

HENRY DAVIS YORK

Fast Ferry Service Contract between Circular Quay and Manly

Transport for NSW
ABN 18 804 239 602

Manly Fast Ferry Pty Ltd
ABN 90 135 008 070

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KEY DETAILS

1 **Date**

2 **Parties**

TfNSW

Name

Transport for NSW

ABN 18 804 239 602

Address

Level 6, 18 Lee Street, Chippendale NSW 2008

Operator

Name

Manly Fast Ferry Pty Ltd

ABN 90 135 008 070

Address

531 Rocky Point Road, Sans Souci NSW 2219

BACKGROUND

- A RMS owns the Circular Quay Wharf and Manly Wharf.
- B TfNSW has entered into a Wharf Access Deed with RMS under which RMS grants to TfNSW:
- (a) access rights to the Wharves; and
 - (b) the right to grant licences to contractors engaged by TfNSW to operate the Ferry Service at the Wharves.
- C TfNSW has selected the Operator to provide the Ferry Service and to carry out the other Operator Activities.
- D The Operator has agreed to provide the Ferry Service and carry out the other Operator Activities on the terms set out in this Contract.

TERMS

1 Interpretation

1.1 Definitions

The following definitions apply in this Contract.

Accreditation means accreditation or certification of competency to be obtained in accordance with the requirements of any Law (including any Safety Law) including any guideline, regulation or ordinance.

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 Government Authority.

Business Day means any day other than a Saturday, Sunday or a day that is appointed as a public holiday in New South Wales.

Certificate of Competency has the meaning given to it in the MS Act.

Certificate of Operation has the meaning given to it in the MS Act.

Certificate of Survey has the meaning given to it in the MS Act.

Circular Quay Wharf means wharf 6 at Circular Quay, as shown in the plan set out in Schedule 9.

Claim includes any claim, action, suit, demand or proceeding:

- (a) under, arising out of, or in any way in relation to this Contract;
- (b) under, arising out of, or in any way in relation to the Operator Activities or a party's conduct prior to the Date of the Contract; or
- (c) otherwise at Law or in equity.

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

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

Communication Procedure has the meaning given to it in the Wharf Access Deed.

Confidential Information means TfNSW Confidential Information or Operator Confidential Information as applicable.

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

Contamination means the presence in, on or under land or water of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land or water, 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.

Contract means this document including all Schedules to it (and all attachments and appendices to those Schedules).

Contract Material means all Material:

- (a) created, collected, generated, reported or provided under or in connection with this Contract by or on behalf of the Operator;
- (b) that comprises, contains or embodies any TfNSW IP or TfNSW Confidential Information; or
- (c) that is necessary for TfNSW to have the full benefit of the Operator IP,

whether such Material came into existence before or after the Date of the Contract. For the avoidance of doubt, Contract Material includes the Transition In Plan.

Contract Ferry means those vessels used by the Operator to provide the Ferry Service the subject of this Contract being each of those listed in Schedule 8 as may be modified in accordance with this Contract.

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

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

Date of the Contract means the date which appears on page 1 of this Contract.

DCIS means the centralised Digital Customer Information Services that communicates and receives data and information in relation to public transport services (including the Ferry Service), through the Transport info Services (131500).

Dispute has the meaning given to it in clause 20.1.

Engaged Party means:

- (a) any person who has entered into any form of contract, agreement, lease, licence, association or arrangement with the Operator (or a Related Entity of the Operator) to:
 - (i) provide the Operator Activities, or any part of the Operator Activities;
 - (ii) lease, licence or otherwise occupy the Relevant Infrastructure or any part of the Relevant Infrastructure;
 - (iii) have any right to enter upon the Relevant Infrastructure or any part of the Relevant Infrastructure;
 - (iv) design, manufacture, import, supply, install, construct, commission or otherwise provide any goods (including any plant, substance, structure or thing), to be used on the Relevant Infrastructure, or for the purpose of carrying out of the Operator Activities, or any part of the Operator Activities; or
 - (v) supply or otherwise provide any services for the purposes of the providing of the Operator Activities, or any part of the Operator Activities; or
- (b) a person who has entered into any form of contract, agreement, lease, licence, association or arrangement with a person described in paragraphs (a)(i) to (v), in relation to which the first person:
 - (i) enters upon or occupies, or enters upon and occupies, the Relevant Infrastructure or any part of the Relevant Infrastructure; or
 - (ii) has any connection with the performance or the providing of the Operator Activities, or any part of the Operator Activities.

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;

- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

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

Environmental Law means 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.

Excluded Information means information which:

- (a) is in or enters the public domain other than through disclosure contrary to this Contract; or
- (b) is made available to a party after the Date of the Contract from another person having unrestricted legal right to disclose the information without requiring the maintenance of confidentiality.

Excusable Payment Event means the Excusable Payment Events described in clause 13.3(b) and 18.5(b).

Executive Management Representatives means:

- (a) in respect of TfNSW, TfNSW's Executive Management Representative; and
- (b) in respect of the Operator, the Operator's Executive Management Representative.

Extension Period has the meaning given to it in clause 3.3(a).

Fare means the price payable for a Ticket that can be charged to passengers for a Ticket as set out in Schedule 3 and varied under clause 8.

Fare Revenue means the sum of the value of the Fares.

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

Ferry Service means a high speed ferry service along the Route, with a maximum scheduled travelling time of 20 minutes for each separate scheduled trip between the relevant Wharves.

Ferry Service Slot means each Slot that is allocated to the Operator by operation of Schedule 11 for the sole use of the Contract Ferries for the provision of the Ferry Services.

Ferry Service Slot Monthly Payment has the meaning given to it in Schedule 1.

Ferry Timetable means the timetable for the operation of the Ferry Service as set out in Part B of Schedule 11, as may be amended in accordance with Schedule 13.

Financial Records means proper books of account and all other financial planning records of the Operator relating to the Operator Activities kept by or on behalf of the Operator, required by Law or Authorisations or that would ordinarily be maintained as a matter of Good Industry Practice and including:

- (a) cash flow reports;
- (b) profit and loss statements;
- (c) balance sheets; and
- (d) notes, documents and data supporting the records contemplated above including ledgers, spreadsheets, payroll registers, customer invoices, vendor bills, bank statements, tax returns, insurance policies and ASIC lodgements.

Force Majeure Event has the meaning given to it in clause 13.1.

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.

Government Authority means any federal, state or local government, semi government, quasi-government, administrative, fiscal, judicial or quasi-judicial, department, commission, authority, tribunal, agency, entity (wherever created or located) or statutory authority. 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 multiplied by the prevailing rate of GST (currently 10%).

GST Group has the meaning given by the GST Act.

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 17.1(a).

Infringement Claim means any Claim that the Operator Activities, the Contract Material or Operator IP, or use of any of them, infringes the rights, including the Intellectual Property or Moral Rights, of or duties owed to any person, whether arising under contract, statute, common law or otherwise.

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 ■ Business Days; or
- (i) any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Intellectual Property means all present and future rights conferred by law in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, excluding Moral Rights.

Investigation or Prosecution includes:

- (a) any investigation, carried out by a Safety Authority or otherwise, 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.

Issuer means an authorised deposit-taking institution, as defined in section 5(1) of the *Banking Act* 1959 (Cth).

Key Performance Indicator or KPI means a KPI specified in clause 4 of Schedule 4.

Law means any legislation, regulation, order, rule, subordinate or delegated legislation, statutory instruments, statutory notices, statutory directions or other document or direction enforceable under any statute, regulation, order, rule or subordinate legislation, the common law and published codes of conduct.

Loss includes:

- (a) any cost, expense, loss, damage, claim, suite, action, demand, proceedings or liability of any nature whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent, including arising under any statute or at common law and including any property damage any public liability damage suffered by any person, and includes any management fees payable in relation to any repair work; and
- (b) without being limited by paragraph (a), to the extent permitted by Law, any fine or penalty.

Manly Wharf means that part of the eastern side of the wharf at Manly as shown in the plan set out in Schedule 9.

Master means the person who has command or charge of a Contract Ferry.

Material means material in any form (whether visible or not) including documents, databases, records, recordings, reports, products, equipment, information, data, software, software tools and software development methodologies, and includes all releases, updates and amendments to the original material.

Minimum Service Levels means the minimum service levels for the Ferry Service described in Part A of Schedule 11.

Minister means the Minister for Transport.

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

Moral Rights means:

- (a) the right of attribution of authorship or performership;
- (b) the right not to have authorship or performership falsely attributed; and

(c) the right of integrity of authorship or performership,

conferred by the *Copyright Act 1968* (Cth) and rights of a similar nature anywhere in the world, that exist now or that may come to exist in the future.

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

Operational Records means any reports, documents or other information relating to the operation and performance of the Ferry Service and the other Operator Activities.

Operator Activities means all things and tasks which the Operator is, or may be, required to carry out or do to comply with its obligations under this Contract, including the Ferry Service.

Operator Confidential Information means information of the Operator in any form or media, and whether given to or acquired directly or indirectly before or after the Date of the Contract by TfNSW and includes information concerning the Operator's past, present or future structure, business activities, strategies and assets, products, trade secrets and know-how, financial affairs, network, communications, and technology; and clients, customers, suppliers, distributors and their financial affairs. It also includes any other information of the Operator that is by its nature confidential or that is marked or designated or confirmed as being confidential or proprietary at the time of its disclosure, but excludes the Excluded Information and the TfNSW Confidential Information.

Operator Contamination means Contamination caused or contributed by the Operator, its Staff or its subcontractors, whether before, on or after the Service Commencement Date.

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

Operator Premises means any premises leased, licensed or occupied by the Operator for use in connection with the Operator Activities.

Operator Records means the Financial Records, the Operational Records and all other plans and documentation kept in whatever form relating to the Operator Activities.

Operator's Executive Management Representative means the person in the position of Chief Executive Officer, or if that position does not exist, a position of equivalent seniority or higher.

Operator's Senior Management Representative means the person in the position of Operations Manager, or if that position does not exist, a position of equivalent seniority or higher.

Performance Requirements means the requirements set out in Schedule 13.

Permitted Security Interest means:

- (a) a Security Interest created or outstanding with the prior consent of TfNSW;
or
- (b) a lien or charge 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.

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

Personal Property means all personal property provided by TfNSW or RMS (as applicable) to the Operator for the purposes of performing or in connection with the Operator Activities.

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; 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).

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means:

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

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

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

Quarterly Payment has the meaning given to it in Schedule 1.

Quarterly Report means each of the quarterly reports to be prepared in accordance with Schedule 6.

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

Recipient Party has the meaning given to it in clause 21.1.

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

Relevant Infrastructure means the Wharves and the Wharf Infrastructure Facilities and any other assets, infrastructure or equipment provided to, used or accessed by the Operator in connection with the Operator Activities, where such assets, infrastructure or equipment is provided or facilitated by TfNSW or another Government Authority (including RMS).

RMS means Roads and Maritime Services constituted under the TA Act, its successors and assigns.

Route means the uninterrupted route with no scheduled stops over water along which the Ferry Service is operated between:

- (a) Circular Quay Wharf and Manly Wharf; and
- (b) Manly Wharf and Circular Quay Wharf.

For avoidance of doubt the Route does not allow or permit the scheduled stopping at any other wharf (or wharves) and berthing at such other wharf (or wharves).

Safety Authority includes the WorkCover Authority of New South Wales, the Australian Maritime Safety Authority, the Office of Transport Safety Investigations, the Australian Transport Safety Bureau, the NSW Coroner and any other relevant authority under the Safety Laws, and any person appointed by those entities authorised to exercise powers under the Safety Laws or otherwise.

Safety Laws means:

- (a) section 173 of the PT Act;
- (b) the MS Act and *Maritime Services Act 1935 (NSW)* and the regulations made under such legislation; and
- (c) the WHS Legislation.

Safety Management System has the meaning given to it in the MS Act.

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.

Senior Management Representatives means TfNSW's Senior Management Representative and the Operator's Senior Management Representative.

Service Commencement Date means 1 April 2015.

SHFA means Sydney Harbour Foreshore Authority.

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

Spares means rotables, parts and components that are required as part of, or for the purpose of carrying out of any of the Operator Activities.

Specified Performance Criteria means the performance criteria set out in Schedule 12.

Staff means all:

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

to the extent that they are engaged in connection with the carrying out of the Operator Activities.

State means the State of New South Wales.

Successor Operator means a service provider succeeding the Operator in the provision of substantially all of the Operator Activities after the Termination Date, but does not include the Operator.

Sydney Ferries means Sydney Ferries constituted under the TA Act, its successors and assigns.

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.

Termination Date means the date of termination of this Contract or the expiry of the Term, whichever is applicable.

Termination Event means any of the events listed in clause 19.3.

Termination Notice has the meaning given to it in clause 19.4.

Term means the term of this Contract set out in clause 3.1 as may be extended in accordance with clause 3.3.

TfNSW's Associates means:

- (a) the Minister, the Minister for Roads and Freight, RMS, SHFA, Sydney Ferries and the State;
- (b) any subsidiary or related entity of either TfNSW or RMS; or
- (c) any employee, agent, representative, contractor, consultant, delegate or adviser of, or to, TfNSW or those entities or persons referred to in paragraphs (a) or (b).

TfNSW Confidential Information means:

- (a) information of TfNSW or of any customer, supplier or contractor of TfNSW in any form or media, and whether given to or acquired directly or indirectly before or after the Date of the Contract by the Operator, its Staff or any Engaged Party;
- (b) information that:
 - (i) is disclosed to the Operator, any Staff or any Engaged Party by TfNSW or a TfNSW's Associate or any person acting on their behalf; or
 - (ii) is acquired by, or comes to the knowledge of, the Operator, any Staff or any Engaged Party directly or indirectly under or in connection with this Contract, including in the course of providing the Operator Activities, and whether from TfNSW, TfNSW's Associates or any Government Authority or not, including through any discussions or negotiations between TfNSW and TfNSW's Associates on the one hand, and the Operator and its Staff, on the other hand, relating directly or indirectly to this Contract or the, the Ferry Service or the Operator Activities.

It also includes any other information of TfNSW or of any customer, supplier or contractor of TfNSW that is by its nature confidential or that is marked or designated or confirmed as being confidential or proprietary at the time of its disclosure, but excludes the Excluded Information.

TfNSW IP means:

- (a) all Intellectual Property owned by TfNSW, including the TfNSW Marks; and

- (b) all Intellectual Property licensed to TfNSW, other than by or on behalf of the Operator.

TfNSW Marks means the trade marks, logos, indicia and images notified by TfNSW to the Operator in writing from time to time.

TfNSW Personal Information means Personal Information to which the Operator, any Staff or any Engaged Party has access directly or indirectly in connection with this Contract, including all Personal Information of customers or passengers of the Ferry Service collected as part of providing the Operator Activities and the Personal Information of any TfNSW staff or TfNSW customer or supplier (other than the Operator).

TfNSW's Executive Management Representative means the person in the position of Executive General Manager Service Delivery and Performance, or if that position does not exist, a position of equivalent seniority or higher.

TfNSW's Senior Management Representative means the person in the position of General Manager Bus and Ferry Contracts, or if that position does not exist, a position of equivalent seniority or higher.

TfNSW's Representative means the person in the position of General Manager Bus and Ferry Contracts of TfNSW or such other person from time to time nominated by TfNSW to be the "TfNSW's Representative" for the purposes of this Contract and notified to the Operator.

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

Ticketing Assets means those assets owned by TfNSW or any other Government Authority used for the purpose of issuing or validating Tickets.

Transition In Plan means the Operator's transition in plan containing (as a minimum) the matters required by Schedule 2 (and any other matters reasonably required by TfNSW) which is to be prepared, submitted and finalised in accordance with clause 10.

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

Transport info Services (131500) means the DCIS, operated by the Transport info Services 131500 operator, providing information on public transport services.

Trip means each scheduled Contract Ferry journey between the Wharves required under the Ferry Timetable provided however that for the purposes only of Table 1 in clause 4 of Schedule 4 a reference to a Trip during the period from the Service Commencement Date to the earlier of 1 November 2015 and the date that the first of vessel numbers 3, 4, 7 and 8 of the table in Part A of Schedule 8, becomes available for the Ferry Service, does not include a Trip with any of the following scheduled start times:

- (a) 07:15, 08:05 or 09:00 from Manly Wharf on weekdays; and

- (b) 07:40, 8:30 or 09:25 from Circular Quay Wharf on weekdays.

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

Wharf Access Deed means the deed of that name entered into between RMS and TfNSW on around March 2012, and as varied by the amendment deed(s) between the parties, and set out in Annexure A to Schedule 10.

Wharf Infrastructure Facilities means wharf structures, wharf supports, signalling systems, vessel control systems, communication systems, power supply systems, power and communication cables and associated works, plant, machinery and equipment on a Wharf.

Wharf Rules has the meaning given to that term in the Wharf Access Deed.

Wharves means:

- (a) the Circular Quay Wharf; and
(b) the Manly Wharf.

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW); and
(b) the *Work Health and Safety Regulations 2011* (NSW).

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 or Schedule is a reference to a clause of, or a schedule to, this Contract and a reference to this Contract includes all Schedules 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 any governmental department or professional body includes the successors of that body;
- (m) a reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- (n) a reference to a month or to a year is to a calendar month or a calendar year;
- (o) a reference to dollars or \$ is a reference to Australian currency;
- (p) 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;
- (q) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (r) 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;
- (s) the terms 'subsidiary', 'control', 'related entity', 'body corporate' and 'associate' have the meanings given to those terms in the Corporations Act;
- (t) a reference to the words 'include', 'includes' and 'including' means 'including without limitation';
- (u) 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;
- (v) all communications between the parties under this Contract, together with all documents required to be produced under this Contract (including the Transition In Plan and reports), must be in English; and

- (w) to the extent of any inconsistency between the Transition In Plan and any other part of this Contract, the other part of this Contract will prevail.

1.3 Consents or approvals

If the doing of any act, matter or thing under this Contract is dependent on the consent or approval of TfNSW or is within the discretion of TfNSW, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by TfNSW in its sole and absolute discretion (unless an express provision to the contrary has been made).

1.4 TfNSW's Representative

- (a) TfNSW's Representative will act as the agent of TfNSW (and not as a certifier) in discharging each of the functions and exercising each of the rights of TfNSW's Representative or TfNSW under this Contract.
- (b) Any direction of TfNSW's Representative under this Contract or purported to be given under this Contract may, unless this Contract expressly provides otherwise, be given either orally or in writing.
- (c) TfNSW's Representative may, from time to time, appoint an individual to exercise delegated functions of TfNSW's Representative, provided that:
 - (i) at any one time there will be no more than one TfNSW's Representative delegate for any one function;
 - (ii) delegation will not prevent TfNSW's Representative exercising any function; and
 - (iii) TfNSW's Representative must promptly give the Operator written notice of:
 - (A) the name and the delegated functions of TfNSW's Representative delegate; and
 - (B) the termination of the appointment of any given delegate.

