



TASMANIAN GOVERNMENT: PASSENGER SERVICE CONTRACT STANDARD CONDITIONS

(Document Reference: PSC Standard Conditions 2019–02)

Section 46 *Passenger Transport Services Act 2011* (Tas)

This document (consisting of 107 pages) contains provisions which are taken to be incorporated in contracts which provide that the provisions of this document are to form part of, and to be incorporated in, those contracts.

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TASMANIAN GOVERNMENT: PASSENGER SERVICE CONTRACT STANDARD CONDITIONS

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Part 1: Preliminary

1 Definitions and interpretation

1.1 Definitions

In the Contract, unless the context otherwise requires:

Accredited means, in relation to a Passenger Service, the Operator being accredited under Part 2 of the Act to operate that service, and **Accreditation** has a corresponding meaning.

Act means the *Passenger Transport Services Act 2011* (Tas).

Adjacent Named Month (when used in clause 14.4(a)) – see clause 14.4(b). **Adjudicator** has the meaning in clause 33(h).

Adjustment Amount (when used in clause 21.5) – see clause 21.5(a).

admissible evidence (when used in clause 4.13) – see clause 4.13(i).

Alternative Vehicle has the meaning in clause 9.2. An Alternative Vehicle must comply with the minimum standards set out in clause 9.4.

Annual Capital Allowance means an annual capital allowance payable by the Crown to the Operator in respect of an Approved Vehicle, calculated in accordance with the Bus Contract Payment Model. The payment in respect of each Approved Vehicle is shown in the Contract Vehicle Table as at the dates shown in that table.

Annual Service Fee means, in relation to a Contract for a Passenger Service, the Annual Service Fee, for the Passenger Service calculated, and adjusted from time to time, in accordance with the Bus Contract Payment Model.

Approved Monitoring Equipment means:

- (a) as at the date of the Formal Instrument of Agreement, any monitoring equipment, device or other system (if any) required by, or specified in, the Formal Instrument of Agreement as 'Approved Monitoring Equipment' for an Approved Vehicle or an Alternative Vehicle. The installation and/or operation of Approved Monitoring Equipment that is video recording equipment or CCTV equipment is subject to the requirements of clause 20; and
- (b) any later monitoring equipment, device or other system (including video recording equipment and CCTV equipment):
 - (i) which, in accordance with clause 9.5:
 - (A) the Crown directs the Operator to install on, or for, an Approved Vehicle or an Alternative Vehicle; or

- (B) the Crown installs on, or for, an Approved Vehicle, or an Alternative Vehicle; or
- (ii) which the Crown and the Operator agree, in writing, will be taken to be Approved Monitoring Equipment for an Approved Vehicle or an Alternative Vehicle,

but does not include any such monitoring equipment, device or other system which ceases to be Approved Monitoring Equipment pursuant to clause 9.5(d). In paragraph (b), a reference to an 'Alternative Vehicle' means an Alternative Vehicle which both the Crown and the Operator agree, in writing, is to be an Alternative Vehicle for the purposes of this definition.

Approved Route means, in relation to a Passenger Service, the route applicable to the operation of that Passenger Service, being the route, specified or referred to in, or otherwise ascertained in accordance with, the Contract Appendix referred to in Column 4 of the row in the Passenger Service Table that relates to that service. The expression includes any changes to the Approved Route made in accordance with the Contract. The Approved Route may specify bus stops (being the points at which an Approved Vehicle or Alternative Vehicle must stop to allow for passengers to embark or disembark from such a vehicle).

Approved Ticketing System means:

- (a) as at the date of the Formal Instrument of Agreement, the ticketing system (if any) required by, or specified in, the Formal Instrument of Agreement; and
- (b) any later ticketing system required by the Crown in accordance with clause 12.1,

but does not include any such ticketing system which ceases to be an Approved Ticketing System pursuant to clause 12.1(c).

Approved Timetable means, in relation to a Passenger Service, the timetable applicable to the operation of that Passenger Service on the Approved Route, being the timetable specified, or referred to, in the Contract Appendix referred to in Column 5 of the row in the Passenger Service Table that relates to that service. The expression includes any changes to, or replacement of, the timetable made in accordance with the Contract. An Approved Timetable may specify a 'not before' departure time from a specific bus stop on an Approved Route.

Approved Vehicle means, subject to any restrictions in the Contract, the vehicles, specified in the Contract Vehicle Table, which the Operator is permitted to use to provide a Passenger Service. An Approved Vehicle must comply with the minimum standards set out in clause 9.4. The expression includes any vehicle that becomes an Approved Vehicle in accordance with the Contract.

Articulated Bus means a single deck bus comprised of two rigid sections linked by a pivoting joint and protective folding bellows, and having a minimum of 60 adult passenger seats.

ASX means the stock exchange market operated by ASX Limited.

Authorised means, in relation to a Passenger Service, the Operator being authorised under Part 3 of the Act to operate that service, and **Authorisation** has a corresponding meaning.

bank (when used in clause 16.1) – see clause 16.1(d).

Bus Age means:

- (a) subject to paragraph (b), at any time in relation to a vehicle that is a bus (including an Approved Vehicle or an Alternative Vehicle), the age of the vehicle, at that time, reckoned from the year of its manufacture; and
- (b) in relation to an Approved Vehicle or Alternative Vehicle which:
 - (i) at the date on which it becomes an Approved Vehicle or Alternative Vehicle, is not more than 2 years of age, reckoned from the year of its manufacture; and
 - (ii) has not previously been used for any commercial use, by any person, prior to it becoming an Approved Vehicle or Alternative Vehicle,for the purposes of the Contract, the age of the vehicle, at any time, will be reckoned from the year on which it first became an Approved Vehicle or Alternative Vehicle (instead of from the year of its manufacture).

At any time, to calculate the Bus Age in relation to a vehicle that is a bus, take the current year (expressed YYYY), at that time, and subtract:

- (c) if paragraph (a) above applies, the year of manufacture of that vehicle (expressed YYYY); or
- (d) if paragraph (b) above applies, the year the vehicle became an Approved Vehicle or Alternative Vehicle (expressed as YYYY).

For the purposes of this definition, the 'year of manufacture' of a vehicle is:

- (e) if the vehicle has, as required by an applicable Law, a body compliance plate or identification plate, the year of manufacture shown on that plate; and
- (f) in any other case, the year of manufacture determined from the vehicle identification number (VIN) allocated to the vehicle in accordance with an applicable Law.

Bus Contract Payment Model means the Bus Contract Payment Model, applicable to the Contract, referred to in the Formal Instrument of Agreement. The expression includes:

- (a) any amendment to, or replacement of, the Bus Contract Payment Model made in accordance with its terms; and
- (b) any later Bus Contract Payment Model agreed to, in writing, by the Crown and the Operator.

Bus Size means the size attributed to a bus in accordance with clause 1.8.

Business Day means a day that is not a Saturday, a Sunday, Easter Tuesday or a statutory holiday (as defined in the *Statutory Holidays Act 2000* (Tas)) generally observed in Hobart.

Business Records (when used in clause 18.3) – see clause 18.3(a)(i).

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature however arising and whether present or future, fixed or unascertained, actual or contingent, and whether at law, in equity, under statute or otherwise.

Confidential Business Records Information (when used in clause 31.4) – see clause 31.4(c).

Contract means the contract formed by the Formal Instrument of Agreement. If the Contract includes more than one Passenger Service, the Contract operates, in accordance with clause 1.5, as a separate contract in relation to each service.

Contract Amounts means the Annual Service Fee and the Annual Capital Allowance payable in respect of the Contract. Where the context admits or requires:

- (a) the expression refers to instalments of the Annual Service Fee and the Annual Capital Allowance for a Named Month; and
- (b) includes the payments referred to in clause 14.8.

Contract Appendix means an appendix to the Formal Instrument of Agreement. The expression includes any replacement appendix which the parties agree, in writing, is to replace an appendix to the Formal Instrument of Agreement.

Contract Vehicle Table means the table, so titled, which forms part of the Formal Instrument of Agreement, and which, among other things, sets out as at the date of the Formal Instrument of Agreement, the Approved Vehicles which the Operator must use to provide the Passenger Services subject to any restrictions set out in the Contract. The expression includes any amendment to, or replacement of, the Contract Vehicle Table made by the Crown in accordance with clause 11.

Contracted School means, in relation to a School Bus Service, the school serviced by the School Bus Service, as set out in the Approved Timetable for that service.

Control (when used in clause 25.5) – see clause 25.5(d).

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

Crown means the Crown in Right of Tasmania (as a contracting party for the purposes of the Contract). A reference to the 'Crown' includes, where the context requires, the Department, the Secretary, a delegate acting under clause 1.6, and any other person acting lawfully on behalf of the Crown.

Crown's Agents means:

- (a) each officer and employee of the Crown; and
- (b) each agent and contractor of the Crown engaged in any activity related to the Crown's obligations under the Contract,

and **Crown's Agent** means any of them. For the avoidance of doubt, a Crown's Agent does not include the Operator or any of the Operator's Personnel.

Crown's Contact Officer means the Crown's Agent, last nominated by the Crown, as the Crown's Contact Officer for the purposes of the Contract.

Deal means to:

- (a) assign, transfer or novate the Contract;
- (b) appoint a person to provide a Passenger Service (other than as an employee) including any contractor or sub-contractor;
- (c) dispose of the Contract or any Rights under the Contract;

- (d) become the trustee of a trust in respect of the Contract; or
 - (e) give a Security Interest in relation to the Contract,
- or any combination of the above, and **Dealing** has a corresponding meaning.

decision (when used in clause 4.11) – see clause 4.11(i).

Defined Event means any of the following events which prevent the use of an Approved Vehicle by the Operator for the purposes of the Contract:

- (a) the mechanical breakdown of the vehicle;
- (b) the requirement to undertake non-routine maintenance;
- (c) the requirement to undertake routine maintenance, or an inspection, in relation to the vehicle, which, in each case, cannot be reasonably scheduled outside of the times when the vehicle is required for the operation of a Passenger Service in accordance with the Contract;
- (d) an accident involving the vehicle;
- (e) an incident on, or involving, an Approved Vehicle attended by, reported to, or required to be reported to, an emergency service; or
- (f) the impoundment, seizure, theft, total loss or destruction of the vehicle.

Demerit Point means a point (or part of a point) allocated, in respect of the Contract, in accordance with clause 7.

Demerit Point Period (when used in clause 26) – see clause 26.1(b).

Department means the Department of State Growth, or any department which substantially succeeds to its functions in relation to the administration of Part 3 of the Act. If the Act is replaced by another Act, a reference to the Department refers to the Department responsible for the administration of that other Act.

Directed Service Variation Notice has the meaning in clause 21.1(a).

Dispute (when used in clause 32) – see clause 32.1(a).

Dispute Notice (when used in clause 21.5) – see clause 21.5(c)(iv).

Dispute Notice (when used in clause 32) – see clause 32.1(a).

Extension Notice (when used in clause 24) – see clause 24(a).

Extra Large Bus means a rigid bus with a minimum of 50 adult passenger seats.

Fare Structure means, subject to clause 13.1(b), the bus fare structure published from time to time by the Department.

First Level Discussions (when used in clause 32) – see clause 32.1(d).

Force Majeure Event means any event or circumstance or combination of events or circumstances beyond the reasonable control of a party (including earthquake, act of God, natural disaster, weather, flood, landslide, fire, riots, civil commotion, mechanical breakdown, malicious damage, sabotage, act of public enemy, war, revolution, terrorism, radioactive contamination, traffic congestion, road works, road closures, labour disputes, shortages of fuel that are common to the bus industry in Tasmania or an incident

occurring on a Trip that is attended by, reported to, or required to be reported to, an emergency service) but only to the extent that the party claiming the benefit of any such Force Majeure Event proves that:

- (a) the event or circumstance:
 - (i) was not within that party's reasonable control;
 - (ii) was unavoidable notwithstanding the exercise by that party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances;
 - (iii) was not due to any negligence by that party; and
 - (iv) did not involve any breach of Law by that party; and
- (b) the effects of the event or circumstance could not have been prevented, overcome or remedied by the exercise by that party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances, including by the expenditure of reasonable sums of money and the application of technology known to prudent and competent persons.

Formal Instrument of Agreement:

- (a) means the formal instrument of agreement, which incorporates these standard conditions of contract, made between the Crown and the Operator pursuant to which the Operator is to supply and/or operate certain bus services; and
- (b) includes each Contract Appendix and any other appendixes, attachments or annexures to, or other documents incorporated in, that formal instrument of agreement.

General Access Service means a Passenger Service which is designated as a 'General Access Service' in the Passenger Service Table.

Government Body includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

GST means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

GST Laws means applicable Laws relating to GST.

Indemnified Persons means the Crown and each Crown's Agent, and **Indemnified Person** means any of them.

Large Bus means a bus with a minimum of 36 adult passenger seats and a maximum of 49 adult passenger seats.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

Loss means any loss, cost, expense, damage, liability, damages or exposure of any type and however arising incurred by a person including:

- (a) consequential loss, liability to third parties, loss of revenue and loss of profit;
- (b) loss or damage arising out of an injury, disease or death; and
- (c) loss or damage as a result of any destruction of or damage to real or personal property.

Marginal Operating Costs has the meaning in the Bus Contract Payment Model.

Medium Bus means a bus with a minimum of 26 adult passenger seats and a maximum of 35 adult passenger seats.

Minimum Number (when used in clause 26.5) – see clause 26.5(d).

Monthly Service Report has the meaning in clause 19.2.

Named Month means one of the 12 named months into which each year is divided (and where the context requires, includes a part of a month).

Notice has the meaning in clause 34.1(a).

Notice of Inadequacy (when used in clause 3.7) – see clause 3.7(a).

Novatee (when used in clause 25.2) – see clause 25.2(c).

Obligations (when used in clause 29) – see clause 29.1.

Operator means each person named in the Formal Instrument of Agreement as the Operator (and includes a person who becomes the Operator pursuant to a novation of the Contract agreed to by the Crown).

Operator's Margin has the meaning in the Bus Contract Payment Model.

Operator's Personnel means all employees, officers, sub-contractors (including employees and agents of sub-contractors) and volunteers employed or engaged by the Operator in or about the performance of the Contract. If the Operator is a natural person and directly engaged in the performance of the Contract, the expression 'Operator's Personnel' also includes the Operator.

Operator's Representative means in relation to a Contract:

- (a) subject to clause 4.11, the person named in the Formal Instrument of Agreement as the Operator's Representative for that contract; and
- (b) each member of the Operator's Personnel who is, for the time being, an Operator's Representative pursuant to clause 4.11 for that Contract.

Operator's Response Notice (when used in clause 7.2) – see clause 7.2(b).

Passenger Conduct Code means the code of conduct, if any, from time to time published on the Department's website, setting out the expected standards of conduct to be adhered to by passengers when using a Passenger Service.

Passenger Service means each regular passenger service, for the purposes of the Act, described and/or identified in a row in the Passenger Service Table.

Passenger Service Contract Number or PSC No. means the number allocated, by the Department, to a contract for a Passenger Service, for the purposes of identifying the contract that service.

Passenger Service Table means the table, so titled, which forms part of the Formal Instrument of Agreement and summarises, in each row of that table, each Passenger Service to be provided by the Operator. The expression includes any amendment to, or replacement of, that table agreed to, in writing, by the Crown and the Operator.

Passenger Terms and Conditions means, in relation to a Passenger Service, terms and conditions which the Operator is permitted or required, for the time being, to impose in accordance with clause 5.3.

Payment Date means, in relation to the payment of a monthly instalment of the Annual Service Fee for a Passenger Service:

- (a) if, in respect of the Named Month to which the instalment relates, the Monthly Service Report (for the Passenger Service) is given to the Crown within five Business Days of the end of that month, the date which is 15 days after the end of that month (but, if that date is not a Business Day, the next Business Day after that date); and
- (b) if, in respect of the Named Month to which the instalment relates, the Monthly Service Report for the Passenger Service is given to the Crown more than five Business Days after the end of that month, the date which is 15 days after the end of the Named Month during which the Crown received the report (but, if that date is not a Business Day, the next Business Day after that date).

Performance Standard means:

- (a) each requirement in Column 2 of the table set out in Part A of Schedule 1; and
- (b) each obligation of the Operator under a clause listed in Column 2 of the table set out in Part B of Schedule 1.

Privacy Claim (when used in clause 20.6) – see clause 20.6(d).

Rejection Notice (when used in clause 24) – see clause 24(e).

Relevant Time (when used in in clause 19.1(a)(vii)) – see clause 19.1(a)(vii)(A).

Right includes a right, power, remedy, authority and discretion.

School Bus means an Approved Vehicle in respect of which the Annual Capital Allowance is calculated in accordance with the provisions of the Bus Contract Payment Model applicable to a School Bus Service.

School Bus Service means a Passenger Service which is designated as a 'School Bus Service' in the Passenger Service Table.

School Student means a person who is a school student for the purposes of the Fare Structure.

Second Level Discussions (when used in clause 32) – see clause 32.1(e).

Secretary has the meaning in the Act, and includes an Acting Secretary.

Security Interest means:

- (a) a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cwlth); and
- (b) any mortgage, charge, bill of sale, pledge, deposit, lien, hypothecation, arrangement for the retention of title and any other interest or power given by way of security for any debt, monetary liability or other obligation and includes any agreement to grant or create any of the foregoing.

Small Bus means a bus with a minimum of 18 adult passenger seats and a maximum of 25 adult passenger seats.

Solicitor-General (when used in clause 4.13) – see clause 4.13(i).

Specified Amount (when used in clause 14.7) – see clause 14.7(e).

Specified Amount (when used in clause 16.3) – see clause 16.3(a).

Specified Contract (when used in clause 15.1(c)) – see clause 15.1(c).

Specified Matter has the meaning in clause 33(h).

Specified Person (when used in clause 26.1(l)) – see clause 26.3(d).

Start Date means, in relation to a Passenger Service, the date on which the Operator is to commence that service, being the date shown in Column 2 of the row in the Passenger Service Table that relates to that service.

Term means, in relation to a Passenger Service, the period for which the Operator is to provide the Passenger Service, being the period specified in Column 3 of the row in the Passenger Service Table that relates to that service. The Term commences on the Start Date. The expression includes any extension to that Term made in accordance with clause 24.

Timetable Non-compliance Event (when used in clause 14.7) – see clause 14.7(e).

Threshold Number – see clause 1.10.

Trip means a single trip or journey required by an Approved Timetable on an Approved Route.

Trust (when used in clause 29) – see clause 29.1.

Trust Deed (when used in clause 29) – see clause 29.1.

Video Retention Period (when used in clause 20.3) – see clause 20.3(a).

1.2 Interpretation

In the Contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning;
- (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;

- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a party to, or a clause or a part of, the Contract;
- (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (h) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (i) a reference to a document includes:
 - (i) any thing on which there is writing;
 - (ii) any thing from which sounds, images or writings can be reproduced with or without the aid of any thing else;
 - (iii) an amendment or supplement to, or replacement or novation of, that document; or
 - (iv) a map, plan, drawing or photograph;
- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (n) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (o) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (p) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;
- (q) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (r) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere;

- (s) references to '\$' and 'dollars' are to Australian dollars; and
- (t) each Right of the Crown under the Contract may be exercised from time to time.

1.3 Headings

Headings are included for convenience only and do not affect the interpretation of the Contract.

1.4 No rule of construction applies to disadvantage party

In relation to the interpretation of the Contract, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of the Contract or any part of it.

1.5 Separate contract if more than one Passenger Service

If the Contract includes more than one Passenger Service, the Contract operates as a separate contract in relation to each service.

1.6 Delegation

- (a) The Secretary is taken to be a delegate of the Crown in relation to the Contract, and may exercise, on behalf of the Crown, any Right, function or responsibility which the Crown has under or in connection with the Contract.
- (b) The Secretary may delegate to any person the exercise of any Right, function or responsibility which the Crown, or the Secretary, has under or in connection with the Contract. Any such delegation may be:
 - (i) to a person or to the holder of a position (for the time being);
 - (ii) revoked, changed or re-delegated; and
 - (iii) unlimited or may be subject to such conditions as the Secretary determines from time to time.
- (c) Where the Secretary delegates any such Right, function or responsibility under or in connection with the Contract to a person or the holder of a position:
 - (i) the Secretary must promptly (and in any event before the delegation is sought to be relied on) give notice of such delegation to the Operator; and
 - (ii) that person, or the holder of the position (for the time being), may exercise, on behalf of the Crown, any Right, function or responsibility which the Crown, or the Secretary, has under or in connection with the Contract which has been delegated to that person.
- (d) Until further written notice from the Secretary, the holder for the time being of each of the following positions is taken to be a delegate of the Crown and the Secretary, and able to exercise, on behalf of the Crown or the Secretary (as applicable), all of the Rights, functions and responsibilities of the Crown or the Secretary (as applicable) under or in connection with the Contract except this power of delegation:
 - (i) each Deputy Secretary of the Department;
 - (ii) an Acting Secretary of the Department.

- (e) Nothing in this clause 1.6 affects or limits:
 - (i) the operation of any delegation given by a Minister or the Secretary independently of the Contract; or
 - (ii) any power of a person to act on behalf of the Minister or the Crown.
- (f) Despite any thing else in the Contract, the Crown may by notice in writing to the Operator ratify and confirm any thing done, or purported to be done, on behalf of the Crown or the Secretary, by any officer or employee (within the meaning of the *State Service Act 2000* (Tas)). The Crown's ratification may be retrospective to the date on which the thing was done, or purported to have been done, by the officer or the employee.

1.7 Imputed conduct

- (a) The conduct of the Operator's Personnel, when involved in the performance of the Contract, will be imputed to the Operator and taken to be the conduct of the Operator (even if that conduct is not within the scope of the actual or ostensible authority of the Operator's Personnel), but only to the extent that the conduct of the Operator's Personnel would constitute a breach of the Contract by the Operator if the Operator had done, or omitted to do, the act or thing that constitutes the conduct of the Operator's Personnel.
- (b) The application of this clause 1.7 is not limited because another provision of the Contract specifically refers to the conduct of the Operator's Personnel.
- (c) This clause 1.7 operates in addition to, and not in substitution for, any applicable Law that makes the Operator responsible for the conduct of the Operator's Personnel.
- (d) For the purposes of this clause 1.7, 'conduct' includes fraud, a criminal act, an omission or a misrepresentation to the extent that the conduct occurs during performance of the Contract.

1.8 Bus Size

- (a) For the purposes of the Contract, an Approved Vehicle, or Alternative Vehicle, is to be classified as a 'Small Bus', a 'Medium Bus', a 'Large Bus', an 'Extra Large Bus' or an 'Articulated Bus', according to its adult passenger seating capacity as referenced in the definition of each of those terms.
- (b) A reference to 'seating capacity' refers to the adult passenger seating capacity as stated on the compliance plate, or later modification plate, affixed to the body of an Approved Vehicle or Alternative Vehicle. A 'compliance plate' or 'modification plate' means a plate or notice required by an applicable Law to be affixed to such a vehicle.
- (c) The Operator must not modify the adult passenger seating capacity of an Approved Vehicle except with the prior written consent of the Crown.

1.9 Operational capacity

A reference to the operational capacity of an Approved Vehicle or Alternative Vehicle refers to its operational capacity for the purposes of the *Passenger Transport Services Regulations 2013* (Tas).

