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**PUBLIC SERVICE CONTRACT**

**Between**

**An tÚdarás Náisiúnta Iompair - National Transport Authority**

**and**

**Bus Átha Cliath-Dublin Bus**

**Concerning**

**Compensation for Public Service Obligations pursuant to**

**Dublin Transport Authority Act 2008**

**(as amended by the Public Transport Regulation Act 2009)**

**and EC Regulation 1370/2007**

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**THIS AGREEMENT** is made the 1st day of December 2009

**BETWEEN**

**An tÚdarás Náisiúnta Iompair-National Transport Authority;** as established under the Dublin Transport Authority Act 2008, as amended by the Public Transport Regulation Act 2009 and having its principal office at Irish Life Centre, Dublin 1

**AND**

**Bus Átha Cliath-Dublin Bus** as 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” or “Dublin Bus”**).

**WHEREAS:-**

- (A) The Dublin Transport Authority Act 2008 (the “Act of 2008”) provides that the Authority shall secure the provision of public passenger transport services by means of public transport services contracts. That Act sets out how bus, rail, metro, and light rail passenger transport services are to be secured and the main provisions that are to be included in the public transport services contracts. Section 52 of the Act of 2008 provides that the Authority shall enter into a Direct Award Contract with Dublin Bus to secure the provision of public bus services.
- (B) Part 3, Chapter 2 of the Act of 2008 establishes the general framework for the making of public transport services contracts. It also provides for the review of such contracts and the making of payments to a public transport operator, including financial or other incentives for exceeding specified performance standards as well as financial or other consequences for non-compliance with contract requirements.
- (C) Regulation (EC) No 1370/2007 (the “Regulation”) on public passenger transport services by rail and by road enters into force on 3 December 2009. That Regulation lays down the conditions under which competent authorities, when imposing or contracting for public service obligations, compensate public service operators for costs incurred and/or grant exclusive rights in return for the discharge of public services obligations. Ireland is complying with the Regulation by concluding this and other agreements and this Contract is awarded in accordance with that Regulation.
- (D) Section 52 and section 53 of the Act of 2008 provide that Dublin Bus shall be empowered to enter into public transport services contracts with the

Authority and shall be bound by the terms and conditions of such contracts in relation to the public bus services specified in the contracts.

- (E) As Dublin Bus provides public bus services in accordance with the provisions of section 7 of the Act of 1958, section 8 of the Act of 1986 and section 52(1)(a) and 52(1)(c) of the Act of 2008, the Authority has decided that Dublin Bus shall provide the said public bus services and ancillary services on the network set out herein and in accordance with the terms and conditions hereinafter set out.
- (F) This Contract in no way diminishes or interferes with Dublin Bus's responsibility for all aspects of safety associated with its operations. Dublin Bus shall conduct its operations with due regard to the safety, including the safety of the public, passengers and staff, and in compliance with applicable laws and standards.
- (G) The Public Service Obligation (PSO) is based on securing network benefits. It is the characteristics of the network, for example, integration, interchange, ticket information, through ticketing, inter-available ticketing and accessibility between routes and services provided by the Operator and integrated with other public passenger transport services, which are being funded as the PSO. The PSO is not therefore the subject of individual routes or services but rather the wider characteristics of the network of public passenger transport services.

**WHEREBY IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATIONS**

- 1.1 In this Contract the following words and expressions shall have the meaning herein assigned to them unless there is something in the subject matter or context inconsistent with such meaning:

“Act of 1950” means Transport Act 1950;

“Act of 1958” means Transport Act 1958;

“Act of 1961” means the Road Traffic Act 1961”;

“Act of 1986” means Transport (Re-organisation of Córas Iompair Éireann) Act 1986;

“Act of 2008” means Dublin Transport Authority Act as amended 2008;

“Act of 2009” means Public Transport Regulation Act 2009;

“Authorised Officer” means a person appointed under section 78 of the Act of 2008 as an authorised officer of the Authority;

“Authority” means the Dublin Transport Authority established under section 9 of the Act of 2008 and renamed An tÚdarás Náisiúnta Iompair-National Transport Authority under section 30 of the Act of 2009;

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

“Bus Átha Cliath” means Bus Átha Cliath-Dublin Bus, its successors and assigns;

“Bus Stop” has the meaning assigned under section 85 of the Road Traffic Act 1961;

“Change” means a variation to the services provided for in Schedule A including any consequent change to the service levels, performance obligations, reporting arrangements and compensation funding provisions of the Contract;

“Controlled Fare” means the single adult fare between any two places when purchased on the day of travel;

this “Contract” or this “Agreement” means the contract between the Authority and Dublin Bus;

the “Department” means the Department of Transport, its successors and assigns;

“Direct Award Contract” has the meaning assigned to it under section 47 of the Act of 2008;

“DTA” means Údarás Iompair Bhaile Átha Cliath-Dublin Transport Authority;

“GDA” has the meaning assigned to it in the Act of 2008;

“Greater Dublin Area” means—

the City of Dublin,  
the administrative counties of South Dublin, Fingal, Dún Laoghaire-Rathdown, Kildare, Wicklow and Meath,  
and such other areas as may be declared by order, from time to time, by the Minister;

“Integrated Implementation Plan” means the plan made under section 13 of the Act of 2008;

“Integrated Ticketing Scheme” or “ITS” means a scheme developed, procured, implemented, operated and maintained by the Authority in accordance with

section 58(1) or transferred to the Authority in accordance with section 58(5) of the Act of 2008;

“ITS Participation Agreement” means the agreement entered into by participating operators and the Authority for the purposes of participating in the Integrated Ticketing Scheme;

“Interchange Facilities” means infrastructure or premises which facilitate transport users using different modes of transport, including but not limited to park and ride facilities and facilities that allow for the stopping, parking or standing of taxis, cycles, motorcycles, buses, trains and cars in order to facilitate users of one mode of transport transferring to another mode;

“Minister” means the Minister for Transport, his successor and assignee;

“Month” means calendar month;

“NTA” means An tÚdarás Náisiúnta Iompair -National Transport Authority;

“Operator” means Bus Átha Cliath - Dublin Bus, its successors and assigns;

“PSO” means Public Service Obligation

“Public Bus Service” has the meaning assigned in the Act of 2008;

“Public Passenger Transport Service” has the meaning assigned in the Act of 2008;

“Public Service Compensation” has the meaning assigned to it in the Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;

“Public Service Contract” has the meaning assigned in section 47 of the Act of 2008;

“Public Service Obligation” or “PSO” has the meaning assigned in section 47 of the Act of 2008;

“Public Transport Services Contract” has the meaning assigned in section 47 of the Act of 2008;

“Public Transport Infrastructure ” has the meaning assigned in the Act of 2008;

“Public Transport Operator” has the meaning assigned in the Act of 2008;

the “Regulation” or “Regulation (EC) No 1370/2007” means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October

2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;

“Service” or “Services” means the provision of public bus services by the Operator as set out in Schedule A hereto as the same may be amended from time to time by the Authority;

“STTAP” means the Sustainable Travel and Transport Action Plan for Ireland;

“Timetable” means the relevant Dublin Bus timetable as at 1 December, 2009 and published on [www.dublinbus.ie](http://www.dublinbus.ie) and as may be amended from time to time by Dublin Bus with the agreement of the Authority;

“Working Day” means a day which is not a Saturday, Sunday or public holiday;

“Writing” shall include electronic communications.

