

PURCHASE /SERVICE ORDER GENERAL TERMS AND CONDITIONS**PART A – GENERAL CONDITIONS****1. INTERPRETATIONS AND GENERAL MATTERS****1.1 Definitions**

- 1.1.1 "Customer" means Yarra Journey Makers Pty Ltd (ACN 671 633 159) trading as Yarra Trams.
- 1.1.2 "day" means a calendar day.
- 1.1.3 "FIS" means, in relation to delivery of the Goods, free in store and includes the responsibility (and associated costs) for packing, loading, transportation, delivery and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.
- 1.1.4 "Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase/Service Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.
- 1.1.5 "Head, TfV" means the Head, Transport for Victoria (ABN 97 481 088 949), a body corporate established under the *Transport Integration Act 2010* (formerly Public Transport Development Authority (operating as Public Transport Victoria)).
- 1.1.6 "Insolvency Event" has the meaning given in Clause 5.3.
- 1.1.7 "Losses" means all loss, damage, liability, cost or expense arising from the performance or non performance (including any negligent or wilful act or omission), any breach or default of parties' obligations under this Purchase/Service Order and includes any loss, damage, liability, cost or expense agreed to be paid by way of settlement or compromise.
- 1.1.8 "Purchase/Service Order" means the purchase order and/or service order issued by the Customer to the Supplier as evidenced by the documents listed in the Purchase/Service Order Form.
- 1.1.9 "Purchase/Service Order Form" means the section of the Purchase/Service Order to be completed by the Customer, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase/Service Order.
- 1.1.10 "Rolling Stock Maintenance Services" means any maintenance services or other works to:
- (a) rolling stock;
 - (b) rotatable items; or
 - (c) any tool (including an electronic diagnostic tool) that may be used in a specific activity for maintaining the rolling stock or rotatable items.
- 1.1.11 "Services" means the services as set out and further detailed in the Purchase/Service Order Form.
- 1.1.12 "Specifications" means the Customer's requirements with which the Goods and Services must comply, as specified by the Customer to the Supplier from time to time.
- 1.1.13 "Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase/Service Order Form.
- 1.1.14 "Warranty Period" means:
- (a) in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year thereof; and
 - (b) in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and lasting for a period of one (1) year thereof.

1.2 Interpretations

- 1.2.1 Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.
- 1.2.2 Rights and remedies under the Purchase/Service Order are in addition to rights or remedies available at law (including under statute).

1.3 Supplier to Inform Itself

- 1.3.1 The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and fully satisfied itself regarding all of the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase/Service Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase/Service Order.

1.4 Order of Precedence

- 1.4.1 Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase/Service Order Form, will be as follows:
- (a) the Purchase/Service Order Form;
 - (b) the General Terms and Conditions (this document); and
 - (c) the Specification(s).

1.5 Ambiguities

- 1.5.1 If the Supplier discovers any ambiguity in the Purchase/Service Order it shall immediately notify the Customer in writing. The Customer will then determine the correct interpretation of the Purchase/Service Order. The determination of the Customer will be final and binding on the Supplier and have no effect on the Purchase/Service Order price.

1.6 Use of Documentation and Equipment

- 1.6.1 Documents prepared in relation to, or ancillary to the Purchase/Service Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.
- 1.6.2 The Supplier will keep any equipment provided by the Customer to the Supplier safe and return it to the Customer in its original state on expiry or termination of this Purchase/Service Order (fair wear and tear excepted), failing which the Supplier will pay the cost of repair or replacement (at the Customer's option).

1.7 Waiver

- 1.7.1 No failure or delay on the part of the Customer in exercising any of its rights under the Purchase/Service Order shall be construed as constituting a waiver of any such rights.

1.8 Entire Agreement

- 1.8.1 The Purchase/Service Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase/Service Order has any effect on the Purchase/Service Order unless specifically incorporated herein. Without limitation, no quotation or Supplier standard terms and conditions of supply shall form part of this Purchase/Service Order unless otherwise agreed in writing by the Customer.

1.9 Communications

- 1.9.1 Any notice or other communication required under the Purchase/Service Order must be delivered in writing. Such written communication will be provided in English. Verbal instructions or directions from the Customer must be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

1.10 Licences and Laws

- 1.10.1 The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, directions received from the Head, TfV, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the

Goods and/or the performance of Services. No change in licenses or laws will affect the Purchase/Service Order price.

1.11 Trust entities

- 1.11.1 If the Supplier is entering into the Purchase/Service Order on behalf of a trust, the Supplier warrants:

- (a) it is a validly appointed trustee of the trust;
- (b) there has not been any contravention of or non-compliance with any of the terms of the trust deed;
- (c) it has the right to be indemnified out of, and a lien over, the assets of the trust except where the Supplier is fraudulent, negligent or in breach of trust;
- (d) this Purchase/Service Order does not conflict with the operation or terms of the trust or the trust deed;
- (e) this Purchase/Service Order constitutes valid and enforceable obligations of the trust;
- (f) it has full and valid power and authority under the trust to enter into this Purchase/Service Order and to carry out the transactions contemplated by this Purchase/Service Order (including all proper authorisations and consents);
- (g) it enters into this Purchase/Service Order and the transactions evidenced by it for the proper administration of the trust and for the benefit of all of the beneficiaries of the trust; and
- (h) it is the sole trustee of the trust.

2. PERFORMANCE AND QUALITY**2.1 Materials and Workmanship**

- 2.1.1 All Services and/or Goods shall be fit for purpose. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase/Service Order and the workmanship must be of a high quality and standard. The work must be carried out in accordance with good engineering practice and comply with all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws. Goods supplied must meet all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.

2.2 Supplier Qualifications

- 2.2.1 The Supplier represents and warrants to the Customer that it has the necessary skills, resources and experience to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase/Service Order.

2.3 Testing and Inspection

- 2.3.1 The Goods and/or Services must be tested in accordance with the requirements of the Purchase/Service Order, including any Specification. Unless otherwise stated in the Purchase/Service Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Customer in writing.
- 2.3.2 The Customer will have the right to inspect, expedite and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give the Customer access to the Supplier's premises for such purpose during its normal working hours. The Services and/or Goods will not be accepted by the Customer until inspected and approved in writing by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of the Purchase/Service Order and will in no way impair the Customer's right to require subsequent correction or re-performance of non-conforming Services and/or Goods.

2.4 Quality Standards

- 2.4.1 The Supplier must comply with the standards of quality specified in the Purchase/Service Order. If no standards are specified the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.

2.5 Defects and Warranty

- 2.5.1 The Supplier warrants that the Goods shall:
- (a) be free from liens, charges, encumbrances, mortgages or other defects in title;
 - (b) be new and made to the specified quality;
 - (c) be free from defects in design, materials and workmanship; and
 - (d) conform to the conditions and specifications of the Purchase/Service Order.
- 2.5.2 The Supplier warrants that the Goods and Services shall:
- (a) conform to all applicable laws and regulations to which the Services or Goods are subject; and
 - (b) be performed in accordance with any performance standard specified in the Purchase/Service Order.
- 2.5.3 The Supplier warrants that it will comply with any of the Customer's policies notified by the Customer to the Supplier from time to time, including without limitation any of the Customer's privacy policies.
- 2.5.4 The warranties noted in Clause 2.5.1 above are in addition to any statutory warranties applicable to the Services and/or Goods.
- 2.5.5 During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Customer:
- (a) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or
 - (b) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Customer.
- 2.5.6 If the Supplier fails to correct any defects and failures, of which it has been notified by the Customer, within the time specified in the notice (which must not be unreasonable), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer which may be deducted from moneys otherwise owing to the Supplier by the Customer.
- 2.5.7 Any Services re-performed or rectified and/or any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Customer, commencing on the date of completion of any such re-performance, rectification or repair.
- 2.5.8 Where the Supplier is not the original equipment manufacturer of the Goods the Supplier must obtain for the Customer's benefit such standard warranties, indemnities and rights as those outlined in this Purchase/Service Order and where more are offered, then the Supplier must provide such additional warranties, indemnities and rights to the Customer.

3. DELIVERY/DELAY

- 3.1 Unless otherwise specified in the Purchase/Service Order, Goods must be delivered FIS, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase/Service Order Form.
- 3.2 Title in the Goods will transfer to the Customer upon payment for the Goods. Such payment is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. Notwithstanding that the Customer has taken delivery of the Goods, the Supplier will remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase/Service Order. The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date or in the performance of the Services provided:

- (a) the delay is caused by a breach or act of prevention by the Customer, (without fault of the Supplier);
- (b) the Supplier has notified the Customer in writing within seven (7) days of the delay occurring (or such other time as may be specified in the Purchase/Service Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within seven (7) days of the delay occurring.
- 3.4 The Customer may in its absolute discretion (and with no obligation to do so) extend the time for performance or delivery for any other reason at any time prior to expiration of the Warranty Period. The Customer is not required to exercise its discretion under this Clause 3.4 for the benefit of the Supplier.
- 3.5 If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s), the Customer may terminate the Purchase/Service Order either in whole or in part for default, in accordance with the provisions of Clause 5.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Customer's damages and not as a penalty, the amount specified in the Purchase/Service Order Form, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.
- 4. VARIATIONS**
- 4.1 The Customer may vary the work under the Purchase/Service Order or any condition thereof and the Supplier must carry out any such variation as directed by the Customer. In the event of any such variation, the Supplier's price (addition or reduction) will be varied together with the delivery date(s) for the Services and/or Goods. Any variation to the price will be consistent with prices charged by the Supplier in accordance with the Purchase/Service Order. If agreement cannot be reached in relation to a revised price or delivery date(s), the parties will seek to resolve the dispute in accordance with Clause 9.
- 4.2 The Supplier must not vary the work under the Purchase/Service Order or any condition thereof, without the written consent of the Customer.
- 5. SUSPENSION/TERMINATION**
- 5.1 Suspension**
- 5.1.1 The Customer may, at any time by written notice, suspend all or part of the Purchase/Service Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must recommence the work under the Purchase/Service Order within forty-eight (48) hours of being directed to do so by the Customer.
- 5.2 Termination by Default**
- 5.2.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice stating its intention to terminate the contract pursuant to this Clause 5.2 to the other party (the "defaulting party") in the event that the defaulting party:
- (a) abandons or repudiates the Purchase/Service Order;
- (b) suspends performance of the contract for a significant time, or fails to pay monies due under the Purchase/Service Order, without reasonable cause;
- (c) breaches any of the terms and conditions of the Purchase/Service Order which is not remedied within seven (7) days of notice to do so; or
- (d) appears likely to become subject to an Insolvency Event described in Clause 5.3.
- 5.3 Termination for Insolvency**
- 5.3.1 If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation (each such event or process referred to in these General Terms and Conditions as an "Insolvency Event"), the other party may at any time by written notice terminate the contract forthwith.
- 5.4 Termination for fraudulent, misleading or deceptive conduct by the Supplier**
- 5.4.1 Notwithstanding any other provisions of the Purchase/Service Order, the Customer may terminate the Purchase/Service Order if the Supplier or any of its personnel engage in fraudulent, misleading or deceptive conduct in relation to the Purchase/Service Order or any other agreement or contract between the Supplier and the Customer.
- 5.5 Termination at Customer's Option**
- 5.5.1 Notwithstanding any other provisions of the Purchase/Service Order, the Customer may terminate the Purchase/Service Order at any time and for any reason whatsoever by giving seven (7) days written notice to the Supplier.
- 5.6 Supplier's Rights and Obligations on Suspension /Termination**
- 5.6.1 In the event of suspension of the Purchase/Service Order, the Supplier will not be entitled to payment by the Customer for any costs it may incur as a result of any such suspension.
- 5.6.2 In the event of insolvency of the Supplier or its default under Clause 5.2, the Customer shall immediately suspend any further payment to the Supplier. Any additional monies required by the Supplier to complete the Purchase/Service Order in excess of what the Customer would have paid under the Purchase/Service Order shall be a debt due and payable by the Supplier to the Customer.
- 5.6.3 In the event of termination by the Customer under Clause 5.4, and provided the Supplier is not in default, the Customer shall pay the Supplier for Services performed or Goods delivered prior to termination. The Customer shall not otherwise be liable for any other costs, losses, damages or expenses of any kind whatsoever of the Supplier in respect of the termination.
- 6. PRICE AND PAYMENT**
- 6.1 Unless otherwise stated in the Purchase/Service Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.
- 6.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes applicable to the Supplier, duties and charges payable with respect to the Goods and/or Services. The Purchase/Service Order price will be deemed to be inclusive of all such taxes, duties and charges.
- 6.3 Unless otherwise specified in the Purchase/Service Order, invoices for payment must be submitted to the Customer for payment following delivery of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than 60 days from the end of month of the date the invoice was issued (invoice date).
- 6.4 To the extent that any Taxable Supply occurs under the Purchase/Service Order then:
- (a) the party who is the supplier will (unless prices are expressed to be inclusive of GST), be entitled to increase the consideration for the Taxable Supply identified in the Purchase/Service Order ("net consideration") by the amount of any applicable GST calculated in accordance with the Act;
- (b) the recipient shall pay such increased consideration;

- (c) the supplier must in a situation such as described in Clause 6.4, issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid;
- (d) in Clauses 6.4(a) and (c), "Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated legislation and regulations, "GST" means the goods and services tax imposed by the Act and "Taxable Supply" means a taxable supply under the Act.

7. SUPPLIER NOT TO SUBCONTRACT OR ASSIGN

- 7.1 The Supplier must not subcontract, assign, novate, transfer, mortgage, charge or encumber any right or obligation, in whole or in part, under this Purchase/Service Order without the prior written consent of the Customer (in its absolute discretion).
- 7.2 The Supplier must obtain the approval of the Customer to full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract. Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase/Service Order.

8. RELATIONSHIP

- 8.1 In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in this Purchase/Service Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

9. DISPUTES

- 9.1 Disputes or differences arising between the Customer and the Supplier must be settled quickly and by negotiation.
- 9.2 In the event of any unresolved dispute between the Customer and the Supplier, the Supplier must ensure that the progress of the work under the Purchase/Service Order is continued without any effect on the specified delivery date.
- 9.3 The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Customer and the Supplier.
- 9.4 If the parties cannot resolve a dispute within twenty-one (21) days the dispute is first raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation. The dispute must be heard within fourteen (14) days after it is referred to the ACDC.
- 9.5 Neither party may litigate until the procedures in Clauses 9.1 to 9.4 above have first been complied with.

10. INSURANCE AND INDEMNITIES

- 10.1 The Supplier must maintain the insurances specified below from the commencement of this Purchase/Service Order until seven (7) years after the completion of the delivery of the Goods and/or Services:
- (a) the Supplier must maintain public and product liability insurance for an amount of not less than \$20,000,000, professional indemnity insurance for an amount of not less than \$5,000,000 and where applicable goods in transit insurance (for the total replacement value of the Goods);
- (b) the Supplier must ensure that its public liability and products liability policy each name the Customer as an additional insured and contain a cross-liability clause which allows the Customer to make a claim as though individual insurance policies had been issued to the Supplier and the Customer;
- (c) not reduce the level of insurance required by this Purchase/Service Order without the written consent of the Customer; and
- (d) give evidence of the insurances, and their currency, acceptable to the Customer on request.
- 10.2 The Supplier indemnifies the Customer in respect of all Losses arising out of the Supplier's performance or non performance (including any negligent or wilful act or omission), or any breach or default of its obligations under this agreement.
- 10.3 The Supplier's liability under Clause 10.2 shall not exceed the amount equal to five (5) times the amount paid or payable by the Customer under this Purchase/Service Order, except for Losses arising from personal injury or death (including disease or illness), third party property damage, breach of a third party's Intellectual Property, delays to tram passenger services, breach of confidence and loss arising from fraud or unlawful act, where no limitation applies.

11. APPLICABLE LAW

- 11.1 Unless otherwise specified, the Purchase/Service Order will be governed and construed in accordance with the laws of Victoria. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of Victoria.
- 11.2 The United Nations Convention on Purchase/Service Orders for the International Sale of Goods does not apply to this Purchase/Service Order.
- 11.3 Clauses 1.1, 1.2, 1.3, 1.6, 1.7, 2.5, 3.5, 5.6, 7, 8, 9, 10, 11 and 12 in Part A of the General Terms and Conditions and all Clauses in Part B of the General Terms and Conditions survive the termination or expiry of this Purchase/Service Order as do any other provisions that by implication from their nature are intended to survive the termination or expiry, and any rights and remedies accrued prior to termination.

12. FRANCHISE BUSINESS SPECIAL CONDITIONS

- 12.1 The Contractor must comply with the requirements set out in Part B (Franchise Business Special Conditions). Notwithstanding anything else in this agreement, to the extent that there is any inconsistency, ambiguity or discrepancy between the requirements of Part B and the rest of this agreement, the requirements of Part B prevail.

PART B – FRANCHISEE BUSINESS SPECIAL CONDITIONS

In this Part B "Contractor" has the same meaning as "Supplier" in Part A and means the person performing the Services and/or providing the Goods, as identified in the Purchase/Service Order Form.

1. DEFINITIONS

- Unless the context otherwise indicates, each word or phrase defined in this clause 1 has that meaning given to it wherever used in this Contract.
- 1.1 Aboriginal Self-Determination Plan means the relevant Franchise Plan, as prepared and updated in accordance with the Franchise Agreement.
- 1.2 "Accreditation" means accreditation obtained in accordance with the requirements of the Rail Safety National Law, including any guideline, regulation or ordinance made in respect of the Rail Safety National Law.
- 1.3 "Associate" has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).
- 1.4 "Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth)

