

Ferry Service Contract

Lane Cove River

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

Captain Cook Cruises Pty Ltd (**Operator**)

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Details

Date 28 December 2022

Parties

Name **Transport for NSW, a corporation constituted under the *Transport Administration Act 1988* (NSW) on behalf of the State of New South Wales**
ABN 18 804 239 602
Short form name **TfNSW**
Notice details GPO Box K659, Haymarket NSW 1240

Name **Captain Cook Cruises**
ABN 17 008 272 302
Short form name **Operator**
Notice details Level 3, 26 Flinders Street, Adelaide SA 5000

Background

- A The PT Act 2014 provides that TfNSW may enter into a passenger service contract on behalf of the State of New South Wales for the provision of a Public Passenger Service with an accredited operator of a Public Passenger Service or the operator of a Public Passenger Service who is not required to be accredited under the PT Act 2014.
- B This Agreement is a passenger service contract within the meaning, and for the purposes of, Part 3 Division 1 of the PT Act 2014.
- C The Operator has agreed to provide the Ferry Service on the terms set out in this Agreement including the Schedules.
- D TfNSW is the recipient of the benefit of the conduct of the Ferry Service by the Operator.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement, unless the context otherwise requires, the following words shall have the meanings as follows:

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.

Agreement means this ferry services contract, including all attachments and schedules and all documents attached or annexed to each schedule.

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

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

Authorised Person means a person appointed by TfNSW to be an authorised person for the purposes of this Agreement.

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

Base Service Fee has the meaning given in Schedule 4.

Business Day has the meaning given in clause 1.3.

Business Hours means the period between the commencement of the first Trip and the completion of the last Trip on a Business Day.

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

Change in Law means the imposition of, change in or repeal of a Law, after the date of the Agreement 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 which is specifically directed at the conduct or operations of the Ferry Service or to the public transport industry in New South Wales; or
- (b) a change to a Law that relates to the terms of employment or engagement of any Staff, including without limitation, the *Fair Work Act 2009* (Cth) or 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,

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 not due to a change to a Law;
- (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 Agreement 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 Agreement; or

- (ii) a party experienced and competent in the provision of services similar to the Ferry Services would have reasonably foreseen or anticipated prior to the date of this Agreement;
- (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 this Agreement;
- (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 Agreement;
- (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 Agreement; or
- (n) any change in Law relating to the COVID-19 pandemic.

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).

Certificate of Competency has the meaning given in the Marine Safety Act.

Certificate of Operation has the meaning given in the Marine Safety Act.

Certificate of Survey has the meaning given in the Marine Safety Act.

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

Commencement Date means 1 January 2023, or such other date as may be mutually agreed between TfNSW and the Operator.

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

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 recipient party knows or ought to know is confidential.

Consequential or Indirect Loss means a 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 Agreement), 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.

Contract Year means each 12 months ending on the anniversary of the Commencement Date during the Term.

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

Deed of Guarantee and Indemnity means a deed in favour of TfNSW in the form set out in Schedule 13.

Disclosed Information means all information of whatever nature that is obtained by or on behalf of the Operator from TfNSW, the State of New South Wales, 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 Agreement; 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 of New South Wales, 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 Ferry Services, whether the information is in oral, visual or written form or is recorded in any other medium.

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 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.

Existing Contract Material means any Material that is brought into existence other than for the purposes of this Agreement.

Fare means the price payable for a Ticket.

Ferry Service means the timetabled services to be carried on by the Operator on the Routes and in accordance with this Agreement as detailed in Schedule 1, Schedule 2 and Schedule 7.

Ferry Service Slot means each Slot that is allocated to the Operator by operation of Schedule 1 and Schedule 7 for the sole use of the Vessels for the provision of the Ferry Services.

FOCIS means the ferry operations and customer information system operated by TfNSW from time to time.

Force Majeure Event means any of the following events:

- (a) act of God, lightning, storm, extreme weather, high seas, explosion, flood, landslide, bush fire or earthquake;
- (b) act of public enemy, war (declared or undeclared), terrorism, sabotage, revolution, riot, insurrection, civil commotion, pandemic or epidemic;
- (c) blockade or embargo within Australia, other than a blockade or embargo which only affects the Operator or which is caused by industrial action, power shortage or water shortage;
- (d) fuel shortages or power shortages that apply generally to the maritime industry;
- (e) strikes or other industrial action (other than industrial action primarily involving some or all of the Staff or primarily involving the ferry industry); and
- (f) ionising radiation or contamination by radioactivity or any nuclear fuel or from 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).

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 services the same or similar to the Ferry Service under the same or similar circumstances for those services.

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

GST has the meaning given by the GST Act.

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

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

Indemnified Persons has the meaning given in clause 12.3(a).

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.

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 undertaking;
- (g) has an application or order made or a resolution passed for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them;
- (h) has 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
- (i) any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Intellectual Property means all industrial and intellectual property rights whether created before or after the date of this Agreement, 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.

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 and who is approved by TfNSW.

Key Performance Indicators has the meaning given in Schedule 8.

Law means:

- (a) any statute, regulation, order, rule, 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 Ferry Service 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.

Losses means all losses, damages, liabilities, actions, suits, claims, demands, charges, costs and expenses of every kind (including reasonable legal costs and expenses on a full indemnity basis), including Consequential or Indirect Loss.

KPI Credit has the meaning given in Schedule 8.

KPI Default has the meaning given in Schedule 8.

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

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

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).

Monthly Contract Payment has the meaning given in Schedule 4.

Key Performance Indicator or **KPI** has the meaning given in Schedule 8.

New Contract Material means any Material brought into existence as part of, or for the purposes of, performing this Agreement (whether prepared before or after the commencement of this Agreement) including the Timetables and all data provided by the Operator under this Agreement.

OpalPay means the system comprising the OpalPay API, the POS Device App and the POS Device which interfaces with the Opal Ticketing System.

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

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

Operator means the person who is a party to this Agreement and who is to provide the Ferry Service under this Agreement and, unless the context otherwise requires, includes that person's employees and agents.

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 this Agreement, including the provision of the Ferry Services.

Operator's Associate 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 this Agreement;
- (b) the Parent Company;
- (c) any Related Body Corporate of the Operator; and
- (d) any director, officer, employee or agent of the Operator or any of the persons referred to in paragraphs (a) to (c) above.

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

Operator IP means the Existing Contract Material and any public timetable, passenger information and reports provided under this Agreement.

Operator Ticket Income has the meaning given in clause 6.2(d)(i)(A).

Operator Ticket Income Adjustment has the meaning given in Schedule 4.

Parent Company means Kelsian Group Limited ACN 109 078 257.

Performance Benchmark means the performance benchmarks set out in clause 2.5.

Performance Bond means a performance bond that complies with the requirements in clause 4.1.

Personal Information has the meaning give in the Privacy Laws.

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 an application and associated network infrastructure developed or utilised by the Operator to connect with the OpalPay API, the Opal Ticketing System or other ticketing system used by TfNSW.

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

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).

Proposal means the proposal submitted by the Operator to TfNSW in response to the Request For Tender issued by TfNSW dated 29 November 2021 with reference number WS3253564210.

PT Act 1990 means, unless otherwise specified, the *Passenger Transport Act 1990* (NSW) and the regulations made under that Act.

PT Act 2014 means, unless otherwise specified, the *Passenger Transport Act 2014* (NSW) and the regulations made under that Act.

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

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.

Related Body Corporate means has the same meaning as in section 50 of 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).

Relevant Legislation includes:

- (a) the Marine Safety Act;
- (b) the *Ports and Maritime Administration Act 1995* (NSW);
- (c) the *Work Health and Safety Act 2011* (NSW);
- (d) the PT Act 2014;
- (e) the PT Act 1990;
- (f) the TAA;
- (g) the *Disability Discrimination Act (1992)* (Cth) and the accompanying guidelines under the Act;
- (h) the *Disability Standards for Accessible Public Transport 2002* (Cth); and
- (i) any regulations made under any of these Laws.

Revenue Share Amount has the meaning given in Schedule 5.

Revenue Share Payment means the payment calculated under paragraph (b) of Schedule 5.

Route means the uninterrupted with no scheduled stops service route shown on the map in Schedule 2 and any revisions to that route, approved by TfNSW in accordance with clause 6.3(b). 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, TfNSW, SafeWork NSW, the Port Authority of New South Wales (including the Harbour Master and Vessel Traffic Services) and any other relevant authority under the Law applicable to the Ferry Services and Relevant Legislation and any persons appointed by those entities authorised to exercised powers under the Law applicable to the Ferry Services or Relevant Legislation or otherwise.

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

Service Levels means the level of services to be operated and provided the Ferry Services including:

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

as set out in Schedule 1.

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).

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.

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

Staff means all persons whether officers, employees, agents or contractors of the Operator engaged in or in connection with the Ferry Service.

State Owned Corporation means any organisation set up under the *State Owned Corporations Act 1989* (NSW).

TAA means the *Transport Administration Act 1998* (NSW).

Tax Invoice has the meaning given in the GST Act.

Term means the term of this Agreement set out in clause 2.3.

Termination Event means any of the events listed in clause 13.1.

Termination Notice means a notice issued pursuant to clause 13.2.

TfNSW means the New South Wales Governmental Agency known as Transport for NSW constituted under the TAA, its successors and assigns.

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

TfNSW Brand means all:

- (a) marks, trade marks, logos, indicia or images, livery, colours or other get up or brand;
- (b) names including business names, domain names and company names (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 Agreement or not (other than those of the Operator or Operator's Associates which are used in their business generally),

registered or used by TfNSW in relation to the provision of Public Passenger Services.

TfNSW Customer Complaints Policy means any policies, standards and guidelines for the management of customer complaints and feedback as issued and amended by TfNSW from time to time, which as the date of this Agreement includes the document titled *Customer Complaints and Feedback Policy* effective from July 2018 and the document titled *Customer Complaints and Feedback Management Standard* dated 15 August 2019 and reviewed on 15 August 2020.

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 IP means:

- (a) all Intellectual Property owned by TfNSW, including the TfNSW Brand; and
- (b) all Intellectual Property licensed to TfNSW, other than by or on behalf of the Operator.

TfNSW Policies means all TfNSW policies and standards:

- (a) referenced in this Agreement;
- (b) 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) published on TfNSW's website (being www.transport.nsw.gov.au or its successor) from time to time, that are generally applicable or otherwise relevant to any part of the Ferry Services or the performance of this Agreement, including all policies and standards regarding security, data and privacy; or
- (d) otherwise notified by TfNSW to Operator from time to time.

TfNSW Systems and Equipment means systems and equipment installed for or on behalf of TfNSW on any Vessel at any time before or during the Term including ticketing systems and equipment and tracking systems and equipment.

TfNSW's Associate means the Transport Minister and the State of New South Wales.

Third Party Contract Material means any Material created by or owned by a third party which is or becomes incorporated in the Existing Contract Material or New Contract Material or is otherwise necessary or required for the purposes of performing this Agreement or accessing or using the Existing Contract Material or New Contract Material.

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

Ticketing System Income is defined in clause 6.2(d).

Ticketing System Income Adjustment has the meaning given in Schedule 4.

Timetable means the timetable for the provision of Ferry Services on the Route set out in Schedule 7, as may be updated from time to time in accordance with this Agreement.

Transition In Plan means the Operator's transition in plan as set out in Schedule 9.

Transition Milestone means each milestone identified in the Transition In Plan.

Transition Milestone Date means the date for completion of a Transition Milestone as identified in the Transition In Plan.

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).

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

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.

Vessels means the ferries used by the Operator to provide the Ferry Service the subject of this Agreement.

Wharf means a wharf on the Routes identified as a stopping point for the Ferry Service as set out in Schedule 2.

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 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 Ferry Services;
- (b) the requirements of any Governmental Agency relating to work health and safety with respect to the Ferry Services; 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 Ferry Services.

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

1.2 Interpretation

Except where the context otherwise requires in this Agreement:

- (a) all references to statutory provisions (including acts, rules, regulations, orders, by-laws and ordinances) include any modification or re-enactment or replacement of such statutory provisions (whether before, on or after the date of this Agreement) for the time being in force;

- (b) a reference to any Governmental Agency or professional body includes the successors of that Governmental Agency or professional body;
- (c) words importing the singular number or plural number include the plural number and singular number respectively;
- (d) words importing any gender include every gender;
- (e) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (f) clause headings do not affect the interpretation of this Agreement;
- (g) a reference to a clause, Schedule, Attachment or Annexure is a reference to a clause, Schedule or Annexure of or Attachment to this Agreement and a reference to this Agreement shall include its Schedules, Attachments and Annexures;
- (h) 'month' shall be construed as a reference to a calendar month and 'year' shall be construed as a reference to a calendar year;
- (i) a receiver includes a receiver and manager and a liquidator includes a provisional liquidator and official manager;
- (j) any person company or party shall mean and include the legal personal representatives of a person or party and permitted assigns of such person company or party as the circumstances may require;
- (k) a reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document;
- (l) nothing in this Agreement is to be interpreted against a party solely on the ground that the party drafted or put forward this Agreement or any part of it;
- (m) a reference to the words '*include*', '*includes*' and '*including*' means '*including without limitation*';
- (n) where TfNSW has a power, or the term 'may' is used in the context of a Power exercisable by TfNSW means that:
 - (i) TfNSW can exercise or not exercise that Power in its absolute and unfettered discretion;
 - (ii) TfNSW has no obligation to the Operator or any other party to exercise that Power, or to consider whether to exercise that power, including in connection with its effect on the Operator; and
 - (iii) no right, interest or expectation of any kind is created in the Operator in respect of that Power or its exercise or otherwise;
- (o) where a Power is conferred on TfNSW under any agreement, that Power is in addition to, and not in substitution of, any other Power conferred on TfNSW at law or under this Agreement;
- (p) an acknowledgement by the Operator under this Agreement does not of itself create legal rights or obligations on the part of TfNSW;
- (q) if any amount under this Agreement is payable on a day that is not a Business Day, it will instead be payable on the preceding Business Day;
- (r) a reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- (s) 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;
- (t) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (u) 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;

- (v) the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (w) TfNSW may rely on any waiver by the Operator of any Powers, including statutory Powers;
- (x) where this Agreement provides that the Operator is not entitled to make any Claim against TfNSW, or the Operator releases TfNSW from any Claim, or the Operator has no Claim against TfNSW or similar words are used, the Operator and the Operator's Associates are deemed to have released and forever discharged TfNSW and TfNSW's Associates (**Released Parties**) from all Claims (known or otherwise) which the Operator or any of the Operator's Associates have or at any time might have or, but for the release, might have had in connection with the relevant subject matter and the Released 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 each of the Released Parties;
- (y) any act or omission by or on behalf of the Staff is deemed to be an act or omission by the Operator;
- (z) where:
 - (i) an obligation has been imposed on an Operator's Associate under this Agreement;
 - (ii) an obligation has been imposed on the Operator to procure or ensure that an Operator's Associate complies with the requirements of this Agreement; or
 - (iii) in order to discharge its obligations under this Agreement 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; and
- (bb) a reference to a consent or approval means prior consent or approval.

1.3 Business Days

A Business Day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales.

1.4 Jurisdiction

This Agreement shall be read and construed and take effect in accordance with the laws of New South Wales from time to time in force and the parties hereby agree to subject themselves to the non exclusive jurisdiction of the courts of New South Wales.

1.5 Grammar

Where a word or phrase is given a defined meaning in this Agreement any other part of speech or other grammatical form in respect of such word or phrase shall, unless the context otherwise requires, have a corresponding meaning.

1.6 Prior agreement

This Agreement supersedes all prior agreements and understandings between the parties relating to the Ferry Service.

1.7 Meaning of terms

Any term used in this Agreement which is defined in the Relevant Legislation and is not specifically defined in this Agreement shall have the same meaning as set out in those Acts or any one of them unless the context otherwise requires.

1.8 No expectation

Nothing in this Agreement affects TfNSW's right at any time to invite contracts by tender or in such other manner as TfNSW thinks fit for the Ferry Services (including on the Route).

1.9 Consents or approvals

Unless expressly provided otherwise, if the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of TfNSW or is within the discretion of TfNSW, including where it is expressed that TfNSW may do something or omit to do something, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by TfNSW as the case may be in its absolute discretion. Any consent or approval by TfNSW does not relieve the Operator from its obligations under this Agreement nor constitute evidence that the act, matter or thing has been completed in accordance with this Agreement.

1.10 TfNSW's capacity

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

1.11 No implied duty of good faith

Nothing in, or contemplated by, this Agreement 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 Agreement on a good faith basis.

1.12 Reasonable endeavours

Without limiting clause 1.14, if TfNSW is required under the terms of this Agreement to exercise best or reasonable endeavours or good faith, the Operator acknowledges that:

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

1.13 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.

1.14 No fetter on TfNSW's Powers

- (a) This Agreement 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 1.14(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 this Agreement and will not entitle the Operator to make any Claim against TfNSW; and
 - (ii) nothing in this Agreement 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 this Agreement 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 this Agreement;
 - (D) require TfNSW to procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this Agreement;
or
 - (E) act in any other way that TfNSW regards as not in the public interest.

- (c) Clauses 1.14(a) and 1.14(b) do not limit any liability which TfNSW would have had to the Operator under this Agreement as a result of a breach by TfNSW of this Agreement but for clauses 1.14(a) and 1.14(b).
- (d) The Operator acknowledges that:
 - (i) there are many Governmental Agencies (other than TfNSW) with jurisdiction over aspects of the Ferry Service and other areas affected by the Ferry Service;
 - (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 Ferry Service; and
 - (iii) except to the extent expressly stated otherwise in this Agreement, the Operator bears the risk of all occurrences of the kind referred to in clause 1.14(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.

1.15 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 this Agreement 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 this Agreement, or any replacement agreement or agreements for this Agreement 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 1.15.
- (d) For the purposes of this clause 1.15, '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.

1.16 Entire agreement

This Agreement contains the entire agreement between the parties with respect to their subject matter and supersedes all prior agreements and understandings between the parties in connection with that subject matter.

1.17 No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

1.18 Severability

Any provision of this Agreement 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 Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

1.19 Counterparts

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

1.20 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.

1.21 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 Agreement.

1.22 Relationship

- (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 Agreement shall be deemed to be an employee, partner or agent of TfNSW or the State of New South Wales, by reason only of execution of, or performance of, this Agreement.
- (b) The Operator must not, and must procure that none of the Operator's Associates represent themselves as being the employees, partners or agents of TfNSW or the State of New South Wales.

1.23 Enforcement of indemnities

It is not necessary for TfNSW, the Transport Minister or the State to incur any expense or make any payment before enforcing a right of indemnity contained in this Agreement.

1.24 Costs

- (a) Each party will pay its own costs of negotiation, preparation, execution and (subject to express terms of this Agreement) performance of this Agreement.
- (b) TfNSW may require the Operator to pay the reasonable costs of any variations to this Agreement sought by the Operator.

2. Commencement and duration

2.1 Conditions precedent

- (a) This Agreement (other than clauses 1, 2.1, 2.2, 3.4, 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 0) does not commence until the conditions precedent set out in this clause 2.1 have been satisfied in accordance with this clause 2.1.
- (b) The Operator must ensure that the following conditions precedent are fulfilled to TfNSW's satisfaction prior to Commencement Date:
 - (i) delivery to TfNSW of the Performance Bond and Deed of Guarantee and Indemnity in accordance with clause 4;
 - (ii) if any party of the 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;
 - (iii) delivery to TfNSW of evidence satisfactory to it that the Operator has obtained the insurances required by clause 12.1;
 - (iv) 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 Ferry Services (including a copy of the Operator's safety management system);
 - (v) TfNSW being satisfied that the Operator has obtained access to the Wharves in accordance with clause 7;

- (vi) TfNSW being satisfied that the Operator has obtained access to the Vessels in accordance with clause 6.7;
 - (vii) TfNSW being satisfied that each document required to be delivered under this clause 2.1 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 Commencement Date under this Agreement; and
 - (viii) 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 this Agreement on or prior to the Commencement Date.
- (c) As soon as reasonably practicable after TfNSW is satisfied that each of the conditions in clause 2.1(b) has been satisfied (or waived by TfNSW), TfNSW will issue to the Operator a certificate of service commencement.
 - (d) If the Operator fails to comply with clause 2.1(b) by the Commencement Date, TfNSW may terminate this Agreement by issuing a notice to the Operator with immediate effect and subject to clause 13.3, this Agreement will be of no further effect and the Operator has no Claim against TfNSW in respect of such termination.