- 1.2 The masculine shall include the feminine and neuter and the singular number shall include the plural and vice versa and words importing persons shall include firms and companies and vice versa.
- 1.3 The section headings of this Contract are for convenience of reference only and shall not be considered to be a part of or affect the construction or interpretation of the Contract.
- 1.4 Any reference to any provision of legislation shall, unless the contrary is clearly stated, be a reference to legislation of Ireland and any references shall include any modification, re-enactment or extension of such legislation. Any reference to legislation or to another provision in this Contract which is made in error shall be treated by the parties to this Contract as if the reference were made correctly.

## **2. GRANT**

The Authority hereby grants to the Operator the rights specified in this Contract, under which the Operator agrees to provide the Services set out hereunder and on the terms herein stated in accordance with the Act of 2008, the Regulation and this Contract.

## **3. THE PUBLIC SERVICE OBLIGATION**

- 3.1 This is a Direct Award Contract entered into in accordance with, and subject to, the provisions of Part 3 Chapter 2 of the Act of 2008.
- 3.2 Having regard to section 52(3) of the Act of 2008, the Authority hereby enters into this Contract with the Operator:

- (a) for the provision of a network of public bus services and service capacity set out in:
    - (i) Schedule A; and
    - (ii) that part of the Dublin Bus timetable as at 1 December 2009 that relate to Schedule A services and published and amended with such form of agreement of the Authority as the Authority shall require from time to time on [www.dublinbus.ie](http://www.dublinbus.ie);
  - (b) to meet the service level requirements set out in Schedules A and B in accordance with the terms of this Contract.
- 3.3 If the Authority adopts a transport strategy under section 12 of the Act of 2008 and/or, an integrated implementation plan under section 13 of the Act of 2008 and/or integration measures under Part 3 Chapter 3 of the Act of 2008, in respect of the Greater Dublin Area then this Contract may be amended from time to time to take account thereof in accordance with the Act of 2008.
- 3.4 The Operator shall, in so far as possible, and, in any event, without discrimination integrate all Services provided by it with those of other public passenger transport services including by participating and complying with integration measures introduced by the Authority under Chapter 3 of Part 3 of the Act of 2008.
- 3.5 The Operator shall support and participate using all due skill, care and diligence in the development and operation of the Integrated Ticketing Scheme in accordance with the ITS Participation Agreement and shall comply with any lawful requirements of the Authority in relation thereto.
- 3.6 The Operator shall cease to operate an interim smartcard scheme established by it within a timeframe specified by the Authority in accordance with the ITS Participation Agreement.
- 3.7 The Operator shall, in accordance with the ITS Participation Agreement, participate in any review of the expansion of the Integrated Ticketing Scheme on a national basis, and also of interoperability with the scheme in Northern Ireland, undertaken by the Authority.
- 3.8 The Operator shall, as and when required by the Authority, co-operate in the development and implementation of a single public transport brand.
- 3.9 The Operator shall comply with the accessibility standards for members of the public with special needs set out in “Access for All – the Sectoral Plan for Transport”.
- 3.10 The Operator shall comply with all applicable laws (including those in relation to pay and terms and conditions of employment) relating to all staff employed by the Operator.

#### **4. CHANGES TO SERVICES**

- 4.1 Without prejudice to the powers of the Authority under sections 51 and 52 of the Act of 2008, the Operator may at any time propose a change to the Authority.
- 4.2 The Authority shall consult with the Operator and shall not unreasonably withhold or delay whatever decision it may make on the Operator's request for a change. Where the Authority decides not to agree to a change it shall inform the Operator if asked of its reasons for the decision.
- 4.3 Following receipt of the proposed change from the Operator, the Authority shall respond in writing to the proposed change as soon as practicable and in any event, within ten Working Days or any such longer period as may be agreed by the Authority and the Operator.
- 4.4 Any agreement to a change will become valid as an amendment to this Contract only when recorded in writing and signed by the duly authorised representative of each party.

#### **5. COMPENSATION**

- 5.1 The Authority shall compensate the Operator for the provision of Services and the Operator's compliance with this Contract in the manner and at the times specified in Schedule D.
- 5.2 For the period of 1 December 2009 to 31 December 2009, the Authority shall pay €2,060,000 to the Operator. In regard to the period commencing on 1 January, 2010 until the termination of this Contract, the amount and terms of the payment shall be determined by the Authority, and the Services to be provided therefore agreed between the Operator and the Authority on an annual basis by a date agreed between the Authority and the Operator and any alterations to services shall be set out in an amended Schedule A.
- 5.3 The parties agree that in accordance with section 52(7) of the Act of 2008, all compensation made available by the Authority for the provision of Services to which this Contract applies must be made in accordance with the Annex to Regulation (EC) No 1370/2007.
- 5.4 The Authority may, in accordance with section 45 of the Act of 2008, make available to the Operator grants towards the cost of buses and public transport infrastructure insofar as it relates to the provision of Services. Compensation paid and grants shall be compatible and calculated in accordance with all applicable laws including EU law on competition and State aid.
- 5.5 An amount to be determined by the Authority but equivalent to no more than 10% of the amount of compensation shall be payable by the Authority subject to the Operator meeting the performance targets marked with an asterisk in Schedule B. An amount to be determined by the Authority will be attached



annually to each of those targets. The Authority shall pay the amount for each target on a quarterly basis, in arrears, pro rata in accordance with the degree of compliance as determined by the Authority.

- 5.6 In accordance with Article 4(1) of the Regulation, there shall be no overcompensation of the Operator and if such overcompensation occurs then such amounts shall be reimbursed to the Authority by the Operator.

## **6. PERFORMANCE OBLIGATIONS**

- 6.1 Having regard to section 48(3)(i) of the Act of 2008, the Operator shall ensure its adherence, at a minimum, to the performance obligations which are set out at Schedule B to this Contract.

- 6.2 The Operator undertakes to compile and maintain for a period of two (2) years following the end of the Contract all such performance-related information as may be required by the Authority and notified in writing to the Operator in order to determine the extent of the Operator's adherence to the performance obligations set out at Schedule B to this Contract.

