

AN tÚDARÁS NÁISIÚNTA IOMPAIR - THE NATIONAL TRANSPORT AUTHORITY

and

BUS ÁTHA CLIATH - DUBLIN BUS

DIRECT AWARD PUBLIC SERVICE CONTRACT

**imposing public service obligations to secure the provision of
certain public bus services
in the**

GREATER DUBLIN AREA

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THIS AGREEMENT is made ____ December 2014

BETWEEN:

- (1) **THE NATIONAL TRANSPORT AUTHORITY** (or in the Irish language, **AN tÚDARÁS NÁISIÚNTA IOMPAIR**), a statutory corporation established under the Dublin Transport Authority Act 2008 as amended and having its principal office at Dún Scéine, Iveagh Court, Harcourt Lane, Dublin 2 (the “**Authority**”); and
- (2) **DUBLIN BUS - BUS ÁTHA CLIATH**, a company established under the Transport (Re-Organisation of Córas Iompair Éireann) Act 1986 and having its principal office at 59 Upper O’Connell Street, Dublin 1 (the “**Operator**”).

RECITALS

- (A) The Authority was established by the 2008 Act and has, among other things, the functions to secure the provision of public passenger transport services, to secure the provision of integrated ticketing and information systems for public transport, to secure the development and implementation of a single public transport brand and the collection of statistical data and information on transport.
- (B) Section 48(2)(b) of the 2008 Act requires the Authority, when securing the provision of public bus services, to do so in accordance with Section 52 of the 2008 Act or following a competitive tendering procedure.
- (C) Section 52(3) of the 2008 Act authorises the Authority, to ensure the adequacy of public passenger transport services in the general economic interest, to enter into direct award contracts, which impose public service obligations on the Operator, being Bus Átha Cliath - Dublin Bus.
- (D) This Agreement is a public transport services contract (within the meaning of section 47 of the 2008 Act) and a direct award public service contract for the purposes of Chapter 2 of Part 3 of the 2008 Act and Regulation (EC) No. 1370/2007.

NOW IT IS HEREBY AGREED as follows:

PART 1 - DEFINITIONS AND INTERPRETATION**1. DEFINITIONS**

In this Agreement (including the recitals and Schedules), unless the context otherwise requires, each of the following words and expressions shall have the following meanings:

"2008 Act" means the Dublin Transport Authority Act 2008.

"Actual Price" has the meaning given to it in Schedule 20 (Contract Prices and Indexation).

"Actual Waiting Time" or **"AWT"** has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

"Agreement" means this Agreement, including the Schedules.

"Annual Business Plan" means the plan prepared by the Operator in accordance with Schedule 17 (Annual Business Plan).

"Approval" means any agreement, consent, permission, expression of satisfaction or other approval to be given by the Authority, as applicable, under the terms of this Agreement and the term **"Approved"** shall be interpreted accordingly.

"Associated Company" means any company which is, in relation to another company:

- (a) a subsidiary; or
- (b) a holding company; or
- (c) a company which is a subsidiary of the holding company.

"Authority Network Asset" means any asset used by the Operator in the provision of the Services that has been funded or provided, either directly or indirectly, by the Authority.

"Authority Network Branding" means any trademarks and logos relating to the Network Assets which are owned by the Authority or its licensors.

"Authority IPR" means Intellectual Property Rights related to Leap, Transport for Ireland and any other public transport brands developed by the Authority for public transport services.

"Authority Variation Notice" means a notice of Variation to the Services served on the Operator by the Authority in accordance with Schedule 23 (Variations).

"AVL Data Management System" means the system used by the Authority to monitor performance of the Services.

"AVL System" means the Automatic Vehicle Location System used on the Network Buses.

"Base Period Payment" means the amount payable by the Authority to the Operator in accordance with Schedule 21 (Payment Mechanism).

"Base Yearly Payment" means the amount payable by the Authority to the Operator in accordance with Schedule 21 (Payment Mechanism).

“**Bus**” means a mechanically propelled vehicle designed for travel by road, having seating accommodation for more than nine (9) persons (including the driver).

“**Business Day**” means a day that is not a Saturday, Sunday or a public holiday established under the Organisation of Working Time Act 1997.

“**Capital Expenditure**” means any capital expenditure accepted as such under normal accounting procedure generally accepted and applied in Ireland from time to time.

“**Central Control Room**” means the primary Control Room operated by the Operator.

“**Claim**” means any claim, demand or proceeding.

“**Commencement Date**” means the date of execution of this Agreement.

“**Complaint**” means a complaint received by the Operator in relation to the Services except:

- (a) complaints in relation to fares; and
- (b) any complaints that are demonstrated to the Authority (acting reasonably) to be frivolous or vexatious.

“**Consents to Operate**” means all permissions, consents, licences, certificates and authorisations (whether statutory or otherwise) which are required to be obtained by the Operator from a Relevant Authority for the provision of the Services.

“**Contract Period**” means the period commencing on the Commencement Date and expiring on the Expiry Date.

“**Contract Year**” means in respect of the first Contract Year, the period commencing on the Commencement Date and ending on 31 December next following and, in respect of each subsequent Contract Year, the period of twelve (12) months commencing on the expiry of the preceding Contract Year (1 January) and ending on 31 December next following or, if earlier, the end of the Contract Period.

“**Control Room**” means any premises from which the Operator manages the performance of the Services and the operation and monitoring of the Control System.

“**Control Systems**” means the supervisory control and data acquisition system, the AVL System, radio system and the other control systems described in Schedule 1 (Network Description).

“**Customer Service Centre**” has the meaning given to it in Schedule 13 (Customer Care).

“**Customer Service Policy**” means the Operator’s policy for customer care as required under Schedule 13 (Customer Care) as may be amended from time to time in accordance with this Agreement.

“**Dangerous Substances**” means:

- (a) any pollutant, contaminant, flammable or corrosive or radioactive or otherwise hazardous substance (including petroleum and its derivatives and any other hydrocarbon) and every substance, matter or thing having constituent elements having any of the foregoing characteristics, whether or not the substance, matter or thing is specifically referred to in, or regulated under, the Legal Requirements and

which alone or in combination with one or more substances causes or may cause harm to the Environment; and

(b) Waste.

“Data Protection Acts” means the Data Protection Acts 1988 and 2003.

“Default Rate” means the applicable rate of interest for late payment of debts prescribed by the European Communities (Late Payment in Commercial Transactions) Regulations 2012.

“Departure Time” means the time of departure for a Bus from a Stop as set out in the applicable Timetable.

“DSP” means Department of Social Protection.

“Encumbrance” means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security, together with any option, right of pre-emption, right to acquire or preferential right or arrangement in relation to an asset or assets of a person and any other equity or preferential right or any agreement or arrangement to create any of them.

“Environment” means the environment generally including all of its physical and ecological aspects including, without limitation, all or any of air, water (including inland waters and groundwater and water in drains and sewers) and land and the medium of air includes the air within any building or the air within any other man-made or natural structure above or below ground.

“Environmental Damage” means any injury or damage to persons (including offence to their senses) living organisms, premises or other property or any pollution or impairment of the Environment resulting from the discharge emission escape or migration of any substance, energy, noise or vibration.

“Environmental Legislation” means any Legal Requirement concerning matters relating to the Environment, and includes the Inland Fisheries Acts 1959 to 2010, the Dangerous Substances Acts 1972 and 1979, the Local Government (Planning and Development) Acts 1963 to 1999, the Planning and Development Act 2000 to 2011, the European Communities Acts 1972 to 2012, the Local Government (Water Pollution) Acts 1977 to 2007, the Water Services Act 2007 to 2013, the Air Pollution Acts 1987 and 2011, the Safety Health and Welfare at Work Acts 2005 and 2010, the Environmental Protection Agency Acts 1992 and 2003, the Waste Management Act 1996 to 2008 and secondary legislation made under any of them.

“Excess Waiting Time” or **“EWT”** has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“Excess Waiting Time Deduction” or **“EWT Deduction”** has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“Excess Waiting Time Standard” or **“EWT Standard”** has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“Expiry Date” means:

(a) 30 November 2019; or

- (b) if earlier, the date upon which this Agreement is terminated in accordance with its provisions.

“**Fare**” means any fare or tariff charged by the Operator to passengers in connection with the Services being provided to such passengers.

“**Fare Evasion**” means any act or omission by a passenger giving rise to a Fare Evasion Loss.

“**Fare Evasion Loss**” has the meaning given to it in Schedule 10 (Revenue Protection).

“**Fare Evasion Rate**” has the meaning given to it in Schedule 10 (Revenue Protection).

“**Fare Evasion Survey**” means a survey of Fare Evasion to establish the Fare Evasion Rate as more particularly described in Schedule 10 (Revenue Protection).

“**Fare Evasion Survey Report**” means a report issued by the Authority pursuant to Schedule 10 (Revenue Protection).

“**Fares Revenue**” means revenue earned by the Operator in respect of carriage of passengers on the Network (including concessionary fare schemes, fare sharing or similar schemes in which the Operator participates from time to time with other public transport services) net of third party agency commissions.

“**Force Majeure**” means any of the following events and circumstances and their consequences (including a Party’s inability to perform its obligations under this Agreement as a result of any event of Force Majeure):

- (a) war (whether declared or undeclared), armed conflict, invasion or act of foreign enemy in each case within and affecting Ireland;
- (b) rebellion, revolution, civil disobedience or acts or threats of terrorism in each case within, and affecting, Ireland;
- (c) suicide, fire, earthquake or extraordinary storm, flood or weather conditions;
- (d) any strike, lock-out or other industrial dispute not confined to employees of the Operator or any Associated Company of the Operator to the extent that such strike, lock-out or industrial dispute has a material adverse effect on the Operator’s ability to perform a substantial part of the Services;
- (e) nuclear explosion, chemical or radioactive contamination or ionising radiation unless the source or cause of the explosion, contamination or radiation is brought to or near the Network Assets by the Party seeking protection as a result of Force Majeure or that Party’s contractors or their sub-contractors of any tier, or exists naturally *in situ*; or
- (f) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed.

“**Good Industry Practice**” means, in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced contractor (engaged in the same type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matter arises) seeking in good faith to comply with its

contractual obligations and to discharge any liability arising under any duty of care that might be owed by that contractor.

“Government” means, at any time, the government of Ireland at that relevant time.

“Grant Agreement” means an agreement substantially in the form specified in Schedule 28 (Form of Grant Agreement).

“Group” means, in relation to any company, its holding company and each company which would be regarded as a subsidiary of that company or the ultimate holding company.

“Headway” means the time (in minutes) between the departure of a Bus from a Stop and the departure from that Stop of the next Bus which departs in the same direction as, but is not coupled to, the first mentioned Bus.

“holding company” has the meaning given to it in section 155 of the Companies Act 1963. Notwithstanding anything to the contrary in this Agreement, this definition shall not be changed in the event of an amendment to the definition of “holding company” contained in the Companies Acts 1963 to 2012.

“Indexed” means, except where otherwise expressly provided, the adjustment to any amount on each Review Date referred to in this Agreement during the Contract Period in accordance with Schedule 20 (Contract Prices and Indexation).

“Intellectual Property Rights” means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, (whether or not the same constitutes Confidential Information) and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in Ireland or any part of the world.

“Integrated Ticketing Scheme” means the scheme for integrated ticketing for public transport procured, maintained and operated by the Authority pursuant to section 58 of the 2008 Act, known as Leap.

“Integrated Ticketing Scheme Arrangements” means the arrangements whereby the Operator participates in the Integrated Ticketing Scheme, including:

- (a) any regulations made by the Authority pursuant to section 58(4) of the 2008 Act;
- (b) any directions given by the Authority pursuant to section 58(6) of the 2008 Act;
- (c) any agreement entered into by the Operator in connection with its participation in the Integrated Ticketing Scheme; and
- (d) any other arrangement involving the Operator (and to which the Authority has consented) in relation to the Integrated Ticketing Scheme.

“KPI” means key performance indicator.

“Leap” means the integrated ticketing scheme which enables passengers to access one or more public transport services using contactless smart cards as a commonly accepted ticketing medium.

“Legal Requirements” means any legislation, constitutions, acts, statutes, laws, bye-laws, rules, or subordinate legislation and any enforceable Community right in each case

enforceable in Ireland, and includes any modification, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute.

“**Loss**” means any loss, damage, cost, expense, charge, fee or liability.

“**Lost Kilometres Deduction**” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“**Lost Service Kilometres**” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“**Maximum Quarterly Payment**” is the amount payable by the Authority to the Operator in accordance with Schedule 21 (Payment Mechanism).

“**Maximum Yearly Payment**” is the amount payable by the Authority to the Operator in accordance with Schedule 21 (Payment Mechanism).

“**Missed Connection Deduction**” has the meaning set out in paragraph 19.9 of Schedule 19 (Performance Payments and Deductions).

“**National Journey Planner**” means the Authority’s internet based system for advising users of suitable means of travelling by public transport between an origin and destination selected by the user.

“**Network**” means the Routes operated by the Operator using the associated Network Assets.

“**Network Assets**” means any infrastructure and equipment (including depots, cleaning, fuelling and maintenance facilities, Network Buses and associated equipment) required by the Operator, and managed by the Operator, to provide the Services.

“**Network Buses**” means Buses that are used in the provision of the Services.

“**Network Data**” means all information, data, materials, manuals and documents of any nature acquired or relating to the Network or the operation or the provision of the Services, or would reasonably be required by the Authority or any other person:

- (a) to provide the Services (or any interfaces with the Network); or
- (b) to perform any statutory duty related thereto.

