

Execution Version

Ferry System Contract

The Director-General of the Department of Transport for and on behalf of Transport for NSW (**Director-General**)

Harbour City Ferries Pty Ltd in its personal capacity and as nominee for each of the Partners and the Partnership (**Operator**)

MinterEllison

L A W Y E R S

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Details

Date

Parties

Name **The Director-General of the Department of Transport for and on behalf of Transport for NSW**
 Short form name **Director-General**
 Notice details Level 6, 18 Lee Street, Chippendale NSW 2008
 Attention: The Director-General

Name **Harbour City Ferries Pty Ltd**
 Capacity **in its personal capacity and as nominee for each of the Partners and the Partnership**
 Short form name **Operator**
 ACN 156 137 236
 Notice details Level 10, 111 Pacific Highway, North Sydney NSW 2060
 Facsimile: (02) 9464 1618
 Attention: Company Secretary

Name **Transfield Services (Sydney Ferries) Pty Ltd**
 Capacity **jointly and severally in its capacity as partner of the Partnership (under the name 'Harbour City Ferries Partnership')**
 Short form name **Partner**
 ACN 154 815 611
 Notice details Level 10, 111 Pacific Highway, North Sydney NSW 2060
 Facsimile: (02) 9464 1618
 Attention: Company Secretary

Name **Veolia Ferries Sydney Pty Ltd**
 Capacity **jointly and severally in its capacity as partner of the Partnership (under the name 'Harbour City Ferries Partnership')**
 Short form name **Partner**
 ACN 087 535 224
 Notice details Level 12, 114 William Street, Melbourne VIC 3000
 Facsimile: (03) 9946 1330
 Attention: Company Secretary

Background

- A The *Passenger Transport Act 1990* (NSW) authorises the Director-General to enter into a service contract for the provision of Regular Ferry Services.
- B The Director-General has selected the Operator to provide the Ferry Services.
- C The Operator is entering into this Contract in its personal capacity and as nominee for each of the Partners and the Partnership.
- D The Operator, each of the Partners and the Partnership are jointly and severally liable for the obligations of the Operator under this Contract.
- E The Operator has agreed to carry out the Ferry Services on the terms set out in this Contract.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Contract:

Accessible Transport Action Plan means the Operator's written and electronic plan for management of passenger accessibility issues, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2.

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.

Agreed Asset Capital Expenditure means those expenditure items set out in Sheet 10 of the Financial Bid Template contained in Annexure A.

Agreed Commencement Condition Report means the condition report that documents the agreed structural and physical condition of the Contract Ferries, the Shipyard, the Shipyard Infrastructure and the General Assets on or about the Service Commencement Date pursuant to a joint inspection conducted by the parties.

Annual Timetable Review has the meaning given to it in clause 6.1(b).

Annual Works Plan means the Operator's written and electronic plan describing in detail the proposed maintenance works to be carried out on the Assets to meet the requirements of the AMP, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2.

Approved Beneficiaries means the beneficiaries listed in Schedule 3 as amended from time to time.

ASIC means the Australian Securities and Investments Commission.

Assessment Date means the date that is 18 months prior to the end of the Term.

Assessment Period means the period beginning on the Service Commencement Date and ending on the Assessment Date.

Assets means all assets used in the conduct of the Ferry Operations (whether owned, leased or licensed) including the Contract Ferries, the Premises, the Shipyard Infrastructure, Spares, Equipment and Ferry Operations IP but excluding:

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

Asset Management Plan or **AMP** means the Operator's written and electronic plan for management of the long term safety, reliability, integrity and condition of the Assets, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2.

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.

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

Bareboat Charterparty means the vessel lease between the Lessor and the Operator dated on or about the date of this Contract.

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

Business Plan means the Operator's written and electronic plan detailing its strategy for the conduct of the Ferry Operations to meet the requirements of the Transaction Documents, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2.

Calendar Year means a period that commences on 1 January and ends on the next 31 December.

CCTV Assets means all closed circuit television equipment including such equipment and other assets in respect of which ownership is transferred to the Operator pursuant to the contract entitled '*Contract for CCTV, Emergency Help Point, Infoline and Public Address System Upgrade and Operation*' originally between Sydney Ferries and Tyco Australia Pty Limited.

Certificate of Service Commencement means the certificate issued by the Director-General to the Operator under clause 4.2(a).

Change Event has the meaning given to it in clause 19.1.

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

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

but excludes:

- (c) any change in application or interpretation of a Law (including a Law of a New South Wales Governmental Agency);
- (d) the introduction of or variation to, or change in application or interpretation of, any industrial instrument to which the Operator or any Staff is or will be bound or subject to;
- (e) any Change in Tax;
- (f) any change in workers compensation premiums;
- (g) a change in Law which was not in force at the date of this Contract but which:
 - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to publicly prior to the date of this Contract; or
 - (ii) a party experienced and competent in the provision of services similar to the Ferry Services would have reasonably foreseen or anticipated prior to the date of this Contract; or
- (h) the introduction of any emissions tax or law or emissions trading scheme.

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

Change Notice has the meaning given to it in clause 19.2(a).

Change Order has the meaning given to it in clause 19.2(a).

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

Commencement Condition means:

- (a) for the Contract Ferries, the condition as specified in the Ferry Inspection Report as supplemented and updated by any Agreed Commencement Condition Report requested by the Operator or, if a Contract Ferry is acquired after the Service Commencement Date, the condition at delivery; and
- (b) for the Shipyard, Shipyard Infrastructure and the General Assets, their condition as specified in any Agreed Commencement Condition Report requested by the Operator or, if acquired after the Service Commencement Date, the condition at delivery.

Commencement Ferries means the Contract Ferries the subject of the Bareboat Charterparty as at the Service Commencement Date and any other Contract Ferries agreed with the Director-General at the Service Commencement Date.

Commissioner means either the Federal or New South Wales Privacy Commissioner.

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

Concession Fare means the Fare that can be charged to an Approved Beneficiary for a Ticket (as set out in Part 1 of Schedule 3 and varied under clause 10.1).

Conditions Precedent Bond means an irrevocable bank guarantee, letter of credit or insurance bond callable by and in a form approved by the Director-General which meets the criteria set out in clause 4.5(a).

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

Consideration has the meaning given to it in the GST Act.

Construction Work means any construction work carried out or caused to be carried out in or in connection with the Ferry Operations by or through the Operator.

Contamination means the presence in, on or under Land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) Land or within the vicinity of the Wharves, being a presence that presents significant risk of harm to human health or any other aspect of the Environment. Contamination is not limited to soil contamination but also includes contamination of and movement of contaminated ground and service water.

Contamination Report has the meaning given to it in clause 14.4(e).

Continuity of the Ferry Services means:

- (a) the continued provision of the Ferry Services during the Term in accordance with this Contract; and
- (b) the orderly handover of the Ferry Operations by the Operator to a Step-in Party, Interim Operator or Successor Operator as contemplated by this Contract.

Contract means this Ferry System Contract.

Contract Ferry means a Ferry used or to be used in the provision of the Ferry Services, including those Ferries the subject of, and more particularly described in, the Bareboat Charterparty. The Contract Ferries at the date of this Contract are listed in Schedule 11.

Contract Objectives has the meaning given to it in clause 2.

Contract Service Plan Amendment Amount has the meaning given to it in paragraph 2.5 of Schedule 1.

Contract Service Plan means the Operator's written and electronic plan for the provision of the Ferry Services in accordance with the Timetables prepared and submitted under clause 6.1 and containing the matters required by Schedule 2.

Contract Variation has the meaning given to it in clause 18.

Contract Variation Template means a template in the form contained in Schedule 5.

Contract Year means:

- (a) for the first Contract Year, the period from the Service Commencement Date to 31 December 2012; and
- (b) for each subsequent Contract Year, each subsequent Calendar Year during the Contract Term including any part Calendar Year concluding on the Termination Date.

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

CPI means the Consumer Price: All Groups Index Number Sydney as published by the Australian Bureau of Statistics. In this definition:

- (a) the reference to the Consumer Price: All Groups Index Number Sydney means:
 - (i) the same numbers but with different names at any time; and
 - (ii) the same numbers adjusted mathematically to take account of a change at any time in the base period provided that indices of the same base year are used throughout the calculation; and
- (b) the reference to the Australian Bureau of Statistics includes a reference to:
 - (i) the Australian Bureau of Statistics but with a different name at any time; and
 - (ii) a Governmental Agency in Australia (in the absence of the Australian Bureau of Statistics) at any time having similar functions.

CPI Multiplier at any time means:

- (a) the CPI for the most recent March Quarter at that time, divided by,
- (b) the CPI for the March Quarter 2012.

Cure Period has the meaning given to it in clause 21.3(b)(iii).

Cure Plan has the meaning given to it in clause 21.2(a)(iii)(B).

Current Accounting Practice means accounting principles and practices applying by Law or otherwise generally accepted in Australia consistently applied.

Current Ticketing System means the manual and automated ticketing system, revenue management system and retail agent network supplied and operated for ferry services in Sydney and which includes the ability to deal with certain multimodal products and services, whether mobile or fitted at Wharves.

Customer Experience Plan means the Operator's written and electronic plan for management of customer experience issues, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2.

Dealing has the meaning given to it in clause 23.5(c).

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

Defaulting Party has the meaning given to that term in clause 9.6.

Direct Agreement means, for a Key Contract, an agreement between the Director-General and some or all of the parties to the Key Contract entered into or to be entered into under clause 34.5(a).

Director-General means the Director-General of the Department of Transport or the person acting in such position from time to time and includes the nominees or delegates of the Director-General.

Director-General's Associates means Transport for NSW, the Minister for Transport, the Minister for Roads and Ports, Roads and Maritime Services, the Lessor, the State or any employee, agent, representative, contractor, consultant, delegate or adviser of, or to, the Director-General or those entities or persons.

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

- (a) the request for tender documents for the Ferry Services and any information issued or disclosed in connection with the request for tender process;
- (b) all discussions and negotiations between the Director-General and the Director-General's Associates on the one hand, and the Operator and the Operator's Associates, on the other hand, relating directly or indirectly to this Contract or any other Transaction Document; and
- (c) any other information disclosed to the Operator or an Operator's Associate or any person acting on their behalf by the Director-General or a Director-General's Associate or any person acting on their behalf or which is otherwise acquired by, or comes to the knowledge of, the Operator or an Operator's Associate or any person acting on their behalf 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.

Dispute has the meaning given to it in clause 31.1.

Electronic Ticketing Operator Agreement means a Phase 2 memorandum of understanding between the Operator and the Director-General, the Director-General's nominee or a Director-General's Associate in respect of the delivery of the Electronic Ticketing System Project, substantially on similar terms as the pro-forma agreement entitled "Operator Agreement: Phase 2: ETS Delivery Memorandum of Understanding" set out in Annexure D.

Electronic Ticketing System Project means the electronic ticketing system project for the Greater Sydney region proposed to be implemented by the Director-General or any of the Director-General's Associates on a date to be notified to the Operator by any of those parties and as the project is defined in that notice.

Electronic Ticketing System means the electronic ticketing system to be implemented under the Electronic Ticketing System Project.

Emergency Replacement Ferry has the meaning given to it in clause 13.4(a).

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

- (a) the date which is twelve months prior to the date of expiry of the Term (ignoring for this purpose, the possibility of extension or early termination); and
- (b) the date on which the Director-General notifies the Operator of a Termination Event, and ending on the Termination Date.

Environment means components of the earth, including:

- (a) land, air and water; and
- (b) any layer of the atmosphere;
- (c) any organic or organic matter any living organism; and
- (d) human-made or modified structures and areas,
- (e) and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

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

Environmental Law means a Law regulating or otherwise relating to the Environment, including land use, planning, pollution of the atmosphere, water or land waste, the storage and handling of chemicals, Hazardous Substances, or any other aspect of protection of the Environment.

Environmental Plan means the Operator's written and electronic plan for management of environmental issues relating to the Ferry Operations, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2.

Equipment means all items of movable plant and equipment used in the conduct of the Ferry Operations.

Existing Ferry System Contract means the contract entitled '*Ferry System Contract*' between the Director-General and Sydney Ferries relating to the provision of Regular Ferry Services on Sydney Harbour.

Expenditure has the meaning given to it in clause 19.2(a).

Fare means the price payable for a Ticket.

Fare Revenue means the sum of revenue from Fares.

Ferry has the meaning given to it in the PT Act.

Ferry Employees means employees of the Operator employed during the Term.

Ferry Inspection Report means the most recent In-Survey certificate issued by Roads and Maritime Services for each Contract Ferry prior to the Service Commencement Date.

Ferry Laws means all Laws affecting the provision of the Ferry Operations, including the PT Act, the TA Act and the MS Act.

Ferry Operations means the business of:

- (a) providing the Ferry Services (excluding any other use);
- (b) the operation and maintenance of the assets used in the provision of the Ferry Services; and

(c) any business or activity associated with the activities described in paragraphs (a) and (b), to be conducted by the Operator on and from the Service Commencement Date.

Ferry Operations IP means all the Intellectual Property (whether owned by the Operator or used under licence) used, required or developed in connection with the Ferry Operations.

Ferry Services means the Regular Ferry Services carried on by the Operator on the Routes and in accordance with the Contract Service Plan as modified under this Contract.

Financial Default means a failure by a party to pay when due any money which that party is obliged to pay to another party to a Transaction Document.

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

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

Financial Records has the meaning given to it in Schedule 2.

Financial Report has the meaning given to it in Schedule 2.

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

Fixed Contract Payments means the Service Payment and the Vessel Lease Payment.

Fleet Procurement Strategy has the meaning given to it in clause 13.7.

FOCIS Agreement means the contract entitled '*Sydney Ferries Ferry Operations and Customer Information System (FOCIS) Agreement*' between Sydney Ferries (its successors or assigns) and Thales Australia Limited, as amended or replaced from time to time.

FOCIS Assets means the ferry operations and customer information system and assets which includes the hardware and software solution provided under the FOCIS Agreement.

FOCIS Modification means any change, supplement, modification, upgrade, replacement, removal or decommissioning of any or all of the FOCIS Assets.

Force Majeure Event has the meaning given to it in clause 25.1.

Fuel Cost Payment has the meaning given in paragraph 2.4 of Schedule 1.

Full Fare means the Fare that can be charged to passengers who are not Approved Beneficiaries for a Ticket (as set out in Part 1 of Schedule 3 and varied under clause 10.1).

Full Year Preliminary Report means the report to be provided to the Director-General in the form set out in Annexure B.

Further Term Criteria has the meaning given to it in clause 5.5(b).

General Assets means all Assets other than the Contract Ferries, the Shipyard and the Shipyard Infrastructure.

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 same type of undertaking as that of the Operator under the same or similar circumstances.

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 to it in the GST Act.

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

GST Amount means, in relation to a Taxable Supply, the amount of GST payable on that Taxable Supply, being the Consideration to be provided for the supply under this Contract (other than under clause 9.6) multiplied by the prevailing rate of GST (currently 10%).

GST Group has the meaning given by the GST Act.

Half Year Preliminary Report means the report to be provided to the Director-General in the form set out in Annexure C.

Handover Information has the meaning given to it in clause 34.12.

Hazardous Substance means any substance which is, or may be, hazardous, toxic, dangerous or polluting or which is regulated by any Environmental Law.

Incident means incident which is notifiable to a Safety Authority.

Indemnified Persons has the meaning given to it in clause 30.1(a).

Initial Accessible Transport Action Plan means the initial Accessible Transport Action Plan, as initialled and dated by the parties for identification purposes on the date of this Contract.

Initial Annual Works Plan means the initial Annual Works Plan, as initialled and dated by the parties for identification purposes on the date of this Contract.

Initial Asset Management Plan means the initial Asset Management Plan, as initialled and dated by the parties for identification purposes on the date of this Contract.

Initial Business Plan means the initial Business Plan to be submitted to the Director-General in accordance with clause 8.9(b).

Initial Contract Service Plan means the initial Contract Service Plan to be prepared by the Operator and approved by the Director-General prior to the Service Commencement Date.

Initial Customer Experience Plan means the initial Customer Experience Plan, as initialled and dated by the parties for identification purposes on the date of this Contract.

Initial Environmental Plan means the initial Environmental Plan, as initialled and dated by the parties for identification purposes on the date of this Contract.

Initial Operations Plan means the initial Operations Plan, as initialled and dated by the parties for identification purposes on the date of this Contract.

Initial Plans means the Initial Accessible Transport Action Plan, Initial Annual Works Plan, Initial Asset Management Plan, Initial Business Plan, Initial Contract Service Plan, Initial Customer Experience Plan, Initial Environmental Plan, Initial Revenue Protection Plan, Initial Safety Management Plan, Initial Operations Plan and the Transition Plan.

Initial Safety Management Plan means the Initial Safety Management Plan, as initialled and dated by the parties for identification purposes on the date of this Contract.

Initial Revenue Protection Plan means the initial Revenue Protection Plan, as initialled and dated by the parties for identification purposes on the date of this Contract.

Innocent Party has the meaning given to it in clause 9.6.

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

Insolvency Event means when the Operator:

- (a) stops or suspends payment of all or a class of its debts;
- (b) 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.

In Survey means a Contract Ferry in relation to which Roads and Maritime Services has issued a valid and current certificate of survey.

Intellectual Property has the meaning given to it in clause 27.1.

Interim Operator means any party appointed by the Director-General under this Contract to operate the Ferry Services on a temporary or interim basis after the Termination Date.

Investigation or Prosecution includes:

- (a) any investigation in connection with safety;
- (b) any actual or prospective prosecution in connection with a possible breach of the Safety Laws; and

(c) any coronial inquest.

Invoice has the meaning given to it by the GST Act.

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

Issuer means:

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

ITIS means the centralised Integrated Transport Information Service that communicates and receives data and information in relation to public transport services (including the Ferry Services), through the Transport Info (131500).

Key Contract means an agreement or arrangement (whether legally enforceable or not):

- (a) listed or falling within a category set out in Schedule 9;
- (b) where the term of that agreement or arrangement expires after the seventh anniversary of the Service Commencement Date;
- (c) where the amount payable by the Operator during any 12 month period is more than \$[REDACTED]; or
- (d) which is designated as a Key Contract under clause 34.5(a).

Key Result Area or **KRA** means the KRAs specified in Schedule 4 as amended from time to time.

Land means any land or water on or below the surface of the land and the bed of any water.

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

Lessor means the entity or entities granting the Shipyard Lease and the Bareboat Charterparty.

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).

Maintenance Work means the conduct of activities such as inspection, examination, condition assessment, servicing, adjustments, alterations, additions, repairs, reconditioning, replacement of component parts and modifications.

Mandated Accounting Policies means those accounting policies set out in Schedule 7.

Margin Payment has the meaning given to it in paragraph 2.6 of Schedule 1.

Minimum Superannuation Contributions means [REDACTED]% of the Ordinary Time Earnings (as defined in the *Superannuation Guarantee (Administration) Act 1992* (Cth) as amended from time to time and as interpreted by any applicable rulings made by the Australian Taxation Office) of Transferring Employees referred to in clause 12.4(c) or such higher minimum percentage provided for in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

Minister means the Minister for Transport.

Monthly Payment has the meaning given to it in paragraph 2.1 of Schedule 1.

Monthly Report has the meaning given to it in clause 9.7.

MS Act means the *Marine Safety Act 1998* (NSW).

Narrabeen Docking Contract means the contract to be entered into by Sydney Ferries in relation to the dry docking and repairs to the Commencement Ferry identified as 'Narrabeen' in Schedule 11.

Net Loss or Net Gain means the net loss or the net gain as determined in each case under, and subject to, Schedule 6.

Network Review has the meaning given to it in clause 6.3(a).

Non-Compliance Event has the meaning given to it in clause 21.1(a).

Non-Compliance Notice has the meaning given to it in clause 21.1(b).

NSW Ombudsman means an ombudsman appointed under the *Ombudsman Act 1974* (NSW).

Operational Records has the meaning given to it in Schedule 2.

Operational Report has the meaning given to it in Schedule 2.

Operations Plan means the Operator's written and electronic operations plan for undertaking the Ferry Operations, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2.

Operator Breach means any failure by the Operator to comply with its obligations under this Contract or any other Transaction Document or a Key Contract, and includes any breach of warranty and any failure to meet a Performance Benchmark, but does not include a failure to meet a Performance Benchmark for Performance Indicator 6.

Operator Security Deeds means each of the following general security deeds dated on or about the date of this Contract:

- (a) a general security deed granted by the Operator in favour of the Director-General;
- (b) a general security deed granted by Transfield Services (Sydney Ferries) Pty Ltd ACN 154 815 611 in favour of the Director-General;
- (c) a general security deed granted by Veolia Ferries Sydney Pty Ltd ACN 087 535 224 in favour of the Director-General.

Operator Contamination means any Contamination existing at any time after the Service Commencement Date and prior to the Termination Date other than Sydney Ferries Contamination.

Operator Information means any information or document, including the RFT Response, supplied by the Operator in connection with this Contract or any other Transaction Document.

Operator's Associates means the Operator's employees, officers, agents, contractors, consultants or advisers.

Operator's Records means the Financial Records, the Operational Records, the Handover Information and all other plans and documentation kept in whatever form relating to the Ferry Operations.

Parents means each of:

- (a) Transfield Services Limited ABN 69 000 484 417; and
- (b) Veolia Transport Australasia Pty Ltd ABN 40 079 303 816.

Parent Company Guarantee means a document in the form in Schedule 10.

Partnership means the partnership under the name '*Harbour City Ferries Partnership*' constituted by the Partners.

Partnership Agreement means the agreement titled '*Harbour City Ferries Partnership Agreement*' between Harbour City Ferries Pty Ltd, Veolia Ferries Sydney Pty Ltd and Transfield Services (Sydney Ferries) Pty Ltd constituting the Partnership between the Partners dated 20 April 2012.

Peak Period means for each Route, each period identified as such for that Route in the Contract Service Plan.

Performance Benchmark means a performance standard determined for a Performance Indicator as set out in Schedule 4 as amended and updated from time to time in accordance with clause 7.1A.

Performance Bond means an irrevocable bank guarantee, letter of credit or insurance bond callable by and in a form approved by the Director-General which meets the criteria set out in clause 28.1.

Performance Bond Amount means:

- (a) at the date of this Contract, \$ [REDACTED]; and
- (b) at each Trigger Date, \$ [REDACTED] multiplied by the CPI Multiplier as at the Trigger Date.

Performance Indicator means a performance indicator for a KRA as set out in Schedule 4.

Performance Review has the meaning given to it in clause 8.7(a).

Permitted Security Interest means:

- (a) each Operator Security Deed or any collateral security relating to it; or
- (b) each Specific Security Deed or any collateral security relating to it; or
- (c) a Security Interest created or outstanding with the prior consent of the Director-General; or
- (d) a lien or charge:
 - (i) which arises by operation of law or which is in favour of a repairman, workman, storeman or contractor and which arises in the ordinary course of business;
 - (ii) maritime liens on a Contract Ferry for current Master's, officers' or crew wages outstanding in the ordinary course of trading and any lien for salvage or general usage;
 - (iii) statutory liens arising out of any other claim against a Contract Ferry where the liability for such claims is covered by the insurances required to be maintained under this Contract, or where a bond or other counter-security has been posted as security for the full value of the relevant claim; and
 - (iv) under which the indebtedness secured by it is not overdue for payment by more than one month or is being contested in good faith;
- (e) a Security Interest in favour of a Governmental Agency securing public statutory obligations as long as there is no default in payment of the amount secured or the payment of the amount secured is being contested in good faith; or
- (f) any netting or set-off arrangements entered into by the Operator in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances.

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

Planned Service Commencement Date means 28 July 2012.

Plans means each of the following plans:

- (a) the Accessible Transport Action Plan;
- (b) the Annual Works Plan;
- (c) the Asset Management Plan;
- (d) the Business Plan;
- (e) the Contract Service Plan;
- (f) the Environmental Plan;
- (g) the Customer Experience Plan;
- (h) the Revenue Protection Plan;
- (i) the Safety Management Plan; and
- (j) the Operations Plan.

Pollution means water, air, noise or land pollution.

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

PPS Law means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

PPS Regulations means the *Personal Property Securities Regulations 2010* (Cth).

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

Pre Existing Superannuation Fund means a superannuation fund (including defined benefit schemes) of which a Transferring Employee was a member immediately prior to the Service Commencement Date.

Premises means the Shipyard and any other premises leased, licensed or occupied by the Operator for use in connection with the Ferry Operations.

Principal Contractor has the same meaning as that contained in the Safety Laws.

Priority Access Wharves means the Wharves identified as such in Attachment A to Schedule 12.

Privacy Laws means:

- (a) in respect of the Operator, the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth), the *Health Records and Information Privacy Act 2002* (NSW) and any other Law regulating the privacy of information; and
- (b) in respect the Director-General, the *Privacy and Personal Information Protection Act 1998* (NSW).

Probity and Process Deed means the deed of that name between the Director-General and the Operator dated 14 October 2011.

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

PT Regulations means the *Passenger Transport Regulation 2007* (NSW).

Public Holiday means a day that is appointed as a public holiday in New South Wales.

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.

Ramp Refurbishment Contract means the contract to be entered into by Sydney Ferries in relation to the refurbishment of hydraulic ramps at Circular Quay Wharf 3 and Manly Wharf (west):

- (a) with a contractor selected by Sydney Ferries; and
- (b) with Macartney Engineering Consultants Pty Ltd.

Recipient has the meaning given to it in the GST Act.

Recipient Party has the meaning given to it in clause 32.1.

Regular Ferry Service has the meaning given to 'regular ferry service' in the PT Act.

Related Entity has the meaning given to it in the Corporations Act.

Related Party Arrangement has the meaning given to it in clause 34.4(a).

Relevant Amount has the meaning given to it in clause 28.6(c).

Relevant Leave means the annual leave, extended/long service leave, accumulated days off (including public holiday leave), leisure leave and maritime leave.