1.5 No implied duty of good faith

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

1.6 No fetter on TfNSW's or RMS' powers

- (a) Subject to clause 1.6(b), nothing in this Contract unlawfully restricts or otherwise affects TfNSW's or RMS' unfettered discretion to use or exercise any of their respective statutory powers, functions or discretions.
- (b) TfNSW acknowledges and agrees that clause 1.6(a) does not limit TfNSW's obligations under this Contract.

1.7 Transfer of functions

- (a) The Operator acknowledges that TfNSW may be reconstituted, renamed or replaced and that some or all of the Powers of TfNSW may be transferred to or vested in another entity.
- (b) If TfNSW is reconstituted, renamed or replaced or if some or all of TfNSW's Powers are transferred to or vested in another entity, references in this Contract to TfNSW 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 1.7, another entity means a Government Authority or any subsidiary or related entity of TfNSW or any Government Authority.

2 Contract risks

2.1 Operator risks and costs

Except to the extent that this Contract expressly provides otherwise, as between TfNSW and the Operator, the Operator must bear all risks and costs of carrying out the Operator Activities and otherwise complying with its obligations under this Contract.

2.2 TfNSW not responsible for Ferry Service

The Operator acknowledges and agrees that:

- (a) TfNSW's, and TfNSW's Associate's, business or undertaking does not include performing any aspect of the Ferry Service or the Operator Activities; and
- (b) TfNSW and TfNSW's Associates do not possess expertise in the provision of the Ferry Service or Operator Activities.

3 Term and arrangements for use of the Wharves

3.1 Term

This Contract:

- (a) commences on the Service Commencement Date (other than this clause 3 and clauses 1, 2.1, 4.4, 5.1 (other than 5.1(b) and 5.1(c)), 5.4, 10, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25 and 26 inclusive and Schedule 10 which commence on the Date of the Contract); and

connection with a failure by TfNSW to extend the Term, or for a Loss arising in connection with any potential Extension Period.

3.4 Arrangements for use of the Wharves

TfNSW and the Operator acknowledge and agree that:

- (a) only the Operator will be entitled to operate a ferry service during the Term with a scheduled travelling time of less than 20 minutes between any wharf at Circular Quay and any wharf on or around Manly;
- (b) no other operator will be authorised to provide a ferry service between any wharf at Circular Quay and any wharf on or around Manly, with the exception, subject to clause 3.4(a), of the operator of Sydney Ferries services (as at the Date of the Contract being Harbour City Ferries Pty Ltd);
- (c) subject to the limitation of clause 3.4(a) and clause 3.4(b), Slots at the Wharves not allocated to the Operator in the Ferry Timetable may be made available by RMS or TfNSW to other operators through separate wharf access agreements and, subject to the limitation of clause 3.4(a) and clause 3.4(b), these Slots may be used by operators seeking to provide any service including:
 - (i) a tourist service or a charter service; or
 - (ii) a ferry service operating on a route approved by TfNSW in its absolute discretion other than a service provided in accordance with clause 6 of the *Passenger Transport Regulation 2014 (NSW)* between the Wharves;
- (d) the Operator must not book or seek to obtain additional Slots for or in connection with the provision of the Ferry Service (or any similar service between the Wharves) by making a separate agreement or bookings for access to the Wharves through any wharf booking system administered by RMS from time to time. It is, however, further acknowledged that the Operator may seek access to the Wharves in accordance with such system for the purposes of a separate tourist or charter service;
- (e) for the purposes of this clause 3.4:
 - (i) the term "Circular Quay" means the Circular Quay precinct as defined in the *Passenger Transport Regulation 2014 (NSW)*;
 - (ii) the term "Manly" means Manly as defined in the *Passenger Transport Regulation 2014 (NSW)*; and
 - (iii) the terms "charter service", "ferry service" (and, for the avoidance of doubt, not Ferry Service as defined in clause 1.1) and "tourist service" have the meanings given in the PT Act.

4 Operator Activities

4.1 Obligation to provide

The Operator must:

- (a) commence to provide the Ferry Service and carry out all of the other Operator Activities on or from the Service Commencement Date; and
 - (b) thereafter continue to carry out the Operator Activities for the Term,
- in each case in accordance with, and subject to, the terms of this Contract.

4.2 No proprietary rights

Nothing in this Contract confers on the Operator any proprietary right in the Relevant Infrastructure.

4.3 Operator to provide things necessary to carry out the Operator Activities

Except as otherwise expressly provided in this Contract, the Operator must provide the Contract Ferries and all facilities, items of equipment, tools, Spares, utilities (including power and water) and consumables required for the carrying out of the Operator Activities.

4.4 Subcontracting

- (a) The Operator must not subcontract or delegate the performance of any of its obligations under this Contract without the consent of TfNSW (which may not be unreasonably withheld or delayed).
- (b) The Operator acknowledges that any consent given by TfNSW under clause 4.4(a) does not affect, or release the Operator from, any of its obligations under this Contract and the Operator is entirely responsible for the acts or omissions of its subcontractors or delegates.

4.5 Guarantee and indemnity

On or before the Date of the Contract, the Operator must provide TfNSW with a guarantee and indemnity in the form and on the terms set out in Schedule 14 duly executed by Noorton Pty Ltd ABN 82 070 125 478 and stamped (if required by law).

5 Performance standards and cooperation

5.1 Performance standards

The Operator must:

- (a) perform its obligations under this Contract:
 - (i) in accordance with the Performance Requirements;

- (ii) in accordance with Good Industry Practice;
 - (iii) so as to prevent injury to or death of persons and damage to property; and
 - (iv) in a proper, competent, courteous, safe and reliable manner;
- (b) without limiting the foregoing, operate the Ferry Service in accordance with:
 - (i) the Ferry Timetable; and
 - (ii) the Ferry Service Slots;
- (c) ensure that the Ferry Timetable will at all times provide a Ferry Service which meets or exceeds the Minimum Service Levels;
- (d) ensure that, as far as is practicable, it allocates such of the Contract Ferries to best accommodate the then prevailing demand for each Trip;
- (e) without limiting clause 5.1(d) above and clause 3.3 of Schedule 7, use such of the Contract Ferries as is necessary to provide the Ferry Service in accordance with the requirements of this Contract;
- (f) be of good character and fit to conduct and manage the Operator Activities;
- (g) implement and comply with the Transition In Plan;
- (h) at all times, hold and comply with all applicable Authorisations and Laws which are required to be held or complied with in carrying out the Operator Activities, including Certificates of Competency, Certificates of Operations and Certificates of Survey;
- (i) carry out the Operator Activities in accordance with all applicable:
 - (i) Authorisations and Laws, including the Safety Laws and Environmental Laws;
 - (ii) requirements of all relevant Government Authorities, including TfNSW and RMS; and
 - (iii) manufacturers' and suppliers' specifications, recommendations and service and operating standards;
- (j) ensure that it maintains systems throughout the Term which, at a minimum, comply with the requirements set out in the Performance Requirements; and
- (k) otherwise comply with its obligations under this Contract.

5.2 Safety of passengers and the public

- (a) The Operator must discharge its obligations in relation to the health and safety of passengers and all persons under:

- (i) its duty of care at common law; and
 - (ii) all other applicable Authorisations and Laws, including the Safety Laws.
- (b) Without limiting clause 5.2(a), the Operator must ensure the appropriate supervision of embarking/disembarking of passengers at the Wharves including by assisting with mobility ramps as required.

5.3 All Staff

- (a) The Operator must ensure that:
- (i) in order to discharge their duties, all Staff are properly authorised, qualified, accredited, trained and experienced and have the proper competency and Authorisations, including, where applicable, as required by Law;
 - (ii) all Staff comply with applicable Laws and Authorisations, including the Safety Laws;
 - (iii) all Staff are of good character and fit to conduct and manage the Operator Activities;
 - (iv) all Staff comply with any requirements or directions made by a Safety Authority;
 - (v) all customer facing Staff at all times:
 - (A) are courteous and polite to customers;
 - (B) are attired in a clean, well maintained uniform as required in the Performance Requirements or as otherwise required by TfNSW; and
 - (C) possess a thorough knowledge of the Tickets, Fares, and the Ferry Timetable;
 - (vi) at all times during the Term there is adequate and sufficient Staff to be able to perform the Operator Activities in accordance with this Contract;
 - (vii) it monitors and manages the safety and security of all Staff at the Wharves and any other place where the Operator carries on the Operator Activities; and
 - (viii) Staff are subject to regular security checks and that all new Staff undergo a police criminal history check prior to commencing employment.
- (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 marine and work health and safety issues.

- (c) If TfNSW reasonably believes that a member of the Staff may cause, or has caused, damage or harm to TfNSW's reputation:
 - (i) TfNSW may advise the Operator of its belief (providing adequate reasons for such belief); and
 - (ii) the Operator must take such disciplinary action as is warranted in the circumstances.

5.4 Work health and safety

- (a) The Operator must, in relation to the carrying out of the Operator Activities and in relation to its use of, access to, or activities regarding the Wharves and the Contract Ferries:
 - (i) comply with all applicable Safety Laws and ensure that all Staff do the same;
 - (ii) ensure that any Engaged Party complies with all Safety Laws applicable to the Engaged Party;
 - (iii) use its best endeavours to ensure that any actions or omissions by the Operator do not cause TfNSW or TfNSW's Associates and their directors, officers and workers, to be in breach of the Safety Laws and co-operate with TfNSW to ensure this;
 - (iv) immediately inform TfNSW of any material issues regarding compliance with clause 5.4(a)(i) or safety generally (including any improvement notices, prohibition notices or notifications to a Safety Authority);
 - (v) where an Incident occurs which is required to be notified by TfNSW to a Safety Authority under Safety Laws (and without limiting the Operator's obligations under this Contract or otherwise at Law), provide all assistance, including documentation and information, reasonably required by TfNSW to enable it to comply with the notification obligation;
 - (vi) immediately supply TfNSW with copies of the following information:
 - (A) any material communications with a Safety Authority including any improvement notices or prohibition notices received from, or notifications provided to, the Safety Authority;
 - (B) any safety management system and any other plans or programs required to be provided to a Safety Authority under the Safety Laws;

- (C) where reasonably required by TfNSW, all audits undertaken by the Operator and other reports which relate to the Safety Laws or any Incidents;
 - (D) where reasonably requested by TfNSW, all minutes of work health and safety committees or other documents recording or relating to consultation over safety matters relating to the Staff;
 - (E) all material information relating to any Investigation or Prosecution; and
 - (F) any other information reasonably requested by TfNSW regarding compliance with this clause 5.4 or safety generally;
- (vii) to the extent necessary to comply with 5.4(a)(vi):
- (A) agree to the waiver of legal professional privilege over any document prepared by, or on behalf of, the Operator. However, TfNSW and the Operator may agree that any document may, between TfNSW and the Operator, be subject to a common interest privilege; and
 - (B) agree that both TfNSW and the Operator will treat any such document as Operator Confidential Information;
- (viii) co-operate with TfNSW and TfNSW's Associates and their directors, officers and employees in relation to any Investigation or Prosecution;
- (ix) promptly:
- (A) comply with any direction by TfNSW to implement any recommendation of a work health and safety audit, assessment, or Investigation or Prosecution (whether or not the recommendation is required in order to comply with applicable Safety Laws); and
 - (B) put in place measures to address any work health and safety matter notified to the Operator by a Safety Authority under Safety Laws, or arising out of any findings, orders or directions of any court or tribunal in respect of a work health and safety matter, including any Investigation or Prosecution;
- (x) ensure that all Staff are provided suitable and adequate information, training and instruction in accordance with the Safety Laws; and
- (xi) ensure that all Staff possess and comply with all appropriate Authorisations required to perform their job.

- (b) The Operator must also:
- (i) ensure that the Operator Activities are carried out without risk to health and safety of any person;
 - (ii) ensure the health, safety and welfare of any person:
 - (A) while the person is on the Relevant Infrastructure for whatever reason;
 - (B) while the person is travelling on the Contract Ferries; and
 - (C) while the person is carrying out any activities in relation to the carrying out of the Operator Activities;
 - (iii) regularly report to, and meet with, representatives of TfNSW (as required by TfNSW and also with representatives of RMS to the extent required by TfNSW) concerning compliance with this clause 5.4 and otherwise, so far as is reasonably practicable, consult, cooperate and coordinate activities with each other and with any other persons who have a common duty under the WHS Legislation;
 - (iv) allow TfNSW, or a third party appointed by TfNSW, to conduct audits from time to time of the Operator's compliance with any of its obligations under this clause 5.4; and
 - (v) if directed by TfNSW, conduct, or have a third party conduct, such audits of its compliance with any of its obligations under this clause and promptly report in writing to TfNSW on the outcome of the audit.

5.5 General operational matters

- (a) The Operator must maintain facilities located separately from the Wharves which can provide overnight and between-peaks berthing, maintenance, external cleaning, garbage removal, fuelling and sewerage pump-out services for the Contract Ferries, so that the Ferry Service can operate in accordance with this Contract.
- (b) The Operator must not undertake garbage removal, fuelling or sewerage pump-services for the Contract Ferries at the Wharves.

5.6 Cooperation by the Operator

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

- (ii) full integration of passenger information to deliver a seamless public transport service across metropolitan Sydney.
- (b) If requested in writing by TfNSW, the Operator must allow TfNSW or any other Government Authority and their agents and contractors reasonable access to:
 - (i) all Contract Ferries; and
 - (ii) other facilities used by the Operator for the provision of the Ferry Services,

to facilitate any design, installation, testing and commissioning of any equipment and assets (including any Ticketing Assets) required in conjunction with the implementation of the State's public transport policy objectives. The Operator acknowledges and agrees that without limiting the Operator's obligations elsewhere in this Contract:

- (iii) such equipment and assets will remain at all times the property of TfNSW or the other applicable Government Authority; and
- (iv) within [REDACTED] from the expiry of the Term or such earlier period as may be required by TfNSW, it will at TfNSW's cost allow TfNSW or TfNSW's agents and contractors to remove such equipment and assets from the Contract Ferries and any other facilities used by the Operator for the provision of the Ferry Services.

5.7 Third party advertising

- (a) Subject to clauses 5.7(b) and 5.7(c) and the Wharf Rules, the Operator must not advertise, or permit any third party advertising, on or within a Contract Ferry without the prior written approval of TfNSW.
- (b) Where TfNSW has permitted third party advertising, the Operator must ensure that such advertising:
 - (i) complies with all applicable Laws, Authorisations and applicable TfNSW guidelines 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.
- (c) Where, in TfNSW's reasonable opinion, advertising on or within a Contract Ferry does not comply with clause 5.7(b), TfNSW may require the Operator to remove it and the Operator must do so within [REDACTED] of receipt of the direction.

- (d) The revenue under this clause will be owned by the Operator.
- (e) The Operator must not advertise, or permit any third party advertising on or within any Relevant Infrastructure.

6 Access and Wharves

6.1 Access

- (a) Subject to clause 6.4 and any restrictions in Schedule 10 or elsewhere in this Contract, TfNSW grants the Operator with non-exclusive, non-transferable access to the Wharves during the period of each Ferry Service Slot only for the sole purpose of enabling the Operator to carry out its obligations under this Contract.
- (b) The Operator acknowledges and agrees that its use of the Wharves will be:
 - (i) in common with RMS and its Authorised Users (as that term is defined in the Wharf Access Deed) and all other persons authorised by RMS; and
 - (ii) in accordance with the Priority Access Principles (as that term is defined in the Wharf Access Deed), the Wharf Rules and the terms of the Wharf Access Deed.
- (c) TfNSW is not required to procure any rights for the Operator to use any other facilities at the Wharves.
- (d) It is a condition of rights granted under this clause 6.1 that the Operator must, at its own cost, obtain and comply with any planning or other approvals (including the Wharf Rules) required to install signage, fixtures and fittings on the Wharves.
- (e) To ensure that TfNSW complies with its contractual obligations to RMS under the Wharf Access Deed, the Operator must comply with all of the provisions in Schedule 10. The provisions in Schedule 10 apply without affecting the operation of the other provisions of this Contract.

6.2 Use of Wharves

The Operator must:

- (a) only use the Wharves for the purpose described in clause 6.1(a);
- (b) at all times comply with any reasonable direction or requirement of TfNSW and RMS in relation to access to, or passenger movements within or around, the Wharves; and
- (c) not:
 - (i) alter or modify the Relevant Infrastructure; and

- (ii) carry out, procure or allow the carrying out of, any works or services on the Relevant Infrastructure,

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

6.3 Condition of Relevant Infrastructure

The Operator acknowledges and agrees:

- (a) that before the Service Commencement Date it had sufficient opportunity to inspect the Relevant Infrastructure;
- (b) it accepts the Relevant Infrastructure on an "as is" basis, in whatever condition it is in on the Service Commencement Date;
- (c) TfNSW and TfNSW's Associates make no warranty, representation or guarantee with respect to the condition, functionality or adequacy of the Relevant Infrastructure for the purpose of undertaking the Operator Activities, and the Operator releases TfNSW from all Claims, liabilities or losses that arise in this regard;
- (d) no act, matter or thing arising out of or in connection with the condition of the Relevant Infrastructure before, on or after the Service Commencement Date will relieve the Operator from its obligation to perform the Operator Activities in accordance with this Contract or to make any Claim against TfNSW;
- (e) to the extent that the Operator makes use of the Relevant Infrastructure, it does so at its sole cost and risk; and
- (f) without limiting the foregoing, the Operator assumes all risk and liability for and in respect of all Loss, injury or death caused by the Operator to persons or property howsoever arising from the use of the Wharves, Wharf Infrastructure Facilities, Contract Ferries and equipment or the exercise of the Operator's rights under this Contract or the Wharf Rules.

6.4 Submission of documents prior to Wharf access

On or before [REDACTED], the Operator must provide TfNSW with the following:

- (a) a written acceptance by the Operator of its obligations to comply with the Wharf Rules, in the form set out in Schedule 2 to the Wharf Access Deed;
- (b) evidence that the Operator has complied with the insurance obligations in clause 14 of the Wharf Rules; and
- (c) evidence of all Authorisations held by the Operator entitling it to provide the Ferry Service from the Wharves.

6.5 Environmental and Contamination matters

- (a) The Operator must at all times ensure that the Operator Activities are carried out in an environmentally responsible manner and, without limiting clause 5.1(i), must take all reasonably practicable steps to protect the Environment.
- (b) The parties acknowledge and agree that the Operator is responsible for any Operator Contamination.
- (c) The Operator must not do, or permit, any act which:
 - (i) causes any Contamination; or
 - (ii) exacerbates any Contamination or the risks presented by the Contamination,on, in, over, under or from any land or waters in the carrying out of the Operator Activities.
- (d) The Operator must take such measures as are necessary (including the expenditure of money) to prevent or reduce the likelihood of any:
 - (i) Contamination being caused; or
 - (ii) Contamination or the risks presented by it being exacerbated,on, in, over, under or from any land or waters where the Operator Activities are carried out.
- (e) The Operator must immediately notify the relevant Government Authority where it is so required in relation to any breach or alleged breach of an Environmental Law in respect of the carrying out of the Operator Activities.
- (f) The Operator must promptly notify each of RMS and TfNSW after:
 - (i) any notification referred to in clause 6.5(e) including the circumstances giving rise to the notification; or
 - (ii) the Operator becomes aware of any notice, order, declaration or requirement made under any Environmental Law in respect of the carrying out of the Operator Activities.
- (g) The Operator must do whatever is necessary or desirable at the Operator's cost to:
 - (i) remediate (including manage, contain, remove and abate) any Contamination on, in, over, under or any land or waters caused or contributed to by the carrying out of the Operator Activities;
 - (ii) remedy any breach of an Environmental Law in the course of the carrying out of the Operator Activities as soon as it occurs; and

- (iii) comply with every notice, order, declaration or requirement referred to in clause 6.5(f)(ii).