“**Non-PMS Breach**” has the meaning given to it in Clause 29.2 (Breach).

“**Operating Plan**” means a document or documents prepared by the Operator in accordance with Schedule 5 (Operations Management).

“**Operator’s Representative**” means the person appointed from time to time by the Operator to act as its representative in accordance with Clause 17.3 (Operator’s Representative).

“**Operator Variation Notice**” means a notice served by the Operator in accordance with the provisions of Part 3 of Schedule 23 (Variations) in respect of a Variation which the Operator wants to recommend to the Authority.

“**Originating Stop**” means the Stop from which a Trip starts as set out in the Timetable.

“Parties” means the Authority and the Operator.

“Passengers’ Charter” means the passengers’ charter provided by the Operator outlining the expectations which passengers may have of passenger services on the Network and a procedure for passenger complaints.

“Performance Deduction” has the meaning given in Schedule 19 (Performance Payments and Deductions).

“Performance Monitoring System” or **“PMS”** means the system described in Schedule 19 (Performance Payments and Deductions) as amended from time to time in accordance with this Agreement in connection with the monitoring of compliance by the Operator with the Performance Standards and determining the Performance Deductions.

“Performance Payment” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“Performance Standards” means the requirements for minimum levels of System performance that are set out in Schedule 19 (Performance Payments and Deductions), as amended from time to time in accordance with this Agreement.

“Period Customer Services Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Period Operations Report” means the period report on the operation of the Services to be provided in accordance with Schedule 18 (Records and Reporting Requirements).

“Period Passenger, Revenue and Ticketing Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Period Punctuality Performance Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Planned Service Interruption” means a disruption to Services due to a major Public Event or a major project on or near the Network, which the Operator is aware sufficiently in advance to be in a position to prepare an Operator Variation Notice in respect of such disruption.

“Positive Financial Effects” has the meaning given to “Positive Induced Financial Effects” in Section 2.4.2 of the European Commission’s Interpretative Guidelines on Regulation (EC) No. 1370/2007, published March 2014.

“Price” has the meaning given to it in Schedule 20 (Contract Prices and Indexation).

“Principal Sub-Contractors” means the sub-contractors appointed by the Operator which are listed in Clause 40.2(c) (Sub-Contractors) and such other sub-contractors as may be agreed between the Authority and the Operator from time to time.

“PSO Compensation Amount” has the meaning given to it in Clause 26.2(a).

“Public Event” means a public event which may affect the provision of the Services by the Operator as set out in Schedule 5 (Operations Management).

“public passenger transport service” has the meaning given to it in section 47 of the 2008 Act.

“**public service contract**” has the meaning given to it in section 47 of the 2008 Act.

“**public service obligation**” or “**PSO**” has the meaning given to in section 47 of the 2008 Act.

“**public transport service contract**” has the meaning given to it in section 47 of the 2008 Act.

“**Punctuality Performance Payment**” means the amount payable by the Authority to the Operator in accordance with paragraph 21.9 of Schedule 21 (Payment Mechanism).

“**Punctuality Performance Report**” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“**Quality Management Plans**” means the procedures and instructions setting out the activities to be undertaken by the Operator as required by Clause 18 (Quality Management).

“**Quarter**” means, in respect of the first Quarter, the period commencing on the Commencement Date and ending on 31 December next following, and in the respect of each subsequent Quarter during a Contract Year:

- (a) in respect of the first three Quarters during such Contract Year, the period commencing on the expiry of the preceding Quarter and ending on the expiry of three successive Reporting Periods or, if earlier, the Expiry Date or date of termination of this Agreement; and
- (b) in respect of the fourth Quarter during such Contract Year, the period commencing on the expiry of the preceding Quarter and ending on the expiry of four successive Reporting Periods or, if earlier, the Expiry Date or date of termination of this Agreement.

“**Quarterly Cost Report**” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“**Quarterly Operations Report**” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“**Quarterly Service Quality Performance Report**” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“**Rates**” means the rates detailed in Schedule 20 (Contract Prices and Indexation) or such other rates as may be agreed by the Parties.

“**Records**” means those records referred to in Schedule 18 (Records and Reporting Requirements).

“**Relevant Authority**” means each House of the Oireachtas, the Government, any agency, local authority, department, inspectorate, minister, cross-border body, European Union institution or agency, official or public or statutory person (whether autonomous or not) having jurisdiction over the subject matter of this Agreement.

“**Relevant Interest Rate**” means the best interest rate available to the Operator at the relevant time determined, unless otherwise agreed by the Authority, by reference to at least three (3) quotes from providers of finance (the identity of which shall be agreed in advance with the Authority).

“**Relevant Reporting Period**” has the meaning given to it in Clause 27.1.

“Relevant Road Authority” means a road authority (as defined in the Roads Act 1993) in whose functional area a Route is operated.

“Relief Event” means any wilful or accidental damage to any Network Asset by a person other than the Operator to the extent that such damage has a material adverse effect on the Operator’s ability to perform a substantial part of the Services.

“Reporting Period” means each successive period of four (4) consecutive weeks ending on a Sunday occurring during the Contract Period provided that:

- (a) the first Reporting Period in each calendar year shall commence:
 - (i) subject to sub-paragraph (ii), on 1 January in such calendar year; and
 - (ii) in the case of the first Contract Year, on the Commencement Date or such other date as may be agreed by the Parties; and
- (b) the last Reporting Period in each calendar year shall include any days remaining in such calendar year.

“Required Insurance Policies” means the insurance policies required of the Operator as described in Schedule 27 (Insurances).

“Required Records” means the records specified in Schedule 18 (Records and Reporting Requirements).

“Revenue Protection Officer” means an employee of the Operator whose duties include the checking of customer tickets for fare payment.

“Review Date” means 1 January of each year from the Commencement Date until the Expiry Date.

“Road” has the meaning given to it in the Roads Act 1993.

“Route” means each route Approved by the Authority serving each of the areas set out in Schedule 1 (Network Description) and Schedule 2 (Service Specification) and serving each Stop specified by the Authority.

“Running Time” means the time taken by a Bus in normal service to travel from a Originating Stop to the corresponding Terminating Stop.

“Scheduled Service Kilometres” means, in respect of a Reporting Period and a Route, the total kilometreage of the Trips in passenger service shown in the Timetable to depart on that Route during that Reporting Period.

“Scheduled Waiting Time” or **“SWT”** has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“Schedules” means the Schedules to this Agreement.

“Service Quality Performance Deduction” has the meaning set out in paragraph 19.10 of Schedule 19 (Performance Payments and Deductions).

“Service Quality Performance Payment” means the amount payable by the Authority to the Operator in accordance with paragraph 21.10 of Schedule 21 (Payment Mechanism).

“**Service Specification**” means the service specification set out in Schedule 2 (Service Specification) as may be amended from time to time in accordance with this Agreement.

“**Services**” means the services to be provided by the Operator as contemplated by this Agreement.

“**Services Interruption**” means any event, other than strike or industrial action by the Staff, which directly or indirectly prevents or frustrates the safe passage of Network Buses along a Route.

“**Staff**” means the employees of the Operator and/or any contractors and/or any sub-contractors of any tier (which, for the avoidance of doubt, shall include the Principal Sub-Contractors), and/or any employees, servants or agents of any of them, engaged in connection with the performance of the Services.

“**Standard Fare**” means the standard fare payable by a passenger on the Network consequent on a Fare Evasion pursuant to relevant bye-laws.

“**Standard Fare Revenue**” has the meaning given to it in Schedule 10 (Revenue Protection).

“**Step In**” has the meaning given to it in Clause 36.1 (Step-In).

“**Step In Services**” has the meaning given to it in Clause 36.2 (Step-Out).

“**Step Out**” has the meaning given to it in Clause 36.2 (Step-Out).

“**Stop**” means any place at which passengers are normally permitted to board or leave a Network Bus along a Route.

“**Sub-Contract**” means a contract between the Operator and a Sub-Contractor in relation to the performance by the Sub-Contractor of part of the Services.

“**Sub-Contractor**” means:

- (a) any person of any tier to whom responsibility for part of the Services has been sub-contracted; and
- (b) the permitted legal successors or assignees of any person referred to in paragraph (a).

“**subsidiary**” has the meaning given to it in section 155 of the Companies Act 1963. Notwithstanding anything to the contrary in this Agreement, this definition shall not be changed in the event of an amendment to the definition of “subsidiary” contained in the Companies Acts 1963 to 2012.

“**Successor Operator**” means any person appointed to provide the Services and/or maintain the Network Assets upon termination or expiry of this Agreement or any part of the Services or the Network Assets.

“**Tax**” means all forms of taxation, duties, imposts and levies including (but without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property tax, rates, property tax, property related tax, VAT, customs and other import and export duties, excise duties, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto and any interest, surcharge, penalty or fine in connection

therewith, the words “**Taxation**”, “**taxation**”, “**Taxes**”, “**taxes**” and “**tax**” shall be construed accordingly.

“**Terminating Stop**” means the Stop at which a Trip terminates as set out in the Timetable.

“**Timetable**” means the timetables from time to time in force for the operation of passenger services on the Network.

“**Timing Point**” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“**Total Operating Price**” has the meaning given to it in Schedule 20 (Contract Prices and Indexation).

“**Traffic Regulation Order**” means a change to Legal Requirements by a Relevant Roads Authority in relation to the regulation of traffic.

“**Transfer Regulations**” means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

“**Trip**” means the passage of a Bus from a Originating Stop to the Terminating Stop and during which passengers can board and alight at all operational intermediate Stops.

“**Variation**” means any addition, deletion or change to the Operator’s obligations under this Agreement, together with, to the extent not contemplated by the foregoing, any changes contemplated by Clauses 23.2(b) and 23.2(c) (Changes and Variations to Services).

“**Variation Implementation Plan**” has the meaning given to it in Schedule 23 (Variations).

“**Variation Order**” means the instruction given by the Authority to the Operator to implement a Variation in accordance with Schedule 23 (Variations).

“**Variation Response**” means the documentation or reports produced by the Operator in accordance with Schedule 23 (Variations) in response to an Authority Variation Notice.

“**VAT**” means value added tax pursuant to the Value Added Tax Consolidation Act 2010 and related VAT regulations or similar tax or any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112).

“**Waste**” has the meaning given to it in the Waste Management Act 1996 to 2008.

“**Website**” means such website as the Authority may designate.

2. INTERPRETATION

2.1 References

Except to the extent that the context or the express provisions of this Agreement otherwise require:

- (a) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;

- (b) all references to Clauses and Schedules are references to Clauses of and Schedules to this Agreement and all references to Parts, Sections, paragraphs, Annexes or Appendices are references to Parts, Sections and paragraphs contained in and Annexes and Appendices to the Schedules;
- (c) the Schedules to this Agreement (including any Annexes or Appendices thereto) are an integral part of this Agreement and reference to this Agreement includes reference thereto and reference to any Schedule includes reference to any Annex or Appendix thereto;
- (d) all references to any agreement (including, without limitation, this Agreement), document or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned;
- (e) all references to any statute or statutory provision (including any subordinate legislation) shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include, without limitation, any statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, rule of court, instrument or delegated or other subordinate legislation made under the relevant statute;
- (f) all references to time of day shall be a reference to whatever time of day shall be in force in the State;
- (g) any reference to "requirements" or "obligations" shall be to such requirements or obligations as may be subsequently altered or supplemented in accordance with the terms of this Agreement;
- (h) the words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular Clause, Schedule, Part, Section, paragraph, Annex or Appendix in which such word may be used;
- (i) words importing the singular include the plural and vice versa;
- (j) words importing a particular gender include all genders;
- (k) "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association;
- (l) any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative;
- (m) references to "Parties" mean the parties to this Agreement and references to a "Party" mean one of the parties to this Agreement;
- (n) all monetary amounts are expressed in Euro;
- (o) any references to the Authority shall be deemed to include a reference to the Authority's advisers, consultants, servants, sub-contractors and/or agents;

- (p) any references to the Operator shall be deemed to include a reference to the Operator's Representative, the Operator's advisers, consultants, servants, sub-contractors and/or agents;
- (q) at any time any reference in this Agreement to a sum or amount, other than PSO Compensation Amounts, shall be construed as referring to such sum or amount Indexed for the effects of inflation at such time;
- (r) wherever this Agreement obliges a Party to pay any amount to the other Party in respect of any Loss, Claim or other sums incurred by the other Party:
 - (i) such obligation shall be construed as applying only to so much of such sums as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis, so much of them as are proper and reasonable; and
 - (ii) the other Party shall, where requested by the other Party, provide supporting evidence of such Loss, Claim or other sums;
- (s) the Authority shall not be imputed with knowledge of any fact, matter or thing merely because that fact, matter or thing is within the knowledge of the State's servants or agents;
- (t) any reference to the statutory duties or functions of the Authority shall be a reference to such duties or functions (including powers and discretions) from time to time and shall include any common law duties and functions (including powers and discretions);
- (u) if the result of any calculation to be rounded up or down to a multiple of a specified figure (after deducting the next lower multiple of the specified figure) is exactly half that specified figure (for example, where amounts are to be rounded up or down to the nearest ten (10), the calculation gives a five (5)), then such result shall be rounded up to the nearest multiple of the specified figure;
- (v) any reference to "day" shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next;
- (w) where the context requires, any reference in this Agreement:
 - (i) to "approval" shall include "Approval",
 - (ii) to "certificate" shall include "Certificate",
 - (iii) to "acknowledge" shall include "Acknowledged",
 - (iv) to "notice" shall include "Notice";
- (x) any Approval shall be at the absolute discretion of the Authority, as applicable, except where expressly stated otherwise in this Agreement; and
- (y) words preceding "**include**", "**includes**", "**including**" and "**included**" shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as *ejusdem generis* shall not apply.