- 6.3 Subject to Clause 24 the Operator undertakes to disclose any and all performance-related information requested by the Authority in order to determine the extent of the Operator's adherence to the performance obligations set out at Schedule B to this Contract.

- 6.4 The Operator shall not withhold any such performance-related or any other information of whatever kind from the Authority.

- 6.5 In recognition of the Government's Smarter Travel Policy for Sustainable Transport, the Operator must prepare a plan within such period as required by the Authority for the duration of the Contract which sets out how, while providing the agreed service levels, the Operator will:

- a) minimise fuel consumption;
- b) minimise greenhouse gas and other transport emissions;
- c) outline proposals for fleet replacement based on the most sustainable vehicle and fuel type; and
- d) continuously monitor and improve environmental performance.

## **7. RIGHT TO REVIEW/AMEND/ALTER THIS CONTRACT**

Notwithstanding any other provision of the Contract, the Operator accepts that:

- a) in accordance with section 51 of the Act of 2008, the Authority, may, subject to section 52(6) of the Act of 2008, unilaterally alter this Contract, including the scope of the Contract, where the Authority is of the opinion that such alteration is necessary to guarantee safe, efficient and high quality public bus services or transparency in the performance of public bus services; and

- b) in accordance with section 52(6) of the Act of 2008, the Authority may at any time review this Contract and may following such a review unilaterally make amendments to this Contract.

## **8. STEP-IN RIGHTS**

Acting reasonably, if the Authority is of the opinion that the Operator is in breach of any aspect of this Contract and where such a breach has material adverse consequences on the provision of the Services, the Authority may issue a written notice of the breach requiring the breach to be remedied within a specific time no longer than 30 Working Days after receipt of the notice and may then in the event that the Operator fails to remedy such breach, in cooperation with any person, body or agency, appoint any such third party, for as long as it deems fit, to fulfil the duties of the Operator in respect of that part of the Services in respect of which the breach has not been remedied. If the Authority acting reasonably believes that such breach requires an urgent and immediate remedy the provision of notice will not be required.

## **9. DURATION**

- 9.1 In accordance with section 52(4) of the Act of 2008, the duration of this Contract shall be five (5) years.
- 9.2 The Contract shall commence on 1 December 2009.
- 9.3 The parties acknowledge that subject to section 52(6)(c)(ii) of the Act of 2008, the Authority may enter into Direct Award Contracts with the Operator subsequent to this Contract.

## **10. INSPECTION AND ENFORCEMENT**

The Authority may, in accordance with its powers under Part 4 of the Act of 2008, carry out such inspections of the Operator's Services and seek and obtain promptly such information as it considers necessary or useful to monitor compliance with this Contract.

## **11. REPORTING REQUIREMENTS**

- 11.1 The Operator shall supply promptly and in full to the Authority all the information requirements outlined in this Contract including information relating to service, customer, vehicle, reporting, financial and contractual requirements which are set out in the Schedules to this Contract.

- 11.2 To assist the Authority in discharging its duties and functions under Part 2 and Part 3 of the Act of 2008 and generally, the Operator shall satisfy the Authority, with such information and in such form as the Authority may reasonably specify, including information, in respect of:
- 11.2.1 compensation for the performance of a Public Service Obligation, that the compensation does not exceed that which is necessary to cover all or part of the costs incurred in discharging the Public Service Obligation taking into account the relevant receipts and a reasonable profit for discharging the obligation;
  - 11.2.2 the costs incurred in discharging the Public Service Obligation, that such costs do not exceed those, which in the opinion of the Authority, an operator that is well run and adequately provided with means of transport would be expected to incur in discharging the Public Service Obligation; and
  - 11.2.3 the maintenance of separate accounts in accordance with paragraph 5 of the Annex to the Regulation.
- 11.3 Subject to Clause 24, the Operator expressly accepts that the Authority may share any or all relevant documents, records or other information, given under this Contract to the Authority by the Operator, with the Minister for Transport and his Department or such other parties as the Authority believes to be reasonable.

## **12. SUBCONTRACTING**

- 12.1 The level of subcontracting undertaken by the Operator in respect of the Services shall be agreed with the Authority. For the avoidance of doubt, any services referred to in Schedule A which are provided by a subcontractor of the Operator shall, unless otherwise agreed with the Operator:
- 12.1.1 constitute Services for the purposes of this Contract; and
  - 12.1.2 continue to be provided by or on behalf of the Operator.
- 12.2 Any subcontracted Services shall be treated for the purposes of this Contract as if they were being provided directly by the Operator.
- 12.3 The Operator shall require the subcontractor to comply with all applicable laws and standards including those relating to safety and employment matters. In this regard the Operator shall assist the Authority by producing any such document or information (whether written or oral), which may be required by the Authority in accordance with the terms of this Contract.

### **13. OPERATION OF AUXILIARY DEPARTURES**

- 13.1 In this Contract the following words and expressions shall have the meaning herein assigned to them unless there is something in the subject matter or context inconsistent with such meaning.
- 13.1.1 “an Auxiliary Departure” means a departure on a route that is referred to in Schedule A that departs as close to the timetabled departure as safe and as operationally possible, serves all or some points of the route and terminates on that route, which is deployed for the purposes of accommodating unanticipated additional demand for a Scheduled Departure on that route; and
- 13.1.2 “Scheduled Departure” means a departure that is referred to in the published timetable or on the Dublin Bus website at [www.dublinbus.ie](http://www.dublinbus.ie) that is referred to in Schedule A or in that website that is updated from time to time with the approval of the Authority following the making of this Contract.
- 13.2 A reference to a departure of a service on a route referred to in Schedule A shall, unless otherwise stated in the timetable for that route, be regarded as a reference to the departure of a single bus.
- 13.3 Subject to Clause 13(5) and (6), the Operator may deploy buses to facilitate Auxiliary Departures on a route referred to in Schedule A, where the Operator determines reasonably on any given day that there is additional demand for the deployment of such departures which could not have been reasonably anticipated.
- 13.4 The approval of the Authority is not required in respect of the deployment of an Auxiliary Departure that operates for not more than 15 Working Days, consecutively or otherwise, within a period of not more than 3 Months provided the Operator informs the Authority of the operation of that departure within 5 Working Days of the first operation of that departure and that the departure otherwise complies with this clause.
- 13.5 The following departures shall not be regarded as being Auxiliary Departures –
- (a) any departure on a route that is additional to a Scheduled Departure for that route that does not comply with the definition of an Auxiliary Departure set out in Clause 13.1;
  - (b) any additional departures on a route that is referred to in Schedule A, including departures that would otherwise comply with the definition of an Auxiliary Departure set out in Clause 13(1), but do not comply with the provisions of Clause 13.4; or
  - (c) any non-scheduled departure on a route that is referred to in any schedule or timetable published or displayed in any format by the

Operator or any other operator which provides services on a subcontracting basis to the Operator in respect of the route in question.

