



Variation Agreement – Service Contract

between

**The State of Queensland acting through the
Department of Transport and Main Roads
ABN 39 407 690 291**

and

**CXN Transport Pty Ltd
t/a Con-x-ion Airport Transfers
ABN 28 157 948 304**

Dated.....02/03/..... 2015

Parties

1. **The State of Queensland** acting through the Department of Transport and Main Roads (ABN 39 407 690 291) of 61 Mary Street, Brisbane Queensland 4000 (**the "State"**)
2. **CXN Transport Pty Ltd t/a Con-x-ion Airport Transfers** (ABN 28 157 948 304) of 1 Bellevue Drive, Varsity Lakes Queensland 4227 (**"the Operator"**)

Background

- A. The State entered into a service contract with Gold Coast Mini Coaches Pty Ltd ("the Original Operator") dated 7 May 2012 ("the Original Service Contract") under which the Original Operator agreed to provide certain public passenger services to the Brisbane Airport.
- B. By Deed of Assignment and Consent dated 18 November 2012, the Original Operator assigned all of its rights and liabilities under the Original Service Contract to the Operator.
- C. The State and the Operator now wish to amend the Original Service Contract as assigned, from the Variation Commencement Date, as set out in this Variation Agreement.

1 Definitions and Interpretation

1.1 Interpretation

- (a) In this Variation Agreement, words and expressions have the meaning provided for in:
 - (i) this Variation Agreement; and
 - (ii) the Existing Contract,unless the context otherwise requires.
- (b) If there is any inconsistency between the terms of this Variation Agreement and the terms of the Existing Contract, the terms of this Variation Agreement will have priority to the extent of such inconsistency.

1.2 Definitions

In this Variation Agreement:

Commencement Date means Commencement Date in the Existing Contract, as defined in clause 1.2 of the Existing Contract.

Existing Contract means the Original Service Contract, as assigned in accordance with recital B.

Expiration Date means the Expiration Date in the Existing Contract, as defined in clause 1.2 of the Existing Contract.

Parties means the State and the Operator and **Party** means one of them.

Variation Agreement means this document, including all schedules and annexures.

Variation Commencement Date means the 8th day of May 2015.

2 Variations to Existing Contract

2.1 Variations

The Parties agree to vary the Existing Contract in the following manner, effective from the Variation Commencement Date:

2.2.1 Vary the Expiration Date of the Existing Contract to 22 January 2017, as a result of an agreed term extension.

2.2.2 Amend the heading "**1.2 Index and clause headings**" to read "**1.3 Index and clause headings**" and renumber clauses 1.3 to 1.6 as clauses 1.4 to 1.7.

2.2.3 Vary Schedule 1, Item 7 of the Existing Contract by deleting the existing wording and replacing with the following wording:

Address for service of notices – State	General Manager (Passenger Transport Services) TransLink Division Department of Transport and Main Roads PO Box 50 Brisbane Qld 4001 Facsimile: (07) 3338 4600 Contact: Mr Danny Foster
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3 Remaining Provisions Unaffected

3.1 Other than as provided for in this Variation Agreement, the terms and conditions of the Existing Contract continue in full force and effect.

3.2 All rights, obligations and liabilities of the Parties relating to the subject matter of this Variation Agreement are as provided for in this Variation Agreement.

4 General provisions

4.1 Choice of law

(a) This Variation Agreement is governed by and will be construed in accordance with the laws of Queensland.

(b) This Variation Agreement is deemed to be entered into in Brisbane, Queensland.

(c) Any proceedings between the parties brought at any time that relate in any way to this Variation Agreement will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.

4.2 Counterparts

This Variation Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

4.3 Notices

Requirements of notices relating to this Variation Agreement are as set out in clause 40 of the Existing Contract.

4.4 Costs

The Parties agree to bear their own costs arising out of the negotiation, preparation, execution and performance of this Variation Agreement unless this Variation Agreement provides otherwise.

Released under RTI - DEMR

Executed as an Agreement

Executed by the **State of Queensland represented by the Department of Transport and Main Roads** (ABN 39 407 690 291) by its duly authorised delegate:

this 2nd day of March 2015

by

.....
Signature of delegate

.....
Signature of witness

Daniel Foster
.....
Name of delegate (print)

.....
Name of witness (print)

Director (Contracts)
.....
Position of delegate (print)

Executed by **CXN Transport Pty Ltd t/a Con-x-ion Airport Transfers** (ABN 28 157 948 304) in accordance with section 127 of the Corporations Act 2001 (Cth) acting by the following persons or, if the seal is affixed, witnessed by the following persons:

by

.....
Signature of authorised person

.....
Signature of witness

.....
Name of authorised person (print)

.....
Name of witness (print)

Director
.....
Office held

this Second day of March 2015

.....
Signature of authorised person

.....
Signature of witness

.....
Name of authorised person (print)

.....
Name of witness (print)

Director
.....
Office held

this Second day of March 2015



Queensland
Government

State of Queensland

and

Gold Coast Mini Coaches Pty Ltd

Exclusive Service Contract

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Released under RTI - DTMR

Date 7 May 2012

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads ABN 39 407 690 291 of 85 George Street, Brisbane, Queensland (**State**)

Gold Coast Mini Coaches Pty Ltd ACN 106 666 148 of Level 1, 183 Varsity Parade, Varsity Lakes, Queensland (**Operator**)

Background

- A The State is responsible for enabling the effective planning and efficient management of public passenger services within the State of Queensland, and wishes to engage the Operator to work with it in providing certain public passenger services.
- B The Operator has agreed to work with the State to provide public passenger services on the terms and conditions of this document.

Agreed Terms

Part A - Definitions and Interpretation

1 Definitions and Interpretation

1.1 Definition in the Act

Words and expressions defined in the Act will have the same meaning in this Contract unless a contrary intention appears in this Contract.

1.2 Definitions

In this Contract, unless the context otherwise requires:

Act means the *Transport Operations (Passenger Transport) Act 1994* (Qld).

Airport means Brisbane International and Domestic Airport, as defined by the map in Annexure A Contract Area.

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

Chief Executive means the chief executive administering the Act from time to time and includes any person exercising a valid delegation on behalf of the Chief Executive.

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

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

- (a) is by its nature confidential;
- (b) is designated by that party as confidential; or
- (c) the other party knows or ought to know is confidential,

and includes in relation to each party:

- (d) information comprised in or relating to any Intellectual Property Rights of the party;
- (e) information relating to the financial position of the party and, in particular, includes information relating to the assets or liabilities of the party and any other matter that does or may affect the financial position or reputation of the party;
- (f) information relating to the internal management and structure of the party, or the personnel, clients or suppliers, policies and strategies of the party;
- (g) information of the party to which the other party has access other than information referred to in paragraphs (d), (e) and (f) that has any actual or potential commercial value to the party that supplied the information; and
- (h) the terms of this Contract, including its Schedules and Annexures.

Confidential Information in relation to the State includes:

- (a) information relating to the policies, strategies, practices and procedures of the Department and the government of the State of Queensland and any information in the Operator's possession relating to the personnel of the Department or any Queensland Government Authority; and
- (b) information relating to the construction, operation and maintenance and security of the infrastructure used to provide the Services (except to the extent it constitutes information properly used by the Operator to provide services to another customer).

Confidential Information does not include information which is:

- (a) publicly known or becomes publicly known other than by breach of this Contract or any other obligation of confidentiality;
- (b) disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or
- (c) developed independently by the other party without reliance on any of the discloser's Confidential Information.

Contract means this service contract between the Operator and the State.

Contract Area means the service contract area and/or routes declared in accordance with the Act, as set out in Annexure A.

Contract Material means Existing Contract Material and New Contract Material.

Contract Service Plan means the agreed schedule of services at the Commencement Date of this Contract as set out in Annexure B, as varied in accordance with this Contract from time to time.

Contract Vehicle means each public passenger vehicle used to provide the Services, including under any subcontracting arrangement entered into by the Operator.

Defect has the meaning given to that term as prescribed in Chapter 3 of the *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999* (Qld).

Department means the Queensland Department of Transport and Main Roads.

Driver means each person employed or contracted by the Operator to be in control of and/or operate a Contract Vehicle.

Emergency Service Change means a temporary route or schedule change that is required:

- (a) in respect of an unexpected temporary emergency event (for example, without limitation, traffic accident, natural disaster, weather event etc); and
- (d) in order to ensure the safety of passengers, drivers, pedestrians and/or other road users.

Exclusive Services means the services identified in Annexure B, as varied in accordance with this Contract from time to time.

Existing Contract Material means any material or information created, written or otherwise brought into existence by or on behalf of a party or any third parties prior to the Commencement Date and which is necessary or appropriate for the effective performance of the Contract, whether during or after the Term.

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

Financial Records means proper books of account and all other financial records of the Operator that would ordinarily be maintained by a prudent and competent operator of public passenger services of the type, size, scope and complexity of the Services.

Force Majeure Event means (without limitation) any of the following events that are beyond the reasonable control of a party:

- (a) an act of God;
- (b) strike, lockout or other industrial disturbance (whether legal or illegal);
- (c) an act of public enemy, war, blockade, revolution, riot, insurrection, or civil commotion;
- (d) lightning, storm, cyclone, flood, fire, earthquake, or explosion;
- (e) any action, inaction, demand, order, restraint, restriction, requirement, prevention, frustration or hindrance by or of any applicable Government Authority; or
- (f) the unavailability (other than as a result of default or lack of planning or forethought by the Operator) of any essential equipment, chemicals, fuel, public utilities (such as electricity or water) or other materials.

General Route Services has the meaning given to that term under the Act.

Government Authority means the crown, a minister, a government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority and any agent or employee of any of the foregoing.

Insolvency Event means an event where:

- (a) an order is made or a resolution is effectively passed for the winding up or dissolution of the Operator (except for the purpose of solvent reconstruction or amalgamation for which the Chief Executive has given prior written approval);
- (b) the Operator goes into liquidation or makes an assignment for the benefit of, or enters into an arrangement, composition or compromise with its creditors, or any class of creditors;
- (c) a receiver and manager, controller, administrator, trustee or similar officer is appointed over all or any part of the assets of the Operator or an application or order for such appointment is made;
- (d) execution is levied against the Operator and not discharged within thirty (30) days;

- (e) the Operator is unable to pay its debts as and when they fall due, or is deemed unable to pay its debts according to any applicable legislation (other than because of a failure to pay a debt or claim that is subject to a good faith dispute);
- (f) the Operator (being an individual) becomes bankrupt, or commits an act of bankruptcy; or
- (g) anything analogous or having similar effect to anything referred to in paragraphs (a) to (f) above occurs to the Operator.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

Invitation to Offer or Invitation means the documentation issued by the State, inviting offers for the provision of the Services.

Key Performance Indicator or KPI means the key performance indicators specified in Schedule 2, as adjusted in accordance with clause 27.7 from time to time.

Key Result Area or KRA means a key result area set out in Schedule 2.

Material Adverse Event means:

- (a) any one of the following events:
 - (i) a change in any law, regulation, policy or a direction of a Government Authority; or
 - (ii) amendment to any applicable mandatory industry standard that is outside of the reasonable control of the Operator,

that occurs during the Term which materially affects the Operator's ability to comply with its obligations under this Contract, as determined by the Chief Executive, acting reasonably.

Minimum Service Levels means the levels of service delivery specified in Schedule 2.

Monthly Summary Report means a report containing the information and in the format required by clause 2 of Schedule 3, or such other format as may be directed by the Chief Executive from time to time.

Moral Right means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; or
- (d) rights of a similar nature,

which is conferred by statute and which exists or comes to exist, anywhere in the world, in connection with this Contract.

netBI means the business intelligence solution (data warehouse) supplied by netBI Pty Ltd (ABN 20 120 804 864), that is used for the purposes of reporting.

New Contract Material means any material or information created, written or otherwise brought into existence by or on behalf of a party in the performance of its obligations under this Contract and which is necessary or appropriate for the effective performance of the Contract and/or the provision of the Services either during or after the Term, and includes (without limitation):

- (a) Service Data, including data relating to the Operator's performance of the Services under this Contract;

- (b) route information, including the design and layout of all routes;
- (c) patronage and ticketing data, including all data collected by the Operator in connection with clause 18.5; and
- (d) Timetable information, including the content, design and layout of all Timetables.

Offer means the offer submitted by the Operator in response to the Invitation, and includes all attachments to the Offer.

Operational Records means records about the operation of the Services of a kind that would be ordinarily maintained by a prudent and competent operator of public passenger services, including but not limited to those matters specified in Schedule 3.

Personal Information means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

Public Transport Initiatives means initiatives proposed or undertaken by the State relating to public transport infrastructure and services, including, but not limited to, the introduction of busways, light railways, information systems, service delivery innovations and integrated ticketing systems.

Rectification Plan has the meaning given in clause 27.2(a).

Regulation means the *Transport Operations (Passenger Transport) Regulation 2005 (Qld)*.

Service Change means any change to the agreed details of a Service under the Contract Service Plan.

Service Data means data relating to the Services (excluding work rosters and Driver schedules) that the Operator is required to collect, retain and/or report under this Contract.

Services means the routes and/or Timetables, to be provided by the Operator under this Contract, as set out in the Contract Service Plan, as amended from time to time.

Special Conditions means the conditions of this Contract set out in Schedule 6.

Standard means the *Transport Operations (Passenger Transport) Standard 2010 (Qld)*.

State means the State of Queensland, and where the State is referred to as a party to this Contract, means the State of Queensland acting through the Department.

Term means the term of this Contract as provided for in Schedule 1.

Timetable means the schedule of times at which the Operator will provide the Services on routes in the Contract Area.

1.2 Index and clause headings

Index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of this Contract.

1.3 Interpretation

In the interpretation of this Contract, unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) a reference to any gender includes every gender;
- (c) references to a person include a corporation, association, partnership, Government Authority, or other legal entity;

- (d) references to writing include any means of representing or reproducing words, figures, drawings or symbols, in a visible, tangible form;
- (e) references to an obligation to notify a party mean an obligation to notify that party in writing;
- (f) references to signature and signing include due execution by a corporation, or other relevant entity;
- (g) references to months mean calendar months;
- (h) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, standards, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (i) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (j) references to clauses, schedules and annexures refer to clauses, schedules, and annexures of this Contract;
- (k) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (l) no rule of construction of documents shall apply to the disadvantage of a party on the basis that the party put forward this document, or any relevant part of it;
- (m) if any term of this Contract is legally unenforceable or made inapplicable, it shall be severed or read down, but so as to maintain (as far as possible) all other terms of this Contract (unless to do so would change the underlying principal commercial purposes of this Contract);
- (n) "will" is a mandatory expression; and
- (o) references to consent mean prior written consent.

1.4 Order of Precedence

This Contract is comprised of the following documents:

- (a) clauses 1 to 41 (inclusive);
- (b) the Schedules, including any other terms and conditions referenced in those Schedules;
- (c) Annexures A to C of this Contract;
- (d) any other annexures or attachments to this Contract;
- (e) the State's Invitation; and
- (f) the Operator's Offer.

1.5 Severance

In the event and to the extent of any inconsistency between the documents listed in clause 1.4, the provisions of the earlier mentioned document in clause 1.4 will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

1.6 Priority of interpretation

If there is any inconsistency between a provision of this Contract and a provision of the Act, the Act will prevail to the extent of such inconsistency.

Part B - Term and Contract Structure

2 Cooperation and collaboration

2.1 Parties to cooperate

The parties acknowledge and agree that their mutual intention in entering into this Contract is to work together, in accordance with the terms of this Contract, in providing the Services to members of the public.

2.2 Interpretation of Contract

Where a term or provision of this Contract can be interpreted in more than one way, and one of the possible interpretations is more consistent with a cooperative and collaborative approach, that interpretation is to be preferred.

2.3 Compliance with directions

Where this Contract requires the Operator to comply with any direction issued by the Chief Executive or the Department and such compliance would result in a material change to the scope of the Services, the Operator's costs in providing the Services or the commercial viability of the Services to the Operator, such direction must be treated as a Service Change, and the parties must comply with the process set out in the Contract Service Plan.

3 Contract

3.1 Service Contract

This Contract is a service contract under Chapter 6 (Service Contracts) of the Act. The parties acknowledge that this Contract has the purpose set out in section 37 (Purpose of service contracts) of the Act.

3.2 Objectives of the Act

The Chief Executive and the Operator will co-operate and take all reasonable actions to advance the objectives of the Act, as set out in section 2 (Objectives of the Act) of the Act.

3.3 Subject to Act

Nothing in this Contract will affect or limit any powers or rights, or any obligations, that either party may have under the Act, Regulation or Standard.

3.4 Delegation

The Chief Executive may delegate to a nominee the exercise of any of the Chief Executive's powers, obligations or functions under this Contract or the Act including, but not limited to, the giving and receiving of notices, certificates or other documentation or correspondence.

4 Term

4.1 Term

This Contract will commence on the Commencement Date and expire on the Expiration Date (**Term**), or terminated or cancelled earlier in accordance with this Contract or the Act.

4.2 No offer of new service contract

Section 62 (Offer of new service contract) of the Act does not apply to this Contract and the Chief Executive has no obligation to invite the Operator to submit an offer to provide the Services after the expiration of this Contract in accordance with section 62.

5 Exclusivity

5.1 Exclusive right

Subject to the Operator complying with:

- (a) the requirements published and/or notified to it from time to time by the Chief Executive for the designated scheme, arrangement or Service;
- (b) the Act; and
- (c) this Contract,

the Operator's right to perform the Exclusive Services in the Contract Area during the Term will be an exclusive right.

5.2 First opportunity to offer

If the Chief Executive proposes to amend the Contract Area by adding an area or route to the Contract Area, the Chief Executive will provide the Operator with the first opportunity to offer to provide the amended Contract Area in accordance with section 60 of the Act. The Chief Executive will act reasonably in assessing any such offer and will comply with the requirements of the Act in respect of the amended Contract Area.

5.3 Retained rights

The Chief Executive may grant rights, or enter into additional service contracts, on behalf of the State for the provision of public passenger services covering the same or similar areas or routes as the Contract Area if:

- (a) and to the extent that the Operator's rights under this Contract are not, or cease to be, exclusive;
- (b) this Contract is suspended in accordance with clause 37;
- (c) the Operator fails or refuses to provide any or all of the Services under this Contract to a satisfactory standard (within the meaning of the Act), or at all;
- (d) the Operator's offer to provide Services in an amended Contract Area under clause 5.2 is unacceptable to the Chief Executive under section 59 of the Act.

5.4 No compensation

The State will not be liable to compensate the Operator or any other person should it exercise its rights under clause 5.3.

6 Contract Area

6.1 Initial Contract Area

- (a) The parties agree that the Contract Area shown in Annexure A is accurate as at the Commencement Date.

- (b) The Contract Area will not be affected by any subsequent amendment or variation to a declared service contract area or route unless the parties execute a written variation to this Contract to that effect.

6.2 Amendments to Contract Area

- (a) The Chief Executive must comply with section 42B of the Act in respect of any amendments to the Contract Area or to a route where a declaration under section 42 of the Act is in force in respect of the Contract Area or route.
- (b) Where an amendment to which clause 6.2(a) applies is an amendment to the Contract Area to add a new route or service contract area to the Contract Area, without limiting any other obligation under this Contract and the Act, the Chief Executive must also comply with section 60 of the Act in respect of the amendment.

6.3 No Compensation for amendments

The Chief Executive will not be liable to compensate the Operator under this Contract in respect of any amendment of a service contract area or route made in accordance with section 42B (Amendment of service contract area or route) of the Act or the implementation of such amendments pursuant to sections 60 (Service contract for amended service contract area or route) or 61 (Compensation) of the Act.

7 Operator Status

7.1 Independent contractor

The Operator will perform this Contract as an independent contractor and will at no time be an agent or representative of the State, the Department or the Chief Executive.

7.2 Not a contract of service

To remove any doubt, this Contract does not give rise to a contract of service between the parties under the *Workers Compensation and Rehabilitation Act 2003* (Qld).

7.3 Provision of Equipment and Services

The Operator will at its own expense supply all goods, labour, vehicles, tools, depots, equipment, materials, power, water, services and facilities necessary to perform the Contract. Nothing in this clause 7.3 will be taken to limit the application of funding received under any other agreement in accordance with the terms of that agreement and any applicable laws or policies.

8 Revenue

8.1 Operator to retain revenue

For the avoidance of doubt, the Operator shall be entitled to retain all revenue generated from fares charged for the provision of Services under this Contract.

8.2 No financial assistance from Chief Executive

No financial assistance shall be provided by the Chief Executive under this Contract.

9 Costs

9.1 Contract costs

Subject to any contrary provision in this Contract, each party will bear its own costs (including legal costs) of and incidental to the preparation, negotiation and signing of this Contract.

9.2 Taxes and duties

The Operator must pay and indemnify the State against liability for any tax, charge, duty or impost of any kind (including stamp duty but not including income tax or capital gains tax) and registration fees assessed on this Contract, on any documents created under this Contract, in respect of any transaction evidenced by the Contract and in respect of the performance by the parties of any of their respective obligations under it.

Part C - Laws, Standards and Quality

10 Regulatory compliance

10.1 Compliance with laws

The Operator must at all times comply with:

- (a) the provisions of the Act, Regulation and Standard and all other applicable laws in providing the Services and performing its obligations under this Contract;
- (b) without limiting any other provision of this Contract, all State, Commonwealth and local government laws, regulations, policies, industry codes and standards, directions and requirements applicable to the Operator's performance of its obligations under this Contract, including provision of the Services; and
- (c) any conditions applying to an authority obtained in accordance with section 123 (Requirement for authority to enter) of the Regulation.

10.2 Evidence of Compliance with Laws

If reasonably required by the Chief Executive, the Operator must establish, maintain and provide to the Chief Executive upon request, such compliance plans as the Chief Executive reasonably requires.

10.3 Vehicle Accessibility Compliance

- (a) The Operator must comply with all State and Commonwealth government laws in relation to vehicle accessibility standards, including but not limited to the Commonwealth *Disability Standards for Accessible Public Transport 2002* (Cth) and accompanying guidelines made under the *Disability Discrimination Act 1992* (Cth).
- (b) The Operator must provide such information and complete such documentation as the Chief Executive may request to enable the Chief Executive to evaluate and/or report upon the Operator's compliance with clause 10.3(a). The Operator must provide such information within ten (10) Business Days of the Chief Executive's request.

10.4 Compliance with State policies

The Operator must at all times comply with:

- (a) any applicable policies, procedures, guidelines and directions published or issued by the State from time to time during the Term; and
- (b) all reasonable directions and requirements of the Chief Executive in respect of the operation of this Contract including (without limitation) directions and requirements in relation to public safety and security.

11 Audits

11.1 Scope of Audits

Audits may be conducted by or on behalf of the Chief Executive under this clause 11 in respect of:

- (a) the Operator's compliance with all its obligations under this Contract;
- (b) the Operator's financial position;
- (c) the discharge of any of the Chief Executive's obligations under the Act, Regulation, Standard and this Contract, or as required in order to comply with a request, direction or order from the Queensland Government (including, without limitation, the Minister for Transport); and
- (d) any other matters reasonably determined by the Chief Executive to be relevant to this Contract.

11.2 Conduct of Audits

- (a) The parties acknowledge that the records and reports to be provided under clause 18 and the review process set out in clause 25 are intended to be the primary means by which information regarding the matters set out in clause 11.1 is provided by the Operator to the Chief Executive. The Chief Executive or their nominee will only conduct audits where the Chief Executive reasonably considers that these processes provide insufficient information or comfort regarding such matters, and will use best endeavours to minimise the interruption to and impact upon the Operator's business operations as a result of any audit.
- (b) The Operator must participate promptly and cooperatively in any audits conducted by the Chief Executive or their nominee.
- (c) Except in those circumstances in which notice is not practicable or appropriate, the Chief Executive must give the Operator reasonable notice of an audit and an indication of which documents and/or class of documents the auditor may require.
- (d) Subject to any express provisions in this Contract to the contrary, each party must bear its own costs associated with any audits.
- (e) The requirement for, and participation in, audits does not in any way affect or reduce the Operator's responsibility to perform its obligations in accordance with this Contract.
- (f) The Chief Executive must use its reasonable endeavours to ensure that audits do not unreasonably delay or disrupt the Operator's performance of its obligations under this Contract.
- (g) The Operator must promptly take, at no additional cost to the Chief Executive, corrective action to rectify any error, non-compliance or inaccuracy in the way the Operator has performed any of the Services under this Contract, which is identified in any audit.

11.3 Access to Operator's premises and records

- (a) For the purposes of this clause 11, the Operator must grant, and, where relevant, must ensure that its subcontractors grant, the Chief Executive and its nominees or the Auditor-General access as required by the Chief Executive, to the extent relevant to the performance of the Operator's obligations under this Contract, the Operator's premises, Contract Vehicles, data (including Service Data), records (including both Operational Records and Financial Records), accounts and other financial material and material relevant to the performance of this Contract.
- (b) The Chief Executive must provide the Operator with written notice of its intention to access the operator's premises in accordance clause 11.3(a), within a reasonable time prior to the date of access.
- (c) This clause 11 applies for the Term and for a period of six years from the date of expiry or termination of this Contract.
- (d) Without limiting any of its other obligations under this Contract, the Operator must, at its own cost, ensure that it keeps full and complete records in accordance with Australian accounting standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under this clause 11.

- (e) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, or the Information Commissioner or a delegate of the Information Commissioner, or the Ombudsman or a delegate of the Ombudsman. The rights of the Chief Executive under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, the Information Commissioner or a delegate of the Information Commissioner or the Ombudsman or a delegate of the Ombudsman.
- (f) Nothing in this clause 11 will require the Operator to disclose or make available to the Chief Executive or its nominees the following records, unless a denial of access to such information would prevent the auditor from meeting the objectives set out in clause 11.1:
 - (i) records or minutes of internal management meetings of the Operator;
 - (ii) Confidential Information relating to the Operator's employees or suppliers;
 - (iii) information not directly related to the performance of this Contract; or
 - (iv) trade secrets of the Operator.

11.4 Interpretation of this clause

In this clause 11:

- (a) a reference to the 'Auditor-General' is a reference to the Auditor-General or equivalent office holder with jurisdiction over the Chief Executive;
- (b) a reference to the 'Information Commissioner' is a reference to the Information Commissioner or equivalent office holder (if any) with jurisdiction over the Chief Executive; and
- (c) a reference to the 'Ombudsman' is a reference to any Ombudsman or equivalent office holder (if any) with jurisdiction over the Chief Executive.

Part D - Service Requirements

12 Services

12.1 Provision of Services

The Operator must provide the Services in accordance with this Contract, including the Special Conditions (if any) specified in Schedule 6.

12.2 Operator obligations

The Operator must:

- (a) provide the Services in accordance with the Contract Service Plan, the Services Levels and any KPIs;
- (b) at all times throughout the Term comply with all of its obligations under the Act, the Regulation and the Standard and all other applicable laws;
- (c) take all reasonable steps to ensure that each Driver, at all times throughout the Term:
 - (i) is appropriately licensed and accredited to be in control of and operate the Contract Vehicles; and
 - (ii) holds appropriate driver authorisation under the Act when providing the Services;

- (d) ensure that any contractors or employees engaged or tasked to provide any service in connection with the Services are suitably skilled and experienced, and hold all appropriate qualifications, necessary to provide such service in a workmanlike and professional manner, in accordance with generally accepted industry standards and without in any way detracting from the Operator's ability to comply with its obligations under this Contract; and
- (e) ensure, in order to be eligible to provide the Services, that the reporting requirements in clause 18 will be met.

12.3 Consequences of failure to comply

If at any time during the Term the Operator:

- (a) is aware of and continues to permit any Driver not appropriately licensed and accredited in accordance with clause 12.2(c)(i) to provide Services; or
- (b) is aware of and continues to permit any Driver not holding appropriate driver authorisation in accordance with clause 12.2(c)(ii) to provide Services,

the Chief Executive may activate the performance management process by issuing a rectification notice in accordance with clause 27.1.

12.4 Counter terrorism

- (a) The Operator will participate in and implement all programs developed in accordance with State and national policies for counter terrorism activities, as notified by the Chief Executive from time to time, to ensure Service continuity.
- (b) The Chief Executive will meet the reasonable costs incurred by the Operator (if any), in carrying out the obligations imposed on the Operator as a result of a direction or notification by the Chief Executive under clause 12.4(a).

12.5 Reasonable actions

Each party must act in a reasonable way to facilitate the operation of this Contract and in exercising its rights and performing its obligations under this Contract.

12.6 Access to Airport

The Department will use best endeavours to facilitate access to the Airport for the Operator, by arrangement with the Airport operators. Notwithstanding, it remains the ultimate responsibility of the operator to ensure access to the Airport is granted, and neither the State nor the Department will be liable in any way should such access not be granted to the Operator by the Airport operators.

13 Customer Service and Safety

13.1 Customer Service

The Operator must use best endeavours to ensure that all personnel, at all times throughout the Term:

- (a) comply with all of their obligations under the Act, the Regulation, the Standard and all other applicable laws;
- (b) have a thorough knowledge of the fares and routes;
- (c) receive appropriate ongoing structured training;
- (d) act reasonably, courteously and helpfully in all dealings with passengers and the public;
- (e) do not discriminate against any passengers and operators of other vehicles; and

- (f) are attired in a clean, well maintained uniform.

13.2 Safety

The Operator will undertake all reasonable measures to ensure the safety of passengers while boarding, travelling on and disembarking from the Services, including, without limitation, any measures it is permitted or required to take pursuant to the Act, Regulation and Standard.

13.3 Operator responsible for safety

The Operator will provide and maintain everything necessary for the safety of persons and property and for the safety and convenience of its personnel, personnel of the State and passengers at any location and in any Contract Vehicle under the Operator's control.

13.4 Operator to comply with safety directions

The Operator will comply with, and will require all its personnel, agents and subcontractors to comply with, all directions of the Chief Executive relating to the safety and protection of persons and property.

13.5 Lost Property

During the Term and for 6 months after the termination or expiry of this Contract, the Operator will maintain a lost property register and provide a facility for members of the public to recover their lost property.

13.6 Customer Comments

The Operator must maintain a register of comments received from members of the public, detailing the date of occurrence, the nature of the comment, investigations into the comment and actions that were taken in response to the comment, and must promptly provide the Chief Executive with a copy of the register upon request, and in any event at least once in every 12 month period as required by clause 1 of Schedule 3.

14 Service Planning

14.1 Contract Service Plan

- (a) The Operator must comply with the agreed Contract Service Plan under this Contract. The parties agree that the Contract Service Plan described is accurate as at the Commencement Date.
- (b) The Operator may elect to receive assistance from the Department in respect to service planning and the Department will provide such assistance as it determines, acting reasonably, is required to enable the Operator to meet its service planning obligations under this Contract. Such assistance may include, without limitation, attendance by representatives of the department at the Operator's place of business to with the Operator in developing a Contract Service Plan.

14.2 Timetable changes proposed by Operator

- (a) The Operator may make Timetable changes without obtaining the prior written consent of the Chief Executive, provided the Operator:
 - (i) notifies the Chief Executive of any changes to Timetables that it proposes as soon as is reasonably practicable, and prior to its implementation;
 - (ii) continues to meet the Minimum Service Levels contained in Schedule 2;
 - (iii) uses best endeavours to implement Timetable changes made in accordance with this clause 14.2 by the dates notified to the Chief Executive; and
 - (iv) gives a public notice of the impact of the change to the Timetable before implementing that change.

14.3 Material Service Changes

The Operator must obtain the prior written consent of the Chief Executive if the Operator wishes to make Service Changes which materially affect:

- (a) the nature of the Services as described in the Contract Service Plan; or
- (b) the Operator's ability to meet the Minimum Service Levels contained in Schedule 2.

14.4 Business continuity planning

- (a) The Operator will plan to ensure continuity of the Services, to a standard acceptable to the Chief Executive, and undertake reasonable security precautions appropriate to the risk involved despite any event that may impact on the Services.
- (b) The Operator will maintain, and will provide to the Chief Executive upon request but in any event at least once in every 12 month period throughout the Term, suitable business continuity plans to ensure continuity of the Services.

14.5 Operator to notify

The Operator must promptly notify the Chief Executive in respect of:

- (a) Contract Vehicle capacity and loading problems or issues;
- (b) any ongoing problems it identifies in respect of any of the routes within the Contract Service Plan, including in respect of traffic volumes, navigability, efficiency and delays; and
- (c) any other matter which may affect the efficiency or quality of the Services, and/or the Operator's compliance with this Contract, the Act, the Regulation or the Standard.

15 Fares and ticketing

15.1 Fares

The Operator is responsible for specifying applicable fares for the Services. The fare schedule must be provided by the Operator at Schedule 7. The Operator must provide written notice to the Chief Executive at least fourteen (14) Business Days before adjusting the fare schedule.

15.2 Tickets

Except for passengers utilising a valid electronic ticket in the form of a smartcard or other approved proximity card, the Operator must ensure that each passenger on the Service is issued a paper ticket that is, at a minimum:

- (a) is a valid Tax Invoice;
- (b) sets out the date and time of travel and the validity period of the ticket;
- (c) identifies the origin and destination zone of travel;
- (d) contains an identifier sufficient to identify the issuing shift or Driver; and
- (e) sets out the total fare payable.

16 Contract Vehicles and Depot

16.1 Contract Vehicles

The Operator must ensure that each Contract Vehicle:

- (a) complies in every respect with the Act, the Regulation, the Standard and all other applicable laws;
- (b) is an appropriate public passenger vehicle as specified in Schedule 4 of the Standard;
- (c) without limiting clause 16.1(a), complies with Schedules 1 to 3 of the Standard;
- (d) complies with all of the requirements specified in Schedule 3;
- (e) complies with any special conditions set out in Schedule 6;
- (f) if fitted with any closed circuit television (CCTV) cameras, complies with all relevant codes of practice and privacy obligations set out in clause 33; and
- (g) has the necessary facilities to safely carry luggage for the number of passengers on board.

16.2 Depot requirements

The Operator must ensure that when not in use, Contract Vehicles are securely parked in a suitable depot which, as a minimum:

- (a) has sufficient capacity to accommodate all of the Contract Vehicles;
- (b) is safe, clean, well-lit and free of hazards;
- (c) complies with all relevant laws; and
- (d) is adequately secured to prevent unauthorised access to vehicles and equipment.

16.3 Depot as at Commencement Date

The depot utilised by the Operator at the Commencement Date is identified in Item 5 of Schedule 1.

