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# Manly Ferry Service Contract

Transport for NSW on behalf of the State of New South Wales (**TfNSW**)

Manly Fast Ferry Pty Ltd (**Operator**)

(Volume 1 of 2)

Manly Ferry Service Contract

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## Details

**Date:** 23 December 2022

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### Parties

**Name** **Transport for NSW, a corporation constituted under the *Transport Administration Act 1988 (NSW)* on behalf of the State of New South Wales**

**Short form name** **TfNSW**

**Notice details** GPO Box K659 Haymarket 1240

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**Name** Manly Fast Ferry Pty Ltd ABN 90 135 008 070

**Short form name** **Operator**

**Notice details** Level 13, 151 Clarence Street, Sydney NSW 2000

### Background

- A TfNSW is entering into this Contract on behalf of the State under the *Transport Administration Act 1988 (NSW)* (**TAA**) and the *Passenger Transport Act 2014 (NSW)* (**PT Act 2014**).
- B This Contract is a passenger service contract within the meaning, and for the purposes, of Part 3 of Division 1 of the PT Act 2014.
- C The Operator has agreed to carry out the Operator Activities on the terms set out in this Contract.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this Contract:

**Aboriginal Participation Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Accessible Transport Action Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Accounting Standards** means:

- (a) accounting standards approved under the Corporations Act and its requirements about the preparation and contents of accounts; and
- (b) generally accepted accounting principles, policies, practices and procedures in Australia.

**Accreditation** means accreditation or certification of competency to be obtained in accordance with the requirements of any Law including any guideline, regulation or ordinance made pursuant to the PT Act 1990 or the PT Act 2014.

[REDACTED]

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

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

**Asset and Services Plan** means the plan set out in Annexure G.

**Asset Holding Entity** has the meaning given in Clause 27.2(a).

**Asset Information System** means the system for the storage, processing, transmission and management of asset information as described in paragraph 5 of the Asset Schedule.

**Asset Maintenance Standards** means the standards adopted by the Operator in accordance with paragraph 2 of the Asset Schedule.

**Asset Management Activities** means the activities that the Operator is required to perform under Clause 25 and the Asset Schedule, including:

- (a) maintaining and repairing the Assets; and
- (b) the replacement and refurbishment of the Assets.

**Asset Management Audit** has the meaning given in Clause 25.8.

**Asset Management Failure** has the meaning given in Clause 25.7(b).

**Asset Management Framework** means the asset management arrangements described in paragraph 1.2 of the Asset Schedule within which the Asset Management Activities are undertaken.

**Asset Schedule** means Schedule 6 to this Contract.

**Assets** means:

- (a) the State Assets; and
- (b) the Operator Assets.

**Audit Notice** has the meaning given in Clause 25.8(a)(i).

**Authorisation** includes any Accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, order, declaration, determination, authority or exemption from, by or with a Governmental Agency (including a Safety Authority).

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

**Authorised Officer** has the meaning given in the PT Act 1990 and the PT Act 2014.

**Base Service Fee** has the meaning given in paragraph 1 of the Payment Schedule.

**Boardings** has the meaning given in the KPI Schedule.

**Brand and Marketing Forum** has the meaning given in the Governance and Reporting Schedule.

**Business Continuity and Disaster Recovery Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Business Day** means any day other than a Saturday, Sunday or a Public Holiday.

**Calendar Month** means the period that commences on the first day of the month and ends on the last day of the month.

**Cancelled Trip** has the meaning given in the KPI Schedule.

**Cardholder Data** means details of any credit, debit or other payment card, including the account number, cardholder name, service code, expiry date, magnetic stripe data, card verification number and any other information regulated or governed by PCI DSS.



**Certificate of Competency** has the meaning given in the MS Act.

**Certificate of Operation** has the meaning given in the MS Act.

**Certificate of Survey** has the meaning given in the MS Act.

**Certificate of Service Commencement** means the certificate issued by TfNSW in accordance with Clause 5.7(a).

**Change Event** has the meaning given in Clause 48.1.

**Change in Control** occurs when:

- (a) the Operator or the Parent Company becomes a Subsidiary of a person (of which it was not a Subsidiary on the commencement of this Contract);
- (b) a person's Voting Power in the Operator or the Parent Company increases from below 50% to 50% or above after the commencement of this Contract; or
- (c) a person is able to Control the Operator or the Parent Company where that person was not able to Control the Operator or the Parent Company on the commencement of this Contract.

**Change in Law** means the imposition of, change in or repeal of a Law, after the date of the Contract and with which the Operator is bound to comply, which is:

- (a) the imposition of, change in or repeal of a Law of New South Wales; and
- (b) specifically directed at the Ferry Operations or to the public transport industry in New South Wales;

but excludes:

- (c) any change in application or interpretation of a Law (including a Law of a New South Wales Governmental Agency);
- (d) the introduction of or variation to, or change in application or interpretation of, any industrial instrument to which the Operator or any Staff is or will be bound or subject to;
- (e) any applicable judgment of a relevant court of law which changes a binding precedent;

- (f) any Change in Tax;
- (g) any change in workers compensation premiums;
- (h) a change in Law which was not in force at the date of this Contract but which:
  - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to publicly prior to the date of this Contract; or
  - (ii) a party experienced and competent in the provision of services similar to the Services would have reasonably foreseen or anticipated prior to the date of this Contract;
- (i) the introduction of any emissions tax or law or emissions trading scheme;
- (j) the imposition of, change in or repeal of an Authorisation after the date of the Contract;
- (k) a change in Law relating to Part 4 of the *Civil Liability Act 2002* (NSW) or its application which limits or eliminates the impact of that part on any legal risk allocation under this Contract;
- (l) the making, amendment or repeal of any order made under the TAA, the PT Act 1990 or the PT Act 2014;
- (m) any change to the TAA, the PT Act 1990 or the PT Act 2014 made for the purposes of giving effect to this Contract;
- (n) any change in Law relating to the COVID-19 pandemic; or
- (o) [REDACTED].

**Change in Tax** means the imposition of, change in (or change in application or interpretation of) or repeal of a tax, levy, impost, duty, charge, assessment, fee or allowance of any nature that is imposed by any Governmental Agency (including a taxation authority).

**Change Notice** means a notice or notices issued by the Operator to TfNSW under Clause 48.3(a) or Clause 48.3(c).

**Change Order** has the meaning given in Clause 48.3(a).

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

**Class 1 Key Performance Indicator** has the meaning given in the KPI Schedule.

**Clean Up Notice** means any direction, order, demand or other requirement from a Governmental Agency to take any action, including any investigation of any Contamination or Pollution, or refrain from taking any action in respect of any Contamination or Pollution.

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

**Compulsory Acquisition** means requisition for title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, forfeiture or confiscation for any reason of a Contract Ferry by any Governmental Agency, but excludes requisition for use or hire not involving requisition for title.

**Concession Fare** means the Fare that can be charged to an Approved Beneficiary for a Ticket as determined by TfNSW from time to time and which as at the date of this Contract are set out in the Fares and Ticketing Schedule.

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

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

All Data is Confidential Information of TfNSW, and not of the Operator.

**Connecting Passenger Operator** means any passenger transport operator whose services connect with the Services.

**Consequential or Indirect Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract (other than the loss of this Contract), loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

**Contamination** means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) a presence that presents a risk of harm to human health or any other aspect of the Environment;  
or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica,

and the word 'Contaminant' has a corresponding meaning.

**Consumer Price Index** or **CPI** has the meaning given in paragraph 1 of the Payment Schedule.

**Continuity of the Services** means:

- (a) the continued provision of the Services during the Service Term in accordance with this Contract (including the requirement to meet or exceed the Key Performance Indicators);
- (b) the continued performance of the Operator's obligations under the Transaction Documents; and
- (c) the orderly handover of the Operator Activities and the transfer of Assets by the Operator to a Step in Party or Successor Operator as contemplated by this Contract.

**Contract** means this Manly Ferry Service Contract.

**Contract Ferry** means:

- (a) each Existing Operator Ferry;
- (b) each State Ferry (if applicable); and
- (c) each Operator New Ferry.

**Contract Material** means Existing Contract Material and New Contract Material.

**Contract Objectives** has the meaning given in Clause 3(a).

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

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

**Contract Variation** means any change to the requirements of this Contract for:

- (a) the Assets; or
- (b) the Operator Activities (or the sequencing or timing of them),

including any addition, extension, reduction, increase, decrease or omission to or from them and includes:

- (c) a Contract Variation that requires the Operator to operate and or maintain additional wharves or shipyards;
- (d) a Contract Variation that TfNSW is permitted to direct in accordance with the terms of this Contract,

but does not include a Service Variation, a Change Event, a Wharf Access Disruption Event or the implementation of any Major Project.

**Contract Variation Impact Proposal** means a proposal prepared by the Operator in respect of a Contract Variation which must set out detailed particulars of the Operator's view on:

- (a) the Net Financial Impact of the proposed Contract Variation or, if requested by TfNSW under Clause 53, a Procurement Proposal;
- (b) the time within which the proposed Contract Variation will be implemented;
- (c) any Authorisations required to implement the proposed Contract Variation and the effect of the proposed Contract Variation on any existing Authorisations;
- (d) the effect which the proposed Contract Variation will have on the Operator's ability to satisfy its obligations under this Contract;
- (e) any relief which is required from the Operator's obligation under this Contract to ensure that it is left in a no better or no worse position than it would be in if the Contract Variation were not implemented; and
- (f) any other information required by TfNSW in a Contract Variation Request.

**Contract Variation Order** means a notice titled 'Contract Variation Order' issued by TfNSW under Clause 52.1(c)(ii) or Clause 52.2 for a Contract Variation.

**Contract Variation Request** means a notice titled 'Contract Variation Request' issued by TfNSW under Clause 52.1(a).

**Contract Year** means each 12 months ending 30 June during the Service Term, provided that:

- (a) the first Contract Year will commence on the Service Commencement Date and end on the following 30 June; and
- (b) the last Contract Year will commence on 1 July and end on the Termination Date.

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

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

**CPI Annual Multiplier** has the meaning given in paragraph 1 of the Payment Schedule.

**CPI Indexed** has the meaning given in Clause 79.

**Crew** means individuals employed or engaged by the Operator in any capacity on board a Contract Ferry but excluding a Master.

**Cure Period** has the meaning given in Clause 54.3(b)(v).

**Cure Plan** has the meaning given in Clause 54.2(c)(ii).

**Cure Plan Date** has the meaning given in Clause 54.2(c)(ii).

**Cure Plan Threshold** has the meaning given in the KPI Schedule.

**Customer Experience Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

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

- (a) relating to the business, networks and operations of TfNSW or TfNSW's Associates, including data, information, documents or records in relation to the customers, employees or suppliers of TfNSW; or
- (b) relating to the Services or the performance of the Services, including data, information, documents or records provided or required to be provided by the Operator via the OSD or DCIS or otherwise relating to the maintenance or operation of any Contract Ferries or other Assets, the operation or utilisation of any Services or any passengers (including complaints) or patronage or lost property,

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

- (c) data that is Personal Information, including any Personal Information referred to in Clause 29.3;



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

**Data Breach** means any:

- (a) unauthorised access to, or unauthorised disclosure of, or breach of security relating to any Personal Information or Data; or
- (b) loss, corruption or damage of any Personal Information or Data.

**Day One Services** means the Services set out in Part 1 of the Service Level Schedule.

**DCIS or Digital Customer Information System** means the centralised integrated transport information ecosystem that communicates and receives data and information in relation to public transport services, through websites, apps, trip planners, virtual assistants, customer feedback systems and the Transportnsw.info Website.

**DDA Legislation** means:

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

**Dedicated Staff** means:

- (a) Masters and Crew;
- (b) the Operator's Authorised Officers;
- (c) members of Staff who are engaged predominantly to carry out regular maintenance in accordance with this Contract; and
- (d) members of Staff who are predominantly engaged as operations supervisors, customer service representatives and general purpose hands.

**Deed of Guarantee and Indemnity** means a deed in favour of TfNSW in the form set out in Annexure B.

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

**De-Identified or De-Identify** has the same meaning as in the *Privacy Act 1988* (Cth).

**Design Life** means in respect of a State Asset or any Operator New Ferry that falls within an asset category referred to in paragraph 6 of the Asset Schedule, the period specified for that asset category in paragraph 6 of the Asset Schedule.

**Digital Passenger Information System (or Passenger Information System or PIDs)** means a digital service information display providing real time data to passengers.

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

**Disability Engagement Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

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

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

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

**Dispose** means to transfer, assign, sell, grant an exclusive or irrevocable licence over, declare a trust over or otherwise part with possession of something.

**Dispute** has the meaning given in Clause 46.1(a).

**Dispute Notice** has the meaning given in Clause 46.1(d).

**Disruption Event** has the meaning given in Clause 47.1(a).

**Disruption Service Remedy Proposal** has the meaning give in Clause 47.2(a)(iii)(C).

**Diversity Inclusion Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Emergency Replacement Vessel** has the meaning given in Clause 19.5(a).

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

- (a) the date which is twelve months prior to the Expiry Date;
- (b) the date on which TfNSW notifies the Operator of a Termination Event; or
- (c) the date on which TfNSW issues a Termination Notice,

and ending on the Termination Date.

**Environment** means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

**Environmental Auditor** means a person who is entitled to be accredited as a site auditor under Part 4 of the *Contaminated Land Management Act 1997* (NSW).

**Environmental Law** means any Law relating to the Environment including any Law relating to the protection or preservation of the Environment, flora and fauna, land use, planning, Contamination or pollution of air, water, soil or groundwater, chemicals, waste, the use and transport, storage and handling of dangerous goods and hazardous substances or the health or safety of any person.

**Environmental Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Existing Contract Material** means any Material that is brought into existence other than for the purposes of this Contract or preparing the Proposal.

**Existing Operator Ferry** means each vessel identified as such in Annexure 1 of the Asset Schedule.

**Expenditure** has the meaning given in Clause 48.3(a).

**Expert** means an independent expert appointed in accordance with Clause 46.2.

**Expiry Date** means the 15th anniversary of the Planned Service Commencement Date, or the date of earlier termination of the Contract under Clause 5.2.

**Fare** means the price payable for a Ticket.

**Fares and Ticketing Schedule** means Schedule 8 to this Contract.

**FATA** has the meaning given in Clause 5.6(f).

**Ferry** has the meaning give in section 4 of the PT Act 2014.

[REDACTED]

**Ferry Layover** means a designated place where a Contract Ferry is moored overnight or between Service peaks.

**Ferry Operations** means the business of:

- (a) providing the Services (excluding any other use);
- (b) the operation and maintenance of the assets used in the provision of the Services;
- (c) any business or activity associated with the activities described in paragraphs (a) and (b),

to be conducted by the Operator on and from the Service Commencement Date.

**Ferry Service Slot** means each Slot that is allocated to the Operator by operation of Part C of Annexure 1 of the Asset Schedule for the use of the Contract Ferries for the provision of the Services.

**Final Inspection Auditor** has the meaning given in Clause 58.4(a).

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

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

**Financial Year** means each 12 month period ending on 30 June during the Service Term, provided that:

- (a) the first Financial Year will commence on the Service Commencement Date and end on the following 30 June; and
- (b) the last Financial Year will commence on 1 July and end on the Termination Date.

**Financier Direct Agreement** means a direct agreement entered into between TfNSW, the Operator and a proposed financier under this Contract in a form approved by TfNSW.

**Fleet Deployment Plan** means the fleet deployment and replacement schedule set out in Annexure F.

**Fleet Security Deed** means a security deed under which the Operator grants to TfNSW a Security Interest in an Operator New Ferry or Operator Ferry Charterparty in a form approved by TfNSW.

**Force Majeure Event** means:

- (a) act of public enemy, war (declared or undeclared), terrorism, sabotage, revolution, riot, insurrection, civil commotion or epidemic;
- (b) blockade or embargo within Australia, other than a blockade or embargo which only affects the Operator or the Operator's Associates or which is caused by industrial action; or
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

the consequence of which is beyond the control of the affected Party and could not have been prevented, overcome or remedied by that Party exercising a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such prudent and competent person). For the avoidance of the doubt, the ongoing management of the COVID-19 pandemic by the Operator or the Operator's Associates is not a Force Majeure Event.

**Full Fare** means the Fare that can be charged to passengers who are not Approved Beneficiaries for a Ticket as determined by TfNSW from time to time and which as at the date of this Contract are set out in the Fares and Ticketing Schedule.

**General Performance Bond(s)** mean the performance bond(s) to be provided to TfNSW under Clause 6.1(a) and any performance bond(s) replacing them.

**General Performance Bond Amount** means on any day, the amount which is equal to:

- (a) the amount specified in Item 7 of Attachment A CPI Indexed at the commencement of each Contract Year;
- (b) less the aggregate amount of any payments received by TfNSW under the General Performance Bonds up to and including that date;
- (c) plus the aggregate amount of any payments made by TfNSW to the Operator under Clause 6.5(d) or Clause 6.5(f)(iii) up to and including that date.

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

**Good Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person, engaged in the provision of one or more activities the same or similar to the Operator Activities under the same or similar circumstances for those activities.

**Governance and Reporting Schedule** means Schedule 5 to this Contract.

**Governmental Agency** means any government or governmental, semi-governmental, administrative, statutory, municipal, fiscal or judicial body, department, commission, authority, tribunal, person, agency or entity (wherever created or located) and includes a self regulatory organisation established under statute or a stock exchange.

**Government Subsidised Travel Schemes** means a scheme for subsidised travel on passenger services, approved by the Transport Minister, in accordance with section 8 of schedule 1 of the TAA.

**GST** has the meaning given by the GST Act.

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

**GST Group** has the meaning given by the GST Act.

**Guarantee** means a guarantee, indemnity, letter of credit, legally binding letter of comfort or other obligation of any kind:

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;

- (b) to indemnify any person against the consequences of default in the payment of; or
- (c) to be responsible for,

an obligation or monetary liability of another person or the assumption of any responsibility or obligation in respect of the solvency or financial condition of another person.

**Handback Audit** has the meaning given in Clause 58.1(a).

**Handback Audit Assets** has the meaning given in Clause 58.1(b).

**Handback Auditor** has the meaning given in Clause 58.1(a).

**Handback Condition** means the required condition of the State Assets and Operator New Ferries as at the Termination Date as set out in paragraph 4 of the Asset Schedule.

**Handback Security Bond** means the performance bond to be provided to TfNSW under Clause 6.1(b) and any performance bond replacing it.

**Handover Information** has the meaning given in Clause 57.3.

[REDACTED]

[REDACTED]

[REDACTED]

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

**Incomplete Trip** has the meaning given in the KPI Schedule.

**Information** may include (as applicable) information about:

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

but excludes Personal Information.

**Indemnified Person** has the meaning given in Clause 44.1(a).

**Industrial Relations Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

[REDACTED]

[REDACTED]

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

**In-Service Hour** means time in hours travelled in performing the Services, in which passengers are able to board the Contract Ferry (for the avoidance of doubt this excludes the time for that Contract Ferry to travel the most direct practicable route between the finishing point of that Service and the starting point of the next Service or between a Ferry Layover and a starting or finishing point of that Service).

**Insolvency Event** means when the Operator or the Parent Company:

- (a) stops or suspends payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Act;
- (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertakings;
- (g) has an application or order made or a resolution passed for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them;
- (h) has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings and that enforcement, distress, execution or similar process is not set aside within five Business Days; or

or any other event in respect of the Operator, or the Parent Company occurs which, under the Laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

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

**Interim Operator** means any party appointed by TfNSW to perform the Operator Activities on a temporary or interim basis after the Termination Date.

**IPART** means the Independent Pricing and Regulatory Tribunal established under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

**Issuer** means:

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

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

**Key Personnel** has the meaning given in Clause 35.2(a).

**Key Subcontract** means an agreement or arrangement (whether legally enforceable or not) in respect of:

- (a) any lease, licence or other access to wharves, shipyards or layover areas (other than the State Assets);
- (b) any lease, licence or other access to premises (other than the State Assets);
- (c) any lease, licence, charterparty or other access to vessels (other than the State Assets);
- (d) the supply of passenger information, telecommunications or radio network services;

- (e) any design, construction or procurement of any State Asset or Operator New Ferry;
  - (f) any maintenance or refurbishment of any State Asset or Operator New Ferry;
  - (g) any work to be undertaken by the Operator at any State Premises or any work undertaken by the Operator, or supply or procurement by the Operator, in relation to any replacement of a State Asset;
  - (h) any labour hire for Masters, Crew or general purpose hands;
  - (i) any labour hire contracts for any maintenance staff; or
  - (j) any arrangement with a term that exceeds the Expiry Date,
- or that is otherwise designated as a Key Subcontract under Clause 37.2(b).

**Key Subcontractor** means any party to a Key Subcontract that is not TfNSW or the Operator.

**Key Subcontract Security Document** means:

- (a) any document that TfNSW may require to be provided or entered into by any Key Subcontractor and any other parties in connection with a Key Subcontract; and
  - (b) any ancillary document required by the terms of a document referred to in paragraph (a),
- in each case in a form and substance satisfactory to TfNSW and executed by the Key Subcontractor and all relevant counterparties.

**KPI Credit** has the meaning given in the KPI Schedule.

**KPI Default** has the meaning given in the KPI Schedule.

**KPI Event** has the meaning given in Clause 55.1(a)(iv).

**KPI Schedule** means Schedule 4 to this Contract.

**Land Tax** means land tax payable in accordance with the provisions of the Land Tax Legislation.

**Land Tax Legislation** means each of the *Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW).

**Late** has the meaning given in the KPI Schedule.

**Law** means:

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

and includes the general law.

**Licensed Area** has the meaning given in Clause 21.1(a) and includes the Licensed Infrastructure located on the relevant Licensed Area.

**Licensed Infrastructure** means the infrastructure affixed to the Licensed Area.

**Licensed Area Handover Date** in respect of a Licensed Area, means the handover date specified in Annexure 4 of the Asset Schedule for that Licensed Area.

**Local Content Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

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

**Maintenance Works Program** means the works program required under the paragraph 3 of the Asset Schedule defining the Asset Management Activities required in the following two years.

**Major Projects** has the meaning given in Clause 50.1(a).

**Major Projects Disruption Event** has the meaning given in Clause 50.2.



**Marks** means any mark, trade mark, logo, indicia or image, whether or not they are registered or capable of being registered.

**Master** means the person in command or charge of a Contract Ferry.

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

**Material Breach** means the Operator commits a material breach (being any breach that is not trivial or inconsequential) of any of the Transaction Documents.

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

**Modern Slavery Laws** means any anti-slavery and human trafficking Laws (in any relevant jurisdiction), including:

- (a) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
- (b) sections 80D, 80E, 91G(1)-(3), 91H, 91HAA and 93AA-93AC of the *Crimes Act 1900* (NSW);
- (c) as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth); and
- (d) Laws equivalent to any of the Laws referred to in paragraphs (a) and (b) in the relevant jurisdictions.

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

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

**Modified Services** means the Modified Services (Stage 1) and the Modified Services (Stage 2).

**Modified Services (Stage 1)** means the Services set out in Part 2 of the Service Level Schedule.

**Modified Services (Stage 2)** means the Services set out in Part 3 of the Service Level Schedule.

**Monthly Commercial Forum** has the meaning given in the Governance and Reporting Schedule.

**Monthly Service Delivery Forum** has the meaning given in the Governance and Reporting Schedule.

**Monthly Contract Payment** has the meaning given in paragraph 1 of the Payment Schedule.

**Month n** means a particular month during the Service Term, where n signifies the number of months from the Service Commencement Date.

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

**MS Act** means the *Marine Safety Act 1998* (NSW), and the Marine Safety (Domestic Commercial Vessel) National Law contained within it.

**Net Financial Impact** means the net financial impact of a NFI Event calculated in accordance with Schedule 7.



**New Contract Material** means any Material brought into existence as part of, or for the purposes of, performing this Contract (whether prepared before or after the commencement of this Contract and whether by the Operator or the Operator's Associates) and includes the Disclosed Information, the Timetables and all Data provided by the Operator via the OSD or DCIS.

**NFI Event** has the meaning given in Schedule 7.

**Old Contract** means the Fast Ferry Service Contract between Circular Quay and Manly, between TfNSW and the Operator dated 11 December 2014.

**On Time** has the meaning given in the KPI Schedule.

**Opal Ticketing System** means the electronic ticketing system operated by TfNSW, known as Opal.

**Operating Plans** has the meaning given in the Governance and Reporting Schedule.

**Operational Commencement Date** has the meaning given in Clause 24.3(b)(viii).

**Operator Activities** means all things and tasks which the Operator is, or may be, required to carry out or do to comply with its obligations under the Transaction Documents, including the provision of the Services.

**Operator Asset** means any asset used by the Operator to conduct the Operator Activities including any systems and equipment used by the Operator to provide the Services, the Existing Operator Ferries, Operator New Ferries and Key Subcontracts but excluding:

- (a) the State Assets;
- (b) any sum placed on deposit with a bank or other financial institution by the Operator; and
- (c) an asset which TfNSW notifies the Operator is not to be an Operator Asset for the purposes of this Contract.

For the avoidance of doubt, assets includes rights under leases, licences and other contracts.

**Operator Communications and Marketing Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Operator Disruption Management Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Operator Ferry Charterparty** means a lease, licence or other arrangement under which an Operator New Ferry is leased, licensed, hired or otherwise made available to the Operator by any party other than TfNSW or a TfNSW nominee.

**Operator Ferry Charterparty Direct Agreement** has the meaning given in Clause 26.3(a).

**Operator Financial Arrangement** means any financing arrangement for the purchase of an Operator Asset including a finance lease, hire purchase or chattel mortgage by the Operator from a financier for use in the provision of the Operator Activities. It excludes any arrangement that is in the nature of an operating lease, as determined under the Accounting Standards.

**Operator Material** has the meaning given in Clause 30.3(b).

**Operator New Ferry** means a vessel that is purchased, leased, licensed, hired or otherwise accessed or used by, or otherwise made available to, the Operator, with the approval of TfNSW, in accordance with Clause 24 during the Service Term, but does not include the State Ferries.

**Operator Novation Ferry** means an Operator New Ferry that is subject to an Operator Ferry Charterparty.

**Operator Representative** has the meaning given in Clause 2(b).

**Operator Sale Ferry** means an Operator New Ferry that is owned by the Operator.

**Operator Schedules** means the Trip linking or Master instructions put in place by the Operator for the efficient and effective performance of the Services.

**Operator Security Deed** means a general security deed granted by the Operator in favour of TfNSW in substantially the form set out in Part A of Annexure C.

**Operator Stakeholder Engagement Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Operator Sustainability Plan** has the meaning given in Schedule 5.

**Operator Ticket Income** means amounts in respect of the Fares for each Ticket received by the Operator from cash, credit card or other Ticket sales. For the avoidance of doubt, Operator Ticket Income does not include Ticketing System Income.

**Operator Ticket Income Adjustment** has the meaning given in paragraph 1 the Payment Schedule.

**Operator's Associates** means:

- (a) any contractor, consultant or adviser of or to the Operator including any person engaged by the Operator for the purpose of enabling the Operator to comply with its obligations under the Transaction Documents;
- (b) if the Operator is, or is part of a joint venture, for the purposes of delivering the Services under this Contract, any entity or organisation in that joint venture;
- (c) the Parent Company;
- (d) any Related Body Corporate of the Operator; and
- (e) any director, officer, employee or agent of the Operator or any of the persons referred to in paragraphs (a) to (d) above.

**Operator's Authorised Officer** means a member of the Staff appointed as an Authorised Officer.

[REDACTED]

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

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

**Parent Company** means National Roads and Motorists' Association Limited (**NRMA**) ABN 77 000 010 506.

**Payment Schedule** means Schedule 3 to this Contract.

**Payments** means those payments set out in the Payment Schedule.

**PCI DSS** means the latest version of "Payment Card Industry's Data Security Standard", as updated from time to time.

**Performance Benchmarks** has the meaning given in Clause 5.3.

**Performance Bond** means:

- (a) a General Performance Bond; or
- (b) the Handback Security Bond.

**Performance Improvement Initiative** has the meaning given in the KPI Schedule.

**Permitted Security Interest** means:

- (a) each Operator Security Deed or any collateral security relating to it;
- (b) each Specific Security Deed or any collateral security relating to it;
- (c) each Fleet Security Deed or any collateral security relating to it;
- (d) a Security Interest created or outstanding with the consent of TfNSW (including each Security Interest permitted under an Operator Ferry Charterparty Direct Agreement);
- (e) a Security Interest created or outstanding in respect of an Operator New Ferry with the consent of TfNSW, which consent will not be unreasonably withheld where the holder of that Security Interest enters into a Financier Direct Agreement if required by TfNSW;
- (f) a lien or charge:
  - (i) which arises by operation of Law or which is in favour of a repairman, workman, storeman or contractor and which arises in the ordinary course of day-to-day trading;
  - (ii) that is a maritime lien on a Contract Ferry for current Master's, officers' or crew wages outstanding in the ordinary course of trading and any lien for salvage or general usage;
  - (iii) that is a statutory lien arising out of any other claim against a Contract Ferry where the liability for such claim is covered by the insurances required to be maintained under this Contract, or where a bond or other counter-security has been posted as security for the full value of the relevant claim;
  - (iv) which does not secure Financial Indebtedness; and
  - (v) under which the indebtedness secured by it is paid when due or is being contested in good faith;
- (g) a Security Interest in favour of a Governmental Agency securing public statutory obligations as long as there is no default in payment of the amount secured or the payment of the amount secured is being contested in good faith; or
- (h) any netting or set off arrangements entered into by the Operator in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances.

**Personal Information** has the meaning given in the Privacy Laws.

**Personal Property Securities Register** means the register established under section 147 of the *Personal Property Securities Act 2009* (Cth).

**Planned Service Commencement Date** means 23 December 2022.

**Planned Service Transition Date** means [REDACTED].

**Pollution** has the same meaning set out in the *Protection of the Environment Operations Act 1997* (NSW).

**POS Device** means the hardware on which the POS Device App can be installed.

**POS Device App** means the application and associated network infrastructure developed or utilised by the Operator to connect with the TransportConnect API.

**Power** means any power (including to make a determination), right, authority, discretion or remedy, whether express or implied.

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

**Pre-existing Contamination** means any Contamination existing in, on or under or emanated or emanating from any of the State Premises (or the land or seabed adjoining the State Premises) at the Service Commencement Date together with any release or leaching of, or deterioration in, or alteration to, any such Contamination which occurs after the Service Commencement Date except to the extent the release, leaching or deterioration arises by reason of the act or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the State Premises from the Operator or enjoying the use or occupation of the State Premises with the consent of the Operator.

**Privacy Laws** means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth).

**Procurement Proposal** has the meaning given in Clause 53.2.

**Procurement Proposal Notice** has the meaning given in Clause 53.2.

**Proposal** means

**PT Act 1990** means the *Passenger Transport Act 1990* (NSW).

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

**PT Regulation** means any regulation issued under the PT Act 1990 or the PT Act 2014 and includes the PT Regulation 2017.

**PT Regulation 2017** means the *Passenger Transport Regulation 2017* (NSW).

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

**Public Passenger Service** has the meaning given to the term 'public passenger service' in section 5 of the PT Act 2014.

**Published Timetable Trips** has the meaning given in the KPI Schedule.

**Quarter** means any calendar quarter (or part of a calendar quarter) commencing on 1 January, 1 April, 1 July or 1 October in any year.

**Quarterly Executive Forum** has the meaning given in the Governance and Reporting Schedule.

**Rates** means all rates, taxes, charges or other amounts which any Governmental Agency levies by reference to any premises including the State Premises, but excluding any Land Tax.

**Related Body Corporate** has the same meaning as in section 50 of the Corporations Act and in relation to the Operator includes the Parent Company.

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

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

**Related Party Arrangement** has the meaning given in Clause 61.2(a).

**Relevant Amount** has the meaning given in Clause 6.5(f)(iii).

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

**Requisition Compensation** has the meaning given in the State Bareboat Charterparty.

**Restricted Activity** means any activity (whether commercial or otherwise) that relates to or includes:

- (a) the sale, provision, making available or service of tobacco or tobacco products;
- (b) gambling, betting or gaming; or
- (c) anything which is or may be considered to be contentious or offensive.

[REDACTED]

**Revenue Share Amount** means the amount determined in accordance with paragraph (g) of Schedule 3A.

**Revenue Share Payment** means the payment calculated under paragraph (b) of Schedule 3A.

**Route** means the uninterrupted route with no scheduled stops over water along which the Services are operated between the Wharves as specified or described in the Service Level Schedule and any revisions to that route, approved by TfNSW in accordance with Clause 18. For the avoidance of doubt, the Route does not allow or permit the scheduled stopping at any other wharf (or wharves) or berthing at such other wharf (or wharves).

**Safety Authority** means each of the Australian Maritime Safety Authority, the Office of Transport Safety Investigations, the Australian Transport Safety Bureau, the NSW Coroner, SafeWork NSW, the Port Authority of New South Wales (including the Harbour Master and Vessel Traffic Services) and any other relevant authority under the Transport Laws and WHS Law and any persons appointed by those entities authorised to exercised powers under the Transport Law or WHS Law or otherwise.

**Safety Management Plan** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Safety Management System** means a 'safety management system' as required under the MS Act that ensures that the Contract Ferries and the operation of the Contract Ferries are, so far as reasonably practicable, safe.

[REDACTED]

**Security** means:

- (a) each Operator Security Deed;
- (b) each Specific Security Deed;
- (c) each Fleet Security Deed; and
- (d) each other present or future Security Interest, Guarantee or other document or agreement created or entered into as security (directly or indirectly) for the payment of money or the performance of any obligation in favour of TfNSW under a Transaction Document.

**Security Interest** means:

- (a) an interest which provides security for, or protects against default by, a person for the payment or satisfaction of a debt, obligation or liability including a mortgage, charge, bill of sale, pledge,

deposit, lien, encumbrance or hypothecation (including a retention of title other than in the ordinary course of day to day trading and a deposit of money by way of security);

- (b) a security interest under the PPS Law; and
- (c) an agreement to create or give any arrangement referred to in paragraphs (a) or (b) of this definition.

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

**Service Commencement Date** means 12.01 am on the date set out in the Certificate of Service Commencement.

**Service Default** means an event identified as such in Clause 54.1.

**Service Default Notice** has the meaning given in Clause 54.2.

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

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

**Service Variation** means a variation to the Contract Service Levels or Timetables in each case that requires:

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

**Service Variation Notice** means a notice issued in accordance with Clause 18(a).

**Services** means the timetabled ferry services to be carried on by the Operator on the Routes described in the Service Level Schedule as amended from time to time in accordance with this Contract, and includes the Day One Services and the Modified Services.

**Services Schedule** means Schedule 1 to this Contract.

**Service Term** means the period determined under Clause 5.

**Service Transition Date** means the date on which the Operator has commenced operation of all of the Modified Services.

**Slot** means any Wharf location and time that is or may be allocated by TfNSW to a particular vessel user for the sole use of that particular user. The time period includes all vessel manoeuvring in, berthing and manoeuvring out time.

**Smartcard** has the meaning given in the PT Act 1990.

**Small and Medium Enterprise Participation Plan** or **SMEPP** means a plan which addresses the requirements referred to in the Governance and Reporting Schedule.

**Spares** means rotables, parts and components of Contract Ferries that are required as part of, or for the purpose of carrying out, Asset Management Activities in relation to any aspect of the Operator Activities.

**Special Event Services** means services provided in response to a temporary Service Variation requested by TfNSW or identified in the Service Level Schedule to transport customers to an event, such as an event of a sporting, cultural or community nature.

**Specific Security Deed** means a specific security deed under which TfNSW is granted a Security Interest in all of the share capital of the Operator in substantially the form set out in Part B of Annexure C.

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

**Staff** means all persons whether officers, employees, agents or contractors of the Operator or the Operator's Associates engaged in or in connection with the provision of Operator Activities.

**State** means the State of New South Wales.

**State Asset Access Agreements** means:

- (a) the State Bareboat Charterparty; and
- (b) any other agreement or document entered into between TfNSW (or TfNSW's nominees) and the Operator in relation to access to and use of assets required to perform the Operator Activities.

**State Assets** means:

- (a) the State Ferries; and
- (b) the State Premises.

**State Bareboat Charterparty** means a bareboat charterparty in respect of a Ferry or vessel that is not owned or leased by the Operator that is between the State Lessor and the Operator in substantially the form set out in Annexure D.

**State Ferries** means, any Ferries or vessels and associated parts and equipment, that are leased to the Operator under a State Bareboat Charterparty.

**State Lessor** means the entity or entities nominated by TfNSW that are party to any State Asset Access Agreement.

**State Owner** has the meaning in Clause 27.2(a).

**State Premises** means:

- (a) the State Wharves; and
- (b) the Licensed Areas.

**State Record** has the meaning given in section 3 of the *State Records Act 1988* (NSW).

**State Wharf** means a wharf identified as such in Annexure 1 to the Asset Schedule.

**State Wharf Upgrade Program** has the meaning given in Clause 50.1(a)(i)(A)(I).

**State Wharf Redevelopment** has the meaning given in Clause 50.1(a)(i)(A)(II).

**State Wharf Redevelopment Disruption Parameters** means the delivery parameters set out in Schedule 13.

**State Wharf Redevelopment Disruption Management Plan** has the meaning given in Clause 50.3(a)(ii).

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

- (a) the costs, charges and expenses of any Step in Party appointed by TfNSW to carry out any or all of the Operator Activities under this Contract or any other Transaction Document; and
- (b) TfNSW's costs, charges and expenses incurred in engaging or managing a Step in Party or exercising any Step in Rights, including any transaction costs and the costs of any consultants and advisers engaged in connection with the appointment or management of the Step in Party or otherwise associated with the conduct of the Step in Rights.

**Step in Event** has the meaning given in Clause 55.1(a).

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

**Step in Powers** has the meaning given in Clause 55.2.

**Step in Right** has the meaning given in Clause 55.1(b).

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

**Subsequent Contamination** means:

- (a) any Contamination existing in, on, under or emanated or emanating from any State Premises (or the land or seabed adjoining any State Premises) that was not in existence at the Service Commencement Date to the extent caused or contributed to by an act or omission of the Operator or the Operator's Associates or any person deriving an interest in the State Premises from the Operator or enjoying the use or occupation of the State Premises with the consent of the Operator;
- (b) any release, leaching or deterioration of any Pre-existing Contamination which arises by reason of the acts or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the State Premises from the Operator or enjoying the use or occupation of the State Premises with the consent of the Operator;
- (c) any Contamination which migrates:
  - (i) to the State Premises or the land or seabed adjoining any State Premises as a result of an act or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the State Premises from the Operator or enjoying the use or occupation of the State Premises with the consent of the Operator; or
  - (ii) from the State Premises or the land or seabed adjoining any State Premises as a result of an act or omission of the Operator or any of the Operator's Associates or any person deriving an interest in the State Premises from the Operator or enjoying the use or occupation of the State Premises with the consent of the Operator; or
- (d) any Contamination which otherwise arises out of or in connection with the Operator Activities.

**Subsidiary** has the meaning given in the Corporations Act.

**Successor Operator** means an operator succeeding the Operator in the operation of all or part of the Operator Activities after the Termination Date (but does not include an Interim Operator).

**Sydney Ferries** means Sydney Ferries being a corporation constituted by section 35A of the TAA.

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

**TAO or Technically Assured Organisation** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status by TfNSW.

**Tax** means any present or future tax, levy, impost, duty, deduction, fee, charge, compulsory loan or withholding plus any interest, penalty, charge, fee or other amounts payable in respect thereof.

**Tax Invoice** has the meaning given by the GST Act.

**Temporary Measures** means temporary measures taken to alleviate the impact or effect of a Service Default pending a permanent cure being achieved.

**Termination Date** means:

- (a) the effective date of termination of this Contract (including where applicable the date set out in a Termination Notice) other than where the termination occurs under Clause 5; or
- (b) the Expiry Date;

whichever is applicable.

**Termination Event** means any of the events listed in Clause 56.1.

**Termination Notice** means a notice issued by TfNSW terminating this Contract including a notice issued in accordance with:

- (a) Clause 56.1;
- (b) Clause 56.3(a); or
- (c) Clause 48.8.

**TfNSW Advertising Assets** has the meaning given in Clause 60.2.



**TfNSW Advertising Content Guidelines** means the guidelines for advertising on Contract Ferries as issued and amended by TfNSW from time to time, which as the date of this Contract include the panel location diagrams set out in Schedule 10.

**TfNSW Asset Information Standards** means the standards and requirements set out in the document titled 'Management of Asset Information Standard' (version 1.0) issued by the Asset Standards Authority on 19 March 2018.

**TfNSW Authorised Officer** means a member of TfNSW's staff appointed as an Authorised Officer.

**TfNSW Brand** means all Marks, livery, colours or other get up or brand used on or in relation to the State Assets or Contract Ferries or any part of them including:

- (a) the TfNSW Marks;
- (b) all names including business names, domain names and company names registered or used in relation to the Operator Activities (other than those business names, domain names and company names of the Operator or Operator's Associates which are used in their business generally); and
- (c) all telephone numbers, email addresses, websites, social media accounts and all other addresses or means of communication in any medium, whether in existence at the date of this Contract or not, registered or used in relation to the Operator Activities (other than those of the Operator or Operator's Associates which are used in their business generally).

**TfNSW Configuration Management Plan** has the meaning given in paragraph 2(e) of the Asset Schedule.

**TfNSW Customer Complaints Policy** means the policies, standards and guidelines for the management of customer complaints and feedback, as updated by TfNSW from time to time.

**TfNSW Customer Feedback System** means the cloud based customer complaint and feedback case management system operated by TfNSW using the desktop solution licensed by TfNSW from salesforce.com, inc. that has been configured to meet TfNSW requirements or such other system as is used by TfNSW from time to time.

**TfNSW Marks** means the Marks notified by TfNSW to the Operator from time to time and any other Marks used by or on behalf of the Operator in relation to the Operator Activities (other than those Marks of the Operator's Associates which are used in their business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any Marks which are created or developed in connection with, the Operator Activities or any part of the Operator Activities).

**TfNSW Public Transport Brand Style Guide** means the TfNSW policy that specifies how the TfNSW Brand may be used and TfNSW's marketing requirements, as updated by TfNSW from time to time.

**TfNSW Representative** has the meaning given in Clause 2(a).

**TfNSW Systems and Equipment** means systems and equipment installed for or on behalf of TfNSW on any Asset at any time before or during the Service Term including Ticketing Equipment but excluding TransportConnect.

**TfNSW Transport Service Provider Asset Management Plan Standard** means TfNSW's information and analysis requirements for service provider asset management plans as issued and amended by TfNSW from time to time, which as the date of this Contract is the document titled *Transport Service Provider Asset Management Plan Standard* dated 12 February 2019.

**TfNSW's Associates** means:

- (a) any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of TfNSW; and
- (b) Sydney Ferries, any Asset Holding Entity or State Owner and their officers, employees, agents, contractors, consultants, nominees, licensees or advisors,

but does not include the Operator or the Operator's Associates.

[REDACTED]

**Ticket** means any authority to travel on one or more Services, as evidenced by a printed ticket, a Smartcard or any other thing issued by or on behalf of the Operator or TfNSW in accordance with section 69 of the PT Regulation 2017.

**Ticketing Equipment** means equipment used to issue Tickets and record and validate Tickets, including any related or supporting equipment and which includes the Opal Ticketing System or any replacement of it.

**Ticketing System Income** means amounts in respect of the Fares for each Ticket collected using TfNSW Systems and Equipment and TransportConnect.

**Ticketing System Income Adjustment** has the meaning given in paragraph 1 of the Payment Schedule.

**Timetables** means each and every timetable for the Services contained in the Service Level Schedule as amended from time to time in accordance with this Contract.

**Transaction Document** means:

- (a) this Contract;
- (b) the State Asset Access Agreements;
- (c) any Key Subcontract Security Documents, Operator Ferry Charterparty Direct Agreements or Financier Direct Agreements to which the Operator is a party;
- (d) the Performance Bonds;
- (e) the Deed of Guarantee and Indemnity;
- (f) each Security;
- (g) any Transfer Out Agreement; and
- (h) any other document or agreement that TfNSW and the Operator agree is to be a Transaction Document for the purpose of this Contract.

**Transfer Date** means:

- (a) if this Contract terminates by expiry or otherwise under Clause 5, the Expiry Date; or
- (b) if this Contract terminates other than by expiry (or otherwise under Clause 5), the date notified by TfNSW falling no later than 45 Business Days after the date of termination.

**Transfer Out Agreement** means an agreement entered into in accordance with Clause 59.7 which must be in the form set out Annexure E.

**Transfer Time** means 12.01 am on the Transfer Date.

**Transferee** has the meaning given in Clause 59.3.

**Transferring Assets** means [REDACTED]

**Transition Completion** has the meaning given in Clause 9.2(b).

**Transition In Plan** means the Operator's transition plan containing (as a minimum) the matters required by the Transition Schedule (and any other matters reasonably required by TfNSW).

**Transition Milestone** means each milestone identified in the Transition Schedule.

**Transition Milestone Date** means the date for completion of a Transition Milestone as identified in the Transition Schedule.

**Transition Period** means the period commencing on the date of this Contract and ending on the Service Transition Date.

**Transition Schedule** means Schedule 9 to this Contract.

**TransportConnect** means the system comprising the TransportConnect API, the POS Device App and the POS Device which interfaces with the Opal Ticketing System (and includes any replacement or future system or components).

**TransportConnect API** means the TransportConnect application programming interface (API) developed by TfNSW to permit the POS Devices to connect to the Opal Ticketing System.

**Transport Laws** has the meaning given in Clause 39.1.

**Transport Minister** means the New South Wales Minister for Transport and Roads.

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

**Trigger Date** means, in relation to a Performance Bond procured under Clause 6, the date falling six months prior to the expiry date of that Performance Bond.

**Trip** means any single, one direction service between the Wharves (or any other wharves approved by TfNSW) which forms part of the Services.

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

**TSE Rotable Asset** means a removable component or inventory item forming part of the TfNSW Systems and Equipment that can be repeatedly and economically restored to a fully serviceable condition.

**Vessel Termination Payment** means the amount payable for any Operator New Ferry or Operator Ferry Charterparty in respect of an Existing Operator Ferry or Operator New Ferry as calculated under paragraph 11 of the Payment Schedule.

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

**Wage Price Index** or **WPI** has the meaning given in paragraph 1 of the Payment Schedule.

**Wayfinding Guidance Documents** means TfNSW's specifications for new wayfinding signage including the design and installation standards for new signage, the naming and numbering conventions for stops and other locations and documentation and other related requirements as set out in the *Wayfinding Strategy and Ferry Kit of Parts* as issued and amended by TfNSW from time to time.

**Wharf** means a wharf:

- (a) at which a Contract Ferry is capable of stopping to pick up or set down passengers;
  - (b) whether fixed or floating, permanent or temporary;
- and
- (c) which is a State Wharf; or
  - (d) which the Operator uses from time to time with TfNSW's approval.

**Wharf Access Disruption Event** has the meaning given in Clause 49.1.

**Wharf Infrastructure** means wharf structures, wharf supports, signalling systems, vessel control systems, communication systems, emergency systems, Opal ticketing gates, power supply systems, power and communication cables and associated works, plant, machinery and equipment on a State Wharf.

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

**WHS Law** means:

- (a) those Acts, regulations, by-laws, orders, awards, proclamations, standards and codes relating to work health and safety (including the WHS Act and WHS Regulation) with respect to the Operator Activities;

- (b) the requirements of any Governmental Agency relating to work health and safety with respect to the Operator Activities; and
- (c) any directions or notices relating to work health and safety issued by any relevant Governmental Agency or any code of practice or compliance code appropriate or relevant to the Operator Activities.

**WHS Regulation** means the *Work Health and Safety Regulation 2017 (NSW)*.

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

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

**WPI Annual Multiplier** has the meaning given in paragraph 1 of the Payment Schedule.

## 1.2 Interpretation

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

- (a) An acknowledgement by the Operator under any Transaction Document does not of itself create legal rights or obligations on the part of TfNSW.
- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a Clause, Part, Schedule, Attachment or Annexure is a reference to a clause of, part of, or a schedule, attachment or annexure to, this Contract.
- (g) A reference to an agreement or document (including a reference to this Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other agreement or document.
- (h) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form.
- (i) A reference to a party to this Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (j) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (k) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (l) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (m) A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from, the property or asset.
- (n) A reference to any Governmental Agency or professional body includes the successors of that Governmental Agency or professional body.
- (o) A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- (p) A reference to a month or to a year is to a calendar month or a calendar year.

- (q) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (r) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions. A reference to the words 'include', 'includes' and 'including' means 'including without limitation'.
- (s) Nothing in this Contract is to be interpreted against a Party solely on the ground that the Party put forward this Contract or any part of it.
- (t) Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the reference date) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month.
- (u) The meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities.
- (v) Where a Power is conferred on TfNSW under any Transaction Document, that Power is in addition to, and not in substitution of, any other Power conferred on TfNSW at Law or under another Transaction Document.
- (w) TfNSW may rely on any waiver by the Operator of any Powers, including statutory Powers.
- (x) Any act or omission by or on behalf of the Operator's Associates or the Staff in relation to the Transaction Documents is deemed to be an act or omission by the Operator.
- (y) [Not used]
- (z) Where:
  - (i) an obligation has been imposed on an Operator's Associate under a Transaction Document;
  - (ii) an obligation has been imposed on the Operator to procure or ensure that an Operator's Associate complies with the requirements of a Transaction Document; or
  - (iii) in order to discharge its obligations under a Transaction Document the Operator is required to, or would need to, ensure or procure that an Operator's Associate complies with that obligation,the Operator must ensure or procure that the Operator's Associate complies with that obligation.
- (aa) A reference to A\$, \$A, dollar or \$ is to Australian currency.
- (bb) A reference to a consent or approval means prior consent or approval.

### 1.3 Precedence of documents

- (a) In the event of an inconsistency, ambiguity or discrepancy between or within this Contract, any of the documents contained in the schedules or annexures to this Contract and the Transaction Documents (excluding this Contract), TfNSW will determine how to that inconsistency, ambiguity or discrepancy will be resolved, which determination may require the Operator to comply with the greater, more onerous to the Operator or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by TfNSW.
- (b) If the Operator identifies any such inconsistency, ambiguity or discrepancy, then the Operator must notify TfNSW of the inconsistency, ambiguity or discrepancy as soon as practicable and, in any case not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.

### 1.4 TfNSW's capacity

TfNSW enters into this Contract on behalf of the State pursuant to the PT Act 2014 and an obligation or Power of TfNSW under this Contract is an obligation or Power of TfNSW in that capacity.

**1.5 No implied duty of good faith**

Nothing in, or contemplated by, this Contract will be construed or interpreted as imposing any general duty of good faith on TfNSW, other than the obligations (if any) expressly stated to be assumed by TfNSW under this Contract on a good faith basis.

**1.6 Delegation**

TfNSW may at any time delegate, or enter into any subcontractor or agency agreements in relation to, any of TfNSW's Powers, functions or responsibilities.

**1.7 No fetter on TfNSW's Powers**

- (a) The Transaction Documents will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its statutory functions or Powers pursuant to any Law.
- (b) The Operator acknowledges that, without limiting Clause 1.7(a):
  - (i) anything TfNSW does, fails to do, or purports to do, pursuant to its functions and Powers under any Law will be deemed not to be an act or omission by TfNSW (including a breach of contract) under or in connection with the Transaction Documents and will not entitle the Operator to make any Claim against TfNSW; and
  - (ii) nothing in a Transaction Document will in any way:
    - (A) interfere with or influence the exercise by any person of a statutory Power;
    - (B) require TfNSW to exercise a Power or otherwise act in a manner that promotes the objectives and expected outcomes of the Transaction Documents if TfNSW regards that exercise as not in the public interest;
    - (C) require TfNSW to develop policy or legislate by reference only or predominantly to the interests of the Transaction Documents;
    - (D) require TfNSW to procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Transaction Documents; or
    - (E) act in any other way that TfNSW regards as not in the public interest.
- (c) Clauses 1.7(a) and 1.7(b) do not limit any liability which TfNSW would have had to the Operator under any Transaction Document as a result of a breach by TfNSW of a term of any Transaction Document but for Clauses 1.7(a) and 1.7(b).
- (d) The Operator acknowledges that:
  - (i) there are many Governmental Agencies (other than TfNSW) with jurisdiction over aspects of the Operator Activities, parts of the State Assets and other areas affected by the Operator Activities;
  - (ii) such Governmental Agencies may from time to time exercise their statutory functions and Powers in such a way as to disrupt, interfere with or otherwise affect the Operator Activities; and
  - (iii) except to the extent expressly stated otherwise in this Contract, the Operator bears the risk of all occurrences of the kind referred to in Clause 1.7(d)(ii) and will not be entitled to make any Claim against TfNSW arising out of or in any way in connection with such occurrences.

**1.8 Transfer of functions**

- (a) The Operator acknowledges that:
  - (i) TfNSW may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the Powers, functions, assets, liabilities or responsibilities of TfNSW may be transferred to or vested in another entity;

- (ii) if TfNSW is reconstituted, renamed, dissolved, replaced or restructured or if some or all of TfNSW's Powers, functions, assets, liabilities or responsibilities are transferred to or vested in another entity, references in the Transaction Documents to TfNSW must, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those Powers, functions, assets, liabilities or responsibilities; and
  - (iii) TfNSW may, or may be required to (including as a result of changes to New South Wales Government policy or directions) acquire or dispose of, any property or assets forming part of TfNSW's assets at its absolute discretion.
- (b) The Operator acknowledges and agrees that it must, to the extent required by TfNSW and without limiting any facilitative legislation, negotiate in good faith any variations required to the Transaction Documents, or any replacement agreement or agreements for the Transaction Documents to give effect to TfNSW being reconstituted, renamed, dissolved, replaced or restructured.
  - (c) The Operator shall be taken for all purposes to have consented to, and the Operator will have no Claim against TfNSW as a result of, any action, matter or circumstance referred to in, or contemplated by this Clause 1.8.
  - (d) For the purposes of this Clause 1.8, 'another entity' means a Governmental Agency and may include a privately owned entity to whom Powers, functions, assets, liabilities or responsibilities are transferred pursuant to any Law.

### 1.9 Effect of certificates issued by TfNSW

The Operator acknowledges and agrees that the issue by TfNSW of a Certificate of Service Commencement is final and binding but does not constitute conclusive evidence that the Operator has performed its obligations in accordance with this Contract.

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## 2. Parties' Representatives

- (a) TfNSW appoints as its representative the person named in Item 1 in Attachment A of the Contract, or such other person as TfNSW may nominate and notify to the Operator from time to time (**TfNSW Representative**).
- (b) The Operator appoints as its representative the person named in Item 2 in Attachment A of the Contract, or such other person as the Operator may nominate and notify to TfNSW from time to time (**Operator Representative**).
- (c) The TfNSW Representative and the Operator Representative will serve as the principal interface between the Parties with respect to all issues arising under the Transaction Documents.

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## 3. Contract Objectives

- (a) The Operator acknowledges that:
  - (i) the primary purpose of this Contract is to ensure that the Services are run by an efficient and experienced ferry transport operator, which is able to sustain improvements in service delivery and value for money and assist TfNSW in developing longer term service expansion and fleet procurement strategies; and
  - (ii) TfNSW's principal objectives (**Contract Objectives**) in entering into this Contract are to:
    - (A) deliver transport journeys and related customer services that are safe and reliable for passengers, Staff and the public;
    - (B) improve the customer experience, service delivery and provide a coherent and consistent customer experience that will promote greater patronage and modal shift;

- (C) return patronage to levels experienced before the advent of the COVID-19 and maintain sufficient revenue from patronage to offset the cost of the Services;
  - (D) enable a smooth and seamless transition from the current contract to the new contract;
  - (E) maintain flexibility in the contract arrangements to address future growth and changes including zero and low emissions technology;
  - (F) maintain reliable, timely and transparent reporting and Data management on the operation of the Services (including real time) and performance of the Operator; and
  - (G) deliver value for money to TfNSW, including by improving the efficiency of operations, increasing revenue (above pre-COVID-19 levels) and prudently balancing financial, environmental and social sustainability.
- (b) The Operator must perform its obligations under the Transaction Documents having regard to the Contract Objectives.

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#### 4. Contract risks

Except to the extent that this Contract expressly provides otherwise, as between TfNSW and the Operator, the Operator must bear all risks and costs, and has no Claim against TfNSW arising out of or in connection with carrying out the Operator Activities or otherwise complying with its obligations under the Transaction Documents.

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### Part A – Service Commencement and Service Term

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#### 5. Service Commencement and Service Term

##### 5.1 Service Term

- (a) The Service Term commences on the Service Commencement Date and continues until the Expiry Date, unless earlier terminated in accordance with this Contract.
- (b) For the avoidance of doubt, the Service Term is not extended if the Services are not commenced (regardless of the reason) by the Planned Service Commencement Date.

##### 5.2 Performance Review

- (a) No later than the date that is nine months prior to the fifth anniversary of the Planned Service Commencement Date, TfNSW must determine whether the Operator has met the relevant Performance Benchmarks as at the end of the fourth Contract Year and notify the Operator accordingly.
- (b) If TfNSW notifies the Operator under Clause 5.2(a) that the Operator has not met the Performance Benchmarks, TfNSW may, by giving notice to the Operator, terminate this Contract (without cost or liability) with effect from 12.01 am on the later of:
  - (i) the date that is the fifth anniversary of the Planned Service Commencement Date; or
  - (ii) another date nominated by TfNSW in the notice of termination issued under this Clause 5.2(b) which must be no earlier than the date that is the fifth anniversary of the Planned Service Commencement Date and no later than the date that is the sixth anniversary of the Planned Service Commencement Date.
- (c) No later than the date that is nine months prior to the tenth anniversary of the Planned Service Commencement Date, TfNSW must determine whether the Operator has met the relevant



Performance Benchmarks as at the end of the ninth Contract Year and notify the Operator accordingly.

- (d) If TfNSW notifies the Operator under Clause 5.2(c) that the Operator has not met the Performance Benchmarks, TfNSW may, by giving notice to the Operator, terminate this Contract (without cost or liability) with effect from 12.01 am on the later of:
  - (i) the date that is the tenth anniversary of the Planned Service Commencement Date; or
  - (ii) another date nominated by TfNSW in the notice of termination issued under this Clause 5.2(d) which must be no earlier than the date that is the tenth anniversary of the Planned Service Commencement Date and no later than the date that is the eleventh anniversary of the Planned Service Commencement Date.
- (e) The Operator has no Claim against TfNSW in relation to the termination of this Contract under Clause 5.2(b) or Clause 5.2(d).
- (f) Nothing in this Clause 5 in any way limits TfNSW's rights in respect of any breach by the Operator or the Operator's Associates of this Contract including under Clause 56 or otherwise at Law.
- (g) For the avoidance of doubt, TfNSW may itself, or through a third party, carry out the Services after termination under this Clause 5.

### 5.3 Performance Benchmarks

- (a) For the purposes of Clause 5.2, the Operator must achieve the following performance benchmarks at the end of the fourth Contract Year (**Performance Benchmarks**):
  - (i) [Not used];
  - (ii) during the second, third and fourth Contract Years the Operator has not:
    - (A) breached two or more Class 1 Key Performance Indicators, or a Class 1 Key Performance Indicator on more than one occasion, during any six month period; or
    - (B) breached three or more Class 1 Key Performance Indicators, or a Class 1 Key Performance Indicator on more than three occasions, during any 12 month period;
  - (iii) there is no Service Default under this Contract that has not been remedied or waived, or in respect of which the Operator is not diligently pursuing a cure, in accordance with the requirements of this Contract to the satisfaction of TfNSW;
  - (iv) TfNSW has received written advice from the Australian Maritime Safety Authority that, in its opinion, there have been no material concerns regarding the Operator's safety record during the first four Contract Years; and
  - (v) in TfNSW's opinion there have been no material concerns regarding the Operator's safety record during the first four Contract Years.
- (b) For the purposes of Clause 5.2, the Operator must achieve the following performance benchmarks at the end of the ninth Contract Year:
  - (i) [Not used];
  - (ii) during the sixth, seventh, eighth and ninth Contract Years the Operator has not:
    - (A) breached two or more Class 1 Key Performance Indicators, or a Class 1 Key Performance Indicator on more than one occasion, during any six month period; or
    - (B) breached three or more Class 1 Key Performance Indicators (if any), or a Class 1 Key Performance Indicator on more than three occasions, during any 12 month period;

- (iii) there is no Service Default under this Contract that has not been remedied or waived, or in respect of which the Operator is not diligently pursuing a cure, in accordance with the requirements of this Contract to the satisfaction of TfNSW;
  - (iv) TfNSW has received written advice from the Australian Maritime Safety Authority that, in its opinion, there have been no material concerns regarding the Operator's safety record during the sixth, seventh, eighth and ninth Contract Years; and
  - (v) in TfNSW's opinion there have been no material concerns regarding the Operator's safety record during the sixth, seventh, eighth and ninth Contract Years.
- (c) TfNSW may waive any of the Performance Benchmarks or any non compliance with them.
- (d) [Not used]

#### 5.4 No entitlement to new contract or extension of contract

- (a) Nothing in this Contract shall be construed as affording the Operator a right or expectation of any renewal or extension of this Contract or to provide, or be invited to provide the Operator Activities after the Service Term or any new Public Passenger Service during the Service Term.
- (b) A reference in this Contract to TfNSW's rights to conduct a procurement process for the performance of the Operator Activities on termination or expiry of this Contract includes the right to conduct a limited or open tender, engage in bilateral negotiation or award a service contract on any other basis and conditions whatsoever.

#### 5.5 Conditions at execution

- (a) Without limiting the operation of Clauses 5.6 to 5.8 the Parties acknowledge and agree that it is a requirement that the Operator delivers to TfNSW at the same time as it delivers to TfNSW a counterpart of this Contract executed by the Operator:
  - (i) the executed Deed of Guarantee and Indemnity in accordance with Clause 7;
  - (ii) if any party of any Deed of Guarantee and Indemnity is not an Australian entity, a legal opinion in the form and substance, and issued by a law firm, acceptable to TfNSW; and
  - (iii) evidence to TfNSW's satisfaction that the Operator and the Parent Company are authorised to enter into each Transaction Document and any other document to be entered into in connection with this Contract.
- (b) If any of the conditions contemplated by Clause 5.5(a) are not fulfilled to TfNSW's satisfaction as at the date of execution of this Contract by the Operator, TfNSW may terminate this Contract by notice in writing to the Operator with immediate effect and this Contract will be of no further effect. For the avoidance of doubt, if TfNSW terminates the Contract in accordance with this Clause 5.5(b) TfNSW has no liability to the Operator and the Operator will not be entitled to claim any amount, including for set-up costs or any other costs incurred during or before the Transition Period.

#### 5.6 Conditions precedent prior to Service Commencement

The Operator must ensure that the following conditions precedent are fulfilled to TfNSW's satisfaction prior to the Planned Service Commencement Date:

- (a) delivery to TfNSW of the General Performance Bond(s), in accordance with Clause 6.1;
- (b) delivery to TfNSW of evidence satisfactory to it that the Operator has obtained the insurances required by Clause 43;
- (c) delivery to TfNSW of evidence satisfactory to TfNSW that the Operator and the Staff hold the necessary Authorisations to conduct the Services and other related Operator Activities;
- (d) [Not Used];
- (e) [Not Used];

- (f) if applicable, delivery to TfNSW of evidence of notification under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) from the Australian Treasurer that there is 'no objection' under the FATA (either unconditionally or on conditions acceptable to TfNSW and the Operator) to all of the 'notifiable actions' and 'significant actions' (as those terms are defined in the FATA) contemplated by or otherwise related to this Contract;
- (g) TfNSW being satisfied that each document required to be delivered under this Clause 5.6 has been duly executed in a form approved by TfNSW and is in full force and effect or is conditional only on the occurrence of the Service Commencement Date under this Contract;
- (h) delivery to TfNSW of each certificate, confirmation, grant, assurance, conveyance, deed and other document of title or evidencing title to, or right to acquire, possess, use or dispose of, any property secured by each Security that is required to be delivered under this Clause 5.6;
- (i) TfNSW having received each document required to be delivered under Clause 5.6(a) (**Security Documents**), properly executed by the relevant parties and:
  - (i) in registrable form, together with all things (including documents) necessary to register the Security Documents in each relevant jurisdiction and evidence satisfactory to TfNSW of the registration on the Personal Property Securities Register of each financing statement (each as defined by the PPS Law) required by TfNSW to perfect any Security Interest created under the Security Documents;
  - (ii) evidence satisfactory to TfNSW that each Security Document has been stamped in all relevant jurisdictions and any other taxes of a similar nature have been paid;
  - (iii) results satisfactory to TfNSW of all searches and enquiries relating to the property granted as security under each Security Document; and
  - (iv) duly completed and executed discharges and releases, in registrable form, of any Security Interest (other than a Permitted Security Interest) existing over the property the subject of a Security Document;
- (j) TfNSW being satisfied of there being no material breach, and there being no facts or circumstances that may reasonably be expected to lead to a material breach, of any of the warranties set out in Clause 41; and
- (k) TfNSW being satisfied that the Operator has satisfied or complied with any other requirements that the Operator is required to satisfy or comply with under the Transaction Documents on or prior to the Planned Service Commencement Date.

### 5.7 Certificate of Service Commencement

- (a) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions precedent in Clause 5.6 has been satisfied (or waived by TfNSW), TfNSW will issue to the Operator a Certificate of Service Commencement specifying the Service Commencement Date.
- (b) The Service Commencement Date will be a date on or after the Planned Service Commencement Date (unless TfNSW and the Operator agree otherwise).

### 5.8 Consequences of non-fulfilment of conditions precedent

If the Operator fails to comply with the conditions precedent in Clause 5.6 by the Planned Service Commencement Date, TfNSW may terminate this Contract by issuing a notice to the Operator with immediate effect and, subject to Clauses 56.5 and 78, this Contract will be of no further effect and the Operator has no Claim against TfNSW in respect of such termination.

### 5.9 Operating Plans

The Operator must ensure that, no later than three months after the Planned Service Commencement Date, all of the Operating Plans have been delivered to TfNSW and approved by TfNSW (acting reasonably). The Operator Plans provided to TfNSW under this Clause 5.9 must be consistent with, and no less onerous than, the plans provided in the Proposal unless otherwise agreed by TfNSW.

## 6. Performance Bonds

### 6.1 Performance Bonds

- (a) The Operator must, prior to the Planned Service Commencement Date, procure the issue to TfNSW of one or more performance bonds each of which:
- (i) is in the form set out in Annexure A;
  - (ii) is issued by an Issuer with the Required Rating and approved by TfNSW (which approval must not be unreasonably withheld);
  - (iii) has a face amount which, when aggregated with the face amount of any other performance bond provided under this Clause 6.1(a) (or any replacement provided under Clauses 6.2, 6.3 or 6.4), is no less than the General Performance Bond Amount;
  - (iv) is unconditional and irrevocable;
  - (v) expires no earlier than:
    - (A) 12 months after the end of the Service Term; or
    - (B) two years after the date it is issued to TfNSW; and
  - (vi) is issued, and available to be drawn at, an office of the Issuer in Sydney.
- (b) The Operator must, at least six months prior to the Expiry Date provide to TfNSW a performance bond for the amount referred to in Clause 58.1(c)(iv) (**Estimated Amount**) that complies with the requirements of Clauses 6.1(a)(i), (ii), (iv), (v) and 6.1(a)(vi) (**Handback Security Bond**).
- (c) If the Operator fails to provide a Handback Security Bond in accordance with Clause 6.1(b), then TfNSW may withhold the Estimated Amount from the Payments (provided that TfNSW will not withhold more than ■% of the Estimated Amount from payments due in any one month). TfNSW may use the amounts withheld on the same conditions as it may use the Handback Security Bond under this Contract and the unused part of any amounts withheld will be paid to the Operator on the earlier of:
- (i) the time that the Handback Security Bond would have been returned had it been provided; and
  - (ii) the time that the Operator provides the Handback Security Bond in accordance with its obligations under this Clause 6.1.

### 6.2 Available amount

If, at any time prior to the date that is 12 months after the end of the Service Term, the amount available to be drawn under the General Performance Bonds is less than the General Performance Bond Amount as at that time, the Operator must, within 10 Business Days after that time procure the issue to TfNSW of one or more supplementary performance bonds in accordance with the requirements of Clause 6.1(a), so that the aggregate of the amount of all General Performance Bonds is equal to the General Performance Bond Amount as at that time.

### 6.3 Trigger Date

If the Trigger Date of a Performance Bond occurs at any time prior to the date that is 12 months after the end of the Service Term the Operator must procure the issue to TfNSW of a replacement performance bond which complies with the requirements of Clause 6.1 prior to the occurrence of the Trigger Date for the Performance Bond.

### 6.4 Required Rating

If, at any time prior to the date that is 12 months after the end of the Service Term, the Issuer of a Performance Bond ceases to have the Required Rating, the Operator must procure the issue to TfNSW of a replacement performance bond which complies with the requirements of Clause 6.1 within 20 Business Days after the Issuer ceases to have the Required Rating.

**6.5 Demands under bonds**

- (a) TfNSW may only make a demand under the Performance Bonds in accordance with this Clause 6.5.
- (b) TfNSW may have recourse to more than one of the Deed of Guarantee and Indemnity and the Performance Bonds.
- (c) TfNSW may make a demand under the Performance Bonds where:
  - (i) any amount has become due and payable (and has not been paid) by the Operator or the Operator's Associates to TfNSW or a Successor Operator under or in connection with a Transaction Document (including any amount which TfNSW is entitled to set off under the Transaction Document);
  - (ii) TfNSW has a good faith Claim to any amount whether for damages (including liquidated damages) or under an indemnity or otherwise relating to the Operator Activities or any Transaction Document, and has notified the Operator of such Claim; or
  - (iii) the Operator or the Operator's Associates may or will become liable to pay any amount to TfNSW or a Successor Operator in respect of their obligations under a Transaction Document following the Termination Date.
- (d) If the Operator does not comply with Clause 6.2, 6.3 or 6.4, TfNSW may demand the full General Performance Bond Amount as at the relevant time, provided that:
  - (i) the amount paid to TfNSW as a result of the demand must be paid to the Operator as soon as practicable after a replacement General Performance Bond is provided to TfNSW in accordance with Clause 6.2, 6.3 or 6.4 (whichever is applicable) (but for this purpose the amount received by TfNSW under this paragraph is to be disregarded in determining the General Performance Bond Amount which the replacement General Performance Bond must satisfy); or
  - (ii) if a replacement General Performance Bond has not been provided to TfNSW by the date falling 12 months after the end of the Service Term, TfNSW must pay the Operator the amount, if any, paid to TfNSW as a result of the demand under this Clause 6.5(d) less any amount in respect of which TfNSW was or would have been entitled to make a demand in accordance with Clause 6.5(c) at any time on or before that date, without any interest being owed in respect of such amount.
- (e) TfNSW may make a demand irrespective of whether or not the amount is, or the circumstances relating to the amount are:
  - (i) in dispute between the Parties; or
  - (ii) subject to any court or other proceedings.
- (f) If:
  - (i) the Issuer of a Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 6.5(c)(i) and all or part of the amount in respect of which demand was made was not actually payable by the Operator or the Operator's Associates to TfNSW or a Successor Operator; or
  - (ii) the Issuer of a Performance Bond makes a payment to TfNSW as a result of a demand made in accordance with Clause 6.5(c)(ii) or 6.5(c)(iii) and the Operator or the Operator's Associates do not in fact become liable to pay to TfNSW or a Successor Operator all or part of the amount in respect of which the demand was made, then TfNSW must pay to the Operator (as the Operator's sole remedy):
    - (iii) the amount which was not actually due and payable by the Operator or the Operator's Associates to TfNSW or a Successor Operator or for which the Operator or the Operator's Associates did not in fact become liable to pay to TfNSW or a Successor Operator (**Relevant Amount**); and

- (iv) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Performance Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Operator. Such interest must be paid on the date the Relevant Amount is paid to the Operator.
- (g) TfNSW must, as soon as practicable after TfNSW has made a demand under a Performance Bond, give a notice to the Operator specifying TfNSW's reasons for making the demand.
- (h) The aggregate amount of demands that TfNSW may make under all of the General Performance Bonds may not exceed the General Performance Bond Amount as at the relevant time.
- (i) The Operator must not take any steps to restrain or injunct TfNSW from making a demand under a Performance Bond or the Issuer paying, or TfNSW using, any amounts under a Performance Bond.

#### 6.6 Return of Performance Bonds

- (a) TfNSW must return to the Operator an existing Performance Bond once TfNSW has received a replacement Performance Bond under Clause 6.2, 6.3 or 6.4.
- (b) TfNSW must, subject to any rights TfNSW may have in relation to the Performance Bond, return the Performance Bonds (less any amounts drawn under Clause 6.5) to the Operator within 10 Business Days after the date that is 12 months after the end of the Service Term.

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### 7. Deed of Guarantee and Indemnity

Prior to the Planned Service Commencement Date, the Operator must provide TfNSW with a Deed of Guarantee and Indemnity duly executed by the Parent Company and stamped (if required by Law).

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### 8. Not used

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## Part B – Transition [REDACTED]

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### 9. Transition

#### 9.1 Day One Services

- (a) This Contract commences on the date on which this Contract is executed by both parties.
- (b) The Operator must provide the Day One Services on and from the Service Commencement Date.

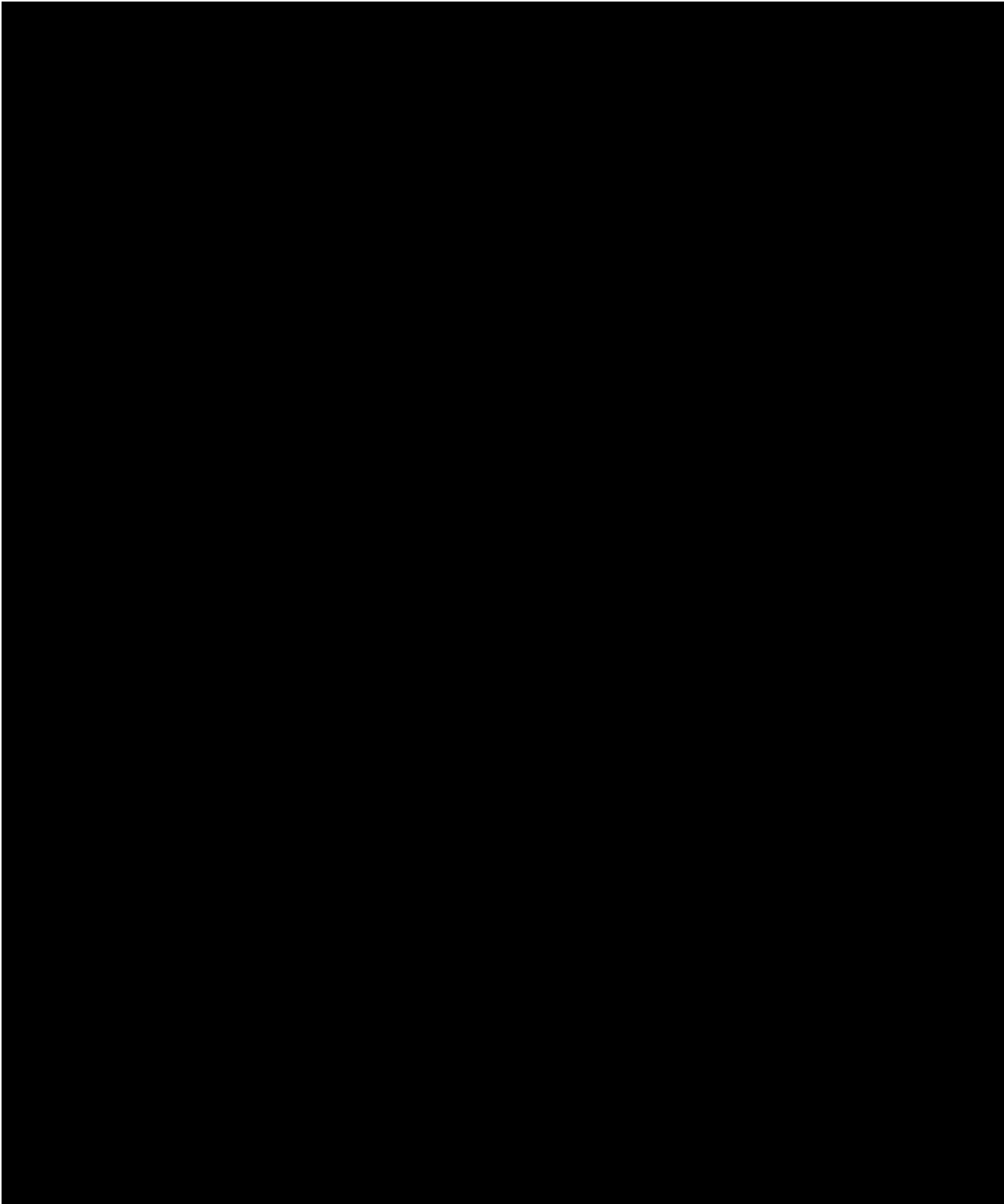
#### 9.2 Transition to Modified Services

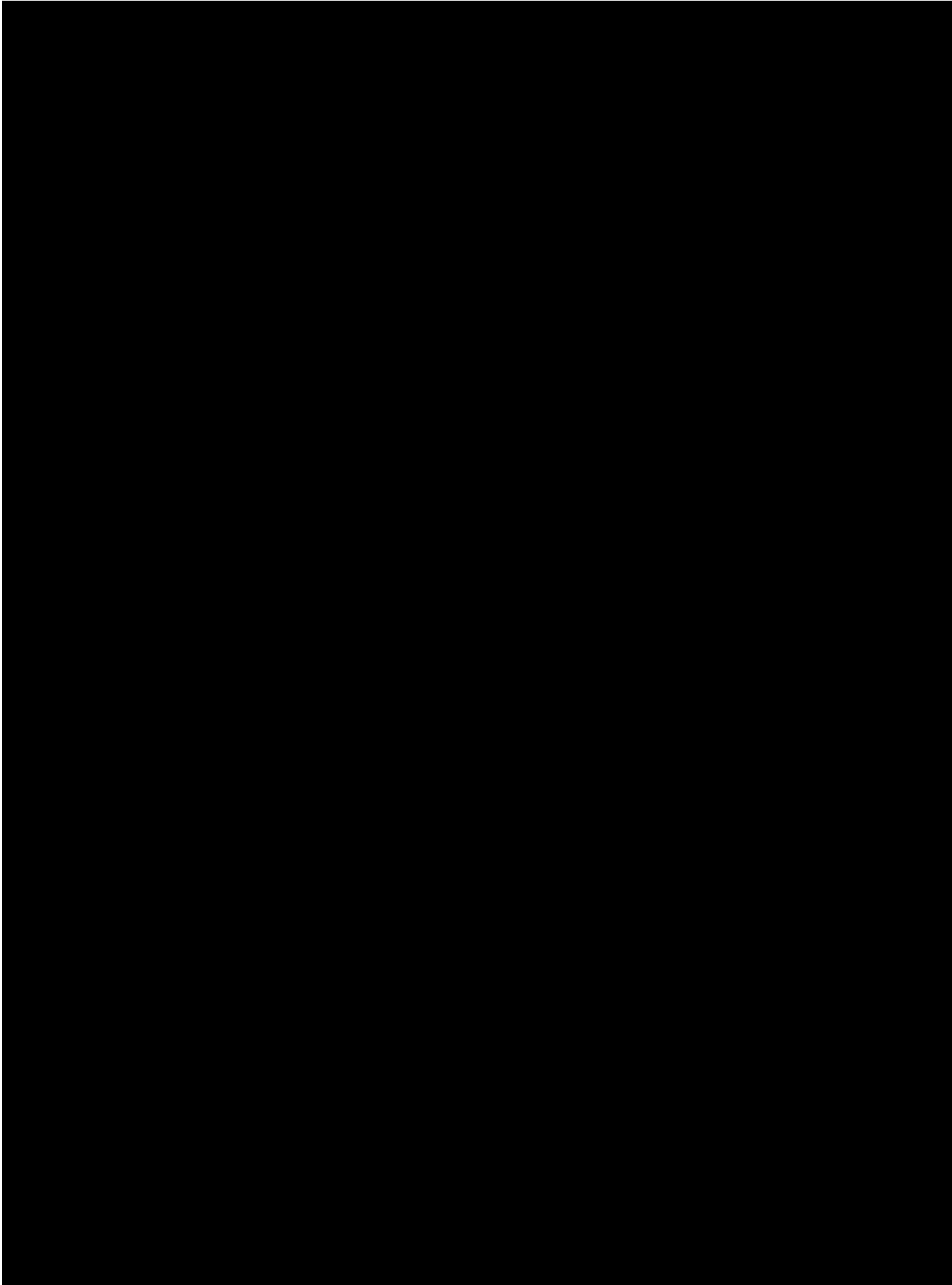
- (a) On and from the date of this Contract the Operator must:
  - (i) comply with the Transition Schedule (including by preparing and complying with the Transition In Plan);
  - (ii) achieve the Transition Milestones by the Transition Milestone Dates; and
  - (iii) do all other things reasonably necessary,

(Transition Activities) to ensure that the Modified Services are able to be commenced by the Planned Service Transition Date.
- (b) The Parties acknowledge and agree that **Transition Completion** will occur on successful completion of all Transition Activities (and associated Transition Milestones) in accordance with the Transition In Plan and Clause 9.2(a) and satisfaction of all criteria or requirements for the

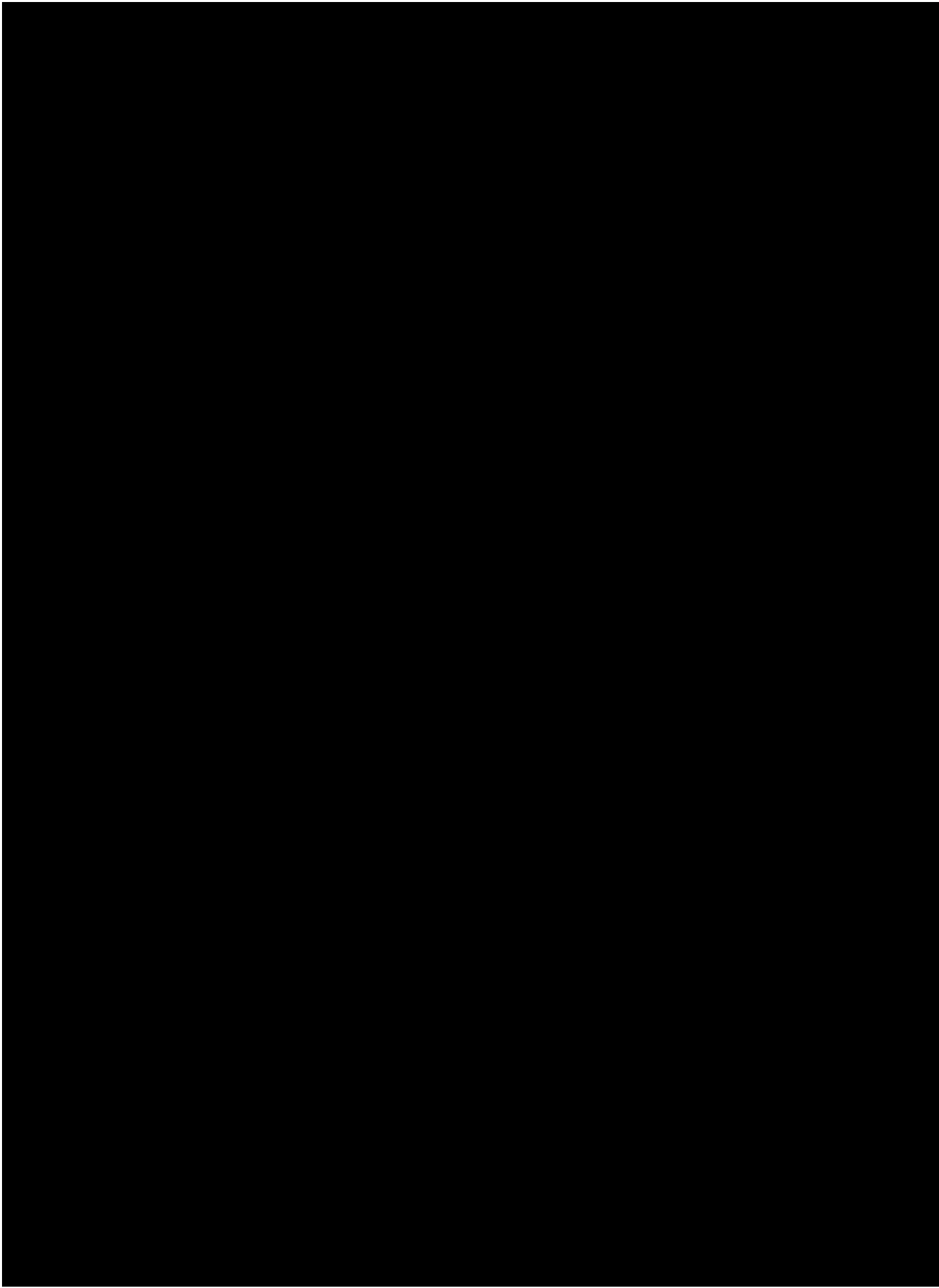
performance or completion of the Transition Activities as are specified in the Transition In Plan and Clause 9.2(a).

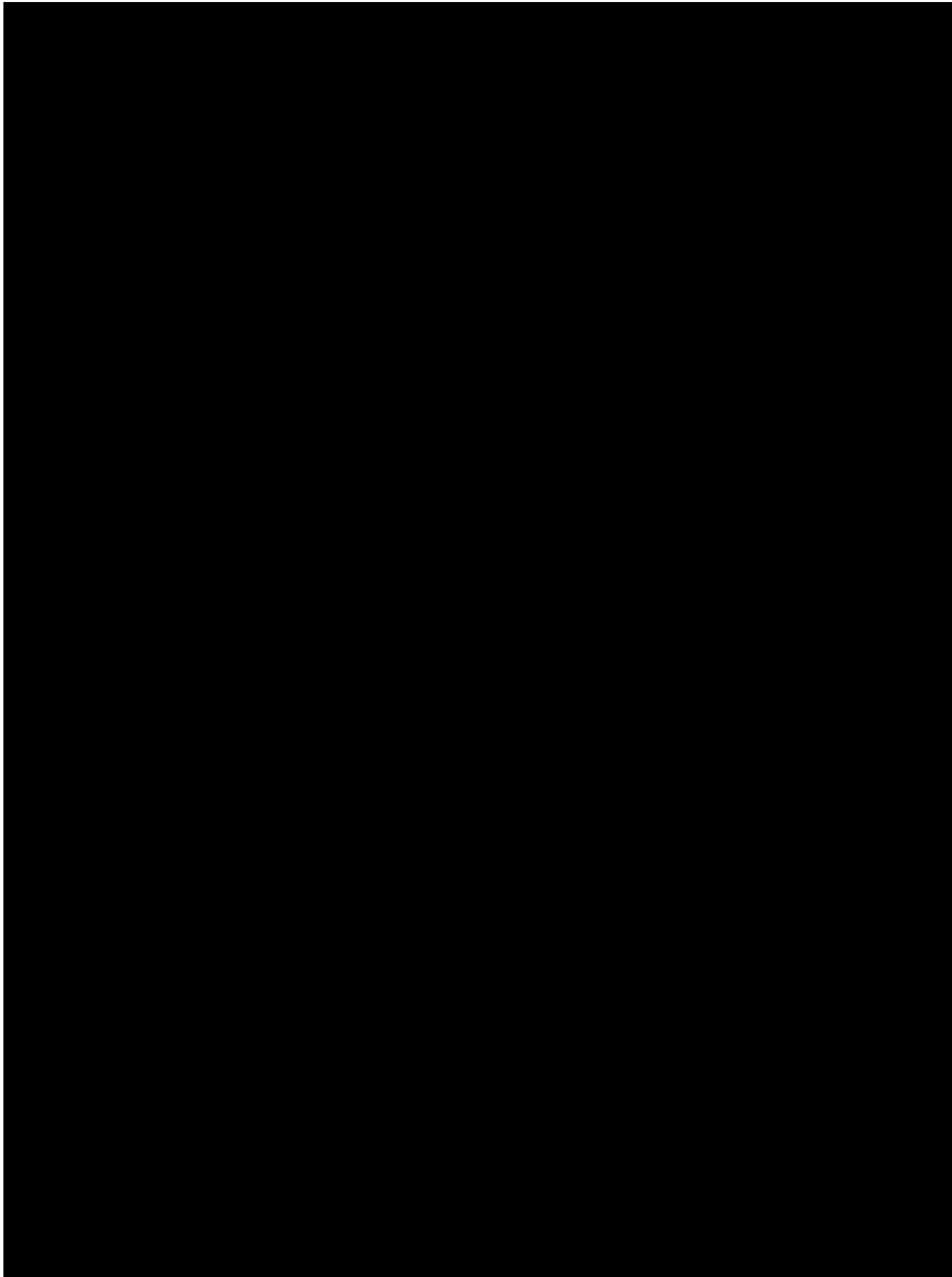
- (c) Subject to paragraph 2(c) of the KPI Schedule, without limiting Clauses 9.2(a) and 9.2(b) the Operator must:
- (i) commence operation of the Modified Services (Stage 1) on [REDACTED] (**Stage 1 Implementation Date**); and
  - (ii) commence operation of the Modified Services (Stage 2) on the Planned Service Transition Date.