Reporting Period means each calendar month which commences or ends during the Term and:

- (a) in the case of the first Reporting Period, is the period from the Service Commencement Date to the end of the month in which the Service Commencement Date occurs; and
- (b) in the case of the last Reporting Period during the Term, is the period from the commencement of the calendar month during which this Contract terminates or expires and ending on the Termination Date.

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

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

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

Retendering Purpose has the meaning given to it in clause 35.1.

Revenue has the meaning given to it in clause 9.4.

Revenue Hours has the meaning given to it in Schedule 1.

Revenue Protection Plan means the Operator's written and electronic plan and strategy for the collection, protection and remitting of Fare Revenue, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2.

RFT Response has the meaning given to it in the Probity and Process Deed.

Roads and Maritime Services means the New South Wales Governmental Agency of the same name constituted under the TA Act, its successors and assigns.

Route means each in service route joining two or more Wharves as shown on the map in the Contract Service Plan, as amended under clause 18.

Safety Authority includes Safe Work Australia, the WorkCover Authority, the Office of Transport Safety Investigations and any other relevant authority under the Safety Laws.

Safety Laws means:

- (a) sections 46A, 53C, 53D of the PT Act and regulation 213 of the PT Regulations;
- (b) the MS Act, *Navigation Act 1901* (NSW), *Maritime Services Act 1935* (NSW) and the regulations made under that legislation;
- (c) the *Occupational Health and Safety Act 2000* (NSW) and the regulations made under that legislation; and
- (d) the *Work Health and Safety Act 2011* (NSW) and the regulations made under that legislation (the *Work Health and Safety Regulations 2011* (NSW)).

Safety Management Plan means the Operator's written and electronic plan for management of safety, prepared and submitted under clause 8.9 and containing the matters required by Schedule 2

Security Interest means any:

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

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

Service Commencement Date means the date specified as such in the Certificate of Service Commencement.

Service Improvement Projects means such work or activity as the Director-General may determine under clause 22 that the Operator must undertake from time to time in connection with the Performance Benchmarks.

Service Improvement Project Retention Account means the account established by the Director-General for the purposes of clause 22 which will:

- (a) be with a retail bank, the holder of a current licence issued by APRA and with the Required Rating;
- (b) have as sole signatories persons nominated by the Director-General; and
- (c) be interest bearing and on call within 24 hours notice.

Service Payment has the meaning given to it in paragraph 2.2 of Schedule 1.

Service Planning Guidelines means the guidelines described as such prepared by the Director-General.

Shipyard means the premises the subject of the Shipyard Lease and which are known as the Balmain Shipyard.

Shipyard Fuel Tanks means the fuel tanks at the Shipyard.

Shipyard Infrastructure has the meaning given to that term in the Shipyard Lease.

Shipyard Lease means the premises and infrastructure lease between the Lessor and the Operator dated on or about the date of this Contract.

Site Contamination has the meaning given to it in clause 14.4(e).

Spares means rotables, parts and components of Contract Ferries that are required as part of, or for the purpose of carrying out, Maintenance Work in relation to any aspect of the Ferry Operations.

Specific Security Deeds means each of the following specific security deeds dated on or about the date of this Contract:

- (a) a specific security deed under which Transfield Services (Holdings) Pty Limited ACN 093 114 535 grants to the Director-General a Security Interest in all of the share capital of Transfield Services (Sydney Ferries) Pty Ltd ACN 154 815 611 ;
- (b) a specific security deed under which Veolia Transport Australasia Pty Ltd ABN 40 079 303 816 grants to the Director-General a Security Interest in all of the share capital of Veolia Ferries Sydney Pty Ltd ACN 087 535 224;
- (c) a specific security deed under which Transfield Services (Sydney Ferries) Pty Ltd ACN 154 815 611 grants to the Operator a Security Interest in all of its share capital in the Operator;
- (d) a specific security deed under which Veolia Ferries Sydney Pty Ltd ACN 087 535 224 grants to the Operator a Security Interest in all of its share capital in the Operator.

Staff means all persons engaged in or in connection with the Ferry Operations including:

- (a) officers, employees, agents of the Operator;
- (b) contractors and subcontractors (whether engaged directly by the Operator or otherwise) and their officers, employees and agents;
- (c) persons seconded to the Operator.

State means the State of New South Wales.

Step-in Costs means:

- (a) the Losses of any Step-in Party in exercising the Step-in Powers; and
- (b) the Losses of the Director-General and the Director-General's Associates incurred in engaging a Step-in Party including any transaction costs and the costs of any consultants and advisers engaged in connection with the appointment of the Step-in Party.

Step-in Notice has the meaning given to it in clause 23.1.

Step-in Party means the Director-General or his agent, attorney or nominee, and may be more than one person appointed to act jointly.

Step-in Period means the period from the date that a Step-in Party is appointed to the effective date set out in a Step-out Notice.

Step-in Powers means the Powers referred to in clause 23.2.

Step-in Rights means the rights of a Step in Party to exercise the powers under clause 23.1.

Step-out Notice means a notice given by the Director-General to the Operator under clause 23.6.

Subcontractor's Statement means the form prescribed for the purposes of section 175B of the *Workers Compensation Act 1987* (NSW), sections 17 to 20 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) or such other form of statement determined by the Director-General.

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

Sydney Ferries means the New South Wales Governmental Agency of the same name constituted under the TA Act.

Sydney Ferries Contamination means any Contamination existing prior to the Service Commencement Date.

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

Taxable Supply has the meaning given to it in the GST Act.

Tax Invoice has the meaning given to it in the GST Act.

Temporary Measures means temporary measures taken to alleviate the impact or effect of the Non-Compliance Event pending a permanent cure being achieved.

Termination Date means the effective date of termination of this Contract set out in a valid Termination Notice or the scheduled expiry date of this Contract (as extended under clause 5.4 if relevant), whichever is applicable.

Termination Event means any of the events listed in clause 24.1.

Termination Notice has the meaning given to it in clause 24.2.

Term means the term of this Contract set out in clause 5.3.

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

Ticketing Assets means those elements of the Current Ticketing System forming the subject matter of the Ticketing Contracts.

Ticketing Contracts means:

- (a) the contract entitled '*AFC Equipment Maintenance Contract*' between Sydney Ferries and ERG Systems Limited;
- (b) the CON2006-1306 – Contract for the Supply of Magnetic Stripe Tickets between Sydney Ferries and Magnadata Pty Limited; and
- (c) any other maintenance contract entered into by the Director-General or a Director-General Associate in relation to the Ticketing Assets.

Ticketing Modification means any change, supplement, modification, upgrade, replacement, removal or decommissioning of any or all of the Ticketing Assets or any other element of the Current Ticketing System.

Timetable means each timetable prepared and submitted to the Director-General under clause 6.

Timetable Specification means a document identifying key service delivery elements including the span of hours, service frequencies and locations to be served.

Transaction Documents means:

- (a) this Contract;
- (b) the Wharf Access Deed;
- (c) the Shipyard Lease;
- (d) the Bareboat Charterparty;
- (e) the Operator Security Deeds;
- (f) the Specific Security Deeds;
- (g) the Transitional Agreement;
- (h) the Electronic Ticketing Operator Agreement and any other agreement entered into by the Operator under clause 10.9 in relation to the Electronic Ticketing System Project; and
- (i) any other document or agreement that the Director-General and the Operator agree is to be a Transaction Document for the purpose of this Contract.

Transfer Date means:

- (a) if this Contract terminates by expiry, the day the Term expires; or
- (b) if this Contract terminates other than by expiry, the day falling no later than 45 Business Days after the Termination Date.

Transferee has the meaning given to it in clause 35.11.

Transfer Time means 3.00 am on the Transfer Date.

Transition Costs means the following costs, charges and expenses arising as a result of any of the matters listed in clauses 30.1(a)(i) to (v):

- (a) all reasonable costs, charges and expenses of any Successor Operator (or nominee of the Director-General) or Interim Operator, receiver, receiver and manager, agent, attorney or nominee appointed by the Director-General to operate any or all of the Ferry Operations until the earlier to occur of the appointment of a Successor Operator or the Termination Date;
- (b) the Director-General's and the Director-General's Associates' reasonable costs, charges and expenses incurred in engaging a Successor Operator (or nominee of the Director-General) or Interim Operator, including any re-tender and transaction costs and the costs of any consultants and advisers engaged in connection with the appointment of the Successor Operator; and
- (c) all reasonable costs, charges and expenses of the Director-General or any Successor Operator (or nominee of the Director-General) or Interim Operator meeting any arrears under any Transaction Document.

Transition Plan means the Operator's written and electronic operations plan for transitioning the Ferry Operations from Sydney Ferries to the Operator, as initialled and dated by the parties for identification purposes on the date of this Contract.

Transitional Agreement means the agreement of that name between the Director-General and the Operator dated on or about the date of this Contract.

Transport for NSW means the New South Wales Governmental Agency of the same name constituted under the TA Act, its successors and assigns.

Transport Info (131500) means the ITIS service, operated by the Transport Info 131500 Operator, providing information on public transport services.

Transport Info (131500) Operator means the operator from time to time of Transport Info (131500).

Trigger Date means for a Performance Bond, the date falling six months prior to the expiry of that Performance Bond.

Unsatisfactory Performance has the meaning given to it in clause 22.

Variable Contract Payments means the Contract Service Plan Amendment Amount, Fuel Cost Payment and Margin Payment.

Viability Review has the meaning given to it in clause 8.7(c).

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

Wharf means a wharf:

- (a) at which a Contract Ferry is capable of stopping to pick up or set down passengers;
 - (b) whether fixed or floating, permanent or temporary;
- and
- (c) which is identified in Attachment 1 to Schedule 12; or
 - (d) which the Operator may use from time to time with Agreement from the Director-General.

Wharf Access Deed means the deed of that name entered into between Roads and Maritime Services and the Director-General.

Wharf Access Deed Schedule means Schedule 12 of this Contract.

Wharf Rules has the meaning given to it in the Wharf Access Deed.

Wharf Upgrade Program has the meaning given to it in clause 17.3(a).

1.2 Interpretation

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

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause, Schedule or Annexure is a reference to a clause of, or a schedule or annexure to, this Contract and a reference to this Contract includes all Schedules or Annexures to it, and references to paragraphs are references to paragraphs within the clause of this Contract in which they are situated, in each case unless expressly stated otherwise;

- (f) a reference to an agreement or document (including a reference to this Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other agreement or document;
- (g) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;
- (h) a reference to a party to this Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (j) a reference to conduct includes, an omission, statement or undertaking, whether or not in writing;
- (k) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (l) a reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (m) a reference to any governmental department or professional body includes the successors of that body;
- (n) a reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- (o) a reference to a month or to a year is to a calendar month or a calendar year;
- (p) a reference to dollars or \$ is a reference to Australian currency;
- (q) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (r) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (s) nothing in this Contract is to be interpreted against a party solely on the ground that the party put forward this Contract or any part of it;
- (t) the terms 'subsidiary', 'control', 'related entity', 'body corporate' and 'associate' have the meanings given to those terms in the Corporations Act;
- (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) a reference to the words 'include', 'includes' and 'including' means 'including without limitation';

- (w) where a word or phrase is defined, any other capitalised grammatical form of that word or phrase has a corresponding meaning;
- (x) unless a contrary intention appears expressly, the term 'may' when used in the context of a Power of the Director-General means that:
 - (i) the Director-General can exercise or not exercise that Power in his absolute and unfettered discretion;
 - (ii) the Director-General has no obligation to the Operator or any other party in connection with the exercise or non-exercise of 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.
- (y) where a Power is conferred on the Director-General under any Transaction Document, that Power is in addition to, and not in substitution of, any other Power conferred on the Director-General at law or under that or any other Transaction Document; and
- (z) if any amount under this Contract is payable on a day that is not a Business Day, it will instead be payable on the preceding Business Day.

1.3 Consents or approvals

- (a) If the doing of any act, matter or thing under this Contract is dependent on the consent or approval of the Director-General or is within the discretion of the Director-General, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Director-General in his sole and absolute discretion (unless an express provision to the contrary has been made) and clause 1.2(x) will apply.
- (b) Without limitation, the Director-General will not be acting unreasonably if, in giving or withholding any approval or consent, or in imposing any conditions, the Director-General:
 - (i) acts in accordance with relevant government policies;
 - (ii) adopts a 'whole of government' approach; or
 - (iii) acts to protect the reputation of Transport for NSW or the State.
- (c) The Operator acknowledges that the Director-General, in granting any approval, consent or endorsement, will not assume any duty of care, responsibility or liability of any kind to the Operator or any other person and will not be taken to have agreed that any matter the subject of any approval, consent or endorsement is in compliance with the Transaction Documents.

1.4 Director-General's Capacity

The Director-General enters into this Contract for and on behalf of Transport for NSW pursuant to the PT Act and an obligation or Power of the Director-General under this Contract is an obligation or Power of the Director-General in that capacity.

1.5 Delegation

- (a) The Director-General may delegate any Power, function or responsibility that the Director-General has under the Transaction Documents to any person.
- (b) Any such delegation may be:
 - (i) revoked, changed or delegated;

- (ii) limited or may be subject to such conditions as the Director-General determines from time to time; and
 - (iii) in favour of a nominated person or in favour of the holder of a nominated office or position from time to time.
- (c) The Operator may request from the Director-General details of the delegation of any Power, function or responsibility by the Director-General under the Transaction Documents where a person purports to be acting under such a delegation. Once the Operator obtains such details from the Director-General, it may rely on them unless and until given notice of revocation of that delegation.
- (d) If the Director-General delegates any Power, function or responsibility under the Transaction Documents, the Director-General must give notice of such delegation to the Operator (including the address of any person, or the description of the office or position, to whom such Power, function or responsibility is delegated). Where the Director-General has given such notice, the Operator may rely upon such notice unless and until given notice of revocation of that delegation.
- (e) If the Director-General does not give notice to the Operator under clause 1.5(d) of the delegation of any Power, function or responsibility under the Transaction Documents, this does not affect the delegation of the Power, function or responsibility or the exercise of it by the person to whom it is delegated.
- (f) Any person, or the holder of any office or position, to whom a Power, function or responsibility is delegated by the Director-General has, to the extent of that delegation and subject to compliance with the terms and conditions of that delegation, full power and authority to act for and on behalf of and to bind the Director-General under the Transaction Documents.

1.6 Exercise of function

- (a) The Operator acknowledges and agrees that the Director-General, in performing any of his duties and obligations, is not obliged to exercise any Power, function or duty within the responsibility of any other Governmental Agency, or to influence, override or direct any other Governmental Agency in the proper exercise of its legal duties and functions.
- (b) If the Director-General is required under the terms of this Contract to exercise best or reasonable endeavours, the Operator acknowledges that the Director-General in so acting does not agree to:
- (i) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (ii) exercise a power or discretion or otherwise act in a manner that he regards as not in the public interest; or
 - (iii) develop policy or legislate by reference only to or predominantly in the interests of the Contract Objectives.

1.7 No implied duty of good faith

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

1.8 No fetter on Director-General's powers

- (a) Subject to clause 1.8(b), no Transaction Document unlawfully restricts or otherwise affects the Director-General's unfettered discretion to use his statutory powers.
- (b) The Director-General acknowledges and agrees that clause 1.8(a) does not limit the Director-General's obligations under a Transaction Document.

1.9 Transfer of Functions

- (a) The Operator acknowledges that the Director-General may be reconstituted, renamed or replaced and that some or all of the Powers of the Director-General may be transferred to or vested in another entity.
- (b) If the Director-General is reconstituted, renamed or replaced or if some or all of the Director-General's Powers are transferred to or vested in another entity, references in the Transaction Documents to the Director-General must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those Powers.
- (c) For the purposes of this clause 1.9, another entity means a Governmental Agency.

1.10 Priority of Interpretation

- (a) If there is any inconsistency between a provision of a Transaction Document and a provision of the PT Act, the PT Act will prevail.
- (b) If there is any inconsistency:
 - (i) within the provisions of a Transaction Document, the provision which imposes the higher standard on the Operator will prevail; and
 - (ii) between the provisions of any two or more Transaction Documents, the Transaction Documents will be given priority in interpretation in the following order to the extent of any inconsistency:
 - (A) this Contract;
 - (B) the Wharf Access Deed;
 - (C) the Shipyard Lease;
 - (D) the Bareboat Charterparty;
 - (E) the Operator Security Deeds;
 - (F) the Specific Security Deeds;
 - (G) the Electronic Ticketing Operator Agreement and any other agreement entered into by the Operator under clause 10.9 in relation to the Electronic Ticketing System Project; and
 - (H) any other document or agreement that the Director-General and the Operator agree is to be a Transaction Document for the purpose of this Contract.

1.11 No rights or expectations

Nothing in this Contract or any other Transaction Document:

- (a) imposes any obligation on either the Director-General or the Operator to agree the terms of a new service contract as a result of participating in negotiations under clause 5.5;
- (b) is to be construed as affording a right or expectation of renewal of this Contract;

- (c) affects the Operator's obligation to comply with the Transaction Documents during and after any negotiation period under clause 5.5; or
- (d) affects the Director-General's right at any time to invite contracts by tender or in such other manner as the Director-General determines for Regular Ferry Services (including on the Routes).

1.12 Joint and several liability of the Operator, the Partners and the Partnership

- (a) The Operator enters into this Contract in its personal capacity and as nominee for each of the Partners and the Partnership. References to the Operator in this Contract include the Operator in those capacities, the Partnership and the Partners.
- (b) The obligations, undertakings, representations, warranties, indemnities and liabilities of the Operator are given and assumed jointly and severally by each of the Operator, the Partners and the Partnership. They bind each of the Operator, the Partners and the Partnership jointly and severally.
- (c) Any notice, consent, approval, waiver, acknowledgement, representation, warranty, nomination, agreement or similar act or thing given by or to the Operator under or in connection with this Contract binds the Operator, each of the Partners and the Partnership and is deemed to have been given by or to the Operator, each of the Partners and the Partnership.
- (d) This Contract continues to bind each of the Operator, the Partners and the Partnership despite the dissolution or change at any time in the constitution of the Partnership.
- (e) The Director-General may conclusively rely on any conduct or document of or signed by the Operator as being authorised by and binding on each of the Operator, the Partners or the Partnership without the need for further enquiry.

2. Contract Objectives

- (a) The Operator acknowledges that:
 - (i) the primary purpose of this Contract is to ensure that the Ferry Services are run by an efficient and experienced public transport operator, which is able to sustain improvements in service delivery and value for money and assist the Director-General in developing longer term service expansion and fleet procurement strategies; and
 - (ii) the Director-General's principal objectives (**Contract Objectives**) in entering into this Contract are to:
 - (A) ensure the Operator is focused on the delivery of safe, reliable and customer focused ferry services;
 - (B) promote improved performance, sustained over the term of the Contract, in relation to the safety, reliability, service quality and value for money priorities reflected in the Performance Benchmarks;
 - (C) promote transparent reporting of the Operator's performance to drive service improvements;
 - (D) facilitate the development of long term network improvement and fleet replacement strategies;

- (E) promote practical initiatives to support the coordination and planning of Ferry Services as part of an integrated public transport network;
 - (F) recognise the importance of the Ferry Services to both commuters and tourist/leisure users;
 - (G) provide an opportunity to expand the Ferry Services and enable further private sector involvement on potential additional routes on a cost-neutral basis to Government;
 - (H) promote the delivery of the Director-General's wider public transport priorities, particularly in relation to passenger information, ticketing and model coordination initiatives and wharf development; and
 - (I) ensure transparent and viable funding arrangements that provide value for money to the Director-General.
- (b) The Operator must perform its obligations under the Transaction Documents having regard to the Contract Objectives.

3. Contract risks

Except to the extent that a Transaction Document to which the Director-General and the Operator are parties expressly provides otherwise, as between the Director-General and the Operator, the Operator must bear all risks and costs of conducting the Ferry Operations and otherwise complying with its obligations under the Transaction Documents, including:

- (a) the provision of the Ferry Services; and
- (b) the maintenance of the Assets.

4. Conditions

4.1 Conditions Precedent

- (a) This Contract (other than this clause 4 and clauses 1, 26, 30.5, 31, 32, 33 and 36 to 39 inclusive) is conditional on the satisfaction (or waiver by the Director-General) of the following conditions precedent:
- (i) receipt by the Director-General of:
 - (A) a counterpart of a Parent Company Guarantee executed by each Parent;
 - (B) an executed copy of the Bareboat Charterparty;
 - (C) an executed copy of the Shipyard Lease;
 - (D) an executed counterpart of each Operator Security Deed;
 - (E) an executed counterpart of each Specific Security Deed;
 - (F) all documents and information required under the Wharf Access Deed to enable a licence to be granted to the Operator pursuant to clause 17;
 - (G) evidence to the reasonable satisfaction of the Director-General that the Operator has obtained the insurances required by clause 28;
 - (H) evidence that the Operator and the Staff hold the necessary Authorisations;
 - (I) the Performance Bond;

- (J) the Director-General having received evidence satisfactory to him of due execution of the documents referred to in clauses 4.1(a)(i)(A), (B), (C), (D) and (E) above by each party to it including, if such party is not an Australian entity, a legal opinion in form and substance, and issued by a law firm, acceptable to the Director-General; and
 - (K) each of the Initial Plans (except for the Initial Business Plan), which must be initialled and dated by the parties for identification purposes;
- (ii) the Director-General being satisfied that the Operator has received cash of an amount not less than \$ [REDACTED] from the issue and subscription for the shares in the Operator;
 - (iii) termination or expiry of the Existing Ferry System Contract; and
 - (iv) upon the satisfaction (or waiver) of the last of the conditions precedent in clauses 4.1(a)(i) and 4.1(a)(ii), the Operator issuing to the Director-General a certificate to the effect that no event or matter has occurred or arisen which is or ought to be notified to the Director-General under clause 26.3 and which, if it had been known to the Director-General before signing this Contract would, in the Operator's reasonable opinion, have resulted in the Director-General not entering into this Contract with the Operator or entering into this Contract on materially different terms.
- (b) The Director-General may not waive satisfaction of the conditions precedent in clauses 4.1(a)(i)(B) and 4.1(a)(i)(C) without the prior consent of the Operator (not to be unreasonably withheld).

4.2 Certificate of Actual Service Commencement

- (a) As soon as reasonably practicable after the Director-General is satisfied that each of the conditions in clause 4.1 has been satisfied (or waived by (subject to clause 4.1(b)) the Director-General), the Director-General will issue to the Operator a Certificate of Service Commencement specifying the Service Commencement Date.
- (b) The Service Commencement Date will be a date on or after the Planned Service Commencement Date (unless the parties agree otherwise).

4.3 Commitment to Satisfy Conditions Precedent

The Operator must use reasonable endeavours to satisfy or procure the satisfaction of the conditions in clause 4.1 by the Planned Service Commencement Date.

4.4 Consequences of Non Fulfilment of Conditions Precedent

- (a) Subject to clause 4.4(b), if the Certificate of Service Commencement has not been issued on or before the date that is 40 Business Days after the date of this Contract (or on any later date notified in writing to the Operator by the Director-General), the Director-General may terminate this Contract by notice in writing to the Operator with immediate effect and:
 - (i) this Contract will be of no further effect; and
 - (ii) afterwards no party will have any other rights or obligations under it, except under clauses 1, 4.5, 26, 30.5, 31, 32, 33 and 36 to 39 inclusive, which survive termination and in respect of any obligations arising or rights accrued as a result of a breach of this Contract.

- (b) The Director-General may not invoke clause 4.4(a) to the extent that the failure to satisfy the conditions precedent in clause 4.1(a)(i)(B) or 4.1(a)(i)(C) is attributable to a failure by the Director-General to satisfy those conditions precedent.

4.5 Conditions Precedent Bond

- (a) The Operator must, on or before the date of this Contract, procure the issue to the Director-General of a Conditions Precedent Bond which:
- (i) is issued by an Issuer with a Required Rating and approved by the Director-General (which approval must not be unreasonably withheld);
 - (ii) has a face amount of \$ [REDACTED];
 - (iii) expires no earlier than [REDACTED]; and
 - (iv) is payable at an office of the Issuer in Sydney.
- (b) Subject to clause 4.5(c), the Director-General must return the Conditions Precedent Bond to the Operator within 5 Business Days of the Director-General issuing the Operator with a Certificate of Service Commencement under clause 4.2(a).
- (c) The Director-General may make a demand under the Conditions Precedent Bond for an amount up to and including the entire amount of the Conditions Precedent Bond if the Director-General considers:
- (i) that the Operator is in breach of clause 32;
 - (ii) the Operator is seeking to introduce, either formally or informally, whether in writing or otherwise, any variations or additions to the Transaction Documents which were not specifically identified and agreed in writing by the Director-General as at the date of this Contract; or
 - (iii) the Operator has failed to satisfy one or more of the Conditions Precedent in clause 4.1 or has failed to comply with its obligations in clause 4.3, except where such failure arises from a third party failing to enter into a document required by clause 4.1(a) and where the Operator has used reasonable endeavours to procure the execution of the required document by such third parties.
- (d) The Operator must not take any steps to injunct or otherwise restrain:
- (i) any Issuer of the Conditions Precedent Bond from making a payment to the Director-General pursuant to the Conditions Precedent Bond;
 - (ii) the Director-General from taking any steps for the purpose of making a demand under the Conditions Precedent Bond or receiving a payment pursuant to the Conditions Precedent Bond; or
 - (iii) the Director-General from using any money received under the Conditions Precedent Bond.
- (e) The Operator acknowledges and agrees that it will not be entitled to make any claim against the Director-General for any Loss incurred by the Operator or any of the Operator's Associates arising out of or in connection with the Director-General drawing on the Conditions Precedent Bond in circumstances permitted by this clause.

5. Provision of Ferry Services

5.1 Obligation to provide

The Operator must provide the Ferry Services and conduct the Ferry Operations in accordance with, and subject to, the terms of the Transaction Documents for the Term.

5.2 No exclusivity

Nothing in the Transaction Documents confers on the Operator any proprietary right in the Routes or any exclusive right to provide the Ferry Services.

5.3 Term

This Contract commences on the Service Commencement Date and (subject to early termination under clause 24.2 or extension under clause 5.4) expires 27 July 2019.