16.4 Relocation of Depot

The Operator must provide written notice to the Chief Executive at least fourteen (14) Business Days before relocating a depot.

17 Transitional

17.1 Transition of service contracts

- (a) The parties acknowledge that, within 45 days of the Commencement Date, they will use best endeavours to agree to a transition plan acceptable to both parties to manage the transition from the previous service contract governing the Operator's provision of the Services, to the terms of this Contract (**Transition Plan**).
- (b) The parties must comply with the terms of the Transition Plan. Any breach of the Transition Plan will be deemed to be a breach of this Contract.

Part E - Information, Records and Reporting

18 Records and Reporting

18.1 Records

The Operator must maintain complete and accurate Operational Records and Financial Records sufficient to demonstrate its performance under this Contract, and must provide any information that the State may require in order to assess performance.

18.2 Maintenance of Records

Except where otherwise expressly stated, the Operator will retain all records required under this Contract for no less than six (6) years from the date of creation. This clause will survive expiry or termination of this Contract.

18.3 Inspection and copies

The Operator will make the records required in this clause 18 available for inspection by the Chief Executive as and when required, and will provide copies of such records to the Chief Executive within ten (10) Business Days of receiving a request for information, unless an alternative timeframe is specified in writing by the Chief Executive.

18.4 Reports

The Operator will provide to the Chief Executive the reports set out in Schedule 3, in accordance with the requirements relating to timing and content set out in that Schedule. The Operator will provide all reports under this Contract in electronic or "hard copy" format, as required by the Chief Executive. Electronic reports must comply with the any requirements specified by the Chief Executive, and may include the requirement that reports are compatible with the netBI system requirements. The electronic reports must be provided in a format that is acceptable to the Chief Executive.

18.5 Management Information

Without limiting any other provision of this Contract, the Operator will:

- (a) endeavour to ensure that the number of passengers who use the Services is accurately counted and recorded in order to provide the information required under this Contract; and
- (b) collect and provide to the Department the information specified in Schedule 3, within the required timeframes.

18.6 Ticketing reporting and technology

The Operator must maintain records of all tickets sold, and must at any time permit the Chief Executive to access all such data.

19 Financial Statements

19.1 Financial Statements

The Operator must ensure that any financial statements provided by it under this Contract are:

- (a) prepared and presented in accordance with applicable Australian accounting standards; and
- (b) certified by the Operator's auditor where such certified accounts are available (or, if the Operator is not required by law to appoint an auditor or audited accounts are not otherwise obtained by the Operator, the Operator's accountant) to be a true and fair representation of the Operator's financial position for the relevant period.

19.2 Content of financial statements

Financial statements to be provided under this Contract must include:

- (a) Profit and Loss Statement (or its equivalent under applicable Australian accounting standards from time to time);
- (b) Balance Sheet (or its equivalent under applicable Australian accounting standards from time to time);
- (c) Cash Flow Statement (or its equivalent under applicable Australian accounting standards from time to time); and
- (d) notes to and forming part of the accounts.

20 Customer Information and Marketing

20.1 Obligations with respect to customer information and marketing

The parties must comply with their respective obligations in relation to:

- (a) the provision, accuracy, production and distribution of Service information, Timetables and customer information (including online information); and
 - (b) marketing strategies, communication campaigns, promotions and media communication,
- as set out in Schedule 5.

Part F - Incidents

21 Material Adverse Event

21.1 No liability for delays

- (a) Neither party will be liable for any delay or failure to perform its obligations pursuant to this Contract if such delay is due to a Material Adverse Event which renders such performance unlawful or otherwise disables the affected party from so performing.
- (b) Subject to clause 21.1(a), each party must continue to perform its obligations under this Contract notwithstanding the occurrence of a Material Adverse Event, and must comply with this clause 21 in respect of the Material Adverse Event.

21.2 Negotiation process

As soon as reasonably practicable, but in any event within 10 Business Days after the occurrence of a Material Adverse Event, or after the parties become aware that a Material Adverse Event is likely to occur, senior representatives of each party must meet and, acting in good faith, endeavour to negotiate such amendments to the Contract as may be necessary to overcome the effects of the Material Adverse Event.

21.3 No limitation

The negotiation process in clause 21.2 is not to be taken to in any way affect or limit any other right of the Chief Executive under this Contract.

21.4 Dispute resolution

If the parties are unable, within sixty (60) Business Days of the meeting required under clause 21.2, to agree on appropriate amendments to the Contract, or if the Material Adverse Event cannot be overcome, either party may invoke the dispute resolution process set out in clause 38.

22 Incidents

22.1 Incident management plan

- (a) The Operator must prepare and maintain incident management plans in accordance with the requirements of the Standard.
- (b) The Operator must provide the Chief Executive with a copy of:
 - (i) each incident management plan the Operator is required to have under the Standard; and
 - (ii) any changes proposed as a result of the annual review of the incident management plan pursuant to the Standard.

22.2 Notification to Chief Executive

Without limiting the Operator's obligations at law, including its obligations under the Standard, the Operator must notify the Chief Executive as soon as reasonably practicable that any of the following incidents have occurred in connection with the Services (including, without limitation, on or involving any Contract Vehicle):

- (a) an incident involving serious risk to passenger safety;
- (b) an incident in which a person is seriously injured or killed; and/or
- (c) an incident in which property is damaged to the value of at least the amount fixed under section 287 (4) of the *Transport Operations (Road Use Management-Road Rules) Regulation 1999*.

22.3 Incident report

The Chief Executive may request the Operator to provide a copy of any incident report that the Operator is required to make under the Standard and the Operator must immediately comply with any request made under this clause.

23 Force majeure

23.1 No liability for delays

Neither party will be liable for any delay or failure to perform its obligations pursuant to this Contract if such delay is due to a Force Majeure Event.

23.2 Entitlement to terminate

If a delay or failure by a party to perform its obligations due to a Force Majeure Event exceeds forty-five (45) Business Days, either party may immediately terminate this Contract on providing notice in writing to the other party.

23.3 Operator's disaster recovery obligations

The Operator must take all commercially reasonable steps to:

- (a) prevent the occurrence of;
 - (b) avoid being affected by; and
 - (c) mitigate the effects of,
- any Force Majeure Event.

The Operator will not be absolved of responsibility to perform its obligations under this Contract by virtue of a Force Majeure Event if and to the extent that the taking of all proper precautions, due care and

reasonable alternative measures by the Operator with the object of avoiding the delay or failure and of carrying out its obligations under this Contract would have enabled it to continue to meet those obligations.

24 Change of Shareholding

24.1 Consent required

Where the Operator is a corporation, other than a company whose shares are listed on any stock exchange in Australia, the Operator will not permit any substantial change in the underlying shareholding of the Operator without obtaining the Chief Executive's prior written consent.

24.2 Substantial change

For the purposes of clause 24.1, a substantial change in the underlying shareholding of the Operator will occur whenever:

- (a) there is a transfer in the issued capital or voting rights of the Operator of thirty percent (30%) or more;
- (b) any corporation or related corporations (as defined in the Corporations Act) not holding between them more than fifty percent (50%) of the issued share capital or voting rights of the Operator, acquires or acquire between them so much of the issued capital or voting rights of the Operator as when added to the issued capital or voting rights (if any previously held by that corporation or related corporation) represent in the aggregate more than fifty percent (50%) of the issued capital or voting rights of the Operator; or
- (c) any person or person and their relatives (as defined in the Income Tax Assessment Act 1936) not holding between them more than fifty percent (50%) of the issued capital or voting rights of the Operator acquires or acquire between them so much of the issued capital or voting rights of the Operator as when added to the issued capital or voting rights (if any) previously held by that person or those persons represent in aggregate more than fifty (50%) of the issued capital or voting rights of the Operator; or
- (d) any of the changes referred to in clause 24.2(a) to 24.2(c) occur to any holding company (as defined in the Corporations Act) of the Operator or to any holding company of any holding company of the Operator.

Part G - Performance Management

25 Review and Monitoring of Service

25.1 Review

The Operator's performance under this Contract will be subject to:

- (d) annual reviews,
- (e) a mid-term review; and
- (f) an end-of-term review,

conducted in accordance with section 46 (Review of holder's performance) of the Act, at the discretion of the Chief Executive and subject to reasonable notice being given to the Operator. To avoid doubt, where an annual review coincides with a mid-term review or an end-of-term review, the parties will only be required to complete a single review process.

25.2 Review information

The Chief Executive may take into account the following when conducting the review:

- (a) the annual report bundle described in Schedule 3;
- (b) the Service Data;
- (c) records (including both Operational Records and Financial Records);
- (d) accounts and other financial material; and/or
- (e) any other material relevant to the performance of this Contract.

25.3 Travel on services

The Operator will allow a representative of the Chief Executive access to the premises from which the Operator conducts its administration and to travel free of charge on any Contract Vehicle to monitor or observe the provision of the Services, subject to reasonable notice being given to the Operator.

25.4 Review at request of either Party

The parties further agree that the Operator's performance will also be subject to any further review that may be requested by either party during the Term, to be conducted in accordance with section 46 (Review of holder's performance) of the Act.

25.5 Guidelines and directions

The Operator will comply with guidelines and directions issued by the Chief Executive and will co-operate to ensure that reviews conducted under this clause are completed promptly and to implement all improvements which the Chief Executive reasonably determines are necessary.

26 Key Performance Indicators and Minimum Service Levels

26.1 Acknowledgement

- (a) The parties acknowledge:
 - (i) the importance of continually improving the quality of the contracted Services;
 - (ii) that the Minimum Service Levels, KPIs and associated KRAs provide an indication of the quality of Services; and
 - (iii) that over time, the Minimum Service Levels and KPIs may need to be adjusted in accordance with clause 27.7, to reflect the Operator's progress against the Minimum Service Levels and KPIs and future requirements.
- (b) The Operator acknowledges and agrees that the Services and the Operator's performance will be evaluated against the agreed Minimum Service Levels and any KPIs in Schedule 2.

26.2 Reporting

The Operator must report against any KPIs in the ways and at the intervals specified in Schedule 2.

26.3 Measures

At the expiry of each six (6) month period of the Term, the Chief Executive will measure the Operator's performance against the Minimum Service Levels and KPIs by reference to those measures available to the Chief Executive, including but not limited to:

- (a) the Operator's reports under clause 26.2;
- (b) information provided to the Chief Executive in respect of previous or upcoming annual reviews, pursuant to clause 25.1;
- (c) information and data reportable to the Chief Executive under this Contract, or the Act;

- (d) checks, audits and/or inspections undertaken by, or on behalf of the Chief Executive; and
- (e) any data or technology that may become available over time relating to the Services, or the Operator's performance.

26.4 Performance Measurement

Upon completion of the measures referred to in clause 26.3, the Chief Executive will notify the Operator of the outcome of the review and may issue a rectification notice in accordance with clause 27.1.

27 Performance Management Process

27.1 Rectification notice

If the Operator is in breach of this Contract, including any failure to meet any performance requirement in Schedule 2 or comply with the Contract Service Plan as part of the review process under clause 25.1, the Chief Executive may issue a rectification notice requiring the Operator to develop a plan to remedy the breach and, in the case of a failure to comply with the Contract Service Plan, restore performance to satisfactory levels.

27.2 Rectification Plan

- (a) Within ten (10) Business Days of receipt of a rectification notice under clause 27.1, the Operator must submit to the Chief Executive the Operator's written proposal to rectify the identified breach and/or deficiencies, including a proposed timeframe (**Rectification Plan**).
- (b) The parties will co-operatively discuss the proposed Rectification Plan with a view to finalising a Rectification Plan that is acceptable to the Chief Executive.
- (c) Where the Rectification Plan is acceptable to the Chief Executive, the Operator must comply with the Rectification Plan.
- (d) If there is no Rectification Plan acceptable to the Chief Executive within twenty (20) Business Days of receipt of a rectification notice under clause 27.1, the Chief Executive may take action in accordance with clause 27.4.

27.3 Successful completion of Rectification Plan

- (a) Upon completion of the Rectification Plan, the Operator's performance will be measured against the terms of the Rectification Plan (including any amendments to Schedule 2 or amendment to the Contract Service Plan agreed under the Rectification Plan).
- (b) Where the identified breach has been rectified, the Chief Executive will notify the Operator accordingly.

27.4 Failure to rectify

If the Operator:

- (a) fails to develop a Rectification Plan which is acceptable to the Chief Executive within the required time; or
- (b) fails to comply with its Rectification Plan; or
- (c) fails to rectify the identified breach to the satisfaction of the Chief Executive,

the Chief Executive may escalate the issue to the show cause process under clause 27.5.

27.5 Show cause process

- (a) If the Chief Executive escalates the issue under clause 27.4, the Chief Executive must issue a show cause notice to the Operator setting out details of the identified breach and details of the

action which the Chief Executive proposes to take in respect of such breach and/or deficiency (**Show Cause Notice**).

- (b) Within ten (10) Business Days of the date of the Show Cause Notice, the Operator may make written representations about the proposed action under clause 27.5(a).
- (c) The Chief Executive may, after the date that is ten (10) Business Days from the date of the Show Cause Notice, immediately amend, suspend or cancel this Contract by notice to the Operator, if the Chief Executive reasonably believes that the Operator is unable to provide any or all of the Services.
- (d) The State will not be liable to compensate the Operator for any action taken under this clause 27.5 except in accordance with section 42 of the Act.

27.6 Other rights

Without limiting any other right or ability that the Chief Executive may have under the Act or this Contract (including, without limitation, the ability to exercise his or her rights under clause 37 in the circumstances set out in that clause), if, after deciding whether or not to issue a notice under clause 27.5, the Chief Executive considers that the outcome is still not acceptable, the Chief Executive may exercise any of its rights under clause 37.

27.7 KPI adjustments

- (a) If KPIs are specified in Schedule 2, the following process for KPI adjustments will apply:
 - (i) Upon the initiation of either party, the parties will co-operatively review and adjust the KPIs as may be necessary from time to time to ensure the relevance of the KPIs to the Services and the continual improvement of the quality of the Services.
 - (ii) If the parties are unable to agree upon the proposed KPIs within twenty (20) Business Days of commencing the review, either party may invoke the dispute resolution process as set out in clause 38.
 - (iii) Upon any adjustment of the KPIs by the parties under clause 27.7(a) or following dispute resolution under clause 27.7(a)(ii), the adjusted KPIs will be recorded in a replacement Schedule 2, and take effect as a variation to this Contract.

27.8 No limitation

No action taken by the Chief Executive under this clause will affect or limit any other right or remedy that the Chief Executive may have under the Act or this Contract.

Part H - Assignment and Subcontracting

28 Subcontracting

28.1 Direct dealings

The Chief Executive may, but is not obliged to, deal directly with the subcontractor (including meeting and corresponding with and giving notices to the subcontractor) concerning any matter relating to the subcontractor's operations, and this shall be deemed to be a dealing directly with the Operator for the purposes of this Contract.

28.2 Consent required

The Operator will not subcontract the provision of any of the Services without the prior written consent of the Chief Executive, which:

- (a) may be conditional and require step in rights to deal directly with the subcontractor;

- (b) will not operate as an authority to transfer responsibility for obligations of the Operator under this Contract to the subcontractor; and
- (c) will not relieve the Operator of any of its liabilities or obligations under this Contract.

28.3 Responsibility for subcontracted Services

If the Operator subcontracts any of its obligations under this Contract, the Operator:

- (a) remains responsible for the performance of this Contract in accordance with its terms, notwithstanding any such subcontracting;
- (b) is liable to the State for the acts and omissions of all subcontractors, and employees and agents of subcontractors, as if they were acts or omissions of the Operator; and
- (c) must ensure that any subcontractor complies with all of the terms of this Contract and does not itself subcontract without the prior written consent of the Chief Executive.

29 Transfer and Surrender of Contract

29.1 Transfer

The Operator may transfer its rights and liabilities under this Contract only with the prior written approval of the Chief Executive in accordance with section 48 (Transfer or surrender of service contracts etc.) of the Act.

29.2 Surrender

The Operator may surrender this Contract only with the prior written approval of the Chief Executive in accordance with section 48 (Transfer or surrender of service contracts etc.) of the Act.

29.3 Consequences of surrender

The Operator will not be liable to pay any amount to the Chief Executive for the cost of engaging another person to provide the Services in the place of the Operator after the effective date of surrender, although this does not limit any other obligation to pay compensation, whether in respect of default of the Operator or otherwise.

29.4 Chief Executive approval

The approval of the Chief Executive under this clause may be given or declined, or given subject to such conditions as the Chief Executive thinks fit. In exercising his or her discretion under this clause 29, the Chief Executive must act reasonably.

29.5 Request for approval

The Operator will provide any request for approval of the Chief Executive to the Chief Executive at least three (3) months prior to the proposed effective date of the transfer, or surrender of this Contract, and must provide such further information as is reasonably requested by the Chief Executive in respect of any such request.

Part I - Information Management

30 Intellectual Property

30.1 Ownership of Intellectual Property Rights

The parties acknowledge that, unless and to the extent otherwise agreed in writing from time to time:

- (a) each party remains the owner of any Existing Contract Material contributed by it, and all Intellectual Property Rights associated with the Existing Contract Material, including any modification effected in connection with this Contract; and

- (b) all Intellectual Property Rights in any New Contract Material will vest in the State upon creation.

30.2 Licensing

- (a) The Operator grants the State a non-exclusive, non-transferable, royalty free and perpetual licence to use the Operator's Existing Contract Material for the purpose of:
- (i) exercising its rights and performing its obligations under this Contract;
 - (ii) improving use of public transport services, including the Services;
 - (iii) reporting about the Services or the Operator's performance under this Contract;
 - (iv) planning and policy development in relation to the Services and/or public passenger transport more broadly;
 - (v) fulfilling any obligations that the Chief Executive may have under the Act, Regulation or Standard or otherwise at law;
 - (vi) making available information services for the benefit of passengers of public transportation services;
 - (vii) achieving improvements, including greater efficiency, in the delivery of public transportation services in the State of Queensland;
 - (viii) provision of public transportation services into developing areas; and
 - (ix) aligning with and/or meeting Government objectives.
- (b) The State grants the Operator a non-exclusive, non-transferable, royalty free licence to use the State's Existing Contract Material and New Contract Material during the Term for the sole purpose of performing the Services and complying with its obligations under this Contract.
- (c) Where the State does not own the Intellectual Property Rights in Contract Material or part of any Contract Material (including, without limitation, the right to sub-license that Contract Material or part thereof and to grant any third party access to that Contract Material or part thereof), the Operator must grant or procure the grant of a non-exclusive, unrestricted, royalty free, perpetual and irrevocable licence to use that Contract Material or part thereof, as the case may be.

30.3 Operator Obligations

The Operator agrees to sign such documentation as is reasonably required in order to give effect to any transfer of ownership or licence of Intellectual Property Rights to the State under this clause 30.

31 Moral Rights

31.1 Waiver of Moral Rights

To the extent permitted by applicable law:

- (a) the Operator unconditionally and irrevocably consents, and will use all reasonable efforts to obtain all other necessary unconditional and irrevocable written consents, to any act or omission that would otherwise infringe any Moral Rights in any work which is included in any Contract Material, whether occurring before or after a consent is given; and
- (b) the Operator unconditionally and irrevocably waives, and will obtain all other necessary unconditional and irrevocable written waivers of, all Moral Rights,

for the benefit of the State, its licensees, successors in title and anyone authorised by any of them to do acts comprised in the copyright.

If the Operator is unable to obtain the consent of an employee or any other person as required by clause 31.1(a), it must immediately inform the State, in which case the State may, at its discretion, require the substitution of that employee or person in relation to the provision or supply of the Services if it is reasonable to do so in all the circumstances.

31.2 Operator not to Claim Infringement of Moral Rights

The Operator will not institute, maintain or support any claim or proceeding for infringement of Moral Rights in any work included in any Contract Material and must use its best endeavours to ensure that no one else does so.

31.3 Operator to provide Copies of Consents

The Operator will provide the Chief Executive with copies of each written consent and waiver required under this clause 31 within 10 Business Days of a request by the Chief Executive.

32 Confidentiality

32.1 Keep Confidential

Without limiting the application of section 148C (Confidentiality) of the Act and subject to clause 32.2, each party must keep the other party's Confidential Information confidential, and must not disclose it to any other person without the written consent of the other party.

32.2 Exceptions to Confidentiality

The obligations of confidentiality set out in clause 32.1 will not apply in the following circumstances:

- (a) any disclosure or use contemplated or permitted by this Contract;
- (b) any disclosure required by law;
- (c) in the case of the State, any disclosure permitted or required in order to comply with a request, direction or order from the Queensland Government (including, without limitation, the Minister for Transport);
- (d) in the case of the Operator, disclosure to the relevant industry body (currently QBIC and/or QSBA) which the Operator considers necessary or appropriate to enable such industry body to perform its functions at the Operator's request;
- (e) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality; or
- (f) disclosure to a banker or other financial institution relevant to the Operator, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution first gives a binding covenant to the State to maintain confidentiality, in form and substance satisfactory to the State.

32.3 Right to Information and Disclosure

The Operator acknowledges that:

- (a) the *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies; and
- (b) accordingly, information relating to this Contract is potentially subject to disclosure to third parties.

32.4 Consent to use, reporting and publication

The Operator expressly consents to the use, release and publication of the following information by the Chief Executive, the Department or any Government Authority:

- (a) patronage levels;

- (b) number of Contract Vehicles and average vehicle age;
- (c) network and Service performance information, such as on-time running, kilometres travelled and any other performance matter determined by the Chief Executive;
- (d) Service information, such as Timetables, route information and variations and hours operated;
- (e) details of the Operator's compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth); and
- (f) details of the Operator's compliance with the Act, Regulation and Standard and any other laws.

33 Privacy

33.1 Information Privacy Act 2009

If the Operator collects or has access to Personal Information in order to perform this Contract the Operator must:

- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this Contract as if the Operator was the State;
- (b) not use Personal Information other than for the purposes of performing its obligations under this Contract, unless required or authorised by law;
- (c) not disclose Personal Information without the prior written consent of the Chief Executive, unless required or authorised by law;
- (d) not transfer Personal Information outside of Australia without the prior written consent of the Chief Executive;
- (e) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties;
- (f) ensure that its employees and officers do not access, use or disclose Personal Information other than in the performance of their duties;
- (g) ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Operator under this clause;
- (h) fully co-operate with the Chief Executive to enable the Chief Executive to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to respond to privacy complaints; and
- (i) comply with such other privacy, information security, ticketing system security and physical security measures as the Chief Executive reasonably advises the Operator in writing from time to time.

33.2 Deed of privacy

On request by the Chief Executive, the Operator must obtain from its employees, officers or subcontractors engaged for the purposes of this Contract, an executed deed of privacy in a form acceptable to the Chief Executive.

33.3 Notice of breach

The Operator must immediately notify the Chief Executive on becoming aware of any breach of clause 33.1.

Part J - Risk Management

34 Representations and warranties

34.1 Representations and warranties to be true

Each party represents and warrants to the other party that all statements, representations and projections made or required to be made under this Contract by the first party or any representatives of that party are and will be, to the best knowledge of the party and its representatives (after making reasonable enquiries and based on reasonable assumptions and not omitting any material detail within the knowledge of the party or its representatives), complete, true, accurate, made on reasonable grounds, and not misleading or deceptive or likely to mislead or deceive.

34.2 Warranty of authority

Each person signing this Contract as an authorised officer or agent for any party, by so doing, warrants to the other party that, as at the date of signing, that person has full authority to execute this Contract on behalf of that party.

34.3 Power of attorney

Each person signing this Contract as attorney for a party, by so doing, warrants to the other party that as at the date of signing as attorney that person has not received any notice or information of the revocation of the power of attorney appointing that person.

34.4 No oral or written warranties

No oral or written warranties, representations, or other terms or conditions of any nature not contained in this Contract will be of any force unless they have been reduced to writing and signed by the parties and are expressed to be in modification of this Contract.

35 Liability and Indemnity

35.1 Limitation of Liability

- (a) The State's total liability to the Operator in connection with this Contract or any breach thereof shall be limited to the Contract Payments paid to the Operator under this Contract. The State shall not be liable to the Operator for any special, consequential or indirect loss or damage, even if advised of the possibility of such loss or damage.
- (b) To the extent permitted by law, if a court holds that the State or the Chief Executive is liable to pay damages to the Operator and if the Operator or any other person (including other advisers to the Operator) has contributed to the loss the Operator suffered, the damages payable by the State or Chief Executive will be reduced to the extent of such contribution.

35.2 Indemnity

- (a) The Operator indemnifies the State, the Chief Executive and all servants, agents and contractors of the State (the "indemnified" for the purposes of this clause 35) from and against all actions, claims, demands, direct, indirect or consequential losses (including lost profits, revenue and opportunities), damages, costs (including legal costs on a full indemnity basis) and expenses for which any of the indemnified may sustain or become liable arising directly or indirectly out of or in connection with this Contract.
- (b) Without limiting the foregoing, the indemnity in this clause 35.2 applies in all circumstances, including in relation to:
 - (i) the performance or non-performance of this Contract, or any other act or omission, by the Operator or any agent, subcontractor or employee of the Operator;
 - (ii) any claim by a third party in connection with the subject matter of this Contract (whether arising in tort, contract, by law or under statute);

- (iii) any claim that the use of any Contract Material (other than the State's Existing Contract Material) infringes or may infringe the Intellectual Property Rights of any third party;
 - (iv) any death, personal injury, loss or damage sustained by passengers or any third party in connection with the provision of the Services;
 - (v) any inaccurate or incorrect information provided by the Operator under this Contract which is relied upon by the State, the Chief Executive or a third party to their detriment;
 - (vi) the use of the Operator's premises, Contract Vehicles or other facilities by any person in order to access, travel on or exit the Services; and
 - (vii) any exercise or failure to exercise any right under this Contract by the State or the Chief Executive.
- (c) This indemnity will not apply to the extent that the loss, damage or claim is caused or contributed to by the negligent act or omission of the indemnified.
 - (d) This indemnity will not exclude any other right that the indemnified may have to be indemnified by the Operator.

35.3 Release

The Operator releases the indemnified from all actions, proceedings, claims and demands which, but for the indemnity provision of this clause, might be brought or made against any of the indemnified by the Operator.

36 Insurance

36.1 Insurance

The Operator will maintain the following insurances at its own expense during the Term:

- (a) Workers' compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (Qld);
- (b) adequate public liability insurance for an amount per incident of not less than that specified in Item 6 of Schedule 1 and with an excess amount that is within the range specified in Item 6 of Schedule 1;
- (c) motor vehicle insurance as required under clause 4.2 of Schedule 4, for all vehicles used to provide Services under this Contract; and
- (d) any other insurance:
 - (i) which the Chief Executive may reasonably require; and/or
 - (ii) in the amounts and for perils against which a prudent operator would protect itself in similar circumstances.

36.2 Terms of Insurance

The insurances effected under this clause 36 will:

- (a) contain a waiver of any subrogation rights which the Operator's insurers may have against the indemnified where the damage is caused by the act, omission or negligence of the indemnified; and
- (b) be taken out with reputable insurers and on terms satisfactory to the Chief Executive.

36.3 Evidence of insurance

The Operator will, upon request of the Chief Executive, provide the Chief Executive with evidence of the currency and a copy of the terms and conditions of the insurances effected under clause 36.

Part K - Disputes and Termination

37 Amendment, suspension, cancellation or termination of Contract

37.1 Amendment, suspension or cancellation

- (a) The Chief Executive may amend, suspend or cancel this Contract in accordance with section 47 (Amendment, suspension or cancellation of service contracts for breach of the service contract) of the Act.
- (b) Without limiting in any way the discretion conferred by section 47(3) of the Act, the circumstances which the Chief Executive may consider in forming a reasonable belief that the Operator is unable to provide any or all of the Services required under the Contract under section 47(3) of the Act may include any failure by the Operator to:
 - (i) hold any required accreditation under the Act;
 - (ii) comply with any term of this Contract which impacts, or may impact, the continued delivery of the Services;
 - (iii) deliver Services in accordance with the Contract Service Plan, including the Timetables;
 - (iv) satisfy any Minimum Service Level, KPI or KRA;
 - (v) cooperate with directions of the Chief Executive;
 - (vi) provide reports as required by this Contract, or provide access to data and records to any representative of the Chief Executive; or
 - (vii) comply with the safety requirements set out in clause 13 to the satisfaction of the Chief Executive.

37.2 Additional measures

If the Operator has contravened a term or condition of this Contract or the Chief Executive determines a contravention of this Contract by the Operator is imminent, the Chief Executive may, without limiting any other right that the Chief Executive may have under this Contract, the Act or otherwise at law, do any one or more of the following:

- (a) suspend the operation of this Contract for any period during which the contravention continues and, at the Operator's expense, engage another person to provide the Services in the place of the Operator or any subcontractor of the Operator for the period of the suspension;
- (b) if any of the rights granted to the Operator are then exclusive to the Operator, terminate the exclusive nature of all or some of those rights and exercise the Chief Executive's rights in clause 5.3;
- (c) take legal action against the Operator for damages for breach of contract; and/or
- (d) require the Operator and subcontractors, employees and officers of the Operator nominated by the Chief Executive to undertake, at the Operator's expense, such training and obtain such assistance as the Chief Executive may determine.

37.3 Termination

Without prejudice to any other rights the Chief Executive may have under this Contract or at law, including in addition to the Chief Executive's rights under clauses 27, 37.1 and 37.2, the Chief Executive may terminate this Contract immediately by notice in writing:

- (a) where the Operator is in breach of this Contract and such breach is not remedied within 30 Business Days of written notice by the Chief Executive;
- (b) where the Operator is in breach of any term of this Contract and such breach is incapable of remedy;
- (c) in accordance with clause 23.2; or
- (d) if the Operator becomes or threatens to become or is in jeopardy of becoming subject to an Insolvency Event.

37.4 Consequences of Termination

- (a) Without limiting any other rights the Chief Executive may have under this Contract or at law, if this Contract is terminated the Chief Executive may;
 - (i) recover the Service Data and all related data, documentation and records retained by the Operator pursuant to this Contract;
 - (ii) recover Confidential Information of the State and Contract Material that is in the possession, custody or control of the Operator;
 - (iii) be regarded as discharged from any further obligations under this Contract; and
 - (iv) pursue any additional or alternative remedies provided by law.
- (b) On termination or expiry of this Contract, the Operator must immediately cease using and promptly return to the State, at no additional cost to the State, all materials (whether in written or electronic form) that contain or encapsulate any of the State's Contract Material, other State materials and the State's Confidential Information.

37.5 No compensation for termination

- (a) Without limiting the operation of section 47(4) of the Act, no compensation will be payable by the Chief Executive in respect of any action taken under clause 37 to the Operator or to any other person and the Operator will indemnify the State and Chief Executive against any subcontractor or third party claim arising from the Chief Executive's exercise of any rights under this clause 37.
- (b) Any action taken under this clause 37 will not defer, delay or limit any other rights the Chief Executive may have (including, without limitation, a right of termination under this clause or the Act or a right to seek damages in respect of any default).

37.6 Rights on Termination

Termination of this Contract will not affect any claim or action either party may have against the other by reason of any antecedent breach of this Contract and will not relieve either party of any obligation under this Contract which is expressed to continue after termination.

37.7 Monies Payable to the Chief Executive

Upon an amendment, suspension, cancellation or termination of this Contract by either party for any reason, the Operator will immediately pay to the Chief Executive all amounts then payable under this Contract or the Act.

38 Dispute Resolution

38.1 Before court proceedings

Unless a party has complied with the procedure in the following parts of this clause 38, that party may not commence court proceedings relating to any dispute arising from this Contract, except where that party seeks urgent interlocutory relief (in which case that party need not comply with this clause 38 before seeking such relief). Where a party fails to comply with this clause 38, any other party in dispute with the party so failing to comply need not comply with this clause 38 before commencing court proceedings relating to that dispute.

38.2 Notice of dispute

Any party claiming that a dispute has arisen under this Contract between the parties will give notice to the other party designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The party given written notice will promptly give notice to the other party, designating as its representative in negotiations relating to the dispute a person with similar authority.

38.3 Seek to resolve

The designated representatives of the parties will seek to resolve the dispute within ten (10) Business Days of the last designation required by clause 38.2. If the dispute is not resolved within that period of ten (10) Business Days (or within such further period as the representatives may agree is appropriate) either party may refer the dispute for mediation in accordance with clause 38.4.

38.4 Mediation

The mediation will be conducted by:

- (a) a mediator agreed on by the parties within ten (10) Business Days; or, in default of agreement; or
- (b) a mediator nominated by the President of the Queensland Law Society or that President's nominee, at the request of either party.

The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing. Each party must bear its own costs of attending the mediation and the parties must bear equally the costs of any mediator engaged.

38.5 Performance of obligations

Despite the existence of a dispute, each party must continue to perform its obligations under this Contract.

38.6 Termination of process

If the parties are unable to resolve the dispute through mediation under clause 38.4, any party which has complied with the provisions of clause 38 may in writing terminate the dispute resolution process and may then commence court proceedings relating to the dispute.

38.7 Without prejudice

The purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 38 is to attempt to settle the dispute between the parties. It may not be used for any other purpose, and must be treated as "without prejudice" in any subsequent court proceedings.

39 Compensation under Section 61

If the Invitation requires the Operator to pay compensation to an existing operator under section 61 (Compensation) of the Act, the Operator will pay compensation as agreed in accordance with that section. If the Operator and the person to whom compensation is payable cannot agree on the amount of compensation within three (3) months after the Commencement Date, the Operator will refer the matter to arbitration in accordance with section 61 (Compensation) of the Act.

Part L - General Contract Matters

40 Notices

40.1 Addresses for notices

Any notice in connection with this Contract will be taken to have been given when made in writing and delivered by hand, pre-paid post or facsimile to the party to which it is intended by be given at the parties' respective addresses set out in Items 7 and 8 of Schedule 1, or to such other address, or facsimile number as may from time to time be notified in writing by one party to the other for the purposes of this clause.

40.2 Receipt after posting

Any notice or other communication sent by pre-paid post will be taken to have been received at the expiration of three (3) Business Days after the date of posting.

40.3 Receipt of facsimile

Any notice sent by facsimile transmission will be taken to have been received upon completion of an apparently successful transmission. However, if a facsimile is sent on a Business Day after 5.00pm at the place of receipt, or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

40.4 Other communications

Communications other than notices in connection with this Contract may be given by delivery, posting and facsimile, or other methods including e-mail, as agreed between the parties.

