

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 ____ November 2019

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), 2008 Act requires the Authority, when securing the provision of public bus services, to do so in accordance with section 52, 2008 Act or following a competitive tendering procedure.
- (C) Section 52(3), 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) The Authority and the Operator had entered into a direct award contract (within the meaning of section 47, 2008 Act) in accordance with section 52, 2008 Act which is expiring on 30 November 2019.
- (E) The Authority is authorised in accordance with section 52(6), 2008 Act to enter into subsequent direct award contracts with the Operator, subject to satisfaction of the requirements of section 52(6), 2008 Act.
- (F) This Agreement is a public transport services contract (within the meaning of section 47, 2008 Act) and a public service contract which is a direct award contract for the purposes of Chapter 2 of Part 3 of the 2008 Act and Regulation 1370.

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:

“**1958 Act**” means the Transport Act 1958.

“**1986 Act**” means the Transport (Re-organisation of Córas Iompair Éireann) Act 1986.

“**2008 Act**” means the Dublin Transport Authority Act 2008.

“**2009 Act**” means the Public Transport Regulation Act 2009.

“**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.

“**Ancillary Services**” means any services to be provided by the Operator in accordance with a Service Level Agreement, including:

- (a) the provision of travel information;
- (b) the provision of Bus Stop infrastructure maintenance; and
- (c) the marketing of Transport for Ireland services in the Greater Dublin Area.

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

“**Annual Operating Charge**” means the annual amount determined in accordance with clause 29.2(a) (PSO Compensation) and Schedule 20 (Contract Prices and Indexation).

“**Annual Review**” has the meaning given to it in clause 14.1(a) (Annual Review).

“**Annual Services Charge**” means the amount payable by the Authority to the Operator in accordance with Schedule 20 (Contract Prices and Indexation).

“**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.

“**Arrival Time**” means the time of arrival for a Bus to a destination as set out in the applicable Timetable.

“**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 IPR” means Intellectual Property Rights related to LEAP, Transport for Ireland and any other public transport brands developed by the Authority in connection with public transport services.

“Authority Network Asset” means any asset used by the Operator in the provision of the Services that, in accordance with Regulation 1370, has been funded or provided, in each case directly or indirectly, by the Authority, including any Authority Network Bus or the AVL System.

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

“Authority Network Bus” means a Network Bus (including all on-board equipment) which has been provided for the purposes of providing the Services and is owned by the Authority.

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

“Authority’s Representative” means the person appointed from time to time by the Authority to act as its representative in accordance with clause 20.5 (Authority’s Representative).

“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 and associated equipment owned by the Authority and 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).

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

“Bus Connects” means the investment programme to improve public transport in Dublin involving a number of projects including, designing and building a number of new bus corridors and new cycle lanes and the redesign of the Network.

“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.

“Claim” means any claim, demand or proceeding.

“Commencement Date” means 1 December 2019.

“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 in connection with the provision of the Services on the Routes.

“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, from time to time, the premises specified in Schedule 1 (Network Description) 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.

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

“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 Law” means all applicable Legal Requirements relating to data protection including, as of the Commencement Date, the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), the Data Protection Acts 1988 to 2018, and any legislation which amends, extends, consolidates, re-enacts or replaces same, including any statutory instruments and regulations that may be made pursuant thereto from time to time.

“DEASP” means Department of Employment Affairs and Social Protection.

“Deemed Variation” means:

- (a) a Discriminatory Change of Law; or

- (b) the introduction, or modification of, a Sectoral Employment Order in relation to employees who are drivers of Buses.

“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.

“Discriminatory Change of Law” means a change of Legal Requirements the terms of which apply expressly to the Services provided that:

- (a) a Legal Requirement which also affects:
- (i) other public bus passenger services;
 - (ii) road transport; or
 - (iii) persons other than the Operator,

shall not be regarded as a Discriminatory Change of Law solely on the basis that its effect on the Services or the Operator is greater than on any such public bus passenger services, road transport or other persons;

- (b) the introduction, or modification, of a Registered Employment Agreement or Employment Regulation Order is not a Discriminatory Change of Law; and
- (c) such change of Legal Requirement has neither been caused by, nor is the result of, any act or omission of the Operator.

“Employee Representatives” means, for the purposes of clause 44.5 (Transfer Regulations), the employee representatives as defined in the Transfer Regulations.

“Employment Regulation Order” means an order made under Section 42C of the Industrial Relations Act 1946 (as amended).

“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:

- (a) the Inland Fisheries Acts 1959 to 2017,
- (b) the Dangerous Substances Acts 1972 and 1979,
- (c) the Local Government (Planning and Development) Acts 1963 to 1999,
- (d) the Planning and Development Acts 2000 to 2019,
- (e) the European Communities Acts 1972 to 2012,
- (f) the Local Government (Water Pollution) Acts 1977 to 2007,
- (g) the Water Services Act 2007 to 2017,
- (h) the Air Pollution Acts 1987 and 2011,
- (i) the Safety Health and Welfare at Work Acts 2005 to 2014,
- (j) the Environmental Protection Agency Acts 1992 to 2011,
- (k) the Waste Management Acts 1996 to 2011, and

in each case, any secondary legislation made under any of them.

“Event of Default” means any event specified in clause 41.1 (Event of Default).

“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 2024; 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 carriage of passengers by the provision of the Services.

“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, in relation to any period, the revenue collected together with any amount collected or received through the use of LEAP and any amount received through the use of PSC Passes (other than amounts collected or receivable through the use of PSC Passes relating to commercial services which are not Services) by the Operator in connection with the carriage of passengers on the Network (including Standard Fare Revenue, revenue related to concessionary fare schemes and any other fare sharing or similar schemes in which the Operator participates from time to time with other public transport operators) 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), civil war, 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) 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
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed,

provided that such event is not caused or contributed to by the Party claiming or seeking to claim the occurrence of Force Majeure.

“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 service provider (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 (Grant Agreement).

“Gross Cost Date” means 1 January 2021.

“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 the first mentioned Bus.

“**holding company**” has the meaning given to it in section 8 of the Companies Act 2014. 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 Act 2014.

“**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).

“**Insolvency Event**” means, in relation to the Operator, each or any of the following events or any analogous event in any jurisdiction:

- (a) the presentation of a petition for winding-up and which petition is not dismissed within twenty-eight (28) days of its presentation; or
- (b) the presentation of a petition to appoint an examiner and which petition is not dismissed within ten (10) days of its presentation; or
- (c) the making of an order or an effective resolution being passed for winding up except for the purpose of a solvent reconstruction or amalgamation on a basis previously approved by the Authority (such approval not to be unreasonably withheld or delayed); or
- (d) the making of an order for the appointment or other duly authorised appointment of a liquidator, an examiner, receiver, trustee or similar officer for the Operator; or
- (e) the making of an order for the appointment of an examiner to a related company (within the meaning of Part 10 of the Companies Act 2014) of the Operator; or
- (f)
 - (i) the making of an order by a court for the appointment of a liquidator, receiver, examiner or other similar officer taking possession; or
 - (ii) the appointment of a receiver by an encumbrancer or the taking of possession by an encumbrancer,of the whole or any part (which is material in the context of the performance of the Operator's obligations under this Agreement) of the Operator's undertaking, property or assets; or
- (g) the making of a composition with creditors generally; or
- (h) being unable to pay its debts as they fall due.

“**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, 2008 Act, which is currently known as LEAP, including:

- (a) any regulations made by the Authority pursuant to section 58(4), 2008 Act;

- (b) any directions given by the Authority pursuant to section 58(6), 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,

which enables passengers to access one or more public transport services using contactless smart cards approved by the Authority for use on Network Services as an accepted ticketing medium.

“**KPI**” means key performance indicator.

“**LEAP**” means, as of the Commencement Date, the name of the Integrated Ticketing Scheme.

“**Legal Requirements**” means any applicable 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, in each case enforceable in Ireland.

“**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).

“**Mid-Term Review**” has the meaning given to it in clause 14.2(a) (Mid-Term Review).

“**Missed Connection Deduction**” has the meaning set out in paragraph 19.7 and table 19-2 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 in accordance with this Agreement using the Network Assets.

“**Network Assets**” means, at any time, any infrastructure and equipment (including depots, cleaning, fuelling and maintenance facilities, Authority Network Assets, Network Buses and associated equipment) required by the Operator, and used or managed by the Operator at that time, 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.

“Network Licence” means the licence granted to the Operator under clause 8.1 (Network Licence) pursuant to which the Operator is entitled to access and use the Authority Network Assets to enable it to provide the Services and otherwise comply with its obligations and exercise its rights under this Agreement.

“Non-PMS Breach” has the meaning given to it in clause 32.2 (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 20.3 (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.

“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 Payment” has the meaning given to it in Schedule 21 (Payment Mechanism).

“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 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” refers to “Positive Induced Network Effects” in Section 2.4.2 of the European Commission’s Interpretative Guidelines on Regulation 1370, published March 2014.

“Potential Replacement Operator” means any person tendering or otherwise offering to provide all or part of the Services (or services similar to the Services) on termination of or expiry of this Agreement (or part of it).

“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 46.2(c) (Sub-Contractors) and such other sub-contractors as may be agreed between the Authority and the Operator from time to time.

“Prior Contract” means the direct award public service contract dated 1 December 2014 between the Authority and the Operator in connection with the provision of certain public passenger transport services.

“PSC Passes” means Public Service Cards issued by the DEASP, which entitle:

- (a) the holder; and
- (b) any eligible person with the holder,

to free travel on the Services.

“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” means:

- (a) a public bus service (as defined in section 2, 2008 Act) or, to the extent different, a public bus passenger service (as defined in section 2, 2009 Act); or
- (b) an ancillary public passenger transport service (as defined in section 2, 2008 Act).

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

“public service obligation” has the meaning given to in section 47, 2008 Act and **“PSO”** shall be construed accordingly.

“public transport services contract” has the meaning given to it in section 47, 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 21 (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 (3) 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.

“Real Time Passenger Information” means the real time information on the predicted arrival time or departure time of Services.

“Records” means those records referred to in Schedule 18 (Records and Reporting Requirements) together with the accounts referred to in clause 25 (Accounts, Records and Reporting Requirements).

“Registered Employment Agreement” has the meaning given to it by section 6 of the Industrial Relations (Amendment) Act 2015.

“Regulation 1370” 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, as amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No. 1370/2007 concerning the opening of the market for domestic passenger transport services by rail.

“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 Employee” means, for the purposes of clause 44.5 (Transfer Regulations), a person whose employment would or does transfer (including to the Authority) by virtue of the Transfer Regulations or by operation of law at any time.