5.4 Extension by the Director-General

The Director-General may extend the Term on substantially the same terms as this Contract on one or more occasions by giving the Operator at least 3 months' prior written notice on each occasion provided that the aggregate of all extensions does not exceed 12 months.

5.5 New Contract

- (a) The Director-General may undertake any new procurement process and may in his sole and absolute discretion offer to negotiate with the Operator a new service contract to take effect from the expiry of the Term.
- (b) In exercising the discretion whether to invite the Operator under clause 5.5(a), the Director-General may in his sole and absolute discretion take into account the Further Term Criteria. The Further Term Criteria are:
 - (i) that there have been no Termination Events during the Assessment Period;
 - (ii) that any Non-Compliance Event during the Assessment Period has been remedied to the satisfaction of the Director-General;
 - (iii) that the Operator continues to hold all Authorisations required to conduct the Ferry Operations; and
 - (iv) the Operator's performance in relation to the measurement of the Performance Benchmarks identified in Schedule 4 as relevant to this clause 5.5.

6. Contract Service Plan, Annual Timetable Review, Network Review and Approval for Service Changes

6.1 Contract Service Plan

- (a) The Operator must have a Contract Service Plan, approved by the Director-General, at all times during the Term.
- (b) The Initial Contract Service Plan must be implemented and complied with by the Operator from the Service Commencement Date until it is updated under clause 6.2(d) or clause 18.

6.2 Annual Timetable Review

- (a) The Director-General will conduct an annual review of the Timetable (**Annual Timetable Review**) and will subsequently produce a Timetable Specification. The Operator will be required to convert the Timetable Specification into a Timetable to be submitted for approval by the Director-General.
- (b) The Operator must cooperate with the Director-General in the Annual Timetable Review process. The Director-General must consult with the Operator in determining timing for

the review, which will take into account the review, consultation, specification, timetabling, approval and public notification procedures to be undertaken so as to enable any agreed changes to the Timetable to take effect from 1 December in the same Contract Year.

- (c) Factors to be addressed in each Annual Timetable Review may include:
- (i) data generated from customer feedback records;
 - (ii) measures to improve the reliability of the Ferry Services;
 - (iii) measures to reflect patronage demand;
 - (iv) measures to improve modal coordination;
 - (v) measures to address seasonality issues particular to the provision of the Ferry Services;
 - (vi) availability of appropriate vessels and wharves;
 - (vii) trends or changes in the demographics, land use and infrastructure that impact on the Ferry Services;
 - (viii) measures to overcome any identified inefficiencies; and
 - (ix) any other factors that the Director-General considers relevant.
- (d) After receipt of the Timetable Specification, the Operator must submit to the Director-General a proposed amended Contract Service Plan for approval. Any change to the Contract Service Plan may only be implemented under clause 18.

6.3 Network Review

- (a) No later than 3 years after the Service Commencement Date, the Director-General will conduct and complete a network wide review of the Timetables and Routes, with the aim of maximising the achievement of the Contract Objectives (**Network Review**). The Director-General will subsequently produce a Timetable Specification. The Operator will be required to convert the Timetable Specification into a Timetable to be submitted for approval by the Director-General. The Network Review will replace the Annual Timetable Review for that Contract Year.
- (b) Factors that may be addressed in the Network Review, in addition to those factors included in clause 6.2(c), include:
- (i) the Service Planning Guidelines for the Ferry Services;
 - (ii) issues arising from public consultation;
 - (iii) the implications for access to the Wharves under the Wharf Access Deed and the implications for the Assets;
 - (iv) net cost implications of any service changes;
 - (v) the implications in regard to the Fleet Procurement Strategy in clause 13.7; and
 - (vi) any other factors that the Director-General considers relevant.
- (c) At any stage of the Network Review, the Director-General may request information from the Operator on the details and matters required to be addressed in the Network Review and the Operator must co-operate in this regard.

- (d) After receipt of the Timetable Specification, the Operator must submit to the Director-General a proposed amended Contract Service Plan for approval. Any change to the Contract Service Plan may only be implemented under clause 18.
- (e) The Operator may initiate a Contract Variation resulting from the Network Review.

6.4 Operator may propose changes to Ferry Services

- (a) The Operator may propose changes to Ferry Services to the Director-General at any time during the life of the Contract Service Plan when the Operator considers that the proposed change is consistent with the Contract Objectives.
- (b) The Operator must provide the Director-General with a completed Contract Variation Template for any change it proposes under clause 6.4(a).
- (c) The Director-General may accept or reject (or require changes to) the Operator's proposal to implement a service change.
- (d) Subject to clause 6.4(e), before implementing a change to a Ferry Service, the Operator must obtain the written approval of the Director-General.
- (e) Subject to clause 6.4(i), the Operator may implement changes to a Ferry Service prior to obtaining the Director-General's approval if the change is:
 - (i) not a material change; or
 - (ii) required on a temporary basis and prior approval could not reasonably be obtained.
- (f) Where the Operator makes a change under clause 6.4(e), the Operator must, as soon as reasonably practicable but in any case not more than 20 Business Days after the implementation of the change, submit an application for approval of the change to the Director-General.
- (g) On receipt of an application under clause 6.4(f), the Director-General:
 - (i) must approve the change if the Director-General is satisfied that the change to the Ferry Services is not material or was temporary; or
 - (ii) reject the change.
- (h) If the Director-General rejects the change, the Director-General may require the Operator to cease the relevant change and follow the approval processes set out in clause 6.4(a) for the proposed change.
- (i) The following changes must not be implemented without the approval of the Director-General having first been obtained under clause 6.4(c):
 - (i) a decrease in frequency of a Ferry Service;
 - (ii) the removal of a stop on a Route by the Operator;
 - (iii) a permanent change to a Route;
 - (iv) the addition of a new Route or Ferry Service; and
 - (v) the removal of an existing Route or Ferry Service.
- (j) A failure by the Director-General to reject or require amendments to a proposed or implemented Ferry Service change will not prejudice the Director-General's rights in respect of any Ferry Service that is in breach of the terms of this Contract, including the Contract Service Plan.

7. Performance standards, obligations and cooperation

7.1 Performance standards and obligations

The Operator must:

- (a) perform its obligations under this Contract:
 - (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;
 - (iv) in a proper, competent, courteous, safe and reliable manner; and
 - (v) in a manner that affords passengers with optimal comfort levels, having regard to the nature of the passenger service and the condition and amenities of the relevant Contract Ferry;
- (b) at all times, comply with the standards and Laws referred to in section 16AB(4) of the PT Act;
- (c) be, and must ensure that its managers and office-holders are, of good character and fit to conduct and manage the Ferry Operations;
- (d) provide at least the services specified in the current Contract Service Plan;
- (e) meet the Performance Benchmarks;
- (f) implement and comply with the Plans;
- (g) provide the Ferry Services having primary regard to the needs and interests of passengers and potential passengers and ensure that the Ferry Services are provided with a focus on customer satisfaction;
- (h) hold and comply with all applicable Authorisations and Laws in conducting the Ferry Operations; and
- (i) otherwise comply with its obligations under the Transaction Documents.

7.2 Safety of passengers and the public

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

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

7.3 Cooperation by Operator

- (a) The Operator must cooperate with the Director-General and any relevant Director-General's Associates in good faith to implement the State's public transport policy objectives notified to the Operator by the Director-General from time to time, including:
 - (i) the provision of a modern high standard network of ferry services;
 - (ii) the achievement of a service strategy that facilitates integration of:
 - (A) public transport services across metropolitan Sydney; and
 - (B) Fares and Ticketing;

- (iii) the incremental upgrading of the infrastructure for the provision of ferry services; and
 - (iv) full integration of passenger information to deliver a seamless public transport service across metropolitan Sydney.
- (b) If requested by the Director-General, the Operator must in good faith:
- (i) participate in, and contribute to, planning forums involving public transport stakeholders and engage in discussions and consideration of issues affecting the integrated public transport network; and
 - (ii) provide submissions to the Director-General or any relevant Director-General's Associates regarding the development of public transport policy.
- (c) The Operator agrees that the Director-General or any Governmental Agency may, during the Term, implement the Electronic Ticketing System, establish additional public transport services, install and implement the FOCIS Assets, undertake a FOCIS Modification, undertake a Ticketing Modification, undertake infrastructure upgrades or other major projects across metropolitan Sydney or facilitate deregulated services, whether involving the provision of ferry services or otherwise (**Government Project**).
- (d) If requested in writing by the Director-General to do so, the Operator must cooperate with the Director-General and any relevant Governmental Agencies and their agents and contractors (**Project Parties**) in connection with any Government Project by:
- (i) assisting the Project Parties to implement arrangements, procedures and protocols to minimise disruptions to the Ferry Services;
 - (ii) providing any response, information, assistance or documentation reasonably requested by a Project Party within a reasonable time of the request;
 - (iii) conducting the Ferry Operations in a way that facilitates the establishment, completion and operation of the Government Project in a safe, expeditious and cost effective manner;
 - (iv) mitigating loss or damage suffered by the Operator as a result of the establishment, commissioning or operation of the Government Project;
 - (v) allowing the Project Parties reasonable access to all Assets to facilitate any design, construction, testing and commissioning related to the Government Project; and
 - (vi) doing all other things reasonably required by a Project Party to facilitate the establishment, commissioning and or operation of the Government Project.
- (e) If requested by the Director-General, the Operator must make the feed (whether live or recorded) captured by the CCTV Assets available to the Director-General and any other Government Agency notified by the Director-General.

7.1A Updating of Performance Benchmarks

- (a) The Director-General may from time to time propose amendments to the Performance Benchmarks in order to meet changed circumstances, including the demands and expectations of passengers.
- (b) The parties will negotiate in good faith with each other in order to agree:
 - (i) any proposed amendments to the Performance Benchmarks on reasonable commercial terms; and

- (ii) any consequential amendments required to the Transaction Documents arising out of those amendments.

8. Records and Reporting

8.1 Reporting

- (a) The Operator and each Partner must maintain those financial and financial planning records that would ordinarily be maintained by a skilled and experienced operator of Ferries and ferry services comparable to the size, scope and complexity of the Ferry Services.
- (b) Subject to clause 8.1(g), the Operator must provide to the Director-General:
 - (i) as soon as practicable (and in any event not later than two months) after the end of each Calendar Year and Financial Year which ends in the Contract Term, completed copies of the Half Year Preliminary Report or Full Year Preliminary Report (as the case requires), including a statement of financial performance, cash flow statement and a statement of financial position and:
 - (A) a commentary commenting on:
 - (1) material variations between actual results and budget year to date;
 - (2) financial viability; and
 - (3) material variations between actual results and the forecasts contained in the Operator's bid offer template; and
 - (B) details of its indebtedness (whether actual or contingent) in respect of financial accommodation (including any lease or hiring agreement) and the total financial accommodation available to the Operator; and
 - (ii) as soon as practicable (and in any event not later than three months) after the end of each Financial Year or part Financial Year which ends within the Contract Term, certified true copies of its audited accounts, the audited accounts of each Partner and the Partnership, together with all related directors' and auditor's reports.
- (c) If requested by the Director-General, the Operator must reconcile the information provided to the Director-General under clause 8.1(b)(i) for any Financial Year to the audited accounts for the same period provided to the Director-General under clause 8.1(b)(ii).
- (d) The accounts referred to in clause 8.1(b)(i) and clause 8.1(b)(ii) must be prepared consistently in accordance with:
 - (i) the Mandated Accounting Policies; and
 - (ii) the Operator's normal accounting policies, details of which must be supplied, on request, to the Director-General.

Any changes to the accounting policies of the Operator, any Partner or the Partnership must be notified to the Director-General on submission of the accounts. The Operator must draw the Director-General's attention to any differences between the normal accounting policies of the Operator, any Partner or the Partnership and Current Accounting Practices.

- (e) Each set of accounts delivered under clause 8.1(b)(i) and clause 8.1(b)(ii) must, except as stated in the notes to those accounts, be prepared and audited in accordance with Current Accounting Practice and the Mandated Accounting Policies and, together with those notes, and subject to any qualifications contained in any relevant auditor's report, must give a true and fair view of the state of affairs and profits for the period covered by the accounts.
- (f) The Operator must ensure that the records and accounts kept in accordance with this clause 8.1 relate only to the Ferry Operations and are separate from the financial and planning records and accounts of its other operations.
- (g) The first:
 - (i) Full Year Preliminary Report will cover the period from the Service Commencement Date to 30 June 2013; and
 - (ii) Half Year Preliminary Report will cover the period to 31 December 2012.
- (h) Where applicable, the Operator may choose to consolidate some of the additional reporting requirements under this Contract within the Half-Year Preliminary Reports and Full-Year Preliminary Reports.
- (i) The Operator must provide the Director-General with an Operational Report in accordance with Schedule 2 for each month of service within 10 Business Days after the end of each month.
- (j) The Operator must provide the Director-General with a Financial Report in accordance with Schedule 2 within 10 Business Days after the end of each month.
- (k) The Operator acknowledges its obligation to comply with section 46B of the PT Act as more particularly described in the PT Regulations, and agrees that it must also notify the Director-General as soon as practicable, of the same information that the Operator is required to provide under section 46B of the PT Act.

8.2 Compatibility of Information Systems

- (a) Any financial, operational or other information, data, records or reports required to be provided to the Director-General must be provided in a form which is compatible with the electronic data and records systems of Transport for NSW current on the Service Commencement Date, or such other form as otherwise notified by the Director-General to the Operator from time to time.
- (b) The Operator must, at its sole cost and expense, install hardware, office equipment and software to enable its system to interact with the Director-General's data and records systems at all times.
- (c) If the Director-General notifies the Operator under clause 8.2(a), and this requires the Operator to install additional hardware, office equipment and software :
 - (i) the Operator must comply with this requirement;
 - (ii) the Operator must notify the Director-General of the likely or known costs associated with complying with this requirement; and
 - (iii) the Operator and the Director-General must in good faith agree on costs that the Director-General will pay to the Operator as compensation for complying with this requirement (such costs to be all reasonable costs of complying with this requirement but only to the extent such costs exceed the costs that the Operator would have been reasonably expected to have incurred by reason of its usual

practice or requirements in respect of replacement of hardware, office equipment and software).

8.3 Right of Audit or Inspection

- (a) The Operator must permit the Director-General and the Director-General's Associates to conduct surveys of passengers or to inspect at any reasonable time:
 - (i) the Operator's Records; and
 - (ii) any Assets,
 in order to:
 - (iii) check or audit any information supplied to the Director-General under any Transaction Document; or
 - (iv) monitor the performance of the Operator or compliance by the Operator with its obligations under the Transaction Documents.
- (b) The Operator must cooperate with the Director-General and the Director-General's Associates when conducting a survey or an inspection under this clause.
- (c) If the survey or inspection under this clause reveals that information previously supplied to the Director-General was in any material respect inaccurate, the costs of the inspection must be borne by the Operator.

8.4 Immediate notification

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

- (a) the employment or the termination of employment of any key Staff;
- (b) any litigation or other dispute which may have a material effect on the Ferry Operations;
- (c) any material change in, or restructuring of, the capitalisation or financing of the Operator.
- (d) any fact, matter or circumstance of which it becomes aware that may prejudice its ability to perform its obligations under any Transaction Document or its ability to operate the Ferry Operations; or
- (e) any actual or proposed investigation or inquiry by a Governmental Agency into any aspect of the Ferry Operations;
- (f) requisition of a Contract Ferry for hire;
- (g) any occurrence in consequence of which a Contract Ferry has or may become damaged beyond economic repair;
- (h) proceedings being instituted against a Contract Ferry, or any arrest, detention, attachment or levy upon a Contract Ferry, or any exercise (or purported exercise) of a lien or other claim in connection with a Contract Ferry, the insurances or any Requisition Compensation (as defined in the Bareboat Charterparty); or
- (i) actual or proposed revocation of, or imposition of conditions on, the Operator's Authorisations,

and must provide sufficient details with that notice and outline any steps taken, or proposed to be taken, by the Operator to overcome or mitigate the impact of that fact, matter or circumstance.

8.5 Further Information

The Operator must deliver to the Director-General any other information, records or documents, and respond to any questions, relating to, or connected with:

- (a) the Ferry Operation or any Transaction Document;
- (b) the operation of the Plans;
- (c) the operational or financial performance of the Operator; or
- (d) the coordination of public transport in New South Wales or the strategic or operational planning of transport policy in New South Wales,

as reasonably requested by, and within the period reasonably specified by, the Director-General.

8.6 Misinformation

If the Operator:

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

(in each case **Misinformation**), this will constitute an Operator Breach and a Termination Event and (in addition to his rights in respect of the Operator Breach and Termination Event) the Director-General may refuse to make a payment affected by the Misinformation and may:

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

together with interest at the Default Rate calculated on a daily basis from (and including) the date on which the shortfall or excess payments were made to the date the amount is paid in full. The Operator must make any payment in accordance with a demand under clause 8.6(c) or 8.6(d).

8.7 Performance reviews

- (a) The Operator must (provided it is given at least 10 Business Days prior notice) attend meetings with the Director-General or the Director-General's Associates as requested by the Director-General from time to time for the purposes of enabling the Director-General to conduct periodic reviews of the financial and operational performance of the Operator under the Transaction Documents (**Performance Review**).
- (b) Any reviews conducted under clause 8.7(a):
 - (i) must not be more frequent than one review each Quarter (except where the circumstances or nature of the review requires follow up reviews or an extended review); and

- (ii) are in addition to any Annual Timetable Review or Network Review.
- (c) If, following a Performance Review or at any other time, the Director-General considers that the Operator is likely to incur financial losses on a continuing basis and that this has the potential to prejudice:
 - (i) the Continuity of the Ferry Services; or
 - (ii) the Director-General's rights under a Transaction Document,
 the Director-General may undertake a detailed investigation of the financial performance of the Operator (**Viability Review**).
- (d) The Operator must comply with any reasonable request for information from the Director-General regarding a Performance Review or Viability Review.
- (e) The persons attending meetings on behalf of the Operator as part of a Performance Review or a Viability Review must be of appropriate seniority and responsibility and must include those directors or senior management of the Operator reasonably requested by the Director-General.
- (f) If requested to do so by the Director-General, the Operator must prepare (or procure the preparation of) and present reports as part of a Performance Review or Viability Review for aspects of its performance reasonably requested by the Director-General.

8.8 Boarding and Fare Revenue data

- (a) Until the Director-General notifies the Operator that the Electronic Ticketing System is fully operational, the Operator must collect boarding and revenue data for or on behalf of the Director-General or the Director-General's Associates to enable the Operator to comply with its reporting requirements.
- (b) Until the Director-General notifies the Operator otherwise, every six months the Operator must conduct a manual headcount of boardings and alightings on each Ferry Service (other than the Manly service) provided for a particular calendar week and include the results of that headcount for that calendar week on a disaggregated, Route by Route basis in its Operational Report for that month.

8.9 Operator to prepare Plans

- (a) The Operator must have current versions of all Plans (approved by the Director-General) at all times during the Term.
- (b) Each Initial Plan (except for the Initial Business Plan) must be implemented and complied with by the Operator from the Service Commencement Date until updated under Schedule 2. The Initial Business Plan must be submitted by the Operator for approval in accordance with Schedule 2 in sufficient time such that it is approved in accordance with Schedule 2 and implemented and complied with by the Operator from 30 June 2013.
- (c) Each Plan (other than the Contract Service Plan and the Transition Plan) must be prepared, submitted, reviewed and updated by the Operator in accordance with Schedule 2.

8.10 Standards for Plans

The Operator must prepare each Plan:

- (a) so that it includes the content required by Schedule 2, applicable Laws and Authorisations and Good Industry Practice; and

- (b) in the form specified by the Director-General (including under clause 38) or, if no form is specified, in a clear, sensible, organised and legible form.

9. Payments

9.1 Payments

Subject to the remaining provisions of this clause 9 and Schedule 1, as consideration for the provision of the Ferry Services the Director-General must make the Monthly Payment to the Operator under, and in accordance with, the terms of Schedule 1.

9.2 Manner of payments

All payments under this Contract must be made by transfer of immediately available funds to the account specified by the Director-General or the Operator as the case requires, by 11.00 am (Sydney time) on the date that payment is payable.

9.3 Set off

- (a) The Director-General may set off against any payment made or payable by him under a Transaction Document, any amount payable to the Director-General under a Transaction Document or otherwise at law.
- (b) The Operator must make all payments under any Transaction Document without set off or counterclaim and without any deduction unless otherwise agreed in writing by the Director-General.

9.4 Payment abatement

- (a) The Director-General may, by written notice to the Operator, reduce the Monthly Payment to the Operator in accordance with the terms of Schedule 1.
- (b) Clause 9.4 and section 3.2 of Schedule 1 are civil penalty provision for the purposes of section 16AD of the PT Act.

9.5 GST

- (a) Any Consideration to be paid or provided for a supply made under or in connection with this Contract, unless specifically described as 'GST inclusive', does not include an amount on account of GST.
- (b) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Contract, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.
- (c) In the calculation of a cost, expense or other liability incurred by a party, the amount of any Input Tax Credit entitlement in relation to the relevant cost, expense or other liability must be excluded. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.
- (d) Subject to clause 9.5(e), the GST Amount, or an appropriate component of it, is payable on the earlier of:
 - (i) the first date on which all or any part of the Consideration for the Taxable Supply, or a component of it that is treated as a separate supply, is provided; and

- (ii) the date five Business Days after the date on which a Tax Invoice is issued in relation to the Taxable Supply, or a component of it that is treated as a separate supply.
- (e) Despite clause 9.5(d), the GST Amount will only become payable if the supplier has issued a Tax Invoice that complies with the requirements of the GST Act.
- (f) Any reference in this Contract to price, value, sales, revenue or a similar amount (**Revenue**) is a reference to the amount obtained by subtracting from that Revenue any GST. For the avoidance of doubt, if a payment is calculated by reference to or as a specified percentage of other Revenue, that payment shall be calculated by reference to or as a specified percentage of the Relevant exclusive of GST.
- (g) If an amount payable under this Contract is adjusted by reference to a change to the CPI, then the impact of GST must be excluded from the change to the CPI.
- (h) If there is a change in the rate of GST during the Term that results in a reduction in the net costs or tax burden incurred by the Operator in relation to the Ferry Operations (**Tax Saving**), the Operator and the Director-General agree to review and amend Schedule 1 as necessary so that the Monthly Payments reflect that the Tax Saving is passed on to the Director-General.
- (i) For the avoidance of doubt, the parties acknowledge that the Operator is supplying the Ferry Services to passengers and that it will return GST payable on all Fare Revenue collected from passengers and otherwise comply with the GST Act in respect of the supply of the Ferry Services.
- (j) If an amount is paid by a party for GST, and that amount differs from the GST Amount in accordance with the GST Act (**Adjustment**), the supplier within 14 days of becoming aware of the Adjustment shall notify the recipient of the Adjustment and:
 - (i) may recover from the recipient the difference between the amount paid and the GST Amount, provided the supplier first issues the recipient an adjustment note (except where the recipient is required to issue the adjustment note); or
 - (ii) must refund to the recipient the difference between the amount paid and the GST Amount within 14 days of receiving from the Commissioner of Taxation such amount, whether in cash or by credit or by offset against other liabilities of the supplier or by offset against liabilities of another member of a GST group of which the supplier is a member, including, but not limited to, any amount or credit received following a successful objection or appeal.
- (k) Recipient created tax invoices and Subdivision 153B
 - (i) The parties acknowledge and agree that:
 - (A) the Director-General has entered into an agreement with Sydney Ferries in accordance with the provisions of Subdivision 153B of the GST Act pursuant to which the Director-General is authorised to act as Sydney Ferries' intermediary in respect of any supply to the Operator under the Bareboat Charterparty; and
 - (B) for administrative convenience, the Director-General and the Operator will enter into an issue recipient created tax invoice (RCTI) agreement on the terms set out below in respect of the supply under the Bareboat Charterparty.

- (ii) In respect of the Monthly Payment that the Director-General must make to the Operator pursuant to clause 9.1 and Schedule 1 of this Contract, the Operator will issue a Tax Invoice to the Director-General for that amount. To the extent that the calculation of the Monthly Payment requires an amount to be paid to the Director-General, the Operator will issue an adjustment note.
- (iii) The parties acknowledge that the Operator will:
 - (A) issue RCTIs to the Director-General for any taxable supplies under the Bareboat Charterparty that the Director-General is taken to have made in accordance with clause 9.5(k)(i)(A) above; and
 - (B) that Operator will issue a RCTI (in respect of the Bareboat Charterparty) and Tax Invoice (as contemplated by clause 9.5(k)(ii) above) to the Director-General.
- (iv) For the purpose of the Operator issuing RCTIs, the parties agree that:
 - (A) the Operator will, to the extent it is legally entitled to do so, issue RCTIs;
 - (B) the Director-General shall not issue Tax Invoices in respect of the taxable supplies for which a RCTI will be issued;
 - (C) each party acknowledges that at the time of entering into this Contract, it is registered for GST and must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs; and
 - (D) the Director-General may cancel this RCTI agreement at any time by providing written notice to the Operator.
- (v) To the extent that the tax invoice and RCTI are issued as separate documents for a particular month or tax period (as the case may be), the Operator will issue both documents simultaneously.

9.6 Financial Default

- (a) Each party (**Defaulting Party**) must pay to the other party (**Innocent Party**) interest on any amount that is the subject of a Financial Default (including interest payable under this clause 9.6).
- (b) Interest will accrue at the Default Rate on the amount which is the subject of the Financial Default on a daily basis from (and including) the date on which the amount became due and payable to the date the amount is paid in full both before and after judgment (as a separate and independent obligation).
- (c) The Defaulting Party must pay interest accrued under this clause 9.6 on demand by the Innocent Party and on the last Business Day of each month.
- (d) The right to require payment of interest under this clause is without prejudice to any other rights and remedies of the Innocent Party in respect of the Financial Default.

9.7 Funding Model Information

- (a) The Operator must provide to the Director-General as soon as practicable (and in any event not later than five Business Days) after the end of each Reporting Period the completed monthly reporting template in the form specified in Schedule 13 (Monthly Report) to enable the calculation of the Monthly Payments.