13.6 It is agreed that:

- (a) where the Operator proposes to deploy or deploys additional departures to which Clause 13(5) refers, it must apply for the prior approval of the Authority in a manner to be determined by the Authority to the operation of that service providing any details that the Authority may require;
- (b) the Authority shall consider an application made under paragraph (a) having regard to section 52 (5) of the Act of 2008 and Clause 4 and may approve or reject the application or impose conditions; and
- (c) where the Authority approves an application, the departure in question shall be regarded as being part of the Scheduled Departures on the route in question for the purposes of this contract.

13.7 Any departures operated in accordance with the arrangements set out in this Clause shall not attract additional subvention to that to which this Contract relates.

## **14. FARES**

14.1 The Operator will retain the fare revenue.

14.2 Pending the development and implementation of a fare scheme under section 59 of the Act of 2008, any increase in controlled fares in respect of the Services shall be subject to the prior written approval of the Authority. This requirement for the prior written approval of the Authority shall not apply to discounted fares, prepaid fares, concessionary fares or multi-journey fares.

14.3 The Operator will give reasonable advance notice to the public of any change in fares.

## **15. AUDIT PROVISIONS**

15.1 The Authority may at any time require an audit to be carried out for the purpose of verifying the adequacy of the record keeping in place to fulfil the requirements of this Contract provided that, if such audits confirm that the record keeping is adequate, the total number of such audits in respect of the Contract shall not exceed two (2) in any one calendar year. The Authority

shall provide the Operator with not less than ten (10) Working Days prior written notice of any requirement for an audit.

- 15.2 If the audits identify inadequate record keeping of a material nature then the Operator will use its reasonable endeavours to improve forthwith its record keeping arrangement in accordance with the Authority's written recommendation and the Authority may require as many audits as may be necessary to confirm that adequate record keeping has been achieved in accordance with the Authority's written recommendation.
- 15.3 Not later than four (4) Months after the end of each financial year the Operator shall submit audited accounts in respect of the business covered in the Contract. These accounts shall be consistent in all respects with the Operator's published accounts.
- 15.4 The Operator and Authority shall share the cost of all audits carried out for the purpose of this Contract.

**16. SEVERANCE**

Each of the provisions of this Contract is severable and if any provision of this Contract is or becomes invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining provisions of this Contract shall not in any way be affected or impaired.

**17. DUTIES OF THE BOARD OF THE OPERATOR**

Nothing in this Contract shall prejudice the duties (including the duty in relation to safety) of the Operator and the board of the Operator under the Transport Acts and other applicable laws and standards.

**18. FORCE MAJEURE**

- 18.1 No party shall be liable for any breach of its obligations herein resulting from Force Majeure and any non-performance shall not for so long as such event continues constitute a default in relation to the affected obligation under this Contract or entitle the other party to terminate this Contract by virtue of any non-performance arising from such event PROVIDED THAT:

- 18.1.1 the party affected by the Force Majeure (the "Affected Party") shall have taken all reasonable steps to have overcome, avoided or minimise the effects of any such occurrence; and

- 18.1.2 the Affected Party shall have notified the other party as soon as is reasonably practicable.

- 18.2 Without prejudice to any other provision in this Contract, if an event referred to in Clause 18.1 shall continue for a period of ninety (90) days the other party

may therefore terminate this Contract upon giving twenty one (21) Working Days' written notice.

- 18.3 The parties shall negotiate in good faith with a view to agreeing on measures (if appropriate) to mitigate the effects of any interruption to Services arising from an event referred to in Clause 18.1. If an event of Force Majeure is, causes, or is caused by damage to the Operator's infrastructure, the Operator shall repair the damage as soon as possible and shall ensure that any available insurance proceeds are applied to the repair.
- 18.4 In this clause "Force Majeure" means the occurrence after the date of this Contract of any of the following: riot; civil unrest; war; act of terrorism; threat or perceived threat of terrorism; accidental damage to Operator's infrastructure; suicide; fire; earthquake; extraordinary storm; flood; abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes (in the case of strikes, lock-outs or other industrial disputes not confined to employees of the Operator or C oras Iompair  ireann and its subsidiaries) to the extent that such event has materially affected the ability of the Affected Party to perform its obligations in accordance with the terms of this Contract but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such event of Force Majeure or its impact.

## **19. INDEMNITY**

- 19.1 Subject to sub-clauses 19.2 and 19.3, the Operator shall indemnify the Authority and the State, their servants and agents (each an "Indemnified Person") against any action, expense, cost, claim, demand, and any other liability arising from:

- 19.1.1 death or personal injury;
- 19.1.2 damage to property
- 19.1.3 breach of statutory duty;
- 19.1.4 third party claims;

in respect of the provision of Services under this Contract provided always that the Operator's liability to indemnify an Indemnified Person shall be reduced proportionately to the extent that the negligence, breach of duty or a breach of statutory duty of such Indemnified Person or a breach of this Contract by the Authority caused or contributed to the matters specified in subsections 19.1.1-19.1.4 above.

- 19.2 The Operator's liability pursuant to Clause 19.1 shall be limited to ~~€~~2million.

19.3 Neither party shall be liable, in contract, tort (including negligence) or for breach of duty or breach of statutory duty for:

19.3.1 any economic loss (including loss of revenues, profits, contracts, business or anticipated savings);

19.3.2 any loss of goodwill or reputation; or

19.3.3 any special or indirect or consequential losses

in any case, whether or not such losses were within the contemplation of the parties at the date of this Contract, or were suffered or incurred by a party arising out of or in connection with any matter arising under this Contract.

19.4 Such indemnity shall not operate to the extent that the act complained of arises directly from the Operator's compliance with a direction of the Authority under the Act of 2008 or an express written direction of the Authority under this Contract.

## **20. WAIVERS AND ALTERNATIVE REMEDIES**

20.1 No delay, omission or forbearance on the part of either party to this Contract in exercising any right, power, privilege or remedy provided by law or under this Contract shall operate to or be construed or interpreted as operating to:

20.1.1 impair such rights, power, privilege or remedy; or

20.1.2 operate as a waiver thereof.

20.2 The single or partial exercise by a party of any right, power, privilege, or remedy provided by law or under this Contract shall, whether or not exercised, not preclude any other or further exercise thereof.

20.3 The rights, powers, privileges, and remedies of a party provided in this Contract are cumulative and not exclusive of any rights, powers, privileges and remedies it would otherwise be entitled to under common law or statute.

