0), or
 - (C) any other revised, replacement or additional specifications notified by TfNSW to the Operator from time to time,

4 weeks before the Services Commencement Date;
 - (iii) delivery to TfNSW of acceptable proof of currency and coverage of the insurances referred to in Clause 26.1(a), by the Services Commencement Date;
 - (iv) delivery to TfNSW of the Performance Bond in accordance with Clause 4.3, by the Services Commencement Date; and

- (v) undertake and obtain all other things necessary to be ready and able to provide the Contract Bus Services under this Contract, by the Services Commencement Date,

(each a Critical Transition Milestone).

4.2 *Consequences of Non-Fulfilment of a Critical Transition Milestone*

- (a) If the Operator fails to comply with or meet a Critical Transition Milestone, TfNSW may:
 - (i) require the Operator to and the Operator must, pay TfNSW a credit of \$800 per day, for each day that a Critical Transition Milestone is overdue, being a genuine pre-estimate, agreed by the parties, to off-set part of TfNSW's direct or indirect costs arising from the Operator's non-fulfilment of the Critical Transition Milestone; or
 - (ii) terminate this Contract by notice in writing to the Operator with immediate effect, and this Contract will be of no further effect.
- (b) If TfNSW requires a credit from the Operator in accordance with Clause 4.2(a)(i), TfNSW may:
 - (i) set-off the amount of the credit against any future Payments due from TfNSW to the Operator; or
 - (ii) immediately recover the amount of the credit as a debt due and payable by the Operator to TfNSW.
- (c) If TfNSW terminates the Contract during the Transition Period in accordance with Clause 4.2(a)(ii), the Operator will not be entitled to claim any amount for set-up costs or any other costs incurred during or before the Transition Period.

4.3 *Performance Bond*

- (a) The Operator must, on or before the Services Commencement Date, procure the issue to TfNSW of a Performance Bond which:
 - (i) is issued by an Issuer with a Required Rating and approved by TfNSW (which approval must not be unreasonably withheld);
 - (ii) has a face amount which is no less than the Performance Bond Amount;
 - (iii) expires no earlier than the Initial Term; and
 - (iv) is payable at an office of the Issuer in Sydney.
- (b) If the Operator receives notice from TfNSW that the Term is to be extended for the Extension Period in accordance with Clause 3.3, or the Discretionary Extension Period in accordance with Clause 3.4, the Operator must, prior to the commencement of the Term, procure the issue to TfNSW of a replacement Performance Bond which:
 - (i) complies with the requirements of Clauses 4.3(a)(i), 4.3(a)(ii) and 4.3(a)(iv); and
 - (ii) expires no earlier than the Extension Period or the Discretionary Extension Period (as applicable).

- (c) At any time on and from the Termination Date, TfNSW may make a demand under the Performance Bond on account of, and apply the Performance Bond against, any amount which TfNSW considers:
- (i) is due and payable by the Operator to TfNSW, or is TfNSW's Loss or Consequential Loss, under or in connection with a Transaction Document (which may include costs associated with enforcing the Performance Bond, any Step-in Costs and any costs associated with appointing a Successor Operator (who is not the Operator)); or
 - (ii) the Operator may or will become liable to pay to TfNSW, or a Successor Operator (who is not the Operator) in respect of its obligations under a Transaction Document following the Termination Date.
- (d) If:
- (i) the Issuer of the Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 4.3(c)(i) and all or part of the amount in respect of which demand was made was not actually due and payable by the Operator to TfNSW or a Successor Operator; or
 - (ii) the Issuer of the Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 4.3(c)(ii) and the Operator does not in fact become liable to pay to TfNSW or a Successor Operator all or part of the amount in respect of which demand was made,
- then TfNSW must pay to the Operator:
- (iii) the amount (the **Relevant Amount**) which was not actually due and payable by the Operator to TfNSW or a Successor Operator or for which the Operator did not in fact become liable to pay to TfNSW or a Successor Operator; and
 - (iv) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Performance Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Operator. Such interest must be paid on the date the Relevant Amount is paid to the Operator.
- (e) TfNSW must return to the Operator an existing Performance Bond once TfNSW has received a replacement Performance Bond.
- (f) TfNSW must, subject to any rights TfNSW may have in relation to the Performance Bond, return the Performance Bond (less any amounts drawn under Clause 4.3(c)) to the Operator within 12 months after the Termination Date.
- (g) TfNSW must, as soon as practicable after TfNSW has made a demand under the Performance Bond, give a notice to the Operator specifying TfNSW's reasons for making the demand.
- (h) TfNSW may only make a demand under the Performance Bond in accordance with this Clause 4.3.
- (i) TfNSW may make a demand irrespective of whether or not the amount is or the circumstances relating to the amount are:
- (i) in dispute between the parties; or

- (ii) subject to any Court or other proceedings.
- (j) The Operator must not take any steps to restrain or injunct TfNSW from making a demand under the Performance Bond or the Issuer paying any amounts under the Performance Bond.
- (k) If at any time after the Services Commencement Date, the Issuer of the Performance Bond ceases to have the Required Rating, the Operator must procure the issue of a replacement Performance Bond which complies with Clauses 4.3(a) or 4.3(b) (whichever is applicable).
- (l) If the Operator does not comply with Clauses 4.3(b) or 4.3(k), TfNSW may call down on the full value of the Performance Bond and hold the amount so drawn as cash until:
 - (i) the Operator complies with Clauses 4.3(b) or 4.3(k) (whichever is applicable); or
 - (ii) if the Operator does not comply with Clauses 4.3(b) or 4.3(k), until TfNSW is required to return a Relevant Amount in accordance with Clause 4.3(d)(iii) or until Clause 4.3(f) would have applied had a Performance Bond been held.
- (m) If TfNSW is holding the amount of the Performance Bond as cash pursuant to Clause 4.3(l) and the Operator subsequently complies with Clauses 4.3(b) or 4.3(k) (whichever is applicable), TfNSW must as soon as is practicable return the cash to the Operator (for the avoidance of doubt, without any interest being owed in respect of such cash).

5 Performance of Contract Bus Services

5.1 *Bus Services*

- (a) The Operator must provide the Bus Services:
 - (i) on the Bus Routes;
 - (ii) in accordance with the Timetables and the relevant provisions of the Services Schedule; and
 - (iii) in a manner that effectively and efficiently carries out the Contract Service Levels with Contract Buses of the required Bus Category,
 from the Services Commencement Date and for the duration of the Term.

5.2 *Dedicated School Services*

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

5.3 *Non exclusivity*

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

5.4 *Service Variations*

- (a) TfNSW may at any time during the Term, require a Service Variation by way of written notice to the Operator (**Service Variation Notice**), in accordance with this Clause 5.4.
- (b) The Service Variation Notice must state:
 - (i) the particulars of the Service Variation;
 - (ii) the date on which the Service Variation will take effect, which:
 - (A) in the event of an emergency (as determined by TfNSW), will be immediately; and
 - (B) in all other circumstances (including a Service Variation due to a Viability Review which shows that the number of passengers using a Dedicated School Service has been below 8 for 2 years), will be after a reasonable period of time to enable the Operator to comply with the Service Variation Notice; and
 - (iii) if the Service Variation Notice applies in the event of an emergency (as determined by TfNSW), that KPI Relief that will be granted to the Operator as a result of complying with the Service Variation Notice.
- (c) The Operator must comply with the Service Variation Notice and make any necessary amendments to its operations so that it complies with the Service Variation Notice.
- (d) The Payments to be made by TfNSW to the Operator may be adjusted as a result of a Service Variation required by TfNSW, in accordance with the Payment Schedule.
- (e) The Operator may request a Service Variation, by way of notice to TfNSW via the BSAR system. Any request for a Service Variation from the Operator is subject to TfNSW's approval (which may be withheld at TfNSW's absolute discretion).
- (f) Any request for a Service Variation from the Operator must set out:
 - (i) A description of the proposed Service Variation, including any impact on the Bus Routes, Bus Categories, Timetables or Dedicated School Services Timetables;
 - (ii) The impact of the proposed Service Variation on the Operator's ability to meet the Key Performance Indicators; and
 - (iii) The proposed price adjustment, based on Paragraph 4.1 of the Payment Schedule.
- (g) Upon receipt of the information required under Clause 5.4(f), TfNSW will inform the Operator of the timeframe within which TfNSW will approve, reject or further clarify the Operator's request for a Service Variation.

- (h) If the Operator wishes to request a retroactive Service Variation due to an unforeseen diversion of a Contract Bus for more than 2 days, the Operator must, within 24 hours of the diversion, submit a Service Variation request via the BSAR system that:
- (i) Describes the details and circumstances of the diversion and the impact that it had on the resources used;
 - (ii) Clearly evidences to TfNSW the need to implement the diversion, and the potential impact of not diverting;
 - (iii) Clearly evidences to TfNSW that the diverted course was the most efficient diversion available; and
 - (iv) Sets out the proposed price adjustment, based on Paragraph 4.1 of the Payment Schedule.
- (i) For the avoidance of doubt, nothing in this Clause 5.4 gives rise to an obligation on TfNSW to approve a request for a Service Variation from the Operator.
- (j) TfNSW will generally not approve any adjustments to the Payments as a result of a change to the Timetables required to correct the punctuality rate of the Bus Services (as referred to in table 2 of the KPI Schedule), within 2 years from the Services Commencement Date, if the Operator has failed to commence at least 95% of Published Timetable Trips and Headway Trips as Trips on Time.
- (k) Unless and until TfNSW approves any request from the Operator for a Service Variation:
- (i) the request for a Service Variation will be of no effect;
 - (ii) the Operator must not act upon the request for a Service Variation; and
 - (iii) the Operator will not be entitled to any payments in connection with its request for a Service Variation.
- (l) The Operator is not required to seek approval from TfNSW for a Service Variation which varies the Bus Schedules, provided that the variation to the Bus Schedules does not change the Contract Service Levels, Timetables, or Dedicated School Service Timetables.
- (m) If a New Bus is required as a result of a Service Variation, TfNSW will determine the Bus Category required for the New Bus using the following process:
- (i) TfNSW will consider the following information, which must be provided by the Operator within 7 days of a request from TfNSW (or such longer period as may be agreed between the parties):
 - (A) actual patronage data for the relevant Bus Route(s); and
 - (B) the projected maximum number of regular passengers at the peak patronage time for the following period of 12 months, showing all assumptions used by the Operator in preparing the projection;
 - (ii) TfNSW may allocate eligible school students to alternative Bus Routes in order to achieve the most efficient service delivery; and
 - (iii) TfNSW will compare the maximum passenger load determined in accordance with regulation 94 of the *Passenger Transport Regulation 2007* (NSW) to the

authorised adult seating capacity of each bus category set out in the Bus Category Table to determine the required Bus Category for the New Bus.

5.5 *Allocation of new students to Dedicated School Services*

- (a) The parties acknowledge and agree that new students wishing to travel on a Dedicated School Service will be serviced by their preferred appropriate Dedicated School Service, subject to available capacity.
- (b) If there is insufficient capacity on the new student's preferred appropriate Dedicated School Service, the student will be serviced by:
 - (i) the best alternative Dedicated School Service with capacity, or
 - (ii) if there is no suitable alternative Dedicated School Service, the best alternative Bus Service with capacity.
- (c) If no suitable alternative Dedicated School Service or Bus Service exists and TfNSW does not implement any alternative travel arrangements for the student, a Service Variation will be required.

5.6 *Co-operation with other Road and infrastructure projects*

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

5.7 *Service reviews*

TfNSW will carry out service reviews of regular route public passenger services in accordance with service planning guidelines published by TfNSW (as may be amended from time to time). TfNSW may require a Service Variation as a result of a service review, in accordance with Clause 5.4.

6 **Contract Service Levels and Timetables**

6.1 *Contract Service Levels*

- (a) TfNSW may introduce new or amended Contract Service Levels, by notice to the Operator.
- (b) If TfNSW provides notice of new or amended Contract Service Levels, the Operator must:
 - (i) develop a new timetable to efficiently and effectively carry out the requirements of the new or amended Contract Service Levels; and
 - (ii) submit the new timetable to TfNSW for approval, in accordance with Clauses 6.2 or 6.3,

within the timeframe specified by TfNSW.

If TfNSW has not specified any Contract Service Levels, the Operator must deliver the Contract Bus Services in a manner that efficiently and effectively carries out the base level of services required by the Timetables and the Dedicated School Services Timetable.

6.2 *Timetables*

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

6.3 *Dedicated School Services Timetable*

- (a) The Operator must liaise with the schools set out in the Service Level Schedule, by no later than 30 October of each calendar year for the duration of the Term, to ascertain the start and finish dates of the school year and the daily bell start and finish times.
- (b) The Operator must provide TfNSW with a preliminary timetable for the Dedicated School Services by no later than 1 January each calendar year for the duration of the Term, via the BSAR system.
- (c) The Operator must submit any revisions to the timetable for the Dedicated School Services, no later than 8 weeks after the start of the school year, via the BSAR system.
- (d) TfNSW may approve or reject a timetable for the Dedicated School Services submitted by the Operator within 14 days of receipt, by notice to the Operator.
- (e) If TfNSW approves a timetable for the Dedicated School Services, the Operator must operate the Dedicated School Services in accordance with the approved Dedicated School Services Timetable, within the period specified by TfNSW.
- (f) If TfNSW rejects a timetable for the Dedicated School Services (or does not respond to the Operator's request for approval), the proposed timetable will be of no effect and the Operator must continue to provide the Dedicated School Services in accordance with the approved Dedicated School Services Timetable.

7 *Publication and display of Public Transport Information*

- (a) The Operator must display and provide the public transport information, referred to in Item 4 of the Services Schedule, to the public, for the duration of the Term, in accordance with the requirements of Item 4 of the Services Schedule.

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

8 Bus Stops

The Operator must:

- (a) maintain and make good any damaged Bus Stop Signage on the Bus Routes, for the duration of the Term, in accordance with Items 6.1 and 6.2 of the Services Schedule;
- (b) ensure Bus Stop Signage which includes Timetable or Dedicated School Services Timetable information contains up to date information, which complies with any standards or guidelines issued by TfNSW, in accordance with Items 6.3 and 6.4 of the Services Schedule;
- (c) install new Bus Stop Signage, in accordance with Items 6.6 and 6.7 of the Services Schedule, if there is a variation to the Bus Routes, or a new Bus Route is introduced, during the Term, in accordance with Clause 5.4;
- (d) notify the relevant authority, in accordance with Items 6.5 and 6.8 of the Services Schedule, if any infrastructure at a Bus Stop is damaged during the Term; and
- (e) comply with any other requirements regarding Bus Stops contained in Item 6 of the Services Schedule.

9 Service Desk

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

10 Key Performance Indicators

10.1 Key Performance Indicators

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

11 Fares and Ticketing

11.1 *Fares*

- (a) To the extent the Operator is providing Contract Bus Services to passengers required to pay a Fare, the Operator must offer and honour Fares for Tickets to travel on Contract Bus Services in accordance with the categories and maximum prices outlined in the Fares and Ticketing Schedule, as amended by TfNSW and notified to the Operator in writing from time to time.
- (b) Any school term pass offered by the Operator must be in accordance with the Fares and Ticketing Schedule. School term passes may only be offered to students who are not eligible for the SSTS.

11.2 *Not used*

11.3 *Not used*

11.4 *Travel Free of Charge*

- (a) The Operator must ensure that travel, free of any direct or indirect charge by the Operator, is provided to persons:
 - (i) listed in Parts 3 and 4 of the Fares and Ticketing Schedule, as amended by TfNSW and notified to the Operator in writing from time to time; or
 - (ii) notified in writing by TfNSW, from time to time.

11.5 *Government Subsidised Travel Schemes*

The Operator must participate in Government Subsidised Travel Schemes, as outlined in Item 11 of the Services Schedule.

11.6 *Recognition of Transfers*

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

11.7 *Compliance by Agents*

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

12 Systems and Equipment

12.1 *Not used*

12.2 *New Systems and Equipment*

- (a) The Operator acknowledges TfNSW may introduce New Systems and Equipment on a Contract Bus, in a Contract Depot or in the Operator's premises.
- (b) The Operator must co-operate with TfNSW in facilitating the installation, testing, ongoing maintenance and removal of New Systems and Equipment. This co-operation includes, without limitation:
 - (i) making each Contract Bus, Contract Depot and the Operator's premises and any required equipment available to TfNSW or TfNSW's Associates, on 14 days' notice from TfNSW, for a reasonable period;

- (ii) allowing representatives of TfNSW and any TfNSW's Associates to travel, free of any direct or indirect charge by the Operator to TfNSW, on each Contract Bus as required; and
 - (iii) liaising with TfNSW and TfNSW's Associates as required in respect to the installation, testing, ongoing maintenance and removal of New Systems and Equipment.
- (c) TfNSW must reimburse the Operator for its direct costs incurred in facilitating the installation, testing, ongoing maintenance and removal of New Systems and Equipment.
- (d) The Operator acknowledges that TfNSW:
 - (i) owns any New Systems and Equipment installed during the Term, including any Intellectual Property in the New Systems and Equipment, unless TfNSW agrees otherwise in writing;
 - (ii) may use any data collected by New Systems and Equipment (if any) as the property of the State and the Operator must not modify any such data; and
 - (iii) reserves the right for the State to use the data as it sees fit, including providing other authorised service providers with access to data relating to their services.
- (e) The Operator must comply with any reasonable operational procedures, guidelines, directions and training requirements for New Systems and Equipment, issued by TfNSW from time to time.
- (f) TfNSW will reimburse the Operator the reasonable costs of repairing damage to a Contract Bus or Contract Depot, or equipment of the Operator, caused by TfNSW when installing, testing, maintaining or removing New Systems and Equipment.
- (g) The Operator must maintain New Systems and Equipment in accordance with Item 9 of the Services Schedule.
- (h) The Operator acknowledges and agrees that any failure of any New Systems and Equipment, whatever the cause, will not entitle the Operator to make any claim in respect of any delays or interruptions in the Contract Bus Services.
- (i) If any New Systems and Equipment on a Contract Bus fails to operate whilst the Contract Bus is performing a Contract Bus Service, and the Operator becomes aware, or should have become aware, of the failure, the Operator must ensure that the Contract Bus is taken out of service until the faulty equipment is repaired or replaced, in accordance with the following timeframes:
 - (i) Immediately if a safety issue arises as a result of the failure; or
 - (ii) At the end of the day for any other failures,
 unless TfNSW otherwise directs the Operator in writing.
- (j) The Operator must not use any New Systems and Equipment on Buses that are not Contract Buses, without the prior written approval of TfNSW.
- (k) The Operator agrees to enter into any agreement with TfNSW, on reasonable commercial terms considered necessary by TfNSW, in relation to any New Systems

and Equipment, when requested by TfNSW to do so. Such agreement will prevail over this Clause 12.2 to the extent of any inconsistency, unless otherwise agreed.

12.3 *Not used*

12.4 *Participation in DCIS*

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

12.5 *OSD*

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

12.6 *Compatibility of Information Systems*

- (a) Any financial, operational or other information, data or records required to be provided to TfNSW by the Operator must be provided in a form which is compatible with the electronic data and records systems notified by TfNSW to the Operator from time to time.
- (b) The Operator must install hardware and office equipment to enable its systems to interact with TfNSW's data and records systems.
- (c) If TfNSW requires the Operator to install hardware and office equipment under Clause 12.6(b):
 - (i) the Operator must comply with the requirement;
 - (ii) the Operator must notify TfNSW of the likely or known costs associated with complying with the requirement; and
 - (iii) the Operator and TfNSW must in good faith agree on costs that TfNSW will pay to the Operator as compensation for complying with the requirement.

13 *Contract Buses and Contract Depots*

13.1 *Contract Buses*

- (a) The Operator must perform the Contract Bus Services using Contract Buses.

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

13.2 *Replacement of Buses*

- (a) The Operator must replace any Bus which:
 - (i) reaches its maximum age, as set out in Paragraph 2 of the Contract Buses and Contract Depots Schedule; or
 - (ii) is irretrievably lost, stolen, destroyed or damaged beyond economic repair, during the Term, with a Replacement Contract Bus, unless TfNSW agrees otherwise in writing with the Operator.
- (b) Any Bus that has been replaced in accordance with Clause 13.2(a) shall be deemed to no longer be a Contract Bus and the Operator may dispose of the Bus and retain all sale and/or insurance proceeds from the sale.
- (c) The Operator must provide TfNSW with notice when a Bus is replaced in accordance with Clause 13.2(a) (and at least 21 days' prior notice if the Operator intends to dispose of a the Bus), to allow TfNSW to remove any New Systems and Equipment, in accordance with Clause 12.2.

13.3 *TfNSW inspection of Contract Buses*

- (a) The Operator must allow, or obtain for (as the case may be), TfNSW or any of TfNSW's Associates (or any person authorised by TfNSW or any of TfNSW's Associates), immediate unrestricted access to:
 - (i) any Contract Bus or any Bus Components;
 - (ii) any Contract Bus maintenance records;
 - (iii) the Operator's premises and/or any Contract Depot for the purposes of inspecting any Contract Buses or any Bus Components or exercising any rights under or in connection with the Contract; and
 - (iv) any other premises or property on which any Contract Bus or any Bus Components may be located.
- (b) In the event that TfNSW issues a termination notice, TfNSW may, in its absolute discretion, appoint an independent valuer to inspect any Transfer Out Contract Buses, in accordance with Clause 13.3(a).
- (c) If the independent valuer forms the view that any Transfer Out Contract Bus:
 - (i) is not in good repair or condition, consistent with its age;
 - (ii) is not in satisfactory working order;

- (iii) has not been properly maintained or serviced in accordance with, or does not otherwise comply with, the terms of this Contract; or
- (iv) is dangerous or unsuitable for the purpose for which it is used,

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

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

TfNSW forms the view that the defects identified by the independent valuer should be remedied by the Operator, the Operator must make good the defects identified by the independent valuer, within the timeframe specified by TfNSW.
- (e) If the Operator fails to make good the defects identified by an independent valuer in accordance with Clause 13.3(d), TfNSW may:
 - (i) arrange for the defects identified by the independent valuer to be remedied; and
 - (ii) deduct the costs associated with remedying such defects (including the costs of any additional buses required whilst a Transfer Out Contract Bus is being repaired) from any Payments due by TfNSW to the Operator, or from the Performance Bond.

13.4 *Contract Depot Capacity*

- (a) The Operator must provide the Contract Depot capacity referred to in Clause 13.4(b).
- (b) The Operator must provide Contract Depots sufficient to:
 - (i) accommodate the following:
 - (A) the number and type of Buses required for the proper and efficient operation of the Contract Bus Services as at the Services Commencement Date; and
 - (B) additional Buses to allow for an increase of up to 10% of the total seating capacity of the Buses referred to in Clause 13.4(b)(i)(A);
 - (C) the number of spare Buses required for the proper and efficient operation of the Contract Bus Services as at the Services Commencement Date, plus any additional spare Buses required for the potential increase referred to in Clause 13.4(b)(i)(B); and
 - (ii) accommodate the number of Staff and the activities necessary for the proper operation of the Contract Bus Services as at the Services Commencement Date, plus any additional capacity required for the potential increase referred to in Clause 13.4(b)(i)(B).
- (c) The Operator may achieve the Contract Depot capacity referred to in Clause 13.4(b) through the use of Existing Depots or New Depots.

13.5 Contract Depot Standards

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

14 New Assets

14.1 New Buses

- (a) The Operator may seek Payments from TfNSW in respect of:
 - (i) a Bus to be purchased during the Transition Period – if approved, the Bus will be taken to be a New Bus for the purposes of this Clause 14.1 and the remainder of the Contract; or
 - (ii) a New Bus, to be purchased during the Term,
in accordance with this Clause 14.1 and any procedure or guideline regarding the approval process for a New Bus, issued by TfNSW from time to time.
- (b) TfNSW may, in its absolute discretion, approve or decline an application for Payments in respect of a New Bus. If the Operator acquires a New Bus, without TfNSW's prior written approval, the Operator will not be entitled to any Payments in respect of the New Bus.
- (c) The Operator must provide its proposed program for New Buses it proposes to acquire during the Term (**New Bus Program**), to TfNSW, on the commencement of this Contract.
- (d) TfNSW will approve, amend or decline the New Bus Program for the first Contract year, within 7 days of receiving the New Bus Program from the Operator, and every 12 months thereafter for the rest of the Term.
- (e) TfNSW will notify the Operator of the program for Growth Contract Buses each year.
- (f) On 1 July each year during the Term, the Operator must notify TfNSW of any proposed changes to the New Bus Program (as approved by TfNSW), for the following two financial years.
- (g) TfNSW will approve, amend or decline the proposed changes to the New Bus Program.
- (h) The Operator must comply with any conditions notified to it by TfNSW in relation to any New Buses approved by TfNSW.
- (i) The Operator acknowledges that TfNSW may, in its sole discretion, determine that any New Bus will be purchased by a TfNSW Lessor and leased to the Operator.
- (j) If TfNSW notifies the Operator that a TfNSW Lessor will purchase a New Bus, the Operator:
 - (i) agrees to lease such New Bus from the TfNSW Lessor;
 - (ii) must comply with any conditions or requirements in connection with the New Bus notified by TfNSW and/or the TfNSW Lessor to the Operator;
 - (iii) must execute a TfNSW Bus Lease in form and substance satisfactory to TfNSW and/or the TfNSW Lessor;

- (iv) must ensure that no Security Interest is created or allowed to exist over or in connection with such New Bus or TfNSW Bus Lease, other than a Permitted Security Interest; and
- (v) agrees to execute any documentation or amendments to documentation required by TfNSW and/or the TfNSW Lessor to ensure that any Security Interest of the TfNSW Lessor in respect of such New Bus and its Proceeds will rank in priority over any Security Interest over the Operator's assets.

14.2 *Purchase of Buses from Bus Procurement Panel*

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

14.3 *New Depots*

- (a) If New Depots are required during the Term, to cater for growth above the Contract Depot capacity referred to in Clause 13.4:
 - (i) The Operator may provide a New Depot; or
 - (ii) TfNSW may, at its sole discretion, enter into arrangements outside of this Contract for the establishment of a New Depot; or
 - (iii) TfNSW may, at its sole discretion, permit a group of Bus Operators (including the Operator) to share a New Depot established by TfNSW.

15 *Dealing with Operator Assets*

15.1 *Security, assignment and possession of Contract Buses*

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

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

any Contract Bus, other than an Existing Bus, other than by way of a Permitted Security Interest.

15.2 *Bus Leases*

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

- (a) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any Bus Lease for a Contract Bus, other than an Existing Bus;
- (b) in any other way:
 - (i) assign, transfer or otherwise dispose of;
 - (ii) create or allow any interest in; or

- (iii) part with possession of,
its rights under, or interest in, a Bus Lease for a Contract Bus, other than an Existing Bus, or:
- (iv) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
- (v) suspend the performance of any of its obligations under; or
- (vi) do or permit anything that would enable or give grounds to another party to do anything referred to in Clauses 15.2(b)(iv) or 15.2(b)(v) in relation to,
a Bus Lease for a Contract Bus, other than an Existing Bus, other than by way of a Permitted Security Interest; or
- (c) materially amend or supplement, or consent to any material amendment or supplement of a Bus Lease for a Contract Bus, other than an Existing Bus or expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under a Bus Lease for a Contract Bus, other than an Existing Bus, if and to the extent that such amendment, supplement, waiver, extension or grant takes effect in, or relates to the exercise of any power or the performance of any obligation under the Bus Lease during the End of Contract Period or after the Termination Date.

15.3 *Not used*

15.4 *Bus Leases entered into during the Term*

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

15.5 *Transfer Out Contract Buses*

- (a) If the Operator is not the Successor Operator, on or within the period of 30 days immediately preceding the Termination Date:
 - (i) the Operator must ensure that all Contract Buses, including Contract Buses which are subject to a Bus Lease, but excluding Existing Buses, (referred to as **Transfer Out Contract Buses**) are sold to the Successor Operator or a TfNSW Lessor (unless otherwise agreed in writing between TfNSW, the Operator and the Successor Operator); and
 - (ii) TfNSW shall procure that the Successor Operator or a TfNSW Lessor (as required by TfNSW) purchases all Transfer Out Contract Buses (unless otherwise agreed in writing between TfNSW, the Operator and the Successor Operator),
as required by TfNSW, including in accordance with the Contract Buses and Contract Depots Schedule and any other terms of this Contract.
- (b) The Operator acknowledges and agrees that:
 - (i) Clause 15.5(a) applies to all Transfer Out Contract Buses (including Transfer Out Contract Buses which are subject to a Bus Lease and Transfer out Contract Buses which are owned by the Operator); and

- (ii) the Operator will be required to acquire the full legal and beneficial right and title to all Transfer Out Contract Buses which are subject to a Bus Lease, to enable the Operator to sell such Transfer Out Contract Buses as required by Clause 15.5(a) (unless otherwise agreed in writing between TfNSW, the Operator and the Successor Operator).

15.6 *Treatment of Contract Depots on Termination of Contract*

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

- (a) where there is an Operator Owned Existing Depot or a New Depot owned by the Operator, that the Operator (as landlord) must enter into the Depot Headlease with TfNSW (as tenant), for a term required by TfNSW in its absolute discretion, but not exceeding 1 year from the date of the notice from TfNSW;
- (b) where there is an Associated Entity Owned Existing Depot or a New Depot owned by an Associated Entity of the Operator, that:
 - (i) the Operator must procure the Associated Entity of the Operator (as landlord) to enter into the Depot Headlease with TfNSW (as tenant), for a term required by TfNSW in its absolute discretion, but not exceeding 1 year from the date of the notice from TfNSW; and
 - (ii) the Operator must procure the Operator Depot Lease for that Associated Entity Owned Existing Depot or New Depot (as the case may be) is surrendered on the date of the notice from TfNSW;
- (c) where there is a Third Party Owned Existing Depot or a New Depot owned by a Third Party Owner, that the Operator must use its best endeavours to either:
 - (i) seek to procure a surrender of the Operator Depot Lease for that Third Party Owned Existing Depot or New Depot (as the case may be) by no later than the day notified by TfNSW and have the Third Party Owner (as landlord) enter into the Depot Headlease with TfNSW (as tenant) for a term required by TfNSW in its absolute discretion, but not exceeding 1 year from the date of the notice from TfNSW; or
 - (ii) If the Operator is unable to achieve the matters referred to in Clause 15.6(c)(i), then the Operator must procure the assignment of that Operator Depot Lease to TfNSW (as assignee) from the date of the notice from TfNSW.
- (d) The Operator must obtain the consent of any mortgagee of a Contract Depot and/or mortgagee of an Operator Depot Lease to:
 - (i) the Depot Headlease in Clause 15.6(a), Clause 15.6(b) and Clause 15.6(c);
 - (ii) to the surrender of the Operator Depot Lease in Clause 15.6(b)(ii); or
 - (iii) to the assignment of the Operator Depot Lease in Clause 15.6(b)(ii),
 whichever applies.

16 Reporting

16.1 Reporting

- (a) The Operator must report to TfNSW during the Term, in accordance with the Reporting Schedule.
 - (b) If requested by TfNSW, the Operator must provide:
 - (i) Driver and Bus shift information to TfNSW; and
 - (ii) the Operator's financial statements, which:
 - (A) if the Operator is required to prepare audited financial statements under the *Corporations Act 2001*, must be audited financial statements; or
 - (B) if the Operator is not required to prepare audited financial statements under the *Corporations Act 2001*, need not be audited but must still be a true and fair representation of the financial affairs of the Operator,
- to TfNSW, on reasonable notice.

17 Operating Plans

17.1 Accessible Transport Action Plan

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

- (iii) coordinate the Operator's accessible transport services with the accessible services and infrastructure of Connecting Passenger Operators.

17.2 *Environmental Plan*

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

17.3 *Passenger Relations Plan*

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

- (D) monitor action taken in response to a complaint or enquiry; and
- (E) identify any problems of a systemic nature revealed by the complaints and enquiries;
- (v) incorporate a guarantee of response times to complaints and enquiries received by telephone, mail and electronic mail, within at least the response time detailed in the Customer Complaint Resolution Key Performance Indicator, set out in KPI table 5 of the KPI Schedule;
- (vi) have regard to Australian Standard AS4269-1995 or any successor standard issued by Standards Australia relating to complaints handling;
- (vii) detail the Operator's plan for dealing with lost children and other emergencies;
- (viii) detail the Operator's customer relations strategy, including objectives, specific initiatives to achieve the objectives and tangible measures of performance;
- (ix) detail a program for passenger training to facilitate the uptake of bus travel by the elderly, disabled or culturally and linguistically diverse members of the community;
- (x) detail the manner in which the benefits of the Contract Bus Services will be marketed, advertised and made available to public; and
- (xi) detail any customer research to be undertaken including, but not limited to, patronage surveys, loading counts, origin and destination surveys, focus groups, community consultation and any other product or market research.
- (c) The Operator must review and report annually to TfNSW to provide TfNSW with information about how all the complaints of which the Operator is aware were resolved or why complaints were not resolved, in accordance with the KPI Schedule.
- (d) If requested, the Operator must submit its Passenger Relations Plan to TfNSW.
- (e) The Operator must publish its Passenger Relations Plan on its website and make it available to passenger, upon request, free of charge.