- (b) The Director-General will not be obliged to make or the Operator be entitled to a reimbursement of, Monthly Payments under Schedule 1 for any Reporting Period if the Operator has not complied or does not comply with clause 9.7(a) for that Reporting Period.
- (c) The Operator must provide a reconciliation of cash received to Ticket sales reported under Schedule 1 for any Reporting Period within a reasonable period specified by the Director-General.
- (d) The Director-General may require that a reconciliation under clause 9.7(c) or the Operator's cash handling procedures, be audited by an independent third person, within a reasonable period specified by the Director-General.
- (e) The Operator must:
 - (i) conduct or arrange to conduct the reconciliation requested under clause 9.7(c);
 - (ii) arrange to conduct the audit required by the Director-General under clause 9.7(d); and
 - (iii) upon completion of the reconciliation or audit, provide a report to the Director-General within a further 10 Business Days detailing the results of any conclusions from the reconciliation or audit (including any opinion or report provided by a third party).
- (f) The Director-General may request other information he reasonably considers relevant with respect to any of the information provided to the Director-General under this clause 9.7 (including the template information provided under clause 9.7(a) and any reports provided under clause 9.7(e)) or to support the calculation of the Monthly Payments.
- (g) The Operator must comply with a request from the Director-General under clause 9.7(f).
- (h) The Director-General may (at his own cost) appoint advisers to review and comment on any of the information provided to the Director-General under this clause 9.7 (including the template information provided under clause 9.7(a) and any reports provided under clause 9.7(e)).
- (i) If a reconciliation under clause 9.7(c) or audit under clause 9.7(e) establishes that there are no material inaccuracies in the Operator's Monthly Report, the Director-General must meet the Operator's reasonable costs of such reconciliation or audit.

9.8 Certification of employee entitlements

As a condition of payment of amounts due under clause 9.1, the Operator will be required, on request by the Director General, to certify that all Staff entitlements (including those referred to in clause 12.4(a)) have been paid or properly accrued and the Director General will have the power to inspect the Operator's records in this regard.

10. Ticketing and Fares

10.1 Fares

- (a) The Operator must offer and honour single and multi-ride Tickets specified in Schedule 3 or as determined by the Director-General from time to time by written notice to the Operator to:
 - (i) passengers (other than Approved Beneficiaries) at the Full Fares specified for those Tickets in Schedule 3 or as determined by the Director-General; and

- (ii) Approved Beneficiaries at the Concession Fares specified for those Tickets in Schedule 3 or as determined by the Director-General;

or, if IPART makes a determination under section 16AE of the PT Act in respect of those Tickets, at Full Fares and Concession Fares equal to the maximum Full Fares and Concession Fares determined by IPART.

- (b) Upon receipt of a notice under clause 10.1(a), the Operator must do all such things as may be necessary to ensure that the changes to the Tickets, Full Fares or Concession Fares (as the case may be), notified under that notice are capable of being implemented and are implemented with effect from the relevant date contained in such notice.
- (c) Section 16AE of the PT Act will apply to the fares charged by the Operator.

10.2 Alternative Ticket products

The Operator must not offer any Ticket products other than those Ticket products identified in Schedule 3 or determined by the Director-General from time to time.

10.3 Prohibition on disincentives and penalties

- (a) Subject to clause 10.3(b), the Operator must not impose any charge, fee, penalty, restriction or other disincentive in connection with a Ferry Service that has the purpose or likely effect of:
 - (i) increasing the total cost to passengers choosing to travel on a Ferry Service above the Full Fares set out in Schedule 3 or as determined by the Director-General;
 - (ii) increasing the total cost to Approved Beneficiaries choosing to travel on a Ferry Service above the Concession Fares set out in Schedule 3 or as determined by the Director-General;
 - (iii) deterring passengers from purchasing Tickets at the Fares set out in Schedule 3 or as determined by the Director-General; or
 - (iv) reducing the availability of Tickets to passengers wishing to travel on the Ferry Service.
- (b) The Operator may impose a nominal charge for replacing lost and stolen Tickets that compensates the Operator for the costs associated with replacing that Ticket.

10.4 Free travel

The Operator must ensure that free travel is provided to persons listed in Schedule 3 as adjusted by notice under clause 10.1(a) from time to time.

10.5 Recognition of transfers

The Operator must recognise the transfer rights of any passenger carrying a Ticket entitling transfer that is approved by the Director-General from time to time.

10.6 Compliance with agents

The Operator must procure that each of its agents selling or offering to sell Tickets on the Operator's behalf complies with clauses 10.1 (only to the extent of offering Tickets), 10.2 and 10.3.

10.7 Fare revenue

- (a) The Operator is responsible for all Fare Revenue received from the time it is collected until it is remitted to the Director-General. The Operator is also liable for any shortfall between recorded Ticket sales and cash collected by it.

- (b) If an operative ticketing system malfunctions during the running of any Ferry Service so that Tickets cannot be issued or validated correctly, the Operator must continue to collect Fare Revenue and complete that service and use reasonable endeavours to collect and issue Tickets.

10.8 Fare Revenue protection measures

- (a) Until the Director-General notifies the Operator otherwise, the Operator must:
 - (i) ensure passengers have the correct Tickets for their travel and that those Tickets are validated;
 - (ii) verify that passengers travelling as concession card holders have proof of their concession status; and
 - (iii) inform the Director-General of any material matter relating to Fare evasion in relation to the Ferry Operations of which the Operator is aware.
- (b) The Director-General must from time to time consult with the Operator in relation to the development and implementation of the "TfNSW Network Revenue Protection Plan" or any similar plan for the deployment of authorised revenue protection officers. Such consultation will be solely for purpose of exchanging information between the parties and will not bind the Director-General to take any steps or do anything else in relation to the subject matter of the consultations.

10.9 Ticketing

- (a) The Operator must participate in the Electronic Ticketing System Project (or any other new ticketing project implemented by the Director-General or the Director-General's Associates), including by the installation of a validation system using smart card technology or magnetic stripe technology as specified by the Director-General.
- (b) The Operator acknowledges that it is intended that the validation system referred to in clause 10.9(a) will be capable of:
 - (i) recording boardings and alightings of passengers on the Ferry Services; and
 - (ii) identifying and recording the Ticket type and any service of a Connecting Passenger Operator on which the passenger has travelled,
 in accordance with the information reporting requirements set out in Schedule 2.
- (c) The Operator must enter into the following agreements with the Director-General, the Director-General's nominee or a Director-General's Associate:
 - (i) the Electronic Ticketing Operator Agreement;
 - (ii) a Phase 3 memorandum of understanding in respect of the ongoing operation of the Electronic Ticketing System;
 - (iii) any other agreement (on reasonable commercial terms) considered necessary by the Director-General regarding the implementation of the Electronic Ticketing System Project; and
 - (iv) any agreement (on reasonable commercial terms) considered necessary by the Director-General to amend this Contract to incorporate additional data collection, record keeping and reporting requirements and any other changes required as a result of the implementation of the Electronic Ticketing System Project.

- (d) Prior to implementation of the Electronic Ticketing System Project:
- (i) the Operator must maintain the Current Ticketing System other than the Ticketing Assets, which must be capable of issuing and validating all Tickets issued by the Operator and Connecting Passenger Operators (where applicable) and recording data to enable the Operator to comply with the information reporting requirements set out in Schedule 2; and
 - (ii) subject to clause 10.10, the Director-General must maintain or procure the maintenance of the Ticketing Assets which must be capable of issuing and validating all Tickets issued by the Operator and Connecting Passenger Operators (where applicable) and recording data to enable the Operator to comply with the information reporting requirements set out in Schedule 2;
 - (iii) the Operator must install or maintain a system to account for revenue collected from all travel and use of Tickets in a manner and frequency to enable the Operator to comply with the information reporting requirements set out in Schedule 2.
- (e) The Operator must:
- (i) when reasonably requested by the Director-General, actively participate in the development by Transport for NSW of requirements for, and in the assessment by Transport for NSW of, proposed design components for the Electronic Ticketing System;
 - (ii) cooperate with the Director-General (and his nominee) in facilitating the installation, testing and ongoing maintenance by the Director-General (and his nominee) of equipment and systems forming part of the Electronic Ticketing System; and
 - (iii) make each Asset available for installation, testing and ongoing maintenance of equipment and systems forming part of the Electronic Ticketing System (provided if such maintenance is carried out for a Contract Ferry it is done when the Contract Ferry is not scheduled to provide a service on a Route at the time of maintenance).
- (f) The Operator acknowledges that all information and data collected by the Electronic Ticketing System:
- (i) is the property of the Director-General or the Director-General's Associate; and
 - (ii) may be used by the Director-General as he sees fit in administering public transport in the State and this Contract, including in preparation for the appointment of a Successor Operator on, or in anticipation of, expiry or termination of the Term.
- (g) The Operator may use the data collected as it relates to the Ferry Operations for the purpose of complying with its obligations under this Contract and planning new services or alterations to existing Ferry Services for a Route for use in managing its business and compliance with this Contract, subject to reasonable conditions as the Director-General may impose.
- (h) Subject to the provisions of any agreement entered into by the Operator under clause 10.9(c), if following the implementation of the Electronic Ticketing System Project there is a fault or failure in the system or it is required for operational purposes, the Operator must continue to collect Fare Revenue and must use reasonable endeavours to collect and issue Tickets.

10.10 Ticketing Assets

- (a) On and from the Service Commencement Date, the Director-General grants to the Operator a non-exclusive, non-transferable licence to use the Ticketing Assets for the sole purpose of undertaking the Ferry Operations during the Term.
- (b) The licence granted under clause 11.5(a) terminates in respect of any part of the Ticketing Assets on the removal or decommissioning of that part of the Ticketing Assets pursuant to a Ticketing Modification.
- (c) The Operator must cooperate with the Director-General and any relevant Director-General's Associates in good faith to enable:
 - (i) the Director-General to comply with its obligations under clause 10.9(d)(ii); and
 - (ii) the Director-General and any Director-General Associate to comply with their obligations under any Ticketing Contract.
- (d) The Operator acknowledges and agrees that:
 - (i) it accepts the Ticketing Assets on an "as is" basis, in whatever condition they are in on the Service Commencement Date;
 - (ii) the Director-General and the Director General's Associates make no warranty, representation or guarantee with respect to the condition, functionality or adequacy of the Ticketing Assets (as they are on the Commencement Date) for the purpose of undertaking the Ferry Operations or facilitating the ability of the Operator to meet its obligations under this agreement, and the Operator releases the Director General from all claims, liabilities or losses that arise in this regard;
 - (iii) subject to clause 10.10(e) & (f), to the extent that the Operator makes use of the Ticketing Assets or any Ticketing Modification, it does so at its sole cost and risk;
- (e) If, having regard to the condition, functionality or adequacy of the Ticketing Assets at the Service Commencement Date, a fault or failure subsequently occurs in relation to the Ticketing Assets and (to the extent not caused or contributed to by the Operator) directly results in a reduction of Actual Patronage Validations for the purpose of calculating a Patronage Growth Rebate, then such reduction in validations will not be taken into account in determining Actual Patronage Validations.
- (f) If a Ticketing Modification directly results in a reduction of Actual Patronage Validations for the purpose of calculating a Patronage Growth Rebate then such reduction in validations will not be taken into account in determining Actual Patronage Validations.

11. Passengers and transport information

11.1 Integrated Transport Information Service (Transport Info 131500)

- (a) The Operator must:
 - (i) participate in Transport Info 131500 (or any successor service developed by the Director-General or any of the Director-General's Associates);
 - (ii) enter into a service level agreement with the Director-General for the ongoing operation of Transport Info 131500 on reasonable commercial terms;
 - (iii) actively participate in the governance processes for Transport Info 131500 through the monthly project liaison group or as otherwise agreed with the Director-General;

- (iv) promote the Transport Info (131500) as the primary customer interface for service information, trip planning, timetables and customer feedback, particularly on published information such as timetable booklets, website, promotional material and other literature at wharves and within the fleet in a format reasonably required by the Director-General;
 - (v) provide accurate, reliable and timely data for the Transport Info 131500 trip planner;
 - (vi) not compete with or duplicate Transport Info 131500 services or customer information channels.
- (b) The Director-General may use data provided by the Operator for Transport Info 131500 (including without limitation, timetable and trip planning data) for any purpose whatsoever, including, without limitation, for the purpose of managing the Ferry Operations, for planning and marketing purposes, or for any purpose required by the Director-General's Associates,.
 - (c) The Operator grants a royalty free perpetual, irrevocable, non-exclusive, transferable licence to the Director-General to use all the data relating to the Ferry Operations recorded by ITIS or provided by the Operator pursuant to clause 11.1 as he sees fit, including for the purposes of permitting any Successor Operator to provide the Ferry Services after the Termination Date, or any other third party licensed to use the data by the Director General.
 - (d) The Operator agrees to provide timely service status information to Transport Info 131500 to keep customers informed of current service status and issues impacting on the operation of the ferry services. Transport Info may make this information available to customers through such channels and via such means as the Director General may deem appropriate.

11.2 Customer feedback

- (a) All publications, notices, advertisements and public information created or distributed by the Operator must direct customer feedback, including complaints, compliments and comments to Transport Info 131500.
- (b) On receiving notice from Transport Info 131500 of a complaint, the Operator must contact the relevant customer within 24 hours to verify the matter, if required by Transport Info 131500.
- (c) Within a further 24 hours, the Operator must contact the customer and provide a response that either resolves the matter or provides an action path and timeline to resolve the matter.
- (d) Consistent with Schedule 2, the Operator is to report to the Director-General on a monthly basis to advise the category of feedback received and action taken by the Operator to resolve the matter.
- (e) The Operator must advise the Director-General promptly of customer feedback received from sources other than Transport Info 131500 to ensure feedback is appropriately recorded and to determine if action is required to maintain Transport Info 131500 as the primary source. The Operator must promptly attend to any complaint in accordance with paragraphs (a) to (d) as if the complaint had been received from Transport Info 131500

11.3 Publication and display of information

- (a) The Operator must ensure that current, accurate, up to date and relevant information relating to the Ferry Services (including as to Timetable, disruptions and accessibility) is

provided to passengers in a clear and legible form (including the use of maps) at all times (and in a manner approved by the Director-General) both on Contract Ferries and displayed on the passenger information displays at the Wharves.

- (b) The Operator must facilitate the delivery of that information to passengers via systems and technologies as may be determined and notified from time to time by the Director-General, which may include electronic displays, on board announcements, directional signage and kiosks at locations including on Contract Ferries, at Wharves and at other public places. The Director-General must meet any reasonable and substantiated direct costs incurred by the Operator, that are incremental to the costs that would have otherwise been incurred by the Operator in implementing new systems or technologies after the date of this Contract, in order to comply with this clause 11.3(b).
- (c) Any initiative by the Operator to enhance passenger information must be developed in consultation with the Director-General and submitted to the Director-General for approval.

11.4 Timetables and other data

- (a) The Operator must deliver to the Director-General Timetables, route and stop information in electronic form (as reasonably required by the Director-General) suitable for website display and loading into the ITIS database, and where there is a Timetable variation, in sufficient time prior to the implementation date of that variation to enable uploading at least two week prior to the implementation date.
- (b) The Operator must print and maintain a sufficient stock of up to date Timetables:
 - (i) on Contract Ferries;
 - (ii) that are available by mail on request; and
 - (iii) in a reasonable quantity required by the Director-General.

11.5 FOCIS

- (a) On the Service Commencement Date the Director-General grants to the Operator a non-exclusive, non-transferable licence to use the FOCIS Assets for the sole purpose of undertaking the Ferry Operations.
- (b) The licence granted under clause 11.5(a) terminates in respect of any FOCIS Asset on the earlier of the removal or decommissioning of a FOCIS Asset pursuant to a FOCIS Modification.
- (c) The Operator acknowledges and agrees that:
 - (i) it accepts the FOCIS Assets on an "as is" basis, in whatever condition they are in when they are made available to the Operator.
 - (ii) the Director-General and the Director General's Associates make no warranty, representation or guarantee with respect to the condition, functionality or adequacy of the FOCIS Assets for the purpose of undertaking the Ferry Operations or facilitating the ability of the Operator to meet its obligations under this agreement, and the Operator, subject to clause 13.2(d)(iii), releases the Director General from all claims, liabilities or losses that arise in this regard.
 - (iii) to the extent that the Operator makes use of the FOCIS Assets and any FOCIS Modification, it does so at its sole cost and risk;

12. Staffing

12.1 All Staff

- (a) The Operator must:
- (i) ensure that all Staff are properly authorised, qualified, accredited, trained and experienced to discharge their duties;
 - (ii) ensure that all Staff comply with applicable Laws and Authorisations;
 - (iii) ensure that all customer facing Staff are attired in a clean, well maintained and appropriate uniform that complies with occupational health and safety Laws and possess a thorough knowledge of the Tickets, Fares, Concession Fares, Routes and Timetables; and
 - (iv) ensure that Staff are subject to regular security checks.
- (b) The Operator must, where required, provide all Staff with a formal induction and staff handbooks, which are to include appropriate policies dealing with equal employment, discrimination, harassment and occupational health and safety issues.
- (c) The Operator must provide all customer facing Staff with passenger service training on at least annual intervals and, in particular, training with regard to:
- (i) service requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds;
 - (ii) the management of confrontation, difficult passengers and personal safety; and
 - (iii) occupational health and safety issues.

12.2 OHS

- (a) The Operator must:
- (i) comply with all Safety Laws (including in relation to members of the public and other persons who are not Staff) and ensure that all Staff do the same;
 - (ii) use its best endeavours to ensure that the Director-General, Sydney Ferries and their directors, officers and employees, do not breach the Safety Laws in relation to the Ferry Operations and co-operate with the Director-General, Sydney Ferries and their directors, officers and employees to ensure this;
 - (iii) immediately inform the Director-General of any material issues regarding compliance with clause 12.2(a)(i) or safety generally (including any improvement notices, prohibition notices or notifications to a Safety Authority);
 - (iv) immediately supply the Director-General with copies of the following information:
 - (A) any material communications with a Safety Authority (including any improvement notices, prohibition notices or notifications);
 - (B) all audits undertaken by the Operator and other reports which relate to the Safety Laws or any Incidents;
 - (C) where reasonably requested by the Director-General, all minutes of Occupational Health and Safety Committees or other documents recording or relating to consultation over safety matters relating to the Staff.
 - (D) all material information relating to any Investigation or Prosecution;

- (E) any other information reasonably requested by the Director-General regarding compliance with this clause 12.2 or safety generally; and
 - (v) ensure that all Staff are provided suitable and adequate information, training and instruction in accordance with the Safety Laws;
 - (vi) ensure that all Staff possess and comply with all appropriate Authorisations required to perform their job;
 - (vii) regularly report to, and meet with, representatives of the Director-General (as required by the Director-General) concerning compliance with this clause;
 - (viii) co-operate with the Director-General and Sydney Ferries, their directors, officers and employees in relation to any Investigation or Prosecution;
 - (ix) allow the Director-General, or a third party appointed by the Director-General, to conduct audits from time to time of the Operator's compliance with the Safety Laws;
 - (x) if directed by the Director-General, conduct, or have a third party conduct, such audits of its compliance with the Safety Laws and promptly report in writing to the Director-General on the outcome of the audit;
 - (xi) undertake any corrective work or action which an audit referred to above identifies as necessary to rectify any departure from the Safety Laws at the Operator's expense and within a reasonable time given the nature of the departure.
- (b) The Operator will be appointed as Principal Contractor for any Construction Work undertaken by, through or on behalf of the Operator (other than Construction Work in respect of which the Director-General nominates a different Principal Contractor)
- (c) The Operator is authorised to exercise such authority as is necessary to enable the Operator to discharge its responsibilities as Principal Contractor.
- (d) The Operator:
- (i) agrees that as Principal Contractor, the Operator is responsible for the Construction Work at all times until the Construction Work is completed;
 - (ii) accepts that it is the 'person responsible for the construction work' in respect of the Construction Work for the purposes of the Safety Laws;
 - (iii) is responsible for all costs associated with performing the role of Principal Contractor;
 - (iv) must ensure that signs, that are clearly visible from outside the area of the Construction Work and on which the name and contact telephone numbers (including an after hours emergency telephone number) of the Operator are stated, are placed at each boundary of the Construction Work;
 - (v) must ensure any person who carries out Construction Work has undergone construction training including work activity based and site specific health and safety induction training that relates to the Construction Work; and
 - (vi) acknowledges that it has control and management of the Construction Work.

12.3 Subcontractor's Statement

With each invoice submitted by the Operator, the Operator must provide the Director-General 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.

12.4 Employee Entitlements

The Operator must:

- (a) permit a Transferring Employee to remain a member of a Pre-Existing Superannuation Fund and must do everything to ensure they are able to do so;
- (b) make Minimum Superannuation Contributions on behalf of all employees to an account nominated by the employee, subject to it being a complying superannuation fund;;
- (c) in respect of Transferring Employees who remain members of a defined benefit scheme (each a **DB Scheme Employee**):
 - (i) contribute at a rate which is equal to the Minimum Superannuation Contribution rate (**DB Scheme Contribution**); and
 - (ii) meet the costs associated with making the DB Scheme Contribution;
- (d) make provision for the staff of Sydney Ferries' entitlements in its accounts in accordance with the requirements of applicable accounting standards;
- (e) ensure that it has sufficient resources to honour all its staff salary, leave and other entitlements as and when they fall due or are taken;
- (f) honour all its staff salary, leave and other entitlements as and when they fall due or are taken;
- (g) provide the Director-General on the first anniversary of the Service Commencement Date and each twelve months thereafter, with a list of Transferring Employees who remain employed by the Operator; and
- (h) within 7 days, notify the Director-General when a Transferring Employee resigns from their employment with the Operator.

Subject to clause 16.3(b) of the Transitional Agreement, the Director General agrees during the term of each DB Scheme Employee's employment with the Operator to meet any additional cost required to fund the difference between the Operator DB Scheme Contribution and the cost of providing the superannuation entitlement of each DB Scheme Employee under the defined benefit scheme that applied to each of them at the date the DB Scheme Employee commenced employment with the Operator .

13. Contract Ferries

13.1 Commencement Condition

The Operator acknowledges and accepts the Commencement Condition of the Commencement Ferries.

13.2 Requirements for Contract Ferries

- (a) The Operator must ensure that each Contract Ferry:
 - (i) is registered with Roads and Maritime Services at all times;
 - (ii) is In Survey at all times;
 - (iii) is operated in accordance with the Ferry manufacturer's specifications, recommendations and service standards;

- (iv) is clean and tidy when providing the Ferry Services;
 - (v) is maintained, equipped and operated in a safe manner and in compliance with all Ferry Laws and other applicable Laws and Authorisations, including the *Disability Standards for Accessible Public Transport 2002* (Cth) and accompanying guidelines under the *Disability Discrimination Act 1992* (Cth); and
 - (vi) displays illuminated destination signs (if available) stating the destination and or the Route.
- (b) The Operator must:
- (i) comply with its obligations under the Bareboat Charterparty;
 - (ii) monitor and manage security and safety of the Master, crew and passengers on the Contract Ferries; and
 - (iii) allow for inspection of the Contract Ferries and the Operator's Records on reasonable notice by any Governmental Agency for any purpose related to an Authorisation or by the Director-General or the Director-General's Associates for the purpose of ascertaining whether the Contract Ferries comply with the requirements set out in clause 13.2(a) or that the required Maintenance Work has been carried out.
- (c) In accessing the Contract Ferries under clause 13.2(b)(iii) the Director-General or the Director-General's Associates must attempt to minimise any interference with the conduct of the Ferry Operations.
- (d) Without in any way limiting the application of the other provisions of this Contract, the parties acknowledge and agree that all costs of complying with the *Disability Standards for Accessible Public Transport 2002* (Cth) and accompanying guidelines under the *Disability Discrimination Act 1992* (Cth) (**DDA Legislation**) will be borne by the Operator except only for the costs of any:
- (i) works to Wharves which are Priority Access Wharves;
 - (ii) upgrades to the Electronic Ticketing System or the physical infrastructure of the Current Ticketing System; or
 - (iii) implementation of or changes to FOCIS;

in each case necessarily required to ensure their respective compliance with relevant DDA Legislation; or

- (iv) structural works to a Contract Ferry existing at the date of this Contract, or where such structural works are impossible, the replacement of such Contract Ferry, necessarily required to ensure that the relevant Contract Ferry complies with applicable requirements under DDA Legislation relating only to:
 - (A) the size and accessibility of toilets;
 - (B) the size of access paths (as that term is defined in the DDA Legislation);
 - (C) the size of manoeuvring areas (as that term is defined in the DDA Legislation);
 - (D) the size of passing areas; or
 - (E) the size of doorways and doors.

13.3 Non-compliant Contract Ferries

If a Contract Ferry is damaged or vandalised so as to affect the Continuity of the Ferry Services or does not meet the requirements set out in clause 13.2 the Operator must:

- (a) remove it from service as soon as practicable, having regard to the nature of the failure, the Law and the best interests of passengers;
- (b) replace it with a compliant Contract Ferry;
- (c) promptly repair or restore it; and
- (d) not return it to use until it meets the requirements set out in clause 13.2.

13.4 Standards for Emergency Replacement Ferry

- (a) The Operator may use a replacement Ferry which does not comply with the requirements set out in clause 13.2 or which is not a Contract Ferry (**Emergency Replacement Ferry**) only in an emergency and only for the minimum period necessary to overcome the emergency and in any event, for no longer than 48 hours (unless otherwise approved by the Director-General prior to the expiry of the 48 hour period).
- (b) If an Emergency Replacement Ferry is to be used in an emergency:
 - (i) the Operator must notify the Director-General as soon as practicable (and in any event, not later than 24 hours after it is first used) explaining the particulars of the emergency and details of the Emergency Replacement Ferry used;
 - (ii) the Operator must ensure that the Emergency Replacement Ferry is the best available Ferry and at a minimum complies with clauses 13.2(a)(i), (ii), (iii), and (v);
 - (iii) it must meet the insurance requirements set out in clause 28;
 - (iv) the Operator must ensure that the use of the Emergency Replacement Ferry will not materially adversely affect the provision of the Ferry Services; and
 - (v) the Monthly Payments will not be adjusted.