2.2 Ambiguities

In the case of any ambiguity or discrepancy:

- (a) between the provisions in this Agreement (excluding for this purpose, the Schedules) and the provisions of any Schedule, the provisions of this Agreement (excluding for this purpose, the Schedules) shall prevail; or
- (b) between the provisions of particular Schedules, the interpretation which provides the safest and most conservative result, the highest standard of work or service or the latest standard or procedure, as determined by the Authority (acting reasonably), shall prevail; or
- (c) within or between any documentation forming part of a Schedule, the ambiguity or discrepancy shall be determined and resolved by the Authority (acting reasonably).

2.3 Technical Terms

Except where expressly stated to the contrary elsewhere in this Agreement the relevant technical standards used in the Schedules have the meanings given to them in such Schedules.

PART 2 - DURATION

3. DURATION

This Agreement shall remain in effect for the Contract Period.

PART 3 - WARRANTIES AND PROJECT UNDERTAKINGS**4. WARRANTIES****4.1 Reliance**

The Operator acknowledges that the Authority has entered into this Agreement in reliance on the representations and warranties contained in this Agreement.

4.2 General

The Operator represents and warrants to the Authority that, as at the Commencement Date:

- (a) the Operator is a company duly incorporated and validly existing under the laws of the jurisdiction of its incorporation and it has the power and authority to own its assets and to conduct the business and to provide the Services which it conducts or proposes to conduct;
- (b) the Operator has full power and authority:
 - (i) to execute and deliver this Agreement; and
 - (ii) to comply with the provisions of, and perform all of its obligations and exercise all of its rights under, this Agreement;
- (c) the Operator has taken all necessary action to authorise the execution and delivery of this Agreement and the transactions contemplated hereby;
- (d) the entry into and performance by the Operator of this Agreement does not, and will not, violate in any respect any of the following:
 - (i) any Legal Requirements applicable to the Operator; or
 - (ii) the constitutional documents of the Operator; or
 - (iii) any agreement, contract or other undertaking to which the Operator is a party or which is binding on the Operator or any of its property or assets;
- (e) this Agreement constitutes legal, valid and binding obligations of the Operator enforceable in accordance with its terms except as may be limited by any relevant bankruptcy, insolvency, examination or similar laws affecting creditors' rights generally, the principles of equity and equitable remedies, limitation of claims or defences of set-off, counterclaim or similar principles and except for any obligation that purports to confer rights on a person that is not a party to the relevant agreement;
- (f) except to the extent previously disclosed to the Authority by or on behalf of the Operator, no action, suit, proceeding, litigation or dispute against the Operator is currently taking place or pending or, to the Operator's knowledge, threatened nor is there subsisting any judgment or award given against the Operator or before any court, arbitrator or other body which, in any case, would be reasonably likely to result in any material adverse change in the business or condition (financial or otherwise) of the Operator and/or to materially adversely affect its ability to perform its obligations under this Agreement;

- (g) except to the extent previously disclosed to the Authority by the Operator, there has been no material adverse change in the financial condition of the Operator, since the date of its latest audited consolidated accounts that would have a material adverse effect on the Operator's ability to perform its obligations under this Agreement; and
- (h) having made all due and reasonable enquiries in respect of information sourced from a third party other than any member of its Group, all written information furnished by or on behalf of the Operator in connection with this Agreement or delivered by or on behalf of the Operator to the Authority pursuant to this Agreement was true and accurate in all material respects when given and continues to be true and accurate in all material respects to the extent not subsequently superseded by further written information furnished by or on behalf of the Operator.

5. OPERATOR UNDERTAKINGS

5.1 Operator Obligations

- (a) Subject to and in accordance with the provisions of this Agreement, the Operator shall perform and shall procure that the Services are performed:
 - (i) in accordance with this Agreement during the Contract Period;
 - (ii) in full compliance with all applicable Legal Requirements; and
 - (iii) in full compliance with all Consents to Operate,at its own cost and risk.
- (b) The Operator shall not commence to provide the Services on a Route for the purpose of carrying fare paying passengers until the Operator has:
 - (i) secured all Consents to Operate including in respect of the Route; and
 - (ii) obtained the Approval of the Authority to the provision of the Services in respect of that Route.

5.2 Standard of Performance

- (a) The Operator shall perform and shall procure that the Services are at all times performed:
 - (i) in an efficient, effective and safe manner and in accordance with Good Industry Practice (save where a lesser specification or standard of performance is expressly required under this Agreement);
 - (ii) in accordance with accepted professional standards, codes of practice and regulations applicable in the State which are consistent with Good Industry Practice;
 - (iii) in a manner that is not likely to be injurious to health or to cause damage to property;
 - (iv) with all due skill, care and diligence;
 - (v) by appropriately experienced, qualified and trained personnel; and

- (vi) in such manner as would not be likely to materially detract from the image and reputation of the Authority.
- (b) Without prejudice to the generality of Clause 5.2(a), the Operator agrees and acknowledges that, at all times during the Contract Period:
 - (i) each Network Bus shall satisfy the requirements of Schedule 3 (Network Bus Specification);
 - (ii) each Network Bus shall be operated in accordance with Schedule 11 (Operation and Maintenance of Network Assets); and
 - (iii) the Services shall be provided to satisfy, and in compliance with, the requirements of Schedule 2 (Service Specification).

5.3 General Obligations

- (a) Without limitation to Clause 5.2 (Standard of Performance), the Operator shall, at all times:
 - (i) assist and facilitate the Authority in carrying out, and shall take all reasonable steps necessary to support and facilitate the Authority in complying with its duties under any Legal Requirements (insofar as the duties relate to the operation of the Network and the provision of the Services); and
 - (ii) perform the Services so as to:
 - (A) facilitate the proper performance by the Authority of its obligations under the 2008 Act insofar as it relates to the provision of public bus services in the Greater Dublin Area and the provision of the Services;
 - (B) ensure that it shall not hinder or prevent the Authority from enjoying its property rights, or exercising its rights and powers under the 2008 Act; and
 - (C) ensure that it shall not carry out or permit any act or omission which would put the Authority in breach of its obligations under the 2008 Act or any other Legal Requirement.
- (b) The Operator, at all times, shall comply with the requirements of the Authority (acting reasonably and insofar as relates to the subject matter of this Agreement) and any Legal Requirements.
- (c) The Operator shall:
 - (i) procure that all approvals, consents and licences required by it in connection with the entry into, performance, validity and enforceability of this Agreement (or any obligations contemplated herein or therein) will be obtained in a timely manner;
 - (ii) procure that to the extent within its control all consents and licences remain in full force and effect and it shall comply, and shall procure compliance, with the terms and requirements of each of the consents and licences;

- (iii) obtain all Consents to Operate; and
 - (iv) fulfil any conditions in such Consents to Operate so that the Services may be provided.
- (d) The Operator shall procure that all of its necessary returns will be delivered by or on behalf of the Operator to the relevant taxation authorities, that the Operator is not in default in the payment of any taxes save in respect of any liability to Tax which is disputed in good faith by the Operator, and that no Claim will be asserted with respect to taxes which has not been disclosed to the Authority (except where the Operator is reclaiming VAT).

5.4 Network Buses

- (a) The Operator shall ensure that, unless otherwise agreed by the Authority, there is available for use at all times sufficient Buses to provide the Services in accordance with Schedule 2 (Service Specification) and Schedule 3 (Network Bus Specification).
- (b) The Operator shall use, operate and store each Network Bus in compliance with:
- (i) any recommendations of the manufacturer from time to time; and
 - (ii) Good Industry Practice from time to time.
- (c) The Operator shall ensure that Network Buses are stored at a location or locations agreed with the Authority for such purpose.
- (d) The Operator shall:
- (i) not do or omit to do or knowingly permit to be done or omitted to be done anything which may reasonably be expected to expose the Network Buses to penalty, forfeiture, impounding, detention, appropriation, damage or destruction (other than in the course of the provision of normal Services) and without prejudice to the foregoing, if any such situation arises, the Operator shall give the Authority prompt notice thereof and use all reasonable endeavours immediately to remedy such situation;
 - (ii) at its own cost, obtain and maintain in full force all certificates, licences, permits and authorisations required for the use and operation of the Network Buses and the provision of the Services; and
 - (iii) not make any modification to the Network Buses or any part of the Network Buses (except as required to comply with its obligations under this Agreement or any Grant Agreement) without the prior written consent of the Authority and subject to such conditions as the Authority, at its absolute discretion, considers necessary.
- (e) The Operator shall take all necessary steps to ensure that the operation, use and storage of each Bus is not contrary to any Legal Requirements.

5.5 Integration obligations

- (a) The Operator, in providing the Services, shall integrate its Services with other public passenger transport services being provided in the Greater Dublin Area.

- (b) Without prejudice to Clause 5.5(a), the Operator shall:
- (i) participate in and comply with any measures being undertaken or specified by the Authority pursuant to Chapter 3 of Part 3 of the 2008 Act;
 - (ii) support and participate in, using all skill, due care and diligence, the development and operation of:
 - (A) a real time passenger information system,
 - (B) a journey planner; and
 - (C) any other project related to the foregoing,in each case, being undertaken or promoted by the Authority and shall comply with the requirements of the Authority in connection with the foregoing; and
 - (iii) if required by the Authority, co-operate in the development of a single public transport brand and comply with the requirements of the Authority in connection with the use of such public transport brand.

5.6 Integrated ticketing arrangements

- (a) The Authority and the Operator acknowledge that the Operator is participating in the Integrated Ticketing Scheme.
- (b) The Operator:
 - (i) shall not operate a smart card system, other than the Authority's smart card system, for the discharge of fares; and
 - (ii) shall comply with Schedule 9 (Integrated Ticketing Requirements) and, to the extent not contemplated by Schedule 9, with the Integrated Ticketing Scheme Arrangements.
- (c) The Operator shall participate in any review of the Integrated Ticketing Scheme being undertaken by the Authority.

5.7 Implementation

- (a) The Operator shall prepare, submit for Approval, revise, update and comply with the Implementation Plan required under, and in accordance with, Schedule 4 (Implementation Plan and Programme).
- (b) The Operator shall comply with Schedule 24 (Implementation Date for Certain Aspects of the Contract).

5.8 Business Plan

The Operator shall prepare, submit for Approval, revise, update and comply with the Annual Business Plan required under Schedule 17 (Annual Business Plan).

5.9 Negative Pledge

The Operator hereby undertakes to the Authority that it shall not (without the prior Approval of the Authority) create, nor permit to subsist, any Encumbrance on or over any Authority Network Asset (or any part thereof).

5.10 Data Protection

To the extent that the provision of the Services by the Operator involves the processing of personal data (as defined in the Data Protection Acts) by the Operator on behalf of the Authority, the Operator agrees that:

- (a) to the extent permitted by Legal Requirements, it shall process such personal data in accordance with the instructions of the Authority and the terms of this Agreement;
- (b) it shall implement and maintain such security measures as are required to comply with the data security obligations of the Data Protection Acts;
- (c) the Authority (or its authorised representative(s)), acting reasonably, shall be entitled, at reasonable times and on reasonable notice, to audit the security measures adopted by the Operator to ensure that such measures comply with the data security obligations of the Data Protection Acts;
- (d) it shall report any incident which gives rise to a risk of unauthorised disclosure, loss, destruction or alteration of such personal data to the Authority immediately upon becoming aware of such an incident;
- (e) it will not transfer any personal data outside the European Economic Area:
 - (i) without the prior written consent of the Authority; and
 - (ii) without ensuring that one of the exceptions to the prohibition on transfer set out in Section 11 of the Data Protection Acts applies to the transfer in question; and
- (f) it shall at all times comply with the relevant provisions of the Data Protection Acts including any obligation to register as a data processor (as defined in the Data Protection Acts) with the Data Protection Commissioner.

6. INTELLECTUAL PROPERTY

6.1 Licence

The Operator shall comply with its obligations as specified by the Authority in relation to Intellectual Property Rights and the Authority Network Branding.

6.2 Operator's obligations

- (a) The Operator shall ensure that all Intellectual Property Rights in Network Data acquired, created or brought into existence in any manner whatsoever by or on behalf of the Operator or a Sub-Contractor for the purposes of the Services are vested in the Authority at the Expiry Date at no cost to the Authority, provided that in the case of software generally available in the market the Operator shall use all reasonable endeavours to ensure that the Authority is granted a non-exclusive, transferable, royalty-free perpetual licence in such Intellectual Property Rights and the Authority

shall assume the obligation to discharge all fees, charges and expenses of any third party supplier in connection with the acquisition and use by the Authority of such Intellectual Property Rights.

- (b) The Authority shall act reasonably in relation to the Operator's ability to comply with its obligations under Clause 6.2(a).

6.3 Further assurances

Each Party undertakes, at the request of the other, to execute and do all such instruments, applications, documents, acts and things as may be necessary for the purpose of giving full effect to this Clause 6 (Intellectual Property).