- 1.5 "Authorisation" includes any Accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with a Governmental Agency.
- 1.6 "Claim" includes any claim, action, proceeding, demand or investigations of any nature or kind and includes the allegation of a claim.
- 1.7 "Confidential Information" means:
- In the case of the Principal:
 - all documents and information (whether or not in material form and whether or not disclosed before or after the date of the Purchase/Service Order) disclosed or revealed by the Principal, Head, TfV or any Principal's Associate or Head, TfV's Associate to the Contractor or any Contractor's Associate relating to the Purchase/Service Order, the Franchise Agreement, the Contractor's Activities the Franchise Business or the Victorian public transport system;
 - other than Third Party Data, all Data (including Personal Information); and
 - other information in connection with the Contractor's
 - In the case of the Contractor.
- 1.8 "Contract" means these Purchase/Service Order General Terms and Conditions.
- 1.9 "Contractor Employee Record" means a record held by or on behalf of the Contractor that is directly related to a current or former employment relationship between the Contractor and a current or former employee of the Contractor.
- 1.10 "Contractor IP" means any Intellectual Property which the Contractor Uses, or wishes to Use, in connection with the performance of the Contractor's Activities, including Intellectual Property:
- owned solely by the Contractor as at the date of this Contract;
 - owned wholly or in part by a third party as at date of this Contract or during the performance of the Contractor's Activities and which is licensed to the Contractor; and
 - assigned to the Contractor during the term of this Contract, but excluding any Head, TfV IP, Developed IP, any Intellectual Property subsisting in Data and any Head, TfV Mark.
- 1.11 "Contractor's Activities" means the work, things, services and tasks that the Contractor is or may be required to perform to comply with its obligations under or in connection with this Contract.
- 1.12 "Contractor's Associate" means any director, officer, employee, agent, contractor, consultant, adviser or Related Body Corporate of or to the Contractor.
- 1.13 "Corporations Act" means the *Corporations Act 2001* (Cth).
- 1.14 "Data" means any information or materials generated, processed, obtained, received, collected, held, stored, managed, used, disclosed, transferred or transmitted by or on behalf of the Contractor, including all data and expressions of data comprising any public sector data (as defined in the Privacy and Data Protection Act) which is collected, held, used, managed, disclosed or transferred by the Contractor for the principal or Head, TfV.
- 1.15 "Data Security Breach" has the meaning given in clause 14.4.
- 1.16 "Data Security Obligations" means:
- obligations imposed on public sector agencies under the Privacy and Data Protection Act which relate to data security;
 - any other applicable Laws which relate to data security;
 - requirements imposed on Head, TfV under the Protective Data Security Framework or the Protective Data Security Standards; and
 - any Head, TfV Data Security Policy.
- 1.17 "Data Systems" includes:
- information technology for the generation, transmission, processing or storage of Data including infrastructure, hardware, software and systems, including the OCMS and OCMS Spares (as defined in the Franchise Agreement);
 - non electronic means for storage of Data; and
 - procedures for dealing with Data including by use of information technology and non-electronic means,
- employed or used by or on behalf of the Contractor under, or in connection with, the Contractor performing its obligations under this Contract or otherwise in connection with the Contractor's Activities.
- 1.18 "Department" means the Victorian Department of Transport and Planning.
- 1.19 "Developed IP" means any Intellectual Property:
- developed by or on behalf of the Contractor in connection with the performance of the Contractor's Activities;
 - subsisting in any Improvements,
- including in any information, records, reports, documents, drawings, specifications, instructions, procedures, training materials, photographs, plans, software (including source code), operating plans and schedules.
- 1.20 "Disclosed Information" means:
- the information included in the electronic data room operated by or on behalf of the State or Head, TfV, as part of the procurement process leading to the award of the Franchise Agreement; and
 - all information, data or materials:
 - issued or made available by or on behalf of Head, TfV or any of Head, TfV's Associates to the Principal or any of the Principal's Associates in connection with the Franchise Business (whether prior to or after 1 December 2024), and which is also issued or made available to the Contractor; or
 - referred to, or incorporated by reference, in any material referred to in paragraph (b)(i),
- but excludes:
- the Franchise Agreement; or
 - the materials which Head, TfV is expressly required by the Franchise Agreement to provide to the Principal or any of the Principal's Associates.
- 1.21 "DJISIR" means the Department of Jobs, Skills, Industry and Regions (and any successor Victorian Government department) as the Department responsible for the Fair Jobs Code.
- 1.22 "Fair Jobs Code" means the Fair Jobs Code issued by the State, available at <https://www.buyingfor.vic.gov.au/fair-jobs-code>.
- 1.23 "Fair Work Act" means the *Fair Work Act 2009* (Cth).
- 1.24 "Franchise Agreement" means the Franchise Agreement – Tram dated 26 June 2024 between the Head, TfV and the Principal in the form published at their website [tenders.vic.gov.au](https://www.buyingfor.vic.gov.au), with such amendments as notified in writing by the Principal to the Contractor from time to time.
- 1.25 "Franchise Asset" means any asset of the Franchisee.
- 1.26 "Franchise Business" means the business of:
- providing the Passenger Services;
 - the maintenance and operation of, and the granting of access to, Infrastructure and OCMS;
 - the maintenance and operation of Rolling Stock;
 - undertaking or assisting in the delivery of Projects;
 - any business or activity associated with the activities described in paragraph (a), (b), (c) or (d),
- to be conducted by or on behalf of the Principal.
- 1.27 "Franchise Period" means the term of the Franchise Agreement.
- 1.28 "Franchise Plan" means a franchise plan prepared and updated by the Principal under the Franchise Agreement, and a copy of which is available at the website address notified by the Principal to the Contractor in writing or which has otherwise been provided to the Contractor.
- 1.29 "Franchisee IP" means any Intellectual Property which the Principal Uses, or wishes to Use, in connection with the operation of the Franchise Business, including Intellectual Property:
- owned solely by the Principal as at 1 December 2024;
 - owned wholly or in part by a third party as at 1 December 2024 or during the Franchise Period and which is licensed to the Franchisee; or
 - assigned to the Franchisee during the Franchise Period, but excluding any Head, TfV IP, Developed IP, any Intellectual Property subsisting in Data, any Franchisee Mark (as defined in the Franchise Agreement) and any Head, TfV Mark.
- 1.30 "Franchise Rolling Stock" means an item of Rolling Stock which is owned by or leased to the Principal, but does not include the G Class Rolling Stock.
- 1.31 "Governmental Agency" means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (wherever created or located). It also includes a self-regulatory organisation established under statute or a stock exchange.
- 1.32 "G Class Contractor" means Alstom Transport Australia Pty Limited (ACN 165 157 451).
- 1.33 "G Class Rolling Stock" means the Rolling Stock to be supplied and maintained by the G Class Contractor under the G Class Supply and Maintenance Agreement.
- 1.34 "G Class Supply and Maintenance Agreement" means the agreement titled 'Next Generation Trams Project Supply and Maintenance Agreement' entered into by the G Class Contractor and Head, TfV.
- 1.35 "Handle" means collect, hold, use, disclose, process, store, transfer, access, correct, deal with or handle.
- 1.36 "Head, TfV" means the Head, Transport for Victoria (a body corporate established under the *Transport Integration Act 2010* (Vic)).
- 1.37 "Head, TfV's Associate" means the State and any Victorian Governmental Agency and any officer, employee, agent, contractor, consultant or adviser of or to Head, TfV, the State or any Victorian Governmental Agency. For the avoidance of doubt, the Principal, MTP Project Co, G Class Contractor and their representatives are not 'Head, TfV's Associates' for the purposes of the Contract.
- 1.38 "Head, TfV IP" means any Intellectual Property which is necessary to enable the Principal to perform its obligations under the Franchise Agreement (or any related contract) or which is necessary to enable the Contractor to perform its obligations under this Contract and which is:
- owned solely by Head, TfV as at 1 December 2024;
 - owned wholly or in part by a third party as at 1 December 2024 or during the Franchise Period and which is:
 - licensed to Head, TfV; and
 - able to be lawfully sub-licensed by Head, TfV to the Principal on the terms set out in the Franchise Agreement for the purpose of allowing the Principal to perform its obligations under the Franchise Agreement (or any related contract); or
 - assigned by a third party to Head, TfV during the Franchise Period and which is able to be lawfully licensed by Head, TfV to the Principal on the terms set out in the Franchise Agreement for the purpose of allowing the Principal to perform its obligations under the Franchise Agreement (or any related contract),
- but excluding Developed IP, any Intellectual Property subsisting in Data and any Head, TfV Mark.
- "Head, TfV Mark" has the meaning given in the Franchise Agreement.
- "Head, TfV Privacy Policy" means any policy of Head, TfV relating to the handling of Personal Information, as published by Head, TfV or otherwise notified by Head, TfV (including via the Principal) to the Contractor from time to time.
- 1.41 Head, TfV Security Policy means any policy of Head, TfV relating to data security, as published by Head, TfV or otherwise notified by Head, TfV (including via the Principal) to the Contractor from time to time.
- 1.42 "Health Information" has the meaning given in the Health Records Act.
- 1.43 "Health Records Act" means the *Health Records Act 2001* (Vic).
- 1.44 "HPP" has the meaning given to 'Health Privacy Principle' in the Health Records Act.
- 1.45 "Improvements" means all:
- alterations, modifications and enhancements to, and applications, developments and adaptations of, the materials in which:
 - Head, TfV IP or Franchisee IP subsists;
 - Contractor IP subsists, and which are made by or on behalf of the Contractor in connection with performing its obligations under this Contract; or
 - Developed IP or Intellectual Property in Data subsists, and which are made by or on behalf of the Contractor in connection with performing its obligations under this Contract; and
 - all other materials based upon or derived from the materials in which any:
 - Head, TfV IP or Franchisee IP subsists;
 - Contractor IP subsists, and which are made by or on behalf of the Contractor in connection with performing its obligations under this Contract; or
 - Developed IP or Intellectual Property in Data subsists, and which are made by or on behalf of the Contractor in connection with performing its obligations under this Contract,
- whether or not the use of such alterations, modifications, enhancements, applications, developments, adaptations, or other materials would constitute an infringement of any Head, TfV IP, Contractor IP, Developed IP or Intellectual Property in Data.
- 1.46 "Industry Best Practice" means the utilisation of up-to-date and advanced proven processes, techniques, technology or methodologies, and will be interpreted having regard to:
- any prevailing industry standards in respect of services similar to the Contractor's Activities both in Australia and internationally; and
 - the processes, techniques, technology or methodologies utilised by other service providers substantially similar to the Contractor in the performance of similar services to the Contractor's Activities.
- 1.47 "Infrastructure" means:
- all improvements, plant, equipment, fixtures, fittings, buildings and structures installed or erected on, over or under the Land from time to time including:
 - track systems (such as rail, fastenings, pads, sleepers, ballast, rail joints and slab track);
 - sidings/stabling facilities and yards;
 - associated track structures (such as points and crossings, track support earthworks cuttings, embankments, track formation, track drainage systems and geomembranes);
 - structures that accommodate and allow the movement of people, plant and equipment (such as tunnels, bridges, retaining walls, viaducts, subways, platforms, station buildings, at-grade pedestrian crossings, maintenance depots/workshops/facilities);
 - the Preston under floor wheel lathe;
 - signalling system assets (such as signals, track circuits, point machines, tram stops, level crossing protection equipment);

	(vii) traction power assets (such as overhead wiring, structures supporting overhead wiring, substations, tie stations, rectifiers, rectifier transformers, circuit breakers, feeder cables remote control systems);	1.69	"PPSA Deemed Security Interest" means an interest of the kind referred to in section 12(3) of the PPSA where the transaction concerned does not, in substance, secure payment or performance of an obligation.
	(viii) building services (such as power supply, lighting, air conditioning, water supply, sewerage and storm water drainage);	1.70	"Principal" means Yarra Journey Makers Pty Ltd (AC N 671 633 159).
	(ix) service roads;	1.71	"Principal's Associate" means any director, officer, employee, agent, contractor, consultant, adviser or Related Body Corporate of or to the Principal.
	(x) notices and signs; and	1.72	"Privacy and Data Protection Act" means the <i>Privacy and Data Protection Act 2014</i> (Vic).
	(xi) maintenance facilities; and	1.73	"Privacy Code of Practice" means any code of practice approved under Division 3 of Part 3 of the Privacy and Data Protection Act.
	(b) all tram track and tram supporting infrastructure (such as passenger loading platforms, passenger shelters, safety zones, traction power systems and communication systems) relating to the routes owned by or leased to Head, TfV from time to time necessary for the safe and proper operation of the Franchise Business.	1.74	"Privacy Consent" means an individual's consent to the Contractor, the Principal or Head, TfV (as the case may be):
1.48	"Insurance Deductible" means, in respect of any insurance and any single incident, the amount that:		(a) collecting, using or disclosing Personal Information about them; and
	(a) the relevant insurer is entitled to deduct from any payment the insurer is required to make under that insurance policy for that incident;	1.75	(b) disclosing their Personal Information to the Contractor, the Principal or Head, TfV, or any other person nominated by the Contractor, the Principal or Head, TfV.
	(b) the insured is required to pay to the relevant insurer in respect of a claim under that insurance policy for that incident;		"Privacy Notice" means a notice provided for the purposes of satisfying IPP 1.3 or 1.5 or HPP 1.4 or 1.5 (as the case may be) or any other Privacy Obligation in a format approved by the Principal or Head, TfV.
	(c) the insured must bear under the insurance policy for that incident before the insurer is required to indemnify the insured; or	1.76	"Privacy Obligations" means
	(d) the insured must bear under any self-insurance arrangement.		(e) obligations imposed on public sector agencies under the Privacy and Data Protection Act (excluding Part 4 of the Privacy and Data Protection Act);
1.49	"Intellectual Property" means any intellectual or industrial property whether protected by statute, at common law or in equity, including any registered and unregistered Mark, trade name, logo or get-up (and copyright subsisting in any such Mark, trade name, logo and get-up), patent, invention, copyright, design (whether or not registrable), trade secret, circuit layout design or right in relation to circuit layouts, right to confidential information, technical information, processes, techniques and know how.		(f) obligations imposed on the Contractor, the Principal or Head, TfV under the <i>Privacy Act 1988</i> (Cth) to the extent they are not exempt from regulation under the <i>Privacy Act 1988</i> (Cth);
1.50	"IPP" has the meaning given to 'Information Privacy Principle' in the Privacy and Data Protection Act.		(g) any other applicable Laws which relate to the privacy and protection of Personal Information, including the Health Records Act, the <i>Spam Act 2003</i> (Cth) and the <i>Do Not Call Register Act 2006</i> (Cth);
1.51	"KDR" means KDR Victoria Pty Ltd (ACN 138 066 074).		(h) any privacy codes of conduct or similar instruments in relation to privacy protection which are industry standards and applicable to the Passenger Services;
1.52	"Law" means:		(i) any Privacy Notice or Privacy Consent issued by Head, TfV or the Principal; and
	(a) those principles of common law and equity established by decisions of courts;	1.77	(j) any Head, TfV policy relating to privacy compliance, including Head, TfV Privacy Policy.
	(b) all Legislation of the Commonwealth, the State or a Governmental Agency; and		"Privacy Purpose" means, in respect of any Personal Information of an individual, the purpose for which the Personal Information was originally provided to the Contractor, the Principal or Head, TfV by the individual.
	(c) Authorisations (including any conditions or requirements under them).	1.78	"Project" means a project which relates to or impacts on any part of the rail network and systems used by the Principal to undertake and deliver rail operations.
1.53	"Liability" means debts, obligations, liabilities, losses, expenses, costs and damages of any kind and however arising, including penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable and whether:	1.79	"Protective Data Security Framework" means the Victorian protective data security framework issued by the Information Commissioner from time to time under the Privacy and Data Protection Act.
	(a) arising from or in connection with any Claim or not;		"Protective Data Security Standards" means the protective data security standards issued by the Information Commissioner from time to time under the Privacy and Data Protection Act.
	(b) liquidated or not;	1.80	"Public Accountability Act" means the <i>Public Records Act 1973</i> (Vic), the <i>Freedom of Information Act 1982</i> (Vic), the <i>Public Interest Disclosures Act 2012</i> (Vic), the <i>Financial Management Act 1994</i> (Vic), the <i>Audit Act 1994</i> (Vic) and the <i>Ombudsman Act 1973</i> (Vic).
	(c) legal or equitable; or		"Quarter" means any calendar quarter (or part of a calendar quarter) commencing on 1 January, 1 April, 1 July or 1 October in any year.
	(d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.	1.81	"Rail Safety National Law" has the meaning specified in the <i>Rail Safety National Law Application Act 2013</i> (Vic) and includes the Rail Safety Regulations.
1.54	"LIDP" means the Local Industry Development Plan submitted by the Principal under the Franchise Agreement and certified by the Industry Capability Network (Victoria) by providing an acknowledgement letter or such later version approved by Head, TfV under the Franchise Agreement.	1.82	"Rail Safety Regulations" means the regulations made under the Rail Safety National Law or the <i>Rail Safety National Law Application Act 2013</i> (Vic), as amended or replaced from time to time.
1.55	"Local Jobs First Policy" means the policy of the Victorian Government made under section 4 of the <i>Local Jobs First Act 2003</i> (Vic).	1.83	"Recycled First Plan" means the relevant Franchise Plan, as prepared and updated in accordance with the Franchise Agreement.
1.56	"Mark" has the meaning given to 'trade mark' in the <i>Trade Marks Act 1995</i> (Cth).	1.84	"Related Body Corporate" has the meaning given in the Corporations Act.
1.57	"Model Litigant Guidelines" means the Victorian Model Litigant Guidelines published by the State from time to time, being as at the date of this Contract the guidelines published at https://www.justice.vic.gov.au/justice-system/laws-and-regulation/victorian-model-litigant-guidelines .	1.85	Related Privacy Purpose means:
1.58	"MTP Franchisee Cooperation Agreement" means the agreement titled 'Franchisee Cooperation Agreement (Tram) – Metro Tunnel – Tunnel and Stations PPP' dated 16 December 2017 between KDR and MTP Project Co, anticipated to be novated to the Principal on or prior to the Franchise Commencement Date (as defined in the Franchise Agreement).	1.86	(a) in relation to any Personal Information, a purpose that is related to the Privacy Purpose of that Personal Information; or
1.59	"MTP Project Co" means the entity described as 'Project Co' in the MTP Franchisee Cooperation Agreement.	1.87	(b) if the Personal Information is Sensitive Information or Health Information, directly related to the Privacy Purpose of that Personal Information, and for which the individual would reasonably expect the Personal Information to be used or disclosed.
1.60	"OCMS has the meaning given in the Franchise Agreement.		"Rolling Stock" means any vehicle that operates on or uses a tramway track, including a light inspection vehicle and a road/rail vehicle, and includes the Franchise Rolling Stock and the G Class Rolling Stock.
1.61	"Pandemic" means:	1.88	"Rotable Item" means a constituent item of Rolling Stock which is capable of being reconditioned or repaired.
	(a) COVID-19; and	1.89	"Special Tool" means a tool (including an electronic diagnostic tool) which may be used in a specific activity for undertaking maintenance of the Rolling Stock or Rotable Items.
	(b) any other infectious disease that is declared as a pandemic by the World Health Organisation after the Contract Execution Date.	1.90	"Safety Law" means any Law in relation to safety including the following:
1.62	"Pandemic Change in Law" means (if it takes effect after the Contract Execution Date):	1.91	(a) <i>Work, Health and Safety Act 2011</i> (Cth);
	(a) a change in (including any extension, repeal, revocation or expiry of) Legislation in response to a Pandemic;		(b) <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth);
	(b) new Legislation in response to a Pandemic; or		(c) <i>Workplace Injury, Rehabilitation and Compensation Act 2013</i> (Vic);
	(c) a new Pandemic Direction or a change to (including any extension, repeal, revocation or expiry of) an existing Pandemic Direction.		(d) <i>Electrical Safety Act 1998</i> (Vic);
1.63	"Pandemic Direction" means a direction, order, requirement, declaration or exercise of a power by a relevant Governmental Agency in Victoria or in any other Australian jurisdiction in response to a Pandemic which the Franchisee is required to implement in order to comply with its obligations under Legislation, including:		(e) <i>Dangerous Goods Act 1985</i> (Vic);
	(a) a public health order or direction issued by a relevant Governmental Agency under the <i>Public Health and Wellbeing Act 2008</i> (Vic) or the equivalent public health Legislation in another Australian jurisdiction;		(f) the Rail Safety National Law; and
	(b) the exercise of powers or issuing of directions or requirements by a relevant Governmental Agency under the <i>Biosecurity Act 2015</i> (Cth);		(g) <i>Occupational Health and Safety Act 2004</i> (Vic).
	(c) the exercise of powers or issuing of directions under a declaration of an emergency as a 'state of disaster' or a declaration of a 'state of emergency'; or	1.92	"Security Interest" means any mortgage, pledge, lien, charge, encumbrance, assignment, hypothecation, security interest, preferential interest, trust arrangement, contractual right to set-off or any other security agreement or arrangement in favour of any person of any kind and includes:
	(d) the exercise of powers or issuing of directions analogous or with a similar effect to those contemplated in paragraphs (a) to (c).		(a) a security interest under section 12 or the PPSA; and
1.64	"Passenger Services" means the tramway passenger services as provided by the Principal in Victoria under the Franchise Agreement from time to time whether on its own account or through a permitted third party contractor.	1.93	(b) anything which gives a creditor property to other creditors with respect to any asset, but does not include a PPSA Deemed Security Interest.
1.65	"Passenger Services Personal Information" means any Personal Information which the Contractor accesses, receives, collects, stores, uses, generates, discloses or processes under or in connection with the Passenger Services, the performance of the Contractor's Activities or otherwise under this Contract, but excludes any Personal Information that is contained in a Contract Employee Record.		"Sensitive Information" has the meaning given in the Privacy and Data Protection Act.
1.66	"Personal Information" means information or opinion about an individual whose identity is apparent, or can reasonably be ascertained, including 'personal information' as that term is defined in the Privacy and Data Protection Act and 'health information' as that term is defined in the Health Records Act.	1.94	"SOCI Act" means the <i>Security of Critical Infrastructure Act 2018</i> (Cth).
1.67	"Power" means any approval, consent, power, right, authority, discretion or remedy, whether express or implied.		"Social Procurement Commitments" means:
1.68	"PPSA" means the <i>Personal Property Securities Act 2009</i> (Cth) and all regulations and other subordinate legislation pursuant to it.	1.95	(a) the 'Base Targets' and 'Stretch Targets' (as defined in the Franchise Agreement) to the extent they apply to the Contractor's Activities and are set out in the Contract Particulars;
			(b) having and complying with a gender equality action plan; and
			(c) having and complying with a family violence policy.
			"Standard" means:
			(a) the regulatory and mandatory standards, codes, guidelines, specifications, rules, policies, procedures, directives, circulars or practices or other requirements imposed by Law in relation to the Contractor's Activities and the Infrastructure, OCMS or Rolling Stock (as applicable); and
			(b) all standards, codes, guidelines, specifications, rules, policies, procedures, directives, circulars or practices and other requirements (including technical guidelines regarding use of standard parts or type approvals) in relation to the Contractor's Activities or the Franchise Business with which (as applicable) a service provider or an experienced