18 Staffing

18.1 All Staff

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

18.2 Damage or Harm to TfNSW's Reputation by Staff

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

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

19 Subcontracting

19.1 *Engagement of Approved Subcontractor*

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

19.2 *Access to Approved Subcontractor information*

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

19.3 *Operator undertakings in relation to Approved Subcontractors*

- (a) If the Operator is not the Successor Operator, the Operator undertakes to ensure that:
 - (i) in respect of any Contract Bus used by an Approved Subcontractor in connection with the performance of the Contract Bus Services that was not owned by the Approved Subcontractor prior to the Services Commencement Date, the Contract Bus is dealt with in accordance with Clause 15.5, as if it were a Transfer Out Contract Bus; and
 - (ii) as at the Termination Date (or any earlier date on which the transfer occurs under Clause 15.5), an Approved Subcontractor:
 - (A) will be the legal and beneficial owner of any Contract Bus to be sold under Clause 15.5; and
 - (B) will have full power and authority to transfer good legal and equitable title to any Contract Bus (which must be free from any Security Interest) to be sold under Clause 15.5.

20 *Payment*

20.1 *Payments*

- (a) In exchange for the Operator performing the Contract Bus Services in accordance with this Contract, TfNSW must pay the Operator the Payments, in accordance with this Clause 20.
- (b) For the avoidance of doubt, the Operator acknowledges that the Operator will not be entitled to any Payments until after the Services Commencement Date.
- (c) The Payment amounts specified in the Payment Schedule will be fixed for the Term, unless varied in accordance with the Payment Schedule.
- (d) Unless expressly stated in this Contract or the Schedules, the Operator must bear the cost of any steps, actions, obligations or activities required of the Operator arising from or in connection with this Contract and is not entitled to any reimbursement of expenses, payment or compensation for any such steps, actions, obligations or activities.

20.2 *Invoices and time for payment*

- (a) The Operator must, for the duration of the Term, submit to TfNSW a valid Tax Invoice for the performance of the Contract Bus Services, within 5 Business Days after the end of each Contract Month following the Services Commencement Date. The Tax Invoice must specify:

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

20.3 *Set-off*

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

20.4 *Goods and Services Tax (GST exclusive prices)*

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

21 Contract management

21.1 *Governance*

- (a) The Operator and TfNSW must participate in the governance of this Contract, as described in the Governance Schedule.

21.2 *Audit*

- (a) TfNSW may investigate any matter in connection with this Contract, including costs and pricing matters, and may at any time during the Term and for six months after termination or expiration of the Contract, audit all files, records and invoices of the

Operator pertaining to the provision of the Contract Bus Services and related expenditures.

- (b) TfNSW may appoint an auditor for the purposes of Clause 21.2(a).
- (c) TfNSW may, or may appoint persons to, carry out mystery shopper surveys, or collect customer satisfaction data, from passengers on Contract Buses.
- (d) TfNSW, or its agent, may conduct audits on the contents of reports and data provided by the Operator to TfNSW in accordance with Clause 16 and the Reporting Schedule.
- (e) The Operator must:
 - (i) provide all reasonable access and assistance to TfNSW or its agent in the conduct of an investigation or audit under this Clause 21.2;
 - (ii) make available to TfNSW or its agent all reports and underlying data requested by TfNSW in the conduct of an investigation or audit under this Clause 21.2; and
 - (iii) comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits.

21.3 *Inquiries*

- (a) The Operator must, within the timeframe required by TfNSW, provide all assistance reasonably requested by TfNSW in respect of any inquiry into or concerning the Contract Bus Services or this Contract. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to TfNSW), or any request for information from the NSW Auditor-General or the Independent Pricing and Regulatory Tribunal directed to TfNSW or the Minister for Transport.
- (b) Without limiting Clause 21.3(a), the assistance to be provided by the Operator includes:
 - (i) the provision of requested documents or information relevant to the Contract Bus Services; and
 - (ii) answering questions relevant to the Contract Bus Services.

21.4 *Notifiable Safety Incident*

Without limiting any requirements under the Law, the Operator must immediately report to TfNSW any Notifiable Safety Incident in the manner and containing such details of the Notifiable Safety Incident as specified by TfNSW (which may be amended from time to time by TfNSW acting reasonably), and the Operator must provide any additional details or information reasonably requested by TfNSW in relation to the Notifiable Safety Incident.

22 Accreditation and compliance

22.1 *Accreditation and Compliance with Laws and Standards*

- (a) The Operator warrants that it will hold, for the duration of the Term, all Authorisations required to operate the Contract Bus Services in accordance with, and to perform its obligations under, this Contract.
- (b) In operating the Contract Bus Services, and in performing its obligations under this Contract, the Operator must:
 - (i) comply at all times with all Authorisations required to be held by the Operator under Clause 22.1(a); and

- (ii) procure that with respect to Driver Authorities required to be held by Drivers under Clause 22.1(a), the Driver will comply at all times with such Driver Authorities required to be held by the Driver.
- (c) The Operator acknowledges that nothing in this Contract restricts or otherwise affects TfNSW's unfettered discretion to use its statutory powers, including any statutory powers relating to Accreditation under the PT Act. For the avoidance of doubt, the Operator also acknowledges that nothing in this Contract restricts or otherwise affects RMS's unfettered discretion to use its statutory powers relating to Accreditation under the PT Act.
- (d) The Operator must immediately notify the TfNSW Representative of any circumstance which may affect the Operator's Accreditation, which includes (without limitation):
 - (i) if the Operator is a body corporate, a circumstance in which:
 - (A) it has given written notice to the accrediting authority nominating, or revoking the nomination of, a director or manager of the Operator; or
 - (B) a director or manager of the Operator nominated for the purposes of the Operator's Accreditation dies or ceases to be a director or manager of the Operator; and
 - (ii) If the Operator is a partnership, any partner in the partnership dies or ceases to be a partner.
- (e) Without limitation to any other provision of this Contract, the Operator must comply with all applicable Laws and all quality and safety plans from time to time applicable to the Contract Bus Services.
- (f) Without limiting any other approvals or permissions required for the provision of the Contract Bus Services, the Operator must operate the Contract Bus Services only upon:
 - (i) Roads and Road-Related Areas that have been approved by the appropriate Road Authority for use by Bus traffic; or
 - (ii) if the Contract Bus Services are to be provided on private property, with the permission of the owner of the private property.
- (g) The Operator warrants to TfNSW that it complies with the following legislative and regulatory requirements:
 - (i) *Disability Discrimination Act 1992 (Cth)*;
 - (ii) *Anti-Discrimination Act 1977 (NSW)*;
 - (iii) Environmental legislation, including but not limited to the *Protection of the Environment Operations Act 1997 (NSW)*; and
 - (iv) *Fair Work Act 2009 (Cth)* or *Industrial Relations Act 1996 (NSW)* (as applicable).

22.2 WHS

- (a) In performing the services required under this Contract, the Operator must ensure, so far as is reasonably practicable, the health and safety of its Workers and other persons at the Workplace (in the area under the Operator's control), whether or not engaged by the Operator.
- (b) The Operator acknowledges that, in performing the services required under this Contract:

- (i) for the purposes of the WHS Law, it is the controller of the Workplace and as such must ensure, so far as is reasonably practicable, compliance with its obligations under WHS Law in this regard;
 - (ii) it will use its best endeavours to ensure, so far as is reasonably practicable, the health and safety of any persons at the Workplace (in those areas not under the Operator's control), including any persons performing work at the Workplace, whether or not engaged by the Operator;
 - (iii) in performing the services required under this Contract, the Operator must ensure, so far as is reasonably practicable, that (subject to Clause 22.2(e)):
 - (A) it manages the Workplace;
 - (B) it provides appropriate training and supervision for all persons employed or engaged by it at the Workplace;
 - (C) it controls or directs the performance of work associated with the services required under this Contract;
 - (D) it establishes and maintains safe work practices;
 - (E) it engages competent persons to carry out risk audits at its Workplace every two years;
 - (F) all Staff performing the services required under this Contract are trained in work health and safety, in particular in relation to the risks associated with performing the services required under this Contract;
 - (G) it will inform TfNSW of any changes of any Staff, corporate structure, management structure or supervisors that may affect the safety of its Staff or workers in performing the services required under this Contract; and
 - (iv) it otherwise complies with all statutory requirements of the WHS Laws and for work health, safety and rehabilitation management.
- (c) TfNSW and the Operator acknowledge and agree that the Operator has, so far as is reasonably practicable, control of:
- (i) the manner in which the services required under this Contract are performed; and
 - (ii) all matters arising out of or as a consequence of the performing of or failure to perform the services required under this Contract that give rise or may give rise to risks to health or safety.
- (d) The Operator must, prior to the performance of any part of the services required under this Contract:
- (i) undertake an assessment of the WHS risks associated with the performance of the services and identify and take all reasonably practicable steps to implement appropriate WHS risk control measures to eliminate and minimise all such WHS risks; and
 - (ii) if requested by TfNSW, provide TfNSW with details of the WHS risk assessment undertaken and evidence of implementation of appropriate WHS risk control measures required under this Clause 22.2.

- (e) If the Operator engages an Approved Subcontractor (in accordance with Clause 19) or otherwise relinquishes to, or shares with, any person:
- (i) the management or control of the Workplace; or
 - (ii) control over the performance of work associated with the services required under this Contract,
- it will ensure, so far as is reasonably practicable, that person complies with the obligations referred to in this Clause 22.2.
- (f) In order to meet its obligations under this Clause 22.2, the Operator must adopt a work health, safety and rehabilitation management system that supports a systematic approach to managing risks to health and safety posed by the Workplace or the services required under this Contract, including:
- (i) a process to identify safety hazards, assess the risks posed by such hazards and eliminate or control the risks; and
 - (ii) mechanisms to monitor the performance of the system adapt and improve it as necessary.
- (g) The Operator will provide to TfNSW such information about the operation and maintenance of the system referred to in Clause 22.2(f) as TfNSW requests. Any review of the operation or maintenance of the system by TfNSW under this sub-clause does not constitute a verification or acceptance by TfNSW of the adequacy of the system.
- (h) The Operator must ensure, so far as is reasonably practicable, that it participates, and that its Staff participate, in any investigation carried out by TfNSW relating to any Workplace incident notifiable under a WHS Law in connection with the performance of the services required under this Contract that arises during the Term (**Notifiable incident**). This will include, so far as is reasonably practicable:
- (i) providing TfNSW with the names and details of all of the Staff and workers who were involved in the Notifiable incident;
 - (ii) ensuring that TfNSW has immediate unrestricted access to, and cooperation by, all of the relevant Staff;
 - (iii) ensuring that all of the relevant Staff promptly provide any written or oral statement as is reasonably required by TfNSW;
 - (iv) providing immediate access to the Operator's records together with the right of TfNSW, at its cost, to make copies of such records as TfNSW reasonably requires; and
 - (v) providing the contact information (including address and telephone number) for all of the Operator's past and current relevant Staff and workers involved in or with knowledge of the Incident and in doing so the Operator must comply with the Privacy Laws.
- (i) The Operator must, so far as is reasonably practicable consult, cooperate and coordinate the services required under this Contract with any other person involved in performing work at the Workplace to achieve effective coordination of the services to ensure optimal health and safety risk management and enable TfNSW and the

Operator and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.

- (j) If the Operator breaches its obligations under this Clause 22.2, the breach will be a Termination Event for the purposes of Clause 30.2. In addition, the Operator will not be entitled to make a Claim against TfNSW as a result of or in any way connected with a breach of its obligations under this Clause 22.2.
- (k) The Operator indemnifies TfNSW, against any cost, expense, loss, damage or other liability suffered or incurred by TfNSW to the extent it arises from a breach by the Operator of this Clause 22.2.

23 Warranties

23.1 Warranties Correct

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

- (a) If it is (or purports to be) a corporation, it is duly incorporated and validly existing under the laws of New South Wales;
- (b) It has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- (c) It has taken all necessary action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents;
- (d) Each Transaction Document to which it is expressed to be a party creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (e) The execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
 - (i) a Law or treaty or a judgment, ruling, order or decree of a Reporting Body binding on it; or
 - (ii) its constitution or other constituent documents;
- (f) No suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it or its Subsidiaries (if any) that may have an adverse effect on the performance of the Contract;
- (g) No resolution has been passed for its winding up or the winding up of its Subsidiaries (if any);
- (h) No resolution has been passed for the appointment of an administrator to it or its Subsidiaries (if any);
- (i) There is no unsatisfied judgment against it or its Subsidiaries (if any);

- (j) There are no facts, matters or circumstances that give rise to an Insolvency Event, or any step preliminary to an Insolvency Event, in respect of it or its Subsidiaries (if any) or any part of its or its Subsidiaries' (if any) undertaking or assets or income;
- (k) Each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents; and
 - (ii) its business as now conducted or contemplated and that is material (including, under the PT Act),

has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Services Commencement Date, it is only given as at the Services Commencement Date;
- (l) All returns, notices and other documents required to be lodged or given by it or its Subsidiaries (if any) under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (m) There are no notices of any Reporting Body outstanding against it or its Subsidiaries (if any);
- (n) All Authorisations necessary for the conduct of its business and the business of its Subsidiaries (if any) are validly subsisting and are held by it and the business of its Subsidiaries (if any);
- (o) It and each of its Subsidiaries (if any) has duly observed and complied in all respects with the provisions of all laws and regulations and all orders, notices, awards and determinations made by any statutory or other competent authority in any way relating to or binding on it or its Subsidiaries (if any) or any property owned or occupied by it or its Subsidiaries (if any);
- (p) All copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to TfNSW are true and complete copies. Where applicable, those documents are in full force and effect;
- (q) No breach of the Existing Services Contract has occurred and is continuing that has not been disclosed to TfNSW;
- (r) None of its property, and no property of its Subsidiaries (if any), is subject to any Security Interest (other than a Permitted Security Interest);
- (s) It does not hold any assets as the trustee of any trust (unless Clause 23.2 applies);
- (t) It complies with the Privacy Laws, and any guidelines issued by the Commissioner under the relevant Privacy Law;
- (u) As at the Termination Date (or any earlier date on which transfer occurs under Clause 15.5), if the Operator is not the Successor Operator, the Operator:
 - (i) will be the legal and beneficial owner of all Contract Buses to be sold under Clause 15.5 free from any Security Interest;

- (ii) will have full power and authority to transfer to a Successor Operator or a TfNSW Lessor (as required by TfNSW) good legal and equitable title to all Contract Buses required to be sold under Clause 15.5, free from any Security Interest;
- (iii) will have ensured that each Transfer Out Contract Bus:
 - (A) is, consistent with its age, in good repair and condition;
 - (B) is in satisfactory working order;
 - (C) has been properly maintained and serviced in accordance with, and otherwise complies with, the terms of this Contract;
 - (D) is not dangerous or unsuitable for the purpose for which it is used; and
 - (E) is, to the best of the Operator's then knowledge and belief, capable of doing the work for which it was designed or purchased and will be capable (subject to fair wear and tear) of doing so over its normal serviceable life; and
- (iv) will have ensured that all arrangements in connection with any fleet maintenance plan are in full force and effect in respect of any Transfer Out Contract Bus;
- (v) It can commence the Contract Bus Services on the Services Commencement Date;
- (w) It is and will be able to comply with the Services Schedule, Service Level Schedule, Key Performance Indicators and any outcomes or indicators agreed in this Contract;
- (x) Its performance of this Contract will not infringe the Intellectual Property rights of any third person;
- (y) Its Revenue and Revenue Data Protection Plan is updated annually and provides sufficient protection for Revenue;
- (z) Its Accessible Transport Action Plan, Environmental Plan and Passenger Transport Plan are updated annually;
- (aa) It will perform the Contract Bus Services in accordance with the degree of skill, diligence, prudence and practice that would be exercised by a skilled and experienced operator of buses and bus services comparable to the size, scope and complexity of the Contract Bus Services and to TfNSW's reasonable satisfaction; and
- (bb) It will perform the Contract Bus Services:
 - (i) in a competent, courteous, safe and reliable manner;
 - (ii) having primary regard to the needs and interests of passengers and to build an integrated Route Network; and
 - (iii) in accordance with the requirements of this Contract.

23.2 *Trustee representations and warranties*

If the Operator is contracting as a trustee of a trust, the Operator further represents and warrants to TfNSW that the following warranties are true and correct and not misleading on the commencement of this Contract and for the duration of the Transition Period and the Term:

- (a) **(Trust validly created)** the Trust has been validly created and is in existence;
- (b) **(Trust Deed):**
 - (i) the Trust is solely constituted by the Trust Deed;
 - (ii) the Trust Deed complies with all applicable laws and has been duly stamped in accordance with the laws of each State and Territory of Australia;
 - (iii) it has complied with all its obligations and duties as trustee of the Trust and no one has alleged that it has not so complied;
- (c) **(sole trustee)** it is validly appointed as the sole trustee of the Trust and no circumstances exist pursuant to which it may be removed;
- (d) **(right of indemnity)** it has the right to be indemnified out of, and a lien over, the Trust Property for all liabilities incurred by it under this Contract, and this right has not been limited in any way and it has no liability which may be set off against that right of indemnity;
- (e) **(priority of TfNSW)** the rights of TfNSW under this Contract rank in priority to the interests of all of the members, beneficiaries or unitholders of the Trust;
- (f) **(no conflict)** this Contract does not conflict with the operation or terms of the Trust;
- (g) **(power)** it has:
 - (i) full and valid power and authority to enter into this Contract and to carry out the transactions contemplated by this Contract;
 - (ii) full legal capacity and power to carry on the Trust's business as presently conducted,

in its capacity as trustee of the Trust and there is no restriction on or condition of it doing so;
- (h) **(binding obligations)** this Contract constitutes legally binding obligations, enforceable against it and the Trust Property in accordance with its terms, subject to any necessary stamping and registration, equitable principles, statute of limitations and Laws affecting creditors' rights generally;
- (i) **(proper administration and benefit)** entry into this Contract and the transactions contemplated by this Contract is for the proper administration of the Trust and for the benefit of all of the members, beneficiaries or unitholders of the Trust;
- (j) **(no termination)** the Trust has not been terminated and no event for the vesting of the Trust Property has occurred;
- (k) **(no resettlement)** no Trust Property has been re-settled or set aside or transferred to any other trust;
- (l) **(disputes)** there is no litigation or other material dispute between the Operator as trustee of the Trust and any other person in relation to the Trust or the Trust Property;
- (m) **(legal owner)** the Operator has full legal capacity and power to own and is the legal owner of all of the Trust Property; and
- (n) **(no security interests):**
 - (i) the Trust Property is not subject to any Security Interest; and

- (ii) no person holds an interest in the Trust Property other than the Operator or a member, beneficiary or unitholder of the Trust (in such capacity only), other than any Permitted Security Interest.

23.3 *Trustee undertakings*

If the Operator is contracting as a trustee of a trust, it undertakes in relation to the Trust that, at all times until the Termination Date:

- (a) **(resignation and additional trustees)** it will not:
 - (i) resign or do anything that may cause or enable its removal as trustee of the Trust; or
 - (ii) appoint or allow to be appointed a new or additional trustee of the Trust;
- (b) **(re-settle, set aside or transfer)** it will not re-settle, set aside or transfer any Trust Property;
- (c) **(amendment)** it will not amend or revoke any of the terms of the Trust Deed in any material way;
- (d) **(vesting date)** it will:
 - (i) not exercise a power, or allow a power to be exercised, to change the vesting date of the Trust or provide for the Trust to be terminated early; and
 - (ii) without limiting Clause 23.3(d)(i), notify TfNSW of any event which might cause any Trust Property to vest or to be distributed to a member, beneficiary or unitholder of the Trust, as soon as it becomes aware of the event;
- (e) **(right of subrogation and indemnity)** it will ensure that:
 - (i) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the terms of the Trust); and
 - (ii) its lien over any Trust Property at all times has priority over the rights of the members, beneficiaries or unitholders of the Trust;
- (f) **(notices generally)** it will promptly give TfNSW copies of all material documents and notices received by it from any member, beneficiary or unitholder of the Trust or which it gives to a member, beneficiary or unitholder of the Trust;
- (g) **(indemnity)** it will not do anything or allow anything to be done which adversely affects its right of indemnity against the Trust Property and (without limiting any right of subrogation TfNSW may have) it must on demand by TfNSW exercise all rights of indemnity against the Trust Property to enable payment of any amount that is owing to TfNSW under or in connection with this Contract and which is due and payable;
- (h) **(compliance)** it will comply with all its obligations as trustee under the Trust Deed and all applicable laws; and
- (i) **(acquisitions)** it will not acquire or hold property intended to be subject to the terms of the Trust other than in its name.

23.4 *Notification of Change*

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

23.5 *Reliance on Representations and Warranties*

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

24 Operator acknowledgments

- (a) The Operator acknowledges that it has made its own enquiries and has not relied on any representations made by TfNSW, nor any other person acting on behalf of TfNSW, in respect of this Contract and each other Transaction Document.
- (b) Without limiting the generality of Clause 24(a), the Operator acknowledges the following:
 - (i) TfNSW, or any other person acting on behalf of TfNSW, has not made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
 - (ii) the Operator has not relied in any way on the skill or judgment of TfNSW or any person acting on behalf of or associated with TfNSW and has relied absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to enter into this Contract and each other Transaction Document; and
 - (iii) the acknowledgments under this Clause are in addition to and do not replace the terms and conditions already agreed to or accepted by the Operator when receiving the Disclosed Information.
- (c) The Operator warrants to TfNSW that in entering into this Contract and each other Transaction Document, the Operator is aware that TfNSW has relied on the acknowledgments contained in this Clause 24 in entering into this Contract and each of the other Transaction Documents.
- (d) To the extent permitted by law, the Operator expressly waives any right which it has (whether at the commencement of this Contract or otherwise) to bring any action or make any claim against TfNSW, or any person acting on behalf of or associated with any of TfNSW, arising (directly or indirectly) out of any alleged misrepresentation or misleading or deceptive conduct on the part of TfNSW, or any person acting on behalf of or associated with TfNSW, in providing the Disclosed Information or in connection with this Contract or any other Transaction Document (except for misrepresentations or misleading or deceptive conduct of TfNSW that is deliberate or negligent).

25 Intellectual Property, Marks and Advertising

25.1 *General Principle*

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

25.2 *Intellectual Property Licence*

- (a) Where any of the Intellectual Property used by the Operator in connection with the performance of the Contract Bus Services is owned by the Operator, the Operator grants to TfNSW a perpetual, irrevocable, non-exclusive, transferable licence (with the right to sublicense) to use all of the Intellectual Property:
 - (i) in connection with this Contract; or
 - (ii) except for the Operator's registered business or company name or trademark, for the purpose of permitting any Successor Operator (who is not the Operator), nominee of TfNSW, or Interim Operator to provide all or any part of the Contract Bus Services after the termination or expiry of the Term.
- (b) Where any third party Intellectual Property rights are embodied in any of the Contract Material, the Operator grants TfNSW a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence (including the right to sublicense) to use, reproduce and adapt such Contract Material for TfNSW's own use in connection with this Contract.
- (c) TfNSW grants the Operator a perpetual, irrevocable, world-wide and royalty-free licence to use, reproduce and adapt the Contract Materials for the performance of this Contract.

25.3 *Indemnity*

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

25.4 *Third Party Rights*

Where, in the reasonable opinion of the Operator, any Contract Material does or is likely to infringe the rights of any third party's Intellectual Property which does or may prevent TfNSW from using the Contract Material, the Operator will, where requested by TfNSW and to TfNSW's reasonable satisfaction obtain such consents from the relevant third party that will

allow TfNSW to use the Contract Material without infringing that third party's Intellectual Property.

25.5 *Not Used*

25.6 *Advertising*

- (a) Any advertising placed by the Operator on a Contract Bus must:
- (i) comply with all applicable Laws;
 - (ii) comply with any directions issued by TfNSW from time to time, including regarding where advertising may be placed on a Contract Bus;
 - (iii) comply with codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by a Governmental Agency, the Advertising Standards Bureau of Australia, Office of Film and Literature Classification, Australian Association of National Advertising, Outdoor Advertising Association of Australia and Buspak;
 - (iv) not depict political, religious or other similar subject matter;
 - (v) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour;
 - (vi) not cause, or have the potential to cause, any damage or harm to TfNSW's reputation;
 - (vii) not be offensive;
 - (viii) not obscure the route number and destination details on a Contract Bus; and
 - (ix) not obscure or impact the ability to clearly view any regulatory signage on the rear panel of any Contract Bus.
- (b) Where, in TfNSW's reasonable opinion, advertising on a Contract Bus does not comply with Clause 25.6(a), TfNSW may require the Operator to remove an advertising item from a Contract Bus.
- (c) The Operator must comply with a direction of TfNSW made pursuant to Clause 25.6(b) within 1 Business Day of receipt of the direction.

26 Insurance

26.1 *Insurance policies*

- (a) No later than the Services Commencement Date, the Operator must effect and maintain for the Term and any extension of the Term:
- (i) public liability insurance:
 - (A) covering Claims in respect of:
 - (I) damage to any real or personal property; and
 - (II) the injury to, or death of, any person,
 in the performance of the Contract Bus Services and use and operation of the Contract Buses;
 - (B) in which TfNSW is also a named insured in the policy;

- (C) for at least the amount specified in Item 6 of Attachment A; and
- (D) including a cross-liability clause:
 - (I) in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against the “insured” parties; and
 - (II) for the purpose of which the insurer accepts the term “insured” as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result);
- (ii) workers’ compensation insurance against any common law or statutory liability;
- (iii) insurance coverage against property damage which is adequate for all Contract Buses and Contract Depots;
- (iv) insurance coverage against third party property damage:
 - (A) for all Contract Buses; and
 - (B) for at least the amount specified in Item 7 of Attachment A;
- (v) any other insurances which TfNSW reasonably requires in which it is also a named insured and which are commonly effected by the operators of buses and bus services comparable to the size, scope and complexity of the Contract Bus Services provided those insurances can be obtained on payment of a reasonable premium.
- (b) Any property damage insurance must be effected and maintained with an Authorised Insurer.

26.2 *Insurance generally*

- (a) The Operator represents and warrants to TfNSW that on the commencement of this Contract and for the duration of the Transition Period and the Term that it has effected insurances as are required by Clause 26.1.
- (b) The Operator must use reasonable endeavours to ensure that all contracts for insurance the Operator effects in compliance with this Contract contain a term that requires the insurer to notify TfNSW in writing whenever the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy.
- (c) If the Operator has used reasonable endeavours as required by Clause 26.2(b) but, despite this, the contracts for insurance effected in compliance with this Contract do not contain the term referred to in Clause 26.2(b), the Operator must immediately notify TfNSW in writing if the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy, including particulars of that notice from the insurer.
- (d) The Operator must provide notice to TfNSW of any intended cancellation of insurances effected in compliance with this Contract by the Operator.
- (e) The Operator must:

- (i) give TfNSW acceptable proof of currency and coverage of the insurances referred to in Clause 26.1(a) before the Services Commencement Date;
- (ii) if reasonably requested by TfNSW, give TfNSW certified copies of all:
 - (A) policies;
 - (B) policy schedules;
 - (C) renewal certificates; and
 - (D) endorsement slips; and
- (iii) ensure that the insurances referred to in Clause 26.1(a) include terms to the effect that:
 - (A) the insurer will not reduce the amount payable in respect of a claim by reason of a non-disclosure or misrepresentation except to the extent that the named insured making the claim was itself the party responsible for that non-disclosure or misrepresentation; and
 - (B) where any loss is incurred under the policy which arises from both the insured responsible for the non-disclosure or misrepresentation and any other named insured under the policy, the insurer's liability is to be limited to the proportion of the loss which represents a fair and equitable allocation between the parties, taking into account the relative legal and financial exposures attributable to the insured parties,

subject to the reasonable availability of insurance on these terms.

- (f) The Operator hereby indemnifies TfNSW on demand for and against any damage to, or Loss in connection with, a New Bus or New Depot to the extent that:
 - (i) any insurance required by this Contract is not available for the benefit of TfNSW due to any misrepresentation or fraud on behalf of the Operator or breach of this Contract by the Operator; or
 - (ii) the proceeds of insurance are not available for the benefit of TfNSW or are not sufficient to meet the costs of replacing the relevant New Bus or New Depot, where the damage or loss was caused or contributed to by a breach of this Contract or the wilful default or negligence of the Operator.

26.3 Premiums

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

27 Indemnity and Limitation of Liability

27.1 Indemnity

- (a) The Operator indemnifies on demand and must keep indemnified on demand TfNSW, the Minister for Transport, the State or any office holder, employee, agent, contractor, consultant, delegate or adviser of, or to, TfNSW, the Minister for Transport or the State (**Indemnified Persons**), from and against any Loss which any of them pays, suffers, incurs or is liable for in connection with or arising from:

- (i) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Operator or any of its Staff;
 - (ii) any Non-Compliance Event;
 - (iii) any Termination Event;
 - (iv) any breach of a Transaction Document by the Operator (or an Approved Subcontractor (if any));
 - (v) any infringement of any Intellectual Property rights by any of the Operator or any of its employees, Related Entities, or contractors or agents; or
 - (vi) any death, personal injury, loss or damage suffered by any passengers or by any third party enjoying or affected by the performance of the Contract Bus Services caused or contributed to by the Operator or any of its Related Entities or Staff.
- (b) The Operator's indemnity in Clause 27.1(a) will be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Indemnified Persons caused or contributed to the loss.
 - (c) This indemnity will not exclude any other right of TfNSW to be indemnified by the Operator.
 - (d) For the avoidance of doubt the Losses that must be indemnified under Clause 27.1(a) include any Losses arising as a result of a Non-Compliance Event or Termination Event and any Step-in Costs.
 - (e) The Operator's indemnity in Clause 27.1(a) is capped at the amount stated in Item 5 of Attachment A.

27.2 *Liability and responsibility*

The Operator acknowledges and agrees that:

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

27.3 *Release*

- (a) The Operator releases TfNSW and TfNSW's Associates (**Released Parties**) to the full extent permitted by law, from all Losses which arise in connection with this Contract, except in relation to direct losses arising from a breach of this Contract.
- (b) The Released Parties are not liable for, and no measure of loss or damages will, under any circumstances include Consequential Loss (whether in contract, tort, in equity, under statute or any other basis, whether or not the loss or damage was foreseeable and even if advised of the possibility of the loss or damage).

- (c) TfNSW's liability arising in connection with this Contract is capped at the amount stated in Item 5 of Attachment A.

28 Confidentiality, Privacy and Information Access

28.1 Confidentiality

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

28.2 Maintaining confidentiality

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

28.3 Permitted disclosure

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

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

28.4 Publication of certain information by TfNSW

- (a) Subject to Clause 28.4(e), TfNSW may publish or require the Operator to publish in any form and at times TfNSW considers appropriate, any information obtained by TfNSW from the Operator in accordance with the Reporting Schedule or information collected from New Systems and Equipment.
- (b) Subject to Clause 28.4(e) and the Operator's first right to negotiate under Clause 3.5, TfNSW may publish the handover information referred to in Clause 32.3(a) and any other information reasonably required in connection with the re-tendering or contracting of all or any part of the Contract Bus Services, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting.
- (c) Nothing in this Contract restricts TfNSW's provision of information to any Minister of the Crown in right of the State or any of its agencies, instrumentalities or Governmental Agencies (other than State Transit Authority).

- (d) For the avoidance of any doubt, and without limiting Clause 28.4(a), TfNSW may publish:
 - (i) information collected via DCIS and the OSD;
 - (ii) performance information;
 - (iii) ticketing information; and
 - (iv) information regarding Payments made under this Contract.
- (e) TfNSW must not publish the following information:
 - (i) Personal Information; and
 - (ii) information that TfNSW considers is commercial-in confidence information.
- (f) For the purposes of Clause 28.4(e)(ii) “commercial-in-confidence” information means information which TfNSW considers to show:
 - (i) the Operator’s financing arrangements;
 - (ii) the Operator’s cost structure or profit margins;
 - (iii) any Intellectual Property in which the Operator has an interest (other than Intellectual Property in the Contract Material or Intellectual Property which is licenced to TfNSW under Clause 25.2); and
 - (iv) any other matter the disclosure of which TfNSW reasonably considers could place the Operator at a substantial commercial disadvantage in relation to other operators or potential operators, whether at the time of the proposed disclosure or in the future.

28.5 *Privacy compliance*

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

in respect of any Personal Information which the Operator receives or has access to under this Contract or any Transaction Document.
- (b) The Operator must co-operate with TfNSW in the resolution of any complaint alleging a breach of the Privacy Laws, a privacy policy or an approved privacy code.