## **21. NOTICES AND SERVICE**

21.1 Any notice required or authorised by this Contract to be given by either party to the other shall be in writing and may be given by hand or sent by registered post or fax transmission or email transmission to the other party to the addresses and facsimile numbers or email address and marked for the attention of the following persons:

on behalf of An tÚdarás Náisiúnta Iompair – National Transport Authority

**Mr. Gerard Murphy, CEO, National Transport Authority, Irish Life Centre, Dublin 1.**



and

on behalf of Dublin Bus – Bus Átha Cliath:

**Mr. Paddy Doherty, Dublin Bus, O’Connell Street, Dublin 1.**

- 21.2 Any notice or other information given by post under Clause 21.1 which is not returned to the sender as undelivered shall be deemed to have been given on the fourth day after the envelope containing the same was so posted and proof that the envelope containing any such notice or information was properly addressed and sent by prepaid post, and that it has not been so returned to the sender, shall be sufficient evidence that such notice of information has been duly given.
- 21.3 Any notice or other information sent by fax transmission or email shall be deemed to have been duly sent on the date of transmission provided that such date is a Working Day and that the sender’s facsimile machine or computer issues confirmation that the relevant pages have been transmitted to the recipient’s facsimile machine or email address.
- 21.4 Any notice or other information given by hand shall be deemed to have been given at the time of delivery.
- 21.5 Either party may, by notice to the other (in compliance with this Clause), change the address, fax, e-mail address or the person to which such notice is to be sent or delivered.

**22. ENTIRE AGREEMENT**

This Contract contains the entire agreement between the parties and contains all the terms, which the parties have agreed with respect to its subject matter and this Contract supersedes and extinguishes all previous drafts, agreements, contracts, and undertakings between the parties.

**23. GOOD FAITH**

The parties shall conduct all discussions and negotiations called for under this Contract in good faith and perform all obligations under this Contract in good faith.

**24. CONFIDENTIALITY**

- 24.1 “Confidential Information” means all confidential information disclosed (whether in writing, orally or by another means and whether directly or

indirectly) by a party (the “Disclosing Party”) to the other party (the “Receiving Party”) whether before, on or after the date of this Contract including, without limitation, information relating to the negotiation, provisions and subject matter of this Contract or the Disclosing Party’s operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs.

24.2 Subject to sub-clause 24.3, during the term of this Contract and at any time after the termination or expiry of this Contract (for any reason) the Receiving Party:

24.2.1 may not use any Confidential Information for any purpose other than in the performance of its obligations under this Contract;

24.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with sub-clause 24.3; and

24.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.

24.3 Subject to sub-clause 24.4, the Receiving Party may disclose information, which would otherwise be Confidential Information if and to the extent that:

24.3.1 it is required by law or by a binding court order;

24.3.2 in the case of the Operator, disclosure is required by its parent company, or shareholder, or a Minister of the Government of Ireland;

24.3.3 the information has come into the public domain or into the knowledge of the Receiving Party, otherwise than through a breach of this clause or any other confidentiality agreement with the Disclosing Party by the Receiving Party;

24.3.4 it is required by existing contractual obligations of which the Disclosing Party is aware;

24.3.5 it is required by any securities exchange or regulatory or governmental body to which it is subject;

24.3.6 the disclosure is to its professional advisers, auditors, or banker;

24.3.7 the disclosure is to any of its directors, other officers, employees, and sub-contractors (a “Recipient”) and is reasonably necessary for the performance of their obligations in connection with this Contract.

24.4 Where the Authority receives a request under the Freedom of Information Acts 1997 and 2003 (the “FOI Acts”) for disclosure of the Operator’s Confidential

Information, the Authority shall deal with such request in accordance with the provisions of the FOI Acts, in particular section 26(1)(b) of the FOI Acts. For the avoidance of doubt, nothing in this Clause 24.4 shall prejudice the Authority's rights or obligations under the FOI Acts.

- 24.5 The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Contract as if the Recipient was a party to this Contract.

**25. NON ASSIGNABILITY**

This Contract shall not be assigned, or otherwise transferred, to any third party without the prior written consent of the Authority

**26. EXECUTION**

This Contract may be executed in one or more counterparts each signed by one of the parties and such counterparts shall together constitute one Contract.

**27. GOVERNING LAW AND JURISDICTION**

This Contract shall be governed by the laws of Ireland and all matters of interpretation of law arising hereunder or in connection with this Contract shall be subject to the exclusive jurisdiction of the Irish Courts.


**GIVEN under the seal of  
An tÚdarás Náisiúnta Iompair -  
National Transport Authority**

  
\_\_\_\_\_  
**Member or authorised signatory**



**GIVEN under the seal of  
DUBLIN BUS  
BUS ÁTHA CLIATH**

  
\_\_\_\_\_  
**Director**

  
\_\_\_\_\_  
~~Director~~ **Secretary**



## **LIST OF SCHEDULES**

- Schedule A - Services and Service Levels to be provided by the Operator
- Schedule B - Performance Obligations
- Schedule C - Reporting Requirements
- Schedule D - Compensation

# **SCHEDULE A**

## **SERVICES AND SERVICE LEVELS TO BE PROVIDED BY DUBLIN BUS NETWORK MAPS**

## SERVICES AND SERVICE LEVELS TO BE PROVIDED BY THE OPERATOR

The Operator will provide:

- A network of integrated services as set out in Schedule A and shown in Schedule E operating from early morning (generally before 7AM) to midnight Monday to Friday and as demand requires on Saturdays and Sundays. In addition, a Nitelink network of services will operate at weekends serving the main corridors from the city from midnight to early morning.
- Services so that **approximately 96%** of the 1.2m population in the Dublin Bus operational area will be within an 800 metre walk of a Dublin Bus bus stop.
- Bus services to all areas irrespective of demographic profile and include areas where age profiles are older, where residential densities are low and where communities are physically disconnected from the built-up area.
- Levels of service at peak periods in order to satisfy high commuting demands along main transport corridors and thereby increase modal share using public transport in line with Government policy under Smarter Travel.
- Dedicated peak hour only services to and from areas of the city where there are specific commuter travel requirements.
- A universal fare scheme across the network subject to the controlled fare being set by the Authority in accordance with clause 14.
- Discounted fares for children and schoolchildren.
- A comprehensive range of discounted prepaid tickets to customers for bus only journeys, for integrated bus/luas journeys and bus/rail journeys. In addition, discounted tickets will be available for specific categories of customers including schools and those attending third level colleges.

- Ancillary services as part of the overall network delivery including but not limited to bus and public transport marketing, information, sales, and service integration.
- Accessible services in line with the Sectoral Plan 'Transport Access for All' under the Disability Act 2005.
- Services meeting the requirements specified in the Official Languages Act.