13.5 Other use

- (a) The Operator may only use a Contract Ferry for a purpose other than the provision of the Ferry Services if:
 - (i) it does not adversely affect the Continuity of the Ferry Services;
 - (ii) it does not breach the Bareboat Charterparty; and
 - (iii) it does not adversely affect the Director-General's rights under a Transaction Document.
- (b) Notwithstanding any other provision of this Contract, the Operator must not, and must not permit any other person to carry on any Restricted Activity in relation to or in connection with the Ferry Operations or, on or in connection with any of the Assets, without the prior written consent of the Director-General (in his sole and absolute discretion).
- (c) The revenue from any other use authorised under this clause will be shared between the Operator and the Director-General as agreed and accounted for in the manner set out in Schedule 1.

13.6 New Ferries

- (a) Subject to clauses 13.4, 13.6(b) and 18, the Operator must use only the Commencement Ferries for the provision of the Ferry Services, subject to any change that is agreed with the Director-General.
- (b) The Operator may temporarily charter a Ferry which is not a Commencement Ferry in the provision of Ferry Services, however must not use any such Ferry for more than 3 months without the prior written approval of the Director-General (at his sole and absolute discretion).

13.7 Fleet Procurement Strategy

- (a) The Director-General will develop a Fleet Procurement Strategy and the Operator will co-operate in its development.
- (b) The Operator agrees that the Director-General may during the Term procure new ferries for use by the Operator in the Ferry Operations. The Director-General may determine the timing and method of procurement, the number and type of ferries and how they will be maintained, in each case pursuant to clause 18.

13.8 Advertising

- (a) The Operator must not advertise or permit advertising on or within a Contract Ferry unless it:
 - (i) complies with all applicable Laws and Authorisations and will not breach the Intellectual Property rights of any person;
 - (ii) complies with voluntary codes of conduct established by the advertising industry;
 - (iii) does not depict political, religious or other subject matter which is contentious or offensive; and
 - (iv) does not resemble and is not capable of confusion with directional or informational signs either by location, shape, size or colour.
- (b) Where, in the Director-General's reasonable opinion, advertising on or within a Contract Ferry does not comply with clause 13.8(a), the Director-General may require the Operator to remove it and the Operator must do so within one Business Day of receipt of the direction.
- (c) The revenue from any other use authorised under this clause will be shared between the Operator and the Director-General as agreed and accounted for in the manner set out in Schedule I.

13.9 Livery

- (a) All Contract Ferries must maintain the livery as at the Service Commencement Date unless the Director-General gives his prior written consent to any proposal by the Operator to alter the livery.
- (b) If the Director-General varies any existing uniform livery requirements for the Contract Ferries:
 - (i) the Operator must comply with the varied uniform livery requirements; and
 - (ii) the Director-General must compensate the Operator for all reasonable costs of complying with that new or varied uniform livery requirement but only to the extent such costs exceed the costs that the Operator would have incurred had the Director-General not required the new or varied livery requirement.

14. Premises

14.1 Commencement Condition

The Operator acknowledges and accepts the Commencement Condition of the Shipyard.

14.2 Use of Premises and Shipyard Infrastructure

The Operator must:

- (a) comply with its obligations under the Shipyard Lease;
- (b) monitor and manage the safety and security of all Staff at, and visitors to, the Premises;
- (c) allow access to the Premises and Shipyard Infrastructure at reasonable times and on reasonable notice to the Director-General, the Director-General's Associates and any Governmental Agency for the purpose of ascertaining the Operator's compliance with its obligations under the Transaction Documents. In doing so, the Director-General or the Director-General's Associates must attempt to minimise any interference with the conduct of the Ferry Operations;
- (d) consider, manage and take reasonable steps to minimise the impact of the Ferry Operations conducted at the Premises on neighbouring properties;
- (e) use Shipyard Infrastructure in accordance with the manufacturers' and suppliers' specifications, recommendations and service standards; and
- (f) maintain the Premises in a clean and tidy state having regard to the activities conducted there from time to time.

14.3 Other use

- (a) The Operator may only use the Premises for a purpose other than conducting the Ferry Operations if it does not:
 - (i) adversely affect the Continuity of the Ferry Services;
 - (ii) breach the Shipyard Lease;
 - (iii) adversely affect the Director-General's rights under a Transaction Document; or
 - (iv) increase the likelihood of a Clean Up Notice being served on either party in respect of the Premises.
- (b) The revenue from any other use authorised under this clause will be shared between the Operator and the Director-General as agreed and accounted for in the manner set out in Schedule I.

14.4 Contamination matters

- (a) The parties acknowledge and agree that:
 - (i) Sydney Ferries occupied the Premises and conducted the Ferry Operations prior to the Service Commencement Date;
 - (ii) the Operator will occupy the Premises and conduct the Ferry Operations and any other use permitted by the Director-General under clause 14.3 as and from the Service Commencement Date; and
 - (iii) subject to this clause 14.4:

- (A) the Director-General has, or will procure, an acknowledgement and agreement from Sydney Ferries that it is responsible for any Sydney Ferries Contamination; and
 - (B) the Operator is responsible for any Operator Contamination.
- (b) If a Clean Up Notice is served on Sydney Ferries and is complied with by Sydney Ferries and that Clean Up Notice relates wholly or partly to Operator Contamination, to the extent that Sydney Ferries incurs any Losses in complying with that Clean Up Notice, the Operator acknowledges that Sydney Ferries may recover in a court of competent jurisdiction the portion of its Losses of complying with the Clean Up Notice which is equivalent to the portion to which the Contamination the subject of the Clean Up Notice is Operator Contamination.
- (c) If a Clean Up Notice is served on the Operator and is complied with by the Operator and that Clean Up Notice relates wholly or partly to Sydney Ferries Contamination, to the extent that the Operator incurs any Losses in complying with that Clean Up Notice, the Operator may recover in a court of competent jurisdiction the portion of its Losses of complying with the Clean Up Notice which is equivalent to the portion to which the Contamination the subject of the Clean Up Notice is Sydney Ferries Contamination.
- (d) If a Clean Up Notice is served on Sydney Ferries and is complied with by Sydney Ferries and that Clean Up Notice relates wholly or substantially to Sydney Ferries Contamination and that Sydney Ferries Contamination has been exacerbated by the Operator, to the extent that Sydney Ferries incurs any Losses in complying with that Clean Up Notice, the Operator acknowledges that Sydney Ferries may recover in a court of competent jurisdiction the portion of its Losses of complying with the Clean Up Notice which is equivalent to the portion to which the Contamination the subject of the Clean Up Notice has been exacerbated by the Operator.
- (e) If either party is served with a Clean Up Notice and that party reasonably suspects that one of the circumstances described in clauses 14.4(b), (c) or (d) may apply, the party who has been served with the Clean Up Notice must:
- (i) engage an independent Environmental Auditor, to be approved by the other party (such approval not to be unreasonably withheld or delayed) or failing such approval, to be engaged under clause 31.3;
 - (ii) arrange for that Environmental Auditor to investigate the Premises the subject of the Clean Up Notice and prepare a report in accordance with all applicable Environmental Laws and relevant Governmental Agency guidelines and generally in accordance with Good Industry Practice (**Contamination Report**), which:
 - (A) describes the nature and extent of any Contamination which is the subject of that Clean-Up Notice (**Site Contamination**);
 - (B) describes the investigation undertaken to identify the nature and extent of the Site Contamination;
 - (C) identifies, in the opinion of the Environmental Auditor, the extent to which the Site Contamination:
 - (I) is Sydney Ferries Contamination;
 - (II) is Operator Contamination; or
 - (III) is Sydney Ferries Contamination which has been exacerbated by the Operator, in which case the Contamination Report should

identify the extent to which the Sydney Ferries Contamination has been exacerbated by the Operator;

- (D) based on the conclusions in paragraph (C), allocates liability for the Environmental Auditor's fees between the Director-General and the Operator in the same proportion as that party's responsibility for the Contamination;
- (iii) provide the other party with a copy of the Contamination Report as soon as possible after receiving the Contamination Report from the Environmental Auditor.
- (f) Prior to finalising the Contamination Report, the Environmental Auditor must provide a draft of the Contamination Report to both parties, and must allow both parties a reasonable period in which to provide the Environmental Auditor with comments regarding that draft Contamination Report. Those comments must also be provided by each party to the other party.
- (g) Upon finalising the Contamination Report, the findings of the Environmental Auditor contained in the Contamination Report will be final and binding on the parties (including regarding liability for the Environmental Auditor's fees).
- (h) Except with the prior consent of the Director-General, the Operator must not significantly excavate or disturb any Premises or the land or seabed adjoining any Premises.
- (i) The Director-General will not unreasonably withhold consent to any excavation or disturbance referred to in clause 14.4(h) to the extent that he is satisfied that the excavation or disturbance will not increase the likelihood;
 - (i) of any Clean Up Notice being served on either party in respect of the Premises; or
 - (ii) of any Contamination of the Premises or any land or seabed adjoining the Premises; or
 - (iii) any Pollution.
- (j) Except with the prior consent of Roads and Maritime Services, the Operator must not excavate, disturb or undertake any works in relation to any Wharf or the Land or seabed adjoining any Wharf.

15. General Assets

15.1 Commencement Condition

The Operator acknowledges and accepts the Commencement Condition of the General Assets.

15.2 Use of General Assets

The Operator must:

- (a) comply with its obligations under the Transitional Agreement;
- (b) allow access to any of the General Assets at reasonable times and on reasonable notice to the Director-General, the Director-General's Associates and any Governmental Agency for the purpose of ascertaining the Operator's compliance with its obligations under the Transaction Documents. In doing so, the Director-General or the Director-General's Associates must attempt to minimise any interference with the conduct of the Ferry Operations; and

- (c) use the General Assets in accordance with the manufacturers' and suppliers' specifications, recommendations and service standards.

15.3 Other use

- (a) The Operator may only use the General Assets for a purpose other than conducting the Ferry Operations if it does not:
 - (i) adversely affect the Continuity of the Ferry Services;
 - (ii) breach the Transitional Agreement; or
 - (iii) adversely affect the Director-General's rights under a Transaction Document.
- (b) The revenue from any other use authorised under this clause will be shared between the Operator and the Director-General as agreed and accounted for in the manner set out in Schedule 1.

16. Maintenance

16.1 General maintenance obligation

The Operator must carry out Maintenance Work:

- (a) on all Assets, as well as the FOCIS Assets;
- (b) in such a way as to ensure that the Assets and the FOCIS Assets are always in a condition which enables the Operator to comply with its obligations under the Transaction Documents;
- (c) so that the Assets and the FOCIS Assets are protected and preserved and in good working order and always capable of being operated fully, efficiently, effectively and safely:
 - (i) for the purpose, and to the capacity, for which they were designed; and
 - (ii) in compliance with all applicable Laws and Authorisations; and
- (d) in accordance with the Asset Management Plan and the Annual Works Plans which must be prepared, submitted, reviewed and updated in accordance with Schedule 2.

16.2 Standard of Maintenance Works

The Operator must ensure that:

- (a) all Maintenance Work complies with all applicable Laws, Authorisations and safety standards;
- (b) all Maintenance Work is carried out in accordance with Good Industry Practice;
- (c) it maintains systems throughout the Term which, at a minimum, comply with AS/NZS ISO 9001/2000 Quality Management Systems; and
- (d) all Maintenance Work is carried out so as not to void, breach or have an adverse effect on any supplier's or manufacturer's warranty or guarantee given for any Assets.

16.3 Failure to carry out Maintenance Work

If the Operator fails to carry out Maintenance Work under clauses 16.1 and 16.2, the Director-General may:

- (a) direct the Operator to undertake any Maintenance Work which has not been performed; or

- (b) require the Operator to pay, and the Operator must pay, the Director-General on demand an amount reasonably determined by the Director-General to be the estimated costs of an independent maintenance provider to undertake any Maintenance Work which has not been performed, and the Operator must cooperate and provide access to the relevant Assets to allow the independent maintenance provider to undertake such Maintenance Work.

16.4 Agreed Asset Capital Expenditure

The Operator must carry out the Agreed Asset Capital Expenditure.

16.5 Spares

- (a) The Operator must ensure that there is available at all times an appropriate quantity and quality of Spares for use in connection with the Ferry Operations so as not to adversely affect:
 - (i) the Continuity of the Ferry Services; or
 - (ii) the Director-General's rights under a Transaction Document.
- (b) The Operator must maintain, protect and preserve all Spares in proper working order and condition and in good repair in accordance with Good Industry Practice.
- (c) The obligation in clause 16.5(b) includes the obligation to replace a Spare with an equivalent or better quality Spare as soon as practicable after that Spare ceases to be a part of the stock of Spares available to the Operator.

17. Wharves

17.1 Wharf Access

- (a) In consideration of the Operator complying with its obligations under clause 17.2, the Director-General grants the Operator a licence for the Term to exercise the rights conferred on the Director-General under the Wharf Access Deed on the terms and conditions contained in the Wharf Access Deed and the Wharf Rules and subject to any other constraints stipulated in the Wharf Access Deed Schedule.
- (b) The Operator will, at its own risk and cost, procure such access to Wharves as it may from time to time require to enable it to comply with its obligations under the Contract Service Plan.

17.2 Wharf Access Deed

The Operator must:

- (a) perform and comply with all of the Director-General's obligations under the Wharf Access Deed (including the Wharf Rules) as if those obligations were restated in full in this Contract for the benefit of the Director-General, except to the extent expressly stated otherwise in the Wharf Access Deed Schedule; and
- (b) deal directly with Roads and Maritime Services in relation to its performance of those obligations.

17.3 Wharf Upgrade Program

- (a) The Operator acknowledges that:
 - (i) Roads and Maritime Services may undertake a project to upgrade the condition and characteristics of certain Wharves (**Wharf Upgrade Program**);

- (ii) the Wharf Upgrade Program may be implemented during the Term; and
 - (iii) the Wharf Upgrade Program may involve Wharves that are used as part of, and will therefore impact on, the Ferry Services.
- (b) The Operator must cooperate with Roads and Maritime Services and its contractors and agents regarding all aspects of the implementation of the Wharf Upgrade Program, including:
- (i) participating in discussions and forums;
 - (ii) assisting Roads and Maritime Services to implement arrangements, procedures and protocols to minimise disruptions to the Ferry Services;
 - (iii) providing any response, information, assistance or documentation reasonably requested by Roads and Maritime Services within a reasonable time of the request;
 - (iv) conducting the Ferry Operations in a way that facilitates the implementation of the Wharf Upgrade Program in a safe, expeditious and cost effective manner;
 - (v) mitigating Loss or damage suffered by the Operator as a result of the establishment, commissioning and or operation of the Wharf Upgrade Program; and
 - (vi) complying with directions issued by and doing all other things reasonably required by Roads and Maritime Services to facilitate the Wharf Upgrade Program.

17.4 Variation, replacement or termination of the Wharf Access Deed

- (a) Without affecting any of the parties other rights and obligations under this Contract, the Director-General may vary, replace or otherwise terminate the Wharf Access Deed at any time during the Term.
- (b) Where the Wharf Access Deed is varied, replaced or terminated, the Operator agrees, at its sole cost and expense subject to clause 19.1(m), to do all such things as may be reasonably necessary to give effect to the new arrangements for the purposes of this Contract.

18. Contract Variations

18.1 Definition

A Contract Variation is any of the following:

- (a) a variation to the frequency or extent of operation of a Ferry Service;
- (b) a variation to the days or hours of operation of a Ferry Service;
- (c) a variation to an existing Route;
- (d) the introduction of a new Route;
- (e) any of (a) to (d) arising from the Annual Timetable Review;
- (f) a variation to the categories of Tickets to be made available and honoured by the Operator, the Full Fares or Concession Fares at which Tickets are to be made available or the categories of Approved Beneficiaries; or
- (g) without limiting paragraphs (a) to (f), a change in the nature, scope or level of Ferry Services to be provided by, or obligations of, the Operator under this Contract,

but excludes a Change Event.

18.2 Contract Variations required by the Director-General

- (a) The Director-General may at any time, by notice in writing, require a Contract Variation.
- (b) The notice under clause 18.2(a) must:
 - (i) set out the particulars of the Contract Variation; and
 - (ii) set out the date on which the Contract Variation will take effect (which date must be after a reasonable time taking into account the nature of the Contract Variation, its likely impact on the Operator, the Operator's passengers, the views of the Operator, and any amendments that may need to be made to the Ferry Services).
- (c) Subject to clause 18.2(f)(iii), the Operator must:
 - (i) agree to the Contract Variation and must make any necessary amendments to the Ferry Operations and to this Contract so that it complies with the Contract Variation; and
 - (ii) return a completed Contract Variation Template (including the Operator's proposal for a Net Gain or Net Loss adjustment applicable to the Contract Variation) to the Director-General within the time stipulated by him which must be reasonable having regard to the nature of the Contract Variation required.
- (d) The Director-General may request reasonable information from the Operator:
 - (i) to clarify whether a Net Gain or Net Loss adjustment is appropriate as a result of a Contract Variation;
 - (ii) that relates to the anticipated Net Loss or Net Gain; and
 - (iii) to clarify anything else contained in the completed Contract Variation Template.
- (e) The Operator must provide the Director-General with any information requested under clause 18.2(d).
- (f) Upon receiving a completed Contract Variation Template the Director-General may:
 - (i) accept the Operator's proposal regarding the Contract Variation as set out in the Contract Variation Template;
 - (ii) request that the Operator clarify any aspect of the completed Contract Variation Template or provide further information to enable the Director-General to assess the Operator's proposal, within a reasonable time stipulated by the Director-General; or
 - (iii) reject the Operator's proposal regarding the Contract Variation as set out in the Contract Variation Template and:
 - (A) withdraw the proposed Contract Variation;
 - (B) direct the Operator to comply with the proposed Contract Variation on terms specified by the Director-General (but without prejudice to the Operator's rights under clause 31); or
 - (C) direct the Operator to resubmit a completed Contract Variation Template addressing any matters specified in reasonable detail by the Director-General, within a reasonable time specified by the Director-General.
 - (iv) The Operator must (as applicable) comply with any request under clause 18.2(f)(ii) or direction under clause 18.2(f)(iii), or implement any Contract Variation agreed under clause 18.2(f)(i).

18.3 Changes to Contract Service Plan

- (a) Without limiting clause 18.1, the Director-General may, under clause 18.2(a), require an amendment to the Contract Service Plan by six months notice in writing to the Operator.
- (b) If an amendment to the Contract Service Plan under clause 18.3(a) does not increase or reduce the Revenue Hours specified in the Contract Service Plan by more than █% over the Term, then:
 - (i) the Operator will not be compensated under Schedule 6 for that amendment; and
 - (ii) the Monthly Payments in Schedule 1 will be adjusted to reflect the change in Revenue Hours.

18.4 Contract Variations proposed by the Operator

- (a) The Operator may propose a Contract Variation to the Director-General.
- (b) Any proposed Contract Variation under clause 18.4(a) must be accompanied by a completed Contract Variation Template.
- (c) The procedure in clause 18.2(f) will apply to any Contract Variation proposed by the Operator, except that for clause 18.2(f)(iii)(A), the Operator must withdraw the Contract Variation.

18.5 Interaction with Contract Service Plan Reviews and other change mechanisms

This clause 18 is without prejudice to the operation of, and does not apply to any amendment (whether to this Contract or anything required by this Contract) or any Contract Variation where such amendment or Contract Variation is subject to any other provision of this Contract containing a mechanism for implementing amendments and whether or not providing for (or excluding) compensation to apply to that amendment, including:

- (a) the amendment of the Contract Service Plan in accordance with clause 6 and Schedule 2; and
- (b) any amendments required for the implementation of the Electronic Ticketing System Project as contemplated under clause 10.9.

19. Change Event

19.1 Change Event

A Change Event is any one of the following events:

- (a) a Change in Law;
- (b) the agreed changes to the Contract Service Plan resulting from the Network Review, but only if the thresholds contemplated in clause 18.3(b) are exceeded;
- (c) the undertaking of remediation to the Shipyard in relation to Sydney Ferries Contamination to the extent that such remediation will cause disruption to the Ferry Operations;
- (d) implementation of the Fleet Procurement Strategy approved by the Director-General;
- (e) implementation of the Electronic Ticketing System;
- (f) an amendment to Concession Fares or the definition of Approved Beneficiaries,
- (g) implementation of the Wharf Upgrade Program;

- (h) the permanent removal of access to a Wharf under clause 9.6 of the Wharf Access Deed, except as a result of any act, default or omission of the Operator or an Operator's Associate;
- (i) a material change to any Wharf Rule (other than, subject to paragraph (j) below, the allocation or amendment by Roads and Maritime Services under clause 5.2 of the Wharf Rules of a Priority Time Allotment (as that term is defined in the Wharf Rules)), except as a result of any act, default or omission of the Operator or an Operator's Associate;
- (j) a Wharf which, at the date of this Contract, is designated as an Exclusive Access Wharf (as that term is defined in the Wharf Rules) being designated as a Priority Access Wharf (as that term is defined in the Wharf Rules) under the Wharf Access Deed during the Term;
- (k) an increase in the Access Charge (as that term is defined in the Wharf Access Deed) imposed by Roads and Maritime Services for access to the Wharves for the provision of the Ferry Services;
- (l) the loss, destruction or damage beyond economic repair of an Asset in the circumstances set out in clause 34.2(b);
- (m) a variation, replacement or termination of the Wharf Access Deed pursuant to clause 17.4 which results in the Operator assuming greater or more onerous obligations in relation to the Wharves than those assumed by the Operator under the Wharf Access Deed at the date of this Contract; and
- (n) the implementation in accordance with the provisions of this Contract of a Director-General Initiated Capital Expenditure project as set out in Sheet 15 of the Financial Bid Template contained in Annexure A,

where such event:

- (o) occurs on or after the date of this Contract;
- (p) affects the Operator's obligations under this Contract or affects the Ferry Services; and
- (q) is not a Contract Variation otherwise the subject of clause 18 or any other provision of this Contract containing a mechanism for implementing an amendment as a consequence of the event and whether or not providing for (or excluding) compensation to apply to that amendment.

19.2 Notification of Change Event

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

(Expenditure);
 - (ii) recovery of the Expenditure is consistent with the provisions of this clause;

- (iii) except in the case of a Change Event contemplated in clause 19.1(e), clause 19.1(l), clause 19.1(m) or clause 19.1(n), the Expenditure is equal to or exceeds the threshold in paragraph 1.3 of Schedule 6; and
- (iv) the Operator has not or will not be otherwise compensated under a Transaction Document for the Change Event,

then the Operator may by written notice (**Change Notice**) apply to the Director-General for a change to the payments made under this Contract (**Change Order**), provided that Expenditure recoverable under this clause 19 will, in the case of a Change Event contemplated in clause 19.1(l), be limited to the cost of replacing the Asset with an equivalent Asset.

- (b) A Change Notice must include information about:
 - (i) the event or circumstance that the Operator considers constitutes a Change Event;
 - (ii) the amendments to the Ferry Operations or procedures that the Operator proposes to make to ensure continued compliance with its obligations under the Transaction Documents in the context of the Change Event and the timing of such amendments;
 - (iii) the mechanics for integrating the Change Event with the continued provision of the Ferry Services;
 - (iv) the Expenditure and substantiating documentation;
 - (v) working papers supporting the determination of the Expenditure;
 - (vi) the proposed method of funding the Expenditure and justification for the proposed method of funding;
 - (vii) whether or not any or all of the Expenditure could be accommodated in any subsequent replacement or procurement of any Assets used in performing the Operator's obligations under this Contract or the performance of the Ferry Services;
 - (viii) having regard to the Expenditure, the Operator's proposal for a Net Gain or Net Loss adjustment, prepared in accordance with Schedule 6;
 - (ix) a statement of the Expenditure certified by an accountant independent of the Operator and who is a member of the Australian Society of Certified Practising Accountants or of the Institute of Chartered Accountants;
 - (x) a statutory declaration from two directors (or a director and secretary) of the Operator confirming that in their opinions:
 - (A) the Change Event cannot be accommodated within the current Ferry Operations or any amendment to those operations or procedures without incurring the Expenditure; and
 - (B) the financial information provided to the Director-General is accurate, true and fair; and
 - (xi) evidence of compliance with clause 20.
- (c) The Director-General may request that other information he reasonably considers relevant with respect to any of the matters listed in clause 19.2(b) be provided to him within a reasonable time.
- (d) The Operator must comply with a request from the Director-General under clause 19.2(c).

- (e) If the Director-General:
- (i) reasonably considers that:
 - (A) there is a Change Event and the Operator will no longer be required to make an expenditure or the Operator's expenditures will be reduced; and
 - (B) payments made under this Contract will not otherwise be reduced; or
 - (ii) identifies a Change Event which would or is likely to arise out of any proposed or anticipated action by the Director-General or the Director-General's Associates,
- then the Director-General may by written notice require the Operator to submit a Change Notice to the Director-General and the provisions of this clause 19 will apply.