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

“Relief Event” means:

- (a) 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;
- (b) suicide, fire, earthquake, extraordinary storm, extraordinary flood or extraordinary weather conditions;
- (c) any official or unofficial strike or lockout in relation to a third party on a national basis in the State which:
 - (i) has been or is under way, on a consecutive basis, for more than five (5) Business Days; and
 - (ii) directly prevents the Operator from performing its obligations under this Agreement,
- (d) a Services Interruption of the type described in paragraph 19.8.1 of Schedule 19 (Performance Payments and Deductions);
- (e) failure of the ticketing system for more than two (2) days consecutively on any one occurrence;
- (f) compliance by the Operator with a Suspension Notice issued pursuant to clause 8.2(a) (Right to suspend access/use),

provided that, in the case of each event listed in this definition, such event has not been caused by any act or omission of the Operator.

“Replacement Operator” means any Successor Operator (including the Authority) to whom a Relevant Employee may or does transfer under the Transfer Regulations or by operation of law at any time including on termination or expiry of this Agreement (or part of it) or upon the occurrence of a Step In.

“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:
 - (i) commence:
 - (A) subject to sub-paragraph (B), on 1 January in such calendar year; and
 - (B) in the case of the first Contract Year, on the Commencement Date or such other date as may be agreed by the Parties; and

- (ii) end on:
 - (A) where 1 January falls on any Monday, Tuesday, Wednesday or Thursday, subject to sub-paragraph (C), the fourth (4th) Sunday of such calendar year;
 - (B) where 1 January falls on any Friday, Saturday or Sunday, subject to sub-paragraph (C), the fifth (5th) Sunday of such calendar year; and
 - (C) in the case of the first Contract Year, on the next Sunday such period would end by reference to sub-paragraphs (i) and (ii)(A) and (B);
- (b) the last Reporting Period in any calendar year shall include any days remaining in such calendar year; and
- (c) in the case of the last Reporting Period, such Reporting Period shall end on the Expiry Date.

“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 an Originating Stop to the corresponding Terminating Stop.

“Scheduled Service Kilometres” means, in respect of a Reporting Period and a Route, the total kilometrage 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.

“Sectoral Employment Order” has the meaning assigned to it by Section 17 of the Industrial Relations (Amendment) Act 2015.

“Service Level Agreement” means any agreement between the Authority and the Operator in connection with the provision of Ancillary Services, in the form specified by the Authority.

“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 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, including the Ancillary 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.

“Specified Employees” means the employees of the Operator who are designated as, and performing the duties of, drivers of the Network Buses.

“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).

“State” means Ireland.

“Step In” has the meaning given to it in clause 40.1 (Step-In).

“Step In Services” has the meaning given to it in clause 40.2 (Step-Out).

“Step Out” has the meaning given to it in clause 40.2 (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).

“Subsequent Transfer Date” means, for the purpose of clause 44.5 (Transfer Regulations), the moment on any date on which a Relevant Employee would or does transfer to a Replacement Operator by virtue of the Transfer Regulations or by operation of law at that time.

“**subsidiary**” has the meaning given to it in section 7, Companies Act 2014. 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 Act 2014.

“**Successor Operator**” means any person appointed to provide some or all of 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.

“**Transition Management Plan**” means, at any time, the then current plan detailing the transition management and termination assistance services to be provided by the Operator on the expiry or termination of this Agreement in accordance with Schedule 26 (Transition Management).

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

“**Variation**” means:

- (a) any addition, deletion or change to the Operator’s obligations under this Agreement, including, without limitation;
 - (i) a variation to the Routes;
 - (ii) the omission of one or more Routes and/or the addition of one or more Routes to the extent permitted by Legal Requirements;
 - (iii) variations associated with the replacement or enhancement, as the case may be, of Network Assets;

- (iv) variations associated with the modification, installation and operation of equipment on, or refurbishment to, Network Buses;
 - (v) a variation to the Service Specification;
 - (vi) a variation to the Authority Network Bus specification;
 - (vii) the provision of customer information; or
 - (viii) to the extent not contemplated by this Agreement, a variation required in connection with the implementation of measures contemplated by clause 5.6 (Integration obligations);
- (b) to the extent not contemplated by the foregoing, any changes contemplated by clauses 28.3(c) and 28.3(d) (Changes and Variations to Services), clause 28.5 (Possible Variations) and clause 28.6 (Bus Connects); and
- (c) any Deemed Variation.

“**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 2011.

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

2. INTERPRETATION

2.1 References

Except to the extent that the context or the 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 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 Representative, 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 an Annual Operating Charge, 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) to the extent there is any inconsistency between this Agreement and any Legal Requirements, the Legal Requirements shall prevail;
- (v) 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;
- (w) any calculation shall be rounded up or down to three (3) decimal places, or, in the case of monetary amounts, to two (2) decimal places;
- (x) any reference to "day" shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next;
- (y) 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";
- (z) any Approval shall be at the absolute discretion of the Authority, as applicable, except where expressly stated otherwise in this Agreement; and
- (aa) 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 Prior Contract

- (a) Subject to clause 2.2(c), nothing in this Agreement shall affect or prejudice the rights, entitlements, obligations and liabilities in relation to the Prior Contract prior to the Commencement Date.
- (b) Subject to clause 2.2(c), as and from the Commencement Date the rights, entitlements, obligations and liabilities of each Party shall be determined by reference to this Agreement, to the exclusion of the Prior Contract.
- (c) To the extent any performance metric and/or amounts payable under Schedules 19 (Performance Payments and Deduction) and Schedule 20 (Contract Prices and Indexation) falls to be determined by reference to the calendar year 2019 (including, any deduction, payment or bonus consequent on such determination), such matter shall be determined by reference to the Prior Contract as if the Prior Contract is in effect up to 31 December 2019 and thereafter shall fall to be determined by reference to this Agreement.

2.3 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).

2.4 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 – EFFECTIVENESS, WARRANTIES AND PROJECT UNDERTAKINGS**3. EFFECTIVENESS**

This Agreement shall take effect on the Commencement Date.

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 Operator has all Consents to Operate required in connection with the provision of the Services and such Consents to Operate are in full force and effect;
- (e) 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;
- (f) 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;
- (g) 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 (in the reasonable opinion of the Authority) 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;

- (h) 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
- (i) 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) The Operator hereby agrees to perform this Agreement (including the Schedules), any Grant Agreement, any Service Level Agreement and any other agreement with the Authority.
- (b) 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,

in each case, except to the extent expressly contemplated otherwise by this Agreement, at its own cost and risk.

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 (except where a lesser specification or standard of performance is expressly required under this Agreement);
 - (ii) in accordance with all Legal Requirements, 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 significantly damage the 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 in compliance with, and to satisfy, 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 or any other Legal Requirements insofar as it relates to the provision of public bus services in the Greater Dublin Area and the provision of the Services and/or any matter the subject of a Grant Agreement;
 - (B) ensure that it shall not hinder or prevent the Authority from enjoying its property rights in relation to the Network, the Authority Network Assets or Fares Revenue, or exercising its rights and powers under the 2008 Act or any other Legal Requirement; 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 such requirements relate to the subject matter of this Agreement and have been notified to the Operator or the Operator is otherwise aware of such requirements) 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, including, all approvals, consents and licences required under Data Protection Law to provide information, documents and records to the Authority in connection with the performance of its obligations under this Agreement;

- (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:
- (i) all of its necessary returns will be delivered by or on behalf of the Operator to the relevant taxation authorities,
 - (ii) 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
 - (iii) no Claim, as far as the Operator is aware (having made all due enquiry), will be asserted with respect to taxes which has not been disclosed to the Authority (except where the Operator is reclaiming VAT).

5.4 Legal Requirements

The Operator shall comply with all Legal Requirements applicable to it in connection with the provision of services.

5.5 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 ensure that Network Buses are stored in accordance with Good Industry Practice.
- (c) 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 normal course of the provision of the Services or to the extent otherwise permitted by this Agreement) 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 promptly to remedy such situation;
 - (ii) at its own cost, obtain and maintain in full force all Consents to Operate 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.
- (d) The Operator shall take all necessary steps to ensure that the operation, use and storage of each Network Bus is not contrary to any Legal Requirements.

5.6 Integration obligations

- (a) The Operator, in providing the Services, shall co-ordinate its Services with other public passenger transport services being provided in the Greater Dublin Area and, to the extent required by the Authority, shall integrate such Services with other public passenger transport services specified by the Authority.
- (b) Without prejudice to clause 5.6(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 operation of, and any developments in relation to:
 - (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.

5.7 Integrated ticketing arrangements

- (a) The Authority and the Operator acknowledge that the Operator is participating in, and shall provide all reasonable assistance to the Authority in relation to the Integrated Ticketing Scheme to the extent relating to the Services.
- (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.
- (c) The Operator shall participate in any review of the Integrated Ticketing Scheme being undertaken by the Authority.

- (d) The Operator shall cooperate with, and facilitate, the Authority in connection with any developments and/or modifications of the Integrated Ticketing Scheme

5.8 Implementation

The Operator shall comply with Schedule 24 (Implementation Date for Certain Aspects of the Contract).

5.9 Annual 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).

5.10 Negative Pledge

- (a) Subject to clause 5.10(b), the Operator hereby undertakes to the Authority that it shall not (without the prior Approval of the Authority):

- (i) create, nor permit to subsist, any Encumbrance on or over; or
- (ii) transfer or otherwise dispose of any right, title, benefit or interest in, any Authority Network Asset or any part thereof.

- (b) Clause 5.10(a) shall not apply to any Encumbrance arising by operation of law and in the ordinary course of business to the extent amounts payable by the Operator giving rise to such Encumbrance are discharged in accordance with applicable terms and conditions or are subject of a *bona fide* dispute.

6. INTELLECTUAL PROPERTY

6.1 Licence

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

6.2 Operator's obligations

- (a) Subject to clause 6.2(b), the Operator shall:
 - (i) ensure that all Intellectual Property Rights in Network Data acquired, created or brought into existence in any manner whatsoever by or on behalf of it; or
 - (ii) use all reasonable endeavours to ensure that all Intellectual Property Rights and Network Data acquired, vested or brought into existence by or on behalf of a Sub-Contractor,

in each case, for the purposes of the Services are vested in the Authority at the Expiry Date, at no cost to the Authority, and to give effect to this, the Operator hereby assigns to the Authority absolutely, including by way of present assignment of future rights, its entire right, title and interest in and to all Intellectual Property Rights in Network Data free from all encumbrances, for the full terms thereof throughout the world, including, all statutory and common law rights attaching to the Intellectual Property Rights and the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any

infringement or any other cause of action arising from ownership of the Intellectual Property Rights whether occurring before, on or after the date of this Agreement.

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

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 Intellectual Property Rights 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.