- railway operator (as applicable) would comply having regard to the nature of the Contractor's Activities or the Franchise Business (as applicable), and includes at the date of this Contract the standards listed in:
- (c) Schedule 8 (Infrastructure Standards) of the Infrastructure Module, which forms part of the Franchise Agreement;
 - (d) Schedule 6 (OCMS Standards) of the OCMS Module, which forms part of the Franchise Agreement; and
 - (e) section 1 of Schedule 6 (Rolling Stock Standards) of the Rolling Stock Module, which forms part of the Franchise Agreement,
- but excludes all Laws and any conditions or requirements under any Laws.
- 1.96 "State" means the State of Victoria.
- 1.97 "Third Party Data" means any Data which is not owned by Head, TfV, and any Head, TfV's Associate, the Contractor or any Contractor's Associate.
- 1.98 "Third Party Improvements" means all:
- (a) alterations, modifications and enhancements to, and applications, developments and adaptations of, the materials in which any Contractor IP subsists which are:
 - (i) owned wholly or in part by a party other than the Contractor or a Contractor's Associate; and
 - (ii) not made by or on behalf of the Contractor in connection with performing its obligations under this Contract; and
 - (iii) used by the Contractor in performing its obligation under this Contract; and
 - (b) all other materials based upon or derived from the materials in which any Contractor IP subsists which:
 - (i) are owned wholly or in part by a party other than the Contractor or a Contractor's Associate; and
 - (ii) are not made by or on behalf of the Contractor in connection with performing its obligations under this Contract but are subsequently used by the Contractor in performing its obligation under this Contract.
- 1.99 "Trade Marks Act" means the *Trade Marks Act 1995* (Cth).
- 1.100 "Trade Mark Licence" means the relevant licence granted by head, TfV under the Franchise Agreement.
- 1.101 "Transaction Document" means the Franchise Agreement or any agreement related to the Franchise Agreement.
- 1.102 "Use" means, in relation to the Intellectual Property, disclose, reproduce, copy, adapt, publish, perform, exhibit, transmit, communicate, rent or make other use of the Intellectual Property or any adaptation thereof (or any part of the Intellectual Property or any such adaptation).
- 1.103 "Wilful Misconduct" means an act or failure to act that was intended to cause, or was in reckless disregard of or with wanton indifference to, any harmful consequences of the action or inaction, and includes a wilful default.
- 2. GENERAL MATTERS**
- 2.1 Interpretation**
- Notwithstanding anything in the Purchase/Service Order to the contrary, to the extent that there is any inconsistency, ambiguity or discrepancy between this Part B of the General Terms and Conditions and any other clause, schedule or annexure of the Purchase/Service Order, this Part B of the General Terms and Conditions will prevail.
- 2.2 Franchise Agreement**
- In performing the Contractor's Activities or its obligations under this Contract or exercising its rights under this Contract, the Contractor must not do (or omit to do) any act, matter or thing that would cause the Principal to breach the Franchise Agreement.
- 2.3 Franchise Plans, reporting and attendance at meetings**
- Without prejudice to any other provisions of this Contract with respect to Franchise Plans, reporting, attendance at meetings or Approvals, the Contractor must:
- (a) unless directed otherwise in writing by the Principal, carry out the Contractor's Activities in accordance with the Franchise Plans (and updated versions of them), to the extent such Franchise Plans are relevant or applicable to the Contractor's Activities, and to the extent that the relevant Franchise Plans, and any updates of them, have been provided or made available to the Contractor;
 - (b) provide such assistance to the Principal as the Principal reasonably requires (and within such timeframes as the Principal reasonably requires) in order to assist the Principal to comply with its obligations under the Franchise Agreement to prepare and update Franchise Plans (or parts thereof), to the extent such Franchise Plans are relevant or applicable to the Contractor's Activities;
 - (c) provide such assistance to the Principal as the Principal reasonably requires (and within such timeframes as the Principal reasonably requires) in order to assist the Principal to comply with its reporting obligations under the Franchise Agreement, to the extent such reporting obligations are relevant or applicable to the Contractor's Activities; and
 - (d) attend all meetings that the Principal reasonably requires the Contractor to attend in connection with the Contractor's Activities, which may include meetings required under the Franchise Agreement and in respect of which the Principal is required to procure the attendance of the Contractor (and the Principal may nominate specific personnel of the Contractor to attend meetings referred to in this clause and the Contractor must ensure that such personnel attend the required meetings).
- 2.4 Reference to Franchise Agreement documents**
- Where this Contract refers to any Franchise Agreement document (including any Franchise Plan), the Contractor acknowledges and agrees that it has:
- (a) access to such document via the website tenders.vic.gov.au and such other website address notified in writing by the Principal to the Contractor; or
 - (b) otherwise been provided with a copy of such document.
- 3. PARTICULAR MANDATORY REQUIREMENTS OF THE FRANCHISE AGREEMENT**
- 3.1 Direct Deed**
- Where required by the Principal (consequent upon a requirement of Head, TfV), the Contractor must, on or before the Contract Execution Date, provide the Principal with a duly executed (by the Contractor) direct deed in the form of Schedule 21 of the Franchise Module which forms part of the Franchise Agreement.
- 3.2 Principal Security**
- The Contractor acknowledges and agrees that neither the creation of any Security Interest granted by the Principal in favour of Head, TfV (Franchisee Security) nor the exercise of any of Head, TfV's Powers under the Franchisee Security or the Franchise Agreement will of itself:
- (a) contravene or constitute a breach by the Principal of any of its obligations under this Contract or any event of default, termination event or similar event (whatever called) under this Contract;
 - (b) constitute any other event or circumstance which would entitle the Contractor to avoid, terminate, discharge or rescind this Contract or treat it as repudiated or suspend the Contractor's performance of obligations under it; or
 - (c) entitle the Contractor to exercise any power (including termination) under this Contract.
- 4. STANDARD OF PERFORMANCE**
- The Contractor must ensure that all Contractor's Associates who are engaged in or in connection with the Contractor's Activities are properly trained and experienced to a level that would

reasonably be expected of an experienced, efficient and competent person engaged in the same type of undertaking as the relevant Associate under the same or similar circumstances.

COMPLIANCE OBLIGATIONS

Compliance with ethical work practices

The Contractor:

- (a) must, and must ensure that its subcontractors, comply with all applicable employment and industrial relations obligations relevant to its employees and other personnel, including any applicable obligations arising under the Fair Work Act and any associated regulations; and
- (b) must not, and must ensure that its subcontractors do not:
 - (i) engage in unethical work practices in the provision of the Contractor's Activities (or any services or goods forming part of or in connection with the Contractor's Activities); or
 - (ii) employ or otherwise engage employees or other personnel on terms or conditions which are overall worse than industry standards generally applicable in Victoria, Australia. For the avoidance of doubt, the Contractor will meet generally applicable industry standards if the terms and conditions of the employment of engagement are overall no worse than any applicable enterprise agreement, modern award and the National Employment Standards under the Fair Work Act.

Compliance with standards

The Contractor must, in performing the Contractor's Activities, comply with the Standards.

Compliance with SOCI Act

- (a) The Contractor must, to the extent relevant or applicable to the performance of the Contractor's Activities:
 - (i) comply with
 - the SOCI Act and related regulations and rules (Security Legislation);
 - any lawful notice, direction or request made by Head, TfV (via the Principal) for the purposes of complying with the Security Legislation in respect of the Contractor's Activities; and
 - any lawful notice, direction or request made by a Minister, a Secretary or designated officer pursuant to the Security Legislation in respect of the Contractor's Activities;
 - (ii) provide to the Principal, as soon as practicable after receipt, any notice, direction or request referred to in clause 5.3(a)(i)(C);
 - (iii) (to the extent relevant or applicable to the Contractor's Activities) cooperate with, and provide all necessary assistance to the Principal and Head, TfV for Head, TfV to fulfil its obligations pursuant to the Security Legislation in respect of the Franchise Business, including providing any information or documents as soon as practicable for the purposes of Head, TfV complying with the Security Legislation; and
 - (iii) if it becomes aware of a cyber security incident that may directly or indirectly have any impact on Head, TfV or the Franchise Business, immediately notify and provide all relevant documents and information about the cyber security incident to the Principal.
- (b) The Contractor must indemnify the Principal from and against any Liability that may be incurred or sustained by the Principal in respect of or arising from:
 - (i) any failure by the Contractor or a Contractor's Associate to comply with this clause 5.3; or
 - (ii) any act or omission of the Contractor or a Contractor's Associate in connection with this Contract or the Contractor's Activities that constitutes a breach of, or caused Head, TfV to breach, the Security Legislation.

Compliance with Safety Law

- (a) The Contractor must, in connection with the performance of the Contractor's Activities:
 - (i) comply with all Safety Law;
 - (ii) ensure that all persons for whom it is responsible or over whom it is capable of exercising control comply with all obligations imposed by Safety Law on the Contractor; and
 - (iii) not do (or omit to do) any act, matter or things that would cause the Principal to be in breach of its Accreditation or any of its duties under the Rail Safety National Law.
- (b) The Contractor must promptly notify the Principal of any notice (and provide a copy of the notice), including a notice of non-compliance, prohibition or improvement notice, the Contractor receives under Safety Law from a Governmental Agency or workers' representative in connection with the performance of the Contractor's Activities.

General safety obligations

The Contractor must, in connection with the performance of the Contractor's Activities:

- (a) ensure that, so far as is reasonably practicable, all plant or systems of work that are controlled or used by or on behalf of the Contractor are used and maintained in a safe manner and without risks to health and if the Principal considers that any plant is unsafe or a risk to health, the Principal may direct the Contractor to:
 - (i) stop using the plant, until it has been brought into a safe working order; or
 - (ii) replace the plant with plant which is in a safe working order;
- (b) ensure that all plant is maintained and used in accordance with Safety Law; and
- (c) ensure that all subcontractors engaged by the Contractor comply with Safety Law.

DEALINGS WITH FRANCHISE ASSETS

The Contractor must not, in connection with the performance of the Contractor's Activities, except with the prior written consent of the Principal:

- (a) create or allow to exist for the benefit of it or any of its subcontractor any Security Interest over any present or future assets or undertakings of the Principal or Head, TfV (including any Franchise Asset); or
 - (b) in any other way:
 - (i) dispose of;
 - (ii) create or allow any interest in; or
 - (iii) part with possession of,
- any Franchise Asset.

PPSA

- (a) The Contractor acknowledges and agrees that each of Head, TfV, VicTrack and any other relevant Governmental Agency or the Principal may register any Security Interest or PPSA Deemed Security Interest which it considers arises out of any Transaction Document or this Contract (even before that Security Interest or PPSA Deemed Security Interest starts).
 - (b) Whenever the Principal requests the Contractor to do anything:
 - (i) to ensure each Security Interest or PPSA Deemed Security Interest (as applicable) created under the Transaction Documents or this Contract is fully effective, enforceable and perfected with the stated priority;
 - (ii) for more satisfactorily assuring or securing any asset the subject of a Security Interest or PPSA Deemed Security Interest to Head, TfV, VicTrack or any other relevant Governmental Agency or the Principal in a manner not inconsistent with the Transaction Documents or this Contract; or
 - (iii) for aiding the exercise of any Power,
- the Contractor must do it as soon as practicable at its own cost. It may include:

- (iv) doing anything to make, procure or obtain any Authorisation from a Governmental Agency (including registration) in respect of anything, or to facilitate it;
- (v) creating, procuring or executing any document, including any notice, consent or agreement, or legal or statutory mortgage or transfer; and
- (vi) delivering documents or evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any asset the subject of a Security Interest or PPSA Deemed Security Interest.
- (c) The Contractor waives any right it may have at any time, including under sections 144 and 157 of the PPSA, to receive a copy of a verification statement or other notice contemplated in the PPSA.
- (d) The Contractor waives its right to receive anything from Head, TfV, VicTrack or any other relevant Governmental Agency or the Principal under section 275 of the PPSA, and agrees:
 - (i) not to make any request of Head, TfV, VicTrack or any other relevant Governmental Agency or the Principal under that section; and
 - (ii) to waive any duty of confidence that would otherwise permit non-disclosure under that section,
 but this does not limit the Contractor's rights to request information other than under section 275 of the PPSA.
- (e) The Contractor shall not disclose any information of the kind mentioned in section 275(1) of the PPSA (but this does not limit the Contractor's rights to request information other than under section 275 of the PPSA).
- (f) To the extent permitted by Law:
 - (i) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (A) neither Head, TfV, VicTrack nor any other relevant Governmental Agency nor the Principal is required to comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - sections 142 and 143 are excluded;
 - (ii) for the purposes of section 115(7) of the PPSA, neither Head, TfV, VicTrack nor any other relevant Governmental Agency nor the Principal is required to comply with sections 132 and 137(3) of the PPSA; and
 - (iii) if the PPSA is amended after the date of this Contract to permit the Contractor, the Principal, Head, TfV, VicTrack or any other relevant Governmental Agency to agree to not comply with or to exclude other provisions of the PPSA, the Principal, Head, TfV, VicTrack or any other relevant Governmental Agency (as applicable) may notify the Contractor that any of these provisions is excluded, or that the Principal, Head, TfV, VicTrack or any other relevant Governmental Agency (as applicable) need not comply with any of these provisions, as notified to the Contractor by the Principal, Head, TfV, VicTrack or any other relevant Governmental Agency (as applicable).
- (g) The Contractor waives any rights it may have to anything installed in or affixed to the any assets used by the Principal in the conduct of the Franchise Business, including any rights the Contractor might otherwise have under Part 3.3 of the PPSA.

8. Access and inspection

8.1 Right of access and inspection

- (a) Subject to clause 8.3, the Contractor must, in connection with this Contract and the Contractor's Activities:
 - (i) provide the Principal, any Principal's Associate, Head, TfV and any Head TfV's Associate with copies of; and
 - (ii) permit, at any reasonable time, the Principal, any Principal's Associate, Head, TfV and any Head TfV's Associate to access, inspect and copy, the books, records, contracts, Data and other information or material kept by or on behalf of the Contractor.
- (b) Subject to clause 8.3, the Contractor must, in relation to any tender or other procurement process being carried out by Head, TfV or a Head, TfV's Associate for:
 - (i) the operation of all or any part of the Franchise Business; or
 - (ii) the right to provide any other tramway passenger services or operate any other tramway asset,
 provide full cooperation to Head, TfV or Head, TfV's Associates (as applicable) to prepare for, and conduct, a fair and competitive tender process, including by performing all acts requested by Head, TfV or Head, TfV's Associate (acting reasonably) in an efficient, timely and professional manner. Such acts include:
 - (iii) providing copies of or otherwise making available to Head, TfV or Head, TfV's Associates (as applicable) any information that Head, TfV has the right to access under clause 8.1(a);
 - (iv) assisting with the verification of any information (including provision of answers to verification questions);
 - (v) providing access as required under clause 8.2; and
 - (vi) providing Head, TfV or Head, TfV's Associates (as applicable) with access to the Contractor's personnel, including to discuss, describe and respond to queries about the Franchise Business.
- (c) The Contractor acknowledges that under the Franchise Agreement, Head, TfV has the right to access the Contractor's personnel, including procuring that such persons attend interviews and give evidence in court where a request has been made of, or other action is required to be taken by, Head, TfV under a Public Accountability Act in relation to the Franchise Business.
- (d) The Contractor further acknowledges that under the Franchise Agreement, Head, TfV has the right, during the End of Franchise Period (as defined in the Franchise Agreement) to appoint one or more agents or representatives to be permanently stationed at any premises from or at which the Contractor's Activities are being carried out and any other place where relevant plant or equipment is located.
- (e) The Contractor must cooperate with, and provide reasonable assistance to, the Principal, any Principal's Associate, Head, TfV and any Head TfV's Associate when the rights referred to in clause 8.1(a) to clause 8.1(d) are exercised, including by:
 - (i) making segregated work stations, computer access and printing facilities available;
 - (ii) delivering books, records, Data and other material as and when, and in the format and manner, reasonably requested by the Principal or Head, TfV;
 - (iii) installing and running audit software;
 - (iv) responding to questions as requested by, and within the period reasonably specified by, the Principal, any Principal's Associate, Head, TfV or any Head TfV's Associate;
 - (v) making relevant plant and equipment available for inspection at the location or locations and at the times nominated by the Principal or Head, TfV (each, acting reasonably);
 - (vi) giving access to land or premises from or at which the Contractor's Activities are being carried out and any other place where relevant plant or equipment is located; and
 - (vii) permitting the Principal, any Principal's Associate, Head, TfV and any Head TfV's Associate to carry out tests of the relevant plant or equipment.

- (f) The Contractor must procure all necessary access, cooperation and assistance from any relevant Contractor's Associate to ensure the Principal and Head, TfV are able to exercise their rights as referred to in this clause 8, including procuring access by the Principal, the Principal's Associates, Head, TfV and Head, TfV's Associates to the relevant Contractor's Associates.
- (g) If any action contemplated by clause 8.1(a) identifies any non-compliance by the Contractor, the Contractor must remedy the non-compliance.
- (h) If any action contemplated by clause 8.1(a) reveals that information supplied to the Principal, Head, TfV (by or on behalf of the Contractor) was in any material respect inaccurate, the costs of the relevant action will be borne by the Contractor. For the avoidance of doubt, the Contractor must bear its own costs in relation to any relevant action contemplated by clause 8.1(a).

8.2

Access to third parties' records and premises

- (a) Without limiting clause 8.1 but subject to clause 8.3, the Contractor must, if requested by Head, TfV or the Principal, ensure that the Principal and Head, TfV have direct access to any of the Contractor's land or premises relating to the Contract or the Contractor's Activities, and any information, Data or other records relating to the Contractor or the Contractor's Activities which is maintained by the Contractor or a third party and which the Principal or Head, TfV is entitled to have access to, or have copies of, from the Contractor as contemplated by clause 8.1 (or elsewhere in this Contract).
- (b) The Contractor must ensure that any contractual arrangements between it and any relevant third party acknowledges the Principal's and Head, TfV's right of access as referred to in clause 8.2(a). The Contractor must provide to the Principal and Head, TfV on demand written evidence (including a copy of any contractual arrangement) showing compliance by the Contractor with its obligations under this clause 8.2(b).

8.3

Information protected by legal privilege

The Contractor is not required to comply with any clause of this Contract that requires the disclosure of information, documents or other materials to the extent the information, documents or materials that would otherwise be required to be provided to the Principal or Head, TfV are subject to the protection of legal professional privilege and compliance with the relevant clause would result in the loss of such legal professional privilege.

9.

STEP-IN

- (a) The Contractor acknowledges that, in certain situations, the Franchise Agreement confers on Head, TfV (or Head, TfV's agent, attorney or nominee) (Step-in Party) a right to exercise all or any of the Step-in Powers (as defined in the Franchise Agreement), including the power to perform all or any of the obligations of the Principal under any agreement to which the Principal is a party as if it were the Principal to the exclusion of the Principal (Step-in Right).
- (b) The Contractor agrees that the Contractor will recognise any purported exercise of rights, or performance of the Principal's obligations, by Head, TfV under this Contract as an exercise or performance by the Principal itself.
- (c) The Contractor must cooperate with and provide reasonable assistance to the Step-in Party in the exercise of the Step-in Right.
- (d) Without limiting clause 9(c), the Contractor must give access to a Step-in Party to:
 - (i) all or any of the assets used in the operation of the Franchise Business, including, but not limited to, any land or premises used by the Contractor in connection with this Contract;
 - (ii) the Contractor's employees; and
 - (iii) any information the Step-in Party requires (acting reasonably), to enable the Step-in Party to use the Step-in Right.

10.

INTELLECTUAL PROPERTY

10.1

Head, TfV IP

- (a) To the extent it is lawfully able to do so, the Principal grants to the Contractor a non-exclusive, non-transferable, royalty free licence to Use Head, TfV IP for the purpose of performing the Contractor's Activities. This licence commences on the date of this Contract (or such later date as the Principal reasonably requires) and will expire on the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first) (provided that, in respect of Head, TfV IP not owned solely by Head, TfV, the licence will expire on the first to occur of the expiry or termination of Head, TfV's licence in respect of that Head, TfV IP and the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first)).
- (b) The Contractor may, with the prior written consent of the Principal, grant sub-licences to Use Head, TfV IP to third parties engaged from time to time during the term of this Contract to undertake works or to perform services for the Contractor in connection with the Contractor's Activities, provided that:
 - (i) any such sub-licence authorises the third party to Use Head, TfV IP solely for the purpose of undertaking those works or performing those services (as the case may be); and
 - (ii) any such sub-licence expires no later than the completion of the relevant works or services or the termination of this Contract (whichever occurs first).

10.2

Contractor IP

- (a) The Contractor hereby grants to the Principal a perpetual, worldwide, irrevocable, royalty free, fully paid-up, non-exclusive, transferable licence (with the right to sub license) to Use all Contractor IP for purposes associated with the provision of tramway passenger services in Victoria or a Project.
- (b) The licence granted in clause 10.2(a) commences with effect from the date that the relevant Contractor IP is first Used by the Contractor in connection with the performance of the Contractor's Activities. The licence subsists until such time as:
 - (i) in the case of Contractor IP which is owned by the Contractor, the relevant Contractor IP is transferred to the Principal;
 - (ii) in the case of Contractor IP which is owned and not transferred to the Principal, until the end of the Franchise Period; or
 - (iii) in the case of Contractor IP not owned by the Contractor, the Contractor's licence to Use the relevant Contractor IP is novated to the Principal (or its nominee) as contemplated by clause 10.8.
- (c) Without limiting clause 10.2(a), the Contractor must, except with the prior written approval of the Principal, include terms in the form set out in clause 10.12 in any agreement with a third party which relates to Intellectual Property to be used by the Contractor in connection with the performance of the Contractor's Activities.