7 Contract Ferries

7.1 Requirements for Contract Ferries

- (a) The Operator must ensure that each Contract Ferry:
 - (i) has the Authorisations required under Laws, including the Safety Laws;
 - (ii) is operated in accordance with the Contract Ferry manufacturer's specifications, recommendations and service standards;
 - (iii) is maintained in such a way so as to ensure that the Contract Ferry is in a condition which enables the Operator to comply with its obligations under this Contract and the Safety Laws; and
 - (iv) is maintained, equipped and operated in a safe manner and in compliance with all Ferry Laws, Safety 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)*.
- (b) The Operator must:
 - (i) monitor and manage security and safety of the Staff and passengers on the Contract Ferries; and
 - (ii) allow for inspection of the Contract Ferries and the Operator's Records on reasonable notice by any Government Authority for any purpose related to an Authorisation or by TfNSW or TfNSW's Associates for the purpose of monitoring the performance by the Operator of its obligations under this Contract.
- (c) In accessing the Contract Ferries under clause 7.1(b)(ii), TfNSW or TfNSW's Associates must attempt to minimise any interference with the conduct of the Operator Activities.
- (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)* will be borne by the Operator.

7.2 Contract Ferries, Masters and Crew requirements

Without limiting clauses 5.3 and 7.1(a), the Operator must ensure that:

- (a) each Contract Ferry:

- (i) is maintained and operated in conformity with the MS Act, including:
 - (A) a current Certificate of Operation and Certificate of Survey issued pursuant to the MS Act on or after 1 July 2013; or
 - (B) if clause 7.2(a)(i)(A) does not apply, an unexpired Certificate of Survey issued pursuant to the MS Act prior to 1 July 2013; and
 - (C) any standards, guidelines and codes of practice relating to marine safety and applicable to the Contract Ferry issued pursuant to the MS Act on or after 1 July 2013; and
- (ii) is kept clean and tidy when providing the Ferry Service;
- (b) each Master of a Contract Ferry complies with the MS Act, including that each such Master:
 - (i) holds a current Certificate of Competency issued pursuant to the MS Act on or after from 1 July 2013; or
 - (ii) if a Master does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013;
 - (iii) is conversant with and knowledgeable of the Route, the Ferry Timetable and the Wharves; and
 - (iv) is properly attired in the Operator's uniform; and
- (c) each member of the Crew of a Contract Ferry complies with the MS Act, including that each such member:
 - (i) holds a current Certificate of Competency issued pursuant to the MS Act on or after 1 July 2013; or
 - (ii) if a member of the Crew does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013; and
 - (iii) is properly attired in the Operator's uniform.

7.3 Safety Management System

Without limiting clauses 5.4 and 7.1(b) the Operator must implement and maintain a Safety Management System that ensures each Contract Ferry and the operation of each Contract Ferry complies all applicable Law including the MS Act and is, so far as reasonably practicable, safe.

7.4 Non-compliant Contract Ferries

If a Contract Ferry:

- (a) is damaged or vandalised so as to affect the continuity of the Ferry Services;
- (b) is unable to be operated so as to meet the Ferry Timetable; or
- (c) does not meet the requirements set out in clause 7.1,

the Operator must replace that Contract Ferry with a Contract Ferry that will allow the Operator to comply with the Operator Activities and without any delay or interruption to the Ferry Service.

7.5 Other use

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

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

8 Fares

8.1 Fares

- (a) The Operator must at its own cost make arrangements for collection of Fares, including the sale and processing of Tickets for the Ferry Service. Except as provided in clause 6.1(a), TfNSW is not required to provide facilities at the Wharves for this purpose.
- (b) The Operator must offer Fares for Tickets to travel on the Contract Ferries in accordance with the categories and prices outlined in Schedule 3, as amended in accordance with Schedule 3 from time to time.
- (c) The Operator must not offer any other Fare for Tickets to travel on the Contract Ferries which is higher than the prices outlined in Schedule 3 without prior written approval from TfNSW.

8.2 Fare revenue

All Fare Revenue is owned by the Operator and the Operator bears all risk in relation to the sale of Tickets and the collection and protection of revenue.

8.3 Operator to co-operate with transport officers, NSW Police and other emergency services

The Operator must at all times co-operate with and otherwise allow transport officers, NSW Police and other emergency services full access to the Contract Ferries to carry out their statutory duties and functions.

8.4 Ticketing

The Operator must comply with Schedule 3 in relation to the issuing and sale of Tickets.

8.5 Digital Customer Information Service (Transport info Services (131 500))

(a) The Operator must:

- (i) participate in Transport info Services (131500) (or any successor service developed by TfNSW or any of TfNSW's Associates);
- (ii) provide accurate, reliable and timely data for the Transport info Services (131500) trip planner; and
- (iii) not compete with or duplicate Transport info Services (131500) services or customer information channels.

(b) The Operator agrees to provide timely service status information to Transport info Services (131500) to keep customers informed of current service status and issues impacting on the operation of the Ferry Service. Transport info Services (131500) may make this information available to customers through such channels and via such means as TfNSW may deem appropriate.

8.6 Schedule 13 requirements

The Operator must comply with the requirements for which the Operator is responsible or otherwise has a role as set out in Schedule 13.

9 Reporting and governance

9.1 Reporting

The Operator must report to TfNSW during the Term, in accordance with Schedule 6.

9.2 Governance

The Operator and TfNSW must participate in the governance of this Contract, as described in Schedule 5.

9.3 Compatibility of information systems

Any financial, operational or other information, data, records or reports required to be provided to TfNSW must be provided in a form which is compatible with the electronic data and records systems of TfNSW current on the Date of the Contract, or such other form as otherwise notified by TfNSW to the Operator from time to time.

9.4 Right of audit, survey or inspection

- (a) Without limiting the operation of clause 21, the Operator must permit TfNSW and TfNSW's Associates to conduct audits, surveys of passengers, surveillance of or to inspect at any reasonable time:
- (i) any Operator Records;
 - (ii) the Contract Ferries;
 - (iii) any other place where the Operator Activities are being undertaken; and/or
 - (iv) any subcontractor of the Operator carrying out the Operator Activities,
- in order to:
- (v) check, audit and/or obtain a copy of any information supplied to TfNSW under this Contract;
 - (vi) audit the financial viability of the Operator; or
 - (vii) monitor the performance or compliance by the Operator with its obligations under this Contract.
- (b) The Operator must cooperate with TfNSW and TfNSW's Associates when conducting a survey or an inspection under this clause including by permitting TfNSW to access the Operator Premises, including any physical storage facilities.
- (c) The Operator must implement the recommendations and comply with the audit findings of TfNSW.
- (d) If the survey or inspection under this clause reveals that information previously supplied to TfNSW was in any material respect inaccurate, the costs of the inspection must be borne by the Operator, and to make a copy of any information or data.
- (e) The Operator acknowledges and agrees that by exercising its rights under clause 9.4, TfNSW and/or TfNSW's Associates are not assuming any management or control of the Ferry Service or the Operator Activities and is only exercising its rights of audit, survey or inspection to monitor the Operator's compliance with its obligations under this Contract and/or applicable Laws, including the Safety Laws.

9.5 Immediate notification

Without limiting its reporting obligations elsewhere under this Contract, the Operator must inform TfNSW as soon as practicable (and in any event within [REDACTED] of becoming aware of the change or issue) of any change or issues (whether proposed, anticipated or that have occurred) affecting the Operator Activities, including:

- (a) any issues relating to safety, including any notifications to any Safety Authority;
- (b) any litigation or other dispute which may have a material effect on the Operator Activities;
- (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 this Contract or its ability to carry out the Operator Activities;
- (e) any actual or proposed investigation or inquiry by a Government Authority or Safety Authority into any aspect of the Operator Activities; or
- (f) any breach, 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.

9.6 Further information

The Operator must deliver to TfNSW any other information, records or documents, and respond to any questions, relating to, or connected with:

- (a) the Operator Activities or this Contract;
- (b) the operation of the Transition In Plan;
- (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, TfNSW, including the information contemplated in KPI (Table 3) in Schedule 4.

9.7 Boarding and Fare Revenue data

Without limiting the Operator's other reporting obligations under this Contract, the Operator must collect and provide to TfNSW monthly boarding and revenue data in regard to the Ferry Service.

10 Transition In Plan

10.1 Operator to prepare Transition In Plan

- (a) The Operator must prepare and submit to TfNSW the Transition In Plan:

- (i) within ■ from the Date of the Contract; and
 - (ii) in any event so that it is finalised to ensure that there is no delay or disruption to the commencement of the Ferry Service on the Service Commencement Date.
- (b) TfNSW may (but without being under any obligation to do so):
 - (i) review the Transition In Plan prepared and submitted by the Operator; and
 - (ii) within ■ of the submission by the Operator of the Transition In Plan, reject the Transition In Plan and provide written reasons for the rejection.
- (c) If the Transition In Plan is rejected by TfNSW under clause 10.1(b) the Operator must submit to TfNSW within ■ a revised Transition In Plan which takes into account the comments and requirements of TfNSW and clauses 10.1(b) to 10.1(c) (inclusive) will reapply.

10.2 Compliance with the Transition In Plan

- (a) The Operator must:
 - (i) carry out the Operator Activities in accordance with, and otherwise implement, the Transition In Plan; and
 - (ii) record its compliance with the Transition In Plan in such a format and in such detail as are reasonably required by TfNSW.
- (b) The Operator agrees that its compliance with the Transition In Plan will not:
 - (i) relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise according to law; or
 - (ii) prejudice TfNSW's rights against the Operator whether under this Contract or otherwise according to law.

10.3 Development of the Transition In Plan

The Operator:

- (a) must develop, amend or update (and resubmit to TfNSW) the Transition In Plan from time to time prior to the Service Commencement Date as and when either the Operator or TfNSW reasonably considers it is necessary to do so to comply with this Contract; and
- (b) warrants that the Transition In Plan will be fit for its intended purposes and will otherwise comply with the requirements of this Contract.

10.4 No TfNSW responsibility for the Transition In Plan

- (a) TfNSW does not assume or owe any duty of care to the Operator to review, or when reviewing, to assess the Transition In Plan submitted by the Operator for errors, omissions or compliance with this Contract.
- (b) No review of, comments upon, or failure to comment upon, or rejection of (including the reasons for rejection) or failure to reject, the Transition In Plan prepared by the Operator or any other direction by TfNSW about such document will:
 - (i) relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise according to law; or
 - (ii) prejudice TfNSW's rights against the Operator whether under this Contract or otherwise according to law.
- (c) Without limiting clauses 10.4(a) and 10.4(b), TfNSW is not assuming any management or control of the Operator Activities or the Ferry Service.

11 Payments

11.1 Payments

- (a) Subject to the remaining provisions of this clause 11 and Schedule 1, as consideration for the right to carry out the Operator Activities, the Operator must make the Monthly Payment and the Quarterly Payment to TfNSW under, and in accordance with, the terms of Schedule 1.
- (b) Except where the Operator is entitled to payment in accordance with an express provision of this Contract, the Operator must bear all costs and expenses in respect of or arising from the carrying out of the Operator Activities and its other obligations under this Contract.

11.2 Manner of payments

All payments under this Contract must be made by transfer of immediately available funds to the account specified by TfNSW or the Operator as the case requires, by [REDACTED] (Sydney time) on the date that payment is payable.

11.3 Set off

The Operator must make all payments under this Contract without set off or counterclaim and without any deduction unless otherwise agreed in writing by TfNSW.

11.4 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 11.4(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 [REDACTED] 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 11.4(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) 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 [REDACTED] of becoming aware of the Adjustment must 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 becoming aware of the Adjustment.

12 Key Performance Indicators

12.1 Measurement of performance

TfNSW will measure the Operator's performance against the Key Performance Indicators.

12.2 Compliance with Key Performance Indicators

The Operator must comply with its obligations relating to the measurement and reporting of Key Performance Indicators and the remedy of breaches of the Key Performance Indicators.

13 Force Majeure

13.1 Force Majeure Events

The following events constitute Force Majeure Events:

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

13.2 Claims for relief

- (a) If by reason of a Force Majeure Event occurring, either party is wholly or partially unable to carry out its obligations under this Contract that party must, as soon as it becomes aware of the Force Majeure Event, give to the other party prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:
 - (i) details of the Force Majeure Event;
 - (ii) details of the obligations affected;

- (iii) details of the action that the party has taken to remedy the situation and details of the action that the party proposes to take to remedy the situation; and
 - (iv) an estimate of the time during which the party will be unable to carry out its obligations due to the Force Majeure Event.
- (b) The parties must promptly meet and endeavour to identify an alternative viable means of carrying out the applicable obligations affected by the Force Majeure Event described in the notice given under this clause.
 - (c) The party giving the notice must provide the other party with all further relevant information pertaining to the Force Majeure Event as may reasonably be requested by the other party.

13.3 Suspension of obligations

- (a) Following a notice of a Force Majeure Event under clause 13.2, and while the Force Majeure Event continues, the obligations which cannot be performed because of the Force Majeure Event will be suspended.
- (b) To the extent that a Force Majeure Event results in the Operator being required to suspend the Ferry Service, then the period of such suspension will constitute an Excusable Payment Event.

13.4 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.

14 Warranties and acknowledgements

14.1 Warranties and acknowledgements correct

- (a) The Operator represents and warrants to TfNSW that, except as disclosed in writing to TfNSW, the statements in Schedule 7 are true and correct and not misleading on the Date of the Contract.
- (b) The Operator makes each of the acknowledgements in Part B of Schedule 7 as at the Date of the Contract.

14.2 **Updating of warranties and acknowledgements**

Subject to clause 14.3, the Operator undertakes that each of the statements in Schedule 7 (including the warranties and acknowledgements) will be true and correct and not misleading:

- (a) on the Service Commencement Date; and
- (b) on each and every day after the Service Commencement Date to the expiry of the Term,

as if they had been made on that date.

14.3 **Notification of change**

The Operator must immediately notify TfNSW upon becoming aware that a representation, warranty or acknowledgement it has given under this clause has become untrue or misleading.

14.4 **Reliance on representations, warranties and acknowledgements**

The Operator acknowledges that TfNSW has entered, or will enter, into this Contract in reliance on the representations, warranties and acknowledgements in Schedule 7.

14.5 **TfNSW's warranties**

TfNSW represents and warrants to the Operator that:

- (a) it has the power to enter into and perform its obligations under this Contract and to carry out the transactions contemplated by this Contract; and
- (b) this Contract constitutes a valid and binding obligation of TfNSW, subject to any necessary stamping and registration.

15 **Intellectual Property**

15.1 **Ownership**

- (a) TfNSW owns the TfNSW IP and nothing in this Contract confers any right in the TfNSW IP to the Operator other than as licensee as expressly set out in clause 15.2(b).
- (b) The Operator retains ownership of the Operator IP and nothing in this Contract confers any right in the Operator IP to TfNSW other than as licensee as expressly set out in clause 15.2(a).

15.2 Licences of Intellectual Property

- (a) The Operator grants to TfNSW a non-exclusive, royalty free, perpetual, irrevocable licence, with the right to sub-license, under the Operator IP for the purposes of:
 - (i) performing its obligations or exercising its rights under this Contract; and
 - (ii) the granting of any concession or similar right to manage or operate a ferry service similar to the Ferry Service including in connection with any procurement process for such concession or similar right. Without limiting the foregoing, this purpose includes providing tenderers of such ferry service with access on a confidential basis to the Contract Material.
- (b) TfNSW grants to the Operator a non-exclusive, royalty free, perpetual, irrevocable licence with the right to sub-licence subject to clause 15.2(c), under that TfNSW IP which is required to enable the Operator to perform its obligations under this Contract for the sole and limited purpose of, and only to the extent necessary for, performing its obligations under this Contract.
- (c) The Operator may only grant a sub-licence of the rights granted to it under clause 15.2(b) to a subcontractor under and in accordance with this Contract and then only to the extent necessary for the subcontractor to perform its obligations under the subcontract.

15.3 TfNSW Marks

The Operator must not use any TfNSW Marks without the prior written consent of TfNSW.

15.4 IP Claims

- (a) The Operator must notify TfNSW immediately if it becomes aware of:
 - (i) any infringement or threatened infringement of any Contract Material;
 - (ii) any unauthorised use of Contract Material; or
 - (iii) any threatened challenge of the validity of the Operator IP.
- (b) Without limiting TfNSW rights under this Contract or otherwise, if an Infringement Claim is made or threatened:
 - (i) the party against whom the Infringement Claim is made must notify the other party as soon as is practicable;
 - (ii) upon request from TfNSW, the Operator must at its own cost conduct the defence of the Infringement Claim, but may not settle it without TfNSW's prior written consent; and

- (iii) if the Infringement Claim is successful, or if it is agreed that there is an infringement of the Intellectual Property of the relevant person, the Operator must at the option of TfNSW:
 - (A) modify the Operator Activities, Contract Material or Operator IP (as the case may be) to render the use non-infringing; or
 - (B) at no cost to TfNSW, render the relevant activity non-infringing by procuring for the Operator or TfNSW (as the case requires) the right to exercise the Intellectual Property of the person making the Infringement Claim.

16 Insurance

16.1 Insurance policies

- (a) The Operator must effect and maintain, or cause to be effected and maintained, at all times during the Term the following insurances:
 - (i) a public liability policy of insurance which covers TfNSW, RMS, the Operator and its Staff, for an amount in respect of any one occurrence [REDACTED];
 - (ii) a policy of insurance for property damage which covers the Relevant Infrastructure and any other specified significant assets of RMS or TfNSW (as determined by RMS or TfNSW as applicable) for [REDACTED] in respect of any claim;
 - (iii) workers compensation insurance in respect of job related injuries to the Operator's Staff;
 - (iv) marine liability (or similar) insurance in relation to the use, charter or licence of vessels (including the Contract Ferries) or moorings, pontoons and similar equipment undertaken in connection with the Operator Activities (including the use of the Wharves and Wharf Infrastructure Facilities) and the removal of wreck or port blockages for not less than [REDACTED] for any one claim;
 - (v) environmental impairment liability and clean up policy, or an equivalent form of cover under an alternate policy as approved by TfNSW and RMS for [REDACTED] for any one claim and period of insurance;
 - (vi) any other insurance required by Law; and
 - (vii) any other insurance policy or level of coverage that TfNSW or RMS may reasonably require. TfNSW will meet the Operator's reasonable and substantiated costs associated with compliance with this clause 16.1(a)(vii).