28.6 *Disclosure log (GIPA Act section 25)*

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

28.7 Access to information (GIPA Act section 121)

- (a) The Operator must, within 7 Business Days of receiving a written request by TfNSW, provide TfNSW with immediate access to the following information contained in records held by the Operator:
 - (i) information that relates directly to the performance of the Contract Bus Services provided to the Operator by TfNSW pursuant to this Contract;
 - (ii) information collected by the Operator from members of the public to whom it provides, or offers to provide, the Contract Bus Services pursuant to the Contract; and
 - (iii) information received by the Operator from TfNSW to enable it to provide the Contract Bus Services pursuant to this Contract.
- (b) For the purposes of Clause 28.7(a), such information does not include:
 - (i) information that discloses or would tend to disclose the Operator's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Operator is prohibited from disclosing to TfNSW by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (iii) information that, if disclosed to TfNSW, could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to TfNSW, whether at present or in the future.
- (c) The Operator must provide copies of any of the information requested by TfNSW, in accordance with Clause 28.7(a), at the Operator's own expense.
- (d) Any failure by the Operator to comply with any request pursuant to Clause 28.7(a) will be considered a breach of an essential term and will allow TfNSW to terminate this Contract by providing notice in writing of its intention to do so with the termination to take effect 7 Business Days after receipt of the notice. Once the Operator receives the notice, if it fails to remedy the breach within the 7 Business Day period to the satisfaction of TfNSW, then the termination will take effect 7 Business Days after receipt of the notice.
- (e) Nothing in Clause 28.7(d) derogates from any other remedy or remedies that may be available to TfNSW in respect of a breach of this Agreement by the Operator.

29 Step-in for Operator Breach

29.1 Step-in Right

- (a) If:
 - (i) a Termination Event has occurred; or
 - (ii) a material Non-Compliance Event has occurred and TfNSW considers that the Operator is failing to address the causes of the Non-Compliance Event or has not developed a cure plan which TfNSW considers will address the Non-Compliance Event; and
 - (iii) TfNSW has given notice to the Operator in accordance with Clause 29.1(b),

then, a Step-in Party may exercise all or any of the Powers set out in Clause 29.2 (the **Step-in Powers**) in an endeavour to remedy the Termination Event or the Non-Compliance Event or to overcome any risk or mitigate the consequences resulting from the Termination Event or the Non-Compliance Event (the **Step-in Right**).

- (b) The notice referred to in Clause 29.1(a)(iii):
 - (i) must specify:
 - (A) the Termination Event or the Non-Compliance Event which has triggered the Step-in Right; and
 - (B) the date on which the relevant Step-in Party proposes to commence exercising the Step-in Powers; and
 - (ii) may be given orally if TfNSW considers that the Termination Event or Non-Compliance Event requires urgent remedy and there is insufficient time to serve a written notice. Any oral notice must be followed within 24 hours by a written notice.
- (c) The Step-in Right is without prejudice to TfNSW's other Powers in respect of a Non-Compliance Event or Termination Event, and the right to terminate in the circumstances set out in Clause 30.
- (d) TfNSW may:
 - (i) deduct from an amount payable to the Operator under Clause 20 or under any other Clause of this Contract, the amount of any costs and expenses it reasonably considers will be incurred by a Step-in Party in exercising the Step-in Powers; and
 - (ii) apply the amount deducted to meet such costs and expenses.

29.2 *Step-in Powers*

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

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

29.3 *Acknowledgment and Obligations of the Operator*

- (a) The Operator must immediately take such steps as are necessary to remedy the Termination Event or Non-Compliance Event to TfNSW's satisfaction.
- (b) The Operator acknowledges that a Step-in Party is not under any obligation to remedy a Termination Event or Non-Compliance Event nor to overcome any risk or mitigate any consequences resulting from a Termination Event or Non-Compliance Event.
- (c) The Operator must cooperate with the Step-in Party in the exercise of the Step-in Powers.
- (d) Without limiting Clause 29.3(c):
 - (i) the Operator must give access to a Step-in Party to:
 - (A) all or any of the assets used in the operation of the Contract Bus Services;
 - (B) its Staff; and
 - (C) any information the Step-in Party reasonably requires; and
 - (ii) to the extent necessary, the Operator must procure any consents to disclose Personal Information to the Step-in-Party,

to enable the Step-in Party to exercise the Step-in Powers.
- (e) The Operator must pay to TfNSW on demand all reasonable Step-In Costs and all Losses incurred by a Step-in Party in exercising the Step-in Powers (less any amount applied to meet those costs and expenses pursuant to Clause 29.1(d)).
- (f) Any Step-in Party acts as agent of the Operator at all times during which it is exercising the Step-in Powers and subject to Clause 29.3(g), the Operator indemnifies the Step-in Party and TfNSW from and against all reasonable Step-in Costs and all Losses in respect of or arising from the exercise of the Step-in Powers by the Step-in Party or arising in connection with the Termination Event or the Non-Compliance Event which has triggered the Step-in Right, except to the extent it arises from the fraud, wilful default, or gross negligence on the part of the Step-in Party.
- (g) The Operator is not liable for and provides no indemnity in respect of any Operator Breach or Termination Event caused by the Step-in Party.

29.4 *Protection of a Step-in Party*

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

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Power; nor
- (b) for any loss (including consequential loss) which results,

except where it arises from fraud, wilful default or gross negligence on the part of the Step-in Party.

29.5 *Protection of third parties*

- (a) A party to any Dealing (as defined in Clause 29.5(c)), need not enquire:
 - (i) as to whether the Step-in Right has become exercisable;

- (ii) as to whether a person who is, or, purports or is purported to be, the Step-in Party is duly appointed; or
 - (iii) in any other way as to the propriety or regularity of the Dealing.
- (b) For the protection of any party to a Dealing, the Dealing will be taken to be authorised by this Contract and will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.
- (c) In this Clause 29.5, a **Dealing** is:
- (i) any payment, or any delivery or handing over of an asset, to; or
 - (ii) any acquisition, incurring of Financial Indebtedness, receipt, sale, lease, disposal or other dealing, by,

any Step-in Party or any person who purports or is purported to be a Step-in Party.

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

29.6 Step-Out

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

30 Termination

30.1 Termination Events

The following are Termination Events:

- (a) **(Material Non-Performance of Key Performance Indicators)** The Operator:

- (i) breaches any Class 1 Key Performance Indicator (set out in the KPI Schedule) on three or more occasions (whether it is the same Key Performance Indicator or a different Key Performance Indicator on each occasion) within a 6 month period; or
- (ii) breaches any Class 1 Key Performance Indicator (set out in the KPI Schedule) on four or more occasions (whether it is the same Key Performance Indicator or a different Key Performance Indicator on each occasion) within a 12 month period;

and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with a cure plan, to justify waiving the breaches of the Key Performance Indicators.

- (b) **(Unlawful)** It becomes unlawful for the Operator to perform all or a material number of the Contract Bus Services.
- (c) **(Change of Control)** Without the prior written consent of TfNSW:
 - (i) the Operator becomes a Subsidiary of a person (of which it was not a Subsidiary on the commencement of this Contract);
 - (ii) a person's Voting Power in the Operator increases from below 50% to 50% or more after the commencement of this Contract; or
 - (iii) a person is able to Control the Operator where that person was not able to Control the Operator on the commencement of this Contract.
- (d) **(Variation, suspension or revocation of Accreditation)** The Operator's Accreditation, or any other Authorisation that is material to the performance by the Operator of a Transaction Document, or to the validity and enforceability of a Transaction Document or for the performance of the Contract Bus Services, is suspended, repealed, revoked or terminated or expires, or is modified or amended or conditions are attached to it in a manner unacceptable to TfNSW, and is not replaced by another Authorisation acceptable to TfNSW.
- (e) **(Regular or habitual breaches)** The Operator regularly or habitually commits breaches of this Contract which, in TfNSW's reasonable opinion, when taken in total amount to a material breach of the Contract or which collectively have a material adverse effect on the performance of the Contract Bus Services.
- (f) **(Viability Review)** A Viability Review shows that the number of passengers using:
 - (i) if only one Dedicated School Service is specified or described in the Service Level Schedule, the Dedicated School Service; or
 - (ii) if multiple Dedicated School Services are specified or described in the Service Level Schedule, all of the Dedicated School Services,
 has been below 8 for a period of 2 years.

30.2 Termination by TfNSW for insolvency, breach or unviability

- (a) TfNSW may terminate the whole or any part of this Contract immediately by giving notice (a **Termination Notice**) to the Operator, if:
 - (i) an Insolvency Event in relation to the Operator occurs; or

- (ii) a Termination Event occurs;
 - (iii) the Independent Commission Against Corruption or similar public body determines that the Operator has engaged in corrupt conduct, collusive pricing or other similar activity;
 - (iv) in TfNSW's view, a conflict of interest exists for the Operator which prevents the proper performance of this Contract; or
 - (v) in TfNSW's reasonable opinion, the Operator has caused damage or harm to TfNSW's or the State's reputation.
- (b) This Contract will terminate on the date specified in the Termination Notice.
- (c) This termination right is without prejudice to TfNSW's rights under Clause 29 in relation to Step-in Parties and TfNSW's right to exercise all legal and equitable rights and remedies available to TfNSW in respect of the Termination Event (whether under this Contract or not).
- (d) If this Contract is terminated by TfNSW due to the occurrence of the Termination Event described in Clause 30.1(f), TfNSW will reimburse the Operator its unavoidable costs directly incurred as a result of the termination, as follows:
- (i) any outstanding Payments owed to the Operator, calculated in accordance with the Payment Schedule; and
 - (ii) any reasonable and mitigated costs incurred by the Operator in winding down or providing disengagement assistance.
- (e) TfNSW will not, in any circumstance, be liable for any Consequential Loss suffered by the Operator as a result of the termination of this Contract by TfNSW due to the occurrence of the Termination Event described in Clause 30.1(f).

30.3 *Termination by TfNSW for convenience*

- (a) TfNSW may at any time at its absolute discretion, terminate this Contract, whether or not the Operator is in default, by 90 days' written notice to the Operator signed by the Secretary (or his or her authorised delegate or representative).
- (b) If TfNSW terminates this Contract in accordance with Clause 30.3(a), TfNSW will reimburse the Operator its unavoidable costs directly incurred as a result of the termination, as follows:
- (i) any outstanding Payments owed to the Operator, calculated in accordance with the Payment Schedule; and
 - (ii) any reasonable and mitigated costs incurred by the Operator in winding down or providing disengagement assistance.
- (c) TfNSW will not, in any circumstance, be liable for any Consequential Loss suffered by the Operator as a result of the termination of this Contract by TfNSW under Clause 30.3(a).

30.4 *Waiver on termination*

If TfNSW terminates this Contract under Clause 30.2, the Operator's sole right and remedy will be to require TfNSW to pay a proper valuation under this Contract of all amounts due and not

previously paid to the Operator for performance of the Contract Bus Services completed in accordance with this Contract before the notice of termination.

30.5 *Consequences of termination generally*

- (a) The termination of this Contract does not affect any of TfNSW's other rights or remedies.
- (b) If the Operator's engagement under this Contract is terminated under Clause 30.2 or Clause 30.6, the Operator is liable for and indemnifies TfNSW on demand against any loss suffered by TfNSW as a result of the termination.

30.6 *Termination by Operator on notice*

The Operator may terminate this Contract, by 90 days' written notice to TfNSW (or any shorter period agreed to by TfNSW).

31 Force Majeure

- (a) If either of the Parties is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, it must as soon as practicable notify the other Party in writing accordingly.
- (b) Each notice under Clause 31(a) must:
 - (i) specify the obligations and the extent to which the Party cannot perform those obligations;
 - (ii) fully describe and provide documentary evidence of the Force Majeure Event;
 - (iii) estimate the time during which the Force Majeure Event will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.
- (c) For the duration of the Force Majeure Event, the obligations which cannot be performed, or penalties which would have applied, because of the Force Majeure Event will be suspended.
- (d) The Party that is prevented from carrying on its obligation under this Contract, or is subject to the payment of penalties, because of the impact of a Force Majeure Event, must:
 - (i) remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
 - (ii) take all action reasonably practicable to mitigate any loss suffered by the other Party or any passengers as a result of the Party's failure to carry out its obligations under this Contract. The Party is not required to test the validity or refrain from testing the validity of any Law.
- (e) The Term will not be extended by the period of a Force Majeure Event.

32 End of Contract Transfer Provisions

32.1 *Right to appoint Successor Operator and Interim Operator*

- (a) The Operator acknowledges that TfNSW may, on or before the expiry or termination of the Term, invite any person to perform all or any part of the Contract Bus Services for

the period commencing after expiry or termination of the Term, subject to the Operator's first right to negotiate under Clause 3.5.

32.2 *Maintenance as Going Concern*

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

32.3 *Handover Information*

- (a) The Operator must prepare and maintain the following information:
- (i) information regarding all premises from which the Contract Bus Services are operated, including offices and Contract Depots;
 - (ii) information regarding material contracts relating to the Contract Bus Services;
 - (iii) information regarding computer and other information systems (if any);
 - (iv) an asset register for assets used in relation to the Contract Bus Services including an inventory of Spares;
 - (v) information regarding its organisational structure;
 - (vi) Bus maintenance records;
 - (vii) if the Service Level Schedule does not contain complete Bus Service Timetables and Dedicated School Service Timetables in a format easily understood by customers, Driver shift bats;
 - (viii) the information described in Schedule 9; and
 - (ix) such other information as is reasonably requested by TfNSW to facilitate smooth handover of the Contract Bus Services to a Step-in Party, Successor Operator (or nominee of TfNSW) or Interim Operator.
- (b) The Operator must keep the information described in Clause 32.3(a) up to date and provide copies to TfNSW on reasonable notice, or in any case, immediately in the event of TfNSW issuing a Termination Notice.
- (c) The Operator must ensure that a Step-In Party, prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW has, to the extent permitted by Law, immediate access to the information referred to in Clauses 32.3(a) on reasonable notice from TfNSW, or in any case, immediately in the event of TfNSW issuing a Termination Notice.

32.4 *Preparation for Contracting at End of Term*

- (a) The Operator must, to the extent permitted by Law, provide TfNSW with reasonable access to the Staff and the information, books and records, kept by or on behalf of the Operator in connection with the Contract Bus Services, for the purpose of TfNSW preparing reports and documents in connection with any invitation to a person for the operation of all or part of the Contract Bus Services or any other associated services.
- (b) The Operator must, to the extent permitted by Law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as they reasonably require in connection with the contracting of the Contract Bus Services.

- (c) The Operator warrants to TfNSW that to the best of its belief all information provided under Clauses 32.3(a) and 32.4(b) will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.
- (d) The Operator must warrant to a Successor Operator that to the best of its belief any other information made available is true and correct.

32.5 *Non-frustration of Transfer*

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

32.6 *Assistance in Securing Continuity*

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

32.7 *Access*

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

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

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

33 *Dispute Resolution*

33.1 *Dispute Resolution*

- (a) This Clause 33 applies to any dispute which arises between the Parties in connection with this Contract, except disputes relating to the construction of this Contract including this Clause 33 (**Dispute**).
- (b) Subject to Clause 33(h) below, a Party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with the provisions of this Clause 33.
- (c) If a Party considers that a Dispute has arisen, it may issue a written Notice to the other Party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (d) The Parties must promptly hold good faith discussions between the Operator's Representative and TfNSW's Representative after issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussions**), and must (subject to privilege) furnish to the other party all information with respect to the Dispute which is appropriate in connection with its resolution.

- (e) If the Dispute has not been resolved within ten Business Days after commencement of First Level Discussions, the Parties must attempt to resolve the Dispute by holding good faith discussion between the Operator's Managing Director (or equivalent) and the Executive General Manager, Service Procurement and Performance, TfNSW (or such other position notified to the Operator by TfNSW from time to time) (**Second Level Discussions**).
- (f) If the Dispute has not been resolved within ten Business Days after commencement of Second Level Discussions, either Party may pursue its rights and remedies under this Deed as it sees fit.
- (g) The Parties will continue performing their respective obligations under this Deed while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Deed.
- (h) Notwithstanding anything in this Clause 33, a Party at any time may commence court proceedings in relation to a Dispute or Claim arising in connection with this Contract where that Party seeks urgent interlocutory relief.

34 Restriction on Activities

34.1 Assignment

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

35 Relationship between Operator and TfNSW

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

36 Personal Property Securities Act

36.1 General

- (a) The Operator must promptly, following a request by TfNSW or its agents, attorneys or nominees (**Relevant Party**), execute such documents, deeds and other agreements and otherwise take whatever action that Relevant Party may reasonably require:
 - (i) to perfect and/or protect any Security Interest created by or in connection with the Transaction Documents, including registration on the Personal Property Securities Register established under section 147 of the PPS Law;
 - (ii) to facilitate the realisation or enforcement of such Security Interest;

- (iii) to facilitate the exercise of any of the Relevant Party's rights, powers or discretions under the Transaction Documents;
- (iv) to register, record or file any Transaction Document in such places as the Relevant Party may at any time consider necessary or desirable to perfect the Transaction Document, to ensure its enforceability, validity and priority against any other person or to protect the rights of the Relevant Party under or in connection with the Transaction Document;
- (v) to ensure that any Transaction Document is stamped for the proper amount in each state and territory of Australia in which the Transaction Document is required to be stamped;
- (vi) to confer on the Relevant Party security over the secured property (in whatever jurisdiction situated) equivalent or similar to the security intended to be conferred by any Transaction Document; and
- (vii) to enable the Relevant Party to better exercise its rights over the relevant secured property,

including, without limitation, the execution of additional Security Interests and other documents and the giving of all notices, orders, instructions and directions whatsoever.

36.2 *Corresponding provisions*

Any document required to be executed by the Operator under Clause 36.1 will be in form and substance satisfactory to the Relevant Party.

37 Conflict of Interest

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

38 Notices

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

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be hand delivered, posted by prepaid express post or emailed to the intended recipient to the address specified in Item 9 in Attachment A or such other address as may be notified by the intended recipient to the sender;

- (c) are taken to be received by the addressee:
 - (i) in the case of delivery by hand, on delivery at the address of the addressee;
 - (ii) in the case of prepaid express post, three business days after the date of posting; and
 - (iii) in the case of email, at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of that email,

provided that if the Notice would be taken to be received on a day that is not a business day or after 4.00pm on a business day, it is taken to have been received at 9.00am on the next business day.

39 Entire agreement

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

40 Amendment

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

41 No waiver

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

42 Further assurances

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

43 Costs and stamp duty

- (a) Each party will pay its own costs of negotiation, preparation and execution of this Contract and the other Transaction Documents.
- (b) TfNSW may require the Operator to pay the reasonable costs of any variations to this Contract or any of the Transaction Documents sought by the Operator, at TfNSW's absolute discretion.
- (c) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Contract any Transaction Document and any instrument executed under this Contract or any Transaction Document must be borne by the Operator. The

Operator must indemnify TfNSW on demand against any liability for those costs and that stamp duty.

44 Governing law and jurisdiction

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

45 Counterparts

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

46 Survival

Clauses 1, 12.2, 13.3, 19, 24, 25, 26, 27, 28, 29 35, 42 and 44 continue to apply after the expiration or termination of this Contract.

Signing page

Executed as a Contract

Signed for and on behalf of TfNSW, by)
..... [insert name])
a duly authorised delegate for TfNSW)

In the presence of:

.....
Signature of delegate
Date:

.....
Print name of Witness

.....
Signature of Witness
Date:

[GUIDANCE NOTE – Operator – option 1 – if the Operator is a corporation]

Signed by «Operator_Name_»,)
ABN «ABN» in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)

.....
Signature of Director
Date:

.....
Signature of Director/Secretary
Date:

Print name of Director

Print name of Director/Secretary

[GUIDANCE NOTE – Operator – option 2 – if the Operator is an individual]

Signed by «Operator_Name_» in the)
presence of:)

.....

Signature of Witness

Date:

.....

Signature of «Operator_Name_»

Date:

.....

Print name of Witness

.....

.....

Address of Witness

[GUIDANCE NOTE – Operator – option 3 – if the Operator is a partnership]

Signed by)
«**Names_of_partners_if_partnership**»,)
ABN «ABN» in the presence of:

.....
Signature of Witness

.....
Signature of Partner

Date:

Date:

.....
Print name of Witness

.....
Print name of Partner

Signed by)
«**Names_of_partners_if_partnership**»,)
ABN «ABN» in the presence of:

.....
Signature of Witness

.....
Signature of Partner

Date:

Date:

.....
Print name of Witness

.....
Print name of Partner

[GUIDANCE NOTE – If there are more than 2 partners, additional signature blocks will need to be added so that every partner executes the contract]

Attachment A Contract details

Item	Clause	Term	Details
<i>Item 1</i>		Operator	«Operator_Name_» ABN «ABN» «Operator_address»
<i>Item 2</i>	2.1	TfNSW Representative	«TfNSW_representative_position_title» (or such other position notified to the Operator by TfNSW from time to time)
<i>Item 3</i>	2.1	Operator's Representative	«Operators_representative_position_title»
<i>Item 4</i>	3.1	Services Commencement Date	«Services_Commencement_Date»
<i>Item 5</i>	27.1(e) 27.3(c)	Operator's indemnity cap TfNSW's liability cap	3 times the Annual Contract Price, for Year 1 1 times the Annual Contract Price, for Year 1
<i>Item 6</i>	26.1(a)(i)(B)	Public liability insurance	\$10 million per incident
<i>Item 7</i>	26.1(a)(iv)(B)	Third party property insurance	\$10 million per incident
<i>Item 8</i>	4.3	Performance Bond Amount	One times the Monthly Contract Price
<i>Item 9</i>	38(b)	Address for notices	TfNSW: «TfNSW_representative_position_title» «TfNSW_address_for_notices» «TfNSW_email address_for_notices» Operator: «Operators_representative_position_title» «Operator_address_for_notices» «TfNSW_email address_for_notices»
<i>Item 10</i>	23.2 and 23.3	Trust	«Trust»
<i>Item 11</i>	23.2 and 23.3	Trust Deed	«Trust_deed»

Attachment B Performance Bond

Bank Guarantee

To: **Transport for NSW**, a corporation constituted under the *Transport Administration Act 1988* (NSW), on behalf of the State of New South Wales (**TfNSW**) of 18 Lee Street, CHIPPENDALE NSW 2008

1 In this undertaking:

Business Day means any day other than a Saturday, Sunday or a public holiday; and

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

2 **[insert name of Issuer]** (the **Issuer**) issues this undertaking in consideration of TfNSW agreeing to accept this undertaking in connection with the Rural & Regional Bus Service Contract dated **[insert date of R&RBSC]** (**R&RBSC**) between TfNSW and **[insert name of Operator]** (**Operator**) at the request of the Issuer.

3 The Issuer unconditionally undertakes to pay to TfNSW on demand any sum or sums which may from time to time be demanded under this Bank Guarantee by TfNSW in accordance with Clause 4 up to a maximum amount of **[\$specify amount]** (the **Amount**).

4 Payment by the Issuer under this Bank Guarantee will be made within 2 Business Days of receipt by the Issuer of a written demand for payment:

- (a) presented at **[specify Issuer's address details]** no later than **[specify time]** (Sydney time) on the Expiry Date (as defined in Clause 6 below);
- (b) stating that it is made under this Bank Guarantee;
- (c) purporting to be signed by or on behalf of TfNSW;
- (d) demanding payment of the whole or any part of the Amount to TfNSW; and
- (e) accompanied by a statutory declaration complying with Clause 5.

5 A statutory declaration accompanying a demand made under this Bank Guarantee must state that:

- (a) the declarant is TfNSW or an officer making the declaration on behalf of TfNSW;
- (b) in the case of an officer, that the declarant has authority to make the declaration on behalf of TfNSW;
- (c) the declaration is made under this Bank Guarantee; and
- (d) the amount claimed is not more than the Amount available under this Bank Guarantee.

6 This Bank Guarantee continues in force until the first to occur of:

- (a) **[specify time]** (Sydney time) on **[specify date]** (the **Expiry Date**);
- (b) payment to TfNSW by the Issuer of the whole of the Amount; or
- (c) return of this Bank Guarantee to the Issuer at **[specify address details]**,

when all liability of the Issuer under this Bank Guarantee will cease.

- 7 Payment of the Amount will be made by the Issuer to TfNSW:
 - (a) without reference by the Issuer to the Operator;
 - (b) despite any notice to the Issuer by the Operator not to pay any money payable under this undertaking; and
 - (c) irrespective of the performance or non-performance by the Operator or TfNSW of the terms of the R&RBSC.
- 8 TfNSW may assign its rights under this Bank Guarantee to any Governmental Agency or otherwise with the prior written consent of the Issuer.
- 9 If TfNSW assigns its rights under this undertaking in accordance with Clause 8 then, unless the context requires otherwise, "TfNSW" includes each assignee.
- 10 This undertaking is governed by the laws of New South Wales.

Dated: **[specify date]**

[Execution by Issuer]

Schedule 1 Services Schedule

1 Definitions

1.1 In this Schedule, the following words have the following meanings:

Advice for Choosing Locations of Informal School Bus Stops means the document “Advice for choosing locations of informal school bus stops” dated December 2016 prepared by the Centre for Road Safety, as amended and reissued from time to time.

Guidelines for Managing School Student Behaviour on Buses means the document titled “Guidelines for Managing School Student Behaviour on Buses” prepared or adopted by TfNSW, as amended from time to time.

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

The following table sets out the meaning of the column headings in the roles and responsibilities tables set out in this Schedule. “T” in any of the columns means that TfNSW is the relevant Party. “O” in any of the columns means that the Operator is the relevant Party.

Term	Description
Responsible	The Party that has to do the activity.
Accountable	The Party ultimately answerable for the correct and full completion of the activity. There must be only one Party accountable for each activity.
Support	The Party that is to provide support to assist in completing the activity.
Consulted	The Party that is consulted by the responsible Party as part of the process of carrying out the activity.
Informed	The Party that has to be kept up-to-date, by the responsible Party.
When	When the activity must be performed.
Contract Clause	The Clause in the Contract that the activity must be performed in accordance with.

2 Services Overview

The following are the key objectives for the provision of the services under the Contract by the Operator:

- (a) Provide reliable, safe and clean Contract Bus Services to customers;
- (b) Develop Timetables and Dedicated School Services Timetables to efficiently meet the Contract Service Levels;
- (c) Run the Contract Bus Services to the approved Timetables;
- (d) Ensure that customers are provided with accurate Timetable information and kept informed of service changes and Incidents as required;
- (e) Ensure Staff receive appropriate training;
- (f) Assist TfNSW in improving the provision of Bus services to customers; and
- (g) Provide support for New Systems and Equipment required to improve and upgrade the Contract Bus Services.

3 Contract Service Levels, Timetables and Contract Bus Services

The following table identifies the general roles and responsibilities associated with Contract Service Levels, Timetables and Contract Bus Services

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
3.1	Develop Contract Service Levels	6.1(a)	T	T	O	O	O	As required throughout the Term
3.2	Develop timetables to efficiently and effectively meet the requirements of the Contract Service Levels	6.1(b)	O	O	T	T	T	As specified by TfNSW from time to time
3.3	Contact each school set out in the Service Level Schedule, to ascertain the school term start and finish dates and the daily start and finish times, for the following school year	6.3(a)	O	O		T	T	By 30 October each year
3.4	Prepare a provisional timetable for the Dedicated School Services for the year, based on the start and finish dates and times ascertained in accordance with Item 3.3 above	6.3(b)	O	O	T	T	T	By 1 January each year
3.5	Prepare a final timetable for the Dedicated School Services for the year, based on the start and finish dates and times ascertained in accordance with Item 3.3 above	6.3(c)	O	O	T	T	T	Within 8 weeks of the start of the school year (ascertained in accordance with Item 3.3 above)
3.6	Approve timetables	6.2(c) and 6.3(d)	T	T	O	O	O	As required under the Contract
3.7	Operate Contract Bus Services, in accordance with the Contract Service Levels and approved Timetables and Dedicated School Services Timetables	5.1 and 5.2	O	O		T	T	Continuing throughout the Term

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
3.8	Monitor security on the Contract Buses and monitor and manage passenger and Driver safety	5.1(a)(ii) and 5.2(a)(ii)	O	O		T	T	Continuing throughout the Term

4 Publication and Display of Public Transport Information

Publication and display of public transport information includes the activities required to ensure that passengers are provided with adequate, reliable information regarding Contract Bus Services.

