

Service Contract

SEQ General Route Services
Urban and School

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty. Limited trading as Sunshine Coast Sunbus (**Service Provider**)

Released under RTI - DTMR

Service Contract

SEQ General Route Services

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Details

Date

Parties

Name	State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads
ABN	39 407 690 291
Short form name	Purchaser
Notice details	See Part A

Name	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus
Short form name	Service Provider
Notice details	See Part A

Background

- A The Purchaser is responsible for the coordination of transport infrastructure and services and the management of transport policy and planning in Queensland.
- B The Chief Executive is authorised under the Act, on behalf of the Purchaser, to enter into a service contract with an operator under which that operator is required to provide a Public Passenger Service for an area or Route in a way that meets or exceeds performance levels stated in the Contract.
- C Pursuant to section 62AAD of the Act, the Purchaser invited the Service Provider to offer for a new Integrated Mass Transit Service Contract to provide certain General Route Services.
- D The parties have entered into this Contract to record the terms and conditions on which it has been agreed that the Service Provider will perform the Transport Operations and the Purchaser will perform its related obligations as described under this Contract.

Part A – Contract Details

The Contract Details referred to in this Contract are set out in the following table.

1.	Service Provider Name ABN ACN Address	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus 94 065 794 943 065 794 943 KPMG, 71 Eagle St, Brisbane Qld 4000
2.	Commencement Date	23 July 2018
3.	Option Exercise Date (clause 3.2)	25 June 2022
4.	Original Expiry Date – option to extend not exercised (clause 3.2)	25 June 2023
5.	Extended Expiry Date – option to extend exercised (clause 3.2)	25 June 2025
6.	Address for service of notices – Purchaser	General Manager (Passenger Transport Services) TransLink Division Department of Transport and Main Roads 61 Mary Street Brisbane Qld 4000 Facsimile: (07) 3338 4600 email: sunbussc@translink.com.au
7.	Address for service of notices – Service Provider	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus Attn: KPMG 71 Eagle St Brisbane Qld 4000 Contact: 07 5579 5900 Email: buscontracts@tagroup.net.au
8.	Service Provider's Representative	PI
9.	Amount of Performance Bond	Sch.4 Part 4 s.7(1)(c)

Part B – Preliminary Matters

1. Defined Terms and Interpretation

1.1 Defined Terms

The definitions in Schedule A1 apply throughout this Contract, including in the schedules to this Contract.

1.2 Interpretation

The following rules apply in interpreting this Contract unless the context makes it clear that a rule is not intended to apply:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes other genders;
- (c) another grammatical form of a defined word or expression has, when capitalised, a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule, annexure or exhibit is to a clause or paragraph of, or schedule, annexure or exhibit to, this Contract, and a reference to this Contract includes any schedule, annexure or exhibit;
- (e) headings and subheadings are for convenience only and do not affect interpretation;
- (f) except to the extent expressly stated to the contrary in this Contract, a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (h) a reference to a time of day is to that time of day in Brisbane, Australia;
- (i) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) a reference to:
 - (i) a statute, ordinance, code or other law includes regulations and other enforceable instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
 - (ii) sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in consolidated, amended, re-enacted or replacement statutes;
- (l) the meaning of general words is not limited by specific examples that follow them;
- (m) the meaning of general words is not limited merely because more specific words precede them;
- (n) a party who has an obligation must perform that obligation at its own cost, unless a term of this Contract expressly provides otherwise;
- (o) any contract, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- (p) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (q) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it or benefits from the relevant provision;
- (r) references to writing include any means of representing or reproducing words, figures, drawings or symbols, in a visible, tangible form;
- (s) references to an obligation to notify a party mean an obligation to notify that party in writing;
- (t) references to signature and signing include due execution by a corporation, or other relevant entity;
- (u) any reference to:
 - (i) the Transport Operations;
 - (ii) a Service Contract Asset; or
 - (iii) any other Deliverable, document or thing,or any part of them:
 - (iv) being fit for purpose or fit for its intended purpose; or
 - (v) as having an intended use,(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to any purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:
 - (vi) this Contract;
 - (vii) the Information Documents;
 - (viii) the Operations Manual; or
 - (ix) to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change Event, any document provided by the Purchaser to the Service Provider specifically in connection with the Change Event.
- (v) references to months mean calendar months;
- (w) a reference to a quarter means any calendar quarter (or part calendar quarter) commencing on 1st January, 1st April, 1st July or 1st October in any year;
- (x) if any term of this Contract is legally unenforceable or made inapplicable, it must 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);
- (y) references to:
 - (i) consent mean prior written consent; and
 - (ii) approval mean prior written approval; and
- (z) references to:
 - (i) termination of this Contract include cancellation of this Contract as that term is used in Chapter 6 of the Act; and
 - (ii) surrender of this Contract are references to surrender of the Contract pursuant to s.48(1)(c) of the Act.

1.3 Purchaser Discretion

- (a) Except where expressly stated otherwise in this Contract:
- (i) all approvals, consents, decisions or exercises of discretion required (whether expressly or impliedly) or able to be given or made by the Purchaser under this Contract may be given, not given, made, not made, exercised, not exercised, withheld or made conditional by the Purchaser, in the Purchaser's absolute and unfettered discretion; and
 - (ii) in granting any approval or consent, making any decisions or exercising any discretion under or in connection with this Contract in relation to any matter described in clause 1.3(a)(i), the Purchaser does not assume any duty of care, responsibility or liability to the Service Provider or any other person and will not be taken to have agreed that any matter that is the subject of any approval, consent, decision or exercise of discretion is in compliance with this Contract.
- (b) The Service Provider acknowledges and agrees that this Contract does not in any way:
- (i) limit or prevent the exercise of any statutory power or discretion by any Government Authority;
 - (ii) require the Purchaser to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of this Contract if the Purchaser regards that exercise as not in the public interest or otherwise contrary to a duty of the Purchaser under the Act or another Law;
 - (iii) require the Purchaser to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of this Contract;
 - (iv) require the Purchaser to legislate in the future in a manner that is only consistent with the objectives and expected outcomes of this Contract;
 - (v) interfere with or influence the exercise by any other person of a statutory power or discretion; or
 - (vi) require the Purchaser to act in any way that the Purchaser regards as not in the public interest.
- (c) Except where expressly stated otherwise in this Contract, nothing the Purchaser does, fails to do, or purports to do, pursuant to its statutory functions or powers will:
- (i) be an act or omission of the Purchaser under this Contract; or
 - (ii) entitle the Service Provider to make any Claim arising out of the subject matter of this Contract
- (d) Notwithstanding clauses 1.3(a), 1.3(b) and 1.3(c), the Purchaser is not relieved from any Claim that the Service Provider may have against the Purchaser for its exercise of (or failure to exercise) any of its executive or statutory functions or powers under any Law or for taking any action (or failing to take any action) on the grounds of public interest, in a manner contrary to an express obligation of the Purchaser under this Contract, and the existence of such obligations, and the existence and the amount of such Claim, will be assessed in accordance with the terms of this Contract.

1.4 Reasonable endeavours of the Purchaser

If the Purchaser is required under the terms of this Contract to exercise best or reasonable endeavours, the Service Provider acknowledges that:

- (a) the Purchaser will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities; and
- (b) the Purchaser cannot guarantee the relevant outcome.

1.5 Relationship between this Contract and the Act

- (a) **Integrated Mass Transit Service Contract:** This Contract is an Integrated Mass Transit Service Contract under Chapter 6, Part 2, Division 2AA of the Act.
- (b) **No exclusivity:** In accordance with section 62AAC(2) of the Act, this Contract does not confer on the Service Provider an exclusive right to deliver all or any part of the Network or any other Public Passenger Service in any geographical area or on any route. The Service Provider acknowledges and agrees that the Purchaser may grant to any other person from time to time (without any liability or obligation on the Purchaser to compensate any person and without prejudice to any other right the Purchaser may have) any right or benefit similar to a right or benefit of the Service Provider under this Contract.
- (c) **Minimum Service Levels:** The minimum service levels applicable to this Contract for the purposes of section 40 of the Act are the Performance Standards.
- (d) **Special Events:** This Contract does not constitute a:
 - (i) declaration of any Special Event under section 67C of the Act; or
 - (ii) Special Event Approval under section 67F of the Act,and the Service Provider is not authorised by this Contract to enter into or perform a contract or other arrangement for the provision of Public Passenger Services to or from a Special Event except to the extent that clause 7.8 applies.
- (e) **End of Term:** The provisions of clause 28 do not apply unless:
 - (i) the Purchaser has determined for the purposes of section 62AAD(1)(a) of the Act that the performance of the Service Provider has not been satisfactory under this Contract;
 - (ii) a circumstance described in any of sections 62AAD(3)(a), 62AAD(3)(b) or 62AAD(3)(c) of the Act has arisen; or
 - (iii) this Contract is terminated, cancelled or surrendered for any reason prior to the Expiry Date.
- (f) **Compensation:** The provisions of clauses 7.5 and 7.6 are without prejudice to any rights of the Service Provider under section 62AAH of the Act.

1.6 Resolution of ambiguities

If there is any inconsistency:

- (a) within the provisions of this Contract;
- (b) between a provision of this Contract and a provision of Legislation;
- (c) between a provision of this Contract and a provision of the Operations Manual;
- (d) [Not used];
- (e) between a provision of this Contract and a provision of the Operating Plans; or
- (f) between any one or more of them,

unless directed to the contrary by the Purchaser, the provision which imposes the higher or more onerous standard on the Service Provider will prevail.

1.7 No bias against drafter

No provision of this Contract is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

1.8 Changes to indices

In this Contract:

- (a) a reference to an index published by the Australian Bureau of Statistics or another statistical service (**Statistical Service**) includes a reference to any replacement or renamed index performing substantially the same function as the original index;
- (b) a reference to a Statistical Service responsible for publishing an index includes a reference to any replacement or renamed Statistical Service performing substantially the same function in relation to the index; and
- (c) if there is no replacement or renamed index, or no replacement or renamed Statistical Service (as the case may be), the Purchaser will determine the appropriate replacement index or Statistical Service and notify the Service Provider.

1.9 Excluding liability

Any provision of this Contract which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law.

1.10 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).

1.11 Service Provider is an independent contractor

Subject to clause 8.2, the Service Provider acknowledges and agrees that;

- (a) it has entered into this Contract as an independent contractor; and
- (b) neither this Contract, the performance of the Transport Operations in accordance with this Contract nor any other aspect of the Service Provider's performance of its obligations under this Contract will constitute an appointment of the Service Provider as an agent for the Purchaser.

2. Contract Objectives and General Obligations

2.1 Contract Objectives

In addition to the objectives stated in the Act, the Purchaser's strategic objectives in entering into this Contract are to:

- (a) provide a framework for a genuine collaborative approach between the Purchaser and Service Provider to deliver high quality Public Passenger Services;
- (b) ensure financial sustainability for both the Purchaser and the Service Provider while also ensuring flexibility to meet changing circumstances;
- (c) improve accountability through clarity of roles and responsibilities which appropriately account for the respective sharing of risk;
- (d) achieve consistency of livery and branding across the entire Integrated Network;
- (e) deliver a contracting framework that enables:
 - (i) continuous and consistent improvement in the Customer's experience along the entire public transport journey through:
 - (A) a strong operational focus on accessibility, affordability, reliability, safety, and overall Customer service experience; and
 - (B) the management of clear Performance Measures and KPIs directly linked to the achievement of the strategic objectives;
 - (ii) planning and delivery agility to meet the strategic objectives of the State;
 - (iii) improved cost certainty to support robust budget management with respect to Network design and delivery;

- (iv) greater transparency of costs paid by the Purchaser; and
- (v) the ongoing and transparent realisation of efficiencies and cost savings through the delivery of an Optimised Network throughout the Contract Term.

2.2 Service Provider's General Obligations

On the terms and conditions of this Contract, the Service Provider must:

- (a) perform the Transport Operations; and
- (b) in doing so, use its best endeavours to assist the Purchaser to achieve the Contract Objectives.

Nothing in clause 2.2(b) is intended to expand or otherwise affect the scope of the Transport Operations or any warranty given by the Service Provider under this Contract.

2.3 Purchaser's General Obligations

On the terms and conditions of this Contract, the Purchaser agrees to pay the Service Payments to the Service Provider in consideration for performance of the Transport Operations.

3. Contract Term

3.1 Commencement

- (a) Subject to clause 3.1(b), the Contract and the Contract Term commence on the Commencement Date.
- (b) The parties have agreed that:
 - (i) the progressive implementation of certain obligations and initiatives provided for under the Mobilisation Program will commence on the date of execution of this Contract; and
 - (ii) accordingly, clauses 1, 3, 4, 5, 6, 10, 16, 17, 23, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 and the schedules to this Contract referred to in those clauses (to the extent referred to in those clauses) will commence on the date of execution of this Contract.

3.2 Extended Term

- (a) Subject to clause 3.2(b), the Purchaser may extend the Expiry Date by a period of two years from the Original Expiry Date until the Extended Expiry Date.
- (b) The Purchaser must give written notice of its intention to extend the Expiry Date by giving notice to the Service Provider on or before the Option Exercise Date.
- (c) If the Purchaser exercises its option to extend the Contract Term under clause 3.2(a), the new Expiry Date of the Contract will be the Extended Expiry Date.

3.3 End of Contract Term

The Contract Term ends on:

- (a) the Expiry Date; or
- (b) if earlier, the date on which this Contract is terminated, cancelled or surrendered in accordance with its terms or the Act,
(the End Date).

4. Representations and Warranties

4.1 Service Provider's decision to enter into Contract

- (a) The Purchaser gives no warranties and makes no representations to the Service Provider as to the accuracy, completeness or fitness for any purpose of the Information Documents. The Service Provider shall not in any way be relieved from any obligation under this Contract, nor shall it be entitled to claim against the Purchaser or any Purchaser Associate on grounds that any information, whether obtained from the Purchaser or otherwise (including information made available by the Purchaser), is incorrect or insufficient. In deciding to enter into this Contract, the Service Provider has made its own enquiries as to the accuracy and adequacy of that information.
- (b) The Service Provider shall be deemed to have satisfied itself:
 - (i) as to the subject matter of this Contract (including the Information Documents) and the nature and extent of the risks assumed by it under this Contract, and is solely responsible for the consequences of any misunderstanding or misinterpretation of the requirements of this Contract;
 - (ii) as to the quantity, quality, nature and extent of all resources (including human resources), materials and facilities necessary to enable it to meet, to comply with and to perform its obligations under this Contract; and
 - (iii) that each Service Payment provides it with sufficient allowance to perform the Transport Operations and to manage the risks assumed by it under this Contract.
- (c) The Service Provider acknowledges and agrees that it:
 - (i) has gathered all information necessary to fully inform itself as to the performance of:
 - (A) the Transport Operations; and
 - (B) its obligations generally under this Contract, including all regulatory requirements of the relevant Government Authorities in relation thereto;
 - (ii) has otherwise made its own independent assessment of, and has relied on its own enquiries, investigations, experience, skills and judgement in its entry into, and performance of this Contract; and
 - (iii) has not relied on any representations made, or information provided to it, by the Purchaser that has not been independently verified by the Service Provider.

4.2 Service Provider representations and warranties

- (a) On each Disclosure Date described in clause 4.2(b), the Service Provider represents and warrants to and for the benefit of the Purchaser that, except as disclosed in writing to, and expressly acknowledged in writing by, the Purchaser prior to the relevant Disclosure Date, each of the Service Provider Warranties are true, correct and not misleading.
- (b) Each representation and warranty made under clause 4.2(a) is deemed to be made with reference to the facts and circumstances then subsisting on the following dates (each a **Disclosure Date**):
 - (i) on the Commencement Date;
 - (ii) thereafter on the first Business Day of each of the months of January, April, July and October during the Contract Term; and
 - (iii) in the case of the Service Provider Warranty given under paragraph 1.3(c) of Schedule A2, on the date on which the relevant report or other information is provided by the Service Provider to the Purchaser (or any Purchaser Associate).

4.3 Reliance on Representations and Warranties

The Service Provider acknowledges that the Purchaser has entered into this Contract in reliance on the Service Provider Warranties being true, correct and not misleading on each Disclosure Date.

4.4 Notification of Change

The Service Provider must notify the Purchaser immediately on becoming aware that any of the Service Provider Warranties has become untrue, incorrect or misleading.

5. Governance

5.1 Purchaser's power to give directions

- (a) The Purchaser may give a direction to the Service Provider:
- (i) pursuant to any express provision of this Contract enabling the Purchaser to give a direction in relation to a particular thing, matter or circumstance;
 - (ii) requiring the Service Provider to:
 - (A) comply with an obligation imposed on the Service Provider by or in relation to this Contract;
 - (B) take a step which will support the compliance by the Service Provider with an obligation imposed on the Service Provider by or in relation to this Contract; or
 - (C) decline or cease to take a step which may prejudice the Service Provider's ability to comply with an obligation imposed on the Service Provider by or in relation to this Contract; and
 - (iii) in any other circumstance where the Purchaser considers it reasonably necessary to give a direction in relation to this Contract.
- (b) Subject to clause 5.1(e), the Service Provider must comply with all directions given by the Purchaser under this Contract.
- (c) The Purchaser may, as part of a direction or subsequent to a direction, prescribe a time or date by which the Service Provider must comply with the direction.
- (d) Except where this Contract provides otherwise, the Purchaser may give a direction orally but must confirm it in writing as soon as practicable.
- (e) If the Purchaser gives a direction under clause 5.1(a)(iii) and such direction will or is likely to:
- (i) materially adversely affect the ability of the Service Provider to comply with its obligations; or
 - (ii) otherwise constitute or give rise to any material change or variation to the Transport Operations that requires the Service Provider to incur material additional cost,
- then:
- (iii) the Service Provider may give notice to this effect to the Purchaser within 3 Business Days following receipt of the relevant direction; and
 - (iv) within 5 Business Days of receipt of such notice from the Service Provider, the Purchaser must either:
 - (A) if the Purchaser agrees that the direction will or is likely to have such effect and it wishes to pursue such direction, direct the Service Provider to

prepare an Indicative Change Proposal in respect of the subject matter of the direction and clause 23 will apply;

- (B) notify the Service Provider that it wishes to withdraw the direction, in which case the Service Provider will not be required to comply with the direction; or
- (C) notify the Service Provider that it disagrees that the direction will or is likely to have such effect, in which case either party may refer the matter for resolution under the Dispute Resolution Procedures,

provided that if the Purchaser does not notify the Service Provider within the timeframe required by clause 5.1(e)(iv) the direction will be deemed to have been withdrawn and the Service Provider will not be required to comply with such direction.

5.2 Service Provider's Representative

- (a) The Service Provider must appoint and retain a natural person to be the Service Provider's Representative under this Contract and, on the Commencement Date, the Service Provider appoints the person specified in the Contract Details to that role.
- (b) The Service Provider must ensure that the Service Provider's Representative has a detailed knowledge of the Transport Operations and the appropriate qualifications, skills and experience in all relevant areas to undertake the role of Service Provider's Representative.
- (c) The Service Provider's Representative will be deemed:
 - (i) to have authority from the Service Provider to exercise all the powers, duties, discretions and authorities to be exercised by the Service Provider's Representative under this Contract and to do so as the agent of the Service Provider; and
 - (ii) to have full power and authority to act for and on behalf of, and to bind the Service Provider under this Contract.
- (d) The Service Provider's Representative shall be the principal person responsible for direct liaison with the Purchaser in relation to this Contract and the Transport Operations during the Contract Term and the Service Provider must ensure that the Service Provider's Representative performs the duties of the Service Provider's Representative under this Contract, including to:
 - (i) understand, co-ordinate and manage the Transport Operations throughout the Contract Term;
 - (ii) liaise and generally deal with stakeholders in accordance with the Service Provider's obligations to do so under this Contract;
 - (iii) represent the views of the Service Provider and to manage and co-ordinate issues with any other Service Provider Associate prior to presentation to the Purchaser;
 - (iv) act as the principal point of contact between the Purchaser and the Service Provider in relation to this Contract; and
 - (v) oversee and co-ordinate the provision of all Deliverables by or on behalf of the Service Provider and to review and ensure the quality (including the clarity and completeness of documentation) and timeliness of provision of all such Deliverables.
- (e) The Service Provider is bound by and deemed to have knowledge of:
 - (i) notices or documents signed by the Service Provider's Representative;
 - (ii) matters within the knowledge of the Service Provider's Representative; and

- (iii) acts, omissions and defaults of the Service Provider's Representative, whether or not the Service Provider's Representative was acting within the scope of its authority at the time of the act, omission or default.
- (f) On reasonable notice from the Purchaser, the Service Provider's Representative must:
 - (i) be available by telephone during normal Business Hours; or
 - (ii) (at the Purchaser's reasonable discretion) attend any ad hoc meeting required by the Purchaser (and must provide reports and make any presentations that the Purchaser reasonably requests), to either:
 - (A) demonstrate the Service Provider's compliance with this Contract; or
 - (B) discuss other matters of importance to the conduct of the Transport Operations.
- (g) The Service Provider must:
 - (i) nominate an alternative person to act as the Service Provider's Representative in circumstances where the Service Provider's Representative will not be available in accordance with clause 5.2(f) (for example, due to illness or planned leave arrangements) (**Service Provider's Representative Delegate**); and
 - (ii) obtain the Purchaser's approval of the appointment.
- (h) If, at any time, the Purchaser makes a reasonable objection to the person holding the position of Service Provider's Representative or Service Provider's Representative Delegate, the Service Provider must terminate the appointment and appoint another Service Provider's Representative or Service Provider's Representative Delegate, as applicable.
- (i) The Service Provider may not replace the Service Provider's Representative with another person who is not an approved Service Provider's Representative Delegate, unless it first obtains the approval of the Purchaser, which must not be unreasonably withheld.

5.3 Contract Management Portal

- (a) The Purchaser may, during the Contract Term, notify the Service Provider that the Contract Management Portal (**CMP**) is to be used with effect from a date nominated by the Purchaser (**CMP Effective Date**) as the principal medium for formal communications and workflow between the Purchaser and Service Provider under this Contract.
- (b) From the CMP Effective Date, the Service Provider must:
 - (i) use the Contract Management Portal in accordance with this Contract; and
 - (ii) only use the Contract Management Portal for the purpose of performing this Contract.
- (c) Until the CMP Effective Date, communications under this Contract must be given in accordance with clause 39.1.
- (d) The Service Provider acknowledges and agrees that it will have no Claim against the Purchaser in respect of the introduction of the Contract Management Portal.

Part C – Transport Operations

6. Mobilisation Program and Transition In Period

6.1 Acknowledgement

The parties acknowledge and agree that:

- (a) under the terms of the 3G Contract, the Service Provider was responsible for delivery of the Existing Network; and
- (b) subject to this Contract, performance of the Transport Operations by the Service Provider under this Contract, and the administration of this Contract by the Purchaser, will require the parties to:
 - (i) develop and implement new systems and processes;
 - (ii) mobilise and manage existing and new resources in new ways;
 - (iii) train Staff;
 - (iv) establish new arrangements with third parties (including Subcontractors); and
 - (v) terminate existing arrangements with third parties,

including, during the Transition In Period, undertaking activities described in the Transition In Schedule in order to enable a transition from the Existing Network to an Optimised Performance Network.

6.2 Mobilisation Activities and Transition In

- (a) To reflect the reasonable mobilisation requirements of the Purchaser and the Service Provider described in clause 6.1, the parties have agreed the Transition In Schedule and the Mobilisation Program for the progressive implementation of certain obligations and initiatives under this Contract. In particular:
 - (i) in accordance with the Transition In Schedule:
 - (A) the redesign of the Existing Network through Performance Optimisation as contemplated by the Transition In Schedule;
 - (B) the implementation and use by the Service Provider of the Integrated Scheduling System; and
 - (C) the update of the Network Specification to reflect the Existing Network; and
 - (ii) in accordance with the Mobilisation Program:
 - (A) the implementation by the Service Provider of Business Improvement Measures (as identified in Schedule B3) pursuant to clause 11.2;
 - (B) [Not used]
 - (C) [Not used]
 - (D) the implementation by the Service Provider of an operational telematics system on Approved Contract Vehicles in accordance with clause 13.6(b); and
 - (E) the procurement and use of digital radios by the Service Provider that are compatible with the Purchaser Nominated Digital Radio Network as directed by the Purchaser in accordance with clause 12.12(f).
- (b) The Service Provider, must:

- (i) undertake and complete all the Mobilisation Activities in accordance with the Mobilisation Program and this Contract; and
 - (ii) without limiting clause 6.2(b)(i), during the Transition In Period, undertake the activities of the Service Provider set out in, and comply with, the provisions of the Transition In Schedule.
- (c) Notwithstanding any other provision of this Contract, during the Transition In Period:
- (i) clause 15;
 - (ii) clause 21; and
 - (iii) Schedule D2,
- will be deemed to be varied, in accordance with and as set out in the Transition In Schedule, but otherwise, all other provisions of this Contract will continue to apply in accordance with their terms.

7. Performance of Passenger Services

7.1 Obligation to perform the Transport Operations

On and from the Commencement Date up to and including the End Date, the Service Provider must undertake the Transport Operations, including deliver the Network as described in the Network Specification so as to meet or exceed the Performance Standard, all in accordance with this Contract and the Act.

7.2 Planning framework

The Service Provider acknowledges and agrees that:

- (a) during the Contract Term, the Purchaser will lead strategic planning for the Integrated Network and develop Public Transport Plans from time to time drawing on input from operators of relevant public transport modes in the Integrated Network (as determined to be necessary or desirable from time to time by the Purchaser);
- (b) as reasonably directed by the Purchaser, the Service Provider's Representative must provide planning inputs through the Purchaser's designated channels to support development of Public Transport Plans;
- (c) in accordance with clause 7.5, the Purchaser has discretion to direct a Planned Service Change at any time during the Contract Term, including to:
 - (i) respond to Public Transport Plans, the requirements of Customers or policy; or
 - (ii) achieve or support an Optimised Network; and
- (d) where reasonably directed by the Purchaser, the Service Provider must collaborate with and support the Purchaser in determining:
 - (i) opportunities and requirements for such Planned Service Changes; and
 - (ii) the associated new or changed Route Attributes.

7.3 Operational Risks

Subject to this Contract, the Service Provider must manage, and bears the risk of, all financial and operational impacts of any direction given by the Purchaser under clause 7.5(c)(i), including:

- (a) any impact on the ability of the Service Provider to deliver the Network in accordance with the Performance Standard and other requirements of this Contract or the Act;
- (b) any change in Peak Vehicle Requirement;
- (c) changes in requirements for Staff numbers;

- (d) scheduling activities; and
- (e) staff recruitment, training and rostering.

7.4 Not Used

7.5 Planned Service Changes

- (a) At any time during the Contract Term:
 - (i) the Purchaser may propose to the Service Provider that a Planned Service Change be implemented; or
 - (ii) the Service Provider may propose a Planned Service Change for consideration by the Purchaser.
- (b) If a Planned Service Change is proposed under clause 7.5(a), the Purchaser will evaluate and plan the proposed Service Change in accordance with the Operations Manual and the Service Provider must, as directed by the Purchaser:
 - (i) develop and submit to the Purchaser:
 - (A) one or more Service Change Quotations for the proposed Service Change;
 - (B) where a result of the Service Change is that:
 - (I) there will be an increase in the number of Contract Vehicles required to be accommodated at a Depot and that increase exceeds the Spare Depot Capacity; or
 - (II) a Depot will no longer be required to accommodate Contract Vehicles,an Indicative Change Proposal for the required Change in Depot Capacity (and the Purchaser will be deemed to have given a direction to that effect pursuant to clause 12.11(b)(ii)); and
 - (C) any other information about the operational or financial impacts of the Service Change reasonably required by the Purchaser from time to time pursuant to the Operations Manual;
 - (ii) undertake tests of new Contract Vehicles, Trips, Routes, options for Route Alignment or other Route Attributes; or
 - (iii) determine the Timing Points and Run Times for the Service Change, each within the timeframes required or contemplated by the Operations Manual.
- (c) The Purchaser may, at its discretion:
 - (i) direct that the Service Provider implement a Service Change proposed by the Purchaser under clause 7.5(a)(i);
 - (ii) approve or reject a Service Change proposed by the Service Provider pursuant to clause 7.5(a)(ii); or
 - (iii) approve or reject a Service Change Quotation or request the Service Provider to modify a Service Change Quotation, including if the Purchaser considers the acceptance of the Service Change Quotation will not achieve Performance Optimisation.
- (c) Subject to clause 7.7, the Service Provider must not implement any Service Change other than a Planned Service Change directed by the Purchaser under clause 7.5(c)(i) or which is approved under clause 7.5(c)(ii) or 7.5(c)(iii) (**Approved Service Change**).
- (e) The Service Provider must:

- (i) implement an Approved Service Change in accordance with the processes and timeframes described in the Operations Manual; and
 - (ii) as directed by the Purchaser, participate in Situation Room Meetings for the introduction of the Approved Service Change.
- (f) The Service Provider acknowledges and agrees that the Purchaser:
- (i) subject to clause 7.6(c), is not obliged to invite the Service Provider to offer to deliver any New Route (as defined in clause 7.6) that is the subject of a Service Change unless the New Route is to be implemented as part of a Service Change during the Performance Optimisation Period;
 - (ii) is only obliged to invite the Service Provider to offer to provide an Existing Route (as changed) that is the subject of a Service Change in accordance with clause 7.6(c); and
 - (iii) subject to clauses 7.5(f)(i) and 7.5(f)(ii) may, at its discretion invite or appoint any person to deliver any Route, including in circumstances where the Service Provider has proposed the Service Change pursuant to clause 7.5(a)(ii) or has submitted a Service Change Quotation for the Service Change in accordance with clause 7.5(b)(i).
- (g) If there is an Approved Service Change pursuant to clause 7.5(d) or the Purchaser appoints a person other than the Service Provider to deliver a Route as contemplated in clause 7.5(f)(iii):
- (i) the Purchaser will amend the Network Specification to reflect the Service Change and the amended Network Specification will be deemed to replace the previous Network Specification;
 - (ii) the Service Payment will be adjusted in accordance with the provisions of paragraph 9 of Schedule D2;
 - (iii) where there is an increase in the Peak Vehicle Requirement as a result of the Approved Service Change:
 - (A) the Service Provider must obtain the Purchaser's approval to purchase Contract Vehicles to respond to the change in Peak Vehicle Requirement in accordance with the Operations Manual and Schedule B1 (such approval not to be unreasonably withheld or delayed); and
 - (B) the Fleet Payment will be increased in accordance with paragraph 5.2(e) of Schedule D2;
 - (iv) where there is a decrease in the Peak Vehicle Requirement as a result of the Approved Service Change, the Fleet Payment will be reduced in accordance with paragraph 5.2(i) of Schedule D2 and in accordance with paragraph 9.3 of Schedule D2; and
 - (v) the Service Provider acknowledges that:
 - (A) the requirements of clause 12.5(b) apply in relation to any Contract Vehicle disposed of or acquired in relation to the Approved Service Change; and
 - (B) the implementation of any Change in Depot Capacity referred to in clause 7.5(b)(i)(B) will be subject to the provisions of clause 23.

7.6 New Routes

- (a) The Purchaser will determine, in its reasonable discretion, whether the implementation of a Service Change will constitute:
- (i) the introduction of a new Urban Route (**New Urban Route**); or
 - (ii) the introduction of a new School Route (**New School Route**),

(each a **New Route**) for the purposes of this Contract.

- (b) In exercising its discretion under clause 7.6(a), the Purchaser will take into account whether:
- (i) in respect of a New Urban Route only, the Service Change will cause an increase of more than 10% in the Weighted Average Route Length of that Route, and the Weighted Average Route Length will be calculated in accordance with the following formula:

$$WARL = \frac{UiSK(p)}{TotTrips(p)}$$

Where:

- WARL** means the Weighted Average Route Length for the Route in respect of which the Service Change is to be effected;
- UiSK(p)** means the Urban In-Service Kilometres for period "p";
- TotTrips(p)** means the total number of Trips in period "p" shown in the Network Specification for that Route (including all Route Variants of that Route); and
- p** means the most recent whole calendar week preceding the date on which the Purchaser makes its determination under clause 7.6(a);

- (ii) in respect of a New School Route only, the Route is to service a School that is or is planned to be assigned a new unique code which identifies that School by the Department of Education and Training,

and may take into account any other facts or circumstances the Purchaser considers reasonably relevant.

- (c) If the Purchaser determines under clause 7.6(a) that the implementation of a Service Change will introduce a change to an Existing Route and will not introduce a New Route:
- (i) unless the Purchaser considers, acting reasonably, that the performance of the Service Provider under this Contract has not been satisfactory, the Purchaser must give the Service Provider reasonable opportunity to offer to continue to provide the Existing Route (as changed) before inviting another person to do so under clause 7.5(f)(ii); and
- (ii) if the Service Provider makes an offer reasonably acceptable to the Purchaser, the Purchaser must give a direction to the Service Provider pursuant to clause 7.5(c)(i) to continue to deliver the Existing Route subject to the Approved Service Change.
- (d) The Service Provider acknowledges that, in accordance with clause 7.5(f)(i), the Purchaser has absolute discretion in relation to implementation of New Routes.

7.7 Temporary Unplanned Service Changes

- (a) The Purchaser acknowledges and agrees that from time-to-time, the Service Provider may need to respond to unforeseen events (including Incidents or Service Disruptions and their consequences) that require a Temporary Unplanned Service Change to be implemented.
- (b) The Service Provider:
- (i) is not required to seek approval from the Purchaser for any Temporary Unplanned Service Change;
- (ii) must use its best endeavours to, as far as reasonably practicable:

- (A) minimise the impact of the Temporary Unplanned Service Change on Customers and the Level of Service; and
- (B) ensure Continuity of the Services;
- (iii) must comply with the Operations Manual, including:
 - (A) in relation to communication and coordination with the Purchaser in respect of the Temporary Unplanned Service Change; and
 - (B) to ensure Customers are informed of impacts resulting from the Temporary Unplanned Service Change;
- (iv) must provide the Purchaser with written details of the Temporary Unplanned Service Change within 24 hours of the Temporary Unplanned Service Change (which notification must include an Incident Report if the cause of the Temporary Unplanned Service Change is an Incident);
- (v) must comply with any reasonable direction given by the Purchaser to minimise any service disruptions and ensure Continuity of the Services;
- (vi) will not be entitled to any change to the Service Payment or any other additional payment or compensation as a result of any Temporary Unplanned Service Change; and
- (vii) may seek relief pursuant to clause 16 from the consequences of failing to meet a Performance Standard because of the impacts of the event giving rise to the Temporary Unplanned Service Change if that event was a Force Majeure Event or Purchaser Breach but otherwise will not be relieved from its obligation to meet the Performance Standard.

7.8 State Designated Events

- (a) The Service Provider acknowledges and agrees that the Purchaser:
 - (i) retains all rights to operate Scheduled Passenger Services for State Designated Events; and
 - (ii) may, at its discretion, engage any person it considers suitable to provide Scheduled Passenger Services for any State Designated Event.
- (b) The Service Provider acknowledges and agrees that:
 - (i) in accordance with the Operations Manual, from time to time, the Purchaser may give the Service Provider advance notification of State Designated Events;
 - (ii) the Service Provider must provide the State Designated Event Services for those State Designated Events as agreed between the Purchaser and the Service Provider from time to time in accordance with the procedures described in the Operations Manual, including the submission of a Service Change Quotation for providing those services; and
 - (iii) the Service Provider may not otherwise provide State Designated Event Services, including as a service provider to any person other than the Purchaser, without the Purchaser's prior written consent.
- (c) Where the Service Provider provides the State Designated Event Services as contemplated in clause 7.8(b)(ii), the Service Payment will be adjusted in accordance with the provisions of paragraph 9 of Schedule D2.
- (d) If requested by the Purchaser, the Service Provider must, where practicable, include a quotation in its Service Change Quotation for providing additional personnel or equipment in connection with State Designated Event Services, including security personnel, water barriers, traffic control devices and crowd control marshals (**SDE Auxiliary Services**).
- (e) The Purchaser may, at its discretion:

- (i) accept a quotation in respect of SDE Auxiliary Services in whole or in part, by directing the Service Provider to provide some or all of those SDE Auxiliary Services;
 - (ii) reject the quotation; or
 - (iii) adjust the quotation as agreed between the parties.
- (f) If the Purchaser accepts a Service Change Quotation in respect of SDE Auxiliary Services:
- (i) the Service Provider must provide the SDE Auxiliary Services as directed by the Purchaser under clause 7.8(e)(i); and
 - (ii) in accordance with paragraph 9.7 of Schedule D2, the Purchaser must pay the Service Provider the relevant amounts as quoted in the Service Change Quotation.
- (g) The parties acknowledge that the Performance Measures do not apply in respect of State Designated Event Services.

7.9 Other passenger services

The Service Provider warrants that no amount that is payable by the Purchaser under this Contract is also included in the amounts payable by any Government Authority under or in respect of an arrangement for the provision of Public Passenger Services by the Service Provider or a Service Provider Associate.

7.10 Cooperation with other operators

In conducting the Transport Operations, the Service Provider must cooperate with the operators of other Public Passenger Services in a manner that:

- (a) facilities efficient connections and transfers for Customers; and
- (b) does not impede other operators or service providers in the provision of those other services.

8. Ticketing and Fare Revenue

8.1 Ticketing

The Service Provider must:

- (a) offer and honour Tickets, collect Fares and inspect and reload Smartcards on behalf of the Purchaser in each case in accordance with the Operations Manual;
- (b) comply with all directions of the Purchaser in respect of Tickets or Fares (including all *TransLink Ticketing Advices*);
- (c) not:
 - (i) in any way deter any boarding Customers from purchasing a Ticket for a Trip;
 - (ii) offer or honour any Ticket or accept any Ticket other than a Ticket described in the Operations Manual; or
 - (iii) make any Fare or Ticket adjustment except as approved in the Operations Manual; and
- (d) at all times otherwise comply with the Operations Manual.

8.2 Service Provider agent of the Purchaser

The Service Provider acts as the agent of the Purchaser for the purpose of selling Tickets, supplying and reloading of Smartcards from the Ticketing Equipment, and the collection of Fares.

For the avoidance of doubt, the Service Provider does not act as the agent of the Purchaser for the purposes of subdivision 153-B of the GST Laws.

8.3 Requirements for dealing with Fare Revenue

- (a) The Service Provider must comply with the banking, reconciliation, settlement and apportionment processes for Fare Revenue received from Ticket transactions as specified by the Purchaser from time to time in the Operations Manual or as otherwise agreed.
- (b) Without limitation to clause 8.3(a), the Service Provider must:
 - (i) as a precondition to its right to receive any payment under this Contract, provide the Purchaser with a completed Direct Debit Authority; and
 - (ii) ensure that at all times the details provided in the Direct Debit Authority are current and correct (including by providing an updated Direct Debit Authority prior to any change in the Service Provider's details for settlement).
- (c) The Service Provider acknowledges and agrees that:
 - (i) subject to the *Fare Apportionment Rules* in the Operations Manual, all Fare Revenue received from Ticket transactions, whether as cash by the Service Provider or electronically through the Ticketing Equipment, belongs to and remains the property of the Purchaser;
 - (ii) the Service Provider is responsible for that Fare Revenue, from the time it is collected until it is remitted to the Purchaser, and
 - (iii) all cash received by the Service Provider from the sale of Tickets is for the account of the Purchaser and Moneys Owning.

8.4 Fare Revenue Protection Measures

The Service Provider must:

- (a) use its best endeavours to minimise Fare evasion on the Network, including by:
 - (i) ensuring that Drivers inspect Tickets as Customers board the Contract Vehicle;
 - (ii) except as permitted under the Operations Manual, ensuring that concession Tickets are not sold, or validated, unless the Customer produces a TransLink approved concession pass as outlined in the Operations Manual;
 - (iii) comply with the Purchaser's required procedures from time to time for notifying Senior Network Officers (SNOs) about suspected Fare evasion using the Ticketing Equipment; and
 - (iv) cooperate with SNOs and provide them with unhindered access to the Contract Vehicles to permit them to carry out their function;
- (b) if required by the Purchaser, participate in a task force on Fare evasion at least once per Contract Year; and
- (c) otherwise comply with any other revenue protection measures in the Operations Manual or this Contract (including clause 13.2).

8.5 TransLink Ticket Stock

- (a) The Service Provider must maintain sufficient levels of TransLink Ticket Stock to ensure it is able to issue paper Tickets as required at all times.
- (b) The Purchaser will be responsible for providing the Service Provider with the required TransLink Ticket Stock and the Service Provider must participate in such supply arrangements for TransLink Ticket Stock as notified by the Purchaser from time to time.
- (c) The Service Provider is responsible for the security and safe storage of TransLink Ticket Stock under its control.

- (d) The Service Provider must maintain a register of TransLink Ticket Stock deliveries in accordance with the Operations Manual.

9. Customer experience

9.1 Customer Service

- (a) The Service Provider must deliver the Network:
 - (i) competently and in accordance with the performance requirements in Schedule C4 (including in relation to punctuality and reliability);
 - (ii) using clean, comfortable and modern Contract Vehicles, which comply with the Minimum Contract Vehicle Specifications; and
 - (iii) in a manner that:
 - (A) is courteous to Customers and other road users;
 - (B) affords Customers with optimal comfort levels, having regard to the nature of the passenger service and the condition and amenities of the relevant Contract Vehicles;
 - (C) otherwise has primary regard to the needs and interests of Customers; and
 - (D) displays a strong orientation towards customer satisfaction.
- (b) The Service Provider acknowledges and agrees that its obligations under this clause 9.1 do not limit its obligations under the Standard or other Mandatory Requirements.

9.2 Lost Property

- (a) The Service Provider must provide a lost property service (**Lost Property Service**) for Customers that complies with this clause 9.2. If a Customer contacts the *TransLink Contact Centre* (as described in further detail in the Operations Manual) to enquire about lost property left on a Contract Vehicle, the Purchaser will provide the Customer with the Service Provider's contact details to make enquiries about the lost property directly with the Service Provider through the Lost Property Service.
- (b) The Service Provider must:
 - (i) provide reasonable facilities (approved by the Purchaser) for Drivers, Customers and other relevant persons to:
 - (A) report and hand in personal property found on Contract Vehicles; and
 - (B) report and collect personal property lost on Contract Vehicles;
 - (ii) ensure that, on return to the Depot and at the end of each shift, each Driver checks the Contract Vehicle for lost property;
 - (iii) ensure that any lost property found by a Driver is handed in to the Service Provider and establish an after-hours lost property handling procedure for Drivers and locate this facility within view of CCTV cameras;
 - (iv) ensure that each item of lost property handed in is item tagged and logged by the Service Provider in a lost property register;
 - (v) ensure its lost property register (at a minimum) records:
 - (A) the date the item of lost property was found;
 - (B) a description of the item;
 - (C) if claimed, the date of collection and the name and address of the person who collected the item;

- (D) where lost property is cash or coins, the amount of money found; and
- (E) in instances where Customers find and report lost property, but choose not to hand over the lost property to the Driver or Service Provider, relevant details of the person that has retained the lost property (to the extent practicable);
- (vi) not release lost property to any person (other than an authorised police officer) unless the person has provided suitable personal identification and appropriate evidence or validation of ownership of the lost item; and
- (vii) keep unclaimed lost property for a period of at least two (2) months, after which time the Service Provider may dispose of the lost property in a responsible manner.

9.3 Customer feedback

The Service Provider acknowledges and agrees that:

- (a) the Purchaser has established various systems to manage and process Customer feedback, as further described in the Operations Manual (**Feedback Channels**);
- (b) it will develop, implement and maintain at all times throughout the Contract Term a complaints handling process which:
 - (i) is effective in directing Customer feedback to the Feedback Channels; and
 - (ii) is otherwise effective in informing the Purchaser of any complaints or any other useful Customer feedback; and
- (c) without limitation to clause 9.3(b), it must, in accordance with Best Industry Practice:
 - (i) investigate each complaint received; and
 - (ii) in accordance with any direction from the Purchaser, address any issues in respect of the performance of the Transport Operations under this Contract that are disclosed in a complaint.

9.4 Research activities

- (a) The Service Provider must provide all reasonable cooperation to the Purchaser to facilitate research activities, including but not limited to Customer surveys, patronage surveys, passenger counts and other monitoring required by the Purchaser to be undertaken from time to time.
- (b) The Purchaser will provide the Service Provider with written notice prior to the Purchaser or Purchaser Associates boarding the Contract Vehicle to undertake any research activities, unless anonymity is required to ensure the effectiveness of the research activity

10. Compliance and Safety

10.1 Mandatory Requirements

In conducting the Transport Operations, the Service Provider must, and must procure that all Service Provider Associates:

- (a) comply with all Authorisations and Law;
 - (b) obtain, keep and maintain all Accreditations required to lawfully perform its obligations under this Contract; and
 - (c) comply with the Operations Manual,
- in each case, as applicable from time to time.

10.2 General obligations as to safety

The Service Provider must perform the Transport Operations:

- (a) so as to eliminate all risk of injury to or death of persons and damage to property or, to the extent that risk cannot be eliminated, the risk is reduced as far as reasonably practicable;
- (b) in accordance with Best Industry Practice; and
- (c) in a manner that is otherwise safe and fit for purpose.

10.3 Workplace health and safety

- (a) In performing the Transport Operations and its other obligations under this Contract, the Service Provider must:
 - (i) ensure, so far as is reasonably practicable, the health and safety of its Workers and any persons at the Workplace (in the area under the Service Provider's control), including any persons performing work at the Workplace, whether or not engaged by the Service Provider; and
 - (ii) use its best endeavours to ensure, so far as is reasonably practicable the health and safety of any persons at the Workplace (in those areas not under the Service Provider's control), including any persons performing work at the Workplace, whether or not engaged by the Service Provider.
- (b) The Service Provider acknowledges that, in performing the Transport Operations and its other obligations under this Contract:
 - (i) subject to clause 10.3(d), for the purposes of the WHS Law, it has management or control of the Workplace and as such must ensure compliance with its obligations under WHS Law in this regard; and
 - (ii) the Service Provider must ensure that (subject to clause 10.2):
 - (A) it manages or controls the Workplace;
 - (B) it provides appropriate training and supervision for all persons employed or engaged by it at the Workplace;
 - (C) it controls or directs the performance of work associated with the activities required under this Contract;
 - (D) it establishes and maintains safe work practices;
 - (E) it engages competent persons to carry out risk audits at its Workplace and of the work health, safety and rehabilitation system every two years. Such audits must be undertaken in compliance with good risk management principles and must identify, assess and control any work health and safety risks present at the Workplace;
 - (F) all Staff performing the activities required under this Contract are trained in work health and safety systems and procedures, including the work health, safety and rehabilitation management system, in particular in relation to the risks associated with performing the activities required under this Contract;
 - (G) it in all respects complies with all WHS Law;
 - (H) it informs the Purchaser of any changes of any Staff, corporate structure, management structure or supervisors that may affect the safety of its Staff or other Workers in performing the activities required under this Contract; and
 - (I) it otherwise complies with all Legal Requirements for work health, safety and rehabilitation management.

- (c) The Service Provider must, prior to the performance of any part of the Transport Operations and its other obligations under this Contract:
- (i) undertake an assessment of the work health and safety risks associated with the performance of the activities and identify and take all reasonably practicable steps to implement appropriate work health and safety risk control measures to eliminate and minimise all such work health and safety risks; and
 - (ii) as required by the Purchaser, provide the Purchaser with details of the work health and safety risk assessment undertaken and evidence of implementation of appropriate work health and safety risk control measures required under this clause 10.3.
- (d) If the Service Provider engages an Approved Subcontractor (in accordance with clause 11.4) or otherwise relinquishes to, or shares with, any person:
- (i) the management or control of the Workplace; or
 - (ii) control over the performance of work associated with the activities required under this Contract,
- it will ensure that person complies with the obligations referred to in this clause 10.3.
- (e) In order to meet its obligations under this clause 10.3, the Service Provider must adopt a work health, safety and rehabilitation management system that supports a systematic approach to managing risks to health and safety posed by the Workplace or the activities required under this Contract, including:
- (i) a process to identify safety hazards, assess the risks posed by such hazards and eliminate or control the risks; and
 - (ii) mechanisms to monitor the performance of the system and adapt and improve it as necessary.
- (f) The Service Provider will provide to the Purchaser such information about the operation and maintenance of the system referred to in clause 10.3(e) as the Purchaser directs. Any review of the operation or maintenance of the system by the Purchaser under this clause 10.3(f) does not constitute a verification or acceptance by the Purchaser of the adequacy of the system.
- (g) The Service Provider must ensure that it reasonably participates, and that its Staff reasonably participate, in any investigation carried out by the Purchaser relating to any Workplace incident that:
- (i) is notifiable under a WHS Law;
 - (ii) is in connection with the performance of the activities required under this Contract; and
 - (iii) occurs during the Contract Term.
- (h) The Service Provider must so far as is reasonably practicable consult, cooperate and coordinate the activities required under this Contract with any other person:
- (i) involved in performing work at the Workplace; or
 - (ii) who may otherwise have a duty or obligation under a WHS Law relating to the Transport Operations,
- to achieve effective coordination of the activities to ensure optimal health and safety risk management and enable the Purchaser and the Service Provider and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.

10.4 Counter Terrorism

- (a) If at any time the Service Provider is a SISTO, the Service Provider must participate in and implement all programs developed in accordance with all Mandatory Requirements and state and national policies for counter terrorism activities, as notified by the Purchaser or required by any Government Authority from time to time.
- (b) If at any time during the Contract Term:
 - (i) the Service Provider is declared to be a SISTO; or
 - (ii) the Service Provider's declaration as a SISTO is revoked,
it will be a Change Event and:
 - (iii) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (iv) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

10.5 Disability Standards

The Service Provider must:

- (a) develop, implement and comply with a Disability Action Plan in accordance with paragraph 2.4 of Schedule C2;
- (b) make its Disability Action Plan available to Customers and prospective Customers, upon request, free of charge;
- (c) where relevant, publish its Disability Action Plan on its website;
- (d) within three months after the Commencement Date and on (or as soon as reasonably practicable after) the five year anniversary of the Commencement Date, provide the Purchaser with a copy of any compliance reports required under the *Disability Discrimination Act 1992* (Cth) to be prepared by the Service Provider; and
- (e) provide such reasonable details of the Service Provider's compliance with the Disability Action Plan as directed by the Purchaser from time to time.

11. Operational Management

11.1 Operating Plans

Subject to clause 11.2, on and from the Commencement Date:

- (a) the Service Provider must develop, maintain and update the Operating Plans in accordance with the requirements of Schedule C2 and this Contract; and
- (b) implement and comply with those plans at all times during the Contract Term.

11.2 Business Improvement Measures

- (a) The Service Provider must implement the Business Improvement Measures within the times prescribed in Schedule B3, and must comply with its other obligations under that Schedule in respect of the Business Improvement Measures.
- (b) If, during the Contract Term, the Purchaser identifies additional measures which in its opinion should be treated as Business Improvement Measures under this Contract, the Purchaser may notify the Service Provider of that fact and the parties will endeavour to agree on arrangements for the identified measures, or suitable equivalent measures, to be developed and implemented by the Service Provider.

11.3 Records and reporting

- (a) The Service Provider must:
- (i) throughout the Contract Term, keep and maintain records concerning the performance of the Transport Operations that are in accordance with all Mandatory Requirements, Best Industry Practice and any other specific requirements of this Contract;
 - (ii) prepare and provide to the Purchaser:
 - (A) the information described in Schedule C1 at the times set out in Schedule C1; and
 - (B) any other records or reports reasonably required by the Purchaser from time to time,in each case in the format reasonably required by the Purchaser from time to time;
 - (iii) ensure:
 - (A) that information held in electronic form is held in a format that is compatible with the Purchaser's systems for the time being so as to enable the Purchaser to review, inspect or audit that information in accordance with its rights under this Contract;
 - (B) its records provide sufficient detail to enable the Purchaser to reconcile the records with the content of reports and other information that the Service Provider is required to provide to the Purchaser under this Contract; and
 - (iv) retain all records it is obliged to keep and maintain under this Contract:
 - (A) at the Service Provider's headquarters at Robina, or otherwise at a place in South East Queensland approved by the Purchaser;
 - (B) for no less than 7 years from the End Date; and
 - (C) at all times in a form and manner that conveniently facilitates access, inspection, audit and reproduction as contemplated in this Contract.
- (b) The Service Provider must ensure that any Financial Statements provided by it under clause 15.5(d)(i)(B) are:
- (i) if the Service Provider is a reporting entity under the Corporations Act:
 - (A) general purpose financial statements prepared in accordance with the Accounting Standards and the Chart of Accounts; and
 - (B) audited, for the purposes of compliance with Corporations Act; or
 - (ii) if the Service Provider is not a reporting entity under the Corporations Act:
 - (A) special purpose financial statements prepared on a basis generally compliant with recognition and measurement principles prescribed within applicable Accounting Standards and any Mandatory Requirements applicable to special purpose financial statements; and
 - (B) audited in compliance with generally accepted audit standards.

11.4 Subcontracting

- (a) The Purchaser acknowledges and agrees that as at the Commencement Date, the subcontracting arrangements described in Schedule A4 are approved for the purposes of this clause 11.4 and do not require further approvals under this clause 11.4. The Service Provider must not otherwise engage any Subcontractor except in accordance with this clause 11.4.
- (b) The Service Provider must:

- (i) notify the Purchaser before entering into any procurement or negotiation process for any Material Subcontract; and
 - (ii) obtain the Purchaser's preliminary approval to that proposed Material Subcontracting.
- (c) At least 20 Business Days prior to the proposed effective date of any Material Subcontract, the Service Provider must provide the Purchaser with a copy of the agreed Subcontract for approval.
- (d) The Purchaser may, after reviewing a request for approval under clause 11.4(b) or clause 11.4(c):
 - (i) request further information from the Service Provider in relation to the proposed Material Subcontract or Subcontractor;
 - (ii) grant or deny approval (in the Purchaser's reasonable discretion); or
 - (iii) impose conditions on any approval to the proposed Material Subcontract.
- (e) The Service Provider must notify the Purchaser in writing (including providing a copy of the executed subcontract) within 10 Business Days of entering into any Subcontract approved under clause 11.4(d)(ii).
- (f) The Service Provider must ensure that each Approved Subcontractor:
 - (i) is suitably qualified, skilled and experienced, and holds all necessary approvals and Accreditations, to undertake the subcontracted activities;
 - (ii) is made aware of the terms and conditions of this Contract; and
 - (iii) other than an Approved Subcontractor that is referred to in Schedule A4, enters into or provides the Purchaser with:
 - (A) any document that the Purchaser reasonably requires (at its discretion) to be provided or entered into by any Approved Subcontractor and any other parties in connection with an Approved Subcontracting Arrangement; and
 - (B) any ancillary document required by the terms of a document referred to in clause 11.4(f)(iii)(A),in each case in a form and substance satisfactory to the Purchaser (acting reasonably) and executed by the Approved Subcontractor and all relevant counterparties (except the Purchaser if the Purchaser is a party to such document) prior to performing any part of the Transport Operations.
- (g) The terms and conditions of all Subcontracts must be consistent with the terms and conditions of this Contract.
- (h) Notwithstanding the appointment of any Subcontractor, the Service Provider:
 - (i) will continue to be bound by, and responsible for performance of this Contract;
 - (ii) is liable for any acts or omissions of any Subcontractor or any employee or agent of the Subcontractor as fully as if they were the acts or omissions of the Service Provider; and
 - (iii) must indemnify and release the Purchaser from any liability or Loss resulting from the acts or omissions of any Subcontractor.
- (i) At any time, the Purchaser may, without incurring any liability, by written notice to the Service Provider, withdraw its approval of an Approved Subcontracting Arrangement if, in the Purchaser's reasonable opinion, the Approved Subcontractor is not complying with the requirements of this Contract, or the Approved Subcontractor has caused damage or harm to the Purchaser's reputation.
- (j) Upon receipt of written notice under clause 11.4(i), the Service Provider must immediately terminate the Approved Subcontracting Arrangement and provide the Purchaser with such

evidence as the Purchaser may reasonably require as to the Service Provider's arrangements for the ongoing performance of the Transport Operations by the Service Provider.

- (k) The Service Provider must give to the Purchaser at least 40 Business Days prior written notice of its intention to terminate an Approved Subcontracting Arrangement for any reason and provide the Purchaser with such evidence as the Purchaser may reasonably require as to the Service Provider's arrangements for the ongoing performance of the Transport Operations by the Service Provider.

11.5 Drivers and other Staff

- (a) The Service Provider must ensure that all its Staff are properly authorised and directed and are suitably qualified, Accredited, skilled, trained and experienced to perform the Transport Operations, in each case:
 - (i) as required by Mandatory Requirements and this Contract; and
 - (ii) to the extent it imposes a higher or more onerous standard, as otherwise reasonably required to meet Best Industry Practice.
- (b) The Service Provider must ensure that each Driver (and all other frontline Staff members), at all relevant times:
 - (i) complies with all Mandatory Requirements;
 - (ii) receives appropriate ongoing structured training in accordance with the Training Plan referred to in paragraph 2.7 of Schedule C2, all relevant chapters of the Operations Manual and all Mandatory Requirements, including in respect of the Service Provider's obligations under clause 8.1;
 - (iii) displays a key focus on customer service and is courteous and helpful to Customers and other road users;
 - (iv) does not discriminate against any Customers or other person;
 - (v) is attired in a clean and well maintained manner;
 - (vi) has a thorough knowledge of the Fares, Tickets, Routes and Timetables for the Network and key interchange locations throughout the Integrated Network; and
 - (vii) is provided with a manual or written operating procedures that supports achieving compliance with the Service Provider's obligations in this clause 11.5.

12. Asset Management

12.1 Maintenance and safety of Contract Vehicles

The Service Provider:

- (a) must develop, maintain and implement a maintenance, testing and inspection program for the Contract Vehicles that ensures compliance with all Mandatory Requirements;
- (b) warrants that each Contract Vehicle will, at all relevant times:
 - (i) comply with the Minimum Contract Vehicle Specifications and all Mandatory Requirements;
 - (ii) be roadworthy;
 - (iii) be in a safe and suitable condition for the delivery of the Network; and
 - (iv) otherwise be fit for purpose; and
- (c) repeats the warranty set out in clause 12.1(b) on each Disclosure Date in accordance with clause 4.2(b) as though the warranty was a Service Provider Warranty.

12.2 Modification of Contract Vehicles

Subject to clause 12.12, the Service Provider must not modify or otherwise alter any Approved Contract Vehicle.

12.3 Exclusive use of Contract Vehicles

- (a) At any time the Purchaser may direct the Service Provider to ensure all or any Approved Contract Vehicles are reserved exclusively for delivery of the Network and Scheduled Passenger Services under this Contract (**Exclusive Use**). Such direction must:
- (i) identify the period of Exclusive Use; and
 - (ii) be given by the Purchaser no less than 20 Business Days prior to the start of that period.
- (b) Following receipt of a direction under clause 12.3(a):
- (i) the Service Provider must within 5 Business Days notify the Purchaser of any charter services or other operations in the nominated period of Exclusive Use that will require use of the specific Approved Contract Vehicles nominated by the Purchaser; and
 - (ii) subject always to clause 12.3(d), the requirements of clause 12.3(c) will not apply to any Approved Contract Vehicles nominated by the Service Provider in its notice under clause 12.3(b)(i) to the extent that the relevant charter or other services cannot reasonably be provided using other vehicles owned or controlled by the Service Provider or its Associates that are available for use.
- (c) Subject to clause 12.3(b)(ii), during any period of Exclusive Use, the Service Provider must not, without the Purchaser's consent, use any Approved Contract Vehicle for any purpose other than the delivery of the Network and Scheduled Passenger Services under this Contract.
- (d) The Service Provider must at all times give priority to use of the Approved Contract Vehicles for the Transport Operations regardless of whether they have been reserved for Exclusive Use or not.
- (e) Subject to clause 12.3(b), 12.3(d), 12.3(f) and the Mandatory Requirements, if at any time one or more Approved Contract Vehicles are not required for the performance of the Transport Operations then the Service Provider may use those Approved Contract Vehicles for charter services or other operations provided that any such use:
- (i) must not interfere with, conflict with or prejudice the Service Provider's performance of the Transport Operations and its other obligations under this Contract;
 - (ii) must be recorded in the Total Odometer Reading submitted in the Commercial Revenue Declaration for each relevant Contract Month in accordance with clause 15.4(a)(i); and
 - (iii) will be at the Service Provider's cost and risk.
- (f) The use of Approved Contract Vehicles as described in clause 12.3(e) does not limit, waive or vary the Service Provider's obligations and liabilities under this Contract in any way.

12.4 Allocation of Contract Vehicles to Routes

- (a) Subject to clause 12.4(b) the Service Provider:
- (i) must only use a vehicle to operate a General Route Service that is an Approved Contract Vehicle and that is of the type designated for use under this Contract for the operation of that General Route Service in the Network Specification (**Designated Vehicle Type**); and

- (ii) may not operate a General Route Service using any other vehicle.
 - (b) Clause 12.4(a) does not apply if the Service Provider has given prior written notice to the Purchaser:
 - (i) identifying the Approved Contract Vehicle of the Designated Vehicle Type and the General Route Services that are affected;
 - (ii) demonstrating, to the Purchaser's reasonable satisfaction, that due to unavoidable and unforeseeable operational constraints, the Service Provider will not be able to make the affected vehicle available to operate the affected General Route Service;
 - (iii) identifying an alternative Contract Vehicle (reasonably acceptable to the Purchaser) to be used as a temporary replacement and the proposed duration of the arrangement (which may not exceed 5 Business Days unless agreed otherwise by the Purchaser); and
 - (iv) warranting that no Approved Contract Vehicle of the Designated Vehicle Type:
 - (A) is being (or will be, at the relevant time) used by the Service Provider for any purpose other than the delivery of the Network under this Contract; and
 - (B) to the extent that any Approved Contract Vehicle of the Designated Vehicle Type is being (or will be, at the relevant time) used by the Service Provider to provide other General Route Services under this Contract, it is not reasonably practicable to redeploy that vehicle to operate the affected General Route Service,
- and the Purchaser has given consent to the proposed arrangement (such consent not to be unreasonably withheld or delayed).

12.5 Fleet management

- (a) The Service Provider must:
 - (i) ensure that each Contract Vehicle is fit for purpose having regard to Route Alignment, road geometry and required Customer carrying capacity and the Public Passenger Service which it will be used to provide;
 - (ii) dispose of and either acquire or hire replacement Contract Vehicles to ensure that no Contract Vehicle that is more than the maximum age specified:
 - (A) by the Purchaser in accordance with paragraph 4.2 of Schedule B1; or
 - (B) otherwise, in the Standard,is used to provide any Urban Route or School Route; and
 - (iii) at all times ensure that the number of Approved Contract Vehicles available to deliver the Network is equivalent to the total of the Peak Vehicle Requirement and Spare Vehicle Requirement (expressed as a whole number of vehicles).
- (b) The Service Provider must:
 - (i) ensure that each Contract Vehicle complies with the Minimum Contract Vehicle Specifications, the provisions of Schedule B1, Schedule D2 and the Operations Manual;
 - (ii) not hire any Contract Vehicle except as approved by the Purchaser pursuant to paragraph 5.3 of Schedule D2 and where such approval is given by the Purchaser, not without the Purchaser's further prior approval, acquire a Contract Vehicle as an alternative to that approved hire arrangement;
 - (iii) without limitation to clause 12.5(b)(i) obtain the Purchaser's prior approval before acquiring or hiring any vehicle of a type that is not at that time listed in the Approved Contract Vehicle Register; and

- (iv) without limitation to clause 12.5(b)(i), following acquisition of any Contract Vehicle, update the Approved Contract Vehicle Register in accordance with paragraph 4.4 of Schedule B1.
- (c) At any time during the Contract Term, the Purchaser may:
 - (i) purchase new or replacement Contract Vehicles for operation by the Service Provider; or
 - (ii) establish arrangements for the Purchaser to lease new Contract Vehicles to the Service Provider, for operation by the Service Provider.
- (d) If the Purchaser exercises its rights under clause 12.5(c), it will be a Change Event and:
 - (i) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).
- (e) At any time during the Contract Term, the Purchaser may:
 - (i) direct the Service Provider to replace one or more Contract Vehicles at an earlier time than nominated in the Contract Vehicle Replacement Plan; and
 - (ii) in any direction given under clause 12.5(e)(i), direct the Service Provider that the replacement Contract Vehicles are to be of a greater or lesser passenger carrying capacity to those nominated in the Contract Vehicle Replacement Plan.
- (f) If the Purchaser:
 - (i) gives a direction under clause 12.5(e)(ii); or
 - (ii) approves a Contract Vehicle Replacement Plan under which the Service Provider is, within the forthcoming 12 month period, to replace a Contract Vehicle with a Contract Vehicle with greater or lesser passenger carrying capacity than the Contract Vehicle that it is replacing,it will be a Change Event and:
 - (iii) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (iv) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

12.6 Vehicle Registration

On and from the Commencement Date, the Service Provider must ensure that:

- (a) every Contract Vehicle is registered in the name of the Service Provider;
- (b) each Contract Vehicle is registered under the appropriate registration category having regard to the Shifts on which it will be used in accordance with this Contract,

and the Service Provider acknowledges that:

- (c) an amount for registration of Contract Vehicles under the 'TransLink Class 10B' category will only be included in the Operating Payment if those Contract Vehicles are to be used on Shifts with Urban Routes only or Shifts with a combination of Urban Routes and School Routes (each such Contract Vehicle being an **Urban Contract Vehicle**);
- (d) the Service Provider is not entitled to payment for registration of a Contract Vehicle under the 'TransLink Class 10B' category if the Contract Vehicle is to be used other than as described in clause 12.6(c) (each such Contract Vehicle being a **School Only Vehicle**); and
- (e) these requirements are intended to support achievement of the Optimised Network.

12.7 Contract Vehicle livery

- (a) The Service Provider must ensure that the livery of all Approved Contract Vehicles at all times complies with the Operations Manual.
- (b) [Not used]
- (c) [Not used]
- (d) Subject to clauses 22.4 and 23, the Purchaser may direct the Service Provider at any time to provide an Indicative Change Proposal in response to a change or proposed change in the livery requirements described in the Operations Manual, at the Purchaser's discretion, on the basis of either or both of the following arrangements:
 - (i) the Service Provider will be required to make its own arrangements to procure any associated change to the livery within a reasonable period notified by the Purchaser in the direction; or
 - (ii) the Service Provider must give full cooperation to the Purchaser or any Purchaser Associate so that the Purchaser or Purchaser Associate can effect the required livery changes.
- (e) The Service Provider must remove all TransLink livery from:
 - (i) each Approved Contract Vehicle that is to be disposed of under clause 12.5(a)(ii) during the Contract Term, before it is disposed of; and
 - (ii) every Approved Contract Vehicle as soon as reasonably practicable (and no later than 60 Business Days) after the End Date, except to the extent the Service Provider has been engaged by the Purchaser as a Successor Service Provider.
- (f) If the Service Provider does not comply with clause 12.7(e)(ii):
 - (i) the Purchaser (or a nominee of the Purchaser) may access any relevant Approved Contract Vehicle at any time on reasonable notice to the Service Provider in order to remove the TransLink livery;
 - (ii) the Service Provider must, and must procure any relevant Service Provider Associate to, give full cooperation to the Purchaser and any person, or persons engaged by the Purchaser to effect the required livery changes; and
 - (iii) the Service Provider must indemnify the Purchaser for all costs incurred by the Purchaser in effecting the required livery change.

12.8 Vehicle Advertising

- (a) Subject to clause 12.8(e), the Service Provider acknowledges and agrees that:
 - (i) the Purchaser has the sole and exclusive right to Vehicle Advertising;
 - (ii) paragraph 7.2 of Schedule D2 applies in respect of any revenue derived from Vehicle Advertising (Static);
 - (iii) the Purchaser will retain all revenue derived from Vehicle Advertising (Digital); and
 - (iv) the Service Provider must not, and must not permit any person other than the Purchaser or a Purchaser Associate to, affix, display or otherwise publish any form of advertising either inside or on the outside of any Contract Vehicle.
- (b) Subject to clause 12.8(e), the Service Provider must make Contract Vehicles available and permit access to the Contract Vehicles in accordance with the Access Licence to enable:
 - (i) the Purchaser; and
 - (ii) any Purchaser Associate who is engaged or directed by the Purchaser to install Vehicle Advertising (each an **On Vehicle Advertiser**),to install, repair, maintain or remove Vehicle Advertising on the Contract Vehicles.

- (c) Subject to clause 12.8(e), the Purchaser will:
 - (i) use reasonable endeavours to procure that the On Vehicle Advertiser:
 - (A) as far as reasonably practicable, avoids damage to any property of the Service Provider, including the Contract Vehicles; and
 - (B) provides an indemnity to the Purchaser for the costs of rectifying any damage to property owned by the Service Provider or its Associates that is caused by the On Vehicle Advertiser, whether the On Vehicle Advertiser is in breach of the arrangements with the Purchaser or otherwise;
 - (ii) exercise its rights under any such indemnity, or any other relevant rights, for the benefit of the Service Provider; and
 - (iii) account to the Service Provider for amounts recovered from the On Vehicle Advertiser as contemplated in clause 12.8(c)(ii).
- (d) The Service Provider acknowledges and agrees that, except as provided for in clause 12.8(c), it will have no Claim against the Purchaser or any Purchaser Associate in respect of increased costs or in respect of delays or interruptions to any General Route Service and will not be relieved from performance of any other obligation under this Contract howsoever caused or affected by the requirement to make Contract Vehicles available under clause 12.8(b) and to grant access to the Purchaser and the Purchaser Associates under the Access Licence.
- (e) Where, at the Commencement Date, the Service Provider has existing arrangements with third parties relating to Vehicle Advertising, to the extent those arrangements are in respect of Contract Vehicles (and not in respect of other vehicles owned or operated by the Service Provider for operations other than the Transport Operations) (**Existing Arrangements**):
 - (i) the Service Provider must not, without the Purchaser's prior written consent, agree to vary or extend the duration or scope of the Existing Arrangement or enter into any new arrangement with respect to Vehicle Advertising;
 - (ii) clauses 12.8(a), 12.8(b), 12.8(c) and 12.8(d) do not apply until the expiry of the Existing Arrangement;
 - (iii) until that time, the Service Provider has the sole and exclusive right to Vehicle Advertising (and paragraph 7.1 of Schedule D2 applies in respect of any revenue derived from it); and
 - (iv) the Service Provider must ensure that all Vehicle Advertising under those Existing Arrangements at all relevant times complies with the requirements set out in the Operations Manual.
- (f) Not Used.
- (g) Not Used.

12.9 Depot standards

The Service Provider warrants that all Depots and Depot Equipment will at all times during the Contract Term:

- (a) be operated and maintained in accordance with Best Industry Practice and all applicable Mandatory Requirements; and
- (b) be fit for purpose.

12.10 Depot capacity

- (a) The Service Provider must at all times on and from the Commencement Date provide Depot capacity sufficient to accommodate:

- (i) the number and type of Contract Vehicles (including the Peak Vehicle Requirement and the Spare Vehicle Requirement) required for the proper and efficient delivery of the Network as at the Commencement Date; and
 - (ii) the activities necessary for the proper performance of the Transport Operations as at the Commencement Date.
- (b) The Service Provider acknowledges and agrees that, to the extent any Service Change or Change Event gives rise to an increase in the number of Contract Vehicles required to be accommodated at any Depot, the Service Provider must make any Spare Depot Capacity at the Depot available to accommodate those Contract Vehicles in priority to the use of that capacity for any other purpose, including the accommodation of any Non-Contract Vehicles.

12.11 Depot changes

- (a) The Service Provider may not:
- (i) close down or dispose of;
 - (ii) materially change the utilisation of;
 - (iii) acquire or establish; or
 - (iv) subject to clause 12.12, make any material alteration to, any Depot or Depot Equipment (each a **Change in Depot Capacity**) except:
 - (v) in accordance with this clause 12.11; or
 - (vi) to the extent required to comply with the Service Provider's obligations under clause 30.2.
- (b) At any time:
- (i) the Service Provider may seek the approval of the Purchaser for the Service Provider to implement a Change in Depot Capacity (to be implemented at its own cost); or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal concerning a Change in Depot Capacity, which will be a Change Event.
- (c) For the avoidance of doubt, the Purchaser will give reasonable consideration to any Change in Depot Capacity proposed by the Service Provider but subject to clause 22 and clause 23 will have no obligation to either give a direction under clause 12.11(b)(ii) or to issue a Change Notice approving the proposed change.

12.12 Change or modification of Service Contract Assets

- (a) The Service Provider must not modify, upgrade, alter or replace any Service Contract Asset except:
- (i) as directed or approved by the Purchaser in accordance with this clause 12.12.
 - (ii) in relation to the Contract Vehicles, as contemplated by clause 12.5;
 - (iii) in relation to the Depots and Depot Equipment, as contemplated by clause 12.11;
 - (iv) to the extent required to comply with the Service Provider's obligations under clause 30 (*Damage, Loss and Reinstatement*);
 - (v) to the extent comprising maintenance, overhaul or repair to a Service Contract Asset undertaken by the Service Provider so as to ensure that such Service Contract Asset complies with the requirements of this Contract; or
 - (vi) if the Service Provider is otherwise expressly required to do so under this Contract,

and if the Service Provider does modify, upgrade, alter or replace any Service Contract Asset in accordance with this clause 12.12(a), then:

- (vii) the Service Provider must, in respect of a Service Contract Asset that is a Contract Vehicle, update the Approved Contract Vehicle Register in accordance with paragraph 4.4 of Schedule B1; and
 - (viii) in respect of any other Service Contract Asset, the parties will update the Register of Service Contract Assets accordingly.
- (b) If directed by the Purchaser, the Service Provider must provide reasonable cooperation to the Purchaser in researching and trialling new technologies or potential modifications to existing Service Contract Assets in order to improve the performance of the Transport Operations.
- (c) At any time:
- (i) the Service Provider may seek the approval of the Purchaser (not to be unreasonably withheld) for the Service Provider:
 - (A) to adopt a new technology or upgrade an existing technology in relation to the delivery of the Network; or
 - (B) modify any existing Service Contract Asset to incorporate new or upgraded technologies,(each a **Change in Technology**); or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in respect of a Change in Technology, which will be a Change Event.
- (d) Subject to clause 12.12(c)(ii), clause 22 and clause 23, the Service Provider is responsible for all direct and indirect costs associated with the implementation of any Change in Technology and there will be no associated adjustment to the Service Payments in respect of any cost incurred by the Service Provider.
- (e) If a Change in Technology is implemented, the Service Provider:
- (i) must update the Minimum Contract Vehicle Specifications to ensure that it reflects the Change in Technology;
 - (ii) must ensure that the Service Contract Assets, as modified, upgraded or replaced:
 - (A) comply with all Mandatory Requirements and all other requirements under this Contract; and
 - (B) are otherwise fit for their intended purpose;
 - (iii) must at all times ensure the Continuity of the Services; and
 - (iv) subject to any consequential amendments to this Contract that are the subject of a Change Notice pursuant to clause 23.4(a)(v), will not be relieved from performance of any obligation under this Contract,
- (f) The parties acknowledge and agree that the Purchaser may direct the Service Provider to procure and use digital radios that are compatible with the Purchaser Nominated Digital Radio Network and that such direction will be deemed to be a direction by the Purchaser pursuant to clause 12.12(c)(ii) to prepare and submit an Indicative Change Proposal in respect of that Change in Technology.

13. Systems and Equipment

13.1 Integrated Scheduling System

- (a) The Service Provider must:

- (i) implement the Integrated Scheduling System in accordance with the Transition In Schedule; and
 - (ii) subject to clause 13.1(b), use the Integrated Scheduling System for the Network Scheduling Functions.
- (b) The Service Provider may, at its cost, use an alternative electronic scheduling system, but:
- (i) the Service Provider is responsible for ensuring that all Network Attributes, Contract Vehicle and Staff schedules are also entered by the Service Provider into the Integrated Scheduling System within the timeframes outlined in the Operations Manual and with reference to the interface standards for the Integrated Scheduling System contained in the Operations Manual; and
 - (ii) the Network Attributes to which the rights and obligations under this Contract relate are the Network Attributes contained in the Integrated Scheduling System.
- (c) The Service Provider must:
- (i) comply with the Integrated Scheduling System Requirements; and
 - (ii) without limitation to clause 13.1(d), comply with, and ensure that any Subcontractor complies with:
 - (A) the Operations Manual in respect of use of and access to the Integrated Scheduling System; and
 - (B) all relevant policies or guidelines provided by the Purchaser regarding the use of the Integrated Scheduling System, that are consistent with either or both of the Operations Manual and the Integrated Scheduling System Requirements.
- (d) The Purchaser may, at any time during the Contract Term, notify the Service Provider of an amendment of, update to or replacement of the Integrated Scheduling System Requirements, which may for the avoidance of doubt include replacement with an end user licence agreement or similar arrangement.
- (e) If the Purchaser notifies the Service Provider pursuant to clause 13.1(d) and the Service Provider demonstrates to the Purchaser's reasonable satisfaction that:
- (i) the amendment of, update to or replacement is a Change in ISS Requirements; and
 - (ii) the Service Provider will incur material additional costs as a consequence of the Change in ISS Requirements that would not otherwise have been incurred, it will be a Change Event and:
 - (iii) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of the Purchaser's direction; or
 - (iv) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

13.2 Ticketing Equipment

Subject to the Purchaser performing its obligations under clause 13.3(a), the Service Provider must:

- (a) ensure that no Contract Vehicle enters service unless Ticketing Equipment has been installed on it;
- (b) at all times take all reasonable steps to protect, preserve and secure the Ticketing Equipment and to keep the Ticketing Equipment in good repair (including by undertaking first line maintenance);

- (c) ensure the Ticketing Equipment on a Contract Vehicle is switched on, correctly logged in and fully operational before the Contract Vehicle enters service and replace any damaged or defective Ticketing Equipment identified using appropriate Spares before the vehicle enters service;
- (d) use its best endeavours to ensure that the Ticketing Equipment is switched on, correctly logged in and operational on each Contract Vehicle for the full duration of the period commencing when the Contract Vehicle departs the Depot to commence operation of a Vehicle Block to the time when it returns to the Depot;
- (e) if any Ticketing Equipment does not function or operate correctly when a Contract Vehicle is in service, such that Tickets cannot be issued or validated correctly, either:
 - (i) deploy a spare Contract Vehicle to replace the Contract Vehicle on which the defective Ticketing Equipment is installed; or
 - (ii) replace the defective Ticketing Equipment with appropriate Spares, in either case as soon as operationally practicable;
- (f) enter and record data using the Ticketing Equipment as required under the Operations Manual and, if, for any reason, data is not entered or recorded as required, provide details to the Purchaser as soon as reasonably practicable;
- (g) keep and provide reasonable technical details of Contract Vehicles to the Purchaser or Purchaser Associates to facilitate the installation, repair, removal, maintenance, upgrade, modification, testing or commissioning of the Ticketing Equipment (for example, the size of power cables, routing and fixing of power and communications cables and the like within Contract Vehicles);
- (h) subject to clause 32.1, provide all reasonable cooperation to the Purchaser and any Purchaser Associates:
 - (i) in the conduct of any testing required to be undertaken by the Purchaser or the Purchaser Associates from time to time in relation to Ticketing Equipment or ETS Software;
 - (ii) to facilitate the installation, repair, removal, maintenance, upgrade, modification, testing, commissioning, decommissioning, tagging, recording and auditing of the Ticketing Equipment or ETS Software by the Purchaser or Purchaser Associate; and
 - (iii) to retrieve or verify information recorded by Ticketing Equipment or ETS Software;
- (i) not alter, modify, dispose of or relocate the Ticketing Equipment or ETS Software;
- (j) not dispose of any Contract Vehicle before the Ticketing Equipment or ETS Software has been removed from that Contract Vehicle; and
- (k) otherwise comply with:
 - (i) the Operations Manual; and
 - (ii) all other reasonable operational procedures, maintenance instructions, guidelines, directions and training requirements for Ticketing Equipment issued by the Purchaser from time to time.

13.3 Ownership of Ticketing Equipment

- (a) The Purchaser will:
 - (i) provide the Service Provider with the Ticketing Equipment, including appropriate quantities of Ticketing Equipment spares, for use solely in the Transport Operations; and
 - (ii) subject to the Service Provider providing access to any relevant Contract Vehicle, Depot or other premises in accordance with clause 32.1, ensure that the Ticketing

Equipment and ETS Software is installed, removed, tested, commissioned and maintained by the Purchaser or Purchaser Associates.

- (b) The Service Provider:
 - (i) acknowledges and agrees that, at the Commencement Date, the Purchaser owns all Ticketing Equipment; and
 - (ii) must not grant or create, and must procure that no Service Provider Associate grants or creates, any Security Interest over the Ticketing Equipment.
- (c) The Service Provider must maintain an asset register that details the current location of all Ticketing Equipment and produce this register, upon reasonable request, to the Purchaser. The register must include current details of the precise location of the Ticketing Equipment (for example, Contract Vehicle number and Depot location).

13.4 Changes to Ticketing Equipment

- (a) The Purchaser may:
 - (i) introduce and install new Ticketing Equipment or ETS Software and associated systems;
 - (ii) modify, upgrade, augment or change existing Ticketing Equipment or ETS Software; or
 - (iii) change the supplier or maintainer of Ticketing Equipment or ETS Software, at any time during the Contract Term.
- (b) If the Purchaser takes a step, or notifies the Service Provider that it intends to take a step described in clause 13.4(a)(i) or clause 13.4(a)(ii) it will be a Change Event and:
 - (i) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).
- (c) Without prejudice to the Service Provider's obligations and the rights of the Purchaser under clause 13.1(d) and the Access Licence, the Service Provider must co-operate with the Purchaser and any Purchaser Associates in facilitating the procurement, installation, testing, commissioning and ongoing maintenance of any new Ticketing Equipment or ETS Software. This co-operation includes:
 - (i) participating in any trials or tests relating to the new Ticketing Equipment or ETS Software;
 - (ii) negotiating and agreeing an access plan (as contemplated in clause 32.1(c)) for the purposes of installation, testing, commissioning and ongoing maintenance of the new Ticketing Equipment or ETS Software;
 - (iii) at the request of the Purchaser, entering into a direct interface and coordination agreement with the supplier of the new Ticketing Equipment or ETS Software, or with any other relevant Purchaser Associate, on terms reasonably required by the Purchaser; and
 - (iv) complying with any reasonable operational procedures, guidelines, directions and training requirements of the Purchaser or any Purchaser Associate for the new Ticketing Equipment or ETS Software (including any procurement process in respect of new Ticketing Equipment or ETS Software) as issued from time to time.

13.5 Removal and return of Ticketing Equipment

- (a) If:
 - (i) at the End Date, clause 28 applies; or

- (ii) the Service Provider replaces a Contract Vehicle before the End Date in accordance with clause 12.5, clause 30.2 or the Contract Vehicle Replacement Plan in any circumstances (including if that Contract Vehicle has been damaged or destroyed),

as soon as reasonably practicable the Service Provider must:

- (iii) in the case of vehicle replacement, remove the Ticketing Equipment and ETS Software from the affected Contract Vehicle; and
- (iv) at the End Date, remove the Ticketing Equipment and ETS Software from all Contract Vehicles, unless clause 13.5(c) applies,

and, in each case, return the Ticketing Equipment to the Purchaser.

- (b) Subject to clause 13.5(c), the Purchaser will reimburse the Service Provider for all reasonable costs of removing the Ticketing Equipment and ETS Software save for costs in connection with:
 - (i) removing cabling;
 - (ii) repairing any holes, gaps or imperfections in paint or other surfaces apparent following the removal of the Ticketing Equipment and ETS Software; and
 - (iii) any works to make good any other damage to the Contract Vehicles.
- (c) If this Contract is terminated by the Purchaser under clause 20, or surrendered pursuant to s.48(1)(c) of the Act, the Service Provider must reimburse the Purchaser for, and indemnify the Purchaser against, all costs incurred by the Purchaser arising out of and incidental to the removal of the Ticketing Equipment and ETS Software.

13.6 Systems supplied by Service Provider

- (a) The Service Provider must implement and use on the Approved Contract Vehicles, at its cost:
 - (i) a telematics systems in accordance with clause 13.6(b); and
 - (ii) any other hardware or software system that is necessary to perform the Transport Operations other than the Integrated Scheduling System, Ticketing Equipment, ETS Software and relevant Additional Purchaser Supplied Items.
- (b) The Service Provider must ensure that on and from the first anniversary of the Commencement Date, each Approved Contract Vehicle is fitted with an operational telematics system that:
 - (i) complies with Best Industry Practice and with Schedule B1; and
 - (ii) without limitation to clause 13.6(b)(i):
 - (A) produces a systems generated report in the form required by Schedule B1 showing any and all data produced from the telematics system, including odometer readings and kilometres travelled for each Approved Contract Vehicle for designated time periods; and
 - (B) produces data feeds compatible with the Data Storage System in accordance with the requirements specified in the Operations Manual.
- (c) The Service Provider must provide a report referred to in clause 13.6(b)(ii)(A) as part of the Stage 1 MCPFR for the relevant Contract Month.
- (d) The Purchaser shall ensure that, once each Approved Contract Vehicle is fitted with an operational telematics system in accordance with clause 13.6(b), the data feeds generated by that system in accordance with clause 13.6(b)(ii)(B) are incorporated into the Performance Data as contemplated by and in accordance with the Performance Data Methodology.

13.7 Additional Purchaser Supplied Items

- (a) The Purchaser or any Purchaser Associate may at any time during the Contract Term provide equipment, assets or other property to the Service Provider for use in the performance of the Transport Operations (**Additional Purchaser Supplied Items**), in which case the Purchaser will provide the Service Provider with reasonable information as to the functionality, use and maintenance of the Additional Purchaser Supplied Items.
- (b) The Service Provider must use any Additional Purchaser Supplied Items for the purposes of performing the Transport Operations, in accordance with this Contract and otherwise in accordance with the information provided by the Purchaser under clause 13.7(a).
- (c) The provisions of this Contract in respect of the Ticketing Equipment and the ETS Software will apply in respect of the Additional Purchaser Supplied Items to the extent relevant to the Additional Purchaser Supplied Items and the Purchaser may for this purpose direct the Service Provider as to the extent to which the Ticketing Equipment and ETS Software provisions are to apply in respect of the Additional Purchaser Supplied Items.
- (d) Without limitation to clause 13.7(c), the Service Provider must:
 - (i) if Additional Purchaser Supplied Items are affixed to or incorporated into Approved Contract Vehicles, update the Approved Contract Vehicle Register accordingly; and
 - (ii) otherwise maintain an asset register that details the current location of all Additional Purchaser Supplied Items.
- (e) If the Purchaser exercises its rights under clause 13.7(a), to the extent that the Additional Purchaser Supplied Items require a Change in Depot Capacity under clause 12.11 or a modification of Service Contract Assets under clause 12.12, it will be a Change Event and:
 - (i) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

13.8 No Claim

The Service Provider acknowledges and agrees that:

- (a) without limiting the Purchaser's obligations under clause 13.3(a), the Purchaser makes no representations and gives no warranty in relation to the design, quality, suitability, performance or fitness for purpose of the Integrated Scheduling System, the Ticketing Equipment or the ETS Software;
- (b) it will have no Claim against the Purchaser or any Purchaser Associate in respect of increased costs or in respect of delays or interruptions to any General Route Service and will not be relieved from fulfilling any other obligation under this Contract howsoever caused or affected by:
 - (i) the requirement to comply with this clause 13 including the requirements to:
 - (A) use and maintain the Integrated Scheduling System, the Ticketing Equipment, ETS Software or, subject to clause 13.7(e), Additional Purchaser Supplied Items; and
 - (B) to grant access to the Purchaser in accordance with the Access Licence; or
 - (ii) any defect in the Integrated Scheduling System, the Ticketing Equipment or the ETS Software; and

- (c) subject to clause 31.4, it will indemnify the Purchaser for any Loss incurred by the Purchaser or any Purchaser Associate in connection with any failure to co-operate with the Purchaser or any Purchaser Associates under clause 13.1, 13.4, 13.6 or 13.8.

14. Marketing and Communications

14.1 Marketing and Communication Activities

- (a) The Service Provider acknowledges that:
 - (i) the Purchaser manages a system wide marketing and communication strategy for Public Passenger Services using the Purchaser Brands; and
 - (ii) from time to time the Purchaser may require the Service Provider to co-operate with local marketing and communications campaigns developed by the Purchaser that are relevant to the Network.
- (b) In order to give effect to the Purchaser's marketing and communications strategy, the Service Provider must:
 - (i) participate in and promote marketing and communications activities;
 - (ii) provide relevant Passenger Information and data to the Purchaser; and
 - (iii) ensure quality assurance of any Passenger Information provided to the Purchaser, as reasonably required by the Purchaser from time to time (**Marketing and Communication Activities**).
- (c) Without limiting their scope, the Marketing and Communication Activities may include promotions, information sessions, focus groups, surveys, community consultation, and participation in local or regional events (such as local shows etc.).
- (d) If the Purchaser requires the Service Provider to participate in any Marketing and Communications Activities, the Purchaser will provide the necessary marketing or communications materials and any training necessary for the Service Provider to participate effectively in the activity.
- (e) As directed by the Purchaser, the Service Provider must:
 - (i) ensure that marketing and communications materials are displayed prominently on or within Contract Vehicles (including, if directed, on internal walls of Contract Vehicles) or are otherwise disseminated effectively to Customers travelling on the Network;
 - (ii) ensure that up-to-date Passenger Information is displayed prominently inside the Contract Vehicle near the Driver's cabin; and
 - (iii) provide for free space on or within the Contract Vehicles to be available in order to promptly comply with any direction given by the Purchaser under this clause 14.1(e).
- (f) The Service Provider acknowledges and agrees that the Service Payment includes allowance for the Service Provider to install Passenger Information on all Contract Vehicles twice in each calendar year and that the Service Provider is not entitled to be otherwise reimbursed for the costs of those installations.
- (g) If the Purchaser gives a direction in accordance with clause 14.1(e) that requires the Service Provider to install Passenger Information on Contract Vehicles more than twice in a calendar year, the Purchaser will pay the Service Provider's costs directly and reasonably incurred in undertaking that installation.

14.2 Schools

The Service Provider must:

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- (a) pursuant to the Operations Manual, undertake communications campaign with relevant Schools in relation to changes to the Network impacting School Students; and
- (b) ensure that the 'TransLink Call to Action' as referred to in the Operations Manual is used in all communications with Schools.

14.3 Purchaser Branding

The Service Provider must:

- (a) at all times follow and implement the requirements in the Operations Manual in relation to the use of the Purchaser Brands;
- (b) where, under the Operations Manual, the Service Provider is required to use Purchaser Brands on any Customer information or promotional material produced by or on behalf of the Service Provider in connection with the Transport Operations including, but not limited to:
 - (i) advice regarding Service Changes;
 - (ii) consultation documents and materials;
 - (iii) letterhead; and
 - (iv) the Service Provider's website,the Service Provider must obtain the Purchaser's approval for that use; and
- (c) otherwise comply promptly with any reasonable directions of the Purchaser in relation to the use of the Purchaser Brands.

14.4 Service Provider trademarks and logos

- (a) The Service Provider must ensure that all branding, trademarks or logos of the Service Provider comply with the Operations Manual.
- (b) Except to the extent the Service Provider does not comply with clause 14.4(a), the Purchaser will reproduce the Service Provider's trademarks and logos together with the Purchaser Brands on other customer information and promotional material as reasonably agreed between the parties.

14.5 Website links

The Service Provider must ensure that its web pages directly relating to the Transport Operations include appropriate references and hyperlinks to the Purchaser's website.

14.6 Restrictions

The Service Provider must not:

- (a) on any Passenger Information or promotional materials relating to the Network, give any greater prominence to the trademarks or logos of the Service Provider relative to the prominence given to the relevant Purchaser Brands;
- (b) use any Contract Vehicle that displays the Purchaser Brands except as permitted under the Operations Manual, from time to time; or
- (c) except as expressly contemplated under this Contract, use the Purchaser Brands on any materials (including customer information or promotional materials) without the prior written consent of the Purchaser.

14.7 Communication with the media and social media

- (a) The Service Provider must:
 - (i) inform the Purchaser of any enquiries from the media concerning the Transport Operations as soon as practicable; and

- (ii) comply at all times with the Operations Manual.
- (b) The Purchaser and the Service Provider must use their best endeavours to share information with each other which relates to communication to the public about the Network and which may impact on the interests of either of them.

14.8 Production and publication of Timetables

- (a) The Purchaser will be responsible for the design, production, distribution, publication and storage of all Public Timetables (including installation of Public Timetables at Transit Stops).
- (b) As directed by the Purchaser from time to time, the Service Provider must:
 - (i) proof Timetable related information required for the production of Public Timetables; and
 - (ii) make Public Timetables available through the Service Provider's distribution channels,in each case, in accordance with the requirements and timeframes in the Operations Manual.

Part D - Service Provider Performance

15. Performance Review

15.1 Performance Measures

- (a) For the purposes of:
- (i) Monthly Contract Payment and Performance Meetings described in clause 15.4(b);
 - (ii) periodic performance reviews contemplated in clause 15.5; and
 - (iii) calculation of Performance Payment Adjustments in accordance clause 21.7,
- the assessment of the performance of the Service Provider under this Contract will include measurement of the Level of Service against the Performance Measures and by reference to the scope of the Network set out in the Network Specification.
- (b) The Service Provider acknowledges and agrees that:
- (i) the adoption of Performance Measures under this Contract is designed to provide an incentive for the Service Provider to deliver the Network according to the following performance principles:
 - (A) the correct operation of the Ticketing Equipment to ensure the accurate creation and recording of Performance Data;
 - (B) all Trips are commenced;
 - (C) all scheduled Transit Stops are traversed;
 - (D) Customers can board and alight at their required Transit Stop;
 - (E) Transit Stops are traversed within defined tolerances of the scheduled times in the Timetable for the relevant Route;
 - (F) Trips depart on time; and
 - (G) late Trips are completed, particularly at times of the day and on Routes where Trips are less frequent;
 - (ii) subject to clause 15.2(c), the assessment of the Service Provider's performance against the Performance Measures under clause 15.1(a) will be based on the Performance Data; and
 - (iii) the Purchaser may publish details of the Service Provider's performance against the Performance Measures at any time without notice to the Service Provider.

15.2 Performance monitoring and data reliability

- (a) The Purchaser will:
- (i) subject to clause 15.2(i), monitor and measure the Service Provider's performance against the Performance Measures using a system that ensures, so far as is reasonably practicable, the integrity and quality of the relevant Performance Data;
 - (ii) during the Contract Term, use reasonable endeavours to continuously improve the reliability of the Performance Data (other than to the extent the reliability of the data is impaired by any act or omission of the Service Provider);
 - (iii) procure audits by a suitably qualified independent auditor (**Data Reliability Auditor**) of the reliability of the Performance Data generated in the period since the most recent previous audit, in accordance with the Data Reliability Audit

- Methodology (each such period being a Data Audit Period and each such audit being a Data Reliability Audit);
- (iv) as a minimum, procure:
 - (A) the First Data Reliability Audit in accordance with the Transition In Schedule; and
 - (B) thereafter, a Data Reliability Audit within 2 months of each anniversary of the First Data Reliability Audit.
 - (b) Without prejudice to the express requirements of this Contract, the Service Provider must provide reasonable cooperation and assistance to:
 - (i) the Purchaser to enable the Purchaser to monitor the Service Provider's performance against the Performance Measures; and
 - (ii) the Data Reliability Auditor to allow the Data Reliability Auditor to have regard to the Service Provider Data Matters.
 - (c) If a Data Reliability Audit identifies that there is a probability that any Performance Data is not reasonably reliable for the purpose of assessment of the Service Provider's performance against the Performance Measures for the relevant Data Audit Period, then:
 - (i) the Data Reliability Auditor will calculate that probability (expressed as a percentage of all Performance Data for that Data Audit Period) in accordance with the Data Reliability Audit Methodology; and
 - (ii) that percentage will be the Data Exclusion Factor (**Data Exclusion Factor**).
 - (d) After completion of a Data Reliability Audit, the Purchaser will:
 - (i) notify the Service Provider of the Data Exclusion Factor; and
 - (ii) provide reasonable detail summarising the calculation of the Data Exclusion Factor by the Data Reliability Auditor if requested to do so by the Service Provider.
 - (e) The Purchaser will apply the Data Exclusion Factor to the calculation of the Missed Trip Payment Adjustment for each Reference Period in the next Data Audit Period in accordance with paragraph 2 of Schedule C4.
 - (f) The Data Exclusion Factor:
 - (i) will be determined in accordance with this clause 15.2 on the basis of the probable reliability of the Performance Data for the previous relevant Data Audit Period, but be applied for the next relevant Data Audit Period in accordance with clause 15.2(e); and
 - (ii) will be final and binding on the parties.
 - (g) The parties acknowledge and agree that, in addition to any other provisions of the Data Reliability Audit Methodology,
 - (i) the Service Provider may, not less than 5 Business Days prior to commencement of each Data Reliability Audit, submit a list of concerns with regard to the reliability of the Performance Data for the Data Audit Period in respect of which the Data Reliability Audit is to be conducted (each such list being the **Service Provider Data Matters**); and
 - (ii) the Data Reliability Audit Methodology will require the Data Reliability Auditor to:
 - (A) give reasonable consideration to the Service Provider Data Matters; and
 - (B) produce its audit report on the basis that it is addressed to, and may be relied on by, the Purchaser and the Service Provider.

- (h) The parties acknowledge and agree that it is the sole responsibility of the Data Reliability Auditor to determine the manner in which it will address the Service Provider Data Matters (if at all).
- (i) If during a Contract Month, there is no Performance Data available for measurement of the Service Provider's performance against the Performance Measures for a period of more than 8 consecutive hours other than as a result of:
 - (i) any act or omission of the Service Provider or any Associate of the Service Provider; or
 - (ii) without prejudice to clauses 16 and 17, a Force Majeure Event.the Purchaser will exclude all affected Trips from measurement against the Performance Measures for that Contract Month.
- (j) The Service Provider acknowledges and agrees that the Service Provider will have no entitlement or Claim in respect of any alleged or actual inaccuracy, omission or other defect in any Performance Data except for:
 - (i) the application of the Data Exclusion Factor in accordance with clause 15.2(e);
 - (ii) pursuant to clause 15.2(i); or
 - (iii) in respect of the effects of a Force Majeure Event or Purchaser Breach, any entitlement of the Service Provider for relief pursuant to clause 16.4.

15.3 Change to Performance Measures

- (a) Subject to clause 23, the Purchaser may, at its discretion direct a change to any Performance Measure under this Contract, including without limitation, the removal, addition or substitution of a Performance Measure and that change will be a Change Event.
- (b) Before giving a direction under clause 15.3(a), the Purchaser must direct the Service Provider to prepare and submit an indicative Change Proposal.

15.4 Monthly payment and performance review process

- (a) Subject to clause 21.3, in respect of each Contract Month:
 - (i) on or before the 7th Business Day of the next Contract Month, the Service Provider must prepare and submit to the Purchaser:
 - (A) a Stage 1 MCPPR; and
 - (B) all relevant financial and operational information reasonably directed by the Purchaser to support the matters contained in the Stage 1 MCPPR, so as to enable the Purchaser to calculate the amount of all Adjustment Payment elements to be calculated under Schedule D2 in respect of the Reference Period to which the information relates;
 - (ii) on or before the 12th Business Day of the next Contract Month, the Purchaser must prepare and issue to the Service Provider a:
 - (A) Stage 2 MCPPR; and
 - (B) supporting Performance Assessment Report;
 - (iii) the parties must coordinate a Monthly Contract Payment and Performance Meeting to be held between them between the 15th and 20th Business Day of the next Contract Month; and
 - (iv) the Service Provider's Representative must:

- (A) review the relevant Stage 2 MCPPR prior to the Monthly Contract Payment and Performance Meeting to identify if, in the Service Provider's opinion, there are any issues or discrepancies;
 - (B) participate in the Monthly Contract Payment and Performance Meeting; and
 - (C) in the Monthly Contract Payment and Performance Meeting, discuss any issues or discrepancies in respect of the relevant Stage 2 MCPPR.
- (b) The purpose of each Monthly Contract Payment and Performance Meeting will be to:
- (i) discuss issues relating to the Service Provider's standard of performance of the Transport Operations including any issues the Service Provider wishes to raise in relation to the Stage 2 MCPPR or the related Performance Assessment Report;
 - (ii) discuss any other matters of importance in relation to the delivery of the Network or other obligations of the Service Provider including, but not limited to, safety issues and environmental issues;
 - (iii) seek to agree an action plan for the progress and resolution of all matters raised in this manner, which includes allocation of responsibility for each action and a date by which the action shall be completed; and
 - (iv) discuss proposals (if any) to be submitted by the Service Provider for potential innovations in delivering the Network.
- (c) To facilitate the efficient conduct of each Monthly Contract Payment and Performance Meeting:
- (i) the parties will follow the agenda contained in the relevant Stage 2 MCPPR; and
 - (ii) in advance of the meeting the Service Provider must provide the Purchaser with:
 - (A) any information reasonably directed by the Purchaser from time to time about the performance of the Transport Operations; and
 - (B) detailed written particulars of any matters that the Service Provider wishes to raise with the Purchaser at the Monthly Contract Payment and Performance Meeting, to the extent not included in the Stage 1 MCPPR.
- (d) On or before 25 Business Days after the end of the Contract Month in respect of which the Stage 1 MCPPR was issued, the Purchaser:
- (i) will prepare minutes of the proceedings of the Monthly Contract Payment and Performance Meeting relating to that Contract Month and a Stage 3 MCPPR for the purposes of clause 21.2(a); and
 - (ii) provide a copy of each of those documents to the Service Provider.