6.4 Authority IPR

- (a) The Operator shall not use Authority IPR except for the purposes of providing the Services, and shall not use the Authority IPR in any manner which suggests, or may lead people to believe, that it is the Authority.
- (b) The Operator shall follow all reasonable directions, instructions and requirements given or made by the Authority from time to time with regard to the form and manner of the use of the Authority IPR including, without limitation, any brand guidelines which may be provided to the Operator by the Authority from time to time.
- (c) The Operator shall not:
 - (i) do, or omit to do, or permit to be done, any act which will or may weaken, damage or be detrimental to the Authority IPR or the reputation or goodwill associated with the Authority IPR, or which may invalidate or jeopardise the registration of any Authority IPR; or
 - (ii) apply for, or obtain, registration of any trade mark or service mark which consists of, or comprises, or is confusingly similar to, the Authority IPR or any part of it.
- (d) The Operator shall not:
 - (i) be entitled to use the Authority's logo, livery or corporate image unless:
 - (A) it obtains the prior written Approval of the Authority to such use; and
 - (B) it complies with the Authority's requirements regarding the use of such logo, livery or corporate image; and
 - (ii) suggest or lead people to believe that it is the Authority.

6.5 Operator IPR

- (a) The Operator represents and warrants to the Authority that in performing its obligations under this Agreement, it will not infringe or make unauthorised use of any Intellectual Property Rights of any person, except to the extent that such infringement or unauthorised use is caused by the Operator using the Authority IPR in accordance with the terms of this Agreement.

- (b) The Operator indemnifies and holds harmless the Authority, on demand, against all Losses as a result of any infringement by the Operator of any third party Intellectual Property Rights, except to the extent that such infringement is caused by the Operator using the Authority IPR in accordance with the terms of this Agreement.

PART 4 - OPERATION AND MAINTENANCE**7. OPERATION AND MAINTENANCE OF NETWORK ASSETS****7.1 General Obligations**

- (a) The Operator shall comply with the requirements of Schedule 5 (Operations Management) and Schedule 11 (Operation and Maintenance of Network Assets), including in relation to:
- (i) maintaining records in relation to the causes of delays, disruptions and other significant events which affect or have the potential to affect operations and taking the appropriate improvement actions in relation to same;
 - (ii) procuring such water, sewerage disposal, communications, electricity, gas and any other utility services as the Operator may require;
 - (iii) co-operating with An Garda Síochána, the Dublin Fire Brigade, the relevant Fire Services and the Fire Brigades in each of the counties of Kildare, Meath and Wicklow and Relevant Authorities;
 - (iv) ensuring that any Control Room is manned in accordance with Schedule 13 (Customer Care);
 - (v) attending meetings with Relevant Road Authorities in connection with the provision of Services in relation to other road users;
 - (vi) maintaining a schedule of all Public Events relevant to the Network; and
- (b) The Operator shall comply with the requirements of Schedule 12 (Management of Security).
- (c) The Operator shall comply with the requirements of Schedule 18 (Records and Reporting Requirements) in relation to, among other reporting obligations, the plans to be prepared and implemented by the Operator.

7.2 Training of Staff

The Operator shall comply with the requirements of this Agreement and shall act in accordance with Good Industry Practice in relation to:

- (a) the preparation of relevant training procedures for relevant staff and relevant personnel; and
- (b) the training of relevant staff and relevant personnel during the Contract Period,

to ensure that the Services are performed with and by appropriately qualified and trained personnel in accordance with Schedule 5 (Operations Management).

7.3 Operating Plan

- (a) The Operator shall comply with the requirements of this Agreement and act in accordance with Good Industry Practice in relation to the preparation of the Operating Plan.
- (b) The Operator shall provide to the Authority a copy of the proposed Operating Plan no later than sixty (60) Business Days after the Commencement Date.
- (c) The Authority shall provide the Operator with such comments and amendments as it requires (acting reasonably) in respect of the Operating Plan within ten (10) Business Days of receipt from the Operator. The Operator shall incorporate such comments and amendments in the proposed Operating Plan and shall submit to the Authority for approval. Upon the proposed Operating Plan being Approved by the Authority, it shall be the "Operating Plan".
- (d) The Operator shall implement the Operating Plan throughout the Contract Period.
- (e) The Authority may require, or the Authority and the Operator may agree, amendments to the Operating Plan from time to time.
- (f) The Operator shall keep under review, maintain and update the Operating Plan and, in any event, shall provide the Authority four (4) weeks prior to the Expiry Date an electronic copy of the updated Operating Plan to be in force as at the Expiry Date.

7.4 Policing, Emergency Exercises and Enquiries

The Operator shall:

- (a) comply with the requirements of Schedule 5 (Operations Management) and Schedule 13 (Management of Security) in relation to the security of the Network, the Network Buses, the Operator's staff and members of the public using the Network;
- (b) make arrangements with the appropriate members of An Garda Síochána as may be necessary in relation to their policing of the Network;
- (c) co-operate with the Authority and any other Relevant Authorities in relation to the planning, organisation and control of extraordinary passenger movements resulting from the holding of special events, including Public Events; and
- (d) without prejudice to the generality of the foregoing, comply with the requirements of Schedule 5 (Operations Management) in relation to policing, emergency exercises and special inquiries or investigations that may affect the Network and/or the Services.

8. DEFECTS IN AND DAMAGE TO NETWORK ASSETS

8.1 Operator's General Obligations

The Operator shall:

- (a) bear all risk of loss, theft and damage to Network Assets from any cause whatsoever;
- (b) be responsible for monitoring the performance of the Network Assets in performing the Services;

- (c) be responsible for identifying and remedying defects in Network Assets; and
- (d) comply with the provisions of Schedule 25 (Defects and Damage to Network Assets).

8.2 Damage to Network Assets

- (a) The Operator shall be responsible for identification, notification and rectification of damage to Network Assets.
- (b) On the occurrence of damage to a Network Asset, the Operator shall rectify such damage with all due speed in accordance with Schedule 25 (Defects and Damage to Network Assets) and shall indemnify and hold harmless the Authority in respect of all costs of the Operator in carrying out the rectification.

8.3 Defects and Damage to Network Assets

Subject to Clause 29.1 (Reporting and monitoring) and without prejudice to the Operator's obligations under Clause 5 (Operator Undertakings), the Operator shall be liable pursuant to Clause 29.1 for any Performance Deduction arising as a consequence of damage to Network Assets or defects, unless relieved by the Authority in accordance with Clause 35 (Relief Events).

9. MAINTENANCE

9.1 Maintenance

The Operator shall comply with the requirements of Schedule 5 (Operations Management) and Schedule 11 (Operation and Maintenance of Network Assets) in relation to maintenance of the Network Assets.

9.2 Disruption to Services

If, at any time, it appears to the Operator likely that any maintenance or repair works (including, for the avoidance of doubt, any work required under Clause 8 (Defects in and Damage to Network Assets) to be carried out to Network Assets will necessitate an interruption to, or restriction of, passenger services on the Network so as to result in passenger services on the Network not being provided in accordance with the Timetable, the Operator shall:

- (a) notify the Authority, as soon as is practicable in advance of the carrying out of such work, of:
 - (i) the nature of such work;
 - (ii) the likely effect of such works on passenger services; and
- (b) comply with the requirements of Schedule 5 (Operations Management) and Schedule 15 (Marketing, Communications and Public Relations) in relation to notification of passengers and provision of replacement bus services.

10. ENVIRONMENTAL MANAGEMENT

10.1 General Environmental Management

The Operator shall:

- (a) perform the Services so as not to interfere unnecessarily or improperly with:
 - (i) the convenience of the public; or
 - (ii) access to, use and occupation of, public or private roads or footpaths, or of properties whether in the possession of the Authority or of any other person;
- (b) perform the Services in accordance with, and comply with, the provisions of Schedule 7 (Environmental Management); and
- (c) comply with any warning letters or notices issued to the Operator under any Environmental Legislation in connection with the Network and/or the Services.

10.2 Land Contamination

The Operator shall not, in performing the Services, cause or knowingly permit contamination of any land by any deliberate or accidental disposal, including, without limitation, leakage or spillage of any Dangerous Substance.

11. SAFETY MANAGEMENT

11.1 Safety Management

- (a) The Operator shall be responsible for all health and safety matters related to the performance of the Services and shall manage for the benefit of the Authority all safety requirements related to the Network and Network Assets so as to facilitate the compliance by the Authority of the Authority's obligations under any relevant Legal Requirements.
- (b) Without prejudice to the generality of the foregoing, the Operator shall comply with the requirements of Schedule 6 (Safety Management) in relation to health and safety matters related to the performance of the Services.

11.2 Construction Regulations

To the extent that the Safety, Health and Welfare at Work (Construction) Regulations 2013 apply to any activities for which the Operator is responsible under this Agreement, the Operator shall, in relation to those activities, be the "client" as that term is used in those regulations, and shall comply with this Agreement accordingly.

PART 5 - PASSENGER SERVICES**12. PASSENGER SERVICES****12.1 Timetable**

- (a) The Operator shall provide the Services in accordance with the Timetable set out in Schedule 2 (Service Specification).
- (b) Without prejudice to the generality of Clause 12.1(a), the Operator shall comply with the requirements of Schedule 2 (Service Specification), Schedule 13 (Customer Care), Schedule 14 (Customer Information) and Schedule 15 (Marketing, Communications and Public Relations) in relation to the Timetable and the provision of information relating to the Services.

12.2 Passengers' Charter

- (a) The Operator shall prepare the Passengers' Charter for Approval by the Authority within forty (40) Business Days of the Commencement Date and subsequently review and update the Passengers' Charter on each anniversary of the Commencement Date.
- (b) The Passengers' Charter shall set out the mechanisms to ensure that passenger rights under Regulation (EU) No. 181/2011 are secured in connection with the Services.
- (c) The Operator shall provide the Services in accordance with the Passengers' Charter.

12.3 Authority Consent

The Operator shall not make any changes to:

- (a) the Timetable;
- (b) the Passengers' Charter; or
- (c) to the extent such changes have, or might reasonably be expected to have, a material effect on the performance of the Services by the Operator, any bye-laws made by the Operator,

without the Authority's prior consent in writing.

13. REVENUE COLLECTION**13.1 Ticketing Arrangements**

The Operator shall:

- (a) procure, make available, charge for and accept tickets of such types, design, periodicity, distance and service validity, at the fare levels and subject to operational arrangements as may be notified by the Authority from time to time to the Operator, subject to the Authority providing the Operator with reasonable prior notice in relation to changes to the tickets and the fare levels and consultation by the Authority with the Operator concerning any operational or administrative issues in relation to such changes;

- (b) provide such assistance to the Authority in establishing the design of tickets to be used on the Network as the Authority may require from time to time;
- (c) implement revenue protection measures in accordance with Schedule 10 (Revenue Protection) or such other measures as the Authority may require from time to time; and
- (d) without prejudice to the generality of the foregoing, comply with:
 - (i) the revenue reporting set out in the Schedule 8 (Ticketing and Fare Collection);
 - (ii) the requirements of Schedule 8 (Ticketing and Fare Collection) in relation to ticketing; and
 - (iii) the requirements of Schedule 10 (Revenue Protection) in relation to Standard Fares.

13.2 Standard Fares

- (a) The Operator shall be responsible for implementing any relevant bye-laws and all Legal Requirements relating to Standard Fares, including:
 - (i) issuing Standard Fares notices;
 - (ii) making demands for payment of Standard Fares; and
 - (iii) collecting Standard Fares,in accordance with Schedule 10 (Revenue Protection).
- (b) The Operator shall keep records of, and, subject to Legal Requirements, provide details to the Authority upon request of:
 - (i) all notices issued and demands for payment made in relation to Standard Fares; and
 - (ii) all Standard Fares collected by the Operator.

13.3 Authority Consent

The Operator shall not make any changes to the revenue collection arrangements contemplated by this Clause 13 (Revenue Collection) without the Authority's prior consent in writing.

13.4 Fares

- (a) The Operator is entitled to, and shall retain, all Fares other than Fares collected on behalf of the Authority.
- (b) All Fares in a Contract Year shall be in accordance with the Fares determined by the Authority and included in the relevant Annual Business Plan made pursuant to Schedule 17 (Annual Business Plan).

- (c) No changes to Fares shall be made by the Operator without the prior Approval in writing of the Authority.

14. ADVERTISING

- (a) The Operator shall be entitled to any revenue from the sale of advertising space in relation to the Network.
- (b) The Operator shall facilitate such reasonable access to the Network (subject to compliance with all reasonable instructions of the Operator with regard to the safety of the Network) for the Authority, its employees, sub-contractors and agents as may be requested by the Authority in relation to the installation and replacement of advertisements on the Network or any Network Assets.

15. CUSTOMER CARE AND PUBLIC RELATIONS

The Operator shall:

- (a) comply with the requirements of Schedule 13 (Customer Care) in relation to complaints handling and shall implement a complaints handling system in accordance with such Schedule;
- (b) comply with any reasonable request of the Authority that the Operator join and participate in such liaison activities or such public liaison groups as the Authority may require; and
- (c) comply with the requirements of Schedule 15 (Marketing, Communications and Public Relations) in relation to public relations and publicity.

16. SERVICES INTERRUPTIONS

16.1 Services Interruptions

In the event of a Services Interruption, the Operator shall take all reasonable and practical steps to maintain services either side of the affected section of the Network and shall continue to provide the Services by either:

- (a) local diversion of the Services to avoid the affected part of the Network; or
- (b) operating Services to the nearest suitable stopping place either side of the affected part of the Network,

in each case in accordance with Schedule 5 (Operations Management).