For the purposes of Clause 3 in this contract the table below sets out by corridor type (radial or orbital/local) the services to be provided by Dublin Bus (and set out in its timetable as published on [www.dublinbus.ie](http://www.dublinbus.ie)), the passenger capacity to be provided and targeted seat kilometres and passenger carryings.

## **NOTES**

- Forecast seat kilometres gives a quantitative description of the service provided in terms of the number of departures and length and the vehicle seated capacity operated.
- Forecasted passengers is a forecast of the number of passengers expected to be carried within each corridor for the quarter based on the anticipated service, fares and operating conditions.
- Low frequency Nitelink, Xpresso and subcontracted services are included in the details by corridor.



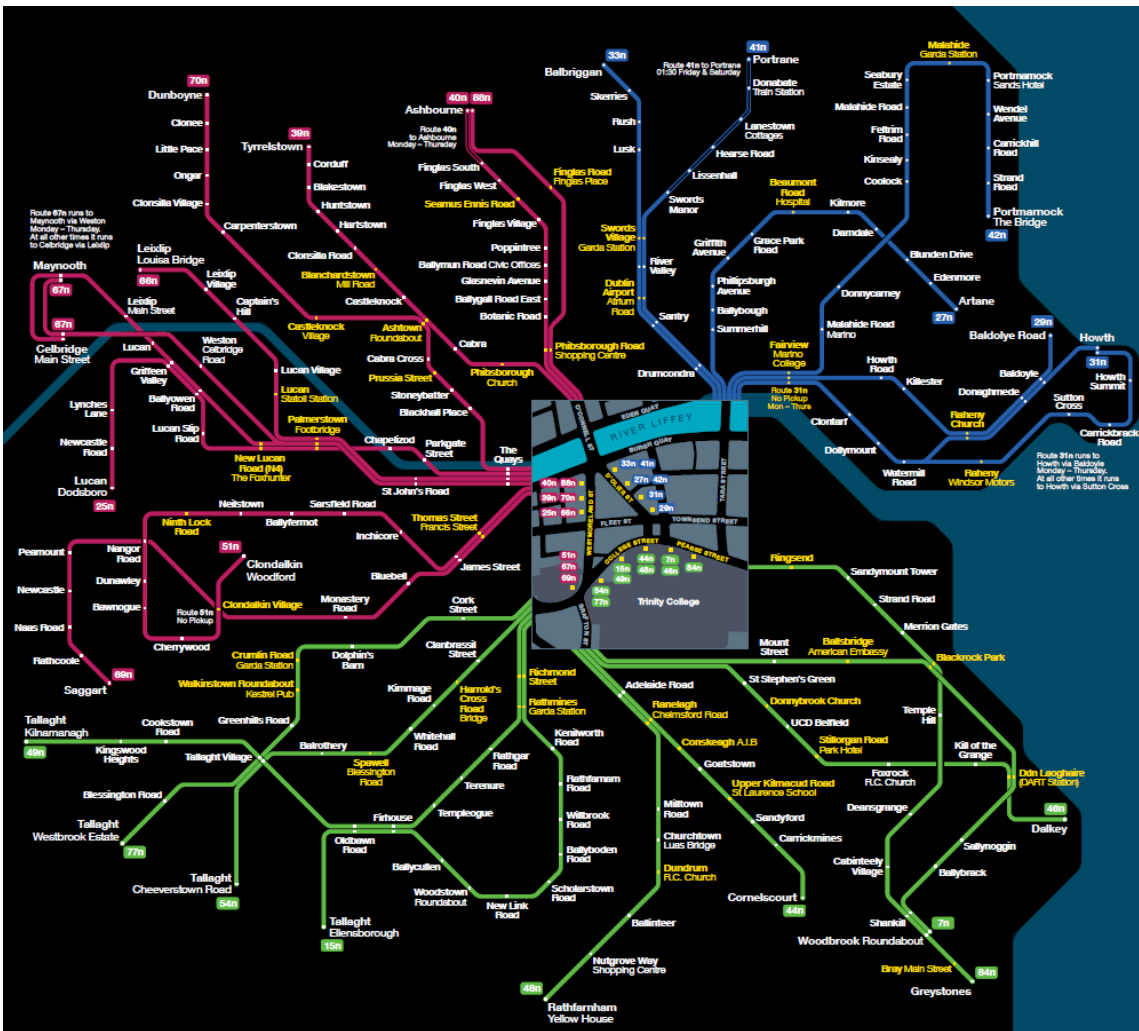
## **Schedule A.**

# Network Maps

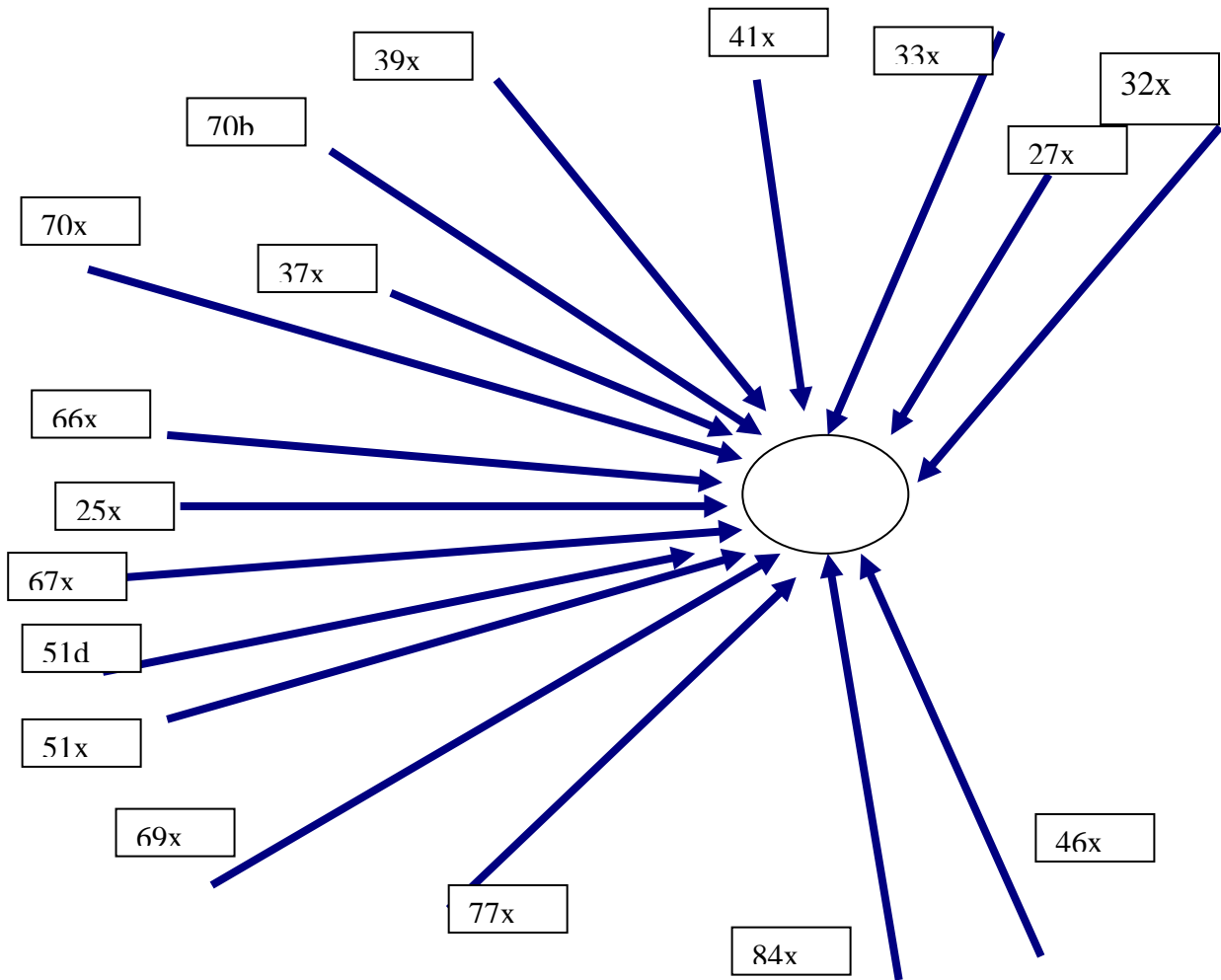
## Network Diagram



# Network Diagram - Nitelink.



# Network – Xpresso Services to/from Central Dublin



## **SCHEDULE B**

### **PERFORMANCE OBLIGATIONS**

## Schedule B-PERFORMANCE OBLIGATIONS

Performance obligation	Reporting Arrangement	Compliance test	Performance Related Payment
<b>Weekday AM Peak Vehicles in Service</b> On normal weekday mornings when [according to the standardised school term] schools are open, Bus Átha Cliath will operate at least <b>98%</b> of the <b>936*</b> morning peak vehicle requirement (at 0830) on the PSO network.	Quarterly Report to Authority including year to date position	Minimum of 98%	*
<b>Weekday PM Peak Vehicles in Service</b> On normal weekday evenings when schools are open, Bus Átha Cliath will operate at least <b>98%</b> of the <b>893*</b> evening peak vehicle requirement (at 1730) on the PSO network.	Quarterly Report to Authority including year to date position	Minimum of 98%	*
<b>Saturday Peak Vehicles in Service</b> Bus Átha Cliath will operate at least <b>98%</b> of the <b>625*</b> buses for the Saturday peak at 1600 hours	Quarterly Report to Authority including year to date position	Minimum of 98%	*
<b>Sunday Peak Vehicles in Service</b> Bus Átha Cliath will operate at least <b>98%</b> of the <b>451*</b> buses for the Sunday peak at 1600 hours.	Quarterly Report to Authority	Minimum of 98%	*
<b>Weekday Scheduled Services during Valley Period</b> On normal weekdays when schools are open, Bus Átha Cliath will schedule at least 68% on average of the morning peak buses during the valley period (1000 hours to 1600 hours).	Quarterly Report to Authority including year to date position	Minimum of 68%	
<b>Drivers Duties Operated</b> Bus Átha Cliath will operate at least <b>98%</b> of scheduled duties in the period of this agreement.	Quarterly Report to Authority including year to date position	Minimum of 98%	*
<b>Services cancelled – TO BE REPORTED ON WITH THE DEPLOYMENT OF AVL</b> Bus Átha Cliath will operate at least 95% of forecast services	Quarterly Report to Authority including year to date position	Minimum of 95%	*

<b>Schedule kms operated</b> Bus Átha Cliath will operate at least <b>97% of</b> schedule kms.	Quarterly Report to Authority including year to date position	Minimum of 97%	*
<b>Customers Carried Dec 2009</b> Bus Atha Cliath forecast to carry 10million customers in total in Dec 2009.	Quarterly Report to Authority including year to date position and profile for remaining year	10 million	