- (b) TfNSW may increase the amount of the insurances referred to in this clause 16.1 from time to time, provided that RMS has sought a similar increase under clause 14.1(b) of the Wharf Rules.
- (c) The Operator must not do any act or thing which might invalidate or prejudice any of the insurances referred to in this clause 16.1 or TfNSW's or RMS' interest in such insurances.

16.2 Insurance policies

- (a) The insurances referred to in clauses 16.1(a)(i), 16.1(a)(ii), 16.1(a)(iv) and 16.1(a)(v) must:
 - (i) name RMS, TfNSW and the Operator as insureds for their respective rights and interests;
 - (ii) be effected with a reputable insurer with proven experience in the area of cover required by TfNSW and RMS;
 - (iii) be for the relevant amounts set out in clause 16.1; and
 - (iv) be on such terms and with such excesses exclusions, endorsements or alterations as may be approved in writing by TfNSW and RMS (such approval not to be unreasonably withheld).
- (b) The effecting of insurance does not limit any liability or obligations of the Operator under this Contract.

16.3 Compliance with insurances

The Operator:

- (a) must comply with and abide by the terms and conditions of the insurances required to be taken out under clause 16.1; and
- (b) is responsible for the payment of all excesses and premiums which may be contained or payable, as the case may be, within or by the terms of such insurances arranged by the Operator.

16.4 Approval by TfNSW and RMS

- (a) The insurances arranged under clause 16.1 are subject to the approval of TfNSW and RMS as to the adequacy and terms of insurance protection.
- (b) The Operator must promptly provide such documentation, information and assistance as may be reasonably required by TfNSW or RMS in this regard.

16.5 Proof of insurance

- (a) Whenever any policy of insurance referred to in clause 16.1 is renewed and whenever reasonably requested in writing by TfNSW or RMS, the Operator must produce evidence to the satisfaction of TfNSW or RMS (as applicable) of the insurance effected if and when requested by TfNSW or RMS.

- (b) The rights given to TfNSW and RMS by clause 16.5(a) are in addition to any other right of TfNSW and RMS.

16.6 Notification

The Operator must:

- (a) ensure that unless TfNSW otherwise agrees, the insurances referred to in clauses 16.1(a)(i) and 16.1(a)(v) contain a provision that requires the insurer/s to give no less than [REDACTED] notice to TfNSW and RMS of any proposed cancellation or material change to the terms of the insurance cover; and
- (b) as soon as practicable but in any event no later than [REDACTED] after the occurrence of any event that may give rise to a Claim under the insurances referred to in clause 16.1(a)(i) and 16.1(a)(v):
 - (i) inform TfNSW and RMS in writing of the occurrence;
 - (ii) keep TfNSW and RMS informed of subsequent developments concerning any Claim; and
 - (iii) comply with all instructions of TfNSW and RMS in connection with any Claim.

16.7 The policies

Any insurance policy in which TfNSW or RMS is named as an insured under this clause 16 must, unless TfNSW or RMS (as applicable) otherwise agrees:

- (a) include a cross liability clause noting that each of the parties comprising the "insured" will be considered as a separate entity, and the insurance applies as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
- (b) waive all express or implied rights of subrogation against TfNSW and RMS (as applicable) arising out of the occupation and use of the Relevant Infrastructure by the Operator; and
- (c) include a clause that provides that any non-disclosure or breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

16.8 Settlement of Claims

- (a) Upon settlement of a Claim under any insurance required under clause 16 covering damage to the Relevant Infrastructure or Sydney Harbour or any other property, to the extent that TfNSW or RMS directs that the affected property:
 - (i) is not to be reinstated, the Operator must ensure that any moneys received by them are paid to TfNSW or RMS (as applicable); and

- (ii) is to be reinstated, then the Operator will reimburse TfNSW or RMS (as applicable) for the moneys paid or for any allowance made to the Operator in respect of the reinstatement.
- (b) The Operator must not do any act or thing, which might invalidate or prejudice any such insurance of TfNSW's or RMS' interests in such insurance.
- (c) The Operator must immediately notify TfNSW and RMS in writing of any event that leads or might lead to a rejection of a claim for compensation or payment under any insurance policy and must comply with all instructions of TfNSW and RMS in connection with its claim.

17 Indemnity, release and exclusions

17.1 Indemnity

- (a) The Operator indemnifies, and must keep indemnified, TfNSW and TfNSW's Associates (**Indemnified Persons**) from and against all Losses or Claims that may be incurred or sustained by any or all of the Indemnified Persons in respect of or arising out of:
 - (i) any act, omission or neglect on the part of the Operator or its Staff;
 - (ii) any Termination Event;
 - (iii) any breach by the Operator of its obligations under clause 21 or any failure by the Operator to comply with Schedule 7;
 - (iv) any death, personal injury (including illness or condition), loss or damage (including to property and whether the property of TfNSW, TfNSW's Associates or otherwise) caused or contributed to by the Operator or its Staff or arising out of or in consequence of the Operator Activities;
 - (v) any Operator Contamination;
 - (vi) any Pollution to the extent caused or contributed by the Operator in the carrying out of the Operator Activities, whether before, on or after the Service Commencement Date;
 - (vii) any breach by the Operator of its obligations under clause 5.4; and
 - (viii) any breach by the Operator of its obligations under clause 6.1(e).
- (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 TfNSW or TfNSW's Associates to be indemnified by the Operator.

- (d) No indemnity in this Contract limits the effect or operation of any other indemnity in this Contract.
- (e) Unless expressly provided otherwise, each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties.
- (f) Each indemnity in this Contract survives the expiry or termination of this Contract.
- (g) 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.
- (h) TfNSW holds for itself and on trust for each of TfNSW's Associates the benefit of each indemnity and release in this Contract expressed to be for the benefit of that TfNSW's Associate. The trust created under this paragraph does not prevent or in any other way restrict:
 - (i) the parties' ability to amend this Contract;
 - (ii) either party's ability to terminate this Contract; or
 - (iii) the exercise of any other right of the parties under this Contract or at law.

17.2 Release

The Operator releases (to the extent not excluded by Law) TfNSW and TfNSW's Associates from any Claim and liability for Losses which arise from the Operator's performance of this Contract, except where a breach or negligence of TfNSW or TfNSW's Associates resulted in the Claim or liabilities.

17.3 Liability with respect to passengers and third parties

The Operator agrees that neither TfNSW nor any of TfNSW's Associates will be responsible for the actions of the Operator or its Staff.

17.4 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.

18 Suspension

18.1 Right of suspension

TfNSW may suspend all or some of the access rights granted under clause 6.1:

- (a) if there is a default by the Operator as contemplated in clauses 19.1 or a Termination Event;
- (b) for the protection or safety of any person or property;
- (c) if a Force Majeure Event exists and is so notified; or
- (d) if maintenance, upgrade or repair works are required to all or any of the Wharves and/or the Wharf Infrastructure Facilities during the Term.

18.2 Notice of suspension

- (a) TfNSW must serve written notice on the Operator as soon as practicable of a suspension and the relevant details of the suspension including:
 - (i) the reasons for the suspension;
 - (ii) the Wharves affected;
 - (iii) the Wharf Infrastructure Facilities affected;
 - (iv) the access rights granted under clause 6.1 which are affected;
 - (v) the proposed or likely period of suspension; and
 - (vi) the actions the Operator must take to have the suspension lifted.
- (b) The Operator acknowledges and agrees that RMS may notify TfNSW and the Operator orally of a suspension in an emergency.

18.3 Duty to mitigate

The Operator must use its best endeavours to mitigate and/or remedy the effects of a suspension where the suspension arises from the requirements for the protection or safety of any person or property.

18.4 Lifting of suspension

As soon as practicable after the reasons for the suspension have ceased, TfNSW must lift any suspension imposed and notify the Operator of the lifting of any rights suspended under this clause 18.

18.5 Effect of suspension

- (a) To the extent that the suspension is as a result of the wrongful act, default or omission of the Operator, its Staff or passengers:
 - (i) the Operator is liable for all Losses incurred by TfNSW and TfNSW's Associates as a result of the suspension (including Losses claimed by RMS against TfNSW under clause 8.5 of the Wharf Access Deed);
 - (ii) the suspension does not affect or suspend any other obligation of the parties under this Contract; and
 - (iii) the suspension shall be without prejudice to the parties' rights in respect of any breach of this Contract.
- (b) To the extent that a suspension is not as a result of the wrongful act, default or omission of the Operator, its Staff or passengers, then the period of such suspension will constitute an Excusable Payment Event.

19 Default and Termination

19.1 Notice of breach which is capable of remedy

If the Operator commits a breach of this Contract which is capable of remedy, TfNSW may (in its absolute discretion) give a written notice to the Operator in accordance with clause 19.2.

19.2 Contents of notice

The notice under clause 19.1 must state:

- (a) that it is a notice under clause 19.1;
- (b) the relevant breach relied upon; and
- (c) that the Operator must:
 - (i) rectify the breach within [REDACTED] of receipt of the notice in accordance with clause 19.1 (or such longer period as may be specified by TfNSW in such notice); and
 - (ii) if required by TfNSW, prepare a rectification plan for the approval of RMS.

19.3 Termination Events

The following are Termination Events in respect of the Operator:

- (a) **(Breach capable of remedy)** the Operator fails to rectify the breach within the period stated in the notice in accordance with clause 19.1, or (if applicable) the rectification plan is not approved by RMS;
- (b) **(Breach incapable of remedy)** the Operator commits a breach of an essential term (including clause 21) of this Contract which, in TfNSW's opinion, is incapable of remedy;
- (c) **(Non-performance of KPI)** there are more than [REDACTED] Defaults (as defined in Schedule 4) within any [REDACTED] during the Term;
- (d) **(Insolvency)** an Insolvency Event occurs;
- (e) **(Unlawful)** it becomes unlawful for the Operator to perform all or a material number of the Operator Activities;
- (f) **(Abandonment)** the Operator abandons, ceases or suspends the conduct of all or a substantial part of the Operator Activities or it threatens or expresses an intention to do so;
- (g) **(Assignment and subcontracting)** a purported assignment by the Operator of this Contract or any of its obligations under this Contract without the prior consent of TfNSW;
- (h) **(Change in Control)** where:
 - (i) a person's Voting Power in the Operator changes after the Date of the 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 the Contract,without TfNSW's prior written consent;
- (i) **(Revocation of Authorisation)** Authorisations that are material to the performance by the Operator of this Contract, or to the validity and enforceability of this Contract or for the performance of the Operator Activities or the continuity of the Operator Activities, is repealed, revoked or terminated or expires, or is modified or amended or conditions are attached to it in a manner unacceptable to TfNSW, and is not replaced by another Authorisation acceptable to TfNSW;
- (j) **(Fraud)** the Operator has acted fraudulently or dishonestly in relation to the provision of the Operator Activities or the performance of any of its obligations under this Contract; and
- (k) **(Repudiation)** the Operator repudiates this Contract.

19.4 TfNSW's right to terminate on a Termination Event

- (a) On the occurrence of a Termination Event, TfNSW may by written notice to the Operator terminate this Contract effective on the date specified in the notice (**Termination Notice**).
- (b) No failure to exercise, nor any delay in exercising TfNSW's rights under this clause will operate as a waiver or cause the rights of TfNSW under this clause to lapse or be otherwise diminished.
- (c) This termination right is without prejudice to TfNSW's right under clause 12 and TfNSW's right to exercise all legal and equitable rights and remedies available to TfNSW in respect of the Termination Event (whether under this Contract or not).

19.5 Termination of this Contract due to termination of the Wharf Access Deed

If the Wharf Access Deed is terminated under clause 10 of the Wharf Access Deed, then this Contract will automatically terminate on the same date of such termination and without the necessity for notice.

19.6 Other rights upon termination

Notwithstanding termination of this Contract, either party may be entitled to recover any payments due under this Contract up to and including the date of termination.

19.7 Clauses which survive termination or expiry of this Contract

This clause 19.7 and clauses 1, 15, 16 (to the extent applicable), 17, 19.8, 20, 21, 22, 23, 24 and 26, and clause 8(C) of Schedule 1, survive termination or expiry of this Contract.

19.8 Waiver

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

20 Dispute resolution

20.1 Dispute notice and negotiation

- (a) If a dispute between the parties in connection with this Contract arises (**Dispute**), a party to the Dispute (**Referring Party**) may by giving notice to the other party (**Dispute Notice**) refer the Dispute to the Senior Management Representatives.
- (b) The Dispute Notice must:
 - (i) be in writing;

- (ii) state that it is given pursuant to this clause 20.1; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute.
- (c) Within [REDACTED] of the Referring Party giving the Dispute Notice the Senior Management Representatives must meet at least once to attempt to resolve the Dispute.
- (d) Where a Dispute is not resolved within the period contemplated in clause 20.1(c) (or such longer period as the parties agree in writing), the Dispute must be referred to the Executive Management Representatives.

20.2 Executive negotiation

- (a) Within [REDACTED] of the Dispute being referred to the Executive Management Representatives in accordance with clause 20.1(d), the Executive Management Representatives must meet at least once to attempt to resolve the Dispute.
- (b) Where the Dispute is not resolved within the period contemplated in clause 20.2(a) (or such longer period as the parties agree in writing), then either party may commence proceedings.

20.3 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 20.
- (b) Clause 20.3(a) does not prevent either party from applying to a court at any stage for injunctive or other urgent relief.

20.4 Related Disputes

- (a) The parties acknowledge and agree that:
- (i) Disputes between TfNSW and the Operator in connection with this Contract may be concerned with the same issues to those in respect of the respective rights, liabilities and obligations of TfNSW and RMS in connection with the Wharf Access Deed; and
 - (ii) disputes between TfNSW and RMS in connection with the Wharf Access Deed may be concerned with the same issues to those in respect of the respective rights, liabilities and obligations of TfNSW and the Operator in connection with this Contract which are or may be the subject of a Dispute under this Contract.
- (b) TfNSW may give a notice to the Operator that, in TfNSW's reasonable opinion, a Dispute concerns those matters contemplated in clause 20.4(a) and that it requires the operation of clauses 20.4(c) - 20.4(h) to apply (**Related Dispute**). A Related Dispute must:
- (i) not be resolved by reference to the dispute resolution procedures under both the Wharf Access Deed and this Contract; and

- (ii) be conclusively resolved in accordance with this clause 20.4.
- (c) In respect of a Related Dispute, TfNSW must:
 - (i) give the Operator in a timely manner copies of all documents, information and other material relating to the corresponding dispute under the Wharf Access Deed received from RMS;
 - (ii) allow the Operator, at the Operator's own costs, an opportunity to provide TfNSW with draft submissions to be considered for inclusion as part of TfNSW's submissions in the corresponding dispute under the Wharf Access Deed; and
 - (iii) keep the Operator fully informed as to the progress and outcome of the corresponding dispute under the Wharf Access Deed.
- (d) In respect of a Related Dispute, the Operator must:
 - (i) at the Operator's own cost, co-operate fully with, and comply with all reasonable requests for assistance from, TfNSW in relation to any negotiation, expert determination process or proceedings under the Wharf Access Deed to the extent it corresponds to the Related Dispute, including providing all such documents, data and information as may reasonably be requested by TfNSW; and
 - (ii) provide any draft submission pursuant to clause 20.4(c)(ii) to TfNSW in a timely manner and, in any event, no later than ■ Business Days before TfNSW is due to make its submissions of the corresponding dispute under the Wharf Access Deed.
- (e) Subject to clause 20.4(f), TfNSW and the Operator agree that:
 - (i) if there is a Related Dispute, any settlement by TfNSW and RMS of the corresponding dispute under the Wharf Access Deed will be binding on the Operator;
 - (ii) if there is a Related Dispute, any expert determination of the corresponding dispute under the Wharf Access Deed will be binding on the Operator and TfNSW without the need for a separate appointment or determination under this Contract;
 - (iii) the Operator acknowledges and accepts in full and final resolution of:
 - (A) each Related Dispute, the outcome of the corresponding dispute which has been agreed or determined under the Wharf Access Deed; and
 - (B) all and any entitlement, privilege, benefit or liability which it may have arising out of or in connection with this Contract in respect of any Related Dispute, the amount of the corresponding entitlement, privilege, benefit or liability which

has been agreed or determined under the Wharf Access Deed.

- (f) The agreement by TfNSW under clause 20.4(e) does not apply:
 - (i) to the extent that the non-recovery of any costs under clause 20.4(e) is due solely to an act or omission of TfNSW (but excluding any act or omission arising in respect of any dispute resolution process under the Wharf Access Deed or this Contract);
 - (ii) where, in respect of the settlement of any dispute arising out of or in connection with the Wharf Access Deed which is concerned with a Related Dispute, TfNSW agrees that settlement without first obtaining the prior consent of the Operator to such a resolution (which consent must not be unreasonably withheld or delayed); or
 - (iii) where, in respect of an expert determination process under the Wharf Access Deed to the extent it corresponds to the Related Dispute, TfNSW, in making its submissions to the expert or court (as the case may be) has not taken due account of any draft submissions provided by the Operator in accordance with clause 20.4(c)(ii) and 20.4(d)(ii).
- (g) Any remedy or benefit to which TfNSW or the Operator (as applicable) is entitled under this clause 20.4 must be paid or granted by TfNSW or the Operator (as applicable) by the later of:
 - (i) ■ Business Days of the binding settlement or determination of such entitlement under the Wharf Access Deed; or
 - (ii) by the date such remedy or benefit must be paid or granted by TfNSW or the Operator (as applicable) under any other provision of this Contract.
- (h) The Operator acknowledges and agrees that, in respect of a Related Dispute, it must:
 - (i) provide whatever consents are necessary for the proceedings or other dispute resolution process under the Wharf Access Deed to be used to determine the dispute; and
 - (ii) make no objection to the consolidation of any proceedings or other dispute resolution process to enable the resolution of the Related Dispute at the same time under the dispute resolution process in the Wharf Access Deed.

20.5 Operator to continue performing obligations

Despite the existence of any Dispute as contemplated by this clause 20, the Operator must continue to perform its other obligations under this Contract.

21 Confidentiality

21.1 Obligation of confidentiality

The Operator and TfNSW (each a "**Recipient Party**") must:

- (a) not use or disclose the Confidential Information of the other (the "**Disclosing Party**") except as expressly permitted by this Contract or with the consent in writing of the Disclosing Party;
- (b) take all action reasonably necessary to maintain the confidentiality of the Confidential Information of the Disclosing Party and the security of that Confidential Information;
- (c) only use or reproduce the Confidential Information of the Disclosing Party for the purposes of this Contract;
- (d) must take reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this Contract including, diligently prosecuting at its cost, any breach or threatened breach of such confidentiality obligations by a person to whom it has disclosed Confidential Information of the Disclosing Party; and
- (e) on request by the Disclosing Party provide and update promptly a list of all its representatives to whom Confidential Information of the Disclosing Party has been disclosed.