2.2 Transition

On and from the dated of execution of this Agreement the Operator must:

- (a) comply with the Transition In Plan;
- (b) achieve the Transition Milestones by the Transition Milestone Dates; and
- (c) do all other things reasonably necessary so as to ensure that the Ferry Services are able to be commenced by the Commencement Date.

2.3 Duration of agreement

Subject to prior termination under clause 2.4 or 13, the Term commences on the Commencement Date and expires at the end of the day prior to the 15th anniversary of the Commencement Date.

2.4 Early termination at end of fifth and tenth Contract Year

- (a) No later than the date that is nine months prior to the fifth anniversary of the 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 2.4(a) that the Operator has not met the Performance Benchmarks, TfNSW may, by giving notice to the Operator, terminate this Agreement with effect from the later of:
 - (i) the date that is the fifth anniversary of Commencement Date; or
 - (ii) another date nominated by TfNSW in the notice of termination issued under this clause 2.4(b) which must be no earlier than the date that is the fifth anniversary of the Commencement Date and no later than the date that is the sixth anniversary of the Commencement Date.
- (c) No later than the date that is nine months prior to the tenth anniversary of the 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 2.4(c) that the Operator has not met the Performance Benchmarks, TfNSW may, by giving notice to the Operator, terminate this Agreement with effect from the later of:
 - (i) the date that is the tenth anniversary of the Commencement Date; or
 - (ii) another date nominated by TfNSW in the notice of termination issued under this clause 2.4(d) which must be no earlier than the date that is the tenth anniversary of the Commencement Date and no later than the date that is the eleventh anniversary of the Commencement Date.

- (e) The Operator has no Claim against TfNSW in relation to the termination of this Agreement under clause 2.4(b) or clause 2.4(d).
- (f) Nothing in this clause 2.4 in any way limits TfNSW's rights in respect of any breach by the Operator or the Operator's Associates of this Agreement including under clause 13 or otherwise at Law.
- (g) For the avoidance of doubt, TfNSW may itself, or through a third party, carry out the Ferry Service after termination under this clause 2.4.

2.5 Performance Benchmarks

- (a) The Operator must achieve the following performance benchmarks at the end of the fourth Contract Year:
 - (i) during the second, third and fourth Contract Years the Operator has not:
 - (A) breached two or more Class 1 Key Performance Indicators (if any), 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;
 - (ii) there is no Non-Compliance Event under this Agreement 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 Agreement to the satisfaction of TfNSW;
 - (iii) 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
 - (iv) in TfNSW's opinion there have been no material concerns regarding the Operator's safety record during the first four Contract Years.
- (b) The Operator must achieve the following performance benchmarks at the end of the ninth Contract Year:
 - (i) during the sixth, seventh, eighth and ninth Contract Years the Operator has not:
 - (A) breached two or more Class 1 Key Performance Indicators (if any), 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;
 - (ii) there is no Non-Compliance Event under this Agreement 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 Agreement to the satisfaction of TfNSW;
 - (iii) 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
 - (iv) 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.

2.6 No entitlement to new contract or extension of contract

- (a) Nothing in this Agreement shall be construed as affording the Operator a right or expectation of any renewal or extension of this Agreement or to provide, or be invited to provide the Ferry Services after the Term or any new Public Passenger Service during the Term.

- (b) A reference in this Agreement to TfNSW's rights to conduct a procurement process for the performance of the Ferry Services on termination or expiry of this Agreement 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.

2.7 Arrangements for use of the Wharves

TfNSW and the Operator acknowledge and agree that:

- (a) Slots at the Wharves not allocated to the Operator in the Timetable may be made available by TfNSW to other operators through separate wharf access agreements and these Slots may be used by operators seeking to provide any service including:
 - (i) a tourist service or a charter service; or
 - (ii) a ferry service operating on a route approved by TfNSW in its absolute discretion other than a service provided in accordance with regulation 6 of the *Passenger Transport Regulation 2014* (NSW) between the Wharves;
- (b) the Operator must not book or seek to obtain additional Slots for or in connection with the provision of the Ferry Service (or any similar service between the Wharves) by making a separate agreement or bookings for access to the Wharves through any wharf booking system administered by TfNSW from time to time. It is, however, further acknowledged that the Operator may seek access to the Wharves in accordance with such system for the purposes of a separate tourist or charter service; and
- (c) for the purposes of this clause 2.7, the terms "charter service", "ferry service" (and, for the avoidance of doubt, not Ferry Service as defined in clause 1.1) and "tourist service" have the meanings given in the PT Act 2014.

3. Contract for services

3.1 General

The Operator must provide the Ferry Service with effect from the Commencement Date in accordance with, and subject to the terms of this Agreement for the Term.

3.2 Contract risks

Except to the extent that this Agreement expressly provides otherwise, the Operator must bear all risks and costs of conducting the Ferry Service and otherwise complying with its obligations under this Agreement.

3.3 Remuneration and payments

- (a) The Operator will not be remunerated or paid by TfNSW for the Ferry Service, other than in accordance with clause 3.3(b).
- (b) If the aggregate of the Operator Ticket Income and the Ticketing System Income for a month is:
 - (i) less than the Base Service Fee for that month, TfNSW must pay the Operator the Monthly Contract Payment for that month; or
 - (ii) equal to or more than the Base Service Fee for that month, TfNSW has no obligation to pay, and the Operator has no Claim against TfNSW in respect of, any Monthly Contract Payment for that month; and
 - (iii) more than the Revenue Share Amount, the Operator must pay TfNSW the Revenue Share Payment in accordance with Schedule 5.
- (c) TfNSW may set off against any payment made or payable by it under this Agreement, any amount payable to TfNSW under this Agreement or otherwise at Law.
- (d) The Operator must make all payments under this Agreement without set-off or counterclaim and without any deduction unless otherwise agreed in writing by TfNSW.

3.4 Non ownership

- (a) The right to provide the Ferry Services under this Agreement is non-exclusive.

- (b) The Operator acknowledges that TfNSW may contract with one or more service providers to provide Public Passenger Services along or near the Routes.
- (c) Nothing in, or contemplated by, this Agreement or elsewhere confers on the Operator:
 - (i) any ownership of, or property or proprietary right in or over, the Routes;
 - (ii) any other right or interest to operate any Public Passenger Service or other transport service other than the Ferry Services (**Other Services**); or
 - (iii) any right to provide or be paid for Other Services.
- (d) 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) If a variation decreases, omits, deletes or removes any part of the Routes or Ferry Services, TfNSW may thereafter carry out the omitted routes or services itself or by engaging another person to provide the routes or services.

3.5 Management of Change in Law

Where a Change in Law materially impacts on the manner, method or timing for the provision of the Ferry Services (including without limitation, a negative financial impact on the Operator) then the parties will meet to review the Agreement and negotiate amendments to address the impact on each party, including updating the remuneration for the Ferry Services where relevant (which may also include adjustments in favour of TfNSW).

4. Performance Bond

4.1 Performance Bond

The Operator must, prior to the Commencement Date, procure the issue to TfNSW of a performance bond that:

- (a) is in the form set out in Schedule 10;
- (b) is issued by an Issuer with a credit rating of at least A (Standard & Poor's) or A2 (Moody's) (**Required Rating**) and approved by TfNSW (which approval must not be unreasonably withheld);
- (c) is in an amount equal to \$ [REDACTED] (**Performance Bond Amount**);
- (d) is unconditional and irrevocable;
- (e) does not have an expiry date; and
- (f) is issued, and available to be drawn at, an office of the Issuer in Sydney.

4.2 Required rating

If at any time prior to the date that is 12 months after the end of the Term, the Issuer of the Performance Bond ceases to have the Required Rating, the Operator must procure the issue to TfNSW of a supplementary performance bond which complies with the requirements of clause 4.1 within 20 Business Days after the Issuer ceases to have the Required Rating.

4.3 Demands under Performance Bond

- (a) TfNSW may make a demand under the Performance Bond where:
 - (i) any amount has become due and payable (and has not been paid) by the Operator or the Operator's Associates to TfNSW under or in connection with this Agreement (including any amount which TfNSW is entitled to set off under this Agreement);
 - (ii) TfNSW has a good faith Claim to any amount whether for damages (including liquidated damages or KPI Credits) or under an indemnity or otherwise relating to the carrying out of the Ferry Services and activities associated with the Ferry Services or this Agreement; or

- (iii) the Operator or the Operator's Associates may or will become liable to pay any amount to TfNSW in respect of their obligations under this Agreement following the date of termination of this Agreement.
- (b) If the Operator does not comply with clause 4.2 TfNSW may demand the full Performance Bond Amount (or the balance of the amount remaining at the time) provided that:
- (i) the amount paid to TfNSW as a result of such demand must be paid to the Operator as soon as practicable after the Operator complies with clause 4.2; and
 - (ii) if a replacement Performance Bond is not provided to TfNSW by the date falling 12 months after the end of the Term, TfNSW must pay the Operator the amount, if any, paid to TfNSW as a result of the demand under this clause less any amount in respect of which TfNSW was or would have been entitled to make a demand in accordance with clause 4.3(a),
- without any interest being owed in respect of such amount.
- (c) 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.
- (d) The Operator must not take any steps to restrain or injunct TfNSW from making any demand under a Performance Bond, or the Issuer paying, or TfNSW using, any amounts under a Performance Bond.

4.4 Return of Performance Bond

- (a) TfNSW must return to the Operator an existing Performance Bond once TfNSW has received a replacement Performance Bond under clause 4.2.
- (b) TfNSW must, subject to any rights TfNSW may have in relation to the Performance Bond, return the Performance Bond (less any amounts drawn under clause 4.3) to the Operator within 10 Business Days after the date this is 12 months after the end of the Term.

4.5 Parent Company Guarantee

- (a) The Operator must provide TfNSW with a Deed of Guarantee and Indemnity duly executed by the Parent Company and stamped (if required by Law).
- (b) TfNSW may have recourse to more than one of the Deed of Guarantee and Indemnity and the Performance Bonds.

5. Operator compliance

5.1 General

Without limiting any other provision of this Agreement, the Operator will at all times comply with all relevant requirements of the Relevant Legislation.

5.2 Fitness of the Operator

The Operator must be in all respects fit and proper to provide the Ferry Service at all times:

- (a) where the Operator or Operators is/are individuals, he/she/they must be of good character at all times;
- (b) where the Operator is a corporation, the directors and manager of the corporation must be of good character at all times; and
- (c) if the Operator becomes aware of any fact, matter, or circumstance which may cause the Operator, director or manager to no longer be fit and proper or of good character within the meaning of this clause, it must immediately notify TfNSW and provide full disclosure of the fact, matter, or circumstance and set out in writing how the Operator will mitigate such event.

5.3 Financial viability

- (a) The Operator must remain solvent at all times.
- (b) The Operator must maintain sufficient financial resources to provide the Ferry Service at all times.
- (c) If the Operator becomes aware of any fact, matter, or circumstance which may cause the Operator, director or manager to be no longer solvent or maintain sufficient financial resources within the meaning of this clause, it must immediately notify TfNSW and provide full disclosure of the fact, matter, or circumstance.

5.4 Compliance with TfNSW Policies

- (a) In connection with the performance of the Ferry Services, the Operator must comply with, and ensure all Operator's Associates comply with:
 - (i) any TfNSW Policies that have been provided to the Operator prior to the execution of this Agreement; and
 - (ii) any changed or additional TfNSW Policies of which TfNSW notifies the Operator of from time to time after the Commencement Date.
- (b) Without limitation, the TfNSW Policies referred to in clause 5.4(a) may include policies relating to health, safety or security.

6. Conditions of the service contract

6.1 Provide the Ferry Service

The Operator must:

- (a) develop and provide the Ferry Service along the Route shown in Schedule 2;
- (b) maintain, as a minimum standard, the Service Levels set out in Schedule 1;
- (c) in performing the Ferry Services, comply with the requirements of Schedule 3;
- (d) ensure that all scheduled journeys are operated at all times other than to the extent prevented by a Force Majeure Event (provided that for the purposes of determining the Operator's compliance with the Key Performance Indicators, the Operator's obligations under this Agreement that are affected by a Force Majeure Event will be deemed to be subsisting for the duration of the Force Majeure Event);
- (e) perform its obligations under this Agreement:
 - (i) in accordance with Good Industry Practice;
 - (ii) in a timely and expeditious way;
 - (iii) in a way that is designed to prevent injury to or death of persons and damage to property; and
 - (iv) in a proper, competent, safe and reliable manner;
- (f) be, and must ensure that its Staff are, of good character and fit to conduct and manage the Ferry Service;
- (g) hold and comply with all applicable Authorisations and Laws in conducting the Ferry Service;
- (h) provide the Ferry Service having primary regard to the needs and interests of passengers and potential passengers and ensure that the Ferry Service is provided with a focus on customer satisfaction; and
- (i) otherwise comply with its obligations under this Agreement.

6.2 Ticketing and Fares

- (a) The Operator:
 - (i) acknowledges and agrees that Division 2 of Part 7 of the PT Act 2014 applies to this Agreement;

- (ii) must cooperate with any review of fares and other charges undertaken by IPART and comply with all directions to provide information to IPART;
 - (iii) acknowledges that IPART will determine the maximum Fare payable in respect of the Ferry Services;
 - (iv) is responsible for setting Fares for Tickets, subject to this clause 6.2 provided that the Operator:
 - (A) must not charge more for Fares for Tickets than the maximum amount determined by the IPART from time to time; and
 - (B) must notify TfNSW of any proposed change to the amount charged for Fares for Tickets at least 20 Business Days before any such change; and
 - (v) must deal with all revenue from the sale of Tickets in accordance with item 8 of Schedule 3 and account for all revenue from the sale of Tickets in accordance with Schedule 4.
- (b) The Operator must ensure that each of its agents selling or offering to sell Tickets on the Operator's behalf complies with this clause 6.2.
 - (c) 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 Vessels, and any premises or facilities used by the Operator or the Operator's Associates, to carry out their statutory duties and functions.
 - (d) The Operator acknowledges and agrees:
 - (i) that:
 - (A) amounts in respect of the Fares for each Ticket received by the Operator from cash, credit card or other Ticket Sales (**Operator Ticket Income**); and
 - (B) amounts in respect of the Fares for each Ticket collected using TfNSW Systems and Equipment (**Ticketing System Income**),
 are collected and paid to the Operator on its own account;
 - (ii) that 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 Systems Income; and
 - (iii) if TfNSW collects fare revenue through the TfNSW Systems and Equipment, TfNSW will remit the Ticketing System Income to the Operator. TfNSW may from time to time issue policies and procedures to the Operator regarding the calculation and transfer of Ticketing System Income with which the Operator must comply.
 - (e) The Operator must implement and maintain an effective internal control framework over:
 - (i) processing of revenue collected and management of such revenue to ensure that revenue is completely and accurately identified, collected, recorded and reported; and
 - (ii) money handling and banking procedures to ensure that revenue collected from all sources is completely and accurately identified, collected, banked and recorded.
 - (f) The Operator must maintain and provide to TfNSW accurate records that verify Ticket sales information, recharges and revenue derived from the sale of Fares and of all revenue collected under this clause 6.2.
 - (g) The Operator must take reasonable steps to ensure all passengers travelling on a Ferry Service have a valid Ticket, including that the Ticket is valid for the journey being taken by the passenger.
 - (h) The Operator must minimise fare evasion on the Ferry Services including by:
 - (i) 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;
- (ii) producing a monthly fare evasion report as specified by TfNSW;
 - (iii) co-operating with TfNSW in implementing fare evasion strategies as required by TfNSW; and
 - (iv) 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.
- (i) If requested by TfNSW:
- (i) the Operator must provide a booking and ticketing platform for the Ferry Services that is integrated with the Opal Ticketing System;
 - (ii) the Operator must work collaboratively with TfNSW to implement OpalPay or to interface the POS Device and POS Device App with the Opal Ticketing System (or other relevant system), including by:
 - (A) procuring, installing, operating and maintaining POS Devices and undertaking upgrades or enhancements to the POS Devices;
 - (B) designing, developing, operating and maintaining the POS Device App in accordance with specifications provided by TfNSW in respect of OpalPay, the Opal Ticketing System or other relevant system;
 - (C) providing all necessary information and undertaking all necessary activities to interface the POS Devices and POS Device App with OpalPay, the Opal Ticketing System or other relevant system; and
 - (D) entering into an agreement with TfNSW or its nominee regarding OpalPay, the Opal Ticketing System or other relevant system on terms that:
 - (I) 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 OpalPay, the Opal Ticketing System or other relevant system; and
 - (II) include fees comparable to the industry standard payable by other private operators of public transport services in the Greater Sydney Region to TfNSW for:
 - (1) implementation of OpalPay, the Opal Ticketing System or other relevant system;
 - (2) licensing of the OpalPay API or other relevant software or equipment; and
 - (3) maintenance and support services.
- (j) TfNSW acknowledges and agrees that if, following the integration of the Operator's booking and ticketing platform for the Ferry Service with the Opal Ticketing System pursuant to clause 6.2(i), there is any major system or specification change to the Opal Ticketing System that will require further work in order to ensure the Operator can continue to meet its contractual obligations under clause 6.2(i) and this Agreement, the Operator is entitled to make a Claim for compensation from TfNSW in respect of the Operator's direct incremental costs reasonably and properly incurred for additional system integration work as is necessary to meet those obligations. The Operator is not entitled to Claim compensation under this clause 6.2(i) unless the costs have been approved by TfNSW in advance on an open book basis.

6.3 Timetable and Route

- (a) The Operator must provide the Ferry Service on the Route and in accordance with the Timetable.
- (b) Either party may request variations of the Route or Timetable, upon written notice to the other party at least 10 Business Days before the anticipated commencement of the

variation to the Route or Timetable, as the case may be. The parties will negotiate in good faith with each other to agree any proposed amendments to the Route or the Timetable.

6.4 Reporting

The Operator must:

- (a) maintain financial and financial planning records that would ordinarily be maintained by a skilled and experienced operator of services comparable to the size, scope and complexity of the Ferry Service;
- (b) provide TfNSW with the registration numbers of the Vessels to be used by it to provide the Ferry Service;
- (c) maintain records/statistics as required by any relevant Law (including the PT Act 2014) and furnish information from such records as required by TfNSW or make such records available for inspection by an Authorised Person;
- (d) provide TfNSW:
 - (i) with copies of current Certificates of Survey for each Vessel:
 - (A) within 10 Business Days after each anniversary of the Commencement Date; and
 - (B) within 10 Business Days after the due date for renewal of such certificates or as soon as practicable after the regulator has issued the Certificate to the Operator, whichever is the earlier; and
 - (ii) with evidence satisfactory to TfNSW that the Operator has effected and maintained the insurance required to be maintained under clause 12.1 within 10 Business Days after each anniversary of the Commencement Date;
- (e) at the end of each month, or at such other intervals as TfNSW may determine:
 - (i) provide TfNSW with a report providing full and accurate details of:
 - (A) passenger numbers (broken down by differentiating by ticket or entitlement type, and on a per service and wharf basis);
 - (B) Operator Ticket Income and the Ticketing System Income (broken down individually and in aggregate);
 - (C) service cancellations;
 - (D) Excusable Performance Incidents; and
 - (E) Force Majeure Events;for that completed month, signed as true and correct by the general manager of the Operator; and
 - (ii) provide TfNSW with the report referred to in paragraph 3 of Schedule 8;
- (f) in addition to any other reporting requirements, provide TfNSW with the following information:
 - (i) a monthly written report detailing incidents on the Ferry Service or at wharves for the Ferry Service which compromise the security of the passengers, ferry master, vessels (including fare box), including verbal assaults and threats; and
 - (ii) a monthly written report detailing any complaints received by the Operator from passengers and the action taken by the Operator in response.