1.10 Threshold Number (refer clauses 7, 24 and 26)

The Threshold Number applicable to a Contract is as follows:

- (a) if the Contract is for a School Bus Service, the Threshold Number applicable to the Contract is 10;
- (b) if the Contract is for a General Access Service and the number of vehicles shown in Column 8 of the row in the Passenger Service Table applicable to that service is not greater than two, the Threshold Number applicable to the Contract is 15;
- (c) if the Contract is for a General Access Service and the number of vehicles shown in Column 8 of the row in the Passenger Service Table applicable to that service is three, the Threshold Number applicable to the Contract is 20;
- (d) if the Contract is for a General Access Service and the number of vehicles shown in Column 8 of the row in the Passenger Service Table applicable to that service is four, the Threshold Number applicable to the Contract is 25; and
- (e) if the Contract is for a General Access Service and the number of vehicles shown in Column 8 of the row in the Passenger Service Table applicable to that service is greater than four, the Threshold Number applicable to the Contract is 30.

1.11 Passenger Service Table

If the Passenger Service Table refers to information in a Contract Appendix, that information is taken:

- (a) to form part of; and
 - (b) to be shown, specified or included in,
- the Passenger Service Table.

2 Contract does not create any proprietary interest

The Contract does not confer upon the Operator:

- (a) any proprietary right or interest in any Passenger Service or Approved Route; or
- (b) any exclusive right to operate any Passenger Service or any other service in respect of any route (including an Approved Route).

Part 2: Operation of Passenger Service(s) (including service delivery requirements, performance, monitoring audit and review)

3 Operation of Passenger Service(s) and related matters

3.1 Operator to provide Passenger Service(s)

The Operator must, in accordance with the Contract, operate each Passenger Service specified in each row in Column 1 of the Passenger Service Table:

- (a) on and from the Start Date, for that Passenger Service, as shown in Column 2 of the row in the Passenger Service Table that relates to that service;

- (b) for duration of the Term, applicable to that Passenger Service, as shown in Column 3 of the row in the Passenger Service Table that relates to that service;
- (c) on the Approved Route for that service (except to the extent that, in respect of a Trip, it is necessary to deviate from the Approved Route because of a temporary road closure or traffic restriction, on the Approved Route, effected by, or on behalf of, a Government Body pursuant to the exercise of any statutory power);
- (d) in accordance with the Approved Timetable for that service; and
- (e) using an Approved Vehicle or, subject to clause 9.2, an Alternative Vehicle, for that service.

3.2 Standard of service performance etc.

The Operator must:

- (a) operate each Passenger Service:
 - (i) exercising the standards of care, skill and diligence expected of a competent contractor operating a similar service;
 - (ii) in a competent, courteous, safe and reliable manner having primary regard to the safety, needs and interests of passengers;
 - (iii) in accordance with all applicable Laws;
 - (iv) in accordance with the Contract; and
 - (v) in accordance with any reasonable instructions or directions issued, from time to time, by the Crown to the Operator;
- (b) be Accredited to operate each Passenger Service, and do all things necessary to maintain its Accreditation;
- (c) be Authorised to operate each Passenger Service, and do all things necessary to maintain each Authorisation; and
- (d) in relation to each Passenger Service, comply with:
 - (i) the terms and conditions of the Authorisation applicable to the Service;
 - (ii) the terms and conditions of its Accreditation; and
 - (iii) each direction or instruction given by:
 - (A) the Crown in accordance with the Contract; or
 - (B) a Government Body in accordance with any legislation (including the Act).

3.3 Performance Standards

The Operator must comply with each Performance Standard in Part A of Schedule 1.

3.4 Passenger relations

- (a) The Operator must maintain a telephone service for the purpose of receiving passenger complaints, answering timetable queries, answering other queries in relation to the Passenger Service, and dealing with lost property enquiries.

- (b) The Operator must promptly and courteously address any complaints about any aspect of the Passenger Service (including the Approved Timetable, the Approved Route, any Approved Vehicle, any Alternative Vehicle, the Operator and/or the Operator's Personnel).
- (c) The Operator must:
 - (i) provide for public distribution, in accordance with clause 3.4(c)(ii), a timetable for the Passenger Service showing:
 - (A) the timetable for the operation of the Passenger Service (including departure time for the start of each Trip, the departure time from major bus stops along the Approved Route, and the arrival time at the last bus stop on the Approved Route);
 - (B) the Operator's name; and
 - (C) a telephone number for the purpose of receiving passenger complaints, answering timetable queries, answering other queries in relation to the Passenger Service, and dealing with lost property enquiries;
 - (ii) make the timetable available to persons travelling on a Passenger Service, and to members of the public, upon request by them;
 - (iii) ensure that the timetable is kept current;
 - (iv) in the case of a Passenger Service that is designated as a 'General Access Service':
 - (A) give at least 10 Business Days' notice to the public of any change to the Approved Timetable, to the Approved Route or to the passenger fares (but, in the case of a change which is the subject of a Directed Service Variation Notice which, in accordance with clause 21.1(c), takes effect earlier than 10 Business Days after the giving of a Directed Service Variation Notice, give notice to the public of the change as soon practicable after the date of the Directed Service Variation Notice); and
 - (B) ensure that an up-to-date timetable, for the Passenger Service, is generally accessible by the public on a website maintained by the Operator; and
 - (v) in the case of a Passenger Service that is designated as a 'School Bus Service', ensure that, before any material changes to the Approved Timetable or the Approved Route take effect, those changes are notified, by at least 10 Business Days' notice in writing, to the Contracted Schools (but, in the case of change which is the subject of a Directed Service Variation Notice which, in accordance with clause 21.1(c), takes effect earlier than 10 Business Days after the giving of a Directed Service Variation Notice, give notice to the Contracted Schools of the change as soon practicable after the date of the Directed Service Variation Notice).
- (d) The Crown may require a timetable for the purposes of clause 3.4(c):
 - (i) to be in a format approved, in writing, by the Crown;

- (ii) to include a statement approved, in writing, by the Crown, which indicates that detailed fare and concession information for a passenger Service can be accessed on a specified internet web page (or another method) hosted or managed by the Crown; and
 - (iii) for a General Access Service, to include information on concession eligibility and fares (applicable to the Passenger Service) in a format provided by the Crown.
- (e) Clause 3.4(c) does not apply to the extent:
 - (i) the Crown gives notice, in writing, to the Operator that the Operator is not required to comply with that clause; and
 - (ii) that notice has not been withdrawn by the Crown or otherwise lapsed (in accordance with its terms).
- (f) The Crown must give at least 20 Business Days' notice, in writing, to the Operator that it is withdrawing a notice previously given pursuant to clause 3.4(e).

3.5 Passenger Service operational matters

- (a) **Bus stops:** An Approved Route for a Passenger Service may include restrictions as to the locations (for example, bus stops) where an Approved Vehicle or Alternative Vehicle is to stop to allow passengers to be picked up or set down. The Operator must comply with any such restriction. To avoid doubt, no breach of this clause 3.5(a) occurs if a passenger cannot be picked up or set down at a stop because of an emergency, for safety reasons or on other reasonable grounds.
- (b) **Assistance:** Subject to applicable Laws (including laws relating to health and safety) or unless otherwise agreed, in writing, by the Crown, the driver of an Approved Vehicle or Alternative Vehicle must provide all reasonable assistance to passengers:
 - (i) when embarking or disembarking from the vehicle; and
 - (ii) in relation to the handling and storage of any passenger luggage (including wheelchairs, mobility assistance devices, prams and strollers).
- (c) **Communications:** The driver of an Approved Vehicle or Alternative Vehicle must be provided with appropriate equipment (for example, a mobile telephone or radio) to allow for the driver to communicate or be contacted, as necessary, immediately prior to, during or after, a Trip. To avoid doubt, no breach of this clause 3.5(c) occurs if a driver cannot be contacted by mobile telephone or radio for technical reasons, such as restricted reception or a network service outage, or if contact is delayed due to the driver's compliance with appropriate mobile telephone or other communication equipment policies of the Operator.
- (d) **Operational rules, customer standards and guidelines:**
 - (i) The Operator must comply, and must ensure that the Operator's Personnel comply, with any current operational rules, customer standards and/or guidelines, for the operation of the Passenger Service or passenger services of the kind to be provided under the Contract, published, from time to time, by the Crown, and notified, in writing, to the Operator. The Crown will use its reasonable endeavours to consult with the Operator

before making any changes to operational rules, customer standards and/or guidelines that may affect the Operator.

- (ii) If, and only to the extent that, compliance with any such current operational rules, customer standards and/or guidelines, will increase the Operator's costs of operating the Passenger Service, the Crown must give a Directed Service Variation Notice in accordance with clause 21.1.
- (iii) Without limitation, operational rules may include rules related to the following:
 - (A) the interchange of passengers between different Passenger Services and/or passenger services (for the purposes of the Act) which are not a Passenger Service (as that term is defined in the Contract);
 - (B) the allocation of a route number to a Passenger Service;
 - (C) the display of a route number and/or route name on an Approved Vehicle when it is operating a Trip;
 - (D) the specifications for bus stop signage for a bus stop provided by the Operator for a Passenger Service;
 - (E) branding on an Approved Vehicle for the purpose of the integration of a Passenger Service as part of a passenger transport network funded by the Crown.
- (iv) Any operational rules, customer standards or guidelines published, from time to time, by the Crown must not:
 - (A) materially change the scope of the Contract; or
 - (B) require the Operator to do any thing which would result in the Operator being in breach of another provision of the Contract (disregarding any prospective breach that the Crown agrees, in writing, to waive).
- (v) If the Operator reasonably believes that the Operator's compliance with any current operational rules, customer standards or guidelines published by the Crown will cause the Operator to be in breach of the Contract, the following provisions apply:
 - (A) the Operator must promptly, in writing, notify the Crown of the grounds for that belief;
 - (B) despite the Operator's notice, the Operator must continue to comply with the current operational rules, customer standards or guidelines so published by the Crown except to the extent directed, in writing, by the Crown;
 - (C) the Operator will be excused from any breach of the Contract directly attributable to the Operator's compliance with any current operational rules, customer standards or guidelines published by the Crown; and
 - (D) any dispute in relation to the application of this clause 3.5(d)(v) will be determined in accordance with clause 32.

(e) **School Bus Service Trip – over-capacity:**

- (i) This clause 3.5(e) applies to a Passenger Service that is a School Bus Service.
- (ii) If the Operator refuses to allow a School Student to travel on a Trip because to do so would cause the operational capacity of the vehicle (operating the Trip) to be exceeded, the Operator must:
 - (A) inform the School Student of any alternative means of transportation that may be available;
 - (B) subject to any current operational rules published, from time to time, by the Department, at the Crown's expense (determined in accordance with the Bus Contract Payment Model), as soon as practicable, operate another Trip to carry the School Student or make other arrangements for the carriage of the School Student; and
 - (C) as soon as practicable, by telephone, inform the Crown's Contact Officer and, to the extent if practicable, the school attended by the School Student, of those matters.
- (iii) The Crown is not required to meet any expenses pursuant to clause 3.5(e)(ii)(B) if the School Student was refused travel because:
 - (A) the vehicle was at its operational capacity as a result of the vehicle carrying passengers not permitted to use the Passenger Service; or
 - (B) the vehicle operating the Trip had an operational capacity less than the capacity required by the Contract.

(f) **School Bus Service – Contracted Schools:**

- (i) This clause 3.5(f) applies to a Passenger Service that is a School Bus Service.
- (ii) Subject to clause 3.5(f)(iii), the Operator must operate the School Bus Service on any day when any Contracted School is open to School Students.
- (iii) The Operator is not required to operate the School Bus Service during any week when, for that whole week, all State schools (for the purposes of the *Education Act 2016* (Tas)) are closed to all School Students. For the purposes of this clause, a 'week' means a period of five consecutive days commencing on a Monday.
- (iv) Unless otherwise previously directed, in writing, by the Crown, if a School Bus Service services more than one Contracted School, and not all of the Contracted Schools are closed to all School Students on a day when the Passenger Service is required to be operated then, in relation to that day only, the Operator may, at its discretion and without seeking prior approval of the Crown do all or any of the following:
 - (A) use an Approved Vehicle, or an Alternative Vehicle, that has sufficient operational capacity (even though the Contract requires the use of vehicle with a greater minimum operational capacity);

- (B) deviate from the Approved Timetable;
 - (C) deviate from the Approved Route,
- so that the Passenger Service, on that day, only caters for the School Students of the Contracted Schools that are open to School Students on that day.
- (v) The Operator must include in its Monthly Service Report details of each occasion, during the Named Month to which the Monthly Service Report relates, when the Operator used an Approved Vehicle, or an Alternative Vehicle, in accordance with a lesser operational capacity pursuant to clause 3.5(f)(iv).

3.6 Emergency planning and procedures

- (a) The Operator must, in relation to each Passenger Service, have in place for the Term applicable to that service, an emergency response plan to deal with the following:
 - (i) unavailability of Operator's Personnel (including bus drivers);
 - (ii) actual and threatened emergencies likely to be encountered in relation to the operation of that service;
 - (iii) in relation to the operation of any Trip, how the Operator will respond to a circumstance where any person is refused, in accordance with the Law, the right to board an Approved Vehicle, or an Alternative Vehicle, because it has reached its operational capacity.
- (b) The Operator's emergency response plan must:
 - (i) without limiting clause 3.6(a), deal with emergency procedures associated with the operation of the Passenger Service including:
 - (A) the use of equipment in situations of emergency;
 - (B) communication processes and protocols; and
 - (C) risk assessments, decision methods and actions appropriate to the various emergency situations likely to be encountered;
 - (ii) be reviewed, amended and/or replaced by the Operator as necessary to keep it current and appropriate to the Passenger Service, and otherwise as directed, in writing, by the Crown.
- (c) The Operator must comply, and ensure that the Operator's Personnel comply, with:
 - (i) the Operator's emergency response plan in force from time to time; and
 - (ii) any emergency response plan or plans that may be applicable prepared by or on behalf of the Crown, and notified to the Operator.

3.7 Inadequacy of service provided

- (a) If, at any time, the Crown (acting reasonably) forms the opinion that the Passenger Service is not being operated in accordance with the requirements of the Contract, the Crown may give written notice to the Operator (**Notice of Inadequacy**).

- (b) A Notice of Inadequacy:
 - (i) is to give particulars of any matters taken into account by the Crown in deciding to give a Notice of Inadequacy; and
 - (ii) may specify the steps which the Crown (acting reasonably) requires the Operator to undertake to ensure that the Passenger Service will be operated in conformity with the Contract.
- (c) The Operator must:
 - (i) subject to clause 3.7(c)(ii), promptly comply with any Notice of Inadequacy issued by the Crown to the extent that it specifies steps:
 - (A) which the Operator should reasonably undertake to ensure that the Passenger Service will be operated in conformity with the Contract; and
 - (B) which the Operator does not dispute; and
 - (ii) to the extent that it disputes a Notice of Inadequacy, not later than five Business Days after receiving a Notice of Inadequacy, notify the Crown, in writing, of any matters that it disputes in the Notice of Inadequacy, and the reasons for doing so.
- (d) If the parties are unable to reach agreement on any matters in dispute relating to the Notice of Inadequacy within five Business Days after the Operator's notice under clause 3.7(c)(ii):
 - (i) the Crown may withdraw the Notice of Inadequacy in relation to those matters (and then exercise any other Rights it may have); or
 - (ii) the Crown and/or the Operator may require any matters in dispute to be determined in accordance with clauses 32 and 33.
- (e) Subject to clause 3.7(d), if the Operator fails to promptly comply with a Notice of Inadequacy to the Crown's satisfaction (acting reasonably), the following provisions apply:
 - (i) the Crown, at its cost, may appoint a suitably qualified person to act as a quality inspector in relation to the operation of the Passenger Service by the Operator;
 - (ii) the Crown must promptly notify the Operator, in writing, of the appointment (including the name and qualifications of the quality inspector);
 - (iii) a quality inspector may monitor, and report to the Crown, in relation to the operation of the Passenger Service and the Operator's compliance with the Contract;
 - (iv) for the purposes of carrying out his or her functions, a quality inspector may travel on the Passenger Service, as a passenger, on a without charge basis provided that:
 - (A) the quality inspector properly identifies himself, or herself, to the Operator's Personnel conducting the Passenger Service; and

- (B) to the extent required by any Law, the quality inspector holds, and produces to the Operator's Personnel conducting the Passenger Service, any required pass that permits a person to travel on a regular passenger service (for the purposes of the Act) without paying a fare;
- (v) the Operator must comply, and must ensure that the Operator's Personnel comply, with any reasonable directions of a quality inspector, issued, in writing, to the Operator, but only to the extent that the direction is properly given for the purpose of ensuring that the Passenger Service is operated in conformity with the Contract.

4 General provisions related to contract delivery

4.1 Sub-contracting

- (a) Except in accordance with clause 25 or in the case of an unforeseen emergency beyond the reasonable control of the Operator, the Operator must not sub-contract the operation of any Passenger Service except in accordance with an approval, in writing, given by the Crown.
- (b) If the Operator sub-contracts the operation of any Passenger Service because of an unforeseen emergency beyond the reasonable control of the Operator, the Operator must notify the Crown, in writing, as soon as practicable of the details of the unforeseen emergency and the sub-contract arrangements.

4.2 No inconsistent activity

The Operator must not engage in any activity that in any way adversely affects or impairs the Operator's ability to deliver a Passenger Service in conformity with the Contract.

4.3 Duty of good faith

The Operator must, and must ensure that the Operator's Personnel, at all times act loyally, faithfully and honestly in its and their dealings with the Crown in connection with the Contract.

4.4 Duty to keep Crown informed

The Operator must keep the Crown fully and regularly informed as to all adverse matters affecting, or relating to, the operation of the Passenger Service.

4.5 No secret profits

The Operator must not make, and must ensure that none of the Operator's Personnel make, any secret profit or secret commission in connection with any activity related to the Contract.

4.6 Supply of equipment and materials

The Operator is responsible, at its cost, for the supply of all materials, supplies and other equipment and support necessary for the operation of the Passenger Service including:

- (a) all vehicles required to provide the Passenger Service (including Approved Vehicles);
- (b) all labour (including bus drivers);

- (c) all consumables including fuel, oil and lubricants; and
- (d) all communications equipment.

4.7 Health and safety

The Operator must in relation to the operation of a Passenger Service and its activities under the Contract relating to that service:

- (a) take all reasonable precautions for the safety of the general public, the Crown, the Crown's personnel and the Operator's Personnel in connection with the delivery of the Passenger Service;
- (b) comply with all reasonable directions as may be given by the Crown to the Operator in relation to health and safety matters (including, as directed by the Crown, undertaking risk assessments and documenting the results of those assessments); and
- (c) take prompt action to anticipate and avoid existing and future hazards associated with the operation of the Passenger Service.

4.8 Independent contractor

- (a) The Operator is an independent contractor, and not an employee or agent of the Crown.
- (b) The Operator unconditionally acknowledges and agrees that, as an independent contractor, the Operator is not entitled to, and the Crown is not required to provide to the Operator or any of the Operator's Personnel, any entitlements or benefits provided by an employer to an employee as part of the relationship of employer and employee.
- (c) The Crown is not responsible for any debts, liabilities, costs, charges or expenses incurred by the Operator in connection with the Contract.

4.9 Scope of authority

The Operator is not the agent of the Crown for the purposes of providing the Passenger Services. The Operator must not represent itself to be an agent of the Crown.

4.10 Liaise and report to Crown

The Operator must liaise with and report to the Crown as reasonably required by the Crown.

4.11 Operator's Representative

- (a) This clause 4.11 applies if the Operator is a body corporate or a partnership.
- (b) The Operator must ensure that at all times after the date of the Formal Instrument of Agreement a member of the Operator's Personnel is appointed to act as Operator's Representative in relation to the Contract. The Operator may have more than one Operator's Representative in relation to the Contract.
- (c) The Operator may terminate its appointment of an Operator's Representative by notice, in writing, to the Crown.
- (d) If the Operator's Representative (for the time being):
 - (i) ceases to a member of the Operator's Personnel;

- (ii) dies; or
- (iii) is unable to act as the Operator's Representative (including because of the taking of leave),

and there is no other Operator's Representative in relation to the Contract, the Operator must immediately appoint another member of the Operator's Personnel to act as the Operator's Representative in relation to the Contract.

- (e) The Operator must immediately notify the Crown, in writing, of each appointment of an Operator's Representative. The notice must include contact details (including a mobile telephone number) for the appointee. If the contact details for an Operator's Representative change, the Operator must immediately notify the Crown, in writing, of the changed details.
- (f) An Operator's Representative acts as the agent of the Operator in discharging any functions or exercising any Rights of the Operator in connection with the Contract. Any decision that may be, or is required to be, made by the Operator may be made by the Operator's Representative on behalf of the Operator. The Operator is bound by all decisions of the Operator's Representative as if those decisions had been made by the Operator. The Operator is responsible for all acts or omissions of the Operator's Representative as if such acts or omissions were those of the Operator.
- (g) Any decision of the Crown communicated to the Operator's Representative for the time being is taken to have been given to the Operator.
- (h) If the Operator is a body corporate and either:
 - (i) the Crown is unable to contact the Operator's Representative for any reason; or
 - (ii) the Operator has not notified the Crown of the Operator's appointment of an Operator's Representative,
 then, for so long as either of those circumstances continue, the Crown may treat each director of the Operator, for the time being, as an Operator's Representative.
- (i) A '**decision**' includes any agreement, approval, authorisation, certificate, consent, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

4.12 Operator's right to escalate matters

If, in the opinion of the Operator, the Crown fails to adequately respond to any matter in respect of which the Contract requires a direction, decision or approval by the Crown within 20 Business Days after the Operator gives notice, in writing, to the Crown, requesting a response in relation to that matter, the Operator may then escalate that matter to a Deputy Secretary of the Department.

4.13 Zero tolerance towards violence against women

- (a) Violence against women is defined by the United Nations (in *The Declaration on the Elimination of Violence Against Women*) as 'any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women'.

- (b) The Crown upholds a zero tolerance policy towards violence against any person in the workplace. The Operator acknowledges and undertakes to uphold a zero tolerance policy towards violence against any person in the workplace in its interaction with employees, agents and sub-contractors of the Crown, and in the performance of the Contract.
- (c) The Operator must, and will take reasonable measures to ensure that the Operator's Personnel, at all times in the performance of the Contract, act in a manner that is non-threatening.
- (d) If the Crown reasonably believes that any of the Operator's Personnel, involved in the performance of the Contract, are failing to comply with the behavioural standards specified in this clause 4.13, then the Crown may:
 - (i) prohibit access by the relevant Operator's Personnel to any premises occupied or used by the Crown (provided that the Operator is notified a reasonable time prior to any prohibition); and
 - (ii) subject to clause 4.13(f), direct the Operator to withdraw the relevant Operator's Personnel from providing the performance of the Contract.
- (e) The Operator must comply with a direction given by the Crown in accordance with clause 4.13(d).
- (f) The Crown must not give a direction pursuant to clause 4.13(d)(ii) unless the Secretary has received from the Solicitor-General a certificate stating that, in the opinion of the Solicitor-General, there is sufficient admissible evidence to establish, on the balance of probabilities, that the Operator's Personnel, intended to be the subject of a direction under clause 4.13(d)(ii), failed to comply with the behavioural standards specified in this clause 4.13.
- (g) For the avoidance of doubt:
 - (i) a certificate by the Solicitor-General pursuant to clause 4.13(f) is not conclusive as to the matters stated in it; and
 - (ii) nothing in this clause 4.13 affects the Operator's right to otherwise dispute whether the Crown was properly entitled to give a direction pursuant to clause 4.13(d)(ii).
- (h) If:
 - (i) the Crown gives a direction for the purposes of clause 4.13(d)(ii) in respect of a person who is a member of the Operator's Personnel;
 - (ii) the Operator is not reasonably able to redeploy that person to employment that does not involve working on any Contract;
 - (iii) solely as a consequence of the matters referred to in clauses 4.13(h)(i) and (ii), the Operator terminates the employment of that person;
 - (iv) the person claims that the termination of his or her employment was wrongful or unfair;

- (v) a tribunal or court of competent jurisdiction holds that the termination of the employment was wrongful, or unfair, or otherwise unlawful under discrimination laws, industrial legislation or other laws, and determines that an amount of compensation should be paid by the Operator to that person; and
- (vi) the Operator has taken all prudent and reasonable steps to defend the person's claim,

then the Crown must indemnify the Operator for all costs properly and reasonably incurred or paid by the Operator in connection with the termination of that person's employment.