15.5 Periodic Review under section 46 of the Act

- (a) After the end of each Financial Year, in respect of that Financial Year and in accordance with this clause 15.5, the Purchaser will conduct a review (**Annual Performance Review**) of whether the Service Provider is meeting the requirements of the Contract. An Annual Performance Review will include consideration of:
- (i) the Service Provider's compliance and non-compliance with its obligations under this Contract generally;
 - (ii) the Service Provider's performance against the Performance Measures; and
 - (iii) the Service Provider's performance against the Key Performance Indicators.
- (b) The arrangements described in this clause 15.5 for review of the performance of the Service Provider are without prejudice to the rights of the Purchaser to undertake such a review pursuant to section 46(1) of the Act at any other time.

- (c) The Service Provider acknowledges and agrees that the Annual Performance Review to be conducted in 2021 will constitute a midterm review for the purposes of section 46 (2) of the Act.
- (d) The Service Provider must:
 - (i) assist the Purchaser to undertake its Annual Performance Review by providing:
 - (A) an Annual Performance Review Report; and
 - (B) its Financial Statements,in respect of the relevant Accounting Period to the Purchaser:
 - (C) on or before the last Business Day of the fourth month following the end of the relevant Financial Year; or
 - (D) if Service Provider has an Accounting Period which is not a Financial Year, on or before the last Business Day of the fourth month following the end of the Service Provider's Accounting Period;
 - (ii) provide any further information reasonably required by the Purchaser for the review as soon as reasonably practicable on being requested to do so;
 - (iii) comply with all other reasonable directions issued by the Purchaser relating to the review; and
 - (iv) otherwise co-operate with the Purchaser to ensure that any review is completed promptly and effectively.
- (e) The Purchaser will:
 - (i) use reasonable endeavours to complete the Annual Performance Review within 30 Business Days after receipt of all of the information referred to in clauses 15.5(d)(i) and 15.5(d)(ii) (and for clarity, if clause 15.5(d)(i)(D) applies, will utilise the information referred to in clause 15.5(d)(i) that was most recently provided by the Service Provider); and
 - (ii) confirm the outcome of the Annual Performance Review to the Service Provider's Representative as soon as reasonably practicable on completion of the assessment.
- (f) The outcome of the Annual Performance Review will include a reasonable determination by the Purchaser for the purposes of section 46(8) of the Act, either that:
 - (i) the Service Provider's performance has been satisfactory; or
 - (ii) the Service Provider's performance has been inadequate in a significant respect, in which case clause 15.6 will apply.
- (g) The review for the purposes of section 46(1) of the Act will not include consideration of the Service Provider's Financial Statements.

15.6 Rights under section 46(9) of the Act

- (a) If the Purchaser determines that the Service Provider's performance has been inadequate in a significant respect:
 - (i) pursuant to section 46(8) of the Act, the Purchaser:
 - (A) will notify the Service Provider of the inadequacy;
 - (B) may direct the Service Provider to take specified steps to remedy the inadequacy within a specified time; or
 - (C) direct the Service Provider to prepare a rectification strategy setting out steps proposed to be taken by the Service Provider that will improve its

performance to a satisfactory level within a time period acceptable to the Purchaser; and

- (ii) within such period directed by the Purchaser, the Service Provider must:
 - (A) take the steps specified by the Purchaser under clause 15.6(a)(i)(B) to remedy the inadequacy within the specified time; or
 - (B) where directed under clause 15.6(a)(i)(C), provide details of its proposed rectification strategy to the Purchaser for review, and implement that strategy.
- (b) If the Service Provider fails to comply with a direction under clause 15.6(a)(i)(B) or fails to implement a rectification strategy in accordance with clause 15.6(a)(i)(C), section 46(9) of the Act will apply and it will be an Immediate Termination Event.

16. Force Majeure Events and Purchaser Breach

16.1 General obligations in respect of Force Majeure Events

- (a) If either party is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, irrespective of whether the Service Provider wishes to claim relief under clause 16.2, as soon as practicable following the occurrence of the Force Majeure Event, the parties must consult with each other in good faith on a continuing basis (being no less frequently than every 5 Business Days) and use all reasonable endeavours to agree and implement an appropriate course of action and plan to mitigate or overcome the effects of the Force Majeure Event with the paramount objective of securing the continued performance of the Contract and the continued performance of the Transport Operations in accordance with this Contract.
- (b) Each party must notify the other party as soon as practicable if at any time it receives or becomes aware of any further material information relating to the Force Majeure Event, giving details of that information.
- (c) For the avoidance of doubt, the Service Provider will not have any Claim against the Purchaser for any additional costs incurred by the Service Provider as a result of the Force Majeure Event.
- (d) For the duration of the Force Majeure Event, the obligations of the Purchaser which cannot be performed because of the Force Majeure Event will be suspended.

16.2 Service Provider's entitlement to relief for a Force Majeure Event or Purchaser Breach

If and to the extent that a:

- (a) Force Majeure Event is (or would, if unremedied by the Service Provider, be); or
- (b) a Purchaser Breach is (or would, if unremedied by the Purchaser, be),

the direct cause of any failure by the Service Provider to comply with its obligations under this Contract in whole or in part (including a failure to meet a Performance Standard), the Service Provider is entitled to apply to the Purchaser for relief under this clause 16.

16.3 Claim for relief

To claim relief under this clause 16 the Service Provider must:

- (a) as soon as practicable (and in any event within 24 hours in the case of a Force Majeure Event) after it became aware that the Force Majeure Event or Purchaser Breach has adversely affected, or is likely to adversely affect, the ability of the Service Provider to perform an obligation under this Contract (including, if relevant, the obligation to achieve a Performance Standard) (**Affected Obligations**) provide written notice to the Purchaser of that fact together with:

- (i) a statement that the Service Provider is claiming relief under this clause 16; and
 - (ii) the basis on which the relief is being claimed;
- (b) within 10 Business Days after it became aware that the Force Majeure Event or Purchaser Breach has adversely affected, or is likely to adversely affect, the ability of the Service Provider to perform the Affected Obligations, demonstrate to the reasonable satisfaction of the Purchaser:
- (i) that a Force Majeure Event or Purchaser Breach has occurred;
 - (ii) that:
 - (A) the Force Majeure Event is (or would, if unremedied by the Service Provider, be); or
 - (B) the Purchaser Breach is (or would, if unremedied by the Purchaser, be), the direct cause of a failure by the Service Provider to perform the Affected Obligations in whole or in part and the period for which this failure is likely to subsist;
 - (iii) that the failure or likely failure could not reasonably be expected to be remedied, mitigated, overcome or avoided by the Service Provider in accordance with Best Industry Practice; and
 - (iv) to the extent that the Force Majeure Event or Purchaser Breach still subsists, the Service Provider is using its best endeavours to prevent or to minimise the impact of the Force Majeure Event or Purchaser Breach on performance of the Affected Obligations (including by putting in place temporary measures acceptable to the Purchaser (acting reasonably) to enable the Service Provider to perform the Affected Obligations so far as that is reasonably practicable at the relevant time); and
- (c) notify the Purchaser as soon as practicable if at any time it receives or becomes aware of any further material information relating to the Force Majeure Event or Purchaser Breach or its consequences that renders the information previously provided inaccurate or misleading.

16.4 Relief Available

- (a) Provided the Service Provider has complied with this clause 16, then subject to clause 17:
- (i) the requirement to perform the Affected Obligations (other than any obligation to pay money) will be suspended and the Service Provider's failure to perform the obligations (other than an obligation to pay money) will not be a breach of this Contract or a Non-Compliance Event or a Show Cause Event;
 - (ii) the Purchaser will grant the Service Provider relief from any Missed Trip Payment Adjustments and penalty units (to the extent applicable) that would otherwise have arisen, and
 - (iii) any Completed Trips that are affected will be disregarded for the purposes of the calculation of the On-Time Running Payment Adjustment,
- in each case:
- (iv) to the extent only that the Service Provider is prevented from performing Affected Obligations despite having taken reasonable steps to overcome or mitigate the effects of the Force Majeure Event or Purchaser Breach; and
 - (v) from the time of the Force Majeure Event or Purchaser Breach until the time at which the Purchaser determines (acting reasonably) that the Force Majeure Event or Purchaser Breach and its consequences cease to prevent the Service Provider from performing the Affected Obligation (including the obligation to meet the Performance Standard) (**Period of Suspension**).

- (b) Notwithstanding that the Service Provider's obligations, to the extent affected by the Force Majeure Event or Purchaser Breach, are suspended, the Purchaser will continue to pay the Service Payments in respect of any of the Transport Operations affected by the Force Majeure Event or Purchaser Breach for the Period of Suspension after adjustments for:
 - (i) subject to paragraph 9.8(b) of Schedule D2, the Force Majeure Adjustment calculated under paragraph 9.8(a) of Schedule D2; and
 - (ii) the insurance proceeds paid (or that would have been payable had the Service Provider complied with this Contract and the Insurances) or any other insurance in relation to revenue or business interruption as a result of the Force Majeure Event or Purchaser Breach.
- (c) During the Period of Suspension, the failure to perform the obligations of the Service Provider that are so suspended will not be a breach of this Contract by the Service Provider.

17. Limitations on Relief

17.1 Late notices

If the Service Provider fails to comply with its obligations under clause 16.3, then any relief granted in respect of the Force Majeure Event or Purchaser Breach shall be at the discretion of the Purchaser.

17.2 Alternative arrangements

The Purchaser may make its own arrangements for alternate means of providing any of the Transport Operations that have been suspended as a result of a Force Majeure Event, and in any such case clause 27 will apply.

17.3 Duty to mitigate

During any period in which a Force Majeure Event or Purchaser Breach impairs or may impair the Service Provider's ability to comply with its obligations under this Contract (including its ability to meet a Performance Standard), the Service Provider must do everything it can reasonably do within its power to avoid, overcome or mitigate the effect of it being prevented from complying with its obligations.

17.4 Where relief is not available

- (a) Nothing in clause 16.4 entitles the Service Provider to any relief from its obligations under this Contract which are not affected by the relevant Force Majeure Event or Purchaser Breach.
- (b) No relief is available to the Service Provider under clause 16 if and to the extent that:
 - (i) an Immediate Termination Event was subsisting at the time of the Force Majeure Event or Purchaser Breach;
 - (ii) the relevant Force Majeure Event or Purchaser Breach or its consequences could have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations of the Service Provider under this Contract;
 - (iii) the relevant Force Majeure Event or Purchaser Breach or its consequences were otherwise caused or contributed to directly or indirectly by the breach or negligence of the Service Provider or any Service Provider Associate or the failure by the Service Provider or any Service Provider Associate to comply with their respective obligations;

- (iv) the Service Provider would have been entitled to coverage under the Insurances for the Force Majeure Event or Purchaser Breach or its consequences if the Service Provider:
 - (A) had complied with its obligations under clause 29 of this Contract; or
 - (B) had complied with the terms of the Insurances; or
- (v) the relevant Force Majeure Event or Purchaser Breach or its consequences were otherwise within the control of the Service Provider (including within the scope of contingency planning that the Service Provider had or ought to have had in place in accordance with Best Industry Practice).

17.5 Termination for extended Force Majeure Event

If:

- (a) the Service Provider has been unable to implement appropriate measures to avoid, overcome or mitigate the effects of the relevant Force Majeure Event and facilitate the continued performance of its obligations under this Contract; and
- (b) the relevant Force Majeure Event is continuing, or its consequences remain, such that the Service Provider:
 - (i) has been unable to comply with its obligations under this Contract for a period of more than 45 Business Days from the date of the Force Majeure Event; or
 - (ii) is likely to be unable to comply with its obligations for a period of more than 60 Business Days from the date of the Force Majeure Event,

then the Service Provider will be deemed to be unable to deliver all or any part of the Network for the purposes of section 47(3) of the Act and it will be an Immediate Termination Event.

18. Key Performance Indicators

18.1 Relationship with section 45 of the Act

- (a) The Service Provider acknowledges and agrees that:
 - (i) without limiting any other obligation of the Service Provider under this Contract, it is a condition of this Contract that the Service Provider must achieve the compliance targets identified in Schedule C3; and
 - (ii) each compliance target identified in Schedule C3 is a 'Key Performance Indicator' for the purposes of section 45 of the Act.
- (b) The Service Provider and Purchaser acknowledge and agree that:
 - (i) a failure by the Service Provider to achieve a compliance target identified in Schedule C3 will not of itself be a Show Cause Event; and
 - (ii) Schedule C3 sets out the circumstances in which one or more KPI Breaches will constitute a Show Cause Event in respect of a Key Performance Indicator.

18.2 Significance of Key Performance Indicators

- (a) The Service Provider acknowledges:
 - (i) the importance of continually improving the quality of the performance of the Transport Operations;
 - (ii) that the Key Performance Indicators provide an indication of the quality of the performance of the Transport Operations; and
 - (iii) that the Purchaser may, at its discretion, direct a change to the Key Performance Indicators under this Contract, including without limitation:

- (A) by removing, substituting or adding Key Performance Indicators;
 - (B) changing the Performance Standards associated with a specific Key Performance Indicator;
 - (C) changing the measurement of the quality of the performance; or
 - (D) changing the assessment or calculation mechanisms for the Key Performance Indicators.
- (b) If:
- (i) the Purchaser directs a change to the Key Performance Indicators pursuant to clause 18.2(a)(iii); and
 - (ii) the Service Provider demonstrates to the Purchaser's reasonable satisfaction that:
 - (A) the change, when taken together with all other changes to the Key Performance Indicators (if any) directed by the Purchaser pursuant to clause 18.2(a)(iii) in the preceding 24 month period will, during the remaining Contract Term, have a Net Financial Impact equal to or greater than \$50,000 (indexed in accordance with paragraph 11.2 of Schedule D2);
 - (B) the calculation of the Net Financial Impact:
 - (I) has been calculated correctly by the Service Provider on the basis of the Lump Sum Change Payment method as described in paragraph 2.2 of Schedule D3; and
 - (II) excludes the cost of any previous changes to the Key Performance Indicators in the relevant 24 month period that, either alone or together have previously contributed to a Change Event under this clause 18.2(b); and
 - (C) the relevant costs would not otherwise have been incurred, it will be a Change Event and:
 - (iii) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of the Purchaser's direction; or
 - (iv) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

18.3 KPI Breach

- (a) For each occurrence of a KPI Breach the Purchaser may require the Service Provider to pay an amount corresponding to:
 - (i) the number of penalty units prescribed for that KPI Breach in Schedule C3; or
 - (ii) if no amount is prescribed in Schedule C3, the maximum number of penalty units prescribed by the Act,provided that if a single failure or breach by the Service Provider gives rise to multiple KPI Breaches, the Purchaser will not require the Service Provider to pay a penalty for each KPI Breach but may require the Service Provider to pay the highest of the penalties prescribed for the relevant KPI Breaches.
- (b) Amounts payable under clause 18.3(a) are Moneys Owning.
- (c) The rights and remedies available to the Purchaser under this clause 18 for a KPI Breach do not limit the Purchaser's other rights, including:
 - (i) the Purchaser's rights under clause 21.7 to adjust any Service Payment by reference to the Service Provider's performance;

- (ii) the Purchaser's rights to damages consequent on breach of this Contract;
 - (iii) the Purchaser's right to indemnity under clause 31; or
 - (iv) the Purchaser's rights pursuant to section 46 or section 47 of the Act.
- (d) Each:
- (i) KPI Breach is a Non-Compliance Event; and
 - (ii) prescribed multiple occurrence of a KPI Breach, as set out in Schedule C3, will give rise to a Show Cause Event.

18.4 No waiver

Without prejudice to the generality of clause 43.8, no failure, delay, relaxation or indulgence by the Purchaser in exercising any right under clause 18.3 will operate as a waiver of such right, nor will any single or partial exercise of any such right or failure to do so preclude any other or future exercise of such right, or the exercise of any other right under this Contract.

19. Default

19.1 Non-Compliance Events

As soon as practicable after becoming aware of a Non-Compliance Event, the Service Provider must give notice to the Purchaser setting out in reasonable detail the relevant event and surrounding circumstances.

19.2 Issue of Non-Compliance Notice

- (a) Where a Non-Compliance Event has occurred and is subsisting, the Purchaser may give the Service Provider written notice (**Non-Compliance Notice**):
- (i) stating that a Non-Compliance Event has occurred;
 - (ii) setting out reasonable details of the Non-Compliance Event;
 - (iii) directing the Service Provider to do any or all of the following:
 - (A) to meet with representatives of the Purchaser to consult about an appropriate remedy and timetable for the Service Provider to effect that remedy;
 - (B) provide the Purchaser with a Cure Plan; or
 - (C) implement Urgent Measures; and
 - (iv) if the Non-Compliance Notice directs the Service Provider to provide a Cure Plan, setting out the timeframe (which must be a reasonable timeframe) within which the Service Provider must take measures to cure the Non-Compliance Event (or the events or the circumstances giving rise to the Non-Compliance Event) (**Cure Period**).
- (b) A Non-Compliance Notice need not address the matters referred to in clause 19.2(a)(i) or clause 19.2(a)(ii) if the Service Provider has served a notice under clause 19.1.

19.3 Cure Plan

- (a) A Cure Plan required by a Non-Compliance Notice, or that is proposed by the Service Provider under clause 19.3(d), must be submitted by the Service Provider to the Purchaser within 10 Business Days of the date of the relevant notice (or such longer period as the Purchaser may agree).
- (b) The Service Provider must ensure that the Cure Plan describes in reasonable detail:

- (i) each measure that the Service Provider will take to permanently cure the Non-Compliance Event within the Cure Period;
 - (ii) each measure that the Service Provider will take to alleviate the adverse effect of the Non-Compliance Event within the Cure Period;
 - (iii) the proposed timing of each of those measures, which must be within the Cure Period and in a sequence and timing which is reasonably acceptable to the Purchaser;
 - (iv) the form and timing of reports (which must be reasonably acceptable to the Purchaser) to be provided by the Service Provider to the Purchaser about the implementation status of the Cure Plan; and
 - (v) the operational arrangements to be implemented by the Service Provider to integrate the cure with the continued performance of the Transport Operations.
- (c) The Service Provider must implement and pursue diligently its Cure Plan in order to permanently cure the Non-Compliance Event and alleviate its adverse effects within the Cure Period.
- (d) The Service Provider may (on one occasion only in relation to each Non-Compliance Event) by notice in writing to the Purchaser request an extension to the Cure Period provided that:
- (i) it does so prior to the expiry of the existing Cure Period;
 - (ii) it sets out complete particulars of the reasons why the extension is requested and any consequential revisions to the Cure Plan; and
 - (iii) it provides evidence to the Purchaser's satisfaction that it has pursued diligently and is continuing to pursue diligently a cure in accordance with the Cure Plan.
- (e) The Purchaser may approve or reject a request for extension to the Cure Period at the Purchaser's discretion.

19.4 Urgent Measures

- (a) In determining whether the Service Provider is required to implement Urgent Measures under this clause, the Purchaser agrees to act reasonably having regard to the severity of the Non-Compliance Event and its impact on the continued delivery of the Transport Operations in a safe and reliable manner and otherwise in accordance with this Contract.
- (b) The Service Provider must implement the Urgent Measures within any reasonable period stipulated by the Purchaser having regard to the nature of the Urgent Measures.

20. Amendment, Suspension or Cancellation

20.1 Show Cause Events

- (a) The Service Provider acknowledges and agrees that:
 - (i) the occurrence of a Show Cause Event is a contravention of a condition of this Contract for the purposes of section 47(1)(a) of the Act; and
 - (ii) the Purchaser's rights to amend, suspend or cancel this Contract under section 47(1) and section 47(3) of the Act and pursuant to clause 20.1(d) include the right to terminate the Contract.
- (b) If a Show Cause Event has occurred and is subsisting, or if the Purchaser reasonably believes that the occurrence of a Show Cause Event is imminent, the Purchaser may give the Service Provider written notice (**Show Cause Notice**):

- (i) stating that a Show Cause Event has occurred or that the Purchaser reasonably believes that the occurrence of a Show Cause Event is imminent (as the case may be);
- (ii) setting out reasonable details of the Show Cause Event and the action that the Purchaser proposes to take if the Service Provider does not provide a response that is acceptable to the Purchaser; and
- (iii) giving the Service Provider an opportunity to make written submissions to the Purchaser as to why the Purchaser should not exercise a right under section 47(1) of the Act to amend, suspend or cancel this Contract,

and the Purchaser may in that notice (acting reasonably) direct the Service Provider to implement Urgent Measures.

- (c) The Service Provider must make any written submissions to the Purchaser within 10 Business Days of the date of the Show Cause Notice.
- (d) If the Service Provider fails to make submissions in response to a Show Cause Notice or its submissions are not acceptable to the Purchaser, the Purchaser may (subject always to section 47(1A) of the Act) amend, suspend or cancel this Contract pursuant to section 47(1) of the Act on written notice given to the Service Provider effective on the date specified in the notice.

20.2 Immediate Termination Events

If an Immediate Termination Event occurs, the Purchaser may amend, suspend or cancel this Contract on written notice given to the Service Provider effective immediately on the date specified in the notice.

20.3 Consequences of termination

- (a) Upon expiry or termination of this Contract, the rights and obligations of the parties under this Contract will cease except for:
 - (i) any accrued rights and obligations under this Contract; and
 - (ii) any rights and obligations which are expressed to continue after termination, including those referred to in clause 43.12.
- (b) If the Purchaser exercises a right to amend, suspend or cancel this Contract pursuant to clause 20.2 or this Contract is otherwise terminated:
 - (i) the Service Provider waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit; and
 - (ii) except as provided in section 47(4) of the Act for a termination pursuant to section 47(3) of the Act, the Service Provider will not be entitled to make a Claim against the Purchaser or any Purchaser Associate for any amount.

20.4 No other termination rights

Subject to clause 20.5, despite any rule of law or equity to the contrary, the Service Provider may not terminate, rescind nor treat as repudiated this Contract other than as expressly provided for in this Contract.

20.5 Surrender of Contract

For the avoidance of doubt:

- (a) clause 20.4 is not intended to limit the Service Provider's right to surrender the Contract, subject to the approval of the Purchaser, pursuant to s.48(1)(c) of the Act; and
- (b) in circumstances where:

- (iii) the Service Provider does surrender the Contract pursuant to s.48(1) (c) of the Act; or
- (iv) this Contract is terminated or cancelled in accordance with its terms other than as a result of:
 - (A) a Show Cause Event; or
 - (B) an Immediate Termination Event that is not an event referred to in clause 17.5,

then subject to any other liability of the Service Provider under this Contract, the Service Provider will not be liable to pay any amount to the Purchaser for the cost of engaging any Successor Service Provider to perform the Transport Operations in place of the Service Provider.

Part E – Financial

21. Payments

21.1 Service Payments

- (a) Subject to this clause 21, as consideration for, and subject to, the performance of the Transport Operations by the Service Provider, in each Payment Month the Purchaser must pay the Service Provider a Service Payment calculated in accordance with Schedule D2.
- (b) Subject to clause 21.3(c), each Service Payment will comprise:
- (i) a Core Payment; and
 - (ii) where relevant, an Adjustment Payment.
- (c) On the last Business Day of each Contract Month (**Payment Month**) the Purchaser will:
- (i) calculate and assess the Core Payment and, subject to clause 21.3(a), the Adjustment Payment payable in that Payment Month;
 - (ii) issue to the Service Provider's Representative a Recipient Created Tax Invoice for the amount calculated together with details of:
 - (A) the calculations employed by the Purchaser to arrive at the amounts set out in the invoice; and
 - (B) any allowances by the Purchaser for:
 - (I) amounts otherwise due from the Purchaser to the Service Provider or the Service Provider to the Purchaser under this Contract; or
 - (II) amounts to be set off or deducted by the Purchaser to or from the Service Provider under this Contract; and
 - (iii) pay the Service Provider the amount set out in the Recipient Created Tax Invoice.
- (d) The Core Payment in any Payment Month comprises the following elements:
- (i) the Operating Payment;
 - (ii) the Fuel Cost Payment;
 - (iii) the Margin Payment;
 - (iv) the Fleet Payment;
 - (v) the Depot Payment; and
 - (vi) any Mobilisation Payments,
- for that Payment Month.
- (e) The Adjustment Payment in any Payment Month comprises the following elements:
- (i) the Performance Payment Adjustment for the Payment Month;
 - (ii) the Commercial Revenue Payment Adjustment for the Payment Month;
 - (iii) any True Up Adjustment for the Payment Month;
 - (iv) any State Designated Event Services Payment Adjustment for the Payment Month; and
 - (v) any Change Payment for the Payment Month.
- (f) Any payment by the Purchaser to the Service Provider under this Contract (including any Core Payment or Adjustment Payment) is not:

- (i) evidence of the value of work or services, or that any work or services have been satisfactorily carried out in accordance with this Contract;
 - (ii) an admission of liability; or
 - (iii) approval by the Purchaser of the Service Provider's performance or compliance with this Contract,
- but is only taken to be payment on account.
- (g) The Purchaser may correct any previous document issued by the Purchaser under clause 21.1(c)(ii) or apply any deductions in accordance with this Contract.
 - (h) If the Service Provider disputes the amount set out in a Recipient Created Tax invoice issued by the Purchaser under this Contract:
 - (i) the Service Provider must notify the Purchaser in writing within three months of the date of the invoice; and
 - (ii) the parties must confer with each other within 5 Business Days after notification of the dispute to attempt to resolve the dispute.
 - (i) If the Service Provider and the Purchaser subsequently agree or it is determined in accordance with this Contract that the disputed amount or any part of the disputed amount was or was not due:
 - (i) the Service Payments for the Payment Months next following the date of the agreement or determination will be adjusted accordingly; or
 - (ii) if there are no remaining Service Payments, the disputed amount will be a debt due and payable from the Purchaser to the Service Provider, or from the Service Provider to the Purchaser, as the case may be.

21.2 Significance of MCPPR process

- (a) Subject to clause 21.2(b), as an outcome of the monthly contract payment and performance review process described in clause 15.4:
 - (i) the Purchaser will determine the Performance Payment Adjustment for the Payment Month in respect of which the relevant Stage 1 MCPPR was issued and confirm its determination in the Stage 3 MCPPR; and
 - (ii) that Performance Payment Adjustment will be included in the Adjustment Payment in the Payment Month in which the Stage 3 MCPPR was issued.
- (b) If, as a result of:
 - (i) any fault in the Service Provider's systems; or
 - (ii) a failure by the Service Provider to record any relevant information or otherwise comply with this Contract,Performance Data cannot reasonably be determined for the purposes of assessing the Level of Service and calculating the Performance Payment Adjustment for a Payment Month, then, without limiting clause 15.2(c):
 - (iii) the Purchaser will determine the relevant Performance Payment Adjustment on the basis of the Performance Data that is available; and
 - (iv) that Performance Payment Adjustment calculated by the Purchaser will be final and binding on the Service Provider, absent manifest error by the Purchaser.
- (c) The Service Provider acknowledges and agrees that:
 - (i) the Purchaser may be unable to accurately calculate a Commercial Revenue Payment Adjustment if the Service Provider does not provide the Stage 1 MCPPR strictly in accordance with the requirements of clause 15.4(a)(i);

- (ii) if the Service Provider does not comply with clause 15.4(a)(i), the Purchaser may withhold from the Service Payment otherwise payable in the Payment Month when the Stage 1 MCPPR was due, an amount equal to the greater of:
 - (A) the highest Commercial Revenue Payment Adjustment calculated in respect of the preceding three Payment Months (if any); and
 - (B) 0.5% of the Core Payment for that Payment Month; and
- (iii) if the Service Provider subsequently provides the information required under this Contract to substantiate the amount (if any) of the relevant Commercial Revenue Payment Adjustment for that Payment Month, to the extent the Commercial Revenue Payment Adjustment:
 - (A) is less than the amount withheld, the Purchaser must account to the Service Provider for the difference;
 - (B) is equal to the amount withheld, the Purchaser may retain that amount and the Service Provider will be deemed to waive all Claims in relation to those monies; or
 - (C) exceeds the amount withheld, the difference will be Moneys Owing.

21.3 Adjustment Payments at the beginning and the end of the Contract Term

- (a) In the first Payment Month of the Contract Term, the Service Payment will comprise a Core Payment only and no Adjustment Payment will be applicable.
- (b) In the last Payment Month of the Contract Term the Purchaser may:
 - (i) (acting reasonably) estimate the sum of all the Adjustment Payment elements referred to in clause 21.1(e) that have arisen, or are reasonably likely to arise, in respect of the last two Payment Months of the Contract Term (to the extent these will not form part of the Adjustment Payment for the last Payment Month of the Contract Term) (**Estimated Final Adjustment Payment**); and
 - (ii) withhold the Estimated Final Adjustment Payment from the amount of the Service Payment otherwise payable in the final Payment Month of the Contract Term.
- (c) Within 40 Business Days of the End Date, the Purchaser will calculate the actual sum of all the Adjustment Payment elements referred to in clause 21.1(e) that have arisen in respect of the last two Contract Months of the Contract Term (to the extent these did not form part of the Adjustment Payment for the last Payment Month of the Contract Term) (**Confirmed Final Adjustment Payment**) and if:
 - (i) the Estimated Final Adjustment Payment is greater than the Confirmed Final Adjustment Payment, the Purchaser:
 - (A) will issue a Recipient Created Tax Invoice to the Service Provider; and
 - (B) pay to the Service Provider, the amount of the difference within that 40 Business Days;
 - (ii) the Estimated Final Adjustment Payment equals the Confirmed Final Adjustment Payment, the Purchaser may retain the amount withheld and the Service Provider will be deemed to waive all Claims in relation to those monies; or
 - (iii) the Estimated Final Adjustment Payment is less than the Confirmed Final Adjustment Payment, the difference will be Moneys Owing.
- (d) To enable the Purchaser to calculate the Confirmed Final Adjustment Payment:
 - (i) the Service Provider and the Purchaser will follow the procedures described in clause 15.4 in the first month after the End Date; and

- (ii) the Service Provider must provide the Purchaser with all other relevant cooperation and information reasonably directed by the Purchaser.

21.4 Nature of Service Payments

The Service Payments under this Contract (including any adjustments, additions or deductions expressly provided for by this Contract):

- (a) are a Fixed Price;
- (b) include an allowance for all costs, expenses, fees and charges incurred by the Service Provider in performing the Transport Operations (including the supply of all related consumables, Spares and other equipment);
- (c) include an allowance for all related items of work under this Contract (including the supply of any labour, materials or other necessary items);
- (d) include an allowance for the Service Provider's profit, attendance, preliminaries, supervision and all overheads in connection with the performance of all of its related obligations under this Contract;
- (e) will not be subject to any rise and fall in costs of materials or labour or otherwise, foreign exchange adjustment or any other adjustment for any reason, except to the extent expressly provided by this Contract; and
- (f) include all duties including, without limitation, stamp duty, customs duty and import duty.

21.5 Other Revenue

The Service Provider acknowledges and agrees that:

- (a) the amounts under clause 21.4 which comprise the Service Payments are costs which solely relate to delivery of the Network under this Contract;
- (b) it will not seek to recover any of those amounts under or in connection with any other contract, agreement or arrangement with the Purchaser or other Government Authority for the provision of transport services; and
- (c) it undertakes that it will provide financial transparency to the Purchaser in relation to revenue and pricing under any such contract, agreement or arrangement.

21.6 Moneys Owing and Set off

- (a) All Moneys Owing are payable by the Service Provider to the Purchaser on demand.
- (b) The Purchaser may demand payment of Moneys Owing at any time, and any such demand is payable within 5 Business Days of the date of demand.
- (c) The Purchaser may at any time deduct from monies due to the Service Provider under this Contract:
 - (i) any Moneys Owing; or
 - (ii) amounts in respect of any other Claim that the Purchaser may have against the Service Provider under this Contract or at Law.
- (d) The Purchaser must provide the Service Provider with reasonable details of the basis on which it is setting off any amount under this clause 21.6.
- (e) The Service Provider must:
 - (i) make all payments due to the Purchaser under this Contract without set-off or counterclaim; and
 - (ii) not at any time deduct from money otherwise due to the Purchaser (including any Moneys Owing) under this Contract:

- (A) any debt or other money due from the Purchaser to the Service Provider;
or
- (B) any Claim to money which the Service Provider may have against the Purchaser,

whether under this Contract or otherwise at Law.

- (f) Nothing in this clause 21.6 affects the Purchaser's right to recover from the Service Provider the whole of the amount of any Claim or any balance that remains owing after any set-off.

21.7 Performance Payment Adjustment

- (a) The Service Provider acknowledges and agrees that:
 - (i) both the Purchaser and the Service Provider require a formula for the calculation of Losses, costs, expenses and detriments which the Purchaser may incur if the Service Provider fails to meet the required Performance Standard under this Contract, that is able to be readily applied without unnecessary administrative costs, delay or difficulty;
 - (ii) it is in the economic and other best interests of both the Purchaser and the Service Provider that formulae of the nature referred to in Schedule C4 be adopted;
 - (iii) there are many and varied matters which form part of the Losses, costs, expenses and detriments which the Purchaser may incur as a result of a failure by the Service Provider to discharge its performance obligations under this Contract many of which are either difficult, or in some cases impossible, to calculate with precision;
 - (iv) the formulae adopted in Schedule C4 meet the requirements and objectives set out in clauses 21.7(a)(i), 21.7(a)(ii) and 21.7(a)(iii);
 - (v) the formulae in Schedule C4 also includes an incentive margin in respect of On-Time Running that may potentially be payable to the Service Provider in accordance with this Contract depending on the relevant Level of Service delivered by the Service Provider and such amount is the sole entitlement of the Service Provider to payment from the Purchaser in respect of the Level of Service actually delivered for On-Time Running;
 - (vi) the Performance Payment Adjustment applicable to a given Contract Month may be a positive, negative or neutral amount as calculated in accordance with Schedule C4 and Schedule D2; and
 - (vii) the Service Provider:
 - (A) is contracting with the Purchaser at arm's length;
 - (B) possesses equivalent bargaining power to the Purchaser;
 - (C) possesses extensive commercial experience and expertise;
 - (D) has had access to and been advised by its own legal, accounting, technical, financial, economic, commercial and other professionals and experts in relation to its rights and obligations under this Contract;
 - (E) having received advice, warrants that the Performance Regime is legally binding, valid and enforceable according to its terms and does not constitute a penalty in any respect;
 - (F) enters into this Contract without any duress, coercion, undue influence or other form of unconscionable conduct or impermissible or objectionable persuasion on the part of Purchaser;

- (G) enters into this Contract not dependent on or influenced by any statements or representations (whether express or implied) made by or on behalf of the Purchaser, other than those stated in this Contract; and
 - (H) enters into this Contract with the intention that the Performance Regime is legally binding, valid and enforceable in accordance with its terms.
- (b) The Service Provider agrees to exclude and waive any right to the benefit of, to the extent permissible, the application of any legal rule or norm, including under statute, equity and common law, relating to the enforceability of Schedule C4 or Schedule D2 or the characterisation of any Performance Payment Adjustment as a penalty.
 - (c) To the extent that the Performance Payment Adjustment is conclusively determined in dispute resolution conducted in accordance with this Contract to be unenforceable, the Purchaser is entitled to recover, as general damages, an amount of up to the total of the Performance Payment Adjustment that would have been payable had the Performance Payment Adjustment not been determined to be unenforceable.
 - (d) Subject to clause 21.7(e), the Performance Payment Adjustment will be the Purchaser's sole and exclusive remedy in respect of:
 - (i) any failure by the Service Provider to operate Trips in accordance with the Timetable (including to ensure that the Contract Vehicle performing a Trip traverses each designated Transit Stop on that Trip); and
 - (ii) the Level of Service actually delivered for On-Time Running.
 - (e) Clauses 21.7(c) and 21.7(d) do not limit or affect:
 - (i) the Service Provider's liability:
 - (A) for payment to the Purchaser of any Moneys Owning;
 - (B) in respect of any Change Payment that is payable by the Service Provider to the Purchaser;
 - (C) any amount for which the Service Provider must indemnify the Purchaser pursuant to clause 11.4(h)(iii), 13.5(c), 13.8(c), 31.1(d), 31.1(e), 32.1(e) or 37.2. or
 - (D) arising from criminal acts, fraud or wilful misconduct on the part of the Service Provider or a Service Provider's Associate; or
 - (ii) the Purchaser's rights under clause 19 or clause 20 of this Contract or under the Act arising from any failure by the Service Provider to operate Trips in accordance with the Timetable (including to ensure that the Contract Vehicle performing a Trip traverses each designated Transit Stop on that Trip) and the Level of Service actually delivered for On-Time Running.

22. Change in Mandatory Requirements

22.1 General risk allocation

Except as provided in this clause 22:

- (a) the Service Provider is responsible for all effects on the Transport Operations of any Change in Mandatory Requirements and the Service Provider will not be entitled to any relief or additional payment or compensation for performance of any obligation under this Contract arising out of, or in any way in connection with, a Change in Mandatory Requirements;
- (b) notwithstanding the nature, timing or extent of any Change in Mandatory Requirements, the Service Provider is not relieved from performance of any obligation under this Contract, and must ensure that at all relevant times during the Contract Term all Service

Contract Assets and other Deliverables and the Service Provider's performance of its obligations complies with all Mandatory Requirements; and

- (c) the Service Provider must absorb all financial effects of any Change in Mandatory Requirements which are not compensated pursuant to this clause 22.

22.2 Effect of indexation

The Service Provider is not entitled to make any Claim under this clause 22 for any increase in the cost of any goods or service, or any other thing, to the extent that the increase in cost is taken into account in the calculation of the Service Payment (including in any indexation or reconciliation adjusting the Service Payment) under Schedule D2.

22.3 Qualifying Change in Law

If a Qualifying Change in Law occurs that has had, or will have, a Net Financial Impact:

- (a) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of that Qualifying Change in Law; or
- (b) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in respect of that Qualifying Change in Law.

22.4 Change in Operations Manual

If there is a Change in Operations Manual which has had, or will have, a Net Financial Impact:

- (a) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of that Change in Operations Manual; or
- (b) the Purchaser may direct the Service Provider to prepare an Indicative Change Proposal in respect of that Change in Operations Manual.

22.5 Purchaser's response

- (a) Within 20 Business Days of receiving an Indicative Change Proposal from the Service Provider under clause 22.3 or clause 22.4:
 - (i) if the Purchaser agrees with the Service Provider's assessment that there has been a Qualifying Change in Law or Change in Operations Manual that has had, or will have a Net Financial Impact, the Purchaser must either:
 - (A) direct the Service Provider to submit a Change Proposal in accordance with clause 23.2 (a **Request for Change Proposal**); or
 - (B) in the case of a Change in Operations Manual, direct that the Service Provider's obligations under this Contract to comply with the Change in Operations Manual be varied (at the Purchaser's discretion) to avoid or mitigate the Net Financial Impact of the Change in Operations Manual; or
 - (ii) if the Purchaser disputes the Service Provider's assessment that there has been a Qualifying Change in Law or Change in Operations Manual that has had, or will have a Net Financial Impact, the Purchaser must give notice of that dispute and the parties must then seek to resolve the disputed matters in accordance with the Dispute Resolution Procedures.
- (b) To the extent that a direction given under clause 22.5(a)(i)(B):
 - (i) does not fully avoid or mitigate the Net Financial Impact of the Change in Operations Manual or itself causes the Service Provider to incur additional cost, it will be deemed to be a direction to the Service Provider to submit a Change Proposal in accordance with clause 23.2 (a **Request for Change Proposal**); or
 - (ii) would, if properly complied with, prevent the Service Provider from complying with any of its other obligations under this Contract:

- (A) the Service Provider must promptly notify the Purchaser of those affected obligations and the reasons why it cannot comply with them; and
- (B) provided the Service Provider has complied with clause 22.5(b)(ii)(A) and any direction given by the Purchaser that would otherwise enable the Service Provider to comply with the affected obligations:
 - (I) the Service Provider will be relieved from complying with the affected obligations; and
 - (II) clause 22.5(b)(i) will apply to that direction to the extent that the direction itself causes the Service Provider to incur additional cost.

22.6 No entitlement

The Service Provider will have no entitlement under clause 22.3 or clause 22.4 arising from a Qualifying Change in Law or a Change in Operations Manual to the extent:

- (a) that the change was required as a result of:
 - (i) a failure of the Service Provider to comply with the Operations Manual or another Mandatory Requirement;
 - (ii) an illegal act or omission of the Service Provider; or
 - (iii) a breach of this Contract by the Service Provider; or
- (b) that was not in force at the date of this Contract but which:
 - (i) had been specifically referred to the Service Provider prior to the date of this Contract by the Purchaser in writing; or
 - (ii) a party experienced and competent in the provision of services comparable to the Transport Operations would have reasonably foreseen or anticipated prior to the date of this Contract,

in substantially the same form as the Qualifying Change in Law or Change in Operations Manual which came into effect after the date of this Contract.

23. Change Payments

23.1 Indicative Change Proposal

- (a) Where the Purchaser gives a direction to the Service Provider to prepare and submit an Indicative Change Proposal under:
 - (i) clause 10.4(b) (*Counter Terrorism*);
 - (ii) clause 12.5(c) (*Fleet Management – purchase or lease by Purchaser*);
 - (iii) clause 12.5(f) (*Fleet Management – changed replacement capacity*);
 - (iv) [Not used]
 - (v) clause 12.11(b)(ii) (*Change in Depot Capacity*);
 - (vi) clause 12.12(c)(ii) (*Change in Technology*);
 - (vii) clause 13.1(e) (*Integrated Scheduling System*);
 - (viii) clause 13.4(b)(ii) (*Changes to Ticketing Equipment*);
 - (ix) clause 13.7(e)(ii) (*Additional Purchaser Supplied Items*);
 - (x) clause 15.3 (*Change to Performance Measures*);
 - (xi) clause 18.2(b) (*Significance of Key Performance Indicators*);
 - (xii) clause 22.3(b) (*Qualifying Change In Law*);

- (xiii) clause 22.4(b) (*Change in Operations Manual*);
- (xiv) clause 29.10(b) (*Change in Insurances*); or
- (xv) clause 5.1(e)(iv)(A) (*Purchaser's Power to Give Directions*),

the Service Provider must do so within 10 Business Days of the direction or within such other reasonable period as agreed by the Purchaser.

- (b) An Indicative Change Proposal prepared and submitted under this Contract must:
 - (i) describe the steps the Service Provider proposes to take to respond to:
 - (A) in the case of an Indicative Change Proposal submitted under clause 22.3, the Qualifying Change in Law;
 - (B) in the case of an Indicative Change Proposal submitted under clause 22.4, the Change in Operations Manual; or
 - (C) otherwise, the Change Event that is the subject of the Indicative Proposal; and
 - (ii) include a reasonable estimate of the Net Financial Impact of the Qualifying Change in Law, Change in Operations Manual or Change Event;
 - (iii) for each of the Change Payment Methods, provide a separate estimate of the Net Financial Impact calculated on the basis of that Change Payment Method, unless otherwise directed by the Purchaser; and
 - (iv) if required by paragraph 7(b) of Schedule D3, include an Outline Business Case, and may set out any consequential amendments to this Contract which the Service Provider proposes be made in the event that the Purchaser issues a Change Notice in respect of the Change Event.
 - (c) The Purchaser will consider the Indicative Change Proposal and, subject to clause 22.5, within 20 Business Days of receipt, either:
 - (i) accept the Indicative Change Proposal and issue a Change Notice in accordance with clause 23.3(a), on the basis set out in the Indicative Change Proposal;
 - (ii) direct the Service Provider to prepare a Change Proposal and in this direction, identify:
 - (A) the information referred to in paragraph 1.2(c) of Schedule D3;
 - (B) whether the Service Provider is required to undertake a tender process in accordance with paragraph 4.1 of Schedule D3;
 - (C) in respect of a Material Change Event that has resulted from a request from the Service Provider for the Purchaser's approval under clause 12.11(b)(i) (*Change in Depot Capacity*) or clause 12.12(c)(i) (*Change in Technology*), whether the Service Provider is required to include a Detailed Business Case;
 - (D) in respect of a Material Change Event other than one referred to in clause 23.1(c)(ii)(C), the inputs (if any) the Service Provider is required to provide for a business case to be prepared by or for the Purchaser; and
 - (E) any other information which the Purchaser reasonably requires the Service Provider to include in the Change Proposal,
- (a Request for Change Proposal); or
- (iii) in the case of an Indicative Change Proposal submitted under:
 - (A) clause 12.5(c) (*Fleet Management – purchase or lease by Purchaser*);
 - (B) clause 12.5(f) (*Fleet Management – changed replacement capacity*);

- (C) [Not used];
 - (D) clause 12.11(b)(ii) (*Change in Depot Capacity*);
 - (E) clause 12.12(c)(ii) (*Change in Technology*) (other than an event deemed to be a Change in Technology in accordance with clause 12.12(f));
 - (F) clause 13.1(e) (*Integrated Scheduling System*);
 - (G) clause 13.7(e) (*Additional Purchaser Supplied Items*);
 - (H) clause 15.3 (*Change to Performance Measures*);
 - (I) clause 18.2(b) (*Significance of Key Performance Indicators*);
 - (J) clause 29.10(b) (*Change in Insurances*); or
 - (K) clause 5.1(e)(iv)(A) (*Purchaser's Power to Give Directions*),
notify the Service Provider that the Purchaser does not wish to proceed with proposed Change Event.
- (d) The Service Provider must bear its costs of preparing an Indicative Change Proposal (including any third party costs).

23.2 Change Proposal

- (a) Where the Purchaser issues a Request for Change Proposal, the Service Provider must provide its Change Proposal within 20 Business Days or such longer period as reasonably approved by the Purchaser.
- (b) Any Change Proposal submitted under this Contract must:
 - (i) be a detailed development of the Indicative Change Proposal (if there was a relevant Indicative Change Proposal) submitted by the Service Provider in relation to the Change Event;
 - (ii) include any Detailed Business Case that is required by this Contract or inputs to a business case to be prepared by or for the Purchaser, as required under clause 23.1(c)(ii)(C);
 - (iii) include the Service Provider's calculation of the Net Financial Impact of the Change Event in accordance with the Request for Change Proposal, including:
 - (A) details of its calculations;
 - (B) working papers and supporting documentation for its determination of the Net Financial Impact;
 - (C) details of the amount and payment terms proposed for any Change Payment;
 - (D) consideration as to whether some or all of the Net Financial Impact could reasonably be negated or mitigated in the course of replacement or disposal of any Service Contract Assets under this Contract or by any other reasonable means;
 - (E) consideration as to how any cost saving resulting from the Qualifying Change in Law, Change in Operations Manual or Change Event can be maximised; and
 - (F) a statutory declaration from two directors (or a director and secretary) of the Service Provider confirming that to the best of those directors' (or director's and secretary's) knowledge after making all prudent enquiries the information provided to the Purchaser in the Change Proposal is accurate, true and fair; and

- (iv) include such other information required by the Purchaser under clause 23.1(c) (which in the event that the Service Provider is required under clause 23.1(c)(ii)(B) to undertake a tender process, must be provided with reference to the outcomes of that tender process).
- (c) A Change Proposal once submitted may only be amended with the Purchaser's approval.

23.3 Change Notice

Following receipt of a Change Proposal, the Purchaser must, as soon as reasonably practicable having regard to the scale and complexity of the Change Proposal, either:

- (a) issue a Change Notice approving the Change Proposal;
- (b) propose an alternative:
 - (i) valuation of the Net Financial Impact of the Qualifying Change in Law, Change in Operations Manual or Change Event (which must be consistent with the possible approaches set out in Schedule D3); or
 - (ii) Change Payment Method for the Qualifying Change in Law, Change in Operations Manual or Change Event,

and the Purchaser may with that proposal also propose consequential amendments to this Contract in respect of the Change Event; or

- (c) in the case of a Change Proposal relating to a possible Change Event described in:
 - (i) clause 12.5(c) (*Fleet Management -- purchase or lease by Purchaser*);
 - (ii) clause 12.5(f) (*Fleet Management – changed replacement capacity*);
 - (iii) [Not used];
 - (iv) clause 12.11(b)(ii) (*Change in Depot Capacity*);
 - (v) clause 12.12(c)(ii) (*Change in Technology*) (other than an event deemed to be a Change in Technology in accordance with clause 12.12(f));
 - (vi) clause 13.1(e) (*Integrated Scheduling System*);
 - (vii) clause 13.7(e) (*Additional Purchaser Supplied Items*);
 - (viii) clause 15.3 (*Change to Performance Measures*);
 - (ix) clause 18.2(b) (*Significance of Key Performance Indicators*);
 - (x) clause 29.10(b) (*Change in Insurances*); or
 - (xi) clause 5.1(e)(iv)(A) (*Purchaser's Power to Give Directions*),reject the Change Proposal and notify the Service Provider that the Purchaser does not wish to proceed with the proposed Change Event.

23.4 Effect of Change Notice

A Change Notice issued under clause 23.3(a):

- (a) subject to clauses 23.1(c)(i) and 23.5, must state:
 - (i) to the extent the Change Notice relates to a Qualifying Change in Law or Change in Operations Manual, the steps agreed (in accordance with this clause 23) to be taken by the parties to address the Qualifying Change in Law or Change in Operations Manual;
 - (ii) in all other cases the steps agreed by the parties (in accordance with this clause 23) to implement and respond to the relevant Change Event;
 - (iii) the amount of the Net Financial Impact as agreed or determined in accordance with this clause 23;

- (iv) the Change Payment Method to apply in accordance with this clause 23; and
 - (v) any consequential amendments to be made to this Contract in respect of the Change Event in accordance with this clause 23; and
- (b) is a direction to implement the matters set out in the Change Notice and will have the effect of amending this Contract accordingly without the need for further action.

23.5 Negotiation

- (a) If the Purchaser makes a proposal under clause 23.3(b), the parties must negotiate in good faith to try to determine and agree:
- (i) the valuation of the Net Financial Impact (applying the Change Payment Method proposed by the Purchaser under clause 23.3(b)); and
 - (ii) any consequential amendments to the Contract in respect of the Change Event.
- (b) If the parties are unable to reach agreement within 60 Business Days of the Purchaser's proposal under clause 23.3(b):
- (i) the Purchaser may give a direction (acting reasonably) confirming its assessment of the Net Financial Impact to apply and that direction will apply unless otherwise agreed by the parties or determined by an Expert following a referral under clause 23.5(b)(ii)(A);
 - (ii) notwithstanding anything to the contrary in clause 40:
 - (A) either party may refer the assessment of the Net Financial Impact directly for resolution by an Expert under clause 40.7, provided that if the parties are unable to agree as to the identity of the person to be appointed as the Expert within 5 Business Days, either party may request the President of the Resolution Institute to nominate an appropriate person and the parties will promptly appoint such person as the Expert; and
 - (B) the Expert's determination in respect of the Net Financial Impact following a referral in accordance with clause 23.5(b)(ii)(A) will be final and binding on the parties except to the extent of fraud, gross negligence or a manifest error and (notwithstanding any remaining dispute in respect of proposed consequential amendments to the Contract, which either party may refer for resolution in accordance with clause 40 after or contemporaneously with referral to the Expert); and
 - (iii) unless otherwise directed by the Purchaser, the Service Provider must implement the Change Proposal as modified by the Purchaser's assessment of the Net Financial Impact in accordance with clause 23.5(b)(i), but subject to:
 - (A) any alternative Net Financial Impact agreed by the parties under clause 23.5(b)(i) or determined by an Expert in accordance with clause 23.5(b)(ii)(B); and
 - (B) the outcome agreed between the parties or determined in accordance with clause 40 in respect of any consequential amendments to this Contract in connection with the Change Event and the Change Proposal.

23.6 Change in Depot Capacity

- (a) The Service Provider acknowledges and agrees that to the extent a Change Proposal relates to a Change in Depot Capacity and the proposed Change Payment Method is through an Indirect Service Payment Adjustment then, subject to the Purchaser's rights under clause 23.3(c):
- (i) the parties must negotiate in good faith to determine and agree any changes required to the Depot Payment determined under Schedule D2;

- (ii) at the Purchaser's discretion, the change in Depot Payment may be assessed by a Registered Valuer appointed by the Purchaser in accordance with clause 23.6(b); and
 - (iii) from the relevant time directed by the Purchaser in a Change Notice (or as otherwise agreed or determined under clause 23.5) the Depot Payment will be revised accordingly.
- (b) If the Purchaser wishes to appoint a Registered Valuer as contemplated by clause 23.6(a)(ii), then:
- (i) the parties will (each acting reasonably) seek to agree the identity of the person to be so appointed, provided that if the parties are unable to reach agreement within 5 Business Days, the Purchaser will request the President of the Real Estate Institute of Queensland to nominate the person to be so appointed (in which case the Purchaser will promptly appoint the nominated person as the Registered Valuer); and
 - (ii) the Purchaser will appoint the Registered Valuer on terms that require the Registered Valuer to make his or her assessment based on principles which are reasonable, transparent, in accordance with market practice and require the Registered Valuer to value the Depot on the basis of its existing use.

23.7 Costs of Change Proposal if rejected by Purchaser

- (a) If the Purchaser rejects a Change Proposal in accordance with clause 23.3(c), provided that the Service Provider is not in breach of this clause 23, the Purchaser will reimburse the Service Provider for any directly attributable and substantiated third party costs reasonably incurred by the Service Provider in preparing the relevant Change Proposal.
- (b) Except to the extent provided in clause 23.7(a), the Service Provider must bear all its costs of preparing a Change Proposal.

24. Security for Performance

24.1 Performance Bond

Within 10 Business Days of the Commencement Date, the Service Provider must provide a bond to the Purchaser in the amount specified in item 9 of the Contract Details as security for the performance by the Service Provider of its obligations under this Contract (**Performance Bond**).

24.2 Performance Bond requirements

Subject to clause 24.3, each Performance Bond under this Contract must be:

- (a) an irrevocable and unconditional instrument in the form set out in Schedule E1 or otherwise in a form approved by the Purchaser;
- (b) issued in favour of the Purchaser;
- (c) issued in Australian dollars;
- (d) at all times provided by a bank acceptable to the Purchaser that maintains the Required Performance Bond Rating or another rating as approved by the Purchaser;
- (e) payable at an office of the issuer in Brisbane (or such other place as the Purchaser may approve); and
- (f) valid until the earlier of:
 - (i) the Bond Longstop Date; or
 - (ii) another date that is not less than 12 months from the date of issue of the Performance Bond.

24.3 Replacement of expiring Performance Bond

- (a) Until the Bond Longstop Date, the Service Provider must replace each Performance Bond (**Original Bond**) held by the Purchaser with a new Performance Bond (**Renewing Bond**) by no later than 20 Business Days prior to the expiry date stated in the Original Bond.
- (b) The Renewing Bond must comply with all of the requirements for a Performance Bond in clause 24.2 and must be held by the Purchaser for the same purposes for which the Original Bond was held.
- (c) The Purchaser agrees to surrender an Original Bond:
 - (i) in exchange for a Renewing Bond complying with this clause upon receiving reasonable notice of a request to do so (which notice need not exceed 10 Business Days); and
 - (ii) subject to clause 24.9(b)(ii), on the Bond Longstop Date.

24.4 Performance Bond ratings trigger

If the issuer of a Performance Bond ceases to have the Required Performance Bond Rating, then the Service Provider must:

- (a) notify the Purchaser of that circumstance as soon as reasonably practicable and in any event within 20 Business Days; and
- (b) within 10 Business Days of being requested to do so, procure the issue to the Purchaser of a replacement bond (**Replacement Bond**) which must have a face value equal to that of the Performance Bond being replaced, comply with all of the requirements for a Performance Bond in clause 24.2 and must be held by the Purchaser for the same purposes for which the Original Bond was held,

and the Purchaser must promptly surrender the Original Bond to the Service Provider following the issue of the Replacement Bond.

24.5 Demands under Performance Bond

- (a) If the Purchaser wishes to make a demand or exercise its rights under any Performance Bond at any time, the Purchaser may do so:
 - (i) at any time provided it must first give the Service Provider not less than 5 Business Days prior notice specifying the Purchaser's reasons for making a demand under the Performance Bond; and
 - (ii) in accordance with clause 24.6(a).
- (b) The Service Provider must not for any reason take any steps to injunct or otherwise restrain:
 - (i) the issuer of a Performance Bond from paying the Purchaser pursuant to the terms of the Performance Bond;
 - (ii) the Purchaser from making a demand under a Performance Bond; or
 - (iii) the Purchaser from using the proceeds of a Performance Bond,in each case where the Purchaser is entitled to exercise its rights under any Performance Bond in accordance with clause 24.6.

24.6 Proceeds of Performance Bond

- (a) Subject to clause 24.5 and clause 24.9(b), the Purchaser may only make a demand under, and apply the proceeds of any Performance Bond towards payment of:
 - (i) any amount that has become due and payable (and has not been paid) by the Service Provider or the Service Provider's Associates to the Purchaser in respect of:

- (A) Moneys Owning by the Service Provider under this Contract; or
 - (B) any Loss suffered or incurred by an Indemnified Person under or in connection with this Contract, including as a consequence of an Insolvency Event; or
- (ii) any amount:
- (A) for which the Service Provider may or will become liable following the End Date; or
 - (B) in respect of which, as at the End Date, the Purchaser has a bona fide claim against the Service Provider.
- (b) Within 10 Business Days of being requested to do so, the Service Provider must procure the issue to the Purchaser of a Replacement Bond for the Performance Bond that the Purchaser made a demand on. The Replacement Bond must have a face value equal to that of the Performance Bond being replaced, comply with all of the requirements for a Performance Bond in clause 24.2 and will be held by the Purchaser for the same purposes for which the Original Bond was held.
- (c) Any proceeds remaining from a Performance Bond must be repaid to the Service Provider in return for the Replacement Bond.
- (d) If the issuer of a Performance Bond makes a payment to the Purchaser as a result of a demand made in accordance with clause 24.6(a) and all or any part of the amount:
- (i) in respect of which demand was made pursuant to clause 24.6(a)(i) was not actually due and payable to the Purchaser or another Indemnified Person under or in connection with this Contract by the Service Provider or Service Provider Associate; or
 - (ii) in respect of which demand was made pursuant to clause 24.6(a)(ii), the Service Provider or Service Provider Associate does not in fact become liable to pay the Purchaser or another Indemnified Person under or in connection with this Contract,
- (in either case, a **Relevant Amount**), then the Purchaser must pay the Service Provider (as the Service Provider's sole remedy):
- (iii) the Relevant Amount, and
 - (iv) subject to clause 24.6(e), an amount equal to that proportion of any fees or charges levied on the Service Provider by the issuer of the Performance Bond as the direct result of the demand made in accordance with clause 24.6(a) in respect of the Relevant Amount.
- (e) The Purchaser will not be liable to pay any amount to the Service Provider under clause 24.6(d)(iv) except to the extent the Service Provider has substantiated that amount to the Purchaser's reasonable satisfaction.

24.7 No interest

The Purchaser is not obliged to pay the Service Provider interest on a Performance Bond or the proceeds of a Performance Bond.

24.8 No trust

If the Purchaser makes a demand under a Performance Bond, the Purchaser does not hold the proceeds on trust for the Service Provider.

24.9 Failure to provide Performance Bond

- (a) If the Service Provider fails to provide any Performance Bond in accordance with its obligations under clauses 24.1, 24.3, 24.4(b) or 24.6(b), that failure will be a Show Cause Event.

- (b) If:
- (i) the Service Provider fails to provide a Renewing Bond as required under clause 24.3; or
 - (ii) on the Bond Longstop Date any amount referred to in clause 24.6(a) remains outstanding or continues to be the subject of a bona fide claim under this Contract by the Purchaser,
- then, without limiting the Purchaser's other rights, the Purchaser may present the Original Bond for payment and may hold the proceeds as a cash security for the performance of the obligations for which the Original Bond was held.
- (c) The Service Provider may:
- (i) provide a Renewing Bond that is equal to the proceeds of the Original Bond held by the Purchaser as a cash security under clause 24.9(b); and
 - (ii) request return of those proceeds to the Service Provider in exchange for the Renewing Bond,
- and if the Service Provider does so, the Purchaser must promptly return those proceeds to the Service Provider.

24.10 Bond Longstop Date

For the purposes of this clause 24, the Bond Longstop Date is the date 12 months from the End Date.

24.11 Replacement Performance Bond for Government Authority

- (a) If the Purchaser assigns or novates this Contract to a Government Authority (**GA Assignee**) pursuant to clause 43.1(c), the Service Provider must replace the Performance Bond (**Original Bond**) with a new Performance Bond (**Assignment Bond**) by no later than 10 Business Days after the date of such assignment or novation.
- (b) The Assignment Bond must comply with all of the requirements for a Performance Bond in clause 24.2 and must be held by the GA Assignee for the same purposes for which the Original Bond was held.
- (c) The Purchaser agrees to surrender an Original Bond in exchange for an Assignment Bond complying with this clause upon receiving reasonable notice of a request to do so (which notice need not exceed 10 Business Days).
- (d) If the Service Provider fails to provide an Assignment Bond as required under this clause then, without limiting the Purchaser's other rights including under clause 24.9, the Purchaser may present the Original Bond for payment and may hold the proceeds as a cash security for the performance of the obligations for which the Original Bond was held.

Part F - Continuity of the Services

25. Importance of Continuity of the Services

- (a) The Service Provider acknowledges that:
 - (i) the Network forms part of a system of Public Passenger Services for which the Purchaser's strategic objectives are set out in clause 2.1;
 - (ii) uninterrupted delivery of the Network is crucial to the Purchaser and Customers;
 - (iii) it is important that Continuity of the Services is achieved at all times; and
 - (iv) in order to achieve the matters referred to in this clause 25(a), it is important that the Purchaser has access to relevant information at all times during and after the Contract Term and receives certain assistance from the Service Provider after the Contract Term in accordance with this Contract.
- (b) The Service Provider further acknowledges and agrees that:
 - (i) clauses 26 and 27 require the Service Provider to provide and ensure the availability of information that is important to the achievement of the matters referred to in clause 25(a), in particular the ongoing provision of Public Passenger Services in a manner that is consistent with the standards required for the Transport Operations under this Contract;
 - (ii) clause 28 also requires the Service Provider to cooperate and provide certain assistance after the Contract Term in a manner that is important to the achievement of the matters referred to in clause 25(a), in particular the ongoing provision of Public Passenger Services in a manner that is consistent with the standards required for the Transport Operations under this Contract; and
 - (iii) the Service Provider's obligations under this Part F are reasonable having regard to the nature of the Transport Operations and the matters referred to in clause 25(a).

26. Handover Information

26.1 Obligation to document Handover Information

The Service Provider must diligently document, maintain and update the following information (**Handover Information**) within its business in either soft or hard copy form (at the discretion of the Service Provider):

- (a) all asset management records in respect of the Contract Vehicles, the Depot and Depot Equipment and maintenance manuals and plans;
- (b) [Not used];
- (c) subject to any restriction at Law, a list of all Staff, their contact details, payroll records, copies of their employment contracts, industrial instruments, copies of other employment records and details of Staff Liabilities for each of them;
- (d) subject to any restriction at Law, all shift rosters for the performance of the Transport Operations for a reasonable period of time prior to and following the date for provision of the Handover Package;
- (e) keys, security cards, security panel access codes and other security devices required to gain access to operate or use the Service Contract Assets; and

- (f) any other information that will be reasonably necessary for the Purchaser, a Step-in Party or a Successor Service Provider to ensure Continuity of the Services on the exercise of a Step-in Power or from the End Date.

26.2 Handover Package

- (a) The Service Provider must provide the Purchaser with a detailed, complete, orderly, up to date and accurate package of the Handover Information (and a guide to that information) (**Handover Package**):
 - (i) on or before the date that is six months after the Commencement Date,
 - (ii) within 10 Business Days of the end of each Financial Year; and
 - (iii) six months prior to the Expiry Date,in each case in accordance with this clause 26.
- (b) The Service Provider must:
 - (i) provide the Handover Package in electronic format accessible by the Purchaser and separately identifiable from other information; and
 - (ii) make any part of the Handover Package that does not constitute or cannot be reduced to a document (for example, keys) available to the Purchaser in its original form.
- (c) To preserve the Continuity of the Services, the Service Provider must ensure that the Purchaser has access as soon as reasonably practicable to detailed, complete, orderly and substantially up to date Handover Information that is accurate in all material respects in the form required by clause 26.2(b) on:
 - (i) the exercise of the Step-in Powers;
 - (ii) the Purchaser issuing a notice to amend, suspend, cancel or terminate pursuant to clause 20;
 - (iii) the surrender of this Contract pursuant to s.48(1)(c) of the Act; and
 - (iv) at any other time directed by the Purchaser from time to time.
- (d) The Purchaser must comply with its confidentiality obligations under clause 33 in respect of the Handover Package.
- (e) The Service Provider is not required to comply with this clause 26.2 to the extent that the consent of its employees or those of its Subcontractors is required for disclosure of Handover Information and the Service Provider is unable to obtain that consent, having used reasonable endeavours to do so.

26.3 Restrictions on disclosure by the Purchaser

- (a) The Purchaser may disclose relevant Handover Information to a relevant third party at any time for the purposes of a Retender or to facilitate the exercise of a Step-in Power, provided that the Purchaser will, if requested by the Service Provider, procure that such third party enters into a confidentiality undertaking agreeing to keep such information confidential.
- (b) Nothing in this clause 26 is intended to permit the Purchaser or a Step-in Party to disclose the Service Provider's Financial Statements to any person without the prior consent of the Service Provider.

27. Step-in Right

27.1 Step-in Powers

- (a) At any time after the occurrence of a Step-in Event (including if the Purchaser suspends this Contract under the Act) or an Emergency Step-in Event, the Purchaser has the right (**Step-in Right**) to:
- (i) access and temporarily assume total or partial management and control of the Transport Operations and the Service Contract Assets; or
 - (ii) take such other reasonable steps,
as in the reasonable opinion of the Purchaser are necessary or desirable to preserve the Continuity of the Services and minimise the adverse effects of the Step-in Event or Emergency Step-in Event,
(**Step-in Powers**).
- (b) The Purchaser may exercise the Step-in Powers:
- (i) in person; or
 - (ii) through another party as agent of the Purchaser (**Step-in Party**).
- (c) Unless an Emergency Step-in Event subsists, the Purchaser must give prior written notice to the Service Provider of an election to exercise its Step-in Powers.
- (d) During any Step-in Period, the Service Provider's rights and obligations under this Contract are suspended to the extent necessary to permit the Purchaser to exercise its Step-in Powers and the Service Provider will not be liable for any Non-Compliance Event, KPI Breach, Show Cause Event or, subject to clause 27.4, any Missed Trip Payment Adjustment to the extent that the relevant Non-Compliance Event, KPI Breach, Show Cause Event or Missed Trip was caused by the Step-in Party while exercising the Step-In Powers.

27.2 No effect on the rights of the Purchaser

The exercise by the Purchaser of its Step-in Rights under this clause (or ceasing to exercise those rights) does not affect any other right or power of the Purchaser or any other right of the Purchaser under this Contract or at Law.

27.3 Permitted Steps

- (a) The Purchaser or a Step-in Party may do anything necessary or incidental to ensuring Continuity of the Services, including anything:
- (i) that the Service Provider is permitted to do under or in connection with this Contract or any Law, as if it were the Service Provider and to the exclusion of the Service Provider, including conducting the Transport Operations in accordance with this Contract; and
 - (ii) all things that the Purchaser considers necessary for performing the Transport Operations and remedying or mitigating the effects of the Step-in Event or Emergency Step-in Event that gave rise to the Step-in Right.
- (b) The Purchaser or a Step-in Party may, but is not under any obligation to, remedy any Step-in Event or Emergency Step-in Event or mitigate or overcome any other event or circumstance in respect of which the Purchaser or Step-in Party exercises the Step-in Powers.
- (c) The Service Provider must use its best endeavours to assist the Purchaser or the Step-in Party in the exercise of the Step-in Powers, wherever and howsoever reasonably possible.

27.4 Payments on Step-in

- (a) Where the Purchaser exercises a Step-in Right during the Contract Term, the Service Payment for each Payment Month (or part of a Payment Month) during the Step-in Period will be adjusted to take into account:
- (i) subject to clause 27.4(b), the reasonable and proper costs and all Losses incurred by the Purchaser (including the costs of any Step-in Party that is not the Purchaser) in exercising the Step-in Powers;
 - (ii) an amount estimated by the Purchaser, acting reasonably, as representing the costs saved by the Service Provider to the extent it has not delivered the Network in accordance with and to the standard specified in this Contract during the Step-in Period;
 - (iii) to the extent that the Service Provider has delivered any part of the Network or State Designated Event Services during the Step-In Period, the costs incurred by the Service Provider in delivering those Transport Operations and a reasonable assessment of the Performance Payment Adjustment that would have been applicable having regard to the Level of Service provided; and
 - (iv) the Commercial Revenue Payment Adjustment, provided that the same amount will not be counted more than once.
- (b) Clause 27.4(a)(i) does not apply in the case of the exercise of a Step-in Right due to an Emergency Step-In Event unless that event was caused or contributed to by the breach, negligence or wilful misconduct of the Service Provider.
- (c) The Purchaser may set off any amounts due by the Service Provider under this clause 27.4 against Service Payments otherwise payable under this Contract.
- (d) The Purchaser:
- (i) agrees to use reasonable endeavours to ensure any Step-in Party acts in good faith and delivers the Network to the standard of a reasonable and prudent operator of Public Passenger Services of the type, size, scope and complexity of the Network; and
 - (ii) acknowledges that where a Step-in Right is exercised in circumstances that do not result in termination or cancellation under clause 20, the Step-in Period is intended to be temporary and, where clause 27.6(a) applies, to conclude with the giving of a Step-out Notice.

27.5 Protection of Step-in Party

Subject to any Law to the contrary and to clauses 27.4(d)(i) and 30.2(c), the Service Provider acknowledges that neither the Purchaser nor a Step-in Party will be liable to the Service Provider in respect of:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor
- (b) for any Loss which results from the exercise of a Step-in Right,

except where it arises from a fraudulent or unlawful act or omission or wilful misconduct or gross negligence on the part of the Purchaser or the Step-in Party.

27.6 Step-out

- (a) When:
- (i) the Step-in Event which resulted in the Purchaser exercising Step-in Rights has been remedied to the satisfaction of the Purchaser and the Purchaser is satisfied that there is no material risk of a recurrence of the Step-in Event; or

- (ii) the Purchaser is satisfied that the circumstances that gave rise to the Emergency Step-in Event no longer subsist,
the Purchaser will give the Service Provider a notice (**Step-out Notice**).
- (b) The Purchaser agrees that the Step-out Notice must allow the Service Provider a reasonable period to resume the performance of the Transport Operations.
- (c) The Purchaser and the Service Provider agree to consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to the Service Provider resuming the delivery of the Transport Operations is effected with the least practicable interruption to the Transport Operations.
- (d) The Service Provider acknowledges that during the Step-in Period the Purchaser may exercise any rights to cancel or terminate this Contract under clause 20 or under the Act and in that case:
 - (i) the Service Provider has no right to resume the delivery of the Network; and
 - (ii) the Step-in Party must continue to conduct the Transport Operations until a Successor Service Provider is appointed.

28. End of Contract Term

28.1 Transitional Assistance

- (a) Until the end of the Transition Out Period, the Service Provider must, and must procure all relevant Service Provider Associates to cooperate with, assist and otherwise facilitate the Purchaser and the Purchaser Associates in:
 - (i) the preparation for, and conduct of any Retender;
 - (ii) ensuring uninterrupted delivery of the Network; and
 - (iii) facilitating the orderly and efficient transition of the Transport Operations to one or more Successor Service Providers,
(Transitional Assistance).
- (b) Without prejudice to the generality of clause 28.1(a), the Transitional Assistance required under this clause 28 includes the Service Provider:
 - (i) making at least one member of its administration Staff available to Successor Service Providers (including any Interim Service Provider) during Business Hours;
 - (ii) providing reasonable assistance to Successor Service Providers to secure the continued supply of goods and or services used in connection with the Transport Operations that the Successor Service Provider indicates it will require;
 - (iii) permitting the Purchaser (subject to clause 26.3) to access, and make use of, the Service Provider's records and the Handover Information in preparing reports and information packages;
 - (iv) assisting in the verification of any information (including answering verification questions) by the Purchaser and any prospective Successor Service Provider nominated by the Purchaser in the course of any Retender;
 - (v) making its Staff and operations reasonably available for inspection and questioning by the Purchaser, Purchaser Associates and any prospective Successor Service Provider nominated by the Purchaser; and
 - (vi) complying with all reasonable requests of the Purchaser relating to any of the above.

- (c) The Purchaser, may give a reasonable direction to the Service Provider at any time as to the manner or timeframe within which any aspect of Transitional Assistance must be provided.
- (d) The Service Provider will be solely responsible for, and will have no Claim in relation to, the Service Provider's costs of providing Transitional Assistance:
 - (i) before the End Date; or
 - (ii) after the End Date if this Service Contract has been:
 - (A) surrendered by the Service Provider pursuant to s.48(1)(c) of the Act; or
 - (B) suspended or cancelled by the Purchaser following an Immediate Termination Event (other than an Immediate Termination Event in the circumstances contemplated in clause 17.5) prior to the Expiry Date,but the Purchaser must otherwise reimburse the Service Provider for all the Service Provider's reasonable costs and expenses incurred in providing Transitional Assistance after the End Date.
- (e) The Service Provider must not do any thing or fail to do any thing, and must procure that no Service Provider Associate or Service Provider Staff member does any thing, or fails to do any thing, that will, or is reasonably likely to, materially prejudice or frustrate a Retender.

28.2 Interim Service Provider

- (a) The Service Provider acknowledges that:
 - (i) uninterrupted delivery of the Transport Operations is crucial to the Purchaser and Customers; and
 - (ii) pursuant to section 48A of the Act, the Purchaser may appoint an Interim Service Provider to deliver the Network or General Route Services substantially similar to the Network on a temporary or interim basis before appointing another Successor Service Provider to deliver the Network beyond the end of the Transition Out Period.
- (b) Without limiting the Service Provider's other obligations to provide Transitional Assistance under this clause 28, until the end of the Transition Out Period, the Service Provider must cooperate in all respects and do all things reasonably directed by the Purchaser to:
 - (i) facilitate the temporary transfer of the Transport Operations to an Interim Service Provider, and
 - (ii) the subsequent transfer of the Transport Operations from the Interim Service Provider to another Successor Service Provider.

28.3 Transitional Assistance a condition of Contract

Without limiting any other obligation of the Service Provider under this Contract, the Service Provider acknowledges and agrees that the provisions of this clause 28 are conditions of this Contract.

Part G – Loss, Liability and Insurance

29. Insurance

29.1 Insurances

The Service Provider must, at its own cost and expense, effect and maintain (or cause to be effected and maintained) Insurances in accordance with Best Industry Practice, including, as a minimum, those Insurances set out in Schedule D1 and all on the terms set out in this clause 29.

29.2 Term of Insurances

The Insurances must be effected and maintained from the Commencement Date until the End Date.

29.3 Minimum Coverage and Deductibles

The Insurances must provide coverage for the relevant insured risk of at least the amount specified in Schedule D1 and have deductibles equal to the amount specified in Schedule D1.

29.4 Nature of Policies

All Insurances must:

- (a) be taken out with Reputable Insurers with the Required Insurer Rating or another rating as approved by the Purchaser;
- (b) other than for the employers' liability and workers' compensation insurance and professional indemnity insurance policies (if any), name the Purchaser and the Purchaser Associates for their respective rights and interests as a Named Insured (as defined under the relevant policy), unless Schedule D1 provides otherwise, in which case the Insurance must note the interests of the Purchaser under the policy;
- (c) where coverage cannot be obtained in advance for the full Contract Term, be renewed annually for the full Contract Term;
- (d) for policies written on an occurrence basis, provide that the deductible is payable once for each occurrence regardless of whether a Claim or Claims are brought against one or more insureds;
- (e) not contain any 'other insurance' provisions that attempt or purport to limit or restrict coverage where another insurance policy may also potentially respond;
- (f) where more than one party is an insured, contain a waiver and cross liability clause in which the insurer agrees:
 - (i) to waive all rights of subrogation that it may have against all or any of the insured parties; and
 - (ii) that any non-disclosure or breach by an insured party does not prejudice or otherwise affect the rights of another insured party to Claim;
- (g) provide for at least 20 Business Days prior written notice to be given by the insurer to the Purchaser prior to the cancellation, expiry or amendment of the policy; and
- (h) otherwise be on terms that would ordinarily be obtained and maintained by a prudent and competent operator of Public Passenger Services of the type, size, scope and complexity of the Network.

29.5 Payment of Premiums and Deductibles

The Service Provider must pay all premiums in respect of all Insurances by the due date for payment of those premiums. If an insurer requires payment of a premium or deductible under a

relevant insurance policy by the Purchaser or if, in the absence of any such requirement, the Purchaser makes such payment (without any obligation to do so and at the Purchaser's discretion) the Purchaser may recover the payment from the Service Provider as Moneys Owing.

29.6 Evidence of Policies and Payment

The Service Provider must provide, on taking out or amending an Insurance policy, on renewal and whenever otherwise reasonably directed by the Purchaser:

- (a) (if requested) policy documentation containing sufficient detail to evidence the currency of the policy and compliance by the Service Provider with the relevant terms of this Contract, along with any other information reasonably required by the Purchaser in relation to such policies, which may include the list of specific property or assets insured;
- (b) evidence that all premiums payable under the Insurance policies have been paid, that the Service Provider is not otherwise known to be in breach of the terms of any Insurance policies and that the Insurances remain in full force and effect in accordance with the requirements of this Contract;
- (c) a written undertaking (in a form reasonably acceptable to the Purchaser) from the insurance broker used to obtain the Insurances, that the policies specifically meet the requirements of this Contract and provide sufficient coverage for all reasonably foreseeable risks that are not uninsurable that may arise out of this Contract; and
- (d) all documents and approvals necessary to allow for communication to occur directly between the Service Provider's insurance broker and the Purchaser to facilitate the Service Provider's compliance with clauses 29.6(a), (b) and (c) above.

29.7 Notice of Cancellation

The Service Provider must provide not less than 30 Business Days prior notice to the Purchaser of any intended cancellation of any Insurances and proposed arrangements for implementation of replacement policies.

29.8 Failure to insure

If the Service Provider fails to comply with its obligations in relation to Insurances under this Contract or breaches the terms of any Insurances, the Purchaser may (but is not obliged to):

- (a) remedy the Service Provider's breach (including by the payment of premiums); or
- (b) itself procure equivalent insurance to that required to be maintained by the Service Provider under this Contract,

and all costs or expenses incurred by the Purchaser in doing so will be Moneys Owing from the Service Provider to the Purchaser.

29.9 Non-vitiating

The Service Provider must not take any action or fail to take any action or (so far as it is reasonably within the Service Provider's power) permit anything to occur which would entitle any insurer to refuse to pay any Claim or otherwise prejudice the rights of any party (including the Purchaser and the Service Provider) under any Insurances.

29.10 Change in Insurances

- (a) Subject to the rights of the Purchaser under this clause 29, it will at all times be the responsibility of the Service Provider to ensure that sufficient and adequate insurance cover is maintained.
- (b) Subject to clause 23, the Purchaser may at any time direct the Service Provider to:
 - (i) insure against a risk not specifically provided for or contemplated by this clause 29 or Schedule D1; or

- (ii) vary the coverage of an Insurance (either by reducing the policy exclusions or increasing the limit of cover, or otherwise),
which, in each case, will be a Change Event.
- (c) Before giving a direction under clause 29.10, the Purchaser must direct the Service Provider to prepare and submit an Indicative Change Proposal.

30. Damage, Loss and Reinstatement

30.1 Service Provider to bear risk of damage or Loss

The parties agree that the Service Provider:

- (a) bears all risk of damage and Loss (including theft) to Service Contract Assets; and
- (b) is responsible for the care, custody and control of the Ticketing Equipment and Additional Purchaser Supplied Items and bears the risk of damage and Loss (including theft) to them in accordance with clause 30.3.

30.2 Damage or destruction of Service Contract Assets

- (a) If at any time during the Contract Term any Service Contract Asset is damaged, lost or destroyed, the Service Provider must:
 - (i) except in the case of minor damage only, promptly notify the Purchaser; and
 - (ii) procure the repair, rebuilding or replacement of the Service Contract Asset as the case may be.
- (b) If a Service Contract Asset is repaired, rebuilt or replaced:
 - (i) subject to clause 30.2(c), the Service Provider is responsible for all direct and indirect costs associated with the repair, rebuilding or replacement and there will be no associated adjustment to the Service Payments under this Contract;
 - (ii) the Service Provider must ensure that the Service Contract Asset, as repaired, rebuilt or replaced;
 - (A) complies with all Mandatory Requirements and all other requirements under this Contract; and
 - (B) is otherwise fit for purpose;
 - (iii) the Service Provider must at all times ensure the Continuity of the Services and if the Service Provider is temporarily unable to use a Service Contract Asset pending its repair, rebuilding or replacement, the Service Provider must, at its own cost, procure the use of a temporary alternative asset to ensure Continuity of the Services, and
 - (iv) the Service Provider has no entitlement to relief from performance of any other obligation under this Contract.
- (c) If there is any shortfall in the amount recovered by the Service Provider under an insurance in respect of the cost of repairing, rebuilding or replacing a Service Contract Asset (other than a Contract Vehicle in the circumstances referred to in clause 30.2(d)) and that shortfall arises because of a wrongful act or omission of the Purchaser or a Purchaser Associate which has vitiated the coverage available under the Insurance, then the Purchaser must pay the Service Provider an amount equal to the difference between the reasonable cost of carrying out the required repair, rebuilding or replacement work and the amount of the relevant insurance proceeds recovered.
- (d) If a Contract Vehicle is destroyed or wholly or substantially damaged such that the Contract Vehicle is to be written off and replaced:

- (i) the New Notional Lease Fleet Payment set out in Table 13 of 5.2(e) of Schedule D2 will apply to the replacement Contract Vehicle as though the replacement Contract Vehicle was listed in the Approved Contract Vehicle Register;
 - (ii) subject to clause 30.2(e), if the amount available to the Service Provider under the Contract Vehicle Insurance is less than the amount of any Third Party Break Costs, the Service Provider shall be entitled to Claim that shortfall from the Purchaser, and provided the Purchaser is reasonably satisfied in relation to the amount claimed, the Purchaser must pay the Service Provider that amount within 30 Business Days of the Service Provider's Claim; and
 - (iii) if the amount available to the Service Provider under the Contract Vehicle Insurance is greater than the amount of Third Party Break Costs (if any), the Service Provider must pay the Purchaser the amount by which the available Insurance exceeds the Third Party Break Costs (if any).
- (e) The Service Provider shall not be entitled to claim any amount under clause 30.2(d)(ii) to the extent that the relevant Contract Vehicle was damaged or destroyed due to a failure by the Service Provider or any Service Provider Associate to comply with any requirement of this Contract (for the avoidance of doubt, including a failure by the Service Provider to comply with its obligations under clause 29 (*Insurance*) or to diligently pursue its rights under any Insurance policy).

30.3 Damage or destruction of other assets

If at any time during the Contract Term any item of Ticketing Equipment or an Additional Purchaser Supplied Item is damaged, lost or destroyed:

- (a) the Service Provider must immediately notify the Purchaser of that fact and take any steps directed by the Purchaser to facilitate the repair, rebuilding or replacement of the relevant Ticketing Equipment or Additional Purchaser Supplied Items;
- (b) the Service Provider will have the obligations and liabilities set out in clauses 30.2(b)(i) and 30.2(b)(iii) with respect to the relevant Ticketing Equipment or Additional Purchaser Supplied Items;
- (c) the Service Provider has no entitlement to relief from performance of any other obligation under this Contract with respect to the relevant Ticketing Equipment or Additional Purchaser Supplied Items; and
- (d) any costs of the repair, rebuilding or replacement of the relevant Ticketing Equipment or Additional Purchaser Supplied Items incurred by the Purchaser will be Moneys Owning.

31. Indemnity and limitation of liability

31.1 Indemnity

The Service Provider (subject to clause 31.2) releases and indemnifies, and must keep indemnified, the Purchaser and the Purchaser Associates (each an **Indemnified Person**) from and against all Claims and Losses (including direct, Indirect or Consequential Losses and costs incurred in exercising a Step-in Power or otherwise to ensure Continuity of the Services) that any of the Indemnified Persons may suffer or for which it may become liable to the extent they are directly or indirectly caused by reason of or in connection with:

- (a) the performance or non-performance of any Service Contract Document by the Service Provider;
- (b) any other act or omission of the Service Provider or any Service Provider Associate (whether arising in tort, contract or by Law) in connection with the performance of the Transport Operations;

- (c) the use of, access to, occupation of or possession of any Contract Vehicle, Depot, Depot Equipment, Ticketing Equipment, Additional Purchaser Supplied Items, the Integrated Scheduling System or any other facility, equipment or other property by the Service Provider or a Service Provider Associate or by any person for which the Service Provider or any Service Provider Associate is responsible;
- (d) the reliance by the Purchaser or another Indemnified Person on any information, statement, representation or warranty given by the Service Provider under or in relation to this Contract which is inaccurate or incorrect; or
- (e) the infringement or alleged violation of any Intellectual Property Rights or other rights in relation to the use or possession of the Existing Service Provider Materials, the Dead Network Attributes or any New Contract Materials as contemplated in this Contract.

31.2 Indemnity not defeated

The Service Provider is not obliged to indemnify an Indemnified Person in respect of an indemnity given under this Contract to the extent that the Claim or Loss which is the subject of the indemnity arises directly as a result of:

- (a) an unlawful, negligent or fraudulent act or omission or the wilful misconduct of the Indemnified Person; or

- (b) a breach by the Purchaser of this Contract or another Service Contract Document,

except to the extent that such act or omission was caused or contributed to by an act or omission of the Service Provider (other than an act or omission expressly permitted or required under this Contract or another Service Contract Document).

31.3 Liability with respect to Customers and third parties

The Service Provider acknowledges and agrees that:

- (a) the Purchaser will not be responsible for the actions of the Service Provider or any of its Associates or Staff; and
- (b) other than as expressly provided in any Service Contract Document, the Service Provider must deliver the Network and comply with its obligations under each Service Contract Document at its own cost and risk without recourse to the Purchaser or government funds or guarantees.

31.4 Exclusion of liability for Indirect or Consequential Loss

- (a) Despite any other provision of a Service Contract Document, neither the Purchaser nor any Purchaser Associate will have any liability to the Service Provider, nor is the Service Provider entitled to make any Claim, in respect of any Indirect or Consequential Loss incurred or sustained by the Service Provider as a result of any act or omission by the Purchaser or any Purchaser Associate (whether negligent or otherwise) or as a result of a breach of a Service Contract Document by the Purchaser.
- (b) Clause 31.4(a) does not operate to limit or restrict the liability of any Indemnified Person to the Service Provider or any Service Provider Associate, nor any Claim by the Service Provider or any Service Provider Associate against an Indemnified Person, in respect of Indirect or Consequential Loss:
 - (i) arising from:
 - (A) damage to, or Loss of use of, property (except to the extent that liability or Claim arises solely in contract under an agreement or deed entered into by the Service Provider or Service Provider Associate after the date of this Contract);
 - (B) death or personal injury;

- (C) criminal acts, fraud or wilful misconduct on the part of the Indemnified Person; or
 - (D) infringement by an Indemnified Person of the Intellectual Property Rights of a third party except in circumstances where the Indemnified Person was acting in accordance with the terms of a licence granted or procured by the Service Provider pursuant to clause 36;
- (ii) included in an amount payable by the Purchaser to the Service Provider pursuant to clauses 7.5, 14.1(f), 21.1, 23, 27.4 or 30.2 or Schedule D2 or Schedule D3;
- (iii) to the extent that the Indemnified Person has:
- (A) recovered that loss from a third party (whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party (provided that the Indemnified Person is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Indemnified Person);
- (iv) to the extent that the Indemnified Person
- (A) is indemnified in respect of that liability by a policy of insurance required under this Contract); or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract:
 - (I) but for clause 31.4(a); or
 - (II) if:
 - (1) the Indemnified Person had diligently pursued a claim under that policy of insurance;
 - (2) the Indemnified Person had complied with the terms and conditions of that policy of insurance; or
 - (3) the Purchaser had complied with its insurance obligations under this Contract; and
- (v) to the extent such liability cannot be excluded at Law.
- (c) Despite any other provision of this Contract, neither the Service Provider nor any Service Provider Associate will have any liability to the Purchaser or any Purchaser Associate, nor is the Purchaser or any Purchaser Associate entitled to make any Claim, in respect of any Indirect or Consequential Loss incurred or sustained by the Purchaser or a Purchaser Associate as a result of any act or omission by the Service Provider or Service Provider Associate (whether negligent or otherwise) or as a result of a breach of this Contract by the Service Provider.
- (d) Clause 34.1(c) does not operate to limit or restrict the liability of the Service Provider or any Service Provider Associate to any Indemnified Person, or any Claim by any Indemnified Person against the Service Provider or the Service Provider Associate, in respect of Indirect or Consequential Loss:
- (i) arising from:
 - (A) damage to, or loss of use of, property (except to the extent that liability or Claim arises solely in contract under an agreement or deed);
 - (B) death or personal injury;

- (C) criminal acts, fraud or wilful misconduct on the part of the Service Provider or a Service Provider Associate; or
 - (D) infringement by the Service Provider or a Service Provider Associate of the Intellectual Property Rights of a third party except in circumstances where the Service Provider and Service Provider Associate was acting in accordance with the terms of a licence granted or procured by the Purchaser pursuant to clause 36.5 or clause 36.6;
- (ii) arising from liability of the Indemnified Person to a third party for consequential or economic Loss of that third party, other than liability of the Indemnified Person that arises under an agreement or deed with that third party;
 - (iii) that is Moneys Owning;
 - (iv) to the extent that the Service Provider has:
 - (A) recovered that Loss from a third party (including any Subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party (provided that the Service Provider is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Service Provider);
 - (v) to the extent that the Service Provider:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this Contract or another Service Contract Document; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract or another Service Contract Document:
 - (I) but for clause 34.1(c); or
 - (II) if the Service Provider had:
 - (1) diligently pursued a claim under that policy of insurance;
 - (2) complied with the terms and conditions of that policy of insurance; or
 - (3) complied with its insurance obligations under this Contract or another Service Contract Document; and
 - (vi) to the extent such liability cannot be excluded at Law.

31.5 Reduction in Purchaser Liability

The Purchaser's liability and the Service Provider's entitlements in connection with any Claim by the Service Provider will be reduced:

- (a) to the extent that the Claim or the events and circumstances giving rise to the Claim were contributed to by:
 - (i) any breach of this Contract or another Service Contract Document by the Service Provider; or
 - (ii) any other act or omission by the Service Provider other than to the extent any such act or omission is expressly authorised or permitted under this Contract or another Service Contract Document;

- (b) to the extent the Service Provider fails to:
 - (i) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of the events and circumstances giving rise to the Claim (including by putting in place temporary measures reasonably required by the Purchaser); or
 - (ii) take all reasonable steps which a prudent, competent and experienced person in the circumstances of the Service Provider would have taken to mitigate, minimise or avoid the effects, consequences or duration of the events and circumstances giving rise to the Claim; and
- (c) by any insurance proceeds:
 - (i) payable to the Service Provider, or any of its Associates, under any insurances in respect of the events and circumstances giving rise to the Claim; or
 - (ii) which would have been payable to the Service Provider or any of its Associates under any Insurance in respect of the events and circumstances giving rise to the Claim but for:
 - (A) a failure by the Service Provider to comply with this Contract or another Service Contract Document; or
 - (B) a failure by the Service Provider or any of its Associates to comply with the terms of those Insurances.

Part H – General Provisions

32. Purchaser's right to access, inspect and audit

32.1 Access Licence

- (a) The Service Provider hereby grants, and must procure that any relevant Service Provider Associate grants, to the Purchaser and any Purchaser Associate a licence (**Access Licence**) to enter and access any Contract Vehicle, Depot or other premises of the Service Provider or the Service Provider Associate for the purposes of:
- (i) effecting livery changes directed by the Purchaser under clause 12.7;
 - (ii) installing, repairing, maintaining or removing Vehicle Advertising as contemplated in clause 12.8(b);
 - (iii) testing, installing, repairing, removing, maintaining, upgrading, modifying, commissioning, decommissioning, tagging, recording, auditing or retrieving or verifying any information recorded by the Ticketing Equipment or ETS Software as contemplated in clause 13.2(h);
 - (iv) installing, maintaining or removing marketing and communication materials and Passenger Information;
 - (v) exercising any Step-in Power pursuant to clause 27; or
 - (vi) exercising the Purchaser's rights of audit and inspection under clause 32.2.
- (b) The rights of access conferred on the Purchaser and the Purchaser Associates under the Access Licence are granted subject to the Purchaser and the Purchaser Associates:
- (i) subject to clauses 32.1(c), 32.2(b) and 32.2(c), giving reasonable prior notice of the access required, in each instance; and
 - (ii) complying with any reasonable conditions imposed by the Service Provider in relation to:
 - (A) operational scheduling; and
 - (B) workplace health and safety and other relevant Legal Requirements affecting the relevant vehicle or premises,and the Purchaser must, and must use reasonable endeavours to procure that the Purchaser Associates:
 - (C) comply with such conditions;
 - (D) do not cause Loss or damage to the Contract Vehicles, Depot or other premises being accessed; and
 - (E) minimise, so far as practicable, interruptions to the Transport Operations,and to the extent that the rights of access are exercised by Purchaser Associates, must use reasonable endeavours to procure that those Purchaser Associates comply with these requirements.
- (c) If requested by the Purchaser at any time, the Service Provider must negotiate in good faith with the Purchaser or any Purchaser Associate to agree an access plan or plans for any purpose of the Access Licence. The Service Provider must not unreasonably withhold agreement to any access plan nor impose unreasonable conditions in relation to it. The Service Provider must comply with the requirements of any access plan agreed upon and must allow access as provided for in it, without either:
- (i) any requirement for any further notice to be given by the Purchaser or any Purchaser Associate under clause 32.1(b)(i); or

- (ii) the imposition of any conditions under clause 32.1(b)(ii)(A).
- (d) The Purchaser or any Purchaser Associate may access any Contract Vehicle at any time during a Trip for any Fare Revenue protection or Customer survey purposes or for otherwise monitoring the Service Provider's performance and compliance with this Contract.
- (e) The Service Provider indemnifies the Purchaser for any Loss incurred by the Purchaser or any Purchaser Associate in connection with any failure or delay by the Service Provider in providing access to the Purchaser or any Purchaser Associate under this clause 32.1.

32.2 Right to inspect or audit

- (a) Subject to clause 32.2(b), the Purchaser or any person authorised by the Purchaser (which may include a Purchaser Associate) may, at any time from the Commencement Date until 12 months after the End Date, inspect or audit any of:
 - (i) the records of the Service Provider or its Associates;
 - (ii) the Service Contract Assets; or
 - (iii) any of the systems and work practices used by the Service Provider or any of its Associates in delivering the Network and performing the Transport Operations, or relating to a transaction contemplated in clause 8.3,in order to assess or verify:
 - (iv) the Service Provider's performance of the Transport Operations, business and risk control systems or compliance with any of its obligations under this Contract;
 - (v) the Service Provider's financial position, including any matter relating to Service Payments or other Funding;
 - (vi) compliance by the Service Provider with any Service Provider Warranty;
 - (vii) compliance by the Service Provider with its obligations under clauses 8.1 and 8.3; and
 - (viii) any other matters reasonably determined by the Purchaser or the Auditor General to be relevant to this Contract.

The Service Provider acknowledges and agrees that the Auditor General of Queensland is a person authorised by the Purchaser for the purposes of this clause.

- (b) Subject to clause 32.2(c), if the Purchaser exercises a right to inspect or audit under clause 32.2(a):
 - (i) the Purchaser must, as far as reasonably practicable, give the Service Provider reasonable prior notice of:
 - (A) the date, time and location of the proposed inspection or audit; and
 - (B) the information, Service Contract Assets, systems or work practices that are required for inspection or audit; and
 - (ii) the Service Provider must:
 - (A) provide copies of any documents or data reasonably directed by the Purchaser; and
 - (B) comply with any other reasonable requirements of the Purchaser for the inspection or audit.
- (c) To the extent that an inspection or audit under this clause 32.2 relates to the Service Provider's compliance with a Mandatory Requirement, the Purchaser may, but is not obliged to, give the Service Provider advance notice of the proposed inspection or audit.

- (d) The Service Provider must cooperate with and facilitate the conduct of each inspection or audit under this clause 32.2, including:
 - (i) by cooperating with, assisting and otherwise facilitating the inspection of systems and processes used to produce records and reports required under this Contract;
 - (ii) in the case of documents or records stored in electronic form, make available on request at no additional cost to the Auditor General or the Purchaser such facilities as may be reasonably necessary to enable the data to be viewed and a legible reproduction to be created;
 - (iii) by procuring (at its own cost) any consent required from a third party to the disclosure or provision of any document or data referred to in clause 32.2(b)(ii); and
 - (iv) if requested by the Purchaser, promptly rectifying any error, non-compliance or inaccuracy identified in any records or reports.
- (e) Subject to clause 32.2(f):
 - (i) the Purchaser must pay the Service Provider's reasonable third party costs (if any) incurred in providing copies of documents or data directed by the Purchaser under clause 32.2(b)(ii)(A); and
 - (ii) each party must otherwise bear its own costs associated with any inspection or audit conducted pursuant to this clause 32.
- (f) Notwithstanding clause 32.2(e), if the Purchaser reasonably determines in the course of an inspection or audit under this clause 32 that:
 - (i) a report or other information provided by the Service Provider is not fit for purpose;
 - (ii) any information provided by the Service Provider under this Contract is materially false or misleading, or there has been a material omission in the provision of information by the Service Provider under this Contract (whether intentionally or otherwise); or
 - (iii) there has otherwise been a material breach by the Service Provider under this Contract,the Service Provider must pay the reasonable costs incurred by the Purchaser in relation to the inspection or audit.
- (g) Nothing in this clause 32.2 requires the Service Provider to provide or provide access to any documents, records or information that is subject to legal professional privilege.

33. Confidentiality, disclosure, publicity and probity

33.1 Confidential Information

The parties must keep confidential and not allow, make or cause any disclosure of or in relation to Confidential Information without the prior written consent of the other party, which consent may be given or withheld, or given with conditions, in the other party's sole discretion.