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
4.1	a) Publish accurate Timetables and Dedicated School Services Timetables, with route maps, on the Operator's website (if the Operator has a website). This includes updating Dedicated School Service Timetables daily at the commencement of each school year, if changes are made to the Dedicated School Services b) Ensure accurate Timetables and Dedicated School Services Timetables are provided to Transportnsw.info	7(a)	O	O			T	Continuing throughout the Term At least 14 days prior to introduction of the Contract Bus Service, unless otherwise approved by TfNSW
4.2	Mail Timetables and Dedicated School Services Timetables to customers free of charge, if requested	7(a)	O	O			T	Within 48 hours of request

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
4.3	Provide all Timetables and Dedicated School Services Timetables to TfNSW for approval	7(b)	O	O		T	T	Prior to the introduction of a new or revised Timetable or Dedicated School Services Timetables
4.4	Approve all Timetables and Dedicated School Services Timetables, prior to publication	7(b)	T	T	O	O	O	Continuing throughout the Term
4.5	<p>If a new Timetable or Dedicated School Services Timetable is approved by TfNSW, provide:</p> <p>a) TfNSW with the updated Timetable or Dedicated School Services Timetable in electronic format (as reasonably required by the TfNSW) suitable for website display;</p> <p>b) the public with the updated printed Timetable or Dedicated School Services Timetable</p>	7(a)	O	O			T	At least 14 days (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable or Dedicated School Services Timetable
4.6	<p>If TfNSW approves an amendment to a Timetable or Dedicated School Services Timetable, provide notice to the public of any material amendments to the Timetable or Dedicated School Services Timetable by:</p> <p>a) notifying TfNSW of relevant details;</p> <p>b) displaying signs prominently in each Contract Bus;</p> <p>c) updating the Operator website;</p> <p>d) displaying advertisements in the local newspapers covering the affected Bus Routes;</p> <p>e) displaying signs at Stops;</p>	7(a)	O	O		T	T	At least 14 days (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable or Dedicated School Services Timetable

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
	f) making announcements on local radio; and g) other appropriate means.							
4.7	If requested by a member of the public, provide complete and up to date information about the accessibility of Contract Bus Services (as required by the <i>Disability Discrimination Act 1992</i> (Cth)), in an appropriate format	7(a)	O	O			T	Within a reasonable timeframe
4.8	Ensure accurate Timetables and Dedicated School Services Timetables are displayed at all Bus Stops which display timetables	7(a)	O	O			T	Continuing throughout the Term
4.9	Ensure Timetables and Dedicated School Services Timetables indicate all Contract Bus Services which are accessible (as required by the <i>Disability Discrimination Act 1992</i> (Cth))	7(a)	O	O			T	Continuing throughout the Term
4.10	Ensure Timetables and Dedicated School Services Timetables comply with any TfNSW naming and numbering standard notified by TfNSW to the Operator from time to time	7(a)	O	O			T	Continuing throughout the Term
4.11	Provide the destination information, to be displayed on Contract Buses, in Timetables, on the Operator's website and in any other location, to TfNSW for approval	7(b)	O	O		T	T	Prior to publication of the destination information
4.12	Approve destination information, to ensure it complies with any TfNSW standards or guidelines, from time to time	7(b)	T	T	O	O	O	Continuing throughout the Term
4.13	Display the destination clearly on the front and side of all Contract	7(a)	O	O		T	T	Continuing throughout the

Functional Description		Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
	Buses in service. Contract Buses without side destination signage need only display the destination on the front of the Contract Bus.							Term
4.14	Display the route number clearly on the front, side and rear of all Contract Buses in service, Contract Buses without side and/or rear destination signage need only display the route number where signage space exists	7(a)	O	O			T	Continuing throughout the Term
4.15	Ensure all passenger Timetables and Dedicated School Services Timetables provide times at Bus Stops and do not reflect operational timing points that are not Bus Stops	7(a)	O	O		T	T	Continuing throughout the Term
4.16	Use timetable template(s) which may be introduced by TfNSW from time to time	6.2(f)	O	O		T	T	Continuing throughout the Term (if notice is given by TfNSW under Clause 6.2(f) of the Contract)

5 Contract Bus Services Information

The following table identifies the general roles and responsibilities associated with providing information about the Contract Bus Services

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
5.1	Inform passengers on a Contract Bus of any relevant service delays	7(c)	O	O			T	Continuing throughout the Term
5.2	Inform TfNSW of service delays to the Contract Bus Services and work with TfNSW as required from time to time to minimise the impact of delays on customers	7(c)	O	O	T	T	T	Continuing throughout the Term

6 Bus Stops

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
6.1	For all Bus Stop Signage in place as at the Commencement Date, maintain Bus Stop Signage, including but not limited to: <ul style="list-style-type: none"> • Repair; • Replacement; • Cleaning; and • Graffiti removal 	8(a)	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
6.2	For all plinth Bus Stop Signage carry out: <ul style="list-style-type: none"> • minor repairs (parts to be provided by TfNSW); • Cleaning; and • Graffiti removal 	8(a)	O	O			T	Within 7 days of becoming aware of the damage
6.3	Ensure Bus Stop Signage which includes Timetable or Dedicated School Services Timetable information, contains up to date timetable information and complies with any standards or guidelines issued by TfNSW from time to time	8(b)	O	O	T	T	T	Continuing throughout the Term
6.4	Ensure Bus Stop identification numbers comply with any TfNSW naming and numbering standard notified by TfNSW to the Operator from time to time	8(b)	O	O			T	Continuing throughout the Term
6.5	Advise TfNSW of any damage to Bus Stops	8(d)	O	O			T	Within 7 days of becoming aware of the damage
6.6	If there is a change to a Bus Route or a new Bus Route is introduced: <ol style="list-style-type: none"> seek and obtain approval from TfNSW for the location of Bus Stop Signage; ensure Bus Stop Signage is installed at all Stops along the changed or new Bus Route; and ensure new Bus Stop Signage complies with any TfNSW naming and numbering standard notified by TfNSW to the Operator from time to time 	8(c)	O	O			T	Before commencement of the new or changed Bus Route
6.7	Liaise with the Road Authority, local government authority, or any other authority with responsibilities relevant to Bus Stops and local residents, as appropriate, about the installation of Bus Stop Signage	8(c)	O	O			T	Before installing Stop Signage

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
6.8	Notify the relevant authority if any infrastructure at a Bus Stop is damaged or in need of maintenance or repair	8(d)	O	O			T	Within 24 hours of becoming aware of the damage
6.9	Document and maintain a proper record of all communications relating to Bus Stops and Bus Stop Signage	8(e)	O	O			T	Continuing throughout the Term
6.10	For all existing and new informal bus stops reference should be made to Centre for Road Safety guidance on recognised best practice, including the Advice for Choosing Locations of Informal School Bus stops, as amended from time to time: https://roadsafety.transport.nsw.gov.au/downloads/advice-for-choosing-locations-of-informal-school-bus-stops.pdf	8(e)	O	O			T	Continuing throughout the Term

7 Service Desk

The following table identifies the Service Desk roles and responsibilities:

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
7.1	Provide a Service Desk, during the operational hours of the Contract Bus Services. The Operator may elect that the Service Desk be provided by Transportnsw.info	9(a)	O	O			T	Continuing throughout the Term
7.2	Manage all calls to the Service Desk from receipt to closure	9(a)	O	O			T	Continuing throughout the Term
7.3	Log, classify and assign a reference number to all calls to the Service Desk	9(a)	O	O			T	Continuing throughout the Term

7.4	Assign a priority to all calls received by the Service Desk to reflect the severity of the issue, or as otherwise directed by TfNSW	9(a)	O	O			T	Continuing throughout the Term
7.5	Collaborate and cooperate with the Transportnsw.info, as required, to manage calls to the Service Desk and resolve Incidents	9(a)	O	O			T	Continuing throughout the Term
7.6	Refer any calls received by the Service Desk which do not relate to the Contract Bus Services to Transport Info 131500	9(a)	O	O			T	Within 2 hours of receipt of call
7.7	Notify TfNSW of Incidents and any other unplanned maintenance issues	9(a)	O	O			T	Within 24 hours of notification of the Incident or unplanned maintenance issue
7.8	Report all calls which are unresolved for more than 30 Business Days, at the end of each month to TfNSW	9(a)	O	O			T	Monthly throughout the Term
7.9	Maintain appropriate documentation of all calls to the Service Desk, including details of the closure of all calls	9(a)	O	O			T	Continuing throughout the Term
7.10	Perform trend analysis on Service Desk calls	9(a)	O	O			T	Monthly throughout the Term
7.11	Identify any problems of a systemic nature revealed by the trend analysis and implement processes to improve performance	9(a)	O	O			T	As soon as practicable
7.12	Ensure the Service Desk is staffed with personnel who are suitably skilled and trained to deliver support services	9(a)	O	O			T	Continuing throughout the Term

8 Training and Knowledge Transfer

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

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
8.1	Provide all customer facing Staff with passenger service training, in particular: <ul style="list-style-type: none"> a) training with regard to requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds; and b) training with regard to the management of confrontation, difficult passengers and personal safety 	18.1 (b)	O	O			T	Before the individual commences providing Services
8.2	Provide training to all Drivers regarding the following, as applicable to the Bus Routes for which the Driver is engaged to provide Contract Bus Services: <ul style="list-style-type: none"> a) the Tickets, Full Fares and Concession Fares, Free Travel and Integrated Event Ticketing; b) the Bus Routes and the Contract Depots; c) the Timetables; and d) the Guidelines for Managing School Student Behaviour on Buses and any relevant School Student Transport information or requirements as provided by TfNSW from time to time 	18.1(b)	O	O			T	Before the Driver commences providing Contract Bus Services
8.3	Provide training to staff regarding: <ul style="list-style-type: none"> a) appropriate environmental legislation; and b) work health and safety 	18.1(b)	O	O			T	Continuing throughout the Term

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
8.4	Provide additional training to Staff to meet the requirements of Items 8.1, 8.2 and 8.3 above, if required when a change in the Contract Bus Services is implemented	18.1(b)	O	O			T	Before the implementation of the change in the Contract Bus Services
8.5	Develop, document and maintain training materials to provide to Staff to support the training referred to at Items 8.1, 8.2 and 8.3 above	18.1(b)	O	O			T	As required throughout the Term

9 New Systems and Equipment

	Functional	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
9.1	Develop operational procedures, guidelines and training requirements for New Systems and Equipment, as required	12.2(g)	T	T		O		As required throughout the Term
9.2	Comply with any reasonable operational procedures, guidelines and training requirements for New Systems and Equipment issued by TfNSW from time to time	12.2(g)	O	O	T	T	T	Continuing throughout the Term
9.3	Ensure New Systems and Equipment are in operational condition	12.2(g)	O	O	T	T	T	Continuing throughout the Term
9.4	Protect New Systems and Equipment and use reasonable endeavours to ensure New Systems and Equipment are not mishandled or mistreated	12.2(g)	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
9.5	Check New Systems and Equipment for faults, malfunctions security breaches or viruses regularly	12.2(g)	O	O	T	T	T	Continuing throughout the Term
9.6	Report any fault, malfunction, security breach or virus in New Systems and Equipment to TfNSW promptly	12.2(g)	O	O	T	T	T	Within 24 hours of the fault or malfunction being identified
9.7	Replace Rotable Assets, as required	12.2(g)	O	O	T	T	T	Continuing throughout the Term
9.8	Ensure all spare Rotable Assets are kept in a secure location	12.2(g)	O	O	T	T	T	Continuing throughout the Term
9.9	Maintain a record of all New Systems and Equipment, which includes information regarding the location and movement of all New Systems and Equipment (including Rotable Assets)	12.2(g)	O	O	T	T	T	Continuing throughout the Term

10 KPI Management

KPI Management is the activities associated with monitoring and reporting on the Key Performance Indicators.

The following table identifies KPI Management roles and responsibilities.

	Functional Description	Contract Clause	Responsible	Accountable	Support	Consulted	Informed	When
10.1	Define and document KPI requirements	10.1(a)	T	T	T	O	O	Before the Commencement Date and as amended from time to time
10.2	Coordinate KPI monitoring and reporting with TfNSW and third-party providers, as required	10.1(b)	O	O		T	T	Continuing throughout the Term
10.3	Measure, analyse, and provide reports on performance against KPIs	10.1(b)	O	O			T	As stated in the KPI Schedule
10.4	Track KPI performance for individual Incidents and escalate KPI breaches	10.1(b)	O	O			T	As stated in the KPI Schedule
10.5	Develop and document KPI corrective action plans, where required	10.1(b)	O	O	T	T	T	As required throughout the Term
10.6	Implement corrective action plans	10.1(b)	O	O	T	T	T	As required throughout the Term
10.7	Report to TfNSW on KPI corrective action plan results	10.1(b)	O	O	T	T	T	As required throughout the Term

11 Government Subsidised Travel Schemes, including SSTS

The Operator must ensure all students have appropriate bus passes under SSTS and persons eligible for other Government Subsidised Travel Schemes have access to concessional and free transport, as required by TfNSW, and outlined below:

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
11.1	Provide administration of any Government Subsidised Travel Schemes, approved by the Minister for Transport in accordance with Clause 8 of Schedule 1 of the TA Act, and notified to the Operator by TfNSW from time to time (including SSTS). Administration activities may include: a) receiving and retaining applications; b) assessing the eligibility of applicants; c) maintaining administration records	11.5	T	T	O	O	O	Continuing throughout the Term
11.2	Manage travel entitlements conferred by Government Subsidised Travel Schemes, including planning and determining the most cost effective mode and route of travel on the Bus Routes	11.5	T/O	T/O		T/O	T/O	Continuing throughout the Term
11.3	Provide prescribed application form or system (as notified to the Operator by TfNSW) for applicants under a Government Subsidised Travel Scheme	11.5	T	T	O	O	O	Continuing throughout the Term
11.4	Issue new and replacement instruments evidencing proof of entitlement under a Government Subsidised Travel Scheme as required, whether purchased or not, e.g. travel passes, term passes, concession cards	11.5	O	O		T	T	Continuing throughout the Term
11.5	Provide information on eligibility and entitlements of applicants under a Government Subsidised Travel Scheme, in electronic or any other required format	11.5	T	T	O	O	O	Monthly throughout the Term

	Functional Description	Contract Clause	Responsibility	Accountable	Support	Consulted	Informed	When
11.6	Liaise with schools, TAFE colleges and other relevant organisations where school students or concessional customers are serviced by the Bus Routes, to ensure the Contract Bus Services are meeting the requirements of those persons	11.5	O	O		T	T	On a regular basis, continuing throughout the Term
11.7	Attend schools, TAFE colleges and other relevant organisations for meetings with relevant persons to communicate transport arrangements and work through service issues	11.5	O	O		T	T	As required, throughout the Term
11.8	Ensure all schools and TAFE colleges serviced by the Bus Routes have access to specific timetable information regarding the individual school or TAFE college and the information is available on the Operator's website.	11.5	O	O		T	T	Continuing throughout the Term
11.9	Comply with the requirements of the Guidelines for Managing School Student Behaviour on Buses and any other guidelines regarding Government Subsidised Travel Schemes issued by TfNSW from time to time	11.5	O	O		T	T	Continuing throughout the Term
11.10	Attend schools, TAFE colleges and other relevant organisations for meetings with relevant persons to communicate transport arrangements and work through service issues	11.5	O	O		T	T	As required, throughout the Term
11.11	Assess eligibility of SSTS	11.5	T	T	O	O	O	Continuing throughout the Term

Schedule 2 Service Level Schedule

The content of this Schedule, as at the commencement of this Contract, is set out below. The information is current to 22 September 2015.

During the Transition Period, the Operator must consider the information set out below and, by the Services Commencement Date, prepare Timetables or Dedicated School Services Timetables (as applicable) and Bus Route maps and descriptions, in a format determined by TfNSW, to the satisfaction of TfNSW. The Timetables and Dedicated School Services Timetables (as applicable) must reflect the trips and stopping patterns approved under the Previous Service Contract. Unless specific approval has been given by TfNSW, the Dedicated School Services Timetables must indicate that the Dedicated School Services do not pick up or drop off passengers within town boundaries, other than at approved school stops.

The parties will sign the Bus Services and/or Dedicated School Services information (as applicable) prepared by the Operator and approved by TfNSW during the Transition Period, and annex it to this Schedule. Once annexed to this Schedule, that information will be taken to be the content of this Schedule for the remainder of the Term, unless further modified by the Parties.

Schedule 3 Payment Schedule

1 Definitions

1.1 In this Schedule, the following words have the following meanings:

Annual Contract Price means the amounts itemised in Annexure 1 to this Schedule, which may be adjusted in accordance with this Schedule.

Bus Purchase Date means

- (a) For an Existing Bus which was purchased new, the date on which the Existing Bus was first used to provide bus services continuously under a Previous Service Contract;
- (b) For an Existing Bus which was purchased second hand, the date on which the bus was first registered; and
- (c) For a New Bus, the date on which the Contract Bus was first used to provide Contract Bus Services.

Capital Charge means the annual capital charge, including stamp duty, for a Contract Bus, which is equal to the Monthly Bus Payment times 12.

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

Monthly Bus Payment means:

- (a) For an Existing Bus, the amount included in the Annual Contract Price for the capital costs of the Existing Bus, which will be depreciated over the Term. The starting amount (as at the Services Commencement Date) is listed in Annexure 1 of the Contract Buses and Contract Depots Schedule; and
- (b) For a New Bus, the amount calculated in accordance with Paragraph 4.3 of this Schedule, which will be depreciated over the Term. The starting amount will be listed in Annexure 2 to the Contract Buses and Contract Depots Schedule (as amended from time to time).

Monthly Bus Payment End Date means:

- (a) For an Existing Bus, the date of the last Monthly Bus Payment, which for an Existing Bus within Bus Category 1 or 2 is 156 months after the Bus Purchase Date and for an Existing Bus within Bus Category 3 or 4 is 240 months after the Bus Purchase Date, as listed in column 11 of Annexure 1 to the Contract Buses and Contract Depots Schedule; and
- (b) For a New Bus, the date of the last Monthly Bus Payment, which for a New Bus within Bus Category 1 or 2 is 156 months after the Bus Purchase Date and for a New Bus within Bus Category 3 or 4 is 180 months after the Bus Purchase Date, as listed in Annexure 2 to the Contract Buses and Contract Depots Schedule (as amended from time to time).

Monthly Contract Price means the sum to be paid by TfNSW to the Operator for the Contract Bus Services provided in each Contract Month, which is equal to the Annual Contract Price divided by 12.

Peak Bus means a Contract Bus that must be absent from the Contract Depot at the same time that the maximum number of Contract Buses must be absent from the Contract Depot in order to efficiently provide the Contract Bus Services.

Purchase Price means:

- (a) For an Existing Bus, the purchase price of the Bus, as listed in Annexure 1 to the Contract Buses and Contract Depots Schedule; and
- (b) For a New Bus, the funded price of the Bus, as listed in Annexure 2 to the Contract Buses and Contract Depots Schedule (as amended from time to time).

Service Bus Hrs means any hour that a Bus of a particular Bus Category must be absent from the Contract Depot in order to efficiently provide the Contract Bus Services.

Service Bus Kms means any kilometre that a Bus of a particular Bus Category must travel outside of the Contract Depot in order to efficiently provide the Contract Bus Services.

Unit Rate means the rates contained in Annexure 2 to this Schedule.

Written Off Contract Bus means a Contract Bus which is irretrievably lost, stolen, destroyed or damaged beyond economic repair during the Term.

2 General Requirements

- 2.1 In accordance with Clause 20.2 of the Contract, the Operator must provide a Tax Invoice to TfNSW, in a form approved by TfNSW from time to time, which identifies:
 - (a) the amount of the Monthly Contract Price for the previous month;
 - (b) the amount of GST chargeable on the amount referred to in paragraph 2.1(a);
 - (c) the amount to be set-off from the aggregate of the amounts referred to in paragraphs 2.1(a) and 2.1(b) above, being any amount to be deducted from the total Payment for a KPI Credit in the previous month; and
 - (d) the net Payment owed by TfNSW to the Operator, having regard to paragraphs 2.1(a) to 2.1(c) above.
- 2.2 The Operator must provide TfNSW with supporting evidence showing that the amounts identified in a Tax Invoice are correctly calculated in accordance with the Contract and this Schedule.
- 2.3 The Tax Invoice must be addressed to an officer nominated by TfNSW and notified to the Operator from time to time.

3 Annual Contract Price

- 3.1 The Annual Contract Price is fixed for the Term, unless varied in accordance with this Schedule.
- 3.2 The parties acknowledge there will be no negotiation of the Annual Contract Price, other than variations in accordance with this Schedule.

4 Variation to Annual Contract Price

The parties acknowledge and agree the Annual Contract Price may be varied in accordance with this Paragraph 4.

- 4.1 Price Adjustments for Service Variations
 - (a) The Annual Contract Price may be adjusted in accordance with this Paragraph 4.1, if TfNSW provides notice of or approves a Service Variation.

- (b) Subject to Paragraph 4.1(g), for each approved Service Variation, TfNSW will increase or decrease the Annual Contract Price, for the duration of the Service Variation, by applying the following calculation(s):
- (i) the agreed change in daily Service Bus Kms as a result of the Service Variation, multiplied by the applicable Unit Rate for Bus Kilometre Payments (as specified in Annexure 2 to this Schedule) multiplied by the number of days in the year for which the Service Variation will operate;
 - (ii) the agreed change in daily Service Bus Hrs as a result of the Service Variation, multiplied by the applicable Unit Rate for Bus Hour Payments (as specified in Annexure 2 to this Schedule), multiplied by the number of days in the year for which the Service Variation will operate;
 - (iii) the agreed change in daily Service Bus Hrs as a result of the Service Variation, multiplied by the applicable Unit Rate for Bus Hour Payments – Hourly Maintenance Rate (as specified in Annexure 2 to this Schedule), multiplied by the number of days in the year for which the Service Variation will operate;
 - (iv) the agreed change in Peak Buses per day as a result of the Service Variation, multiplied by the applicable Unit Rate for Bus Driver Daily Allowance (as specified in Annexure 2 to this Schedule), multiplied by the number of days in the year for which the additional Peak Bus will operate;
 - (v) the agreed change in daily Service Bus Kms as a result of the Service Variation, multiplied by the applicable Unit Rate for Bus Fuel Payment (as specified in Annexure 2 to this Schedule) multiplied by the number of days in the year for which the Service Variation will operate;
 - (vi) the agreed change in Contract Buses as a result of the Service Variation, multiplied by the applicable Unit Rate for Bus Overhead (as specified in Annexure 2 to this Schedule);
 - (vii) for any Service Variation requiring an increase in the number of Peak Buses, the price for the agreed required number of Growth Contract Buses as a result of the Service Variation will be calculated in accordance with Paragraph 4.3 of this Schedule:
 - (A) In agreeing the required number of Growth Contract Buses, an allowance will be incorporated for additional spare Buses. This allowance will be applied on the basis of one additional spare Bus of the same Bus type being required for each ten extra Peak Buses required in the Fleet;
 - (viii) for any Service Variation allowing a decrease in the number of Peak Buses:
 - (A) the parties will agree the number of Buses no longer required, making an appropriate allowance for a reduction in the number of spare Buses required. This allowance must be applied on the basis of one fewer spare Bus of the same Bus

- Category being required for each ten fewer Peak Buses required in the Contract Bus Fleet;
- (B) in reducing the Contract Bus Fleet by the agreed number of Buses no longer required, the oldest Buses in the Contract Bus Fleet must be excluded first;
 - (C) if the Service Variation allows a decrease in Peak Buses which are Existing Buses, the Annual Contract Price will be reduced by excluding the price for the Contract Buses removed from the Contract Bus Fleet, in accordance with Paragraph 4.3 of this Schedule; and
 - (D) TfNSW will pay the Operator a Displaced Bus Termination Payment, calculated in accordance with Paragraph 4.1(b)(x)(A)(II) of this Schedule, for the Contract Bus displaced as a result of the decrease in Peak Buses;
- (ix) for any Service Variation which requires a lower Bus Category number to service a Bus Route (for example changing a Bus Route from requiring Bus Category 4 to Bus Category 3):
- (A) the Operator must continue to use its Contract Bus Fleet to deliver the Contract Bus Services (without change to the Annual Contract Price), until the standard Bus replacement process or further Service Variations replace a sufficient number of higher category buses with lower category buses;
- (x) for any Service Variation which requires a higher Bus Category number to service a Bus Route (for example changing a Bus Route from requiring Bus Category 3 to Category 4):
- (A) for any Contract Bus no longer required as a result of the Service Variation, TfNSW may, in its absolute discretion, either:
 - (I) make no immediate change to the Contract Bus Fleet, and make no change to the Annual Contract Price (other than any payment made in accordance with Paragraphs 4.1(b)(i) to 4.1(b)(vi) of this Schedule). The oldest Contract Bus of the same Bus Category as the Contract Bus no longer required will become an additional Spare Bus. When this additional Spare Bus reaches its maximum age, as set out in Paragraph 2 of the Contract Buses and Contract Depots Schedule, it will be removed from the Contract Fleet without replacement; or
 - (II) remove the Contract Bus that is no longer required from the Contract Bus Fleet and if it is an Existing Bus (in addition to any payment made in accordance with Paragraphs 4.1(b)(i) to 4.1(b)(vi) of this Schedule), pay the Operator a Displaced Bus Termination Payment (DBTP_e) calculated as follows:

$$DBTP_e = (PP - (PP \times DR \times A_g)) - DV$$

Where:

PP = the Purchase Price of the displaced Contract Bus

DR = the straight line rate of depreciation, which is: 7.69% for a Bus Category 1 or a Bus Category 2 Contract Bus; and 5% for a Bus Category 3 or a Bus Category 4 Contract Bus

Note: If an Existing Bus which the Operator purchased second hand is displaced, the DR will be adjusted to reflect the appropriate rate of depreciation for the reduced payment period. The payment period for an Existing Bus which the Operator purchased second hand will be reduced by the age of that Existing Bus at the Purchase Date.

A_g = the age in years of the Existing Bus from the Bus Purchase Date to the date of displacement

DV = the depreciated value of the Existing Bus as determined by:

For a Bus Category 3 or 4 Existing Bus not acquired and not being replaced under the Seat Belts in Buses Program

$$DV = CC_n(1 - 0.1088)^{\left(\frac{m+1}{12}\right)}$$

For a Bus Category 1 or 2 Existing Bus not acquired and not being replaced under the Seat Belts in Buses Program

$$DV = CC_n(1 - 0.1623)^{\left(\frac{m+1}{12}\right)}$$

For any Existing Bus acquired under the Seat Belts in Buses Program

$$DV = CC_n(1 - 0.2056)^{\left(\frac{m+1}{12}\right)}$$

For any Existing Bus not acquired, but being replaced, under the Seat Belts in Buses Program

$$DV = CC_n(1 - 0.1623)^{\left(\frac{m+1}{12}\right)}$$

Where:

“ CC_n ” and “ m ” have the same definitions as in Paragraph 4.6(a).

If this option is chosen, TfNSW will cease to pay the Operator the Monthly Bus Payment; or

- (III) remove the Contract Bus which is no longer required from the Contract Bus Fleet and if it is a New Bus (in addition to any payment made in accordance with Paragraphs 4.1(b)(i) to 4.1(b)(vi) of this Schedule), pay the Operator a Displaced Bus Termination Payment ($DBTP_n$) calculated as follows:

$$DBTP_n = VTP - DV$$

Where:

VTP = the Vehicle Termination Payment calculated in accordance with Schedule 34.6(a) of this Schedule.

DV = the depreciated value of the New Bus displaced as determined by:

For a Bus Category 3 or 4 New Bus not acquired and not being replaced under the Seat Belts in Buses Program

$$DV = CC_n(1 - 0.1423)^{\frac{m+1}{12}}$$

For a Bus Category 1 or 2 New Bus not acquired and not being replaced under the Seat Belts in Buses Program

$$DV = CC_n(1 - 0.1623)^{\frac{m+1}{12}}$$

For any New Bus acquired under the Seat Belts in Buses Program

$$DV = CC_n(1 - 0.2056)^{\frac{m+1}{12}}$$

For any New Bus not acquired, but being replaced, under the Seat Belts in Buses Program

$$DV = CC_n(1 - 0.1623)^{\frac{m+1}{12}}$$

If this option is chosen, TfNSW will cease to pay the Operator the Monthly Bus Payment.

The example below is provided to demonstrate how to calculate the Displaced Bus Termination Payment for an Existing Bus (Bus Category 4). The data used in the example does not relate to this Contract and must not be relied on by the Operator.

Displaced Bus Purchase Date

dd/mm/yyyy 20/05/2005

Date of Displacement

dd/mm/yyyy 20/05/2013

Type of replacement Cat 3 or 4 bus not acquired/replaced under Seat Belts in Buses Program

PP \$300,000

DR 5.00%

A_g 8.00

CC_n \$300,000

m maximum 240

M 96 Elapsed total months since purchase

DV Factor 0.1088

DV \$118,237.15

DBTP_e	\$61,762.85
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(c) Unit Rates will be inflation adjusted by application of the Inflation Indices in Paragraph 4.5(d), applied in the following manner:

Unit Rate	Inflation Indices to be Applied
Bus Kilometre Payments and Bus Hour Payments – Hourly Maintenance Rate	45% of rate inflated by index in Paragraph 4.5(d) Table Ref 1 55% of rate inflated by index in Paragraph 4.5(d) Table Ref 4
Bus Hour Payments and Bus Driver Daily Allowance	100% of rate inflated by index in Paragraph 4.5(d) Table Ref 1
Bus Fuel Payments	100% of rate inflated by index in Paragraph 4.5(d) Table Ref 2

Unit Rate	Inflation Indices to be Applied
Per Bus Overhead	45% of rate inflated by index in Paragraph 4.5(d) Table Ref 1 55% of rate inflated by index in Paragraph 4.5(d) Table Ref 4

- (d) If the Annual Contract Price has been varied due to a Service Variation, any future inflation adjustment for the varied Annual Contract Price will be treated in accordance with Paragraph 4.5.
- (e) At any given time, TfNSW shall record the inflation adjusted value of the Annual Contract Price, as at the Services Commencement Date, separately from the inflation adjusted total value of all Service Variations.
- (f) TfNSW must notify the Operator of the variation to the Annual Contract Price by notice in writing and adjust the Monthly Contract Price accordingly for payment purposes.
- (g) The Annual Contract Price will not be increased or decreased for an approved Service Variation which:
 - (i) was proposed by the Operator in accordance with Clause 5.4 of the Contract; and
 - (ii) changes the Bus Schedules, with no change to the Contract Service Levels.

4.2 Price Adjustments for Failure to Achieve Key Performance Indicators

- (a) The Monthly Contract Price may be adjusted in the event that the Operator fails to meet a Key Performance Indicator subject to a Service Credit, in accordance with the KPI Schedule.
- (b) In the event the Operator fails to meet a KPI subject to a Service Credit, the monthly Payment due to the Operator will be reduced by the amount of the KPI Credit, calculated in accordance with the KPI Schedule.

4.3 Price Adjustment for a Scheduled Replacement Contract Bus or for a change in the number of Peak Buses or Bus Category as a result of a Service Variation

- (a) The price adjustment for a Contract Bus which reaches its maximum age, as set out in Paragraph 2 of the Contract Buses and Contract Depots Schedule and is replaced in accordance with Clause 13.2(a)(i) of the Contract, or the price adjustment for a change in the number of Peak Buses or Bus Category number required to service a Bus Route as a result of a Service Variation (subject to Paragraph 4.1(b)(viii)) will be calculated in accordance with the following formula:
 - (i) For a Contract Bus which is replaced or is no longer required as a result of a Service Variation, remove the Monthly Bus Payment for the replaced/displaced Contract Bus from the Annual Contract Price for each relevant year in Annexure 1 of this Schedule; and

- (ii) For a New Bus which is added due to a Service Variation, the Monthly Bus Payment (referred to as the **NFPP**) for the New Bus will be added to the Annual Contract Price for each relevant year in accordance with the following formula:

$$\text{NFPP}_n = \frac{i_n \times (\text{CC}_n)}{1 - (1 + i_n)^{-M}}$$

and is the new monthly vehicle periodic payment.

Where:

i_n is the monthly interest rate (for payment) calculated in accordance with the following formula:

$$i_n = (1 + r_n)^{1/12} - 1$$

where:

r_n is the 10 year Commonwealth Treasury Bond Rate (expressed as a decimal) at the end of the first month in which TfNSW is satisfied that Bus (n) is a Contract Bus plus 3%

M For New Buses within Bus Category 1 or 2 not acquired under the Seat Belts in Buses Program, M equals 156; or
For New Buses within Bus Category 3 or 4 not acquired under the Seat Belts in Buses Program, M equals 180; or
For New Buses acquired under the Seat Belts in Buses Program, M equals 120

CC_n is the Purchase Price for the New Bus.

4.4 Price Adjustment for Written Off Contract Bus

- (a) A Written Off Contract Bus must be replaced in accordance with Clause 13.2(a)(ii) of the Contract. A Written Off Contract Bus will have an existing cash flow and will be subject to an insurance payout.
- (b) Accordingly, when a Written Off Contract Bus is replaced with a New Bus (which must be acquired from the Bus Procurement Panel), the contract bus capital charge for the Written Off Contract Bus must be discontinued and the payment for the New Bus must be adjusted by the current book value of the Written Off Contract Bus (to reflect any insurance payout).
- (c) The price adjustment for a Written Off Contract Bus (**PAWOB**), from the month of replacement, will be calculated in accordance with the following formula:

$$\text{PAWOB}_n = \text{NFPP}_{\text{WO}} - \text{CBCC}_n/12$$

Where:

$$\text{NFPP}_{\text{WO}} = \frac{i_n \times (\text{CC}_n - \text{BPV})}{1 - (1 + i_n)^{-M}}$$

- CBCC_n = The Capital Charge for the Contract Bus which is written off. If the Monthly Payment End Date has been reached, CBCC_n will be zero.
- BPV = The Initial Capital Value of the Written Off Contract Bus depreciated at a rate of:
- 0.955% per month on a diminishing value basis for Bus Category 3 or 4 Existing Buses not acquired under the Seat Belts in Buses Program; or
 - 1.270% per month on a diminishing value basis for Bus Category 3 or 4 New Buses not acquired under the Seat Belts in Buses Program; or
 - 1.465% per month on a diminishing value basis for Bus Category 1 or 2 Existing Buses and New Buses not acquired under the Seat Belts in Buses Program; or
 - 1.900% per month on a diminishing value basis for all Contract Buses acquired under the Seat Belts in Buses Program,
- for each month the Written Off Contract Bus formed part of the Contract Bus Fleet.

CC_n is the Purchase Price for the Written Off Contract Bus.

4.5 Price Adjustments for Inflation

- (a) The Annual Contract Price must be adjusted to take into account inflation.
- (b) At the appropriate periods as specified in the table in Paragraph 4.5(d), TfNSW must apply the appropriate inflation index to the appropriate cost items and notify the Operator in writing of the adjusted Annual Contract Price and Monthly Contract Price.
- (c) Indexation increases for References 1 and 4 in the table in Paragraph 4.5(d) below, will apply from the first day of the month following the indexation date.

Monthly Fuel Prices (**MFP**) will be indexed on a monthly basis in accordance with the following formula:

Tendered Monthly Fuel Price * FIM

The Tendered Monthly Fuel Price is 1/12th of the relevant annual fuel price component from Ref 1, Annexure 1 to this Schedule

where

$FIM = AFP_{n-1} / BFP$

FIM is the monthly Fuel Indexation Multiplier factor

AFP_{n-1} is the Average fuel price per litre for the previous month (net of GST)

BFP is the Bid Fuel Price per litre (net of GST).

- (d) For the purposes of this Paragraph 4.5, the following inflation indices will be adopted and applied to the prices shown in Annexure 1.

Ref.	Item (from table in Annexure 1)	Inflation Mechanism	Inflation Timing and Base (Indexation date being the last day of the base month)
1	Salaries and Wages (including labour on-costs)	Latest ABS Quarterly Index; Total hourly rates of pay excluding bonuses; Private and Public; Transport, postal and warehousing A2603469T	To be applied annually in arrears. Base June 2015
2	Fuel and Oil	Monthly Average Mobil Terminal Gate Price Silverwater NSW Diesel. Any changes in the Fuel Tax Credit rate will be adjusted if and when they apply in the corresponding month.	To be applied monthly in arrears. Base January 2016
3	New Bus Principal Prices and Interest	Actual Bus Procurement Panel price for that Bus type at that time c.f. equivalent	To be applied at time of purchase
4	Other	Latest Australian Bureau of Statistics Consumer Price Index (CPI), quarter All groups Sydney.	To be applied annually in arrears. Base June 2015

4.6 Vehicle Termination Payments

- (a) Subject to Paragraph 4.6(b), the Vehicle Termination Payment payable under Paragraph 4.1(b)(x)(A)(III) of this Schedule or Paragraph 3 of the Contract Buses and Contract Depots Schedule, will be determined by TfNSW in accordance with the following formula:

$$VTP_n = (CC_n) \times (1 + i_n)^{(m+1)} - \left(\frac{NFPP_n}{i_n} \times ((1 + i_n)^m - 1) \right)$$

Where:

VTP_n is the Vehicle Termination Payment;

m is:

- (i) in respect of a New Bus, the number of months that the New Bus has been in service, the maximum number being:
- (A) 180 months for a Bus Category 3 or 4 New Bus not acquired under the Seat Belts in Buses Program;

- (B) 156 months for a Bus Category 1 or 2 New Bus not acquired under the Seat Belts in Buses Program;
- (C) 120 months for a Contract Bus acquired under the Seat Belts in Buses Program; or
- (ii) in respect of an Existing Bus, the number of months that the Existing Bus has been in service, the maximum number being:
 - (A) 240 months for a Bus Category 3 or 4 New Bus not acquired under the Seat Belts in Buses Program;
 - (B) 156 months for a Bus Category 1 or 2 New Bus not acquired under the Seat Belts in Buses Program; or
 - (C) 120 months for a Contract Bus acquired under the Seat Belts in Buses Program.