10.3

Head, TfV IP Improvements, other Improvements and Developed IP

- (a) Subject to clauses 10.3(b) and 10.3(k), all right, title and interest in and to the Developed IP will vest upon creation in the Contractor, except any Third Party Improvement.
- (b) The Contractor acknowledges and agrees that all right, title and interest in and to the Intellectual Property in an Improvement of any material in which Head, TfV IP subsists (Head, TfV IP Improvement) will vest upon creation in the Principal, except any Third Party Improvements.
- (c) Other than any Head, TfV IP Improvements and any Developed IP which the parties agree is owned by the Principal in accordance with clause 10.3(k), the Contractor:
 - (i) grants to the Principal;

- (ii) without limiting the Contractor's obligations under clause 10.10, must procure that each of the Contractor's Associates who own or are licensed to use the relevant Improvements or Developed IP grants to the Principal (with effect from the date the relevant Improvement or Developed IP comes into existence); and
- (iii) must do all things necessary to give effect to the grant to the Principal of, a perpetual, worldwide, irrevocable, royalty free, fully paid-up, non-exclusive, transferable licence (with the right to sub license) to Use all Improvements and Developed IP for purposes associated with the provision of tramway passenger services in Victoria or a Project.
- (d) The Contractor must procure from the owner of any Third Party Improvement a perpetual, worldwide, irrevocable, royalty free, fully paid-up, non-exclusive, transferable licence (with the right to sub license) for the Principal (and any other licensee that the Principal nominates) to Use any Third Party Improvement and all Intellectual Property subsisting in the Third Party Improvement for purposes associated with the provision of tramway passenger services in Victoria or a Project effective from the date the Contractor first uses the relevant Third Party Improvement in performing any of its obligations under this Contract.
- (e) The Contractor must provide to the Principal a written report after the end of each Quarter during the term of this Contract which identifies all Head, TfV IP Improvements and Third Party Improvements made during that Quarter. This written report must contain such detail as the Principal may reasonably require, but in any event must detail in relation to each item:
 - (i) the nature of Head, TfV IP Improvement or Third Party Improvement;
 - (ii) the materials to which the Third Party Improvement has been made or in which Head, TfV IP Improvement subsists; and
 - (iii) the date of creation of Head, TfV IP Improvement or Third Party Improvement.
- (f) The Contractor must deliver to the Principal one copy of:
 - (i) the materials embodying:
 - (A) any Improvement, Third Party Improvement or Developed IP;
 - (B) any Head, TfV IP which comprises or includes any Developed IP; and
 - (C) any Contractor IP which comprises or includes any Improvement or Developed IP; and
 - (ii) any supplementary materials reasonably required to exercise the licences granted to the Principal under clauses 10.3(c) and 10.3(d), by;
 - (iii) in the case of the materials described in clauses 10.3(f)(i)(A) and 10.3(f)(ii) which are created in connection with a Project, no later than the date reasonably required by the Principal;
 - (iv) in the case of all other materials described in clause 10.3(f)(i)(A) or the materials described in clauses 10.3(f)(i)(B) or 10.3(f)(i)(C), no later than the expiry or termination of this Contract.
- (g) The licence granted in clause 10.3(c) commences with effect from the date that the relevant Improvement or Developed IP is first Used by the Contractor in connection with the Contractor's Activities. In the case of an Improvement or Developed IP which is not owned by the Contractor, the licence granted in clause 10.3(c) subsists until such time as the Contractor's licence to Use the relevant Improvement or Developed IP is novated to the Principal (or its nominee) as contemplated by clause 10.8.
- (h) To the extent it is lawfully able to do so, the Principal grants to the Contractor a non-exclusive, non-transferable, royalty free licence to Use Head, TfV IP Improvements for the purposes of performing the Contractor's Activities. This licence commences with effect from creation of Head, TfV IP Improvements to the extent that the Contractor has perfected the Principal's ownership of Head, TfV IP Improvements under clause 10.3(b) and will expire on the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first).
- (i) [Not used]
- (j) The Contractor may, with the prior written consent of the Principal, grant sub-licences to Use Head, TfV IP Improvements to third parties engaged from time to time during the Contractor's Activities to undertake works or to perform services for the Contractor for the purposes of the Contractor providing the Contractor's Activities, provided that:
 - (i) any such sub-licence authorises the third party to Use Head, TfV IP Improvements solely for the purpose of undertaking those works or performing those services (as the case may be); and
 - (ii) any such sub-licence expires no later than the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first).
- (k) For any Developed IP created or required to be created as part of a Project, the parties may agree in writing (or the Principal may require, if consequent upon an agreement between the Principal and Head, TfV or a requirement of Head, TfV) that such Developed IP will be owned by the Principal (or Head, TfV, as applicable), in which case the provisions of this clause 10.3 relating to Head, TfV IP Improvements will be taken to apply to such Developed IP, as if the references to Head, TfV IP Improvements are a reference to such Developed IP.

10.4 Maintenance of Intellectual Property

- (a) In respect of all Intellectual Property which is used by the Contractor in connection with the performance of the Contractor's Activities, the Contractor must (unless otherwise agreed in writing between the Principal and the Contractor):
 - (i) maintain, preserve, and renew any registrations thereof (including payment of any renewal or other fee);
 - (ii) procure the registration (and if necessary, prosecute the application for the registration) of such Intellectual Property;
 - (iii) promptly notify the Principal of any infringement of any such Intellectual Property of which the Contractor becomes aware;
 - (iv) take such action as may be reasonably necessary to prevent or prohibit the infringement of any such Intellectual Property (other than Intellectual Property subsisting in Third Party Improvements) by third parties, by the taking of legal proceedings or otherwise;
 - (v) take such action as may be reasonably necessary to prevent or prohibit the infringement of any Intellectual Property subsisting in Third Party Improvements by third parties, by the taking of legal proceedings (to the extent it has standing to do so) or otherwise where the Principal, acting reasonably, considers the infringement may have an adverse effect on the Franchise Business and so notifies the Contractor;
 - (vi) take such action as may be reasonably necessary to defend any challenge to the validity or ownership of such Intellectual Property by third parties, by the taking of legal proceedings or otherwise;
 - (vii) disclose to the Principal all such Intellectual Property in such detail and at such frequency as the Principal may, acting reasonably, require or as may be agreed by the Principal and the Contractor; and
 - (viii) on request by the Principal, provide:
 - (A) copies of any works or other matter in which Intellectual Property subsists; and

- (B) certificates of registration and currency in relation to the Intellectual Property, in a form and on media nominated by the Principal.
 - (b) The Principal must, unless it is prohibited from doing so (by Law or otherwise), provide to the Contractor information which is in the Principal's possession to assist the Contractor in taking any action under clause 10.4(a)(iv) with respect to infringements of Head, TfV IP.
 - (c) Where the Contractor takes any action (including by initiating or conducting legal proceedings) to prevent or prohibit the infringement of, or to defend any challenge to the validity or ownership of, any Intellectual Property in accordance with clause 10.4(a), the Contractor must comply with the Model Litigant Guidelines.
- #### 10.5 Ownership and use of Data
- (a) The Contractor acknowledges and agrees that all right, title and interest in and to the following types of Data and any Intellectual Property subsisting in such Data will vest upon creation in Head, TfV:
 - (i) Passenger Services Personal Information;
 - (ii) OCMS Data; and
 - (iii) Transport Information (including Real-Time Transport Information).
 - (b) The Contractor must procure perpetual, worldwide, irrevocable, non-exclusive, royalty-free and fully paid-up licences for the Principal to use Third Party Data in connection with the operation of the Franchise Business and to Use any Intellectual Property subsisting in Third Party Data effective from the date the Contractor first uses the relevant Third Party Data. For the avoidance of doubt, this paragraph (b) does not apply to any Data which is owned by Head, TfV or the Principal.
 - (c) In respect of any Data which the Contractor uses in connection with the performance of the Contractor's Activities, the Contractor:
 - (i) in respect of Data and Intellectual Property subsisting in Data which it or any Contractor's Associate owns, assigns (in accordance with clause 10.6); or
 - (ii) in respect of any Third Party Data and Intellectual Property subsisting in Third Party Data, licenses, to the Principal, as of the date the Contractor first uses such Data in connection with the performance of the Contractor's Activities and with effect from such date, all rights it has with respect to any such Data and any Intellectual Property subsisting in such Data. For avoidance of doubt, this does not require the Contractor to provide to the Principal any rights in excess of those which it holds in respect to any particular Data and any Intellectual Property subsisting in such Data.
 - (d) To the extent it is lawfully able to do so, the Principal grants to the Contractor a non-exclusive, non-transferable, royalty free licence to:
 - (i) [not used]
 - (ii) use Data and Use the Intellectual Property subsisting in Data which is assigned to the Principal under clause 10.5(c)(i), for the purposes of performing the Contractor's Activities. This licence commences on the date that the relevant Data is assigned to the Principal under clause 10.5(c)(i) and will expire on the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first).
 - (e) The Contractor may, with the prior written consent of the Principal, grant sub-licences to use the Data, and Use the Intellectual Property subsisting in Data, referred to in clause 10.5(d) to third parties engaged from time to time during the performance of the Contractor's Activities to undertake works or to perform services for the Contractor for the purposes of the performance of the Contractor's Activities, provided that:
 - (i) any such sub-licence authorises the third party to use the relevant Data and to Use the relevant Intellectual Property subsisting in Data solely for the purpose of undertaking those works or performing those services (as the case may be); and
 - (ii) any such sub-licence expires no later than the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first).
 - (f) The Contractor must not grant any Security Interest or other right or interest against or to the Data or otherwise deal with the Data other than in accordance with this Contract.

10.6 Assignment and grant of licences

- (a) In respect of:
 - (i) [not used]
 - (ii) Head, TfV IP Improvements; and
 - (iii) all Data and Intellectual Property subsisting in Data, (each such item or Intellectual Property being Assigned IP) the Contractor:
 - (iv) hereby assigns all copyright (including future copyright) which it owns in any Assigned IP to the Principal free of any Security Interest or any other third party rights or interests;
 - (v) hereby assigns to the Principal, as of the date of creation of the relevant component of the Assigned IP and with effect from such date, all other right, title and interest in and to any Assigned IP which it owns, including any trade mark registrations, free of any Security Interest or any other third party rights or interests;
 - (vi) without limiting clauses 10.6(a)(iv) and 10.6(a)(v), must procure that each Contractor's Associate assigns to the Principal all right, title and interest in and to any Assigned IP which those persons own, including any trade mark registrations, free of any Security Interest or any other third party rights or interests with effect from the date of creation of the relevant component of the Assigned IP;
 - (vii) if requested by the Principal to do so, must bring into existence, sign, execute or otherwise deal with any document or do such acts or things as the Principal may request (acting reasonably) in order to enable vesting of all right, title and interest in and to any Assigned IP in the Principal free of any Security Interest or any other third party rights or interests; and
 - (viii) if requested by the Principal to do so, must provide, and will ensure that each Contractor's Associate provides, all reasonable assistance requested by the Principal to protect, perfect, enforce, defend or assert its interests in and right to use and exploit any Assigned IP (including assisting the Principal or Head, TfV, as applicable, to take action against persons infringing, in the Principal's or Head, TfV's opinion, any Assigned IP).
- (b) Any assignment, licence or undertaking to be procured by the Contractor in accordance with this clause 10.6 must comply with this Contract and must otherwise be in a form acceptable to the Principal (acting reasonably).

10.7 Contractor relief

- (a) For any Contractor IP required to be licensed under clause 10.2, or any Improvements (other than Head, TfV IP Improvements) or Developed IP required to be licensed under clauses 10.3(c) and 10.3(d), including any materials in which the Contractor IP or Developed IP subsists (collectively, the Licensed Material), the requirements under clauses 10.2, 10.3(c) and 10.3(d) (as the case may be) and clause 10.10 will not apply if, and only to the extent that:
 - (i) the Licensed Material is generally commercially available on reasonable commercial terms to members of the public who are willing to pay the appropriate licensing fee;
 - (ii) the Contractor and the Contractor's Associates have been unable (despite their best endeavours) to procure from the relevant third party the right to grant the licences in

- clauses 10.2, 10.3(c) and 10.3(d) (as applicable) and form of consents required by clause 10.10 in respect of the Licensed Material;
- (iii) the Contractor has notified the Principal that it has been unable to procure the necessary licence rights for that Licensed Material;
 - (iv) the Contractor has used its best endeavours to procure a licence and consent for the Principal in respect of that Licensed Material on terms as close as possible to the terms of clauses 10.2, 10.3(c) and 10.3(d) and 10.10, and has notified the Principal of those terms; and
 - (v) the Principal has given its approval to the Licensed Material being excluded from the subject matter of the licences and consents granted in clauses 10.2, 10.3(c), 10.3(d) and 10.10.
- (b) If the Principal approves certain Licensed Material being excluded from the subject matter of the licences and consents granted in clauses 10.3(c) and 10.3(d) and 10.10 and instead being licensed to the Principal on certain terms notified under clause 10.7(a)(iv), the Contractor must immediately grant to the Principal or procure from the relevant third party a licence for the Principal (as the case may be) on those terms.
- (c) The Principal's approval under clause 10.7(a)(v) is subject to such conditions as the Principal sees fit. The Principal not giving approval in accordance with clause 10.7(a)(v) will not relieve the Contractor from any of its obligations under this Contract.
- (d) If the Principal has reasonable grounds to withdraw, and notifies the Contractor that it has withdrawn, its approval under clause 10.7(a)(v) in respect of any Licensed Material, the Contractor must use its reasonable endeavours to immediately procure for the Principal from the relevant third party (or parties) all licences necessary under the terms of this Contract in respect of that Licensed Material.
- (e) Without limiting clauses 10.7(a) to (d), the Contractor may seek the Principal's prior written consent to be relieved of any one or more of its obligations under this clause 10 if the Contractor can demonstrate to the satisfaction of the Principal that the Contractor:
- (i) cannot comply with that obligation because of a genuine refusal by a third party (other than a Related Body Corporate of the Contractor) to grant the Contractor the necessary rights or consents to comply with that obligation; and
 - (ii) has used reasonable endeavours to obtain those rights or consents.
- (f) Except in respect of the Principal's approval under clause 10.7(a)(v), the Principal must act reasonably in determining whether or not to grant all or part of the relief sought by the Contractor under this clause 10.7.
- (g) The Contractor acknowledges that it will be reasonable for the Principal to withhold its consent if Head, TfV withholds its consent under the corresponding provision of the Franchise Agreement.
- (h) The Principal not giving its prior written consent under clause 10.7(a) or clause 10.7(c) does not excuse the Contractor from any of its obligations under this Contract.

10.8 Transfer of licences relating to Third Party IP

- (a) With respect to any Contractor IP or Developed IP which is not owned by the Contractor, Third Party Improvements, Intellectual Property subsisting in Third Party Improvements and Third Party Data (in this clause 10.8, Third Party IP), the Contractor must:
 - (i) on or before completion of the Contractor's Activities or termination of this Contract (whichever occurs first), procure the novation of the Contractor's licence to Use, including all of its rights and obligations in connection with, such Third Party IP to the Principal (or its nominee) free of any Security Interest or any other third party rights or interest effective from the date of completion of the Contractor's Activities or termination of this Contract (whichever occurs first); and
 - (ii) on the date of completion of the Contractor's Activities or termination of this Contract (whichever occurs first) or at a time and date nominated by the Principal by giving the Contractor 7 Business Days' notice (whichever occurs first), deliver to the Principal (or its nominee):
 - (A) the novations obtained under clause 10.8(a)(i); and
 - (C) a copy of the subject matter in which such Third Party IP subsists.
- (b) Where any third party:
 - (i) refuses to or otherwise does not provide the relevant consent or other agreement contemplated by clause 10.8(a); or
 - (ii) will not provide such agreement without a variation to the contract terms which is not acceptable to the Principal (or its nominee),
 the Contractor must:
 - (iii) notify the Principal as soon as reasonably practicable; and
 - (iv) procure that the person which licenses the Contractor the right to use the relevant Third Party IP enters into a new licence agreement in respect of the relevant Third Party IP with the Principal (or its nominee) in a form which is acceptable to the Principal (or its nominee).
- (c) The Contractor is liable for any payment which is required to give effect to the arrangements in clause 10.8(b)(iv) (including of licence fees by the Principal (or its nominee) and any applicable taxes).

10.9 Indemnities

- (a) The Contractor indemnifies the Principal from and against any Liability that may be incurred or sustained by the Principal in respect of or arising from a Claim by a third party that Principal's (or another relevant licensee's):
 - (i) Use of the Contractor IP in the manner contemplated by clause 10.2;
 - (ii) Use of an Improvement, Third Party Improvement, Developed IP or Intellectual Property in a Third Party Improvement; or
 - (iii) use of the Data or the Principal's (or other relevant licensee's) Use of Intellectual Property subsisting in Data,
 (each item or Intellectual Property the subject of such use being Relevant IP), either:
 - (iv) infringes any third party rights (including intellectual property rights, moral rights or similar personal rights); or
 - (v) gives rise to a right entitling any third party to make a Claim against the Principal (or other relevant licensee) whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification in relation to the Relevant IP,
 unless the Claim is the direct result of:
 - (vi) a modification made by the Principal (or other relevant licensee) to the Relevant IP; or
 - (vii) the Principal (or other relevant licensee) having used the Relevant IP in combination with other Intellectual Property:
 - (A) which was licensed to the Principal (or other relevant licensee) by a third party without the Contractor's approval; and
 - (B) which the Contractor would not reasonably expect the Principal (or other relevant licensee) to use in combination with the Relevant IP.
- (b) Without limiting clause 10.9(a), the Contractor indemnifies:
 - (i) the Principal from and against any Liability that may be incurred or sustained by it in respect of or arising from the Contractor breaching clauses 10.3(a) or 10.3(c); and
 - (ii) the Principal from and against any Liability that may be incurred or sustained by it in respect of or arising from any breach of or failure by the Contractor to comply with clause 10.8.

- (c) Each indemnity under this clause 10.9 does not apply to any Liability to the extent that:
 - (i) the Liability is caused or contributed to by fraud, Wilful Misconduct or a negligent act or negligent omission on the part of the Principal (or other relevant licensee) or by the Principal's breach of this Contract;
 - (ii) the Liability relates to an infringement of a third party's Intellectual Property rights which existed at the date of this Contract and was not caused or contributed to directly or indirectly by the Contractor or any Contractor's Associate; or
 - (iii) the Liability relates to a claim that Head, TfV IP has infringed a third party's Intellectual Property rights unless:
 - (A) the Contractor has breached clause 10.1 or 10.6; or
 - (B) the Liability is the direct result of a modification made by the Contractor to Head, TfV IP, or the Contractor having Used Head, TfV IP in combination with other Intellectual Property which was licensed to the Contractor by a third party without the Principal's approval and which the Principal would not reasonably expect the Contractor to Use in combination with Head, TfV IP.
- (d) The Principal must use reasonable endeavours to mitigate the losses, damages, liabilities, actions, suits, claims, demands, costs and expenses that may be incurred or sustained by it for which it is indemnified under this clause 10.9.

10.10

Moral rights

- (a) If the Contractor, in the course of carrying out the Contractor's Activities, makes use of any work or other subject matter in which copyright subsists (Authorised Works), the Contractor must procure from every person (including any officer, employee, agent, consultant or subcontractor of the Contractor or a Contractor's Associate) who is an author of that Authorised Work a consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which (to the maximum extent permitted by Law) that person irrevocably and unconditionally consents to the Principal, the Principal's Associates, Head, TfV and any Head, TfV's Associate (and any person nominated or authorised by, or to whom a sublicense is granted by, the Principal or Head, TfV), the Contractor and the Contractor's Associates and any person authorised to do acts comprised in the copyright (Beneficiaries):
 - (i) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Authorised Work anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Authorised Work or any adaptation thereof, or to any part of the Authorised Work or of any adaptation to the Authorised Work in a manner which, but for the consent, infringes or may infringe that person's moral rights in the Authorised Work); and
 - (ii) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Authorised Work or any adaptation thereof (or any part of the Authorised Work or of any such adaptation) anywhere in the world without making any identification of that person in relation to the Authorised Work.

10.11

IP Warranties

- (a) The Contractor undertakes and warrants to the Principal that:
 - (i) the Use of the Contractor IP as contemplated by clause 10.2(a);
 - (ii) the Use of the Improvements, Third Party Improvements, Developed IP and Intellectual Property in Third Party Improvements; and
 - (iii) the use of the Data and the Use of any Intellectual Property subsisting in Data, by the Principal (and any other relevant licensee) will not infringe the rights (including Intellectual Property rights, moral rights or similar personal rights) of any other person, nor give rise to a right entitling any person to make a Claim or impose any Liability against the Principal (or any relevant licensee), whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification in relation to any Contractor IP, Improvement, Third Party Improvement, Developed IP, Intellectual Property in a Third Party Improvement, Data or any Intellectual Property subsisting in Data.
- (b) The Contractor undertakes and warrants to the Principal that it owns, or has the authority to grant the rights granted or effect the assignments made (as applicable) under clause 10.3 in respect of, the Improvements, Head, TfV IP Improvements, Third Party Improvements, Developed IP and Intellectual Property in Third Party Improvements and neither:
 - (i) the exercise of those rights by the Principal, any of the Principal's Associates, Head, TfV, any of Head, TfV's Associates or any person nominated or authorised by the Principal or Head, TfV in connection with this Contract; nor
 - (ii) the possession or use of any materials in which those rights subsist in connection with this Contract,
 will give rise to any Liability on the part of the Principal, any of the Principal's Associates, Head, TfV, any of Head, TfV's Associates or any person nominated or authorised by the Principal or Head, TfV on account of an infringement of any rights of a third party, including to pay any compensation (including any royalty) to any person, or give rise to a right entitling any person to make a Claim against the Principal, any of the Principal's Associates, Head, TfV, any of Head, TfV's Associates or any person nominated or authorised by the Principal or Head, TfV for any attribution or acknowledgement or rectification in relation to the Improvements, Head, TfV IP Improvements, Third Party Improvements, Developed IP and Intellectual Property in Third Party Improvements.

10.12

Mandatory IP Terms

- (a) The Contractor grants to the Principal the right to grant to Head, TfV a perpetual, irrevocable, non-exclusive, royalty free, transferable licence (with the right to sub license) to disclose, reproduce, copy, adapt, publish, perform, exhibit, transmit, communicate, rent or make other use of the intellectual property provided or developed under or used in connection with this Contract (Intellectual Property) or any adaptation of the Intellectual Property (or any part of the Intellectual Property or any such adaptation) (Use).
- (b) The Contractor must provide to the Principal, and procure and provide to the Principal from any creator or author of Intellectual Property (Relevant Individual), an irrevocable and unconditional consent to the fullest extent permitted by law (either present or future), to Head, TfV and any person succeeding the Principal in the operation of trams in Victoria and their licensees, contractors, assignees and successors and any other person authorised or nominated by any of them (each a Licensee):
 - (i) Using the Intellectual Property anywhere in the world, in whatever form and in whatever circumstances the Licensee thinks fits, including the making of any distortions, additions or alterations to the Intellectual Property or any adaptation of it (or any part of the Intellectual Property or of such adaptation) as so Used;
 - (ii) Using the Intellectual Property or any adaptation of it (or any part of the Intellectual Property or of such adaptation) anywhere in the world without making any identification of the Contractor or Relevant Individual (as applicable) in relation to it; and
 - (iii) doing anything in relation to the Intellectual Property that (but for these consents) would otherwise infringe any moral rights or similar rights of the Contractor or Relevant Individual (as applicable) anywhere in the world.