- (i) In this clause 4.13:

admissible evidence means evidence admissible in legal proceedings commenced in the civil jurisdiction of the Supreme Court of Tasmania.

Solicitor-General means the person holding, or acting in, the office of Solicitor-General of Tasmania for the purposes of the *Solicitor-General Act 1983* (Tas).

5 Passengers

5.1 Use of Passenger Service may be restricted

- (a) The Crown may, from time to time, by notice, in writing, to the Operator, determine the passengers, or classes of passengers, who may use a Passenger Service.
- (b) The Operator must comply with a determination made by the Crown in accordance with clause 5.1(a).
- (c) If, and only to the extent that, compliance with any such determination will increase the Operator's costs of operating the Passenger Service, the Crown must give a Directed Service Variation Notice in accordance with clause 21.1.
- (d) Subject to clause 5.1(b), the Operator must:
 - (i) not carry, on a Passenger Service, any person who is not authorised to use that Passenger Service in accordance with a determination, for the time being in force, under clause 5.1(a) in relation to that Passenger Service; and
 - (ii) not carry, on a School Bus Service, any person who is not a School Student.
- (e) An employee of the Operator, engaged in the performance of the Contract, may use a Passenger Service but only to the extent that the use relates to the performance of the Contract in respect of that Passenger Service.

5.2 When can Operator refuse to carry a passenger?

Subject to the Act and any directions given by the Crown, the Operator may refuse to carry a person, authorised to use a Passenger Service, in accordance with a determination for the time being in force under clause 5.1(a), if:

- (a) the person does not comply with the Passenger Conduct Code;

- (b) the person does not comply with the Passenger Terms and Conditions (if any) applicable to the Passenger Service; or
- (c) the person refuses to pay a fare which, in accordance with the Fare Structure, the Operator is required to charge and collect from, or in respect of, that person,

but nothing in this clause affects the operation of any applicable Law (including the Act, and regulations made under the Act) in relation to the carriage of passengers or the collection of fares.

5.3 Passenger Terms and Conditions

- (a) The Operator must not require a person to agree to, or to otherwise accept, any terms and conditions related to:
 - (i) the use of a Passenger Service; or
 - (ii) the sale of a ticket for the use of a Passenger Service,
 unless those terms and conditions have been approved, in writing, by the Crown, and that approval remains in force.
- (b) The Crown may by notice, in writing, to the Operator do any of the following:
 - (i) revoke or vary any approval given under clause 5.3(a);
 - (ii) in relation to a Passenger Service, direct the Operator to require persons to agree to terms and conditions related to:
 - (A) the use of a Passenger Service; or
 - (B) the sale of a ticket for the use of a Passenger Service.
 Any terms and conditions directed by the Crown must not contravene any applicable Law.
- (c) The Operator must do all things reasonably necessary to apply and enforce any terms and conditions required by the Crown in accordance with a direction given under clause 5.3(b)(ii).

6 Operator's Personnel

6.1 General obligations

The Operator must:

- (a) engage sufficient personnel to ensure that it can deliver the Passenger Service in accordance with, and perform its obligations under, the Contract;
- (b) keep a register of drivers (including details of annual checks completed in relation to each driver), and allow the Crown to inspect and take copies of that register; and
- (c) ensure that each member of the Operator's Personnel is:
 - (i) competent to undertake the duties allocated to that member;
 - (ii) appropriately qualified and skilled;

- (iii) where appropriate, holds, and continues to hold, all qualifications, licences, permits, authorities and credentials, required, appropriate or relevant to the work that they are required to perform in connection with the Contract; and
- (iv) in accordance with good industry practice, provided with proper support, training, debriefings and directions to enable them to effectively perform their duties in connection with the Contract.

6.2 Operator's obligation to notify Crown

The Operator must within 72 hours inform the Crown, in writing, upon the Operator becoming aware of any of the following matters:

- (a) any member of the Operator's Personnel being charged or convicted of any criminal offence during the Term;
- (b) any member of the Operator's Personnel being the subject of any investigations or proceedings during the Term concerning the protection of children who are, or were, under the guardianship, or in the custody, of the member.

6.3 Operator responsible for employee benefits and taxes

As between the Operator and the Crown, in respect of each member of the Operator's Personnel, the Operator is responsible for, and must pay and discharge in accordance with all applicable Laws:

- (a) all wages, salaries, benefits, entitlements and payments (including all employer contributions for superannuation);
- (b) all employer deductions for income tax;
- (c) payroll and similar taxes; and
- (d) amounts due for workers' compensation insurance premiums.

7 Demerit Points

7.1 Allocation of Demerit Points

- (a) Subject to clause 7.2, the Crown may in respect of a breach of a Performance Standard occurring during a Named Month allocate, to the Contract, a Demerit Point, or Demerit Points, in respect of that breach, as set out in Schedule 1. For the purposes of the Contract, a Demerit Point is to be allocated to the Contract in respect of the Named Month in which the breach of the Performance Standard occurred (notwithstanding that the Demerit Point is allocated by the Crown at a later time).
- (b) The Operator acknowledges that:
 - (i) the Crown may terminate the Contract, in accordance with clause 26, if the total number of Demerit Points allocated to the Contract for breaches of the Performance Standards occurring during any period, not exceeding 36 consecutive Named Months, reaches, or exceeds, the Threshold Number applicable to the Contract; and

- (ii) the Crown may reject an extension to the Term of the Contract, in accordance with clause 24, if the total number of Demerit Points allocated to the Contract reaches, or exceeds, the Threshold Number applicable to the Contract.
- (c) A Demerit Point that is allocated to the Contract attaches to the Contract. Accordingly, if the Contract is novated, the Demerit Point continues in force, after the novation, as a Demerit Point allocated to the Contract as novated.
- (d) For the avoidance of doubt, a Demerit Point attaches to an extension to the Term of the Contract in accordance with clause 24.

7.2 Operator has opportunity to dispute proposed allocation

- (a) Before allocating a Demerit Point (or Points) in accordance with clause 7.1, the Crown must give notice, in writing, to the Operator (**Show Cause Notice**) stating the following:
 - (i) that the notice is a 'Show Cause Notice' for the purposes of this clause 7.2 of the Contract;
 - (ii) the accumulated Demerit Points previously allocated to the Contract;
 - (iii) the Demerit Point (or Points) which the Crown intends to allocate to the Contract in respect of a breach of a Performance Standard and the particulars of that breach; and
 - (iv) that the Operator must during the period of 10 Business Days after the date of the Show Cause Notice give to the Crown notice, in writing, in accordance with clause 7.2(b) of the Contract.
- (b) During the period of 10 Business Days after the date of the Crown's Show Cause Notice, the Operator must by notice, in writing, to the Crown (**Operator's Response Notice**):
 - (i) state whether the Operator disputes the Crown's Right to allocate the Demerit Point (or Points) as set out in the Crown's Show Cause Notice, and if so why (for example, an excuse shown in a table in Schedule 1 that excuses the breach of the Performance Standard referred to the Show Cause Notice); and
 - (ii) provide details of any matters which the Operator claims should be taken into account by the Crown before it decides whether or not to allocate the Demerit Point (or Points) (being matters that are not an excuse shown in a table in Schedule 1 that excuses the breach of the Performance Standard referred to in the Crown's Show Cause Notice).
- (c) The Crown must take into account any Operator's Response Notice, received by the Crown during the period of 10 Business Days after the date of the Crown's Show Cause Notice, before the Crown decides to allocate, to the Contract, the Demerit Point (or Points) set out in the Crown's Show Cause Notice.
- (d) If the Operator fails to give an Operator's Response Notice within the time permitted by clause 7.2(b), the Crown may proceed to allocate the Demerit Point (Points) set out in the Crown's Show Cause Notice.
- (e) The Crown must promptly notify the Operator, in writing, of any Demerit Points that are allocated to the Contract.

- (f) The Operator bears the onus of proving that any stated breach of a Performance Standard, specified in a Show Cause Notice, did not actually occur. Accordingly, a Show Cause Notice will be taken to be prima facie evidence of the matters referred to in it.

7.3 Interpretation – more than one Contract

For the avoidance of doubt, if the Formal Instrument of Agreement includes more than one Passenger Service, this clause 7 operates singly in respect of each separate contract created by clause 1.5.

8 Audit, monitoring and service review

8.1 Audit and monitoring

- (a) The Crown may do any of the following:
 - (i) audit the Operator's compliance with its obligations under the Contract;
 - (ii) monitor the Operator's performance of its obligations under the Contract;
 - (iii) review the Passenger Service (including reviewing its use and operation, its adequacy, opportunities to improve the Passenger Service, the Approved Timetable and/or the Approved Route).
- (b) The Operator:
 - (i) must co-operate with, and provide any reasonable assistance required by, the Crown in respect of any such audit, monitoring and/or review;
 - (ii) must, in accordance with any directions given by the Crown, attend meetings with the Crown (provided that, if the Operator is fully complying with its obligations under the Contract, the meetings are not to be held more frequently than once every six months); and
 - (iii) unconditionally and irrevocably authorises another Government Body to supply to the Crown (as represented by the Department), on request, any information or document related to, concerning, or connected with, any of the following:
 - (A) the Contract;
 - (B) the Operator;
 - (C) an Approved Vehicle or an Alternative Vehicle;
 - (D) a Passenger Service.
- (c) Without limiting any thing else in clause 8, the Crown may do any of the following in respect of any such audit, monitoring and/or review:
 - (i) question and/or observe any of the Operator's Personnel involved in the operation of the Passenger Service;
 - (ii) subject to clause 31.4, inspect, audit and take copies of the Operator's records in relation to the Passenger Service (including any records that the Operator is required to keep in accordance with the Contract);

- (iii) obtain any information or document referred to in clause 8(b)(iii);
- (iv) survey users of the Passenger Service;
- (v) authorise a Crown's Agent to travel on any Trips without paying a fare provided that:
 - (A) the Crown's Agent identifies himself, or herself, to the Operator's Personnel conducting the Passenger Service for that Trip; and
 - (B) to the extent required by any Law, the Crown's Agent holds, and produces to the Operator's Personnel conducting the Passenger Service for that Trip, any required pass that permits a person to travel on a regular passenger service (for the purpose of the Act) without paying a fare;
- (vi) inspect the following:
 - (A) any premises occupied by the Operator;
 - (B) Approved Vehicles and Alternative Vehicles.
- (d) The Crown must give at least one day's notice in writing to the Operator of the exercise by the Crown of any Rights set out in clauses 8(c)(ii), 8(c)(iii) or 8(c)(vi)(A).

8.2 Service review and improvement

- (a) The Operator may request the Crown to meet with the Operator for the purposes of reviewing the Passenger Service (including reviewing its use and operation, its adequacy, and opportunities to improve the Passenger Service, the Approved Timetable and/or the Approved Route). The Crown must not unreasonably fail to comply with such a request provided that the Operator has given to the Crown at least 20 Business Days' notice, in writing, of the matters to be raised by the Operator at the meeting. The meeting must be held at the Department's premises in Hobart or, if convenient to both parties, conducted by telephone or by another electronic means.
- (b) Each party may request, by notice, in writing, to the other party, a meeting (between the parties) to discuss and review safety, traffic congestion and capacity issues affecting the operation of the Passenger Service (including where relevant, the Approved Timetable and the Approved Route). A party receiving such a notice must not unreasonably refuse to meet with the other party, as soon as practicable, whether in person, by telephone or by another electronic means.

Part 3: Vehicles, vehicle monitoring and ticketing systems

9 Vehicle requirements for operation of Passenger Service

9.1 Operator must only use Approved Vehicle

- (a) Subject to this clause 9, the Operator must only use an Approved Vehicle to provide a Passenger Service.

- (b) Unless otherwise approved, in writing, by the Crown, the Operator (or if the Operator is a partnership, at least one of the partners) must be the registered operator (for the purposes of the *Vehicle and Traffic Act 1999* (Tas)) of an Approved Vehicle.
- (c) If an Approved Vehicle is not available for use in relation to a Passenger Service because of a Defined Event, the Operator must:
 - (i) subject to clause 9.2, substitute an Alternative Vehicle for the period that the Approved Vehicle is unavailable because of the Defined Event; or
 - (ii) subject to complying with clause 25.1, engage, at the Operator's cost, another person to operate the Passenger Service for the period that the Approved Vehicle is not available for use.
- (d) Without limiting any thing in clause 25.1, the Operator must ensure that another person who operates the Passenger Service (for the period that the Approved Vehicle is not available for use because of a Defined Event) does so in accordance with the requirements of the Contract.

9.2 Alternative Vehicles

- (a) The Operator may substitute another vehicle (an **Alternative Vehicle**) if an Approved Vehicle is unavailable because of a Defined Event.
- (b) Unless otherwise agreed in writing by the Crown or except in the case of an emergency, an Alternative Vehicle must have a sufficient operational capacity to meet passenger demand (but nothing in this clause requires the Operator to operate an Alternative Vehicle that has an operational capacity greater than the operational capacity of the Approved Vehicle for which it is being substituted because of a Defined Event).
- (c) An approval by the Crown for the purposes of this clause 9.2 may be given subject to terms and conditions, and relate to more than one Contract as specified in the approval. The Operator must comply with any such terms and conditions.
- (d) If directed, in writing, by the Crown, the Operator must not use another vehicle, as an Alternative Vehicle, if:
 - (i) that vehicle does not include Approved Monitoring Equipment; and
 - (ii) the Crown has previously sought the installation of such equipment on that vehicle in accordance with clause 9.5.

9.3 Not all Approved Vehicles may be used on all services

- (a) If the Passenger Service Table specifies a Bus Size for an Approved Vehicle that is used to provide a Passenger Service, the Operator must only use an Approved Vehicle to provide the service that is equal to or greater than that Bus Size.
- (b) If the Passenger Service Table specifies a seating configuration for an Approved Vehicle that is used to provide a Passenger Service, the Operator must only use an Approved Vehicle to provide the service that has that seating configuration.
- (c) If the Passenger Service Table specifies a minimum operational capacity for an Approved Vehicle that is used to provide a Passenger Service, the Operator must only use an Approved Vehicle to provide the service that has an operational capacity not less than that minimum operational capacity.

9.4 Minimum standards

The Operator must ensure that each Approved Vehicle, each Alternative Vehicle and each vehicle used by a person referred to in clause 9.1(c)(ii), complies with the following minimum standards:

- (a) the vehicle must be registered in accordance with all applicable Laws;
- (b) unless otherwise agreed, in writing, by the Crown, if the vehicle is a Small Bus, the vehicle must be equipped with lap-sash seatbelts for all passengers;
- (c) the vehicle must comply with all applicable Laws;
- (d) unless otherwise agreed, in writing, by the Crown, the vehicle must not have a Bus Age exceeding:
 - (i) in the case of a Small Bus used for a Passenger Service – a Bus Age of 15 years;
 - (ii) in the case of a Medium Bus used for a School Bus Service – a Bus Age of 30 years;
 - (iii) in the case of a Large Bus, Extra Large Bus or Articulated Bus used for a School Bus Service – a Bus Age of 30 years; and
 - (iv) in the case of a Medium Bus, Large Bus, Extra Large Bus or Articulated Bus used for a General Access Service – a Bus Age of 21 years;
- (e) the vehicle must be fully and appropriately maintained and inspected (including in accordance with all applicable Laws);
- (f) the vehicle must be roadworthy and otherwise be 'fit for purpose' to operate the Passenger Service (and to the extent that the Crown asserts that a vehicle is not roadworthy or not 'fit for purpose' for the purposes of this clause 9.4(f), the Crown may proceed to give a Notice of Inadequacy in accordance with clause 3.7).

9.5 Approved Monitoring Equipment

- (a) The Crown may issue a direction, in writing, requiring the Operator to do any of the following:
 - (i) to install Approved Monitoring Equipment on, or for, an Approved Vehicle or an Alternative Vehicle;
 - (ii) to permit the Crown:
 - (A) to install Approved Monitoring Equipment on, or for, an Approved Vehicle or an Alternative Vehicle;
 - (B) to remove from an Approved Vehicle, or an Alternative Vehicle, any Approved Monitoring Equipment previously installed by the Crown.

In this clause 9.5(a), a reference to an '**Alternative Vehicle**' means an Alternative Vehicle which both the Crown and the Operator agree, in writing, is to be an Alternative Vehicle for the purposes of this clause 9.5(a).

- (b) The Operator must not modify Approved Monitoring Equipment, except in accordance with any directions, in writing, given by the Crown.

- (c) The Crown may issue directions, in writing, to the Operator in relation to the maintenance, use, testing, modification and/or audit of Approved Monitoring Equipment (including the retention of data collected by Approved Monitoring Equipment). The installation and/or operation of Approved Monitoring Equipment that is video recording equipment or CCTV equipment is subject to the requirements of clause 20.
- (d) The Crown may by notice, in writing, to the Operator direct the Operator to stop using Approved Monitoring Equipment and/or replace it with other Approved Monitoring Equipment. Approved Monitoring Equipment which the Crown directs the Operator to stop using ceases to be Approved Monitoring Equipment on and from the date specified in the notice that contains that direction (and, if no date is specified, then the date of the notice).
- (e) A direction given by the Crown to the Operator pursuant to this clause 9.5 will be taken to be a Directed Service Variation Notice for the purposes of clause 21.1.
- (f) The Operator must comply with any directions given by the Crown under this clause 9.5.

9.6 Cleaning

The Operator must ensure that all Approved Vehicles and Alternative Vehicles used to provide a Passenger Service are cleaned on a regular basis consistent with good industry practice, and in any event, not less frequently than weekly.

9.7 Advertising – general restrictions

- (a) Any advertising on an Approved Vehicle or Alternative Vehicle must:
 - (i) comply with all applicable Laws;
 - (ii) comply with any relevant codes of advertising for the advertising industry of general application to the advertising industry;
 - (iii) not be offensive; and
 - (iv) not obscure:
 - (A) the route number and destination details, if any, on the vehicle; or
 - (B) any branding on an Approved Vehicle for the purpose of the integration of a Passenger Service as part of a passenger transport network funded by the Crown.
- (b) If, in the Crown's reasonable opinion, advertising on an Approved Vehicle or Alternative Vehicle does not comply with clause 9.7(a), the Crown may:
 - (i) in the case of an Approved Vehicle, require the Operator, at the Operator's cost, to remove the advertising from the vehicle (or otherwise modify the advertising so that it complies with that clause); and
 - (ii) in the case of an Alternative Vehicle, direct the Operator not to use the Alternative Vehicle in the performance of the Contract until the Operator, at the Operator's election and cost, removes the advertising from the vehicle (or otherwise modifies the advertising so that it complies with that clause).

9.8 Road safety and school safety messages

- (a) Unless otherwise agreed, in writing, by the Crown, the Operator must ensure that there is sufficient space on the external rear surface of a School Bus that may be used by the Crown to undertake road safety and/or school safety advertising.
- (b) A sufficient space for the purposes of clause 9.8(a) is an area, on the external rear surface of the School Bus, at least 1.2 metres wide by 0.50 metres high.
- (c) No licence or advertising fee is payable by the Crown to the Operator for road safety and/or school safety advertising placed on a School Bus pursuant to this clause 9.8. All costs associated with the installation or removal of such advertising on a School Bus must be met by the Crown.
- (d) This clause 9.8 does not apply to a School Bus that was used by the Operator on a passenger service contract (as defined in the Act) for school bus services immediately before the date of the Contract.

10 Changes in Approved Vehicles

10.1 Change in Approved Vehicles requires Crown approval

Subject to and in accordance with this clause 10, any change in the Approved Vehicles that can be used by the Operator for the purposes of the Contract requires the approval, in writing, of the Crown.

10.2 Application by Operator for change in Approved Vehicles

- (a) The Operator may make an application, in writing, to the Crown:
 - (i) for an additional vehicle to be approved by the Crown as an Approved Vehicle (so that, subject to such approval being granted, the additional vehicle becomes an Approved Vehicle in addition to the existing Approved Vehicles);
 - (ii) for another vehicle to be approved by the Crown as an Approved Vehicle in replacement for an existing Approved Vehicle (so that, subject to such approval being granted, the other vehicle becomes an Approved Vehicle and the existing Approved Vehicle will cease to be an Approved Vehicle);
 - (iii) for the Crown to approve an Approved Vehicle having its status as an 'Approved Vehicle' revoked (so that, subject to such approval being granted, the vehicle will cease to be an Approved Vehicle).
- (b) An application for the purposes of clause 10.2(a) must be in a form and substance required by the Crown, and signed by the Operator.

10.3 Crown may give or refuse to give approval

- (a) The Crown may give, or refuse to give, its approval to an application made under clause 10.2(a).
- (b) The Crown may refuse to approve a vehicle, as an Approved Vehicle, if the vehicle is to be used for a School Bus Service and it has:
 - (i) in the case of a Small Bus – a Bus Age exceeding 10 years;

- (ii) in the case of a Medium Bus, Large Bus or Extra Large Bus – a Bus Age exceeding 20 years; or
 - (iii) in the case of an Articulated Bus – a Bus Age exceeding 25 years.
- (c) The Crown may refuse to approve a vehicle, as an Approved Vehicle, if the vehicle is to be used for a General Access Service and it has a Bus Age exceeding two years.
- (d) The Crown may refuse to approve a vehicle, as an Approved Vehicle, if the vehicle is not compliant with *Disability Standards for Accessible Public Transport 2002* (Cwlth) and any requirements relating to the *Disability Discrimination Act 1992* (Cwlth), unless an exemption has been obtained or is applicable.
- (e) Subject to clauses 10.3(b), 10.3(c) and 10.3(d), the Crown will not unreasonably refuse its approval to an application made under clause 10.2(a)(i) if:
 - (i) the application for approval is in the form required by the Crown for the purposes of clause 10.2(b) and has been duly completed and signed by the Operator; and
 - (ii) the Crown is satisfied that:
 - (A) the Operator requires the use of the additional vehicle, as an Approved Vehicle, for genuine operational reasons for the purposes of performing the Contract;
 - (B) unless otherwise approved, in writing, by the Crown, the Operator (or if the Operator is a partnership, at least one of the partners) is, or will become, the registered operator (for the purposes of the *Vehicle and Traffic Act 1999* (Tas)) of the additional vehicle; and
 - (C) the additional vehicle meets the minimum standards referred to in clause 9.4.
- (f) Subject to clauses 10.3(b), 10.3(c) and 10.3(d), the Crown will not unreasonably refuse its approval to an application made under clause 10.2(a)(ii) if:
 - (i) the application for approval is in the form required by the Crown for the purposes of clause 10.2(b) and has been duly completed and signed by the Operator; and
 - (ii) the Crown is satisfied that:
 - (A) the Operator has genuine operational reasons to replace the Approved Vehicle with the replacement vehicle;
 - (B) the Operator (or if the Operator is a partnership, at least one of the partners) is, or will become, the registered operator (for the purposes of the *Vehicle and Traffic Act 1999* (Tas)) of the replacement vehicle;
 - (C) the replacement vehicle has the same Bus Size as the existing Approved Vehicle which it is to replace (unless the Crown otherwise directs, in writing, to the Operator because of changes, or projected changes, in the number of passengers using the Passenger Service);

- (D) the use of the replacement vehicle, as an Approved Vehicle, will not result in a breach of clause 9.3; and
 - (E) the replacement vehicle meets the minimum standards referred to in clause 9.4.
- (g) The Crown must advise, in writing, the Operator of the Crown's approval or rejection of an application made under clause 10.2(a)(ii) within 15 Business Days of the date on which the application is received by the Crown.