Reports required under this clause must be provided in the format and via the medium advised by TfNSW from time to time which may include via email or through a portal.

6.5 Other reporting requirements

- (a) 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 Service, including:
- (i) any litigation or other dispute which may have a material effect on the Ferry Services;
 - (ii) any fact, matter or circumstance of which it becomes aware that may prejudice its ability to perform its obligations under this Agreement;
 - (iii) any actual or proposed investigation or inquiry by a Governmental Agency into any aspect of the Ferry Service; and
 - (iv) the 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.
- (b) In addition to any other reporting requirements, the Operator must:
- (i) keep a proper record of any scheduled journeys that fail to operate for any reason and to make the records available for inspection by an Authorised Person; and
 - (ii) maintain details of patronage and other records/statistics as reasonably required by TfNSW to monitor the Operator's performance or to analyse or review transport policies or strategies in NSW, and furnish information from such records/statistics as required by TfNSW or make such records/statistics available for inspection by an Authorised Person.

6.6 Safety of passengers and the public

- (a) The Operator must discharge its obligations in relation to the safety of passengers and the public under:
- (i) its duty of care at common law; and
 - (ii) all other applicable Laws, including the Relevant Legislation.
- (b) The Operator must ensure the appropriate supervision of embarking and disembarking passengers at 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 wharves and in respect of the use of navigation channels.

6.7 Vessel requirements

The Operator must ensure that:

- (a) all Vessels used to provide the Ferry Services:
- (i) are appropriate and adapted to the provision of the Ferry Services;
 - (ii) comply with all Laws, including the requirements of the Relevant Legislation and any relevant regulations;
 - (iii) are staffed by sufficient Staff and that its Staff:
 - (A) have appropriate qualifications, authorisations, experience and training to properly discharge their duties; and
 - (B) understand and comply with their obligations under the Relevant Legislation;
 - (iv) are maintained in accordance with all Laws, including the requirements of the Relevant Legislation and in accordance with the builder's specifications or recommendations; and
 - (v) have a current Certificate of Operation and Certificate of Survey at all times;

- (b) any person, including any sub-contractor, who maintains the Vessels is suitably qualified in all respects to carry out the required maintenance;
- (c) any weight or passenger limit applicable to Vessels used to provide the Ferry Services is not exceeded; and
- (d) all Vessels are clean and tidy when performing the Ferry Services.

6.8 Other use

The Operator may only use a Vessel for a purpose other than the provision of the Ferry Services if:

- (a) it does not adversely affect the continuity of the Ferry Services; and
- (b) it does not adversely affect TfNSW's rights under this Agreement.

6.9 Information to the public

The Operator must:

- (a) maintain a telephone service for the purpose of receiving customer complaints and answering enquiries as to routes, services and lost property. This telephone service must be staffed at least between the hours of 8.00am and 5.00pm on Business Days and an answering machine must be available at other times;
- (b) maintain a register on which all complaints are recorded (written and telephone) and which summarises the action taken in response to those complaints. The register must be made available, if required, for inspection by an Authorised Person;
- (c) ensure that the Timetable:
 - (i) is available at all times for distribution to the public;
 - (ii) as distributed to the public identifies the times at each terminus for each journey and intermediate journey times at major points and provides a phone number for lost property and complaints, and any other relevant information; and
 - (iii) is available from the ferry master at no charge or at a nominal charge;
- (d) give at 10 Business Days' notice (or in an emergency, give notice as soon as practicable) to the Transportnsw.info Website, the public of any significant variations to the Ferry Service;
- (e) provide on-board passenger information systems capable of integrating with TfNSW real time passenger information and journey planning systems. In the event that there is a significant change to TfNSW real time passenger information and journey planning systems following the Operator's integration of these systems into the Operator's on-board passenger information systems, that will require further work in order to ensure the Operator can continue to meet its contractual obligations under this clause, the Operator is entitled to make a Claim for compensation for such additional work from TfNSW in respect of the Operator's direct incremental costs reasonably and properly incurred for additional system integration work as is necessary to meet those obligations. The Operator is not entitled to Claim compensation under this clause 6.9(e) unless the costs have been approved by TfNSW in advance on an open book basis; and
- (f) market the Ferry Service to the general public.

6.10 Staff

- (a) The Operator must ensure that all Staff:
 - (i) hold all relevant Authorisations, including under the *Child Protection (Working with Children) Act 2012* (NSW), to enable them to provide the Ferry Service;
 - (ii) have appropriate experience and training to navigate the Vessels and provide the Ferry Service, including without limitation:
 - (A) training in relation to the operation and use of TfNSW Systems and Equipment;
 - (B) training in relation to the Safety Plan; and

- (C) training to deal with difficult passengers;
 - (iii) are competent to carry out the work for which they are engaged for the purposes of all applicable Laws;
 - (iv) comply with their obligations under all applicable Laws;
 - (v) are conversant with and knowledgeable of relevant fares, concessions, routes, ferry wharves, timetables and radio and telephone operations; and
 - (vi) are properly attired in the Operator's uniform (if applicable).
- (b) Without limiting clause 6.10(a), the Operator must ensure that:
- (i) each ferry master complies with the Marine Safety Act, including that each such master holds a current Certificate of Competency issued pursuant to the Marine Safety Act; and
 - (ii) each crew member complies with the Marine Safety Act, including that each such member holds a current Certificate of Competency issued pursuant to the Marine Safety Act.
- (c) The Operator must provide training to the Staff and develop, document and maintain training materials in accordance with item 6 of Schedule 3.
- (d) Without limiting clauses 6.10(a) to 6.10(c), the Operator must ensure that all Staff who are engaged in, or in connection with, the Ferry Services 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 Ferry Services.
- (e) 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 Laws and the requirements of this Agreement.

6.11 Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under this Agreement 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.
- (b) The Operator must ensure that any subcontractor engaged to provide any of the Ferry Services holds all appropriate Authorisations required in relation to the activities for which it has been engaged.
- (c) The Operator:
 - (i) is not, by reason of having engaged a subcontractor, relieved of any of its liabilities or obligations under this Agreement;
 - (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 this Agreement 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 Agreement and otherwise complies with all obligations of the Operator under this Agreement.

6.12 Installation of TfNSW Systems and Equipment

- (a) The Operator must cooperate with TfNSW in facilitating the installation, testing and ongoing maintenance of TfNSW Systems and Equipment including by:
 - (i) making the Vessels, 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 Vessel 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.
- (b) The Operator must maintain TfNSW Systems and Equipment in accordance with item 7 of Schedule 3.
 - (c) 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.
 - (d) The Operator acknowledges that TfNSW:
 - (i) owns any TfNSW Systems and Equipment installed before and during the Term, including any Intellectual Property in the TfNSW Systems and Equipment, unless TfNSW agrees otherwise in writing;
 - (ii) may use any data collected by TfNSW Systems and Equipment as the property of the TfNSW and the Operator must not modify any such data; and
 - (iii) reserves the right for the TfNSW and TfNSW's Associates to use the data as it sees fit, including providing other authorised service providers with access to data relating to their services.
 - (e) The Operator 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.
 - (f) If any TfNSW Systems and Equipment on a Vessel fails to operate while the Vessel is performing a Ferry Service, the Operator must ensure that all electronic systems and processes (including ticket sales) are recorded via a manual system or process until the failure is remedied.
 - (g) The Operator must not:
 - (i) use the TfNSW Systems and Equipment (or any Intellectual Property in the TfNSW Systems and Equipment) for any purpose other than the performance of its obligations under this Agreement; or
 - (ii) use any TfNSW Systems and Equipment on vessels that are not Vessels, without the approval of TfNSW.
 - (h) 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 6.12 to the extent of any inconsistency, unless otherwise agreed.
 - (i) The Operator must allow TfNSW or TfNSW's Associates to remove TfNSW Systems and Equipment from each Vessel, including by making such Vessel or other Operator premises available on reasonable notice from TfNSW.
 - (j) If the Operator repairs any damage to any Vessel 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.

6.13 TfNSW Customer Feedback System

- (a) The Operator must provide and operate a Service Desk, in accordance with the requirements set out in item 5 of Schedule 3, from the Commencement Date and for the duration of the Term.
- (b) Without limiting the requirements of this clause 6.13 or Schedule 3, the Operator must:
 - (i) 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 the Transportnsw.info Website;
- (ii) record all complaints or feedback received by the Operator 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 Ferry Services in accordance with the TfNSW Customer Complaints Policy;
 - (iii) 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 6.13; and
 - (iv) 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).
- (c) Nothing in this clause 6.13:
- (i) limits the Operator's responsibility for resolving calls or complaints received by the Operator either directly or through the TfNSW Customer Feedback System or the Transportnsw.info Website; or
 - (ii) makes TfNSW responsible for resolving calls or complaints received through the Operator directly or through the TfNSW Customer Feedback System or the Transportnsw.info Website.

6.14 Environmental matters

- (a) The Operator must at all times during the Term ensure that in carrying out the Ferry Services and activities associated with the Ferry Services:
- (i) Contaminants are not discharged without an Authorisation;
 - (ii) a condition of pollution does not arise and is not likely to arise as a result of the Operator's Vessels;
 - (iii) no breach of any Environmental Law occurs;
 - (iv) no industrial waste or potentially hazardous substance is abandoned, disposed of or dumped in any waterway; 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 Ferry Services or release or emit anything into the air or water or on to the ground or into the Environment;
 - (ii) advise TfNSW of the existence of any Contamination or Pollution arising out of or in connection with the performance of the Ferry Services or activities associated with the Ferry Services as soon as the Operator becomes aware of the matter; and
 - (iii) 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 Operator give full details of it and copies of any notices, directions, or other instruments to TfNSW.

6.15 Livery and branding

The Operator must, if directed to do so by TfNSW (acting reasonably), apply TfNSW logos and branding (including logos and branding relating to the OPAL ticketing system or such other ticketing system as TfNSW may utilise from time to time) in accordance with TfNSW's branding policies and standards from time to time. The cost of supplying the TfNSW branding materials will be borne by TfNSW. The cost of applying the TfNSW logos must be borne by the Operator.

6.16 Advertising

- (a) Any advertising placed by the Operator on a Vessel must:
 - (i) comply with all applicable Laws;
 - (ii) comply with any guidelines, standards or directions issued by TfNSW from time to time;
 - (iii) comply with the requirements of TfNSW's branding policies and standards from time to time;
 - (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 Vessels;
 - (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 Vessel does not comply with clause 6.16(a), TfNSW may require the Operator to remove an advertising item from that Vessel.
- (c) The Operator must comply with a direction of TfNSW made pursuant to clause 6.16(b) within one Business Day after receipt of the direction.
- (d) The Operator must, when requested to do so by TfNSW, allow TfNSW to undertake transport promotions and safety initiatives on Vessels for such reasonable periods as are required by TfNSW and at no cost to TfNSW.

6.17 General Governance

- (a) The Operator must meet with TfNSW on a monthly basis (or such other less frequent basis as TfNSW may require from time to time) either in person or by remote conference to discuss the Operator's performance of its obligations under this Agreement.
- (b) The Operator must ensure that appropriately senior and authorised representatives of the Operator meet with TfNSW on a quarterly basis (or such other less frequent basis as TfNSW may require from time to time) either in person or by remote conference to discuss the Operator's performance of its obligations under this Agreement and any other matters related to the Ferry Services.
- (c) The Operator must manage this Agreement in accordance with the obligations set out in Schedule 3.

7. Wharves

7.1 Access

- (a) Subject to any restrictions in Schedule 12 or elsewhere in this Agreement, TfNSW grants the Operator with non-exclusive, non transferable access to the Wharves during the period of each Ferry Service Slot for the sole purpose of enabling the Operator to carry out its obligations under this Agreement.
- (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 Wharves will be:
 - (i) in common with TfNSW and its Authorised Users (as that term is defined in Schedule 12) and all other persons authorised by TfNSW; and
 - (ii) in accordance with the terms set out in Schedule 12.
- (d) TfNSW is not required to procure any rights for the Operator to use any other facilities at the Wharves.
- (e) It is a condition of rights granted under this clause 7.1 that the Operator must:
 - (i) pay TfNSW the amounts set out in Schedule 6 in accordance with Schedule 6; and
 - (ii) at its own cost, obtain and comply with any planning or other approvals required to install signage, fixtures and fittings on the Wharves.
- (f) The Operator must comply with all of the provisions in Schedule 12. The provisions in Schedule 12 apply without affecting the operation of the other provisions of this Agreement.
- (g) The Operator acknowledges and agrees that it is responsible for procuring access to any additional wharves or Wharves that are not owned or managed by TfNSW to the extent the Operator may require such access to meet its obligations under this Agreement.

7.2 Use of Wharves

The Operator must:

- (a) only use the Wharves for the purpose described in clause 7.1(a);
- (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 Wharves; and
- (c) not:
 - (i) alter or modify the Wharves or Wharf Infrastructure; and
 - (ii) carry out, procure or allow the carrying out of, any works or services on the Wharves or Wharf Infrastructure,
 without the prior written consent of TfNSW and the applicable owner of the property.



9. Supervision

9.1 Key performance indicators

- (a) Unless expressly provided for in Schedule 8, the Operator must meet or exceed the Key Performance Indicators from the 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 Schedule 8.
- (d) Paragraph 5 of Schedule 8, paragraph 2 and 4 of Schedule 4 and paragraph 3(a) and (b) of Schedule 6 are civil penalty provisions for the purposes of section 38 of the PT Act 2014.

9.2 Audits of compliance and performance

- (a) TfNSW (and any person authorised by TfNSW) may investigate any matter in connection with this Agreement, including costs and pricing matters, and may at any time during the Term and for six months after the date of expiry of termination of this Agreement, audit all files, records and invoices of the Operator pertaining to the provision of the Ferry Services and related expenditures.
- (b) TfNSW may, or may appoint persons to, carry out mystery shopper surveys, or collect customer satisfaction data, from passengers on Vessels and at wharves located on the Routes.
- (c) If requested by TfNSW, the Operator must carry out customer satisfaction surveys adopting a methodology that is approved by TfNSW and which must include the subject matter of the KPIs set out in Tables 6 and 7 in Schedule 8.
- (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 this Agreement.
- (e) The Operator must:
 - (i) provide all reasonable assistance to TfNSW (and any person authorised by TfNSW) in the conduct of an audit under clause 9.2(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 9.2(d); and
 - (iii) comply with any recommendations for corrective actions TfNSW may reasonably require as a result of those audits.
- (f) The Operator must provide all reasonable access and assistance required in connection with this clause 9.2.

9.3 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 Ferry Services or this Agreement. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to TfNSW) or any request for information from the NSW Auditor-General or the IPART directed to TfNSW or the Transport Minister.
- (b) Without limiting clause 9.3(a), the assistance to be provided by the Operator includes:
 - (i) the provision of requested documents or information relevant to the Ferry Services or this Agreement; and
 - (ii) answering questions relevant to the Ferry Services and this Agreement.

9.4 Access to assets and premises

- (a) TfNSW (and any person authorised by TfNSW) may, at any time, enter any premises where the Ferry Services or other activities associated with the Ferry Services are being carried out for the purpose of:
 - (i) observing or inspecting the Ferry Services or other activities associated with the Ferry Services;
 - (ii) monitoring compliance by the Operator with its obligations under this Agreement or any Laws;
 - (iii) conducted passenger surveys;
 - (iv) maintaining TfNSW Systems and Equipment; and
 - (v) exercising any right or performing any obligation which TfNSW has under this Agreement.

- (b) The Operator must:
 - (i) use reasonable endeavours to coordinate the Ferry Services and activities associated with the Ferry Services 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 or premises, relevant systems, registers, manuals, records (including financial records), plans and programs.
- (c) If an audit under clause 9.2 or an inspection under clause 9.4 shows that the Operator has not complied or is not complying with its obligations under this Agreement, TfNSW:
 - (i) may notify the Operator of the details of the non-compliance;
 - (ii) will specify a reasonable period within which the Operator must carry out appropriate rectification or remedy activities; and
 - (iii) will be entitled to be reimbursed by the Operator for the reasonable costs of the inspection including any reasonable administrative costs incurred by TfNSW in relation to the inspection.
- (d) Where, in accordance with clause 9.4(b), TfNSW (or any person authorised by TfNSW) enters any premises where the Ferry Services or activities associated with the Ferry Services are being carried out, TfNSW must comply (or must procure that any person authorised by TfNSW complies) with reasonable site safety and security requirements as advised by the Operator.

9.5 Access to information

- (a) Without limiting any other provision of this Agreement:
 - (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 Ferry Services or this Agreement;
 - (ii) upon receipt of a notice under clause 9.5(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 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 9.5.

10. Assignment

- (a) The Operator shall not, without the prior consent of TfNSW in writing, assign this Agreement or sub-contract the performance of any Ferry Service.
- (b) Without limiting clause 1.15, TfNSW may assign or transfer its rights or obligations under this Agreement to another Governmental Agency or State Owned Corporation.

11. Status of Operator

It is acknowledged that neither the Operator nor any person employed by the Operator for the purpose of carrying out its obligations under this Agreement shall be deemed to be an employee of TfNSW or of the Government of the State of New South Wales, or employed under the *Government Sector Employment Act 2013* or the TAA and neither the Operator nor the employees of the Operator shall represent themselves as being the servants or agents of TfNSW or the Government.

12. Insurance and indemnities

12.1 Insurance

- (a) On or before the Commencement Date, the Operator must effect and maintain for the Term:
- (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 Ferry Services and use and operation of the Vessels;
 - (B) in which TfNSW is a named insured in the policy in respect of its vicarious liability for the Operator in respect of the claims arising under clause 12.1(a)(i)(A); and
 - (C) for at least \$ [REDACTED];
 - (ii) a policy of insurance for property damage which covers Wharves and Wharf Infrastructure and any other specified significant assets of TfNSW (as determined by TfNSW) for \$ [REDACTED] in respect of any claim;
 - (iii) workers' compensation insurance against any common law or statutory liability;
 - (iv) marine hull insurance (or similar) in respect of the Vessels against:
 - (A) fire and usual marine risks (including hull, machinery and increased value insurance on an agreed value basis);
 - (B) war risks on an agreed value basis;
 - (v) marine liability insurance (or similar) in respect of the Vessels and Wharves against:
 - (A) any other risk not covered by clause 12.1(a)(ii) and 12.1(a)(iv) which would be effected exercising 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 the Ferry Services under the same or similar circumstances for those activities; and
 - (B) usual protection and indemnity risks (including risks in respect of pollution arising from the Operator's Vessels of the sea and environment) for at least \$ [REDACTED] per incident,to be in the joint names of TfNSW, the State, the Transport Minister (each of which will be named as a general co-assured in a misdirected arrows capacity) and the Operator for their respective rights and interests; and
 - (vi) any other insurances which TfNSW reasonably requires by agreement between the parties, in which it is also a named insured or which are commonly effected by the operators of public transport services comparable to the size, scope and complexity of the Ferry Service provided those insurances can be obtained on payment of a reasonable premium.
- (b) All policies of insurance required under this clause 12.1 must be effected and maintained with:
- (i) an insurer that:
 - (A) is a corporation authorised under the *Insurance Act 1973* (Cth) to carry on an insurance business;
 - (B) has credit rating of at least A (Standard & Poor's) or A2 (Moody's); and
 - (C) has been approved by TfNSW; or
 - (ii) any other insurer that has been approved by TfNSW.