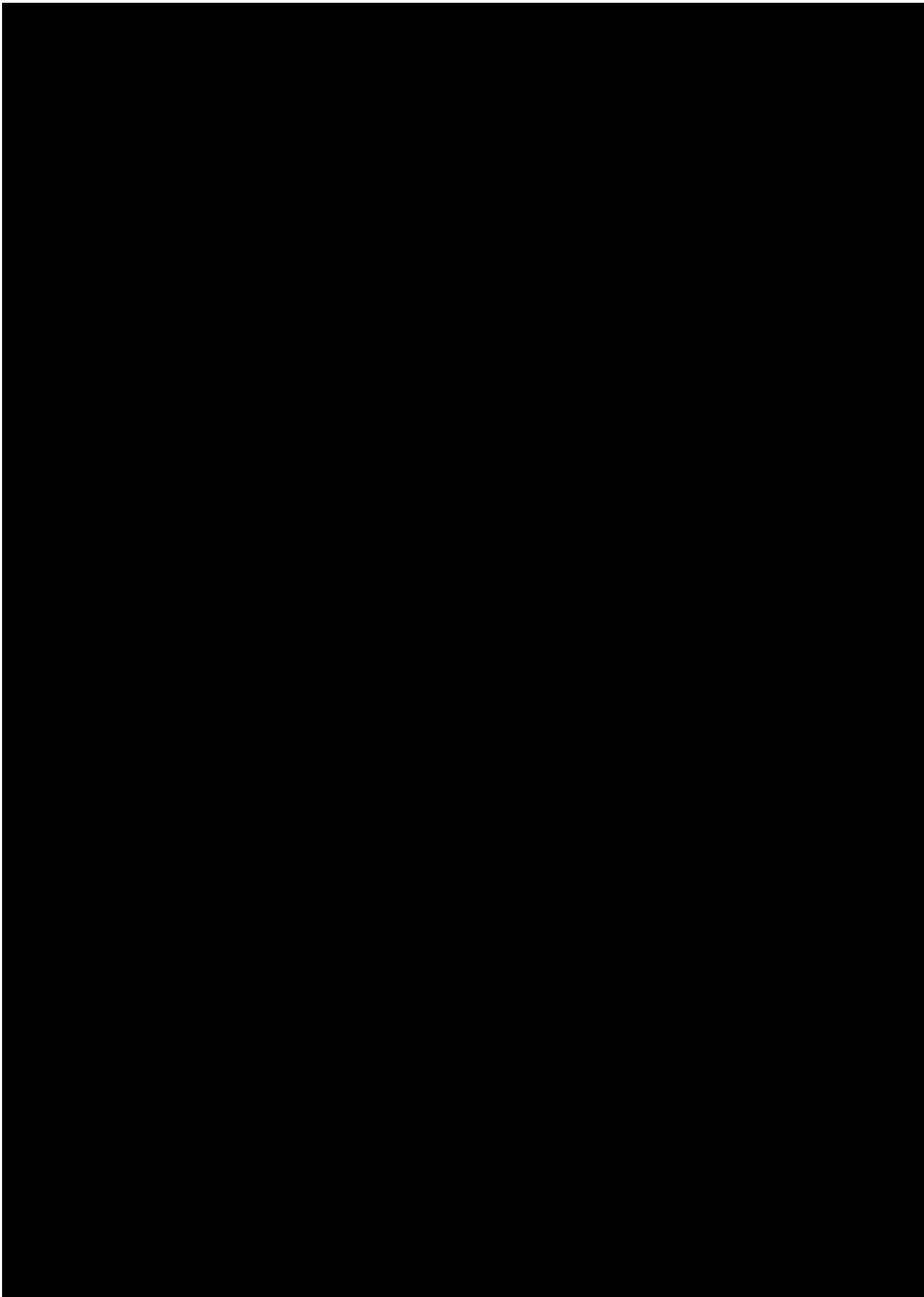


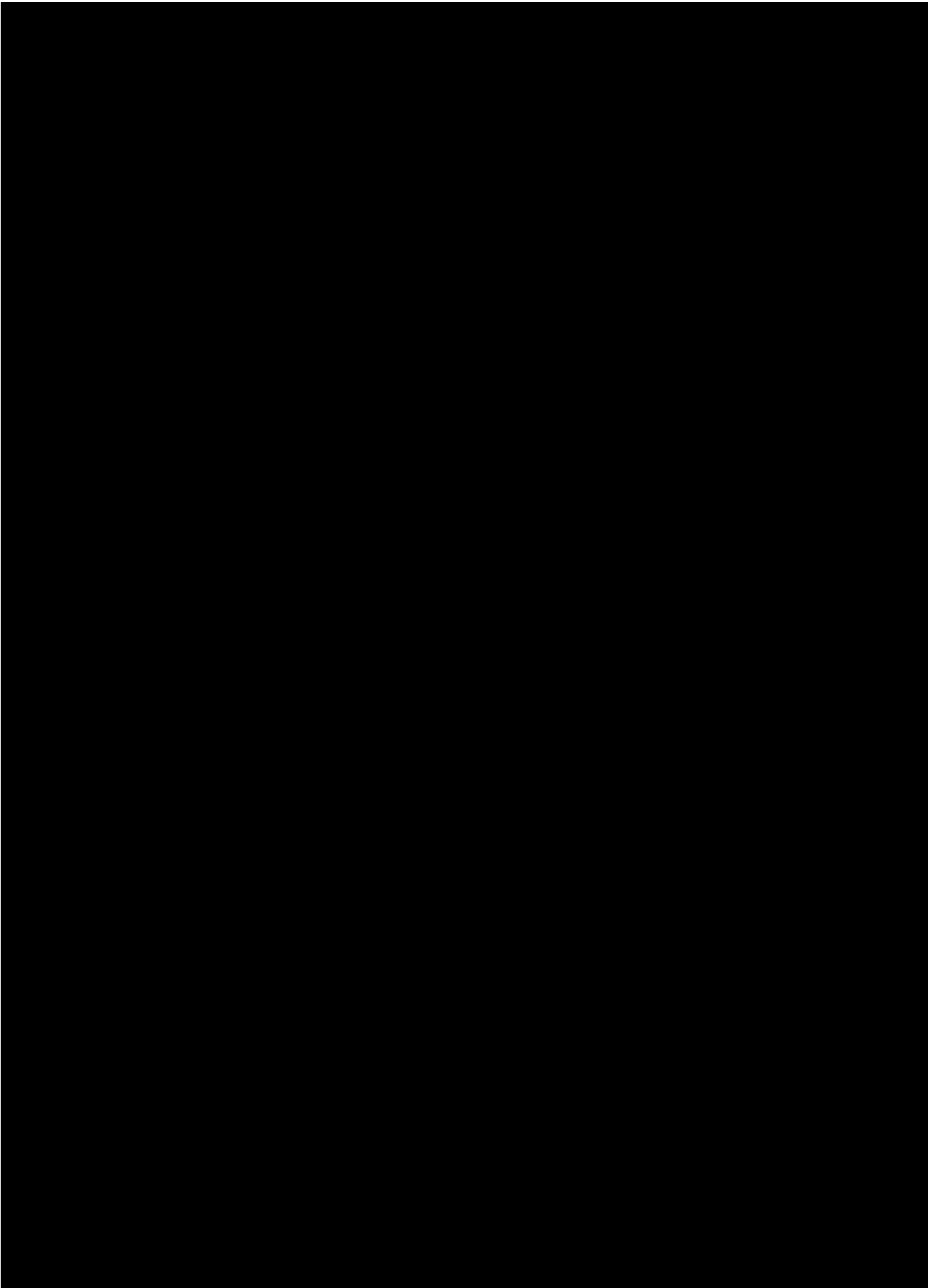


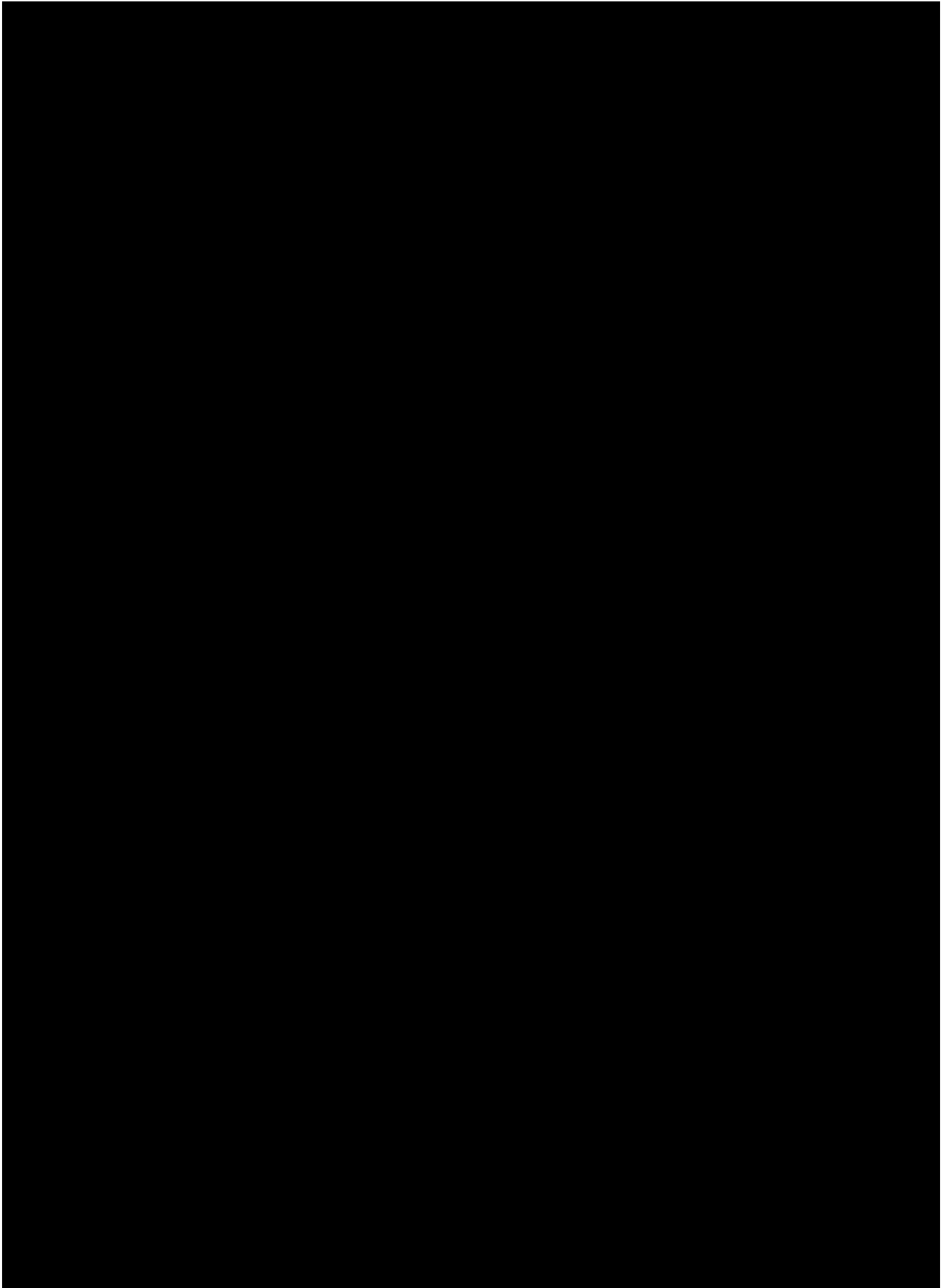


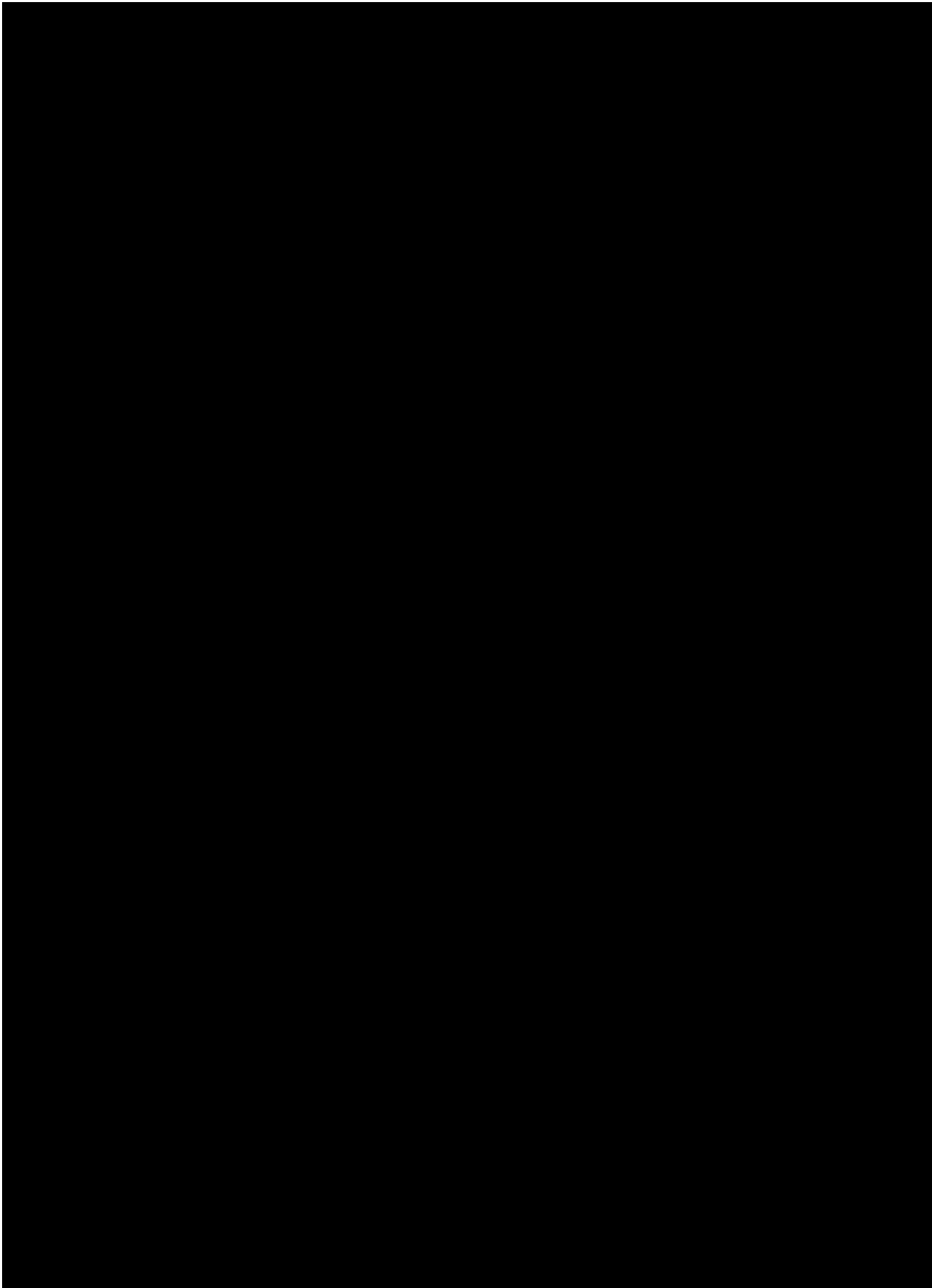


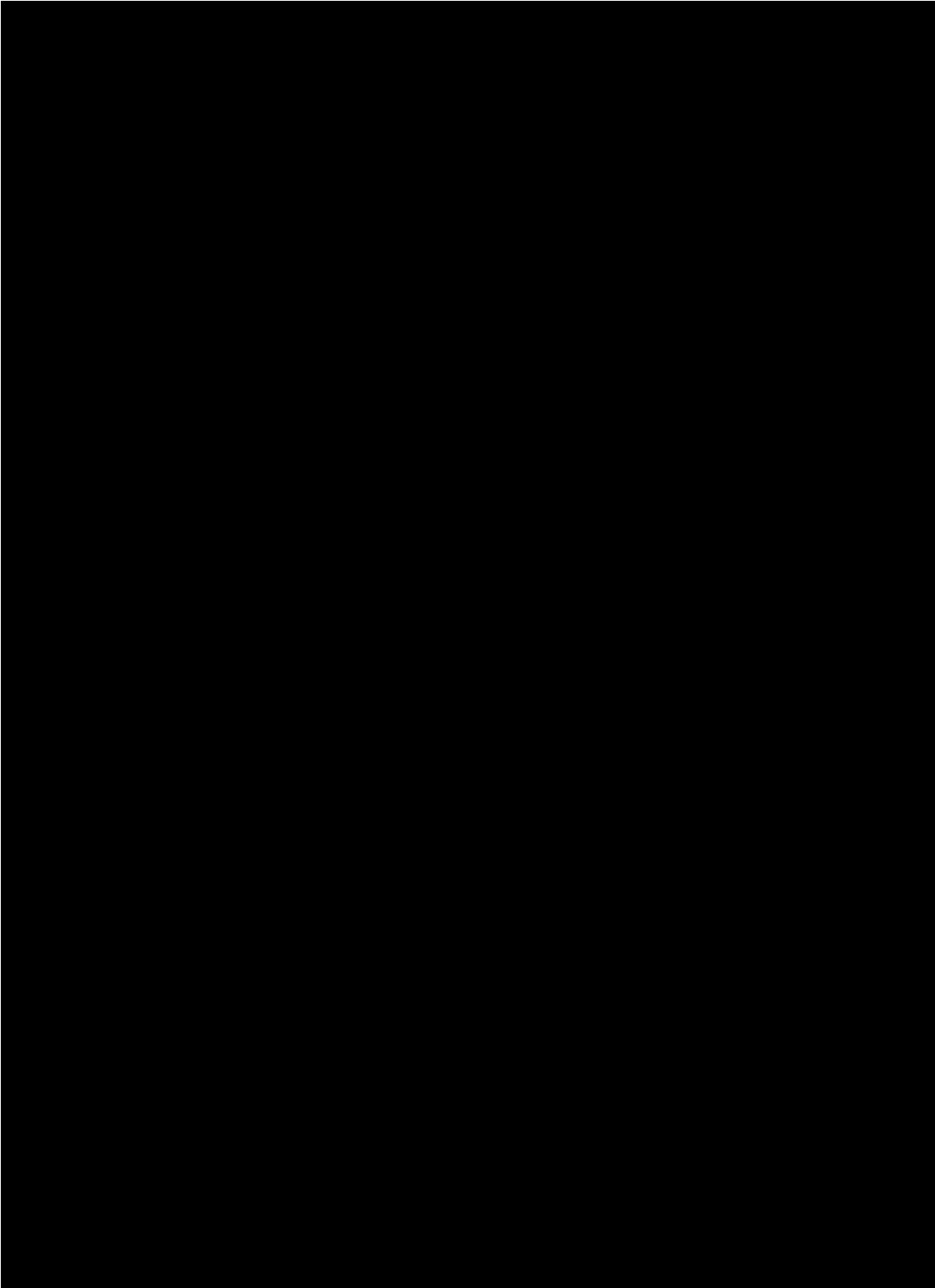


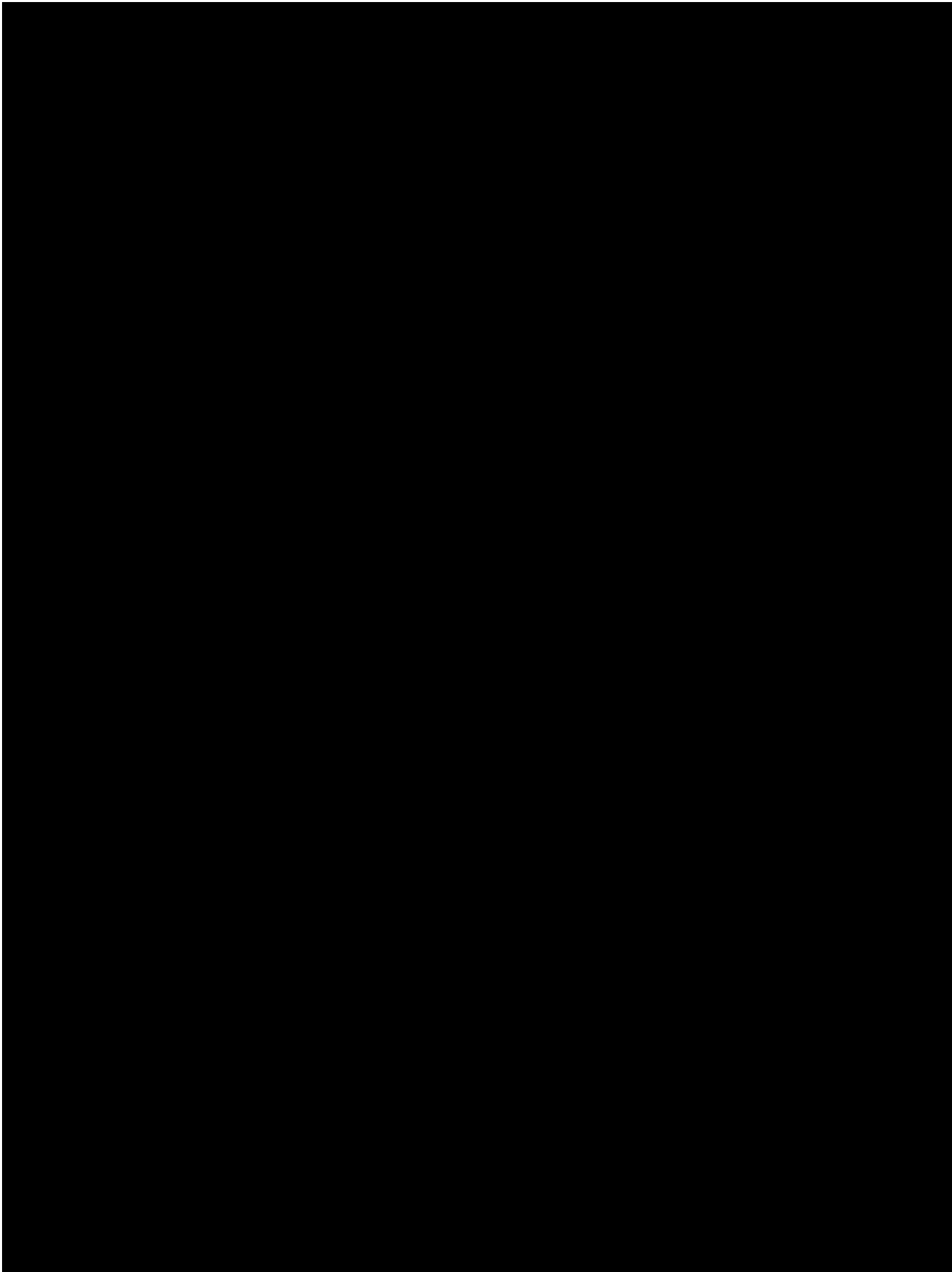




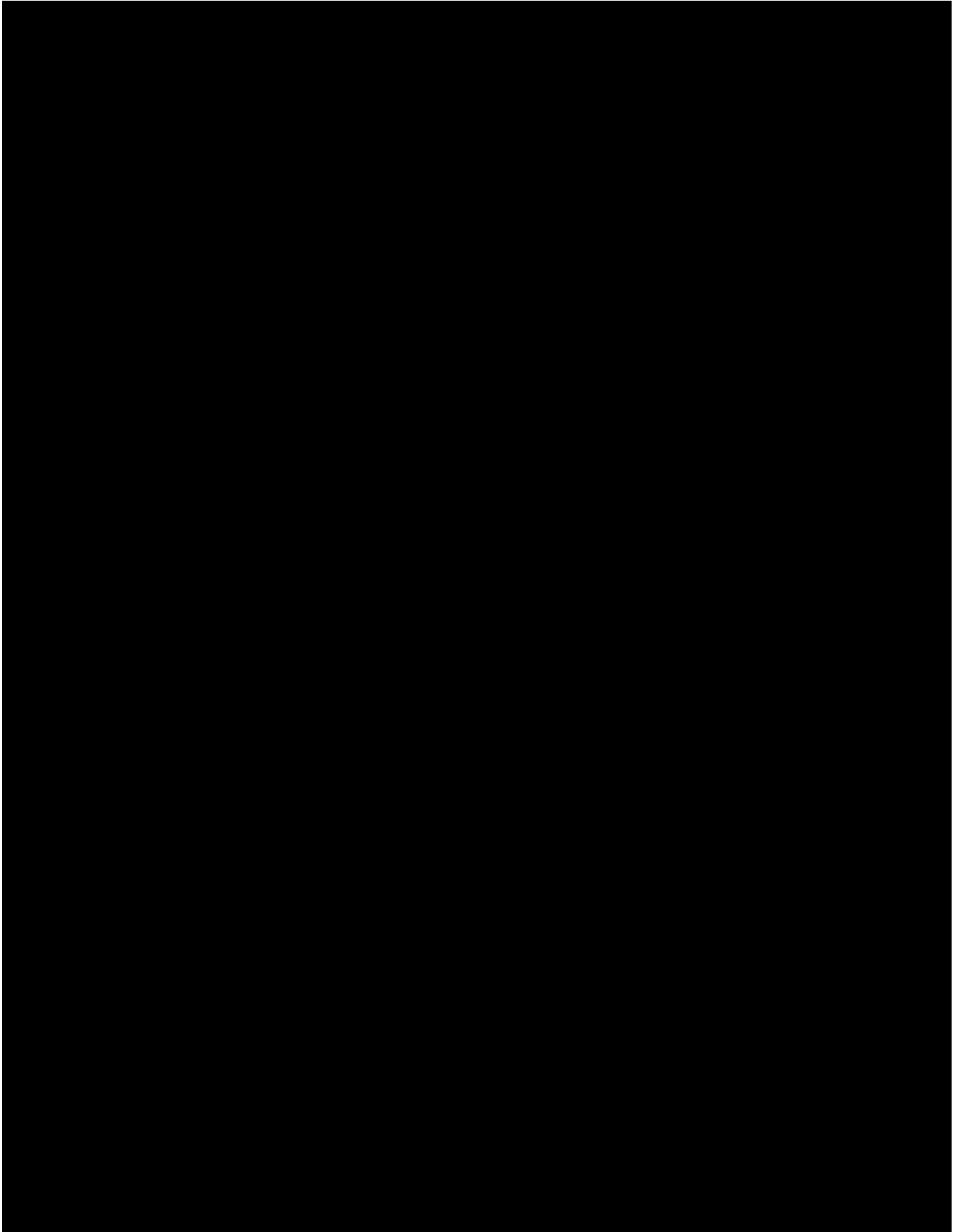


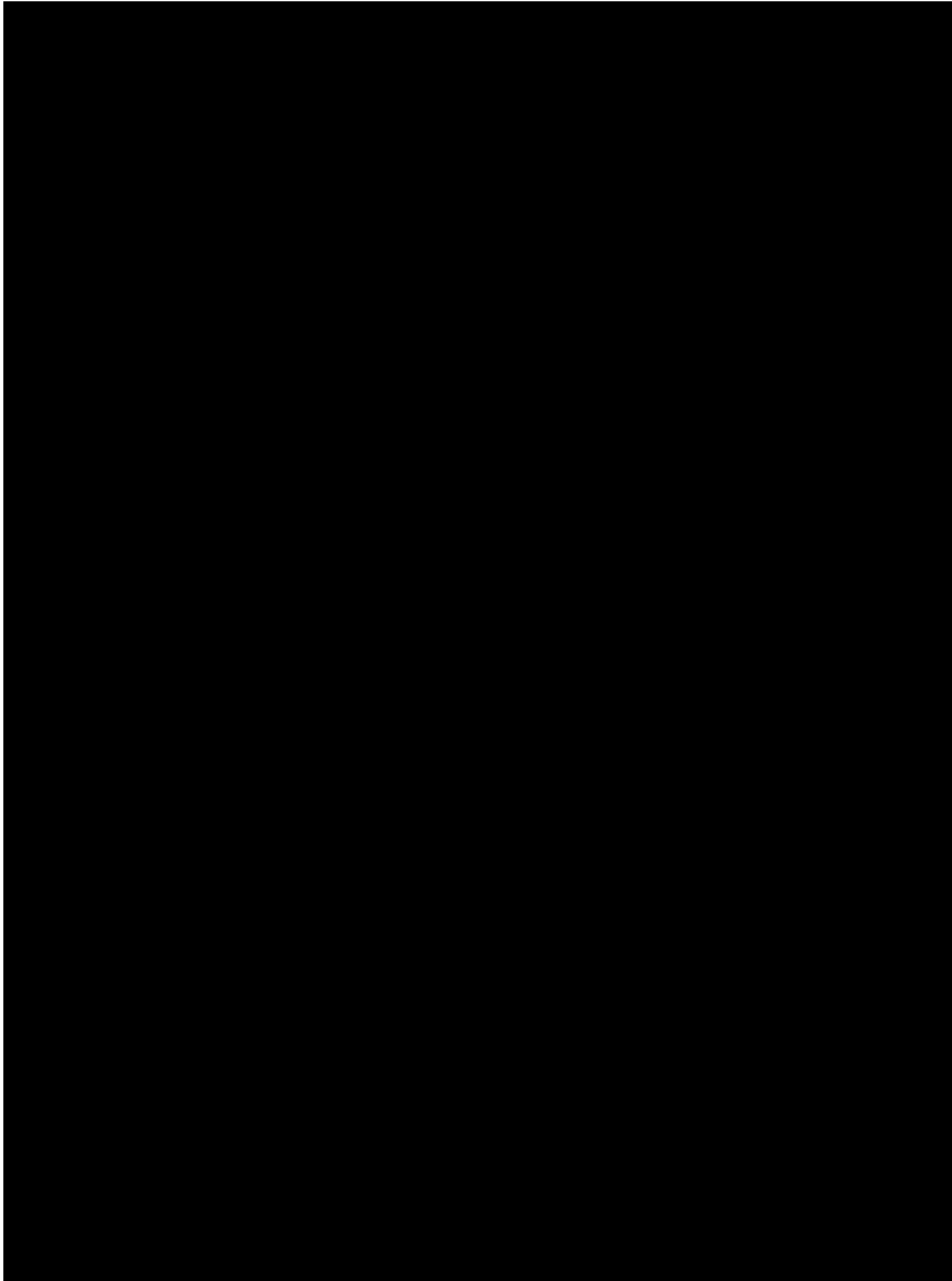












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## Part C – Service Delivery

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### 10. Performance of Services

#### 10.1 Commencement of Services

- (a) The Operator must provide the Services on and from the Service Commencement Date for the duration of the Service Term.
- (b) In performing the Services, the Operator must comply with the requirements of the Services Schedule.

#### 10.2 General Service obligations

The Operator must at all times during the Service Term:

- (a) perform its obligations under this Contract:
  - (i) in accordance with the Services Schedule and the Service Level Schedule;
  - (ii) in accordance with Good Industry Practice;
  - (iii) so as to meet or exceed the Key Performance Indicators;
  - (iv) so as to minimise disruption to the Services and to mitigate any unavoidable disruption to the fullest extent possible;
  - (v) so as to minimise impacts on the Environment in accordance with Law and Good Industry Practice;
  - (vi) so as to prevent injury to or death of persons and damage to property; and
  - (vii) in a proper, competent, courteous, safe and reliable manner;
- (b) be of good character and fit to conduct and manage the Operator Activities;
- (c) provide the Services:
  - (i) on the relevant Routes;
  - (ii) in accordance with the relevant Timetables and the relevant provisions of the Services Schedule; and
  - (iii) in a manner that effectively and efficiently carries out the Contract Service Levels set out in the Service Level Schedule; and

- (d) maintain, repair, replace and refurbish the Assets in accordance with the Contract including the Asset Schedule.

**10.3 Non exclusivity**

TfNSW and the Operator acknowledge and agree that:

- (a) [REDACTED] from the Service Commencement Date:
  - (i) only the Operator will be entitled to operate a ferry service during the Service Term with a scheduled travelling time of less than 20 minutes between any wharf at Circular Quay and any wharf on or around Manly; and
  - (ii) no other operator will be authorised to provide a ferry service between any wharf at Circular Quay and any wharf on or around Manly without any intermittent stops, with the exception, subject to Clause 10.3(a)(i), of the operator of Sydney Ferries services (as at the date of this Contract being Transdev Sydney Ferries Pty Ltd);

[REDACTED]

- (d) [REDACTED]:
  - (i) the right to provide the Services under this Contract is non-exclusive;
  - (ii) TfNSW may contract with one or more service providers to provide Public Passenger Services along or near the Routes;
  - (iii) nothing in, or contemplated by, the Transaction Documents or elsewhere confers on the Operator:
    - (A) any ownership of, or property or proprietary right in or over, the Routes;
    - (B) any other right or interest to operate any Public Passenger Service or other transport service other than the Services (**Other Services**); or
    - (C) any right to provide or be paid for Other Services; and
  - (iv) the Operator has no Claim against TfNSW in relation to the award, provision, operation or amendment of Other Services or the establishment, award, provision or operation of any new Public Passenger Services by TfNSW;
- (e) [REDACTED] if a Service Variation decreases, omits, deletes or removes any part of the Routes or Services, TfNSW may thereafter carry out the omitted routes or services itself or by engaging another person to provide the routes or services; and
- (f) for the purposes of this Clause 10.3:

- (i) the term "Circular Quay" means the Circular Quay precinct as defined in the *Passenger Transport Regulation 2014* (NSW); and
- (ii) the term "Manly" means Manly as defined in the *Passenger Transport Regulation 2014* (NSW).

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## Part D – Service requirements

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### 11. Publication and display of public transport information and marketing

#### 11.1 General requirements

- (a) The Operator must display, publish, exchange and provide the public transport information, referred to in Item 4 of the Services Schedule, to the public, for the duration of the Service Term, in accordance with the requirements of Item 4 of the Services Schedule.
- (b) The Operator must submit the public transport information, referred to in Item 4 of the Services Schedule, to TfNSW for approval, in accordance with the requirements of Item 4 of the Services Schedule.
- (c) The Operator must provide information about the Services, in accordance with Item 5 of the Services Schedule.

#### 11.2 Transport information

- (a) The Operator must provide real time information to TfNSW and customers in accordance with the Services Schedule.
- (b) The Operator must:
  - (i) actively participate in the governance processes for Transportnsw.info Website as reasonably required by TfNSW;
  - (ii) promote Transportnsw.info Website as the primary customer interface for information regarding the Services, trip planning and customer feedback, particularly on published information such as websites, promotional material and other literature at Wharves and within Contract Ferries in a format reasonably required by TfNSW; and
  - (iii) not compete with or duplicate Transportnsw.info Website.

#### 11.3 Social media

The Operator must not establish or operate during the Service Term, its own social media channels for the Services unless approved by TfNSW. TfNSW may provide a standing approval in relation to the use of social media channels for day to day communications.

#### 11.4 Other requirements

The Operator must:

- (a) unless otherwise agreed by TfNSW, ensure that all marketing materials are provided to TfNSW for approval prior to publication;
- (b) unless otherwise agreed by TfNSW, not publish or make publicly available any marketing materials which have not been approved by TfNSW;
- (c) produce the Operator's marketing materials in accordance with the Operator Communications and Marketing Plan;

- (d) where requested to do so by TfNSW, make advertising space available on Contract Ferries in accordance with Clause 60.3(e) and do all things reasonably required by TfNSW to install TfNSW marketing campaign materials on the Contract Ferries;
- (e) maintain any TfNSW marketing campaign materials in good condition, replacing them where necessary with replacement materials provided by TfNSW and removing them when required by TfNSW.

#### **11.5 Wayfinding Signage**

The Operator must ensure that any new signage installed on the Assets during the Service Term complies with the Wayfinding Guidance Documents.

#### **11.6 Safety of passengers and the public**

The Operator must discharge its obligations in relation to the safety of passengers and the public under:

- (a) its duty of care at common law; and
- (b) all other applicable Laws, including the Transport Laws and WHS Law.

#### **11.7 [Not used]**

#### **11.8 Lost property system**

The Operator must obtain and maintain sufficient software licences in respect of TfNSW's lost property management system from time to time, and ensure that sufficient Staff are trained to use that system, to enable the Operator to perform its obligations under the Services Schedule.

#### **11.9 Compliance with NSW Government, TfNSW and other standards**

Without limiting the Operator's other obligations under the Transaction Documents, the Operator must comply with:

- (a) all New South Wales Government and TfNSW policies and guidelines referred to in the Transaction Documents or as notified to the Operator by TfNSW or published on TfNSW's website (being [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au) or its successor) from time to time including, without limitation:
  - (i) TfNSW's Statement of Business Ethics (which includes a requirement to comply with the Transport Code of Conduct and the NSW Government Procurement Policy Framework in relation to conduct by suppliers); and
  - (ii) all policies and standards regarding security, data and privacy; and
- (b) all Australian standards,  
to the extent that they relate to or affect the provision of the Services.

#### **11.10 Commercial opportunities**

Notwithstanding any other provision of this Contract, the Operator must not, and must not permit any other person to carry on any Restricted Activity in relation to or in connection with the Ferry Operations or, on or in connection with any of the Assets, without the consent of TfNSW.

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## **12. Service Desk**

- (a) The Operator must provide and operate a Service Desk, in accordance with the requirements set out in Item 7 of the Services Schedule, from the Service Commencement Date and for the duration of the Service Term.
- (b) Without limiting the requirements of this Clause 12 and the Services Schedule:
  - (i) the Operator must manage and resolve all customer complaints in accordance with the TfNSW Customer Complaints Policy including by promptly dealing with and responding to

- all complaints and feedback referred from the TfNSW Customer Feedback System and Transportnsw.info Website;
- (ii) while ever TfNSW is operating the Transportnsw.info Website services, the Operator must use the Transportnsw.info Website services for the provision of the Service Desk services under this Contract;
  - (iii) the Operator must record all complaints or feedback received by the Operator's Service Desk in the TfNSW Customer Feedback System and complete the entry of all relevant data in relation to the management of complaints in respect of the Services in accordance with the TfNSW Customer Complaints Policy;
  - (iv) the Operator must obtain and maintain sufficient software licences in respect of the TfNSW Customer Feedback System, and ensure that sufficient Staff are trained to use that system, to enable the Operator to perform its obligations under this Clause 12;
  - (v) the Operator must comply with TfNSW's directions in relation to a standardised approach to the complaints handling software used as part of the TfNSW Customer Complaints Policy (including by ensuring that any other complaints management software used by the Operator is compatible and integrated with the software used by TfNSW); and
  - (vi) the Operator must implement processes and practices that comply with the requirements of this Clause 12 and the TfNSW Customer Complaints Policy.
- (c) Nothing in Clause 12(b):
- (i) limits the Operator's responsibility for resolving calls or complaints received through the Operator's Service Desk, the TfNSW Customer Feedback System or the Transportnsw.info Website services; or
  - (ii) makes TfNSW responsible for resolving calls or complaints received through the Operator's Service Desk, the TfNSW Customer Feedback System or the Transportnsw.info Website services.
- (d) If and when TfNSW chooses to discontinue the Transportnsw.info Website services, the Operator must cease using those services but must otherwise continue to provide the Service Desk in accordance with this Contract. The Parties acknowledge and agree that the discontinuation of the Transportnsw.info Website services is not a Contract Variation.

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## 13. Key Performance Indicators

- (a) Unless expressly provided for in the KPI Schedule, the Operator must meet or exceed the Key Performance Indicators from the Service Commencement Date.
- (b) TfNSW will measure the Operator's performance against the Key Performance Indicators.
- (c) The Operator must comply with its obligations relating to the measurement and reporting of Key Performance Indicators and the remedy of any breaches of the Key Performance Indicators as set out in the KPI Schedule.

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## 14. Fares and Ticketing

### 14.1 Fares

- (a) The Operator must offer Fares for Tickets to travel on Services in accordance with the categories and prices outlined in the Fares and Ticketing Schedule and as amended by TfNSW and notified to the Operator from time to time. The Operator must comply with all directions issued by TfNSW regarding Fares for Special Event Services.
- (b) The Operator must not offer or charge any other fare for Tickets to travel on Services without approval from TfNSW of the other fare proposed, such approval being given at TfNSW's absolute discretion.

- (c) The Operator must deal with all revenue from the sale of Tickets in accordance with Item 10 of the Services Schedule and account for all revenue from the sale of Tickets in accordance with the Payment Schedule.
- (d) The Operator:
  - (i) acknowledges and agrees that Division 2 of the PT Act 2014 applies to this Contract; and
  - (ii) must cooperate with any review of fares and other charges undertaken by the IPART and comply with all directions to provide information to IPART.

**14.2 Ticketing and revenue protection**

- (a) The Operator must take reasonable steps to ensure all passengers travelling on a Service have a valid Ticket, including that the Ticket is valid for the journey being taken by the passenger.
- (b) The Operator authorises TfNSW, and persons for and on behalf of TfNSW, to enter and remain on any Contract Ferry providing Services or any Wharf for the purpose of carrying out Ticket inspection and revenue protection activities.
- (c) The Operator must ensure that the Staff comply with any reasonable direction given to them by TfNSW, or a person for and on behalf of TfNSW, carrying out the activities referred to in Clause 14.2(b).
- (d) Subject to the terms of this Contract:
  - (i) TfNSW will be responsible for the collection of fare revenue in relation to the TfNSW Systems and Equipment and TransportConnect. The Operator acknowledges and agrees that:
    - (A) TfNSW will remit the Ticketing System Income to the Operator;
    - (B) TfNSW may from time to time issue reasonable policies and procedures to the Operator regarding the calculation and transfer of Ticketing System Income with which the Operator must comply; and
    - (C) [not used];
  - (ii) the Operator will be responsible for the collection of any other fare revenue on the Services;
  - (iii) the Operator will be responsible for protection of fare revenue to the extent specified in the Services Schedule;
  - (iv) the Operator is not entitled to any fine revenue received by the Operator; and
  - (v) the Operator must remit to TfNSW all fine revenue received by the Operator.
- (e) The Operator must minimise fare evasion on the Services including by:
  - (i) operating in accordance with all relevant TfNSW policies as notified by TfNSW to the Operator from time to time;
  - (ii) providing TfNSW with assurance (to the satisfaction of TfNSW) that the Operator's Authorised Officers (to the extent that the Operator chooses to engage Operator's Authorised Officers) are competent and trained to be appointed as and undertake the duties of Authorised Officers;
  - (iii) producing a monthly fare evasion report as specified by TfNSW;
  - (iv) co-operating with TfNSW in implementing fare evasion strategies as required by TfNSW, including twice yearly fare evasion surveys; and
  - (v) co-operating with and providing access to TfNSW, TfNSW Authorised Officers and the NSW Police to enable them to undertake revenue protection and crime prevention activities.



**14.3 Prohibition on disincentives, penalties and discounts**

The Operator must not impose any charges, fees, penalties, restrictions or other Fare adjustments in connection with any of the Services that have the purpose or likely effect of:

- (a) increasing the total cost to passengers choosing to travel on a Service above the Full Fares;
- (b) increasing the total cost to Approved Beneficiaries choosing to travel on a Service above the Concession Fares;
- (c) deterring passengers from purchasing Tickets at the Fares;
- (d) reducing the availability of Tickets to passengers wishing to travel on the Services; or
- (e) reducing the revenue from Tickets.

**14.4 Travel free of charge**

The Operator must ensure that travel, free of any direct or indirect charge by the Operator, is provided to persons:

- (a) listed in Part 5 of the Fares and Ticketing Schedule, as amended by TfNSW and notified to the Operator from time to time; or
- (b) otherwise notified by TfNSW, from time to time.

**14.5 Government Subsidised Travel Schemes**

The Operator must participate in Government Subsidised Travel Schemes, as outlined in Item 13 of the Services Schedule.

**14.6 Compliance by agents**

The Operator must ensure that each of its agents selling or offering to sell Tickets on the Operator's behalf complies with this Clause 14.

**14.7 Operator to cooperate with TfNSW Authorised Officers, NSW Police and other emergency services**

The Operator must at all times cooperate with and otherwise allow TfNSW Authorised Officers, NSW Police and other emergency services personnel to have full access to the Contract Ferries, and any premises or facilities used by the Operator or the Operator's Associates (including the State Premises), to carry out their statutory duties and functions.

**14.8 Implementation of Opal Ticketing System and TransportConnect**

- (a) The Operator must provide a booking and ticketing platform for the Services that is integrated with the Opal Ticketing System and with the DCIS including so that those services are visible on the TfNSW journey planner and customers can click through to the Operator's booking and ticketing platform from the TfNSW journey planner.

- (b) The Operator must, as directed by TfNSW, procure, install, operate and maintain either:

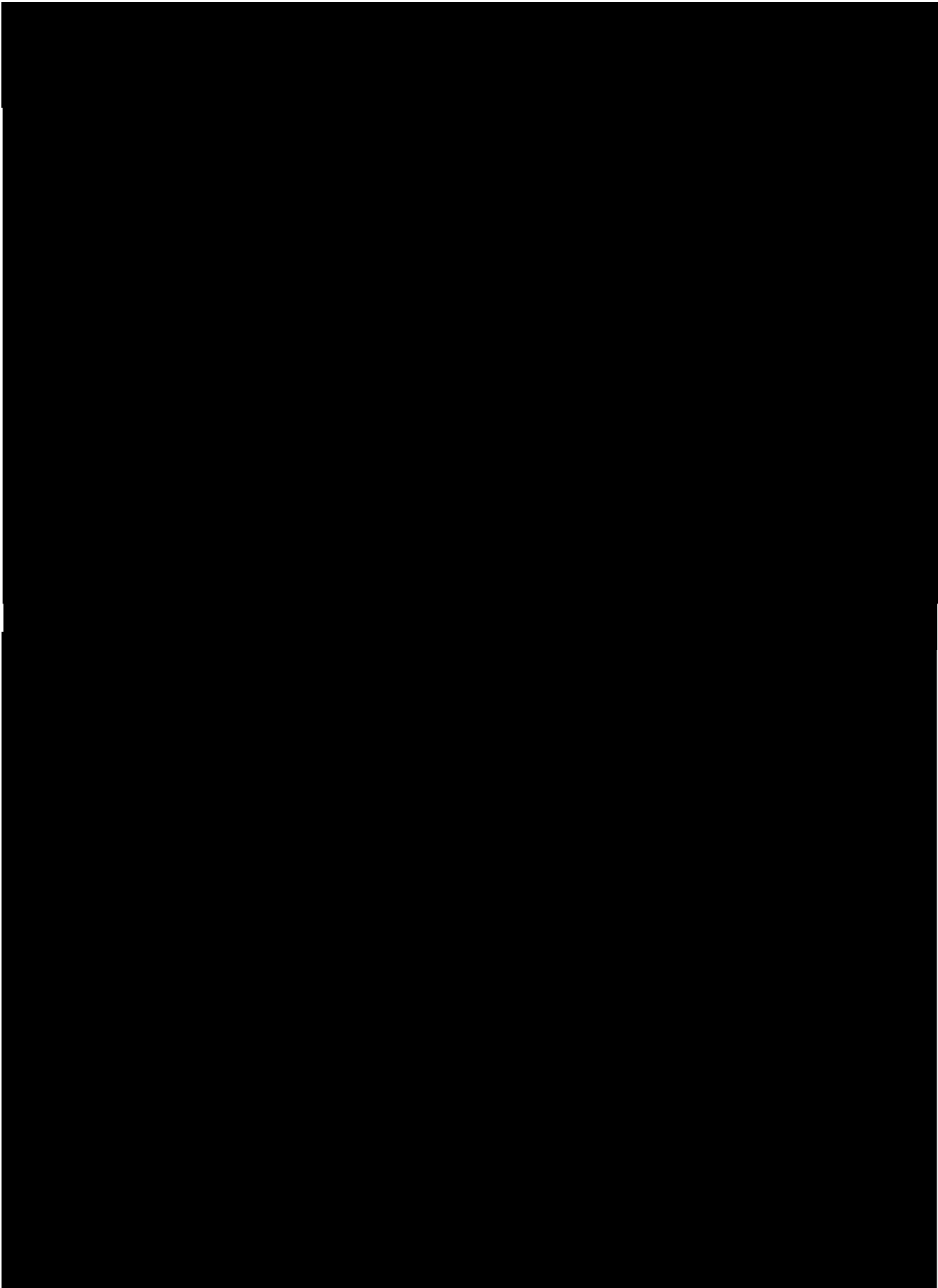
- (i) TransportConnect;
- (ii) any upgrades or enhancements to the POS Device or POS Device App to interface with the Opal Ticketing System or any replacement for that system; or
- (iii) the Opal Ticketing System,

on Contract Ferries used to operate the Services, by the earlier of the Planned Service Transition Date or the date on which the relevant Operator New Ferries are first used for the Services. A direction under this Clause will be implemented as a Contract Variation. From the Planned Service Commencement Date the Operator will ensure that OpalPay system currently used for the Services continues in operation until the Opal Ticketing System is installed on the State Wharves.

- (c) If the Operator is directed to provide ticketing for the Services under Clause 14.8(b)(i) or Clause 14.8(b)(ii), the Operator must work collaboratively with TfNSW to implement

TransportConnect or to interface the POS Device and POS Device App with the Opal Ticketing System (or other relevant system), including by:

- (i) procuring, installing, operating and maintaining POS Devices and undertaking upgrades or enhancements to the POS Devices;
- (ii) designing, developing, operating and maintaining the POS Device App in accordance with specifications provided by TfNSW in respect of TransportConnect, the Opal Ticketing System or other relevant system;
- (iii) providing all necessary information and undertaking all necessary activities to interface the POS Devices and POS Device App with TransportConnect, the Opal Ticketing System or other relevant system; and
- (iv) entering into an agreement with TfNSW or its nominee regarding TransportConnect, the Opal Ticketing System or other relevant system on terms that:
  - (A) are consistent with similar agreements used by TfNSW with other private operators of public transport services in the Greater Sydney Region for the purposes of implementing and operating TransportConnect, the Opal Ticketing System or other relevant system; and
  - (B) include fees comparable to the industry standard payable by other private operators of public transport services in the Greater Sydney Region to TfNSW for:
    - (I) implementation of TransportConnect, the Opal Ticketing System or other relevant system;
    - (II) licensing of the TransportConnect API or other relevant software or equipment; and
    - (III) maintenance and support services.
- (d) If the Operator is directed to provide ticketing for the Services under Clause 14.8(b)(iii), the Operator must work collaboratively with TfNSW to implement the Opal Ticketing System, including by:
  - (i) procuring, installing, operating and maintaining equipment used to issue Tickets and record and validate Tickets, including any related or supporting equipment or software rights; and
  - (ii) providing all necessary information and undertaking all necessary activities to interface the equipment referred to in Clause 14.8(d)(i) with the Opal Ticketing System.
- (e) The Operator is responsible for any developer or other transaction fees or costs associated with the Operator's obligations under this Clause 14.8, including fees or costs associated with the use of the POS Devices or POS Device App but excluding transaction fees associated with the operation of the Opal Ticketing System.
- (f) The Operator must not:
  - (i) use the TransportConnect API to allow customers to pay for services offered by the Operator and/or third parties, other than for direct travel on the Services;
  - (ii) use the POS Device App to provide services to third parties other than to the customers of the Services;
  - (iii) use the POS Device App to allow customers to pay for services offered by the Operator or third parties, other than for direct travel on the Services; or
  - (iv) add any charges, fees or commission to any transactions made by a customer on the POS Device App.



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## 15. TfNSW Systems and Equipment

### 15.1 TfNSW Systems and Equipment

- (a) The Operator must ensure that TfNSW Systems and Equipment are operational at all times during the Service Term.
- (b) The Operator must cooperate with TfNSW in facilitating the installation, testing and ongoing maintenance of TfNSW Systems and Equipment including by:
  - (i) making each Asset, the Operator's premises and any required equipment available to TfNSW or TfNSW's Associates, on reasonable notice from TfNSW (being not more than 10 Business Days' notice), for installation, testing and maintenance of TfNSW Systems and Equipment by or on behalf of TfNSW;
  - (ii) allowing TfNSW and TfNSW's Associates to travel, free of any direct or indirect charge by the Operator to TfNSW, on each Contract Ferry as requested to test or inspect any TfNSW Systems and Equipment; and
  - (iii) liaising with TfNSW and TfNSW's Associates as required in relation to the installation, testing and ongoing maintenance of TfNSW Systems and Equipment.
- (c) The Operator must maintain TfNSW Systems and Equipment in accordance with Item 9 of the Services Schedule.
- (d) The Operator must comply with any reasonable operational procedures, guidelines, directions and training requirements for TfNSW Systems and Equipment issued by TfNSW from time to time.
- (e) The Operator acknowledges that TfNSW:
  - (i) owns all TfNSW Systems and Equipment installed before and during the Service Term, including any Intellectual Property in the TfNSW Systems and Equipment, unless TfNSW agrees otherwise in writing;
  - (ii) owns all Data processed, generated or collected by TfNSW Systems and Equipment as the property of the State and the Operator must not modify any such Data; and

- (iii) reserves the right for the State to use the Data in any way and for any purpose, as it sees fit, including providing other operators and service providers with access to Data relating to their services.
- (f) The Operator has no Claim against TfNSW in respect of any delays or interruptions in the Services arising out of or in connection with any failure of any TfNSW Systems and Equipment.
- (g) If any TfNSW Systems and Equipment on a Contract Ferry fails to operate while the Contract Ferry is performing a Service, the Operator must ensure that the Contract Ferry is taken out of service until the faulty system or equipment is repaired or replaced, in accordance with the following timeframes:
  - (i) immediately if a safety issue arises;
  - (ii) when the Contract Ferry returns to a maintenance facility, if the failure occurs to a TSE Rotable Asset; or
  - (iii) at the end of the day for any other failures.
- (h) The Operator must not:
  - (i) use the TfNSW Systems and Equipment (or any Intellectual Property in the TfNSW Systems and Equipment) or any Data referred to in Clause 15.1(e) for any purpose other than the performance of its obligations under this Contract; or
  - (ii) use any TfNSW Systems and Equipment on vessels that are not Contract Ferries, without the approval of TfNSW.
- (i) The Operator agrees to enter into any agreement with TfNSW or its nominee, on reasonable commercial terms considered necessary by TfNSW, in relation to any TfNSW Systems and Equipment, when requested by TfNSW to do so. Such agreement will prevail over this Clause 15.1 to the extent of any inconsistency, unless otherwise agreed.
- (j) The Operator must ensure, without exception, that when a Contract Ferry is removed from service due to retirement, write-off, disposal or surplus to needs, that a notification of works order made to Cubic Service Desk ([etservice@cubic.com](mailto:etservice@cubic.com)) requesting the decommissioning of Opal-related equipment and incident number is received. No Opal-related equipment is to be removed by the Operator.
- (k) The Operator must allow TfNSW or TfNSW's Associates to remove TfNSW Systems and Equipment from each Asset, including by making such Asset or other Operator premises available on reasonable notice from TfNSW.
- (l) If the Operator repairs any damage to any Asset caused by TfNSW when installing, testing, maintaining or removing TfNSW Systems and Equipment, TfNSW will reimburse the Operator the reasonable direct costs of repairing such damage.

## 15.2 Participation in the DCIS

- (a) The Operator must participate in the DCIS (or any successor or additional service developed by TfNSW or any of TfNSW's Associates for use by TfNSW).
- (b) The Operator must advertise the DCIS (or any successor service) phone number and internet address on its published Timetables, website, promotional material and other literature at Wharves and within Contract Ferries in a format reasonably required by TfNSW.
- (c) TfNSW will pay the centralised costs in respect of Transportnsw.info Website (including software licensing fees).
- (d) TfNSW may give the Operator access to Data collected by DCIS as required for the purpose of managing its business and for planning and marketing purposes, subject to reasonable conditions, qualifications or restrictions as TfNSW may impose.
- (e) The Operator acknowledges that all Data collected by DCIS will constitute New Contract Material and the title and property to Intellectual Property in or in relation to all Data collected by DCIS will vest in TfNSW, in accordance with Clause 30.1.

**15.3 Passenger information displays**

The Operator is responsible for providing passenger information displays at the State Wharves that comply with the requirements of this Contract.

**15.4 OSD**

- (a) The Operator must submit Data to the OSD, as required by the Governance and Reporting Schedule.
- (b) The Operator acknowledges that all Data submitted to the OSD will constitute New Contract Material and the rights, title and property to Intellectual Property in or in relation to all Data submitted to the OSD will vest in TfNSW, in accordance with Clause 30.1.

**15.5 Compatibility of information systems**

- (a) Any financial, operational or other information, data or records required to be provided to TfNSW by the Operator must be provided in a form which is compatible with the electronic data and records systems notified by TfNSW to the Operator from time to time.
- (b) The Operator must assist TfNSW to comply with the *NSW Government Open Data Policy 2016* including by ensuring that data supplied to TfNSW by the Operator under this Contract complies with the requirements of that policy.

**15.6 Development of customer facing information systems**

Without limiting Clause 15.5, during the Service Term the Operator must:

- (a) collaborate with TfNSW (including by attending meetings and forums requested by TfNSW);
- (b) provide all reasonable resources; and
- (c) provide all reasonable data, application programming interfaces and information,

in a timely manner and without delay, to ensure that the Operator's customer facing systems (including TransportConnect) are co-ordinated, compatible, interoperable and integrated with TfNSW's customer facing systems in a way that enables customers to plan, book, pay and provide feedback for an end-to-end journey using the channel (including phone, single applications, intelligent personal assistant and website) of their choice. For the avoidance of doubt, if the Operator is required to undertake software development or integration to provide a new feature or provide information, application programming interfaces or data under this Clause 15.6 that is not already available or in a form required by TfNSW in the Operator's existing customer facing information systems, TfNSW will direct a Contract Variation under Clause 52.

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**Part E – Planning and service changes**

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**16. Operator role in planning****16.1 Review of Contract Services Levels and Timetables**

- (a) The Operator must:
  - (i) undertake reviews of the Contract Service Levels and Timetables at least annually, unless directed by TfNSW to undertake such reviews on a less frequent basis;
  - (ii) work collaboratively with TfNSW to:
    - (A) develop the Services having regard to the Contract Objectives and the requirements of this Contract; and
    - (B) consider and develop innovative strategies to:
      - (I) improve the efficiency and effectiveness of the Services;

- (II) improve processes and procedures for achieving the Contract Objectives;
- (III) utilise capacity;
- (IV) optimally manage dead running and the efficient use of Wharves;
- (V) improve the safety of the Services and minimise impacts on the Environment; and
- (VI) improve the security of the Operator's transport network; and
- (VII) uplift customer satisfaction,  
adopting a 'best for passenger' and 'best for TfNSW' approach;
- (iii) proactively engage and collaborate with key stakeholders in accordance with the Operator Stakeholder Engagement Plan; and
- (iv) deliver highly integrated Services, including integration with other transport modes as appropriate and so as to enable passengers to easily and efficiently transfer to and from other transport modes.
- (b) Within 40 Business Days after the end of each Contract Year the Operator must submit to TfNSW a report recommending any changes to the Contract Service Levels and Timetables to facilitate the outcomes of the reviews conducted under Clause 16.1(a).
- (c) In developing the report required under Clause 16.1(b) and in submitting any other proposals to TfNSW in respect of proposed changes to the Contract Service Levels and Timetables, the Operator must have regard to:
  - (i) navigational safety, especially in areas of congestion on Sydney Harbour and the Parramatta River, and Environmental impacts;
  - (ii) current patronage and likely future patronage changes;
  - (iii) the needs of passengers and key stakeholders;
  - (iv) TfNSW service level guidelines and polices;
  - (v) efficient use of Wharves and management of capacity and dead running;
  - (vi) interconnectivity of the Services with other transport services (other than the Services) available in Sydney (including rail, light rail and bus services);
  - (vii) the funding envelope and timing of funding available for public transport in Sydney; and
  - (viii) any new or amended Contract Service Levels requested by TfNSW.
- (d) TfNSW is not obliged to in any way to adopt the recommendations provided in the Operator's report submitted in accordance with Clause 16.1(b), and the Operator must not make any changes to the Contract Service Levels or Timetables described in the report unless and until TfNSW issues a notice for a change to Contract Service Levels under Clause 17.1(b).

## 17. Contract Service Levels and Timetables

### 17.1 Contract Service Levels

- (a) TfNSW may accept a proposal by the Operator for a change to Contract Service Levels by issuing a notice under Clause 17.1(b).
- (b) TfNSW may introduce new or amended Contract Service Levels, whether or not proposed by the Operator, by notice to the Operator.
- (c) If TfNSW provides notice of new or amended Contract Service Levels, the Operator must:
  - (i) develop a new timetable to efficiently and effectively carry out the requirements of the new or amended Contract Service Levels; and

- (ii) submit the new timetable to TfNSW for approval, in accordance with Clause 17.2, within the timeframe specified by TfNSW.
- (d) If TfNSW has not specified any Contract Service Levels, the Operator must deliver the Services in a manner that efficiently and effectively carries out the base level of services required by the Timetables.

## 17.2 Timetables

- (a) If, at any time during the Service Term, the Operator believes it can deliver the Services more efficiently and effectively, or is required to submit a revised timetable under Clause 17.1, the Operator must immediately submit a revised timetable for approval by TfNSW, by notice to TfNSW via the TSAR system.
- (b) If, at any time during the Service Term, the Operator wishes to vary the Timetable, the Operator may submit a revised timetable for approval by TfNSW, by notice to TfNSW via the TSAR system.
- (c) TfNSW may approve or reject a timetable submitted for approval by the Operator by notice to the Operator.
- (d) If TfNSW approves a revised Timetable, the Operator must operate the Services in accordance with the approved Timetable within the period specified by TfNSW.
- (e) If TfNSW rejects a revised timetable (or does not respond to the Operator's request for approval), the revised timetable will be of no effect and the Operator must continue to provide the Services in accordance with the approved Timetable.
- (f) The Operator acknowledges that TfNSW may introduce a template for the preparation of timetables, by notice to the Operator. The Operator must use the template when preparing any timetables, after receiving notice from TfNSW that a template has been introduced.

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## 18. Service Variations

- (a) TfNSW may at any time during the Service Term, require a Service Variation by way of notice to the Operator (**Service Variation Notice**).
- (b) The Service Variation Notice must state:
  - (i) the particulars of the Service Variation; and
  - (ii) the date on which the Service Variation will take effect, which:
    - (A) other than in the event of an emergency (as determined by TfNSW), must be after a reasonable period of time determined by TfNSW to enable the Operator to comply with the Service Variation Notice; and
    - (B) in the event of an emergency (as determined by TfNSW), will be immediately.
- (c) The Operator must comply with the Service Variation Notice and make any necessary amendments to its operations so that it complies with the Service Variation Notice.
- (d) If a Service Variation is required and approved by TfNSW, the Base Service Fee will be adjusted in accordance with the Payment Schedule. There will be no adjustment to the Payments (including the Base Service Fee), and the Operator will have no other Claim against TfNSW arising out of, or in any way in connection with, a Service Variation requested by the Operator, other than for a Service Variation that is accepted by TfNSW under Clause 47.2(c) (subject to Clause 47.2(d)).
- (e) The Operator may request a Service Variation, by way of notice to TfNSW via the TSAR system. The Operator must have consulted with TfNSW in accordance with Clause 16.1 prior to submitting a Service Variation request that comprises any change to the Contract Service Levels or Timetables.



- (f) TfNSW may, acting reasonably, approve or reject a request for a Service Variation from the Operator.
- (g) Any request for a Service Variation from the Operator must as a minimum set out:
  - (i) a description of the proposed Service Variation, including any impact on the Routes and Timetables; and
  - (ii) the impact of the proposed Service Variation on the Operator's ability to meet the Key Performance Indicators.
- (h) Unless and until TfNSW approves any request from the Operator for a Service Variation:
  - (i) the request for a Service Variation will be of no effect;
  - (ii) the Operator must not act upon the request for a Service Variation; and
  - (iii) the Operator will not be entitled to any payments in connection with its request for a Service Variation.

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## Part F – Assets

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### 19. Contract Ferries

#### 19.1 Performance of the Services using Contract Ferries

- (a) Subject to Clause 19.4, the Operator must perform the Services using the Contract Ferries.
- (b) Subject to Clause 19.2, the Operator must not use Contract Ferries for any purpose other than the purpose of providing the Services.

#### 19.2 Other Use of Contract Ferries

- (a) Without limiting Clause 11.10, the Operator may only use a Contract Ferry for a purpose other than the provision of the Services:
  - (i) when the Contract Ferry is not required for the performance of the Services; and
  - (ii) provided that such use:
    - (A) does not adversely affect the Continuity of the Services;
    - (B) does not adversely affect the ability of the Operator to comply with Clause 58 or Clause 59;
    - (C) does not breach the State Bareboat Charterparty or any replacement of that lease;
    - (D) does not adversely affect TfNSW's rights under a Transaction Document; and
    - (E) is otherwise at the Operator's sole cost and risk.
- (b) Without limiting Clause 19.2(a), the Operator must ensure that the use of Contract Ferries for the purposes of providing charter services does not affect the ability of the Operator to comply with Clause 19.3(b)(ii).

#### 19.3 Contract Ferry standard

- (a) The Operator must ensure that:
  - (i) each Contract Ferry is registered and licensed in accordance with all Laws and complies with all Authorisations;
  - (ii) each Contract Ferry:

- (A) complies with the Asset Schedule and all Laws;
  - (B) is operated and maintained:
    - (I) in accordance with Part G; and
    - (II) in accordance with Good Industry Practice and so as to ensure that it is always in a condition which enables the Operator to comply with its obligations under this Contract;
  - (C) is clean and tidy and meets the standards required under Annexure 5 of the Asset Schedule when providing the Services;
  - (D) is in a safe operating condition at all times and is maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations, including the DDA Legislation; and
  - (E) displays illuminated destination signs (if available) stating the destination and or the Route.
- (b) The Operator must:
- (i) have available to it enough Contract Ferries to meet its obligations under this Contract;
  - (ii) only use the best available Contract Ferries to provide the Services having regard to reasonable operational requirements and the condition, cleanliness, features and age of all Contract Ferries;
  - (iii) comply with its obligations under the State Bareboat Charterparty or any replacement of that lease; and
  - (iv) monitor and manage the security and safety of the Staff and passengers on the Contract Ferries.
- (c) Without in any way limiting the application of the other provisions of this Contract, the parties acknowledge and agree that all costs of complying with the DDA Legislation will be borne by the Operator except only for the costs of any:
- (i) works to State Wharves which are Priority Access Wharves (as defined in Schedule 14); or
  - (ii) upgrades to the Ticketing Equipment,  
in each case necessarily required to ensure their respective compliance with relevant DDA Legislation; or
  - (iii) structural works to any State Ferry, or where such structural works are impossible, the replacement of such State Ferry with the approval of TfNSW, necessarily required to ensure that the relevant State Ferry complies with applicable requirements under DDA Legislation relating only to:
    - (A) the size and accessibility of toilets;
    - (B) the size of access paths (as that term is defined in the DDA Legislation);
    - (C) the size of manoeuvring areas (as that term is defined in the DDA Legislation);
    - (D) the size of passing areas; or
    - (E) the size of doorways and doors.

#### 19.4 Non compliant Contract Ferries

If a Contract Ferry is damaged or vandalised so as to affect the Continuity of the Services or does not meet the requirements set out in Clause 19.3 the Operator must:

- (a) remove it from service as soon as practicable, having regard to the nature of the failure, the Law and Authorisations, and the best interests of passengers;
- (b) replace it with a compliant Contract Ferry;

- (c) promptly repair or restore it; and
- (d) not return it to use until it meets the requirements set out in Clause 19.3 and the Continuity of the Services are no longer affected.

### 19.5 Use of non-compliant Contract Ferries

- (a) The Operator may use a replacement Ferry or other vessel which is not a Contract Ferry (**Emergency Replacement Vessel**) only in an emergency and only for the minimum period necessary to overcome the emergency and in any event, for no longer than 48 hours (unless otherwise approved by TfNSW prior to the expiry of the 48 hour period).
- (b) If an Emergency Replacement Vessel is to be used in an emergency:
  - (i) the Operator must notify TfNSW as soon as practicable (and in any event, not later than 24 hours after it is first used) explaining the particulars of the emergency and details of the Emergency Replacement Vessel used;
  - (ii) the Operator must ensure that the Emergency Replacement Vessel is the best available Ferry or other vessel and at a minimum complies with Clause 19.3(a);
  - (iii) the insurances required under Clause 43 must be effective in relation to the Emergency Replacement Vessel and the use of the Emergency Replacement Vessel;
  - (iv) the Operator must ensure that the use of the Emergency Replacement Vessel will not materially adversely affect the provision of the Services; and
  - (v) the Payments (including the Base Service Fee) will not be adjusted.

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## 20. Infrastructure

### 20.1 Infrastructure standards

The Operator must:

- (a) comply with the State Asset Access Agreements that relate to the State Premises;
- (b) monitor and manage the safety and security of Staff at, and visitors to, the State Premises and all other premises used by the Operator in the conduct of the Operator Activities (**Other Premises**);
- (c) consider, manage and take reasonable steps to minimise the impact of the Ferry Operations conducted at the State Premises and Other Premises on neighbouring properties;
- (d) ensure that the State Premises and any other premises used by the Operator in connection with the Ferry Operations:
  - (i) are and remain at all times fit for the purposes of enabling the Operator to perform its obligations under the Transaction Documents;
  - (ii) comply with the Asset Schedule and all Laws and Authorisations, in addition to any other requirements imposed in any other Transaction Documents;
  - (iii) are maintained:
    - (A) in accordance with Part G; and
    - (B) in accordance with Good Industry Practice and so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract;
  - (iv) are clean and tidy and meet the standards required under Annexure 5 of the Asset Schedule (if applicable); and
  - (v) are in a safe operating condition at all times and are maintained, equipped and operated in a safe manner and in compliance with all Laws and Authorisations, including the DDA Legislation; and

- (e) ensure that the State Premises and any other premises used by the Operator in connection with the Ferry Operations:
  - (i) are operated in accordance with all Laws and Authorisations and any other requirements imposed in any other Transaction Documents; and
  - (ii) are operated in accordance with Good Industry Practice and so as to ensure that they are always in a condition which enables the Operator to comply with its obligations under this Contract; and
- (f) except to the extent necessary for the purposes of complying with this Contract, not:
  - (i) alter or modify the State Assets; or
  - (ii) carry out, procure or allow the carrying out of, any works or services on the State Assets, without the consent of TfNSW and the applicable owner of the property.

The Operator will not be in breach of Clauses 20.1(d) or 20.1(e) in respect of the State Assets to the extent that the Operator is prevented from performing its obligations under those Clauses as a result of a breach by TfNSW of its maintenance obligations in respect of the State Assets provided that the Operator has given TfNSW reasonable notice of such breach and TfNSW has not taken appropriate remedial action within a reasonable period after receipt of such notice.

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## 21. Operating Licence

### 21.1 Licensed Areas

- (a) Subject to the terms of this Contract, TfNSW grants to the Operator a non-exclusive licence to use and occupy, and to permit the Operator's Associates to use and occupy the areas identified in Annexure 4 of the Asset Schedule as 'Licensed Areas' (**Licensed Area**) for the purpose of performing the Operator Activities.
- (b) The licences granted under this Clause 21.1 commence on the applicable Licensed Area Handover Date (**Licence Commencement Date**) and terminate on the Termination Date.
- (c) The rights conferred by this Clause 21.1 are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Area.
- (d) The Operator must comply with any easements, restrictions on use, covenants, agreements or other similar arrangements burdening or benefiting the land contained in the Licensed Area as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW) as at the relevant Licence Commencement Date.
- (e) The Operator must not use the Licensed Area for any purpose other than the Operator Activities.

### 21.2 Utility Services and Rates

[REDACTED]

### 21.3 Access to waterways

The Operator is solely responsible for procuring access to any waterway (including Sydney Harbour and the Parramatta River) for the purposes of performing its obligations under the Transaction Documents.

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## 22. Wharves

### 22.1 State Wharves

- (a) Subject to any restrictions in Schedule 14 or elsewhere in this Contract, TfNSW grants the Operator non-exclusive, non transferable access to the State Wharves during the period of each

Ferry Service Slot for the sole purpose of enabling the Operator to carry out its obligations under this Contract.

- (b) The Operator must not use a Slot or part of a Slot which is not a Ferry Service Slot.
- (c) The Operator acknowledges and agrees that its use of the State Wharves will be:
  - (i) in common with TfNSW and its Authorised Users (as that term is defined in Schedule 14) and all other persons authorised by TfNSW; and
  - (ii) in accordance with the terms set out in Schedule 14.
- (d) TfNSW is not required to procure any rights for the Operator to use any other facilities at any State Wharf.
- (e) It is a condition of rights granted under this Clause 22 that the Operator must:
  - (i) [not used]; and
  - (ii) at its own cost, obtain and comply with any planning or other approvals required to install signage, fixtures and fittings on the State Wharves.
- (f) The Operator must comply with all of the provisions in Schedule 14. The provisions in Schedule 14 apply without affecting the operation of the other provisions of this Contract.
- (g) The Operator acknowledges and agrees that it is responsible for procuring access to any additional wharves to the extent the Operator may require such access to meet its obligations under this Contract.

## 22.2 Use of Wharves

The Operator must:

- (a) only use the State Wharves for the sole purpose of enabling the Operator to carry out its obligations under this Contract;
- (b) at all times comply with any reasonable direction or requirement of TfNSW in relation to access to, or passenger movements within or around, the State Wharves; and
- (c) not:
  - (i) alter or modify the State Wharves or Wharf Infrastructure; and
  - (ii) carry out, procure or allow the carrying out of, any works or services on the State Wharves or Wharf Infrastructure,

without the prior written consent of TfNSW and the applicable owner of the property.

## 22.3 Payment for Slots

TfNSW may at any time during the Service Term introduce a regime for payment for usage of Slots at the State Wharves provided that the Base Service Fee and Revenue Share Amount are adjusted to reflect the amounts payable by the Operator under such new regime. The Operator agrees to make such amendments to this Contract as are necessary to implement the introduction of a Slot payment regime in accordance with this Clause 22.3.

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## 23. Environment and Contamination

### 23.1 Condition of Infrastructure

- (a) The Operator must at all times during the Service Term ensure that in carrying out the Operator Activities:
  - (i) Contaminants are not discharged without an Authorisation;
  - (ii) a condition of pollution does not arise and is not likely to arise;
  - (iii) no breach of any Environmental Law occurs;

- (iv) no industrial waste or potentially hazardous substance is abandoned, disposed of or dumped at the State Premises; and
  - (v) no industrial waste or potentially hazardous substance is handled in a manner which causes or is likely to cause an environment hazard or breaches any Environmental Law.
- (b) The Operator must:
- (i) obtain and maintain in full force and effect and comply with the terms of all Authorisations required in order to perform the Operator Activities or release or emit anything from the State Premises into the air or water or on to the ground or into the Environment;
  - (ii) permit TfNSW to enter the State Premises on reasonable notice to enable TfNSW to satisfy itself that the State Premises have not been Contaminated (including without limitation to conduct any sampling or testing required to ascertain the nature of any Contamination) and that no breach of an Environmental Law has occurred;
  - (iii) advise TfNSW of the existence of any Contamination or Pollution of, or emanation from, the State Premises contrary to any Environmental Law as soon as the Operator becomes aware of the matter; and
  - (iv) as soon as reasonably practicable, and in any event within two Business Days, after receipt of any penalty notice or direction or other notice or complaint issued under any Environmental Law in relation to the State Premises give full details of it and copies of any notices, directions, or other instruments to TfNSW.

### 23.2 Subsequent Contamination

The Operator is responsible for all Subsequent Contamination and must:

- (a) dispose of, or otherwise deal with, Subsequent Contamination in accordance with Law and Authorisations; and
- (b) remediate to the standard required by Law and Authorisations, the State Premises to the extent to which:
  - (i) they are in any way degraded by Subsequent Contamination; or
  - (ii) the Subsequent Contamination is of such a nature that an Environmental Auditor or other relevant Governmental Agency could issue a statutory notice requiring it to be remediated or it is otherwise necessary at Law for it to be remediated;
- (c) remediate to the standard required by Law and Authorisations the land and seabed adjoining any State Premises (and any other land to which any Subsequent Contamination has migrated) to the extent to which:
  - (i) it is in any way degraded by Subsequent Contamination; and
  - (ii) the Subsequent Contamination is of such a nature that an Environmental Auditor or other relevant Governmental Agency could issue a statutory notice requiring it to be remediated or it is otherwise necessary at Law for it to be remediated.

In this Clause the term 'remediate' includes to remove, disperse, abate, destroy, dispose of, treat, cap, contain, evacuate or manage and any associated testing, monitoring and assessment.

### 23.3 Contamination at other premises

The Operator is solely responsible for any Contamination in, on or under any land or premises supplied by the Operator for the purposes of performing the Operator Activities (including Wharves that are not State Wharves).

### 23.4 Clean Up Notices

- (a) If a Clean Up Notice is served on TfNSW, a State Lessor or the Operator relating to Contamination in, on or under (or which has emanated from or is emanating from) the State Premises, then:

- (i) if the Operator receives the Clean Up Notice the Operator must promptly provide TfNSW with a copy of the Clean Up Notice;
  - (ii) if TfNSW or a State Lessor receives the Clean Up Notice TfNSW must promptly provide the Operator with a copy of the Clean Up Notice;
  - (iii) the Parties must meet as soon as practicable after service of the Clean Up Notice to determine, to the extent possible, whether and to what extent the Clean Up Notice relates to Pre-existing Contamination or Subsequent Contamination;
  - (iv) to the extent that the Clean Up Notice relates solely to Subsequent Contamination, the Operator will at its sole cost and expense be responsible for complying with the Clean Up Notice;
  - (v) to the extent that the Clean Up Notice relates to both Pre-existing Contamination and Subsequent Contamination, the Operator will be responsible for complying with the Clean Up Notice to the extent that it relates to Subsequent Contamination;
  - (vi) to the extent that the Clean Up Notice relates to Pre-existing Contamination, TfNSW will, as between the parties, at its sole cost and expense be responsible for complying with the Clean Up Notice; and
  - (vii) the Operator must provide TfNSW and the State Lessor with such access to the State Premises and other assistance as TfNSW or the State Lessor may reasonably require in order to investigate, assess or manage the risk created by the existence or suspected existence of any Pre-existing Contamination.
- (b) If the Parties cannot agree within a reasonable period to what extent the Clean Up Notice relates to Pre-existing Contamination or to Subsequent Contamination:
- (i) the Parties will:
    - (A) refer the matters in dispute to be determined by an Environmental Auditor to be approved by the Parties (such approval not to be unreasonably withheld or delayed). If the Parties cannot agree on the appointment of an Environmental Auditor within a reasonable period, TfNSW may determine who will be appointed as the Environmental Auditor;
    - (B) arrange for the Environmental Auditor to investigate the State Premises the subject of the Clean Up Notice and prepare and provide to the Parties a report in accordance with all applicable Environmental Laws and relevant Governmental Agency guidelines and in accordance with the degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person engaged in the provision of one or more activities the same or similar to those performed by the Environmental Auditor under this Clause 23.4(b) under the same or similar circumstances (**Contamination Report**), which:
      - (I) describes the nature and extent of any Contamination which is the subject of that Clean Up Notice (**Notified Contamination**);
      - (II) describes the investigation undertaken to identify the nature and extent of the Notified Contamination;
      - (III) identifies, in the opinion of the Environmental Auditor, the extent to which the Notified Contamination:
        - (1) is Pre-existing Contamination; or
        - (2) is Subsequent Contamination; and
      - (IV) based on the conclusions in Clause 23.4(b)(i)(B)(III), allocates liability for the Environmental Auditor's fees between TfNSW and the Operator in the same proportion as that Party's responsibility for the Contamination; and

- (C) ensure that prior to finalising the Contamination Report, the Environmental Auditor provides a draft of the Contamination Report to both Parties, and allows both Parties a reasonable period in which to provide the Environmental Auditor with comments regarding that draft Contamination Report. Those comments must also be provided by each Party to the other Party; and
- (ii) the findings of the Environmental Auditor contained in the final Contamination Report will be final and binding on the Parties (including regarding liability for the Environmental Auditor's fees) in the absence of manifest error.

### **23.5 Environmental obligations**

Without limiting anything else in this Clause 23, the Operator must comply with its obligations in Schedule 16.

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## **24. Acquisition of new assets**

### **24.1 Contract Ferries**

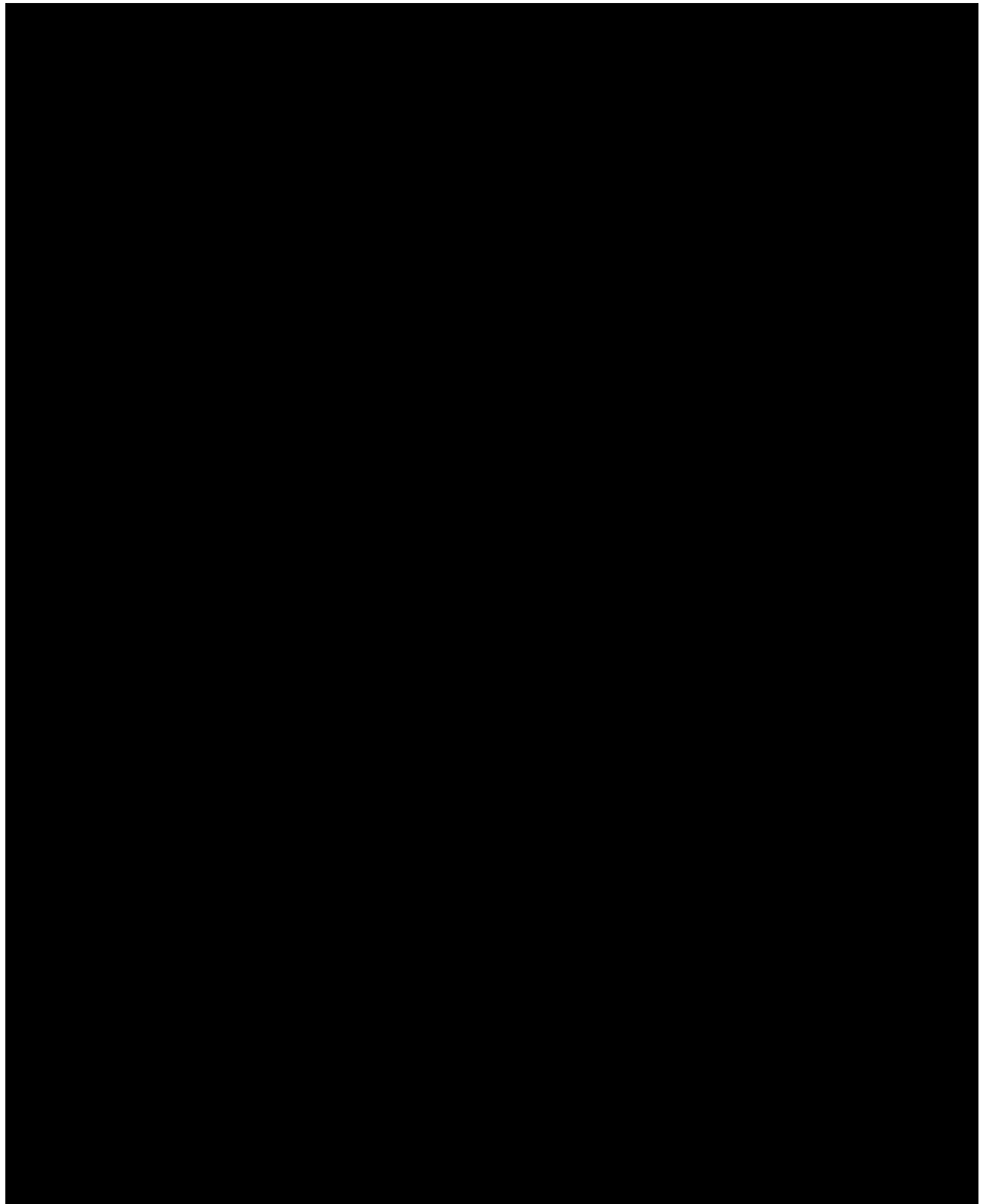
- (a) The Operator must use only the State Assets, Existing Operator Ferries and Operator New Ferries for the provision of the Services, unless expressly provided for in this Contract or otherwise with approval by TfNSW.
- (b) Subject to Clause 19.4 and Clause 19.5, the Operator:
  - (i) must not use vessels or wharves that are not State Assets, Existing Operator Ferries or Operator New Ferries to perform the Operator Activities;
  - (ii) must only use or acquire new Ferries or vessels for the provision of the Services in accordance with Clauses 9.4 or 9.5 and this Clause 24; and
  - (iii) must otherwise only use or acquire assets (other than consumables) including Ferries, vessels, vehicles, wharves, layover areas, facilities or premises to perform the Operator Activities with the consent of TfNSW.
- (c) The Operator must provide TfNSW with any information requested by TfNSW in relation to each Operator New Ferry.

### **24.2 Acquisition of New Ferries under Fleet Deployment Plan**

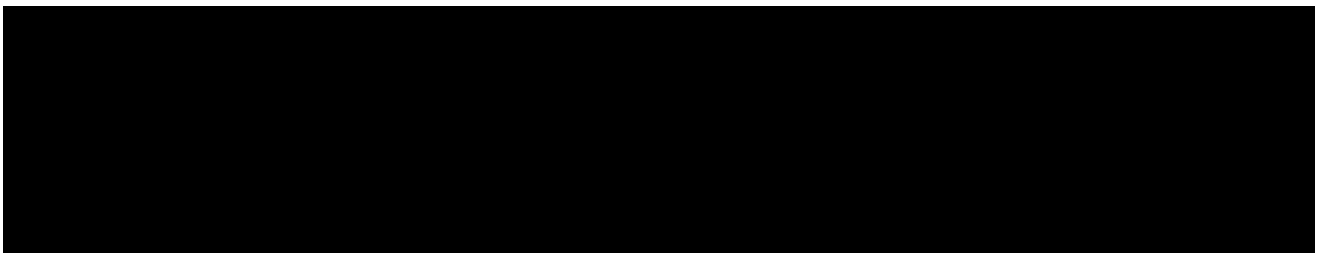
- (a) Subject to Clauses 9.4 or 9.5, the Operator must comply with the Fleet Deployment Plan, and must arrange for the acquisition and disposal of Contract Ferries in accordance with Clauses 9.4 or 9.5 and Clause 24.4.
- (b) The Operator must not depart from the Fleet Deployment Plan without the consent of TfNSW.

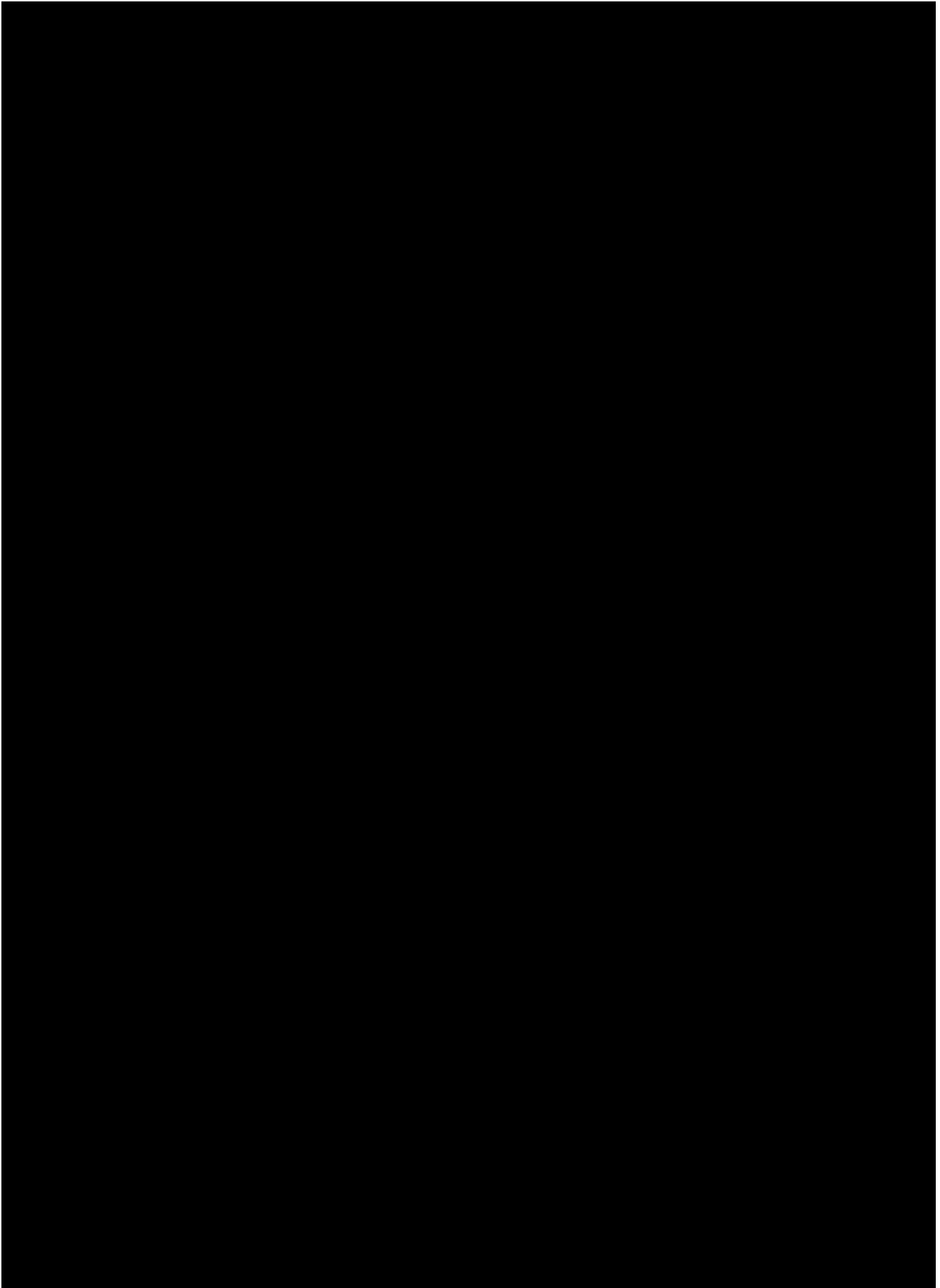
### **24.3 Process for acquisition of Operator New Ferries**





**24.4 Procurement of new Ferries or vessels by Operator**





**24.5 Payment**

- (a) Subject to Clause 24.5(b), if an Operator New Ferry is acquired by the Operator as a result of the implementation of Clauses 9.4 or 9.5 or the Fleet Deployment Plan then the Operator is not entitled to any adjustment to the Payments (including the Base Service Fee) in relation to that Operator New Ferry other than as set out in paragraph 5 of the Payment Schedule.
- (b) Where the Payment Schedule does not include an adjustment to the Payments (including the Base Service Fee) in relation to the acquisition of an Operator New Ferry by the Operator, the Payments will be adjusted in accordance with any Business Case in relation to the Operator New Ferry submitted by the Operator under Clause 24.3 that has been approved by TfNSW under Clause 24.3(d)(i).