19.3 Director-General's response

- (a) Within 30 Business Days after the later of the receipt of a Change Notice (or any longer period agreed by the parties) and the provision of any additional information under clause 19.2(d), the Director-General must notify the Operator in writing that:
- (i) he accepts the application for a Change Order; or
 - (ii) he rejects the application for a Change Order and reasonably considers that:
 - (A) an event or circumstance that the Operator has claimed to be a Change Event is not a Change Event;
 - (B) the proposed method of addressing the Expenditure is not the best cost option for the Operator (after having regard to the Operator's circumstances and Transport for NSW's available funding);
 - (C) the recovery of the Expenditure does not satisfy the requirements of clause 19.2(a);
 - (D) a Change Notice does not comply with clause 19.2(b);
 - (E) the Operator has not complied with clause 19.2(d);
 - (F) the Operator has not complied with clause 20; or
 - (G) the Change Event or proposed Change Event will not proceed or is amended or withdrawn.
- (b) If the Director-General notifies the Operator under clause 19.3(a)(i) that he has accepted (or is deemed to have accepted under clause 19.3(d)) the application for a Change Order, a Change Order occurs.
- (c) If the Director-General notifies the Operator under (and in accordance with) clause 19.3(a)(ii) that he has rejected the application for a Change Order, the Operator may either:
- (i) withdraw the Change Notice; or
 - (ii) refer the matter to dispute resolution by the Independent Expert under clause 31.
- (d) If the Director-General fails to give notice to the Operator under (or within the time required by) clause 19.3(a)(i) or clause 19.3(a)(ii), the Director-General is not deemed to have accepted the Change Order under clause 19.3(a)(i).
- (e) If the dispute resolution process commenced following a notice under clause 19.3(c)(ii) determines the matter in dispute:

- (i) in favour of the Operator, a Change Order occurs; or
- (ii) in favour of the Director-General, the Change Notice is deemed withdrawn under clause 19.3(c)(i).

19.4 Compensation

Where an application for a Change Order is (or is deemed to be) approved:

- (a) the Operator will be entitled to receive a Net Loss adjustment; or
- (b) the Operator will be obliged to pay a Net Gain adjustment,

arising from the Change Event determined and receivable or payable (as the case may be) in accordance with, and subject to, Schedule 6.

20. Mitigation

20.1 Operator to mitigate Loss

In respect of any claim for compensation by the Operator from the Director-General under this Contract arising in respect of a Contract Variation, Change Event or any other event contemplated by this Contract, the Operator must (to the extent of its financial, technical and other relevant resources) use its reasonable endeavours to mitigate the amount of any Loss associated with the circumstances giving rise to the claim (or potential claim) for compensation.

20.2 Failure to mitigate

To the extent that the Operator fails to comply with clause 20.1, such amounts that the Director-General (acting fairly, reasonably and in good faith) considers would otherwise have been mitigated or minimised had the Operator complied with clause 20.1 are:

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

21. Default and cure regime

21.1 Non-Compliance Events

- (a) The following are Non-Compliance Events:
 - (i) **(Operator Breach)** any Operator Breach other than one that is a Termination Event;
 - (ii) **(Termination of Transaction Documents)** if:
 - (A) all or any material part of a Transaction Document is terminated or is or becomes void, illegal, invalid or unenforceable; or
 - (B) a party becomes entitled to terminate, rescind or avoid all or a material part of a Transaction Document; and
 - (iii) **(Misrepresentation)** a representation, warranty or statement by or on behalf of the Operator in a Transaction Document, or in a document provided under or in connection with a Transaction Document, is not true in a material respect or is misleading when made or repeated which, if it had been known to the Director-General before signing this Contract would, in his reasonable opinion, have resulted in him not entering into this Contract or any of the Transaction

Documents or in him entering into this Contract or any of the Transaction Documents on materially different terms.

- (b) As soon as practicable following becoming aware of a Non-Compliance Event the Operator must give notice to the Director-General setting out in reasonable detail the relevant event or surrounding circumstances.

21.2 Issue of Non-Compliance Notice

- (a) On the occurrence of a Non-Compliance Event, the Director-General may give the Operator written notice (**Non-Compliance Notice**):
 - (i) stating that a Non-Compliance Event has occurred;
 - (ii) setting out reasonable details of the event or circumstance constituting the Non-Compliance Event; and
 - (iii) stating whether the Non-Compliance Event requires either one or more of:
 - (A) an immediate remedy to be implemented by the Operator (specifying a reasonable period for the Operator to effect a remedy for that event or the circumstances that gave rise to the event);
 - (B) a plan (**Cure Plan**) to be submitted within five Business Days for approval by the Director-General setting out all measures the Operator proposes to take to cure the Non-Compliance Event or the events or the circumstances giving rise to the Non-Compliance Event; and or
 - (C) implementation of Temporary Measures (specifying a reasonable period for the Operator to do so having regard to the event or the circumstances that gave rise to the event) to alleviate the impact or effect of the Non-Compliance Event (or the events or circumstances that gave rise to the Non-Compliance Event) pending a permanent cure being achieved following an immediate remedy or in accordance with a Cure Plan.
- (b) In determining whether the Operator is required to immediately remedy the Non-Compliance Event, submit a Cure Plan or implement a Temporary Measure, or any combination of these requirements, the Director-General must act reasonably having regard to the impact of the Non-Compliance Event on the continued provision of safe and reliable Ferry Services.

21.3 Dealing with Non-Compliance Notices

- (a) If the Director-General requires the Operator to immediately remedy the Non-Compliance Event under clause 21.2(a)(iii)(A), the Operator must remedy the Non-Compliance Event within the period stipulated by the Director-General in the Non-Compliance Notice.
- (b) If the Director-General requires the Operator to submit a Cure Plan under clause 21.2(a)(iii)(B), the Operator must submit a Cure Plan which details:
 - (i) the measures that the Operator considers necessary and proposes to take to cure the Non-Compliance Event (or the events or the circumstances giving rise to the Non-Compliance Event);
 - (ii) the Temporary Measures to be taken to alleviate the impact or effect of the Non-Compliance Event (or the events or circumstances giving rise to the Non-Compliance Event) pending implementation of the Cure Plan;

- (iii) the period within which the Operator will cure the Non-Compliance Event (or the events or the circumstances that gave rise to the Non-Compliance Event) (**Cure Period**);
 - (iv) a work plan setting out each task to be undertaken and the time for each task to be completed;
 - (v) the form and timing of reports to be provided by the Operator as to the status of any Cure Plan together with evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the Cure Plan; and
 - (vi) the operational arrangements for integrating the cure with the continuing performance of Ferry Services.
- (c) If the Director-General requires the Operator to implement a Temporary Measure with respect to the Non-Compliance Event under clause 21.2(a)(iii)(C), the Operator must undertake the Temporary Measures required by the Director-General within the time stipulated by the Director-General in the Non-Compliance Notice.

21.4 Agreement and implementation of Cure Plan

- (a) The Director-General must, by notice to the Operator within five Business Days of submission by the Operator of a Cure Plan required under clause 21.2(a)(iii)(B):
- (i) approve the Cure Plan; or
 - (ii) require the Operator to amend the Cure Plan if the Director-General considers, acting reasonably, that the Cure Plan:
 - (A) is not likely to cure the relevant Non-Compliance Event (or the events or circumstances that gave rise to the Non-Compliance Event) within the period required in the Non-Compliance Notice; and or
 - (B) does not comply with all applicable provisions of this Contract.

A notice under this clause must include details of any amendments (generally or specifically) to the Cure Plan required by the Director-General.

- (b) If clause 21.4(a)(ii) applies, the Operator must amend its Cure Plan in accordance with the requirements of the Director-General and resubmit a revised Cure Plan to the Director-General for approval.
- (c) The Operator must implement and diligently pursue any Cure Plan approved by the Director-General (or revised Cure Plan approved by the Director-General).
- (d) The Operator must provide reports as to the status of any Cure Plan and evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the Cure Plan. These reports and evidence must be provided by the Operator:
 - (i) in accordance with the reporting requirements set out in the Cure Plan; or
 - (ii) if requested to do so by the Director-General (and within five Business Days of the Director-General requesting the Operator to do so).

21.5 Extension to Cure Period

- (a) Subject to clause 21.5(b), if the Operator requires an extension of the existing Cure Period the Operator must, as soon as possible but not later than the expiration of the existing Cure Period, submit to the Director-General a request that the Cure Plan be revised and provide:
- (i) reports as to the status of the Cure Plan;

- (ii) the proposed amendment to the Cure Period;
 - (iii) evidence that the Operator has diligently pursued and is continuing to diligently pursue a cure in accordance with the Cure Plan but that the Non-Compliance Event cannot, with reasonable diligence, be cured within the existing Cure Period;
 - (iv) any other consequential amendments to the Cure Plan; and
 - (v) any other information requested by the Director-General and relevant to curing the Non-Compliance Event or the Cure Plan.
- (b) The Operator may only apply once under clause 21.5(a) for an extension of the Cure Period in respect of any Non-Compliance Event (unless otherwise agreed with the Director-General).
 - (c) If the Operator submits a request to the Director-General under and in accordance with clause 21.5(a), the provisions of clauses 21.4(a) and 21.4(b) will apply to the approval of the revision to the Cure Plan.
 - (d) If the Director-General approves a revision to the Cure Plan, this clause 21 will apply to that Cure Plan as amended.

21.6 Confirmation of Cure

- (a) At any time after the issue of the Non-Compliance Notice:
 - (i) the Operator may request the Director-General to confirm whether or not the Non-Compliance Event has been cured; and
 - (ii) the Director-General must respond to a request under clause 21.6(a)(i) as soon as practicable and that response:
 - (A) must confirm whether the Non-Compliance Event has or has not been cured; and
 - (B) may require further information from the Operator.
- (b) The failure by the Director-General to respond to a request by the Operator under clause 21.6(a)(i) will not in any way affect or reduce the Operator's obligations under this Contract including the obligation to cure the Non-Compliance Event (or the events or circumstances that gave rise to the Non-Compliance Event).
- (c) The Operator may rely on a confirmation issued by the Director-General under clause 21.6(a)(ii) but any response by the Director-General pursuant to a request by the Operator under clause 21.6(a)(i) will not constitute a waiver of any rights, remedies or powers of the Director-General in connection with any matter specified by the Director-General as still to be cured.

21.7 Wharf Access Deed Default

- (a) If an Event of Default (as that term is defined in the Wharf Access Deed) has occurred as a result of any act, default or omission of the Operator or an Operator's Associate (Wharf Default), the Director-General may give the Operator a written notice of default (Wharf Default Notice) that:
 - (i) provides details of the alleged Wharf Default;
 - (ii) requires the Operator:
 - (A) to remedy the Wharf Default, if capable of remedy; and/or

- (B) if the Director-General considers appropriate, to prepare a rectification plan for the approval of the Director-General; and
- (iii) specifies any time requirement for response or action.
- (b) The Operator must, within three Business Days of the receipt of a Wharf Default Notice (or such longer period as may be specified by the Director-General in the Wharf Default Notice), give a written response to the Director-General advising:
 - (i) that the Wharf Default has been remedied or, if not remedied, the date on which it will be remedied; or
 - (ii) the plan for rectification of the Wharf Default.
- (c) If, after the expiration of seven Business Days following the date of service of the Wharf Default Notice on the Operator (or such other time period as agreed between the parties):
 - (i) the Director-General is dissatisfied with the action taken by the Operator;
 - (ii) if the parties (acting reasonably) cannot agree on a plan for rectification; or
 - (iii) the Operator has not responded,
 this will be a Termination Event under clause 24.1.
- (d) The Operator acknowledges that the Director-General may take into account any decision or requirement of Roads and Maritime Services under the Wharf Access Deed in respect of the Wharf Default.

22. Investment in Service Improvement Projects

- (a) This clause applies without limiting or otherwise affecting the Director-General's Powers under clauses 21, 23 and 24 or otherwise.
- (b) From the Service Commencement Date until 31 December 2012, a sum agreed between the Director-General and the Operator will be withheld from Monthly Payments and paid by the Director-General into the Service Improvement Project Retention Account so that its required balance on 1 January 2013 stands at \$ [REDACTED] (**Required Balance**). If the Director-General and the Operator have not agreed on the withholdings from Monthly Payments within three months after the Service Commencement Date, the Director-General may determine the amount and timing of such withholdings so as to achieve the Required Balance. The Required Balance for each subsequent Contract Year will be the amount of \$ [REDACTED] multiplied by the CPI Multiplier as at 1 January in that Contract Year.
- (c) From 1 January 2013, the Director-General may direct the Operator to undertake a Service Improvement Project if Unsatisfactory Performance has been determined by the Director-General in relation to a Key Result Area in Schedule 4.
- (d) The Director-General may determine **Unsatisfactory Performance** if the Performance Benchmark for Performance Indicators 1, 2, 3, 4, 5, 7, 8, 9 and/or 10 are not met.
- (e) The Director-General may direct the Operator to undertake one or more of Service Improvement Projects in any Contract Year. The total value of any Service Improvement Projects to be undertaken in any one Contract Year must not exceed the balance of the Service Improvement Project Retention Account as at 1 January in that Contract Year.

- (f) The Director-General may draw on the Service Improvement Project Retention Account for the purpose of funding Service Improvement Projects to be undertaken by the Operator.
- (g) If the Director-General draws on the Service Improvement Project Retention Account, a sum agreed between the Director-General and the Operator will be withheld from subsequent Monthly Payments so that the Required Balance will be met at 1 January of the next Contract Year. If the Director-General and the Operator fail to agree on the withholdings, the Director-General may determine the amount and timing of such withholdings so as to achieve the Required Balance by the applicable date.
- (h) Any interest earned on money standing to the credit of the Service Improvement Project Retention Account will be deposited in the Service Improvement Project Retention Account and may contribute to the Required Balance.
- (i) The Director-General must, no later than 20 Business Days after the end of the Term, pay the Operator all unallocated moneys then standing to the credit of the Service Improvement Project Retention Account.
- (j) Clause 22 is a civil penalty provision for the purposes of section 16AD of the PT Act.

23. Step-in for Operator Breach

23.1 Step-in Right

- (a) If:
 - (i) a Termination Event has occurred and is subsisting; or
 - (ii) a Non-Compliance Event occurs which is not cured to the satisfaction of the Director-General in accordance with clause 21 and which, in the opinion of the Director-General:
 - (A) materially adversely affects the conduct of all or any part of the Ferry Operations;
 - (B) disrupts, restricts or prevents the operation or performance of all or any of the Ferry Services for more than 24 hours;
 - (C) gives rise to a right of a party to a Transaction Document (other than the Operator) to terminate the Transaction Document;
 - (D) increases the risk of imminent death or imminent injury to passengers or Staff involved in the enjoyment and performance of the Ferry Operations or other traffic affected by the Route;
 - (E) directly or indirectly avoids or materially prejudices or frustrates the tender or contracting of the performance of the Ferry Services at the end of the Term to a Successor Operator; or
 - (F) is likely to give rise to any of the above, and

the Director-General has given notice to the Operator in accordance with clause 23.1(b), then a Step-in Party may exercise all or any of the Step-in Powers in an endeavour to remedy the Termination Event or the Non-Compliance Event or to overcome any risk or mitigate the consequences resulting from the Termination Event or the Non-Compliance Event.

- (b) The notice referred to in clause 23.1(a):

- (i) must specify:
 - (A) the Termination Event or Non-Compliance Event which has triggered the Step-in Right; and
 - (B) the date on which the relevant Step-in Party proposes to commence exercising the Step-in Powers; and
- (ii) may be given orally if the Director-General considers that the Termination Event or Non-Compliance Event requires urgent remedy and there is insufficient time to serve a written notice. Any oral notice must be followed within 24 hours by a written notice.
- (c) The Step-in Right is without prejudice to the Director-General's other Powers in respect of a Non-Compliance Event or Termination Event, and the right to terminate in the circumstances set out in clause 23.
- (d) The Director-General may:
 - (i) deduct from an amount payable to the Operator under clause 23.3(e)(ii) or under any other clause of this Contract, the amount of any costs and expenses he reasonably considers will be incurred by a Step-in Party or the Director-General in exercising the Step-in Powers under clause 23.1(a)(i) or (ii); and
 - (ii) apply the amount deducted to meet such costs and expenses.

23.2 Step-in Powers

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

- (a) enter into and remain in possession of all or any of the Assets;
- (b) operate and manage all or any Assets;
- (c) exercise all or any of the Powers, and perform all or any of the obligations, of the Operator:
 - (i) in connection with the Ferry Operations; or
 - (ii) under or in relation to a Transaction Document or any other document to which the Operator is a party,
 as if it were the Operator to the exclusion of the Operator;
- (d) do anything the Director-General considers necessary to remedy the relevant Termination Event or Non-Compliance Event or to overcome any risk or mitigate any consequences resulting from the Termination Event or Non-Compliance Event; and
- (e) do anything incidental to the matters listed in clauses 23.2(a) to 23.2(d).

23.3 Acknowledgment and Obligations of the Operator

- (a) The Operator acknowledges that a Step-in Party is not under any obligation to remedy a Termination Event or Non-Compliance Event nor to overcome any risk or mitigate any consequences resulting from a Termination Event or Non-Compliance Event.
- (b) The Operator must cooperate and procure that its Staff and the Operator's Associates cooperate with the Step-in Party in the exercise of the Step-in Powers.
- (c) Without limiting clause 23.3(b), the Operator must give access to a Step-in Party to:
 - (i) all or any of the Assets;

- (ii) the Staff; and
 - (iii) any information the Step-in Party reasonably requires including the Operator's Records, and to the extent necessary, the Operator must procure any consents to disclose Personal Information to the Step-In Party,
- to enable the Step-in Party to exercise the Step-in Powers.
- (d) The Operator must pay to the Director-General on demand all reasonable Step-In Costs and all Losses incurred by a Step-in Party in exercising the Step-in Powers (less any amount applied to meet those costs and expenses pursuant to clause 23.1(d).
 - (e) Any Step-in Party acts as agent of the Operator at all times during which it is exercising the Step-in Powers and:
 - (i) subject to clause 23.3(f), the Operator indemnifies the Step-in Party and the Director-General from and against all reasonable Step-in Costs and all Losses in respect of or arising from the exercise of the Step-in Powers by the Step-in Party or arising in connection with the Termination Event or the Non-Compliance Event which has triggered the Step-in Right, except to the extent it arises from the fraud, wilful default or gross negligence on the part of the Step-in Party; and
 - (ii) the Director-General must account to the Operator for any revenue received, net of any expenses incurred (including expenses referred to in clause 23.3(d)) in operating the Ferry Operations while exercising the Step-in Powers.
 - (f) The Operator is not liable for and provides no indemnity in respect of any Operator Breach or Termination Event caused by the Step-in Party.

23.4 Protection of a Step-in Party

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

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

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

23.5 Protection of third parties

- (a) A party to any Dealing (as defined below):
 - (i) need not enquire:
 - (A) as to whether the Step-in Right has become exercisable;
 - (B) as to whether a person who is, or, purports or is purported to be, the Step-in Party is duly appointed; or
 - (C) in any other way as to the propriety or regularity of the Dealing; or
 - (ii) is affected by express notice that the Dealing is unnecessary or improper.
- (b) For the protection of any party to a Dealing, the Dealing will be taken to be authorised by this Contract and will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.
- (c) In this clause 22, a **Dealing** is:

- (i) any payment, or any delivery or handing over of an asset, to; or
 - (ii) any acquisition, incurring of Financial Indebtedness, receipt, sale, lease, disposal or other dealing, by,
- any Step-in Party or any person who purports or is purported to be a Step-in Party.
- (d) The receipt of the Director-General or any Step-in Party (or person who purports, or is purported, to be a Step-in Party) for any money or assets payable to or receivable or received by it exonerates the person paying that money or handing over that asset from being concerned as to their application, or from being liable or accountable for their loss or misapplication.

23.6 Step-out

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

24. Termination

24.1 Termination Events

The following are Termination Events:

- (a) **(Immediate Action)** the Operator fails to remedy a Non-Compliance Event when required to do so under (or within the time period required by) clause 21.3(a);
- (b) **(Temporary Measure)** the Operator fails to take a Temporary Measure when required to do so under (or within the time period required by) clause 21.3(c);
- (c) **(Cure Plan)** the Operator fails to submit a Cure Plan in accordance with (or within the time period required by) clause 21.3(b) or a revised Cure Plan in accordance with clause 21.4(b);
- (d) **(Pursue Cure Plan)** the Director-General forms the opinion, acting reasonably, that the Operator has not diligently pursued or is not continuing to diligently pursue a cure in accordance with a Cure Plan, or the Operator fails to provide the evidence required (or within the time period required) by clause 21.4(d);

- (e) **(Failure to Cure)** the Operator took action required by the Director-General under clause 21.3(a) or clause 21.3(c) or pursued a cure in accordance with clause 21.4(c) but has, in the reasonable opinion of the Director-General, failed to cure during the Cure Period the Non-Compliance Event or circumstances giving rise to the Non-Compliance Event;
- (f) **(Persistent Breaches)** a persistent failure by the Operator to perform, or comply to a material extent with, any one or more of its obligations under this Contract or the Transaction Documents in circumstances where the Director-General has previously notified the Operator of the failures or non-compliances and has put the Operator on notice that continued failures or non-compliances would constitute a persistent failure or non-compliance for the purposes of this clause (other than, without limiting the Director-General's Powers under clauses 21, 22 and 23 or the remaining sub-paragraphs of this clause 24.1 or otherwise in respect of a breach of a Performance Benchmark, a breach of a Performance Benchmark other than in relation to Performance Indicator 6);
- (g) **(Insolvency)** an Insolvency Event occurs;
- (h) **(Unlawful)** it becomes unlawful for the Operator to perform all or a material number of the Ferry Services;
- (i) **(Misinformation)** the Operator engages in any conduct of the kind set out in clause 8.6 or paragraph 10.3 of Schedule 1;
- (j) **(Dealing with Assets)** the Operator breaches clause 34.1;
- (k) **(Abandonment)** 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;
- (l) **(Assignment and subcontracting)** a purported assignment by the Operator of a Transaction Document or any of its obligations under any Transaction Document without the prior consent of the Director-General;
- (m) **(Change in Control)** where:
 - (i) a person's Voting Power in the Operator changes after the date of this Contract; or
 - (ii) a person is able to Control the Operator where that person was not able to Control the Operator at the date of this Contract,
 without the Director-General's prior written consent;
- (n) **(Revocation of Authorisation)** the Operator's Authorisations that are material to the performance by the Operator of a Transaction Document, or to the validity and enforceability of a Transaction Document or for the performance of the Ferry Services or the Continuity of the Ferry Services, is repealed, revoked or terminated or expires, or is modified or amended or conditions are attached to it in a manner unacceptable to the Director-General, and is not replaced by another Authorisation acceptable to the Director-General;
- (o) **(Fraud)** the Operator has acted fraudulently or dishonestly in relation to the provision of the Ferry Services or the performance of any of its obligations under the Transaction Documents;
- (p) **(Compulsory Acquisition)** a Contract Ferry becomes subject to Compulsory Acquisition as a result of a breach of a Transaction Document by the Operator;
- (q) **(Repudiation)** the Operator repudiates this Contract; and
- (r) **(Wharf Default)** clause 21.7(c) applies.

24.2 Director-General's right to terminate

- (a) On the occurrence of a Termination Event:
 - (i) if the Termination Event is an event listed in clauses 24.1(f), 24.1(g), 24.1(h), 24.1(i), or 24.1(m);
 - (A) the Director-General may give a notice to the Operator requiring the Operator to show cause as to why the Director-General should not terminate the Contract;
 - (B) the Operator must respond to this notice within 2 Business Days following receipt of the notice; and
 - (C) following the 2 Business Day period referred to in clause (B) and after reviewing any response received from the Operator under clause (B), the Director-General may terminate this Contract on written notice to the Operator effective on the date specified in the notice; and
 - (ii) in the case of all other Termination Events, the Director-General may terminate this Contract on written notice to the Operator effective on the date specified in the notice.
- (b) A notice terminating this Contract issued under clause 24.2(a)(i)(C) or clause 24.2(a)(ii) is a **Termination Notice**.
- (c) 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 Contract.
- (d) This Contract will terminate on the date specified in the Termination Notice (unless pursuant to clause 24.2(c) the Termination Notice specified conditions and such conditions have been satisfied by the Operator prior to the specified date of termination).
- (e) No failure to exercise, nor any delay in exercising the Director-General's rights under this clause will operate as a waiver or cause the rights of the Director-General under this clause to lapse or be otherwise diminished.
- (f) This termination right is without prejudice to the Director-General's right under clauses 22 and 23 and the Director-General's right to exercise all legal and equitable rights and remedies available to the Director-General in respect of the Termination Event (whether under this Contract or not).

24.3 No other right to terminate

Notwithstanding any rule of law or equity to the contrary, this Contract may not be terminated except as provided in clauses 4.4 and 24.2.

24.4 Consequences of Termination

- (a) Subject to clause 24.4(b), upon the expiry or termination of this Contract (whether through default or expiry or otherwise but other than pursuant to clause 4.4(a)) 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 Contract by the Operator or as a result of a Termination Event;
 - (ii) any outstanding obligations existing as at termination (including any obligation to pay money but subject to a right of the Director-General to set off under clause 9.3); and

- (iii) any obligations that are expressed to continue in accordance with the terms of this Contract;
 - (iv) any indemnity given by the Operator under this Contract; and
 - (v) any obligation of confidence under this Contract.
- (b) This clause 24.4 and clauses 1, 4, 30, 30.5, 31, 32, 33, 35, 36 and 39 survive termination or expiry of this Contract.

24.5 Waiver

If this Contract is lawfully terminated by the Director-General, the Operator waives any rights it might otherwise have to pursue a claim of restitution of any kind including a claim of unjust enrichment.

25. Force Majeure

25.1 Force Majeure Events

The following events constitute Force Majeure Events:

- (a) any of the following events occurs under the Wharf Access Deed except to the extent it occurs as a result of any act, default or omission of the Operator or an Operator's Associate:
 - (i) termination of the Wharf Access Deed;
 - (ii) the occurrence of a Force Majeure Event (as that term is defined in the Wharf Access Deed); or
 - (iii) a suspension under clause 8 of the Wharf Access Deed;
- (b) act of God, lightning, storm, extreme weather, high seas, explosion, flood, landslide, bush fire or earthquake;
- (c) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (d) embargo, power shortage or water shortage;
- (e) fuel shortages that apply generally to the maritime industry; and
- (f) strikes or other industrial action (other than industrial action primarily involving some or all of the Staff or primarily involving the ferry industry),

the consequence of which is:

- (g) beyond the control of the party seeking relief as a result of the Force Majeure Event (**Affected Party**); and
- (h) could not have been prevented, overcome or remedied by the exercise by the Affected 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).