7. DATA PROTECTION

7.1 Schedule 30 (Data to be processed under the Agreement) - respective roles

- (a) The Parties have set out in Schedule 30 (Data to be processed under the Agreement) their respective roles as either controller or processor of personal data that is processed in connection with the Services, and the basis on which transfers of personal data between the Parties shall take place.
- (b) Where the Operator is designated as a processor of specified personal data under Schedule 30 (Data to be processed under the Agreement), it processes such personal data on behalf of the Authority in the context of providing the Services for the duration of the Contract Period. The obligations and rights of the Authority shall be as set out in this Agreement.

7.2 Operator - acting as a processor

The Operator further agrees that where it acts as a processor on behalf of the Authority:

- (a) the Operator will only process such personal data in accordance with the documented instructions of the Authority, including with regard to transfers of personal data to a third country and solely as strictly necessary for the performance of its obligations under this Agreement, unless otherwise required to do so by a Legal Requirement to which the Operator is subject and in such a case, the Operator shall inform the Authority of that Legal Requirement before processing, unless that law prohibits such information on important grounds of public interest;
- (b) the Operator shall ensure that the persons authorised by the Operator to process such personal data are bound by appropriate confidentiality obligations;
- (c) the Operator shall implement such technical and organisational security measures as are required to comply with its data security obligations under Data Protection Law, including compliance with the requirements of Schedule 32 (Cyber Security);
- (d) the Operator shall not engage any sub-processor in respect of the provision of the Services that will have access to such personal data without the prior written consent of the Authority (such consent not to be unreasonably withheld) and, subject always to clause 46 (Sub-Contracting), where the Authority has consented to the appointment of a sub-processor, the Operator shall not replace or engage other sub-processors without the prior written consent of the Authority;

- (e) where any sub-processor of the Operator will be processing such personal data on behalf of the Authority, the Operator shall ensure that a written contract exists between the Operator and the sub-processor containing clauses equivalent to those imposed on the Operator in this clause 7;

In the event that any sub-processor fails to meet its data protection obligations, the Operator shall remain fully liable to the Authority for the performance of the sub-processor's obligations;

- (f) the Operator shall inform the Authority without undue delay in the event of receiving a request from a data subject to exercise their rights under Data Protection Law and provide such co-operation and assistance as may reasonably be required to enable the Authority to deal with such request in accordance with the provisions of Data Protection Law;
- (g) taking into account the nature of the processing the Operator shall assist the Authority by implementing appropriate technical and organisational measures, in so far as this is possible, to allow the Authority to comply with requests from data subjects to exercise their rights under Data Protection Law;
- (h) the Operator shall assist the Authority in ensuring the Authority's compliance with its obligations in respect of security of personal data, data protection impact assessments and prior consultation requirements under Data Protection Law, taking into account the nature of the processing and the information available to the Operator;
- (i) when the Operator ceases to provide Services relating to data processing the Operator shall:
- (i) at the choice of the Authority, delete or return all such personal data to the Authority; and
 - (ii) delete all existing copies of such personal data unless a Legal Requirement requires the continued storage or retention of the personal data;
- (j) the Operator shall
- (i) make available to the Authority all information necessary to demonstrate compliance with the obligations laid down in this clause 7; and
 - (ii) allow for and assist with audits, including inspections, conducted by the Authority or another auditor mandated by the Authority, in order to ensure compliance with the obligations laid down in this clause 7, including its data security obligations under Data Protection Law. The Authority shall be entitled, at its discretion, to accept adherence by the Operator to an approved code of conduct or an approved certification mechanism to aid demonstration by the Operator that it is compliant with the provisions of this clause 7;
- (k) the Operator shall inform the Authority immediately if, in the Operator's opinion, it receives an instruction with regard to Article 28(3)(h) of the GDPR from the Authority which infringes Data Protection Law;
- (l) the Operator shall notify the Authority without undue delay, and in any event within forty eight (48) hours, after becoming aware of any personal data breach and shall provide the Authority with such co-operation and assistance as is required for the Authority to comply with its obligations under Articles 33 and 34 of the General Data

Protection Regulation (Regulation (EU) 2016/679) in connection with any such personal data breach; and

- (m) without prejudice to the generality of clause 7.2(a), where any such personal data shall be processed by the Operator or any of its agents or sub-processors outside the European Economic Area (“EEA”) (which the Parties acknowledge may in the future include the United Kingdom), the Operator shall:
 - (i) provide the Authority with prior written notice of any intended processing outside of the EEA and provide details of such processing activities and the method intended to be adopted by the Operator to ensure the lawfulness of same; and
 - (ii) ensure that any such processing shall be in accordance with Data Protection Law, including the provisions of Chapter V of the General Data Protection Regulation (Regulation (EU) 2016/679).

7.3 Controller to controller

- (a) In the event that personal data is transferred from one Party (the “**Transferring Party**”) to the other Party on a controller to controller basis, as identified in Schedule 30 (Data to be processed under this Agreement) or otherwise:
 - (i) the Transferring Party shall take all steps necessary to be able to provide such personal data to the other Party in compliance with the Transferring Party’s obligations under Data Protection Law;
 - (ii) the Transferring Party shall provide such cooperation and assistance as may be reasonably required for the other Party to comply with the other Party’s obligations under Data Protection Law in connection with the other Party’s receipt and use of such personal data; and
 - (iii) each Party shall:
 - (A) notify the other Party promptly upon becoming aware of any data subject request or complaint in relation to the processing of personal data or any correspondence or action by any competent supervisory authority in respect of the provision of such personal data to the other Party or receipt of such personal data from the other Party, as applicable; and
 - (B) provide the other Party with such cooperation and assistance as may be reasonably required for the relevant Party to comply with its obligations under Data Protection Law in respect of any such request, complaint, correspondence or action.
- (b) It is the common intention and understanding of the Parties that the Parties will not act as joint controllers in relation to any personal data that is processed in connection with this Agreement.

7.4 Defined terms

In this clause 7, the terms ‘personal data’, ‘controller’, ‘joint controller’, ‘processor’, ‘process’, ‘data subject’ and ‘personal data breach’ shall have the meanings given to them under Data Protection Law.

PART 3 - OPERATION AND MAINTENANCE**8. NETWORK LICENCE****8.1 Network Licence**

- (a) Without prejudice to any other licensing arrangements in place with the Authority, for the purposes of the Operator providing the Services and otherwise complying with its obligations and exercising its rights pursuant to this Agreement, the Authority hereby grants a licence to the Operator to have access to and to use the Authority Network Assets in accordance with this Agreement.
- (b) The Network Licence shall commence, in the case of each Authority Network Asset, on the delivery of such Authority Network Asset to the Operator and shall end on the Expiry Date.
- (c) The Operator shall be entitled to grant a sub-licence, in terms no better than those granted under the Network Licence, to have access to and/or to use the Authority Network Assets to the Operator's servants, agents, employees and Sub-Contractors and any other person whom the Operator reasonably requires to allow to have access to and/or to use the Authority Network Assets in order to provide the Services and otherwise to perform or facilitate the performance of the obligations and exercise or facilitate the exercise of the rights of the Operator pursuant to this Agreement, provided that the Operator shall not otherwise be entitled to or be required to assign, sublet, part with possession or otherwise deal with the Authority Network Assets other than in accordance with this Agreement.
- (d) The Operator shall be liable to the Authority for all acts and omissions of any of its sub-licensees in breach of the Network Licence.
- (e) The Network Licence is granted to the Operator for the sole purpose of enabling the Operator to meet its obligations under this Agreement. Neither the Network Licence nor the provision of access to the Authority Network Assets by the Authority to the Operator shall be a demise of the Authority Network Assets or any part of them, nor shall the Operator be entitled to any estate, right or interest in the Authority Network Assets or any part of them, and the Operator and those authorised by it shall have access to the Authority Network Assets as licensees of the Authority only.
- (f) The Network Licence shall immediately terminate upon the occurrence of the Expiry Date.

8.2 Right to Suspend Network Licence

The Authority may serve a notice (the "**Suspension Notice**") on the Operator where:

- (a) the Authority and/or its agents or contractors or any other person authorised by the Authority requires exclusive access to the Authority Network Assets (or any of them) to carry out works or to maintain or repair or renew or replace the Authority Network Assets (or any of them);
- (b) the Operator or any of its agents or contractors acts in a manner that, in the reasonable opinion of Authority, will or is likely to cause a detrimental (physical or commercial) effect to any of the Authority Network Assets; or
- (c) an Event of Default has occurred and is continuing,

(each a “**Suspension Event**”).

8.3 Contents of Suspension Notice

A Suspension Notice shall specify:

- (a) the nature of the relevant Suspension Event;
- (b) the date and time at which suspension is to take effect;
- (c) any reasonable restrictions imposed by Authority on the Operator’s rights to use the Authority Network Assets (or any of them) while the Suspension Notice is in force, including restrictions on the Operator’s provision of the Services on any particular Route; and
- (d) in respect of a Suspension Notice pursuant to clauses 8.2(b) or 8.2(c) (Right to Suspend Network Licence), whether the Authority reasonably considers that such Suspension Event is capable of remedy, and where the Suspension Event is capable of remedy:
 - (i) to the extent that the Authority has an opinion on how such should be remedied, the steps reasonably required to remedy the Suspension Event; and
 - (ii) a reasonable grace period for the Operator to remedy it.

8.4 Effect of Suspension Notice

Where the Authority has served a Suspension Notice on the Operator:

- (a) the Operator shall comply with any restrictions and the other requirements imposed on it by the Suspension Notice;
- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Authority to the Operator under clause 8.6(c) (Revocation of Suspension).
- (c) in respect of a Suspension Notice pursuant to clause 8.2(a) (Right to Suspend Network Licence), the Authority and the Operator shall use all reasonable endeavours to agree any matters consequent on the works or maintenance or repair or renewal or replacement of the Authority Network Assets (or any of them) by the Authority.

8.5 Suspension to be Proportionate

- (a) A Suspension Notice shall, so far as reasonably practicable, apply only to those Authority Network Assets to which the relevant Suspension Event relates.
- (b) Where a Suspension Event is capable of remedy or to be remedied by the Operator, the Operator shall:
 - (i) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Suspension Event; and
 - (ii) keep the Authority fully informed of the progress which is being made in remedying the Suspension Event.

8.6 Revocation of Suspension

- (a) With respect to a Suspension Notice served under clause 8.2(a) (Right to Suspend Network Licence) on completion of the works, maintenance or repairs or renewal or replacement the subject of that Suspension Notice (whether in whole or in part), provided it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the Authority shall revoke the suspension to that extent in accordance with this clause 8.6.
- (b) Where the Operator has complied with its obligations under clause 8.5(b) (Suspension to be Proportionate) (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the Authority shall revoke the suspension to that extent in accordance with this clause 8.6.
- (c) The Authority shall effect the revocation of a suspension as soon as practicable after cessation of the Suspension Event to its satisfaction (whether in whole or in part) by written notice from the Authority to the Operator specifying the extent of the revocation and the date on which it is to have effect.