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## Part G – Asset Management

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### 25. Asset Management

**25.1 Asset management obligations**

The Operator must perform the Asset Management Activities in accordance with:

- (a) the Asset Management Framework;
- (b) the Asset and Services Plan;
- (c) the Asset Schedule; and
- (d) the other requirements of this Contract,

so that:

- (e) the Assets comply with the requirements of the Transaction Documents;
- (f) the Assets are and remain fit for purpose during the Service Term;
- (g) the Assets are in a condition to permit the Services to be provided in accordance with this Contract;
- (h) the State Assets and the Operator New Ferries comply with the Handback Condition at the end of the Service Term; and
- (i) provided each State Asset and Operator New Ferry is operated and maintained after the end of the Service Term in accordance with the Asset Management Framework, each State Asset and Operator New Ferry is capable of remaining fit for its intended purpose throughout the Design Life of that State Asset and Operator New Ferry.

**25.2 Asset Management Framework**

The Operator must:

- (a) prior to the Planned Service Commencement Date develop, implement and update the Asset Management Framework;
- (b) otherwise develop and update the Asset Management Framework in accordance with the requirements of the Asset Schedule.

**25.3 Asset and Services Plan**

The Operator must:

- (a) update the Asset and Services Plan in accordance with the Asset Schedule;
- (b) not defer any Asset Management Activity in the End of Contract Period without TfNSW's consent, and not otherwise defer any Asset Management Activity to a subsequent Contract Year without

first notifying TfNSW and providing TfNSW with a statement signed by a director of the Operator confirming that the deferral of the activity will not have any impact on safety;

- (c) not update the Asset and Services Plan in a manner which makes TfNSW's obligations under this Contract more onerous or increases any Loss or potential Loss of TfNSW or TfNSW's Associates in connection with the condition or maintenance of State Assets or Operator New Ferries;
- (d) ensure that any updated Asset and Services Plan:
  - (i) imposes standards, levels and frequencies of service, scope and requirements that are equal to or greater than or higher than those imposed by this Contract and the most recent applicable Asset and Services Plan; and
  - (ii) provides an equal or greater level of detail than the most recent applicable Asset and Services Plan; and
- (e) comply with any direction given by TfNSW requiring the Operator to undertake maintenance activities in accordance with the Asset and Services Plan (including a direction to bring forward an activity that has been deferred to the original proposed time of delivery).

**25.4 Review of Asset and Services Plan**

- (a) The TfNSW Representative may:
  - (i) review any Asset and Services Plan submitted under paragraph 3 of the Asset Schedule; and
  - (ii) notify the Operator if, in the opinion of the TfNSW Representative, the Asset and Services Plan does not comply with the requirements of this Contract (with detailed reasons) within 20 Business Days following submission of the Asset and Services Plan to the TfNSW Representative.
- (b) If the Operator receives a notice in accordance with Clause 25.4(a)(ii) the Operator must, within 20 Business Days, submit a revised Asset and Services Plan to the TfNSW Representative whereupon the provisions of this Clause 25.4 will reapply to the revised Asset and Services Plan.

**25.5 TfNSW may request updates of the Asset and Services Plan**

If, at any time during the Service Term:

- (a) any Asset and Services Plan does not comply with the requirements of this Contract; or
- (b) the Operator has not updated any Asset and Services Plan in accordance with the requirements of the Asset Schedule,

the TfNSW Representative may, by notice, request that the Operator amend or update the Asset and Services Plan specifying:

- (c) the reasons why such updating is required (or why the Asset and Services Plan does not comply with this Contract); and
- (d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and the Operator must:

- (e) amend or update the Asset and Services Plan as requested by TfNSW to comply with the requirements of this Contract; and
- (f) submit the amended or updated Asset and Services Plan to TfNSW within the time specified under Clause 25.5(d) for review under Clause 25.4.

**25.6 Compliance with Asset and Services Plan**

The Operator:

- (a) is only permitted to use; and
- (b) must implement and comply with,

each Asset and Services Plan which has been submitted to the TfNSW Representative and in respect of which the TfNSW Representative has not issued a notice under Clause 25.4(a)(ii) within 20 Business Days following submission of the Asset and Services Plan.

### 25.7 Asset Management Failures

- (a) Unless TfNSW determines otherwise, the Parties will meet annually within 3 months after the end of each Contract Year to review the Operator's compliance with the Maintenance Works Program during the previous Contract Year (as applicable).
- (b) An Asset Management Failure will occur if:
  - (i) the Operator fails to comply with the Maintenance Works Program and in TfNSW's opinion (acting reasonably), the Operator's failure to comply with the Maintenance Works Program constitutes a material non-compliance with the Asset and Services Plan or will, or is likely to, result in breach of Clauses 25.1(a) to (i); or
  - (ii) the Operator fails in any material respect to comply with any of its maintenance obligations under this Contract.
- (c) If an Asset Management Failure occurs TfNSW may give the Operator a notice stating the nature of the Asset Management Failure.
- (d) The Operator must remedy the Asset Management Failure within:
  - (i) 3 months after the date on which the notice referred to in Clause 25.7(c) is issued; or
  - (ii) such other period agreed between the Parties (acting reasonably),  
**(Remediation Period).**

### 25.8 Asset Management Audit

- (a) Without limiting Clause 25.7, TfNSW may elect to undertake an independent asset management audit once every two years during the Service Term to audit the Operator's compliance with the Asset and Services Plan (**Asset Management Audit**). If TfNSW elects to undertake the Asset Management Audit:
  - (i) TfNSW must notify the Operator in writing and advise which Assets TfNSW is seeking to have audited in accordance with this Clause 25.8 (**Audit Notice**);
  - (ii) the Parties must use reasonable endeavours to agree a suitably qualified independent auditor to perform the Asset Management Audit within 10 Business Days after the date of the Audit Notice and, on agreement, the Parties must jointly appoint the independent auditor with the costs of the independent auditor to be shared equally by the Parties, and each Party must otherwise bear its own costs associated with the Asset Management Audit; and
  - (iii) if the Parties do not agree the identity of the independent auditor or otherwise do not affect the joint appointment of the independent auditor within 10 Business Days after the date of the Audit Notice, TfNSW may request that the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute nominate the independent auditor. The Parties must jointly appoint the independent auditor so nominated with the costs of the independent auditor to be shared equally by the Parties, and each Party must otherwise bear its own costs associated with the Asset Management Audit.
- (b) The Operator must:
  - (i) co-operate with and provide all reasonable assistance to the independent auditor in the conduct of and otherwise facilitate the Asset Management Audit;
  - (ii) make available to TfNSW and the independent auditor all Assets, personnel, reports and underlying maintenance data requested by the independent auditor as reasonably required to conduct the Asset Management Audit;

- (iii) comply, at its own cost, with any recommendations for corrective actions that the independent auditor reasonably recommends to address asset management failures or omissions of the Operator in complying with (or failing to comply with) the Asset and Services Plan and its related obligations under this Contract to the reasonable satisfaction of TfNSW; and
  - (iv) where the Asset Management Audit determines that there are material asset management failures or material omissions of the Operator in complying with (or failing to comply with) the Asset and Services Plan or the Operator's related obligations under this Contract, then the Operator must promptly reimburse TfNSW for the costs paid by TfNSW to engage the independent auditor for the relevant Asset Management Audit.
- (c) The Parties acknowledge and agree that the independent auditor conducting the Asset Management Audit will give reasonable consideration to minimising disruption to the Ferry Operations and the performance by the Operator of the relevant Maintenance Works Program whilst undertaking the Asset Management Audit.

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## 26. Dealing with Assets

### 26.1 Security, assignment and possession of State Assets and Operator Sale Ferries

The Operator must not, except with the consent of TfNSW:

- (a) Dispose of any State Asset, State Asset Access Agreement or Operator Sale Ferry;
- (b) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any State Asset, State Asset Access Agreement or Operator Sale Ferry; or
- (c) otherwise deal with or part with possession of any State Asset, State Asset Access Agreement or Operator Sale Ferry,

except as authorised by the Transaction Documents.

### 26.2 Security, assignment and possession of Operator Assets

- (a) All assets (other than State Assets) required by the Operator to perform its obligations under the Transaction Documents must, subject to Clause 24.3(a), Clause 26.2 or 26.3, be owned by the Operator.
- (b) Subject to Clauses 26.1 and 26.3, the Operator must not (directly or indirectly) without TfNSW's consent:
  - (i) create or allow to exist any Security Interest (other than a Permitted Security Interest) over any Operator Asset; or
  - (ii) Dispose of any Operator Asset (unless it is being replaced by an Operator Asset having a substantially similar or better functionality or condition),

where the effect of that action would (in TfNSW's opinion) materially and adversely affect:

- (iii) the Operator's ability to provide the Services;
  - (iv) the Continuity of the Services; or
  - (v) TfNSW's rights or obligations under a Transaction Document.
- (c) Prior to executing any Operator Financial Arrangement in respect of an Operator Asset, the Operator must provide TfNSW with:
- (i) details of the purchase terms, including the acquisition cost of the relevant Asset;
  - (ii) the terms of the financing with the proposed financier; and
  - (iii) if requested by TfNSW, a Financier Direct Agreement executed by the Operator and the proposed financier.

**26.3 Operator Ferry Charterparty Direct Agreement**

- (a) In addition to its rights under Clause 26.2 to require a Financier Direct Agreement, TfNSW may, at any time during the Service Term, require that an agreement is entered into with the owner or lessor of any Operator New Ferry in a form approved by TfNSW) which:
- (i) recognises TfNSW's rights under this Contract in respect of the Operator New Ferry; and
  - (ii) is on such terms as are customarily used by TfNSW for an agreement of such nature (including such terms as are necessary to give effect to TfNSW's Powers under the Transaction Documents including with respect to step in and novation),
- (each such agreement an **Operator Ferry Charterparty Direct Agreement**).
- (b) If TfNSW notifies the Operator that it requires an Operator Ferry Charterparty Direct Agreement to be entered in accordance with Clause 26.3(a) (such notification to identify the relevant Operator New Ferry), the Operator must procure that the relevant owner or lessor promptly enters into an Operator Ferry Charterparty Direct Agreement with TfNSW.
- (c) The Operator must not, except with the consent of TfNSW (such consent not to be unreasonably withheld or delayed):
- (i) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any Operator Ferry Charterparty;
  - (ii) in any other way:
    - (A) Dispose of; or
    - (B) create or allow any interest in,its rights under, or interest in, an Operator Ferry Charterparty, or:
    - (C) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
    - (D) suspend the performance of any of its obligations under; or
    - (E) do or permit anything that would enable or give grounds to another party to do anything referred to in Clauses 26.3(c)(ii)(C) or (D) in relation to,an Operator Ferry Charterparty, other than by way of a Permitted Security Interest; or
  - (iii) materially amend or supplement, or consent to any material amendment or supplement of an Operator Ferry Charterparty or expressly or impliedly waive, or extend or grant time or indulgence in respect of, any material provision of or material obligation under an Operator Ferry Charterparty.

**26.4 Consequences of dealings with Assets**

Any breach by the Operator of this Clause 26 is deemed to be a Termination Event.

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**27. Asset restructure by TfNSW****27.1 Assignment or Novation**

- (a) Without limiting Clause 1.8 or any facilitative legislation, TfNSW may assign or novate this Contract or any State Asset Access Agreement (to which it is a party), its interest in the subject matter of this Contract or any State Asset Access Agreement (to which it is a party) or any right under this Contract or any State Asset Access Agreement (to which it is a party).
- (b) The Operator agrees to such assignment or novation such that no further consent is required.
- (c) In the case of a novation by TfNSW under this Clause 27.1:

- (i) TfNSW will be released from its obligations under this Contract or any relevant State Asset Access Agreement and the respective rights of TfNSW and the Operator against one another under this Contract or any relevant State Asset Access Agreement will cease; and
  - (ii) the novated Contract or State Asset Access Agreement will be on substantially the same terms and conditions as this Contract or the relevant State Asset Access Agreement, such that the incoming party and the Operator will assume substantially the same obligations to one another and acquire substantially the same rights against one another as the rights and obligations discharged under Clause 27.1(c)(i), except that the incoming party replaces TfNSW for all purposes under this Contract or the relevant State Asset Access Agreement.
- (d) The Operator consents to the disclosure by or on behalf of TfNSW to the incoming party of the Operator's Confidential Information for the purposes of the assignment or novation.

## 27.2 Transfer of State Assets by other Governmental Agencies

- (a) The Operator acknowledges and agrees that TfNSW, a State Lessor or any other lessor or head lessor under any State Asset Access Agreement entered into during the Service Term (**State Owner**) may transfer the ownership of State Assets to another Governmental Agency or a private entity (**Asset Holding Entity**) during the Service Term.
- (b) Without limiting Clause 1.8 or any facilitative legislation, the Operator:
- (i) consents to, and must procure that the Operator's Associates and financiers consent to any such transfer of State Assets to an Asset Holding Entity;
  - (ii) agrees to the assignment or novation of any State Asset Access Agreement by a State Owner to an Asset Holding Entity; and
  - (iii) agrees to:
    - (A) the termination of any State Asset Access Agreement by a State Owner;
    - (B) the release of the State Owner from its obligations under the relevant State Asset Access Agreement and the respective rights of the State Owner and the Operator against one another under the relevant State Asset Access Agreement ceasing from the date of termination under Clause 27.2(b)(iii)(A); and
    - (C) in relation to the relevant State Asset the subject of that State Asset Access Agreement, enter into a replacement lease, licence or arrangement with the Asset Holding Entity (**Asset Holding Entity Lease**). TfNSW will use reasonable endeavours to procure that the Asset Holding Entity Lease provides that the Asset Holding Entity and the Operator will assume substantially the same obligations to one another and acquire substantially the same rights against one another as the rights and obligations discharged under Clause 27.2(b)(iii)(B), except that the incoming party replaces the State Owner for all purposes under the relevant State Asset Access Agreement.
- (c) If:
- (i) the amount of the lease payments required to be made by the Operator under the Asset Holding Entity Lease is greater than the equivalent payments required to be made by the Operator under the relevant State Asset Access Agreement; or
  - (ii) the Operator demonstrates to TfNSW's reasonable satisfaction that the terms of the Asset Holding Entity Lease are more onerous than the relevant State Asset Access Agreements that they replace in a material way,

TfNSW will direct a Contract Variation to the extent necessary to provide that the Operator is no worse off under the Asset Holding Entity Lease than it would have been under the State Asset Access Agreement.



- (d) The Operator consents to the disclosure by or on behalf of TfNSW to the incoming party of the Operator's Confidential Information for the purposes of the transfer of State Assets to any Asset Holding Entity.

### **27.3 Attorney**

The Operator, for valuable consideration, to secure the performance of its obligations under this Clause 27, irrevocably appoints TfNSW as its attorney to:

- (a) do all other things (and execute all other documents) necessary to complete the transactions contemplated by this Clause 27 if the Operator has not done so in sufficient time to give effect to those transactions, and
- (b) the Operator must ratify anything done by TfNSW acting under this power of attorney.

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## **Part H – Confidentiality and Privacy**

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### **28. Confidentiality**

#### **28.1 Confidentiality**

Subject to Clauses 28.3, 28.4 and 28.5, a Party must not disclose to a third party without the consent of the other Party, any Confidential Information which is:

- (a) supplied or made available by a Party to the other Party in relation to the performance of the Operator Activities; or
- (b) brought into existence by the Operator in performing the Operator Activities.

#### **28.2 Maintaining confidentiality**

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

#### **28.3 Permitted disclosure**

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

- (a) with the consent of the Party whose Confidential Information is proposed to be disclosed;
- (b) required or permitted by this Contract or by Law;
- (c) in enforcing this Contract or in proceedings arising out of or in connection with this Contract;
- (d) to the Operator's Associates, provided the Operator's Associates are under a similar obligation of confidentiality with respect to the information as the Operator is bound to under Clauses 28.1 and 28.2; or
- (e) to a Party's legal advisers or its consultants.

For the avoidance of doubt, the Operator agrees that TfNSW may publish a complete copy of the Transaction Documents and any plan or other document provided by the Operator under the Transaction Documents, subject only to redaction of financial information, in any data room published by the State, TfNSW or any Governmental Agency of the State relating to the procurement of the construction, commissioning, operation and maintenance of any State Wharf Redevelopment provided that persons who are given access to such data rooms are subject to standard conditions of confidentiality as used by TfNSW for the procurement of major infrastructure projects.

#### **28.4 Publication of certain information by TfNSW**

- (a) Despite any other provisions of this Contract, TfNSW may publish or require the Operator to publish in any form and at times TfNSW considers appropriate, all Data, any information obtained

by TfNSW from the Operator in accordance with the KPI Schedule or the Governance and Reporting Schedule or information collected from the TfNSW Systems and Equipment.

- (b) Despite any other provisions of this Contract, TfNSW may disclose the Operator's Confidential Information to other transport operators for the purposes of managing and operating a safe, consistent and integrated transport service.
- (c) Nothing in the Transaction Documents restricts TfNSW's provision of information to any Minister of the Crown in right of the State or any of its agencies, instrumentalities or Governmental Agencies. Further, without limiting TfNSW's rights under Clause 28.3, TfNSW may disclose Confidential Information of the Operator to TfNSW's Associates.
- (d) For the avoidance of any doubt, and without limiting Clauses 28.4(a) to 28.4(c), TfNSW may publish:
  - (i) all Data, including information collected via DCIS and the OSD;
  - (ii) performance information;
  - (iii) ticketing information; and
  - (iv) information regarding Payments made under this Contract.

#### **28.5 Disclosure log (GIPA Act section 25)**

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

#### **28.6 Access to information (GIPA Act section 121)**

- (a) The Operator must, within five Business Days after receiving a written request by TfNSW, provide TfNSW with immediate access to the following information contained in records held by or under the control of the Operator or the Operator's Associates:
  - (i) information that relates directly to the performance of the Operator Activities provided to the Operator by TfNSW pursuant to this Contract;
  - (ii) information collected by the Operator from members of the public to whom it provides, or offers to provide, the Services pursuant to this Contract; and
  - (iii) information received by the Operator from TfNSW to enable it to perform the Operator Activities pursuant to this Contract.
- (b) For the purposes of Clause 28.6(a), such information does not include:
  - (i) information that discloses or would tend to disclose the Operator's financing arrangements, financial modelling, cost structure or profit margin;
  - (ii) information that the Operator is prohibited from disclosing to TfNSW by provision made by or under any Act, whether of any Australian state or territory, or of the Commonwealth; or
  - (iii) information that, if disclosed to TfNSW, could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to TfNSW, whether at the time of the proposed disclosure or in the future.
- (c) The Operator must provide copies of any of the information requested by TfNSW in accordance with Clause 28.6(a) at the Operator's own expense.

#### **28.7 Consultation (GIPA Act section 54)**

- (a) TfNSW will take reasonably practicable steps to consult with the Operator before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, if it appears that:
  - (i) the information:

- (A) includes Personal Information about the Operator or its employees;
- (B) concerns the Operator's business, commercial, professional or financial interests;
- (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Operator; or
- (D) concerns the affairs of a government of the Commonwealth or another Australian state or territory;
- (ii) the Operator may reasonably be expected to have concerns about the disclosure of the information; and
- (iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (b) If, following consultation between TfNSW and the Operator, the Operator objects to disclosure of some or all of the information, the Operator must provide details of any such objection (including the information objected to and the reasons for any such objection) to TfNSW within five Business Days after the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of the information, TfNSW will take into account any objection received from the Operator.
- (d) If the Operator objects to the disclosure of some or all of the information but TfNSW nonetheless decides to release the information, TfNSW must not provide access to that information until it has given the Operator notice of TfNSW's decision and notice of the Operator's right to have that decision reviewed.
- (e) Where TfNSW has given notice to the Operator in accordance with Clause 28.7(d), TfNSW must not provide access to the information:
  - (i) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
  - (ii) where any review of the decision duly applied for is pending.
- (f) The reference in Clause 28.7(e)(i) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

## 28.8 Publicity

Except for notices which the Operator is required to disclose to any recognised stock exchange, the Operator must:

- (a) not make any public announcements or statements in relation to the Operator Activities (including by posting any information related to the Operator Activities on any website) without TfNSW's consent;
- (b) give TfNSW a draft of any proposed media release relating to the Operator Activities and obtain TfNSW's approval of the media release before distributing it;
- (c) prior to release, revise the wording and timing of all media releases, public announcements and statements by the Operator or the Operator's Associates relating to the Services as requested by TfNSW; and
- (d) ensure that the Operator's Associates comply with the requirements referred to in this Clause 28.8.

## 29. Privacy

### 29.1 Privacy compliance

If the Operator collects, uses, discloses, transfers or otherwise handles any Personal Information in connection with this Contract or the Services, it must:

- (a) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (b) comply with any TfNSW policies related to privacy; and
- (c) not do anything or engage in any practice which if done or engaged in by TfNSW, would be a breach of any Privacy Laws.

### 29.2 General privacy obligations

Without limiting Clause 29.1, the Operator must:

- (a) (and must ensure its Staff) collect, use, disclose, transfer or handle any Personal Information only to the extent necessary to perform its obligations in accordance with this Contract;
- (b) not disclose any Personal Information to any other person (including to any subcontractor) without the prior consent of TfNSW or, subject to Clause 29.2(e), as required by Law;
- (c) ensure that its Staff with access to any Personal Information:
  - (i) are made aware of the obligations in this Clause 29.2; and
  - (ii) if requested by TfNSW, ensure that such Staff sign written undertakings (in a form acceptable to TfNSW) to comply with the obligations in this Clause 29;
- (d) without limiting any of the Operator's other obligations under this Contract, take all technical, organisational and other security measures as are reasonably within the Operator's power to protect any Personal Information from:
  - (i) misuse, interference and loss; and
  - (ii) unauthorised access, modification or disclosure;
- (e) notify TfNSW:
  - (i) as soon as reasonably practicable after the Operator receives any request or complaint concerning any Personal Information;
  - (ii) immediately after the Operator becomes aware that a disclosure of any Personal Information may be required by Law; and
  - (iii) immediately if the Operator becomes aware of any breach of this Clause 29, or of any Data Breach which has occurred or which the Operator has reasonable grounds to suspect may have occurred;
- (f) promptly comply with any requests and/or directions from TfNSW from time to time:
  - (i) concerning the collection, use, disclosure, transfer, handling, access or correction of any Personal Information; and
  - (ii) for information, assistance and co-operation to allow TfNSW to investigate breaches of this Clause 29, or a Data Breach and to comply with its obligations under the Privacy Laws; and
- (g) without limiting the above, in relation to the Data Breach, if the Operator forms the view that it is or may be required to notify affected individuals of a Data Breach under the Privacy Laws, ensure that:
  - (i) before making any such notification it promptly discusses such matter with TfNSW in good faith and complies with any reasonable directions issued by TfNSW in relation to such notification, including as to whether the Operator or TfNSW will be the person responsible for fulfilling the relevant notification requirements; and

- (ii) where TfNSW determines that the Operator will be the party responsible for fulfilling the relevant notification requirements, comply with all such notification requirements in accordance with the Privacy Laws.

### 29.3 Consents

In relation to any Personal Information collected by Operator or the Operator's Associates in connection with the Services, the Operator must ensure that it obtains all consents and makes all disclosures required under Privacy Law for the collection, use and disclosure of that Personal Information to and by TfNSW and TfNSW's Associates, including as contemplated by Clause 29.2(e).

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## Part I – Intellectual Property and Data

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### 30. Intellectual Property and Marks

#### 30.1 General principle

- (a) The Operator acknowledges and agrees that TfNSW endorses open government principles and that any and all New Contract Material may be shared by TfNSW with other persons or made publicly available (including online) and that TfNSW may grant such other persons or members of the public broad licences to use and sub-licence the New Contract Material either on a fee or free fee basis. The Operator acknowledges and agrees that the New Contract Material may be branded by TfNSW or a sub- licensee of TfNSW with TfNSW's or the licensee's branding with no acknowledgement of the Operator's input, Intellectual Property or Moral Rights.
- (b) The Parties agree that title to and Intellectual Property in or in relation to all New Contract Material is owned by TfNSW
- (c) The Operator:
  - (i) absolutely and unconditionally assigns to TfNSW all right, title and interest (including all Intellectual Property) in New Contract Materials without the need for further assurance, including as an assignment of future property under section 197 of the *Copyright Act 1968* (Cth) and in equity; and
  - (ii) must promptly do all things and deliver all further documents required by Law, or reasonably requested by TfNSW, to give effect to an assignment under Clause 30.1(c)(i).

#### 30.2 Existing Contract Material

Each party retains title to and Intellectual Property in or in relation to their respective Existing Contract Material.

#### 30.3 Licence to Operator Material

- (a) To the extent that any Existing Contract Material of the Operator:
  - (i) is incorporated into;
  - (ii) forms part of; or
  - (iii) is required in order to enable TfNSW to utilise or otherwise obtain the full benefit from, any New Contract Material, the Operator grants to TfNSW an irrevocable, perpetual, transferable, world-wide, non-exclusive, royalty-free licence to do the following things in respect of such Existing Contract Material:
    - (iv) use and develop and sublicense the use and development of such Existing Contract Material (and all associated Intellectual Property) in connection with the use or development of the New Contract Material; and

- (v) all such other things as contemplated or required by the TfNSW to exercise its rights under this Contract, including ownership rights, in connection with the New Contract Material.
- (b) Without limiting Clause 30.1 or 30.3(a), where any of the Intellectual Property used by the Operator (including Existing Contract Material) in connection with the performance of the Services is owned by the Operator (**Operator Material**), the Operator grants to TfNSW an irrevocable, world-wide, perpetual, non-exclusive, royalty-free, transferable licence (with the right to sublicense) to use, distribute and develop all of the Operator Material (and all associated Intellectual Property):
  - (i) in connection with this Contract;
  - (ii) in connection with other transport services with other operators; or
  - (iii) for the purpose of permitting any Successor Operator (or nominee of TfNSW) or Interim Operator to provide all or any part of the Services after the termination or expiry of the Service Term.
- (c) Without limiting Clauses 30.3(a) or 30.3(b), in respect of Operator Material owned by a third party, the Operator must use all reasonable efforts to obtain the licence rights and consents required to grant the rights under Clauses 30.3(a) or 30.3(b).
- (d) TfNSW grants the Operator a revocable, world-wide and royalty-free licence during the term of this Contract to use, reproduce and adapt the New Contract Materials solely for purpose of the performance of this Contract. The licence granted by this Clause does not, however, extend to a licence to use TfNSW's trade marks, logos or branding so as to represent or give the impression that the Operator represents TfNSW. Express approval is required for such use.
- (e) The Operator warrants that it holds all necessary rights and has obtained all necessary approvals, consents and licences to grant the assignments and licences referred to in this Clause 30.3 and that TfNSW will not, by using, publishing or licensing the Contract Material or the Intellectual Property in the Contract Material, infringe any Intellectual Property in the Contract Material.
- (f) The Operator agrees that it will create and execute any documents necessary to give effect to the terms and intention of this Clause 30.3 so as to ensure that TfNSW is unimpeded in its Power to use, publish and licence the Contract Material and any Intellectual Property in the Contract Material.

#### 30.4 Moral Rights

- (a) To the maximum extent permitted by Law the Operator consents to, and must procure that each relevant author(s) consents to:
  - (i) any use of any New Contract Material or Operator Material in accordance with this Contract without the need to make any identification of the Operator or the author; and
  - (ii) doing anything in relation to a Contract Material or Operator Material that (but for the consents provided in this Contract) would otherwise infringe any moral rights or similar non-assignable, personal rights that the Operator or relevant author might otherwise have.
- (b) The Operator must obtain all necessary waivers or consents from the authors of any moral rights which may subsist in any New Contract Material and Operator Material to permit TfNSW to exercise its full rights of use and quiet enjoyment of that New Contract Material or Operator Material.

#### 30.5 Provision of Material

The Operator must provide TfNSW, on request, with copies of any Material within its possession or control which TfNSW owns or is licensed to use under this Contract. The Operator must do so promptly, and for:

- (a) Material already in existence within 2 Business Days; and
- (b) Material that needs to be compiled from information already in existence, within 5 Business Days.

**30.6 Use of TfNSW Brand**

- (a) The Operator must only use the TfNSW Brand in material if TfNSW has given that material to the Operator or if the Operator has submitted representative material including the TfNSW Brand to TfNSW and TfNSW has approved their use.
- (b) The Operator acknowledges and agrees that:
- (i) the TfNSW Brand is extremely important and valuable to TfNSW;
  - (ii) TfNSW owns all right, title and interest in the TfNSW Brand and the Operator has no right, title or interest in the TfNSW Brand and, in particular, in respect of the TfNSW Marks the powers conferred on authorised users by section 25 of the *Trade Marks Act 1995* (Cth) are expressly excluded;
  - (iii) any goodwill and any other right, title or interest from the Operator's use of the TfNSW Brand accrues solely for TfNSW's benefit;
  - (iv) the Operator will, at TfNSW's request, immediately amend or withdraw any document or thing bearing the TfNSW Brand;
  - (v) the Operator must only use the TfNSW Brand in a manner which strictly accords with the terms of this Contract and any directions or guidelines which TfNSW provides to the Operator from time to time; and
  - (vi) TfNSW may request access to any material bearing the TfNSW Brand to ensure compliance with this Contract and any directions or guidelines for use of the TfNSW Brand and the Operator must provide TfNSW with access to the relevant material within five Business Days after receipt of such a request.
- (c) The Operator must do all things necessary (including executing documents) and provide TfNSW with all such assistance as is reasonably required by TfNSW to register any part of the TfNSW Brand in the name of TfNSW and to maintain that registration throughout the Service Term.
- (d) The Operator must ensure that where the TfNSW Marks appear in any written material (including any electronic material) published by or on behalf of the Operator, unless otherwise approved by TfNSW:
- (i) the ® symbol must appear next to TfNSW Marks which are registered and the "TM" symbol must appear next to TfNSW Marks which are not registered; and
  - (ii) the TfNSW Marks must be accompanied by the following footnote:  
*"The [to be inserted] trade mark is used by [insert Operator name] under licence from TfNSW."*
- (e) The Operator must not use the TfNSW Brand in a manner which is prejudicial to TfNSW or likely to prejudice the distinctiveness of the TfNSW Brand or the validity of any registration for any of the TfNSW Marks.
- (f) The Operator must comply with any standards, directions and specifications notified by TfNSW from time to time during the Service Term as to the appearance, colour, size and positioning of the TfNSW Marks and the footnote referred to in Clause 30.6(d)(ii).
- (g) The Operator must not at any time during the Service Term use the TfNSW Marks in juxtaposition to any other trade mark, embellishment or device without the consent of TfNSW.
- (h) The Operator will:
- (i) if requested by TfNSW, take all necessary action and execute and deliver to TfNSW all necessary documents and instruments to record the Operator as a registered user of the TfNSW Marks;
  - (ii) if requested by TfNSW, submit to TfNSW samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the TfNSW Brand for TfNSW's approval;

- (iii) except to the extent expressly permitted by this Contract, not use or apply to register any TfNSW Marks as part of its corporate, business, trading or domain name;
  - (iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose TfNSW's ownership of the TfNSW Brand;
  - (v) not register or use any trade mark, trade name, company name or domain name which includes any part of the TfNSW Brand or which is substantially identical or deceptively similar to any part of the TfNSW Brand; and
  - (vi) not challenge the TfNSW Brand or TfNSW's ownership of the TfNSW Brand or assist a third party to do these things.
- (i) If, during the Service Term, the Operator becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the TfNSW Marks, the Operator must promptly notify TfNSW.
  - (j) TfNSW will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the TfNSW Marks and may decide what action if any to take in respect of that matter. The Operator must, at TfNSW's reasonable cost, take any action which TfNSW reasonably requests to bring the matter to an end.
  - (k) The Operator shall, upon termination or expiry of this Contract, procure that any part of the TfNSW Brand which is listed or registered in the name of the Operator, or any person acting on its behalf, is transferred to TfNSW and procure that all telephone numbers, email addresses and all other electronic addresses which are designated by the Operator for use by the general public to make contact with the Operator in relation to the Operator Activities using a telecommunication network be transferred to TfNSW.

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## 31. Data

### 31.1 General

- (a) The Data is and remains the property and Confidential Information of TfNSW and all rights, title and interests, including Intellectual Property, in the Data will remain with or vest in TfNSW.
- (b) To the extent necessary to give effect to this Clause 31.1, the Operator hereby assigns to TfNSW all rights, title and interest, including Intellectual Property, in the Data. The Operator shall not obtain any right, title or interest to the Data save as set out in Clause 30.3(d).
- (c) The Operator must ensure TfNSW has access at all times (and without condition or additional charge) to the Data (in an industry standard format) whilst in the possession or under the control of the Operator or any of its Associates.

### 31.2 Security and confidentiality of the Data

- (a) The Operator acknowledges that Data is Confidential Information of TfNSW (and not of the Operator) and is subject to the confidentiality obligations in Clause 28 and Clause 29.
- (b) The Operator must maintain, enforce and continuously improve a security environment and safety and security procedures and safeguards (including procedures and safeguards against the destruction, loss, disclosure, alteration or unauthorised access or use of Data) that are:
  - (i) in accordance with Good Industry Practice and any policies, procedures or standards as may be advised by TfNSW from time to time;
  - (ii) consistent with the following International Standards for Information Security (available from the Australian Standards website, "<http://www.standards.org.au>):
    - (A) AS/NZS ISO/IEC 27001:2015 Information Security Management Systems - Requirements;



- (B) AS/NZS ISO/IEC 27002:2013 Code of Practice for Information Security Management; and
- (C) ISO/IEC 27005:2018 Information Security Risk Management;
- (iii) comply with all Laws applicable to the Operator's use and custody of the Data; and
- (iv) to the extent Operator or the Operator's Associates (or any of their systems) process, transmit or store Cardholder Data, the Operator:
  - (A) must implement and maintain PCI DSS compliance and certification; and
  - (B) as requested by TfNSW, evidence of its compliance and certification with PCI DSS.
- (c) Without limiting Clauses 31.2(b) and 31.3, the Operator must:
  - (i) at all times use the most appropriate, sophisticated and up-to-date pro-active security prevention software, including virus detection systems and intrusion detection systems for preventing and detecting Disabling Code;
  - (ii) ensure that all systems are constantly updated throughout the term of this Contract to address security vulnerabilities and changes in the threat environment;
  - (iii) not remove or transfer Data to any non-TfNSW premises or from TfNSW Systems and Equipment without obtaining the prior approval of TfNSW or as expressly authorised by and in accordance with this Contract;
  - (iv) provide TfNSW with security-relevant information including security intelligence, near-miss incidents or relevant updates to the Operator's data security policies which may impact the security of Data and systems; and
  - (v) promptly inform TfNSW of any security threats or Disabling Code and the steps necessary to avoid their introduction.
- (d) If the Operator becomes aware of a breach or potential breach of security, the Operator must immediately notify TfNSW and identify the cause of such breach or potential breach, and do all within its power to remedy any breach and prevent any recurrence of such breach.
- (e) In the event of any conflict between any data or security requirements, the most stringent or higher level of security standard will apply.

### 31.3 Disabling Code

- (a) The Operator must not, and must ensure its Staff does not:
  - (i) supply or connect to the TfNSW environment or the Services any product containing a Disabling Code; or
  - (ii) insert or activate any Disabling Code into the TfNSW environment or the Services at any time.
- (b) If the Operator becomes aware that any Disabling Code is found to have been installed, released or otherwise introduced into any part of the TfNSW environment or the Services by the Operator or its Staff:
  - (i) the Operator must promptly provide all information reasonably requested by TfNSW in relation to the Disabling Code, its manner of introduction and the effect the Disabling Code has had or is likely to have;
  - (ii) if the Disabling Code causes a loss of operational efficiency or loss of data, assist TfNSW to mitigate the effect of the Disabling Code and to assist TfNSW to recover the efficiency and/or data;
  - (iii) in addition to any other rights that TfNSW has, must pay the Losses incurred by TfNSW relating to:
    - (A) identifying and removing the Disabling Code; and

- (B) restoring any data lost, damaged or corrupted as a result of the Disabling Code to the last backed-up version of that data and otherwise remedying the impact of the Disabling Code.

#### **31.4 No transfer of Data outside of NSW**

The Operator must not, without TfNSW's prior approval:

- (a) transfer, or permit the transfer, outside of NSW any Data which is a State Record or Personal Information held in connection with this Contract; or
- (b) allow or permit access to such Data by any person who is outside of NSW at the time of such access.

#### **31.5 Data recovery and back-up**

Without limiting any other terms of this Contract, the Operator must:

- (a) to the extent the Data is within the Operator's control, maintain back-ups in accordance with Good Industry Practice and as required by this Contract; and
- (b) if there is a loss of, or damage to, Data, reload the relevant data saved during the last back-up.

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## **Part J – Contract Administration**

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### **32. Access and inspections**

#### **32.1 TfNSW's right of entry**

- (a) The Operator must maintain those financial and financial planning records that would ordinarily be maintained by a skilled and experienced operator of Ferries and ferry services comparable to the size, scope and complexity of the Ferry Operations.
- (b) TfNSW (and any person authorised by TfNSW) may, at any time, enter the State Premises and any other premises where the Operator Activities are being carried out for the purpose of:
  - (i) observing or inspecting the Operator Activities;
  - (ii) monitoring compliance by the Operator with its obligations under this Contract or any Laws; or
  - (iii) exercising any right or performing any obligation which TfNSW has under any Transaction Document.
- (c) The Operator must:
  - (i) use reasonable endeavours to coordinate the Operator Activities so they do not interfere with the exercise by TfNSW of its right of entry; and
  - (ii) provide TfNSW with every reasonable facility and other assistance necessary for any inspection by TfNSW, including providing access to any Assets, relevant systems, registers, manuals, records (including financial records), plans and programs.
- (d) If an inspection shows that the Operator has not complied or is not complying with its obligations under the Transaction Documents:
  - (i) TfNSW may notify the Operator of the details of the non-compliance;
  - (ii) TfNSW will specify a reasonable period within which the Operator must carry out appropriate rectification or remedy activities; and
  - (iii) the Operator must reimburse TfNSW for the reasonable costs of the inspection including any reasonable administrative costs incurred by TfNSW in relation to the inspection.

- (e) Where, in accordance with Clause 32.1(b), TfNSW (or any person authorised by TfNSW) enters the State Premises or any other premises where the Operator Activities are being carried out, TfNSW must:
  - (i) comply (or must procure that any person authorised by TfNSW complies) with reasonable site safety and security requirements as advised by the Operator; and
  - (ii) use reasonable endeavours to minimise unnecessary disruption to the Operator's Activities.

### **32.2 Access to information**

- (a) Without limiting any other provision of this Contract:
  - (i) TfNSW may at any time notify the Operator that it requires access to any information held by the Operator or the Operator's Associates which relates to the Operator Activities;
  - (ii) upon receipt of a notice under Clause 32.2(a)(i), the Operator must immediately provide TfNSW (and any person authorised by TfNSW) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and
  - (iii) TfNSW (and any person authorised by TfNSW) may review, copy, retain or otherwise deal with such information.
- (b) The Operator must:
  - (i) ensure that TfNSW (and any person authorised by TfNSW) has direct access to any information, documents or material that:
    - (A) is maintained by a third party (including the Operator's Associates); and
    - (B) TfNSW is entitled to have access to, or have copies of, from the Operator under this Contract;
  - (ii) ensure that any contractual arrangements between the Operator or the Operator's Associates and any third parties acknowledge TfNSW's right of access under Clause 32.2(b)(i); and
  - (iii) on demand, provide to TfNSW written evidence (including copies of any contractual arrangements referred to in Clause 32.2(b)(ii)) showing compliance by the Operator with its obligations under Clause 32.2(b)(ii).
- (c) The Operator must cooperate, and must ensure that the Operator's Associates cooperate, with TfNSW and any persons authorised by TfNSW in the exercise of TfNSW's rights under this Clause 32.

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## **33. Reporting**

### **33.1 Reporting**

- (a) The Operator must report to TfNSW during the Service Term, in accordance with the Governance and Reporting Schedule.
- (b) If requested by TfNSW, the Operator must provide Master, Crew and Contract Ferry shift information to TfNSW, on reasonable notice.

### **33.2 Immediate notification**

The Operator must inform TfNSW as soon as practicable of any material change or material issues (whether proposed, anticipated or that have occurred) affecting the Ferry Operations, including:

- (a) the employment or the termination of employment of any key Staff;
- (b) any litigation or other dispute which may have a material effect on the Ferry Operations;

- (c) any material change in, or restructuring of, the capitalisation or financing of the Operator;
- (d) any fact, matter or circumstance of which it becomes aware that may prejudice its ability to perform its obligations under any Transaction Document or its ability to operate the Ferry Operations;
- (e) any actual or proposed investigation or inquiry by a Governmental Agency into any aspect of the Ferry Operations;
- (f) requisition of a Contract Ferry for hire;
- (g) any occurrence in consequence of which a Contract Ferry has or may become damaged beyond economic repair; or
- (h) proceedings being instituted against a Contract Ferry, or any arrest, detention, attachment or levy upon a Contract Ferry, or any exercise (or purported exercise) of a lien or other claim in connection with:
  - (i) a Contract Ferry;
  - (ii) the insurances required to be maintained by the Operator under this Contract in relation to the Contract Ferries; or
  - (iii) any Requisition Compensation; or
- (i) actual or proposed revocation of, or imposition of conditions on, the Operator's Authorisations, and must provide sufficient details with that notice and outline any steps taken, or proposed to be taken, by the Operator to overcome or mitigate the impact of that fact, matter or circumstance.

### 33.3 Misinformation

If the Operator:

- (a) provides information used in calculation of payments, or assessing performance, under this Contract which is deliberately false or misleading in any material respect; or
- (b) takes any action to artificially inflate the calculation of payments to be made to the Operator or to artificially deflate the calculation of payments to be made by the Operator under this Contract, or to artificially improve the measure of the Operator's performance,

(in each case **Misinformation**), this will constitute a Termination Event and (in addition to TfNSW's rights in respect of the Termination Event) TfNSW may refuse to make a payment affected by the Misinformation and may:

- (c) demand that the Operator pay to TfNSW any shortfall in payments previously made, or to be made, by the Operator which have been deflated as a result of the Misinformation; or
- (d) demand that the Operator pay to TfNSW any excess in payments previously made, or to be made, to the Operator, which have been inflated as a result of the Misinformation,

together with interest at the Default Rate calculated on a daily basis from (and including) the date on which the shortfall or excess payments were made to the date the amount is paid in full. The Operator must make any payment in accordance with a demand under Clause 33.3(c) or 33.3(d).

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## 34. Operating Plans

The Operator must comply with its obligations in paragraph 10 of the Governance and Reporting Schedule.

## 35. Staffing

### 35.1 All Staff

- (a) The Operator must ensure that all Staff hold all necessary Authorisations and are properly Authorised, trained and experienced to perform the Services for the duration of the Service Term.
- (b) The Operator must provide training to the Staff and develop, document and maintain training materials in accordance with Item 8 of the Services Schedule.
- (c) Without limiting Clause 35.1(a) and (b), the Operator must ensure that all Staff who are engaged in, or in connection with, the Operator Activities are properly trained and experienced to a level that would ordinarily be expected of an experienced, efficient and competent operator of passenger transport in relation to the provision of services and the conduct of a passenger transport service comparable to the size, scope and complexity of the Services and the Operator Activities.
- (d) The Operator must ensure that all customer facing Staff are:
  - (i) clean and tidy; and
  - (ii) attired in a clean, well maintained and appropriate uniform that complies with WHS Law and the requirements of this Contract.

### 35.2 Key Personnel

- (a) The Operator must ensure that all Staff that are identified as key management personnel of the Operator in Item 3 of Attachment A (**Key Personnel**) are members of Staff on or before the time specified in Item 3 of Attachment A.
- (b) The Operator must:
  - (i) ensure that each person who is one of the Key Personnel remains dedicated to the carrying out of the performance of the Operator Activities and the Operator's obligations under this Contract in the positions and for the periods specified in Item 3 and Item 4 of Attachment A; and
  - (ii) not remove Key Personnel from their positions and identified duties during the Service Term (or other period specified in Item 4 of Attachment A) without the approval of TfNSW unless the employment or engagement of the Key Personnel is terminated.
- (c) If any of the Key Personnel do not remain dedicated to the performance of the Operator Activities and the Operator's obligations under this Contract in the position and for the periods specified in Item 3 and Item 4 of Attachment A, the Operator must propose a replacement who is of at least equivalent skill and experience as soon as practicable for TfNSW's approval. The Operator must only appoint proposed replacements approved by TfNSW (acting reasonably). If the proposed replacements are not approved, the Operator must propose further replacements until TfNSW's approval is obtained. Any replacement personnel approved by TfNSW will be Key Personnel for the purposes of this Clause 35.2.

### 35.3 Industrial relations

The Operator:

- (a) is responsible for monitoring and managing all risks associated with industrial relations during the Service Term (including any industrial relations reforms it may require to implement the Services); and
- (b) must develop and maintain internal processes and procedures for monitoring and managing industrial relations risks to ensure that the Operator is able to perform the Operator Activities in accordance with this Contract.

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## 36. Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under a Transaction Document without the consent of TfNSW (such consent not to be unreasonably withheld or delayed). TfNSW may consent to the terms of a specific subcontract or delegation or to a class or type of subcontracts or delegations. Each subcontractor consented to by TfNSW being an **Approved Subcontractor**.
- (b) Without limiting Clause 36(a), a subcontract or delegation entered into by the Operator must not be for a period that exceeds the fifth or tenth anniversary of the Planned Service Commencement Date without:
  - (i) the subcontract or delegation including a provision which allows the Operator to terminate the subcontract or delegation (as applicable) if this Contract is terminated under Clause 5.2; or
  - (ii) the consent of TfNSW.
- (c) The Operator must ensure that any subcontractor engaged to provide any of the Operator Activities holds all appropriate Authorisations required in relation to the activities for which it has been engaged.
- (d) The Operator:
  - (i) is not, by reason of having engaged a subcontractor, relieved of any of its liabilities or obligations under the Transaction Documents;
  - (ii) is responsible for each subcontractor engaged by it as if all the acts and omissions of the subcontractor were its own acts and omissions; and
  - (iii) agrees, that where there is a reference in a Transaction Document to the Operator and a subcontractor is performing the obligations of the Operator, the Operator must procure that each subcontractor it appoints engages in, or refrains from engaging in, conduct of the kind required or prohibited by this Contract and otherwise complies with all obligations of the Operator under the Transaction Document.
- (e) The Operator must complete a Subcontractor's Statement in relation to any subcontractor approved by TfNSW under this Clause 36. TfNSW will provide the Subcontractor's Statement to the Operator for completion.

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## 37. Key Subcontracts

### 37.1 Interpretation

In this Clause 37:

- (a) a reference to an agreement includes an arrangement (whether legally enforceable or not); and
- (b) a reference to the Operator entering into an agreement includes the Operator being a party to, or having the benefit of, an agreement.

### 37.2 Key Subcontract Security Documents

- (a) Subject to Clause 37.2(g), the Operator must not enter into a Key Subcontract unless TfNSW has previously entered into a Key Subcontract Security Document in respect of that Key Subcontract on terms acceptable to TfNSW. The Operator will not be required to comply with this Clause 37.2(a) if it notifies TfNSW prior to entering into a Key Subcontract and TfNSW notifies the Operator that a Key Subcontract Security Document is not required in respect of that Key Subcontract. TfNSW must act reasonably in determining whether or not a Key Subcontract Security Document will be required.
- (b) TfNSW may, by notice to the Operator, designate any agreement as a Key Subcontract if TfNSW considers that the receipt by the Operator of the goods or services which are or will be the subject

matter of the agreement is reasonably necessary for the conduct of all or any part of the Operator Activities.

- (c) The designation takes effect from the date that notice is given to the Operator under Clause 37.2(b) and may be made in respect of a particular agreement or a category of agreements.
- (d) The Operator must notify TfNSW of any agreement it proposes to enter into which it believes (acting reasonably) TfNSW may wish to designate under Clause 37.2(b), prior to entering into that agreement.
- (e) TfNSW may, by notice to the Operator, declare that a Key Subcontract is no longer a Key Subcontract for the purposes of this Contract if TfNSW considers that the receipt by the Operator of the goods or services that are the subject matter of the agreement is no longer reasonably necessary for the conduct of all or any part of the Operator Activities.
- (f) A designation or declaration takes effect from the date that notice is given to the Operator under Clause 37.2(e) and may be made in respect of a particular agreement or a category of agreements.
- (g) The Operator will not be required to comply with this Clause 37.2 in respect of any agreement with a term (including all options) of three months or less that is necessary to deal with any emergency in connection with all or any part of the Operator Activities.
- (h) The Operator acknowledges the existence of the Key Subcontract Security Documents and agrees to cooperate in the implementation of those Key Subcontract Security Documents.

### 37.3 Amendment of Key Subcontract

The Operator must not, except with the consent of TfNSW:

- (a) materially amend or supplement, or consent to any material amendment or supplement of; or
- (b) expressly or impliedly waive, or extend or grant time or indulgence in respect of,

any material provision of or material obligation under a Key Subcontract, if and to the extent that anything referred to in Clauses 37.3(a) or (b) takes effect in, or relates to the exercise of any Power or the performance of any obligation under the Key Subcontract during the End of Contract Period or after this Contract is due to expire or terminate.

### 37.4 Assignment of Key Subcontract

The Operator must not, except with the consent of TfNSW:

- (a) create or allow to exist any Security Interest over; or
- (b) in any other way Dispose of or create or allow any interest in, or otherwise deal with, its rights under, or interest in, a Key Subcontract.

### 37.5 Termination of Key Subcontract

- (a) The Operator must not, except as permitted by Clause 37.5(b):

- (i) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
  - (ii) suspend the performance of any of its obligations under; or
  - (iii) do or permit anything that would enable or give grounds to another party to do anything referred to in Clause 37.5(a)(i) or (ii) in relation to,
- a Key Subcontract.

- (b) The Operator may terminate a Key Subcontract if TfNSW is reasonably satisfied that:

- (i) it is no longer necessary for the Operator to have the benefit of the Key Subcontract; or

- (ii) the Operator has made adequate alternative arrangements for the continued conduct of the Operator Activities.
- (c) If the Operator terminates a Key Subcontract in breach of this Contract, the Operator must at the request of TfNSW, enter into an agreement immediately following that request with each counterparty to the Key Subcontract on the terms set out in the relevant Key Subcontract Security Document.

### 37.6 Notices in respect of Key Subcontract

The Operator must in respect of any Key Subcontract, as soon as practicable:

- (a) notify TfNSW if it receives any notice of any assignment, transfer, Security Interest, execution or other dealing in relation to the Key Subcontract;
- (b) provide a copy to TfNSW of any notice given or received by it terminating, or suspending the supply of any goods or services under, the Key Subcontract; and
- (c) notify TfNSW (to the extent that it is aware) of:
  - (i) any breach by any party to the Key Subcontract of any of its material obligations under the Key Subcontract;
  - (ii) the occurrence of any event of default, termination event or similar event (whatever called) under the Key Subcontract; and
  - (iii) any other event or circumstance which, alone or with the giving of notice or passage of time or both, would entitle a party to the Key Subcontract to terminate or rescind it or treat it as repudiated or suspend a party's performance of obligations under it.

### 37.7 Successor Operator

The Operator must at the request of TfNSW, provide reasonable assistance to the Successor Operator and Interim Operator in securing the supply to the Successor Operator or Interim Operator (as applicable) of the goods or services which are the subject matter of a Key Subcontract, to the extent that the supply is necessary for the conduct of all or any part of the Operator Activities.

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## 38. Contract management

### 38.1 Governance

- (a) The Operator and TfNSW must participate in the governance of this Contract, as described in the Governance and Reporting Schedule.
- (b) The Operator must manage the Contract in accordance with the obligations set out in Item 12 of the Services Schedule.

### 38.2 Audit

- (a) TfNSW (and any person authorised by TfNSW) may investigate any matter in connection with this Contract, including costs and pricing matters, and may at any time during the Service Term and for six months after the Termination Date, audit all files, records and invoices of the Operator pertaining to the provision of the Operator Activities and related expenditures.
- (b) TfNSW may appoint an auditor for the purposes of this Clause 38.2.
- (c) TfNSW may, or may appoint persons to, carry out mystery shopper surveys, or collect customer satisfaction data, from passengers on Contract Ferries and at Wharves.
- (d) TfNSW (and any person authorised by TfNSW) may conduct audits of the contents of reports and data provided by the Operator to TfNSW in accordance with the Governance and Reporting Schedule.



- (e) Without limiting Clause 38.2(d), from the Service Commencement Date and for the duration of the Service Term, the Operator must collect the data specified in paragraph 13 of the Governance and Reporting Schedule.
- (f) The Operator must:
  - (i) provide all reasonable assistance to TfNSW (and any person authorised by TfNSW) in the conduct of an audit under Clause 38.2(d);
  - (ii) make available to TfNSW (and any person authorised by TfNSW) all reports and underlying data requested by TfNSW in the conduct of an audit under Clause 38.2(d); and
  - (iii) comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits.
- (g) The Operator must provide all reasonable access and assistance required in connection with this Clause 38.2.

### 38.3 Inquiries

- (a) The Operator must, within the timeframe required by TfNSW, provide all assistance reasonably requested by TfNSW in respect of any inquiry into or concerning the Operator Activities or this Contract. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to TfNSW) or any request for information from the NSW Auditor-General or IPART directed to TfNSW or the Transport Minister.
- (b) Without limiting Clause 38.3(a), the assistance to be provided by the Operator includes:
  - (i) the provision of requested documents or information relevant to the Operator Activities; and
  - (ii) answering questions relevant to the Operator Activities.

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## 39. Compliance

### 39.1 Compliance with Laws

- (a) The Operator must:
  - (i) in performing the Operator Activities, comply with all applicable Laws including:
    - (A) the MS Act;
    - (B) the *Ports and Maritime Administration Act 1995* (NSW);
    - (C) the PT Act 1990;
    - (D) the PT Act 2014;
    - (E) the TAA; and
    - (F) any regulations made under any of the Laws referred to in Clauses 39.1(a)(i)(A) to (E),  
**(Transport Laws)**;
  - (ii) ensure the Operator's Associates engaged in, or in connection with, the Operator Activities, comply with all applicable Laws including Transport Laws;
  - (iii) ensure that the Assets are operated and maintained so as to comply with all applicable Laws including Transport Laws;
  - (iv) give the TfNSW Representative copies of:
    - (A) all material documents given by the Operator or any of the Operator's Associates to a Governmental Agency; and

- (B) any other material communications between the Operator or any of the Operator's Associates and any Governmental Agency,  
in connection with the Operator Activities;
- (v) without limiting Clause 39.1(a)(iv), give the TfNSW Representative copies of any notice, report or other correspondence given or received by:
  - (A) the Operator or the Operator's Associates under or in connection with:
    - (I) any applicable Law including any Transport Law under which any Authorisation required to carry out the Operator Activities is granted; or
    - (II) any Authorisation held by the Operator or the Operator's Associates, in connection with the Operator Activities; or
  - (B) the Operator or the Operator's Associates which may adversely affect the ability of the Operator or the Operator's Associates to carry out the Operator Activities, as soon as practicable, but in any event no later than five Business Days after such notice, report or other correspondence is given or received by the Operator or the Operator's Associates.
- (b) The Operator must provide TfNSW with such assistance as may be required by TfNSW (acting reasonably) to enable it to comply with all applicable Laws including Transport Laws.
- (c) During the first month after the Service Commencement Date and every 12 months thereafter, the Operator must certify in writing to TfNSW that the Operator has complied with the following legislative and regulatory requirements:
  - (i) DDA Legislation;
  - (ii) Anti-Discrimination Act 1977 (NSW);
  - (iii) Environmental Law, including but not limited to the *Protection of the Environment Operations Act 1997* (NSW) and the *Marine Pollution Act 2012* (NSW);
  - (iv) *Fair Work Act 2009* (Cth) and applicable industrial instruments;
  - (v) Independent Commission Against Corruption Act 1988 No 35 (NSW);
  - (vi) Modern Slavery Laws; and
  - (vii) Child Protection (Working with Children) Act 2012 (NSW).
- (d) The Operator must, and must ensure that the Operator's Associates:
  - (i) promptly give any Governmental Agency such access to assets, premises and information as that Governmental Agency requests, within the time requested;
  - (ii) cooperate with and respond to any lawful requests made by any Governmental Agency, within the time requested; and
  - (iii) not hinder or delay any Governmental Agency in carrying out its duties.
- (e) Compliance by the Operator with its obligations under this Clause 39:
  - (i) does not discharge or excuse the Operator from complying with its other obligations under the Contract; and
  - (ii) is not evidence of compliance by the Operator with its other obligations under the Contract.

### 39.2 Authorisations

Prior to the commencement of any work arising under or in connection with the Operator Activities for which any Authorisation is required by Law, and at all times while carrying out such Operator Activities, the Operator must, and must ensure that the Operator's Associates:

- (a) hold all Authorisations required to carry out those Operator Activities including:

- (i) all necessary Certificates of Survey; and
- (ii) all necessary Certificates of Operation; and
- (b) comply with all conditions of such Authorisations and all obligations of accredited persons under the applicable Laws including:
  - (i) the PT Act 1990 or PT Act 2014; or
  - (ii) the MS Act.

### 39.3 Safety Management System

- (a) Without limiting Clauses 39.1 and 39.2, the Operator must, and must ensure that the Operator's Associates do, to the extent required by applicable Laws including Transport Laws develop, implement and maintain a Safety Management System:
  - (i) in a timely manner; and
  - (ii) in accordance with this Contract and the applicable Law including Transport Laws.
- (b) The Operator must:
  - (i) ensure that its or the Operator's Associates' Safety Management Systems contemplate and provide for the continuation of the Operator Activities following the exercise by TfNSW of its Step in Rights; and
  - (ii) provide TfNSW with:
    - (A) the then current version of its or the Operator's Associates' Safety Management System for the Operator Activities promptly upon request by TfNSW; and
    - (B) an updated version of such Safety Management System within five Business Days after any update.

### 39.4 Staff

- (a) Without limiting Clauses 39.1 to 39.3, the Operator must ensure that all Staff:
  - (i) are competent to carry out the work for which they are engaged for the purposes of all applicable Laws including Transport Laws; and
  - (ii) comply with their obligations under all applicable Laws including Transport Laws.
- (b) Without limiting Clause 39.4(a), the Operator must ensure that:
  - (i) each Master of a Contract Ferry complies with the MS Act, including that each such Master:
    - (A) holds a current Certificate of Competency issued pursuant to the MS Act on or after 1 July 2013; or
    - (B) if a Master does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013; and
  - (ii) each Crew member of a Contract Ferry complies with the MS Act, including that each such member:
    - (A) holds a current Certificate of Competency issued pursuant to the MS Act on or after 1 July 2013; or
    - (B) if the Crew member does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013.

### 39.5 Specific Contract Ferry safety requirements

- (a) Without limiting Clause 19.3 or Clause 39.2, the Operator must ensure that each Contract Ferry is maintained and operated in conformity with the MS Act, including by:

- (i) holding and complying with a current Certificate of Operation and Certificate of Survey issued pursuant to the MS Act; and
- (ii) complying with any standards, guidelines and codes of practice relating to maritime safety and applicable to the Contract Ferry issued pursuant to the MS Act.
- (b) The Operator must ensure the appropriate supervision of embarking and disembarking passengers at the Wharves including by assisting with mobility ramps as required.
- (c) The Operator must consult and cooperate with TfNSW in relation to the management of safety at the Wharves and in respect of the use of navigation channels.

**39.6 TAO**

- (a) The Operator must, or must procure that each of the relevant Operator's Associates must:
  - (i) from the Service Commencement Date, achieve alignment with the ISO 55000 series of standards; and
  - (ii) if directed to do so by TfNSW, use its best endeavours to achieve TAO status in relation to the Operator Activities in accordance with the requirements set out from time to time at <https://www.transport.nsw.gov.au/industry/asset-management-branch/technically-assured-organisation-scheme> (or its replacement from time to time) (**TAOS**) within twelve months after the requirements for achievement of TAO status have been made available to the Operator.
- (b) Regardless of whether or not the Operator achieves TAO status, the Operator must comply with the TfNSW Configuration Management Plan. TfNSW may appoint a representative on the configuration control board established in accordance with that plan.
- (c) For clarification, a change in the requirements referred to in Clause 39.6(a)(ii) is not a Change in Law.
- (d) If TfNSW gives a direction under Clause 39.6(a)(ii) and the Operator achieves TAO status in relation to the Operator Activities in accordance with the requirements of the TAOS), within twelve months after the requirements for achievement of TAO status have been made available to the Operator, then TfNSW will reimburse the Operator's reasonable incremental direct costs of complying with Clause 39.6(a)(ii).

**39.7 WHS**

- (a) In performing the Operator Activities, the Operator must ensure, so far as is reasonably practicable, the health and safety of its Workers and any persons in relation to the Operator Activities, including any persons performing work at the Workplace, whether or not engaged by the Operator.
- (b) The Operator acknowledges that, in performing the Operator Activities:
  - (i) it must comply with its obligations under WHS Law and must require that the Operator's Associates and all of the Operator's or Operator's Associates' subcontractors comply with the Operator's and their own obligations under the WHS Law;
  - (ii) the Operator must ensure that (subject to Clause 39.7(e)):
    - (A) it is responsible for ensuring work health and safety in relation to the Operator Activities;
    - (B) it provides appropriate training and supervision for all persons employed or engaged by it or subject to its control in relation to the Operator Activities;
    - (C) it controls or directs the performance of work associated with the Operator Activities;
    - (D) it establishes and maintains safe work practices;
    - (E) it engages competent persons to carry out risk audits 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 associated with the Operator Activities;
- (F) all Staff performing the Operator Activities are trained in work health and safety, in particular in relation to the risks associated with performing the Operator Activities;
  - (G) it will inform TfNSW of any changes of any Staff, corporate structure, management structure or supervisors that may affect the safety of the Staff or Workers in performing the Operator Activities; and
  - (H) it otherwise complies with all statutory requirements for work health, safety and rehabilitation management.
- (c) TfNSW and the Operator acknowledge and agree that the Operator has control of:
- (i) the manner in which the Operator Activities are performed; and
  - (ii) all matters arising out of or as a consequence of the performing of or failure to perform the Operator Activities that give rise or may give rise to risks to health or safety.
- (d) The Operator must, prior to the performance of any part of the Operator Activities:
- (i) undertake an assessment of the work, health and safety risks associated with the performance of the Operator 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 TfNSW, provide TfNSW 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 39.7.
- (e) If the Operator engages a contractor, or otherwise relinquishes to, or shares with, any person:
- (i) the management or control of a Workplace; or
  - (ii) control over the performance of work associated with the Operator Activities,
- it will ensure that person complies with the obligations referred to in this Clause 39.7.
- (f) In order to meet its obligations under this Clause 39.7, the Operator must adopt a work health, safety and rehabilitation management system that supports a systematic approach to managing risks to health and safety posed by any Workplace or the Operator Activities, 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.
- (g) The Operator will provide to TfNSW such information about the operation and maintenance of the system referred to in Clause 39.7(f) as TfNSW requests. Any review of the operation or maintenance of the system by TfNSW under this Clause 39.7(g) does not constitute a verification or acceptance by TfNSW of the adequacy of the system.
- (h) The Operator must so far as is reasonably practicable consult, cooperate and coordinate the Operator Activities with any other person involved in performing work associated with or connected with the Operator Activities to achieve effective coordination of those activities to ensure optimal health and safety risk management and enable TfNSW and the Operator and any person who has control of access to or from the Workplace to comply with their respective obligations under all relevant WHS Laws.
- (i) Without limiting the Operator's obligations under any other provision of this Contract, to the extent that the Operator Activities include construction work at any State Premises that are owned by TfNSW (**TfNSW Site**):

- (i) TfNSW engages the Operator as the principal contractor in respect of that TfNSW Site and authorises the Operator to have management and control of each workplace at which such Operator Activity is to be carried out and to discharge the duties of a principal contractor under the WHS Law;
  - (ii) the Operator accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Law and perform all such other activities as are necessary to ensure that TfNSW does not breach its obligations under the WHS Law; and
  - (iii) the Operator's engagement and authorisation as a principal contractor will continue until the point in time when the relevant Operator Activity is completed.
- (j) If the Operator breaches its obligations under this Clause 39.7, the breach will be a Termination Event for the purposes of Clause 56.1. In addition, the Operator has no Claim against TfNSW as a result of or in any way connected with a breach of its obligations under this Clause 39.7.
- (k) In this Clause 39.7 the terms "principal contractor" and "construction work" have the same meanings given to those terms in the WHS Law.

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## Part K – Payment

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### 40. Payment

#### 40.1 Payments

- (a) In exchange for the Operator performing the Operator Activities in accordance with this Contract, TfNSW must pay the Operator the Payments, after receipt of a valid Tax Invoice from the Operator in accordance with Clause 40.2.
- (b) The Payment amounts specified in the Payment Schedule will be fixed for the Service Term, unless varied in accordance with this Contract.
- (c) Unless expressly stated in this Contract or the Schedules, the Operator must bear the cost of any steps, actions, obligations or activities required of the Operator arising from or in connection with this Contract and is not entitled to any reimbursement of expenses, payment or compensation for any such steps, actions, obligations or activities.

#### 40.2 Invoices and time for payment

- (a) On a monthly basis in accordance with paragraph 2 of the Payment Schedule for the duration of the Service Term, the Operator must submit to TfNSW a valid Tax Invoice for the performance of the Operator Activities in accordance with the terms of this Contract. The Tax Invoice must specify:
  - (i) the amount of the Payments in respect of the Services for the month in arrears;
  - (ii) the amount of GST payable in respect of the provision of the Services; and
  - (iii) such other details specified in the Payment Schedule.
- (b) TfNSW must make Payments within 14 days after receipt of a Tax Invoice where:
  - (i) the amount claimed in the Tax Invoice is due for payment and correctly calculated in Australian dollars; and
  - (ii) the invoice is set out as an itemised account in accordance with the requirements of Clause 40.2(a).
- (c) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.

**40.3 Set off**

- (a) TfNSW will be entitled to set off or deduct from any amount due from TfNSW to the Operator under a Transaction Document:
  - (i) any debt or other monies due from the Operator to TfNSW; and
  - (ii) any Claim to money which TfNSW may make in good faith against the Operator whether for damages or otherwise (including under any indemnity in a Transaction Document) and whether or not the amount is subject to a dispute between the Parties or subject to any court or other proceedings,

whether under a Transaction Document or otherwise at Law relating to the Operator Activities.
- (b) The Operator must make all payments due to TfNSW under any Transaction Document without set off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) Nothing in this Clause 40.3 affects TfNSW's right to recover from the Operator the whole of the debt or any balance that remains owing after any set off.

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

- (a) In this Clause 40.4:
  - (i) a reference to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act (as amended from time to time);
  - (ii) any part of a supply that is treated as a separate supply for GST purposes (including for the purpose of attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this Clause 40;
  - (iii) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts;
  - (iv) a reference to GST payable by or input tax credit entitlement of a party includes any GST payable by or input tax credit entitlement of the representative member of any GST group of which that party (or the entity on whose behalf that party is acting) is a member; and
  - (v) a reference to GST payable or input tax credit entitlements includes GST and input tax credits to which an entity is notionally liable or entitled in accordance with Division 177 of the GST Act.
- (b) Any amount referred to in this Contract which is relevant in determining or calculating a payment to be made by one of the parties to the other is exclusive of any GST unless expressly stated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this Contract, the consideration provided for that supply is increased by the amount of GST payable on that supply (**GST Amount**). The GST Amount is payable without set off, deduction or requirements for demand at the same time as the consideration to which it relates is payable or to be provided, subject to the supplier giving the recipient a tax invoice in respect of the supply. This Clause 40.4(c) does not apply to any amount that is expressly stated to be inclusive of GST.
- (d) If one of the Parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Contract, the amount of the reimbursement will be net of any Input Tax Credit which may be claimed by the party being reimbursed in relation to that expense or outgoing. If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment shall be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of GST.
- (e) If an adjustment event arises in respect of a supply made under or in connection with this Contract, then:

- (i) the supplier must issue an adjustment note to the recipient within five Business Days after the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event, outlining the revised amount of GST payable in respect of that supply (**Corrected GST Amount**);
  - (ii) if the Corrected GST Amount is less than the previously attributed GST Amount, the supplier shall refund the difference to the recipient within 15 days after the adjustment note is issued by the supplier; and
  - (iii) if the Corrected GST Amount is greater than the previously attributed GST Amount, the recipient shall pay the difference to the supplier within 15 days after the adjustment note is issued by the supplier.
- (f) The Operator acknowledges that:
- (i) the Operator Ticket Income and Ticketing System Income is collected by and paid to the Operator on its own account;
  - (ii) the Operator Ticket Income and Ticketing System Income is consideration for a supply made by the Operator to passengers and the Operator will remit the GST on that Operator Ticket Income and Ticketing System Income.
- (g) [Not Used]
- (h) The parties acknowledge and agree that, having reliance on the principles outlined in public GST ruling GSTR 2006/4, no tax law partnership is formed between them for income tax or for GST purposes as a result of the entry into or operation of this Contract.
- (i) If requested to do so by the Operator, TfNSW will support the Operator in undertaking a review of the Operator's compliance with its obligations under the GST Act by:
- (i) providing reasonable information regarding the treatment of Ticketing System Income and Operator Ticketing Income under the TfNSW Systems and Equipment and TransportConnect and the process of invoicing payments under this Contract from a GST perspective; and
  - (ii) providing reasonable access to appropriately experienced TfNSW personnel to discuss any information provided under Clause 40.4(i)(i).
- (j) The Parties may agree to enter into an agreement which allows either Party to issue recipient created tax invoices in respect of the Services provided under this Contract.

#### **40.5 Civil Penalties**

Paragraph 7 of the KPI Schedule and paragraph 6 of the Payment Schedule are civil penalty provisions for the purposes of section 38 of the PT Act 2014.

#### **40.6 Subcontractor' statements**

With each invoice submitted by the Operator, the Operator must provide TfNSW with a properly completed and correct Subcontractor's Statement for the period to which the invoice relates. The Operator acknowledges that it is not entitled to payment of the invoice unless such a statement is provided.

#### **40.7 Certification of employee entitlements**

As a condition of payment of amounts due under Clause 40.1, the Operator will be required, on request by TfNSW, to certify that all Staff entitlements have been paid or properly accrued and TfNSW may inspect the Operator's records in this regard.



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## Part L – Risk Allocation

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### 41. Representations and Warranties

#### 41.1 General Representations and Warranties

The Operator represents and warrants to TfNSW and the Indemnified Persons on a continuing basis:

- (a) it is a corporation duly incorporated and validly existing under the Laws of New South Wales and the Commonwealth;
- (b) it has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- (c) it has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents;
- (d) each Transaction Document to which it is expressed to be a party creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration, laws generally affecting creditors rights and general principles of equity. Each Security is an effective security interest (as defined in each such document) over the property purported to be secured by it with the priority stated in it;
- (e) the execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
  - (i) a Law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document or agreement that is binding on it or its assets;
- (f) no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it that may have an adverse effect on the performance of this Contract;
- (g) there are no facts, matters or circumstances that would give rise to an Insolvency Event occurring;
- (h) each Authorisation that is required in relation to:
  - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents;
  - (ii) the validity and enforceability of those documents and the effectiveness or priority of each Security; and
  - (iii) its business as now conducted or contemplated and that is material (including, under the PT Act 1990, the PT Act 2014 and the MS Act),  
has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Service Commencement Date, it is only given as at and from the Service Commencement Date;
- (i) all returns, notices and other documents required to be lodged or given by it under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (j) there are no notices of any Governmental Agency outstanding against it;

- (k) all Authorisations necessary for the conduct of its business are validly subsisting and are held by it;
- (l) it has duly observed and complied in all respects with the provisions of all Laws and regulations and all orders, notices, awards and determinations made by any statutory or other competent authority in any way relating to or binding on it or any property owned or occupied by it;
- (m) all copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to TfNSW are true and complete copies. Where applicable, those documents are in full force and effect;
- (n) all information provided by the Operator to TfNSW is true in all material respects at the date of this Contract or, if later, when provided. Neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by the Transaction Documents was or is or will be misleading, by omission or otherwise;
- (o) none of its property is subject to any Security Interest (other than a Permitted Security Interest);
- (p) it does not carry out any activities or hold any assets as the trustee of any trust;
- (q) it complies with the Privacy Laws, and any guidelines issued by the Commissioner under the relevant Privacy Law;
- (r) it can commence the Services on and from the Planned Service Commencement Date;
- (s) it is and will be able to comply with the Services Schedule, the Service Level Schedule, the Key Performance Indicators and any outcomes or indicators agreed in this Contract;
- (t) any New Contract Material, Existing Contract Material and Operator Material used in the performance of, or in accordance with, this Contract will not infringe the Intellectual Property rights of any third person;
- (u) all plans that are required to be prepared and maintained under this Contract are, and will be, updated in accordance with the Contract and will be fit for purpose (including having due regard to the Contract Objectives);
- (v) it will perform the Services in accordance with Good Industry Practice and to TfNSW's reasonable satisfaction;
- (w) it will perform the Services:
  - (i) in a competent, courteous, safe and reliable manner;
  - (ii) having primary regard to the needs and interests of passengers; and
  - (iii) in accordance with the requirements of this Contract; and
- (x) it:
  - (i) has examined this Contract and the Disclosed Information and any other information that was made available in writing by TfNSW or any other person on TfNSW's behalf;
  - (ii) has been given the opportunity prior to submitting its Proposal to itself undertake tests, enquiries and investigations:
    - (A) relating to the subject matter of the Disclosed Information; and
    - (B) relating to the State Assets and the TfNSW Systems and Equipment;
  - (iii) has had a sufficient opportunity to obtain and obtained all necessary legal and other technical advice in relation to this Contract, the Disclosed Information, the State Assets and the TfNSW Systems and Equipment as well as the risks, contingencies and other circumstances having an effect on its Proposal and the performance of its obligations and liabilities under this Contract;
  - (iv) has had sufficient access to the Disclosed Information, the State Assets and the TfNSW Systems and Equipment and undertaken sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to

enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and potential risks and liabilities which it imposes on the Operator; and

- (v) has satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the Operator Activities.

**41.2 Not used**

**41.3 Not used**

**41.4 Notification of change**

The Operator must immediately notify the TfNSW Representative upon becoming aware that a representation or warranty it has given under this Clause 41 has become untrue or misleading at any time during the Service Term.

**41.5 Reliance on representations and warranties**

- (a) The Operator acknowledges that TfNSW has entered into, or will enter into, the Transaction Documents in reliance on the representations and warranties made by the Operator in this Clause 41.
- (b) Each warranty and representation is separate and independent from the other and not limited by reference to another warranty or representation.

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**42. Operator acknowledgments**

**42.1 Acknowledgements**

- (a) The Operator acknowledges and agrees that it has made its own enquiries and has not relied on any representations made by TfNSW, the State or any other person acting on behalf of TfNSW or the State, in respect of this Contract and each other Transaction Document.
- (b) Without limiting the generality of Clause 42.1(a), the Operator acknowledges and agrees the following:
  - (i) neither TfNSW, the State nor any other person acting on behalf of TfNSW or the State has verified the accuracy, reliability or completeness of the Disclosed Information;
  - (ii) neither TfNSW, the State nor any other person acting on behalf of TfNSW or the State has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
  - (iii) the Operator has not relied in any way on the skill or judgment of TfNSW, the State or any person acting on behalf of or associated with TfNSW or the State and has relied absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to tender a proposal and to enter into this Contract and each other Transaction Document;
  - (iv) the Operator has carried out all relevant investigations and has examined and acquainted itself concerning:
    - (A) the contents, correctness and sufficiency of the Disclosed Information;
    - (B) all information which is relevant to the risks, contingencies and other circumstances which could affect its decision to enter into this Contract and each other Transaction Document; and
    - (C) all amounts payable between the Parties to this Contract and the other Transaction Documents;

- (v) the Disclosed Information has been provided by TfNSW or the State in good faith and that:
  - (A) neither TfNSW nor the State has any knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither TfNSW, the State nor any person acting on behalf of or associated with TfNSW or the State is under an obligation to make, and that none of them has made, enquiries to verify that state of knowledge); and
  - (B) any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by TfNSW, the State or any person acting on behalf of or associated with TfNSW or the State, in any prior negotiation, arrangement, understanding or agreement has no effect except to the extent expressly set out or incorporated in this Contract or the other Transaction Documents;
- (vi) for the avoidance of doubt:
  - (A) neither TfNSW, the State nor any person acting on behalf of TfNSW or the State has made or makes any representation or warranty either express or implied as to the condition of the State Assets, the TfNSW Systems and Equipment, the Ferry Operations or any matter in connection with any Transaction Document or any transaction or arrangement contemplated under a Transaction Document; and
  - (B) the Operator accepts the State Assets and the TfNSW Systems and Equipment in their condition at the date they are first licensed, leased or made available to the Operator subject to all defects and agrees that it is responsible for, and assumes the risk of:
    - (I) all Loss, delay or disruption it suffers or incurs; and
    - (II) any adverse effect on the Operator Activities,
 arising out of or in any way in connection with the State Assets and the TfNSW Systems and Equipment; and
- (vii) the acknowledgments under this Clause 42.1(b) are in addition to and do not limit the terms and conditions already agreed to or accepted by the Operator when receiving the Disclosed Information.
- (c) The Operator warrants to TfNSW:
  - (i) that the Operator is aware that TfNSW has relied on the acknowledgments contained in this Clause 42 in entering into this Contract and each of the other Transaction Documents; and
  - (ii) without limiting any of the representations or warranties in Clause 41.1 or this Clause 42, the Operator has made adequate allowance for the Operator's labour and staffing costs and expenses in connection with the Contract, whilst complying with the terms of each Transaction Document and maintaining award and enterprise agreement terms and conditions.
- (d) To the extent permitted by Law, the Operator expressly waives any right which it has (whether at the commencement of this Contract or otherwise) to bring any action or make any Claim against TfNSW, the State or any person acting on behalf of or associated with any of TfNSW or the State, arising (directly or indirectly) out of or in connection with:
  - (i) the Disclosed Information, including any reliance on any of the Disclosed Information by the Operator or any other person;
  - (ii) any failure of the Operator to make adequate allowance for the Operator's labour and staffing costs and expenses in connection with the Contract, whilst complying with the terms of each Transaction Document and maintaining award and enterprise agreement terms and conditions; or

- (iii) any alleged or actual misrepresentation or misleading or deceptive conduct or false or misleading statements on the part of TfNSW, or any person acting on behalf of or associated with TfNSW, in connection with the Disclosed Information or in connection with this Contract or any other Transaction Document.
- (e) The Operator indemnifies TfNSW and the Indemnified Parties on demand against all claims, proceedings, costs, expenses, loss, liability or damage that TfNSW may sustain or incur as a result of or in connection with (whether directly or indirectly):
  - (i) any breach of this Clauses 41 or 42 by the Operator including, any breach of a warranty given by the Operator under Clause 41 or this Clause 42; or
  - (ii) any Claim or Loss associated with any action or claim referred to in Clause 42.1(d).
- (f) The Operator acknowledges that Clause 41 and this Clause 42 are intended to benefit and are to be interpreted as benefiting TfNSW and the State and are to be enforceable by TfNSW and the State against the Operator. TfNSW holds the benefit of the Operator's representations, warranties, acknowledgments and agreements under Clause 41 and this Clause 42 on trust for the TfNSW's Associates, the State Lessors, the Transport Minister and the State.

#### 42.2 No TfNSW responsibility for review of documents

- (a) The Operator:
  - (i) must develop, amend or update (and resubmit to TfNSW) any documents required to be submitted to TfNSW under this Contract (**Operator Documents**) in accordance with the requirements of this Contract or, where no requirement is specified, from time to time as and when either the Operator or TfNSW reasonably consider it is necessary to do so to comply with this Contract; and
  - (ii) warrants that the Operator Documents will be fit for their intended purposes and will otherwise comply with the requirements of this Contract.
- (b) TfNSW does not assume or owe any duty of care to the Operator to review, or when reviewing, to assess any Operator Document for errors, omissions or compliance with this Contract.
- (c) The Operator agrees that:
  - (i) review of, comments upon, or failure to comment upon, or rejection of (including the reasons for rejection) or failure to reject, an Operator Document or any other direction by TfNSW about such document; and
  - (ii) the Operator's compliance with any Operator Document,will not:
  - (iii) relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise according to Law;
  - (iv) prejudice TfNSW's rights against the Operator whether under this Contract or otherwise according to Law; or
  - (v) entitle the Operator to make any Claim against TfNSW in connection with such review, comments, or failure to comment, or rejection or failure to reject, or other direction by TfNSW.
- (d) Without limiting Clauses 42.2(a) to 42.2(c), TfNSW is not assuming any management or control of the Operator Activities or the Services.

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## 43. Insurance

### 43.1 Insurance policies

- (a) The Operator must effect and maintain the following insurance for the period contemplated by Clause 43.2(a) in relation to the relevant insurance:

- (i) public liability insurance:
  - (A) covering claims in respect of:
    - (I) damage to any real or personal property; and
    - (II) injury to, or death of, any person,

arising out of or in connection with the performance of the Operator Activities and use and operation of the Assets;
  - (B) in which TfNSW, the State, the Transport Minister and the State Lessors are named in the policy as an "Interested Party"; and
  - (C) for at least the amount specified in Item 5 of Attachment A;
- (ii) workers' compensation insurance against any common law or statutory liability;
- (iii) industrial special risks insurance:
  - (A) covering the State Premises (other than the State Wharves), Spares and all other movable plant or equipment used or accessed by the Operator in the conduct of the Operator Activities against physical loss, destruction or damage for an amount not less than the market value (plus allowances for claim contingencies including removal of debris, demolition costs, professional fees and expediting expenses); and
  - (B) to be effected in the joint names of TfNSW, the State, the Transport Minister and the State Lessors for their respective rights and interests;
- (iv) marine liability insurance (or similar) in respect of the Existing Operator Ferries and Operator New Ferries:
  - (A) against:
    - (I) fire and usual marine risks (including hull, machinery and increased value insurance on an agreed value basis);
    - (II) war risks (including by reason of the act of a terrorist) on an agreed value basis;
    - (III) any other risk which should be effected as a matter of Good Industry Practice; and
    - (IV) usual protection and indemnity risks (including risks in respect of pollution of the sea and environment) for at least \$ [REDACTED] per incident;
  - (B) in which TfNSW, the State, the Transport Minister and the State Lessors and the Operator are named in the policy as an "Interested Party" or "Protective Co-assured" (as appropriate under the terms of the relevant policies of insurance);
- (v) a policy of insurance for property damage arising out of or in connection with the Operator Activities which covers State Wharves and Wharf Infrastructure and any other specified significant assets of TfNSW (as determined by TfNSW) for \$ [REDACTED] in respect of any claim;
- (vi) professional indemnity and project works insurance to the extent requested by TfNSW in connection with [REDACTED] any construction work for at least the amount reasonably required by TfNSW;
- (vii) Property in Care, Custody and Control (PCCC) insurance for at least the amount specified in Item 8 of Attachment A;
- (viii) a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles which are used in connection with the Operator Activities;

- (ix) compulsory third party motor vehicle insurance in respect of all registrable motor vehicles which are used in connection with the Operator Activities;
  - (x) insurance coverage against third party property damage for all motor vehicles used to carry out the Operator Activities for at least the amount specified in Item 6 of Attachment A;
  - (xi) insurance in respect of business interruption in respect of the Existing Operator Ferries and Operator New Ferries; and
  - (xii) any other insurances which TfNSW reasonably requires which are commonly effected by the operators of public transport services comparable to the size, scope and complexity of the Operator Activities provided those insurances can be obtained on payment or a reasonable premium.
- (b) All policies of insurance required under this Clause 43.1 must be effected and maintained with an Authorised Insurer or that has been approved by TfNSW.

#### 43.2 Insurance generally

- (a) The Operator undertakes, represents and warrants to TfNSW that:
- (i) on and from the Planned Services Commencement Date and for the duration of the Service Term that it will have effected and maintained all insurances as are required by, and in accordance with, Clause 43.1; and
  - (ii) without limiting Clause 43.2(a)(i), on the date of this Contract and for the duration of the Transition Period that it has effected and maintained the following insurances as required by, and in accordance with, Clause 43.1:
    - (A) public liability insurance;
    - (B) workers' compensation insurance; and
    - (C) any other insurances referred to in Clause 43.1 which TfNSW reasonably requires the Operator to effect during the Transition Period.
- (b) The Operator must use reasonable endeavours to ensure that all contracts for insurance the Operator effects in compliance with this Contract contain a term that requires the insurer to notify TfNSW in writing whenever the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy.
- (c) If the Operator has used reasonable endeavours as required by Clause 43.2(b) but, despite this, the contracts for insurance effected in compliance with this Contract do not contain the term referred to in Clause 43.2(b), the Operator must immediately notify TfNSW if the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy, including particulars of that notice from the insurer.
- (d) The Operator must provide notice to TfNSW of any intended cancellation of insurances effected in compliance with this Contract by the Operator and when any insurances are to expire.
- (e) The Operator must:
- (i) give TfNSW proof of currency and coverage of the insurances referred to in Clause 43.1 that is acceptable to TfNSW before the Planned Service Commencement Date;
  - (ii) if requested, give TfNSW certified copies of all:
    - (A) policies;
    - (B) policy schedules;

- (C) renewal certificates; and
  - (D) endorsement slips,
- as soon as it receives them (or, if the relevant insurer does not permit the Operator to provide a certified copy of the policy or policy schedule, ensure that the insurer permits a nominee of TfNSW to inspect copies of those documents in Sydney at a time reasonably notified by TfNSW);
- (iii) give TfNSW a certificate of currency in a form satisfactory to TfNSW (acting reasonably) to confirm that the insurances which the Operator must effect and maintain under this Clause 43 have been effected and maintained in accordance with the requirements of this Clause 43, whenever any policy or insurance is renewed or replaced and whenever reasonably requested by TfNSW; and
  - (iv) in respect of any policy for which TfNSW, the State, the Transport Minister or the State Lessors are required to be named as insured, use best endeavours to have each policy endorsed or a term in the policy to the effect that:
    - (A) the insurer waives its right to avoid the policy or any liability under the policy by reason of non-disclosure or inaccurate disclosure relating to that policy by the named insureds other than the named insureds responsible for the non-disclosure or inaccurate disclosure;
    - (B) the insurer agrees to waive all rights of subrogation or action that it may have or acquire against the 'insured' parties;
    - (C) the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
    - (D) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.
- (f) The Operator must:
- (i) not knowingly do or permit, or omit to do, anything which prejudices any insurance required to be effected and maintained under this Clause 43 (**Required Insurance**);
  - (ii) rectify anything which might prejudice any Required Insurance;
  - (iii) reinstate any Required Insurance if it lapses;
  - (iv) immediately notify TfNSW of any fact or circumstance or change in circumstances which may prejudice any Required Insurance;
  - (v) without limiting Clause 43.2(f)(iv), immediately notify TfNSW if it receives any claim or notice in connection with a Required Insurance;
  - (vi) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Required Insurance; and
  - (vii) comply at all times with the terms of each Required Insurance.
- (g) The effecting of insurances does not limit the liabilities or obligations of the Operator under this Contract. The Operator bears the risk of the Required Insurances being inadequate to enable the Operator to fulfil its obligations under this Contract.

### 43.3 Premiums

The Operator must punctually pay all premiums in respect of all insurance policies referred to in this Clause 43.



#### 43.4 Claims and proceeds

- (a) If the Operator becomes entitled to claim under any insurance policy as the result of the loss of, or any damage to, any State Asset or Operator New Ferry, the Operator must diligently pursue such claim and keep TfNSW notified of its progress in pursuing that claim.
- (b) The Operator must, as directed by TfNSW, apply the proceeds of any claim referred to in Clause 43.4(a):
  - (i) to the repair of any damage to the relevant State Asset or Operator New Ferry, where such repair is economic; or
  - (ii) to TfNSW, together with any deductible loss and proceeds realised by the Operator on the disposal of or scrapping of such State Assets or Operator New Ferry.
- (c) If Clause 43.4(b)(i) applies and if required by TfNSW, the Operator must provide evidence to TfNSW's satisfaction (acting reasonably) that repair of any damage to a State Asset or Operator New Ferry is economic.
- (d) If TfNSW is not reasonably satisfied by the evidence provided by the Operator under Clause 43.4(c), TfNSW may (acting reasonably) direct the Operator to apply the insurance proceeds in another manner.
- (e) Any replacement for a State Asset procured under this Clause 43.4 will be deemed to be a State Asset and, unless TfNSW directs that an alternative lease will apply, will become subject to the same State Asset Access Agreement that the original State Asset was subject to.