CC_n is the Purchase Price for the Contract Bus.

NFPP_n:

- (iii) in respect of a New Bus, will be calculated using the relevant formulas in Paragraph 4.3 (but by reference to any corresponding definitions under this Paragraph); and
- (iv) In respect of an Existing Bus, the Monthly Bus Payment.
i_n will be calculated using the relevant formulas in Paragraph 4.3 (but by reference to any corresponding definitions under this Paragraph).
- (b) No Vehicle Termination Payment will be payable in connection with an Existing Bus or a New Bus where the Existing Bus or New Bus has been in service for more than the maximum months stipulated in Paragraph 4.6(a)(i) or 4.6(a)(ii) of this Schedule.

4.7 Price Adjustment Due to Incorrect Information

- (a) If the Annual Contract Price is based on information provided by the Operator which TfNSW determines is incorrect, TfNSW may vary the Annual Contract Price to account for the effect of that incorrect information.

4.8 Price Adjustment Due to a Material Change in Fares

- (a) If TfNSW changes a Fare (or Fares) in the Fares and Ticketing Schedule as a result of a change in Government Fare policy, and the change results in a material change in the Fare revenue received by the Operator, the parties will agree an adjustment to the Annual Contract Price to reflect the impact of the change in the annual Fare revenue.

4.9 Payment for Bus Lights and Signs

- (a) TfNSW will pay the Operator \$1,600 per Contract Bus modified by or on behalf of the Operator in compliance with Paragraph 5 of the Contract Buses and Contract Depot Schedule, if:
 - (i) the Contract Bus is modified by 31 December 2020 or any other date specified in writing by TfNSW at TfNSW's absolute discretion; and
 - (ii) the Operator notified TfNSW before 7 August 2020 of the date on which the Contract Bus would be TS 150 compliant; and

- (iii) the Operator provides TfNSW with evidence (to the satisfaction of TfNSW) that the modifications have been carried out and that consequently the Contract Bus complies with the requirements of TS 150.
 - (b) TfNSW will pay any amounts owing by TfNSW to the Operator under Paragraph 4.9(a) by increasing the next Payment to be made by TfNSW to the Operator by a corresponding amount.
- 4.10 Price Adjustment Due to a Material Change in Law
- (a) The Annual Contract Price may be adjusted to account for a material change in Law, in accordance with this Paragraph 4.10.
 - (b) If a Law directly affecting the Operator's performance of the Contract Bus Services is materially changed, resulting in a change in the costs incurred by the Operator in the performance of the Contract Bus Services, the Operator may submit a notice to TfNSW requesting an adjustment to the Annual Contract Price.
 - (c) The notice to be given by the Operator under Paragraph 4.10(b) must:
 - (i) be given within 12 months of the material change in Law;
 - (ii) set out the details of the material change in Law and its effect or potential effect on the Operator's performance of the Contract Bus Services;
 - (iii) specify the adjustment to the Annual Contract Price sought by the Operator; and
 - (iv) provide evidence to substantiate the Operator's claim (to the satisfaction of TfNSW).
 - (d) TfNSW may, in its absolute discretion, grant or reject a request by the Operator to adjust the Annual Contract Price to account for a material change in Law. A request by the Operator will be of no force and effect unless and until it is granted by TfNSW.
 - (e) TfNSW will not grant a request by the Operator to adjust the Annual Contract Price to account for a material change in Law if TfNSW believes that any change in costs is (or will be) dealt with by a price adjustment for inflation under Paragraph 4.5 of this Schedule, or another price adjustment process under this Schedule.
 - (f) TfNSW may, in its absolute discretion, decrease the Annual Contract Price to account for a material change in Law, after consulting with the Operator.

Annexure 1 Annual Contract Price

Annexure 2 Gross Unit Rates for Service Variations

Driver Hours include ex-depot bus hours, adjusted for minimum engagement per day, and where an additional Peak Bus is included in the Service Variation, a half hour allowance for driver sign on / sign off.

Schedule 4 KPI Schedule

1 Definitions

1.1 In this Schedule, the following words have the following meanings:

Act Outside of the Reasonable Control of the Operator means passenger emergencies, road accidents, major road or construction works, and where the Operator has complied with its obligations set out in Paragraphs 5.7(e) and 5.7(f) of this Schedule.

At Risk Amount means 5%.

Boardings means the number of Trips taken by all passengers.

Cascade means when a single Incident results in the Operator incurring more than one Class 1 KPI Default.

Crowded means Contract Bus full on route which leaves customers behind.

Excused Performance Incident means an Incident resulting in the Operator's inability to meet a KPI which is caused directly by either a Force Majeure or an Act Outside of the Reasonable Control of the Operator.

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

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

KPI means a Key Performance Indicator.

KPI Class means the classification of the KPI as a Class 1 or Class 2.

KPI Credit Allocation Percentage means the percentage defined in the table set out in Paragraph 6 of this Schedule.

KPI Credit Loading means the increase in KPI Credits payable by the Operator, determined under Paragraph 5.3 of this Schedule.

KPI Credit means the amount payable by the Operator to TfNSW for non-performance of a KPI in the KPI Credit Table, being a civil penalty provision for the purposes of section 38 of the PT Act and a genuine pre-estimate, agreed by the parties, to off-set part of TfNSW's direct or indirect costs arising from the Operator's non-performance.

KPI Credit Table means the table set out in Paragraph 6 of this Schedule, as may be amended by TfNSW in accordance with Paragraph 6(b) from time to time.

KPI Default means failure to comply with a KPI.

KPI Negative Trend means a trend in the measured results of a KPI which demonstrate a reduction in performance.

KPI Relief means an Operator is excused from non-performance of a KPI as a result of an Excused Performance Incident in accordance with Paragraph 5.7 of this Schedule.

KPI Reporting Period means the frequency with which the Operator's performance against the KPI must be reported (as specified in the KPI Table).

KPI Table means the KPI tables set out in Paragraph 9 of this Schedule.

Late means a Contract Bus departing a Bus Stop more than 5 minutes 59 seconds later than timetabled.

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

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

1.2 The following table sets out how the KPI Tables included in this Schedule are to be interpreted:

Name	The name of the KPI
Description	A description of what the KPI does and, at a high level, how it is measured and calculated
Hours measured	The hours during which the KPI calculation is applied
KPI	The level which the delivery performance of the Operator (calculation) must equal or exceed
Class	Either Class 1 or Class 2
Measurement methodology	
Measurement starting point	The point in time at which the Operator must commence measurement for any KPI Reporting Period
Calculation	The algorithm for calculation of the level of performance of the KPI for the KPI Reporting Period
Period of calculation	The period over which the performance of the KPI must be calculated in each report
Measurement unit	The granularity with which the KPI performance must be measured and reported against
Data source	The data sources TfNSW will consider in order to provide an accurate measurement
Measurement responsibility	Whether it is the responsibility of the Operator, TfNSW or a third party to measure (or collect the measurement of) and then calculate the KPI
Reporting frequency	How frequently performance against this KPI should be reported (typically this is each Contract Quarter unless specified otherwise in this Schedule (KPI Reporting Period))

2 KPI Principles

2.1 In accordance with Clause 10 of the Contract, the Operator must perform the Contract Bus Services described in the Services Schedule and the Service Level Schedule, measured against the KPIs set out in this Schedule.

2.2 The Operator acknowledges:

- (a) the emphasis of the KPI regime is on delivery of the Contract Bus Services to meet TfNSW's business requirements and on performance improvement where the Contract Bus Services fail to meet the requirements;
- (b) KPIs apply from the Services Commencement Date and data must be sourced from available sources if automation of data collection is not available; and

- (c) TfNSW requires flexibility to modify KPIs and the management regime in order to keep pace with the changing business environment.

3 KPI Reporting

3.1 Reporting Content

In accordance with the Reporting frequency specified for every KPI, the Operator must report to TfNSW, at a minimum, the following information:

- (a) Numerical data setting out the performance achieved during the KPI Reporting Period against, where applicable, the data for the preceding quarter and 12 months;
- (b) A graphical representation of those data highlighting the KPI, the actual performance during the KPI Reporting Period and the performance for the previous quarter, 6 months or 12 months (as applicable);
- (c) A summary table demonstrating performance for each KPI;
- (d) A commentary explaining any performance variations and performance trends;
- (e) Where, for the KPI Reporting Period, there is a KPI Default, or there is an indication of a KPI Negative Trend, an explanation of the causes of the KPI Default or KPI Negative Trend;
- (f) A proposed cure plan, developed by the Operator to address the causes of any KPI Default or KPI Negative Trend, including proposed actions for that Operator and/or TfNSW; and
- (g) Where there has been a previous cure plan for the KPI, the status of the actions and an explanation of any relationship between the cure plans and current performance.

3.2 The Operator must include such other information in its reports to TfNSW as is specified in this Schedule or as otherwise required by TfNSW from time to time.

3.3 The Operator must use the format for KPI reporting specified in the Reporting Schedule.

3.4 Where the Operator develops a cure plan under Paragraph 3.1(f) of this Schedule to address the causes of any KPI Default or a KPI Negative Trend in a KPI performance and proposes actions to be performed by TfNSW, the Operator acknowledges that:

- (a) TfNSW may accept those proposed actions at its absolute discretion; and
- (b) nothing in the proposed cure plan derogates from the Operator's responsibility to perform the Contract Bus Services.

3.5 TfNSW may, from time to time, redefine its requirements for KPI reporting or request additional material to be provided by the Operator for any KPI which the Operator must provide.

3.6 The Operator may propose additional or alternative data sources that would, in the reasonable opinion of the Operator, improve the quality of measurement and reporting against the KPI. TfNSW may consider any additional or alternative data sources proposed at its absolute discretion.

3.7 In addition to reporting in the KPI Reporting Period specified for each KPI, within 15 days of each KPI Reporting Period, the Operator must provide a report to TfNSW that includes, with respect to each KPI for which there was a KPI Default during the preceding 12 months, the following:

- (a) Statistics on the Operator's monthly performance against each of the KPI's included in the report during the preceding year;
- (b) The yearly Performance Average for the KPI's included in the report; and

(c) The total amount of KPI Credits imposed for KPI Defaults.

4 KPI Classes

4.1 The parties acknowledge and agree that KPIs are classified into KPI Classes as defined in the table below:

KPI Class	Description	Management
Class 1	The measurement, management, reporting and achievement of the KPI must be met by the Operator and failure to meet the KPI requirement may result in a KPI Credit.	Actively monitored and managed by the Operator; breaches within any KPI Reporting Period require the Operator to develop an incident report in accordance with Paragraph 3.1 of this Schedule with an explanation and remedial action proposed to ensure the KPI is met. The Operator's performance against the KPI must be reported, presented and reviewed at the relevant governance meeting.
Class 2	The KPI information is to be measured, captured and reported on a regular basis but non-performance may result in a KPI Credit.	Performance is monitored and reported as stated in the KPI description. Where the KPI is not met, the Operator must take remedial action where it is necessary to continue to meet the KPI.

5 KPI Credits

5.1 Applicability

The Operator must pay KPI Credits to TfNSW for a KPI Default of a KPI specified in the KPI Credit Table, other than where non-compliance with a KPI is as a result of an Excused Performance Incident for which the Operator has been granted KPI Relief in accordance with the Payment Schedule and this Schedule.

5.2 Calculation of KPI Credit

- (a) Subject to Paragraph 5.1 of this Schedule, in the event of a KPI Default of a KPI specified in the KPI Credit Table, the Operator must pay to TfNSW a KPI Credit as calculated below.
- (b) The Operator must pay to TfNSW a KPI Credit for a KPI Default computed in accordance with the following formulae:

$$\text{KPI Credit} = A \times B \times C \times D$$

Where:

- A** = The KPI Credit Allocation Percentage for which the KPI Default occurred as shown in the KPI Credit Table in Paragraph 6 of this Schedule 4.
- B** = At Risk Amount (defined in Paragraph 1.1 of this Schedule 4).
- C** = KPI Credit Loading for repeated failures (calculated in accordance with Paragraph 5.3 of this Schedule 4).
- D** = Monthly Contract Price for the KPI Reporting Period.

The examples below are provided to demonstrate how a KPI Credit will be calculated. The data used in the examples does not relate to this Contract and must not be relied on by the Operator.

Example A

A	15.0%	KPI Credit Allocation Percentage – Paragraph 6, KPI No 12
B	5.0%	At Risk Amount – Paragraph 1.1
C	1.0	KPI Credit Loading – Paragraph 5.3(a) - two KPI failures but in one KPI Reporting Period
D	<u>541,667</u>	Example Monthly Contract Payment
KPI Credit	<u>4,062.50</u>	

Example B

A	15.0%	KPI Credit Allocation Percentage – Paragraph 6, KPI No 12
B	5.0%	At Risk Amount – Paragraph 1.1
C	1.5	KPI Credit Loading – Paragraph 5.3(a) - two failures in two consecutive KPI Reporting Periods
D	<u>541,667</u>	Example Monthly Contract Payment
KPI Credit	<u>6,093.75</u>	

5.3 Repeated Failure

The parties agree the KPI Credit Loading regime will operate as follows:

- (a) if the Operator repeatedly fails to meet a Class 1 KPI in consecutive KPI Reporting Periods, in addition to any other rights TfNSW may have under the Contract, the KPI Credit payable by the Operator (as set out in Paragraph 6 of this Schedule 4) will increase (the **KPI Credit Loading**) as follows:

Number of KPI Reporting Periods in which the same KPI has failed	KPI Credit Loading
1 KPI Reporting Period	1
KPI failed in 2 consecutive KPI Reporting Periods	1.5
KPI failed in 3 consecutive KPI Reporting Periods	2
KPI failed in 4 or more KPI Reporting Periods in 6 rolling KPI Reporting Periods	2.5

- (b) the KPI Credit Loading will only apply to the KPI Credits for the same KPI for the relevant KPI Reporting Period.
- (c) The Operator must report to TfNSW on KPI Credit Loadings in the monthly KPI Credits report for the month following the month in which KPI Credit Loading is incurred and provide the corresponding credit in the invoice for the same month.

5.4 Multiple Class 1 KPI Defaults and No Cascade

- (a) Subject to Paragraph 5.4(b), if more than one KPI Default of a KPI specified in the KPI Credit Table has occurred in a single month, the Operator must credit the sum of the corresponding KPI Credits to TfNSW in accordance with the Payment Schedule and this Schedule.
- (b) If a single Incident results in the Operator incurring more than one KPI Credit (**Cascade**), TfNSW may select any one of such KPI Defaults for which it will be entitled to receive a KPI Credit. Without prejudice to TfNSW's other rights under the Contract, TfNSW is not entitled to more than one KPI Credit for a single Incident that gives rise to multiple KPI Defaults within the same KPI Reporting Period.

5.5 Monthly KPI Credit Cap

The parties acknowledge that the aggregate amount of KPI Credits payable by the Operator to TfNSW with respect to all KPI Defaults of KPIs specified in the KPI Credit Table occurring in a single month must not exceed the sum of:

- (a) the At Risk Amount multiplied by the Monthly Contract Payment; and
- (b) any additional amounts due to the application of KPI Credit Loadings.

5.6 KPI Credit Reporting

The Operator must notify TfNSW in writing if TfNSW becomes entitled to a KPI Credit, within one Business Day of TfNSW becoming entitled to the KPI Credit, and must include any such notification in its reporting for each KPI in accordance with the Reporting frequency specified for the KPI.

5.7 Excused Performance Incident

- (a) In the event of an Excused Performance Incident, the Operator:
 - (i) must notify TfNSW in the next Quarterly Performance Report required under the Reporting Schedule; and
 - (ii) may seek KPI Relief from TfNSW.
- (b) The Operator acknowledges if TfNSW does not receive written notification of an Excused Performance Event in the next Quarterly Performance Report required under the Reporting Schedule, the Incident will not be an Excused Performance Incident for the purposes of this Schedule.
- (c) In support of an application for KPI Relief, the Operator must provide TfNSW supporting documentation detailing the circumstances of the Excused Performance Incident and the effect of the Excused Performance Incident on one or more of the KPIs.
- (d) TfNSW may formally accept or reject the Operator's application for KPI Relief within 4 weeks of the request for KPI Relief and the provision of all information required by TfNSW in support of the application for KPI Relief such an application being granted at TfNSW's discretion acting reasonably.

- (e) The Operator acknowledges that, in the event of a KPI Default which is caused by an Excused Performance Incident and for which KPI Relief is granted, the Operator's obligations in relation to the performance of the Contract Bus Services and compliance with the KPIs which are not affected by the Excused Performance Incident continue and include, but are not limited to:
- (i) an obligation to use commercially reasonable efforts to reinstate the Contract Bus Services affected by the Excused Performance Incident and meet the KPIs affected by the Excused Performance Incident as soon as possible in the circumstances;
 - (ii) track and monitor the performance against the KPIs affected by the Excused Performance Incident; and
 - (iii) continue to report Excused Performance Incidents as if they were any other Incidents for the purposes of analysis and corrective action.
- (f) If road or construction works are scheduled in advance, the Operator must:
- (i) submit a revised Timetable for all affected Contract Bus Services to TfNSW in accordance with Clause 6.2(b) of the Contract; and
 - (ii) operate the affected Contract Bus Services to the revised Timetable (if approved by TfNSW).
- (g) The parties acknowledge that:
- (i) any unpredictable delays arising from road or construction works which are scheduled in advance may be an Excused Performance Incident, if TfNSW considers that the delays materially impact Trips On Time; and
 - (ii) if the Operator could not have been aware of the road or construction works more than 24 hours before the works commence, then any unpredictable delays arising from road or construction works may be an Excused Performance Incident until the revised Timetable, which must be submitted within 1 Business Day of the works commencing, is approved by TfNSW.

6 KPI Credits weighting

The KPI Credit Allocation Percentage for each KPI which is subject to a KPI Credit as at the Services Commencement Date, is set out in the following KPI Credit Table:

KPI No	KPI	KPI Credit Allocation Percentage
1	Punctuality Rate (Class 1)	15%
2	Cancelled or Incomplete Trips (Class 1)	15%
12	Contract Bus Maintenance – Major Defects (Class 1)	15%
16	Data Maintenance (Class 1)	15%
18	CCTV Reliability (Class 1)	15%
14	Reporting (Class 2)	15%
6	Customer Complaint/Enquiries Database (Class 2)	15%

- (a) The parties acknowledge that the KPI Credit Table contains KPIs the performance of which have a significant business impact to TfNSW.

- (b) TfNSW may substitute the Class 2 KPI's included in the KPI Credit Table with new KPIs by no less than 30 days written notice to the Operator.

7 Effect of KPI Default

In addition to any other rights TfNSW may have under the Contract, TfNSW may be entitled to terminate the Contract due to KPI Defaults, in accordance with Clauses 30.1(a) and 30.2(a)(ii) of the Contract.

8 Additions and Deletions of KPIs

- (a) TfNSW may change the KPI regime by:
- (i) adding a Class 2 KPI;
 - (ii) removing a KPI; or
 - (iii) varying the KPI Reporting Period.
- (b) The parties acknowledge if TfNSW adds a KPI in accordance with Paragraph 8(a) of this Schedule TfNSW will measure the Operator's performance against the KPI over a period of 3 months, unless the parties agree in writing to a different KPI measurement period.

9 KPIs

9.1 Service Reliability

KPI	Table 1
Name	Punctuality Rate – Published Timetable Trips
Description	This KPI aims to ensure that Contract Bus Services run to Timetable, Dedicated School Services Timetable and/or frequency. It will measure the variation from Timetable or Dedicated School Services Timetable for all Trips each month, measured at the beginning, selected mid-point and end of Trip.
Hours measured	All hours of operation
KPI	<ul style="list-style-type: none"> a) At least 95% of Published Timetable Trips for Bus Services commence each Trip On Time b) At least 95% of Published Timetable Trips for Dedicated School Services arrive at and depart from each school within 30 minutes of school bell time
Class	Class 1
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	$100 \times ((\text{Number of Published Timetable Trips for Bus Services commencing Trip On Time} + \text{Number of Published Timetable Trips for Dedicated School Services within 30 minutes of school bell time}) / (\text{Total number of Published Timetable Trips for Bus Services measured in the period} + \text{Total number of Published Timetable Trips for Dedicated School Services measured in the period}))$
Period of calculation	Each Contract Month

KPI	Table 1
Name	Punctuality Rate – Published Timetable Trips
Measurement unit	Selected Bus Stops for which a Contract Bus Service is not On Time
Data source	<p>Prior to Automation of data sources(s): Time of commencement of Trip compared to scheduled time to be measured by Operator. Mid-Points will be measured for selected routes only.</p> <p>Post Automation of data sources(s): Relevant system such as P-TIPS and 'smart' ticketing, analysed to provide performance information. KPI will be based on selected Bus Stops for all routes for which automated data is available. This must be implemented within 3 months of implementation of the automated system.</p>
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

KPI	Table 2
Name	Cancelled and Incomplete Trips
Description	This KPI aims to ensure that Contract Bus Services deliver the full Timetable or Dedicated School Services Timetable service, including Headway services, and Bus Stops are not missed to correct timetable or frequency issues. All Incomplete Trips and Cancelled Trips must be reported against the total trips for the period.
Hours measured	All hours of operation
KPI	a) <1% Incomplete Trips b) <1% Cancelled Trips
Class	Class 1
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	(Incomplete Trips)/Total Trips (Cancelled Trips)/Total Trips
Period of calculation	Each Contract Month
Measurement unit	Trips
Data source	Prior to Automation of data sources(s): Drivers, Co-ordinator and customer complaints Post Automation of data sources(s): Relevant system such as P-TIPS and 'smart' ticketing, analysed to provide performance information. This must be implemented within 3 months of implementation of the automated system.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

KPI	Table 3
Name	Accessible Bus Services
Description	<p>This KPI aims to ensure that timetabled Accessible Bus Services are available as advertised. All Accessible Services Not Operated must be reported against the total Trips for the period.</p> <p>In this KPI:</p> <p>Timetabled Accessible Services is defined as the number of Wheelchair Accessible timetabled Trips during the KPI Reporting Period.</p> <p>Wheelchair Accessible is defined as a Bus which has wheelchair access such as a ramp.</p> <p>Accessible Services Not Operated is defined as the total wheelchair accessible Bus Trips not operated in full or in part during the KPI Reporting Period.</p>
Hours measured	All hours of operation
KPI	At least 99% of Timetabled Accessible Services operate
Class	Class 2
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	100 X (Accessible Services Not Operated / Timetabled Accessible Services)%
Period of calculation	Each Contract Month
Measurement unit	Trips
Data source	<p>Prior to Automation of data sources(s): Driver, Customer Complaints, Mystery Shopper.</p> <p>Post Automation of data sources(s): Driver, Customer Complaints, Mystery Shopper.</p> <p>Contract Bus designation to include information on accessibility.</p>
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

9.2 Service Quality and Customer Satisfaction

KPI	Table 4
Name	Customer Complaint Resolution
Description	Customer Complaint Resolution means the satisfactory closure of customer complaints within agreed timeframes. It is measured from the time of receipt of the complaint by the Operator to the resolution and closure of the complaint in accordance with the Passenger Relations Plan
Hours measured	24/7
KPI	a) 70% of all complaints are resolved within 2 Business Days b) 95% of all complaints are resolved within 30 Business Days
Class	Class 2
Measurement methodology	
Measurement starting point	First Business Day of each KPI Reporting Period
Calculation	100 x ((Complaints resolved within 2 Business Days during the KPI Reporting Period + anonymous complaints) / Total complaints received for the KPI Reporting Period)% 100 x ((Complaints resolved within 30 Business Days during the KPI Reporting Period+ anonymous complaints) / Total complaints received for the KPI Reporting Period)%
Period of calculation	Each Contract Month
Measurement unit	Complaints
Data source	Prior to Automation of data sources(s): Operator and 131500 Complaints Registers Post Automation of data sources(s): 100% recorded in 131500 Complaints Registers
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

KPI	Table 5
Name	Customer Response
Description	Customer Response means the time from which a complaint is received until the time that the customer is contacted in relation to that complaint.
Hours measured	Business Hours
KPI	100% of all complaints are responded to within 2 Business Days
Class	Class 2
Measurement methodology	
Measurement starting point	First Business Day of each KPI Reporting Period
Calculation	$100 \times ((\text{Complaints responded to within 2 Business Days} + \text{anonymous complaints}) / \text{Total complaints received for the KPI Reporting Period})\%$
Period of calculation	Each Contract Month
Measurement unit	Complaints
Data source	Prior to Automation of data sources(s): Operator and 131500 Complaints Registers Post Automation of data sources(s): 100% recorded in 131500 Complaints Registers
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

KPI	Table 6
Name	Customer Complaint/Enquiries Database
Description	Customer complaint database measures the completeness of the 131500 database of customer complaints and enquiries by ensuring that all complaints and enquiries received directly by the Operator are referred to 131500.
Hours measured	All hours of operation
KPI	100% of calls received are included in the 131500 database
Class	Class 2
Measurement methodology	
Measurement starting point	First Business Day of each KPI Reporting Period
Calculation	$100 \times (\text{Complaints and Enquiries received during the KPI Reporting Period} / \text{Total complaints and enquiries recorded in the 131500 database for the KPI Reporting Period})\%$
Period of calculation	Each Contract Month
Measurement unit	Complaints
Data source	Prior to Automation of data sources(s): Operator Complaints Register and 131500 database Post Automation of data sources(s):
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

KPI	Table 7
Name	Customer Satisfaction
Description	Customer Satisfaction means the level of satisfaction with the Operator's performance as expressed by a representative sample of the passengers (TfNSW to approve) as measured on a Likert Scale. The survey questions used in the calculation of this KPI will relate to services largely under the control of the Operator.
Hours measured	N/A – by survey at least quarterly
KPI	85% of all ratings above the mid-point of the Likert Scale, based on historical performance on services largely under the control of the Operator
Class	Class 2
Measurement methodology	
Measurement starting point	N/A per survey at least quarterly
Calculation	On the basis of a survey (the structure and content to be defined by TfNSW) on a Likert Scale, the number of the ratings above the mid-point divided by the total number of ratings times 100.
Period of calculation	Each Contract Year
Measurement unit	Rating
Data source	Surveys of customer satisfaction
Measurement responsibility	TfNSW
Reporting frequency	Each Contract Year

KPI	Table 8
Name	Passenger Crowding
Description	This measures the bus crowding and highlights routes which require review for service improvement. The Operator's obligation is to report all Crowded routes. Once a Crowded route has been notified the Operator's obligation under this KPI is met.
Hours measured	24x7
KPI	Prior to automation of data sources(s): < 2 routes are Crowded and have not been notified to TfNSW Post Automation of data sources(s): 100% of Routes which exceed 90% of bus capacity at peak load point or Routes which include Bus Stops at which passengers are left behind due to capacity are advised to TfNSW
Class	Class 2
Measurement methodology	
Measurement starting point	Commencement Date and then the previous survey
Calculation	The number of Crowded Bus Routes not notified to TfNSW
Period of calculation	Each Contract Month
Measurement unit	Bus Routes
Data source	Prior to Automation of data sources(s): Drivers, Customer Complaints, Survey of peak loads as and when undertaken, ticketing data, on-road supervision, Mystery Shopper Post Automation of data sources(s): Drivers, Customer Complaints, Survey of peak loads, ticketing system, on-road supervision, Mystery Shopper
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

KPI	Table 9
Name	Passenger Information
Description	This measures how passengers on buses are kept informed of delays in scheduled services and notification of delays to 131500 and the Transport Co-ordination Group (or similar group as nominated by TfNSW from time to time)
Hours measured	24x7
KPI	> 95% of passengers on Contract Buses are kept informed of delays on that Contract Bus Service
Class	Class 2
Measurement methodology	
Measurement starting point	N/A per survey at least quarterly
Calculation	100 x (The number of surveyed passengers satisfied with passenger information / the number of passengers surveyed)%
Period of calculation	Each Contract Quarter
Measurement unit	Passengers
Data source	Customer complaints, customer satisfaction surveys, Mystery Shopper
Measurement responsibility	TfNSW
Reporting frequency	Each Contract Quarter

KPI	Table 10
Name	Contract Bus Presentation
Description	This KPI aims to ensure that all Contract Buses are clean and tidy. Clean and tidy includes general presentation including, clean at the beginning of each Trip, free of graffiti, good external presentation and paintwork, minimal window etching etc
Hours measured	All hours of operation
KPI	a) > 95% of passengers surveyed are satisfied with Contract Bus presentation b) > 95% of Contract Buses inspected meet presentation requirements
Class	Class 2
Measurement methodology	
Measurement starting point	N/A per survey at least quarterly
Calculation	100 x (The number of surveyed passengers satisfied with Contract Bus presentation / the number of passengers surveyed)% 100 x (The number of Contract Buses inspected for Contract Bus presentation which fail / The number of Contract Buses inspected for Contract Bus presentation)%
Period of calculation	Each Contract Quarter
Measurement unit	Passengers
Data source	Customer complaints, customer satisfaction survey, random survey of presentation, Mystery Shopper
Measurement responsibility	TfNSW via customer surveys and audits
Reporting frequency	Each Contract Quarter

9.3 Safety and Contract Bus Maintenance

KPI	Table 11
Name	Incidents Due to Failure to Conduct Contract Bus Maintenance
Description	This measures the diligence with which the Operator undertakes maintenance of Contract Buses.
Hours measured	24x7
KPI	<5% of Late Trips, Cancelled Trips and Incomplete Trips are caused due to Contract Bus failure arising from maintenance issues
Class	Class 2
Measurement methodology	
Measurement starting point	Following cause analysis of Late Trips, Cancelled Trips and Incomplete Trips
Calculation	$100 \times \frac{\text{The number of Late Trips, Cancelled Trips and Incomplete Trips that would have been avoided if Contract Buses had been maintained as scheduled}}{\text{Total number of Late Trips, Cancelled Trips and Incomplete Trips in the Reporting Period}}$
Period of calculation	Each Contract Month
Measurement unit	Each Late Trip, Cancelled and Incomplete Trip due to maintenance issues
Data source	Drivers, customer complaints, maintenance records, RMS, changeover records
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

KPI	
Table 12	
Name	Contract Bus Maintenance – Major Defects
Description	<p>This KPI aims to ensure that all Contract Buses are properly maintained and do not have Major Defects which potentially impact reliability and safety.</p> <p>In this KPI:</p> <p>Major Defect is defined as a defect identified in regular and random inspections by the RMS as a Major Defect not immediately resulting from a road accident, which must be rectified immediately and prior to driving the Contract Bus.</p>
Hours measured	All hours of operation
KPI	<p>Nil Major Defect notices for the KPI Reporting Period.</p> <p>A Major Defect notice that is appealed will apply to the KPI Reporting Period in which the appeal is finally determined (if the Major Defect notice is upheld).</p>
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	Number of Contract Buses deemed unroadworthy by the RMS
Period of calculation	Each Contract Month
Measurement unit	Contract Buses
Data source	Contract Bus maintenance records; RMS
Measurement responsibility	Operator, with selected audit by TfNSW.
Reporting frequency	Each Contract Quarter

KPI	Table 13
Name	Preventable Accidents
Description	<p>This KPI aims to ensure that all Contract Buses are properly maintained and operated.</p> <p>In this KPI 15:</p> <p>Preventable Accident is defined as an accident that is caused by:</p> <ul style="list-style-type: none"> • poor maintenance (such as wheels falling off, fire, fluid leaks); • driver failure to follow proper procedures (such as failure to engage the hand brake or resulting in a runaway Contract Bus); • failure to perform adequate maintenance; or • poor driving.
Hours measured	All hours of operation
KPI	0 Preventable Accidents
Class	Class 2
Measurement methodology	
Measurement starting point	First of each KPI Reporting Period
Calculation	Number of Preventable Accidents during the KPI Reporting Period
Period of calculation	Each Contract Month
Measurement unit	Accidents
Data source	Accident reports, maintenance records, defect reports, HVIS TfNSW on-line incident report system
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

9.4 Reporting

KPI	Table 14
Name	Reporting
Description	<p>This KPI aims to ensure all agreed reports are available to TfNSW within the agreed timeframe. This Reporting KPI measures the time taken to deliver reports starting from the end of the reporting period until the time that the reports are available for TfNSW. The scope is for all reports as set out in the Reporting Schedule.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% within KPI Reporting Requirements
Class	Class 2
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of reports presented within the required timeframe during the KPI Reporting Period / total number of reports due to be presented during the KPI Reporting Period)
Period of calculation	Each Contract Month
Measurement unit	Report
Data source	<p>Prior to Automation of data sources(s): Reporting tools</p> <p>Post Automation of data sources(s): Where possible, report to be generated directly from installed automated systems such as ticketing, traffic priority etc</p>
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

KPI	Table 15
Name	Provision of Information
Description	<p>This KPI aims to ensure that responses to request for information about Contract Bus Services are provided in a reasonable timeframe. Such requests for information could arise from varying sourcing, but would include information required to provide Ministerial responses, answering customer enquiries, providing information required by legislation, providing information to support transport planning etc.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% within agreed timeframe (timeframe to be agreed for categories of information)
Class	Class 2
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of information requests responded to within the required timeframe during the KPI Reporting Period / total number of information requests during the KPI Reporting Period)
Period of calculation	Each Contract Month
Measurement unit	Requests for information
Data source	<p>Prior to Automation of data sources(s): Record of requests</p> <p>Post Automation of data sources(s): Record of requests</p>
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

9.5 Data Maintenance

KPI	Table 16
Name	Data Maintenance
Description	This KPI aims to ensure critical information is accurate and available to customers and TfNSW within the agreed timeframe. The Data Maintenance KPI measures the currency and accuracy of timetable, routes, mapping, bus stops, schedule, etc information. Information must be accurate and current.
Hours measured	24 x 7
KPI	Zero errors in information on the Operator website and OSD for all Contract Bus Services operated
Class	Class 1
Measurement methodology	
Measurement starting point	As at the last day of the KPI Reporting Period
Calculation	Zero errors in route, mapping, bus stop, schedule and timetable information provided on the Operator website and OSD
Period of calculation	Each Contract Month
Measurement unit	Contract Bus Services
Data source	Website, OSD
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Each Contract Quarter

9.6 Implementation of Projects

KPI	
Table 17	
Name	Project On Time Delivery
Description	Measures the % of projects that are delivered On Time. Of particular interest to TfNSW is the implementation of Government initiatives. In this KPI 23: On Time means a project is delivered to within 5% of the original agreed schedule as varied by any approved change requests.
Hours measured	N/A
KPI	100%
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each Contract Month
Calculation	$100 \times \text{Number of projects delivered On Time} / \text{Total number of projects delivered}$
Period of calculation	Each Contract Month
Measurement unit	Percentage
Data source	Project reports, plans and records
Measurement responsibility	Operator
Reporting frequency	Each Contract Quarter

9.7 CCTV

KPI		Table 18	
Name		CCTV Reliability	
Description	Measures the reliability of the Closed Circuit Television (CCTV) system. For avoidance of doubt: <ul style="list-style-type: none"> • CCTV data reliability measures the retrieval of quality images from designed coverage areas. • Failure to identify people in CCTV images due to improper maintenance, including cleaning, is deemed to be a failure to retrieve images 		
Hours measured	N/A		
KPI	a) 100% of CCTV images successfully retrieved from New Buses		
Class	Class 1		
Measurement methodology			
Measurement starting point	First day of each Contract Month		
Calculation	CCTV: $100 \times \text{Number of Incidents for which CCTV images were successfully retrieved from New Buses} / \text{Total number of Incidents requiring retrieval of CCTV images from New Buses}$		
Period of calculation	Each Contract Month		
Measurement unit	Percentage		
Data source	Requests for images		
Measurement responsibility	Operator		
Reporting frequency	Each Contract Quarter		

Schedule 5 Reporting

1 Definitions

1.1 In this Schedule, the following words have the following meanings:

In-Service Kilometres mean kilometres travelled in performing the Bus Services, in which passengers are able to board the Bus (for the avoidance of doubt this excludes Non-Operational Kilometres).