<b>Customers Carried 2010</b> Bus Atha Cliath forecast to carry 120 million customers in total in 2010.	Quarterly Report to Authority including year to date position and profile for remaining year	120 million	
<b>Punctuality</b> 95 % of departures from the terminus will operate no later than 5 minutes after the timetabled departure time	Quarterly Report to Authority including year to date position	95 % punctuality	*
<b>Delivery of Timetables</b> Dublin Bus service information will be distributed across the Dublin area via Dublin Telephone Directory or similar mechanism.	Annual Report to Authority.	Confirmation of Production	
<b>Annual Timetable Book</b> A comprehensive timetable book for Bus Átha Cliath services will be published each year.	Annual Report to DTA.	Confirmation of Production	
<b>Bus Destination Scrolls</b> Bus Átha Cliath aim to have the route numbers and destinations for buses in normal service correctly displayed on at least 95% of buses. This will be audited and reported to the Authority on a 6 monthly basis.	6 monthly Report to Authority	95% of scrolls	
<b>Customer Telephone Information</b> The customer information bureau will operate from 8:30am to 6.00pm, Monday to Saturday (excluding PH's), and at least 85% of calls will be answered within 60 seconds.	6 monthly Report to Authority	85% of calls answered	
<b>24 Hour Service Information</b> Dublin Bus will make a comprehensive range of up to date timetable information available by Website and for mobile phone users on 'Bustxt' 24 hours a day, subject to routine maintenance downtime and service provider availability.	6 monthly Report to Authority		

<p><b>On Street Information</b> Dublin Bus will provide correct and up-to-date timetables on at least 95% of the bus stops that provide information.</p>	6 monthly Report to Authority	95% accurate	
<p><b>Complaint Reporting</b> Bus Átha Cliath will report to the Authority complaints, by specified category, received by the Sales Department of Bus Átha Cliath.</p>	Quarterly Report to Authority including year to date position		
<p><b>Network Changes on Website</b> Comprehensive and up-to-date information on all BÁC services is available on the company website. Major timetable changes will be announced on the website as early as possible, and not less than 5 working days in advance of the change taking place.</p>	Quarterly Report to Authority	Minimum 5 Working Days Notice	
<p><b>Cleanliness</b></p> <ul style="list-style-type: none"> <li>▪ Each bus operated in service will be vacuumed internally and washed externally each day.</li> <li>▪ Each bus will receive daily attention to include the removal of rubbish, emptying of bins and attending to visible or identifiable soiling of a significant nature</li> <li>▪ Each bus in service will be internally valeted on average every 4 weeks to include cleaning of all internal surfaces including windows, graffiti and stain removal.</li> <li>▪ Dublin Bus will clean the public areas of Dublin Bus buildings periodically.</li> </ul>	6 monthly report to Authority	Random sampling	
<p><b>Staff</b> Dublin Bus staff will be well presented, friendly, helpful and courteous at all times.</p>	As per quarterly complaints report		
<p><b>Accessibility</b> All buses purchased by Bus Átha Cliath will be low floor, wheelchair accessible vehicles. Dublin Bus intends to implement fully the provisions of the Department of Transport Outline Action Plan for Accessible Public Transport insofar as those provisions pertain to the company.</p>	Annual Report to DTA.	All Buses	