- (c) In procuring prior written consents in accordance with clause 10.12(b) above, the Contractor undertakes that it will not (and will ensure that no one else does) apply any duress to any person or make a statement to any person knowing that the statement is or was false or misleading in a material particular, or knowing that a matter or thing is or was omitted from the statement without which the statement is or was false or misleading in a material particular.
- (d) The Contractor indemnifies and holds the Principal, Head, TfV and any Licensee harmless against all debts, obligations, liabilities, losses, expenses, costs and damages of any kind and however arising, including penalties, fines, and interest, including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable (whether liquidated or not or legal or equitable or owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others), which are directly or indirectly incurred, suffered or sustained by the Principal, Head, TfV or any Licensee as a result of, or in connection with, a claim, action, proceeding or demand of any nature or kind (Claim) threatened, made or brought against the Principal, Head, TfV or any Licensee, by a third person that Use of Intellectual Property by the Principal, Head, TfV or any Licensee (Relevant Intellectual Property) infringes the rights (including intellectual property rights, and moral rights and similar personal rights) of any third person or gives rise to a right entitling any third person to make a Claim against the Principal, Head, TfV or any Licensee whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification in relation to the Relevant Intellectual Property.
- (e) The Contractor acknowledges that the Principal is entitled to from time to time assign all or any of its rights, and novate any of its obligations, under this agreement to Head, TfV or any Licensee. The Contractor further acknowledges that, in the event of such assignment or novation, Head, TfV or any Licensee must obtain the benefit and the burden (as the case may be) of this agreement. Without limiting the foregoing, immediately, upon demand from the Principal, the Contractor must execute a novation agreement (in a form submitted to the Contractor by the Principal) to confirm that the Principal's transferee pursuant to the assignment or novation is a party to this agreement in place of the Principal.
- (f) The Contractor must ensure that the Principal has at all times an up to date copy of any object code comprised in the Intellectual Property, and any corresponding source code, for the purposes of providing it to Head, TfV.
- (g) To the extent of any inconsistency, this clause 10.12 takes precedence over any other provisions in clause 8. The terms "Intellectual Property", "Claim" and "Use" as used in this clause 10.12 have the meaning given in this clause 10.12.

11. MARKS

- (a) The Contractor must ensure that the Principal has at all times an up to date copy of any object code comprised in the Intellectual Property, and any corresponding source code, for the purposes of providing it to Head, TfV.
- (b) To the extent of any inconsistency, this clause 10.12 takes precedence over any other provisions in clause 8. The terms "Intellectual Property", "Claim" and "Use" as used in this clause 10.12 have the meaning given in this clause 10.12.

12. CONFIDENTIALITY

12.1 Confidential Information

- The Principal and the Contractor must keep confidential the Confidential Information and must not:
- (a) allow, make or cause any disclosure of or in relation to any Confidential Information except where permitted under clause 12.2 or clause 12.4; or
 - (b) use any Confidential Information other than for the purposes of the performance of the Contractor's Activities, as contemplated by clause 12.4 or as required by or permitted by the Franchise Agreement.

12.2 Exceptions

- The parties' obligations under clause 12.1 do not apply to disclosures to the extent that the disclosure is:
- (a) to another person with the prior written consent of the non-disclosing party, which consent may be given or withheld, or given with conditions, in the non disclosing party's sole discretion;
 - (b) required by or permitted by this Contract or the Franchise Agreement, including the exceptions set out in clause 30.3 of the Franchise Agreement;
 - (c) necessary for the performance of the Contractor's obligations under this Contract;
 - (d) by a party to:
 - (i) its legal and other professional advisers, auditors and other consultants;
 - (ii) its subcontractors;
 - (iii) its employees; or
 - (iv) its Related Bodies Corporate,
 requiring the information for the purposes of this Contract (or any transactions contemplated by it) or for the purpose of advising that party in relation thereto;
 - (e) to the party's insurers, the Victorian Auditor-General or an auditor appointed under this Contract;
 - (f) of information which is at the time lawfully in the possession of the proposed recipient of the information through sources other than the party wishing to disclose the information;
 - (g) required by Law or by a lawful requirement of any Governmental Agency or recognised stock exchange having jurisdiction over the party wishing to disclose the information;
 - (h) required in connection with legal proceedings, arbitration or expert determination relating to this Contract or for the purpose of advising the party wishing to disclose the information in relation thereto;
 - (i) of information which is at the time generally and publicly available other than as a result of breach of confidence by the party wishing to disclose the information; or
 - (j) necessary or commercially desirable to an existing or bona fide proposed or prospective financier or finance lessor, although the party wishing to disclose the information must, if requested by the other party, procure that the proposed recipient of the information executes a confidentiality undertaking in favour of the other party prior to the disclosure of the confidential information.

12.3 Other confidentiality requirements

- (a) Before any disclosure by a party (Disclosing Party) in reliance on clause 12.2(g), the Disclosing Party must:
 - (i) to the maximum extent permitted by Law or the rules of the relevant stock exchange, immediately notify the other party giving full details of the circumstances of the proposed disclosure in reliance on clause 12.2(g) and of the relevant information to be disclosed;
 - (ii) to the maximum extent permitted by Law or the rules of the relevant stock exchange, give the other party a reasonable opportunity in a court of law or other appropriate body to:
 - (A) challenge whether the proposed disclosure is in accordance with clause 12.2(g);
 - (B) challenge the obligation of the Disclosing Party or any other person to make that disclosure; or

- (C) secure an order or other ruling (for example, that the disclosure must only be made on a confidential basis) to protect or preserve the confidentiality of the relevant information; and
- (iii) take all reasonable steps to preserve the confidentiality of the information being disclosed (for example, by making an application for an order that the information be disclosed only in a confidential exhibit or in proceedings heard in closed court).
- (b) If a party (Disclosing Party) discloses information under clauses 12.2(a) to 12.2(d), or to any insurer (appointed by the Disclosing Party) under clause 12.2(e):
 - (i) it must ensure that such information is:
 - (A) kept confidential by the recipient of the information; and
 - (B) only used for the purposes for which the other party has provided its prior written consent; and
 - (ii) the other party may at any time request the Disclosing Party to (and the Disclosing Party must immediately) procure that the recipient of the information signs a confidentiality undertaking in favour of the other party (and, if the other party so requires, in favour of Head, TfV) agreeing to be bound by substantially the same confidentiality obligations as apply to the Disclosing Party under this clause 12.
- (c) Each party remains liable at all times for any misuse or failure to keep information confidential in accordance with clause 12.3(b).

12.4 Head, TfV's publication and disclosure by Head, TfV

The Contractor acknowledges and agrees that Head, TfV may publish or require the Principal to publish in any form and at times Head, TfV considers appropriate (including to proposed or prospective successor operators in a physical or electronic data room or otherwise), any information in connection with the Franchise Business or the performance of the Franchisee's obligations under the Franchise Agreement or any agreement related to the Franchise Agreement (including the Contractor's Activities and this Contract).

12.5 Confidential Information and disclosure by Head, TfV

- (a) Without limiting clause 12.2 or 12.4, Head, TfV or any Head, TfV's Associate may disclose any information in connection with the Franchise Business, including (subject to paragraph (c)) any Confidential Information of the Contractor, where disclosure is:
 - (i) in accordance with the State's contract management and disclosure policy;
 - (ii) required pursuant to the Freedom of Information Act 1982 (Vic), the Ombudsman Act 1973 (Vic) or the Independent Broad-based Anti-Corruption Commission Act 2011 (Vic);
 - (iii) required to satisfy the requirements of Parliamentary accountability;
 - (iv) in the course of the official duties of the Treasurer of Victoria, the Victorian Minister for Public and Active Transport, the Victorian Minister for Transport Infrastructure or the Department;
 - (v) required to satisfy public accountability or transparency obligations of the State or the requirements of Victorian Government policy;
 - (vi) in annual reports of the State, Head, TfV or the Department; or
 - (vii) required to satisfy any other recognised public requirement, (collectively, the Public Disclosure Obligations) and the Contractor must use all reasonable endeavours to assist Head, TfV or any Head, TfV's Associate in meeting the Public Disclosure Obligations.
- (b) In meeting its Public Disclosure Obligations, Head, TfV may publish, disclose or make generally available this Contract on a Victorian Government website.

13. PRIVACY

13.1 Privacy compliance

- (a) In performing the Contractor's Activities and its obligations under this Contract, the Contractor is bound by and must comply with, and must procure that each Contractor's Associate is bound by and complies with:
 - (i) the IPPs and any applicable Privacy Code of Practice with respect to any act done or practice engaged in by it, in the same way and to the same extent as the Principal or Head, TfV would have been bound by them in respect of that act or practice had it been directly done or engaged in by the Principal or Head, TfV;
 - (ii) the Privacy Obligations that apply to it; and
 - (iii) any protocol, guidelines or direction issued by the Principal after consultation with the Contractor regarding how to comply with the Privacy Obligations, in respect of any Passenger Services Personal Information.
- (b) If there is any inconsistency, ambiguity or discrepancy between any of the obligations in clause 13.1(a), the Contractor must immediately notify the Principal of the inconsistency, ambiguity or discrepancy and comply with the higher listed obligation in clause 13.1(a) to the extent of any inconsistency, ambiguity or discrepancy, unless the Principal directs otherwise.
- (c) If there is any inconsistency, ambiguity or discrepancy between any of the obligations listed in the definition of Privacy Obligations, the Contractor must immediately notify the Principal of the inconsistency, ambiguity or discrepancy and comply with the higher listed obligation in the definition of Privacy Obligations to the extent of any inconsistency, ambiguity or discrepancy, unless the Principal directs otherwise.
- (d) The Contractor must:
 - (i) require and procure any contractor to the Contractor that receives or has access to any Passenger Services Personal Information to enter into a formal written agreement with the Contractor containing terms no less onerous on the contractor than the terms of clauses 12 (with respect to the confidentiality of Passenger Services Personal Information) and 13 are on the Contractor; and
 - (ii) ensure that any Contractor's Associate agrees in writing to confidentiality obligations no less onerous on the Contractor's Associate than the terms of clauses 12 (with respect to the confidentiality of Passenger Services Personal Information and 13) before that Contractor's Associate is permitted to Handle any Passenger Services Personal Information.
- (e) The Contractor must:
 - (i) provide reasonable assistance to the Principal; and
 - (ii) comply with the Principal's reasonable instructions, as reasonably required for the Principal and Head, TfV to comply with their respective Privacy Obligations.

13.2 Collection of Personal Information

Without limiting any obligations under this Contract or at Law, the Contractor must, and must procure that each Contractor's Associate:

- (a) provide a Privacy Notice at the time of collecting Passenger Services Personal Information to the extent necessary for the Contractor to comply with the Privacy and Data Protection Act, the Health Records Act and any other applicable Privacy Obligations;
- (b) assist the Principal and Head, TfV to comply with their obligations under IPP 1.5 or HPP 1.5 (as the case may be) by stating in the Privacy Notice that the Contractor may disclose the Passenger Services Personal Information to the Principal and Head, TfV and any other person nominated by the Principal or Head, TfV, as notified to the Contractor from time to time;
- (c) obtain Privacy Consents from individuals to the extent necessary to allow the Principal, Head, TfV and any person nominated by the Principal or Head, TfV to collect, use,

- disclose and store any Passenger Services Personal Information, including Sensitive Information and Health Information, in a manner compliant with the Privacy and Data Protection Act, the Health Records Act or any other applicable Privacy Obligation;
- (d) notify the Principal promptly if a Privacy Consent which is required to be obtained in accordance with clause 13.2(c) is not obtained; and
- (e) keep the Principal informed about its procedures for Handling Passenger Services Personal Information and obtaining Privacy Consents, including notifying the Principal promptly if there is any change to such procedures.

13.3 Protection of Personal Information

The Contractor must, and must procure that each Contractor's Associate:

- (a) only use, disclose or make accessible Passenger Services Personal Information for the Privacy Purpose of that Personal Information or a Related Privacy Purpose or any other purpose authorised by Law and approved by the Principal, except where it obtains a Privacy Consent to any other use or disclosure which is approved by the Principal;
- (b) ensure that Sensitive Information or Health Information is not collected in connection with the performance of the Contractor's Activities or otherwise under this Contract without the prior written consent of the Principal;
- (c) only disclose Passenger Services Personal Information to the Principal, other persons nominated by the Principal or as required by Law;
- (d) to the extent relevant to the performance of the Contractor's Activities, take reasonable steps, including appropriate technical and organisational measures to:
- without limiting its obligation under clause 14, protect Passenger Services Personal Information from:
 - misuse, interference or loss; and
 - unauthorised access, modification or disclosure;
 - ensure that Passenger Services Personal Information is kept accurate, complete and up-to date; and
 - destroy or permanently de-identify Passenger Services Personal Information as soon as practicable after the Contractor no longer requires that information for the Privacy Purpose of that Passenger Services Personal Information or any other purpose for which the Contractor may use or disclose the Passenger Services Personal Information under Law;
- (e) immediately on expiry or termination of this Contract, or otherwise on request by the Principal:
- transfer Personal Information and Passenger Services Personal Information that must be kept for a Privacy Purpose or by Law to the Principal or another person nominated by the Principal;
 - destroy Personal Information and Passenger Services Personal Information, as directed by the Principal; or
 - de-identify Personal Information and Passenger Services Personal Information, as directed by the Principal, at the Principal's election;
- (f) not disclose, or make accessible, that Passenger Services Personal Information to any person located outside of Australia unless approved by the Principal; and
- (g) where approval is given by the Principal under clause 13.3(f), comply with its Privacy Obligations in relation to Passenger Services Personal Information being disclosed to, or accessed by a person located outside Australia.

13.4 Complaints, access and breach

The Contractor must, and must procure that each Contractor's Associate:

- (a) allow the Principal and Head, TfV an opportunity, on reasonable request, to review and audit its procedures for collecting and Handling Passenger Services Personal Information to ensure the Contractor is complying with its obligations under this Contract;
- (b) immediately notify the Principal of:
- any complaint alleging a breach of the Privacy and Data Protection Act or any other Privacy Obligation or any other improper use or treatment of Passenger Services Personal Information by the Contractor or any Contractor's Associate; and
 - any actual or suspected breach of this clause 13 or any actual or potential interference with the privacy of an individual;
- (c) upon request by the Principal, immediately assist the Principal in:
- resolving any complaint alleging a breach of the Privacy Obligations or any other improper use or treatment of Passenger Services Personal Information by the Contractor or any Contractor's Associate; and
 - responding to:
 - any access request made by an individual in respect of Passenger Services Personal Information held about them; or
 - any complaint made by an individual regarding the Handling of their Passenger Services Personal Information, including, by:
 - providing access to any record or Passenger Services Personal Information following a request to the Principal or Head, TfV from an individual;
 - correcting or updating any Passenger Services Personal Information following a request to the Principal or Head, TfV from an individual; and
 - any other assistance requested by the Principal or Head, TfV (acting reasonably);
- (d) comply promptly with any direction issued by the Principal requiring the Contractor to take action to prevent future breaches of this clause 13;
- (e) subject to clause 13.4(f), upon request by the Information Commissioner or the Health Complaints Commissioner, cooperate with the Information Commissioner or the Health Complaints Commissioner in resolving any complaint received by them alleging a breach of the Privacy and Data Protection Act or the Health Records Act or any other Privacy Obligation or any other improper use or treatment of Passenger Services Personal Information by the Contractor or any Contractor's Associate; and
- (f) to the extent permitted by Law, not notify any person of a matter required to be notified to the Principal under clause 13.4(b), unless required by Law or with the Principal's written consent.

14. DATA SYSTEMS SECURITY

14.1 Ownership of Data and licence to Use Data

The parties acknowledge and agree that clause 10.5 applies to Data and governs, amongst other things, the ownership of Data and the Contractor's right to use Data.

14.2 Compliance with Data Security Obligations

- (a) Without limiting its other obligations under this clause 14, the Contractor is bound by and must comply with the Data Security Obligations with respect to any act or practice engaged in by it in respect of the Data and the Data Systems in the same way and to the same extent as the Principal or Head, TfV would have been bound by them if that act or practice had been directly done or engaged in by the Principal or Head, TfV.
- (b) If there is any inconsistency, ambiguity or discrepancy between any of the obligations listed in the definition of Data Security Obligations, the Contractor must immediately notify the Principal of the inconsistency, ambiguity or discrepancy and comply with the higher listed obligation in the definition of Data Security Obligations to the extent of any inconsistency, ambiguity or discrepancy unless the Principal directs otherwise.

- (c) For the avoidance of doubt, nothing in this clause 14 is intended to make the Contractor responsible for Data which is not in the possession, custody or control of the Contractor or a Contractor's Associate.

Data security measures

(a) The Contractor must:

- not do any act or engage in any practice that contravenes the Protective Data Security Standards;
- not omit to do anything that is required by the Protective Data Security Standards;
- do all things that a reasonable and prudent entity would do to ensure all Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- provide protective measures for Data that are no less rigorous than Industry Best Practice and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, Data including:
 - protective measures to keep the Data Systems safe and secure from, and to mitigate their functionality and performance from being reduced by:
 - unauthorised access (including hacking for fare evasion);
 - denial of service attacks; or
 - other attacks or abuse;
 - having adequate intrusion detection and monitoring to detect Data Security Breaches when they occur and to contain and minimise any resulting adverse impacts; and
 - ensuring all Data is stored and transmitted securely in accordance with the Data Security Obligations and Industry Best Practice;
- without limiting clause 14.3(a)(iii) or clause 14.3(a)(iv), comply with all security regulations or procedures or directions as are specified in this Contract or given by the Principal from time to time regarding any aspect of security of, or access to, Data or the Data Systems; and
- without limiting clause 14.3(a)(iii), clause 14.3(a)(iv) or clause 14.3(a)(v), regularly monitor, review and update its data security measures to respond to the evolving security risk environment.

14.4

Data Security Breach

If the Contractor becomes aware of any actual, threatened or suspected:

- (a) action taken through the use of computer networks that results in an actual or potentially adverse effect on the Data Systems or the Data; or
- (b) unauthorised access to, use by a third party of, or misuse, damage or destruction by any person relating to, the Data Systems or the Data,
- (c) (each, a Data Security Breach), the Contractor must:
- (d) notify the Principal immediately and, in any event, within one hour of becoming aware of the Data Security Breach;
- (e) to the extent permitted by Law, not notify any person of a Data Security Breach, unless required by Law or with Head, TfV's written consent (provided via the Principal);
- (f) immediately take all necessary steps to promptly remedy the Data Security Breach and reinstate any affected Data Systems or Data (including by recovering any lost Data); and
- (g) immediately comply with any other directions issued by Head, TfV or the Principal in connection with the Data Security Breach.

14.5

Contractors

The Contractor must:

- (a) ensure that all subcontracts which may allow or provide access to Data Systems or Data contain no provisions that are inconsistent with this clause 14; and
- (b) ensure that:
- only Contractor's Associates who require access to the Data Systems or Data in order to perform obligations in connection with the Contractor's Activities are permitted to access and use the Data Systems or Data (as applicable); and
 - all Contractor's Associates who have access to Data Systems or Data comply with this clause 14.

15.

DISCLOSED INFORMATION RELEASE

The Contractor releases the Principal from and against any Claim or Liability suffered or incurred by the Principal in connection with the provision of, or the purported reliance upon, or use of, the Disclosed Information by the Contractor or any of the Contractor's Associates or any other person to whom the Disclosed Information is disclosed by the Contractor, a Contractor's Associate or any person on the Contractor's or a Contractor's Associate's behalf.

16.

ASSET RECORDS

For each asset which is the subject of, or operated under, this Contract, the Contractor must maintain (and provide to the Principal upon request):

- (a) complete records of its maintenance, repair and renewal work (including all operating and maintenance plans, technical information and data, specifications, manuals, drawings, 3D models, tracings, calculations, financial information, computer programs, computer disks and reports) to enable Head, TfV to monitor the Principal's compliance with its maintenance, repair and renewal obligations under the Franchise Agreement or otherwise assist Head, TfV to determine the condition of the assets;
- (b) all operating manuals (including any safety related regulations); and
- (c) all Authorisations or other documents required to operate it.

17.

GOVERNMENT REQUIREMENTS

17.1

Supplier Code of Conduct

- (a) In this clause 17.1, Supplier Code of Conduct means the document entitled "Procurement - Supplier Code of Conduct" issued by the State and, as at the Agreement Date, available at <https://www.buyingfor.vic.gov.au/supplier-code-conduct>.
- (b) The Contractor acknowledges and agrees that:
- the Supplier Code of Conduct is an important part of Head, TfV's approach to procurement and describes Head, TfV's minimum expectations regarding the conduct of its suppliers;
 - it has read and aspires to comply with the Supplier Code of Conduct, and must periodically check with reasonable frequency for updates and amendments to the Supplier Code of Conduct; and
 - the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Contractor, whether under this Contract or at Law.

17.2

Local Jobs First Policy

The Contractor must:

- (a) comply with the Local Jobs First Policy and the LIDP to the extent that they apply to the Contractor's Activities;
- (b) provide necessary information that allows the Principal to comply with its relevant reporting obligations under the Franchise Agreement in connection with the Local Jobs First Policy and the LIDP; and
- (c) permit, provide any information and give all reasonable assistance to Head, TfV and the Victorian Department of Transport and Planning, DJSIR (and persons authorised by them) to exercise their inspection, audit and verification rights under the Franchise Agreement in connection with the Fair Jobs Code, the Local Jobs First Policy and the LIDP.