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## 44. Indemnity and Limitation of Liability

### 44.1 Indemnity

- (a) The Operator must indemnify TfNSW, the State Lessors, the Transport Minister, the State and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of, or to, any of them (**Indemnified Persons**), from and against:
    - (i) any Loss incurred by an Indemnified Person in respect of:
      - (A) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to an Indemnified Person;
      - (B) damage to, loss or destruction of, or loss of use of (whether total or partial), any Asset; and
      - (C) any Claim against an Indemnified Person (including by another Indemnified Person) in respect of:
        - (I) any illness, personal injury to, or death of, any person;
        - (II) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property; or
        - (III) breach of any Law or Authorisations,
- caused by, arising out of, or as a consequence of any act or omission of the Operator;
- (ii) any Loss incurred by an Indemnified Person arising out of or any way in connection with:
    - (A) any breach of, or failure to comply with, a Transaction Document by the Operator (whether through its own acts or omissions or due to an act or omission of a subcontractor) including:
      - (I) any Service Default; or
      - (II) any Termination Event;
    - (B) termination of this Contract under Clause 56.1; or

- (C) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or any of the Staff;
- (iii) any Loss incurred by an Indemnified Person in respect of any Claim by a third party against an Indemnified Person or any liability of an Indemnified Person to a third party arising out of, or in any way in connection with:
  - (A) any breach of, or failure to comply with, a Transaction Document by the Operator (whether through its own acts or omissions or due to an act or omission of a subcontractor) including:
    - (I) any Service Default; or
    - (II) any Termination Event;
  - (B) termination of this Contract under Clause 56.1; or
  - (C) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or any of the Staff;
- (iv) without limiting Clauses 44.1(a)(i), (ii) or (iii), any Loss incurred by an Indemnified Person including in respect of any Claim by a third party against an Indemnified Person or any liability of an Indemnified Person to a third party arising out of or in any way in connection with:
  - (A) the occupation or use of the Contract Ferries or the State Premises by the Operator or the Operator's Associates;
  - (B) any Subsequent Contamination including:
    - (I) except to the extent prohibited by Law, where arising out of or in any way in connection with any failure by the Operator to comply with any obligation under this Contract in connection with Subsequent Contamination; or
    - (II) where incurred by TfNSW or the State Lessors or in complying with, or in connection with, a Clean Up Notice to the extent that the relevant Contamination the subject of the Clean Up Notice is Subsequent Contamination;
  - (C) except to the extent prohibited by Law:
    - (I) Contamination or Pollution in, on or under (or emanated or emanating from) any premises (other than the State Premises) used by the Operator in conducting the Operator Activities (**Other Premises**);
    - (II) any Contamination or Pollution of, to, around or emanating from any Other Premises or Sydney Harbour in connection with the Operator Activities;
    - (III) any Contamination or Pollution of, to, around or emanating from the Parramatta River in connection with the Operator Activities arising out of, or as a consequence of, any act or omission of the Operator or any of the Operator's Associates; and
    - (IV) any Contamination or Pollution occurring or emanating from any Other Premises or a Contract Ferry at any time after the Service Commencement Date;
  - (D) any breach by the Operator of the terms of a Key Subcontract;
  - (E) TfNSW:
    - (I) remedying or procuring the remedy of any default of the Operator under a Key Subcontract; or
    - (II) performing the obligations of the Operator under a Key Subcontract;

- (F) a breach by the Operator of Clause 39.7;
  - (G) any infringement of any Intellectual Property rights by the Operator or any of the Operator's Associates;
  - (H) TfNSW's or its sublicensee's use of the Contract Material produced by or on behalf of the Operator infringing a third party's Intellectual Property rights; or
  - (I) (whether directly or indirectly) any breach of Clause 41 or 42 by the Operator including any breach of a warranty given by the Operator under Clause 41 or 42.
- (b) The Operator's indemnity in Clause 44.1(a) will be reduced proportionally to the extent that the Loss is caused by or arises out of, or in any way in connection with:
- (i) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Indemnified Person claiming under the indemnity;
  - (ii) a breach by TfNSW of its obligations under the Transaction Documents; or
  - (iii) any failure of the Indemnified Party to take reasonable steps to mitigate its Loss.
- (c) This indemnity will not exclude any other right of TfNSW to be indemnified by the Operator.
- (d) For the purposes of this Clause 44.1, 'infringement' includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 100 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth) constitute an infringement.
- (e) TfNSW may recover a payment under an indemnity in this Contract before the Indemnified Person for that indemnity makes the payment in respect of which the indemnity is given. Each indemnity is an on demand indemnity.

#### 44.2 Liability and responsibility

The Operator acknowledges and agrees that:

- (a) the Indemnified Persons are not responsible for and have no obligations in connection with the actions or omissions of the Operator or any of the Operator's Associates;
- (b) the Indemnified Persons are not liable for any Loss caused or incurred by the Operator or any of the Operator's Associates; and
- (c) the Operator will provide and perform the Operator Activities at its own cost and risk, without recourse to TfNSW or government funds or guarantees,

except as expressly provided otherwise in this Contract.

#### 44.3 Release

- (a) The Operator releases, and must procure that the Operator's Associates release the Indemnified Persons to the full extent permitted by Law, from all Claims for any Losses suffered or incurred by the Operator or the Operator's Associates to the extent caused or contributed to by any of the Operator Activities or any act or omission of the Operator or the Operator's Associates in connection with the Transaction Documents.
- (b) The release in Clause 44.3(a) will be reduced proportionally to the extent that the relevant Loss is caused by or arises out of, or in any way in connection with:
  - (i) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Indemnified Person seeking to rely on the release;
  - (ii) a breach by TfNSW of its obligations under the Transaction Documents.

#### 44.4 Exclusion of Consequential or Indirect Loss

- (a) Subject to Clause 44.4(b), but otherwise despite any other provision of this Contract, the Operator has no liability to any Indemnified Person (whether in contract, tort, negligence, under an indemnity or otherwise), nor will any Indemnified Person be entitled to make any Claim against

the Operator, in respect of Consequential or Indirect Loss incurred or sustained by the Indemnified Person as a result of any act or omission of the Operator (whether negligent or otherwise).

- (b) Clause 44.4(a) does not operate to limit or restrict the Operator's liability to an Indemnified Person in respect of Consequential or Indirect Loss:
- (i) to the extent that the Operator has:
    - (A) recovered 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 Operator 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 Operator,

an amount in respect of that liability; and
  - (ii) to the extent that the Operator:
    - (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 if the Operator had:
      - (I) diligently pursued a claim under that policy of insurance;
      - (II) complied with the terms and conditions of that policy or insurance; or
      - (III) complied with its insurance obligations under this Contract;
  - (iii) in respect of any Claim against an Indemnified Person by, or liability of an Indemnified Person to, a third party (including to another Indemnified Person);
  - (iv) in respect of any liability which is the subject of the indemnity given under Clauses 44.1(a)(i)(A), 44.1(a)(i)(B), 44.1(a)(i)(C)(I) and 44.1(a)(i)(C)(II);
  - (v) arising from any criminal acts or fraud on the part of the Operator or an Operator's Associate;
  - (vi) arising from wilful misconduct on the part of the Operator or an Operator's Associate; or
  - (vii) to the extent to which, by Law, the Parties cannot limit or contract out of such liability.

**44.5 State exclusion**

- (a) Despite any other provision of this Contract but subject to Clauses 4 and 44.5(b), none of the Indemnified Persons has any liability to the Operator (whether in contract, tort or otherwise), nor will the Operator be entitled to make any Claim against the Indemnified Persons, in respect of Consequential or Indirect Loss incurred or sustained by the Operator as a result of any act or omission of the Indemnified Persons (whether negligent or otherwise).
- (b) Clause 44.5(a) does not operate to limit or restrict an Indemnified Person's liability in respect of Consequential or Indirect Loss:
  - (i) to the extent payable pursuant to Schedule 7;
  - (ii) to the extent payable as part of any termination payment referred to in Clause 56.3;
  - (iii) 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 if the Indemnified Person had:
      - (I) complied with the terms and conditions of that policy of insurance; or

- (II) complied with its insurance obligations under this Contract;
- (iv) arising from any criminal acts or fraud on the part of the Indemnified Person;
- (v) arising from wilful misconduct on the part of the Indemnified Person; or
- (vi) to the extent to which, by Law, the Parties cannot limit or contract out of such liability.

#### 44.6 Liability for events triggering KPI Credits

- (a) Subject to Clauses 44.6(b) and (c), reduction of the Payments by the application of KPI Credits will be the only monetary compensation payable by the Operator to TfNSW for any failure by the Operator to meet the Key Performance Indicators.
- (b) Clause 44.6(a) does not limit or exclude:
  - (i) the Operator's liability for any KPI Credit;
  - (ii) the Operator's liability under any indemnity contained in this Contract including the indemnity in Clause 44.1;
  - (iii) the Operator's obligations and liabilities under Clauses 54 to 56;
  - (iv) the Operator's obligations and liabilities under Clauses 57 to 59;
  - (v) any Indemnified Person's entitlement to a Claim under this Contract or at Law in respect of:
    - (A) any third party property damage; or
    - (B) any personal injury or death,for which the Operator or any Operator's Associate is liable;
  - (vi) TfNSW's rights under this Contract or any other Transaction Document in respect of the event that caused or contributed to the KPI Default (as opposed to the KPI Default itself); or
  - (vii) any other right under this Contract or at Law in relation to any non-monetary compensation.
- (c) If any KPI Credit is held to be void, invalid, unenforceable or otherwise inoperative so as to disentitle TfNSW from adjusting the Payments in accordance with the KPI Schedule, TfNSW will be entitled to recover common law damages for the failure to meet the Key Performance Indicators, but the Operator's liability for such damages will not be any greater than the liability which it would have had if the KPI Credit had not been void, invalid, unenforceable or otherwise inoperative.

#### 44.7 Indemnified Persons

- (a) To the extent that an indemnity in this Contract is for Indemnified Persons other than TfNSW, TfNSW has sought and obtained that indemnity as agent on behalf of each Indemnified Person (other than TfNSW) and TfNSW confirms that it has the authority to act as agent on behalf of each Indemnified Person (other than TfNSW). TfNSW may also enforce that indemnity as agent on behalf of each Indemnified Person (other than TfNSW).
- (b) If TfNSW does not have authority to act as agent on behalf of an Indemnified Person (other than TfNSW), then TfNSW will be deemed to have sought and obtained that indemnity as trustee for that Indemnified Person and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit of that Indemnified Person.
- (c) If the indemnity in Clause 44.1 is unenforceable to the extent that it is expressed to be given in favour of an Indemnified Person other than TfNSW, all references in this Clause 44 to the Indemnified Person will be read as a reference to TfNSW only.

## 45. Reinstatement of loss and damage

### 45.1 Reinstatement

- (a) If, at any time during the Service Term, any Asset is lost, destroyed or damaged beyond economic repair:
- (i) the Operator must replace that Asset with an equivalent asset. The replacement must be of equal or better specification than the replaced Asset as it existed immediately prior to it being lost, destroyed or damaged beyond economic repair; and
  - (ii) subject to Clause 45.1(b) and paragraph 1(b) of Schedule 7, there will be no adjustment to the Payments.
- (b) To the extent that the loss, destruction or damage to the Asset occurs as a direct result of:
- (i) a breach by TfNSW of any Transaction Document to which TfNSW is a party;
  - (ii) a negligent, reckless, unlawful or malicious act or omission by TfNSW or any of TfNSW's Associates when acting in respect of a Transaction Document; or
  - (iii) a negligent act or omission of a contractor of TfNSW when acting in respect of a Transaction Document,
- and is not caused by an act or omission of the Operator or any of the Operator's Associates, the cost of replacing the Asset is payable by TfNSW in accordance with Clause 48.
- (c) Contract Ferries that are replaced under this Clause 45.1 must comply with the uniform livery requirements set out in the TfNSW Public Transport Brand Style Guide if those Contract Ferries were in TfNSW livery prior to their loss, destruction or damage.
- (d) The Operator must repair or reinstate any other damage to any Assets unless otherwise expressly provided for in this Contract.

### 45.2 Damage to third party property

- (a) Without limiting Clause 44, but subject to Clause 43.2, where any damage to or loss or destruction of real or personal property of a third party occurs which arises out of a breach by the Operator of this Contract or an act or omission of the Operator, the Operator must do one of the following (where it has a legal liability to do so):
- (i) promptly repair, replace or reinstate the damage, loss or destruction; or
  - (ii) reasonably compensate the third party.
- (b) If the Operator fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, TfNSW may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by TfNSW will be a debt due and payable from the Operator to TfNSW.

## 46. Dispute resolution

### 46.1 Dispute resolution

- (a) This Clause 46 applies to any dispute which arises between the Parties in connection with this Contract (**Dispute**).
- (b) Subject to Clause 46(c), a Party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first complying with the provisions of this Clause 46.
- (c) This Clause 46 does not prohibit a Party from seeking and obtaining appropriate injunctive or interlocutory relief.

- (d) If a Party considers that a Dispute has arisen, it may issue a notice to the other Party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (e) Subject to Clause 46.2, the Parties must promptly (and in any event within 10 Business Days after the date of the Dispute Notice):
  - (i) subject to legal professional privilege, furnish to the other Party all information with respect to the Dispute which is appropriate in connection with its resolution; and
  - (ii) hold good faith discussions between the Operator Representative and the TfNSW Representative to attempt to resolve the Dispute.
- (f) If the Dispute has not been resolved within 10 Business Days after the date of the Dispute Notice, the Parties must attempt to resolve the Dispute by holding good faith discussions between the Operator's Chief Executive Officer (or equivalent) and the Executive General Manager, Service Delivery and Performance, TfNSW (or such other position notified to the Operator by TfNSW from time to time).
- (g) If the Dispute has not been resolved within 25 Business Days after the date of the Dispute Notice, either Party may, subject to Clause 46.2, pursue its rights and remedies under this Contract as it sees fit.

#### 46.2 Referral to expert

- (a) If this Contract requires that a Dispute be resolved by an independent expert, or if the Parties agree, with reference to this Clause, that a Dispute will be referred to an independent expert, the Parties must refer that Dispute for resolution under this Clause 46.2 to a person who is an independent expert in its subject matter appointed by agreement between the Parties (**Expert**).
- (b) If the parties are unable to agree on whom to appoint as an Expert within 20 Business Days after the date of the Dispute Notice, the Expert will be appointed on the application of any Party by (unless otherwise agreed) the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute.
- (c) The Expert appointed under Clause 46.2(a) or 46.2(b) acts as an expert and not as an arbitrator.
- (d) The Parties must have a reasonable opportunity to make submissions to the Expert.
- (e) Unless otherwise stated in this Contract, the costs of the Expert must be borne in equal shares by the Parties.
- (f) 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.
- (g) The provisions of the *Commercial Arbitration Act 2010* (NSW) will not apply to the dispute resolution proceedings under this Clause 46.2.
- (h) Despite anything else, to the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).

#### 46.3 General

- (a) This Clause 46 does not apply to any Dispute relating to or arising out of the exercise or non exercise by TfNSW of any Power conferred on TfNSW by the TAA, PT Act 1990, PT Act 2014 or otherwise by Law.
- (b) The Parties will continue performing their respective obligations under the Transaction Documents while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this Contract.

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## Part M – Management of change

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### 47. Management of disruption to Services

#### 47.1 Disruption Event

- (a) The Operator acknowledges and agrees:
  - (i) that the Services may be delayed or disrupted by:
    - (A) Change Events;
    - (B) Force Majeure Events;
    - (C) Wharf Access Disruption Events;
    - (D) Major Projects Disruption Events,  
**(Disruption Events)**;
  - (ii) the Operator has been engaged on the basis of its capacity to manage such disruptions and delays and to ensure Continuity of the Services; and
  - (iii) the Operator is primarily responsible for:
    - (A) ensuring that Disruption Events cause no disruption to the Services; or
    - (B) where this is not possible, minimising disruption to the Services to the fullest extent possible.
- (b) In addition to the obligations under Clauses 48, 49 and 50, the Operator must comply with the process set out in Clause 47.2. It is a condition precedent to any entitlement of the Operator to any additional payment or relief that the Operator has complied with the notice requirements in these Clauses.

#### 47.2 Operator obligations regarding management of disruption

- (a) If a Disruption Event unavoidably and permanently prevents, or will unavoidably and permanently prevent, the Operator from complying with its obligations under the Transaction Documents in respect of the Services, the Operator must:
  - (i) mitigate any delay or disruption to the Services to the fullest extent possible and in accordance with the Operator Disruption Management Plan;
  - (ii) as soon as possible and in any event within two Business Days after the Operator becomes aware, or ought reasonably to have become aware, that a Disruption Event has, or will, unavoidably and permanently prevent the Operator from complying with its obligations under the Transaction Documents, give the TfNSW Representative a notice stating that a Disruption Event has occurred; and
  - (iii) as soon as possible and in any event within 10 Business Days after giving notice under Clause 47.2(b)(ii), give the TfNSW Representative full particulars of the Disruption Event including (to the extent practicable):
    - (A) details of the obligations which have been affected by the Disruption Event;
    - (B) details of the steps which the Operator has taken and will take to mitigate the effects of the Disruption Event; and
    - (C) adopting Good Industry Practice, details of any changes to the Contract Service Levels, Timetables or any Service Variations reasonably necessary to overcome the effects of the Disruption Event and to ensure Continuity of the Services **(Disruption Service Remedy Proposal)**. The Disruption Service Remedy Proposal must be developed consistently with the requirements of Clause 16.



- (b) Within 20 Business Days after receiving a Disruption Service Remedy Proposal from the Operator, the TfNSW Representative may:
- (i) accept the Disruption Service Remedy Proposal;
  - (ii) reject the Disruption Service Remedy Proposal; or
  - (iii) inform the Operator that it requires further time or information to assess the Disruption Service Remedy Proposal in which case the TfNSW Representative must advise the Operator of the further information required and the reasonable time within which such information must be provided and within which a determination will be made,
- by notice to the Operator. The Operator must comply with any request to provide further information issued by the TfNSW Representative under this Clause 47.2(b) in accordance with the timeframe advised by the TfNSW Representative under this Clause 47.2(b).
- (c) If TfNSW accepts the Disruption Service Remedy Proposal in accordance with Clause 47.2(b)(i):
- (i) the Disruption Service Remedy Proposal will be implemented in accordance with Clauses 17 and 18;
  - (ii) subject to Clause 47.2(d), the Payments (including the Base Service Fee) will be adjusted in accordance with paragraph 10 of the Payment Schedule; and
  - (iii) the Operator will not have any other Claim against TfNSW in respect of the Disruption Event.
- (d) Notwithstanding any other provision in the Transaction Documents:
- (i) to the extent a Disruption Event:
    - (A) arises out of or in connection with any safety issue or the protection of people and property;
    - (B) is caused or contributed to by an act or omission of the Operator or any Operator's Associate; or
    - (C) ought to have been reasonably foreseen by the Operator based on information provided to the Operator by TfNSW or based on information in the public domain and incorporated into the last review conducted by the Operator under Clause 16.1 prior to the Disruption Event occurring; or
  - (ii) without limiting Clause 47.2(d)(i), in the case of:
    - (A) a Wharf Access Disruption Event, if TfNSW has provided the Operator with access to a replacement wharf with sufficient functionality and capacity to accommodate the Services provided at the wharf that is affected by the Wharf Access Disruption Event to enable Continuity of the Services;
    - (B) any Disruption Event, the relevant event is within the scope of the State Wharf Redevelopment Disruption Parameters,
- the Operator shall not be entitled to any adjustment or increase to the Payments (including any adjustments to the Base Service Fee) or any other compensation in relation to the Disruption Event.
- (e) Regardless of whether the Operator has delivered a Disruption Service Remedy Proposal under Clause 47.2(a), the TfNSW Representative may at any time (including after it has rejected a Disruption Service Remedy Proposal under Clause 47.2(b)), instruct the Operator to implement a change to the Contract Service Levels or Timetables or implement a Service Variation under Clauses 17 and 18.

## 48. Change Events and Force Majeure Events

### 48.1 Change Event

A Change Event is any one of the following events:

- (a) a Change in Law;
- (b) the loss, destruction or damage beyond economic repair of an Asset in the circumstances set out in Clause 45.1(b),

where such event:

- (c) occurs on or after the date of this Contract;
- (d) affects the Operator's obligations under this Contract or affects the Services; and
- (e) is not:
  - (i) a Major Projects Disruption Event;
  - (ii) a Wharf Access Disruption Event; or
  - (iii) a Contract Variation otherwise the subject of Clause 52 or any other provision of this Contract containing a mechanism for implementing an amendment as a consequence of the event, and whether or not providing for (or excluding) compensation to apply to that amendment.

### 48.2 Management of disruption arising in connection with Change Event or Force Majeure Event

- (a) The Operator must comply with Clause 47.2 in relation to any delay or disruption to the Services arising in connection with a Change Event or Force Majeure Event, including the undertaking of works by the State or its contractors in connection with a Change Event or Force Majeure Event.
- (b) If a Party (**Affected Party**) is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, it must as soon as practicable, notify the other Party accordingly.
- (c) Each notice given under Clause 48.2(b) must:
  - (i) specify the obligations and the extent to which TfNSW cannot perform those obligations;
  - (ii) fully describe and provide documentary evidence of the Force Majeure Event;
  - (iii) estimate the time during which the Force Majeure Event will continue; and
  - (iv) specify the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.
- (d) If the Operator is required to issue a notice under both Clauses 48.2(b) and 48.3(c) in respect of the one event, the Operator may issue a single notice in respect of both Clauses 48.2(b) and 48.3(c) provided that the subject matter heading of the notice clearly identifies that the notice has been issued under both Clauses and the content of the notice clearly and separately addresses each of the requirements of both Clauses.

### 48.3 Notification of Claims in respect of Change Events and Force Majeure Events

- (a) If the Operator reasonably considers that:
  - (i) there is a Change Event and the Operator will incur or be required to incur expenditure or will receive reduced income, that:
    - (A) the Operator would not have otherwise incurred or received (as the case may be); and
    - (B) is necessary to ensure continued compliance by the Operator with its obligations under the Transaction Documents in the context of the Change Event,

other than any increased expenditure or reduced income that is otherwise the subject of a Service Variation (**Expenditure**);

- (ii) recovery of the Expenditure is consistent with the provisions of this Clause 48;
- (iii) the Operator has not or will not be otherwise compensated under a Transaction Document for or in connection with the Change Event,

then the Operator may by notice apply to TfNSW for a change to the payments made under this Contract (**Change Order**), provided that Expenditure recoverable under this Clause 48 will, in the case of a Change Event contemplated in Clause 48.1(b), be limited to the cost of replacing the Asset with an equivalent Asset.

- (b) A Change Notice issued under Clause 48.3(a) must be given in the time periods stated in Clause 48.3(c) and include information about:
  - (i) the event or circumstance that the Operator considers constitutes a Change Event;
  - (ii) the amendments to the Ferry Operations or Operator Activities or procedures that the Operator proposes to make to ensure continued compliance with its obligations under the Transaction Documents in the context of the Change Event and the timing of such amendments (other than Service Variations proposed under Clause 47.2);
  - (iii) the mechanics for integrating the Change Event with the continued provision of the Services (other than Service Variations proposed under Clause 47.2);
  - (iv) the Expenditure and substantiating documentation;
  - (v) working papers supporting on an open book basis the determination of the Expenditure;
  - (vi) the proposed method of funding the Expenditure and justification for the proposed method of funding;
  - (vii) whether or not any or all of the Expenditure could be accommodated in any subsequent replacement or procurement of any Assets used in performing the Operator's obligations under this Contract or the performance of the Services;
  - (viii) having regard to the Expenditure, the Operator's proposal for a Net Financial Impact adjustment, prepared in accordance with Schedule 7;
  - (ix) a statement of the Expenditure certified by an accountant independent of the Operator and who is a member of CPA Australia or Chartered Accountants Australia and New Zealand;
  - (x) a statutory declaration from two directors (or a director and secretary) of the Operator confirming that in their opinions:
    - (A) the Change Event cannot be accommodated within the current Ferry Operations or any amendment to those operations or procedures without incurring the Expenditure; and
    - (B) the financial information provided to TfNSW is accurate, true and fair; and
  - (xi) evidence of compliance with Clause 51.
- (c) If a Change Event or a Force Majeure Event occurs and prevents, or will prevent, the ability of the Operator to comply with its obligations under this Contract, the Operator must:
  - (i) within two Business Days after it becomes aware, or ought reasonably to have become aware, that a Change Event or Force Majeure Event is likely to affect the ability of the Operator to comply with its obligations under this Contract, give to the TfNSW Representative a notice:
    - (A) stating that a Change Event or Force Majeure Event has occurred;
    - (B) stating whether the Operator proposes to seek relief from performance of its obligations arising directly out of that Change Event or Force Majeure Event and in the case of a Change Event, a Change Order; and

- (ii) within 10 Business Days after giving the notice under Clause 48.3(c)(i), give the TfNSW Representative full particulars of the Change Event or Force Majeure Event including (to the extent practicable):
  - (A) detailed particulars concerning the Change Event or Force Majeure Event upon which the Claim is based;
  - (B) details of the obligations which have been prevented by the Change Event or Force Majeure Event;
  - (C) details of the steps which the Operator has taken to mitigate the effects of the relevant Change Event or Force Majeure Event; and
  - (D) in the case of a Change Event, the information in Clause 48.3(b); and
- (iii) if the Change Event or Force Majeure Event (or its effects) is continuing:
  - (A) continue to give the information required by Clause 48.3(c)(ii) every 40 Business Days after the notice under Clause 48.3(c)(i) was provided to the TfNSW Representative until after the Change Event or Force Majeure Event (or its effects) has ceased; and
  - (B) if the Operator has notified TfNSW that it proposes to seek relief under Clause 48.3(c)(i)(B), provide a final written Claim within five Business Days after the Change Event or Force Majeure Event (or its effects) have ceased.
- (d) If the Operator is permitted to issue a Change Notice under both Clauses 48.3(a) and 48.3(c) in respect of the one event, the Operator may issue a single Change Notice in respect of both Clauses 48.3(a) and 48.3(c) provided that the subject matter heading of the Change Notice clearly identifies that the notice has been issued under both Clauses and the content of the notice clearly and separately addresses each of the requirements of both Clauses.
- (e) TfNSW may request that other information it reasonably considers relevant with respect to any of the matters listed in Clauses 48.3(a) and 48.3(c) be provided to it within a reasonable time.
- (f) The Operator must comply with a request from TfNSW under Clause 48.3(e).
- (g) If TfNSW:
  - (i) reasonably considers that:
    - (A) there is a Change Event and the Operator will no longer be required to make an expenditure or the Operator's expenditures will be reduced and payments made under this Contract will not otherwise be reduced; or
    - (B) there is a Change Event and the Operator may or will be prevented from performing its obligations under this Contract; or
  - (ii) identifies a Change Event which would or is likely to arise out of any proposed or anticipated action by TfNSW or the TfNSW's Associates,

then TfNSW may by notice require the Operator to submit a Change Notice to TfNSW and the provisions of this Clause 48 will apply. TfNSW is not required to exercise this discretion for the benefit of the Operator nor does it have any obligation, to issue, or consider whether it should issue, a Change Order.

#### 48.4 TfNSW's response to request for Change Order

- (a) Within 20 Business Days after the later of the receipt by TfNSW of a Change Notice issued under Clause 48.3(a) (or any longer period agreed by the Parties) and the provision of any additional information under Clause 48.3(c), TfNSW must notify the Operator that:
  - (i) it accepts the application for a Change Order; or
  - (ii) it rejects the application for a Change Order and reasonably considers that:
    - (A) an event or circumstance that the Operator has claimed to be a Change Event is not a Change Event;

- (B) the proposed method of addressing the Expenditure is not the best cost option for the Operator (after having regard to the Operator's circumstances and TfNSW's available funding);
  - (C) the recovery of the Expenditure does not satisfy the requirements of Clause 48.3(a);
  - (D) the Change Notice does not comply with Clause 48.3(b);
  - (E) the Operator has not complied with Clause 48.3(f);
  - (F) the Operator has not complied with Clause 51; or
  - (G) the Change Event or proposed Change Event will not proceed or is amended or withdrawn.
- (b) If TfNSW notifies the Operator under Clause 48.4(a)(i) that it has accepted the application for a Change Order, a Change Order occurs and the Net Financial Impact arising from the Change Event will be determined and compensated or paid for in accordance with Schedule 7.
- (c) If TfNSW notifies the Operator under Clause 48.4(a)(ii) that it has rejected the application for a Change Order, the Operator may either:
- (i) withdraw the Change Notice; or
  - (ii) refer the matter to dispute resolution by expert determination under Clause 46.
- (d) If TfNSW fails to give notice to the Operator under (or within the time required by) Clause 48.4(a)(i) or Clause 48.4(a)(ii), TfNSW is not deemed to have accepted the Change Order under Clause 48.4(a)(i).
- (e) If the dispute resolution process commenced following a notice under Clause 48.4(c)(ii) determines the matter in dispute:
- (i) in favour of the Operator, a Change Order occurs; or
  - (ii) in favour of TfNSW, the relevant Change Notice is deemed withdrawn under Clause 48.4(c)(i).

#### **48.5 Relief**

- (a) If a Change Event or Force Majeure Event occurs that prevents the Operator from carrying on its obligations under this Contract and the Operator has complied with the requirements in Clauses 47.2, 48.2, 48.3 and this Clause 48.5, TfNSW will grant the Operator such relief from its non-financial obligations under this Contract which are prevented by the Change Event or Force Majeure Event, but only to the extent and for so long as the Change Event or Force Majeure Event prevents the Operator from performing those obligations provided that for the purposes of determining the Operator's compliance with the Key Performance Indicators, the Operator's obligations under this Contract that are affected by the Change Event or Force Majeure Event will be deemed to be subsisting for the duration of the Change Event or Force Majeure Event.
- (b) The Operator must:
- (i) remedy or minimise the effects of the Change Event or Force Majeure to the extent reasonably practicable; and
  - (ii) take all action reasonably practicable to mitigate any loss suffered by TfNSW or any passengers as a result of the Operator's failure to carry out its obligations under this Contract. The Operator is not required to test the validity, or refrain from testing the validity, of any Law.
- (c) The Operator acknowledges and agrees that any relief granted by TfNSW under this Clause 48.5 will not apply to extend the Planned Service Commencement Date.
- (d) The Service Term will not be extended by the period of a Change Event or Force Majeure Event.

**48.6 Suspension of TfNSW obligations**

- (a) For the duration of a Force Majeure Event, the obligations of TfNSW which cannot be performed because of the Force Majeure Event will be suspended.
- (b) TfNSW will:
  - (i) remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
  - (ii) take all action reasonably practicable to mitigate any Loss suffered by the Operator as a result of TfNSW's failure to carry out its obligations under this Contract. TfNSW is not required to test the validity, or refrain from testing the validity, of any Law.

**48.7 Application of KPIs during Force Majeure Event**

The Operator acknowledges and agrees that for the purposes of determining the Operator's compliance with the Key Performance Indicators, the Operator's obligations under this Contract that are affected by the Force Majeure Event will be deemed to be subsisting for the duration of the Force Majeure Event.

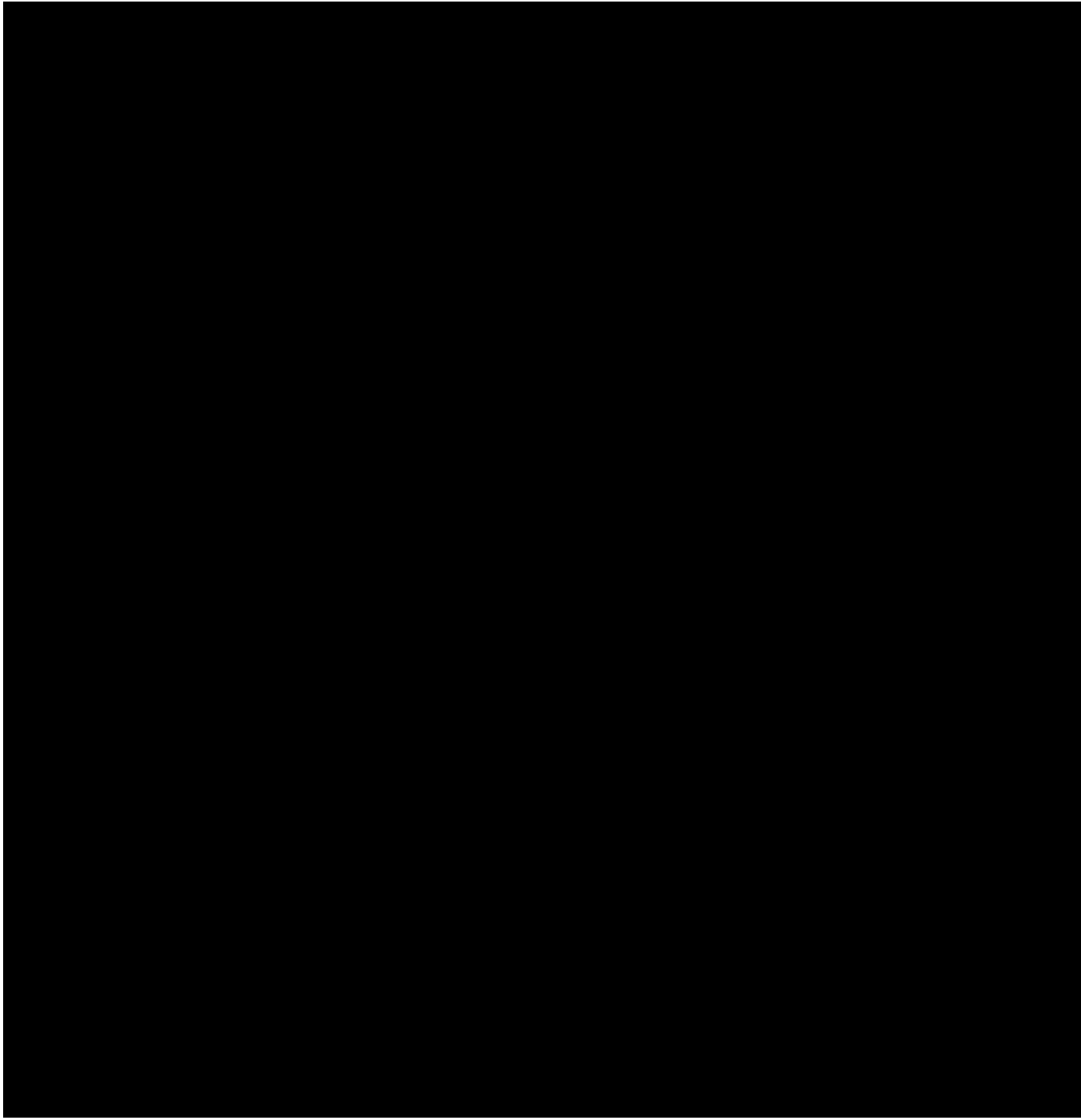
**48.8 Service Variations in response to epidemics or pandemics**

The Operator acknowledges and agrees that if there is a reduction in the patronage of the Services as a result of an epidemic or pandemic for a period of more than two weeks, TfNSW may direct a Service Variation to efficiently align the level of Services with patronage levels including by:

- (a) reducing the Services; and
- (b) gradually reintroducing Services as patronage returns to the levels that existed prior to the epidemic or pandemic affecting patronage.

**48.9 Termination for extended Force Majeure Event**

- (a) If a Force Majeure Event is continuing or its consequences remain such that the Operator has been or is unable to comply with a material part of its obligations under this Contract for a continuous period of 90 days after the date on which notice is issued under Clause 48.2(b), TfNSW may terminate this Contract by giving a notice to the Operator.
- (b) If this Contract is terminated under Clause 48.9(a), TfNSW shall pay (as the Operator's sole remedy) a termination payment to the Operator calculated as the aggregate of:
  - (i) any amounts due and payable by TfNSW to the Operator in accordance with this Contract as at the Termination Date;less:
  - (ii) any amounts owing by the Operator to TfNSW under this Contract as at the Termination Date;
  - (iii) the net amount (which for the avoidance of doubt, shall be the net of any amount deductible under the relevant insurance policy) the Operator is entitled to retain, or would be entitled to retain had the Operator complied with the requirements of Clause 43 and the relevant insurance policy, under any insurance policy; and
- (c) If this Contract is terminated under Clause 48.9(a), TfNSW will procure the transfer of the Operator New Ferries in accordance with Clause 59.6.



**48.11 Change in Control**

- (a) Subject to Clauses 48.11(b) and (f), the Operator must not permit a Change in Control to occur without the consent of TfNSW.
- (b) If a Change in Control occurs as a result of the trading of shares on any recognised stock exchange on which shares are publicly traded, the consent of TfNSW in accordance with this Clause 48.11 may have to be sought after the occurrence of the Change in Control. If the consent of TfNSW is not obtained, the Operator must procure that the Controller ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving notice under Clause 48.11(d) that TfNSW does not consent to the Change in Control.
- (c) The Operator's notification under Clause 48.11(a) must include details of:

- (i) the identity of each proposed Controller or (in the situation to which Clause 48.11(b) applies) the Controller;
  - (ii) the address of each proposed Controller or (in the situation to which Clause 48.11(b) applies) the Controller;
  - (iii) the extent and nature of the proposed Change in Control or (in the situation to which Clause 48.11(b) applies) the Change in Control; and
  - (iv) all other information required by TfNSW to determine whether or not to consent to the Change in Control.
- (d) TfNSW will, within 15 Business Days after receipt of information required to be provided under Clauses 48.11(c) or 48.11(e), inform the Operator whether TfNSW:
- (i) consents to the proposed Change in Control or (in the situation to which Clause 48.11(b) applies) the Change in Control;
  - (ii) consents to the proposed Change in Control or (in the situation to which Clause 48.11(b) applies) the Change in Control subject to conditions, which may include the Operator procuring such agreements (for example, deeds of consent) or such security (for example, general or specific security deeds, deeds of guarantee and indemnity and performance bonds) as TfNSW may require;
  - (iii) does not consent to the proposed Change in Control or (in the situation to which Clause 48.11(b) applies) the Change in Control; or
  - (iv) requires further information from the Operator regarding the proposed Change in Control or (in the situation to which Clause 48.11(b) applies) the Change in Control. A notice issued under this Clause 48.11(d)(iv) must specify the time within which the Operator must provide the further information and the reasonable time within which TfNSW will make its decision. The Operator must provide any additional information requested by TfNSW within the time required by TfNSW.
- (e) The Operator must provide promptly any further information that TfNSW requires in order to make its decision under this Clause 48.11 and will obtain all consents for the Change in Control as are required by Law or TfNSW.
- (f) The consent of TfNSW in respect of a Change in Control may only be withheld if:
- (i) TfNSW is of the reasonable opinion that:
    - (A) the Controller is not solvent or reputable;
    - (B) the Controller has an interest which conflicts in a material way with the interests of TfNSW or the State or has an involvement in a business or activity that is inconsistent or incompatible with the conduct of the Operator Activities, Ferry Operations or the provision of Public Passenger Services;
    - (C) the Change in Control would result in the Operator not having the level of financial, managerial and technical capacity required to deliver the Operator Activities, Ferry Operations and the provision of Public Passenger Services;
    - (D) the Change in Control is against the public interest;
    - (E) the Change in Control would increase the level of risk or liability of TfNSW or TfNSW's Associates under any of the Transaction Documents; or
    - (F) the Change in Control would cause the Deed of Guarantee and Indemnity to be void, voidable or invalid or otherwise adversely affect TfNSW's rights under the Deed of Guarantee and Indemnity, unless the Controller agrees to comply with any requirements referred to in Clause 48.11(f)(ii); or
  - (ii) the Controller does not execute such agreements (for example, deeds of consent) and provide such security (for example, general or specific security deeds, parent company guarantees or performance bonds) as required by TfNSW.



- (g) In this Clause 48.11 Controller, in relation to a Change in Control of the Operator or the Parent Company, means the person or body to whom Control will pass.
- (h) Upon receipt by TfNSW of:
- (i) a Deed of Guarantee and Indemnity in a form, and executed by an entity (**Replacement Guarantor**), that is acceptable to TfNSW in its absolute discretion;
  - (ii) if the Replacement Guarantor is not an Australian entity, a legal opinion in the form and substance, and issued by a law firm, acceptable to TfNSW; and
  - (iii) evidence to TfNSW's satisfaction that the Replacement Guarantor is authorised to enter into the replacement Deed of Guarantee and Indemnity,
- TfNSW will provide to the Operator and the Parent Company a release of the Deed of Guarantee and Indemnity provided by the Parent Company.

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## 49. Management of disruption to Wharf access

### 49.1 Disruption to Wharf access

Without limiting the Operator's right to issue a Disruption Service Remedy Proposal under Clause 47.2(a), the Operator acknowledges that it is responsible for ensuring Continuity of the Services notwithstanding that access to Wharves may be disrupted, interfered with, removed or made more onerous including as a result of any of the following:

- (a) any matter relating to the safety of any person or property;
- (b) the occurrence of a Force Majeure Event;
- (c) the use of a Wharf by Authorised Users (as that term is defined in Schedule 14) or any other persons authorised by TfNSW to use a Wharf;
- (d) any maintenance, upgrade or closure of a Wharf by TfNSW in accordance with paragraph 4 of Schedule 14;
- (e) any removal or suspension of the Operator's access to a Wharf under paragraph 13 of Schedule 14;
- (f) a Wharf which, at the date of this Contract, is designated as an Exclusive Access Wharf under Schedule 14 being designated as a Priority Access Wharf under Schedule 14 during the Service Term;
- (g) any other change to Schedule 14 during the Service Term;

**(Wharf Access Disruption Event).**

### 49.2 Operator obligations regarding disruption to access

The Operator must comply with Clause 47.2 in relation to any delay or disruption to the Services arising in connection with any Wharf Access Disruption Event.

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## 50. Major Projects

### 50.1 Major Projects

- (a) The Operator acknowledges that:
  - (i) the State (including through Governmental Agencies) may undertake:
    - (A) major works (including planning and advisory work, interface management, design, construction, testing, commissioning and ongoing operation and maintenance) in relation to or affecting the Assets and the Services including:

- (I) undertaking projects to upgrade the condition and characteristics of certain State Wharves and associated infrastructure (**State Wharf Upgrade Program**); and
- (II) undertaking major projects to upgrade and redevelop Circular Quay or Manly wharf (**State Wharf Redevelopment**); and
- (B) other major works (including planning and advisory work, interface management, design, construction, testing, commissioning and ongoing operation and maintenance) that impact the delivery of the Services including any programs to upgrade infrastructure and interchange facilities at Sydney Harbour wharves, (**Major Projects**);
  - (ii) Major Projects may be implemented during the Service Term; and
  - (iii) Major Projects may impact on the Services.
- (b) The Operator must cooperate with TfNSW, the State and their contractors and agents regarding all aspects of the implementation of any Major Project, including by:
  - (i) participating in discussions and forums and ensuring that passengers are provided up to date and accurate information regarding the impacts of the Major Project on the Services;
  - (ii) assisting TfNSW and the State to implement arrangements, procedures and protocols to minimise disruptions to the Services;
  - (iii) providing any response, information, assistance or documentation reasonably requested by the State within a reasonable time of the request;
  - (iv) conducting the Ferry Operations in a way that facilitates the implementation of the Major Project in a safe, expeditious and efficient manner;
  - (v) cooperating and carefully coordinating the Operator Activities with the work and activities of the State and its contractors and agents;
  - (vi) assisting TfNSW and the State in ensuring that any works constructed as part of the Major Project are compatible with the State Assets or Contract Ferries;
  - (vii) allowing TfNSW to adjust the State Assets or Contract Ferries to interface with any works constructed as part of the Major Project;
  - (viii) cooperating with TfNSW and the State and their nominees to facilitate the undertaking of the Major Project, including permitting contemporaneous access to, or reasonable temporary closure of parts of the Wharves, managing passengers and others in areas affected by the Major Project and rescheduling or adjusting the Operator Activities;
  - (ix) mitigating Loss suffered by the Operator as a result of the establishment, commissioning and or operation of the Major Project; and
  - (x) complying with directions issued by and doing all other things reasonably required by TfNSW or the State to facilitate the Major Project (including executing any document or entering into an agreement with a third party on terms which the TfNSW Representative considers to be commercially reasonable).

## 50.2 Management of disruption caused by Major Projects

The Operator must comply with Clause 47.2 in relation to any delay or disruption to the Services arising out of or in connection with a Major Project including the undertaking of works by the State or its contractors in connection with a Major Project (**Major Projects Disruption Event**).

## 50.3 Special Requirements for State Wharf Redevelopments

- (a) Without limiting the Operator's obligations under Clauses 47, 50.1 and 50.2, the Operator must, in relation to any State Wharf Redevelopment:

- (i) comply with the Operator Disruption Management Plan as it applies to the State Wharf Redevelopment;
- (ii) within 10 Business Days after being directed to do so by TfNSW, provide TfNSW with a draft disruption management plan in respect of any stage of the State Wharf Redevelopment (**State Wharf Redevelopment Disruption Management Plan**) which must at minimum:
  - (A) include a Disruption Service Remedy Proposal that complies with the requirements of Clause 47.2;
  - (B) proposed adjustments to or relief from KPIs; and
  - (C) be consistent with the Operator Disruption Management Plan.
- (b) TfNSW may provide comments on the draft State Wharf Redevelopment Disruption Management Plan, within 10 Business Days after receipt of a draft State Wharf Disruption Management Plan under Clause 50.3(a).
- (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under Clause 50.3(b), the Operator must provide to TfNSW for its approval a revised version of the State Wharf Redevelopment Disruption Management Plan amended to incorporate any comments provided by TfNSW under Clause 50.3(b).
- (d) TfNSW will approve the State Wharf Redevelopment Disruption Management Plan if it complies with Clause 50.3 and adequately addresses any comments required by TfNSW under Clause 50.3(b).
- (e) The Operator must comply with the State Wharf Redevelopment Disruption Management Plan approved by TfNSW under Clause 50.3(d).
- (f) The State Wharf Redevelopment Disruption Management Plan must not be amended without TfNSW's approval.
- (g) The Parties agree that the Key Performance Indicators will be adjusted, or relief will apply, in accordance with the approved State Wharf Redevelopment Disruption Management Plan.

#### 50.4 No other Claims

Except as expressly set out in Clause 50.2 or Clause 47.2, and despite anything to the contrary in the Transaction Documents, the Operator has no Claim against TfNSW in relation to any Major Projects Disruption Event.

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## 51. Mitigation

### 51.1 Operator to mitigate Loss

In respect of any Claim for compensation by the Operator from TfNSW under this Contract arising in respect of a Contract Variation, Force Majeure Event, Change Event, Major Projects Disruption Event or Wharf Access Disruption Event or any other event contemplated by this Contract, the Operator must (to the extent of its financial, technical and other relevant resources) use its reasonable endeavours to mitigate the amount of any Loss associated with the circumstances giving rise to the Claim (or potential Claim) for compensation.

### 51.2 Failure to mitigate

To the extent that the Operator fails to comply with Clause 51.1, such amounts that TfNSW (acting fairly, reasonably and in good faith) considers would otherwise have been mitigated or minimised had the Operator complied with Clause 51.1 are:

- (a) not recoverable under this Contract; and
- (b) to be excluded from any Net Financial Impact calculations under Schedule 7.

## 52. Contract Variations

### 52.1 TfNSW Contract Variation Request

- (a) The TfNSW Representative may at any time issue to the Operator a Contract Variation Request setting out the details of a proposed Contract Variation which TfNSW is considering.
- (b) The Operator must provide TfNSW with a Contract Variation Impact Proposal as soon as practicable but in any case no later than:
  - (i) 10 Business Days after receipt of a Contract Variation Request; or
  - (ii) if a direction is issued under Clause 53.1, within such longer period as is set out by TfNSW in the Contract Variation Request having regard to the time required to complete the processes under Clause 53.1.
- (c) The Operator Representative may recommend to TfNSW a Contract Variation from time to time by setting out the reasons for the Contract Variation, and if it does so:
  - (i) the Operator must provide all information requested by TfNSW regarding the same; and
  - (ii) TfNSW may elect to issue a Contract Variation Request or Contract Variation Order or not pursue any associated Contract Variation.
- (d) TfNSW is not obliged to proceed with any Contract Variation proposed in a Contract Variation Request or that is recommended by the Operator.
- (e) TfNSW is entitled to be compensated for the amount calculated by reference to the positive Net Financial Impact of a Contract Variation proposed by Operator and approved by TfNSW under Clause 52.1(c)(ii), but the Operator will otherwise:
  - (i) bear all risks and costs associated with a Contract Variation proposed by the Operator; and
  - (ii) have no Claim against TfNSW arising out of, or in any way in connection with, a Contract Variation proposed by the Operator.

### 52.2 Contract Variation Order

- (a) Within 40 Business Days after receiving a Contract Variation Impact Proposal, the TfNSW Representative may, by notice to the Operator:
  - (i) accept the Contract Variation Impact Proposal by issuing a Contract Variation Order on the basis set out in the Contract Variation Impact Proposal;
  - (ii) reject the Contract Variation Impact Proposal;
  - (iii) inform the Operator that it does not wish to proceed with the proposed Contract Variation;
  - (iv) if Clause 53 applies, provide comments or recommendations regarding the Procurement Proposal under Clause 53.7; or
  - (v) inform the Operator that it requires further time or information to assess the Contract Variation Impact Proposal in which case TfNSW must advise the Operator of the further information required and the reasonable time within which such information must be provided and within which a determination will be made.
- (b) The Operator must comply with any request to provide further information issued by TfNSW under Clause 52.2(a)(v) in accordance with the timeframe advised by TfNSW under Clause 52.2(a)(v).
- (c) Whether or not TfNSW has issued a Contract Variation Request under Clause 52.1, the TfNSW Representative may at any time instruct the Operator to implement a Contract Variation by issuing a Contract Variation Order. In these circumstances TfNSW will determine all matters required to enable the Contract Variation to be implemented.

- (d) If TfNSW issues a Contract Variation Order in accordance with Clause 52.2(a)(i) or Clause 52.2(c):
  - (i) the Operator must implement the Contract Variation in accordance with the Contract Variation Order; and
  - (ii) this Contract, including the Operator's obligations under this Contract, will be modified to the extent specified in the Contract Variation Order.
- (e) Without limiting Clause 52.2(d), If the Operator disagrees with a matter determined by TfNSW under Clause 52.2(c):
  - (i) the Operator may refer the matter to dispute resolution by expert determination under Clause 46;
  - (ii) the Operator must proceed to implement the Contract Variation on the basis determined by TfNSW notwithstanding that the matters in dispute have not been agreed or determined in accordance with Clause 46; and
  - (iii) any necessary adjustments will be made following any agreement or determination under Clause 46.2.

### 52.3 Directions by TfNSW

- (a) If a decision, demand, determination, direction, instruction, order, rejection, requirement or notice given to it in writing by a person authorised by TfNSW to do so (**Direction**), other than a Contract Variation Order, in the Operator's opinion constitutes a Contract Variation, the Operator must notify TfNSW that it considers compliance with such Direction constitutes a Contract Variation, within 10 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction.
- (b) The Operator must comply with all Directions. There will be no adjustment to the Payments (including the Base Service Fee), and the Operator will have no other Claim against TfNSW arising out of or in connection with a Direction if the Operator fails to comply with the requirements of Clause 52.3(a).

### 52.4 Omissions

If a Contract Variation omits any part of the Operator Activities, TfNSW may carry out those omitted Operator Activities itself or by engaging another contractor.

### 52.5 Payment

- (a) Where TfNSW has issued a direction under Clause 53 and issued a Contract Variation Order accepting a Procurement Proposal, the Operator will be paid for the relevant Contract Variation in accordance with the Procurement Proposal. Otherwise, the Net Financial Impact of a Contract Variation Order issued by TfNSW under Clauses 52.1 to 52.3 will be calculated in accordance with Schedule 7 and as an adjustment to the Payments (including the Base Service Fee).
- (b) The Operator will have no Claim against TfNSW arising out of, or in any way in connection with, any Contract Variation, except where the Operator is directed to implement a Contract Variation pursuant to a Contract Variation Order issued by TfNSW under Clauses 52.1 to 52.3.

### 52.6 Associated Service Variations

The Parties acknowledge and agree that to the extent a change to this Contract includes elements that are a Service Variation and also a Contract Variation, Clause 18 will apply to those parts that are a Service Variation, and for clarity, Clause 18(d) will apply exclusively to those parts. This Clause 52 will solely apply to the parts that are not a Service Variation.

### 52.7 Other contractor to perform Contract Variation

If TfNSW notifies the Operator that it wishes to withdraw a Contract Variation Request then:

- (a) TfNSW may undertake, or appoint any of TfNSW's Associates (including another contractor) to undertake the Contract Variation;

- (b) the Operator must co-operate with, and not hinder, prevent or delay TfNSW or TfNSW's Associates from undertaking the Contract Variation and must provide TfNSW or any of TfNSW's Associates with all assistance and information about the Ferry Operations or Operator Activities that TfNSW or TfNSW's Associates reasonably require; and
- (c) TfNSW may request and the Operator will, in good faith, enter into an interface protocol with any of TfNSW's Associates in respect of any aspect of the Contract Variation and its procurement.

### 52.8 Implementation of Contract Variation

- (a) All Contract Variations implemented by the Operator:
  - (i) must be designed, constructed and completed so that:
    - (A) the Operator provides and will continue to provide the Ferry Operations in accordance with the Transaction Documents;
    - (B) the Operator will at all times comply with its obligations under the Transaction Documents; and
    - (C) any equipment or materials forming part of the Contract Variation are selected, procured, manufactured, installed, commissioned and tested in accordance with Good Industry Practice and are fit for purpose; and
  - (ii) must be implemented so as to cause no disruption to the provision of the Services by the Operator, save to the extent of disruptions or suspension of obligations agreed by the Operator and TfNSW in consultation prior to the issue of, and as specified in, the Contract Variation Request, Contract Variation Impact Proposal, Procurement Proposal or Contract Variation Order (with the Contract Variation Order taking precedence in the case of any inconsistency).
- (b) Except as expressly agreed by TfNSW and the Operator in a Contract Variation Order, the Operator releases TfNSW and TfNSW's Associates from any Losses of the Operator (or any person claiming through or on behalf of the Operator, including any of the Operator's Associates) in respect of or in connection with such Contract Variation.

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## 53. Procurement of Contract Variations

### 53.1 Procurement process

TfNSW may, as part of a Contract Variation Request, direct the Operator to procure any goods or services required as part of the Contract Variation in accordance with the process set out in this Clause 53.

### 53.2 Procurement Proposal

If TfNSW gives a direction under Clause 53.1 (**Procurement Proposal Notice**), the Operator must, as part of its Contract Variation Impact Proposal, prepare and submit to TfNSW a detailed proposal for the procurement of the Contract Variation (**Procurement Proposal**) which includes:

- (a) if requested in the Procurement Proposal Notice, the scope of works required to deliver the Contract Variation;
- (b) the Operator's proposed methodology and processes for performing or procuring the performance of the Contract Variation;
- (c) the concept design of the Contract Variation;
- (d) the programme for implementing the Contract Variation and the time within which the Contract Variation will be implemented;
- (e) the identity, nature, scope, pricing and terms of any subcontractor, consultant or supplier required to undertake any aspect of the Contract Variation;
- (f) the cost of the proposed Contract Variation, calculated in accordance with Clauses 53.3, 53.4, 53.5 and 53.6 and including calculations supporting the requirements for:

- (i) staged payments matching the payments to relevant subcontractors;
- (ii) if appropriate:
  - (A) a lump sum amount for the capital component of any Contract Variation together with the Operator's proposal in relation to the timing of such payment; and
  - (B) any adjustment to the Payments (including the Base Service Fee);
- (g) the mechanics for integrating the Contract Variation with the continued provision of the Services;
- (h) the Expenditure and substantiating documentation including:
  - (i) working papers supporting the determination of the Expenditure;
  - (ii) a statutory declaration from two directors (or a director and secretary) of the Operator confirming that in their opinion the financial information provided to TfNSW is accurate, true and fair;
  - (iii) evidence of compliance with Clause 51;
- (i) a margin commensurate with the identifiable risk of undertaking the Contract Variation but which must not exceed █% for the Operator on any work carried out by any arm's length subcontractor; and
- (j) any other information requested by TfNSW in respect of the Contract Variation in such form as may be requested.

### 53.3 Value for money

In determining the cost under Clause 53.2, the overriding considerations are:

- (a) that TfNSW receives value for money and that the cost proposed pursuant to Clause 53.2 is fair and reasonable and is calculated in a manner that is transparent and avoids any double counting; and
- (b) the Operator will not be compensated by TfNSW for any cost associated with a Contract Variation which is included in the Base Service Fee or for which the Operator is compensated by other means.

### 53.4 Open book

The Operator must:

- (a) provide (and must procure that the subcontractors provide) all information on an open book basis; and
- (b) ensure that any unit prices or amounts of compensation are calculated based on the most efficient form of delivery which offers the best value for money to TfNSW in order to comply with the Procurement Proposal Notice.

### 53.5 Calculation of cost

The Operator's Procurement Proposal must include any cost saving (including tax, financing or other benefits associated with deferred expenditure) made by or accruing to the Operator as a result of the Contract Variation.

### 53.6 Obtaining quotes and tendering

- (a) If the proposed value of the Contract Variation is equal to or greater than \$█ but less than \$█ (CPI Indexed and GST inclusive), the Procurement Proposal must include not less than three written quotes from three different contractors nominated by the Operator to carry out the relevant Contract Variation in accordance with the methodology and processes for procuring the performance of the Contract Variation set out in the Procurement Proposal.
- (b) If the proposed value of the Contract Variation is equal to or greater than \$█ (CPI Indexed and GST inclusive), the Procurement Proposal must be a proposal in which the Operator is

engaged by TfNSW in the capacity of a managing contractor to issue a public call for tender (or if appropriate limited select tender subject to TfNSW approval acting reasonably).

- (c) The Operator must ensure that all tender processes for the Contract Variation are conducted:
  - (i) in a manner consistent with Australian Standard AS 4120-1994 *Code of Tendering* or such other standard, policy or procedure as TfNSW may notify to the Operator;
  - (ii) on terms which provide value for money for TfNSW; and
  - (iii) with the highest standards of probity and fairness on a commercial arm's length basis.
- (d) The Operator must do each of the following as part of the Procurement Proposal (if Clause 53.6(a) applies) or as part of a tender process (if Clause 53.6(b) applies):
  - (i) examine and analyse all quotes and tenders received;
  - (ii) recommend to TfNSW which quote or tender, if any, should be accepted by the Operator; and
  - (iii) submit together with any such recommendation, the proposed subcontract (including subcontract price), as well as the amounts quoted or tendered by other suppliers and such other information required by TfNSW.

### 53.7 TfNSW response

- (a) Within 40 Business Days after receiving the Procurement Proposal, TfNSW may by notice give the Operator comments or recommendations regarding the Procurement Proposal.
- (b) If TfNSW:
  - (i) does not consent to the Operator's recommended quote or tender; or
  - (ii) gives the Operator other comments or recommendations regarding the Procurement Proposal,the Operator must identify another quote or supplier which would be acceptable to TfNSW and amend the Procurement Proposal to reflect that new quote or supplier and TfNSW's other comments or recommendations and the Procurement Proposal must be re-submitted by the Operator within 10 Business Days.
- (c) If required by TfNSW, the Operator will meet at such times and procure such further details and access to such appropriately qualified personnel, as may be reasonably necessary to enable TfNSW to assess any Procurement Proposal.
- (d) No consent or withholding of consent by TfNSW will in any way relieve the Operator from any of the Operator's liabilities or obligations under the Transaction Documents.

### 53.8 Agreed Procurement Proposal and Approved Tenderer

- (a) If TfNSW issues a Contract Variation Order in relation to a Contract Variation Request, the Procurement Proposal relating to that Contract Variation Request is deemed to be accepted by TfNSW and the Operator must implement it in accordance with its terms and the Operator must promptly enter into the subcontract with any approved tenderer on the basis provided to TfNSW in the Procurement Proposal or with such amendments as TfNSW may approve.
- (b) The Operator must not terminate that subcontract except with the approval of TfNSW.

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## Part N – Termination and End of Service Term



## 54. Default and cure regime

### 54.1 Service Defaults

- (a) The following are Service Defaults:
- (i) **(Failure to achieve Transition Milestone)** any Operator breach of Clause 9.2(a)(ii);
  - (ii) **(Delivery of Operator New Ferries)** a failure by the Operator to comply with Clause 24.4(a);
  - (iii) **(Asset Management Failure)** the Operator fails to remedy an Asset Management Failure in accordance with Clause 25.7(d);
  - (iv) **(Non-performance of Key Performance Indicators)** the Operator:
    - (A) breaches an individual Class 1 Key Performance Indicator on two occasions within a six month period; or
    - (B) breaches an individual Class 1 Key Performance Indicator on three occasions within a 12 month period,

and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with the Performance Improvement Initiative provided in accordance with the KPI Schedule, to justify waiving the breaches of the relevant Key Performance Indicators for the purposes of this Clause 54.1;
  - (v) **(Cure Plan Threshold)** performance with respect to any KPI is at or below the Cure Plan Threshold;
  - (vi) **(lack or breach of Authorisation)** the Operator or any Operator's Associate:
    - (A) undertakes any of the Operator Activities which require an Authorisation without obtaining the Authorisation or being Authorised to do so; or
    - (B) breaches the terms of any Authorisation;
  - (vii) **(threatened suspension or revocation of Authorisation)** a Safety Authority notifies the Operator that:
    - (A) the Operator or an Operator's Associate must improve a part of the Operator Activities to which an Authorisation relates and failure to do so within the time specified by the Safety Authority may result in the Safety Authority suspending or revoking the Authorisation;
    - (B) a Safety Authority proposes to suspend or revoke an Authorisation held by the Operator or an Operator's Associate that is required to permit the Operator to carry out the Operator Activities; or
    - (C) a failure to take action specified by a Safety Authority within a time period specified by the Safety Authority may result in the Safety Authority suspending or revoking an Authorisation held by the Operator or an Operator's Associate that is required to permit the Operator to carry out the Operator Activities;
  - (viii) **(Operator Breach)** any Operator breach of a Transaction Document other than one that is a Termination Event;
  - (ix) **(Misrepresentation)** a material representation, warranty or statement by or on behalf of the Operator in a Transaction Document, or in a document provided under or in connection with a Transaction Document, is not true in a material respect or is misleading when made or repeated (other than where Clause 33.3 applies);
  - (x) **(Failure to implement the Modified Services)** the Operator fails to commence operation of the Modified Services by the Planned Service Transition Date;

[REDACTED]

[REDACTED]

[REDACTED]

- (xv) **(Material breach)** the Operator commits a Material Breach that is capable of being remedied, as determined by TfNSW in its sole discretion.
- (b) As soon as practicable following the Operator becoming aware of a Service Default the Operator must give notice to TfNSW setting out in reasonable detail the relevant event and surrounding circumstances.
- (c) Without limiting Clause anything else in this Clause 54, TfNSW may, at its absolute discretion, treat any Termination Event as a Service Default. Any action taken by TfNSW under this Clause 54 in respect of a Termination Event does not affect TfNSW's right to take action under Clause 56 in respect of the Termination Event at any time.

**54.2 Issue of Service Default Notice**

Without limiting any other rights TfNSW may have under this Contract, if a Service Default occurs, TfNSW may give the Operator notice (**Service Default Notice**):

- (a) stating that a Service Default has occurred;
- (b) setting out reasonable details of the event or circumstance constituting the Service Default; and
- (c) stating whether TfNSW requires either one or more of:
  - (i) an immediate remedy to be implemented by the Operator (with TfNSW specifying a reasonable period for the Operator to effect a remedy for the Service Default or the circumstances that gave rise to the Service Default);
  - (ii) a plan (**Cure Plan**) to be submitted by the Operator setting out all measures the Operator proposes to take to cure the Service Default or the events or circumstances giving rise to the Service Default by a date specified by TfNSW (**Cure Plan Date**); and
  - (iii) implementation of Temporary Measures (specifying a reasonable period for the Operator to do so having regard to the Service Default or the circumstances that gave rise to the Service Default) to alleviate the impact or effect of the Service Default (or the events or circumstances that gave rise to the Service Default) pending a permanent cure being achieved following an immediate remedy or in accordance with a Cure Plan.

**54.3 Dealing with Service Default Notices**

- (a) If TfNSW requires the Operator to immediately remedy the Service Default under Clause 54.2(c)(i), the Operator must remedy the Service Default within the period stipulated by TfNSW in the Service Default Notice.
- (b) If TfNSW requires the Operator to submit a Cure Plan under Clause 54.2(c)(ii), the Operator must within five Business Days after receipt of the Service Default Notice submit to TfNSW a Cure Plan which must, in order to be a compliant Cure Plan, include:
  - (i) the requirements of any Performance Improvement Initiatives previously provided by the Operator in accordance with the KPI Schedule;
  - (ii) the root cause of the Service Default and the anticipated impact of the Service Default (to the extent known by the Operator at that time). Where root cause analysis is not available at the time of proposing the Cure Plan, the Operator must identify within the Cure Plan the timeline for completing the root cause analysis and providing it to TfNSW;

- (iii) the measures that the Operator considers necessary and proposes to take to cure the Service Default (or the events or the circumstances giving rise to the Service Default), including any measures over and above those provided for in any Performance Improvement Initiatives previously provided by the Operator in accordance with the KPI Schedule;
  - (iv) the Temporary Measures to be taken to alleviate the impact or effect of the Service Default (or the events or circumstances giving rise to the Service Default) pending implementation of the Cure Plan;
  - (v) the period within which the Operator will cure the Service Default (or the events or the circumstances that gave rise to the Service Default), which period must end before the Cure Plan Date (**Cure Period**);
  - (vi) a work plan setting out each task to be undertaken and the time for each task to be completed;
  - (vii) the form and timing of reports to be provided by the Operator as to the status of any Cure Plan together with evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the Cure Plan; and
  - (viii) the operational arrangements for integrating the cure with the continuing performance of Operator Activities.
- (c) If TfNSW requires the Operator to implement a Temporary Measure with respect to the Service Default under Clause 54.2(c)(iii), the Operator must undertake that Temporary Measure within the time stipulated by TfNSW in the Service Default Notice.
- (d) The Operator must amend any proposed Cure Plan to reflect TfNSW's comments and to include any additional steps or timing requirements that TfNSW may require, and then resubmit the Cure Plan for TfNSW's approval within 2 Business Days of TfNSW's notice. This procedure will then re-apply.
- (e) Without limiting TfNSW's rights under Clause 56, if the parties have not agreed the Cure Plan within 15 Business Days (or such alternative period as agreed) of its delivery to TfNSW or if the Operator fails to provide the first draft within 5 Business Days of any Cure Notice, TfNSW may either refer the matter to dispute resolution in accordance with Clause 46 or, acting reasonably in the circumstances, establish a Cure Plan itself.
- (f) Once agreed or otherwise established by TfNSW in accordance with this Clause 54.3, the Operator must implement and comply with the Cure Plan and otherwise promptly and diligently remedy any Service Default and the events or circumstances leading to the Service Default.
- (g) The Operator must provide reports as to the status of any Cure Plan and evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the Cure Plan. These reports and evidence must be provided by the Operator to TfNSW:
- (i) in accordance with the reporting requirements set out in the Cure Plan; and
  - (ii) within five Business Days after TfNSW's request.
- (h) Unless otherwise agreed, the costs incurred under this Clause 54.3 and otherwise in developing and implementing a Cure Plan will be borne by the Operator.
- (i) The Operator will not be relieved of any liability or responsibility under this Contract or otherwise at law arising out of or in connection with the implementation of a Cure Plan.
- (j) Either TfNSW or Operator may propose updates to the Cure Plan to reflect changed circumstances, provided that any updates must be approved by TfNSW and no update or change to the Cure Plan will vary the Cure Plan Date unless such change to the Cure Plan Date is expressly approved by the TfNSW Representative with reference to this Clause 54.3.

**54.4 Enhanced Cooperation Right**

- (a) If any Service Default or Termination Event occurs or TfNSW reasonably considers that a Cure Plan either is not appropriate on its own or has not resolved or is not likely to resolve the relevant issue, then TfNSW may require the Operator to:
- (i) enable TfNSW or its nominated personnel to work alongside and supervise the Operator and its Staff to understand and collaborate on how to resolve the relevant circumstances, problem, risk or issue;
  - (ii) promptly provide TfNSW or its nominated personnel with such information (in addition to any information required to be provided under the other provisions of this Contract), and access to Assets used in the provision of the Services as TfNSW may reasonably request to enable it fully to understand the nature and causes of the circumstances, problem, risk or issue, other information relevant to the Services, and the steps (if any) being taken or considered by the Operator to remedy such circumstances, problem, risk or issue; and
  - (iii) procure that such members of the Operator's senior management engaged or familiar with the delivery of the Services:
    - (A) attend in person, at TfNSW's chosen location, meetings with representatives of TfNSW as soon as reasonably practicable and on no more than 2 Business Days' notice; and
    - (B) are directly responsible for management and oversight of resolution of the relevant circumstances, problem, risk or issue, remotely providing comprehensive daily updates (or updates at such other frequency as TfNSW may require) on such resolution to TfNSW.
- (b) Without limiting any other term of this Contract, where TfNSW provides any assistance, materials or resources to support or help the Operator in performance of any Services or the conduct of any remediation activities, the provision of such assistance, materials or resources in no way limits the Operator's obligations or warranties under this Contract or reduces the Operator's liability under this Contract. This Clause 54.4(b) applies regardless of whether such assistance, materials or resources are provided under or in accordance with this Clause 54.4 or otherwise.

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**55. Step in****55.1 Step in Rights**

- (a) Each of the following is a Step in Event:
- (i) a Termination Event occurs;
  - (ii) a Force Majeure Event has occurred which prevents or delays the Operator from performing any material obligation under a Transaction Document;
  - (iii) a Cure Plan has not substantially cured or is not likely to substantially cure, the matters for which it was designed by the Cure Plan Date;
  - (iv) a material KPI Default in respect of a Class 1 Key Performance Indicator (**KPI Event**) occurs and TfNSW considers that the Operator is failing to address the causes of the KPI Event or has not developed a Cure Plan or provided Performance Improvement Initiatives which TfNSW considers will address the KPI Event in accordance with the requirements of Clause 54 and the KPI Schedule;
  - (v) an event or circumstance which arises out of or in connection with the Operator Activities poses a serious threat to, or causes or will cause material damage or material disruption to:
    - (A) the health or safety of persons;
    - (B) the Environment;

- (C) any property; or
  - (D) the safe and secure performance of the Operator Activities; or
- (vi) TfNSW forms the opinion that a breach of a Transaction Document by the Operator or any Operator's Associate:
  - (A) materially adversely affects the operation of all or any of the Services;
  - (B) materially disrupts, restricts or prevents the operation of all or any of the Services for more than 24 hours;
  - (C) materially disrupts, restricts or prevents the operation of all or any of the Public Passenger Services of any other operator for more than 24 hours;
  - (D) increases the risk of imminent death or imminent injury to any person;
  - (E) directly or indirectly avoids or materially prejudices or frustrates the transfer of the Operator Activities as a going concern at the expiry or termination of this Contract to a Successor Operator; or
  - (F) is likely to give rise to any of the above.
- (b) If a Step in Event occurs and TfNSW has given a notice to the Operator advising the Operator that a Step in Party will be appointed then a Step in Party may exercise all or any of the Step in Powers (**Step in Right**).
- (c) The notice referred to in Clause 55.1(b):
  - (i) must specify:
    - (A) the Step in Event which has triggered the Step in Right;
    - (B) the Operator Activities which TfNSW proposes the Step in Party will perform;
    - (C) the date on which the relevant Step in Party proposes to commence exercising the Step in Powers; and
    - (D) the date on which, if any, the relevant Step in Party proposes to cease performing the relevant Operator Activities; and
  - (ii) may be given orally if TfNSW considers that the Step in Event requires urgent remedy and there is insufficient time to serve a notice. Any oral notice given under this Clause 55.1(c)(ii) must be followed within 24 hours by a notice to the same effect.
- (d) The Step in Right is without prejudice to TfNSW's other Powers in respect of a Step in Event, and the rights set out in Clause 54 and Clause 56.

## 55.2 Step in Powers

A Step in Party may, in performing the Operator Activities referred to in the notice issued under Clause 55.1(b), do anything in respect of those Operator Activities that the Operator could do including:

- (a) enter into and remain in possession of all or any of the Assets used in the performance of the Operator Activities;
- (b) operate and manage all or any of the Assets used in the performance of the Operator Activities;
- (c) enter into and remain in or on any part of the State Premises or any other premises on which Operator Activities are conducted;
- (d) exercise all or any of the Powers, and perform all or any of the obligations, of the Operator:
  - (i) in connection with the Operator Activities;
  - (ii) under or in relation to a Transaction Document or any other document to which the Operator is a party; or
  - (iii) under or in relation to any Authorisation held by the Operator,as if it were the Operator to the exclusion of the Operator;

- (e) do anything TfNSW considers necessary to remedy the relevant Step in Event or to overcome any risk or mitigate any consequences resulting from the Step in Event; and
- (f) do anything incidental to the matters listed in Clauses 55.2(a) to 55.2(e),  
**(Step in Powers).**

### **55.3 Acknowledgment and obligations of the Operator**

- (a) The Operator must immediately take such steps as are necessary to remedy the Step-In Event to TfNSW's satisfaction.
- (b) The Operator acknowledges that a Step in Party is not under any obligation to remedy a Step in Event, nor to overcome any risk or mitigate any consequences resulting from a Step in Event.
- (c) The Operator must (and must procure that the Operator's Associates):
  - (i) cooperate with the Step in Party in the exercise of the Step in Powers;
  - (ii) assist the Step in Party to enable the Step in Party to perform all or any of the Operator's obligations under or in relation to any Authorisation held by the Operator or the Operator's Associates; and
  - (iii) take any step which the Step in Party considers necessary or desirable to remedy the Step in Event or overcome the risk or mitigate any consequences resulting from the Step in Event.
- (d) Without limiting Clauses 55.3(a) and 55.3(c), the Operator must (and must procure that the Operator's Associates):
  - (i) give access to a Step in Party to:
    - (A) all or any of the Assets used in the Operator Activities;
    - (B) the Staff; and
    - (C) any information the Step in Party reasonably requires;
  - (ii) to the extent necessary, procure any consents to disclose Personal Information to the Step in Party;
  - (iii) assist the Step in Party in dealing with a Safety Authority or other Governmental Agency in relation to any Authorisations; and
  - (iv) comply with all reasonable directions given by the Step in Party,  
to enable the Step in Party to exercise the Step in Powers.
- (e) The Operator irrevocably appoints TfNSW as its attorney with full power to exercise the Step in Powers (or to delegate the exercise of the Step in Powers to another Step in Party).
- (f) The Operator's obligations under this Contract will be suspended to the extent and for such period as is necessary to permit TfNSW to exercise its Step in Rights.

### **55.4 Payments during step in**

- (a) During the period when TfNSW is exercising its Step in Rights:
  - (i) TfNSW will continue to pay the Monthly Contract Payment; and
  - (ii) KPI Credits calculated under the KPI Schedule will continue to be calculated based on the actual performance of the Operator.
- (b) The Operator shall be liable to TfNSW for, and must pay on demand, the Step in Costs incurred by TfNSW in exercising the Step in Rights where the Step in Event was an event identified in Clauses 55.1(a)(i), (ii), (iii), (iv) or (vi), or where the Step in Event was an event identified in Clause 55.1(a)(v) and was caused or contributed to by the Operator or the Operator's Associates.
- (c) Subject to Clause 55.4(d), the Operator indemnifies the Step in Party and TfNSW from and against all reasonable Step in Costs and all Losses in respect of or arising from the exercise of the Step in

Powers by the Step in Party or arising in connection with the Step In Event which has triggered the Step in Right, except to the extent it arises from:

- (i) in the case of the Step in Events referred to in Clauses 55.1(a)(i), (ii), (iii), (iv) or (vi), the fraud, wilful default, or gross negligence on the part of the Step in Party; or
  - (ii) in the case of the Step in Event referred to in Clause 55.1(a)(v), where that Step in Event does not arise out of or in connection with a breach of the Transaction Documents by the Operator, a negligent or otherwise wrongful act or omission of the Step in Party.
- (d) Without limiting the Operator's liability for the Step In Event and its ongoing impacts, the Operator is not liable for the acts or omissions of the Step In Party.
- (e) If directed to do so by TfNSW, the Operator must appoint the Step-in Party to act as agent of the Operator during which it is exercising the Step-in Powers.

### 55.5 Protection of a Step in Party

Subject to any Law which applies despite any written agreement to the contrary, the Operator acknowledges and agrees that the Operator has no Claim against TfNSW arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non exercise of a Step in Power; or
- (b) any Loss which results,  
except where it arises from:
  - (c) in the case of the Step in Events referred to in Clauses 55.1(a)(i), (ii), (iii), (iv) or (vi), fraud, wilful default or gross negligence on the part of the Step in Party; or
  - (d) in the case of the Step in Event referred to in Clause 55.1(a)(v), where that Step in Event does not arise out of or in connection with a breach of the Transaction Documents by the Operator, a negligent or otherwise wrongful act or omission of the Step in Party.

### 55.6 Protection of third parties

- (a) A party to any Dealing (as defined in Clause 55.6(c)):
  - (i) need not enquire:
    - (A) as to whether the Step in Right has become exercisable;
    - (B) as to whether a person who is, or purports or is purported to be, the Step in Party is duly appointed; or
    - (C) in any other way as to the propriety or regularity of the Dealing; and
  - (ii) is not affected by express notice that the Dealing is unnecessary or improper.
- (b) For the protection of any party to a Dealing, the Dealing will be taken to be authorised by this Contract and accordingly will be valid, even if there is any irregularity or impropriety in the Dealing.
- (c) In this Clause 55.6, a **Dealing** is:
  - (i) any payment, or any delivery or handing over of an asset, to; or
  - (ii) any acquisition, incurring of Financial Indebtedness, receipt, sale, lease, disposal or other dealing, by,  
any Step in Party or any person who purports, or is purported, to be a Step in Party.
- (d) The receipt by TfNSW or any Step in Party (or person who purports, or is purported, to be a Step in Party) of any money or assets payable to or receivable or received by it exonerates the person paying that money or handing over that asset from being concerned as to their application or from being liable or accountable for their loss or misapplication.

## 55.7 Step out

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

## 56. Termination

### 56.1 Termination Events

Subject to Clause 56.8, TfNSW may terminate the whole or any part of this Contract immediately (or on such later date specified in the Termination Notice) by giving notice to the Operator, if any of the following **Termination Events** occur:

- (a) (**Immediate action**) the Operator fails to remedy a Service Default when required to do so under (or within the time period required by) Clause 54.3(a);
- (b) (**Temporary Measure**) the Operator fails to take a Temporary Measure when required to do so under (or within the time period required by) Clause 54.3(c);
- (c) (**Cure Plan**) the Operator fails to submit a Cure Plan in accordance with (or within the time period required by) Clause 54.3(b) or a revised Cure Plan in accordance with Clause 54.3(d);
- (d) (**Failure to pursue Cure Plan**) TfNSW forms the opinion, acting reasonably, that the Operator has not diligently pursued or is not continuing to diligently pursue a cure in accordance with a Cure Plan, or the Operator fails to provide the evidence required (or within the time period required) by Clause 54.3(g);
- (e) (**Failure to cure**) the Operator took action required under Clause 54.3(a) or Clause 54.3(c) or pursued a cure in accordance with Clause 54.3(f) but, in the opinion of TfNSW has failed to cure the Service Default or the circumstances giving rise to the Service Default in the period prescribed under Clause 54;
- (f) (**Persistent breaches**) a persistent failure by the Operator to perform, or comply to a material extent with, any one or more of its obligations under this Contract or the Transaction Documents in circumstances where TfNSW has previously notified the Operator of the failures or non-compliances and has put the Operator on notice that continued failure or non-compliance would constitute a persistent failure or non-compliance for the purposes of this Clause 56.1;
- (g) (**Material Breach**) the Operator commits a Material Breach that is not capable of being remedied, as determined by TfNSW in its sole discretion;
- (h) (**Material non-performance of Key Performance Indicators**) the Operator:



- (i) breaches an individual Class 1 Key Performance Indicator on three occasions within a six month period; or
- (ii) breaches an individual Class 1 Key Performance Indicator on four occasions within a 12 month period,

and TfNSW does not consider there to be sufficient evidence of performance improvement, in accordance with the Performance Improvement Initiative provided in accordance with the KPI Schedule, to justify waiving the breaches of the Key Performance Indicators for the purposes of this Clause 56.1;

- (i) **(Safety)** the circumstances described in Clause 39.7(j) occur;
- (j) **(Unlawful)** it becomes unlawful for the Operator to perform all or a material part or number of the Operator Activities;
- (k) **(Dealing with Assets)** the Operator breaches Clause 26;
- (l) [Not used];
- (m) **(Modern Slavery)** the circumstances described in Clause 67.7 occur;
- (n) **(Abandonment)** the Operator abandons, ceases or suspends the conduct of all or a substantial part of the Operator Activities or it threatens or expresses an intention to do so;
- (o) **(Failure to insure)** the Operator does not effect and maintain (or cause to be effected or maintained) any insurance as required by this Contract, and fails to do so within 10 Business Days after receipt of a notice from TfNSW directing it to do so;
- (p) **(Assignment)** a purported assignment by the Operator of a Transaction Document or any of its obligations under any Transaction Document occurs without the consent of TfNSW;
- (q) **(Change in Control)** a Change in Control occurring without TfNSW's consent in accordance with Clause 48.11;
- (r) **(Revocation of Authorisation)** any Authorisation that is material to the performance by the Operator of a Transaction Document, or to the validity and enforceability of a Transaction Document, or for the performance of the Operator Activities, is cancelled, suspended, repealed, revoked, terminated, expires or is varied, modified or amended, or conditions are attached to it in a manner unacceptable to TfNSW, and is not replaced by another Authorisation acceptable to TfNSW;
- (s) **(Repudiation)** the Operator repudiates this Contract;
- (t) **(Misinformation)** the Operator engages in any conduct of the kind set out in Clause 33.3;
- (u) **(Fraud)** the Operator has acted fraudulently or dishonestly in relation to the Operator Activities, the provision of the Operator Activities or the performance of any of its obligations under the Transaction Documents;
- (v) **(ICAC)** the Independent Commission Against Corruption or similar Governmental Agency determines that the Operator has engaged in corrupt conduct, collusive pricing or other similar activity;
- (w) **(Conflict of Interest)** in TfNSW's opinion, a conflict of interest exists for the Operator which prevents the proper performance of this Contract;
- (x) **(Harm to TfNSW reputation)** in TfNSW's reasonable opinion, the Operator has caused damage or harm to TfNSW's or the State's reputation;
- (y) **(Insolvency Event)** an Insolvency Event occurs;
- (z) **(Deed of Guarantee and Indemnity)** the Deed of Guarantee and Indemnity is validly terminated or is or becomes void, illegal, invalid or unenforceable (or a party becomes entitled to terminate, rescind or avoid the Deed of Guarantee and Indemnity) for any reason and such situation is not remedied within 5 Business Days after it first arises;

- (aa) **(Compulsory Acquisition)** a Contract Ferry becomes subject to Compulsory Acquisition as a result of a breach of a Transaction Document by the Operator;
- (bb) **(Termination of Transaction Document)** a Transaction Document (other than this Contract) is terminated as a result of an act or omission of the Operator or any of the Operator's Associates; or
- (cc) **(Other)** the occurrence of any other event which this Contract states is a Termination Event, and this termination right is without prejudice to TfNSW's rights under Clause 55 and TfNSW's right to exercise all legal and equitable rights and remedies available to TfNSW in respect of the relevant Termination Event (whether under this Contract or not).

### 56.2 Suspension of payments

Without limiting TfNSW's rights or remedies, if a Termination Event occurs TfNSW may suspend payments (if any) to the Operator until the date upon which the Operator remedies the Termination Event or makes other arrangements satisfactory to TfNSW.

### 56.3 Termination by TfNSW for convenience

- (a) TfNSW may (without cost or liability, subject to Clause 56.3(b)) at any time at its absolute discretion by giving 12 months' notice to the Operator, terminate this Contract, whether or not the Operator is in default.
- (b) If TfNSW terminates this Contract in accordance with Clause 56.3(a):
  - (i) Clause 59 will apply; and
  - (ii) TfNSW will (as its sole liability):
    - (A) reimburse the Operator its unavoidable costs directly incurred as a result of the termination, as follows:
      - (I) any outstanding Payments owed to the Operator, calculated in accordance with the Payment Schedule; and
      - (II) the demonstrable, reasonable and mitigated costs actually incurred by the Operator directly as a result of the early termination under Clause 56.3(a) (including redundancy costs) and that otherwise would not have been incurred had this Contract continued until the Expiry Date;
    - (B) pay the Operator an amount equal to █% of the Base Service Fee for each Contract Year (or part Contract Year) between the date of termination under this Clause 56.3 and the Expiry Date (assuming the Contract is not terminated under Clause 5.2);
    - (C) pay the Vessel Termination Payment for the Operator New Ferries in accordance with Clause 59.6; and
    - (D) if the Operator transfers (at its election) the Existing Operator Ferries to TfNSW or its nominee free from any encumbrance, pay an amount determined in accordance with the table set out in Annexure I for the relevant Contract Year in which termination under this Clause 56.3 occurs.
- (c) The Operator must take all reasonable measures to mitigate and minimise the costs referred to in Clause 56.3(b)(ii)(A)(II) and TfNSW is only liable to pay such costs to the extent the Operator has complied with this Clause 56.3(c).
- (d) TfNSW may itself, or through a third party, carry out the Operator Activities after termination under this Clause 56.3.

### 56.4 Waiver on termination

- (a) If TfNSW terminates this Contract under Clause 56.1 the Operator's sole right and remedy will be to require TfNSW (subject to Clause 40.3) to pay a proper valuation under this Contract of all

amounts due and not previously paid to the Operator for performance of the Services completed in accordance with this Contract before the Termination Date.

- (b) If TfNSW terminates this Contract under:
- (i) Clause 56.3(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with Clause 56.3(b); and
  - (ii) Clause 48.9(a), the Operator's sole right and remedy will be to require TfNSW to pay the amount determined in accordance with Clause 48.9(b).

#### **56.5 Consequences of termination generally**

- (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, including those arising out of the expiry or termination of this Contract; and
  - (ii) any rights and obligations which expressly or impliedly continue after expiry or termination of this Contract (including those referred to in Clause 78).
- (b) The expiry or termination of the Operator's engagement under this Contract does not affect any of TfNSW's other rights or remedies.
- (c) If the Operator's engagement under this Contract is terminated (excluding termination under Clause 56.3), the Operator is liable for and indemnifies TfNSW on demand against any Loss suffered by TfNSW as a result of the termination.

#### **56.6 Wrongful termination**

If:

- (a) TfNSW purports to terminate the whole or any part of this Contract; and
- (b) a court determines that such purported termination was wrongful,

the liability of TfNSW is limited to the payment of the amounts contemplated by Clause 56.3 as if TfNSW had terminated the whole or that part of this Contract for convenience under Clause 56.3.

#### **56.7 Partial termination**

- (a) If TfNSW exercises a right to terminate this Contract in part:
- (i) TfNSW has the sole discretion as to which part or parts of this Contract are to be terminated;
  - (ii) the Parties will agree (or TfNSW may direct in accordance with Clause 18 or 52) any appropriate Service Variations or Contract Variations to this Contract to effect the partial termination; and
  - (iii) TfNSW may determine and direct how the rights and obligations in Clauses 56 to 59 apply and must be implemented by the Operator in respect of the terminated parts (including as if such clauses apply only in respect of the terminated part with such changes as TfNSW deems necessary so that those clauses operate with respect to the terminated part). The Operator must comply with such directions at no cost to TfNSW.
- (b) If at any time TfNSW considers that any aspect of the partial termination is not proceeding to its satisfaction, TfNSW may by notice convert the partial termination into a full termination.

## 57. End of Contract Retendering Provisions

### 57.1 Right to appoint Successor Operator and Interim Operator

- (a) The Operator acknowledges and agrees that TfNSW may, on or before the Termination Date, invite any person (including the Operator) to perform all or any part of the Operator Activities for the period commencing after the Termination Date.
- (b) The following Clauses will not apply if the Operator is the Successor Operator:
  - (i) Clause 57.7; and
  - (ii) Clause 59.2 and 59.7.

### 57.2 Maintenance as going concern

The Operator must maintain and manage the Operator Activities in such a way that a Step in Party, Successor Operator (or nominee of TfNSW) or Interim Operator is able at any time to immediately take over the Operator Activities as a going concern.

### 57.3 Handover Information

- (a) The Operator must, as soon as practicable and in any event no later than six months after the Service Commencement Date, prepare and maintain information on:
  - (i) all premises from which the Operator Activities are carried out, including the State Premises;
  - (ii) material contracts relating to the Services (including Key Subcontract);
  - (iii) computer and other information systems;
  - (iv) an asset register for Assets used in relation to the Operator Activities (including an inventory of spares and special tools and equipment);
  - (v) Staff details (including a list of names, terms and conditions of employment and rosters);
  - (vi) its organisational structure;
  - (vii) an up to date and complete copy of the Asset Information System; and
  - (viii) such other information as is reasonably requested by TfNSW to facilitate smooth handover of the Operator Activities to a Step in Party, Successor Operator (or nominee of TfNSW) or Interim Operator,

**(Handover Information).**
- (b) The Operator must keep the information referred to in Clauses 57.3(a) up to date and provide copies to TfNSW on reasonable notice, and in any case on the earlier of:
  - (i) TfNSW issuing a Termination Notice;
  - (ii) the date that is six months prior to the Expiry Date; and
  - (iii) one week after the commencement of the End of Contract Period.
- (c) The Operator must ensure that a Step in Party, prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW has, to the extent permitted by Law, immediate

access to the information referred to in Clause 57.3(a) on reasonable notice from TfNSW, and in any case on the earlier of:

- (i) the exercise of the Step in Rights;
- (ii) TfNSW issuing a Termination Notice;
- (iii) the date that is six months prior to the Expiry Date; and
- (iv) one week after the commencement of the End of Contract Period.