33.2 Exclusions

The restrictions on disclosure of Confidential Information in clause 33.1 do not apply to any disclosure of Confidential Information:

- (a) by the Purchaser or a Purchaser Associate if disclosure is reasonably required:
 - (i) for the appointment and engagement of a Successor Service Provider, unless the information is Retender Sensitive Information;
 - (ii) for the performance of the Purchaser's obligations under this Contract;

- (iii) in order to obtain the full benefit of the Purchaser's rights under this Contract; or
- (iv) if required by constitutional convention in respect of disclosure to parliament, cabinet, or any other Government Authority;
- (b) by a party to any financier or lawyers, accountants or other professional advisors to a party, provided that the party disclosing such information has obtained an undertaking of confidentiality from such financiers, advisors or consultants;
- (c) in connection with obtaining any Insurance or where reasonably necessary in connection with a claim under an Insurance;
- (d) which is in the public domain other than as a result of the breach of any obligation of confidentiality;
- (e) which was made available to the disclosing party on an expressly non-confidential basis;
- (f) pursuant to the order of any court or tribunal of competent jurisdiction;
- (g) which is required in connection with an assignment, novation or other disposition of rights, benefits or obligations by either party permitted under this Contract where the proposed assignee or transferee has agreed with the other party in writing to be bound by the provisions of this clause 33;
- (h) which is required in connection with a sale or other disposition of shares in the Service Provider provided that any recipient of such information has provided an undertaking of confidentiality to the disclosing party in substantially the same form as set out in this clause 33 and on the basis that the recipient will not be released from such undertaking without the consent of the Service Provider and the Purchaser;
- (i) to the extent required in the exercise of any Intellectual Property Rights licensed to a party under this Contract;
- (j) to the extent required by any Law, the rules of any recognised stock exchange or regulatory body to which the disclosing party is subject or any written request of any taxation authority;
- (k) to the extent that such disclosure is expressly permitted by this Contract; or
- (l) by the Service Provider to:
 - (i) its shareholders or Related Bodies Corporate; or
 - (ii) its Subcontractors,but only to the extent that such disclosure is reasonably necessary.

33.3 Disclosure by the Purchaser

- (a) Subject to clause 33.3(b), the Purchaser may publish or disclose (on the internet or otherwise):
 - (i) the terms and conditions of this Contract;
 - (ii) the amount of Service Payments payable and incentives paid under this Contract;
 - (iii) the nature of any Non-Compliance Events, Show Cause Events or Immediate Termination Events, and details of actions taken by the Service Provider to cure each of them;
 - (iv) the results of any monitoring or measurement of the operational performance of the Service Provider in the delivery of the Network;
 - (v) the results of any Customer surveys, passenger counts, patronage surveys and revenue protection measures, fare evasion information or investigation or audit of the condition of any Service Contract Assets;

- (vi) detailed descriptions of the specifications for Service Contract Assets and the total amount spent or to be spent on their maintenance; and
 - (vii) ticketing and revenue information in relation to the Network.
- (b) To the extent that information proposed to be published or disclosed by the Purchaser under clause 33.3(a) contains commercially sensitive information (and without limiting the Purchaser's rights to publish or disclose information to comply with Public Disclosure Obligations):
- (i) the Purchaser may publish or disclose the information without consultation with the Service Provider if the commercially sensitive information is redacted or otherwise not disclosed;
 - (ii) the Purchaser must use reasonable endeavours to maintain the confidentiality of the commercially sensitive information, including to procure that any third party to whom any commercially sensitive information is disclosed has entered into a confidentiality agreement agreeing to keep such information confidential; and
 - (iii) without limiting clause 33.3(b)(ii), if the Purchaser proposes to disclose any commercially sensitive information, the Purchaser must use reasonable endeavours to give the Service Provider prior notice of that intention and must consult with the Service Provider prior to disclosing any commercially sensitive information, however the Purchaser may disclose the commercially sensitive information without notice if disclosure is required under any applicable government policy or if in the reasonable opinion of the Purchaser, it is appropriate to do so.
- (c) Nothing in this Contract prevents the Purchaser, or any Government Authority from disclosing any information which it is required to disclose:
- (i) under the *Right to Information Act 2009* (Qld) or the *Ombudsman Act 2001* (Qld) or any similar replacement Legislation;
 - (ii) to an employee or agent of the Purchaser for the sole purpose of the administration of, or internal reporting about, this Contract;
 - (iii) under the Purchaser's procurement practices and procedures from time to time; or
 - (iv) to satisfy the disclosure requirements of the Auditor General of Queensland or to satisfy the requirements of Parliamentary accountability, including tabling information concerning this Contract in Parliament,
- (Public Disclosure Obligations).**
- (d) The Service Provider agrees, at its own cost and expense, to use all reasonable endeavours to assist the Purchaser, or a Government Authority in meeting their Public Disclosure Obligations.

33.4 Publicity

Without limitation to clause 14.7, the Service Provider:

- (a) agrees not to, and must ensure that its Service Provider Associates do not, make any public announcement or statement or issue any media release in relation to the Network or this Contract (**Public Announcement**) without the prior consent of the Purchaser, except:
 - (i) if the Public Announcement is of a kind generally made by operators operating a bus service in Australia comparable to the size, scope and complexity of the Transport Operations in the ordinary course of their business; or
 - (ii) to the extent the Public Announcement is required by any Law or the rules of any recognised stock exchange or regulatory body to which the disclosing party is

subject and it is not reasonably practicable for the Service Provider to first seek the Purchaser's prior consent under this clause;

- (b) agrees to give the Purchaser a draft of any proposed Public Announcement which requires the Purchaser's consent and use its reasonable endeavours to agree with the Purchaser the wording and timing of that Public Announcement before it is made; and
- (c) agrees to as soon as practicable, give a copy of any Public Announcement, agreed to or approved by the Purchaser under this clause 33.4, to the Purchaser.

33.5 Probity Events

- (a) The Service Provider must give notice to the Purchaser immediately upon becoming aware that a Probity Event has occurred or is likely to occur. The notice must at a minimum describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise to the Probity Event.
- (b) Upon receipt of a notice under clause 33.5(a) or otherwise upon the occurrence of a Probity Event:
 - (i) the Purchaser and the Service Provider must meet within 5 Business Days to agree to a course of action that will remedy the Probity Event; and
 - (ii) the Service Provider must comply with any agreement made under clause 33.5(b)(i) to remedy the Probity Event within the timeframe agreed.
- (c) If the Purchaser and the Service Provider fail to agree to a course of action in accordance with clause 33.5(b), the Service Provider must take any action as directed by the Purchaser to remedy the Probity Event in accordance with the timeframe directed by the Purchaser.

33.6 Additional remedy in respect of Provision of Misinformation

If there is a Provision of Misinformation, then in addition to its rights under clause 20.1 the Purchaser may:

- (a) refuse to make any payments affected by the Provision of Misinformation unless and until the Provision of Misinformation has been rectified by provision of information that complies with the requirements of this Contract; and
- (b) direct that any overpayment made under this Contract by the Purchaser arising from the Provision of Misinformation is Moneys Owing.

34. Privacy

34.1 Information Privacy Act 2009

If the Service Provider deals with Personal Information for the Purchaser in performing its obligations under this Contract or otherwise will transfer to or receive from the Purchaser Personal Information for the purposes of this Contract, then the Service Provider must, and must procure any relevant Service Provider Associate to:

- (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 Service Provider was the Purchaser;
- (b) not use that Personal Information other than for the purposes of performing the Service Provider's obligations under this Contract, unless required or authorised by Law;
- (c) not disclose that Personal Information without the prior written consent of the Purchaser, unless required or authorised by Law;
- (d) not transfer that Personal Information outside of Australia without the prior written consent of the Purchaser;

- (e) ensure that access to any document that includes that Personal Information is restricted to those Service Provider Associates who require access in order to perform their duties;
- (f) ensure that Service Provider Associates do not access, use or disclose that Personal Information other than in the performance of their duties;
- (g) fully co-operate with the Purchaser to enable the Purchaser 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
- (h) comply with such other privacy, information security and physical security measures as the Purchaser reasonably directs from time to time.

34.2 Deed of privacy

On request by the Purchaser, the Service Provider must obtain from its Service Provider Associates engaged for the purposes of this Contract, an executed deed of privacy in a form acceptable to the Purchaser.

34.3 Notice of breach

The Service Provider must immediately notify the Purchaser on becoming aware of any breach of this clause 34.

35. PPSA

35.1 PPSA undertakings

If the interests of the Purchaser or any Purchaser Associate (a **Secured Party**) under this Contract or any transaction contemplated by it constitutes one or more Security Interests in favour of that Secured Party:

- (a) the Service Provider agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information or procuring that a Subcontractor does the same) which that Security Party may require for the purposes of:
 - (i) ensuring that any Security Interest of that Secured Party is enforceable, perfected and otherwise effective;
 - (ii) ensuring that any Security Interest of that Secured Party is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA;
 - (iii) enabling that Secured Party to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by that Secured Party; or
 - (iv) enabling that Secured Party to exercise any right or power in connection with the Security Interest;
- (b) the Service Provider agrees that it will bear all costs and expenses;
 - (i) that it incurs in complying with clause 35.1(a); and
 - (ii) incurred by a Secured Party for the purposes set out in clause 35.1(a);
- (c) to the extent permitted by Law, and in respect of any Security Interest created by this Contract or any transactions contemplated by it:
 - (i) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);

- (ii) the application of Part 4.3 of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA; and
- (iii) the Service Provider waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice cannot be excluded;
- (d) the parties agree to the full extent permitted by Law not to disclose information of the kind mentioned in section 275(1) of the PPSA;
- (e) the Service Provider agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if the relevant Secured Party approves;
- (f) a Secured Party's Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly, from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this Contract;
- (g) except where contemplated in clause 35.2(a), the Service Provider will not, without the relevant Secured Party's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the collateral; and
- (h) for the avoidance of doubt, pursuant to section 80 of the PPSA, the Service Provider covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person to whom a Secured Party assigns some or all of its rights and obligations under this Contract should have the benefit of this covenant.

35.2 PPSA procedures

- (a) Without limiting clause 35.1(g), if the Service Provider holds any Security Interests in the Service Contract Assets for the purposes of the PPSA by reason of entering into any supply or other arrangements with a Subcontractor, the Service Provider agrees to implement, maintain and comply in all material respects with procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that the Service Provider takes all steps to identify Security Interests in its favour and under the PPSA to perfect continuously any such Security Interest, including all steps necessary:
 - (i) for the Service Provider to obtain the highest ranking priority possible in respect of the Security Interest (such as perfecting a purchase money security interest (as defined in the PPSA) or perfecting a Security Interest by Control); and
 - (ii) to reduce as far as possible the risk of a third party acquiring an interest free of the Security Interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- (b) If a Secured Party asks, the Service Provider agrees to arrange at its expense an audit of the above PPSA procedures. A Secured Party may ask the Service Provider to do this if it reasonably suspects to that Service Provider is not complying with this clause 35.2.

36. Intellectual Property

36.1 Service Provider Materials

- (a) The Service Provider grants, and must procure that each relevant Associate of the Service Provider grants, to the Purchaser and any Purchaser Associate nominated by the Purchaser a non-exclusive, perpetual, irrevocable, transferable, royalty free licence, without additional cost, to exercise all Intellectual Property Rights in:

- (i) the Existing Service Provider Materials; and
 - (ii) the Dead Network Attributes,
- for the Permitted Purpose.
- (b) The licence granted in clause 36.1(a):
 - (i) may be sub-licensed; and
 - (ii) will survive expiry, cancellation, termination or surrender of this Contract on any basis.
 - (c) The Purchaser acknowledges and agrees that all Intellectual Property Rights in the Existing Service Provider Materials and Dead Network Attributes are, and remain, the sole property of the Service Provider.

36.2 New Contract Materials

- (a) Subject to this clause 36.2:
 - (i) the Service Provider acknowledges and agrees that all Intellectual Property Rights in the New Contract Materials vest immediately on creation in the Purchaser without the need for further assurance; and
 - (ii) irrespective of where it is created, if requested by the Purchaser, the Service Provider must:
 - (A) sign, execute or otherwise deal with; and
 - (B) ensure that any third party that creates any New Contract Material signs, executes or otherwise deals with,any document which may be necessary to vest all rights in and title to the intellectual property in the New Contract Material to the Purchaser.
- (b) To the extent that the Intellectual Property Rights of any third party are embodied in New Contract Material developed or created by the Service Provider, clause 36.2(a) will not apply and the Service Provider grants to the Purchaser and any Purchaser Associate nominated by the Purchaser a non-exclusive, perpetual, irrevocable, transferable, royalty free licence, without additional cost to exercise all those Intellectual Property Rights for the Permitted Purpose.
- (c) Clause 36.2(a) does not apply to the Intellectual Property Rights in the Dead Network Attributes and those rights vest immediately on creation in the Service Provider.
- (d) The Purchaser grants, and must procure that each relevant Associate of the Purchaser grants, to the Service Provider and any relevant Service Provider Associate nominated by the Service Provider a non-exclusive, perpetual, irrevocable, transferable, royalty free licence (with the right to sub-license) without additional cost to exercise all Intellectual Property Rights in the New Contract Material for the purposes of performing the Service Provider's obligations under this Contract.

36.3 Licensing of Subcontractor created Intellectual Property Rights

To the extent that any Intellectual Property Rights may be owned by any of the Service Provider's Associates, the Service Provider:

- (a) must procure from the relevant Associate a licence to enable the Service Provider to provide the licences in clause 36.1(a) and clause 36.2(b); and
- (b) warrants that it:
 - (i) is entitled to grant to the Purchaser the rights granted under clause 36.1(a) and clause 36.2(b); and
 - (ii) has procured from the relevant Associates such authority and licences as are necessary for the Service Provider to do so.

36.4 Access to Intellectual Property Rights

Without limiting the Service Provider's other obligations under this Contract with respect to the delivery of any Deliverables, the Service Provider must provide, and procure that its Associates provide, all documentation, information and assistance as the Purchaser may reasonably require in connection with the Purchaser's use and enjoyment of the Intellectual Property Rights in the Existing Service Provider Materials and the New Contract Materials in accordance with and as contemplated by this Contract.

36.5 Software

The Purchaser will procure at the Purchaser's cost all necessary licences to enable the Purchaser, the Purchaser's relevant Associates, the Service Provider and the Service Provider's relevant Associates to use and enjoy all Intellectual Property Rights reasonably required by an end user of:

- (a) the ETS Software, the Ticketing Equipment and the Integrated Scheduling System;
- (b) subject to the Service Provider complying with clause 13.1(c), the Integrated Scheduling System;
- (c) the Contract Management Portal; and
- (d) any other software systems listed in the Operations Manual as software that the Purchaser will provide,

throughout the Contract Term, as contemplated under this Contract.

36.6 Trade Mark Licence

- (a) The Purchaser grants to the Service Provider a non-exclusive licence to use the Purchaser Brands during the Contract Term for the purposes of the Transport Operations.
- (b) The Service Provider must not:
 - (i) use the Purchaser Brands for any purposes other than for the purposes of the Transport Operations, without the Purchaser's consent; or
 - (ii) use the Purchaser Brands for any unlawful purpose.
- (c) The Purchaser may give the Service Provider directions regarding such matters as:
 - (i) the nature, standards, characteristics and quality of the materials embodying the Purchaser Brands, or any goods upon which, or services in respect of which, the Purchaser Brands are to be used; and
 - (ii) the manner in which the Service Provider uses any of the Purchaser Brands.
- (d) The Service Provider must not:
 - (i) use the Purchaser Brands in any way which is likely to harm or prejudice the Purchaser's rights in the Purchaser Brands;
 - (ii) apply to register in any territory any trade mark, or apply to register any business name, company name or internet domain name that comprises or contains the Purchaser Trade Marks (or any of them) or any words or images that are substantially identical with, or deceptively similar to, the Purchaser Trade Marks (or any of them), without the consent of the Purchaser; or
 - (iii) challenge or in any way impugn:
 - (A) the Purchaser's complete ownership of, or rights to use, the Purchaser Trade Marks; or
 - (B) the validity of, or the Purchaser's title to, any applications for registration made by the Purchaser, or any registrations obtained by the Purchaser in respect of the Purchaser Trade Marks.

- (e) All use of the Purchaser Brands as between the Purchaser and the Service Provider shall enure for the benefit of the Purchaser, and any goodwill arising in respect of any of the Purchaser Brands is exclusively the property of the Purchaser.
- (f) The Purchaser and the Service Provider agree that the licence granted to the Supplier under clause 36.6(a) excludes:
 - (i) the right to commence an action for trade mark infringement under section 26(1)(b) of the *Trade Marks Act 1995* (Cth), which the Purchaser expressly reserves to itself in all instances; and
 - (ii) the rights of an 'authorised user' of a trade mark referred to in sections 26(1) (c), (d), (e) and (f) of the *Trade Marks Act 1995* (Cth).

37. Taxes

37.1 Interpretation

Words or expressions used in this clause 37 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

37.2 Taxes and duties

The Service Provider must pay and indemnify the Purchaser 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.

37.3 FTC entitlements

The parties acknowledge and agree that, in relation to fuel acquired by the Service Provider for the purposes of performance of the Contract:

- (a) the Service Provider must at all times retain ownership of that fuel; and
- (b) the Service Provider is the party entitled to make FTC claims from the ATO in relation to that fuel.

37.4 Service Provider to make FTC claims

- (a) The Service Provider may choose whether or not to claim for FTC entitlements relating to eligible fuel acquired and used in the performance of the Contract in accordance with the Service Provider's usual Business Activity Statement cycle and the ATO's rules from time to time governing FTC claims.
- (b) If the Service Provider does not pursue or obtain an FTC entitlement or equivalent credit or rebate under relevant Legislation, it will be at the Service Provider's risk, and the Purchaser will continue to be entitled to calculate the Core Fuel Payment, Permanent Service Change (In-Service Rate) Fuel Adjustment, Permanent Service Change (Total Rate) Fuel Adjustment and Temporary Planned Service Change Fuel Adjustment, in the manner set out in paragraph 3 of Schedule D2.
- (c) The parties agree that a decision by the Service Provider not to pursue an FTC entitlement or equivalent credit or rebate under relevant legislation does not preclude the Purchaser from adjusting or recovering Contract payments equivalent to that entitlement.

37.5 Payment expressed as GST exclusive

Any payment or consideration to be paid or provided to a party for a supply made by another party under or in connection with this Contract unless specifically described in this Contract as 'GST inclusive', does not include an amount on account of GST.

37.6 Costs and expenses expressed as GST exclusive

Any cost or expense referred to in this Contract excludes any amount of GST forming part of the relevant cost or expense that the party who has incurred the cost or expense may claim as an Input Tax Credit.

37.7 GST payable

If the whole or any part of any payment is the consideration for a Taxable Supply, the payer must pay to the payee an additional amount equal to the GST Amount either concurrently with that payment or as otherwise agreed in writing.

37.8 Parties to exchange information

The parties must exchange information and documentation that is reasonably necessary for each to make a proper assessment of their obligations and entitlements under the GST Law.

37.9 Parties to register for GST

The parties acknowledge that they are registered for GST and will use their best endeavours to remain registered for GST for the Contract Term. Any party who ceases to be registered for GST must immediately notify the other party of that cessation.

37.10 Recipient Created Tax Invoices

- (a) The Purchaser must issue Recipient Created Tax invoices in accordance with clause 21.1(c)(ii) and the Service Provider will not issue Tax invoices in respect of the Transport Operations.
- (b) The Purchaser may cease issuing Recipient Created Tax Invoices if the Purchaser determines at any time that it is no longer appropriate or convenient to do so. If this occurs, the Service Provider must provide the Purchaser with a complying Tax Invoice in respect of any supply for which the Service Provider seeks to be paid before any payment will be made to the Service Provider under this Contract.

38. Trust undertakings

38.1 Undertakings

If the Service Provider is, or is expressed in any Service Contract Document to be, trustee or responsible entity of a Trust, it must, unless the Purchaser otherwise consents:

- (a) **(resignation)** not resign, retire or do anything to allow it to be removed or replaced as trustee or responsible entity of the Trust or appoint or allow a new or additional trustee or responsible entity of the Trust to be appointed;
- (b) **(records)** maintain complete and correct records in relation to the Trust;
- (c) **(vesting and distribution)** not:
 - (i) vest, distribute or advance any property of the Trust (other than income); or
 - (ii) distribute income of the Trust except a non-cash distribution solely to avoid liability for any Tax on the undistributed profits of the Trust made while a Show Cause Event or Immediate Termination Event or potential Show Cause Event or Immediate Termination Event subsists;
- (d) **(re-settle, set aside or transfer)** not re-settle, set aside or transfer any property of the Trust;
- (e) **(amendment)** not amend or revoke any of the terms of the Trust;
- (f) **(acquisitions)** not acquire property intended to be subject to the terms of the Trust other than in its name;

- (g) **(use or possession of property)** not permit a beneficiary of the Trust to use or possess the property of the Trust;
- (h) **(observe obligations)** observe its obligations as trustee or responsible entity of the Trust under the constituent documents of the Trust and at Law;
- (i) **(breaches of Trust)** not do anything, or permit or omit anything, which breaches the Trust;
- (j) **(issue units)** if a unit trust, not issue any further units in the Trust;
- (k) **(vesting date)** not exercise a power, or allow a power to be exercised, to change the vesting date of the Trust or provide for the Trust to be terminated early (and must notify the Purchaser of any event which might cause the capital of the Trust to vest or to be distributed to a beneficiary, as soon as it becomes aware of the event);
- (l) **(right of subrogation and indemnity)** ensure that:
 - (i) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under the Service Contract Document to which it is a party;
 - (ii) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the terms of the Trust); and
 - (iii) its lien over any property of the Trust at all times has priority over the rights and interests of the beneficiaries of the Trust;
- (m) **(Security Interest)** not create or allow to exist any Security Interest over its right of indemnity out of the assets of the Trust;
- (n) **(delegation)** not delegate any powers conferred upon it by Law or under the Trust (other than for management of the Trust assets or the granting of a power of attorney for that purpose or as required by the Service Contract Document);
- (o) **(Custodian)** if there is a Custodian of the Trust, ensure that:
 - (i) it observes its obligations under the Custody Agreement;
 - (ii) the Custodian does not resign and is not removed as custodian of the Trust, and that no new or additional custodian is appointed in respect of the Trust or property of the Trust unless any successor or replacement to the Custodian:
 - (A) is an entity acceptable to the Purchaser acting reasonably; and
 - (B) executes such documentation reasonably required by the Purchaser (including without limitation, among other things, any ASIC forms) in respect of the property held or to be held by it as custodian (or if such successor or replacement custodian refuses to do so for more than 10 Business Days, procure the appointment of an alternative suitably qualified person as custodian of the Trust and cause that person to enter into such documentation as may reasonably be required by the Purchaser); and
 - (iii) the Custodian complies in all material respects with all of its obligations under the Custody Agreement and the Service Contract Document;
 - (iv) it does not do anything or permit anything to be done which could restrict or impair the Custodian's ability to observe its obligations under the Custody Agreement or the Service Contract Document; and
 - (v) if a Show Cause Event or Immediate Termination Event subsists, give such directions and instructions to the Custodian as may reasonably be required by the Purchaser to enable or assist the Purchaser to exercise its rights and powers under the Service Contract Document;
- (p) **(segregation)** not do anything which results in the assets of the Trust being re-settled, distributed or mixed with other property; and

- (q) **(notices generally)** promptly give the Purchaser copies of all material documents and notices received by it from any beneficiary of the Trust or which it gives to a beneficiary or manager of the Trust.

38.2 Effect of Default

If the Service Provider is the trustee of a Trust, while a Show Cause Event or Immediate Termination Event subsists, it:

- (a) must not exercise its powers or discretions under the Trust without the Purchaser's consent; and
- (b) must exercise its rights of indemnity against the assets of the Trust on demand.

39. Notices

39.1 Service of Notices

- (a) A notice, demand, consent, approval or communication under this Contract must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender;
 - (ii) addressed to the recipient as specified in the Contract Details (or to such other address as notified by the recipient from time to time); and
 - (iii) after the CMP Effective Date, sent through the Contract Management Portal in accordance with the requirements set out in clause 39.2, except in circumstances where:
 - (A) the Contract Management Portal is temporarily disabled or not operating in which case the party giving the notice must give the notice in accordance with clause 39.1(b); or
 - (B) this Contract or a Mandatory Requirement expressly requires the notice, demand, consent, approval or communication to be given by other means, in which case the party giving the notice must give the notice in accordance with that requirement and otherwise in accordance with clause 39.1(b).
- (b) A notice given:
 - (i) prior to the CMP Effective Date; or
 - (ii) after the CMP Effective Date, in accordance with clause 39.1(a)(iii)(A) or 39.1(a)(iii)(B),

must be hand delivered, sent by prepaid post or transmitted by facsimile or electronic mail (email) to the recipient's address for notices specified in the Contract Details, as varied by any notice given by the recipient to the sender.

39.2 Notices through the Contract Management Portal

- (a) All notices sent through the Contract Management Portal:
 - (i) must be submitted by the Service Provider's Representative;
 - (ii) only the text in any notice, or subject to clause 39.2(a)(iii), any attachments to the notice which are referred to in the notice, will form part of the notice. Any text in the subject line will not form part of the notice; and
 - (iii) an attachment to a notice will only form part of a notice if it is uploaded to the Contract Management Portal in:
 - (A) .pdf format;
 - (B) a format compatible with Microsoft Office; or

- (C) another format agreed by the Purchaser from time to time.
- (b) From the CMP Effective Date, the Service Provider must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the Contract Management Portal;
 - (ii) ensure that relevant Staff log on and use the Contract Management Portal and check whether notices have been received on each Business Day;
 - (iii) ensure all relevant Staff attend all necessary training required by the Purchaser in respect of the Contract Management Portal;
 - (iv) advise the Purchaser which Staff require access to the Contract Management Portal;
 - (v) at all times, ensure that it has access to Staff trained in the use of the Contract Management Portal so as to be able to view, receive and submit communications (including notices) using the Contract Management Portal; and
 - (vi) as soon as practicable, at the first available opportunity following any period when the Contract Management Portal is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 39.1(a)(iii) to the Purchaser through the Contract Management Portal.
- (c) The Purchaser has no liability for any Losses the Service Provider may suffer or incur arising out of or in connection with its access to or use of the Contract Management Portal or any failure of the Contract Management Portal, and the Service Provider will not be entitled to make, and the Purchaser will not be liable upon, any Claim against the Purchaser arising out of or in connection with the Service Provider's access to or use of the Contract Management Portal or any failure of the Contract Management Portal.

39.3 Effective on receipt

A notice given in accordance with this clause 39 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if given through the Contract Management Portal, at the time recorded in the Contract Management Portal as being the time at which the notice was received;
- (b) if hand delivered, on delivery;
- (c) if sent by prepaid post and:
 - (i) mailed to an address in the city of despatch, on the fourth Business Day after the date of posting;
 - (ii) mailed to an address elsewhere within Australia, on the fifteenth Business Day after the date of posting;
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within 8 Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice; and
- (e) if sent by email, when the sender's email system generates a report indicating the sender's date, time and transmission to the recipient's email address,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

39.4 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.

40. Dispute Resolution

40.1 Notice of Dispute

If a dispute or difference arises under or in connection with this Contract, either party may give the other written notice expressing the nature of the dispute or differences (**Dispute Notice**).

40.2 Parties to meet

Within 10 Business Days after receipt by a party of a Dispute Notice, the parties agree to ensure that senior and relevant authorised representatives of both parties meet and attempt to resolve the issue.

40.3 Referral to senior executives

- (a) If the issue is not resolved within 10 Business Days of the receipt of the Dispute Notice, it must be referred immediately to the most senior executive officers of the parties who will personally or through their nominated delegates (who must be senior to the persons who met under clause 40.2) meet as soon as practical and attempt to resolve the issue.
- (b) The parties acknowledge that:
 - (i) the senior executive of the Purchaser referred to in clause 40.3(a) is the individual holding the office of Director General of the Department of Transport and Main Roads; and
 - (ii) that individual may nominate a suitable delegate in accordance with clause 40.3(a).

40.4 Optional referral to Expert or Arbitrator

If the issue is not resolved within 20 Business Days of the receipt of the Dispute Notice, the parties may agree to refer the issue for resolution to:

- (a) if the issue is of a technical nature or if this Contract requires, a person who is an independent expert in its subject matter (**Expert**); or
- (b) if the issue is not of a technical nature, an independent person (**Arbitrator**) for arbitration, provided that the parties are not obliged to refer the issue for resolution to an Expert or Arbitrator and if the parties do not agree to do so, either party may instead exercise its rights in accordance with clause 40.8.

40.5 Issues for resolution by an Expert

An issue is of a technical nature if it is of a kind that, if it were litigated, could be resolved on expert evidence alone.

40.6 Procedure on arbitration if elected by parties

If the parties agree to refer the issue for resolution to arbitration:

- (a) the Arbitrator will be the person selected by the parties to perform that role, who must be independent of the parties and suitably qualified for the role; and
- (b) subject to any other provision of this Contract to the contrary, arbitration is to be conducted in accordance with the *Commercial Arbitration Act 2013* (Qld) and subject to that Act, with the Resolution Institute Arbitration Rules 2016.

40.7 Procedure on resolution by Expert if elected by parties

If the parties agree to refer the issue for resolution to an Expert:

- (a) the Expert appointed will be the person selected by the parties to perform that role, who must be independent of the parties and suitably qualified for the role;
- (b) the Expert will act as an expert and not as an Arbitrator;

- (c) each party to a dispute which is referred to the Expert for determination must have a reasonable opportunity to make submissions to the Expert;
- (d) the costs of the Expert must be borne in equal shares by the parties; and
- (e) the Expert's decision is final and binding on the parties to the dispute, except to the extent of fraud, gross negligence or a manifest error.

40.8 Court proceedings and other relief

- (a) A party may not start court proceedings in relation to any issue or dispute under this Contract unless:
 - (i) it has complied with clauses 40.1 to 40.3; and
 - (ii) if (and only if) the parties have agreed to refer the issue or dispute to an Expert or Arbitrator in accordance with clause 40.4, the parties have complied with clauses 40.5 to 40.7 (as applicable).
- (b) This clause 40 does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensable in damages.

40.9 Exclusion

This clause 40 does not apply to any dispute relating to or arising out of the exercise or non-exercise by the Purchaser of any right or discretion conferred on the Purchaser by the Act or otherwise by Law.

40.10 Performance not affected

Despite the parties having a dispute or difference, they agree to continue to perform their respective obligations under this Contract.

40.11 Without prejudice

The purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 40 is to attempt to settle the dispute between the parties, and must accordingly be treated as "without prejudice" in any subsequent court proceedings.

41. Notices of Claims

41.1 Communication of Claims

- (a) If the Service Provider wishes to make a Claim against the Purchaser, the Service Provider must give the Purchaser a Prescribed Notice under clause 41.2 within 20 Business Days of the earlier of:
 - (i) the date when the Service Provider was or could reasonably have been aware of the conduct, circumstance, event, act, default, omission, direction, fact, matter or thing upon which the Claim is or will be based (**Claim Event**); and
 - (ii) the date when the Service Provider could first reasonably have been aware of the entitlement to make the Claim.
- (b) The Service Provider must not delay giving notice until a Claim Event or series of Claim Events is complete or until the quantum of the Claim can be ascertained.
- (c) This clause 41.1 is subject to the express requirements for Claims in relation to:
 - (i) any Change Event under clauses 13.4(b)(i) or clause 13.7(e)(i),
 - (ii) any Force Majeure Event under clause 16;
 - (iii) any Qualifying Change in Law under clause 22.3(a); or

- (iv) a Change in Operations Manual under clause 22.4(a),

and is in addition to, and not in substitution for, and does not qualify or diminish, any other express requirement of this Contract relating to the notification or making of Claims.

41.2 Prescribed Notice

A Prescribed Notice is a notice in writing stating that it is a notice under this clause 41.2 and containing full particulars of:

- (a) the Claim Events;
- (b) the legal basis or bases for the Claim including any clause of this Contract relied upon; and
- (c) the quantum or likely quantum of the Claim (if any).

41.3 Failure to notify

The Purchaser shall not be liable upon any Claim by the Service Provider which was not notified strictly in accordance with this clause 41, and such Claim shall be absolutely barred.

42. Choice of Law and Jurisdiction

42.1 Choice of Law

This Contract is governed by and will be construed in accordance with the Laws of Queensland.

42.2 Jurisdiction

- (a) This Contract 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 Contract will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.

43. General

43.1 Restrictions in relation to Contract

- (a) The Service Provider must not assign, novate, delegate, transfer, sub-let, mortgage, charge, declare any trust over, surrender or otherwise deal with its interest in, or obligations under, this Contract without the Purchaser's prior written consent in accordance with section 48 (*Transfer or surrender of service Contracts etc.*) of the Act.
- (b) The Service Provider must provide any request for approval of the Purchaser under this clause at least 60 Business Days prior to the proposed effective date of the transfer, or surrender of the Contract, and must provide such further information as is reasonably requested by the Purchaser in respect of any such request.
- (c) The Purchaser may:
 - (i) novate or transfer its rights and interests in, or obligation under, this Contract to a Government Authority; or
 - (ii) assign, delegate, sub-let, mortgage, charge, declare any trust over or otherwise deal with its interest in, or obligations under, this Contract to any person, without the prior written consent of the Service Provider.
- (d) The Purchaser may novate or transfer its rights and interests in, or obligation under, this Contract to a person other than a Government Authority with the prior written consent of the Service Provider, which must not be unreasonably withheld or delayed.

43.2 Restrictions in relation to Service Contract Assets

- (a) The Service Provider must not:
 - (i) enter into or allow to exist any Financing Arrangement in respect of any Service Contract Asset other than with the prior written consent of the Purchaser (which may be subject to reasonable conditions); or
 - (ii) otherwise create or allow to exist any Security Interest (other than a Permitted Security Interest) over any Service Contract Asset.
- (b) Subject to clause 43.2(c), if any Service Contract Asset is the subject of any Financing Arrangement or is owned by a Third Party Owner, the Service Provider must procure that each financier and Third Party Owner enters into a Direct Deed with the Purchaser and the Service Provider under which that financier or Third Party Owner recognises and agrees to the enforceability of the Purchaser's rights under this Contract in relation to the relevant Service Contract Assets.
- (c) In the case of Service Contract Assets that are the subject of an existing Financing Arrangement at the date of this Contract, provided the Service Provider has used its best endeavours to comply with clause 43.2(b), it will not be in breach of clause 43.2(b) if it is unable to procure the existing financier under the existing Financing Arrangement to enter into a Direct Deed as contemplated. This clause 43.2(c) does not apply to any new, amended or replacement Financing Arrangement entered into after the date of this Contract in relation to the relevant Service Contract Assets.

43.3 Change in Control of the Service Provider

- (a) Subject to clauses 43.3(b), 43.3(c) and 43.3(d), the Service Provider must:
 - (i) not permit or suffer any Change in Control of, or change in the legal or beneficial ownership of any Service Provider Group Member or any change to the Service Provider Group structure without the prior written consent of the Purchaser, which consent must not be unreasonably withheld; and
 - (ii) inform the Purchaser as soon as reasonably practicable and, in any event, at least 60 Business Days prior to the date of any proposed Change in Control of any Service Provider Group Member.
- (b) If a Change in Control of any Service Provider Group Member occurs due to the transfer of shares or other interests which are listed on a stock exchange and the Purchaser has not given prior written consent to the Change in Control:
 - (i) that consent must be sought immediately after the relevant share capital dealing;
 - (ii) the Purchaser must only withhold consent to the Change in Control if the new controlling party:
 - (A) is not solvent or reputable;
 - (B) has an interest or duty that conflicts, or may conflict, in a material way with the interests of the Purchaser; or
 - (C) if, in the opinion of the Purchaser, the Change in Control is otherwise not in the public interest; and
 - (iii) if the Purchaser does not consent to the Change in Control, the Service Provider must procure that the relevant new controlling party ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving notice from the Purchaser that the Purchaser does not consent to the Change in Control.
- (c) If a Change in Control of the Service Provider or a Service Provider Group Member results in a Related Body Corporate obtaining Control of that Service Provider or a Service Provider Group Member (as relevant):

- (i) the Service Provider must notify the Purchaser of that Change in Control in accordance with clause 43.3(a)(ii); and
 - (ii) subject to the Service Provider's compliance with clause 43.3(c)(i), the Change in Control may be effected without the need for prior written consent from the Purchaser to that Change in Control.
- (d) If, following a Change in Control, the Service Provider or a Service Provider Group Member will continue to be Controlled solely by one or more Family Members:
- (i) the Service Provider must notify the Purchaser of that Change in Control by not later than 10 Business Days after the occurrence of the Change in Control; and
 - (ii) subject to the Service Provider's compliance with clause 43.3(d)(i), the Change in Control may be effected without the need for consent from the Purchaser to that Change in Control.

43.4 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.

43.5 Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

43.6 Entire Agreement

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

43.7 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.

43.8 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

43.9 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.

43.10 Authority to Complete Blanks etc

The Purchaser may date this Contract and complete any blanks left by the Service Provider, provided that the obligations of the Service Provider are not materially increased.

43.11 Further Assurances

Each party to this Contract must 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.

43.12 Survival of clauses

- (a) Clauses 1.5(e), 8.3(c), 9.2, 11.3(a)(iv), 11.4(h), 12.7(e)(ii), 12.8(c), 13.2(h)(ii), 13.2(j), 13.5, 13.7(c), 13.8(c), 14.6(c), 15.1(b)(iii), 15.4, 16.1(c), 20.3, 21.3, 21.6, 24, 26.2, 26.3, 28, 29.9, 31, 32, 33, 34, 35, 36, 37.2, 37.8, 38.2, 39, 40, 43 (other than clause 43.2 and 43.3) and the representations, warranties and indemnities given by the Service Provider under this Contract and any other provision which is expressed or by implication from its nature is intended to survive termination or surrender of this Contract or is necessary for the interpretation of the clauses set out in this clause 43.12 (together, the **Surviving Clauses**) will survive rescission, termination, surrender or expiration of this Contract.
- (b) If this Contract is rescinded, terminated or surrendered, no party will be liable to any other party except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this Contract occurring before such rescission, termination or surrender.
- (c) No provision of this Contract which is expressed to survive termination or surrender will prevent any other provision of this Contract, as a matter of interpretation, also surviving termination or surrender.
- (d) No right or obligation of any party will merge on completion of any transaction under this Contract. All rights and obligations under this Contract survive the execution and delivery of any transfer or other document which implements any transaction under this Contract.

43.13 Indemnities

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, surrender, completion or expiration of this Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Contract.

43.14 Contract costs

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

Schedules A - General

Schedule A1 – Definitions and Interpretation

1. Definitions 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.

2. Definitions

In this Contract, unless the context otherwise requires:

3G Contract means a contract entered into between the State and the Service Provider in or about July 2004 for provision of the General Route Services comprised in the Existing Network.

Access Licence has the meaning given in clause 32.1.

Accounting Period means the twelve month period of time used by the Service Provider for reporting its financial data, which may be a Financial Year or other period of time depending on the place of domicile of the Service Provider or relevant Service Provider Associate.

Accounting Standards means accounting standards, principles and practices applying by Law or otherwise generally accepted and consistently applied in Australia.

Accreditation means all and any formal accreditation from any Government Authority or professional or industry body that is required by a person according to a Mandatory Requirement to undertake any part of the Transport Operations.

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

Actual Cost means Service Provider Change Costs actually incurred.

Additional Purchaser Supplied Items has the meaning given in clause 13.7(a).

Adjustment Payment has the meaning given in clause 21.1(e).

Affected Obligations has the meaning given in clause 16.3(a).

Agreed Cost has the meaning given in Table 9 at paragraph 5.2(a) of Schedule D2, in Table 11 at paragraph 5.2(c) of Schedule D2 or in Table 13 at paragraph 5.2(e) of Schedule D2, as applicable.

Annual Core Depot Payments means the amounts set out in Table 14 in paragraph 6.2 of Schedule D2.

Annual Core In-Service Hours means the amounts set out in Table 2 in paragraph 2.3 of Schedule D2.

Annual Core In-Service Kilometres means the amounts set out in Table 5 in paragraph 3.9 of Schedule D2.

Annual Core Operating Payment, for a Contract Year, means the amounts set out in Table 1 in paragraph 2.2 of Schedule D2.

Annual Existing Depreciation and Interest Fleet Payments means the amounts set out in Table 10 of paragraph 5.2(b) of Schedule D2.

Annual Existing Notional Lease Fleet Payments means the amounts set out in Table 12 of paragraph 5.2(d) of Schedule D2.

Annual Performance Review means a performance review described in clause 15.5(a).

Annual Performance Review Report means an 'Annual Performance Review Report' as more particularly described in the Operations Manual.

Applicable Deflator means:

- (a) the Wage Deflator in respect of all Change Costs that are amounts on account of wages, salaries or other like payments for employment or consultancy; or
- (b) the CPI Deflator in respect of all other Change Costs.

Approved Contract Vehicle means:

- (a) at the Commencement Date, a Contract Vehicle in the Approved Contract Vehicle Register; and
- (b) any additional or replacement Contract Vehicle approved by the Purchaser, acquired by the Service Provider or (subject to clause 12.5(c)) the Purchaser, and recorded in an update to the Approved Contract Vehicle Register in accordance with this Contract,

but excludes any Contract Vehicle disposed of or replaced by the Service Provider pursuant to clause 12.5 or clause 30.2.

Approved Contract Vehicle Register means:

- (a) at the Commencement Date, the register of Approved Contract Vehicles in Schedule B4; and
- (b) any replacement of that register from time to time in accordance with this Contract.

Approved Service Change has the meaning given in clause 7.5(d).

Approved Subcontracting Arrangement means a Subcontracting arrangement identified in Schedule A4 or that is the subject of an approval given under clause 11.4(d)(ii).

Approved Subcontractor means a Subcontractor identified in Schedule A4 or that is the subject of an approval given under clause 11.4(d)(ii).

Arbitrator means the person described in clause 40.4(b).

Asset Lease means a lease of:

- (a) a Contract Vehicle;
- (b) Depot Equipment; or
- (c) any other chattels (if any) listed in Schedule B4 which are wholly or partly funded by the Purchaser (whether under the Service Payments or otherwise) for use in delivering the Network, as that list may be amended by the parties from time to time in writing or as those things are replaced by the Service Provider from time to time in the ordinary course of conducting the Transport Operations,

but it does not include any Depot Lease.

Associate means, in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of that person or that Related Body Corporate and:

- (a) in the case of the Purchaser, includes any Step-In Party; and
- (b) in the case of the Service Provider, includes any Subcontractor.

ATO means the Australian Taxation Office.

Australian Business Number or **ABN** means an entity's unique identifying number for dealings with the Australian Taxation Office.

Authorisation means any form of authorisation, approval, certification or consent from any Government Authority or professional or industry body that is required by a person to undertake lawfully any part of the Transport Operations according to a Mandatory Requirement.

Award means the Passenger Vehicle Transportation Award 2010.

Base LOTT has the meaning given in Table 6 at paragraph 4.2(a) of Schedule C4.

Best Industry Practice means that degree of skill, care, prudence, foresight and good practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person engaged in the same type of undertaking in Australia as that of the Service Provider under the same or similar circumstances as those contemplated by this Contract.

Bond Longstop Date has the meaning given in clause 24.10.

Bus ID Number has the meaning given in the Operations Manual.

Business and Service Continuity Plan means the business and service continuity plan described in paragraph 2.2 of Schedule C2.

Business As Usual Improvement means any Change in Technology or Change in Depot Capacity that is:

- (a) required by or reflective of a change in Best Industry Practices (including but not limited to a Change in Mandatory Requirements, whether occurring on or after the Commencement Date) that is known or ought reasonably to have been known to the Service Provider at the Commencement Date; or
- (b) subject to clause 22, necessary or desirable to accord with the Mandatory Requirements at any time during the Contract Term.

Business Case Guidelines means any section of the Operations Manual in respect of Outline and Detailed Business Cases.

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a Public Holiday, special holiday or bank holiday in Brisbane.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Business Improvement Measures means the Business Improvement Measures identified in Schedule B3.

Business Plan means the business plan described in paragraph 2.1 of Schedule C2.

CEQM means the 'Change Event Quotation Model' that is referenced in paragraph 8 of Schedule D3 to be used by the Service Provider for the purpose of assisting in the calculation of the Net Financial Impact of a Change Event.

Change Costs means:

- (a) all actual incremental direct capital costs, operation and maintenance costs or external third party advisory costs properly and reasonably incurred, or which will be properly and reasonably incurred and in each case to the extent that they:
 - (i) exceed the relevant amounts (if any) in the then current CEQM; and
 - (ii) reflect commercial arm's length arrangements in relation to costs (and other cash outflows), determined by reference to pricing, costing and other information provided by the Service Provider on an Open Book Basis; or
- (b) in respect of any Saving, all direct costs saved or which ought reasonably to have been saved.

Change Event means an event or circumstance described as a Change Event in:

- (a) clause 10.4(b) (*Counter Terrorism*);
- (b) clause 12.5(c) (*Fleet Management – purchase or lease by Purchaser*);
- (c) clause 12.5(f) (*Fleet Management – changed replacement capacity*);
- (d) [Not used];
- (e) clause 12.11(b)(ii) (*Change in Depot Capacity*);

- (f) clause 12.12(c)(ii) (*Change in Technology*) (including a Change in Technology referred to in clause 12.12(f));
- (g) clause 13.1(e) (*Integrated Scheduling System*);
- (h) clause 13.4(b)(ii) (*Changes to Ticketing Equipment*);
- (i) clause 13.7(e) (*Additional Purchaser Supplied Items*);
- (j) clause 15.3 (*Change to Performance Measures*);
- (k) clause 18.2(b) (*Significance of Key Performance Indicators*);
- (l) clause 29.10(b) (*Change in Insurances*);
- (m) clause 5.1(e)(iv)(A) (*Purchaser's Power to Give Directions*),

and additionally includes:

- (n) a Qualifying Change in Law referred to in clause 22.3; and
- (o) a Change in Operations Manual referred to in clause 22.4.

Change in Control means in respect of an entity, a change in the Control of that entity.

Change in Depot Capacity has the meaning given in clause 12.11(a).

Change in ISS Requirements means an amendment of, update to or replacement of the Integrated Scheduling System Requirements, or any part of them, which:

- (a) occurs after the date of this Contract;
 - (b) the Service Provider is required under this Contract to comply with; and
 - (c) has had, or would have, a material effect on the performance of the Transport Operations,
- but excludes any:

- (d) Change in Law;
- (e) Change in Operations Manual; and
- (f) amendment, update or replacement that is the result of:
 - (i) the failure of the Service Provider to comply with a Legal Requirement;
 - (ii) an illegal act or omission of the Service Provider; or
 - (iii) a breach of this Contract by the Service Provider.

Change in Law means any one or more of the following which occurs after the date of this Contract, with which the Service Provider is legally obliged to comply and which has, or would have, a material effect on the performance of the Transport Operations:

- (a) a change in, or repeal of, an existing Legal Requirement;
- (b) the enactment or making of a new Legal Requirement; or
- (c) a change in the way a Legal Requirement is applied or interpreted as a result of a binding decision of a court of competent jurisdiction.

Change in Mandatory Requirements means a Change in Law or a Change in Operations Manual

Change in Operations Manual means an amendment of, update to or replacement of any part of the Operations Manual which:

- (a) occurs after the date of this Contract;
 - (b) the Service Provider is required under this Contract to comply with; and
 - (c) has had, or would have, a material effect on the performance of the Transport Operations,
- but excludes any Change in Law.

Change in Tax means the introduction of a new Tax or a change in the rate, amount or nature of a Tax.

Change in Technology has the meaning given in clause 12.12(c)(i).

Change Notice means a direction given by the Purchaser under clause 23.3(a).

Change Payment means, in respect of a Change Event, a payment due in accordance with paragraph 1.1 of Schedule D3 and determined in accordance with this Contract.

Change Payment Method means any one, or combination of, a Lump Sum Change Payment, a Direct Service Payment Adjustment, an Indirect Service Payment Adjustment or a Minor Payment Adjustment.

Change Payment Review Procedures means the review requirements specified in:

- (a) paragraph 6 of Schedule D3; or
- (b) any relevant section of the Operations Manual.

Change Proposal means a proposal submitted by the Service Provider which complies with clause 23.2(b).

Chart of Accounts means the chart of accounts provided by the Purchaser to the Service Provider from time to time.

Charter Rate means the rate set out in Table 16 in paragraph 7.3 of Schedule D2.

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

Claim includes any claim, proceeding, cause of action, action, demand or suit (including of an interlocutory or administrative nature or by way of contribution or indemnity) of any nature whatsoever (whether at Law or otherwise).

Claim Event has the meaning given in clause 41.1(a)(i).

CMP Effective Date has the meaning given in clause 5.3(a).

Commencement Date means the date specified in item 2 of the Contract Details.

Commercial Revenue Declaration means a statutory declaration by the Service Provider's Representative, to be provided to the Purchaser as part of the Stage 1 MCPPR, attesting to the amount of the Service Provider Monthly Advertising Revenue (if any) and the Total Odometer Reading for the Contract Month which is the subject of the declaration.

Commercial Revenue Payment Adjustment means an amount calculated in accordance with paragraph 7 of Schedule D2.

Completed Trip means a scheduled Trip (other than a State Designated Event Service) that is not a Missed Trip.

Confidential Information means:

- (a) the terms and conditions of this Contract;
- (b) any written or oral agreements, negotiations or information in relation to or in connection with this Contract;
- (c) the Handover Package;
- (d) any documents which are, or information which is, confidential under this Contract including any information provided by one party to the other which is identified by the party at the time it is provided to the other party as being confidential; and
- (e) any information relating to know-how, ideas, concepts, company structures, financial modelling, technology, business plans, Passenger Information, business opportunities, financial information, cash flows, budgets, research, development, techniques, processes,

personnel, policies, business connections, transactions, marketing and commercial knowledge of a party which is not in the public domain.

Confirmed Final Adjustment Payment has the meaning given in clause 21.3(c).

Congestion Index has the meaning given in paragraph 4.4(c) of Schedule C4.

Congestion Offset has the meaning given in paragraph 4.4(b) of Schedule C4.

Continuity of the Services refers to:

- (a) the continued performance of the Transport Operations during the Contract Term in accordance with this Contract: or
- (b) the orderly handover of the Transport Operations by the Service Provider to an Interim Service Provider or Successor Service Provider as contemplated by this Contract.

Contract means this service Contract between the Service Provider and the Purchaser.

Contract Details means the information set out in Part A.

Contract Management Portal (CMP) means the online central data repository and collaboration system provided by the Purchaser as described in clause 5.3(a).

Contract Month means each of the following periods:

- (a) the period from the Commencement Date up to and including the last day of the calendar month in which the Commencement Date occurs;
- (b) each whole calendar month thereafter up to and including the last whole calendar month before the calendar month in which the End Date occurs; and
- (c) the period from the first day of the calendar month in which the End Date occurs up to and including the End Date.

Contract Objectives means the objectives of the Purchaser in entering into this Contract described in clause 2.1.

Contract Term means the period from the Commencement Date up to and including the End Date.

Contract Vehicle means a vehicle used, or intended to be used, by the Service Provider in conducting the Transport Operations. It includes an Approved Contract Vehicle, vehicles used for testing and operational support vehicles but excludes any Contract Vehicle disposed of or replaced by the Service Provider pursuant to clause 12.5 or clause 30.2.

Contract Vehicle Replacement Plan has the meaning given in paragraph 4.1 of Schedule B1.

Contract Year means:

- (a) the period from the Commencement Date up to and including the next Financial Year end;
- (b) each Financial Year thereafter including the last 30 June before the End Date; and
- (c) the period from the last 1 July before the End Date, up to and including the End Date.

Control has the meaning given in the Corporations Act.

Core Depot Payment means an amount calculated in accordance with paragraph 6.2 of Schedule D2.

Core Fuel Payment means an amount calculated in accordance with paragraph 3.2 of Schedule D2.

Core In-Service Hours means an amount calculated in accordance with paragraph 2.3 of Schedule D2.

Core In-Service Kilometres means an amount calculated in accordance with paragraph 3.9 of Schedule D2.

Core Operating Payment means an amount calculated in accordance with paragraph 2.2 of Schedule D2.

Core Payment has the meaning given in clause 21.1(d).

Core Total Hours means, for all Trips identified in the Network Specification at the Commencement Date, the In-Service Hours plus the Dead Running Time for all Trips.

Core Total Kilometres means, for each Trip identified in the Network Specification at the Commencement Date, the In-Service Kilometres plus the Dead Running Distance for that Trip.

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

Counter-Terrorism Risk Management Plan means the plan of that name described in paragraph 2.3 of Schedule C2.

CPI Deflator means the series of annual discount factors in each Contract Year calculated as the inverse of the CPI Index Multiplier in respect of each Contract Year for which the relevant Contract Year's CPI has been published.

CPI Index Multiplier means an amount calculated in accordance with paragraph 11.2 of Schedule D2.

Cure Period has the meaning given in clause 19.2(a)(iv).

Cure Plan means a detailed plan setting out all measures that the Service Provider proposes to take to permanently cure a Non-Compliance Event as soon as reasonably practicable.

Custodian means, for a Trust, an entity appointed as custodian of the Trust or of property of the Trust.

Custody Agreement means, for a Trust, each document or agreement by which a person is appointed custodian of the Trust.

Customer means:

- (a) passengers; or
- (b) other users or potential users of services and facilities associated with the Network.

Data Audit Period has the meaning given in clause 15.2(a)(iii).

Data Exclusion Factor has the meaning given in clause 15.2(c)(ii).

Data Reliability Audit has the meaning given in clause 15.2(a)(iii).

Data Reliability Auditor has the meaning given in clause 15.2(a)(iii).

Data Reliability Audit Methodology means the methodology identified and described as such in the Operations Manual.

Data Storage System means, at the Commencement Date, 'NetBI' (as described in the Operations Manual) or any other similar data storage system described in the Operations Manual from time to time.

Day 1 Route Summary Worksheet means the 'Route Summary Worksheet' included in the Network Specification at the Commencement Date.

Day Type means a designated day type in the Integrated Scheduling System.

Day Type Wage Multiplier means the additional compensation that a Driver receives when working outside the timeframe of 6.00am to 7.00pm on a weekday, expressed as a percentage of the Driver's ordinary hourly rate.

DDA Legislation means:

- (a) the *Disability Discrimination Act 1992* (Cth); and
- (b) the *Disability Standards for Accessible Public Transport 2002* (Cth).

Dead Network Attributes means all the Dead Running Distance and Dead Running Time associated with the Network.

Dead Running Distance means the distance in kilometres (measured to the nearest 0.001 kilometres) travelled by a Contract Vehicle between:

- (a) a Depot and the starting point of the first Trip in a Vehicle Block (pull-out trip);
- (b) the final destination of any Trip and the starting point of the next Trip in the Vehicle Block (repositioning trip); and
- (c) the final destination of any Trip and the Depot at the end of the Vehicle Block (pull-in trip).

Dead Running Proportion means the difference between annual Total Kilometres (Reset) and annual Total In-Service Kilometres (Reset), divided by annual Total Kilometres (Reset), expressed as a percentage.

Dead Running Proportion (Service Change) means the difference between annual Permanent Total Kilometres and annual Permanent In-Service Kilometres, divided by annual Permanent Total Kilometres, expressed as a percentage.

Dead Running Time means the time in minutes (measured to the nearest whole minute):

- (a) taken by a Contract Vehicle to travel over the Dead Running Distance (pull trips and repositioning trips); or
- (b) that is non-driving idle or wait time between the last Transit Stop of a Trip and the start of the next Trip (layover),

and other paid time the Contract Vehicle is not moving such as sign-on and sign-off time and that part of Guaranteed Time when the Contract Vehicle is not performing a Trip.

Deliverable means any works, equipment, product, materials, documentation or any other item or any service to be provided by or on behalf of the Service Provider pursuant to this Contract.

Depot means all and any depot facilities required to be utilised in the performance of the Transport Operations. At the Commencement Date, it includes the depot facilities described in Schedule B4.

Depot Equipment means all and any plant or equipment specified in Schedule B4 at the date of this Contract and that the Service Provider is required to, or chooses to, install or use at a Depot from time to time for the purposes of undertaking the Transport Operations.

Depot Lease means each lease of a Depot. It does not include Asset Leases. At the Commencement Date, it includes the depot leases described in Schedule B4.

Depot Payment means an amount calculated in accordance with paragraph 6 of Schedule D2.

Depot Payment Marginal Rate means:

- (c) in respect of the Permanent Service Change (In-Service Rate) Adjustment, the amounts set out as such in Table 19 in paragraph 9.4(e) of Schedule D2; and
- (d) in respect of the Permanent Service Change (Total Rate) Adjustment, the amounts set out as such in Table 22 in paragraph 9.5(e) of Schedule D2.

Designated Vehicle Type has the meaning given in clause 12.4(a).

Detailed Business Case has the meaning specified in the Business Case Guidelines.

Direct Debit Authority means a document authorising inter-account settlements and:

- (a) in the form set out at Schedule E2; or
- (b) in such other form provided by the Purchaser from time to time.

Direct Deed means:

- (a) in respect of Service Contract Assets that are the subject of a Financing Arrangement, a direct deed:

- (i) in the form contained in Schedule E3 or otherwise in a form approved by the Purchaser; and
 - (ii) entered into between the Purchaser, the Service Provider, the relevant Financier and any relevant Third Party Owner; and
- (b) in respect of Service Contract Assets owned by a Third Party Owner, a direct deed that is:
- (i) in the form contained in Schedule E4 or otherwise in a form approved by the Purchaser; and
 - (ii) entered into between the Purchaser, the Service Provider and the relevant Third Party Owner.

Direct Service Payment Adjustment means a series of Change Payments paid in instalments payable as an increase or decrease in the Service Payment calculated in accordance with paragraph 2.3 of Schedule D3.

Disability Action Plan means the disability action plan described in paragraph 2.4 of Schedule C2.

Disclosure Date has the meaning given in clause 4.2(b).

Dispute Notice has the meaning given in clause 40.1.

Dispute Resolution Procedures means the procedures for resolution of disputes under this Contract described in clause 40.

Driver means each individual employed or otherwise engaged by the Service Provider or a Service Provider Associate to operate a Contract Vehicle.

Driver Console Unit means the 'driver console unit' of the Ticketing Equipment as more particularly described in the Operations Manual.

Driver Training Matrix means a schedule listing, as a minimum, all Staff names, positions, commencement dates, mandatory training, supplementary training, completion dates and validity periods.

Driver Wage Parity Industrial Action means protected industrial action (as defined in the *Fair Work Act 2009* (Cth)) participated in by all or substantially all Drivers, if and to the extent that:

- (a) it is undertaken with the objective of achieving agreement by the Service Provider to a new enterprise agreement that provides for a base ordinary time wage rate for Drivers (excluding penalty rates, allowances or superannuation) that is equivalent to the Driver Wage Parity Point; and
- (b) that objective is consistent with and pursued with reference to a policy of the State with regard to wage parity between bus drivers employed in providing General Route Services under Integrated Mass Transit Service Contracts that has been formally announced by the State and that has not been subsequently superceded or withdrawn,

but excluding:

- (c) such industrial action to the extent that its objective is to achieve conditions, entitlements or other provisions in that enterprise agreement other than a base ordinary time wage rate for Drivers referred to in paragraph (a) of this definition; or
- (d) industrial action, whether protected or not, which is directed at or has the effect of allowing or facilitating the carriage of passengers without the relevant Fares being paid by those passengers or collected by the Service Provider.

Driver Wage Parity Point means a base ordinary time hourly rate of \$26.21, indexed by the Wage Index Multiplier in accordance with section 11.3 of Schedule D2.

Efficiency Initiative means a Material Change Event that:

- (a) will, or has the potential to, reduce the Purchaser's payment obligations to the Service Provider over the Contract Term;

- (b) enhances value for money to the Purchaser;
- (c) enables the Service Provider to more efficiently, cost effectively, or professionally deliver the Transport Operations in accordance with the Minimum Service Levels;
- (d) is not a Business As Usual Improvement; and
- (e) is the subject of a request from the Service Provider for the Purchaser's approval under clause 12.11(b)(i) or clause 12.12(c)(i).

Electronic Pricing Template means the document titled 'Electronic Pricing Template' in the Service Payment Pricing Model.

Emergency Step-in Event means an event or circumstance:

- (a) that causes the Purchaser to form the reasonable opinion that unless some or all of the Step-in Powers are exercised urgently there is or is likely to be:
 - (i) a significant risk to the health or safety of the public; or
 - (ii) a material risk to the environment; or
- (b) that is a Force Majeure Event and which causes the Purchaser to elect to make its own arrangements for provision of the Transport Operations in accordance with clause 17.2.

End Date has the meaning in clause 3.3.

Enterprise Agreement means *Sunshine Coast Subus Union Enterprise Agreement 2017* but excluding any updates, amendments or replacements of that agreement.

Environmental Management Plan means the environmental management plan described in paragraph 2.5 of Schedule C2.

Essential Employee means:

- (a) Drivers;
- (b) Staff who are engaged predominantly to carry out regular maintenance in accordance with this Contract;
- (c) Staff who are predominantly engaged as operations supervisors, on-road supervisors, customer service representatives or refuellers in the performance of the Transport Operations; and
- (d) Staff who are engaged at a Depot as administration officers in the performance of the Transport Operations, but excluding employees employed at management level.

Estimated Final Adjustment Payment has the meaning given in clause 21.3(b)(i).

ETS Software means the software developed for the Ticketing Equipment and installed, or to be installed and updated from time to time, on the Ticketing Equipment.

Exclusive Use has the meaning given in clause 12.3(a).

Existing Arrangement has the meaning given in clause 12.8(e).

Existing Depreciation and Interest Fleet Payment means an amount calculated in accordance with Table 9 and Table 10 in paragraphs 5.2(a) and 5.2(b) of Schedule D2.

Existing Network means the combination of General Route Services performed by the Service Provider under the terms of another contract.

Existing Notional Lease Fleet Payment means an amount calculated in accordance with Table 11 and Table 12 in paragraphs 5.2(c) and 5.2(d) of Schedule D2.

Existing Route means a Route comprised in the Network at the Commencement Date. It excludes New Routes.

Existing Service Provider Material means any material or information created, written or otherwise brought into existence by or on behalf of the Service Provider prior to the

Commencement Date and which is necessary or convenient for the effective performance of this Contract, whether during or after the Contract Term.

Expert means the person described in clause 40.4(a).

Expiry Date means:

- (a) if the Purchaser has not exercised the option to extend the Expiry Date in accordance clause 3.2, the Original Expiry Date; or
- (b) if the Purchaser has exercised the option to extend the Expiry Date under clause 3.2, the Extended Expiry Date.

Extended Expiry Date means the date specified in item 5 of the Contract Details.

Family Member means any member from time to time of the Calabro families (whether by blood, marriage or legal adoption) and includes:

- (a) any trust or trustee acting on behalf of any of them; and
- (b) any of their beneficiaries under any will or any law relating to intestacy.]

Fare means the price payable for a Ticket.

Fare Revenue means

- (a) the proceeds of any TransLink Ticket transactions and any other Ticket transactions by way of revenue sharing arrangements between the Purchaser and a third party; and
- (b) any fees arising out of Ticket transactions, including refund fees and replacement fees for *School Transport Assistance Scheme* products.

Feedback Channels has the meaning given in clause 9.3(a).

Financial Statements means the financial statements described in clause 11.3(b).

Financial Year means a period which ends on 30 June and commences on 1 July.

Financing Arrangement means any arrangement whereby financial accommodation is provided to the Service Provider or a Third Party Owner (whether by way of a loan, finance lease, operating lease, hire purchase or other financial arrangement) and in connection with which a Service Contract Asset is, or may, be subject to a Security Interest.

First Data Reliability Audit has the meaning given in paragraph 1.2(b)(i) of Schedule A5.

Fixed Price means a fixed amount that does not vary.

Fleet Payment means an amount calculated in accordance with paragraph 5 of Schedule D2.

Force Majeure Adjustment means an amount calculated in accordance with paragraph 9.8(a) of Schedule D2.

Force Majeure Event means any of the following events, circumstances or combination of events and circumstances:

- (a) an act of God, lightning, storm, explosion, flood, cyclone, landslide, bush fire, tsunami or earthquake;
- (b) a Terrorist Act, war (declared or undeclared), blockade, revolution, riot, insurrection, epidemic or civil commotion;
- (c) nationwide or state wide industrial action except for industrial action predominantly in relation to the bus services industry or predominantly involving Staff of the Service Provider or a Service Provider Associate;
- (d) any blockade or embargo within Australia, other than a blockade or embargo which predominantly affects the Service Provider, Staff of the Service Provider or the bus services industry;

- (e) any failure by a Government Authority to carry out works or provide services that are essential to the performance of the Transport Operations and which the Government Authority has a statutory duty to provide;
- (f) the unavailability of any essential equipment (not including the Ticketing Equipment), fuel, public utilities (such as electricity or water) or other essential materials; or
- (g) Driver Wage Parity Industrial Action.

FTC means 'fuel tax credit' as defined in the *Fuel Tax Act 2006* (Cth), as amended from time to time.

Fuel Cost Payment means an amount calculated in accordance with paragraph 3 of Schedule D2.

Fuel Index Multiplier means the amount calculated in accordance with paragraph 11.4 of Schedule D2.

Fuel Tax Credit Adjustment has the meaning given to it in paragraph 11.5 of Schedule D2.

Fuel Tax Credit Rate (In-Service Rate) means the amounts set out in Table 4 in paragraph 3.8 of Schedule D2.

Fuel Tax Credit Rate (Total Rate) means the amount set out in Table 7 in paragraph 3.11 of Schedule D2.

Funding means funding, off-set, subsidy, rebate, commission or entitlement other than the Service Payments, which may be paid by the Purchaser or any other party to the Service Provider in respect of any Approved Contract Vehicle or otherwise in connection with the Service Provider's performance of the Transport Operations.

General Route Service has the meaning given in the Act.

Government Authority means the Commonwealth, the Purchaser, another State of the Commonwealth, 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.

Gross Fuel Cost Rate (In-Service Rate) means the amounts set out in Table 3 in paragraph 3.7 of Schedule D2.

Gross Fuel Cost Rate (Total Rate) means the amount set out in Table 6 in paragraph 3.10 of Schedule D2.

GST means a goods and services tax that is payable under the GST Law.

GST Amount means any payment (or the relevant part of the payment) multiplied by the appropriate rate of GST, together with any related interest, penalties, fines or other charges, but only to the extent such interest, penalties, fines or charges arise from the payer's failure to pay when due.

GST Law means GST law as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guaranteed Time means the minimum paid Shift duration for each Driver for each Shift type under the Award or, if this matter is provided for in the Enterprise Agreement, the Enterprise Agreement.

Handover information has the meaning given in clause 26.1.

Handover Package has the meaning given in clause 26.2.

Immediate Termination Event means the occurrence of any of the following:

- (a) pursuant to section 47(3) of the Act, the Purchaser reasonably believes that the Service Provider is unable to deliver all or any part of the Network, including in the circumstances described in clause 17.5;

- (b) an Insolvency Event occurs in relation to the Service Provider; or
- (c) the Purchaser gives notice to terminate this Contract pursuant to section 46(9) of the Act including if the Service Provider fails to comply with a direction under clause 15.6(a)(i)(B) or fails to implement a rectification strategy pursuant to clause 15.6(a)(i)(C).

In-Service Cost Rates means the amounts set out in paragraph 12(a) of Schedule D2.

In-Service Hour Marginal Rates means the amounts set out in Table 18 in paragraph 9.4(c) of Schedule D2.

In-Service Hours means the time measured in hours and minutes identified in the Network Specification for a Contract Vehicle to complete a Trip, excluding all Dead Running Time.

In-Service Kilometre Marginal Rates means the amounts set out in Table 19 in paragraph 9.4(d) of Schedule D2.

In-Service Kilometres means the distance in kilometres (measured to the nearest 0.001 kilometres) between the starting point of a Trip and the final destination of the Trip, excluding any Dead Running Distance.

In-Service Rate Adjustment means an adjustment contemplated in paragraphs 9.1(b) or 9.1(c) of Schedule D2.

Incident means an incident as defined in the Standard.

Incident Management Plan means a plan for responding to and managing Incidents as described in paragraph 2.6 of Schedule C2.

Incident Report means an Incident Report as defined in Part 4 of the Standard.

Indemnified Person has the meaning given in clause 31.1.

Indicative Change Proposal means a proposal which complies with clause 23.1(b).

Indirect or Consequential Loss means any:

- (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, or any failure to realise anticipated savings; or
- (b) without limiting paragraph (a), any penalties or damages payable under agreements other than under this Contract.

Indirect Service Payment Adjustment means a series of Change Payments that is:

- (a) paid via an increase or decrease in the variables contained in the Service Payment formula at paragraph 2.4 of Schedule D3; and
- (b) calculated in accordance with paragraph 2.4 of Schedule D3.

Information Documents means the Invitation to Offer and all other information, data, documents and materials made available in writing by the Purchaser or any other person on the Purchaser's behalf to the Service Provider or its Associates regarding the Transport Operations in the course of the ITO Process.

Initial Contract Year means the period from the Commencement Date up to and including the next Financial Year end.

Input Tax Credit has the meaning given to that term by the GST Law.

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 Service Provider (except for the purpose of solvent reconstruction or amalgamation for which the Purchaser has given approval);

- (b) the Service Provider 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 Service Provider or an application or order for such appointment is made;
- (d) execution is levied against the Service Provider and not discharged within 30 Business Days;
- (e) the Service Provider 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 Service Provider (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 Service Provider.

Insurances means the insurance policies required to be effected and maintained by the Service Provider under clause 29.

Integrated Mass Transit Area has the meaning given in the Act.

Integrated Mass Transit Service Contract has the meaning given in the Act.

Integrated Network means the integrated network of all Public Passenger Services throughout the Integrated Mass Transit Area.

Integrated Scheduling System means, at the Commencement Date, the '*HASTUS scheduling system*' (as described in the Operations Manual) or any other similar scheduling system nominated by the Purchaser and described in the Operations Manual from time to time.

Integrated Scheduling System Requirements means:

- (a) at the Commencement Date, the requirements set out at Schedule E5; or
- (b) during the Contract Term, any amendment of, update to or replacement of the Integrated Scheduling System Requirements notified by the Purchaser in accordance with clause 13.1(c).

Intellectual Property Rights means all intellectual property rights including but not limited to the following rights:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

whether created or coming into existence before, on or after the date of this Contract.

Interim Service Provider means an entity appointed by the Purchaser to deliver all or part of the Network pursuant to an emergency service contract under section 48A of the Act.

Invitation to Offer or **ITO** means the document of that name issued by the Purchaser on 3 June 2016 inviting the Service Provider to submit an offer to perform the Transport Operations on the terms set out in this Contract. It includes all and any later addenda, amendments or clarifications to the invitation to Offer issued by the Purchaser.

ITO Process means the procurement process contemplated in the Invitation to Offer.

Key Performance Indicator or **KPI** means each compliance target identified in Schedule C3.

KPI Breach means a failure by the Service Provider or a Service Provider Associate to achieve a Key Performance Indicator.

KPI Reporting Period means the period of time over which the Service Provider's performance against a KPI will be measured, being:

- (a) for the first KPI Reporting Period, the period commencing on the Commencement Date and ending on the last day of the period of calculation as specified for that KPI in Schedule C3; and
- (b) each subsequent period of calculation as specified for that KPI in Schedule C3

Law means:

- (a) Legislation; and
- (b) those principles established by decisions of the courts.

Legal Requirements includes:

- (a) any Law;
- (b) any decision or requirement, or any similar form of decision or determination (or any official interpretation or administration of any of the foregoing) by any Government Authority; and
- (c) the requirements and conditions of any Authorisations.

Legislation means in relation to the State of Queensland or the Commonwealth:

- (a) any act of parliament; and
- (b) any subordinate legislation, rules, regulations, standards or by-laws made under the relevant act.

Level of Service in any period, means the actual level of performance by the Service Provider over that period, in respect of a Performance Measure.

Loss means all loss, damage, liability, Claims, charges, costs, and expenses of every kind including legal costs and expenses on a full indemnity basis.

Lost Property Service has the meaning given in clause 9.2(a).

Lower On-Time Running Threshold means the lower on-time running threshold set out in paragraph 4.2 of Schedule C4.

Lump Sum Change Payment means a Change Payment calculated in accordance with paragraph 2.2 of Schedule D3 and includes a series of Milestone Change Payments if they are payable under paragraph 2.2(b)(ii) of Schedule D3 in respect of the relevant Change Event.

Mandatory Requirement means Legal Requirements and the Operations Manual, or any of them.

Margin Payment means an amount calculated in accordance with paragraph 4 of Schedule D2.

Marketing and Communication Activities has the meaning given in clause 14.1(b).

Material Change Event means a Change Event:

- (a) in respect of a Change in Depot Capacity in accordance with clause 12.11 or a Change in Technology in accordance with clause 12.12(c); and
- (b) with an estimated Net Financial Impact of greater than \$100,000 (indexed).

Material Subcontract means any Subcontract for:

- (a) the performance of a material part of the Transport Operations; or
- (b) any material functions that are required for performance of the Transport Operations by the Service Provider, including:
 - (i) a Depot Lease or other arrangement for provision of space within any Depot;
 - (ii) any arrangement for provision of Contract Vehicles;

- (iii) any arrangement or related series of arrangements for provision of Drivers, maintenance or repair services or labour (including cleaning or refuelling) under which the Service Provider is required to pay more than \$500,000 per annum;
- (iv) any arrangement for provision of major items of office equipment or Depot Equipment (excluding items costing less than \$100,000 per item); and
- (v) any outsourced or shared service arrangements or related series of arrangements for regular or ongoing provision of operations and administration functions (including payroll, accounts payable or receivable, financial, operations, scheduling, planning or information technology systems) under which the Service Provider is required to pay more than \$500,000 per annum.

Measurement Point means, in relation to a Trip, a Transit Stop as shown in the Network Specification to be used for determining the Performance Standard.

Milestone Change Payments means a series of payments which together are equal to the total amount of the relevant Lump Sum Change Payment in respect of a Change Event.

Minimum Contract Vehicle Specifications means:

- (a) at the Commencement Date, the standards and requirements for Contract Vehicles described in Schedule B1; and
- (b) any update to those standards and requirements provided in accordance with clause 12.12(e)(i).

Minor Payment Adjustment means a Lump Sum Change Payment that is of a total value of less than \$100,000 (as at the Commencement Date and indexed on each anniversary date of the Commencement Date using the CPI Index Multiplier).

Missed Service Rate for a Contract Month means the sum of the Operating Payment, Margin Payment, Fuel Cost Payment, Fleet Payment and Depot Payment for the Contract Month divided by the In-Service Kilometres for the same Contract Month as determined in accordance with Schedule D2.

Missed Stop means any instance where the Contract Vehicle performing a Trip does not traverse a designated Transit Stop on that Trip.

Missed Stop Percentage means, for a Trip, the percentage of Missed Stops on that Trip measured as a percentage of the total Transit Stops on that Trip.

Missed Trip means a scheduled Trip (other than a State Designated Event Service):

- (a) that departed from the first Transit Stop outside the Missed Trip Departure Tolerance;
- (b) that is a Trip with 10 or more scheduled Transit Stops and is not a Trip referred to in paragraph (d), where the Missed Stop Percentage is equal to or greater than 10%, provided that:
 - (i) if the calculation does not produce a whole number and the fraction in the number is equal to or more than 0.5, rounded up to the nearest whole number of Transit Stops (for example, a Missed Stop Percentage of 9.64% would be rounded up to 10%); and
 - (ii) if the calculation does not produce a whole number and the fraction in the number is less than 0.5, rounded down to the nearest whole number of Transit Stops (for example, a Missed Stop Percentage of 8.412% would be rounded down to 8%);
- (c) that is a Trip with less than 10 scheduled Transit Stops that is not a Trip referred to in paragraph (d), where more than one of the Transit Stops is a Missed Stop;
- (d) until the second anniversary of the Optimised Performance Commencement Date, that is a Trip operated on a School Route or operated over a NightLink Route;

- (i) with 10 or more scheduled Transit Stops, where the Missed Stop Percentage is equal to or greater than 20%, provided that the rounding provisions set out in paragraphs (b)(i) and (b)(ii) will apply; or
- (ii) with less than 10 scheduled Transit Stops, where more than two of the Transit Stops are Missed Stops;
- (e) for which the Performance Data has been manually entered for at least 50% of the entry and departure points for each Transit Stop on that Route; or
- (f) that was operated by a Contract Vehicle that either did not have:
 - (i) a Driver Console Unit fitted on board; or
 - (ii) the Driver Console Unit fit switched on and correctly logged-on in accordance with the Operations Manual at the start of the Trip.

Missed Trip Departure Tolerance means departure from the first Transit Stop no more than 10:00 minutes before the scheduled time and no later than 50:00 minutes after the scheduled time in the Timetable for the relevant Route.

Missed Trip Payment Adjustment means the missed trip payment adjustment determined in accordance with paragraph 2 of Schedule C4.

Mobilisation Activity means the activities set out in the Mobilisation Program.

Mobilisation Activity Cost Cap means, for each Mobilisation Activity, the amount described in paragraph 8 of Schedule D2.

Mobilisation Payment means each payment set out in Table 17 in paragraph 8 of Schedule D2.

Mobilisation Program means the program of that name set out in Schedule B3.

Moneys Owing means all moneys identified as 'Moneys Owing' in this Contract which the Service Provider, alone or with any other person, at any time is or becomes actually liable to pay to, or for the account of, the Purchaser (alone or with any other person) on any account whatsoever under, or in relation to, this Contract or at Law (including by way of principal or interest, fees, costs, charges, expenses, indemnity or damages).

Monthly Contract Payment and Performance Meeting means a meeting held in accordance with clause 15.4(b).

Named Insured means, in respect of the Purchaser, such capacity or standing under a relevant policy of insurance (however described under that policy) that ensures the Purchaser may claim in its own right for its own interests under the policy.

Net Financial Impact means the amount calculated in accordance with paragraph 2 of Schedule D3.

Network means:

- (a) the combination of Route Attributes described in the Network Specification, as amended from time to time in accordance with this Contract; and
- (b) any other Public Passenger Services that the Service Provider must operate under this Contract, including but not limited to the performance of State Designated Event Services if required by the Purchaser.

Network Attributes means all Route Attributes and Dead Network Attributes as further described in the Operations Manual.

Network Scheduling Functions means scheduling and planning of the Transport Operations using those core modules of the Integrated Scheduling System that the Service Provider is required to use for that purpose, as specified in the Operations Manual (but excluding modules that are not mandatory for use by the Service Provider).

Network Specification means the:

- (a) 'Network Statistics Report';
- (b) 'Route Summary Worksheet';
- (c) 'Working Timetables'; and
- (d) 'Route Reports',

each as described in the Operations Manual and set out in Schedule B2, as varied and amended from time to time during the Contract Term in accordance with this Contract, and subject to paragraph 6.2 of Schedule A5. It includes any alternative future combination of documents or data sets containing the equivalent information, as determined by the Purchaser.

New Contract Material means any material or information created, written or otherwise brought into existence by or on behalf of either party on or after the Commencement Date and which is necessary or convenient for the effective performance of this Contract, whether during or after the Contract Term. It includes:

- (a) the Network Attributes, all data in respect of the Network Attributes and all other data generated or stored in the Integrated Scheduling System; and
- (b) the Performance Data and all other data created or stored by the Ticketing Equipment or ETS Software.

New Notional Lease Fleet Payment means an amount calculated in accordance with Table 13 in paragraph 5.2(e) of Schedule D2.

New Route has the meaning given in clause 7.6(a).

New School Route has the meaning given in clause 7.6(a)(ii).

New Urban Route has the meaning given in clause 7.6(a)(i).

NightLink Route means:

- (a) a Route that is designated as 'NightLink' in the Network Specification; or
- (b) if during the Contract Term the Purchaser adopts a naming convention that is different to 'NightLink' to describe Trips operating in the late evening to early morning, a Route designated using that naming convention in the Network Specification.

Nominal Terms means Change Cost and Savings amounts that are specified on the basis of actual payments or receipts as and when they occur, or are forecast to occur, inclusive of inflation.

Non-Compliance Event means the occurrence of any of the following:

- (a) a breach of this Contract by the Service Provider which does not constitute:
 - (i) a Show Cause Event or Immediate Termination Event;
 - (ii) a KPI Breach; or
 - (iii) a failure to achieve the Performance Standard;
- (b) a KPI Breach;
- (c) a Non-Compliance Event described in Schedule C4;
- (d) a fact, matter or circumstance that, in the reasonable opinion of the Purchaser, is likely to result in a Step-in Event if not attended to promptly; or
- (e) if any of the Service Provider Warranties or any other representation, warranty or statement made by the Service Provider in this Contract is or was untrue or misleading in a material respect when made or repeated and, if that fact had been known to the Purchaser before signing this Contract the Purchaser, in the Purchaser's reasonable opinion, would not have entered into the Contract or would have entered into it on materially different terms.

For the avoidance of doubt, a failure by the Service Provider to meet the Performance Standard or otherwise operate Trips in accordance with the Timetable (including a failure to ensure that Contract Vehicles perform all required Trips and traverse each designated Transit Stop on that Trip) shall not constitute a Non-Compliance Event except to the extent a Non-Compliance Event described in paragraph (c) has occurred.

Non-Compliance Notice has the meaning given in clause 19.2(a).

Non-Contract Vehicle means a vehicle that is not a Contract Vehicle.

Non-State School has the meaning given in the Act.

Not-To-Exceed Price means an upper limiting cap on Actual Costs, subject to the Change Payment Review Procedures, unless specified otherwise in the relevant Change Notice, at the Purchaser's sole discretion.

Offer means the Service Provider's offer to perform the Transport Operations and to enter into this Contract submitted in response to the Invitation to Offer. It includes any amendments or additions to the offer prior to the date of this Contract.

On-Time Incentive Rate means the on-time incentive rate set out in paragraph 3.2 of Schedule C4.

On-Time Running means that Level of Service where the On-Time Running Rate for a relevant period is equal to or greater than the Lower On-Time Running Threshold for that period.

On-Time Running Annual Rate means:

- (a) in respect of the Transition In Period, the average of the On-Time Running Rate for all Contract Months within the Transition In Period; or
- (b) in respect of an Optimised Performance Year, the average of the On-Time Running Rate for all Optimised Performance Months within that Optimised Performance Year.

On-Time Running Payment Adjustment means the on-time running payment adjustment in respect of Urban Routes (but not School Routes) determined in accordance with paragraph 3 of Schedule C4.

On-Time Running Rate means, for a Contract Month, the total number of Measurement Points that were traversed by the Contract Vehicles that departed within the On-Time Urban Service Tolerance on all Completed Trips on Urban Routes in that Contract Month, expressed as a proportion of the total number of all Measurement Points traversed by the Contract Vehicles on all Completed Trips on Urban Routes that were operated in that Contract Month.

On-Time Urban Service Tolerance means departure of a Trip on an Urban Route from the designated Measurement Points on the Route no more than 1:00 minutes before the scheduled time and no later than 5:00 minutes after the scheduled time in the Timetable for the relevant Route.

Open Book Basis means provision in a clear and transparent manner by the Service Provider of:

- (a) a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontracts, finance and other Change Costs of the Service Provider and its Associates and
- (b) other information reasonably requested by the Purchaser including reasonably available source documents required to verify such calculation.

Operating Payment means an amount calculated in accordance with paragraph 2 of Schedule D2.

Operating Plans mean:

- (a) those plans for the performance of the Transport Operations described in paragraph 2 of Schedule C2; and
- (b) any other plans reasonably directed by the Purchaser from time to time,

each in a form as previously approved by the Purchaser.

Operations Manual means the document titled '*TransLink Service Provider Operations Manual*' as amended, updated or replaced from time to time and includes all policies, protocols, standards, guidelines, bulletins, plans or other documents referred to or incorporated in it (other than Legislation) and as at the Commencement Date, means the '*TransLink Service Provider Operations Manual v1.6*'.

Optimised Network means a design for the Network in the Integrated Scheduling System, within the Legal Requirements and the Scheduling Business Rules, that:

- (a) maximises value for money for the Purchaser;
- (b) minimises duplication between Routes and routes operated by other service providers of all modes of public transport;
- (c) balances supply and demand;
- (d) minimises the PVR, Dead Running Distance and Dead Running Time;
- (e) maximises use of the application of Guaranteed Time to the performance of Trips;
- (f) interlines Trips between different Routes and/or Route types; and
- (g) continues to achieve the Contract Objectives.

Optimised Performance Commencement Date has the meaning given in paragraph 2.3(a)(vi) of Schedule A5.

Optimised Performance Month means:

- (a) for the first Optimised Performance Month, the period from the Optimised Performance Commencement Date up to and including the last day of the Contract Month within which the Optimised Performance Month commenced; and
- (b) subsequently, each Contract Month.

Optimised Performance Network means a design for the Network in the Integrated Scheduling System, within the Legal Requirements and the Scheduling Business Rules, that makes it reasonably practicable for the Service Provider to:

- (a) deliver an Optimised Network; and
- (b) achieve the Performance Standard.

Optimised Performance Year means:

- (a) for the first Optimised Performance Year, the period from the Optimised Performance Commencement Date up to and including the last day of the Contract Year within which the Optimised Performance Year commenced; and
- (b) subsequently, each Contract Year.

Option Exercise Date means the date specified in item 3 of the Contract Details.

Original Bond has the meaning given in clause 24.3.

Original Expiry Date means the date specified in item 4 of the Contract Details.

Other Overhead Costs means the combination of indirect costs inclusive of operations, administration and management wages, administration and office costs and Depot maintenance and operation costs.

Outline Business Case has the meaning specified in the Business Case Guidelines.

Passenger Information means passenger information as provided by the Purchaser to the Service Provider from time to time, such as decals for fare tables, fare zone maps, conditions of travel, concession cards, handheld timetables and brochures.

Payment Month means a Contract Month as described in clause 21.1(c).

Peak Vehicle Requirement or **PVR** means the maximum number of Contract Vehicles required to deliver the Optimised Network for each Day Type, excluding the Spare Vehicle Requirement, as calculated using the Integrated Scheduling System.

Performance Assessment Report means a report prepared by the Purchaser in respect of a Contract Month summarising the outcome of the Purchaser's analysis of the Performance Data to determine the performance of the Service Provider against the Performance Measures in that Contract Month.

Performance Bond has the meaning given in clause 24.1.

Performance Data means geo-positional and timing data relating to the Service Provider's performance against the Performance Measures generated and recorded by any or all of the following:

- (a) the Ticketing Equipment;
- (b) the Service Provider's telematics system installed in accordance with clause 13.6(b) and imported into the Data Storage System in accordance with the Operations Manual; or
- (c) any other systems or equipment used by the Purchaser for this purpose from time to time.

Performance Data Methodology means the methodology set out in the Operations Manual for:

- (a) incorporation of all Performance Data into the Data Storage System; and
- (b) the resolution of any conflicts in the Performance Data recorded by different systems.

Performance Improvement means the relevant Performance Improvement determined in accordance with paragraph 4.2(a) of Schedule C4.

Performance Improvement Offset has the meaning given in paragraph 4.3 of Schedule C4.

Performance Measure means a performance measure described in Schedule C4 .

Performance Optimisation means the design of the Network, as far as reasonably practicable to achieve the Optimised Performance Network.

Performance Optimisation Commencement Date has the meaning given in paragraph 1.3(b) of Schedule A5.

Performance Optimisation Period means the period within the Transition In Period which commences on the Performance Optimisation Commencement Date and ends on the day before the Optimised Performance Commencement Date.

Performance Payment Adjustment means an amount calculated in accordance with paragraph 1 of Schedule C4.

Performance Regime means the provisions under this Contract for the calculation of:

- (a) Performance Payment Adjustments and the application of those Performance Payment Adjustments in the calculation of each Service Payment; and
- (b) the provisions for payment of amounts determined under clause 18.3.

Performance Standard means that Level of Service where:

- (a) all Missed Trip Payment Adjustments calculated in accordance with paragraph 2.1 of Schedule C4 are zero; and
- (b) the On-Time Running Rate is always equal to or greater than the Upper On-Time Running Threshold.

Period of Suspension has the meaning in clause 16.4(a)(v).

Permanent In-Service Kilometres means the In-Service Kilometres attributed to a Permanent Service Change.

Permanent Service Change means a Planned Service Change that will permanently affect the Timetable, Route or one or more Transit Stops that must be approved in advance by the

Purchaser. A Permanent Service Change is not a Temporary Unplanned Service Change or Temporary Planned Service Change.

Permanent Service Change (In-Service Rate) Adjustment means an amount calculated in accordance with paragraph 9.4 of Schedule D2.

Permanent Service Change (In-Service Rate) Fuel Adjustment means an amount calculated in accordance with paragraph 3.4 of Schedule D2.

Permanent Service Change (Total Rate) Adjustment means an amount calculated in accordance with paragraph 9.5 of Schedule D2.

Permanent Service Change (Total Rate) Fuel Adjustment means an amount calculated in accordance with paragraph 3.5 of Schedule D2.

Permanent Total Kilometres over a designated period means the Total Kilometres attributed to a Permanent Service Change.

Permitted Purpose means the purposes of:

- (a) exercising a right, performing an obligation or fulfilling a duty under this Contract or at Law;
- (b) delivery of the Network by any person;
- (c) increasing the quality, efficiency or use of Public Passenger Services in Queensland;
- (d) administering or reporting about the Network or the Transport Operations;
- (e) planning, policy development or procurement in relation to the Integrated Network or other Public Passenger Services.

Permitted Security Interest means a Security Interest:

- (a) disclosed in the Register of Service Contract Assets on the date of this Contract or that is subsequently approved by the Purchaser (acting reasonably) and recorded in an updated version of the Register of Service Contract Assets; or
- (b) that arises by operation of Law after the Commencement Date in the ordinary course of day-to-day trading or under which the secured indebtedness is paid when due or is being contested in good faith.

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.

Planned Service Change means a Service Change that is scheduled before it is implemented, and includes Temporary Planned Service Change.

Post Performance Optimisation Period means the period commencing on the Optimised Performance Commencement Date and ending on the End Date.

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

Prescribed Notice has the meaning given in clause 41.2.

Price Base Date means the Initial Contract Year, unless expressly specified otherwise.

Probity Event means an event or thing which occurs during the Contract Term and which:

- (a) has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of the Service Provider, a Service Provider Associate or the Staff of either of them (such events to include Provision of Misinformation);
- (b) relates to the Service Provider, a Service Provider Associate or the Staff of either of them and has a material adverse effect on the public interest, or public confidence, in the Transport Operations;

- (c) without limiting paragraphs (a) and (b), involves a material failure of the Service Provider, a Service Provider Associate or the Staff of either of them to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of Service Provider to carry out and observe its obligations in connection with the Transport Operations; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in a State government project or contract.

Provision of Misinformation means:

- (a) the provision of information by the Service Provider that is used in the calculation of any payments claimed by the Service Provider under this Contract which is false or misleading in any material respect, other than information obtained from the Integrated Scheduling System or the Ticketing Equipment that:
 - (i) is not false or misleading as a result of an act or omission of the Service Provider; or
 - (ii) the Service Provider does not know to be false or misleading; or
- (b) the Service Provider taking any other steps to artificially inflate any entitlement to payments to be made to the Service Provider or to deflate artificially the calculation of payments to be made by the Service Provider,

Public Announcement has the meaning given in clause 33.4.

Public Disclosure Obligations has the meaning given in clause 33.3(c).

Public Holiday means a public holiday under the *Holidays Act 1983* (Qld).

Public Holiday Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the service subject of the Service Change is scheduled to depart on a Public Holiday.

Public Passenger Service has the meaning given in the Act.

Public Timetable means a document or data set containing the information referred to in paragraph (a) of the definition of Timetable that is intended for publication to Customers through public channels (whether via hard copy, digital or any other medium).

Public Transport Plan means formal plans for the strategic development of the Integrated Network prepared by the Purchaser.

Purchaser means the State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads.

Purchaser Associate means an Associate of the Purchaser but, excludes:

- (a) the Data Reliability Auditor; and
- (b) for the purposes of clauses 13.8(c), 29.4(b), 31.1, 31.4, 36.1(a) and Schedule D1 in respect of Motor Vehicle Third Party Property Insurance and Liability Insurance, a person who is another holder of an Integrated Mass Transit Service Contract under the Act acting in that capacity.

Purchaser Brands means the TransLink trade name, the Purchaser Trade Mark and any other brands and marks relevant to the Network developed by the Purchaser during the Contract Term.

Purchaser Breach means a breach of this Contract by the Purchaser.

Purchaser Monthly Advertising Revenue (Static) means the net revenue to which the Purchaser is entitled in a Contract Month under its arrangements with respect to Vehicle Advertising (Static).

Purchaser Nominated Digital Radio Network means a digital radio network to be specified by the Purchaser.

Purchaser Trade Mark means the trade marks of the Purchaser notified to the Service Provider from time to time.

Qualifying Change in Law means a Change in Law of the State of Queensland or the Commonwealth of Australia, the terms of which:

- (a) apply directly and exclusively to bus operators or to mass public transport that operates on road infrastructure;
- (b) are directly and exclusively related to bus safety or heavy vehicle safety; or
- (c) are a change to the DDA Legislation,

but excludes:

- (d) a Service Change;
- (e) a Change in Operations Manual;
- (f) a change in any Legal Requirement or the way a Legal Requirement applies or is interpreted as a result of a court decision other than a decision described in paragraph (c) of the definition of Change in Law;
- (g) a change in any Legal Requirement or the way a Legal Requirement is applied or is interpreted as a result of:
 - (i) the failure of the Service Provider to comply with a Legal Requirement;
 - (ii) an illegal act or omission of the Service Provider; or
 - (iii) a breach of this Contract by the Service Provider; or
- (h) a Change in Tax, including a change in the prevailing rate of FTC available to the Service Provider.

Real Terms means cost and Savings amounts that are specified on a real basis as at the Price Base Date, discounted at the CPI Deflator.

Recipient Created Tax Invoice has the meaning given to that term by the GST Law.

Reconciliation Sheets means the document titled 'Schedule D2 Reconciliation Template' in the Service Payment Pricing Model.

Reference Period means, for the purposes of calculating any variable element of a Service Payment under Schedule D2, the Reference Period identified for that element in that Schedule.

Register of Service Contract Assets means:

- (a) at the Commencement Date, the register detailed in Schedule B4; and
- (b) subsequently, any updated version of that register held by the Purchaser that is updated in accordance with this Contract.

Registered Valuer means a valuer registered under the *Valuers Registration Act 1992* (Qld).

Reimbursable Redundancy Cost means a redundancy payment to an Essential Employee that is necessary as a direct result of a Change Event except where:

- (a) the Service Provider has not used its best endeavours to avoid those costs;
- (e) the redundant Essential Employee is redeployed or reemployed elsewhere by the Service Provider or a Service Provider Associate within three months from the implementation date of the Change Notice or the date of redundancy (whichever is earlier) in which case this payment will cease and any payments made by the Purchaser in respect of the redundant Essential Employee (whether as Reimbursable Redundancy Costs or otherwise) will be deducted from the Change Payment in the following Payment Month; or

- (b) any such redundancy payment is payable in respect of a Permanent Service Change in accordance with paragraph 9.3(a) of Schedule D2.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Amount has the meaning given in clause 24.6(d)(ii).

Renewing Bond has the meaning given in clause 24.3.

Replacement Bond has the meaning given in clause 24.4.

Replacement Life has the meaning given at paragraph 4.2 of Schedule B1.

Reputable Insurer means an insurance company with:

- (a) the Required Insurer Rating; and
- (b) a good reputation in the Australian domestic and international insurance markets, or which satisfies such other criteria as the Purchaser may approve from time to time.

Request for Change Proposal means a direction to the Service Provider to prepare and submit a Change Proposal given under clause 22.5(a)(i)(A), clause 22.5(b) or clause 23.1(c)(ii) (as the case may be).

Required Insurer Rating means a financial security rating given by Standard and Poor's Australia of at least A+ or an equivalent rating if no rating is provided by Standard and Poor's Australia.

Required Performance Bond Rating means a credit rating given by Standard and Poor's Australia of at least A- or an equivalent rating if no rating is provided by Standard and Poor's Australia.

Retender means a procurement process for the provision of all or any part of the Network by a Successor Service Provider for a period commencing after the End Date.

Retender Sensitive Information means the information described as such in Schedule C5.

Route means a line of route made up of a group of Route Attributes specified or described in the Network Specification.

Route Alignment means in respect of a Route, the designated route to be taken by a Contract Vehicle via the road network, in traversing the Route.

Route Attribute means each of the individual elements that comprise a Route including the Route Identifier, Transit Stops, Trips, Timing Points, payment options, Run Time, Route Alignment, schedule, Stopping Pattern, Measurement Points, direction, operating days, frequency, service span, brand, point of origin, final destination, Route Length, Route Variant, Route type, vehicle type, network type and funding agent, all as more particularly described in the Operations Manual.

Route Length means, in respect of a Route Variant, the distance between the point of origin of the Route Variant and the last Transit Stop on the Route Variant measured over the Route Alignment.

Route Variant has the meaning given in the Operations Manual.

RSW Reconciliation Sheet means the following worksheets in the Reconciliation Sheets:

- (a) '2._Route_Data'; and
- (b) '6._Approved_Service_Changes',

which describe a summary of all of the changes to the Existing Network under the 3G Contract that have occurred since 28 February 2017.

Run Time means the scheduled interval of time between two Timing Points.

Saturday Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the service subject of the Service Change is scheduled to depart on a Saturday.

Savings means the amount of any Change Costs of the Service Provider avoided or otherwise reduced in accordance with Schedule D3 as a consequence of a Change Event.

Scheduled Passenger Service has the meaning given in the Act.

Scheduling Best Industry Practice means the exercise of Best Industry Practice in performing the Network Scheduling Functions in a way that endeavours to achieve the outcomes in paragraphs (a) to (f) of the definition of 'Optimised Network'.

Scheduling Business Rules means the labour related parameters to be used by the Service Provider in carrying out the Network Scheduling Functions, reflecting the Service Provider's Driver labour conditions to the extent that they impact on scheduling of the Network and are applicable pursuant to:

- (a) the Award, except to the extent that the Enterprise Agreement or a replacement enterprise agreement provides for Driver labour conditions;
- (b) the Enterprise Agreement;
- (c) Mandatory Requirements, including as to fatigue management; and
- (d) other scheduling practices that are in accordance with Scheduling Best Industry Practice (which for clarity may include updates, amendments or replacements of the Enterprise Agreement, to the extent that they constitute such practices).

School means State School or a Non-State School.

School In-Service Kilometres means the In-Service Kilometres for School Routes consisting of Core In-Service Kilometres, Permanent Service Changes and Temporary Planned Service Changes.

School Margin Percentage means the amount set out in Table 7 in paragraph 4.2 of Schedule D2.

School Only Vehicle has the meaning given in clause 12.6(d).

School Route means a General Route Service that operates only during School term time and services at least one School.

School Student has the meaning given in the Act.

SDE Auxiliary Services has the meaning given in clause 7.8(d).

Secured Party has the meaning given in clause 35.1.

Security Interest means any:

- (a) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary Claim and flawed deposit arrangements);
- (b) 'security interest' as defined in the PPSA; and
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over Claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

Senior Network Officer or **SNO** means a person authorised under Chapter 11 of the Act for the purpose of inspecting Tickets to ensure correct Fares have been paid by Customers.

Service Change means any permanent or temporary:

- (a) change to a Route Attribute for an Existing Route;

- (b) introduction of a New Route; or
- (c) cancellation of a Route.

Service Change Quotation means a financial model for the operational and financial impacts of a proposed Service Change, as more particularly described in the Operations Manual.

Service Contract Assets means:

- (a) the Contract Vehicles;
- (b) the Service Provider's right, title and interest in each Asset Lease;
- (c) the Depots;
- (d) the Depot Equipment;
- (e) the Service Provider's right, title and interest in each Depot Lease; and
- (f) the other assets (if any) listed in the Register of Service Contract Assets which are wholly or partly funded by the Purchaser (whether under the Service Payments or otherwise) for use in performance of the Transport Operations.

Service Contract Document means:

- (a) this Contract;
- (b) each Direct Deed;
- (c) any amended, updated or replacement requirements or arrangements in respect of use of the Integrated Scheduling System that are notified by the Purchaser to the Service Provider in accordance with clause 13.1(d); and
- (d) each other document that the Purchaser and the Service Provider agree from time to time is a Service Contract Document.

Service Disruption has the meaning in the Operations Manual.

Service Payment means a payment for performance of the Transport Operations as described in clause 21.1(a) and calculated in accordance with Schedule D2.

Service Payment Pricing Model means the agreed financial model used by the parties prior to the date of this Contract to calculate relevant values and amounts set out in Schedule D2, which values and amounts the parties have agreed, subject to this Contract, will be the relevant inputs to the calculation of Service Payments during the Term in accordance with Schedule D2. The Service Payment Pricing Model is set out in Schedule D4.

Service Payment Variable means any:

- (a) input assumption specified in the CEQM or the Operations Manual as an input assumption; and
- (b) other financial assumption or calculation methodology specified by the Purchaser in its absolute discretion.

Service Provider means the entity specified in item 1 of the Contract Details.

Service Provider Associate means an Associate of the Service Provider.