41 General Provisions

41.1 Successors

This Contract is binding on the parties and their respective successors and permitted assigns, and will be enforceable by and against the parties, or those successors and assigns.

41.2 Counterparts

This Contract may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

41.3 Entire agreement

This Contract contains the entire agreement between the parties and supersedes all prior arrangements and understandings of whatever nature made in relation to its subject matter.

41.4 Applicable Law and Jurisdiction

This Contract is governed by and will be construed in accordance with the laws of Queensland. Any proceedings between the parties brought at any time that relate in any way to this Contract will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.

41.5 Variations and Waivers to be in Writing

No variation, modification or waiver of any provision in this Contract, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it.

41.6 Waiver

No failure, delay, relaxation or indulgence by any party in exercising any right conferred on such party by this Contract will operate as a waiver of such right, nor will any single or partial exercise of any such right nor any single failure to do so, preclude any other or future exercise of it, or the exercise of any other right under this Contract.

41.7 Joint and Several Obligations

- (a) If any party consists of more than one person, then the liability of those persons in all respects under this Contract will be a joint liability of each two or more of those persons and a liability of each of those persons severally.
- (b) Any agreement, representation or warranty in favour of more than one party is for the benefit of each two or more of those parties jointly and each of them severally.

41.8 Authority to Complete Blanks etc

The Chief Executive may date this Contract and complete any blanks left by the Operator, provided that the obligations of the Operator are not materially increased.

41.9 Further Assurances

Each party to this Contract will do all things and sign all deeds and other documents as may reasonably be required by the other party so as to carry out and give effect to the terms and intentions of this Contract and to perfect, protect and preserve the rights of the other party.

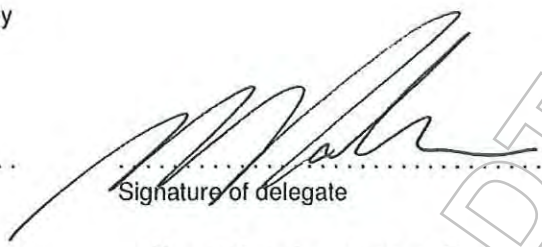
41.10 Survival of clauses

Clauses 1, 3, 4.2, 7, 10.1, 11, 18, 21.1, 23.1, 28.3, 30, 31, 32, 33, 34 35, 37.4, 37.5, 37.6, 37.7, 40 and 41 and clause 2.4 of Schedule 5 survive the termination or cancellation of this Contract.

Executed by the State of Queensland
represented by the Department of
Transport and Main Roads by its duly
authorised delegate:

.....
Signature of witness

.....
Name of witness (print)


Signature of delegate

.....
M. CAUTABIAN
Name of delegate (print)

.....
DIRECTOR GENERAL
Position of delegate (print)



Executed by Gold Coast Mini Coaches Pty
Ltd ACN 106 666 148 acting by the following
persons or, if the seal is affixed, witnessed by
the following persons:

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

4/5/2012

.....
Signature of authorised person

.....
Position held

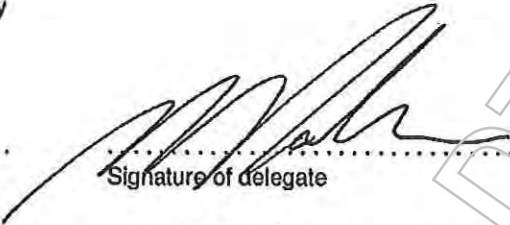
.....
Name of authorised person (print)

4/5/2012

Executed by the State of Queensland
represented by the Department of
Transport and Main Roads by its duly
authorised delegate:

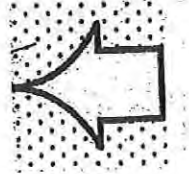
.....
Signature of witness

.....
Name of witness (print)


.....
Signature of delegate

M. CALTABIANO
.....
Name of delegate (print)

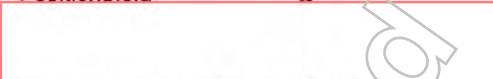
DIRECTOR GENERAL
.....
Position of delegate (print)



Executed by Gold Coast Mini Coaches Pty
Ltd ACN 106 666 148 acting by the following
persons or, if the seal is affixed, witnessed by


.....
Signature of authorised person

Director
.....
Position held



.....
Name of authorised person (print)

4/5/2012


.....
Signature of authorised person

Director
.....
Signature of authorised person

Director
.....
Position held

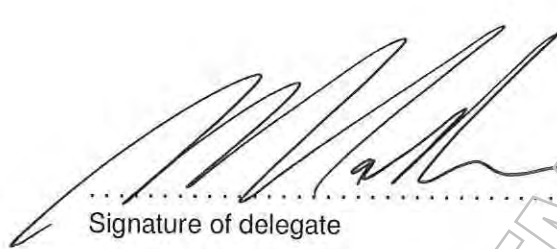

.....
Name of authorised person (print)

4/5/2012

Executed by the State of Queensland
represented by the Department of
Transport and Main Roads by its duly
authorised delegate:

.....
Signature of witness

.....
Name of witness (print)


.....
Signature of delegate

..... M. CALTABIANO

..... DIRECTOR GENERAL

Executed by **Gold Coast Mini Coaches Pty
Ltd** ACN 106 666 148 acting by the following
persons or, if the seal is affixed, witnessed by
the following persons:

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

Schedule 1

Contract Details

Item	Description	Detail
1	Commencement Date	7 May 2012
2	Expiration Date	22 January 2017
3	Public Passenger Services	Road-based General Route Services
4	Contract Vehicles	As set out in the Register of Contract Vehicles at Annexure C, as amended from time to time.
5	Depot location	18 Industrial Avenue Molendinar Qld 4214
6	Insurance	<p>Minimum public liability insurance amount:</p> <div style="border: 1px solid red; height: 20px; width: 100px; margin-bottom: 5px;"></div> <p>Vehicle insurance excess:</p> <div style="border: 1px solid red; padding: 2px;">Part Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs</div>
7	Address for service of notices – State	<p>General Manager (Passenger Transport Services) TransLink Division Department of Transport and Main Roads PO Box 50 Brisbane Qld 4001</p> <p>Facsimile: (07) 3338 4600</p> <p>Contact: Mr Danny Foster</p>
8	Address for service of notices – Operator	<p>PO Box 4965 GCMC Qld 9726</p> <p>Facsimile: (07) 3020 3805</p> <p>Contact:</p> <div style="border: 1px solid red; padding: 2px; margin-top: 5px;">Part Refuse Sch.4 Part 4 s.6 PI</div>

Schedule 1

Contract Details

Item	Description	Detail
1	Commencement Date	7 May 2012
2	Expiration Date	Three calendar years from the Commencement Date
3	Public Passenger Services	Road-based General Route Services
4	Contract Vehicles	As set out in the Register of Contract Vehicles at Annexure C, as amended from time to time
5	Depot location	18 Industrial Avenue Molendinar Qld 4214
6	Insurance	Minimum public liability insurance amount: <div></div> Vehicle insurance excess: <div>Part Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs</div>
7	Address for service of notices – State	General Manager (Passenger Transport) Department of Transport and Main Roads Floor 6 420 George Street Brisbane QLD 4001 Facsimile: (07) 3236 3159 Contact: Mr Ryan Huelin
8	Address for service of notices – Operator	PO Box 4965 GCMC QLD 9726 Facsimile: (07) 3020 3805 Contact: <div>Part Refuse Sch.4 Part 4 s.6 PI</div>

Schedule 2

Minimum Service Levels

The operator shall provide a service to co-ordinate with every scheduled arrival and departure of a passenger aircraft operated by a major airline.

Released under RTI - DTMR

Schedule 3

Data and Reporting

1 Reporting

The Operator is required to provide the following reports in accordance with this Contract.

Report	Content and format	Frequency
Monthly Summary Report	In accordance with the template provided by the Chief Executive below	Monthly, within 10 Business Days of the completion of each month during the Term
Annual reporting bundle, consisting of the following: <ul style="list-style-type: none"> • updated business continuity plan, in accordance with clause 14.4; • register of customer comments for the preceding year, in accordance with clause 13.6; and • any other information reasonably required by the Chief Executive to be included in the annual report bundle. 	<p>In accordance with the template provided by the Chief Executive from time to time</p> <p>In accordance with the template provided by the Chief Executive from time to time</p> <p>As notified to the Operator by the Chief Executive.</p>	Annually, within 10 Business Days of the anniversary of the Commencement Date
Register of Contract Vehicles	In the form and containing the information set out in Schedule 4	In accordance with clause 3.1 of Schedule 4
Incident Management Plans	In accordance with the Standard	In accordance with clause 22.1(b) of the Contract
Incident Report	In accordance with the Standard	In accordance with clause 22.3 of the Contract
Any information requested by the Chief Executive to enable the Chief Executive to assess the Operator's Vehicle Accessibility compliance in accordance with clause 10.3(b) of the Contract	As notified to the Operator by the Chief Executive	Within 10 Business Days of receiving the Chief Executive's request.

Report	Content and format	Frequency
Any information that the Chief Executive reasonably requires in order to assess the performance of the Operator under the Contract.	As notified to the Operator by the Chief Executive.	Within 10 Business Days of receiving the Chief Executive's request, or as otherwise agreed between the parties.
Any information relevant to the provision of the Services that is requested by the Chief Executive	As notified to the Operator by the Chief Executive.	Within 10 Business Days of receiving the Chief Executive's request, or as otherwise agreed between the parties.

Released under RTI - DTMR

2 Monthly Summary Report Template

DECLARATION FOR THE MONTH OF

Operator	
ABN	
Trading As	
Address	
Contract Area	

The following report is to be provided for each trip on each route.

Period: From To

	Adult		Child		Pre-booked		Walk-up		Total	
	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$
Services to the Airport										
Services from the Airport										

Certification:

The figures above represent a true statement of the passenger numbers and revenue for the Service Contract Area for the period shown.

Signature of Operator _____ Date _____

Schedule 4

Contract Vehicles

1 Vehicle Standards & Maintenance

The Operator will:

- (a) ensure that all Contract Vehicles used in the operation of Services under the Contract comply with the requirements of the Act, Regulation and Standard and any other applicable laws;
- (b) ensure that all Contract Vehicles used in the operation of Services under the Contract are clean and tidy when performing the service;
- (c) ensure that Contract Vehicles displaying all over advertising will clearly display the trading name of the Operator on the front of the Contract Vehicle;
- (d) ensure that all Contract Vehicles used in the operation of Services under this Contract have and comply with a documented vehicle maintenance plan in accordance with the Standard;
- (e) take all reasonable steps to ensure that Contract Vehicles are free from Defects; and
- (f) ensure that Contract Vehicles possess a current certificate of inspection unless the particular vehicle is exempted from this requirement under clause 22 of the *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999* (Qld).

2 Advertising

2.1 Advertising

The Operator must not permit any advertising on a Contract Vehicle which in the opinion of the Chief Executive is:

- (a) political in nature;
- (b) sexual in nature;
- (c) not compliant with the requirements of section 119 (Advertising on public passenger vehicles) of the Regulation;
- (d) inconsistent with the objectives of the Act;
- (e) unsuitable for display on a Contract Vehicle; or
- (f) detracts from a positive image of public passenger transport.

If the Operator is directed to remove any advertising on the basis that it breaches this clause 2.1, the Operator must, at its cost, promptly comply with such direction.

3 Contract Vehicle Records

3.1 Register of Contract Vehicles

The Operator's register of Contract Vehicles as at the Commencement Date appears in

Annexure C.

- (a) The Operator must maintain a complete, accurate and up-to-date register of all Contract Vehicles. The register must be maintained in the format prescribed by the Chief Executive and at a minimum, contain the following categories of information:
- (i) vehicle number;
 - (ii) vehicle registration;
 - (iii) year of manufacture;
 - (iv) vehicle make and model;
 - (v) number of seats;
 - (vi) year of purchase;
 - (vii) purchase/acquisition price;
 - (viii) details of Special Vehicle Access and DDA compliance;
 - (ix) principal use; and
 - (x) Contract Vehicle age.
- (b) The Operator must provide the Chief Executive with a copy of an updated register of Contract Vehicles annually, or as otherwise requested.

4 Restrictions on disposal of Contract Vehicles

4.1 Use, maintenance and recording of Contract Vehicles

- (a) The Operator will be and remain the absolute owner of all Contract Vehicles, and nothing in this Contract will be taken to transfer title or risk in any Contract Vehicle to the State, the Department or the Chief Executive.
- (b) The Operator must maintain all Contract Vehicles in good order and condition at all times. Without limiting the generality of this obligation and the requirements set out under clause 1 of this Schedule 4, this obligation includes:
- (i) monitoring the physical condition of the Contract Vehicles;
 - (ii) taking all reasonable steps to safeguard the Contract Vehicles from damage or theft;
 - (iii) carrying out all necessary maintenance and repairs to ensure all Contract Vehicles remain in good working order; and
 - (iv) ensuring staff are properly trained in the use and operation of Contract Vehicles.
- (c) The Operator must ensure that all maintenance and repair work performed in accordance with clause 4.1(b)(iii) is carried out by contractors or employees who are suitably skilled and experienced, and hold all appropriate qualifications, necessary to perform such work in a

workmanlike and professional manner, in accordance with generally accepted industry standards and without in any way detracting from the Operator's obligations under this Contract.

- (d) The Operator must develop and implement appropriate financial strategies to ensure that the Contract Vehicles can be replaced as necessary.
- (e) Except as otherwise provided under this Contract, the Operator is responsible to pay all costs associated with the use, operation, maintenance and repair of the Contract Vehicles, including, where applicable, vehicle registration fees.

4.2 Insurance

- (a) The Operator must take out and maintain with a reputable insurer comprehensive insurance in respect of all Contract Vehicles, for the full insurable value of the Contract Vehicles.
- (b) If the Operator fails to take out or maintain insurance as required by clause 4.2(a), the Chief Executive may effect the necessary insurance and may treat such failure as a breach of the contract, entitling the Chief Executive to exercise any of the rights under clause 27 and/or clause 37 of this Contract, or under section 47 of the Act.

Schedule 5

Customer Information and Marketing

1 Customer Information

1.1 Timetable and Route Information

The Operator must ensure that accurate, current and legible copies of the Timetables and route information are:

- (a) carried on each Contract Vehicle when providing a Service the subject of the Timetable; and
- (b) readily available at the Operator's office and at appropriate locations in sufficient numbers for public distribution.

1.2 State-operated websites

- (a) The Operator must provide the Chief Executive with an electronic version of the Timetables, in the format specified by the Chief Executive, for inclusion in any website operated by the State relating to the Services.
- (b) The Operator must immediately provide the Chief Executive with any Timetable updates and pertinent information about the Services to ensure that information on any State website remains current and accurate.

1.3 Link to Operator website

The Operator authorises the State to establish an electronic link to any website that the Operator maintains about the Services.

2 Marketing and Communications

2.1 Strategy and Campaigns

The Chief Executive may develop regional, Queensland or network-wide marketing strategies regarding provision of the Services, and will keep the Operator informed about such marketing campaigns.

The Chief Executive may also develop local marketing campaigns, in consultation with the Operator.

2.2 Operator to Cooperate in Marketing

In order to give effect to any marketing strategy, the Operator will cooperate with the Chief Executive by participating in and promoting marketing activities as reasonably required by the Chief Executive. Without limiting their scope, marketing activities may include promotions, information sessions, focus groups, surveys, community consultation, as well as participation in local or regional events.

2.3 Operator to Cooperate in Communication Campaigns

The Operator will cooperate with the Chief Executive in any communication campaign as well as stakeholder management initiatives undertaken by the State during the Term.

2.4 Media Communication

- (a) The Chief Executive and the Operator will use their best endeavours to share information with each other which relates to communication to the public in relation to the Services and which may impact on the interests of either party.
- (b) The Operator will inform the Chief Executive of any enquiries from the media concerning the Services as soon as practicable after initial contact.

Released under RTI - DTMR

Schedule 6

Special Conditions

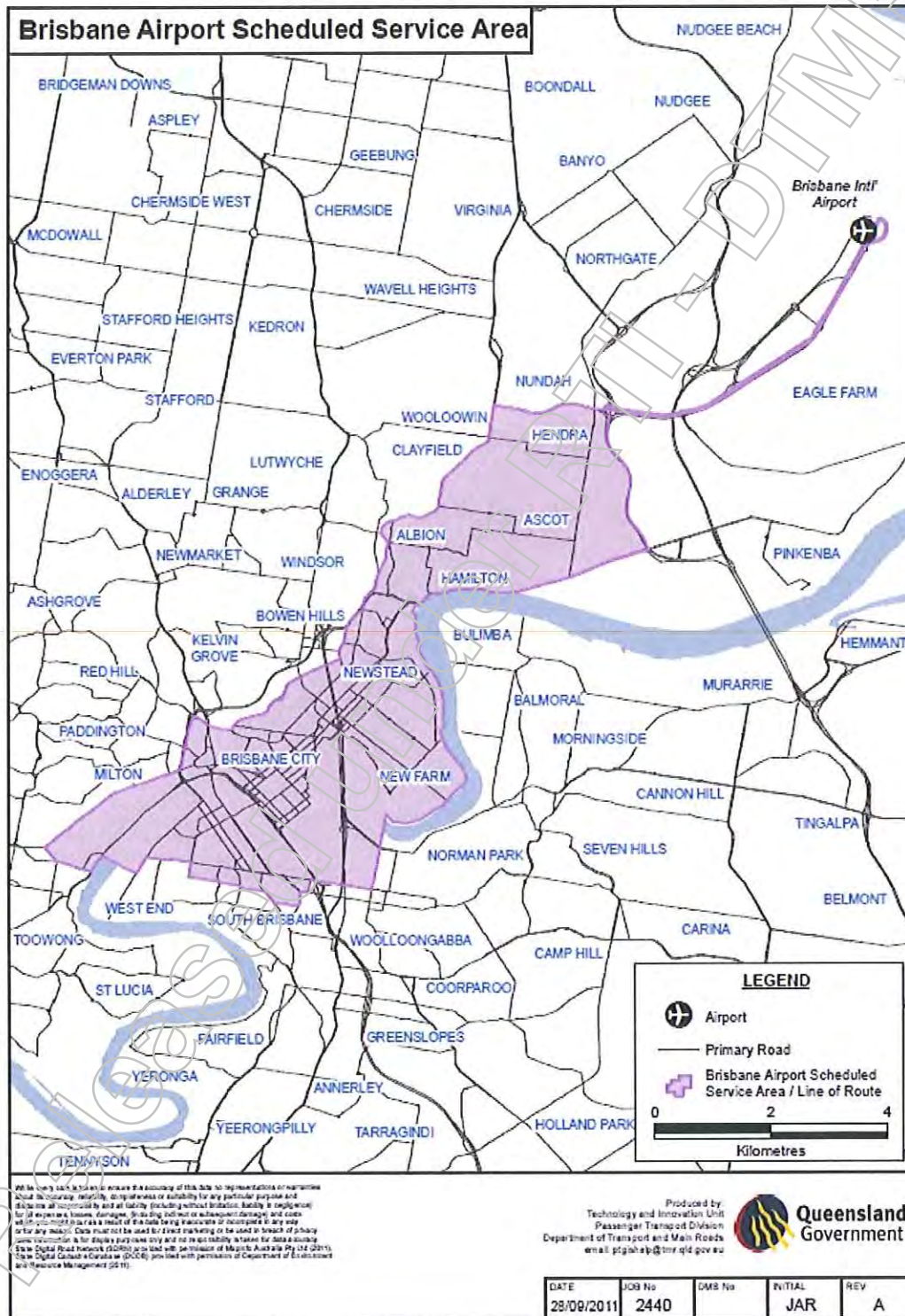
Released under RTI - DTMR

Released under RTI - DTMR

Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

Annexure A

Contract Area



Annexure B

Contract Service Plan as at Commencement Date

[Contract Service Plan to include:

1. The Operator is to provide road-based General Route Services between the Airport (as defined) and the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping terminals located within the service contract area as defined by the map located in Annexure A.

2. These Services shall be subject to the following restrictions:

- (a) on journeys from the Airport, passengers may be picked up only at the Airport and set down only at the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping Terminals located in the service contract area; and**
- (b) on journeys to the Airport, passengers may be picked up only at the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping Terminals located in the service contract area. Passengers can be set down only at the Airport.]**

Released under RTI - DTMR

Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

Released under RTI - DTMR

Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

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Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

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Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

Released under RTI - DTMR

Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs



Queensland
Government

Our ref 39025-PT
Enquiries Gavin Bramwell

Department of
Transport and Main Roads

25 February 2015

Part Refuse Sch.4 Part 4 s.6 PI

CXN Transport Pty Ltd
PO Box 4965
GCMC Qld 9726

Dear

Please find enclosed two Deeds of Variation to extend the Brisbane Airport Bus Service Contract – made between the Department of Transport and Main Roads (TMR) and CXN Transport Pty Ltd (Con-x-ion) – until 22 January 2017

To facilitate a prompt execution of this Deed, please arrange for authorised signatories and a suitable witness to sign and date both Deeds where indicated.

Once executed, please return both copies to the address below for execution on behalf of the State by a duly authorised officer. Upon completion, a copy will be mailed to you for your records.

Please address the executed documents to:

Mr Gavin Bramwell
TransLink Division
GPO Box 50
Brisbane Qld 4001

If you have any questions, please call Mr Gavin Bramwell, Senior Advisor (Contracts), on 3338 4115 or email gavin.bramwell@translink.com.au. Mr Bramwell will be pleased to assist.

Yours sincerely

Danny Foster
Director Contracts (Ferry, Coach, Aviation and Regional Bus)

Enc (2)

Passenger Transport Services Branch
PT Contracts & Services
Level 1, 61 Mary Street
Brisbane Queensland 4000
GPO Box 50 Brisbane Queensland 4001

Telephone +61 7 3338 4168
Facsimile +61 7 3338 4600
Website www.tmr.qld.gov.au
Email Danny.Foster@translink.com.au
ABN 39 407 690 291



Queensland
Government

Deed of Variation– Service Contract

Between

STATE OF QUEENSLAND

acting through the Department of Transport and Main
Roads

ABN 39 407 690 291

and

CXN TRANSPORT PTY LTD

ACN 157 948 304

This **DEED** is made this ^{6th}..... day of ^{July}..... 2017

BETWEEN: **STATE OF QUEENSLAND** acting through the Department of Transport and Main Roads (ABN 39 407 690 291) of 61 Mary Street, Brisbane Queensland 4000 (*the State*)

AND: **CXN TRANSPORT PTY LTD** ACN 157 948 304 of 1 Bellevue Drive, Varsity Lakes Queensland 4227 (*the Operator*)

Background

- A. The State and the Operator are parties to the Service Contract.
- B. The State and the Operator now wish to vary the Service Contract to extend its expiration date, as set out in this Deed.

1 Definitions and Interpretation

1.1 In this Deed:

Deed means this document;

Service Contract means the Exclusive Service Contract between the State and the Operator for the provision of road-based general route services between Brisbane Airport and areas in and around Brisbane, dated 7 May 2012 and with a commencement date of 7 May 2012, originally entered into between the State and Gold Coast Mini Coaches Pty Ltd and subsequently assigned to the Operator, as varied from time to time; and

Variation Date means the 1st day of October 2017.

- 1.2 The provisions of clauses 1.3 and 1.4 of the Service Contract apply to this Deed as if they were set out in this Deed, with all necessary terminology adjustments.
- 1.3 If there is any inconsistency between the terms of this Deed and the terms of the Service Contract, the terms of this Deed will have priority to the extent of such inconsistency.

2 Variations to Service Contract

- 2.1 The parties agree to vary the Service Contract, with effect from the Variation Date, by deleting '22 October 2017' in item 2 ('Expiration Date') of Schedule 1 and inserting '22 October 2018' in its place.

2.2 The Parties further agree that:

- (a) except as varied by this Deed, the Service Contract remains in full force and effect in accordance with its terms; and
- (b) nothing in this Deed affects or limits any claim or right of action under or in relation to the Service Contract, accrued as at the Variation Date.

3 General provisions

- 3.1** This Deed is governed by and will be construed in accordance with the laws of Queensland and any proceedings between the parties brought at any time that relate in any way to this Deed will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.
- 3.2** This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.
- 3.3** The parties will bear their own costs arising out of the negotiation, preparation, execution and performance of this Deed.

Released under RTI - D1M/R

EXECUTED AS A DEED on the dates set out below

SIGNED, SEALED AND DELIVERED for and on behalf the **STATE OF QUEENSLAND** represented by the Department of Transport and Main Roads (ABN 39 407 690 291) by a duly authorised person:

Signature of authorised person

Signature of witness

JESSICA RIDDEU

Name of authorised person (print)

Name of witness (print)

A/ED (PT CONTRACTS)

Position of authorised person (print)

this 18th day of July 2017

SIGNED, SEALED AND DELIVERED for and on behalf **CXN TRANSPORT PTY LTD** ACN 157 948 304 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

this 6th day of July 2017

Our ref T117/1036/2.27
Your ref
Enquiries Vanessa Radakovic

Department of
Transport and Main Roads

20 June 2018

Part Refuse Sch.4 Part 4 s.6 PI

Chief Executive Officer
CXN Transport Pty Ltd
PO Box 283
Ashmore City Qld 4214

Dear

Brisbane Airport Bus Service Contract

I am writing to you in relation to the Brisbane Airport Bus Service Contract ('Service Contract'). As you are aware, the Service Contract held between the Department of Transport and Main Roads (TMR) and CXN Transport Pty Ltd is due to expire on 22 October 2018. As recently discussed with departmental officers, TMR wishes to execute a variation to the contract as per Clause 41.4 that will provide an option to renew for a further 12 month period.

If you wish to renew the contract for a further 12 month period, please find attached two (2) copies of a Deed of Variation for completion. A letter to request extension of the current term for a further 12 months will also need to be provided ('Letter of Extension'). Both copies of the Deed of Variation and Letter of Extension will need to be signed by an authorised representative of CXN Transport and returned to TMR by 14 July 2018.

The variation to the Service Contract, and a Letter of Acceptance to the request for extension will then be executed by a duly authorised officer. Upon completion, a copy of the executed variation and a Letter of Acceptance will be provided for your records.

Please return the documents to:

Ms Vanessa Radakovic
TransLink Division
Department of Transport and Main Roads
GPO Box 50
Brisbane Qld 4001

TransLink Division
Passenger Transport Services Branch
Level 4, 61 Mary Street
Brisbane Qld 4000
GPO Box 50 Brisbane Qld 4001

Telephone +61 7 (07) 3338 4307
Facsimile +61 7 3338 4275
Website www.tmr.qld.gov.au
Email Vanessa.radakovic@translink.com.au
ABN 39 407 690 291

Should you have any questions regarding this proposal, please contact your contract manager, Ms Vanessa Radakovic on 3338 4275 or vanessa.radakovic@translink.com.au. Ms Radakovic will be pleased to assist.

Yours sincerely

Daniel Moore
Director (Bus Contracts)

Released under RTI - DTMR

Our ref TL17/1036/6
Your ref
Enquiries Rishi Wijesoma

Department of
Transport and Main Roads

10 August 2018

Part Refuse Sch.4 Part 4 s.6 PI

Chief Executive Officer
CXN Transport
PO Box 283
Ashmore City Qld 4214

Dear

Brisbane Airport and Sunshine Coast Airport (South of the Maroochy River) Bus Service Contracts

I am writing to you in relation to the Brisbane Airport and Sunshine Coast Airport (South of the Maroochy River) Bus Service Contracts ('Service Contracts'). I can confirm that as per the request outlined in our correspondence of 20 June 2018, the Department of Transport and Main Roads received the signed Deed(s) of Variation and a letter requesting extension of the Service Contracts under the terms of the Deed.

I am pleased to enclose a copy of the executed Deed to extend the Service Contracts for a further 12 months to 22 October 2019.

Should you have any questions regarding this matter, please contact Mr Rishi Wijesoma, Manager (SEQ Contracts) on 07 3066 3044. Mr Wijesoma will be pleased to assist.

Yours sincerely

Daniel Moore
Director (Bus Contracts)



Deed of Variation— Service Contract

Between

STATE OF QUEENSLAND

acting through the Department of Transport and Main
Roads

ABN 39 407 690 291

and

CXN TRANSPORT PTY LTD

ACN 157 948 304

This **DEED** is made this 8th day of NOVEMBER 2016

BETWEEN: **STATE OF QUEENSLAND** acting through the Department of Transport and Main Roads (ABN 39 407 690 291) of 61 Mary Street, Brisbane Queensland 4000 (*the State*)

AND: **CXN TRANSPORT PTY LTD** ACN 157 948 304 of 1 Bellevue Drive, Varsity Lakes Queensland 4227 (*the Operator*)

Background

- A. The State and the Operator are parties to the Service Contract.
- B. The State and the Operator now wish to vary the Service Contract to extend its expiration date, as set out in this Deed.

1 Definitions and Interpretation

- 1.1 In this Deed: _____

Deed means this document;

Service Contract means the Exclusive Service Contract between the State and the Operator for the provision of road-based general route services between Brisbane Airport and areas in and around Brisbane, dated 7 May 2012 and with a commencement date of 7 May 2012, originally entered into between the State and Gold Coast Mini Coaches Pty Ltd and subsequently assigned to the Operator, as varied from time to time; and

Variation Date means the 12th day of December 2016.

- 1.2 The provisions of clauses 1.3 and 1.4 of the Service Contract apply to this Deed as if they were set out in this Deed, with all necessary terminology adjustments.
- 1.3 If there is any inconsistency between the terms of this Deed and the terms of the Service Contract, the terms of this Deed will have priority to the extent of such inconsistency.

2 Variations to Service Contract

- 2.1 The parties agree to vary the Service Contract, with effect from the Variation Date, by deleting '22 January 2017' in item 2 ('Expiration Date') of Schedule 1 and inserting '22 October 2017' in its place.

- 2.2 The Parties further agree that:

- (a) except as varied by this Deed, the Service Contract remains in full force and effect in accordance with its terms; and
- (b) nothing in this Deed affects or limits any claim or right of action under or in relation to the Service Contract, accrued as at the Variation Date.

3 General provisions

- 3.1** This Deed is governed by and will be construed in accordance with the laws of Queensland and any proceedings between the parties brought at any time that relate in any way to this Deed will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.
- 3.2** This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.
- 3.3** The parties will bear their own costs arising out of the negotiation, preparation, execution and performance of this Deed.

Released under RTI - DTM/R

EXECUTED AS A DEED on the dates set out below

SIGNED, SEALED AND DELIVERED for and on behalf the **STATE OF QUEENSLAND** represented by the Department of Transport and Main Roads (ABN 39 407 690 291) by a duly authorised person:

Signature of authorised person Signature of witness ✓
Jessica Middle
Name of authorised person (print) Name of witness (print) ✓

Executive Director (PTCS)
Position of authorised person (print)

this *8th* day of *November* 2016

SIGNED, SEALED AND DELIVERED for and on behalf **CXN TRANSPORT PTY LTD** ACN 157 948 304 in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director Signature of Director/Secretary
Name of Director (print) Name of Director/Secretary (print)
Part Refuse Sch.4 Part 4 s.6 PI

this *Third* day of *November* 2016



Queensland
Government

Our ref P42970-PT
Your ref
Enquiries Katie Pekaj

Department of
Transport and Main Roads

3 July 2017

Part Refuse Sch.4 Part 4 s.6 PI

Chief Executive Officer
CXN Transport Pty Ltd
PO Box 283
Ashmore City Qld 4214

Dear

Brisbane Airport Bus Service Contract

I am writing to you in relation to the Brisbane Airport Bus Service Contract ('Service Contract') and the forthcoming expiry date. As you are aware, the Service Contract held between the Department of Transport and Main Roads (TMR) and CXN Transport Pty Ltd is due to expire 22 October 2017. As recently discussed with departmental officers, TMR wishes to extend the contract for a further 12 month period.

As a result, I am writing to you to seek your agreement to vary the current contract term in accordance with clause 41.5 of the Service Contract, to give effect to a 12 month extension to the current contract expiry date. This would mean the new expiry date would be 22 October 2018.

If you are in agreement with this, please sign both copies of the enclosed Deed of Variation and return both copies back to TMR where they will be executed by a duly authorised officer. Upon completion, a copy will be posted back to you for your records.

Please return the documents to:

Ms Katie Pekaj
TransLink Division
Department of Transport and Main Roads
GPO Box 50
Brisbane Qld 4001

TransLink Division
Passenger Transport Services Branch
Level 1, 61 Mary Street
Brisbane Qld 4000
GPO Box 50 Brisbane Qld 4001

Telephone +61 7 (07) 3338 4307
Facsimile +61 7 3338 4600
Website www.tmr.qld.gov.au
Email katie.pekaj@translink.com.au
ABN 39 407 690 291

Should you have any questions regarding this proposal, please contact your contract manager, Ms Katie Pekaj on 3338 4307 or katie.pekaj@translink.com.au. Ms Pekaj will be pleased to assist.

Yours sincerely

Simon Hicks
A/Director (Bus Contracts)

Released under RTI - DTMR



Deed of Assignment and Consent - **Brisbane Airport**

Released under RTI - DEMR

BETWEEN:

Gold Coast Mini Coaches Pty Ltd ACN 106 666 148 c/- Dryden and Associates, 25 Monak Rd Peregrine Beach 4573 in the State of Queensland (the "**Assignor**")

AND

CXN Transport Pty Ltd ACN 157 948 304 c/- Dryden Associates, 25 Monak Rd Peregrine Beach 4573 in the State of Queensland (the "**Assignee**")

AND

The State of Queensland acting through the Department of Transport and Main Roads (the "**State**")

RECITALS:

- A. The Assignor provides the Services in the Contract Area pursuant to the terms and conditions of the Service Contract.
- B. The Assignor wishes to transfer the obligations and liabilities under the Service Contract to the Assignee with effect from the Effective Date.
- C. Under clause 29.1 of the Service Contract and section 48 of the Act, the Assignor may only transfer its rights and liabilities under the Service Contract with the prior written approval of the Chief Executive.
- D. The Chief Executive has agreed to approve the assignment of the Service Contract to the Assignee on the terms and conditions of this Deed.