#### **57.4 Preparation for contracting at End of Service Term**

- (a) Despite any other provisions of this Contract, TfNSW may disclose the Handover Information and all material that TfNSW may licence to Successor Operator or which TfNSW otherwise owns the Intellectual Property and any other information reasonably required by TfNSW in connection with the re-tendering or contracting of all or any part of the Services (including as contemplated below).
- (b) The Operator must, to the extent permitted by Law, provide TfNSW with reasonable access to the Staff and the information, books and records kept by or on behalf of the Operator in connection with the Operator Activities for the purpose of TfNSW preparing reports and documents in connection with any procurement process for the operation of all or part of the Operator Activities or any other associated services.
- (c) The Operator must use reasonable endeavours to assist TfNSW in the preparation for, and the conduct of the procurement process including, where required by TfNSW, a fair and competitive expression of interest or tendering process.
- (d) Without limiting Clause 57.4(c), the Operator must, to the extent permitted by Law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as TfNSW reasonably requires in connection with the procurement process for the Operator Activities or any other associated services.
- (e) The Operator warrants to TfNSW that to the best of its belief, all information provided under Clauses 57.3(a) and 57.4(d) will be, at the time it is provided, true and correct in all material respects and will not be misleading by omission or otherwise.
- (f) The Operator must warrant to a Successor Operator that to the best of its belief, any other information made available to the Successor Operator by the Operator or the Operator's Associates is true and correct.

#### **57.5 Non frustration of transfer**

The Operator must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer as a going concern of the Operator Activities at the Termination Date to a Successor Operator (or nominee of TfNSW) or Interim Operator and any procurement process in connection with such transfer.

#### **57.6 Assistance in securing continuity**

The Operator must do everything, both before and after the Termination Date, as TfNSW may reasonably require to assist and advise any Step in Party, prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW in performing the Operator Activities, including the provision of information and records related to the operation of the Operator Activities (excluding confidential financial information).

#### **57.7 Access**

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

- (a) the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW receiving information in respect of the Operator Activities; and

- (b) preparations by the prospective Successor Operator, Successor Operator, Interim Operator or nominee of TfNSW to take over the Operator Activities on the Termination Date, but only to the extent that any of the above does not unduly interfere with the performance of the Operator Activities.

## 58. End of Service Term Asset Condition and Handover Requirements

### 58.1 Handback Audit

- (a) Without limiting Clause 32, no earlier than 12 months prior to the Expiry Date, the TfNSW Representative may procure the carrying out of an audit of the State Assets, Operator New Ferries and Transferring Assets (**Handback Audit**) by an independent expert (**Handback Auditor**):
- (i) appointed by agreement between the Parties; or
  - (ii) failing agreement within 10 Business Days after a request is made in writing by TfNSW, nominated by the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute.
- (b) The TfNSW Representative must:
- (i) notify the Operator at least 10 Business Days in advance of the date it wishes to procure the carrying out of a Handback Audit and specify the State Assets, Operator New Ferries and Transferring Assets that will be the subject of the Handback Audit (**Handback Audit Assets**); and
  - (ii) consider in good faith any reasonable request by the Operator for the Handback Audit to be carried out on a different date.
- (c) The Handback Auditor will inspect and assess the Handback Audit Assets and notify TfNSW and the Operator in writing of:
- (i) whether the Handback Audit Assets have been and are being maintained by the Operator in accordance with this Contract;
  - (ii) any rectification, maintenance or remediation works required to be carried out by the Operator to bring the condition of the Handback Audit Assets to the condition they would have been in had the Operator complied with its obligations under this Contract;
  - (iii) any rectification, maintenance or remediation works required to be carried out by the Operator to bring the condition of the Handback Audit Assets to the Handback Condition at the Expiry Date; and
  - (iv) the Handback Auditor's estimate of the value of the rectification, maintenance and remediation works referred to in Clauses 58.1(c)(ii) and 58.1(c)(iii).
- (d) The Operator must cooperate with the Handback Auditor and provide the Handback Auditor with any reasonable assistance required by the Handback Auditor.
- (e) The TfNSW Representative must use its reasonable endeavours to procure that the Handback Auditor minimises any disruption caused to the Operator Activities by the Handback Audit.
- (f) The costs of performing the Handback Audit incurred by TfNSW will be borne by TfNSW, except where the results of the Handback Audit show that the Operator has not complied with its obligations under this Contract in relation to the maintenance of the Handback Audit Assets, in which case the cost of the Handback Audit will be a debt due and payable by the Operator to TfNSW.

### 58.2 Rectification work

The Operator must carry out any required rectification, maintenance or remediation work notified pursuant to Clauses 58.1(c)(ii) and (iii):

- (a) to the satisfaction of the Handback Auditor; and

- (b) so as to satisfy the standards and other requirements applicable to the State Assets, Operator New Ferries and Transferring Assets under this Contract,
- prior to the Expiry Date and any costs it incurs in carrying out such rectification, maintenance or remediation work will be at the Operator's own expense.

### 58.3 Handback obligations

At the Termination Date, the Operator must:

- (a) surrender and return to TfNSW the State Assets and the TfNSW Systems and Equipment in accordance with Clause 59;
- (b) transfer all of the Operator's rights, title and interest (if any) in the State Assets to TfNSW or TfNSW's nominee free from any Security Interests;
- (c) ensure that the State Assets, Operator New Ferries and Transferring Assets are in a state and condition which complies with the requirements of this Contract, including the Handback Condition;
- (d) have completed all works scheduled to be carried out under the current Maintenance Works Program; and
- (e) have completed the transfer of the Asset Information System database to TfNSW or TfNSW's nominee such that:
- (i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
  - (ii) the Asset Information System database remains fully functional and retains interface capabilities;
  - (iii) all data entry is fully up to date;
  - (iv) all data archives are included; and
  - (v) all supporting documentation is included.

### 58.4 Final inspection

- (a) As soon as practicable following the Termination Date, an independent expert (**Final Inspection Auditor**):
- (i) appointed by agreement between the Parties; or
  - (ii) failing agreement within 10 Business Days after a request is made in writing by TfNSW, nominated by the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute,
- will inspect and assess the State Assets, Operator New Ferries and Transferring Assets and notify TfNSW and the Operator in writing of the estimated cost (without double counting) of making good or rectifying any failure by the Operator to carry out:
- (iii) where the end of the Service Term is the Expiry Date, the work (if any) required under Clauses 58.1(c)(ii) and 58.1(c)(iii); and
  - (iv) the Operator's obligations under Clause 58.3.
- (b) The amount notified by the Final Inspection Auditor under Clause 58.4(a) will be a debt due and payable from the Operator to TfNSW.
- (c) TfNSW may deduct or set off any amount payable by the Operator under Clause 58.4(b) against any amount otherwise payable by TfNSW to the Operator, or may take other enforcement action available to it including under the Handback Security Bond or any other security provided under Clause 6.

**58.5 Operator Assurance Letter**

No later than 10 Business Days prior to the Termination Date, the Operator must provide TfNSW with written assurance signed by two directors of the Operator that the State Assets, Operator New Ferries and Transferring Assets have been maintained and operated in accordance with the Transaction Documents and are in the condition required by the Transaction Documents.

**59. Handback and transfer of Assets****59.1 Handback of State Assets**

The Operator must hand back the State Assets and TfNSW Systems and Equipment to TfNSW or TfNSW's nominee:

- (a) in accordance with the requirements of the Transaction Documents;
- (b) at a location determined by TfNSW; and
- (c) at the Transfer Time.

**59.2 Indicative Statement**

TfNSW may, by notice to the Operator given a reasonable time before the Transfer Date, require the Operator to prepare an indicative statement for all Transferring Assets held by the Operator as at the date of TfNSW's notice, setting out the current value of each of those Transferring Assets (calculated on the basis of the Accounting Standards) (**Indicative Statement**). The Operator must provide the Indicative Statement to TfNSW within one month after the date of TfNSW's notice.

**59.3 Transfer**

Subject to Clauses 59.1 and 59.6, the Operator must transfer the Transferring Assets (and all improvements on such Transferring Assets) to TfNSW or any one or more transferees nominated by TfNSW (in each case, a **Transferee**):

- (a) with effect from the Transfer Time;
- (b) free of any Security Interests or any claim by any person; and

**59.4 Delivery**

- (a) The Operator must deliver possession of the Transferring Assets to a Transferee at the Transfer Time at a location in Sydney to be nominated by TfNSW.
- (b) The Operator must deliver to the relevant Transferee at or before the relevant Transfer Time at the location determined under Clause 59.4(a) all documents of title, books of account, accounts, records, data and all other documents relating to Transferring Assets transferred to the Transferee.

**59.5 Payments**

Any amount payable under this Clause 59 must be tendered by a draft or cheque drawn by a bank as defined in the *Banking Act 1959* (Cth).

**59.6 Transfer of Operator New Ferries**

- (a) On or within the period of 30 days immediately preceding the Termination Date:
  - (i) the Operator must ensure that all Operator Sale Ferries are sold to TfNSW or its nominee (**Purchaser**); and
  - (ii) TfNSW shall procure that the Purchaser purchases all Operator Sale Ferries, as required by TfNSW, including in accordance with the terms of this Contract and any other Transaction Document.



- (b) On or within the period of 30 days immediately preceding the Termination Date:
- (i) the Operator must ensure that all Operator Ferry Charterparties in respect of Operator Novation Ferries are novated to TfNSW or its nominee (**Novatee**); and
  - (ii) TfNSW shall procure that the Novatee executes documentation to ensure the novation of Operator Ferry Charterparties as contemplated under this Clause,  
as required by TfNSW, including in accordance with the terms of this Contract and any other Transaction Document.
- (c) The transfer of the Operator New Ferries under Clauses 59.7(a) and 59.7(b) shall be on the following terms and conditions:
- (i) in respect of any Operator New Ferry that is an Operator Sale Ferry the Operator must:
    - (A) sell;
    - (B) transfer full legal and beneficial title to; and
    - (C) deliver possession of,such Operator New Ferry to the Purchaser free from all Security Interests as required by TfNSW and on terms otherwise acceptable to TfNSW;
  - (ii) in respect of any Operator New Ferry that is an Operator Novation Ferry the Operator must:
    - (A) novate the Operator Ferry Charterparty in respect of; and
    - (B) deliver possession of,such Operator New Ferry to the Novatee as required by TfNSW and on terms otherwise acceptable to TfNSW;
  - (iii) if an Operator New Ferry is subject to an Operator Ferry Charterparty, and the Operator is unable to procure the novation of the Operator Ferry Charterparty, the Operator must exercise its rights under the Operator Ferry Charterparty to acquire the Operator New Ferry and sell the Operator New Ferry to the Purchaser under this Clause as if it were an Operator Sale Ferry;
  - (iv) the Purchaser and Novatee may conduct due diligence on the Operator New Ferries;
  - (v) the Operator must assign any warranties held by it in respect of the Operator New Ferries to the Purchaser or Novatee (as the case may be);
  - (vi) the Operator agrees that the amount payable by the Purchaser and the Novatee to the Operator in respect of the:
    - (A) sale of an Operator New Ferry that is an Operator Sale Ferry will be the Vessel Termination Payment as determined by TfNSW in accordance with paragraph 11 of the Payment Schedule; and
    - (B) novation of an Operator Ferry Charterparty in respect of an Operator Novation Ferry will be the Vessel Termination Payment as determined by TfNSW in accordance with paragraph 11 of the Payment Schedule; and
  - (vii) the Operator shall have no Claim against TfNSW in respect of the termination of any Operator Ferry Charterparty (including payment of any costs under that arrangement).

### 59.7 Transfer Out Agreement

In addition to the matters set out in Clauses 59.3 to 59.6, the Operator must, transfer the Transferring Assets, Operator Sale Ferries and Operator Novation Ferries to TfNSW or its nominee on the following terms and conditions:

- (a) TfNSW or its nominee may conduct due diligence on the relevant Transferring Assets, Operator Sale Ferries and Operator Novation Ferries;

- (b) the Transfer Out Agreement will be entered into between TfNSW, its nominee (if any) and each vendor or assignor of the relevant Transferring Assets, Operator Sale Ferries and Operator Novation Ferries, at least 30 Business Days prior to the Termination Date (**Transfer Agreement Date**); and
- (c) the Operator for valuable consideration, to secure the performance of its obligation under Clause 59.7(b) to enter into the Transfer Out Agreement, irrevocably appoints TfNSW as its attorney to complete all schedules to, and execute, the Transfer Out Agreement and all ancillary documents and to do all other things necessary to complete the transactions contemplated by the Transfer Out Agreement, if the Operator has not signed the Transfer Out Agreement by the Transfer Agreement Date. The Operator must ratify anything done by TfNSW acting under this power of attorney.

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## Part O – General

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### 60. Livery and advertising

#### 60.1 Livery and Operator's Marks

- (a) To the extent that the Operator incorporates the TfNSW Brand onto any Asset, the Operator must:
    - (i) obtain TfNSW's prior consent;
    - (ii) incorporate the TfNSW Brand in a manner that enables the Assets to be identified as part of an integrated transport network;
    - (iii) comply with all NSW Government policies regarding application of NSW Government brands (**NSW Brand Policies**) and with the TfNSW Public Transport Brand Style Guide including by ensuring that:
      - (A) the TfNSW Brand is applied in accordance with NSW Brand Policies and the TfNSW Public Transport Brand Style Guide; and
      - (B) any Operator brand placement is co-branded with the relevant TfNSW Brand and in a format and relative scale in accordance with NSW Brand Policies and the TfNSW Public Transport Brand Style Guide;
    - (iv) not use primary colours or other distinctive colour schemes unless it can be demonstrated to TfNSW's satisfaction that it is complementary to and or consistent with the NSW Brand Policies and the TfNSW Public Transport Brand Style Guide;
    - (v) comply with a visual language as determined by TfNSW.
  - (b) If there is any inconsistency between any NSW Brand Policy and the TfNSW Public Transport Brand Style Guide, the Operator must request that TfNSW provide a direction in relation to the relevant requirements that must be complied with. The Operator must comply with any direction issued by TfNSW under this Clause 60.1(b).
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#### 60.2 Advertising

The Parties acknowledge and agree that:

- (a) the Operator has the exclusive right under this Contract to advertise, and grant rights to third parties to advertise on the interior of Contract Ferries subject always to the requirements set out in Clause 60.1;
- (b) the Operator must not advertise on the State Premises or the exterior of Contract Ferries; and

- (c) TfNSW has the right under this Contract to advertise, and grant rights to third parties to advertise, on the State Premises or the exterior of State Ferries (**TfNSW Advertising Assets**).

### 60.3 Advertising by Operator

- (a) Any advertising placed by the Operator on a State Asset or Contract Ferry must:
- (i) comply with all applicable Laws;
  - (ii) comply with:
    - (A) the TfNSW Advertising Content Guidelines; and
    - (B) any other reasonable guidelines, standards or directions issued by TfNSW from time to time;
  - (iii) comply with the requirements of Clause 60.1;
  - (iv) comply with codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by a Governmental Agency, the Advertising Standards Bureau of Australia, the Office of Film and Literature Classification, the Australian Association of National Advertising, the Outdoor Advertising Association of Australia and the Australian Advertising Standards Board;
  - (v) not depict political, religious or other similar subject matter;
  - (vi) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour;
  - (vii) not cause, or have the potential to cause, any damage or harm to TfNSW's reputation;
  - (viii) not be offensive;
  - (ix) not obscure the route number and destination details on the Contract Ferry;
  - (x) not obscure any transport information or wayfinding information; and
  - (xi) not obscure or distract from any safety information or signage.
- (b) Where, in TfNSW's reasonable opinion, advertising on a State Asset or Contract Ferry does not comply with Clause 60.3(a), TfNSW may require the Operator to remove an advertising item from that State Asset or Contract Ferry.
- (c) The Operator must comply with a direction of TfNSW made pursuant to Clause 60.3(b) within one Business Day after receipt of the direction.
- (d) The Operator must not install any digital advertising equipment on Contract Ferries without the consent of TfNSW which consent may be subject to conditions, including conditions protecting TfNSW's rights in relation to the Contract Ferries.
- (e) The Operator must, when requested to do so by TfNSW, allow TfNSW to utilise such advertising panels and spaces on Contract Ferries (including any digital media) for such reasonable periods as are required by TfNSW, at no cost to TfNSW, to enable TfNSW to promote transport and safety initiatives.
- (f) Without limiting anything else in this Clause 60.3, the Operator must not enter into any new contract for the placement of advertising on any State Asset or Contract Ferry without the prior approval of TfNSW.
- (g) If requested to do so by TfNSW, the Operator must negotiate with TfNSW in good faith to grant TfNSW the exclusive right to advertise on Contract Ferries.

### 60.4 Revenue from advertising activities

- (a) The Parties agree that TfNSW will be entitled to, and the Operator must pay to TfNSW on an annual basis:
- (i) ██████████ % (TfNSW Share) of \$ ██████████ (Guaranteed Amount); plus

- (ii) the TfNSW Share of the gross revenue derived from all advertising activities conducted by or on behalf of the Operator in accordance with this Clause 60 in excess of the Guaranteed Amount.
- (b) The amounts payable to TfNSW under this Clause 60.4 may be deducted from the Monthly Contract Payment in accordance with paragraph 4.1 of the Payment Schedule. To the extent that the Monthly Contract Payment is not sufficient to offset the payment under this Clause 60.4 the balance of the amount payable under this Clause 60.4 is a debt due and payable on demand.

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## 61. Restriction on activities

### 61.1 Assignment

- (a) Except where this Contract expressly provides otherwise, the Operator may not assign, transfer, encumber or otherwise deal with its interest under the Transaction Documents without the consent of TfNSW which may be granted or refused at TfNSW's discretion and on such conditions as TfNSW may impose.
- (b) Without limiting Clauses 1.8 and 27, TfNSW may assign or transfer its rights or obligations under the Transaction Documents to another Governmental Agency.

### 61.2 Arrangements with Related Entities

- (a) The Operator must not enter into any agreement or arrangement (whether legally enforceable or not) between it and a Related Entity (a **Related Party Arrangement**) unless the Related Party Arrangement is on arm's length commercial terms for:
  - (i) the provision of services or goods by the Related Entity to the Operator;
  - (ii) the transfer, secondment or sharing of any employee to or with the Related Entity; or
  - (iii) the lease, licence or sharing of any assets or facilities of the Related Entity by the Operator,and the following requirements have also been satisfied:
  - (iv) TfNSW and the Related Entity have entered into an agreement on terms acceptable to TfNSW in respect of the Related Party Arrangement;
  - (v) if required by TfNSW acting reasonably, the Related Entity has provided a Security Interest in favour of TfNSW in a form satisfactory to TfNSW; and
  - (vi) if required by TfNSW acting reasonably, TfNSW has obtained a parent company guarantee in respect of the obligations of the Related Entity under the agreement referred to in Clause 61.2(a)(iv).
- (b) In acting reasonably under Clause 61.2(a)(v) and 61.2(a)(vi), TfNSW must have regard to the need to ensure the Continuity of the Services on expiry or termination of this Contract or if a Termination Event or Service Default occurs.
- (c) If the Operator enters into a Related Party Arrangement in breach of Clause 61.2(a), then TfNSW may request the Operator to terminate the Related Party Arrangement and the Operator must, as soon as practicable, comply with that request.
- (d) No later than three months prior to the end of each Financial Year the Operator must provide to TfNSW a summary list of all Related Party Arrangements to which it is a party. TfNSW may seek further information about any Related Party Arrangement (including copies of any contracts) identified on the list and the Operator must provide that information within one month of TfNSW's request. If, on the basis of the information provided under this Clause 61.2(d) or otherwise available to TfNSW, TfNSW reasonably considers that any Related Party Arrangements are not on arm's length commercial terms TfNSW may provide a notice to the Operator specifying conditions to which any future Related Party Arrangements may be subject. The conditions so specified may include a condition prohibiting the Operator from entering into Related Party

Arrangements without the approval of TfNSW. The Operator must comply with any conditions specified by TfNSW under this Clause 61.2(d).

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## 62. Relationship between Operator and TfNSW

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

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## 63. Personal Property Securities Act

### 63.1 Incorporation of PPS Law terms

In this Clause 63 the following words and expressions have the same meanings given to them in the PPS Law:

- (a) registration;
- (b) secured party;
- (c) verification statement;
- (d) financing statement;
- (e) personal property; and
- (f) financing change statement.

### 63.2 General

The Operator acknowledges and agrees that:

- (a) if and to the extent that TfNSW at any time forms a belief on reasonable grounds that TfNSW is, or will become, a secured party in respect of a Security Interest arising out of or in connection with this Contract or any other Transaction Document, TfNSW or its agents, attorneys or nominees (**Relevant Party**) may at the Operator's expense take all steps that the Relevant Party considers advisable to:
  - (i) perfect, protect, record, register, amend or remove the registration of TfNSW's Security Interest in any personal property that is the subject of the Security Interest (**Relevant Personal Property**); and
  - (ii) better secure TfNSW's position in respect of the Relevant Personal Property under the PPS Law;
- (b) it will execute such other documents, deeds and other agreements including the execution of additional Security Interests, and otherwise take whatever action that the Relevant Party may reasonably require, including the giving of all notices, orders, instructions and directions whatsoever, to:
  - (i) do anything referred to in Clause 63.2(a)(i) or (ii);
  - (ii) facilitate the realisation or enforcement of such Security Interest;
  - (iii) facilitate the exercise of any of the Relevant Party's Powers under the Transaction Documents;

- (iv) ensure that any Transaction Document is stamped for the proper amount in each state and territory of Australia in which the Transaction Document is required to be stamped; and
- (v) confer on the Relevant Party security over the secured property (in whatever jurisdiction situated) equivalent or similar to the security intended to be conferred by any Transaction Document;
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Relevant Party in the Relevant Personal Property;
- (d) if TfNSW becomes a secured party in relation to the Relevant Personal Property, and to the extent that Chapter 4 of the PPS Law would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, the Operator and TfNSW agree that pursuant to section 115 of the PPS Law, sections 117, 118, 120, 121(4), 125, 129, 130, 132(3)(d), 132(4), 142 and 143 of the PPS Law do not apply in relation to those Security Interests;
- (e) other than in relation to Security Interests arising in the ordinary course of the Operator Activities and Security Interests described in section 12(3) of the PPS Law of which the Operator is the grantor (but only where the interest does not secure payment or performance of an obligation), it must immediately notify TfNSW if the Operator becomes aware of any person other than the Operator taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and
- (f) other than in relation to Security Interests arising in the ordinary course of the Operator Activities and Security Interests described in section 12(3) of the PPS Law of which the Operator is the grantor (but only where the interest does not secure payment or performance of an obligation), it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of TfNSW's interest in Relevant Personal Property.

### 63.3 Corresponding provisions

Any document required to be executed by the Operator under Clause 63.2 must be in a form and substance satisfactory to the Relevant Party.

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## 64. Conflict of Interest

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

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## 65. Proportionate Liability

### 65.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights,

obligations or liabilities of the Parties under this Contract whether those rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

- (b) Without limiting Clause 65.1(a), the rights, obligations and liabilities of TfNSW and the Operator under this Contract with respect to proportionate liability are as specified in this Contract and not otherwise, whether those rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

### 65.2 Operator not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the Operator must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by TfNSW against the Operator (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by TfNSW against the Operator (whether in contract, tort or otherwise), the Operator will indemnify TfNSW against any loss, damage, cost or expense that forms part of a claim by TfNSW against the Operator which TfNSW cannot recover from the Operator because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

### 65.3 Subcontracts

The Operator must:

- (a) in each subcontract into which it enters for the performance of the Operator Activities, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each subcontractor to include, in any further contract that it enters into with a third party for the performance of the Operator Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

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## 66. Taxes

Subject to Clause 40.4, the Operator must indemnify TfNSW against, and must pay TfNSW on demand the amount of, all Taxes (excluding Land Tax and any stamp or like duty (**Duty**), and any penalty, fine, charge or interest in respect of any Land Tax or Duty, in each case relating to the State Premises that are owned by TfNSW) incurred in connection with:

- (a) the negotiation, preparation, execution and registration of this Contract or any Transaction Document;
- (b) the transactions that this Contract or any Transaction Document contemplates; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Contract or any Transaction Document.

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## 67. Anti-bribery, anti-corruption and Modern Slavery

### 67.1 Anti-bribery and anti-corruption

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

- (a) comply with all applicable anti-bribery and anti-corruption legislation, including the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) and similar Laws of other countries that are applicable;

- (b) comply with *TfNSW's Statement of Business Ethics* (which includes a requirement to comply with the *Transport Code of Conduct* and the *NSW Government Procurement Policy Framework* in relation to conduct by suppliers);
- (c) maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
- (d) ensure that Operator's Associates and Staff comply with this clause.

### 67.2 Modern slavery compliance

- (a) The Operator warrants that, as at the date of its execution of this Contract:
  - (i) any Information it has provided to TfNSW in relation to Modern Slavery is, to the best of its knowledge, complete and accurate;
  - (ii) neither the Operator, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Operator, has been convicted of a Modern Slavery Offence; and
  - (iii) the Operator is not aware of any circumstances within its operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
- (b) The Operator:
  - (i) must not, and must take reasonable steps to ensure that any entity that it owns or controls does not, engage in activity in the nature of Modern Slavery in its operations; and
  - (ii) must otherwise comply, and take reasonable steps to ensure that any entity that it owns or controls complies, with the Modern Slavery Laws and the Related Offence Provisions, to the extent applicable.

### 67.3 Provision of information relating to modern slavery compliance

- (a) The Operator must:
  - (i) subject to any restrictions under any applicable Laws by which it is bound, provide to TfNSW any Information and other assistance, as reasonably requested by TfNSW, to enable TfNSW to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and any NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by TfNSW (including by a third party on behalf of TfNSW) or the NSW Audit Office and providing reasonable access to TfNSW's/Audit Office's auditors to interview the Operator's Staff;
  - (ii) notify TfNSW in writing as soon as it becomes aware of either or both of the following:
    - (A) a material change to any of the Information it has provided to TfNSW in relation to Modern Slavery; and
    - (B) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- (b) Without limiting Clause 67.3(a)(ii), in providing Information to TfNSW as to any actual or suspected occurrence of Modern Slavery in the Operator's operations or supply chains (or in those of any entity that it owns or controls), the Operator must provide sufficient Information:
  - (i) to identify where the occurrence has arisen in those operations or supply chains and its scale and severity;
  - (ii) to enable TfNSW to be satisfied, acting reasonably, that the Operator is taking reasonable steps to respond to that occurrence in accordance with any internal Modern Slavery policy and procedures of the Operator and any relevant code of conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board.
- (c) Promptly following execution of this Contract, the Operator must communicate to the Staff (and those of any entity that it owns or controls):



- (i) the name and contact details of a specified representative of the Operator whom Staff are invited to contact in respect of any actual or suspected occurrence of Modern Slavery in the Operator's operations and supply chains (or in those of any entity that it owns or controls); and
- (ii) where to access further information about Modern Slavery Laws, including contact details for the Anti-slavery Commissioner (anti.slavery@dpc.nsw.gov.au).
- (d) In providing any requested Information to TfNSW, the Operator must:
  - (i) make such inquiries in relation to its operations and supply chains as may be reasonably expected to inform its response;
  - (ii) communicate openly about the extent to which the Information it provides is complete and accurate (including a statement as to the limitations of the Information provided);
  - (iii) communicate and report key Information to TfNSW regarding its supply chains on request; and
  - (iv) update during the Service Term of this Contract any Information already provided by the Operator as necessary from time to time.
- (e) The Operator may provide any Information or report requested by TfNSW in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Information from another Australian public sector agency, or refer TfNSW to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by TfNSW.
- (f) The Operator must, during the Service Term of this Contract and for a period of seven (7) years thereafter:
  - (i) maintain; and
  - (ii) upon TfNSW's reasonable request, give TfNSW access to, and/or copies of, a complete set of records in the possession or control of the Operator to trace, so far as practicable, the supply chain of all goods and services provided under this Contract and to enable TfNSW to assess the Operator's compliance with this Clause 67.3.
- (g) The Operator consents to TfNSW sharing Information obtained from the Operator in respect of Modern Slavery, including records referred to in Clause 67.3(f), with any other NSW Governmental Agency or entity:
  - (i) to the extent the Operator has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or supply chains of the Operator or any entity that it owns or controls; and
  - (ii) for the purpose of identifying, addressing or remediating that actual or potential Modern Slavery.
- (h) Without limiting any other provision of this Clause 67.3, the Operator:
  - (i) agrees that the communication of such information to any Governmental Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
  - (ii) releases and indemnifies TfNSW and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

**67.4 Modern Slavery policy, due diligence processes, staff programs and training**

- (a) The Operator must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Operator and any entity that it owns or controls.
- (b) Without affecting the generality of Clause 67.4(a), if the Operator:
  - (i) submits a Modern Slavery Statement; or

- (ii) Self-Assesses as a high risk of causing or contributing to Modern Slavery in its operations or supply chains (for example because it operates within an industry, or obtains inputs from countries, reported to have a high incidence of Modern Slavery),

the Operator must, if, and to the extent, requested by TfNSW:

- (iii) develop and implement, and ensure that any entity that it owns or controls and which is exposed to similar risks develops and implements, a Modern Slavery strategy (including on how to respond to an actual or suspected case of Modern Slavery) and due diligence processes in relation to Modern Slavery in its operations and supply chains;
- (iv) provide programs and training for all Staff about Modern Slavery, including to:
- (v) ensure compliance with the Modern Slavery Laws and any Modern Slavery strategy and due diligence processes of the Operator;
- (vi) promote awareness of the risks of Modern Slavery taking place in the Operator's operations and supply chains; and
- (vii) develop capacity to assess and effectively address such risks; and
- (viii) provide TfNSW with:
  - (A) a copy of each of the strategy and processes referred to in Clause 67.4(b)(iii) and Information on their implementation; and
  - (B) Information on implemented training and programs.

#### **67.5 Subcontractors**

The Operator must take reasonable steps to ensure that all subcontracts of the whole or part of this Contract contain:

- (a) in relation to subcontracts that relate exclusively to TfNSW, provisions in relation to Modern Slavery that are substantially the same as this Clause 67; and
- (b) in all other cases, Modern Slavery provisions that are reasonably consistent with the provisions in this Clause 67.

#### **67.6 Response to Modern Slavery incident**

- (a) If the Operator becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Operator must take reasonable steps to respond to the occurrence in accordance with any applicable policies and guidance as identified in Clause 67.3(b).
- (b) Any action taken by the Operator under Clause 67.6(a) will not affect any rights of TfNSW under this Contract, including its rights under Clause 67.7.

#### **67.7 Termination on ground of Modern Slavery**

In addition to any other rights of termination, or rights to damages, that it may have under this Contract or at Law, each of the following events are Termination Events:

- (a) the Operator has failed to disclose to TfNSW, prior to execution of this Contract, that the Operator, or any entity owned or controlled by the Operator, has been convicted of a Modern Slavery Offence;
- (b) the Operator, or any entity owned or controlled by the Operator, is convicted of a Modern Slavery Offence during the Service Term of this Contract;
- (c) in TfNSW's reasonable view, the Operator has failed to notify TfNSW as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
- (d) in TfNSW's reasonable view, the Operator has failed to take reasonable steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or

- (e) in TfNSW's reasonable view, the Operator has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of this Clause 67.
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## 68. Notices

Subject to the notices referred to in Clauses 17.2(a), 17.2(b) and 18(e), which are to be submitted via the TSAR system, any notice, demand, approval, consent, direction or other communication (**Notice**) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (or, if posted to an address in another country, by registered airmail) or by hand to the address below or the address last notified by the intended recipient to the sender:
- (i) to TfNSW:  
Director, Ferry Contracts  
Email: [c/o ferries@transport.nsw.gov.au](mailto:c/o_ferries@transport.nsw.gov.au)  
PO Box K659, Haymarket, Sydney, 1240
- (ii) to the Operator:  
Attention: Company Secretary  
Manly Fast Ferry Pty Ltd  
Level 13, 151 Clarence Street, Sydney NSW 2000  
Email: [notices.cosec@mynrma.com.au](mailto:notices.cosec@mynrma.com.au)

or by email (in accordance with an email authorisation procedure agreed between the Parties);  
and

- (c) will be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of delivery by email on receipt by the sender of a receipt of transmission,  
but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at a time that is later than 4.00pm (local time) in that place it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.
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## 69. Entire agreement

This Contract and the Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and supersede all prior agreements and understandings between the Parties in connection with that subject matter.

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## 70. Amendment

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

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## 71. No waiver

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

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## 72. Further assurances

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

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## 73. Costs

- (a) Each Party will pay its own costs of negotiation, preparation, execution and (subject to express terms of this Contract and the Transaction Documents) performance of this Contract and the other Transaction Documents.
  - (b) TfNSW may require the Operator to pay the reasonable costs of any variations to this Contract or any of the Transaction Documents sought by the Operator.
  - (c) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Contract or any Transaction Document and any instrument executed under this Contract or any Transaction Document must be borne by the Operator. The Operator must indemnify TfNSW on demand against any liability for those costs and that stamp duty.
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## 74. Governing Law and jurisdiction

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

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## 75. Counterparts

- (a) The Parties acknowledge and agree that:
  - (i) a Party may sign this Contract electronically and bind itself to this Contract by executing in that manner;
  - (ii) a Party's signature (whether affixed electronically or in handwriting) may be witnessed remotely in accordance with applicable Laws; and
  - (iii) a Party's signature appearing in the Contract (whether affixed electronically or in handwriting) is their personal signature which has been duly authenticated.
- (b) This Contract may be executed in any number of counterparts, each of which:
  - (i) may be executed electronically or in handwriting; and
  - (ii) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.
- (c) Without limiting the foregoing, if the signatures on behalf of one Party are on more than one copy of this Contract, this shall be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this Contract.
- (d) If this Contract is signed electronically, the parties' intention is to print this Contract out after all parties that are signing electronically have done so, so that where a Party prints it out, the first print-out by that Party after all signatories who are signing electronically have done so will also be an executed original counterpart of this Contract.

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## 76. TfNSW actions

- (a) Unless this Contract expressly provides otherwise, all approvals, consents, decisions, waivers or exercises of discretion required (whether expressly or impliedly) or able to be given or made by TfNSW may be given, not given, made, not made, exercised, not exercised, withheld or conditioned by TfNSW in its absolute discretion and the Operator acknowledges that TfNSW and the TfNSW Representative, in granting any approval, consent or waiver, or making any decisions or exercising any discretion under or in connection with this Contract in relation to such matters, will not assume any duty of care, responsibility or liability to the Operator or any other person.
- (b) If TfNSW is required under the terms of any Transaction Document to exercise best or reasonable endeavours, the Operator acknowledges that TfNSW:
  - (i) 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;
  - (ii) cannot guarantee the relevant outcome; and
  - (iii) by undertaking to exercise best or reasonable endeavours, does not agree to:
    - (A) interfere with or influence the exercise by any person of a statutory power or discretion;
    - (B) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Contract if TfNSW regards that exercise as not in the public interest;
    - (C) develop policy or legislate by reference only or predominantly to the interests of the Contract or Transaction Document;
    - (D) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Contract; or
    - (E) act in any other way that TfNSW regards as not in the public interest.

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## 77. No Claims

Where this Contract or any Transaction Document provides that the Operator is not entitled to make any Claim against TfNSW, has no Claim against TfNSW, waives any Claim, releases TfNSW from any Claim or any similar words are used, then the Operator and each of Operator's Associates is deemed to have released and forever discharged TfNSW and each of TfNSW's Associates and the Indemnified Persons from all Claims which the Operator or any of the Operator's Associates has or at any time might have, or but for the release, might have had, in connection with the relevant subject matter and TfNSW, TfNSW's Associates and each of the Indemnified Parties have no liability to the Operator or any of the Operator's Associates whatsoever in connection with the relevant subject matter. TfNSW holds the benefit of this release on trust for TfNSW's Associates and each of the Indemnified Parties.

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## 78. Survival

Clauses 1, 4, 5.4, 6, 10.3, 15.1(j), 15.1(l), 15.2(e), 15.4(b), 23, 28, 29, 32.2, 33, 37.7, 38, 40.3, 40.5, 40.6, 40.7, 41, 42, 43, 44, 45, 46, 54, 55, 56, 56.7, 58, 59, 61, 62, 63, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 79 and this Clause 78 continue to apply after the expiration or termination of this Contract.

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## 79. Indexation

- (a) Unless otherwise expressly provided in this Contract, a reference to:
  - (i) "CPI Indexed" means that the relevant amount will be indexed for movements in CPI by multiplying the relevant amount by the CPI Annual Multiplier; and

- (ii) "WPI Indexed" means that the relevant amount will be indexed for movements in WPI by multiplying the relevant amount by the WPI Annual Multiplier.
  - (b) Any changes to indexes will be calculated in accordance with the Payment Schedule.
- 

## **80. No Merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by a Transaction Document. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

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## **81. Severability**

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

## Signing page

EXECUTED as a deed

---

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

H Collins

Signature of authorised delegate

L Ward

Signature of witness

Howard Collins

Name of authorised delegate (block letters)

Liz Ward

Name of witness (block letters)

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

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

---

Executed by Manly Fast Ferry Pty Limited ABN 90 135 008 070 in accordance with Section 127 of the *Corporations Act 2001*

Mary-Ellen Payne

Signature of director

R I Ford

Signature of director/company secretary  
(Please delete as applicable)

Mary-Ellen Payne

Name of director (print)

Richard Ian Ford

Name of director/company secretary (print)

*By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.*

## Attachment A – Contract details

Item	Clause	Term	Details		
Item 1	2(a)	TfNSW Representative	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> Director Ferry Contracts <div style="background-color: black; width: 250px; height: 15px; margin-top: 5px;"></div>		
Item 2	2(b)	Operator Representative	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> Chief Operating Officer <div style="background-color: black; width: 200px; height: 15px; margin-top: 5px;"></div>		
Item 3	35.2(b)	Key Personnel Details and Roles	Role	Name	Time for Commencement
			Managing Director		23 December 2022
			GM Asset Management		23 December 2022
			GM SHEQ		23 December 2022
			GM Operations		23 December 2022
			GM Customer Service		23 December 2022
			GM People		23 December 2022
			Dedicated Transition Manager		23 December 2022
Item 4	35.2(b)	Key Personnel – Duration of Appointment	Three years from Time for Commencement specified in Item 3		
Item 5	43.1(a)(i)	Public liability insurance	\$ <div style="background-color: black; width: 80px; height: 15px; display: inline-block;"></div> per incident		
Item 6	43.1(a)(x)	Third party property damage insurance for motor vehicles	\$ <div style="background-color: black; width: 80px; height: 15px; display: inline-block;"></div> per incident		



Item	Clause	Term	Details
<b>Item 7</b>	6.1	General Performance Bond Amount	[REDACTED]
<b>Item 8</b>	43.1(a)(vii)	Property in Care, Custody and Control (PCCC) insurance	\$ [REDACTED] per incident

# Schedule 1 – Services

## 1. Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract; and
- (c) a reference to an item is a reference to an item in this Schedule.

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

**Holiday or Special Event Period** means each summer school holiday or special event period as set out in the Service Level Schedule or otherwise approved by TfNSW under Clause 18.

**KPI Management** means the activities associated with monitoring and reporting on the Key Performance Indicators and providing the information required to be reported to TfNSW.

**National Terrorism Threat Advisory System** means the scale of five levels published by the Australian Government on the likelihood of an act of terrorism occurring in Australia.

**Service Planning Guidelines** means the service planning guidelines prepared by TfNSW to develop transport service plans in metropolitan areas (as amended from time to time) being at the date of this Contract the document titled *Integrated Service Planning Guidelines – Sydney Metropolitan Area – Final* dated December 2013.

**Standard Working Timetable (SWTT)** means the base scheduled timetable approved by TfNSW of route timetable, stopping patterns, days of operation, route path and accessibility.

**TfNSW Systems and Equipment** or **TSE** has the meaning given in Clause 1.1.

The following table sets out the meaning of the column headings in the roles and responsibilities tables set out in this Schedule. 'T' in any of the columns means that TfNSW is the relevant Party. 'O' in any of the columns means that the Operator is the relevant Party.

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

## 2. Services Overview

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

- (a) provide reliable, safe and clean Services to customers;
- (b) develop Services to efficiently meet the Contract Objectives and the requirements of Clause 16;

- (c) operate the Services to the approved Timetables;
- (d) ensure customers are provided with accurate Timetable information and kept informed of Service changes and Incidents;
- (e) provide passenger information to deliver a seamless passenger service;
- (f) ensure Staff receive appropriate training and are competent and capable of providing excellent Services;
- (g) recommend Service improvements annually;
- (h) improve the provision of Services to customers; and
- (i) provide support for TfNSW Systems and Equipment required to improve and upgrade the Services.

### 3. Contract Service Levels and Timetables

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

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.1	Update Service Planning Guidelines.	T	T	O		O	As required throughout the Service Term
3.2	Develop Contract Service Levels.	T	T	O		O	As required throughout the Service Term
3.3	Develop Timetables to efficiently and effectively meet the requirements of the Contract Service Levels.	O	O	T	T	T	As required throughout the Service Term
3.4	Address navigational safety requirements, in particular in congested parts of the network, when developing Timetables.	O	O	T	T	T	As required throughout the Service Term
3.5	Address environmental requirements, including wash impacts when developing Timetables.	O	O	T	T	T	As required throughout the Service Term
3.6	Ensure that timetabling provides passengers with effective connectivity to other ferry services and to services on adjacent modes so as to deliver seamless Services.	O	O	T	T	T	Continuing throughout the Service Term
3.7	Consult with passengers, the broader community, relevant Governmental Agencies (including local councils, Safety Authorities, Port Authority of New South Wales), local business groups, education and health providers, relevant tourism bodies and other key stakeholders (including Sydney Harbour Federation Trust and the developer, operator or maintainer of Circular Quay or Manly wharf from time to time) in relation to planned service changes, special events service satisfaction levels, service initiatives and improvement opportunities.	O	O	T	T	T	As required throughout the Service Term and at least twice each Contract Year

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.8	Carry out Service reviews at least annually to develop Service improvement plans and submit any recommended variations to TfNSW for consideration.	O	O	T	T	T	Annually at a minimum
3.9	Provide evidence through cost benefit analysis in support of changes in Contract Service Levels or Timetables, including the impact of changes in improving the customer experience. The analysis requires provision of the detail and outcome of the consultation process to demonstrate community support for the changes.	O	O		T	T	For each Timetable change throughout the Service Term
3.10	Maintain a prioritised list of Contract Service Level or Timetable changes that are considered worthwhile implementing and which are compliant with the Service Planning Guidelines and the requirements of the Contract.	O	O		T	T	Continuing throughout the Service Term
3.11	For each change in Contract Service Levels or Timetables, provide confirmation of compliance with the Service Planning Guidelines. Any change that is not compliant with the Service Planning Guidelines must be expressly advised detailing how the non-compliance will provide an improved customer experience / service outcome.	O	O		T	T	For each Timetable change throughout the Service Term
3.12	Approve Contract Service Levels and Timetables.	T	T	O	O	O	As required throughout the Service Term
3.13	Engage with special event organisers and participate in NSW Government Planning committees for major events to plan for Holiday or Special Event Periods	O	O	T	T	T	As required throughout the Service Term
3.14	Prepare a provisional timetable for each Holiday or Special Event Period.	O	O	T	T	T	At least four weeks prior to the start of the Holiday or Special Event Period
3.15	Prepare a final timetable for each Holiday or Special Event Period based on the start and finish dates and times ascertained in accordance with Item 3.14.	O	O	T	T	T	At least 21 days prior to the start of the Holiday or Special Event Period

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.16	Operate the Services in accordance with the approved Contract Service Levels and approved Timetables (including Timetables for Holiday or Special Event Periods).	O	O		T	T	Continuing throughout the Service Term
3.17	Maintain high levels of passenger and Staff security on the Services and monitor and manage passenger and Staff safety, including responding to the activation of duress alarms in accordance with response time standards in the KPI Schedule.	O	O		T	T	Continuing throughout the Service Term
3.18	Deploy customer service personnel to provide a regular presence for customer engagement and receipt of feedback, support special events and mitigate the customer impact of disruptions.	O	O		T	T	Continuing throughout the Service Term
3.19	Declare an emergency situation and specify amended and/or additional ferry services to contribute to the integrity of the broader transport network and/or public safety.	T	T	O	O	O	Continuing throughout the Service Term
3.20	Amend the Services and/or provide additional Services at short notice as directed by TfNSW in response to an emergency situation.  An emergency situation may include major disruptions to the broader transport network, or any situation where public safety is at risk.  Emergency ferry services may be required to operate to and from wharves that are not usually part of the network used by the Operator under this Contract.	O	O	T	T	T	Continuing throughout the Service Term
3.21	Procure ferry replacement bus services when it is not possible to operate the Service using vessels that comply with the requirements of this Contract (unless otherwise agreed by TfNSW) where: <ul style="list-style-type: none"> <li>in the case of planned disruptions (including tidal events), 1 or more regular services cannot operate; or</li> </ul>	O	O		T	T	Subject to Clause 9.9

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<ul style="list-style-type: none"> <li>in the case of unplanned disruptions, 3 or more regular services cannot operate.</li> </ul> <p>The replacement bus service must operate at least as frequently as the usual Service at that time, and with a sufficient number of buses to cater for the expected demand.</p> <p>If Opal-enabled buses are available, these must be used in preference to buses that are not Opal-enabled to allow for correct adjustment of the fare and real time tracking.</p> <p>Timetable data must be provided for all ferry replacement services.</p> <p>Replacement buses must stop only at stops registered in the TfNSW Transit Stop Management (TSM) database.</p>						

#### 4. Publication, display and exchange of Public Transport Information

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

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
4.1	Provide Timetables for the Services, including during Holiday or Special Event Periods, to TfNSW for approval.	O	O		T	T	Prior to the introduction of a new or revised Timetable
4.2	Approve all Timetables for the Services, including for Holiday or Special Event Periods, prior to publication.	T	T	O	O	O	Continuing throughout the Service Term
4.3	<p>If a Timetable (including a Timetable for a Holiday or Special Event Period) is approved by TfNSW, provide:</p> <p>a) TfNSW with the updated Timetable in electronic format (as reasonably required by TfNSW); and</p> <p>b) the public with the updated printed Timetable.</p>	O	O			T	Ensure Timetables are provided to TfNSW at least 30 days, and on display to customers from 14 days (or as otherwise agreed with TfNSW), prior to the

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
							implementation of the new Timetable
4.4	If a Timetable (including a Timetable for a Holiday or Special Event Period) is approved, provide Standard Working Timetable (SWTT) data to TfNSW on approved timetables to support TfNSW data quality assurance and data change management.	O	O			T	Ensure data is provided at least 30 days prior to the implementation date each time a change has been made to the underlying Standard Working Timetable (SWTT)
4.5	If TfNSW approves an amendment to a Timetable (including a Timetable for a Holiday or Special Event Period), provide notice to the public of any material amendments to the Timetable by: <ul style="list-style-type: none"> <li>a) notifying TfNSW of relevant details;</li> <li>b) displaying signs prominently;</li> <li>c) displaying advertisements in the local newspapers covering the affected Route;</li> <li>d) displaying signs/posters at Wharves; and</li> <li>e) other appropriate means.</li> </ul>	O	O			T	Ensure details are provided at least 30 days out to TfNSW and on display to customers from 14 days (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable
4.6	If requested by a member of the public, provide complete and up-to-date information about the accessibility of the Services.	O	O			T	Within a reasonable timeframe
4.7	Ensure accurate Timetables (including Timetables for Holiday or Special Event Periods) are displayed at all locations on or near the Routes where timetables are on display.	O	O			T	Continuing throughout the Service Term
4.8	Ensure that Timetables (including Timetables for Holiday or Special Event Periods) are in the format specified by TfNSW.	O	O			T	Continuing throughout the Service Term



	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
4.9	Ensure Timetables (including Timetables for Holiday or Special Event Periods) indicate all Services which are accessible.	O	O			T	Continuing throughout the Service Term
4.10	Ensure Timetables (including Timetables for Holiday or Special Event Periods) comply with TfNSW requirements.	O	O			T	Continuing throughout the Service Term
4.11	Provide the destination information in data submitted to TfNSW in Timetables (including Timetables for Holiday or Special Event Periods) and in any other relevant location, to TfNSW for approval.	O	O		T	T	Prior to publication of the destination information
4.12	Approve destination information for all Services, to ensure it complies with current TfNSW standards or guidelines.	T	T	O	O	O	Continuing throughout the Service Term
4.13	Display the destination clearly on the front and side of all Ferries in service, excluding any Ferries without front destination signage.	O	O		T	T	Continuing throughout the Service Term
4.14	Ensure all Timetables (including Timetables for Holiday or Special Event Periods) provide times at Wharves and do not reflect operational timing points that are not Wharves.	O	O		T	T	Continuing throughout the Service Term
4.15	Provide timetable data in the format specified by TfNSW, which may be changed by TfNSW from time to time, including sufficient context for customers to fully plan their journey (e.g. wharf side of departure).	O	O		T	T	Continuing throughout the Service Term (if notice is given by TfNSW under Clause 17.2(f) of the Contract)
4.16	Provide a real-time data feed to TfNSW in the format specified by TfNSW that includes: a) Ferry locations; b) predicted arrival times at all subsequent Wharves on the Trip;	O	O		T	T	At an interval frequency of at least 15 seconds

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<p>c) information on Services and status of Services and Wharves (including crowding and capacity);</p> <p>d) real-time running status information; and</p> <p>e) service alert messaging to support customer information and transport operations, including changes to the side of the Wharf that the Service is operating from.</p>						
4.17	<p>Provide a static timetable data feed to TfNSW in the format specified by TfNSW that provides upcoming Timetable changes due to a TfNSW approved change, Holidays or Special Event Periods, projects (for example Wharf upgrades) and maintenance works.</p>	O	O		T	T	<p>Ensure a static timetable data feed is provided at least 21 days prior to Timetable change (or as otherwise agreed with TfNSW) prior to the implementation of the new or revised Timetable</p>
4.18	<p>Electronically exchange data and information with TfNSW in accordance with integration and quality guidelines and specifications issued by TfNSW from time to time.</p> <p>The exchanged data and information, having regard to its purpose and use, must conform to the appropriate specifications, as set out below:</p> <ul style="list-style-type: none"> <li>the specifications available from <a href="https://opendata.transport.nsw.gov.au/documentation">https://opendata.transport.nsw.gov.au/documentation</a></li> <li>the General Transit Feed Specification (GTFS); and</li> <li>GTFS-realtime (GTFR-R); and</li> </ul>	O	O		T	T	<p>Continuing throughout the Service Term</p>

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<ul style="list-style-type: none"> <li>the specifications available from <a href="https://www.transport.nsw.gov.au/industry/asset-standards-authority/reference-material">https://www.transport.nsw.gov.au/industry/asset-standards-authority/reference-material</a>;</li> <li>SIRI 2.0 - TfNSW Implementation Specification - Using SIRI at TfNSW (PDF, 7.41 MB)</li> <li>SIRI XML snippets (ZIP, 69.68 MB); and</li> <li>TfNSW TransXchange Implementation Specification (PDF, 3.21MB).</li> </ul>						
4.19	For Services provided for Holiday or Special Event Periods, ensure accurate data is provided to TfNSW in TfNSW's required format.	O	O		T	T	Ensure data is provided at least 21 days prior to the relevant event (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable
4.20	When notified by TfNSW, fix any errors in the information provided on the Operator website or any data provided to TfNSW.	O	O		T	T	Within 24 hours of the notification from TfNSW
4.21	Provide free Wi-Fi to passengers on all Contract Ferries.	O	O	T	T	T	Continuing throughout the Service Term, unless TfNSW directs that the Wi-Fi service is to be discontinued.

## 5. Customer Information, marketing and branding

The following table identifies the general roles and responsibilities associated with marketing, branding and providing information to customers of the Services:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.1	Inform passengers on a Service of any relevant Service delays.	O	O			T	Continuing throughout the Service Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.2	When an Incident occurs, categorise the Incident using the Incident Classification and Management Table in Attachment 1 of the KPI Schedule.	O	O	T	T	T	Continuing throughout the Service Term
5.3	When an Incident occurs, inform TfNSW of delays to any Service and work with TfNSW as required from time to time to minimise the impact of delays on customers.	O	O	T	T	T	Continuing throughout the Service Term
5.4	Provide interim status updates to TfNSW as required in Attachment 1 of KPI Schedule (Incident Classification and Management).	O	O	T	T	T	Continuing throughout the Service Term
5.5	Provide, operate and maintain a customer information system on board all Contract Ferries and at all Wharves that: <ul style="list-style-type: none"> <li>a) provides real-time information about the Service, interchanges and any other transport services specified by TfNSW;</li> <li>b) is compliant with all TfNSW wayfinding and branding standards, guidelines or policies; and</li> <li>c) Complies with the <i>Customer Information Systems for Public Transport Buildings and Conveyances Standard</i> (and its successors); and</li> <li>d) Complies with any other applicable Laws or standards.</li> </ul>	O	O	T	T	T	Continuing throughout the Service Term
5.6	Adhere to and support the effective implementation of the TfNSW Channel Integration Specification, or any successor document.	O	O	T	T	T	Continuing throughout the Service Term

## 6. Signage and barriers

The following table identifies the general roles and responsibilities associated with signage and barriers at wharves:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.1	Install and maintain TfNSW-supplied customer information materials on Contract Ferries and ferry passenger Wharves including maps, timetables, posters and information notices	O	O	T	T	T	Continuing throughout the Service Term
6.2	Monitor and attend ticketing barriers at Wharves at all times when in use	O	O		T	T	Subject to Clause 9.9
6.3	Oversee, monitor and manage passenger flows through ticketing barriers at Wharves at all times when in use	O	O		T	T	Subject to Clause 9.9
6.4	Report all incidents involving passenger accidents or injuries at ticketing barriers to TfNSW as soon as practicable and in any event within 2 Business Days after their occurrence or, in cases where ambulance or other medical attendance is required, immediately	O	O		T	T	Continuing throughout the Service Term

## 7. Service Desk

The following table identifies the Service Desk roles and responsibilities:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.1	Use the call centre provided as part of Transportnsw.info Website or another call centre as nominated by TfNSW from time to time for the provision of call centre information services.	O	O			T	Continuing throughout the Service Term
7.2	Manage all complaints and feedback recorded in the TfNSW Customer Feedback System in relation to the Operator Activities from receipt to closure.	O	O			T	Continuing throughout the Service Term
7.3	Log and classify all complaints and feedback in the TfNSW Customer Feedback System in accordance with the TfNSW Customer Complaints Policy.	O	O			T	Continuing throughout the Service Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	This includes complaints addressed to and/or received directly by the Operator with regard to the Service, as well as complaints received via TfNSW channels.						
7.4	Assign a priority to all complaints and feedback received by the Service Desk to reflect the severity of the issue in accordance with the TfNSW Customer Complaints Policy or as otherwise directed by TfNSW.  All complaints, regardless of priority, must be assigned a complaint manager.	O	O			T	Continuing throughout the Service Term
7.5	Collaborate and cooperate with the Transportnsw.info Website and the TfNSW Customer Feedback System, as required, to manage complaints and feedback received by the Service Desk and resolve Incidents.	O	O			T	Continuing throughout the Service Term
7.6	Refer any calls received by the Service Desk which do not relate to the Services to the TfNSW Customer Feedback System.	O	O			T	Within 2 hours of receipt of call
7.7	Immediately notify TfNSW of Incidents and any other unplanned maintenance issues.	O	O			T	Immediately after the Incident or unplanned maintenance issue
7.8	Report all Service Desk calls received that remain unresolved for more than 30 Business Days, at the end of each month to TfNSW.	O	O			T	Monthly throughout the Service Term
7.9	Maintain relevant records pertaining to all complaints and feedback in relation to the Services recorded on the TfNSW Customer Feedback System, including details of the closure of all calls.  Clear notes on all interactions with the customer in relation to their case must be entered into the TfNSW Customer Feedback System.	O	O			T	Continuing throughout the Service Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.10	Perform trend analysis on complaints and feedback in relation to the Services recorded on the TfNSW Customer Feedback System.	O	O			T	Monthly throughout the Service Term
7.11	Identify any problems of a systemic nature revealed by the trend analysis and when identified, inform TfNSW and implement processes to improve performance.	O	O			T	As soon as practicable
7.12	Ensure the Service Desk is staffed with personnel who are suitably skilled and trained to deliver support services and to interface with the TfNSW Customer Feedback System.	O	O			T	Continuing throughout the Service Term
7.13	Manage lost property in accordance with any TfNSW lost property policy and integrate with any lost property process and, when it becomes available, use the system provided by TfNSW (including, for example, by obtaining software licences).	O	O		T	T	Continuing throughout the Service Term

## 8. Staff training and knowledge transfer

The following table identifies training and knowledge transfer roles and responsibilities.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.1	Provide all customer facing Staff with passenger service training, in particular: a) training with regard to requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds; and b) training with regard to the management of confrontation, difficult passengers and personal safety.	O	O			T	Before the individual commences providing Service

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.2	<p>Provide training to all relevant Staff regarding the following, as applicable to the Services for which the relevant Staff are engaged to work:</p> <ul style="list-style-type: none"> <li>a) the Tickets, Full Fares, Concession Fares and SSTs;</li> <li>b) the Routes and Wharves;</li> <li>c) the Timetables; and</li> <li>d) relevant interchange information for each Wharf on the Service, for example, "Bus services to North Head are available from Manly wharf".</li> </ul>	O	O			T	Before the individual commences working on the relevant Services
8.3	<p>Provide training to all Staff regarding compliance with:</p> <ul style="list-style-type: none"> <li>a) Environmental Law;</li> <li>b) work health and safety and WHS Law; and</li> <li>c) emergency and incident management and response procedures and protocols, including protocols for passenger emergency evacuation and operation of fire safety equipment.</li> </ul>	O	O			T	Continuing throughout the Service Term
8.4	Provide additional training to Staff to meet the requirements of items 8.1, 8.2 and 8.3 above, if required when a change in the Services is implemented.	O	O			T	Before the implementation of the change in the Services
8.5	Develop, document and maintain training materials to provide to Staff to support the training referred to at items 8.1, 8.2 and 8.3 above.	O	O			T	As required throughout the Service Term
8.6	Provide all staff with customer service training in the three months after the Service Commencement Date, and on an annual basis.	O	O			T	Within three months after the Service Commencement and Continuing throughout the Service Term



## 9. TfNSW Systems and Equipment

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
9.1	Develop operational procedures, guidelines and training requirements for TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations, as required.	T	T		O		As required by TfNSW throughout the Service Term
9.2	Comply with any reasonable operational procedures, guidelines and training requirements for TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations issued by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the Service Term
9.3	Ensure TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations are in operational condition.	O	O	T	T	T	Continuing throughout the Service Term
9.4	Protect TfNSW Systems and Equipment associated with the provision of the Services and related contractual obligations and use reasonable endeavours to ensure TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations are not mishandled or mistreated.	O	O	T	T	T	Continuing throughout the Service Term
9.5	Check TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations for faults, malfunctions security breaches or viruses regularly.	O	O	T	T	T	Continuing throughout the Service Term
9.6	Report any fault, malfunction, security breach or virus in TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations to TfNSW promptly.	O	O	T	T	T	Within 24 hours of the fault, malfunction, security breach or virus being identified
9.7	Replace TSE Rotable Assets associated with TfNSW Systems and Equipment as required.	O	O	T	T	T	Continuing throughout the Service Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
9.8	Ensure all spare TSE Rotable Assets associated with TfNSW Systems and Equipment are kept in a secure location.	O	O	T	T	T	Continuing throughout the Service Term
9.9	Maintain a record of all TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations, which includes information regarding the location and movement of all TfNSW Systems and Equipment associated with the provision of Services and related contractual obligations (including TSE Rotable Assets).	O	O	T	T	T	Continuing throughout the Service Term

## 10. Collection Services

### (a) Operator Ticket Income

The Operator must take the following steps to securely collect and store Operator Ticket Income:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.1	Sell and accurately record all Operator Ticket Income.	O	O			T	Continuing throughout the Service Term
10.2	Ensure amounts reported to TfNSW equal actual Operator Ticket Income.	O	O			T	Continuing throughout the Service Term
10.3	Ensure bank deposits equal actual receipts.	O	O			T	Continuing throughout the Service Term
10.4	Securely manage all cash at all times.	O	O			T	Continuing throughout the Service Term
10.5	Deduct the amount of all Operator Ticket Income from the Base Service Fee each month to calculate the Monthly Contract Payment in accordance with paragraph 4.1 of the Payment Schedule.	O	O			T	Monthly throughout the Service Term

(b) Ticketing System Income

In relation to Ticketing System Income collected on the Operator's behalf through the TfNSW Systems and Equipment or TransportConnect, the Operator:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.6	Irrevocably authorises TfNSW or its nominee to hold Ticketing System Income collected on the Operator's behalf through the TfNSW Systems and Equipment or TransportConnectOpalPay	O	O			T	Continuing throughout the Service Term
10.7	Irrevocably authorises TfNSW to remit the Ticketing System Income to the Operator	O	O			T	Continuing throughout the Service Term
10.8	Must deduct the Ticketing System Income from the Base Service Fee each month to calculate the Monthly Contract Payment in accordance with paragraph 4.1 of the Payment Schedule.	O	O			T	Continuing throughout the Service Term

(c) Revenue Collection

The Operator is empowered and incentivised to maximise the number of Fare paying passengers and minimise Fare loss:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.8	Deploy Operator's Authorised Officers to minimise revenue loss.	O	O	T	T	T	At the Operator's discretion
10.9	Issue penalty notices.	O	O	T	T	T	Continuing throughout the Service Term if Operator's Authorised Officers are engaged
10.10	Issue fines and commence proceedings to collect unpaid fines.	T	T	O			Continuing throughout the Service Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.11	Attend court hearings as a witness in relation to proceedings concerning unpaid fines.	O	O	T	T	T	Continuing throughout the Service Term
10.12	Develop and implement Authorised Officer training programs which are consistent with Law and with similar programs for the training of Authorised Officers in other parts of New South Wales and which address revenue protection issues as notified by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the term if Operator's Authorised Officers are engaged
10.13	Use reasonable endeavours to ensure that sufficiently trained personnel who are submitted to be authorised as an Authorised Officer are granted such authorisation.	T	T	O	O	O	Continuing throughout the term if the Operator submits sufficiently trained personnel to be authorised as an Authorised Officer

## 11. KPI Management

The following table identifies KPI Management roles and responsibilities.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
11.1	Define and document Key Performance Indicator and reporting requirements.	T	T	T	O	O	Before the Commencement Date and as amended from time to time in accordance with the KPI Schedule

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
11.2	Coordinate Key Performance Indicator monitoring and reporting with TfNSW and third-party providers as required.	O	O		T	T	Continuing throughout the Service Term
11.3	Measure, analyse, and provide reports on performance against Key Performance Indicators and other information as requested.	O	O			T	As stated in the KPI Schedule and the Governance and Reporting Schedule
11.4	Track KPI performance for individual Incidents and escalating KPI Default.	O	O			T	As stated in the KPI Schedule
11.5	Develop and document Performance Improvement Initiatives where required under the KPI Schedule.	O	O	T	T	T	As required throughout the Service Term
11.6	Implement and diligently pursue Performance Improvement Initiatives developed under the KPI Schedule.	O	O	T	T	T	As required throughout the Service Term
11.7	Report to TfNSW on Key Performance Indicator Performance Improvement Initiative results.	O	O	T	T	T	As required throughout the Service Term
11.8	Collaborate with TfNSW Authorised Officers.	O	O	T	T	T	As required throughout the Service Term
11.9	Implement a mystery traveller program. The mystery traveller will ride the services on a random day each week, recording service performance and areas for improvement under customer service and cleanliness. The results of the mystery traveller program must be provided to TfNSW under the Governance and Reporting Schedule.	O	O		T	T	Continuing throughout the Service Term

## 12. Account Management

The Operator must possess contemporary account management, service and reporting capabilities including, but not limited to, the roles and responsibilities detailed in the following table:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
12.1	Continuously monitor trends in all Services through independent research.	O	O			T	Continuing throughout the Service Term
12.2	Document and report to TfNSW on products and services to improve Services and customer outcomes.	O	O			T	Continuing throughout the Service Term
12.3	Act in accordance with and support the governance process, as set out in the Governance and Reporting Schedule.	O	O			T	Continuing throughout the Service Term
12.4	Provide accurate, robust and proven billing systems and methodology.	O	O			T	Continuing throughout the Service Term
12.5	Engage and maintain a qualified and experienced account management team.	O	O			T	Continuing throughout the Service Term

## 13. Government Subsidised Travel Schemes, including SSTS

The Operator must ensure that persons eligible for Government Subsidised Travel Schemes (including SSTS) have access to concessional and free transport, as required by TfNSW, and outlined below:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
13.1	Manage travel entitlements conferred by Government Subsidised Travel Schemes.	T	T	O	O	O	Continuing throughout the Service Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
13.2	Comply with the requirements of any guidelines regarding carrying school children issued by TfNSW from time to time.	O	O		T	T	Continuing throughout the Service Term
13.8	In addition to validation of proof of entitlement instruments, ensure that Tickets issued to instrument holders are also validated.	O	O		T	T	Continuing throughout the Service Term

#### 14. Licensed Area Management

The obligations set out in this table do not limit the obligations of the Operator under Annexure 5 of the Asset Schedule.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
14.1	Perform day to day maintenance of the Licensed Areas.	O	O			T	Continuing throughout the Service Term
14.2	Inspect, weed, trim, mow, water, dewater, fertilise, repair, replace, plant all landscaped areas of the Licensed Areas.	O	O			T	Continuing throughout the Service Term
14.3	Clean third party infrastructure such as TfNSW Systems and Equipment in the Licensed Areas.	O	O			T	Continuing throughout the Service Term
14.4	Report major maintenance issues at the Licensed Areas to TfNSW or as otherwise required by the Contract.	O	O		T	T	Continuing throughout the Service Term
14.5	If facilities for Staff are provided as part of the Licensed Areas, clean the facilities.	O	O		T	T	Continuing throughout the Service Term

## 15. Security Management

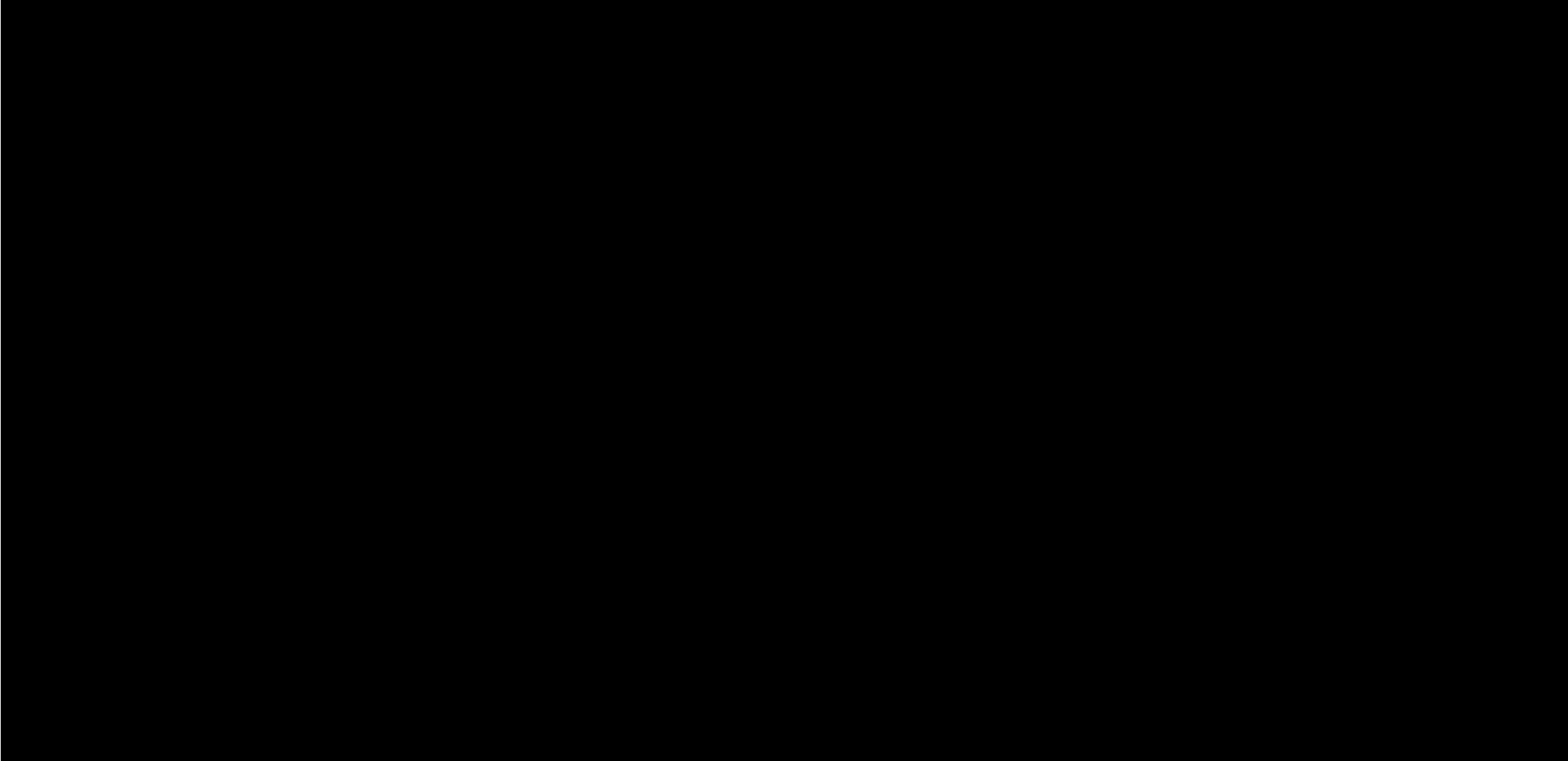
The Operator must ensure that security risk management requirements in relation to the delivery of transport services, arising from the National Terrorism Threat Advisory System and general security arrangements, are implemented and participate with TfNSW on ensuring that potential security threats are identified and managed appropriately:

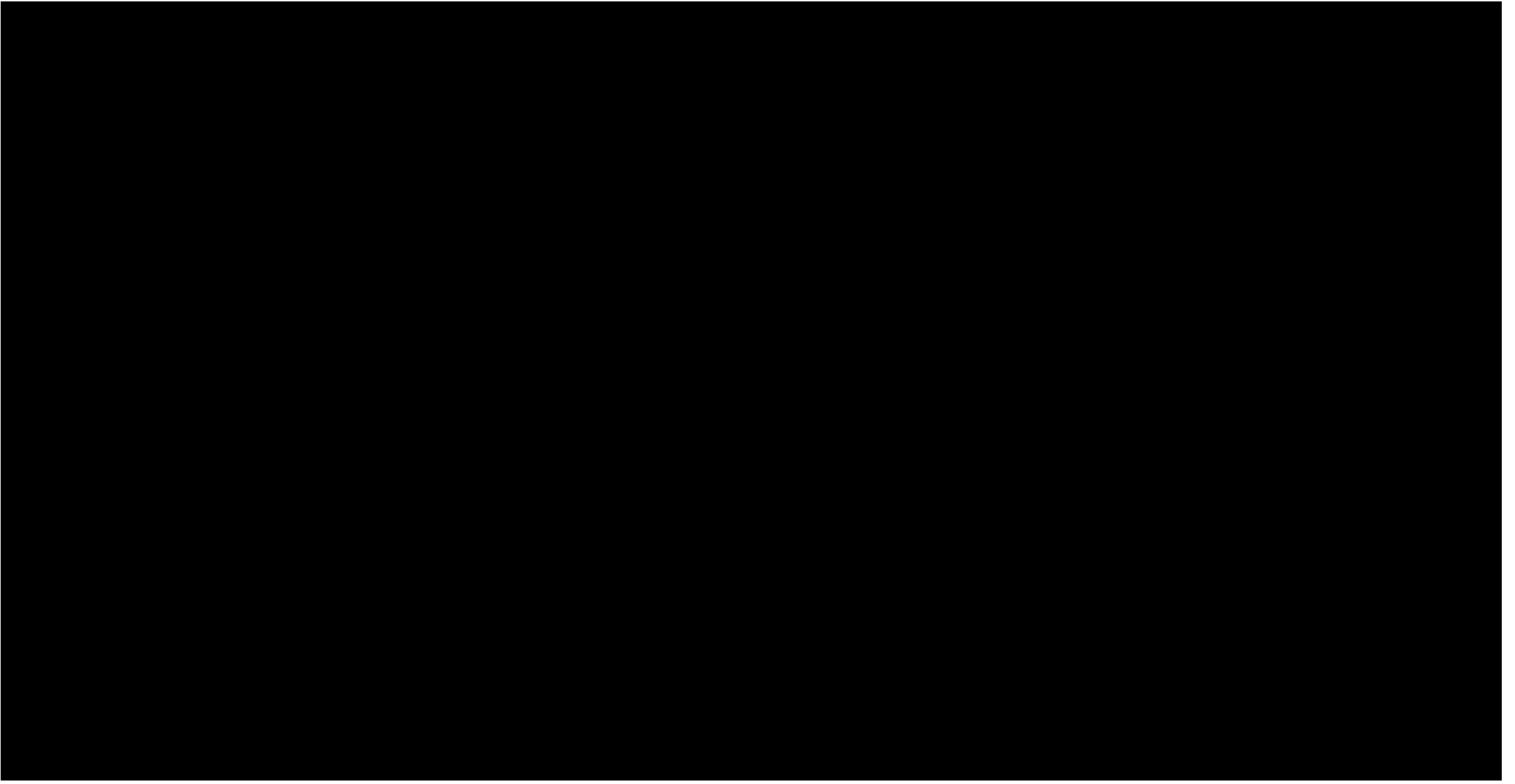
	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
15.1	Carry out regular risk assessments of terrorism related threats to the Operator Activities.	O	O	T	T	T	Continuing throughout the Service Term
15.2	Implement security measures as identified in the Operator's risk assessment.	O	O	T	T	T	Continuing throughout the Service Term
15.3	Develop and implement security measures that align to the Operator's risk assessment and the relevant level identified under the National Terrorism Advisory System.	O	O	T	T	T	Continuing throughout the Service Term
15.4	Implement procedures to notify NSW Police and TfNSW of the following incidents: a) assault; b) sexual offences; c) robbery; d) harassment, threatening behaviour and private nuisance; e) other offences against the person; f) theft; g) arson; h) malicious damage to property; i) drug offences; j) prohibited and regulated weapons offences; k) disorderly conduct,	O	O	T	T	T	Continuing throughout the Service Term



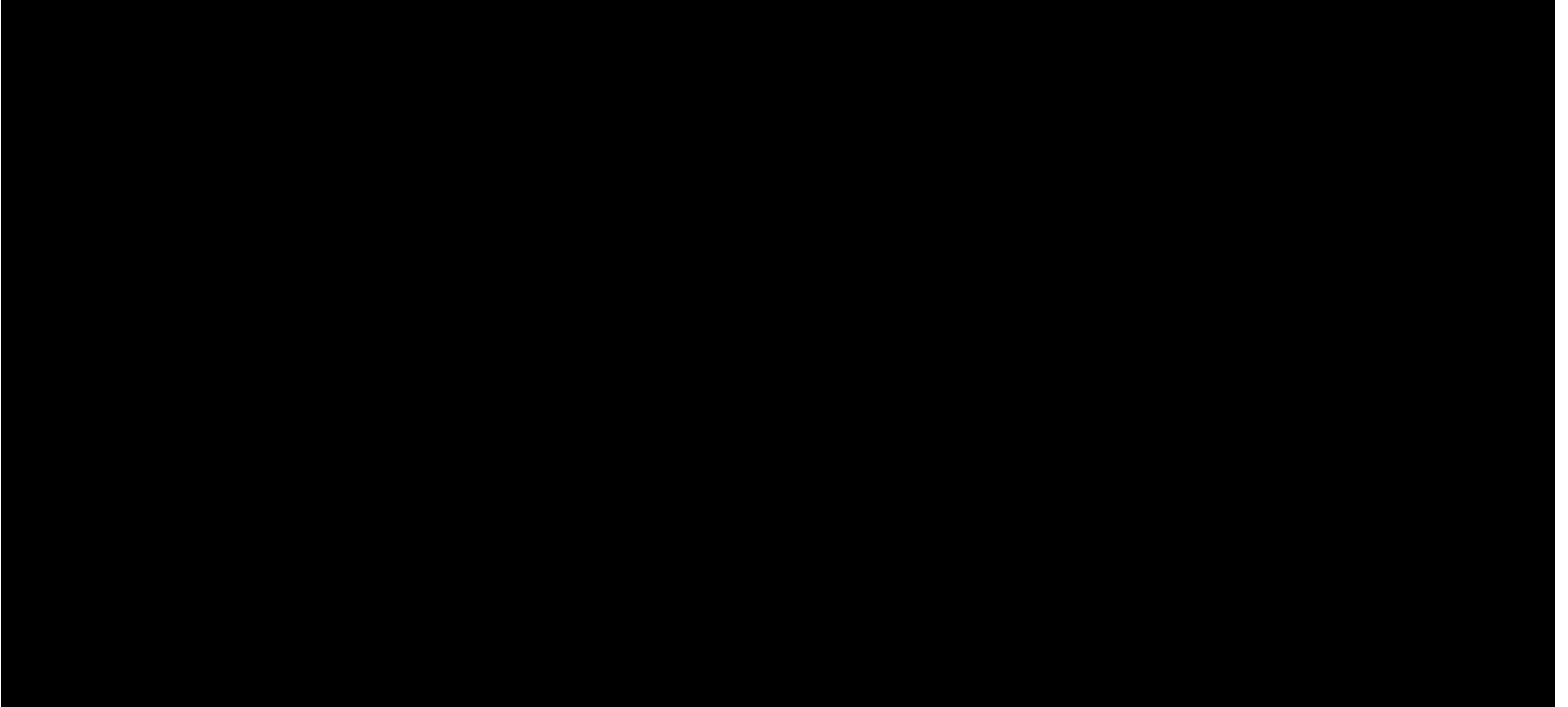
	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	<p>each as defined in the 'definitions and explanations' section of the NSW Bureau of Crime Statistics and Research website, and:</p> <p>l) offences against transport services;</p> <p>m) other street offences;</p> <p>n) terrorism offences;</p> <p>o) offences under Part 5 Divisions 2 and 3 and Part 6 (as it relates to ticketing offences) of the PT(General) Regulation.</p>						
15.5	<p>Provide CCTV on the Contract Ferries which complies with the <i>Public Transport Closed Circuit Television (CCTV) Functional Requirements Standard</i>, and any subsequent standards. Recordings must be made available on request as a digital file extract to any Transport cluster agency, the NSW Police, Federal security agencies or other Governmental Agency at no charge.</p>	O	O	T	T	T	Continuing throughout the Service Term
15.6	<p>Provide help points on multi-deck Contract Ferries that have a passenger capacity of 300 customers or more. The help points must comply with the Help Points Standard.</p>	O	O	T	T	T	Continuing throughout the Service Term
15.7	<p>Integrate TfNSW Life Ring monitoring alarms (where fitted) into the CCTV and Help Point system to allow a timely response to the use of a Life Ring in an emergency.</p>	O	O	T	T	T	Continuing throughout the Service Term

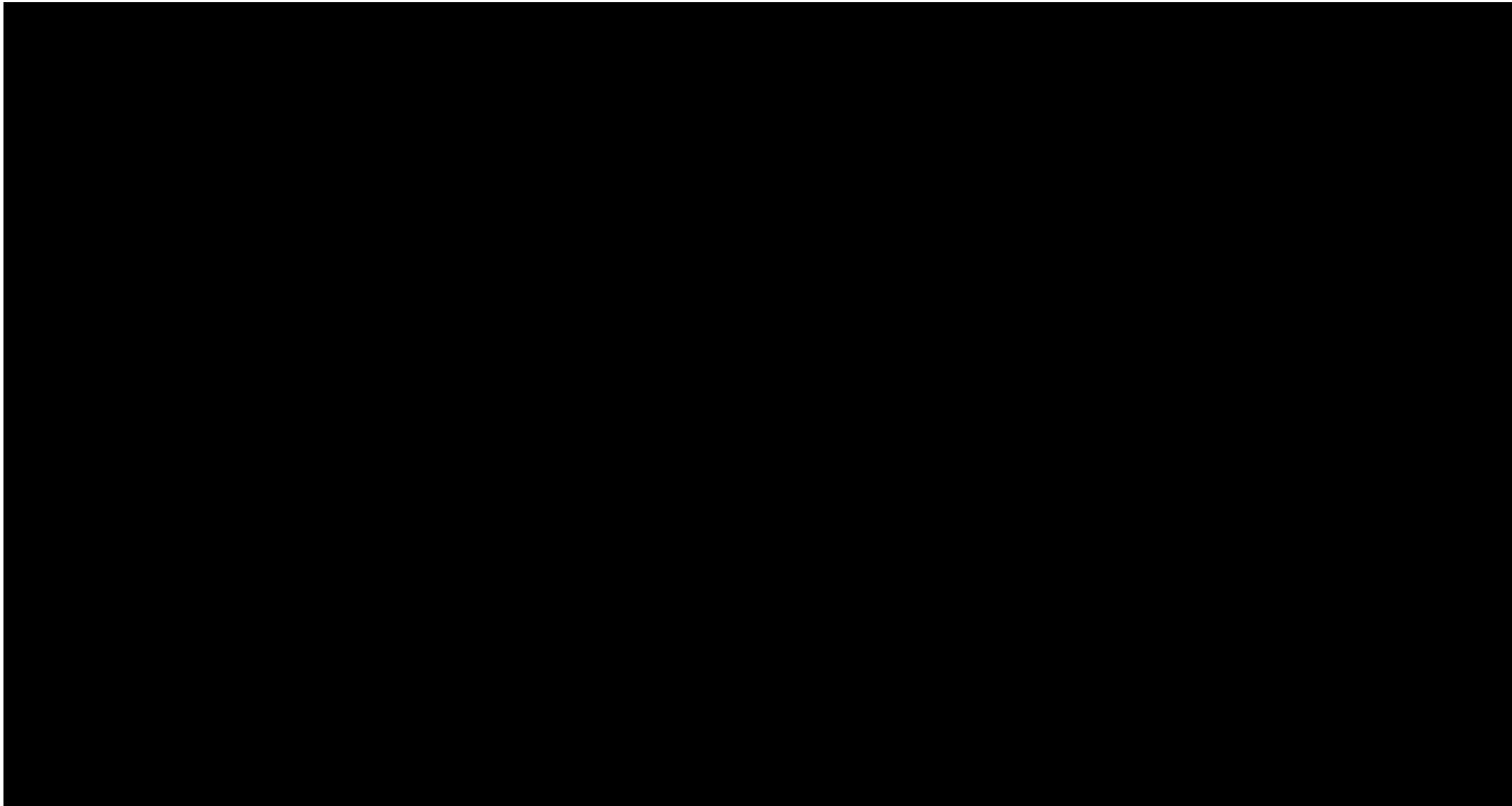
## Schedule 2 – Service Levels

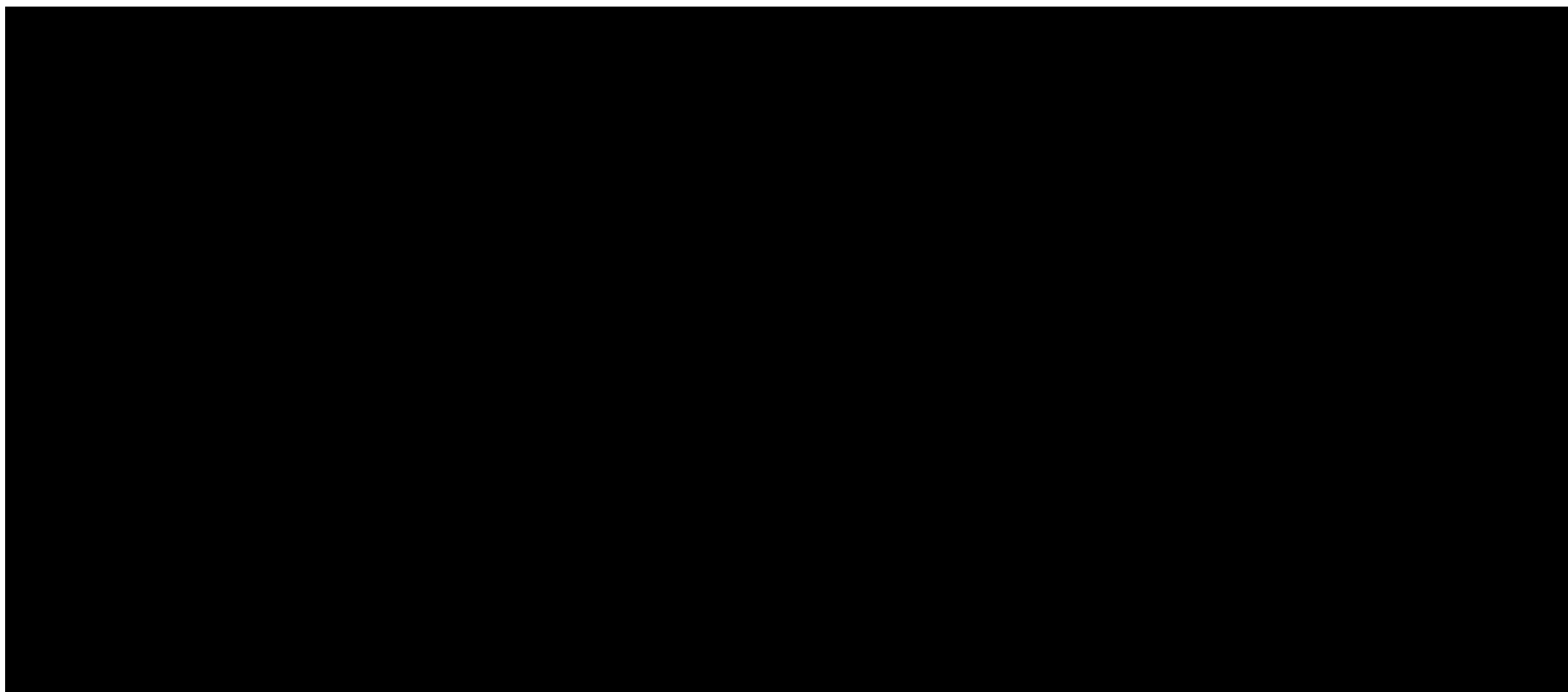




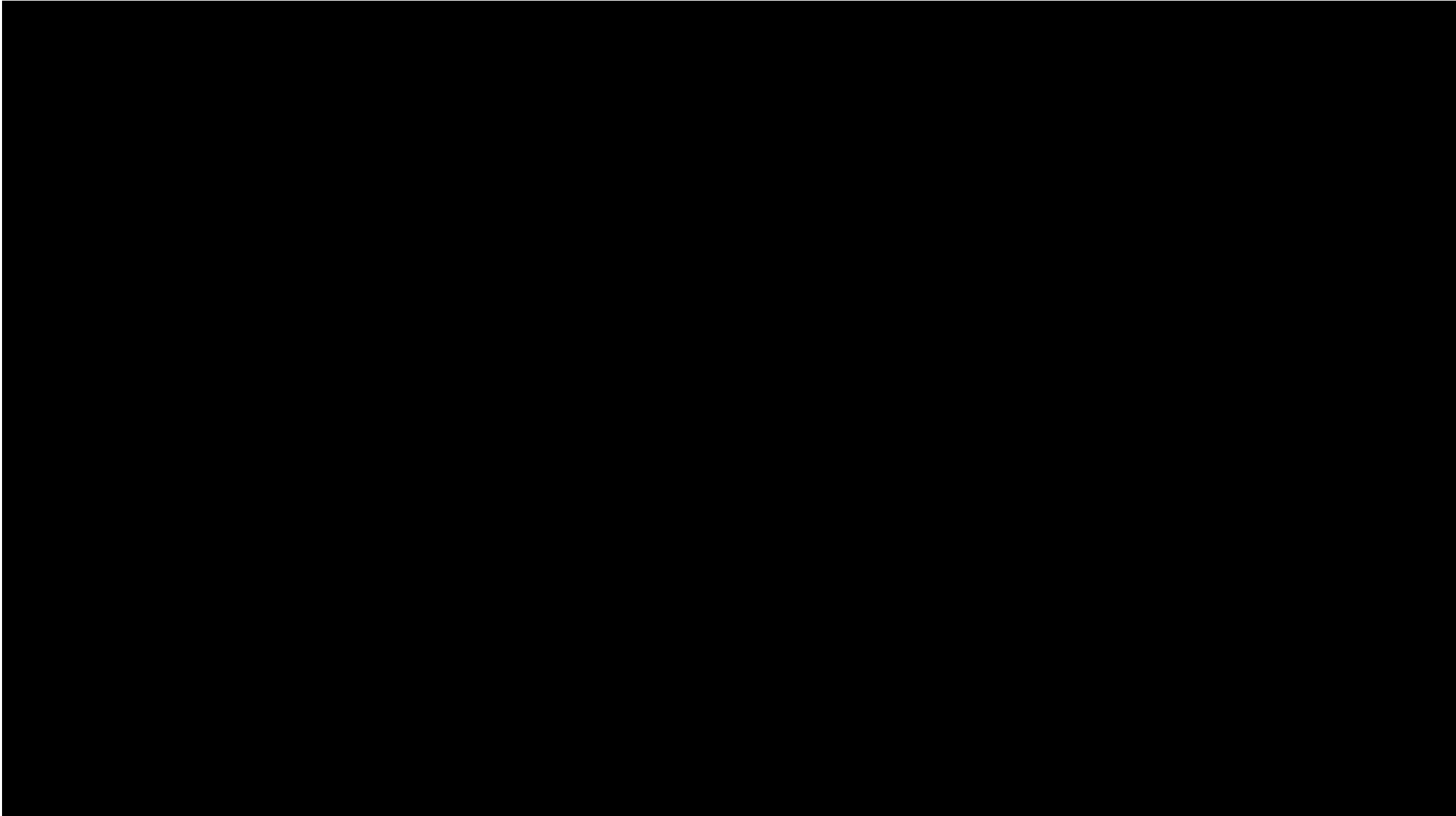
### 3. Modified Services (Stage 2)

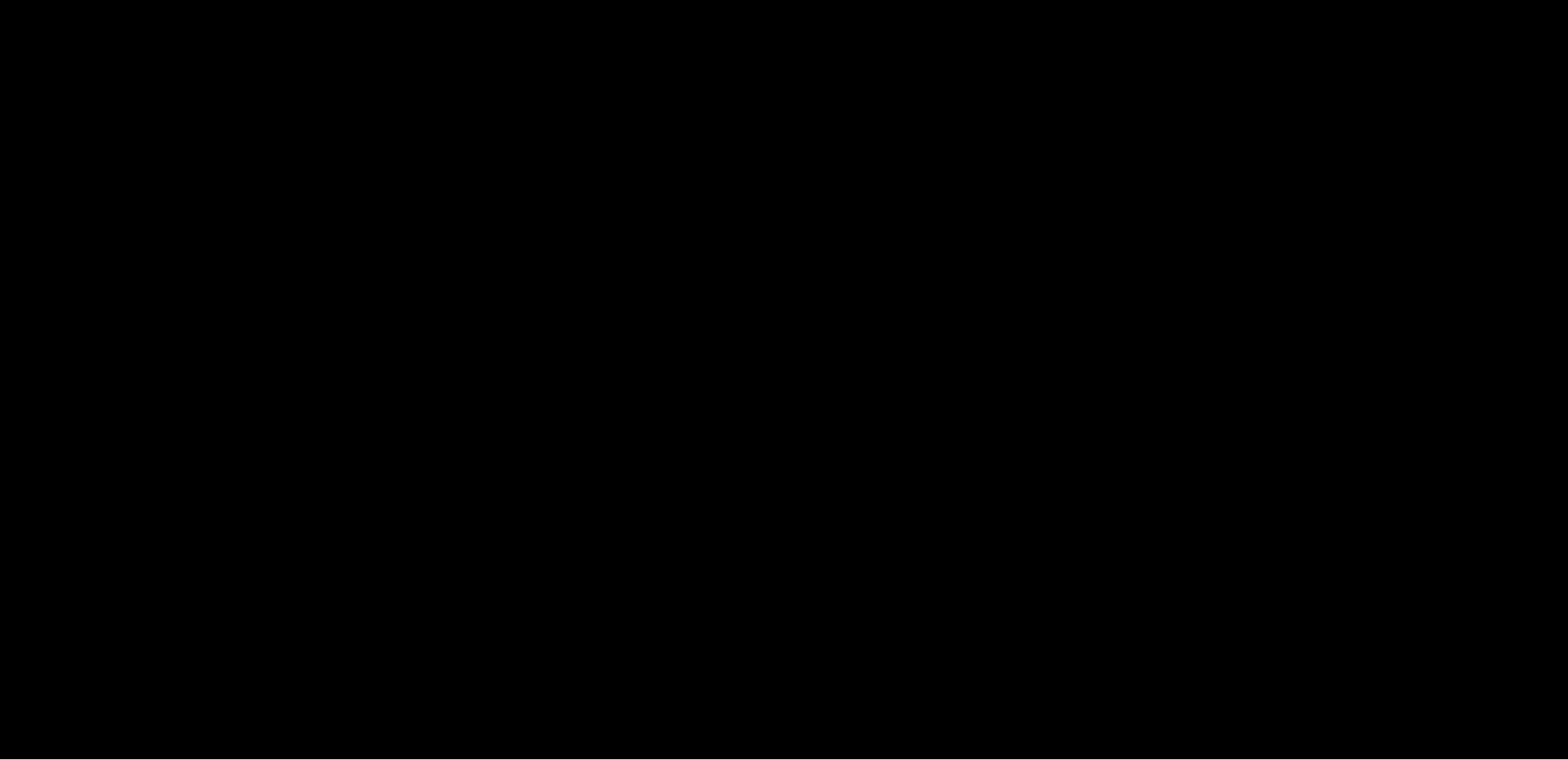






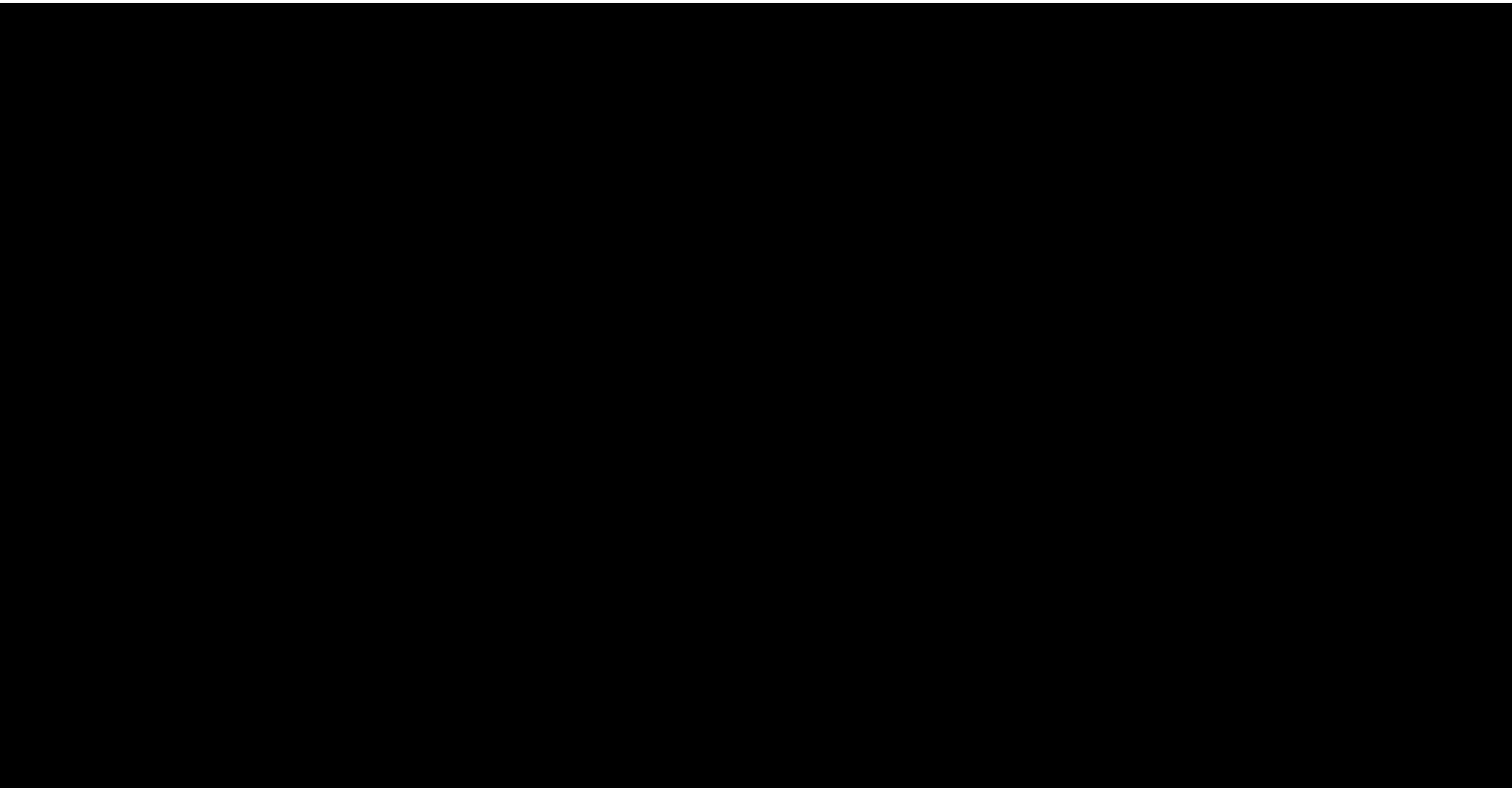
Timetables are set out in Annexure E.