Non-Operational Kilometres means kilometres run as positioning or other incidental movements of Contract Buses.

2 Reporting Principles

2.1 In accordance with Clause 16.1 of the Contract, the Operator must provide all reports and data in accordance with this Schedule 5 and at such other times TfNSW may require from time to time.

2.2 In accordance with Clauses 21.2(d) and 21.2(e) of the Contract, the Operator acknowledges and agrees that TfNSW, or its agent, may conduct audits on the contents of reports and data provided by the Operator and the Operator must comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits. Such audit reports will be considered in the relevant governance forum as set out in the Governance Schedule. The Operator must make available to TfNSW on request all reports and underlying data in the format as required by TfNSW.

3 Frequency and Format of Reporting

3.1 The Operator must provide reports and data to the TfNSW Representative in accordance with the timeframes specified in this Schedule, and at such other times as may be required by TfNSW from time to time.

3.2 The Operator must provide reports and data to TfNSW in the format specified in this Schedule for the reports and data identified.

3.3 The Operator acknowledges it may be required to provide reports and/or data to TfNSW in any one or more of the following formats:

- (a) Hard copy (printed) report. If the report contains information that is presented in colour, the hard copy must also be in colour.
- (b) Electronic copy report meaning a report that is presented in an electronic format reasonably required by TfNSW.
- (c) Electronic transfer meaning a report that is presented in a format reasonably required by TfNSW, including but not limited to the TODIS for OSD and reports submitted electronically via a reporting interface and/or web-portal specified by TfNSW from time to time.

4 Overview of Reporting Requirements

4.1 The Operator must provide the following reports and data to TfNSW's nominated contract officer in accordance with this Schedule (and any Annexures to this Schedule) at the following times:

- (a) Quarterly Operational Report (QOR): In the formats specified in Annexure 1 to this Schedule, on or before the 10th Business Day of the start of the Contract Quarter.
- (b) Quarterly Performance Report (QPR): In the format specified by TfNSW from time to time, no later than 5 Business Days of the date of the Quarter Service Delivery Forum meeting referred to in Paragraph 2.1(b)(i) of the Governance Schedule.

- (c) Quarterly Commercial Report (QCR): In the format specified by TfNSW from time to time, no later than 5 Business Days prior to the date of the Monthly Commercial Forum referred to in Paragraph 2.1(b)(ii) of the Governance Schedule.

5 Reporting requirement - Quarterly Operational Reports (QOR):

5.1 The Operator must provide the Quarterly Operational Reports in the format specified in Annexure 1 to this Schedule.

5.2 The Operator acknowledges and agrees the Quarterly Operational Report must satisfy the following requirements:

Quarterly Operational Report	Description	Format
<p>QOR 1: Value of ticket sales, actual cash received for Ticket sales by Ticket type.</p>	<p>QOR 1 reflects the value of ticket sales and the actual cash received by the Operator from Ticket sales for the Contract Quarter by Ticket type. The Operator must accurately report in the QOR all cash or other payment received for the sale of every approved Ticket type.</p>	<p>In the format specified by TfNSW from time to time, in accordance with the interface specification list set out in Annexure 2 to this Schedule, or as otherwise specified by TfNSW from time to time.</p>
<p>QOR 2: Bus Service Kilometres travelled.</p>	<p>QOR 2 reflects the actual Contract Bus Service kilometres travelled by Contract Buses in the performance of the Contract Bus Services for the Contract Quarter including:</p> <ul style="list-style-type: none"> • Total Contract Bus Services kilometres • Minus Cancelled and Incomplete Trip kilometres • Total operated In-Service kilometres • Total Dedicated School Service Kilometres • Minus Cancelled and Incomplete Trip kilometres • Total kilometres Details of reason for Incomplete Trip or Cancelled Trip 	<p>In the format specified in Annexure 1 to this Schedule in accordance with the interface specification list set out in Annexure 2 to this Schedule, or as otherwise specified by TfNSW from time to time.</p>
<p>QOR 3: Operational performance</p>	<p>QOR 3 reflects a number of key operational performance results for each Contract Quarter:</p> <ul style="list-style-type: none"> • Bus Service by Bus Route 	<p>In the format specified in Annexure 1 to this</p>

Quarterly Operational Report	Description	Format
Data	<ul style="list-style-type: none"> • Bus Route description • Planned Timetabled Trips • Number of Incomplete Trips • Number of Cancelled Trips • Trips Early > 1:59 minutes at route start and mid point • Trips Late = to or > 5:59 minutes at route start, mid and end point • Late Contract Bus Service as a result of late arrival of other transport mode • Contract Bus Crowded on Bus Route (refer to KPI Table 10 of the KPI Schedule). • Timetabled Accessible Trips • Accessible Trips Incomplete or Cancelled. For the avoidance of doubt this means accessible buses not operating on timetabled accessible trip/s. 	Schedule in accordance with the interface specification list set out in Annexure 2 to this Schedule, or as otherwise specified by TfNSW from time to time.
QOR 4: Passenger data by Bus Route.	QOR 4 provides the patronage data per Bus Route for the Contract Quarter. In the absence of an automated process, SSTS passenger patronage to be based on a reasonably determined typical school day (retrospectively determined as typical).	In the format specified in Annexure 1 to this Schedule, in accordance with the interface specification list set out in Annexure 2 to this Schedule, or as otherwise specified by TfNSW from time to time.
QOR 5: Customer feedback.	QOR 5 records the total number of different types of customer feedback received by the Operator or on the Operator's behalf. The QOR 5 must include details of customer feedback received from the following sources: <ul style="list-style-type: none"> • Mail • Telephone • Email • www.transportnsw.info • Operator's website • Matters referred to the Operator by TfNSW 	
QOR 6: Timetable and route changes	QOR 6 reflects any Timetable change and any change to a Trip or Contract Bus Service during the preceding Contract Quarter.	

Quarterly Operational Report	Description	Format
QOR 7: Contract Bus movements	QOR 7 reflects Contract Bus movements that occurred in the preceding Contract Quarter.	In the format specified in Annexure 1 to this Schedule, in accordance with the interface specification list set out in Annexure 2 to this Schedule, or as otherwise specified by TfNSW from time to time.
QOR 8: Patronage by time of day.	QOR 8 is used to record the total number of passengers by time of day.	
QOR 9: Safety performance indicators	QOR 9 provides a set of safety related performance indicators. The following definitions apply to QOR 9: <ul style="list-style-type: none"> • Driver Human Error Incidents are incidents where the bus driver is at fault and/or breaks the road rules. • Notifiable Safety Incident means an accident or incident as described in section 88(3)(a) or 88(3)(B) of the Passenger Transport (General) Regulation 2017 involving a Contract Bus (whether in service or not) or a bus being used to provide a Contract Bus Service, or occurring at a Contract Depot. • Operating Kilometres means the total kilometres travelled by all Contract Buses across all Contracted Bus Services under the Contract, which shall include in-service kilometres and any dead running kilometres. • Safety Action means a safety related activity to address the findings of a safety inspection, audit or leadership visit. • Under the Passenger Transport General Regulation 2017 an operator of a bus service must notify Transport for NSW of an accident or incident involving a bus service which: <ul style="list-style-type: none"> (a) Resulted in a person being injured; (b) Prevented the bus from continuing its journey; (c) Is, in the reasonable opinion of the operator of the service, otherwise likely to arouse serious public concern. 	

6 Reporting Requirement - Quarterly Performance Report (QPR):

- 6.1 The Operator must provide the Quarterly Performance Report in the format specified by TfNSW from time to time.
- 6.2 The Operator acknowledges and agrees the Quarterly Performance Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
Quarterly Service Delivery Forum	<p>QPR for all KPIs as per the KPI Schedule, including trend analysis</p> <p>The following is to be provided by exception as required and agreed for each meeting agenda:</p> <ul style="list-style-type: none"> • KPI corrective action plan for KPIs failed in the preceding Contract Quarter • KPI performance and performance exceptions • Contract Bus Service trends including any capacity constraints • New and outstanding root cause analyses identifying appropriate preventative action • Post incident review reports • New and existing escalations and plans to resolve • Recommended improvements to operational processes • Progress against improvement plans • Satisfaction Survey results and trend analysis • Customer feedback report • Missed or Cancelled Services report • Actual Patronage Boarding by Bus Route and Ticket type • Patronage and type of Patronage per Bus Route (cash/pre-paid /adult/concession/ SSTS /PET/RED/Free Travel etc.) • Status of actions to improve interactions with any and all third party operators • Refresh plans for assets nearing end of useful life. 	<p>5 Business Days prior to the Quarterly Service Delivery Forum</p>	<p>In the format specified by TfNSW from time to time, via electronic copy to TfNSW</p>

7 Reporting Requirement - Quarterly Commercial Report (QCR):

7.1 The Operator acknowledges and agrees the Quarterly Commercial Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
Quarterly Commercial Forum	<p>The following is to be provided as required and agreed for each quarter's meeting agenda:</p> <ul style="list-style-type: none"> • Operator organisational changes, including requests for changes to key personnel • Any commercial changes to the services environment • Any Service Variations • KPI Defaults and associated Service Credits and accounting of KPI Credits to date • Applications for an Excused Performance Incident in accordance with the KPI Schedule • Status of invoicing, payment issues, rate validation issues and billing disputes outstanding • Inventory report including Contract Bus movements and Contract Bus movement reports • Any allegations of fraud and corrupt conduct • Any incidents which may generate public and/or media interest in the Operator 	<p>No later than 5 Business Days prior to the Quarterly Commercial Forum</p>	<p>In the format specified by TfNSW from time to time, via electronic copy to TfNSW</p>

8 **Not used.**

9 Reporting requirement - Ad-Hoc Reporting (AHR)

9.1 The Operator acknowledges and agrees that TfNSW may require the Operator to submit Ad-Hoc Reports to TfNSW from time to time.

9.2 Without limitation, the types of Ad-Hoc Reports TfNSW may require from time to time include, but are not limited to:

<p>Ad-Hoc Reports Bus Fleet Age Profile</p>	<p>This report is used to record the Operators Bus Fleet Age Profile.</p> <table border="1"> <thead> <tr> <th>Bus Age</th> <th>No. of Buses</th> <th>Seat Belt</th> </tr> </thead> <tbody> <tr><td><1 Year</td><td></td><td></td></tr> <tr><td>1 year</td><td></td><td></td></tr> <tr><td>2 years</td><td></td><td></td></tr> <tr><td>3 years</td><td></td><td></td></tr> <tr><td>4-6 years</td><td></td><td></td></tr> <tr><td>7-9 years</td><td></td><td></td></tr> <tr><td>10-12 years</td><td></td><td></td></tr> <tr><td>13-15 years</td><td></td><td></td></tr> <tr><td>16-18 years</td><td></td><td></td></tr> <tr><td>19 -21 years</td><td></td><td></td></tr> <tr><td>22-25 years</td><td></td><td></td></tr> <tr><td>> 25 years</td><td></td><td></td></tr> <tr><td>> 30 years</td><td></td><td></td></tr> <tr><td>Total No Contract Buses</td><td></td><td></td></tr> </tbody> </table>	Bus Age	No. of Buses	Seat Belt	<1 Year			1 year			2 years			3 years			4-6 years			7-9 years			10-12 years			13-15 years			16-18 years			19 -21 years			22-25 years			> 25 years			> 30 years			Total No Contract Buses												
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10 Data Requirements

- 10.1 The Operator acknowledges and agrees that TfNSW may require access to data collected by the Operator from time to time in accordance with Clause 21.2(d) of the Contract. The table below outlines specific data requirements the Operator must collect from the Services Commencement Date for the duration of the Term.
- 10.2 The Operator acknowledges and agrees that TfNSW may request additional data for projects from time to time during the Term.

Service	Report	Frequency	Format
Ticketing Data	<ul style="list-style-type: none"> Provide continued access to all ticketing data. 	Daily	As specified by TfNSW

11 Bus lights and signs

- 11.1 The Operator must provide TfNSW with a report outlining whether the Contract Buses meet or do not meet the bus lights and signs requirements specified in the Contract Buses and Contract Depots Schedule, by the end of the first Contract Year.

Annexure 1 QOR Templates

QOR: 2

Quarterly Report Schedule 5 Service Kilometres	
Reporting Period:	
Bus Service by Route Number	Planned Service Kilometres
<i>(Insert Route number)</i>	<i>(Insert Planned kms)</i>
<i>(Insert Route number)</i>	<i>(Insert Planned kms)</i>
<i>(Insert Route number)</i>	<i>(Insert Planned kms)</i>
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<i>(Insert Route number)</i>	<i>(Insert Planned kms)</i>
	Actual Operated Kilometres
Total Planned In Service Kilometres	
Incomplete or Cancelled In Service Kilometres	
Total operated In Service Kilometres	
Total Planned Dedicated School Service Kilometres	
Incomplete or Cancelled Dedicated School Service Kilometres	
Total Service Kilometres	

QOR: 3

Quarterly Report Schedule 5 Operational Performance Data										
Reporting Period:										
Bus Service by Route Number	Route Desc	Planned timetabled trips	Number of incomplete trips	Number of cancelled trips	Trips Early > 1 minute	Trips Late = to or > 5 minutes	Late Rain	Bus full on route	Timetabled accessible trips	Accessible trips incomplete or cancelled
<i>(Insert Route number)</i>										
<i>(Insert Route number)</i>										
<i>(Insert Route number)</i>										
<i>(Insert Route number)</i>										
<i>(Insert Route number)</i>										
<i>(Insert Route number)</i>										
<i>(Insert Route number)</i>										
<i>(Insert Route number)</i>										

QOR: 4

Quarterly Report Schedule 5 Passenger Data by Bus Route				
Reporting Period:				
Sections Purchased	1 to 2	3 to 5	6+	Total
<i>Adult Cash fare</i>				
<i>Concession Cash Fare</i>				
<i>PET/RED</i>				
<i>Non fare Paying Passengers (non-SSTS)</i>				
<i>SSTS Passengers</i>				
Total Passengers Carried				

QOR: 5

Quarterly Report Schedule 5 Customer Feedback	
Reporting Period:	
Feedback type	No Recorded
<i>Compliment</i>	
<i>Staff/Driver rude</i>	
<i>Staff/Driver unhelpful</i>	
<i>Dangerous Driving</i>	
<i>Felt unsafe</i>	
<i>Ticket dispute</i>	
<i>Bus Early</i>	
<i>Bus Late</i>	
<i>Missed stop</i>	
<i>failed to operate</i>	
<i>overcrowded</i>	
<i>running wrong route</i>	
<i>bus dirty</i>	
<i>no Seats</i>	
<i>Timetable</i>	
<i>Others</i>	
<i>Total Feedback</i>	

QOR: 6

<p align="center">Quarterly Report Schedule 5 Bus Service Timetable and Route Changes</p>							
Reporting Period:							
Bus services by Route	Bus Service		Day	Variance of trips per day	Introduction Date	Description of change	Comments
	from	to					

QOR: 7

Summary Sheet

SUMMARY SHEET

**Quarterly Report
Changes to Contracted Bus
Fleet**

Period Covered	
Contract #	
Operator's Name	
Report Submitted by	

Form NO	Bus Fleet Change event	Total Changes in This Period
NB1	New Bus	
NB2	Registration change	
NB3	Change of bus location	
NB1 to NB3	Combined Total	

Where there have been no changes to any of the above in the preceding Contract Quarter, the Operator must submit the QOR 7 summary sheet with a "nil" record.

New Bus

The New Bus report is to be completed each time a New Bus is brought into the Contract Bus Fleet. If no New Buses have entered the Contract Bus Fleet, the report is to be submitted with “no contract bus changes.”

Report - New Bus				
	Bus 1	Bus 2	Bus 3	Bus 4
Contract #				
Registered Operator				
Depot Location				
New Bus Tranche				
Bus Registration Replaced				
VIN numberof Bus Replaced				
Date bus removed from service				
Tray ID Number ETS				
New Bus Registration Number				
VIN Number New bus				
Date Planned for In Service				
Body Manufacture Date				
Chassis Cost excl GST				
Body Cost excl GST				
Chassis Model				
Body Manufacturer				
Body Model				
Body Build Number				
Fuel Type	Diesel	Diesel	Diesel	Diesel
Engine Emission standard	Euro 5	Euro 5	Euro 5	Euro 5
Transmission type	Auto	Auto	Auto	Auto
Configuration	Low Floor	Low Floor	Low Floor	Low Floor
Standard				
Ultra Low Floor				
Wheel chair Accessible				
No of wheel Chair Positions				
Air conditioned				
Two Way Radio Installed				
Bus wifi				
Number of Saloon Doors				
Pax Seating Capacity				
Pax standing Capacity				
Body Lenght				
Rear Window				
Comments				

Contract Bus Change of Registration Number

Report of Contracted Bus - Change of Registration Number			
A Contract Bus must not be exchanged or interchanged with a Bus used for the performance of other Service Contracts, without the prior written approval of TfNSW.			
	Bus 1	Bus 2	Bus 3
<i>Contract #</i>			
<i>Registered Operator</i>			
<i>Depot Location</i>			
New details			
<i>New Bus Registration Number</i>			
<i>VIN</i>			
<i>Depot Location</i>			
<i>Date Change of Registration</i>			
Old Details			
<i>Previous Bus Registration Number</i>			
<i>VIN of Previous registration</i>			

Permanent Change in Depot Location

Report - Permanent Change in Depot Location of a Contracted Bus			
A Contract Bus must not be exchanged or interchanged with a Bus used for the performance of other Service Contracts, without the prior written approval of TfNSW.			
	Bus 1	Bus 2	Bus 3
<i>Contract #</i>			
<i>Registered Operator</i>			
<i>Bus Registration Number</i>			
<i>VIN</i>			
<i>Existing Depot Location</i>			
New details			
<i>New Depot Location of bus</i>			
<i>Date of change effective</i>			
<i>If change in Service Contract has a Business Case been submitted</i>			
<i>Comments</i>			

QOR: 8

Patronage Report Boardings by Time of Day	
Reporting Period:	
Boardings by time of Day	Actual No
<u>Adult and Concession</u>	
<i>AM</i>	
<i>PM</i>	
<i>other periodsweekday</i>	
<i>Weekend & Public Holidays</i>	
PET/RED	
<i>AM</i>	
<i>PM</i>	
<i>Offpeak weekday</i>	
<i>Weekend & Public Holidays</i>	

QOR 9

Quarterly Report Schedule 5 QOR 9: Safety Performance Indicators	
Measure	Data
<p>Safety Actions:</p> <p>a) Total number of safety actions closed in the reporting period</p> <p>b) Percentage of planned safety actions closed out (within timeframe) in the reporting period</p>	
<p>Safety Audits:</p> <p>a) Total number of safety audits completed in the reporting period</p> <p>b) Percentage of planned safety audits completed within reporting period</p>	
<p>Lost time Injury Frequency Rate (injury and illness):</p> <p>a) Number of work related injuries/illnesses resulting in lost time in the reporting period</p> <p>b) Total hours worked in the reporting period</p>	
<p>Workplace injuries/illnesses:</p> <p>a) Number of work related injuries/illnesses in the reporting period (total number not just those resulting in lost time)</p>	
<p>Notifiable Safety Incidents:</p> <p>a) Number and details of Notifiable Safety Incidents, specifically note what action has been taken to prevent a recurrence and lessons learnt</p> <p>b) Number and details of regulatory breaches (eg improvement notices, infringements, fines, prosecutions) specifically note what action has been taken to prevent a recurrence and lessons learnt</p> <p>c) Number of bus Driver Human Error Incidents and operating kilometres per vehicle in the reporting period</p>	
<p>Major Defect or Improvement Notices:</p> <p>a) Details of any Major Defect notices from TfNSW (as a delegate of NHVR) within the reporting period, noting what action was taken to resolve the defect.</p>	

Annexure 2 Quarterly Operational Report Data Interface

1 Data interface options:

TfNSW interface available at <http://www.transport.nsw.gov.au/content/bus-reporting-interfaces>

Alternative approach is to provide data via TfNSW web-portal for quarterly reporting.

Information for portal access and use is contained in the following user guide located at

<http://www.transport.nsw.gov.au/content/bus-reporting-interfaces>

Schedule 6 Governance Schedule

1 Introduction

1.1 Definitions

- (a) In this Schedule, the following words have the following meanings:
- (i) **Quarterly Commercial Forum** means the quarterly forum which will focus on commercial matters, described in Paragraph 2.1(b)(ii)
 - (ii) **Quarterly Service Delivery Forum** means the quarterly forum which will focus on the delivery of the services, described in Paragraph 2.1(b)(i).

1.2 General Requirements

- (a) The Operator must:
- (i) Provide effective governance for its own team to ensure the Contract Bus Services are delivered in accordance with the Contract;
 - (ii) Ensure that the governance model used is aligned with and, where appropriate, integrated with the TfNSW business model;
 - (iii) Take sole responsibility and accountability for the performance of its own subcontractors. Such subcontractors are not required to attend the governance forums; and
 - (iv) Raise issues relating to the delivery of the Contract Bus Services at the Quarterly Service Delivery Forums.

2 Governance Regime

2.1 Operational Forums and Reviews

- (a) There are a number of forums and reviews the Parties will utilise to manage the relationship and measure the Operator's compliance with the Contract (including its objectives). In addition to these forums and reviews, the Operator must attend ad-hoc meetings with TfNSW as required, such as specific root cause analysis reviews, project status meetings, operational meetings and informal discussions.
- (b) The forums and reviews referred to in Paragraph 2.1(a) are described below.
- (i) Quarterly Service Delivery Forum
 - (A) The Quarterly Service Delivery Forum will focus on the ongoing delivery of the services required under the Contract, including service management activities, KPI performance and reporting and customer satisfaction assessments.
 - (B) The Quarterly Service Delivery Forum will take place by the end of the third week of each Contract Quarter and be attended by:

TfNSW Attendees	Operator Attendees
Regional Manager (as required)	Managing Director / Chief Executive Officer / General Manager (as required)
Manager Bus Contracts (Chairperson)	Senior Manager
Senior Contracts Officer	Contract Manager or equivalent
Contracts Officer	Operations Manager

- (C) The attendees at the Quarterly Service Delivery Forum will address the following, as required:
- (I) Operator's performance in the delivery of the Contract Bus Services and other services under the Contract;
 - (II) Operator's Performance against the KPIs and plans for the upcoming Quarter Year, in particular:
 - Quarterly reporting, including emerging trends;
 - New and outstanding root cause analyses and appropriate preventative action;
 - Management of any Incidents;
 - Post Incident reports and cure plans;
 - Customer satisfaction surveys;
 - Operator's handling and management of any customer complaints;
 - Any issues relating to performance of the Contract Bus Services or other services under the Contract raised by TfNSW;
 - Identify and approve any improvements to operational processes;
 - Any breaches by the Operator, corrective actions to resolve such breaches and progress of corrective actions;
 - Interactions between the Operator and other Bus Operators (if appropriate) and ways to improve those interactions;
 - Disputes between the Operator and another Bus Operator that cannot be resolved by the Operator and Bus Operator;
 - New Contract Bus Services or changes to Contract Bus Services;
 - Lifecycle management of assets by the Operator, and tracking against end of life service plans;
 - Implementation and management of New Systems and Equipment by TfNSW and the Operator;
 - Share achievements, completed activities and projects;
 - Identify opportunities for improvement;
 - Review of major incidents and cure plans;
 - Identify and plan for the introduction of New Systems and Equipment;
 - Communicate TfNSW's strategic direction where appropriate;
 - Review the effectiveness of the relationship between the Operator and TfNSW and related concerns and issues;
 - Communicate organisational changes;
 - Enable the Operator to communicate new technologies and service offerings; and
 - Develop objectives for the following Quarter Year.

- (D) Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Quarterly Service Delivery Forum.
- (ii) Quarterly Commercial Forum
- (A) The Quarterly Commercial Forum will focus on all commercial matters under the Contract. This includes Payments, Service Credits, disputes, contract negotiations and contract variations.
- (B) The Quarterly Commercial Forum will take place by the end of the third week of each Contract Quarter and be attended by:

TfNSW Attendees	Operator Attendees
Regional Manager (Chairperson)	Senior Manager
Manager Bus Contracts	Contract Manager or equivalent
Senior Contracts Officer	Chief Financial Officer
Finance Manager (as required)	

- (C) The attendees at the Quarterly Commercial Forum will address the following, as required:
- (I) Staff issues, including changes to any of the Operator's key personnel;
- (II) Organisational changes;
- (III) Raise and attempt to resolve any contractual disputes, prior to issuing a Dispute Notice under the Contract. This includes:
- review of any Contract Bus Service delivery issues and its significance for TfNSW;
 - review of any Contract issues raised by TfNSW; and
 - tabling KPI breaches and associated Service Credits;
- (IV) Raise and attempt to resolve disputes between the Operator and another Bus Operator that cannot be resolved between the Operator and the Bus Operator or through the Quarterly Service Delivery Forum;
- (V) Table and discuss proposed Service Variations and other proposed amendments to the Contract;
- (VI) Assist with budget planning activities;
- (VII) Review financial summary and trending;
- (VIII) Address any Payment issues, including invoicing, rate validation and billing disputes, and results of benchmarking; and
- (IX) Review and manage audit activities and outcomes.
- (D) Reports addressing the above items must be delivered by the Operator to TfNSW at least 5 days prior to each Quarterly Commercial Forum.

Schedule 7 Ticketing, Fares, Concessions and Free Travel

Effective from 1 January 2021

Concession fares are half the adult fares, rounded down to the nearest ten cents

Part 1 - Single Trip Full Fares and Concessional Fares applicable on Contract Bus Services:			
Fare Band	No. Sections	Adult	Concession
1	1-2	\$2.30	\$1.10
2	3-6	\$3.30	\$1.60
3	7-15	\$4.20	\$2.10
4	16-25	\$4.50	\$2.20
5	26-37	\$5.90	\$2.90
6	38-56	\$7.50	\$3.70
7	57-75	\$10.00	\$5.00
8	76-100	\$15.00	\$7.50
9	101-125	\$20.00	\$10.00
10	126+	\$25.00	\$12.50

Part 1 - Daily Trip Full Fares and Concessional Fares applicable on Contract Bus Services:			
Fare Band	No. Sections for longest trip during day	Adult	Concession
1	1-2	\$5.00	\$2.50
2	3-6	\$5.00	\$2.50
3	7-15	\$10.00	\$5.00
4	16-25	\$10.00	\$5.00
5	26-37	\$10.00	\$5.00
6	38-56	\$20.00	\$10.00
7	57-75	\$20.00	\$10.00
8	76-100	\$30.00	\$15.00
9	101-125	\$30.00	\$15.00
10	126+	\$30.00	\$15.00

GST Inclusive, and as varied by TfNSW from time to time

Part 2 – Full Fares and Concession Fares Applicable on Bus Services:

The persons identified in the following are Approved Beneficiaries eligible for concession fares prices

Concession and Half Fare	Proof of eligibility	Issued by	Concession entitlements
Children (aged 4-15)	No proof required. However, some children may carry a Transport Concession Entitlement Card (POA) Cardboard Proof of Age cards will still be in circulation until the child's 16 th birthday	Schools to order cards from TfNSW Customer Operations and distribute to their students	Half fare
Senior Secondary School Students (aged 16+)	Transport Concession Entitlement Card (SSS), (MSS), (DES), (HSS) Cardboard Senior Secondary Student cards (Form 202 or equivalent) will still be in circulation until the child's 16th birthday	Schools to order cards from TfNSW Customer Operations and distribute to their students	Half fare
Full time NSW University, TAFE and private college students (aged 16+)	Transport Concession Entitlement Card (TS), (TAFE)	Eligible Tertiary students must apply online for a Transport Concession Entitlement Card issued by Transport for NSW	Half fare
Apprentices and Trainees NSW – for all travel – all purposes and all times	Transport Concession Entitlement Card (AT)	Eligible apprentice/ trainee must apply online for a Transport Concession Entitlement Card issued by Transport for NSW	Half fare
Eligible Centrelink customers NSW (on the maximum amount of benefit)	Transport Concession Entitlement Card (Concession - CG)	Eligible Jobseekers must apply online for a Transport Concession Entitlement Card issued by Transport for NSW	Half fare
Pensioners / Seniors	Pensioner Concession Card An Australian Seniors card	Pensioner Concession Card issued by Centrelink (either a physical card or electronic card) or the Department of Veterans' Affairs Seniors Card issued by any Australian State and Territory (including external territories)	Half fare for single Tickets \$2.50 for Red1
NSW DVA Gold Card Holders	DVA Gold Health Card or DVA Gold Veteran Card	Issued by the Department of Veterans Affairs	Half fare for single Tickets \$2.50 for Red1
NSW War Widow/ers	NSW War Widow/ers Transport Concession Card (TC1- available until 2021)	Issued by the Department of Veterans Affairs	Half fare for single Tickets \$2.50 for Red1
NSW Asylum Seekers	Transport Concession Entitlement Card (Senior/ Pensioner – CG)	Eligible asylum seekers must apply online for a Transport Concession Entitlement Card issued by Transport for NSW	Half fare for single Tickets \$2.50 for Red1

¹ **Red** means a ticket approved by the Secretary for issue by the Operator or by another regular Bus Operator providing services under a Rural and Regional Bus Service Contract that allows Approved Beneficiaries unlimited travel for that day on the Operator's contract bus services.