9. OPERATION AND MAINTENANCE OF NETWORK ASSETS

9.1 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 and any other Relevant Authority;
 - (iv) ensuring that any Control Room is manned in accordance with Schedule 11 (Operation and Maintenance of Network Assets);
 - (v) attending meetings with Relevant Road Authorities in connection with the provision of Services in relation to other road users; and
 - (vi) maintaining a schedule of all Public Events relevant to the Network.
- (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.
- (d) 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;

- (ii) obtained the Approval of the Authority to the provision of the Services in respect of that Route; and

satisfied all Legal Requirements.

9.2 Route commencement

Without prejudice to any other requirement under this Agreement, the Operator shall not commence to provide the Services on a Route for the purpose of carrying fare paying passengers until the Operator has satisfied the Authority that it has:

- (a) in the event of any new or modified Route or change in stopping places, secured all Consents to Operate in respect thereof;
- (b) obtained the Approval of the Authority to the provision of the Services in respect of that Route; and
- (c) satisfied all Legal Requirements.

9.3 Training of Staff

The Operator shall:

- (a) comply with the requirements of this Agreement; and
- (b) act in accordance with Good Industry Practice,

in relation to the preparation and implementation of a training plan for Staff deployed in the provision of the Services to ensure that the Services are performed with and by appropriately qualified and trained personnel in accordance with Schedule 5 (Operations Management).

9.4 Operating Plan

- (a) The Operator shall comply with the requirements of this Agreement, Schedule 4 (Operating Plan) and act in accordance with Good Industry Practice in relation to the preparation of the Operating Plan.
- (b) The Operator shall implement the Operating Plan throughout the Contract Period.
- (c) The Operating Plan shall be submitted by the date and time specified by the Authority for its Approval.
- (d) The Authority shall review any draft Operating Plan submitted to it in accordance with this clause 9.4 and shall, within twenty (20) Business Days of its receipt, notify the Operator whether the draft Operating Plan is Approved or whether the Authority has comments and modifications in relation to the draft Operating Plan. Any Authority comments and modifications shall be provided by the Authority within the twenty (20) Business Day period referred to in this clause 9.4(d).
- (e) Upon the Operator receiving the comments and modifications of the Authority, it shall prepare a revised version of the draft Operating Plan taking into account the comments and modifications of the Authority. It shall supply such revised version of the draft Operating Plan within fifteen (15) Business Days (or such greater period as the Authority may specify) of its receiving the comments and modifications.

- (f) The process contemplated by clauses 9.4(d) and 9.4(e) shall be repeated until the Authority is satisfied with the draft Operating Plan in which case:
 - (i) the Authority shall promptly inform the Operator that the draft plan is Approved; and
 - (ii) such Approved plan shall be the Operating Plan for the purposes of this Agreement and the period specified in such Approved plan.
- (g) If the Authority does not notify the Operator or give comments and modifications on or before the expiry of the period referred to in clause 9.4(d) (or as repeated in accordance with clause 9.4(f)), the draft plan shall be deemed to have been Approved.
- (h) The Operator shall comply with the Operating Plan.
- (i) The Authority may require, or the Authority and the Operator may agree, amendments to the Operating Plan from time to time.
- (j) 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.

9.5 Policing, Emergency Exercises and Enquiries

The Operator shall:

- (a) comply with the requirements of Schedule 5 (Operations Management) and Schedule 12 (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.

10. DEFECTS IN AND DAMAGE TO NETWORK ASSETS

10.1 Operator's General Obligations

The Operator shall:

- (a) bear all risk of loss, theft and damage (save for any loss, theft or damage directly caused by the Authority) to such Network Assets from any cause whatsoever, except to the extent expressly contemplated otherwise by this Agreement;
- (b) be responsible for monitoring the performance of such Network Assets in performing the Services; and

- (c) comply with the provisions of Schedule 11 (Operation and Maintenance of Network Assets).

10.2 Defects and Damage to Network Assets

- (a) The Operator shall be responsible for identification, notification and, except to the extent expressly contemplated otherwise by this Agreement, rectification of defects in, and damage to, Network Assets including, where the defect or damage is not capable of rectification, replacement of such Network Assets.
- (b) On the occurrence of damage to, or defects in, a Network Asset the Operator shall rectify such defects and damage with all due speed in accordance with Schedule 11 (Operation and Maintenance of Network Assets) and shall hold the Authority harmless in respect of all costs of the Operator in carrying out the rectification.

10.3 No Relief

Subject to clause 32.1 (Reporting and monitoring) and without prejudice to the Operator's obligations under clause 5 (Operator Undertakings), the Operator shall be liable for any Performance Deduction arising as a consequence of damage to Network Assets or defects, unless relieved by the Authority in accordance with clause 39 (Relief Events).

11. MAINTENANCE

11.1 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.

11.2 General requirements

Without prejudice to clause 11.1 (Maintenance) and the Grant Agreement, to the extent applicable, the Operator shall use, operate, maintain and securely store each Network Asset in compliance with:

- (a) any recommendations of the relevant manufacturer notified to the Operator by the manufacturer, the Authority or the Authority's Representative from time to time or of which the Operator is otherwise aware; and
- (b) Good Industry Practice from time to time.

11.3 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 10 (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 (Communications and Public Relations) in relation to notification of passengers and provision of replacement bus services.

12. ENVIRONMENTAL MANAGEMENT

12.1 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.

12.2 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.

13. SAFETY MANAGEMENT

13.1 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.

13.2 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.

14. REVIEWS

14.1 Annual Review

- (a) On the expiry of each Contract Year, the Authority shall undertake a review (the “**Annual Review**”) which shall be a review of the Services provided and performance under this Agreement during that Contract Year.
- (b) In connection with such Annual Review, the Operator shall attend a meeting with the Authority for the purposes of reviewing the Operator’s performance under this Agreement and the Services.
- (c) In carrying out any Annual Review, the Authority may consider such matters as it deems appropriate, including (but not exclusively):
 - (i) the results of planned or random inspections;
 - (ii) the results of the customer satisfaction surveys;
 - (iii) the audited financial statements;
 - (iv) the number of complaints received by the Operator or the Authority and the results of complaints resolution;
 - (v) any matters contemplated by the Service Specification; and
 - (vi) the standards of performance achieved.

14.2 Mid-Term Review

- (a) On or about the thirtieth (30) month after the Commencement Date the Authority may undertake a Mid-Term Review which shall be to review in detail the Operator’s performance and to assess a range of strategic and operational matters in relation to the provision of the Services.
- (b) The Authority shall, prior to the Mid-Term Review, issue an invitation to submit comments to representatives of consumer groups and any other interested parties, and shall furnish to the Operator the outcome of any such invitation and allow the Operator a reasonable opportunity to provide observations on such comments to the Authority.

14.3 Other Reviews

- (a) The Authority reserves the right to undertake a more detailed review of one or more areas as may be deemed necessary by it from time to time.
- (b) 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.
- (c) Each Party shall ensure that sufficient representatives of that Party attend meetings required under this clause 14.3 to constructively address any issues raised.
- (d) 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.

- (e) The Authority shall have regard to any submissions made by the Operator in relation to matters to be considered as part of an Annual Review or a Mid-Term Review pursuant to this clause 14 (Reviews).

14.4 Operator's response

The Operator shall address all issues raised during any review by the Authority and to the results of the Annual Review referred to in clause 14.1 (Annual Review) or the results of the Mid-Term Review referred to in clause 14.2 (Mid-Term Review) and to any other issues raised in response to the Authority's invitation to submit comments referred to at clause 14.2(b) (Mid-Term Review), within five (5) Business Days or such other time as the Authority may require (acting reasonably).

PART 4 - PASSENGER SERVICES**15. PASSENGER SERVICES**

15.1 Timetable

- (a) The Operator shall provide the Services in accordance with the Timetables set out in Schedule 2 (Service Specification).
- (b) Without prejudice to the generality of clause 15.1(a), the Operator shall comply with the requirements of Schedule 2 (Service Specification), Schedule 13 (Customer Care), Schedule 14 (Customer Information) and Schedule 15 (Communications and Public Relations) in relation to the Timetable and the provision of information relating to the Services.

15.2 Customers' Charter

- (a) The Operator shall prepare the Customer's Charter for Approval by the Authority within forty (40) Business Days of the Commencement Date and subsequently review and update the Customers' Charter by each anniversary of the Commencement Date.
- (b) The Customers' Charter shall set out the mechanisms to ensure that applicable 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 Customers' Charter.

15.3 Authority Consent

The Operator shall not make any changes to:

- (a) the Timetable;
- (b) the Customers' Charter;
- (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; or
- (d) any Route,

without the Authority's prior consent in writing or, in the case of clause 15.3(a) or clause 15.3(d), to the extent permitted by Schedule 5 (Operations Management).

16. REVENUE COLLECTION

16.1 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;
- (d) collect Fares from passengers or require passengers to present (and have validated as appropriate) a valid ticket or pass entitling such passengers to use the Services; and
- (e) without prejudice to the generality of the foregoing, comply with:
 - (i) the revenue reporting set out in the Schedule 8 (Ticketing and Fares Collection);
 - (ii) the requirements of Schedule 8 (Ticketing and Fares Collection) in relation to ticketing; and
 - (iii) the requirements of Schedule 10 (Revenue Protection) in relation to Standard Fares.

16.2 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.

16.3 Authority Consent

The Operator shall not make any changes to the revenue collection arrangements contemplated by this clause 16 (Revenue Collection) without the Authority's prior consent in writing.

16.4 Fares

- (a) Subject to the requirements of Schedule 24 (Implementation Date for Certain Aspects of the Contract), 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.

17. ADVERTISING

- (a) The Operator shall be entitled to any revenue from the sale of advertising space in relation to the Network and the Network Assets.
- (b) The Operator shall facilitate and/or procure such reasonable access to the Network (subject to compliance with all reasonable instructions of the Operator with regard to the safety of the Network) and provided such access does not disrupt the Services 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.

18. 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 (Communications and Public Relations) in relation to public relations and publicity.

19. SERVICES INTERRUPTIONS

19.1 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 Stop either side of the affected part of the Network,

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

19.2 Operator Relief in relation to Service Interruptions

To the extent that the Operator complies with clause 19.1 (Services Interruptions), then the Operator shall be entitled to relief in accordance with Schedule 19 (Performance Payments and Deductions).