12.2 Insurance generally

- (a) The Operator represents and warrants to TfNSW that on the Commencement Date and for the duration of the Term that it has effected insurances as are required by, and in accordance with, clause 12.1.
- (b) The Operator must use reasonable endeavours to ensure that all contracts for insurance the Operator effects in compliance with this Agreement 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 12.2(b) but, despite this, the contracts for insurance effected in compliance with this Agreement do not contain the term referred to in clause 12.2(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 Agreement 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 12.1 that is acceptable to TfNSW before the Commencement Date;
 - (ii) give TfNSW certified copies of all:
 - (A) policies;
 - (B) policy schedules;
 - (C) renewal certificates; and
 - (D) endorsement slips,as soon as it receives them;
 - (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 clause 12.1 have been effected and maintained in accordance with the requirements of this clause 12:
 - (A) whenever any policy or insurance is renewed or replaced;
 - (B) in accordance with clause 6.4(d)(ii); and
 - (C) whenever reasonably requested by TfNSW; and
 - (iv) in respect of any policy which names more than one insured, 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 in the proposal 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 12 (**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 12.2(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 Agreement. The Operator bears the risk of the Required Insurances being inadequate to enable the Operator to fulfil its obligations under this Agreement.
- (h) The Operator must punctually pay all premiums in respect of all insurance policies referred to in this clause 12.

12.3 Indemnity

- (a) The Operator must indemnify TfNSW, 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 Wharf; 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, this Agreement by the Operator including any Termination Event; or
 - (B) 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, this Agreement by the Operator including any Termination Event; or
 - (B) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of the Operator or any of the Staff;
 - (iv) without limiting clauses 12.3(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 Wharves by the Operator or the Operator's Associates;
 - (B) any Contamination or Pollution occurring or emanating from any of the Operator's Vessels at any time after the Commencement Date; or
 - (C) any Contamination or Pollution of Sydney Harbour or the Parramatta River or to or around the Wharves caused by, arising out of, or as a consequence of the Operator's Vessels;
- (v) any infringement of any Intellectual Property rights by the Operator or any of the Operator's Associates;
 - (vi) TfNSW's or its sublicensee's use of the Operator IP produced by or on behalf of the Operator infringing a third party's Intellectual Property rights; or
 - (vii) (whether directly or indirectly) any breach of clause 12.4 by the Operator including any breach of a warranty given by the Operator under clause 12.4.
- (b) The Operator's indemnity in clause 12.3(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; or
 - (ii) a breach by TfNSW of its obligations under this Agreement.

12.4 Exclusion of Consequential or Indirect Loss

- (a) Subject to clause 12.4(b), but otherwise despite any other provision of this Agreement, 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 12.4(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 an 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 Agreement; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Agreement 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 Agreement;
 - (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 clause 12.3(a)(i);

- (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.
- (c) Despite any other provision of this Agreement but subject to clauses 3.2 and 12.4(d), none of the Indemnified Persons has any liability to the Operator or the Operator's Associates (whether in contract, tort or otherwise), nor will the Operator or the Operator's Associates be entitled to make any Claim against the Indemnified Persons, in respect of Consequential or Indirect Loss incurred or sustained by the Operator or the Operator's Associates as a result of any act or omission of the Indemnified Persons (whether negligent or otherwise).
- (d) Clause 12.4(d) does not operate to limit or restrict TfNSW's liability to the Operator in respect of Consequential or Indirect Loss:
- (i) to the extent that an Indemnified Person:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this Agreement; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this Agreement if TfNSW had:
 - (I) complied with the terms and conditions of that policy of insurance; or
 - (II) complied with its insurance obligations under this Agreement;
 - (ii) arising from any criminal acts or fraud on the part of the Indemnified Persons;
 - (iii) arising from wilful misconduct on the part of the Indemnified Persons; or
 - (iv) to the extent to which, by Law, the parties cannot limit or contract out of such liability.

12.5 Warranties

- (a) The Operator represents and warrants to TfNSW that the following warranties are true and correct and not misleading on the date of this Agreement, the Commencement Date and for the duration of the Term:
- (i) it is a corporation duly incorporated and validly existing under the Laws of New South Wales and the Commonwealth;
 - (ii) it has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement and to carry on its business as now conducted or contemplated;
 - (iii) it has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement;
 - (iv) this Agreement 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;
 - (v) the execution and performance by it of this Agreement and each transaction contemplated under this Agreement did not and will not violate in any respect a provision of:
 - (A) a Law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it;
 - (B) its constitution or other constituent documents; or
 - (C) any other document or agreement that is binding on it or its assets;

- (vi) 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 Agreement;
- (vii) no resolution has been passed for its winding up; no resolution has been passed for the appointment of an administrator to it;
- (viii) there is no unsatisfied judgment against it;
- (ix) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its undertakings or assets or income;
- (x) each Authorisation that is required in relation to:
 - (A) the execution, delivery and performance by it of this Agreement and the transactions contemplated by this Agreement;
 - (B) the validity and enforceability this Agreement; and
 - (C) its business as now conducted or contemplated and that is material (including under the PT Act 1990, the PT Act 2014 and the Marine Safety 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 Commencement Date, it is only given as at and from the Commencement Date;

- (xi) 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;
- (xii) there are no notices of any Governmental Agency outstanding against it;
- (xiii) all Authorisations necessary for the conduct of its business are validly subsisting and are held by it;
- (xiv) 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;
- (xv) 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;
- (xvi) all information provided by the Operator to TfNSW is true in all material respects at the date of this Agreement 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 this Agreement was or is or will be misleading, by omission or otherwise;
- (xvii) it does not carry out any activities or hold any assets as the trustee of any trust; and
- (xviii) it:
 - (A) has examined this Agreement and the Disclosed Information and any other information that was made available in writing by TfNSW or any other person on TfNSW's behalf;
 - (B) has been given the opportunity prior to submitting its Proposal to itself undertake tests, enquiries and investigations relating to the subject matter of the Disclosed Information;
 - (C) has had a sufficient opportunity to obtain and obtained all necessary legal and other technical advice in relation to this Agreement, the Disclosed Information and the risks, contingencies and other circumstances having

an effect on its Proposal and the performance of its obligations and liabilities under this Agreement;

- (D) has had sufficient access to the Disclosed Information 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 Agreement and assume the obligations and potential risks and liabilities which it imposes on the Operator; and
 - (E) 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 Agreement and of all matters and things necessary for the due and proper performance and completion of the Ferry Services.
- (b) The Operator must immediately notify TfNSW upon becoming aware that a representation or warranty it has given under this clause 12.4 has become untrue or misleading at any time during the Term.
 - (c) The Operator acknowledges that TfNSW has entered into, or will enter into, this Agreement in reliance on the representations and warranties made by the Operator in this clause 12.4.
 - (d) Each warranty and representation is separate and independent from the other and not limited by reference to another warranty or representation.

12.6 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 of New South Wales (**State**) or any other person acting on behalf of TfNSW or the State, in respect of this Agreement.
- (b) Without limiting the generality of clause 12.6(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 Agreement;
 - (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 Agreement; and
 - (C) all amounts payable between the parties to this Agreement;
 - (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 Agreement;
- (vi) for the avoidance of doubt 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 Ferry Services or any matter in connection with this Agreement or any transaction or arrangement contemplated under this Agreement; and
- (vii) the acknowledgments under this clause 12.6 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 that the Operator is aware that TfNSW has relied on the acknowledgments contained in this clause 12.6 in entering into this Agreement.
- (d) To the extent permitted by Law, the Operator expressly waives any right which it has (whether at the commencement of this Agreement or otherwise) to bring any action or make any Claim against TfNSW, the State or any person acting on behalf of or associated with TfNSW or the State, arising (directly or indirectly) out of any alleged misrepresentation or misleading or deceptive conduct on the part of TfNSW or the State, or any person acting on behalf of or associated with TfNSW or the State, in providing the Disclosed Information or in connection with this Agreement (except for any misrepresentation or misleading or deceptive conduct of TfNSW or the State that is deliberate or negligent).
- (e) The Operator acknowledges that this clause 12.6 is intended to benefit and is to be interpreted as benefiting TfNSW and the State and is 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 this clause 12.6 on trust for TfNSW's Associates.

12.7 Release

- (a) The Operator releases, and must procure that the Operator's Associates release, the Indemnified Persons (as defined in clause 12.3) 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 Ferry Services or any act or omission of the Operator or the Operator's Associates in connection with this Agreement.
- (b) The release in clause 12.7(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 fraudulent, negligent, 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 this Agreement.

13. Termination

13.1 Termination Events

In addition to any other rights of termination given to TfNSW and subject to clause 13.2, this Agreement may be immediately terminated by TfNSW (without any requirement or obligation to pay compensation or make payment in lieu of notice to the Operator) in any of the following Termination Events:

- (a) if the Operator has, in the opinion of TfNSW, been in persistent breach of any provision of this Agreement, the Relevant Legislation, any other relevant Law 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 13.1;

- (b) if there has been in the opinion of TfNSW an instance of such magnitude or blatant disregard of this Agreement, the Relevant Legislation, any other relevant law, which in the public interest requires such action;
- (c) the Operator includes (or fails to include) anything in any report or information given under clause 6.4 that deliberately renders that report or information untrue or misleading;
- (d) if the Operator is in breach of clauses 4, 8, 10 or 12 of this Agreement;
- (e) if the Operator fails to achieve any Class 1 Key Performance Indicator (as defined in Schedule 8) for three or more consecutive months;
- (f) if an Insolvency Event occurs in respect of the Operator or the Parent Company;
- (g) if it becomes unlawful for the Operator to perform all or a material part of the Ferry Services;
- (h) if the Operator abandons, ceases or suspends the conduct of all or a substantial part of the Ferry Services or it threatens or expresses an intention to do so; or
- (i) if any the circumstances in relation to Modern Slavery described in Clause 23.7 occur.

13.2 Termination Notice

- (a) On the occurrence of a Termination Event, TfNSW may terminate this Agreement on written notice to the Operator effective on the date specified in the notice (**Termination Notice**).
- (b) A Termination Notice may specify conditions which the Operator must satisfy by a date specified in the Termination Notice in order to avoid termination of this Agreement.
- (c) This Agreement will terminate on the date specified in the Termination Notice (unless pursuant to clause 13.2(b), the Termination Notice specified conditions and such conditions have been satisfied by the Operator to TfNSW's satisfaction prior to the specified date of termination).

13.3 Consequences of termination

- (a) Subject to clause 13.3(b), upon the expiry or termination of this Agreement, the rights and obligations of the parties will cease except for:
 - (i) any obligations arising or rights accrued as a result of an existing breach of this Agreement by the Operator or as a result of a Termination Event;
 - (ii) any outstanding obligations existing as at termination;
 - (iii) any obligations that are expressed to continue in accordance with the terms of this Agreement; and
 - (iv) any indemnity given by the Operator under this Agreement.
- (b) This clause 13.3 and clauses 1, 3.4, 4, 9.2, 9.3, 9.4, 9.5, 12, 14, 15, 17, 18, 19, 20 and 0 inclusive, survive termination or expiry of this Agreement.

13.4 Step-in

- (a) Notwithstanding any other provision this Agreement, TfNSW may (either with its own resources or with contracted resources) step in, in whole or in part, and take over the provision of the Ferry Services to the exclusion of the Operator if:
 - (i) a Termination Event occurs;
 - (ii) a material KPI Default in respect of a Class 1 Key Performance Indicator (as defined in Schedule 8) (**KPI Event**) occurs and TfNSW considers that the Operator is failing to address the causes of the KPI Event;
 - (iii) 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
- (iv) TfNSW forms the opinion that a breach of this Agreement by the Operator or any Operator's Associate:
 - (A) materially adversely affects the operation of all or any of the Ferry Services;
 - (B) materially disrupts, restricts or prevents the operation of all or any of the Ferry 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 Agreement to a subsequent Operator; or
 - (F) is likely to give rise to any of the above.
- (b) The costs incurred by TfNSW as a result of exercising its rights under this clause 13.4 are a debt due and payable by the Operator to TfNSW on demand.

14. End of Term

- (a) For the purposes of this clause 14, a reference to a "successor service provider" includes a reference to any party tendering to provide services similar to some or all of the Ferry Services and other activities performed by the Operator under this Agreement.
- (b) The Operator must provide all reasonable assistance and information requested by TfNSW for the purposes of TfNSW preparing to appoint a successor service provider for the operation of all or part of the Ferry Services and other activities performed by the Operator under this Agreement. This includes all processes and steps involved in due diligence, the preparation of reports, patronage data and documents, evaluation processes and the award of new contracts.
- (c) All assistance provided by the Operator under clause 14(b) must be provided within the timeframe specified by TfNSW or, where no timeframe is specified, within a reasonable time.
- (d) The Operator warrants to TfNSW that to the best of its belief all information provided under this clause 14 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

15. Notices

- (a) Every notice, request, demand, consent, authorisation, approval or other communication under this Agreement (**Notice**) shall be in writing and signed by a person duly authorised by the sender and 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:
 Attention: Director, Ferry Contracts
 Email: c/o ferries@transport.nsw.gov.au
 Transport for NSW
 GPO Box K659
 Haymarket NSW 1240
 - (ii) To the Operator:
 Attention: Company Secretary
 Captain Cook Cruises Pty Ltd
 Level 3, 26 Flinders Street
 Adelaide SA 5000

or by email (in accordance with an email authorisation procedure agreed between the parties); and:

- (b) 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 the earlier to occur of:
 - (A) receipt by the sender of any email acknowledgement from the intended recipient's information system showing that the Notice has been delivered to the email address of the recipient;
 - (B) the time that the Notice enters an information system which is under the control of the intended recipient; or
 - (C) the time that the Notice is first opened or read by an employee or officer of the intended recipient,

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.

16. Variation

16.1 In writing

- (a) This Agreement may only be varied in writing by an Agreement signed by or on behalf of each party.
- (b) Any variation to the Ferry Services proposed by the Operator must take into account the operation of other public transport modes and to the furthest extent possible integrate with the operation of other public transport modes.
- (c) Any adjustment to the remuneration of the Operator resulting from any variation to the Ferry Services must be negotiated by the parties.

16.2 Request

Either party may from time to time request changes to the terms of this Agreement. Such a request must be in writing by Notice addressed to the other party. As soon as practicable after service of a Notice requesting changes to the terms of this Agreement, the parties must meet and discuss in good faith the requested changes.

16.3 No dispute

Failure by a party to agree to changes to the terms of this Agreement requested by the other party pursuant to clause 16.2 does not constitute a dispute for the purposes of clause 17.

16.4 Provision of map

Where a variation to this Agreement is by way of varying the Route, the Agreement recording the variation in accordance with clause 16.1 must be accompanied by a map upon which the revised Route is clearly marked.

17. Dispute resolution

17.1 Dispute resolution

- (a) This clause 17 applies to any dispute which arises between TfNSW (on the one part) and the Operator (on the other part) in connection with this Agreement, except disputes relating to the construction of this Agreement including this clause 17 (**Dispute**).

- (b) Subject to clause 17.1(b), 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 17.
- (c) This clause 17 does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensable in damages.
- (d) If a party considers that a Dispute has arisen, it may issue a notice to the other parties, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (e) Subject to clause 17.2, 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 each 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 and the TfNSW 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 TfNSW's Executive Director, Services (or such other position notified to the Operator by TfNSW from time to time).
- (g) If the Dispute is not resolved within 20 Business Days after the date of the Dispute Notice, a party may:
 - (i) if the Dispute is of a technical nature or if this Agreement requires, refer it for resolution under clause 17.2; or
 - (ii) if the Dispute is not of a technical nature, refer it for resolution under clause 17.3.
- (h) A Dispute is of a technical nature if it is of a kind that, if it were litigated, could be resolved on expert evidence alone. If the parties are unable to agree whether or not an issue is of a technical nature, the opinion of TfNSW as to whether or not the issue should be referred for resolution under clause 17.2 prevails.

17.2 Referral to expert

- (a) If this Agreement requires that a Dispute be resolved by an independent expert, or if it is determined under clause 17.1(g) or 17.1(h) that a Dispute will be referred for resolution under this clause 17.2, the parties must refer that Dispute for resolution under this clause 17.2 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 17.2(a) or 17.2(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 Agreement, the costs of the Expert must be borne in equal shares by TfNSW and the Operator.
- (f) Subject to clause 17.2(g), 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 17.2.
- (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).

17.3 Arbitration

- (a) Any Dispute which is referred to arbitration will be conducted before a person to be:
 - (i) agreed between the parties; or
 - (ii) failing agreement within 10 Business Days after the giving of the notice under clause 17.1(g)(ii), appointed by the Australian Centre for International Commercial Arbitration.
- (b) To the extent that they are not inconsistent with this Agreement, the Arbitration Rules of the Australian Centre for International Commercial Arbitration will apply to the arbitration.
- (c) The seat of the arbitration will be Sydney, Australia and the language of the arbitration will be English.
- (d) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an Expert under clause 17.2.
- (e) The parties agree that:
 - (i) section 26 of the *Commercial Arbitration Act 2010* (NSW) will not apply in the arbitration; and
 - (ii) the decision of the arbitrator will be final and binding on the parties and is not subject to review or appeal except in the case of an error of law.
- (f) Despite anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).
- (g) All aspects of the arbitration, including:
 - (i) any proceedings or hearings;
 - (ii) any meetings;
 - (iii) any submissions;
 - (iv) any materials in the proceedings created for the purpose of the arbitration; and
 - (v) documents produced in the proceedings which are not otherwise in the public domain,must be kept private and confidential in accordance with the provisions of clause 17.

17.4 General

- (a) This clause 17 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 this Agreement 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 Agreement.

18. Application of the PT Act 2014

Except to the extent that a contrary intention appears from this Agreement as amended from time to time, this Agreement shall be taken to include all of the provisions of the PT Act 2014 that confer or impose rights, powers or duties on the parties.

19. Confidentiality, Privacy, Information Access and Intellectual Property

19.1 Confidentiality

Subject to clauses 19.3, 19.4 and 19.7, a party must not disclose to a third party without the consent of the other parties, any Confidential Information which is:

- (a) supplied or made available by a party to another party in relation to the performance of the Ferry Service; or

- (b) brought into existence by the Operator in performing the Ferry Service.

19.2 Maintaining confidentiality

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

19.3 Permitted disclosure

Clauses 19.1, 19.2 and 19.4(e)(ii) 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 Agreement or by Law;
- (c) in enforcing this Agreement or in proceedings arising out of or in connection with this Agreement; or
- (d) to a party's legal advisers or its consultants.