10.4 Form and effect of approval

- (a) An approval by the Crown for the purposes of clause 10.3(a):
 - (i) must be in writing;
 - (ii) may be given subject to terms and conditions; and
 - (iii) must state the date on which it takes effect (which may be the date of an event).
- (b) The Operator must comply with any such terms and conditions.

10.5 Crown to consult with Operator if application refused

If the Crown refuses to approve an application under clause 10.2, the Crown will consult with the Operator as to the reasons for that refusal.

10.6 When does an Approved Vehicle cease to be an Approved Vehicle?

Despite any thing else in this clause 10, an Approved Vehicle automatically ceases to be an Approved Vehicle if:

- (a) unless otherwise approved, in writing, by the Crown, the Operator ceases to be the registered operator (for the purposes of the *Vehicle and Traffic Act 1999* (Tas)) of the Approved Vehicle; or
- (b) the Approved Vehicle:
 - (i) ceases to satisfy the minimum standards referred to in clause 9.4; or
 - (ii) is irretrievably lost, stolen, destroyed or damaged beyond economic repair.

10.7 Replacement of Approved Vehicle

Subject to and in accordance with this clause 10, the Operator must replace an Approved Vehicle if:

- (a) that vehicle:
 - (i) ceases to be an Approved Vehicle; or
 - (ii) is irretrievably lost, stolen, destroyed or damaged beyond economic repair; and
- (b) a replacement vehicle is necessary to operate the Passenger Service.

10.8 Crown's right to remove Approved Vehicles – termination or novation of Contract

- (a) This clause 10.8 applies if the Passenger Service Table specifies more than one Passenger Service.

- (b) If:
 - (i) a Contract is terminated, or novated in accordance with clause 25.2, in relation to Passenger Service; and
 - (ii) the Operator continues to hold other Contracts which continue in force, the Crown may, after consulting with the Operator, amend the Contract Vehicle Table to remove any one or more Approved Vehicles which the Crown considers that the Operator does not require in order to provide the Passenger Services which are the subject of the other Contracts which continue in force.
- (c) A decision by the Crown to amend the Contract Vehicle Table pursuant to clause 10.8(b) is:
 - (i) not a variation for the purposes of clause 21; and
 - (ii) final and binding on the Operator.

11 Contract Vehicle Table

- (a) The Crown is to maintain an up-to-date version of the Contract Vehicle Table showing:
 - (i) the Approved Vehicles that must be used for the Contract (including relevant vehicle details, such as model type, Bus Age, Bus Size and registration number);
 - (ii) any additional terms and conditions that apply to an Approved Vehicle (pursuant to clause 10.4); and
 - (iii) the Annual Capital Allowance payable in respect of each Approved Vehicle.
- (b) Except in the case of manifest error, the up-to-date version of the Contract Vehicle Table, as maintained by the Crown, is prima facie evidence as to matters specified in the table.
- (c) If, for the purposes of this clause 11, the Crown makes any changes to the Contract Vehicle Table, the Crown must give a copy of the up-to-date table to the Operator as soon as practicable following the making of the change.

12 Ticketing systems

12.1 Approved Ticketing System

- (a) The Operator must:
 - (i) supply, install (or permit the Crown to install or arrange the installation of), and maintain and use, an Approved Ticketing System for each Passenger Service in respect of which the Operator is required to collect fares in accordance with the Contract;
 - (ii) not modify an Approved Ticketing System, except in accordance with any directions, in writing, given by the Crown; and

- (iii) comply with any directions given by the Crown under this clause 12.1.
- (b) The Crown may issue written directions to the Operator in relation to the supply, installation, maintenance, use, testing, modification and/or audit of an Approved Ticketing System on, or in relation to, an Approved Vehicle, or an Alternative Vehicle, that is used to operate the Passenger Service.
- (c) The Crown may by notice, in writing, to the Operator direct the Operator to do any of the following:
 - (i) to stop using an Approved Ticketing System;
 - (ii) to stop using a ticketing system that is not an Approved Ticketing System;
 - (iii) to replace an Approved Ticketing System, or replace a ticketing system that is not an Approved Ticketing System, with an Approved Ticketing System.

An Approved Ticketing System which the Crown directs the Operator to stop using ceases to be an Approved Ticketing System on and from the date specified in the notice that contains that direction (and, if no date is specified, then the date of the notice).

- (d) A direction given by the Crown to the Operator pursuant to this clause 12.1 will be taken to be a Directed Service Variation Notice for the purposes of clause 21.1.

12.2 Operation of ticketing system if no Approved Ticketing System

- (a) This clause 12.2 applies if the Operator is required to charge fares, in relation to a Passenger Service, and there is no Approved Ticketing System for that Passenger Service.
- (b) The Operator must supply and operate a ticketing system for the Passenger Service, and comply with any directions, in writing, given by the Crown in relation to the use of the system and the issuing of tickets. A direction by the Crown made under this clause 12.2(b) does not constitute approval of the Operator's ticketing system as an Approved Ticketing System. However, if, and only to the extent that, compliance with any such direction will increase the Operator's costs of operating the Passenger Service, the Crown must give a Directed Service Variation Notice in accordance with clause 21.1 in respect of that direction.
- (c) Subject to any directions, in writing, given by the Crown, the ticketing system must, at a minimum, include the following features:
 - (i) provide for a separate ticket to be issued to each passenger who is required to purchase a fare for a Trip in accordance with the Fare Structure;
 - (ii) allow for multi-trips in accordance with the Fare Structure; and
 - (iii) allow for the following information to be collated and verified in relation to each day:
 - (A) the total tickets issued for each day;
 - (B) the amount paid for each ticket; and
 - (C) each category and each type of ticket issued.

Part 4: Financial matters (including payments to Operator)

13 Charging of passenger fares

13.1 Services in respect of which Operator must charge fares

- (a) If Column 7 of the row in the Passenger Service Table states 'Yes' in relation to the Passenger Service to which that row relates, the Operator must charge and collect fares from, or in respect of, passengers for the use of the service in accordance with the Fare Structure, the Approved Timetable and the Approved Route. An Approved Timetable for a Passenger Service may specify that fares are not chargeable in respect of passengers picked up, or to be set down at, certain designated bus stops on the Approved Route.
- (b) The Crown may, from time to time, by notice, in writing, to the Operator amend or replace the Fare Structure. Any such amendment to, or replacement of, the Fare Structure takes effect on the date set out in the Crown's notice (being a date not earlier than two months after the date of the Crown's notice).

13.2 Services in respect of which Operator must not charge fares

If Column 7 of the row in the Passenger Service Table states 'No' in relation to the Passenger Service to which that row relates, the Operator must not charge and collect fares from, or in respect of, passengers for the use of the service.

13.3 Application of passenger fare revenue

- (a) Subject to clause 16.2, the Operator is entitled to retain the fares collected by the Operator in respect of a Passenger Service for which the Operator is required to collect fares in accordance with the Contract.
- (b) The Operator must comply with any written instructions issued by the Crown relating to the receipt, handling, recording, and banking, of fares charged and collected in respect of a Passenger Service (for the purposes of enabling the Crown to verify the fares charged and collected by the Operator).

14 Service and business payments (including Annual Service Fee)

14.1 Annual Service Fee

- (a) Subject to this clause 14 and clause 16.2, the Crown must pay to the Operator during the Term applicable to a Contract for a Passenger Service, an Annual Service Fee, for that Contract, calculated in accordance with the Bus Contract Payment Model.
- (b) Column 9 of the row in the Passenger Service Table that relates to a Passenger Service states the Crown's calculation of the amount of the Annual Service Fee, for that service, as at the calculation date shown in that column.

14.2 Annual Service Fee to be paid by instalments

- (a) Subject to clauses 14.2(b), 14.3, 14.4 and 14.7, the Annual Service Fee, for a Passenger Service, is payable by equal monthly instalments (equivalent to one-twelfth of the Annual Service Fee), in arrears, in respect of each Named Month, on the Payment Date applicable to that instalment.

- (b) The Operator is not entitled to payment of a monthly instalment of the Annual Service Fee, in respect of a Passenger Service, until the Operator has delivered to the Crown, in accordance with clause 19.2, the applicable Monthly Service Report for the month to which the instalment relates.
- (c) For the avoidance of doubt, nothing in clause 14.2(b) requires the payment of an instalment of Annual Service Fee before the Payment Date applicable to that instalment.

14.3 Adjustment of Annual Service Fee and Performance Standards

- (a) This clause 14.3 has been agreed having regard to the following matters:
 - (i) Section 49(3)(a) of the Act which provides that a passenger service contract may set performance standards and provide for sanctions (which may include early termination) if these are not met.
 - (ii) Schedule 1 includes Performance Standards which, pursuant to clause 3.3, the Operator must comply with.
 - (iii) The Crown and the Operator have agreed that an appropriate sanction for not meeting the Performance Standards includes for the Annual Service Fee to be reduced in the manner provided in this clause 14.3.
- (b) On the basis of the matters set out in clause 14.3(a), but subject to clause 14.3(d), if any Demerit Points are, or Demerit Point is, allocated to the Contract in respect of a Named Month in accordance with clause 7.1, the monthly instalment of the Annual Service Fee already paid, or that would otherwise be payable, under the Contract for that Named Month is to be reduced by the lesser of the following amounts:
 - (i) the amount determined in accordance with the following formula:

$$A = (B \div 5 \div P) \times C$$

where:

A is the amount to be deducted from the Annual Service Fee for that Named Month;

B is the Operator's Margin, for the Named Month, included in the Annual Service Fee that would otherwise be payable, under the Contract for that Named Month, but for this clause 14.3;

P is the number of Approved Vehicles required to operate the Passenger Service as set out in Column 8 of the row of the Passenger Service Table applicable to the Contract (but excluding any number of the Approved Vehicles that are designated, in Column 8, as 'Rotational Approved Vehicles'); and

C is the number of Demerit Points allocated to the Contract in respect of that Named Month;

- (ii) the Operator's Margin, for the Named Month, included in the Annual Service Fee already paid, or that would otherwise be payable, under the Contract for that Named Month, but for this clause 14.3.

- (c) For the avoidance of doubt, if the instalment of the Annual Service Fee, in respect of which the reduction is to be applied in accordance with this clause 14.3, has already been paid to the Operator before the reduction is applied:
 - (i) the Operator must pay the amount of the reduction to the Crown not later than 10 Business Days after the Crown demands that payment by the Operator; or
 - (ii) the Crown may deduct the amount of the reduction from any later instalment of the Annual Service Fee.
- (d) The Annual Service Fee is not to be reduced, in accordance with this clause 14.3, to the extent that an individual breach of a Performance Standard is taken into account in calculating a reduction in the Annual Service Fee in accordance with clause 14.7.

14.4 Broken periods – Contract for General Access Service

- (a) If:
 - (i) the Term for a Passenger Service commences on a date which is not the first day of a Named Month; or
 - (ii) the Term for a Passenger Service ends on a date which is not the last day of a Named Month,

and the Passenger Service is a General Access Service, then in each case, but subject to clauses 14.3 and 14.7, for that part of the Named Month that is part of the Term, the instalment of the Annual Service Fee payable by the Crown to the Operator, for that Passenger Service, will be calculated as the Annual Service Fee (applicable to the service) for the Adjacent Named Month multiplied by the fraction which is the number of Trips completed by the Operator during that part of the Named Month divided by the total number of Trips for the Adjacent Named Month.
- (b) In clause 14.4(a) **Adjacent Named Month** means:
 - (i) in the case of clause 14.4(a)(i), the next whole Named Month immediately after the date the Term commenced; and
 - (ii) in the case of clause 14.4(a)(ii), the whole Named Month that immediately preceded the date the Term ended.

14.5 Broken periods – Contract for School Bus Service

- If:
 - (a) the Term for a Passenger Service commences on a date which is not the first day of a Named Month; or
 - (b) the Term for a Passenger Service ends on a date which is not the last day of a Named Month,

and the Passenger Service is a School Bus Service, then in each case, but subject to clauses 14.3 and 14.7, for that part of the Named Month that is part of the Term, the instalment of the Annual Service Fee payable by the Crown to the Operator, for that Passenger Service, will be calculated as the Annual Service Fee (applicable to the service) multiplied by the fraction which is the number of days of the Term occurring during that Named Month divided by 365.

14.6 Adjustment of Annual Service Fee

The Annual Service Fee for a Passenger Service is subject to adjustment, during the Term, in accordance with the Bus Contract Payment Model.

14.7 Reduction in Annual Service Fee if service not operated

- (a) The Annual Service Fee for a Passenger Service has been agreed and/or determined on the basis that the Operator will provide all of the Trips required by the Approved Timetable in accordance with the Approved Route.
- (b) Without limiting any other Rights of the Crown, if a Timetable Non-compliance Event occurs, in relation to a Passenger Service, the instalment of the Annual Service Fee for that Passenger Service, already paid, or that would otherwise be payable, for the Named Month during which that event occurs, is to be reduced by the Specified Amount.
- (c) If the instalment of the Annual Service Fee, in respect of which the reduction is to be applied in accordance with this clause 14.7, has already been paid to the Operator:
 - (i) the Operator must pay the Specified Amount to the Crown not later than 10 Business Days after the Crown demands that payment by the Operator; or
 - (ii) the Crown may deduct the Specified Amount from any later instalment of the Annual Service Fee.
- (d) Clause 14.7(b) does not apply to the extent that the cause of a Timetable Non-Compliance Event is due to a Force Majeure Event.
- (e) In this clause 14.7:

Specified Amount means the amount determined in accordance with the formula:

$$SA = (A \div B) \times C$$

where:

SA is the Specified Amount to be determined in relation to the Named Month during which the Timetable Non-compliance Event occurred.

A is the Marginal Operating Costs per annum for the Passenger Service.

B is the annual total distance of all loaded and unloaded kilometres used to calculate the Annual Service Fee for the Passenger Service.

C is, in relation to a Named Month, the total distance in kilometres (including unloaded kilometres) of all Trips which the Operator:

- (i) cancelled or otherwise did not provide as required by the Approved Timetable for the Passenger Service; or
- (ii) did not complete in accordance with the Approved Route for the Passenger Service, but disregarding any Trip which the Operator did not complete in accordance with the Approved Route because of unsafe road conditions or an emergency (for example, bush fire).

Timetable Non-compliance Event means, in relation to a Passenger Service, the Operator cancelling or otherwise not providing a Trip required by the Approved Timetable for that Passenger Service.

14.8 Performance bonus payments

The Crown must pay to the Operator for so long as the Operator is providing a Passenger Service pursuant to the Contract, any bonus payments (in addition to the Annual Service Fee) calculated and payable in accordance with the Bus Contract Payment Model.

14.9 Other business payments

The Crown must pay to the Operator for so long as the Operator is providing a Passenger Service pursuant to any Contract, payments (in addition to the Annual Service Fee) calculated and required to be paid in accordance with the Bus Contract Payment Model.

15 Annual Capital Allowance payment

15.1 Amount payable and attribution

- (a) Subject to this clause 15 and clause 16.2, during the Term of the Contract, the Crown must pay to the Operator, in respect of an Approved Vehicle, the Annual Capital Allowance (if any) for that vehicle calculated and adjusted (from time to time) in accordance with the Bus Contract Payment Model.
- (b) The Contract Vehicle Table may provide that an Approved Vehicle has a 'nil' Annual Capital Allowance if the Approved Vehicle is an 'Approved Vehicle' pursuant to a contract created by an agreement, between the Crown and the Operator, that is not the Formal Instrument of Agreement.
- (c) If:
 - (i) the Passenger Service Table specifies more than one Passenger Service;
 - (ii) pursuant to the application of clause 1.5, a separate Contract exists in relation to each such Passenger Service; and
 - (iii) an Approved Vehicle can be used on one or more of those Passenger Services,

the Annual Capital Allowance for an Approved Vehicle to be attributed to a Contract (**Specified Contract**) will be that amount which bears the same proportion to the Annual Capital Allowance for that Approved Vehicle which the Annual Service Fee for the Specified Contract bears to the total Annual Service Fees for all Contracts (including the Specified Contract) on which that Approved Vehicle can be used in accordance with those Contracts.

- (d) The Crown's calculation of the attribution, between Contracts, of the Annual Capital Allowance for an Approved Vehicle, will be conclusive and binding except in the case of manifest error.

15.2 Annual Capital Allowance to be paid by instalments

- (a) Subject to clause 15.3, the Annual Capital Allowance for an Approved Vehicle, is payable by equal monthly instalments (equivalent to one-twelfth of the Annual Capital Allowance), in arrears, in respect of each Named Month, on the Payment Date applicable to the instalment of the Annual Service Fee for that Named Month.
- (b) The Operator is not entitled to payment of a monthly instalment of the Annual Capital Allowance for an Approved Vehicle until the Operator has delivered to the Crown, in accordance with clause 19.2, all Monthly Service Reports for the month to which the instalment relates.

15.3 Broken periods

If:

- (a) the Term for a Passenger Service commences on a date which is not the first day of a Named Month; or
- (b) the Term for a Passenger Service ends on a date which is not the last day of a Named Month,

then in each case, for that part of the Named Month that is part of the Term, the instalment of the Annual Capital Allowance attributed to the Contract for that Passenger Service will be calculated as the Annual Capital Allowance (attributed to the Contract for that service) multiplied by the fraction which is the number of days of the Term occurring during that Named Month divided by 365.

15.4 Annual Capital Allowances – exceptions to payment

- (a) If an Approved Vehicle ceases to be an Approved Vehicle for the purposes of the Contract (including pursuant to the operation of clause 10.6), no Annual Capital Allowance is payable by the Crown in respect of that vehicle from the date on which it ceases to be an Approved Vehicle.
- (b) The Crown is not required to pay an Annual Capital Allowance in respect of an Approved Vehicle if the Crown is required to pay an annual capital allowance for that vehicle pursuant to another contract made, between the Crown and the Operator, by a different agreement to the Formal Instrument of Agreement.
- (c) The Crown is not required to pay an Annual Capital Allowance for an additional vehicle that becomes an Approved Vehicle unless:
 - (i) the Crown is satisfied that:
 - (A) the additional vehicle is required solely because of an increase in passenger demand on the Passenger Service; and
 - (B) the Operator does not have access to another vehicle, in respect of which it is receiving an Annual Capital Allowance from the Crown, to operate the Passenger Service so as to meet the increase in demand; and
 - (ii) the Crown agrees, in writing, to pay that allowance.

16 Payments

16.1 Method

- (a) The Operator must:
 - (i) during the Term maintain a bank account with a bank;
 - (ii) notify the Crown, in writing, as to the details of the Operator's bank account not later than 10 Business Days after the date of the Contract; and
 - (iii) give the Crown at least 10 Business Days' notice in writing of any change to the details for the Operator's bank account.
- (b) The bank account must be held at a bank branch within Australia, and be capable of receiving direct deposits from any person using 'electronic banking'.
- (c) The Crown may pay, by direct deposit, amounts payable by it to the Operator under the Contract to the bank account notified by the Operator to the Crown.
- (d) In this clause 16.1, **bank** means an authorised deposit-taking institution that is authorised under a law of the Commonwealth to carry on banking business and to call itself a 'bank'.

16.2 Reduction of Contract Amounts to take account of passenger fares collected by Operator

- (a) **Fare paying School Bus Service:** If the row in Column 7 of the Passenger Service Table states 'Yes' in relation to the Passenger Service to which that row relates, and the Passenger Service is a School Bus Service:
 - (i) subject to clause 16.2(a)(ii), the total of the Contract Amounts for that Passenger Service, for each Named Month, will be reduced by that amount which is equivalent to 80% of the fares (excluding GST) collected, or which ought to have been collected, by the Operator in respect of the service for that Named Month; and
 - (ii) if the amount which is 80% of the fares (excluding GST) collected, or which ought to have been collected, by the Operator in respect of the service for a Named Month exceeds 125% of the Contract Amounts for that Named Month:
 - (A) the Contract Amounts for that Named Month are reduced to zero; and
 - (B) any fares (excluding GST) in excess of 125% of Contract Amounts will be taken to be received by the Operator in the next Named Month for the purposes of this clause 16.2.
- (b) **General Access Service:** If the row in Column 7 of the Passenger Service Table states 'Yes' in relation to the Passenger Service to which that row relates, and the Passenger Service is a General Access Service:
 - (i) the total of the Contract Amounts for that Passenger Service, for each Named Month, will be reduced by that amount which is equivalent to 98.5% of the fares (excluding GST) collected, or which ought to have been collected, by the Operator in respect of the service for that Named Month; and

- (ii) if the amount which is 98.5% of the fares (excluding GST) collected, or which ought to have been collected, by the Operator in respect of the service for a Named Month exceeds the 101.52% of the Contract Amounts for that Named Month:
 - (A) the Contract Amounts for that Named Month are reduced to zero; and
 - (B) any fares (excluding GST) in excess of 101.52% of Contract Amounts will be taken to be received by the Operator in the next Named Month for the purposes of this clause 16.2.

(c) **Interpretation:**

- (i) For the purposes of this clause 16.2:
 - (A) except in the case of fraud, mistake or manifest error, the amount of fares collected, or which ought to have been collected by an Operator, is to be calculated by the Crown based on the number of passengers carried on the Passenger Service in respect of each fare category, and each fare zone, applicable to the Passenger Service (reckoned in accordance with the Fare Structure, the Approved Timetable and the Approved Route), as reported by the Operator to the Crown in accordance with clause 19.2(e)(iv);
 - (B) a fare which a passenger has refused to pay, and which the driver has made no reasonable attempt to collect from the passenger, is a fare which ought to have been collected by the Operator; and
 - (C) a prepaid fare in respect of a Passenger Service (being a fare paid in advance of the travel) is to be accounted for by the Operator in the Named Month that the prepaid fare is used for travel on the Passenger Service.
- (ii) To avoid doubt, a reference in this clause 16.2 to the Contract Amounts for Named Month refers to the Contract Amounts payable for that Named Month net of any reduction pursuant to another provision of the Contract.
- (iii) Nothing in this clause 16.2 affects the operation of clause 16.3.

16.3 Recoupment of amounts paid by mistake etc.

- (a) If, for any reason (including due to a mistake, an administrative error, mathematical error or fraud), the Crown pays any amount (the **Specified Amount**) to the Operator to which the Operator was not legally entitled to be paid in accordance with the Contract, the Crown may demand by notice, in writing, to the Operator that the Operator repays the Specified Amount to the Crown:
 - (i) in the case where the Specified Amount was paid by the Crown as a result of the Operator's fraud, the next Business Day after date of the notice;
 - (ii) in the case where sub-paragraph (i) does not apply and the Specified Amount does not exceed 10% of the Contract Amounts for the Named Month (at the time when the Crown makes demand), within 20 Business Days of that demand;
 - (iii) if sub-paragraphs (i) and (ii) do not apply, then as follows:

- (A) by equal monthly instalments of 10% of the Contract Amounts (for the Named Month at the time when the Crown makes demand) until the Specified Amount is repaid in full (with the last instalment being any residual part of the Specified Amount outstanding, if any, that is less than 10% of the Contract Amounts (for the Named Month at the time when the Crown makes demand)), and with the first such instalment to be paid on the date 20 Business Days after that demand, and monthly thereafter; and
 - (B) if pursuant to sub-paragraph (iii)(A) the Specified Amount would not be repaid prior to the expiry of the Term, the monthly instalments (for the purposes of sub-paragraph (iii)(A)) must be increased to the amount necessary to fully repay the Specified Amount before that expiry (with such instalments being equal or nearly equal as may be).
- (b) The Operator must comply with any such demand.
 - (c) If the Operator fails to comply with a demand to repay a Specified Amount, the Crown may set-off the Specified Amount against any amounts otherwise payable by the Crown to the Operator.