21.2 Permitted disclosure

Clause 21.1 does not apply to disclosures to the extent the disclosure:

- (a) 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, acting reasonably, as necessary to protect its interests;
- (b) is authorised or required under a binding order of a Government Authority or under a procedure for discovery in any proceedings;
- (c) 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 Government Authority similarly situated;
- (d) 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;
- (e) 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 Recipient Party is bound to under clause 21.1;

- (f) is to the officers and employees of the Recipient 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 Recipient Party is bound to under clause 21.1;
- (g) is to the Recipient Party's legal advisers and its consultants;
- (h) 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; or
- (i) is by the 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 that is reasonably satisfactory to the Disclosing Party.

21.3 Permitted disclosure by TfNSW

Clause 21.1 does not apply to disclosures by TfNSW:

- (a) to any of TfNSW's Associates or any Minister of the Crown in right of the State or any of its agencies or instrumentalities or for any legitimate government purpose or process;
- (b) (where TfNSW reasonably considers it necessary) to a Successor Operator or otherwise to secure the continuity of the Ferry Services; or
- (c) to perform its obligations, and obtain the full benefit of its rights, under this Contract including in order to enjoy the rights under the licence of Intellectual Property granted under clause 15.

21.4 Public disclosure

- (a) Nothing in this Contract prevents TfNSW or any Government Authority 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 the Minister's duties of office.

- (b) The Operator must use all reasonable endeavours to assist TfNSW or a Government Authority in meeting their obligations under clause 21.4(a).
- (c) Despite the provisions of clause 21.1, TfNSW may publish or require the Operator to publish in any form and at times TfNSW considers appropriate, any of the following information, and whether or not the information is the Operator Confidential Information:
 - (i) the amounts payable under this Contract;
 - (ii) the nature of any breaches by the Operator, the outcomes (if any) in respect of each breach and details of actions taken by the Operator to cure each breach (including the costs incurred by the Operator);
 - (iii) subject to clause 21.4(d), any information TfNSW considers reasonably necessary to publish in connection with the performance of its functions;
 - (iv) subject to clause 21.4(d), any information reasonably required in connection with the re-tendering or contracting of all or any part of the Operator Activities, 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 21.4(d), any reports delivered to TfNSW under this Contract;
 - (vi) the operational performance results under Schedule 4;
 - (vii) the results of any passenger counts or surveys on or in respect of the Operator Activities;
 - (viii) the farebox revenue and patronage information;
 - (ix) any damage or vandalism reports relating to the Relevant Infrastructure;
 - (x) the Transition In Plan;
 - (xi) any information TfNSW reasonably requires to include in its annual report;
 - (xii) any information TfNSW reasonably considers necessary at or around the expiry or termination of this Contract in order to secure the continuity of the Ferry Service; and
 - (xiii) any information TfNSW reasonably considers necessary to explain the nature of, reasons for and or consultation on, any variation or proposed variation to:
 - (A) the Ferry Service;
 - (B) the Ferry Timetable; or

- (C) ticketing.
- (d) TfNSW is not permitted to publish or require the Operator to publish Operator Confidential Information pursuant to clause 21.4(c) where:
 - (i) such information is financial information;
 - (ii) the Operator requests TfNSW 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) Except to the extent permitted above or otherwise under this clause 21, TfNSW may publish any other information relating to the Operator if TfNSW has previously notified the Operator and the Operator does not demonstrate to the reasonable satisfaction of TfNSW within ■ 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, TfNSW must allow ■ more Business Days before publishing the information.

21.5 GIPA Act

- (a) The Operator acknowledges that TfNSW may disclose certain information about this Contract (including a copy of this Contract) in accordance with TfNSW's obligations under the GIPA Act, including making certain information about this Contract publicly available in any disclosure log of contracts TfNSW is required to maintain.
- (b) The Operator must provide TfNSW with immediate access to the following information contained in records held by the Operator:
 - (i) information that relates directly to the performance of the Operator Activities provided to TfNSW 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 Operator Activities pursuant to this Contract; and
 - (iii) information received by the Operator from TfNSW to enable it to provide the Operator Activities pursuant to this Contract.
- (c) For the purposes of clause 21.5(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 TfNSW by provision made by or under any Law; or
 - (iii) information that, if disclosed to TfNSW, could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to TfNSW, whether at present or in the future.
- (d) The Operator must provide copies of any of the information in clause 21.5(a), as requested by TfNSW, at the Operator's own expense.
- (e) For the purposes of this clause, "**record**" has the same meaning as the term "record" in the GIPA Act.

21.6 Use of certain information by TfNSW

The Operator consents to the use of Operator Confidential Information by TfNSW in the performance of its functions under this Contract and the Law, including in assessing the Operator's performance under this Contract.

21.7 Media

The Operator must not, and must ensure that its Staff do not, engage with the media in relation to any aspect of the Operator Activities or any other aspect of this Contract without the prior written approval of TfNSW.

21.8 Return of Confidential Information

Each Recipient Party agrees at the request of the Disclosing Party, to return within a reasonable time any Confidential Information of the other party in all documents and other materials in any medium in the possession or under the power or control of the party or any of its representatives when the documents and other materials are no longer required for the purposes of performing its obligations or exercising its rights under this Contract.

22 Privacy

22.1 Compliance

- (a) Each party must comply with all Privacy Laws in relation to Personal Information, and in the case of the Operator, whether or not it is an organisation bound by the Privacy Laws.
- (b) If the Operator is a small business operator under the Privacy Act, then the Operator agrees to choose to be treated as an organisation bound by the Privacy Act in accordance with Section 6EA of the Privacy Act during the Term.
- (c) The Operator must:

- (i) collect, store, use, disclose or otherwise deal with the TfNSW Personal Information as directed by TfNSW, except to the extent that compliance with the direction would cause the Operator to breach a Privacy Law; and
- (ii) provide all assistance required by TfNSW to assist TfNSW in complying with its obligations under any Privacy Law.

22.2 Use and disclosure of the TfNSW Personal Information

The Operator:

- (a) may use the TfNSW Personal Information, but only as is necessary for the purposes of carrying out the Operator Activities;
- (b) must not directly or indirectly disclose or transfer any TfNSW Personal Information to, or allow access to any TfNSW Personal Information by, any person:
 - (i) without TfNSW's prior written consent;
 - (ii) except to those of its Staff who need to know the TfNSW Personal Information for the purposes of providing the Operator Activities, on the condition that the Staff will only use the TfNSW Personal Information for the purposes of providing the Operator Activities; or
 - (iii) except as required by law;
- (c) must not transfer any TfNSW Personal Information to a person (including itself) outside of Australia without TfNSW's prior written consent, which may be granted or withheld at TfNSW's sole and absolute discretion;
- (d) must not purport to sell, let for hire, assign rights in or otherwise dispose of any of the TfNSW Personal Information, commercially exploit the TfNSW Personal Information, or allow any of the Staff to commercially exploit the TfNSW Personal Information; and
- (e) must not alter the TfNSW Personal Information in any way, other than as required to fulfil its obligations under this Contract.

22.3 Records and retention of TfNSW Personal Information

The Operator must:

- (a) establish and maintain complete, accurate and up-to-date records of its use and disclosure of TfNSW Personal Information, but otherwise only establish and keep records of any TfNSW Personal Information supplied to or acquired by it from TfNSW to the extent necessary to exercise its rights, and to perform its obligations under this Contract; and
- (b) at TfNSW's request, provide TfNSW with copies of the records referred to in clause 22.3(a) in real time if possible, and if not possible within [REDACTED] of the real time.

22.4 Resolution of complaints

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

23 End of Term

23.1 Successor service provider

- (a) For the purposes of this clause 23.1, a reference to a "successor service provider" includes a reference to any party tendering to provide services similar to some or all of the Operator Activities performed by the Operator under this Contract.
- (b) The Operator must provide all reasonable assistance and information requested by TfNSW for the purposes of TfNSW preparing for appointing a successor service provider for the operation of all or part of the Operator Activities. This includes all processes and steps involved in due diligence, the preparation of reports, patronage data and documents, evaluation processes and the award of new contracts.
- (c) All assistance provided by the Operator under clause 23.1(b) must be provided within the timeframe specified by TfNSW or, where no timeframe is specified, within a reasonable time.
- (d) The Operator warrants to TfNSW that to the best of its belief all information provided under clause 23.1 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

24 Relationship between Operator and TfNSW

- (a) The Operator acknowledges that neither it nor any Staff shall be deemed to be an employee or agent of TfNSW 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, this Contract.
- (b) The Operator must not, and must procure that none of its Staff, represent themselves as being the employee or agents of TfNSW or the State.

25 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 TfNSW: Level 2, 18 Lee Street,
Chippendale NSW 2008

Attention: General Manager Bus and Ferry Contracts

Fax No: (02) 8202 2739

(ii) to the Operator: 531 Rocky Point Road
Sans Souci NSW 2219

Attention: Chief Executive Officer

Fax No: (02) 9529 5092; 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 [REDACTED] Business Days after the date of posting (if posted to an address in the same country) or [REDACTED] 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 Day 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 Day in that place.

26 General

26.1 Entire agreement

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

26.2 Amendment

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

26.3 Assignment

- (a) The Operator may not assign, transfer, encumber or otherwise deal with its interest under this Contract without the consent in writing of TfNSW.
- (b) TfNSW may assign or transfer its rights or obligations under this Contract to another Government Authority.

26.4 Dealing with Relevant Infrastructure

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

- (a) create or allow to exist any Security Interest, other than a Permitted Security Interest, over any Relevant Infrastructure; 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 Relevant Infrastructure, other than the grant of a Permitted Security Interest.

26.5 Costs

- (a) Without limiting any other right of TfNSW under this Contract or otherwise at law, the Operator must pay, on an indemnity basis, to TfNSW or as TfNSW directs, TfNSW's and RMS' reasonable costs, including administrative costs, legal costs and disbursements in connection with any failure by the Operator to perform and observe its obligations under this Contract, including a failure to perform and observe the Wharf Rules.
- (b) TfNSW holds the benefit of this provision on trust for RMS. The trust created under this paragraph does not prevent or in any other way restrict:
 - (i) the parties' ability to amend this Contract;
 - (ii) either party's ability to terminate this Contract; or
 - (iii) the exercise of any other right of the parties under this Contract or at law.

26.6 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.

26.7 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.

26.8 Costs and stamp duty

- (a) Each party must pay its own costs of negotiation, preparation and execution of this Contract.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Contract and any instrument executed under this Contract must be borne by the Operator. The Operator must indemnify TfNSW on demand against any liability for that stamp duty.

26.9 Governing law and jurisdiction

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

26.10 Counterparts

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

26.11 Rights cumulative

Subject to any express provision in this Contract to the contrary, a right, power or remedy of TfNSW 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.

26.12 No merger

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

26.13 PPS Law

- (a) The Operator acknowledges that this Contract may give TfNSW a Security Interest in all Personal Property. To the extent that such a Security Interest is created in favour of TfNSW, the Operator acknowledges that TfNSW may

register a financing statement in relation to its Security Interest in the Personal Property. The Operator waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

- (b) The Operator must promptly do anything TfNSW requires to ensure that any Security Interest TfNSW has in the Personal Property is a perfected Security Interest and has priority over all other Security Interests.
- (c) To the extent that the PPS Laws allows them to be excluded, the enforcement provisions in Chapter 4 of the PPSA do not apply to any enforcement of TfNSW's rights in respect of any Security Interest in the Personal Property or to the exercise of TfNSW's rights in respect of the Personal Property.

26.14 **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.

26.15 **Moratorium legislation**

Unless application is mandatory by Law, any present or future Law will not apply to this Contract so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to TfNSW.

EXECUTION

Executed as a deed

Executed for and on behalf of **Transport
for NSW**

Signature

Print name

Executed by **Manly Fast Ferry Pty Ltd
(ABN 90 135 008 070)** in accordance with
section 127(1) of the Corporations Act:

Signature of director

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

Print name

Print name

Schedule 1 - Monthly Payments and Quarterly Payments

In regard to the Monthly Payment and the Quarterly Payment the following provisions apply:

- (1) subject to the formula in paragraph (3) below and the application of paragraphs (4) and (6), the Ferry Service Slot Monthly Payment is fixed throughout the Term and payable in full, regardless of whether or not (for example):
 - (A) the Operator uses a Ferry Service Slot; or
 - (B) there is a different number of operational days by day type in any year of the Term (eg if a public holiday falls on what would otherwise be a standard weekday);
- (2) the Operator must not use a Slot or part of a Slot which is not a Ferry Service Slot. For each Slot or part of a Slot used by the Operator which is not a Ferry Service Slot (and regardless of whether or not the Slot is allocated to another operator) and without limiting TfNSW's rights under this Contract or otherwise at law, the Operator must pay TfNSW the Additional Slot Payment. For the avoidance of doubt, the Operator must pay an Additional Slot Payment on each occasion that a Contract Ferry exceeds the allocated Ferry Service Slot. This paragraph (2) is a civil penalty provision for the purposes of section 38 of the PT Act;
- (3) for each applicable month of the Term, the Monthly Payment will be calculated in accordance with the following formula:

MP = FSSP - EPA

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

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

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

- (4) for each Quarter of the Term, the Quarterly Payment will be calculated in accordance with the following formula:

QP = ASP + KPIP

ASP is the sum of the Additional Slot Payments for the applicable Quarter of the Term

KPIP is the KPI Payment for the applicable Quarter of the Term;

- (5) where TfNSW approves a change to the Ferry Timetable in accordance with Table 1 of Schedule 13, the Ferry Service Slot Monthly Payment will be adjusted to reflect the increase or decrease in the number of Ferry Service Slots in the new Ferry Timetable compared to the then approved Ferry Timetable, calculated on the basis of the Slot Amount per Ferry Service Slot;

- (6) each of the Additional Slot Payment and the KPI Payment is a civil penalty provision for the purposes of section 38 of the PT Act;
- (7) each of the Slot Amount and the Ferry Service Slot Monthly Payment will be adjusted in accordance with Schedule 15;
- (8) the Operator must pay to TfNSW:
- (A) each Monthly Payment on the ■ Business Day of each month during the Term;
 - (B) subject to paragraph (8)(C), each Quarterly Payment on the ■ Business Day of the month immediately following the relevant Quarter; and
 - (C) the final Quarterly Payment on the ■ Business Days after the expiry of the Term; and
- (9) the following definitions apply in this Schedule:

Additional Slot Payment means, in respect of a Slot, the "Wharf Bookings - CBD Berth Access Fee" (as may be amended from time to time) for adhoc bookings for vessels with a passenger capacity of over 150 available at http://www.maritime.nsw.gov.au/cv/cv_fees.html#wharf.

Excusable Payment Event means the Excusable Payment Events described in clause 13.3(b) and 18.5(b).

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

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

Ferry Service Slot Monthly Payment means, in respect of each month during the Term, ■, as adjusted in accordance with this Contract.

KPI Payment has the meaning given to that term in Schedule 4.

Slot Amount means ■ (excl GST) per Ferry Service Slot, as adjusted in accordance with this Contract.

Schedule 2 - Transition In Plan

Minimum Requirements for Inclusion in the Transition In Plan

The Transition In Plan must address as a minimum transitioning issues in relation to the following:

Transition issues	Delivery Date	Notes
Wharf and Contract Ferry signage	March 2015	Subject to approvals from RMS
Displays and publications in relation to the Ferry Timetable and timetable systems	March 2015	Subject to approvals from RMS
Service Desk	Existing at Circular Quay Wharf	Subject to RMS continued approval
All Staff required to operate the Ferry Service and other Operator Activities and have undertaken all required training	Commence extra staff training February 2015 completed March 2015	
KPI and performance monitoring	April 2015	

Schedule 3 - Fares and Ticketing Arrangements

1 Fares Levels and Fare Structure

The Fares listed below apply for the duration of the Contract, subject to adjustment in accordance with Schedule 15.

Fare Classification	Adult Fare (1)	Child Fare (1) (2)
■	■	■
■	■	■
■	■	■
■	■	■
■	■	■
■	■	■

Notes:

1. All Fares (adult and child) are shown GST exclusive.
2. Children are aged 4-12 years, under 4 years old travel free.

Fares Classification	Manly Wharf to Circular Quay Wharf	Circular Quay Wharf to Manly Wharf
Commuter Single (i.e. a passenger who does not use a Smartcard during the period to which this classification relates)	First Ferry Service until 8.59am, each weekday (other than where the weekday is a public holiday)	4.00pm until the last Ferry Service, each weekday (other than where the weekday is a public holiday)
Regular Single (i.e. a passenger who does not use a Smartcard during the period to which this classification relates)	<ul style="list-style-type: none"> • 9.00am until last Ferry Service, each weekday (other than where the weekday is a public holiday) • First Ferry Service until last Ferry Service, weekends and public holidays 	<ul style="list-style-type: none"> • First Ferry Service until 3.59pm, each weekday (other than where the weekday is a public holiday) • First Ferry Service until last Ferry Service weekends and public holidays
Smartcard Peak (i.e. a passenger who uses a Smartcard during the period to which this classification relates)	7:15am until 8:30am, each weekday (other than where the weekday is a public holiday)	5:15pm until 6:30pm, each weekday (other than where the weekday is a public holiday)
Smartcard Shoulder (i.e. a passenger who uses a Smartcard during the period to which this classification relates)	<ul style="list-style-type: none"> • First Ferry Service until 7:14am each weekday (other than where the weekday is a public holiday); • 8:31am until 9:30am, each weekday (other than where the weekday is a public holiday) 	<ul style="list-style-type: none"> • 4.00pm until 5:14pm each weekday (other than where the weekday is a public holiday) • 6:31pm until last Ferry Service, each weekday (other than where the weekday is a public holiday)

Fares Classification	Manly Wharf to Circular Quay Wharf	Circular Quay Wharf to Manly Wharf
Smartcard Regular (i.e a passenger who uses a Smartcard during the period to which this classification relates)	<ul style="list-style-type: none"> • 9:31am until last Ferry Service, each weekday (other than where the weekday is a public holiday) • First Ferry Service until last Ferry Service, weekends and public holidays 	<ul style="list-style-type: none"> • 9:31am until 3.59pm, each weekday (other than where the weekday is a public holiday) • First Ferry Service until last Ferry Service, weekends and public holidays
Smartcard counter peak (i.e a passenger who uses a Smartcard during the period to which this classification relates)	Not applicable	6:30am to 9:30am, each weekday (other than where the weekday is a public holiday)

In addition to the above Fare classifications, the Operator is entitled to add further Fare options during the Term which would enhance passenger service and be put in place with appropriate prior consultation with TfNSW. Examples of additional Fare options may include monthly passes and yearly passes.

For the avoidance of doubt and without limiting the operation of clause 8.1(c), the Operator is not entitled to change the Fare classifications described in the above tables or periods to which each classification relates without prior written approval from TfNSW.

For the purposes of this Schedule 3, a reference to **Smartcard** is a reference to the Ticket known as Smartcard issued by the Operator in regard to the Ferry Service and any other ferry service operated by the Operator.