<b>Fleet Bus Age</b> Bus Átha Cliath aims to ensure that the average fleet age will be less than 7 years.	Annual Report to DTA.	Full Fleet	
<b>Integrated Ticketing</b> In accordance with the ITS Participation agreement, Dublin Bus shall continue to co-operate with and participate in the work of the Integrated Ticketing Project Board, established by the Minister.	Annual Report to DTA.	Implemented as planned	
<b>Cost and Efficiency Review</b> Implementation of the Cost and Efficiency Review findings	Quarterly Report to Authority	Implemented as planned	

Having regard to section 48(3)(p) of the Act of 2008, the Operator shall ensure its compliance with any or all emission standards for pollutants and noise in respect of the Operator's provision of public bus transport services and any associated activities of the Operator, and/or its subcontractor(s), as may be applicable under Irish or EU law. In keeping with the target set out by EU Directive 2003/30/EC, Dublin Bus will report regularly on the progress made during 2010 towards the achievement of the target of replacing 5.75% of all fuel requirements with biofuel alternatives.

**SCHEDULE C**  
**REPORTING REQUIREMENTS**

## SCHEDULE C - REPORTING REQUIREMENTS

### Financial / Operations Data To Be Reported to NTA

ITEM	Frequency
<p><b>Number of passenger journeys</b></p> <ol style="list-style-type: none"> <li>1. Monday to Friday (0000 - 0700)</li> <li>2. Monday to Friday (0700 to 1000 and 1600 to 1900)</li> <li>3. Monday to Friday (1000 to 1600)</li> <li>4. Monday to Friday (1900 - 2400)</li> <li>5. Saturday (0000 - 0900)</li> <li>6. Saturday (0900 to 1900)</li> <li>7. Saturday (1900 - 2400)</li> <li>8. Sunday (0000 - 0900)</li> <li>9. Sunday (0900 to 1900)</li> <li>10. Sunday (1900 - 2400)</li> </ol>	<p>Quarterly Report to Authority including year to date position and remaining year profile</p>
<p><b>Payments Received</b></p>	
<p>Total fares revenue</p> <ul style="list-style-type: none"> <li>On bus</li> <li>Prepaid</li> </ul>	<p>Quarterly Report to Authority including year to date position and remaining year profile</p>
<p>Other revenue</p>	<p>Quarterly Report to Authority including year to date position and remaining year profile</p>

DSFA Payment for Social Welfare Travel Scheme	Quarterly Report to Authority including year to date position and remaining year profile
Other state payments Subvention	Quarterly Report to Authority including year to date position and remaining year profile

<b>Costs</b>	
<ul style="list-style-type: none"> <li>1 Driver costs</li> <li>2 Fuel Costs</li> <li>3 Engineering costs (including engineering labour)</li> <li>4 Other direct costs</li> <li>5 Depot overhead costs</li> <li>6 Central overhead costs</li> </ul>	<p>Quarterly Report to Authority including year to date position and remaining year profile</p>
<p><b>Capital Expenditure</b></p> <p>PSO Vehicles</p> <p>Other</p>	<p>Quarterly Report to Authority including year to date position and remaining year profile</p>

<p><b>Staff Numbers</b></p> <ol style="list-style-type: none"> <li>1. Drivers</li> <li>2. Maintenance staff</li> <li>3. Management + network staff</li> </ol>	<p>Quarterly Report to Authority including year to date position and remaining year profile</p>
<p><b>Network</b></p> <ol style="list-style-type: none"> <li>1. Total Route km's</li> <li>2. Total QBC kms</li> <li>3. Average waiting times on bus priority corridors</li> </ol>	<p>Quarterly Report to Authority including year to date position and remaining year profile</p>

<p><b>Operations</b></p> <ol style="list-style-type: none"> <li>1. Total number of buses <ul style="list-style-type: none"> <li>▪ Double deckers</li> <li>▪ Midis</li> <li>▪ Artics</li> <li>▪ Triaxles</li> <li>▪ Other</li> <li>▪ Total</li> </ul> </li> <li>2. Percentage of duties operated</li> <li>3. Kilometres operated</li> <li>4. Seat kms operated</li> <li>5. Lost Traffic Kilometers</li> <li>6. Non revenue kilometres as a percentage of total traffic kilometres</li> <li>7. Other Data <ul style="list-style-type: none"> <li>▪ Operations Cost/No. of employees</li> <li>▪ Revenue/Seat kms</li> <li>▪ Revenue/Pay costs</li> <li>▪ Vehicle kms/No. of employees</li> </ul> </li> </ol>	<p>Quarterly Report to Authority including year to date position and remaining year profile</p>
<p>Population within 800m of a bus stop</p>	<p>Annual Report to Authority</p>

**Dublin Bus has agreed to work towards providing the information provided in Schedule C broken down by the 16 corridors specified in Schedule A annually.**

**SCHEDULE D**  
**COMPENSATION**



## **SCHEDULE D**

### **Compensation**

#### **D.1: Compensation**

The NTA will finalise, not later than 31 December each year or such other date as the parties may agree, the financial compensation payable to Dublin Bus for the provision of the network of services and ancillary services set out in Schedule A amended as necessary. The compensation will be finalised taking full account of the provisions of clauses 3, 4, 5 and 6 in this Contract.

#### **D.2: Consultation**

A consultation process will commence between Dublin Bus and the NTA each year on 1 October. The purpose of this will be to specify the services and ancillary services to be delivered in the following year under PSO. This process will be completed and the compensation established no later than the date specified or agreed under Clause D.1 above. This process will be finalised taking full account of the provisions of clauses 3, 4, 5 and 6.

#### **D.3: Terms**

Compensation will be paid in thirteen instalments equally spread over the calendar year. Compensation will be paid no later than ten Working Days after the end of any period

#### **D.4: Tax**

The Contract reflects the taxation status of the compensation payment at the date of the Contract