1. INTERPRETATION

- 1.1 Terms and expressions used in this Deed have the meaning provided for in:
 - (a) this Deed; and
 - (b) the Service Contract.
- 1.2 Subject to clause 1.3, if there is any inconsistency in the way terms or expressions are defined in any of the documents referred to in clause 1.1, the documents rank in the order of precedence set out in clause 1.1.
- 1.3 Notwithstanding any other provision of this Deed, if there is any inconsistency between the Act and one or more of:
 - (a) this Deed; or
 - (b) the Service Contract;the Act will prevail to the extent of such inconsistency.
- 1.4 In this Deed the following definitions apply unless the context requires otherwise.

Deed means this document, including all annexures and schedules to this document.

Effective Date means 1 July 2012.

Parties means the Assignor, Assignee, and the State, and a **Party** means any one of them.

Service Contract means the Exclusive Service Contract under Chapter 6 of the Act between the State and the Assignor dated 7 May 2012, a copy of which is included at Schedule 1 to this Deed.

2. ASSIGNEE ASSUMES LIABILITIES AND OBLIGATIONS

- 2.1 The Parties agree and acknowledge that subject to the terms and conditions of this Deed, as and from the Effective Date, the Assignee will perform and be bound by, and assume all liabilities and obligations of the Assignor under the Service Contract as though the Assignee were a party to the Service Contract in substitution for the Assignor.
- 2.2 The Assignee represents and warrants that as at the Effective Date it will have all insurances specified in accordance with clause 36 of the Service Contract.
- 2.4 The Assignee represents and warrants that it has obtained from the Assignor all documents and records the Assignor was required to develop and maintain under the Service Contract.

3. ASSIGNEE OBTAINS RIGHTS AND INTERESTS

- 3.1 The Parties agree and acknowledge that subject to the terms and conditions of this Deed, as and from the Effective Date, the Assignee will have all rights and interests under the Service Contract as though the Assignee were a party to the Service Contract in substitution for the Assignor.

4. REPRESENTATIONS AND WARRANTIES BY THE PARTIES

- 4.1 Each Party represents and warrants that:
- (a) it has full power to enter into and perform its obligations under this Deed and is capable of performing its obligations under this Deed; and
 - (b) its execution and performance of this Deed will not breach or infringe any laws, regulations, obligations, rulings, judgments, orders or decrees of an authority or judicial body having authority over it, or any legal rights of a third party.

5. SPECIAL CONDITIONS OF CONSENT

- 5.1 The Assignee acknowledges and agrees that:
- (a) the conditions contained in the Service Contract and this Deed represent the entire agreement between the State and the Assignee in relation to the Services; and
 - (b) the State has made no representations as to the future management, operation or funding of the Service Contract, or any renewal or extension of the Service Contract.

6. ACCESS TO THE BRISBANE AIRPORT

- 6.1 The Assignor and Assignee agree and acknowledge that in order for the Assignee to perform the Service Contract, the Assignee will need, among other things, access to the Contract Area, which includes parts of the Brisbane Airport.
- 6.2 The Assignee agrees and acknowledges that the State:
- (a) is not responsible for obtaining or facilitating the access referred to in clause 6.1; and
 - (b) will not be liable in any way should the access referred to in clause 6.1 not be granted, be revoked or be amended or made subject to one or more conditions at any time.

7. APPROVAL OF THE STATE

Subject to the terms and conditions of this Deed, the State approves the assignment of the Service Contract from the Assignor to the Assignee in accordance with section 48 of the Act.

8. ADDRESS OF ASSIGNEE FOR NOTICES

The address of the Assignee to which all Notices shall be delivered or transmitted shall be as follows:

25 Monak Rd Peregian Beach 4573

9. GOVERNING LAW AND JURISDICTION

9.1 Choice of Law

This Deed is governed and shall be construed by and in accordance with the laws of Queensland.

9.2 Jurisdiction

- (a) This Deed is deemed to be entered into in Brisbane, Queensland.
- (b) Any proceedings between the Parties brought at any time that relate in any way to this Deed or any document to which this Deed refers will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.

10. COSTS

- (a) **(Each Party pays own costs)** Subject to any contrary provision in this Deed, each Party shall bear its own costs (including legal costs) of and incidental to the preparation, negotiation and signing of this Deed.
- (b) **(Transfer duty and other Taxes)** However the Assignee shall pay and indemnify the State against liability for any taxes (including transfer duty but not including income tax or capital gains tax) and registration fees assessed on this Deed, on any documents created under this Deed, in respect of any transaction evidenced by this Deed and in respect of the performance by the Parties of any of their respective obligations under it.
- (c) The Assignee shall provide evidence in writing to the Chief Executive of the payment of any applicable transfer duty. The Chief Executive is not obliged to check or ensure that the Assignee provides such evidence. In the event that the Chief Executive becomes aware that the transfer duty has not been paid, the Chief Executive may terminate this Deed and the Service Contract.

11. EXECUTION OF DEED BY SEVERAL COUNTERPARTS

This Deed may be signed in any number of counterparts, with the same effect as if the signatures to each counterpart were on the same instrument.

EXECUTED as a Deed.

ASSIGNOR:

Signed sealed and delivered for and on behalf of Gold Coast Mini Coaches Pty Ltd ACN 106 666 148 in accordance with section 127 of the Corporations Act 2001:	
<div></div> Signature of Director	<div></div> Signature of Director/Secretary
<div></div> Name of Director (please print)	<div></div> Name of Director (please print)
Date <u>08/11/2012</u>	Date <u>8/11/2012</u>

ASSIGNEE:

Signed sealed and delivered for and on behalf of CXN Transport Pty Ltd ACN 157 948 304 in accordance with section 127 of the Corporations Act	
<div></div> Signature of Director	<div></div> Signature of Director/Secretary
<div></div> Name of Director (please print)	<div></div> Name of Director (please print)
<div></div> In the presence of (Name of Witness)	<div></div> In the presence of (Name of Witness)
<div></div> Signature if Witness	<div></div> Signature if Witness
Date <u>8 November 2012</u>	Date <u>8 November 2012</u>

STATE OF QUEENSLAND:

Signed, sealed and delivered for and on behalf of the State of Queensland acting through the Department of Transport and Main Roads by <u>Chris Basche</u>	
Name of Authorised Person, a person duly authorised to act in that behalf, in the presence of:	Signature _____
Name of Witness (printed)	
Signature of Witness	<u>10/11/12</u>
Date	Date Signed

SCHEDLUE 1

Service Contract

Released under RTI - DTMR



Queensland
Government

State of Queensland

and

Gold Coast Mini Coaches Pty Ltd

Exclusive Service Contract

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Released under RTI - DTMR

Date 7 May 2012

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads ABN 39 407 690 291 of 85 George Street, Brisbane, Queensland (**State**)

Gold Coast Mini Coaches Pty Ltd ACN 106 666 148 of Level 1, 183 Varsity Parade, Varsity Lakes, Queensland (**Operator**)

Background

- A The State is responsible for enabling the effective planning and efficient management of public passenger services within the State of Queensland, and wishes to engage the Operator to work with it in providing certain public passenger services.
- B The Operator has agreed to work with the State to provide public passenger services on the terms and conditions of this document.
-

Agreed Terms

Part A - Definitions and Interpretation

1 Definitions and Interpretation

1.1 Definition in the Act

Words and expressions defined in the Act will have the same meaning in this Contract unless a contrary intention appears in this Contract.

1.2 Definitions

In this Contract, unless the context otherwise requires:

Act means the *Transport Operations (Passenger Transport) Act 1994* (Qld).

Airport means Brisbane International and Domestic Airport, as defined by the map in Annexure A Contract Area.

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

Chief Executive means the chief executive administering the Act from time to time and includes any person exercising a valid delegation on behalf of the Chief Executive.

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

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

- (a) is by its nature confidential;
- (b) is designated by that party as confidential; or
- (c) the other party knows or ought to know is confidential,

and includes in relation to each party:

- (d) information comprised in or relating to any Intellectual Property Rights of the party;
- (e) information relating to the financial position of the party and, in particular, includes information relating to the assets or liabilities of the party and any other matter that does or may affect the financial position or reputation of the party;
- (f) information relating to the internal management and structure of the party, or the personnel, clients or suppliers, policies and strategies of the party;
- (g) information of the party to which the other party has access other than information referred to in paragraphs (d), (e) and (f) that has any actual or potential commercial value to the party that supplied the information; and
- (h) the terms of this Contract, including its Schedules and Annexures.

Confidential Information in relation to the State includes:

- (a) information relating to the policies, strategies, practices and procedures of the Department and the government of the State of Queensland and any information in the Operator's possession relating to the personnel of the Department or any Queensland Government Authority; and
- (b) information relating to the construction, operation and maintenance and security of the infrastructure used to provide the Services (except to the extent it constitutes information properly used by the Operator to provide services to another customer).

Confidential Information does not include information which is:

- (a) publicly known or becomes publicly known other than by breach of this Contract or any other obligation of confidentiality;
- (b) disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or
- (c) developed independently by the other party without reliance on any of the discloser's Confidential Information.

Contract means this service contract between the Operator and the State.

Contract Area means the service contract area and/or routes declared in accordance with the Act, as set out in Annexure A.

Contract Material means Existing Contract Material and New Contract Material.

Contract Service Plan means the agreed schedule of services at the Commencement Date of this Contract as set out in Annexure B, as varied in accordance with this Contract from time to time.

Contract Vehicle means each public passenger vehicle used to provide the Services, including under any subcontracting arrangement entered into by the Operator.

Defect has the meaning given to that term as prescribed in Chapter 3 of the *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999* (Qld).

Department means the Queensland Department of Transport and Main Roads.

Driver means each person employed or contracted by the Operator to be in control of and/or operate a Contract Vehicle.

Emergency Service Change means a temporary route or schedule change that is required:

- (a) in respect of an unexpected temporary emergency event (for example, without limitation, traffic accident, natural disaster, weather event etc); and
- (d) in order to ensure the safety of passengers, drivers, pedestrians and/or other road users.

Exclusive Services means the services identified in Annexure B, as varied in accordance with this Contract from time to time.

Existing Contract Material means any material or information created, written or otherwise brought into existence by or on behalf of a party or any third parties prior to the Commencement Date and which is necessary or appropriate for the effective performance of the Contract, whether during or after the Term.

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

Financial Records means proper books of account and all other financial records of the Operator that would ordinarily be maintained by a prudent and competent operator of public passenger services of the type, size, scope and complexity of the Services.

Force Majeure Event means (without limitation) any of the following events that are beyond the reasonable control of a party:

- (a) an act of God;
- (b) strike, lockout or other industrial disturbance (whether legal or illegal);
- (c) an act of public enemy, war, blockade, revolution, riot, insurrection, or civil commotion;
- (d) lightning, storm, cyclone, flood, fire, earthquake or explosion;
- (e) any action, inaction, demand, order, restraint, restriction, requirement, prevention, frustration or hindrance by or of any applicable Government Authority; or
- (f) the unavailability (other than as a result of default or lack of planning or forethought by the Operator) of any essential equipment, chemicals, fuel, public utilities (such as electricity or water) or other materials.

General Route Services has the meaning given to that term under the Act.

Government Authority means the crown, a minister, a government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority and any agent or employee of any of the foregoing.

Insolvency Event means an event where:

- (a) an order is made or a resolution is effectively passed for the winding up or dissolution of the Operator (except for the purpose of solvent reconstruction or amalgamation for which the Chief Executive has given prior written approval);
- (b) the Operator goes into liquidation or makes an assignment for the benefit of, or enters into an arrangement, composition or compromise with its creditors, or any class of creditors;
- (c) a receiver and manager, controller, administrator, trustee or similar officer is appointed over all or any part of the assets of the Operator or an application or order for such appointment is made;
- (d) execution is levied against the Operator and not discharged within thirty (30) days;

- (e) the Operator is unable to pay its debts as and when they fall due, or is deemed unable to pay its debts according to any applicable legislation (other than because of a failure to pay a debt or claim that is subject to a good faith dispute);
- (f) the Operator (being an individual) becomes bankrupt, or commits an act of bankruptcy; or
- (g) anything analogous or having similar effect to anything referred to in paragraphs (a) to (f) above occurs to the Operator.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

Invitation to Offer or Invitation means the documentation issued by the State, inviting offers for the provision of the Services.

Key Performance Indicator or KPI means the key performance indicators specified in Schedule 2, as adjusted in accordance with clause 27.7 from time to time.

Key Result Area or KRA means a key result area set out in Schedule 2.

Material Adverse Event means:

- (a) any one of the following events:
 - (i) a change in any law, regulation, policy or a direction of a Government Authority; or
 - (ii) amendment to any applicable mandatory industry standard that is outside of the reasonable control of the Operator,

that occurs during the Term which materially affects the Operator's ability to comply with its obligations under this Contract, as determined by the Chief Executive, acting reasonably.

Minimum Service Levels means the levels of service delivery specified in Schedule 2.

Monthly Summary Report means a report containing the information and in the format required by clause 2 of Schedule 3, or such other format as may be directed by the Chief Executive from time to time.

Moral Right means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; or
- (d) rights of a similar nature,

which is conferred by statute and which exists or comes to exist, anywhere in the world, in connection with this Contract.

netBI means the business intelligence solution (data warehouse) supplied by netBI Pty Ltd (ABN 20 120 804 864), that is used for the purposes of reporting.

New Contract Material means any material or information created, written or otherwise brought into existence by or on behalf of a party in the performance of its obligations under this Contract and which is necessary or appropriate for the effective performance of the Contract and/or the provision of the Services either during or after the Term, and includes (without limitation):

- (a) Service Data, including data relating to the Operator's performance of the Services under this Contract;

- (b) route information, including the design and layout of all routes;
- (c) patronage and ticketing data, including all data collected by the Operator in connection with clause 18.5; and
- (d) Timetable information, including the content, design and layout of all Timetables.

Offer means the offer submitted by the Operator in response to the Invitation, and includes all attachments to the Offer.

Operational Records means records about the operation of the Services of a kind that would be ordinarily maintained by a prudent and competent operator of public passenger services, including but not limited to those matters specified in Schedule 3.

Personal Information means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

Public Transport Initiatives means initiatives proposed or undertaken by the State relating to public transport infrastructure and services, including, but not limited to, the introduction of busways, light railways, information systems, service delivery innovations and integrated ticketing systems.

Rectification Plan has the meaning given in clause 27.2(a).

Regulation means the *Transport Operations (Passenger Transport) Regulation 2005 (Qld)*.

Service Change means any change to the agreed details of a Service under the Contract Service Plan.

Service Data means data relating to the Services (excluding work rosters and Driver schedules) that the Operator is required to collect, retain and/or report under this Contract.

Services means the routes and/or Timetables, to be provided by the Operator under this Contract, as set out in the Contract Service Plan, as amended from time to time.

Special Conditions means the conditions of this Contract set out in Schedule 6.

Standard means the *Transport Operations (Passenger Transport) Standard 2010 (Qld)*.

State means the State of Queensland, and where the State is referred to as a party to this Contract, means the State of Queensland acting through the Department.

Term means the term of this Contract as provided for in Schedule 1.

Timetable means the schedule of times at which the Operator will provide the Services on routes in the Contract Area.

1.2 Index and clause headings

Index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of this Contract.

1.3 Interpretation

In the interpretation of this Contract, unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) a reference to any gender includes every gender;
- (c) references to a person include a corporation, association, partnership, Government Authority, or other legal entity;

- (d) references to writing include any means of representing or reproducing words, figures, drawings or symbols, in a visible, tangible form;
- (e) references to an obligation to notify a party mean an obligation to notify that party in writing;
- (f) references to signature and signing include due execution by a corporation, or other relevant entity;
- (g) references to months mean calendar months;
- (h) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, standards, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (i) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (j) references to clauses, schedules and annexures refer to clauses, schedules, and annexures of this Contract;
- (k) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (l) no rule of construction of documents shall apply to the disadvantage of a party on the basis that the party put forward this document, or any relevant part of it;
- (m) if any term of this Contract is legally unenforceable or made inapplicable, it shall be severed or read down, but so as to maintain (as far as possible) all other terms of this Contract (unless to do so would change the underlying principal commercial purposes of this Contract);
- (n) "will" is a mandatory expression; and
- (o) references to consent mean prior written consent.

1.4 Order of Precedence

This Contract is comprised of the following documents:

- (a) clauses 1 to 41 (inclusive);
- (b) the Schedules, including any other terms and conditions referenced in those Schedules;
- (c) Annexures A to C of this Contract;
- (d) any other annexures or attachments to this Contract;
- (e) the State's Invitation; and
- (f) the Operator's Offer.

1.5 Severance

In the event and to the extent of any inconsistency between the documents listed in clause 1.4, the provisions of the earlier mentioned document in clause 1.4 will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

1.6 Priority of Interpretation

If there is any inconsistency between a provision of this Contract and a provision of the Act, the Act will prevail to the extent of such inconsistency.

Part B - Term and Contract Structure

2 Cooperation and collaboration

2.1 Parties to cooperate

The parties acknowledge and agree that their mutual intention in entering into this Contract is to work together, in accordance with the terms of this Contract, in providing the Services to members of the public.

2.2 Interpretation of Contract

Where a term or provision of this Contract can be interpreted in more than one way, and one of the possible interpretations is more consistent with a cooperative and collaborative approach, that interpretation is to be preferred.

2.3 Compliance with directions

Where this Contract requires the Operator to comply with any direction issued by the Chief Executive or the Department and such compliance would result in a material change to the scope of the Services, the Operator's costs in providing the Services or the commercial viability of the Services to the Operator, such direction must be treated as a Service Change, and the parties must comply with the process set out in the Contract Service Plan.

3 Contract

3.1 Service Contract

This Contract is a service contract under Chapter 6 (Service Contracts) of the Act. The parties acknowledge that this Contract has the purpose set out in section 37 (Purpose of service contracts) of the Act.

3.2 Objectives of the Act

The Chief Executive and the Operator will co-operate and take all reasonable actions to advance the objectives of the Act, as set out in section 2 (Objectives of the Act) of the Act.

3.3 Subject to Act

Nothing in this Contract will affect or limit any powers or rights, or any obligations, that either party may have under the Act, Regulation or Standard.

3.4 Delegation

The Chief Executive may delegate to a nominee the exercise of any of the Chief Executive's powers, obligations or functions under this Contract or the Act including, but not limited to, the giving and receiving of notices, certificates or other documentation or correspondence.

4 Term

4.1 Term

This Contract will commence on the Commencement Date and expire on the Expiration Date (Term), or terminated or cancelled earlier in accordance with this Contract or the Act.

4.2 No offer of new service contract

Section 62 (Offer of new service contract) of the Act does not apply to this Contract and the Chief Executive has no obligation to invite the Operator to submit an offer to provide the Services after the expiration of this Contract in accordance with section 62.

5 Exclusivity

5.1 Exclusive right

Subject to the Operator complying with:

- (a) the requirements published and/or notified to it from time to time by the Chief Executive for the designated scheme, arrangement or Service;
- (b) the Act; and
- (c) this Contract,

the Operator's right to perform the Exclusive Services in the Contract Area during the Term will be an exclusive right.

5.2 First opportunity to offer

If the Chief Executive proposes to amend the Contract Area by adding an area or route to the Contract Area, the Chief Executive will provide the Operator with the first opportunity to offer to provide the amended Contract Area in accordance with section 60 of the Act. The Chief Executive will act reasonably in assessing any such offer and will comply with the requirements of the Act in respect of the amended Contract Area.

5.3 Retained rights

The Chief Executive may grant rights, or enter into additional service contracts, on behalf of the State for the provision of public passenger services covering the same or similar areas or routes as the Contract Area if:

- (a) and to the extent that the Operator's rights under this Contract are not, or cease to be, exclusive;
- (b) this Contract is suspended in accordance with clause 37;
- (c) the Operator fails or refuses to provide any or all of the Services under this Contract to a satisfactory standard (within the meaning of the Act), or at all;
- (d) the Operator's offer to provide Services in an amended Contract Area under clause 5.2 is unacceptable to the Chief Executive under section 59 of the Act.

5.4 No compensation

The State will not be liable to compensate the Operator or any other person should it exercise its rights under clause 5.3.

6 Contract Area

6.1 Initial Contract Area

- (a) The parties agree that the Contract Area shown in Annexure A is accurate as at the Commencement Date.

- (b) The Contract Area will not be affected by any subsequent amendment or variation to a declared service contract area or route unless the parties execute a written variation to this Contract to that effect.

6.2 Amendments to Contract Area

- (a) The Chief Executive must comply with section 42B of the Act in respect of any amendments to the Contract Area or to a route where a declaration under section 42 of the Act is in force in respect of the Contract Area or route.
- (b) Where an amendment to which clause 6.2(a) applies is an amendment to the Contract Area to add a new route or service contract area to the Contract Area, without limiting any other obligation under this Contract and the Act, the Chief Executive must also comply with section 60 of the Act in respect of the amendment.

6.3 No Compensation for amendments

The Chief Executive will not be liable to compensate the Operator under this Contract in respect of any amendment of a service contract area or route made in accordance with section 42B (Amendment of service contract area or route) of the Act or the implementation of such amendments pursuant to sections 60 (Service contract for amended service contract area or route) or 61 (Compensation) of the Act.

7 Operator Status

7.1 Independent contractor

The Operator will perform this Contract as an independent contractor and will at no time be an agent or representative of the State, the Department or the Chief Executive.

7.2 Not a contract of service

To remove any doubt, this Contract does not give rise to a contract of service between the parties under the *Workers Compensation and Rehabilitation Act 2003* (Qld).

7.3 Provision of Equipment and Services

The Operator will at its own expense supply all goods, labour, vehicles, tools, depots, equipment, materials, power, water, services and facilities necessary to perform the Contract. Nothing in this clause 7.3 will be taken to limit the application of funding received under any other agreement in accordance with the terms of that agreement and any applicable laws or policies.

8 Revenue

8.1 Operator to retain revenue

For the avoidance of doubt, the Operator shall be entitled to retain all revenue generated from fares charged for the provision of Services under this Contract.

8.2 No financial assistance from Chief Executive

No financial assistance shall be provided by the Chief Executive under this Contract.

9 Costs

9.1 Contract costs

Subject to any contrary provision in this Contract, each party will bear its own costs (including legal costs) of and incidental to the preparation, negotiation and signing of this Contract.

9.2 Taxes and duties

The Operator must pay and indemnify the State against liability for any tax, charge, duty or impost of any kind (including stamp duty but not including income tax or capital gains tax) and registration fees assessed on this Contract, on any documents created under this Contract, in respect of any transaction evidenced by the Contract and in respect of the performance by the parties of any of their respective obligations under it.

Part C - Laws, Standards and Quality

10 Regulatory compliance

10.1 Compliance with laws

The Operator must at all times comply with:

- (a) the provisions of the Act, Regulation and Standard and all other applicable laws in providing the Services and performing its obligations under this Contract;
- (b) without limiting any other provision of this Contract, all State, Commonwealth and local government laws, regulations, policies, industry codes and standards, directions and requirements applicable to the Operator's performance of its obligations under this Contract, including provision of the Services; and
- (c) any conditions applying to an authority obtained in accordance with section 123 (Requirement for authority to enter) of the Regulation.

10.2 Evidence of Compliance with Laws

If reasonably required by the Chief Executive, the Operator must establish, maintain and provide to the Chief Executive upon request, such compliance plans as the Chief Executive reasonably requires.

10.3 Vehicle Accessibility Compliance

- (a) The Operator must comply with all State and Commonwealth government laws in relation to vehicle accessibility standards, including but not limited to the Commonwealth *Disability Standards for Accessible Public Transport 2002* (Cth) and accompanying guidelines made under the *Disability Discrimination Act 1992* (Cth).
- (b) The Operator must provide such information and complete such documentation as the Chief Executive may request to enable the Chief Executive to evaluate and/or report upon the Operator's compliance with clause 10.3(a). The Operator must provide such information within ten (10) Business Days of the Chief Executive's request.

10.4 Compliance with State policies

The Operator must at all times comply with:

- (a) any applicable policies, procedures, guidelines and directions published or issued by the State from time to time during the Term; and
- (b) all reasonable directions and requirements of the Chief Executive in respect of the operation of this Contract including (without limitation) directions and requirements in relation to public safety and security.

11 Audits

11.1 Scope of Audits

Audits may be conducted by or on behalf of the Chief Executive under this clause 11 in respect of:

- (a) the Operator's compliance with all its obligations under this Contract;
- (b) the Operator's financial position;
- (c) the discharge of any of the Chief Executive's obligations under the Act, Regulation, Standard and this Contract, or as required in order to comply with a request, direction or order from the Queensland Government (including, without limitation, the Minister for Transport); and
- (d) any other matters reasonably determined by the Chief Executive to be relevant to this Contract.

11.2 Conduct of Audits

- (a) The parties acknowledge that the records and reports to be provided under clause 18 and the review process set out in clause 25 are intended to be the primary means by which information regarding the matters set out in clause 11.1 is provided by the Operator to the Chief Executive. The Chief Executive or their nominee will only conduct audits where the Chief Executive reasonably considers that these processes provide insufficient information or comfort regarding such matters, and will use best endeavours to minimise the interruption to and impact upon the Operator's business operations as a result of any audit.
- (b) The Operator must participate promptly and cooperatively in any audits conducted by the Chief Executive or their nominee.
- (c) Except in those circumstances in which notice is not practicable or appropriate, the Chief Executive must give the Operator reasonable notice of an audit and an indication of which documents and/or class of documents the auditor may require.
- (d) Subject to any express provisions in this Contract to the contrary, each party must bear its own costs associated with any audits.
- (e) The requirement for, and participation in, audits does not in any way affect or reduce the Operator's responsibility to perform its obligations in accordance with this Contract.
- (f) The Chief Executive must use its reasonable endeavours to ensure that audits do not unreasonably delay or disrupt the Operator's performance of its obligations under this Contract.
- (g) The Operator must promptly take, at no additional cost to the Chief Executive, corrective action to rectify any error, non-compliance or inaccuracy in the way the Operator has performed any of the Services under this Contract, which is identified in any audit.

11.3 Access to Operator's premises and records

- (a) For the purposes of this clause 11, the Operator must grant, and, where relevant, must ensure that its subcontractors grant, the Chief Executive and its nominees or the Auditor-General access as required by the Chief Executive, to the extent relevant to the performance of the Operator's obligations under this Contract, the Operator's premises, Contract Vehicles, data (including Service Data), records (including both Operational Records and Financial Records), accounts and other financial material and material relevant to the performance of this Contract.
- (b) The Chief Executive must provide the Operator with written notice of its intention to access the operator's premises in accordance clause 11.3(a), within a reasonable time prior to the date of access.
- (c) This clause 11 applies for the Term and for a period of six years from the date of expiry or termination of this Contract.
- (d) Without limiting any of its other obligations under this Contract, the Operator must, at its own cost, ensure that it keeps full and complete records in accordance with Australian accounting standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under this clause 11.

- (e) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, or the Information Commissioner or a delegate of the Information Commissioner, or the Ombudsman or a delegate of the Ombudsman. The rights of the Chief Executive under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, the Information Commissioner or a delegate of the Information Commissioner or the Ombudsman or a delegate of the Ombudsman.
- (f) Nothing in this clause 11 will require the Operator to disclose or make available to the Chief Executive or its nominees the following records, unless a denial of access to such information would prevent the auditor from meeting the objectives set out in clause 11.1:
 - (i) records or minutes of internal management meetings of the Operator;
 - (ii) Confidential Information relating to the Operator's employees or suppliers;
 - (iii) information not directly related to the performance of this Contract; or
 - (iv) trade secrets of the Operator.

11.4 Interpretation of this clause

In this clause 11:

- (a) a reference to the 'Auditor-General' is a reference to the Auditor-General or equivalent office holder with jurisdiction over the Chief Executive;
- (b) a reference to the 'Information Commissioner' is a reference to the Information Commissioner or equivalent office holder (if any) with jurisdiction over the Chief Executive; and
- (c) a reference to the 'Ombudsman' is a reference to any Ombudsman or equivalent office holder (if any) with jurisdiction over the Chief Executive.

Part D - Service Requirements

12 Services

12.1 Provision of Services

The Operator must provide the Services in accordance with this Contract, including the Special Conditions (if any) specified in Schedule 6.

12.2 Operator obligations

The Operator must:

- (a) provide the Services in accordance with the Contract Service Plan, the Services Levels and any KPIs;
- (b) at all times throughout the Term comply with all of its obligations under the Act, the Regulation and the Standard and all other applicable laws;
- (c) take all reasonable steps to ensure that each Driver, at all times throughout the Term:
 - (i) is appropriately licensed and accredited to be in control of and operate the Contract Vehicles; and
 - (ii) holds appropriate driver authorisation under the Act when providing the Services;

- (d) ensure that any contractors or employees engaged or tasked to provide any service in connection with the Services are suitably skilled and experienced, and hold all appropriate qualifications, necessary to provide such service in a workmanlike and professional manner, in accordance with generally accepted industry standards and without in any way detracting from the Operator's ability to comply with its obligations under this Contract; and
- (e) ensure, in order to be eligible to provide the Services, that the reporting requirements in clause 18 will be met.

12.3 Consequences of failure to comply

If at any time during the Term the Operator:

- (a) is aware of and continues to permit any Driver not appropriately licensed and accredited in accordance with clause 12.2(c)(i) to provide Services; or
- (b) is aware of and continues to permit any Driver not holding appropriate driver authorisation in accordance with clause 12.2(c)(ii) to provide Services,

the Chief Executive may activate the performance management process by issuing a rectification notice in accordance with clause 27.1.

12.4 Counter terrorism

- (a) The Operator will participate in and implement all programs developed in accordance with State and national policies for counter terrorism activities, as notified by the Chief Executive from time to time, to ensure Service continuity.
- (b) The Chief Executive will meet the reasonable costs incurred by the Operator (if any), in carrying out the obligations imposed on the Operator as a result of a direction or notification by the Chief Executive under clause 12.4(a).

12.5 Reasonable actions

Each party must act in a reasonable way to facilitate the operation of this Contract and in exercising its rights and performing its obligations under this Contract.

12.6 Access to Airport

The Department will use best endeavours to facilitate access to the Airport for the Operator, by arrangement with the Airport operators. Notwithstanding, it remains the ultimate responsibility of the operator to ensure access to the Airport is granted, and neither the State nor the Department will be liable in any way should such access not be granted to the Operator by the Airport operators.

13 Customer Service and Safety

13.1 Customer Service

The Operator must use best endeavours to ensure that all personnel, at all times throughout the Term:

- (a) comply with all of their obligations under the Act, the Regulation, the Standard and all other applicable laws;
- (b) have a thorough knowledge of the fares and routes;
- (c) receive appropriate ongoing structured training;
- (d) act reasonably, courteously and helpfully in all dealings with passengers and the public;
- (e) do not discriminate against any passengers and operators of other vehicles; and

- (f) are attired in a clean, well maintained uniform.

13.2 Safety

The Operator will undertake all reasonable measures to ensure the safety of passengers while boarding, travelling on and disembarking from the Services, including, without limitation, any measures it is permitted or required to take pursuant to the Act, Regulation and Standard.

13.3 Operator responsible for safety

The Operator will provide and maintain everything necessary for the safety of persons and property and for the safety and convenience of its personnel, personnel of the State and passengers at any location and in any Contract Vehicle under the Operator's control.

13.4 Operator to comply with safety directions

The Operator will comply with, and will require all its personnel, agents and subcontractors to comply with, all directions of the Chief Executive relating to the safety and protection of persons and property.

13.5 Lost Property

During the Term and for 6 months after the termination or expiry of this Contract, the Operator will maintain a lost property register and provide a facility for members of the public to recover their lost property.

13.6 Customer Comments

The Operator must maintain a register of comments received from members of the public, detailing the date of occurrence, the nature of the comment, investigations into the comment and actions that were taken in response to the comment, and must promptly provide the Chief Executive with a copy of the register upon request, and in any event at least once in every 12 month period as required by clause 1 of Schedule 3.

14 Service Planning

14.1 Contract Service Plan

- (a) The Operator must comply with the agreed Contract Service Plan under this Contract. The parties agree that the Contract Service Plan described is accurate as at the Commencement Date.
- (b) The Operator may elect to receive assistance from the Department in respect to service planning and the Department will provide such assistance as it determines, acting reasonably, is required to enable the Operator to meet its service planning obligations under this Contract. Such assistance may include, without limitation, attendance by representatives of the department at the Operator's place of business to with the Operator in developing a Contract Service Plan.

14.2 Timetable changes proposed by Operator

- (a) The Operator may make Timetable changes without obtaining the prior written consent of the Chief Executive, provided the Operator:
 - (i) notifies the Chief Executive of any changes to Timetables that it proposes as soon as is reasonably practicable, and prior to its implementation;
 - (ii) continues to meet the Minimum Service Levels contained in Schedule 2;
 - (iii) uses best endeavours to implement Timetable changes made in accordance with this clause 14.2 by the dates notified to the Chief Executive; and
 - (iv) gives a public notice of the impact of the change to the Timetable before implementing that change.

14.3 Material Service Changes

The Operator must obtain the prior written consent of the Chief Executive if the Operator wishes to make Service Changes which materially affect:

- (a) the nature of the Services as described in the Contract Service Plan; or
- (b) the Operator's ability to meet the Minimum Service Levels contained in Schedule 2.

14.4 Business continuity planning

- (a) The Operator will plan to ensure continuity of the Services, to a standard acceptable to the Chief Executive, and undertake reasonable security precautions appropriate to the risk involved despite any event that may impact on the Services.
- (b) The Operator will maintain, and will provide to the Chief Executive upon request but in any event at least once in every 12 month period throughout the Term, suitable business continuity plans to ensure continuity of the Services.

14.5 Operator to notify

The Operator must promptly notify the Chief Executive in respect of:

- (a) Contract Vehicle capacity and loading problems or issues;
- (b) any ongoing problems it identifies in respect of any of the routes within the Contract Service Plan, including in respect of traffic volumes, navigability, efficiency and delays; and
- (c) any other matter which may affect the efficiency or quality of the Services, and/or the Operator's compliance with this Contract, the Act, the Regulation or the Standard.

15 Fares and ticketing

15.1 Fares

The Operator is responsible for specifying applicable fares for the Services. The fare schedule must be provided by the Operator at Schedule 7. The Operator must provide written notice to the Chief Executive at least fourteen (14) Business Days before adjusting the fare schedule.

15.2 Tickets

Except for passengers utilising a valid electronic ticket in the form of a smartcard or other approved proximity card, the Operator must ensure that each passenger on the Service is issued a paper ticket that is, at a minimum:

- (a) is a valid Tax Invoice;
- (b) sets out the date and time of travel and the validity period of the ticket;
- (c) identifies the origin and destination zone of travel;
- (d) contains an identifier sufficient to identify the issuing shift or Driver; and
- (e) sets out the total fare payable.