2 Proposed Ticketing Arrangements

In relation to ticket selling booth arrangements for the Ferry Service at the Wharves the following principles shall apply:

- (a) the timing and availability of each of the ticket selling booths at the Wharves will be determined by RMS;
- (b) the Operator will be required to liaise, and enter into separate licence arrangements, with RMS in relation to any proposed ticket selling booth at the Wharves;
- (c) the terms of such licences will be determined by RMS and will include (among other things):

- (i) an annual licence fee of ■ (exclusive of GST and indexed annually) payable by the Operator per ticket selling booth;
 - (ii) in addition to the licence fee, an obligation on the Operator to pay its contribution for common outgoings;
 - (iii) the Operator may only use the ticket selling booth for specified purposes and must comply with all laws in relation to those booths;
 - (iv) provisions dealing with maintenance and repair of the ticket selling booth;
 - (v) provisions dealing with indemnities, insurances and security to be provided by the Operator; and
 - (vi) such other terms as are required by RMS, including the timing as to if and when each of the ticket selling booths can be made available to the Operator and on what basis; and
- (d) if and when the terms of any licence arrangement have been entered into between the Operator and RMS in regard to a ticket selling booth applicable to the Ferry Service, the Operator must at all times comply with the terms of such licence.

Schedule 4 - KPIs

1 Definitions

- 1.1 In this Schedule, Schedule 6 and Schedule 12, the following words have the following meanings:

Act Outside of the Reasonable Control of the Operator means any event where the Master determines it would be unsafe to operate the Ferry Services provided the Operator has complied with its obligations set out in clause 3.3(c) of this Schedule.

Additional Slot Payment has the meaning given to it in Schedule 1.

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

- (a) a Force Majeure Event; or
- (b) an Act Outside of the Reasonable Control of the Operator.

KPI Default means, in respect of a KPI, a failure by the Operator to achieve the KPI over the applicable period of calculation.

KPI Payment means the amount payable by the Operator to TfNSW for a KPI Default as calculated in accordance with clause 3.2 of this Schedule.

KPI Relief means, in respect of a KPI, the Operator is excused from the non-performance of the KPI as a result of an Excused Performance Incident in accordance with clause 3.3 of this Schedule.

KPI Table means the KPI tables set out in clause 4 of this Schedule.

Trip On Time means a Trip where a Contract Ferry departs a Wharf no sooner than the scheduled start time for that Trip and arrives at the next Wharf no more than 2 minutes late compared to the Ferry Timetable.

- 1.2 The following table sets out how the KPI Tables are to be interpreted:

Name	The name of the KPI
Description	A description of what the KPI does and, at a high level, how it is measured and calculated
Hours measured	The hours during which the KPI calculation is applied
KPI	The level which the delivery performance of the Operator (calculation) must equal or exceed
Measurement methodology	
Calculation	The algorithm for calculation of the level of performance of the KPI for the relevant month

Name	The name of the KPI
Period of calculation	The period over which the performance of the KPI must be calculated in each report
Measurement unit	The granularity with which the KPI performance must be measured and reported against
Data source	Without limiting TfNSW's audit rights under this Contract, the data sources TfNSW will consider in order to provide an accurate measurement
Measurement responsibility	Whether it is the responsibility of the Operator, TfNSW or a third party to measure (or collect the measurement of) and then calculate the KPI
Reporting frequency	How frequently performance against this KPI should be reported

2 KPI Principles

The Operator acknowledges:

- (a) the emphasis of the KPI regime is on delivery of the Ferry Services to meet TfNSW's business requirements and on performance improvement; and
- (b) KPIs will be measured from the Service Commencement Date during each month of the Term.

3 KPI Payments

3.1 Applicability

- (a) The Operator must pay a KPI Payment to TfNSW for a KPI Default other than where non-compliance with a KPI is as a result of an Excused Performance Incident for which the Operator has been granted KPI Relief.
- (b) This clause 3 is a civil penalty provision for the purposes of section 38 of the PT Act.

3.2 Calculation of KPI Payment

Subject to clause 3.1 of this Schedule, in the event of a KPI Default, the Operator must pay to TfNSW a KPI Payment computed in accordance with the following formula:

- (a) in the event of a KPI Default of the KPI in Table 1 of clause 4:

$$(\text{■ of the Fare Revenue in the relevant month}) + [(\text{Number of Trips which are not Trips on Time} - \text{■ x Trips}) \times \text{the Additional Slot Payment}]$$
- (b) in the event of a KPI Default of the KPI in Table 2 of clause 4:

$$\text{Total Number of complaints not responded to within ■ Business Days in the relevant month} \times \text{the Additional Slot Payment}$$

- (c) in the event of a KPI Default of the KPI in Table 3 of clause 4:

Total number of information requests not received by TfNSW within the required timeframe in the relevant month x the Additional Slot Payment

3.3 Excused Performance Incident

- (a) In the event of an Excused Performance Incident, the Operator:
- (i) must notify TfNSW of the Excused Performance Incident within ■ Business Days of the end of the month during which the Excused Performance Incident occurred; and
 - (ii) may seek KPI Relief from TfNSW and TfNSW will determine whether or not the Operator's claim for an Excused Performance Incident is valid.
- (b) In support of an application for KPI Relief, the Operator must provide TfNSW supporting documentation detailing the circumstances of the Excused Performance Incident and the effect of the Excused Performance Incident on one or more of the KPIs.
- (c) The Operator acknowledges that, in the event of a KPI Default which is caused by an Excused Performance Incident and for which KPI Relief is granted, the Operator's obligations in relation to the performance of the Operator Activities and compliance with the KPIs which are not affected by the Excused Performance Incident continue and include:
- (i) an obligation to use commercially reasonable efforts to reinstate the Operator Activities affected by the Excused Performance Incident and meet the KPIs affected by the Excused Performance Incident as soon as possible in the circumstances;
 - (ii) track and monitor the performance against the KPIs affected by the Excused Performance Incident; and
 - (iii) continue to report Excused Performance Incidents as if they were any other Incidents for the purposes of analysis and corrective action.
- (d) Events which are subject to an Excused Performance Incident will be removed entirely from the calculation of the relevant KPI (ie removed from the numerator and the denominator of the KPI calculation).

4 KPIs

KPI	Table 1
Name	Trips on Time
Description	This KPI aims to ensure that Ferry Services run to the Ferry Timetable
Hours measured	All hours of operation of the Ferry Services
KPI	At least ■ of Trips are Trips On Time
Measurement methodology	
Calculation	Subject to clause 3.3(d) of this Schedule, ■ (Number of Trips On Time / Total number of Trips measured in the period)%
Period of calculation	■
Measurement unit	At each Wharf for each Trip
Data source	Data made available by the Operator in accordance with this Contract
Measurement responsibility	The Operator, with selected audit by TfNSW
Reporting frequency	■

KPI		Table 2	
Name	Customer Response		
Description	Customer Response means the time from which a complaint is received by the Operator until the time that the customer is contacted in relation to that complaint.		
KPI	■ of all complaints are responded to within ■ Business Days		
Measurement methodology			
Calculation	■ (Complaints responded to within ■ Business Days / Total complaints received for the ■)%		
Period of calculation	■		
Measurement unit	Complaints		
Data source	Data made available by the Operator in accordance with this Contract		
Measurement responsibility	The Operator, with selected audit by TfNSW		
Reporting frequency	■		

KPI		Table 3	
Name		Provision of Information	
Description	<p>This KPI aims to ensure that responses by the Operator to requests for information from TfNSW about Ferry Services are provided in the required timeframe. Such requests for information could arise from varying sources, including information required by TfNSW to provide Ministerial responses, answering customer enquiries, providing information required by legislation, providing information to support transport planning.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>		
KPI	<p>■ of requests for information are responded to by the Operator within ■ Business Days or such longer period as may be specified by TfNSW</p>		
Measurement methodology			
Calculation	<p>100 x (Total number of information requests responded to within the required timeframe during the month / total number of information requests during the ■)%</p>		
Period of calculation	<p>■</p>		
Measurement unit	<p>Requests for information</p>		
Data source	<p>Data made available by the Operator in accordance with this Contract</p>		
Measurement responsibility	<p>The Operator, with selected audit by TfNSW</p>		
Reporting frequency	<p>■</p>		

Schedule 5 - Governance

1 Introduction

1.1 Definitions

In this Schedule, the following words have the following meanings:

Quarterly Service Delivery Forum means the quarterly forum which will focus on the delivery of the Operator Activities (including the Ferry Services), as described in clause 2.1 of this Schedule.

1.2 General Requirements

The Operator must:

- (a) provide effective governance for its own team to ensure the Operator Activities are delivered in accordance with this Contract; and
- (b) raise issues relating to the delivery of Operator Activities at the Quarterly Service Delivery Forum.

2 Governance Regime

2.1 Quarterly Service Delivery Forum

- (a) The Quarterly Services Delivery Forum will take place every 3 months during the Term and at such other times as may be reasonably required by TfNSW.
- (b) The Quarterly Services Delivery Forum will be attended by the following persons (or a suitable delegate):

TfNSW Attendees	Operator Attendees
Principal Manager (as required)	Managing Director / Chief Executive Officer / General Manager (as required)
Manager Contracts (Chairperson)	Senior Manager
Contract Manager (as required)	Contract Manager or equivalent
	Operations Manager

- (c) The issues to be considered at the Quarterly Services Delivery Forum will include:
- (i) the Operator's performance in the delivery of the Ferry Services and the other Operator Activities;
 - (ii) the Operator's performance against the KPIs, in particular:
 - (A) quarterly reporting, including emerging trends; and
 - (B) new and outstanding root cause analyses and appropriate preventative action;
 - (iii) management of any incidents;
 - (iv) post incident reports and cure plans;
 - (v) the Operator's handling and management of any customer complaints;
 - (vi) customer satisfaction and service management activities;
 - (vii) any breaches by the Operator, corrective actions to resolve such breaches and progress of corrective actions;
 - (viii) interactions between the Operator and other operators (if appropriate) and ways to improve those interactions;
 - (ix) disputes between the Operator and another operator that cannot be resolved by the Operator;
 - (x) new Ferry Services or changes to the Ferry Timetable;
 - (xi) implementation and management of TfNSW Systems and Equipment (as defined in Schedule 13) by TfNSW and the Operator;
 - (xii) share achievements, completed activities and projects;
 - (xiii) discuss any improvement initiatives identified by the Operator;
 - (xiv) communicate TfNSW's strategic direction where appropriate; and
 - (xv) review the effectiveness of the relationship between the Operator and TfNSW and related concerns and issues.

Reports addressing the above items must be delivered by the Operator to TfNSW at least Business Days prior to each Quarterly Service Delivery Forum.

Schedule 6 - Reporting

1 Definitions

In this Schedule, the following words have the following meanings:

KPI Negative Trend means a trend in the measured results of a KPI which demonstrate a reduction in performance.

2 Reporting Principles

- (a) In accordance with clause 9 of this Contract, the Operator must provide TfNSW with the reports and data required under this Schedule at the times, and containing the information, specified in this Schedule.
- (b) TfNSW may request the Operator to:
 - (i) provide a report in addition to those required under this Schedule;
 - (ii) amend the times at which a required report must be provided; or
 - (iii) amend the required content of a report.

3 Format of reporting

- 3.1 The Operator must provide reports and data to TfNSW in the format specified in this Schedule for the reports and data identified and which is compatible with information systems used by TfNSW.
- 3.2 The Operator acknowledges it may be required to provide report and/or data to TfNSW in any one or more of the following formats:
 - (a) hard copy (printed) report. If the report contains information that is presented in colour, the hard copy must also be in colour;
 - (b) electronic copy report meaning a report that is presented in an electronic format reasonably required by TfNSW; and
 - (c) electronic transfer meaning a report that is presented in a format reasonably required by TfNSW.

4 Overview of Reporting Requirements

- 4.1 The Operator must provide the following reports and data to TfNSW in accordance with this Schedule (and any Annexures to this Schedule) at the following times during the Term:
 - (a) Quarterly Operational Report (QOR): a report provided by the Operator to TfNSW in the format specified in Annexure 1 to this Schedule on or before the ■ Business Day of the start of each Quarter during the Term.

- (b) Quarterly Performance Reports (QPR): reports provided by the Operator addressing those matters outlined in clause 2.1(c) of Schedule 5 (Governance), by no later than ■ Business Days prior to the date of the Quarterly Service Delivery Forum meeting referred to in clause 2.1 of Schedule 5 (Governance).
- (c) KPI Report: In accordance with the reporting frequency specified for each KPI (and in any event by no later than ■ Business Days prior to the date of the Quarter Service Delivery Forum meeting referred to in clause 2.1 of Schedule 5 (Governance)), the Operator must report to TfNSW, at a minimum and (where applicable) using the format for KPI reporting specified in Annexure 2 to this Schedule, the following information:
- (i) those matters required in the KPI Management table in Schedule 13;
 - (ii) numerical data setting out the performance achieved during the KPI reporting period against, where applicable, the data for the preceding Quarter and 12 months;
 - (iii) a graphical representation of those data highlighting the KPI, the actual performance during the KPI reporting period and the performance for the previous Quarter, 6 months or 12 months (as applicable);
 - (iv) a summary table demonstrating performance for each KPI;
 - (v) a commentary explaining any performance variations and performance trends;
 - (vi) where, for the KPI reporting period, there is a KPI Default, or there is an indication of a KPI Negative Trend, an explanation of the causes of the KPI Default or KPI Negative Trend;
 - (vii) a proposed cure plan, developed by the Operator to address the causes of any KPI Default or KPI Negative Trend, including proposed actions for that Operator and/or TfNSW; and
 - (viii) where there has been a previous cure plan for the KPI, the status of the actions and an explanation of any relationship between the cure plans and current performance.
- (d) Data: The Operator must provide TfNSW with access to all ticketing, Fare Revenue and Contract Ferry monitoring system data at such times as requested by TfNSW.

4.2 The Operator must include such other information in its reports to TfNSW as is specified in this Schedule or as otherwise required by TfNSW from time to time.

Annexure 1 Quarterly Operational Reports

Annexure 2 Quarterly Performance Reports

Note: This example report contains data for illustrative purposes only

Note: This example report contains data for illustrative purposes only

Note: This example report contains data for illustrative purposes only

Schedule 7 - Representations, warranties and acknowledgements

Part A – Representations and Warranties

The Operator represents and warrants to TfNSW the following:

1 Process

- 1.1 **(Information etc)** All of the information, representations and other matters of fact communicated in writing to TfNSW or TfNSW's Associates by the Operator and its directors, officers, employees, servants, agents or Related Entities, in connection with or arising out of the entering into of this Contract were (at the dates submitted to the TfNSW or TfNSW's Associates) and remain, in all material respects, true, accurate and not misleading.
- 1.2 **(No representations or warranties by TfNSW)** Before entering into this Contract, it made all enquiries that it wanted to make in relation to the subject matter of this Contract, and did not rely on any representation or warranty by or on behalf of TfNSW.

2 General representations and warranties

- 2.1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of New South Wales.
- 2.2 **(Power)** It has the power to enter into and perform its obligations under this Contract, to carry out the transactions contemplated by this Contract and to carry on its business as now conducted or contemplated.
- 2.3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Contract and to carry out the transactions contemplated by this Contract.
- 2.4 **(Document binding)** This Contract creates valid and binding obligations and is enforceable in accordance with its terms, subject to any necessary stamping and registration, laws generally affecting creditors' rights and general principles of equity.
- 2.5 **(Transactions permitted)** The execution and performance of this Contract and each transaction contemplated under it does not and will not violate in any respect a provision of:
- (a) any law or treaty or a judgment, ruling, order or decree binding on it;
 - (b) its constitution or other constituent documents; or
 - (c) any other document or agreement that is binding on it or its assets.

2.6 (Legal proceedings)

- (a) No suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it and in particular there is no outstanding product liability or workers' compensation claim.
- (b) No resolution has been passed for its winding up.
- (c) No resolution has been passed for the appointment of an administrator to it.
- (d) There is no unsatisfied judgment against it.
- (e) There are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its undertaking or assets or income.

2.7 (Authorisations) Each Authorisation that is required in relation to:

- (a) the execution, delivery and performance by it of this Contract and the transactions contemplated by it;
- (b) the validity and enforceability of this Contract; and
- (c) the Ferry Services and the Operator Activities,

has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Service Commencement Date, it is only given as at the Service Commencement Date.

2.8 (Statutory Requirements)

- (a) All Authorisations required to be lodged or given by it under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given.
- (b) There are no notices of any Government Authority outstanding against it.
- (c) It has duly observed and complied in all respects with the provisions of all Laws and all orders, notices, awards and determinations made by any Government Authority in any way relating to or binding on it or any property owned or occupied by it.

2.9 (No misrepresentation) All information provided by it to TfNSW is true in all material respects at the Date of the Contract and the Service Commencement Date or, if later, when provided. Neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by this Contract was or is or will be misleading, by omission or otherwise.

- 2.10 **(Copies of documents)** All copies of documents (including all audited accounts and all Authorisations) given by it or on its behalf to TfNSW are true and complete copies. Where applicable, those documents are in full force and effect.
- 2.11 **(No Security Interests)** None of its property is subject to any Security Interest (other than a Permitted Security Interest).
- 2.12 **(No trust)** It does not hold any assets as the trustee of any trust.
- 2.13 **(Privacy Laws)** It complies with the Privacy Laws, and any guidelines issued by the Commissioner under the relevant Privacy Law.

3 Specific representations and warranties

- 3.1 **(Own investigations)** It has relied entirely on its own assessments and investigations in connection with deciding to enter into this Contract and has not relied on any information, statement, document or representation by or on behalf of TfNSW in connection with such matters.
- 3.2 **(Intellectual Property)** The Operator represents and warrants that:
- (a) it is the sole legal and beneficial owner of, or has a lawful right to use and to grant the licence of all Intellectual Property necessary to carry out the Operator Activities and comply with its obligations in accordance with the terms of this Contract;
 - (b) there have not been and there will not be any assignments, licences, options or other dealings with any Intellectual Property that would conflict with the rights of TfNSW under this Contract; and
 - (c) none of the Operator Activities nor the Contract Material or use of any of them, infringes the rights, including the Intellectual Property or Moral Rights, of or duties owed to any person, whether arising under contract, statute, common law or otherwise.
- 3.3 **(Contract Ferries)** The Operator represents and warrants that the Contract Ferries:
- (a) will enable it to comply with its obligations under the Contract including clause 5.1(d); and
 - (b) listed in items 3, 4, 7, 8 of the table in Part A of Schedule 8 will be available for the Ferry Service as from the applicable "Availability Date" set out in that table for the remainder of the Term subject to the following:
 - (i) the Operator may seek an extension to the applicable Availability Date in circumstances for an event beyond the reasonable control of the Operator, and must provide substantiated evidence of the circumstances leading to the delay;
 - (ii) the Operator must use all reasonable endeavours to mitigate the period of any such extension; and

- (iii) subject to paragraph (b)(ii), TfNSW must not unreasonably withhold its consent to such an application for an extension.