16.4 Underpayment

If, for any reason (including due to a mistake, an administrative error, or mathematical error), the Crown fails to pay any amount to the Operator, to which the Operator was legally entitled, the Crown must pay that amount to the Operator as soon as practicable after the Crown becomes aware of the circumstances.

17 GST

- (a) The Operator must be registered for GST.
- (b) Unless otherwise stated in the Contract, all amounts payable by one party to another party are exclusive of GST.
- (c) If GST is imposed or payable on any supply made by a party under the Contract, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- (d) Subject to clause 17(e):
 - (i) a party that makes a taxable supply under the Contract must provide a valid tax invoice to the recipient of the supply; and
 - (ii) a party's right to payment under this clause 17(c) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- (e) The Crown may create, and issue to the Operator, a recipient created tax invoice in respect of the supply of the Passenger Service by the Operator. If the Crown issues a recipient created tax invoice for the supply of a Passenger Service:

- (i) it must give a copy of the recipient created tax invoice to the Operator; and
 - (ii) the Operator must not issue a tax invoice in respect of that supply.
- (f) If the consideration for a supply under the Contract is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (g) Where any amount payable under the Contract is paid by being set off against another amount, each amount must be calculated in accordance with this clause 17 as if it were an actual payment made pursuant to the Contract.
- (h) Unless the context otherwise requires, expressions used in this clause 17 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

Part 5: Record keeping, reporting and video footage

18 Record keeping

18.1 Passenger fare revenue records

The Operator must, in relation to each Passenger Service in respect of which the Operator is required, in accordance with the Contract, to charge and collect fares:

- (a) keep and maintain true and complete accounting records showing for each Named Month during the Term:
 - (i) the total number of tickets issued in respect of the Passenger Service (broken down by days, number of tickets issued, ticket value, ticket type and ticket category);
 - (ii) the total amount of fares received by the Operator for the Named Month;
 - (iii) the total amount of fares banked by the Operator for the Named Month; and
 - (iv) a record of unpaid fares that includes:
 - (A) the number of passengers that did not pay a fare or the correct fare; and
 - (B) the Operator's efforts to collect unpaid fares;
- (b) keep those records for at least five years after the last date to which those records relate; and
- (c) permit the Crown, on reasonable notice, to inspect, take copies of, and audit, those records.

18.2 Operational records

The Operator must:

- (a) in relation to each Passenger Service, keep and maintain true and complete records, in a form acceptable to the Crown, showing for each Named Month during the Term:
 - (i) each Trip that is cancelled, or not completed, in accordance with the Approved Timetable, and the reasons for that occurrence;
 - (ii) each Trip that is not completed in accordance with the Approved Route, and the reasons for that occurrence;
 - (iii) disregarding frivolous or vexatious complaints, passenger complaints received by the Operator including:
 - (A) the date on which the complaint was received during the Named Month;
 - (B) the nature of the complaint; and
 - (C) the category of the complaint (using the categories set out in clause 19.2(e)(iii));
 - (iv) disregarding frivolous or vexatious complaints, complaints that are resolved during a Named Month and the actions taken by the Operator to respond and/or resolve complaints that were outstanding from a previous Named Month;
 - (v) any act or omission of the Operator, or any of the Operator's Personnel, in connection with the Passenger Service or the Contract which constitutes:
 - (A) a breach of any applicable Law; or
 - (B) a breach of the Contract (including a breach of a Performance Standard);
 - (vi) any motor vehicle accident involving an Approved Vehicle, or an Alternative Vehicle, that occurs during a Trip;
 - (vii) any injury to, or the death of, any person (including a passenger or any Operator's Personnel) arising out of the operation or use of the Passenger Service;
 - (viii) passenger behaviour management activities (including warning letters, suspensions and reports to schools); and
 - (ix) such other information and details as the Crown reasonably requires (including passenger boarding and numbers);
- (b) keep those records for at least five years after the last date to which those records relate;
- (c) provide copies of those records to the Crown upon being requested, in writing, to do so by the Crown; and
- (d) permit the Crown, on reasonable notice, to inspect, take copies of, and audit, those records.

18.3 Operator's business records

- (a) The Operator must:

- (i) keep and maintain proper business records sufficient to enable the Crown to verify the Operator's compliance with the Contract and/or that the Contract Amounts have been correctly calculated and paid to the Operator (the **Business Records**);
- (ii) keep the Business Records for at least five years after the last date to which those records relate; and
- (iii) subject to clause 31.4, for the purposes of the Contract:
 - (A) provide copies of the Business Records to the Crown upon being requested, in writing, to do so by the Crown; and
 - (B) permit the Crown, on reasonable notice, to inspect and take copies of the Business Records.
- (b) To avoid doubt, clause 18.3(a) applies even if the Business Records have been combined, by the Operator, with other business records of the Operator.

19 Reporting

19.1 Notices by Operator to Crown

- (a) Subject to clause 19.1(b), the Operator must give notice, in writing, to the Crown in respect of each of the following:
 - (i) any accident or incident involving an Approved Vehicle or an Alternative Vehicle, when being used to conduct a Passenger Service, being an accident or incident involving the death of, or a serious injury to, any person;
 - (ii) any serious injury to, or death of, any passenger, or any Operator's Personnel, in the provision of a Passenger Service which is reported to the Operator;
 - (iii) any substantial litigation commenced against the Operator:
 - (A) which may have a material effect on the ability of the Operator to perform its obligations under the Contract; or
 - (B) related to the Operator's conduct of the Passenger Service;
 - (iv) any breach of the Law by the Operator, in connection with the operation of the Passenger Service, being a breach known by the Operator;
 - (v) any failure to operate, or complete a Trip, that is required to be operated in accordance with an Approved Timetable or the Approved Route;
 - (vi) the expiry, cancellation, revocation, termination or suspension of an Authorisation or Accreditation or the occurrence of any circumstances, events, matters or things which would justify the cancellation, revocation, termination or suspension of any Authorisation or Accreditation;
 - (vii) for a School Bus Service:

- (A) each time (the **Relevant Time**) when the Operator has a reasonable expectation that a vehicle to be used to provide any Trip for that service may exceed its operational capacity; and
- (B) each occasion where, in respect of any three consecutive Trips for that service, the vehicle(s) used to operate those Trips reach 90% of their operational capacity, or 100% of their seating capacity for the purposes of the *Passenger Transport Services Regulations 2013* (Tas).

The Operator does not have to give a notice under clause 19.1(a)(vii)(A) if the Operator has given a notice under that clause within the period of 20 Business Days preceding the Relevant Time.

For the purposes of clause 19.1(a)(vii)(B) above, three Trips will be taken to be consecutive where the Approved Timetable provides for each Trip to be operated at the same time on:

- (A) three or more consecutive days; or
 - (B) three or more consecutive Business Days.
- (b) A notice under clause 19.1(a) must be given by the Operator to the Crown not later than 12 noon on the next Business Day after the occurrence of the event, circumstance, matter or thing which requires the giving of a notice.
 - (c) In addition to giving notice in accordance with clause 19.1(b), the Operator must, as soon as practicable inform the Crown's Contact Officer of the occurrence of an event, circumstance, matter or thing referred to in clause 19.1(a):
 - (i) which materially affects, or is likely to materially affect, the immediate ability of the Operator to perform its obligations under the Contract; or
 - (ii) which involves the death of, or serious injury to, any person.
 - (d) For the purposes of this clause 19.1, '**serious injury**' means an injury to a person which results in that person being taken away in an ambulance, operated by an ambulance service, from the scene of the accident or incident that caused the injury.

19.2 Monthly Service Report

- (a) The Operator must, in relation to each Passenger Service, give to the Crown not later than five Business Days after the end of each Named Month during the Term a service report for that month (**Monthly Service Report**).
- (b) The Monthly Service Report in relation to a Passenger Service must be in a form and substance as directed by the Crown. Without limitation, the Monthly Service Report may require the Operator to provide information to the Crown related to the performance of the Contract by the Operator. A direction given by the Crown to the Operator pursuant to this clause 19.2(b) will be taken to be a Directed Service Variation Notice for the purposes of clause 21.1.
- (c) The Crown must give the Operator not less than three months' notice, in writing, of any material change to the form of the Monthly Service Report required by the Crown.

- (d) Without limiting clause 19.2(b), if directed by the Crown, a Monthly Service Report for a Named Month must be lodged electronically with the Department, in accordance with any directions given by the Crown.
- (e) Until otherwise directed by the Crown in accordance with clause 19.2(b), a Monthly Service Report must include the following details and information for the Named Month to which the report relates:
 - (i) each Timetable Non-compliance Event, for the purposes of clause 14.7, occurring during the Named Month, including the reasons for that event;
 - (ii) each failure by the Operator to meet a Performance Standard during the Named Month;
 - (iii) except for frivolous or vexatious complaints, the number of complaints, in relation to the Passenger Service, received by the Operator during the Named Month broken down into the following categories:
 - (A) customer service (including the behaviour of the Operator, the behaviour of the Operator's Personnel or the condition of a vehicle);
 - (B) late running, or non-operation, of a Trip;
 - (C) dissatisfaction with the Passenger Service which the Operator is required to deliver in accordance with the Contract;
 - (D) any other complaints;
 - (iv) if the row in Column 7 of the Passenger Service Table states 'Yes' in relation to the Passenger Service to which that row relates:
 - (A) to the extent ascertainable, the number of passengers using the Passenger Service who, during the Named Month, did not pay a fare in accordance with the Fare Structure; and
 - (B) the number of passengers carried on the Passenger Service for the Named Month in respect of each fare category, each fare type, and each fare zone, applicable to the Passenger Service (reckoned in accordance with the Fare Structure, the Approved Timetable and the Approved Route);
 - (v) a list of vehicle registration numbers for all vehicles (other than Approved Vehicles) used in the operation of the Passenger Service during the Named Month;
 - (vi) if, in respect of any Named Month, an Approved Vehicle could not be used on the Passenger Service for more than five consecutive days in accordance with the Approved Timetable, a brief description of when, and the reasons why, the Approved Vehicle could not be used.

19.3 Licence

The Operator gives to the Crown an irrevocable, non-exclusive, world-wide, perpetual and royalty-free licence (including the right to grant sub-licences) to use, reproduce, modify and adapt the whole or any part of any report or document given by the Operator to the Crown pursuant to the Contract (but, in the case of a document that is not a report to be provided by the Operator in accordance with the Contract, only to the extent that

the document relates to the Passenger Service or the obligations of the Operator under the Contract). The Operator must ensure that it obtains from any third person, holding moral rights (within the meaning of the *Copyright Act 1968* (Cwlth)) in any such report or document, consent to any infringement of their moral rights by the Crown.

20 Collection and use of video footage in respect of Trips

20.1 Application

This clause 20 applies if the Approved Monitoring Equipment for an Approved Vehicle, or an Alternative Vehicle, for the purposes of clause 9.5, includes video recording equipment.

20.2 Recording of video footage

- (a) The Operator must, in relation to each Trip, record video footage of the interior of the Approved Vehicle, or Alternative Vehicle, being used to operate that Trip.
- (b) The Approved Monitoring Equipment must be configured so that, in respect of the Trip, the recorded video footage, at a minimum, records:
 - (i) the picking up and setting down of passengers;
 - (ii) any payment made by a passenger to the driver of the Approved Vehicle or Alternative Vehicle (but not necessarily the amount paid); and
 - (iii) the date and time the footage was taken.
- (c) As between the Crown and the Operator, the Approved Monitoring Equipment does not have to be configured so as to allow for the identification of any person or to record the amount paid.

20.3 Retention and supply of video footage

- (a) In this clause 20.3, **Video Retention Period** means, in relation to any recorded video footage taken by the Operator for the purposes of clause 20.2, the period of 45 days commencing on the date the footage was recorded (or any lesser period of days agreed, in writing, by the Crown).
- (b) The Operator must:
 - (i) retain video footage taken by the Operator, in respect of a Trip, for at least the Video Retention Period;
 - (ii) subject to clause 20.3(b)(i), maintain a system that allows for the retrieval of video footage taken by the Operator in respect of a particular Trip; and
 - (iii) subject to clause 20.3(c), in accordance with any notice, in writing, issued by the Crown to the Operator, supply to the Department video footage recorded in relation to the operation of a Trip in accordance with this clause 20.
- (c) The Operator is not required to supply video footage for a Trip, in response to a notice given by the Crown pursuant to clause 20.3(b)(iii), if the Video Retention Period applicable to that footage has expired and the video footage was erased or deleted before the Operator received the notice.

- (d) A notice given by the Crown for the purpose of clause 20.3(b)(iii) must allow the Operator at least five Business Days to supply the video footage referred to in the notice.
- (e) The Crown may issue reasonable directions, in writing, to the Operator in relation to the format and delivery of video footage which the Operator is required to supply to the Department in accordance with this clause 20.3.
- (f) A direction for the purposes of clause 20.3(e) may require the Operator to only supply video footage to the Department that has been edited, by the Operator (or a person acting on behalf of the Operator), using software, supplied or otherwise approved by the Department, which automatically scrambles or blurs facial information in a way that prevents a person being identified from the video footage. The Crown must pay the Operator's reasonable costs to edit video footage, to scramble or blur facial information, being video footage which is to be supplied to the Crown in response to a notice given by the Crown for the purpose of clause 20.3(b)(iii).
- (g) The Crown must acknowledge by notice, in writing, to the Operator the receipt by the Crown of video footage supplied by the Operator to the Crown in response to a notice given by the Crown for the purpose of clause 20.3(b)(iii). The acknowledgement must be given not later than three Business Days after the video footage was supplied to the Crown.
- (h) The Operator must comply with any such directions.

20.4 *Personal Information Protection Act 2004 (Tas)*

The parties agree that:

- (a) the collection of video footage by the Operator, in accordance with clause 20.2, may constitute the collection of personal information for the purposes of *Personal Information Protection Act 2004 (Tas)* (the **PIP Act**) to the extent that the video footage contains footage of an individual, the identity of whom is reasonably capable of being ascertained from that footage; and
- (b) to the extent that any thing in this clause 20 requires the Operator to collect and disclose to the Department personal information, for the purposes of the PIP Act:
 - (i) the Contract is a personal information contract for the purposes of the PIP Act;
 - (ii) the Operator is a personal information custodian for the purposes of the PIP Act in respect of that information;
 - (iii) the Operator is only required to supply video footage if, and to the extent that, the supply of the video footage to the Department:
 - (A) does not contravene the PIP Act; or
 - (B) falls within an exemption granted, and which continues in force, under section 14 of the PIP Act; and
 - (iv) subject to any exemption granted, and which continues in force, under section 14 of the PIP Act, the Crown must ensure that the Department complies with the PIP Act in relation to any use of any personal information supplied by the Operator to the Department pursuant to this clause 20.

20.5 Notice as to recording of video footage

The Operator must ensure that each Approved Vehicle and each Alternative Vehicle displays a notice, in a form and substance acceptable to the Crown (acting reasonably), in relation to the collection, disclosure and use, pursuant to this clause 20, of any personal information recorded using Approved Monitoring Equipment on that Approved Vehicle or Alternative Vehicle.

20.6 Crown indemnity

- (a) Subject to clauses 20.6(b) and 20.6(c), the Crown indemnifies the Operator against any Loss incurred, paid or payable by the Operator in respect of a Privacy Claim, but only to the extent that the Privacy Claim arises out of any breach of an applicable Law by the Crown, or any Crown's Agent, in relation to the use, handling or disclosure by the Crown, or any Crown's Agent, of any video footage supplied by the Operator to the Crown in accordance with this clause 20.
- (b) The Crown's liability to indemnify the Operator in accordance with clause 20.6(a) will be reduced proportionally to the extent that:
 - (i) the Operator failed to take reasonable steps to defend the Privacy Claim;
 - (ii) the Operator failed to take reasonable steps to mitigate any Loss incurred, paid or payable by the Operator in respect of the Privacy Claim;
 - (iii) the Operator's legal liability in respect of the Privacy Claim was voluntarily incurred by the Operator and the Crown did not consent, in writing, to the Operator voluntarily incurring that legal liability;
 - (iv) where the Loss includes legal costs, those legal costs were not reasonable costs; or
 - (v) the Privacy Claim was caused or contributed to by any breach of this clause 20 by the Operator.
- (c) The Crown is not liable, in respect of a Privacy Claim, to indemnify the Operator, in accordance with this clause 20.6, if the Operator did not notify the Crown, in writing, of that Privacy Claim within two months of the Operator first becoming aware of that Privacy Claim.
- (d) In this clause 20.6 **Privacy Claim** means a Claim made by an individual, against the Operator, claiming that the individual's privacy has been infringed contrary to an applicable Law, but does not include a Claim made by:
 - (i) any relative (as defined in section 9 of the Corporations Act) of the Operator; or
 - (ii) if the Operator is a body corporate, any related entity (as defined in section 9 of the Corporations Act) of the Operator.

20.7 Overriding provisions

- (a) Nothing in this clause 20:
 - (i) requires the Operator to do any act, matter or thing that would constitute a breach of any Law (being a breach that cannot be avoided or overcome by doing of any reasonable act, matter or thing that is permitted by a Law); or
 - (ii) limits the operation of clause 9.5.

- (b) Subject to clauses 20.7(c) and 20.7(d), the Operator will not be in breach of this clause 20 if, and to the extent that, acting on written legal advice given by an Australian legal practitioner (for the purposes of the *Legal Profession Act 2007* (Tas)), the Operator reasonably refuses to supply video footage to the Crown on the grounds that to do so would likely involve a breach by the Operator of an applicable Law relating to privacy.
- (c) Clause 20.7(b) does not apply if the Crown has obtained a final declaration from a Court of competent jurisdiction to the effect that:
 - (i) the supply by the Operator to the Crown of video footage in accordance with this clause 20 does not breach an applicable Law relating to privacy; or
 - (ii) the supply by another operator to the Crown of video footage in accordance with a clause, that in all material respects is the same as this clause 20, does not breach an applicable Law relating to privacy.
- (d) If the Crown does not already hold a copy of the written legal advice referred to in clause 20.7(b), then, clause 20.7(b) will not apply unless the Operator has provided, to the Crown, a copy of that written legal advice as soon as practicable following the receipt of that advice by the Operator and, in any event, no later than the date it first seeks to rely on that advice for the purposes of clause 20.7(b).

20.8 Interpretation

In this clause 20, a reference to 'video footage' includes footage recorded by Approved Monitoring Equipment that is a CCTV system.

Part 6: Variations

21 Variations

21.1 Directed service variations in relation to Passenger Service

- (a) The Crown may, in relation to a Passenger Service, by notice, in writing, to the Operator (**Directed Service Variation Notice**) vary the Contract, or otherwise give directions to the Operator, in relation to the following:
 - (i) the Approved Timetable;
 - (ii) the Approved Route;
 - (iii) the Approved Ticketing System;
 - (iv) the Approved Monitoring Equipment;
 - (v) the Fare Structure;
 - (vi) the charging of passenger fares on the Passenger Service;
 - (vii) the passengers, or classes of passengers, who may use a Passenger Service;
 - (viii) for the purposes of clauses 3.5(d)(ii) or 19.2(b);

- (ix) subject to clause 21.1(d), to increase the Bus Size or the minimum operational capacity (required by the Passenger Service Table) of an Approved Vehicle or to increase the number of Approved Vehicles, to accommodate:
 - (A) an increase, or anticipated increase, in passenger demand, as determined by the Crown; or
 - (B) changes to the Approved Timetable or the Approved Route;
- (x) any combination of the above.
- (b) A Directed Service Variation Notice must:
 - (i) be signed by or on behalf of the Crown;
 - (ii) state that it is a 'Directed Service Variation Notice';
 - (iii) give reasonable details of the variation, or any direction, to which the notice relates; and
 - (iv) if applicable, state the Crown's assessment of any increase, or reduction, as the case may be, in the Annual Service Fee.
- (c) The Operator must comply with a Directed Service Variation Notice on and from the date specified in the notice, being:
 - (i) in the case of a variation of the kind referred to in clauses 21.1(a)(i) or 21.1(a)(ii) that is required because of operational necessity arising from a Force Majeure Event, not less than one Business Day after the date of the notice; and
 - (ii) in any other case, a reasonable time after the date of the notice, as determined by the Crown, acting reasonably, but in any event not less than 10 Business Days.
- (d) An Operator of a School Bus Service does not have to comply with a Directed Service Variation Notice that would require the Operator to purchase an additional or replacement vehicle. If the Operator so decides, then, subject to the Act, the Crown may contract another person to provide additional capacity in respect of the Approved Route to which the School Bus Service relates. Nothing in this clause 21.1(d) prevents the Crown and the Operator negotiating any further agreement in relation to the use of an additional or replacement vehicle for a School Bus Service.
- (e) The Crown will use its reasonable endeavours to consult with the Operator about a proposed variation, which is to be the subject of a Directed Service Variation Notice, before the Crown gives such a notice in relation to that proposed variation.

21.2 Other general contract variations

- (a) Nothing in this clause 21.2 affects or limits the operation of clause 21.1.
- (b) The Crown may, by notice, in writing, to the Operator (**Contract Variation Request Notice**), request a variation to the Contract (including a variation as to the Approved Vehicles).
- (c) A Contract Variation Request Notice must:

- (i) be in writing to the Operator;
 - (ii) be signed by the Crown;
 - (iii) contain a clear statement that it is a 'Contract Variation Request Notice'; and
 - (iv) give reasonable details of the proposed amendments to the Contract to give effect to the requested variation.
- (d) If the Crown gives a Contract Variation Request Notice, the Operator must enter into negotiations with the Crown with a view to reaching agreement in relation to the variation, including:
- (i) the period of time which the Operator reasonably requires within which to adjust its procedures and resources to accommodate the proposed variation;
 - (ii) any amendments necessary to the terms of the Contract to give effect to the variation; and
 - (iii) the date on which the proposed variation is to take effect.
- (e) If the parties are unable to reach agreement as to the variation requested in the Contract Variation Request Notice (including agreeing all of the matters referred to in clause 21.2(d) in respect of the proposed variation), the Crown may by notice, in writing, to the Operator:
- (i) withdraw the Contract Variation Request Notice (in which case, the Contract continues in force as if the notice had not been given); or
 - (ii) require the matters in dispute in relation to the variation requested in the Contract Variation Request Notice to be determined in accordance with clauses 32 and 33.

21.3 Variation caused by new Law after date of Contract

If a new Law comes into force after the date of the Contract which:

- (a) is inconsistent with the Contract;
- (b) is mandatory, and not capable of being contracted out of;
- (c) necessitates a material change to the Operator's method of delivering the Passenger Service; and
- (d) increases or reduces the Operator's costs of complying with its obligations under the Contract, and that cost increase, or reduction, as the case may be, is not provided for in the Bus Contract Payment Model,

then the application of the new Law will be taken to be a variation to the Contract, and if the parties are unable to agree on any required changes to the Contract to give effect to the variation, those changes must be determined by an Adjudicator.