PART 5 - RELATIONSHIPS, MONITORING AND THIRD PARTIES**20. RELATIONSHIPS****20.1 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.

20.2 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 20.2(a) whether a certificate or approval has been given by the Relevant Authority.

20.3 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 20.4 (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.

20.4 Change of Operator's Representative

Except 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 (such Approval not to be unreasonably withheld or delayed).

20.5 Authority's Representative

- (a) The Authority shall appoint a competent and qualified person to act as its representative in connection with this Agreement and such person shall be the Authority's Representative.
- (b)
 - (i) The Authority's Representative shall be located in Ireland.
 - (ii) At any time the Authority's Representative will be outside of Ireland for more than five (5) consecutive Business Days, the Authority's Representative shall nominate a temporary substitute and shall so notify the Operator in writing, which notice shall include the name and contact details of the temporary substitute.
 - (iii) Where the Authority's Representative proposes to nominate a substitute for a period in excess of twenty (20) consecutive Business Days, such nomination shall, unless otherwise notified by the Authority, be deemed to be a termination of the Authority's Representative's appointment and the provisions of clause 20.6 (Change of Authority's Representative) shall apply.
- (c) The Authority's Representative shall have full authority to act on behalf of the Authority for all purposes of this Agreement. The Operator shall be entitled to treat any act of the Authority's Representative in connection with this Agreement as being expressly authorised by the Authority, and the Operator shall not be required to determine whether any express authority has in fact been given.

20.6 Change of Authority' Representative

- (a) The Authority may, at any time and from time to time, by notice to the Operator, terminate the appointment of the Authority's Representative or appoint one or more substitute Authority's Representatives.
- (b) Any such notice shall specify the date on which such termination or substitution shall have effect.

21. 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.

22. CONSENTS AND APPROVALS

22.1 Approvals

- (a) Without limitation to clause 22.2 (Effect of Consents and Approvals), 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, if required by the Authority, use all reasonable endeavours to 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.

22.2 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 22.3 (Withdrawal of Approval) applies.
- (c) Without prejudice to the preceding provisions of this clause 22.2, any Approval, endorsement, decision, opinion, instruction, notice, statement of objection, finding, determination, requirement, or certificate of the Authority shall be final.

22.3 Withdrawal of Approval

Without prejudice to clause 22.2 (Effects of Consents and Approvals), which shall apply whether or not an Approval is withdrawn under this clause 22.3, 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.

23. CONSENTS TO OPERATE

23.1 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.

23.2 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).

24. INFORMATION AND ACCESS

24.1 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 the provision of the Services and for no other purpose.

24.2 Supply of Information and Access to the Network

- (a) Without prejudice to clause 25.2 (Separate accounts), 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, if any 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 24.2(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 24.2(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 on the Authority for preparation of accounts.

- (c) The Operator:
 - (i) acknowledges that the rights of the Authority under clauses 24.2(a) and 24.2(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 24.2(a) and 24.2(b).
- (d) The reasonable costs of the financial audit to be carried out in accordance with Schedule 29 (Audit Terms of Reference) shall be borne in equal shares by the Authority and the Operator.

24.3 Oireachtas Questions and Issues

- (a) Without prejudice to clause 24.2 (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 Associated Company 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:
 - (i) in connection with this Agreement and/or the Services; and
 - (ii) in relation to statements by the Authority to 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 24.3 applies to the extent that it deems necessary or appropriate and shall not be obliged to keep any such information confidential.

24.4 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 operators 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 in connection with the competition.
- (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.

24.5 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.

25. ACCOUNTS, RECORDS AND REPORTING REQUIREMENTS

25.1 Required Reports and Records

- (a) The Operator shall submit to the Authority the reports and the records 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 25.1(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 or activity 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 25.1(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.

25.2 Separate accounts

The Operator shall ensure that:

- (a) the activities contemplated by this Agreement are the subject of separate accounts;
- (b) such accounts shall comply with the requirements of Regulation 1370 and any other Legal Requirement applicable to them;
- (c) such accounts are provided to the Authority, and/or such other person (acting on its behalf) as the Authority may specify, within such period as the Authority may specify, having regard to the status of such accounts; and
- (d) without prejudice to clause 24 (Information and Access), it will respond within such period as the Authority may specify to any queries which the Authority may raise in relation to such accounts.

25.3 Audit

- (a) The reports and records referred to in clause 25.1 (Records and Reporting Requirements) 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).
- (b) The Authority is entitled to audit such records (or any category of record or any of them):
 - (i) subject to clause 25.3(b)(ii), no more frequently than once each Contract Year in relation thereto and may only exercise its right to have such records audited on giving at least five (5) Business Days' notice to the Operator; and
 - (ii) at any time, upon the occurrence and for the duration of:
 - (A) an Event of Default; or
 - (B) it being entitled to exercise its rights to Step-In.

25.4 Availability

- (a) The Operator shall make the records referred to in clause 25.1 (Required Reports and Records) available for inspection by or on behalf of the Authority, without prejudice to any legal rights of the Authority, at all reasonable times upon the Authority giving at least two (2) days' notice or, if an Event of Default has occurred or the Authority is entitled to exercise its rights to Step-In, without notice and shall assist the Authority in respect of any accounting queries..
- (b) The Authority shall be entitled, without prejudice to any legal rights of the Authority, at all reasonable times upon giving at least two (2) days' notice or, if an Event of Default has occurred or the Authority is entitled to exercise its rights to Step-In, 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.

25.5 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 25.1 (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 25.5(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 25.5(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.

25.6 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 can be extracted from all other data or information generated or acquired by the Operator in some other capacity, and provided to the Authority when required.

(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.

- (d) The Operator hereby agrees and consents to the Authority, its employees, consultants and agents carrying out such tasks, and accessing such property (without restriction) to obtain such data or information where it has failed to deliver such to the Authority.

25.7 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 the extent that their sub-contractors are engaged for, solely or, among other things, the purpose of back-up and/or storage of copies of such records) 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 25.7, 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.

25.8 Applicable Laws

Without prejudice to clause 5.1(b)(ii) (Operator Obligations) or 7 (Data Protection), the Operator acknowledges that the performance by the Operator of its obligations under this Agreement (including this clause 25 (Accounts, Records and Reporting Requirements)) shall comply with, and satisfy, all the Legal Requirements applicable to data protection and data storage (including Data Protection Law).

PART 6 - CHANGES AND VARIATIONS**26. OPERATOR SERVICES****26.1 Provision of Services**

- (a) Subject to clause 26.1(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 for provision of services or activities other than Services being provided under this Agreement ("**other activities**") provided that:
 - (i) the other activities do not prejudice the provision of the Services;
 - (ii) the full economic cost of providing such other activities is recovered by the Operator;
 - (iii) it can demonstrate to the Authority that such use is in accordance with Regulation 1370, including, in relation to the allocation of costs connected with the provision of the other activities, such that there is no cross subsidy between the provision of the Services under this Agreement and the provision of the other activities;
 - (iv) the Operator provides details (including details of the cost of providing, and the revenue earned in the provision of, such other activities) in writing to the Authority in respect of each Reporting Period during which such other activities are provided by the Operator;
 - (v) the Authority and the Operator agree the reduction of the Charges consequent on the provision of such other activities such that there is no overcompensation; and
 - (vi) in the case of any Authority Network Asset, the prior Approval of the Authority is obtained.
- (c) Authority Network Assets may be used for other activities but only to the extent contemplated by, and subject to the conditions of, the Grant Agreement in respect of such Authority Network Assets.

26.2 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, 2008 Act to facilitate the acquisition by the Operator, on behalf of the Authority, 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 (Grant Agreement) including upon the expiry or termination of the Existing Grant Agreement.

27. NETWORK INFRASTRUCTURE

27.1 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 27.1(a) shall be provided by the Operator within such time period as the Authority may reasonably require.

27.2 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.

28. VARIATIONS

28.1 Variations

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

28.2 Sections 51 and 52, 2008 Act

It is agreed and acknowledged that this clause 28 (Variations) is without prejudice to, and shall not affect, any right, duty or entitlement of the Authority pursuant to, and in accordance with section 51 or section 52, 2008 Act to unilaterally amend this Agreement.

28.3 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 the Services which it proposes to introduce.
- (b) The Authority may from time to time prepare and notify the Operator of changes to the Services which it proposes to introduce in accordance with Schedule 23 (Variations).
- (c) 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.
- (d) 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.

28.4 Deemed Variations

- (a) Upon the occurrence of a Deemed Variation, the Operator shall, within five (5) Business Days of its occurrence:
 - (i) notify the Authority of the occurrence of such Deemed Variation; and
 - (ii) where it is a Deemed Variation:
 - (A) falling within paragraph (a) of its definition, confirm to the Authority details of the costs incurred (or to be incurred) by the Operator arising from the Discriminatory Change of Law; or
 - (B) falling within paragraph (b) of its definition and it relates to the annual cost of Specified Employees, demonstrate to the satisfaction of the

Authority details of the annual cost immediately before the introduction or modification of the Sectoral Employment Order, of the Specified Employees.

- (b) Upon receipt of the information contemplated by clause 28.4(a) and provided the notice satisfies the requirements of paragraph 23.8 of Schedule 23 (Variations), the Authority shall treat such as an Operator Variation Notice in respect of the Deemed Variation for the purposes of Schedule 23 (Variations).
- (c) Schedule 23 (Variations) applies to each Deemed Variation.
- (d) The amount payable in connection with a Deemed Variation falling within paragraph (a) of its definition is the costs incurred (or to be incurred) by the Operator arising from the Discriminatory Change of Law.
- (e) The amount payable in respect of each Reporting Period in connection with the Deemed Variation falling within paragraph (b) of its definition is, if (i) is greater than (ii) the difference between:
 - (i) the annual cost prescribed by the Sectoral Employment Order for drivers of Buses, to the extent that the Sectoral Employment Order prescribes this; and
 - (ii) the amount referred to in clause 28.4(a)(ii)(B).
- (f) In this clause 28.4:

“**annual cost**” means, in the case of a Specified Employee, all payments associated with the employment of drivers (such as salary, bonus, overtime, pension contributions, employer’s PRSI) and includes all amount which may be payable in connection with unsocial hours or other enhancements.

28.5 Possible Variations

The Parties acknowledge that Variations may be required in connection with:

- (a) changes or upgrades to the Network (or any part of the Network), including works requiring the re-configuration of elements of the Network; or
- (b) variations to the Services,

in each case, whether prompted by:

- (i) passenger demand and/or travel conditions generally affecting the Network (or any part of the Network) having regard to road, rail and other forms of public and private transport;
- (ii) the impact (or anticipated impact) or any planned or actual transport programme, including Bus Connects;
- (iii) changes to ticketing arrangements (such as, the introduction of next generation ticketing);
- (iv) funding
- (v) public policy;

- (vi) technological changes and/or improvements;
- (vii) changes in applicable Legal Requirements;
- (viii) technical or operational difficulties which become apparent during operation or maintenance of the Network and/or performance of the Network;
- (ix) the needs of customers and other road users;
- (x) replacement or upgrade of the Operator’s ticketing system;
- (xi) extraordinary interventions that might become necessary in order to ensure continuation of passenger services on the Network; or
- (xii) otherwise.