Service Provider Change Costs means the additional net incremental Change Costs incurred by the Service Provider that are directly attributable to the relevant Change Event, but excluding all:

- (a) overheads and administrative, corporate and other like costs, except to the extent that such costs are incurred by the Service Provider as the direct and unavoidable result of the relevant Change Event;
- (b) margin and profit; and
- (c) allowance for the risk that Actual Costs exceed estimated Service Provider Change Costs.

Service Provider Data Matters has the meaning given in clause 15.2(g)(i).

Service Provider Group means the Service Provider and its Related Bodies Corporate.

Service Provider Group Member means a member of the Service Provider Group.

Service Provider Monthly Advertising Revenue means the net revenue to which the Service Provider is entitled in a Contract Month under its Existing Arrangements.

Service Provider Warranties means:

- (a) the representations and warranties set out in Schedule A2; and
- (b) the representation and warranty set out at clause 7.9.

Service Provider's Representative means the person referred to in item 8 of the Contract Details, and any subsequent person appointed to that role from time to time under clause 5.2 of this Contract.

Service Rate Reset means the resetting of the In-Service Cost Rates in accordance with paragraph 12 of Schedule D2.

Shift means a planned period of time over which a Driver is rostered (in a way which supports the achievement of an Optimised Network) to perform Transport Operations, including driving an Approved Contract Vehicle.

Show Cause Event means the occurrence of any of the following events or circumstances:

- (a) the Service Provider fails to implement an Urgent Measure directed by the Purchaser under this Contract;
- (b) the Service Provider fails to notify the Purchaser of any Incident in accordance with the Standard;
- (c) an Incident is found to be attributable to the wilful default or negligence of the Service Provider or an Associate of the Service Provider;
- (d) the Service Provider fails to comply with its obligations under clause 10.3;
- (e) the Service Provider fails to pursue diligently a Cure Plan in accordance with its obligations under clause 19.3(c) or otherwise to cure a Non-Compliance Event to the reasonable satisfaction of the Purchaser within an agreed Cure Period;
- (f) a Show Cause Event described in Schedule C3 or Schedule C4 occurs;
- (g) the Service Provider fails to comply with any of its obligations in respect of a Probity Event;
- (h) the Service Provider fails to provide any Performance Bond in accordance with clause 24;
- (i) the Service Provider persistently or repeatedly fails to comply with this Contract in circumstances where the Purchaser has previously notified it of the failures or non-compliances and has put it on notice that continued failures or non-compliances would constitute a Show Cause Event for the purposes of this Contract; or
- (j) the Service Provider commits any other breach of this Contract that is, in the Purchaser's reasonable opinion, a breach of a condition of this Contract.

For the avoidance of doubt, a failure by the Service Provider to meet the Performance Standard or otherwise operate Trips in accordance with the Timetable (including a failure to ensure that Contract Vehicles perform all required Trips and traverse each designated Transit Stop on that Trip) shall not constitute a Show Cause Event except to the extent:

- (k) a Show Cause Event described in paragraph (f) has occurred; or
- (l) the Service Provider has abandoned, or displayed an intention to abandon, performance of any of the Transport Operations.

Show Cause Notice has the meaning given in clause 20.1(b).

Step-in Event means a Show Cause Event or an Immediate Termination Event.

Step-in Party has the meaning given in clause 27.1(b).

Step-in Period means any period during which the Purchaser exercises Step-in Powers pursuant to clause 27.1(a).

Step-in Powers has the meaning given in clause 27.1(a).

Step-in Right has the meaning given in clause 27.1(a).

Step-out Notice has the meaning given in clause 27.6(a).

Stopping Pattern means the sequence of, and distance between, Transit Stops along a Route.

Subcontract means any subcontract or other arrangement between the Service Provider and a Subcontractor for the Subcontractor to perform all or any part of the Transport Operations. It includes any arrangement for a Subcontractor to make any Service Contract Asset or Staff available to the Service Provider to be utilised in performance of the Transport Operations but excludes any contract of employment between the Service Provider and an individual or between a Subcontractor and an individual.

Subcontractor means a person engaged, or to be engaged, by the Service Provider under a Subcontract.

Successor Service Provider means a service provider appointed by the Purchaser to perform all or some of the Transport Operations following the expiry or earlier termination, cancellation or surrender of this Contract. It includes an Interim Service Provider.

Sunday Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the Trip that is the subject of the Service Change is scheduled to depart on a Sunday.

Surviving Clauses has the meaning given in clause 43.12(a).

Tax means any tax, levy, duty, rate, impost, charge, deduction or withholding (and any related penalty, fine, fee or interest) imposed, levied or assessed by a Government Authority. It includes stamp duty, GST and any transaction taxes and duties.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

Temporary Planned Service Change means any Planned Service Change which has a defined start date and a defined end or review date. It excludes Temporary Unplanned Service Changes.

Temporary Planned Service Change Adjustment means an amount calculated in accordance with paragraph 9.6 of Schedule D2.

Temporary Planned Service Change Fuel Adjustment means an amount calculated in accordance with paragraph 3.6 of Schedule D2.

Temporary Unplanned Service Change means a Service Change implemented for no longer than 72 hours in response to an urgent circumstance that could not reasonably have been anticipated by the Service Provider, and excludes:

- (a) Planned Service Changes; and
- (b) State Designated Event Services.

Terrorist Act has the meaning given in section 100.1 of the *Criminal Code* (Cth).

Third Party Break Costs means the amount (if any) that the Service Provider is liable to pay to any person other than a Service Provider Group Member under the terms of a Financing Arrangement between the Service Provider and that person as repayment of financial accommodation or break costs in respect of a Contract Vehicle that is destroyed or otherwise written off.

Third Party Owner means:

Step-in Event means a Show Cause Event or an Immediate Termination Event.

Step-in Party has the meaning given in clause 27.1(b).

Step-in Period means any period during which the Purchaser exercises Step-in Powers pursuant to clause 27.1(a).

Step-in Powers has the meaning given in clause 27.1(a).

Step-in Right has the meaning given in clause 27.1(a).

Step-out Notice has the meaning given in clause 27.6(a).

Stopping Pattern means the sequence of, and distance between, Transit Stops along a Route.

Subcontract means any subcontract or other arrangement between the Service Provider and a Subcontractor for the Subcontractor to perform all or any part of the Transport Operations. It includes any arrangement for a Subcontractor to make any Service Contract Asset or Staff available to the Service Provider to be utilised in performance of the Transport Operations but excludes any contract of employment between the Service Provider and an individual or between a Subcontractor and an individual.

Subcontractor means a person engaged, or to be engaged, by the Service Provider under a Subcontract.

Successor Service Provider means a service provider appointed by the Purchaser to perform all or some of the Transport Operations following the expiry or earlier termination, cancellation or surrender of this Contract. It includes an Interim Service Provider.

Sunday Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the Trip that is the subject of the Service Change is scheduled to depart on a Sunday.

Surviving Clauses has the meaning given in clause 43.12(a).

Tax means any tax, levy, duty, rate, impost, charge, deduction or withholding (and any related penalty, fine, fee or interest) imposed, levied or assessed by a Government Authority. It includes stamp duty, GST and any transaction taxes and duties.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

Temporary Planned Service Change means any Planned Service Change which has a defined start date and a defined end or review date. It excludes Temporary Unplanned Service Changes.

Temporary Planned Service Change Adjustment means an amount calculated in accordance with paragraph 9.6 of Schedule D2.

Temporary Planned Service Change Fuel Adjustment means an amount calculated in accordance with paragraph 3.6 of Schedule D2.

Temporary Unplanned Service Change means a Service Change implemented for no longer than 72 hours in response to an urgent circumstance that could not reasonably have been anticipated by the Service Provider, and excludes:

- (a) Planned Service Changes; and
- (b) State Designated Event Services.

Terrorist Act has the meaning given in section 100.1 of the *Criminal Code* (Cth).

Third Party Break Costs means the amount (if any) that the Service Provider is liable to pay to any person other than a Service Provider Group Member under the terms of a Financing Arrangement between the Service Provider and that person as repayment of financial accommodation or break costs in respect of a Contract Vehicle that is destroyed or otherwise written off.

Third Party Owner means:

- (a) if a Contract Vehicle is not owned by the Service Provider, the owner of the Contract Vehicle; and
- (b) if the Service Provider is not the freehold owner of a Depot, the freehold owner of the Depot.

Ticket means an entitlement to travel, as evidenced by a paper or electronic ticket, token, coupon, pass, card or other instrument (including a Smartcard).

Ticketing Equipment means all ticketing equipment, including (but not limited to) the ticketing equipment listed in the Operations Manual, Driver Console Units, Smartcard readers and sign on cards to log in to Driver Console Units or other ticketing equipment, which the Purchaser or any Purchaser Associate provides to the Service Provider for use in its performance of the Transport Operations.

Timetable means, in respect of all Trips on a Route:

- (a) the times when a Contract Vehicle is scheduled to pass a Timing Point or Transit Stop on that Route; and
- (b) the In-Service Hours and In-Service Kilometres for each Trip.

Timing Point means designated timing points on a Route identified in the Network Specification and the Integrated Scheduling System.

Total Charter Kilometres means an amount calculated in accordance with paragraph 7.4 of Schedule D2.

Total Cost Rates means the amounts set out in paragraph 12(b) of Schedule D2.

Total Equivalent Ordinary Hours (Reset) means the sum, for each Day Type, of the product of the Total Hours and the Day Type Wage Multiplier.

Total Hour Marginal Rates means the amounts set out in Table 20 in paragraph 9.5(c) of Schedule D2.

Total Hours means, for a Trip, the In-Service Hours plus the Dead Running Time.

Total Hours (Reset) means the Total Hours required to travel over any designated period to deliver Urban Routes and School Routes consisting of Core Total Hours and Permanent Service Changes but excluding:

- (a) Temporary Planned Service Changes; and
- (b) State Designated Event Services.

Total In-Service Equivalent Ordinary Hours (Reset) means the sum, for each Day Type, of the product of the In-Service Hours and the Day Type Wage Multiplier.

Total In-Service Hours (Reset) means the In-Service Hours required to travel over any designated period to deliver Urban Routes and School Routes consisting of Core In-Service Hours and Permanent Service Changes but excluding:

- (a) Temporary Planned Service Changes; and
- (b) State Designated Event Services.

Total In-Service Kilometres over any designated period is the sum of Urban In-Service Kilometres and School In-Service Kilometres.

Total In-Service Kilometres (Reset) over any designated period is the sum of Urban In-Service Kilometres and School In-Service Kilometres consisting of Core Service Kilometre and Permanent Service Changes but excluding:

- (a) Temporary Planned Service Changes; and
- (b) State Designated Event Services.

Total Kilometres means, for a Trip, the In-Service Kilometres plus the Dead Running Distance for that Trip over any designated period.

Total Kilometres (Combined) over a period is the Total Kilometres to be travelled to deliver Urban Routes, School Routes and State Designated Event Services in that period consisting of Core Total Kilometres as adjusted for;

- (a) Permanent Total Kilometres; and
- (b) the change in Total Kilometres over that period attributable to Temporary Planned Service Changes and State Designated Event Services.

Total Kilometre Marginal Rates means the amounts set out in Table 21 in paragraph 9.5(d) of Schedule D2.

Total Kilometres (Reset) is the Total Kilometres to be travelled over any designated period to deliver Urban Routes and School Routes consisting of Core Total Kilometres and Permanent Service Changes but excluding:

- (a) Temporary Planned Service Changes; and
- (b) State Designated Event Services.

Total Odometer Reading means an amount calculated in accordance with paragraph 7.4 of Schedule D2.

Total Rate Adjustment means an adjustment contemplated in paragraph 9.1(a) of Schedule D2.

Training Plan means the training plan described in paragraph 2.7 of Schedule C2.

Transit Stop means a designated location along a Route for a Contract Vehicle to set down or pick up passengers.

Transition In Period means the period commencing on the Commencement Date and ending on the Optimised Performance Commencement Date.

Transition In Schedule means Schedule A5.

Transition Out Period means a period of 120 Business Days (or any shorter period determined under this Contract) commencing on the first day following the End Date.

Transitional Assistance has the meaning given in clause 28.

TransLink means the TransLink Division of the Queensland Department of Transport and Main Roads.

TransLink Ticket Stock means paper stock required by the Ticketing Equipment for production of paper Tickets.

Transport Operations includes:

- (a) the delivery of the Network;
- (b) the maintenance and operation of the Service Contract Assets; and
- (c) all other activities of the Service Provider expressly contemplated under this Contract or that are incidental to the performance of the Service Provider's express obligations under this Contract.

Trip means a one way trip performed by a Contract Vehicle between the point of origin and final destination of a Route.

True Up Adjustment means the combination of all approved and calculable amounts in respect of any:

- (a) Permanent Service Change (In-Service Rate) Fuel Adjustment;
- (b) Permanent Service Change (In-Service Rate) Adjustment;
- (c) Permanent Service Change (Total Rate) Fuel Adjustment;

- (d) Permanent Service Change (Total Rate) Adjustment;
- (e) Temporary Planned Service Change Fuel Adjustment;
- (f) Temporary Planned Service Change Adjustment; or
- (g) any Force Majeure Adjustment;

and any other element of the Service Payment that is approved and calculable and is payable or to be accounted for under Schedule D2, that relates to an earlier Payment Month and which has not already been paid or accounted for.

Trust means in respect of the Service Provider, each trust of which it is or becomes trustee.

Updated Route Summary Worksheet has the meaning given in paragraph 6.1(b) of Schedule A5.

Unplanned Events Exclusion has the meaning given in paragraph 2.2(a)(i) of Schedule C4.

Upper On-Time Running Threshold means the upper on-time running threshold as set out in paragraph 4.2 of Schedule C4.

Urban Contract Vehicle has the meaning given in clause 12.6(c).

Urban In-Service Kilometres means the In-Service Kilometres for Urban Routes consisting of Core In-Service Kilometres, Permanent Service Changes and Temporary Planned Service Changes but excluding State Designated Event Services on Urban Routes.

Urban Margin Percentage means the amount set out in Table 8 in paragraph 4.2 of Schedule D2.

Urban Route means a General Route Service that operates throughout the year or with a seasonal timetable and is designed to service multiple Customer types including, but not limited to, School Students.

Urgent Measures means immediate temporary measures to alleviate the adverse effect of a Non-Compliance Event or Show Cause Event pending a permanent cure being achieved.

Vehicle Advertising means all forms of advertising (excluding Passenger Information) intended to be fixed, displayed or otherwise published or broadcast in any form (including digitally or electronically) either inside or on the outside of any Contract Vehicle and includes Vehicle Advertising Equipment.

Vehicle Advertising (Digital) means any Vehicle Advertising that is digitally displayed or uses electronic media in any form, whether displayed on the inside or on the outside of any Contract Vehicle.

Vehicle Advertising Equipment means equipment (including electronic equipment) installed, or intended to be installed, in or on a Contract Vehicle for the purpose of displaying advertising material.

Vehicle Advertising (Static) means Vehicle Advertising that is not Vehicle Advertising (Digital), whether displayed on the inside or on the outside of any Contract Vehicle.

Vehicle Block means the scheduled pattern of movements of a Contract Vehicle from its point of departure from a Depot or termini to its final point of arrival at a Depot or termini, inclusive of all trips (pull, dead and in-service).

Vehicle Overhead Marginal Rate means:

- (a) in respect of the Permanent Service Change (In-Service Rate) Adjustment, the amounts set out as such in Table 19 in paragraph 9.4(e) of Schedule D2; and
- (b) in respect of the Permanent Service Change (Total Rate) Adjustment, the amounts set out as such in Table 22 in paragraph 9.5(e) of Schedule D2.

Wage Deflator means the series of annual discount factors in each Contract Year calculated as the inverse of the Wage Index Multiplier in respect of each Contract Year for which the relevant Wage Index Multiplier for that Contract Year has been published.

Wage Index Multiplier means the amount calculated in accordance with paragraph 11.3 of Schedule D2.

Weekday Day Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the Trip that is the subject of the Service Change is scheduled to depart the first Transit Stop between 06:00am to 7:00pm on a weekday.

Weekday Early/Late Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the Trip that is subject to the Service Change is scheduled to depart the first Transit Stop between 07.01pm and 5.59am on a weekday.

Weighted Average Route Length has the meaning given in clause 7.6(b)(i).

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

WHS Law means:

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

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

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

Workplace means a workplace (within the meaning given to that term in section 8 of the WHS Act) where the Transport Operations are performed.

Released under RTI - DTMR

Schedules B – Operational

Released under RTI - DTMR

Schedules C – Contract Administration

Released under RTI - DTMR

Schedules D – Financial

Released under RTI - DTMR

Schedules E – Pro-Forma Documents

Released under RTI - DTMR

Signing page

EXECUTED on 23/7/2018.

State

Executed for and on behalf of **The State of Queensland** by Matthew Longland, Deputy Director General, Translink of the Department of Transport and Main Roads in the presence of:

Not Relevant

Signature of witness

Not Relevant

Signature

Markin Hugh Bradshaw

Name of witness (print)

Service Provider

Executed by Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ACN 065 794 943 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Not Relevant

Signature of director

Not Relevant

Signature of company secretary/director

Sch.4 Part 4 s6 PI

Print Name

Sch.4 Part 4 s.6 PI

Print name

Service Contract

SEQ General Route Services
Urban and School

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty. Limited trading as Sunshine Coast Sunbus (**Service Provider**)

Released under RTI - DTMR

Service Contract

SEQ General Route Services

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Details

Date

Parties

Name	State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads
ABN	39 407 690 291
Short form name	Purchaser
Notice details	See Part A

Name	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus
Short form name	Service Provider
Notice details	See Part A

Background

- A The Purchaser is responsible for the coordination of transport infrastructure and services and the management of transport policy and planning in Queensland.
- B The Chief Executive is authorised under the Act, on behalf of the Purchaser, to enter into a service contract with an operator under which that operator is required to provide a Public Passenger Service for an area or Route in a way that meets or exceeds performance levels stated in the Contract.
- C Pursuant to section 62AAD of the Act, the Purchaser invited the Service Provider to offer for a new Integrated Mass Transit Service Contract to provide certain General Route Services.
- D The parties have entered into this Contract to record the terms and conditions on which it has been agreed that the Service Provider will perform the Transport Operations and the Purchaser will perform its related obligations as described under this Contract.

Part A – Contract Details

The Contract Details referred to in this Contract are set out in the following table.

1.	Service Provider Name ABN ACN Address	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus 94 065 794 943 065 794 943 KPMG, 71 Eagle St, Brisbane Qld 4000
2.	Commencement Date	23 July 2018
3.	Option Exercise Date (clause 3.2)	25 June 2022
4.	Original Expiry Date – option to extend not exercised (clause 3.2)	25 June 2023
5.	Extended Expiry Date – option to extend exercised (clause 3.2)	25 June 2025
6.	Address for service of notices – Purchaser	General Manager (Passenger Transport Services) TransLink Division Department of Transport and Main Roads 61 Mary Street Brisbane Qld 4000 Facsimile: (07) 3338 4600 email: sunbussc@translink.com.au
7.	Address for service of notices – Service Provider	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus Attn: KPMG 71 Eagle St Brisbane Qld 4000 Contact: 07 5579 5900 Email: buscontracts@tagroup.net.au
8.	Service Provider's Representative	Sch.4 Part 4 s.6 PI
9.	Amount of Performance Bond	Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Part B – Preliminary Matters

1. Defined Terms and Interpretation

1.1 Defined Terms

The definitions in Schedule A1 apply throughout this Contract, including in the schedules to this Contract.

1.2 Interpretation

The following rules apply in interpreting this Contract unless the context makes it clear that a rule is not intended to apply:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes other genders;
- (c) another grammatical form of a defined word or expression has, when capitalised, a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule, annexure or exhibit is to a clause or paragraph of, or schedule, annexure or exhibit to, this Contract, and a reference to this Contract includes any schedule, annexure or exhibit;
- (e) headings and subheadings are for convenience only and do not affect interpretation;
- (f) except to the extent expressly stated to the contrary in this Contract, a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (h) a reference to a time of day is to that time of day in Brisbane, Australia;
- (i) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) a reference to:
 - (i) a statute, ordinance, code or other law includes regulations and other enforceable instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
 - (ii) sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in consolidated, amended, re-enacted or replacement statutes;
- (l) the meaning of general words is not limited by specific examples that follow them;
- (m) the meaning of general words is not limited merely because more specific words precede them;
- (n) a party who has an obligation must perform that obligation at its own cost, unless a term of this Contract expressly provides otherwise;
- (o) any contract, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- (p) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (q) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it or benefits from the relevant provision;
- (r) references to writing include any means of representing or reproducing words, figures, drawings or symbols, in a visible, tangible form;
- (s) references to an obligation to notify a party mean an obligation to notify that party in writing;
- (t) references to signature and signing include due execution by a corporation, or other relevant entity;
- (u) any reference to:
 - (i) the Transport Operations;
 - (ii) a Service Contract Asset; or
 - (iii) any other Deliverable, document or thing,or any part of them:
 - (iv) being fit for purpose or fit for its intended purpose; or
 - (v) as having an intended use,(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to any purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:
 - (vi) this Contract;
 - (vii) the Information Documents;
 - (viii) the Operations Manual; or
 - (ix) to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change Event, any document provided by the Purchaser to the Service Provider specifically in connection with the Change Event.
- (v) references to months mean calendar months;
- (w) a reference to a quarter means any calendar quarter (or part calendar quarter) commencing on 1st January, 1st April, 1st July or 1st October in any year;
- (x) if any term of this Contract is legally unenforceable or made inapplicable, it must 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);
- (y) references to:
 - (i) consent mean prior written consent; and
 - (ii) approval mean prior written approval; and
- (z) references to:
 - (i) termination of this Contract include cancellation of this Contract as that term is used in Chapter 6 of the Act; and
 - (ii) surrender of this Contract are references to surrender of the Contract pursuant to s.48(1)(c) of the Act.

1.3 Purchaser Discretion

- (a) Except where expressly stated otherwise in this Contract:
- (i) all approvals, consents, decisions or exercises of discretion required (whether expressly or impliedly) or able to be given or made by the Purchaser under this Contract may be given, not given, made, not made, exercised, not exercised, withheld or made conditional by the Purchaser, in the Purchaser's absolute and unfettered discretion; and
 - (ii) in granting any approval or consent, making any decisions or exercising any discretion under or in connection with this Contract in relation to any matter described in clause 1.3(a)(i), the Purchaser does not assume any duty of care, responsibility or liability to the Service Provider or any other person and will not be taken to have agreed that any matter that is the subject of any approval, consent, decision or exercise of discretion is in compliance with this Contract.
- (b) The Service Provider acknowledges and agrees that this Contract does not in any way:
- (i) limit or prevent the exercise of any statutory power or discretion by any Government Authority;
 - (ii) require the Purchaser to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of this Contract if the Purchaser regards that exercise as not in the public interest or otherwise contrary to a duty of the Purchaser under the Act or another Law;
 - (iii) require the Purchaser to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of this Contract;
 - (iv) require the Purchaser to legislate in the future in a manner that is only consistent with the objectives and expected outcomes of this Contract;
 - (v) interfere with or influence the exercise by any other person of a statutory power or discretion; or
 - (vi) require the Purchaser to act in any way that the Purchaser regards as not in the public interest.
- (c) Except where expressly stated otherwise in this Contract, nothing the Purchaser does, fails to do, or purports to do, pursuant to its statutory functions or powers will:
- (i) be an act or omission of the Purchaser under this Contract; or
 - (ii) entitle the Service Provider to make any Claim arising out of the subject matter of this Contract
- (d) Notwithstanding clauses 1.3(a), 1.3(b) and 1.3(c), the Purchaser is not relieved from any Claim that the Service Provider may have against the Purchaser for its exercise of (or failure to exercise) any of its executive or statutory functions or powers under any Law or for taking any action (or failing to take any action) on the grounds of public interest, in a manner contrary to an express obligation of the Purchaser under this Contract, and the existence of such obligations, and the existence and the amount of such Claim, will be assessed in accordance with the terms of this Contract.

1.4 Reasonable endeavours of the Purchaser

If the Purchaser is required under the terms of this Contract to exercise best or reasonable endeavours, the Service Provider acknowledges that:

- (a) the Purchaser will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities; and
- (b) the Purchaser cannot guarantee the relevant outcome.

1.5 Relationship between this Contract and the Act

- (a) **Integrated Mass Transit Service Contract:** This Contract is an Integrated Mass Transit Service Contract under Chapter 6, Part 2, Division 2AA of the Act.
- (b) **No exclusivity:** In accordance with section 62AAC(2) of the Act, this Contract does not confer on the Service Provider an exclusive right to deliver all or any part of the Network or any other Public Passenger Service in any geographical area or on any route. The Service Provider acknowledges and agrees that the Purchaser may grant to any other person from time to time (without any liability or obligation on the Purchaser to compensate any person and without prejudice to any other right the Purchaser may have) any right or benefit similar to a right or benefit of the Service Provider under this Contract.
- (c) **Minimum Service Levels:** The minimum service levels applicable to this Contract for the purposes of section 40 of the Act are the Performance Standards.
- (d) **Special Events:** This Contract does not constitute a:
 - (i) declaration of any Special Event under section 67C of the Act; or
 - (ii) Special Event Approval under section 67F of the Act,and the Service Provider is not authorised by this Contract to enter into or perform a contract or other arrangement for the provision of Public Passenger Services to or from a Special Event except to the extent that clause 7.8 applies.
- (e) **End of Term:** The provisions of clause 28 do not apply unless:
 - (i) the Purchaser has determined for the purposes of section 62AAD(1)(a) of the Act that the performance of the Service Provider has not been satisfactory under this Contract;
 - (ii) a circumstance described in any of sections 62AAD(3)(a), 62AAD(3)(b) or 62AAD(3)(c) of the Act has arisen; or
 - (iii) this Contract is terminated, cancelled or surrendered for any reason prior to the Expiry Date.
- (f) **Compensation:** The provisions of clauses 7.5 and 7.6 are without prejudice to any rights of the Service Provider under section 62AAH of the Act.

1.6 Resolution of ambiguities

If there is any inconsistency:

- (a) within the provisions of this Contract;
- (b) between a provision of this Contract and a provision of Legislation;
- (c) between a provision of this Contract and a provision of the Operations Manual;
- (d) [Not used];
- (e) between a provision of this Contract and a provision of the Operating Plans; or
- (f) between any one or more of them,

unless directed to the contrary by the Purchaser, the provision which imposes the higher or more onerous standard on the Service Provider will prevail.

1.7 No bias against drafter

No provision of this Contract is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

1.8 Changes to indices

In this Contract:

- (a) a reference to an index published by the Australian Bureau of Statistics or another statistical service (**Statistical Service**) includes a reference to any replacement or renamed index performing substantially the same function as the original index;
- (b) a reference to a Statistical Service responsible for publishing an index includes a reference to any replacement or renamed Statistical Service performing substantially the same function in relation to the index; and
- (c) if there is no replacement or renamed index, or no replacement or renamed Statistical Service (as the case may be), the Purchaser will determine the appropriate replacement index or Statistical Service and notify the Service Provider.

1.9 Excluding liability

Any provision of this Contract which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law.

1.10 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).

1.11 Service Provider is an independent contractor

Subject to clause 8.2, the Service Provider acknowledges and agrees that;

- (a) it has entered into this Contract as an independent contractor; and
- (b) neither this Contract, the performance of the Transport Operations in accordance with this Contract nor any other aspect of the Service Provider's performance of its obligations under this Contract will constitute an appointment of the Service Provider as an agent for the Purchaser.

2. Contract Objectives and General Obligations

2.1 Contract Objectives

In addition to the objectives stated in the Act, the Purchaser's strategic objectives in entering into this Contract are to:

- (a) provide a framework for a genuine collaborative approach between the Purchaser and Service Provider to deliver high quality Public Passenger Services;
- (b) ensure financial sustainability for both the Purchaser and the Service Provider while also ensuring flexibility to meet changing circumstances;
- (c) improve accountability through clarity of roles and responsibilities which appropriately account for the respective sharing of risk;
- (d) achieve consistency of livery and branding across the entire Integrated Network;
- (e) deliver a contracting framework that enables:
 - (i) continuous and consistent improvement in the Customer's experience along the entire public transport journey through:
 - (A) a strong operational focus on accessibility, affordability, reliability, safety, and overall Customer service experience; and
 - (B) the management of clear Performance Measures and KPIs directly linked to the achievement of the strategic objectives;
 - (ii) planning and delivery agility to meet the strategic objectives of the State;
 - (iii) improved cost certainty to support robust budget management with respect to Network design and delivery;

- (iv) greater transparency of costs paid by the Purchaser; and
- (v) the ongoing and transparent realisation of efficiencies and cost savings through the delivery of an Optimised Network throughout the Contract Term.

2.2 Service Provider's General Obligations

On the terms and conditions of this Contract, the Service Provider must:

- (a) perform the Transport Operations; and
- (b) in doing so, use its best endeavours to assist the Purchaser to achieve the Contract Objectives.

Nothing in clause 2.2(b) is intended to expand or otherwise affect the scope of the Transport Operations or any warranty given by the Service Provider under this Contract.

2.3 Purchaser's General Obligations

On the terms and conditions of this Contract, the Purchaser agrees to pay the Service Payments to the Service Provider in consideration for performance of the Transport Operations.

3. Contract Term

3.1 Commencement

- (a) Subject to clause 3.1(b), the Contract and the Contract Term commence on the Commencement Date.
- (b) The parties have agreed that:
 - (i) the progressive implementation of certain obligations and initiatives provided for under the Mobilisation Program will commence on the date of execution of this Contract; and
 - (ii) accordingly, clauses 1, 3, 4, 5, 6, 10, 16, 17, 23, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 and the schedules to this Contract referred to in those clauses (to the extent referred to in those clauses) will commence on the date of execution of this Contract.

3.2 Extended Term

- (a) Subject to clause 3.2(b), the Purchaser may extend the Expiry Date by a period of two years from the Original Expiry Date until the Extended Expiry Date.
- (b) The Purchaser must give written notice of its intention to extend the Expiry Date by giving notice to the Service Provider on or before the Option Exercise Date.
- (c) If the Purchaser exercises its option to extend the Contract Term under clause 3.2(a), the new Expiry Date of the Contract will be the Extended Expiry Date.

3.3 End of Contract Term

The Contract Term ends on:

- (a) the Expiry Date; or
- (b) if earlier, the date on which this Contract is terminated, cancelled or surrendered in accordance with its terms or the Act,
(the **End Date**).

4. Representations and Warranties

4.1 Service Provider's decision to enter into Contract

- (a) The Purchaser gives no warranties and makes no representations to the Service Provider as to the accuracy, completeness or fitness for any purpose of the Information Documents. The Service Provider shall not in any way be relieved from any obligation under this Contract, nor shall it be entitled to claim against the Purchaser or any Purchaser Associate on grounds that any information, whether obtained from the Purchaser or otherwise (including information made available by the Purchaser), is incorrect or insufficient. In deciding to enter into this Contract, the Service Provider has made its own enquiries as to the accuracy and adequacy of that information.
- (b) The Service Provider shall be deemed to have satisfied itself:
 - (i) as to the subject matter of this Contract (including the Information Documents) and the nature and extent of the risks assumed by it under this Contract, and is solely responsible for the consequences of any misunderstanding or misinterpretation of the requirements of this Contract;
 - (ii) as to the quantity, quality, nature and extent of all resources (including human resources), materials and facilities necessary to enable it to meet, to comply with and to perform its obligations under this Contract; and
 - (iii) that each Service Payment provides it with sufficient allowance to perform the Transport Operations and to manage the risks assumed by it under this Contract.
- (c) The Service Provider acknowledges and agrees that it:
 - (i) has gathered all information necessary to fully inform itself as to the performance of:
 - (A) the Transport Operations; and
 - (B) its obligations generally under this Contract, including all regulatory requirements of the relevant Government Authorities in relation thereto;
 - (ii) has otherwise made its own independent assessment of, and has relied on its own enquiries, investigations, experience, skills and judgement in its entry into, and performance of this Contract; and
 - (iii) has not relied on any representations made, or information provided to it, by the Purchaser that has not been independently verified by the Service Provider.

4.2 Service Provider representations and warranties

- (a) On each Disclosure Date described in clause 4.2(b), the Service Provider represents and warrants to and for the benefit of the Purchaser that, except as disclosed in writing to, and expressly acknowledged in writing by, the Purchaser prior to the relevant Disclosure Date, each of the Service Provider Warranties are true, correct and not misleading.
- (b) Each representation and warranty made under clause 4.2(a) is deemed to be made with reference to the facts and circumstances then subsisting on the following dates (each a **Disclosure Date**):
 - (i) on the Commencement Date;
 - (ii) thereafter on the first Business Day of each of the months of January, April, July and October during the Contract Term; and
 - (iii) in the case of the Service Provider Warranty given under paragraph 1.3(c) of Schedule A2, on the date on which the relevant report or other information is provided by the Service Provider to the Purchaser (or any Purchaser Associate).

4.3 Reliance on Representations and Warranties

The Service Provider acknowledges that the Purchaser has entered into this Contract in reliance on the Service Provider Warranties being true, correct and not misleading on each Disclosure Date.

4.4 Notification of Change

The Service Provider must notify the Purchaser immediately on becoming aware that any of the Service Provider Warranties has become untrue, incorrect or misleading.

5. Governance

5.1 Purchaser's power to give directions

- (a) The Purchaser may give a direction to the Service Provider:
- (i) pursuant to any express provision of this Contract enabling the Purchaser to give a direction in relation to a particular thing, matter or circumstance;
 - (ii) requiring the Service Provider to:
 - (A) comply with an obligation imposed on the Service Provider by or in relation to this Contract;
 - (B) take a step which will support the compliance by the Service Provider with an obligation imposed on the Service Provider by or in relation to this Contract; or
 - (C) decline or cease to take a step which may prejudice the Service Provider's ability to comply with an obligation imposed on the Service Provider by or in relation to this Contract; and
 - (iii) in any other circumstance where the Purchaser considers it reasonably necessary to give a direction in relation to this Contract.
- (b) Subject to clause 5.1(e), the Service Provider must comply with all directions given by the Purchaser under this Contract.
- (c) The Purchaser may, as part of a direction or subsequent to a direction, prescribe a time or date by which the Service Provider must comply with the direction.
- (d) Except where this Contract provides otherwise, the Purchaser may give a direction orally but must confirm it in writing as soon as practicable.
- (e) If the Purchaser gives a direction under clause 5.1(a)(iii) and such direction will or is likely to:
- (i) materially adversely affect the ability of the Service Provider to comply with its obligations; or
 - (ii) otherwise constitute or give rise to any material change or variation to the Transport Operations that requires the Service Provider to incur material additional cost,
- then:
- (iii) the Service Provider may give notice to this effect to the Purchaser within 3 Business Days following receipt of the relevant direction; and
 - (iv) within 5 Business Days of receipt of such notice from the Service Provider, the Purchaser must either:
 - (A) if the Purchaser agrees that the direction will or is likely to have such effect and it wishes to pursue such direction, direct the Service Provider to

prepare an Indicative Change Proposal in respect of the subject matter of the direction and clause 23 will apply;

- (B) notify the Service Provider that it wishes to withdraw the direction, in which case the Service Provider will not be required to comply with the direction; or
- (C) notify the Service Provider that it disagrees that the direction will or is likely to have such effect, in which case either party may refer the matter for resolution under the Dispute Resolution Procedures,

provided that if the Purchaser does not notify the Service Provider within the timeframe required by clause 5.1(e)(iv) the direction will be deemed to have been withdrawn and the Service Provider will not be required to comply with such direction.

5.2 Service Provider's Representative

- (a) The Service Provider must appoint and retain a natural person to be the Service Provider's Representative under this Contract and, on the Commencement Date, the Service Provider appoints the person specified in the Contract Details to that role.
- (b) The Service Provider must ensure that the Service Provider's Representative has a detailed knowledge of the Transport Operations and the appropriate qualifications, skills and experience in all relevant areas to undertake the role of Service Provider's Representative.
- (c) The Service Provider's Representative will be deemed:
 - (i) to have authority from the Service Provider to exercise all the powers, duties, discretions and authorities to be exercised by the Service Provider's Representative under this Contract and to do so as the agent of the Service Provider; and
 - (ii) to have full power and authority to act for and on behalf of, and to bind the Service Provider under this Contract.
- (d) The Service Provider's Representative shall be the principal person responsible for direct liaison with the Purchaser in relation to this Contract and the Transport Operations during the Contract Term and the Service Provider must ensure that the Service Provider's Representative performs the duties of the Service Provider's Representative under this Contract, including to:
 - (i) understand, co-ordinate and manage the Transport Operations throughout the Contract Term;
 - (ii) liaise and generally deal with stakeholders in accordance with the Service Provider's obligations to do so under this Contract;
 - (iii) represent the views of the Service Provider and to manage and co-ordinate issues with any other Service Provider Associate prior to presentation to the Purchaser;
 - (iv) act as the principal point of contact between the Purchaser and the Service Provider in relation to this Contract; and
 - (v) oversee and co-ordinate the provision of all Deliverables by or on behalf of the Service Provider and to review and ensure the quality (including the clarity and completeness of documentation) and timeliness of provision of all such Deliverables.
- (e) The Service Provider is bound by and deemed to have knowledge of:
 - (i) notices or documents signed by the Service Provider's Representative;
 - (ii) matters within the knowledge of the Service Provider's Representative; and

- (iii) acts, omissions and defaults of the Service Provider's Representative, whether or not the Service Provider's Representative was acting within the scope of its authority at the time of the act, omission or default.
- (f) On reasonable notice from the Purchaser, the Service Provider's Representative must:
 - (i) be available by telephone during normal Business Hours; or
 - (ii) (at the Purchaser's reasonable discretion) attend any ad hoc meeting required by the Purchaser (and must provide reports and make any presentations that the Purchaser reasonably requests), to either:
 - (A) demonstrate the Service Provider's compliance with this Contract; or
 - (B) discuss other matters of importance to the conduct of the Transport Operations.
- (g) The Service Provider must:
 - (i) nominate an alternative person to act as the Service Provider's Representative in circumstances where the Service Provider's Representative will not be available in accordance with clause 5.2(f) (for example, due to illness or planned leave arrangements) (**Service Provider's Representative Delegate**); and
 - (ii) obtain the Purchaser's approval of the appointment.
- (h) If, at any time, the Purchaser makes a reasonable objection to the person holding the position of Service Provider's Representative or Service Provider's Representative Delegate, the Service Provider must terminate the appointment and appoint another Service Provider's Representative or Service Provider's Representative Delegate, as applicable.
- (i) The Service Provider may not replace the Service Provider's Representative with another person who is not an approved Service Provider's Representative Delegate, unless it first obtains the approval of the Purchaser, which must not be unreasonably withheld.

5.3 Contract Management Portal

- (a) The Purchaser may, during the Contract Term, notify the Service Provider that the Contract Management Portal (**CMP**) is to be used with effect from a date nominated by the Purchaser (**CMP Effective Date**) as the principal medium for formal communications and workflow between the Purchaser and Service Provider under this Contract.
- (b) From the CMP Effective Date, the Service Provider must:
 - (i) use the Contract Management Portal in accordance with this Contract; and
 - (ii) only use the Contract Management Portal for the purpose of performing this Contract.
- (c) Until the CMP Effective Date, communications under this Contract must be given in accordance with clause 39.1.
- (d) The Service Provider acknowledges and agrees that it will have no Claim against the Purchaser in respect of the introduction of the Contract Management Portal.

Part C – Transport Operations

6. Mobilisation Program and Transition In Period

6.1 Acknowledgement

The parties acknowledge and agree that:

- (a) under the terms of the 3G Contract, the Service Provider was responsible for delivery of the Existing Network; and
- (b) subject to this Contract, performance of the Transport Operations by the Service Provider under this Contract, and the administration of this Contract by the Purchaser, will require the parties to:
 - (i) develop and implement new systems and processes;
 - (ii) mobilise and manage existing and new resources in new ways;
 - (iii) train Staff;
 - (iv) establish new arrangements with third parties (including Subcontractors); and
 - (v) terminate existing arrangements with third parties,

including, during the Transition In Period, undertaking activities described in the Transition In Schedule in order to enable a transition from the Existing Network to an Optimised Performance Network.

6.2 Mobilisation Activities and Transition In

- (a) To reflect the reasonable mobilisation requirements of the Purchaser and the Service Provider described in clause 6.1, the parties have agreed the Transition In Schedule and the Mobilisation Program for the progressive implementation of certain obligations and initiatives under this Contract. In particular:
 - (i) in accordance with the Transition In Schedule:
 - (A) the redesign of the Existing Network through Performance Optimisation as contemplated by the Transition In Schedule;
 - (B) the implementation and use by the Service Provider of the Integrated Scheduling System; and
 - (C) the update of the Network Specification to reflect the Existing Network; and
 - (ii) in accordance with the Mobilisation Program:
 - (A) the implementation by the Service Provider of Business Improvement Measures (as identified in Schedule B3) pursuant to clause 11.2;
 - (B) [Not used]
 - (C) [Not used]
 - (D) the implementation by the Service Provider of an operational telematics system on Approved Contract Vehicles in accordance with clause 13.6(b); and
 - (E) the procurement and use of digital radios by the Service Provider that are compatible with the Purchaser Nominated Digital Radio Network as directed by the Purchaser in accordance with clause 12.12(f).
- (b) The Service Provider, must:

- (i) undertake and complete all the Mobilisation Activities in accordance with the Mobilisation Program and this Contract; and
 - (ii) without limiting clause 6.2(b)(i), during the Transition In Period, undertake the activities of the Service Provider set out in, and comply with, the provisions of the Transition In Schedule.
- (c) Notwithstanding any other provision of this Contract, during the Transition In Period:
- (i) clause 15;
 - (ii) clause 21; and
 - (iii) Schedule D2,
- will be deemed to be varied, in accordance with and as set out in the Transition In Schedule, but otherwise, all other provisions of this Contract will continue to apply in accordance with their terms.

7. Performance of Passenger Services

7.1 Obligation to perform the Transport Operations

On and from the Commencement Date up to and including the End Date, the Service Provider must undertake the Transport Operations, including deliver the Network as described in the Network Specification so as to meet or exceed the Performance Standard, all in accordance with this Contract and the Act.

7.2 Planning framework

The Service Provider acknowledges and agrees that:

- (a) during the Contract Term, the Purchaser will lead strategic planning for the Integrated Network and develop Public Transport Plans from time to time drawing on input from operators of relevant public transport modes in the Integrated Network (as determined to be necessary or desirable from time to time by the Purchaser);
- (b) as reasonably directed by the Purchaser, the Service Provider's Representative must provide planning inputs through the Purchaser's designated channels to support development of Public Transport Plans;
- (c) in accordance with clause 7.5, the Purchaser has discretion to direct a Planned Service Change at any time during the Contract Term, including to:
 - (i) respond to Public Transport Plans, the requirements of Customers or policy; or
 - (ii) achieve or support an Optimised Network; and
- (d) where reasonably directed by the Purchaser, the Service Provider must collaborate with and support the Purchaser in determining:
 - (i) opportunities and requirements for such Planned Service Changes; and
 - (ii) the associated new or changed Route Attributes.

7.3 Operational Risks

Subject to this Contract, the Service Provider must manage, and bears the risk of, all financial and operational impacts of any direction given by the Purchaser under clause 7.5(c)(i), including:

- (a) any impact on the ability of the Service Provider to deliver the Network in accordance with the Performance Standard and other requirements of this Contract or the Act;
- (b) any change in Peak Vehicle Requirement;
- (c) changes in requirements for Staff numbers;

- (d) scheduling activities; and
- (e) staff recruitment, training and rostering.

7.4 Not Used

7.5 Planned Service Changes

- (a) At any time during the Contract Term:
 - (i) the Purchaser may propose to the Service Provider that a Planned Service Change be implemented; or
 - (ii) the Service Provider may propose a Planned Service Change for consideration by the Purchaser.
 - (b) If a Planned Service Change is proposed under clause 7.5(a), the Purchaser will evaluate and plan the proposed Service Change in accordance with the Operations Manual and the Service Provider must, as directed by the Purchaser:
 - (i) develop and submit to the Purchaser:
 - (A) one or more Service Change Quotations for the proposed Service Change;
 - (B) where a result of the Service Change is that:
 - (I) there will be an increase in the number of Contract Vehicles required to be accommodated at a Depot and that increase exceeds the Spare Depot Capacity; or
 - (II) a Depot will no longer be required to accommodate Contract Vehicles,an Indicative Change Proposal for the required Change in Depot Capacity (and the Purchaser will be deemed to have given a direction to that effect pursuant to clause 12.11(b)(ii)); and
 - (C) any other information about the operational or financial impacts of the Service Change reasonably required by the Purchaser from time to time pursuant to the Operations Manual;
 - (ii) undertake tests of new Contract Vehicles, Trips, Routes, options for Route Alignment or other Route Attributes; or
 - (iii) determine the Timing Points and Run Times for the Service Change, each within the timeframes required or contemplated by the Operations Manual.
- (c) The Purchaser may, at its discretion:
 - (i) direct that the Service Provider implement a Service Change proposed by the Purchaser under clause 7.5(a)(i);
 - (ii) approve or reject a Service Change proposed by the Service Provider pursuant to clause 7.5(a)(ii); or
 - (iii) approve or reject a Service Change Quotation or request the Service Provider to modify a Service Change Quotation, including if the Purchaser considers the acceptance of the Service Change Quotation will not achieve Performance Optimisation.
- (c) Subject to clause 7.7, the Service Provider must not implement any Service Change other than a Planned Service Change directed by the Purchaser under clause 7.5(c)(i) or which is approved under clause 7.5(c)(ii) or 7.5(c)(iii) (**Approved Service Change**).
- (e) The Service Provider must:

- (i) implement an Approved Service Change in accordance with the processes and timeframes described in the Operations Manual; and
 - (ii) as directed by the Purchaser, participate in Situation Room Meetings for the introduction of the Approved Service Change.
- (f) The Service Provider acknowledges and agrees that the Purchaser:
- (i) subject to clause 7.6(c), is not obliged to invite the Service Provider to offer to deliver any New Route (as defined in clause 7.6) that is the subject of a Service Change unless the New Route is to be implemented as part of a Service Change during the Performance Optimisation Period;
 - (ii) is only obliged to invite the Service Provider to offer to provide an Existing Route (as changed) that is the subject of a Service Change in accordance with clause 7.6(c); and
 - (iii) subject to clauses 7.5(f)(i) and 7.5(f)(ii) may, at its discretion invite or appoint any person to deliver any Route, including in circumstances where the Service Provider has proposed the Service Change pursuant to clause 7.5(a)(ii) or has submitted a Service Change Quotation for the Service Change in accordance with clause 7.5(b)(i).
- (g) If there is an Approved Service Change pursuant to clause 7.5(d) or the Purchaser appoints a person other than the Service Provider to deliver a Route as contemplated in clause 7.5(f)(iii):
- (i) the Purchaser will amend the Network Specification to reflect the Service Change and the amended Network Specification will be deemed to replace the previous Network Specification;
 - (ii) the Service Payment will be adjusted in accordance with the provisions of paragraph 9 of Schedule D2;
 - (iii) where there is an increase in the Peak Vehicle Requirement as a result of the Approved Service Change:
 - (A) the Service Provider must obtain the Purchaser's approval to purchase Contract Vehicles to respond to the change in Peak Vehicle Requirement in accordance with the Operations Manual and Schedule B1 (such approval not to be unreasonably withheld or delayed); and
 - (B) the Fleet Payment will be increased in accordance with paragraph 5.2(e) of Schedule D2;
 - (iv) where there is a decrease in the Peak Vehicle Requirement as a result of the Approved Service Change, the Fleet Payment will be reduced in accordance with paragraph 5.2(i) of Schedule D2 and in accordance with paragraph 9.3 of Schedule D2; and
 - (v) the Service Provider acknowledges that:
 - (A) the requirements of clause 12.5(b) apply in relation to any Contract Vehicle disposed of or acquired in relation to the Approved Service Change; and
 - (B) the implementation of any Change in Depot Capacity referred to in clause 7.5(b)(i)(B) will be subject to the provisions of clause 23.

7.6 New Routes

- (a) The Purchaser will determine, in its reasonable discretion, whether the implementation of a Service Change will constitute:
- (i) the introduction of a new Urban Route (**New Urban Route**); or
 - (ii) the introduction of a new School Route (**New School Route**),

(each a **New Route**) for the purposes of this Contract.

- (b) In exercising its discretion under clause 7.6(a), the Purchaser will take into account whether:
- (i) in respect of a New Urban Route only, the Service Change will cause an increase of more than 10% in the Weighted Average Route Length of that Route, and the Weighted Average Route Length will be calculated in accordance with the following formula:

$$WARL = \frac{UiSK(p)}{TotTrips(p)}$$

Where:

- WARL** means the Weighted Average Route Length for the Route in respect of which the Service Change is to be effected;
- UiSK(p)** means the Urban In-Service Kilometres for period "p";
- TotTrips(p)** means the total number of Trips in period "p" shown in the Network Specification for that Route (including all Route Variants of that Route); and
- p** means the most recent whole calendar week preceding the date on which the Purchaser makes its determination under clause 7.6(a);

- (ii) in respect of a New School Route only, the Route is to service a School that is or is planned to be assigned a new unique code which identifies that School by the Department of Education and Training,

and may take into account any other facts or circumstances the Purchaser considers reasonably relevant.

- (c) If the Purchaser determines under clause 7.6(a) that the implementation of a Service Change will introduce a change to an Existing Route and will not introduce a New Route:
- (i) unless the Purchaser considers, acting reasonably, that the performance of the Service Provider under this Contract has not been satisfactory, the Purchaser must give the Service Provider reasonable opportunity to offer to continue to provide the Existing Route (as changed) before inviting another person to do so under clause 7.5(f)(ii); and
- (ii) if the Service Provider makes an offer reasonably acceptable to the Purchaser, the Purchaser must give a direction to the Service Provider pursuant to clause 7.5(c)(i) to continue to deliver the Existing Route subject to the Approved Service Change.
- (d) The Service Provider acknowledges that, in accordance with clause 7.5(f)(i), the Purchaser has absolute discretion in relation to implementation of New Routes.

7.7 Temporary Unplanned Service Changes

- (a) The Purchaser acknowledges and agrees that from time-to-time, the Service Provider may need to respond to unforeseen events (including Incidents or Service Disruptions and their consequences) that require a Temporary Unplanned Service Change to be implemented.
- (b) The Service Provider:
- (i) is not required to seek approval from the Purchaser for any Temporary Unplanned Service Change;
- (ii) must use its best endeavours to, as far as reasonably practicable:

- (A) minimise the impact of the Temporary Unplanned Service Change on Customers and the Level of Service; and
- (B) ensure Continuity of the Services;
- (iii) must comply with the Operations Manual, including:
 - (A) in relation to communication and coordination with the Purchaser in respect of the Temporary Unplanned Service Change; and
 - (B) to ensure Customers are informed of impacts resulting from the Temporary Unplanned Service Change;
- (iv) must provide the Purchaser with written details of the Temporary Unplanned Service Change within 24 hours of the Temporary Unplanned Service Change (which notification must include an Incident Report if the cause of the Temporary Unplanned Service Change is an Incident);
- (v) must comply with any reasonable direction given by the Purchaser to minimise any service disruptions and ensure Continuity of the Services;
- (vi) will not be entitled to any change to the Service Payment or any other additional payment or compensation as a result of any Temporary Unplanned Service Change; and
- (vii) may seek relief pursuant to clause 16 from the consequences of failing to meet a Performance Standard because of the impacts of the event giving rise to the Temporary Unplanned Service Change if that event was a Force Majeure Event or Purchaser Breach but otherwise will not be relieved from its obligation to meet the Performance Standard.

7.8 State Designated Events

- (a) The Service Provider acknowledges and agrees that the Purchaser:
 - (i) retains all rights to operate Scheduled Passenger Services for State Designated Events; and
 - (ii) may, at its discretion, engage any person it considers suitable to provide Scheduled Passenger Services for any State Designated Event.
- (b) The Service Provider acknowledges and agrees that:
 - (i) in accordance with the Operations Manual, from time to time, the Purchaser may give the Service Provider advance notification of State Designated Events;
 - (ii) the Service Provider must provide the State Designated Event Services for those State Designated Events as agreed between the Purchaser and the Service Provider from time to time in accordance with the procedures described in the Operations Manual, including the submission of a Service Change Quotation for providing those services; and
 - (iii) the Service Provider may not otherwise provide State Designated Event Services, including as a service provider to any person other than the Purchaser, without the Purchaser's prior written consent.
- (c) Where the Service Provider provides the State Designated Event Services as contemplated in clause 7.8(b)(ii), the Service Payment will be adjusted in accordance with the provisions of paragraph 9 of Schedule D2.
- (d) If requested by the Purchaser, the Service Provider must, where practicable, include a quotation in its Service Change Quotation for providing additional personnel or equipment in connection with State Designated Event Services, including security personnel, water barriers, traffic control devices and crowd control marshals (**SDE Auxiliary Services**).
- (e) The Purchaser may, at its discretion:

- (i) accept a quotation in respect of SDE Auxiliary Services in whole or in part, by directing the Service Provider to provide some or all of those SDE Auxiliary Services;
 - (ii) reject the quotation; or
 - (iii) adjust the quotation as agreed between the parties.
- (f) If the Purchaser accepts a Service Change Quotation in respect of SDE Auxiliary Services:
- (i) the Service Provider must provide the SDE Auxiliary Services as directed by the Purchaser under clause 7.8(e)(i); and
 - (ii) in accordance with paragraph 9.7 of Schedule D2, the Purchaser must pay the Service Provider the relevant amounts as quoted in the Service Change Quotation.
- (g) The parties acknowledge that the Performance Measures do not apply in respect of State Designated Event Services.

7.9 Other passenger services

The Service Provider warrants that no amount that is payable by the Purchaser under this Contract is also included in the amounts payable by any Government Authority under or in respect of an arrangement for the provision of Public Passenger Services by the Service Provider or a Service Provider Associate.

7.10 Cooperation with other operators

In conducting the Transport Operations, the Service Provider must cooperate with the operators of other Public Passenger Services in a manner that:

- (a) facilities efficient connections and transfers for Customers; and
- (b) does not impede other operators or service providers in the provision of those other services.

8. Ticketing and Fare Revenue

8.1 Ticketing

The Service Provider must:

- (a) offer and honour Tickets, collect Fares and inspect and reload Smartcards on behalf of the Purchaser in each case in accordance with the Operations Manual;
- (b) comply with all directions of the Purchaser in respect of Tickets or Fares (including all *TransLink Ticketing Advices*);
- (c) not:
 - (i) in any way deter any boarding Customers from purchasing a Ticket for a Trip;
 - (ii) offer or honour any Ticket or accept any Ticket other than a Ticket described in the Operations Manual; or
 - (iii) make any Fare or Ticket adjustment except as approved in the Operations Manual; and
- (d) at all times otherwise comply with the Operations Manual.

8.2 Service Provider agent of the Purchaser

The Service Provider acts as the agent of the Purchaser for the purpose of selling Tickets, supplying and reloading of Smartcards from the Ticketing Equipment, and the collection of Fares.

For the avoidance of doubt, the Service Provider does not act as the agent of the Purchaser for the purposes of subdivision 153-B of the GST Laws.

8.3 Requirements for dealing with Fare Revenue

- (a) The Service Provider must comply with the banking, reconciliation, settlement and apportionment processes for Fare Revenue received from Ticket transactions as specified by the Purchaser from time to time in the Operations Manual or as otherwise agreed.
- (b) Without limitation to clause 8.3(a), the Service Provider must:
 - (i) as a precondition to its right to receive any payment under this Contract, provide the Purchaser with a completed Direct Debit Authority; and
 - (ii) ensure that at all times the details provided in the Direct Debit Authority are current and correct (including by providing an updated Direct Debit Authority prior to any change in the Service Provider's details for settlement).
- (c) The Service Provider acknowledges and agrees that:
 - (i) subject to the *Fare Apportionment Rules* in the Operations Manual, all Fare Revenue received from Ticket transactions, whether as cash by the Service Provider or electronically through the Ticketing Equipment, belongs to and remains the property of the Purchaser;
 - (ii) the Service Provider is responsible for that Fare Revenue, from the time it is collected until it is remitted to the Purchaser, and
 - (iii) all cash received by the Service Provider from the sale of Tickets is for the account of the Purchaser and Moneys Owning.

8.4 Fare Revenue Protection Measures

The Service Provider must:

- (a) use its best endeavours to minimise Fare evasion on the Network, including by:
 - (i) ensuring that Drivers inspect Tickets as Customers board the Contract Vehicle;
 - (ii) except as permitted under the Operations Manual, ensuring that concession Tickets are not sold, or validated, unless the Customer produces a TransLink approved concession pass as outlined in the Operations Manual;
 - (iii) comply with the Purchaser's required procedures from time to time for notifying Senior Network Officers (SNOs) about suspected Fare evasion using the Ticketing Equipment; and
 - (iv) cooperate with SNOs and provide them with unhindered access to the Contract Vehicles to permit them to carry out their function;
- (b) if required by the Purchaser, participate in a task force on Fare evasion at least once per Contract Year; and
- (c) otherwise comply with any other revenue protection measures in the Operations Manual or this Contract (including clause 13.2).

8.5 TransLink Ticket Stock

- (a) The Service Provider must maintain sufficient levels of TransLink Ticket Stock to ensure it is able to issue paper Tickets as required at all times.
- (b) The Purchaser will be responsible for providing the Service Provider with the required TransLink Ticket Stock and the Service Provider must participate in such supply arrangements for TransLink Ticket Stock as notified by the Purchaser from time to time.
- (c) The Service Provider is responsible for the security and safe storage of TransLink Ticket Stock under its control.

- (d) The Service Provider must maintain a register of TransLink Ticket Stock deliveries in accordance with the Operations Manual.

9. Customer experience

9.1 Customer Service

- (a) The Service Provider must deliver the Network:
 - (i) competently and in accordance with the performance requirements in Schedule C4 (including in relation to punctuality and reliability);
 - (ii) using clean, comfortable and modern Contract Vehicles, which comply with the Minimum Contract Vehicle Specifications; and
 - (iii) in a manner that:
 - (A) is courteous to Customers and other road users;
 - (B) affords Customers with optimal comfort levels, having regard to the nature of the passenger service and the condition and amenities of the relevant Contract Vehicles;
 - (C) otherwise has primary regard to the needs and interests of Customers; and
 - (D) displays a strong orientation towards customer satisfaction.
- (b) The Service Provider acknowledges and agrees that its obligations under this clause 9.1 do not limit its obligations under the Standard or other Mandatory Requirements.

9.2 Lost Property

- (a) The Service Provider must provide a lost property service (**Lost Property Service**) for Customers that complies with this clause 9.2. If a Customer contacts the *TransLink Contact Centre* (as described in further detail in the Operations Manual) to enquire about lost property left on a Contract Vehicle, the Purchaser will provide the Customer with the Service Provider's contact details to make enquiries about the lost property directly with the Service Provider through the Lost Property Service.
- (b) The Service Provider must:
 - (i) provide reasonable facilities (approved by the Purchaser) for Drivers, Customers and other relevant persons to:
 - (A) report and hand in personal property found on Contract Vehicles; and
 - (B) report and collect personal property lost on Contract Vehicles;
 - (ii) ensure that, on return to the Depot and at the end of each shift, each Driver checks the Contract Vehicle for lost property;
 - (iii) ensure that any lost property found by a Driver is handed in to the Service Provider and establish an after-hours lost property handling procedure for Drivers and locate this facility within view of CCTV cameras;
 - (iv) ensure that each item of lost property handed in is item tagged and logged by the Service Provider in a lost property register;
 - (v) ensure its lost property register (at a minimum) records:
 - (A) the date the item of lost property was found;
 - (B) a description of the item;
 - (C) if claimed, the date of collection and the name and address of the person who collected the item;

- (D) where lost property is cash or coins, the amount of money found; and
- (E) in instances where Customers find and report lost property, but choose not to hand over the lost property to the Driver or Service Provider, relevant details of the person that has retained the lost property (to the extent practicable);
- (vi) not release lost property to any person (other than an authorised police officer) unless the person has provided suitable personal identification and appropriate evidence or validation of ownership of the lost item; and
- (vii) keep unclaimed lost property for a period of at least two (2) months, after which time the Service Provider may dispose of the lost property in a responsible manner.

9.3 Customer feedback

The Service Provider acknowledges and agrees that:

- (a) the Purchaser has established various systems to manage and process Customer feedback, as further described in the Operations Manual (**Feedback Channels**);
- (b) it will develop, implement and maintain at all times throughout the Contract Term a complaints handling process which:
 - (i) is effective in directing Customer feedback to the Feedback Channels; and
 - (ii) is otherwise effective in informing the Purchaser of any complaints or any other useful Customer feedback; and
- (c) without limitation to clause 9.3(b), it must, in accordance with Best Industry Practice:
 - (i) investigate each complaint received; and
 - (ii) in accordance with any direction from the Purchaser, address any issues in respect of the performance of the Transport Operations under this Contract that are disclosed in a complaint.

9.4 Research activities

- (a) The Service Provider must provide all reasonable cooperation to the Purchaser to facilitate research activities, including but not limited to Customer surveys, patronage surveys, passenger counts and other monitoring required by the Purchaser to be undertaken from time to time.
- (b) The Purchaser will provide the Service Provider with written notice prior to the Purchaser or Purchaser Associates boarding the Contract Vehicle to undertake any research activities, unless anonymity is required to ensure the effectiveness of the research activity

10. Compliance and Safety

10.1 Mandatory Requirements

In conducting the Transport Operations, the Service Provider must, and must procure that all Service Provider Associates:

- (a) comply with all Authorisations and Law;
 - (b) obtain, keep and maintain all Accreditations required to lawfully perform its obligations under this Contract; and
 - (c) comply with the Operations Manual,
- in each case, as applicable from time to time.

10.2 General obligations as to safety

The Service Provider must perform the Transport Operations:

- (a) so as to eliminate all risk of injury to or death of persons and damage to property or, to the extent that risk cannot be eliminated, the risk is reduced as far as reasonably practicable;
- (b) in accordance with Best Industry Practice; and
- (c) in a manner that is otherwise safe and fit for purpose.

10.3 Workplace health and safety

- (a) In performing the Transport Operations and its other obligations under this Contract, the Service Provider must:
 - (i) ensure, so far as is reasonably practicable, the health and safety of its Workers and any persons at the Workplace (in the area under the Service Provider's control), including any persons performing work at the Workplace, whether or not engaged by the Service Provider; and
 - (ii) use its best endeavours to ensure, so far as is reasonably practicable the health and safety of any persons at the Workplace (in those areas not under the Service Provider's control), including any persons performing work at the Workplace, whether or not engaged by the Service Provider.
- (b) The Service Provider acknowledges that, in performing the Transport Operations and its other obligations under this Contract:
 - (i) subject to clause 10.3(d), for the purposes of the WHS Law, it has management or control of the Workplace and as such must ensure compliance with its obligations under WHS Law in this regard; and
 - (ii) the Service Provider must ensure that (subject to clause 10.2):
 - (A) it manages or controls the Workplace;
 - (B) it provides appropriate training and supervision for all persons employed or engaged by it at the Workplace;
 - (C) it controls or directs the performance of work associated with the activities required under this Contract;
 - (D) it establishes and maintains safe work practices;
 - (E) it engages competent persons to carry out risk audits at its Workplace and of the work health, safety and rehabilitation system every two years. Such audits must be undertaken in compliance with good risk management principles and must identify, assess and control any work health and safety risks present at the Workplace;
 - (F) all Staff performing the activities required under this Contract are trained in work health and safety systems and procedures, including the work health, safety and rehabilitation management system, in particular in relation to the risks associated with performing the activities required under this Contract;
 - (G) it in all respects complies with all WHS Law;
 - (H) it informs the Purchaser of any changes of any Staff, corporate structure, management structure or supervisors that may affect the safety of its Staff or other Workers in performing the activities required under this Contract; and
 - (I) it otherwise complies with all Legal Requirements for work health, safety and rehabilitation management.

- (c) The Service Provider must, prior to the performance of any part of the Transport Operations and its other obligations under this Contract:
- (i) undertake an assessment of the work health and safety risks associated with the performance of the activities and identify and take all reasonably practicable steps to implement appropriate work health and safety risk control measures to eliminate and minimise all such work health and safety risks; and
 - (ii) as required by the Purchaser, provide the Purchaser with details of the work health and safety risk assessment undertaken and evidence of implementation of appropriate work health and safety risk control measures required under this clause 10.3.
- (d) If the Service Provider engages an Approved Subcontractor (in accordance with clause 11.4) or otherwise relinquishes to, or shares with, any person:
- (i) the management or control of the Workplace; or
 - (ii) control over the performance of work associated with the activities required under this Contract,
- it will ensure that person complies with the obligations referred to in this clause 10.3.
- (e) In order to meet its obligations under this clause 10.3, the Service Provider must adopt a work health, safety and rehabilitation management system that supports a systematic approach to managing risks to health and safety posed by the Workplace or the activities required under this Contract, including:
- (i) a process to identify safety hazards, assess the risks posed by such hazards and eliminate or control the risks; and
 - (ii) mechanisms to monitor the performance of the system and adapt and improve it as necessary.
- (f) The Service Provider will provide to the Purchaser such information about the operation and maintenance of the system referred to in clause 10.3(e) as the Purchaser directs. Any review of the operation or maintenance of the system by the Purchaser under this clause 10.3(f) does not constitute a verification or acceptance by the Purchaser of the adequacy of the system.
- (g) The Service Provider must ensure that it reasonably participates, and that its Staff reasonably participate, in any investigation carried out by the Purchaser relating to any Workplace incident that:
- (i) is notifiable under a WHS Law;
 - (ii) is in connection with the performance of the activities required under this Contract; and
 - (iii) occurs during the Contract Term.
- (h) The Service Provider must so far as is reasonably practicable consult, cooperate and coordinate the activities required under this Contract with any other person:
- (i) involved in performing work at the Workplace; or
 - (ii) who may otherwise have a duty or obligation under a WHS Law relating to the Transport Operations,
- to achieve effective coordination of the activities to ensure optimal health and safety risk management and enable the Purchaser and the Service Provider and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.

10.4 Counter Terrorism

- (a) If at any time the Service Provider is a SISTO, the Service Provider must participate in and implement all programs developed in accordance with all Mandatory Requirements and state and national policies for counter terrorism activities, as notified by the Purchaser or required by any Government Authority from time to time.
- (b) If at any time during the Contract Term:
 - (i) the Service Provider is declared to be a SISTO; or
 - (ii) the Service Provider's declaration as a SISTO is revoked, it will be a Change Event and:
 - (iii) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (iv) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

10.5 Disability Standards

The Service Provider must:

- (a) develop, implement and comply with a Disability Action Plan in accordance with paragraph 2.4 of Schedule C2;
- (b) make its Disability Action Plan available to Customers and prospective Customers, upon request, free of charge;
- (c) where relevant, publish its Disability Action Plan on its website;
- (d) within three months after the Commencement Date and on (or as soon as reasonably practicable after) the five year anniversary of the Commencement Date, provide the Purchaser with a copy of any compliance reports required under the *Disability Discrimination Act 1992* (Cth) to be prepared by the Service Provider; and
- (e) provide such reasonable details of the Service Provider's compliance with the Disability Action Plan as directed by the Purchaser from time to time.

11. Operational Management

11.1 Operating Plans

Subject to clause 11.2, on and from the Commencement Date:

- (a) the Service Provider must develop, maintain and update the Operating Plans in accordance with the requirements of Schedule C2 and this Contract; and
- (b) implement and comply with those plans at all times during the Contract Term.

11.2 Business Improvement Measures

- (a) The Service Provider must implement the Business Improvement Measures within the times prescribed in Schedule B3, and must comply with its other obligations under that Schedule in respect of the Business Improvement Measures.
- (b) If, during the Contract Term, the Purchaser identifies additional measures which in its opinion should be treated as Business Improvement Measures under this Contract, the Purchaser may notify the Service Provider of that fact and the parties will endeavour to agree on arrangements for the identified measures, or suitable equivalent measures, to be developed and implemented by the Service Provider.

11.3 Records and reporting

- (a) The Service Provider must:
- (i) throughout the Contract Term, keep and maintain records concerning the performance of the Transport Operations that are in accordance with all Mandatory Requirements, Best Industry Practice and any other specific requirements of this Contract;
 - (ii) prepare and provide to the Purchaser:
 - (A) the information described in Schedule C1 at the times set out in Schedule C1; and
 - (B) any other records or reports reasonably required by the Purchaser from time to time,in each case in the format reasonably required by the Purchaser from time to time;
 - (iii) ensure:
 - (A) that information held in electronic form is held in a format that is compatible with the Purchaser's systems for the time being so as to enable the Purchaser to review, inspect or audit that information in accordance with its rights under this Contract;
 - (B) its records provide sufficient detail to enable the Purchaser to reconcile the records with the content of reports and other information that the Service Provider is required to provide to the Purchaser under this Contract; and
 - (iv) retain all records it is obliged to keep and maintain under this Contract:
 - (A) at the Service Provider's headquarters at Robina, or otherwise at a place in South East Queensland approved by the Purchaser;
 - (B) for no less than 7 years from the End Date; and
 - (C) at all times in a form and manner that conveniently facilitates access, inspection, audit and reproduction as contemplated in this Contract.
- (b) The Service Provider must ensure that any Financial Statements provided by it under clause 15.5(d)(i)(B) are:
- (i) if the Service Provider is a reporting entity under the Corporations Act:
 - (A) general purpose financial statements prepared in accordance with the Accounting Standards and the Chart of Accounts; and
 - (B) audited, for the purposes of compliance with Corporations Act; or
 - (ii) if the Service Provider is not a reporting entity under the Corporations Act:
 - (A) special purpose financial statements prepared on a basis generally compliant with recognition and measurement principles prescribed within applicable Accounting Standards and any Mandatory Requirements applicable to special purpose financial statements; and
 - (B) audited in compliance with generally accepted audit standards.

11.4 Subcontracting

- (a) The Purchaser acknowledges and agrees that as at the Commencement Date, the subcontracting arrangements described in Schedule A4 are approved for the purposes of this clause 11.4 and do not require further approvals under this clause 11.4. The Service Provider must not otherwise engage any Subcontractor except in accordance with this clause 11.4.
- (b) The Service Provider must:

- (i) notify the Purchaser before entering into any procurement or negotiation process for any Material Subcontract; and
 - (ii) obtain the Purchaser's preliminary approval to that proposed Material Subcontracting.
- (c) At least 20 Business Days prior to the proposed effective date of any Material Subcontract, the Service Provider must provide the Purchaser with a copy of the agreed Subcontract for approval.
- (d) The Purchaser may, after reviewing a request for approval under clause 11.4(b) or clause 11.4(c):
 - (i) request further information from the Service Provider in relation to the proposed Material Subcontract or Subcontractor;
 - (ii) grant or deny approval (in the Purchaser's reasonable discretion); or
 - (iii) impose conditions on any approval to the proposed Material Subcontract.
- (e) The Service Provider must notify the Purchaser in writing (including providing a copy of the executed subcontract) within 10 Business Days of entering into any Subcontract approved under clause 11.4(d)(ii).
- (f) The Service Provider must ensure that each Approved Subcontractor:
 - (i) is suitably qualified, skilled and experienced, and holds all necessary approvals and Accreditations, to undertake the subcontracted activities;
 - (ii) is made aware of the terms and conditions of this Contract; and
 - (iii) other than an Approved Subcontractor that is referred to in Schedule A4, enters into or provides the Purchaser with:
 - (A) any document that the Purchaser reasonably requires (at its discretion) to be provided or entered into by any Approved Subcontractor and any other parties in connection with an Approved Subcontracting Arrangement; and
 - (B) any ancillary document required by the terms of a document referred to in clause 11.4(f)(iii)(A),in each case in a form and substance satisfactory to the Purchaser (acting reasonably) and executed by the Approved Subcontractor and all relevant counterparties (except the Purchaser if the Purchaser is a party to such document) prior to performing any part of the Transport Operations.
- (g) The terms and conditions of all Subcontracts must be consistent with the terms and conditions of this Contract.
- (h) Notwithstanding the appointment of any Subcontractor, the Service Provider:
 - (i) will continue to be bound by, and responsible for performance of this Contract;
 - (ii) is liable for any acts or omissions of any Subcontractor or any employee or agent of the Subcontractor as fully as if they were the acts or omissions of the Service Provider; and
 - (iii) must indemnify and release the Purchaser from any liability or Loss resulting from the acts or omissions of any Subcontractor.
- (i) At any time, the Purchaser may, without incurring any liability, by written notice to the Service Provider, withdraw its approval of an Approved Subcontracting Arrangement if, in the Purchaser's reasonable opinion, the Approved Subcontractor is not complying with the requirements of this Contract, or the Approved Subcontractor has caused damage or harm to the Purchaser's reputation.
- (j) Upon receipt of written notice under clause 11.4(i), the Service Provider must immediately terminate the Approved Subcontracting Arrangement and provide the Purchaser with such

evidence as the Purchaser may reasonably require as to the Service Provider's arrangements for the ongoing performance of the Transport Operations by the Service Provider.

- (k) The Service Provider must give to the Purchaser at least 40 Business Days prior written notice of its intention to terminate an Approved Subcontracting Arrangement for any reason and provide the Purchaser with such evidence as the Purchaser may reasonably require as to the Service Provider's arrangements for the ongoing performance of the Transport Operations by the Service Provider.

11.5 Drivers and other Staff

- (a) The Service Provider must ensure that all its Staff are properly authorised and directed and are suitably qualified, Accredited, skilled, trained and experienced to perform the Transport Operations, in each case:
 - (i) as required by Mandatory Requirements and this Contract; and
 - (ii) to the extent it imposes a higher or more onerous standard, as otherwise reasonably required to meet Best Industry Practice.
- (b) The Service Provider must ensure that each Driver (and all other frontline Staff members), at all relevant times:
 - (i) complies with all Mandatory Requirements;
 - (ii) receives appropriate ongoing structured training in accordance with the Training Plan referred to in paragraph 2.7 of Schedule C2, all relevant chapters of the Operations Manual and all Mandatory Requirements, including in respect of the Service Provider's obligations under clause 8.1;
 - (iii) displays a key focus on customer service and is courteous and helpful to Customers and other road users;
 - (iv) does not discriminate against any Customers or other person;
 - (v) is attired in a clean and well maintained manner;
 - (vi) has a thorough knowledge of the Fares, Tickets, Routes and Timetables for the Network and key interchange locations throughout the Integrated Network; and
 - (vii) is provided with a manual or written operating procedures that supports achieving compliance with the Service Provider's obligations in this clause 11.5.

12. Asset Management

12.1 Maintenance and safety of Contract Vehicles

The Service Provider:

- (a) must develop, maintain and implement a maintenance, testing and inspection program for the Contract Vehicles that ensures compliance with all Mandatory Requirements;
- (b) warrants that each Contract Vehicle will, at all relevant times:
 - (i) comply with the Minimum Contract Vehicle Specifications and all Mandatory Requirements;
 - (ii) be roadworthy;
 - (iii) be in a safe and suitable condition for the delivery of the Network; and
 - (iv) otherwise be fit for purpose; and
- (c) repeats the warranty set out in clause 12.1(b) on each Disclosure Date in accordance with clause 4.2(b) as though the warranty was a Service Provider Warranty.

12.2 Modification of Contract Vehicles

Subject to clause 12.12, the Service Provider must not modify or otherwise alter any Approved Contract Vehicle.

12.3 Exclusive use of Contract Vehicles

- (a) At any time the Purchaser may direct the Service Provider to ensure all or any Approved Contract Vehicles are reserved exclusively for delivery of the Network and Scheduled Passenger Services under this Contract (**Exclusive Use**). Such direction must:
- (i) identify the period of Exclusive Use; and
 - (ii) be given by the Purchaser no less than 20 Business Days prior to the start of that period.
- (b) Following receipt of a direction under clause 12.3(a):
- (i) the Service Provider must within 5 Business Days notify the Purchaser of any charter services or other operations in the nominated period of Exclusive Use that will require use of the specific Approved Contract Vehicles nominated by the Purchaser; and
 - (ii) subject always to clause 12.3(d), the requirements of clause 12.3(c) will not apply to any Approved Contract Vehicles nominated by the Service Provider in its notice under clause 12.3(b)(i) to the extent that the relevant charter or other services cannot reasonably be provided using other vehicles owned or controlled by the Service Provider or its Associates that are available for use.
- (c) Subject to clause 12.3(b)(ii), during any period of Exclusive Use, the Service Provider must not, without the Purchaser's consent, use any Approved Contract Vehicle for any purpose other than the delivery of the Network and Scheduled Passenger Services under this Contract.
- (d) The Service Provider must at all times give priority to use of the Approved Contract Vehicles for the Transport Operations regardless of whether they have been reserved for Exclusive Use or not.
- (e) Subject to clause 12.3(b), 12.3(d), 12.3(f) and the Mandatory Requirements, if at any time one or more Approved Contract Vehicles are not required for the performance of the Transport Operations then the Service Provider may use those Approved Contract Vehicles for charter services or other operations provided that any such use:
- (i) must not interfere with, conflict with or prejudice the Service Provider's performance of the Transport Operations and its other obligations under this Contract;
 - (ii) must be recorded in the Total Odometer Reading submitted in the Commercial Revenue Declaration for each relevant Contract Month in accordance with clause 15.4(a)(i); and
 - (iii) will be at the Service Provider's cost and risk.
- (f) The use of Approved Contract Vehicles as described in clause 12.3(e) does not limit, waive or vary the Service Provider's obligations and liabilities under this Contract in any way.

12.4 Allocation of Contract Vehicles to Routes

- (a) Subject to clause 12.4(b) the Service Provider:
- (i) must only use a vehicle to operate a General Route Service that is an Approved Contract Vehicle and that is of the type designated for use under this Contract for the operation of that General Route Service in the Network Specification (**Designated Vehicle Type**); and

- (ii) may not operate a General Route Service using any other vehicle.
 - (b) Clause 12.4(a) does not apply if the Service Provider has given prior written notice to the Purchaser:
 - (i) identifying the Approved Contract Vehicle of the Designated Vehicle Type and the General Route Services that are affected;
 - (ii) demonstrating, to the Purchaser's reasonable satisfaction, that due to unavoidable and unforeseeable operational constraints, the Service Provider will not be able to make the affected vehicle available to operate the affected General Route Service;
 - (iii) identifying an alternative Contract Vehicle (reasonably acceptable to the Purchaser) to be used as a temporary replacement and the proposed duration of the arrangement (which may not exceed 5 Business Days unless agreed otherwise by the Purchaser); and
 - (iv) warranting that no Approved Contract Vehicle of the Designated Vehicle Type:
 - (A) is being (or will be, at the relevant time) used by the Service Provider for any purpose other than the delivery of the Network under this Contract; and
 - (B) to the extent that any Approved Contract Vehicle of the Designated Vehicle Type is being (or will be, at the relevant time) used by the Service Provider to provide other General Route Services under this Contract, it is not reasonably practicable to redeploy that vehicle to operate the affected General Route Service,
- and the Purchaser has given consent to the proposed arrangement (such consent not to be unreasonably withheld or delayed).

12.5 Fleet management

- (a) The Service Provider must:
 - (i) ensure that each Contract Vehicle is fit for purpose having regard to Route Alignment, road geometry and required Customer carrying capacity and the Public Passenger Service which it will be used to provide;
 - (ii) dispose of and either acquire or hire replacement Contract Vehicles to ensure that no Contract Vehicle that is more than the maximum age specified:
 - (A) by the Purchaser in accordance with paragraph 4.2 of Schedule B1; or
 - (B) otherwise, in the Standard,is used to provide any Urban Route or School Route; and
 - (iii) at all times ensure that the number of Approved Contract Vehicles available to deliver the Network is equivalent to the total of the Peak Vehicle Requirement and Spare Vehicle Requirement (expressed as a whole number of vehicles).
- (b) The Service Provider must:
 - (i) ensure that each Contract Vehicle complies with the Minimum Contract Vehicle Specifications, the provisions of Schedule B1, Schedule D2 and the Operations Manual;
 - (ii) not hire any Contract Vehicle except as approved by the Purchaser pursuant to paragraph 5.3 of Schedule D2 and where such approval is given by the Purchaser, not without the Purchaser's further prior approval, acquire a Contract Vehicle as an alternative to that approved hire arrangement;
 - (iii) without limitation to clause 12.5(b)(i) obtain the Purchaser's prior approval before acquiring or hiring any vehicle of a type that is not at that time listed in the Approved Contract Vehicle Register; and

- (iv) without limitation to clause 12.5(b)(i), following acquisition of any Contract Vehicle, update the Approved Contract Vehicle Register in accordance with paragraph 4.4 of Schedule B1.
- (c) At any time during the Contract Term, the Purchaser may:
 - (i) purchase new or replacement Contract Vehicles for operation by the Service Provider; or
 - (ii) establish arrangements for the Purchaser to lease new Contract Vehicles to the Service Provider, for operation by the Service Provider.
- (d) If the Purchaser exercises its rights under clause 12.5(c), it will be a Change Event and:
 - (i) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).
- (e) At any time during the Contract Term, the Purchaser may:
 - (i) direct the Service Provider to replace one or more Contract Vehicles at an earlier time than nominated in the Contract Vehicle Replacement Plan; and
 - (ii) in any direction given under clause 12.5(e)(i), direct the Service Provider that the replacement Contract Vehicles are to be of a greater or lesser passenger carrying capacity to those nominated in the Contract Vehicle Replacement Plan.
- (f) If the Purchaser:
 - (i) gives a direction under clause 12.5(e)(ii); or
 - (ii) approves a Contract Vehicle Replacement Plan under which the Service Provider is, within the forthcoming 12 month period, to replace a Contract Vehicle with a Contract Vehicle with greater or lesser passenger carrying capacity than the Contract Vehicle that it is replacing,it will be a Change Event and:
 - (iii) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (iv) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

12.6 Vehicle Registration

On and from the Commencement Date, the Service Provider must ensure that:

- (a) every Contract Vehicle is registered in the name of the Service Provider;
- (b) each Contract Vehicle is registered under the appropriate registration category having regard to the Shifts on which it will be used in accordance with this Contract,

and the Service Provider acknowledges that:

- (c) an amount for registration of Contract Vehicles under the 'TransLink Class 10B' category will only be included in the Operating Payment if those Contract Vehicles are to be used on Shifts with Urban Routes only or Shifts with a combination of Urban Routes and School Routes (each such Contract Vehicle being an **Urban Contract Vehicle**);
- (d) the Service Provider is not entitled to payment for registration of a Contract Vehicle under the 'TransLink Class 10B' category if the Contract Vehicle is to be used other than as described in clause 12.6(c) (each such Contract Vehicle being a **School Only Vehicle**); and
- (e) these requirements are intended to support achievement of the Optimised Network.

12.7 Contract Vehicle livery

- (a) The Service Provider must ensure that the livery of all Approved Contract Vehicles at all times complies with the Operations Manual.
- (b) [Not used]
- (c) [Not used]
- (d) Subject to clauses 22.4 and 23, the Purchaser may direct the Service Provider at any time to provide an Indicative Change Proposal in response to a change or proposed change in the livery requirements described in the Operations Manual, at the Purchaser's discretion, on the basis of either or both of the following arrangements:
 - (i) the Service Provider will be required to make its own arrangements to procure any associated change to the livery within a reasonable period notified by the Purchaser in the direction; or
 - (ii) the Service Provider must give full cooperation to the Purchaser or any Purchaser Associate so that the Purchaser or Purchaser Associate can effect the required livery changes.
- (e) The Service Provider must remove all TransLink livery from:
 - (i) each Approved Contract Vehicle that is to be disposed of under clause 12.5(a)(ii) during the Contract Term, before it is disposed of; and
 - (ii) every Approved Contract Vehicle as soon as reasonably practicable (and no later than 60 Business Days) after the End Date, except to the extent the Service Provider has been engaged by the Purchaser as a Successor Service Provider.
- (f) If the Service Provider does not comply with clause 12.7(e)(ii):
 - (i) the Purchaser (or a nominee of the Purchaser) may access any relevant Approved Contract Vehicle at any time on reasonable notice to the Service Provider in order to remove the TransLink livery;
 - (ii) the Service Provider must, and must procure any relevant Service Provider Associate to, give full cooperation to the Purchaser and any person, or persons engaged by the Purchaser to effect the required livery changes; and
 - (iii) the Service Provider must indemnify the Purchaser for all costs incurred by the Purchaser in effecting the required livery change.

12.8 Vehicle Advertising

- (a) Subject to clause 12.8(e), the Service Provider acknowledges and agrees that:
 - (i) the Purchaser has the sole and exclusive right to Vehicle Advertising;
 - (ii) paragraph 7.2 of Schedule D2 applies in respect of any revenue derived from Vehicle Advertising (Static);
 - (iii) the Purchaser will retain all revenue derived from Vehicle Advertising (Digital); and
 - (iv) the Service Provider must not, and must not permit any person other than the Purchaser or a Purchaser Associate to, affix, display or otherwise publish any form of advertising either inside or on the outside of any Contract Vehicle.
- (b) Subject to clause 12.8(e), the Service Provider must make Contract Vehicles available and permit access to the Contract Vehicles in accordance with the Access Licence to enable:
 - (i) the Purchaser; and
 - (ii) any Purchaser Associate who is engaged or directed by the Purchaser to install Vehicle Advertising (each an **On Vehicle Advertiser**),to install, repair, maintain or remove Vehicle Advertising on the Contract Vehicles.

- (c) Subject to clause 12.8(e), the Purchaser will:
 - (i) use reasonable endeavours to procure that the On Vehicle Advertiser:
 - (A) as far as reasonably practicable, avoids damage to any property of the Service Provider, including the Contract Vehicles; and
 - (B) provides an indemnity to the Purchaser for the costs of rectifying any damage to property owned by the Service Provider or its Associates that is caused by the On Vehicle Advertiser, whether the On Vehicle Advertiser is in breach of the arrangements with the Purchaser or otherwise;
 - (ii) exercise its rights under any such indemnity, or any other relevant rights, for the benefit of the Service Provider; and
 - (iii) account to the Service Provider for amounts recovered from the On Vehicle Advertiser as contemplated in clause 12.8(c)(ii).
- (d) The Service Provider acknowledges and agrees that, except as provided for in clause 12.8(c), it will have no Claim against the Purchaser or any Purchaser Associate in respect of increased costs or in respect of delays or interruptions to any General Route Service and will not be relieved from performance of any other obligation under this Contract howsoever caused or affected by the requirement to make Contract Vehicles available under clause 12.8(b) and to grant access to the Purchaser and the Purchaser Associates under the Access Licence.
- (e) Where, at the Commencement Date, the Service Provider has existing arrangements with third parties relating to Vehicle Advertising, to the extent those arrangements are in respect of Contract Vehicles (and not in respect of other vehicles owned or operated by the Service Provider for operations other than the Transport Operations) (**Existing Arrangements**):
 - (i) the Service Provider must not, without the Purchaser's prior written consent, agree to vary or extend the duration or scope of the Existing Arrangement or enter into any new arrangement with respect to Vehicle Advertising;
 - (ii) clauses 12.8(a), 12.8(b), 12.8(c) and 12.8(d) do not apply until the expiry of the Existing Arrangement;
 - (iii) until that time, the Service Provider has the sole and exclusive right to Vehicle Advertising (and paragraph 7.1 of Schedule D2 applies in respect of any revenue derived from it); and
 - (iv) the Service Provider must ensure that all Vehicle Advertising under those Existing Arrangements at all relevant times complies with the requirements set out in the Operations Manual.
- (f) Not Used.
- (g) Not Used.

12.9 Depot standards

The Service Provider warrants that all Depots and Depot Equipment will at all times during the Contract Term:

- (a) be operated and maintained in accordance with Best Industry Practice and all applicable Mandatory Requirements; and
- (b) be fit for purpose.

12.10 Depot capacity

- (a) The Service Provider must at all times on and from the Commencement Date provide Depot capacity sufficient to accommodate:

- (i) the number and type of Contract Vehicles (including the Peak Vehicle Requirement and the Spare Vehicle Requirement) required for the proper and efficient delivery of the Network as at the Commencement Date; and
 - (ii) the activities necessary for the proper performance of the Transport Operations as at the Commencement Date.
- (b) The Service Provider acknowledges and agrees that, to the extent any Service Change or Change Event gives rise to an increase in the number of Contract Vehicles required to be accommodated at any Depot, the Service Provider must make any Spare Depot Capacity at the Depot available to accommodate those Contract Vehicles in priority to the use of that capacity for any other purpose, including the accommodation of any Non-Contract Vehicles.

12.11 Depot changes

- (a) The Service Provider may not:
- (i) close down or dispose of;
 - (ii) materially change the utilisation of;
 - (iii) acquire or establish; or
 - (iv) subject to clause 12.12, make any material alteration to, any Depot or Depot Equipment (each a **Change in Depot Capacity**) except:
 - (v) in accordance with this clause 12.11; or
 - (vi) to the extent required to comply with the Service Provider's obligations under clause 30.2.
- (b) At any time:
- (i) the Service Provider may seek the approval of the Purchaser for the Service Provider to implement a Change in Depot Capacity (to be implemented at its own cost); or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal concerning a Change in Depot Capacity, which will be a Change Event.
- (c) For the avoidance of doubt, the Purchaser will give reasonable consideration to any Change in Depot Capacity proposed by the Service Provider but subject to clause 22 and clause 23 will have no obligation to either give a direction under clause 12.11(b)(ii) or to issue a Change Notice approving the proposed change.

12.12 Change or modification of Service Contract Assets

- (a) The Service Provider must not modify, upgrade, alter or replace any Service Contract Asset except:
- (i) as directed or approved by the Purchaser in accordance with this clause 12.12.
 - (ii) in relation to the Contract Vehicles, as contemplated by clause 12.5;
 - (iii) in relation to the Depots and Depot Equipment, as contemplated by clause 12.11;
 - (iv) to the extent required to comply with the Service Provider's obligations under clause 30 (*Damage, Loss and Reinstatement*);
 - (v) to the extent comprising maintenance, overhaul or repair to a Service Contract Asset undertaken by the Service Provider so as to ensure that such Service Contract Asset complies with the requirements of this Contract; or
 - (vi) if the Service Provider is otherwise expressly required to do so under this Contract,

and if the Service Provider does modify, upgrade, alter or replace any Service Contract Asset in accordance with this clause 12.12(a), then:

- (vii) the Service Provider must, in respect of a Service Contract Asset that is a Contract Vehicle, update the Approved Contract Vehicle Register in accordance with paragraph 4.4 of Schedule B1; and
 - (viii) in respect of any other Service Contract Asset, the parties will update the Register of Service Contract Assets accordingly.
- (b) If directed by the Purchaser, the Service Provider must provide reasonable cooperation to the Purchaser in researching and trialling new technologies or potential modifications to existing Service Contract Assets in order to improve the performance of the Transport Operations.
- (c) At any time:
- (i) the Service Provider may seek the approval of the Purchaser (not to be unreasonably withheld) for the Service Provider:
 - (A) to adopt a new technology or upgrade an existing technology in relation to the delivery of the Network; or
 - (B) modify any existing Service Contract Asset to incorporate new or upgraded technologies,(each a **Change in Technology**); or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in respect of a Change in Technology, which will be a Change Event.
- (d) Subject to clause 12.12(c)(ii), clause 22 and clause 23, the Service Provider is responsible for all direct and indirect costs associated with the implementation of any Change in Technology and there will be no associated adjustment to the Service Payments in respect of any cost incurred by the Service Provider.
- (e) If a Change in Technology is implemented, the Service Provider:
- (i) must update the Minimum Contract Vehicle Specifications to ensure that it reflects the Change in Technology;
 - (ii) must ensure that the Service Contract Assets, as modified, upgraded or replaced:
 - (A) comply with all Mandatory Requirements and all other requirements under this Contract; and
 - (B) are otherwise fit for their intended purpose;
 - (iii) must at all times ensure the Continuity of the Services; and
 - (iv) subject to any consequential amendments to this Contract that are the subject of a Change Notice pursuant to clause 23.4(a)(v), will not be relieved from performance of any obligation under this Contract,
- (f) The parties acknowledge and agree that the Purchaser may direct the Service Provider to procure and use digital radios that are compatible with the Purchaser Nominated Digital Radio Network and that such direction will be deemed to be a direction by the Purchaser pursuant to clause 12.12(c)(ii) to prepare and submit an Indicative Change Proposal in respect of that Change in Technology.

13. Systems and Equipment

13.1 Integrated Scheduling System

- (a) The Service Provider must:

- (i) implement the Integrated Scheduling System in accordance with the Transition In Schedule; and
 - (ii) subject to clause 13.1(b), use the Integrated Scheduling System for the Network Scheduling Functions.
- (b) The Service Provider may, at its cost, use an alternative electronic scheduling system, but:
- (i) the Service Provider is responsible for ensuring that all Network Attributes, Contract Vehicle and Staff schedules are also entered by the Service Provider into the Integrated Scheduling System within the timeframes outlined in the Operations Manual and with reference to the interface standards for the Integrated Scheduling System contained in the Operations Manual; and
 - (ii) the Network Attributes to which the rights and obligations under this Contract relate are the Network Attributes contained in the Integrated Scheduling System.
- (c) The Service Provider must:
- (i) comply with the Integrated Scheduling System Requirements; and
 - (ii) without limitation to clause 13.1(d), comply with, and ensure that any Subcontractor complies with:
 - (A) the Operations Manual in respect of use of and access to the Integrated Scheduling System; and
 - (B) all relevant policies or guidelines provided by the Purchaser regarding the use of the Integrated Scheduling System, that are consistent with either or both of the Operations Manual and the Integrated Scheduling System Requirements.
- (d) The Purchaser may, at any time during the Contract Term, notify the Service Provider of an amendment of, update to or replacement of the Integrated Scheduling System Requirements, which may for the avoidance of doubt include replacement with an end user licence agreement or similar arrangement.
- (e) If the Purchaser notifies the Service Provider pursuant to clause 13.1(d) and the Service Provider demonstrates to the Purchaser's reasonable satisfaction that:
- (i) the amendment of, update to or replacement is a Change in ISS Requirements; and
 - (ii) the Service Provider will incur material additional costs as a consequence of the Change in ISS Requirements that would not otherwise have been incurred, it will be a Change Event and:
 - (iii) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of the Purchaser's direction; or
 - (iv) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

13.2 Ticketing Equipment

Subject to the Purchaser performing its obligations under clause 13.3(a), the Service Provider must:

- (a) ensure that no Contract Vehicle enters service unless Ticketing Equipment has been installed on it;
- (b) at all times take all reasonable steps to protect, preserve and secure the Ticketing Equipment and to keep the Ticketing Equipment in good repair (including by undertaking first line maintenance);

- (c) ensure the Ticketing Equipment on a Contract Vehicle is switched on, correctly logged in and fully operational before the Contract Vehicle enters service and replace any damaged or defective Ticketing Equipment identified using appropriate Spares before the vehicle enters service;
- (d) use its best endeavours to ensure that the Ticketing Equipment is switched on, correctly logged in and operational on each Contract Vehicle for the full duration of the period commencing when the Contract Vehicle departs the Depot to commence operation of a Vehicle Block to the time when it returns to the Depot;
- (e) if any Ticketing Equipment does not function or operate correctly when a Contract Vehicle is in service, such that Tickets cannot be issued or validated correctly, either:
 - (i) deploy a spare Contract Vehicle to replace the Contract Vehicle on which the defective Ticketing Equipment is installed; or
 - (ii) replace the defective Ticketing Equipment with appropriate Spares, in either case as soon as operationally practicable;
- (f) enter and record data using the Ticketing Equipment as required under the Operations Manual and, if, for any reason, data is not entered or recorded as required, provide details to the Purchaser as soon as reasonably practicable;
- (g) keep and provide reasonable technical details of Contract Vehicles to the Purchaser or Purchaser Associates to facilitate the installation, repair, removal, maintenance, upgrade, modification, testing or commissioning of the Ticketing Equipment (for example, the size of power cables, routing and fixing of power and communications cables and the like within Contract Vehicles);
- (h) subject to clause 32.1, provide all reasonable cooperation to the Purchaser and any Purchaser Associates:
 - (i) in the conduct of any testing required to be undertaken by the Purchaser or the Purchaser Associates from time to time in relation to Ticketing Equipment or ETS Software;
 - (ii) to facilitate the installation, repair, removal, maintenance, upgrade, modification, testing, commissioning, decommissioning, tagging, recording and auditing of the Ticketing Equipment or ETS Software by the Purchaser or Purchaser Associate; and
 - (iii) to retrieve or verify information recorded by Ticketing Equipment or ETS Software;
- (i) not alter, modify, dispose of or relocate the Ticketing Equipment or ETS Software;
- (j) not dispose of any Contract Vehicle before the Ticketing Equipment or ETS Software has been removed from that Contract Vehicle; and
- (k) otherwise comply with:
 - (i) the Operations Manual; and
 - (ii) all other reasonable operational procedures, maintenance instructions, guidelines, directions and training requirements for Ticketing Equipment issued by the Purchaser from time to time.

13.3 Ownership of Ticketing Equipment

- (a) The Purchaser will:
 - (i) provide the Service Provider with the Ticketing Equipment, including appropriate quantities of Ticketing Equipment spares, for use solely in the Transport Operations; and
 - (ii) subject to the Service Provider providing access to any relevant Contract Vehicle, Depot or other premises in accordance with clause 32.1, ensure that the Ticketing

Equipment and ETS Software is installed, removed, tested, commissioned and maintained by the Purchaser or Purchaser Associates.

- (b) The Service Provider:
 - (i) acknowledges and agrees that, at the Commencement Date, the Purchaser owns all Ticketing Equipment; and
 - (ii) must not grant or create, and must procure that no Service Provider Associate grants or creates, any Security Interest over the Ticketing Equipment.
- (c) The Service Provider must maintain an asset register that details the current location of all Ticketing Equipment and produce this register, upon reasonable request, to the Purchaser. The register must include current details of the precise location of the Ticketing Equipment (for example, Contract Vehicle number and Depot location).

13.4 Changes to Ticketing Equipment

- (a) The Purchaser may:
 - (i) introduce and install new Ticketing Equipment or ETS Software and associated systems;
 - (ii) modify, upgrade, augment or change existing Ticketing Equipment or ETS Software; or
 - (iii) change the supplier or maintainer of Ticketing Equipment or ETS Software, at any time during the Contract Term.
- (b) If the Purchaser takes a step, or notifies the Service Provider that it intends to take a step described in clause 13.4(a)(i) or clause 13.4(a)(ii) it will be a Change Event and:
 - (i) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).
- (c) Without prejudice to the Service Provider's obligations and the rights of the Purchaser under clause 13.1(d) and the Access Licence, the Service Provider must co-operate with the Purchaser and any Purchaser Associates in facilitating the procurement, installation, testing, commissioning and ongoing maintenance of any new Ticketing Equipment or ETS Software. This co-operation includes:
 - (i) participating in any trials or tests relating to the new Ticketing Equipment or ETS Software;
 - (ii) negotiating and agreeing an access plan (as contemplated in clause 32.1(c)) for the purposes of installation, testing, commissioning and ongoing maintenance of the new Ticketing Equipment or ETS Software;
 - (iii) at the request of the Purchaser, entering into a direct interface and coordination agreement with the supplier of the new Ticketing Equipment or ETS Software, or with any other relevant Purchaser Associate, on terms reasonably required by the Purchaser; and
 - (iv) complying with any reasonable operational procedures, guidelines, directions and training requirements of the Purchaser or any Purchaser Associate for the new Ticketing Equipment or ETS Software (including any procurement process in respect of new Ticketing Equipment or ETS Software) as issued from time to time.

13.5 Removal and return of Ticketing Equipment

- (a) If:
 - (i) at the End Date, clause 28 applies; or

- (ii) the Service Provider replaces a Contract Vehicle before the End Date in accordance with clause 12.5, clause 30.2 or the Contract Vehicle Replacement Plan in any circumstances (including if that Contract Vehicle has been damaged or destroyed),

as soon as reasonably practicable the Service Provider must:

- (iii) in the case of vehicle replacement, remove the Ticketing Equipment and ETS Software from the affected Contract Vehicle; and
- (iv) at the End Date, remove the Ticketing Equipment and ETS Software from all Contract Vehicles, unless clause 13.5(c) applies,

and, in each case, return the Ticketing Equipment to the Purchaser.