21.4 Recording variations

If required by the Crown, the Crown and the Operator must, in respect of a variation made pursuant to this clause 21, enter into an agreement recording that variation to the Contract (including for the purpose of updating or replacing the Passenger Service Table applicable to the Contract). This clause 21.4 does not affect the date on which a variation takes effect in accordance with another provision of the Contract.

21.5 Adjustment of Annual Service Fee for variations

- (a) Subject to this clause 21.5, the Annual Service Fee will be increased, or reduced, to reflect any increase, or reduction, in the Operator's costs attributable to a variation or direction made, or taken to be made, pursuant to this clause 21 (**Adjustment Amount**).
- (b) If and to the extent that an Adjustment Amount can be calculated in accordance with the Bus Contract Payment Model, the amount must be calculated in accordance with that model.
- (c) If, and to the extent that:
 - (i) an Adjustment Amount cannot be calculated in accordance with the Bus Contract Payment Model; and
 - (ii) the variation or direction made, or taken to be made, pursuant to this clause 21 involves a material increase, or a material reduction, in the Operator's costs in respect of the Passenger Service,then:
 - (iii) the Adjustment Amount will be a reasonable amount taking into account the Bus Contract Payment Model; and
 - (iv) the Crown's assessment of the Adjustment Amount, as set out in a Directed Service Variation Notice, will be final and binding on the Operator unless the Operator gives notice (**Dispute Notice**), in writing, to the Crown disputing that assessment within 20 Business Days after the date of the Directed Service Variation Notice.
- (d) If the Operator gives a Dispute Notice, and the Crown and the Operator have not agreed, in writing, the Adjustment Amount within 15 Business Days of the Dispute Notice, the dispute in relation to the Adjustment Amount will be determined in accordance with clauses 32 and 33.

Part 7: Insurance and indemnities

22 Insurance

22.1 Insurance policies

The Operator must throughout the Term effect and maintain policies of insurance (each an **insurance policy**) in respect of the following:

- (a) (**insurance of Operator's property**): insurance against property damage to all of the Operator's property (including Approved Vehicles) for its full insurable value taking into account the age and condition of the property;

- (b) **(insurance for third party property damage related to use of motor vehicles):** insurance, with a limit of at least twenty million dollars (\$20,000,000) (or such higher amount as the Crown reasonably requires from time to time), against third party property damage caused by, or arising out of the use of, any motor vehicle by the Operator (including Approved Vehicles and Alternative Vehicles);
- (c) **(public liability insurance):** public liability insurance, with a limit of at least twenty million dollars (\$20,000,000) (or such higher amount as the Crown reasonably requires from time to time), for each occurrence to cover liability to pay damages for:
 - (i) personal injury to, or the death of any person (excluding a person who at the time of the injury or death is defined as a worker of the insured under any statute relating to workers' or accident compensation insurance); and
 - (ii) loss, destruction or damage to any property,
 which arises out of, or is caused by, the performance of the Contract, and being damages of a kind usually covered by such a policy;
- (d) **(workers compensation insurance):** workers compensation insurance in accordance with the Law;
- (e) **(other insurance):** any other insurance required by Law.

22.2 Insurers and policies

- (a) The Operator must effect each insurance policy referred to in clauses 22.1(a), 22.1(b), 22.1(c) and 22.1(e):
 - (i) if directed by the Crown, on terms and conditions reasonably required by the Crown; and
 - (ii) with an insurer authorised by Law to carry on insurance business in Australia.
- (b) Each insurance policy required by clauses 22.1(b) and 22.1(c) must name the Crown as a principal in respect of the Operator for the purpose of indemnifying the Crown for any vicarious or other legal liability the Crown may have in respect of any injury, death, damage or loss caused by a wilful or negligent act or omission of the Operator or any Operator's Personnel.
- (c) An insurance policy required by a Contract may be combined with an insurance policy required by another Contract.

22.3 Policy documents

The Operator must give to the Crown:

- (a) evidence of the currency of each insurance policy at the time each policy is renewed and at any other time upon demand by the Crown; and
- (b) if requested by the Crown, a copy of each insurance policy and each document issued by an insurer in relation to an insurance policy.

22.4 Protection of insurances

The Operator must:

- (a) immediately notify the Crown in writing of any event (of which the Operator is aware) which gives rise or might give rise to a claim, exceeding \$50,000, under an insurance policy;
- (b) immediately notify the Crown in writing of the cancellation or termination of any insurance policy for any reason, other than by effluxion of time;
- (c) comply with the requirements of each insurance policy; and
- (d) not do any thing which may result in:
 - (i) the Operator losing its right to be indemnified under section 14 of the *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas);
 - (ii) the cancellation of any insurance policy;
 - (iii) the refusal by an insurer to renew any insurance policy; or
 - (iv) the loss of any right to claim under an insurance policy.

22.5 Crown may insure

If the Operator fails to take out, effect or renew an insurance policy which it is required to take out, effect or renew by this clause 22, then, without being obliged to do so, the Crown may:

- (a) take out, effect or renew any such insurance policy that the Operator has not taken out, effected or renewed;
- (b) pay any unpaid premium; and
- (c) recover the cost of doing so from the Operator.

22.6 Operator's obligations are not limited

The Operator's obligations and liabilities under the Contract are not limited because of any thing in this clause 22.

23 Indemnity

23.1 Operator's indemnity

The Operator indemnifies each Indemnified Person against, and must pay to an Indemnified Person on demand by that Indemnified Person, the amount of all Loss incurred, paid or payable by the Indemnified Person in connection with or arising out of any, or any combination, of the following:

- (a) any breach of the Contract by the Operator;
- (b) any breach of a warranty given by the Operator in the Contract;
- (c) any successful Claim against the Crown for:
 - (i) any loss (including economic loss) or damage incurred by any person (including loss or damage arising out of injury, disease or death); or
 - (ii) any loss, destruction or damage to property, caused by or arising out of:

- (A) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Operator or any of the Operator's Personnel; or
- (B) the use, operation or condition of a vehicle used to operate the Passenger Service;
- (d) any successful Claim made against the Crown by any third person on the grounds that the Operator or any of the Operator's Personnel is, or was, acting as a partner, joint venturer, employee, agent or representative of the Crown;
- (e) the termination of the Contract by the Crown pursuant to clause 26.1.

23.2 Indemnity reduction

The liability of the Operator under an indemnity is to be reduced proportionately in respect of any Loss that directly results from:

- (a) a breach of the Contract by the Crown; or
- (b) any unlawful, negligent, fraudulent, reckless or deliberately wrongful, act or omission of the Crown or any of the Crown's employees, authorised contractors or agents.

23.3 Indemnity limitations

Each indemnity:

- (a) is a continuing obligation, separate and independent from the other obligations of the Operator;
- (b) survives the expiration or sooner termination of the Contract; and
- (c) extends to any Loss.

Part 8: Contract extension, contract dealings (including assignment and novation) and termination (including for default)

24 Grant of option to extend Term

- (a) This clause 24 applies if Column 3 of the Passenger Service Table includes an option (each an **Option**) for the extension of the Term of the Contract for the Passenger Service.
- (b) An Option is only exercisable by the Operator subject to, and in accordance with, this clause 24.
- (c) If the Operator wishes to exercise an Option, it must give notice, in writing, to the Crown (**Extension Notice**) stating that the Operator wishes to extend the Term of the Contract in accordance with the Option.
- (d) Subject to the Formal Instrument of Agreement, the Operator cannot give an Extension Notice:
 - (i) earlier than the date which is nine months; or
 - (ii) later than the date which is six months,
 before the date when the Term would expire but for operation of this clause 24.

- (e) If the number of Demerit Points allocated to a Contract reaches, or exceeds, the Threshold Number, the Crown may by notice, in writing, to the Operator **(Rejection Notice)** reject the Extension Notice in relation to that Contract. A Rejection Notice must be given by the Crown to the Operator not later than two months after the Crown's receipt of the Extension Notice. If the Crown gives a Rejection Notice in respect of an Extension Notice, the Extension Notice is taken to be of no effect. For the purposes of this clause 24(e) it does not matter whether the Demerit Points were allocated before or after any novation of the Contract.
- (f) An Extension Notice for a Contract:
 - (i) is of no effect if the Operator was not permitted to give the Extension Notice in accordance with clauses 24(d);
 - (ii) must state that it is an Extension Notice;
 - (iii) must be signed by the Operator; and
 - (iv) subject to clause 24(e), once given is irrevocable, unless the Crown, in writing, otherwise agrees.
- (g) For the avoidance of doubt:
 - (i) if the Formal Instrument of Agreement relates to more than one Contract, the Operator must give an Extension Notice in relation to the Term of each Contract which the Operator wishes to extend, and in respect of which the Operator is entitled to give an Extension Notice;
 - (ii) the exercise of an Option does not create a new contract; and
 - (iii) the Term cannot, as extended, exceed 10 years from the Start Date.

25 Dealings (including assignment)

25.1 Dealing by Operator requires Crown's consent

Subject to clauses 25.2 and 25.3, the Operator must not assign or otherwise Deal with its interest in the Contract without the Crown's prior written consent, which consent may be given (conditionally or unconditionally) or withheld entirely at the Crown's absolute discretion.

25.2 Operator may novate in certain circumstances

The Crown may not unreasonably withhold its consent to a proposed novation of the Contract if:

- (a) the Operator gives to the Crown not less than one month's notice in writing of its wish to novate the Contract;
- (b) the Operator is not at the time of giving that notice:
 - (i) in breach of any of its obligations under the Contract; or
 - (ii) being investigated by the Crown as to whether or not the Operator has breached, or is in breach of, the Contract (being an investigation commenced prior to the Operator requesting the Crown's consent to the proposed novation);

- (c) the Crown is satisfied that the proposed party to which the Contract is to be novated (**Novatee**):
 - (i) is a respectable, responsible and solvent person;
 - (ii) is capable of performing the Operator's obligations under the Contract;
 - (iii) holds all insurances required by the Contract; and
 - (iv) is appropriately Accredited and Authorised;
- (d) in connection with the proposed novation, the Crown and the Operator have agreed, in writing, the Approved Vehicles for the purposes of any Contract that is not being novated and for the purposes of the Contract that is being novated (and, in the absence of such an agreement being made, the Crown may unconditionally refuse its consent to the novation);
- (e) the terms and conditions of the novation are fully disclosed in writing to the Crown and are acceptable to the Crown (acting reasonably);
- (f) the Operator and the Novatee enter into a deed of novation with the Crown (in a form and substance reasonably required by the Crown) pursuant to which the Novatee agrees with the Crown that the Novatee will duly perform and discharge the Operator's obligations under the Contract in respect of any period after the novation;
- (g) the Crown is provided with any guarantee, or guarantee and indemnity, reasonably required by the Crown in respect of the obligations to be assumed by the Novatee;
- (h) the Crown is provided with such financial information and other data (including operational experience) in relation to the Novatee and each prospective guarantor for the Novatee, as the Crown may reasonably require; and
- (i) the Operator pays to the Crown its proper and reasonable expenses, costs and disbursements in respect of the above matters.

25.3 Operator may provide for security in certain circumstances

The Crown may not unreasonably withhold its consent to the Operator giving a Security Interest in relation to the Contract if:

- (a) the Operator gives to the Crown not less than one month's notice, in writing, of its wish to give such a Security Interest;
- (b) the Operator is not at the time of giving that notice:
 - (i) in breach of any of its obligations under the Contract; or
 - (ii) being investigated by the Crown as to whether or not the Operator has breached, or is in breach of, the Contract (being an investigation commenced prior to the Operator requesting the Crown's consent to the giving of the Security Interest);
- (c) the proposed Security Interest would provide the Operator with financial resources to carry out the Operator's obligations under the Contract and would not prevent the Operator's compliance with the Contract;

- (d) the terms and conditions of the Security Interest are fully disclosed in writing to the Crown and are acceptable to the Crown (acting reasonably); and
- (e) the Operator pays to the Crown its proper and reasonable expenses, costs and disbursements in respect of the above matters.

25.4 Crown's notice regarding investigation

- (a) If an investigation referred to clause 25.2(b)(ii) has not been completed by the Crown within one month of the request by the Operator to novate the Contract, the Crown must notify the Operator, in writing, that the Operator is the subject of an investigation and the matters to which the investigation relates.
- (b) If an investigation referred to clause 25.3(b)(ii) has not been completed by the Crown within one month of the request by the Operator to grant a Security Interest, the Crown must notify the Operator, in writing, that the Operator is the subject of an investigation and the matters to which the investigation relates.

25.5 Change of Control

- (a) The Operator must not permit any change in the Control of the Operator or any entity that Controls the Operator, in either case whether by a single transaction or event or a series of transactions or events, without the prior written consent of the Crown, such consent not to be unreasonably withheld.
- (b) The Crown's consent will not be required if the change in Control:
 - (i) occurs by reason of the issue of securities in connection with an offer to the public pursuant to a prospectus or other product disclosure statement lodged with the Australian Securities and Investments Commission and those securities are listed on ASX;
 - (ii) occurs as part of a transaction that forms part of an issue and listing of securities as contemplated by clause 25.5(b)(i); or
 - (iii) occurs by reason of dealings in securities listed on the ASX.
- (c) The Operator must give the Crown notice in writing of any change in Control that occurs for the purposes of clause 25.5(b) not later than five Business Days after the date on which the change in Control occurs.
- (d) In this clause 25.5, **Control** in relation to an entity (as defined in the Corporations Act) includes:
 - (i) if the entity is a corporation:
 - (A) the direct or indirect holding of more than 50% of the issued shares of the corporation; or
 - (B) the possession directly or indirectly of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable Rights) directly or indirectly:
 - I. to control the membership of the board of directors of the corporation; or
 - II. to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at any general meeting of the entity,

- (C) whether by means of trusts, agreements, arrangements, understandings, practices or otherwise;
- (ii) if the entity is a unit trust:
 - (A) the direct or indirect holding of more than 50% of the issued units of the entity; or
 - (B) the possession directly or indirectly of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable Rights) directly or indirectly:
 - I. to control, appoint or change the trustee of the unit trust;
 - II. to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at any general meeting of the unit-holders of the entity;
 - III. to remove or appoint a trustee of the unit trust;
 - IV. to give directions to the trustee of the unit trust;
 - V. to vary the constituent documents for the unit trust; or
 - VI. to wind up the unit trust,
 - (C) whether by means of trusts, agreements, arrangements, understandings, practices or otherwise; and
- (iii) in respect of any entity however constituted or established, the possession directly or indirectly of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable Rights) to directly or indirectly direct or cause the direction of the management and policies of the entity and, without limitation, in the case of the Operator includes the manner in which the Operator performs its obligations, and exercises its Rights, under the Contract, whether in each case by means of trusts, agreements, arrangements, understandings, practices, greater industry experience, the ownership of any equity in that entity or otherwise.

25.6 Interpretation

For the avoidance of doubt, if the Formal Instrument of Agreement includes more than one Passenger Service, this clause 25 operates singly in respect of each separate contract created by clause 1.5.

26 Termination

26.1 Crown's right to terminate for default and other events

The Crown, acting through the Secretary, may terminate the Contract by notice, in writing, to the Operator to that effect:

- (a) **(breach)**: subject to clause 26.3(a), if the Operator:
 - (i) breaches any of its obligations under the Contract and that breach, if it is capable of being remedied, continues for a period of five Business Days after the date on which the Crown serves notice on the Operator specifying the breach; or
 - (ii) commits more than 10 breaches of the Contract in any period of six consecutive months (irrespective of whether the breaches are remedied or capable of being remedied);
- (b) **(allocated Demerit Points reach, or exceed, Threshold Number)**: subject to clause 26.2, if the total number of Demerit Points allocated to the Contract for any breach or breaches of the Performance Standards, occurring during any period not exceeding 36 consecutive Named Months (**Demerit Point Period**), reaches, or exceeds, the Threshold Number applicable to the Contract;
- (c) **(Demerit Points allocated for certain offences by Operator)**: if:
 - (i) 10 Demerit Points are allocated to the Contract by the Crown in connection with:
 - (A) the Operator; or
 - (B) any person who is an Operator by reason of the extended meaning given the expression 'Operator' in Part (A) of Schedule 1, being convicted of an offence referred to in any of rows 9, 10, 13 or 14 of Table 1 in Schedule 1; or
 - (ii) 10 Demerit Points are allocated to the Contract by the Crown in connection with the Operator being convicted of the offence referred to in row 15 of Table 1 in Schedule 1;
- (d) **(Authorised)**: if the Operator does not hold, or ceases to hold, an Authorisation to provide the Passenger Service to which the Contract relates;
- (e) **(Accredited)**: if the Operator's Accreditation is cancelled or suspended;
- (f) **(serious offence)**: if the Operator, or the person responsible (within the meaning of the Act) for the Operator's Accreditation, is convicted of:
 - (i) a serious offence (as defined in the Act);
 - (ii) an offence of kind in another jurisdiction that would constitute a serious offence (as defined in the Act) if committed in Tasmania; or
 - (iii) any offence that is punishable by a term of imprisonment exceeding six months;
- (g) **(repudiation)**: if the Operator repudiates the Contract;
- (h) **(corporate events)**: if the Operator is a corporation:
 - (i) the Operator becomes an externally administered body corporate (as defined in section 9 of the Corporations Act) or a person becomes a controller (as defined in section 9 of the Corporations Act) of any of its property;

- (ii) any steps are taken to pass, or there is passed, a resolution for the winding up or dissolution of the Operator other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Crown; or
 - (iii) an application or order is sought or made in any court for the winding up or dissolution of the Operator other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Crown;
- (i) **(natural person)**: if the Operator is a natural person:
 - (i) **(legal capacity)**: the Operator was not at the time of entering into the Contract, or at any later time ceases to be, of full legal capacity;
 - (ii) **(health)**: the Operator was at the time of entering into the Contract, or at any later time becomes, of unsound mind or subject to any Law relating to mental health; or
 - (iii) **(control of property)**: any mortgagee or receiver takes control of any property of the Operator;
- (j) **(insolvency – general)**: if the Operator:
 - (i) is unable to pay its debts as and when they fall due for payment or determines that it is insolvent or is likely to become insolvent at some future time;
 - (ii) is a natural person, the Operator becomes an insolvent under administration (as defined in section 9 of the Corporations Act) or any action is taken by any person that could result in that event;
 - (iii) is a corporation, it fails to comply with a statutory demand within the meaning of section 459F of the Corporations Act;
 - (iv) convenes a meeting of its creditors or proposes or enters into any scheme of arrangement with its creditors or any of them; or
 - (v) seeks protection from its creditors under any applicable Law;
- (k) **(representation untrue, false or misleading)**: if any representations or warranties given by the Operator to the Crown in connection with the Contract are untrue, false or misleading;
- (l) **(fraud)**: if any act or omission of a Specified Person, in connection with the performance of any Contract, is fraudulent or dishonest;
- (m) **(invalidity)**: if the Contract is or becomes void, voidable, illegal, invalid, unenforceable or of limited or reduced force or effect or is claimed to be so by the Operator;
- (n) **(distress/execution)**: if any distress or execution for an amount exceeding fifty thousand dollars (\$50,000), or its equivalent in another currency, is levied or enforced upon or against any assets of the Operator and that distress or execution is not withdrawn or satisfied within 10 Business Days of its levy or issue;

- (o) **(judgment)**: if a final judgment in an amount exceeding fifty thousand dollars (\$50,000) or its equivalent in another currency is obtained against the Operator and is not satisfied within 15 Business Days of it becoming final;
- (p) **(cease business)**: if the Operator ceases or threatens to cease carrying on business or is otherwise unable to pay its debts as and when they fall due for payment;
- (q) **(business operations)**: if the Operator abandons the Contract; or
- (r) **(trustee)**: if the Operator entered into the Contract in its capacity as trustee of a trust (**Trust**), any of the following occur:
 - (i) **(breach of trustee undertakings)**: the Operator breaches any of its undertakings in clause 29.3;
 - (ii) **(action for removal)**: any action is taken to remove the Operator as a trustee of the Trust or to appoint an additional trustee;
 - (iii) **(order for removal)**: an application or order is sought or made in any court, which is not withdrawn or dismissed within 10 Business Days, for:
 - (A) the removal of the Operator as trustee of the Trust;
 - (B) any assets which are subject to the Trust to be administered by a court; or
 - (C) accounts to be taken in relation to the Trust; or
 - (iv) **(termination)**: any action or step is taken or proposed to terminate the Trust, or the Trust is terminated.

26.2 Notice limitation in relation to clause 26.1(b)

- (a) A notice by the Secretary terminating the Contract pursuant to clause 26.1(b) must be given not later than three months after the later of the following dates in respect of a Demerit Point Period:
 - (i) if clause 26.2(a)(ii) does not apply, the date when the last Demerit Point was allocated by the Crown to the Contract in respect of a breach of a Performance Standard that occurred during the Demerit Point Period; and
 - (ii) if the Operator has disputed the allocation of any Demerit Point in respect of any breach of a Performance Standard occurring during the Demerit Point Period, the date when all of those disputes are finally determined or settled.
- (b) To avoid doubt:
 - (i) a Demerit Point Period:
 - (A) may commence and end on any days, so long as the period does not exceed 36 consecutive Named Months;
 - (B) does not have to be consecutive with another Demerit Point Period; and
 - (C) may overlap with another Demerit Point Period; and
 - (ii) a Named Month can be included in one or more Demerit Point Periods which overlap.

26.3 Interpretation

- (a) For the purposes of clause 26.1(a), breaches of a Performance Standard are to be disregarded.
- (b) Nothing in clause 26.1 limits the generality of any thing else in that clause.
- (c) A reference to the '**Operator**' in clause 26.1 includes:
 - (i) any person who is named in the Formal Instrument of Agreement as part of the Operator;
 - (ii) any person named in a deed of novation who, pursuant to that deed, becomes the Operator or part of the Operator, pursuant to a novation of the Contract in accordance with clause 25.2; and
 - (iii) if the Operator, for the purposes of the Contract, is a partnership, any of the partners of that partnership.
- (d) For the purposes of clause 26.1(l), '**Specified Person**' means each of the following:
 - (i) the Operator;
 - (ii) any person referred to in clause 26.3(c);
 - (iii) if the Operator is a body corporate, each director or shareholder of the Operator;
 - (iv) a responsible person (within the meaning of the Act) for the Operator's Accreditation,

but does not otherwise include the Operator's Personnel.

26.4 Consequences of termination pursuant to clause 26.1

If the Contract is terminated in accordance with clause 26.1:

- (a) the Crown is not required to perform any of its obligations under the Contract which relate to any period after that termination;
- (b) the Operator must give the Crown such information, and take all such action, as the Crown requires in order to facilitate the orderly and systematic termination of the Contract and the transition of the Passenger Service to another person; and
- (c) the Crown may take action to recover any Loss arising as a result of such termination and the Operator's default that gave rise to that termination.

26.5 Termination for convenience – utilisation

- (a) This clause 26.5 applies to a Contract for a School Bus Service.
- (b) The Crown, acting through the Secretary, may by not less than three months' notice, in writing, to the Operator terminate the Contract if the Crown determines that the number of School Students using the Passenger Service has fallen below the Minimum Number.

- (c) If the Contract is terminated pursuant to clause 26.5(b), the liability of the Crown to the Operator is limited to the amount equivalent to the Contract Amounts paid or payable for the period of three months immediately before the Crown's notice terminating the Contract. No other compensation (including damages) will be payable by the Crown to the Operator in respect of that termination.
- (d) In this clause 26.5, **Minimum Number** means the number determined, from time to time, by the Crown as the minimum number of School Students required for the operation of a Passenger Service that is designated as a School Bus Service.