19.4 Publication of certain information by TfNSW

- (a) Subject to clause 19.4(e), despite any other provisions of this Agreement, TfNSW may publish or require the Operator to publish in any form and at times TfNSW considers appropriate, any information obtained by TfNSW from the Operator in accordance with Schedule 8 or clauses 6.4 or 6.5 or information collected from the TfNSW Systems and Equipment.
- (b) Subject to clause 19.4(e), despite any other provisions of this Agreement, TfNSW may publish any information reasonably required in connection with the re-tendering or contracting of all or any part of the Ferry Service, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting.
- (c) Nothing in this Agreement restricts TfNSW's provision of information to any Minister of the Crown in right of the State of New South Wales or any of its agencies, instrumentalities or Governmental Agencies.
- (d) For the avoidance of any doubt, and without limiting clause 19.4(a), TfNSW may publish:
 - (i) the Timetable approved by TfNSW;
 - (ii) information collected via systems operated by TfNSW;
 - (iii) performance information;
 - (iv) ticketing information; and
 - (v) information regarding payments made under Schedule 4.
- (e) TfNSW must not publish the following information:
 - (i) Personal Information; and
 - (ii) subject to clause 19.3, information that TfNSW considers is commercial-in-confidence information.
- (f) For the purposes of clause 19.4(e)(ii) 'commercial-in-confidence' information means information which TfNSW considers to show:
 - (i) the Operator's financing arrangements;
 - (ii) the Operator's cost structure or profit margins; or
 - (iii) any other matter the disclosure of which TfNSW reasonably considers could place the Operator at a substantial commercial disadvantage in relation to other operators or potential operators, whether at the time of the proposed disclosure or in the future.

19.5 Intellectual Property

- (a) TfNSW grants to the Operator a non-exclusive, royalty free licence with the right to sub-licence subject to clause 19.5(b) TfNSW IP which is required to enable the Operator to

perform its obligations under this Agreement for the limited purpose of, and only to the extent necessary for, performing its obligations under this Agreement.

- (b) The Operator may only grant a sub-licence of the rights granted to it under clause 19.5(a) to a subcontractor appointed by the Operator for the purposes of and in accordance with this Agreement and then only to the extent necessary for the subcontractor to perform its obligations under the subcontract.
- (c) The Operator grants to TfNSW an irrevocable, royalty-free, perpetual licence to use all Operator IP for the purposes of providing public transport in New South Wales which licence will be for the duration of the Intellectual Property in that material and will include a right to sublicense.
- (d) The Operator must procure the grant to TfNSW of an irrevocable, royalty-free, perpetual licence to use all Third Party Contract Material for the purposes of providing public transport in New South Wales which licence will be for the duration of the Intellectual Property in that material and will include a right to sublicense.
- (e) 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.

19.6 Privacy compliance

- (a) TfNSW and the Operator must comply with:
 - (i) the Privacy Laws and any guidelines issued by the Commissioner;
 - (ii) any privacy policy or approved privacy code which has been adopted by TfNSW and that is reasonable having regard to the requirements of Law; and
 - (iii) any reasonable direction of TfNSW regarding how to comply with any such Privacy Laws, privacy policy or code, in respect of any Personal Information which TfNSW or the Operator receives or has access to under this Agreement.
- (b) The Operator must cooperate with TfNSW in the resolution of any complaint alleging a breach of the Privacy Laws, a privacy policy or an approved privacy code.

19.7 Disclosure log (GIPA Act section 25)

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

19.8 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 Ferry Service provided to the Operator by TfNSW pursuant to this Agreement;
 - (ii) information collected by the Operator from members of the public to whom it provides, or offers to provide, the Ferry Service pursuant to this Agreement; and
 - (iii) information received by the Operator from TfNSW to enable it to perform the Ferry Service pursuant to this Agreement.
- (b) For the purposes of clause 19.8, 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 present or in the future.
- (c) The Operator must provide copies of any of the information requested by TfNSW in accordance with clause 19.8(a) at the Operator's own expense.

19.9 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 Agreement, 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 19.9(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 19.9(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.

19.10 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 Ferry Service (including by posting any information related to the Ferry Service on any website) without TfNSW's consent;
- (b) give TfNSW a draft of any proposed media release relating to the Ferry Service and obtain TfNSW's approval of the media release before distributing it; and

- (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 Ferry Services as requested by TfNSW.

20. Proportionate Liability

- (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 Agreement whether those rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 20(a), the rights, obligations and liabilities of TfNSW and the Operator under this Agreement with respect to proportionate liability are as specified in this Agreement and not otherwise, whether those rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
 - (i) 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
 - (ii) 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).
- (d) The Operator must:
 - (i) in each subcontract into which it enters for the performance of this Agreement, 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
 - (ii) require each subcontractor to include, in any further contract that it enters into with a third party for the performance of this Agreement, 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.

21. Goods and Services Tax

21.1 Interpretation

In this clause 21:

- (a) words or expressions used which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause;
- (b) **Recipient** means the party acquiring the relevant supply; and
- (c) **Supplier** means the party making the relevant supply.

21.2 Gross up of consideration

If the Supplier makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as inclusive of GST) then:

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause 21 (**GST exclusive consideration**) is increased by, and the Recipient must also pay to the Supplier, an amount equal to the GST payable on the supply (**GST Amount**); and
- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, subject to the Supplier giving the Recipient a tax invoice in respect of that supply.

21.3 Payments and reimbursements

- (a) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a Loss incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which the Loss relates.
- (b) 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.

21.4 Adjustment events

If an adjustment event arises in respect of a supply made under or in connection with this Agreement, then:

- (a) 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**);
- (b) 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
- (c) 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.

21.5 No tax law partnership

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 Agreement.

22. Compliance with State policies

22.1 SMEPP

- (a) In this clause a **SMEPP** means a Small and Medium Enterprise Participation Plan being a plan demonstrating how the Operator will promote the participation of small and medium enterprise in its supply chains in accordance with the NSW Government's *Small and Medium Enterprises and Regional Procurement Policy*.
- (b) The Operator must develop, implement, maintain and comply with its SMEPP from the Commencement Date.
- (c) The Operator must annually review the SMEPP and make such amendments as may be required to ensure ongoing compliance with Law and this Agreement.
- (d) Each update of the SMEPP must be provided to TfNSW.

- (e) The Operator must prepare and submit to TfNSW a draft of the SMEPP covering the relevant forthcoming Contract Year which must:
 - (i) demonstrate how it will increase spend with SMEs, 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
 - (ii) provide targets.
- (f) The Operator must provide progress reports against the SMEPP to TfNSW [monthly] or more frequently as determined by TfNSW, in a format specified by TfNSW.

22.2 Aboriginal Participation Plan

- (a) In this clause **Aboriginal Participation Plan** means an Aboriginal Participation Plan demonstrating how the Operator will promote Aboriginal participation under this agreement.
- (b) The Operator must comply with the *New South Wales Government Aboriginal Procurement Policy* as amended from time to time (latest version January 2021) (**APP**).
- (c) The Operator must develop, implement, maintain and comply with its Aboriginal Participation Plan from the Commencement Date.
- (d) The Operator must annually review the Aboriginal Participation Plan and make such amendments as may be required to ensure ongoing compliance with Law, the APP and this Agreement.
- (e) Each update of the Aboriginal Participation Plan must be provided to TfNSW.
- (f) The Operator must prepare and submit to TfNSW a draft of the Aboriginal Participation Plan covering the relevant forthcoming Contract Year which must demonstrate how it will comply with the APP.
- (g) The Operator must provide progress reports against the Aboriginal Participation Plan to TfNSW monthly or more frequently as determined by TfNSW, in a format specified by TfNSW.

22.3 Disability Engagement Plan

- (a) In this clause **Disability Engagement Plan** means a plan demonstrating how the Operator will promote opportunities for people with disabilities in relation to this Agreement in the Operator's workplace or in its supply chains.
- (b) The Operator must develop, implement, maintain and comply with its Disability Engagement Plan from the 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 Agreement.
- (d) Each update of the Disability Engagement Plan must be provided to TfNSW.
- (e) The Operator must prepare and submit to TfNSW a draft of the Disability Engagement Plan covering the relevant forthcoming Contract Year which must demonstrate how it will:
 - (i) seek to award contracts to Disability Employment Organisations; and
 - (ii) create (or fill existing) jobs in corporate, administration, operations or maintenance for persons with a disability, including any targets over the life of the Agreement.
- (f) The Operator must provide progress reports against the Disability Engagement Plan to TfNSW monthly or more frequently as determined by TfNSW, in a format specified by TfNSW.

22.4 Diversity Inclusion Plan

- (a) In this clause **Diversity Inclusion Plan** means a plan demonstrating how the Operator will encourage and support diversity and inclusion in the Operator's workforce.
- (b) The Operator must develop, implement, maintain and comply with its Diversity Inclusion Plan from the 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 Agreement.
- (d) Each update of the Diversity Inclusion Plan must be provided to TfNSW.
- (e) The Operator must prepare and submit to TfNSW a draft of the Diversity Inclusion Plan covering the relevant forthcoming Contract Year which must demonstrate how it will:
 - (i) increase the percentage of women in the workforce;
 - (ii) provide greater opportunities for women in trades;
 - (iii) work towards gender equality in leadership roles;
 - (iv) increase opportunities to support LGBTIQ employees; and
 - (v) propose other Workforce Diversity and Inclusion activities.
- (f) The Operator must provide progress reports against the Diversity Inclusion Plan to TfNSW monthly or more frequently as determined by TfNSW, in a format specified by TfNSW.

23. International obligations

23.1 Anti-bribery and anti-corruption

Without limiting any other provision of this Agreement, 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.

23.2 Modern slavery compliance

- (a) The Operator warrants that, as at the date of its execution of this Agreement:
 - (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.

23.3 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 23.3(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 Agreement, 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 Term of this Agreement 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 Term of this Agreement 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 Agreement and to enable TfNSW to assess the Operator's compliance with this Clause 23.3.
- (g) The Operator consents to TfNSW sharing Information obtained from the Operator in respect of Modern Slavery, including records referred to in Clause 23.3(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 23.3, 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.

23.4 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 23.4(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 23.4(b)(iii) and Information on their implementation; and
- (ix) Information on implemented training and programs.

23.5 Subcontractors

The Operator must take reasonable steps to ensure that all subcontracts of the whole or part of this Agreement 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 23; and

- (b) in all other cases, Modern Slavery provisions that are reasonably consistent with the provisions in this Clause 23.

23.6 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 23.3(b).
- (b) Any action taken by the Operator under Clause 23.6(a) will not affect any rights of TfNSW under this Agreement, including its rights under Clause 23.7.

23.7 Termination on ground of Modern Slavery

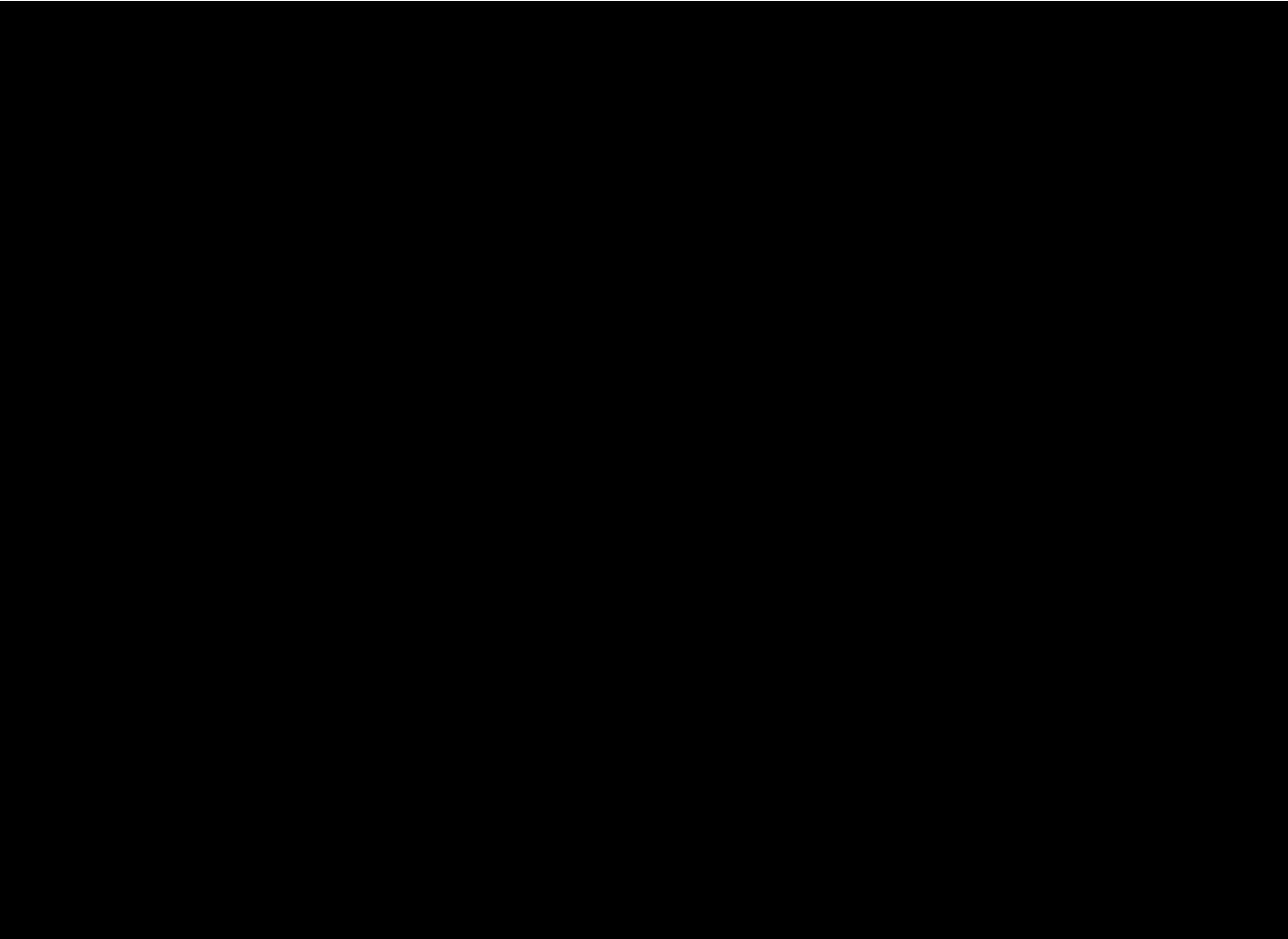
In addition to any other rights of termination, or rights to damages, that it may have under this Agreement or at Law, each of the following events are Termination Events:

- (a) the Operator has failed to disclose to TfNSW, prior to execution of this Agreement, 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 Term of this Agreement;
- (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 23.

24. 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.

Schedule 1 – Service Levels



Schedule 2 – Route

Indicative route below (varies by service in accordance with the timetable at Schedule 1). Actual route of service will also depend on good seamanship and navigational safety.



Schedule 3 – Ferry Services

In this Schedule 3:

- (a) all terms that have defined meanings in the Agreement have the same meaning in this Schedule 3 as they do in the Agreement;
- (b) a reference to a clause is a reference to a clause in the Agreement; and
- (c) a reference to an item is a reference to an item in this Schedule 3.

In this Schedule 3, 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 Schedule 1 or otherwise approved by TfNSW.

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 Agreement 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 3. '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.
Agreement Clause	The clause in the Agreement that the activity must be performed in accordance with.

1. Service Levels and Timetables

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
1.1	Develop Timetables to efficiently and effectively meet the requirements of the Service Levels.	O	O	T	T	T	As required throughout the Term
1.2	Address navigational safety requirements when developing Timetables.	O	O	T	T	T	As required throughout the Term
1.3	Address environmental requirements, including wash impacts, when developing Timetables.	O	O	T	T	T	As required throughout the Term
1.4	Ensure that timetabling provides passengers with effective connectivity to services on adjacent modes so as to deliver seamless passenger transport services.	O	O	T	T	T	Continuing throughout the Term
1.5	For each change in Timetable, provide confirmation of compliance with the Service Planning Guidelines.	O	O		T	T	For each Timetable change throughout the Term
1.6	Approve Service Levels and Timetables.	T	T	O	O	O	As required throughout the Term
1.7	Operate the Ferry Services in accordance with the Service Levels and approved Timetables.	O	O		T	T	Continuing throughout the Term
1.8	Maintain high levels of passenger and Staff security on the Ferry Services and monitor and manage passenger and Staff safety in	O	O		T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	accordance with the response time standards in Schedule 8.						
1.9	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 Term
1.10	Amend the Ferry Services and/or provide additional Ferry Services at short notice as directed by TfNSW in response to an emergency situation. 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 Agreement.	O	O	T	T	T	Continuing throughout the Term

2. Publication and dispute of Public Transport Information

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
2.1	Provide Timetables for the Ferry 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
2.2	Approve all Timetables for the Ferry Services, including for Holiday or Special Event Period, prior to publication.	T	T	O	O	O	Continuing throughout the Term
2.3	If a Timetable is approved by TfNSW provide: a) TfNSW with the updated Timetable in electronic format (as reasonably required by TfNSW); and	O	O			T	Ensure Timetables are provided to TfNSW at least 30 days, and on

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	b) The public with the updated printed Timetable.						display to customers from 14 days (or as otherwise agreed with TfNSW) prior to the implementation of the new Timetable.
2.4	If TfNSW approves an amendment to a Timetable, provide notice to the public of any material amendments to the Timetable by: a) Notifying TfNSW of relevant details; b) Displaying signs prominently; c) Displaying advertisements in the local newspaper covering the affected Route; d) Displaying signs/posters on wharves; and e) Other appropriate means.	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.
2.5	If requested by a member of the public, provide complete and up-to-date information about the accessibility of the Ferry Services.	O	O			T	Within a reasonable timeframe
2.6	Ensure accurate Timetables are displayed at all locations on or near the Route where timetables are on display.	O	O			T	Continuing throughout the Term
2.7	Ensure that Timetables are in the format specified by TfNSW.	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
2.8	Ensure Timetables indicate all Services which are accessible.	O	O			T	Continuing throughout the Term
2.9	Ensure Timetables comply with TfNSW requirements.	O	O			T	Continuing throughout the Term
2.10	Display the destination clearly on the front and side of all Vessels in service, excluding any Vessels without front destination signage.	O	O		T	T	Continuing throughout the Term
2.11	Ensure all Timetables provide times at Wharves and do not reflect operational timing points that are not Wharves.	O	O		T	T	Continuing throughout the Term
2.12	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 eg: wharf side of departure.	O	O		T	T	Continuing throughout the Term
2.13	Provide a real-time data feed to TfNSW in the format specified by TfNSW that includes: a) Vessel locations; b) Predict arrival times at all subsequent Wharves on the Trip; c) Information on Ferry Services and status of Ferry Services; d) Real-time running status information; and e) Service alert messaging to support customer information and transport operations.	O	O		T	T	At an interval frequency of at least 15 seconds

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
2.14	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, projects (for example Wharf upgrades) and maintenance works.	O	O		T	T	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.
2.15	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

3. Customer information marketing and branding

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.1	Inform passengers on a Ferry Service of any relevant Ferry Service delays.	O	O			T	Continuing throughout the Term
3.2	When an Incident occurs, categorise the Incident using the 'Incident Classification and Management Table' set out in Schedule 8.	O	O	T	T	T	Continuing throughout the Term
3.3	When an Incident occurs, inform TfNSW of delays to any Ferry Service and work with TfNSW as required from time to time to	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	minimise the impact of delays on customers.						
3.4	Provide interim status updates to TfNSW as required in 'Incident Classification and Management Table' set out in Schedule 8.	O	O	T	T	T	Continuing throughout the Term
3.5	Provide, operate and maintain a customer information system on board all Vessels and at all Wharves that: <ul style="list-style-type: none"> a) Provides information about the Ferry Service, interchanges and other transport services specified by TfNSW; b) Is compliant with all TfNSW wayfinding and branding standards, guidelines or policies; c) Complies with the <i>Customer Information for Public Transport Buildings and Conveyances Standard</i> (and its successors); and d) Complies with any other applicable Laws or standards. 	O	O	T	T	T	Continuing throughout the Term
3.6	Adhere to and support the effective implementation of the TfNSW Channel Integration Specification Version 1.1 (06 February 2018), or any successor document.	O	O	T	T	T	Continuing throughout the Term