- (b) Subject to clause 13.5(c), the Purchaser will reimburse the Service Provider for all reasonable costs of removing the Ticketing Equipment and ETS Software save for costs in connection with:
 - (i) removing cabling;
 - (ii) repairing any holes, gaps or imperfections in paint or other surfaces apparent following the removal of the Ticketing Equipment and ETS Software; and
 - (iii) any works to make good any other damage to the Contract Vehicles.
- (c) If this Contract is terminated by the Purchaser under clause 20, or surrendered pursuant to s.48(1)(c) of the Act, the Service Provider must reimburse the Purchaser for, and indemnify the Purchaser against, all costs incurred by the Purchaser arising out of and incidental to the removal of the Ticketing Equipment and ETS Software.

13.6 Systems supplied by Service Provider

- (a) The Service Provider must implement and use on the Approved Contract Vehicles, at its cost:
 - (i) a telematics systems in accordance with clause 13.6(b); and
 - (ii) any other hardware or software system that is necessary to perform the Transport Operations other than the Integrated Scheduling System, Ticketing Equipment, ETS Software and relevant Additional Purchaser Supplied Items.
- (b) The Service Provider must ensure that on and from the first anniversary of the Commencement Date, each Approved Contract Vehicle is fitted with an operational telematics system that:
 - (i) complies with Best Industry Practice and with Schedule B1; and
 - (ii) without limitation to clause 13.6(b)(i):
 - (A) produces a systems generated report in the form required by Schedule B1 showing any and all data produced from the telematics system, including odometer readings and kilometres travelled for each Approved Contract Vehicle for designated time periods; and
 - (B) produces data feeds compatible with the Data Storage System in accordance with the requirements specified in the Operations Manual.
- (c) The Service Provider must provide a report referred to in clause 13.6(b)(ii)(A) as part of the Stage 1 MCPFR for the relevant Contract Month.
- (d) The Purchaser shall ensure that, once each Approved Contract Vehicle is fitted with an operational telematics system in accordance with clause 13.6(b), the data feeds generated by that system in accordance with clause 13.6(b)(ii)(B) are incorporated into the Performance Data as contemplated by and in accordance with the Performance Data Methodology.

13.7 Additional Purchaser Supplied Items

- (a) The Purchaser or any Purchaser Associate may at any time during the Contract Term provide equipment, assets or other property to the Service Provider for use in the performance of the Transport Operations (**Additional Purchaser Supplied Items**), in which case the Purchaser will provide the Service Provider with reasonable information as to the functionality, use and maintenance of the Additional Purchaser Supplied Items.
- (b) The Service Provider must use any Additional Purchaser Supplied Items for the purposes of performing the Transport Operations, in accordance with this Contract and otherwise in accordance with the information provided by the Purchaser under clause 13.7(a).
- (c) The provisions of this Contract in respect of the Ticketing Equipment and the ETS Software will apply in respect of the Additional Purchaser Supplied Items to the extent relevant to the Additional Purchaser Supplied Items and the Purchaser may for this purpose direct the Service Provider as to the extent to which the Ticketing Equipment and ETS Software provisions are to apply in respect of the Additional Purchaser Supplied Items.
- (d) Without limitation to clause 13.7(c), the Service Provider must:
 - (i) if Additional Purchaser Supplied Items are affixed to or incorporated into Approved Contract Vehicles, update the Approved Contract Vehicle Register accordingly; and
 - (ii) otherwise maintain an asset register that details the current location of all Additional Purchaser Supplied Items.
- (e) If the Purchaser exercises its rights under clause 13.7(a), to the extent that the Additional Purchaser Supplied Items require a Change in Depot Capacity under clause 12.11 or a modification of Service Contract Assets under clause 12.12, it will be a Change Event and:
 - (i) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of the Change Event; or
 - (ii) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

13.8 No Claim

The Service Provider acknowledges and agrees that:

- (a) without limiting the Purchaser's obligations under clause 13.3(a), the Purchaser makes no representations and gives no warranty in relation to the design, quality, suitability, performance or fitness for purpose of the Integrated Scheduling System, the Ticketing Equipment or the ETS Software;
- (b) it will have no Claim against the Purchaser or any Purchaser Associate in respect of increased costs or in respect of delays or interruptions to any General Route Service and will not be relieved from fulfilling any other obligation under this Contract howsoever caused or affected by:
 - (i) the requirement to comply with this clause 13 including the requirements to:
 - (A) use and maintain the Integrated Scheduling System, the Ticketing Equipment, ETS Software or, subject to clause 13.7(e), Additional Purchaser Supplied Items; and
 - (B) to grant access to the Purchaser in accordance with the Access Licence; or
 - (ii) any defect in the Integrated Scheduling System, the Ticketing Equipment or the ETS Software; and

- (c) subject to clause 31.4, it will indemnify the Purchaser for any Loss incurred by the Purchaser or any Purchaser Associate in connection with any failure to co-operate with the Purchaser or any Purchaser Associates under clause 13.1, 13.4, 13.6 or 13.8.

14. Marketing and Communications

14.1 Marketing and Communication Activities

- (a) The Service Provider acknowledges that:
 - (i) the Purchaser manages a system wide marketing and communication strategy for Public Passenger Services using the Purchaser Brands; and
 - (ii) from time to time the Purchaser may require the Service Provider to co-operate with local marketing and communications campaigns developed by the Purchaser that are relevant to the Network.
- (b) In order to give effect to the Purchaser's marketing and communications strategy, the Service Provider must:
 - (i) participate in and promote marketing and communications activities;
 - (ii) provide relevant Passenger Information and data to the Purchaser; and
 - (iii) ensure quality assurance of any Passenger Information provided to the Purchaser, as reasonably required by the Purchaser from time to time (**Marketing and Communication Activities**).
- (c) Without limiting their scope, the Marketing and Communication Activities may include promotions, information sessions, focus groups, surveys, community consultation, and participation in local or regional events (such as local shows etc.).
- (d) If the Purchaser requires the Service Provider to participate in any Marketing and Communications Activities, the Purchaser will provide the necessary marketing or communications materials and any training necessary for the Service Provider to participate effectively in the activity.
- (e) As directed by the Purchaser, the Service Provider must:
 - (i) ensure that marketing and communications materials are displayed prominently on or within Contract Vehicles (including, if directed, on internal walls of Contract Vehicles) or are otherwise disseminated effectively to Customers travelling on the Network;
 - (ii) ensure that up-to-date Passenger Information is displayed prominently inside the Contract Vehicle near the Driver's cabin; and
 - (iii) provide for free space on or within the Contract Vehicles to be available in order to promptly comply with any direction given by the Purchaser under this clause 14.1(e).
- (f) The Service Provider acknowledges and agrees that the Service Payment includes allowance for the Service Provider to install Passenger Information on all Contract Vehicles twice in each calendar year and that the Service Provider is not entitled to be otherwise reimbursed for the costs of those installations.
- (g) If the Purchaser gives a direction in accordance with clause 14.1(e) that requires the Service Provider to install Passenger Information on Contract Vehicles more than twice in a calendar year, the Purchaser will pay the Service Provider's costs directly and reasonably incurred in undertaking that installation.

14.2 Schools

The Service Provider must:

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- (a) pursuant to the Operations Manual, undertake communications campaign with relevant Schools in relation to changes to the Network impacting School Students; and
- (b) ensure that the 'TransLink Call to Action' as referred to in the Operations Manual is used in all communications with Schools.

14.3 Purchaser Branding

The Service Provider must:

- (a) at all times follow and implement the requirements in the Operations Manual in relation to the use of the Purchaser Brands;
- (b) where, under the Operations Manual, the Service Provider is required to use Purchaser Brands on any Customer information or promotional material produced by or on behalf of the Service Provider in connection with the Transport Operations including, but not limited to:
 - (i) advice regarding Service Changes;
 - (ii) consultation documents and materials;
 - (iii) letterhead; and
 - (iv) the Service Provider's website,the Service Provider must obtain the Purchaser's approval for that use; and
- (c) otherwise comply promptly with any reasonable directions of the Purchaser in relation to the use of the Purchaser Brands.

14.4 Service Provider trademarks and logos

- (a) The Service Provider must ensure that all branding, trademarks or logos of the Service Provider comply with the Operations Manual.
- (b) Except to the extent the Service Provider does not comply with clause 14.4(a), the Purchaser will reproduce the Service Provider's trademarks and logos together with the Purchaser Brands on other customer information and promotional material as reasonably agreed between the parties.

14.5 Website links

The Service Provider must ensure that its web pages directly relating to the Transport Operations include appropriate references and hyperlinks to the Purchaser's website.

14.6 Restrictions

The Service Provider must not:

- (a) on any Passenger Information or promotional materials relating to the Network, give any greater prominence to the trademarks or logos of the Service Provider relative to the prominence given to the relevant Purchaser Brands;
- (b) use any Contract Vehicle that displays the Purchaser Brands except as permitted under the Operations Manual, from time to time; or
- (c) except as expressly contemplated under this Contract, use the Purchaser Brands on any materials (including customer information or promotional materials) without the prior written consent of the Purchaser.

14.7 Communication with the media and social media

- (a) The Service Provider must:
 - (i) inform the Purchaser of any enquiries from the media concerning the Transport Operations as soon as practicable; and

- (ii) comply at all times with the Operations Manual.
- (b) The Purchaser and the Service Provider must use their best endeavours to share information with each other which relates to communication to the public about the Network and which may impact on the interests of either of them.

14.8 Production and publication of Timetables

- (a) The Purchaser will be responsible for the design, production, distribution, publication and storage of all Public Timetables (including installation of Public Timetables at Transit Stops).
- (b) As directed by the Purchaser from time to time, the Service Provider must:
 - (i) proof Timetable related information required for the production of Public Timetables; and
 - (ii) make Public Timetables available through the Service Provider's distribution channels,

in each case, in accordance with the requirements and timeframes in the Operations Manual.

Part D - Service Provider Performance

15. Performance Review

15.1 Performance Measures

- (a) For the purposes of:
- (i) Monthly Contract Payment and Performance Meetings described in clause 15.4(b);
 - (ii) periodic performance reviews contemplated in clause 15.5; and
 - (iii) calculation of Performance Payment Adjustments in accordance clause 21.7,
- the assessment of the performance of the Service Provider under this Contract will include measurement of the Level of Service against the Performance Measures and by reference to the scope of the Network set out in the Network Specification.
- (b) The Service Provider acknowledges and agrees that:
- (i) the adoption of Performance Measures under this Contract is designed to provide an incentive for the Service Provider to deliver the Network according to the following performance principles:
 - (A) the correct operation of the Ticketing Equipment to ensure the accurate creation and recording of Performance Data;
 - (B) all Trips are commenced;
 - (C) all scheduled Transit Stops are traversed;
 - (D) Customers can board and alight at their required Transit Stop;
 - (E) Transit Stops are traversed within defined tolerances of the scheduled times in the Timetable for the relevant Route;
 - (F) Trips depart on time; and
 - (G) late Trips are completed, particularly at times of the day and on Routes where Trips are less frequent;
 - (ii) subject to clause 15.2(c), the assessment of the Service Provider's performance against the Performance Measures under clause 15.1(a) will be based on the Performance Data; and
 - (iii) the Purchaser may publish details of the Service Provider's performance against the Performance Measures at any time without notice to the Service Provider.

15.2 Performance monitoring and data reliability

- (a) The Purchaser will:
- (i) subject to clause 15.2(i), monitor and measure the Service Provider's performance against the Performance Measures using a system that ensures, so far as is reasonably practicable, the integrity and quality of the relevant Performance Data;
 - (ii) during the Contract Term, use reasonable endeavours to continuously improve the reliability of the Performance Data (other than to the extent the reliability of the data is impaired by any act or omission of the Service Provider);
 - (iii) procure audits by a suitably qualified independent auditor (**Data Reliability Auditor**) of the reliability of the Performance Data generated in the period since the most recent previous audit, in accordance with the Data Reliability Audit

- Methodology (each such period being a Data Audit Period and each such audit being a Data Reliability Audit);
- (iv) as a minimum, procure:
 - (A) the First Data Reliability Audit in accordance with the Transition In Schedule; and
 - (B) thereafter, a Data Reliability Audit within 2 months of each anniversary of the First Data Reliability Audit.
 - (b) Without prejudice to the express requirements of this Contract, the Service Provider must provide reasonable cooperation and assistance to:
 - (i) the Purchaser to enable the Purchaser to monitor the Service Provider's performance against the Performance Measures; and
 - (ii) the Data Reliability Auditor to allow the Data Reliability Auditor to have regard to the Service Provider Data Matters.
 - (c) If a Data Reliability Audit identifies that there is a probability that any Performance Data is not reasonably reliable for the purpose of assessment of the Service Provider's performance against the Performance Measures for the relevant Data Audit Period, then:
 - (i) the Data Reliability Auditor will calculate that probability (expressed as a percentage of all Performance Data for that Data Audit Period) in accordance with the Data Reliability Audit Methodology; and
 - (ii) that percentage will be the Data Exclusion Factor (**Data Exclusion Factor**).
 - (d) After completion of a Data Reliability Audit, the Purchaser will:
 - (i) notify the Service Provider of the Data Exclusion Factor; and
 - (ii) provide reasonable detail summarising the calculation of the Data Exclusion Factor by the Data Reliability Auditor if requested to do so by the Service Provider.
 - (e) The Purchaser will apply the Data Exclusion Factor to the calculation of the Missed Trip Payment Adjustment for each Reference Period in the next Data Audit Period in accordance with paragraph 2 of Schedule C4.
 - (f) The Data Exclusion Factor:
 - (i) will be determined in accordance with this clause 15.2 on the basis of the probable reliability of the Performance Data for the previous relevant Data Audit Period, but be applied for the next relevant Data Audit Period in accordance with clause 15.2(e); and
 - (ii) will be final and binding on the parties.
 - (g) The parties acknowledge and agree that, in addition to any other provisions of the Data Reliability Audit Methodology,
 - (i) the Service Provider may, not less than 5 Business Days prior to commencement of each Data Reliability Audit, submit a list of concerns with regard to the reliability of the Performance Data for the Data Audit Period in respect of which the Data Reliability Audit is to be conducted (each such list being the **Service Provider Data Matters**); and
 - (ii) the Data Reliability Audit Methodology will require the Data Reliability Auditor to:
 - (A) give reasonable consideration to the Service Provider Data Matters; and
 - (B) produce its audit report on the basis that it is addressed to, and may be relied on by, the Purchaser and the Service Provider.

- (h) The parties acknowledge and agree that it is the sole responsibility of the Data Reliability Auditor to determine the manner in which it will address the Service Provider Data Matters (if at all).
- (i) If during a Contract Month, there is no Performance Data available for measurement of the Service Provider's performance against the Performance Measures for a period of more than 8 consecutive hours other than as a result of:
 - (i) any act or omission of the Service Provider or any Associate of the Service Provider; or
 - (ii) without prejudice to clauses 16 and 17, a Force Majeure Event.the Purchaser will exclude all affected Trips from measurement against the Performance Measures for that Contract Month.
- (j) The Service Provider acknowledges and agrees that the Service Provider will have no entitlement or Claim in respect of any alleged or actual inaccuracy, omission or other defect in any Performance Data except for:
 - (i) the application of the Data Exclusion Factor in accordance with clause 15.2(e);
 - (ii) pursuant to clause 15.2(i); or
 - (iii) in respect of the effects of a Force Majeure Event or Purchaser Breach, any entitlement of the Service Provider for relief pursuant to clause 16.4.

15.3 Change to Performance Measures

- (a) Subject to clause 23, the Purchaser may, at its discretion direct a change to any Performance Measure under this Contract, including without limitation, the removal, addition or substitution of a Performance Measure and that change will be a Change Event.
- (b) Before giving a direction under clause 15.3(a), the Purchaser must direct the Service Provider to prepare and submit an indicative Change Proposal.

15.4 Monthly payment and performance review process

- (a) Subject to clause 21.3, in respect of each Contract Month:
 - (i) on or before the 7th Business Day of the next Contract Month, the Service Provider must prepare and submit to the Purchaser:
 - (A) a Stage 1 MCPPR; and
 - (B) all relevant financial and operational information reasonably directed by the Purchaser to support the matters contained in the Stage 1 MCPPR, so as to enable the Purchaser to calculate the amount of all Adjustment Payment elements to be calculated under Schedule D2 in respect of the Reference Period to which the information relates;
 - (ii) on or before the 12th Business Day of the next Contract Month, the Purchaser must prepare and issue to the Service Provider a:
 - (A) Stage 2 MCPPR; and
 - (B) supporting Performance Assessment Report;
 - (iii) the parties must coordinate a Monthly Contract Payment and Performance Meeting to be held between them between the 15th and 20th Business Day of the next Contract Month; and
 - (iv) the Service Provider's Representative must:

- (A) review the relevant Stage 2 MCPPR prior to the Monthly Contract Payment and Performance Meeting to identify if, in the Service Provider's opinion, there are any issues or discrepancies;
 - (B) participate in the Monthly Contract Payment and Performance Meeting; and
 - (C) in the Monthly Contract Payment and Performance Meeting, discuss any issues or discrepancies in respect of the relevant Stage 2 MCPPR.
- (b) The purpose of each Monthly Contract Payment and Performance Meeting will be to:
- (i) discuss issues relating to the Service Provider's standard of performance of the Transport Operations including any issues the Service Provider wishes to raise in relation to the Stage 2 MCPPR or the related Performance Assessment Report;
 - (ii) discuss any other matters of importance in relation to the delivery of the Network or other obligations of the Service Provider including, but not limited to, safety issues and environmental issues;
 - (iii) seek to agree an action plan for the progress and resolution of all matters raised in this manner, which includes allocation of responsibility for each action and a date by which the action shall be completed; and
 - (iv) discuss proposals (if any) to be submitted by the Service Provider for potential innovations in delivering the Network.
- (c) To facilitate the efficient conduct of each Monthly Contract Payment and Performance Meeting:
- (i) the parties will follow the agenda contained in the relevant Stage 2 MCPPR; and
 - (ii) in advance of the meeting the Service Provider must provide the Purchaser with:
 - (A) any information reasonably directed by the Purchaser from time to time about the performance of the Transport Operations; and
 - (B) detailed written particulars of any matters that the Service Provider wishes to raise with the Purchaser at the Monthly Contract Payment and Performance Meeting, to the extent not included in the Stage 1 MCPPR.
- (d) On or before 25 Business Days after the end of the Contract Month in respect of which the Stage 1 MCPPR was issued, the Purchaser:
- (i) will prepare minutes of the proceedings of the Monthly Contract Payment and Performance Meeting relating to that Contract Month and a Stage 3 MCPPR for the purposes of clause 21.2(a); and
 - (ii) provide a copy of each of those documents to the Service Provider.

15.5 Periodic Review under section 46 of the Act

- (a) After the end of each Financial Year, in respect of that Financial Year and in accordance with this clause 15.5, the Purchaser will conduct a review (**Annual Performance Review**) of whether the Service Provider is meeting the requirements of the Contract. An Annual Performance Review will include consideration of:
- (i) the Service Provider's compliance and non-compliance with its obligations under this Contract generally;
 - (ii) the Service Provider's performance against the Performance Measures; and
 - (iii) the Service Provider's performance against the Key Performance Indicators.
- (b) The arrangements described in this clause 15.5 for review of the performance of the Service Provider are without prejudice to the rights of the Purchaser to undertake such a review pursuant to section 46(1) of the Act at any other time.

- (c) The Service Provider acknowledges and agrees that the Annual Performance Review to be conducted in 2021 will constitute a midterm review for the purposes of section 46 (2) of the Act.
- (d) The Service Provider must:
 - (i) assist the Purchaser to undertake its Annual Performance Review by providing:
 - (A) an Annual Performance Review Report; and
 - (B) its Financial Statements,in respect of the relevant Accounting Period to the Purchaser:
 - (C) on or before the last Business Day of the fourth month following the end of the relevant Financial Year; or
 - (D) if Service Provider has an Accounting Period which is not a Financial Year, on or before the last Business Day of the fourth month following the end of the Service Provider's Accounting Period;
 - (ii) provide any further information reasonably required by the Purchaser for the review as soon as reasonably practicable on being requested to do so;
 - (iii) comply with all other reasonable directions issued by the Purchaser relating to the review; and
 - (iv) otherwise co-operate with the Purchaser to ensure that any review is completed promptly and effectively.
- (e) The Purchaser will:
 - (i) use reasonable endeavours to complete the Annual Performance Review within 30 Business Days after receipt of all of the information referred to in clauses 15.5(d)(i) and 15.5(d)(ii) (and for clarity, if clause 15.5(d)(i)(D) applies, will utilise the information referred to in clause 15.5(d)(i) that was most recently provided by the Service Provider); and
 - (ii) confirm the outcome of the Annual Performance Review to the Service Provider's Representative as soon as reasonably practicable on completion of the assessment.
- (f) The outcome of the Annual Performance Review will include a reasonable determination by the Purchaser for the purposes of section 46(8) of the Act, either that:
 - (i) the Service Provider's performance has been satisfactory; or
 - (ii) the Service Provider's performance has been inadequate in a significant respect, in which case clause 15.6 will apply.
- (g) The review for the purposes of section 46(1) of the Act will not include consideration of the Service Provider's Financial Statements.

15.6 Rights under section 46(9) of the Act

- (a) If the Purchaser determines that the Service Provider's performance has been inadequate in a significant respect:
 - (i) pursuant to section 46(8) of the Act, the Purchaser:
 - (A) will notify the Service Provider of the inadequacy;
 - (B) may direct the Service Provider to take specified steps to remedy the inadequacy within a specified time; or
 - (C) direct the Service Provider to prepare a rectification strategy setting out steps proposed to be taken by the Service Provider that will improve its

performance to a satisfactory level within a time period acceptable to the Purchaser; and

- (ii) within such period directed by the Purchaser, the Service Provider must:
 - (A) take the steps specified by the Purchaser under clause 15.6(a)(i)(B) to remedy the inadequacy within the specified time; or
 - (B) where directed under clause 15.6(a)(i)(C), provide details of its proposed rectification strategy to the Purchaser for review, and implement that strategy.
- (b) If the Service Provider fails to comply with a direction under clause 15.6(a)(i)(B) or fails to implement a rectification strategy in accordance with clause 15.6(a)(i)(C), section 46(9) of the Act will apply and it will be an Immediate Termination Event.

16. Force Majeure Events and Purchaser Breach

16.1 General obligations in respect of Force Majeure Events

- (a) If either party is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, irrespective of whether the Service Provider wishes to claim relief under clause 16.2, as soon as practicable following the occurrence of the Force Majeure Event, the parties must consult with each other in good faith on a continuing basis (being no less frequently than every 5 Business Days) and use all reasonable endeavours to agree and implement an appropriate course of action and plan to mitigate or overcome the effects of the Force Majeure Event with the paramount objective of securing the continued performance of the Contract and the continued performance of the Transport Operations in accordance with this Contract.
- (b) Each party must notify the other party as soon as practicable if at any time it receives or becomes aware of any further material information relating to the Force Majeure Event, giving details of that information.
- (c) For the avoidance of doubt, the Service Provider will not have any Claim against the Purchaser for any additional costs incurred by the Service Provider as a result of the Force Majeure Event.
- (d) For the duration of the Force Majeure Event, the obligations of the Purchaser which cannot be performed because of the Force Majeure Event will be suspended.

16.2 Service Provider's entitlement to relief for a Force Majeure Event or Purchaser Breach

If and to the extent that a:

- (a) Force Majeure Event is (or would, if unremedied by the Service Provider, be); or
- (b) a Purchaser Breach is (or would, if unremedied by the Purchaser, be),

the direct cause of any failure by the Service Provider to comply with its obligations under this Contract in whole or in part (including a failure to meet a Performance Standard), the Service Provider is entitled to apply to the Purchaser for relief under this clause 16.

16.3 Claim for relief

To claim relief under this clause 16 the Service Provider must:

- (a) as soon as practicable (and in any event within 24 hours in the case of a Force Majeure Event) after it became aware that the Force Majeure Event or Purchaser Breach has adversely affected, or is likely to adversely affect, the ability of the Service Provider to perform an obligation under this Contract (including, if relevant, the obligation to achieve a Performance Standard) (**Affected Obligations**) provide written notice to the Purchaser of that fact together with:

- (i) a statement that the Service Provider is claiming relief under this clause 16; and
- (ii) the basis on which the relief is being claimed;
- (b) within 10 Business Days after it became aware that the Force Majeure Event or Purchaser Breach has adversely affected, or is likely to adversely affect, the ability of the Service Provider to perform the Affected Obligations, demonstrate to the reasonable satisfaction of the Purchaser:
 - (i) that a Force Majeure Event or Purchaser Breach has occurred;
 - (ii) that:
 - (A) the Force Majeure Event is (or would, if unremedied by the Service Provider, be); or
 - (B) the Purchaser Breach is (or would, if unremedied by the Purchaser, be), the direct cause of a failure by the Service Provider to perform the Affected Obligations in whole or in part and the period for which this failure is likely to subsist;
 - (iii) that the failure or likely failure could not reasonably be expected to be remedied, mitigated, overcome or avoided by the Service Provider in accordance with Best Industry Practice; and
 - (iv) to the extent that the Force Majeure Event or Purchaser Breach still subsists, the Service Provider is using its best endeavours to prevent or to minimise the impact of the Force Majeure Event or Purchaser Breach on performance of the Affected Obligations (including by putting in place temporary measures acceptable to the Purchaser (acting reasonably) to enable the Service Provider to perform the Affected Obligations so far as that is reasonably practicable at the relevant time); and
- (c) notify the Purchaser as soon as practicable if at any time it receives or becomes aware of any further material information relating to the Force Majeure Event or Purchaser Breach or its consequences that renders the information previously provided inaccurate or misleading.

16.4 Relief Available

- (a) Provided the Service Provider has complied with this clause 16, then subject to clause 17:
 - (i) the requirement to perform the Affected Obligations (other than any obligation to pay money) will be suspended and the Service Provider's failure to perform the obligations (other than an obligation to pay money) will not be a breach of this Contract or a Non-Compliance Event or a Show Cause Event;
 - (ii) the Purchaser will grant the Service Provider relief from any Missed Trip Payment Adjustments and penalty units (to the extent applicable) that would otherwise have arisen, and
 - (iii) any Completed Trips that are affected will be disregarded for the purposes of the calculation of the On-Time Running Payment Adjustment, in each case:
 - (iv) to the extent only that the Service Provider is prevented from performing Affected Obligations despite having taken reasonable steps to overcome or mitigate the effects of the Force Majeure Event or Purchaser Breach; and
 - (v) from the time of the Force Majeure Event or Purchaser Breach until the time at which the Purchaser determines (acting reasonably) that the Force Majeure Event or Purchaser Breach and its consequences cease to prevent the Service Provider from performing the Affected Obligation (including the obligation to meet the Performance Standard) (**Period of Suspension**).

- (b) Notwithstanding that the Service Provider's obligations, to the extent affected by the Force Majeure Event or Purchaser Breach, are suspended, the Purchaser will continue to pay the Service Payments in respect of any of the Transport Operations affected by the Force Majeure Event or Purchaser Breach for the Period of Suspension after adjustments for:
 - (i) subject to paragraph 9.8(b) of Schedule D2, the Force Majeure Adjustment calculated under paragraph 9.8(a) of Schedule D2; and
 - (ii) the insurance proceeds paid (or that would have been payable had the Service Provider complied with this Contract and the Insurances) or any other insurance in relation to revenue or business interruption as a result of the Force Majeure Event or Purchaser Breach.
- (c) During the Period of Suspension, the failure to perform the obligations of the Service Provider that are so suspended will not be a breach of this Contract by the Service Provider.

17. Limitations on Relief

17.1 Late notices

If the Service Provider fails to comply with its obligations under clause 16.3, then any relief granted in respect of the Force Majeure Event or Purchaser Breach shall be at the discretion of the Purchaser.

17.2 Alternative arrangements

The Purchaser may make its own arrangements for alternate means of providing any of the Transport Operations that have been suspended as a result of a Force Majeure Event, and in any such case clause 27 will apply.

17.3 Duty to mitigate

During any period in which a Force Majeure Event or Purchaser Breach impairs or may impair the Service Provider's ability to comply with its obligations under this Contract (including its ability to meet a Performance Standard), the Service Provider must do everything it can reasonably do within its power to avoid, overcome or mitigate the effect of it being prevented from complying with its obligations.

17.4 Where relief is not available

- (a) Nothing in clause 16.4 entitles the Service Provider to any relief from its obligations under this Contract which are not affected by the relevant Force Majeure Event or Purchaser Breach.
- (b) No relief is available to the Service Provider under clause 16 if and to the extent that:
 - (i) an Immediate Termination Event was subsisting at the time of the Force Majeure Event or Purchaser Breach;
 - (ii) the relevant Force Majeure Event or Purchaser Breach or its consequences could have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations of the Service Provider under this Contract;
 - (iii) the relevant Force Majeure Event or Purchaser Breach or its consequences were otherwise caused or contributed to directly or indirectly by the breach or negligence of the Service Provider or any Service Provider Associate or the failure by the Service Provider or any Service Provider Associate to comply with their respective obligations;

- (iv) the Service Provider would have been entitled to coverage under the Insurances for the Force Majeure Event or Purchaser Breach or its consequences if the Service Provider:
 - (A) had complied with its obligations under clause 29 of this Contract; or
 - (B) had complied with the terms of the Insurances; or
- (v) the relevant Force Majeure Event or Purchaser Breach or its consequences were otherwise within the control of the Service Provider (including within the scope of contingency planning that the Service Provider had or ought to have had in place in accordance with Best Industry Practice).

17.5 Termination for extended Force Majeure Event

If:

- (a) the Service Provider has been unable to implement appropriate measures to avoid, overcome or mitigate the effects of the relevant Force Majeure Event and facilitate the continued performance of its obligations under this Contract; and
- (b) the relevant Force Majeure Event is continuing, or its consequences remain, such that the Service Provider:
 - (i) has been unable to comply with its obligations under this Contract for a period of more than 45 Business Days from the date of the Force Majeure Event; or
 - (ii) is likely to be unable to comply with its obligations for a period of more than 60 Business Days from the date of the Force Majeure Event,

then the Service Provider will be deemed to be unable to deliver all or any part of the Network for the purposes of section 47(3) of the Act and it will be an Immediate Termination Event.

18. Key Performance Indicators

18.1 Relationship with section 45 of the Act

- (a) The Service Provider acknowledges and agrees that:
 - (i) without limiting any other obligation of the Service Provider under this Contract, it is a condition of this Contract that the Service Provider must achieve the compliance targets identified in Schedule C3; and
 - (ii) each compliance target identified in Schedule C3 is a 'Key Performance Indicator' for the purposes of section 45 of the Act.
- (b) The Service Provider and Purchaser acknowledge and agree that:
 - (i) a failure by the Service Provider to achieve a compliance target identified in Schedule C3 will not of itself be a Show Cause Event; and
 - (ii) Schedule C3 sets out the circumstances in which one or more KPI Breaches will constitute a Show Cause Event in respect of a Key Performance Indicator.

18.2 Significance of Key Performance Indicators

- (a) The Service Provider acknowledges:
 - (i) the importance of continually improving the quality of the performance of the Transport Operations;
 - (ii) that the Key Performance Indicators provide an indication of the quality of the performance of the Transport Operations; and
 - (iii) that the Purchaser may, at its discretion, direct a change to the Key Performance Indicators under this Contract, including without limitation:

- (A) by removing, substituting or adding Key Performance Indicators;
 - (B) changing the Performance Standards associated with a specific Key Performance Indicator;
 - (C) changing the measurement of the quality of the performance; or
 - (D) changing the assessment or calculation mechanisms for the Key Performance Indicators.
- (b) If:
- (i) the Purchaser directs a change to the Key Performance Indicators pursuant to clause 18.2(a)(iii); and
 - (ii) the Service Provider demonstrates to the Purchaser's reasonable satisfaction that:
 - (A) the change, when taken together with all other changes to the Key Performance Indicators (if any) directed by the Purchaser pursuant to clause 18.2(a)(iii) in the preceding 24 month period will, during the remaining Contract Term, have a Net Financial Impact equal to or greater than \$50,000 (indexed in accordance with paragraph 11.2 of Schedule D2);
 - (B) the calculation of the Net Financial Impact:
 - (I) has been calculated correctly by the Service Provider on the basis of the Lump Sum Change Payment method as described in paragraph 2.2 of Schedule D3; and
 - (II) excludes the cost of any previous changes to the Key Performance Indicators in the relevant 24 month period that, either alone or together have previously contributed to a Change Event under this clause 18.2(b); and
 - (C) the relevant costs would not otherwise have been incurred, it will be a Change Event and:
 - (iii) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of the Purchaser's direction; or
 - (iv) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in accordance with clause 23.1(a).

18.3 KPI Breach

- (a) For each occurrence of a KPI Breach the Purchaser may require the Service Provider to pay an amount corresponding to:
 - (i) the number of penalty units prescribed for that KPI Breach in Schedule C3; or
 - (ii) if no amount is prescribed in Schedule C3, the maximum number of penalty units prescribed by the Act,provided that if a single failure or breach by the Service Provider gives rise to multiple KPI Breaches, the Purchaser will not require the Service Provider to pay a penalty for each KPI Breach but may require the Service Provider to pay the highest of the penalties prescribed for the relevant KPI Breaches.
- (b) Amounts payable under clause 18.3(a) are Moneys Owning.
- (c) The rights and remedies available to the Purchaser under this clause 18 for a KPI Breach do not limit the Purchaser's other rights, including:
 - (i) the Purchaser's rights under clause 21.7 to adjust any Service Payment by reference to the Service Provider's performance;

- (ii) the Purchaser's rights to damages consequent on breach of this Contract;
 - (iii) the Purchaser's right to indemnity under clause 31; or
 - (iv) the Purchaser's rights pursuant to section 46 or section 47 of the Act.
- (d) Each:
- (i) KPI Breach is a Non-Compliance Event; and
 - (ii) prescribed multiple occurrence of a KPI Breach, as set out in Schedule C3, will give rise to a Show Cause Event.

18.4 No waiver

Without prejudice to the generality of clause 43.8, no failure, delay, relaxation or indulgence by the Purchaser in exercising any right under clause 18.3 will operate as a waiver of such right, nor will any single or partial exercise of any such right or failure to do so preclude any other or future exercise of such right, or the exercise of any other right under this Contract.

19. Default

19.1 Non-Compliance Events

As soon as practicable after becoming aware of a Non-Compliance Event, the Service Provider must give notice to the Purchaser setting out in reasonable detail the relevant event and surrounding circumstances.

19.2 Issue of Non-Compliance Notice

- (a) Where a Non-Compliance Event has occurred and is subsisting, the Purchaser may give the Service Provider written notice (**Non-Compliance Notice**):
- (i) stating that a Non-Compliance Event has occurred;
 - (ii) setting out reasonable details of the Non-Compliance Event;
 - (iii) directing the Service Provider to do any or all of the following:
 - (A) to meet with representatives of the Purchaser to consult about an appropriate remedy and timetable for the Service Provider to effect that remedy;
 - (B) provide the Purchaser with a Cure Plan; or
 - (C) implement Urgent Measures; and
 - (iv) if the Non-Compliance Notice directs the Service Provider to provide a Cure Plan, setting out the timeframe (which must be a reasonable timeframe) within which the Service Provider must take measures to cure the Non-Compliance Event (or the events or the circumstances giving rise to the Non-Compliance Event) (**Cure Period**).
- (b) A Non-Compliance Notice need not address the matters referred to in clause 19.2(a)(i) or clause 19.2(a)(ii) if the Service Provider has served a notice under clause 19.1.

19.3 Cure Plan

- (a) A Cure Plan required by a Non-Compliance Notice, or that is proposed by the Service Provider under clause 19.3(d), must be submitted by the Service Provider to the Purchaser within 10 Business Days of the date of the relevant notice (or such longer period as the Purchaser may agree).
- (b) The Service Provider must ensure that the Cure Plan describes in reasonable detail:

- (i) each measure that the Service Provider will take to permanently cure the Non-Compliance Event within the Cure Period;
 - (ii) each measure that the Service Provider will take to alleviate the adverse effect of the Non-Compliance Event within the Cure Period;
 - (iii) the proposed timing of each of those measures, which must be within the Cure Period and in a sequence and timing which is reasonably acceptable to the Purchaser;
 - (iv) the form and timing of reports (which must be reasonably acceptable to the Purchaser) to be provided by the Service Provider to the Purchaser about the implementation status of the Cure Plan; and
 - (v) the operational arrangements to be implemented by the Service Provider to integrate the cure with the continued performance of the Transport Operations.
- (c) The Service Provider must implement and pursue diligently its Cure Plan in order to permanently cure the Non-Compliance Event and alleviate its adverse effects within the Cure Period.
- (d) The Service Provider may (on one occasion only in relation to each Non-Compliance Event) by notice in writing to the Purchaser request an extension to the Cure Period provided that:
- (i) it does so prior to the expiry of the existing Cure Period;
 - (ii) it sets out complete particulars of the reasons why the extension is requested and any consequential revisions to the Cure Plan; and
 - (iii) it provides evidence to the Purchaser's satisfaction that it has pursued diligently and is continuing to pursue diligently a cure in accordance with the Cure Plan.
- (e) The Purchaser may approve or reject a request for extension to the Cure Period at the Purchaser's discretion.

19.4 Urgent Measures

- (a) In determining whether the Service Provider is required to implement Urgent Measures under this clause, the Purchaser agrees to act reasonably having regard to the severity of the Non-Compliance Event and its impact on the continued delivery of the Transport Operations in a safe and reliable manner and otherwise in accordance with this Contract.
- (b) The Service Provider must implement the Urgent Measures within any reasonable period stipulated by the Purchaser having regard to the nature of the Urgent Measures.

20. Amendment, Suspension or Cancellation

20.1 Show Cause Events

- (a) The Service Provider acknowledges and agrees that:
 - (i) the occurrence of a Show Cause Event is a contravention of a condition of this Contract for the purposes of section 47(1)(a) of the Act; and
 - (ii) the Purchaser's rights to amend, suspend or cancel this Contract under section 47(1) and section 47(3) of the Act and pursuant to clause 20.1(d) include the right to terminate the Contract.
- (b) If a Show Cause Event has occurred and is subsisting, or if the Purchaser reasonably believes that the occurrence of a Show Cause Event is imminent, the Purchaser may give the Service Provider written notice (**Show Cause Notice**):

- (i) stating that a Show Cause Event has occurred or that the Purchaser reasonably believes that the occurrence of a Show Cause Event is imminent (as the case may be);
- (ii) setting out reasonable details of the Show Cause Event and the action that the Purchaser proposes to take if the Service Provider does not provide a response that is acceptable to the Purchaser; and
- (iii) giving the Service Provider an opportunity to make written submissions to the Purchaser as to why the Purchaser should not exercise a right under section 47(1) of the Act to amend, suspend or cancel this Contract,

and the Purchaser may in that notice (acting reasonably) direct the Service Provider to implement Urgent Measures.

- (c) The Service Provider must make any written submissions to the Purchaser within 10 Business Days of the date of the Show Cause Notice.
- (d) If the Service Provider fails to make submissions in response to a Show Cause Notice or its submissions are not acceptable to the Purchaser, the Purchaser may (subject always to section 47(1A) of the Act) amend, suspend or cancel this Contract pursuant to section 47(1) of the Act on written notice given to the Service Provider effective on the date specified in the notice.

20.2 Immediate Termination Events

If an Immediate Termination Event occurs, the Purchaser may amend, suspend or cancel this Contract on written notice given to the Service Provider effective immediately on the date specified in the notice.

20.3 Consequences of termination

- (a) Upon expiry or termination of this Contract, the rights and obligations of the parties under this Contract will cease except for:
 - (i) any accrued rights and obligations under this Contract; and
 - (ii) any rights and obligations which are expressed to continue after termination, including those referred to in clause 43.12.
- (b) If the Purchaser exercises a right to amend, suspend or cancel this Contract pursuant to clause 20.2 or this Contract is otherwise terminated:
 - (i) the Service Provider waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum merit; and
 - (ii) except as provided in section 47(4) of the Act for a termination pursuant to section 47(3) of the Act, the Service Provider will not be entitled to make a Claim against the Purchaser or any Purchaser Associate for any amount.

20.4 No other termination rights

Subject to clause 20.5, despite any rule of law or equity to the contrary, the Service Provider may not terminate, rescind nor treat as repudiated this Contract other than as expressly provided for in this Contract.

20.5 Surrender of Contract

For the avoidance of doubt:

- (a) clause 20.4 is not intended to limit the Service Provider's right to surrender the Contract, subject to the approval of the Purchaser, pursuant to s.48(1)(c) of the Act; and
- (b) in circumstances where:

- (iii) the Service Provider does surrender the Contract pursuant to s.48(1) (c) of the Act; or
- (iv) this Contract is terminated or cancelled in accordance with its terms other than as a result of:
 - (A) a Show Cause Event; or
 - (B) an Immediate Termination Event that is not an event referred to in clause 17.5,

then subject to any other liability of the Service Provider under this Contract, the Service Provider will not be liable to pay any amount to the Purchaser for the cost of engaging any Successor Service Provider to perform the Transport Operations in place of the Service Provider.

Part E – Financial

21. Payments

21.1 Service Payments

- (a) Subject to this clause 21, as consideration for, and subject to, the performance of the Transport Operations by the Service Provider, in each Payment Month the Purchaser must pay the Service Provider a Service Payment calculated in accordance with Schedule D2.
- (b) Subject to clause 21.3(c), each Service Payment will comprise:
- (i) a Core Payment; and
 - (ii) where relevant, an Adjustment Payment.
- (c) On the last Business Day of each Contract Month (**Payment Month**) the Purchaser will:
- (i) calculate and assess the Core Payment and, subject to clause 21.3(a), the Adjustment Payment payable in that Payment Month;
 - (ii) issue to the Service Provider's Representative a Recipient Created Tax Invoice for the amount calculated together with details of:
 - (A) the calculations employed by the Purchaser to arrive at the amounts set out in the invoice; and
 - (B) any allowances by the Purchaser for:
 - (I) amounts otherwise due from the Purchaser to the Service Provider or the Service Provider to the Purchaser under this Contract; or
 - (II) amounts to be set off or deducted by the Purchaser to or from the Service Provider under this Contract; and
 - (iii) pay the Service Provider the amount set out in the Recipient Created Tax Invoice.
- (d) The Core Payment in any Payment Month comprises the following elements:
- (i) the Operating Payment;
 - (ii) the Fuel Cost Payment;
 - (iii) the Margin Payment;
 - (iv) the Fleet Payment;
 - (v) the Depot Payment; and
 - (vi) any Mobilisation Payments,
- for that Payment Month.
- (e) The Adjustment Payment in any Payment Month comprises the following elements:
- (i) the Performance Payment Adjustment for the Payment Month;
 - (ii) the Commercial Revenue Payment Adjustment for the Payment Month;
 - (iii) any True Up Adjustment for the Payment Month;
 - (iv) any State Designated Event Services Payment Adjustment for the Payment Month; and
 - (v) any Change Payment for the Payment Month.
- (f) Any payment by the Purchaser to the Service Provider under this Contract (including any Core Payment or Adjustment Payment) is not:

- (i) evidence of the value of work or services, or that any work or services have been satisfactorily carried out in accordance with this Contract;
 - (ii) an admission of liability; or
 - (iii) approval by the Purchaser of the Service Provider's performance or compliance with this Contract,
- but is only taken to be payment on account.
- (g) The Purchaser may correct any previous document issued by the Purchaser under clause 21.1(c)(ii) or apply any deductions in accordance with this Contract.
 - (h) If the Service Provider disputes the amount set out in a Recipient Created Tax invoice issued by the Purchaser under this Contract:
 - (i) the Service Provider must notify the Purchaser in writing within three months of the date of the invoice; and
 - (ii) the parties must confer with each other within 5 Business Days after notification of the dispute to attempt to resolve the dispute.
 - (i) If the Service Provider and the Purchaser subsequently agree or it is determined in accordance with this Contract that the disputed amount or any part of the disputed amount was or was not due:
 - (i) the Service Payments for the Payment Months next following the date of the agreement or determination will be adjusted accordingly; or
 - (ii) if there are no remaining Service Payments, the disputed amount will be a debt due and payable from the Purchaser to the Service Provider, or from the Service Provider to the Purchaser, as the case may be.

21.2 Significance of MCPPR process

- (a) Subject to clause 21.2(b), as an outcome of the monthly contract payment and performance review process described in clause 15.4:
 - (i) the Purchaser will determine the Performance Payment Adjustment for the Payment Month in respect of which the relevant Stage 1 MCPPR was issued and confirm its determination in the Stage 3 MCPPR; and
 - (ii) that Performance Payment Adjustment will be included in the Adjustment Payment in the Payment Month in which the Stage 3 MCPPR was issued.
- (b) If, as a result of:
 - (i) any fault in the Service Provider's systems; or
 - (ii) a failure by the Service Provider to record any relevant information or otherwise comply with this Contract,Performance Data cannot reasonably be determined for the purposes of assessing the Level of Service and calculating the Performance Payment Adjustment for a Payment Month, then, without limiting clause 15.2(c):
 - (iii) the Purchaser will determine the relevant Performance Payment Adjustment on the basis of the Performance Data that is available; and
 - (iv) that Performance Payment Adjustment calculated by the Purchaser will be final and binding on the Service Provider, absent manifest error by the Purchaser.
- (c) The Service Provider acknowledges and agrees that:
 - (i) the Purchaser may be unable to accurately calculate a Commercial Revenue Payment Adjustment if the Service Provider does not provide the Stage 1 MCPPR strictly in accordance with the requirements of clause 15.4(a)(i);

- (ii) if the Service Provider does not comply with clause 15.4(a)(i), the Purchaser may withhold from the Service Payment otherwise payable in the Payment Month when the Stage 1 MCPPR was due, an amount equal to the greater of:
 - (A) the highest Commercial Revenue Payment Adjustment calculated in respect of the preceding three Payment Months (if any); and
 - (B) 0.5% of the Core Payment for that Payment Month; and
- (iii) if the Service Provider subsequently provides the information required under this Contract to substantiate the amount (if any) of the relevant Commercial Revenue Payment Adjustment for that Payment Month, to the extent the Commercial Revenue Payment Adjustment:
 - (A) is less than the amount withheld, the Purchaser must account to the Service Provider for the difference;
 - (B) is equal to the amount withheld, the Purchaser may retain that amount and the Service Provider will be deemed to waive all Claims in relation to those monies; or
 - (C) exceeds the amount withheld, the difference will be Moneys Owing.

21.3 Adjustment Payments at the beginning and the end of the Contract Term

- (a) In the first Payment Month of the Contract Term, the Service Payment will comprise a Core Payment only and no Adjustment Payment will be applicable.
- (b) In the last Payment Month of the Contract Term the Purchaser may:
 - (i) (acting reasonably) estimate the sum of all the Adjustment Payment elements referred to in clause 21.1(e) that have arisen, or are reasonably likely to arise, in respect of the last two Payment Months of the Contract Term (to the extent these will not form part of the Adjustment Payment for the last Payment Month of the Contract Term) (**Estimated Final Adjustment Payment**); and
 - (ii) withhold the Estimated Final Adjustment Payment from the amount of the Service Payment otherwise payable in the final Payment Month of the Contract Term.
- (c) Within 40 Business Days of the End Date, the Purchaser will calculate the actual sum of all the Adjustment Payment elements referred to in clause 21.1(e) that have arisen in respect of the last two Contract Months of the Contract Term (to the extent these did not form part of the Adjustment Payment for the last Payment Month of the Contract Term) (**Confirmed Final Adjustment Payment**) and if:
 - (i) the Estimated Final Adjustment Payment is greater than the Confirmed Final Adjustment Payment, the Purchaser:
 - (A) will issue a Recipient Created Tax Invoice to the Service Provider; and
 - (B) pay to the Service Provider, the amount of the difference within that 40 Business Days;
 - (ii) the Estimated Final Adjustment Payment equals the Confirmed Final Adjustment Payment, the Purchaser may retain the amount withheld and the Service Provider will be deemed to waive all Claims in relation to those monies; or
 - (iii) the Estimated Final Adjustment Payment is less than the Confirmed Final Adjustment Payment, the difference will be Moneys Owing.
- (d) To enable the Purchaser to calculate the Confirmed Final Adjustment Payment:
 - (i) the Service Provider and the Purchaser will follow the procedures described in clause 15.4 in the first month after the End Date; and

- (ii) the Service Provider must provide the Purchaser with all other relevant cooperation and information reasonably directed by the Purchaser.

21.4 Nature of Service Payments

The Service Payments under this Contract (including any adjustments, additions or deductions expressly provided for by this Contract):

- (a) are a Fixed Price;
- (b) include an allowance for all costs, expenses, fees and charges incurred by the Service Provider in performing the Transport Operations (including the supply of all related consumables, Spares and other equipment);
- (c) include an allowance for all related items of work under this Contract (including the supply of any labour, materials or other necessary items);
- (d) include an allowance for the Service Provider's profit, attendance, preliminaries, supervision and all overheads in connection with the performance of all of its related obligations under this Contract;
- (e) will not be subject to any rise and fall in costs of materials or labour or otherwise, foreign exchange adjustment or any other adjustment for any reason, except to the extent expressly provided by this Contract; and
- (f) include all duties including, without limitation, stamp duty, customs duty and import duty.

21.5 Other Revenue

The Service Provider acknowledges and agrees that:

- (a) the amounts under clause 21.4 which comprise the Service Payments are costs which solely relate to delivery of the Network under this Contract;
- (b) it will not seek to recover any of those amounts under or in connection with any other contract, agreement or arrangement with the Purchaser or other Government Authority for the provision of transport services; and
- (c) it undertakes that it will provide financial transparency to the Purchaser in relation to revenue and pricing under any such contract, agreement or arrangement.

21.6 Moneys Owing and Set off

- (a) All Moneys Owing are payable by the Service Provider to the Purchaser on demand.
- (b) The Purchaser may demand payment of Moneys Owing at any time, and any such demand is payable within 5 Business Days of the date of demand.
- (c) The Purchaser may at any time deduct from monies due to the Service Provider under this Contract:
 - (i) any Moneys Owing; or
 - (ii) amounts in respect of any other Claim that the Purchaser may have against the Service Provider under this Contract or at Law.
- (d) The Purchaser must provide the Service Provider with reasonable details of the basis on which it is setting off any amount under this clause 21.6.
- (e) The Service Provider must:
 - (i) make all payments due to the Purchaser under this Contract without set-off or counterclaim; and
 - (ii) not at any time deduct from money otherwise due to the Purchaser (including any Moneys Owing) under this Contract:

- (A) any debt or other money due from the Purchaser to the Service Provider;
or
- (B) any Claim to money which the Service Provider may have against the Purchaser,

whether under this Contract or otherwise at Law.

- (f) Nothing in this clause 21.6 affects the Purchaser's right to recover from the Service Provider the whole of the amount of any Claim or any balance that remains owing after any set-off.

21.7 Performance Payment Adjustment

- (a) The Service Provider acknowledges and agrees that:
 - (i) both the Purchaser and the Service Provider require a formula for the calculation of Losses, costs, expenses and detriments which the Purchaser may incur if the Service Provider fails to meet the required Performance Standard under this Contract, that is able to be readily applied without unnecessary administrative costs, delay or difficulty;
 - (ii) it is in the economic and other best interests of both the Purchaser and the Service Provider that formulae of the nature referred to in Schedule C4 be adopted;
 - (iii) there are many and varied matters which form part of the Losses, costs, expenses and detriments which the Purchaser may incur as a result of a failure by the Service Provider to discharge its performance obligations under this Contract many of which are either difficult, or in some cases impossible, to calculate with precision;
 - (iv) the formulae adopted in Schedule C4 meet the requirements and objectives set out in clauses 21.7(a)(i), 21.7(a)(ii) and 21.7(a)(iii);
 - (v) the formulae in Schedule C4 also includes an incentive margin in respect of On-Time Running that may potentially be payable to the Service Provider in accordance with this Contract depending on the relevant Level of Service delivered by the Service Provider and such amount is the sole entitlement of the Service Provider to payment from the Purchaser in respect of the Level of Service actually delivered for On-Time Running;
 - (vi) the Performance Payment Adjustment applicable to a given Contract Month may be a positive, negative or neutral amount as calculated in accordance with Schedule C4 and Schedule D2; and
 - (vii) the Service Provider:
 - (A) is contracting with the Purchaser at arm's length;
 - (B) possesses equivalent bargaining power to the Purchaser;
 - (C) possesses extensive commercial experience and expertise;
 - (D) has had access to and been advised by its own legal, accounting, technical, financial, economic, commercial and other professionals and experts in relation to its rights and obligations under this Contract;
 - (E) having received advice, warrants that the Performance Regime is legally binding, valid and enforceable according to its terms and does not constitute a penalty in any respect;
 - (F) enters into this Contract without any duress, coercion, undue influence or other form of unconscionable conduct or impermissible or objectionable persuasion on the part of Purchaser;

- (G) enters into this Contract not dependent on or influenced by any statements or representations (whether express or implied) made by or on behalf of the Purchaser, other than those stated in this Contract; and
 - (H) enters into this Contract with the intention that the Performance Regime is legally binding, valid and enforceable in accordance with its terms.
- (b) The Service Provider agrees to exclude and waive any right to the benefit of, to the extent permissible, the application of any legal rule or norm, including under statute, equity and common law, relating to the enforceability of Schedule C4 or Schedule D2 or the characterisation of any Performance Payment Adjustment as a penalty.
 - (c) To the extent that the Performance Payment Adjustment is conclusively determined in dispute resolution conducted in accordance with this Contract to be unenforceable, the Purchaser is entitled to recover, as general damages, an amount of up to the total of the Performance Payment Adjustment that would have been payable had the Performance Payment Adjustment not been determined to be unenforceable.
 - (d) Subject to clause 21.7(e), the Performance Payment Adjustment will be the Purchaser's sole and exclusive remedy in respect of:
 - (i) any failure by the Service Provider to operate Trips in accordance with the Timetable (including to ensure that the Contract Vehicle performing a Trip traverses each designated Transit Stop on that Trip); and
 - (ii) the Level of Service actually delivered for On-Time Running.
 - (e) Clauses 21.7(c) and 21.7(d) do not limit or affect:
 - (i) the Service Provider's liability:
 - (A) for payment to the Purchaser of any Moneys Owning;
 - (B) in respect of any Change Payment that is payable by the Service Provider to the Purchaser;
 - (C) any amount for which the Service Provider must indemnify the Purchaser pursuant to clause 11.4(h)(iii), 13.5(c), 13.8(c), 31.1(d), 31.1(e), 32.1(e) or 37.2. or
 - (D) arising from criminal acts, fraud or wilful misconduct on the part of the Service Provider or a Service Provider's Associate; or
 - (ii) the Purchaser's rights under clause 19 or clause 20 of this Contract or under the Act arising from any failure by the Service Provider to operate Trips in accordance with the Timetable (including to ensure that the Contract Vehicle performing a Trip traverses each designated Transit Stop on that Trip) and the Level of Service actually delivered for On-Time Running.

22. Change in Mandatory Requirements

22.1 General risk allocation

Except as provided in this clause 22:

- (a) the Service Provider is responsible for all effects on the Transport Operations of any Change in Mandatory Requirements and the Service Provider will not be entitled to any relief or additional payment or compensation for performance of any obligation under this Contract arising out of, or in any way in connection with, a Change in Mandatory Requirements;
- (b) notwithstanding the nature, timing or extent of any Change in Mandatory Requirements, the Service Provider is not relieved from performance of any obligation under this Contract, and must ensure that at all relevant times during the Contract Term all Service

Contract Assets and other Deliverables and the Service Provider's performance of its obligations complies with all Mandatory Requirements; and

- (c) the Service Provider must absorb all financial effects of any Change in Mandatory Requirements which are not compensated pursuant to this clause 22.

22.2 Effect of indexation

The Service Provider is not entitled to make any Claim under this clause 22 for any increase in the cost of any goods or service, or any other thing, to the extent that the increase in cost is taken into account in the calculation of the Service Payment (including in any indexation or reconciliation adjusting the Service Payment) under Schedule D2.

22.3 Qualifying Change in Law

If a Qualifying Change in Law occurs that has had, or will have, a Net Financial Impact:

- (a) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of that Qualifying Change in Law; or
- (b) the Purchaser may direct the Service Provider to prepare and submit an Indicative Change Proposal in respect of that Qualifying Change in Law.

22.4 Change in Operations Manual

If there is a Change in Operations Manual which has had, or will have, a Net Financial Impact:

- (a) the Service Provider may prepare and submit an Indicative Change Proposal within 10 Business Days of becoming aware of that Change in Operations Manual; or
- (b) the Purchaser may direct the Service Provider to prepare an Indicative Change Proposal in respect of that Change in Operations Manual.

22.5 Purchaser's response

- (a) Within 20 Business Days of receiving an Indicative Change Proposal from the Service Provider under clause 22.3 or clause 22.4:
 - (i) if the Purchaser agrees with the Service Provider's assessment that there has been a Qualifying Change in Law or Change in Operations Manual that has had, or will have a Net Financial Impact, the Purchaser must either:
 - (A) direct the Service Provider to submit a Change Proposal in accordance with clause 23.2 (a **Request for Change Proposal**); or
 - (B) in the case of a Change in Operations Manual, direct that the Service Provider's obligations under this Contract to comply with the Change in Operations Manual be varied (at the Purchaser's discretion) to avoid or mitigate the Net Financial Impact of the Change in Operations Manual; or
 - (ii) if the Purchaser disputes the Service Provider's assessment that there has been a Qualifying Change in Law or Change in Operations Manual that has had, or will have a Net Financial Impact, the Purchaser must give notice of that dispute and the parties must then seek to resolve the disputed matters in accordance with the Dispute Resolution Procedures.
- (b) To the extent that a direction given under clause 22.5(a)(i)(B):
 - (i) does not fully avoid or mitigate the Net Financial Impact of the Change in Operations Manual or itself causes the Service Provider to incur additional cost, it will be deemed to be a direction to the Service Provider to submit a Change Proposal in accordance with clause 23.2 (a **Request for Change Proposal**); or
 - (ii) would, if properly complied with, prevent the Service Provider from complying with any of its other obligations under this Contract:

- (A) the Service Provider must promptly notify the Purchaser of those affected obligations and the reasons why it cannot comply with them; and
- (B) provided the Service Provider has complied with clause 22.5(b)(ii)(A) and any direction given by the Purchaser that would otherwise enable the Service Provider to comply with the affected obligations:
 - (I) the Service Provider will be relieved from complying with the affected obligations; and
 - (II) clause 22.5(b)(i) will apply to that direction to the extent that the direction itself causes the Service Provider to incur additional cost.

22.6 No entitlement

The Service Provider will have no entitlement under clause 22.3 or clause 22.4 arising from a Qualifying Change in Law or a Change in Operations Manual to the extent:

- (a) that the change was required as a result of:
 - (i) a failure of the Service Provider to comply with the Operations Manual or another Mandatory Requirement;
 - (ii) an illegal act or omission of the Service Provider; or
 - (iii) a breach of this Contract by the Service Provider; or
- (b) that was not in force at the date of this Contract but which:
 - (i) had been specifically referred to the Service Provider prior to the date of this Contract by the Purchaser in writing; or
 - (ii) a party experienced and competent in the provision of services comparable to the Transport Operations would have reasonably foreseen or anticipated prior to the date of this Contract,

in substantially the same form as the Qualifying Change in Law or Change in Operations Manual which came into effect after the date of this Contract.

23. Change Payments

23.1 Indicative Change Proposal

- (a) Where the Purchaser gives a direction to the Service Provider to prepare and submit an Indicative Change Proposal under:
 - (i) clause 10.4(b) (*Counter Terrorism*);
 - (ii) clause 12.5(c) (*Fleet Management – purchase or lease by Purchaser*);
 - (iii) clause 12.5(f) (*Fleet Management – changed replacement capacity*);
 - (iv) [Not used]
 - (v) clause 12.11(b)(ii) (*Change in Depot Capacity*);
 - (vi) clause 12.12(c)(ii) (*Change in Technology*);
 - (vii) clause 13.1(e) (*Integrated Scheduling System*);
 - (viii) clause 13.4(b)(ii) (*Changes to Ticketing Equipment*);
 - (ix) clause 13.7(e)(ii) (*Additional Purchaser Supplied Items*);
 - (x) clause 15.3 (*Change to Performance Measures*);
 - (xi) clause 18.2(b) (*Significance of Key Performance Indicators*);
 - (xii) clause 22.3(b) (*Qualifying Change In Law*);

- (xiii) clause 22.4(b) (*Change in Operations Manual*);
- (xiv) clause 29.10(b) (*Change in Insurances*); or
- (xv) clause 5.1(e)(iv)(A) (*Purchaser's Power to Give Directions*),

the Service Provider must do so within 10 Business Days of the direction or within such other reasonable period as agreed by the Purchaser.

- (b) An Indicative Change Proposal prepared and submitted under this Contract must:
 - (i) describe the steps the Service Provider proposes to take to respond to:
 - (A) in the case of an Indicative Change Proposal submitted under clause 22.3, the Qualifying Change in Law;
 - (B) in the case of an Indicative Change Proposal submitted under clause 22.4, the Change in Operations Manual; or
 - (C) otherwise, the Change Event that is the subject of the Indicative Proposal; and
 - (ii) include a reasonable estimate of the Net Financial Impact of the Qualifying Change in Law, Change in Operations Manual or Change Event;
 - (iii) for each of the Change Payment Methods, provide a separate estimate of the Net Financial Impact calculated on the basis of that Change Payment Method, unless otherwise directed by the Purchaser; and
 - (iv) if required by paragraph 7(b) of Schedule D3, include an Outline Business Case, and may set out any consequential amendments to this Contract which the Service Provider proposes be made in the event that the Purchaser issues a Change Notice in respect of the Change Event.
 - (c) The Purchaser will consider the Indicative Change Proposal and, subject to clause 22.5, within 20 Business Days of receipt, either:
 - (i) accept the Indicative Change Proposal and issue a Change Notice in accordance with clause 23.3(a), on the basis set out in the Indicative Change Proposal;
 - (ii) direct the Service Provider to prepare a Change Proposal and in this direction, identify:
 - (A) the information referred to in paragraph 1.2(c) of Schedule D3;
 - (B) whether the Service Provider is required to undertake a tender process in accordance with paragraph 4.1 of Schedule D3;
 - (C) in respect of a Material Change Event that has resulted from a request from the Service Provider for the Purchaser's approval under clause 12.11(b)(i) (*Change in Depot Capacity*) or clause 12.12(c)(i) (*Change in Technology*), whether the Service Provider is required to include a Detailed Business Case;
 - (D) in respect of a Material Change Event other than one referred to in clause 23.1(c)(ii)(C), the inputs (if any) the Service Provider is required to provide for a business case to be prepared by or for the Purchaser; and
 - (E) any other information which the Purchaser reasonably requires the Service Provider to include in the Change Proposal,
- (a Request for Change Proposal); or
- (iii) in the case of an Indicative Change Proposal submitted under:
 - (A) clause 12.5(c) (*Fleet Management – purchase or lease by Purchaser*);
 - (B) clause 12.5(f) (*Fleet Management – changed replacement capacity*);

- (C) [Not used];
 - (D) clause 12.11(b)(ii) (*Change in Depot Capacity*);
 - (E) clause 12.12(c)(ii) (*Change in Technology*) (other than an event deemed to be a Change in Technology in accordance with clause 12.12(f));
 - (F) clause 13.1(e) (*Integrated Scheduling System*);
 - (G) clause 13.7(e) (*Additional Purchaser Supplied Items*);
 - (H) clause 15.3 (*Change to Performance Measures*);
 - (I) clause 18.2(b) (*Significance of Key Performance Indicators*);
 - (J) clause 29.10(b) (*Change in Insurances*); or
 - (K) clause 5.1(e)(iv)(A) (*Purchaser's Power to Give Directions*),
notify the Service Provider that the Purchaser does not wish to proceed with proposed Change Event.
- (d) The Service Provider must bear its costs of preparing an Indicative Change Proposal (including any third party costs).

23.2 Change Proposal

- (a) Where the Purchaser issues a Request for Change Proposal, the Service Provider must provide its Change Proposal within 20 Business Days or such longer period as reasonably approved by the Purchaser.
- (b) Any Change Proposal submitted under this Contract must:
 - (i) be a detailed development of the Indicative Change Proposal (if there was a relevant Indicative Change Proposal) submitted by the Service Provider in relation to the Change Event;
 - (ii) include any Detailed Business Case that is required by this Contract or inputs to a business case to be prepared by or for the Purchaser, as required under clause 23.1(c)(ii)(C);
 - (iii) include the Service Provider's calculation of the Net Financial Impact of the Change Event in accordance with the Request for Change Proposal, including:
 - (A) details of its calculations;
 - (B) working papers and supporting documentation for its determination of the Net Financial Impact;
 - (C) details of the amount and payment terms proposed for any Change Payment;
 - (D) consideration as to whether some or all of the Net Financial Impact could reasonably be negated or mitigated in the course of replacement or disposal of any Service Contract Assets under this Contract or by any other reasonable means;
 - (E) consideration as to how any cost saving resulting from the Qualifying Change in Law, Change in Operations Manual or Change Event can be maximised; and
 - (F) a statutory declaration from two directors (or a director and secretary) of the Service Provider confirming that to the best of those directors' (or director's and secretary's) knowledge after making all prudent enquiries the information provided to the Purchaser in the Change Proposal is accurate, true and fair; and

- (iv) include such other information required by the Purchaser under clause 23.1(c) (which in the event that the Service Provider is required under clause 23.1(c)(ii)(B) to undertake a tender process, must be provided with reference to the outcomes of that tender process).
- (c) A Change Proposal once submitted may only be amended with the Purchaser's approval.

23.3 Change Notice

Following receipt of a Change Proposal, the Purchaser must, as soon as reasonably practicable having regard to the scale and complexity of the Change Proposal, either:

- (a) issue a Change Notice approving the Change Proposal;
- (b) propose an alternative:
 - (i) valuation of the Net Financial Impact of the Qualifying Change in Law, Change in Operations Manual or Change Event (which must be consistent with the possible approaches set out in Schedule D3); or
 - (ii) Change Payment Method for the Qualifying Change in Law, Change in Operations Manual or Change Event,

and the Purchaser may with that proposal also propose consequential amendments to this Contract in respect of the Change Event; or

- (c) in the case of a Change Proposal relating to a possible Change Event described in:
 - (i) clause 12.5(c) (*Fleet Management -- purchase or lease by Purchaser*);
 - (ii) clause 12.5(f) (*Fleet Management – changed replacement capacity*);
 - (iii) [Not used];
 - (iv) clause 12.11(b)(ii) (*Change in Depot Capacity*);
 - (v) clause 12.12(c)(ii) (*Change in Technology*) (other than an event deemed to be a Change in Technology in accordance with clause 12.12(f));
 - (vi) clause 13.1(e) (*Integrated Scheduling System*);
 - (vii) clause 13.7(e) (*Additional Purchaser Supplied Items*);
 - (viii) clause 15.3 (*Change to Performance Measures*);
 - (ix) clause 18.2(b) (*Significance of Key Performance Indicators*);
 - (x) clause 29.10(b) (*Change in Insurances*); or
 - (xi) clause 5.1(e)(iv)(A) (*Purchaser's Power to Give Directions*),reject the Change Proposal and notify the Service Provider that the Purchaser does not wish to proceed with the proposed Change Event.

23.4 Effect of Change Notice

A Change Notice issued under clause 23.3(a):

- (a) subject to clauses 23.1(c)(i) and 23.5, must state:
 - (i) to the extent the Change Notice relates to a Qualifying Change in Law or Change in Operations Manual, the steps agreed (in accordance with this clause 23) to be taken by the parties to address the Qualifying Change in Law or Change in Operations Manual;
 - (ii) in all other cases the steps agreed by the parties (in accordance with this clause 23) to implement and respond to the relevant Change Event;
 - (iii) the amount of the Net Financial Impact as agreed or determined in accordance with this clause 23;

- (iv) the Change Payment Method to apply in accordance with this clause 23; and
 - (v) any consequential amendments to be made to this Contract in respect of the Change Event in accordance with this clause 23; and
- (b) is a direction to implement the matters set out in the Change Notice and will have the effect of amending this Contract accordingly without the need for further action.

23.5 Negotiation

- (a) If the Purchaser makes a proposal under clause 23.3(b), the parties must negotiate in good faith to try to determine and agree:
- (i) the valuation of the Net Financial Impact (applying the Change Payment Method proposed by the Purchaser under clause 23.3(b)); and
 - (ii) any consequential amendments to the Contract in respect of the Change Event.
- (b) If the parties are unable to reach agreement within 60 Business Days of the Purchaser's proposal under clause 23.3(b):
- (i) the Purchaser may give a direction (acting reasonably) confirming its assessment of the Net Financial Impact to apply and that direction will apply unless otherwise agreed by the parties or determined by an Expert following a referral under clause 23.5(b)(ii)(A);
 - (ii) notwithstanding anything to the contrary in clause 40:
 - (A) either party may refer the assessment of the Net Financial Impact directly for resolution by an Expert under clause 40.7, provided that if the parties are unable to agree as to the identity of the person to be appointed as the Expert within 5 Business Days, either party may request the President of the Resolution Institute to nominate an appropriate person and the parties will promptly appoint such person as the Expert; and
 - (B) the Expert's determination in respect of the Net Financial Impact following a referral in accordance with clause 23.5(b)(ii)(A) will be final and binding on the parties except to the extent of fraud, gross negligence or a manifest error and (notwithstanding any remaining dispute in respect of proposed consequential amendments to the Contract, which either party may refer for resolution in accordance with clause 40 after or contemporaneously with referral to the Expert); and
 - (iii) unless otherwise directed by the Purchaser, the Service Provider must implement the Change Proposal as modified by the Purchaser's assessment of the Net Financial Impact in accordance with clause 23.5(b)(i), but subject to:
 - (A) any alternative Net Financial Impact agreed by the parties under clause 23.5(b)(i) or determined by an Expert in accordance with clause 23.5(b)(ii)(B); and
 - (B) the outcome agreed between the parties or determined in accordance with clause 40 in respect of any consequential amendments to this Contract in connection with the Change Event and the Change Proposal.

23.6 Change in Depot Capacity

- (a) The Service Provider acknowledges and agrees that to the extent a Change Proposal relates to a Change in Depot Capacity and the proposed Change Payment Method is through an Indirect Service Payment Adjustment then, subject to the Purchaser's rights under clause 23.3(c):
- (i) the parties must negotiate in good faith to determine and agree any changes required to the Depot Payment determined under Schedule D2;

- (ii) at the Purchaser's discretion, the change in Depot Payment may be assessed by a Registered Valuer appointed by the Purchaser in accordance with clause 23.6(b); and
 - (iii) from the relevant time directed by the Purchaser in a Change Notice (or as otherwise agreed or determined under clause 23.5) the Depot Payment will be revised accordingly.
- (b) If the Purchaser wishes to appoint a Registered Valuer as contemplated by clause 23.6(a)(ii), then:
- (i) the parties will (each acting reasonably) seek to agree the identity of the person to be so appointed, provided that if the parties are unable to reach agreement within 5 Business Days, the Purchaser will request the President of the Real Estate Institute of Queensland to nominate the person to be so appointed (in which case the Purchaser will promptly appoint the nominated person as the Registered Valuer); and
 - (ii) the Purchaser will appoint the Registered Valuer on terms that require the Registered Valuer to make his or her assessment based on principles which are reasonable, transparent, in accordance with market practice and require the Registered Valuer to value the Depot on the basis of its existing use.

23.7 Costs of Change Proposal if rejected by Purchaser

- (a) If the Purchaser rejects a Change Proposal in accordance with clause 23.3(c), provided that the Service Provider is not in breach of this clause 23, the Purchaser will reimburse the Service Provider for any directly attributable and substantiated third party costs reasonably incurred by the Service Provider in preparing the relevant Change Proposal.
- (b) Except to the extent provided in clause 23.7(a), the Service Provider must bear all its costs of preparing a Change Proposal.

24. Security for Performance

24.1 Performance Bond

Within 10 Business Days of the Commencement Date, the Service Provider must provide a bond to the Purchaser in the amount specified in item 9 of the Contract Details as security for the performance by the Service Provider of its obligations under this Contract (**Performance Bond**).

24.2 Performance Bond requirements

Subject to clause 24.3, each Performance Bond under this Contract must be:

- (a) an irrevocable and unconditional instrument in the form set out in Schedule E1 or otherwise in a form approved by the Purchaser;
- (b) issued in favour of the Purchaser;
- (c) issued in Australian dollars;
- (d) at all times provided by a bank acceptable to the Purchaser that maintains the Required Performance Bond Rating or another rating as approved by the Purchaser;
- (e) payable at an office of the issuer in Brisbane (or such other place as the Purchaser may approve); and
- (f) valid until the earlier of:
 - (i) the Bond Longstop Date; or
 - (ii) another date that is not less than 12 months from the date of issue of the Performance Bond.

24.3 Replacement of expiring Performance Bond

- (a) Until the Bond Longstop Date, the Service Provider must replace each Performance Bond (**Original Bond**) held by the Purchaser with a new Performance Bond (**Renewing Bond**) by no later than 20 Business Days prior to the expiry date stated in the Original Bond.
- (b) The Renewing Bond must comply with all of the requirements for a Performance Bond in clause 24.2 and must be held by the Purchaser for the same purposes for which the Original Bond was held.
- (c) The Purchaser agrees to surrender an Original Bond:
 - (i) in exchange for a Renewing Bond complying with this clause upon receiving reasonable notice of a request to do so (which notice need not exceed 10 Business Days); and
 - (ii) subject to clause 24.9(b)(ii), on the Bond Longstop Date.

24.4 Performance Bond ratings trigger

If the issuer of a Performance Bond ceases to have the Required Performance Bond Rating, then the Service Provider must:

- (a) notify the Purchaser of that circumstance as soon as reasonably practicable and in any event within 20 Business Days; and
- (b) within 10 Business Days of being requested to do so, procure the issue to the Purchaser of a replacement bond (**Replacement Bond**) which must have a face value equal to that of the Performance Bond being replaced, comply with all of the requirements for a Performance Bond in clause 24.2 and must be held by the Purchaser for the same purposes for which the Original Bond was held,

and the Purchaser must promptly surrender the Original Bond to the Service Provider following the issue of the Replacement Bond.

24.5 Demands under Performance Bond

- (a) If the Purchaser wishes to make a demand or exercise its rights under any Performance Bond at any time, the Purchaser may do so:
 - (i) at any time provided it must first give the Service Provider not less than 5 Business Days prior notice specifying the Purchaser's reasons for making a demand under the Performance Bond; and
 - (ii) in accordance with clause 24.6(a).
- (b) The Service Provider must not for any reason take any steps to injunct or otherwise restrain:
 - (i) the issuer of a Performance Bond from paying the Purchaser pursuant to the terms of the Performance Bond;
 - (ii) the Purchaser from making a demand under a Performance Bond; or
 - (iii) the Purchaser from using the proceeds of a Performance Bond,in each case where the Purchaser is entitled to exercise its rights under any Performance Bond in accordance with clause 24.6.

24.6 Proceeds of Performance Bond

- (a) Subject to clause 24.5 and clause 24.9(b), the Purchaser may only make a demand under, and apply the proceeds of any Performance Bond towards payment of:
 - (i) any amount that has become due and payable (and has not been paid) by the Service Provider or the Service Provider's Associates to the Purchaser in respect of:

- (A) Moneys Owning by the Service Provider under this Contract; or
- (B) any Loss suffered or incurred by an Indemnified Person under or in connection with this Contract, including as a consequence of an Insolvency Event; or
- (ii) any amount:
 - (A) for which the Service Provider may or will become liable following the End Date; or
 - (B) in respect of which, as at the End Date, the Purchaser has a bona fide claim against the Service Provider.
- (b) Within 10 Business Days of being requested to do so, the Service Provider must procure the issue to the Purchaser of a Replacement Bond for the Performance Bond that the Purchaser made a demand on. The Replacement Bond must have a face value equal to that of the Performance Bond being replaced, comply with all of the requirements for a Performance Bond in clause 24.2 and will be held by the Purchaser for the same purposes for which the Original Bond was held.
- (c) Any proceeds remaining from a Performance Bond must be repaid to the Service Provider in return for the Replacement Bond.
- (d) If the issuer of a Performance Bond makes a payment to the Purchaser as a result of a demand made in accordance with clause 24.6(a) and all or any part of the amount:
 - (i) in respect of which demand was made pursuant to clause 24.6(a)(i) was not actually due and payable to the Purchaser or another Indemnified Person under or in connection with this Contract by the Service Provider or Service Provider Associate; or
 - (ii) in respect of which demand was made pursuant to clause 24.6(a)(ii), the Service Provider or Service Provider Associate does not in fact become liable to pay the Purchaser or another Indemnified Person under or in connection with this Contract,

(in either case, a **Relevant Amount**), then the Purchaser must pay the Service Provider (as the Service Provider's sole remedy):
 - (iii) the Relevant Amount, and
 - (iv) subject to clause 24.6(e), an amount equal to that proportion of any fees or charges levied on the Service Provider by the issuer of the Performance Bond as the direct result of the demand made in accordance with clause 24.6(a) in respect of the Relevant Amount.
- (e) The Purchaser will not be liable to pay any amount to the Service Provider under clause 24.6(d)(iv) except to the extent the Service Provider has substantiated that amount to the Purchaser's reasonable satisfaction.

24.7 No interest

The Purchaser is not obliged to pay the Service Provider interest on a Performance Bond or the proceeds of a Performance Bond.

24.8 No trust

If the Purchaser makes a demand under a Performance Bond, the Purchaser does not hold the proceeds on trust for the Service Provider.

24.9 Failure to provide Performance Bond

- (a) If the Service Provider fails to provide any Performance Bond in accordance with its obligations under clauses 24.1, 24.3, 24.4(b) or 24.6(b), that failure will be a Show Cause Event.

- (b) If:
- (i) the Service Provider fails to provide a Renewing Bond as required under clause 24.3; or
 - (ii) on the Bond Longstop Date any amount referred to in clause 24.6(a) remains outstanding or continues to be the subject of a bona fide claim under this Contract by the Purchaser,
- then, without limiting the Purchaser's other rights, the Purchaser may present the Original Bond for payment and may hold the proceeds as a cash security for the performance of the obligations for which the Original Bond was held.
- (c) The Service Provider may:
- (i) provide a Renewing Bond that is equal to the proceeds of the Original Bond held by the Purchaser as a cash security under clause 24.9(b); and
 - (ii) request return of those proceeds to the Service Provider in exchange for the Renewing Bond,
- and if the Service Provider does so, the Purchaser must promptly return those proceeds to the Service Provider.

24.10 Bond Longstop Date

For the purposes of this clause 24, the Bond Longstop Date is the date 12 months from the End Date.

24.11 Replacement Performance Bond for Government Authority

- (a) If the Purchaser assigns or novates this Contract to a Government Authority (**GA Assignee**) pursuant to clause 43.1(c), the Service Provider must replace the Performance Bond (**Original Bond**) with a new Performance Bond (**Assignment Bond**) by no later than 10 Business Days after the date of such assignment or novation.
- (b) The Assignment Bond must comply with all of the requirements for a Performance Bond in clause 24.2 and must be held by the GA Assignee for the same purposes for which the Original Bond was held.
- (c) The Purchaser agrees to surrender an Original Bond in exchange for an Assignment Bond complying with this clause upon receiving reasonable notice of a request to do so (which notice need not exceed 10 Business Days).
- (d) If the Service Provider fails to provide an Assignment Bond as required under this clause then, without limiting the Purchaser's other rights including under clause 24.9, the Purchaser may present the Original Bond for payment and may hold the proceeds as a cash security for the performance of the obligations for which the Original Bond was held.

Part F - Continuity of the Services

25. Importance of Continuity of the Services

- (a) The Service Provider acknowledges that:
 - (i) the Network forms part of a system of Public Passenger Services for which the Purchaser's strategic objectives are set out in clause 2.1;
 - (ii) uninterrupted delivery of the Network is crucial to the Purchaser and Customers;
 - (iii) it is important that Continuity of the Services is achieved at all times; and
 - (iv) in order to achieve the matters referred to in this clause 25(a), it is important that the Purchaser has access to relevant information at all times during and after the Contract Term and receives certain assistance from the Service Provider after the Contract Term in accordance with this Contract.
- (b) The Service Provider further acknowledges and agrees that:
 - (i) clauses 26 and 27 require the Service Provider to provide and ensure the availability of information that is important to the achievement of the matters referred to in clause 25(a), in particular the ongoing provision of Public Passenger Services in a manner that is consistent with the standards required for the Transport Operations under this Contract;
 - (ii) clause 28 also requires the Service Provider to cooperate and provide certain assistance after the Contract Term in a manner that is important to the achievement of the matters referred to in clause 25(a), in particular the ongoing provision of Public Passenger Services in a manner that is consistent with the standards required for the Transport Operations under this Contract; and
 - (iii) the Service Provider's obligations under this Part F are reasonable having regard to the nature of the Transport Operations and the matters referred to in clause 25(a).

26. Handover Information

26.1 Obligation to document Handover Information

The Service Provider must diligently document, maintain and update the following information (**Handover Information**) within its business in either soft or hard copy form (at the discretion of the Service Provider):

- (a) all asset management records in respect of the Contract Vehicles, the Depot and Depot Equipment and maintenance manuals and plans;
- (b) [Not used];
- (c) subject to any restriction at Law, a list of all Staff, their contact details, payroll records, copies of their employment contracts, industrial instruments, copies of other employment records and details of Staff Liabilities for each of them;
- (d) subject to any restriction at Law, all shift rosters for the performance of the Transport Operations for a reasonable period of time prior to and following the date for provision of the Handover Package;
- (e) keys, security cards, security panel access codes and other security devices required to gain access to operate or use the Service Contract Assets; and

- (f) any other information that will be reasonably necessary for the Purchaser, a Step-in Party or a Successor Service Provider to ensure Continuity of the Services on the exercise of a Step-in Power or from the End Date.

26.2 Handover Package

- (a) The Service Provider must provide the Purchaser with a detailed, complete, orderly, up to date and accurate package of the Handover Information (and a guide to that information) (**Handover Package**):
 - (i) on or before the date that is six months after the Commencement Date,
 - (ii) within 10 Business Days of the end of each Financial Year; and
 - (iii) six months prior to the Expiry Date,in each case in accordance with this clause 26.
- (b) The Service Provider must:
 - (i) provide the Handover Package in electronic format accessible by the Purchaser and separately identifiable from other information; and
 - (ii) make any part of the Handover Package that does not constitute or cannot be reduced to a document (for example, keys) available to the Purchaser in its original form.
- (c) To preserve the Continuity of the Services, the Service Provider must ensure that the Purchaser has access as soon as reasonably practicable to detailed, complete, orderly and substantially up to date Handover Information that is accurate in all material respects in the form required by clause 26.2(b) on:
 - (i) the exercise of the Step-in Powers;
 - (ii) the Purchaser issuing a notice to amend, suspend, cancel or terminate pursuant to clause 20;
 - (iii) the surrender of this Contract pursuant to s.48(1)(c) of the Act; and
 - (iv) at any other time directed by the Purchaser from time to time.
- (d) The Purchaser must comply with its confidentiality obligations under clause 33 in respect of the Handover Package.
- (e) The Service Provider is not required to comply with this clause 26.2 to the extent that the consent of its employees or those of its Subcontractors is required for disclosure of Handover Information and the Service Provider is unable to obtain that consent, having used reasonable endeavours to do so.

26.3 Restrictions on disclosure by the Purchaser

- (a) The Purchaser may disclose relevant Handover Information to a relevant third party at any time for the purposes of a Retender or to facilitate the exercise of a Step-in Power, provided that the Purchaser will, if requested by the Service Provider, procure that such third party enters into a confidentiality undertaking agreeing to keep such information confidential.
- (b) Nothing in this clause 26 is intended to permit the Purchaser or a Step-in Party to disclose the Service Provider's Financial Statements to any person without the prior consent of the Service Provider.

27. Step-in Right

27.1 Step-in Powers

- (a) At any time after the occurrence of a Step-in Event (including if the Purchaser suspends this Contract under the Act) or an Emergency Step-in Event, the Purchaser has the right **(Step-in Right)** to:
- (i) access and temporarily assume total or partial management and control of the Transport Operations and the Service Contract Assets; or
 - (ii) take such other reasonable steps, as in the reasonable opinion of the Purchaser are necessary or desirable to preserve the Continuity of the Services and minimise the adverse effects of the Step-in Event or Emergency Step-in Event,
- (Step-in Powers).**
- (b) The Purchaser may exercise the Step-in Powers:
- (i) in person; or
 - (ii) through another party as agent of the Purchaser **(Step-in Party)**.
- (c) Unless an Emergency Step-in Event subsists, the Purchaser must give prior written notice to the Service Provider of an election to exercise its Step-in Powers.
- (d) During any Step-in Period, the Service Provider's rights and obligations under this Contract are suspended to the extent necessary to permit the Purchaser to exercise its Step-in Powers and the Service Provider will not be liable for any Non-Compliance Event, KPI Breach, Show Cause Event or, subject to clause 27.4, any Missed Trip Payment Adjustment to the extent that the relevant Non-Compliance Event, KPI Breach, Show Cause Event or Missed Trip was caused by the Step-in Party while exercising the Step-In Powers.

27.2 No effect on the rights of the Purchaser

The exercise by the Purchaser of its Step-in Rights under this clause (or ceasing to exercise those rights) does not affect any other right or power of the Purchaser or any other right of the Purchaser under this Contract or at Law.

27.3 Permitted Steps

- (a) The Purchaser or a Step-in Party may do anything necessary or incidental to ensuring Continuity of the Services, including anything:
- (i) that the Service Provider is permitted to do under or in connection with this Contract or any Law, as if it were the Service Provider and to the exclusion of the Service Provider, including conducting the Transport Operations in accordance with this Contract; and
 - (ii) all things that the Purchaser considers necessary for performing the Transport Operations and remedying or mitigating the effects of the Step-in Event or Emergency Step-in Event that gave rise to the Step-in Right.
- (b) The Purchaser or a Step-in Party may, but is not under any obligation to, remedy any Step-in Event or Emergency Step-in Event or mitigate or overcome any other event or circumstance in respect of which the Purchaser or Step-in Party exercises the Step-in Powers.
- (c) The Service Provider must use its best endeavours to assist the Purchaser or the Step-in Party in the exercise of the Step-in Powers, wherever and howsoever reasonably possible.

27.4 Payments on Step-in

- (a) Where the Purchaser exercises a Step-in Right during the Contract Term, the Service Payment for each Payment Month (or part of a Payment Month) during the Step-in Period will be adjusted to take into account:
- (i) subject to clause 27.4(b), the reasonable and proper costs and all Losses incurred by the Purchaser (including the costs of any Step-in Party that is not the Purchaser) in exercising the Step-in Powers;
 - (ii) an amount estimated by the Purchaser, acting reasonably, as representing the costs saved by the Service Provider to the extent it has not delivered the Network in accordance with and to the standard specified in this Contract during the Step-in Period;
 - (iii) to the extent that the Service Provider has delivered any part of the Network or State Designated Event Services during the Step-In Period, the costs incurred by the Service Provider in delivering those Transport Operations and a reasonable assessment of the Performance Payment Adjustment that would have been applicable having regard to the Level of Service provided; and
 - (iv) the Commercial Revenue Payment Adjustment, provided that the same amount will not be counted more than once.
- (b) Clause 27.4(a)(i) does not apply in the case of the exercise of a Step-in Right due to an Emergency Step-In Event unless that event was caused or contributed to by the breach, negligence or wilful misconduct of the Service Provider.
- (c) The Purchaser may set off any amounts due by the Service Provider under this clause 27.4 against Service Payments otherwise payable under this Contract.
- (d) The Purchaser:
- (i) agrees to use reasonable endeavours to ensure any Step-in Party acts in good faith and delivers the Network to the standard of a reasonable and prudent operator of Public Passenger Services of the type, size, scope and complexity of the Network; and
 - (ii) acknowledges that where a Step-in Right is exercised in circumstances that do not result in termination or cancellation under clause 20, the Step-in Period is intended to be temporary and, where clause 27.6(a) applies, to conclude with the giving of a Step-out Notice.

27.5 Protection of Step-in Party

Subject to any Law to the contrary and to clauses 27.4(d)(i) and 30.2(c), the Service Provider acknowledges that neither the Purchaser nor a Step-in Party will be liable to the Service Provider in respect of:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor
- (b) for any Loss which results from the exercise of a Step-in Right,

except where it arises from a fraudulent or unlawful act or omission or wilful misconduct or gross negligence on the part of the Purchaser or the Step-in Party.

27.6 Step-out

- (a) When:
- (i) the Step-in Event which resulted in the Purchaser exercising Step-in Rights has been remedied to the satisfaction of the Purchaser and the Purchaser is satisfied that there is no material risk of a recurrence of the Step-in Event; or

- (ii) the Purchaser is satisfied that the circumstances that gave rise to the Emergency Step-in Event no longer subsist,
- the Purchaser will give the Service Provider a notice (**Step-out Notice**).
- (b) The Purchaser agrees that the Step-out Notice must allow the Service Provider a reasonable period to resume the performance of the Transport Operations.
- (c) The Purchaser and the Service Provider agree to consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to the Service Provider resuming the delivery of the Transport Operations is effected with the least practicable interruption to the Transport Operations.
- (d) The Service Provider acknowledges that during the Step-in Period the Purchaser may exercise any rights to cancel or terminate this Contract under clause 20 or under the Act and in that case:
 - (i) the Service Provider has no right to resume the delivery of the Network; and
 - (ii) the Step-in Party must continue to conduct the Transport Operations until a Successor Service Provider is appointed.

28. End of Contract Term

28.1 Transitional Assistance

- (a) Until the end of the Transition Out Period, the Service Provider must, and must procure all relevant Service Provider Associates to cooperate with, assist and otherwise facilitate the Purchaser and the Purchaser Associates in:
 - (i) the preparation for, and conduct of any Retender;
 - (ii) ensuring uninterrupted delivery of the Network; and
 - (iii) facilitating the orderly and efficient transition of the Transport Operations to one or more Successor Service Providers,

(Transitional Assistance).
- (b) Without prejudice to the generality of clause 28.1(a), the Transitional Assistance required under this clause 28 includes the Service Provider:
 - (i) making at least one member of its administration Staff available to Successor Service Providers (including any Interim Service Provider) during Business Hours;
 - (ii) providing reasonable assistance to Successor Service Providers to secure the continued supply of goods and or services used in connection with the Transport Operations that the Successor Service Provider indicates it will require;
 - (iii) permitting the Purchaser (subject to clause 26.3) to access, and make use of, the Service Provider's records and the Handover Information in preparing reports and information packages;
 - (iv) assisting in the verification of any information (including answering verification questions) by the Purchaser and any prospective Successor Service Provider nominated by the Purchaser in the course of any Retender;
 - (v) making its Staff and operations reasonably available for inspection and questioning by the Purchaser, Purchaser Associates and any prospective Successor Service Provider nominated by the Purchaser; and
 - (vi) complying with all reasonable requests of the Purchaser relating to any of the above.

- (c) The Purchaser, may give a reasonable direction to the Service Provider at any time as to the manner or timeframe within which any aspect of Transitional Assistance must be provided.
- (d) The Service Provider will be solely responsible for, and will have no Claim in relation to, the Service Provider's costs of providing Transitional Assistance:
 - (i) before the End Date; or
 - (ii) after the End Date if this Service Contract has been:
 - (A) surrendered by the Service Provider pursuant to s.48(1)(c) of the Act; or
 - (B) suspended or cancelled by the Purchaser following an Immediate Termination Event (other than an Immediate Termination Event in the circumstances contemplated in clause 17.5) prior to the Expiry Date,but the Purchaser must otherwise reimburse the Service Provider for all the Service Provider's reasonable costs and expenses incurred in providing Transitional Assistance after the End Date.
- (e) The Service Provider must not do any thing or fail to do any thing, and must procure that no Service Provider Associate or Service Provider Staff member does any thing, or fails to do any thing, that will, or is reasonably likely to, materially prejudice or frustrate a Retender.

28.2 Interim Service Provider

- (a) The Service Provider acknowledges that:
 - (i) uninterrupted delivery of the Transport Operations is crucial to the Purchaser and Customers; and
 - (ii) pursuant to section 48A of the Act, the Purchaser may appoint an Interim Service Provider to deliver the Network or General Route Services substantially similar to the Network on a temporary or interim basis before appointing another Successor Service Provider to deliver the Network beyond the end of the Transition Out Period.
- (b) Without limiting the Service Provider's other obligations to provide Transitional Assistance under this clause 28, until the end of the Transition Out Period, the Service Provider must cooperate in all respects and do all things reasonably directed by the Purchaser to:
 - (i) facilitate the temporary transfer of the Transport Operations to an Interim Service Provider, and
 - (ii) the subsequent transfer of the Transport Operations from the Interim Service Provider to another Successor Service Provider.

28.3 Transitional Assistance a condition of Contract

Without limiting any other obligation of the Service Provider under this Contract, the Service Provider acknowledges and agrees that the provisions of this clause 28 are conditions of this Contract.

Part G – Loss, Liability and Insurance

29. Insurance

29.1 Insurances

The Service Provider must, at its own cost and expense, effect and maintain (or cause to be effected and maintained) Insurances in accordance with Best Industry Practice, including, as a minimum, those Insurances set out in Schedule D1 and all on the terms set out in this clause 29.

29.2 Term of Insurances

The Insurances must be effected and maintained from the Commencement Date until the End Date.

29.3 Minimum Coverage and Deductibles

The Insurances must provide coverage for the relevant insured risk of at least the amount specified in Schedule D1 and have deductibles equal to the amount specified in Schedule D1.

29.4 Nature of Policies

All Insurances must:

- (a) be taken out with Reputable Insurers with the Required Insurer Rating or another rating as approved by the Purchaser;
- (b) other than for the employers' liability and workers' compensation insurance and professional indemnity insurance policies (if any), name the Purchaser and the Purchaser Associates for their respective rights and interests as a Named Insured (as defined under the relevant policy), unless Schedule D1 provides otherwise, in which case the Insurance must note the interests of the Purchaser under the policy;
- (c) where coverage cannot be obtained in advance for the full Contract Term, be renewed annually for the full Contract Term;
- (d) for policies written on an occurrence basis, provide that the deductible is payable once for each occurrence regardless of whether a Claim or Claims are brought against one or more insureds;
- (e) not contain any 'other insurance' provisions that attempt or purport to limit or restrict coverage where another insurance policy may also potentially respond;
- (f) where more than one party is an insured, contain a waiver and cross liability clause in which the insurer agrees:
 - (i) to waive all rights of subrogation that it may have against all or any of the insured parties; and
 - (ii) that any non-disclosure or breach by an insured party does not prejudice or otherwise affect the rights of another insured party to Claim;
- (g) provide for at least 20 Business Days prior written notice to be given by the insurer to the Purchaser prior to the cancellation, expiry or amendment of the policy; and
- (h) otherwise be on terms that would ordinarily be obtained and maintained by a prudent and competent operator of Public Passenger Services of the type, size, scope and complexity of the Network.

29.5 Payment of Premiums and Deductibles

The Service Provider must pay all premiums in respect of all Insurances by the due date for payment of those premiums. If an insurer requires payment of a premium or deductible under a

relevant insurance policy by the Purchaser or if, in the absence of any such requirement, the Purchaser makes such payment (without any obligation to do so and at the Purchaser's discretion) the Purchaser may recover the payment from the Service Provider as Moneys Owing.

29.6 Evidence of Policies and Payment

The Service Provider must provide, on taking out or amending an Insurance policy, on renewal and whenever otherwise reasonably directed by the Purchaser:

- (a) (if requested) policy documentation containing sufficient detail to evidence the currency of the policy and compliance by the Service Provider with the relevant terms of this Contract, along with any other information reasonably required by the Purchaser in relation to such policies, which may include the list of specific property or assets insured;
- (b) evidence that all premiums payable under the Insurance policies have been paid, that the Service Provider is not otherwise known to be in breach of the terms of any Insurance policies and that the Insurances remain in full force and effect in accordance with the requirements of this Contract;
- (c) a written undertaking (in a form reasonably acceptable to the Purchaser) from the insurance broker used to obtain the Insurances, that the policies specifically meet the requirements of this Contract and provide sufficient coverage for all reasonably foreseeable risks that are not uninsurable that may arise out of this Contract; and
- (d) all documents and approvals necessary to allow for communication to occur directly between the Service Provider's insurance broker and the Purchaser to facilitate the Service Provider's compliance with clauses 29.6(a), (b) and (c) above.

29.7 Notice of Cancellation

The Service Provider must provide not less than 30 Business Days prior notice to the Purchaser of any intended cancellation of any Insurances and proposed arrangements for implementation of replacement policies.

29.8 Failure to insure

If the Service Provider fails to comply with its obligations in relation to Insurances under this Contract or breaches the terms of any Insurances, the Purchaser may (but is not obliged to):

- (a) remedy the Service Provider's breach (including by the payment of premiums); or
- (b) itself procure equivalent insurance to that required to be maintained by the Service Provider under this Contract,

and all costs or expenses incurred by the Purchaser in doing so will be Moneys Owing from the Service Provider to the Purchaser.

29.9 Non-vitiating

The Service Provider must not take any action or fail to take any action or (so far as it is reasonably within the Service Provider's power) permit anything to occur which would entitle any insurer to refuse to pay any Claim or otherwise prejudice the rights of any party (including the Purchaser and the Service Provider) under any Insurances.

29.10 Change in Insurances

- (a) Subject to the rights of the Purchaser under this clause 29, it will at all times be the responsibility of the Service Provider to ensure that sufficient and adequate insurance cover is maintained.
- (b) Subject to clause 23, the Purchaser may at any time direct the Service Provider to:
 - (i) insure against a risk not specifically provided for or contemplated by this clause 29 or Schedule D1; or

- (ii) vary the coverage of an Insurance (either by reducing the policy exclusions or increasing the limit of cover, or otherwise),
which, in each case, will be a Change Event.
- (c) Before giving a direction under clause 29.10, the Purchaser must direct the Service Provider to prepare and submit an Indicative Change Proposal.

30. Damage, Loss and Reinstatement

30.1 Service Provider to bear risk of damage or Loss

The parties agree that the Service Provider:

- (a) bears all risk of damage and Loss (including theft) to Service Contract Assets; and
- (b) is responsible for the care, custody and control of the Ticketing Equipment and Additional Purchaser Supplied Items and bears the risk of damage and Loss (including theft) to them in accordance with clause 30.3.

30.2 Damage or destruction of Service Contract Assets

- (a) If at any time during the Contract Term any Service Contract Asset is damaged, lost or destroyed, the Service Provider must:
 - (i) except in the case of minor damage only, promptly notify the Purchaser; and
 - (ii) procure the repair, rebuilding or replacement of the Service Contract Asset as the case may be.
- (b) If a Service Contract Asset is repaired, rebuilt or replaced:
 - (i) subject to clause 30.2(c), the Service Provider is responsible for all direct and indirect costs associated with the repair, rebuilding or replacement and there will be no associated adjustment to the Service Payments under this Contract;
 - (ii) the Service Provider must ensure that the Service Contract Asset, as repaired, rebuilt or replaced;
 - (A) complies with all Mandatory Requirements and all other requirements under this Contract; and
 - (B) is otherwise fit for purpose;
 - (iii) the Service Provider must at all times ensure the Continuity of the Services and if the Service Provider is temporarily unable to use a Service Contract Asset pending its repair, rebuilding or replacement, the Service Provider must, at its own cost, procure the use of a temporary alternative asset to ensure Continuity of the Services, and
 - (iv) the Service Provider has no entitlement to relief from performance of any other obligation under this Contract.
- (c) If there is any shortfall in the amount recovered by the Service Provider under an insurance in respect of the cost of repairing, rebuilding or replacing a Service Contract Asset (other than a Contract Vehicle in the circumstances referred to in clause 30.2(d)) and that shortfall arises because of a wrongful act or omission of the Purchaser or a Purchaser Associate which has vitiated the coverage available under the Insurance, then the Purchaser must pay the Service Provider an amount equal to the difference between the reasonable cost of carrying out the required repair, rebuilding or replacement work and the amount of the relevant insurance proceeds recovered.
- (d) If a Contract Vehicle is destroyed or wholly or substantially damaged such that the Contract Vehicle is to be written off and replaced:

- (i) the New Notional Lease Fleet Payment set out in Table 13 of 5.2(e) of Schedule D2 will apply to the replacement Contract Vehicle as though the replacement Contract Vehicle was listed in the Approved Contract Vehicle Register;
 - (ii) subject to clause 30.2(e), if the amount available to the Service Provider under the Contract Vehicle Insurance is less than the amount of any Third Party Break Costs, the Service Provider shall be entitled to Claim that shortfall from the Purchaser, and provided the Purchaser is reasonably satisfied in relation to the amount claimed, the Purchaser must pay the Service Provider that amount within 30 Business Days of the Service Provider's Claim; and
 - (iii) if the amount available to the Service Provider under the Contract Vehicle Insurance is greater than the amount of Third Party Break Costs (if any), the Service Provider must pay the Purchaser the amount by which the available Insurance exceeds the Third Party Break Costs (if any).
- (e) The Service Provider shall not be entitled to claim any amount under clause 30.2(d)(ii) to the extent that the relevant Contract Vehicle was damaged or destroyed due to a failure by the Service Provider or any Service Provider Associate to comply with any requirement of this Contract (for the avoidance of doubt, including a failure by the Service Provider to comply with its obligations under clause 29 (*Insurance*) or to diligently pursue its rights under any Insurance policy).