16.2 Operator Relief in relation to Public Events

To the extent that the Operator complies with Clause 16.1 (Services Interruptions), then the Operator shall be entitled to relief in accordance with Schedule 19 (Performance Payments and Deductions).

PART 6 - RELATIONSHIPS, MONITORING AND THIRD PARTIES**17. RELATIONSHIPS****17.1 Instructions in writing**

Instructions given by the Authority shall be in writing, provided that if, in the event of an emergency, the Authority considers it necessary to give any such instructions orally, the Operator shall comply with such instructions but such instruction shall be confirmed in writing by the Authority, as the case may be, as soon as practicable and in any event within two (2) days of the oral instructions being given.

17.2 Certificates and approvals

- (a) Where a part of the Network or any Network Asset is required to be certified or approved by a Relevant Authority, the Authority shall not be obliged to issue any certificate or approval under this Agreement in respect of such part of the Network unless the Authority is reasonably satisfied that the required certificates or approvals have been given by the Relevant Authority.
- (b) Neither the Authority nor the Operator shall be liable for any delay or disruption to the Services as a result of the Authority, before issuing a certificate or approval, as the case may be, making reasonable enquiries to establish in accordance with Clause 17.2(a) whether a certificate or approval has been given by the Relevant Authority.

17.3 Operator's Representative

- (a) The Operator shall appoint a competent and qualified person to act as its representative in connection with this Agreement and such person shall be the Operator's Representative. Such appointment shall be subject to the Approval of the Authority (such Approval not to be unreasonably withheld or delayed).
- (b)
 - (i) The Operator's Representative shall be located in Ireland.
 - (ii) At any time the Operator's Representative will be outside of Ireland for more than five (5) consecutive Business Days, the Operator's Representative shall nominate a temporary substitute and shall so notify the Authority in writing, which notice shall include the name and contact details of the temporary substitute.
 - (iii) Where the Operator's Representative proposes to nominate a substitute for a period in excess of twenty (20) consecutive Business Days, such nomination shall, unless otherwise agreed by the Parties, be deemed to be a termination of the Operator's Representative's appointment and the provisions of Clause 17.4 (Change of Operator's Representative) shall apply.
- (c) The Operator's Representative shall have full authority to act on behalf of the Operator for all purposes of this Agreement. The Authority shall be entitled to treat any act of the Operator's Representative in connection with this Agreement as being expressly authorised by the Operator, and the Authority shall not be required to determine whether any express authority has in fact been given.

17.4 Change of Operator's Representative

Save in the case of resignation, death, serious illness or gross misconduct, the appointment of the Operator's Representative shall not be terminated by the Operator without the prior Approval of the Authority (not to be unreasonably withheld or delayed). As soon as reasonably practicable upon the Operator's Representative ceasing to act in the case of resignation, death, serious illness or gross misconduct and at least twenty (20) Business Days prior to termination of the appointment in all other cases, the Operator shall notify the Authority in writing of its intention to appoint a substitute. Such appointment shall be subject to the Approval of the Authority (not to be unreasonably withheld or delayed).

17.5 Attendance at Meetings

- (a) Subject to the giving of not less than five (5) Business Days' notice, the Operator shall attend such meetings at the Authority's offices or such other premises as the Authority may reasonably require to:
 - (i) review the day-to-day performance of this Agreement; and
 - (ii) discuss any changes to this Agreement which might be appropriate and desirable.
- (b) Each Party shall ensure that sufficient representatives of that Party attend meetings required under this Clause 17.5 to constructively address any issues raised.
- (c) The Operator shall liaise with the Authority as and when required by the Authority, and to deal with general enquiries of the Authority in a prompt and efficient manner.

18. QUALITY MANAGEMENT

The Operator shall, in performing its obligations under this Agreement, comply at all times with the requirements of Schedule 16 (Quality Management) in relation to quality plans and systems.

19. CONSENTS AND APPROVALS

19.1 Approvals

- (a) Without limitation to Clause 19.2 (Effect of Consents, Approvals and Inspections), notwithstanding the Approval of the Authority, the Operator shall not be entitled to recover from the Authority any Losses or Claims which may arise out of or in connection with any inadequacy, error or failure of any matter which has been subject to Approval and any comments made by the Authority in the course thereof.
- (b) The Operator shall obtain from the Principal Sub-Contractors, prior to any such party carrying out any part of the Services, waivers of liability in favour of the Authority in respect of any such Losses and Claims.
- (c) No comments or absence of comments on any matter in the course of an Approval shall relieve the Operator of any of its obligations under this Agreement in connection with the Services.

19.2 Effect of Consents and Approvals

- (a) Neither the giving of any Approval, knowledge of the terms of any agreement or document, nor the review of any document or course of action by or on behalf of the Authority shall relieve the Operator of any of its obligations under this Agreement or of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the Approval, knowledge or review.
- (b) Any Approval shall be final, subject only to being opened up, reviewed or revised:
 - (i) if errors or further material relevant facts are revealed after the Approval has been given; or
 - (ii) where Clause 19.3 (Withdrawal of Approval) applies.
- (c) Without prejudice to the preceding provisions of this Clause 19.2, any Approval, endorsement, decision, opinion, instruction, notice, statement of objection, finding, determination, requirement, or certificate of the Authority shall be final.

19.3 Withdrawal of Approval

Without prejudice to Clause 19.2 (Effects of Consents and Approvals), which shall apply whether or not an Approval is withdrawn under this Clause 19.3, an Approval may be withdrawn if it has been given:

- (a) on the basis of materially inaccurate or misleading facts, information or calculations provided to the Authority by the Operator or any of its Staff; or
- (b) without all relevant material facts, information or calculations known by the Operator or any of its Staff at such time (at a time when such member of Staff owes an obligation to the Operator to provide to the Operator or the Authority such facts, information or calculations) having been given to the Authority and where, had such facts, information or calculations been given to the Authority such Approval would not have been given.

20. CONSENTS TO OPERATE

20.1 Consents to Operate

- (a) From the Commencement Date the Operator shall (at its own cost) maintain and, where appropriate, obtain or otherwise renew the Consents to Operate.
- (b) The Operator shall provide copies of each Consent to Operate obtained or renewed by it to the Authority within five (5) Business Days of receipt of such Consent to Operate.

20.2 Authority Assistance

The Authority shall provide such assistance as the Operator may reasonably require to enable the Operator to obtain and maintain such approvals, licences and certificates as may be required in relation to the Network (including, without limitation, the Consents to Operate).

21. INFORMATION AND ACCESS

21.1 Use of Information

The Operator shall only use any information provided to it by the Authority or any person that the Authority has procured to deliver information in connection with this Agreement solely for the purposes of this Agreement and for no other purpose.

21.2 Supply of Information and Access to the Network

- (a) The Operator shall at any time throughout the Contract Period:
- (i) provide to the Authority at its own cost such information, records or documents (including details of cost breakdowns or updates to financial models or any copy correspondence) with respect to the Services as the Authority may require and within such period as the Authority may in each case require and subject to all applicable laws;
 - (ii) without prejudice to the generality of Clause 21.2(a)(i), provide such information records or documents as the Authority may require and within such period as the Authority may in each case require in order to assess the efficiency of the provision of Services or any part of the Services;
 - (iii) inform and keep informed the Authority of any material change or proposed material change in the performance of the Services or in the Operator including any material change in or restructuring of the capitalisation or financing of the Operator; and
 - (iv) subject to the compliance by the Authority with all reasonable instructions of the Operator with regard to the safety of the Network and the Network Assets, provide access to the Authority to the Network Assets (or any part thereof).
- (b) Without prejudice to the generality of Clause 21.2(a), the Operator shall make available to the Authority, or such professional advisers as the Authority may from time to time nominate, such financial information, documents or accounts as the Authority may reasonably require to audit and verify any payments made under this Agreement and such as may reasonably be required from time to time to comply with the statutory obligations upon the Authority for preparation of accounts.
- (c) The Operator:
- (i) acknowledges that the rights of the Authority under Clauses 21.2(a) and 21.2(b) may be exercised by such professional advisers as the Authority may from time to time appoint on its behalf; and
 - (ii) shall provide such information, access and assistance as may reasonably be required by such professional advisers subject to, and in accordance with, Clauses 21.2(a) and 21.2(b).
- (d) The reasonable costs of the financial audit to be carried out in accordance with Schedule 29 (Financial Audit Terms of Reference) shall be borne in equal shares by the Authority and the Operator.

21.3 Oireachtas Questions and Issues

- (a) Without prejudice to Clause 21.2 (Supply of Information and Access to the Network) the Operator shall, at its own cost and within the timescale from time to time prescribed by the Authority to ensure compliance with all relevant procedures, provide any information within the possession of the Operator or any company which is at the relevant time an Affiliate of the Operator or the Principal Sub-Contractors or any of their respective directors, officers, employees, servants or agents, which is requested by the Authority in relation to its statements or responses to questions or issues raised by or on behalf of the Oireachtas, or any member thereof or the Comptroller and Auditor General.
- (b) The Authority shall be entitled to disclose in the course of carrying out its public functions any information to which Clause 21.3 applies to the extent that it deems necessary or appropriate and shall not be obliged to keep any such information confidential.

21.4 Access to Information

- (a) Subject to Legal Requirements, the Operator shall provide the Authority or (subject to appropriate confidentiality undertakings being provided by the participant) any person (each a “**participant**”) participating in a competition consequent on an invitation to potential successor contractors to tender for the right and obligation to provide or operate all or any part of the Services on the expiration or earlier termination of the Contract Period with access to:
 - (i) the employees;
 - (ii) the Network Assets; and
 - (iii) the books, records and other material kept by or on behalf of the Operator in connection with the Services.
- (b) The Operator shall make available to the Authority or, with the consent of the Authority, a participant such information and shall assist in the verification of such information (including the provision of answers to verification questions) as shall reasonably be required in connection with such exercise provided that:
 - (i) such exercise shall not unduly interfere with the continuing provision and operation of the Services by the Operator; and
 - (ii) the Authority or such participant, as the case may be, shall comply with all reasonable instructions of the Operator with regard to the safe use of the Network Assets.

21.5 Relevant Authority Information

The Operator shall collect and maintain any information (including information concerning patronage, numbers and types of passenger journeys and customer satisfaction) required by a Legal Requirement or reasonably required by a Relevant Authority.

22. RECORDS AND REPORTING REQUIREMENTS

22.1 Required Reports and Records

- (a) The Operator shall submit to the Authority the reports specified in Schedule 18 (Records and Reporting Requirements), Schedule 20 (Contract Prices and Indexation) and Schedule 19 (Performance Payments and Deductions) at the times and in such numbers as provided therein, and such reports shall, at the Authority's request, be accompanied by an electronic copy of such report.
- (b) Without prejudice to the generality of Clause 22.1(a), the Operator shall:
 - (i) ensure that it maintains separate profit and loss accounts and balance sheets in relation to the Services from any other business of the Operator;
 - (ii) furnish to the Authority, as soon as they become available and in any event not later than one hundred and twenty (120) days after the end of each of its financial years a copy of its draft financial statements, including a draft balance sheet prepared as at the end of such accounting period and a draft profit and loss account in respect of such accounting period;
 - (iii) furnish to the Authority, as soon as they become available and in any event not later than one hundred and eighty (180) days after the end of each of its financial years:
 - (A) a copy of its audited financial statements, including a balance sheet prepared as at the end of such accounting period and a profit and loss account in respect of such accounting period; and
 - (B) to the extent that they are different, the accounts referred to in Clause 22.1(b)(i);
 - (iv) ensure that the cost accounting principles according to which separate accounts are maintained are clearly established; and
 - (v) maintain its accounts in accordance with generally accepted accounting principles, practices and policies in Ireland and ensure that all accounting principles are clearly stated.

22.2 Audit

The records referred to in Clause 22.1 (Required Reports and Records) shall be kept in good and safe order and in such form (including in electronic format) so as to be capable of audit by the Authority (or any person authorised in this regard by the Authority).

22.3 Availability

- (a) The Operator shall make the records referred to in Clause 22.1 (Required Reports and Records) available for inspection by or on behalf of the Authority at all reasonable times and shall assist the Authority in respect of any accounting queries.
- (b) The Authority shall be entitled at all reasonable times, with or without notice, to free and full access to inspect examine and/or copy any books, files, records, data, and/or documents relating to the Services other than:

- (i) documents prepared in response to the issue of any extension or invitation to tender for the provision of the Services; or
- (ii) legally privileged documents, belonging to or maintained by or on behalf of the Operator.

22.4 Retention of Records

- (a) Without prejudice to any Legal Requirement, all Required Records shall be:

- (i) retained for and stored on a computer system; and
- (ii) shall be archived,

in accordance with the provisions of, and for not less than the periods specified in, Schedule 18 (Records and Reporting Requirements).

- (b) Where the period for the retention of any records has expired, then the Operator shall notify the Authority as to what it intends to do with such records. If it intends to dispose of them or subsequently decides to dispose of them, the Operator shall notify the Authority, and if the Authority shall within forty (40) days of such notice elect to receive those records or any part of them the Operator, at the Authority's cost, shall deliver up such records to the Authority in the manner and at such location as the Authority shall reasonably specify.
- (c) At the end of the Contract Period, the Operator shall, at its own cost, deliver up to the Authority, in the manner and at such location as the Authority shall reasonably specify, all such records as are referred to in Clause 22.1 (Required Reports and Records) which were in existence at the end of the Contract Period (or, where those records are required by statute to remain with the Operator, copies thereof) or such part of such records as the Authority may by notice to the Operator specify. Without prejudice to any Legal Requirement, and subject to the receipt of a reasonable request in writing from the Operator, the Authority shall make available to the Operator such records delivered up by the Operator pursuant to this Clause 22.4(c) as the Authority considers reasonable.
- (d) The Operator shall retain in safe storage at a location to be identified by the Operator and agreed by the Authority for a period of not less than that specified in Schedule 18 (Records and Reporting Requirements) following the end of the Contract Period all such records as are referred to in Clause 22.4(c) which the Authority does not require to be delivered up to it. The costs of retaining those records in safe storage shall be borne by the Operator and the Authority in equal proportions.