4. Signage and barriers

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
4.1	Install and maintain TfNSW supplied customer information materials on Vessels and ferry passenger Wharves including	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	maps, timetables, posters and information notices.						
4.2	Oversee, monitor and manage passenger flows at Wharves at all times when in use.	O	O		T	T	Continuing throughout the Term
4.3	Report all incidents involving passenger accidents or injuries at Wharves to TfNSW as soon as practicable and in any event within two Business Days after their occurrence or, in cases where ambulance or other medical attendance is required, immediately.	O	O		T	T	Continuing throughout the Term

5. Service Desk

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.1	Use the call centre provided as part of the 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 Term
5.2	Manage all complaints and feedback recorded in the TfNSW Customer Feedback System in relation to the Ferry Services from receipt to closure.	O	O			T	Continuing throughout the Term
5.3	Log and classify all complaints and feedback in the TfNSW Customer Feedback System in accordance with the TfNSW Customer Complaints Policy. This includes complaints addressed to and/or received directly by the Operator	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	with regards to the Service, as well as complaints received via TfNSW channels.						
5.4	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 complaints manager.	O	O			T	Continuing throughout the Term
5.5	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 Term
5.6	Refer any calls received by the Service Desk which do not relate to the Ferry Services to the TfNSW Customer Feedback System.	O	O			T	Within 2 hours of receipt of call
5.7	Immediately notify TfNSW of Incidents and any other unplanned maintenance issues.	O	O			T	Immediately after the Incident or unplanned maintenance issue
5.8	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 Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.9	Maintain relevant records pertaining to all complaints and feedback in relation to the Ferry 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 Term
5.10	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	T	Continuing throughout the Term
5.12	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 Term

6. Staff training and knowledge transfer

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.1	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; b) Training in regard to the management of confrontation, difficult passengers and personal safety.	O	O			T	Before the individual commences providing the Service

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.2	Provide training to all relevant Staff regarding the following, as applicable to the Ferry Services for which the relevant Staff are engaged to work: a) The Tickets and SSTS; b) The Routes and Wharves; c) The Timetables; d) Relevant interchange information for each Wharf on the Ferry Service.	O	O			T	Before the individual commences working on the relevant Services
6.3	Provide training to all Staff regarding compliance with: a) Environmental Law; b) Work health and safety and WHS Law; c) Emergency and incident management and response procedures and protocols, including protocols for passenger emergency evacuation and operation of fire safety equipment.	O	O			T	Continuing throughout the Service
6.4	Provide additional training to Staff to meet the requirements of 6.1, 6.2, 6.3 above, if required when a change in the Ferry Services is implemented.	O	O			T	Before the implementation of the change in Services
6.5	Develop, document and maintain training materials to provide to Staff to support the training referred to at items 6.1, 6.2, 6.3 above.	O	O			T	As required throughout the Term
6.6	Provide all staff with customer service training in the three months after the Commencement Date, and on an annual basis.	O	O			T	Within three months after the Service commencement and continuing throughout the Term

7. TfNSW Systems and Equipment

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.1	Develop operational procedures, guidelines and training requirements for TfNSW Systems and Equipment.	T	T		O		As required by TfNSW throughout the Term
7.2	Comply with any reasonable operational procedures, guidelines and training requirements for TfNSW Systems and Equipment associated with the provision of Ferry Services and related contractual obligations issued by TfNSW from time to time.	O	O	T	T	T	Continuing throughout the Term
7.3	Ensure TfNSW Systems and Equipment associated with the provision of the Ferry Services and related contractual obligations are in operational condition (including by supplying power and communications connections).	O	O	T	T	T	Continuing throughout the Term
7.4	Protect TfNSW Systems and Equipment associated with the provision of the Ferry Services and related contractual obligations and use reasonable endeavours to ensure TfNSW Systems and Equipment associated with the provision of Ferry Services and related contractual obligations are not mishandled or mistreated.	O	O	T	T	T	Continuing throughout the Term
7.5	Check TfNSW Systems and Equipment associated with the provision of Ferry Services and related contractual obligations for faults, malfunctions, security breaches or viruses regularly.	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.6	Report any fault, malfunction, security breach or virus in TfNSW Systems and Equipment associated with the provision of Ferry 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 detected
7.7	Replace TSE Rotable Assets associated with TfNSW Systems and Equipment as required.	O	O	T	T	T	Continuing throughout the Term
7.8	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 Term
7.9	Maintain a record of all TfNSW Systems and Equipment associated with the provision of Ferry Services and related contractual obligations, which includes information regarding the location and movement of all TfNSW Systems and Equipment associated with the provision of Ferry Services and related contractual obligations (including TSE Rotable Assets).	O	O	T	T	T	Continuing throughout the Term

8. Collection services

(a) Ticket sales: The Operator must take the following steps to securely collect and store all Operator Ticket Income.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.1	Sell and accurately record all Operator Ticket Income.	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.2	Ensure amounts reported to TfNSW equal actual Operator Ticket Income.	O	O			T	Continuing throughout the Term
8.3	Ensure bank deposits equal actual receipts.	O	O			T	Continuing throughout the Term
8.4	Securely manage all cash at all times.	O	O			T	Continuing throughout the Term
8.5	Offset the amount of all Operator Ticket Income against the charges in the tax invoice each month in accordance with paragraph 2(a)(iv) and the calculation in paragraph 4 of Schedule 4.	O	O			T	Continuing throughout the Term

(b) Ticketing System Income

The Operator irrevocably authorises TfNSW as follows, in relation to Ticketing System Income collected on the Operator's behalf by TfNSW through the TfNSW Systems and Equipment or OpalPay:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.6	Authorises TfNSW or its nominee to hold Ticketing System Income collected on the Operator's behalf through the TfNSW Systems and Equipment or OpalPay and to procure the transfer of the Ticketing System Income to the Operator. The Operator must then offset the amount of all Ticketing System Income against the charges in the tax invoice each month in accordance with paragraph 2(a)(iv) and the calculation in paragraph 4 of Schedule 4.	O	O			T	Continuing throughout the 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
8.7	Deploy Operator's Authorised Officers to minimise revenue loss.	O	O	T	T	T	At the Operator's discretion
8.8	Issue penalty notices.	O	O	T	T	T	Continuing throughout the Term if Operator's Authorised Officers are engaged
8.9	Issue fines and commence proceedings to collect unpaid fines.	O	O			T	Continuing throughout the Term
8.10	Attend court hearings as a witness in relation to proceedings concerning unpaid fines.	O	O			T	Continuing throughout the Term
8.11	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	Continuing throughout the Term if Operator's Authorised Officers are engaged
8.12	Use reasonable endeavours to ensure that sufficiently trained personnel who are submitted to be authorised as an Authorised Officer are granted such authorisation.	O	O			T	Continuing throughout the Term if the Operator submits sufficiently trained personnel to be

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
							authorised as an Authorised Officer

9. KPI Management

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
9.1	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 Schedule 8
9.2	Measure, analyse, and provide reports on performance against Key Performance Indicators and other information as requested.	O	O			T	As stated in Schedule 8 and clauses 6.4 and 6.5
9.3	Track KPI performance for individual Incidents and escalating KPI Default.	O	O			T	As stated in Schedule 8
9.4	Develop and document Key Performance Indicator cure plans where required under Schedule 8.	O	O	T	T	T	As required throughout the Term
9.5	Implement and diligently pursue cure plans developed under Schedule 8.	O	O	T	T	T	As required throughout the Term
9.6	Report to TfNSW on Key Performance Indicator cure plan results.	O	O	T	T	T	As required throughout the Term

10. Account management

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.1	Document and report to TfNSW on products and services to improve Ferry Services and customer outcomes.	O	O			T	Continuing throughout the Term
10.3	Provide accurate, robust and proven billing systems and methodology.	O	O			T	Continuing throughout the Term
10.4	Engage and maintain a qualified and experienced account management team.	O	O			T	Continuing throughout the Term

11. School Student Transport Scheme

The Operator must ensure that persons eligible for the SSTS have access to concessional and free transport, as required by TfNSW, and outlined below:

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
11.2	Comply with the requirements of any guidelines regarding carrying school children issues by TfNSW from time to time.	O	O		T	T	Continuing throughout the Term
11.3	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 Term

12. Security management

The Operator must ensure that security risk management requirements in relation to the delivery of transport service, 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
12.1	Carry out regular risk assessments of terrorism related threats to the Ferry Services.	O	O	T	T	T	Continuing throughout the Term
12.2	Implement security measures as identified in the Operator's risk assessment.	O	O	T	T	T	Continuing throughout the Term
12.3	Develop and implement security measures that align to the Operator's risk assessment and the relevant level identified under the National Terrorism Threat Advisory System.	O	O	T	T	T	Continuing throughout the Term
12.4	<p>Implement procedures to notify NSW Police and TfNSW of the following incidents:</p> <ul style="list-style-type: none"> 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; and k) Disorderly conduct. <p>Each as defined in the 'definitions and explanations' section of the NSW Bureau of Crime Statistic and Research website, and;</p> <ul style="list-style-type: none"> l) Offences against transport services; m) Other street offences; n) Terrorism offences; o) Offences under Part 5 Divisions 2 and 3 and Part 6 (as it relates to ticketing 	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	offences) of the <i>Passenger Transport (General) Regulation 2017</i> (NSW)						

Schedule 4 – Remuneration for the Ferry Services

1. Application and defined terms

1.1 Defined terms

- (a) In this Schedule 4:
- (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.
- (b) In this Schedule, the following words have the following meanings:
- Base Service Fee** has the meaning given in paragraph 5.
- Bid Fuel Price** means \$█ per litre (excluding GST).
- Bid Fuel Volume** means the volume set out in in Annexure A, Table 2, Ref 1.
- 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.
- Fuel Index Multiplier** or **FIM** means the multiplier determined under paragraph 9.2.
- Fuel Price** means the daily "Mobil Terminal Gate Price" Sydney Diesel (in AUS\$/litre excluding GST) quoted on the website http://apps.exxonmobil.com.au/apps/html/mn_mobil_products_automotive_pricing.asp.
- 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.
- KPI Abatement** has the meaning given in paragraph 6.
- Month n** means a particular month during the Term, where n signifies the number of months from the Commencement Date.
- Monthly Contract Payment** means the sum to be paid by TfNSW to the Operator for the Ferry Services provided in any month as set out in paragraph 4 of this Schedule 4.
- Operator Ticket Income Adjustment** means the adjustment determined in accordance with paragraph 7.
- Ticketing System Income Adjustment** means the adjustment determined in accordance with paragraph 8.
- 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 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 any agreement made under clause 16.1;
 - (iii) KPI Credits for the previous month (if any) calculated in that month in accordance with Schedule 8; and
 - (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 4) in accordance with items 8(a) and (b) of Schedule 3;
 - (v) the net remuneration owed by TfNSW to the Operator, having regard to paragraphs 2(a)(i) to 2(a)(iv) and the calculation under paragraph 4; and
 - (vi) any GST Amount payable under clause 21.2 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 Agreement and this Schedule 4 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 6.4(e).

For the avoidance of doubt, TfNSW is under no obligation to make any payment under this Agreement 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) Unless expressly stated in this Agreement 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 Agreement and is not entitled to any reimbursement of expenses, payment or compensation for any such steps, actions, obligations or activities.
- (e) TfNSW must make payments within 20 Business 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 and in accordance with the requirements of this paragraph 2.
- (f) The Operator must provide any further details in regard to a Tax Invoice that are reasonably requested by TfNSW from the Operator.
- (g) 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

3. Indexation

3.1 Indexation

All amounts to be "indexed" under this Agreement 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 Agreement, 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 paragraph 4.1(b), the Monthly Contract Payment for Month n (**MSP_n**) is determined as follows:

$$\mathbf{MSP}_n = \mathbf{BSF}_n + \mathbf{VA}_n - \mathbf{KA}_n - \mathbf{OTIA}_n - \mathbf{TSIA}_n$$

Where:

BSF_n = the Base Service Fee for Month n, calculated in accordance with paragraph 5;

VA_n is the amount of any adjustment to the Base Service Fee for Month n determined in accordance with any agreement made under clause 16.1;

KA_n = the KPI Abatement for Month n, calculated in accordance with paragraph 6 (if any);

OTIA_n = the Operator Ticket Income Adjustment for Month n, calculated in accordance with paragraph 7; and

TSIA_n = the Ticketing System Income Adjustment for Month n, calculated in accordance with paragraph 8.

- (b) Where **MSP_n** 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 Agreement 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 Payment for Month n will be paid as part of the next Monthly Contract Payment (unless Month n is the last month of the Term).

5. Base Service Fee

The Base Service Fee for Month n (**BSF_n**) is determined as follows:

$$\mathbf{BSF}_n = \left(\frac{\mathbf{LC}_n}{\mathbf{NM}}\right) \times \mathbf{WPIM}_n + \left(\frac{\mathbf{NL}_n}{\mathbf{NM}}\right) \times \mathbf{CPIM}_n + \frac{\mathbf{NIC}_n}{\mathbf{NM}} + \mathbf{FA}_n$$

Where:

LC_n = the Labour Payment Component for Month n, as set out in Annexure A, Table 1, Ref 1;

NL_n = the Non Labour Payment Component for Month n, as set out in Annexure A, Table 1, Ref 2;

NIC_n = the Non Indexed Payment Component for Month n occurs, as set out in Annexure A, Table 1, Ref 3;

WPIM_n = the WPI Annual Multiplier applicable for Month n;

CPIM_n = the CPI Annual Multiplier applicable for Month n; and

NM = 12;

FA_n = The Fuel Adjustment for Month n determined in accordance with paragraph 9.

The amounts in Table 1 of Annexure A will be subject to a pro-rata adjustment in the first and final contract years as needed to account for the variance between calendar and financial years.

6. KPI Abatement

- (a) The KPI Abatement for Month n (**KAn**) is the KPI Credit calculated in accordance with Schedule 8 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; and
 - (ii) at the end of this Agreement 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 off set from the Monthly Contract Payment in accordance with paragraph 4.1.

8. Ticketing System Income Adjustment

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 8(b) of Schedule 3 during the previous Month n (or where applicable, part Month n).

9. Fuel Adjustment

9.1 Fuel Adjustment

The Fuel Adjustment for Month n (**FA_n**) is determined as follows:

$$FA_n = \left(\frac{BFV_n \times (BFP - FC_n)}{NM} \right) \times (FIM_n - 1)$$

Where:

BFV_n = the Bid Fuel Volume in which Month n occurs;

NM = 12;

BFP = the Bid Fuel Price;

FC_n = the Fuel Tax Credit for the previous Calendar Month; and

FIM_n = the Fuel Index Annual Multiplier applicable for Month n.

9.2 Fuel Index Multiplier

The Fuel Index Multiplier for the Month n (**FIM_n**) is determined as follows:

$$FIM_n = \frac{AP_n - FC_n}{BFP - FC_n}$$

Where:

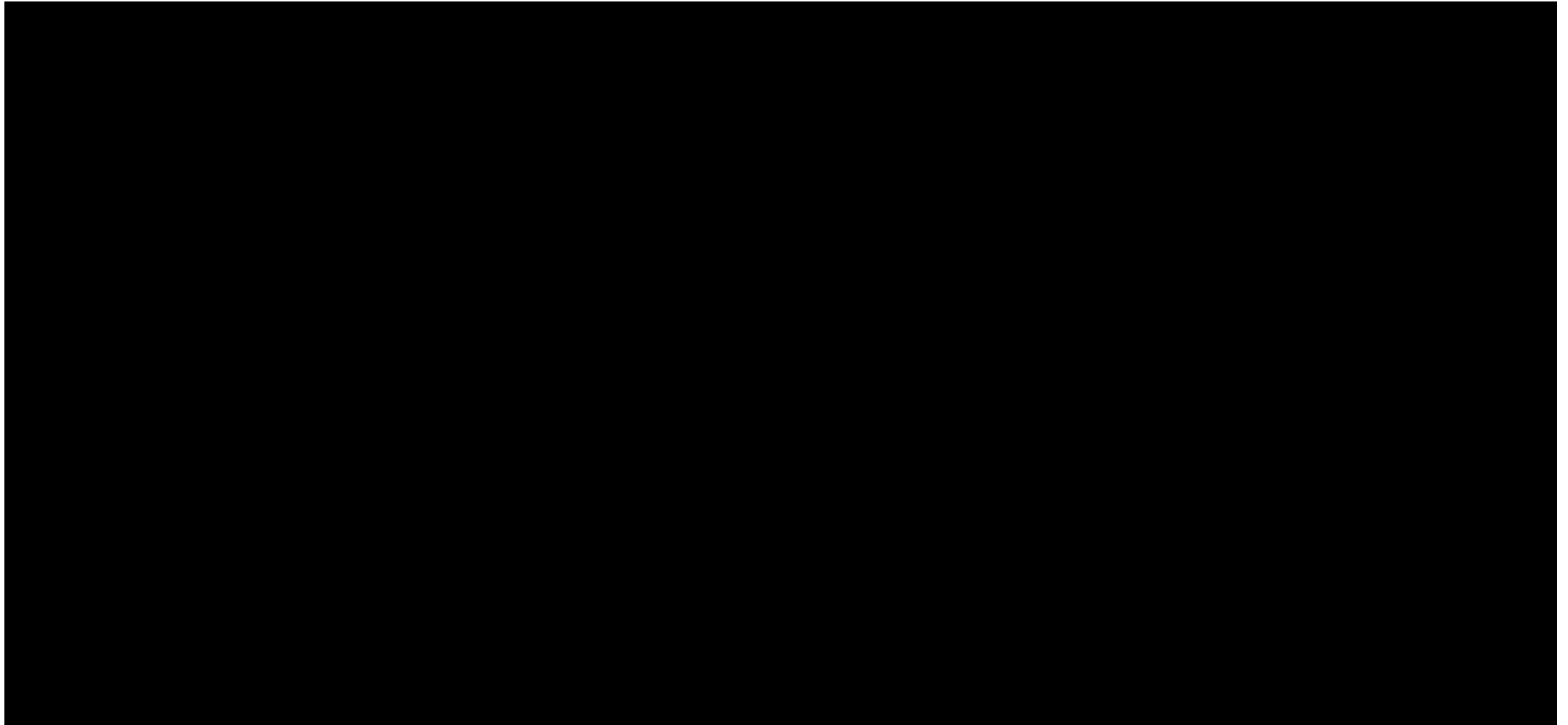
AP_n = the average Fuel Price for the previous Calendar Month;

BFP = the Bid Fuel Price; and

FC_n = the Fuel Tax Credit for the previous Calendar Month.