30.3 Damage or destruction of other assets

If at any time during the Contract Term any item of Ticketing Equipment or an Additional Purchaser Supplied Item is damaged, lost or destroyed:

- (a) the Service Provider must immediately notify the Purchaser of that fact and take any steps directed by the Purchaser to facilitate the repair, rebuilding or replacement of the relevant Ticketing Equipment or Additional Purchaser Supplied Items;
- (b) the Service Provider will have the obligations and liabilities set out in clauses 30.2(b)(i) and 30.2(b)(iii) with respect to the relevant Ticketing Equipment or Additional Purchaser Supplied Items;
- (c) the Service Provider has no entitlement to relief from performance of any other obligation under this Contract with respect to the relevant Ticketing Equipment or Additional Purchaser Supplied Items; and
- (d) any costs of the repair, rebuilding or replacement of the relevant Ticketing Equipment or Additional Purchaser Supplied Items incurred by the Purchaser will be Moneys Owning.

31. Indemnity and limitation of liability

31.1 Indemnity

The Service Provider (subject to clause 31.2) releases and indemnifies, and must keep indemnified, the Purchaser and the Purchaser Associates (each an **Indemnified Person**) from and against all Claims and Losses (including direct, Indirect or Consequential Losses and costs incurred in exercising a Step-in Power or otherwise to ensure Continuity of the Services) that any of the Indemnified Persons may suffer or for which it may become liable to the extent they are directly or indirectly caused by reason of or in connection with:

- (a) the performance or non-performance of any Service Contract Document by the Service Provider;
- (b) any other act or omission of the Service Provider or any Service Provider Associate (whether arising in tort, contract or by Law) in connection with the performance of the Transport Operations;

- (c) the use of, access to, occupation of or possession of any Contract Vehicle, Depot, Depot Equipment, Ticketing Equipment, Additional Purchaser Supplied Items, the Integrated Scheduling System or any other facility, equipment or other property by the Service Provider or a Service Provider Associate or by any person for which the Service Provider or any Service Provider Associate is responsible;
- (d) the reliance by the Purchaser or another Indemnified Person on any information, statement, representation or warranty given by the Service Provider under or in relation to this Contract which is inaccurate or incorrect; or
- (e) the infringement or alleged violation of any Intellectual Property Rights or other rights in relation to the use or possession of the Existing Service Provider Materials, the Dead Network Attributes or any New Contract Materials as contemplated in this Contract.

31.2 Indemnity not defeated

The Service Provider is not obliged to indemnify an Indemnified Person in respect of an indemnity given under this Contract to the extent that the Claim or Loss which is the subject of the indemnity arises directly as a result of:

- (a) an unlawful, negligent or fraudulent act or omission or the wilful misconduct of the Indemnified Person; or
- (b) a breach by the Purchaser of this Contract or another Service Contract Document, except to the extent that such act or omission was caused or contributed to by an act or omission of the Service Provider (other than an act or omission expressly permitted or required under this Contract or another Service Contract Document).

31.3 Liability with respect to Customers and third parties

The Service Provider acknowledges and agrees that:

- (a) the Purchaser will not be responsible for the actions of the Service Provider or any of its Associates or Staff; and
- (b) other than as expressly provided in any Service Contract Document, the Service Provider must deliver the Network and comply with its obligations under each Service Contract Document at its own cost and risk without recourse to the Purchaser or government funds or guarantees.

31.4 Exclusion of liability for Indirect or Consequential Loss

- (a) Despite any other provision of a Service Contract Document, neither the Purchaser nor any Purchaser Associate will have any liability to the Service Provider, nor is the Service Provider entitled to make any Claim, in respect of any Indirect or Consequential Loss incurred or sustained by the Service Provider as a result of any act or omission by the Purchaser or any Purchaser Associate (whether negligent or otherwise) or as a result of a breach of a Service Contract Document by the Purchaser.
- (b) Clause 31.4(a) does not operate to limit or restrict the liability of any Indemnified Person to the Service Provider or any Service Provider Associate, nor any Claim by the Service Provider or any Service Provider Associate against an Indemnified Person, in respect of Indirect or Consequential Loss:
 - (i) arising from:
 - (A) damage to, or Loss of use of, property (except to the extent that liability or Claim arises solely in contract under an agreement or deed entered into by the Service Provider or Service Provider Associate after the date of this Contract);
 - (B) death or personal injury;

- (C) criminal acts, fraud or wilful misconduct on the part of the Indemnified Person; or
 - (D) infringement by an Indemnified Person of the Intellectual Property Rights of a third party except in circumstances where the Indemnified Person was acting in accordance with the terms of a licence granted or procured by the Service Provider pursuant to clause 36;
- (ii) included in an amount payable by the Purchaser to the Service Provider pursuant to clauses 7.5, 14.1(f), 21.1, 23, 27.4 or 30.2 or Schedule D2 or Schedule D3;
- (iii) to the extent that the Indemnified Person has:
- (A) recovered that loss from a third party (whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party (provided that the Indemnified Person is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Indemnified Person);
- (iv) to the extent that the Indemnified Person
- (A) is indemnified in respect of that liability by a policy of insurance required under this Contract); or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract:
 - (I) but for clause 31.4(a); or
 - (II) if:
 - (1) the Indemnified Person had diligently pursued a claim under that policy of insurance;
 - (2) the Indemnified Person had complied with the terms and conditions of that policy of insurance; or
 - (3) the Purchaser had complied with its insurance obligations under this Contract; and
- (v) to the extent such liability cannot be excluded at Law.
- (c) Despite any other provision of this Contract, neither the Service Provider nor any Service Provider Associate will have any liability to the Purchaser or any Purchaser Associate, nor is the Purchaser or any Purchaser Associate entitled to make any Claim, in respect of any Indirect or Consequential Loss incurred or sustained by the Purchaser or a Purchaser Associate as a result of any act or omission by the Service Provider or Service Provider Associate (whether negligent or otherwise) or as a result of a breach of this Contract by the Service Provider.
- (d) Clause 34.1(c) does not operate to limit or restrict the liability of the Service Provider or any Service Provider Associate to any Indemnified Person, or any Claim by any Indemnified Person against the Service Provider or the Service Provider Associate, in respect of Indirect or Consequential Loss:
- (i) arising from:
 - (A) damage to, or loss of use of, property (except to the extent that liability or Claim arises solely in contract under an agreement or deed);
 - (B) death or personal injury;

- (C) criminal acts, fraud or wilful misconduct on the part of the Service Provider or a Service Provider Associate; or
 - (D) infringement by the Service Provider or a Service Provider Associate of the Intellectual Property Rights of a third party except in circumstances where the Service Provider and Service Provider Associate was acting in accordance with the terms of a licence granted or procured by the Purchaser pursuant to clause 36.5 or clause 36.6;
- (ii) arising from liability of the Indemnified Person to a third party for consequential or economic Loss of that third party, other than liability of the Indemnified Person that arises under an agreement or deed with that third party;
 - (iii) that is Moneys Owning;
 - (iv) to the extent that the Service Provider has:
 - (A) recovered that Loss from a third party (including any Subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party (provided that the Service Provider is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by the Service Provider);
 - (v) to the extent that the Service Provider:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this Contract or another Service Contract Document; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Contract or another Service Contract Document:
 - (I) but for clause 34.1(c); or
 - (II) if the Service Provider had:
 - (1) diligently pursued a claim under that policy of insurance;
 - (2) complied with the terms and conditions of that policy of insurance; or
 - (3) complied with its insurance obligations under this Contract or another Service Contract Document; and
 - (vi) to the extent such liability cannot be excluded at Law.

31.5 Reduction in Purchaser Liability

The Purchaser's liability and the Service Provider's entitlements in connection with any Claim by the Service Provider will be reduced:

- (a) to the extent that the Claim or the events and circumstances giving rise to the Claim were contributed to by:
 - (i) any breach of this Contract or another Service Contract Document by the Service Provider; or
 - (ii) any other act or omission by the Service Provider other than to the extent any such act or omission is expressly authorised or permitted under this Contract or another Service Contract Document;

- (b) to the extent the Service Provider fails to:
 - (i) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of the events and circumstances giving rise to the Claim (including by putting in place temporary measures reasonably required by the Purchaser); or
 - (ii) take all reasonable steps which a prudent, competent and experienced person in the circumstances of the Service Provider would have taken to mitigate, minimise or avoid the effects, consequences or duration of the events and circumstances giving rise to the Claim; and
- (c) by any insurance proceeds:
 - (i) payable to the Service Provider, or any of its Associates, under any insurances in respect of the events and circumstances giving rise to the Claim; or
 - (ii) which would have been payable to the Service Provider or any of its Associates under any Insurance in respect of the events and circumstances giving rise to the Claim but for:
 - (A) a failure by the Service Provider to comply with this Contract or another Service Contract Document; or
 - (B) a failure by the Service Provider or any of its Associates to comply with the terms of those Insurances.

Part H – General Provisions

32. Purchaser's right to access, inspect and audit

32.1 Access Licence

- (a) The Service Provider hereby grants, and must procure that any relevant Service Provider Associate grants, to the Purchaser and any Purchaser Associate a licence (**Access Licence**) to enter and access any Contract Vehicle, Depot or other premises of the Service Provider or the Service Provider Associate for the purposes of:
- (i) effecting livery changes directed by the Purchaser under clause 12.7;
 - (ii) installing, repairing, maintaining or removing Vehicle Advertising as contemplated in clause 12.8(b);
 - (iii) testing, installing, repairing, removing, maintaining, upgrading, modifying, commissioning, decommissioning, tagging, recording, auditing or retrieving or verifying any information recorded by the Ticketing Equipment or ETS Software as contemplated in clause 13.2(h);
 - (iv) installing, maintaining or removing marketing and communication materials and Passenger Information;
 - (v) exercising any Step-in Power pursuant to clause 27; or
 - (vi) exercising the Purchaser's rights of audit and inspection under clause 32.2.
- (b) The rights of access conferred on the Purchaser and the Purchaser Associates under the Access Licence are granted subject to the Purchaser and the Purchaser Associates:
- (i) subject to clauses 32.1(c), 32.2(b) and 32.2(c), giving reasonable prior notice of the access required, in each instance; and
 - (ii) complying with any reasonable conditions imposed by the Service Provider in relation to:
 - (A) operational scheduling; and
 - (B) workplace health and safety and other relevant Legal Requirements affecting the relevant vehicle or premises,and the Purchaser must, and must use reasonable endeavours to procure that the Purchaser Associates:
 - (C) comply with such conditions;
 - (D) do not cause Loss or damage to the Contract Vehicles, Depot or other premises being accessed; and
 - (E) minimise, so far as practicable, interruptions to the Transport Operations,and to the extent that the rights of access are exercised by Purchaser Associates, must use reasonable endeavours to procure that those Purchaser Associates comply with these requirements.
- (c) If requested by the Purchaser at any time, the Service Provider must negotiate in good faith with the Purchaser or any Purchaser Associate to agree an access plan or plans for any purpose of the Access Licence. The Service Provider must not unreasonably withhold agreement to any access plan nor impose unreasonable conditions in relation to it. The Service Provider must comply with the requirements of any access plan agreed upon and must allow access as provided for in it, without either:
- (i) any requirement for any further notice to be given by the Purchaser or any Purchaser Associate under clause 32.1(b)(i); or

- (ii) the imposition of any conditions under clause 32.1(b)(ii)(A).
- (d) The Purchaser or any Purchaser Associate may access any Contract Vehicle at any time during a Trip for any Fare Revenue protection or Customer survey purposes or for otherwise monitoring the Service Provider's performance and compliance with this Contract.
- (e) The Service Provider indemnifies the Purchaser for any Loss incurred by the Purchaser or any Purchaser Associate in connection with any failure or delay by the Service Provider in providing access to the Purchaser or any Purchaser Associate under this clause 32.1.

32.2 Right to inspect or audit

- (a) Subject to clause 32.2(b), the Purchaser or any person authorised by the Purchaser (which may include a Purchaser Associate) may, at any time from the Commencement Date until 12 months after the End Date, inspect or audit any of:
 - (i) the records of the Service Provider or its Associates;
 - (ii) the Service Contract Assets; or
 - (iii) any of the systems and work practices used by the Service Provider or any of its Associates in delivering the Network and performing the Transport Operations, or relating to a transaction contemplated in clause 8.3,in order to assess or verify:
 - (iv) the Service Provider's performance of the Transport Operations, business and risk control systems or compliance with any of its obligations under this Contract;
 - (v) the Service Provider's financial position, including any matter relating to Service Payments or other Funding;
 - (vi) compliance by the Service Provider with any Service Provider Warranty;
 - (vii) compliance by the Service Provider with its obligations under clauses 8.1 and 8.3; and
 - (viii) any other matters reasonably determined by the Purchaser or the Auditor General to be relevant to this Contract.

The Service Provider acknowledges and agrees that the Auditor General of Queensland is a person authorised by the Purchaser for the purposes of this clause.

- (b) Subject to clause 32.2(c), if the Purchaser exercises a right to inspect or audit under clause 32.2(a):
 - (i) the Purchaser must, as far as reasonably practicable, give the Service Provider reasonable prior notice of:
 - (A) the date, time and location of the proposed inspection or audit; and
 - (B) the information, Service Contract Assets, systems or work practices that are required for inspection or audit; and
 - (ii) the Service Provider must:
 - (A) provide copies of any documents or data reasonably directed by the Purchaser; and
 - (B) comply with any other reasonable requirements of the Purchaser for the inspection or audit.
- (c) To the extent that an inspection or audit under this clause 32.2 relates to the Service Provider's compliance with a Mandatory Requirement, the Purchaser may, but is not obliged to, give the Service Provider advance notice of the proposed inspection or audit.

- (d) The Service Provider must cooperate with and facilitate the conduct of each inspection or audit under this clause 32.2, including:
 - (i) by cooperating with, assisting and otherwise facilitating the inspection of systems and processes used to produce records and reports required under this Contract;
 - (ii) in the case of documents or records stored in electronic form, make available on request at no additional cost to the Auditor General or the Purchaser such facilities as may be reasonably necessary to enable the data to be viewed and a legible reproduction to be created;
 - (iii) by procuring (at its own cost) any consent required from a third party to the disclosure or provision of any document or data referred to in clause 32.2(b)(ii); and
 - (iv) if requested by the Purchaser, promptly rectifying any error, non-compliance or inaccuracy identified in any records or reports.
- (e) Subject to clause 32.2(f):
 - (i) the Purchaser must pay the Service Provider's reasonable third party costs (if any) incurred in providing copies of documents or data directed by the Purchaser under clause 32.2(b)(ii)(A); and
 - (ii) each party must otherwise bear its own costs associated with any inspection or audit conducted pursuant to this clause 32.
- (f) Notwithstanding clause 32.2(e), if the Purchaser reasonably determines in the course of an inspection or audit under this clause 32 that:
 - (i) a report or other information provided by the Service Provider is not fit for purpose;
 - (ii) any information provided by the Service Provider under this Contract is materially false or misleading, or there has been a material omission in the provision of information by the Service Provider under this Contract (whether intentionally or otherwise); or
 - (iii) there has otherwise been a material breach by the Service Provider under this Contract,the Service Provider must pay the reasonable costs incurred by the Purchaser in relation to the inspection or audit.
- (g) Nothing in this clause 32.2 requires the Service Provider to provide or provide access to any documents, records or information that is subject to legal professional privilege.

33. Confidentiality, disclosure, publicity and probity

33.1 Confidential Information

The parties must keep confidential and not allow, make or cause any disclosure of or in relation to Confidential Information without the prior written consent of the other party, which consent may be given or withheld, or given with conditions, in the other party's sole discretion.

33.2 Exclusions

The restrictions on disclosure of Confidential Information in clause 33.1 do not apply to any disclosure of Confidential Information:

- (a) by the Purchaser or a Purchaser Associate if disclosure is reasonably required:
 - (i) for the appointment and engagement of a Successor Service Provider, unless the information is Retender Sensitive Information;
 - (ii) for the performance of the Purchaser's obligations under this Contract;

- (iii) in order to obtain the full benefit of the Purchaser's rights under this Contract; or
- (iv) if required by constitutional convention in respect of disclosure to parliament, cabinet, or any other Government Authority;
- (b) by a party to any financier or lawyers, accountants or other professional advisors to a party, provided that the party disclosing such information has obtained an undertaking of confidentiality from such financiers, advisors or consultants;
- (c) in connection with obtaining any Insurance or where reasonably necessary in connection with a claim under an Insurance;
- (d) which is in the public domain other than as a result of the breach of any obligation of confidentiality;
- (e) which was made available to the disclosing party on an expressly non-confidential basis;
- (f) pursuant to the order of any court or tribunal of competent jurisdiction;
- (g) which is required in connection with an assignment, novation or other disposition of rights, benefits or obligations by either party permitted under this Contract where the proposed assignee or transferee has agreed with the other party in writing to be bound by the provisions of this clause 33;
- (h) which is required in connection with a sale or other disposition of shares in the Service Provider provided that any recipient of such information has provided an undertaking of confidentiality to the disclosing party in substantially the same form as set out in this clause 33 and on the basis that the recipient will not be released from such undertaking without the consent of the Service Provider and the Purchaser;
- (i) to the extent required in the exercise of any Intellectual Property Rights licensed to a party under this Contract;
- (j) to the extent required by any Law, the rules of any recognised stock exchange or regulatory body to which the disclosing party is subject or any written request of any taxation authority;
- (k) to the extent that such disclosure is expressly permitted by this Contract; or
- (l) by the Service Provider to:
 - (i) its shareholders or Related Bodies Corporate; or
 - (ii) its Subcontractors,but only to the extent that such disclosure is reasonably necessary.

33.3 Disclosure by the Purchaser

- (a) Subject to clause 33.3(b), the Purchaser may publish or disclose (on the internet or otherwise):
 - (i) the terms and conditions of this Contract;
 - (ii) the amount of Service Payments payable and incentives paid under this Contract;
 - (iii) the nature of any Non-Compliance Events, Show Cause Events or Immediate Termination Events, and details of actions taken by the Service Provider to cure each of them;
 - (iv) the results of any monitoring or measurement of the operational performance of the Service Provider in the delivery of the Network;
 - (v) the results of any Customer surveys, passenger counts, patronage surveys and revenue protection measures, fare evasion information or investigation or audit of the condition of any Service Contract Assets;

- (vi) detailed descriptions of the specifications for Service Contract Assets and the total amount spent or to be spent on their maintenance; and
 - (vii) ticketing and revenue information in relation to the Network.
- (b) To the extent that information proposed to be published or disclosed by the Purchaser under clause 33.3(a) contains commercially sensitive information (and without limiting the Purchaser's rights to publish or disclose information to comply with Public Disclosure Obligations):
- (i) the Purchaser may publish or disclose the information without consultation with the Service Provider if the commercially sensitive information is redacted or otherwise not disclosed;
 - (ii) the Purchaser must use reasonable endeavours to maintain the confidentiality of the commercially sensitive information, including to procure that any third party to whom any commercially sensitive information is disclosed has entered into a confidentiality agreement agreeing to keep such information confidential; and
 - (iii) without limiting clause 33.3(b)(ii), if the Purchaser proposes to disclose any commercially sensitive information, the Purchaser must use reasonable endeavours to give the Service Provider prior notice of that intention and must consult with the Service Provider prior to disclosing any commercially sensitive information, however the Purchaser may disclose the commercially sensitive information without notice if disclosure is required under any applicable government policy or if in the reasonable opinion of the Purchaser, it is appropriate to do so.
- (c) Nothing in this Contract prevents the Purchaser, or any Government Authority from disclosing any information which it is required to disclose:
- (i) under the *Right to Information Act 2009* (Qld) or the *Ombudsman Act 2001* (Qld) or any similar replacement Legislation;
 - (ii) to an employee or agent of the Purchaser for the sole purpose of the administration of, or internal reporting about, this Contract;
 - (iii) under the Purchaser's procurement practices and procedures from time to time; or
 - (iv) to satisfy the disclosure requirements of the Auditor General of Queensland or to satisfy the requirements of Parliamentary accountability, including tabling information concerning this Contract in Parliament,
- (Public Disclosure Obligations).**
- (d) The Service Provider agrees, at its own cost and expense, to use all reasonable endeavours to assist the Purchaser, or a Government Authority in meeting their Public Disclosure Obligations.

33.4 Publicity

Without limitation to clause 14.7, the Service Provider:

- (a) agrees not to, and must ensure that its Service Provider Associates do not, make any public announcement or statement or issue any media release in relation to the Network or this Contract (**Public Announcement**) without the prior consent of the Purchaser, except:
 - (i) if the Public Announcement is of a kind generally made by operators operating a bus service in Australia comparable to the size, scope and complexity of the Transport Operations in the ordinary course of their business; or
 - (ii) to the extent the Public Announcement is required by any Law or the rules of any recognised stock exchange or regulatory body to which the disclosing party is

subject and it is not reasonably practicable for the Service Provider to first seek the Purchaser's prior consent under this clause;

- (b) agrees to give the Purchaser a draft of any proposed Public Announcement which requires the Purchaser's consent and use its reasonable endeavours to agree with the Purchaser the wording and timing of that Public Announcement before it is made; and
- (c) agrees to as soon as practicable, give a copy of any Public Announcement, agreed to or approved by the Purchaser under this clause 33.4, to the Purchaser.

33.5 Probity Events

- (a) The Service Provider must give notice to the Purchaser immediately upon becoming aware that a Probity Event has occurred or is likely to occur. The notice must at a minimum describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise to the Probity Event.
- (b) Upon receipt of a notice under clause 33.5(a) or otherwise upon the occurrence of a Probity Event:
 - (i) the Purchaser and the Service Provider must meet within 5 Business Days to agree to a course of action that will remedy the Probity Event; and
 - (ii) the Service Provider must comply with any agreement made under clause 33.5(b)(i) to remedy the Probity Event within the timeframe agreed.
- (c) If the Purchaser and the Service Provider fail to agree to a course of action in accordance with clause 33.5(b), the Service Provider must take any action as directed by the Purchaser to remedy the Probity Event in accordance with the timeframe directed by the Purchaser.

33.6 Additional remedy in respect of Provision of Misinformation

If there is a Provision of Misinformation, then in addition to its rights under clause 20.1 the Purchaser may:

- (a) refuse to make any payments affected by the Provision of Misinformation unless and until the Provision of Misinformation has been rectified by provision of information that complies with the requirements of this Contract; and
- (b) direct that any overpayment made under this Contract by the Purchaser arising from the Provision of Misinformation is Moneys Owing.

34. Privacy

34.1 Information Privacy Act 2009

If the Service Provider deals with Personal Information for the Purchaser in performing its obligations under this Contract or otherwise will transfer to or receive from the Purchaser Personal Information for the purposes of this Contract, then the Service Provider must, and must procure any relevant Service Provider Associate to:

- (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 Service Provider was the Purchaser;
- (b) not use that Personal Information other than for the purposes of performing the Service Provider's obligations under this Contract, unless required or authorised by Law;
- (c) not disclose that Personal Information without the prior written consent of the Purchaser, unless required or authorised by Law;
- (d) not transfer that Personal Information outside of Australia without the prior written consent of the Purchaser;

- (e) ensure that access to any document that includes that Personal Information is restricted to those Service Provider Associates who require access in order to perform their duties;
- (f) ensure that Service Provider Associates do not access, use or disclose that Personal Information other than in the performance of their duties;
- (g) fully co-operate with the Purchaser to enable the Purchaser 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
- (h) comply with such other privacy, information security and physical security measures as the Purchaser reasonably directs from time to time.

34.2 Deed of privacy

On request by the Purchaser, the Service Provider must obtain from its Service Provider Associates engaged for the purposes of this Contract, an executed deed of privacy in a form acceptable to the Purchaser.

34.3 Notice of breach

The Service Provider must immediately notify the Purchaser on becoming aware of any breach of this clause 34.

35. PPSA

35.1 PPSA undertakings

If the interests of the Purchaser or any Purchaser Associate (a **Secured Party**) under this Contract or any transaction contemplated by it constitutes one or more Security Interests in favour of that Secured Party:

- (a) the Service Provider agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information or procuring that a Subcontractor does the same) which that Security Party may require for the purposes of:
 - (i) ensuring that any Security Interest of that Secured Party is enforceable, perfected and otherwise effective;
 - (ii) ensuring that any Security Interest of that Secured Party is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA;
 - (iii) enabling that Secured Party to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by that Secured Party; or
 - (iv) enabling that Secured Party to exercise any right or power in connection with the Security Interest;
- (b) the Service Provider agrees that it will bear all costs and expenses;
 - (i) that it incurs in complying with clause 35.1(a); and
 - (ii) incurred by a Secured Party for the purposes set out in clause 35.1(a);
- (c) to the extent permitted by Law, and in respect of any Security Interest created by this Contract or any transactions contemplated by it:
 - (i) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);

- (ii) the application of Part 4.3 of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA; and
- (iii) the Service Provider waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice cannot be excluded;
- (d) the parties agree to the full extent permitted by Law not to disclose information of the kind mentioned in section 275(1) of the PPSA;
- (e) the Service Provider agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if the relevant Secured Party approves;
- (f) a Secured Party's Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly, from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this Contract;
- (g) except where contemplated in clause 35.2(a), the Service Provider will not, without the relevant Secured Party's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the collateral; and
- (h) for the avoidance of doubt, pursuant to section 80 of the PPSA, the Service Provider covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person to whom a Secured Party assigns some or all of its rights and obligations under this Contract should have the benefit of this covenant.

35.2 PPSA procedures

- (a) Without limiting clause 35.1(g), if the Service Provider holds any Security Interests in the Service Contract Assets for the purposes of the PPSA by reason of entering into any supply or other arrangements with a Subcontractor, the Service Provider agrees to implement, maintain and comply in all material respects with procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that the Service Provider takes all steps to identify Security Interests in its favour and under the PPSA to perfect continuously any such Security Interest, including all steps necessary:
 - (i) for the Service Provider to obtain the highest ranking priority possible in respect of the Security Interest (such as perfecting a purchase money security interest (as defined in the PPSA) or perfecting a Security Interest by Control); and
 - (ii) to reduce as far as possible the risk of a third party acquiring an interest free of the Security Interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- (b) If a Secured Party asks, the Service Provider agrees to arrange at its expense an audit of the above PPSA procedures. A Secured Party may ask the Service Provider to do this if it reasonably suspects to that Service Provider is not complying with this clause 35.2.

36. Intellectual Property

36.1 Service Provider Materials

- (a) The Service Provider grants, and must procure that each relevant Associate of the Service Provider grants, to the Purchaser and any Purchaser Associate nominated by the Purchaser a non-exclusive, perpetual, irrevocable, transferable, royalty free licence, without additional cost, to exercise all Intellectual Property Rights in:

- (i) the Existing Service Provider Materials; and
 - (ii) the Dead Network Attributes,
- for the Permitted Purpose.
- (b) The licence granted in clause 36.1(a):
 - (i) may be sub-licensed; and
 - (ii) will survive expiry, cancellation, termination or surrender of this Contract on any basis.
 - (c) The Purchaser acknowledges and agrees that all Intellectual Property Rights in the Existing Service Provider Materials and Dead Network Attributes are, and remain, the sole property of the Service Provider.

36.2 New Contract Materials

- (a) Subject to this clause 36.2:
 - (i) the Service Provider acknowledges and agrees that all Intellectual Property Rights in the New Contract Materials vest immediately on creation in the Purchaser without the need for further assurance; and
 - (ii) irrespective of where it is created, if requested by the Purchaser, the Service Provider must:
 - (A) sign, execute or otherwise deal with; and
 - (B) ensure that any third party that creates any New Contract Material signs, executes or otherwise deals with,any document which may be necessary to vest all rights in and title to the intellectual property in the New Contract Material to the Purchaser.
- (b) To the extent that the Intellectual Property Rights of any third party are embodied in New Contract Material developed or created by the Service Provider, clause 36.2(a) will not apply and the Service Provider grants to the Purchaser and any Purchaser Associate nominated by the Purchaser a non-exclusive, perpetual, irrevocable, transferable, royalty free licence, without additional cost to exercise all those Intellectual Property Rights for the Permitted Purpose.
- (c) Clause 36.2(a) does not apply to the Intellectual Property Rights in the Dead Network Attributes and those rights vest immediately on creation in the Service Provider.
- (d) The Purchaser grants, and must procure that each relevant Associate of the Purchaser grants, to the Service Provider and any relevant Service Provider Associate nominated by the Service Provider a non-exclusive, perpetual, irrevocable, transferable, royalty free licence (with the right to sub-license) without additional cost to exercise all Intellectual Property Rights in the New Contract Material for the purposes of performing the Service Provider's obligations under this Contract.

36.3 Licensing of Subcontractor created Intellectual Property Rights

To the extent that any Intellectual Property Rights may be owned by any of the Service Provider's Associates, the Service Provider:

- (a) must procure from the relevant Associate a licence to enable the Service Provider to provide the licences in clause 36.1(a) and clause 36.2(b); and
- (b) warrants that it:
 - (i) is entitled to grant to the Purchaser the rights granted under clause 36.1(a) and clause 36.2(b); and
 - (ii) has procured from the relevant Associates such authority and licences as are necessary for the Service Provider to do so.

36.4 Access to Intellectual Property Rights

Without limiting the Service Provider's other obligations under this Contract with respect to the delivery of any Deliverables, the Service Provider must provide, and procure that its Associates provide, all documentation, information and assistance as the Purchaser may reasonably require in connection with the Purchaser's use and enjoyment of the Intellectual Property Rights in the Existing Service Provider Materials and the New Contract Materials in accordance with and as contemplated by this Contract.

36.5 Software

The Purchaser will procure at the Purchaser's cost all necessary licences to enable the Purchaser, the Purchaser's relevant Associates, the Service Provider and the Service Provider's relevant Associates to use and enjoy all Intellectual Property Rights reasonably required by an end user of:

- (a) the ETS Software, the Ticketing Equipment and the Integrated Scheduling System;
- (b) subject to the Service Provider complying with clause 13.1(c), the Integrated Scheduling System;
- (c) the Contract Management Portal; and
- (d) any other software systems listed in the Operations Manual as software that the Purchaser will provide,

throughout the Contract Term, as contemplated under this Contract.

36.6 Trade Mark Licence

- (a) The Purchaser grants to the Service Provider a non-exclusive licence to use the Purchaser Brands during the Contract Term for the purposes of the Transport Operations.
- (b) The Service Provider must not:
 - (i) use the Purchaser Brands for any purposes other than for the purposes of the Transport Operations, without the Purchaser's consent; or
 - (ii) use the Purchaser Brands for any unlawful purpose.
- (c) The Purchaser may give the Service Provider directions regarding such matters as:
 - (i) the nature, standards, characteristics and quality of the materials embodying the Purchaser Brands, or any goods upon which, or services in respect of which, the Purchaser Brands are to be used; and
 - (ii) the manner in which the Service Provider uses any of the Purchaser Brands.
- (d) The Service Provider must not:
 - (i) use the Purchaser Brands in any way which is likely to harm or prejudice the Purchaser's rights in the Purchaser Brands;
 - (ii) apply to register in any territory any trade mark, or apply to register any business name, company name or internet domain name that comprises or contains the Purchaser Trade Marks (or any of them) or any words or images that are substantially identical with, or deceptively similar to, the Purchaser Trade Marks (or any of them), without the consent of the Purchaser; or
 - (iii) challenge or in any way impugn:
 - (A) the Purchaser's complete ownership of, or rights to use, the Purchaser Trade Marks; or
 - (B) the validity of, or the Purchaser's title to, any applications for registration made by the Purchaser, or any registrations obtained by the Purchaser in respect of the Purchaser Trade Marks.

- (e) All use of the Purchaser Brands as between the Purchaser and the Service Provider shall enure for the benefit of the Purchaser, and any goodwill arising in respect of any of the Purchaser Brands is exclusively the property of the Purchaser.
- (f) The Purchaser and the Service Provider agree that the licence granted to the Supplier under clause 36.6(a) excludes:
 - (i) the right to commence an action for trade mark infringement under section 26(1)(b) of the *Trade Marks Act 1995* (Cth), which the Purchaser expressly reserves to itself in all instances; and
 - (ii) the rights of an 'authorised user' of a trade mark referred to in sections 26(1) (c), (d), (e) and (f) of the *Trade Marks Act 1995* (Cth).

37. Taxes

37.1 Interpretation

Words or expressions used in this clause 37 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

37.2 Taxes and duties

The Service Provider must pay and indemnify the Purchaser 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.

37.3 FTC entitlements

The parties acknowledge and agree that, in relation to fuel acquired by the Service Provider for the purposes of performance of the Contract:

- (a) the Service Provider must at all times retain ownership of that fuel; and
- (b) the Service Provider is the party entitled to make FTC claims from the ATO in relation to that fuel.

37.4 Service Provider to make FTC claims

- (a) The Service Provider may choose whether or not to claim for FTC entitlements relating to eligible fuel acquired and used in the performance of the Contract in accordance with the Service Provider's usual Business Activity Statement cycle and the ATO's rules from time to time governing FTC claims.
- (b) If the Service Provider does not pursue or obtain an FTC entitlement or equivalent credit or rebate under relevant Legislation, it will be at the Service Provider's risk, and the Purchaser will continue to be entitled to calculate the Core Fuel Payment, Permanent Service Change (In-Service Rate) Fuel Adjustment, Permanent Service Change (Total Rate) Fuel Adjustment and Temporary Planned Service Change Fuel Adjustment, in the manner set out in paragraph 3 of Schedule D2.
- (c) The parties agree that a decision by the Service Provider not to pursue an FTC entitlement or equivalent credit or rebate under relevant legislation does not preclude the Purchaser from adjusting or recovering Contract payments equivalent to that entitlement.

37.5 Payment expressed as GST exclusive

Any payment or consideration to be paid or provided to a party for a supply made by another party under or in connection with this Contract unless specifically described in this Contract as 'GST inclusive', does not include an amount on account of GST.

37.6 Costs and expenses expressed as GST exclusive

Any cost or expense referred to in this Contract excludes any amount of GST forming part of the relevant cost or expense that the party who has incurred the cost or expense may claim as an Input Tax Credit.

37.7 GST payable

If the whole or any part of any payment is the consideration for a Taxable Supply, the payer must pay to the payee an additional amount equal to the GST Amount either concurrently with that payment or as otherwise agreed in writing.

37.8 Parties to exchange information

The parties must exchange information and documentation that is reasonably necessary for each to make a proper assessment of their obligations and entitlements under the GST Law.

37.9 Parties to register for GST

The parties acknowledge that they are registered for GST and will use their best endeavours to remain registered for GST for the Contract Term. Any party who ceases to be registered for GST must immediately notify the other party of that cessation.

37.10 Recipient Created Tax Invoices

- (a) The Purchaser must issue Recipient Created Tax invoices in accordance with clause 21.1(c)(ii) and the Service Provider will not issue Tax invoices in respect of the Transport Operations.
- (b) The Purchaser may cease issuing Recipient Created Tax Invoices if the Purchaser determines at any time that it is no longer appropriate or convenient to do so. If this occurs, the Service Provider must provide the Purchaser with a complying Tax Invoice in respect of any supply for which the Service Provider seeks to be paid before any payment will be made to the Service Provider under this Contract.

38. Trust undertakings

38.1 Undertakings

If the Service Provider is, or is expressed in any Service Contract Document to be, trustee or responsible entity of a Trust, it must, unless the Purchaser otherwise consents:

- (a) **(resignation)** not resign, retire or do anything to allow it to be removed or replaced as trustee or responsible entity of the Trust or appoint or allow a new or additional trustee or responsible entity of the Trust to be appointed;
- (b) **(records)** maintain complete and correct records in relation to the Trust;
- (c) **(vesting and distribution)** not:
 - (i) vest, distribute or advance any property of the Trust (other than income); or
 - (ii) distribute income of the Trust except a non-cash distribution solely to avoid liability for any Tax on the undistributed profits of the Trust made while a Show Cause Event or Immediate Termination Event or potential Show Cause Event or Immediate Termination Event subsists;
- (d) **(re-settle, set aside or transfer)** not re-settle, set aside or transfer any property of the Trust;
- (e) **(amendment)** not amend or revoke any of the terms of the Trust;
- (f) **(acquisitions)** not acquire property intended to be subject to the terms of the Trust other than in its name;

- (g) **(use or possession of property)** not permit a beneficiary of the Trust to use or possess the property of the Trust;
- (h) **(observe obligations)** observe its obligations as trustee or responsible entity of the Trust under the constituent documents of the Trust and at Law;
- (i) **(breaches of Trust)** not do anything, or permit or omit anything, which breaches the Trust;
- (j) **(issue units)** if a unit trust, not issue any further units in the Trust;
- (k) **(vesting date)** not exercise a power, or allow a power to be exercised, to change the vesting date of the Trust or provide for the Trust to be terminated early (and must notify the Purchaser of any event which might cause the capital of the Trust to vest or to be distributed to a beneficiary, as soon as it becomes aware of the event);
- (l) **(right of subrogation and indemnity)** ensure that:
 - (i) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under the Service Contract Document to which it is a party;
 - (ii) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the terms of the Trust); and
 - (iii) its lien over any property of the Trust at all times has priority over the rights and interests of the beneficiaries of the Trust;
- (m) **(Security Interest)** not create or allow to exist any Security Interest over its right of indemnity out of the assets of the Trust;
- (n) **(delegation)** not delegate any powers conferred upon it by Law or under the Trust (other than for management of the Trust assets or the granting of a power of attorney for that purpose or as required by the Service Contract Document);
- (o) **(Custodian)** if there is a Custodian of the Trust, ensure that:
 - (i) it observes its obligations under the Custody Agreement;
 - (ii) the Custodian does not resign and is not removed as custodian of the Trust, and that no new or additional custodian is appointed in respect of the Trust or property of the Trust unless any successor or replacement to the Custodian:
 - (A) is an entity acceptable to the Purchaser acting reasonably; and
 - (B) executes such documentation reasonably required by the Purchaser (including without limitation, among other things, any ASIC forms) in respect of the property held or to be held by it as custodian (or if such successor or replacement custodian refuses to do so for more than 10 Business Days, procure the appointment of an alternative suitably qualified person as custodian of the Trust and cause that person to enter into such documentation as may reasonably be required by the Purchaser); and
 - (iii) the Custodian complies in all material respects with all of its obligations under the Custody Agreement and the Service Contract Document;
 - (iv) it does not do anything or permit anything to be done which could restrict or impair the Custodian's ability to observe its obligations under the Custody Agreement or the Service Contract Document; and
 - (v) if a Show Cause Event or Immediate Termination Event subsists, give such directions and instructions to the Custodian as may reasonably be required by the Purchaser to enable or assist the Purchaser to exercise its rights and powers under the Service Contract Document;
- (p) **(segregation)** not do anything which results in the assets of the Trust being re-settled, distributed or mixed with other property; and

- (q) **(notices generally)** promptly give the Purchaser copies of all material documents and notices received by it from any beneficiary of the Trust or which it gives to a beneficiary or manager of the Trust.

38.2 Effect of Default

If the Service Provider is the trustee of a Trust, while a Show Cause Event or Immediate Termination Event subsists, it:

- (a) must not exercise its powers or discretions under the Trust without the Purchaser's consent; and
- (b) must exercise its rights of indemnity against the assets of the Trust on demand.

39. Notices

39.1 Service of Notices

- (a) A notice, demand, consent, approval or communication under this Contract must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender;
 - (ii) addressed to the recipient as specified in the Contract Details (or to such other address as notified by the recipient from time to time); and
 - (iii) after the CMP Effective Date, sent through the Contract Management Portal in accordance with the requirements set out in clause 39.2, except in circumstances where:
 - (A) the Contract Management Portal is temporarily disabled or not operating in which case the party giving the notice must give the notice in accordance with clause 39.1(b); or
 - (B) this Contract or a Mandatory Requirement expressly requires the notice, demand, consent, approval or communication to be given by other means, in which case the party giving the notice must give the notice in accordance with that requirement and otherwise in accordance with clause 39.1(b).
- (b) A notice given:
 - (i) prior to the CMP Effective Date; or
 - (ii) after the CMP Effective Date, in accordance with clause 39.1(a)(iii)(A) or 39.1(a)(iii)(B),

must be hand delivered, sent by prepaid post or transmitted by facsimile or electronic mail (email) to the recipient's address for notices specified in the Contract Details, as varied by any notice given by the recipient to the sender.

39.2 Notices through the Contract Management Portal

- (a) All notices sent through the Contract Management Portal:
 - (i) must be submitted by the Service Provider's Representative;
 - (ii) only the text in any notice, or subject to clause 39.2(a)(iii), any attachments to the notice which are referred to in the notice, will form part of the notice. Any text in the subject line will not form part of the notice; and
 - (iii) an attachment to a notice will only form part of a notice if it is uploaded to the Contract Management Portal in:
 - (A) .pdf format;
 - (B) a format compatible with Microsoft Office; or

- (C) another format agreed by the Purchaser from time to time.
- (b) From the CMP Effective Date, the Service Provider must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the Contract Management Portal;
 - (ii) ensure that relevant Staff log on and use the Contract Management Portal and check whether notices have been received on each Business Day;
 - (iii) ensure all relevant Staff attend all necessary training required by the Purchaser in respect of the Contract Management Portal;
 - (iv) advise the Purchaser which Staff require access to the Contract Management Portal;
 - (v) at all times, ensure that it has access to Staff trained in the use of the Contract Management Portal so as to be able to view, receive and submit communications (including notices) using the Contract Management Portal; and
 - (vi) as soon as practicable, at the first available opportunity following any period when the Contract Management Portal is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 39.1(a)(iii) to the Purchaser through the Contract Management Portal.
- (c) The Purchaser has no liability for any Losses the Service Provider may suffer or incur arising out of or in connection with its access to or use of the Contract Management Portal or any failure of the Contract Management Portal, and the Service Provider will not be entitled to make, and the Purchaser will not be liable upon, any Claim against the Purchaser arising out of or in connection with the Service Provider's access to or use of the Contract Management Portal or any failure of the Contract Management Portal.

39.3 Effective on receipt

A notice given in accordance with this clause 39 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if given through the Contract Management Portal, at the time recorded in the Contract Management Portal as being the time at which the notice was received;
- (b) if hand delivered, on delivery;
- (c) if sent by prepaid post and:
 - (i) mailed to an address in the city of despatch, on the fourth Business Day after the date of posting;
 - (ii) mailed to an address elsewhere within Australia, on the fifteenth Business Day after the date of posting;
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within 8 Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice; and
- (e) if sent by email, when the sender's email system generates a report indicating the sender's date, time and transmission to the recipient's email address,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

39.4 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.

40. Dispute Resolution

40.1 Notice of Dispute

If a dispute or difference arises under or in connection with this Contract, either party may give the other written notice expressing the nature of the dispute or differences (**Dispute Notice**).

40.2 Parties to meet

Within 10 Business Days after receipt by a party of a Dispute Notice, the parties agree to ensure that senior and relevant authorised representatives of both parties meet and attempt to resolve the issue.

40.3 Referral to senior executives

- (a) If the issue is not resolved within 10 Business Days of the receipt of the Dispute Notice, it must be referred immediately to the most senior executive officers of the parties who will personally or through their nominated delegates (who must be senior to the persons who met under clause 40.2) meet as soon as practical and attempt to resolve the issue.
- (b) The parties acknowledge that:
 - (i) the senior executive of the Purchaser referred to in clause 40.3(a) is the individual holding the office of Director General of the Department of Transport and Main Roads; and
 - (ii) that individual may nominate a suitable delegate in accordance with clause 40.3(a).

40.4 Optional referral to Expert or Arbitrator

If the issue is not resolved within 20 Business Days of the receipt of the Dispute Notice, the parties may agree to refer the issue for resolution to:

- (a) if the issue is of a technical nature or if this Contract requires, a person who is an independent expert in its subject matter (**Expert**); or
- (b) if the issue is not of a technical nature, an independent person (**Arbitrator**) for arbitration, provided that the parties are not obliged to refer the issue for resolution to an Expert or Arbitrator and if the parties do not agree to do so, either party may instead exercise its rights in accordance with clause 40.8.

40.5 Issues for resolution by an Expert

An issue is of a technical nature if it is of a kind that, if it were litigated, could be resolved on expert evidence alone.

40.6 Procedure on arbitration if elected by parties

If the parties agree to refer the issue for resolution to arbitration:

- (a) the Arbitrator will be the person selected by the parties to perform that role, who must be independent of the parties and suitably qualified for the role; and
- (b) subject to any other provision of this Contract to the contrary, arbitration is to be conducted in accordance with the *Commercial Arbitration Act 2013* (Qld) and subject to that Act, with the Resolution Institute Arbitration Rules 2016.

40.7 Procedure on resolution by Expert if elected by parties

If the parties agree to refer the issue for resolution to an Expert:

- (a) the Expert appointed will be the person selected by the parties to perform that role, who must be independent of the parties and suitably qualified for the role;
- (b) the Expert will act as an expert and not as an Arbitrator;

- (c) each party to a dispute which is referred to the Expert for determination must have a reasonable opportunity to make submissions to the Expert;
- (d) the costs of the Expert must be borne in equal shares by the parties; and
- (e) the Expert's decision is final and binding on the parties to the dispute, except to the extent of fraud, gross negligence or a manifest error.

40.8 Court proceedings and other relief

- (a) A party may not start court proceedings in relation to any issue or dispute under this Contract unless:
 - (i) it has complied with clauses 40.1 to 40.3; and
 - (ii) if (and only if) the parties have agreed to refer the issue or dispute to an Expert or Arbitrator in accordance with clause 40.4, the parties have complied with clauses 40.5 to 40.7 (as applicable).
- (b) This clause 40 does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensable in damages.

40.9 Exclusion

This clause 40 does not apply to any dispute relating to or arising out of the exercise or non-exercise by the Purchaser of any right or discretion conferred on the Purchaser by the Act or otherwise by Law.

40.10 Performance not affected

Despite the parties having a dispute or difference, they agree to continue to perform their respective obligations under this Contract.

40.11 Without prejudice

The purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 40 is to attempt to settle the dispute between the parties, and must accordingly be treated as "without prejudice" in any subsequent court proceedings.

41. Notices of Claims

41.1 Communication of Claims

- (a) If the Service Provider wishes to make a Claim against the Purchaser, the Service Provider must give the Purchaser a Prescribed Notice under clause 41.2 within 20 Business Days of the earlier of:
 - (i) the date when the Service Provider was or could reasonably have been aware of the conduct, circumstance, event, act, default, omission, direction, fact, matter or thing upon which the Claim is or will be based (**Claim Event**); and
 - (ii) the date when the Service Provider could first reasonably have been aware of the entitlement to make the Claim.
- (b) The Service Provider must not delay giving notice until a Claim Event or series of Claim Events is complete or until the quantum of the Claim can be ascertained.
- (c) This clause 41.1 is subject to the express requirements for Claims in relation to:
 - (i) any Change Event under clauses 13.4(b)(i) or clause 13.7(e)(i),
 - (ii) any Force Majeure Event under clause 16;
 - (iii) any Qualifying Change in Law under clause 22.3(a); or

- (iv) a Change in Operations Manual under clause 22.4(a),

and is in addition to, and not in substitution for, and does not qualify or diminish, any other express requirement of this Contract relating to the notification or making of Claims.

41.2 Prescribed Notice

A Prescribed Notice is a notice in writing stating that it is a notice under this clause 41.2 and containing full particulars of:

- (a) the Claim Events;
- (b) the legal basis or bases for the Claim including any clause of this Contract relied upon; and
- (c) the quantum or likely quantum of the Claim (if any).

41.3 Failure to notify

The Purchaser shall not be liable upon any Claim by the Service Provider which was not notified strictly in accordance with this clause 41, and such Claim shall be absolutely barred.

42. Choice of Law and Jurisdiction

42.1 Choice of Law

This Contract is governed by and will be construed in accordance with the Laws of Queensland.

42.2 Jurisdiction

- (a) This Contract 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 Contract will be dealt with in courts of competent jurisdiction in Queensland or for appeals, the courts competent to determine appeals from those courts.

43. General

43.1 Restrictions in relation to Contract

- (a) The Service Provider must not assign, novate, delegate, transfer, sub-let, mortgage, charge, declare any trust over, surrender or otherwise deal with its interest in, or obligations under, this Contract without the Purchaser's prior written consent in accordance with section 48 (*Transfer or surrender of service Contracts etc.*) of the Act.
- (b) The Service Provider must provide any request for approval of the Purchaser under this clause at least 60 Business Days prior to the proposed effective date of the transfer, or surrender of the Contract, and must provide such further information as is reasonably requested by the Purchaser in respect of any such request.
- (c) The Purchaser may:
 - (i) novate or transfer its rights and interests in, or obligation under, this Contract to a Government Authority; or
 - (ii) assign, delegate, sub-let, mortgage, charge, declare any trust over or otherwise deal with its interest in, or obligations under, this Contract to any person, without the prior written consent of the Service Provider.
- (d) The Purchaser may novate or transfer its rights and interests in, or obligation under, this Contract to a person other than a Government Authority with the prior written consent of the Service Provider, which must not be unreasonably withheld or delayed.

43.2 Restrictions in relation to Service Contract Assets

- (a) The Service Provider must not:
 - (i) enter into or allow to exist any Financing Arrangement in respect of any Service Contract Asset other than with the prior written consent of the Purchaser (which may be subject to reasonable conditions); or
 - (ii) otherwise create or allow to exist any Security Interest (other than a Permitted Security Interest) over any Service Contract Asset.
- (b) Subject to clause 43.2(c), if any Service Contract Asset is the subject of any Financing Arrangement or is owned by a Third Party Owner, the Service Provider must procure that each financier and Third Party Owner enters into a Direct Deed with the Purchaser and the Service Provider under which that financier or Third Party Owner recognises and agrees to the enforceability of the Purchaser's rights under this Contract in relation to the relevant Service Contract Assets.
- (c) In the case of Service Contract Assets that are the subject of an existing Financing Arrangement at the date of this Contract, provided the Service Provider has used its best endeavours to comply with clause 43.2(b), it will not be in breach of clause 43.2(b) if it is unable to procure the existing financier under the existing Financing Arrangement to enter into a Direct Deed as contemplated. This clause 43.2(c) does not apply to any new, amended or replacement Financing Arrangement entered into after the date of this Contract in relation to the relevant Service Contract Assets.

43.3 Change in Control of the Service Provider

- (a) Subject to clauses 43.3(b), 43.3(c) and 43.3(d), the Service Provider must:
 - (i) not permit or suffer any Change in Control of, or change in the legal or beneficial ownership of any Service Provider Group Member or any change to the Service Provider Group structure without the prior written consent of the Purchaser, which consent must not be unreasonably withheld; and
 - (ii) inform the Purchaser as soon as reasonably practicable and, in any event, at least 60 Business Days prior to the date of any proposed Change in Control of any Service Provider Group Member.
- (b) If a Change in Control of any Service Provider Group Member occurs due to the transfer of shares or other interests which are listed on a stock exchange and the Purchaser has not given prior written consent to the Change in Control:
 - (i) that consent must be sought immediately after the relevant share capital dealing;
 - (ii) the Purchaser must only withhold consent to the Change in Control if the new controlling party:
 - (A) is not solvent or reputable;
 - (B) has an interest or duty that conflicts, or may conflict, in a material way with the interests of the Purchaser; or
 - (C) if, in the opinion of the Purchaser, the Change in Control is otherwise not in the public interest; and
 - (iii) if the Purchaser does not consent to the Change in Control, the Service Provider must procure that the relevant new controlling party ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving notice from the Purchaser that the Purchaser does not consent to the Change in Control.
- (c) If a Change in Control of the Service Provider or a Service Provider Group Member results in a Related Body Corporate obtaining Control of that Service Provider or a Service Provider Group Member (as relevant):

- (i) the Service Provider must notify the Purchaser of that Change in Control in accordance with clause 43.3(a)(ii); and
 - (ii) subject to the Service Provider's compliance with clause 43.3(c)(i), the Change in Control may be effected without the need for prior written consent from the Purchaser to that Change in Control.
- (d) If, following a Change in Control, the Service Provider or a Service Provider Group Member will continue to be Controlled solely by one or more Family Members:
- (i) the Service Provider must notify the Purchaser of that Change in Control by not later than 10 Business Days after the occurrence of the Change in Control; and
 - (ii) subject to the Service Provider's compliance with clause 43.3(d)(i), the Change in Control may be effected without the need for consent from the Purchaser to that Change in Control.

43.4 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.

43.5 Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

43.6 Entire Agreement

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

43.7 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.

43.8 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

43.9 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.

43.10 Authority to Complete Blanks etc

The Purchaser may date this Contract and complete any blanks left by the Service Provider, provided that the obligations of the Service Provider are not materially increased.

43.11 Further Assurances

Each party to this Contract must 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.

43.12 Survival of clauses

- (a) Clauses 1.5(e), 8.3(c), 9.2, 11.3(a)(iv), 11.4(h), 12.7(e)(ii), 12.8(c), 13.2(h)(ii), 13.2(j), 13.5, 13.7(c), 13.8(c), 14.6(c), 15.1(b)(iii), 15.4, 16.1(c), 20.3, 21.3, 21.6, 24, 26.2, 26.3, 28, 29.9, 31, 32, 33, 34, 35, 36, 37.2, 37.8, 38.2, 39, 40, 43 (other than clause 43.2 and 43.3) and the representations, warranties and indemnities given by the Service Provider under this Contract and any other provision which is expressed or by implication from its nature is intended to survive termination or surrender of this Contract or is necessary for the interpretation of the clauses set out in this clause 43.12 (together, the **Surviving Clauses**) will survive rescission, termination, surrender or expiration of this Contract.
- (b) If this Contract is rescinded, terminated or surrendered, no party will be liable to any other party except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this Contract occurring before such rescission, termination or surrender.
- (c) No provision of this Contract which is expressed to survive termination or surrender will prevent any other provision of this Contract, as a matter of interpretation, also surviving termination or surrender.
- (d) No right or obligation of any party will merge on completion of any transaction under this Contract. All rights and obligations under this Contract survive the execution and delivery of any transfer or other document which implements any transaction under this Contract.

43.13 Indemnities

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, surrender, completion or expiration of this Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Contract.

43.14 Contract costs

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

Schedules A - General

Schedule A1 – Definitions and Interpretation

1. Definitions 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.

2. Definitions

In this Contract, unless the context otherwise requires:

3G Contract means a contract entered into between the State and the Service Provider in or about July 2004 for provision of the General Route Services comprised in the Existing Network.

Access Licence has the meaning given in clause 32.1.

Accounting Period means the twelve month period of time used by the Service Provider for reporting its financial data, which may be a Financial Year or other period of time depending on the place of domicile of the Service Provider or relevant Service Provider Associate.

Accounting Standards means accounting standards, principles and practices applying by Law or otherwise generally accepted and consistently applied in Australia.

Accreditation means all and any formal accreditation from any Government Authority or professional or industry body that is required by a person according to a Mandatory Requirement to undertake any part of the Transport Operations.

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

Actual Cost means Service Provider Change Costs actually incurred.

Additional Purchaser Supplied Items has the meaning given in clause 13.7(a).

Adjustment Payment has the meaning given in clause 21.1(e).

Affected Obligations has the meaning given in clause 16.3(a).

Agreed Cost has the meaning given in Table 9 at paragraph 5.2(a) of Schedule D2, in Table 11 at paragraph 5.2(c) of Schedule D2 or in Table 13 at paragraph 5.2(e) of Schedule D2, as applicable.

Annual Core Depot Payments means the amounts set out in Table 14 in paragraph 6.2 of Schedule D2.

Annual Core In-Service Hours means the amounts set out in Table 2 in paragraph 2.3 of Schedule D2.

Annual Core In-Service Kilometres means the amounts set out in Table 5 in paragraph 3.9 of Schedule D2.

Annual Core Operating Payment, for a Contract Year, means the amounts set out in Table 1 in paragraph 2.2 of Schedule D2.

Annual Existing Depreciation and Interest Fleet Payments means the amounts set out in Table 10 of paragraph 5.2(b) of Schedule D2.

Annual Existing Notional Lease Fleet Payments means the amounts set out in Table 12 of paragraph 5.2(d) of Schedule D2.

Annual Performance Review means a performance review described in clause 15.5(a).

Annual Performance Review Report means an 'Annual Performance Review Report' as more particularly described in the Operations Manual.

Applicable Deflator means:

- (a) the Wage Deflator in respect of all Change Costs that are amounts on account of wages, salaries or other like payments for employment or consultancy; or
- (b) the CPI Deflator in respect of all other Change Costs.

Approved Contract Vehicle means:

- (a) at the Commencement Date, a Contract Vehicle in the Approved Contract Vehicle Register; and
- (b) any additional or replacement Contract Vehicle approved by the Purchaser, acquired by the Service Provider or (subject to clause 12.5(c)) the Purchaser, and recorded in an update to the Approved Contract Vehicle Register in accordance with this Contract,

but excludes any Contract Vehicle disposed of or replaced by the Service Provider pursuant to clause 12.5 or clause 30.2.

Approved Contract Vehicle Register means:

- (a) at the Commencement Date, the register of Approved Contract Vehicles in Schedule B4; and
- (b) any replacement of that register from time to time in accordance with this Contract.

Approved Service Change has the meaning given in clause 7.5(d).

Approved Subcontracting Arrangement means a Subcontracting arrangement identified in Schedule A4 or that is the subject of an approval given under clause 11.4(d)(ii).

Approved Subcontractor means a Subcontractor identified in Schedule A4 or that is the subject of an approval given under clause 11.4(d)(ii).

Arbitrator means the person described in clause 40.4(b).

Asset Lease means a lease of:

- (a) a Contract Vehicle;
- (b) Depot Equipment; or
- (c) any other chattels (if any) listed in Schedule B4 which are wholly or partly funded by the Purchaser (whether under the Service Payments or otherwise) for use in delivering the Network, as that list may be amended by the parties from time to time in writing or as those things are replaced by the Service Provider from time to time in the ordinary course of conducting the Transport Operations,

but it does not include any Depot Lease.

Associate means, in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of that person or that Related Body Corporate and:

- (a) in the case of the Purchaser, includes any Step-In Party; and
- (b) in the case of the Service Provider, includes any Subcontractor.

ATO means the Australian Taxation Office.

Australian Business Number or **ABN** means an entity's unique identifying number for dealings with the Australian Taxation Office.

Authorisation means any form of authorisation, approval, certification or consent from any Government Authority or professional or industry body that is required by a person to undertake lawfully any part of the Transport Operations according to a Mandatory Requirement.

Award means the Passenger Vehicle Transportation Award 2010.

Base LOTT has the meaning given in Table 6 at paragraph 4.2(a) of Schedule C4.

Best Industry Practice means that degree of skill, care, prudence, foresight and good practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person engaged in the same type of undertaking in Australia as that of the Service Provider under the same or similar circumstances as those contemplated by this Contract.

Bond Longstop Date has the meaning given in clause 24.10.

Bus ID Number has the meaning given in the Operations Manual.

Business and Service Continuity Plan means the business and service continuity plan described in paragraph 2.2 of Schedule C2.

Business As Usual Improvement means any Change in Technology or Change in Depot Capacity that is:

- (a) required by or reflective of a change in Best Industry Practices (including but not limited to a Change in Mandatory Requirements, whether occurring on or after the Commencement Date) that is known or ought reasonably to have been known to the Service Provider at the Commencement Date; or
- (b) subject to clause 22, necessary or desirable to accord with the Mandatory Requirements at any time during the Contract Term.

Business Case Guidelines means any section of the Operations Manual in respect of Outline and Detailed Business Cases.

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a Public Holiday, special holiday or bank holiday in Brisbane.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Business Improvement Measures means the Business Improvement Measures identified in Schedule B3.

Business Plan means the business plan described in paragraph 2.1 of Schedule C2.

CEQM means the 'Change Event Quotation Model' that is referenced in paragraph 8 of Schedule D3 to be used by the Service Provider for the purpose of assisting in the calculation of the Net Financial Impact of a Change Event.

Change Costs means:

- (a) all actual incremental direct capital costs, operation and maintenance costs or external third party advisory costs properly and reasonably incurred, or which will be properly and reasonably incurred and in each case to the extent that they:
 - (i) exceed the relevant amounts (if any) in the then current CEQM; and
 - (ii) reflect commercial arm's length arrangements in relation to costs (and other cash outflows), determined by reference to pricing, costing and other information provided by the Service Provider on an Open Book Basis; or
- (b) in respect of any Saving, all direct costs saved or which ought reasonably to have been saved.

Change Event means an event or circumstance described as a Change Event in:

- (a) clause 10.4(b) (*Counter Terrorism*);
- (b) clause 12.5(c) (*Fleet Management – purchase or lease by Purchaser*);
- (c) clause 12.5(f) (*Fleet Management – changed replacement capacity*);
- (d) [Not used];
- (e) clause 12.11(b)(ii) (*Change in Depot Capacity*);

- (f) clause 12.12(c)(ii) (*Change in Technology*) (including a Change in Technology referred to in clause 12.12(f));
- (g) clause 13.1(e) (*Integrated Scheduling System*);
- (h) clause 13.4(b)(ii) (*Changes to Ticketing Equipment*);
- (i) clause 13.7(e) (*Additional Purchaser Supplied Items*);
- (j) clause 15.3 (*Change to Performance Measures*);
- (k) clause 18.2(b) (*Significance of Key Performance Indicators*);
- (l) clause 29.10(b) (*Change in Insurances*);
- (m) clause 5.1(e)(iv)(A) (*Purchaser's Power to Give Directions*),

and additionally includes:

- (n) a Qualifying Change in Law referred to in clause 22.3; and
- (o) a Change in Operations Manual referred to in clause 22.4.

Change in Control means in respect of an entity, a change in the Control of that entity.

Change in Depot Capacity has the meaning given in clause 12.11(a).

Change in ISS Requirements means an amendment of, update to or replacement of the Integrated Scheduling System Requirements, or any part of them, which:

- (a) occurs after the date of this Contract;
 - (b) the Service Provider is required under this Contract to comply with; and
 - (c) has had, or would have, a material effect on the performance of the Transport Operations,
- but excludes any:

- (d) Change in Law;
- (e) Change in Operations Manual; and
- (f) amendment, update or replacement that is the result of:
 - (i) the failure of the Service Provider to comply with a Legal Requirement;
 - (ii) an illegal act or omission of the Service Provider; or
 - (iii) a breach of this Contract by the Service Provider.

Change in Law means any one or more of the following which occurs after the date of this Contract, with which the Service Provider is legally obliged to comply and which has, or would have, a material effect on the performance of the Transport Operations:

- (a) a change in, or repeal of, an existing Legal Requirement;
- (b) the enactment or making of a new Legal Requirement; or
- (c) a change in the way a Legal Requirement is applied or interpreted as a result of a binding decision of a court of competent jurisdiction.

Change in Mandatory Requirements means a Change in Law or a Change in Operations Manual

Change in Operations Manual means an amendment of, update to or replacement of any part of the Operations Manual which:

- (a) occurs after the date of this Contract;
 - (b) the Service Provider is required under this Contract to comply with; and
 - (c) has had, or would have, a material effect on the performance of the Transport Operations,
- but excludes any Change in Law.

Change in Tax means the introduction of a new Tax or a change in the rate, amount or nature of a Tax.

Change in Technology has the meaning given in clause 12.12(c)(i).

Change Notice means a direction given by the Purchaser under clause 23.3(a).

Change Payment means, in respect of a Change Event, a payment due in accordance with paragraph 1.1 of Schedule D3 and determined in accordance with this Contract.

Change Payment Method means any one, or combination of, a Lump Sum Change Payment, a Direct Service Payment Adjustment, an Indirect Service Payment Adjustment or a Minor Payment Adjustment.

Change Payment Review Procedures means the review requirements specified in:

- (a) paragraph 6 of Schedule D3; or
- (b) any relevant section of the Operations Manual.

Change Proposal means a proposal submitted by the Service Provider which complies with clause 23.2(b).

Chart of Accounts means the chart of accounts provided by the Purchaser to the Service Provider from time to time.

Charter Rate means the rate set out in Table 16 in paragraph 7.3 of Schedule D2.

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

Claim includes any claim, proceeding, cause of action, action, demand or suit (including of an interlocutory or administrative nature or by way of contribution or indemnity) of any nature whatsoever (whether at Law or otherwise).

Claim Event has the meaning given in clause 41.1(a)(i).

CMP Effective Date has the meaning given in clause 5.3(a).

Commencement Date means the date specified in item 2 of the Contract Details.

Commercial Revenue Declaration means a statutory declaration by the Service Provider's Representative, to be provided to the Purchaser as part of the Stage 1 MCPPR, attesting to the amount of the Service Provider Monthly Advertising Revenue (if any) and the Total Odometer Reading for the Contract Month which is the subject of the declaration.

Commercial Revenue Payment Adjustment means an amount calculated in accordance with paragraph 7 of Schedule D2.

Completed Trip means a scheduled Trip (other than a State Designated Event Service) that is not a Missed Trip.

Confidential Information means:

- (a) the terms and conditions of this Contract;
- (b) any written or oral agreements, negotiations or information in relation to or in connection with this Contract;
- (c) the Handover Package;
- (d) any documents which are, or information which is, confidential under this Contract including any information provided by one party to the other which is identified by the party at the time it is provided to the other party as being confidential; and
- (e) any information relating to know-how, ideas, concepts, company structures, financial modelling, technology, business plans, Passenger Information, business opportunities, financial information, cash flows, budgets, research, development, techniques, processes,

personnel, policies, business connections, transactions, marketing and commercial knowledge of a party which is not in the public domain.

Confirmed Final Adjustment Payment has the meaning given in clause 21.3(c).

Congestion Index has the meaning given in paragraph 4.4(c) of Schedule C4.

Congestion Offset has the meaning given in paragraph 4.4(b) of Schedule C4.

Continuity of the Services refers to:

- (a) the continued performance of the Transport Operations during the Contract Term in accordance with this Contract: or
- (b) the orderly handover of the Transport Operations by the Service Provider to an Interim Service Provider or Successor Service Provider as contemplated by this Contract.

Contract means this service Contract between the Service Provider and the Purchaser.

Contract Details means the information set out in Part A.

Contract Management Portal (CMP) means the online central data repository and collaboration system provided by the Purchaser as described in clause 5.3(a).

Contract Month means each of the following periods:

- (a) the period from the Commencement Date up to and including the last day of the calendar month in which the Commencement Date occurs;
- (b) each whole calendar month thereafter up to and including the last whole calendar month before the calendar month in which the End Date occurs; and
- (c) the period from the first day of the calendar month in which the End Date occurs up to and including the End Date.

Contract Objectives means the objectives of the Purchaser in entering into this Contract described in clause 2.1.

Contract Term means the period from the Commencement Date up to and including the End Date.

Contract Vehicle means a vehicle used, or intended to be used, by the Service Provider in conducting the Transport Operations. It includes an Approved Contract Vehicle, vehicles used for testing and operational support vehicles but excludes any Contract Vehicle disposed of or replaced by the Service Provider pursuant to clause 12.5 or clause 30.2.

Contract Vehicle Replacement Plan has the meaning given in paragraph 4.1 of Schedule B1.

Contract Year means:

- (a) the period from the Commencement Date up to and including the next Financial Year end;
- (b) each Financial Year thereafter including the last 30 June before the End Date; and
- (c) the period from the last 1 July before the End Date, up to and including the End Date.

Control has the meaning given in the Corporations Act.

Core Depot Payment means an amount calculated in accordance with paragraph 6.2 of Schedule D2.

Core Fuel Payment means an amount calculated in accordance with paragraph 3.2 of Schedule D2.

Core In-Service Hours means an amount calculated in accordance with paragraph 2.3 of Schedule D2.

Core In-Service Kilometres means an amount calculated in accordance with paragraph 3.9 of Schedule D2.

Core Operating Payment means an amount calculated in accordance with paragraph 2.2 of Schedule D2.

Core Payment has the meaning given in clause 21.1(d).

Core Total Hours means, for all Trips identified in the Network Specification at the Commencement Date, the In-Service Hours plus the Dead Running Time for all Trips.

Core Total Kilometres means, for each Trip identified in the Network Specification at the Commencement Date, the In-Service Kilometres plus the Dead Running Distance for that Trip.

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

Counter-Terrorism Risk Management Plan means the plan of that name described in paragraph 2.3 of Schedule C2.

CPI Deflator means the series of annual discount factors in each Contract Year calculated as the inverse of the CPI Index Multiplier in respect of each Contract Year for which the relevant Contract Year's CPI has been published.

CPI Index Multiplier means an amount calculated in accordance with paragraph 11.2 of Schedule D2.

Cure Period has the meaning given in clause 19.2(a)(iv).

Cure Plan means a detailed plan setting out all measures that the Service Provider proposes to take to permanently cure a Non-Compliance Event as soon as reasonably practicable.

Custodian means, for a Trust, an entity appointed as custodian of the Trust or of property of the Trust.

Custody Agreement means, for a Trust, each document or agreement by which a person is appointed custodian of the Trust.

Customer means:

- (a) passengers; or
- (b) other users or potential users of services and facilities associated with the Network.

Data Audit Period has the meaning given in clause 15.2(a)(iii).

Data Exclusion Factor has the meaning given in clause 15.2(c)(ii).

Data Reliability Audit has the meaning given in clause 15.2(a)(iii).

Data Reliability Auditor has the meaning given in clause 15.2(a)(iii).

Data Reliability Audit Methodology means the methodology identified and described as such in the Operations Manual.

Data Storage System means, at the Commencement Date, 'NetBI' (as described in the Operations Manual) or any other similar data storage system described in the Operations Manual from time to time.

Day 1 Route Summary Worksheet means the 'Route Summary Worksheet' included in the Network Specification at the Commencement Date.

Day Type means a designated day type in the Integrated Scheduling System.

Day Type Wage Multiplier means the additional compensation that a Driver receives when working outside the timeframe of 6.00am to 7.00pm on a weekday, expressed as a percentage of the Driver's ordinary hourly rate.

DDA Legislation means:

- (a) the *Disability Discrimination Act 1992* (Cth); and
- (b) the *Disability Standards for Accessible Public Transport 2002* (Cth).

Dead Network Attributes means all the Dead Running Distance and Dead Running Time associated with the Network.

Dead Running Distance means the distance in kilometres (measured to the nearest 0.001 kilometres) travelled by a Contract Vehicle between:

- (a) a Depot and the starting point of the first Trip in a Vehicle Block (pull-out trip);
- (b) the final destination of any Trip and the starting point of the next Trip in the Vehicle Block (repositioning trip); and
- (c) the final destination of any Trip and the Depot at the end of the Vehicle Block (pull-in trip).

Dead Running Proportion means the difference between annual Total Kilometres (Reset) and annual Total In-Service Kilometres (Reset), divided by annual Total Kilometres (Reset), expressed as a percentage.

Dead Running Proportion (Service Change) means the difference between annual Permanent Total Kilometres and annual Permanent In-Service Kilometres, divided by annual Permanent Total Kilometres, expressed as a percentage.

Dead Running Time means the time in minutes (measured to the nearest whole minute):

- (a) taken by a Contract Vehicle to travel over the Dead Running Distance (pull trips and repositioning trips); or
- (b) that is non-driving idle or wait time between the last Transit Stop of a Trip and the start of the next Trip (layover),

and other paid time the Contract Vehicle is not moving such as sign-on and sign-off time and that part of Guaranteed Time when the Contract Vehicle is not performing a Trip.

Deliverable means any works, equipment, product, materials, documentation or any other item or any service to be provided by or on behalf of the Service Provider pursuant to this Contract.

Depot means all and any depot facilities required to be utilised in the performance of the Transport Operations. At the Commencement Date, it includes the depot facilities described in Schedule B4.

Depot Equipment means all and any plant or equipment specified in Schedule B4 at the date of this Contract and that the Service Provider is required to, or chooses to, install or use at a Depot from time to time for the purposes of undertaking the Transport Operations.

Depot Lease means each lease of a Depot. It does not include Asset Leases. At the Commencement Date, it includes the depot leases described in Schedule B4.

Depot Payment means an amount calculated in accordance with paragraph 6 of Schedule D2.

Depot Payment Marginal Rate means:

- (c) in respect of the Permanent Service Change (In-Service Rate) Adjustment, the amounts set out as such in Table 19 in paragraph 9.4(e) of Schedule D2; and
- (d) in respect of the Permanent Service Change (Total Rate) Adjustment, the amounts set out as such in Table 22 in paragraph 9.5(e) of Schedule D2.

Designated Vehicle Type has the meaning given in clause 12.4(a).

Detailed Business Case has the meaning specified in the Business Case Guidelines.

Direct Debit Authority means a document authorising inter-account settlements and:

- (a) in the form set out at Schedule E2; or
- (b) in such other form provided by the Purchaser from time to time.

Direct Deed means:

- (a) in respect of Service Contract Assets that are the subject of a Financing Arrangement, a direct deed:

- (i) in the form contained in Schedule E3 or otherwise in a form approved by the Purchaser; and
 - (ii) entered into between the Purchaser, the Service Provider, the relevant Financier and any relevant Third Party Owner; and
- (b) in respect of Service Contract Assets owned by a Third Party Owner, a direct deed that is:
- (i) in the form contained in Schedule E4 or otherwise in a form approved by the Purchaser; and
 - (ii) entered into between the Purchaser, the Service Provider and the relevant Third Party Owner.

Direct Service Payment Adjustment means a series of Change Payments paid in instalments payable as an increase or decrease in the Service Payment calculated in accordance with paragraph 2.3 of Schedule D3.

Disability Action Plan means the disability action plan described in paragraph 2.4 of Schedule C2.

Disclosure Date has the meaning given in clause 4.2(b).

Dispute Notice has the meaning given in clause 40.1.

Dispute Resolution Procedures means the procedures for resolution of disputes under this Contract described in clause 40.

Driver means each individual employed or otherwise engaged by the Service Provider or a Service Provider Associate to operate a Contract Vehicle.

Driver Console Unit means the 'driver console unit' of the Ticketing Equipment as more particularly described in the Operations Manual.

Driver Training Matrix means a schedule listing, as a minimum, all Staff names, positions, commencement dates, mandatory training, supplementary training, completion dates and validity periods.

Driver Wage Parity Industrial Action means protected industrial action (as defined in the *Fair Work Act 2009* (Cth)) participated in by all or substantially all Drivers, if and to the extent that:

- (a) it is undertaken with the objective of achieving agreement by the Service Provider to a new enterprise agreement that provides for a base ordinary time wage rate for Drivers (excluding penalty rates, allowances or superannuation) that is equivalent to the Driver Wage Parity Point; and
- (b) that objective is consistent with and pursued with reference to a policy of the State with regard to wage parity between bus drivers employed in providing General Route Services under Integrated Mass Transit Service Contracts that has been formally announced by the State and that has not been subsequently superceded or withdrawn,

but excluding:

- (c) such industrial action to the extent that its objective is to achieve conditions, entitlements or other provisions in that enterprise agreement other than a base ordinary time wage rate for Drivers referred to in paragraph (a) of this definition; or
- (d) industrial action, whether protected or not, which is directed at or has the effect of allowing or facilitating the carriage of passengers without the relevant Fares being paid by those passengers or collected by the Service Provider.

Driver Wage Parity Point means a base ordinary time hourly rate of \$26.21, indexed by the Wage Index Multiplier in accordance with section 11.3 of Schedule D2.

Efficiency Initiative means a Material Change Event that:

- (a) will, or has the potential to, reduce the Purchaser's payment obligations to the Service Provider over the Contract Term;

- (b) enhances value for money to the Purchaser;
- (c) enables the Service Provider to more efficiently, cost effectively, or professionally deliver the Transport Operations in accordance with the Minimum Service Levels;
- (d) is not a Business As Usual Improvement; and
- (e) is the subject of a request from the Service Provider for the Purchaser's approval under clause 12.11(b)(i) or clause 12.12(c)(i).

Electronic Pricing Template means the document titled 'Electronic Pricing Template' in the Service Payment Pricing Model.

Emergency Step-in Event means an event or circumstance:

- (a) that causes the Purchaser to form the reasonable opinion that unless some or all of the Step-in Powers are exercised urgently there is or is likely to be:
 - (i) a significant risk to the health or safety of the public; or
 - (ii) a material risk to the environment; or
- (b) that is a Force Majeure Event and which causes the Purchaser to elect to make its own arrangements for provision of the Transport Operations in accordance with clause 17.2.

End Date has the meaning in clause 3.3.

Enterprise Agreement means *Sunshine Coast Subus Union Enterprise Agreement 2017* but excluding any updates, amendments or replacements of that agreement.

Environmental Management Plan means the environmental management plan described in paragraph 2.5 of Schedule C2.

Essential Employee means:

- (a) Drivers;
- (b) Staff who are engaged predominantly to carry out regular maintenance in accordance with this Contract;
- (c) Staff who are predominantly engaged as operations supervisors, on-road supervisors, customer service representatives or refuellers in the performance of the Transport Operations; and
- (d) Staff who are engaged at a Depot as administration officers in the performance of the Transport Operations, but excluding employees employed at management level.

Estimated Final Adjustment Payment has the meaning given in clause 21.3(b)(i).

ETS Software means the software developed for the Ticketing Equipment and installed, or to be installed and updated from time to time, on the Ticketing Equipment.

Exclusive Use has the meaning given in clause 12.3(a).

Existing Arrangement has the meaning given in clause 12.8(e).

Existing Depreciation and Interest Fleet Payment means an amount calculated in accordance with Table 9 and Table 10 in paragraphs 5.2(a) and 5.2(b) of Schedule D2.

Existing Network means the combination of General Route Services performed by the Service Provider under the terms of another contract.

Existing Notional Lease Fleet Payment means an amount calculated in accordance with Table 11 and Table 12 in paragraphs 5.2(c) and 5.2(d) of Schedule D2.

Existing Route means a Route comprised in the Network at the Commencement Date. It excludes New Routes.

Existing Service Provider Material means any material or information created, written or otherwise brought into existence by or on behalf of the Service Provider prior to the

Commencement Date and which is necessary or convenient for the effective performance of this Contract, whether during or after the Contract Term.

Expert means the person described in clause 40.4(a).

Expiry Date means:

- (a) if the Purchaser has not exercised the option to extend the Expiry Date in accordance clause 3.2, the Original Expiry Date; or
- (b) if the Purchaser has exercised the option to extend the Expiry Date under clause 3.2, the Extended Expiry Date.

Extended Expiry Date means the date specified in item 5 of the Contract Details.

Family Member means any member from time to time of the Calabro families (whether by blood, marriage or legal adoption) and includes:

- (a) any trust or trustee acting on behalf of any of them; and
- (b) any of their beneficiaries under any will or any law relating to intestacy.]

Fare means the price payable for a Ticket.

Fare Revenue means

- (a) the proceeds of any TransLink Ticket transactions and any other Ticket transactions by way of revenue sharing arrangements between the Purchaser and a third party; and
- (b) any fees arising out of Ticket transactions, including refund fees and replacement fees for *School Transport Assistance Scheme* products.

Feedback Channels has the meaning given in clause 9.3(a).

Financial Statements means the financial statements described in clause 11.3(b).

Financial Year means a period which ends on 30 June and commences on 1 July.

Financing Arrangement means any arrangement whereby financial accommodation is provided to the Service Provider or a Third Party Owner (whether by way of a loan, finance lease, operating lease, hire purchase or other financial arrangement) and in connection with which a Service Contract Asset is, or may, be subject to a Security Interest.

First Data Reliability Audit has the meaning given in paragraph 1.2(b)(i) of Schedule A5.

Fixed Price means a fixed amount that does not vary.

Fleet Payment means an amount calculated in accordance with paragraph 5 of Schedule D2.

Force Majeure Adjustment means an amount calculated in accordance with paragraph 9.8(a) of Schedule D2.

Force Majeure Event means any of the following events, circumstances or combination of events and circumstances:

- (a) an act of God, lightning, storm, explosion, flood, cyclone, landslide, bush fire, tsunami or earthquake;
- (b) a Terrorist Act, war (declared or undeclared), blockade, revolution, riot, insurrection, epidemic or civil commotion;
- (c) nationwide or state wide industrial action except for industrial action predominantly in relation to the bus services industry or predominantly involving Staff of the Service Provider or a Service Provider Associate;
- (d) any blockade or embargo within Australia, other than a blockade or embargo which predominantly affects the Service Provider, Staff of the Service Provider or the bus services industry;

- (e) any failure by a Government Authority to carry out works or provide services that are essential to the performance of the Transport Operations and which the Government Authority has a statutory duty to provide;
- (f) the unavailability of any essential equipment (not including the Ticketing Equipment), fuel, public utilities (such as electricity or water) or other essential materials; or
- (g) Driver Wage Parity Industrial Action.

FTC means 'fuel tax credit' as defined in the *Fuel Tax Act 2006* (Cth), as amended from time to time.

Fuel Cost Payment means an amount calculated in accordance with paragraph 3 of Schedule D2.

Fuel Index Multiplier means the amount calculated in accordance with paragraph 11.4 of Schedule D2.

Fuel Tax Credit Adjustment has the meaning given to it in paragraph 11.5 of Schedule D2.

Fuel Tax Credit Rate (In-Service Rate) means the amounts set out in Table 4 in paragraph 3.8 of Schedule D2.

Fuel Tax Credit Rate (Total Rate) means the amount set out in Table 7 in paragraph 3.11 of Schedule D2.

Funding means funding, off-set, subsidy, rebate, commission or entitlement other than the Service Payments, which may be paid by the Purchaser or any other party to the Service Provider in respect of any Approved Contract Vehicle or otherwise in connection with the Service Provider's performance of the Transport Operations.

General Route Service has the meaning given in the Act.

Government Authority means the Commonwealth, the Purchaser, another State of the Commonwealth, 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.

Gross Fuel Cost Rate (In-Service Rate) means the amounts set out in Table 3 in paragraph 3.7 of Schedule D2.

Gross Fuel Cost Rate (Total Rate) means the amount set out in Table 6 in paragraph 3.10 of Schedule D2.

GST means a goods and services tax that is payable under the GST Law.

GST Amount means any payment (or the relevant part of the payment) multiplied by the appropriate rate of GST, together with any related interest, penalties, fines or other charges, but only to the extent such interest, penalties, fines or charges arise from the payer's failure to pay when due.

GST Law means GST law as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guaranteed Time means the minimum paid Shift duration for each Driver for each Shift type under the Award or, if this matter is provided for in the Enterprise Agreement, the Enterprise Agreement.

Handover information has the meaning given in clause 26.1.

Handover Package has the meaning given in clause 26.2.

Immediate Termination Event means the occurrence of any of the following:

- (a) pursuant to section 47(3) of the Act, the Purchaser reasonably believes that the Service Provider is unable to deliver all or any part of the Network, including in the circumstances described in clause 17.5;

- (b) an Insolvency Event occurs in relation to the Service Provider; or
- (c) the Purchaser gives notice to terminate this Contract pursuant to section 46(9) of the Act including if the Service Provider fails to comply with a direction under clause 15.6(a)(i)(B) or fails to implement a rectification strategy pursuant to clause 15.6(a)(i)(C).

In-Service Cost Rates means the amounts set out in paragraph 12(a) of Schedule D2.

In-Service Hour Marginal Rates means the amounts set out in Table 18 in paragraph 9.4(c) of Schedule D2.

In-Service Hours means the time measured in hours and minutes identified in the Network Specification for a Contract Vehicle to complete a Trip, excluding all Dead Running Time.

In-Service Kilometre Marginal Rates means the amounts set out in Table 19 in paragraph 9.4(d) of Schedule D2.

In-Service Kilometres means the distance in kilometres (measured to the nearest 0.001 kilometres) between the starting point of a Trip and the final destination of the Trip, excluding any Dead Running Distance.

In-Service Rate Adjustment means an adjustment contemplated in paragraphs 9.1(b) or 9.1(c) of Schedule D2.

Incident means an incident as defined in the Standard.

Incident Management Plan means a plan for responding to and managing Incidents as described in paragraph 2.6 of Schedule C2.

Incident Report means an Incident Report as defined in Part 4 of the Standard.

Indemnified Person has the meaning given in clause 31.1.

Indicative Change Proposal means a proposal which complies with clause 23.1(b).

Indirect or Consequential Loss means any:

- (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, or any failure to realise anticipated savings; or
- (b) without limiting paragraph (a), any penalties or damages payable under agreements other than under this Contract.

Indirect Service Payment Adjustment means a series of Change Payments that is:

- (a) paid via an increase or decrease in the variables contained in the Service Payment formula at paragraph 2.4 of Schedule D3; and
- (b) calculated in accordance with paragraph 2.4 of Schedule D3.

Information Documents means the Invitation to Offer and all other information, data, documents and materials made available in writing by the Purchaser or any other person on the Purchaser's behalf to the Service Provider or its Associates regarding the Transport Operations in the course of the ITO Process.

Initial Contract Year means the period from the Commencement Date up to and including the next Financial Year end.

Input Tax Credit has the meaning given to that term by the GST Law.

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 Service Provider (except for the purpose of solvent reconstruction or amalgamation for which the Purchaser has given approval);

- (b) the Service Provider 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 Service Provider or an application or order for such appointment is made;
- (d) execution is levied against the Service Provider and not discharged within 30 Business Days;
- (e) the Service Provider 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 Service Provider (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 Service Provider.

Insurances means the insurance policies required to be effected and maintained by the Service Provider under clause 29.

Integrated Mass Transit Area has the meaning given in the Act.

Integrated Mass Transit Service Contract has the meaning given in the Act.

Integrated Network means the integrated network of all Public Passenger Services throughout the Integrated Mass Transit Area.

Integrated Scheduling System means, at the Commencement Date, the '*HASTUS scheduling system*' (as described in the Operations Manual) or any other similar scheduling system nominated by the Purchaser and described in the Operations Manual from time to time.

Integrated Scheduling System Requirements means:

- (a) at the Commencement Date, the requirements set out at Schedule E5; or
- (b) during the Contract Term, any amendment of, update to or replacement of the Integrated Scheduling System Requirements notified by the Purchaser in accordance with clause 13.1(c).

Intellectual Property Rights means all intellectual property rights including but not limited to the following rights:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

whether created or coming into existence before, on or after the date of this Contract.

Interim Service Provider means an entity appointed by the Purchaser to deliver all or part of the Network pursuant to an emergency service contract under section 48A of the Act.

Invitation to Offer or **ITO** means the document of that name issued by the Purchaser on 3 June 2016 inviting the Service Provider to submit an offer to perform the Transport Operations on the terms set out in this Contract. It includes all and any later addenda, amendments or clarifications to the invitation to Offer issued by the Purchaser.

ITO Process means the procurement process contemplated in the Invitation to Offer.

Key Performance Indicator or **KPI** means each compliance target identified in Schedule C3.

KPI Breach means a failure by the Service Provider or a Service Provider Associate to achieve a Key Performance Indicator.

KPI Reporting Period means the period of time over which the Service Provider's performance against a KPI will be measured, being:

- (a) for the first KPI Reporting Period, the period commencing on the Commencement Date and ending on the last day of the period of calculation as specified for that KPI in Schedule C3; and
- (b) each subsequent period of calculation as specified for that KPI in Schedule C3

Law means:

- (a) Legislation; and
- (b) those principles established by decisions of the courts.

Legal Requirements includes:

- (a) any Law;
- (b) any decision or requirement, or any similar form of decision or determination (or any official interpretation or administration of any of the foregoing) by any Government Authority; and
- (c) the requirements and conditions of any Authorisations.

Legislation means in relation to the State of Queensland or the Commonwealth:

- (a) any act of parliament; and
- (b) any subordinate legislation, rules, regulations, standards or by-laws made under the relevant act.

Level of Service in any period, means the actual level of performance by the Service Provider over that period, in respect of a Performance Measure.

Loss means all loss, damage, liability, Claims, charges, costs, and expenses of every kind including legal costs and expenses on a full indemnity basis.

Lost Property Service has the meaning given in clause 9.2(a).

Lower On-Time Running Threshold means the lower on-time running threshold set out in paragraph 4.2 of Schedule C4.

Lump Sum Change Payment means a Change Payment calculated in accordance with paragraph 2.2 of Schedule D3 and includes a series of Milestone Change Payments if they are payable under paragraph 2.2(b)(ii) of Schedule D3 in respect of the relevant Change Event.

Mandatory Requirement means Legal Requirements and the Operations Manual, or any of them.

Margin Payment means an amount calculated in accordance with paragraph 4 of Schedule D2.

Marketing and Communication Activities has the meaning given in clause 14.1(b).

Material Change Event means a Change Event:

- (a) in respect of a Change in Depot Capacity in accordance with clause 12.11 or a Change in Technology in accordance with clause 12.12(c); and
- (b) with an estimated Net Financial Impact of greater than \$100,000 (indexed).

Material Subcontract means any Subcontract for:

- (a) the performance of a material part of the Transport Operations; or
- (b) any material functions that are required for performance of the Transport Operations by the Service Provider, including:
 - (i) a Depot Lease or other arrangement for provision of space within any Depot;
 - (ii) any arrangement for provision of Contract Vehicles;

- (iii) any arrangement or related series of arrangements for provision of Drivers, maintenance or repair services or labour (including cleaning or refuelling) under which the Service Provider is required to pay more than \$500,000 per annum;
- (iv) any arrangement for provision of major items of office equipment or Depot Equipment (excluding items costing less than \$100,000 per item); and
- (v) any outsourced or shared service arrangements or related series of arrangements for regular or ongoing provision of operations and administration functions (including payroll, accounts payable or receivable, financial, operations, scheduling, planning or information technology systems) under which the Service Provider is required to pay more than \$500,000 per annum.

Measurement Point means, in relation to a Trip, a Transit Stop as shown in the Network Specification to be used for determining the Performance Standard.

Milestone Change Payments means a series of payments which together are equal to the total amount of the relevant Lump Sum Change Payment in respect of a Change Event.

Minimum Contract Vehicle Specifications means:

- (a) at the Commencement Date, the standards and requirements for Contract Vehicles described in Schedule B1; and
- (b) any update to those standards and requirements provided in accordance with clause 12.12(e)(i).

Minor Payment Adjustment means a Lump Sum Change Payment that is of a total value of less than \$100,000 (as at the Commencement Date and indexed on each anniversary date of the Commencement Date using the CPI Index Multiplier).

Missed Service Rate for a Contract Month means the sum of the Operating Payment, Margin Payment, Fuel Cost Payment, Fleet Payment and Depot Payment for the Contract Month divided by the In-Service Kilometres for the same Contract Month as determined in accordance with Schedule D2.

Missed Stop means any instance where the Contract Vehicle performing a Trip does not traverse a designated Transit Stop on that Trip.

Missed Stop Percentage means, for a Trip, the percentage of Missed Stops on that Trip measured as a percentage of the total Transit Stops on that Trip.

Missed Trip means a scheduled Trip (other than a State Designated Event Service):

- (a) that departed from the first Transit Stop outside the Missed Trip Departure Tolerance;
- (b) that is a Trip with 10 or more scheduled Transit Stops and is not a Trip referred to in paragraph (d), where the Missed Stop Percentage is equal to or greater than 10%, provided that:
 - (i) if the calculation does not produce a whole number and the fraction in the number is equal to or more than 0.5, rounded up to the nearest whole number of Transit Stops (for example, a Missed Stop Percentage of 9.64% would be rounded up to 10%); and
 - (ii) if the calculation does not produce a whole number and the fraction in the number is less than 0.5, rounded down to the nearest whole number of Transit Stops (for example, a Missed Stop Percentage of 8.412% would be rounded down to 8%);
- (c) that is a Trip with less than 10 scheduled Transit Stops that is not a Trip referred to in paragraph (d), where more than one of the Transit Stops is a Missed Stop;
- (d) until the second anniversary of the Optimised Performance Commencement Date, that is a Trip operated on a School Route or operated over a NightLink Route;

- (i) with 10 or more scheduled Transit Stops, where the Missed Stop Percentage is equal to or greater than 20%, provided that the rounding provisions set out in paragraphs (b)(i) and (b)(ii) will apply; or
- (ii) with less than 10 scheduled Transit Stops, where more than two of the Transit Stops are Missed Stops;
- (e) for which the Performance Data has been manually entered for at least 50% of the entry and departure points for each Transit Stop on that Route; or
- (f) that was operated by a Contract Vehicle that either did not have:
 - (i) a Driver Console Unit fitted on board; or
 - (ii) the Driver Console Unit fit switched on and correctly logged-on in accordance with the Operations Manual at the start of the Trip.

Missed Trip Departure Tolerance means departure from the first Transit Stop no more than 10:00 minutes before the scheduled time and no later than 50:00 minutes after the scheduled time in the Timetable for the relevant Route.

Missed Trip Payment Adjustment means the missed trip payment adjustment determined in accordance with paragraph 2 of Schedule C4.

Mobilisation Activity means the activities set out in the Mobilisation Program.

Mobilisation Activity Cost Cap means, for each Mobilisation Activity, the amount described in paragraph 8 of Schedule D2.

Mobilisation Payment means each payment set out in Table 17 in paragraph 8 of Schedule D2.

Mobilisation Program means the program of that name set out in Schedule B3.

Moneys Owing means all moneys identified as 'Moneys Owing' in this Contract which the Service Provider, alone or with any other person, at any time is or becomes actually liable to pay to, or for the account of, the Purchaser (alone or with any other person) on any account whatsoever under, or in relation to, this Contract or at Law (including by way of principal or interest, fees, costs, charges, expenses, indemnity or damages).

Monthly Contract Payment and Performance Meeting means a meeting held in accordance with clause 15.4(b).

Named Insured means, in respect of the Purchaser, such capacity or standing under a relevant policy of insurance (however described under that policy) that ensures the Purchaser may claim in its own right for its own interests under the policy.

Net Financial Impact means the amount calculated in accordance with paragraph 2 of Schedule D3.

Network means:

- (a) the combination of Route Attributes described in the Network Specification, as amended from time to time in accordance with this Contract; and
- (b) any other Public Passenger Services that the Service Provider must operate under this Contract, including but not limited to the performance of State Designated Event Services if required by the Purchaser.

Network Attributes means all Route Attributes and Dead Network Attributes as further described in the Operations Manual.

Network Scheduling Functions means scheduling and planning of the Transport Operations using those core modules of the Integrated Scheduling System that the Service Provider is required to use for that purpose, as specified in the Operations Manual (but excluding modules that are not mandatory for use by the Service Provider).

Network Specification means the:

- (a) 'Network Statistics Report';
- (b) 'Route Summary Worksheet';
- (c) 'Working Timetables'; and
- (d) 'Route Reports',

each as described in the Operations Manual and set out in Schedule B2, as varied and amended from time to time during the Contract Term in accordance with this Contract, and subject to paragraph 6.2 of Schedule A5. It includes any alternative future combination of documents or data sets containing the equivalent information, as determined by the Purchaser.

New Contract Material means any material or information created, written or otherwise brought into existence by or on behalf of either party on or after the Commencement Date and which is necessary or convenient for the effective performance of this Contract, whether during or after the Contract Term. It includes:

- (a) the Network Attributes, all data in respect of the Network Attributes and all other data generated or stored in the Integrated Scheduling System; and
- (b) the Performance Data and all other data created or stored by the Ticketing Equipment or ETS Software.

New Notional Lease Fleet Payment means an amount calculated in accordance with Table 13 in paragraph 5.2(e) of Schedule D2.

New Route has the meaning given in clause 7.6(a).

New School Route has the meaning given in clause 7.6(a)(ii).

New Urban Route has the meaning given in clause 7.6(a)(i).

NightLink Route means:

- (a) a Route that is designated as 'NightLink' in the Network Specification; or
- (b) if during the Contract Term the Purchaser adopts a naming convention that is different to 'NightLink' to describe Trips operating in the late evening to early morning, a Route designated using that naming convention in the Network Specification.

Nominal Terms means Change Cost and Savings amounts that are specified on the basis of actual payments or receipts as and when they occur, or are forecast to occur, inclusive of inflation.

Non-Compliance Event means the occurrence of any of the following:

- (a) a breach of this Contract by the Service Provider which does not constitute:
 - (i) a Show Cause Event or Immediate Termination Event;
 - (ii) a KPI Breach; or
 - (iii) a failure to achieve the Performance Standard;
- (b) a KPI Breach;
- (c) a Non-Compliance Event described in Schedule C4;
- (d) a fact, matter or circumstance that, in the reasonable opinion of the Purchaser, is likely to result in a Step-in Event if not attended to promptly; or
- (e) if any of the Service Provider Warranties or any other representation, warranty or statement made by the Service Provider in this Contract is or was untrue or misleading in a material respect when made or repeated and, if that fact had been known to the Purchaser before signing this Contract the Purchaser, in the Purchaser's reasonable opinion, would not have entered into the Contract or would have entered into it on materially different terms.

For the avoidance of doubt, a failure by the Service Provider to meet the Performance Standard or otherwise operate Trips in accordance with the Timetable (including a failure to ensure that Contract Vehicles perform all required Trips and traverse each designated Transit Stop on that Trip) shall not constitute a Non-Compliance Event except to the extent a Non-Compliance Event described in paragraph (c) has occurred.

Non-Compliance Notice has the meaning given in clause 19.2(a).

Non-Contract Vehicle means a vehicle that is not a Contract Vehicle.

Non-State School has the meaning given in the Act.

Not-To-Exceed Price means an upper limiting cap on Actual Costs, subject to the Change Payment Review Procedures, unless specified otherwise in the relevant Change Notice, at the Purchaser's sole discretion.

Offer means the Service Provider's offer to perform the Transport Operations and to enter into this Contract submitted in response to the Invitation to Offer. It includes any amendments or additions to the offer prior to the date of this Contract.

On-Time Incentive Rate means the on-time incentive rate set out in paragraph 3.2 of Schedule C4.

On-Time Running means that Level of Service where the On-Time Running Rate for a relevant period is equal to or greater than the Lower On-Time Running Threshold for that period.

On-Time Running Annual Rate means:

- (a) in respect of the Transition In Period, the average of the On-Time Running Rate for all Contract Months within the Transition In Period; or
- (b) in respect of an Optimised Performance Year, the average of the On-Time Running Rate for all Optimised Performance Months within that Optimised Performance Year.

On-Time Running Payment Adjustment means the on-time running payment adjustment in respect of Urban Routes (but not School Routes) determined in accordance with paragraph 3 of Schedule C4.

On-Time Running Rate means, for a Contract Month, the total number of Measurement Points that were traversed by the Contract Vehicles that departed within the On-Time Urban Service Tolerance on all Completed Trips on Urban Routes in that Contract Month, expressed as a proportion of the total number of all Measurement Points traversed by the Contract Vehicles on all Completed Trips on Urban Routes that were operated in that Contract Month.

On-Time Urban Service Tolerance means departure of a Trip on an Urban Route from the designated Measurement Points on the Route no more than 1:00 minutes before the scheduled time and no later than 5:00 minutes after the scheduled time in the Timetable for the relevant Route.

Open Book Basis means provision in a clear and transparent manner by the Service Provider of:

- (a) a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontracts, finance and other Change Costs of the Service Provider and its Associates and
- (b) other information reasonably requested by the Purchaser including reasonably available source documents required to verify such calculation.

Operating Payment means an amount calculated in accordance with paragraph 2 of Schedule D2.

Operating Plans mean:

- (a) those plans for the performance of the Transport Operations described in paragraph 2 of Schedule C2; and
- (b) any other plans reasonably directed by the Purchaser from time to time,

each in a form as previously approved by the Purchaser.

Operations Manual means the document titled '*TransLink Service Provider Operations Manual*' as amended, updated or replaced from time to time and includes all policies, protocols, standards, guidelines, bulletins, plans or other documents referred to or incorporated in it (other than Legislation) and as at the Commencement Date, means the '*TransLink Service Provider Operations Manual v1.6*'.