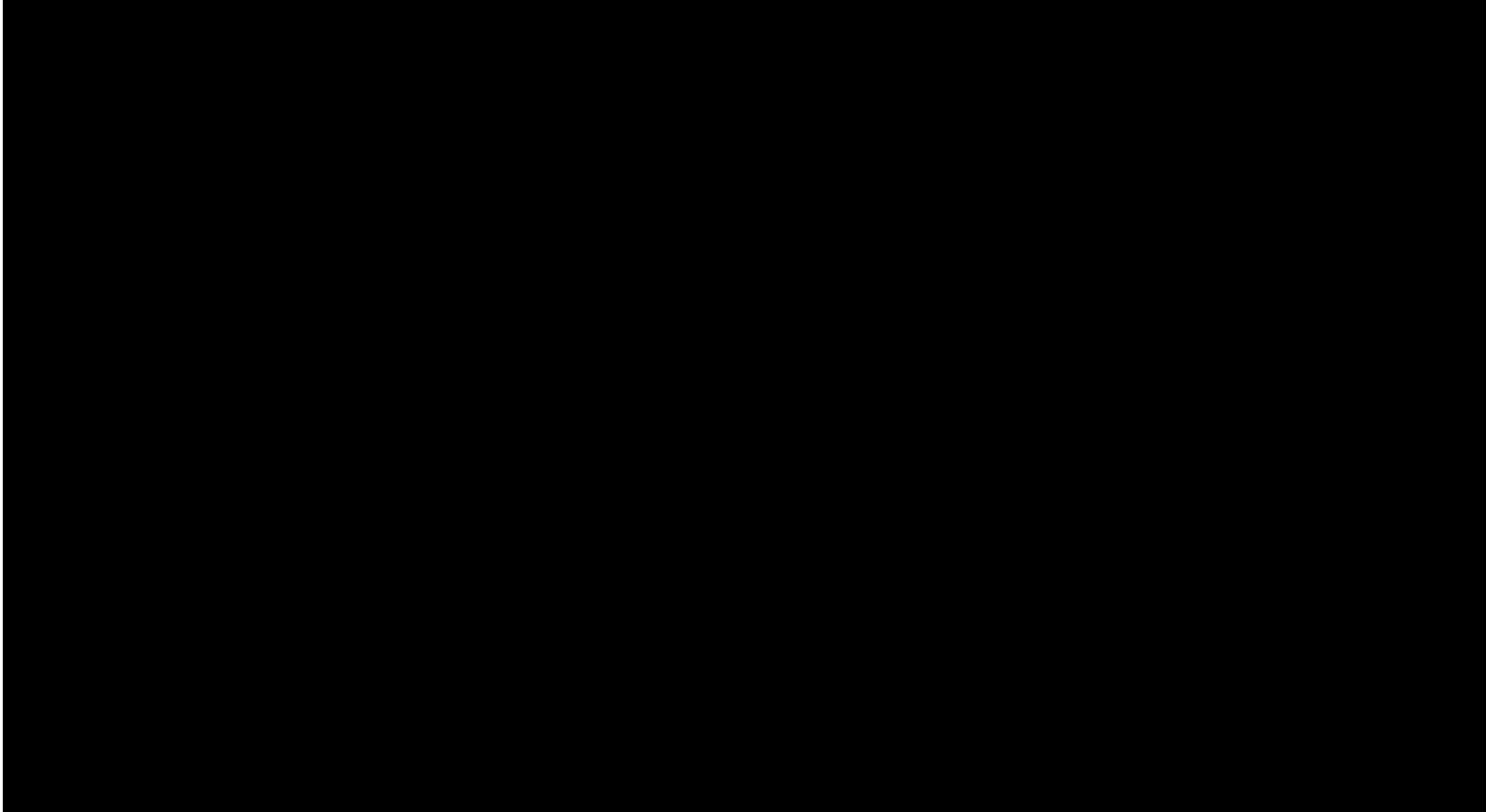




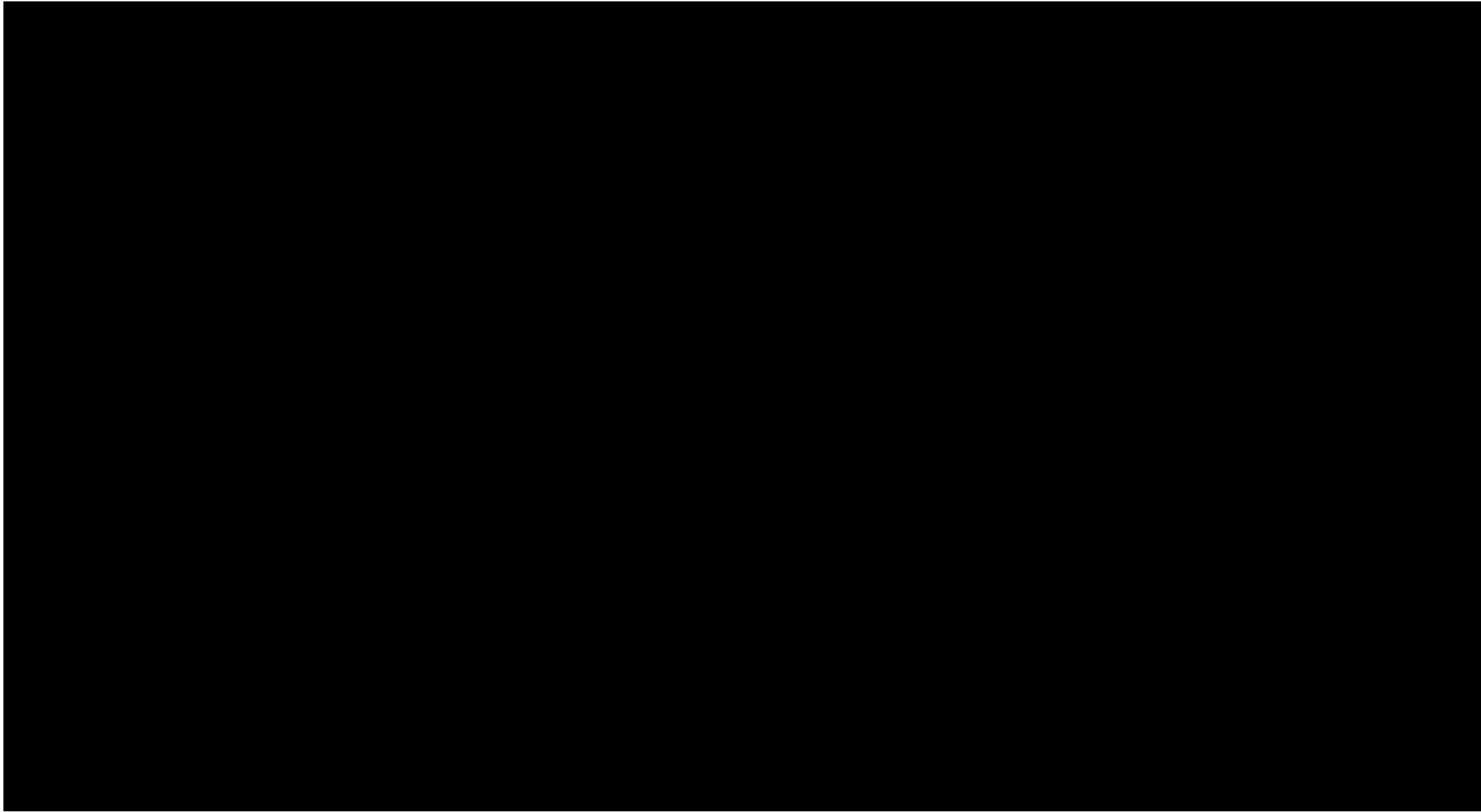


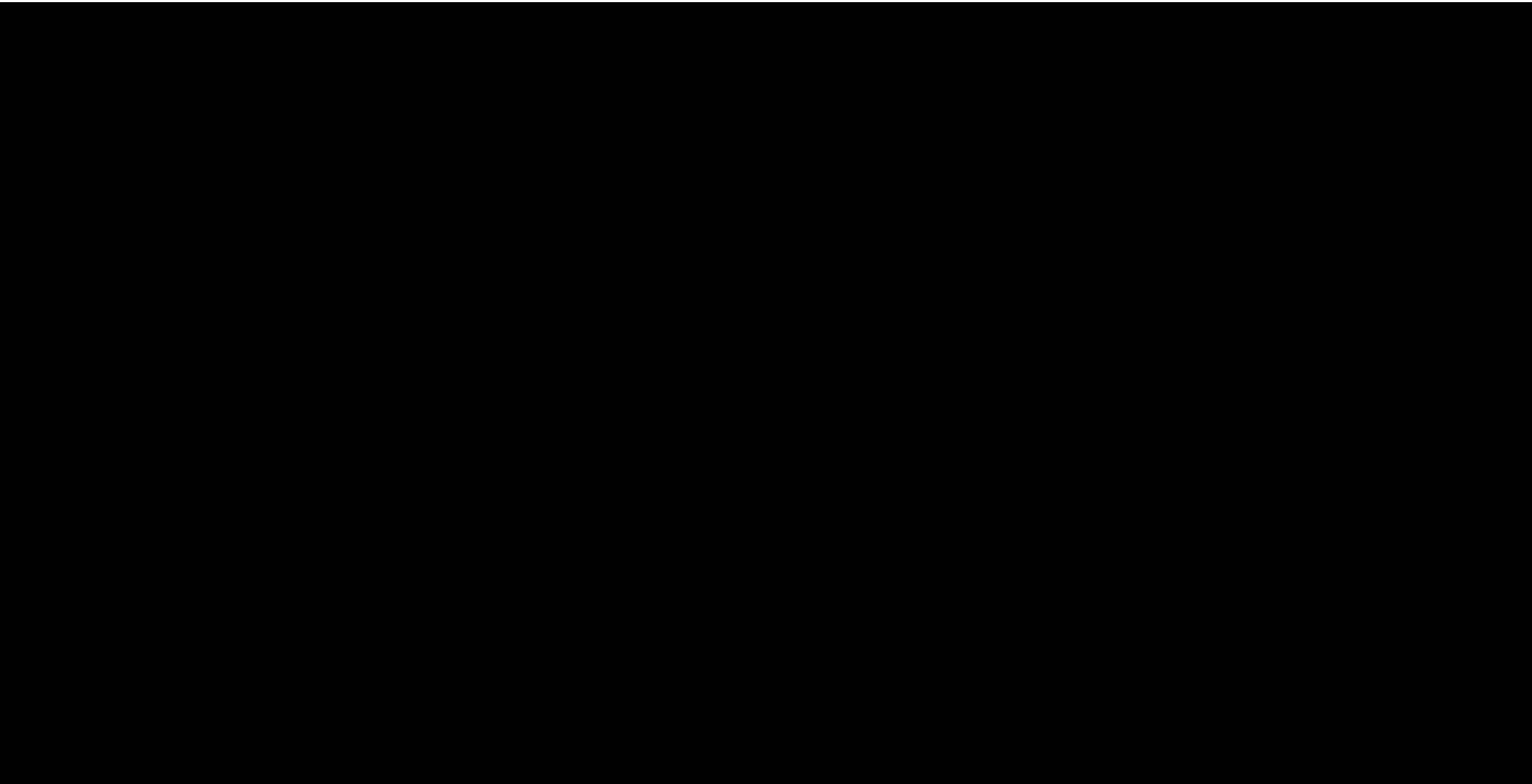


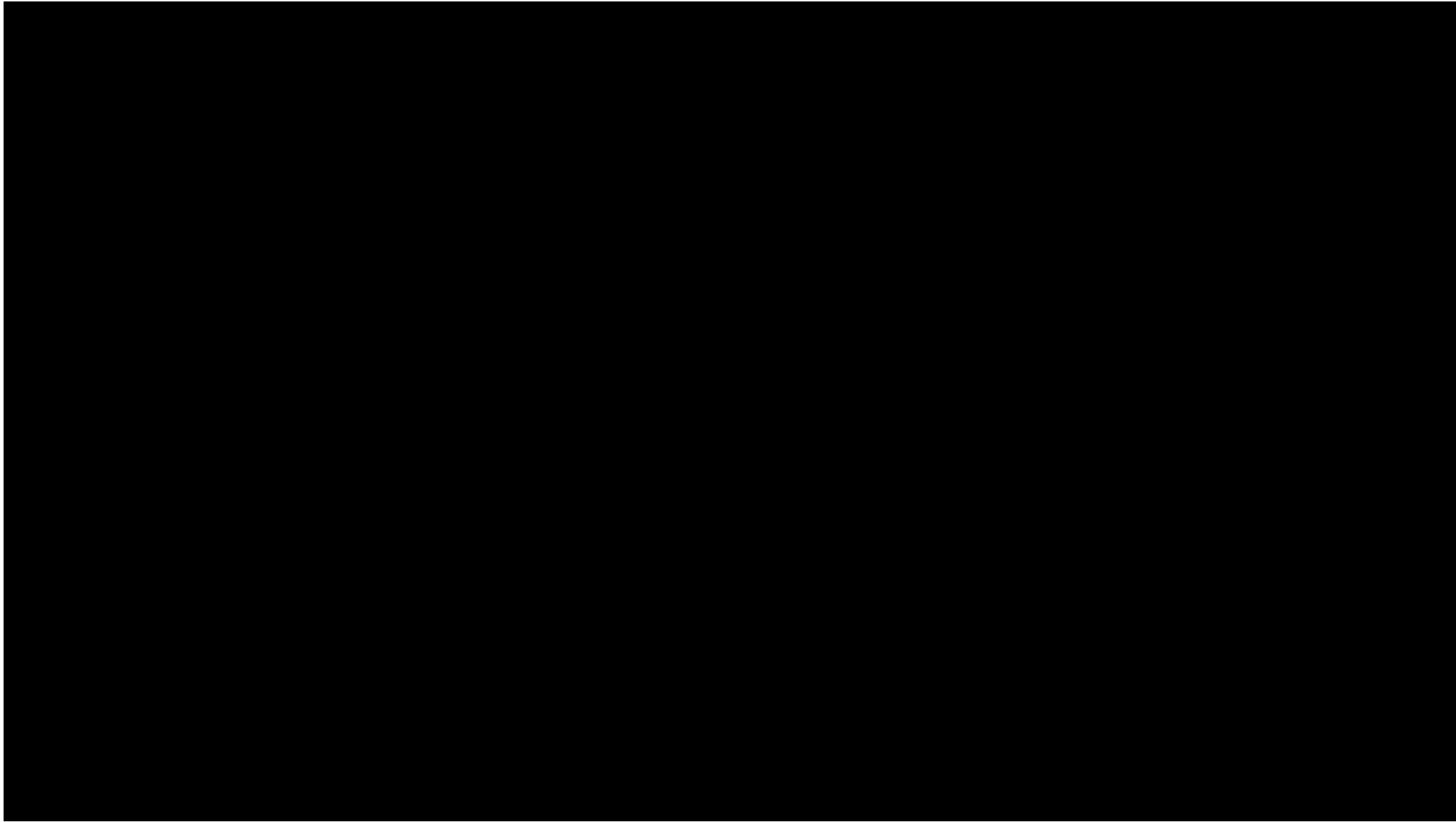
















## Schedule 3 – Payment Schedule

### 1. Application and defined terms

(a) In this Schedule 3:

- (i) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (ii) a reference to a clause is a reference to a clause in the Contract; and
- (iii) a reference to a paragraph is a reference to a paragraph in this Schedule.

(b) In this Schedule, the following words have the following meanings:

**Advertising Revenue Adjustment** means the adjustment determined in accordance with paragraph 9.

**Base Service Fee** has the meaning given in paragraph 5.

**Consumer Price Index** or **CPI** means the Consumer Price Index for Sydney published quarterly by the Australian Bureau of Statistics (ABS Consumer Price Index (CPI), Cat 6401.0, - quarter, Index Numbers; All groups CPI; Sydney; Series ID: A2325806K) or, if paragraph 3.2 applies, the index determined in accordance with that paragraph.

**CPI Annual Multiplier** means, for the current Financial Year:

- (A) the CPI for the Quarter ending 31 March of the previous financial year divided by:
- (B) the CPI for the Quarter ended 31 March 2022.

**Ferry Layover** means a designated place where a Contract Ferry is moored overnight or between Service peaks.

**KPI Abatement** has the meaning given in paragraph 6.

**Monthly Contract Payment** means the sum to be paid by TfNSW to the Operator for the Services provided in any month as set out in paragraph 4.

**Operator Ticket Income Adjustment** means the adjustment determined in accordance with paragraph 7.

**Service Ferry Hrs** means any hour that a Contract Ferry of a particular class and day type must be absent from a Ferry Layover in order to efficiently provide the Services including time for that Contract Ferry to travel the most direct practicable route between the finishing point of that Service and the starting point of the next Service or between a Ferry Layover and a starting or finishing point of that Service, excluding time allowed for unpaid meal breaks or non travelling idle time.

**Ticketing System Income Adjustment** means the adjustment determined in accordance with paragraph 8.

**Unit Rate** means the rates contained in Annexure A, Table 3 to this Schedule.

**Wage Price Index** or **WPI** means the Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses (New South Wales, All Industries, Public and Private) published quarterly by the Australian Bureau of Statistics (ABS Quarterly Wage Price Index; Cat 6345.0, Table 5b, Total hourly rates of pay excluding bonuses; Private and Public; Transport, postal and warehousing A2603469T) or, if paragraph 3.2 applies, the index determined in accordance with that paragraph.

**WPI Annual Multiplier** means, for the current Financial Year:

- (A) the WPI for the Quarter ending 31 March of the previous financial year divided by:
- (B) the WPI for the Quarter ended 31 March 2022.

## 2. General requirements

- (a) The Operator must, within five Business Days after the last day of each month during the Service Term, provide a Tax Invoice to TfNSW, in a form approved by TfNSW from time to time, which identifies:
- (i) the amount of the Monthly Contract Payment for the previous month (if any);
  - (ii) any price adjustments applicable to the previous month, determined in accordance with Clause 18 or Clause 52;
  - (iii) KPI Credits for the previous month (if any) calculated in that month in accordance with Schedule 4;
  - (iv) any Operator Ticket Income or Ticketing System Income received by, or remitted to, the Operator in the previous month (or that has been received or remitted in earlier months but not yet offset under this Schedule 3) in accordance with Item 10 of Schedule 1;
  - (v) any amount payable to TfNSW with respect to advertising revenue under Clause 60.4 in the previous month (or that was payable in earlier months but not yet offset under this Schedule 3);
  - (vi) any GST Amount payable under Clause 40.4 in respect of an amount referred to in paragraph 2(a)(i).
- (b) Each Tax Invoice issued by the Operator must be accompanied by:
- (i) supporting evidence showing that the amounts identified in paragraph 2(a) are correctly calculated in accordance with this Contract and this Schedule 3 and details identifying and clarifying changes from the prior month's invoice line item charges; and
  - (ii) the information required to be provided under Clause 33.
- For the avoidance of doubt, TfNSW is under no obligation to make any payment under this Contract unless and until the Operator has complied with the requirements of this paragraph 2.
- (c) The Tax Invoice must be addressed to the TfNSW officer nominated by TfNSW in writing from time to time.
- (d) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.

## 3. Indexation

### 3.1 Indexation

All amounts to be "indexed" under this Schedule are indexed by multiplying the relevant amount by the CPI Annual Multiplier or the WPI Annual Multiplier (as applicable).

### 3.2 Changes to Indexation

In this Contract, a reference to an index includes a reference to any replacement index or renamed index performing substantially the same function as the named index and a reference to a Governmental Agency or organisation responsible for publishing an index includes a reference to any Governmental Agency or other body performing substantially the same function in relation to the index.

## 4. Monthly Contract Payment

### 4.1 Calculation of the Monthly Contract Payment

- (a) Subject to paragraphs 4.1(b) and 4.3, the Monthly Contract Payment for Month n (**MCP<sub>n</sub>**) is determined as follows:

$$MCP_n = BSF_n - OTIA_n - TSIA_n - AR_n + NFI$$

where:

- BSFn = the Base Service Fee for Month n, calculated in accordance with paragraph 5;
- OTIA<sub>n</sub> = the Operator Ticket Income Adjustment for Month n, calculated in accordance with paragraph 7;
- TSIA<sub>n</sub> = the Ticketing System Income Adjustment for Month n, calculated in accordance with paragraph 8;
- AR<sub>n</sub> = the Advertising Revenue Adjustment for Month n, calculated in accordance with paragraph 9; and
- NFI = the Net Financial Impact for Month n, calculated in accordance with Schedule 7 (which may be a negative or positive amount), provided that the Parties have agreed that the Operator will be compensated or TfNSW will be paid for Net Financial Impact for an NFI Event as part of the Monthly Contract Payment in accordance with paragraph 4.1 of Schedule 7.

- (b) Where MCP<sub>n</sub> is a negative number, the Monthly Contract Payment payable in respect of the relevant Month n will be \$nil.

#### 4.2 First and last Month n of the Contract

- (a) Where Month n does not commence on the first day of a Calendar Month or complete on the last day of a Calendar Month, the Monthly Contract Payment will be adjusted proportionately having regard to the number of days in Month n that this Contract is in place (**Relevant Days**) as a percentage of the total number of days in the full Calendar Month.
- (b) If the number of Relevant Days is less than 7 Business Days then the Monthly Contract Payment for Month n will be paid as part of the next Monthly Contract Payment (unless Month n is the last month of the Service Term).

#### 4.3 Transition Period

During the Transition Period, the Monthly Contract Payment will be calculated as follows.

- (a) the Base Services Fee (BSF) (excluding GST) for each month will be calculated in accordance with the following formula:



- (b) the Monthly Contract Payment will be calculated in accordance with the following formula:

$$MCP = BSF - FR$$

where:

- MCP is the Monthly Contract Payment for the previous month
- BSF is the Base Services Fee for the previous month
- FR is the Fare Revenue received by, or remitted to, the Operator in the previous month;

- (c) if MCP is a negative number, the Monthly Contract Payment for relevant month will be \$nil.

### 5. Base Service Fee

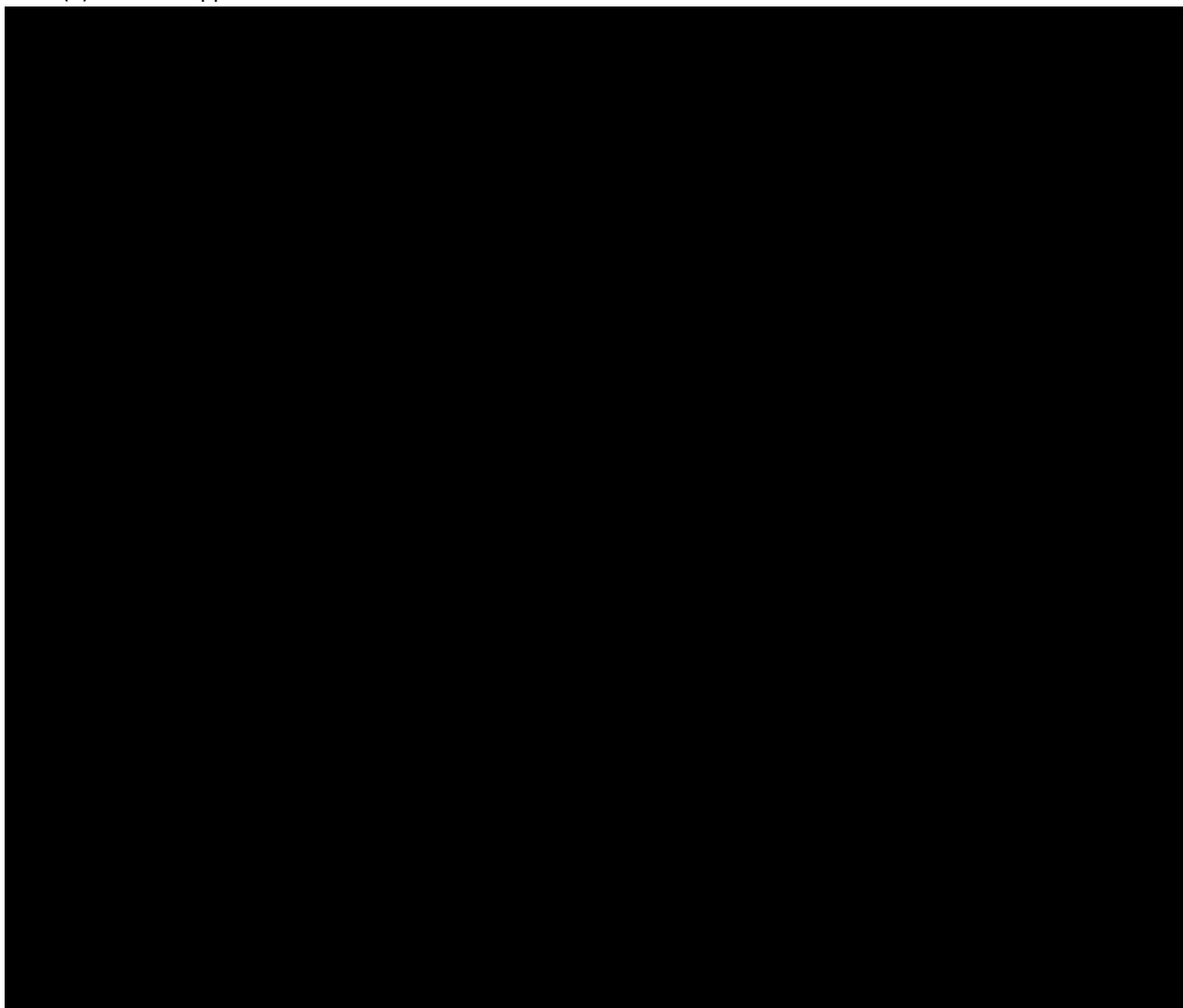
- (a) The Base Service Fee for Month n (BSFn) is determined as follows:

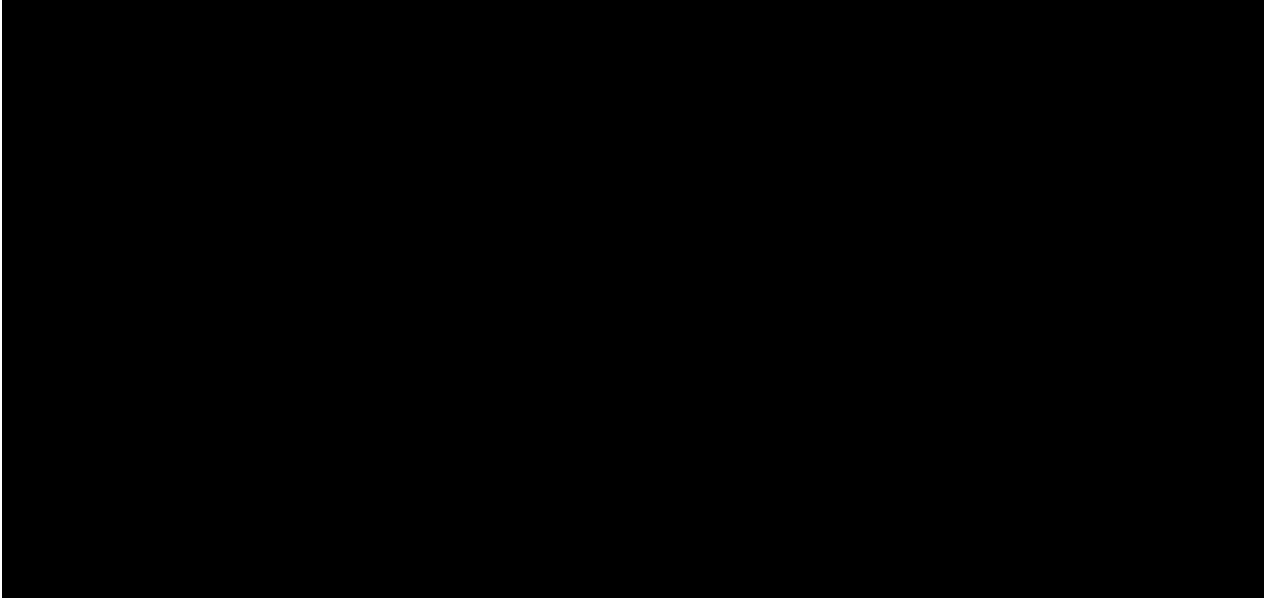
$$BSF_n = \left(\frac{LC_n}{NM}\right) \times WPIM_n + \left(\frac{NL_n}{NM}\right) \times CPIM_n + \frac{NIC_n}{NM} + VA_n + NFI$$

where:

- LC<sub>n</sub> = the Labour Payment Component for Month n, as set out in the applicable reference table determined in accordance with paragraph 5(b);
- NL<sub>n</sub> = the Non Labour Payment Component for Month n, as set out in the applicable reference table determined in accordance with paragraph 5(b);
- NIC<sub>n</sub> = the Non Indexed Payment Component for Month n, as set out in the applicable reference table determined in accordance with paragraph 5(b);
- WPIM<sub>n</sub> = the WPI Annual Multiplier applicable for Month n;
- CPIM<sub>n</sub> = the CPI Annual Multiplier applicable for Month n; and
- NM = 12 in each full Contract Year or pro rata for any Contract Year that is less than 12 months;
- VA<sub>n</sub> = the amount of any adjustment to the Base Service Fee for Month n determined in accordance with paragraph 10 (which may be a negative or positive amount); and
- NFI = the Net Financial Impact for Month n, calculated in accordance with Schedule 7 (which may be a negative or positive amount), provided that the Parties have agreed that the Operator will be compensated or TfNSW will be paid for Net Financial Impact for an NFI Event as part of the Base Service Fee in accordance with paragraph 4.1 of Schedule 7.

(b) The applicable reference table is determined as follows:





## 6. KPI Abatement

- (a) The KPI Abatement for Month n is the KPI Credit calculated in accordance with Schedule 4 in respect of the Calendar Month immediately preceding Month n.
- (b) The parties acknowledge and agree that:
  - (i) the KPI Abatement is calculated on a one month lag basis;
  - (ii) the Operator must pay the KPI Abatement within 20 Business Days after the end of each Calendar Month during the Service Term;
  - (iii) where Month n does not commence on the first day of a Calendar Month or complete on the last day of a Calendar Month, the KPI Abatement for Month n will be adjusted proportionately having regard to the number of days in Month n that this Contract is in place as a percentage of the total number of days in the full Calendar Month; and
  - (iv) at the end of this Contract the final KPI Abatement will be a debt due and payable by the Operator to TfNSW.

## 7. Operator Ticket Income Adjustment

The Operator Ticket Income Adjustment for Month n will be determined by aggregating the Operator Ticket Income during Month n or that has been received by the Operator in earlier months but not yet deducted from the Monthly Contract Payment in accordance with paragraph 4.1 (if any).

## 8. Ticketing System Income Adjustment

- (a) The Ticketing System Income Adjustment for Month n will be determined by aggregating the Ticketing System Income that has been remitted to the Operator in accordance with Item 10(b) of Schedule 1 during the previous Month n (or where applicable, part Month n).
- (b) [Not used].

## 9. Advertising Revenue Adjustment

The Advertising Revenue Adjustment for Month n will be determined by aggregating the amounts payable to TfNSW under Clause 60.4 during Month n or that was payable to TfNSW in earlier months but not yet deducted from the Monthly Contract Payment in accordance with paragraph 4.1 (if any).

## 10. Price adjustments

The parties acknowledge and agree that the Base Service Fee payable by TfNSW to the Operator may vary due to price adjustments, calculated in accordance with this paragraph 10.

### 10.1 Price adjustments for Service Variations

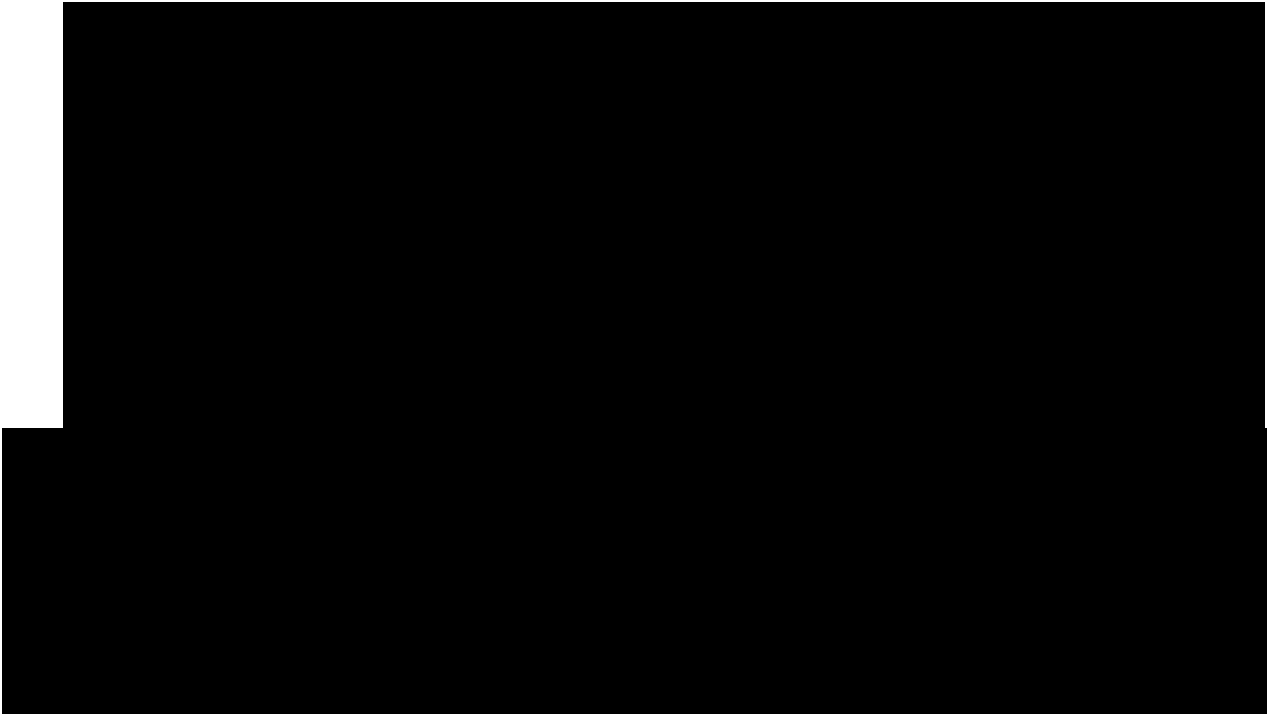
- (a) Subject to paragraph 10.1(d), the adjustment to the Base Service Fee for a Service Variation approved by TfNSW will be calculated by applying the following calculation:

*the change in daily Service Ferry Hrs as a result of the Service Variation, multiplied by the Unit Rate per Service Ferry Hr (for the applicable ferry class and day type).*

- (b) Unit Rates will be indexed in accordance with paragraph 3.
- (c) TfNSW must notify the Operator of the adjustment to the Base Service Fee by notice and adjust the Monthly Contract Payment accordingly for payment purposes.
- (d) The price adjustment under this paragraph does not apply in relation to:
- (i) Service Variations approved by TfNSW in respect of Services relating to Holiday or Special Event Periods that are identified in the Service Level Schedule;
  - (ii) Service Variations that are requested by the Operator, other than Service Variations that are accepted by TfNSW under Clause 47.2(c) (subject to Clause 47.2(d)); or
  - (iii) [REDACTED].

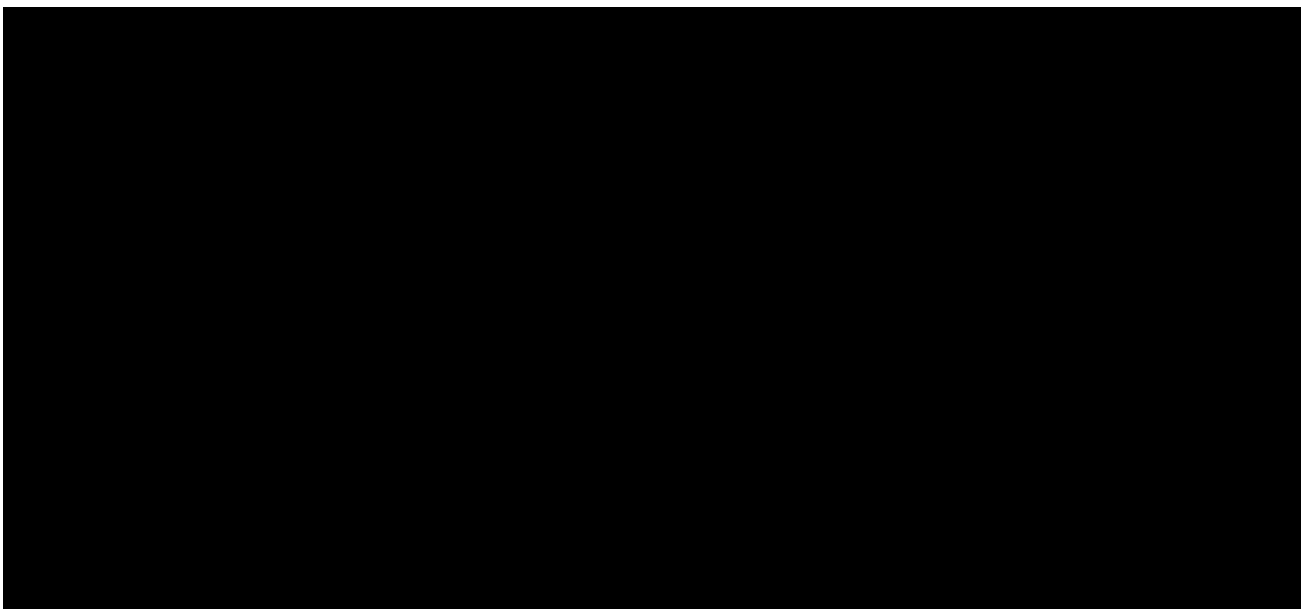
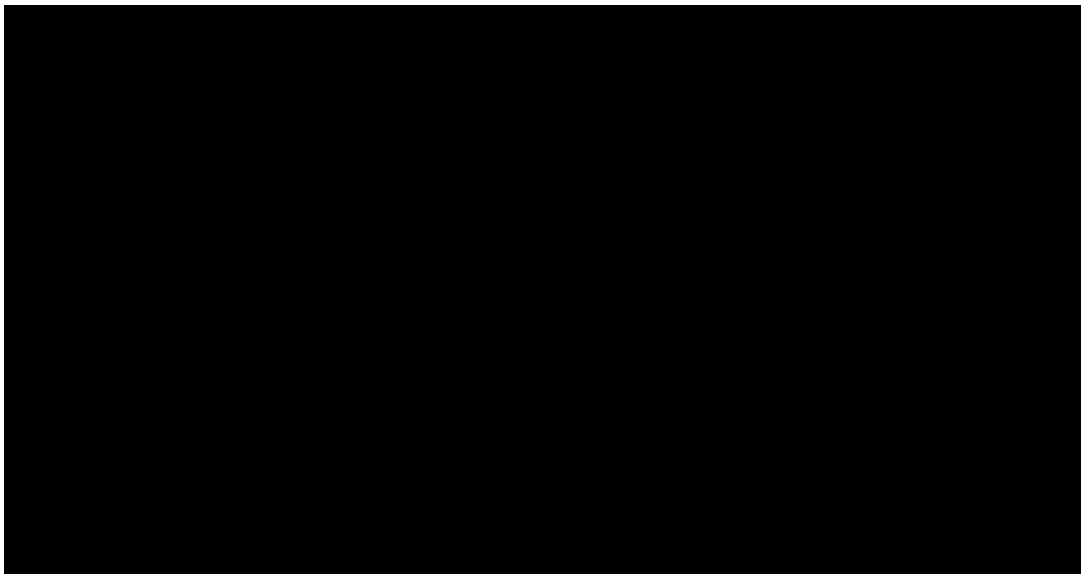
## 11. Vessel Termination Payments

- (a) Subject to paragraph 11(c), the Vessel Termination Payment payable under Clause 59.6 of the Contract for the sale of an Operator Sale Ferry, will be determined by TfNSW in accordance with the following formula:



- (c) No Vessel Termination Payment will be payable in connection with any Operator New Ferry or related Operator Ferry Charterparty where the Operator New Ferry has been in service for more than [REDACTED].
- (d) TfNSW or the Successor Operator must pay any Vessel Termination Payment on or within the period of 30 days immediately preceding the Termination Date.

- (e) The  $NLP_n$  for an Operator New Ferry in respect of a Contract Month will be determined in accordance with the following formula:



## 12. Fuel Payment

### 12.1 Defined terms

In this paragraph 12:

- (a) **Bid Fuel Price** means \$ [redacted] per litre;
- (b) **Bid Fuel Volume** in respect of a Contract Month, means the amount determined in accordance with paragraph 12.3(b);
- (c) **Fuel Index Multiplier** means the multiplier determined in accordance with paragraph 12.4;
- (d) **Fuel Payment** means the amount determined in accordance with paragraph 12.3;
- (e) **Fuel Price** means *daily "Mobil Terminal Gate Price" Sydney Diesel (in AUS\$/litre excluding GST) quoted on the website*  
[http://apps.exxonmobil.com.au/apps/htm/mn\\_mobil\\_products\\_automotive\\_pricing.asp](http://apps.exxonmobil.com.au/apps/htm/mn_mobil_products_automotive_pricing.asp); and

- (f) **Fuel Tax Credit** means the fuel credits received per litre under the single system of fuel tax credits introduced under the *Fuel Tax Act 2006* (Cth) on and from 1 July 2006.

## 12.2 Payment

- (a) For each Contract Month TfNSW will pay to the Operator the Fuel Payment.
- (b) Within one month after the end of each Contract Month, the Operator may submit a payment claim in relation to the Fuel Payment for that Contract Month (**Fuel Payment Claim**). The Fuel Payment Claim must set out:
- (i) the amount of the Fuel Payment claimed (which, to avoid doubt, must not include any amount in respect of GST);
  - (ii) the name and ABN of the supplier;
  - (iii) the relevant invoices of the supplier;
  - (iv) any other information that TfNSW may reasonably require from time to time.
- (c) TfNSW must notify the Operator whether or not it accepts the Fuel Payment Claim within two months after receipt of the Fuel Payment Claim and all supporting documentation requested by TfNSW in relation to that claim.
- (d) If TfNSW rejects the Fuel Payment Claim, the dispute will be resolved by Expert determination under Clause 46.
- (e) As soon as practicable after the Fuel Payment is accepted by TfNSW (or the amount of the Fuel Payment is resolved in accordance with paragraph 12.2(d)) the Operator must issue TfNSW a Tax Invoice in respect of the approved amount and Clauses 40.2(b) and 40.2(c) will apply.

## 12.3 Fuel Payment

- (a) The Fuel Payment for each Contract Month will be determined as follows:

$$FP_n = BFV_n \times (BFP - FC_n) \times (FIM_n)$$

where:

$FP_n$  = the Fuel Payment for the Contract Month

$BFV_n$  = the Bid Fuel Volume for the relevant Contract Month;

$BFP$  = the Bid Fuel Price;

$FC_n$  = the Fuel Tax Credit for the previous Contract Month;

$FIM_n$  = the Fuel Index Multiplier applicable for the relevant Contract Month.

- (b) The Bid Fuel Volume for each Contract Month will be the amount for the relevant Contract Year set out in Annexure F.

## 12.4 Fuel Index Multiplier

The Fuel Index Multiplier for each Contract Month is determined as follows:

$$FIM_n = (AP_n - FC_n) / (BFP - FC_n)$$

where:

$FIM_n$  = the Fuel Index Multiplier for the Contract Month;

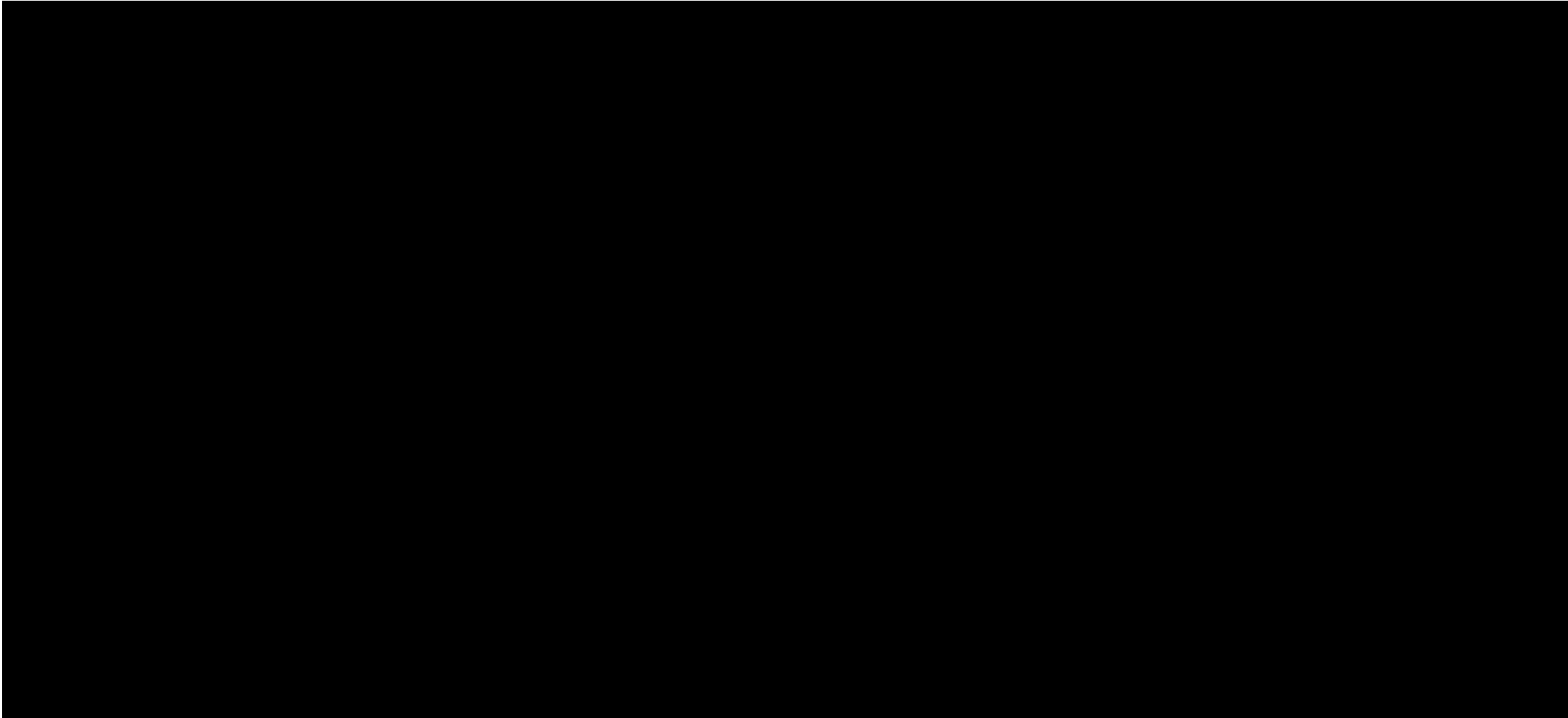
$AP_n$  = the average Fuel Price for the previous Calendar Month;

$BFP$  = the Bid Fuel Price; and

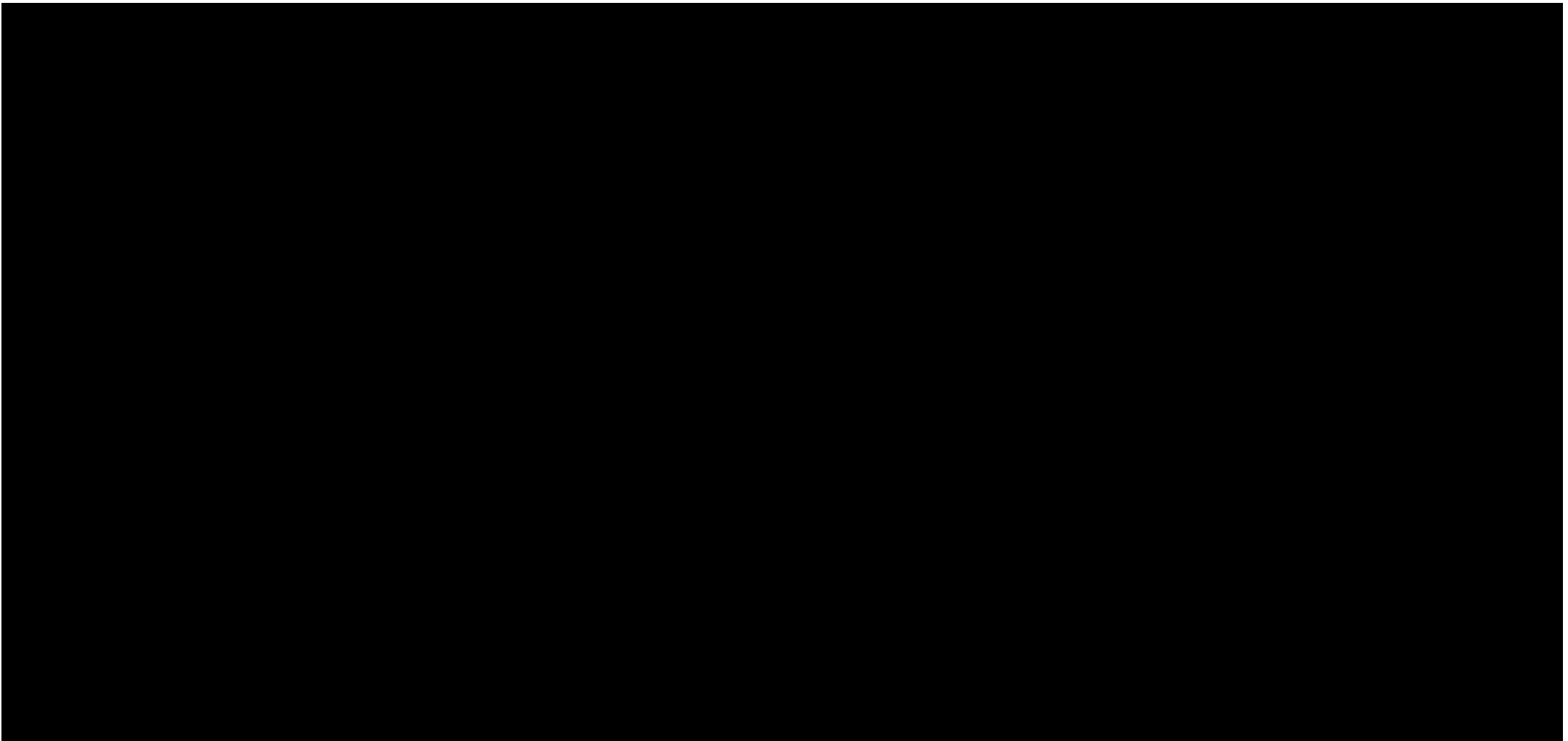
$FC_n$  = the Fuel Tax Credit for the previous Month.



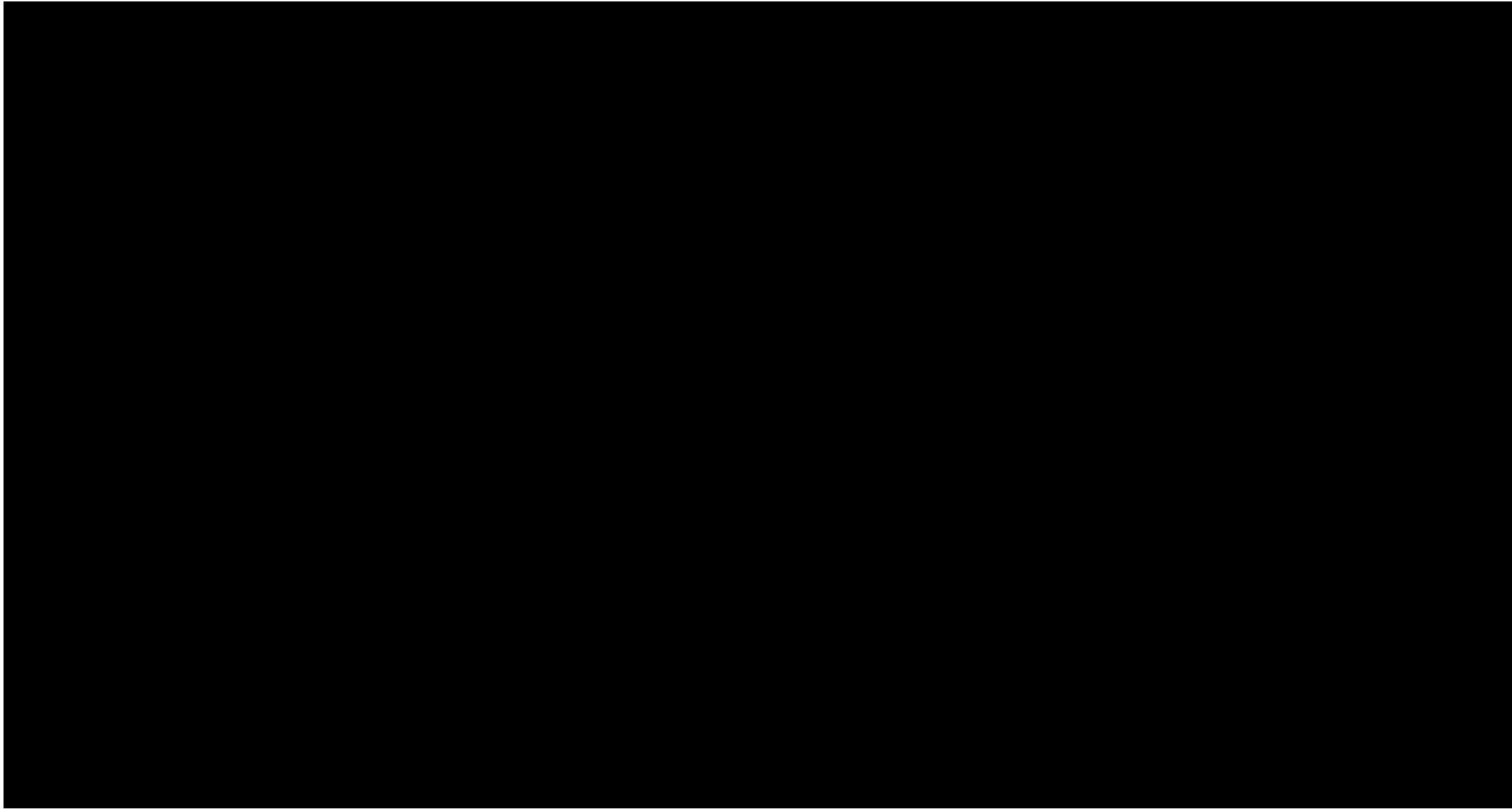
Annexure A

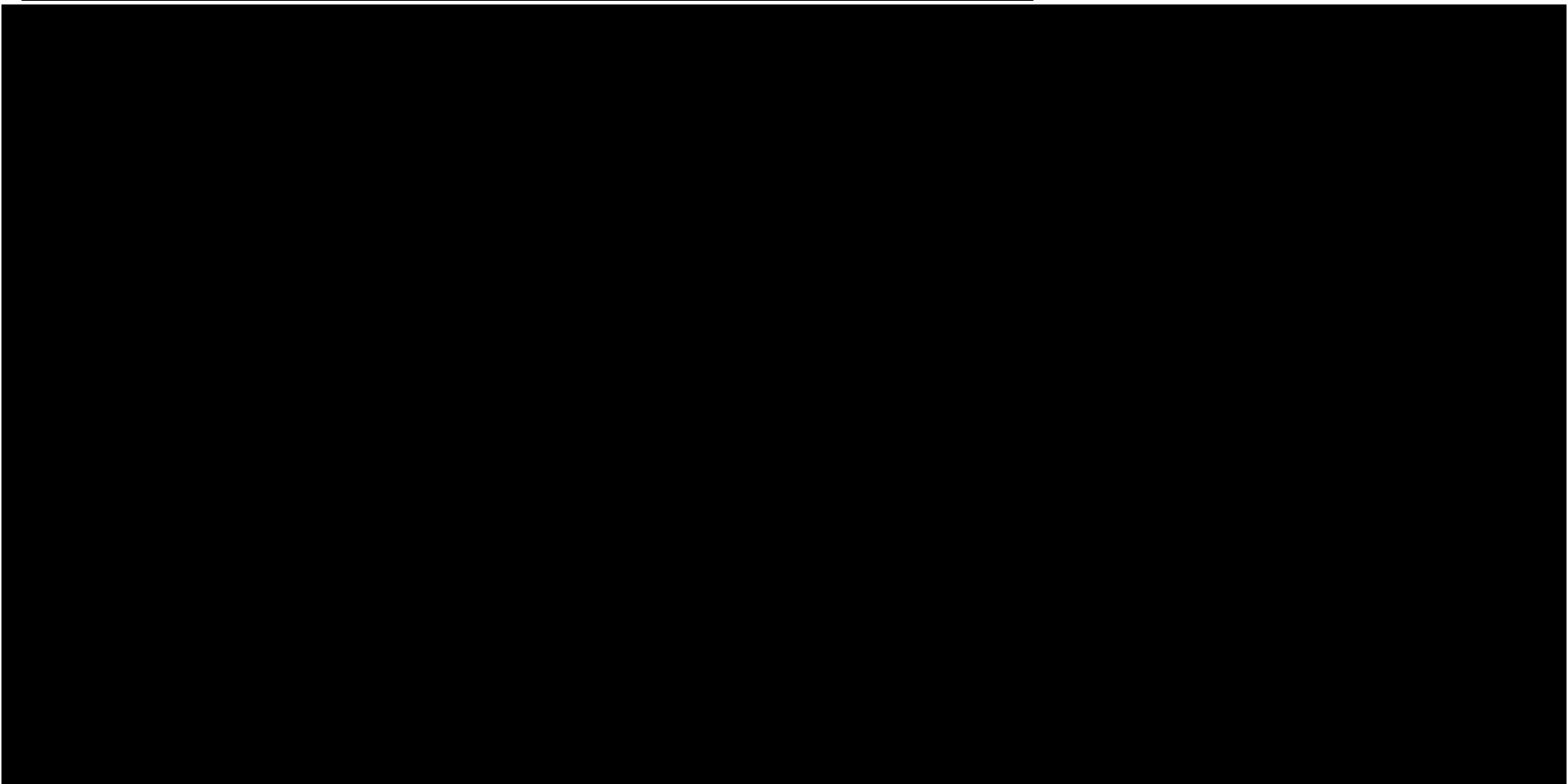


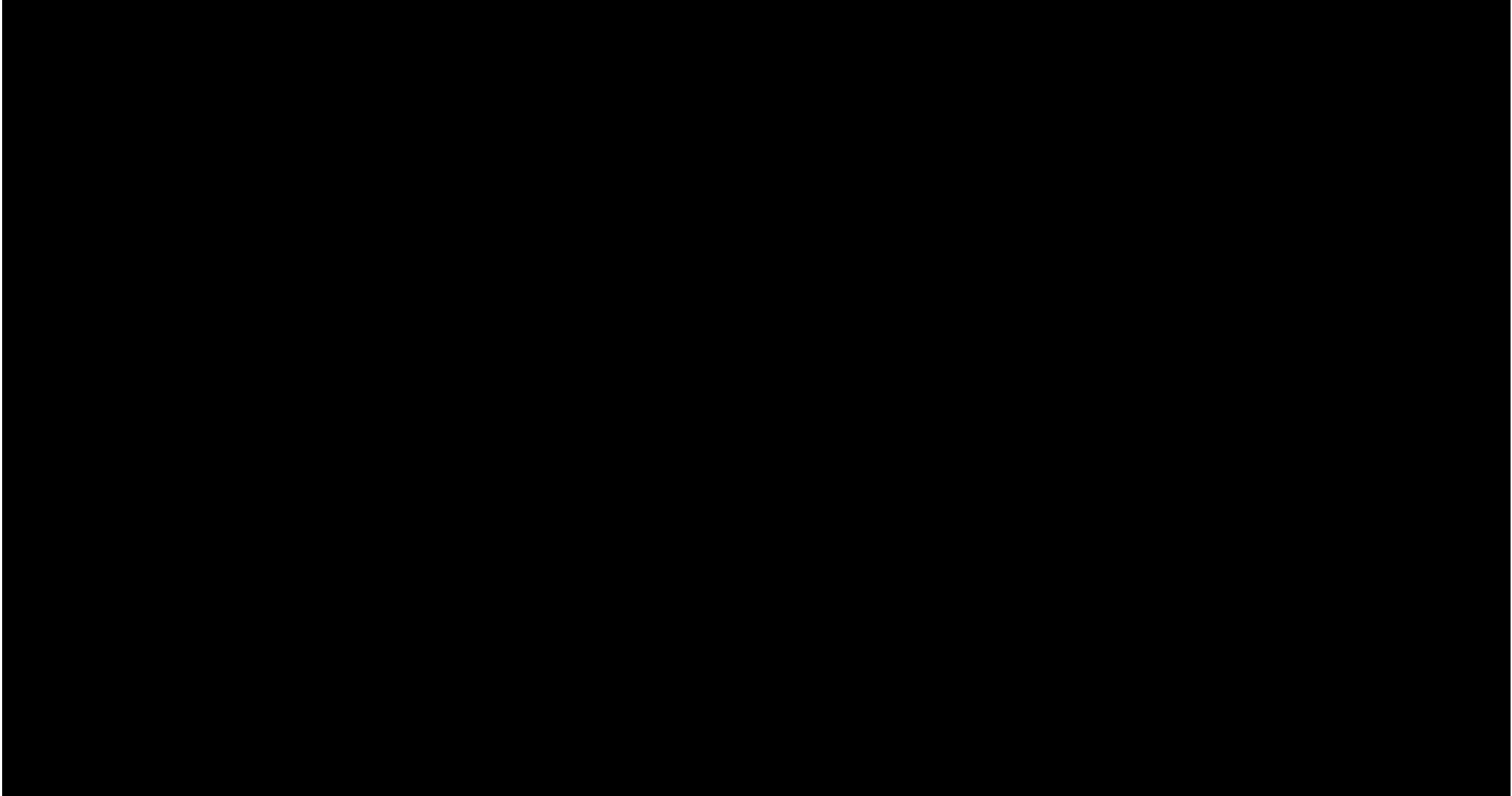


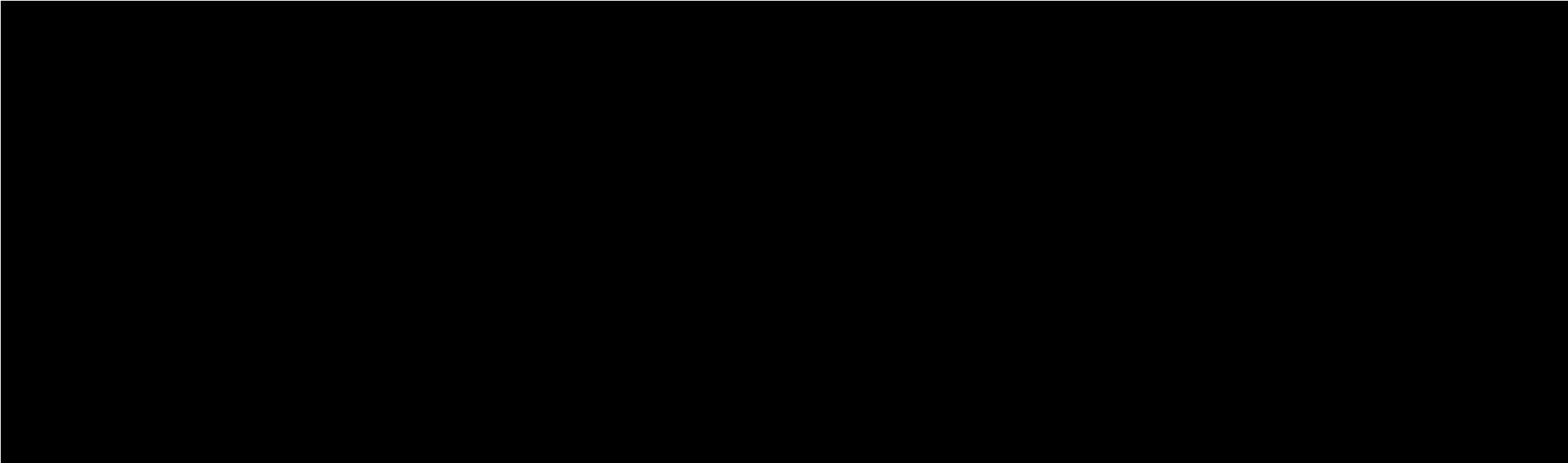




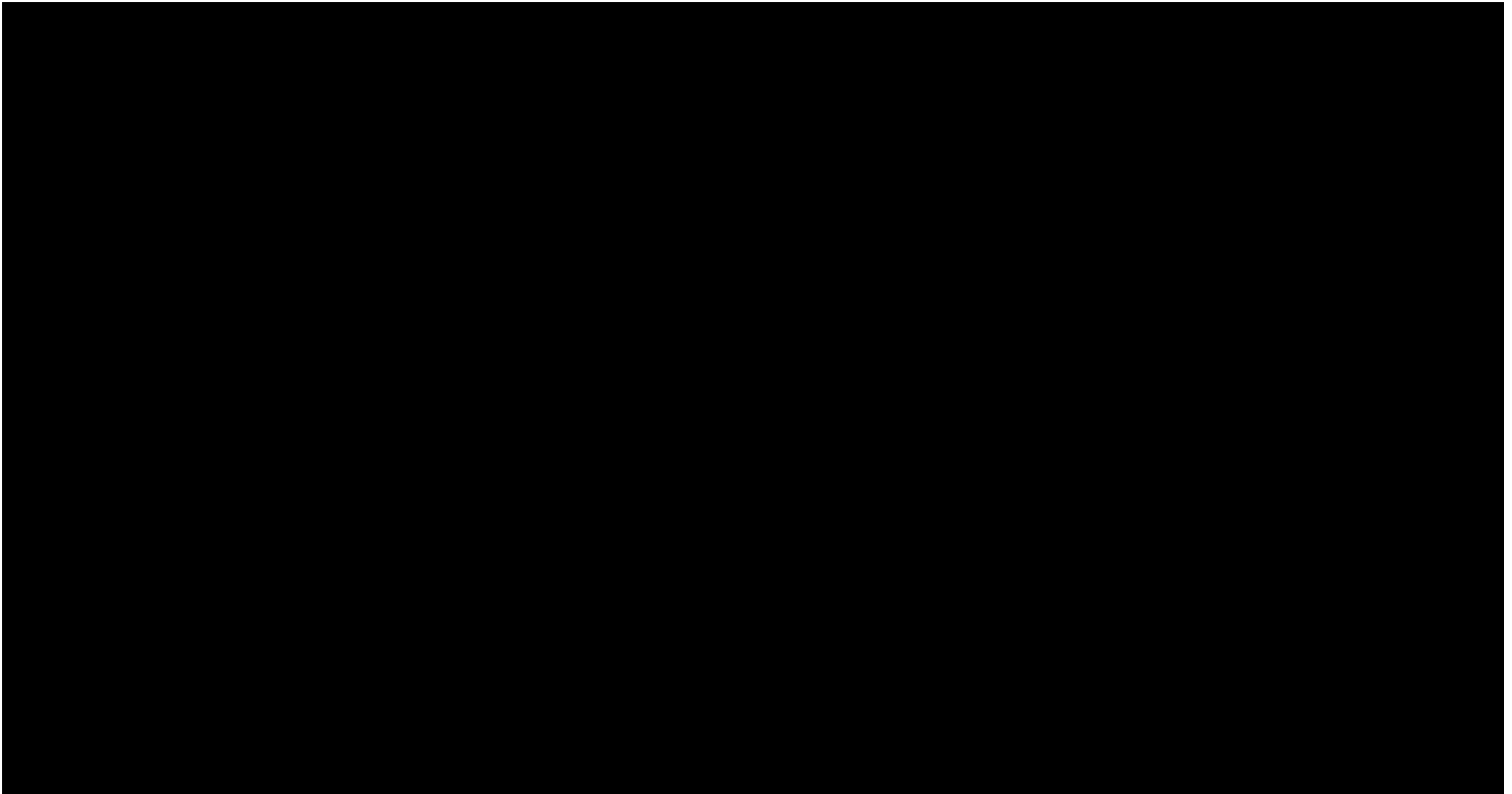












## Schedule 3A – Revenue Share Payment

- (a) This Schedule 3A only applies if the aggregate of the Operator Ticket Income and the Ticketing System Income for a month (**Actual Revenue**) is more than the Revenue Share Amount.
- (b) For each month during the Service Term that the Actual Revenue for the month is more than the Revenue Share Amount, the Operator must pay TfNSW an amount calculated as:
- $$RSP = RS\% \times (AR - RSA)$$
- where:
- RSP is the Revenue Share Payment for that month;
- RS% is the revenue share percentage, being the percentage determined in accordance with paragraph (f) of this Schedule 3A;
- AR Actual Revenue for the month; and
- RSA is the Revenue Share Amount.
- (c) Within 20 Business Days after the end of each month during the Service Term that the Actual Revenue for the month is more than the Revenue Share Amount, the Operator must:
- (i) provide TfNSW with a notice of the amount of the Revenue Share Payment determined under paragraph (b) of this Schedule 3A for that month; and
  - (ii) pay the amount of the Revenue Share Payment determined under paragraph (b) of this Schedule 3A for that month to TfNSW.
- (d) The payment of any Revenue Share Payment by the Operator is consideration for TfNSW's supply of the right to provide the Services.
- (e) The Revenue Share Amount will be adjusted to reflect any change to the Base Service Fee.
- (f) The revenue share percentage for each month will be determined in accordance with the following table:

- (g) The Revenue Share Amount for Month n (RSAn) is determined as follows:

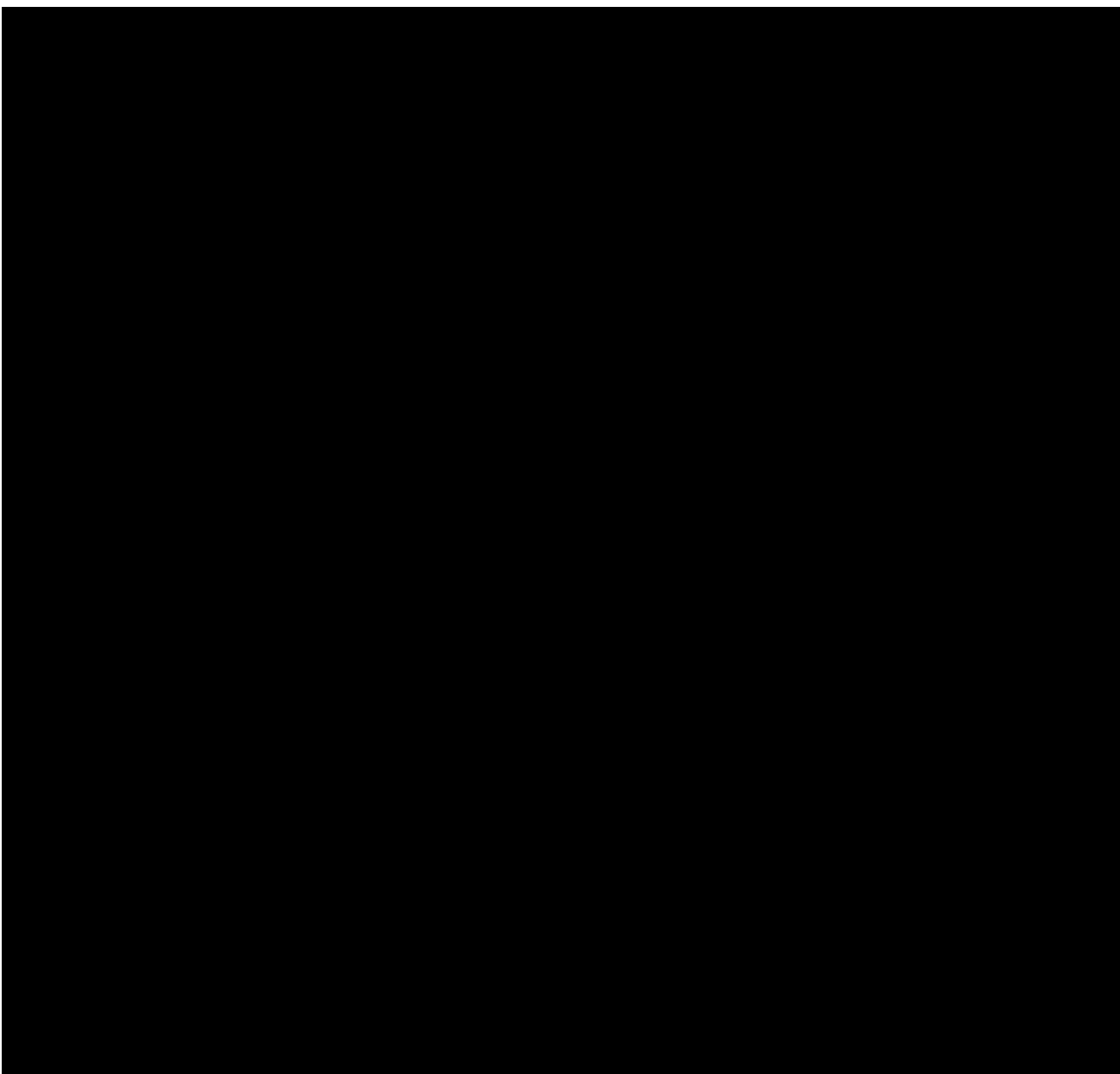
$$RSA_n = \left(\frac{LC_n}{NM}\right) \times WPIM_n + \left(\frac{NL_n}{NM}\right) \times CPIM_n + \frac{NIC_n}{NM} + VA_n + NFI$$

where:

LC<sub>n</sub> = the Labour Payment Component for Month n, as set out in the applicable reference table determined in accordance with paragraph (h);

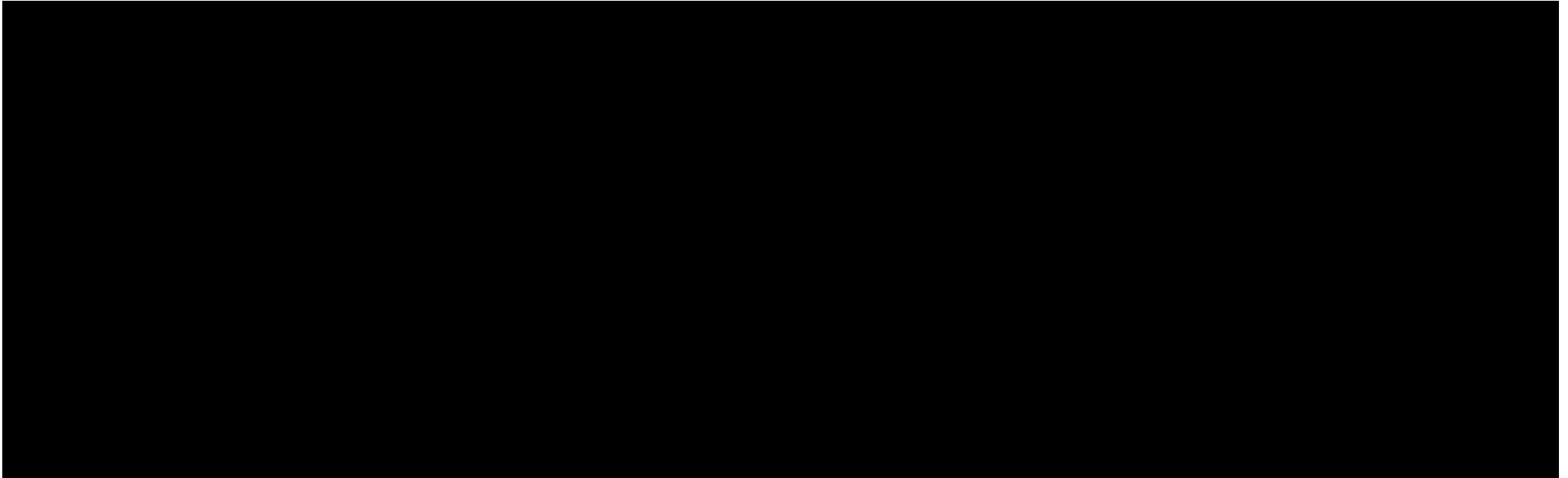
- $NL_n$  = the Non Labour Payment Component for Month n, as set out in the applicable reference table determined in accordance with paragraph (h);
- $NIC_n$  = the Non Indexed Payment Component for Month n occurs, as set out in the applicable reference table determined in accordance with paragraph (h);
- $WPIM_n$  = the WPI Annual Multiplier applicable for Month n;
- $CPIM_n$  = the CPI Annual Multiplier applicable for Month n; and
- $NM$  = 12 in each full Contract Year or pro rata for any Contact Year that is less than 12 months;
- $VA_n$  = the amount of any adjustment to the Base Service Fee for Month n determined in accordance with paragraph 10 of the Payment Schedule (which may be a negative or positive amount); and
- $NFI$  = the Net Financial Impact for Month n, calculated in accordance with Schedule 7 (which may be a negative or positive amount).

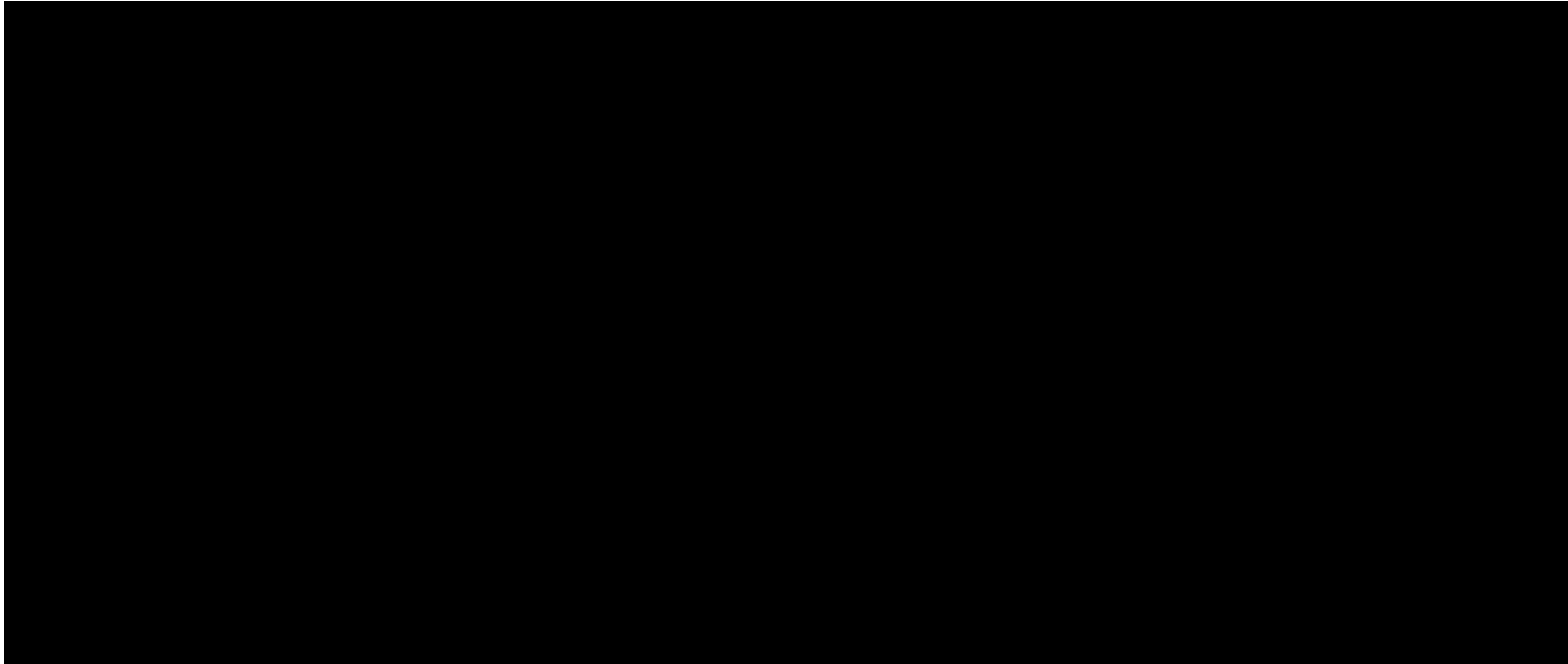
(h) The applicable reference table is determined as follows:





Annexure A











## Schedule 3B – [Not used]

# Schedule 4 – Key Performance Indicators

## 1. Definitions and Interpretation

(a) In this Schedule:

- (i) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (ii) a reference to a Clause is a reference to a Clause in the Contract; and
- (iii) a reference to a paragraph is a reference to a paragraph in this Schedule.

(b) In this Schedule, the following words have the following meanings:

**Boardings** means the number of Trips taken by all passengers.

**Cancelled Trip** means the whole of the Published Timetable Trip was cancelled or did not operate.

**Class 1 Key Performance Indicator** means a KPI identified as such in this Schedule.

**Class 2 Key Performance Indicator** means a KPI identified as such in this Schedule.

**Complaint** means each report of a negative experience in relation to the Services.

**Ferry Layover** has the meaning given in the Payment Schedule.

**Incomplete Trip** means only a part of the Published Timetable Trip operated. This means the Published Timetable Trip was shortened to start or end at a point/s between the timetabled or published start and finish, and/or intermediate Wharves are missed.

**KPI** means a Key Performance Indicator.

**KPI Class** means the classification of the KPI as a Class 1 Key Performance Indicator or Class 2 Key Performance Indicator.

**KPI Credit** means the amount payable by the Operator to TfNSW for non-performance or non-achievement of KPIs, being a civil penalty provision for the purposes of section 38 of the PT Act 2014 and a genuine pre-estimate, agreed by the parties as proportionate and not extravagant, to off-set part of TfNSW's direct or indirect costs and losses arising from the Operator's non-performance.

**KPI Credit Allocation Percentage** means the percentage defined in the table set out in paragraph 8 of this Schedule 4.

**KPI Default** means failure to comply with a KPI.

**KPI Negative Trend** means a trend in the measured results of a KPI which demonstrates a reduction in the achievement of that KPI resulting in, or likely to result in, a KPI Default.

**KPI Reporting Period** means the frequency with which the period of time in which the Operator's performance of the KPI will be measured as determined in accordance with the relevant KPI Table.