16 Contract Vehicles and Depot

16.1 Contract Vehicles

The Operator must ensure that each Contract Vehicle:

- (a) complies in every respect with the Act, the Regulation, the Standard and all other applicable laws;
- (b) is an appropriate public passenger vehicle as specified in Schedule 4 of the Standard;
- (c) without limiting clause 16.1(a), complies with Schedules 1 to 3 of the Standard;
- (d) complies with all of the requirements specified in Schedule 3;
- (e) complies with any special conditions set out in Schedule 6;
- (f) if fitted with any closed circuit television (CCTV) cameras, complies with all relevant codes of practice and privacy obligations set out in clause 33; and
- (g) has the necessary facilities to safely carry luggage for the number of passengers on board.

16.2 Depot requirements

The Operator must ensure that when not in use, Contract Vehicles are securely parked in a suitable depot which, as a minimum:

- (a) has sufficient capacity to accommodate all of the Contract Vehicles;
- (b) is safe, clean, well-lit and free of hazards;
- (c) complies with all relevant laws; and
- (d) is adequately secured to prevent unauthorised access to vehicles and equipment.

16.3 Depot as at Commencement Date

The depot utilised by the Operator at the Commencement Date is identified in Item 5 of Schedule 1.

16.4 Relocation of Depot

The Operator must provide written notice to the Chief Executive at least fourteen (14) Business Days before relocating a depot.

17 Transitional

17.1 Transition of service contracts

- (a) The parties acknowledge that, within 45 days of the Commencement Date, they will use best endeavours to agree to a transition plan acceptable to both parties to manage the transition from the previous service contract governing the Operator's provision of the Services, to the terms of this Contract (**Transition Plan**).
- (b) The parties must comply with the terms of the Transition Plan. Any breach of the Transition Plan will be deemed to be a breach of this Contract.

Part E - Information, Records and Reporting

18 Records and Reporting

18.1 Records

The Operator must maintain complete and accurate Operational Records and Financial Records sufficient to demonstrate its performance under this Contract, and must provide any information that the State may require in order to assess performance.

18.2 Maintenance of Records

Except where otherwise expressly stated, the Operator will retain all records required under this Contract for no less than six (6) years from the date of creation. This clause will survive expiry or termination of this Contract.

18.3 Inspection and copies

The Operator will make the records required in this clause 18 available for inspection by the Chief Executive as and when required, and will provide copies of such records to the Chief Executive within ten (10) Business Days of receiving a request for information, unless an alternative timeframe is specified in writing by the Chief Executive.

18.4 Reports

The Operator will provide to the Chief Executive the reports set out in Schedule 3, in accordance with the requirements relating to timing and content set out in that Schedule. The Operator will provide all reports under this Contract in electronic or "hard copy" format, as required by the Chief Executive. Electronic reports must comply with the any requirements specified by the Chief Executive, and may include the requirement that reports are compatible with the netBI system requirements. The electronic reports must be provided in a format that is acceptable to the Chief Executive.

18.5 Management Information

Without limiting any other provision of this Contract, the Operator will:

- (a) endeavour to ensure that the number of passengers who use the Services is accurately counted and recorded in order to provide the information required under this Contract; and
- (b) collect and provide to the Department the information specified in Schedule 3, within the required timeframes.

18.6 Ticketing reporting and technology

The Operator must maintain records of all tickets sold, and must at any time permit the Chief Executive to access all such data.

19 Financial Statements

19.1 Financial Statements

The Operator must ensure that any financial statements provided by it under this Contract are:

- (a) prepared and presented in accordance with applicable Australian accounting standards; and
- (b) certified by the Operator's auditor where such certified accounts are available (or, if the Operator is not required by law to appoint an auditor or audited accounts are not otherwise obtained by the Operator, the Operator's accountant) to be a true and fair representation of the Operator's financial position for the relevant period.

19.2 Content of financial statements

Financial statements to be provided under this Contract must include:

- (a) Profit and Loss Statement (or its equivalent under applicable Australian accounting standards from time to time);
- (b) Balance Sheet (or its equivalent under applicable Australian accounting standards from time to time);
- (c) Cash Flow Statement (or its equivalent under applicable Australian accounting standards from time to time); and
- (d) notes to and forming part of the accounts.

20 Customer Information and Marketing

20.1 Obligations with respect to customer information and marketing

The parties must comply with their respective obligations in relation to:

- (a) the provision, accuracy, production and distribution of Service information, Timetables and customer information (including online information); and
 - (b) marketing strategies, communication campaigns, promotions and media communication,
- as set out in Schedule 5.

Part F - Incidents

21 Material Adverse Event

21.1 No liability for delays

- (a) Neither party will be liable for any delay or failure to perform its obligations pursuant to this Contract if such delay is due to a Material Adverse Event which renders such performance unlawful or otherwise disables the affected party from so performing.
- (b) Subject to clause 21.1(a), each party must continue to perform its obligations under this Contract notwithstanding the occurrence of a Material Adverse Event, and must comply with this clause 21 in respect of the Material Adverse Event.

21.2 Negotiation process

As soon as reasonably practicable, but in any event within 10 Business Days after the occurrence of a Material Adverse Event, or after the parties become aware that a Material Adverse Event is likely to occur, senior representatives of each party must meet and, acting in good faith, endeavour to negotiate such amendments to the Contract as may be necessary to overcome the effects of the Material Adverse Event.

21.3 No limitation

The negotiation process in clause 21.2 is not to be taken to in any way affect or limit any other right of the Chief Executive under this Contract.

21.4 Dispute resolution

If the parties are unable, within sixty (60) Business Days of the meeting required under clause 21.2, to agree on appropriate amendments to the Contract, or if the Material Adverse Event cannot be overcome, either party may invoke the dispute resolution process set out in clause 38.

22 Incidents

22.1 Incident management plan

- (a) The Operator must prepare and maintain incident management plans in accordance with the requirements of the Standard.
- (b) The Operator must provide the Chief Executive with a copy of:
 - (i) each incident management plan the Operator is required to have under the Standard; and
 - (ii) any changes proposed as a result of the annual review of the incident management plan pursuant to the Standard.

22.2 Notification to Chief Executive

Without limiting the Operator's obligations at law, including its obligations under the Standard, the Operator must notify the Chief Executive as soon as reasonably practicable that any of the following incidents have occurred in connection with the Services (including, without limitation, on or involving any Contract Vehicle):

- (a) an incident involving serious risk to passenger safety;
- (b) an incident in which a person is seriously injured or killed; and/or
- (c) an incident in which property is damaged to the value of at least the amount fixed under section 287 (4) of the *Transport Operations (Road Use Management-Road Rules) Regulation 1999*.

22.3 Incident report

The Chief Executive may request the Operator to provide a copy of any incident report that the Operator is required to make under the Standard and the Operator must immediately comply with any request made under this clause.

23 Force majeure

23.1 No liability for delays

Neither party will be liable for any delay or failure to perform its obligations pursuant to this Contract if such delay is due to a Force Majeure Event.

23.2 Entitlement to terminate

If a delay or failure by a party to perform its obligations due to a Force Majeure Event exceeds forty-five (45) Business Days, either party may immediately terminate this Contract on providing notice in writing to the other party.

23.3 Operator's disaster recovery obligations

The Operator must take all commercially reasonable steps to:

- (a) prevent the occurrence of;
- (b) avoid being affected by; and
- (c) mitigate the effects of,

any Force Majeure Event.

The Operator will not be absolved of responsibility to perform its obligations under this Contract by virtue of a Force Majeure Event if and to the extent that the taking of all proper precautions, due care and

reasonable alternative measures by the Operator with the object of avoiding the delay or failure and of carrying out its obligations under this Contract would have enabled it to continue to meet those obligations.

24 Change of Shareholding

24.1 Consent required

Where the Operator is a corporation, other than a company whose shares are listed on any stock exchange in Australia, the Operator will not permit any substantial change in the underlying shareholding of the Operator without obtaining the Chief Executive's prior written consent.

24.2 Substantial change

For the purposes of clause 24.1, a substantial change in the underlying shareholding of the Operator will occur whenever:

- (a) there is a transfer in the issued capital or voting rights of the Operator of thirty percent (30%) or more;
- (b) any corporation or related corporations (as defined in the Corporations Act) not holding between them more than fifty percent (50%) of the issued share capital or voting rights of the Operator, acquires or acquire between them so much of the issued capital or voting rights of the Operator as when added to the issued capital or voting rights (if any previously held by that corporation or related corporation) represent in the aggregate more than fifty percent (50%) of the issued capital or voting rights of the Operator; or
- (c) any person or person and their relatives (as defined in the Income Tax Assessment Act 1936) not holding between them more than fifty percent (50%) of the issued capital or voting rights of the Operator acquires or acquire between them so much of the issued capital or voting rights of the Operator as when added to the issued capital or voting rights (if any) previously held by that person or those persons represent in aggregate more than fifty (50%) of the issued capital or voting rights of the Operator; or
- (d) any of the changes referred to in clause 24.2(a) to 24.2(c) occur to any holding company (as defined in the Corporations Act) of the Operator or to any holding company of any holding company of the Operator.

Part G - Performance Management

25 Review and Monitoring of Service

25.1 Review

The Operator's performance under this Contract will be subject to:

- (d) annual reviews;
- (e) a mid-term review, and
- (f) an end-of-term review,

conducted in accordance with section 46 (Review of holder's performance) of the Act, at the discretion of the Chief Executive and subject to reasonable notice being given to the Operator. To avoid doubt, where an annual review coincides with a mid-term review or an end-of-term review, the parties will only be required to complete a single review process.

25.2 Review Information

The Chief Executive may take into account the following when conducting the review:

- (a) the annual report bundle described in Schedule 3;
- (b) the Service Data;
- (c) records (including both Operational Records and Financial Records);
- (d) accounts and other financial material; and/or
- (e) any other material relevant to the performance of this Contract.

25.3 Travel on services

The Operator will allow a representative of the Chief Executive access to the premises from which the Operator conducts its administration and to travel free of charge on any Contract Vehicle to monitor or observe the provision of the Services, subject to reasonable notice being given to the Operator.

25.4 Review at request of either Party

The parties further agree that the Operator's performance will also be subject to any further review that may be requested by either party during the Term, to be conducted in accordance with section 46 (Review of holder's performance) of the Act.

25.5 Guidelines and directions

The Operator will comply with guidelines and directions issued by the Chief Executive and will co-operate to ensure that reviews conducted under this clause are completed promptly and to implement all improvements which the Chief Executive reasonably determines are necessary.

26 Key Performance Indicators and Minimum Service Levels

26.1 Acknowledgement

- (a) The parties acknowledge:
 - (i) the importance of continually improving the quality of the contracted Services;
 - (ii) that the Minimum Service Levels, KPIs and associated KRAs provide an indication of the quality of Services; and
 - (iii) that over time, the Minimum Service Levels and KPIs may need to be adjusted in accordance with clause 27.7, to reflect the Operator's progress against the Minimum Service Levels and KPIs and future requirements.
- (b) The Operator acknowledges and agrees that the Services and the Operator's performance will be evaluated against the agreed Minimum Service Levels and any KPIs in Schedule 2.

26.2 Reporting

The Operator must report against any KPIs in the ways and at the intervals specified in Schedule 2.

26.3 Measures

At the expiry of each six (6) month period of the Term, the Chief Executive will measure the Operator's performance against the Minimum Service Levels and KPIs by reference to those measures available to the Chief Executive, including but not limited to:

- (a) the Operator's reports under clause 26.2;
- (b) information provided to the Chief Executive in respect of previous or upcoming annual reviews, pursuant to clause 25.1;
- (c) information and data reportable to the Chief Executive under this Contract, or the Act;

- (d) checks, audits and/or inspections undertaken by, or on behalf of the Chief Executive; and
- (e) any data or technology that may become available over time relating to the Services, or the Operator's performance.

26.4 Performance Measurement

Upon completion of the measures referred to in clause 26.3, the Chief Executive will notify the Operator of the outcome of the review and may issue a rectification notice in accordance with clause 27.1.

27 Performance Management Process

27.1 Rectification notice

If the Operator is in breach of this Contract, including any failure to meet any performance requirement in Schedule 2 or comply with the Contract Service Plan as part of the review process under clause 25.1, the Chief Executive may issue a rectification notice requiring the Operator to develop a plan to remedy the breach and, in the case of a failure to comply with the Contract Service Plan, restore performance to satisfactory levels.

27.2 Rectification Plan

- (a) Within ten (10) Business Days of receipt of a rectification notice under clause 27.1, the Operator must submit to the Chief Executive the Operator's written proposal to rectify the identified breach and/or deficiencies, including a proposed timeframe (**Rectification Plan**).
- (b) The parties will co-operatively discuss the proposed Rectification Plan with a view to finalising a Rectification Plan that is acceptable to the Chief Executive.
- (c) Where the Rectification Plan is acceptable to the Chief Executive, the Operator must comply with the Rectification Plan.
- (d) If there is no Rectification Plan acceptable to the Chief Executive within twenty (20) Business Days of receipt of a rectification notice under clause 27.1, the Chief Executive may take action in accordance with clause 27.4.

27.3 Successful completion of Rectification Plan

- (a) Upon completion of the Rectification Plan, the Operator's performance will be measured against the terms of the Rectification Plan (including any amendments to Schedule 2 or amendment to the Contract Service Plan agreed under the Rectification Plan).
- (b) Where the identified breach has been rectified, the Chief Executive will notify the Operator accordingly.

27.4 Failure to rectify

If the Operator:

- (a) fails to develop a Rectification Plan which is acceptable to the Chief Executive within the required time; or
- (b) fails to comply with its Rectification Plan; or
- (c) fails to rectify the identified breach to the satisfaction of the Chief Executive,

the Chief Executive may escalate the issue to the show cause process under clause 27.5.

27.5 Show cause process

- (a) If the Chief Executive escalates the issue under clause 27.4, the Chief Executive must issue a show cause notice to the Operator setting out details of the identified breach and details of the

action which the Chief Executive proposes to take in respect of such breach and/or deficiency (**Show Cause Notice**).

- (b) Within ten (10) Business Days of the date of the Show Cause Notice, the Operator may make written representations about the proposed action under clause 27.5(a).
- (c) The Chief Executive may, after the date that is ten (10) Business Days from the date of the Show Cause Notice, immediately amend, suspend or cancel this Contract by notice to the Operator, if the Chief Executive reasonably believes that the Operator is unable to provide any or all of the Services.
- (d) The State will not be liable to compensate the Operator for any action taken under this clause 27.5 except in accordance with section 42 of the Act.

27.6 Other rights

Without limiting any other right or ability that the Chief Executive may have under the Act or this Contract (including, without limitation, the ability to exercise his or her rights under clause 37 in the circumstances set out in that clause), if, after deciding whether or not to issue a notice under clause 27.5, the Chief Executive considers that the outcome is still not acceptable, the Chief Executive may exercise any of its rights under clause 37.

27.7 KPI adjustments

- (a) If KPIs are specified in Schedule 2, the following process for KPI adjustments will apply:
 - (i) Upon the initiation of either party, the parties will co-operatively review and adjust the KPIs as may be necessary from time to time to ensure the relevance of the KPIs to the Services and the continual improvement of the quality of the Services.
 - (ii) If the parties are unable to agree upon the proposed KPIs within twenty (20) Business Days of commencing the review, either party may invoke the dispute resolution process as set out in clause 38.
 - (iii) Upon any adjustment of the KPIs by the parties under clause 27.7(a) or following dispute resolution under clause 27.7(a)(ii), the adjusted KPIs will be recorded in a replacement Schedule 2, and take effect as a variation to this Contract.

27.8 No limitation

No action taken by the Chief Executive under this clause will affect or limit any other right or remedy that the Chief Executive may have under the Act or this Contract.

Part H - Assignment and Subcontracting

28 Subcontracting

28.1 Direct dealings

The Chief Executive may, but is not obliged to, deal directly with the subcontractor (including meeting and corresponding with and giving notices to the subcontractor) concerning any matter relating to the subcontractor's operations, and this shall be deemed to be a dealing directly with the Operator for the purposes of this Contract.

28.2 Consent required

The Operator will not subcontract the provision of any of the Services without the prior written consent of the Chief Executive, which:

- (a) may be conditional and require step in rights to deal directly with the subcontractor;

- (b) will not operate as an authority to transfer responsibility for obligations of the Operator under this Contract to the subcontractor; and
- (c) will not relieve the Operator of any of its liabilities or obligations under this Contract.

28.3 Responsibility for subcontracted Services

If the Operator subcontracts any of its obligations under this Contract, the Operator:

- (a) remains responsible for the performance of this Contract in accordance with its terms, notwithstanding any such subcontracting;
- (b) is liable to the State for the acts and omissions of all subcontractors, and employees and agents of subcontractors, as if they were acts or omissions of the Operator; and
- (c) must ensure that any subcontractor complies with all of the terms of this Contract and does not itself subcontract without the prior written consent of the Chief Executive.

29 Transfer and Surrender of Contract

29.1 Transfer

The Operator may transfer its rights and liabilities under this Contract only with the prior written approval of the Chief Executive in accordance with section 48 (Transfer or surrender of service contracts etc.) of the Act.

29.2 Surrender

The Operator may surrender this Contract only with the prior written approval of the Chief Executive in accordance with section 48 (Transfer or surrender of service contracts etc.) of the Act.

29.3 Consequences of surrender

The Operator will not be liable to pay any amount to the Chief Executive for the cost of engaging another person to provide the Services in the place of the Operator after the effective date of surrender, although this does not limit any other obligation to pay compensation, whether in respect of default of the Operator or otherwise.

29.4 Chief Executive approval

The approval of the Chief Executive under this clause may be given or declined, or given subject to such conditions as the Chief Executive thinks fit. In exercising his or her discretion under this clause 29, the Chief Executive must act reasonably.

29.5 Request for approval

The Operator will provide any request for approval of the Chief Executive to the Chief Executive at least three (3) months prior to the proposed effective date of the transfer, or surrender of this Contract, and must provide such further information as is reasonably requested by the Chief Executive in respect of any such request.

Part I - Information Management

30 Intellectual Property

30.1 Ownership of Intellectual Property Rights

The parties acknowledge that, unless and to the extent otherwise agreed in writing from time to time:

- (a) each party remains the owner of any Existing Contract Material contributed by it, and all Intellectual Property Rights associated with the Existing Contract Material, including any modification effected in connection with this Contract; and

- (b) all Intellectual Property Rights in any New Contract Material will vest in the State upon creation.

30.2 Licensing

- (a) The Operator grants the State a non-exclusive, non-transferable, royalty free and perpetual licence to use the Operator's Existing Contract Material for the purpose of:
- (i) exercising its rights and performing its obligations under this Contract;
 - (ii) improving use of public transport services, including the Services;
 - (iii) reporting about the Services or the Operator's performance under this Contract;
 - (iv) planning and policy development in relation to the Services and/or public passenger transport more broadly;
 - (v) fulfilling any obligations that the Chief Executive may have under the Act, Regulation or Standard or otherwise at law;
 - (vi) making available information services for the benefit of passengers of public transportation services;
 - (vii) achieving improvements, including greater efficiency, in the delivery of public transportation services in the State of Queensland;
 - (viii) provision of public transportation services into developing areas; and
 - (ix) aligning with and/or meeting Government objectives.
- (b) The State grants the Operator a non-exclusive, non-transferable, royalty free licence to use the State's Existing Contract Material and New Contract Material during the Term for the sole purpose of performing the Services and complying with its obligations under this Contract.
- (c) Where the State does not own the Intellectual Property Rights in Contract Material or part of any Contract Material (including, without limitation, the right to sub-license that Contract Material or part thereof and to grant any third party access to that Contract Material or part thereof), the Operator must grant or procure the grant of a non-exclusive, unrestricted, royalty free, perpetual and irrevocable licence to use that Contract Material or part thereof, as the case may be.

30.3 Operator Obligations

The Operator agrees to sign such documentation as is reasonably required in order to give effect to any transfer of ownership or licence of Intellectual Property Rights to the State under this clause 30.

31 Moral Rights

31.1 Waiver of Moral Rights

To the extent permitted by applicable law:

- (a) the Operator unconditionally and irrevocably consents, and will use all reasonable efforts to obtain all other necessary unconditional and irrevocable written consents, to any act or omission that would otherwise infringe any Moral Rights in any work which is included in any Contract Material, whether occurring before or after a consent is given; and
- (b) the Operator unconditionally and irrevocably waives, and will obtain all other necessary unconditional and irrevocable written waivers of, all Moral Rights,

for the benefit of the State, its licensees, successors in title and anyone authorised by any of them to do acts comprised in the copyright.

If the Operator is unable to obtain the consent of an employee or any other person as required by clause 31.1(a), it must immediately inform the State, in which case the State may, at its discretion, require the substitution of that employee or person in relation to the provision or supply of the Services if it is reasonable to do so in all the circumstances.

31.2 Operator not to Claim Infringement of Moral Rights

The Operator will not institute, maintain or support any claim or proceeding for infringement of Moral Rights in any work included in any Contract Material and must use its best endeavours to ensure that no one else does so.

31.3 Operator to provide Copies of Consents

The Operator will provide the Chief Executive with copies of each written consent and waiver required under this clause 31 within 10 Business Days of a request by the Chief Executive.

32 Confidentiality

32.1 Keep Confidential

Without limiting the application of section 148C (Confidentiality) of the Act and subject to clause 32.2, each party must keep the other party's Confidential Information confidential, and must not disclose it to any other person without the written consent of the other party.

32.2 Exceptions to Confidentiality

The obligations of confidentiality set out in clause 32.1 will not apply in the following circumstances:

- (a) any disclosure or use contemplated or permitted by this Contract;
- (b) any disclosure required by law;
- (c) in the case of the State, any disclosure permitted or required in order to comply with a request, direction or order from the Queensland Government (including, without limitation, the Minister for Transport);
- (d) in the case of the Operator, disclosure to the relevant industry body (currently QBIC and/or QSBA) which the Operator considers necessary or appropriate to enable such industry body to perform its functions at the Operator's request;
- (e) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality; or
- (f) disclosure to a banker or other financial institution relevant to the Operator, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution first gives a binding covenant to the State to maintain confidentiality, in form and substance satisfactory to the State.

32.3 Right to Information and Disclosure

The Operator acknowledges that:

- (a) the *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies; and
- (b) accordingly, information relating to this Contract is potentially subject to disclosure to third parties.

32.4 Consent to use, reporting and publication

The Operator expressly consents to the use, release and publication of the following information by the Chief Executive, the Department or any Government Authority:

- (a) patronage levels;

- (b) number of Contract Vehicles and average vehicle age;
- (c) network and Service performance information, such as on-time running, kilometres travelled and any other performance matter determined by the Chief Executive;
- (d) Service information, such as Timetables, route information and variations and hours operated;
- (e) details of the Operator's compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth); and
- (f) details of the Operator's compliance with the Act, Regulation and Standard and any other laws.

33 Privacy

33.1 Information Privacy Act 2009

If the Operator collects or has access to Personal Information in order to perform this Contract the Operator must:

- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this Contract as if the Operator was the State;
- (b) not use Personal Information other than for the purposes of performing its obligations under this Contract, unless required or authorised by law;
- (c) not disclose Personal Information without the prior written consent of the Chief Executive, unless required or authorised by law;
- (d) not transfer Personal Information outside of Australia without the prior written consent of the Chief Executive;
- (e) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties;
- (f) ensure that its employees and officers do not access, use or disclose Personal Information other than in the performance of their duties;
- (g) ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Operator under this clause;
- (h) fully co-operate with the Chief Executive to enable the Chief Executive to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to respond to privacy complaints; and
- (i) comply with such other privacy, information security, ticketing system security and physical security measures as the Chief Executive reasonably advises the Operator in writing from time to time.

33.2 Deed of privacy

On request by the Chief Executive, the Operator must obtain from its employees, officers or subcontractors engaged for the purposes of this Contract, an executed deed of privacy in a form acceptable to the Chief Executive.

33.3 Notice of breach

The Operator must immediately notify the Chief Executive on becoming aware of any breach of clause 33.1.

Part J - Risk Management

34 Representations and warranties

34.1 Representations and warranties to be true

Each party represents and warrants to the other party that all statements, representations and projections made or required to be made under this Contract by the first party or any representatives of that party are and will be, to the best knowledge of the party and its representatives (after making reasonable enquiries and based on reasonable assumptions and not omitting any material detail within the knowledge of the party or its representatives), complete, true, accurate, made on reasonable grounds, and not misleading or deceptive or likely to mislead or deceive.

34.2 Warranty of authority

Each person signing this Contract as an authorised officer or agent for any party, by so doing, warrants to the other party that, as at the date of signing, that person has full authority to execute this Contract on behalf of that party.

34.3 Power of attorney

Each person signing this Contract as attorney for a party, by so doing, warrants to the other party that as at the date of signing as attorney that person has not received any notice or information of the revocation of the power of attorney appointing that person.

34.4 No oral or written warranties

No oral or written warranties, representations, or other terms or conditions of any nature not contained in this Contract will be of any force unless they have been reduced to writing and signed by the parties and are expressed to be in modification of this Contract.

35 Liability and Indemnity

35.1 Limitation of Liability

- (a) The State's total liability to the Operator in connection with this Contract or any breach thereof shall be limited to the Contract Payments paid to the Operator under this Contract. The State shall not be liable to the Operator for any special, consequential or indirect loss or damage, even if advised of the possibility of such loss or damage.
- (b) To the extent permitted by law, if a court holds that the State or the Chief Executive is liable to pay damages to the Operator and if the Operator or any other person (including other advisers to the Operator) has contributed to the loss the Operator suffered, the damages payable by the State or Chief Executive will be reduced to the extent of such contribution.

35.2 Indemnity

- (a) The Operator indemnifies the State, the Chief Executive and all servants, agents and contractors of the State (the "Indemnified" for the purposes of this clause 35) from and against all actions, claims, demands, direct, indirect or consequential losses (including lost profits, revenue and opportunities), damages, costs (including legal costs on a full indemnity basis) and expenses for which any of the indemnified may sustain or become liable arising directly or indirectly out of or in connection with this Contract.
- (b) Without limiting the foregoing, the indemnity in this clause 35.2 applies in all circumstances, including in relation to :
 - (i) the performance or non-performance of this Contract, or any other act or omission, by the Operator or any agent, subcontractor or employee of the Operator;
 - (ii) any claim by a third party in connection with the subject matter of this Contract (whether arising in tort, contract, by law or under statute);

- (iii) any claim that the use of any Contract Material (other than the State's Existing Contract Material) infringes or may infringe the Intellectual Property Rights of any third party;
 - (iv) any death, personal injury, loss or damage sustained by passengers or any third party in connection with the provision of the Services;
 - (v) any inaccurate or incorrect information provided by the Operator under this Contract which is relied upon by the State, the Chief Executive or a third party to their detriment;
 - (vi) the use of the Operator's premises, Contract Vehicles or other facilities by any person in order to access, travel on or exit the Services; and
 - (vii) any exercise or failure to exercise any right under this Contract by the State or the Chief Executive.
- (c) This indemnity will not apply to the extent that the loss, damage or claim is caused or contributed to by the negligent act or omission of the indemnified.
 - (d) This indemnity will not exclude any other right that the indemnified may have to be indemnified by the Operator.

35.3 Release

The Operator releases the indemnified from all actions, proceedings, claims and demands which, but for the indemnity provision of this clause, might be brought or made against any of the indemnified by the Operator.

36 Insurance

36.1 Insurance

The Operator will maintain the following insurances at its own expense during the Term:

- (a) Workers' compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (Qld);
- (b) adequate public liability insurance for an amount per incident of not less than that specified in Item 6 of Schedule 1 and with an excess amount that is within the range specified in Item 6 of Schedule 1;
- (c) motor vehicle insurance as required under clause 4.2 of Schedule 4, for all vehicles used to provide Services under this Contract; and
- (d) any other insurance:
 - (i) which the Chief Executive may reasonably require; and/or
 - (ii) in the amounts and for perils against which a prudent operator would protect itself in similar circumstances.

36.2 Terms of Insurance

The insurances effected under this clause 36 will:

- (a) contain a waiver of any subrogation rights which the Operator's insurers may have against the indemnified where the damage is caused by the act, omission or negligence of the indemnified; and
- (b) be taken out with reputable insurers and on terms satisfactory to the Chief Executive.

36.3 Evidence of insurance

The Operator will, upon request of the Chief Executive, provide the Chief Executive with evidence of the currency and a copy of the terms and conditions of the insurances effected under clause 36.

Part K - Disputes and Termination

37 Amendment, suspension, cancellation or termination of Contract

37.1 Amendment, suspension or cancellation

- (a) The Chief Executive may amend, suspend or cancel this Contract in accordance with section 47 (Amendment, suspension or cancellation of service contracts for breach of the service contract) of the Act.
- (b) Without limiting in any way the discretion conferred by section 47(3) of the Act, the circumstances which the Chief Executive may consider in forming a reasonable belief that the Operator is unable to provide any or all of the Services required under the Contract under section 47(3) of the Act may include any failure by the Operator to:
 - (i) hold any required accreditation under the Act;
 - (ii) comply with any term of this Contract which impacts, or may impact, the continued delivery of the Services;
 - (iii) deliver Services in accordance with the Contract Service Plan, including the Timetables;
 - (iv) satisfy any Minimum Service Level, KPI or KRA;
 - (v) cooperate with directions of the Chief Executive;
 - (vi) provide reports as required by this Contract, or provide access to data and records to any representative of the Chief Executive; or
 - (vii) comply with the safety requirements set out in clause 13 to the satisfaction of the Chief Executive.

37.2 Additional measures

If the Operator has contravened a term or condition of this Contract or the Chief Executive determines a contravention of this Contract by the Operator is imminent, the Chief Executive may, without limiting any other right that the Chief Executive may have under this Contract, the Act or otherwise at law, do any one or more of the following:

- (a) suspend the operation of this Contract for any period during which the contravention continues and, at the Operator's expense, engage another person to provide the Services in the place of the Operator or any subcontractor of the Operator for the period of the suspension;
- (b) if any of the rights granted to the Operator are then exclusive to the Operator, terminate the exclusive nature of all or some of those rights and exercise the Chief Executive's rights in clause 5.3;
- (c) take legal action against the Operator for damages for breach of contract; and/or
- (d) require the Operator and subcontractors, employees and officers of the Operator nominated by the Chief Executive to undertake, at the Operator's expense, such training and obtain such assistance as the Chief Executive may determine.

37.3 Termination

Without prejudice to any other rights the Chief Executive may have under this Contract or at law, including in addition to the Chief Executive's rights under clauses 27, 37.1 and 37.2, the Chief Executive may terminate this Contract immediately by notice in writing:

- (a) where the Operator is in breach of this Contract and such breach is not remedied within 30 Business Days of written notice by the Chief Executive;
- (b) where the Operator is in breach of any term of this Contract and such breach is incapable of remedy;
- (c) in accordance with clause 23.2; or
- (d) if the Operator becomes or threatens to become or is in jeopardy of becoming subject to an Insolvency Event.

37.4 Consequences of Termination

- (a) Without limiting any other rights the Chief Executive may have under this Contract or at law, if this Contract is terminated the Chief Executive may;
 - (i) recover the Service Data and all related data, documentation and records retained by the Operator pursuant to this Contract;
 - (ii) recover Confidential Information of the State and Contract Material that is in the possession, custody or control of the Operator;
 - (iii) be regarded as discharged from any further obligations under this Contract; and
 - (iv) pursue any additional or alternative remedies provided by law.
- (b) On termination or expiry of this Contract, the Operator must immediately cease using and promptly return to the State, at no additional cost to the State, all materials (whether in written or electronic form) that contain or encapsulate any of the State's Contract Material, other State materials and the State's Confidential Information.

37.5 No compensation for termination

- (a) Without limiting the operation of section 47(4) of the Act, no compensation will be payable by the Chief Executive in respect of any action taken under clause 37 to the Operator or to any other person and the Operator will indemnify the State and Chief Executive against any subcontractor or third party claim arising from the Chief Executive's exercise of any rights under this clause 37.
- (b) Any action taken under this clause 37 will not defer, delay or limit any other rights the Chief Executive may have (including, without limitation, a right of termination under this clause or the Act or a right to seek damages in respect of any default).

37.6 Rights on Termination

Termination of this Contract will not affect any claim or action either party may have against the other by reason of any antecedent breach of this Contract and will not relieve either party of any obligation under this Contract which is expressed to continue after termination.

37.7 Monies Payable to the Chief Executive

Upon an amendment, suspension, cancellation or termination of this Contract by either party for any reason, the Operator will immediately pay to the Chief Executive all amounts then payable under this Contract or the Act.

38 Dispute Resolution

38.1 Before court proceedings

Unless a party has complied with the procedure in the following parts of this clause 38, that party may not commence court proceedings relating to any dispute arising from this Contract, except where that party seeks urgent interlocutory relief (in which case that party need not comply with this clause 38 before seeking such relief). Where a party fails to comply with this clause 38, any other party in dispute with the party so failing to comply need not comply with this clause 38 before commencing court proceedings relating to that dispute.

38.2 Notice of dispute

Any party claiming that a dispute has arisen under this Contract between the parties will give notice to the other party designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The party given written notice will promptly give notice to the other party, designating as its representative in negotiations relating to the dispute a person with similar authority.

38.3 Seek to resolve

The designated representatives of the parties will seek to resolve the dispute within ten (10) Business Days of the last designation required by clause 38.2. If the dispute is not resolved within that period of ten (10) Business Days (or within such further period as the representatives may agree is appropriate) either party may refer the dispute for mediation in accordance with clause 38.4.

38.4 Mediation

The mediation will be conducted by:

- (a) a mediator agreed on by the parties within ten (10) Business Days; or, in default of agreement; or
- (b) a mediator nominated by the President of the Queensland Law Society or that President's nominee, at the request of either party.

The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing. Each party must bear its own costs of attending the mediation and the parties must bear equally the costs of any mediator engaged.

38.5 Performance of obligations

Despite the existence of a dispute, each party must continue to perform its obligations under this Contract.

38.6 Termination of process

If the parties are unable to resolve the dispute through mediation under clause 38.4, any party which has complied with the provisions of clause 38 may in writing terminate the dispute resolution process and may then commence court proceedings relating to the dispute.