26.6 Termination for convenience – general

- (a) The Crown may, at any time, by notice, in writing, to the Operator, terminate the Contract for convenience.
- (b) If the Contract is terminated in accordance with clause 26.6(a):
 - (i) the Operator must take all reasonable steps to minimise any Loss resulting from the termination; and
 - (ii) the Crown must, subject to clauses 26.6(d), 26.6(e) and 26.6(f), pay to the Operator, as compensation, any reasonable costs actually incurred by the Operator that are directly attributable to the termination.
- (c) No compensation is payable by the Crown to the Operator in connection with the termination of the Contract in accordance with clause 26.6(a) except as provided for in clause 26.6(b)(ii).
- (d) Subject to clause 26.6(f), the maximum amount of compensation that is payable by the Crown to the Operator under clause 26.6(b)(ii) is the total future Contract Amounts which would have been or become payable by the Crown to the Operator in respect of the unexpired Term of the Contract:
 - (i) if the Contract had not been terminated; and
 - (ii) assuming that there will be no rise or fall in the Contract Amounts after the date of termination of the Contract.
- (e) The minimum amount of compensation that is payable by the Crown to the Operator under clause 26.6(b)(ii) is an amount equivalent to the Contract Amounts payable by the Crown to the Operator for a period of three months (assuming that there will be no rise or fall in the Contract Amounts after the date of termination of the Contract).
- (f) Compensation is not to include loss of prospective profits.

26.7 Termination by Operator – hardship

- (a) Subject to clause 26.7(b), the Operator may, at any time, by six months' notice, in writing, to the Crown, terminate the Contract if the Operator satisfies the Crown that:
 - (i) the Operator, or key Operator's Personnel, are unavailable to perform the Contract because of death, personal injury or ill-health; or
 - (ii) the Operator, acting reasonably, decides that it is not financially viable for the Operator to perform the Contract.

- (b) The Crown must not unreasonably agree to a lesser period of notice for the purposes of clause 26.7(a) if, and to the extent that before the expiry of a lesser period of notice, the Crown will be able to arrange for another operator to deliver the Passenger Service, to which the Contract relates, at no greater cost to the Crown than if the Contract remained in force.
- (c) No compensation is payable by the Operator to the Crown, or by the Crown to the Operator, in connection with the termination of the Contract in accordance with clause 26.7(a).

26.8 Interpretation – more than one Contract

- (a) For the avoidance of doubt, if the Formal Instrument of Agreement includes more than one Passenger Service, this clause 26 operates singly in respect of each separate contract created by clause 1.5.
- (b) Accordingly, the termination of a Contract in respect of a Passenger Service, in accordance with this clause 26, does not affect the continued operation of a Contract in respect of another Passenger Service.
- (c) Nothing in this clause 26.8 affects the Crown's right to terminate one or more Contracts at the same time in respect of:
 - (i) any of the matters referred to in clauses 26.1(e), 26.1(f), 26.1(h), 26.1(i), 26.1(j), 26.1(k), 26.1(n), 26.1(o), 26.1(p) or 26.1(r); or
 - (ii) any act or omission of the Operator that, concurrently, constitutes a breach of one or more Contracts.
- (d) Nothing in this clause 26 limits the application of clause 1.5.
- (e) A reference to 'compensation' in this clause 26 includes compensation for Loss.

27 Death of Operator who is a natural person

- (a) This clause 27 applies if the Operator is a natural person.
- (b) If the Operator dies, the Crown may suspend the Contract until the Crown is satisfied that the Operator's legal personal representatives have put in place appropriate arrangements for the immediate continuation and future operation of the Passenger Service to which the Contract relates.
- (c) The Crown may during, any such period of suspension, make alternative arrangements for the operation of the Passenger Service.
- (d) The Crown may terminate the Contract if:
 - (i) the Contract in suspended in accordance with clause 27(b); and
 - (ii) the Crown, after 30 Business Days following the Operator's death, is not satisfied that the Operator's legal personal representatives have made appropriate detailed arrangements for the resumption and future operation of the Passenger Service to which the Contract relates.
- (e) No compensation of any kind is payable by the Crown to the estate of the Operator if the Contract is terminated pursuant to clause 27(d).

Part 9: General provisions (including warranties, trusts, Force Majeure, confidentiality, dispute resolution and notices)

28 Operator's representations and warranties

28.1 Representations and warranties

The Operator represents and warrants to the Crown that:

- (a) **(corporation)**: if the Operator is a corporation:
 - (i) the Operator is a corporation duly incorporated and existing under the law of its place of incorporation;
 - (ii) the Operator is not an externally administered body corporate (as defined in section 9 of the Corporations Act);
 - (iii) no controller (as defined in section 9 of the Corporations Act) has been appointed over any of the Operator's assets and no such appointment has been threatened;
 - (iv) the execution, delivery and performance of the Contract by the Operator will not breach in any respect any provision of:
 - (A) any applicable Law or any order or ruling of a Government Body;
 - (B) any agreement binding on the Operator; or
 - (C) the Operator's constitution;
 - (v) all necessary action has been taken by the Operator to authorise the execution, performance and delivery of, and its obligations under, the Contract;
- (b) **(natural person)**: if the Operator is a natural person, the Operator is not an insolvent under administration (as defined in section 9 of the Corporations Act);
- (c) **(qualifications)**: the Operator holds, and each of the Operator's Personnel holds to the extent relevant to their duties, all qualifications, licences and accreditations necessary for the lawful and proper performance of the Contract;
- (d) **(no disputes)**: except as previously disclosed in writing by the Operator to the Crown before the date of the Contract, there are no actions or proceedings commenced or threatened affecting the Operator or any of its officers which may have a material adverse effect on the ability or capacity of the Operator to perform the Contract;
- (e) **(conflict of interest)**: no conflict of interest exists or is likely to arise in the performance of the Operator's obligations under the Contract;
- (f) **(skill)**: the Operator has, and/or the Operator's Personnel have, the necessary qualifications, expertise and experience to perform the Operator's obligations under the Contract;

- (g) **(termination events)**: except as previously disclosed in writing by the Operator to the Crown prior to the date of the Contract, no event specified in clause 26.1 (or event which with the giving of notice or the lapse of time would be likely to become an event for the purposes of that clause) has occurred or is continuing; and
- (h) **(trustee)**: if the Operator has entered into the Contract in its capacity as trustee of a trust:
 - (i) the Operator has disclosed, in writing, that fact to the Crown, before entering into the Contract;
 - (ii) the Operator has entered into the Contract in its capacity as trustee of that trust as well as in its personal capacity;
 - (iii) the Operator is the only trustee of the trust;
 - (iv) no action has been taken or is contemplated to remove the Operator as trustee of the trust or to appoint an additional trustee of the trust;
 - (v) the Operator (as trustee of the trust) has power to enter into the Contract;
 - (vi) the trust is in full force and effect and no action has been taken or is threatened to terminate the trust;
 - (vii) the Operator has entered into the Contract as part of the due and proper administration of the trust and for the benefit of the beneficiaries under the trust;
 - (viii) the Operator has a right to be indemnified out of the assets of the trust in respect of its obligations under the Contract; and
 - (ix) the Operator is not in default of its duties as trustee.

28.2 Survival and repetition of representations and warranties

Each representation and warranty in clause 28.1:

- (a) survives the execution of the Contract; and
- (b) during the Term, is taken to be repeated with reference to the facts and circumstances on the last day of each Named Month.

28.3 Independent representation and warranties

Each representation and warranty in clause 28.1 is to be construed independently of each of the other representations and warranties in that clause.

28.4 Reliance by Crown

- (a) The Operator acknowledges that the Crown has entered into the Contract in reliance on each of the representations and warranties given in clause 28.1 by the Operator.
- (b) The Operator irrevocably acknowledges and agrees that the Crown's reliance on any representation or warranty is not affected by any investigations made by the Crown.

28.5 Non-reliance by Operator

Subject to any specific representations and warranties given by the Crown in the Contract, the Operator warrants that it has entered into the Contract based on its own investigations, interpretations, deductions, information and determinations and that it has not relied on any representations, warranties or advice (if any) given by the Crown or on behalf of the Crown.

29 Trust obligations and requirements

29.1 Definitions

In this clause 29, unless the context otherwise requires:

Obligations means all obligations and liabilities of the Operator of any kind undertaken or incurred by, or imposed on, the Operator under the Contract.

Trust means, if the Operator acts as a trustee and has entered into the Contract in that capacity, the trust in respect of which the Operator is trustee.

Trust Deed means the document governing the establishment and operation of the Trust.

29.2 Operator contracts personally and as trustee

- (a) If the Operator acts as a trustee and has entered into the Contract in that capacity, the Operator enters into the Contract personally and as trustee of the Trust. Accordingly, and without limitation:
 - (i) the Operator is personally liable in respect of the Obligations; and
 - (ii) the liability of the Operator in respect of the Obligations is not limited to the Operator's rights of indemnity against the assets of the Trust.
- (b) The Crown may enforce its Rights arising from the Operator's breach of the Obligations against the Operator and the Trust assets.

29.3 Undertakings

As long as the Operator is the trustee of the Trust, the Operator must:

- (a) **(resignation)**: unless the Crown otherwise consents, in writing, not:
 - (i) resign or be removed as trustee of the Trust; or
 - (ii) appoint, or allow to be appointed, a new or additional trustee of the Trust;
- (b) **(records)**: maintain complete and correct records in relation to the Trust;
- (c) **(vesting and distribution)**: unless the Crown otherwise consents, in writing, not:
 - (i) vest, distribute or advance any property of the Trust (other than income); or
 - (ii) distribute income of the Trust if to do so would have or be likely to have a material adverse effect on the performance of the Contract;
- (d) **(amendment)**: unless the Crown otherwise consents, in writing, not amend or revoke any of the terms of the Trust;

- (e) **(breaches of Trust)**: not do any thing, or permit or omit to do any thing, which breaches the Trust or which would provide grounds for it to be removed as trustee of the Trust;
- (f) **(Contract)**: not do any thing, or permit or omit to do any thing, in relation to the Trust which could restrict or impair its ability to observe its obligations under the Contract;
- (g) **(right of subrogation and indemnity)**: ensure that:
 - (i) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under the Contract;
 - (ii) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the terms of the Trust); and
 - (iii) its lien over any property of the Trust at all times has priority over the Rights of the beneficiaries of the Trust.

30 Force Majeure

30.1 Force Majeure Event

- (a) Subject to clause 30.1(b), a party is not:
 - (i) in breach of the Contract; or
 - (ii) liable in damages to another party in relation to that breach,if it delays or fails to perform, in part or full, an obligation under the Contract to the extent that the delay or failure is due to a Force Majeure Event.
- (b) Clause 30.1(a) only applies:
 - (i) for as long as the Force Majeure Event continues; or
 - (ii) until the parties agree and implement a commercially reasonable alternative method of performance.

30.2 Notice of Force Majeure Event

A party must notify each other party promptly upon becoming aware of a Force Majeure Event which may cause a delay or failure in the performance of an obligation under the Contract.

30.3 Termination

If a delay in the performance of, or a failure to perform, in part or in full, an obligation under the Contract as a result of a Force Majeure Event continues for a period of more than one month, the Crown may terminate the Contract by notice, in writing, to the Operator.

31 Disclosure and confidentiality

31.1 Disclosure of contract

Despite any confidentiality or intellectual property right subsisting in the Contract, a party may publish all or any part of the Contract without reference to another party.

31.2 Operator to keep information about School Students confidential

The Operator must not publish or disclose any information relating to a School Student except to:

- (a) the extent required by Law;
- (b) the parent or guardian of the School Student;
- (c) a school attended by the School Student;
- (d) the Crown in accordance with the Contract;
- (e) the extent expressly authorised, in writing, by the Crown; or
- (f) the extent expressly authorised by the Contract.

31.3 Disclosure of information relating to Passenger Service

Subject to clause 31.4, the Crown may publish (including by publication on the Department's website) any of the following:

- (a) any document or information held by the Department concerning the Passenger Service;
- (b) any document, report or information that the Operator is required to provide to the Crown in accordance with the Contract; and
- (c) Demerit Points allocated in relation to the Contract.

31.4 Non-disclosure of Confidential Business Records Information

- (a) The Crown must:
 - (i) keep Confidential Business Records Information confidential;
 - (ii) ensure that the Crown's employees, officers, agents and contractors (acting on behalf of the Crown) keep Confidential Business Records Information confidential; and
 - (iii) take all reasonable steps to:
 - (A) maintain the confidentiality of Confidential Business Records Information; and
 - (B) prevent any unauthorised use or disclosure of Confidential Business Records Information.
- (b) The Crown is not bound to keep confidential Confidential Business Records Information if, and to the extent that, the information is required to be disclosed pursuant to the operation of an applicable Law.
- (c) In this clause 31.4, **Confidential Business Records Information** means information contained in copies of the Operator's business records obtained or

received by the Crown in accordance with clause 18.3, being information that is not in the public domain (otherwise than as a result of a breach of clause 31.4 by the Crown).

31.5 Privacy

Nothing in this clause 31 derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

32 Dispute resolution

32.1 Dispute resolution

- (a) This clause 32 applies to any dispute or difference between the parties in connection with the Contract (**Dispute**) except disputes or differences:
 - (i) relating to the exercise by any party of any Right under legislation; or
 - (ii) relating to the construction of the Contract including this clause 32.
- (b) If a party considers that a Dispute has arisen, it may issue a written Notice to the other Party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (c) Subject to clause 32.4, a party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with the provisions of this clause 32.1.
- (d) The parties must promptly hold good faith discussions between the Operator's Representative and the Department's representatives responsible for the administration of the Contract (and who have delegated authority to hold such discussions) after issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussions**), and must (subject to privilege) furnish to the other party all information with respect to the Dispute which is appropriate in connection with its resolution.
- (e) If the Dispute has not been resolved within ten Business Days after commencement of the First Level Discussions, the parties must attempt to resolve the Dispute by holding good faith discussions between the Operator's Managing Director (or equivalent) and a Deputy Secretary of the Department (or such other person nominated, from time to time, by a Deputy Secretary to the Operator so long as the nominated person was not involved in the First Level Discussions) (**Second Level Discussions**).
- (f) If the Dispute has not been resolved within ten Business Days after commencement of the Second Level Discussions or if the First Level Discussions and any Second Level Discussions have not been commenced or completed within 25 Business Days of the date of the Dispute Notice (or any later date agreed, in writing, between the parties), the following provisions apply:
 - (i) if the dispute or difference relates to a Specified Matter for the purposes of clause 33, the dispute or difference is to be decided by an Adjudicator in accordance with that clause; and
 - (ii) in any other case, a party may exercise any Rights that it may have.

32.2 Status of discussions

- (a) Unless otherwise agreed in writing by the parties and subject to all applicable Laws, other than the fact that discussions have occurred, all aspects of discussions for the purpose of clause 32.1 will be without prejudice and treated as confidential including:
 - (i) any settlement proposal made to, or considered by, a party;
 - (ii) the willingness of a party to consider a settlement proposal;
 - (iii) any statement made by, or on behalf of, a party during the discussions; and
 - (iv) any document prepared for the purposes of the discussions.
- (b) Nothing in clause 32.2(a):
 - (i) prevents a party from enforcing any signed settlement agreement made by the parties in relation to the Dispute;
 - (ii) prevents an agent or instrumentality of the Crown (that is a separate legal entity) from disclosing any matter to the Crown;
 - (iii) prevents a Minister of the Crown from making a statement to Parliament (for the purposes of properly discharging a duty to Parliament) or exercising any Right; or
 - (iv) prevents a party from engaging professional advisers (such as lawyers and accountants) for the purpose of providing advice to that party.

32.3 Continuation of performance

Despite the existence of any Dispute, unless the Contract has been terminated, each party must continue to perform its obligations in accordance with the Contract.

32.4 Injunctive and other discretionary relief

Nothing in this clause 32 prevents a party from commencing legal proceedings to seek an injunction (whether interim or permanent), a writ of specific performance, declaratory relief, or any urgent or other interlocutory relief.

33 Adjudication of Specified Matters

- (a) Subject to clause 32, an Adjudicator is to decide each Specified Matter.
- (b) If an Adjudicator is unavailable, refuses to act, dies before making a decision or is unable to decide a Specified Matter, either the Crown or the Operator may request the President (or other senior officer) for the time being of The Law Society of Tasmania (or its successor body), or his or her nominee, to appoint another Adjudicator to decide the Specified Matter.
- (c) An Adjudicator must:
 - (i) decide the Specified Matter having regard to the requirements of the Contract;

- (ii) give both the Crown and the Operator a reasonable opportunity to make submissions and to put before him or her any material which may be relevant to determining the Specified Matter; and
 - (iii) give written reasons for his or her decisions.
- (d) The Adjudicator's costs are to be borne equally by the parties unless the Adjudicator decides otherwise.
- (e) An Adjudicator has the power:
 - (i) to proceed to the resolution of the Specified Matter in such manner and subject to such rules as the Adjudicator and the parties agree or, failing agreement, as the Adjudicator in his or her absolute discretion determines as suitable; and
 - (ii) to engage and consult with any advisers, legal or technical, as he or she may see fit (but the Crown will bear the cost of such advisers if and to the extent that it has sought adjudication of the Specified Matter).
- (f) In making his or her decision an Adjudicator acts as an expert and not as an arbitrator.
- (g) The decision of an Adjudicator will be final and binding on the parties in respect of a Specified Matter, except to the extent that the Law provides otherwise.
- (h) In this clause 33:

Adjudicator means an independent expert suitably qualified (to decide the Specified Matter in dispute) appointed by the President (or other senior officer for the time being) of The Law Society of Tasmania (or its successor body), or his or her nominee (each an **Appointor**), at the request of either party. However, if a dispute or difference in relation to a Specified Matter is materially similar to separate disputes or differences between the Crown and at least four other bus operators, the Crown may require the Appointor to appoint the same Adjudicator to decide the Specified Matter and each of those other disputes or differences.

Specified Matter means each of the following:

- (i) a dispute or difference that solely concerns a technical matter that is of kind that, if it were litigated, could be resolved on the basis of expert evidence alone (and if there is a dispute as to whether a matter is that kind, the opinion of the Crown will be final and binding);
- (ii) a dispute or difference which the parties agree, in writing, should be decided by an Adjudicator;
- (iii) a dispute or difference in respect of any matter referred to in clause 3.7, 21.3 or 21.5(d), and which the parties have been unable to agree in writing or resolve in accordance with clause 32.1.

34 Notices

34.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under the Contract must be:

- (i) in legible writing in the English language;
 - (ii) subject to clause 34.1(b), signed by or on behalf of the sender or by a lawyer for the sender;
 - (iii) marked for the attention of the person or position (if any) specified in the Formal Instrument of Agreement applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
 - (iv) left or sent in accordance with clause 34.2.
- (b) A Notice sent by email is taken to have been signed by the sender.
 - (c) A Notice must not be given orally.

34.2 Method and address for delivery

- (a) Subject to clause 34.2(b), a Notice must be:
 - (i) left at the intended recipient's address set out in the Formal Instrument of Agreement;
 - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Formal Instrument of Agreement; or
 - (iii) sent by email to the intended recipient's email address (if any) set out in the Formal Instrument of Agreement.
- (b) If the intended recipient of a Notice has notified the sender of another address or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address or email address (as applicable) last notified by that intended recipient.

34.3 Time of receipt

- (a) Subject to clause 34.3(b), a Notice is taken to have been received by the intended recipient:
 - (i) if left at the intended recipient's address, at the time of delivery;
 - (ii) if sent by prepaid ordinary mail, on the fifth Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting; and
 - (iii) if sent by email, four hours after the time the email was sent (as recorded by the device from which the email was sent) provided that the sender has not received an automated message that the email has not been delivered.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 34.3(a) and 34.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

34.4 Other modes or places of service

Nothing in the Contract limits or excludes any other mode or place of service required by an applicable Law.

34.5 Email address

Each party must ensure that it maintains a valid email system and email address for the receipt of Notices by email.

35 Miscellaneous

35.1 Governing law

The Contract is governed by the Laws applying in Tasmania.

35.2 Dispute jurisdiction

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with the Contract.

35.3 Entire agreement clause

The Contract forms the entire agreement of the parties in respect of its subject matter. All prior agreements in relation to the subject matter of the Contract are merged in and superseded by the Contract unless expressly incorporated in the Contract as an annexure, an appendix, an attachment or by reference.

35.4 Liability

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term), under or in respect of the Contract, binds them jointly and each of them severally.

35.5 Benefit

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

35.6 Compliance with obligations

- (a) A party must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by that party of its obligations under the Contract:
 - (i) comply with the provisions of the Contract related to that performance; and
 - (ii) do not conduct themselves in a way that would result in the party being in breach of the Contract or that, if the conduct was undertaken by the party, would result in the party being in breach of the Contract.
- (b) If a party is prohibited from doing any thing under the Contract, that party must not knowingly assist, authorise or allow any other person to do that thing.

35.7 Severance

If a provision of the Contract is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from the Contract and the remaining provisions of the Contract:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of the Contract.

35.8 Counterparts

- (a) The Formal Instrument of Agreement may be entered into in any number of counterparts.
- (b) A party may execute the Formal Instrument of Agreement by signing any counterpart.
- (c) All counterparts, taken together, constitute one agreement.

35.9 Further assurance

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to the Contract.

35.10 Business Days

If the day on or by which an act, matter or thing is to be done under the Contract is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

35.11 No partnership or agency

- (a) Nothing contained or implied in the Contract will:
 - (i) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of another party for any purpose;
 - (ii) create, or be taken to create, a partnership or joint venture; or
 - (iii) create, or be taken to create, an agency or trust.
- (b) The Operator must not represent or hold itself out to be a partner, joint venturer, agent or representative of the Crown.

35.12 Legal costs

Each party must bear their own costs in preparing and negotiating the Contract.

35.13 Amendment

The Contract may only be amended or supplemented in writing signed by the parties.

35.14 Waiver

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.

- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

35.15 Successors and assigns

The Contract is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

35.16 Rights cumulative

Each Right provided for in the Contract:

- (a) operates independently of any other Right provided for in the Contract;
- (b) is cumulative with, and does not exclude or limit, any other Right, whether at Law or pursuant to any other agreement, deed or document; and
- (c) may be exercised from time to time as the occasion requires or permits.

35.17 Set off

The Crown may set off against any moneys payable by the Crown to the Operator under the Contract any debt or other moneys from time to time due and owing by the Operator to the Crown. This right of set-off does not limit or affect any other right of set-off available to the Crown.

35.18 Consent and approvals

- (a) This clause 35.18 applies to any consent or approval which a party must obtain from another party in accordance with the Contract. For the avoidance of doubt, this clause does not apply to any consent or approval to be given under any legislation.
- (b) A request for consent or approval must be made in writing.
- (c) A consent or approval for the purposes of the Contract is not effective unless given in writing.
- (d) A consent or approval may be given subject to conditions.
- (e) A party receiving a consent or approval must comply with any conditions subject to which the consent or approval is given. To the extent that the party receiving the consent or approval fails to comply with the condition, that failure is taken to be a breach of the Contract.

35.19 Doctrine of merger

The doctrine or principle of merger does not apply to the Contract or to any thing done under or in connection with the Contract. Accordingly, no Right or obligation of a party is merged in any thing done pursuant to the Contract.

35.20 Civil Liability Act 2002 (Tas)

The parties agree that:

- (a) Part 9A of the *Civil Liability Act 2002* (Tas) does not apply; and

- (b) the Rights, obligations and liabilities (whether such Rights, obligations or liabilities are sought to be enforced as a claim in contract, in tort or otherwise) of the parties in connection with the Contract are those that would exist if Part 9A of the *Civil Liability Act 2002* (Tas) did not apply.