25.2 Claims for relief

If the Operator is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, it must as soon as practicable, but in any event within 48 hours after becoming aware of the Force Majeure Event, notify the Director-General

accordingly. If the Director-General is prevented in whole or in part from carrying out his obligations under this Contract as a result of a Force Majeure Event he must as soon as practicable notify the Operator accordingly. Each notice must:

- (a) specify the obligations and the extent to which the Affected Party cannot perform those obligations;
- (b) fully describe and provide documentary evidence of the Force Majeure Event;
- (c) estimate the time during which the Force Majeure Event will continue; and
- (d) specify the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.

25.3 Suspension of obligations

Subject to the application of paragraph 3.2 of Schedule 1, following a notice of a Force Majeure Event under clause 25.2, and while the Force Majeure Event continues, the obligations which cannot be performed because of the Force Majeure Event will be suspended.

25.4 Mitigation

- (a) The party that is prevented from carrying on its obligation under this Contract, because of the impact of a Force Majeure Event, must:
 - (i) remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
 - (ii) take all action reasonably practicable to mitigate any Loss suffered by the other party or any passengers as a result of the party's failure to carry out its obligations under this Contract. The party is not required to test the validity or refrain from testing the validity of any Law.
- (b) The Term will not be extended by the period of a Force Majeure Event.

26. Warranties and Acknowledgements

26.1 Warranties and Acknowledgements Correct

- (a) The Operator represents and warrants to the Director-General that, except as disclosed in writing to the Director-General, the statements in Schedule 8 are true and correct and not misleading on the date of this Contract.
- (b) The Operator makes each of the acknowledgements in Part B of Schedule 8 as at the date of this Contract.

26.2 Updating of Warranties and Acknowledgements

Subject to clause 26.3, the Operator undertakes that each of the statements in Schedule 8 (including the warranties and acknowledgements) will be true and correct and not misleading on the Service Commencement Date as if they had been made on that date.

26.3 Notification of Change

The Operator must immediately notify the Director-General upon becoming aware that a representation warranty or acknowledgement it has given under this clause has become untrue or misleading between execution of this Contract and the Service Commencement Date.

26.4 Reliance on Representations, Warranties and Acknowledgements

The Operator acknowledges that the Director-General has entered, or will enter, into the Transaction Documents in reliance on the representations, warranties and acknowledgements in Schedule 8.

26.5 Director-General's Warranties

The Director-General represents and warrants to the Operator that:

- (a) he has the power to enter into and perform his obligations under each of the Transaction Documents to which he is a party and to carry out the transactions contemplated by those documents; and
- (b) each Transaction Document to which he is a party constitutes a valid and binding obligation of the Director-General, subject to any necessary stamping and registration.

27. Intellectual Property

27.1 Intellectual property Licence

- (a) In this clause 27, Intellectual Property means any intellectual or industrial property whether protected by statute at common law or in equity, including any patent, invention, copyright, design (whether or not registrable), trade secret, circuit layout design or right in relation to circuit layouts, right to confidential information, technical information, processes, techniques and know how but excluding registered and unregistered trade marks, trade names, logos and get up (and copyright subsisting in such trade marks, logos and get up).
- (b) The Operator grants to the Director-General a perpetual, irrevocable, non-exclusive, royalty free and transferable licence (with the right to sublicense) to use all Ferry Operations IP, for the purpose of permitting any Step-in Party to exercise the Step-in Powers and any Successor Operator (or nominee of the Director-General) or Interim Operator to provide the Ferry Services after the Termination Date.
- (c) Clause 27.1(b) does not oblige the Operator to licence its business name or logo to the Director-General for the purpose of permitting any Successor Operator to provide the Ferry Operations after the Termination Date.
- (d) To the extent that the Operator makes use or intends to make use of third party owned Intellectual Property in connection with the conduct of the Ferry Operations, the Operator must ensure prior to commencing such use, that it will grant the Director-General a licence to that Intellectual Property if required by him in the terms stated in clause 27.1(b) or on such other terms as may be reasonably required by the Director-General.
- (e) The Operator must indemnify and hold the Director-General, Step-in Party and all Successor Operators (or nominees of the Director-General) or Interim Operators harmless against all Losses arising out of or in connection with:
 - (i) the Director-General's, Step-in Party's or any Successor Operator's (or a nominee of the Director-General) or Interim Operator's use of the Ferry Operations IP in a manner contemplated by this clause infringing any third party rights in the Intellectual Property; or
 - (ii) the Operator not having the right to grant the Director-General a licence in the terms stated in clause 27.1(b).

27.2 Director-General's Intellectual Property

The Disclosed Information and all Intellectual Property rights held by the Director-General and the Director-General's Associates (including in the Electronic Ticketing System) will remain the property of the Director-General and the Director-General's Associates at all times.

28. Performance Bond

28.1 Provision

The Operator must, on or before the Service Commencement Date, procure the issue to the Director-General of a Performance Bond which:

- (a) is issued by an Issuer with a Required Rating and approved by the Director-General (which approval must not be unreasonably withheld);
- (b) has a face amount which is no less than the Performance Bond Amount;
- (c) expires no earlier than three years after it is issued or 12 months after the end of the Term, whichever is the earlier; and
- (d) is payable at an office of the Issuer in Sydney.

28.2 Replacement

The Operator must procure the issue to the Director-General of a replacement Performance Bond:

- (a) on or prior to each Trigger Date which complies with the requirements of clause 28.1; and
- (b) if the rating of the Issuer falls below the Required Rating, within five Business Days after being requested by the Director-General to do so.

28.3 Demands

- (a) The Director-General may make a demand under the Performance Bond:
 - (i) in respect of any amount that the Director-General considers:
 - (A) is due and payable (but which has not been paid); or
 - (B) may or will become liable to be paid if a contingency occurs and that contingency is unlikely to occur until after the date the Director-General is obliged to return the Performance Bond to the Operator,

by the Operator to the Director-General or one of the Director-General's Associates under a Transaction Document or in connection with the Operator's conduct of the Ferry Operations; or
 - (ii) for the amount of any Loss suffered or incurred by the Director-General as a result of a Termination Event or Non-Compliance Event occurring.
- (b) The Director-General may make a demand under the Performance Bond for the full amount then undrawn if a replacement Performance Bond is not provided to the Director-General in accordance with clause 28.2. The amount paid to the Director-General will be paid to the Operator as soon as the replacement Performance Bond is provided.
- (c) The Director-General 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 the dispute resolution procedures set out in clause 30 or in another Transaction Document; or
 - (iii) subject to any court or other proceedings.
- (d) The Director-General may only make a demand under the Performance Bond in accordance with this clause 28.3.

28.4 Notice

The Director-General must, as soon as practicable after the Director-General has made a demand under the Performance Bond, give a notice to the Operator specifying the Director-General's reasons for making the demand.

28.5 No injunction

The Operator must not take any steps to restrain or injunct the Director-General from making a demand under the Performance Bond or the Issuer paying any amounts under the Performance Bond.

28.6 Repayment

If:

- (a) the Issuer of the Performance Bond makes a payment to the Director-General as a result of a demand made in accordance with clause 28.3(a)(i)(A) and all or part of the amount in respect of which demand was made was not actually due and payable by the Operator to the Director-General or the Director-General's Associates; or
- (b) the Issuer of the Performance Bond makes a payment to the Director-General as a result of a demand made in accordance with clause 28.3(a)(i)(B) and the Operator does not in fact become liable to pay to the Director-General or the Director-General's Associates all or part of the amount in respect of which demand was made,

then the Director-General must pay to the Operator:

- (c) all or, as the case may be, that part of the amount (**Relevant Amount**) which was not actually due and payable by the Operator to the Director-General or the Director-General's Associates or for which the Operator did not in fact become liable to pay to the Director-General or the Director-General's Associates; and
- (d) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Performance Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Operator. Such interest must be paid on the date the Relevant Amount is paid to the Operator.

28.7 Return

- (a) The Director-General must provide the Performance Bond to be replaced to the Operator in exchange for the replacement Performance Bond.
- (b) The Director-General must, subject to any rights the Director-General may have in relation to the Performance Bond, return the Performance Bond (less any amounts drawn under clause 28.3) to the Operator within 12 months after the Termination Date.

29. Insurance

29.1 Insurance policies

- (a) During the Term, the Operator must effect and maintain at its own cost:
- (i) marine insurance in respect of the Contract Ferries 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;
 - (C) any other risk which should be effected as a matter of Good Industry Practice; and
 - (D) usual protection and indemnity risks (including risks in respect of pollution of the sea and environment) for at least \$ [REDACTED] per incident;
 - (ii) insurance for material loss or damage and consequential loss in respect of the Premises, the Shipyard Infrastructure, Spares, Equipment and Wharves for values to be advised by the Director-General before the Service Commencement Date;
 - (iii) public liability insurance:
 - (A) covering claims in respect of:
 - (1) damage to any real or personal property; and
 - (2) the injury to, or death of, any person,
 in the conduct of the Ferry Operations and in respect of the Premises;
 - (B) for at least \$ [REDACTED] per incident; and
 - (C) including a cross liability clause:
 - (1) in which the insurer must waive all rights of subrogation or action that it may have or acquire against the 'insured' parties; and
 - (2) for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result);
 - (iv) workers' compensation insurance against any common law or statutory liability;
 - (v) any other insurances which the Director-General reasonably requires and which should be effected as a matter of Good Industry Practice, provided those insurances can be obtained on payment of a reasonable premium.
- (b) Any property damage insurance must be effected and maintained with an Authorised Insurer.

29.2 Insurance generally

- (a) All insurances which the Operator effects in compliance with this Contract must:
- (i) be effected with insurers approved by the Director-General (such approval not to be unreasonably withheld);
 - (ii) be on terms approved by the Director-General (such approval not to be unreasonably withheld);

- (iii) not contain any exclusion, endorsement or alteration unless it is first approved in writing by the Director-General (such approval not to be unreasonably withheld); and
 - (iv) in respect of the insurance specified in clause 29.1(a)(i), be in the joint names of the Director-General and the Operator and must identify their respective rights and interests; and
 - (v) in respect of the insurances specified in clauses 29.1(a)(ii) and 29.1(a)(iii), be in the joint names of the Director-General, the State, the Minister, Roads and Maritime Services and the Operator and must identify their respective rights and interests.
- (b) The Operator must use reasonable endeavours to ensure that all contracts for insurance that it effects in compliance with this Contract contain a term that requires the insurer to notify the Director-General 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 29.2(b) but, despite this, the contracts for insurance effected in compliance with this Contract do not contain the term referred to in clause 29.2(b), the Operator must immediately notify the Director-General in writing if the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy, including particulars of that notice from the insurer.
 - (d) The Operator must provide notice to the Director-General of any intended cancellation of insurances effected in compliance with this Contract by the Operator.
 - (e) The Operator must:
 - (i) give the Director-General acceptable proof of currency and coverage of the insurances referred to in clause 29.1(a) before the Service Commencement Date;
 - (ii) give the Director-General certified copies of all:
 - (A) policies;
 - (B) renewal certificates; and
 - (C) endorsement slips,
 as soon as it receives them; and
 - (iii) use reasonable endeavours (including paying any reasonable premium) to have each policy endorsed to the effect that 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.

29.3 Premiums

The Operator must punctually pay all premiums in respect of all insurance policies referred to in clause 29.1.

29.4 Application of proceeds of insurance

- (a) In the event that the Operator becomes entitled to claim under any insurance policy as the result of any Loss in respect of an Asset, the Operator must ensure that it diligently pursues such claim and keeps the Director-General notified of progress in pursuing that claim.

- (b) Unless the Director-General agrees otherwise in writing, the Operator must apply the proceeds of any claim referred to in clause 29.4(a):
 - (i) to the repair of any damage to the relevant Asset where such repair is economic;
 - (ii) to the replacement of the relevant Asset where such Asset is irretrievably lost or stolen or is damaged beyond economic repair (unless the Director-General has approved the Operator not replacing that Asset); and
 - (iii) otherwise, as the Operator sees fit.
- (c) If required by the Director-General, the Operator must provide evidence to the reasonable satisfaction of the Director-General that:
 - (i) if clause 29.4(b)(i) applies, repair of any damage to an Asset is economic; and
 - (ii) if clause 29.4(b)(ii) applies, the Asset is irretrievably lost or stolen or is damaged beyond economic repair.
- (d) If the Director-General is not reasonably satisfied with the evidence provided under clause 29.4(c), he may direct the Operator to apply the insurance proceeds in another reasonable manner.
- (e) The Operator indemnifies the Director-General for and against any Losses incurred or sustained in respect of an Asset to the extent that:
 - (i) any insurance required by this Contract is not available due to any misrepresentation or fraud on behalf of the Operator or Operator Breach; or
 - (ii) the proceeds of insurance are not available or are not sufficient to meet the costs of replacing the relevant Asset, where the damage or loss was caused or contributed to by an Operator Breach or the wilful default or negligence of the Operator.

30. Indemnity and Limitation of Liability

30.1 Indemnity

- (a) The Operator indemnifies, and must keep indemnified, the Director-General and the Director-General's Associates (**Indemnified Persons**) from and against all Losses that may be incurred or sustained by any or all of the Indemnified Persons in respect of or arising from:
 - (i) any act, omission or neglect on the part of the Operator or the Operator's Associates;
 - (ii) any Non-Compliance Event;
 - (iii) any Termination Event;
 - (iv) any infringement of any Intellectual Property rights by the Operator or any of the Operator's Associates;
 - (v) any death, personal injury, loss or damage (including to property) suffered by passengers or by any third party enjoying or affected by the conduct of the Ferry Operations caused or contributed to by the Operator or the Operator's Associates or arising out of or in consequence of the Ferry Operations;
 - (vi) any Operator Contamination;

- (vii) any Pollution of, to, around or emanating from, the Premises, the Wharves, Sydney Harbour or the Parramatta River arising in connection with Ferry Operations; or
 - (viii) any costs incurred by Sydney Ferries as described in clause 14.4(b) or clause 14.4(d);
 - (ix) any Pollution occurring on or emanating from the Premises or a Contract Ferry at any time after the Service Commencement Date.
 - (x) any liability of the Director-General under the Wharf Access Deed arising as a result of any act, default or omission of the Operator or an Operator's Associate.
- (b) This indemnity will not apply to the extent that the Loss is caused or contributed to by fraud, wilful default or negligence on the part of the Indemnified Persons.
 - (c) This indemnity will not exclude any other right of the Director-General or the Director-General's Associates to be indemnified by the Operator.
 - (d) The Losses that must be indemnified under clause 30.1(a) include any Losses arising as a result of a Non-Compliance Event or Termination Event and any Step-in Costs and Transition Costs.
 - (e) No indemnity in this Contract limits the effect or operation of any other indemnity in this Contract.
 - (f) Unless expressly provided otherwise, each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties.
 - (g) Each indemnity in this Contract survives the expiry or termination of this Contract.
 - (h) A party may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.
 - (i) The Director-General holds for itself and on trust for each of the Director-General's Associates the benefit of each indemnity and release in this Contract expressed to be for the benefit of that Director-General's Associate.

30.2 Release

The Operator releases (to the full extent permitted by law) the Director-General and the Director-General's Associates from all Losses which arise from the Operator's performance of the Transaction Documents, except where a breach or negligence of the Director-General or the Director-General's Associates or any of their respective employees or agents has caused such Losses.

30.3 Exclusion of indirect or consequential loss

- (a) Despite any other provision of this Contract, neither the Director-General nor any of the Director-General's Associates are liable to make any payment (whether by way of indemnity, damages or otherwise) to the Operator, and the Operator will have no claim against the Director-General nor any of the Director-General's Associates, in respect of any indirect or consequential loss, loss of profit or loss of revenue incurred or sustained by the Operator or any of the Operator's Associates or any other party as a result of any act, omission, default, breach or negligence of the Director-General or any of the Director-General's Associates.
- (b) Despite any other provision of this Contract, the Operator is not liable to make any payment (whether by way of indemnity, damages or otherwise) to the Director-General, and the Director-General will have no claim against the Operator, in respect of:

- (i) any indirect or consequential loss incurred or sustained by the Director-General or any of the Director-General's Associates; or
- (ii) any loss of profit or loss of revenue, except to the extent that the Operator:
 - (A) is entitled to insurance proceeds under an insurance policy (including but not limited to an insurance policy required to be taken out and maintained under a Transaction Document); or
 - (B) should have been entitled to insurance proceeds under an insurance policy but for:
 - (I) the Operator's failure to take out or maintain any insurance policy as required by the Transaction Documents; or
 - (II) any other act or omission of the Operator,

arising in each case as a result of any act, omission, default, breach or negligence of the Operator or the Operator's Associates.
- (c) For the purpose of this clause 30.3:
 - (i) it is agreed that the following losses are not included in the term 'indirect or consequential': property damage or losses arising from third party claims in respect of property damage, personal injury, nervous shock or death; and
 - (ii) it is agreed that the following losses are included in the term 'indirect or consequential' loss of subsidy payments, access charges and incentive payments, loss of business opportunity, payment of liquidated sums, penalties, fines or damages under any agreement (other than this Contract).

30.4 Liability with respect to passengers and third parties

The Operator agrees that neither the Director-General nor any of the Director-General's Associates will be responsible for the actions of the Operator or the Operator's Associates and that, otherwise than as expressly provided in this Contract, the Operator must provide the Ferry Services at its own cost and risk without recourse to the Director-General or government funds or guarantees.

30.5 Proportionate liability

- (a) To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Contract, howsoever such rights, obligations or liabilities are sought to be enforced.
- (b) The Operator agrees that:
 - (i) in each subcontract, it will include provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to that subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
 - (ii) it must require and ensure that each subcontractor will include in any further subcontract, provisions that, to the extent permitted by Law, each such further subcontract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to such further subcontract howsoever such rights, obligations or liabilities are sought to be enforced.

31. Dispute Resolution

31.1 Negotiation

Within 10 Business Days of a party notifying the other party of a dispute between the parties in connection with this Contract (**Dispute**), a representative of appropriate seniority and responsibility from each party must meet and use all reasonable endeavours to resolve the Dispute.

31.2 Court proceedings and other relief

- (a) A party may not start court proceedings in relation to a Dispute, until it has complied with the obligations under this clause 31.
- (b) Clause 31.2(a) does not prevent either party from applying to a court at any stage for injunctive or other urgent relief.

31.3 Independent expert

- (a) If, within 10 Business Days after the period contemplated in clause 31.1 (or such longer period as the parties agree in writing), the parties are not able to resolve the Dispute, then the parties must submit to the following procedure prior to any other course of action being taken to resolve the Dispute:
 - (i) the parties must use best endeavours to choose and appoint an independent expert;
 - (ii) in the absence of agreement by the parties as to the independent expert within five Business Days of the Dispute being required to be resolved by an independent expert, the independent expert will be appointed on the application of either party by the President of the Australian Commercial Disputes Centre;
 - (iii) the independent expert must disclose to the parties any conflicts of interest;
 - (iv) the independent expert must make a determination or finding on the Dispute as soon as practicable and in any event within 10 Business Days of his or her appointment, or such longer period as may be agreed between the parties;
 - (v) the independent expert must act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit;
 - (vi) the independent expert's decision must be provided in writing and set out reasons for the decision and will, subject to clause 31.3(b), be final and binding on the parties and is not subject to review or appeal except in the case of an error of law; and
 - (vii) the costs of the independent expert must be borne by the parties equally or as the independent expert may otherwise determine and each party must bear its own costs relating to the independent expert's decision.
- (b) If the expert makes a decision that one party is liable to another party in an amount exceeding \$██████, then either party may give a notice of appeal to the other party within 20 Business Days after receipt of the decision. If a notice of appeal is given under and in accordance with this 31.3(b), the Dispute must be referred to arbitration in accordance with clause 31.4.
- (c) 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).

31.4 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 31.3(b) appointed by the Australian Centre for International Commercial Arbitration.
- (b) To the extent that they are not inconsistent with this Contract, 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 31.3.
- (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 32.

31.5 Operator to continue performing obligations

Despite the existence of any Dispute as contemplated by this clause 31, the Operator must continue to perform its other obligations under this Contract.

32. Confidentiality

32.1 Confidentiality

Subject to clauses 32.2 and 32.4 each party (the **Recipient Party**) must not disclose any unpublished information or documents supplied by the other party (the **Disclosing Party**) in connection with this Contract or any other Transaction Document that are specifically indicated by the Disclosing Party to be confidential and that are not in the public domain. The Operator must not disclose Operator Information to any person providing Regular Ferry Services in metropolitan Sydney.

32.2 Permitted disclosure by parties

Clauses 32.1 and 32.7(a) do not apply to disclosures to the extent the disclosure:

- (a) is with the prior written consent of the Disclosing Party;
- (b) is required or permitted by this Contract;
- (c) concerns Operator Information and, prior to the disclosure, the Operator obtains the consent of the Director-General (which consent is not to be unreasonably withheld or delayed) and the recipient agrees to enter into a confidentiality deed with the Operator on terms approved by the Director-General;
- (d) is in enforcing this Contract or in a proceeding arising out of or in connection with this Contract or to the extent that disclosure is regarded by the Recipient Party as necessary to protect its interests;
- (e) is authorised or required under a binding order of a Governmental Agency or under a procedure for discovery in any proceedings;
- (f) is authorised or required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of Governments or Governmental Agencies similarly situated;
- (g) is authorised or required or permitted by the State policy on the disclosure of information in relation to government contracts with the private sector (Premier's Memorandum No. 2007-11) as amended from time to time, or any policy issued in substitution for such document;
- (h) is to the Recipient Party's related entities, provided the Recipient Party's related entities are under a similar obligation of confidentiality with respect to the information as the Operator is bound to under clause 32.1;
- (i) is to the officers and employees of the Recipient Party or the Recipient Party's related entities who, due to the nature of their duties, have a specific need to know or have access to the information, provided those officers and employees are under a similar obligation of confidentiality with respect to the information as the Operator is bound to under clause 32.1;
- (j) is to the Recipient Party's legal advisers and its consultants;
- (k) is necessary or commercially desirable to an existing or bona fide proposed or prospective financier or finance lessor, provided the Recipient Party must, if requested by the Disclosing Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the Disclosing Party prior to the disclosure of the confidential information;
- (l) is by a Recipient Party to a bona fide prospective purchaser of all of the shares in, or assets of the business of, the Recipient Party, provided that prior to the disclosure to the proposed recipient, the Recipient Party notifies the Disclosing Party of the intending disclosure (including the extent and nature of the information to be disclosed) and procures that the proposed recipient of the information executes a confidentiality deed in favour of the Disclosing Party.

32.3 Permitted disclosure by the Director-General

Clauses 32.1 and 32.7(a) do not apply to disclosures by the Director-General:

- (a) to any of the Director-General's Associates or any Minister of the Crown in right of the State or any of its agencies or instrumentalities;
- (b) (where the Director-General reasonably considers it necessary) to an Interim Operator or a Successor Operator or otherwise to secure the Continuity of the Ferry Services;
- (c) to perform his obligations, and obtain the full benefit of his rights, under the Transaction Documents including in order to enjoy the rights under the licence of Intellectual Property granted under clause 27; or
- (d) relevant to the exercise by a Step-in Party of Step-in Powers.

32.4 Public disclosure

- (a) Nothing in the Transaction Documents prevents the Director-General or any Governmental Agency from disclosing any information which it is required to disclose:
 - (i) under the GIPA Act;
 - (ii) under the *Ombudsman Act 1974* (NSW);
 - (iii) under the *Public Finance and Audit Act 1983* (NSW); or
 - (iv) to satisfy the disclosure requirements of the State Auditor General and to satisfy the requirements of Parliamentary accountability or, in the case of the Minister, to fulfil her duties of office.
- (b) The Operator must use all reasonable endeavours to assist the Director-General or a Governmental Agency in meeting their obligations under clause 32.4(a).
- (c) Despite the provisions of clauses 32.1 and 32.7(a), the Director-General may publish or require the Operator to publish in any form and at times he considers appropriate, any of the following:
 - (i) the amount of Monthly Payments and other payments payable under this Contract;
 - (ii) the nature of any Operator Breaches, the outcomes (if any) in respect of each Operator Breach and details of actions taken by the Operator to cure each Operator Breach (including the costs incurred by the Operator);
 - (iii) subject to clause 32.4(d), any information the Director-General considers reasonably necessary to publish in connection with the performance of his functions;
 - (iv) subject to clause 32.4(d), any information reasonably required in connection with the re-tendering or contracting of all or any part of the Ferry Services, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting;
 - (v) subject to clause 32.4(d), any reports delivered to the Director-General under the Contract;
 - (vi) the operational performance results under Schedule 4;
 - (vii) the results of any passenger counts or surveys on or in respect of the Ferry Services;
 - (viii) the Operator's maintenance and operating costs;

- (ix) the farebox revenue and patronage information;
- (x) any damage or vandalism reports relating to the Assets;
- (xi) the Customer Experience Plan, the Accessible Transport Action Plan and the Environmental Plan;
- (xii) any information the Director-General reasonably requires to include in his annual report; and
- (xiii) any information the Director-General reasonably considers necessary at or around the expiry or termination of this Contract in order to secure the Continuity of the Ferry Services; and
- (xiv) any information the Director-General reasonably considers necessary to explain the nature of, reasons for and or consultation on, any variation or proposed variation to:
 - (A) any Route;
 - (B) the Timetables; or
 - (C) ticketing.
- (d) Unless clause 32.4(e) applies, the Director-General is not permitted to publish or require the Operator to publish information pursuant to clause (c) where:
 - (i) such information is financial information;
 - (ii) the Operator requests the Director-General not to disclose such information;
 - (iii) the information would reasonably be considered to be commercially sensitive and disclosure would be materially detrimental to its business; and
 - (iv) the disclosure is not otherwise permitted by this Contract.
- (e) Clause 32.4(d) is not applicable if the information is relevant to a tender process and the requirement to publish is consistent with the principles of disclosure in clause 35.
- (f) Except to the extent permitted above or otherwise under this clause 32, the Director-General may publish any other information relating to the Operator if the Director-General has previously notified the Operator and the Operator does not demonstrate to the reasonable satisfaction of the Director-General within 10 Business Days of that notification that the publication of the information would be materially detrimental to its business. If the Operator objects but fails to demonstrate that publication of the information would be materially detrimental to its business, the Director-General must allow 5 more Business Days before publishing the information.