Annexure A –



Schedule 5 – Revenue Share Payment

- (a) This Schedule 5 only applies if the aggregate of the Operator Ticket Income and the Ticketing System Income for a month is more than the Revenue Share Amount.
- (b) For each month during the Term that the aggregate of the Operator Ticket Income and the Ticketing System Income 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 ■%;
- AR is the aggregate of the Operator Ticket Income and the Ticketing System Income for the month; and
- RSA is the Revenue Share Amount calculated in accordance with paragraph (e) below.
- (c) Within 20 Business Days after the end of each month during the Term that the aggregate of the Operator Ticket Income and the Ticketing System Income 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 5 for that month; and
 - (ii) pay the amount of the Revenue Share Payment determined under paragraph (b) of this Schedule 5 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 Ferry Services.
- (e) The Revenue Share Amount for Month n (**RSAn**) is determined as follows:

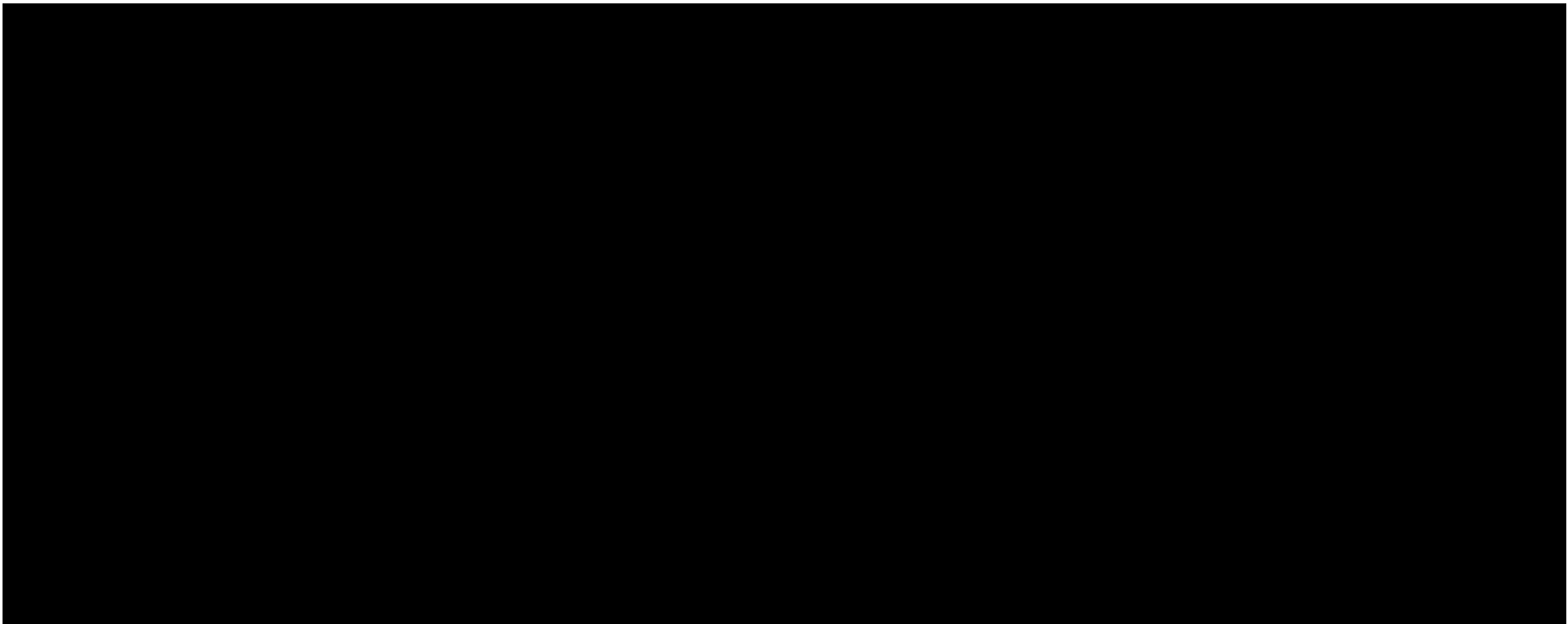
$$RSAn = \left(\frac{LC_n}{NM}\right) \times WPIM_n + \left(\frac{NL_n}{NM}\right) \times CPIM_n + \frac{NIC_n}{NM}$$

Where:

- LC_n = the Labour Payment Component for Month n, as set out in Annexure A, Table 1, Ref 1;
- NL_n = the Non Labour Payment Component for Month n, as set out in Annexure A, Table 1, Ref 2;
- NIC_n = the Non Indexed Payment Component for Month n occurs, as set out in Annexure A, Table 1, Ref 3;
- WPIM_n = the WPI Annual Multiplier applicable for Month n;
- CPIM_n = the CPI Annual Multiplier applicable for Month n; and
- NM = 12.

The amounts in Table 1 of Annexure A will be subject to a pro-rata adjustment in the first and final contract years as needed to account for the variance between calendar and financial years.

Annexure A –



Schedule 6 – Slot Payments

1. General

- (a) In this Schedule 6:

Additional Slot Payment means, in respect of a Slot, the "Wharf access fees " (as may be amended from time to time) for adhoc bookings for vessels with a passenger capacity of over 150 available at <https://roads-waterways.transport.nsw.gov.au/maritime/commercial-vessels/fees.html#Wharfaccessfees>.

Excusable Payment Event means:

- (i) a Force Majeure Event;
- (ii) a suspension under paragraph 13(a) of Schedule 12 to the extent the suspension is not as a result of the wrongful act, default or omission of the Operator, its Staff or passengers;
- (iii) a failure of any TfNSW Systems and Equipment that results in the Operator being unable to use a Ferry Service Slot; or
- (iv) where the Operator is unable to use a Ferry Service Slot as a result of a third party's act or omission (other than an act or omission of an Operator's Associate).

Excusable Payment Amount means the amount calculated by way of the following formula:

The number of Ferry Service Slots which were unavailable during the applicable month of the Term due to an Excusable Payment Event multiplied by the Slot Amount.

Ferry Service Slot Monthly Payment means, in respect of each month during the Term, \$ [REDACTED] (excluding GST), as adjusted in accordance with this Agreement.

Monthly Payment means the amount calculated under paragraph 2 of this Schedule 6.

Quarterly Payment means the sum of the Additional Slot Payments for the applicable Quarter of the Term.

Slot Amount means \$ [REDACTED] (excluding GST) per Ferry Service Slot, as adjusted in accordance with this Agreement.

- (b) The Ferry Service Slot Monthly Payment is fixed throughout the Term and payable in full, regardless of whether or not (for example):
- (i) the Operator uses a Ferry Service Slot; or
 - (ii) there is a different number of operational days by day type in any year of the Term (for example if a public holiday falls on what would otherwise be a standard weekday).
- (c) For each Slot or part of a Slot used by the Operator which is not a Ferry Service Slot (and regardless of whether or not the Slot is allocated to another operator) and without limiting TfNSW's rights under this Agreement or otherwise at Law, the Operator must pay TfNSW the Additional Slot Payment.
- (d) For the avoidance of doubt, the Operator must pay an Additional Slot Payment on each occasion that a Vessel exceeds the allocated Ferry Service Slot.

2. Calculation

For each applicable month of the Term, the Monthly Payment will be calculated in accordance with the following formula:

$$MP = FSSP - EPA$$

where:

MP is the Monthly Payment payable for the applicable month of the Term;

FSSP is the Ferry Service Slot Monthly Payment for the applicable month of the Term;
and

EPA is the Excusable Payment Amount for the applicable month of the Term.

3. Payment

- (a) The Operator must pay to TfNSW the Monthly Payment within 20 Business Days after the end of each month during the Term.
- (b) The Operator must pay to TfNSW each Quarterly Payment within 20 Business Days after the end of each Quarter during the Term (and the final Quarterly Payment on the 20th Business Days after the expiry or termination of this Agreement).

Schedule 7 – Timetable

Normal Timetable Weekday

Lane Cove to Circular Quay INBOUND														
Weekdays														
Ferry Type Code	[01]	[02]	[01]	[02]	[01]			[01]	[01]	[02]	[01]	[02]	[01]	[02]
Hunters Hill Alexandra St	6:55	7:30	8:00	8:30	9:00			15:50	17:00	17:30	18:00	18:35	19:05	19:35
Riverview College			8:03	8:33				15:53			18:03			
Hunters Hill Alexandra St								15:58			18:08			
Longueville	7:03	7:36	8:06	8:36	9:06			16:06	17:06	17:36	18:11	18:41	19:11	
Northwood	7:10	7:40	8:10	8:40	9:10			16:10	17:10	17:40	18:15	18:45	19:15	
Greenwich Bay	7:12	7:42	8:12	8:42	9:12			16:12	17:12	17:42	18:17	18:47	19:17	
Greenwich Point								16:15			18:20			
Birchgrove								16:18			18:24			
Balmain East								16:20			18:26			
Circular Quay	7:30	8:00	8:30	9:05	9:30			16:30	17:30	18:05	18:35	19:05	19:30	20:00

Circular Quay to Lane Cove OUTBOUND													
Weekdays													
Ferry Type Code	[01]	[02]	[01]				[01]	[01]	[02]	[01]	[02]	[01]	[02]
Circular Quay	7:30	8:00	8:30				15:25	16:30	17:00	17:30	18:05	18:35	19:05
Kirribilli Point							15:30						
Jeffrey St	7:35	8:05	8:35				15:36			17:35			
Balmain East	7:40	8:10	8:40					16:40	17:10	17:40	18:15	18:45	19:15
Birchgrove	7:43	8:13	8:43										
Greenwich Point	7:47	8:17	8:47										
Greenwich Bay	7:50	8:20	8:50					16:49	17:19	17:49	18:24	18:54	19:24
Northwood	7:52	8:22	8:52					16:51	17:21	17:51	18:26	18:56	19:26
Longueville	7:57	8:27	8:57					16:54	17:24	17:54	18:29	19:59	19:29
Hunters Hill Alexandra St	8:00	8:30	9:00				15:50	17:00	17:30	18:00	18:35	19:05	19:35

The following table shows the Ferry Service Slots at Circular Quay Wharf, Weekdays Only:

From	7:15	7:45	8:15	8:50	9:15	15:10	16:15	16:45	17:15	17:50	18:20	18:50	19:15	19:45
To	7:30	8:00	8:30	9:05	9:30	15:25	16:30	17:00	17:30	18:05	18:35	19:05	19:30	20:00

Schedule 8 – Key Performance Indicators

1. Definitions and Interpretation

- (a) In this Schedule 8:
- (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 8.
- (b) In this Schedule 8, the following words have the following meanings:

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 8.

Class 2 Key Performance Indicator means a KPI identified as such in this Schedule 8.

Complaint means each report of a negative experience in relation to the Ferry Services.

Excusable Performance Incident means an incident resulting in the Operator's inability to meet a KPI which is caused directly by either:

- (i) a Force Majeure Event;
- (ii) a suspension under paragraph 13(a) of Schedule 12 to the extent the suspension is not as a result of an act or omission of the Operator or an Operator's Associate;
- (iii) A change to marine conditions that prevents normal service provision in each case to the extent not caused or contributed by the Operator or an Operator's Associate and which could not have been reasonably prevented, overcome or remedied by the Operator;
- (iv) Unsafe Conditions; or
- (v) Delays that meet the specific circumstances described in the Description of KPI Table 1 (Punctuality Rate – On Time Running).

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.

Key Performance Indicator or KPI means each key performance indicator set out in paragraph 7.

KPI Class means the classification of the KPI as a Class 1 Key Performance Indicator or a 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 6.

KPI Default means failure to comply with a KPI.

KPI Relief means, in respect of a KPI, the Operator is excused from the non-performance of the KPI as a result of an Excusable Performance Incident in accordance with this Schedule 8.

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 Table means each of the KPI tables set out in paragraph 7.

On Time means for Published Timetable Trips, a Vessel departing a Wharf no earlier than the timetabled departure time and no more than 4 minutes 59 seconds late compared to Timetable.

Published Timetable Trips means Trips on Routes that are scheduled by public timetable.

Unsafe Conditions means a Ferry cannot be operated within the parameters of the Operator's safety management system due to poor visibility or similar constraint arising from an environmental condition outside the reasonable control of the Operator.

- (c) The following table sets out how the KPI Tables included in this Schedule 8 are to be interpreted:

Item	Description
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 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.
Class	Either Class 1 Key Performance Indicator or Class 2 Key Performance Indicator
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 8 (KPI Reporting Period))

2. KPI Principles

- (a) The Operator must perform the Ferry Services described in Schedule 1 and Schedule 3 measured against the KPIs set out in this Schedule 8.
- (b) The Operator acknowledges and agrees:
- (i) the emphasis of the KPI regime is on delivery of the Ferry Services to meet TfNSW's business requirements and on performance improvement where the Ferry Services fail to meet the requirements;
 - (ii) unless otherwise specified in this Schedule 8 or directed by TfNSW, KPIs apply from the 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; and

- (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.
- (c) Subject to clause 2(g) of this Schedule, in the event of an Excusable Performance Incident:
 - (i) the Operator:
 - (A) must notify TfNSW in the report required to be provided for each KPI as set out in the relevant KPI Table in the period of calculation during which the Excusable Performance Incident occurred; and
 - (B) may seek KPI Relief from TfNSW and TfNSW will determine whether or not the Operator's claim for KPI Relief is valid.
 - (ii) an application for KPI Relief must contain at a minimum:
 - (A) details of the KPI disruption and claimed Excusable Performance Incident;
 - (B) the commencement date and the end date of the disruption; and
 - (C) the Trip(s) affected by the disruption.
- (d) Where TfNSW reasonably requires further information in order to consider the application for KPI Relief the Operator must promptly provide such further information to TfNSW.
- (e) Within a reasonable period after receipt of an application for KPI Relief, TfNSW may by notice to the Operator, either:
 - (i) approve the application for KPI Relief (or part of the request, with or without conditions);
 - (ii) reject the application for KPI Relief setting out the basis of the rejection; or
 - (iii) notify the Operator that TfNSW requires further information in order to consider the application, in which case the Operator must promptly provide such further information to TfNSW.
- (f) Any KPI Default for which KPI Relief is granted will be removed entirely from any calculation or measurement of the Operator's compliance or achievement of the relevant KPI(s) the subject of the KPI Default.
- (g) The Operator acknowledges that, in the event of a KPI Default which is caused by an Excusable Performance Incident and for which KPI Relief is granted, the Operator's obligations in relation to the performance of the Operator Activities and compliance with the KPIs which are not affected by the Excusable Performance Incident continue and include:
 - (i) an obligation to use commercially reasonable efforts to reinstate the Operator Activities affected by the Excusable Performance Incident and meet the KPIs affected by the Excusable Performance Incident as soon as possible in the circumstances;
 - (ii) an obligation to mitigate the impact of the Excusable Performance Incident generally and on the KPIs to the fullest extent possible;
 - (iii) an obligation to track and monitor the performance against the KPIs affected by the Excusable Performance Incident; and
 - (iv) an obligation to continue to report Excusable Performance Incidents as if they were any other incidents for the purposes of analysis and corrective action.

3. KPI Reporting

- (a) In accordance with the reporting frequency specified for each KPI in the relevant KPI Table, the Operator must provide:
 - (i) a written report to TfNSW using the template attached in Annexure 2 or as issued by TfNSW from time to time;

- (ii) a proposed cure plan, developed by the Operator to address the causes of any KPI Default, including proposed actions (and timings) for the Operator; and
 - (iii) where there has been a previous cure plan for the KPI, the status of the actions and an explanation of any relationship between the cure plans and current performance.
- (b) Where the Operator develops a cure plan under this paragraph to address the causes of any KPI Default and proposes actions to be performed by TfNSW, the Operator acknowledges and agrees that:
- (i) TfNSW may accept or reject those proposed actions; and
 - (ii) nothing in the proposed cure plan derogates from the Operator's responsibility to perform the Ferry Services.
- (c) The Operator must implement and diligently pursue any cure plan required to be provided under this paragraph to address the causes and remedy the effects of any KPI Default.

4. KPI Classes

- (a) 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 a cure plan in accordance with paragraph 3 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.

- (b) The parties acknowledge and agree that, as at the date of execution of this Agreement, all KPIs are Class 2 Key Performance Indicators.
- (c) Where the Operator has in respect of any KPI:
- (i) failed to achieve the KPI on three occasions in any six month period during the Term; or
 - (ii) failed to achieve the KPI on four occasions in any 12 month period during the Term,
- TfNSW may, by giving 20 Business Days' notice to the Operator escalate that KPI to a Class 1 Key Performance Indicator.
- (d) For the avoidance of doubt, any KPI Credit referred to in a KPI Table will not apply unless and until the relevant KPI has been escalated to a Class 1 Key Performance Indicators in accordance with paragraph 4(c), in which case KPI Credits will be calculated in accordance with the KPI Table until such time as TfNSW notifies the Operator that the KPI will be reverted a Class 2 Key Performance Indicator.

5. Calculation of KPI Credits

5.1 Applicability

If any KPIs have been escalated to Class 1 Key Performance Indicators in accordance with paragraph 4(c) (**Escalated KPIs**), the Operator must pay KPI Credits to TfNSW for a KPI Default of those KPIs as specified in the KPI Tables.

5.2 Calculation of KPI Credits

- (a) KPI Credits are calculated in the calendar month following the KPI Reporting Period for each Escalated KPI as specified in the KPI Tables.
- (b) In the event of a KPI Default of an Escalated KPI as specified in the KPI Tables, the Operator must pay to TfNSW a KPI Credit as calculated in accordance with the following formula:

$$KPI\ Credit = A \times B \times C$$

where:

- A = the KPI Credit Allocation Percentage for the KPI Default as shown in the KPI Credit table in paragraph 6 of this Schedule 8;
- B = the At Risk Amount — ■%; and
- C = the Base Service Fee for the most recent month in the KPI Reporting Period.
- (c) Where the Monthly Service Payment in the calendar month following the KPI Reporting Period is a negative number, the KPI Credit payable in respect of the relevant month will be \$nil.

5.3 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 5.2 multiplied by the Base Service Fee (**Credit Cap**).

5.4 Multiple KPI Defaults

- (a) For each KPI, if more than one KPI Default has occurred in a single calendar month, the Operator must credit the sum of the corresponding KPI Credits to TfNSW in accordance with Schedule 4.
- (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.

5.5 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.

6. KPI Credits

- (a) The KPI Credit Allocation Percentages for each KPI as at the Commencement Date are set out in the following table:

Table No	KPI	KPI Credit Allocation Percentage
1	Punctuality Rate - On Time Running	■
2	Incomplete Trips	■
3	Cancelled Trips	■

Table No	KPI	KPI Credit Allocation Percentage
4	Cancelled and incomplete Trips	
5	Complaint Resolution	
6	Customer Satisfaction	
7	Passenger Information	
8	Reporting	

- (b) The parties acknowledge that the KPI Credit Table contains KPIs the performance of which have an impact on customers and the business of TfNSW.