**KPI Satisfaction** means that the Operator has met or exceeded a Key Performance Indicator.

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

**Late** means a Contract Ferry departing a Wharf more than 4 minutes 59 seconds later than timetabled.

**On Time** means a Contract Ferry departing a Wharf no earlier than the timetabled departure time and no more than 4 minutes 59 seconds late compared to Timetable.

**Operator Safety Matrix** means the NRMA Marine Adverse Weather Procedure document set out at Annexure H of this Contract.

**Performance Improvement Initiative** means all actions planned and undertaken by the Operator to:

- (i) reverse a KPI Negative Trend; or
- (ii) remediate the cause of any KPI Default.

**Published Timetable Trips** means Trips on Routes that are scheduled by public timetable.

**Weather Affected Trips** mean those Trips that fail to meet one or more of the KPIs set out in Table 1 or Table 2 directly due to weather which is categorised as either amber or red in the Operator Safety Matrix.

(c) The following table sets out how the KPI Tables included in this Schedule 4 are to be interpreted:

Name	The name of the KPI
Description	A description of what the KPI does and, at a high level, how it is measured and calculated
Hours measured	The hours during which the KPI calculation is applied
KPI	The level which the delivery performance of the Operator (calculation) must equal or exceed. If multiple levels are specified each level can cause a KPI Defaults and multiple KPI Defaults can result from the KPI
KPI Credit Thresholds	The thresholds that determine which KPI Credit Allocation Percentages are applied
Cure Plan Threshold	The threshold at which the Operator must prepare a Cure Plan and which may trigger other rights or remedies of TfNSW
Class	Either Class 1 or Class 2
Measurement methodology	
Measurement starting point	The point in time at which the Operator must commence measurement for any KPI Reporting Period
Calculation	The algorithm for calculation of the level of performance of the KPI for the KPI Reporting Period
Period of calculation	The period over which the performance of the KPI must be calculated in each report
Measurement unit	The granularity with which the KPI performance must be measured and reported against
Data source	The data sources TfNSW will consider in order to provide an accurate measurement
Measurement responsibility	Whether it is the responsibility of the Operator, TfNSW or a third party to measure (or collect the measurement of) and then calculate the KPI
Reporting frequency	How frequently performance against this KPI should be reported (typically this is each Calendar Month unless specified otherwise in this Schedule 4 (KPI Reporting Period))

## 2. KPI Principles

- (a) In accordance with Clauses 10 and 13 of the Contract, the Operator must perform the Services described in the Services Schedule and the Service Level Schedule of the Contract measured against the KPIs set out in this Schedule 4.
- (b) The Operator acknowledges and agrees:
  - (i) the emphasis of the KPI regime is on delivery of the Services to meet TfNSW’s business requirements and on performance improvement where the Services fail to meet the requirements;

- (ii) unless otherwise specified in this Schedule 4 or directed by TfNSW, KPIs apply from the Service Commencement Date and data must be sourced from all available sources and by all available means if automation of data collection is not available;
  - (iii) TfNSW requires flexibility to modify KPIs and the management regime in order to keep pace with the changing business environment;
  - (iv) TfNSW may classify KPIs to guide the Operator as to which KPIs are the most important, but TfNSW may change this classification as the business environment or the performance of the Operator changes; and
  - (v) without limiting paragraph 2(b)(iv), TfNSW may by written notice to the Operator change any Class 2 KPI to a Class 1 Key Performance Indicator if there is a KPI Default in respect of the Class 2 Key Performance Indicator,
- but TfNSW can only modify other aspects of the KPIs such as the KPI Credit Allocation Percentage by way of a Contract Variation in accordance with Clause 52.
- (c) During the period commencing on the Planned Service Commencement Date and ending on the Planned Service Transition Date:
    - (i) the Operator must:
      - (A) continue to meet the KPIs; and
      - (B) report on its performance in meeting the KPIs; however
    - (ii) KPI Credits will not apply; and
    - (iii) compliance with the KPI set out in Table 4 will not be taken into account for the purposes of determining whether a Service Default or Termination Event has occurred.

### 3. KPI Reporting

- (a) In accordance with the reporting frequency specified for every KPI in the relevant KPI Table, the Operator must provide a written report to TfNSW containing, at a minimum, the following information:
  - (i) numerical data setting out the KPI performance achieved during the KPI Reporting Period against, where applicable, the data for the preceding Quarter, 6 Calendar Months and 12 Calendar Months;
  - (ii) a graphical representation of that data highlighting the KPI, the actual performance during the KPI Reporting Period and the performance for the previous Quarter, 6 Calendar Months or 12 Calendar Months (as applicable);
  - (iii) a summary table demonstrating performance for each KPI;
  - (iv) details of any KPI Credits incurred during the KPI Reporting Period;
  - (v) commentary explaining any performance variations and performance trends;
  - (vi) where, for the KPI Reporting Period, there is a KPI Default, or there is an indication of a KPI Negative Trend, an explanation of the causes of the KPI Default or KPI Negative Trend and (unless TfNSW accepts that this is caused by a one off issue resulting in a KPI Negative Trend):
  - (vii) details of any proposed Performance Improvement Initiative or any Cure Plan, developed by the Operator to address the causes of any KPI Default or KPI Negative Trend, including proposed actions for the Operator; and
  - (viii) where there has been a previous Performance Improvement Initiative or Cure Plan for the KPI, the status of the actions and an explanation of any relationship between the initiatives and plans and current performance;

- (ix) the total amount of KPI Credits imposed for KPI Defaults in the preceding 12 Calendar Months; and
- (x) any other information required by the Governance and Reporting Schedule.
- (b) The Operator must include such other information in its reports to TfNSW as is specified in this Schedule 4 or as otherwise required by TfNSW from time to time.
- (c) The Operator must use the format for KPI reporting specified in paragraph 4 of the Governance and Reporting Schedule.
- (d) TfNSW may, from time to time, redefine its requirements for KPI reporting or request additional material to be provided by the Operator for any KPI, which the Operator must comply with and provide.
- (e) The Operator may propose additional or alternative data sources that would, in the reasonable opinion of the Operator, improve the quality of measurement and reporting against the KPI. TfNSW may consider any additional or alternative data sources proposed.
- (f) In addition to reporting in the KPI Reporting Period specified for each KPI, within 15 days after each KPI Reporting Period, the Operator must provide a report to TfNSW that includes, with respect to each KPI for which there was a KPI Default during the preceding 12 months, the following:
  - (i) statistics on the Operator's monthly performance against each of the KPIs included in the report during the preceding year;
  - (ii) the yearly performance average for the KPIs included in the report; and
  - (iii) the total amount of KPI Credits imposed for KPI Defaults.

#### 4. Performance Improvement Initiatives

- (a) In accordance with the reporting frequency specified for each KPI, when there is any KPI Negative Trend or KPI Default (that does not meet the Cure Plan Threshold) in respect of a KPI or TfNSW indicates to the Operator that it considers there is any KPI Negative Trend, TfNSW may require the Operator to:
  - (i) provide a report and analysis on the cause of that KPI Negative Trend or KPI Default;
  - (ii) propose all Performance Improvement Initiatives to be undertaken to rectify the performance and otherwise reverse the KPI Negative Trend; and
  - (iii) attend additional meetings as required by TfNSW to discuss the performance improvement initiative and implementation process.
- (b) The Operator must implement and diligently pursue Performance Improvement Initiatives to address the causes of any such KPI Default or a KPI Negative Trend in KPI performance and otherwise ensure that its performance meets or exceeds all KPIs.
- (c) Where the Operator develops a Performance Improvement Initiative under this section and proposes actions to be performed by TfNSW or other third party, including any government agency, the Operator acknowledges that:
  - (i) TfNSW may accept or reject those proposed actions at its absolute discretion; and
  - (ii) nothing in the proposed Performance Improvement Initiative or any failure by TfNSW to undertake any proposed actions derogates from the Operator's responsibility to perform the Services so as to meet or exceed the KPIs and to otherwise rectify its performance and any KPI Negative Trend.
- (d) Nothing in this clause limits the Operator's obligations under Clause 54 of the Contract in relation to Cure Plans. The parties acknowledge that where a Cure Plan is required under that clause, that Cure Plan may incorporate and build on any Performance Improvement Initiatives contemplated under this section.

- (e) Any steps or actions undertaken or required to be undertaken by the Operator to ensure that its performance meets or exceeds any KPI, including any Performance Improvement Initiatives, is at the sole cost and expense of the Operator.

## 5. Cure Plan

Without limiting Clause 54 of the Contract, the Operator acknowledges and agrees that any failure to meet the Cure Plan Threshold is a Service Default in respect of which the Operator must provide a Cure Plan and otherwise comply with the requirements of Clause 54.

## 6. KPI Classes

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

KPI Class	Description	Management
Class 1	The measurement, management, reporting and achievement of the KPI must be met by the Operator.	Actively monitored and managed by the Operator; breaches within any KPI Reporting Period require the Operator to develop an incident report in accordance with paragraph 3(a) of this Schedule 4 with an explanation and remedial action proposed to ensure the KPI is met.  The Operator's performance against the KPI must be reported, presented and reviewed at the regular monthly meeting.
Class 2	The KPI information is to be measured, captured and reported on a regular basis.	Performance is monitored and reported on a monthly basis by the Operator (unless otherwise stated in the KPI description). Where the KPI is not met, the Operator must take remedial action where it is necessary to continue to meet the KPI.

## 7. Calculation of KPI Credits

### 7.1 Applicability

- (a) The Operator must pay KPI Credits to TfNSW for a KPI Default of a KPI as specified in the KPI Tables.
- (b) The parties acknowledge and agree that any implementation or pursuit of a Cure Plan or any Performance Improvement Initiative does not entitle the Operator for any relief from KPI Credits or similar.

### 7.2 Calculation of KPI Credits

- (a) KPI Credits are calculated in the Calendar Month following the KPI Reporting Period for each KPI as specified in the KPI Tables.
- (b) Subject to paragraph 7.1 of this Schedule 4, in the event of a KPI Default of a KPI as specified in the KPI Tables, the Operator must pay to TfNSW a KPI Credit as calculated below.
- (c) The Operator must pay to TfNSW a KPI Credit for a KPI Default computed in accordance with the following formulae (in respect of a Key Performance Indicator nominated under the table in paragraph 8(a)):

$$KPI\ Credit = A \times B \times C$$

where:

A = the KPI Credit Allocation Percentage for the KPI Default as shown in the KPI Credit table in paragraph 8 of this Schedule 4;

$B =$  the At Risk Amount, being ■%; and  
 $C =$  the total aggregate Base Service Fee  
 for the KPI Reporting Period.

**7.3 KPI Credit**

The parties acknowledge that the aggregate amount of KPI Credits payable by the Operator to TfNSW with respect to all KPI Defaults calculated in a Calendar Month must not exceed the At Risk Amount for KPI Credits set out in paragraph 7.2 multiplied by the Base Service Fee (**Credit Cap**) for that Calendar Month.

**7.4 Multiple KPI Defaults**

- (a) For each KPI, if more than one KPI Default has occurred in a single Calendar Month, the Operator must pay the sum of the corresponding KPI Credits to TfNSW in accordance with the Payment Schedule.
- (b) For the avoidance of doubt, a single incident may give rise to multiple KPI Defaults in respect of a single KPI or in respect of different KPIs including where a KPI Table includes multiple KPIs.

**7.5 KPI Credit Reporting**

The Operator must immediately notify TfNSW if TfNSW becomes entitled to a KPI Credit and must include any such notification in its reporting for each KPI in accordance with the reporting frequency specified for the KPI.

**8. KPI Credits**

- (a) Subject to paragraph 8(b) below, the KPI Credit Allocation Percentages for each KPI as at the Service Commencement Date are set out in the following table:

Table No	KPI	KPI Credit Allocation Percentage
1	Punctuality Rate – On Time Running (OTR)	[REDACTED]
2	Cancelled Trips	
4	Complaints per Boarding	
6	Customer Satisfaction	
7	Passenger Information	
8	Asset Presentation	
9	Asset Condition	
10	Contract Ferry Maintenance Major Defects	
11	Contract Ferry Maintenance Minor Defects	
15	Data Maintenance	
	Class 2 KPI (1), which as at the date of this Contract is KPI Table 13 (Reporting)	

Table No	KPI	KPI Credit Allocation Percentage
	Class 2 KPI (2), which as at the date of this Contract is KPI Table 12 (CCTV and Duress Alarm Reliability)	

- (b) If a KPI Table contains KPI Credit Bands, the relevant KPI Credit Allocation Percentage for that KPI will be the relevant KPI Credit Band percentage corresponding to the extent of the KPI Default.
- (c) The parties acknowledge that the KPI Credit Table contains KPIs the performance of which have a significant business impact to TfNSW.
- (d) TfNSW may substitute the Class 2 Key Performance Indicators included in the KPI Credit Table with any other Class 2 Key Performance Indicator by no less than 30 days' notice to the Operator.

## 9. KPIs

KPI	Table 1 (Punctuality Rate – On Time Running (OTR))
Description	This KPI aims to ensure that Services run to Timetable. It will measure the variation from Timetable for all Trips each month, measured at the start, mid and end point of each Trip.
Hours measured	All hours of operation
KPI	<p>The minimum weighted On Time performance is expected to be 95%:</p> <ul style="list-style-type: none"> <li>• at least 95% of Trips that are Published Timetable Trips leave the first Wharf of each Trip On Time (75% weighting)</li> <li>• at least 95% of Trips that are Published Timetable Trips arrive at the destination On Time (25% weighting)</li> </ul>
KPI Credit Thresholds	<p>First KPI Credit Band: 94% to 94.99%</p> <p>Second KPI Credit Band: 93% to 93.99%</p> <p>Third KPI Credit Band: 93% or less</p>
Cure Plan Threshold	Less than 90% weighted On Time Performance for any one month
Class	Class 1
<b>Measurement methodology</b>	
Measurement starting point	First of each KPI Reporting Period
Calculation	<p>A. (Number of Trips that are Published Timetable Trips that leave the first Wharf On Time / Total number of Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100%</p> <p>B. (Number of Trips that are Published Timetable Trips arrived the destination Wharf On Time/ Total number of Trips that are Published Timetable Trips measured in the KPI Reporting Period) x100%</p> <p>KPI result = (A x 0.75) + (B x 0.25) + 0.01</p> <p>For the purposes of this calculation, Weather Affected Trips that are delayed due to the affecting weather will not be taken into account in relation to Total Trips.</p>
KPI Reporting Period	Monthly
Measurement unit	% of Wharves for which a Trip is On Time



KPI	Table 1 (Punctuality Rate – On Time Running (OTR))
Data source	Relevant operations or passenger information system, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 2 (Cancelled Trips)
Description	This KPI aims to ensure that Services are delivered. All Cancelled Trips must be reported against the total Trips for the period.
Hours measured	All hours of operation
KPI	<0.5% Cancelled Trips
KPI Credit Band	KPI Credit Band: More than 0.5%
Cure Plan Threshold	Greater than 2.00% Cancelled Trips
Class	Class 1
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	<p><math>(\text{Cancelled Trips}) / \text{Total Trips} \times 100\%</math></p> <p>For the purposes of this calculation, Weather Affected Trips that are cancelled due to the affecting weather will not be taken into account in relation to both Cancelled Trips and Total Trips.</p>
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Relevant operations or passenger information system, analysed to provide performance information.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 3 (Accessible Services)
Description	<p>Where the Operator undertakes works the Operator must address DDA Requirements to the extent that they apply to the works. For every instance where such works are undertaken, the Operator must meet DDA Requirements (<b>DDA Works Requirements</b>).</p> <p>Where facilities are required to comply with DDA Requirements, any event which renders those facilities unable to meet those requirements (for example, aisle way widths, hearing loops, accessible toilets) the Operator must perform maintenance so that such facilities continue to address DDA Requirements (<b>DDA Maintenance Requirements</b>).</p> <p><b>DDA Incident</b> means any instance where the operator fails to meet the DDA Works Requirements or DDA Maintenance Requirements.</p>

KPI	Table 3 (Accessible Services)
	<b>DDA Requirements</b> means the requirements of the DDA Legislation.
Hours measured	All hours of operation
KPI	No DDA Incidents within the KPI Reporting Period
Cure Plan Threshold	2 or more DDA Incidents within the KPI Reporting Period
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	The sum of Complaints that have been determined to have a DDA Incident as the cause and DDA Incidents identified during inspection of assets.
KPI Reporting Period	Monthly
Measurement unit	Trips
Data source	Operator and TfNSW Customer Feedback System, Transportnsw.info Website and inspections carried out by TfNSW or other Governmental Agency.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 4 (Complaints per Boarding)
Description	Measures the level of Complaints per 100,000 Boardings to ensure that the level of Complaints is effectively managed and improvements are implemented to enhance customer satisfaction.
Hours measured	All hours of operation
KPI	<3.3 Complaints per 100,000 Boardings
KPI Credit Threshold	KPI Credit Band: More than 3.3 Complaints per 100,000 Boardings
Class	Class 1
Measurement methodology	
Measurement starting point	Beginning of each Contract Year
Calculation	Complaints received during the previous Contract Year per 100,000 Boardings for the previous Contract Year
KPI Reporting Period	Contract Year
Measurement unit	Complaints
Data source	Operator and TfNSW Customer Feedback System, Transportnsw.info Website, Boardings (from Opal system)
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 5 (Complaint Resolution)
Description	<p><b>Complaint Resolution</b> means the satisfactory closure of Complaints within agreed timeframes. It is measured from the time of receipt of the complaint by the Operator to the resolution and closure of the complaint in accordance with the Customer Experience Plan</p> <p>This KPI applies with effect from the later of integration of the Operator's systems with the TfNSW Customer Feedback System and the Planned Service Transition Date.</p>
Hours measured	24/7
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>KPI 5(i): 70% of all Complaints and feedback (when the customer has requested a response) are resolved within 2 Business Days after the complaint is received by the Operator</li> <li>KPI 5(ii): 100% of customers with an unresolved Complaints are contacted by the Operator within 20 Business Days after the Complaint is received by the Operator</li> <li>KPI 5(iii): 95% of all Complaints received up until five Business Days before the end of the KPI Reporting Period are resolved within the KPI Reporting Period</li> <li>KPI 5(iv): 100% of calls received in KPI Reporting Period are included in the TfNSW Customer Feedback System.</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
Class	Class 2
Measurement methodology	
Measurement starting point	First Day of each KPI Reporting Period
Calculation	<ul style="list-style-type: none"> <li>KPI 5(i): <math>100 \times (\text{Complaints and feedback (when the customer has requested a response) resolved within 2 Business Days during the KPI Reporting Period} / \text{Total Complaints and feedback (where the customer has requested a response) received for the KPI Reporting Period})\%</math></li> <li>KPI 5(ii): <math>100 \times (\text{customers with unresolved Complaints contacted within 20 Business Days after Complaint is received during the KPI Reporting Period} / \text{Total unresolved Complaints received for the KPI Reporting Period})\%</math></li> <li>KPI 5(iii): <math>100 \times (\text{Complaints received until five Business Days before end of KPI Reporting Period resolved within the KPI Reporting Period} / \text{Total Complaints received until five Business Days before the end of the KPI Reporting Period})\%</math></li> <li>KPI 5(iv): <math>100 \times (\text{Calls received within the KPI Reporting Period included in the TfNSW Customer Feedback System} / \text{Total calls received for the KPI Reporting Period})\%</math></li> </ul>
KPI Reporting Period	Monthly
Measurement unit	Complaints
Data source	TfNSW Customer Feedback System and other Complaints and feedback registers as advised by TfNSW from time to time
Measurement responsibility	Operator, with selected audit by TfNSW

KPI	Table 5 (Complaint Resolution)
Reporting frequency	Monthly

KPI	Table 6 (Customer Satisfaction)
Description	<p><b>Customer Satisfaction</b> means the level of satisfaction with the Operator’s performance as expressed by a representative sample of the passengers (TfNSW to approve) as measured on a Likert Scale. The survey questions used in the calculation of this KPI will relate to services largely under the control of the Operator.</p> <p>Satisfaction in relation to ticketing will not be measured until the Opal Ticketing System is implemented.</p>
Hours measured	N/A – by survey
KPI	95% of all ratings above the mid-point of the Likert Scale, based on historical performance on services largely under the control of the Operator
KPI Credit Threshold	KPI Credit Band: Less than 95%
Cure Plan Threshold	Less than 90%
Class	Class 1
Measurement methodology	
Measurement starting point	First Day of the KPI Reporting Period
Calculation	On the basis of a survey (the structure and content to be defined by TfNSW) on a Likert Scale, the number of the ratings above the mid-point divided by the total number of ratings times 100.
KPI Reporting Period	Semi-annual or other periods as advised by TfNSW.
Measurement unit	Rating
Data source	Surveys of customer satisfaction
Measurement responsibility	TfNSW
Reporting frequency	Semi- annual

KPI	Table 7 (Passenger Information)
Description	This measures how well-informed passengers are in regards to the Services.
Hours measured	24x7
KPI	<p>Prior to end of second Contract Year:</p> <p>&gt; 75% of passengers on Contract Ferries are satisfied with information (based on a non-weighted average across the two customer satisfaction survey measures: availability of information for this ferry and ease of finding information (routes, Wharves, timetables))</p> <p>With effect from the start of the third Contract Year:</p> <p>&gt; 75% of passengers on Contract Ferries are satisfied with information (based on a non-weighted average across the four customer satisfaction survey measures:</p>

KPI	Table 7 (Passenger Information)
	availability of information for this ferry, availability of next Wharf information for this ferry, availability of information about service delays and ease of finding information (routes, Wharves, timetables))
KPI Credit Threshold	KPI Credit Band: Less than 75%
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Quarter
Calculation	100 x (The number of surveyed passengers satisfied with passenger information / the number of passengers surveyed)%
KPI Reporting Period	Quarterly or other periods as advised by TfNSW.
Measurement unit	Passengers
Data source	Customer satisfaction surveys, mystery shopper
Measurement responsibility	TfNSW
Reporting frequency	Quarterly

KPI	Table 8 (Asset Presentation)
Description	This KPI aims to ensure that all Contract Ferries and Wharves are clean and tidy. Clean and tidy (includes general presentation including, clean at the beginning of each Trip, free of graffiti, good external presentation and paintwork, minimal window etching etc) in accordance with the Asset Presentation Schedule set out in Annexure 5 of the Asset Schedule.
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>KPI 8(i): &gt; 95% of passengers surveyed are satisfied with Contract Ferry presentation;</li> <li>KPI 8(ii): 100% of Contract Ferry and Wharf inspections in the KPI Reporting Period meet or exceed presentation standard 3 (Moderately Dirty) in accordance with the table in paragraph 1.3 of Annexure 5 to the Asset Schedule; or</li> <li>KPI 8(iii): &gt; 90% of Contract Ferry and Wharf inspections in the KPI Reporting Period meet or exceed presentation standard 4 (Moderately Clean) in accordance with the table in paragraph 1.3 of Annexure 5 to the Asset Schedule.</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	KPI Credit Band: Failure of any one of the requirements set out under KPI.
Cure Plan Threshold	Failure of all three parts of this KPI
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Contract Year

KPI	Table 8 (Asset Presentation)
Calculation	<ul style="list-style-type: none"> <li>KPI 8(i): <math>100 \times (\text{The number of passengers surveyed in the KPI Reporting Period satisfied with Contract Ferry presentation} / \text{the number of passengers surveyed in the KPI Reporting Period})\%</math>; or</li> <li>KPI 8(ii): <math>100 \times (\text{The number of Contract Ferry and Wharf inspections in the KPI Reporting Period which meet or exceed presentation standard 3 (Moderately Dirty)} / \text{The number of Contract Ferry and Wharf inspections in the KPI Reporting Period})\%</math>; or</li> <li>KPI 8(iii): <math>100 \times (\text{The number of Contract Ferry and Wharf inspections in the KPI Reporting Period which meet or exceed presentation standard 4 (Moderately Clean)} / \text{The number of Contract Ferry and Wharf inspections in the KPI Reporting Period})\%</math></li> </ul>
KPI Reporting Period	Contract Year
Measurement unit	Passengers and inspections
Data source	Complaints, customer satisfaction survey, random survey of presentation, mystery shopper and inspections
Measurement responsibility	TfNSW via customer surveys and audits
Reporting frequency	Annually

KPI	Table 9 (Asset Condition)
Description	This KPI aims to ensure that all Contract Ferries and Wharves are properly maintained.
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>KPI 9(i): 100% of Contract Ferry and Wharf inspections in the KPI Reporting Period meet or exceed presentation standard 4 (Moderate wear and tear) in accordance with the table in paragraph 2.3 of Annexure 5 to the Asset Schedule; or</li> <li>KPI 9(ii): &gt; 90% of Contract Ferry and Wharf inspections in the KPI Reporting Period meet or exceed condition standard 5 (Minor wear and tear) in accordance with the table in paragraph 2.3 of Annexure 5 to the Asset Schedule.</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	KPI Credit Band: Failure of any one of the requirements set out under KPI.
Cure Plan Threshold	<p>KPI 9(i) &lt;95%</p> <p>KPI 9(ii) &lt;85%</p>
Class	Class 1
Measurement methodology	
Measurement starting point	First day of Contract Year
Calculation	<ul style="list-style-type: none"> <li>KPI 9(i): <math>100 \times (\text{The number of Contract Ferry and Wharf inspections in the KPI Reporting Period which meet or exceed condition standard 4 (Moderate wear and tear)} / \text{The number of Contract Ferry and Wharf inspections in the KPI Reporting Period})\%</math>; or</li> </ul>

KPI	Table 9 (Asset Condition)
	<ul style="list-style-type: none"> <li>KPI 9(ii): <math>100 \times (\text{The number of Contract Ferry and Wharf inspections in the KPI Reporting Period which meet or exceed condition standard 5 (Minor wear and tear)} / \text{The number of Contract Ferry and Wharf inspections in the KPI Reporting Period})\%</math></li> </ul>
KPI Reporting Period	Contract Year
Measurement unit	Inspections
Data source	Inspections
Measurement responsibility	TfNSW via inspections
Reporting frequency	Annually

KPI	Table 10 (Contract Ferry Maintenance – Major defects or incidents)
Description	<p>This KPI aims to ensure that all Contract Ferries are properly maintained and do not have major defects or Major Preventable Incidents which potentially impact reliability and safety.</p> <p>In this KPI:</p> <p><b>Contract Ferry Accident</b> means any reportable accident involving a Contract Ferry which results in damage to a vessel, wharf or other property.</p> <p><b>Major Defect Notice</b> means a notification, including a prohibition notice or a direction notice, issued by TfNSW or any other Governmental Agency in relation to a major defect identified in a Contract Ferry during regular and random inspections by a Safety Authority or another Governmental Agency.</p> <p><b>Major Preventable Incident</b> means an accident or incident involving a Contract Ferry that is caused by:</p> <ul style="list-style-type: none"> <li>fire;</li> <li>major failure to perform adequate maintenance (including fluid leaks, etc); or</li> <li>dangerous operation resulting in critical injuries or death.</li> </ul>
Hours measured	All hours of operation
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>KPI 10(i): Nil Major Defect Notices issued in respect of Contract Ferries.</li> <li>KPI 10(ii): Nil Major Preventable Incidents or Contract Ferry Accidents</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	<p>KPI Credit Band:</p> <ul style="list-style-type: none"> <li>For KPI 10(i): One or more Major Defect Notices issued in KPI Reporting Period</li> <li>For KPI 10(ii): <ul style="list-style-type: none"> <li>One or more Major Preventable Incidents in the KPI Reporting Periods</li> <li>One or more Contract Ferry Accidents</li> </ul> </li> </ul>

KPI	Table 10 (Contract Ferry Maintenance – Major defects or incidents)
Cure Plan Threshold	<ul style="list-style-type: none"> <li>Two (2) or more Major Defect Notices or Major Preventable Incidents in any month (as interpreted under the KPI Calculation row below regarding each Major Defect).</li> <li>Any KPI Defaults in two or more in consecutive months</li> </ul>
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	<p>For KPI 10(i):</p> <p>Number of Contract Ferries in respect of which a Major Defect Notice is issued.</p> <p>For KPI 10(ii):</p> <p>Number of Major Preventable Incidents</p> <p>Number of Contract Ferry Accidents</p>
KPI Reporting Period	Monthly
Measurement unit	<p>Contract Ferries</p> <p>Major Defect Notices</p> <p>Major Preventable Incidents</p> <p>Accidents</p>
Data source	Contract Ferry maintenance records, Safety Authorities, notices issued by Safety Authorities or other Governmental Agencies, TfNSW data sources
Measurement responsibility	Operator, with selected audit by TfNSW.
Reporting frequency	Monthly

KPI	Table 11 (Contract Ferry Maintenance – Minor Defects)
Description	<p>This KPI aims to ensure that all Contract Ferries are properly maintained and do not have minor defects which potentially impact reliability and safety.</p> <p><b>Minor Defect Notice</b> means a notification, including an improvement notice, issued by TfNSW or any Safety Authority or any other Governmental Agency in relation to a minor defect identified in a Contract Ferry.</p> <p>In this KPI:</p> <p>&lt;8% of Contract Ferries subject to Minor Defect Notices issued by Safety Authorities or other Governmental Agencies</p>
Hours measured	All hours of operation
KPI	<8% of Contract Ferries subject to Minor Defect Notices issued by Safety Authorities or other Governmental Agencies
KPI Credit Threshold	KPI Credit Band: More than 8% of Contract Ferries subject to Minor Defect Notices issued by Safety Authorities or other Governmental Agencies



KPI	Table 11 (Contract Ferry Maintenance – Minor Defects)
Class	Class 1
Measurement methodology	
Measurement starting point	First day of the KPI Reporting Period
Calculation	Number of Contract Ferries subject to Minor Defect Notices issued by Safety Authorities or other Governmental Agencies
KPI Reporting Period	Monthly
Measurement unit	Contract Ferries subject to Minor Defect Notices issued by Safety Authorities or other Governmental Agencies
Data source	Contract Ferries maintenance records, Safety Authorities, notices issued by Safety Authorities or other Governmental Agencies
Measurement responsibility	Operator, with selected audit by TfNSW.
Reporting frequency	Monthly

KPI	Table 12 (CCTV and Duress Alarm Reliability)
Description	<p>Measures the reliability of the Closed Circuit Television (CCTV) and duress alarm system. For avoidance of doubt:</p> <ul style="list-style-type: none"> <li>• CCTV data reliability measures the retrieval of quality images from designated coverage areas</li> <li>• Failure to identify people in CCTV images due to improper maintenance, including cleaning, is deemed to be a failure to retrieve images</li> <li>• Measures the reliability of the duress alarm system.</li> </ul>
Hours measured	N/A
KPI	<p>From the end of the second Contract Year each of the following:</p> <p>Each of the following:</p> <ul style="list-style-type: none"> <li>• KPI 12(i): 100% of CCTV images successfully retrieved</li> <li>• KPI 12(ii): 100% of duress alarms responded to within 30 seconds</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
Cure Plan Threshold	Any KPI Defaults in two or more in consecutive months
Class	Class 2
Measurement methodology	
Measurement starting point	First day of each Calendar Month
Calculation	<p>For KPI 12(i): <math>100 \times (\text{Number of incidents for which CCTV images were successfully retrieved}) / (\text{Total number of incidents requiring retrieval of CCTV images})</math></p> <p>For KPI 12(ii): <math>100 \times (\text{Number of duress alarms responded to within 30 seconds}) / (\text{Total number of incidents for which the duress alarm was activated})</math></p>

KPI	Table 12 (CCTV and Duress Alarm Reliability)
KPI Reporting Period	Monthly
Measurement unit	Percentage of CCTV images successfully retrieved and duress alarms responded to within 30 seconds (as relevant to each KPI)
Data source	Requests for images / Records of duress alarm calls
Measurement responsibility	Operator
Reporting frequency	Monthly

KPI	Table 13 (Reporting)
Description	<p>This KPI aims to ensure all agreed reports are available to TfNSW within the agreed timeframe. This Reporting KPI measures the time taken to deliver reports starting from the end of the reporting period until the time that the reports are available for TfNSW. The scope is for all reports as set out in the Governance and Reporting Schedule and for avoidance of doubt, includes the reporting requirements outlined in this Schedule 4 and the Governance and Reporting Schedule. Reports are to be available in an agreed repository or otherwise provided to TfNSW (e.g., provision to TfNSW of on-line access) within the timeframes nominated in the Governance and Reporting Schedule.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p> <p>The KPI does not apply to the extent that access to TfNSW Systems and Equipment is required in order to generate the relevant report and such access has not been provided by TfNSW.</p>
Hours measured	24 x 7
KPI	100% of reports required under this Schedule 4, the Governance and Reporting Schedule and the Governance and Reporting Schedule are delivered to TfNSW within the timeframe nominated in those Schedules.
Class	Class 2
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of reports presented within the required timeframe during the KPI Reporting Period / total number of reports due to be presented during the KPI Reporting Period)
KPI Reporting Period	Monthly
Measurement unit	Report
Data source	Where possible, report to be generated directly from installed automated systems
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 14 (Provision of Information)
Description	<p>This KPI aims to ensure that responses to request for information about Services are provided in a reasonable timeframe as determined by TfNSW. Such requests for information could arise from varying sources, but would include information required to provide Ministerial responses, answering customer enquiries, providing information required by Law, providing information to support transport planning etc.</p> <p>Any information which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24 x 7
KPI	100% within the timeframe specified in the relevant request for information (provided that such timeframe must be reasonable in the circumstances)
Class	Class 2
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of information requests responded to within the required timeframe during the KPI Reporting Period / total number of information requests during the KPI Reporting Period)
KPI Reporting Period	Monthly
Measurement unit	Requests for information
Data source	Record of requests
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

KPI	Table 15 (Data Maintenance)
Description	<p>This KPI aims to ensure critical information is accurate and available to customers and TfNSW within the timeframe determined by TfNSW. The Data Maintenance KPI measures the currency and accuracy of information relating to timetables, routes, mapping, Wharves, schedules, etc. Information must be accurate and current.</p> <p>In this KPI:</p> <p><b>Data Error</b> means any error, due to error or omission on the part of the Operator, in published timetables or, from the end of the second Contract Year, Operator scheduling data uploads to TfNSW (TODIS, GTFS, SIRI or equivalent acceptable to TfNSW) for the Services, including a route mapping, Wharf, schedule, timetable or similar error, which affects one Trip or multiple Trip (where it is a common error).</p> <p><b>Missing Data Incident</b> means a failure by the Operator to provide published timetables or, from the end of the second Contract Year, operator scheduling data uploads to TfNSW (GTFS, TransXchange, SIRI or equivalent acceptable to TfNSW) for the Services for one or more routes for a given day, due to error or omission on the part of the Operator, which impacts information being made available to customers or ticketing equipment for the affected route(s).</p> <p>For the avoidance of doubt, where an Operator engages a third party to prepare or provide any of the abovementioned data for the Services on its behalf, then an error or</p>

KPI	Table 15 (Data Maintenance)
	omission by that third party will be deemed to be an error or omission on the part of the Operator.
Hours measured	24 x 7
KPI	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>KPI 15(i): Zero (0) Missing Data Incidents for the Services; and</li> <li>KPI 15(ii): No more than two (2) Data Errors for the Services, provided that all such Data Errors are rectified no later than 2 Business Days after the date of identification.</li> </ul> <p>For the avoidance of doubt, a KPI Default can be triggered separately against each of these KPIs in a KPI Reporting Period.</p>
KPI Credit Threshold	<p>For KPI 15(i) Missing Data Incident:</p> <p>KPI Credit Band: One Missing Data Incident or more in the KPI Reporting Period</p> <p>For KPI 15(ii) Data Errors:</p> <p>KPI Credit Band: More than two Data Errors that are not rectified within 2 Business Days after date of identification in the KPI Reporting Period</p>
Cure Plan Threshold	<p>One or more Missing Data Incidents; or</p> <p>Three or more Data Errors</p>
Class	Class 1
Measurement methodology	
Measurement starting point	Number of Missing Data Incidents or Data Errors identified during the month for the KPI Reporting Period
Calculation	<p>Number of Missing Data Incidents</p> <p>Number of Data Errors</p> <p>Number of Data Errors not rectified within 2 Business Days after the date of identification</p>
KPI Reporting Period	Monthly
Measurement unit	Services
Data source	Website, TransXchange, TSM, change.id, passenger information system or other system approved by TfNSW
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Monthly

**Annexure 1 – Incident classification and management**

DEFINITION	MAJOR INCIDENT	SIGNIFICANT INCIDENT	MINOR INCIDENT
Impact on Service Performance	Service unavailable or seriously delayed for affected customers	Service seriously delayed for affected customers. A recurring Minor Incident	Service is delayed causing minor disruption or inconvenience for affected users
Extent of Impact	Potentially impacts 350 or more customers of the Operator. Any serious injury	Potentially impacts more than 50 but less than 350 customers of the Operator	Impacts less than 50 customers of the Operator
Impact on productivity and reputation	Potential for adverse impact on TfNSW and Operator's reputation through negative press coverage and many unsatisfied customers	May result in customer inconvenience and increase in unsatisfied customers. Likely to raise serious public concern	May result in some customer inconvenience and unsatisfied customers
The Operator must work to resolve the Incident	Continuously	Continuously until the Incident is resolved	Within Business Hours until the Incident is resolved
<b>Examples</b>			
Interim Status Update Timeframe	Every 15 minutes	15 mins then every 30 minutes	On request
If Incident is not resolved within the required timeframe	Escalate according to agreed processes	Escalate according to agreed processes	Escalate according to agreed processes
If Incident is not resolved within two times the required timeframe	Escalate according to agreed processes	Reclassify Incident as Major Incident	Escalate according to agreed processes

# Schedule 5 – Governance and Reporting

## 1. Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Contract have the same meaning in this Schedule as they do in the Contract;
- (b) a reference to a Clause is a reference to a Clause in the Contract;
- (c) unless the context otherwise requires:
  - (i) a reference to a document (other than a plan or report) that is not defined is a reference to the document with the same name as provided by TfNSW to the Operator and as updated from time to time; and
  - (ii) a reference to a plan or report that is not defined is a reference to a plan or report of the same name as is required to be developed by the Operator under this Contract; and
- (d) reference to a paragraph is a reference to a paragraph in this Schedule.

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

**Ad Hoc Reports** or **AHR** has the meaning given in paragraphs 5 and 12 of this Schedule.

**Annual Financial Report** or **AFR** has the meaning given in paragraphs 4 and 10(b) of this Schedule.

**Brand and Marketing Forum** means a meeting that will focus on Brand and Marketing matters described in paragraph 3.1(e).

**Half Yearly Financial Report** or **HFR** has the meaning given in paragraphs 4 and 11.1(a) of this Schedule.

**KPI Report** means the reporting required to be provided under paragraph 3 of the KPI Schedule.

**Monthly Asset Management Report** or **MAMR** has the meaning given in paragraph 11.2 of this Schedule.

**Monthly Commercial Forum** means the monthly forum which will focus on commercial matters, described in paragraph 3.1 of this Schedule.

**Monthly Commercial Report** or **MCR** has the meaning given in paragraphs 5 and 8 of this Schedule.

**Monthly Operational Report** or **MOR** has the meaning given in paragraphs 5 and 6 of this Schedule.

**Monthly Performance Report** or **MPR** has the meaning given in paragraphs 5 and 7 of this Schedule.

**Monthly Service Delivery Forum** means the monthly forum which will focus on the delivery of the services, described in paragraph 3.1 of this Schedule.

**Operating Plans** means the plans described in paragraph 10 of this Schedule.

**Performance Improvement Initiative** has the meaning given to it in the KPI Schedule.

**Quarterly Asset Management Report** or **QAMR** has the meaning given in paragraph 11.2 of this Schedule

**Quarterly Executive Forum** means the quarterly forum which will focus on the ongoing relationship between TfNSW and the Operator, described in paragraph 3.1 of this Schedule.

**Quarterly Executive Report** or **QER** has the meaning given in paragraphs 5 and 9 of this Schedule.

**TODIS** means an XML-based data interchange format that has been tailored to the needs of NSW transport agencies for the purpose of exchanging information about routes, timetables and related data items.

## 2. General Requirements

The Operator must:

- (a) provide effective governance for its own team to ensure the Services are delivered in accordance with the Contract;
- (b) ensure that the governance model used is aligned with and, where appropriate, integrated with the TfNSW business model;
- (c) take sole responsibility and accountability for the performance of its own subcontractors. Such subcontractors are not required to attend the TfNSW governance forums described in this Schedule; and
- (d) raise issues relating to the delivery of the Services at the Monthly Service Delivery Forums.

## 3. Governance Regime

### 3.1 Operational Forums and Reviews

There are a number of forums and reviews the Parties will utilise to manage the relationship and measure the Operator’s compliance with the Contract (including its objectives). The Operator must attend all the forums and reviews in this paragraph 3 in accordance with the specified requirements. The Operator must also attend ad-hoc meetings with TfNSW as required, such as specific root cause analysis reviews under Performance Improvement Initiatives, project status meetings, operational meetings and informal discussions.

The Operator must also attend any multi operator forum on safety, security or any other topic that TfNSW requires.

(a) Monthly Service Delivery Forum

The Monthly Service Delivery Forums will focus on the ongoing delivery of the services required under the Contract, including service management activities, Key Performance Indicator performance and reporting and customer satisfaction assessments.

The Monthly Service Delivery Forum will take place by the end of the third week of each month and be attended by:

TfNSW Attendees	Operator Attendees
Director (Chairperson)	Chief Executive Officer / General Manager (as required)
Contract Management Specialist	Chief Operating Officer
Senior Contracts Officer	Contract Manager or equivalent
	Operations Manager

The attendees at the Monthly Service Delivery Forum will address the following, as required:

- (i) Operator’s performance in the delivery of the Services and Operator Activities;
- (ii) Service improvement opportunities and service change plans being considered;
- (iii) feedback from community and stakeholder groups on whether the Services are meeting expectations;
- (iv) patronage trends and plans to increase patronage;
- (v) Operator’s performance against the Key Performance Indicators, in particular:
  - (A) monthly reporting, including emerging trends;
  - (B) new and outstanding root cause analyses and appropriate preventative action;

- (C) management of any Incidents;
- (D) Performance Improvement Initiatives under Schedule 4 (KPIs) or otherwise; and
- (E) post Incident reports and Cure Plans as required under the KPI Schedule, Clause 54 or otherwise;
- (vi) customer satisfaction surveys;
- (vii) Operating Plan reports;
- (viii) Operator’s handling and management of any customer complaints;
- (ix) any workforce/industrial relations issues affecting current/recent performance/service delivery;
- (x) any emerging significant industrial relations issues with the potential/capacity to effect the overall performance of the Contract;
- (xi) identify and approve any improvements to operational processes;
- (xii) any breaches by the Operator, corrective actions to resolve such breaches and progress of corrective actions;
- (xiii) interactions between the Operator and other operators (if appropriate) and ways to improve those interactions;
- (xiv) disputes between the Operator and another operator that cannot be resolved by the Operator;
- (xv) Service Variations or other changes to Services;
- (xvi) lifecycle management of assets by the Operator, and tracking against the Maintenance Works Program;
- (xvii) implementation and management of new spares, special tools and equipment by TfNSW and the Operator;



- (xix) any other issues relating to the performance of the Services or the Operator Activities.

Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Monthly Service Delivery Forum.

(b) Monthly Commercial Forum

The Monthly Commercial Forums will focus on all commercial matters under the Contract. This includes Payments, KPI Credits, set offs, deductions, disputes, contract negotiations, Service Variations and Contract Variations.

The Monthly Commercial Forum will take place by the end of the third week of each month and be attended by:

TfNSW Attendees	Operator Attendees
Director (Chairperson)	Senior Manager
Contract Management Specialist	Contract Manager or equivalent
Senior Contracts Officer	Chief Financial Officer
Finance Manager (as required)	

The attendees at the Monthly Commercial Forum will address the following, as required:

- (i) Staff issues, including changes to any of the Operator’s key personnel;
- (ii) organisational changes;



- (iii) raise and attempt to resolve any contractual disputes, prior to issuing a Dispute Notice under the Contract. This includes:
  - (A) review of any Service delivery issues and its significance for TfNSW;
  - (B) review of any Contract issues raised by TfNSW; and
  - (C) tabling KPI Defaults and associated KPI Credits;
- (iv) raise and attempt to resolve disputes between the Operator and another operator that cannot be resolved between the Operator and the other operator or through the Monthly Service Delivery Forum;
- (v) table and discuss proposed Service changes and other proposed amendments to the Contract;
- (vi) assist with budget planning activities;
- (vii) review financial summary and trending;
- (viii) address any Payment issues, including invoicing, rate validation and billing disputes, and results of benchmarking;
- (ix) review and manage audit activities and outcomes;



Reports addressing the above items must be delivered by the Operator to TfNSW at least five days prior to each Monthly Commercial Forum.

(c) Quarterly Executive Forum

The Quarterly Executive Forum will focus on the ongoing relationship between TfNSW and the Operator, the alignment of the Operator and the Contract to TfNSW’s business strategies and objectives, performance management, the management of escalated issues and continuing alignment to the governance requirements.

The Quarterly Executive Forum will be held within a month of the end of the relevant Quarter and the attendees will be:

TfNSW Attendees	Operator Attendees
Executive Management (as required)	Chief Executive Officer or General Manager
Director (Chairperson)	Senior Manager or equivalent

The attendees at the Quarterly Executive Forum will address the following:

- (i) share achievements, completed activities and projects;
- (ii) identify opportunities for improvement;
- (iii) discuss any improvement initiatives identified by the Operator;
- (iv) Service improvement opportunities and service change plans being considered;
- (v) feedback from community and stakeholder groups on whether the Services are meeting expectations;
- (vi) feedback on the state of working relationships with key stakeholders,
- (vii) patronage trends and plans to increase patronage;
- (viii) analysis of capacity utilisation by Route, including identification of Routes which are overcrowded and Routes which have excess capacity;
- (ix) review of Performance Improvement Initiatives and Cure Plans;
- (x) any emerging significant industrial relations issues with the potential/capacity to effect the overall performance of the Contract;

- (xi) any exceptions to the Maintenance Works Program that are impacting Services or any Asset Management Failures;
- (xii) communicate TfNSW's strategic direction where appropriate;
- (xiii) review the effectiveness of the relationship between the Operator and TfNSW and related concerns and issues;
- (xiv) communicate organisational changes;
- (xv) enable the Operator to communicate new technologies and service offerings;
- (xvi) review the development of customer facing information and the effectiveness of the interface of Operator systems and information with TfNSW application programming interfaces and systems;
- (xvii) develop objectives for the following Quarter;
- (xviii) annual Operating Plan reports;
- (xix) quarterly Operating Plan reports;
- (xx) report on performance against the requirements set out in Part 15 of the Services Schedule; and



Reports addressing the above items must be delivered by the Operator to TfNSW at least two days prior to each Quarterly Executive Forum.

The Operator represents that its senior executives are committed to making the relationship with TfNSW a success.

(d) Conduct of meetings

All meetings held under paragraphs 3.1(a) to (c) must be conducted in accordance with the following:

- (i) TfNSW will be responsible for publishing the agenda and scheduling the meeting;
- (ii) TfNSW will record the minutes and action items from each meeting and distribute with the agenda for the next meeting;
- (iii) action items not resolved within the agreed timeframe will be escalated as follows:
  - (A) from the Monthly Service Delivery Forum to the Monthly Commercial Forum, or straight to the Quarterly Executive Forum if considered necessary by TfNSW; and
  - (B) from the Monthly Commercial Forum to the Quarterly Executive Forum; and
- (iv) each Party will bear its own costs for attending meetings.

(e) Brand and Marketing Forum

The Brand and Marketing Forum will focus on all brand and marketing matters under the Contract. This includes policies, guidelines, current and future brand and marketing initiatives.

The Brand and Marketing Forum will take place at TfNSW's request and be attended by TfNSW and the Operator:

TfNSW Attendees	Operator Attendees
Executive Director, Public Affairs and Marketing (as required)	Senior Marketing Manager
Director, Public Transport Marketing (Chairperson)	Senior Communications Manager
Principal Manager, Brand and Creative Services	Relevant media team members
Contract Management Specialist	

The attendees at the Brand and Marketing Forum will address the following, as required:

- (i) public transport segmentation;
  - (ii) safety messaging and creative;
  - (iii) opal messaging and creative;
  - (iv) contactless messaging and creative;
  - (v) fare compliance and creative;
  - (vi) customer value proposition;
  - (vii) update – TfNSW major projects & initiatives;
  - (viii) on-mode and digital assets;
  - (ix) brand updates;
  - (x) major events;
  - (xi) accessibility and compliance;
  - (xii) best-practice methodology;
  - (xiii) opportunities across all operators for combined programs; and
  - (xiv) other items as required.
- (f) Conduct of meetings
- All meetings held under paragraph 3.1(e) must be conducted in accordance with the following:
- (i) TfNSW will be responsible for publishing the agenda and scheduling the meeting;
  - (ii) TfNSW will record the minutes and action items from each meeting and distribute with the agenda for the next meeting;
  - (iii) action items not resolved within the agreed timeframe will be escalated as follows:
    - (A) from the Brand and Marketing Forum to the Monthly Service Delivery Forum
    - (B) from the Monthly Service Delivery Forum to the Monthly Commercial Forum, or straight to the Quarterly Executive Forum if considered necessary by TfNSW; and
    - (C) from the Monthly Commercial Forum to the Quarterly Executive Forum; and
  - (iv) each Party will bear its own costs for attending meetings.
- (g) TfNSW may, in consultation with the Operator, elect to hold any monthly forum on a quarterly basis, and any quarterly forum on an annual basis.

#### 4. Reporting Principles

- (a) In accordance with Clause 33 and Clause 38, the Operator must provide all reports and data to TfNSW (or any person authorised by TfNSW):
  - (i) so that they are accurate and complete and in accordance with the timeframes specified in this Schedule 5 (or other times as may be required by TfNSW from time to time); and
  - (ii) in any one or more of the following formats (or any other format set out in this Schedule 5 or requested by TfNSW from time to time):
    - (A) hard copy (printed) report, printed in colour where applicable;
    - (B) electronic copy report; or
    - (C) electronic transfer in a format reasonably required by TfNSW, including:
      - (I) TODIS;
      - (II) travel and Trip data including through electronic interfaces such as SIRI and GTFS-(R); and
      - (III) reports submitted electronically via a reporting interface and/or web-portal for forum reporting, Operating Plans, periodic reporting.
- (b) In accordance with Clause 38.2, the Operator acknowledges and agrees that TfNSW, or a person authorised by TfNSW, may conduct audits on the contents of reports and data provided by the Operator and the Operator must comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits. Such audit reports will be considered in the relevant governance forums as set out in this Schedule. The Operator must make available to TfNSW on request all reports and underlying data in the format as required by TfNSW.

## 5. Overview of Reporting Requirements

The Operator must provide the following reports, plans and data to TfNSW (or any person authorised by TfNSW) in accordance with this Schedule (and any Annexures to this Schedule) at the following times:

Report/plan/data	Timeframe
Monthly Operational Reports	Within 10 Business Days of the start of each Calendar Month of the Service Term.
Monthly Performance Report	Within 10 Business Days of the start of each Calendar Month of the Service Term.
Monthly Commercial Report	Within 10 Business Days of the start of each Calendar Month of the Service Term.
Monthly Asset Management Report:	Within 10 Business Days after the start of each Calendar Month of the Service Term.
Quarterly Asset Management Report:	Within 15 Business Days after the start of each Quarter of the Service Term.
Quarterly Executive Report	No later than 15 Business Days prior to the date of the Quarterly Executive Forum referred to in paragraph 3.1(c) of this Schedule.
Half Yearly Financial Report	No later than 15 July of any Contract Year during the Service Term.
Annual Financial Report	No later than 30 April in any Contract Year during the Service Term.
Annual Customer Experience Plan Report	No later than two months after the end of each Financial Year during the Service Term.
Operator Communications and Marketing Plan	40 Business Days prior to the commencement of each Contract Year.
Operator Stakeholder Engagement Plan	40 Business Days prior to the commencement of each Contract Year.
Accessible Transport Action Plan	40 Business Days prior to the commencement of each Contract Year.
Environmental Plan	40 Business Days prior to the commencement of each Contract Year.
Customer Experience Plan	40 Business Days prior to the commencement of each Contract Year.
Small and Medium Enterprise and Regional Procurement Plan	40 Business Days prior to the commencement of each Contract Year.
Aboriginal Participation Plan	40 Business Days prior to the commencement of each Contract Year.
Disability Engagement Plan	40 Business Days prior to the commencement of each Contract Year.
Compliance with Modern Slavery obligations and Modern Slavery Statement (where applicable)	40 Business Days prior to the commencement of each Contract Year.
Diversity Inclusion Plan	40 Business Days prior to the commencement of each Contract Year.
Industrial Relations Plan	40 Business Days prior to the commencement of each Contract Year.

Report/plan/data	Timeframe
Operator Sustainability Plan	40 Business Days prior to the commencement of each Contract Year.
Ad-Hoc Reports	At such times as requested by TfNSW from time to time during the Service Term.
Data	The Operator must provide TfNSW with access to all asset, ticketing, OSD, passenger information and SSTS data held by the Operator at such times as requested by TfNSW in accordance with Clause 15.
KPIs	The Operator must provide reporting in relation to Key Performance Indicators as required under the KPI Schedule.
<u>Tax Invoice Reporting</u>	The Operator must provide reporting in relation to Tax Invoices as required under the Payment Schedule.

## 6. Reporting requirement - Monthly Operational Reporting

The Operator acknowledges and agrees that the Monthly Operational Report (or MOR) must satisfy the following requirements. TfNSW may provide a reporting interface, and if so, the Operator must use it, but in any case, the Operator must report the following at a minimum:

Monthly Operational Report	Description
<p><b>MOR 1:</b> Ticket sales and cash</p>	<p>MOR 1 reflects the value of ticket sales and the actual cash received by the Operator from Ticket sales for the Calendar Month by Ticket type. The Operator must accurately report in the MOR all cash or other payment received for the sale of every approved Ticket type.</p>
<p><b>MOR 2:</b> Operational hours completed</p>	<p>MOR 2 reflects the actual operational hours completed by Contract Ferries in the performance of the Services for the Calendar Month (as a network aggregate and by individual route) including:</p> <ul style="list-style-type: none"> <li>▪ total Services;</li> <li>▪ minus Cancelled Trips and Incomplete Trip hours;</li> <li>▪ total operated In-Service Hours;</li> <li>▪ total In-Service Hours provided for Holiday and Special Event Periods;</li> <li>▪ minus Cancelled Trip and Incomplete Trip hours for the Services provided for Holiday and Special Event Periods;</li> <li>▪ total In-Service Hours;</li> <li>▪ total other operational hours; and</li> <li>▪ total dead running operational hours.</li> </ul>
<p><b>MOR 3:</b> Operational performance data</p>	<p>MOR 3 reflects a number of key operational performance results for each Calendar Month:</p> <ul style="list-style-type: none"> <li>▪ Service by Route;</li> <li>▪ Route description;</li> <li>▪ Published Timetable Trips;</li> <li>▪ number of Incomplete Trips;</li> <li>▪ number of Cancelled Trips;</li> <li>▪ Trips that are Late;</li> <li>▪ Trips that are Late as a result of late connecting service;</li> <li>▪ Contract Ferry crowded on Route;</li> <li>▪ Timetabled accessible Trips; and</li> <li>▪ accessible Trips that are Incomplete Trips or Cancelled Trips. For the avoidance of doubt this means accessible Services not operating to accessible timetabled Trip/s.</li> </ul>
<p><b>MOR 4:</b> Incomplete or Cancelled Trips</p>	<p>MOR 4 reflects the actual planned In-Service Hours that were not completed for the Calendar Month:</p> <ul style="list-style-type: none"> <li>▪ Service by Route and direction;</li> <li>▪ identification (registration number or equivalent);</li> <li>▪ scheduled time;</li> </ul>

Monthly Operational Report	Description
	<ul style="list-style-type: none"> <li>▪ scheduled date;</li> <li>▪ status as Incomplete Trip or Cancelled Trip;</li> <li>▪ hours run as positioning or other incidental movements of Contract Ferries;</li> <li>▪ details of reason for Incomplete Trip or Cancelled Trip.</li> </ul>
<p><b>MOR 5:</b> Customer feedback</p>	<p>MOR 5 records the total number of different types of customer feedback received by the Operator or on the Operator’s behalf.</p> <p>MOR 5 must include details of customer feedback received from the following sources:</p> <ul style="list-style-type: none"> <li>▪ mail;</li> <li>▪ telephone;</li> <li>▪ email;</li> <li>▪ DCIS (Transportnsw.info Website);</li> <li>▪ the Operator’s website;</li> <li>▪ the Operator’s mystery traveller program;</li> <li>▪ matters referred to the Operator by TfNSW; and</li> <li>▪ any new TfNSW Systems and Equipment that may be introduced in accordance with Clause 15.</li> </ul>
<p><b>MOR 6:</b> Contract Ferry movements</p>	<p>MOR 6 reflects Contract Ferry movements that occurred in the preceding Calendar Month.</p> <p>These include new purchased and leased ferries, retired and replaced ferries.</p> <p>Where there have been no changes to any of the above reports in the preceding Calendar Month the Operator must submit MOR 8 with a “nil” record.</p>
<p><b>MOR 7:</b> Safety performance indicators</p>	<p>MOR 7 provides a set of safety related performance indicators.</p> <p>The safety performance section of the Monthly Operations Report must include as a minimum:</p> <ul style="list-style-type: none"> <li>▪ proactive management, including: <ul style="list-style-type: none"> <li>A. percentage of planned leadership visits completed (the total number of planned visits completed as compared to the total number planned for the month);</li> <li>B. percentage of planned safety actions closed out (within timeframe);</li> <li>C. percentage of planned safety audits completed; and</li> <li>D. safety audits, including the type, outcomes and non-conformances, status (raised/closed) of issues, preventative actions.</li> </ul> </li> <li>▪ operations and staff, including: <ul style="list-style-type: none"> <li>A. lost time injury frequency rate (injury and illness) based on the following formula: <p style="margin-left: 40px;">Lost time injury frequency rate = Number of lost time injuries/illnesses in the month/(Total hours worked in the month) x 1,000,000;</p> <p>A lost time injury is as defined in the Australian Standard: Workplace Injury and Disease Recording Standard (Australian Standard 1885.1 - 1990);</p> <p>Work related (compensable) injuries and illnesses are to be included;</p> </li> </ul> </li> </ul>



	<p>B. notifiable incidents (safety and environmental) with a description;</p> <p>C. Crew/Master human error incidents per vehicle operating hour; and</p> <p>D. the number of drug and alcohol tests undertaken and the total number of negative and positive results.</p> <ul style="list-style-type: none"> <li>▪ customer impact, including:           <ul style="list-style-type: none"> <li>A. number of customer injuries that are serious enough to require transportation to hospital or result in a fatality, per 100,000 customer Boardings (directly attributable to the Operator Activities);</li> <li>B. number of customer injuries from slips, trips and falls per 100,000 customer journeys (subset of above); and</li> <li>C. fatalities (on and off board) (all fatalities with a subset of those related to self-harm);</li> </ul> </li> <li>▪ the disruption to Services arising from any accident; and</li> <li>▪ any Incident and accident investigation, including the lessons learnt, recommendations made, actions taken and any changes to procedures, working practices and/or the Safety Management System.</li> </ul> <p><b>Accreditation and Authorisations</b></p> <p>The Accreditation and Authorisations section of the Monthly Operations Report must include as a minimum:</p> <ul style="list-style-type: none"> <li>▪ record of engagements with any Safety Authority; and</li> <li>▪ ongoing actions for maintaining Accreditation and similar Authorisations relevant to conducting the Services e.g. Certificates of Survey and Certificates of Operation.</li> </ul>
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## 7. Reporting Requirement - Monthly Performance Report

The Operator acknowledges and agrees the Monthly Performance Report must satisfy the following requirements:

Forum	Report Items	Frequency	Format
<b>Monthly Service Delivery Forum</b>	<p>KPI Report, including trend analysis</p> <p>The following to be provided by exception as required and agreed for each month’s meeting agenda:</p> <ul style="list-style-type: none"> <li>▪ new and outstanding root cause analyses identifying appropriate preventative action;</li> <li>▪ post Incident review reports;</li> <li>▪ new and existing escalations and plans to resolve;</li> <li>▪ recommended improvements to operational processes;</li> <li>▪ progress against improvement plans;</li> <li>▪ customer feedback report, including results of the Operator’s mystery traveller program;</li> <li>▪ delivery of initiatives to support delivery of the Customer Experience Plan</li> </ul>	<p>Within 10 Business Days after the start of the Calendar Month</p>	<p>Electronic Copy</p>

Forum	Report Items	Frequency	Format
	<ul style="list-style-type: none"> <li>▪ Incomplete Trips or Cancelled Trips report;</li> <li>▪ total number of Fare paying passengers travelling on the Services;</li> <li>▪ actual patronage Boarding by Route and Ticket type;</li> <li>▪ patronage and type of patronage per Route (cash/pre-paid/adult/concession/SSTS /Pensioner Excursion Travel/travel free of charge etc.); and</li> <li>▪ status of actions to improve interactions with any and all third party operators.</li> </ul>		

## 8. Reporting Requirement - Monthly Commercial Report

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

Forum	Report Items	Frequency	Format
<b>Monthly Commercial Forum</b>	<p>The following to be provided as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> <li>▪ Operator organisational changes, including requests for changes to Key Personnel;</li> <li>▪ any commercial changes to the Services environment;</li> <li>▪ any Service Variations;</li> <li>▪ KPI Report;</li> <li>▪ financial summary (monthly and year to date and trend analysis);</li> <li>▪ status of invoicing, payment issues, rate validation issues and billing disputes outstanding;</li> <li>▪ inventory report including Contract Ferry movements and Contract Ferry movement reports;</li> <li>▪ any allegations of fraud and corrupt conduct; and</li> <li>▪ any Incidents which may generate public and/or media interest in the Operator.</li> </ul>	Within 10 Business Days from the start of the Calendar Month	Electronic Copy

## 9. Reporting requirement - Quarterly Executive Report

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

Forum	Report Description	Frequency	Format
<b>Quarterly Executive Forum</b>	Quarterly summary of KPI Report	No later than 10 Business Days prior to	Electronic Copy

Forum	Report Description	Frequency	Format
	<p>The following to be provided as required and agreed for each month's meeting agenda:</p> <ul style="list-style-type: none"> <li>▪ achievements, completed activities and projects;</li> <li>▪ overall performance against the results of customer satisfaction surveys in accordance with the Governance and Reporting Schedule, the Operator's mystery traveller program and trend analysis;</li> <li>▪ improvement opportunities, including any strategic reviews of the Customer Experience Plan;</li> <li>▪ list of upcoming activities and projects;</li> <li>▪ relationship effectiveness issues between the Operator and TfNSW;</li> <li>▪ engagement processes issues;</li> <li>▪ Operator organisational changes;</li> <li>▪ Operator strategic changes;</li> <li>▪ Service trends, including capacity report on the Service, covering peaks and floors, trends, utilisation and planning to assess the Sydney public transport network and its utilisation;</li> <li>▪ Contract Ferry and Wharf, lay over area or berthing area utilisation plans (detailing the forecast for the following two 12 month Financial Year periods);</li> <li>▪ refresh plans for assets nearing end of useful life;</li> <li>▪ any exceptions to the Maintenance Works Program that are impacting the Services;</li> <li>▪ status of any recommendations from an asset management audit conducted under Clause 25.8, or any other review, audit, investigation, inquiry or inspection by a Safety Authority or other Governmental Authority;</li> <li>▪ Quarterly financial report (balance sheet, cashflow and profit and loss statement) and trend analysis;</li> <li>▪ any allegations of fraud and corrupt conduct; and</li> <li>▪ any Incidents which may generate public and/or media interest in the Operator.</li> </ul>	<p>the Quarterly Executive Forum</p>	

## 10. Operating Plans

### 10.1 Operator Communications and Marketing Plan

- (a) No later than:
- (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,

the Operator must prepare and submit to TfNSW an Operator Communications and Marketing Plan covering the relevant forthcoming Contract Year which must:

- (iii) identify the marketing context for the plan and identified marketing opportunities for the Contract Year;
  - (iv) state the marketing objectives for the Contract Year (for example, patronage growth, safe use of public transport in the Contract area or operational communication);
  - (v) identify audience profile and insights including the Operator's approach to market segmentation and target audiences;
  - (vi) set out a planned calendar of marketing, promotional, public relations and other engagement activities, providing an overview of each activity, implementation timing and budget;
  - (vii) detail the Operator's approach to creative content and the channels or resources to be used;
  - (viii) provide for the inclusion in marketing materials (where relevant) of information and references to TfNSW customer channels including the transportnsw.info website and apps and relevant services and products including the Opal Ticketing Equipment;
  - (ix) be consistent with TfNSW policies, guidelines and programs advised to the Operator prior to the submission date; and
  - (x) (except for the initial Operator Communications and Marketing Plan) detail compliance with and progress against items in the previous Operator Communications and Marketing Plan.
- (b) Within 20 Business Days after submission of a draft Operator Communications and Marketing Plan, TfNSW may provide comments on the draft Operator Communications and Marketing Plan.
  - (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under paragraph 10.1(b), the Operator must provide to TfNSW for its approval a revised version of the Operator Communications and Marketing Plan amended to incorporate any comments provided by TfNSW under paragraph 10.1(b).
  - (d) TfNSW will approve the Operator Communications and Marketing Plan if it is consistent with TfNSW Policies, guidelines and programs advised to the Operator prior to the submission date and adequately incorporates any comments required by TfNSW under paragraph 10.1(b).
  - (e) The Operator must only undertake marketing in accordance with the final Operator Communications and Marketing Plan approved by TfNSW under this paragraph 10.1.
  - (f) The parties acknowledge and agree that the Operator Communications and Marketing Plan may be updated by the Operator during the Contract Year. The Operator must notify TfNSW of any updates and follow the process set out in this paragraph 10.1.
  - (g) The Operator must notify TfNSW, and obtain TfNSW's approval (which approval may not be unreasonably withheld), prior to the Operator undertaking any additional marketing which is not included in the Operator Communications and Marketing Plan approved by TfNSW under this paragraph 10.1.

## 10.2 Operator Stakeholder Engagement Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,

the Operator must prepare and submit to TfNSW an Operator Stakeholder Engagement Plan covering the relevant forthcoming Contract Year which must:

- (iii) identify the stakeholder engagement activities to be undertaken by the Operator including providing details of:
  - (A) relevant stakeholders to be engaged with during the Contract Year;
  - (B) focus areas for engagement;
  - (C) information to be provided to stakeholders;
  - (D) the proposed format of reporting on stakeholder responses and feedback to TfNSW;
  - (E) how the proposed engagement is aligned with TfNSW stakeholder engagement plans for the relevant Contract Year and any other TfNSW stakeholder engagement policies or direction issued in respect of the relevant Contract Year; and
  - (F) (except for the initial Operator Stakeholder Engagement Plan) detail compliance with and progress against items in the previous Operator Stakeholder Engagement Plan; and
- (iv) be consistent with TfNSW policies, guidelines and programs advised to the Operator prior to the submission date and updated from time to time.
- (b) Within 20 Business Days after submission of a draft Operator Stakeholder Engagement Plan under paragraph 10.2(a), TfNSW may provide comments on the draft Operator Stakeholder Engagement Plan.
- (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under paragraph 10.2(b), the Operator must provide to TfNSW for its approval a revised version of the Operator Stakeholder Engagement Plan amended to incorporate any comments provided by TfNSW under paragraph 10.2(b).
- (d) The Operator must only undertake stakeholder engagement and community consultation in accordance with the final Operator Stakeholder Engagement Plan approved by TfNSW under this paragraph 10.2.
- (e) The parties acknowledge and agree that the Operator Stakeholder Engagement Plan may be updated by the Operator during the Contract Year. The Operator must notify TfNSW of any updates and follow the process set out in this paragraph 10.2.

### 10.3 Accessible Transport Action Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,
 the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Accessible Transport Action Plan.
- (b) The Operator's Accessible Transport Action Plan must specify the steps the Operator will take to comply with:
  - (i) the DDA Legislation;
  - (ii) the Anti-Discrimination Act 1977 (NSW);
  - (iii) the Disability Inclusion Act 2014 (NSW); and
  - (iv) the Guidelines for Disability Action Planning by NSW Governmental Agencies.

- (c) The Operator must annually review the Accessible Transport Action Plan and make such amendments as may be required to ensure it complies with this paragraph 10.3 and meets the needs of passengers, ongoing compliance with Law and this Contract.
- (d) The Operator must consult and liaise with TfNSW, the Roads Authority, local government authorities or any other Governmental Agency with responsibilities relevant to the Transit Stops (**Relevant Authority**) and Connecting Passenger Operators to:
  - (i) carry out the Operator's obligations relating to State Premises and Service related signage and barriers at State Premises, referred to in Item 6 of the Services Schedule;
  - (ii) facilitate and enable compliance by the Relevant Authority with accessibility requirements at State Premises; and
  - (iii) coordinate the Operator's accessible transport services with the accessible services and infrastructure of Connecting Passenger Operators. The Operator must publish its Accessible Transport Action Plan on its website and make it available to passengers, upon request, free of charge.
- (e) The Operator must develop, implement, maintain and comply with its Accessible Transport Action Plan from the date that is three months after the Planned Service Commencement Date.
- (f) Except for the initial Accessible Transport Action Plan, the Operator must detail in each Accessible Transport Action Plan, its compliance with and progress against items in the previous Accessible Transport Action Plan.

#### 10.4 Environmental Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,
 the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Environmental Plan which must:
  - (iii) be generally consistent with or address the environmental system requirements set out in ISO 14001 'Environmental Management System – Specification with guidance for use'; and
  - (iv) have regard to the need to preserve the Environment and the need to mitigate any adverse effects on the Environment and must ensure all material and consumables used in the performance of the Services are environmentally friendly and kept and disposed of in an environmentally safe and lawful manner.
- (b) The Operator must develop, implement, maintain and comply with its Environmental Plan from the date that is three months after the Planned Service Commencement Date.
- (c) The Operator must annually review the Environmental Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract.
- (d) The Operator must publish its Environmental Plan on its website and make it available to passengers, upon request, free of charge.
- (e) If requested by TfNSW, the Operator must demonstrate that it has appropriate environmental management systems in place.

#### 10.5 Customer Experience Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,

the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Customer Experience Plan which must:

- (iii) address and detail:
  - (iv) the Operator's customer service model including Staff competencies, roles, deployment and responsibilities;
  - (v) customer communication and other interfaces throughout the journey during normal, degraded and planned service disruption operations;
  - (vi) customer and Staff safety and security;
  - (vii) Special Event Services support;
  - (viii) ticketing, revenue protection and mitigation of fare evasion;
  - (ix) operational integration with other public transport services;
  - (x) customer feedback and lost property management;
  - (xi) customer service training and development of Staff; and
  - (xii) measures and strategies to ensure customer engagement in maintaining high standards and the continuous improvement of service delivery; and
  - (xiii) ensure equitable access for all customers.
- (b) The Operator must develop, implement, maintain and comply with its Customer Experience Plan from the date that is three months after the Planned Service Commencement Date.
  - (c) The Operator must annually review the Customer Experience Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract.
  - (d) The Operator must publish its Customer Experience Plan on its website and make it available to passengers, upon request, free of charge.

#### 10.6 Safety Management Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,
 the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Safety Management Plan.
- (b) Without limiting Clauses 39.1 to 39.7 of this Contract, the Operator must comply with the Safety Management Plan.
- (c) The Operator must maintain current versions of the Safety Management Plan at all times during the Service Term.
- (d) If requested by TfNSW, the Operator must provide TfNSW with a complete and accurate copy of its then current Safety Management Plan.
- (e) The Operator must ensure that the Safety Management Plan has been, and will be, provided to TfNSW to demonstrate to TfNSW that the Operator has the understanding, capacity and capability to perform the Operator Activities safely and in accordance with the requirements of this Contract and relevant Laws.
- (f) Without limiting Clause 42.2 of this Contract, TfNSW and TfNSW's Associates do not assume or owe any duty of care to the Operator to review, or when reviewing, the Safety Management Plan and any review of, comments upon, or failure to comment upon the Safety Management Plan by TfNSW or TfNSW's Associates will not impose any additional obligations whatsoever on TfNSW or

relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise according to Law.

#### 10.7 Small and Medium Enterprise and Regional Procurement Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Small and Medium Enterprise and Regional Procurement Plan which must:
  - (iii) demonstrate how it will increase spend with small and medium enterprises, overall and as a proportion of total government procurement expenditure in accordance with the NSW Government Small and Medium Enterprise and Regional Procurement Policy; and
  - (iv) include targets.
- (b) The Operator must develop, implement, maintain and comply with its Small and Medium Enterprise and Regional Procurement Plan from the date that is three months after the Planned Service Commencement Date.
- (c) The Operator must annually review the Small and Medium Enterprise and Regional Procurement Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Small and Medium Enterprise and Regional Procurement Plan must be provided to TfNSW.

#### 10.8 Aboriginal Participation Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Aboriginal Participation Plan which must
  - (iii) demonstrate how the Operator will promote Aboriginal participation under this Contract; and
  - (iv) comply with the *New South Wales Government Aboriginal Procurement Policy* as amended from time to time (latest version January 2021) (**APP**).
- (b) The Operator must develop, implement, maintain and comply with its Aboriginal Participation Plan from the date that is three months after the Planned Service Commencement Date.
- (c) The Operator must annually review the Aboriginal Participation Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Aboriginal Participation Plan must be provided to TfNSW.

#### 10.9 Disability Engagement Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Disability Engagement Plan which must demonstrate how it will:



- (iii) seek to award contracts to Australian Disability Enterprises (ADE) which are not for profit organisations that employ people with disabilities, including targets over the Contract Year; and
- (iv) create (or filling existing) jobs in corporate, administration, operations or maintenance for persons with a disability, including targets over the Contract Year.
- (b) The Operator must develop, implement, maintain and comply with its Disability Engagement Plan from the date that is three months after the Planned Service Commencement Date.
- (c) The Operator must annually review the Disability Engagement Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Disability Engagement Plan must be provided to TfNSW.

#### 10.10 Diversity Inclusion Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,
 the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Diversity Inclusion Plan which must demonstrate how it will:
  - (iii) increase the percentage of women in the workforce;
  - (iv) provide greater opportunities for women in trades;
  - (v) work towards gender equality in leadership roles;
  - (vi) increase opportunities to support LGBTIQ+ employees; and
  - (vii) propose other Workforce Diversity and Inclusion activities.
- (b) The Operator must develop, implement, maintain and comply with its Diversity Inclusion Plan from the date that is three months after the Planned Service Commencement Date.
- (c) The Operator must annually review the Diversity Inclusion Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Diversity Inclusion Plan must be provided to TfNSW.

#### 10.11 Business Continuity and Disaster Recovery Plan

- (a) The Operator:
  - (i) must have, maintain and comply with a Business Continuity and Disaster Recovery Plan which sets out the disaster recovery and business continuity processes to be implemented by the Operator in the event of a Disaster, including:
    - (A) the processes the Operator will implement to protect the Assets and any part of the Data within its control; and
    - (B) the steps that the Operator will take to recommence provision of the Services;
  - (ii) must ensure that the Business Continuity and Disaster Recovery Plan covers potential impacts on its Staff and is sufficient to encompass all Services and any site or location from which the Operator or the Operator's Associates operate, or other site or location from which any of the Services are or will be performed (or tasks and activities relevant to the Services undertaken);
  - (iii) where requested by TfNSW, test or modify the Business Continuity and Disaster Recovery Plan to:
    - (A) ensure it is effective in managing risks relevant to service continuity and in responding to relevant events;

- (B) demonstrate to TfNSW that the Operator has the ability to recover from a Disaster and to recommence provision of the Services in accordance with the Operator's obligations under this Contract; and
- (C) ensure it is properly integrated with TfNSW's (and, where relevant and available, other transport operators') own business continuity and disaster recovery processes, provided that any such requested testing or modifications do not place a significant burden on the Operator;
- (iv) provide TfNSW with a copy of the Business Continuity and Disaster Recovery Plan (including any updates) upon request;
- (v) without limiting paragraph 10.11(a), if a Disaster occurs, must implement the relevant recovery, back-up and response activities set out in the Business Continuity and Disaster Recovery Plan at the times and in accordance with the corresponding procedures set out in the Business Continuity and Disaster Recovery Plan;
- (vi) acknowledges and agrees that TfNSW will not be required to pay any fees or other amounts for any Services that are not provided as a result of a Disaster;
- (vii) [not used];
- (viii) if requested by TfNSW (in its sole discretion), must allow TfNSW's observation and assessment of the testing of the Business Continuity and Disaster Recovery Plan or provide TfNSW with an independent assessment and assurance in writing that the Operator has successfully tested the Business Continuity and Disaster Recovery Plan; and
- (ix) must:
  - (A) provide to TfNSW the Operator's criteria and procedures for declaring:
    - (I) a threat to the Operator's ability to provide the Services uninterrupted to TfNSW; and
    - (II) an actual disruption to the Operator's continuous provision of the Services, to the extent that such criteria and procedures are not specified within the Business Continuity and Disaster Recovery Plan in a level of detail which TfNSW considers, acting reasonably, to be necessary, and provided that nothing in the foregoing limits TfNSW's ability to declare a Disaster;
  - (B) immediately notify TfNSW of any threat or any disruption to Operator's ability to provide the Services; and
  - (C) for the duration of any disruption to the Services, provide to TfNSW a formal status report each day until the Services are restored.
- (b) The Operator must keep the Business Continuity and Disaster Recovery Plan and associated plans and processes up to date so that they remain consistent with the then current Services and provide for any changes in the provision of the Services or the facilities supporting the provision of the Services.
- (c) The Operator must conduct an operational test of the Business Continuity and Disaster Recovery Plan at least once every 12 months and must provide TfNSW with the result of that testing.
- (d) The Operator must make any reasonable changes to the Business Continuity and Disaster Recovery Plan requested by TfNSW from time to time, where those changes relate to the provision of the Services.
- (e) The Operator must consult with TfNSW on the updating of its plans and processes to amend the Business Continuity and Disaster Recovery Plan in order to address any major service, audit or security requirements of TfNSW or any Governmental Agency.

### 10.12 Operator Disruption Management Plan

- (a) No later than:
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,

the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator Disruption Management Plan covering the relevant forthcoming Contract Year which must be consistent with the Proposal.
- (b) Within 10 Business Days after submission of a draft Operator Disruption Management Plan under paragraph 10.12(a), TfNSW may provide comments on the draft Operator Disruption Management Plan.
- (c) Within 10 Business Days after receipt of TfNSW's comments (if any) under paragraph 10.12(b), the Operator must provide to TfNSW for its approval a revised version of the Operator Disruption Management Plan amended to address any comments provided by TfNSW under paragraph 10.12(b).
- (d) TfNSW will approve the Operator Disruption Management Plan if it complies with paragraph 10.12(a) and adequately addresses any comments required by TfNSW under paragraph 10.12(b).
- (e) The Operator must comply with the Operator Disruption Management Plan approved by TfNSW under paragraph 10.12(d).
- (f) The Operator Disruption Management Plan must not be amended without TfNSW's approval.

### 10.13 Local Content Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,

the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Local Content Plan which must demonstrate how the Operator will utilise goods and services supplied by local industries to deliver the Contract Services and be consistent with the Proposal.
- (b) The Operator must develop, implement, maintain and comply with its Local Content Plan from the date that is three months after the Planned Service Commencement Date.
- (c) The Operator must annually review the Local Content Plan and make such amendments as may be required to ensure ongoing compliance with this Contract. Each update of the Local Content Plan must be provided to TfNSW.
- (d) The Operator must provide progress reports against the Local Content Plan to TfNSW monthly or more frequently as determined by TfNSW, in a format specified by TfNSW.

### 10.14 Operator Sustainability Plan

The Operator must provide and comply with the Operator Sustainability Plan in accordance with Schedule 16.

### 10.15 Industrial Relations Plan

- (a) No later than
  - (i) 20 Business Days after the Planned Service Commencement Date; and
  - (ii) thereafter, as outlined in paragraph 5 of this Schedule,

the Operator must prepare and submit to TfNSW (to TfNSW's reasonable satisfaction) the Operator's Industrial Relations Plan which must demonstrate how the Operator will manage industrial relations risk during the Service Term and be consistent with the Proposal.

- (b) The Operator must develop, implement, maintain and comply with its Industrial Relations Plan from the date that is three months after the Planned Service Commencement Date.
- (c) The Operator must annually review the Industrial Relations Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Industrial Relations Plan must be provided to TfNSW.

## 11. Reporting

### 11.1 Half Yearly Financial Report and Annual Financial Report

- (a) **Half Yearly Financial Report:** The Operator must provide to TfNSW in accordance with paragraph 5 of this Schedule:
  - (i) a half yearly Financial Report for the six month period ending 30 June; and
  - (ii) a detailed line item report in the format specified in Annexure 1 to this Schedule 5 for the six month period ending 30 June.
- (b) **Annual Financial Report:** The Operator must provide to TfNSW in accordance with paragraph 5 of this Schedule:
  - (i) an annual Financial Report for the year ended 31 December which is independently audited and which must contain at a minimum:
    - (ii) balance sheets;
    - (iii) cash flow reports;
    - (iv) profit and loss statements; and
    - (v) any other financial analysis required by TfNSW;
  - (vi) a detailed line item report in the format specified in Annexure 1 to this Schedule 5 for the preceding calendar year; and
  - (vii) certified copies of its audited annual financial statements for the previous calendar year together with all related directors' and auditor's reports to TfNSW.
- (c) Each of the documents specified in paragraphs 11.1(a) and 11.1(b) above must be submitted to TfNSW in electronic format.

### 11.2 Monthly Asset Management Report and Quarterly Asset Management Report

- (a) The Operator must provide regular reports that meet the requirements of the Transport Service Provider Asset Management Reporting Standard (dated 27 November 2017 and published by the Asset Standards Authority), or any successor standard for each Calendar Month (**Monthly Asset Management Report**) and each Quarter (**Quarterly Asset Management Report**) during the Service Term.
- (b) The Operator must provide each Monthly Asset Management Report to TfNSW within 10 Business Days after the end of the Calendar Month of the Service Term to which the report relates.
- (c) The Operator must provide the Quarterly Asset Management Report to TfNSW no later than 15 Business Days after the end of the Quarter during the Service Term to which the report relates.

## 12. Reporting requirement - Ad-Hoc Reports

The Operator acknowledges and agrees that TfNSW may require the Operator to submit Ad-Hoc Reports to TfNSW from time to time in the format required by TfNSW.

## 13. Data Requirements

The Operator acknowledges and agrees that TfNSW may require access to data collected or generated by the Operator from time to time and the Operator must provide such access as required by TfNSW. The following table outlines specific data elements the Operator must collect commencing from the Service Commencement Date and for the duration of the Service Term, with all such data being Data owned by TfNSW.

Service	Report	Frequency	Format
<b>OSD data transfer</b>	<ul style="list-style-type: none"> <li>• Data required of the type and in the format specified in TODIS or any replacement system, as modified from time to time by TfNSW, including:                             <ul style="list-style-type: none"> <li>○ Timetable, Route and Wharf data; and</li> <li>○ shift data, including Master and Crew shifts.</li> </ul> </li> <li>• Data required from automated and electronic ticketing systems</li> </ul>	As specified in the TODIS 3 weeks in advance of any change	Data transfer as specified by TODIS
<b>Ferry Incident Management Database</b>	Operators are required to notify TfNSW of incidents and accidents	In accordance with the PT Regulations	Submission of an incident report to the BIMS system
<b>Ticketing data</b>	Provide continued access to all Ticketing data	Daily	As specified by TfNSW's electronic ticketing system requirements as set out in Part 4 of the Services Schedule

**Annexure 1 Line Item Report**

As set out in paragraph 11.1(a) and 11.1(b) the Operator is to provide detailed revenues and costs per line item in accordance with the category list as set out below:

Ferry		Reporting period ending		Previous reporting period ending		
		DD	MM	YY	DD	MM
<b>Commercial revenue line items (2015-16)</b>						
	Revenues from advertising	\$'000	0		0	
	Revenues from charter services	\$'000	0		0	
	Revenues from other commercial opportunities					
	<b>Total Commercial Revenue</b>	\$'000	0		0	
<b>Cost line items (2015-16)</b>						
	Master, Crew and general purpose hand - Salary, wages, overtime and oncosts	\$'000	0		0	
	Maintenance Staff - Salary, wages, overtime and oncosts	\$'000	0		0	
	Cleaners - salary, wages, overtime and oncosts	\$'000	0		0	
	Other staff - salary, wages, overtime and oncosts					
	Fuel - Diesel	\$'000	0		0	
	Contract Ferry other parts and consumables	\$'000	0		0	
	Contract Ferry maintenance and repairs	\$'000	0		0	
	Contract cleaning	\$'000	0		0	
	Wharf and other premises related cleaning, maintenance and repairs	\$'000	0		0	
	Contract Ferry operating costs - signage	\$'000	0		0	
	Contract Ferry operating costs - Timetables	\$'000	0		0	
	Contract Ferry operating costs - Livery	\$'000	0		0	
	Contract Ferry operating costs - Uniforms	\$'000	0		0	
	Contract Ferry survey costs	\$'000	0		0	
	Contract Ferry refurbishments	\$'000	0		0	
	Insurance - Ferry specific	\$'000	0		0	
	Ticketing costs	\$'000	0		0	
	Security	\$'000	0		0	
	Cash collection	\$'000	0		0	
	Operating lease expenses	\$'000	0		0	
	Other Contract Ferry specific overhead costs	\$'000	0		0	
	Other costs	\$'000	0		0	
	<b>Total Operating Costs</b>	\$'000	0		0	
	<b>Net Operating Costs (Cost – Commercial Revenue)</b>	\$'000	0		0	
<b>Statement of FTEs</b>						
	Masters, Crew and general purpose hands	FTEs	0		0	
	Maintenance	FTEs	0		0	

Cleaners	FTEs	0	0
Other	FTEs	0	0
Total	FTEs	0	0

**Operational parameters - Services**

Number of Contract Ferries	number	0	0
Contract Ferry hours per year - in service	hours	0	0
Contract Ferry hours per year - dead running	hours	0	0
Total Contract Ferry hours		0	0
Passenger journeys	'000	0	0
Net Operating Cost per total Contract Ferry hours	\$	0	0
Net Operating Cost per passenger journey	\$	0	0
Fuel Consumed - Diesel	Litres	0	0

**Corporate and Commercial**

**Operational parameters – Charter Services**

		Year ending	
		30 June	30 June
Contract Ferry Charter hours per year - in service and dead running	hours	0	0

**Corporate Costs**

Corporate Staff - Salaries, wages, overtime and oncosts	\$'000	0	0
Other corporate expenses	\$'000	0	0
Total	\$'000	0	0

**Statement of FTEs**

Corporate Staff	FTEs	0	0
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# Schedule 6 - Asset Schedule

## 1. Asset Management Obligations

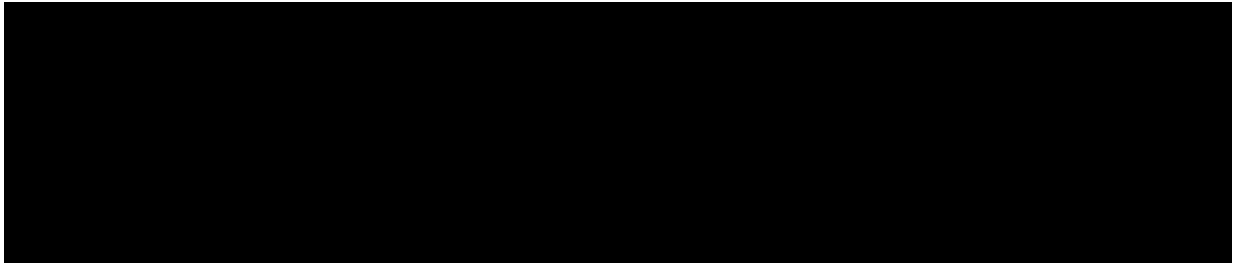
### 1.1 Application of Schedule

In this Schedule and Clause 25, unless the context requires otherwise, references to Assets exclude:

- (a) the Licensed Areas; and
- (b) any Wharf infrastructure (but do not exclude the Circular Quay or Manly wharf and Manly hydraulic ramps and CCTV assets, passenger information displays and help points located on State Wharves).

Performance of the Asset Management Activities must enable the Operator to comply with its maintenance obligations under any State Asset Access Agreements.

### 1.2 Asset Management Framework requirement



### 1.3 General obligations

The Operator must:

- (a) carry out the Asset Management Activities to ensure the performance of the Assets enables the Operator to satisfy all requirements of the Contract;
- (b) ensure that only suitably trained and competent personnel are engaged in respect of the Asset Management Activities;
- (c) keep the Assets in a clean and tidy condition and remove all waste, spillage, graffiti, litter and debris, including incident debris, and repair all damage;
- (d) maintain records of all Asset Management Activities carried out in the Asset Information System within 24 hours of the activity occurring;
- (e) conduct Asset Management Activities in accordance with the Asset and Services Plan and the Maintenance Works Program;
- (f) inspect, weed, trim, mow, water, dewater, fertilise, repair, replace, plant and mulch all landscaped areas and non-structure areas of the Assets;
- (g) retain appropriate levels of spares (including any rotatable spares); and
- (h) procure, maintain and update an Asset Information System which must be capable of exchanging data with the TfNSW enterprise asset management system (EAM).

### 1.4 Asset inspection and routine preventative maintenance

- (a) Inspections and routine maintenance of the Assets must be conducted in accordance with the Asset and Services Plan and the Asset Maintenance Standards and compliant technical maintenance plans.



- (b) Inspections must identify non-compliances and potential non-compliances in the performance of the Operator Activities, defects in and the condition of the Assets.
- (c) The outcomes of inspections must be recorded in the Asset Information System together with an action plan to rectify any non-compliance promptly and any work to rectify performance.