28.6 Bus Connects

- (a) The Operator acknowledges that Bus Connects may:
 - (i) involve inspections, works, tests and other activities being carried out to part of the Network to facilitate the provision of any of the projects contemplated by Bus Connects (the “**Bus Connects works**”);
 - (ii) involve change to the Timetable and to the performance of the Services; and
 - (iii) involve the alteration (including, possible discontinuation) of some of the Services being provided under this Agreement to facilitate the Bus Connects works and the provision of the Bus Connects services on the Network.
- (b) In relation to Bus Connects, the Operator shall:
 - (i) attend such meetings as notified by the Authority;
 - (ii) provide the Authority with written comments upon the operational impact of any Bus Connects design proposals;
 - (iii) make available personnel, at such times and levels as reasonably required by the Authority; and
 - (iv) otherwise liaise and cooperate with the Authority and the contractors and consultants involved in Bus Connects (the “**Bus Connects contractors**”).
- (c) The Operator shall take all steps:
 - (i) as may be reasonably required by the Authority, in co-ordinating its own working arrangements with those of the Bus Connects contractors; and
 - (ii) to manage and minimise the disruption to the Services caused by the development and construction of Bus Connects to the Services.
- (d) The Authority shall liaise with the Operator to co-ordinate the Bus Connects works so as to ensure that the disruption to the Services is minimised.

- (e) Any alteration of the Services directly consequent on the Bus Connects works and the provision of Bus Connects on the Network (or part of the Network) shall be the subject of a Variation Notice and treated as an Authority Variation in accordance with Schedule 23 (Variations).

PART 7 - PSO COMPENSATION, PAYMENT AND TAXES**29. PSO COMPENSATION****29.1 Public Service Obligation**

It is acknowledged that:

- (a) the Authority has determined in accordance with Regulation 1370 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.

29.2 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 1370, 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 “**Annual Operating Charge**”).
- (b) Subject to the terms of this Agreement (including, clause 28 (Variations) and Schedule 23 (Variations)), the parties acknowledge that any performance metric and/or amounts payable for the first Contract Year (being from the Commencement Date to 31 December 2019) shall be determined by reference to the Prior Contract in accordance with clause 2.2(c) (Prior Contract).
- (c) Any Annual Operating Charge payable by the Authority under this Agreement shall be paid in accordance with clause 30 (Payment Process) and Schedule 21 (Payment Mechanism).
- (d) Notwithstanding any other provision of this Agreement, the Annual Operating Charge shall not exceed the amount required to cover the net financial effect, as calculated by reference to the Annex to Regulation 1370, of compliance with the public service obligations contemplated by this Agreement.

30. PAYMENT PROCESS**30.1 Process**

The Parties shall comply with the requirements of Schedule 21 (Payment Mechanism) in connection with payments to be made under this Agreement.

30.2 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, upon the receipt of an invoice.

30.3 Errors in Reports

- (a) Without prejudice to clause 25.3 (Audit), the Authority shall be entitled to send any Report, Required Record and other records provided by the Operator to an

independent auditor (or such other persons as the Authority deems necessary) 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.

31. RATES, TAXES AND CHARGES

31.1 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.

31.2 Value Added Tax

- (a) Except where otherwise expressly stated in this Agreement or otherwise applicable at law, all amounts payable by the Authority under this Agreement are VAT exempt in accordance with paragraph 14(3) of Schedule 1 of the Value Added Tax Consolidation Act 2010.
- (b) If the provision of public transportation is no longer treated as an exempt supply or is treated as subject to VAT, the Operator may give notice to the Authority to this effect, together with material (satisfactory to the Authority) evidencing or demonstrating this.
- (c) Where the Authority is satisfied that the provision of public transportation is no longer treated as an exempt supply or is treated as subject to VAT, in which case:
 - (i) the Authority and the Operator shall revise the charges so that the Operator is "no better no worse" in accordance with clause 31.2(d); and
 - (ii) VAT shall be payable in addition to the revised charge and the Authority shall pay to the Operator the amount of the VAT properly chargeable in sufficient time to allow the Operator to meet its payment obligations in respect of VAT.
- (d) In revising the charges in accordance with this clause 31.2 (Value Added Tax):
 - (i) the Operator shall provide to the Authority such information as would be required by Schedule 23 (Variations) if the change in the VAT treatment had been a Variation;
 - (ii) the Parties shall engage in good faith in resolving this so that the Operator is "no better no worse"; and

- (iii) without prejudice to any other provision of this Agreement, the Authority will be entitled to inspect and audit the records of the Operator in connection with such revision.
- (e) No payment is to be made under this clause 31.2 in respect of VAT unless the Authority has received from the Operator a valid VAT invoice in respect of the relevant supply.
- (f) For the purposes of this clause 31.2, "no better no worse" is to be construed by reference to the costs of, and VAT input credits available to, the Operator both before and after the provision of public transportation being no longer treated as an exempt supply or is treated as subject to VAT, such that the net position of the Operator remains unchanged between before and after such occurring.

PART 8 - PERFORMANCE STANDARDS**32. PERFORMANCE****32.1 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).

32.2 Breach

- (a) Without prejudice to clause 32.2(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 provided that the Authority has given prior notification of such breach to the Operator.
- (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 Annual Operating Charge (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.

32.3 Maximum Liability - Performance Deductions

- (a) Without prejudice to the Authority's right to withhold amounts under clause 32.2 (Breach), the Operator's maximum liability for Performance Deductions, excluding Lost Kilometres Deductions and Fare Evasion Loss, in any Contract Year shall be limited to two per cent (2%) of the Annual Services Charge for such Contract Year.
- (b) Clause 32.3(a) shall not apply to the Authority's right to withhold amounts under clause 32.2 (Breach).

33. PERFORMANCE MONITORING**33.1 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.

33.2 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.

33.3 Annual review

Without prejudice to clauses 33.1 (Attendance at meetings) or 33.2 (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.

34. MONITORING AND ACCESS**34.1 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.

34.2 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 9 - INDEMNITIES< INSURANCE AND LIMITATION OF LIABILITY**35. INDEMNITIES****35.1 Operator's General Indemnities**

- (a) The Operator shall indemnify and hold harmless the Authority from and against:
- (i) all liabilities for or in respect of bodily injury, illness, disease or death of any person whatsoever;
 - (ii) all liabilities for or in respect of damage to any property real or personal of the Authority or their employees or any third party;
 - (iii) all liabilities arising out of a breach of this Agreement;
 - (iv) all liabilities for or in respect of any breach of statutory duty; and
 - (v) third party actions, claims, demands, costs, charges and expenses brought against the Authority (including legal expenses on an indemnity basis),

to the extent that the same arises out of or are contributed to in whole or in part by any performance or non-performance or negligence by the Operator of this Agreement or its Sub-Contractors of any tier, or its or their agents or employees.

- (b) Any amount that may be payable by the Operator pursuant to this clause 35 shall be paid by it on demand being made of it by the relevant indemnified person.

35.2 Extent of indemnities

The indemnities given by the Operator under this Agreement shall not apply to any liabilities to the extent that they:

- (a) arise from or are contributed to by a breach of this Agreement by the Authority or the negligence of the Authority or their subcontractors of any tier or the Authority's employees or agents (excluding the Operator, any Associated Company of the Operator, any subcontractor of the Operator and any Associated Company of a subcontractor of the Operator); or
- (b) arise from any event of Force Majeure; or
- (c) are covered by any insurance policy being maintained by or on behalf of any Party which has not been vitiated and under which insurance proceeds have actually been received by the Authority in respect of the matter and in respect of which the insurer's rights of subrogation have been waived against the Operator.

36. 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 (Insurances) 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 (Insurances), shall limit or relieve the Operator of its liabilities and obligations under this Agreement.

37. LIMITATION ON LIABILITY

37.1 Limitation on Operator liability

- (a) Subject to clause 37.1(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 (€) (Indexed) or, if higher, the specified indemnity limit of the Required Insurance Policy in respect of insurance required under clause 36 (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:
 - (A) to the extent contemplated by clause 32.3(a) (Maximum Liability - Performance Deduction), in accordance with such clause; or
 - (B) to the extent not contemplated by clause 32.3(a), 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);
 - (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.

37.2 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.

37.3 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 10 - THIRD PARTY EVENTS AND STEP IN**38. FORCE MAJEURE****38.1 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 38.1(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 38 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 38 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.

38.2 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 the 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.

38.3 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 38 shall cease to be available to a Party if it fails so to take all such steps to remedy the failure.

38.4 Mitigation

Each Party shall use all reasonable endeavours and in accordance with Good Industry Practice to mitigate the consequences of any Force Majeure event.

38.5 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.

39. RELIEF EVENTS

39.1 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 prevented by any Relief Event, notwithstanding the Operator using all reasonable endeavours and in accordance with Good Industry Practice to mitigate the effect of such Relief Event in its performance of its obligations under this Agreement.
- (b) Any such relief request shall be made by service of a notice on the Authority as soon as reasonably practicable after the occurrence of the Relief Event and in any event, within ten (10) 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.

39.2 Relief Notice

Subject to compliance by the Operator with its obligations under clause 39.1, 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 the 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 relevant Relief Period.

39.3 Duty to Mitigate

Notwithstanding the issue of any Relief Notice, the Operator shall use all reasonable endeavours and consistent with Good Industry Practice to mitigate the consequences of any Relief Event.

40. STEP IN

40.1 Step In

- (a) Without prejudice to the powers of the Authority under section 56, 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 40.1(a), the Authority may:
 - (i) step in and provide, or procure the provision on its behalf of all or part of the Services (a "**General Step In**"); and
 - (ii) where the failure or refusal to provide the Services in the Authority's opinion affects the provision of the Services only on a particular Route or Route(s), step in and provide, or procure the provision on its behalf of, the Services on such Route(s) (a "**Route-Specific Step In**").

Both General Step In and Route Specific Step In shall constitute a “**Step In**” for the purposes of this Agreement.

- (c) In the event that the Authority exercises its rights under clause 40.1(b):
 - (i) 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; and
 - (ii) the Operator shall give all reasonable co-operation to the Authority to ensure a smooth transition to enable the Authority to provide or procure the provision on its behalf of part or all of the Services with no degradation of the standard of Services.
- (d) The provision of part or all of the Services by the Authority in accordance with this clause 40 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.
- (e) Without prejudice to the foregoing, the Operator shall not be subject to Performance Deductions in respect of Services in respect of which there is a Step In for the duration of such Step In.