38.7 Without prejudice

The purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 38 is to attempt to settle the dispute between the parties. It may not be used for any other purpose, and must be treated as "without prejudice" in any subsequent court proceedings.

39 Compensation under Section 61

If the Invitation requires the Operator to pay compensation to an existing operator under section 61 (Compensation) of the Act, the Operator will pay compensation as agreed in accordance with that section. If the Operator and the person to whom compensation is payable cannot agree on the amount of compensation within three (3) months after the Commencement Date, the Operator will refer the matter to arbitration in accordance with section 61 (Compensation) of the Act.

Part L - General Contract Matters

40 Notices

40.1 Addresses for notices

Any notice in connection with this Contract will be taken to have been given when made in writing and delivered by hand, pre-paid post or facsimile to the party to which it is intended by be given at the parties' respective addresses set out in Items 7 and 8 of Schedule 1, or to such other address, or facsimile number as may from time to time be notified in writing by one party to the other for the purposes of this clause.

40.2 Receipt after posting

Any notice or other communication sent by pre-paid post will be taken to have been received at the expiration of three (3) Business Days after the date of posting.

40.3 Receipt of facsimile

Any notice sent by facsimile transmission will be taken to have been received upon completion of an apparently successful transmission. However, if a facsimile is sent on a Business Day after 5.00pm at the place of receipt, or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

40.4 Other communications

Communications other than notices in connection with this Contract may be given by delivery, posting and facsimile, or other methods including e-mail, as agreed between the parties.

41 General Provisions

41.1 Successors

This Contract is binding on the parties and their respective successors and permitted assigns, and will be enforceable by and against the parties, or those successors and assigns.

41.2 Counterparts

This Contract may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

41.3 Entire agreement

This Contract contains the entire agreement between the parties and supersedes all prior arrangements and understandings of whatever nature made in relation to its subject matter.

41.4 Applicable Law and Jurisdiction

This Contract is governed by and will be construed in accordance with the laws of Queensland. Any proceedings between the parties brought at any time that relate in any way to this Contract will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.

41.5 Variations and Waivers to be in Writing

No variation, modification or waiver of any provision in this Contract, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it.

41.6 Waiver

No failure, delay, relaxation or indulgence by any party in exercising any right conferred on such party by this Contract will operate as a waiver of such right, nor will any single or partial exercise of any such right nor any single failure to do so, preclude any other or future exercise of it, or the exercise of any other right under this Contract.

41.7 Joint and Several Obligations

- (a) If any party consists of more than one person, then the liability of those persons in all respects under this Contract will be a joint liability of each two or more of those persons and a liability of each of those persons severally.
- (b) Any agreement, representation or warranty in favour of more than one party is for the benefit of each two or more of those parties jointly and each of them severally.

41.8 Authority to Complete Blanks etc

The Chief Executive may date this Contract and complete any blanks left by the Operator, provided that the obligations of the Operator are not materially increased.

41.9 Further Assurances

Each party to this Contract will do all things and sign all deeds and other documents as may reasonably be required by the other party so as to carry out and give effect to the terms and intentions of this Contract and to perfect, protect and preserve the rights of the other party.


41.10 Survival of clauses

Clauses 1, 3, 4.2, 7, 10.1, 11, 18, 21.1, 23.1, 28.3, 30, 31, 32, 33, 34 35, 37.4, 37.5, 37.6, 37.7, 40 and 41 and clause 2.4 of Schedule 5 survive the termination or cancellation of this Contract.

Executed by the State of Queensland
represented by the Department of
Transport and Main Roads by its duly
authorised delegate:

.....
Signature of witness

.....
Name of witness (print)


.....
Signature of delegate

.....
Name of delegate (print)

.....
Position of delegate (print)



Executed by Gold Coast Mini Coaches Pty
Ltd ACN 106 666 148 acting by the following
persons or, if the seal is affixed, witnessed by
the following persons:

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

Part Refuse Sch.4 Part 4 s.6 PI

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

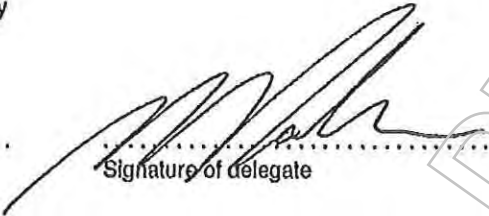
4/5/2012

4/5/2012

Executed by the State of Queensland
represented by the Department of
Transport and Main Roads by its duly
authorised delegate:

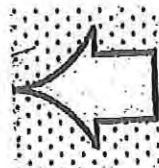
.....
Signature of witness

.....
Name of witness (print)


Signature of delegate

.....
Name of delegate (print)

.....
Position of delegate (print)



Executed by Gold Coast Mini Coaches Pty
Ltd ACN 106 666 148 acting by the following
persons or, if the seal is affixed, witnessed by
the following persons:

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

.....
Name of authorised person (print)

4/5/2012

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

.....
Name of authorised person (print)

4/5/2012

Executed by the State of Queensland
represented by the Department of
Transport and Main Roads by its duly
authorised delegate:

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of delegate

..... M. CALTABIANO
Name of delegate (print)

..... DIRECTOR GENERAL
Position of delegate (print)

Executed by Gold Coast Mini Coaches Pty
Ltd ACN 106 666 148 acting by the following
persons or, if the seal is affixed, witnessed by
the following persons:

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

.....
Signature of authorised person

.....
Position held

.....
Name of authorised person (print)

Schedule 1

Contract Details

Item	Description	Detail
1	Commencement Date	7 May 2012
2	Expiration Date	Three calendar years from the Commencement Date
3	Public Passenger Services	Road-based General Route Services
4	Contract Vehicles	As set out in the Register of Contract Vehicles at Annexure C, as amended from time to time.
5	Depot location	18 Industrial Avenue Molendinar Qld 4214
6	Insurance	Minimum public liability insurance amount: <div>Part Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affair</div> Vehicle insurance excess: <div></div>
7	Address for service of notices – State	General Manager (Passenger Transport) Department of Transport and Main Roads Floor 6 420 George Street Brisbane QLD 4001 Facsimile:(07) 3236 3159 Contact: Mr Ryan Huelin
8	Address for service of notices – Operator	PO Box 4965 GCMC QLD 9726 Facsimile: (07) 3020 3805 Contact: <div>Part Refuse Sch.4 Part 4 s.6 PI</div>

Schedule 2

Minimum Service Levels

The operator shall provide a service to co-ordinate with every scheduled arrival and departure of a passenger aircraft operated by a major airline.

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Schedule 3

Data and Reporting

1 Reporting

The Operator is required to provide the following reports in accordance with this Contract:

Report	Content and format	Frequency
Monthly Summary Report	In accordance with the template provided by the Chief Executive below	Monthly, within 10 Business Days of the completion of each month during the Term
Annual reporting bundle, consisting of the following: <ul style="list-style-type: none"> updated business continuity plan, in accordance with clause 14.4; register of customer comments for the preceding year, in accordance with clause 13.6; and any other information reasonably required by the Chief Executive to be included in the annual report bundle. 	<p>In accordance with the template provided by the Chief Executive from time to time</p> <p>In accordance with the template provided by the Chief Executive from time to time</p> <p>As notified to the Operator by the Chief Executive.</p>	Annually, within 10 Business Days of the anniversary of the Commencement Date
Register of Contract Vehicles	In the form and containing the information set out in Schedule 4	In accordance with clause 3.1 of Schedule 4
Incident Management Plans	In accordance with the Standard	In accordance with clause 22.1(b) of the Contract
Incident Report	In accordance with the Standard	In accordance with clause 22.3 of the Contract
Any information requested by the Chief Executive to enable the Chief Executive to assess the Operator's Vehicle Accessibility compliance in accordance with clause 10.3(b) of the Contract	As notified to the Operator by the Chief Executive	Within 10 Business Days of receiving the Chief Executive's request.

Report	Content and format	Frequency
Any information that the Chief Executive reasonably requires in order to assess the performance of the Operator under the Contract.	As notified to the Operator by the Chief Executive.	Within 10 Business Days of receiving the Chief Executive's request, or as otherwise agreed between the parties.
Any information relevant to the provision of the Services that is requested by the Chief Executive	As notified to the Operator by the Chief Executive.	Within 10 Business Days of receiving the Chief Executive's request, or as otherwise agreed between the parties.

2 Monthly Summary Report Template

DECLARATION FOR THE MONTH OF

Operator	
ABN	
Trading As	
Address	
Contract Area	

The following report is to be provided for each trip on each route.

Period: From To

	Adult		Child		Pre-booked		Walk-up		Total	
	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$
Services to the Airport										
Services from the Airport										

Certification:

The figures above represent a true statement of the passenger numbers and revenue for the Service Contract Area for the period shown.

Signature of Operator _____ Date _____

Schedule 4

Contract Vehicles

1 Vehicle Standards & Maintenance

The Operator will:

- (a) ensure that all Contract Vehicles used in the operation of Services under the Contract comply with the requirements of the Act, Regulation and Standard and any other applicable laws;
- (b) ensure that all Contract Vehicles used in the operation of Services under the Contract are clean and tidy when performing the service;
- (c) ensure that Contract Vehicles displaying all over advertising will clearly display the trading name of the Operator on the front of the Contract Vehicle;
- (d) ensure that all Contract Vehicles used in the operation of Services under this Contract have and comply with a documented vehicle maintenance plan in accordance with the Standard;
- (e) take all reasonable steps to ensure that Contract Vehicles are free from Defects; and
- (f) ensure that Contract Vehicles possess a current certificate of inspection unless the particular vehicle is exempted from this requirement under clause 22 of the *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999* (Qld).

2 Advertising

2.1 Advertising

The Operator must not permit any advertising on a Contract Vehicle which in the opinion of the Chief Executive is:

- (a) political in nature;
- (b) sexual in nature;
- (c) not compliant with the requirements of section 119 (Advertising on public passenger vehicles) of the Regulation;
- (d) inconsistent with the objectives of the Act;
- (e) unsuitable for display on a Contract Vehicle; or
- (f) detracts from a positive image of public passenger transport.

If the Operator is directed to remove any advertising on the basis that it breaches this clause 2.1, the Operator must, at its cost, promptly comply with such direction.

3 Contract Vehicle Records

3.1 Register of Contract Vehicles

The Operator's register of Contract Vehicles as at the Commencement Date appears in

Annexure C.

- (a) The Operator must maintain a complete, accurate and up-to-date register of all Contract Vehicles. The register must be maintained in the format prescribed by the Chief Executive and at a minimum, contain the following categories of information:
 - (i) vehicle number;
 - (ii) vehicle registration;
 - (iii) year of manufacture;
 - (iv) vehicle make and model;
 - (v) number of seats;
 - (vi) year of purchase;
 - (vii) purchase/acquisition price;
 - (viii) details of Special Vehicle Access and DDA compliance;
 - (ix) principal use; and
 - (x) Contract Vehicle age.
- (b) The Operator must provide the Chief Executive with a copy of an updated register of Contract Vehicles annually, or as otherwise requested.

4 Restrictions on disposal of Contract Vehicles

4.1 Use, maintenance and recording of Contract Vehicles

- (a) The Operator will be and remain the absolute owner of all Contract Vehicles, and nothing in this Contract will be taken to transfer title or risk in any Contract Vehicle to the State, the Department or the Chief Executive.
- (b) The Operator must maintain all Contract Vehicles in good order and condition at all times. Without limiting the generality of this obligation and the requirements set out under clause 1 of this Schedule 4, this obligation includes:
 - (i) monitoring the physical condition of the Contract Vehicles;
 - (ii) taking all reasonable steps to safeguard the Contract Vehicles from damage or theft;
 - (iii) carrying out all necessary maintenance and repairs to ensure all Contract Vehicles remain in good working order; and
 - (iv) ensuring staff are properly trained in the use and operation of Contract Vehicles.
- (c) The Operator must ensure that all maintenance and repair work performed in accordance with clause 4.1(b)(iii) is carried out by contractors or employees who are suitably skilled and experienced, and hold all appropriate qualifications, necessary to perform such work in a

workmanlike and professional manner, in accordance with generally accepted industry standards and without in any way detracting from the Operator's obligations under this Contract.

- (d) The Operator must develop and implement appropriate financial strategies to ensure that the Contract Vehicles can be replaced as necessary.
- (e) Except as otherwise provided under this Contract, the Operator is responsible to pay all costs associated with the use, operation, maintenance and repair of the Contract Vehicles, including, where applicable, vehicle registration fees.

4.2 Insurance

- (a) The Operator must take out and maintain with a reputable insurer comprehensive insurance in respect of all Contract Vehicles, for the full insurable value of the Contract Vehicles.
- (b) If the Operator fails to take out or maintain insurance as required by clause 4.2(a), the Chief Executive may effect the necessary insurance and may treat such failure as a breach of the contract, entitling the Chief Executive to exercise any of the rights under clause 27 and/or clause 37 of this Contract, or under section 47 of the Act.

Schedule 5

Customer Information and Marketing

1 Customer Information

1.1 Timetable and Route Information

The Operator must ensure that accurate, current and legible copies of the Timetables and route information are:

- (a) carried on each Contract Vehicle when providing a Service the subject of the Timetable; and
- (b) readily available at the Operator's office and at appropriate locations in sufficient numbers for public distribution.

1.2 State-operated websites

- (a) The Operator must provide the Chief Executive with an electronic version of the Timetables, in the format specified by the Chief Executive, for inclusion in any website operated by the State relating to the Services.
- (b) The Operator must immediately provide the Chief Executive with any Timetable updates and pertinent information about the Services to ensure that information on any State website remains current and accurate.

1.3 Link to Operator website

The Operator authorises the State to establish an electronic link to any website that the Operator maintains about the Services.

2 Marketing and Communications

2.1 Strategy and Campaigns

The Chief Executive may develop regional, Queensland or network-wide marketing strategies regarding provision of the Services, and will keep the Operator informed about such marketing campaigns.

The Chief Executive may also develop local marketing campaigns, in consultation with the Operator.

2.2 Operator to Cooperate in Marketing

In order to give effect to any marketing strategy, the Operator will cooperate with the Chief Executive by participating in and promoting marketing activities as reasonably required by the Chief Executive. Without limiting their scope, marketing activities may include promotions, information sessions, focus groups, surveys, community consultation, as well as participation in local or regional events.

2.3 Operator to Cooperate in Communication Campaigns

The Operator will cooperate with the Chief Executive in any communication campaign as well as stakeholder management initiatives undertaken by the State during the Term.

2.4 Media Communication

- (a) The Chief Executive and the Operator will use their best endeavours to share information with each other which relates to communication to the public in relation to the Services and which may impact on the interests of either party.
- (b) The Operator will inform the Chief Executive of any enquiries from the media concerning the Services as soon as practicable after initial contact.

Schedule 6

Special Conditions

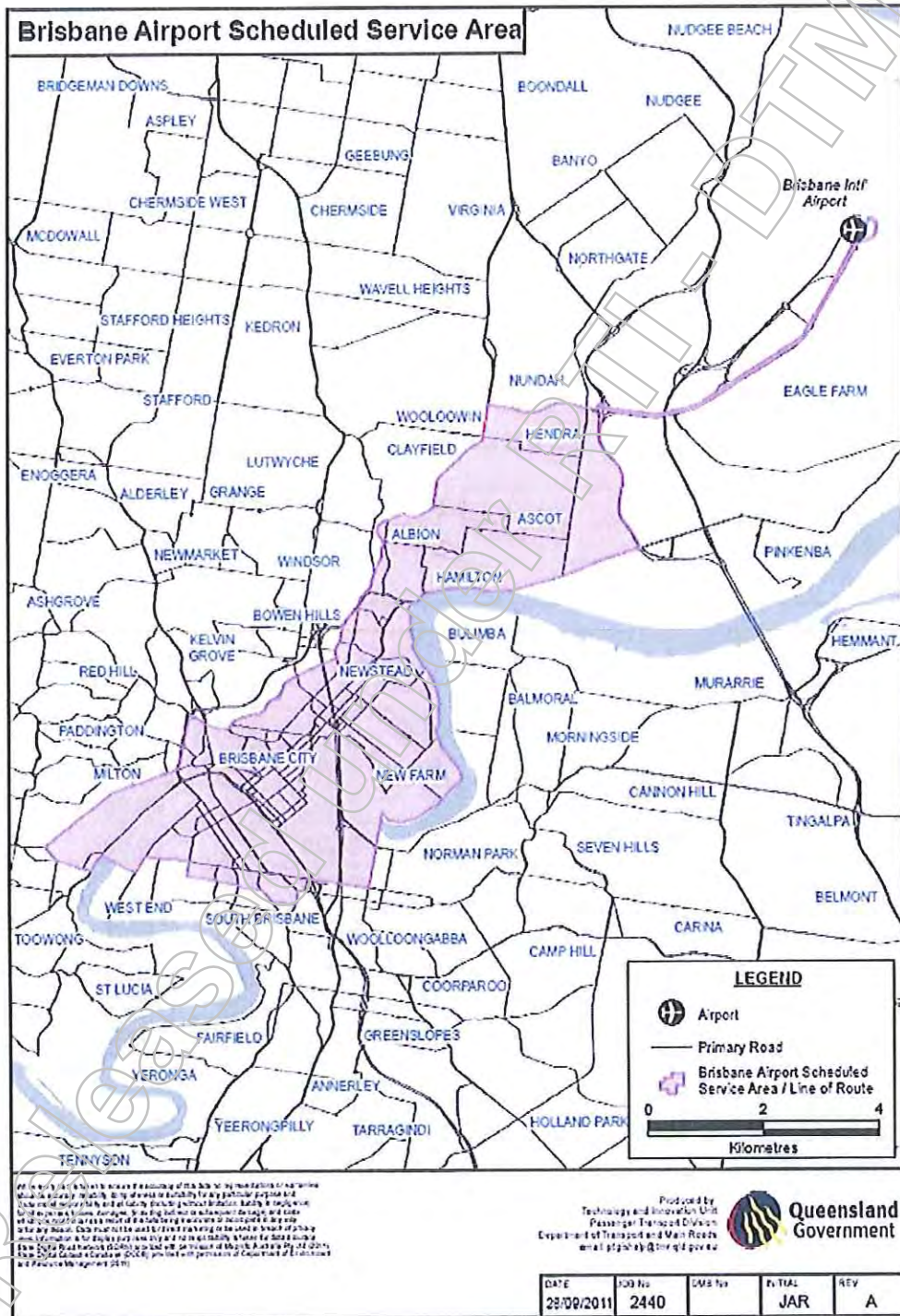
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Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

Annexure A

Contract Area



Annexure B

Contract Service Plan as at Commencement Date

[Contract Service Plan to include:

1. The Operator is to provide road-based General Route Services between the Airport (as defined) and the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping terminals located within the service contract area as defined by the map located in Annexure A.

2. These Services shall be subject to the following restrictions:

- (a) on journeys from the Airport, passengers may be picked up only at the Airport and set down only at the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping Terminals located in the service contract area; and**
- (b) on journeys to the Airport, passengers may be picked up only at the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping Terminals located in the service contract area. Passengers can be set down only at the Airport.]**

Released under RTI - DTMR

Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

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Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

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Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

Released under RTI - DTMR

Refuse Sch.4 Part 4 s.7(1)(c) Business/commercial/professional/financial affairs

Our ref: DG20182

- 3 MAY 2012

Part Refuse Sch.4 Part 4 s.6 PI

Chief Executive Officer
Gold Coast Mini Coaches Pty Ltd
T/A Con-x-ion Airport Transfers
PO Box 4965
GCMC Qld 9726

Dear

Thank you for your offer received 23 March 2012 to provide services to and from the Brisbane Airport under a service contract with the Department of Transport and Main Roads (TMR).

TMR has evaluated the Gold Coast Mini Coaches (trading as Con-x-ion Airport Transfers) offer and I am pleased to advise that your offer has been successful in meeting TMR's requirements. In accordance with the invitation to Offer, the service contract commencement date is 7 May 2012.

As per recent discussions with TMR representatives, there have been a number of amendments made to the service contract since it was originally sent to you, including changing the contract term from one to three years. Please find attached a copy of the amended contract in mark-up for your perusal. If you are in agreement with these changes, please sign the two clean copies of the service contract attached, retain one for your records and return the other to:

Department of Transport and Main Roads
Attention: Mrs Jodie Elphick
PO Box 673
Fortitude Valley Qld 4006

The service contract will be managed by Mrs Jodie Elphick, Senior Contracts Officer. If you have any further enquiries please contact Mrs Elphick on 3167 4310. Mrs Elphick will be pleased to assist.

Yours faithfully



Michael Caltabiano
BE (Hon) MPhil GDBA FIEAust FAICD RPEQ IAMA
Director-General
Department of Transport and Main Roads

Enc (3)

Office of the Director-General
85 George Street Brisbane
GPO Box 1549 Brisbane
Queensland 4001 Australia
Telephone +61 7 3306 7316
Facsimile +61 7 3306 7122

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NOT GOVERNMENT POLICY¶

State of Queensland and

Gold Coast Mini Coaches Pty Ltd

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Coachtrans Unit Trust No 2
Trading as¶
Coachtrans Australia

Exclusive Service Contract

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Date 7 May 2012

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads ABN 39 407 690 291 of 85 George Street, Brisbane, Queensland (State)

Gold Coast Mini Coaches Pty Ltd ACN 106 666 148 of Level 1, 183 Varsity Parade, Varsity Lakes, Queensland
(Operator)

Deleted: The Trustee for Coachtrans Unit Trust No 2 T/A Coachtrans Australia

Deleted: ABN 17 937 570 080

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Background

- A The State is responsible for enabling the effective planning and efficient management of public passenger services within the State of Queensland, and wishes to engage the Operator to work with it in providing certain public passenger services.
- B The Operator has agreed to work with the State to provide public passenger services on the terms and conditions of this document.

Agreed Terms

Part A - Definitions and Interpretation

1 Definitions and Interpretation

1.1 Definition in the Act

Words and expressions defined in the Act will have the same meaning in this Contract unless a contrary intention appears in this Contract.

1.2 Definitions

In this Contract, unless the context otherwise requires:

Act means the *Transport Operations (Passenger Transport) Act 1994* (Qld).

Airport means Brisbane International and Domestic Airport, as defined by the map in Annexure A Contract Area.

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Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

Chief Executive means the chief executive administering the Act from time to time and includes any person exercising a valid delegation on behalf of the Chief Executive.

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

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

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- (a) is by its nature confidential;
- (b) is designated by that party as confidential; or
- (c) the other party knows or ought to know is confidential,

and includes in relation to each party:

- (d) information comprised in or relating to any Intellectual Property Rights of the party;
- (e) information relating to the financial position of the party and, in particular, includes information relating to the assets or liabilities of the party and any other matter that does or may affect the financial position or reputation of the party;
- (f) information relating to the internal management and structure of the party, or the personnel, clients or suppliers, policies and strategies of the party;
- (g) information of the party to which the other party has access other than information referred to in paragraphs (d), (e) and (f) that has any actual or potential commercial value to the party that supplied the information; and
- (h) the terms of this Contract, including its Schedules and Annexures.

Confidential Information in relation to the State includes:

- (a) information relating to the policies, strategies, practices and procedures of the Department and the government of the State of Queensland and any information in the Operator's possession relating to the personnel of the Department or any Queensland Government Authority; and
- (b) information relating to the construction, operation and maintenance and security of the infrastructure used to provide the Services (except to the extent it constitutes information properly used by the Operator to provide services to another customer).

Confidential Information does not include information which is:

- (a) publicly known or becomes publicly known other than by breach of this Contract or any other obligation of confidentiality;
- (b) disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or
- (c) developed independently by the other party without reliance on any of the discloser's Confidential Information.

Contract means this service contract between the Operator and the State.

Contract Area means the service contract area and/or routes declared in accordance with the Act, as set out in Annexure A.

Contract Material means Existing Contract Material and New Contract Material.

Contract Service Plan means the agreed schedule of services at the Commencement Date of this Contract as set out in Annexure B, as varied in accordance with this Contract from time to time.

Contract Vehicle means each public passenger vehicle used to provide the Services, including under any subcontracting arrangement entered into by the Operator.

Defect has the meaning given to that term as prescribed in Chapter 3 of the *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999* (Qld).

Department means the Queensland Department of Transport and Main Roads.

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Driver means each person employed or contracted by the Operator to be in control of and/or operate a Contract Vehicle.

Emergency Service Change means a temporary route or schedule change that is required:

- (a) in respect of an unexpected temporary emergency event (for example, without limitation, traffic accident, natural disaster, weather event etc); and
- (d) in order to ensure the safety of passengers, drivers, pedestrians and/or other road users.

Exclusive Services means the services identified in Annexure B. as varied in accordance with this Contract from time to time.

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Existing Contract Material means any material or information created, written or otherwise brought into existence by or on behalf of a party or any third parties prior to the Commencement Date and which is necessary or appropriate for the effective performance of the Contract, whether during or after the Term.

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

Financial Records means proper books of account and all other financial records of the Operator that would ordinarily be maintained by a prudent and competent operator of public passenger services of the type, size, scope and complexity of the Services.

Force Majeure Event means (without limitation) any of the following events that are beyond the reasonable control of a party:

- (a) an act of God;
- (b) strike, lockout or other industrial disturbance (whether legal or illegal);
- (c) an act of public enemy, war, blockade, revolution, riot, insurrection, or civil commotion;
- (d) lightning, storm, cyclone, flood, fire, earthquake, or explosion;
- (e) any action, inaction, demand, order, restraint, restriction, requirement, prevention, frustration or hindrance by or of any applicable Government Authority; or
- (f) the unavailability (other than as a result of default or lack of planning or forethought by the Operator) of any essential equipment, chemicals, fuel, public utilities (such as electricity or water) or other materials.

General Route Services has the meaning given to that term under the Act.

Government Authority means the crown, a minister, a government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority and any agent or employee of any of the foregoing.

Insolvency Event means an event where:

- (a) an order is made or a resolution is effectively passed for the winding up or dissolution of the Operator (except for the purpose of solvent reconstruction or amalgamation for which the Chief Executive has given prior written approval);
- (b) the Operator goes into liquidation or makes an assignment for the benefit of, or enters into an arrangement, composition or compromise with its creditors, or any class of creditors;
- (c) a receiver and manager, controller, administrator, trustee or similar officer is appointed over all or any part of the assets of the Operator or an application or order for such appointment is made;
- (d) execution is levied against the Operator and not discharged within thirty (30) days;

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- (e) the Operator is unable to pay its debts as and when they fall due, or is deemed unable to pay its debts according to any applicable legislation (other than because of a failure to pay a debt or claim that is subject to a good faith dispute);
- (f) the Operator (being an individual) becomes bankrupt, or commits an act of bankruptcy; or
- (g) anything analogous or having similar effect to anything referred to in paragraphs (a) to (f) above occurs to the Operator.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

Invitation to Offer or Invitation means the documentation issued by the State, inviting offers for the provision of the Services.

Key Performance Indicator or KPI means the key performance indicators specified in Schedule 2, as adjusted in accordance with clause 27.7 from time to time.

Key Result Area or KRA means a key result area set out in Schedule 2.

Material Adverse Event means:

- (a) any one of the following events:
 - (i) a change in any law, regulation, policy or a direction of a Government Authority; or
 - (ii) amendment to any applicable mandatory industry standard that is outside of the reasonable control of the Operator,

that occurs during the Term which materially affects the Operator's ability to comply with its obligations under this Contract, as determined by the Chief Executive, acting reasonably.

Minimum Service Levels means the levels of service delivery specified in Schedule 2.

Monthly Summary Report means a report containing the information and in the format required by clause 2 of Schedule 3, or such other format as may be directed by the Chief Executive from time to time.

Moral Right means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; or
- (d) rights of a similar nature,

which is conferred by statute and which exists or comes to exist, anywhere in the world, in connection with this Contract.

netBI means the business intelligence solution (data warehouse) supplied by netBI Pty Ltd (ABN 20 120 804 864), that is used for the purposes of reporting.

New Contract Material means any material or information created, written or otherwise brought into existence by or on behalf of a party in the performance of its obligations under this Contract and which is necessary or appropriate for the effective performance of the Contract and/or the provision of the Services either during or after the Term, and includes (without limitation):

- (a) Service Data, including data relating to the Operator's performance of the Services under this Contract;

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- (b) route information, including the design and layout of all routes;
- (c) patronage and ticketing data, including all data collected by the Operator in connection with clause 18.5; and
- (d) Timetable information, including the content, design and layout of all Timetables.

Offer means the offer submitted by the Operator in response to the Invitation, and includes all attachments to the Offer.

Operational Records means records about the operation of the Services of a kind that would be ordinarily maintained by a prudent and competent operator of public passenger services, including but not limited to those matters specified in Schedule 3.

Personal Information means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

Public Transport Initiatives means initiatives proposed or undertaken by the State relating to public transport infrastructure and services, including, but not limited to, the introduction of busways, light railways, information systems, service delivery innovations and integrated ticketing systems.

Rectification Plan has the meaning given in clause 27.2(a).

Regulation means the *Transport Operations (Passenger Transport) Regulation 2005 (Qld)*.

Service Change means any change to the agreed details of a Service under the Contract Service Plan.

Service Data means data relating to the Services (excluding work rosters and Driver schedules) that the Operator is required to collect, retain and/or report under this Contract.

Services means the routes and/or Timetables, to be provided by the Operator under this Contract, as set out in the Contract Service Plan, as amended from time to time.

Special Conditions means the conditions of this Contract set out in Schedule 6.

Standard means the *Transport Operations (Passenger Transport) Standard 2010 (Qld)*.

State means the State of Queensland, and where the State is referred to as a party to this Contract, means the State of Queensland acting through the Department.

Term means the term of this Contract as provided for in Schedule 1.

Timetable means the schedule of times at which the Operator will provide the Services on routes in the Contract Area.

1.2 Index and clause headings

Index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of this Contract.

1.3 Interpretation

In the interpretation of this Contract, unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) a reference to any gender includes every gender;
- (c) references to a person include a corporation, association, partnership, Government Authority, or other legal entity;

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- (d) references to writing include any means of representing or reproducing words, figures, drawings or symbols, in a visible, tangible form;
- (e) references to an obligation to notify a party mean an obligation to notify that party in writing;
- (f) references to signature and signing include due execution by a corporation, or other relevant entity;
- (g) references to months mean calendar months;
- (h) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, standards, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (i) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (j) references to clauses, schedules and annexures refer to clauses, schedules, and annexures of this Contract;
- (k) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (l) no rule of construction of documents shall apply to the disadvantage of a party on the basis that the party put forward this document, or any relevant part of it;
- (m) if any term of this Contract is legally unenforceable or made inapplicable, it shall be severed or read down, but so as to maintain (as far as possible) all other terms of this Contract (unless to do so would change the underlying principal commercial purposes of this Contract);
- (n) "will" is a mandatory expression; and
- (o) references to consent mean prior written consent.

1.4 Order of Precedence

This Contract is comprised of the following documents:

- (a) clauses 1 to 41 (inclusive);
- (b) the Schedules, including any other terms and conditions referenced in those Schedules;
- (c) Annexures A to C of this Contract;
- (d) any other annexures or attachments to this Contract;
- (e) the State's Invitation; and
- (f) the Operator's Offer.

1.5 Severance

In the event and to the extent of any inconsistency between the documents listed in clause 1.4, the provisions of the earlier mentioned document in clause 1.4 will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

1.6 Priority of interpretation

If there is any inconsistency between a provision of this Contract and a provision of the Act, the Act will prevail to the extent of such inconsistency.

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Part B - Term and Contract Structure

2 Cooperation and collaboration

2.1 Parties to cooperate

The parties acknowledge and agree that their mutual intention in entering into this Contract is to work together, in accordance with the terms of this Contract, in providing the Services to members of the public.

2.2 Interpretation of Contract

Where a term or provision of this Contract can be interpreted in more than one way, and one of the possible interpretations is more consistent with a cooperative and collaborative approach, that interpretation is to be preferred.

2.3 Compliance with directions

Where this Contract requires the Operator to comply with any direction issued by the Chief Executive or the Department and such compliance would result in a material change to the scope of the Services, the Operator's costs in providing the Services or the commercial viability of the Services to the Operator, such direction must be treated as a Service Change, and the parties must comply with the process set out in the Contract Service Plan.

3 Contract

3.1 Service Contract

This Contract is a service contract under Chapter 6 (Service Contracts) of the Act. The parties acknowledge that this Contract has the purpose set out in section 37 (Purpose of service contracts) of the Act.

3.2 Objectives of the Act

The Chief Executive and the Operator will co-operate and take all reasonable actions to advance the objectives of the Act, as set out in section 2 (Objectives of the Act) of the Act.

3.3 Subject to Act

Nothing in this Contract will affect or limit any powers or rights, or any obligations, that either party may have under the Act, Regulation or Standard.

3.4 Delegation

The Chief Executive may delegate to a nominee the exercise of any of the Chief Executive's powers, obligations or functions under this Contract or the Act including, but not limited to, the giving and receiving of notices, certificates or other documentation or correspondence.

4 Term

4.1 Term

This Contract will commence on the Commencement Date and expire on the Expiration Date (**Term**), or terminated or cancelled earlier in accordance with this Contract or the Act.

4.2 No offer of new service contract

Section 62 (Offer of new service contract) of the Act does not apply to this Contract and the Chief Executive has no obligation to invite the Operator to submit an offer to provide the Services after the expiration of this Contract in accordance with section 62.

5 Exclusivity

5.1 Exclusive right

Subject to the Operator complying with:

- (a) the requirements published and/or notified to it from time to time by the Chief Executive for the designated scheme, arrangement or Service;
- (b) the Act; and
- (c) this Contract,

the Operator's right to perform the Exclusive Services in the Contract Area during the Term will be an exclusive right.

5.2 First opportunity to offer

If the Chief Executive proposes to amend the Contract Area by adding an area or route to the Contract Area, the Chief Executive will provide the Operator with the first opportunity to offer to provide the amended Contract Area in accordance with section 60 of the Act. The Chief Executive will act reasonably in assessing any such offer and will comply with the requirements of the Act in respect of the amended Contract Area.

5.3 Retained rights

The Chief Executive may grant rights, or enter into additional service contracts, on behalf of the State for the provision of public passenger services covering the same or similar areas or routes as the Contract Area if:

- (a) and to the extent that the Operator's rights under this Contract are not, or cease to be, exclusive;
- (b) this Contract is suspended in accordance with clause 37;
- (c) the Operator fails or refuses to provide any or all of the Services under this Contract to a satisfactory standard (within the meaning of the Act), or at all;
- (d) the Operator's offer to provide Services in an amended Contract Area under clause 5.2 is unacceptable to the Chief Executive under section 59 of the Act.