Optimised Network means a design for the Network in the Integrated Scheduling System, within the Legal Requirements and the Scheduling Business Rules, that:

- (a) maximises value for money for the Purchaser;
- (b) minimises duplication between Routes and routes operated by other service providers of all modes of public transport;
- (c) balances supply and demand;
- (d) minimises the PVR, Dead Running Distance and Dead Running Time;
- (e) maximises use of the application of Guaranteed Time to the performance of Trips;
- (f) interlines Trips between different Routes and/or Route types; and
- (g) continues to achieve the Contract Objectives.

Optimised Performance Commencement Date has the meaning given in paragraph 2.3(a)(vi) of Schedule A5.

Optimised Performance Month means:

- (a) for the first Optimised Performance Month, the period from the Optimised Performance Commencement Date up to and including the last day of the Contract Month within which the Optimised Performance Month commenced; and
- (b) subsequently, each Contract Month.

Optimised Performance Network means a design for the Network in the Integrated Scheduling System, within the Legal Requirements and the Scheduling Business Rules, that makes it reasonably practicable for the Service Provider to:

- (a) deliver an Optimised Network; and
- (b) achieve the Performance Standard.

Optimised Performance Year means:

- (a) for the first Optimised Performance Year, the period from the Optimised Performance Commencement Date up to and including the last day of the Contract Year within which the Optimised Performance Year commenced; and
- (b) subsequently, each Contract Year.

Option Exercise Date means the date specified in item 3 of the Contract Details.

Original Bond has the meaning given in clause 24.3.

Original Expiry Date means the date specified in item 4 of the Contract Details.

Other Overhead Costs means the combination of indirect costs inclusive of operations, administration and management wages, administration and office costs and Depot maintenance and operation costs.

Outline Business Case has the meaning specified in the Business Case Guidelines.

Passenger Information means passenger information as provided by the Purchaser to the Service Provider from time to time, such as decals for fare tables, fare zone maps, conditions of travel, concession cards, handheld timetables and brochures.

Payment Month means a Contract Month as described in clause 21.1(c).

Peak Vehicle Requirement or **PVR** means the maximum number of Contract Vehicles required to deliver the Optimised Network for each Day Type, excluding the Spare Vehicle Requirement, as calculated using the Integrated Scheduling System.

Performance Assessment Report means a report prepared by the Purchaser in respect of a Contract Month summarising the outcome of the Purchaser's analysis of the Performance Data to determine the performance of the Service Provider against the Performance Measures in that Contract Month.

Performance Bond has the meaning given in clause 24.1.

Performance Data means geo-positional and timing data relating to the Service Provider's performance against the Performance Measures generated and recorded by any or all of the following:

- (a) the Ticketing Equipment;
- (b) the Service Provider's telematics system installed in accordance with clause 13.6(b) and imported into the Data Storage System in accordance with the Operations Manual; or
- (c) any other systems or equipment used by the Purchaser for this purpose from time to time.

Performance Data Methodology means the methodology set out in the Operations Manual for:

- (a) incorporation of all Performance Data into the Data Storage System; and
- (b) the resolution of any conflicts in the Performance Data recorded by different systems.

Performance Improvement means the relevant Performance Improvement determined in accordance with paragraph 4.2(a) of Schedule C4.

Performance Improvement Offset has the meaning given in paragraph 4.3 of Schedule C4.

Performance Measure means a performance measure described in Schedule C4 .

Performance Optimisation means the design of the Network, as far as reasonably practicable to achieve the Optimised Performance Network.

Performance Optimisation Commencement Date has the meaning given in paragraph 1.3(b) of Schedule A5.

Performance Optimisation Period means the period within the Transition In Period which commences on the Performance Optimisation Commencement Date and ends on the day before the Optimised Performance Commencement Date.

Performance Payment Adjustment means an amount calculated in accordance with paragraph 1 of Schedule C4.

Performance Regime means the provisions under this Contract for the calculation of:

- (a) Performance Payment Adjustments and the application of those Performance Payment Adjustments in the calculation of each Service Payment; and
- (b) the provisions for payment of amounts determined under clause 18.3.

Performance Standard means that Level of Service where:

- (a) all Missed Trip Payment Adjustments calculated in accordance with paragraph 2.1 of Schedule C4 are zero; and
- (b) the On-Time Running Rate is always equal to or greater than the Upper On-Time Running Threshold.

Period of Suspension has the meaning in clause 16.4(a)(v).

Permanent In-Service Kilometres means the In-Service Kilometres attributed to a Permanent Service Change.

Permanent Service Change means a Planned Service Change that will permanently affect the Timetable, Route or one or more Transit Stops that must be approved in advance by the

Purchaser. A Permanent Service Change is not a Temporary Unplanned Service Change or Temporary Planned Service Change.

Permanent Service Change (In-Service Rate) Adjustment means an amount calculated in accordance with paragraph 9.4 of Schedule D2.

Permanent Service Change (In-Service Rate) Fuel Adjustment means an amount calculated in accordance with paragraph 3.4 of Schedule D2.

Permanent Service Change (Total Rate) Adjustment means an amount calculated in accordance with paragraph 9.5 of Schedule D2.

Permanent Service Change (Total Rate) Fuel Adjustment means an amount calculated in accordance with paragraph 3.5 of Schedule D2.

Permanent Total Kilometres over a designated period means the Total Kilometres attributed to a Permanent Service Change.

Permitted Purpose means the purposes of:

- (a) exercising a right, performing an obligation or fulfilling a duty under this Contract or at Law;
- (b) delivery of the Network by any person;
- (c) increasing the quality, efficiency or use of Public Passenger Services in Queensland;
- (d) administering or reporting about the Network or the Transport Operations;
- (e) planning, policy development or procurement in relation to the Integrated Network or other Public Passenger Services.

Permitted Security Interest means a Security Interest:

- (a) disclosed in the Register of Service Contract Assets on the date of this Contract or that is subsequently approved by the Purchaser (acting reasonably) and recorded in an updated version of the Register of Service Contract Assets; or
- (b) that arises by operation of Law after the Commencement Date in the ordinary course of day-to-day trading or under which the secured indebtedness is paid when due or is being contested in good faith.

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.

Planned Service Change means a Service Change that is scheduled before it is implemented, and includes Temporary Planned Service Change.

Post Performance Optimisation Period means the period commencing on the Optimised Performance Commencement Date and ending on the End Date.

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

Prescribed Notice has the meaning given in clause 41.2.

Price Base Date means the Initial Contract Year, unless expressly specified otherwise.

Probity Event means an event or thing which occurs during the Contract Term and which:

- (a) has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of the Service Provider, a Service Provider Associate or the Staff of either of them (such events to include Provision of Misinformation);
- (b) relates to the Service Provider, a Service Provider Associate or the Staff of either of them and has a material adverse effect on the public interest, or public confidence, in the Transport Operations;

- (c) without limiting paragraphs (a) and (b), involves a material failure of the Service Provider, a Service Provider Associate or the Staff of either of them to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of Service Provider to carry out and observe its obligations in connection with the Transport Operations; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in a State government project or contract.

Provision of Misinformation means:

- (a) the provision of information by the Service Provider that is used in the calculation of any payments claimed by the Service Provider under this Contract which is false or misleading in any material respect, other than information obtained from the Integrated Scheduling System or the Ticketing Equipment that:
 - (i) is not false or misleading as a result of an act or omission of the Service Provider; or
 - (ii) the Service Provider does not know to be false or misleading; or
- (b) the Service Provider taking any other steps to artificially inflate any entitlement to payments to be made to the Service Provider or to deflate artificially the calculation of payments to be made by the Service Provider,

Public Announcement has the meaning given in clause 33.4.

Public Disclosure Obligations has the meaning given in clause 33.3(c).

Public Holiday means a public holiday under the *Holidays Act 1983* (Qld).

Public Holiday Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the service subject of the Service Change is scheduled to depart on a Public Holiday.

Public Passenger Service has the meaning given in the Act.

Public Timetable means a document or data set containing the information referred to in paragraph (a) of the definition of Timetable that is intended for publication to Customers through public channels (whether via hard copy, digital or any other medium).

Public Transport Plan means formal plans for the strategic development of the Integrated Network prepared by the Purchaser.

Purchaser means the State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads.

Purchaser Associate means an Associate of the Purchaser but, excludes:

- (a) the Data Reliability Auditor; and
- (b) for the purposes of clauses 13.8(c), 29.4(b), 31.1, 31.4, 36.1(a) and Schedule D1 in respect of Motor Vehicle Third Party Property Insurance and Liability Insurance, a person who is another holder of an Integrated Mass Transit Service Contract under the Act acting in that capacity.

Purchaser Brands means the TransLink trade name, the Purchaser Trade Mark and any other brands and marks relevant to the Network developed by the Purchaser during the Contract Term.

Purchaser Breach means a breach of this Contract by the Purchaser.

Purchaser Monthly Advertising Revenue (Static) means the net revenue to which the Purchaser is entitled in a Contract Month under its arrangements with respect to Vehicle Advertising (Static).

Purchaser Nominated Digital Radio Network means a digital radio network to be specified by the Purchaser.

Purchaser Trade Mark means the trade marks of the Purchaser notified to the Service Provider from time to time.

Qualifying Change in Law means a Change in Law of the State of Queensland or the Commonwealth of Australia, the terms of which:

- (a) apply directly and exclusively to bus operators or to mass public transport that operates on road infrastructure;
- (b) are directly and exclusively related to bus safety or heavy vehicle safety; or
- (c) are a change to the DDA Legislation,

but excludes:

- (d) a Service Change;
- (e) a Change in Operations Manual;
- (f) a change in any Legal Requirement or the way a Legal Requirement applies or is interpreted as a result of a court decision other than a decision described in paragraph (c) of the definition of Change in Law;
- (g) a change in any Legal Requirement or the way a Legal Requirement is applied or is interpreted as a result of:
 - (i) the failure of the Service Provider to comply with a Legal Requirement;
 - (ii) an illegal act or omission of the Service Provider; or
 - (iii) a breach of this Contract by the Service Provider; or
- (h) a Change in Tax, including a change in the prevailing rate of FTC available to the Service Provider.

Real Terms means cost and Savings amounts that are specified on a real basis as at the Price Base Date, discounted at the CPI Deflator.

Recipient Created Tax Invoice has the meaning given to that term by the GST Law.

Reconciliation Sheets means the document titled 'Schedule D2 Reconciliation Template' in the Service Payment Pricing Model.

Reference Period means, for the purposes of calculating any variable element of a Service Payment under Schedule D2, the Reference Period identified for that element in that Schedule.

Register of Service Contract Assets means:

- (a) at the Commencement Date, the register detailed in Schedule B4; and
- (b) subsequently, any updated version of that register held by the Purchaser that is updated in accordance with this Contract.

Registered Valuer means a valuer registered under the *Valuers Registration Act 1992* (Qld).

Reimbursable Redundancy Cost means a redundancy payment to an Essential Employee that is necessary as a direct result of a Change Event except where:

- (a) the Service Provider has not used its best endeavours to avoid those costs;
- (e) the redundant Essential Employee is redeployed or reemployed elsewhere by the Service Provider or a Service Provider Associate within three months from the implementation date of the Change Notice or the date of redundancy (whichever is earlier) in which case this payment will cease and any payments made by the Purchaser in respect of the redundant Essential Employee (whether as Reimbursable Redundancy Costs or otherwise) will be deducted from the Change Payment in the following Payment Month; or

- (b) any such redundancy payment is payable in respect of a Permanent Service Change in accordance with paragraph 9.3(a) of Schedule D2.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Amount has the meaning given in clause 24.6(d)(ii).

Renewing Bond has the meaning given in clause 24.3.

Replacement Bond has the meaning given in clause 24.4.

Replacement Life has the meaning given at paragraph 4.2 of Schedule B1.

Reputable Insurer means an insurance company with:

- (a) the Required Insurer Rating; and
(b) a good reputation in the Australian domestic and international insurance markets, or which satisfies such other criteria as the Purchaser may approve from time to time.

Request for Change Proposal means a direction to the Service Provider to prepare and submit a Change Proposal given under clause 22.5(a)(i)(A), clause 22.5(b) or clause 23.1(c)(ii) (as the case may be).

Required Insurer Rating means a financial security rating given by Standard and Poor's Australia of at least A+ or an equivalent rating if no rating is provided by Standard and Poor's Australia.

Required Performance Bond Rating means a credit rating given by Standard and Poor's Australia of at least A- or an equivalent rating if no rating is provided by Standard and Poor's Australia.

Retender means a procurement process for the provision of all or any part of the Network by a Successor Service Provider for a period commencing after the End Date.

Retender Sensitive Information means the information described as such in Schedule C5.

Route means a line of route made up of a group of Route Attributes specified or described in the Network Specification.

Route Alignment means in respect of a Route, the designated route to be taken by a Contract Vehicle via the road network, in traversing the Route.

Route Attribute means each of the individual elements that comprise a Route including the Route Identifier, Transit Stops, Trips, Timing Points, payment options, Run Time, Route Alignment, schedule, Stopping Pattern, Measurement Points, direction, operating days, frequency, service span, brand, point of origin, final destination, Route Length, Route Variant, Route type, vehicle type, network type and funding agent, all as more particularly described in the Operations Manual.

Route Length means, in respect of a Route Variant, the distance between the point of origin of the Route Variant and the last Transit Stop on the Route Variant measured over the Route Alignment.

Route Variant has the meaning given in the Operations Manual.

RSW Reconciliation Sheet means the following worksheets in the Reconciliation Sheets:

- (a) '2._Route_Data'; and
(b) '6._Approved_Service_Changes',

which describe a summary of all of the changes to the Existing Network under the 3G Contract that have occurred since 28 February 2017.

Run Time means the scheduled interval of time between two Timing Points.

Saturday Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the service subject of the Service Change is scheduled to depart on a Saturday.

Savings means the amount of any Change Costs of the Service Provider avoided or otherwise reduced in accordance with Schedule D3 as a consequence of a Change Event.

Scheduled Passenger Service has the meaning given in the Act.

Scheduling Best Industry Practice means the exercise of Best Industry Practice in performing the Network Scheduling Functions in a way that endeavours to achieve the outcomes in paragraphs (a) to (f) of the definition of 'Optimised Network'.

Scheduling Business Rules means the labour related parameters to be used by the Service Provider in carrying out the Network Scheduling Functions, reflecting the Service Provider's Driver labour conditions to the extent that they impact on scheduling of the Network and are applicable pursuant to:

- (a) the Award, except to the extent that the Enterprise Agreement or a replacement enterprise agreement provides for Driver labour conditions;
- (b) the Enterprise Agreement;
- (c) Mandatory Requirements, including as to fatigue management; and
- (d) other scheduling practices that are in accordance with Scheduling Best Industry Practice (which for clarity may include updates, amendments or replacements of the Enterprise Agreement, to the extent that they constitute such practices).

School means State School or a Non-State School.

School In-Service Kilometres means the In-Service Kilometres for School Routes consisting of Core In-Service Kilometres, Permanent Service Changes and Temporary Planned Service Changes.

School Margin Percentage means the amount set out in Table 7 in paragraph 4.2 of Schedule D2.

School Only Vehicle has the meaning given in clause 12.6(d).

School Route means a General Route Service that operates only during School term time and services at least one School.

School Student has the meaning given in the Act.

SDE Auxiliary Services has the meaning given in clause 7.8(d).

Secured Party has the meaning given in clause 35.1.

Security Interest means any:

- (a) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary Claim and flawed deposit arrangements);
- (b) 'security interest' as defined in the PPSA; and
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over Claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

Senior Network Officer or **SNO** means a person authorised under Chapter 11 of the Act for the purpose of inspecting Tickets to ensure correct Fares have been paid by Customers.

Service Change means any permanent or temporary:

- (a) change to a Route Attribute for an Existing Route;

- (b) introduction of a New Route; or
- (c) cancellation of a Route.

Service Change Quotation means a financial model for the operational and financial impacts of a proposed Service Change, as more particularly described in the Operations Manual.

Service Contract Assets means:

- (a) the Contract Vehicles;
- (b) the Service Provider's right, title and interest in each Asset Lease;
- (c) the Depots;
- (d) the Depot Equipment;
- (e) the Service Provider's right, title and interest in each Depot Lease; and
- (f) the other assets (if any) listed in the Register of Service Contract Assets which are wholly or partly funded by the Purchaser (whether under the Service Payments or otherwise) for use in performance of the Transport Operations.

Service Contract Document means:

- (a) this Contract;
- (b) each Direct Deed;
- (c) any amended, updated or replacement requirements or arrangements in respect of use of the Integrated Scheduling System that are notified by the Purchaser to the Service Provider in accordance with clause 13.1(d); and
- (d) each other document that the Purchaser and the Service Provider agree from time to time is a Service Contract Document.

Service Disruption has the meaning in the Operations Manual.

Service Payment means a payment for performance of the Transport Operations as described in clause 21.1(a) and calculated in accordance with Schedule D2.

Service Payment Pricing Model means the agreed financial model used by the parties prior to the date of this Contract to calculate relevant values and amounts set out in Schedule D2, which values and amounts the parties have agreed, subject to this Contract, will be the relevant inputs to the calculation of Service Payments during the Term in accordance with Schedule D2. The Service Payment Pricing Model is set out in Schedule D4.

Service Payment Variable means any:

- (a) input assumption specified in the CEQM or the Operations Manual as an input assumption; and
- (b) other financial assumption or calculation methodology specified by the Purchaser in its absolute discretion.

Service Provider means the entity specified in item 1 of the Contract Details.

Service Provider Associate means an Associate of the Service Provider.

Service Provider Change Costs means the additional net incremental Change Costs incurred by the Service Provider that are directly attributable to the relevant Change Event, but excluding all:

- (a) overheads and administrative, corporate and other like costs, except to the extent that such costs are incurred by the Service Provider as the direct and unavoidable result of the relevant Change Event;
- (b) margin and profit; and
- (c) allowance for the risk that Actual Costs exceed estimated Service Provider Change Costs.

Service Provider Data Matters has the meaning given in clause 15.2(g)(i).

Service Provider Group means the Service Provider and its Related Bodies Corporate.

Service Provider Group Member means a member of the Service Provider Group.

Service Provider Monthly Advertising Revenue means the net revenue to which the Service Provider is entitled in a Contract Month under its Existing Arrangements.

Service Provider Warranties means:

- (a) the representations and warranties set out in Schedule A2; and
- (b) the representation and warranty set out at clause 7.9.

Service Provider's Representative means the person referred to in item 8 of the Contract Details, and any subsequent person appointed to that role from time to time under clause 5.2 of this Contract.

Service Rate Reset means the resetting of the In-Service Cost Rates in accordance with paragraph 12 of Schedule D2.

Shift means a planned period of time over which a Driver is rostered (in a way which supports the achievement of an Optimised Network) to perform Transport Operations, including driving an Approved Contract Vehicle.

Show Cause Event means the occurrence of any of the following events or circumstances:

- (a) the Service Provider fails to implement an Urgent Measure directed by the Purchaser under this Contract;
- (b) the Service Provider fails to notify the Purchaser of any Incident in accordance with the Standard;
- (c) an Incident is found to be attributable to the wilful default or negligence of the Service Provider or an Associate of the Service Provider;
- (d) the Service Provider fails to comply with its obligations under clause 10.3;
- (e) the Service Provider fails to pursue diligently a Cure Plan in accordance with its obligations under clause 19.3(c) or otherwise to cure a Non-Compliance Event to the reasonable satisfaction of the Purchaser within an agreed Cure Period;
- (f) a Show Cause Event described in Schedule C3 or Schedule C4 occurs;
- (g) the Service Provider fails to comply with any of its obligations in respect of a Probity Event;
- (h) the Service Provider fails to provide any Performance Bond in accordance with clause 24;
- (i) the Service Provider persistently or repeatedly fails to comply with this Contract in circumstances where the Purchaser has previously notified it of the failures or non-compliances and has put it on notice that continued failures or non-compliances would constitute a Show Cause Event for the purposes of this Contract; or
- (j) the Service Provider commits any other breach of this Contract that is, in the Purchaser's reasonable opinion, a breach of a condition of this Contract.

For the avoidance of doubt, a failure by the Service Provider to meet the Performance Standard or otherwise operate Trips in accordance with the Timetable (including a failure to ensure that Contract Vehicles perform all required Trips and traverse each designated Transit Stop on that Trip) shall not constitute a Show Cause Event except to the extent:

- (k) a Show Cause Event described in paragraph (f) has occurred; or
- (l) the Service Provider has abandoned, or displayed an intention to abandon, performance of any of the Transport Operations.

Show Cause Notice has the meaning given in clause 20.1(b).

Step-in Event means a Show Cause Event or an Immediate Termination Event.

Step-in Party has the meaning given in clause 27.1(b).

Step-in Period means any period during which the Purchaser exercises Step-in Powers pursuant to clause 27.1(a).

Step-in Powers has the meaning given in clause 27.1(a).

Step-in Right has the meaning given in clause 27.1(a).

Step-out Notice has the meaning given in clause 27.6(a).

Stopping Pattern means the sequence of, and distance between, Transit Stops along a Route.

Subcontract means any subcontract or other arrangement between the Service Provider and a Subcontractor for the Subcontractor to perform all or any part of the Transport Operations. It includes any arrangement for a Subcontractor to make any Service Contract Asset or Staff available to the Service Provider to be utilised in performance of the Transport Operations but excludes any contract of employment between the Service Provider and an individual or between a Subcontractor and an individual.

Subcontractor means a person engaged, or to be engaged, by the Service Provider under a Subcontract.

Successor Service Provider means a service provider appointed by the Purchaser to perform all or some of the Transport Operations following the expiry or earlier termination, cancellation or surrender of this Contract. It includes an Interim Service Provider.

Sunday Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the Trip that is the subject of the Service Change is scheduled to depart on a Sunday.

Surviving Clauses has the meaning given in clause 43.12(a).

Tax means any tax, levy, duty, rate, impost, charge, deduction or withholding (and any related penalty, fine, fee or interest) imposed, levied or assessed by a Government Authority. It includes stamp duty, GST and any transaction taxes and duties.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

Temporary Planned Service Change means any Planned Service Change which has a defined start date and a defined end or review date. It excludes Temporary Unplanned Service Changes.

Temporary Planned Service Change Adjustment means an amount calculated in accordance with paragraph 9.6 of Schedule D2.

Temporary Planned Service Change Fuel Adjustment means an amount calculated in accordance with paragraph 3.6 of Schedule D2.

Temporary Unplanned Service Change means a Service Change implemented for no longer than 72 hours in response to an urgent circumstance that could not reasonably have been anticipated by the Service Provider, and excludes:

- (a) Planned Service Changes; and
- (b) State Designated Event Services.

Terrorist Act has the meaning given in section 100.1 of the *Criminal Code* (Cth).

Third Party Break Costs means the amount (if any) that the Service Provider is liable to pay to any person other than a Service Provider Group Member under the terms of a Financing Arrangement between the Service Provider and that person as repayment of financial accommodation or break costs in respect of a Contract Vehicle that is destroyed or otherwise written off.

Third Party Owner means:

Step-in Event means a Show Cause Event or an Immediate Termination Event.

Step-in Party has the meaning given in clause 27.1(b).

Step-in Period means any period during which the Purchaser exercises Step-in Powers pursuant to clause 27.1(a).

Step-in Powers has the meaning given in clause 27.1(a).

Step-in Right has the meaning given in clause 27.1(a).

Step-out Notice has the meaning given in clause 27.6(a).

Stopping Pattern means the sequence of, and distance between, Transit Stops along a Route.

Subcontract means any subcontract or other arrangement between the Service Provider and a Subcontractor for the Subcontractor to perform all or any part of the Transport Operations. It includes any arrangement for a Subcontractor to make any Service Contract Asset or Staff available to the Service Provider to be utilised in performance of the Transport Operations but excludes any contract of employment between the Service Provider and an individual or between a Subcontractor and an individual.

Subcontractor means a person engaged, or to be engaged, by the Service Provider under a Subcontract.

Successor Service Provider means a service provider appointed by the Purchaser to perform all or some of the Transport Operations following the expiry or earlier termination, cancellation or surrender of this Contract. It includes an Interim Service Provider.

Sunday Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the Trip that is the subject of the Service Change is scheduled to depart on a Sunday.

Surviving Clauses has the meaning given in clause 43.12(a).

Tax means any tax, levy, duty, rate, impost, charge, deduction or withholding (and any related penalty, fine, fee or interest) imposed, levied or assessed by a Government Authority. It includes stamp duty, GST and any transaction taxes and duties.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

Temporary Planned Service Change means any Planned Service Change which has a defined start date and a defined end or review date. It excludes Temporary Unplanned Service Changes.

Temporary Planned Service Change Adjustment means an amount calculated in accordance with paragraph 9.6 of Schedule D2.

Temporary Planned Service Change Fuel Adjustment means an amount calculated in accordance with paragraph 3.6 of Schedule D2.

Temporary Unplanned Service Change means a Service Change implemented for no longer than 72 hours in response to an urgent circumstance that could not reasonably have been anticipated by the Service Provider, and excludes:

- (a) Planned Service Changes; and
- (b) State Designated Event Services.

Terrorist Act has the meaning given in section 100.1 of the *Criminal Code* (Cth).

Third Party Break Costs means the amount (if any) that the Service Provider is liable to pay to any person other than a Service Provider Group Member under the terms of a Financing Arrangement between the Service Provider and that person as repayment of financial accommodation or break costs in respect of a Contract Vehicle that is destroyed or otherwise written off.

Third Party Owner means:

- (a) if a Contract Vehicle is not owned by the Service Provider, the owner of the Contract Vehicle; and
- (b) if the Service Provider is not the freehold owner of a Depot, the freehold owner of the Depot.

Ticket means an entitlement to travel, as evidenced by a paper or electronic ticket, token, coupon, pass, card or other instrument (including a Smartcard).

Ticketing Equipment means all ticketing equipment, including (but not limited to) the ticketing equipment listed in the Operations Manual, Driver Console Units, Smartcard readers and sign on cards to log in to Driver Console Units or other ticketing equipment, which the Purchaser or any Purchaser Associate provides to the Service Provider for use in its performance of the Transport Operations.

Timetable means, in respect of all Trips on a Route:

- (a) the times when a Contract Vehicle is scheduled to pass a Timing Point or Transit Stop on that Route; and
- (b) the In-Service Hours and In-Service Kilometres for each Trip.

Timing Point means designated timing points on a Route identified in the Network Specification and the Integrated Scheduling System.

Total Charter Kilometres means an amount calculated in accordance with paragraph 7.4 of Schedule D2.

Total Cost Rates means the amounts set out in paragraph 12(b) of Schedule D2.

Total Equivalent Ordinary Hours (Reset) means the sum, for each Day Type, of the product of the Total Hours and the Day Type Wage Multiplier.

Total Hour Marginal Rates means the amounts set out in Table 20 in paragraph 9.5(c) of Schedule D2.

Total Hours means, for a Trip, the In-Service Hours plus the Dead Running Time.

Total Hours (Reset) means the Total Hours required to travel over any designated period to deliver Urban Routes and School Routes consisting of Core Total Hours and Permanent Service Changes but excluding:

- (a) Temporary Planned Service Changes; and
- (b) State Designated Event Services.

Total In-Service Equivalent Ordinary Hours (Reset) means the sum, for each Day Type, of the product of the In-Service Hours and the Day Type Wage Multiplier.

Total In-Service Hours (Reset) means the In-Service Hours required to travel over any designated period to deliver Urban Routes and School Routes consisting of Core In-Service Hours and Permanent Service Changes but excluding:

- (a) Temporary Planned Service Changes; and
- (b) State Designated Event Services.

Total In-Service Kilometres over any designated period is the sum of Urban In-Service Kilometres and School In-Service Kilometres.

Total In-Service Kilometres (Reset) over any designated period is the sum of Urban In-Service Kilometres and School In-Service Kilometres consisting of Core Service Kilometre and Permanent Service Changes but excluding:

- (a) Temporary Planned Service Changes; and
- (b) State Designated Event Services.

Total Kilometres means, for a Trip, the In-Service Kilometres plus the Dead Running Distance for that Trip over any designated period.

Total Kilometres (Combined) over a period is the Total Kilometres to be travelled to deliver Urban Routes, School Routes and State Designated Event Services in that period consisting of Core Total Kilometres as adjusted for;

- (a) Permanent Total Kilometres; and
- (b) the change in Total Kilometres over that period attributable to Temporary Planned Service Changes and State Designated Event Services.

Total Kilometre Marginal Rates means the amounts set out in Table 21 in paragraph 9.5(d) of Schedule D2.

Total Kilometres (Reset) is the Total Kilometres to be travelled over any designated period to deliver Urban Routes and School Routes consisting of Core Total Kilometres and Permanent Service Changes but excluding:

- (a) Temporary Planned Service Changes; and
- (b) State Designated Event Services.

Total Odometer Reading means an amount calculated in accordance with paragraph 7.4 of Schedule D2.

Total Rate Adjustment means an adjustment contemplated in paragraph 9.1(a) of Schedule D2.

Training Plan means the training plan described in paragraph 2.7 of Schedule C2.

Transit Stop means a designated location along a Route for a Contract Vehicle to set down or pick up passengers.

Transition In Period means the period commencing on the Commencement Date and ending on the Optimised Performance Commencement Date.

Transition In Schedule means Schedule A5.

Transition Out Period means a period of 120 Business Days (or any shorter period determined under this Contract) commencing on the first day following the End Date.

Transitional Assistance has the meaning given in clause 28.

TransLink means the TransLink Division of the Queensland Department of Transport and Main Roads.

TransLink Ticket Stock means paper stock required by the Ticketing Equipment for production of paper Tickets.

Transport Operations includes:

- (a) the delivery of the Network;
- (b) the maintenance and operation of the Service Contract Assets; and
- (c) all other activities of the Service Provider expressly contemplated under this Contract or that are incidental to the performance of the Service Provider's express obligations under this Contract.

Trip means a one way trip performed by a Contract Vehicle between the point of origin and final destination of a Route.

True Up Adjustment means the combination of all approved and calculable amounts in respect of any:

- (a) Permanent Service Change (In-Service Rate) Fuel Adjustment;
- (b) Permanent Service Change (In-Service Rate) Adjustment;
- (c) Permanent Service Change (Total Rate) Fuel Adjustment;

- (d) Permanent Service Change (Total Rate) Adjustment;
- (e) Temporary Planned Service Change Fuel Adjustment;
- (f) Temporary Planned Service Change Adjustment; or
- (g) any Force Majeure Adjustment;

and any other element of the Service Payment that is approved and calculable and is payable or to be accounted for under Schedule D2, that relates to an earlier Payment Month and which has not already been paid or accounted for.

Trust means in respect of the Service Provider, each trust of which it is or becomes trustee.

Updated Route Summary Worksheet has the meaning given in paragraph 6.1(b) of Schedule A5.

Unplanned Events Exclusion has the meaning given in paragraph 2.2(a)(i) of Schedule C4.

Upper On-Time Running Threshold means the upper on-time running threshold as set out in paragraph 4.2 of Schedule C4.

Urban Contract Vehicle has the meaning given in clause 12.6(c).

Urban In-Service Kilometres means the In-Service Kilometres for Urban Routes consisting of Core In-Service Kilometres, Permanent Service Changes and Temporary Planned Service Changes but excluding State Designated Event Services on Urban Routes.

Urban Margin Percentage means the amount set out in Table 8 in paragraph 4.2 of Schedule D2.

Urban Route means a General Route Service that operates throughout the year or with a seasonal timetable and is designed to service multiple Customer types including, but not limited to, School Students.

Urgent Measures means immediate temporary measures to alleviate the adverse effect of a Non-Compliance Event or Show Cause Event pending a permanent cure being achieved.

Vehicle Advertising means all forms of advertising (excluding Passenger Information) intended to be fixed, displayed or otherwise published or broadcast in any form (including digitally or electronically) either inside or on the outside of any Contract Vehicle and includes Vehicle Advertising Equipment.

Vehicle Advertising (Digital) means any Vehicle Advertising that is digitally displayed or uses electronic media in any form, whether displayed on the inside or on the outside of any Contract Vehicle.

Vehicle Advertising Equipment means equipment (including electronic equipment) installed, or intended to be installed, in or on a Contract Vehicle for the purpose of displaying advertising material.

Vehicle Advertising (Static) means Vehicle Advertising that is not Vehicle Advertising (Digital), whether displayed on the inside or on the outside of any Contract Vehicle.

Vehicle Block means the scheduled pattern of movements of a Contract Vehicle from its point of departure from a Depot or termini to its final point of arrival at a Depot or termini, inclusive of all trips (pull, dead and in-service).

Vehicle Overhead Marginal Rate means:

- (a) in respect of the Permanent Service Change (In-Service Rate) Adjustment, the amounts set out as such in Table 19 in paragraph 9.4(e) of Schedule D2; and
- (b) in respect of the Permanent Service Change (Total Rate) Adjustment, the amounts set out as such in Table 22 in paragraph 9.5(e) of Schedule D2.

Wage Deflator means the series of annual discount factors in each Contract Year calculated as the inverse of the Wage Index Multiplier in respect of each Contract Year for which the relevant Wage Index Multiplier for that Contract Year has been published.

Wage Index Multiplier means the amount calculated in accordance with paragraph 11.3 of Schedule D2.

Weekday Day Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the Trip that is the subject of the Service Change is scheduled to depart the first Transit Stop between 06:00am to 7:00pm on a weekday.

Weekday Early/Late Marginal Rate means the hourly rate to be applied to Permanent Service Changes and Temporary Planned Service Changes where the Trip that is subject to the Service Change is scheduled to depart the first Transit Stop between 07.01pm and 5.59am on a weekday.

Weighted Average Route Length has the meaning given in clause 7.6(b)(i).

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

WHS Law means:

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

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

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

Workplace means a workplace (within the meaning given to that term in section 8 of the WHS Act) where the Transport Operations are performed.

Released under RTI - DTMR

Schedules B – Operational

Released under RTI - DTMR

Schedules C – Contract Administration

Released under RTI - DTMR

Schedules D – Financial

Released under RTI - DTMR

Schedules E – Pro-Forma Documents

Released under RTI - DTMR

Signing page

EXECUTED on 23/7/2018.

State

Executed for and on behalf of **The State of Queensland** by Matthew Longland, Deputy Director General, Translink of the Department of Transport and Main Roads in the presence of:

Signature of witness

Signature

Markin Hugh Bradshaw

Name of witness (print)

Service Provider

Executed by Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ACN 065 794 943 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Signature of director ✓

Signature of company secretary/director ✓

Print Name

Print name

Deed of Variation

In relation to the Service Contract for SEQ General
Route Services

October 2018

Transit Australia Pty. Limited trading as Sunshine
Coast Sunbus (**Service Provider**)

State of Queensland acting through the Chief
Executive of the Department of Transport and Main
Roads (**Purchaser**)

Released under RTI - DTMR

Deed of Variation

in relation to the Service Contract for SEQ General Route Services

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1. Defined terms & interpretation	4
1.1 Defined terms	4
1.2 Interpretation	4
2. Amendment to the Contract	4
Schedule 1 – Amendments to the Contract	5
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Released under RTI - DTMR

Details

Date

Parties

Name **State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads**
ABN 39 407 690 291
Short form name **Purchaser**
Notice details General Manager (Passenger Transport Services)
TransLink Division
Department of Transport and Main Roads
61 Mary Street
Brisbane Qld 4000
Facsimile: (07) 3338 4600
Email: sunbussc@translink.com.au

Name **Transit Australia Pty. Limited trading as Sunshine Coast Sunbus**
ABN 94 065 794 943
Short form name **Service Provider**
Notice details KPMG
Attn: Sunbus
71 Eagle Street
Brisbane Qld 4000
Contact: 07 5579 5900
Email: buscontracts@tagroup.net.au

Background

- A The Purchaser and Service Provider have entered into the Contract.
- B The Purchaser and Service Provider have agreed to vary the terms of the Contract by way of a deed of variation.
- C The parties have agreed to give effect to the amendments referred to in Recital B by way of this Deed of Variation.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Contract means the service contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser.

Service contract has the meaning given in the *Transport Operations (Passenger Transport) Act 1994* (Qld).

Relevant Jurisdiction means Queensland.

Terms which are defined in the Contract and used in this deed have the meaning given to those terms in the Contract.

1.2 Interpretation

Clause 1.2 of the Contract applies to the interpretation of this deed.

2. Amendment to the Contract

- (a) The Purchaser and the Service Provider agree that they consent and agree to the amendment contained in Schedule 1 of this deed.

Released under RTI/DTP

Schedule 1 – Amendments to the Contract

1. Amendment to Part A item 8 – Contract Details

Part A item 8 – Contract Details in the Service Contract is amended to read:

8	Service Provider's Representative	Sch.4 Part 4 s.6 PI
---	-----------------------------------	---------------------

Released under RTI - DTMR

Signing page

EXECUTED as a deed.

Purchaser

Executed for and on behalf of **The State of Queensland** by its duly authorised representative, who warrants that they are duly authorised to execute this deed, in the presence of:

Not Relevant

Signature of witness

Jodie Elphick

Name of witness (print)

Not Relevant

Signature

Don Moore Director SEQ Bus

Name and position of authorised representative (print)

Service Provider

Executed by **Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ACN 065 794 943** in accordance with section 127 of the *Corporations Act 2001 (Cth)* by:

Not Relevant

Signature of director

Not Relevant

Signature of company secretary / director

Sch.4 Part 4 s6 PI

Name of witness (print)

Not Relevant

Not Relevant

Released under RTI DTMR

Deed of Variation – Service Contract

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (**Service Provider**)

Released under RRT 100/DTMR

Deed of Variation – Service Contract

Date

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 (“**Purchaser**”)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (“**Service Provider**”)

Background

- A. The parties have entered into the Contract.
- B. The Queensland Government has set up the Bus Driver Wages Adjustment Fund.
- C. The Department of Transport and Main Roads is administering the Bus Driver Wages Adjustment Fund in accordance with the Guidelines.
- D. To facilitate the payment of the Lump Sum Wage Adjustment, Annual and Long Service Leave Liability Impact Payment and the Ongoing Wage Adjustment under the terms of the Guidelines, the parties have agreed to enter into this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

Annual and Long Service Leave Liability Impact Payment has the meaning given in the Guidelines.

Bus Driver Wages Adjustment Fund means the bus industry assistance package set up by the Queensland Government.

Contract means the service contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser.

Effective Date means 1 February 2019

Guidelines means the guidelines dated 4 September 2018 (as amended on 25 September 2018) published by the Department of Transport and Main Roads for the administration of the Bus Driver Wages Adjustment Fund.

Lump Sum Wage Adjustment has the meaning given in the Guidelines.

Ongoing Wage Adjustment has the meaning given in the Guidelines.

Service contract has the meaning given in the *Transport Operations (Passenger Transport) Act 1994* (Qld).

Deed of Variation – Service Contract

1.2 Interpretation

In this deed, unless inconsistent with the context, a term defined in the Contract shall have the same meaning in this deed.

2. Variations

The Contract is varied on and from the Effective Date as follows:

- (a) in Schedule D2 (Service Payment), replace Tables 1, 17 and 20 with the Tables set out in Annexure A to this deed.

3. Acknowledgement – Lump Sum Wage Adjustment and Annual and Long Service Leave Liability Impact Statement

The parties acknowledge that:

- (a) in accordance with the funding decision under the Guidelines, the Lump Sum Wage Adjustment in the amount of **\$503,455.95** (excluding GST) and the Annual and Long Service Leave Liability Impact Payment in the amount of **\$37,306.99** (excluding GST) will be subject to the terms of the Guidelines, be paid to the Service Provider with the Service Payment for the February Payment Month; and
- (b) payment of the Lump Sum Wage Adjustment the Annual and Long Service Leave Liability Impact Payment:
 - (i) are not payments under the terms of the Contract; and
 - (ii) in accordance with section 5.1 and 5.2 of the Guidelines, are not subject to margin-related payments.

4. Ongoing Wage Adjustment – Back Payment from 1 July 2018

- 4.1 In accordance with the funding decision under the Guidelines, the Ongoing Wage Adjustment for the period 1 July 2018 to 31 January 2019, in the amount of **\$213,688.59** (excluding GST), will be paid to the Service Provider with the February Monthly Contract Payment.
- 4.2 Payment of the Ongoing Wage Adjustment amount set out in clause 4.1 of this deed:
 - (a) is not a payment under the terms of the Contract; and
 - (b) includes an amount of **\$10,175.65** (excluding GST) as a margin-related payment in accordance with section 5.3 of the Guidelines.

5. Director's Declaration

- 5.1 The Service Provider warrants that it will, within 30 business days of receiving the funding referred to in clauses 2, 3 and 4.1 of this deed, deliver to the Purchaser a duly completed Director's Declaration – Payment to Drivers in accordance with the Guidelines.
- 5.2 If the Service Provider fails to provide the Director's Declaration – Payment to Drivers in accordance with clause 5.1 of this deed, the amounts paid to the Service Provider in

Deed of Variation – Service Contract

accordance with clause 3 and 4.1 of this deed immediately become a debt due and owing to the Purchaser.

5.3 If the Service Provider fails to pay an Eligible Bus Driver within 20 business days of receiving the funding for the:

- (a) Lump Sum Wage Adjustment under clause 3 of this deed; and
- (b) Ongoing Wage Adjustment under clause 4 of this deed,

that unpaid portion immediately becomes a debt due and owing to the Purchaser.

5.4 If the Service Provider fails to pay an Eligible Bus Driver the relevant rates set out in Annexure A to this deed, such amounts will be a debt due and payable by the Service Provider to the Purchaser as Moneys Owing in accordance with clause 21.6 of the Contract.

6. Taxes and Duties

The Service Provider must pay and indemnify the Purchaser 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.

7. Counterparts

This document may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

8. Entire Agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Deed of Variation – Service Contract

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the State of Queensland (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

Not Relevant

Signature of witness

Kara Montgomery

Full name of witness

Executed by Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (“**Service Provider**”) in accordance with s127 of the Corporation Act 2001 (Cth) in the presence of

NR

Signature of Director

Sch.4 Part 4 s.6 PI

Full name of Director

Date *4/2/19*

NR

Signature of
Date *15/02*

Juanita Rechichi

Full name of officer

NR

Signature of Director/Company Secretary

Sch.4 Part 4 s.6 PI

Full name of Director/Company Secretary

Date *14/2/19*

Released under RTI/DMR

Deed of Variation – Service Contract

Annexure A

2.2 Core Operating Payment

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

9.4 Permanent Service Change (In-Service Rate) Adjustment

Table 18: In-Service Hour Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Deed of Variation – Service Contract

9.4 Permanent Service Change (In-Service Rate) Adjustment

Table 21: Total Hour Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
--

Released under RTI - DTMR

Deed of Variation – Service Contract

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (**Service Provider**)

Released under RIA-DTMR

Date

July 2019

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 (“**Purchaser**”)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (“**Service Provider**”)

Background

- A. The parties have entered into the Contract.
- B. On 2 April 2019, the Service Provider gave the Purchaser notice of a Change in Control.
- C. On 29 May 2019, the Purchase provided its consent to the Change in Control, subject to the parties entering into a deed of variation to replace Schedule A3 – Service Provider Group Structure of the Contract.
- D. The Purchaser subsequently supplemented its change in control consent and, as part of that supplement, provided this deed as the form to be used in respect of the condition referred to in Recital **Error! Reference source not found.**
- E. The parties have agreed to enter into this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

Change in Control has the same meaning given under in the Contract.

Contract means the Service Contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser.

Effective Date means 18 June 2019.

Service Contract has the meaning given in the *Transport Operations (Passenger Transport) Act 1994* (Qld).

1.2 Interpretation

In this deed, unless inconsistent with the context, a term defined in the Contract shall have the same meaning in this deed.

2. Variations

The Contract is varied on and from the Effective Date as follows:

- (a) in Schedule A3 (Service Provider Group Structure), replace the diagram with the diagram set out in Annexure A to this deed.

3. Entire Agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Released under RTI - DTMR

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the **State of Queensland** (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

NR

Signature of witness

Alix Baker

Full name of witness

NR

Signature of of

Date 1 Jul 19

Juanita Reulichi

Full name of officer

Executed by Transit Australia Pty Ltd ACN 065 794 943 in accordance with s127 of the *Corporations Act 2001*(Cth) in the presence of:

Not Relevant

Signature of Director

Sch.4 Part 4 s.6 PI

Full name of Director

Date 24 /06/19

NR

Signature of witness

Sch.4 Part 4 s.6 PI

Full name of witness

Not Relevant

Signature of ~~Director~~/Company Secretary

Sch.4 Part 4 s.6 PI

Full name of ~~Director~~/Company Secretary

Date 24 /06/19

NR

Signature of witness

Sch.4 Part 4 s.6 PI

Full name of witness

Released under RTI - DTMR

Deed of Variation – Service Contract

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (**Service Provider**)

Released under RRT-DTMR

Date 12 September 2019

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 (“**Purchaser**”)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (“**Service Provider**”)

Background

- A. The parties have entered into the Contract.
- B. On 2 April 2019, the Service Provider gave the Purchaser notice of a Change in Control.
- C. On 29 May 2019, the Purchaser provided its consent to the Change in Control, subject to the parties entering into a deed of variation to replace Schedule B4 – Register of Service Contract Assets.
- D. The Purchaser subsequently supplemented its change in control consent and, as part of that supplement, provided this deed as the form to be used in respect of the condition referred to in Recital C.
- E. The Service Provider has executed a Financier Direct Deed in respect of the Service Contract Assets.
- F. The parties have agreed to enter into this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

Change in Control has the meaning given under the Contract.

Contract means the Service Contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser.

Depot has the meaning given under the Contract.

Effective Date means the date the Service Provider granted security over all of the Service Contract Assets under the Financier Direct Deed.

Service Contract has the meaning given in the *Transport Operations (Passenger Transport) Act 1994* (Qld).

Service Contract Assets has the meaning given under the Contract.

1.2 Interpretation

In this deed, unless inconsistent with the context, a term defined in the Contract shall have the same meaning in this deed.

2. Variations

The Contract is varied on and from the Effective Date as follows:

- (a) Schedule B4 (Register of Service Contract Assets) is replaced with Annexure A to this deed.

3. Entire Agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Released under RTI - DTMR

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the **State of Queensland** (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

Not Relevant

Signature of witness

Elizabeth Hussey
Full name of witness

Not Relevant

Signature of officer

Date 7/8/19

Daniel Moore
Full name of officer

Executed by Transit Australia Pty Ltd ACN 065 794 943 in accordance with s127 of the *Corporations Act 2001*(Cth) in the presence of:

Not Relevant

Signature of Director

MICHAEL SEWARDS
Full name of Director

Date / 8/8/2019
Not Relevant
Signature of witness

Sch.4 Part 4 s6 PI
Full name of witness

Not Relevant

Signature of Director/Company Secretary

Sch.4 Part 4 s6 PI

Full name of Director/Company Secretary

Date / 8/8/2019

Not Relevant

Signature of witness

Sch.4 Part 4 s.6 PI
Full name of witness

Annexure A

Schedule B4 – Register of Service Contract Assets

This schedule is contained in the folder 'Schedule B4' on the compact disc attached to this deed of variation and titled '*Register of Service Contract Assets*'.

Released under RTI - DTMR

Deed of Variation

In relation to the Service Contract for SEQ General
Route Services

July 2019

Transit Australia Pty. Limited trading as Sunshine
Coast Sunbus (**Service Provider**)

State of Queensland acting through the Chief
Executive of the Department of Transport and Main
Roads (**Purchaser**)

Released under RTI - DTMR

Deed of Variation

in relation to the Service Contract for SEQ General Route Services

Details	3
Agreed terms	4
1. Defined terms & interpretation	4
1.1 Defined terms	4
1.2 Interpretation	4
2. Amendment to the Service Contract	4
3. General	4
Schedule 1 – Amendments to the Service Contract	5
Signing page	6

Released under RTI - DTMR

Details

Date 13th August 2019.

Parties

Name	State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads
ABN	39 407 690 291
Short form name	Purchaser
Notice details	General Manager (Passenger Transport Services) TransLink Division Department of Transport and Main Roads 61 Mary Street Brisbane Qld 4000 Facsimile: (07) 3338 4600 Email: sunbussc@translink.com.au

Name	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus
ABN	94 065 794 943
Short form name	Service Provider
Notice details	KPMG Attn: Sunbus 71 Eagle Street Brisbane Qld 4000 Contact: 07 5579 5900 Email: buscontracts@tagroup.net.au

Background

- A The Purchaser and Service Provider have entered into the Service Contract.
- B The Purchaser and Service Provider have agreed to vary the terms of the Service Contract by way of a deed of variation to change the service provider representative.
- C The parties have agreed to give effect to the amendments referred to in Recital B by way of this Deed of Variation.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Service Contract means the Urban and School Service Contract for SEQ General Route Services entered into between the Purchaser and the Service Provider dated 23 July 2018.

Relevant Jurisdiction means Queensland.

Terms which are defined in the Service Contract and used in this deed have the meaning given to those terms in the Service Contract.

1.2 Interpretation

Clause 1.2 of the Service Contract applies to the interpretation of this deed.

2. Amendment to the Service Contract

The Purchaser and the Service Provider agree that they consent to all amendments which are contained in Schedule 1 of this deed.

3. General

Clauses 39, 40, 41, 42 and 43 of the Service Contract apply in respect of this deed as though they were set out here.

Released under RTI - DMR

Schedule 1 – Amendment to the Service Contract – Part A, item 7 and 8

1. Amendment to item 7 and 8 in Part A – Contract Details

Item 7 and 8 in Part A – Contract Details in the Service Contract is amended to read:

7.	Address for service of notices – Service Provider	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus Attn: Sunbus 29 Francis Briggs Road Melbourne Airport VIC 3045 Contact: 07 5579 5900 Email: buscontracts@tagroup.net.au
8.	Service Provider's Representative	Sch.4 Part 4 s.6 PI

Released under RTI/DTMR

Signing page

EXECUTED as a deed.

Purchaser

Executed for and on behalf of **The State of Queensland** by its duly authorised representative, who warrants that they are duly authorised to execute this deed, in the presence of:

Signature of witness

Not Relevant

Alix Baker
Name of witness (print)

Signature

Not Relevant

Juanita Rechichi
Name and position of authorised representative (print)

Service Provider

Executed by **Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ACN 065 794 943** in accordance with section 127 of the *Corporations Act 2001 (Cth)*

Signature of director

Not Relevant

Name of witness (print)

Sch.4 Part 4 s.6 PI

Sign

Not Relevant

Released under RTI DTMR

Deed of Variation

In relation to the Service Contract for SEQ General
Route Services

October 2019

Transit Australia Pty. Limited trading as Sunshine
Coast Sunbus (**Service Provider**)

State of Queensland acting through the Chief
Executive of the Department of Transport and Main
Roads (**Purchaser**)

Released under RTI - DTMR

Deed of Variation

in relation to the Service Contract for SEQ General Route Services

Details	3
Agreed terms	4
1. Defined terms & interpretation	4
1.1 Defined terms	4
1.2 Interpretation	4
2. Amendment to the Service Contract	4
3. General	4
Schedule 1 – Amendment to the Service Contract – Part A, item 1, 7 and 8	5
Schedule 2 – Amendment to the Service Contract – Schedule A3 – Service Provider Group Structure	6
Signing page	7

Released under RTI - DTMR

Details

Date 25 February 2020

Parties

Name	State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads
ABN	39 407 690 291
Short form name	Purchaser
Notice details	General Manager (Passenger Transport Services) TransLink Division Department of Transport and Main Roads 61 Mary Street Brisbane Qld 4000 Facsimile: (07) 3338 4600 Email: sunbussc@translink.com.au

Name	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus
ABN	94 065 794 943
Short form name	Service Provider
Notice details	Attn: Sunbus 29 Francis Briggs Road Melbourne Airport VIC 3045 Contact: 07 5579 5900 Email: buscontracts@tagroup.net.au

Background

- A The Purchaser and Service Provider have entered into the Service Contract.
- B The Purchaser and Service Provider have agreed to vary the terms of the Service Contract by way of a deed of variation to change the Service Provider Representative, contact details and to replace Schedule A3 – Service Provider Group Structure of the Contract.
- C The parties have agreed to give effect to the amendments referred to in Recital B by way of this Deed of Variation.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Service Contract means the Urban and School Service Contract for SEQ General Route Services entered into between the Purchaser and the Service Provider dated 23 July 2018.

Relevant Jurisdiction means Queensland.

Terms which are defined in the Service Contract and used in this deed have the meaning given to those terms in the Service Contract.

1.2 Interpretation

Clause 1.2 of the Service Contract applies to the interpretation of this deed.

2. Amendment to the Service Contract

The Purchaser and the Service Provider agree that they consent to all amendments which are contained in Schedule 1 and Schedule 2 of this deed.

3. General

Clauses 39, 40, 41, 42 and 43 of the Service Contract apply in respect of this deed as though they were set out here.

Released under RTI - DTMR

Schedule 1 – Amendment to the Service Contract – Part A, item 1, 7 and 8

1. Amendment to item 1, 7 and 8 in Part A – Contract Details

Item 1, 7 and 8 in Part A – Contract Details in the Service Contract is amended to read:

1.	Service Provider Name ABN ACN Address	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus 94 065 794 943 065 794 943 29 Francis Briggs Road, Melbourne Airport, VIC, 3045
7.	Address for service of notices – Service Provider	Transit Australia Pty. Limited trading as Sunshine Coast Sunbus Attn: Sunbus 29 Francis Briggs Road, Melbourne Airport, VIC, 3045 Contact: 07 5552 2700 (x000) Email: SunbusSC@wearekinetic.com
8.	Service Provider's Representative	Sch.4 Part 4 s.6 P1

Released under RIA/OTMR

Released under RTI - DTMR

Signing page

EXECUTED as a deed.

Purchaser

Executed for and on behalf of **The State of Queensland** by its duly authorised representative, who warrants that they are duly authorised to execute this deed, in the presence of:

NR
Signature of witness

Not Relevant
Signature

DEAN GOING
Name of witness (print)

Juanita Rechihi
Name and position of authorised representative (print)

Service Provider

Executed by Transit Australia Pty Limited trading as Sunshine N 065 794 943 in accordance of the Corporations Act 2001

Not Relevant
Signature of director

Not Relevant
Signature of company secretary / director

Sch.4 Part 4 s.6 PI
Name of witness (print)

Released under RTI DMR

Deed of Variation – Service Contract – COVID-19 Emergency

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty. Limited trading as **Sunshine Coast Sunbus** (**Service Provider**)

Released under RTI - DTMR

Date 6 May 2020

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 (“**Purchaser**”)

Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ABN 94 065 794 943 of 29 Francis Briggs Road, Melbourne Airport, VIC 0459EAA18166 (“**Service Provider**”)

Background

- A. The parties have entered into the Contract.
- B. On 29 January 2020, the COVID-19 Emergency was declared and remains in effect at the date of this deed.
- C. The parties have agreed to enter into this deed in respect of matters associated with the COVID-19 Emergency and its impact on matters provided for under the Contract.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

COVID-19 means the disease commonly known as the novel coronavirus disease or COVID-19.

COVID-19 Arrangements Expiry Date means 11:59pm on:

- (a) 31 July 2020;
- (b) 30 September 2020 if the Purchaser elects to extend the COVID-19 Arrangements Date by notice in writing to the Service Provider on or before 31 July 2020; or
- (c) any earlier date that the Purchaser notifies the Service Provider is the COVID-19 Arrangements Expiry Date, which must not be later than the date on which the COVID-19 Emergency and its impact on matters provided for under the Contract have ceased, in the reasonable opinion of the Purchaser.

COVID-19 Emergency has the meaning given in the *Public Health Act 2005* (Qld).

Contract means the Service Contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser.

Effective Date means the date of this deed.

1.2 Interpretation

In this deed, unless inconsistent with the context, a term defined in the Contract shall have the same meaning in this deed.

1.3 General provisions

Clauses 1.2, 1.7, 1.11, 39, 40, 42 and 43.4 to 43.14 of the Contract apply to this deed as though set out here in full.

2. Variations

- (a) With effect on and from the Effective Date until the COVID-19 Arrangements Expiry Date:
 - (i) the arrangements set out in Annexure A will apply to the Contract; and
 - (ii) the Contract is taken to be temporarily varied accordingly.
- (b) Except as expressly provided for in Annexure A, the terms of the Contract remain unamended and in full force and effect.

3. Entire Agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the **State of Queensland** (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

Not Relevant

Signature of witness

DEAN GOING

Full name of witness

Not Relevant

Signature of officer:

Date / /

GRHAM DAIS

Full name of officer

Executed as a deed by Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ACN 065 794 943 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Signature of director

Print Name

Signature of company secretary/director

Print name

Released under RTI - QIMR

Annexure A – Variations in respect of COVID-19 Emergency

1. Framework for relief and cooperation

1.1 Agreement to treat the COVID-19 Emergency as a Force Majeure Event

The parties acknowledge and agree that:

- (a) as at the date of this deed, there are ongoing developments in connection with COVID-19 and the COVID-19 Emergency which may impact the Timetable and performance of the Transport Operations;
- (b) they are committed to developing a 'communication culture' and being transparent in their respective dealings with each other concerning those impacts; and
- (c) the COVID-19 Emergency will be treated as though it is a Force Majeure Event and the Service Provider will be entitled to apply for relief under clause 16 of the Contract, as varied under this deed.

1.2 Service Provider obligations

Without limiting its other obligations under the Contract, the Service Provider will:

- (a) proactively monitor the potential impacts of COVID-19 on its performance of the Transport Operations;
- (b) advise and consult with the Purchaser if it becomes aware of any activities or obligations which may possibly be impacted by COVID-19 or related matters;
- (c) implement all necessary mitigation measures to minimise any potential impact of COVID-19 on the Transport Operations; and
- (d) as far as reasonably practicable, employ methodologies and practices that minimise the impacts of COVID-19 on the Transport Operations.

1.3 Termination for extended Force Majeure Event

Clause 17.5 of the Contract will not apply in respect of the COVID-19 Emergency.

1.4 Force Majeure Adjustment

The Force Majeure Adjustment applicable to claims for relief arising in connection with COVID-19 and the COVID-19 Emergency will be calculated as described in paragraph 7 of this Annexure A.

2. Review of arrangements

2.1 The Purchaser will review the need for and effectiveness of the arrangements set out in this Annexure A on one or more occasions on or before 31 July 2020. The Purchaser may (without being obliged to) discuss the outcomes of this review with the Service Provider.

2.2 Paragraph 2.1 does not limit the requirement under clause 43.7 of the Contract for consent of both parties to a variation of the Contract or affect the COVID-19 Arrangements Expiry Date.

3. Interaction with specific relevant legislative requirements

The parties acknowledge the arrangements set out in this Annexure A are:

- (a) without limitation to any arrangements which may apply at law, including any directions or requirements issued pursuant to the *Public Health Act 2005* (Qld); and

- (b) implemented in an effort to mitigate, if possible, the impacts to both parties of the implementation of amendments to or directions or requirements pursuant to the *Public Health Act 2005* (Qld).

4. Management of Service Changes in response to COVID-19 Emergency

4.1 Requirement to implement Service Changes

- (a) The Purchaser may, by written notice to the Service Provider, require the Service Provider to implement a Service Change which is of a temporary nature in response to the COVID-19 Emergency. A notice under this paragraph must be given not less than 24 hours before the time and date on which the Service Change is to commence.
- (b) A written notice pursuant to paragraph 4.1(a) must include:
 - (i) a description of the Service Change to apply, including the altered Route Attributes to apply as a result of the Service Change;
 - (ii) the time and date on which the Service Change is to commence; and
 - (iii) the duration of the Service Change, if known (if not known, this will be taken to be a period from the date of commencement of the Service Change until the COVID-19 Arrangements Expiry Date, unless otherwise notified by the Purchaser to the Service Provider); and
 - (iv) any date for review of this specific Service Change by the Purchaser (if at all).
- (c) Subject to paragraph 4.1(d) the Service Provider must comply with a requirement described in paragraph 4.1(a) above from the date stated in the notice.
- (d) The parties acknowledge and agree that:
 - (i) the Purchaser will use reasonable endeavours to maximise the period of notice given to the Service Provider of a Service Change under paragraph 4.1(a);
 - (ii) Service Changes under paragraph 4.1(a) are most likely to involve an overall temporary reduction in the level of service; and
 - (iii) the Service Provider may notify the Purchaser in the unlikely event that the proposed Service Change will have, or is reasonably likely to have, an adverse operational or net financial impact on the Service Provider, including if due to any of the matters described in clause 7.3 of the Contract, in which case the Purchaser and the Service Provider will work together in good faith to try to address those matters.

4.2 Acknowledgements

The parties acknowledge and agree that:

- (a) each Service Change implemented in accordance with this paragraph 4 is a **COVID-19 Emergency Service Change**;
- (b) the Purchaser may issue any number of requirements described in paragraph 4.1 above;
- (c) the requirements set out in clause 7.5 of the Contract do not apply in respect of COVID-19 Emergency Service Changes;
- (d) the Service Payment will be adjusted in respect of COVID-19 Emergency Service Changes in accordance with paragraph 7 of this Annexure A below; and
- (e) the Network will be deemed to be updated to reflect COVID-19 Emergency Service Changes.

5. Other changes to the Transport Operations

5.1 Requirement to implement other changes

- (a) The Purchaser may, by written notice to the Service Provider, require the Service Provider to change or alter its performance of the Transport Operations (other than through a Service Change) in a matter which is temporary in nature in response to the COVID-19 Emergency. A notice under this paragraph must be given not less than 24 hours before the time and date on which the change to the Transport Operations is to commence.
- (b) A written notice pursuant to paragraph 5.1(a) must include:
 - (i) a description of the change to the Transport Operations;
 - (ii) the time and date on which that change is to commence; and
 - (iii) the duration of that change, if known (if not known, this will be taken to be a period from the date of commencement of that change until the COVID-19 Arrangements Expiry Date, unless otherwise notified by the Purchaser to the Service Provider); and
 - (iv) any date for review of this specific change by the Purchaser (if at all).
- (c) Subject to paragraph 5.1(d), the Service Provider must comply with a requirement described in paragraph 5.1(a) above from the time stated in the notice.
- (d) The parties acknowledge and agree that:
 - (i) the Purchaser will use reasonable endeavours to maximise the period of notice given to the Service Provider of a change under paragraph 5.1(a);
 - (ii) Service Changes under paragraph 4.1(a) are most likely to involve an overall temporary reduction in the level of service and an increase in spare capacity amongst the Service Provider's Staff; and
 - (iii) the Service Provider may notify the Purchaser in the unlikely event that the proposed change will have, or is reasonably likely to have, an adverse operational or net financial impact on the Service Provider, including if due to any of the matters described in clause 7.3 of the Contract, in which case the Purchaser and the Service Provider will work together in good faith to try to address those matters.

5.2 Acknowledgements

The parties acknowledge that:

- (a) the Purchaser may issue any number of requirements described in paragraph 5.1 above; and
- (b) each such requirement will be deemed to be a Change in Operations Manual to which clause 22.4 of the Contract will apply.

6. Changes initiated by the Service Provider

6.1 Requests for change

The Service Provider:

- (a) may by notice to the Purchaser request the Purchaser to issue a requirement for a COVID-19 Emergency Service Change under paragraph 4.1(a) or another change to the Transport Operations under paragraph 5.1(a) in order to respond to a matter directly resulting from the COVID-19 Emergency and its impacts on the Service Provider, Staff or the Transport Operations; and

- (b) must provide reasonable information to substantiate that request, which may include a copy of any risk assessment conducted by the Service Provider.

6.2 Purchaser discretion

The Purchaser may in its discretion (acting reasonably) issue a requirement under paragraph 4.1(a) or paragraph 5.1(a) in response to a request from the Service Provider under paragraph 6.1(a).

7. **Payments**

7.1 Application and amendment of Force Majeure Adjustment

- (a) The Force Majeure Adjustment under paragraph 9.8 of Schedule D2 to the Contract, as amended by this paragraph 7.1, will be applied in each Payment Month to:
 - (i) COVID-19 Emergency Service Changes; and
 - (ii) Affected Obligations, to the extent that a Period of Suspension applies to those Affected Obligations under clause 16.4(a) of the Contract for reasons attributable to the COVID-19 Emergency.
- (b) For the avoidance of doubt, the following Service Payment adjustments will not apply to COVID-19 Emergency Service Changes:
 - (i) adjustments to the Fuel Cost Payment under paragraphs 3.4, 3.5 and 3.6 of Schedule D2 of the Contract; and
 - (ii) adjustments for Service Changes under paragraphs 9.4, 9.5 or 9.6 of Schedule D2 to the Contract.
- (c) The Force Majeure Adjustment described in paragraph 7.1(a) will be as set out below (with double strikethrough showing the changes when compared to the Force Majeure Adjustment described in paragraph 9.8(a) of Schedule D2 of the Contract):

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

8. **Workforce matters**

8.1 Workforce management

- (a) The Service Provider at all times remains responsible for the management of its Workers, including for their health and safety, in accordance with the Contract and all Mandatory Requirements.
- (b) The parties acknowledge that:
 - (i) it is their objective that no Worker will be materially disadvantaged by reason of any COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A, or otherwise in connection with the COVID-19 Emergency; and
 - (ii) this paragraph 8 will be implemented consistently with that objective.

8.2 Workforce deployment and retention

- (a) Notwithstanding any COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A, the Service Provider must, subject to paragraph 8.2(b):
 - (i) ensure that all of its Workers (whether Staff or personnel of Subcontractors) continue to be engaged to the extent reasonably possible in the provision of the

Transport Operations, tasks related to the Transport Operations or (where appropriate, lawful and safe) other relevant activities undertaken by the Service Provider; and

- (ii) not terminate the employment of any of its Staff, nor its arrangements with any of its Subcontractors, by reason or in connection with the fact that COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A have occurred, or otherwise in connection with the COVID-19 Emergency.
- (b) Paragraph 8.2(a) does not:
- (i) limit the Service Provider's obligations pursuant to Best Industry Practice, Mandatory Requirements or any industrial instrument (including Enterprise Agreement); or
 - (ii) prevent termination of employment or engagement on other bona fide bases (for example, as a consequence of misconduct or resignation).

8.3 Workforce payment

- (a) Notwithstanding any COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A, the Service Provider must:
- (i) continue to pay its Staff, and ensure that staff of its Subcontractors (to the extent engaged in relation to the Transport Operations) are paid by the Subcontractors, as though there had been no COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A; and
 - (ii) accordingly, ensure that the full benefit of the labour-related cost components preserved by the amendments to the Force Majeure Adjustment set out in paragraph 7.1(c) of this Annexure A are passed through to its Staff and staff of its Subcontractors (as applicable).
- (b) The Service Provider warrants the matters set out in paragraph 8.2(a) and paragraph 8.3(a) as a Service Provider Warranty in accordance with the Contract and the parties acknowledge and agree that any material breach of paragraph 8.3(a) by the Service Provider will be deemed to be a Show Cause Event under the Contract.
- (c) The Service Provider must provide, within 10 Business Days of the Effective Date, a plan setting out how the Service Provider will manage the matters required by paragraph 8.3(a) in a manner which is:
- (i) fair and equitable; and
 - (ii) in accordance with all obligations pursuant to the Best Industry Practice, Mandatory Requirements and any applicable industrial instrument (including Enterprise Agreements).
- (d) The Purchaser may, by written notice, modify the Service Provider's obligations in paragraphs 8.2 and 8.3 provided that it may not do so in a way which has a detrimental financial impact on the Service Provider without the consent of the Service Provider.

Deed of Variation – Service Contract – COVID-19 Emergency

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty. Limited trading as **Sunshine Coast Sunbus** (**Service Provider**)

Released under RTI DTMR

Date 6 May 2020

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 ("**Purchaser**")

Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ABN 94 065 794 943 of 29 Francis Briggs Road, Melbourne Airport, VIC 0459EAA18166 ("**Service Provider**")

Background

- A. The parties have entered into the Contract.
- B. On 29 January 2020, the COVID-19 Emergency was declared and remains in effect at the date of this deed.
- C. The parties have agreed to enter into this deed in respect of matters associated with the COVID-19 Emergency and its impact on matters provided for under the Contract.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

COVID-19 means the disease commonly known as the novel coronavirus disease or COVID-19.

COVID-19 Arrangements Expiry Date means 11:59pm on:

- (a) 31 July 2020;
- (b) 30 September 2020 if the Purchaser elects to extend the COVID-19 Arrangements Date by notice in writing to the Service Provider on or before 31 July 2020; or
- (c) any earlier date that the Purchaser notifies the Service Provider is the COVID-19 Arrangements Expiry Date, which must not be later than the date on which the COVID-19 Emergency and its impact on matters provided for under the Contract have ceased, in the reasonable opinion of the Purchaser.

COVID-19 Emergency has the meaning given in the *Public Health Act 2005* (Qld).

Contract means the Service Contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser.

Effective Date means the date of this deed.

1.2 Interpretation

In this deed, unless inconsistent with the context, a term defined in the Contract shall have the same meaning in this deed.

1.3 General provisions

Clauses 1.2, 1.7, 1.11, 39, 40, 42 and 43.4 to 43.14 of the Contract apply to this deed as though set out here in full.

2. Variations

- (a) With effect on and from the Effective Date until the COVID-19 Arrangements Expiry Date:
 - (i) the arrangements set out in Annexure A will apply to the Contract; and
 - (ii) the Contract is taken to be temporarily varied accordingly.
- (b) Except as expressly provided for in Annexure A, the terms of the Contract remain unamended and in full force and effect.

3. Entire Agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the **State of Queensland** (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

Signature of witness

Full name of witness

Signature of officer
Date / /

Full name of officer

Executed as a deed by Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ACN 065 794 943 in accordance with section 127 of the Corporations Act 2001 (Cth) by

Not Relevant

Not Relevant

Signature of director

Signature of company secretary/director

Sch.4 Part 4 s.6 PI

Sch.4 Part 4 s.6 PI

Print Name

Print name

Released under RTI - DTMR

Annexure A – Variations in respect of COVID-19 Emergency

1. Framework for relief and cooperation

1.1 Agreement to treat the COVID-19 Emergency as a Force Majeure Event

The parties acknowledge and agree that:

- (a) as at the date of this deed, there are ongoing developments in connection with COVID-19 and the COVID-19 Emergency which may impact the Timetable and performance of the Transport Operations;
- (b) they are committed to developing a 'communication culture' and being transparent in their respective dealings with each other concerning those impacts; and
- (c) the COVID-19 Emergency will be treated as though it is a Force Majeure Event and the Service Provider will be entitled to apply for relief under clause 16 of the Contract, as varied under this deed.

1.2 Service Provider obligations

Without limiting its other obligations under the Contract, the Service Provider will:

- (a) proactively monitor the potential impacts of COVID-19 on its performance of the Transport Operations;
- (b) advise and consult with the Purchaser if it becomes aware of any activities or obligations which may possibly be impacted by COVID-19 or related matters;
- (c) implement all necessary mitigation measures to minimise any potential impact of COVID-19 on the Transport Operations; and
- (d) as far as reasonably practicable, employ methodologies and practices that minimise the impacts of COVID-19 on the Transport Operations.

1.3 Termination for extended Force Majeure Event

Clause 17.5 of the Contract will not apply in respect of the COVID-19 Emergency.

1.4 Force Majeure Adjustment

The Force Majeure Adjustment applicable to claims for relief arising in connection with COVID-19 and the COVID-19 Emergency will be calculated as described in paragraph 7 of this Annexure A.

2. Review of arrangements

- 2.1 The Purchaser will review the need for and effectiveness of the arrangements set out in this Annexure A on one or more occasions on or before 31 July 2020. The Purchaser may (without being obliged to) discuss the outcomes of this review with the Service Provider.
- 2.2 Paragraph 2.1 does not limit the requirement under clause 43.7 of the Contract for consent of both parties to a variation of the Contract or affect the COVID-19 Arrangements Expiry Date.

3. Interaction with specific relevant legislative requirements

The parties acknowledge the arrangements set out in this Annexure A are:

- (a) without limitation to any arrangements which may apply at law, including any directions or requirements issued pursuant to the *Public Health Act 2005* (Qld); and

- (b) implemented in an effort to mitigate, if possible, the impacts to both parties of the implementation of amendments to or directions or requirements pursuant to the *Public Health Act 2005* (Qld).

4. Management of Service Changes in response to COVID-19 Emergency

4.1 Requirement to implement Service Changes

- (a) The Purchaser may, by written notice to the Service Provider, require the Service Provider to implement a Service Change which is of a temporary nature in response to the COVID-19 Emergency. A notice under this paragraph must be given not less than 24 hours before the time and date on which the Service Change is to commence.
- (b) A written notice pursuant to paragraph 4.1(a) must include:
 - (i) a description of the Service Change to apply, including the altered Route Attributes to apply as a result of the Service Change;
 - (ii) the time and date on which the Service Change is to commence; and
 - (iii) the duration of the Service Change, if known (if not known, this will be taken to be a period from the date of commencement of the Service Change until the COVID-19 Arrangements Expiry Date, unless otherwise notified by the Purchaser to the Service Provider); and
 - (iv) any date for review of this specific Service Change by the Purchaser (if at all).
- (c) Subject to paragraph 4.1(d) the Service Provider must comply with a requirement described in paragraph 4.1(a) above from the date stated in the notice.
- (d) The parties acknowledge and agree that:
 - (i) the Purchaser will use reasonable endeavours to maximise the period of notice given to the Service Provider of a Service Change under paragraph 4.1(a);
 - (ii) Service Changes under paragraph 4.1(a) are most likely to involve an overall temporary reduction in the level of service; and
 - (iii) the Service Provider may notify the Purchaser in the unlikely event that the proposed Service Change will have, or is reasonably likely to have, an adverse operational or net financial impact on the Service Provider, including if due to any of the matters described in clause 7.3 of the Contract, in which case the Purchaser and the Service Provider will work together in good faith to try to address those matters.

4.2 Acknowledgements

The parties acknowledge and agree that:

- (a) each Service Change implemented in accordance with this paragraph 4 is a **COVID-19 Emergency Service Change**;
- (b) the Purchaser may issue any number of requirements described in paragraph 4.1 above;
- (c) the requirements set out in clause 7.5 of the Contract do not apply in respect of COVID-19 Emergency Service Changes;
- (d) the Service Payment will be adjusted in respect of COVID-19 Emergency Service Changes in accordance with paragraph 7 of this Annexure A below; and
- (e) the Network will be deemed to be updated to reflect COVID-19 Emergency Service Changes.

5. Other changes to the Transport Operations

5.1 Requirement to implement other changes

- (a) The Purchaser may, by written notice to the Service Provider, require the Service Provider to change or alter its performance of the Transport Operations (other than through a Service Change) in a matter which is temporary in nature in response to the COVID-19 Emergency. A notice under this paragraph must be given not less than 24 hours before the time and date on which the change to the Transport Operations is to commence.
- (b) A written notice pursuant to paragraph 5.1(a) must include:
 - (i) a description of the change to the Transport Operations;
 - (ii) the time and date on which that change is to commence; and
 - (iii) the duration of that change, if known (if not known, this will be taken to be a period from the date of commencement of that change until the COVID-19 Arrangements Expiry Date, unless otherwise notified by the Purchaser to the Service Provider); and
 - (iv) any date for review of this specific change by the Purchaser (if at all).
- (c) Subject to paragraph 5.1(d), the Service Provider must comply with a requirement described in paragraph 5.1(a) above from the time stated in the notice.
- (d) The parties acknowledge and agree that:
 - (i) the Purchaser will use reasonable endeavours to maximise the period of notice given to the Service Provider of a change under paragraph 5.1(a);
 - (ii) Service Changes under paragraph 4.1(a) are most likely to involve an overall temporary reduction in the level of service and an increase in spare capacity amongst the Service Provider's Staff; and
 - (iii) the Service Provider may notify the Purchaser in the unlikely event that the proposed change will have, or is reasonably likely to have, an adverse operational or net financial impact on the Service Provider, including if due to any of the matters described in clause 7.3 of the Contract, in which case the Purchaser and the Service Provider will work together in good faith to try to address those matters.

5.2 Acknowledgements

The parties acknowledge that:

- (a) the Purchaser may issue any number of requirements described in paragraph 5.1 above; and
- (b) each such requirement will be deemed to be a Change in Operations Manual to which clause 22.4 of the Contract will apply.

6. Changes initiated by the Service Provider

6.1 Requests for change

The Service Provider:

- (a) may by notice to the Purchaser request the Purchaser to issue a requirement for a COVID-19 Emergency Service Change under paragraph 4.1(a) or another change to the Transport Operations under paragraph 5.1(a) in order to respond to a matter directly resulting from the COVID-19 Emergency and its impacts on the Service Provider, Staff or the Transport Operations; and

- (b) must provide reasonable information to substantiate that request, which may include a copy of any risk assessment conducted by the Service Provider.

6.2 Purchaser discretion

The Purchaser may in its discretion (acting reasonably) issue a requirement under paragraph 4.1(a) or paragraph 5.1(a) in response to a request from the Service Provider under paragraph 6.1(a).

7. **Payments**

7.1 Application and amendment of Force Majeure Adjustment

- (a) The Force Majeure Adjustment under paragraph 9.8 of Schedule D2 to the Contract, as amended by this paragraph 7.1, will be applied in each Payment Month to:
 - (i) COVID-19 Emergency Service Changes; and
 - (ii) Affected Obligations, to the extent that a Period of Suspension applies to those Affected Obligations under clause 16.4(a) of the Contract for reasons attributable to the COVID-19 Emergency.
- (b) For the avoidance of doubt, the following Service Payment adjustments will not apply to COVID-19 Emergency Service Changes:
 - (i) adjustments to the Fuel Cost Payment under paragraphs 3.4, 3.5 and 3.6 of Schedule D2 of the Contract; and
 - (ii) adjustments for Service Changes under paragraphs 9.4, 9.5 or 9.6 of Schedule D2 to the Contract.
- (c) The Force Majeure Adjustment described in paragraph 7.1(a) will be as set out below (with double strikethrough showing the changes when compared to the Force Majeure Adjustment described in paragraph 9.8(a) of Schedule D2 of the Contract):

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

8. **Workforce matters**

8.1 Workforce management

- (a) The Service Provider at all times remains responsible for the management of its Workers, including for their health and safety, in accordance with the Contract and all Mandatory Requirements.
- (b) The parties acknowledge that:
 - (i) it is their objective that no Worker will be materially disadvantaged by reason of any COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A, or otherwise in connection with the COVID-19 Emergency; and
 - (ii) this paragraph 8 will be implemented consistently with that objective.

8.2 Workforce deployment and retention

- (a) Notwithstanding any COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A, the Service Provider must, subject to paragraph 8.2(b):
 - (i) ensure that all of its Workers (whether Staff or personnel of Subcontractors) continue to be engaged to the extent reasonably possible in the provision of the

Transport Operations, tasks related to the Transport Operations or (where appropriate, lawful and safe) other relevant activities undertaken by the Service Provider; and

- (ii) not terminate the employment of any of its Staff, nor its arrangements with any of its Subcontractors, by reason or in connection with the fact that COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A have occurred, or otherwise in connection with the COVID-19 Emergency.

(b) Paragraph 8.2(a) does not:

- (i) limit the Service Provider's obligations pursuant to Best Industry Practice, Mandatory Requirements or any industrial instrument (including Enterprise Agreement); or
- (ii) prevent termination of employment or engagement on other bona fide bases (for example, as a consequence of misconduct or resignation).

8.3 Workforce payment

(a) Notwithstanding any COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A, the Service Provider must:

- (i) continue to pay its Staff, and ensure that staff of its Subcontractors (to the extent engaged in relation to the Transport Operations) are paid by the Subcontractors, as though there had been no COVID-19 Emergency Service Changes or alteration to the Transport Operations pursuant to this Annexure A; and
- (ii) accordingly, ensure that the full benefit of the labour-related cost components preserved by the amendments to the Force Majeure Adjustment set out in paragraph 7.1(c) of this Annexure A are passed through to its Staff and staff of its Subcontractors (as applicable).

(b) The Service Provider warrants the matters set out in paragraph 8.2(a) and paragraph 8.3(a) as a Service Provider Warranty in accordance with the Contract and the parties acknowledge and agree that any material breach of paragraph 8.3(a) by the Service Provider will be deemed to be a Show Cause Event under the Contract.

(c) The Service Provider must provide, within 10 Business Days of the Effective Date, a plan setting out how the Service Provider will manage the matters required by paragraph 8.3(a) in a manner which is:

- (i) fair and equitable; and
- (ii) in accordance with all obligations pursuant to the Best Industry Practice, Mandatory Requirements and any applicable industrial instrument (including Enterprise Agreements).

(d) The Purchaser may, by written notice, modify the Service Provider's obligations in paragraphs 8.2 and 8.3 provided that it may not do so in a way which has a detrimental financial impact on the Service Provider without the consent of the Service Provider.

Our ref DOC20/46880

Department of
Transport and Main Roads

23 July 2020

Sch.4 Part 4 s.6 PI

General Manager SEQ
Sunbus Sunshine Coast Pty Ltd

Via CMP

Dear Sch.4 Part 4 s.6 PI

Notice of direction to change schedule C3 key performance indicators: DCU usage and contract variation to amend Missed Trip definition

I refer to the above matter and to the February 2020 contract meeting about the inconsistency between the Missed Trip definition in the 4G Service Contract and the Operations Manual.

You may recall the presentation given by your Contract Manager at the February 2020 contract meeting which outlines the inconsistencies, namely with respect to the Missed Stop Percentage and the usage of the Driver Console Unit (DCU).

As the definition of Missed Trip in your 4G Service Contract is inconsistent with the definition in the Operations Manual it is proposed that it be resolved through a contract variation to amend the definition of Missed Trip in the 4G Service Contract in respect to the Missed Stop Percentage (**Attachment 1**). If you have no objections to the proposed contract variation, I kindly request that you print the deed in duplicate and return both documents for execution by me.

In respect of the requirement in the definition of Missed Trip in the 4G Service Contract for each bus to have a fitted DCU and that it be switched on and logged in at the start of the trip, direction is given that this requirement be removed from the definition of Missed Trip and instead be a key performance indicator (KPI). The effect of this direction will be to change schedule C3 paragraph 1 of the 4G Service Contract to be in accordance with **Attachment 2**.

The change relating to the KPI will become effective from **10 business days** from the date of this letter, unless in accordance clause 18.2(b) of the 4G Service Contract, you demonstrate to my reasonable satisfaction that you will incur material additional costs as a consequence of this new KPI that would not otherwise have been incurred.

Should you wish to discuss this further, please do not hesitate to contact your contract manager.

Yours sincerely

NR

Jennelle Bell
Director (PT Contracts)

Released under RTI - DTMR

Attachment 1

Contract Variation

Released under RTI - DTMR

Deed of Variation – Service Contract

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (**Service Provider**)

Released under DTMR

Date

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 ("**Purchaser**")

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 ("**Service Provider**")

Background

- A. The Purchaser and Service Provider have entered into the Contract.
- B. Schedule A1 of the Contract defines Missed Trips which is inconsistent with paragraph 12.6.2.4 of the Operations Manual.
- C. To resolve the inconsistency the Purchaser would like to vary the Contract to remove the inconsistency referred to in Recital B.
- D. The Purchaser and Service Provider have agreed to vary the Contract in accordance with the terms of this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Defined terms

In this deed:

Commencement Date has the meaning given in the Contract.

Contract means the service contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser.

Operations Manual has the meaning given in the Contract.

1.2 Interpretation

In this deed, unless inconsistent with the context, a term defined in the Contract shall have the same meaning in this deed.

2. Amendment to the Service Contract

The parties agree that:

- (a) Missed Trip as defined in Schedule A1 – Definitions and Interpretation of the Contract is varied as set out in Annexure A to this deed
- (b) the amendments referred to in clause 2(a) of this deed have effect on and from the Commencement Date.

Deed of Variation – Service Contract

Annexure A

Schedule A1 – Definitions and Interpretation

Sch.4 Part 4 s.6 PI

Released under RTI - DTMR

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the **State of Queensland** (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

Signature of witness

Full name of witness

Signature of officer

Date / /

Full name of officer

Executed by Transit Australia Pty Ltd trading as Sunbus Sunshine Coast **ACN 065 794 943** in accordance with s127 of the *Corporations Act 2001*(Cth) in the presence of:

Signature of Director

Full name of Director

Date / /

Signature of witness

Full name of witness

Signature of Director/Company Secretary

Full name of Director/Company Secretary

Date / /

Signature of witness

Full name of witness

Released under RTI - DTMR

**DEED OF VARIATION
OF SERVICE CONTRACT**

Between

**STATE OF QUEENSLAND ACTING THROUGH THE DEPARTMENT
OF TRANSPORT AND MAIN ROADS
(‘Purchaser’)**

and

**TRANSIT AUSTRALIA PTY LIMITED
T/AS SUNSHINE COAST SUNBUS (‘Service Provider’)**

Released under RTI - DTMR

DEED OF VARIATION

BACKGROUND

- A. The Service Provider submitted an Electric Vehicle Proposal regarding the provision of the services under the Service Contract and the Purchaser has agreed to accept that Electric Vehicle Proposal.
- B. The Electric Vehicle Proposal involves implementation of the Program to introduce zero-emission electric buses into the Service Provider's fleet of vehicles to operate from the Depot.
- C. The implementation of the Program will change the mode of delivery of some services under the Service Contract.
- D. The parties have agreed to record the terms that apply to implementation of the Program in this Deed and to vary the Service Contract as set out in this Deed.

DEED PARTICULARS

Item 1: Purchaser	Name: State of Queensland acting through the Department of Transport and Main Roads Address: Level 1, 61 Mary Street, Brisbane QLD 4001 Email: sunbusc@translink.com.au
Item 2: Service Provider	Name: Transit Australia Pty Ltd trading as Sunshine Coast Sunbus Address: 1 – 10 Mercantile Court, Molendinar, Queensland 4214 Email: SunbusSC@wearekinetic.com
Item 3: Variation Date	The last to occur of: <ol style="list-style-type: none"> 1. the Service Provider notifying the Purchaser in writing that the first Electric Vehicle is ready to be deployed onto the TransLink network; and 2. the Purchaser confirming in writing to the Service Provider that it is satisfied that all Conditions Precedent have been satisfied.
Item 4: Conditions Precedent Due Date	Sch.4 Part 4 s.7(1)(c) Bus/com affairs
Item 5: Program Evaluation Period	
Item 6: Fully Operational Date	

AGREED TERMS

1. INTERPRETATION

1.1 In this Deed, unless a contrary intention appears, capitalised words that are defined in the Service Contract have the same meaning.

1.2 In this Deed, unless a contrary intention appears, the definitions in the Deed Particulars apply and the following additional definitions apply:

Business Day means a day other than a Saturday, Sunday or a public holiday in Brisbane.

Conditions Precedent mean the conditions precedent in Schedule 2.

Date of this Deed means the date this Deed is signed by the parties and, if signed on different dates, the date the last party signs this Deed.

Deed means this deed and any schedules and attachments to it.

Deed Particulars means the deed particulars at the start of this Deed.

Electric Vehicles mean the zero-emission battery electric buses that are acquired by the Service Provider for the purpose of the Program.

Electric Vehicle Proposal means a proposal for the implementation of the Program.

GreenPower means the National GreenPower Accreditation Program.

Implementation Plan means the Implementation Plan for the Program provided by the Operator and accepted by the State in accordance with the Conditions Precedent.

Independent Third Party means a suitably qualified third party selected and appointed by the Purchaser to evaluate the Program.

Loss includes injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all legal expenses including court costs and legal fees reasonably incurred.

Performance Evaluation Committee means the committee established by the parties under clause 5.5 of this Deed.

Performance Evaluation Plan means the Performance Evaluation Plan in Schedule 4 of this Deed.

Power Purchase Agreement means an agreement between the Service Provider and a renewable energy generator or retailer for the supply of renewable energy to the Service Provider's Depot.

Program means the introduction of zero-emission electric buses to the Service Provider's fleet of contract vehicles that are used to perform transport services under the Service Contract. The Program is further described in Schedule 1.

Program Evaluation Period has the meaning given in Item 5 of the Deed Particulars.

Service Contract means the Service Contract between the Purchaser and the Service Provider dated 23 July 2018.

1.3 In this Deed, unless a contrary intention appears:

- (a) a reference to a person includes corporations and other entities recognised by law;
- (b) a reference to a statute, regulation, ordinance or local law extends to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them;
- (c) headings are for reference only and do not form part of, or affect the meaning of, the terms of this Deed;
- (d) the singular includes the plural and vice versa;
- (e) words importing one gender includes all other genders;
- (f) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (g) a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Deed;
- (h) where the day on or by which any act, matter or thing is to be done is not a Business Day, the act, matter or thing must be done on the next Business Day; and
- (i) in the case of any inconsistency between the schedules and a clause in this Deed, the provisions of the clause prevail to the extent of any inconsistency.

2. CONDITIONS PRECEDENT

2.1 This Deed is conditional on satisfaction of the Conditions Precedent by the Conditions Precedent Due Date to the satisfaction of the Purchaser (acting reasonably).

2.2 The Service Provider must:

- (a) use its best endeavours to ensure satisfaction of the Conditions Precedent by the Conditions Precedent Due Date; and
- (b) immediately notify the Purchaser if it becomes aware that the Conditions Precedent will not be satisfied by the Conditions Precedent Due Date.

2.3 When the Service Provider considers that the Conditions Precedent have been completed, it must:

- (a) give a written notice to the Purchaser that:
 - (i) is signed by an authorised representative of the Service Provider and confirms completion of the Conditions Precedent; and
 - (ii) in respect of any construction or civil works undertaken as part of the Conditions Precedent, includes:

- (A) a certificate of practical completion signed by a suitably qualified independent engineer or private certifier certifying completion of all works in accordance with relevant approvals and laws; and
 - (B) a copy of all relevant approvals, inspection certificates and certifications evidencing the completion of the works;
 - (b) permit the Purchaser to carry out inspections and assessments in respect of the Conditions Precedent so that the Purchaser may satisfy itself that the Conditions Precedent have been completed, to the Purchaser's satisfaction (acting reasonably); and
 - (c) provide all necessary assistance to the Purchaser for the purpose of the inspections and assessments referred to in clause 2.3(b), including by allowing accessing to relevant documents and premises.
- 2.4 If the Purchaser is satisfied (acting reasonably) that the Conditions Precedent have been completed by the Conditions Precedent Due Date, then the Purchaser will notify the Service Provider in writing within 14 days.
- 2.5 If the Conditions Precedent are not completed to the satisfaction of the Purchaser by the Conditions Precedent Due Date, then either party may terminate this Deed by written notice to the other and neither party will have any obligations under this Deed or any claim against the other.
- 2.6 The Purchaser may, in its absolute discretion, extend the due date for satisfaction of the Conditions Precedent by written notice to the Service Provider, in which case, the date notified by the Purchaser will become the Conditions Precedent Due Date.

3. IMPLEMENTATION OF SERVICE DELIVERY CHANGES

- 3.1 The Service Provider must:
- (a) implement the Program in accordance with the Implementation Plan and the Program Summary in Schedule 1;
 - (b) update the fleet details in the Register of Service Contract Assets and Network in the Purchaser's Integrated Scheduling System (HASTUS) to include the Electric Vehicles;
 - (c) provide an up to date Network Specification 30 days prior to the Variation Commencement Date; and
 - (d) provide the following updated Operating Plans reflecting implementation of the Program to the Purchaser at least 90 Business Days before deployment of the first Electric Vehicle as required:
 - (i) Business Plan;
 - (ii) Business and Service Continuity Plan;
 - (iii) Counter-Terrorism Risk Management Plan;

- (iv) Disability Action Plan;
- (v) Environmental Management Plan;
- (vi) Incident Management Plan;
- (vii) Training Plan;
- (viii) Workplace Health and Safety Management Plan; and
- (ix) Contract Vehicle Replacement Plan.

3.2 The parties must use their best endeavours to ensure that no Service Changes are implemented during a period of 30 days before the Variation Date.

3.3 The parties acknowledge and agree that:

- (a) the Electric Vehicles will be introduced to the Service Provider's fleet progressively from the Variation Date;
- (b) they must, in good faith, calculate and agree before the Conditions Precedent Due Date an updated Schedule D2 of the Service Contract in the form of Schedule 5 to this Deed and in accordance with the Binding Offer Pricing Template in Schedule 6 to reflect current practice and associated impacts of this Deed;
- (c) the final agreed Schedule D2 will be signed by both parties and incorporated into the Service Contract under clause 6.2(j) of this Deed;
- (d) introduction of each Electric Vehicle to the Service Provider's fleet, and retirement of any diesel vehicle being replaced by that Electric Vehicle, must occur in accordance with the vehicle replacement procedures set out in Schedule B1 of the Service Contract;
- (e) the Purchaser approves the purchase of the Electric Vehicles and changes to the Service Provider's depot as contemplated by this Deed for the purpose of clauses 12.11 and 12.12 of the Service Contract;
- (f) the Service Provider must comply with the procedures in clause 11.4 of the Service Contract relating to approval of subcontractors for any new or updated subcontracting arrangements associated with the Program; and
- (g) the Service Provider must comply with the procedures in clause 43.2 of the Service Contract relating to financing arrangements, including those relating to the Electric Vehicles or its depots, and update or procure relevant direct deeds (as defined in the Service Contract) relevant to those arrangements.

4. TESTING AND INITIAL DEPLOYMENT OF ELECTRIC VEHICLES

4.1 The Service Provider must not use the Electric Vehicles to carry passengers until the Purchaser has approved the deployment of the Electric Vehicles under this clause 4.

4.2 The Service Provider must:

- (a) have each Electric Vehicle complete the vehicle blocks listed under the 'Network' heading in Schedule 1 as an out of service vehicle; and
 - (b) provide a report to the Purchaser on that test within 48 hours after that test being completed that includes:
 - (i) overall energy consumption (kWh/km);
 - (ii) the lowest and highest state of charge (expressed as a percentage); and
 - (iii) the depth of discharge (expressed as a percentage) at all times during the vehicle block.
- 4.3 The Purchaser will review the report provided by the Service Provider under clause 4.2(b) and notify the Service Provider in writing within 7 days that the Electric Vehicle may be deployed or may not be deployed.
- 4.4 If the depth of discharge exceeds 80%, the Purchaser may notify the Service Provider that it must, within the time stipulated by the Purchaser, which must not be less than 3 Business Days:
- (a) re-run the test by complying with clause 4.2 again; or
 - (b) modify the vehicle block so that the depth of discharge does not exceed 80% and then re-run the test by complying with clause 4.2 again.
- 4.5 The Purchaser will review the reports of any re-run tests and may provide further notices under clauses 4.3 and 4.4 in its reasonable discretion.
- 4.6 For the first three months of each Electric Vehicle being in service, the Service Provider must provide to the Purchaser a weekly report for each Electric Vehicle, within 1 Business Day after the end of the week, showing the following for each day the Electric Vehicle was in service:
- (a) overall energy consumption (kWh/km);
 - (b) the lowest and highest state of charge (expressed as a percentage);
 - (c) the depth of discharge (expressed as a percentage) at all times during the vehicle block.
- 4.7 After the first three months that an Electric Vehicle has been in service, the Service Provider must provide to the Purchaser monthly reports for each Electric Vehicle, showing information described in clauses 4.6(a) to (c) for each day of the month, within 3 Business Days after the end of each month.
- 4.8 The Purchaser may at any time give the Service Provider a notice requiring the Service Provider to provide the reports described in clause 4.7 weekly or less frequently or to cease providing the reports or to recommence providing the reports. The Service Provider must comply with any notices given by the Purchaser under this clause 4.8.
- 4.9 If the depth of discharge exceeds 80% for a vehicle block shown in Schedule 1, the Purchaser may notify the Service Provider that it must nominate an amendment to the

existing vehicle block or nominate another comparable vehicle block, within a timeframe stipulated by the Purchaser in the notice. The Service Provider must:

- (a) comply with the notice by providing the nomination within the timeframe stipulated; and
- (b) if the nomination is approved by the Purchaser, implement the nominated amendment or comparable vehicle block within 2 Business Days after the Purchaser's approval.

5. PROGRAM EVALUATION

- 5.1 The Program will be reviewed in accordance with the Performance Evaluation Plan.
- 5.2 The Purchaser will, at its own cost:
 - (a) engage the Independent Third Party to collect and data on the performance of the Electric Vehicles during the Program Evaluation Period to conduct an evaluation of the implementation of the Program and the performance of the Electric Vehicles; and
 - (b) ensure that the Independent Third Party prepares and distributes to the parties a monthly performance report during the Program Evaluation Period.
- 5.3 The Service Provider must provide the Independent Third Party with any necessary raw data, or uninhibited access to relevant data sources, as identified in the Performance Evaluation Plan, and any other relevant data as required to allow the Independent Third Party to perform the function referred to in clause 5.2.
- 5.4 The monthly performance report must, at least, contain all the information in the Performance Evaluation Plan. Before the first monthly meeting, the parties must agree, in conjunction with the Independent Third Party, a template performance report based on the measures in the Performance Evaluation Plan.
- 5.5 The parties will establish a Performance Evaluation Committee as soon as possible after the Date of this Deed that consists of:
 - (a) two persons nominated by the Purchaser;
 - (b) two persons nominated by the Service Provider; and
 - (c) one representative of the Independent Third Party.
- 5.6 The Performance Evaluation Committee will meet at least monthly during the Program Evaluation Period to:
 - (a) discuss the set-up of the Program;
 - (b) review and monitor progress under the Program; and
 - (c) share relevant information about the Program as required under the Performance Evaluation Plan as contained in Schedule 4.

5.7 The parties acknowledge and agree that:

- (a) the Performance Evaluation Plan requires the Service Provider to collect and provide data to the Purchaser during the data collection period, which is 36 months from the Fully Operational Date;
- (b) the data collection period will extend beyond the expiry of the Program Evaluation Period; and
- (c) the 36 month data collection period applies to the Electric Vehicle Proposal implemented by the Service Provider under this Deed and not any additional electric vehicles or charging infrastructure acquired by the Service Provider with the Purchaser's approval, which may be subject to additional or different data collection requirements imposed by the Purchaser.