Part B – Acknowledgements

- (a) In this Schedule, the term **Disclosed Information** means all information of whatever nature that is obtained by or on behalf of the Operator from TfNSW, TfNSW's Associates or any Government Authority including:
 - (i) the request for tender documents for the Ferry Services and any information issued or disclosed in connection with the request for tender process;
 - (ii) all discussions and negotiations between TfNSW and TfNSW's Associates on the one hand, and the Operator and the Operator's Associates, on the other hand, relating directly or indirectly to this Contract; and
 - (iii) any other information disclosed to the Operator or any person acting on their behalf by TfNSW or a TfNSW's Associate or any person acting on their behalf or which is otherwise acquired by, or comes to the knowledge of, TfNSW 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.
- (b) The Operator acknowledges to TfNSW the following:
 - (i) The Operator acknowledges that, except as expressly set out in this Contract, none of TfNSW nor any of TfNSW's Associates has made any representation, given any advice or given any warranty or undertaking of any kind in respect to:
 - (A) any of the Wharves, the Relevant Infrastructure, the Ferry Services or any matter in connection with this Contract;
 - (B) any transaction or arrangement contemplated under this Contract; or
 - (C) any other matter relevant to the Operator's decision to enter into this Contract.
 - (ii) Without limiting the generality of paragraph (b), the Operator acknowledges the following:
 - (A) none of TfNSW or TfNSW's Associates, nor any other person acting on behalf of or associated with any of them, has verified the accuracy, reliability or completeness of the Disclosed Information;
 - (B) none of the TfNSW or TfNSW's Associates, nor any other person acting on behalf of or associated with any of them,

- has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
- (C) the Operator has not relied in any way on the skill or judgment of TfNSW or TfNSW's Associates or any person acting on behalf of or associated with any of them and has relied absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to enter into this Contract;
- (D) the Operator has carried out all relevant investigations and has examined and acquainted itself concerning:
- I. the contents, correctness and sufficiency of the Disclosed Information;
 - II. all information which is relevant to the risks, contingencies and other circumstances which could affect its decision to enter into this Contract; and
 - III. all amounts payable between the parties to this Contract;
- (E) any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by TfNSW, TfNSW's Associates, or any person acting on behalf of or associated with any of them, in any prior negotiation, arrangement, understanding or agreement has no effect except to the extent expressly set out or incorporated in this Contract; and
- (F) the acknowledgments under this clause are in addition to and do not replace the terms and conditions already agreed to or accepted by the Operator when receiving the Disclosed Information.
- (iii) The Operator represents and warrants to TfNSW and TfNSW's Associates that in entering into this Contract, the Operator is aware that TfNSW and TfNSW's Associates have relied on the acknowledgments contained in this Part B of Schedule 7 in entering into this Contract.
- (iv) To the extent permitted by law, the Operator expressly waives any right which it has (whether at the date of this Contract or otherwise) to bring any action or make any claim against TfNSW or TfNSW's Associates, or any person acting on behalf of or associated with any of them, arising (directly or indirectly) out of any alleged misrepresentation or misleading or deceptive conduct on the part of TfNSW or TfNSW's Associates, or any person acting on behalf of or

associated with any of them, in providing the Disclosed Information or in connection with this Contract.

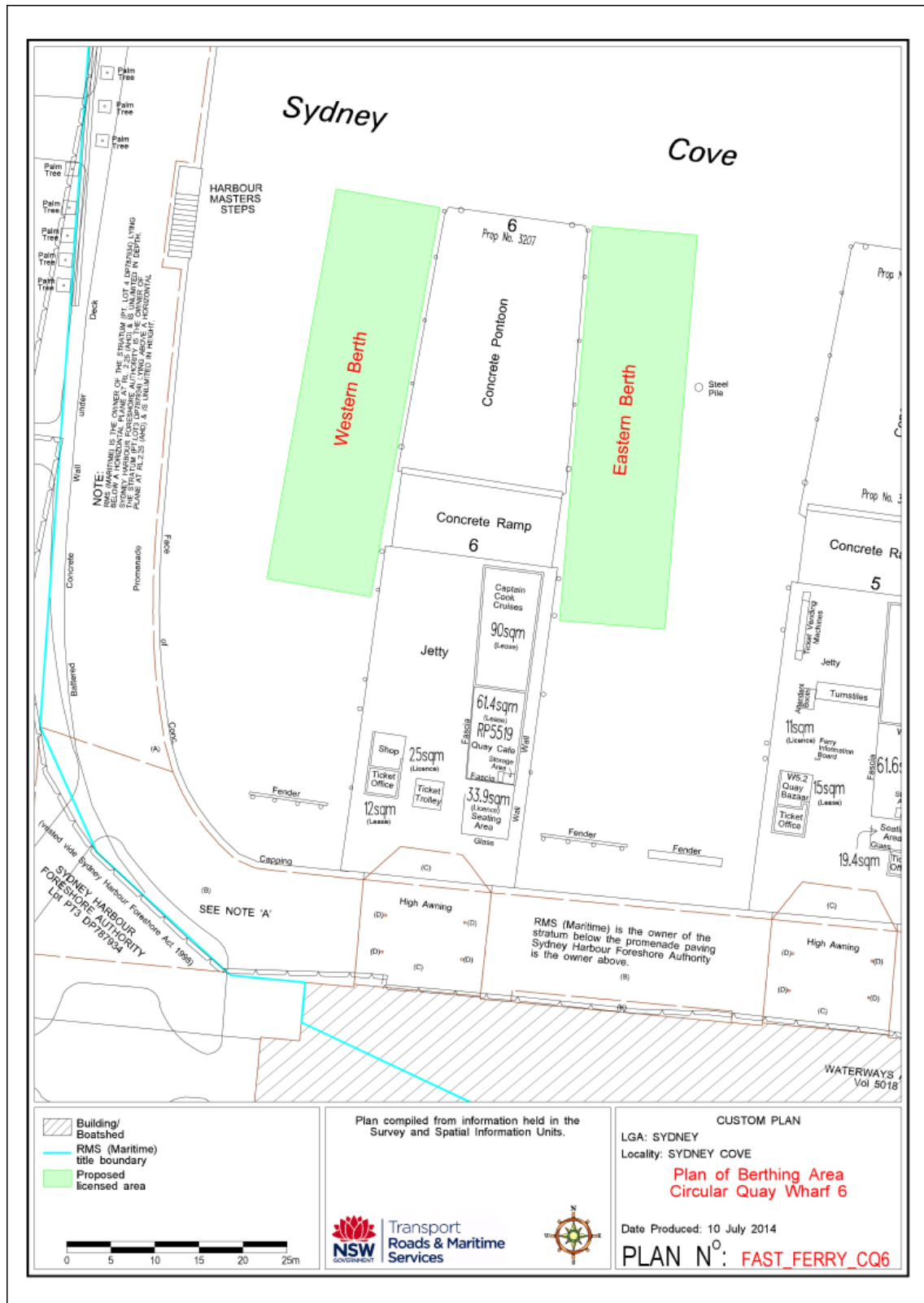
- (v) The Operator acknowledges that TfNSW holds for itself and on trust for each of TfNSW's Associates the benefit of the Operator's representations, warranties, acknowledgments and agreements under Part A and Part B of this Schedule 7. The trust created under this paragraph does not prevent or in any other way restrict:
 - (A) the parties' ability to amend this Contract;
 - (B) either party's ability to terminate this Contract; or
 - (C) the exercise of any other right of the parties under this Contract or at law.

Part B**Other features of Contract Ferries**

This Part B does not limit the Operator's obligations elsewhere under this Contract and otherwise at Law.

1. FLIR being forward looking infrared system (for improved night vision);
2. high speed broadband radar for improved close quarters navigation;
3. AIS, Automated vessel tracking to track and to help avoid close quarters situations;
4. CCTV to allow crew to monitor most spaces and blind spots on the relevant Contract Ferries;
5. 'Quickshift' gearboxes to allow vessels to stop quickly in emergency;
6. improved visibility fore and aft from the helm;
7. 'Blackbox' data recording;
8. common controls and instruments across the Contract Ferries (to improve crew emergency response times and actions);
9. improved vessel design to minimise danger to crew while berthing and un-berthing;
and
10. multiple 'fail safe' systems to provide for safe operations if one system fails.

Schedule 9 - Wharves





Building/Boatshed
 Proposed licensed area

Plan compiled from information held in the Survey and Spatial Information Units.

Transport Roads & Maritime Services

CUSTOM PLAN
 Locality: MANLY COVE
**Plan of Berthing Area
 Manly Wharf**

Date Produced: 10 July 2014
PLAN N^o: FAST_FERRY_MANLY

Schedule 10 - Wharf Access Deed Requirements

Nothing in this Schedule 10 limits the scope of the Operator's obligations elsewhere in this Contract and the Operator's obligations in this Schedule 10 are in addition to, and separate and independent from, the Operator's obligations elsewhere in this Contract.

1 Acknowledgements and undertakings by the Operator

- (a) The Operator acknowledges that:
 - (i) it has been provided with a copy of the Wharf Access Deed and is aware of TfNSW's obligations to RMS under the Wharf Access Deed;
 - (ii) all rights and powers exercisable by TfNSW under this Contract in relation to the access rights granted under clause 6.1 may be exercised by RMS;
 - (iii) RMS has the right to suspend the Operator's licence to access any of the Wharves in the circumstances contemplated in the Wharf Rules;
 - (iv) RMS has the right to terminate the Operator's licence to access any of the Wharves if TfNSW fails to do so in the circumstances contemplated in and in accordance with the procedures set out in the Wharf Access Deed; and
 - (v) nothing in this Contract nor the Wharf Access Deed operates to restrict or otherwise affects RMS' statutory discretion in exercising its powers as a Government Authority.
- (b) The Operator must ensure that:
 - (i) it complies with:
 - (A) all of TfNSW's obligations under the Wharf Access Deed; and
 - (B) without limiting paragraph (b)(i)(A), the Wharf Rules and the Communication Procedures;
 - (ii) if TfNSW's consent or approval is required for any act by the Operator under this Contract in relation to the access rights granted under clause 6.1, to also obtain the consent or approval of RMS and to pay RMS' costs and expenses in relation to such consent or approval;
 - (iii) it complies with all Laws;
 - (iv) it does not impede or obstruct the lawful exercise by RMS of its rights and powers under the Law or the Wharf Access Deed;

- (v) it does not commit and ensures that its Authorised Users (as defined in the Wharf Access Deed) does not commit any act or default or omit to do anything which would or may amount to a breach of the Wharf Access Deed by TfNSW;
 - (vi) it complies with all reasonable requirements of RMS in relation to the Wharves, Wharf Infrastructure Facilities and/or Sydney Harbour; and
 - (vii) it provides any information requested by TfNSW or RMS that might reasonably relate to the performance by the Operator of TfNSW's rights and obligations under the Wharf Access Deed.
- (c) The Operator must not grant any sublicence of the Operator's access rights granted by TfNSW under clause 6.1 or the parting or sharing by the Operator of any of those rights without the prior written consent of TfNSW and RMS, unless otherwise agreed by RMS and TfNSW.
- (d) The Operator is not entitled to, and must not, make any Claim against TfNSW or RMS in circumstances where RMS exercises any right as contemplated in this clause 1.

Annexure A

Wharf Access Deed

Schedule 11 - Minimum Service Levels and Ferry Timetable

Part A: Minimum Service Levels

Weekdays

From Manly Wharf to Circular Quay Wharf

Departure Time Periods	Number of trips	Maximum Headway
06:00-06:59	2	30 minutes
07:00-08:59	11	15 minutes
09:00-09:59	4	20 minutes
10:00-15:59	11 (provided that if and when the 12.10pm Ferry Service Slot becomes available, 12)	30 minutes (other than between 11.20am to 12.20pm, which is 60 minutes unless the 12.10pm Ferry Service Slot becomes available)
16:00-16:59	2	30 minutes
17:00-18:59	9	15 minutes
19:00-21:00	6	30 minutes

From Circular Quay Wharf to Manly Wharf

Departure Time Periods	Number of trips	Maximum Headway
06:00-06:59	2	25 minutes
07:00-08:59	10	15 minutes
09:00-09:59	2	30 minutes
10:00-15:59	11 (provided that if and when the 12.40pm Ferry Service Slot becomes available, 12)	30 minutes (other than between 12.10pm to 1.10pm, which is 60 minutes unless the 12.40pm Ferry Service Slot becomes available)
16:00-16:59	2	30 minutes
17:00-18:59	10	15 minutes
19:00-21:00	4	30 minutes

Weekends and Public Holidays (other than Christmas Day)

From Manly Wharf to Circular Quay Wharf

Departure Time Periods	Number of trips	Maximum Headway
10:00 - 20:00	21 (provided that if and when the 12.10pm Ferry Service Slot becomes available, 22)	30 mins (other than between 11.40am to 12.40pm which is 60mins unless the 12:10pm Ferry Service Slot becomes available)

From Circular Quay Wharf to Manly Wharf

Departure Time Periods	Number of trips	Maximum Headway
10:30 – 20:30	21 (provided that if and when the 12.40pm Ferry Service Slot becomes available, 22)	30 mins (other than between 12.10pm to 1.10pm which is 60mins unless the 12:40pm Ferry Service Slot becomes available)

Part B: Ferry Timetable

The Ferry Timetable is set out below. Unless otherwise agreed between TfNSW and the Operator, the Operator is not required to operate a Ferry Service on Christmas Day.

		Departure from Manly Wharf	Departure from Circular Quay Wharf
Weekday	AM	6:15; 6:45; 7:00; 7:15; 7:30; 7:40; 7:50; 8:00; 8:05; 8:15; 8:30; 8:40; 8:50; 9:00; 9:10; 9:18; 9:40; 10:10; 10:40; 11:10; 11:40.	6:30; 6:45; 7:10; 7:25; 7:40; 7:55; 8:05; 8:15; 8:25; 8:30; 8:40; 8:55; 9:15; 9:25; 10:10; 10:40; 11:10; 11:40.
	PM	12:10; 12:40*; 13:10; 13:40; 14:10; 14:40; 15:10; 15:40; 16:10; 16:40; 17:10; 17:25; 17:40; 17:55; 18:05; 18:15; 18:30; 18:45; 18:55; 19:05; 19:20; 19:35; 19:55; 20:30; 21:00; 21:30.	12:10; 12:40*; 13:10; 13:40; 14:10; 14:40; 15:10; 15:40; 16:15; 16:40; 17:00; 17:15; 17:30; 17:40; 17:50; 18:05; 18:20; 18:30; 18:40; 18:55; 19:10; 19:30; 20:00; 20:30; 21:00.

		Departure from Manly Wharf	Departure from Circular Quay Wharf
Saturday, Sunday, Public Holiday (other than Christmas Day)	AM	10:10; 10:40; 11:10; 11:40	9:40; 10:10; 10:40; 11:10; 11:40
	PM	12:10*; 12:40; 13:10; 13:40; 14:10; 14:40; 15:10; 15:40; 16:10; 16:40; 17:10; 17:40; 18:10; 18:40; 19:10; 19:40; 20:10; 21:10.	12:10; 12:40*; 13:10; 13:40; 14:10; 14:40; 15:10; 15:40; 16:10; 16:40; 17:10; 17:40; 18:10; 18:40; 19:10; 19:40; 20:40.

* there is no obligation on the Operator to run the Ferry Service at this time unless a Ferry Service Slot for this time becomes available.

Part C: Ferry Services Slots Table

Circular Quay Wharf

The following table shows the Ferry Service Slots at Circular Quay Wharf.

These allocated Ferry Service Slots include Contract Ferry manoeuvring in, berthing and all vessel manoeuvring out time.

	Eastern Berth	Western Berth
Weekday	7:45-8:00; 8:15-8:30; 14:30-14:40; 17:20- 17:35	6:15-6:30; 6:30-6:45; 7:00-7:15; 7:15-7:30; 7:30-7:45; 8:00-8:15; 8:15-8:30; 8:30-8:45; 8:45-9:00; 9:00-9:15; 9:15-9:30; 9:30-9:40; 9:55-10:10; 10:25-10:40; 10:55-11:10; 11:25- 11:40; 11:55-12:10; 13:00-13:10; 13:25-13:40; 13:55-14:10; 15:00-15:10; 15:25-15:40; 16:00- 16:15; 16:30-16:45; 16:45-17:00; 17:00-17:15; 17:30-17:45; 17:45-18:00; 18:00-18:15; 18:15- 18:30; 18:30-18:45; 18:45-19:00; 19:00-19:10; 19:10-19:20; 19:20-19:30; 19:35-19:50; 19:50- 20:00; 20:15-20:30; 20:45-21:00; 21:15-21:30; 21:45-22:00
Saturday, Sunday, Public Holiday (other than Christmas Day)	14:30-14:40;	9:25-9:40; 9:55-10:10; 10:25-10:40; 10:55- 11:10; 11:25-11:40; 11:55-12:10; 13:00-13:10; 13:25-13:40; 13:55-14:10; 15:00-15:10; 15:25- 15:40; 15:55-16:10; 16:30-16:45; 16:55-17:10; 17:30-17:45; 17:55-18:10; 18:25-18:40; 18:50- 19:00; 19:00-19:10; 19:25-19:40; 19:55-20:10; 20:25-20:40; 21:25-21:40.

Manly Wharf

The following table shows the Ferry Service Slots at Manly Wharf:

These allocated Ferry Service Slots include Contract Ferry manoeuvring in, berthing and all vessel manoeuvring out time.

	Eastern Berth
Weekday	6:10-6:20; 6:35-6:40; 6:40-6:50; 6:50-7:00; 7:00-7:10; 7:10-7:20; 7:20-7:30; 7:30-7:40; 7:40-7:50; 7:50-8:00; 8:00-8:10; 8:10-8:20; 8:20-8:30; 8:30-8:40; 8:40-8:50; 8:50-9:00; 9:00-9:10; 9:10-9:20; 9:20-9:30; 9:30-9:40; 9:45-10:00; 10:00-10:10; 10:25-10:40; 10:55-11:10; 11:25-11:40; 11:55-12:10; 12:25-12:40; 12:55-13:10; 13:25-13:40; 13:55-14:10; 14:25-14:40; 14:55-15:10; 15:25-15:40; 15:55-16:10; 16:25-16:40; 16:55-17:10; 17:10-17:20; 17:20-17:30; 17:30-17:40; 17:40-17:50; 17:50-18:00; 18:00-18:10; 18:10-18:20; 18:20-18:30; 18:30-18:40; 18:40-18:50; 18:50-19:00; 19:00-19:10; 19:10-19:20; 19:20-19:30; 19:30-19:35; 19:40-19:50; 19:50-19:55; 20:15-20:30; 20:45-21:00, 21:15-21:30.
Saturday, Sunday, Public Holiday (other than Christmas Day)	9:55-10:10; 10:25-10:40; 10:55-11:10; 11:25-11:40; 11:55-12:10; 12:25-12:40; 12:55-13:10; 13:25-13:40; 13:55-14:10; 14:30-14:40; 14:55-15:10; 15:25-15:40; 15:55-16:10; 16:25-16:40; 16:55-17:10; 17:25-17:40; 17:55-18:10; 18:25-18:40; 18:55-19:10; 19:25-19:40; 19:55-20:10; 20:55-21:10.