5.4 No compensation

The State will not be liable to compensate the Operator or any other person should it exercise its rights under clause 5.3.

6 Contract Area

6.1 Initial Contract Area

- (a) The parties agree that the Contract Area shown in Annexure A is accurate as at the Commencement Date.

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- (b) The Contract Area will not be affected by any subsequent amendment or variation to a declared service contract area or route unless the parties execute a written variation to this Contract to that effect.

6.2 Amendments to Contract Area

- (a) The Chief Executive must comply with section 42B of the Act in respect of any amendments to the Contract Area or to a route where a declaration under section 42 of the Act is in force in respect of the Contract Area or route.
- (b) Where an amendment to which clause 6.2(a) applies is an amendment to the Contract Area to add a new route or service contract area to the Contract Area, without limiting any other obligation under this Contract and the Act, the Chief Executive must also comply with section 60 of the Act in respect of the amendment.

6.3 No Compensation for amendments

The Chief Executive will not be liable to compensate the Operator under this Contract in respect of any amendment of a service contract area or route made in accordance with section 42B (Amendment of service contract area or route) of the Act or the implementation of such amendments pursuant to sections 60 (Service contract for amended service contract area or route) or 61 (Compensation) of the Act.

7 Operator Status

7.1 Independent contractor

The Operator will perform this Contract as an independent contractor and will at no time be an agent or representative of the State, the Department or the Chief Executive.

7.2 Not a contract of service

To remove any doubt, this Contract does not give rise to a contract of service between the parties under the *Workers Compensation and Rehabilitation Act 2003* (Qld).

7.3 Provision of Equipment and Services

The Operator will at its own expense supply all goods, labour, vehicles, tools, depots, equipment, materials, power, water, services and facilities necessary to perform the Contract. Nothing in this clause 7.3 will be taken to limit the application of funding received under any other agreement in accordance with the terms of that agreement and any applicable laws or policies.

8 Revenue

8.1 Operator to retain revenue

For the avoidance of doubt, the Operator shall be entitled to retain all revenue generated from fares charged for the provision of Services under this Contract.

8.2 No financial assistance from Chief Executive

No financial assistance shall be provided by the Chief Executive under this Contract.

9 Costs

9.1 Contract costs

Subject to any contrary provision in this Contract, each party will bear its own costs (including legal costs) of and incidental to the preparation, negotiation and signing of this Contract.

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9.2 Taxes and duties

The Operator must pay and indemnify the State against liability for any tax, charge, duty or impost of any kind (including stamp duty but not including income tax or capital gains tax) and registration fees assessed on this Contract, on any documents created under this Contract, in respect of any transaction evidenced by the Contract and in respect of the performance by the parties of any of their respective obligations under it.

Part C - Laws, Standards and Quality

10 Regulatory compliance

10.1 Compliance with laws

The Operator must at all times comply with:

- (a) the provisions of the Act, Regulation and Standard and all other applicable laws in providing the Services and performing its obligations under this Contract;
- (b) without limiting any other provision of this Contract, all State, Commonwealth and local government laws, regulations, policies, industry codes and standards, directions and requirements applicable to the Operator's performance of its obligations under this Contract, including provision of the Services; and
- (c) any conditions applying to an authority obtained in accordance with section 123 (Requirement for authority to enter) of the Regulation.

10.2 Evidence of Compliance with Laws

If reasonably required by the Chief Executive, the Operator must establish, maintain and provide to the Chief Executive upon request, such compliance plans as the Chief Executive reasonably requires.

10.3 Vehicle Accessibility Compliance

- (a) The Operator must comply with all State and Commonwealth government laws in relation to vehicle accessibility standards, including but not limited to the Commonwealth *Disability Standards for Accessible Public Transport 2002* (Cth) and accompanying guidelines made under the *Disability Discrimination Act 1992* (Cth).
- (b) The Operator must provide such information and complete such documentation as the Chief Executive may request to enable the Chief Executive to evaluate and/or report upon the Operator's compliance with clause 10.3(a). The Operator must provide such information within ten (10) Business Days of the Chief Executive's request.

10.4 Compliance with State policies

The Operator must at all times comply with:

- (a) any applicable policies, procedures, guidelines and directions published or issued by the State from time to time during the Term; and
- (b) all reasonable directions and requirements of the Chief Executive in respect of the operation of this Contract including (without limitation) directions and requirements in relation to public safety and security.

11 Audits

11.1 Scope of Audits

Audits may be conducted by or on behalf of the Chief Executive under this clause 11 in respect of:

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Brisbane Airport Bus Service Contract – Gold Coast Mini Coaches

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- (a) the Operator's compliance with all its obligations under this Contract;
- (b) the Operator's financial position;
- (c) the discharge of any of the Chief Executive's obligations under the Act, Regulation, Standard and this Contract, or as required in order to comply with a request, direction or order from the Queensland Government (including, without limitation, the Minister for Transport); and
- (d) any other matters reasonably determined by the Chief Executive to be relevant to this Contract.

11.2 Conduct of Audits

- (a) The parties acknowledge that the records and reports to be provided under clause 18 and the review process set out in clause 25 are intended to be the primary means by which information regarding the matters set out in clause 11.1 is provided by the Operator to the Chief Executive. The Chief Executive or their nominee will only conduct audits where the Chief Executive reasonably considers that these processes provide insufficient information or comfort regarding such matters, and will use best endeavours to minimise the interruption to and impact upon the Operator's business operations as a result of any audit.
- (b) The Operator must participate promptly and cooperatively in any audits conducted by the Chief Executive or their nominee.
- (c) Except in those circumstances in which notice is not practicable or appropriate, the Chief Executive must give the Operator reasonable notice of an audit and an indication of which documents and/or class of documents the auditor may require.
- (d) Subject to any express provisions in this Contract to the contrary, each party must bear its own costs associated with any audits.
- (e) The requirement for, and participation in, audits does not in any way affect or reduce the Operator's responsibility to perform its obligations in accordance with this Contract.
- (f) The Chief Executive must use its reasonable endeavours to ensure that audits do not unreasonably delay or disrupt the Operator's performance of its obligations under this Contract.
- (g) The Operator must promptly take, at no additional cost to the Chief Executive, corrective action to rectify any error, non-compliance or inaccuracy in the way the Operator has performed any of the Services under this Contract, which is identified in any audit.

11.3 Access to Operator's premises and records

- (a) For the purposes of this clause 11, the Operator must grant, and, where relevant, must ensure that its subcontractors grant, the Chief Executive and its nominees or the Auditor-General access as required by the Chief Executive, to the extent relevant to the performance of the Operator's obligations under this Contract, the Operator's premises, Contract Vehicles, data (including Service Data), records (including both Operational Records and Financial Records), accounts and other financial material and material relevant to the performance of this Contract.
- (b) The Chief Executive must provide the Operator with written notice of its intention to access the operator's premises in accordance clause 11.3(a), within a reasonable time prior to the date of access.
- (c) This clause 11 applies for the Term and for a period of six years from the date of expiry or termination of this Contract.
- (d) Without limiting any of its other obligations under this Contract, the Operator must, at its own cost, ensure that it keeps full and complete records in accordance with Australian accounting standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under this clause 11.

- (e) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, or the Information Commissioner or a delegate of the Information Commissioner, or the Ombudsman or a delegate of the Ombudsman. The rights of the Chief Executive under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, the Information Commissioner or a delegate of the Information Commissioner or the Ombudsman or a delegate of the Ombudsman.
- (f) Nothing in this clause 11 will require the Operator to disclose or make available to the Chief Executive or its nominees the following records, unless a denial of access to such information would prevent the auditor from meeting the objectives set out in clause 11.1:
 - (i) records or minutes of internal management meetings of the Operator;
 - (ii) Confidential Information relating to the Operator's employees or suppliers;
 - (iii) information not directly related to the performance of this Contract; or
 - (iv) trade secrets of the Operator.

11.4 Interpretation of this clause

In this clause 11:

- (a) a reference to the 'Auditor-General' is a reference to the Auditor-General or equivalent office holder with jurisdiction over the Chief Executive;
- (b) a reference to the 'Information Commissioner' is a reference to the Information Commissioner or equivalent office holder (if any) with jurisdiction over the Chief Executive; and
- (c) a reference to the 'Ombudsman' is a reference to any Ombudsman or equivalent office holder (if any) with jurisdiction over the Chief Executive.

Part D - Service Requirements

12 Services

12.1 Provision of Services

The Operator must provide the Services in accordance with this Contract, including the Special Conditions (if any) specified in Schedule 6.

12.2 Operator obligations

The Operator must:

- (a) provide the Services in accordance with the Contract Service Plan, the Services Levels and any KPIs;
- (b) at all times throughout the Term comply with all of its obligations under the Act, the Regulation and the Standard and all other applicable laws;
- (c) take all reasonable steps to ensure that each Driver, at all times throughout the Term:
 - (i) is appropriately licensed and accredited to be in control of and operate the Contract Vehicles; and
 - (ii) holds appropriate driver authorisation under the Act when providing the Services;

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- (d) ensure that any contractors or employees engaged or tasked to provide any service in connection with the Services are suitably skilled and experienced, and hold all appropriate qualifications, necessary to provide such service in a workmanlike and professional manner, in accordance with generally accepted industry standards and without in any way detracting from the Operator's ability to comply with its obligations under this Contract; and
- (e) ensure, in order to be eligible to provide the Services, that the reporting requirements in clause 18 will be met.

12.3 Consequences of failure to comply

If at any time during the Term the Operator:

- (a) is aware of and continues to permit any Driver not appropriately licensed and accredited in accordance with clause 12.2(c)(i) to provide Services; or
- (b) is aware of and continues to permit any Driver not holding appropriate driver authorisation in accordance with clause 12.2(c)(ii) to provide Services,

the Chief Executive may activate the performance management process by issuing a rectification notice in accordance with clause 27.1.

12.4 Counter terrorism

- (a) The Operator will participate in and implement all programs developed in accordance with State and national policies for counter terrorism activities, as notified by the Chief Executive from time to time, to ensure Service continuity.
- (b) The Chief Executive will meet the reasonable costs incurred by the Operator (if any), in carrying out the obligations imposed on the Operator as a result of a direction or notification by the Chief Executive under clause 12.4(a).

12.5 Reasonable actions

Each party must act in a reasonable way to facilitate the operation of this Contract and in exercising its rights and performing its obligations under this Contract.

12.6 Access to Airport

The Department will use best endeavours to facilitate access to the Airport for the Operator, by arrangement with the Airport operators. Notwithstanding, it remains the ultimate responsibility of the operator to ensure access to the Airport is granted, and neither the State nor the Department will be liable in any way should such access not be granted to the Operator by the Airport operators.

13 Customer Service and Safety

13.1 Customer Service

The Operator must use best endeavours to ensure that all personnel, at all times throughout the Term:

- (a) comply with all of their obligations under the Act, the Regulation, the Standard and all other applicable laws;
- (b) have a thorough knowledge of the fares and routes;
- (c) receive appropriate ongoing structured training;
- (d) act reasonably, courteously and helpfully in all dealings with passengers and the public;
- (e) do not discriminate against any passengers and operators of other vehicles; and

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- (f) are attired in a clean, well maintained uniform.

13.2 Safety

The Operator will undertake all reasonable measures to ensure the safety of passengers while boarding, travelling on and disembarking from the Services, including, without limitation, any measures it is permitted or required to take pursuant to the Act, Regulation and Standard.

13.3 Operator responsible for safety

The Operator will provide and maintain everything necessary for the safety of persons and property and for the safety and convenience of its personnel, personnel of the State and passengers at any location and in any Contract Vehicle under the Operator's control.

13.4 Operator to comply with safety directions

The Operator will comply with, and will require all its personnel, agents and subcontractors to comply with, all directions of the Chief Executive relating to the safety and protection of persons and property.

13.5 Lost Property

During the Term and for 6 months after the termination or expiry of this Contract, the Operator will maintain a lost property register and provide a facility for members of the public to recover their lost property.

13.6 Customer Comments

The Operator must maintain a register of comments received from members of the public, detailing the date of occurrence, the nature of the comment, investigations into the comment and actions that were taken in response to the comment, and must promptly provide the Chief Executive with a copy of the register upon request, and in any event at least once in every 12 month period as required by clause 1 of Schedule 3.

14 Service Planning

14.1 Contract Service Plan

- (a) The Operator must comply with the agreed Contract Service Plan under this Contract. The parties agree that the Contract Service Plan described is accurate as at the Commencement Date.
- (b) The Operator may elect to receive assistance from the Department in respect to service planning and the Department will provide such assistance as it determines, acting reasonably, is required to enable the Operator to meet its service planning obligations under this Contract. Such assistance may include, without limitation, attendance by representatives of the department at the Operator's place of business to with the Operator in developing a Contract Service Plan.

14.2 Timetable changes proposed by Operator

- (a) The Operator may make Timetable changes without obtaining the prior written consent of the Chief Executive, provided the Operator:
- (i) notifies the Chief Executive of any changes to Timetables that it proposes as soon as is reasonably practicable, and prior to its implementation;
 - (ii) continues to meet the Minimum Service Levels contained in Schedule 2;
 - (iii) uses best endeavours to implement Timetable changes made in accordance with this clause 14.2 by the dates notified to the Chief Executive; and
 - (iv) gives a public notice of the impact of the change to the Timetable before implementing that change.

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14.3 Material Service Changes

The Operator must obtain the prior written consent of the Chief Executive if the Operator wishes to make Service Changes which materially affect:

- (a) the nature of the Services as described in the Contract Service Plan; or
- (b) the Operator's ability to meet the Minimum Service Levels contained in Schedule 2.

14.4 Business continuity planning

- (a) The Operator will plan to ensure continuity of the Services, to a standard acceptable to the Chief Executive, and undertake reasonable security precautions appropriate to the risk involved despite any event that may impact on the Services.
- (b) The Operator will maintain, and will provide to the Chief Executive upon request but in any event at least once in every 12 month period throughout the Term, suitable business continuity plans to ensure continuity of the Services.

14.5 Operator to notify

The Operator must promptly notify the Chief Executive in respect of:

- (a) Contract Vehicle capacity and loading problems or issues;
- (b) any ongoing problems it identifies in respect of any of the routes within the Contract Service Plan, including in respect of traffic volumes, navigability, efficiency and delays; and
- (c) any other matter which may affect the efficiency or quality of the Services, and/or the Operator's compliance with this Contract, the Act, the Regulation or the Standard.

15 Fares and ticketing

15.1 Fares

The Operator is responsible for specifying applicable fares for the Services. The fare schedule must be provided by the Operator at Schedule 7. The Operator must provide written notice to the Chief Executive at least fourteen (14) Business Days before adjusting the fare schedule.

15.2 Tickets

Except for passengers utilising a valid electronic ticket in the form of a smartcard or other approved proximity card, the Operator must ensure that each passenger on the Service is issued a paper ticket that is, at a minimum:

- (a) is a valid Tax Invoice;
- (b) sets out the date and time of travel and the validity period of the ticket;
- (c) identifies the origin and destination zone of travel;
- (d) contains an identifier sufficient to identify the issuing shift or Driver; and
- (e) sets out the total fare payable.

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16 Contract Vehicles and Depot

16.1 Contract Vehicles

The Operator must ensure that each Contract Vehicle:

- (a) complies in every respect with the Act, the Regulation, the Standard and all other applicable laws;
- (b) is an appropriate public passenger vehicle as specified in Schedule 4 of the Standard;
- (c) without limiting clause 16.1(a), complies with Schedules 1 to 3 of the Standard;
- (d) complies with all of the requirements specified in Schedule 3;
- (e) complies with any special conditions set out in Schedule 6;
- (f) if fitted with any closed circuit television (CCTV) cameras, complies with all relevant codes of practice and privacy obligations set out in clause 33; and
- (g) has the necessary facilities to safely carry luggage for the number of passengers on board.

16.2 Depot requirements

The Operator must ensure that when not in use, Contract Vehicles are securely parked in a suitable depot which, as a minimum:

- (a) has sufficient capacity to accommodate all of the Contract Vehicles;
- (b) is safe, clean, well-lit and free of hazards;
- (c) complies with all relevant laws; and
- (d) is adequately secured to prevent unauthorised access to vehicles and equipment.

16.3 Depot as at Commencement Date

The depot utilised by the Operator at the Commencement Date is identified in Item 5 of Schedule 1.

16.4 Relocation of Depot

The Operator must provide written notice to the Chief Executive at least fourteen (14) Business Days before relocating a depot.

17 Transitional

17.1 Transition of service contracts

- (a) The parties acknowledge that, within 45 days of the Commencement Date, they will use best endeavours to agree to a transition plan acceptable to both parties to manage the transition from the previous service contract governing the Operator's provision of the Services, to the terms of this Contract (**Transition Plan**).
- (b) The parties must comply with the terms of the Transition Plan. Any breach of the Transition Plan will be deemed to be a breach of this Contract.

Part E - Information, Records and Reporting

18 Records and Reporting

18.1 Records

The Operator must maintain complete and accurate Operational Records and Financial Records sufficient to demonstrate its performance under this Contract, and must provide any information that the State may require in order to assess performance.

18.2 Maintenance of Records

Except where otherwise expressly stated, the Operator will retain all records required under this Contract for no less than six (6) years from the date of creation. This clause will survive expiry or termination of this Contract.

18.3 Inspection and copies

The Operator will make the records required in this clause 18 available for inspection by the Chief Executive as and when required, and will provide copies of such records to the Chief Executive within ten (10) Business Days of receiving a request for information, unless an alternative timeframe is specified in writing by the Chief Executive.

18.4 Reports

The Operator will provide to the Chief Executive the reports set out in Schedule 3, in accordance with the requirements relating to timing and content set out in that Schedule. The Operator will provide all reports under this Contract in electronic or "hard copy" format, as required by the Chief Executive. Electronic reports must comply with the any requirements specified by the Chief Executive, and may include the requirement that reports are compatible with the netBI system requirements. The electronic reports must be provided in a format that is acceptable to the Chief Executive.

18.5 Management Information

Without limiting any other provision of this Contract, the Operator will:

- (a) endeavour to ensure that the number of passengers who use the Services is accurately counted and recorded in order to provide the information required under this Contract; and
- (b) collect and provide to the Department the information specified in Schedule 3, within the required timeframes.

18.6 Ticketing reporting and technology

The Operator must maintain records of all tickets sold, and must at any time permit the Chief Executive to access all such data.

19 Financial Statements

19.1 Financial Statements

The Operator must ensure that any financial statements provided by it under this Contract are:

- (a) prepared and presented in accordance with applicable Australian accounting standards; and
- (b) certified by the Operator's auditor where such certified accounts are available (or, if the Operator is not required by law to appoint an auditor or audited accounts are not otherwise obtained by the Operator, the Operator's accountant) to be a true and fair representation of the Operator's financial position for the relevant period.

19.2 Content of financial statements

Financial statements to be provided under this Contract must include:

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- (a) Profit and Loss Statement (or its equivalent under applicable Australian accounting standards from time to time);
- (b) Balance Sheet (or its equivalent under applicable Australian accounting standards from time to time);
- (c) Cash Flow Statement (or its equivalent under applicable Australian accounting standards from time to time); and
- (d) notes to and forming part of the accounts.

20 Customer Information and Marketing

20.1 Obligations with respect to customer information and marketing

The parties must comply with their respective obligations in relation to:

- (a) the provision, accuracy, production and distribution of Service information, Timetables and customer information (including online information); and
- (b) marketing strategies, communication campaigns, promotions and media communication,

as set out in Schedule 5.

Part F - Incidents

21 Material Adverse Event

21.1 No liability for delays

- (a) Neither party will be liable for any delay or failure to perform its obligations pursuant to this Contract if such delay is due to a Material Adverse Event which renders such performance unlawful or otherwise disables the affected party from so performing.
- (b) Subject to clause 21.1(a), each party must continue to perform its obligations under this Contract notwithstanding the occurrence of a Material Adverse Event, and must comply with this clause 21 in respect of the Material Adverse Event.

21.2 Negotiation process

As soon as reasonably practicable, but in any event within 10 Business Days after the occurrence of a Material Adverse Event, or after the parties become aware that a Material Adverse Event is likely to occur, senior representatives of each party must meet and, acting in good faith, endeavour to negotiate such amendments to the Contract as may be necessary to overcome the effects of the Material Adverse Event.

21.3 No limitation

The negotiation process in clause 21.2 is not to be taken to in any way affect or limit any other right of the Chief Executive under this Contract.

21.4 Dispute resolution

If the parties are unable, within sixty (60) Business Days of the meeting required under clause 21.2, to agree on appropriate amendments to the Contract, or if the Material Adverse Event cannot be overcome, either party may invoke the dispute resolution process set out in clause 38.

22 Incidents

22.1 Incident management plan

- (a) The Operator must prepare and maintain incident management plans in accordance with the requirements of the Standard.
- (b) The Operator must provide the Chief Executive with a copy of:
 - (i) each incident management plan the Operator is required to have under the Standard; and
 - (ii) any changes proposed as a result of the annual review of the incident management plan pursuant to the Standard.

22.2 Notification to Chief Executive

Without limiting the Operator's obligations at law, including its obligations under the Standard, the Operator must notify the Chief Executive as soon as reasonably practicable that any of the following incidents have occurred in connection with the Services (including, without limitation, on or involving any Contract Vehicle):

- (a) an incident involving serious risk to passenger safety;
- (b) an incident in which a person is seriously injured or killed; and/or
- (c) an incident in which property is damaged to the value of at least the amount fixed under section 287 (4) of the *Transport Operations (Road Use Management-Road Rules) Regulation 1999*.

22.3 Incident report

The Chief Executive may request the Operator to provide a copy of any incident report that the Operator is required to make under the Standard and the Operator must immediately comply with any request made under this clause.

23 Force majeure

23.1 No liability for delays

Neither party will be liable for any delay or failure to perform its obligations pursuant to this Contract if such delay is due to a Force Majeure Event.

23.2 Entitlement to terminate

If a delay or failure by a party to perform its obligations due to a Force Majeure Event exceeds forty-five (45) Business Days, either party may immediately terminate this Contract on providing notice in writing to the other party.

23.3 Operator's disaster recovery obligations

The Operator must take all commercially reasonable steps to:

- (a) prevent the occurrence of;
- (b) avoid being affected by; and
- (c) mitigate the effects of,

any Force Majeure Event.

The Operator will not be absolved of responsibility to perform its obligations under this Contract by virtue of a Force Majeure Event if and to the extent that the taking of all proper precautions, due care and

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reasonable alternative measures by the Operator with the object of avoiding the delay or failure and of carrying out its obligations under this Contract would have enabled it to continue to meet those obligations.

24 Change of Shareholding

24.1 Consent required

Where the Operator is a corporation, other than a company whose shares are listed on any stock exchange in Australia, the Operator will not permit any substantial change in the underlying shareholding of the Operator without obtaining the Chief Executive's prior written consent.

24.2 Substantial change

For the purposes of clause 24.1, a substantial change in the underlying shareholding of the Operator will occur whenever:

- (a) there is a transfer in the issued capital or voting rights of the Operator of thirty percent (30%) or more;
- (b) any corporation or related corporations (as defined in the Corporations Act) not holding between them more than fifty percent (50%) of the issued share capital or voting rights of the Operator, acquires or acquire between them so much of the issued capital or voting rights of the Operator as when added to the issued capital or voting rights (if any) previously held by that corporation or related corporation) represent in the aggregate more than fifty percent (50%) of the issued capital or voting rights of the Operator; or
- (c) any person or person and their relatives (as defined in the Income Tax Assessment Act 1936) not holding between them more than fifty percent (50%) of the issued capital or voting rights of the Operator acquires or acquire between them so much of the issued capital or voting rights of the Operator as when added to the issued capital or voting rights (if any) previously held by that person or those persons represent in aggregate more than fifty (50%) of the issued capital or voting rights of the Operator; or
- (d) any of the changes referred to in clause 24.2(a) to 24.2(c) occur to any holding company (as defined in the Corporations Act) of the Operator or to any holding company of any holding company of the Operator.

Part G - Performance Management

25 Review and Monitoring of Service

25.1 Review

The Operator's performance under this Contract will be subject to:

- (d) annual reviews;
- (e) a mid-term review; and
- (f) an end-of-term review,

conducted in accordance with section 46 (Review of holder's performance) of the Act, at the discretion of the Chief Executive and subject to reasonable notice being given to the Operator. To avoid doubt, where an annual review coincides with a mid-term review or an end-of-term review, the parties will only be required to complete a single review process.

25.2 Review information

The Chief Executive may take into account the following when conducting the review:

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- (a) the annual report bundle described in Schedule 3;
- (b) the Service Data;
- (c) records (including both Operational Records and Financial Records);
- (d) accounts and other financial material; and/or
- (e) any other material relevant to the performance of this Contract.

25.3 Travel on services

The Operator will allow a representative of the Chief Executive access to the premises from which the Operator conducts its administration and to travel free of charge on any Contract Vehicle to monitor or observe the provision of the Services, subject to reasonable notice being given to the Operator.

25.4 Review at request of either Party

The parties further agree that the Operator's performance will also be subject to any further review that may be requested by either party during the Term, to be conducted in accordance with section 46 (Review of holder's performance) of the Act.

25.5 Guidelines and directions

The Operator will comply with guidelines and directions issued by the Chief Executive and will co-operate to ensure that reviews conducted under this clause are completed promptly and to implement all improvements which the Chief Executive reasonably determines are necessary.

26 Key Performance Indicators and Minimum Service Levels

26.1 Acknowledgement

- (a) The parties acknowledge:
 - (i) the importance of continually improving the quality of the contracted Services;
 - (ii) that the Minimum Service Levels, KPIs and associated KRAs provide an indication of the quality of Services; and
 - (iii) that over time, the Minimum Service Levels and KPIs may need to be adjusted in accordance with clause 27.7, to reflect the Operator's progress against the Minimum Service Levels and KPIs and future requirements.
- (b) The Operator acknowledges and agrees that the Services and the Operator's performance will be evaluated against the agreed Minimum Service Levels and any KPIs in Schedule 2.

26.2 Reporting

The Operator must report against any KPIs in the ways and at the intervals specified in Schedule 2.

26.3 Measures

At the expiry of each six (6) month period of the Term, the Chief Executive will measure the Operator's performance against the Minimum Service Levels and KPIs by reference to those measures available to the Chief Executive, including but not limited to:

- (a) the Operator's reports under clause 26.2;
- (b) information provided to the Chief Executive in respect of previous or upcoming annual reviews, pursuant to clause 25.1;
- (c) information and data reportable to the Chief Executive under this Contract, or the Act;

- (d) checks, audits and/or inspections undertaken by, or on behalf of the Chief Executive; and
- (e) any data or technology that may become available over time relating to the Services, or the Operator's performance.

26.4 Performance Measurement

Upon completion of the measures referred to in clause 26.3, the Chief Executive will notify the Operator of the outcome of the review and may issue a rectification notice in accordance with clause 27.1.

27 Performance Management Process

27.1 Rectification notice

If the Operator is in breach of this Contract, including any failure to meet any performance requirement in Schedule 2 or comply with the Contract Service Plan as part of the review process under clause 25.1, the Chief Executive may issue a rectification notice requiring the Operator to develop a plan to remedy the breach and, in the case of a failure to comply with the Contract Service Plan, restore performance to satisfactory levels.

27.2 Rectification Plan

- (a) Within ten (10) Business Days of receipt of a rectification notice under clause 27.1, the Operator must submit to the Chief Executive the Operator's written proposal to rectify the identified breach and/or deficiencies, including a proposed timeframe (**Rectification Plan**).
- (b) The parties will co-operatively discuss the proposed Rectification Plan with a view to finalising a Rectification Plan that is acceptable to the Chief Executive.
- (c) Where the Rectification Plan is acceptable to the Chief Executive, the Operator must comply with the Rectification Plan.
- (d) If there is no Rectification Plan acceptable to the Chief Executive within twenty (20) Business Days of receipt of a rectification notice under clause 27.1, the Chief Executive may take action in accordance with clause 27.4.

27.3 Successful completion of Rectification Plan

- (a) Upon completion of the Rectification Plan, the Operator's performance will be measured against the terms of the Rectification Plan (including any amendments to Schedule 2 or amendment to the Contract Service Plan agreed under the Rectification Plan).
- (b) Where the identified breach has been rectified, the Chief Executive will notify the Operator accordingly.

27.4 Failure to rectify

If the Operator:

- (a) fails to develop a Rectification Plan which is acceptable to the Chief Executive within the required time; or
- (b) fails to comply with its Rectification Plan; or
- (c) fails to rectify the identified breach to the satisfaction of the Chief Executive,

the Chief Executive may escalate the issue to the show cause process under clause 27.5.

27.5 Show cause process

- (a) If the Chief Executive escalates the issue under clause 27.4, the Chief Executive must issue a show cause notice to the Operator setting out details of the identified breach and details of the

action which the Chief Executive proposes to take in respect of such breach and/or deficiency (**Show Cause Notice**).

- (b) Within ten (10) Business Days of the date of the Show Cause Notice, the Operator may make written representations about the proposed action under clause 27.5(a).
- (c) The Chief Executive may, after the date that is ten (10) Business Days from the date of the Show Cause Notice, immediately amend, suspend or cancel this Contract by notice to the Operator, if the Chief Executive reasonably believes that the Operator is unable to provide any or all of the Services.
- (d) The State will not be liable to compensate the Operator for any action taken under this clause 27.5 except in accordance with section 42 of the Act.

27.6 Other rights

Without limiting any other right or ability that the Chief Executive may have under the Act or this Contract (including, without limitation, the ability to exercise his or her rights under clause 37 in the circumstances set out in that clause), if, after deciding whether or not to issue a notice under clause 27.5, the Chief Executive considers that the outcome is still not acceptable, the Chief Executive may exercise any of its rights under clause 37.

27.7 KPI adjustments

- (a) If KPIs are specified in Schedule 2, the following process for KPI adjustments will apply:
 - (i) Upon the initiation of either party, the parties will co-operatively review and adjust the KPIs as may be necessary from time to time to ensure the relevance of the KPIs to the Services and the continual improvement of the quality of the Services.
 - (ii) If the parties are unable to agree upon the proposed KPIs within twenty (20) Business Days of commencing the review, either party may invoke the dispute resolution process as set out in clause 38.
 - (iii) Upon any adjustment of the KPIs by the parties under clause 27.7(a) or following dispute resolution under clause 27.7(a)(ii), the adjusted KPIs will be recorded in a replacement Schedule 2, and take effect as a variation to this Contract.

27.8 No limitation

No action taken by the Chief Executive under this clause will affect or limit any other right or remedy that the Chief Executive may have under the Act or this Contract.

Part H - Assignment and Subcontracting

28 Subcontracting

28.1 Direct dealings

The Chief Executive may, but is not obliged to, deal directly with the subcontractor (including meeting and corresponding with and giving notices to the subcontractor) concerning any matter relating to the subcontractor's operations, and this shall be deemed to be a dealing directly with the Operator for the purposes of this Contract.

28.2 Consent required

The Operator will not subcontract the provision of any of the Services without the prior written consent of the Chief Executive, which:

- (a) may be conditional and require step in rights to deal directly with the subcontractor;

- (b) will not operate as an authority to transfer responsibility for obligations of the Operator under this Contract to the subcontractor; and
- (c) will not relieve the Operator of any of its liabilities or obligations under this Contract.

28.3 Responsibility for subcontracted Services

If the Operator subcontracts any of its obligations under this Contract, the Operator:

- (a) remains responsible for the performance of this Contract in accordance with its terms, notwithstanding any such subcontracting;
- (b) is liable to the State for the acts and omissions of all subcontractors, and employees and agents of subcontractors, as if they were acts or omissions of the Operator; and
- (c) must ensure that any subcontractor complies with all of the terms of this Contract and does not itself subcontract without the prior written consent of the Chief Executive.

29 Transfer and Surrender of Contract

29.1 Transfer

The Operator may transfer its rights and liabilities under this Contract only with the prior written approval of the Chief Executive in accordance with section 48 (Transfer or surrender of service contracts etc.) of the Act.

29.2 Surrender

The Operator may surrender this Contract only with the prior written approval of the Chief Executive in accordance with section 48 (Transfer or surrender of service contracts etc.) of the Act.

29.3 Consequences of surrender

The Operator will not be liable to pay any amount to the Chief Executive for the cost of engaging another person to provide the Services in the place of the Operator after the effective date of surrender, although this does not limit any other obligation to pay compensation, whether in respect of default of the Operator or otherwise.

29.4 Chief Executive approval

The approval of the Chief Executive under this clause may be given or declined, or given subject to such conditions as the Chief Executive thinks fit. In exercising his or her discretion under this clause 29, the Chief Executive must act reasonably.

29.5 Request for approval

The Operator will provide any request for approval of the Chief Executive to the Chief Executive at least three (3) months prior to the proposed effective date of the transfer, or surrender of this Contract, and must provide such further information as is reasonably requested by the Chief Executive in respect of any such request.

Part I - Information Management

30 Intellectual Property

30.1 Ownership of Intellectual Property Rights

The parties acknowledge that, unless and to the extent otherwise agreed in writing from time to time:

- (a) each party remains the owner of any Existing Contract Material contributed by it, and all Intellectual Property Rights associated with the Existing Contract Material, including any modification effected in connection with this Contract; and

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- (b) all Intellectual Property Rights in any New Contract Material will vest in the State upon creation.

30.2 Licensing

- (a) The Operator grants the State a non-exclusive, non-transferable, royalty free and perpetual licence to use the Operator's Existing Contract Material for the purpose of:
- (i) exercising its rights and performing its obligations under this Contract;
 - (ii) improving use of public transport services, including the Services;
 - (iii) reporting about the Services or the Operator's performance under this Contract;
 - (iv) planning and policy development in relation to the Services and/or public passenger transport more broadly;
 - (v) fulfilling any obligations that the Chief Executive may have under the Act, Regulation or Standard or otherwise at law;
 - (vi) making available information services for the benefit of passengers of public transportation services;
 - (vii) achieving improvements, including greater efficiency, in the delivery of public transportation services in the State of Queensland;
 - (viii) provision of public transportation services into developing areas; and
 - (ix) aligning with and/or meeting Government objectives.
- (b) The State grants the Operator a non-exclusive, non-transferable, royalty free licence to use the State's Existing Contract Material and New Contract Material during the Term for the sole purpose of performing the Services and complying with its obligations under this Contract.
- (c) Where the State does not own the Intellectual Property Rights in Contract Material or part of any Contract Material (including, without limitation, the right to sub-license that Contract Material or part thereof and to grant any third party access to that Contract Material or part thereof), the Operator must grant or procure the grant of a non-exclusive, unrestricted, royalty free, perpetual and irrevocable licence to use that Contract Material or part thereof, as the case may be.