Part 3 – Approved Beneficiaries of Free Travel on Bus Services:

The persons identified in the following will be eligible for free travel

Free Travel	Proof of eligibility	Issued by	Concession entitlements
Infants (children aged 0-3)	No proof required	Not applicable	Free travel (should be accompanied)
Primary and secondary school students including certain TAFE students Boarding school students for weekend journeys between school and home; and for travel to and from school just before and just after school terms	SSTS Pass(es) and/or TfNSW Electronic Ticketing Product ²	TfNSW Customer Operations	Free travel in accordance with SSTS Policy set by TfNSW and amended from time to time
Vision impaired persons Plus attendant (optional)	Vision Impaired Persons Pass and an attendant (NSW and all other States and Territories)	TfNSW Customer Operations and equivalent transport agencies in other States and Territories	Free travel
Attendant for a Companion Card holder	Companion Card for attendant Person holding Companion Card must have a valid ticket (this could be an existing free travel entitlement or a paid ticket). Attendant using Companion Card does not need to hold a ticket	NSW Department of Communities and Justice and equivalent agencies in other States and Territories	Free travel for attendant
World War 1 veterans and their wives/ widows Plus attendant	NSW Transport Authorities World War 1 Veteran's Widows Free Pass plus attendant	TfNSW Customer Operations	Free travel
Australian & New Zealand war veterans with an eligible war caused disability Plus attendant	Ex-Member of Defence Force Pass and an attendant (Travel Pass – ED)	TfNSW Customer Operations	Free travel
NSW veterans with Department of Veteran Affairs verified vision impairment Plus attendant	Blinded Soldier's Pass and an attendant	TfNSW Customer Operations	Free travel
People recognised for service to the State Plus attendant	State Travelcard holders Pass and an attendant	TfNSW Customer Operations	Free travel
All passengers on any free bus or shuttle service, as determined by TfNSW	No proof required	Not applicable	Free travel
Assistance Animals	Animals that hold an accreditation recognised by TfNSW	See full list of acceptable accreditations at transportnsw.info/document/3375/ assistance-animals-accepted-types-of-valid-accreditation.pdf	Animals travel free with their handler Handlers must hold a valid ticket

² During the first 4 weeks of a school year, primary and secondary school students including certain TAFE students who do not have SSTS Passes will be eligible for free travel, if the Operator reasonably believes that the student is eligible for free travel.

Part 3 – Approved Beneficiaries of Free Travel on Bus Services:

The Persons identified in the following will be eligible for free travel:

Occasion	Persons Eligible	Concession entitlements
ANZAC Day; National Servicemen's Day; Vietnam Veteran's Memorial Day; Remembrance Day Services	<p>Members or Ex-Members of the Australian Defence Force who are wearing one of the uniforms of the Australian Defence Force, and/or displaying service medals and/or carrying a letter of accreditation on the letterhead of a branch of the Returned and Services League (RSL) or other recognised ex-services organisation.</p> <p>Spouses, children or grandchildren of deceased Members of the Australian Defence Force who are wearing the uniforms of the deceased Australian Defence Force Member and/or displaying the service medals of the deceased Australian Defence Force Member and/or presenting a war widow's gold card and/or carrying a letter of accreditation on the letterhead of a branch of the (RSL) or other recognised ex-services organisation.</p>	Free travel

Notes

- (a) This list of approved Beneficiaries may be varied from time to time by TfNSW, in accordance with any scheme implemented pursuant to Clause 8 of Schedule 1 of the *Transport Administration Act 1988* (NSW).
- (b) The Approved Beneficiary status will continue in circumstances where the proof of eligibility certification may change from time to time (an updated Schedule will be issued to Operators where there is a change).
- (c) The Approved Beneficiary status will continue in circumstances where the issuing authority may be replaced by another authority from time to time (an updated Schedule will be issued to Operators where there is a change).
- (d) Approved Beneficiaries are eligible for the Tickets listed above for travel at any time.

Part 4 – Integrated ticketing – Travel free of charge from the Operator

The persons identified in the following table will be eligible for travel free of charge from the Operator:

Occasion	Integrated ticketing arrangement	Entitlement
Events	TFNSW may, from time to time, declare events as integrated transport ticket events, by notice to the Operator.	TfNSW will provide samples of valid tickets and passes to transport operators prior to the event that are to be recognised for travel.

Schedule 8 Contract Buses and Contract Depots

1 Contract Buses

In accordance with Clause 13.1(a) of the Contract, the Operator must only use Contract Buses in the performance of the Contract Bus Services.

2 Standard of Contract Buses and Contract Bus Fleet

2.1 The standards for Contract Buses which the Operator must comply with under Clause 13.1(d) of the Contract are contained in this Paragraph 2 and Paragraph 5 below.

2.2 The Contract Bus Fleet must:

(a) Not exceed an average age from Bus Purchase Date (as defined in the Payment Schedule) of:

- (i) For Bus Category 1 & 2 Contract Buses, 8 years; and
- (ii) For Bus Category 3 & 4 Contract Buses, 12 years;

(b) Not exceed a maximum age from Bus Purchase Date (as defined in the Payment Schedule) of:

- (i) For Bus Category 1 & 2 Contract Buses, 15 years; and
- (ii) For Bus Category 3 & 4 Contract Buses, 25 years.

The examples below are provided to demonstrate how the age of a Contract Bus will be calculated. The data used in the examples does not relate to this Contract and must not be relied on by the Operator.

Item	Example 1	Example 2
Date bus first used for Contract Bus Services (or services under Previous Service Contract)	3-Feb-18	1-Jul-20
Date on which bus age is to be calculated	25-Jun-21	25-Jun-21
Number of days in elapsed period	1238	359
Number of days in year	365.25	365.25
Number of elapsed years	3.3894593	0.982888
Number of elapsed whole years	3	0
Age of Bus (in whole years)	3	0

2.3 All Contract Buses must at all times comply with:

- (a) the terms of the Contract;
- (b) the *Road Transport (Vehicle Registration) Regulations 1998* (NSW); and
- (c) all environmental and safety standards applicable at the time of registration of each Bus.

- 2.4 All Contract Buses must:
- (a) be clean and tidy at the commencement of operation each day;
 - (b) if during the course of operation on any day, a Contract Bus becomes so unclean as to cause discomfort to passengers, not be used again until it is cleaned;
 - (c) be in a safe operating condition at all times and, in particular, must be maintained, equipped and operated in compliance with the Law as it applies to Buses and the operation of Bus services in New South Wales;
 - (d) be operated, serviced and maintained in accordance with the Bus manufacturer's specifications, recommendations and service standards and the Operator must have documentation to prove this;
 - (e) be operated and maintained in compliance with the Operator's Accreditation; and
 - (f) be in roadworthy condition.
- 2.5 In addition to the other requirements of this Paragraph 2, all Transfer Out Contract Buses must have passed the RMS Heavy Vehicle Inspection Scheme test and inspection within the six months prior to the Termination Date.

3 End of Term Requirements

- 3.1 If the Operator is not the Successor Operator, on or within the period of 30 days immediately preceding the Termination Date, the Operator must:
- (a) sell;
 - (b) transfer full legal and beneficial title to; and
 - (c) deliver possession of,
- each Transfer Out Contract Bus to a TfNSW Lessor or the Successor Operator, unless otherwise agreed by TfNSW, the Operator and the Successor Operator, as required by TfNSW and on terms otherwise acceptable to TfNSW.
- 3.2 The Operator agrees that the amount payable by the TfNSW Lessor or the Successor Operator to the Operator in respect of the transfer of a Transfer Out Contract Bus will be the Vehicle Termination Payment as determined by TfNSW in accordance with Paragraph 4.6(a) of the Payment Schedule.

4 Contract Depot Standards

- 4.1 For the purposes of Clause 13.5 of the Contract, the Operator must ensure that Existing Depots and New Depots are:
- (a) maintained and repaired in such a way so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract; and
 - (b) maintained in a condition which enables them to be safely used for their intended purpose.

5 Bus lights and signs

- 5.1 The Operator must modify the following Contract Buses to comply with the requirements of TS 150:
- (a) all Existing Buses (except those referred to in Paragraph 5.2 below) which operate Dedicated School Services; and
 - (b) any New Buses which operate Dedicated School Services and which do not already comply with TS 150,
- by 31 December 2020 or any other date specified in writing by TfNSW at TfNSW's absolute discretion.
- 5.2 The Operator is not required to modify any Existing Bus which will be replaced during the first Contract Year to comply with the requirements of TS 150.
- 5.3 The Operator must not use any Contract Bus that does not meet the requirements of TS 150 in the performance of Dedicated School Services after 31 December 2020 or any other date specified in writing by TfNSW at TfNSW's absolute discretion.
- 5.4 TfNSW will pay the Operator for the costs of modifying the Contract Buses referred to in Paragraph 5.1 above, in accordance with Paragraph 4.9 of the Payment Schedule, only if the Operator:
- (a) notified TfNSW in writing by 7 August 2020 of the date in which the Contract Buses would be compliant with the TS 150 requirements; and
 - (b) the Contract Buses are TS 150 compliant by 31 December 2020.
- 5.5 Any New Bus procured by the Operator after TS 150 is published by RMS must comply with the requirements of TS 150, or any subsequent technical specification published by RMS as at the date of manufacture of the New Bus.

List of Annexures

Annexure 1 – List of Existing Buses

Annexure 2 – List of New Buses

Annexure 3 – Existing Depots

Annexure 4 – Depot Headlease

Annexure 1 List of Existing Buses

During the Transition Period, the Operator must review the information contained in the table below and provide TfNSW with an updated table (if required) containing any revised or previously incomplete information for approval, by the Services Commencement Date.

The parties will sign any revised table prepared by the Operator and approved by TfNSW during the Transition Period, and annex it to this Annexure 1. Once annexed to this Annexure 1, that information will be taken to be the content of this Annexure 1 for the remainder of the Term, unless further modified by the parties.

Annexure 2 List of New Buses

The List of New Buses will be created and modified by agreement of the Parties, as required, during the Term. Once the list has been created or modified, the Parties will sign and annex the list to this Annexure 2 and that list will be taken to be the content of this Annexure 2 for the remainder of the Term, unless further modified by the Parties.

Registration No.	Purchase Date	Funded Price	VIN	Chassis	Chassis Model	Body	Body Model	Bus Type	Emission Standard	Monthly Bus Payment (\$) - NFPP	Monthly Bus Payment End Date	Growth Contract Bus or Replacement Contract Bus?

Annexure 3 List of Existing Depots

«Existing_Depot_Address_1»

«Existing_Depot_Address_2»

«Existing_Depot_Address_3»

«Existing_Depot_Address_4»

Annexure 4 Depot Headlease



Depot Headlease

[Name of Landlord]

Transport for NSW

[Pro forma version dated September 2013]

- Item 1 Landlord**
[insert Operator name]
- Item 2 Tenant**
Transport for NSW, a corporation constituted under the Transport Administration Act 1988 (NSW) on behalf of the State of New South Wales (TfNSW) of 18 Lee Street, Sydney, New South Wales
- Item 3 Land (Clause 1.1)**
[insert]
- Item 4 Premises (Clause 1.1)**
[insert]
- Item 5 Term (Clause 3.1)**
[insert]
- Item 6 Commencement Date**
[insert]
- Item 7 Termination Date**
[insert]
- Item 8 Further Term (Clauses 1.1 and 3.2)**
[insert]
- Item 9 Rent (Clauses 1.1 and 4)**
\$[insert] (GST exclusive) in the first year and then annually reviewed in accordance with Item 10.
- Item 10 Review Dates (Clauses 4.3 and 4.4)**
CPI Review: [insert]
Fixed Review: [insert]
Fixed Percentage: [insert]
Market Review: [insert]
- Item 11 Permitted Use (Clause 1.1)**
Use as a bus depot including the ability to use the premises as commercial offices associated with a bus depot and to clean, service, refuel and maintain buses and other modes of transport and any other lawful use.
- Item 12 Public Risk Insurance (Clause 8.3)**
\$10,000,000
- Item 13 Right of First Refusal (Clause 13)**
Clause 13 applies

Item 14 Rent Review – Maximum and Minimum Levels (Clause 4.7(a))

Maximum - *[insert]*%

Minimum - *[insert]*%

Item 15 Market Review – Maximum and Minimum Levels (Clause 4.7(b))

Maximum - *[insert]*%

Minimum - *[insert]*%

Item 16 Notices (Clause 15.1)

Tenant: name Transport for NSW

address 18 Lee Street, Sydney, New South Wales

fax *[insert]*

Landlord: name *[insert]*

address *[insert]*

phone *[insert]*

fax *[insert]*

1 Interpretation

1.1 Definitions

The following definitions together with those in the Schedule apply unless the context requires otherwise.

Australian Institute means the State division of the Australian Property Institute;

Authorised Officer means:

- (a) in respect of the Tenant, any director, secretary, any person acting for the Tenant whose title includes the word “manager”, and a solicitor nominated by the Tenant acting on behalf of the Tenant;
- (b) in respect of the Landlord, any director or secretary, and a solicitor nominated by the Landlord acting on behalf of the Landlord;

Authority includes:

- (a) **(government)** any government in any jurisdiction, whether federal, state, territorial or local;
- (b) **(public utility)** any provider of public utility services, whether statutory or not; and
- (c) **(other body)** any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of Australia Limited);

Building means the improvements erected on the Land from time to time;

Business Day means any day except Saturday or Sunday or a day that is a public holiday in New South Wales;

Claim includes any claim, order, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation;

Commencement Date means the Commencement Date referred to in Item 6 of the Schedule;

Consent means prior written consent;

Contamination means any substance or organism present in the soil, substrata or groundwater on the Land or otherwise anywhere in the Premises in concentrations greater than the background levels naturally present for the substance or organism and which (based on generally accepted knowledge and practice at the Commencement Date) harms the Environment or is hazardous or otherwise harmful to health;

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid but excluding loss of profits and economic loss), including where appropriate all Rates and all legal fees;

CPI Review means review in accordance with Clause 4.3;

Date of Termination means:

- (a) the Termination Date;
- (b) any earlier date on which this lease is determined;

- (c) the end of any period of holding over under Clause 3.3,
being the Date which the Tenant is required to vacate the Premises;

Environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect or are affected by, things mentioned in Paragraphs (a) to (c);

Event of Default means any event referred to in Clause 11.1;

Fixed Review means review in accordance with Clause 4.3;

Further Term means the further term (if any) referred to in Item 8;

Index Number means:

- (a) **(Consumer Price Index)** the Consumer Price Index for the capital city of the State All Groups number published from time to time by the Australian Bureau of Statistics;
- (b) **(other cost of living index)** if the system or practice of the determination of the State's Consumer Price Index ceases, the index published by the Australian Bureau of Statistics which reflects changes in the cost of living in the State's capital city at the date of this Lease and at the time of variation of the Rent is determined by:
 - (i) agreement between the parties; or
 - (ii) if the parties are unable to agree, the President of the Australian Institute, or by some person nominated by him, whose decision is conclusive and binding;

Land means the land specified in Item 3 and includes the subsoil;

Landlord means the party specified in Item 1;

Landlord's Employees includes employees, agents, contractors, consultants, customers, workmen, invitees, clients and visitors of the Landlord and others who may at any time be on the Premises whether with or without invitation;

Landlord's Fixtures includes:

- (a) **(general)** all plant and equipment (mechanical and otherwise), fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings from time to time in the Premises or any part of them and owned or supplied by the Landlord; and
- (b) **(fire fighting)** all, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land;

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise;

Lease Year means every 12 month period commencing on and from the Commencement Date;

Market Review means review in accordance with Clause 4.4 and (if applicable) Clause 4.6;

Permitted Use means the use entitled to be carried on in the Premises specified in Item 11;

Premises means the Land and the Building;

Proposed Work means any proposed major structural alteration to the Premises;

Rates means:

- (a) **(council rates)** all charges payable to an Authority:
 - (i) relating to the Premises;
 - (ii) for any Services of the type from time to time provided by the local government Authority for the locality in which the Premises are situated; and
 - (iii) for waste and general garbage removal from the Premises (including any excess); and
- (b) **(water rates)** all charges payable to an Authority:
 - (i) relating to the Premises; and
 - (ii) for the provision, reticulation or discharge of water, sewerage or drainage (including water and sewerage usage charges and meter rents);

Relocation Expenses means the Tenant's costs of:

- (a) vacating the Premises during the Term;
- (b) obtaining alternative accommodation excluding rent except to the extent that rent for the alternative accommodation exceeds Rent under this Lease;
- (c) the installation and establishment of the Tenant in alternative accommodation including the cost of a standard office fitout after deduction of any amount received by the Tenant from any party towards the cost of the fitout or as an incentive to lease; and
- (d) if applicable, the return and re-establishment of the Tenant in the Premises when it is again fit for the Tenant to occupy and use.

Rent means the rent specified in Item 9 as varied from time to time in accordance with this Lease;

Report means the environmental report on the condition of the Land if obtained by the Tenant under Clause 14.1;

Requirement includes any requirement, notice, direction, recommendation, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise, and regardless of to whom it is addressed or directed;

Review Date means each of the dates specified in Item 10;

Schedule means the Reference Schedule at the start of this Lease;

Schedule of Tenant's Fittings means the Schedule so called at the end of this Lease;

Services means all services from time to time provided to the Premises or available for use at the Premises, and means those of the following which are part of the Premises on the Commencement Date, namely:

- (a) lighting, gas, fuel, power, water, sewerage, and drainage; or

- (b) fittings, fixtures, appliances, plant and equipment utilised for any of these Services;

Site Change means any substantial permanent change to:

- (a) the access to the Land; or
- (b) the ability for the Tenant to use the Land effectively for the Permitted Use and the Tenant's Business;

State means NSW;

Structure in relation to the Building includes all walls (whether load-bearing or not), floors, doors, windows, gutters, downpipes, facades, foundations, ceilings and roofs and "structural" has a corresponding meaning.

Sublease means any sublease granted by the Tenant to a sublessee of the Premises or part of the Premises.

Tenant means the party specified in Item 2;

Tenant's Business means the business carried out by the Tenant on the Premises.

Tenant's Employees means the employees agents, contractors or consultants of the Tenant;

Tenant's Fittings includes corporate identification and signage and all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (excluding stock-in-trade) which are not owned by the Landlord and at any time are in the Premises including the items specified in the Schedule of Tenant's Fittings;

Term means the term of the Lease specified in Item 5;

Termination Date means the terminating date specified in Item 7;

Umpire means a person who:

- (a) is at the relevant time a Valuer;
- (b) is appointed under Clause 4.6(f)(ii);
- (c) accepts their appointment in writing; and
- (d) undertakes to hand down their determination within 28 days after being instructed to proceed; and

Valuer means a person who:

- (a) is at least an associate member of the Australian Institute and has been for the last 5 years;
- (b) is active in the relevant market at the time of his or her appointment and has made at least 7 valuations of service station premises in the 24 months prior to his or her appointment;
- (c) has at least 5 years' experience in valuing premises of the kind leased under this Lease; and
- (d) undertakes to act promptly.

1.2 General

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

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) "Clause", "Sub-Clause", "Paragraph", "Sub-Paragraph, or "Schedule" refers to this Lease and "Item" refers to the Schedule.
- (f) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (g) A reference to a right or obligation of any 2 or more parties to this Lease confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (h) A reference to an agreement or document is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.
- (i) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it.
- (j) A reference to "dollars" or "\$" is to Australian currency.
- (k) Each schedule of, annexure to or, exhibit relating to this Lease forms part of it.
- (l) A reference to conduct includes any act, omission, statement or undertaking, whether or not in writing.
- (m) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (n) "Substantial" means not merely nominal.
- (o) Unless stated otherwise, one word or provision does not limit the effect of another.
- (p) Reference to the whole includes part.
- (q) All obligations are taken to be required to be performed duly and punctually.
- (r) Words importing do, include do, permit or omit, or cause to be done or omitted.
- (s)
 - (i) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as the person, body or Authority to which reference was originally made
 - (ii) Any reference to the President of a body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the body or Authority or any other person fulfilling the duties of President.
- (t) Unless the context otherwise requires, where the Landlord has a discretion or its consent or approval is required for anything the Landlord must not unreasonably withhold or delay its decision, consent or approval.

- (u) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.
- (v) Month means calendar month.
- (w) Subject to Clause Annexure 41.2(x) every obligation under this Lease:
 - (i) regardless of the form or context of the wording, is a covenant by the party undertaking that obligation; and
 - (ii) continues throughout the Term and any holding over period and after that so far as the obligation remains to be observed or performed.
- (x) The covenants on the part of the Landlord include the person from time to time immediately entitled to the Premises at the end of this Lease.
- (y) Words defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in this Lease.

2 Exclusion of provisions

To the extent permitted by Law the covenants, powers and provisions implied in leases by virtue of any Law are expressly negated.

3 Term

3.1 Term of Lease

The Landlord leases the Premises to the Tenant for the Term.

3.2 Option of renewal

- (a) If:
 - (i) a Further Term is specified in Item 8;
 - (ii) the Tenant notifies in writing the Landlord not less than 3 months before the Termination Date that it requires a further lease for the Further Term; and
 - (iii) at the Termination Date there is no subsisting Event of Default by the Tenant of which the Tenant has been notified in writing and been given a reasonable time to remedy,

the Landlord must grant to the Tenant a lease of the Premises for the Further Term commencing on the day after the Termination Date.
- (b) That further lease will be on the same conditions as this Lease except that:
 - (i) the term to be specified in Item 5 of the further lease will be that specified in Item 8;
 - (ii) the date to be specified in Item 6 of the further lease will be the day after the Termination Date;
 - (iii) the date to be specified in Item 7 of the further lease will be the last day of the term specified in Item 8 after the date of the commencement of the further lease;
 - (iv) the amount of rent to be specified in Item 9 of the further lease will be determined as specified in Item 10;

- (v) the number of Further Terms specified in Item 8 will be reduced by 1 from the number specified in Item 8 of this Lease; and
- (vi) if in any further lease the number of Further Terms specified in Item 8 would by the operation of Clause 3.2(b)(v) be zero, then this Clause 3.2 will not be included in that further lease so that the last further lease will end on the date specified in Item 8 of this Lease.

3.3 Holding over

If the Landlord does not inform the Tenant in writing prior to the expiration of the Term of the Landlord's refusal to the Tenant continuing to occupy the Premises beyond the Termination Date (otherwise than under a further lease) then:

- (a) the Tenant does so as a monthly tenant and must pay Rent:
 - (i) monthly on the first day of each month; and
 - (ii) equal to one-twelfth of the annual rate of the Rent payable immediately prior to the Termination Date;
- (b) the monthly tenancy is determinable at any time by either the Landlord or the Tenant by 1 month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease.

4 Rent

4.1 Payment of Rent

- (a) The Tenant must pay the Rent to the Landlord by monthly instalments in advance:
 - (i) upon receipt by the Tenant from the Landlord of a tax invoice; or
 - (ii) on the Commencement Date and the corresponding day of each month after the Commencement Date;

whichever is the later.
- (b) The provisions of this Clause 4.1(b) only apply if the Tenant notifies the Landlord that the Tenant wishes to automate the payment of the Rent and, upon such notification, the following provisions apply to this Lease:
 - (i) the Tenant must pay the Rent to the Landlord by monthly instalments in advance on the Commencement Date and the corresponding day of each month after the Commencement Date;
 - (ii) the Landlord must serve on the Tenant a written notice of any change in the Rent under this Lease prior to every Review Date; and
 - (iii) the Tenant and Landlord agree that the Lease is a **Tax Invoice** in respect of the Rent for the purposes of subsection 29-70(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

4.2 Payment of instalments

The first instalment of Rent must be paid on the Commencement Date. All instalments must be paid to a place in Australia and in the manner reasonably determined by the Landlord from time to time (including by way of electronic funds transfer to a bank account nominated by the Landlord).

4.3 CPI Review

On each Review Date for which a CPI Review is specified in Item 10, the Rent will be varied in accordance with the following formula (subject to Clause 4.7):

$$R = \frac{A \times B}{C}$$

Where:

R = the Rent payable for the following Lease Year;

A = the Rent payable during the Lease Year just ended;

B = the Index Number last published before the end of the Lease Year just ended; and

C = the Index Number last published before the commencement of the Lease Year just ended.

4.4 Fixed Review

On each Review Date for which a Fixed Review is specified in Item 10, the Rent will be increased by the percentage specified in Item 10 for that Fixed Review:

4.5 Market review of Rent

- (a) If either party wishes to review the Rent at a Review Date (**relevant Review Date**) for which a Market Review is specified in Item 10, then Clauses 4.5 and 4.6 apply.
- (b) Not earlier than 3 months before and not later than 3 months after the relevant Review Date (time of the essence) (**Notification Period**) a party (**first party**) may notify the other of the first party's assessment of the current market rent for the Premises. This assessment must take into account the criteria contained in Clause 4.6(g), which apply at the relevant Review Date.

4.6 Tenant's dispute of Rent

If the parties do not agree with one party's assessment of the current market rent and the parties are unable to agree on the current market rent to apply from a particular Review Date then the following procedure applies.

- (a) A party must within 60 days of being notified of the other party's assessment of the current market rent notify that party that it disputes that assessment and requires the Rent to be reviewed in accordance with this Clause 4.6.
- (b) Each of the parties may, within 21 days of a party's notice of dispute, nominate a Valuer to the other.
- (c) Subject to Clauses 4.6(d) and 4.6(e), the parties must endeavour to ensure that the nominated Valuers, within 28 days after being nominated, determine the current market rent of the Premises as at that particular Review Date. Each party must provide to the other a copy of the assessment by the Valuer nominated by it as soon as practicable.
- (d) If a party fails to notify the other party that it disputes that party's assessment of the current market rent within the time required the Rent will be as assessed by the party making the assessment and will be payable by the Tenant accordingly.
- (e) If one party nominates a Valuer under Clause 4.6(b) within the time required, but the other fails to do so:

- (i) the Rent must be determined by the appointed Valuer within 28 days after being nominated, and his determination will be final and binding on the parties (in the absence of manifest error) as if he had been appointed by consent; and
 - (ii) the Costs of the appointed Valuer's determination will be apportioned equally between the Landlord and the Tenant.
- (f) If the respective assessments of the Valuers are not the same or the Valuers do not provide a valuation of the current market rent of the Premises within the time specified in Clause 4.6(c) then:
- (i) if the difference between the respective assessments of the Valuers is not greater than 3% of the aggregate of their assessments, then the Rent of the Premises will be one half of that aggregate (subject to Clause 4.7);
 - (ii) in all circumstances other than those covered by Clause 4.6(f)(i), the Valuers must agree on and appoint an Umpire;
 - (iii) if either or both of the Valuers for any reason fail to agree on and appoint the Umpire within 7 days from the end of the time required for them to make a determination, then the Landlord or the Tenant may request the President of the Australian Institute to appoint the Umpire; and
 - (iv) if it becomes necessary for the Umpire to determine the current market rent, his determination will be final and binding on the parties (in the absence of manifest error) and in considering his determination the Umpire must:
 - (A) have regard to any evidence submitted by the Valuers and the parties as to their assessments of the current market rent; and
 - (B) give his determination and the reasons for it in writing to the Landlord and the Tenant.
- (g) In determining the current market rent, each Valuer (including the Umpire) will be taken to be acting as an expert and not as an arbitrator, and must assess and determine respectively the current market rent for the Premises as at the particular Review Date having regard to this Lease and must:
- (i) disregard:
 - (A) the value of any goodwill of the Tenant's Business, the Tenant's Fittings and any other interest in the Premises created by the Tenant;
 - (B) any impaired condition of the Premises if that condition results from any work effected or not carried out on the Premises by the Tenant or from any breach under this Lease by the Tenant; and
 - (C) any refurbishment or upgrade of the Premises carried out by the Tenant with the consent of the Landlord or otherwise permitted by the Lease, with the intent of both the Tenant and the Landlord being that in determining the then current market rent the Valuer must exclude any factor arising from the enhanced value and amenity of the Premises which have resulted from the Tenant's own expenditure or work. The Tenant and the Landlord must provide to any Valuer any drawings, plans, photographs or specifications of any nature relating to the Premises either or before or after such refurbishment or

upgrade has been completed to enable the Valuer to give effect to this sub-clause, and

- (ii) consider, among other things:
 - (A) the Premises as available for use for any purpose for which the Premises may be used in accordance with this Lease; and
 - (B) any Site Change that has occurred or about to occur;
 - (C) any incentives provided by the Tenant to the Landlord under the Lease or for the purposes of the Rent review.
- (h) The Costs incurred in the determination of the current market rent under this Clause 4.6 will be equally borne by the Landlord and by the Tenant.
- (i) Any variation in the Rent resulting from a determination under Clause 4.4 or 4.6 (as appropriate) will be effective on and from that particular Review Date.
- (j) Pending the determination, the Tenant must pay to the Landlord on account of the Rent, an amount equivalent to the Rent due for the last Lease Year before the Review Date, and an adjustment must be made between the Landlord and the Tenant immediately after the market rent has been agreed or determined.

4.7 Rent payable after Review

Despite any other provision of this Clause 4, as from a Review Date until the next review:

- (a) the Rent payable after a review under Clause 4.3 will not exceed the Rent payable immediately before the relevant Review Date increased by the percentage specified in Item 14(a); and
- (b) the Rent payable after a review under Clauses 4.4 or 4.6 (as appropriate) will not exceed the Rent payable immediately before the relevant Review Date increased by the percentage specified in Item 15.

4.8 Rent reduction if default under Sublease

The Tenant may set off against the Rent and other monies payable under this Lease, amounts due and payable but unpaid by the Sublessee under a Sublease.

5 Use of Premises

5.1 Permitted use

The Tenant must not use the Premises for any purpose other than that the Permitted Use without the Landlord's consent.

5.2 Compliance with Laws and Requirements

- (a) The Tenant must:
 - (i) Subject to Clause 5.2(e) comply with and observe at its Cost all Laws and Requirements in relation to the Premises or any of the Tenant's Fittings installed in them resulting from the particular use by the Tenant of the Premises; and
 - (ii) where any Law or Requirement is notified to or served on the Tenant, promptly give a copy of it to the Landlord.

- (b) If the Tenant has not in good faith commenced to comply with any Law or Requirement within a reasonable time of becoming aware of the need to comply, the Landlord may give at least 30 days' notice in writing to the Tenant (without prejudice to any of the Landlord's other rights) that the Landlord elects to comply with any Law or Requirement either in part or whole if the Tenant fails to comply within a reasonable time with any of its obligations. However, in an emergency, no notice is required.
- (c) The Tenant is not required under this Clause 5.2 to effect structural or capital alterations or additions or carry out any structural or capital works of any nature except those caused by any deliberate or negligent act or default on the part of the Tenant or of the Tenant's Employees.
- (d) The Tenant must on demand pay to the Landlord all reasonable Costs incurred in good faith by or on behalf of the Landlord in complying with any Law or Requirement pursuant to Clause 5.2(b).
- (e) Without limiting any other obligations of the Landlord, the Landlord must at its Cost comply with and observe all Laws and Requirements in relation to the Building and the Landlord's Fixtures when such requirement for compliance:
 - (i) has not been brought about by the deliberate or negligent act or default of the Tenant or the Tenant's Employees; and
 - (ii) has been brought about by general requirements for uses such as the use by the Tenant of the Premises and the Landlord's Fixtures under the Lease.

5.3 Signs

The Tenant is permitted to display erect or affix any sign or advertisement on any part of the Premises in conjunction with the Tenant's Business provided that the sign or advertisement complies with all relevant Laws.

5.4 For Sale/To Let

- (a) The Landlord is entitled at reasonable times to:
 - (i) upon giving 48 hours prior notice in writing to the Tenant, place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate where the Premises are either for sale or (3 months prior to the end of the Term where the Tenant has not exercised the option to renew the Lease) available for lease; and
 - (ii) during the hours of 9am to 5pm on days when the Tenant's Business is open and after reasonable notice show interested persons through the Premises.
- (b) The Landlord must not in exercising its rights under this Clause 5.4 do anything likely to cause any confusion to members of the public or any inconvenience to the Tenant or the Tenant's Business.

6 Maintenance, repairs, alterations and additions

6.1 Tenant's repair obligations

- (a) The Tenant must, during the Term and any extension or holding over, keep the Premises in good repair and condition having regard to their state of repair and condition at the commencement of this Lease. That obligation excludes:

- (i) fair wear and tear; and
 - (ii) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out, or which would be covered by any insurance which is required to be taken out by the Landlord in respect of the Premises (other than where any insurance money is irrecoverable through the act, omission, neglect or default of the Tenant or the Tenant's Employees).
- (b) This Clause 6.1 does not oblige the Tenant to carry out any Structural or capital maintenance, replacement or repair except as set out in Clause 6.1(c).
- (c) The Tenant must:
- (i) immediately make good any damage to the Premises caused by any deliberate or negligent act or default of the Tenant or the Tenant's Employees or by the Tenant's use of the Premises;
 - (ii) immediately make good any damage to the Premises caused by any act or default of the Tenant or of the Tenant's Employees by the installation, use or removal of the Tenant's Fittings;
 - (iii) immediately replace all glass broken by the Tenant or by any of the Tenant's Employees; and

6.2 Landlord's repair obligations

- (a) Subject to the obligations of the Tenant to repair in Clause 6.1 the Landlord must keep the:
- (i) Premises, including the Structure;
 - (ii) Landlord's Fixtures; and
 - (iii) Services,
- maintained, serviced and in good repair in good repair and condition.
- (b) This Clause 6.2 obliges the Landlord to carry out any structural maintenance, replacement or repair and make good any except where the maintenance, replacement, repair or make good is rendered necessary by any deliberate or negligent act or default of the Tenant or the Tenant's Employees or by the Tenant's Fittings.
- (c) The Landlord must rectify all defects in the Building which result from faulty design, supervision or materials or construction not having been carried out in a proper and workmanlike manner.
- (d) The Landlord must effect and maintain contracts for the maintenance and repair of the Services in accordance with the relevant Australian Standards with respectable and recognised maintenance and repair contractors provided that this Clause does not limit, in any way, the Landlord's obligations to keep and maintain the Services in accordance with this Lease.
- (e) The Landlord warrants that the Premises and the Building:
- (i) are and will remain fit for use and occupation for the Permitted Use; and
 - (ii) will comply with the relevant Australian Standards and the industry standards which apply at the Commencement Date provided.