32.5 GIPA Act

- (a) The Operator acknowledges that the Director-General may disclose certain information about this Contract in accordance with the Director-General's obligations under the GIPA Act, including making certain information about this Contract publicly available in any disclosure log of contracts the Director-General is required to maintain.
- (b) The Operator must, within 7 Business Days of receiving a written request by the Director-General, provide the Director-General with immediate access to the following information contained in records held by the Operator:
 - (i) information that relates directly to the performance of the Services provided to the Director-General by the Operator pursuant to this Contract;

- (ii) information collected by the Operator from members of the public to whom it provides, or offers to provide, the Ferry Services pursuant to this Contract; and
 - (iii) information received by the Operator from the Director-General to enable it to provide the Ferry Services pursuant to this Contract.
- (c) For the purposes of clause 32.5(b), 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 the Director-General by provision made by or under any Law; or
 - (iii) information that, if disclosed to the Director-General, could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to the Director-General, whether at present or in the future.
- (d) The Operator must provide copies of any of the information in clause 32.5(a), as requested by the Director-General, at the Operator's own expense.
- (e) The Director-General will take reasonably practicable steps to consult with the Operator before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, if it appears that:
 - (i) the information concerns the Operator's financial interests; or
 - (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.
- (f) If, following consultation between the Director-General 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) within 5 Business Days of the conclusion of the consultation process.
- (g) In determining whether there is an overriding public interest against disclosure of the information, the Director-General will take into account any objection received by the Operator.
- (h) If the Operator objects to the disclosure of some or all of the information but the Director-General nonetheless decides to release the information, the Director-General must not provide access to that information until it has given the Operator notice of the Director-General's decision and notice of the Operator's right to have that decision reviewed.
- (i) Where the Director-General has given notice to the Operator in accordance with clause 32.5(h), the Director-General 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.
- (j) The reference in clause 32.5(i)(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.

32.6 Use of Certain Information by the Director-General

The Operator consents to the use of the Operator Information by the Director-General in the performance of his functions under this Contract and the Law, including in assessing the Operator's performance under this Contract.

32.7 Publicity

- (a) Subject to clauses 32.2, 32.4, 32.5 and 32.7(b), no party may, without the prior written consent of the other party, disclose:
 - (i) the terms, effect or implementation of this Contract;
 - (ii) any communication to or from the Director-General in accordance with this Contract;
 - (iii) any decision by the Director-General pursuant to this Contract; or
 - (iv) any documents which are, or information which is, confidential under this Contract.
- (b) Despite the provisions of clause 32.7(a), a party may make disclosures or announcements:
 - (i) in the form and on the terms previously agreed by the other party in writing;
 - (ii) if required by Law or the rules or regulations of the Australian Securities Exchange Limited, after the form and terms of that disclosure (to the extent that it relates to this Contract) have been notified to the other party and the other party has had a reasonable opportunity to comment on the form and terms; or
 - (iii) to the extent necessary for a party to perform its obligations under this Contract or any Transaction Document.
- (c) The Operator must ensure that no Operator's Associate discloses any of the matters listed in clause 32.7(a)(i) to (iv) without the prior written consent of the Director-General.

33. Privacy compliance

33.1 Operator to comply

The Director-General and Operator must comply with:

- (a) the Privacy Laws and any guidelines issued by the Commissioner;
- (b) any privacy policy or approved privacy code which has been adopted by Transport for NSW and that is reasonable having regard to the requirements of Law; and
- (c) any reasonable direction of the Director-General regarding how to comply with any such legislation, privacy policy or code,

in respect of any Personal Information which the Director-General or Operator receives or has access to under this Contract or any Transaction Document.

33.2 Resolution of complaints

The Operator must cooperate with the Director-General in the resolution of any complaint alleging a breach of the Privacy Laws, a privacy policy or an approved privacy code.

34. Preservation of Ferry Operations

34.1 Dealing with Assets

The Operator must not, except with the consent of the Director-General:

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

any Asset, other than the grant of a Permitted Security Interest.

34.2 Replacement of Assets

- (a) If, at any time during the Term, any Asset is lost, destroyed or damaged beyond economic repair, the Operator must replace that Asset with an equivalent asset. The replacement must be of equal or better specification of the replaced Asset as it existed immediately prior to it being lost, destroyed or damaged beyond economic repair.
- (b) To the extent that the loss, destruction or damage to the Asset occurs as a direct result of:
 - (i) a breach by the Director-General of any Transaction Document to which the Director-General is a party; or
 - (ii) a reckless, unlawful or malicious act or omission by the Director-General or any Director-General Associate when acting in respect of a Transaction Document; or
 - (iii) a negligent act or omission of a contractor of Transport for NSW when acting in respect of a Transaction Document,

and is not caused by an act or omission of the Operator or any Operator Associate, the cost of replacing the Asset is payable by the Director-General in accordance with clause 19.

34.3 Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under a Transaction Document without the consent of the Director-General (which may not be unreasonably withheld or delayed).
- (b) The Operator acknowledges that any consent given by the Director-General under clause 34.3(a) does not affect, or release the Operator from, any of its obligations under a Transaction Document and the Operator is entirely responsible for the acts or omissions of its subcontractors or delegates.

34.4 Arrangements with related entities

- (a) The Operator must not enter into any agreement or arrangement (whether legally enforceable or not) with a Related Entity (**Related Party Arrangement**) unless the Related Party Arrangement is on arm's length commercial terms and the following requirements are satisfied:
 - (i) the Director-General and the Related Entity have entered into an agreement on terms acceptable to the Director-General regarding the Related Party Arrangement; and

- (ii) if required by the Director-General, acting reasonably, the Related Entity has provided a Security Interest in favour of the Director-General in a form satisfactory to the Director-General.
- (b) If the Operator enters into a Related Party Arrangement in breach of clause 34.4(a), the Director-General may request the Operator to terminate the Related Party Arrangement at its cost and the Operator must comply with that request as soon as practicable.
- (c) No later than three months prior to the end of each Financial Year the Operator must provide to the Director-General a summary list of all Related Party Arrangements. The Director-General may seek further information about any Related Party Arrangement (including copies of any contract) identified on the list, and the Operator must provide that information within one month of the Director-General's request.

34.5 Key Contracts

- (a) The Operator must not enter into a Key Contract unless the Director-General has previously entered into a Direct Agreement for that Key Contract on terms acceptable to the Director-General.
- (b) The Operator will not be required to comply with clause 34.5(a) if it notifies the Director-General prior to entering into a Key Contract and the Director-General notifies the Operator that a Direct Agreement is not required for that Key Contract.
- (c) The Operator must notify the Director-General of any agreement it intends to enter into which it reasonably believes the Director-General may wish to designate as a Key Contract, prior to entering into that agreement.
- (d) If an Operator has entered into an agreement and the agreement is subsequently designated by the Director-General as a Key Contract, the Operator will not be in breach of its obligation under clause 34.5(a). However, the Operator must use its reasonable endeavours to procure each counterparty to enter into a Direct Agreement as soon as practicable on terms acceptable to the Director-General.
- (e) The Operator acknowledges the existence of the Direct Agreements and agrees to cooperate in the implementation of those Direct Agreements, and agrees to novation of a Key Contract where required under the applicable Direct Agreement.

34.6 Termination, amendment or other dealing

- (a) The Operator must not, except with the consent of the Director-General:
 - (i) materially amend or supplement, or consent to any material amendment or supplement of;
 - (ii) expressly or impliedly waive, or extend or grant time or indulgence regarding, any material provision of or material obligation under;
 - (iii) create or allow to exist any Security Interest (other than a Permitted Security Interest) over;
 - (iv) assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with, its rights under, or interest in;
 - (v) avoid, release, surrender, terminate, rescind, discharge (other than performance) or accept the repudiation of;
 - (vi) suspend the performance of any of its obligations under; or

- (vii) do or permit anything that would enable or give grounds to another party to do anything referred to in subparagraph (v) or (vi) in relation to,
 - a Key Contract, including for the purpose of subparagraph (i) the scope of works under the Ramp Refurbishment Contract and the Narrabeen Docking Contract.
- (b) The Operator may terminate a Key Contract if the Director-General is reasonably satisfied that:
 - (i) it is no longer necessary for the Operator to have the benefit of the Key Contract; or
 - (ii) the Operator has made adequate alternative arrangements which satisfy the requirements for Continuity of the Ferry Services.
- (c) If an Operator terminates a Key Contract in breach of this Contract, the Operator must at the request of the Director-General, enter into an agreement immediately following that request with each counterparty to the Key Contract on the terms set out in the relevant Direct Agreement.

34.7 Notices

The Operator must, for any Key Contract, as soon as practicable:

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

34.8 Constituent Document

The Operator must not, except with the consent of the Director-General:

- (a) amend or supplement, or consent to any amendments or supplement of; or
- (b) expressly or impliedly, waive, or extend or grant time or indulgence regarding, any material provision of, or material obligation under,

any of the following documents:

- (c) the constitution (and any other constituent document) of the Operator and any Partner;
- (d) the Partnership Agreement; or
- (e) any shareholder agreement relating to the shares in the Operator.

34.9 Successor Operator

The Operator must, at the request of the Director-General, provide reasonable assistance to the Successor Operator in securing the supply to the Successor Operator of the goods or services which are the subject matter of a contract relating to the Ferry Operations, to the extent that such supply is necessary for the operation of all or any part of the Ferry Operations.

34.10 Maintenance as a going concern

The Operator must maintain and manage the Ferry Operations in such a way that a Step-In Party, Successor Operator (or nominee of the Director-General) or Interim Operator is able at any time to immediately take over the Ferry Operations as a going concern.

34.11 Availability of Staff

The Operator must ensure that an appropriate number of Ferry Employees, having sufficient skills, qualifications and experience (having regard to the number, skills, qualifications and experience of employees required by the Operator to conduct the Ferry Operations) are available to be employed by a Successor Operator following the Termination Date to enable a Successor Operator to conduct the Ferry Operations after the Termination Date.

34.12 Handover Package

The Operator must as soon as practicable and in any event no later than six months after the Service Commencement Date prepare and maintain information (**Handover Information**) on:

- (a) the Shipyard and any other premises from which the Ferry Operations are operated;
- (b) Key Contracts;
- (c) computer and other information systems;
- (d) an asset register for all Assets including an inventory of Spares and Equipment;
- (e) Staff details (list of names, terms and conditions of employment or engagement and roster);
- (f) its organisational structure;
- (g) 'whole of life' maintenance records for the Assets; and
- (h) such other information as is reasonably requested by the Director-General to facilitate smooth handover of the Ferry Operations to a Step in Party, Successor Operator (or nominee of the Director-General) or Interim Operator.

34.13 Maintenance of Handover Information

- (a) The Handover Information is to be kept up to date and available for inspection by the Director-General on reasonable notice, and in any case must be available for inspection on the earlier of:
 - (i) the Director-General issuing a Termination Notice;
 - (ii) six months prior to the expiry of the Term; and
 - (iii) one week after the commencement the End of Contract Period.
- (b) The Operator must ensure that a Step-In Party, Successor Operator (or nominee of the Director-General) or Interim Operator has, to the extent permitted by law, immediate access to the Handover Information on exercise of the Step in Rights or on the Termination Date.

- (c) No later than 30 Business Days prior to the Termination Date, the Operator must send to each Ferry Employee a statement setting out that employee's:
 - (i) grade/classification;
 - (ii) rate of pay;
 - (iii) date of commencement of employment; and
 - (iv) estimated accrued entitlements (including annual leave, long-service leave, sick pay and rostered days off) as at the Termination Date.
- (d) If any Ferry Employee notifies the Operator that he disputes any of the information contained in the statement provided to that employee pursuant to clause 34.13(c) the Operator must notify the Director-General of such dispute and the Director-General shall refer the disputed issue to an actuary appointed in accordance with the provisions of clause 31 for determination.

35. End of Term

35.1 Retendering

- (a) The Operator must:
 - (i) provide all reasonable assistance requested by the Director-General;
 - (ii) provide the Director-General and the Director-General's Associates with reasonable access to the Staff and the Operator's Records;
 - (iii) make available to the Director-General and the Director-General's Associates any information regarding the Ferry Operations and assist in the verification of any such information (including providing answers to questions from bidders);
 - (iv) make the Assets and the Ferry Operations available for inspection by a possible Successor Operator or Interim Operator, as the Director-General reasonably requires;
 - (v) allow a potential Successor Operator or Interim Operator access to the Staff, as the Director-General reasonably requires; and
 - (vi) provide a potential Successor Operator or Interim Operator with such information regarding the Ferry Operations, and access to the Operator's Records, as the Director-General reasonably requires;

for the purposes of the Director-General preparing for, or conducting, a retendering process and appointing an Interim Operator or Successor Operator (or nominee of the Director-General) for the operation of all or part of the Ferry Operations or associated services (**Retendering Purpose**). This includes all processes and steps involved in due diligence, the preparation of reports and documents, evaluation processes and the award of new contracts.

- (b) All assistance provided by the Operator under clause 35.1(a) must be provided within the timeframe specified by the Director-General or, where no timeframe is specified, within a reasonable time.
- (c) The Operator acknowledges and agrees that compliance with clause 35.1(a) may cause disruption and will involve cost to the Operator which the Operator must bear.

- (d) The Operator warrants to the Director-General that to the best of its belief all information provided under clause 35.1 to the Director-General, a potential Successor Operator or Interim Operator will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

35.2 Tickets and End of Term

- (a) In the End of Contract Period, the Operator must not without the consent of the Director-General:
- (i) set the price of, or sell, a Ticket which entitles the purchaser of that Ticket to enjoy by travelling all or any of the Ferry Services after the Term for an amount which is less than the price of that Ticket immediately before the commencement of the End of Contract Period; or
 - (ii) offer any bonuses or incentives or take any other action with the intention or likely effect of enticing third parties to purchase more multi-ride tickets (or any other Tickets entitling travel beyond the end of the Term) than those third parties would have purchased without that bonus, incentive or other action by the Operator.
- (b) Clause 35.2(a) does not prevent the Operator giving any discount or reduction to which the purchaser of that Ticket may be entitled by virtue of being an Approved Beneficiary.
- (c) The Operator must procure that all persons selling or offering to sell Tickets on its behalf comply with this clause 35.2.
- (d) If smart card technology is not implemented as part of the Electronic Ticketing System, then the Operator must:
- (i) install or, if already installed, maintain, a financial system to account for revenue collected by the Operator for multi-ride tickets sold but not used prior to the Termination Date; and
 - (ii) pay the amount of the revenue calculated in accordance with clause 10.7 (less any agency commission the Operator has paid) to the Director-General within 21 Business Days after the Termination Date.

35.3 Non frustration of transfer

The Operator must not do anything that directly or indirectly avoids or materially prejudices or frustrates the Retendering Purpose or the transfer as a going concern of the Ferry Operations at the Termination Date to a Successor Operator (or nominee of the Director-General) or Interim Operator.

35.4 Access

The Operator must use reasonable endeavours to ensure that the Successor Operator (or nominee of the Director-General) or Interim Operator has access to the Assets and the Staff immediately after the Interim Operator or Successor Operator (or nominee of the Director-General) has signed a contract with the Director-General for the provision of Ferry Services for the purpose of:

- (a) the Successor Operator (or nominee of the Director-General) or Interim Operator receiving information in respect of the Ferry Operations; and
- (b) preparations by the Successor Operator (or nominee of the Director-General) or Interim Operator to take over the Ferry Operations following Termination Date,

but only to the extent that any of the above does not unduly interfere with the conduct of the Ferry Operations.

35.5 Assistance in Securing Continuity

The Operator must do everything, both before and for a period of up to six months after the expiry or termination of the Term, as the Director-General may reasonably require to assist and advise any Successor Operator (or nominee of the Director-General), possible Successor Operator or Interim Operator in conducting the Ferry Operations.

35.6 Variation of terms and conditions of employment

The Operator must not, without the prior written consent of the Director-General (which may not be unreasonably withheld or delayed), vary or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Ferry Employee where:

- (a) the variation takes effect in the End of Contract Period unless:
 - (i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Ferry Employee of no more than the percentage increase in CPI over the 12 month period ending on the month for which that index was last published; or
 - (ii) it is a variation imposed by a determination of the Australian Industrial Relations Commission or the New South Wales Industrial Relations Commission;
- (b) all or part of the variation first takes effect after the Termination Date;
- (c) the variation results in the employment being for a fixed term, the expiry of which is more than six months after the Termination Date;
- (d) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at Law);
- (e) the variation relates to the provision of a benefit (but excluding base salary and the Ferry Employee's legal entitlements) which the Ferry Employee will or may have a contractual right to receive after the Termination Date; or
- (f) the variation prevents, restricts or hinders the Ferry Employee from working for an Interim Operator or a Successor Operator (or nominee of the Director-General) or from performing the duties the Ferry Employee performed in the Ferry Operations.

35.7 Engagement of new Staff

In the End of Contract Period, the Operator must not engage new Staff (other than to replace existing employees) without the prior written consent of the Director-General (which consent must not be unreasonably withheld or delayed where the Operator can demonstrate to the reasonable satisfaction of the Director-General that new Staff are necessary for the provision of the Ferry Services).

35.7A Successor Operator to Make Offers

- (a) The Director-General must procure that any Successor Operator makes offers of employment to Employees on the same terms and conditions (including all accrued entitlements with respect to Relevant Leave) as those applying to the relevant Employees immediately prior to the expiration or termination of this Contract. Offers made by a Successor Operator must take effect from the expiry or termination of this Contract. A Successor Operator must permit Employees to remain a member of a Pre-Existing Superannuation Fund and must do everything to ensure they are able to do so.
- (b) If an Employee accepts an offer of employment from the Successor Operator made in accordance with Clause 35.7A(a), on termination or expiry of the Contract the Operator

must pay to the Director-General or the Successor Operator (as directed by the Director-General) an amount in respect of the total value of Relevant Leave entitlements of the Employee accrued for service from the Service Commencement Date to the date of expiry or termination with the Operator and transfer to the Successor Operator as determined under clause 35.7A(c).

- (c) The value of total Relevant Leave entitlements at contract expiry or termination accrued for service from the Service Commencement Date to the date of expiry or termination will be determined by an actuary in accordance with the methodology set out in Australian Accounting Standards Board No 119: Employee Benefits (as amended) or any successor standard issued by the Australian Accounting Standards Board. The actuary will be appointed by agreement between the Operator, Successor Operator and the Director-General or, in the absence of such agreement, by the President of the Institute of Actuaries of Australia.
- (d) The cost of appointing an actuary in accordance with clause 35.7A(c) will be shared equally between the Operator and the Director-General.

35.8 Handback of Contract Ferries

- (a) The Operator must ensure that as at the Termination Date the Contract Ferries are:
 - (i) operational and free from damage (subject to fair wear and tear);
 - (ii) compliant with clause 13.2; and
 - (iii) in at least the same condition as the Commencement Condition, subject to fair wear and tear.
- (b) If any Contract Ferry is not in the condition required by clause 35.8(a) as at the Termination Date the Director-General may:
 - (i) direct the Operator to and the Operator must restore it to the required condition within 10 Business Days, or such longer period as may be agreed between the parties; or
 - (ii) require the Operator to pay and the Operator must pay the Director-General on demand an amount reasonably determined by the Director-General to be the estimated costs to restore it to the required condition.

35.9 Handback of Shipyard

- (a) The Operator must ensure that as at the Termination Date the Shipyard and the Shipyard Infrastructure are:
 - (i) operational and free from damage (subject to fair wear and tear);
 - (ii) compliant with clause 14.2; and
 - (iii) in at least the same condition as the Commencement Condition, subject to fair wear and tear.
- (b) If any part of the Shipyard or any item of Shipyard Infrastructure is not in the condition required by clause 35.9(a) as at the Termination Date the Director-General may:
 - (i) direct the Operator to and the Operator must restore it to the required condition within 10 Business Days, or such longer period as may be agreed between the parties; or

- (ii) require the Operator to pay and the Operator must pay the Director-General on demand an amount reasonably determined by the Director-General to be the estimated costs to restore it to the required condition.

35.10 Indicative Statement

The Director-General may, by notice in writing to the Operator given a reasonable time before the Transfer Date, require the Operator to prepare an indicative statement for all Assets held by the Operator as at the date of the Director-General's notice, setting out the current value of each of those Assets (calculated on the basis of Current Accounting Practice) (the **Indicative Statement**). The Operator must provide the Indicative Statement to the Director-General within one month after the date of the Director-General's notice.

35.11 Transfer

The Operator must transfer each Asset (including the CCTV Assets, the wharves at the Shipyard and all improvements on the Assets) to the Director-General or any one or more transferees nominated by the Director-General (in each case, a **Transferee**):

- (a) with effect from the Transfer Time;
- (b) free of any Security Interests or any claim by any person, and
- (c) for a purchase consideration of \$[REDACTED].

35.12 Delivery

- (a) The Operator must deliver possession of each of the Assets, the FOCIS Assets, the Ticketing Assets and the wharves at the Shipyard, to a Transferee at the relevant Transfer Time at a location in Sydney to be agreed between the Operator and the Transferee but, if no agreement is reached by the date falling 10 Business Days prior to the Transfer Date, the location in Sydney nominated by the Director-General.
- (b) The Operator must deliver to the relevant Transferee at or before the relevant Transfer Time at the location determined under clause 35.12(a) all documents of title, books of account, accounts, records, data and all other documents relating to each of its Assets transferred to the Transferee.

35.13 Shipyard fuel

The Operator must ensure that at the Transfer Time the aggregate volume of all fuel contained in the Shipyard Fuel Tanks is no less than the aggregate volume of all fuel contained in the Shipyard Fuel Tanks at the Service Commencement Date.

35.14 Payments

Any amount payable under this clause 35.14 must be tendered by a draft or cheque drawn by a bank as defined in the *Banking Act 1959* (Cth).

36. Relationship between Operator and Director-General

- (a) The Operator acknowledges that neither it nor any Staff shall be deemed to be an employee or agent of the Director-General or of the State, or employed under the *Public Sector Employment and Management Act 2002* (NSW) by reason only of execution of, or performance of, a Transaction Document.
- (b) The Operator must not, and must procure that none of its Staff, represent themselves as being the employee or agents of the Director-General or the State.

37. Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
 - (i) to the Director-General:

Level 6, 18 Lee Street, Chippendale NSW 2008

Attention: The Director-General
 - (ii) to the Operator:

Level 10, 111 Pacific Highway, North Sydney NSW 2060

Attention: Company Secretary

Fax No: (02) 9464 1618; and
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Days in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Days in that place.

38. Practice Notes

38.1 Director-General may issue

- (a) The Director-General may issue practice notes to the Operator regarding any provision of the Transaction Documents and may at any time vary or revoke any such practice note.
- (b) Subject to clause 38.2, practice notes are intended to facilitate the administration of the Transaction Documents but are not contractually binding on the Director-General or the Operator.

38.2 Binding Practice Notes

Where a provision of a Transaction Document permits the Director-General to specify the form or content of any document or other information to be prepared or provided by the Operator, the Director-General may (acting reasonably) do so by issuing a practice note to the Operator and any such practice note is binding on the Director-General and the Operator for the purpose of the provision of the Transaction Document under which it is issued.

39. General

39.1 Entire agreement

This Contract and the Transaction Documents contain the entire agreement between the parties with respect to their subject matter and supersede all prior agreements and understandings between the parties in connection with it.

39.2 Amendment

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

39.3 Assignment

- (a) The Operator may not assign, transfer, encumber or otherwise deal with its interest under the Transaction Documents without the consent in writing of the Director-General.
- (b) The Director-General may assign or transfer his rights or obligations under the Transaction Documents to another Governmental Agency.

39.4 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.

39.5 Further assurances

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

39.6 Costs and stamp duty

- (a) Each party must pay its own costs of negotiation, preparation and execution of this Contract and the other Transaction Documents.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Contract, any Transaction Document and any instrument executed under this Contract or any Transaction Document must be borne by the Operator (except for any stamp duty payable as a result of the transfer as a going concern of the Ferry Operations at the Termination Date to a Successor Operator (or nominee of the Director-General)). The Operator must indemnify the Director-General on demand against any liability for that stamp duty.

39.7 Governing law and jurisdiction

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

39.8 Counterparts

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

39.9 Rights Cumulative

Subject to any express provision in this Contract to the contrary, a right, power or remedy of the Director-General under this Contract is cumulative and in addition to, and does not exclude or

limit, any right, power or remedy in any other part of this Contract or otherwise provided by law or equity or by any agreement.

39.10 No Merger

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

39.11 Severability

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

39.12 Double Counting

Payments to the Operator under this Contract must be assessed in a manner which avoids double counting, particularly regarding profits and margins.

39.13 Moratorium legislation

Unless application is mandatory by Law, any present or future Law will not apply to the Transaction Documents so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Director-General.

Signing page

EXECUTED as an agreement.

Executed by **the Director-General of the Department of Transport for and on behalf of Transport for NSW**

_____ Signature of Director-General	←	_____ Signature of witness	←
_____ Name of Director-General (print)		_____ Name of witness (print)	

Executed by **Harbour City Ferries Pty Ltd** in accordance with section 127(1) of the Corporations Act:

_____ Signature of director	←	_____ Signature of director/company secretary (Please delete as applicable)	←
_____ Name of director (print)		_____ Name of director/company secretary (print)	

Signed by Nicholas Kelvin Yates as attorney for **Transfield Services (Sydney Ferries) Pty Ltd** under power of attorney dated _____ in the presence of

_____ Signature of witness	←	_____ Nicholas Kelvin Yates	←
_____ Name of witness (print)			

Signed by Jonathan Newton Metcalfe as attorney for **Veolia Ferries Sydney Pty Ltd** under power of attorney dated _____ in the presence of

_____ Signature of witness	←	_____ Jonathan Newton Metcalfe	←
_____ Name of witness (print)			

Schedules