40.2 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;
- (b) the Operator shall, upon receipt of a notice under clause 40.2(a), resume performance of the Step In Services; and
- (c) the Operator shall give all reasonable co-operation to the Authority to ensure a smooth transition to enable the Operator to resume performance of the Step In Services with no degradation of the standard of Services.

40.3 Operator of last resort

- (a) This clause 40 (Step-in) is without prejudice to section 56, 2008 Act.
- (b) If the Authority exercises the rights conferred on it pursuant to section 56, 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.

40.4 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, 2008 Act or the exercise by the Authority of its rights under clause 43 (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); and
- (c) the Operator shall remedy its failure or refusal to provide the Services within such timeframe as may be specified by the Authority.

PART 11 - TERMINATION, CONSEQUENCES OF TERMINATION AND EMPLOYMENT**41. TERMINATION****41.1 Event of Default**

- (a) Without prejudice to any other rights or remedies of the Authority under this Agreement:
- (i) the occurrence of any Insolvency Event in relation to the Operator; or
 - (ii) the suspension or revocation of any Consent to Operate which prevents the Operator from providing the Services,
- shall constitute an Event of Default.
- (b) The Operator shall notify the Authority forthwith upon becoming aware of the occurrence of an Event of Default and shall provide the Authority with full details of all steps which it is taking, or proposes to take, in order to remedy or mitigate the effect of the Event of Default or otherwise in connection with it.
- (c) If an Event of Default contemplated by clause 41.1(a)(i) occurs, the Authority may within six (6) months of such Event of Default coming to its attention by notice to the Operator terminate this Agreement forthwith.
- (d) Notwithstanding anything in this clause 41.1 (Event of Default), upon the occurrence of an Event of Default, the Authority may exercise all rights and remedies available to it under this Agreement, or otherwise.

41.2 Termination for Force Majeure

Where a Party serves on the other Party a notice pursuant to clause 38.5 (Termination), this Agreement shall terminate immediately upon service of the relevant notice.

42. CONSEQUENCES OF TERMINATION**42.1 Obligations on Termination**

The Operator shall comply with the provisions of this clause 42 (Consequences of Termination) upon termination of this Agreement (for whatever reason).

42.2 Termination as a result of Event of Default

Where this Agreement is terminated by the Authority as a result of an Event of Default:

- (a) the Authority shall be entitled to appoint a new operator to perform and provide the Services;
- (b) the Operator shall indemnify the Authority in respect of all Losses incurred by the Authority as a result of such termination including, without limitation, where the Authority appoints a new operator to perform the Services, any amounts payable by the Authority to such operator in excess of the amounts that, but for such termination, would have been payable by the Authority to the Operator under this Agreement, less any sums owed to the Operator by the Authority under this Agreement; and

- (c) the Authority shall not be required to make any further payment to the Operator after the date of termination of this Agreement until any sum due to the Authority under this Agreement or as damages has been agreed or established in accordance with this Agreement, provided that, upon agreeing or establishing such sum, the Operator shall be entitled to seek payment of any outstanding amounts due to it by the Authority in accordance with this Agreement.

42.3 Condition of records and systems

- (a) The Operator shall ensure that all such records, documentation, drawings and manuals are complete, up-to-date, properly catalogued and in a tidy condition for hand-back to the Authority.
- (b) The Operator shall ensure that the maintenance management systems and procedures are operating effectively.
- (c) Except as otherwise provided in this Agreement, the Operator shall provide to the Authority free of charge one copy of the latest versions of all documents, databases, records and other information necessary for the operation and maintenance of the Authority Network Assets including a complete record of the activities relating to safety matters undertaken by the Operator during the Contract Period and all other information in the Operator's possession or to which it has access and which may be required to enable a Successor Operator to continue to perform the Services.

42.4 Continuance of activities and assignment of benefit of this Agreement

- (a) Subject to clause 42.2 (Termination as a result of Event of Default) and without prejudice to any rights and remedies of any Party, the Operator and the Authority shall continue to perform their respective obligations under this Agreement until the date of termination of this Agreement unless other phased handover procedures are agreed between the Parties.
- (b) The Operator shall:
 - (i) give all reasonable co-operation to the Authority to ensure a smooth transition to enable a Successor Operator to continue to perform the Services with no degradation of the standard of Services; and
 - (ii) at the Authority's request execute all documents and do all acts which may be necessary to assign the benefit of this Agreement to a third party.

42.5 Saving provisions

Termination of this Agreement shall be without prejudice to any right or remedy of any Party against the other accruing or accrued at any time relating to the period prior to such termination.

43. COMPETITIVE TENDERING

43.1 Competitive Tendering

- (a) The Authority may specify certain Routes for competitive tendering during the Contract Period, in accordance with the requirements of Schedule 19 (Performance Payments and Deductions).

- (b) 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 by the Authority.
- (c) The Parties acknowledge and agree that 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 by the Authority.

43.2 Transition Management Plan

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

43.3 Comply with Transition Management Plan

Upon the exercise by the Authority of its rights under clause 43.1 (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.

43.4 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 43.1 (Competitive Tendering).

44. EMPLOYMENT ISSUES

44.1 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 written request furnish to the Authority, in the format required by the Authority, details of all employees, agents, Sub-Contractors, 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.
- (c) The Operator shall, at its own cost and risk, fill all staff vacancies arising during the Contract Period using fair procedures.

44.2 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.

44.3 Employment Conditions

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

44.4 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; and
- (b) appropriate safety gear and equipment will be provided at the Operator's expense and used when required.

44.5 Transfer Regulations

- (a) For the purposes of this clause 44.5 (Transfer Regulations):

"Employee Information" has the meaning set out in clause 44.5(f) below; and

"Liabilities" means costs (including the cost of wages, salaries and other remuneration or benefits), taxation or other deductions required by law, PRSI payments, redundancy payments, levies, losses, claims, demands, actions, fines, penalties, awards, liabilities, expenses (including legal expenses on an indemnity basis), in each case howsoever arising.

- (b) The Operator and the Authority acknowledge that the Transfer Regulations:
 - (i) may apply upon all or part of the Services transferring to, or otherwise being taken on by, the Authority or a Replacement Operator on termination or expiry of this Agreement; and
 - (ii) may apply upon all or part of the Services transferring to, or otherwise being taken on by, the Authority or a Replacement Operator upon the occurrence of a Step In and/or Step Out or otherwise.
- (c) If the Transfer Regulations apply on termination or expiry of this Agreement, the Operator shall comply with its obligations under the Transfer Regulations, including its information and consultation obligations under Regulation 8 of the Transfer Regulations, and it shall provide any reasonably necessary information and assistance to a Replacement Operator to allow that party to comply with its obligations (including providing a list of Relevant Employees together with their terms and conditions of employment and allowing the Replacement Operator to address Relevant Employees as is reasonably necessary in the lead up to the Subsequent Transfer Date).
- (d) The Operator shall indemnify the Authority and the Replacement Operator and keep the Authority and Replacement Operator indemnified against any and all Liabilities relating to Relevant Employees (or a person claiming his employment should transfer to the Replacement Operator) arising from:
 - (i) any claim which relates to such person's employment by the Operator before the Subsequent Transfer Date;

- (ii) the employment or termination of such person's employment by the Operator before the Subsequent Transfer Date;
 - (iii) any changes in such person's terms and conditions of employment before the Subsequent Transfer Date;
 - (iv) any failure by the Operator to comply with the Transfer Regulations, including the information and consultation requirements in Regulation 8;
 - (v) a failure by the Operator to provide an accurate list of Relevant Employees together with their terms and conditions of employment; and
 - (vi) the non-disclosure or inaccurate disclosure of Employee Information.
- (e) If it is found by the Workplace Relations Commission, Labour Court or any other court of competent jurisdiction that the provisions of the Transfer Regulations operate so as to transfer to the Replacement Operator a person other than a Relevant Employee whose identity was notified to the Replacement Operator in accordance with clause 44.5(c) above:
- (i) the Replacement Operator shall, upon becoming aware of the alleged application of the Transfer Regulations to such person, inform the Operator and the Operator shall within five (5) Business Days:
 - (A) provide all relevant information to the Replacement Operator relating to such person and his employment as reasonably requested by the Replacement Operator ; and
 - (B) consult with the Replacement Operator in good faith as to the appropriate steps to be taken in relation to that person;
 - (ii) the Operator shall be entitled but not required, within ten (10) Business Days, offer such person employment on their same terms and conditions of employment; and
 - (iii) the Operator covenants to pay to the Replacement Operator on demand an amount equal to any and all Liabilities arising out of such person's employment and/or the termination of such person's employment (including any award made following a claim taken by such person together with the costs reasonably incurred in defending such claim), so long as such termination takes place within two (2) months of the Replacement Operator becoming aware of such allegation.
- (f) Within fifteen (15) Business Days of a written request by the Authority, the Operator shall give to the Authority or shall procure that the Authority is given the following information:
- (i) details of Relevant Employees including by category (including, without limitation, drivers and Revenue Protection Officers):
 - (A) number of Relevant Employees;
 - (B) job titles and job descriptions;
 - (C) length of service and years left to retirement;

- (D) notice period for termination;
 - (E) rostering arrangements;
 - (F) duty rules (including, without limitation, maximum working time, maximum spread, sign on time, sign off time and meal reliefs);
 - (G) rates of pay, average overtime earnings, allowances, bonuses and other benefits (including, without limitation, pension, life insurance, death in service benefit, spouses' pension benefit, health insurance, company mobile phones and company cars);
 - (H) annual leave entitlement and accrued annual leave at that date;
 - (I) absenteeism rates;
 - (J) employer's pension contributions; and
 - (K) overall wages and salary costs;
- (ii) copies of sample contracts of employment of the Relevant Employees;
 - (iii) copies of any relevant collective or workforce agreement;
 - (iv) a list of any Employee Representatives;
 - (v) proposals for consultation with affected employees;
 - (vi) such further information as is required by the Transfer Regulations at the Subsequent Transfer Date;
 - (vii) such additional information as may be requested by the Authority; and
 - (viii) such information as may be required to enable the Authority to comply with its obligations pursuant to any Legal Requirement.
- (g) The Operator shall inform the Authority of all material changes to the information supplied under clause 44.5(f) (other than to age and length of service) within ten (10) Business Days of such change occurring.
 - (h) The Authority shall be entitled to provide information supplied under clauses 44.5(f) and 44.5(g) to the Replacement Operator and any Potential Replacement Operator.
 - (i) The Operator warrants that the information given under clauses 44.5(f) and 44.5(g) will be complete and accurate and the Operator shall indemnify and hold harmless the Authority on its own account and as trustee for any Replacement Operator or any Potential Replacement Operator against all and any Indemnified Liabilities awarded against, incurred by or paid by the Authority or a Replacement Operator as a result of any such inaccurate or incomplete information.
 - (j) The Operator shall upon:
 - (i) termination or expiry of this Agreement or the transfer of all or part of the Services to a Replacement Operator; and