35.21 No interference with executive duties or powers

Nothing in the Contract is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of the Contract that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

35.22 Surviving provisions and termination

- (a) The termination of the Contract does not affect or limit the operation or effect of clauses or parts of the Contract:
 - (i) that are expressed to survive the termination of the Contract;
 - (ii) that, at Law, survive the termination of the Contract; or
 - (iii) that are necessary to survive the termination of the Contract:
 - (A) to give full force and effect to the parties' respective Rights, obligations and liabilities on or after the termination of the Contract;
 - (B) to enable a party to make, enforce or defend any claims related to the Contract; or
 - (C) to give full force and effect to the operation of clause 35.22(b) or clause 35.22(c).
- (b) The termination of the Contract does not affect any claims related to, or any Rights, releases, obligations or liabilities accrued or incurred under, the Contract before the date on which the Contract is terminated.
- (c) Nothing in this clause 35.22 affects or limits the operation of another provision of the Contract which gives a party Rights, or imposes obligations on a party, on or after the termination of the Contract.

Schedule 1: Performance Standards

PART A

- (A) The Operator must, in relation to the operation of a Passenger Service, comply with each Performance Standard specified in a row in Column 2 of Table 1.
- (B) A failure by the Operator to meet a Performance Standard specified in a row in Column 2 of Table 1 is excused if the Operator proves to the satisfaction of the Crown that the failure was:
- (i) solely caused by a circumstance (if any) specified in Column 3 of the same row of that table; or
 - (ii) caused by a breach of the Contract by the Crown.
- (C) Unless the failure to meet a Performance Standard specified in a row in Column 2 of Table 1 is excused in accordance with paragraph (B) of this Part A, in respect of that failure the Crown may take the action specified in Column 4 of that row.
- (D) In rows 9, 10, 13 and 14 of Table 1, each reference to the **Operator** is taken to also include a separate reference to each of the following persons:
- (i) each person who is named in the Formal Instrument of Agreement as part of the Operator;
 - (ii) each person named in a deed of novation who, pursuant to that deed, becomes the Operator or part of the Operator, pursuant to a novation of the Contract in accordance with clause 25.2;
 - (iii) if the Operator, for the purposes of the Contract, is a partnership, each of the partners of that partnership;
 - (iv) if the Operator is, or includes, a body corporate (that, for the purposes of the Corporations Act, does not have more than 50 shareholders disregarding non-employee shareholders), each director or shareholder of that body corporate.
- (E) In Table 1 **penalty unit** means a penalty unit for the purposes of Tasmanian legislation (including subordinate legislation).

Table 1:

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
1.	Service reliability	The Operator must, in respect of a Named Month during the Term, operate all of the scheduled Trips for a Passenger Service required by the Approved Timetable for that Passenger Service.	Force Majeure Event	The Crown may allocate one Demerit Point to the Contract.

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
2.	Service punctuality – General Access Service	This Performance Standard applies only to a Contract for Passenger Service that is a General Access Service. The Operator must, in respect of each Named Month, ensure that at least 80% of all of the scheduled Trips for a Passenger Service for that Named Month leave from the first bus stop for those Trips not more than 59 seconds before, or more than five minutes after, the scheduled departure time (as required by the Approved Timetable for that Passenger Service).	Force Majeure Event	The Crown may allocate two Demerit Points to the Contract for each failure to meet the Performance Standard specified in Column 2 of this row.
3.	Service punctuality – School Bus Service	This Performance Standard applies only to a Contract for a Passenger Service that is a School Bus Service. The Operator must, in respect of each Named Month, ensure that all of the scheduled Trips for the Passenger Service for that Named Month leave from the first bus stop for those Trips not more than 59 seconds before, or more than five minutes after, the scheduled departure time (as required by the Approved Timetable for the Passenger Service).	Force Majeure Event	The Crown may allocate one Demerit Point to the Contract for each failure to meet the Performance Standard specified in Column 2 of this row.

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
4.	Service reliability	Each scheduled Trip for a Passenger Service must not depart any nominated point for the Trip before the departure time, for that nominated point, as specified in the Approved Timetable for that Passenger Service. A nominated point is a bus stop which is shown as a 'nominated point' on the Approved Timetable for the Passenger Service.	Force Majeure Event	The Crown may allocate half a Demerit Point to the Contract for each failure to meet the Performance Standard specified in Column 2 of this row in respect of any Trip. However, in respect of any Named Month, no more than two Demerit Points will be allocated to the Contract in respect of failures to meet the Performance Standard in Column 2 of this row during that Named Month.
5.	Passenger Conduct Code	The Operator must, in the Operation of the Passenger Service, correctly follow and enforce the Passenger Conduct Code.	Force Majeure Event	(a) Subject to paragraph (b), the Crown may allocate one Demerit Point for each failure to meet the Performance Standard specified in Column 2 of this row. (b) The Crown may allocate three Demerit Points for a failure to meet the Performance Standard specified in Column 2 of this row if that standard was not met by the Operator within the last 12 months before the latest failure to meet the Performance Standard.
6.	Accreditation	The Operator must ensure that the Operator's Accreditation is not given 'probationary status' under the Act.	Nil	The Crown may allocate five Demerit Points to the Contract if the Operator's Accreditation is given 'probationary status' under the Act.
7.	Responsive-ness	The Operator must, not later than 10 Business Days after receiving a query in relation to the Contract, in writing, from the Crown, adequately respond to the Crown, in writing, to that query.	Force Majeure Event	The Crown may allocate half a Demerit Point to the Contract for each failure to meet the Performance Standard specified in Column 2 of this row.

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
8.	Use of Approved Vehicle	An Approved Vehicle is not used to operate any Trip because it has been, or is being, used for another purpose.	Defined Event	The Crown may allocate three Demerit Points to the Contract for each failure to meet the Performance Standard specified in Column 2 of this row.
9.	Safe operation of Passenger Service – alcohol and drugs	<p>The Passenger Service must be operated without breaching any law relating to the use of alcohol or drugs.</p> <p>The performance standard in this row is taken not to be met if the Operator, or a member of the Operator's Personnel, is, for the purposes of any Law, convicted of an offence for driving a vehicle:</p> <ul style="list-style-type: none"> (a) while a prescribed illicit drug is present in his or her blood; (b) under the influence of any intoxicating liquor or a drug; or (c) while alcohol is present in his or her breath or blood in a concentration greater than that prescribed by a Law, and, in each case, the driving of the vehicle occurred whilst operating any Trip. <p>Note: In this row 'Operator' has an extended meaning: see paragraph (D) above in this Part A.</p>	Nil	<p>The Crown may allocate 10 Demerit Points to the Contract if the Operator is convicted of an offence referred to in Column 2 where the driving, to which the offence relates, occurred whilst operating any Trip.</p> <p>The Crown may allocate 5 Demerit Points to the Contract if a member of the Operator's Personnel (not being an Operator) is convicted of an offence referred to in Column 2 of this row where the driving, to which the offence relates, occurred whilst operating any Trip.</p>

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
10.	Safe operation of Passenger Service – no speeding	<p>The Passenger Service must be operated obeying applicable speed limits.</p> <p>The performance standard in this row is taken not to be met if:</p> <ul style="list-style-type: none"> (a) the Operator, or a member of the Operator's Personnel, is, for the purposes of any Law, convicted of an offence of exceeding a speed limit applying to the length of road where the Operator, or the member of the Operator's Personnel, is driving; (b) the speed limit was exceeded by more than 15 kilometres per hour and (c) the driving of the vehicle occurred whilst operating any Trip. <p>Note: In this row 'Operator' has an extended meaning: see paragraph (D) above in this Part A.</p>	Nil	<p>The Crown may allocate Demerit Points, to the Contract, as follows if the Operator is convicted of an offence referred to in Column 2 where the driving, to which that offence relates, occurred whilst operating any Trip:</p> <ul style="list-style-type: none"> (a) 10 Demerit Points if that offence is an excessive speeding offence that results in the Operator being disqualified from driving; (b) two Demerit Points if that offence is not an excessive speeding offence and the speed limit was exceeded by more than 15 kilometres per hour. <p>The Crown may allocate Demerit Points, to the Contract, as follows if a member of the Operator's Personnel (not being an Operator) is convicted of an offence referred to in Column 2 where the driving, to which that offence relates, occurred whilst operating any Trip:</p> <ul style="list-style-type: none"> (a) 5 Demerit Points if that offence is an excessive speeding offence that results in the member of the Operator's Personnel being disqualified from driving; (b) one Demerit Point if that offence is not an excessive speeding offence and the speed limit was exceeded by more than 15 kilometres per hour.

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
		[Note: Row 10 continued]	[Note: Row 10 continued]	[Note: Row 10 continued] Note: Section 3 of the <i>Vehicle and Traffic Act 1999</i> (Tas) defines an 'excessive speeding offence' to be an offence where the prescribed speed limit is exceeded by 38 kilometres per hour or more.
11.	Operation of compliant vehicles	<p>The Passenger Service must be operated using vehicles that are safe.</p> <p>The performance standard in this row is taken not to be met if an Approved Vehicle, or an Alternative Vehicle, is used to operate a Trip, and any of the following applies:</p> <ul style="list-style-type: none"> (a) the operation of the vehicle is in breach of any vehicle defect notice issued under the <i>Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010</i> (Tas); (b) the registration of the vehicle is suspended under the <i>Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010</i> (Tas); (c) the vehicle is unregistered for the purposes of the <i>Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010</i> (Tas); or 	In relation to paragraph (c) in Column 2, the Operator proves, to the satisfaction of the Crown, that the Operator took all reasonable steps to renew the registration of the Approved Vehicle, or the Alternative Vehicle, before the vehicle became unregistered.	<p>The Crown may allocate five Demerit Points to the Contract if an Approved Vehicle, or an Alternative Vehicle, is used to operate a Trip and any of paragraphs (a), (b) or (c), in Column 2 of this row, applies.</p> <p>The Crown may allocate one Demerit Point to the Contract if an Approved Vehicle, or an Alternative Vehicle, is used to operate a Trip and paragraph (d) in Column 2 of this row applies. However, no more than one Demerit Point will be allocated in respect of any week during which there are multiple breaches of the regulations referred to in paragraph (d) in Column 2 of this row.</p> <p>Note: In this row 'week' means a period of seven days commencing on a Monday.</p>

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
		<p>[Note: Row 11 continued]</p> <p>(d) the use of the vehicle breaches the provisions of the <i>Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010</i> (Tas) requiring a person not to use, or permit the use of, a vehicle on a public street for hire or reward, if the vehicle has not been presented for an inspection that it is required to have under a vehicle inspection program in accordance with those regulations.</p>	<p>[Note: Row 11 continued]</p>	<p>[Note: Row 11 continued]</p>
12.	Operation of compliant vehicles – issuing of major defect notice	<p>The Passenger Service must be operated using vehicles that are safe.</p> <p>The performance standard in this row is taken not to be met if an Approved Vehicle, or an Alternative Vehicle, when being used to operate a Trip, is issued with a major defect notice under the <i>Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010</i> (Tas).</p>	Nil	<p>The Crown may allocate five Demerit Points to the Contract if an Approved Vehicle, or an Alternative Vehicle, is issued with a major defect notice under the <i>Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010</i> (Tas).</p>
13.	Operation of Passenger Service in accordance with the Act	<p>The Passenger Service must be operated in accordance with the Act.</p> <p>The performance standard in this row is taken not to be met if:</p> <p>(a) the Operator, or a member of the Operator's Personnel, is convicted of an offence under the Act (including for the avoidance of doubt, regulations made under the Act); and</p>	Nil	<p>The Crown may allocate Demerit Points, to the Contract, as follows if the Operator is convicted of an offence referred to in Column 2 where the offence was committed in respect of an event that occurred whilst operating any Trip:</p> <p>(a) 10 Demerit Points if the offence is punishable by a fine exceeding 50 penalty units;</p>

Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
	<p>[Note: Row 13 continued]</p> <p>(b) the offence was committed in respect of an event that occurred whilst operating any Trip.</p> <p>Note: In this row 'Operator' has an extended meaning: see paragraph (D) above in this Part A.</p>	<p>[Note: Row 13 continued]</p>	<p>[Note: Row 13 continued]</p> <p>(b) five Demerit Points if the offence is punishable by a fine exceeding 25 penalty units but not exceeding 50 penalty units;</p> <p>(c) two Demerit Points if the offence is punishable by a fine exceeding 10 penalty units but not exceeding 25 penalty units; and</p> <p>(d) one Demerit Point if the offence is punishable by a fine not exceeding 10 penalty units.</p> <p>The Crown may allocate Demerit Points, to the Contract, as follows if a member of the Operator's Personnel (not being an Operator) is convicted of an offence referred to in Column 2 where the offence was committed in respect of an event that occurred whilst operating any Trip:</p> <p>(a) 5 Demerit Points if the offence is punishable by a fine exceeding 50 penalty units;</p> <p>(b) 2 Demerit Points if the offence is punishable by a fine exceeding 25 penalty units but not exceeding 50 penalty units;</p> <p>(c) one Demerit Point if the offence is punishable by a fine exceeding 10 penalty units but not exceeding 25 penalty units; and</p> <p>(d) half a Demerit Point if the offence is punishable by a fine not exceeding 10 penalty units.</p>

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
14.	Operation of Passenger Service – compliant drivers (standard 1)	<p>The Passenger Service must be operated using drivers who hold all qualifications, licences, permits, certificates, authorities and credentials required by Law to drive a vehicle being used to operate a regular passenger service (within the meaning of the Act).</p> <p>The performance standard in this row is taken not to be met if a vehicle used to operate a Trip is driven by a person:</p> <ul style="list-style-type: none"> (a) who does not hold a required Australian driver licence (for the purposes of the <i>Vehicle and Traffic Act 1999</i> (Tas)) necessary to lawfully operate that Trip; (b) who does not hold a required ancillary certificate (for the purposes <i>Vehicle and Traffic Act 1999</i> (Tas)) necessary to lawfully operate that Trip; (c) whose Australian driver licence or ancillary certificate, necessary to lawfully operate that Trip, is suspended; or (d) when disqualified from driving a vehicle in Tasmania. <p>Note: In this row 'Operator' has an extended meaning: see paragraph (D) above in this Part A.</p>	<ul style="list-style-type: none"> • Nil where the person driving the vehicle was the Operator. • Where the person driving the vehicle was a member of the Operator's Personnel (not being an Operator), the Operator proves to the satisfaction of the Crown that: <ul style="list-style-type: none"> (a) the Operator undertakes periodic checks of its drivers' qualifications, licences and certifications as required to maintain its Accreditation; and (b) the Operator had no reasonable grounds to suspect that any of paragraphs (a), (b), (c) or (d) in Column 2 was applicable to the member of the Operator's Personnel driving the vehicle used to operate the Trip. 	<p>The Crown may allocate 10 Demerit Points to the Contract if any of paragraphs (a), (b), (c) or (d) in Column 2 of this row applies, and the person driving the vehicle was the Operator.</p> <p>The Crown may allocate five Demerit Points to the Contract if any of paragraphs (a), (b), (c) or (d) in Column 2 of this row applies, and the person driving the vehicle in respect of the Trip was a member of the Operator's Personnel (not being an Operator).</p>

	Column 1: Category	Column 2: Performance Standard which the Operator must meet in relation to Passenger Service	Column 3: Circumstance that excuses failure to meet Performance Standard	Column 4: Action the Crown may take for failure to meet Performance Standard
15.	Operation of Passenger Service – compliant drivers (standard 2)	<p>The Passenger Service must be operated using drivers who hold all qualifications, licences, permits, certificates, authorities and credentials required by Law to drive a vehicle being used to operate a regular passenger service (within the meaning of the Act).</p> <p>The performance standard in this row is taken not to be met if the Operator is convicted of an offence against section 15(2) the <i>Vehicle and Traffic Act 1999</i> (Tas), and the offence relates to, or includes, the operation of a Trip.</p>	Nil	The Crown may allocate 10 Demerit Points to the Contract if the Operator is convicted of the offence referred to in Column 2, and the offence relates to, or includes, the operation of a Trip.

PART B

- (A) A clause of the Contract specified in a row in Column 2 of Table 2 is taken not to be breached by the Operator if the Operator proves to the satisfaction of the Crown that the breach was:
- (i) solely caused by a circumstance specified in Column 3 of the same row of that table; or
 - (ii) caused by a breach of the Contract by the Crown.
- (B) Subject to paragraph (A) in this Part B, the Crown may take the action specified in Column 4 of a row in Table 2 in respect of any breach by the Operator of a clause of the Contract specified in Column 2 of that row.

Table 2:

	Column 1: Subject	Column 2: Breach of Contract clause	Column 3: Circumstance that excuses a breach of the clause	Column 4: Action the Crown may take for a breach of the clause
1.	Approved Vehicle or Alternative Vehicle must be used for each Trip	Clause 3.1(e)	Force Majeure Event	The Crown may allocate one Demerit Point to the Contract for each day where a Trip is operated in breach of the clause specified in Column 2 of this row. However, no more than three Demerit Points will be allocated to the Contract in respect of a Named Month for breaches of the clause specified in Column 2 of this row occurring during that Named Month.
2.	Notification of changes to Approved Route, Approved Timetable	Clause 3.4(c)(iv) Clause 3.4(c)(v)	Nil	The Crown may allocate one Demerit Point to the Contract for each breach of a clause specified in Column 2 of this row. If a breach of a clause specified in Column 2 of this row is not remedied within five Business Days of notification of the breach by the Crown to the Operator, a further one-half of a Demerit Point may be allocated by the Crown for each subsequent day that the breach continues.

	Column 1: Subject	Column 2: Breach of Contract clause	Column 3: Circumstance that excuses a breach of the clause	Column 4: Action the Crown may take for a breach of the clause
3.	Passenger Service operational matters-general	Clause 3.5(a) Clause 3.5(c) Clause 3.5(d)(i)	Force Majeure Event	The Crown may allocate one Demerit Point to the Contract for each breach of the clause specified in Column 2 of this row.
4.	Passenger Service operational matters- bus over capacity	Clause 3.5(e)(ii)	<ul style="list-style-type: none"> Force Majeure Event A School Student refused travel on a School Bus could use another immediately following bus (operated on a regular passenger service for the purposes of the Act) to get to his or her school. 	The Crown may allocate two Demerit Points to the Contract for each breach of a clause specified in Column 2 of this row.
5.	Carrying of passengers not authorised to use the Passenger Service	Clause 5.1(b) Clause 5.1(d)	Nil	<p>(a) Subject to paragraph (b), the Crown may allocate one Demerit Point to the Contract for each breach of a clause specified in Column 2 of this row.</p> <p>(b) The Crown may allocate three Demerit Points to the Contract for a breach of a clause specified in Column 2 of this row if that clause was breached by the Operator within the last 12 months before the latest breach.</p>

	Column 1: Subject	Column 2: Breach of Contract clause	Column 3: Circumstance that excuses a breach of the clause	Column 4: Action the Crown may take for a breach of the clause
6.	Charging of Passenger Fares	Clause 13.1(a)	Force Majeure Event (but see the qualification in Column 4 of this row)	<p>The Crown may allocate one Demerit Point to the Contract where, during a Named Month, the fares uncollected by the Operator are less than two percent of the total passenger fares that should have been collected for that Named Month.</p> <p>The Crown may allocate two Demerit Points to the Contract where, during a Named Month, the fares uncollected by the Operator are more than two percent but do not exceed 10 percent of the total passenger fares that should have been collected for that Named Month.</p> <p>The Crown may allocate five Demerit Points to the Contract where, during a Named Month, the fares uncollected by the Operator exceed 10 percent of the total passenger fares that should have been collected for that Named Month.</p> <p>For the purposes of this row, disregard any fares not collected from a passenger who refuses to pay a fare where the Operator proves to the satisfaction of the Crown that the Operator complied with any current operational rules or guidelines published by the Department relating to the carriage of passengers who have refused to pay a fare.</p>

	Column 1: Subject	Column 2: Breach of Contract clause	Column 3: Circumstance that excuses a breach of the clause	Column 4: Action the Crown may take for a breach of the clause
7.	Required operational capacity of Alternative Vehicle	Clause 9.2(b)	<ul style="list-style-type: none"> The Operator has made arrangements to provide the Passenger Service using a vehicle that does not disadvantage any passengers. Clear and provable evidence (for example, passenger counts) that there was no material risk that the reduced operational capacity would affect the passenger service. 	The Crown may allocate one Demerit Point to the Contract in respect of each day during which the Operator is in breach of the clause specified in Column 2 of this row.
8.	Bus size and seating capacity restrictions	Clause 9.3	Force Majeure Event	<p>The Crown may allocate one Demerit Point to the Contract in respect of each day during which the Operator is in breach of the clause specified in Column 2 of this row.</p> <p>However, in respect of a Named Month, no more than three Demerit Points will be allocated by the Crown for breaches of the clause specified in Column 2 of this row occurring during that Named Month.</p>

	Column 1: Subject	Column 2: Breach of Contract clause	Column 3: Circumstance that excuses a breach of the clause	Column 4: Action the Crown may take for a breach of the clause
9.	Maintenance of records and inspection of records by the Crown	Clause 18	Force Majeure Event	<p>(a) Subject to paragraph (b), the Crown may allocate one Demerit Point to the Contract in respect of each breach by the Operator of the clause specified in Column 2 of this row.</p> <p>(b) If the Operator has not maintained, or refuses to supply, the records in accordance with clause 18, the Crown may allocate to the Contract four Demerit Points in respect of the breach by the Operator of the clause specified in Column 2 of this row.</p> <p>However, in respect of a Named Month, no more than four Demerit Points will be allocated by the Crown for breaches of the clause specified in Column 2 of this row occurring during that Named Month.</p>
10.	Notices by Operator to the Crown	Clause 19.1	Force Majeure Event	The Crown may allocate one Demerit Point to the Contract in respect of each breach by the Operator of the clause specified in Column 2 of this row.

	Column 1: Subject	Column 2: Breach of Contract clause	Column 3: Circumstance that excuses a breach of the clause	Column 4: Action the Crown may take for a breach of the clause
11.	Giving of Monthly Service Report	<p>Clause 19.2</p> <p>Note: Breach includes (or will be taken to include):</p> <ul style="list-style-type: none"> (a) each failure to provide correct and/or complete information required to be included in a Monthly Service Report in accordance with clause 19.2; and (b) each material error in relation to any fact, matter or thing that is declared by the Operator in a Monthly Service Report, and which the Operator has not corrected by notice, in writing, to the Crown within 40 Business Days of the date of the Monthly Service Date. 	Force Majeure Event	<p>The Crown may allocate one Demerit Point to the Contract in respect of each breach by the Operator of the clause specified in Column 2 of this row that continues for a period of more than 10 Business Days.</p> <p>However, if a Monthly Service Report for a Named Month breaches clause 19.2 (for the purposes of Column 1 of this row) in more than one respect, only one Demerit Point is to be allocated in respect of those breaches related to that report.</p>
12.	Supply of recorded video footage	Clause 20	<p>Force Majeure Event</p> <p>As provided for in clause 20.7</p>	<ul style="list-style-type: none"> (a) Subject to paragraph (b), the Crown may allocate one Demerit Point to the Contract in respect of each breach by the Operator of the clause specified in Column 2 of this row. (b) If the Operator has not kept, or refuses to supply, video footage to the Crown, the Crown may allocate four Demerit Points in respect of the breach by the Operator of the clause specified in Column 2 of this row. <p>However, in respect of a Named Month, no more than four Demerit Points will be allocated by the Crown for breaches of the clause specified in Column 2 of this row occurring during that Named Month.</p>