- (f) The Landlord is responsible for all loss and damage suffered by the Tenant, including Relocation Expenses occasioned by or arising out of structural faults or defects including those inherent in the Building or the Premises which make the Premises unfit for use and occupation by the Tenant.

6.3 Landlord's right of inspection

The Landlord may in the presence of a responsible officer of the Tenant at all reasonable times on giving to the Tenant reasonable notice (except in the case of an emergency when no notice is required) enter the premises and view their state of repair and condition but the Landlord must make good any damage caused in doing so and must do everything reasonably necessary to minimise disruption to the Tenant's Business during the viewing.

6.4 Landlord's rights to enter to repair

If:

- (a) the Landlord wishes to carry out any repairs to the Premises which the Landlord is obliged to do under this Lease: or
- (b) any Authority requires any repair or work to be undertaken on the Premises which the Landlord must do and for which the Tenant is not liable under this Lease,

then the Landlord, its architects, workmen and others authorised by the Landlord may at all reasonable times on giving to the Tenant reasonable notice (except in the case of an emergency when no notice is required) enter and carry out any of those works and repairs provided that the Landlord must:

- (c) not cause undue inconvenience to the Tenant when; and
- (d) not interfere with the conduct of the Tenant's Business when;
- (e) promptly make good any damage caused by; and
- (f) indemnify and keep indemnified the Tenant from and against all Claims in any way resulting from,

entering and accessing the Premises and/or carrying out those works or repairs.

6.5 Landlord's failure to repair

- (a) If the Landlord fails to repair, replace or maintain anything which the Landlord is obliged to do under this Lease, including under Clause 6.4(b), Lease (except a repair relating to a malfunction of the Services) within 7 Business Days after receipt of a notice from the Tenant requiring it to effect a repair (or immediately in the case of an emergency), the Tenant may:
 - (i) (but is not obliged to) using its architects, workmen and others authorised carry out those works or repairs at the Landlord's Cost and risk; and/or
 - (ii) abate rent until the Landlord carries out the repair.
- (b) The Landlord must within 30 days, of receiving notice from the Tenant of the Cost of the repairs carried out by the Tenant under Clause 6.5, reimburse the Tenant for that Cost. If the Landlord fails to do so, the Tenant may offset the costs against the Rent.

6.6 Services malfunction

- (a) If any of the Services becomes unusable or otherwise incapable of being operated from any cause the Landlord must, within a reasonable time, repair or replace those Services.
- (b) Without prejudice to any other right or cause of action available to the Tenant, if the occupation, use or enjoyment of the Premises by the Tenant is diminished as a result of a malfunction of the Services from a cause not attributable to the negligent act or omission of the Tenant, the Tenant may give the Landlord a notice to that effect.
- (c) If the malfunction is not rectified within 2 Business Days after receipt of the notice ("the grace period") the Rent and all other amounts payable by the Tenant will be suspended and cease to be payable from the expiration of the grace period until the Services are restored. During and for the period of suspension the Tenant's liability to pay the Rent and all other amounts, calculated on a daily basis, ceases.
- (d) If a malfunction remains uncorrected for a period of 5 Business Days after the grace period the Tenant may carry out the necessary repairs and recover the cost of the repairs from the Landlord by a set-off in Rent or other moneys payable by the Tenant under this Lease.

6.7 Alterations to Premises

- (a) The Tenant is permitted to effect any Proposed Work only after obtaining the Landlord's Consent.
- (b) At least one month prior to the commencement of the Proposed Work the Tenant must submit to the Landlord a copy of plans and specifications of the Proposed Work.
- (c) Within 14 days after receipt of the copy of the plans and specifications, the Landlord may by notice in writing to the Tenant require:
 - (i) the Tenant to pay all reasonable Costs incurred by the Landlord in considering the Proposed Work and its supervision, including the fees of architects or other building consultants engaged by it;
 - (ii) the Tenant to obtain and keep current all necessary approvals and permits from all Authorities necessary to enable any Proposed Work to be lawfully carried out, and on being required by the Landlord, provide for inspection by the Landlord of copies of all those approvals and permits; and
 - (iii) the Tenant on completion of the Proposed Work to immediately obtain and provide to the Landlord copies of any certificates of compliance or satisfactory completion issued by the appropriate Authority.

6.8 Notice to Landlord of damage, accident etc

The Tenant must use its reasonable endeavours upon becoming aware notify the Landlord of any damage, accident or defects to or in the Premises within a reasonable time.

7 Assignment and sub-letting

7.1 Application of this Clause 7.1

- (a) This Clause 7.1 applies where:
 - (i) Transport for NSW; or

- (ii) any other government entity,
is Tenant under this Lease.
- (b) The Tenant in its complete discretion may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or any part of them or this Lease or any interest in them.
- (c) The Tenant must give notice to the Landlord of any exercise by the Tenant of its rights under Clause 7.1(b).

7.2 No disposal of Tenant's interest

Except as permitted under Clause 7.1(b) the Tenant must not assign, transfer, sublet or otherwise deal with or part with possession of the Premises or this Lease or any part of them or any interest in them or attempt to do so without the Consent of the Landlord.

7.3 Assignments and subleases

The Landlord must consent to any assignment or sublease if:

- (a) there is no subsisting Event of Default by the Tenant at the date of proposed assignment or sublease of which the Tenant has received notice and a reasonable opportunity to remedy;
- (b) the Tenant pays to the Landlord all reasonable third party Costs incurred by the Landlord (whether or not the proposed assignment or sublease proceeds to completion) including the Landlord's, legal and other reasonable consultant's Costs of and incidental to the proposed assignment or sublease;
- (c) the Tenant proves to the reasonable satisfaction of the Landlord that the incoming tenant is respectable, responsible and solvent and capable of successfully conducting the Tenant's Business;
- (d) the Tenant and the incoming tenant enter into a deed with the Landlord in the form reasonably required by the Landlord which includes provisions that the incoming tenant:
 - (i) if an assignee, will comply with all the Tenant's obligations under this Lease on and from the date of assignment and the Landlord will comply with the Landlord's obligation under this Lease in favour of the assignee on and from the date of assignment; or
 - (ii) if a sublessee, will not cause or contribute to a breach of this Lease; and
- (e) the Tenant and the incoming tenant comply with the Landlord's reasonable requirements in relation to the documentation, stamping and registration of the proposed assignment or sublease.

7.4 Release of Assignor

Upon an assignment taking place in accordance with Clause 7.3, the Tenant (as assignor) is released by the Landlord from any Claims and Costs (including loss of profits and economic loss) from and including the date of assignment, to be documented between the parties in a separate deed.

8 Insurance and indemnities

8.1 Application of this Clause 8.1

- (a) This Clause 8.1 applies where:
 - (i) Transport for NSW; or
 - (ii) any other government entity,
 is Tenant under this Lease.
- (b) Despite Clause 8.2 the Tenant will not be required to take out insurance whilst it 'self insures'.

8.2 Insurance to be taken out by Tenant

The Tenant must:

- (a) insure the Premises against public risk for an amount in respect of any single accident of not less than the amount specified in Item 12;
- (b) be responsible for damage to all plate glass windows (other than external windows), doors and display show-cases forming part of or within the Premises;
- (c) in respect of any policy of insurance to be effected by the Tenant under this Clause 8, whenever reasonably required by the Landlord, give to the Landlord a certificate of currency; and
- (d) pay all premiums, policy deductibles on any claims and other money payable in respect of any policy whenever they are due and payable.

8.3 Insurances to be taken out by the Landlord

- (a) The Landlord must:
 - (i) take out and keep current during the Term (and any extension or holding over) an insurance policy for:
 - (A) all insurable risks against damage or destruction to the Building;
 - (B) public risk (including sudden and accidental pollution occurrences) for not less than the amount specified in Item 12 in respect of each and every occurrence covering the liabilities of the Landlord
 - (ii) ensure that the insurance policies taken out under this Clause 8.3:
 - (A) are taken out with an independent and reputable insurer approved by the Tenant acting reasonably;
 - (B) are for amounts necessary to enable complete replacement and reinstatement of the Building;
 - (C) contain conditions reasonably acceptable to or reasonably required by the Tenant;
 - (D) have no exclusions, endorsements or alterations unless first approved in writing by the Tenant acting reasonably; and
 - (E) are taken out in the names of the Landlord and the Tenant for their respective rights and interests;

- (F) that the respective rights and interests of the Landlord and the Tenant under the policies are independent of each other and a breach of a condition of the policies by one party will not impact or affect the rights and interests of the other party;
- (G) to the extent permissible at Law, waive all express and implied rights of subrogation against officers, employees and agents of the Tenant.
- (iii) in respect of any policy of insurance to be effected by the Landlord under this Clause 8.3, whenever reasonably required by the Tenant, give to the Tenant copies of the insurance policy or similar evidence of insurance, the receipt for the last premium and a certificate of currency;
- (iv) pay all premiums, policy deductibles on any claims and other money payable in respect of any policy under Clause 8.2 whenever they are due and payable; and
- (v) pay all premiums, proceeds of claims and other money payable in respect of any policy in Clause 8.3(a) towards the repairs, reconstruction or reinstatement of the Building.
- (b) The Landlord must, in respect of any policy of insurance to be effected by the Landlord under this Clause 8.2, ensure that the policy obliges the insurer to immediately notify the Tenant if at any time the policy expires, terminates or is cancelled.
- (c) In respect of any policy of insurance to be effected by the Landlord under Clause 8.3, if:
 - (i) the Landlord terminates or cancels a policy;
 - (ii) the insurer terminates or cancels the policy; or
 - (iii) a policy expires by the effluxion of time during the term of the Lease or any holding over period,
 without any replacement insurance cover being in place in accordance with Clause 8.3 from and including the date of termination, cancellation or expiry of the policy then the Tenant may elect to take out and keep current the insurance required under Clause 8.3 on behalf of the Landlord.
- (d) The Landlord must within a reasonable time, but no later than 14 days after notification by the Tenant, reimburse the Tenant for costs and premiums paid to establish any policy referred to in Clause 8.3(c).
- (e) If the Landlord fails to reimburse the Tenant for the costs and premiums referred to in Clause 8.3(d) the Tenant will be entitled to set off the costs and premiums against the Rent payable by the Tenant under this Lease.
- (f) The Landlord hereby provides power of attorney to the Tenant to do all things necessary to take out any insurance policy referred to in Clause 8.3(c).

8.4 Tenant's indemnities

The Tenant indemnifies the Landlord in respect of all claims for which the Landlord will or may be or become liable, during the Term, in respect of or arising directly from any loss, damage or injury to property or person caused or contributed to by:

- (a) any wilful or negligent act or omission; or
- (b) any default under this Lease;

by or on the part of the Tenant except to the extent caused by the Landlord or any of the Landlord's Employees.

8.5 Exclusion of Tenant's liability

- (a) The Tenant and the Tenant's Employees will not be liable for any Claim that the Landlord or the Landlord's Employees or any person claiming by, through or under the Landlord may incur or make or any which arises from any fault in the construction or state of repair of the Building or any part of it or the Landlord's Fixtures or from any other cause except to the extent caused by the negligence of the Tenant or any servant or agent of the Tenant.
- (b) The Landlord releases the Tenant and the Tenant's Employees from liability in respect of any Claim relating to any property of the Landlord in the Premises or any part of them except to the extent the Claim, damage or injury is caused by the negligence of the Tenant or the Tenant's Employees.

8.6 Landlord's indemnities

The Landlord indemnifies the Tenant in respect of all Claims for which the Tenant will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from any loss, damage or injury to property or person caused or contributed to by:

- (a) any wilful or negligent act or omission (whether before the commencement of or during or after the Term);
- (b) any default under this Lease; or
- (c) any Contamination existing in the Premises and introduced to the Premises

by or on the part of the Landlord, the Landlord's Employees or any prior lessee or licensee of the Landlord or other occupier of the Premises except to the extent caused by the Tenant or the Tenant's Employees.

9 Damage, destruction and resumption**9.1 Damage to or destruction of Premises**

- (a) If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Tenant or (having regard to the nature and location of the Premises and the normal means of access) are substantially inaccessible then:
 - (i) the Rent and any other money payable periodically under this Lease, or a proportionate part of that Rent or money according to the nature and extent of the damage or destruction sustained or the inaccessibility suffered, will abate; and

- (ii) all remedies for recovery of Rent and other money (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

until the Premises have been restored or made fit for the occupation and use or accessible to the Tenant (as appropriate); and

- (iii) the Landlord must make good the destruction or damage, reinstate the Premises, make the Premises fit for occupation and use and accessible to the Tenant including obtaining approvals from all appropriate Authorities as soon as possible; and

- (iv) if the damage or destruction arises from any act, omission or breach of the Landlord, at the request of the Tenant, the Landlord must:

- (A) if the Tenant elects to vacate the Premises, pay the reasonable Relocation Expenses of the Tenant,

until the Premises have been restored or made fit for the occupation and use or accessible to the Tenant (as appropriate).

- (b) If the Landlord has not complied with Clause 9.1(a)(iii) within 6 months from the date of commencement of the abatement referred to in Clause 9.1(a)(i) then the Tenant may:

- (i) at any time terminate this Lease by giving written notice to the Landlord; or
- (ii) carry out the Landlord's obligations in Clause 9.1(a)(i) at the Landlord's cost recoverable by the Tenant as a debt due.

- (c) The Provisions of Clauses 9.1(a)(i), 9.1(a)(iii), 9.1(a)(iv) and 9.1(b) do not apply where and to the extent that:

- (i) the damage or destruction has been caused or contributed to, or arises from, any act or default of the Tenant or the Tenant's Employees; and
- (ii) any insurance policy or policies for the Building have been avoided, or payment of the policy money refused or reduced, as a result of that act or default.

9.2 Resumption of Premises

If at any time:

- (a) the whole of the Premises are resumed; or
- (b) part of the Premises is resumed so that the residue of them is wholly or substantially unfit for the occupation and use of the Tenant or (having regard to the nature and location of the Premises and the normal means of access) is wholly or substantially inaccessible, or
- (c) the Tenant is of the reasonable opinion that the Tenant's Business will be adversely affected due to a Site Change,

the Tenant may determine this Lease by giving not less than one month's notice to the Landlord. At the end of that notice this Lease will be at an end.

9.3 Liability

- (a) Neither the Landlord nor the Tenant will have any liability to each other because of the determination of this Lease under Clause 9.2. However, any determination of the Lease under Clause 9.2 will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease; and
- (b) Despite Clause 9.3(a), if this Lease is determined under Clause 9.2 and the Tenant has paid Rent in advance, the Tenant is entitled to recover from the Landlord the appropriate pro-rata proportion of the prepaid Rent.

9.4 Dispute

- (a) Any dispute arising under Clause 9.2 must be determined by an appropriate independent person who is:
 - (i) agreed between the Landlord and the Tenant; or
 - (ii) if they cannot agree, a member of a professional body nominated at the request of either the Landlord or the Tenant by the President of the State division of the Property Council of Australia.
- (b) The appointed person:
 - (i) must have substantial experience in relation to premises of a similar type within the area in which the Premises are located or other comparable area; and
 - (ii) in making his determination will act as an expert and not as an arbitrator, and his determination will be final and binding on the parties (in the absence of manifest error).
- (c) The Cost of that determination will be borne equally by both of the parties unless the person making the determination otherwise decides.

10 Landlord's covenants**10.1 Quiet enjoyment**

The Tenant may occupy and enjoy the Premises during the Term without any interruption by the Landlord or by any person rightfully claiming through, under or in trust for the Landlord.

10.2 Landlord's mortgaging obligation

The Landlord must obtain from any mortgagee, chargee or encumbrancee at the Commencement Date, and must not mortgage, charge or otherwise encumber its interest in any part of the Premises without first obtaining, a deed in a form reasonably required by the Tenant, pursuant to which the mortgagee, chargee or encumbrancee covenants with the Tenant:

- (a) to exercise any rights or powers under the mortgage, charge or encumbrance subject to the Tenant's rights under the Lease; and
- (b) if it does exercise any of its rights or powers under the mortgage, charge or encumbrance to observe and perform the provisions of the Lease which are to be observed and performed by the Landlord as if it had executed the Lease as lessor.

10.3 Rates taxes and outgoings

Subject to any obligations of the Tenant to pay money under this Lease, the Landlord must pay all rates and taxes in respect of the Land, the Building and the Premises and all other outgoings in respect of the Land, the Building and the Premises.

11 Default and determination**11.1 Default**

Each of the following is an Event of Default:

- (a) the Rent or any part of it is in arrears and unpaid for 30 days after demand from the Landlord;
- (b) any money (other than Rent) payable by the Tenant to the Landlord is in arrears and unpaid within 30 days of demand from the Landlord; and
- (c) the Tenant or the Landlord fail to perform or observe any of their other obligations under this Lease within a reasonable time after receiving notice requiring performance or observance.

11.2 Essential terms

Each obligation of the Tenant to pay Rent or any other money to the Landlord is an essential term of this Lease.

11.3 Termination by Landlord

If an Event of Default on the part of the Tenant occurs the Landlord may, without prejudice to any other Claim which the Landlord has or may have or could otherwise have against the Tenant or any other person in respect of that default:

- (a) provide the Tenant with reasonable (but not less than 30 days) written notice of the Event of Default and of the Landlord's intentions to determine this Lease and take possession of the Premises if the Event of Default is not rectified; and
- (b) after the time period from the provision of the notice in Clause 11.3(a):
 - (i) re-enter into and take possession of the Premises or any part of them, in which event this Lease will be at an end; or
 - (ii) by notice to the Tenant determine this Lease immediately and after the date of giving that notice this Lease will be at an end.

11.4 Termination by Tenant

If the Event of Default on the part of the Landlord occurs the Tenant may, without prejudice to any other Claim which the Tenant has or may have or could otherwise have against the Landlord or any other person in respect of that default:

- (a) provide the Landlord with at least 30 days written notice of the Event of Default and of the Tenant's intentions to determine this Lease if the Event of Default is not rectified; and
- (b) after 30 days from the provision of the notice in Clause 11.4(a) by notice to the Landlord determine this Lease immediately and after the date of giving that notice this Lease will be at an end.

11.5 Waiver

- (a) No:
 - (i) failure to exercise and no delay in exercising any right, power or remedy under this Lease; or
 - (ii) custom or practice existing between the parties in relation to the Lease, operates as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) No waiver by a party of one breach of a covenant under this Lease is a waiver of another breach of that same covenant or of any other.
- (c) The demand by the Landlord for, or acceptance by the Landlord of, Rent or any other money payable under this Lease after default by the Tenant is not a waiver of any earlier breach by the Tenant.
- (d) The subsequent acceptance by the Landlord of Rent or other money (as appropriate) is a waiver by the Landlord only in relation to the Tenant's failure to make that particular payment when due.

11.6 Offer of money after deduction

Any money offered by the Tenant after the determination of this Lease under Clause 11.3(a) or 11.3(b)(ii) and accepted by the Landlord will be applied on account of:

- (a) first: any Rent and other money accrued and due under this Lease but unpaid at the date of determination of this Lease; and
- (b) second: the Landlord's reasonable Costs in relation to the determination.

12 Termination**12.1 Tenant to yield up and remove its Fittings**

Subject to Clause 12.3, at the Date of Termination, the Tenant:

- (a) must yield up the Premises in the state of repair and condition described in Clause 6.1; and
- (b) may (but is not required to) move from the Premises all of the Tenant's Fittings including any improvements erected by the Tenant.

12.2 Tenant not to cause damage

Subject to Clause 12.3 the Tenant must:

- (a) use reasonable endeavours not to cause or contribute to any damage to the Premises in the removal of the Tenant's Fittings. If it does, however, it must make good that damage; and
- (b) leave the Premises in a clean state and condition. If it fails to do so the Landlord may make good and clean the Premises at the reasonable Cost of the Tenant and recover from the Tenant the reasonable Cost to the Landlord of doing so.

12.3 Extension of period to remove Tenant's Fittings

If the Tenant has not removed all or any of the Tenant's Fittings as referred to in Clause 12.1(b), then the Tenant may by notice in writing to the Landlord have up to 28 days

from the Date of Termination to remove all or any of the Tenant's Fittings. During that period, the Tenant will be treated as holding over under Clause 3.3.

13 Right of First Refusal

- (a) If and so often as the Landlord during the term of this Lease or at any time while the Tenant or anyone holding under the Tenant is in possession of the Premises:
- (i) receives from a third party an acceptable bona fide offer to purchase the Premises or enter into a concurrent lease of the Premises or some other arrangement under which a third party would effectively become the landlord under this Lease (**Concurrent Lease**); or
 - (ii) receives from a third party an acceptable bona fide offer to lease the Premises for a term commencing on or after the expiration of the term of this Lease or any extension thereof; or
 - (iii) is desirous of selling the Premises to a third party or entering into a Concurrent Lease; or
 - (iv) is desirous of leasing the Premises to a third party for a term commencing on or after the expiration of the term of this Lease or any extension thereof,

then the Landlord must forthwith give to the Tenant written notice of such offer or of the Landlord's desire to sell, lease or grant a Concurrent Lease of the Premises (referred to as "the notice"). The notice must contain all the terms and conditions (including details of the Premises and proposed price or rental) upon which the Landlord is willing to sell, lease or grant a Concurrent Lease of the Premises and must be accompanied by a true copy of any bona fide offer received from a third party. The notice will constitute an irrevocable offer by the Landlord to the Tenant to purchase, lease or grant a Concurrent Lease of the Premises upon the terms and conditions contained in the notice.

- (b) The Tenant or its nominee will have 30 days from the date of receipt of the notice within which to notify the Landlord of its acceptance of its terms and conditions. The acceptance must be by notice in writing to the Landlord signed by the Manager, Assistant Manager of, or a Solicitor for the Tenant and upon the acceptance being notified to the Landlord, the Landlord will be bound to sell, lease or grant a Concurrent Lease of the Premises to the Tenant or its nominee upon the terms and conditions contained in the notice.
- (c) If the Tenant or its nominee fails to notify its acceptance within the period of 30 days the Landlord will be at liberty to sell, lease or grant a Concurrent Lease of the Premises upon the terms and conditions contained in the notice. However, if the Landlord sells the Premises to a third party, or enters into a Concurrent Lease of the Premises, the sale or Concurrent Lease (**Third Party Sale**) must be made subject to all the terms and conditions of this Lease including this Clause.
- (d) The Tenant agrees to notify the Landlord in writing of any nominee designated for the purpose of Clause 13(b) and warrants that any nominee will be financially responsible and the Landlord agrees to recognise and accept the designation as nominee for the purposes of Clause 13(b).
- (e) The Landlord covenants with the Tenant that it will be a condition of any Third Party Sale that any third party purchaser must (at the Landlord's cost and expense) prior to completion of the sale enter into a covenant with the Tenant that the purchaser

agrees to be bound by the covenants and provisions on the part of the Landlord contained in this Clause and that the purchaser must similarly procure that any subsequent purchaser will be bound. The covenant must be in a form acceptable to the Tenant or its Solicitors. A copy of the stamped covenant must be delivered to the Tenant by the Landlord prior to completion of any sale.

14 Environmental status

14.1 Environmental audit at commencement

The Tenant may arrange for an environmental report (**Report**) on the condition of the Premises prior to the Tenant commencing to operate the Tenant's Business in the Premises.

14.2 Report to be furnished

If the Tenant provides a copy of the Report to the Landlord the Report will be conclusive evidence of the existence of the matters contained in it at the date of it. The contents will be confidential between the parties and must remain confidential after the expiration or determination of this Lease except where the Report must be produced at Law or in relation to any court proceedings

14.3 Treatment of Contamination

- (a) If any Contamination is identified in the Report or is at any time discovered in the Land or the Building that makes the Premises unsafe for use for the Permitted Use (and the presence of the Contamination is not attributable to the act or omission of the Tenant):
 - (i) the Landlord must promptly notify the Tenant and promptly and in a safe manner remove or eradicate the Contamination; and
 - (ii) if the Tenant elects to vacate the Premises until such time as the Contamination is removed or eradicated and the Premises are rendered safe:
 - (A) the Landlord must pay the reasonable Relocation Expenses of the Tenant; and
 - (B) from the time the Tenant vacates the Premises until the Premises are again rendered safe, the Rent and all other amounts payable by the Tenant will be suspended and cease to be payable.

14.4 Tenant's rights

- (a) If the Landlord fails to render safe the Land and the Building within 3 months from the date on which the presence of the Contamination is identified the Tenant may by notice to the Landlord:
 - (i) terminate this Lease; or
 - (ii) carry out remediation of the Land in accordance with Clause 14.5(b) at the Landlord's Cost and recover the Cost from the Landlord by a set-off in Rent or other moneys payable by the Tenant under this Lease.
- (b) If the Tenant terminates the Lease under Clause 14.4(a):
 - (i) the termination will not prejudice the rights or claims of either Party in existence prior to that termination; and

- (ii) despite any Clause to the contrary, the Tenant is not required to remove the Tenant's Fittings or alterations, redecorate, restore, reinstate or make good the Premises.

14.5 Tenant to remediate

- (a) The Tenant must use all reasonable endeavours to remediate any Contamination the Tenant causes to the Land during the Term (if required) within 6 months of the Termination Date of this Lease or, if the parties enter into a lease for a Further Term, within 6 months of the termination date of the last lease for a Further Term.
- (b) In carrying out remediation of the Land the Tenant will not be obliged to:
 - (i) remediate any part of the Land which is beneath any structures which may be existing on the Land;
 - (ii) remediate any part of the Land where the source of the Contamination is any adjoining land; or
 - (iii) remediate the Land or any part of the Land beyond the condition as set out in the Report.
- (c) If the Tenant, acting reasonably, requires more than 6 months to comply with its obligations under this Clause 14.3, then it may extend the 6 months period referred to in Clause 14.5(a) by notice in writing to the Landlord by a reasonable period having regard to the works that remain to be performed.

14.6 Tenant's access to Land

- (a) The Landlord grants to the Tenant a licence to enter the Land for all purposes connected with the remediation of the Land by the Tenant for a period of 6 months commencing on the Termination Date of this Lease or, if the Parties enter into a lease for a Further Term, the Termination Date of the last lease for a Further Term; and
- (b) The Landlord must not cause any interference to the Tenant during the Tenant's remediation of the Land and must ensure that any person deriving title to the Land through the Landlord causes no interference to the Tenant during the Tenant's remediation of the Land.

14.7 Tenant's decision to be final

The Landlord agrees that the manner and degree of remediation of the Land under this Clause 14 will be determined by the Tenant in its reasonable discretion.

14.8 Survival

This Clause 14 survives termination or expiration of this Lease.

15 Miscellaneous

15.1 Notices

All formal notices, demands and consents to or by a party to this Lease:

- (a) must be in writing;
- (b) must be signed by the sender, or if a company, by its Authorised Officer; and
- (c) must be given to the person identified in Item 16; and

- (d) subject to sub-clause (f), must be given by either personal delivery, registered post, facsimile or e-mail
- (e) will be taken to be given or made in the case of:
 - (i) delivery in person, when left at the address specified in Item 16;
 - (ii) delivery by post, when the registered post has been received;
 - (iii) delivery by fax, when the sender receives a confirmation of the successful fax transmission; and
 - (iv) delivery by e-mail, when the recipient confirms the receipt of the e-mail.

provided that, if delivery is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4.00 pm (local time), it will be taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place.
- (f) Any notice which has an effect of terminating or determining the Lease cannot be given by e-mail.

15.2 Costs

The Tenant must pay to the Landlord on demand:

- (a) all stamp duty (including penalties and fines other than those incurred due to the default of the Landlord) properly assessed on this Lease; and
- (b) all reasonable Costs of the Landlord in relation to:
 - (i) the enforcement of or exercise of any rights, powers or remedies under this Lease;
 - (ii) any consent required to or under this Lease;
 - (iii) any assignment or subletting;
 - (iv) any surrender or determination of this Lease otherwise than by effluxion of time; and
 - (v) default by the Tenant or the Tenant's Employees in observing or performing the Tenant's obligations in this Lease,

including in each case reasonable legal costs.

15.3 Services

Subject to anything to the contrary in this Lease, the Landlord and all persons claiming by, through or under the Landlord may at reasonable times, after giving reasonable notice (except in the case of an emergency when no notice is necessary) install, maintain, use, repair, alter, service and replace any Services or any part of them including any pipe, duct, wire and plant at the Landlord's Cost but in doing so the Landlord must do everything reasonably necessary to minimise any disruption to the Tenant's Business.

15.4 Severance

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

15.5 Entire Agreement

This Lease contains all the contractual arrangements of the parties with respect to the transactions to which they relate. This Lease supersedes all earlier conduct by the parties with respect to those transactions.

15.6 Governing Law

This Lease is governed by the laws of the State. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

16 Goods and Services Tax**16.1 GST Exclusive Amounts**

All amounts referred to in this Lease other than in this Clause are exclusive of GST.

16.2 Payment of GST

- (a) Subject to Clause 16.5, a recipient of a taxable supply made under this Lease must pay to the supplier, in addition to the GST exclusive consideration for the taxable supply, an amount on account of any GST paid or payable by the supplier in respect of the taxable supply.
- (b) The recipient must pay the amount in Clause 16.2(b) to the supplier:
 - (i) if there is a due date for the GST exclusive consideration for the taxable supply, on that date; or
 - (ii) if there is no due date, within 14 days of receiving a tax invoice for the taxable supply.

16.3 Reimbursements

Where a party incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set off against another party under this document, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the party being reimbursed or indemnified is entitled to claim in respect of that cost or expense) plus GST, as calculated under Clause 16.3.

16.4 Tax invoice

Each party making a taxable supply under this Lease must issue a tax invoice to the other party for each taxable supply at or before the time it makes the taxable supply except when Clause 4.1(b) applies.

16.5 GST on Claims

- (a) If a payment to satisfy a claim or a right to claim under or in connection with this Lease gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against the amount of that GST.
- (b) If a party has a claim under or in connection with this lease for a cost on which that party must pay GST, the claim is for the cost (reduced by the input tax credit to which that party is entitled) plus all GST.
- (c) If a party has a claim under or in connection with this Lease the amount of which depends on actual or estimated revenue or which is for loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (or if that amount is separate or included as part of a larger amount).

Schedule 1

Schedule of Tenant's Fittings

#[List items]#

Schedule 9 Handover Information

In accordance with Clause 32.3(a)(viii) of the Contract, the Operator must prepare, maintain and keep up to date the following information and the Operator must provide copies of the following information to TfNSW in accordance with Clause 32.3(b):

- 1.1 employee information at an aggregate level, including date of joining, contract / award terms, grade, accrued entitlements and training record, set out in the following manner:

Aggregate Employee Information – Number of Staff by Staff Category (Full Time Equivalents)			
Category	Two Years Ago	Last Year	Current Year to Date
Management			
Clerical			
Drivers			
Mechanics			
Body Shop			
Cleaners			
Operations			
Other			
Total			

- 1.2 payroll details at an aggregate level, including wages and salaries, allowances and awards, overtime and penalties, set out in the following manner:

Aggregate Payroll Details: Annual Wage / Salary Payments (inc Overtime Payment)			
Category	Two Years Ago	Last Year	Current Year to Date
Number of Months	12	12	
Management			
Clerical			
Drivers			
Mechanics			
Body Shop			
Cleaners			
Operations			
Other			

Total			
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- 1.3 general information on overtime, absenteeism, sick leave and industrial relations issues;
- 1.4 asset register (including fleet listing by vehicle type);
- 1.5 information regarding Transfer Out Contract Buses, on a line by line basis, under the following column headings:

Column No.	Item
1	Contracted Operator
2	Bus Operator Company Name
3	Bus Status (attracting an NFPP or not)
4	Chassis Make & Model
5	Body Make & Model
6	Bus Type (e.g articulated, etc)
7	Emission Standard (Euro No.)
8	Auto Trans (Y/N)
9	Wheel Chair (Y/N)
10	A/C (Y/N)
11	Seating Capacity
12	Standing Capacity
13	Registration Number
14	VIN
15	Purchase price
16	Date in service
17	Owned / Leased (O/L)

- 1.6 maintenance history by vehicle over the Term, including parts, materials and parts and materials and labour costs;
- 1.7 operational performance reports (faults in service per km etc);
- 1.8 passenger and employee safety and security reports / history; and
- 1.9 details of environmental issues arising during the Term (if any).