17.3 Social procurement commitments

The Contractor must:

- (a) comply with the Social Procurement Commitments;
- (b) provide all necessary information to the Principal so that the Principal can fulfill its relevant reporting obligations under the Franchise Agreement in connection with the Social Procurement Commitments; and
- (c) permit Head, TfV to exercise its inspection and verification rights under the Franchise Agreement in connection with the Social Procurement Commitments.

17.4 Aboriginal self-determination plan

The Contractor must:

- (a) use its best endeavours to comply with the requirements of the Aboriginal Self-Determination Plan, to the extent that it applies to Contractor's Activities; and
- (b) provide the necessary information that allows the Principal to comply with its relevant reporting obligations under the Franchise Agreement in connection with the Aboriginal Self-Determination Plan.

17.5 Modern slavery

(a) In this clause 17.5:

- (i) **Guiding Principles on Business and Human Rights** means the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf;
- (ii) **Modern Slavery** has the meaning given in the Modern Slavery Legislation; and
- (iii) **Modern Slavery Legislation** means the Modern Slavery Act 2018 (Cth) and any similar legislation in force from time to time in Victoria.

(b) The Contractor must:

- (i) comply with the Modern Slavery Legislation to the extent that such legislation is applicable to the Contractor;
- (ii) facilitate the Principal and Head, TfV complying with any Modern Slavery Legislation applicable to the Principal or Head, TfV, by providing in a timely manner all information concerning the Contractor's supply chain and that of any Contractor's Associate which the Principal may reasonably require; and
- (iii) ensure that such reporting and other information is accurate, complete and in such form as the Principal requires.
- (c) The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in connection with the performance of the Contractor's Activities.
- (d) The Contractor must ensure any Contractor's Associate who is responsible for managing the operations and supply chains used in connection with the Contractor's Activities has undertaken suitable training to be able to identify and report Modern Slavery.
- (e) If at any time the Contractor becomes aware of Modern Slavery practices in the operations or supply chains used in connection with the Contractor's Activities, the Contractor must as soon as reasonably practicable:
 - (i) take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
 - (ii) take all reasonable steps to remediate any adverse impacts caused or contributed to by the Contractor from these practices in accordance with the Guiding Principles on Business and Human Rights.
- (f) Without limiting paragraph (f), the Contractor must:
 - (i) not require any Contractor's Associate to pay fees, charges, expenses or financial obligations incurred in order to secure their employment or placement (Recruitment Fees), regardless of the manner, timing or location of the imposition or collection of these Recruitment Fees;
 - (ii) not destroy or exclusively possess, whether permanently or otherwise, the travel or identity documents of any Contractor's Associate; and
 - (iii) ensure any Contractor's Associate can access a process for handling a complaint or grievance about Modern Slavery practices that is consistent with the criteria set out in the Guiding Principles on Business and Human Rights to safely report any instances of Modern Slavery in the operations and supply chains used by the Contractor in connection with the Contractor's Activities.
- (g) The Contractor must take reasonable steps to ensure that all the subcontracts it enters into in relation to the Contractor's Activities contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 17.5 (including compliance with the modern slavery laws to the extent applicable).

17.6 Recycled First Plan

The Contractor must, in connection with the performance of the Contractor's Activities:

- (a) use its best endeavours to comply with the requirements of the Recycled First Plan, to the extent that it applies to the Contractor's Activities; and
- (b) provide such information as the Principal reasonably requests to assist the Principal to comply with its relevant reporting obligations under section 8.3 of Schedule 19 of the Franchise Agreement.

17.7 Fair Jobs Code

(a) This clause 17.7 only applies if the Contract Sum is \$10 million or more (exclusive of GST).

(b) In this clause 17.7:

- (i) **FJC Plan** means the Principal's Fair Jobs Code Industrial Relations and Occupational Health and Safety Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the Fair Jobs Code;
- (ii) **FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the Fair Jobs Code; and
- (iii) **Pre-Assessment Certificate** means a certificate issued to the Contractor by the FJC Unit prior to entering into this Contract, or which is renewed during the term of this Contract.
- (c) The Contractor must:
 - (i) comply with the Fair Jobs Code;
 - (ii) hold a valid Pre-Assessment Certificate;
 - (iii) notify the Principal if its Pre-Assessment Certificate is revoked, or if its Pre-Assessment Certificate expires without being replaced with a new Pre-Assessment Certificate;
 - (iv) comply with the FJC Plan, to the extent that it applies to the Contractor's Activities;
 - (v) permit the Head, TfV, the Department and DJSIR to exercise their inspection and audit rights under section 4.5 of Schedule 19 (Government Requirements) of the Franchise Agreement and give all reasonable assistance to any person authorised by Head, TfV, the Department or DJSIR to undertake such audits or inspections.
- (d) The obligations set out in this clause 17.7 are in addition to and do not derogate from any other obligations under this Contract.

18. NOTICES UNDER THE SECURITY OF PAYMENT ACT

The Contractor must give the Principal a copy of any written communication in relation to the *Building and Construction Industry Security of Payment Act 2002* (Vic) which the Contractor receives from another party in relation to this Contract or the Contractor's Activities.

19. TERMINATION

The Contractor acknowledges that the Principal may immediately terminate this Contract by notice in writing if the Franchise Agreement is terminated for any reason or Head, TfV revokes its consent to this Contract or requires this Contract to be terminated. If the Principal terminates this Contract under this clause 18, then the Principal remains liable for all Contractor's Activities provided up to the date of termination.

20. ASSIGNMENT AND NOVATION REQUIRED BY HEAD, TFV

(a) The Contractor acknowledges that:

- (i) pursuant to clause 18.1 of the Franchise Agreement, the Principal must enter into a Transfer Agreement with Head, TfV or any one or more nominees of Head, TfV, pursuant to which the Principal may be required to procure the novation of this Contract to the Head, TfV, or any one or more nominees of Head, TfV; and
- (ii) without limiting clause 20(a)(i), the Principal may, from time to time, be required under the Franchise Agreement to assign all or any of its rights, and novate any of its obligations, under this Contract to Head, TfV or any one of more nominees of Head, TfV, and the Contractor consents to the Principal doing so in those circumstances.
- (b) The Contractor further acknowledges that, in the event of such assignment or novation, Head, TfV or its nominee will obtain the benefit and the burden (as the case may be) of this Contract. Without limiting the foregoing, upon demand from the Principal, the Contractor must promptly execute a novation agreement (in the form required by Head, TfV and submitted to the Contractor by the Principal) and any other document reasonably required to effect such novation.

21. COMENG ROLLING STOCK

This clause 21 only applies if the Contractor's Activities are in connection with the operation and / or maintenance of Comeng Rolling Stock.

21.1 Defined terms

A1 Class Rolling Stock means the A1 Class Rolling Stock and the A2 Class Rolling Stock.

A1 Class Rolling Stock means an item of Rolling Stock set out in clause 21.3 and identified as 'A1 Class'.

A2 Class Rolling Stock means an item of Rolling Stock set out in clause 21.3 and identified as 'A2 Class'.

B2 Class Rolling Stock means an item of Rolling Stock set out in clause 21.3 and identified as 'B2 Class'.

Comeng Equipment means the Comeng Rolling Stock, and all Rotable Items and Special Tools related to the Comeng Rolling Stock.

Comeng Licensed Rights means all Intellectual Property which is necessary to use and maintain an item of Comeng Equipment in accordance with the Franchise Agreement and this Contract, but only to the extent that such Intellectual Property is:

- (a) owned solely by Head, TfV as at the date that item of Comeng Equipment becomes subject to the Franchise Agreement; or
- (b) owned wholly or in part by a third party as at the date that item of Comeng Equipment becomes subject to the Franchise Agreement, and is:
 - (i) licensed to Head, TfV; and
 - (ii) able to be lawfully sub-licensed by Head, TfV to the Principal on the terms set out in the Franchise Agreement.

Comeng Rolling Stock means A Class Rolling Stock, B2 Class Rolling Stock and Z3 Class Rolling Stock.

Z3 Class Rolling Stock means an item of Rolling Stock set out in clause 21.3 and identified as 'Z3 Class'.

21.2 Sub-licence of Comeng Licensed Rights

To the extent it is lawfully able to do so, the Principal grants to the Contractor a non-exclusive, non-transferable, royalty free sub-licence to use the Comeng Licensed Rights solely for the purpose of performing the Contractor's Activities. The sub-licence commences on the date of this Contract and will expire on the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first) (provided that, in respect of Comeng Licensed Rights which are not owned solely by Head, TfV, the licence will expire on the first to occur of the expiry or termination of Head, TfV's licence in respect of those Comeng Licensed Rights and the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first)).

21.3 Comeng Rolling Stock

Vehicle Number	Vehicle Description/Cla	Service Entry Date	Non-Active Fleet
116	Z3	25/09/79	Yes
117	Z3	25/09/79	Yes
118	Z3	25/09/79	Yes
119	Z3	7/01/80	Yes
120	Z3	21/12/79	Yes
121	Z3	21/12/79	Yes
122	Z3	29/01/80	Yes
123	Z3	15/02/80	
124	Z3	15/02/80	Yes
125	Z3	15/02/80	Yes
126	Z3	29/02/80	Yes
127	Z3	7/03/80	
128	Z3	28/03/80	
129	Z3	17/04/80	Yes
130	Z3	23/04/80	Yes
131	Z3	30/04/80	
132	Z3	15/05/80	
133	Z3	2/06/80	Yes
134	Z3	6/06/80	
135	Z3	17/06/80	
136	Z3	20/06/80	Yes
137	Z3	2/07/80	Yes
138	Z3	14/07/80	Yes
139	Z3	22/07/80	Yes
140	Z3	22/07/80	Yes
141	Z3	1/08/80	
142	Z3	25/08/80	
143	Z3	8/08/80	
144	Z3	29/08/80	Yes
145	Z3	25/08/80	
146	Z3	29/08/80	
147	Z3	29/08/80	Yes
148	Z3	10/09/80	
150	Z3	26/09/80	
151	Z3	28/11/80	
152	Z3	17/12/80	Yes
153	Z3	31/10/80	
154	Z3	13/11/80	
155	Z3	13/11/80	Yes
156	Z3	28/11/80	156



157	Z3	11/12/80	157
158	Z3	15/12/80	158
159	Z3	19/12/80	159
160	Z3	19/12/80	160
161	Z3	3/03/81	Yes
162	Z3	13/03/81	162
163	Z3	20/03/81	163
164	Z3	27/03/81	164
165	Z3	24/04/81	165
166	Z3	4/05/81	166
167	Z3	6/05/81	167
168	Z3	15/05/81	168
169	Z3	15/05/81	169
170	Z3	1/06/81	170
171	Z3	3/06/81	171
172	Z3	26/06/81	Yes
173	Z3	11/08/81	
174	Z3	17/07/81	
175	Z3	11/08/81	
176	Z3	2/09/81	
177	Z3	4/09/81	
178	Z3	2/10/81	
179	Z3	7/10/81	
180	Z3	9/10/81	
181	Z3	29/10/81	
182	Z3	30/10/81	
183	Z3	20/11/81	
184	Z3	25/11/81	
185	Z3	17/12/81	
186	Z3	22/12/81	
187	Z3	2/02/81	
188	Z3	5/02/82	
189	Z3	2/03/82	
190	Z3	9/03/82	Yes
191	Z3	20/04/82	
192	Z3	16/04/82	
193	Z3	21/04/82	
194	Z3	18/05/82	
195	Z3	25/05/82	
196	Z3	11/06/82	
197	Z3	12/07/82	Yes
198	Z3	22/07/82	
199	Z3	23/07/82	
200	Z3	18/08/82	
201	Z3	10/08/82	
202	Z3	30/08/82	
203	Z3	14/09/82	
204	Z3	5/10/82	
205	Z3	13/10/82	
206	Z3	25/10/82	
207	Z3	2/12/82	
208	Z3	20/12/82	Yes
209	Z3	17/02/83	
210	Z3	25/03/83	
211	Z3	6/04/83	
212	Z3	13/04/83	
213	Z3	3/05/83	
214	Z3	9/05/83	
215	Z3	29/04/83	
216	Z3	29/06/83	
217	Z3	13/07/83	
218	Z3	21/07/83	
219	Z3	10/08/83	
220	Z3	11/08/83	
221	Z3	29/08/83	
222	Z3	1/09/83	
223	Z3	27/09/83	
224	Z3	29/09/83	
225	Z3	20/10/83	
226	Z3	10/11/83	
227	Z3	24/11/83	
228	Z3	12/12/83	
229	Z3	19/01/84	
230	Z3	5/04/84	
232	A1	21/11/84	
233	A1	5/08/84	
234	A1	5/10/84	
235	A1	28/09/84	
236	A1	11/10/84	
237	A1	23/11/84	
238	A1	6/12/84	
239	A1	14/12/84	
240	A1	18/12/84	
241	A1	19/12/84	
242	A1	20/12/84	
243	A1	22/02/85	
244	A1	21/02/85	
245	A1	4/03/85	
246	A1	4/03/85	
247	A1	14/03/85	
248	A1	25/03/85	
249	A1	2/04/85	
250	A1	16/04/85	
251	A1	20/05/85	
252	A1	6/06/85	
253	A1	14/06/85	
254	A1	26/06/85	
255	A1	8/08/85	
256	A1	12/09/85	
257	A1	25/09/85	
258	A1	10/10/85	
259	A2	10/02/86	
260	A2	16/12/85	
261	A2	20/12/85	
262	A2	9/04/86	
263	A2	24/02/86	
264	A2	9/04/86	
265	A2	9/04/86	
266	A2	17/04/86	
267	A2	30/04/86	
268	A2	21/05/87	
269	A2	21/05/86	
270	A2	27/05/86	
271	A2	11/06/86	
272	A2	18/06/86	
273	A2	5/08/86	
274	A2	4/08/86	
275	A2	12/08/86	
276	A2	28/08/86	
277	A2	11/09/86	
278	A2	18/09/86	

279	A2	14/11/86	
280	A2	5/12/86	
281	A2	16/12/86	
282	A2	12/02/87	
283	A2	10/06/87	
284	A2	18/03/87	
285	A2	20/03/87	
286	A2	12/03/87	
287	A2	28/04/87	
288	A2	6/05/87	
289	A2	13/05/87	
290	A2	17/06/87	
291	A2	10/06/87	
292	A2	10/08/87	
293	A2	13/08/87	
294	A2	6/08/87	
295	A2	31/07/87	
296	A2	31/08/87	
297	A2	4/09/87	
298	A2	21/09/87	
299	A2	21/09/87	
300	A2	21/09/87	
2003	B2	25/10/88	
2004	B2	1/09/88	
2005	B2	1/09/88	
2006	B2	27/10/88	
2007	B2	27/10/88	
2008	B2	7/12/88	
2009	B2	15/09/89	
2010	B2	21/02/89	
2011	B2	21/02/89	
2012	B2	1/02/89	
2013	B2	21/02/89	
2014	B2	3/03/89	
2015	B2	10/04/89	
2016	B2	11/05/89	
2017	B2	19/06/89	
2018	B2	23/05/89	
2019	B2	3/07/89	
2020	B2	14/07/89	
2022	B2	2/08/89	
2023	B2	2/08/89	
2024	B2	16/08/89	
2025	B2	16/08/89	
2026	B2	17/08/89	
2027	B2	6/09/89	
2028	B2	4/10/89	
2029	B2	27/09/89	
2030	B2	21/02/90	
2031	B2	23/02/90	
2032	B2	29/03/90	
2033	B2	27/04/90	
2034	B2	21/02/90	
2035	B2	29/03/90	
2036	B2	24/04/90	
2037	B2	27/09/90	
2038	B2	23/04/90	
2039	B2	24/04/90	
2040	B2	9/05/90	
2041	B2	27/03/91	
2042	B2	5/10/90	
2043	B2	2/07/90	
2044	B2	4/10/90	
2045	B2	11/10/90	
2046	B2	15/10/90	
2047	B2	16/10/90	
2048	B2	24/10/90	
2049	B2	24/02/90	
2050	B2	26/10/90	
2051	B2	24/10/90	
2052	B2	30/10/90	
2053	B2	30/10/90	
2054	B2	30/10/90	
2055	B2	30/10/90	
2056	B2	31/10/90	
2057	B2	31/10/90	
2058	B2	1/11/90	
2059	B2	2/11/90	
2060	B2	13/11/90	
2061	B2	16/11/90	
2062	B2	30/11/90	
2063	B2	10/12/90	
2064	B2	17/12/90	
2065	B2	18/01/91	
2066	B2	20/12/90	
2067	B2	18/01/91	
2068	B2	18/01/91	
2069	B2	20/03/91	
2070	B2	7/05/93	
2071	B2	3/05/91	
2072	B2	13/05/91	
2073	B2	24/06/91	
2074	B2	4/07/91	
2075	B2	1/07/91	
2076	B2	26/07/91	
2077	B2	15/10/91	
2078	B2	22/10/91	
2079	B2	13/12/91	
2080	B2	13/11/91	
2081	B2	26/02/92	
2082	B2	9/12/91	
2083	B2	11/12/91	
2084	B2	16/03/92	
2085	B2	19/02/92	
2086	B2	20/10/92	
2087	B2	7/02/92	
2088	B2	3/04/92	
2089	B2	12/03/92	
2090	B2	16/03/92	
2091	B2	6/04/92	
2092	B2	20/05/92	
2093	B2	18/09/92	
2094	B2	18/09/92	
2095	B2	30/09/92	
2096	B2	26/08/92	
2097	B2	19/10/92	
2098	B2	13/10/92	
2099	B2	21/10/92	
2100	B2	10/09/92	
2101	B2	27/10/92	
2102	B2	5/11/92	

2103	B2	23/11/92	
2104	B2	15/12/92	
2105	B2	16/12/92	
2106	B2	13/01/93	
2107	B2	13/01/93	
2108	B2	29/01/93	
2109	B2	22/01/93	
2110	B2	11/02/93	
2111	B2	6/04/93	
2112	B2	7/04/93	
2113	B2	12/05/93	
2114	B2	12/05/93	
2115	B2	4/06/93	
2116	B2	30/06/93	
2117	B2	28/06/93	
2118	B2	1/09/93	
2119	B2	1/09/93	
2120	B2	28/09/93	
2121	B2	28/09/93	
2122	B2	15/11/93	
2123	B2	20/12/93	
2124	B2	24/11/93	
2125	B2	1/12/93	
2126	B2	16/12/93	
2127	B2	21/02/94	
2128	B2	31/03/94	
2129	B2	27/05/94	
2130	B2	13/07/94	
2131	B2	19/06/94	
2132	B2	28/07/94	

22. ALSTOM 2000 ROLLING STOCK

This clause 22 only applies if the Contractor's Activities are in connection with the operation and / or maintenance of Alstom 2000 Rolling Stock.

22.1 Defined terms

(a) In this clause 22:

Alstom 2000 Licensed Rights means all Intellectual Property subsisting in any material which is necessary to use and maintain an item of Alstom 2000 Rolling Stock in accordance with the Franchise Agreement and this Contract, but only to the extent that such Intellectual Property is:

- (i) owned solely by Head, TfV as at the Franchise Commencement Date (as defined in the Franchise Agreement); or
- (ii) owned wholly or in part by a third party as at the Franchise Commencement Date (as defined in the Franchise Agreement), and is:
 - (A) licensed to Head, TfV; and
 - (B) able to be lawfully sub-licensed by Head, TfV to the Franchisee on the terms contained in the Franchise Agreement.

Alstom 2000 Rolling Stock Supply Agreement means the Rolling Stock Design Manufacture and Supply Contract for the Supply of Alstom Citadis®202 Tram dated 20 June 2000 between Metrolink, Alstom, Transdev SA RCS Nanterre and Transfield Pty Ltd.

Alstom IPR Infringement Claim means a claim or proceedings commenced by a person against the Contractor alleging that any element of the Confidential Materials or the Confidential Materials when used by the Contractor as permitted by this clause 22 infringes the intellectual property rights of that person.

Claim includes any claim, proceeding, cause of action, defence, action, demand or suit (including by way of contribution or indemnity):

- (i) under, arising out of, or in connection with the Contract;
- (ii) arising out of, or in connection with the subject matter of the Contract; or
- (iii) otherwise at law or in equity including:
 - (A) by statute;
 - (B) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (C) for quantum meruit or restitution, including restitution based on unjust enrichment.

UGR means UGL Rail Pty Limited (ACN 097 323 852).

UGR IP Licence Deed means the deed entitled 'United Group IP Licence Deed - Tram' dated 27 November 2009 between UGR and Head, TfV.

(b) In this clause 22, the following terms each have the meanings given to them in the Alstom 2000 Rolling Stock Supply Agreement (and not any meanings which may be ascribed to those terms elsewhere in this Contract or the Franchise Agreement):

- (i) Confidential Materials;
- (ii) Documentation;
- (iii) Intellectual Property;
- (iv) Minor Modifications;
- (v) Operation and Maintenance;
- (vi) Parts;
- (vii) Power;
- (viii) Subcontractor Sub-Licence Confidentiality and Non-Disclosure Deed; and
- (ix) Third Party.

(c) In this clause 22, the following terms each have the meanings given to them in the UGR IP Licence Deed (and not any meanings which may be ascribed to those terms elsewhere in this Contract or the Franchise Agreement):

- (i) Approved Purposes;
- (ii) Intellectual Property; and
- (iii) Licensed Materials.