22.5 Protection of Data

- (a) All data or information generated or acquired as a consequence of, or in connection with, this Agreement shall be stored by or on behalf of the Operator such that it is segregated and kept separate from all other data or information generated or acquired by the Operator in some other capacity.
- (b) The Operator shall implement reasonable measures which shall protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other forms of unlawful processing.

- (c) The Operator shall institute and operate all necessary back-up procedures on its systems to ensure that data integrity can be maintained in the event of loss of data for any reason.

22.6 Computer Records

- (a) In respect of all records of the Operator that are to be created or maintained on a computer or other electronic storage device, the Operator shall comply with the reasonable requirements of the Authority in relation to the back-up and adjacent storage of copies of such records and shall adhere to such agreed procedure and shall cause the Principal Sub-Contractors and their sub-contractors to implement and adhere to such agreed procedure.
- (b) In this regard, the Operator shall establish and maintain separate and distinct series of computer records and databases (together with all related records and information) in connection with the performance of its obligations under this Agreement from any computer records and databases established by it in connection with the issue of, and processing of transactions from, its general computer records or records relating to its business generally.
- (c) Without prejudice to the generality of this Clause 22.6, each series of computer records and databases (together with all related records and information) shall be identified as such and shall be capable of being transferred to a third party, separately to the transfer of any other database or other system maintained by the Operator.

22.7 Applicable Laws

Without prejudice to Clause 5.1(a)(ii) (Operator Obligations) or Clause 5.10 (Data Protection), the Operator acknowledges that the performance by the Operator of its obligations under this Agreement (including this Clause 22 (Records and Reporting Requirements)) shall comply with, and satisfy, all the Legal Requirements applicable to data protection and data storage (including the Data Protection Acts).

PART 7 - CHANGES AND VARIATIONS**23. OPERATOR SERVICES****23.1 Provision of Services**

- (a) Subject to Clause 23.1(b), the Operator shall use the Network Assets exclusively in the provision of Services and for no other purpose.
- (b) The Operator may use the Network Assets, other than the Authority Network Assets, for provision of non-PSO services provided that:
 - (i) the full economic cost of providing such non-PSO services is recovered by the Operator; and
 - (ii) the Operator provides details (including, without limitation, details of the cost of providing such non-PSO services) in writing to the Authority in respect of each Reporting Period during which such non-PSO services are provided by the Operator.
- (c) Authority Network Assets may be used for non-PSO services but only to the extent contemplated by, and subject to the conditions of, the Grant Agreement in respect of such Authority Network Assets.

23.2 Changes and Variations to Services

- (a) The Operator may, at its own cost, from time to time prepare and submit to the Authority for its approval proposals for changes to services which it proposes to introduce.
- (b) Any proposal for changes to Services that constitute a change to the Service Specification set out in Annex A of Schedule 2 (Service Specification) shall constitute, and be treated as, a Variation.
- (c) Any proposal for changes to the specification for a Network Bus set out in Annex A of Schedule 3 (Network Bus Specification) shall constitute, and be treated as, a Variation.

23.3 Grant Agreement

The Parties acknowledge and agree that:

- (a) the Authority may wish from time to time to make available certain monies by way of grant or to make certain payments to the Operator in accordance with section 45 and/or section 49 of the 2008 Act to facilitate the acquisition by the Operator of new Authority Network Assets; and
- (b) prior to the Commencement Date:
 - (i) the Parties entered into a framework grant agreement substantially in the form of the Grant Agreement (the "**Existing Grant Agreement**"); and
 - (ii) the Authority has made certain monies available to the Operator pursuant to certain Grant Letters (as defined in the Existing Grant Agreement) issued in accordance with the Existing Grant Agreement;

- (c) the Authority may, prior to it making any further grants or payments to the Operator, require the Operator to enter into a new Grant Agreement substantially in the form set out in Schedule 28 (Form of Grant Agreement) including, without limitation, upon the expiry or termination of the Existing Grant Agreement.

24. NETWORK INFRASTRUCTURE

24.1 Provision of information

- (a) The Operator shall, subject always to Clause 6 (Intellectual Property), provide to the Authority such information as the Authority may reasonably require concerning:

- (i) the Network Assets; and/or
- (ii) the operation of passenger services on the Network; and/or
- (iii) the maintenance of the Network Assets,

that the Authority believes to be required to allow it to specify the terms of any contract for the design, construction, operation and/or maintenance of any public transport infrastructure relating to the Network or the operation of services using the Network Assets.

- (b) Without prejudice to the generality of the foregoing, the information required may be required for the purposes of, and used in preparing and making available:

- (i) a data room;
- (ii) any information memorandum, invitation to tender, technical specification, draft contract or other document connected with such purposes.

- (c) Any information requested by the Authority to be provided pursuant to Clause 24.1(a) shall be provided by the Operator within such time period as the Authority may reasonably require.

24.2 Network Infrastructure

- (a) The Authority may require the Operator to:

- (i) liaise with any contractor (and its consultants and advisers) engaged by the Authority to perform any aspect of the design and/or construction of any new or improved infrastructure relating to the Network, in accordance with the reasonable requests of the Authority or any such contractor;
- (ii) subject to prior reasonable notice, co-operate and co-ordinate with any such contractor (and its consultants and advisers) given access by the Authority to those parts of the Network or Network Assets to which access is required for the efficient carrying out of such design and/or construction; and
- (iii) provide to the Authority and/or to any such contractor such information concerning the design and/or construction of the Network or Network Assets which is at its unrestricted disposal and is reasonably required by the Authority and/or such contractor to facilitate the efficient interfacing and integration of the Network with any new or improved infrastructure relating to the Network.

- (b) The Operator shall use all reasonable endeavours (without incurring additional cost) to ensure that during the construction of any new or improved infrastructure relating to the Network there is minimum disruption to the passenger services being provided on the Network.

25. **VARIATIONS**

25.1 Variations

Either Party may request Variations and the Parties shall deal with any such request in accordance with Schedule 23 (Variations).

25.2 Section 52, 2008 Act

It is agreed and acknowledged that this Clause 25 (Variations) is without prejudice to, and shall not affect, any right, duty or entitlement of the Authority pursuant to section 52 of the 2008 Act to review and, following such review, unilaterally amend this Agreement.

PART 8 - PSO COMPENSATION, PAYMENT AND TAXES**26. PSO COMPENSATION****26.1 Public Service Obligation**

It is acknowledged that:

- (a) the Authority has determined in accordance with Regulation (EC) No. 1370/2007 and the 2008 Act that public service obligations are to be applied in respect of the Services; and
- (b) the Operator is performing public service obligations in providing the Services.

26.2 PSO Compensation

- (a) Subject to the terms of this Agreement, the Authority shall be liable to pay to the Operator, by way of compensation for its performance of the public service obligations in each Contract Year, an amount for that Contract Year calculated in accordance with Regulation (EC) No. 1370/2007, Schedule 20 (Contract Prices and Indexation), Schedule 21 (Payment Mechanism), Schedule 22 (Net Financial Effect Report and Efficiency Incentive) and, to the extent applicable, Schedule 23 (Variations) (the "**PSO Compensation Amount**").
- (b) Subject to the terms of this Agreement (including, Clause 26 (Variations) and Schedule 23 (Variations)), the parties acknowledge:
 - (i) that, by reference to the Services and circumstances applicable as of the Commencement Date, the PSO Compensation Amount for a Contract Year is sixty million and fifty four thousand euro (€60,054,000); and
 - (ii) the PSO Compensation Amount for the first Contract Year (being from the Commencement Date to 31 December 2014) is the product of the amount referred to at Clause 26.2(b)(ii) and a fraction, the numerator of which is the number of days in the first Contract Year and the denominator of which is 365.
- (c) Any PSO Compensation Amounts payable by the Authority under this Agreement shall be paid in accordance with Clause 27 (Payment).

27. PAYMENT**27.1 Process**

The Parties shall comply with the requirements of Schedule 21 (Payment Mechanism).

27.2 Method of payment

All payments to be made by a Party to another Party under this Agreement shall be made by bank transfer (in immediately available funds) to such bank accounts as the receiving Party may have specified to the other from time to time.

27.3 Errors in Reports

- (a) Without prejudice to Clause 22.2 (Audit), the Authority shall be entitled to send any Period Report and other records to an independent accountant for examination and scrutiny.
- (b) If, following such examination, scrutiny or otherwise, it is found that an Period Report was erroneous, resulting in an overpayment or underpayment of a Base Period Payment by the Authority, then the amount of the Base Period Payment payable by the Authority in respect of the next following Reporting Period shall be adjusted to reflect the amount of such overpayment or underpayment, as the case may be.

28. **RATES, TAXES AND CHARGES**

28.1 Obligation to Pay Rates, Taxes and Charges

The Operator shall pay:

- (a) all taxes, duties, charges, impositions and assessments whatsoever whether national, local or otherwise which are payable to the Revenue Commissioners or that the Operator is liable to pay pursuant to any Legal Requirement, in respect of the Network Assets and the Services (except to the extent that another person is required to pay such taxes, duties, charges, impositions and/or assessments); and
- (b) any rates payable in respect of any property owned or occupied by the Operator in connection with the Services.

PART 9 - PERFORMANCE STANDARDS**29. PERFORMANCE****29.1 Reporting and monitoring**

- (a) The Operator shall comply with the requirements of Schedule 19 (Performance Payments and Deductions) in relation to performance monitoring and inspection.
- (b) The Operator shall record the results of its monitoring of certain Performance Standards specified in Schedule 19 (Performance Payments and Deductions) in the Period Report that it submits to the Authority in respect of each Reporting Period in accordance with Schedule 18 (Records and Reporting Requirements) and Schedule 19 (Performance Payments and Deductions).
- (c) The Authority shall comply with the requirements of Schedule 19 (Performance Payments and Deductions) in relation to the monitoring of certain Performance Standards and shall submit reports to the Operator setting out the results of such monitoring in accordance with Schedule 18 (Records and Reporting Requirements).

29.2 Breach

- (a) Without prejudice to Clause 29.2(b), if the Operator is in breach of any provision of this Agreement, and the breach is one which will not result in a Performance Deduction (a "**Non-PMS Breach**"), then the Authority shall be entitled to enforce its rights in relation to the breach by way of an order for specific performance or an injunction.
- (b) In the event of a Non-PMS Breach (except where the Authority has received damages in lieu of specific performance) the Authority shall be entitled to withhold payment of one or more PSO Compensation Amounts (or any part thereof) in an amount equal to the aggregate of:
 - (i) any savings in costs or expenses made by the Operator;
 - (ii) any additional revenues earned by the Operator; and
 - (iii) any loss suffered by the Authority,in each case as a result of the Non PMS- Breach.

29.3 Maximum Liability - Performance Deductions

Without prejudice to the Authority's rights to withhold amounts under Clause 29.2 (Breach), the Operator's maximum liability for Performance Deductions, excluding Lost Kilometres Deductions, in any Contract Year shall be limited to ten per cent (10%) of the Maximum Yearly Payment for such Contract Year.

30. PERFORMANCE MONITORING**30.1 Attendance at meetings**

- (a) The Operator shall send at its own cost and expense such representatives to meetings as the Authority may reasonably require from time to time which are called to

discuss or at which there will be discussed the performance of the Operator against the requirements of the Performance Monitoring System.

- (b) Without prejudice to Clause 33.1(a), the Operator shall send at its own cost and expense representatives to a performance meeting in respect of each Reporting Period with the Authority to discuss the performance of the Operator against the requirements of the Performance Monitoring System for such Reporting Period.

30.2 Performance Monitoring System reports

In addition to the Period Report the Operator shall at its own cost and expense prepare and submit to the Authority for approval for each Reporting Period such Performance Monitoring System reports in such form and with such content as the Authority may reasonably require, detailing the performance of the Operator against the requirements of the Performance Monitoring System.

30.3 Annual review

Without prejudice to Clauses 30.1 (Attendance at Meetings) or 30.2 (Performance Monitoring System reports), the Operator shall comply with the requirements of Schedule 17 (Annual Business Plan) in relation to the preparation and implementation of the Annual Business Plan for each Contract Year.

31. MONITORING AND ACCESS

31.1 Access to the Authority

The Operator shall provide the Authority such reasonable opportunity to monitor the Operator's performance of its obligations under this Agreement, including allowing the Authority access to:

- (a) such documentation as may have been necessary for the preparation of the Records by the Operator as may be reasonably requested by the Authority; and
- (b) unless it is unsafe to do so, all or any part of the Network Assets.

31.2 Effect

The Operator acknowledges and agrees that, notwithstanding any provision of this Agreement which contemplates that the Authority will or may from time to time:

- (a) inspect any part of the Network, Network Assets or any records;
- (b) check compliance by the Operator with its obligations; or
- (c) confirm or indicate approval or non-objection to proposals made by the Operator,

it is and will be the responsibility of, and shall not lessen or in any way affect the responsibility of, the Operator (and not the Authority's responsibility) to ensure that the Services are provided and performed in all respects in accordance with the Operator's obligations under this Agreement.