### 1.5 Asset replacement and refurbishment

- (a) Replacement and refurbishment of an Asset must be undertaken by the Operator in accordance with the Asset and Services Plan and otherwise where replacement or refurbishment of an Asset or components of an Asset is necessary for the Operator to meet the requirements of the Contract or for the Asset to achieve its Design Life.
- (b) Replacement or refurbishment of an Asset must meet the following requirements:
  - (i) where refurbishment of an Asset is undertaken, the functionality and performance of the refurbished Asset must be equivalent to the functionality and performance of the Asset when new;
  - (ii) where replacement is undertaken with a new Asset, the functionality, performance and Design Life of the new Asset must be equivalent to or exceed the functionality, performance and Design Life of the replaced Asset when it was new;
  - (iii) the requirements of the TfNSW Configuration Management Plan (as defined in paragraph 2(e) of this Schedule) and processes.

### 1.6 Maintenance equipment

The Operator must procure any tools and equipment not comprising the State Assets and the TfNSW Systems and Equipment that are required to enable the Operator to comply with the requirements of the Contract including maintaining the Assets in accordance with this Schedule.

### 1.7 Inventory and inventory control

The Operator must maintain a spares inventory at levels that permit the timely maintenance of the Assets through the Service Term and at the end of the Service Term, on the basis of continued operation as a going concern.

### 1.8 Condition monitoring

- (a) The Asset Management Framework must include a description of how condition monitoring will be used to assess the condition of Assets and how it will be used to inform changes to the Asset and Services Plan. The Operator must undertake condition monitoring in order to:
  - (i) identify and prevent as far as practicable, future Asset failures;
  - (ii) identify Assets that require maintenance, replacement or refurbishment;
  - (iii) provide objective analysis of the condition of the Asset which can be used to determine remaining serviceable life; and
  - (iv) enable analysis of trends in performance and reliability of Assets referable to location and system.
- (b) The method and frequency of condition monitoring and the minimum performance at which intervention is required must be:
  - (i) as defined in the Asset Maintenance Standards for that Asset;
  - (ii) as nominated by the manufacturer; and
  - (iii) otherwise sufficient to ensure the Operator's compliance with the requirements of the Contract.

- (a) The Operator must undertake an Asset condition assessment of the State Assets within six months after the Service Commencement Date (or if a State Asset is not made available on the Service Commencement Date, within six months after commencement of the relevant State Asset Access Agreement for each State Asset).

## 2. Asset Maintenance Standards

- (a) The Operator must document and adopt Asset Maintenance Standards that include manufacturer's requirements in technical specifications and performance standards or such higher standards as may be required to meet the obligations of the Contract.
- (b) [REDACTED]
- (c) The Asset Maintenance Standards must cover each Asset and include;
  - (i) the specific performance characteristics which must be maintained;
  - (ii) potential faults or hazards which could affect each performance characteristic;
  - (iii) clearly defined severity ratings for each potential fault or hazard;
  - (iv) the severity ratings at which the fault must be rectified or the hazard removed (intervention level);
  - (v) the time period / response time within which any faults must be rectified or hazard removed; and
  - (vi) condition indicators and condition ratings for each specific performance characteristic that will be used to record an objective assessment of the condition of the Asset and Asset type.
- (d) The Operator must review and improve the Asset Maintenance Standards on an ongoing basis throughout the Service Term to ensure that the Asset Maintenance Standards enable the Operator to comply with its obligations under the Contract.
- (e) [REDACTED]
- (f) The Operator will establish a 'Configuration Change Board' in accordance with the TfNSW Configuration Management Plan.

## 3. Asset and Services Plan

- (a) The Operator must develop, update and maintain the Asset and Services Plan in accordance with the TfNSW Transport Service Provider Asset Management Plan Standard and in accordance with the Asset Management ISO 55000 suite of standards. The plan is to consider the Design Life of the Assets (not the length of the Contract). The Asset and Services Plan or Asset Management Framework must:
  - (i) include an Asset management policy;
  - (ii) include a risk management policy;
  - (iii) describe the risk management process;

- (iv) include an assurance and audit program; and
- (v) include a management plan for subcontracted maintenance.
- (b) The Asset and Services Plan must also contain a 30 year (rolling) forecast works program for the maintenance (planned, preventative and reactive), refurbishment and/or replacement of Assets.
- (c) The program must include the following:
  - (i) Assets to be renewed with supporting justification;
  - (ii) timing of works;
  - (iii) location and scope of works; and
  - (iv) the Fleet Deployment Plan plus the projected fleet replacement beyond the Service Term to meet TfNSW's fleet age requirements.
- (d) As part of the Asset and Services Plan, the Operator must develop, implement and maintain a Maintenance Works Program which;
  - (i) describes the Asset Management Activities to be undertaken to meet the requirements of the Contract;
  - (ii) describes the Asset interventions to be carried out during the following 24 months in sufficient detail to facilitate effective monitoring of all Asset Management Activities;
  - (iii) must include a rolling seven-year docking plan that addresses Australian Maritime Safety Authority and vessel technical maintenance plan requirements.
- (e) The Asset and Services Plan must incorporate the requirements of appropriate Asset Maintenance Standards as amended to meet the requirements of the Contract and the Australian Maritime Safety Authority.
- (f) The Asset and Services Plan must incorporate an obsolescence management plan that describes how Assets will meet their Design Life.
- (g) The Operator must submit the updated Asset and Services Plan to TfNSW:
  - (i) as part of the development of the Asset Management Framework in accordance with Clause 25.2;
  - (ii) thereafter, at yearly intervals by no later than 1 July in each Contract Year and if the Operator materially amends the Asset and Services Plan including the technical maintenance plans.

#### 4. Handback Condition

At the Termination Date, the Operator must ensure that:

- (a) the Assets are in such condition to ensure a safe and reliable operation of the Services and comply with the requirements of the Contract;
- (b) all Asset Management Activities required under the Asset and Services Plan are complete;
- (c) any deficiencies in any State Asset or Operator New Ferry that mean the Design Life, or the residual life, of the State Asset or Operator New Ferry will not be achieved are rectified (unless such deficiencies were forecast with the approval of TfNSW to be rectified after expiry of the Service Term in the course of Asset Management Activities undertaken in accordance with the Asset and Services Plan);
- (d) any rotatable spares are in as new condition or refurbished in accordance with the Asset and Services Plan;

- (e) all special tools and equipment are maintained and fit for purpose and are suitable to maintain the State Assets and Operator New Ferries as a going concern;
- (f) the State Premises are in no worse a condition than at the Service Commencement Date;
- (g) all Assets are performing to their intended function and are fault free;
- (h) Assets are clean and free from graffiti, vandalism and defects (subject only to fair wear and tear); and
- (i) an assurance statement is provided in accordance with Clause 58.5 of the Contract.

## 5. Asset Information System

### 5.1 General requirements of the Asset Information System

- (a) The Operator must provide, maintain, keep up to date and support an Asset Information System covering all Assets.
- (b) The Operator must:
  - (i) [REDACTED]
  - (ii) record all Asset information in the Asset Information System and keep such information up-to-date and accurate throughout the Service Term, including changes arising from:
    - (A) configuration changes to the Assets;
    - (B) like-for-like exchange of components;
    - (C) Asset faults reported and corrective actions taken; and
    - (D) Asset Management Activities undertaken;
  - (iii) record the procurement, acquisition, maintenance and disposal of all Assets;
  - (iv) use the Asset Information System to generate reports on:
    - (A) the achieved performance and condition of the Assets; and
    - (B) Asset use;
  - (v) use the Asset Information System to support Asset performance analysis;
  - (vi) record the spares and consumables inventory data within the Asset Information System;
  - (vii) provide the necessary database tools, manuals, documentation and training required to enable the maintenance and exporting of Asset Information System data to be performed;
  - (viii) provide on-going training on the Asset Information System for TfNSW's staff;
  - (ix) allow TfNSW to audit the validity, accuracy and currency of all data held within the Asset Information System at any time, including in relation to defects management and record of complaints; and
  - (x) support the integration of Data with TfNSW's cluster-wide asset information system.
- (c) The data within the Asset Information System relating to the State Assets will be the property of TfNSW.

- (d) The Operator must make available to TfNSW when requested all data and reports held in the Asset Information System.
- (e) The Operator must participate with TfNSW to develop Asset data rules (**Asset Data Rules**). The Operator will then work in accordance with the Asset Data Rules prescribed by TfNSW.

## 5.2 Standards Conformance

- (a) The Operator must hold all relevant asset information as required by TfNSW and governed by the TfNSW Asset Information Standards, including but not limited to the data extract information defined in paragraph 5.3 of this Schedule.
- (b) The Operator must prove compliance with TfNSW Asset Information Standards as they evolve and mature over time.

## 5.3 Asset Information Data Extract

- (a) TfNSW may require at a future date for the Operator to transmit to TfNSW asset related information for all maintained infrastructure assets (linear and non-linear) and fleet assets, in a standard format prescribed by TfNSW. This format will cover both structured and unstructured asset related data.
- (b) Structured data will include (but is currently not limited to):
  - (i) asset identification data;
  - (ii) asset classification data;
  - (iii) asset hierarchy data;
  - (iv) asset location data;
  - (v) asset condition data;
  - (vi) asset attributes (including e.g. configuration, warranty, make and model);
  - (vii) asset related work orders (including measurements, service records); and
  - (viii) asset related defects.
- (c) Unstructured data related to assets will include (but is currently not limited to):
  - (i) diagrams;
  - (ii) drawings;
  - (iii) manuals;
  - (iv) reports;
  - (v) technical maintenance plans;
  - (vi) certificates; and
  - (vii) other asset maintenance related documents.
- (d) If requested to do so by TfNSW, the Operator must:
  - (i) provide structured data in a common industry standard file format for information interchange (determined by TfNSW);
  - (ii) deliver the structured data file(s) along with the related unstructured data files to a standard location (determined by TfNSW) on a regular basis.
- (e) The extracts may be both full or delta in nature (determined by TfNSW) and will need to be provided across the life of the Contract, including any final handover extracts as TfNSW requests.

#### 5.4 Operator Extract General Obligations

- (a) The Operator must manage the operation of the extract process covered in paragraph 5.3 of this Schedule on an ongoing basis on the Operator side of the interface. This will include but is not limited to:
  - (i) nominating contacts within the Operator for TfNSW to operationally liaise with around the extract process;
  - (ii) ensuring extracts run at intervals prescribed by TfNSW;
  - (iii) ensuring extracts run successfully;
  - (iv) ensuring data produced is correct and up to date;
  - (v) ensuring any extraction failures are investigated and remediated quickly and efficiently, and reported to TfNSW; and
  - (vi) ensuring any requests for out-of-band extract runs are facilitated expeditiously.

#### 5.5 Information requirements for the Asset Information System

- (a) Assets must be labelled at an appropriate level of disaggregation to allow asset management and reporting in accordance with the Contract and the TfNSW Assets Standards Authority naming convention.
- (b) The Asset Information System must include for all Assets unless otherwise agreed with TfNSW:
  - (i) a complete Asset register;
  - (ii) design information (i.e. design documentation, calculations, drawings etc.);
  - (iii) as built information;
  - (iv) supplier/vendor information;
  - (v) Asset type, function and output association;
  - (vi) Asset identifier including serial number;
  - (vii) age of Asset;
  - (viii) location of Assets;
  - (ix) current operational status;
  - (x) failure profile including operational impact assessment and failure history;
  - (xi) reliability analysis aligned with FMECA (Failure Mode, Effects, and Criticality Analysis);
  - (xii) maintenance history, including pre-approval activities and warranty history;
  - (xiii) forward Asset maintenance and replacement and refurbishment plans;
  - (xiv) manufacturer's maintenance requirements;
  - (xv) Asset Design Life and remaining life;
  - (xvi) Asset dependency conditions;
  - (xvii) planned, actual, and projected financial cost;
  - (xviii) Asset condition data and models;
  - (xix) testing and commissioning records;
  - (xx) inventory of spares and consumables;
  - (xxi) minimum levels for re-ordering;
  - (xxii) Asset criticality;

- (xxiii) special conditions (i.e. environmental, heritage, confined space, dangerous materials etc.); and
- (xxiv) capital acquisition cost, depreciation and residual value.
- (c) The Asset Information System must hold supporting information including:
  - (i) operations and maintenance manuals;
  - (ii) original equipment manufacturer manuals;
  - (iii) Asset Maintenance Standards including technical maintenance plans and manuals;
  - (iv) training materials, and
  - (v) drawings.
- (d) Asset records must be structured to reflect the requirements of the Asset and Services Plan including, but not limited to, supporting effective monitoring of scheduling of maintenance activities and defect rectification.
- (e) The Asset Information System must be developed as soon as practicable after the Commencement Date and data must be entered into the Asset Information System in accordance with this schedule from that time.

## 5.6 Asset Information System design requirements

The Asset Information System must:

- (a) be able to export data in standard industry format (including Excel) retaining all Asset details and hierarchies;
- (b) have the capability of integrating Asset data into a common user format;
- (c) be capable of providing integrated Asset information (including Asset performance) within a "dashboard" format to TfNSW and all approved stakeholders covering the data required under paragraph 5.2 of this Schedule;
- (d) have the capability for scheduling, prioritising and altering Asset Management Activities;
- (e) provide records in respect of inventory management, generation of work orders, bills of materials, tracking of costs and Asset warranty data;
- (f) apply version control to all maintenance procedures which is capable of identifying what version of a maintenance procedure was applied to an Asset at any given point in time;
- (g) be capable of recording all asset management activities; and
- (h) record and report on asset failure system responses.

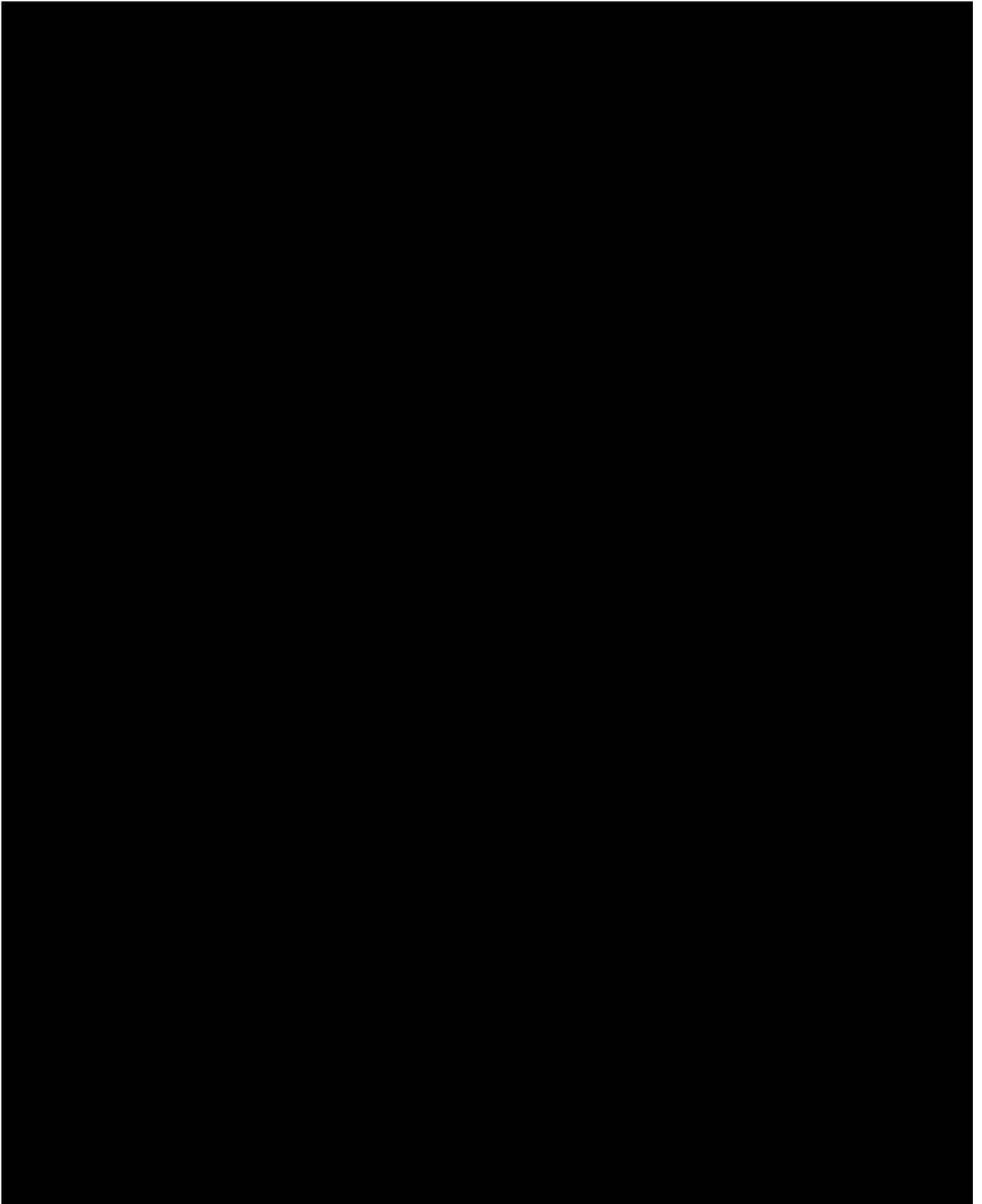
## 6. Design Life

Number	Asset	Design Life from entry into service
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		



Number	Asset	Design Life from entry into service
24		
25		
26		
27		
28		
29		

**Annexure 1 – Existing Ferries**

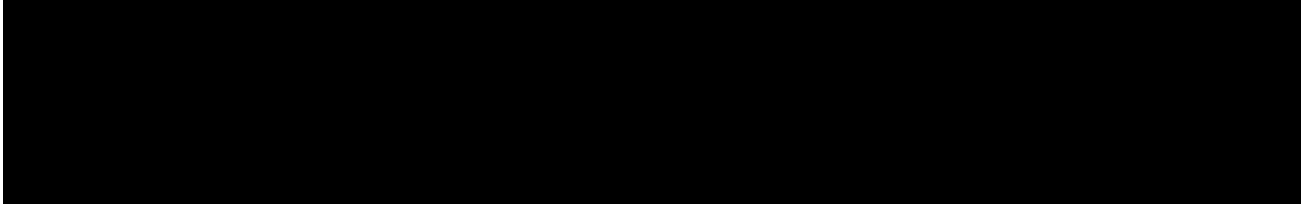


**Annexure 2 – [Not Used]**

**Annexure 3 - Fleet Deployment Plan**



**Part B – Vessel Specifications**



**Annexure 4 – Licensed Areas and Licensed Area Handover Dates**



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**Annexure 5 - Asset Presentation Schedule**

**1. Cleanliness**

**1.1 Customer outcome**

(a) Contract Ferries

Customers shall be provided with Contract Ferries that are clean and free from the effects of dirt and grime. This includes:

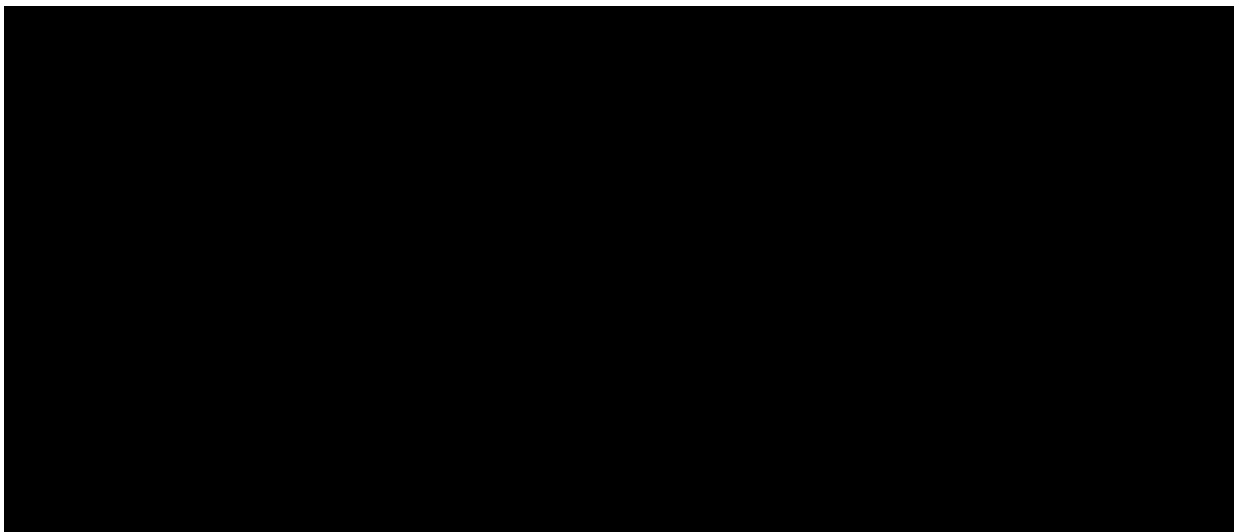
- (i) seats and armrests;
- (ii) entry and exit area and luggage storage;
- (iii) all surfaces inside and outside the Contract Ferries (including the floor, ceilings, walls, doors, decals, handrails, draught screens and grab-handles); and
- (iv) windows and frames.

(b) Wharves and Licensed Areas

Wharves and Licensed Areas shall be clean and free from the effects of dirt and grime. This includes:

- (i) seats;
- (ii) canopies;
- (iii) floors and walls;
- (iv) stairs and ramp;
- (v) lifts;
- (vi) platforms;
- (vii) ticketing, public transport and local area information and wayfinding signage; and
- (viii) Ticketing Equipment.

**1.2 Standard – Performance**



**1.3 Standard – Remediation**

When an area of a Contract Ferry, a Wharf or a Licensed Area outlined above has been observed by a member of Staff, or reported by a customer, to be in a condition such that it may soil clothing or property, the relevant area shall be cleaned at the earliest opportunity. Contract Ferries which are at level 1 for cleanliness (as defined in the table below) shall be remediated or removed from service immediately.

Once a major instance of graffiti has been observed by a Staff member, or reported by a customer, it shall be removed at the earliest opportunity.

- (a) Definition: Cleanliness (includes all areas outlined in 'Cleanliness - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard
[Redacted content]		



Level	Label	Standard

## 2. Condition

### 2.1 Customer outcome

(a) Contract Ferries

Customers shall be provided with Contract Ferries that are in good condition and free from damage (including graffiti and vandalism). This includes:

- (i) seats & armrests;
- (ii) entry and exit area and luggage storage;
- (iii) all interior and exterior surfaces of Contract Ferries (including the floor, ceilings, walls, doors, decals, handrails, draught screens and grab-handles); and
- (iv) windows and frames (including window etching).

(b) Garden Areas

Garden areas located with the Wharves and Licensed Areas (**Garden Areas**) must be maintained in good condition including watering, mowing, weeding and pruning.

**2.2 Standard – Performance**



**2.3 Standard – Remediation**

When a part of a Contract Ferry or an area of a Wharf or a Licensed Area has been observed by a Staff member, or reported by a customer, as broken or missing it shall be repaired or replaced at the earliest opportunity.

Once a major maintenance or safety issue has been observed by a Staff member, or reported by a customer, it shall be made safe and rectified at the earliest opportunity.

(a) Definition: Condition (includes all areas outlined in 'Condition - Customer Outcome')

Failure to achieve any of the issues listed in the standards under each level will be a failure to achieve the level in the following table.

Level	Label	Standard
[Redacted content]		

Level	Label	Standard
[Redacted content]		

**Annexure 6 - Asset and Services Plan**

Refer to Annexure G of this Contract.

## Schedule 7 – Net Financial Impact

### 1. Application

- (a) Subject to the Contract, the Operator is entitled to be compensated for the negative Net Financial Impact of the following events (**NFI Events**):
- (i) Change Events under Clause 48; and
  - (ii) Contract Variations proposed by TfNSW under Clause 52,
- but, for clarity, excluding any Service Variations associated with such NFI Events.
- (b) Subject to the Contract, TfNSW is entitled to be paid an amount calculated by reference to the positive Net Financial Impact of:
- (i) the NFI Events referred to in paragraph 1(a) of this Schedule; or
  - (ii) any Contract Variation that is proposed by the Operator and approved by TfNSW;
  - (iii) if any Asset is lost, destroyed or damaged beyond economic repair (which for the purposes of this Schedule is also deemed to be an NFI Event).

### 2. Calculation of Net Financial Impact

- (a) Subject to paragraphs 2(b) and 3.3, the Net Financial Impact of an NFI Event will be calculated having regard to:
- (i) the incremental additional costs which the Operator incurs or will incur as a result of the NFI Event, including:
    - (A) design, construction, operating and maintenance costs which are the actual incremental direct costs of plant, labour, materials and subcontractors directly engaged in such activities directly required in relation to the NFI Event;
    - (B) manufacturing costs;
    - (C) financing costs;
    - (D) external third party advisory costs;
    - (E) subcontractor direct on-site overhead and margin costs;
    - (F) a reasonable amount (having regard to the NFI Event) in respect of the Operator's overhead and margin costs;
  - (ii) any cost savings which accrue or will accrue to the Operator as a result of the NFI Event;
  - (iii) any insurance proceeds, damages, compensation or other revenue which the Operator receives or is entitled to receive (or would have received but for its acts, defaults or omissions or those of the Operator's Associates) as a result of the NFI Event; and
  - (iv) any liability to third parties (including subcontractors) incurred by the Operator as a result of the NFI Event.
- (b) Consistent with Clause 18(d), incremental costs associated with associated Service Variations will not be counted for the purposes of paragraph 2(a) and are addressed by the price adjustment for that Service Variation.

- (c) If in any month the incremental additional costs and loss incurred or suffered by the Operator as a result of a NFI Event exceeds the cost savings derived by the Operator as a result of the NFI Event, the Net Financial Impact for that month will be a negative amount.
- (d) If in any month the cost savings derived by the Operator as a result of a NFI Event exceeds the incremental additional costs and loss incurred or suffered by the Operator as a result of the NFI Event, the Net Financial Impact for that month will be a positive amount.

### 3. Principles for calculating Net Financial Impact

#### 3.1 Overriding considerations

The overriding considerations for calculating Net Financial Impact will be that:

- (a) TfNSW is receiving value for money;
- (b) the compensation amount is fair and reasonable and is calculated in a manner that is transparent.

#### 3.2 Open book basis

The Operator must and must procure that the Operator's Associates:

- (a) provide all information in relation to the Operator's calculations on an open book basis;
- (b) if required by TfNSW, make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
- (c) allow TfNSW to review and undertake audits to enable it to verify compliance with paragraph 3.2(b),

in order to enable TfNSW to make an accurate assessment of the actual costs and savings. "Open book basis" will include the Operator providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs and margins of the Operator and the Operator's Associates in a clear and transparent manner and other information reasonably required by TfNSW including reasonable available source documents required to verify such calculation.

#### 3.3 No double counting or double compensation

- (a) No amounts will be double counted and no costs will be payable more than once, whether as part of the Net Financial Impact or otherwise under this Contract, including a price adjustment for a Service Variation.
- (b) Without limitation to paragraph 3.3(a), no amount will be included in the Net Financial Impact to the extent that the Operator is otherwise compensated for that amount under this Contract, including in any indexation.

#### 3.4 Incremental costs only

Changes in costs are to be determined on an incremental basis where:

- (a) in the case of an increase in costs, only incremental additional costs that would not be incurred but for the NFI Event are taken into account; and
- (b) in the case of a reduction in costs, only incremental additional savings that would not have accrued but for the NFI Event are taken into account.

#### 3.5 Fair and reasonable, arm's length arrangements

All increases or decreases in costs included in the calculation must:

- (a) be fair and reasonable; and
- (b) reflect commercial arm's length arrangements.

### 3.6 Non-compliance with other obligations

The Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not be been incurred or suffered; and
- (b) include any cost savings which would have been derived,

had the Operator complied with its obligations under this Contract, other than to the extent the Parties agree that an obligation is adversely affected by the relevant NFI Event.

### 3.7 Mitigation

Without limiting paragraph 3.6, the Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not have been incurred or suffered; and
- (b) include any costs savings which would have been derived,

had the Operator:

- (c) complied with Clause 51; and
- (d) taken all action reasonably practicable to mitigate the costs and achieve value for money (including by obtaining multiple quotes for third party costs via market exercises).

### 3.8 Overheads and margin

- (a) Subject to paragraph 3.8(b), the Operator will not be entitled to any amount on account of profit or overheads in respect of an incremental additional costs incurred as a result of a NFI Event.
- (b) If the Net Financial Impact of a Contract Variation excluding the Operator's overhead and margin costs exceeds:
  - (i) [REDACTED]; or
  - (ii) where it is due to a breach of this Contract by TfNSW, [REDACTED]the Operator will be entitled to charge [REDACTED]% on the incremental Net Financial Impact on account of overheads and profit.

### 3.9 Redundancy

Any redundancy payments which are necessary and a direct and unavoidable result of a NFI Event (but excluding annual leave, rostered days off and long service leave entitlements) will be included provided the Operator has used reasonable endeavours to avoid or minimise those redundancies.

### 3.10 Insurance costs

All insurance cost impacts must be included in the calculations.

### 3.11 Bid rates

TfNSW may have regard to the rates set out in Annexure A to this Schedule 7 in calculating the Net Financial Impact component of any Adjustment Event.

## 4. Compensation Arrangements

### 4.1 If agreed

- (a) Subject to paragraph 4.2, the Parties can agree that the Operator will be compensated or TfNSW will be paid for the Net Financial Impact of a NFI Event:
  - (i) by single lump sum payment, or a series of lump sum payments;

- (ii) by milestone payments;
  - (iii) as part of the Base Service Fee or Monthly Contract Payment; or
  - (iv) by any other means which the Parties may agree.
- (b) If the Parties agree the arrangements by which the Operator will be compensated or TfNSW will be paid, then TfNSW must provide the agreed compensation, or the Operator must make the agreed payment, in accordance with the agreed arrangements.

#### **4.2 If not agreed**

If the Parties do not agree upon an arrangement for the payment of compensation under paragraph 4.1 of this Schedule, then:

- (a) if the actual Net Financial Impact of a NFI Event in any month is a negative amount, that amount will become payable by TfNSW to the Operator after the end of the relevant month; and
- (b) if the actual Net Financial Impact of a NFI Event in any month is a positive amount, that amount will become payable by the Operator to TfNSW after the end of the relevant month.

#### **4.3 Claims for payment**

The Operator may submit claims for payment due under this paragraph 4 in accordance with Clause 40.



**Annexure A to Schedule 7 – Rates**

Rates are to be indexed with the WPI as defined in Clause 1, Schedule 3 – Payment Schedule

Ref	Role Title	Measure	Rate
1	Project Director	Hourly \$ Rate	
2	Project Lead	Hourly \$ Rate	
3	Senior Project Manager	Hourly \$ Rate	
4	Project Manager	Hourly \$ Rate	
5	Assistant Project Manager	Hourly \$ Rate	
6	Project Co-ordinator	Hourly \$ Rate	
7	Project Management Support	Hourly \$ Rate	
8	Programmer Associate	Hourly \$ Rate	
9	Director Commercial and Legal	Hourly \$ Rate	
10	Legal General Counsel	Hourly \$ Rate	
11	Legal Senior Counsel	Hourly \$ Rate	
12	Commercial & Finance GM	Hourly \$ Rate	
13	Information Technology GM	Hourly \$ Rate	
14	Commissioning Manager	Hourly \$ Rate	
15	Quality & Assurance Manager	Hourly \$ Rate	
16	Stakeholder Engagement Manager	Hourly \$ Rate	
17	Cost Manger Associate	Hourly \$ Rate	

Ref	Role Title	Measure	Rate
18	Vessel Design Engineer	Hourly \$ Rate	
19	Property Advisor Direction	Hourly \$ Rate	
20	Data Analyst Director	Hourly \$ Rate	
21	Safety Manager	Hourly \$ Rate	
22	Environmental Associate	Hourly \$ Rate	
23	Shipyard Project Manger	Hourly \$ Rate	
24	Senior Design Engineer	Hourly \$ Rate	
25	Design Engineer	Hourly \$ Rate	
26	Shipyard Maintenance Engineer	Hourly \$ Rate	
27	Shipyard Scheduler	Hourly \$ Rate	
28	Shipyard Quality Assurance Officer	Hourly \$ Rate	
29	Master <35m (including dual ticket Master)	Hourly \$ Rate	
30	Engineer MED 1	Hourly \$ Rate	
31	Master <24m (including dual ticket Master)	Hourly \$ Rate	
32	Coxswain	Hourly \$ Rate	
33	Engineer MED III	Hourly \$ Rate	
34	Engineer MED II	Hourly \$ Rate	
35	General Purpose Hand	Hourly \$ Rate	
36	Deck Hand	Hourly \$ Rate	
37	Host	Hourly \$ Rate	
38	Customer Service 1	Hourly \$ Rate	

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Ref	Role Title	Measure	Rate
39	Customer Service 2	Hourly \$ Rate	

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## Schedule 8 – Fares and Ticketing

### 1. Fares

- (a) All Fares and ticketing policies will be set by TfNSW and notified to the Operator.
- (b) The Operator must not enable cash payment for Tickets or accept any payment for Tickets other than through use of the Opal Ticketing System (unless otherwise agreed by TfNSW).
- (c) Until the Opal Ticketing System is operational, the Fares will be those applicable under the Old Contract.

### 2. Prohibition on disincentives, penalties and discounts

The Operator must not impose any charges, fees, penalties, restrictions or other Fare adjustments in connection with any of the Services that have the purpose or likely effect of

- (a) increasing the total cost to passengers choosing to travel on a Service above the Full Fares;
- (b) increasing the total cost to Approved Beneficiaries choosing to travel on a Service above the Concession Fares;
- (c) deterring passengers from purchasing Tickets at the Fares;
- (d) reducing the availability of Tickets to passengers wishing to travel on the Services; or
- (e) reducing the revenue from Tickets.

### 3. Travel free of charge

The Operator must ensure that travel, free of any direct or indirect charge by the Operator, is provided to Approved Beneficiaries listed in paragraph 5 of this Schedule that are eligible for free travel, as amended or notified by TfNSW from time to time.

### 4. Full Fares and Concessions Fares applicable on Services

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

Customer Group	Concession card/s	Concession fares
Aged 4-15 (inclusive)	No card (Proof of Age Card available to verify holder is under 16)	Child/Youth fare
	Full time NSW/ACT school students aged 16 and older with a NSW Senior Secondary Student Concession Card	
Aged 16 and over	NSW Tertiary Student Concession Card	Half fare
	NSW Tertiary Student Identification Card	
	NSW Half Fare Entitlement Card for Jobseekers	
	Apprentice and Trainee Card	
Pensioners (all ages), seniors, asylum seekers and carers	Pensioner Concession Card	Half fare (with \$2.50 cap)
	Seniors Card – NSW and interstate	

Customer Group	Concession card/s	Concession fares
	NSW War Widow/ers card Concession Entitlement Card (asylum seekers)	

## 5. Approved Beneficiaries of travel free of charge on Services

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

Customer Group	Concession Card/s	Concession fares
Aged 0-3 (inclusive)	No card	Free Travel
School students eligible for free travel	SSTS card	Free Travel (To/from school/college)
People with disabilities	Ex-member of Defence Forces Pass	Free Travel
	Ex-member of Defence Forces Pass – Blinded Soldier	
	Vision Impaired Persons Pass – NSW and interstate	
Attendant	Transport concession cards marked ' Plus Attendant'	Free travel for Attendant when accompanying card holder
	Companion Card	
Recognised for service	NSW Travelcard	Free Travel
	World War 1 Veteran/Widow	
Employee	Employee Passes issued by TfNSW	Free Travel

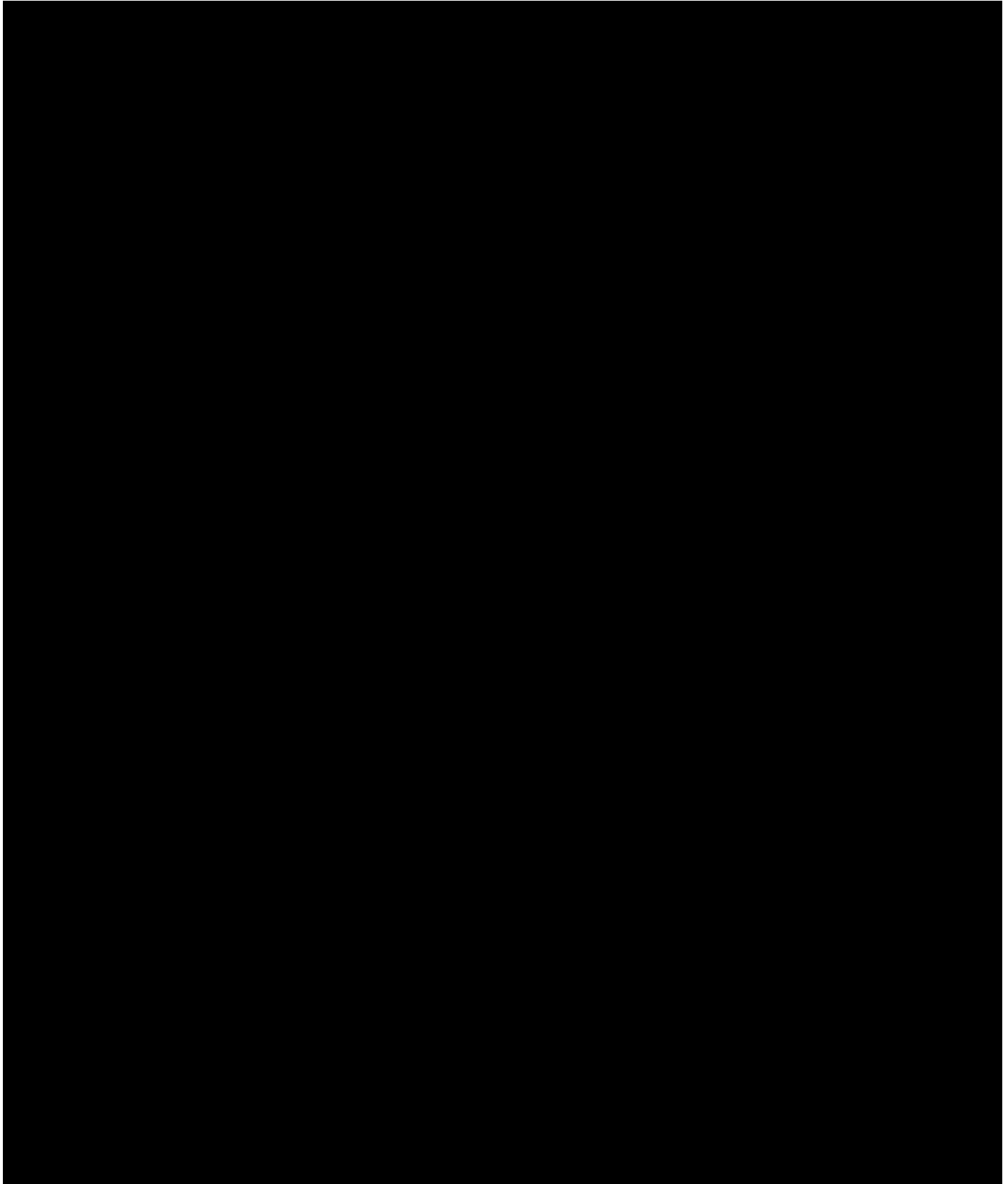
## 6. Form of concession cards

Concession cards referred to in paragraphs 4 and 5 above are to be in the form approved and advised (including where by publication on TfNSW's website) by TfNSW from time to time.

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## Schedule 9 – Transition Schedule

### 1. Transition Milestones





## Schedule 10 – Ferry Advertising Panels

Advertising locations in respect of State Ferries to be agreed at time of implementation.



# Schedule 11 – [Not Used]

## Schedule 12 – [Not used]

# Schedule 13 – State Wharf Redevelopment Disruption Parameters



## Schedule 14 – Wharf requirements

### 1. Definitions and interpretation

(a) In this Schedule 14:

- (i) all terms that have defined meanings in the Agreement have the same meaning in this Schedule as they do in the Agreement;
- (ii) a reference to a clause is a reference to a clause in the Agreement; and
- (iii) a reference to a paragraph is a reference to a paragraph in this Schedule 14.

(b) In this Schedule 14, the following words have the following meanings:

**Authorised User** includes an employee, agent, contractor, licensee, lessee, sublessee or any other person under the control or supervision of a party.

**Berthing** means the securing of a Vessel to a TfNSW Wharf for a short time to pick up and set down Passengers.

**Communications Procedure** means the document referred to in paragraph 3.

**Damages** means damages of all kinds including payment of money due under contract, payment of compensation, payment for Losses, reimbursement or indemnification in respect of damages, costs and expenses (including costs and expenses of defending or settling any Claim) and payment of restitution but does not extend to any economic loss, loss of profit, revenue, income or lost opportunity.

**Environmental Liabilities** means any of the following liabilities, to the extent to which they arise from or in connection with the exercise by the Operator and/or its Authorised Users of any of the rights in relation to the use of the TfNSW Wharves, TfNSW Wharf Infrastructure, Sydney Harbour or the Parramatta River:

- (a) all costs and expenses associated with undertaking any cleanup required under Environmental Laws;
- (b) any compensation or other monies that a Governmental Agency requires to be paid to any person under any Environmental Laws for any reason;
- (c) any fines or penalties incurred under Environmental Laws;
- (d) all costs and expenses incurred in complying with any Environmental Laws; and
- (e) all claims, demands, suits, proceedings, causes of action, losses (including consequential losses), Damages, costs and expenses, legal or consulting fees and interest, payable under, or arising in order to comply with, Environmental Laws.

**Environmental Site Assessment** means an environmental assessment of the TfNSW Wharves and any surrounding property generally in accordance with any relevant guidelines at any time issued by a Governmental Agency and current industry practice that so far as is possible:

- (a) identifies the nature and extent of Contamination and Pollution, if any;
- (b) recommends a method and standard of remediation of the Contamination and Pollution; and
- (c) recommends a method and standard of restoration of the TfNSW Wharves, TfNSW Wharf Infrastructure or any other land, air or water.

**EPA** means the Environment Protection Authority constituted by the Protection of the *Environment Administration Act 1991* (NSW).

**Exclusive Access Wharves** means the berths identified by TfNSW at the following ferry wharves in Sydney Harbour:

- (a) No 2B Jetty, Circular Quay;
- (b) No 3 Jetty, Circular Quay;
- (c) No 4 Jetty, Circular Quay;
- (d) No 5 Jetty, Circular Quay;
- (e) the western side of Manly wharf; and
- (f) Barangaroo Wharf (for overnight Berthing only).

**Mooring** means the securing of a Vessel to a TfNSW Wharf for an extended stay between services requiring the tying up of the Vessel and not solely for the purposes of picking up or setting down Passengers.

**Obstruction** means any obstruction to the whole or any part of the TfNSW Wharves (including debris or other objects at or around the TfNSW Wharves) which causes or could cause a disruption to or cancellation by TfNSW of a Vessel movement.

**Operator's Fixtures** means fixtures, fittings, approved advertising signage, communications equipment and/or other equipment owned by or under the control of the Operator and which are placed, erected or installed on, over, through or under the TfNSW Wharves or TfNSW Wharves Infrastructure for the purpose of providing Services.

**Outgoings** means:

- (a) all amounts paid or payable by TfNSW for rates, taxes, levies, charges, duties and insurances of any description that are assessed, levied, imposed or charged in respect of the TfNSW Wharves or the use or occupation of the TfNSW Wharves by the Operator;
- (b) all charges for electricity, gas, oil, water, telephone or telecommunication services consumed or used in or on the TfNSW Wharves;
- (c) all charges for cleaning and security services at the TfNSW Wharves; and
- (d) all other charges and impositions imposed by any public utility or Governmental Agency for the supply of any other services to the TfNSW Wharves.

**Passenger** means a person embarking or disembarking a Vessel or intending to do so.

**Priority Access Wharf** means a ferry wharf in Sydney Harbour or the Parramatta River that is not an Exclusive Access Wharf.

**Special Event** includes new year's eve celebrations, public holiday celebrations, festivals, sporting and Sydney Harbour events and any other event requiring an aquatic licence.

**TfNSW Wharf Infrastructure** means Wharf Infrastructure at the TfNSW Wharves.

**TfNSW Wharves** means the Exclusive Access Wharves and the Priority Access Wharves.

**Vessels** means the ferries used by the Operator to provide Services.

**Wharf Closure** means the temporary closure of a TfNSW Wharf by TfNSW for the purpose of carrying out work on the TfNSW Wharf or TfNSW Wharf Infrastructure which restricts or prevents a Vessel movement at that TfNSW Wharf.

**Wharf Closure Notice** means a notice issued by TfNSW authorising a Wharf Closure.

## 2. Purpose and scope

- (a) The purpose of this Schedule 14 is to facilitate the daily operations of the Vessels in a way that will keep the TfNSW Wharves in good repair and maintain the standard of the TfNSW Wharves and the waterways in which they are located.
- (b) This Schedule 14 may change from time to time and TfNSW reserves the right to alter this Schedule 14 at any time by agreement with the Operator.
- (c) TfNSW will notify the Operator of any amendments to this Schedule 14 in accordance with the Communications Procedure.
- (d) The Operator uses the Wharves and the Wharf Infrastructure at its own risk and assumes all risk and liability for or in respect of:
  - (i) the use of the Wharves, the Wharf Infrastructure, the Vessels and equipment; and
  - (ii) all Loss, injury or death caused to persons or parties however arising from the use of the Wharves, Wharf Infrastructure, the Vessels and equipment or the exercise of rights under this Schedule 14arising out of or in connection with the Operator's performance of the Operator Activities.

## 3. Communications Procedure

The Operator acknowledges that it:

- (a) has received a copy of;
  - (b) is familiar with the terms of; and
  - (c) must comply with,
- TfNSW's document titled 'Wharf repairs - communications procedure'.

## 4. Maintenance, reporting and Wharf Closures

### 4.1 Maintenance

- (a) Subject to paragraph 4.2, TfNSW must at its cost maintain the TfNSW Wharves to a standard that enables the Operator to carry out the Services at those TfNSW Wharves safely.
- (b) The Operator is responsible for cleaning the Operator's Fixtures on Priority Access Wharves.
- (c) The Operator is responsible for cleaning and preventative pest control measures on all parts of the Exclusive Access Wharves inside the internal face of the floors, walls and ceilings, including:
  - (i) seats;
  - (ii) canopies;
  - (iii) floors and walls;
  - (iv) stairs and ramp;
  - (v) lifts;
  - (vi) platforms;
  - (vii) ticketing, public transport and local area information and wayfinding signage; and
  - (viii) ticketing equipment, including Opal ticketing gates.

#### 4.2 Duty to report

- (a) The Operator must notify TfNSW in accordance with the Communications Procedure as well as any other relevant Governmental Agency as soon as possible but in any case within 24 hours of:
  - (i) an accident or incident that occurs in, on or in the vicinity of the TfNSW Wharves;
  - (ii) any damage to the TfNSW Wharves and/or any TfNSW Wharves Infrastructure Facilities of which it becomes aware, whether that damage is caused by the Operator or any third party;
  - (iii) any abnormal Berthing incident arising in the course of Berthing or Mooring a vessel at a TfNSW Wharf, such as a heavy knock to a TfNSW Wharf; and
  - (iv) any incident that causes or is likely or has the potential to cause injury, damage, danger, risk or hazard to the TfNSW Wharves or any person, whether that incident is caused by the Operator or a third party.
- (b) The Operator is liable for Losses incurred by TfNSW or any third person arising out of:
  - (i) a failure by the Operator to provide notice under this paragraph where that failure directly or indirectly causes or contributes to such Losses; and
  - (ii) an abnormal Berthing incident referred to in paragraph 4.2(a)(iii).
- (c) The Operator must at any time if requested by TfNSW, provide a true and faithful account of the nature of the use of each TfNSW Wharves and/or part of the TfNSW Wharves at the relevant time.

#### 4.3 Wharves Closures

- (a) In carrying out its maintenance and upgrade obligations, TfNSW, acting reasonably, may at any time serve a Wharf Closure Notice on the Operator.
- (b) In exercising its rights under paragraph 4.3(a), TfNSW must use its best endeavours to minimise the disruption to Vessel movements including by:
  - (i) giving as much notice as practicable to the Operator and other persons affected by the proposed Wharf Closure; and
  - (ii) if practicable, providing alternative suitable berthing facilities for the Vessels operated by the Operator.

#### 4.4 Obstructions

The Operator must not Obstruct and must expeditiously remove any Obstructions from the TfNSW Wharves and/or TfNSW Wharf Infrastructure and must obey any directions given to it in relation to the clearance of an Obstruction by TfNSW and/or any other Governmental Agency.

#### 4.5 Special Events

The Operator acknowledges that special provisions will prevail at the TfNSW Wharves during Special Events and the Operator must comply with all directions and requests of TfNSW during these events.

### 5. Priority Access Wharves

#### 5.1 Operator acknowledgments

The Operator acknowledges that:

- (a) TfNSW and its Authorised Users may access the Priority Access Wharves at any time;
- (b) TfNSW will allocate the Priority Access Rights consistent with the objectives of:

- (i) ensuring adequate access to the TfNSW Wharves for Services in Sydney Harbour and the Parramatta River;
- (ii) ensuring the efficient delivery of the responsibilities of TfNSW in relation to TfNSW Wharf access and Services; and
- (iii) effectively managing TfNSW Wharf maintenance, upgrade and repair procurement risks;
- (c) TfNSW intends to grant access to commercial ferry operators and other persons to the Priority Access Wharves during times when TfNSW's contracted operators do not require access to the Priority Access Wharves; and
- (d) while they will be provided with Priority Access Rights to the Priority Access Wharves for the purposes of providing Services they must not unreasonably impede or interfere with the activities of commercial ferry operators and other users of the Priority Access Wharves.

## 5.2 Obligations on the Operator

- (a) The Operator must co-operate with TfNSW in resolving any disputes with any other person as to the use of a Priority Access Wharf.
- (b) The Operator may not access a Priority Access Wharf other than for the purposes of delivering Services in accordance with the timetable approved by TfNSW.

## 5.3 Special Events

During Special Events TfNSW has an absolute discretion to vary the Priority Access Rights at the specified Priority Access Wharves.

## 6. Environmental matters

- (a) The Operator must comply with all relevant Laws and policies that relate to water, air and land activities including but not limited to waterway activities, safety, light, noise levels and all matters covered by the *Protection of the Environment Operations Act 1997* (NSW).
- (b) The Operator must not allow any discharge from Vessels under their control to pollute Sydney Harbour, the Parramatta River or the TfNSW Wharves.
- (c) The Operator must, at its own cost and expense:
  - (i) assume all responsibility for any Contamination of Sydney Harbour or the Parramatta River or to or around the TfNSW Wharves and any Environmental Liabilities arising in connection with the activities of the Operator; and
  - (ii) promptly comply with all directions and requirements of TfNSW and any other Governmental Agency in respect of any Contamination and/or Pollution, including the remediation of the TfNSW Wharves, the area or property surrounding the TfNSW Wharves and/or Sydney Harbour and the Parramatta River.
- (d) Without limiting paragraph 6(c), the Operator must, at its cost, at the request of TfNSW:
  - (i) procure an Environmental Site Assessment in relation to any Contamination or Pollution arising as a result of the act or omission of the Operator for the benefit of TfNSW; and
  - (ii) at the direction of TfNSW, implement the recommendations of that Environmental Site Assessment.
- (e) The Operator must provide to TfNSW evidence of proof of disposal of sewage including pump out receipts, pump readouts and log books within 14 days of a written request by TfNSW.



## 7. Berthing and Mooring obligations

The Operator must in approaching, Berthing, Mooring and departing a Vessel from the TfNSW Wharves, at all times act reasonably and operate and navigate the Vessel in a safe and controlled manner so as not to cause damage to the TfNSW Wharves (other than fair wear and tear created by the ordinary and reasonable use of the TfNSW Wharves as a berthing and mooring facility), TfNSW Wharf Infrastructure, any other Vessel or to any person.

## 8. Outgoings

- (a) TfNSW is responsible for the payment of all Outgoings in relation to the Priority Access Wharves.
- (b) The Operator acknowledges and agrees that it is liable to pay all Outgoings in relation to the Exclusive Access Wharves.

## 9. Noise and public areas

### 9.1 Noise

- (a) The Operator is bound by and must ensure all Vessel and Passenger movements comply with noise limitations and requirements in all relevant Laws, guidelines and policies from time to time.
- (b) The Operator must take reasonable precautions to minimise noise resulting from use of the TfNSW Wharves that is likely to disturb the peaceful enjoyment of occupiers of other premises in the locality.

### 9.2 Public areas

- (a) The Operator must not deposit or throw on any TfNSW Wharves or public area any rubbish, dirt, dust or other material or discarded item.
- (b) The Operator must not obstruct the lawful use of any public area by any person except on a temporary and non-recurring basis.
- (c) The Operator must not mark, fix, paint, drive nails or screws or the like into, or otherwise damage or deface any structure that forms part of the TfNSW Wharves or TfNSW Wharf Infrastructure except with the written approval of TfNSW.
- (d) The Operator must at the request of TfNSW:
  - (i) repair any damage to any adjoining land or any public area caused by their installation or removal of a locking or safety device, screen or other device or structure that forms part of the TfNSW Wharves, the adjoining land or public area; or
  - (ii) compensate TfNSW for the cost of repairing such damage.
- (e) The Operator must not bring any animals onto the TfNSW Wharves except for dogs used to aid blind or hearing impaired persons or any 'assistance animal' as that term is defined in the *Companion Animals Act 1998* (NSW).

## 10. Responsibility for third parties

The Operator must take all reasonable steps to ensure that their Authorised Users:

- (a) do not behave in a manner likely to interfere with the peaceful enjoyment of other owners, occupiers and users of the TfNSW Wharves, adjoining land, other operators or other persons lawfully using the TfNSW Wharves, adjoining land or public areas; and

- (b) are appropriately clothed and do not use language or behave in a manner likely to cause offence or embarrassment to owners, occupiers and users of the TfNSW Wharves, adjoining land or any public area.

## 11. Safety and emergencies

### 11.1 General and Passenger safety

The Operator must take the necessary precautions to ensure that all safety devices including lifebuoys and extinguishers on the TfNSW Wharves or adjoining areas are not used for any purpose other than safety.

### 11.2 Preservation of fire safety

- (a) The Operator must not and must take all reasonable steps to ensure that their Authorised Users do not do anything on the TfNSW Wharves that is likely to affect the operation of fire safety devices or reduce the level of fire safety at and in the vicinity of the TfNSW Wharves.
- (b) The Operator must not use any fire services (including hoses, reels and nozzles) for any other purpose other than fire safety.

### 11.3 Prevention of hazards

The Operator must not do anything or permit any Authorised User to do anything on the TfNSW Wharves that is likely to create a hazard or danger to any person lawfully using the TfNSW Wharves.

### 11.4 Emergency and service routes

The Operator must at all times maintain emergency and service routes to ensure unimpeded access to the TfNSW Wharves is available for vehicles and personnel.

### 11.5 Security

Where security services are provided for TfNSW Wharves or TfNSW Wharf Infrastructure, the Operator must allow those services to operate in the intended way. The Operator may however, at its own expense, supplement those services using the security service provided for those TfNSW Wharves or some other security service.

## 12. Restrictions on the Operator

### 12.1 Consent of TfNSW

- (a) Subject to any express provision in this paragraph relating to consent, the Operator may carry out the restricted activities referred to in paragraph 12 if it obtains the prior approval in writing of TfNSW.
- (b) TfNSW may not unreasonably withhold its approval to a restricted activity if the activity complies with all relevant Laws and the Operator has obtained all relevant Governmental Agency consents in relation to the activity.

### 12.2 Prohibited activities

The Operator is prohibited from carrying out the following activities at the Priority Access TfNSW Wharves:

- (a) sewerage pump-out;
- (b) refuelling;
- (c) internal Vessel cleaning;

- (d) loading stores or providing;
- (e) removal of garbage; and
- (f) filling of water tanks.

**12.3 No sound or image projection devices**

- (a) The Operator must not erect or place upon the TfNSW Wharves or any TfNSW Wharf Infrastructure any radio or television aerial or antenna or any loudspeakers, screens sound or image projection devices, or similar devices or equipment.
- (b) The Operator must not use or permit to be used any radio, sound or image projection devices, television or other like media or equipment likely to be heard or seen from outside the TfNSW Wharves.
- (c) The Operator must comply with all relevant Laws, guidelines and policies and obtain all relevant permits and approvals as required by the relevant Laws for the use of any devices or equipment approved by TfNSW under this paragraph.

**12.4 No chemicals**

- (a) The Operator must not use chemicals, burning fluids, gas or alcohol in lighting or heating at the TfNSW Wharves.
- (b) The Operator must comply with all relevant Laws, guidelines and policies and obtain all relevant permits and approvals as required by the relevant Laws for the use of any devices or equipment approved by TfNSW under this paragraph.

**12.5 No heavy plant or machinery**

- (a) The Operator must not bring onto the TfNSW Wharves any heavy machinery or other plant or equipment.
- (b) In no such event must any machinery, plant or equipment be of a nature or size which in the reasonable opinion of TfNSW causes or is likely to cause any structural or other damage to the TfNSW Wharves or TfNSW Wharf Infrastructure or endangers or is likely to endanger the public.

**12.6 No vehicles**

- (a) Vehicular access to the TfNSW Wharves is not permitted (except with TfNSW's prior written approval).
- (b) The Operator must not park or stand any motor vehicle on the TfNSW Wharves or permit their Authorised Users to park or stand any motor or other vehicle on the TfNSW Wharves or public areas (except with TfNSW's prior written approval).

**12.7 No storage of flammable liquids and other substances and materials**

The Operator must not use or store on the TfNSW Wharves or public area any inflammable chemical, liquid or gas or other inflammable material.

**12.8 No offensive business**

The Operator must not at any time:

- (a) use, exercise or carry on or permit to be used, exercised or carried on in or upon the Wharves any noxious, noisome or offensive act, trade, business, occupation or calling nor permit to be held any auction, sale or any public meeting (except with TfNSW's prior written approval); or
- (b) other than in the ordinary conduct of Services, do or permit or omit to be done or omitted any act, matter or thing whatsoever in, upon or about the TfNSW Wharves which is or shall or may be

to the annoyance, nuisance, grievance, damage or disturbance of TfNSW or persons otherwise lawfully on the TfNSW Wharves.

### **12.9 No advertising or signage**

- (a) No permanent sign, advertisement, embellishment, name, notice or other poster is to be exhibited, erected, displayed or affixed to any part of any TfNSW Wharves.
- (b) Any signage proposed by the Operator must be submitted for written approval to TfNSW or its agent prior to display and must also comply with any relevant Laws, including any requirement to obtain a development consent from the relevant consent authority or any other Governmental Agency.
- (c) Signage should identify the business/operation name only. No commercial brands are to be displayed other than the approved trading name of the Operator and timetable information relevant to the Operator's service schedule.
- (d) The use of a crest, logo or other established corporate insignia may be permitted but only after specific prior written approval is obtained from TfNSW.
- (e) TfNSW may develop further signage standards and/or policies from time to time.
- (f) The height, set out and style of lettering is to be submitted for approval prior to commencing manufacture.
- (g) Free-standing signs (such as sandwich boards) are not permitted.
- (h) No other advertising on the outdoor fixtures or structures is permitted.
- (i) When the Operator ceases to be entitled to access a TfNSW Wharf, the Operator must at its expense:
  - (i) remove all lettering, distinctive marks or signs erected by or on behalf of the Operator on a TfNSW Wharf; and
  - (ii) make good any damage or disfigurement caused to the TfNSW Wharf by reason of removal to the standard reasonably required by TfNSW.

### **12.10 No maintenance and servicing**

The maintenance and servicing of Vessels or plant and equipment, including:

- (a) marine works, painting and fitouts;
- (b) mechanical and electrical work; and
- (c) painting, cleaning and service maintenance,

is prohibited at the TfNSW Wharves.

### **12.11 No retail use**

The Operator may not use the TfNSW Wharves for any retail activity except upon premises that are the subject of a lease or licence from TfNSW permitting retail use.

### **12.12 No deliveries and storage**

As a general rule no deliveries of any kind are to be made to a Vessel while the Vessel is Moored or Berthed, nor are goods of any description to be stored on the TfNSW Wharves.

### **12.13 No installations**

The Operator may not fix or fit installations of any kind to the TfNSW Wharves.

### 13. Suspension

- (a) The Operator acknowledges and agrees that TfNSW may (but only to the extent reasonably necessary in the circumstances and after written notice to TfNSW) suspend the Operator's access to all or some TfNSW Wharves and TfNSW Wharf Infrastructure or from operating a Vessel at a TfNSW Wharf:
- (i) if a Termination Event occurs;
  - (ii) for a material breach by the Operator of this Schedule 14;
  - (iii) for a breach by the Operator of the following:
    - (A) paragraph 4.4 (**Obstructions**);
    - (B) paragraph 5 (**Priority Access Wharves**);
    - (C) paragraph 6 (**Environmental matters**);
    - (D) paragraph 7 (**Berthing and Mooring obligations**);
    - (E) paragraph 8 (**Outgoings**);
    - (F) paragraph 11 (**Safety and Emergencies**); or
    - (G) paragraph 12 (**Restrictions on the Operator**);
  - (iv) for the protection or safety of any person or property;
  - (v) if a Force Majeure Event occurs;
  - (vi) to comply with any Law or Authorisation; or
  - (vii) if maintenance, upgrade or repair works are required to all or any of the TfNSW Wharves and/or TfNSW Wharf Infrastructure during the Service Term.
- (b) The Operator must use its best endeavours to mitigate and/or remedy the effects of a suspension where the suspension arises from the need to protect or safeguard any person or property.
- (c) TfNSW will lift the suspension as soon as practicable after the reasons for the suspension have ceased.
- (d) The Operator acknowledges that TfNSW will not be liable for any Damage or Loss incurred by the Operator as a result of a suspension.

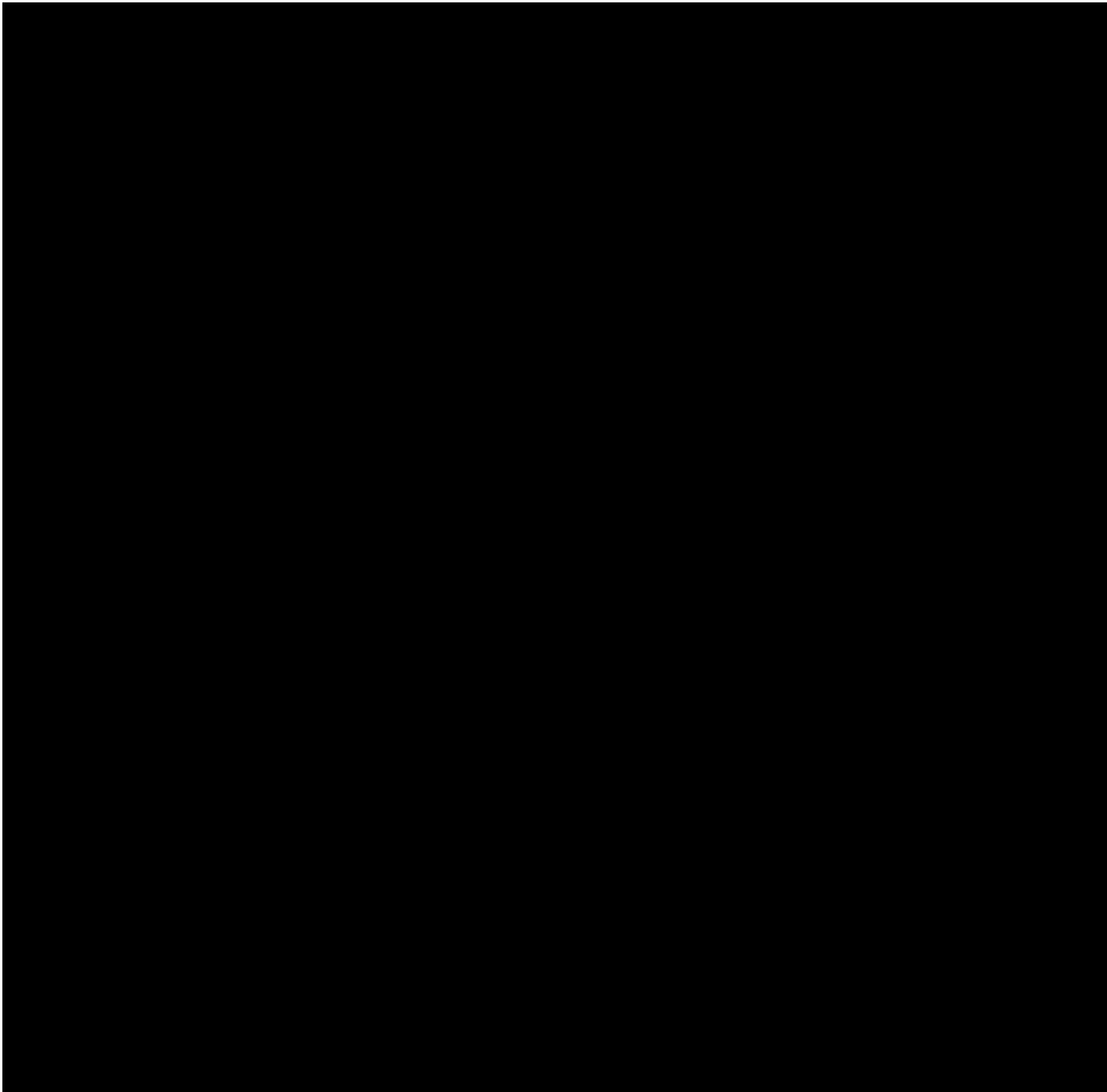
### 14. Booths

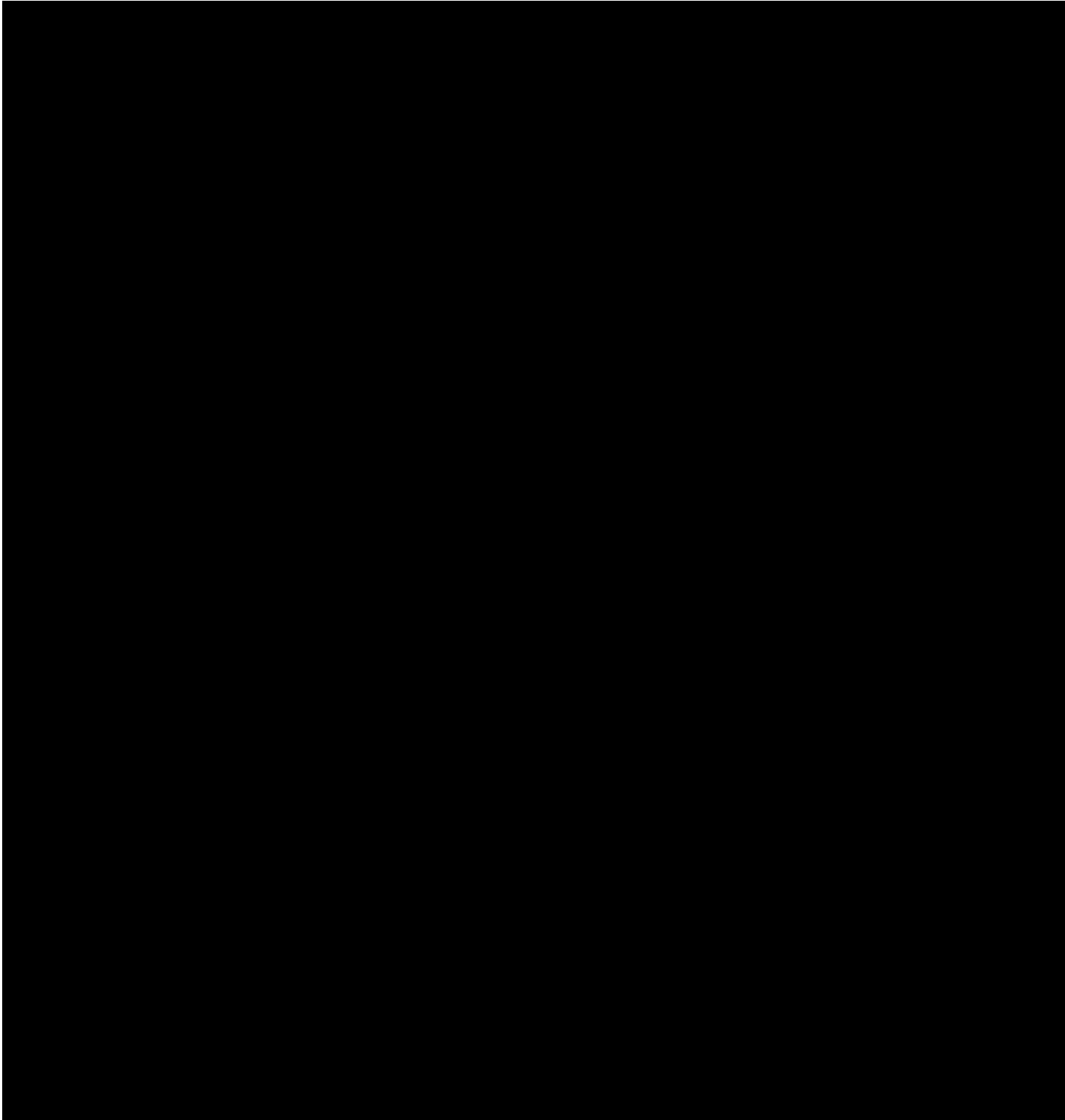
In relation to ticket selling booth arrangements for the Service at the TfNSW Wharves the following principles shall apply:

- (a) the timing and availability of each of the ticket selling booths at the TfNSW Wharves will be determined by TfNSW;
- (b) the Operator will be required to liaise, and enter into separate licence arrangements, with TfNSW in relation to any proposed ticket selling booth at the TfNSW Wharves;
- (c) the terms of such licences will be determined by TfNSW and will include (among other things):
  - (i) an annual licence fee of \$ [REDACTED] (exclusive of GST and indexed annually) per annum payable by the Operator per ticket selling booth;
  - (ii) in addition to the licence fee, an obligation on the Operator to pay its contribution for common outgoings;
  - (iii) the Operator may only use the ticket selling booth for specified purposes and must comply with all laws in relation to those booths;

- (iv) provisions dealing with maintenance and repair of the ticket selling booth;
  - (v) provisions dealing with indemnities, insurances and security to be provided by the Operator; and
  - (vi) such other terms as are required by TfNSW, including the timing as to if and when each of the ticket selling booths can be made available to the Operator and on what basis; and
- (d) if and when the terms of any licence arrangement have been entered into between the Operator and TfNSW in regard to a ticket selling booth applicable to the Service, the Operator must at all times comply with the terms of such licence.

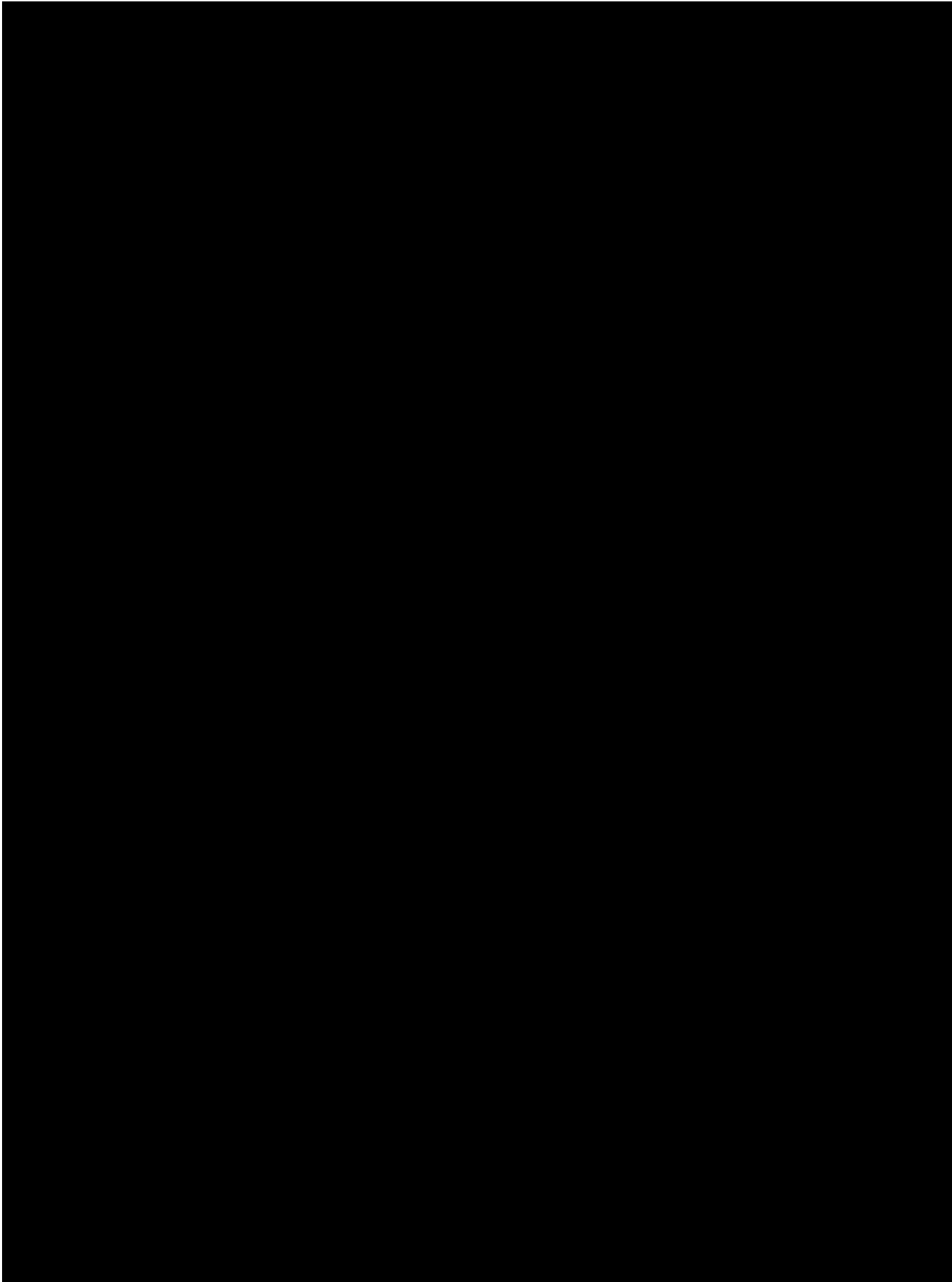
## Schedule 15 –

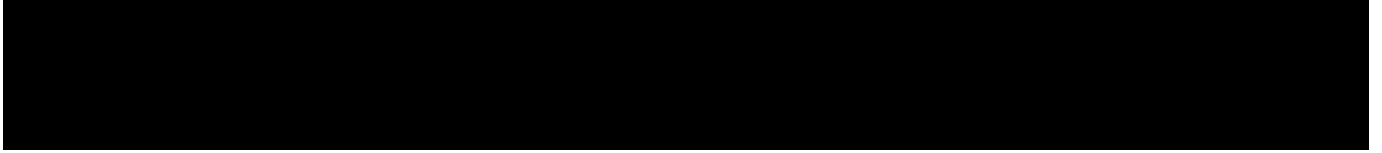


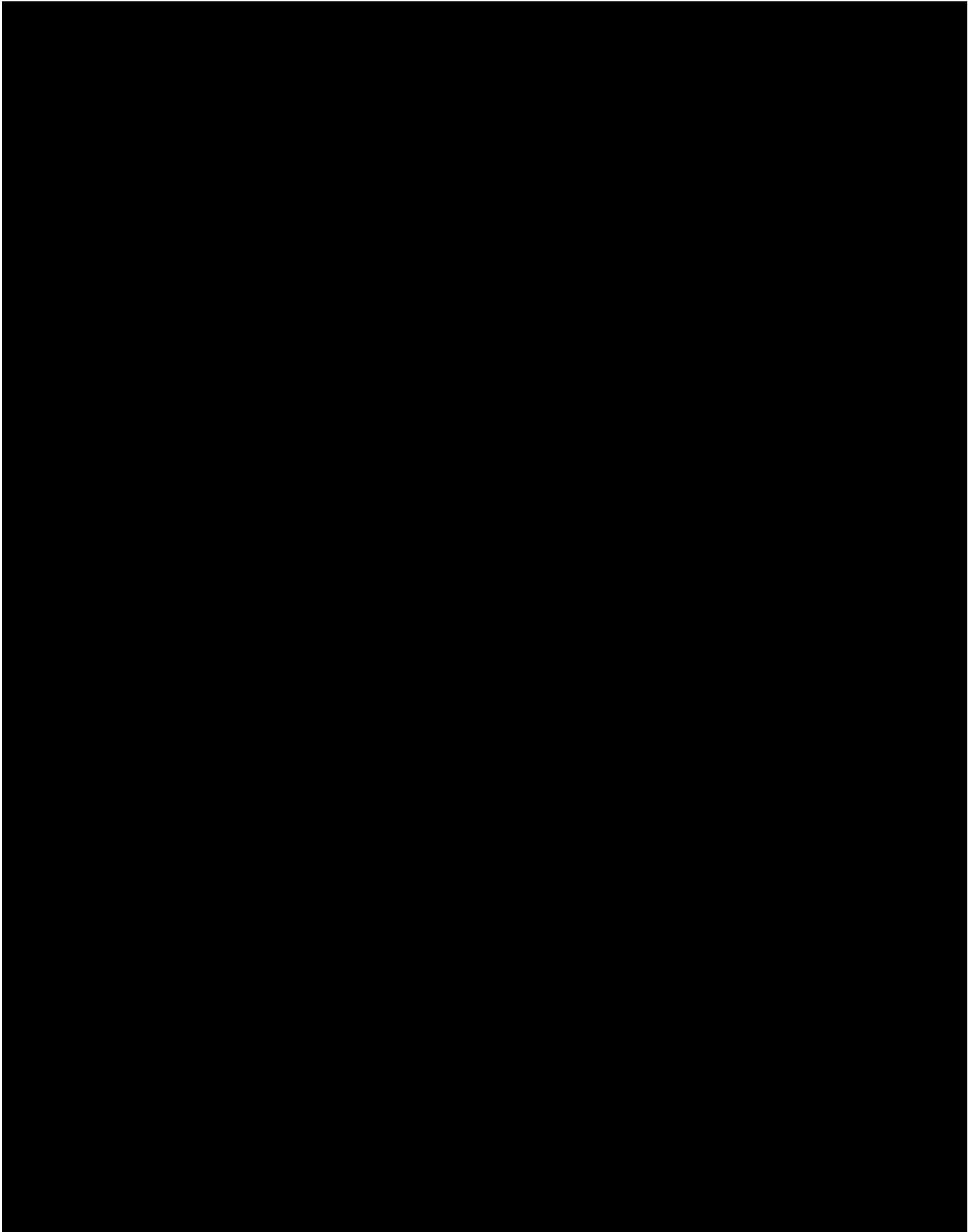












# Schedule 16 – Environmental requirements

## 1. Definitions and Interpretation

In this Schedule 16, the following words have the following meanings:

**Climate Estimate and Reporting Tool** or **CERT** means the Climate Estimate and Reporting Tool referred to in the CERT User Guide.

**CERT User Guide** means the current version of TfNSW's Carbon Estimate and Reporting Tool Guidelines published on TfNSW's website and as amended from time to time.

**Climate Risk Assessment** has the meaning given in the CRA Guidelines.

**Climate Risk Register** means a register of climate risks in respect of the Operator Activities to be maintained by the Operator in accordance with the CRA Guidelines.

**CRA Guidelines** means the current version of TfNSW's Climate Risk Assessment Guidelines published on TfNSW's website and as amended from time to time, or any similar guidelines nominated by the Operator and approved by TfNSW.

**Greenhouse Gases (GHGs)** means the gases that trap thermal radiation in the earth's atmosphere. They are specified by the United Nations Framework Convention on Climate Change (UNFCCC) in Annexure A to the Kyoto Protocol and may be updated periodically.

**ISC** means the Infrastructure Sustainability Council ABN 53 131 329 774.

**IS Rating** means a rating provided by ISC under the IS Rating Scheme.

**IS Rating Scheme** means the scheme administered by the ISC for the purposes of evaluating the sustainability of infrastructure projects.

**IS Rating Tool** means the tool administered by the ISC to determine an IS rating.

**IS Scorecard** means a scorecard produced by the ISC for the purpose of determining an IS Rating.

**Net Zero 2050 Target** means a target to reduce and remove a Party's GHG emissions, including by purchasing carbon credits to offset its Residual Emissions, to achieve a balance between the Party's sources and sinks of GHGs by 2050.

**Operator Sustainability Plan** means the plan to be prepared by the Operator in accordance with paragraph 3 of this Schedule 16.

**Quarterly Sustainability Report** the report referred to in paragraph 2 of this Schedule 16.

**Residual Emissions** means a party's GHG emissions that are emitted after all reasonable efforts have been made by the party to reduce them.

**TfNSW Sustainability Plan** means TfNSW's Transport Sustainability Plan published on TfNSW's website and as amended from time to time.

## 2. Quarterly Sustainability Report

- (a) Within 20 Business Days after the end of each Quarter during the Term, the Operator must provide a report to TfNSW which contains the matters referred to in paragraphs 3(f), 4(c), 5(e), 6(b) and 7(b) of this Schedule 16 (**Quarterly Sustainability Report**).
- (b) Each Quarterly Sustainability Report must be in the form approved by TfNSW and be to TfNSW's reasonable satisfaction.

### 3. Operator Sustainability Plan

- (a) The Operator must prepare and submit the Operator Sustainability Plan to TfNSW (to TfNSW's reasonable satisfaction) no later than 20 Business Days after the Planned Service Commencement Date.
- (b) The Operator must develop, implement, maintain and comply with the Operator Sustainability Plan from the date that is three months after the Planned Service Commencement Date and for the duration of the Term.
- (c) The Operator Sustainability Plan must:
  - (i) address and respond to the focus areas of the TfNSW Sustainability Plan;
  - (ii) address and respond to the obligations under this Schedule 16 including in paragraph 7(a) of this Schedule 16;
  - (iii) have regard to the need to preserve the Environment and the need to mitigate any adverse effects on the Environment; and
  - (iv) ensure all material and consumables used in the performance of the Services are environmentally friendly and kept and disposed of in an environmentally safe and lawful manner.
- (d) The Operator must publish the Operator Sustainability Plan on its website and make it available to passengers, upon request, free of charge.
- (e) The Operator must annually review the Operator Sustainability Plan and make such amendments as may be required to ensure ongoing compliance with Law and this Contract. Each update of the Operator Sustainability Plan must be provided to TfNSW at least 20 Business Days prior to the planned date of publication.
- (f) The Operator must provide progress reports of its performance against the Operator Sustainability Plan to TfNSW as part of each Quarterly Sustainability Report.

### 4. Net Zero 2050 Target

- (a) The Operator commits to achieving the Net Zero 2050 Target.
- (b) The Operator must aim to achieve the Net Zero 2050 Target in a manner that:
  - (i) aligns with the NSW Government's plans and policies with respect to the Net Zero 2050 Target; and
  - (ii) results in a 90% abatement of GHG emissions.
- (c) Each Quarterly Sustainability Report must contain a report against the Operator's progress towards achieving the Net Zero 2050 Target.

### 5. Climate risk

The Operator must:

- (a) undertake a climate risk assessment of the Operator Activities in accordance with CRA Guidelines;
- (b) prepare and submit a Climate Risk Register to TfNSW (to TfNSW's reasonable satisfaction) no later than 20 Business Days after the Planned Service Commencement Date;
- (c) throughout the Term, take all reasonable steps to mitigate the 'very high' or 'extreme risks' (as defined in the CRA Guidelines) identified in the Climate Risk Register;

- (d) annually review the Climate Risk Register and make such amendments as may be required to ensure ongoing risk mitigation in accordance with the CRA Guidelines; and
- (e) provide a copy of the then current Climate Risk Register to TfNSW as part of each Quarterly Sustainability Report.

## 6. Carbon emission reporting

The Operator must:

- (a) prepare and submit a CERT to TfNSW (to TfNSW's reasonable satisfaction) no later than 20 Business Days after the Planned Service Commencement Date; and
- (b) provide an updated CERT to TfNSW as part of each Quarterly Sustainability Report.

## 7. Water use

The Operator must:

- (a) ensure that at least 15% of water used by the Operator in connection with the Operator Activities is sourced from non-potable water sources; and
- (b) in each Quarterly Sustainability Report:
  - (i) demonstrate that identified opportunities to reduce the use of potable water in connection with the Operator Activities have been implemented by the Operator; and
  - (ii) present data on water supply and consumption in respect of the Operator Activities and demonstrate compliance with paragraph 7(a) of this Schedule 16.

## 8. Infrastructure sustainability council rating

- (a) The Operator must achieve an IS Rating for the Operator Activities of at least 65 within 60 months of the Planned Services Commencement Date and maintain that rating for the remainder of the Term.
- (b) For the purposes of paragraph 8(a) of this Schedule 16, the Operator must:
  - (i) enter into a ratings agreement with the ISC to obtain an IS Rating for the Operator Activities in accordance with the IS Rating Tool;
  - (ii) undertake a workshop with a multidisciplinary team including representatives from TfNSW to develop the final IS Rating Scheme credit ratings assessment and completed IS Scorecard;
  - (iii) submit to TfNSW for review a completed IS Scorecard which identifies the targeted credits in accordance with the ISC weighting assessment;
  - (iv) consult with TfNSW in all weightings assessment workshops held with the ISC;
  - (v) submit the proposed base case methodologies and assumptions to TfNSW for review prior to submitting the base case proposal to ISC for verification; and
  - (vi) ensure that TfNSW is a co-owner of the IS Rating and that TfNSW has full rights to the promotion of the IS Rating.
- (c) The Operator is responsible for all fees and costs associated with obtaining an IS Rating and must provide evidence of payment of fees to TfNSW when requested.
- (d) A failure by the Operator to achieve an IS Rating for the Operator Activities of at least 65 within 60 months of the Planned Services Commencement Date is a Non Compliance Event.

- (e) At all times while the Operator has an IS Rating for the Operator Activities of at least 65:
  - (i) the Operator is not required to comply with paragraphs 3, 5, 6 or 7 of this Schedule 16;
  - (ii) the Quarterly Sustainability Report must contain:
    - (A) all documents submitted by the Operator to the ISC in respect of the Operator's IS Rating since the date of the last Quarterly Sustainability Report; and
    - (B) a report of the Operator's progress towards achieving the Net Zero 2050 Target, but is not otherwise required to contain the matters referred to paragraphs 3(f), 5(e), 6(b) and 7(b) of this Schedule 16.



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# Manly Ferry Service Contract

Transport for NSW on behalf of the State of New South Wales (**TfNSW**)

Manly Fast Ferry Pty Ltd (**Operator**)

(Volume 2 of 2)

This volume 2 contains Annexures A to H of the Manly Ferry Service Contract dated on or around 23 December 2022\_\_\_\_\_ between Transport for NSW on behalf of the State of New South Wales and Manly Fast Ferry Pty Ltd ABN 90 135 008 070.

Each attorney executing this Contract states that he or she has no notice of revocation or suspension of his or her power of attorney.

**EXECUTED** as a deed

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

H Collins

Signature of authorised delegate

L Ward

Signature of witness

Howard Collins

Name of authorised delegate (block letters)

Liz Ward

Name of witness (block letters)

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

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

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**Executed by Manly Fast Ferry Pty Ltd (ABN 90 135 008 070) in accordance with Section 127 of the Corporations Act 2001**

Mary-Ellen Payne

Signature of director

R I Ford

Signature of director/company secretary  
(Please delete as applicable)

Mary-Ellen Payne

Name of director (print)

Richard Ian Ford

Name of director/company secretary (print)

*By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.*

## **Annexure A – Performance Bond**

See attached.

# Performance Bond

[insert date]

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

Address: [insert]

Attention: [insert]

[Insert name and ABN of Operator] (**Operator**) has entered into a document with the Beneficiary under which the Operator has agreed to, among other things, provide ferry services in Sydney, New South Wales in accordance with the terms of that document (**Document**).

At the request of the Operator, and in consideration of the Beneficiary agreeing to accept the form of this bond (**Bond**):

[insert] (**Issuer**),

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

A\$[insert].

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

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

This Bond expires on [insert] (**Expiry Date**).

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

The Beneficiary may assign its rights under this Bond to any person to whom it has assigned some or all of its rights under the Document provided that the relevant Beneficiary has notified the Issuer of that assignment.

Other than as set out above, the Beneficiary cannot assign or transfer its rights under this Bond without the prior consent of the Issuer, not to be unreasonably withheld.

Despite anything else in this bond, the Issuer may terminate it at any time by payment to the Beneficiary of the guaranteed amount at that time or any lesser amount that the Beneficiary may agree.

This Bond is governed by the laws of the State of New South Wales.

**EXECUTED** as a deed.

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

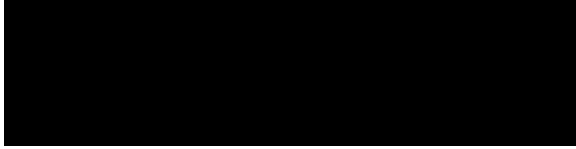
[insert execution block of Issuer]

## **Annexure B – Deed of Guarantee and Indemnity**

See attached.

Annexure redacted

**Annexure C – Operator Security Deeds**



Annexure redacted



## **Annexure D – State Bareboat Charterparty**

See attached.

Annexure redacted

## **Annexure E – Transfer Out Agreement**

See attached.

Annexure redacted

## **Annexure F – Fleet Deployment Plan**

See attached.

Annexure redacted

## **Annexure F – Fleet Deployment Plan**

See attached.

Annexure redacted



## **Annexure G – Asset and Services Plan**

See attached.

Annexure redacted

## **Annexure H – Operator Safety Matrix**

See attached.

Annexure redacted

## **Annexure I – Payments for Existing Operator Ferries**

See attached.

Annexure redacted