22.2 Sub-licence of Alstom 2000 Licensed Rights

- (a) To the extent it is lawfully able to do so, the Principal grants to the Contractor a non-exclusive, non-transferable, royalty-free sub-licence to use the Alstom 2000 Licensed Rights solely for the permitted purposes of:
 - (i) the Operation and Maintenance of the Alstom 2000 Rolling Stock (to the extent those Alstom 2000 Licensed Rights are licensed to Head, TfV for such purposes under the Alstom 2000 Rolling Stock Supply Agreement); and
 - (ii) performing Minor Modification to the Alstom 2000 Rolling Stock (to the extent those Alstom 2000 Licensed Rights are licensed to Head, TfV for such purposes under the Alstom 2000 Rolling Stock Supply Agreement).

This sub-licence commences on the date of this Contract and will expire on the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first) (provided that, in respect of Alstom 2000 Licensed Rights which are not owned solely by Head, TfV, the licence will expire on the first to occur of the expiry or termination of Head, TfV's licence in respect of those Alstom 2000 Licensed Rights and the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first)).

- (b) The Contractor acknowledges having been provided with a copy of clauses 21.2, 21.3, 21.4 and 21.7 of the Alstom 2000 Rolling Stock Supply Agreement. Without limiting any other provision of this Contract, the Contractor must not do anything or refrain from doing anything which would cause Head, TfV to be in breach of any of its obligations under

those clauses, or any conditions or qualifications in those clauses on the licensed conferred upon Head, TfV under clause 21 of the Alstom 2000 Rolling Stock Supply Agreement.

(c) To the extent that any Alstom 2000 Licensed Rights are:

- (i) licensed to Head, TfV under the Alstom 2000 Rolling Stock Supply Agreement for the permitted purpose of the Operation and Maintenance of the Alstom 2000 Rolling Stock; or
 - (ii) licensed to Head, TfV under the Alstom 2000 Rolling Stock Supply Agreement for the permitted purpose of performing Minor Modification to the Alstom 2000 Rolling Stock,
- the Contractor:
- (iii) acknowledges and agrees that those Alstom 2000 Licensed Rights do not include the Confidential Materials or any Intellectual Property forming part of the Confidential Materials except to the extent specified in, and subject to, clause 22.2(e) or clause 22.2(f) (as applicable);
 - (iv) acknowledges and agrees that subject to clause 22.2(d), those Alstom 2000 Licensed Rights may only be used by the Contractor for the permitted purposes specified in section 22.2(a); and
 - (v) must, at the Principal's request, enter into a Subcontractor Sub-Licence Confidentiality and Non-Disclosure Deed in relation to those Alstom 2000 Licensed Rights.

- (d) The Contractor acknowledges and agrees that it is not entitled to use the Documentation or the Intellectual Property for the manufacture or any Rolling Stock or Parts.

- (e) Upon the permanent release of the Confidential Materials from escrow in accordance with the Alstom 2000 Rolling Stock Supply Agreement, the Principal may, by notice to the Contractor, grant to the Contractor a sub-licence to copy and use the Confidential Materials. With effect from the date specified in the Principal's notice, the Confidential Materials referred to in that notice and all Intellectual Property in them will be deemed to form part of the Alstom 2000 Licensed Rights and those Confidential Materials and that Intellectual Property will be subject to the restrictions contained in clause 22.2(c)

- (f) Upon the temporary release from escrow of the Confidential Materials in accordance with the Alstom 2000 Rolling Stock Supply Agreement, the Principal may, by notice to the Contractor, grant to the Contractor a temporary, non-exclusive and royalty-free sub-licence to copy and use only those of the Confidential Materials as are required for, and only for the purpose or purposes specified in the Principal's notice (which purpose or purposes must not be broader than any of the purposes referred to in clause 22.2(c)(i) or clause 22.2(c)(ii)).

(g) In respect of any sub-licence granted to the Contractor under clause 22.2(f):

- (i) the sub-licence commences on the date specified in the Principal's notice given under clause 22.2(f) and ends on the first to occur of:
 - (A) the date (if any) specified in that notice as the date on which the sub-licence terminates or such other date as the Principal notifies the Contractor; and
 - (B) the date on which the Confidential Materials are no longer required for the purpose or purposes for which they are released.
- (ii) the Contractor must ensure that the Confidential Materials are only copied and used for the relevant permitted purpose or purposes specified in the Principal's notice issued under 22.2(f);
- (iii) with effect from the commencement date of the licence specified in the Principal's notice, and until the first to occur of the dates referred to in clause 22.2(g)(i)(A) and clause 22.2(g)(i)(B), the Confidential Materials referred to in that notice and all Intellectual Property in them will be deemed to form part of the Alstom 2000 Licensed Rights and those Confidential Materials and that Intellectual Property will be subject to the restrictions contained in clause 22.2(c);
- (iv) the Contractor must, at the Principal's request, enter into a Subcontractor Sub-Licence Confidentiality and Non-Disclosure Deed in such form as is acceptable to Alstom;
- (v) the Contractor must, on termination of the sub-licence granted to the Contractor under clause 22.2(f), return to the Principal all copies of the Confidential Materials;
- (vi) the Contractor must, if it makes copies of any Confidential Material:
 - (A) notify the Principal that such copies are made and to whom such copies are given; and
 - (B) destroy such copies or return such copies to escrow upon expiry or termination of the applicable sub-licence.
- (h) Without limiting any other provisions of this clause 22, the Contractor's obligations of confidentiality under clause 12 apply to any Confidential Materials licensed to the Contractor under this clause 22.
- (i) The Contractor must indemnify Head, TfV and the Principal from and against any Claim made against, or Liability incurred or sustained by, Head, TfV or the Principal arising as a result of or in connection with any breach by the Contractor of its obligations under a sub-licence granted by the Principal in accordance with this clause 22.

22.3 Alstom IPR Infringement Claims

- (a) If the Contractor receives an Alstom IPR Infringement Claim, the Contractor must notify the Principal of that fact as soon as practicable.
- (b) The Contractor must provide all information and assistance required by the Principal and Head, TfV (acting reasonably) in order to assist Alstom to settle or defend any Alstom IPR Infringement Claim. The Principal must reimburse the Contractor for its reasonable costs of providing such information and assistance, to the extent such costs are recovered by the Principal from Head, TfV.

22.4 Compliance with Alstom 2000 Rolling Stock Supply Agreement

- (a) The Contractor acknowledges that to the extent that clause 21 of the Alstom 2000 Rolling Stock Supply Agreement requires Head, TfV to ensure that a sublicensee of the rights licensed to Head, TfV under any of those clauses of those agreements does a certain thing or refrains from doing a certain thing, the Contractor must do that thing or refrain from doing that thing (as the case may be).
- (b) The Contractor acknowledges that to the extent that a licence granted to Head, TfV under clause 21 of the Alstom 2000 Rolling Stock Supply Agreement is subject to certain conditions or qualifications, and the rights licensed to Head, TfV form part of the Alstom 2000 Licensed Rights, then the sub-licence granted to the Contractor under this clause 22:
 - (i) is deemed to be subject to those conditions and qualifications as if they were set out at length in this clause 22; and
 - (ii) will be subject to, and the Contractor must comply with, those conditions and qualifications.

- (c) This clause 22.4 is without prejudice to any other provision of this Contract.

22.5 Acknowledgement

The Contractor acknowledges and agrees that the licences granted under this clause 22 are subject to the same qualifications as set out in clause 5(j) of the Alstom 2000 Rolling Stock Supply Direct Agreement (which for these purposes will be interpreted on the basis that the sub-licences granted under this clause 22 are 'sublicences' and that the Contractor is a 'sublicensee').

22.6 UGR IP Licence Deed

- (a) To the extent it is lawfully able to do so, the Principal grants to the Contractor a perpetual, irrevocable, non-exclusive, non-transferable, royalty-free licence to exercise all Intellectual Property (whether owned by UGR or not) in the Licensed Materials for the Approved Purposes. This sub-licence commences on the date of this Contract and is without prejudice to, and operates separately from, any other licenses granted under this clause 22.
- (b) If the Contractor receives notice of Claim by any person alleging that the exercise of the licence granted under clause 22.6(a) infringes the Intellectual Property rights of any person, the Contractor must notify the Principal of that fact as soon as practicable.
- (c) The Contractor must provide all information and assistance required by the Principal and Head, TfV (acting reasonably) in order to assist UGR to settle or defend any Claim of the type referred to in clause 22.6(b). The Principal must reimburse the Contractor for its reasonable costs of providing such information and assistance.

22.7 Alstom 2000 Rolling Stock

Vehicle Number	Vehicle Description/Class	Service Entry Date
3001	C1	28/09/2001
3002	C1	28/09/2001
3003	C1	28/09/2001
3004	C1	28/09/2001
3005	C1	31/12/2001
3006	C1	31/12/2001
3007	C1	31/12/2001
3008	C1	31/12/2001
3009	C1	31/12/2001
3010	C1	31/12/2001
3011	C1	31/12/2001
3012	C1	31/12/2001
3013	C1	31/01/2002
3014	C1	31/01/2002
3015	C1	24/01/2002
3016	C1	24/01/2002
3017	C1	28/03/2002
3018	C1	28/03/2002
3019	C1	28/03/2002
3020	C1	28/03/2002
3021	C1	28/03/2002
3022	C1	28/03/2002
3023	C1	28/03/2002
3024	C1	28/03/2002
3025	C1	28/06/2002
3026	C1	28/06/2002
3027	C1	28/06/2002
3028	C1	28/06/2002
3029	C1	30/08/2002
3030	C1	28/06/2002
3031	C1	28/06/2002
3032	C1	28/06/2002
3033	C1	30/08/2002
3034	C1	30/08/2002
3035	C1	30/08/2002
3036	C1	30/08/2002

23. ALSTOM 2008 ROLLING STOCK

This clause 23 only applies if the Contractor's Activities are in connection with the operation and / or maintenance of Alstom 2008 Rolling Stock.

23.1 Defined terms

In this clause 23:

Alstom 2008 Licensed Rights means all Intellectual Property subsisting in any material which is necessary to use and maintain an item of Alstom 2008 Rolling Stock in accordance with the Franchise Agreement and this Contract, but only to the extent that such Intellectual Property is:

- (a) owned solely by Head, TfV as at 1 December 2024; or
- (b) owned wholly or in part by a third party as at 1 December 2024, and is:
- (i) licensed to Head, TfV; and
- (ii) able to be lawfully sub-licensed by Head, TfV to the Principal on the terms set out in the Franchise Agreement.

Claim includes any claim, proceeding, cause of action, defence, action, demand or suit (including by way of contribution or indemnity):

- (a) under, arising out of, or in connection with the Contract;
- (b) arising out of, or in connection with the subject matter of the Contract; or
- (c) otherwise at law or in equity including:
- (i) by statute;
- (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
- (iii) for quantum meruit or restitution, including restitution based on unjust enrichment.

Infringement Claim means any Claim against, or Liability incurred or sustained by, the Contractor as a result of, or in connection with the Contractor's exercise of the Alstom 2008 Licensed Rights in accordance with this clause 23, or any Claim that the Contractor's exercise or possession of any Alstom 2008 Licensed Rights or use of any materials embodying any Alstom 2008 Licensed Rights in accordance with this clause 23:

- (a) infringes the rights of any person; or
- (b) gives rise to a right entitling any third person to make a Claim against the Contractor, whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification in relation to the Alstom 2008 Licensed Rights.

23.2 Sub-licence of Alstom 2008 Licensed Rights

To the extent it is lawfully able to do so, the Principal grants to the Contractor a non-exclusive, non-transferable, royalty-free sub-licence to use the Alstom 2008 Licensed Rights solely for the purpose of performing the Contractor's Activities for the Principal in relation to the Alstom 2008 Rolling Stock in connection with the Principal's conduct of the Franchise Business. The sub-licence commences on the date of this Contract and will expire on the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first) (provided that, in respect of Alstom 2008 Licensed Rights which are not owned solely by Head, TfV, the licence will expire on the first to occur of the expiry or termination of Head, TfV's licence in respect of those Alstom 2008 Licensed Rights and the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first)).

23.3 Infringement Claims

- (a) The party receiving an Infringement Claim must notify the other party as soon as practicable.
- (b) The Contractor must provide all information and assistance required by the Principal and Head, TfV (acting reasonably) to settle or defend any Infringement Claim.

23.4 Alstom 2008 Rolling Stock

Vehicle Number	Vehicle Description/Class	Service Entry Date
5103	C2	17/03/2005

5106	C2	10/05/2005
5111	C2	23/06/2005
5113	C2	7/07/2005
5123	C2	24/11/2005

24. SIEMENS ROLLING STOCK

This clause 24 only applies if the Contractor's Activities are in connection with the operation and / or maintenance of Siemens Rolling Stock.

24.1 Defined terms

(a) In this clause 24:

D1 Class Rolling Stock means an item of Rolling Stock set out in clause 24.3 and identified as 'D1 Class'.

D2 Class Rolling Stock means an item of Rolling Stock set out in clause 24.3 and identified as 'D2 Class'.

Siemens means Siemens Ltd (ACN 008 347 880).

Siemens IP Licence Deed means the deed titled 'Siemens IP Licence Deed - Tram' dated 27 November 2009 between Head, TfV, Siemens and SRS Swanston.

Siemens Rolling Stock means the D1 Class Rolling Stock and D2 Class Rolling Stock.

SRS Swanston means Siemens Rail Services Swanston Pty Limited (ACN 088 116 876) (now deregistered).

(b) In this clause 24, the following terms each have the meanings given to them in the Siemens IP Licence Deed (and not any meanings which may be ascribed to those terms elsewhere in this Contract):

- (i) Approved Purposes;
- (ii) Intellectual Property; and
- (iii) Licensed Materials.

24.2 Siemens Maintenance Materials – Sub-Licence

- (a) The Principal grants to the Contractor a perpetual, royalty-free, irrevocable, non-exclusive, non-transferable sub-licence to exercise all Intellectual Property (whether owned by Siemens or not) in the Licensed Materials for the Approved Purposes. The sub-licence commences on the day of this Contract.
- (b) If the Contractor receives notice of a Claim by any person alleging that the exercise of the sub-licence granted under clause 24.2(a) infringes the Intellectual Property rights of any person, the Contractor must notify the Principal of that fact as soon as practicable.
- (c) The Contractor must provide all information and assistance required by the Principal and Head, TfV (acting reasonably) in order to assist Siemens to settle or defend any Claim of the type referred to in clause 24.2(b). To the extent it is reimbursed by Head, TfV, the Principal must reimburse the Contractor for its reasonable costs of providing such information and assistance.

24.3 Siemens Rolling Stock

Vehicle Number	Vehicle Description/Classes	Service Entry Date	
3501	D1	19/10/2002	
3502	D1	19/12/2002	
3503	D1	19/12/2002	
3504	D1	19/12/2002	
3505	D1	28/02/2003	
3506	D1	28/02/2003	
3507	D1	28/02/2003	
3508	D1	28/02/2003	
3509	D1	28/02/2003	
3510	D1	28/02/2003	
3511	D1	28/02/2003	
3512	D1	2/06/2003	
3513	D1	2/06/2003	
3514	D1	4/06/2003	
3515	D1	2/06/2003	
3516	D1	2/06/2003	
3517	D1	2/06/2003	
3518	D1	1/09/2003	
3519	D1	1/09/2003	
3520	D1	1/09/2003	
3521	D1	1/09/2003	
3522	D1	1/09/2003	
3523	D1	1/09/2003	
3524	D1	1/09/2003	
3525	D1	1/12/2003	
3526	D1	1/12/2003	
3527	D1	1/12/2003	
3528	D1	1/12/2003	
3529	D1	1/12/2003	
3530	D1	1/12/2003	
3531	D1	29/02/2004	
3532	D1	1/12/2003	
3533	D1	1/12/2003	
3534	D1	29/02/2004	
3535	D1	29/02/2004	
3536	D1	29/02/2004	
3537	D1	29/02/2004	
3538	D1	29/02/2004	
5001	D2	4/03/2004	
5002	D2	3/06/2004	
5003	D2	2/06/2004	
5004	D2	2/06/2004	
5005	D2	3/06/2004	
5006	D2	2/06/2004	
5007	D2	2/06/2004	
5008	D2	2/09/2004	
5009	D2	2/09/2004	
5010	D2	2/06/2004	
5011	D2	2/06/2004	
5012	D2	2/09/2004	
5013	D2	2/09/2004	
5014	D2	2/09/2004	
5015	D2	2/09/2004	
5016	D2	9/12/2004	
5017	D2	9/12/2004	
5018	D2	9/12/2004	
5019	D2	9/12/2004	
5020	D2	9/12/2004	
5021	D2	9/12/2004	

25. BOMBARDIER 2010 ROLLING STOCK

This clause 25 only applies if the Contractor's Activities are in connection with the operation and maintenance of Bombardier 2010 Rolling Stock.

25.1 Defined terms

(a) In this clause 25:

Bombardier means Alstom Transport Australia Pty Limited (ACN 165 157 451).

Bombardier 2010 Licensed Rights means all Intellectual Property in any material which is necessary to use and maintain an item of Bombardier 2010 Rolling Stock in accordance with the Franchise Agreement and this Contract, but only to the extent that such Intellectual Property is:

- (i) owned solely by Head, TfV; or
- (ii) owned wholly or in part by a third party, and is:
 - (A) licensed to Head, TfV; and
 - (B) able to be lawfully sub-licensed by Head, TfV to the Principal on the terms contained in the Franchise Agreement.

Bombardier 2010 Rolling Stock means an item of Rolling Stock set out in clause 25.5.

Bombardier 2010 Rolling Stock Supply Agreement means the Agreement for the Supply of Flexity Melbourne Rolling Stock dated 29 September 2010 between Rolling Stock Holdings, Head, TfV and Bombardier.

Bombardier 2010 Subcontractor Deed means a deed poll in the form set out in Schedule 29 to the Bombardier 2010 Rolling Stock Supply Agreement.

- (b) In this clause 25 the following terms each have the meanings given to them in the Bombardier 2010 Rolling Stock Supply Agreement (and not any meanings which may be ascribed to those terms elsewhere in the Contract):
 - (i) Infringement Claim;
 - (ii) Manuals;
 - (iii) Parts;
 - (iv) Special Tools; and
 - (v) Vehicles.

25.2 Sub-licence

- (a) To the extent it is lawfully able to do so, the Principal grants to the Contractor a non-exclusive, non-transferable, royalty-free sub-licence to use the Bombardier 2010 Licensed Rights for the purpose of performing the Contractor's Activities on the Principal's behalf for the permitted purposes of:
 - (i) designing, manufacturing, testing, commissioning and delivering any Parts required to operate and maintain the Vehicles, but only where Bombardier refuses to or does not supply such Parts to the Contractor or Principal on reasonable arms' length terms;
 - (ii) testing, operating, maintaining, rectifying and repairing the Vehicles and Parts;
 - (iii) upgrading, modifying in any way, refurbishing, converting, rebuilding or performing life extension works on, the Vehicles and the Parts;
 - (iv) monitoring the performance of the Vehicles, any maintenance activities, and the outcome of any maintenance activities performed in respect of the Vehicles;
 - (v) performing any activities referred to in the Manuals; and
 - (vi) testing, maintaining, upgrading or modifying in any way the Special Tools in connection with or for the purposes of any of the activities described in clause 25.2(a)(i) to clause 25.2(a)(v), and using the Special Tools (including as so upgraded or modified) for the purposes of performing any of the activities described in clause 25.2(a)(i) to clause 25.2(a)(v).
- The sub-licence:
 - (vii) commences on the last to occur the date of this Contract and the date the Contractor enters into a Bombardier 2010 Subcontractor Deed in relation to the Bombardier 2010 Licensed Rights; and
 - (viii) will expire on the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first) (provided that, in respect of Bombardier Licensed Rights which are not owned solely by Head, TfV, the licence will expire on the first to occur of the expiry or termination of Head, TfV's licence in respect of those Bombardier 2010 Licensed Rights and the completion of the Contractor's Activities or the termination of this Contract (whichever occurs first)).
- (b) The Contractor acknowledges having been provided with a copy of clause 29 of the Bombardier 2010 Rolling Stock Supply Agreement. Without limiting any other provision of this Contract, the Contractor must not do anything, or refrain from doing anything, which would cause Head, TfV to be in breach of any of its obligations under that clause, or any conditions or qualifications in that clause on the licences conferred upon Head, TfV under clause 29 of the Bombardier 2010 Rolling Stock Supply Agreement.
- (c) The Contractor must enter into a Bombardier 2010 Subcontractor Deed in relation to the Bombardier 2010 Licensed Rights.
- (d) The Contractor must indemnify the Principal and Head, TfV from and against any Claims, or Liabilities incurred or sustained by the Principal or Head, TfV arising as a result of or in connection with any breach by the Contractor of its obligations under a sub-licence granted in accordance with this clause 25.2.

25.3 IPR Infringement Claims

- (a) If the Contractor receives an Infringement Claim, the Contractor must notify the Principal of that fact as soon as practicable.
- (b) The Contractor must provide all information and assistance required by the Principal and Head, TfV (acting reasonably) in order to assist Bombardier to settle or defend any Infringement Claim. The Principal must reimburse the Contractor for its reasonable costs of providing such information and assistance, to the extent such costs are recovered by the Principal from Head, TfV.