PART 10 - INSURANCE AND LIMITATION OF LIABILITY**32. INSURANCE**

- (a) The Operator shall from the Commencement Date until the Expiry Date or the date of termination of this Agreement, maintain or procure the maintenance of the insurances stipulated and in the manner described in Schedule 27 (Insurance) and any other insurances as may be required from time to time by Legal Requirements.
- (b) The Operator shall ensure that the insurances are effective in each case not later than the date on which the relevant risk commences.
- (c) No Party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any Claim under any insurance policy in which that Party is an insured, a co-insured or additional insured person.
- (d) The Operator agrees that neither the failure to comply nor full compliance with the insurance provisions of this Agreement, including Schedule 27 (Insurance), shall limit or relieve the Operator of its liabilities and obligations under this Agreement.

33. LIMITATION ON LIABILITY**33.1 Limitation on Operator liability**

- (a) Subject to Clause 33.1(b):
 - (i) the Operator's maximum liability to the Authority for all matters arising out of, or in connection with, this Agreement shall not exceed an amount equal to sixty two million euro (€62,000,000) (Indexed) or, if higher, the specified indemnity limit of the Required Insurance Policy in respect of insurance required under Clause 32 (Insurance) and Schedule 27 (Insurances); and
 - (ii) the Operator's maximum liability to the Authority in respect of its failure to achieve the Performance Standards in respect of which Performance Deductions may be made shall be limited to the Performance Deductions,

(each a "**Liability Cap**" and together the "**Liability Caps**").
- (b) The Liability Caps shall not apply to:
 - (i) any damage to any Authority Network Assets, other than damage caused by the Authority;
 - (ii) any costs or expenses which the Operator is obliged to or does expend in performing its obligations under this Agreement;
 - (iii) except for amounts that are expressly subject to a Liability Cap, any payments which the Operator is obliged to or does make to the Authority under this Agreement (including in respect of any Variation);
 - (iv) any Loss recoverable by the Operator under any insurance policy;
 - (v) any Loss arising under or in respect of any breach by the Operator of the provisions of Clause 6 (Intellectual Property); or

- (vi) any liability of the Operator to the Authority arising as a result of or in connection with:
 - (A) death or personal injury;
 - (B) fraud or wilful deceit by the Operator; or
 - (C) wilful default or abandonment of this Agreement by the Operator;
- (vii) the Operator's liability to refund or reimburse as expressly provided by this Agreement;
- (viii) the Operator's liability to pay any Taxes as expressly provided by this Agreement or required by any Legal Requirements; or
- (ix) any interest payable by the Operator under this Agreement.

33.2 Exclusions

- (a) In no event shall any Party be liable for any:
 - (i) loss of actual or anticipated profits;
 - (ii) loss of actual or anticipated savings;
 - (iii) loss of business; or
 - (iv) special, incidental, indirect or consequential damages,except to the extent that such losses are recoverable by the Operator under any policy of insurance.
- (b) The Operator shall neither:
 - (i) make any Claim against the Authority under, or for breach of, this Agreement; nor
 - (ii) raise any excuse, set-off or defence with respect to any debt or Claim made by the Authority against the Operator under, or for breach of, this Agreement,arising out of any act, default or neglect of the Authority in carrying out obligations imposed on the Authority under any other agreement between the Authority and the Operator.

33.3 General Mitigation Obligation

Each Party shall mitigate its losses under this Agreement howsoever arising and in the event that a Party is liable for such losses pursuant to this Agreement, those liabilities shall be reduced to the extent that such losses have not been mitigated.

PART 11 - THIRD PARTY EVENTS AND STEP IN

34. FORCE MAJEURE

34.1 Application

- (a) Neither of the Parties shall be in breach or otherwise be liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to the occurrence of Force Majeure on the basis that:
 - (i) subject to Clause 34.1(c), the date for performance of the obligation which has been delayed by the Force Majeure event shall be deemed suspended for so long as such obligation is affected by such Force Majeure event;
 - (ii) the Party seeking to exempt itself from liability by virtue of this Clause 34 must:
 - (A) give notice to the other Parties as soon as reasonably practicable after becoming aware of the Force Majeure event identifying:
 - (1) the event(s) of Force Majeure that has occurred;
 - (2) the date from which the event has prevented or hindered the Party affected in the performance of its obligation;
 - (3) the obligations affected; and
 - (4) its best estimate of the date or dates upon which it will be able to resume performance of the affected obligations; and
 - (B) at all times use all reasonable endeavours to mitigate the effect of the Force Majeure event.
- (b) A Party prevented from performing its obligations under this Agreement by an event of Force Majeure must give notice to the other Party forthwith (upon becoming aware of the same) upon the event ending or being removed or its existence no longer preventing performance of an obligation and shall resume performance of such obligation under this Agreement.
- (c) A Party seeking to rely on the provisions of this Clause 34 shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure event.

34.2 Payments

If, as a result of any Force Majeure event occurring on or after the Commencement Date, the Operator is unable to provide the Services as contemplated by this Agreement or such operation is disrupted, then the payment by Authority to the Operator of any Base Period Payment (or part thereof) shall be suspended to the extent that the provision of Services is so affected.

34.3 Obligation to Remedy

As soon as practicable after the occurrence of any Force Majeure event the Party affected shall take all reasonable steps to remedy the failure to perform and relief under this Clause 34 shall cease to be available to a Party if it fails so to take all such steps to remedy the failure.

34.4 Mitigation

Each Party shall take all steps reasonably necessary and consistent with Good Industry Practice to mitigate the consequences of any Force Majeure event.

34.5 Termination

If the Force Majeure event:

- (a) has an effect on the rights or obligations of any of the Parties so as to render financially or practicably impossible the performance of this Agreement; or
- (b) substantively frustrates the ability of a Party to perform its obligations under this Agreement for a period of time in excess of six (6) months,

then the Authority or the Operator may by notice to the other Party forthwith terminate this Agreement.

35. RELIEF EVENTS

35.1 Request for Relief

- (a) The Operator shall be entitled to request relief from the performance of any of its obligations under this Agreement to the extent that its ability to perform such obligation is adversely affected by any Relief Event.
- (b) Any such relief request shall be made by service of a notice on the Authority within two (2) Business Days of the Operator becoming aware of the circumstances giving rise to the relevant Relief Event or, if later, of its failure to perform, containing such relevant information relating to the Relief Event and/or any failure to perform as is available to the Operator, including:
 - (i) full details of the circumstances giving rise to the Relief Event, including its nature, the date of its occurrence and its duration;
 - (ii) the effect of the Relief Event on the Operator's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the precise effect on each such obligation and the likely duration of that effect; and
 - (iii) an explanation of any measures that the Operator proposes or intends to adopt to mitigate the consequences of the Relief Event.

35.2 Relief Notice

Subject to compliance by the Operator with its obligations under Clause 35.1, the Authority shall, having satisfied itself (acting reasonably) of the occurrence of the Relief Event and its effect on the ability of the Operator to perform its obligations under this Agreement, issue a notice (the "**Relief Notice**") specifying:

- (a) the relevant obligations for which relief is given; and
- (b) the period during which the Operator shall be relieved from the performance of those obligations (the “**Relief Period**”);
- (c) where the Operator is unable by reason of such Relief Event to perform the Services (or any part of the Services), the extent to which the payment by Authority to the Operator of any Base Period Payment (or part thereof) shall be suspended,

and the Operator shall be relieved from the performance of all or part of such obligations as set out in the Relief Notice during the Relief Period.

35.3 Duty to Mitigate

Notwithstanding the issue of any Relief Notice, the Operator shall take all steps necessary and consistent with Good Industry Practice to mitigate the consequences of any Relief Event.

36. STEP IN

36.1 Step In

- (a) Without prejudice to the powers of the Authority under section 56 of the 2008 Act, if, in the reasonable opinion of the Authority, the Operator fails or refuses to provide the Services in accordance with this Agreement, the Authority may (acting reasonably) by notice in writing to the Operator:
 - (i) require the Operator to remedy its failure or refusal to provide the Services within such timeframe as may be specified by the Authority (being not less than ten (10) Business Days); and
 - (ii) increase the level of its monitoring of the Operator or, at the Authority’s option, the Operator’s monitoring of its performance of its obligations under this Agreement until such time as the Operator shall have demonstrated to the reasonable satisfaction of the Authority that it will perform, and is capable of performing, its obligations under this Agreement.
- (b) If the Operator does not remedy its failure or refusal to provide the Services within the timeframe specified in the notice referred to in Clause 36.1(a), the Authority may step in and provide, or procure the provision on its behalf of, part or all of the Services (a “**Step In**”).
- (c) In the event that the Authority exercises its rights under Clause 36.1(b):
 - (i) the Operator shall indemnify and keep indemnified the Authority at all times from and against all reasonable costs and expenses (if any) incurred directly or indirectly by or on behalf of the Authority in relation to such Step In (including an appropriate sum in respect of general staff costs and overheads); and
 - (ii) the Authority may deduct any costs and expenses incurred from any monies due or which may become due to the Operator or may invoice the Operator for such sums.
- (d) The provision of part or all of the Services by the Authority in accordance with this Clause 36 shall not relieve the Operator from any of its powers, obligations or

liabilities under this Agreement or affect the rights and powers conferred on the Authority under this Agreement.

36.2 Step Out

In the event that a Step In has occurred and the Authority determines that Services transferred to or taken on by it, or another person on its behalf, ("**Step In Services**") shall be resumed by the Operator (a "**Step Out**"):

- (a) the Authority shall give reasonable notice to the Operator of the date on which Step Out shall occur; and
- (b) the Operator shall, upon receipt of a notice under Clause 36.2(a), resume performance of the Step In Services.

36.3 Operator of last resort

- (a) This Clause 36 (Step-in) is without prejudice to section 56 of the 2008 Act.
- (b) If the Authority exercises the rights conferred on it pursuant to section 56 of the 2008 Act, the Operator shall cooperate with the Authority (or any person nominated by it) and shall do all things required by the Authority to facilitate such exercise.

36.4 Access to Authority Network Assets and Control Systems

Without prejudice to the generality of the foregoing, in the event of a Step In, the exercise by the Authority of its rights under section 56 of the 2008 Act or the exercise by the Authority of its rights under Clause 37 (Competitive Tendering):

- (a) if requested, the Operator shall make available for use by the Authority (or a person on its behalf) the Authority Network Assets (or relevant part thereof);
- (b) the Operator shall provide to the Authority (or person nominated by it) access to the Control Systems (or relevant part thereof).

PART 12 - COMPETITIVE TENDERING AND EMPLOYMENT ISSUES**37. COMPETITIVE TENDERING****37.1 Competitive Tendering**

- (a) The Operator shall provide such assistance as the Authority may reasonably require from time to time in connection with the competitive tendering of the Routes specified in Annex D of Schedule 2 (Service Specification).
- (b) The Parties acknowledge and agree that on or after 30 June 2016¹ the Authority may by notice in writing require the Operator to, as from the date specified in such notice, cease to provide the Services on the Routes specified in Annex D of Schedule 2 (Service Specification).

37.2 Transition Management Plan

The Operator hereby undertakes to develop the Transition Management Plan in accordance with Schedule 26 (Transition Management).

37.3 Comply with Transition Management Plan

Upon the exercise by the Authority of its rights under Clause 37.1 (Competitive Tendering), the Operator hereby:

- (a) acknowledges that the Transition Management Plan shall apply; and
- (b) undertakes to comply with, and perform, the Transition Management Plan.

37.4 Operator Tender

Nothing in this Agreement shall restrict or prohibit the Operator from tendering for any Routes that are subject to competitive tendering in accordance with Clause 37.1 (Competitive Tendering).

38. EMPLOYMENT ISSUES**38.1 General**

- (a) The Operator shall provide sufficient trained, competent and suitable staff with the necessary qualifications, skills and experience to provide the Services to ensure that the Services are provided at all times with reasonable skill and care and in accordance with the Performance Standards.
- (b) The Operator shall upon request furnish to the Authority, in the format required by the Authority, details of all employees, agents or any other person whatsoever who will have an involvement in the provision of the Services. The Operator shall also provide the required information in respect of any additional or replacement personnel or any other personnel whatsoever who may in the future provide any or all of the Services.

¹ This is only a notice date, not the actual date of cessation of part of the Services.

38.2 Ongoing Training

The Operator shall provide or procure the provision of such ongoing training for Staff as may be required by any Legal Requirements and may be reasonably necessary to enable them to perform their respective tasks with reasonable skill and diligence.

38.3 Employment Conditions

The Operator shall comply and shall procure that each of its Staff shall comply with all relevant Legal Requirements from time to time in force relating to employment.

38.4 Supervision

The Operator shall ensure that:

- (a) the Staff shall be appropriately managed and supervised at all times in connection with the operation of the Services;
- (b) appropriate safety gear and equipment will be provided at the Operator's expense and used when required.

PART 13 - MISCELLANEOUS PROVISIONS**39. ASSIGNMENT****39.1 Binding on Successors and Assigns**

This Agreement shall be binding on and shall enure to the benefit of the Operator and the Authority and their respective successors and permitted assigns.