7. KPI Tables

Item	Table 1 (Punctuality Rate – On Time Running (OTR))
Description	<p>This KPI aims to ensure that Ferry Services (including on request 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.</p> <p>Outbound Trips during the morning and inbound Trips during the afternoon that are delayed due to slow boarding of school children will be treated, subject to the processes in Paragraph 2 (KPI Principles) of this Schedule 8, as Excusable Performance Incidents.</p>
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"> at least 95% of Trips that are Published Timetable Trips leave the first Wharf of each Trip On Time (75% weighting) at least 95% of Trips that are Published Timetable Trips leave the TfNSW nominated mid-point Wharf On Time (15% weighting) at least 95% of Trips that are Published Timetable Trips arrive at the TfNSW nominated Wharf close to the end of each Trip On Time (10% weighting) <p>In the first three KPI Reporting Periods from the Commencement Date the minimum weighted On Time performance will be:</p> <ul style="list-style-type: none"> KPI Reporting Period 1: 91.5% KPI Reporting Period 2: 93.0% KPI Reporting Period 3: 94.0%
Class	Subject to paragraph 4, Class 2 Key Performance Indicator
Measurement methodology	
Measurement starting point	First day 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) x 100%</p> <p>B. (Number of mid-point Wharves departed On Time for Trips that are Published Timetable Trips / Total number of mid-point Wharves for Trips that are Published Timetable Trips measured in the KPI Reporting Period) x 100%</p> <p>C. (Number of Trips that are Published Timetable Trips arrived the nominated Wharf close to the end of the Trip On Time/ Total number of the nominated Wharves for Trips that are Published Timetable Trips measured in the KPI Reporting Period) x 100%</p>

Item	Table 1 (Punctuality Rate – On Time Running (OTR))
	KPI result = (A x 0.75) + (B x 0.15) + (C x 0.10) + 0.01
Period of calculation	Monthly
Measurement unit	% of Wharves for which a Trip is On Time
Data source	Relevant system, analysed to provide performance information. KPI will be based on TfNSW nominated Wharves for all Routes for which manual data (or, once automation is available, automated data) is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

Item	Table 2 (Incomplete Trips)
Description	This KPI aims to ensure that Ferry Services are delivered in full, and Wharves are not missed to correct timetable or frequency issues. All Incomplete Trips must be reported against the total Trips for the period. Incomplete Trips that are incomplete due to Unsafe Conditions will be treated, subject to the processes in Paragraph 2 (KPI Principles) of this Schedule 8, as Excusable Performance Incidents.
Hours measured	All hours of operation
KPI	<0.5% Incomplete Trips
Class	Subject to paragraph 4, Class 2 Key Performance Indicator
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	(Incomplete Trips) / Total Trips x 100%
Period of calculation	Monthly
Measurement unit	Trips
Data source	Relevant system, analysed to provide performance information KPI will be based on TfNSW nominated Wharves for all Routes for which manual data (or, once automation is available, automated data) is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

Item	Table 3 (Cancelled Trips)
Description	This KPI aims to ensure that Ferry Services are delivered. All Cancelled Trips must be reported against the total Trips for the period. Cancelled Trips that are cancelled due to Unsafe Conditions will be treated, subject to the processes in Paragraph 2 (KPI Principles) of this Schedule 8, as Excusable Performance Incidents.
Hours measured	All hours of operation

Item	Table 3 (Cancelled Trips)
KPI	<0.5% Cancelled Trips
Class	Subject to paragraph 4, Class 2 Key Performance Indicator
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	(Cancelled Trips) / Total Trips x 100%
Period of calculation	Monthly
Measurement unit	Trips
Data source	Relevant system, analysed to provide performance information KPI will be based on TfNSW nominated Wharves for all Routes for which manual data (or, once automation is available, automated data) is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

Item	Table 4 (Cancelled and Incomplete Trips)
Description	This KPI aims to ensure that Services are available and delivered. All Cancelled Trips and Incomplete Trips must be reported against the total Trips for the period. Cancelled and Incomplete Trips that are cancelled or incomplete due to Unsafe Conditions will be treated, subject to the processes in Paragraph 2 (KPI Principles) of this Schedule 8, as Excusable Performance Incidents.
Hours measured	All hours of operation
KPI	<0.75% Incomplete Trips and Cancelled Trips
Class	Subject to paragraph 4, Class 2 Key Performance Indicator
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	Sum of Incomplete Trips and Cancelled Trips as calculated in Tables 2 and 3
Period of calculation	Monthly
Measurement unit	Trips
Data source	Relevant system, analysed to provide performance information KPI will be based on TfNSW nominated Wharves for all Routes for which manual data (or, once automation is available, automated data) is available.
Measurement responsibility	Operator with selected audit by TfNSW
Reporting frequency	Monthly

If a KPI Default occurs on KPI 4 (Cancelled and Incomplete Trips), the KPI Credit Allocation Percentages for KPI Tables 2 or 3 will not be applied.

Item	Table 5 (Complaint Resolution)
Description	'Complaint Resolution' 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. This KPI does not apply until after the first anniversary of the Commencement Date,
Hours measured	24/7
KPI	Each of the following: <ul style="list-style-type: none"> • KPI 5(i): 70% of all Complaints and feedback (when the customer has requested a response) are resolved within four Business Days after the Complaint is received by the Operator • 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 • 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 • KPI 5(iv): 100% of calls received in KPI Reporting Period are included in the TfNSW Customer Feedback System. <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	Subject to paragraph 4, Class 2 Key Performance Indicator
Measurement methodology	
Measurement starting point	First day of each KPI Reporting Period
Calculation	<p>KPI 5(i): $100 \times (\text{Complaints and feedback (when the customer has requested a response) resolved within two Business Days during the KPI Reporting Period} / \text{Total Complaints and feedback (where the customer has requested a response) received for the KPI Reporting Period})\%$</p> <p>KPI 5(ii): $100 \times (\text{customers with unresolved Complaints contacted within 20 Business Days after Complaint is received during the KPI Reporting Period} / \text{Total unresolved Complaints received for the KPI Reporting Period})\%$</p> <p>KPI 5(iii): $100 \times (\text{Complaints received until five Business Days before end of KPI Reporting Period resolved within the KPI Reporting Period} / \text{Total Complaints received until five Business Days before the end of the KPI Reporting Period})\%$</p> <p>KPI 5(iv): $100 \times (\text{Calls received within the KPI Reporting Period included in the TfNSW Customer Feedback System} / \text{Total calls received for the KPI Reporting Period})\%$</p>
Period of calculation	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
Reporting frequency	Monthly

Item	Table 6 (Customer satisfaction)
Description	'Customer Satisfaction' means the level of satisfaction with the Operator's performance as expressed by a representative sample of the passengers (TfNSW to approve) as measured on a Likert Scale. The survey questions used in the calculation of this KPI will relate to services largely under the control of the Operator.

Item	Table 6 (Customer satisfaction)
	This KPI does not apply until after the first anniversary of the Commencement Date,
Hours measured	N/A – by survey
KPI	95% of all ratings above the mid-point of the Liked Scale, based on historical performance on services largely under the control of the Operator
Class	Subject to paragraph 4, Class 2 Key Performance Indicator
Measurement methodology	
Measurement starting point	First day of each 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.
Period of calculation	Semi-annual or other periods as advised by TfNSW
Measurement unit	Rating
Data source	Survey of customer satisfaction
Measurement responsibility	Operator, with selected audit by TfNSW
Reporting frequency	Semi-annual

Item	Table 7 (Passenger Information)
Description	This measures how well-informed passengers are in regards to the Ferry Services
Hours measured	24x7
KPI	> 75% of passengers on Vessels are satisfied with information (based on a non-weighted average across the four customer satisfaction survey measures: 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)
Class	Subject to paragraph 4, Class 2 Key Performance Indicator
Measurement methodology	
Measurement starting point	First day of Quarter
Calculation	$100 \times (\text{The number of surveyed passengers satisfied with passenger information} / \text{the number of passengers surveyed})\%$
Period of calculation	Quarterly
Measurement unit	Passengers
Data source	Customer satisfaction surveys, mystery shopper
Measurement responsibility	TfNSW
Reporting frequency	Quarterly

Item	Table 8 (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 clause 6.4 and 6.5. 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 clause 6.4 and 6.5.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
Hours measured	24x7
KPI	100% of reports required under clause 6.4 and 6.5 are delivered to TfNSW within the timeframe nominated in those clauses.
Class	Subject to paragraph 4, Class 2 Key Performance Indicator
Measurement methodology	
Measurement starting point	End of each KPI Reporting Period
Calculation	100 x (Total number of reports presented within the required timeframe during the KPI Reporting Period / Total number of reports due to be presented during the KPI Reporting Period)
Period of calculation	Monthly
Measurement unit	Report
Data source	Emails containing reports or when available, reports to be uploaded to TfNSW nominated system from which compliance can be generated automatically
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 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
Examples			
Interim Status Update Timeframe	Every 15 minutes	15 minutes then every 30 minutes	On request
If Incident is not resolved within the time required	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

Annexure 2 – Template KPI Report

(As annexed)

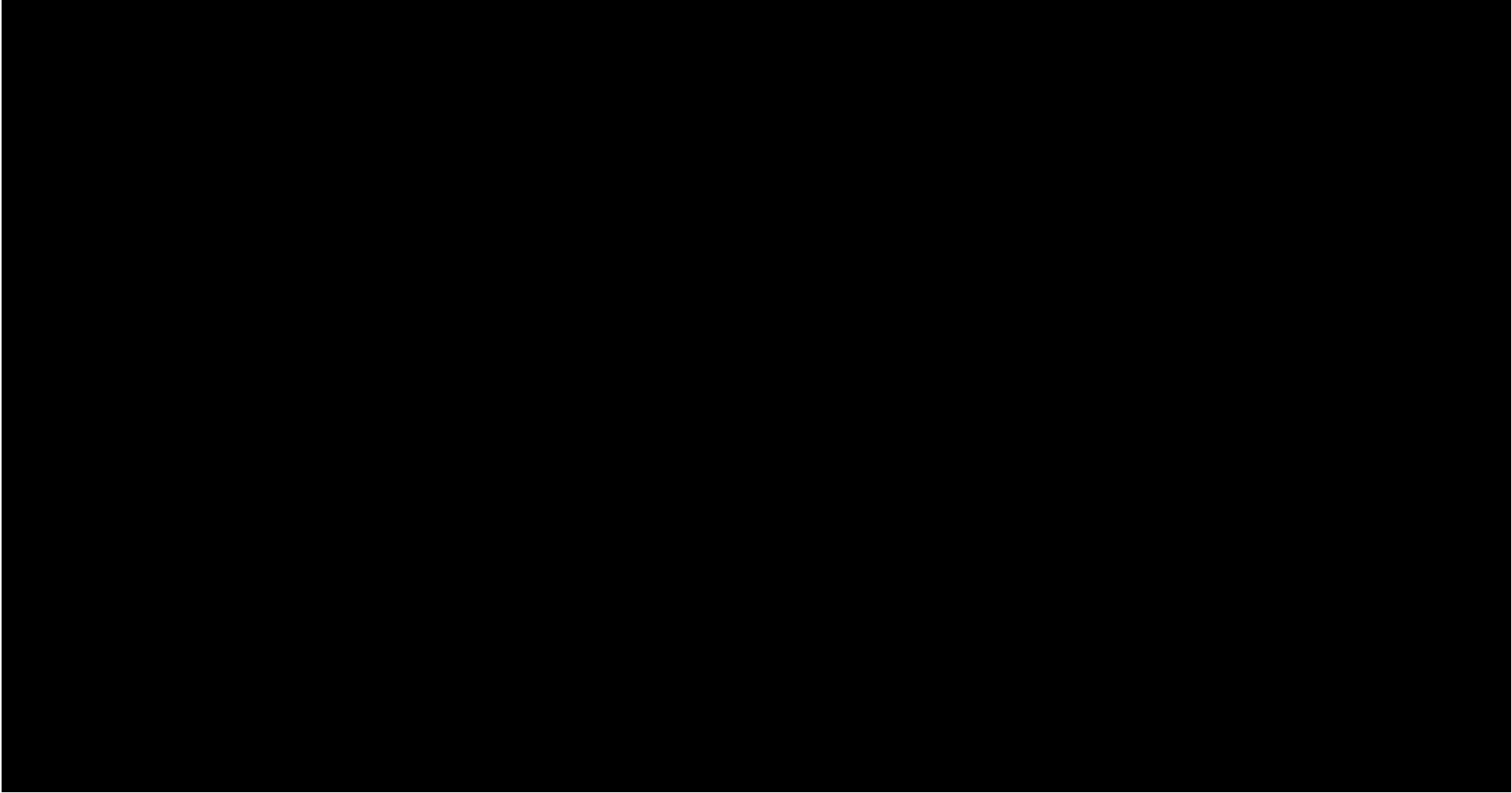
Ferry Services Contract - KPI Reporting Template

Example

KPI	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22		
1 On Time Running																										
Number of Published Timetable Trips that leave Brooklyn in reporting period On Time / Total number of Published Trips in reporting period x 100%	Minimum Weighted on Time - 75% weighting 95%																									72.29
Number of Published Timetable Trips that leave Dangar Island in reporting period On Time / Total number of Published Trips in reporting period x 100%	Minimum Weighted on Time - 15% weighting 95%																									14.46
Number of Published Timetable Trips that leave Little Wobby in reporting period On Time / Total number of Published Trips in reporting period x 100%	Minimum Weighted on Time - 10% weighting 95%																									9.54
	Pass = >95%																									96.29
3 Incomplete Trips																										
Incomplete Trips/Total Trips x 100%	<0.5% Incomplete T 100% weighting																									0.48
	Pass = <0.5%																									0.48
4 Cancelled Trips																										
Cancelled Trips/Total Trips x 100%	<0.5% Incomplete T 100% weighting																									0.48
	Pass = <0.5%																									0.48
5 Incomplete and Cancelled Trips																										
Incomplete Trips + Cancelled Trips /Total Trips x 100%	<0.75% Incomplete and Cancelled Trips 100% weighting																									0.96
	Pass = <0.75%																									0.96
6 Complaint Resolution																										
70% of all Complaints and feedback (where a customer has requested a response) are resolved within 2 Business Days	Complaints and feedback resolved within 2 Business Days / Total Complaints and feedback x 100																									66.67
	Pass = 70%																									66.67
100% of customers with an unresolved Complaint are contacted within 20 Business Days	Complaints and feedback resolved within 20 Business Days / Total Complaints and feedback x 100																									100
	Pass = 100%																									100.00
100% of calls received within the reporting period are included in the TINSW Customer Feedback System	Calls received and included in the TINSW Customer Feedback System / Total calls received for the the reporting period																									100
	Pass = 100%																									100.00
7 Customer Response - On Request Only																										

95% of calls received in reporting period are responded to within 1 minute	Total booking requests received responded to within 1 minute / Total booking requests received during reporting period x 100	100% weighting	97.78
Pass = 95%			97.78
8 Customer Satisfaction			
95% of all ratings above the mid-point of the Likert Scale	The number of ratings above the mid-point / total number of ratings x 100	100% weighting	96.00
Pass = 95%			96.00
10 Revenue Collection			
A fare compliance survey result of at least 96% fare compliance	The fare compliance survey undertaken in accordance with TNSW standard methodologies.	100% weighting	99.00
Pass = 96%			99.00
11 Reporting			
100% of reports due in reporting period	Total number of reports presented within the nominated timeframe during the reporting period / total number of reports due to be presented during the reporting period x 100	100% weighting	100.00
Pass = 100%			100.00

Schedule 9 – Transition Plan



Schedule 10 – 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.

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.

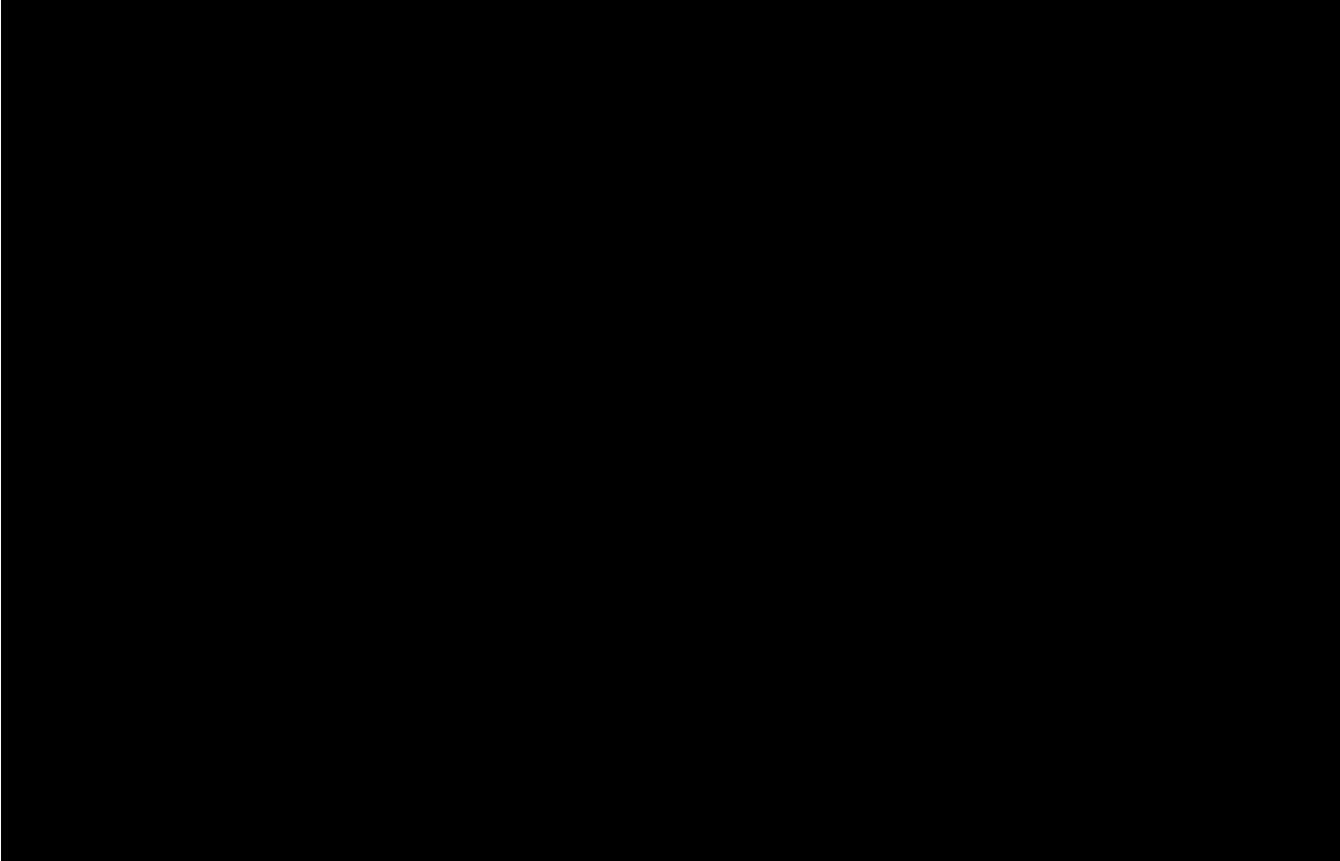
This Bond is governed by the laws of the State of New South Wales.

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]

Schedule 11 – [REDACTED]



Schedule 12 – Wharf requirements

1. Definitions and interpretation

(a) In this Schedule 12:

- (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 12.

(b) In this Schedule 12, 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 Ferry 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.

Wharf Access Force Majeure Event means:

- (a) compliance with any order, demand, requirement, recommendation or request of any international, national, port, transportation, local or other authority or court which prevents TfNSW from providing access to a TfNSW Wharf or prevents the operation of a Vessel;
- (b) an act of God;
- (c) a war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, blockade, civil commotion;
- (d) any damage to a TfNSW Wharf or TfNSW Wharf Infrastructure, including by the impact of vehicles or vessels, caused by a third party other than TfNSW or the Operator, that renders the TfNSW Wharf or TfNSW Wharf Infrastructure unavailable or inaccessible;
- (e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (f) a fire, explosion or other catastrophe; epidemic or quarantine restriction.

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 12 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 12 may change from time to time and TfNSW reserves the right to alter this Schedule 12 at any time.
- (c) TfNSW will notify the Operator of any amendments to this Schedule 12 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 12,except to the extent that the risk and liability is caused by or arises out of, or in any way in connection with:
 - (iii) any unlawful, fraudulent, negligent, reckless or other wrongful act or omission of TfNSW or any third party (not including an Operator's Associate); or
 - (iv) a breach by TfNSW of its obligations under this Agreement (including this Schedule 12).

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 Ferry 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 Ferry 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 Ferry 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 Ferry 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 Ferry 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 providoring;
- (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 Ferry 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 12;
 - (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 Wharf Access Force Majeure Event occurs; or
 - (vi) if maintenance, upgrade or repair works are required to all or any of the TfNSW Wharves and/or TfNSW Wharf Infrastructure during the 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 Ferry 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) 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 Ferry Service, the Operator must at all times comply with the terms of such licence.

Schedule 13 – Deed of Guarantee and Indemnity

As annexed

Signing page

EXECUTED as a deed.

Executed for and on behalf of **Transport for NSW (ABN 18 804 239 602)**, by its authorised delegate:

Liz Ward

Name of Authorised Delegate (print)

L Ward

Signature of authorised delegate

Gillian Stals

Name of witness (print)

G Stals

Signature of witness

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 Captain Cook Cruises Pty Ltd ACN 008 272 302 in accordance with section 127 of the *Corporations Act 2001 (Cth)*

J R Ellison

Signature of director

J McDonald

Signature of director/company secretary
(Please delete as applicable)

Jeffrey Roy Ellison

Name of director (print)

Joanne McDonald

Name of director/company secretary (print)