25.4 Compliance with Bombardier 2010 Rolling Stock Supply Agreement

- (a) To the extent that clause 29 of the Bombardier 2010 Rolling Stock Supply Agreement requires Head, TfV to ensure that a sublicensee of the rights licensed to Head, TfV under any of those clauses of those agreements does a certain thing or refrains from doing a certain thing, the Contractor must do that thing or refrain from doing that thing (as the case may be).
- (b) To the extent that a licence granted to Head, TfV under clause 29 of the Bombardier 2010 Rolling Stock Supply Agreement is subject to certain conditions or qualifications, and the rights licensed to Head, TfV form part of the Bombardier 2010 Licensed Rights, then the sub-licence granted to the Contractor under clause 25.2(a) is deemed to be subject to those conditions and qualifications as if they were set out at length in this clause 25 and the sub-licence granted to the Contractor under clause 25.2(a) in respect of the Bombardier 2010 Licensed Rights will be subject to, and the Contractor must comply with, those conditions and qualifications.
- (c) This clause 25.4 is without prejudice to any other provision of the Contract.

25.5 Bombardier 2010 Rolling Stock

Vehicle Number	Vehicle Description/Class	Service Entry Date
6001	E	4/11/2013
6002	E	4/11/2013
6003	E	15/12/2013
6004	E	2/01/2014
6005	E	2/01/2014
6006	E	22/12/2014
6007	E	14/07/2014
6008	E	20/10/2014
6009	E	4/08/2014
6010	E	1/09/2014
6011	E	7/10/2014

6012	E	24/11/2014
6013	E	1/12/2014
6014	E	8/12/2014
6015	E	15/12/2014
6016	E	19/01/2015
6017	E	23/02/2015
6018	E	17/03/2015
6019	E	13/04/2015
6020	E	27/04/2015
6021	E	30/04/2015
6022	E	20/04/2015
6023	E	11/05/2015
6024	E	21/06/2015
6025	E	13/07/2015
6026	E	27/07/2015
6027	E	17/08/2015
6028	E	14/09/2015
6029	E	5/10/2015
6030	E	9/12/2015
6031	E	9/12/2015
6032	E	22/12/2015
6033	E	1/02/2016
6034	E	29/02/2016
6035	E	26/04/2016
6036	E	6/05/2016
6037	E	30/05/2016
6038	E	4/07/2016
6039	E	4/08/2016
6040	E	19/08/2016
6041	E	7/09/2016
6042	E	26/09/2016
6043	E	31/10/2016
6044	E	14/11/2016
6045	E	5/12/2016
6046	E	2/01/2017
6047	E	8/02/2017
6048	E	25/02/2017
6049	E	7/04/2017
6050	E	24/04/2017
6051	E	13/06/2017
6052	E	14/06/2017
6053	E	14/07/2017
6054	E	29/07/2017
6055	E	11/08/2017
6056	E	1/09/2017
6057	E	24/10/2017
6058	E	6/11/2017
6059	E	27/11/2017
6060	E	1/01/2018
6061	E	30/01/2018
6062	E	16/03/2018
6063	E	23/04/2018
6064	E	7/05/2018
6065	E	18/06/2018
6066	E	2/07/2018
6067	E	6/08/2018
6068	E	24/08/2018
6069	E	14/09/2018
6070	E	10/10/2018
6071	E	19/11/2018
6072	E	17/12/2018
6073	E	21/01/2019
6074	E	1/03/2019
6075	E	12/04/2019
6076	E	1/05/2019
6077	E	20/05/2019
6078	E	2/08/2019
6079	E	19/07/2019
6080	E	4/10/2019
6081	E	8/11/2019
6082	E	16/12/2019
6083	E	27/12/2019
6084	E	31/12/2019
6085	E	7/02/2020
6086	E	8/07/2020
6087	E	10/08/2020
6088	E	14/09/2020
6089	E	28/09/2020
6090	E	21/11/2020
6091	E	21/12/2020
6092	E	2/02/2021
6093	E	26/02/2021
6094	E	12/03/2021
6095	E	23/04/2021
6096	E	17/05/2021
6097	E	16/06/2021
6098	E	23/07/2021
6099	E	17/08/2021
6100	E	24/09/2021

26. G Class Rolling Stock

This clause 26 only applies if the Contractor's Activities are in connection with the operation and / or maintenance of G Class Rolling Stock.

26.1 Defined terms

- (a) In this clause 26:

Commissioning Facility Licence has the meaning given in the G Class Supply and Maintenance Agreement.

Franchisee G Class Agreement means each of:

- (i) the G Class Franchisee Interface Agreement;
- (ii) the New Stabling Yard Licence;
- (iii) the New TMF Works Interface Deed Poll; and
- (iv) any other document the parties agree is a Franchisee G Class Agreement.

G Class Collision Spares has the meaning given to 'Collision Spares' in the G Class Supply and Maintenance Agreement.

G Class Equipment means the G Class Rolling Stock, and all G Class Rotable Items and G Class Special Tools and Equipment.

G Class Franchisee Interface Agreement means the agreement titled 'Franchisee Interface Agreement – Next Generation Trams Project' between Head, TfV, KDR and the G Class Contractor.

G Class Licensed Rights means all Intellectual Property in any material which is necessary to use an item of G Class Equipment in accordance with the Franchise Agreement and this Contract, but only to the extent that such Intellectual Property is:

- (i) owned solely by Head, TfV as at the date that item of G Class Equipment becomes subject to this Contract;
- (ii) owned wholly or in part by a third party as at the date that item of G Class Equipment becomes subject to this Contract, and is:
 - (A) licensed to Head, TfV under the G Class Supply and Maintenance Agreement; and
 - (B) able to be lawfully sub-licensed by Head, TfV to the Principal on the terms contained in the Franchise Agreement; or
- (iii) comprised in any data which is generated or received by the ICT Shore Systems (as defined in the G Class Supply and Maintenance Agreement).

G Class Rotable Items has the meaning given to 'Rotable Items' in the G Class Supply and Maintenance Agreement.

G Class Special Tools and Equipment has the meaning given to 'Special Tools and Equipment' in the G Class Supply and Maintenance Agreement.

Incident means a breakdown, accident, emergency, event, or circumstance on or affecting the Routes (as defined in the Franchise Agreement) or any Service on the Routes that causes, or may reasonably be expected to cause:

- (i) the security or safety of a tram or any person to be jeopardised;
- (ii) illnesses, damage to health (including mental health), injury to or death of any person;
- (iii) material damage to the property of any person;
- (iv) delay or obstruction to the use of the Routes; or
- (v) collision, derailment, signalling failure or serious safe working breach, and any other tramway accident or incident that the Principal is required to investigate under any applicable Law in accordance with the Franchise Agreement.

Interim TMF Lease has the meaning given in the G Class Franchisee Interface Agreement.

New Stabling Yard Licence means the licence titled 'New Stabling Yard Licence – Next Generation Trams Project' between the G Class Contractor and the Principal.

New TMF Works Interface Deed Poll means the document titled 'Tram Maintenance Facility Interface Deed Poll – Next Generation Trams Project' entered into by the Principal.

New TMF Lease has the meaning given in the G Class Franchisee Interface Agreement.

Rolling Stock Holdings means Rolling Stock Holdings (Victoria) Pty Limited (ACN 104 780 056).

Service means any single, one-way service which forms part of the Passenger Services.

Ticketing Operator means Conduent Victoria Ticketing System Pty Ltd (ACN 667 867 950) or any other person appointed by the State or Head, TfV to install, operate, maintain, renew or replace the Ticketing System from time to time.

Ticketing System means the public transport ticketing system or systems for the Victorian public transport system from time to time, currently known as "myki".

26.2 Franchisee G Class Agreements

- (a) The Contractor must not do (or omit to do) any act, matter or thing that would cause the Principal to breach any of its obligations under a Franchisee G Class Agreement.
- (b) The Contractor must, in performing its obligations under this Contract, not knowingly do anything or knowingly fail to do something which will or is likely to result in:
 - (i) Head, TfV being in breach of its obligations under the G Class Supply and Maintenance Agreement or the G Class Franchisee Interface Agreement or which otherwise interferes with, hinders or disrupts the performance by Head, TfV of its obligations under the G Class Supply and Maintenance Agreement or the G Class Franchisee Interface Agreement; or
 - (ii) Head, TfV being in breach of its obligations under the Interim TMF Lease, the New TMF Lease or the Commissioning Facility Licence or which otherwise interferes with, hinders or disrupts the performance by Head, TfV of its obligations under the Interim TMF Lease, the New TMF Lease or the Commissioning Facility Licence.

26.3 Compliance with Laws

The Contractor must:

- (a) comply with all Laws which affect or relate to the Contractor's Activities with respect to the G Class Rolling Stock regardless of whether the Law requires compliance by any or all of the Contractor, the Principal and Head, TfV or any other person;
- (b) promptly notify the Principal of any notice of non-compliance the Contractor received under any Law referred to in clause 26.3(a);
- (c) obtain, maintain and comply with all Authorisations which from time to time may be necessary or appropriate in relation to the Contractor's Activities with respect to the G Class Rolling Stock regardless of whether the Authorisation requires compliance by any or all of the Contractor, the Principal and Head, TfV or any other person;
- (d) comply with all notices, orders and directions issued or given by a Governmental Agency which affect or relate to the Contractor's Activities with respect to the G Class Rolling Stock, regardless of whether the notice, order or direction is addressed to or requires compliance by any or all of the Contractor, the Principal and Head, TfV or any other person;
- (e) promptly give the Principal a copy of any notice, order or direction from any Governmental Agency given to the Contractor which affects or relates to any G Class Rolling Stock;
- (f) without limiting clause 26.3(a), ensure that Contractor's Activities with respect to the G Class Rolling Stock are performed in accordance with all Safety Law;
- (g) ensure that all subcontractors engaged by the Contractor in relation to the Contractor's Activities with respect to the G Class Rolling Stock comply with Safety Law;
- (h) comply with all requirements as to Accreditation relating to the Contractor's Activities with respect to the G Class Rolling Stock;
- (i) immediately comply with any lawful direction in respect of safety or health issued by any Governmental Agency having jurisdiction over the G Class Rolling Stock; and
- (j) notify the Principal of any:
 - (i) incident described in section 37(1) or 37(2) of the *Occupational Health and Safety Act 2004* (Vic);
 - (ii) dangerous event;
 - (iii) direction of any Governmental Agency or worker's representative in relation to health and safety; or
 - (iv) other event giving rise to a requirement to notify a Governmental Agency under Safety Law, arising in connection with the operation of G Class Rolling Stock by the Contractor.

26.4 Operation

The Contractor must perform the Contractor's Activities with respect to each item of G Class Rolling Stock:

- (a) only by competent and (where appropriate) properly qualified, trained and licensed personnel and by recognised methods and standards of operation;

- (b) in accordance with the current versions of all operating manuals provided by the Principal to the Contractor and any operating instructions received from time to time from the Principal; and
- (c) in accordance with the G Class Franchisee Interface Agreement and any applicable Interface Management Plan (as defined in the G Class Franchisee Interface Agreement), unless otherwise permitted under this Contract.

26.5

Proper Purpose

The Contractor may only use the G Class Rolling Stock for the purpose of undertaking any obligation imposed on the Contractor under the Contract.

26.6

Access

- (a) Upon request by Head, TfV, the Contractor must ensure that, subject to the directions of the Incident Controller (as defined in the Franchise Agreement), Head, TfV has direct access to any G Class Rolling Stock under the Contractor's control where any Incident has occurred for the purpose of investigating the Incident and gathering relevant information. The Contractor must reasonably cooperate with and assist Head, TfV in respect of any such investigations taking into account the nature of the investigations, their likely impact on the Contractor, the Principal, other tram, train or bus operators and on passengers.
- (b) The Contractor must give the Principal, Head, TfV, Head, TfV's Associate, the Ticketing Operator, any potential new Ticketing Operator and their respective Associates, the owner, operator, maintainer or other interested party, their authorised representatives and any person claiming through them access to the G Class Rolling Stock for the purpose of installing, operating, maintaining, servicing, altering, upgrading, relocating, removing and replacing the Ticketing Equipment (as defined in the Franchise Agreement).

26.7

Ownership

- (a) The Contractor acknowledges that each item of G Class Rolling Stock is and remains at all times the property of Rolling Stock Holdings and Rolling Stock Holdings retains full title to each item of G Class Rolling Stock notwithstanding that the G Class Rolling Stock may be leased or licensed to, and in the possession of, the G Class Contractor, the Principal or the Contractor.
- (b) The Contractor must:
 - (i) (safeguard and protect) do everything reasonably necessary to safeguard and protect the property, title and rights of Rolling Stock Holdings in and to the G Class Rolling Stock;
 - (ii) (not jeopardise rights) not do or permit to be done any act, omission or thing which might jeopardise the property, title and rights of Rolling Stock Holdings in and to the G Class Rolling Stock except to the extent undertaken lawfully in connection with the performance of its obligations under the Contract;
 - (iii) (protection of rights) do everything necessary to protect the rights of Rolling Stock Holdings in and to each item of G Class Rolling Stock, including making clear to others, where ownership of an item of G Class Rolling Stock is relevant, that Rolling Stock Holdings owns that item of G Class Rolling Stock;
 - (iv) (protection of title) protect the title to, interest in and possession of, each item of G Class Rolling Stock against, and not do anything or permit anything to be done that will or may result in it becoming subject to, confiscation, forfeiture, condemnation, distress, execution, seizure or other similar legal process;
 - (v) (plates or marks) not place or allow to be placed on any G Class Rolling Stock any plates or marks which are inconsistent with the rights of Rolling Stock Holdings and must:
 - (A) allow the G Class Contractor to, if required by Rolling Stock Holding, affix to each item of G Class Rolling Stock a fireproof plate indicating that Rolling Stock Holdings owns that G Class Rolling Stock, the size and location of such plates to be in accordance with industry practice; and
 - (B) not remove, obliterate, change or cover up the plates referred to in clause 26.7(b)(v)(A).
- (c) The Contractor must not cause or permit any G Class Rolling Stock to be affixed to any land or building.
- (d) If any G Class Rolling Stock is affixed to any land or building by the Contractor:
 - (i) it will not become a fixture but will remain the property of Rolling Stock Holdings;
 - (ii) it will be removable by Head, TfV or Head, TfV's Associates; and
 - (iii) he Contractor will be responsible for any damage caused to the land or building by the affixing or removal of that G Class Rolling Stock.
- (e) If any person seizes or attempts to seize or interfere with any G Class Rolling Stock, the Contractor must promptly upon becoming aware of the same:
 - (i) notify that person of Rolling Stock Holdings' title to and rights in relation to that G Class Rolling Stock; and
 - (ii) immediately inform the Principal by notice of that seizure, attempted seizure or interference.
- (f) The Contractor must not directly or indirectly, sell or otherwise dispose of, lease or create or allow to exist any security interest or other interest in the G Class Rolling Stock, or agree or attempt to do so.
- (g) The Contractor acknowledges that, subject to any agreement to the contrary with Head, TfV, any item that is removed or detached from an item of G Class Rolling Stock (other than the Ticketing Equipment (as defined in the Franchise Agreement) which is the property of VicTrack) remains the property of Rolling Stock Holdings until such time as that item is replaced with a part, accessory or component or similar thing:
 - (i) title to which has vested in Rolling Stock Holdings or will, upon installation or incorporation into that G Class Rolling Stock, vest in Rolling Stock Holdings;
 - (ii) that is free and clear of all Security Interests and rights of others; and
 - (iii) that has a value, utility and quality at least equal to the item being replaced, and, at that time, title to the item being replaced;
 - (iv) to the extent the item is a G Class Collision Spare, remains with Rolling Stock Holdings; and
 - (v) otherwise vests in the G Class Contractor.
- (h) The Contractor acknowledges that works may be undertaken by the G Class Contractor to maintain, enhance, modify or add to any G Class Rolling Stock in accordance with the G Class Supply and Maintenance Agreement.
- (i) The Contractor acknowledges that upon completion of any works undertaken with respect to an item of G Class Rolling Stock, ownership and interest in the works will vest in and remain with Rolling Stock Holdings at no cost to Rolling Stock Holdings and the works will form part of the G Class Rolling Stock.
- (j) The Contractor must not:
 - (i) pledge the credit of the State, Head, TfV or Rolling Stock Holdings in connection with any G Class Rolling Stock or its use including its operation, maintenance, overhaul, replacement, repair, modification or addition to, or the installation, storage, housing or transportation of, any G Class Rolling Stock;
 - (ii) remove or permit the removal of any G Class Rolling Stock from Victoria; and
 - (iii) part with possession of any G Class Rolling Stock except as contemplated by the G Class Franchisee Interface Agreement.

- (k) The Contractor acknowledges that the Ticketing Equipment (as defined in the Franchise Agreement) will not constitute a fixture on any G Class Rolling Stock.
- (l) The Contractor acknowledges that it has not relied on the Principal, Head, TfV's or any Head, TfV's Associate's skill and judgment or on any representation or warranty from the Principal, Head, TfV or any Head, TfV's Associate as to the condition, suitability or fitness for purpose of any G Class Rolling Stock.

26.8 Damages to G Class Rolling Stock

- (a) The Contractor acknowledges that under the Franchise Agreement:
 - (i) subject to 26.8(a)(ii), if any loss or damage occurs to G Class Rolling Stock whilst in the possession, custody or control of the Principal, the Principal must pay to Head, TfV on demand an amount equal to any amount Head, TfV is required to pay to:
 - (A) the G Class Contractor under the G Class Supply and Maintenance Agreement; or
 - (B) a third party nominated by Head, TfV to undertake repairs to the G Class Rolling Stock; and
 - (ii) the amount paid by the Principal under clause 26.8(a)(i) in respect of a single incident must not exceed the Insurance Deductible for the G Class Rolling Stock notified by Head, TfV to the Principal from time to time.
- (b) If any loss or damage occurs to G Class Rolling Stock whilst in the possession, custody or control of the Contractor, the Contractor must promptly notify the Principal and must pay to the Principal on demand an amount equal to any amount paid or required to be paid by the Principal under clause 26.8(a)(i) in respect of that loss or damage.
- (c) The Contractor acknowledges that under the Franchise Agreement, if any G Class Rolling Stock is lost, destroyed or damaged beyond economic repair as a result of a single incident whilst in the possession, custody or control of the Principal, the Principal must pay to Head, TfV on demand an amount equal to the Insurance Deductible for the G Class Rolling Stock notified by Head, TfV to the Principal from time to time.
- (d) If any G Class Rolling Stock is lost, destroyed or damaged beyond economic repair as a result of a single incident whilst in the possession, custody or control of the Contractor, the Contractor must immediately notify the Principal of that incident and must pay to the Principal on demand an amount equal to any amount paid by the Principal under clause 26.8(c) in respect of the lost, destroyed or damaged G Class Rolling Stock.
- (e) The Contractor acknowledges that for the purposes of clause 26.8(a)(i) and clause 26.8(c), the initial Insurance Deductible is \$500,000, and the Principal may only notify the Contractor of a higher Insurance Deductible if that higher Insurance Deductible results from the claims experience attributable to the Contractor.
- (f) For the avoidance of doubt and without limitation:
 - (i) G Class Rolling Stock is in the possession, custody or control of the Contractor if the Contractor is performing the Contractor's Activities with respect to the G Class Rolling Stock for the purposes of testing and commissioning the G Class Rolling Stock; and
 - (ii) G Class Rolling Stock is not in the possession, custody or control of the Contractor during times at which the G Class Contractor is the bailee of G Class Rolling Stock in accordance with the G Class Franchise Interface Agreement.

26.9 Handover on the expiry or termination of the Franchise Period

The Contractor must co-operate with the Principal and Head, TfV to ensure that at termination or expiry of the Franchise Period, Head, TfV or any successor operator is in a position to use the G Class Rolling Stock for Passenger Services. Without limiting the generality of the foregoing, the Contractor must do everything, both before and after the expiry or termination of the Franchise Period, as the Principal and Head, TfV may require (acting reasonably) to assist and advise Head, TfV or any successor operator in using the G Class Rolling Stock for Passenger Services.

26.10 G Class Supply and Maintenance Agreement support

The Contractor must provide all reasonable assistance requested by the Principal on behalf of Head, TfV to enable Head, TfV to perform its obligations and exercise its rights under the G Class Supply and Maintenance Agreement.

26.11 Grant of sub-licence

- (a) To the extent it is lawfully able to do so, the Principal grants to the Contractor a non-exclusive, non-transferable, royalty-free sub-licence to use the G Class Licensed Rights solely for the purpose of performing the Contractor's Activities in relation to the G Class Rolling Stock. This sub-licence commences on the date of this Contract (or such later date as the Principal reasonably requires) and will expire on the first to occur of:
 - (i) completion of the Contractor's Activities or the termination this Contract (whichever occurs first); and
 - (ii) the expiry or termination of Head, TfV's licence in respect of the G Class Licensed Rights under the G Class Supply and Maintenance Agreement.

26.12 Compliance with G Class Supply and Maintenance Agreement

- (a) To the extent that Head, TfV's licence in respect of the G Class Licensed Rights under the G Class Supply and Maintenance Agreement is subject to certain conditions or qualifications, the sub-licence granted to the Contractor under clause 26.11 is deemed to be subject to those conditions and qualifications as if they were set out at length in this clause 26, and the sub-licence granted to the Contractor under clause 26.11 in respect of the G Class Licensed Rights will be subject to, and the Contractor must comply with, those conditions and qualifications.
- (b) This clause 26.12 is without prejudice to any other provision of this Contract.