39.2 Assignment by the Operator

The Operator shall not, and shall procure that no Principal Sub-Contractor shall, in either case without the prior consent of the Authority :

- (a) assign, novate, or transfer:
 - (i) this Agreement;
 - (ii) the Principal Sub-Contracts; or
 - (iii) any other contract entered into by the Operator in performing its obligations under this Agreement or any part thereof or any benefit or interest therein or thereunder; or
- (b) allow Principal Sub-Contractors to assign their respective Principal Sub-Contracts or any part thereof.

40. SUB-CONTRACTING**40.1 Sub-Contracting Performance**

- (a) Subject to Regulation (EC) No. 1370/2007, the Operator shall not be entitled to sub-contract performance of the Services in whole or part, except to the parties listed in Clause 40.2(c) (Sub-contractor), without the Authority's prior Approval.
- (b) The Operator shall ensure that no Principal Sub-Contractor shall be entitled to sub-contract performance of its services relating to the Services without the Authority's prior Approval.
- (c) Where any Principal Sub-Contractor sub-contracts any of its performance of the Services without the prior knowledge of the Operator and without the prior Approval of the Authority, the Operator shall not be in breach of this Clause 40.1 where it has acted in good faith and either:
 - (i) obtains the Approval of the Authority; or
 - (ii) procures that the Principal Sub-Contractor terminates, rescinds, revokes and/or procures the rescission of such sub-contract, within thirty (30) Business Days of the date of any such sub-contract.
- (d) For the avoidance of doubt, the Operator acknowledges that it will remain primarily responsible to the Authority for the provision of the Services notwithstanding any sub-contracting permitted pursuant to the terms of this Clause 40.

40.2 Sub-Contractors

The Authority's prior Approval (not to be unreasonably withheld or delayed) shall be obtained before:

- (a) the engagement or employment of the persons identified in Clause 40.2(c) are terminated; or
- (b) the terms of engagement or employment of any proposed substitute are agreed or varied in relation to any Principal Sub-Contractor; or
- (c) the appointment of any proposed substitute is made in relation to:
 - (i) direct bus service providers;
 - (ii) any maintenance contractors;
 - (iii) Parkeon (in relation to the Operator's ticketing system);
 - (iv) Init (in relation to the Operator's AVL System); and
 - (v) any other person agreed by the Authority and the Operator,

provided however if there is an event of default under the Operator's contract with any of the above persons such that their appointment is to be terminated, the Authority shall not object to the appointment of any replacement who has the necessary legal capacity, power and authority to perform such function and who has the necessary technical and financial resources to perform such function.

40.3 Replacement of Sub-Contractors

If any of the persons referred to in Clause 40.2(c) shall cease to act as such at any time, the Operator shall as soon as practicable appoint a replacement, subject to it obtaining Approval in accordance with Clause 40.2 (Sub-Contractors).

40.4 Continuing obligations

- (a) In the event of a Sub-Contractor having undertaken towards the Operator in respect of the work executed, or the materials, Network Assets, or any part thereof or services supplied by such Sub-Contractor, any continuing obligation, the Operator shall use all reasonable endeavours to procure that such continuing obligation shall be assignable or capable of novation to the Authority and thence by the Authority to any nominee stipulated by the Authority and shall assign or novate to the Authority at the Authority's request, the benefit of such obligation for the unexpired duration thereof.
- (b) The Operator shall procure that any manufacturers' or suppliers' warranties to be given in respect of any part or parts of the Network Assets shall be assignable to the Authority and thence by the Authority to any nominee stipulated by the Authority.

41. SET-OFF

- (a) The Operator shall not be entitled to retain or set-off any amount due to it by the Authority against any amounts due to the Authority by it.

- (b) The Authority may retain or set-off any amount due to it by the Operator under this Agreement against any amount due by the Authority to the Operator under this Agreement.

42. NOTICES

42.1 Requirement for Writing

Wherever in this Agreement provision is made for the giving or issuing of any notice, submission, endorsement, consent, approval, Approval, acknowledgement, certificate or determination by any person (a "Notice"), unless otherwise specified such Notice shall be in writing and the words "notify", "endorsed", "consent", "approval", "Approval", "acknowledged", "Acknowledged", "certify" or "determined" shall be construed accordingly.

42.2 Notice Specify Response Period

Subject to Clause 42.4 (Changes), any Notice issued by the Operator under this Agreement which requires a response from the Authority within a particular period of time (pursuant to the provisions of this Agreement) shall expressly specify the particular period.

42.3 Addresses

Any Notice shall be duly given if signed by or on behalf of a duly authorised officer of the person giving the Notice and left at or sent by registered post or by facsimile or email transmission to the following addresses:

Authority	
National Transport Authority Dún Scéine Iveagh Court Harcourt Lane Dublin 2	
Email:	anne.graham@nationaltransport.ie
Attention:	Chief Executive
Operator	
Dublin Bus 59 Upper O'Connell Street Dublin 1	
Email:	paddy.doherty@dublinbus.ie
Attention:	Chief Executive

Operator's Representative

Paddy Doherty
Dublin Bus
59 Upper O'Connell Street
Dublin 1

Email: paddy.doherty@dublinbus.ie
Attention: Paddy Doherty

42.4 Changes

Any Party may change its address for notice to another address in the State by prior notice to the other Parties.

42.5 Receipt

Except where otherwise provided in this Agreement, any Notice shall be deemed to have been given:

- (a) if sent by hand, when delivered; or
- (b) if sent by registered post, one (1) Business Day after posting; or
- (c) if sent by email, at the time of confirmation of receipt by the addressee.

43. ANNOUNCEMENTS

Any announcement, circular, advertisement or other publicity in connection with the subject matter of this Agreement shall only be made or issued by the Operator in accordance with such publicity guidelines as may be agreed with the Authority and the Operator shall submit a copy of such announcement, circular, advertisement or other publicity to the Authority.

44. CONFIDENTIALITY

44.1 Confidential Information

In this Clause 44 (Confidentiality), "**Confidential Information**" means:

- (a) all commercially sensitive pricing information including, without limitation, pricing information relating to a Variation;
- (b) all information relating to the internal discussions of the board of directors of a Party or any Associated Company of that Party;
- (c) all correspondence between a Party, or any Associated Company of that Party, and the Minister for Transport and/or Department of Transport, Tourism and Sport; and
- (d) such other information as may be agreed by the Parties,

disclosed (whether in writing, orally or by another means and whether directly or indirectly and whether specifically designated as 'confidential' or which ought reasonably be regarded as confidential) under or in connection with this Agreement by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**").

44.2 Obligations

During the term of this Agreement, and after termination or expiration of this Agreement for any reason, the Receiving Party:

- (a) will not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
- (b) will not disclose Confidential Information to any third party except with the prior written consent of the Disclosing Party other than in accordance with Clauses 44.3; and
- (c) shall make every effort to prevent the use or disclosure of Confidential Information.

44.3 Permitted Disclosures

- (a) During the term of this Agreement, the Receiving Party may disclose Confidential Information to any of its directors, officers and employees (a "**Recipient**") to the extent that disclosure is reasonably necessary for the purposes of this Agreement.
- (b) The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- (c) The obligations in this Clause 44 (Confidentiality) shall not apply to the extent that:
 - (i) the disclosure of Confidential Information is required by the law of any relevant jurisdiction (including for the avoidance of doubt any disclosure required under the Freedom of Information Acts 1997 and 2003) or pursuant to an order of a court of competent jurisdiction.
 - (ii) the information is disclosed on a strictly confidential basis to the professional advisers, bankers or auditors of that party;
 - (iii) the information has come into the public domain through no fault of that party;
 - (iv) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid;
 - (v) the information was obtained by the Receiving Party from a third party who was free to divulge the same;
 - (vi) the information is disclosed by the Receiving Party in accordance with Clause 21.3 (Oireachtas Questions and Issues); or
 - (vii) the Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure, such approval not to be unreasonably withheld or delayed.

45. AGENCY**45.1 No Delegation**

For the avoidance of doubt, no provision of this Agreement shall be construed as a delegation by the Authority of any of its statutory authority to the Operator.

45.2 No Agency

Except as otherwise provided in this Agreement, the Operator shall not be nor be deemed to be an agent of the Authority and the Operator shall not hold itself out as having authority or power to bind the Authority in any way. For the avoidance of doubt, the Operator shall not have the benefit of any State immunity and, unless otherwise agreed by the Authority, shall apply for and obtain all consents, licences and permissions which the Operator would otherwise be obliged to obtain under any Legal Requirements on the basis that the Operator does not have the benefit of any such immunity.

45.3 Operator Responsibility

As between the Parties, the Operator shall be responsible for the acts, defaults, omissions and neglect of the Staff, as fully as if they were the acts, defaults, omissions or neglect of the Operator.

45.4 Operator Knowledge

Without limitation to its actual knowledge, the Operator shall, for all purposes of this Agreement, be deemed to have such knowledge in respect of the Services as is held (or as ought reasonably to be held) by the Staff in the relevant circumstances.

45.5 Independent Operator

For the avoidance of doubt, nothing in this Agreement shall be construed as constituting a partnership, joint venture, agency or relationship of employer and employee between the Authority and the Operator or any of its Staff and the Operator shall not (and shall procure that no member of its Staff shall) hold itself out as having any such relationship with the Authority.

46. ACKNOWLEDGEMENT

The Parties acknowledge that, subject to section 52 of the 2008 Act, the Authority and the Operator may enter into a direct award public service contract subsequent to this Agreement.

47. WHOLE AGREEMENT

- (a) This Agreement, and the agreements and documents between the Parties referred to herein constitute the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the parties with respect thereto.
- (b) The Operator confirms that it has not relied upon any representation inducing it to enter into this Agreement (whether or not such representation has been incorporated as a term of this Agreement) and agrees to waive any right which it might otherwise have to bring any action in respect of such representation.

48. SEVERABILITY

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

49. WAIVER

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the Operator of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of such Party to enforce any provision in accordance with its terms.

50. AMENDMENTS

No amendment to this Agreement shall be binding unless such amendment is in writing and signed by the duly authorised representatives of the Authority and the Operator.

51. CORRUPT GIFTS**51.1 Prohibited Acts**

The Operator shall not do and warrants that prior to the Commencement Date, it has not done nor have any of the Staff done, nor shall they do any of the following ("**Prohibited Acts**"):

- (a) offer or give or agree to give to any employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; or
- (b) enter into any agreement (including this Agreement) with the Authority in connection with which commission has been paid or agreed to be paid by the Operator or on its behalf, or to its knowledge, unless before such agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to a duly authorised representative of the Authority.

51.2 Consequences of Prohibited Acts

If the Operator (or anyone acting on its behalf) does any of the Prohibited Acts or commits any offence under the Prevention of Corruption Acts 1889 to 2001, and/or the Ethics in Public Office Act 1995, with or without the knowledge of the Operator then, subject to Clause 51.3 (Remedies for Prohibited Acts) the following provisions shall apply:

- (a) If a Prohibited Act is committed by the Operator or by the Staff (or any member of the Staff) not acting independently of the Operator, then the Authority may terminate this Agreement by giving notice to the Operator.
- (b) If a Prohibited Act is committed by the Staff (or any member of the Staff) acting independently of the Operator, then the Authority may give notice to the Operator of termination and this Agreement will terminate, unless within twenty (20) Business

Days of receipt of such notice the Operator terminates (or procures the termination) of the employment of the Staff (or the relevant member of Staff as the case may be) (which shall unless otherwise agreed with the Authority include the employer of any employee in addition to the relevant employee) and (if necessary) procures the performance of such part of the Operator's obligations under this Agreement by another person.

- (c) Any notice of termination under this Clause 51 shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (iii) the date on which this Agreement will terminate, in accordance with the applicable provision of this Clause.

51.3 Remedies for Prohibited Acts

- (a) Without prejudice to any other rights under this Clause 51, the Authority shall be entitled to recover from the Operator:
 - (i) the amount of any Loss suffered by the Authority, as the case may be, resulting from a breach by the Operator of its obligations under this Clause 51; and
 - (ii) the amount or value of any gift or consideration given in breach of this Clause 51.
- (b) In exercising its remedies under this Clause 51, the Authority shall:
 - (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of the Prohibited Act and the identity of the person committing the Prohibited Act; and
 - (ii) give all due consideration where appropriate to action other than termination including (without being limited to):
 - (A) requiring the Operator to procure the termination of a sub-contract where the Prohibited Act is that of a sub-contractor; and
 - (B) requiring the Operator to procure the dismissal of an employee (whether its own or that of a Principal Sub-Contractor) where the Prohibited Act is that of an employee.

52. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute but one and the same instrument.

53. GOVERNING LAW AND JURISDICTION**53.1 Law**

This Agreement shall be governed by and construed in all respects in accordance with the laws of Ireland.

53.2 Jurisdiction

The parties agree to submit to the exclusive jurisdiction of the Courts of Ireland as regards any Claim or matter arising out of or in relation to this Agreement.

EXECUTION PAGE

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

<p>SIGNED by _____</p> <p>a duly authorised representative of/for and on behalf of AN tÚDARÁS Náisiúnta Iompair - NATIONAL TRANSPORT AUTHORITY</p>	<p>_____</p>
<p>in the presence of:</p> <p>Witness:</p> <p>Address:</p> <p>Occupation:</p>	<p>_____</p> <p>_____</p> <p>_____</p>

<p>SIGNED by _____</p> <p>a duly authorised representative of/for and on behalf of BUS ÁTHA CLIATH - DUBLIN BUS</p>	<p>_____</p>
<p>in the presence of:</p> <p>Witness:</p> <p>Address:</p> <p>Occupation:</p>	<p>_____</p> <p>_____</p> <p>_____</p>