6. VARIATION OF SERVICE CONTRACT

6.1 The parties agree that the Service Contract is varied, with effect from the Date of this Deed as follows:

- (a) Schedule C1 is amended by adding the following row to the table:

<i>Quarterly</i>	<i>Quarterly Financial Report</i>	<i>NA</i>	<i>Full copies of the Service Provider's management accounts, parent company Surfside Buslines Pty Ltd, and its ultimate parent company, Kinetic TCo Pty Ltd comprising a monthly breakdown of profit & loss, balance sheets and cash flow statements.</i>	<i>Quarterly, within 10 Business Days of the last day of each calendar quarter. The Purchaser will respond within 30 days of the quarterly being provided to advise whether it is satisfactory or otherwise.</i>
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6.2 The parties agree that the Service Contract is varied, with effect from the Variation Date as follows:

- (a) A new clause 7A is inserted into the Service Contract as follows:

7A. Electric Bus Program

7A.1 Requirements for Electric Vehicle

- (a) *The Electric Vehicles must:*

- (i) *comply with the requirements for Electric Vehicles in Schedule B1; and*
- (ii) *display the appropriate livery design as follows:*
 - A. *for the first Electric Vehicle deployed under the Service Contract – the e-bus livery set out in Schedule 3 of the Deed of Variation Deed; and*
 - B. *for subsequent Electric Vehicles deployed under the Service Contract – the livery required under the Queensland Vehicle Appearance Policy contained in the Operations Manual as in force at the time the Electric Vehicle is placed into Service.*
- (b) *The Service Provider must maintain accurate repair and maintenance records for the Electric Vehicles, including details about costs for parts, consumables (including Batteries) and mechanic hours, and make the records available to the Purchaser upon request.*

7A.2 Fire Safety

- (a) *The Service Provider must engage an appropriately qualified and suitable experienced fire safety engineer to conduct an assessment of the Electric Vehicles to consider any risks posed by their use of busway or other tunnels. The Service Provider must implement any recommendations from the fire safety report. The assessment must be undertaken prior to the Electric Vehicle entering service.*
- (b) *The Service Provider must ensure that no Electric Vehicle enters a tunnel if there is any reason to suspect that the Electric Vehicle is not operating properly or is at risk of a Battery failure.*
- (c) *The Service Provider must ensure that a label is applied to the outside of all Electric Vehicles depicting it as an electric vehicle to assist first responders with fire mitigation. The label must comply with the National Heavy Vehicle Inspection Manual figure 12.3.*

7A.3 Charging Infrastructure

- (a) *The Service Provider must ensure that separate Smart Meters are installed at its depot for the Charging Infrastructure to support Electric Vehicles, so that electricity usage for the Charging Infrastructure may be measured separately to the electricity usage for other depot operations.*
- (b) *Information collected by the Smart Meter must be made available to the Purchaser upon request during the 36 month data collection period as outlined in the Performance Evaluation Plan. Any additional electric vehicles or charging infrastructure acquired by the Service Provider with the Purchaser's approval, may be subject to additional or different Smart Meter data collection requirements imposed by the Purchaser.*

7A.4 Battery management

- (a) *The Service Provider must:*
- (i) *use the Electric Vehicle's Battery Management System to regularly monitor the state of health of the Battery in each Electric Vehicle; and*
 - (ii) *manage the operation of the Contract Vehicles in a way that supports the preservation of the useful life of the Electric Vehicles and the life of each Battery.*
- (b) *The Purchaser may request, by written notice to the Service Provider during the data collection period stated in the Performance Evaluation Plan (as defined in the Deed of Variation), a report about the state of health of a Battery and the Service Provider must respond within 5 Business Days by providing a written report to the Purchaser about the state of health of the Battery (expressed as a percentage measure of the Battery's capacity to hold charge) as shown in the Battery Management System.*
- (c) *The Service Provider must, on an annual basis during the Contract Term by 30 March, update the Integrated Scheduling System with the latest state of health (expressed as a percentage of battery life remaining) for each Battery used in the Electric Vehicles.*
- (b) Clause 12.12(a) is amended by including the following additional sub-paragraph (ia):
- (ia) *in respect of a Service Contract Asset that is a Battery, as approved by the Purchaser in accordance with clause 12.13.*
- (c) Clause 12.12 is amended by including the following additional paragraph (g):
- (g) *For the sake of clarity, the parties expressly agree that a Change in Technology will not occur solely because new technology for bus vehicle electric batteries become available or a Battery is required to be replaced before the end of its Replacement Life as provided for in clause 5A of Schedule D2.*
- (d) A new clause 12.13 is inserted as follows:

12.13 Disposal and acquisition of Batteries

- (a) *The Service Provider must not sell, dispose of, retire, replace or destroy any Battery without the prior written consent of the Purchaser, such consent not to be unreasonably withheld. The Purchaser may provide its consent subject to conditions or may require the Service Provider to provide additional information to support its request, including a Battery Acquisition and Disposal Form.*

- (b) *The purchase or lease of a new Battery is subject to the prior written approval by the Purchaser. The Purchaser is not obliged to make any Battery Payments, other payments or Funding in respect of any Battery that is acquired by the Service Provider without the Purchaser's prior written approval. Battery Payments will be made in accordance with Schedule D2 for any replacement Batteries purchased or leased by the Service Provider with the Purchaser's prior written approval.*
- (c) *If the Service Provider sells, retires, destroys, replaces or disposes of a Battery without the Purchaser's prior written consent, then:*
- (i) *the Service Provider will not be entitled to receive any further Battery Payment in respect of the relevant Battery;*
 - (ii) *the Service Provider must continue to provide the Services in accordance with this Service Contract;*
 - (iii) *the Purchaser will not be obliged to make any Battery Payments, other payments or Funding in respect of any replacement Battery; and*
 - (iv) *the Purchaser may, in its discretion, treat the unauthorised sale, retirement, destruction, replacement or disposal as a breach of this Service Contract.*
- (e) Clause 21.1(d) is amended by adding new subparagraphs (vii) and (viii) as follows:
- (vii) *the Battery Payment; and*
 - (viii) *the Project Cost Payment.* Schedule A1 is amended by:
 - (i) inserting the following new definitions:

AC means alternating current power.

Battery means the battery used to power the electric motor of the Electric Vehicle and to be described in the Register of Service Contract Assets by Make, Model and Plate Capacity.

Battery Energy Storage System (BESS) means the Depot Equipment installed for the purpose of generating and storing electricity such as on-site stationary batteries, solar panels, inverters and generators.

Battery Management System means a program or system that monitors energy, including temperature, cells or module voltages, and total pack voltage and adjusts the control strategy algorithms to maintain the batteries at uniform state of charge and optimal temperatures.

Battery Payment means an amount calculated in accordance with Table 13A in paragraphs 5.4 and 5.5 of Schedule D2.

Charging Infrastructure means the Depot Equipment that has been installed for the purposes of charging Batteries and to be listed in the

Register of Service Contract Asset. Charging Infrastructure also includes the BESS.

***Core Energy Payment** means an amount calculated in accordance with paragraph 3.2A of Schedule D2.*

***DC** means direct current power.*

***Deed of Variation** means a Deed of Variation of this Contract signed by the parties on or around February 2021.*

***Diesel Annual Core (In-Service) Kilometres** means the amounts set out in Table 5 in paragraph 3.9 of Schedule D2.*

***Diesel Core In-Service Kilometres** means an amount calculated in accordance with paragraph 3.9 of Schedule D2.*

***Diesel Dead Running Distance** means the distance in kilometres (measured to the nearest 0.001 kilometres) travelled by a Diesel Vehicle between:*

- (a) a Depot and the starting point of the first Trip in a Vehicle Block (pull-out trip);*
- (b) the final destination of any Trip and the starting point of the next Trip in the Vehicle Block (repositioning trip); and*
- (c) the final destination of any Trip and the Depot at the end of the Vehicle Block (pull-in trip).*

***Diesel In-Service Kilometres** means the distance in kilometres (measured to the nearest 0.001 kilometres) between the starting point of a Trip and the final destination of the Trip, excluding any Diesel Dead Running Distance.*

***Diesel In-Service Kilometre Marginal Rates** means the amounts set out in Table 19 in paragraph 9.4(d) of Schedule D2.*

***Diesel Total Kilometres** means, for a Trip, the Diesel In-Service Kilometres plus the Diesel Dead Running Distance for that Trip over any designated period.*

***Diesel Vehicle** means a vehicle with an internal combustion engine that are used by the Service Provider to deliver the Transport Operations.*

***Electric Annual Core In-Service Kilometres** means the amounts set out in Table 5 in paragraph 3.9 of Schedule D2.*

***Electric Core In-Service Kilometres** means an amount calculated in accordance with paragraph 3.9 of Schedule D2.*

Electric Dead Running Distance means the distance in kilometres (measured to the nearest 0.001 kilometres) travelled by an Electric Vehicle between:

- (a) a Depot and the starting point of the first Trip in a Vehicle Block (pull-out trip);
- (b) the final destination of any Trip and the starting point of the next Trip in the Vehicle Block (repositioning trip); and
- (c) the final destination of any Trip and the Depot at the end of the Vehicle Block (pull-in trip).

Electric In-Service Kilometres means the distance in kilometres (measured to the nearest 0.001 kilometres) between the starting point of a Trip and the final destination of the Trip, excluding any Electric Dead Running Distance.

Electric In-Service Kilometre Marginal Rates means the amounts set out in Table 19 in paragraph 9.4(d) of Schedule D2.

Electric Total Kilometres means, for a Trip, the Electric In-Service Kilometres plus the Electric Dead Running Distance for that Trip over any designated period.

Electric Vehicles means the battery electric buses that are used by the Service Provider to deliver the Transport Operations as described in Schedule 1 of the Deed of Variation and to be listed in the Register of Service Contract Assets.

Energy Cost Rate (In-Service Rate) means the amounts set out in Table 7A in paragraph 3.12 of Schedule D2.

Energy Cost Rate (Total Rate) means the amount set out in Table 7B in paragraph 3.13 of Schedule D2.

Program means the introduction of zero-emission electric buses as Contract Vehicles performing the services under this Contract in accordance with Schedule 1 of the Deed of Variation.

Project Cost Payment means the payment set out in Table 17A in paragraph 8A of Schedule D2.

Smart Meter means an electricity meter that digitally measures electricity use (also known as an advanced meter or 'type 4' meter) in specific time intervals and enabling tariffs that can vary by time of day.

Variation Commencement Date means the Variation Date as defined in the Deed of Variation.

- (ii) by inserting the following sentence in the definition of 'Contract Vehicle':

A Contract Vehicle may be a Diesel Vehicle or an Electric Vehicle.

- (iii) by inserting a new paragraph (aa) to the definition of 'Service Contract Assets' as follows:

(aa) Batteries used in Electric Vehicles;

- (iv) by adding the following sentence at the end of the definition of 'Depot Equipment':

The Depot Equipment includes Charging Infrastructure.

- (v) by inserting the following paragraph at the end of the definition of 'Force Majeure Event':

Despite paragraph (f) above, the parties expressly agree that the unavailability of electricity will not constitute a Force Majeure Event if the Register of Service Contract Assets includes a Battery Energy Storage System.

- (vi) by inserting the following paragraph at the end of the definition of 'Optimised Network':

(h) maximises the Electric In-Service Kilometres and Electric Total Kilometres over Diesel In-Service Kilometres and Diesel Total Kilometres.

- (vii) by replacing the definition of 'Network Specification' with the following:

***Network Specification** means the following documents as described in the Operations Manual and set out in Schedule B2:*

(i) Route Summary Worksheet;

(ii) Integrated Scheduling System Vehicle Statistics screenshot for each Day Type

(iii) Integrated Scheduling System Duty Statistics screenshot for each Day Type;

(iv) Integrated Scheduling System Working Timetables;

(v) Integrated Scheduling System Route Reports;

(vi) Integrated Scheduling System Peak Vehicle Requirement Statistics screenshot for each Day Type; and

(vii) Integrated Scheduling System Annual Crew Stats Report; and

(viii) Driver runsheets/duty sheets

as varied and amended from time to time during the Contract Term in accordance with this Service Contract. It includes any alternative future combination of documents or data sets containing the equivalent information, as determined by the Purchaser.

(viii) by inserting the following paragraph (aa) into the definition of 'Service Change':

(aa) *change to the quantum or proportion of Diesel Total Kilometers and Electric Total Kilometers for all Trips undertaken by Contract Vehicles.*

(g) Schedule A5 is amended by:

(i) deleting the formula in clause 3.3(b) and replacing it with the following formula:

$$FCP = CFP + CEP + PSCFA + TPSCFA$$

(ii) inserting a new clause 3.5A as follows:

3.5A Battery Payment

The Battery Payment will be calculated in accordance with paragraph 5A of Schedule D2.

(h) Schedule B1 is amended by:

(i) inserting the following new rows to the table in Section 1:

Specification	9+ Capacity		<9 capacity
	Existing	New	New
Electric Vehicles			
Electric Vehicles and their associated Charging Infrastructure must have a CCS2 plug that is DC compatible.	Yes	Yes	Yes
Electric Vehicles must have a heat release rate of 30MW if operating in a busway tunnel which is under the control of the Purchaser.	Yes	Yes	Yes
Electric Vehicles must have an appropriate heat release rate for any tunnels (other than a tunnel located on the busway) that they enter.	Yes	Yes	Yes
Electric Vehicles must use a Battery that is fit for purpose that enables performance of the Transport Operations in accordance with the Service Contract.	Yes	Yes	Yes

<p>The Service Provider must:</p> <ul style="list-style-type: none"> • manage the Batteries in accordance with the manufacturer's recommended specifications in relation to charging and discharging the battery and the recommended depth of discharge to limit degradation and to ensure they achieve their anticipated life-span; and • dispose of Batteries responsibly after their useful life in an Electric Vehicle and, where possible, ensure the Battery is repurposed to provide stationary storage at the Depot. 			
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(i) Table 1 'Pre-Performance Optimisation Table' in Section 3 is amended by adding the following additional rows:

<p>Sch.4 Part 4 s.7(1)(c) Bus/com affairs</p>

- (i) Schedule B2 is amended by replacing the Network Summary with the updated version provided by the Service Provider under clause 3.1 of the Deed of Variation.
- (j) Schedule D2 is deleted and replaced with the updated version agreed by the parties under Condition Precedent 2 in Schedule 2 of this Deed.

6.3 In all other respects the Service Contract remains unchanged.

7. NO PUBLIC ANNOUNCEMENTS

7.1 The Service Provider must not make any public announcements, media releases or otherwise communicate information publicly relating to this Deed except with the Purchaser's prior written consent.

8. LIABILITY AND INDEMNITY

8.1 The Service Provider indemnifies, and will keep indemnified, the Purchaser and its agents and employees from and against all Loss arising directly from a breach of this Deed by the Service Provider, except to the extent that it is caused by a breach of this Deed by the Purchaser or the unlawful or negligent act of the Purchaser, its agents or employees. To the extent any obligation under this Deed is or as a result of this Deed is also an obligation

under the Service Contract, the terms of the Service Contract will prevail including clause 31.

9. TERMINATION

9.1 A party may terminate this Deed by written notice to the other party if the Service Contract is terminated or otherwise comes to an end.

10. NOTICES

10.1 Notices under this Deed may be delivered by hand, pre-paid registered mail, or email to the addresses specified in the Deed Particulars or any substitute address as may have been notified in writing by the relevant addressee from time to time.

10.2 Notice are deemed to be given –

- (a) if posted, two Business Days after deposit in the mail;
- (b) if delivered by hand before 5:00pm on a Business Day, on the day of delivery or otherwise on the next Business Day; or
- (c) if sent by email, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered, except that a delivery by hand, fax or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.

10.3 Notices may be given by or to a party's solicitor by any of the means specified in clause 10.1 to the solicitor's business address or email address.

11. GENERAL

11.1 Governing Law - this Deed is governed by the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the Queensland courts.

11.2 Waiver - no rights under this Deed will be deemed to be waived except by written notice signed by each party. A waiver by either party will not prejudice that party's rights in respect of any subsequent breach of this Deed by the other party. Any failure by either party to enforce any clause of this Deed or any forbearance, delay or indulgence granted by either party to the other will not be construed as a waiver of rights under this Deed.

11.3 Severance - if anything in this Deed is unenforceable, illegal or void, then it is severed and the rest of this Deed remains in force.

11.4 Variation - this Deed may not be varied at any time except by a written agreement executed by both parties.

11.5 Assignment - neither of the parties to this Deed may assign their rights and obligations without the prior written consent of the other party.

11.6 Execution - the parties agree that if this Deed is not executed by both parties on the same date, this Deed will commence on and from the later of the dates of execution. The parties will execute copies of this Deed with each party retaining an original copy.

- 11.7 Counterparts – this Deed may consist of a number of counterparts and if so, the counterparts taken together constitute one document.
- 11.8 Entire Agreement – this Deed constitutes the entire agreement between the parties in respect of its subject matter. Any prior arrangements, agreements, warranties, representations or undertakings are superseded.
- 11.9 Costs – each party must pay its own cost of and incidental to the preparation, negotiation and signing of this Deed.
- 11.10 Survival of clauses – any part of this Deed capable of operating after termination or expiry of this Deed will survive termination or expiry of this Deed.

Released under RTI - DTMR

Schedule 1 – Program Summary

The Program involves the deployment of five (5) Electric Vehicles to operate from 150 Fred Chaplin Circuit, Bells Creek, Queensland 4551 (more particularly described as Lot 44 on SP209288) (the Depot).

Bus Specification

The Service Provider will purchase the following Electric Vehicles, specified as follows:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Charging Infrastructure

Charging Infrastructure at the Depot will consist of:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Network

During the Program Evaluation Period, the Electric Vehicles will be deployed on the following vehicle blocks:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Retirement of Diesel Vehicles

The Service Provider will dispose of the following Diesel Vehicles in January 2023:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Energy – Renewable Electricity

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Battery Energy Storage System

Nil

Cost

The agreed fixed cost to deliver the Program is contained in the Binding Offer Pricing Template in Schedule 6 to this Deed.

Schedule 2 – Conditions Precedent

Condition Precedent 1 – Infrastructure

The Service Provider must, at its own cost, before the Conditions Precedent Due Date:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (d) Update the Register of Service Contract Assets to include the Depot Equipment, Electric Vehicles, BESS and Batteries (including details of the Battery 'Purchase Cost', 'Agreed Cost', 'External Funding Amount' and 'Battery Purchase Date' as required under Schedule D2 and otherwise in the form required by the Purchaser).
- (e) Provide an up to date Network Specification 30 days prior to the Variation Commencement Date.
- (f) Execute an agreement with an energy retailer to provide 100% renewable energy which includes GreenPower accreditation under a Power Purchase Agreement. The Power Purchase Agreement must be on terms that ensure that the renewable energy is available from the day the first Electric Vehicle enters services and remains available for the term of the Service Contract.
- (g) Complete any electricity grid upgrades as required by Energex that are required to meet operational requirements under this Deed and the Service Contract, including an upgrade of a transformer to 1MVA. Comply with all requirements and directions given by Energex.
- (h) Install a separate electricity circuit with a Smart Meter in respect of the Charging Infrastructure.
- (i) Submit as constructed plans, signed by a registered professional engineer of Queensland, showing all civil and electrical works described in (b), (c), (f) and (g).
- (j) Take all other steps reasonably necessary for the commencement of the Program by the Variation Date.

Condition Precedent 2 – Updated Schedule D2 of Service Contract

The parties must, in good faith, calculate and agree before the Conditions Precedent Due Date an updated Schedule D2 of the Service Contract in the form of Schedule 5 to this Deed and in accordance with the Binding Offer Pricing Template in Schedule 6 to reflect current practice and the associated impact of this Deed. The final agreed Schedule D2 will be signed by both parties and incorporated into the Service Contract under clause 6.2(j) of this Deed.

Condition Precedent 3 – Direct Deeds

The Service Provider must, before the Conditions Precedent Due Date, procure new or updated direct deeds (as defined in the Service Contract) with any relevant third parties or financiers in accordance with the procedures in clause 43.2 of the Service Contract to the satisfaction of the Purchaser.

Condition Precedent 4 – Implementation Plan

The Service Provider must provide an updated Implementation Plan that is satisfactory to the State (acting reasonably) within 10 Business Days of the Date of this Deed.

Released under RTI - DTMR

Schedule 3 – Electric Vehicle Promotional Wrap

The following images represent the concept design for the promotional wrap for the first Electric Vehicle to be displayed for 12 months.



Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Schedule 4 – Performance Evaluation Plan

The Performance Evaluation Plan comprises a set of primary and secondary measures. The primary measures are the key measures that will be used to inform the e-bus performance across financial, operational, environmental and stakeholder dimensions (table 1) during the data collection period (36 months).

The secondary measures (table 2) are supporting measures reviewed by exception and/or less frequent basis. The secondary measures will provide additional information to analyse performance deviation in case the primary measures show negative trends during the data collection period (36 months) and will help inform longer term decision making.

All data inputs must be made available to the Independent Third Party during the Program Evaluation Period (12 months).

Table 1: Primary measures

Released under RTI - DTMP

Released under RTI - DTMR

Schedule 5 – Schedule D2

Released under RTI - DTMR

Released under RTI - DTMR

Schedules D – Financial

Schedule D2 – Service Payment

Capitalised terms which are used in this Schedule have the meaning given to them in Schedule A1.

1. Service Payments

1.1 Acknowledgement

The Purchaser and the Service Provider acknowledge and agree that:

- (a) for the ITO Process, the Purchaser prepared a pricing model in the form of a MISExcel spreadsheet to be populated by the Service Provider as part of its Offer;
- (b) the Electronic Pricing Template is the final version of the pricing model submitted by the Service Provider with its Offer and determined by the Purchaser to be acceptable for the purposes of the ITO Process and s.62AAE of the Act;
- (c) the ITO Process required the Service Provider to populate the Electronic Pricing Template by reference to the combination of General Route Services that the Service Provider was obliged to deliver under the 3G Contract as at 28 February 2017 and the fleet of buses and (if any) other vehicles utilised by the Service Provider at that date;
- (d) changes to those General Route Services and the associated vehicle fleet have been agreed by the parties under the terms of the 3G Contract between 28 February 2017 and the date of this Contract;
- (e) the parties have used the Reconciliation Sheets to determine the agreed values and amounts set out in this Schedule D2 based on the Electronic Pricing Template whilst also ensuring those values and amounts accurately take into account all relevant changes since 28 February 2017, to the extent the changes were not already provided for in the Electronic Pricing Template; and
- (f) in the event of an inconsistency, discrepancy or ambiguity between the Service Payment Pricing Model (or a part of it) and this Schedule D2, this Schedule D2 will prevail.
- (g) For the Deed of Variation process, the Purchaser prepared a Binding Offer Pricing Template that forms the foundation of the variation.
- (h) The Binding Offer Pricing Template is translated into the electronic pricing template format between the Deed of Variation being signed and the Variation taking effect.
- (i) The updated Schedule D2 will take effect in the first full month following the Deed of Variation taking effect.

1.2 Apportionment

If the Payment Month in relation to any calculation referencing this paragraph 1 in this Schedule D2 is less than a full calendar month, the relevant full Payment Month calculation will be pro rated by multiplying it by:

$$\frac{RPD}{CMD}$$

where:

RPD is the number of days in the Payment Month; and

CMD is the number of days in the calendar month in which the Payment Month falls.

1.3 Calculation

For each Payment Month during the Contract Term, a Service Payment will be calculated in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

1.4 Net effect

A positive Performance Payment Adjustment will represent a payment due by the Purchaser to the Service Provider and a negative Performance Payment Adjustment will represent a payment due by the Service Provider to the Purchaser.

2. Operating Payment

2.1 Calculation

The Operating Payment for any Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

2.2 Core Operating Payment

Subject to paragraph 1.2 of this Schedule D2 and paragraphs 2.4 and 2.5 of Schedule D3, the Core Operating Payment for any Payment Month will be calculated by dividing the relevant Annual Core Operating Payment by 12. The Annual Core Operating Payments are set out in Table 1. These amounts are fixed and are not subject to adjustment.

Table 1: Annual Core Operating Payments

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

2.3 Core Operating Payment

For the purposes of calculating the Total In-Service Hours (Reset) under paragraph 12(e) and subject to paragraph 1.2 of this Schedule D2, the Core In-Service Hours for any Payment Month will be calculated by dividing the Annual Core In-Service Hours by 12. For this purpose the Annual Core In-Service Hours is set out in Table 2 below.

Table 2: Annual Core In-Service Hours

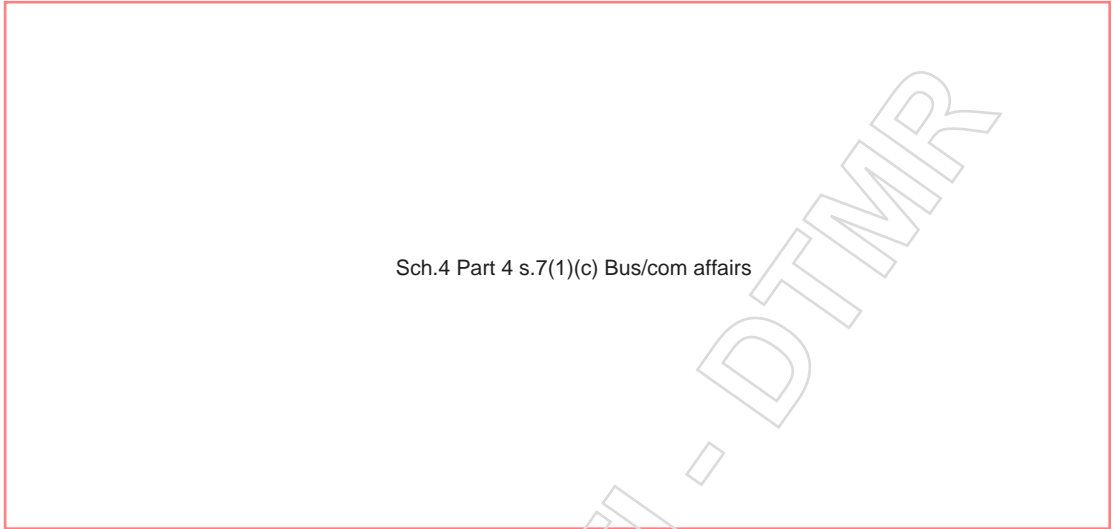
Annual Core In-Service Hours

XXXX

3. Fuel Cost Payment

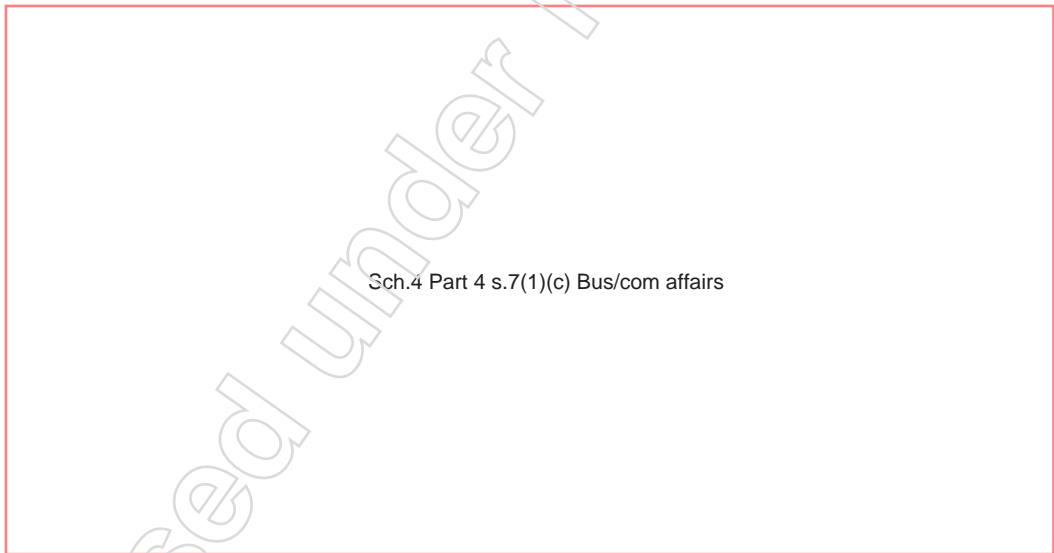
3.1 Calculation

The Fuel Cost Payment for a Payment Month will be determined in accordance with the following formula:



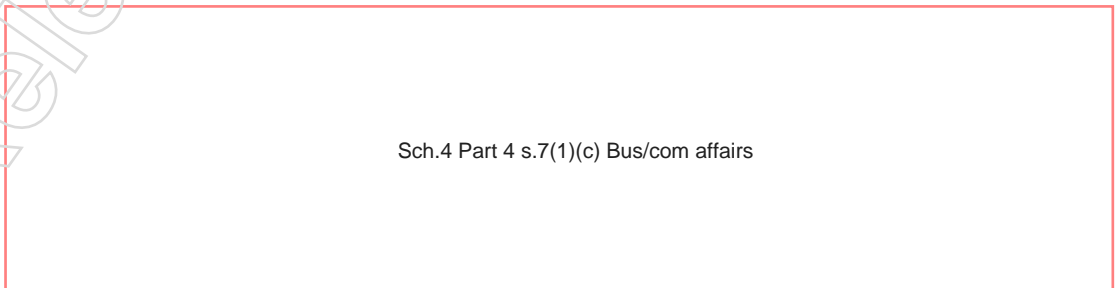
3.2 Core Fuel Payment

Subject to paragraph 1.2 of this Schedule D2 and paragraphs 2.4 and 2.5 of Schedule D3, the Core Fuel Payment for any Payment Month will be determined in accordance with the following formula:



3.2A Core Energy Payment

Subject to paragraph 1.2 of this Schedule D2 and paragraphs 2.4 and 2.5 of Schedule D3, the Energy Payment for any Payment Month will be determined in accordance with the following formula:



3.3 Application of Total or In-Service rates

- (a) The Gross Fuel Cost Rate (Total Rate), Fuel Tax Credit Rate (Total Rate), and Energy Cost Rate (Total Rate) will be applied to Permanent Service Changes where paragraph 9.1(a) applies.
- (b) The Gross Fuel Cost Rate (In-Service Rate), Fuel Tax Credit Rate (In-Service Rate), and Energy Cost Rate (In-Service Rate) will be applied to:
 - (i) Permanent Service Changes where paragraph 9.1(b) applies; or
 - (ii) Temporary Planned Service Changes where paragraph 9.1(c) applies; and
 - (iii) any Force Majeure Adjustment or State Designated Event Services Payment Adjustment under paragraph 9.2.

3.4 Permanent Service Change (In-Service Rate) Fuel Adjustment

A Permanent Service Change (In-Service Rate) Fuel Adjustment for Permanent Service Changes that are subject to the application of the In-Service Rate Adjustment for the Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

negative amount and an increase in In-Service Kilometres will be a positive amount

The inclusion of Permanent Service Changes in the above calculation will be at the Purchaser's discretion where the Permanent Service Change is approved or implemented in the course of the Payment Month. Payments in relation to Permanent Service Changes that are not included in the calculation will be paid in arrears as part of the True Up Adjustment in the following Payment Month.

3.5 Permanent Service Change (Total Rate) Fuel Adjustment

A Permanent Service Change (Total Rate) Fuel Adjustment for Permanent Service Changes that are subject to the application of the Total Rate Adjustment for the Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

The inclusion of Permanent Service Changes in the above calculation will be at the Purchaser's discretion where the Permanent Service Change is approved or implemented in the course of the Payment Month. Payments in relation to Permanent Service Changes that are not included in the calculation will be paid in arrears as part of the True Up Adjustment in the following Payment Month.

3.6 Temporary Planned Service Change Fuel Adjustment

A Temporary Planned Service Change Fuel Adjustment for Temporary Planned Service Changes for the Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

The inclusion of Temporary Planned Service Changes in the above calculation will be at the Purchaser's discretion where the Temporary Planned Service Change is approved or implemented in the course of the Payment Month. Payments in relation to Temporary Planned Service Changes that are not included in the calculation will be paid in arrears as part of the True Up Adjustment in the following Payment Month.

3.7 Gross Fuel Cost Rate (In-Service Rate)

Subject to paragraph 12 of this Schedule D2, the Gross Fuel Cost Rate (In-Service Rate) is set out in Table 3.

Table 3: Gross Fuel Cost Rate (In-Service Rate)

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Released under RTI - DTMR

3.8 Fuel Tax Credit Rate (In-Service Rate)

Subject to paragraph 12 of this Schedule D2, the Fuel Tax Credit Rate (In-Service Rate) are those set out in Table 4.

Table 4: Fuel Tax Credit Rate (In-Service Rate)

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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3.9 Core In-Service Kilometres

Subject to paragraph 1 of this Schedule D2, the Core In-Service Kilometres for any Payment Month will be calculated by dividing the relevant Annual Core In-Service Kilometres by 12. For this purpose the Annual Core In-Service Kilometres is set out in Table 5.

Table 5: Annual Core In-Service Kilometres

Diesel Annual In-Service Kilometres (km)	Electric Annual In-Service Kilometres (km)	Total Annual In-Service Kilometres (km)
xxx	xxx	xxx

3.10 Gross Fuel Cost Rate (Total Rate)

The Gross Fuel Cost Rate (Total Rate) is set out in Table 6.

Table 6: Gross Fuel Cost Rate (Total Rate)

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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3.11 Fuel Tax Credit Rate (Total Rate)

The Fuel Tax Credit Rate (Total Rate) is set out in Table 7.

Table 7: Fuel Tax Credit Rate (Total Rate)

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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3.12 Energy Cost Rate (In-Service Rate)

The Energy Cost Rate (In-Service Rate) is set out in Table 7A.

Table 7A: Energy Cost Rate (In-Service Rate)

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

3.13 Energy Cost Rate (Total Rate)

The Energy Cost Rate (Total Rate) is set out in Table 7B.

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

4. Margin Payment

4.1 Calculation

- (a) The Margin Payment for any Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

4.2 Margin Percentage

The Urban Margin Percentage and School Margin Percentage are set out in Table 8 below.

Table 8: Urban Margin Percentage and School Margin Percentage

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

5. Fleet Payment

5.1 Calculation

The Fleet Payment for any Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

5.2 Fleet Payment Methodologies

- (a) The Existing Depreciation and Interest Fleet Payment relates to Contract Vehicles listed in the Approved Contract Vehicle Register purchased prior to 1 July 2004. The calculation is based on the methodology outlined within Table 9.

Table 9: Existing Depreciation and Interest Fleet Payment Methodology

Capitalised terms in this Table that are not otherwise defined in this Contract have the meaning given to them in this Table.

Component	Basis of methodology
Replacement Life	As determined in accordance with paragraph 4.2 of Schedule B1.
Payment Term	<p>Contract Vehicles acquired before 01 July 2004 will be based on the following:</p> <ul style="list-style-type: none"> i. Standard Rigid, Long Rigid and Articulated buses – depreciation over 20 years OR If purchased second hand older than five years (generally for School Routes) the Payment Term will be the period spanning between the Payment Commencement Date and age 25; ii. Midibuses – depreciation over 15 years OR If purchased second hand the Payment Term will be the period spanning between the Payment Commencement Date and age 15; iii. Minibuses – depreciation over 10 years OR If purchased second hand the Payment Term will be the period spanning between the Payment Commencement Date and age 10. <p>References to vehicle types in items (i) to (iii) above are references to vehicle type as identified in the Register of Service Contract Assets.</p>
Purchase Cost (Principal)	The gross cost of the Contract Vehicle paid by the Service Provider or Service Provider Group Member, including stamp duty, as identified as the 'Purchase Cost (Principal)' for that Contract Vehicle in the Register of Service Contract Assets.
Agreed Cost	<p>The principal amount that the Purchaser will pay to the Service Provider for a Contract Vehicle, by way of the Depreciation and Interest Fleet Payment calculated as set out below in this Table 9 over the Payment Term, identified as the 'Agreed Cost' for that Contract Vehicle in the Register of Service Contract Assets.</p> <p>The calculation of Agreed Cost may be expressed as:</p> <p>Agreed Cost equals Purchase Cost (Principal) minus any part of the Purchase Cost (Principal) which is the cost of components of the Contract Vehicle that exceed the requirements of the Minimum Contract Vehicle Specification.</p>
Funding	Has the meaning given in Schedule A1, and for each Contract Vehicle is the amount identified as the 'External Funding Amount' in the Register of Service Contract Assets.
Residual value	Nil
Interest rate	8 percent (8%) fixed for the life of the Contract Vehicle
Vehicle Purchase Date	The date the Contract Vehicle was acquired by the Service Provider, identified as the 'Vehicle Purchase Date' for that Contract Vehicle within the Register of Service Contract Assets.

Component	Basis of methodology
Payment Commencement Date	Deemed as the first day of the first full month after the date the Contract Vehicle is placed into service
End of Year Current Value (EOY CV)	In the first year of service and prior to the end of the first Financial Year it is the Agreed Cost above. In all other cases it is the Agreed Cost minus all accumulated Monthly Depreciation Payments made by the Purchaser to the Service Provider as at 30 June annually. For example, Monthly Interest Payments during 2007/08 must be calculated on the EOY CV as at 30 June 2007, Monthly Interest Payments during 2008/09 must be calculated on the EOY CV as at 30 June 2008, and so on.
Calculation of Monthly Depreciation Payments and Monthly Interest Payments	The calculation may be expressed as: Monthly Depreciation Payment equals (Agreed Cost minus Funding minus Residual Value) divided by Payment Term) divided by 12 months Plus Monthly Interest Payment equals (End of Year Current Value multiplied by % Interest Rate) divided by 12 months

- (b) Subject to paragraphs 1.2, 5.2(h) and 5.2(j) of this Schedule D2 and paragraphs 2.4 and 2.5 of Schedule D3, the Existing Depreciation and Interest Fleet Payment for any Payment Month will be calculated by dividing the Annual Existing Depreciation and Interest Fleet Payments by 12. For this purpose, the Annual Existing Depreciation and Interest Fleet Payments is set out in Table 10.

Table 10: Annual Existing Depreciation and Interest Fleet Payments

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (c) Existing Notional Lease Fleet Payment relates to Contract Vehicles listed in the Approved Contract Vehicle Register purchased after 1 July 2004 but before the Commencement Date. The calculation is based on the methodology outlined within Table 11.

Table 11: Existing Notional Lease Fleet Payment Methodology

Capitalised terms in this Table that are not otherwise defined in this Contract have the meaning given to them in this Table.

Component	Basis of methodology
Replacement Life	As determined in accordance with paragraph 4.2 of Schedule B1.

Component	Basis of methodology
Lease Term	Sch.4 Part 4 s.7(1)(c) Bus/com affairs
Purchase Cost (Principal)	The gross cost of the Contract Vehicle paid by the Service Provider or Service Provider Group Member, including stamp duty, as identified as the 'Purchase Cost (Principal)' for that Contract Vehicle in the Register of Service Contract Assets.
Agreed Cost	<p>The principal amount that the Purchaser will pay to the Service Provider for a Contract Vehicle, by way of the Notional Lease Fleet Payment calculated as set out below in this Table 11 over the Lease Term, identified as the 'Agreed Cost' for that Contract Vehicle in the Register of Service Contract Assets.</p> <p>The calculation of Agreed Cost may be expressed as:</p> <p>Agreed Cost equals Purchase Cost (Principal) minus any part of the Purchase Cost (Principal) which is the cost of components of the Contract Vehicle that exceed the requirements of the Minimum Contract Vehicle Specification.</p>
Funding	Has the meaning given in Schedule A1, and for each Contract Vehicle is the amount identified as the 'External Funding Amount' in the Service Contract Asset Register.
Residual Value	Sch.4 Part 4 s.7(1)(c) Bus/com affairs
Deemed Purchase Date (For the purpose of selecting the Interest Rate applicable to calculation of the Notional Lease Fleet Payment)	<p>The date of invoice documentation supporting the Contract Vehicle purchase made by the Service Provider.</p> <p>The Service Provider is required to provide copies of invoice documentation supporting the Contract Vehicle purchase. Where multiple invoices exist, the latest invoice date must be selected.</p>
Variable Interest Rates (For the purpose of selecting the Interest Rate applicable to calculation of the Notional Lease Fleet Payment)	<p>Variable Interest Rates will be referenced and maintained by the Purchaser for purposes of selecting the Interest Rate to be applied to the calculation of the Notional Lease Fleet Payment for a Contract Vehicle. As a result, the Interest Rate will vary from Contract Vehicle to Contract Vehicle dependent upon the month in which each Contract Vehicle was purchased by the Service Provider.</p> <p>Variable Interest Rates will be based on the initially agreed Interest Rate of 8% as at 01/07/2004 adjusted for the movement in each month's average of the Market Price MID 'IAUS' 10 Year Swap Rate quoted by the Commonwealth Bank of Australia (CBA) Ltd.</p> <p>For example, the July 2004 Interest Rate is calculated as:</p>

Component	Basis of methodology
	<p>June 2004 Interest Rate 8% plus or minus (July 2004 monthly average 10 Year Swap Rate 6.22% minus June 2004 monthly average 10 Year Swap Rate 6.34%) equals the July 2004 Interest Rate 7.88%</p> <p>Similarly the August 2004 Interest Rate is calculated as: July 2004 Interest Rate 7.88% plus or minus (August 2004 monthly average 10 Year Swap Rate 6.09% minus July 2004 monthly average 10 Year Swap Rate 6.22%) equals the August 2004 Interest Rate 7.75%; and so on.</p>
Interest Rate	<p>The Interest Rate to be applied to the calculation of the Notional Lease Fleet Payment for a Contract Vehicle will be the Variable Interest Rate that is applicable to the month in which the Deemed Purchase Date falls.</p> <p>The Interest Rate for that Contract Vehicle will be fixed over the Lease Term.</p> <p>In the above example, the August 2004 Interest Rate 7.75% would be applied when the Deemed Purchase Date is a date falling within the month of August 2004.</p>
Vehicle Purchase Date	<p>The date the Contract Vehicle was acquired by the Service Provider, identified as the 'Vehicle Purchase Date' within the Register of Service Contract Assets.</p>
Payment Commencement Date	<p>Deemed as the first day of the first full month after the date the Contract Vehicle is placed into service</p>

Calculation of the Notional
 Lease Fleet Payment amount

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Component	Basis of methodology
	Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (d) Subject to paragraphs 1.2, 5.2(h) and 5.2(j) of this Schedule D2 and paragraphs 2.4 and 2.5 of Schedule D3, the Existing Notional Lease Fleet Payment for any Payment Month will be calculated by dividing the Annual Existing Notional Lease Fleet Payments by 12. For this purpose the Annual Existing Notional Lease Fleet Payments is set out in Table 12.

Table 12: Annual Existing Notional Lease Fleet Payments

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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- (e) The New Notional Lease Fleet Payment relates to Contract Vehicles listed in the Approved Contract Vehicle Register purchased on or after the Commencement Date, whether being either for replacement or additional services. The calculation is based on the methodology outlined within Table 13.

The intended replacement of Contract Vehicles as at the Variation Commencement Date is set out in Table 2 at paragraph 4.3(d) of Schedule B1. This sequence may be updated during the Term in accordance with clause 12.5.

Table 13: New Notional Lease Fleet Payment Methodology

Capitalised terms in this Table that are not otherwise defined in this Contract have the meaning given to them in this Table.

Annuity component	Basis of methodology
Replacement Life	As determined in accordance with paragraph 4.2 of Schedule B1.
Lease Term	15 years equals 180 monthly instalments
Purchase Cost (Principal)	The gross cost of that Contract Vehicle paid for by the Service Provider or Service Provider Group Member, including stamp

Annuity component	Basis of methodology
	duty, as identified as the 'Purchase Cost (Principal)' for that Contract Vehicle in the Register of Service Contract Assets.
Agreed Cost	<p>The principal amount that the Purchaser will repay to the Service Provider for a Contract Vehicle, by way of the Notional Lease Fleet Payment calculated as set out below in this Table 13 over the Lease Term, identified as the 'Agreed Cost' for that Contract Vehicle in the Register of Service Contract Assets.</p> <p>The calculation of Agreed Cost may be expressed as: Agreed Cost equals Purchase Cost (Principal) minus any part of the Purchase Cost (Principal) which is the cost of components of the Contract Vehicle that exceed the requirements of the Minimum Contract Vehicle Specification.</p>
Funding	Has the meaning given in Schedule A1, and for each Contract Vehicle is the amount identified as the 'External Funding Amount' in the Service Contract Asset Register.
Residual Value	Nil
Deemed Purchase Date (For the purpose of selecting the Interest Rate applicable to calculation of the Notional Lease Fleet Payment)	<p>The date of invoice documentation supporting the Contract Vehicle purchase made by the Service Provider.</p> <p>The Service Provider is required to provide copies of invoice documentation supporting the Contract Vehicle purchase. Where multiple invoices exist, the latest invoice date must be selected.</p>
Variable Interest Rates (For the purpose of selecting the Interest Rate applicable to calculation of the Notional Lease Fleet Payment)	<p>Variable Interest Rates will be referenced and maintained by the Purchaser for purposes of selecting the Interest Rate to be applied to the calculation of the Notional Lease Fleet Payment for a Contract Vehicle. As a result, the Interest Rate will vary from Contract Vehicle to Contract Vehicle dependent upon the month in which each Contract Vehicle was purchased by the Service Provider.</p> <p>Variable Interest Rates for any given month will be based on the monthly average of the Market Price MID 'IAUS' 10 Year Interest Swap Rate quoted by the Commonwealth Bank of Australia (CBA) Limited plus a fixed margin of 2.5%.</p>
Interest Rate	<p>The Interest Rate to be applied to the calculation of the Notional Lease Fleet Payment will be the Variable Interest Rate that is applicable to the month in which the Deemed Purchase Date falls.</p> <p>This rate will be fixed over the Lease Term.</p>
Vehicle Purchase Date	The date the Contract Vehicle was acquired by the Service Provider, identified as the 'Vehicle Purchase Date' within the Register of Service Contract Assets.
Payment Commencement Date	Deemed to be the first day of the first full month after the date the Contract Vehicle is placed into service.
Calculation of the Notional Lease Fleet Payment amount	<p>Based on reference to the MS Excel payment formula $PMT(Rate, Nper, Pv, Fv, Type)$ where:</p> <ul style="list-style-type: none"> ➤ Rate is the Interest Rate for the Lease Term calculated as: $i = (1 + R)^{(1/12)} - 1$ where R is the Interest Rate ➤ Nper is the total number of payments for the Lease Term. Nper equals 180 monthly instalments.

Annuity component	Basis of methodology
	<ul style="list-style-type: none"> ➤ Pv is the present value, or the total amount that a series of future payments is worth now. Pv is equal to the [Agreed Cost minus Funding]. ➤ Fv is the future value, or a cash balance to be attained after the last payment is made. Fv is equal to the Residual Value. ➤ Type is the number 0 or 1 and indicates when payments are due. Type 0 calculates interest in arrears, Type 1 calculates interest in advance. Type 1 will be applied during the Lease Term. <p>In this context, the calculation may be expressed as: Monthly Notional Lease Fleet Payment equals ([Interest Rate divided by 12 months], [180 monthly instalments], [Agreed Cost minus Funding], [Residual Value], Type 1)</p>

- (f) The purchase or lease of a new Contract Vehicle is subject to approval by the Purchaser in accordance with the Operations Manual and the Agreed Cost will be the purchase cost which the Purchaser will fund in accordance with this Contract and the Operations Manual.
- (g) The Purchaser may reasonably direct the Service Provider to obtain three written quotes for the purchase of a new Contract Vehicle. The purchase cost of the vehicle will be subject to approval by the Purchaser.
- (h) If a Contract Vehicle is sold, destroyed, damaged (and not repaired) or no longer generally available for use as a Contract Vehicle (excluding temporary unavailability for repairs or other causes) before the last Fleet Payment in respect of that Contract Vehicle, either:
- (i) the Existing Depreciation and interest Fleet Payment for all remaining Payment Months, including the Payment Month in which the Loss occurs, will be reduced by the actual Fleet Payment for that Contract Vehicle in the year to which the Existing Depreciation and Interest Fleet Payment relates; or
 - (ii) the Existing Notional Lease Fleet Payment for all remaining Payment Months, including the Payment Month in which the Loss occurs, will be reduced by the actual Fleet Payment for that Contract Vehicle in the year to which the Existing Notional Lease Fleet Payment relates; or
 - (iii) the New Notional Lease Fleet Payment for all remaining Payment Months, including the Payment Month in which the Loss occurs, will be reduced by the actual Fleet Payment for that Contract Vehicle in the year to which New Notional Lease Fleet Payment relates.
- (i) If a Contract Vehicle(s) is no longer required for Transport Operations due to a Permanent Service Change, the Purchaser will continue to pay for the Contract Vehicle(s), on the basis of the Existing Depreciation and the Interest Fleet Payment, Existing Notional Lease Payment or New Notional Lease Fleet Payment (as applicable) in respect of that Contract Vehicle, for six months from the implementation date of the Permanent Service Change or until the date of disposal (whichever is earlier). After this time, the Purchaser will cease to pay the Fleet Payment in relation to the Contract Vehicle(s) no longer required to deliver the Transport Operations due to the Permanent Service Change.
- (j) If the Replacement Life of a Contract Vehicle changes after the date of acquisition by the Purchaser of that Contract Vehicle in accordance with paragraph 4.2 of Schedule B1, then any Existing Depreciation and Interest Fleet Payment, Existing Notional Lease Fleet Payment or New Notional Lease Fleet Payment (as applicable) in respect of that Contract Vehicle for all remaining Payment Months will be recalculated to reflect the amended Replacement Life.

5.3 Dry Hire

- (a) The Purchaser may direct, or where requested by the Service Provider, in the Purchaser's absolute discretion may give approval for, the temporary hire of a Contract Vehicle by the Service Provider for a period of time, including:
 - (i) as an alternative to the acquisition of a Contract Vehicle in circumstances in which the Service Provider is required under this Contract to acquire a Contract Vehicle; or
 - (ii) to provide temporary hire of a Contract Vehicle during the lead time for acquisition of a Contract Vehicle.
- (b) The Service Provider is not entitled to any payment from the Purchaser in respect of the costs incurred by the Service Provider for temporary hire of a Contract Vehicle unless the Purchaser has given its prior approval to those costs (which the Purchaser may give or withhold in its absolute discretion) and those costs have actually been incurred on a commercial arm's-length basis (**Dry Hire Costs**).
- (c) It is a precondition to the inclusion of Dry Hire Costs in the Fleet Payment for a Payment Month that the Service Provider has provided the Purchaser with evidence of the Dry Hire Costs incurred.

5A Battery Payment

5.4 Calculation

The Battery Payment for any Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

5.5 Battery Payment Methodology

- (a) The Notional Lease Battery Payment relates to Battery Assets listed in the Approved Contract Vehicle Register purchased on or after the Variation Commencement Date. The calculation is based on the methodology outlined within Table 13A.

Table 13A: Notional Lease Battery Payment Methodology

Capitalised terms in this Table that are not otherwise defined in this Contract have the meaning given to them in this Table.

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

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Annuity component	Basis of methodology
	<p>interest in advance. Type 1 will be applied during the Lease Term.</p> <p>In this context, the calculation may be expressed as: Monthly Notional Lease Battery Payment equals ([Interest Rate divided by 12 months], [Number of monthly instalments], [Agreed Cost minus Funding], [Residual Value], Type 1)</p>

- (b) The purchase or lease of a new Battery is subject to approval by the Purchaser under clause 12.13 of the Service Contract and the Agreed Cost will be the purchase cost which the Purchaser will fund in accordance with this Contract.
- (c) The Purchaser may reasonably direct the Service Provider to obtain three written quotes for the purchase of a new Battery. The purchase cost of the Battery will be subject to approval by the Purchaser.
- (d) If, before the last Battery Payment in respect of that Battery, the Battery is:
 - (i) sold, destroyed, damaged (and not repaired);
 - (ii) replaced in accordance with clause 12.13; or
 - (iii) otherwise no longer used as a Battery under this Service Contract (excluding temporary unavailability for repairs or other causes)
 then the Notional Lease Battery Payment for all remaining Payment Months, including the Payment Month in which the loss occurs, will be nil. For the sake of clarity, the Purchaser will cease making Battery Payments in respect of any Battery to which paragraphs (i), (ii) or (iii) apply.
- (e) If a Battery(s) is no longer required for Transport Operations due to a Permanent Service Change, the Purchaser will continue to pay for the Battery(s), Notional Lease Battery Payment in respect of that Battery, for six months from the implementation date of the Permanent Service Change or until the date of disposal (whichever is earlier). After this time, the Purchaser will cease to pay the Battery Payment in relation to the Battery(s) no longer required to deliver the Transport Operations due to the Permanent Service Change.

If the Replacement Life of a Battery changes after the date of acquisition by the Service Provider of that Battery in accordance with Schedule B1, then any Notional Lease Battery Payment in respect of that Battery for all remaining Payment Months will be recalculated to reflect the amended Replacement Life

6. Depot Payment

6.1 Calculation

The Depot Payment for any Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

6.2 Core Depot Payment

Subject to paragraph 1.2 and paragraphs 2.4 and 2.5 of Schedule D3, the Core Depot Payment for any Payment Month will be calculated by dividing the Annual Core Depot Payment by 12. For this purpose the Annual Core Depot Payment is set out in Table 14 below.

Table 14: Annual Core Depot Payments

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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6.3 Depot Payment Adjustment

- (a) The Annual Core Depot Payment has been determined based on the following number of Approved Contract Vehicles and Non-Contract Vehicles at each of the following Depots:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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- (b) If in a Payment Month the number of Non-Contract Vehicles housed at a Depot for one or more nights during the Payment Month exceeds the number of Non-Contract Vehicles referred to in paragraph 6.3(a) of this Schedule D2 (such vehicles being the **Additional Non-Contract Vehicles**), the Depot Payment Adjustment will be calculated as the Additional Non-Contract Vehicles multiplied by the Depot Marginal Rate as set out in Table 15 below.

Table 15: Depot Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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Sch.4 Part 4 s.7(1)(c) Bus/com affairs

7. Commercial Revenue Payment Adjustment

7.1 Calculation

Subject to paragraph 1.2, the Commercial Revenue Payment Adjustment for a Payment Month will be determined in accordance with the following formula:

Sch. 4 Part 4 s.7(1)(c) Bus/com affairs

7.2 Charter Rate

The Charter Rate for any Reference Period is determined by reference to the Contract Year in which the Reference Period occurs as set out in Table 16.

Table 16: Charter Rate

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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7.3 Total Charter Kilometres

- (a) The Total Charter Kilometres for a Reference Period will be calculated in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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- (b) Where Total Charter Kilometres is a negative number for any Reference Period, the TCK value will be set at nil for the purpose of the calculation of the Commercial Revenue Payment Adjustment described in paragraph 7.1.

8. Mobilisation Payment

The Mobilisation Payment for each item deliverable by the Service Provider in accordance with the Mobilisation Program is set out in Table 17. For the avoidance of doubt, a negative overall Mobilisation Payment is an amount to be deducted in the calculation of the Service Provider under paragraph 1.3 of this Schedule D2.

Table 17: Mobilisation Payments and Mobilisation Activity Cost Caps

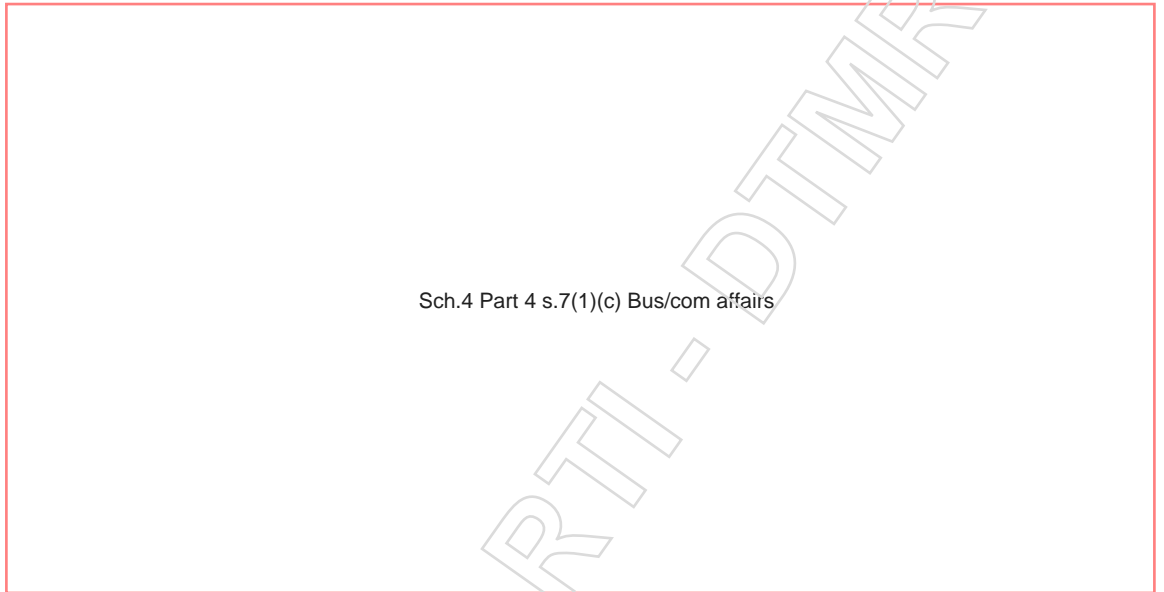
Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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8A Project Cost Payment

The Project Cost Payment is set out in Table 17A and will be paid as a lump sum payment, in the first full month following the Variation Commencement Date.

8A.1 Calculation

The Project Cost Payment will be determined in accordance with the following formula:



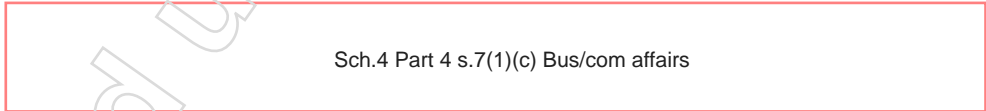
9. Service Payment adjustments

9.1 Service Changes

(a) A Permanent Service Change (Total Rate) Adjustment calculated under paragraph 9.5 will be applied to all Permanent Service Changes:

(i) that are implemented during the Transition In Period; or

(ii)



based on Total Hour Marginal Rates and Total Kilometre Marginal Rates.

(b) For all Permanent Service Changes to which paragraph 9.1(a) does not apply, a Permanent Service Change (In-Service Rate) Adjustment calculated under paragraph 9.4 will be applied based on In-Service Hour Marginal Rates and In-Service Kilometre Marginal Rates.

(c) For all Temporary Planned Service Changes, a Temporary Planned Service Change Adjustment calculated under paragraph 9.6 will be applied based on In-Service Hour Marginal Rates and In-Service Kilometre Marginal Rates.

9.2 Other Service Payment Adjustments

(a) A State Designated Event Services Payment Adjustment calculated under paragraph 9.7 will be applied for State Designated Event Services; and

(b) subject to clause 16.4(b), a Force Majeure Adjustment calculated under paragraph 9.8 will be applied to the Service Payment on the occurrence of a Force Majeure Event that prevents delivery of all or some of the Network,

in each case, based on In-Service Hour Marginal Rates and In-Service Kilometre Marginal Rates.

9.3 Redundancy

If the implementation of a Permanent Service Change leads to a redundancy of Drivers and/or Contract Vehicles, the Purchaser will continue to pay for:

- (a) Driver wages and on-costs for three months from the implementation of the Permanent Service Change or the date of redundancy (whichever is earlier). Where the redundant Driver is redeployed or reemployed elsewhere by the Service Provider or a Service Provider Associate within three months from the implementation date of the Permanent Service Change or the date of redundancy (whichever is earlier) this payment will cease and any payments made by the Purchaser will be deducted from the Service Payment for the following Payment Month; and
- (b) the Contract Vehicle, on the basis of the Existing Depreciation and Interest Fleet Payment, Existing Notional Lease Fleet Payment or New Notional Lease Fleet Payment (as applicable) in respect of that Contract Vehicle, for six months from the implementation of the Permanent Service Change or until the date of disposal (whichever is earlier).

9.4 Permanent Service Change (In-Service Rate) Adjustment

- (a) The Permanent Service Change (In-Service Rate) Adjustment for Permanent Service Changes that are subject to the application of the In-Service Rate Adjustment for the Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

The inclusion of Permanent Service Changes in the above calculation will be at the Purchaser's discretion where the Permanent Service Change is approved or implemented in the course of the Payment Month. Payments in relation to Permanent Service Changes that are not included in the calculation will be paid in arrears as part of the True Up Adjustment in the following Payment Month.

- (b) The individual Permanent Service Change (In-Service Rate) Adjustment for Permanent Service Changes that are subject to the application of the In-Service Rate Adjustment for the Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

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- (B) clause 12.11 regulates any Change in Depot Capacity, including the acquisition or establishment of a new Depot, or the closing down or disposal of an existing Depot.
- (c) Subject to paragraph 12 of this Schedule D2, the In-Service Hour Marginal Rates are those set out in Table 18.

Table 18: In-Service Hour Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (d) Subject to paragraph 12, the In-Service Kilometre Marginal Rates are those set out in Table 19.

Table 19: In-Service Kilometre Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (e) The Vehicle Overhead Marginal Rates are set out in Table 20.

Table 20: Vehicle Overhead Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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- (f) Any adjustment to the Fleet Payment associated with any Permanent Service Change will be calculated under paragraph 5 of this Schedule D2 and will not form part of the Permanent Service Change (In-Service Rate) Adjustment.
- (g) For the purposes of the calculations in paragraphs 9.4(a) and 9.4(b):
- (i) a net addition of In-Service Hours, In-Service Kilometres or Contract Vehicles since the Variation Commencement Date will be treated as a positive amount and a net reduction in In-Service Hours, In-Service Kilometres or Contract Vehicles will be treated as a negative amount; and
 - (ii) a positive Permanent Service Change (In-Service Rate) Adjustment will represent an increase in the Operating Payment and a negative Permanent Service Change (In-Service Rate) Adjustment will represent a decrease in the Operating Payment.

9.5 Permanent Service Change (Total Rate) Adjustment

- (a) The Permanent Service Change (Total Rate) Adjustment for Permanent Service Changes that are subject to the application of the Total Rate Adjustment for the Payment Month will be determined in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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- (b) The individual Permanent Service Change (Total Rate) Adjustment for Permanent Service Changes that are subject to the application of the Total Rate Adjustment for the Payment Month will be determined in accordance with the following formula:



Sch.4 Part 4 s.7(1)(c) Bus/com affairs

in utilisation exceeds 20% of the total capacity at that Depot required for the Service Provider to comply with its obligations under clause 12.10,

then the Purchaser will determine any resulting adjustment payment based on the process in clause 23 and Schedule D3 (and not in accordance with the formula set out above in this paragraph 9.5(b)), provided that the only costs to be considered in such determination are the:

- (C) operations, administration and management wages;
- (D) administration and offices costs; and
- (E) depot maintenance and operation costs,

that result from the material change in required utilisation of spare capacity described at paragraph 9.5(b)(ii)(B).

(iii) For clarity:

- (A) the adjustment provided for in paragraph 9.5(b)(ii) relates to Other Overhead Costs incurred as a direct result of a Permanent Service Change; and
- (B) clause 12.11 regulates any Change in Depot Capacity, including the acquisition or establishment of a new Depot, or the closing down or disposal of an existing Depot.

(c) The Total Hour Marginal Rates are set out in Table 21.

Table 21: Total Hour Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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(d) The Total Kilometre Marginal Rates are set out in Table 22.

Table 22: Total Kilometre Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs
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Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (e) The Vehicle Overhead Marginal Rates are set out in Table 23.

Table 23: Vehicle Overhead Marginal Rates

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (f) Any adjustment to the Fleet Payment associated with any Permanent Service Change will be calculated under paragraph 5 of this Schedule D2 and will not form part of the Permanent Service Change (Total Rate) Adjustment.
- (g) For the purposes of the calculations in paragraphs 9.5(a) and 9.5(b) of this Schedule D2:
- (i) a net addition of Total Hours, Total Kilometres or Contract Vehicles since the Variation Commencement Date will be treated as a positive amount and a net reduction in Total Hours, Total Kilometres or Contract Vehicles will be treated as a negative amount; and
 - (ii) a positive Permanent Service Change (Total Rate) Adjustment will represent an increase in the Operating Payment and a negative Permanent Service Change (Total Rate) Adjustment will represent a decrease in the Operating Payment.

9.6 Temporary Planned Service Change Adjustment

- (a) The Temporary Planned Service Change Adjustment for Temporary Planned Service Changes implemented for the Payment Month will be determined in accordance with the following formula:

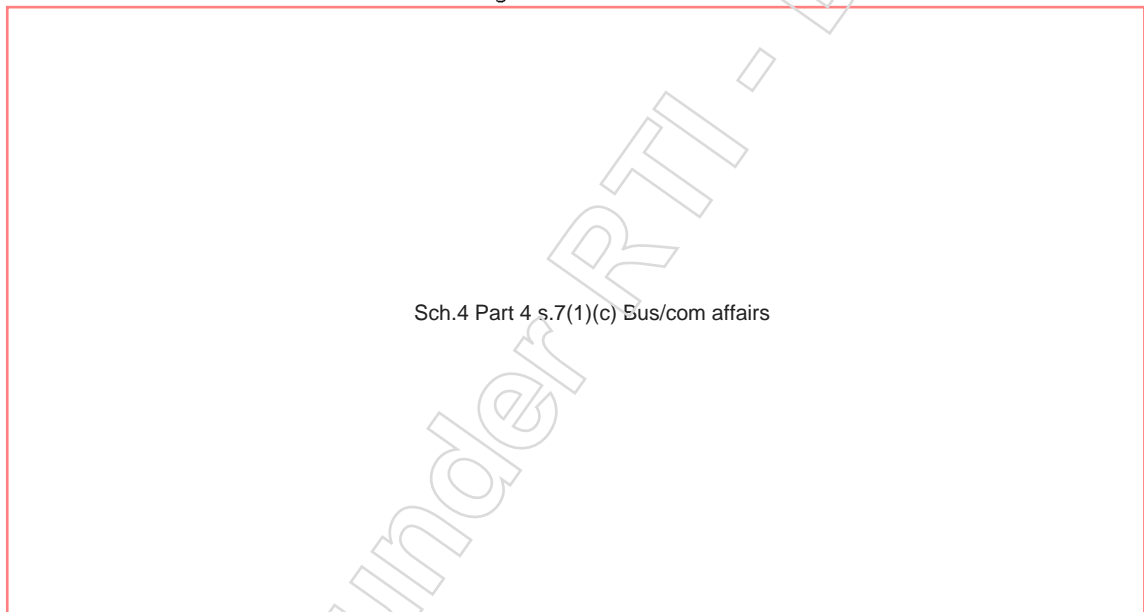
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- (i) a net addition of In-Service Hours or In-Service Kilometres since the Variation Commencement Date will be treated as a positive amount and a net reduction in In-Service Hours or In-Service Kilometres will be treated as a negative amount; and
- (ii) a positive Temporary Planned Service Change Adjustment will represent an increase in the Operating Payment and a negative Temporary Planned Service Change Adjustment will represent a decrease in the Operating Payment.

The inclusion of Temporary Planned Service Changes in the above calculation will be at the Purchaser's discretion where the Temporary Planned Service Change is approved or implemented in the course of the Payment Month. Payments in relation to Temporary Planned Service Changes that are not included in the calculation will be paid in arrears as part of the True Up Adjustment in the following Payment Month.

9.7 State Designated Event Services Payment Adjustment

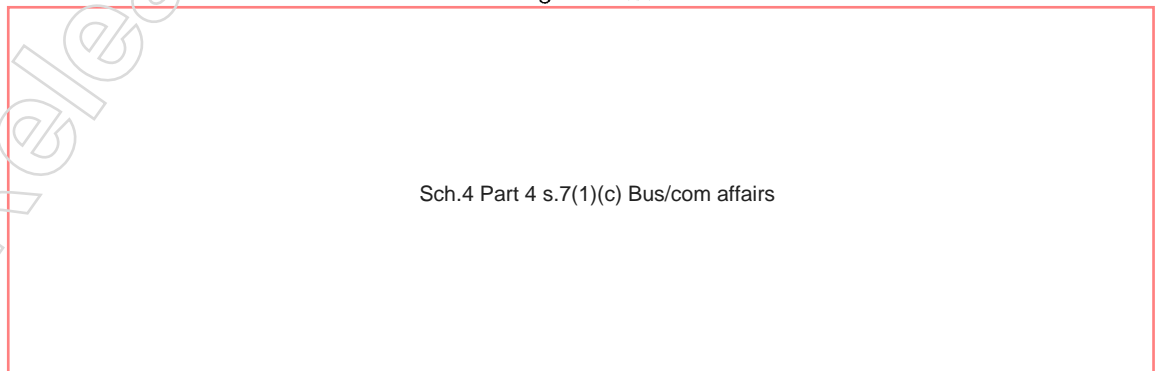
The State Designated Event Services Payment Adjustment for a Payment Month in respect of State Designated Event Service(s) approved on or before the end of the Payment Month will be determined in accordance with the following formula:



The inclusion of State Designated Event Services and SDE Auxiliary Services in the above calculation will be at the Purchaser's discretion where the State Designated Event Service or SDE Auxiliary Service is approved or implemented in the course of the Payment Month. Payments in relation to State Designated Event Services or SDE Auxiliary Services that are not included in the calculation will be paid in arrears as part of the Adjustment Payment in the following Payment Month.

9.8 Force Majeure Adjustment

- (a) The Force Majeure Adjustment under clause 16.4(b)(i) for the Payment Month will be calculated in accordance with the following formula:



FMiSK	is the sum of In-Service Kilometres attributed to any Force Majeure Event which occurred during the Payment Month;
DFMiSK	is the sum of Diesel In-Service Kilometres attributed to any Force Majeure Event which occurred during the Payment Month;
EFMiSK	is the sum of Electric In-Service Kilometres attributed to any Force Majeure Event which occurred during the Payment Month;
iSKMR	is the In-Service Kilometre Marginal Rate, determined in accordance with paragraph 9.4(d);
GFCRs	is the Gross Fuel Cost Rate (In-Service Rate), determined in accordance with paragraph 3.7;
FTCRs	is the Fuel Tax Credit Rate (In-Service Rate), determined in accordance with paragraph 3.8;
ECRs	is the Energy Cost Rate (In-Service Rate), determined in accordance with paragraph 3.12
cc	is xxx, which is the proportion of the In-Service Kilometre Marginal Rate (expressed as a decimal) that will attract CPI indexation and is a constant value for the duration of the Contract;
dd	is xxx, which is the proportion of the In-Service Kilometre Marginal Rate (expressed as a decimal) that will attract wage indexation and is a constant value for the duration of the Contract,
CIM	is the CPI Index Multiplier for the Payment Month, determined in accordance with paragraph 11.2;
WIM	is the Wage Index Multiplier, determined in accordance with paragraph 11.3;
FIM	is the Fuel Index Multiplier, determined in accordance with paragraph 11.4;
UiSKf	is the sum of Urban In-Service Kilometres attributed to Trips prevented by the Force Majeure Event during the Payment Month on Urban Routes;
SiSKf	is the sum of School In-Service Kilometres attributed to Trips prevented by the Force Majeure Event during the Payment Month on School Routes;
UMP%	is the Urban Margin Percentage (expressed as a decimal), determined in accordance with paragraph 4.2; and
SMP%	is the School Margin Percentage (expressed as a decimal), determined in accordance with paragraph 4.2.

The inclusion of Force Majeure Events in the above calculation will be at the Purchaser's discretion where the Service Provider has been granted relief under clause 16.4 in respect of a Force Majeure Event in the course of the Payment Month. Payments in relation to Force Majeure Events that are not included in the calculation will be paid in arrears as part of the True Up Adjustment in the following Payment Month.

(b) If all or any of the costs comprised in the Force Majeure Adjustment calculated under paragraph 9.8(a):

- (i) cannot reasonably be avoided by the Service Provider; and
- (ii) the Service Provider demonstrates to the Purchaser's reasonable satisfaction that the Service Provider used its best endeavours to avoid those costs,

the Purchaser may, in its reasonable discretion, adjust the Force Majeure Adjustment to take into account those costs that could not reasonably have been avoided by the Service Provider.

10. Not used

11. Cost Index Multipliers

11.1 General

- (a) Indexation is applied to:
 - (i) the Service Payments; and
 - (ii) each other amount to be indexed under this Contract (except for the Fuel Payment),
 - (iii) in each case as described in paragraph 11.2 and 11.3 to take effect from the first day in each Contract Year commencing on or after 1 July 2019; and
- (b) Indexation is applied to the Fuel Cost Payment from the first day of the first Payment Month as described in paragraph 11.4.

11.2 CPI Index Multiplier

- (a) The CPI Index Multiplier applicable in the third Contract Year ending on 30 June 2021 will be deemed to be 1.
- (b) The CPI Index Multiplier applicable in each Contract Year ending on or after 30 June 2022 will be determined in accordance with the following formula and rounded to four decimal places:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

11.3 Wage Index Multiplier

- (a) The Wage Index Multiplier (**WIM**) applicable in the third Contract Year ending on 30 June 2021 will be deemed to be 1.
- (b) The Wage Index Multiplier (**WIM**) applicable in each Contract Year ending on or after 30 June 2022 will be determined in accordance with the following formula and rounded to four decimal places:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

11.4 Fuel Index Multiplier

- (a) The Fuel Index Multiplier applicable in each Payment Month ending on or after **Variation Commencement Date** will be determined in accordance with the following formula and rounded to four decimal places:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

11.5 Fuel Tax Credit Adjustment

- (a) The Fuel Tax Credit Rate (In-Service Rate and Total Rate) (FTCRs and FTcRt) will be adjusted as necessary from time to time based on movements in FTC rates. Such adjustments may:
- (i) be positive or negative;
 - (ii) involve retrospective adjustment (and to the extent that the adjustment means the total of pre-adjustment Service Payments made exceeds the Service Provider's post-adjustment entitlement for the relevant Payment Months, the Purchaser may, at the Purchaser's discretion, require the Service Provider to pay the difference to the Purchaser either by adjustment of future Contract Payments or as a lump sum (or a combination of the two) (and any such adjustment amounts will be Moneys Owning)); and
- (b) will be reflective of the nature, magnitude, framework and structure of the FTC regime administered by the ATO.

12. Service Rate Reset

- (a) For the purposes of this paragraph 12, the In-Service Cost Rates refer to the:
- (i) Gross Fuel Cost Rate (In-Service Rate);
 - (ii) Fuel Tax Credit Rate (In-Service Rate);
 - (iii) Energy Cost Rate (In-Service Rate);
 - (iv) In-Service Hour Marginal Rates; and
 - (v) In-Service Kilometre Marginal Rates,
- each as previously reset from time to time (if at all) in accordance with paragraph 12(d) or paragraph 12(e) (as applicable).
- (b) For the purposes of this paragraph 12, the Total Cost Rates refer to:
- (i) Gross Fuel Cost Rate (Total Rate);
 - (ii) Fuel Tax Credit Rate (Total Rate);
 - (iii) Energy Cost Rate (Total Rate);
 - (iv) Total Hour Marginal Rates; and
 - (v) Total Kilometre Marginal Rates.

- (c) The In-Service Cost Rates will be reset (**Service Rate Reset**) in accordance with paragraph 12(d) or paragraph 12(e) at the following times:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (d) If a Service Rate Reset is required under paragraph 12(c), the Gross Fuel Cost Rate (In-Service Rate), Fuel Tax Credit Rate (In-Service Rate), Energy Cost Rate (In-Service Rate), and In-Service Kilometre Marginal Rates for Service Changes approved after the relevant time for that Service Rate Reset (in accordance with paragraph 12(c)) will be adjusted in accordance with the following formula:

$$iSCRr = (TCR \times TKr) / TotiSKr$$

where:

iSCRr are the reset In-Service Cost Rates for the Payment Month;

TCR are the relevant Total Cost Rates for the Payment Month;

TKr for the Diesel In-Service Kilometre Rate, Gross Fuel Cost Rate (In-Service Rate) and Fuel Tax Credit Rate (In-Service Rate) reset, is the Diesel Total Kilometres (Reset) and for Electric In-Service Kilometre Rate and Energy Cost Rate (In-Service Rate) reset, is the Electric Total Kilometres (Reset) for the Payment Month; and

TotiSKr for the Diesel In-Service Kilometre Rate, Gross Fuel Cost Rate (In-Service Rate) and Fuel Tax Credit Rate (In-Service Rate) reset, is the Diesel Total In-Service Kilometres (Reset) and for the Electric In-Service Kilometre Rate and Energy Cost Rate (In-Service Rate) reset, is the Electric Total In-Service Kilometres (Reset) for the Payment Month.

- (e) If a Service Rate Reset is required under paragraph 12(c), the In-Service Hour Marginal Rate for Service Changes approved after the relevant time for that Service Rate Reset (in accordance with paragraph 12(c)) will be adjusted in accordance with the following formula:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

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Schedule 6 – Binding Offer Pricing Template

[USB stick]

Released under RTI - DTMR

Signed as a deed on the dates stated below

SIGNED, SEALED & DELIVERED by the)
State of Queensland acting through the)
Department of Transport and Main Roads by)
an authorised officer in the presence of:)

Not Relevant

(signature of witness)

Elizabeth Hussey

(print full name of witness)

28.5.21

(date)

GRAHAM A. DAVIS

(name of authorised officer)

Not Relevant

SIGNED, SEALED & DELIVERED by)
Transit Australia Pty Limited ACN 065 794)
943 trading as Sunshine Coast Sunbus in)
accordance with s [redacted] Corporations)
Act 2001 (Cth)

Not Relevant

(signature of director)

Sch.4 Part 4 s.6 PI

(full name of director)

18 May 2021

Not Relevant

(signature of director)

Sch.4 Part 4 s.6 PI

(full name of director)

Company Secretary

Released under RTI - DTMR

Deed of Variation – Service Contract

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads (**Purchaser**)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (**Service Provider**)

Released under RFI/DTMR

Date

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 (“**Purchaser**”)

Transit Australia Pty Ltd trading as Sunbus Sunshine Coast ACN 065 794 943 (“**Service Provider**”)

Background

- A. The parties have entered into the Contract.
- B. On 24 May 2021, the Service Provider gave the Purchaser notice of a change in the Service Provider Group structure by way of an acquisition of a minority interest of Kinetic TCo Pty Ltd (**Proposed Transaction**).
- C. On 30 June 2021, the Purchaser provided its consent to the Proposed Transaction, subject to the parties entering into a deed of variation to replace Schedule A3 – Service Provider Group Structure of the Contract.
- D. The parties have agreed to enter into this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

Contract means the Service Contract dated 23 July 2018 and as amended from time to time, between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser.

Effective Date means 30 September 2021.

Service Contract has the meaning given in the *Transport Operations (Passenger Transport) Act 1994* (Qld).

1.2 Interpretation

In this deed, unless inconsistent with the context, a term defined in the Contract shall have the same meaning in this deed.

2. Variations

The Contract is varied on and from the Effective Date as follows:

- (a) in Schedule A3 (Service Provider Group Structure), replace the diagram with the diagram set out in Annexure A to this deed.

3. Entire Agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Released under RTI - DTMR

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the **State of Queensland** (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

Not Relevant

Signature of witness

Katrina Pekaj
Full name of witness

Not Relevant

Signature of officer

Date 11/9/22

Alena Jacobson
Full name of officer

Executed by Transit Australia Pty Ltd ACN 065 794 943 in accordance with s127 of the *Corporations Act 2001*(Cth) in the presence of:

Not Relevant

Signature of Director

Sch.4 Part 4 s6 PI

Full name of Director

Date / /

Not Relevant

Signature of witness

Sch.4 Part 4 s.6 PI

Full name of witness

Not Relevant

Signature of Director/Company Secretary

Sch.4 Part 4 s6 PI

Full name of Director/Company Secretary

Date / /

Not Relevant

Signature of witness

Sch.4 Part 4 s.6 PI

Full name of witness

Released under RTI - DTMR

**DEED OF VARIATION
OF SERVICE CONTRACT**

Between

**STATE OF QUEENSLAND ACTING THROUGH THE DEPARTMENT
OF TRANSPORT AND MAIN ROADS
(‘Purchaser’)**

and

**TRANSIT AUSTRALIA PTY LIMITED
T/AS SUNSHINE COAST SUNBUS (‘Service Provider’)**

Released under RTI - DTMR

DEED OF VARIATION

BACKGROUND

- A. The Purchaser and the Service Provider are parties to the Service Contract and have agreed to extend the term of the Service Contract in accordance with this Deed.

AGREED TERMS

1. INTERPRETATION

- 1.1 In this Deed, unless a contrary intention appears, the following additional definitions apply:

Business Day means a day other than a Saturday, Sunday or a public holiday in Brisbane.

Date of this Deed means the date this Deed is signed by the parties and, if signed on different dates, the date the last party signs this Deed.

Deed means this deed and any schedules and attachments to it.

Long Stop Date has the meaning given in the Surfside Variation Deed.

Program means the introduction of electric buses to Surfside Buslines' fleet of contract vehicles under the Surfside Contract in accordance with the Surfside Variation Deed.

Purchaser means the State of Queensland acting through the Department of Transport and Main Roads.

Service Contract means the Service Contract between the Purchaser and the Service Provider dated 23 July 2018.

Service Provider means Transit Australia Pty Limited ACN 065 794 943 trading as Sunshine Coast Sunbus.

Start Date means the Variation Date as defined in the Surfside Variation Deed.

Surfside Buslines means Surfside Buslines Pty Ltd ABN 25 010 957 552.

Surfside Contract means the service contract between the Purchaser and Surfside Buslines dated 23 July 2018.

Surfside Variation Deed means a Deed of Variation of the Surfside Contract between the Purchaser and Surfside Buslines dated on or around the Date of this Deed.

- 1.2 In this Deed, unless a contrary intention appears:

- (a) a reference to a person includes corporations and other entities recognised by law;
- (b) a reference to a statute, regulation, ordinance or local law extends to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them;

- (c) headings are for reference only and do not form part of, or affect the meaning of, the terms of this Deed;
- (d) the singular includes the plural and vice versa;
- (e) words importing one gender includes all other genders;
- (f) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (g) a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Deed;
- (h) where the day on or by which any act, matter or thing is to be done is not a Business Day, the act, matter or thing must be done on the next Business Day; and
- (i) in the case of any inconsistency between the schedules and a clause in this Deed, the provisions of the clause prevail to the extent of any inconsistency.

2. CONDITIONS PRECEDENT

2.1 This Deed is subject to and conditional upon:

- (a) the satisfaction of all conditions precedent under the Surfside Variation Deed; and
- (b) commencement of the variations under clause 8 of the Surfside Variation Deed.

2.2 This Deed will automatically terminate if the Surfside Variation Deed is terminated.

3. VARIATION OF SERVICE CONTRACT

3.1 The parties agree that the Service Contract is varied, with effect from the Start Date as follows:

- (a) Part A – Contract Details is amended by deleting items 3, 4 and 5 and replacing them with the following:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

(b) Clause 3.2 (a) is amended by deleting the word 'two' and replacing it with 'three'.

3.2 In all other respects the Service Contract remains unchanged.

3.3 The parties agree that the variations to the Service Contract set out in clause 3.1 will only apply while this Deed remains in force. If this Deed is terminated, then the variations will no longer apply, and the original terms of the Service Contract will be reinstated.

4. CONTINGENT VARIATIONS OF SERVICE CONTRACT

4.1 The parties acknowledge and agree that:

- (a) The Service Provider is a wholly owned subsidiary of the Surfside Buslines;
- (b) the Purchaser has agreed to grant an extension of the term of the Service Contract in accordance with this Deed in conjunction with the implementation of the Program under the Surfside Variation Deed;
- (c) the extension of the term of the Service Contract implemented under clause 3 of this Deed is subject to Surfside Buslines fully implementing the Program in accordance with the Surfside Variation Deed; and
- (d) if Surfside Buslines has failed to fully implement the Program and deliver the required number of electric vehicles under the Surfside variation Deed by the Long Stop Date, then the term of the Service Contract will be reduced proportionately.

4.2 If Surfside Buslines has failed to fully implement the Program and deliver the required number of electric vehicles under the Surfside Variation Deed by the Long Stop Date, then the parties agree that:

- (a) the term of the Service Contract will be reduced proportionately; and
- (b) on the Long Stop Date, the Service Contract will be amended in accordance with the following table depending on the number of electric vehicles that have been delivered by Surfside Buslines under the Surfside Variation Deed:

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

Sch.4 Part 4 s.7(1)(c) Bus/com affairs

- (c) The Purchaser will notify the Service Provider, in writing, within 5 Business Days of the Long Stop Date:
 - (i) whether clause 4.2(b) applies and the Service Contract has been amended from the Long Stop Date; and
 - (ii) which variation set out in clause 4.2(b) applies.

5. NO PUBLIC ANNOUNCEMENTS

- 5.1 The Service Provider must not make any public announcements, media releases or otherwise communicate information publicly relating to this Deed except with the Purchaser's prior written consent.

6. TERMINATION

- 6.1 A party may terminate this Deed by written notice to the other party if the Service Contract is terminated or otherwise comes to an end.

7. NOTICES

- 7.1 Notices under this Deed may be delivered by hand, pre-paid registered mail, or email to the addresses specified below or any substitute address as may have been notified in writing by the relevant addressee from time to time:

- (a) Address for notices of the Purchaser:
 - (i) Address: Level 1, 61 Mary Street, Brisbane QLD 4001
 - (ii) Email: sunbussc@translink.com.au
 - (b) Address for notices of the Service Provider:
 - (i) Address: 29 Francis Briggs Road, Melbourne Victoria 3045
 - (ii) Email: SunbusSC@wearekinetic.com
- 7.2 Notice are deemed to be given –
- (a) if posted, two Business Days after deposit in the mail;
 - (b) if delivered by hand before 5:00pm on a Business Day, on the day of delivery or otherwise on the next Business Day; or
 - (c) if sent by email, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered, except that a delivery by hand, fax or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.
- 7.3 Notices may be given by or to a party's solicitor by any of the means specified in clause 7.1 to the solicitor's business address or email address.

8. GENERAL

- 8.1 Governing Law - this Deed is governed by the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the Queensland courts.
- 8.2 Waiver - no rights under this Deed will be deemed to be waived except by written notice signed by each party. A waiver by either party will not prejudice that party's rights in respect of any subsequent breach of this Deed by the other party. Any failure by either party to enforce any clause of this Deed or any forbearance, delay or indulgence granted by either party to the other will not be construed as a waiver of rights under this Deed.
- 8.3 Severance - if anything in this Deed is unenforceable, illegal or void, then it is severed and the rest of this Deed remains in force.
- 8.4 Variation - this Deed may not be varied at any time except by a written agreement executed by both parties.
- 8.5 Assignment - neither of the parties to this Deed may assign their rights and obligations without the prior written consent of the other party.
- 8.6 Execution - the parties agree that if this Deed is not executed by both parties on the same date, this Deed will commence on and from the later of the dates of execution. The parties will execute copies of this Deed with each party retaining an original copy.
- 8.7 Counterparts – this Deed may consist of a number of counterparts and if so, the counterparts taken together constitute one document.

- 8.8 Entire Agreement – this Deed constitutes the entire agreement between the parties. Any prior arrangements, agreements, warranties, representations or undertakings are superseded.
- 8.9 Costs – each party must pay its own cost of and incidental to the preparation, negotiation and signing of this Deed.
- 8.10 Survival of clauses – any part of this Deed capable of operating after termination or expiry of this Deed will survive termination or expiry of this Deed.

Released under RTI - DTMR

Signed as a deed on the dates stated below

SIGNED, SEALED & DELIVERED by the)
State of Queensland acting through the)
Department of Transport and Main Roads by)
an authorised officer in the presence of:)

Not Relevant)
(signature of witness))
Jordan Smith)
(print full name of witness))

11.8.2021)
(date)

G.A. Davis)
(name of authorised officer)

Not Relevant)
(signature of authorised officer)

SIGNED, SEALED & DELIVERED by)
Transit Australia Pty Limited ACN 065 794)
943 trading as Sunshine Coast Sunbus in)
accordance with section 127 of the *Corporations*)
Act 2001 (Cth))

Sch.4 Part 4 s.6 PI)
(full name of director)

Sch.4 Part 4 s.6 PI)
(full name of director) Secretary

19 July 2021)

Not Relevant)
(signature) / Director

Not Relevant)
(signature) / Secretary

Released under RTI

Our ref DOC20/48395

Department of
Transport and Main Roads

30 July 2020

Sch.4 Part 4 s.6 PI

General Manager SEQ
Sunbus Sunshine Coast Pty Ltd

Via CMP

Dear Sch.4 Part 4 s.6 PI

COVID-19 Emergency Deed of Variation - Notice of extension

I refer to the above deed of variation and advise that pursuant to the deed, the Department of Transport and Main Roads elects to extend the COVID-19 Arrangements to 30 September 2020.

Please continue to proactively monitor the potential impacts of COVID-19 on your network and advise your contract manager should you become aware of any such matters.

Thank you for continuing to deliver services on behalf of TransLink, and please contact your contract manager if you wish to discuss this further.

Yours sincerely

Not Relevant

Jennelle Bell
Director (PT Contracts)



Queensland
Government

Department of
Transport and Main Roads

Our ref
Your ref N/A
Enquiries Jennelle Bell

29 September 2020

Sch.4 Part 4 s.6 PI

Transit Australia Pty. Limited trading as Sunshine Coast Sunbus
29 Francis Briggs Road
Melbourne Airport VIC 3045
SunbusSC@wearekinetic.com

Dear Sch.4 Part 4 s6 PI

On 29 January 2020, the COVID-19 Emergency was declared under the *Public Health Act 2005 (Qld)*. To address the impacts of the ongoing COVID-19 Emergency on SEQ 4G Bus Contracts, the Department implemented new temporary working arrangements with each Service Provider by entering into a formal Deed of Variation to the SEQ 4G Bus Contract, on or about 21 May 2020.

Under the Deed of Variation, the temporary arrangements were to expire at the end of July 2020 but could be extended by the Department for up to another 2 months if considered necessary. The Department has extended those temporary arrangements to 30 September 2020.

The Department now intends to enter into a Deed of Amendment with each Service Provider to extend the temporary working arrangements until 31 January 2021 and allow the Department to further extend the temporary arrangements if the COVID-19 Emergency continues to have impact on the Service Providers' ability to perform their obligations under SEQ 4G Bus Contracts beyond 31 January 2021, in the reasonable opinion of the Department.

Given the temporary arrangements have only been extended to the end of this month and there is currently no provision for further extension, the Deed of Amendment must be executed before their expiry. In the circumstances, the Department asks for your full cooperation in executing Deed of Amendment as quickly as possible.

If you have any queries or concerns at all about this initiative please raise them directly as soon as possible with:

Jennelle Bell (Director PT Contracts)
T: 07 3338 4406
Jennelle.bell@translink.com.au

Any questions about the Deed of Amendment itself may also be raised directly with the Department's legal adviser, MinterEllison:

Sch.4 Part 4 s.6 PI

minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

Otherwise, please arrange for the attached copy of the deed to be executed by authorised representatives of your organisation and return the original signed copy to MinterEllison at your earliest convenience. Please also arrange for a scanned pdf of the signed document to be emailed to MinterEllison.

Passenger Transport Services
PT Contracts
61 Mary Street

GPO Box 50 Brisbane Qld 4000

ME_175451445_3

On receipt, the Department will arrange for a counterpart executed on behalf of the State to be provided to you for your records.

Yours sincerely

Not Relevant

Jennelle Bell

Director – SEQ Contracts, PT Contracts, TransLink Division

Department of Transport and Main Roads

Released under RTI - DTMR

Deed of Amendment

in relation to the Deed of Variation – Service Contract – COVID-19
Emergency

State of Queensland acting through the Chief Executive of
the Department of Transport and Main Roads (**Purchaser**)

**Transit Australia Pty. Limited trading as Sunshine Coast
Sunbus (Service Provider)**

Released under RTI-DTMR

Date 26 NOVEMBER 2020

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 (“Purchaser”)

Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ABN 94 065 794 943 of 29 Francis Briggs Road, Melbourne Airport, VIC 0459EAA18166 (“Service Provider”)

Background

- A. The parties have entered into the Contract.
- B. On 29 January 2020, the COVID-19 Emergency was declared and remains in effect at the date of this deed.
- C. The parties have entered into the First CV-19 Variation Deed to amend the Contract temporarily in respect of matters associated with the COVID-19 Emergency and its impact on matters provided for under the Contract.
- D. The COVID-19 Emergency, or its effects, have continued for a longer period than originally contemplated under the First CV-19 Variation Deed.
- E. The parties have agreed to enter into this deed to further amend the terms of the Contract as described in this Deed of Amendment.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

Contract means the Service Contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser as amended by the First CV-19 Variation Deed.

First CV-19 Variation Deed means the deed titled '*Deed of Variation – Service Contract – COVID-19 Emergency*' dated 6 May 2020 between the State and the Service Provider.

1.2 Interpretation

Unless inconsistent with the context, a term defined in the Contract or the First CV-19 Variation Deed shall have the same meaning in this deed.

1.3 General provisions

Clauses 1.2, 1.7, 1.11, 39, 40, 42 and 43.4 to 43.14 of the Contract apply to this deed as though set out here in full.

2. Acknowledgement

- 2.1 This clause 2 applies if this deed is executed on or after 30 September 2020.
- 2.2 The parties acknowledge and confirm their intention that the amendments to the First CV-19 Variation Deed described in clause 3 of this deed shall be deemed to have taken effect retrospectively on 30 September 2020.

3. Amendments to the Contract

The Purchaser and the Service Provider agree that the temporary arrangements described in the First CV-19 Variation Deed shall be extended such that they shall not expire on 30 September 2020 but instead shall continue as if the definition of 'COVID-19 Arrangements Expiry Date' in the First CV-19 Variation Deed was as follows:

COVID-19 Arrangements Expiry Date means 11.59pm on:

- (a) 31 January 2021;
- (b) any later date the Purchaser notifies the Service Provider in writing is the COVID-19 Arrangements Expiry Date, such notification to be given at least 5 Business Days before the COVID-19 Arrangements Expiry Date, and which date may be extended on one or more occasions at the discretion of the Purchaser; or
- (c) any date earlier than the COVID-19 Arrangements Expiry Date that the Purchaser gives the Service Provider at least 10 Business Days' notice, which must not be earlier than the date on which COVID-19's impact on matters provided for under the Contract have ceased, in the reasonable opinion of the Purchaser.

4. Entire Agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

5. Counterparts

- (a) This deed may be executed in any number of counterparts or copies and by the parties in separate counterparts. Each counterpart executed and delivered by a party constitutes the agreement of that party, but subject to the condition precedent that no party is bound by any such counterpart until all parties have executed and delivered a counterpart by exchanging counterparts.
- (b) Counterparts may be exchanged by each party or party's solicitors sending by email a pdf (portable document format) copy of the executed counterpart to the other party or party's solicitors.
- (c) Where this deed is executed and delivered in counterparts, its date is taken to be the date on which the last of the parties to do so executes and delivers a

counterpart and upon that event all such counterparts taken together are deemed to constitute one instrument.

Released under RTI - DTMR

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the **State of Queensland** (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

Not Relevant

Signature of witness

Bryson Walker

Full name of witness

Not Relevant

Signature of officer

Date 21/11/2020

Jennelle Maree Bell

Full name of officer

Executed as a deed by Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ACN 065 794 943 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Signature of director

Signature of director

Print Name

Print Name

Signature of company secretary/director

Signature of company secretary/director

Print name

Print name

Released under RTI-DIMR

Deed of Amendment

in relation to the Deed of Variation – Service Contract – COVID-19
Emergency

State of Queensland acting through the Chief Executive of
the Department of Transport and Main Roads (**Purchaser**)

**Transit Australia Pty. Limited trading as Sunshine Coast
Sunbus (Service Provider)**

Released under RTI-DTMR

Date

Parties

State of Queensland acting through the Chief Executive of the Department of Transport and Main Roads of 61 Mary Street, Queensland 4000 ("**Purchaser**")

Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ABN 94 065 794 943 of 29 Francis Briggs Road, Melbourne Airport, VIC 0459EAA18166 ("**Service Provider**")

Background

- A. The parties have entered into the Contract.
- B. On 29 January 2020, the COVID-19 Emergency was declared and remains in effect at the date of this deed.
- C. The parties have entered into the First CV-19 Variation Deed to amend the Contract temporarily in respect of matters associated with the COVID-19 Emergency and its impact on matters provided for under the Contract.
- D. The COVID-19 Emergency, or its effects, have continued for a longer period than originally contemplated under the First CV-19 Variation Deed.
- E. The parties have agreed to enter into this deed to further amend the terms of the Contract as described in this Deed of Amendment.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

Contract means the Service Contract dated 23 July 2018 between the parties under which the Service Provider has agreed to perform certain passenger services for the Purchaser as amended by the First CV-19 Variation Deed.

First CV-19 Variation Deed means the deed titled '*Deed of Variation – Service Contract – COVID-19 Emergency*' dated 6 May 2020 between the State and the Service Provider.

1.2 Interpretation

Unless inconsistent with the context, a term defined in the Contract or the First CV-19 Variation Deed shall have the same meaning in this deed.

1.3 General provisions

Clauses 1.2, 1.7, 1.11, 39, 40, 42 and 43.4 to 43.14 of the Contract apply to this deed as though set out here in full.

2. Acknowledgement

- 2.1 This clause 2 applies if this deed is executed on or after 30 September 2020.
- 2.2 The parties acknowledge and confirm their intention that the amendments to the First CV-19 Variation Deed described in clause 3 of this deed shall be deemed to have taken effect retrospectively on 30 September 2020.

3. Amendments to the Contract

The Purchaser and the Service Provider agree that the temporary arrangements described in the First CV-19 Variation Deed shall be extended such that they shall not expire on 30 September 2020 but instead shall continue as if the definition of 'COVID-19 Arrangements Expiry Date' in the First CV-19 Variation Deed was as follows:

COVID-19 Arrangements Expiry Date means 11.59pm on:

- (a) 31 January 2021;
- (b) any later date the Purchaser notifies the Service Provider in writing is the COVID-19 Arrangements Expiry Date, such notification to be given at least 5 Business Days before the COVID-19 Arrangements Expiry Date, and which date may be extended on one or more occasions at the discretion of the Purchaser; or
- (c) any date earlier than the COVID-19 Arrangements Expiry Date that the Purchaser gives the Service Provider at least 10 Business Days' notice, which must not be earlier than the date on which COVID-19's impact on matters provided for under the Contract have ceased, in the reasonable opinion of the Purchaser.

4. Entire Agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

5. Counterparts

- (a) This deed may be executed in any number of counterparts or copies and by the parties in separate counterparts. Each counterpart executed and delivered by a party constitutes the agreement of that party, but subject to the condition precedent that no party is bound by any such counterpart until all parties have executed and delivered a counterpart by exchanging counterparts.
- (b) Counterparts may be exchanged by each party or party's solicitors sending by email a pdf (portable document format) copy of the executed counterpart to the other party or party's solicitors.
- (c) Where this deed is executed and delivered in counterparts, its date is taken to be the date on which the last of the parties to do so executes and delivers a

counterpart and upon that event all such counterparts taken together are deemed to constitute one instrument.

Released under RTI - DTMR

Executed as a deed in Queensland

Signed, sealed and delivered as a deed for and on behalf of the **State of Queensland** (represented by the Department of Transport and Main Roads) by its duly authorised officer in the presence of:

Signature of witness

Full name of witness

Signature of officer

Date / /

Full name of officer

Executed as a deed by Transit Australia Pty. Limited trading as Sunshine Coast Sunbus ACN 065 794 943 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

NR

Signature of director

NR

Signature of company secretary/director

Sch.4 Part 4 s.6 PI

Print Name

Sch.4 Part 4 s.6 PI

Print name



Department of
Transport and Main Roads

22 January 2021

Dear Delivery Partners

Via CMP

**Deed of Amendment – Deed of Variation – Service Contract - COVID-19 Emergency -
Notice of extension**

I refer to the above deed of amendment and advise that pursuant to the deed, the Department of Transport and Main Roads elects to extend the COVID-19 Arrangements to 31 March 2021.

Please continue to proactively monitor the potential impacts of COVID-19 on your network and advise your contract manager should you become aware of any such matters.

Thank you for continuing to deliver services on behalf of TransLink, and please contact your contract manager if you wish to discuss this further.

Yours sincerely

Not Relevant

Jennelle Bell
Director (PT Contracts - SEQ)



Department of
Transport and Main Roads

15 March 2021

Dear Delivery Partners

Via CMP

**Deed of Amendment – Deed of Variation – Service Contract - COVID-19 Emergency -
Notice of extension**

I refer to the above deed of amendment and advise that pursuant to the deed, the Department of Transport and Main Roads elects to extend the COVID-19 Arrangements to 30 June 2021.

Please continue to proactively monitor the potential impacts of COVID-19 on your network and advise your contract manager should you become aware of any such matters.

Thank you for continuing to deliver services on behalf of TransLink, and please contact your contract manager if you wish to discuss this further.

Yours sincerely

Not Relevant

Jennelle Bell
Director (PT Contracts - SEQ)



Department of
Transport and Main Roads

10 June 2021

Dear Delivery Partners

Via CMP

**Deed of Amendment – Deed of Variation – Service Contract - COVID-19 Emergency -
Notice of extension**

I refer to the above deed of amendment and advise that pursuant to the deed, the Department of Transport and Main Roads elects to extend the deed of amendment to 31 December 2021.

Please continue to proactively monitor the potential impacts of COVID-19 on your network and advise your contract manager should you become aware of any such matters.

Thank you for continuing to deliver services on behalf of TransLink, and please contact your contract manager if you wish to discuss this further.

Yours sincerely

Not Relevant

Jennelle Bell
Director (PT Contracts - SEQ)

16 December 2021

Dear Delivery Partners

via CMP

**Deed of Amendment – Deed of Variation – Service Contract – COVID-19 Emergency –
Notice of extension**

I refer to the above deed of amendment and advise that pursuant to the deed, the Department of Transport and Main Roads elects to extend the deed of amendment to **26 March 2022**. This date aligns with the Public Health Direction made by Queensland's Governor In Council on 2 December 2021.

Please continue to proactively monitor the potential impacts of COVID-19 on your network and advise your contract manager should you become aware of any such matters.

Thank you for continuing to deliver services on behalf of TransLink, and please contact your contract manager if you wish to discuss this further.

Yours sincerely

Not Relevant

Anjuna Singh
Executive Director (PT Contracts)



Department of
Transport and Main Roads

25 March 2022

Dear Delivery Partners

via CMP

**Deed of Amendment – Deed of Variation – Service Contract – COVID-19 Emergency –
Notice of extension**

I refer to the above deed of amendment and advise that pursuant to the deed, the Department of Transport and Main Roads elects to extend the deed of amendment to **24 June 2022**. This date aligns with the decision on 18 March 2022 to extend the declared public health emergency for COVID-19.

Please continue to proactively monitor the potential impacts of COVID-19 on your network and advise your contract manager should you become aware of any such matters.

Thank you for continuing to deliver services on behalf of TransLink, and please contact your contract manager if you wish to discuss this further.

Yours sincerely

Not Relevant

Anjuna Singh
Executive Director (PT Contracts)