- (ii) to the extent applicable, Step In under clause 40 (Step In),
- discharge all salaries, wages, bonuses, pension contributions, holiday entitlements and any other emoluments or financial benefits including any obligation in respect of tax and social insurance thereon and other employment obligations relating to or concerning any Relevant Employee and/or any of the Operator's employees in respect of the period up to and including the Subsequent Transfer Date (or, in the case of any employee affected by a Step In, up to the date of the Step In);
- (k) The Operator shall maintain, or procure that there is maintained, adequate and suitable personnel records regarding Relevant Employees to enable the Operator to comply with this clause 44.5 (Transfer Regulations).
- (l) The Operator shall procure that there is not, without the Authority's prior consent, at any time made, agreed to take effect, or promised any change to the terms of employment of any Relevant Employee (including, but without limitation, the engagement, promotion or dismissal of any Relevant Employee (other than a dismissal for serious misconduct or serious poor performance and in each case having followed an appropriate disciplinary procedure)) in the period:
- (i) after the Operator has been notified of the termination of this Agreement or part thereof; or
- (ii) of six (6) months immediately prior to the Expiry Date, up to and including the Expiry Date; or
- (iii) prior to any Step In or such period of notice for the exercise of the Step In as has been given, or
- (iv) on or after the Expiry Date,
- other than changes:
- (A) made in the ordinary course of business; or
- (B) consequent on a national industrial relations agreement or Sectoral Employment Order, in each case (as applicable), with which the Operator, as an operator of buses, is obliged to comply.
- (m) The Authority holds the benefit of any indemnities, covenants, agreements or warranties provided under this clause 44.5 (or any sub-clauses hereof) for itself and in trust for any nominee or Replacement Operator, and the Operator agrees that the Authority has the right at its sole discretion to assign the benefit of such indemnities to a Replacement Operator and that, when requested to do so by the Authority, the Operator shall execute indemnities, covenants, agreements or warranties in similar terms as this clause 44.5 in favour of a Replacement Operator.
- (n) Where the Operator chooses to provide all or any part of the Services through a Sub-Contractor:
- (i) the term "**Operator**" shall be interpreted where necessary as including such Sub-Contractor; and
- (ii) the Operator shall ensure that any such Sub-Contractors providing some or all of the Services, comply with the Transfer Regulations (if applicable) and any

obligations to provide information or assistance to the Authority or a Replacement Operator in the same manner as such applies to the Operator.

- (o) The Operator shall indemnify and hold harmless the Authority for itself and as trustee for any Replacement Operator against all and any Liabilities awarded against, incurred or paid by the Authority or any Replacement Operator or replacement contractor in respect of any employee, contractor or worker employed by or contracted to the Operator who is not a Relevant Employee or is not deemed to be a Relevant Employee for the purposes of this clause 44.5 (and for these purposes “**Liability**” shall include those of any Replacement Operator and/or any replacement contractor in relation thereto).
- (p) Each Party (the “**notifying party**”) shall promptly notify the other Party (the “**indemnifying party**”) of any Claims in respect of which the notifying party may be entitled to claim indemnity under this clause 44.5 and the notifying party shall not settle any such Claims without prior authority from the indemnifying party (which shall not be unreasonably withheld or delayed) and, if the indemnifying party shall so request, the notifying party shall entrust to the indemnifying party the care and conduct of contesting any such Claim.
- (q) In the event of a Claim by a third party against any Party arising out of, or in connection with, matters to which this clause 44.5 relates, each Party shall give upon request by the other Party such assistance or information relevant to such Claim as may reasonably be requested.
- (r) Subject to clauses 44.5(d), 44.5(f) and 44.5(g), the Authority shall indemnify the Operator in respect of the discharge of all salaries, wages, bonuses, pension contributions and any other emoluments or financial benefits and other employment obligations relating to or concerning any Relevant Employee who transfers to a Replacement Operator in respect of the period following the Subsequent Transfer Date, provided that the relevant obligation or liability does not arise in or relate to any period before the Subsequent Transfer Date or any act or omission of the Operator taking place in such period.

PART 12 - MISCELLANEOUS PROVISIONS**45. ASSIGNMENT****45.1 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.

45.2 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.

46. SUB-CONTRACTING**46.1 Sub-Contracting Performance**

- (a) Subject to Regulation 1370, the Operator shall not be entitled to sub-contract performance of the Services in whole or part, except to the parties listed in clause 46.2(c) (Sub-Contractors), 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 46.1 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 46.

46.2 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 46.2(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 or any proposed substitute to be made in relation to:
 - (i) direct bus service providers;
 - (ii) any maintenance contractors or persons providing maintenance services to, or for, Network Assets (other than manufacturers of the particular Network Asset or their agents);
 - (iii) Flowbird (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.

46.3 Responsibility of Operator

In the event that Services are sub-contracted to be performed by a third party, for the purposes of this Agreement, such sub-contracted Services:

- (a) are "Services" under this Agreement; and
- (b) are regarded as being provided by the Operator.

Nothing in any sub-contracting arrangement shall relieve the Operator from any liability, obligation or responsibility under this Agreement.

46.4 Replacement of Sub-Contractors

If any of the persons referred to in clause 46.2(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 46.2 (Sub-Contractors).

46.5 Details of proposed Sub-Contractors

The Operator shall, upon reasonable notice from the Authority, submit to the Authority such information as the Authority may reasonably require in respect of Sub-Contractors.

46.6 Continuing obligations

- (a) In the event of a Principal 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 Principal 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 (or otherwise capable of being available) to the Authority and thence by the Authority to any nominee stipulated by the Authority.

46.7 Waiver of Liability

If requested by the Authority, the Operator shall use all reasonable endeavours to obtain from each replacement for a Principal Sub-Contractor, prior to any such party performing any of the Services, a waiver of liability in favour of the Authority in respect of the Losses or Claims referred to clause 22 (Consents and Approvals) in a form satisfactory to the Authority (acting reasonably).

47. **DISPUTES RESOLUTION PROCEDURE**

47.1 Referral to Representatives

Any dispute arising out of or in connection with this Agreement shall be referred at first instance to the Authority's Representative and the Operator's Representative who shall endeavour in good faith to resolve the dispute.

47.2 Initial Escalation

In the event that the dispute cannot be resolved by the parties referred to in clause 47.1 (Referral to Representatives) within five (5) Working Days of referral of the dispute to them, the matter will then be referred to Tim Gaston of the Authority and Ciaran Rogan of the Operator who will endeavour in good faith to resolve the dispute.

47.3 Further Escalation

In the event that the dispute cannot be resolved by the parties referred to in clause 47.2 (Initial Escalation) within five (5) Working Days of referral of the dispute to them, the matter will then be referred to the Chief Executive of the Authority and the Chief Executive of the Operator who will also endeavour in good faith to resolve the dispute.

47.4 No limit on rights

Nothing in this Agreement shall prevent either party from seeking injunctive or other relief in any Court to protect or enforce its legal rights.

47.5 Code of Practice for Governance of State Bodies

Subject to clause 47.4 (No limit on rights), the Parties acknowledge that paragraph 8.48 of the Code of Practice for the Governance of State Bodies provides that:

- (a) where a legal dispute arises between the Parties, unless otherwise required by statute, every effort should be made to mediate, arbitrate or otherwise resolve the dispute before expensive legal costs are incurred; and
- (b) the Parties should pursue the most cost effective course of action in relation to legal disputes.

48. 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.

49. NOTICES

49.1 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.

49.2 Notice Specify Response Period

Subject to clause 49.4 (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.

49.3 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: ray.coyne@dublinbus.ie
Attention: Chief Executive
Operator’s Representative
John Ryan Dublin Bus 59 Upper O’Connell Street Dublin 1
Email: John.Ryan@dublinbus.ie
Attention: John Ryan
Authority’s Representative
Ger Regan National Transport Authority Dún Scéine Iveagh Court Harcourt Lane Dublin 2
Email: ger.regan@nationaltransport.ie
Attention: Ger Regan

49.4 Changes

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

49.5 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.

50. 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 to the Authority for approval a copy of such announcement, circular, advertisement or other publicity.

51. CONFIDENTIALITY

51.1 Confidential Information

In this clause 51 (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, Tourism and Sport and/or Department of Transport, Tourism and Sport;
- (d) any information of a confidential or proprietary nature which relates to the undertaking or finances of any of the Parties; and
- (e) 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**") whether before or during this Agreement.

51.2 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 clause 51.3 (Permitted Disclosures); and
- (c) shall make every effort to prevent the use or disclosure of Confidential Information.

51.3 Permitted Disclosures

- (a) During the term of this Agreement, the Receiving Party may disclose Confidential Information to any of its directors, officers, shareholders (including employees of such shareholders) 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 51 (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 Act 2014) 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 24.3 (Oireachtas Questions and Issues);
- (vii) the information is disclosed to a Minister of the Government of Ireland; or
- (viii) 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.

52. AGENCY

52.1 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.

52.2 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.

52.3 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.

52.4 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.

52.5 Parties Relationship

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.

53. ACKNOWLEDGEMENT

The Parties acknowledge that, subject to compliance with all applicable Legal Requirements (including section 52, 2008 Act), the Authority and the Operator may enter into a direct award public service contract subsequent to this Agreement.

54. 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, subject to clause 2.2 (Prior Contract), 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.

55. 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.

56. 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.

57. 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.

58. CORRUPT GIFTS**58.1 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.

58.2 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 Criminal Justice (Corruption Offences) Act 2018, and/or the Ethics in Public Office Act 1995, with or without the knowledge of the Operator then, subject to clause 58.3 (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 removes (or procures the removal) 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) from the Services 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 58 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.

58.3 Remedies for Prohibited Acts

- (a) Without prejudice to any other rights under this clause 58, the Authority shall be entitled to:
 - (i) recover from the Operator 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 58; and
 - (ii) require that the amount or value of any gift or consideration given in breach of this clause 58 be donated to a charity specified by the Authority.
- (b) In exercising its remedies under this clause 58, 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) report the Prohibited Act to the authorities to the extent it deems such Prohibited Act to be an offence.

59. 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.

60. GOVERNING LAW AND JURISDICTION**60.1 Law**

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

60.2 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>