Schedule 12 - Specified Performance Criteria

During the period from the Service Commencement Date to the date of assessment by TfNSW under clause 3.2 of this Contract:

1. TfNSW has not issued more than [REDACTED] default notices under clause 19.1 of this Contract; or
2. no more than [REDACTED] KPI Defaults have occurred.

Schedule 13 - Performance Requirements

1 Definitions and Interpretation

In this Schedule, the following words have the following meanings:

Rotable Asset means a removable component or inventory item that can be repeatedly and economically restored to a fully serviceable condition.

Service Desk means the service desk provided by the Operator which will be a single point of call for all problems, complaints, questions, requests and comments regarding the Ferry Services.

TfNSW Systems and Equipment means the equipment or assets referred to in clause 5.6(b) of this Contract.

The following table sets out the meaning of the column headings in the roles and responsibilities tables set out in this Schedule. "T" in any of the columns means that TfNSW is the relevant Party. "O" in any of the columns means that the Operator is the relevant Party.

Term	Description
Responsible	The Party that has to do the activity.
Accountable	The Party ultimately answerable for the correct and full completion of the activity. There must be only one Party accountable for each activity.
Support	The Party that is to provide support to assist in completing the activity.
Consulted	The Party that is consulted by the responsible Party as part of the process of carrying out the activity.
Informed	The Party that has to be kept up-to-date, by the responsible Party.
When	When the activity must be performed.

2 Overview of Performance Requirements

Without limiting its obligations elsewhere under this Contract, the Operator must:

- (a) provide reliable, safe and clean Ferry Services to customers;
- (b) meet the Minimum Service Levels;
- (c) run the Ferry Services to the approved Ferry Timetable;
- (d) ensure that customers are provided with accurate Ferry Timetable information and kept informed of service changes and incidents as required;
- (e) ensure Staff receive appropriate training;
- (f) assist TfNSW in improving the provision of Ferry Services to customers; and
- (g) provide support for TfNSW Systems and Equipment required to improve and upgrade the Ferry Services.

Tables

1 Contract Service Levels and Ferry Timetable

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
1.1	Approve the Ferry Timetable. It is acknowledged that, as the Date of the Contract, the Ferry Timetable set out in Part B of Schedule 11 is approved by TfNSW.	T	T	O	O	O	As required under the Contract
1.2	Operate Ferry Services in accordance with the Ferry Timetable and the other requirements of this Contract	O	O		T	T	Continuing throughout the Term
1.3	Monitor security on the Contract Ferries and monitor and manage passenger and Staff safety	O	O		T	T	Continuing throughout the Term

2 Publication and Display of Public Transport Information

Publication and display of public transport information includes the activities required to ensure that passengers are provided with adequate, reliable information regarding Ferry Services.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
2.1	Publish accurate Ferry Timetables, with route maps, on the Operator's website Ensure accurate Ferry Timetables are provided to Transport info Services (131500)	O	O			T	Continuing throughout the Term Unless otherwise approved by TfNSW, at

Functional Description		Responsibility	Accountable	Support	Consulted	Informed	When
							least [REDACTED] prior to introduction of the Contract Ferry into the Ferry Service.
2.2	Provide all revised changes to the Ferry Timetables to TfNSW for approval prior to publication	O	O		T	T	Prior to the introduction of a new or revised Ferry Timetable
2.3	Approve all revised changes to Ferry Timetables, prior to publication. It is acknowledged that any such approval will be subject to Ferry Service Slot availability	T	T	O	O	O	Continuing throughout the Term
2.4	<p>If a new Ferry Timetable is approved by TfNSW, provide:</p> <p>(a) TfNSW with the updated Ferry Timetable in electronic format (as reasonably required by the TfNSW) suitable for website display; and</p> <p>(b) the public with the updated printed Ferry Timetable</p>	O	O			T	At least [REDACTED] (or as otherwise agreed with TfNSW) prior to the implementation of the new Ferry Timetable
2.5	<p>If TfNSW approves an amendment to a Ferry Timetable, provide notice to the public of any material amendments to the Ferry Timetable by:</p> <p>(a) notifying TfNSW of</p>	O	O			T	At least [REDACTED] (or as otherwise agreed with TfNSW) prior to the implementation of the new

Functional Description		Responsibility	Accountable	Support	Consulted	Informed	When
	<p>relevant details;</p> <p>(b) displaying signs prominently in each Contract Ferry;</p> <p>(c) updating the Operator website;</p> <p>(d) displaying signs at the Wharves, subject to any required consents or approvals; and</p> <p>(e) other appropriate means</p>						Ferry Timetable
2.6	If requested by a member of the public, provide complete and up to date information about the accessibility of Ferry Services (as required by the <i>Disability Standards for Accessible Public Transport 2002</i> (Cth) and accompanying guidelines under the <i>Disability Discrimination Act 1992</i> (Cth)), in an appropriate format	O	O			T	Within a reasonable timeframe or otherwise required by law
2.7	Provide any information, to be displayed on Contract Ferries, in Ferry Timetables, on the Operator's website, on the Wharves and in any other location, to TfNSW for approval	O	O		T	T	Prior to publication of the information
2.8	Approve all information to be displayed to customers, to ensure it complies with any TfNSW standards or guidelines, from time to time	T	T	O	O	O	Continuing throughout the Term
2.9	Use timetable and customer information template(s) which may be	O	O		T	T	Continuing throughout the

Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
introduced by TfNSW from time to time						Term
2.10 TfNSW may display customer information relating to the Ferry Services	T	T	O	O	O	Continuing throughout the Term
2.11 Provide ticket selling services via company website	O	O			T	Continuing throughout the Term

3 Ferry Services Information

Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
3.1 Inform passengers on a Contract Ferry of any relevant service delays	O	O			T	Continuing throughout the Term
3.2 Inform TfNSW of service delays to the Ferry Services and work with TfNSW as required from time to time to minimise the impact of delays on customers	O	O	T	T	T	Continuing throughout the Term
3.3 Provide app which provides real-time information and ticketing to customers	O	O			T	Continuing throughout the Term
3.4 Inform customers on Wharves of any relevant service delays via information screens	O	O			T	Continuing throughout the Term

4 Wharves

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
4.1	Maintain signage relating to the Operator Activities: (a) repair; (b) replacement; (c) cleaning; and (d) graffiti removal	O	O	T	T	T	Continuing throughout the Term
4.2	Ensure signage which includes Ferry Timetable information, contains up to date timetable information and complies with any standards or guidelines issued by TfNSW from time to time	O	O	T	T	T	Continuing throughout the Term
4.3	Advise TfNSW of any damage to the Wharves	O	O			T	Within [REDACTED] of becoming aware of the damage
4.4	Seek RMS and any other Government Authority with responsibilities relevant to the Wharves and local residents, as appropriate approval about the installation of signage in accordance with the Wharf Rules and other requirements of this Contract	O	O			T	Before installing signage
4.5	Activities not directly required to perform the Ferry Service must not be carried out on the Wharves without prior TfNSW and RMS approval	O	O		T	T	Continuing throughout the Term

5 Service Desk

Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
5.1 Provide a Service Desk, during the operational hours of the Ferry Services	O	O			T	Continuing throughout the Term
5.2 Manage all calls to the Service Desk from receipt to closure	O	O			T	Continuing throughout the Term
5.3 Collaborate and cooperate with the Transport info Service (131 500), as required, to manage calls to the Service Desk and resolve incidents	O	O			T	Continuing throughout the Term
5.4 Refer any calls received by the Service Desk which do not relate to the Ferry Services to Transport info Service (131 500)	O	O			T	Within [REDACTED] of receipt of call
5.5 Identify any problems of a systemic nature revealed by the trend analysis and implement processes to improve performance	O	O			T	As soon as practicable
5.6 Ensure the Service Desk is staffed with personnel who are suitably skilled and trained to deliver support to the Ferry Services	O	O			T	Continuing throughout the Term
5.7 Ensure that customer complaints are maintained at a reasonable level	O	O			T	Continuing throughout the Term

6 Training and Knowledge Transfer

Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
<p>6.1 Provide all customer facing Staff with passenger service training, including:</p> <p>(a) training with regard to requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds; and</p> <p>(b) training with regard to the management of confrontation, difficult passengers and personal safety</p>	O	O			T	Before the individual commences providing any customer facing services on the Ferry Services
<p>6.2 Provide training to all customer facing staff regarding the following:</p> <p>(a) Fares and Tickets; and</p> <p>(b) the Ferry Timetables</p>	O	O			T	Continuing throughout the Term
<p>6.3 Provide training to all Staff regarding:</p> <p>(a) compliance with appropriate Environmental Law; and</p> <p>(b) Safety Laws</p>						

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
6.4	Provide additional training to Staff to meet the requirements of Items 6.1, 6.2 and 6.3 above, if required when a change in the Ferry Services is implemented	O	O			T	Before the implementation of the change in the Ferry Services
6.5	Develop, document and maintain training materials to provide to Staff to support the training referred to at Items 6.1, 6.2 and 6.3 above	O	O			T	As required throughout the Term

7 TfNSW Systems and Equipment

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.1	Develop operational procedures, guidelines and training requirements for TfNSW Systems and Equipment, as required by TfNSW	T	T		O		As required throughout the Term
7.2	Comply with any reasonable operational procedures, guidelines and training requirements for TfNSW Systems and Equipment issued by TfNSW from time to time	O	O	T	T	T	Continuing throughout the Term
7.3	Protect TfNSW Systems and Equipment and use reasonable endeavours to ensure TfNSW Systems and Equipment are not mishandled or mistreated	O	O	T	T	T	Continuing throughout the Term
7.4	Check TfNSW Systems and Equipment for faults, malfunctions, security breaches or viruses regularly	O	O	T	T	T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
7.5	Report any fault, malfunction, security breach or virus in TfNSW Systems and Equipment to TfNSW promptly	O	O	T	T	T	Within [REDACTED] of the fault or malfunction being identified
7.6	Replace any Rotable Assets, as required and as provided by TfNSW	O	O	T	T	T	Continuing throughout the Term
7.7	Ensure all spare Rotable Assets are kept in a secure location	O	O	T	T	T	Continuing throughout the Term
7.8	Maintain a record of all TfNSW Systems and Equipment, which includes information regarding the location and movement of all TfNSW Systems and Equipment (including Rotable Assets)	O	O	T	T	T	Continuing throughout the Term
7.9	Provide access to Contract Ferries and locations where Contract Ferries are docked to install TfNSW Systems and Equipment	O	O	T	T	T	Within [REDACTED] of notice by TfNSW

8 KPI Management

KPI Management is the activities associated with monitoring and reporting on the Key Performance Indicators.

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
8.1	Measure, analyse, and provide reports on performance against KPIs	O	O			T	As stated in the KPI Schedule (Schedule 4)

8.2	Track KPI performance for individual Incidents and escalate KPI breaches	O	O			T	As stated in the KPI Schedule (Schedule 4)
8.3	Develop and document KPI corrective action plans, where required	O	O	T	T	T	As required throughout the Term
8.4	Implement corrective action plans	O	O	T	T	T	As required throughout the Term
8.5	Report to TfNSW on KPI corrective action plan results	O	O	T	T	T	As required throughout the Term

9 Wharf Access and monitoring

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
9.1	Ensure that Ferry Services do not use Slots that are not a Ferry Service Slot	O	O			T	Continuing throughout the Term
9.2	Ensure that all manoeuvring to and from berths is undertaken within the Ferry Service Slot time so as to not obstruct the use of any other Slot by any other party	O	O			T	Continuing throughout the Term
9.3	Provide Contract Ferry monitoring system such as GPS	O	O			T	As required throughout the Term
9.4	Provide Contract Ferry performance data and reports from the vessel monitoring system which clearly demonstrate compliance with timetabled services to TfNSW in a suitable electronic format	O	O			T	As required throughout the Term

10 Contract Ferries

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
10.1	<p>Provide:</p> <ul style="list-style-type: none"> (a) bike racks. The placement and arrangement of the bike racks must be in areas that do not block the movement of passengers; (b) board racks. Board racks to be located on the aft deck clear of normal passenger areas for them to be safely stowed; (c) showers; (d) facilities in toilets for dressing and changing (including shelves and coat hooks); (e) power and USB outlets on outer rows for passengers; (f) free WiFi on board; (g) charge stations at the kiosk areas for passengers to charge devices that they don't have cables or chargers for or cannot find a seat at the side benches; (h) free coffee on board; (i) licenced bar (afternoons), with lean bars; and (j) on board entertainment (televisions with teleTEXT), 	O	O			T	Continuing throughout the Term

	Functional Description	Responsibility	Accountable	Support	Consulted	Informed	When
	together with online and GPS based passenger information on screens.						

Schedule 14 - Guarantee and Indemnity

Guarantee and Indemnity

Transport for NSW
ABN 18 804 239 602

Noorton Pty Ltd
ABN 82 070 125 478

DateDecember 2014

Parties**TfNSW**

Name

Transport for NSW
ABN 18 804 239 602

Address

Level 6, 18 Lee Street
Chippendale NSW 2008

Attention

General Manager Bus and Ferry Contracts

Fax

(02) 8202 2739

Guarantor

Name

Noorton Pty Ltd
ABN 82 070 125 478

Address

531 Rocky Point Road
Sans Souci , NSW 2219

Attention

Director

Fax

(02) 9529 5092

BACKGROUND

TfNSW has entered into the Contract with the Operator on the condition that the Guarantor enters into this deed.

TERMS

1 Definitions and interpretation

1.1 Definitions

The following words have the following meanings in this deed, unless the context requires otherwise.

Contract means the document titled "Fast Ferry Service Contract between Circular Quay and Manly" between TfNSW and the Operator dated on or about the date of this deed.

Operator means Manly Fast Ferry Pty Ltd ABN 90 135 008 070.

Guaranteed Obligations means all the obligations of the Operator to TfNSW under the Contract.

1.2 Contract definitions

Terms which are defined in the Contract but not otherwise defined in clause 1.1 have the same meanings in this deed.

2 Guarantee and indemnity

2.1 Guarantee

The Guarantor unconditionally and irrevocably guarantees to TfNSW the due and punctual performance of the Guaranteed Obligations.

2.2 Indemnity

The Guarantor unconditionally and irrevocably indemnifies TfNSW against all Loss suffered or incurred by TfNSW directly or indirectly in connection with:

- (a) any failure by the Operator to perform any of the Guaranteed Obligations;
- (b) any Guaranteed Obligation (or anything which would have been a Guaranteed Obligation if it were not unenforceable, invalid or illegal) being or becoming unenforceable, invalid or illegal; or
- (c) the occurrence of an Insolvency Event in relation to the Operator.

2.3 Demand

The Guarantor must pay to TfNSW on demand an amount equal to the amount of any Loss in respect of which it has given an indemnity under clause 2.2. Demand may be made under this clause 2.3 at any time and from time to time. Payments must be made in the currency in which the amounts are demanded.

3 Nature of the Guarantor's obligations

3.1 Absolute obligations

The obligations of the Guarantor under this deed are absolute and are not subject to the performance of any condition precedent or condition subsequent.

3.2 Principal and separate obligations

Each obligation of the Guarantor under this deed is:

- (a) a principal obligation imposed on the Guarantor and not to be regarded as ancillary or collateral to any other right or obligation; and
- (b) a separate obligation of the Guarantor and no obligation limits the generality of any other obligation.

4 Payments

The Guarantor must make all payments to TfNSW under this deed:

- (a) in immediately available funds;
- (b) to the account specified by TfNSW to the Guarantor or as TfNSW otherwise directs from time to time; and
- (c) without any counterclaim, deduction, withholding or set-off unless a law compels the Guarantor to do so.

5 Preservation of TfNSW's rights

The obligations of the Guarantor under this deed will not be affected by an act, omission, matter or thing which, but for this clause 5, would reduce, release or prejudice any of its obligations under this deed (without limitation and whether or not known to it or TfNSW) including (without limitation) any variation to, or termination of, the Contract or the grant of any time, waiver or other indulgence in respect of any obligation under the Contract.

6 General

6.1 Confidentiality

This deed and any documents or other information relating to this deed or the Contract are confidential and the Guarantor must not disclose any of them without the prior written consent of TfNSW. In executing this deed, the Guarantor agrees not to disclose to anyone else any confidential matter even after the expiry or termination of this deed.

6.2 Counterparts

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

6.3 Governing law and jurisdiction

- (a) This deed is governed by the laws in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction of New South Wales in connection with matters concerning this deed and the Contract.

Executed as a deed

Executed for and on behalf of **Transport for NSW**

Signature

Print name

Executed by **Noorton Pty Ltd (ABN 82 070 125 478)** in accordance with section 127(1) of the Corporations Act:

Signature of director

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

Print name

Print name

Schedule 15 - Indexation Formula

1. Each of the Slot Amount, Ferry Service Slot Monthly Payment and, subject to item 5 below, the Fares will be adjusted to take into account of inflation by application of the inflation indices in item 4, applied in the following manner:

Unit Rate	Inflation Indices to be Applied
Ferry Service Slot Monthly Payment	█ of rate inflated by index in item 4 Table Ref 1 rounded to the nearest cent
Slot Amount	█ of rate inflated by index in item 4 Table Ref 1 rounded to the nearest cent
Fares	█ of rate inflated by index in item 4 Table Ref 1 rounded to the nearest cent

2. At the appropriate times during the Term as specified in the table in item 4, TfNSW must apply the appropriate inflation index to the appropriate cost items and notify the Operator in writing of the adjusted Slot Amount, Ferry Service Slot Monthly Payment and the Fares.
3. Indexation, as specified in the table in item 4, will attract payment from the first day of the month following the indexation date.
4. For the purposes of this Schedule 15 the following inflation indices will be adopted and applied:

Ref.	Inflation Mechanism	Inflation Timing and Base (Indexation date being the last day of the base month)
1	Latest Australian Bureau of Statistics Consumer Price Index (CPI), September Quarter All Groups Sydney.	To be applied annually from █, first changes to come into effect █. Base index is the September 2014 CPI
2	Monthly Average Mobil Terminal Gate Price Silverwater NSW Diesel. Any changes in the Fuel Tax Credit rate will be adjusted if and when they apply in the corresponding month.	To be applied annually from █, first changes to come into effect █, based on the percentage change in the average daily cost of diesel fuel for the preceding █.

5. If the increase in the Monthly Average Mobil Terminal Gate Price Silverwater NSW Diesel for the adjustment period is different from the change in the CPI for the same period by more than 5% of the change in CPI, Fares will be adjusted to take into account of inflation by application of the inflation indices in item 4, applied in the following manner:

Unit Rate	Inflation Indices to be Applied
Fares	<p>██████ of rate inflated by index in item 4 Table Ref 1</p> <p>██████ of rate inflated by index in item 4 Table Ref 2</p>

6. The adjustments to the Slot Amount, Ferry Service Slot Monthly Payment and the Fares calculated at ██████ will be multiplied by ██████ because it will apply before the end of the first contract year.