30.3 Operator Obligations

The Operator agrees to sign such documentation as is reasonably required in order to give effect to any transfer of ownership or licence of Intellectual Property Rights to the State under this clause 30.

31 Moral Rights

31.1 Waiver of Moral Rights

To the extent permitted by applicable law:

- (a) the Operator unconditionally and irrevocably consents, and will use all reasonable efforts to obtain all other necessary unconditional and irrevocable written consents, to any act or omission that would otherwise infringe any Moral Rights in any work which is included in any Contract Material, whether occurring before or after a consent is given; and
- (b) the Operator unconditionally and irrevocably waives, and will obtain all other necessary unconditional and irrevocable written waivers of, all Moral Rights,

for the benefit of the State, its licensees, successors in title and anyone authorised by any of them to do acts comprised in the copyright.

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If the Operator is unable to obtain the consent of an employee or any other person as required by clause 31.1(a), it must immediately inform the State, in which case the State may, at its discretion, require the substitution of that employee or person in relation to the provision or supply of the Services if it is reasonable to do so in all the circumstances.

31.2 Operator not to Claim Infringement of Moral Rights

The Operator will not institute, maintain or support any claim or proceeding for infringement of Moral Rights in any work included in any Contract Material and must use its best endeavours to ensure that no one else does so.

31.3 Operator to provide Copies of Consents

The Operator will provide the Chief Executive with copies of each written consent and waiver required under this clause 31 within 10 Business Days of a request by the Chief Executive.

32 Confidentiality

32.1 Keep Confidential

Without limiting the application of section 148C (Confidentiality) of the Act and subject to clause 32.2, each party must keep the other party's Confidential Information confidential, and must not disclose it to any other person without the written consent of the other party.

32.2 Exceptions to Confidentiality

The obligations of confidentiality set out in clause 32.1 will not apply in the following circumstances:

- (a) any disclosure or use contemplated or permitted by this Contract;
- (b) any disclosure required by law;
- (c) in the case of the State, any disclosure permitted or required in order to comply with a request, direction or order from the Queensland Government (including, without limitation, the Minister for Transport);
- (d) in the case of the Operator, disclosure to the relevant industry body (currently QBIC and/or QSBA) which the Operator considers necessary or appropriate to enable such industry body to perform its functions at the Operator's request;
- (e) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality; or
- (f) disclosure to a banker or other financial institution relevant to the Operator, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution first gives a binding covenant to the State to maintain confidentiality, in form and substance satisfactory to the State.

32.3 Right to Information and Disclosure

The Operator acknowledges that:

- (a) the *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies; and
- (b) accordingly, information relating to this Contract is potentially subject to disclosure to third parties.

32.4 Consent to use, reporting and publication

The Operator expressly consents to the use, release and publication of the following information by the Chief Executive, the Department or any Government Authority:

- (a) patronage levels;

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- (b) number of Contract Vehicles and average vehicle age;
- (c) network and Service performance information, such as on-time running, kilometres travelled and any other performance matter determined by the Chief Executive;
- (d) Service information, such as Timetables, route information and variations and hours operated;
- (e) details of the Operator's compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth); and
- (f) details of the Operator's compliance with the Act, Regulation and Standard and any other laws.

33 Privacy

33.1 Information Privacy Act 2009

If the Operator collects or has access to Personal Information in order to perform this Contract the Operator must:

- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this Contract as if the Operator was the State;
- (b) not use Personal Information other than for the purposes of performing its obligations under this Contract, unless required or authorised by law;
- (c) not disclose Personal Information without the prior written consent of the Chief Executive, unless required or authorised by law;
- (d) not transfer Personal Information outside of Australia without the prior written consent of the Chief Executive;
- (e) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties;
- (f) ensure that its employees and officers do not access, use or disclose Personal Information other than in the performance of their duties;
- (g) ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Operator under this clause;
- (h) fully co-operate with the Chief Executive to enable the Chief Executive to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to respond to privacy complaints; and
- (i) comply with such other privacy, information security, ticketing system security and physical security measures as the Chief Executive reasonably advises the Operator in writing from time to time.

33.2 Deed of privacy

On request by the Chief Executive, the Operator must obtain from its employees, officers or subcontractors engaged for the purposes of this Contract, an executed deed of privacy in a form acceptable to the Chief Executive.

33.3 Notice of breach

The Operator must immediately notify the Chief Executive on becoming aware of any breach of clause 33.1.

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Part J - Risk Management

34 Representations and warranties

34.1 Representations and warranties to be true

Each party represents and warrants to the other party that all statements, representations and projections made or required to be made under this Contract by the first party or any representatives of that party are and will be, to the best knowledge of the party and its representatives (after making reasonable enquiries and based on reasonable assumptions and not omitting any material detail within the knowledge of the party or its representatives), complete, true, accurate, made on reasonable grounds, and not misleading or deceptive or likely to mislead or deceive.

34.2 Warranty of authority

Each person signing this Contract as an authorised officer or agent for any party, by so doing, warrants to the other party that, as at the date of signing, that person has full authority to execute this Contract on behalf of that party.

34.3 Power of attorney

Each person signing this Contract as attorney for a party, by so doing, warrants to the other party that as at the date of signing as attorney that person has not received any notice or information of the revocation of the power of attorney appointing that person.

34.4 No oral or written warranties

No oral or written warranties, representations, or other terms or conditions of any nature not contained in this Contract will be of any force unless they have been reduced to writing and signed by the parties and are expressed to be in modification of this Contract.

35 Liability and Indemnity

35.1 Limitation of Liability

- (a) The State's total liability to the Operator in connection with this Contract or any breach thereof shall be limited to the Contract Payments paid to the Operator under this Contract. The State shall not be liable to the Operator for any special, consequential or indirect loss or damage, even if advised of the possibility of such loss or damage.
- (b) To the extent permitted by law, if a court holds that the State or the Chief Executive is liable to pay damages to the Operator and if the Operator or any other person (including other advisers to the Operator) has contributed to the loss the Operator suffered, the damages payable by the State or Chief Executive will be reduced to the extent of such contribution.

35.2 Indemnity

- (a) The Operator indemnifies the State, the Chief Executive and all servants, agents and contractors of the State (the "indemnified" for the purposes of this clause 35) from and against all actions, claims, demands, direct, indirect or consequential losses (including lost profits, revenue and opportunities), damages, costs (including legal costs on a full indemnity basis) and expenses for which any of the indemnified may sustain or become liable arising directly or indirectly out of or in connection with this Contract.
- (b) Without limiting the foregoing, the indemnity in this clause 35.2 applies in all circumstances, including in relation to :
 - (i) the performance or non-performance of this Contract, or any other act or omission, by the Operator or any agent, subcontractor or employee of the Operator;
 - (ii) any claim by a third party in connection with the subject matter of this Contract (whether arising in tort, contract, by law or under statute);

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Brisbane Airport Bus Service Contract – Gold Coast Mini Coaches

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- (iii) any claim that the use of any Contract Material (other than the State's Existing Contract Material) infringes or may infringe the Intellectual Property Rights of any third party;
 - (iv) any death, personal injury, loss or damage sustained by passengers or any third party in connection with the provision of the Services;
 - (v) any inaccurate or incorrect information provided by the Operator under this Contract which is relied upon by the State, the Chief Executive or a third party to their detriment;
 - (vi) the use of the Operator's premises, Contract Vehicles or other facilities by any person in order to access, travel on or exit the Services; and
 - (vii) any exercise or failure to exercise any right under this Contract by the State or the Chief Executive.
- (c) This indemnity will not apply to the extent that the loss, damage or claim is caused or contributed to by the negligent act or omission of the indemnified.
 - (d) This indemnity will not exclude any other right that the indemnified may have to be indemnified by the Operator.

35.3 Release

The Operator releases the indemnified from all actions, proceedings, claims and demands which, but for the indemnity provision of this clause, might be brought or made against any of the indemnified by the Operator.

36 Insurance

36.1 Insurance

The Operator will maintain the following insurances at its own expense during the Term:

- (a) Workers' compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (Qld);
- (b) adequate public liability insurance for an amount per incident of not less than that specified in Item 6 of Schedule 1 and with an excess amount that is within the range specified in Item 6 of Schedule 1;
- (c) motor vehicle insurance as required under clause 4.2 of Schedule 4, for all vehicles used to provide Services under this Contract; and
- (d) any other insurance:
 - (i) which the Chief Executive may reasonably require; and/or
 - (ii) in the amounts and for perils against which a prudent operator would protect itself in similar circumstances.

36.2 Terms of Insurance

The insurances effected under this clause 36 will:

- (a) contain a waiver of any subrogation rights which the Operator's insurers may have against the indemnified where the damage is caused by the act, omission or negligence of the indemnified; and
- (b) be taken out with reputable insurers and on terms satisfactory to the Chief Executive.

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36.3 Evidence of insurance

The Operator will, upon request of the Chief Executive, provide the Chief Executive with evidence of the currency and a copy of the terms and conditions of the insurances effected under clause 36.

Part K - Disputes and Termination

37 Amendment, suspension, cancellation or termination of Contract

37.1 Amendment, suspension or cancellation

- (a) The Chief Executive may amend, suspend or cancel this Contract in accordance with section 47 (Amendment, suspension or cancellation of service contracts for breach of the service contract) of the Act.
- (b) Without limiting in any way the discretion conferred by section 47(3) of the Act, the circumstances which the Chief Executive may consider in forming a reasonable belief that the Operator is unable to provide any or all of the Services required under the Contract under section 47(3) of the Act may include any failure by the Operator to:
 - (i) hold any required accreditation under the Act;
 - (ii) comply with any term of this Contract which impacts, or may impact, the continued delivery of the Services;
 - (iii) deliver Services in accordance with the Contract Service Plan, including the Timetables;
 - (iv) satisfy any Minimum Service Level, KPI or KRA;
 - (v) cooperate with directions of the Chief Executive;
 - (vi) provide reports as required by this Contract, or provide access to data and records to any representative of the Chief Executive; or
 - (vii) comply with the safety requirements set out in clause 13 to the satisfaction of the Chief Executive.

37.2 Additional measures

If the Operator has contravened a term or condition of this Contract or the Chief Executive determines a contravention of this Contract by the Operator is imminent, the Chief Executive may, without limiting any other right that the Chief Executive may have under this Contract, the Act or otherwise at law, do any one or more of the following:

- (a) suspend the operation of this Contract for any period during which the contravention continues and, at the Operator's expense, engage another person to provide the Services in the place of the Operator or any subcontractor of the Operator for the period of the suspension;
- (b) if any of the rights granted to the Operator are then exclusive to the Operator, terminate the exclusive nature of all or some of those rights and exercise the Chief Executive's rights in clause 5.3;
- (c) take legal action against the Operator for damages for breach of contract; and/or
- (d) require the Operator and subcontractors, employees and officers of the Operator nominated by the Chief Executive to undertake, at the Operator's expense, such training and obtain such assistance as the Chief Executive may determine.

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37.3 Termination

Without prejudice to any other rights the Chief Executive may have under this Contract or at law, including in addition to the Chief Executive's rights under clauses 27, 37.1 and 37.2, the Chief Executive may terminate this Contract immediately by notice in writing:

- (a) where the Operator is in breach of this Contract and such breach is not remedied within 30 Business Days of written notice by the Chief Executive;
- (b) where the Operator is in breach of any term of this Contract and such breach is incapable of remedy;
- (c) in accordance with clause 23.2; or
- (d) if the Operator becomes or threatens to become or is in jeopardy of becoming subject to an Insolvency Event.

37.4 Consequences of Termination

- (a) Without limiting any other rights the Chief Executive may have under this Contract or at law, if this Contract is terminated the Chief Executive may;
 - (i) recover the Service Data and all related data, documentation and records retained by the Operator pursuant to this Contract;
 - (ii) recover Confidential Information of the State and Contract Material that is in the possession, custody or control of the Operator;
 - (iii) be regarded as discharged from any further obligations under this Contract; and
 - (iv) pursue any additional or alternative remedies provided by law.
- (b) On termination or expiry of this Contract, the Operator must immediately cease using and promptly return to the State, at no additional cost to the State, all materials (whether in written or electronic form) that contain or encapsulate any of the State's Contract Material, other State materials and the State's Confidential Information.

37.5 No compensation for termination

- (a) Without limiting the operation of section 47(4) of the Act, no compensation will be payable by the Chief Executive in respect of any action taken under clause 37 to the Operator or to any other person and the Operator will indemnify the State and Chief Executive against any subcontractor or third party claim arising from the Chief Executive's exercise of any rights under this clause 37.
- (b) Any action taken under this clause 37 will not defer, delay or limit any other rights the Chief Executive may have (including, without limitation, a right of termination under this clause or the Act or a right to seek damages in respect of any default).

37.6 Rights on Termination

Termination of this Contract will not affect any claim or action either party may have against the other by reason of any antecedent breach of this Contract and will not relieve either party of any obligation under this Contract which is expressed to continue after termination.

37.7 Monies Payable to the Chief Executive

Upon an amendment, suspension, cancellation or termination of this Contract by either party for any reason, the Operator will immediately pay to the Chief Executive all amounts then payable under this Contract or the Act.

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38 Dispute Resolution

38.1 Before court proceedings

Unless a party has complied with the procedure in the following parts of this clause 38, that party may not commence court proceedings relating to any dispute arising from this Contract, except where that party seeks urgent interlocutory relief (in which case that party need not comply with this clause 38 before seeking such relief). Where a party fails to comply with this clause 38, any other party in dispute with the party so failing to comply need not comply with this clause 38 before commencing court proceedings relating to that dispute.

38.2 Notice of dispute

Any party claiming that a dispute has arisen under this Contract between the parties will give notice to the other party designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The party given written notice will promptly give notice to the other party, designating as its representative in negotiations relating to the dispute a person with similar authority.

38.3 Seek to resolve

The designated representatives of the parties will seek to resolve the dispute within ten (10) Business Days of the last designation required by clause 38.2. If the dispute is not resolved within that period of ten (10) Business Days (or within such further period as the representatives may agree is appropriate) either party may refer the dispute for mediation in accordance with clause 38.4.

38.4 Mediation

The mediation will be conducted by:

- (a) a mediator agreed on by the parties within ten (10) Business Days; or, in default of agreement; or
- (b) a mediator nominated by the President of the Queensland Law Society or that President's nominee, at the request of either party.

The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing. Each party must bear its own costs of attending the mediation and the parties must bear equally the costs of any mediator engaged.

38.5 Performance of obligations

Despite the existence of a dispute, each party must continue to perform its obligations under this Contract.

38.6 Termination of process

If the parties are unable to resolve the dispute through mediation under clause 38.4, any party which has complied with the provisions of clause 38 may in writing terminate the dispute resolution process and may then commence court proceedings relating to the dispute.

38.7 Without prejudice

The purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 38 is to attempt to settle the dispute between the parties. It may not be used for any other purpose, and must be treated as "without prejudice" in any subsequent court proceedings.

39 Compensation under Section 61

If the Invitation requires the Operator to pay compensation to an existing operator under section 61 (Compensation) of the Act, the Operator will pay compensation as agreed in accordance with that section. If the Operator and the person to whom compensation is payable cannot agree on the amount of compensation within three (3) months after the Commencement Date, the Operator will refer the matter to arbitration in accordance with section 61 (Compensation) of the Act.

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Part L - General Contract Matters

40 Notices

40.1 Addresses for notices

Any notice in connection with this Contract will be taken to have been given when made in writing and delivered by hand, pre-paid post or facsimile to the party to which it is intended by be given at the parties' respective addresses set out in Items 7 and 8 of Schedule 1, or to such other address, or facsimile number as may from time to time be notified in writing by one party to the other for the purposes of this clause.

40.2 Receipt after posting

Any notice or other communication sent by pre-paid post will be taken to have been received at the expiration of three (3) Business Days after the date of posting.

40.3 Receipt of facsimile

Any notice sent by facsimile transition will be taken to have been received upon completion of an apparently successful transmission. However, if a facsimile is sent on a Business Day after 5.00pm at the place of receipt, or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

40.4 Other communications

Communications other than notices in connection with this Contract may be given by delivery, posting and facsimile, or other methods including e-mail, as agreed between the parties.

41 General Provisions

41.1 Successors

This Contract is binding on the parties and their respective successors and permitted assigns, and will be enforceable by and against the parties, or those successors and assigns.

41.2 Counterparts

This Contract may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

41.3 Entire agreement

This Contract contains the entire agreement between the parties and supersedes all prior arrangements and understandings of whatever nature made in relation to its subject matter.

41.4 Applicable Law and Jurisdiction

This Contract is governed by and will be construed in accordance with the laws of Queensland. Any proceedings between the parties brought at any time that relate in any way to this Contract will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.

41.5 Variations and Waivers to be in Writing

No variation, modification or waiver of any provision in this Contract, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it.

41.6 Waiver

No failure, delay, relaxation or indulgence by any party in exercising any right conferred on such party by this Contract will operate as a waiver of such right, nor will any single or partial exercise of any such right nor any single failure to do so, preclude any other or future exercise of it, or the exercise of any other right under this Contract.

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41.7 Joint and Several Obligations

- (a) If any party consists of more than one person, then the liability of those persons in all respects under this Contract will be a joint liability of each two or more of those persons and a liability of each of those persons severally.
- (b) Any agreement, representation or warranty in favour of more than one party is for the benefit of each two or more of those parties jointly and each of them severally.

41.8 Authority to Complete Blanks etc

The Chief Executive may date this Contract and complete any blanks left by the Operator, provided that the obligations of the Operator are not materially increased.

41.9 Further Assurances

Each party to this Contract will do all things and sign all deeds and other documents as may reasonably be required by the other party so as to carry out and give effect to the terms and intentions of this Contract and to perfect, protect and preserve the rights of the other party.

41.10 Survival of clauses

Clauses 1, 3, 4.2, 7, 10.1, 11, 18, 21.1, 23.1, 28.3, 30, 31, 32, 33, 34 35, 37.4, 37.5, 37.6, 37.7, 40 and 41 and clause 2.4 of Schedule 5 survive the termination or cancellation of this Contract.

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Executed by the State of Queensland
represented by the Department of
Transport and Main Roads by its duly
authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate (print)

Executed by Gold Coast Mini Coaches Pty
Ltd ACN 106 666 148 acting by the following
persons or, if the seal is affixed, witnessed by
the following persons:

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Coachtrans Unit Trust No 2
T/A Coachtrans Australia
ABN 17 937 570 080

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Signature of authorised person

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Signature of authorised person

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Position held

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Name of authorised person (print)

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Schedule 1

Contract Details

Item	Description	Detail
1	Commencement Date	<u>7 May 2012</u>
2	Expiration Date	<u>Three</u> calendar years from the Commencement Date
3	Public Passenger Services	Road-based General Route Services
4	Contract Vehicles	As set out in the Register of Contract Vehicles at Annexure C, as amended from time to time.
5	Depot location	<u>18 Industrial Avenue</u> <u>Molendinar Qld 4214</u>
6	Insurance	Minimum public liability insurance amount: <div style="border: 1px solid red; height: 20px; width: 100px;"></div> Vehicle insurance excess: <div style="border: 1px solid red; padding: 2px;">Part 4 s.7(1)(c) Business/commercial/profes</div>
7	Address for service of notices – State	General Manager (Passenger Transport) Department of Transport and Main Roads Floor 6 420 George Street Brisbane QLD 4001 Facsimile: (07) 3236 3159 Contact: Mr Ryan Huelin
8	Address for service of notices – Operator	PO Box <u>4965</u> <u>GCMC QLD 9726</u> Facsimile: <u>(07) 3020 3805</u> Contact: <div style="border: 1px solid red; padding: 2px;">Part Refuse Sch.4 Part 4 s.6 PI</div>

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Biggera Waters Qld 4216

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Schedule 2

Minimum Service Levels

The operator shall provide a service to co-ordinate with every scheduled arrival and departure of a passenger aircraft operated by a major airline.

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Schedule 3

Data and Reporting

1 Reporting

The Operator is required to provide the following reports in accordance with this Contract:

Report	Content and format	Frequency
Monthly Summary Report	In accordance with the template provided by the Chief Executive below	Monthly, within 10 Business Days of the completion of each month during the Term
Annual reporting bundle, consisting of the following: <ul style="list-style-type: none"> updated business continuity plan, in accordance with clause 14.4; register of customer comments for the preceding year, in accordance with clause 13.6; and any other information reasonably required by the Chief Executive to be included in the annual report bundle. 	<p>In accordance with the template provided by the Chief Executive from time to time</p> <p>In accordance with the template provided by the Chief Executive from time to time</p> <p>As notified to the Operator by the Chief Executive.</p>	Annually, within 10 Business Days of the anniversary of the Commencement Date
Register of Contract Vehicles	In the form and containing the information set out in Schedule 4	In accordance with clause 3.1 of Schedule 4
Incident Management Plans	In accordance with the Standard	In accordance with clause 22.1(b) of the Contract
Incident Report	In accordance with the Standard	In accordance with clause 22.3 of the Contract
Any information requested by the Chief Executive to enable the Chief Executive to assess the Operator's Vehicle Accessibility compliance in accordance with clause 10.3(b) of the Contract	As notified to the Operator by the Chief Executive	Within 10 Business Days of receiving the Chief Executive's request.

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Report	Content and format	Frequency
Any information that the Chief Executive reasonably requires in order to assess the performance of the Operator under the Contract.	As notified to the Operator by the Chief Executive.	Within 10 Business Days of receiving the Chief Executive's request, or as otherwise agreed between the parties.
Any information relevant to the provision of the Services that is requested by the Chief Executive	As notified to the Operator by the Chief Executive.	Within 10 Business Days of receiving the Chief Executive's request, or as otherwise agreed between the parties.

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Brisbane Airport Bus Service Contract – Gold Coast Mini Coaches

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2 Monthly Summary Report Template

DECLARATION FOR THE MONTH OF

Operator	
ABN	
Trading As	
Address	
Contract Area	

The following report is to be provided for each trip on each route.

Period: From To

	Adult		Child		Pre-booked		Walk-up		Total	
	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$	Patronage numbers	\$
Services to the Airport										
Services from the Airport										

Certification:

The figures above represent a true statement of the passenger numbers and revenue for the Service Contract Area for the period shown.

Signature of Operator _____ Date _____

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Schedule 4

Contract Vehicles

1 Vehicle Standards & Maintenance

The Operator will:

- (a) ensure that all Contract Vehicles used in the operation of Services under the Contract comply with the requirements of the Act, Regulation and Standard and any other applicable laws;
- (b) ensure that all Contract Vehicles used in the operation of Services under the Contract are clean and tidy when performing the service;
- (c) ensure that Contract Vehicles displaying all over advertising will clearly display the trading name of the Operator on the front of the Contract Vehicle;
- (d) ensure that all Contract Vehicles used in the operation of Services under this Contract have and comply with a documented vehicle maintenance plan in accordance with the Standard;
- (e) take all reasonable steps to ensure that Contract Vehicles are free from Defects; and
- (f) ensure that Contract Vehicles possess a current certificate of inspection unless the particular vehicle is exempted from this requirement under clause 22 of the *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999* (Qld).

2 Advertising

2.1 Advertising

The Operator must not permit any advertising on a Contract Vehicle which in the opinion of the Chief Executive is:

- (a) political in nature;
- (b) sexual in nature;
- (c) not compliant with the requirements of section 119 (Advertising on public passenger vehicles) of the Regulation;
- (d) inconsistent with the objectives of the Act;
- (e) unsuitable for display on a Contract Vehicle, or
- (f) detracts from a positive image of public passenger transport.

If the Operator is directed to remove any advertising on the basis that it breaches this clause 2.1, the Operator must, at its cost, promptly comply with such direction.

3 Contract Vehicle Records

3.1 Register of Contract Vehicles

The Operator's register of Contract Vehicles as at the Commencement Date appears in

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Annexure C.

- (a) The Operator must maintain a complete, accurate and up-to-date register of all Contract Vehicles. The register must be maintained in the format prescribed by the Chief Executive and at a minimum, contain the following categories of information:
- (i) vehicle number;
 - (ii) vehicle registration;
 - (iii) year of manufacture;
 - (iv) vehicle make and model;
 - (v) number of seats;
 - (vi) year of purchase;
 - (vii) purchase/acquisition price;
 - (viii) details of Special Vehicle Access and DDA compliance;
 - (ix) principal use; and
 - (x) Contract Vehicle age.
- (b) The Operator must provide the Chief Executive with a copy of an updated register of Contract Vehicles annually, or as otherwise requested.

4 Restrictions on disposal of Contract Vehicles

4.1 Use, maintenance and recording of Contract Vehicles

- (a) The Operator will be and remain the absolute owner of all Contract Vehicles, and nothing in this Contract will be taken to transfer title or risk in any Contract Vehicle to the State, the Department or the Chief Executive.
- (b) The Operator must maintain all Contract Vehicles in good order and condition at all times. Without limiting the generality of this obligation and the requirements set out under clause 1 of this Schedule 4, this obligation includes:
- (i) monitoring the physical condition of the Contract Vehicles;
 - (ii) taking all reasonable steps to safeguard the Contract Vehicles from damage or theft;
 - (iii) carrying out all necessary maintenance and repairs to ensure all Contract Vehicles remain in good working order; and
 - (iv) ensuring staff are properly trained in the use and operation of Contract Vehicles.
- (c) The Operator must ensure that all maintenance and repair work performed in accordance with clause 4.1(b)(iii) is carried out by contractors or employees who are suitably skilled and experienced, and hold all appropriate qualifications, necessary to perform such work in a

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workmanlike and professional manner, in accordance with generally accepted industry standards and without in any way detracting from the Operator's obligations under this Contract.

- (d) The Operator must develop and implement appropriate financial strategies to ensure that the Contract Vehicles can be replaced as necessary.
- (e) Except as otherwise provided under this Contract, the Operator is responsible to pay all costs associated with the use, operation, maintenance and repair of the Contract Vehicles, including, where applicable, vehicle registration fees.

4.2 Insurance

- (a) The Operator must take out and maintain with a reputable insurer comprehensive insurance in respect of all Contract Vehicles, for the full insurable value of the Contract Vehicles.
- (b) If the Operator fails to take out or maintain insurance as required by clause 4.2(a), the Chief Executive may effect the necessary insurance and may treat such failure as a breach of the contract, entitling the Chief Executive to exercise any of the rights under clause 27 and/or clause 37 of this Contract, or under section 47 of the Act.

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Schedule 5

Customer Information and Marketing

1 Customer Information

1.1 Timetable and Route Information

The Operator must ensure that accurate, current and legible copies of the Timetables and route information are:

- (a) carried on each Contract Vehicle when providing a Service the subject of the Timetable; and
- (b) readily available at the Operator's office and at appropriate locations in sufficient numbers for public distribution.

1.2 State-operated websites

- (a) The Operator must provide the Chief Executive with an electronic version of the Timetables, in the format specified by the Chief Executive, for inclusion in any website operated by the State relating to the Services.
- (b) The Operator must immediately provide the Chief Executive with any Timetable updates and pertinent information about the Services to ensure that information on any State website remains current and accurate.

1.3 Link to Operator website

The Operator authorises the State to establish an electronic link to any website that the Operator maintains about the Services.

2 Marketing and Communications

2.1 Strategy and Campaigns

The Chief Executive may develop regional, Queensland or network-wide marketing strategies regarding provision of the Services, and will keep the Operator informed about such marketing campaigns.

The Chief Executive may also develop local marketing campaigns, in consultation with the Operator.

2.2 Operator to Cooperate in Marketing

In order to give effect to any marketing strategy, the Operator will cooperate with the Chief Executive by participating in and promoting marketing activities as reasonably required by the Chief Executive. Without limiting their scope, marketing activities may include promotions, information sessions, focus groups, surveys, community consultation, as well as participation in local or regional events.

2.3 Operator to Cooperate in Communication Campaigns

The Operator will cooperate with the Chief Executive in any communication campaign as well as stakeholder management initiatives undertaken by the State during the Term.

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2.4 Media Communication

- (a) The Chief Executive and the Operator will use their best endeavours to share information with each other which relates to communication to the public in relation to the Services and which may impact on the interests of either party.
- (b) The Operator will inform the Chief Executive of any enquiries from the media concerning the Services as soon as practicable after initial contact.

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Schedule 6

Special Conditions

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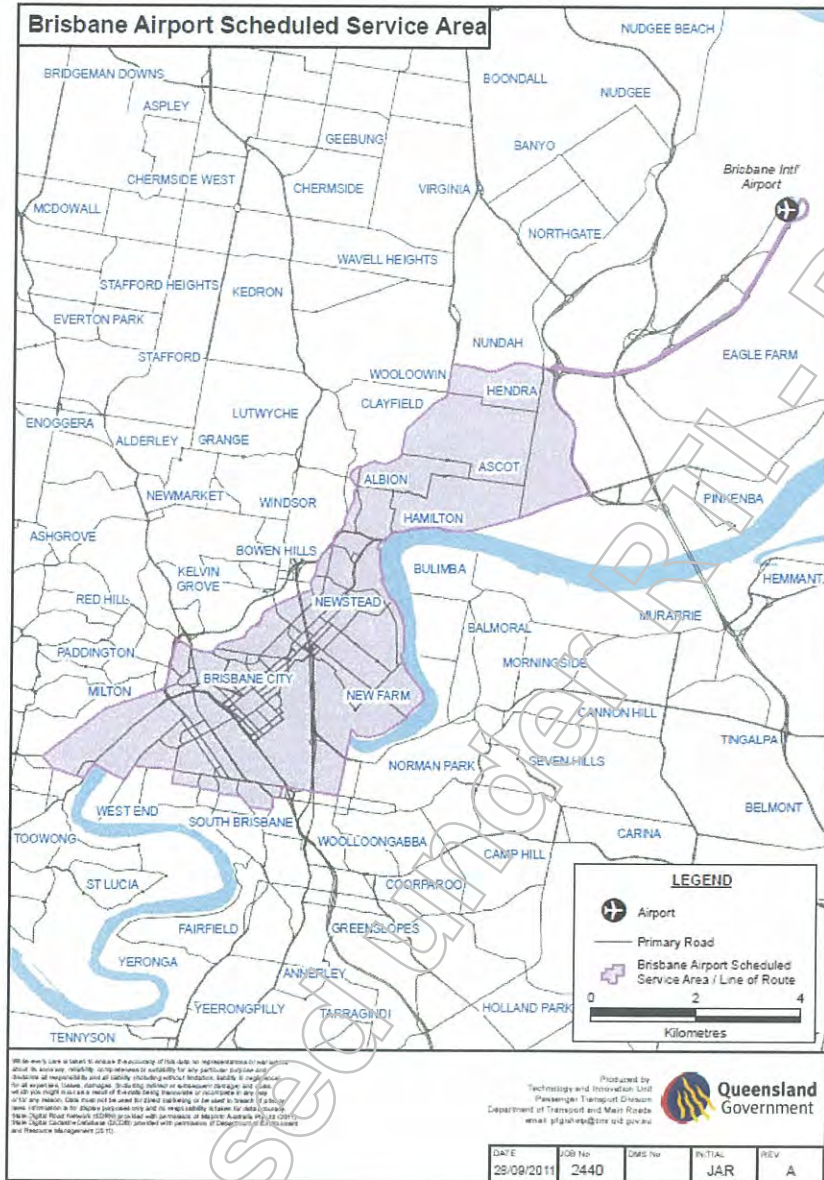
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Annexure A

Contract Area



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Annexure B

Contract Service Plan as at Commencement Date

[Contract Service Plan to include:

1. The Operator is to provide road-based General Route Services between the Airport (as defined) and the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping terminals located within the service contract area as defined by the map located in Annexure A.

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2. These Services shall be subject to the following restrictions:

- (a) on journeys from the Airport, passengers may be picked up only at the Airport and set down only at the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping Terminals located in the service contract area; and
- (b) on journeys to the Airport, passengers may be picked up only at the hotels, motels, accommodation houses, the Brisbane Transit Centre or Passenger Shipping Terminals located in the service contract area. Passengers can be set down only at the Airport.

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Bus No	Vehicle Registration	Year of M'fature	Vehicle Make	Vehicle Model	Seats	Year of Purchase	Special Vehicle Access	DDA Comp
			Not to be completed: To be completed by the Department from ter					

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Our ref P42139-PT
Your ref
Enquiries Katie Pekaj

Department of
Transport and Main Roads

1 November 2016

Chief Executive Officer
CXN Transport Pty Ltd
PO Box 283
Ashmore City Qld 4214

Dear

Brisbane Airport Bus Service Contract

I am writing to you in relation to the Brisbane Airport Bus Service Contract ('Service Contract') and the forthcoming expiry date. As you are aware, the Service Contract held between the Department of Transport and Main Roads (TMR) and CXN Transport Pty Ltd is due to expire 22 January 2017. As recently discussed with departmental officers, it has been identified that further work is required before TMR can conduct the necessary procurement process for future services.

As a result, I am writing to you to seek your agreement to vary the current contract term in accordance with clause 41.5 of the Service Contract, to give effect to a 9 month extension to the current contract expiry date. This would mean the new expiry date would be 22 October 2017.

If you are in agreement with this, please sign both copies of the enclosed Deed of Variation and return both copies back to TMR where they will be executed by a duly authorised officer. Upon completion, a copy will be posted back to you for your records.

Please return the documents to:

Ms Katie Pekaj
TransLink Division
Department of Transport and Main Roads
GPO Box 50
Brisbane Qld 4001

TransLink Division
Passenger Transport Services Branch
Level 1, 61 Mary Street
Brisbane Qld 4000
GPO Box 50 Brisbane Qld 4001

Telephone +61 7 (07) 3338 4307
Facsimile +61 7 3338 4600
Website www.tmr.qld.gov.au
Email katie.pekaj@translink.com.au
ABN 39 407 690 291

Should you have any questions regarding this proposal, please contact your contract manager, Ms Katie Pekaj on 3338 4307 or katie.pekaj@translink.com.au. Ms Pekaj will be pleased to assist.

Yours sincerely,

 Jessica Riddell

A/Executive Director (PT Contracts & Services)

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